

## **TENTATIVE RULINGS: CIVIL LAW & MOTION**

Friday, May 2, 2025 at 8:30 a.m.  
Courtroom 18 – Hon. Kenneth G. English  
**Civil and Family Law Courthouse**  
**3055 Cleveland Avenue**  
**Santa Rosa, California 95403**

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6604**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

**If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.**

### **TO JOIN ZOOM ONLINE:**

#### **Department 18:**

Meeting ID: **160—739—4368**

Password: **000169**

<https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWIIL3NBeE9LVHU2NVpQIVRUT09>

### **TO JOIN ZOOM BY PHONE:**

By Phone (same meeting ID and password as listed for each calendar):

Call: +1 669 900 6833 US (San Jose)

Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

#### **1. 24CV02603, McFarland v. Saffren Joshua L. TR & Saffren-Bloom Heather TR:**

Motion to be Relieved as Counsel (Plaintiff)

Counsel Raymond Ghermezian's motion to be relieved as counsel of Plaintiff Peter Michael McFarland is **CONTINUED** to **May 23, 2025 at 8:30 a.m.** in Department 18 to allow Plaintiff's counsel to give adequate notice of the hearing date to the Parties.

The Court is inclined to grant the motion but is unclear whether Plaintiff's counsel properly served the notice of motion with the hearing date as the motion was filed and served on the same day and Plaintiff did not oppose the motion.

#### **2. SCV-271694, Elder v. Dumolin Service Corporation:** Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement

The Court **GRANTS** Plaintiff Marissa Elder's ("Plaintiff") motion for preliminary approval of class action and PAGA settlement pursuant to California Rules of Court, Rule 3.769 for an order:

1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice;
2. Certifying a Class for settlement purposes;
3. Approving the Notice and Settlement Information Form (collectively, “Notice Packet”) and the plan for the distribution of the Notice Packet to Settlement Class Members;
4. Appointing Plaintiff Marissa Elder as Class Representative for settlement purposes;
5. Appointing Plaintiff’s Counsel, Moon Law Group, PC, as Class Counsel for settlement purposes;
6. Appointing ILYM Group, Inc. as the Settlement Administrator; and
7. Scheduling a final approval hearing.

The Final Fairness Hearing is hereby set for **November 7, 2025 at 9:00 a.m.**, in Department 18.

### Procedural History

Plaintiff filed her initial Complaint against Defendant Dumolin Service Corporation (doing business as Dumolin Community Living) (“Defendant”) on September 28, 2022 alleging several violations of the Labor Code. (MPA, 2:2–10.) Plaintiff subsequently filed her First Amended Complaint (“FAC”) on March 1, 2023 to add a cause of action for civil penalties under the Private Attorneys General Act (“PAGA”). (MPA, 2:10–13.) After participating in private mediation, the Parties executed a Class Action and PAGA Settlement Agreement and Class Notice on January 13, 2025. (MPA, 4:9–21; Moon Declaration, Exhibit 1 [“Settlement Agreement”].) Plaintiff moves the Court to preliminarily approve the class and PAGA settlement.

### The Settlement Agreement

#### *Class Members*

The Parties have reached a full settlement of this action as specified in the Settlement Agreement. Class Members include all persons employed by Defendant in California as hourly, non-exempt employees at any time during the Class Period, which totals about 321 people who collectively worked a total of 18,000 Workweeks and 21 Aggrieved Employees who worked a total of 4,306 PAGA Pay Periods. (Settlement Agreement, ¶¶ 1.5, 4.1.) The Class Period runs from September 28, 2018 to January 12, 2025. (Settlement Agreement, ¶ 1.12.)

#### *Settlement Funding*

The Gross Settlement Amount is \$198,000, or 67.02% of the maximum realistic recoverable potential damages. (Moon Declaration, ¶ 24.) This amount will be used to pay Individual Class Payments, Individual PAGA Payments, the Labor and Workforce Development Agency (“LWDA”) PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the Administration Expenses Payment. (Settlement Agreement, ¶ 1.21.)

The Net Settlement Amount is the Gross Settlement Amount that will be distributed to Class Members and PAGA Employees less Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative

Service Payment, and the Administration Expenses Payment. (Settlement Agreement, ¶1.27.) The Net Settlement Amount will total no less than \$89,500. (Settlement Agreement, ¶¶ 1.7, 1.27, 3.2.1, 3.2.3, 3.2.5.)

#### *Administrator*

The Parties have chosen ILYM Group, Inc. to serve as the Administrator. (Settlement Agreement, ¶ 1.2, 7.1.)

#### *Attorneys' Fees*

Attorneys' fees shall not exceed 33.33% of the Gross Settlement Amount, which is \$66,000.00, and litigation costs and expenses not to exceed \$20,000.00. (Settlement Agreement, ¶ 3.2.2.)

#### *LWDA*

Subject to Court approval, PAGA Penalties in the amount of \$10,000.00 will be paid from the Gross Settlement Amount, with 75% (\$7,500.00) allocated to the LWDA PAGA Payment and 25% (\$2,500.00) allocated to the Individual PAGA Payments. (Settlement Agreement, ¶ 3.2.5.)

#### *Class Representative Enhancement Payment*

The Class Representative Enhancement Payment shall not exceed \$7,500.00 in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. (Settlement Agreement, ¶ 3.2.1.)

#### Proposed Class and Commonality of Interests

The proposed class is sufficiently numerous and ascertainable as it consists of 321 employees who can be identified by Defendant's regular business records. (MPA, 23:2–18.)

Additionally, common issues of law and fact predominate, including whether Defendant had legally compliant policies and practices to provide employees with meal periods, whether Defendant had legally compliant policies and practices authorizing and permitting its employees to take rest breaks, whether Defendant had legally compliant policies and practices ensuring indemnification of all necessary business expenses, whether all wages were timely paid to employees at the time of termination of the employment relationship, and whether the wage statements were consequently non-compliant. (MPA, 23:20–24:9.) All Class Members seek redress for the same alleged injuries. (MPA, 24:9–10.)

Plaintiff's claims are typical of the Class claims as Plaintiff was employed by Defendant and subject to the same practices and policies as other similarly situated employees. (MPA, 24:17–27.)

#### Fair, Adequate, and Reasonable

"The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullar, supra*, at 130.) Plaintiff's Counsels' investigation into

the facts enabled them to come to conclusions regarding the value of the class claims. Plaintiff obtained:

(1) a representative randomized sampling of corresponding time and payroll records for the putative class; (2) company handbooks and written policies in effect during the Class and PAGA Periods; (3) Plaintiff's personnel records and employment files; (4) Class data points, including, for both current and formerly-employed Class Members between the start of the Class Period and the date of mediation total numbers of Class Members, average hourly rates, and approximate numbers of workweeks worked, pay periods, and wage statements issued; and (5) PAGA (and wage statement penalty) group data points, including, for both current and formerly-employed Aggrieved Employees between the start of the PAGA Period and the date of mediation, total numbers of Aggrieved Employees, average hourly rates, and approximate numbers of workweeks worked, pay periods, and wage statements issued.

(Settlement Agreement, ¶ 2.4.)

This data helped Class Counsel to determine scope of potential liability and familiarized them with facts and legal issues raised, allowing them to efficiently investigate and negotiate the Settlement. (Moon Declaration, ¶ 8.)

The Settlement reflects multiple discounts accounting for the potential liabilities, defenses, and other risks in computing the settlement value. (Moon Declaration, ¶¶ 18–24.) The Settlement represents 67.02% of the maximum realistic recoverable potential damages, which Plaintiff notes exceeds percentages routinely approved by courts. (MPA, 12:5–16; Moon Declaration, ¶ 24.)

### Notice

California Rules of Court, Rule 3.769(e), an order “must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.” Additionally, Rule 3.769(f) states that, “if the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.”

Plaintiff contends that all Class members will receive direct mailed notice and will be translated into Spanish. (MPA, 26:1–3, 10–11.) The proposed Notice “informs the Class Members of the terms of the Settlement and of their rights to be excluded from the Settlement.” (MPA, 26:11–12.) The proposed Settlement Notice attached as Exhibit A to the Settlement Agreement appears thorough and sufficient to adequately notify class members pursuant to Rule 3.769.

### Conclusion

Preliminary approval and certification of the Class, the Settlement Agreement, and Class Notice is **GRANTED**. The Final Fairness Hearing is hereby set for **November 7, 2025 at 3:00 p.m.** in Department 18. Unless oral argument is requested, the Court will sign the proposed order lodged with the Court.

**3. & 4 24CV03721, Zerah v. Guerneville School District:** Defendants’ Demurrer and Motion to Strike to Plaintiffs’ FAC

Defendants County of Sonoma and Sonoma County Water Agency’s (together as “Defendants” or “County Defendants”) demurrer to Plaintiffs Jerry Zerah and John Ross Mendenhall’s (together as “Plaintiffs”) Second Amended Complaint (“SAC”) is **SUSTAINED in part and OVERRULED in part**.

Defendants’ demurrer to the SAC is **SUSTAINED in part without leave to amend** only as to the Third, Fifth, and Seventh through Thirteenth Causes of Action. Defendants’ demurrer is **SUSTAINED with leave to amend** as to the Sixth Cause of Action. Defendants’ demurrer is **OVERRULED** as to the Second Cause of Action. Defendants’ motion to strike references to County Defendants’ employees as Defendants and punitive damages is **GRANTED without leave to amend**.

This action arises from the flooding of Fife Creek that damaged Plaintiffs real and personal property. (SAC, ¶ 6, filed December 26, 2024.) Plaintiffs filed their Complaint on June 26, 2024 and subsequently filed their First Amended Complaint (“FAC”) on August 16, 2024. (See Complaint, filed June 26, 2024; FAC, filed August 16, 2024.) In their FAC, Plaintiffs sought damages for the following causes of action: inverse condemnation, negligence, dangerous and defective condition of property, trespass, nuisance, diversion of water, destruction of personal property, destruction of real property, loss of income, disruption of business, and personal injury. (FAC, filed August 16, 2024.) Defendants demurred to the FAC and the Court sustained the demurrer as to all causes of action except inverse condemnation with leave to amend. (See Minute Order, dated November 6, 2024.) Plaintiffs filed their SAC on December 26, 2024 asserting the following causes of action: inverse condemnation, defense against dangerous and defective conditions, negligence, dangerous and defective conditions, trespass, nuisance, diversion of water, damage to personal and real property, personal injury, nonfeasance/malfeasance, non-enforcement, harassment, and lack of assistance. (SAC, pp. 31–41.) Defendants now demurrer to the Second, Third, and Fifth through Thirteenth Causes of Action and move to strike Plaintiffs’ references to County Defendants’ employees as Defendants and punitive damages.

*The Second, Third, Fifth, and Seventh through Thirteenth Causes of Action*

Defendants argue that ten of Plaintiffs’ claims—dangerous and defective conditions of Defendants’ property, negligence, trespass, diversion of water, damage to personal and real property, personal injury, nonfeasance and/or malfeasance by the County of Sonoma regarding the source of the invasive gravel, non-enforcement by Sonoma County Water Agency of the State Water Codes, ongoing harassment to the Plaintiffs by the actions of Defendants, and lack of any assistance by any Defendant to clean up from said creek flooding—fail to cite statutory authority that imposes liability on a public entity, and therefore, County Defendants cannot be liable for these causes of action as a matter of law. (Demurrer, 5:23–6:4.)

In opposition, Plaintiffs claim that Defendants’ reliance on *Cochran v. Herzog Engraving Co.* (1984) 155 Cal.App.3d 405 and *Guzman v. County of Monterey* (2009) 46 Cal.4th 887 are improper because the facts of the case are too distinct to apply to Plaintiffs’ case. (Amended Opposition, 5:17–6:1.)

While Defendants further argue that they were not served with Plaintiffs' Opposition or Amended Opposition in their Reply, they still filed their Reply on time and express no prejudice, so the Court will consider Plaintiffs' Amended Opposition. However, the Court reminds all Parties that they must comply with all Rules of Court and Code of Civil Procedure ("C.C.P."), including the rules governing proof of service (C.C.P. section 1005).

Upon examination of Plaintiffs' Amended Opposition, the Court is not persuaded by their arguments. As stated by Defendants in their Reply, the *Cochran* and *Guzman* cases discuss governmental liability requiring statutory exceptions and are supportive of Defendants' argument. Government Code section 815(a) clearly states that a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person, except as otherwise provided by statute. While Plaintiffs cite certain sections of California Government Code and California Water Code, Plaintiffs still fail to cite any relevant statutory authority allowing governmental liability for the Third, Fifth, and Twelfth Causes of Action. Plaintiffs further fail to state a viable cause of action for the Seventh through Eleventh and Thirteenth Causes of Action.

However, regarding the Second Cause of Action for dangerous and defective conditions of Defendants' property, a public entity can be liable for injury caused by a dangerous condition of its property if the public entity fails to establish "that the act or omission that created the condition was reasonable" or "the action [the public entity] took to protect against the risk of injury created by the condition or its failure to take such action was reasonable." (Gov. Code § 835.4(a)–(b).) Plaintiffs allege that they suffered injury due to Defendants' dangerous condition of its property and Defendants have failed to resolve the condition. Defendants offer no argument as to reasonableness. Therefore, Plaintiffs have alleged sufficient facts to state a claim for dangerous and defective conditions.

Defendants' demurrer to the Second Cause of Action is **OVERRULED**. Defendants' demurrer to the Third, Fifth, and Seventh through Thirteenth Causes of Action is **SUSTAINED** for failure to state a claim.

#### *The Sixth Cause of Action –Nuisance*

Defendants also demurrer to Plaintiffs' Sixth Cause of Action for nuisance as being time-barred. Defendants allege this cause of action is a permanent nuisance which required Plaintiffs to file a government tort claim when the nuisance first occurred and thereby asks the Court to dismiss this cause of action. (Demurrer, 6:6–7:11.)

Plaintiffs allege the nuisance is not permanent but a continuous nuisance that can be altered, modified, or removed entirely. (Amended Opposition, 4:20–5:12.)

The Court agrees with Plaintiffs that the nuisance is continuous and not permanent. In *Baker v. Burbank-Glendale-Pasadena Airport Auth.*, the Court reasoned that "permanent nuisances are of a type where 'by one act a permanent injury is done, [and] damages are assessed once for all'" and "[t]he cases finding the nuisance complained of to be unquestionably permanent in nature have involved solid structures." (*Baker v. Burbank-Glendale-Pasadena Airport Auth.* (1985) 39 Cal.3d 862, 868–69 [internal citation omitted].) "The classic example of a continuing nuisance is an

ongoing or repeated disturbance, such as... [disturbances] caused by noise, vibration or foul odor.” (*Id.* at 869–70 citing *United States v. Dickinson* (1946) 331 U.S. 745, 749 [finding that where a landowner sues to recover damages after the government flooded his land by damming a river was not a single event but was continuous].) Therefore, Plaintiffs’ Sixth Cause of Action for nuisance may not be dismissed on this basis.

However, the Court in a prior ruling in this action cited that “[t]he Tort Claims Act requires that any civil complaint for money or damages first be presented to and rejected by the pertinent public entity. (Gov. Code, §§ 910, 912.4, 912.8, 945.4).” (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776.) “[F]ailure to allege facts demonstrating or excusing compliance with the claim presentation requirement subjects a claim against a public entity to a demurrer for failure to state a cause of action.” (*State of California v. Superior Ct.* (2004) 32 Cal.4th 1234, 1239.) In their Opposition, Plaintiffs claim they attempted to file suit in 2018 but were not successful and eventually filed two cases in 2024 (24CV01074 currently pending in Department 19 and 24CV03721, this case). (Amended Opposition, 4:24–5:5.) However, neither of these claims are filed under the Tort Claims Act and Plaintiffs fail to allege that they have submitted any claim pursuant to the Government Tort Claims Act prior to commencement of this action. (SAC, 42:2–9.) Thus, Plaintiffs have failed to allege facts demonstrating or excusing compliance with the Tort Claims Act. Defendants’ demurrer to Plaintiffs’ Sixth Cause of Action for nuisance is **SUSTAINED** for failure to state a claim.

#### Leave to Amend

After amending their Complaint twice, Plaintiffs still fail to cite any statute allowing governmental liability for nine causes of action identified by Defendants. Therefore, the Court **DENIES** leave to amend as to the Third, Fifth, and Seventh through Thirteenth causes of action as Plaintiffs fail to show that there is a reasonable possibility they can cure this defect with amendment.

Plaintiffs have not alleged the filing of a claim under the Tort Claims Act as required but there is still a reasonable possibility Plaintiffs can show proof of such filing. The Court **GRANTS** leave to amend as to the Sixth Cause of Action for nuisance.

#### Defendants’ Motion to Strike

##### *Employees of County Defendants*

Defendants move to strike Plaintiffs’ reference to employees of County Defendants as Defendants as immaterial and irrelevant because Plaintiffs have not properly filed the action against them, have not served them, and do not allege they have caused or contributed to the flooding. (Motion to Strike, 2:26–3:5.)

Plaintiffs oppose the motion to strike, arguing that County Defendants’ employees are properly listed as co-defendants and that California Government Code Sections 820–823 create a liability for public employees. (Amended Opposition, 2:13–4:7.)

In reply, Defendants assert that Plaintiffs have admittedly not filed a suit against Defendants’ employees and that Plaintiffs failed to allege that they have ever served these individuals with the

SAC or summons required by C.C.P. section 415.10. (Defendants' Reply Motion to Strike, 2:20–27.)

Plaintiffs have not filed a proof of service with the Court showing proof of service of the SAC or any motion on County Defendants' named employees. Additionally, Plaintiffs fail to allege any basis of liability for County Defendants' employees. As such, the Court **GRANTS** Defendants' motion to strike the portions of the SAC referring to County Defendants' employees as Defendants (SAC, page 9, lines 16–20; page 16, lines 8–10) pursuant to C.C.P. section 436(a) as immaterial or irrelevant.

#### *Punitive Damages*

Defendants move to strike Plaintiffs' request for punitive damages because County Defendants are public entities and are not liable for damages awarded under C.C.P. section 3294 pursuant to Government Code section 818 (damages imposed primarily for the sake of example and by way of punishing the defendant). (Motion to Strike, 3:7–18.)

Plaintiffs do not address this claim in their Amended Opposition. The Court **GRANTS** Defendants' motion to strike the portions of the SAC referring to punitive damages (SAC, page 12, lines 3–14; page 12, line 18; page 14, lines 21–25) pursuant to C.C.P. section 436(a) for improperly requesting punitive damages from government entities.

#### Conclusion

Defendants' demurrer to the SAC is **SUSTAINED in part without leave to amend** only as to the Third, Fifth, and Seventh through Thirteenth Causes of Action. Defendants' demurrer is **SUSTAINED with leave to amend** as to the Sixth Cause of Action. Defendants' demurrer is **OVERRULED** as to the Second Cause of Action.

Defendants' motion to strike references to County Defendants' employees as Defendants and punitive damages is **GRANTED without leave to amend**.

Defendants shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

#### **5. 24CV07036, Evan v. Singleton:** Defendants' Motion to Strike

Defendants Kelly Singleton and Power West Properties, Inc.'s ("Defendants") motion to strike portions of Plaintiffs Alexander Evans, Kevin Evans, and Jessica Garcia's ("Plaintiffs") Complaint is **DROPPED as MOOT** because Plaintiffs filed a First Amended Complaint. While Plaintiffs filed its First Amended Complaint one day after the filing of an opposition to the demurrer was due, the Court accepted Plaintiffs' filing of the First Amended Complaint and Defendants did not raise any objections.

**\*\*\*This is the end of the Tentative Rulings\*\*\***