TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, January 24, 2025, 3:00 p.m.
Courtroom 16 – Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359
https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)

The following 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 as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.
Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

ANY REQUESTS FOR ORAL ARGUMENT WILL BE HEARD ON MONDAY, JANUARY 27, AT 3:00 P.M. IN DEPT. 16.

1. 23CV00137, Wells Fargo Bank, N.A. v. Behmke Law, PC.

Plaintiff and judgment creditor Wells Fargo Bank, N.A. ("Wells Fargo") moves to amend the judgment entered against Defendant Behmke Law, P.C. ("Behmke Law") on January 18, 2024, to add Bayside Law P.C. ("Bayside Law") and attorney Jay Matthew Behmke as judgment debtors. **The motion is GRANTED as to attorney Jay Behmke and DENIED as to Bayside Law.**

This motion is brought pursuant to CCP section 187 on the grounds that Bayside Law and attorney Behmke controlled the underlying arbitration and are the alter egos of judgment debtor Behmke Law.

CCP section 187 provides: "When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code."

Section 187 includes the authority to amend a judgment to add an alter ego of an original judgment debtor and thereby make the additional judgment debtor liable on the judgment. (*Highland Springs Conference & Training Center v. City of Banning* (2016) 244 Cal.App.4th 267, 280.) Amending a judgment to add an alter ego of an original judgment debtor is an equitable procedure based on the theory that the court is not amending the judgment to add a new defendant but is merely inserting the correct name of the real defendant. (*Ibid*.)

In *Highland Springs Conference & Training Center v. City of Banning*, the plaintiffs obtained an attorney fee award against the defendant SCC/Black Bench, LLC dba SunCal Companies ("SCC/BB"). After obtaining the award, the plaintiffs moved to amend the judgments to add SCC Acquisitions ("SCCA") as an additional judgment debtor and to make SCCA liable for paying the attorney fees and costs awards. The plaintiffs claimed that SCCA was the alter ego of SCC/BB, it would be unjust not to hold SCCA liable for paying the attorney fees and costs awards, and plaintiffs did not discover until 2012 that SCC/BB had been dissolved in 2010.

To prevail on the motion, the judgment creditor must show, by a preponderance of the evidence, that: "(1) the parties to be added as judgment debtors had control of the underlying litigation and were virtually represented in that proceeding; (2) there is such a unity of interest and ownership that the separate personalities of the entity and the owners no longer exist; and (3) an inequitable result will follow if the acts are treated as those of the entity alone. (*Highland Springs, supra,* at 236.)

1. The parties to be added as judgment debtors had control of the underlying litigation and were virtually represented in that proceeding.

On April 26, 2023, the arbitrator issued a final award for $309,920.23 against Behmke Law. (Flewelling decl., ¶ 19.) On January 18, 2024, this Court granted Wells Fargo's petition to confirm the award and entered judgment for $323,714.00 in its favor.

Behmke Law was owned and controlled by Jay Matthew Behmke. (Wells Fargo's Request for Judicial Notice ["RJN"], Exhibit 3.) A Statement of Information was filed on August 31, 2022, for Behmke Law showing Jay Behmke as the sole officer: the CEO, CFO, and secretary. (*Ibid*.) A Certificate of Dissolution for Behmke Law was filed on December 29, 2022. (RJN, Exhibit 5.)

Jay Behmke represented Behmke Law in the arbitration between it and Wells Fargo. (Flewelling decl., ¶3.) On November 15, 2022, Wells Fargo's attorney, Mark Flewelling ("Flewelling"), deposed Mr. Behmke in his capacity as the owner of Behmke Law. (*Id.,* ¶6.) Jay Behmke executed the transcript, under penalty of perjury, with no changes to his testimony. (*Ibid*.) During the deposition, Flewelling asked Mr. Behmke about his work history and whether he had an interest in any business other than Behmke Law. (*Id.,* ¶7, Exhibit 2.) He testified that in addition to Behmke Law, he had an ownership interest in the Yao Ming winery and a wine bar he formed with his spouse called Vine Star. (*Ibid*.) He testified that he did not have an interest in any other businesses. (*Ibid*.)

Despite his testimony, five days prior to his deposition on November 10, 2022, Mr. Behmke filed Articles of Incorporation for Bayside Law. (Request for Judicial Notice, ["RJN"] Exhibit 1.) Its principal address is located at 929 Main Street in Saint Helena. (*Ibid*.) Its mailing address is listed as 2078 Paradise Drive, Apt 2, in Tiburon. (*Ibid*.) A Statement of Information for Bayside Law was filed on November 15, 2022, the same day as Mr. Behmke's deposition. (RJN, Exhibit 2.) Jay Behmke is listed as the sole officer of Bayside Law: the CEO, CFO, and secretary. (*Ibid*.)

The Statements of Information filed with California Secretary of State for Bayside Law and Behmke Law both list 2078 Paradise Drive, Tiburon, CA 94920 for service of process. (RJN, Exhibits 2, 3.) The only notable difference is that Mr. Behmke's spouse, Kathleen Clancy, is listed as agent for service of process for Bayside Law and the statements refer to different apartment numbers. (RJN, Exhibits 2 and 3.) The California State Bar profile for attorney Behmke states that Bayside Law is located at the same Tiburon Property at 2078 Paradise Drive. (RJN, Exhibit 4.)

At no point during the Arbitration did attorney Behmke inform Flewelling, the arbitrator, or the AAA that he had filed a certificate dissolving Behmke Law. (Flewelling decl., ¶13.) Mr. Behmke continued to refer to Behmke Law after its dissolution. On February 2, 2023, Mr. Behmke signed his deposition transcript under penalty of perjury, making no changes. (*Id.,* ¶16, Exhibit 2.) On February 14, 2023, Mr. Behmke sent an email with Behmke Law's opposition to Wells Fargo's

Motion for Summary Judgment in the Arbitration proceeding. (Flewelling decl., Exhibit 8.) Included under Mr. Behmke's name in the signature block was Behmke Law and its registered address. (*Ibid*.) As of February 24, 2023, the Behmke Law website was still operational. (*Id.,* ¶15, Exhibit 9.) The informational paragraph in Mr. Behmke's opposition brief contained his Behmke Law email address and physical address. (*Id.,* Exhibit 9.) Mr. Behmke listed himself as "Attorney for Respondent" Behmke Law. (*Ibid*.) An interim award was issued by the arbitrator against Behmke Law on March 2, 2023. (*Id.,* Exhibit 12.) In April 2023, Mr. Behmke continued to use his Behmke Law email address and physical address in email correspondence in the arbitration proceedings. (*Id.,* Exhibit 10.) The final award was issued April 26, 2023, against Behmke Law. (*Id.,* Exhibit 12.)

The evidence establishes that Mr. Behmke was in control of the litigation between Behmke Law and Wells Fargo.

Wells Fargo also argues that Bayside Law likewise had control over the arbitration from the day Bayside Law was formed on November 10, 2022. Wells Fargo argues that this is because Bayside Law was an active corporation during the same time, i.e., when Jay Behmke was deposed, when Mr. Behmke opposed Wells Fargo's summary judgment motion, and during subsequent communications and the arbitration awards. Wells Fargo argues that this must be the case because Bayside Law was the only active law practice owned by Mr. Behmke after Behmke Law was dissolved. Wells Fargo concludes that Bayside Law is the successor to Behmke Law because it was also solely owned by attorney Behmke and shared the same Tiburon property for service of process.

The fact that Jay Behmke is the sole officer does not establish that Bayside Law had control of the underlying arbitration. Bayside Law was not even formed until sometime after the arbitration proceedings commenced.

2. There is such a unity of interest and ownership that the separate personalities of the entity and the owners no longer exist.

The same evidence offered above also supports finding that there is a unity of interest and ownership between Mr. Behmke and Behmke Law. Mr. Behmke continued the litigation even after Behmke Law was officially dissolved. Mr. Behmke also did not have a separate trust account for Behmke Law. (Flewelling decl., ¶6, Exhibit 7.) Rather, Mr. Behmke deposited the $400,000 cashier's check at issue in the litigation into Behmke Law's operating account at Wells Fargo. (*Ibid*.) Behmke Law's dissolution failed to follow the Corporations Code, which requires written notice "to all known creditors and claimants whose addresses appear on the records of the corporation." (*See* Corp. Code § 1903(c).)

Wells Fargo also argues that Behmke law was inadequately capitalized, which supports finding a unity of interest and piercing the corporate veil. However, Wells Fargo only points to the dissolution statement for Behmke Law indicating that all debts were paid upon its dissolution. While this is misleading, it does not establish that Behmke Law was inadequately capitalized during its existence.

Wells Fargo also notes that Behmke is the sole owner of both Behmke Law and Bayside Law, which both designated the same office for service of process.

While the two firms have the same sole officer and address, those facts alone do not establish sufficient unity of interest.

3. An inequitable result will follow if the acts are treated as those of the entity alone.

The foregoing facts also support finding that an inequitable result would follow if Behmke Law was determined to have a separate existence from Mr. Behmke because Mr. Behmke dissolved Behmke Law during the arbitration proceedings. The evidence establishes that Mr. Behmke did not maintain a clear and distinct difference between himself and his law firm. Mr. Behmke continued to act on behalf of Behmke Law even when it was no longer in existence. This charade appears to have

been for the purpose of avoiding liability for the arbitration award and would promote injustice. The acts of Jay Behmke were the acts of Behmke Law.

4. Conclusion and Order

Wells Fargo has established that Jay Behmke had control over the arbitration between itself and Behmke Law; that Jay Behmke had such a unity of interest with Behmke Law that there was no separation between them; and that an inequitable result would follow if the acts of Behmke Law were treated only as its own. However, Wells Fargo has not provided sufficient information to make the same determination with respect to Bayside Law. Wells Fargo has only shown that the two law firms have the same owner and same address, and that Bayside existed at the time of the arbitration but was not disclosed to Wells Fargo. This is insufficient for the purposes of this motion.

The motion is GRANTED as to attorney Jay Behmke and DENIED as to Bayside Law.

Wells Fargo's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

2. 24CV00653, Garcia v. Maxim Healthcare Staffing Services, Inc.

Plaintiff Claudia Garcia ("Plaintiff") moves for an order relieving her from the provisions of Government Code section 945.4. **The motion as to defendant Rincon Valley Unified School District ("RVUSD") is GRANTED.**

1. Government Code section 911.2 – Time of presentation of claims; limitation

Both parties agree that Government Code section 911.2, applicable to personal injury claims, required Plaintiff to file a claim with defendant RVUSD within 6 months of the accrual of her causes of action. Neither party has supported this position with authority; it is not clear why at least Plaintiff's FEHA claims are not exempt from the provisions of the Government Tort Claims Act. (See, e.g., *Garcia v. Los Angeles Unified School Dist.* (1985) 173 Cal.App.3d 701.)

2. Government Code section 946.6

Assuming all of Plaintiff's claims are subject to the Tort Claims Act, if the public entity denies the application to submit a late claim, section 946.6 authorizes the injured party to petition the court for relief from the claim presentation requirement of section 945.4. (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 275.)

The trial court shall grant relief under section 946.6 when: (1) the application to the public entity seeking relief from the limit was made within a reasonable time; (2) failure to timely present the claim was caused by mistake, inadvertence, surprise, or excusable neglect; and (3) the public entity does not demonstrate that it will be prejudiced if relief is granted. (See Gov. Code § 946.6, subd. (c).) In determining whether relief is warranted, the court will consider the petition, any affidavits submitted in support or in opposition to the petition, and any other evidence presented at the hearing. (Gov. Code § 946.6, subd. (e).)

The decision to grant or deny a petition seeking relief under section 946.6 is within the sound discretion of the trial court and will not be disturbed on appeal except for an abuse of discretion. (*Bettencourt, supra*, at 275.) Discretion is not "unfettered" but is "'to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice." (*Ibid*.) Section 946.6 is a remedial statute intended "to provide relief from technical rules that otherwise provide a trap for the unwary claimant." (*Ibid*.)

In *Bettencourt,* the plaintiff notified the wrong entity of its claim. Plaintiff thereafter filed an application with the correct government entity for leave to present a late claim under section 911.4. When that was denied, the plaintiff filed a petition in the superior court.

The *Bettencourt* plaintiffs argued that their attorney's failure to file a claim with the correct public entity constituted excusable neglect. (*Ibid*.) In deciding whether counsel's error is excusable, this court looks to: (1) the nature of the mistake or neglect; and (2) whether counsel was otherwise diligent in investigating and pursuing the claim. (*Ibid*.) In addition, "[u]nless inexcusable neglect is clear, the policy favoring trial on the merits prevails." (*Ibid*.)

3. Presentation of claim

On October 27, 2023, Plaintiff's counsel, Melody Rissell Leonard, sent the Government Claims Act Form and Sonoma County's rejection notice to Allen Watts (awatts@rvusd.org) and to another employee with the email bflowers@rvusd.org. (Rissell decl. ¶15.) Ms. Rissell states that, according to Google, Mr. Watts is the Chief Business Official for RVUSD. (*Id.,* ¶15.)

The email to bflowers@rvusd.org states "To whom it may concern, [¶] Please see attached correspondence sent to the county of Sonoma and their response. We are also in touch with Maxim. Please forward to your legal counsel." (Rissell decl., Exhibit F.) The email shows that Ms. Rissell attached the claims she provided to the County of Sonoma and the County's rejection of that claim.

Regardless of whether the proper parties at RVUSD were given notice, the claim was received by the person designated to respond to it. On November 28, 2023, Sandy Manzoni, Property & Liability Risk Manager for Redwood Empire Schools' Insurance Group ("RESIG"), provided a letter to Ms. Rissell wherein she stated RESIG provides self-insured coverage and claims administration services for RVUSD. (Rissell decl., Exhibit H.) Ms. Manzoni stated in the letter that the claim presented on behalf of Plaintiff Claudia Garcia to RVUSD on October 27, 2023, was being returned because it was not presented within 6 months after the event or occurrence "as required by law." (*Ibid*.)

On January 24, 2024, Ms. Rissell mailed Ms. Manzoni an Application for Leave to Present a Late Claim Pursuant to Government Code Sections 911.4 and 911.6. (Rissell decl., Exhibit I.) On March 8, 2024, Ms. Manzoni responded, stating the application was denied. (Rissell decl., Exhibit J.)

Plaintiff's first amended complaint indicates that Plaintiff began work at Binkley Charter Elementary School ("Binkley") in January of 2023. (First Amended Complaint ["FAC"] ¶34.) Plaintiff was transferred to Manzanita Charter School ("Manzanita") in April of 2023. (FAC ¶53.) Plaintiff was let go on April 20, 2023. (FAC ¶59.)

Plaintiff's claim was received by RESIG on October 27, 2023. Despite any technical missteps, RVUSD understood what it received was a claim. RVUSD acknowledged that it had opened its own investigation into the matter. RESIG only received the claim 7 days late. RVUSD has not shown prejudice due to this one-week delay.

Plaintiff argues excusable neglect. The declaration of Plaintiff's counsel, Melody Rissell Leonard, establishes her attempts to provide notice to the correct entity prior to the expiration of the six-month time-period, and her lack of familiarity with this area's charter schools and RVUSD. (See Rissell decl., ¶¶4-15.) Ms. Rissell states that on October 11, 2023, she mailed a copy of the fully executed Government Claims Act Form to Sonoma County. (Rissell decl., ¶¶ 4, 5, Exhibits B, C.) On October 12, 2023, she emailed a copy to Sonoma County's Liability Department (liability@sonoma-county.org). (*Ibid*.)

Ms. Rissell states that besides the identity of Binkley and Manzanita, in early October she had no other information to identify the appropriate governmental entities to notify for purposes of exhausting the Government Claims Act. (*Id.,* ¶7.) She further states that, based upon her past experience and case law, she believed charter schools were not treated as public entities and were required to register with the California Secretary of State. (*Id.,* at ¶8.)

Ms. Rissell states: "After looking on the California Secretary of State website, I was unable to find Binkley or Manzanita Elementary Charter Schools in Sonoma County. When I found Rincon

Valley Union School District Foundation on the Secretary of State Website, this entity appeared to be the correct entity for the charter schools as a Google Search for Binkley and Manzanita state[s]: 'Rincon Valley USD.' Based on my understanding that charter schools were typically public benefit corporations based on relevant case law that registered with the secretary of state, I reasonably presumed that Rincon Valley Union School District Foundation was the appropriate entity for purposes of this case." (Rissell decl., ¶9.) Ms. Rissell later sent the government claims act form to the County of Sonoma. (*Id.,* ¶11.)

Ms. Rissell also states that she is not personally familiar with the Santa Rosa or Sonoma County or how its public, private, or charter school districts are set up in relation to California state, county, or local governments. (*Id.,* ¶¶10, 12.)

In opposition, RVUSD argues attorneys are presumed to know the law and the failure to identify the entity to be served is not excusable. However, a very similar scenario was considered excusable in *Bettencourt.* The cases cited by RVUSD are more dissimilar to the facts of this case than *Bettencourt,* and they focus on the issue of estoppel, which is not applicable here.

Here, Ms. Rissell first sent notice to the wrong entity. As noted above, the only service provided to RVUSD was to Allen Watts and to an employee with the last name Flowers. Sandy Manzoni, Property & Liability Risk Manager for RESIG, rejected the claim and Plaintiff's application to present a late claim. (Rissell decl., Exhibits H-J.) This motion was filed on September 4, 2024—within 6 months of March 8.

Plaintiff's application for relief was made within a reasonable period. Inexcusable neglect in this case is not clear, therefore, the policy favoring trial on the merits prevails. RVUSD has not claimed prejudice if this motion is granted. Therefore, based upon the above, the motion as to RVUSD is GRANTED.

4. Charter Schools

In her memorandum, Plaintiff first argues that she is not required to follow Gov. Code section 945.4 with respect to charter schools, but that Binkley and Manzanita are proper defendants in this case.

If Plaintiff is not required to comply with the Government Claims Act with respect to charter schools, then the issue is moot as there is no need for relief from the provisions of Government Code section 945.4. Regardless, neither entity is currently a named defendant, and neither was served with summons, complaint, and this motion. Therefore, this issue as to these entities is premature as this court does not currently have jurisdiction over them.

5. Order and Conclusion

The motion as to RVUSD is GRANTED.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

3. <u>24CV01790, Salvati v. Petaluma Butane Distributors, Inc</u>

The motion of Brian Gearinger to be relieved as counsel for Plaintiff Ric Salvati is **GRANTED**. The court will sign the proposed order.

4. <u>MCV-254033, State of California Department of Industrial Relations v. Safeway Inc.</u>

Non-party, the State Labor Commissioner, moves to vacate the clerk's judgment entered in favor of Plaintiff Kai Parker and against Defendant Safeway, Inc. ("Safeway") on the grounds that

Safeway has paid in full the amount owned on the Order, Decision, or Award of the Labor Commissioner ("ODA") to Plaintiff under a separate and duplicative judgment in case number MCV-254036 on the same ODA. **The motion is GRANTED.**

The Court has "inherent equity power … to grant relief from a … judgment where there has been `extrinsic' fraud or mistake." (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 855.) Here, the State Labor Commissioner should never have filed two separate and duplicative requests that the court clerk enter judgments on the same ODA. Safeway had already paid in full the amount owed in the ODA to Plaintiff Kai Parker in Case No. MCV-254036. Therefore, it is appropriate at the request of the State Labor Commissioner for this Court to vacate the Clerk's Judgment (entered on November 25, 2020) in this case.

Movant is directed to submit a written order to the court consistent with this ruling.

5. <u>SCV-267534, Garcia v. Rustic Bakery, Inc.</u>

Plaintiffs Jefferson Garcia, Wilson Garcia, and Alicia Rueda de Lara ("Plaintiffs") move for preliminary approval of the proposed class action settlement. **The motion is GRANTED. The final fairness hearing is hereby set for May 21, 2025, at 3:00 p.m., in Department 16.**

Plaintiffs' complaint alleges that that Defendants violated the California Labor Code by failing to pay minimum and overtime wages; failing to provide compliant meal and rest periods; failing to pay reporting time pay; failing to timely pay wages during employment and at separation; failing to provide accurate wage statements; failing to reimburse business expenses; and failing to provide notice of material terms of employment upon hire.

Plaintiffs state that this action was heavily contested and litigated across more than three and a half years. As part of Plaintiffs' investigation, Plaintiffs propounded lengthy written discovery, participated in various informal discovery conferences to advance their investigation, argued various discovery motions, and reviewed thousands of records of putative class members and aggrieved employees. (Macias decl., ¶9.) Plaintiffs conducted extensive interviews of putative class members and aggrieved employees and obtained more than forty signed declarations to support the class claims and underlying liability in this matter. (*Ibid.*) Plaintiffs took the deposition of Defendant's Person Most Qualified and Human Resource personnel to explore Defendants' record keeping, wage statements, meal periods, rest periods, overtime pay, and global employment practices. (*Ibid*.) This included taking the deposition of Defendants' former owner and former Chief Executive Officer, Carol LeValley. (*Ibid*.)

Prior to mediating the action, the Parties also engaged in extensive informal discovery, including the exchange of documents and data related to the employment of putative Class Members, their time and pay records, and Defendants' corporate-wide policies. Defendants produced, and Plaintiffs' Counsel reviewed, thousands of pages of documents and electronic data including employment onboarding records, work calendars, alternative work week arrangements, time records, earnings statements, company policies and employee handbooks. (*Id.,* ¶10.) Discovery and investigation involved inspection and analysis of thousands of pages of documents and data, including extensive time and scheduling records, pay records, and policy documents; in-depth analysis of potential class-wide damages; and extensive research of the applicable law with respect to the claims asserted in the action and the potential defenses thereto. (*Id.,* ¶10.)

In preparation for mediation, Defendants produced payroll data for putative class members that worked for them during the relevant time period, including dates of employment, rates of pay, total earnings, and regular and overtime hours worked, among other data points. (*Id.,* ¶11.) Defendants produced sample time and payroll records for a significant sample portion of putative

class members. (*Id.,* ¶11.) Plaintiffs' counsel compiled the data produced by Defendants and estimated class-wide damages for approximately 1,900 putative class members. (*Id.,* ¶11.) This included: (1) reviewing and analyzing work schedules, timekeeping and payroll records as well as employment handbooks, Plaintiffs' personnel files, relevant policies, and other documentation; (2) researching the applicable law and potential defenses; and (3) constructing extensive excel damage models based on interpretations of California law. (*Id.,* ¶11.)

On October 25, 2023, the Parties attended an all-day private mediation before Tripper Ortman, a respected wage and hour employment law neutral. (*Id.,* ¶ 14.) After mediation failed, settlement discussions continued about eight months later with Mr. Ortman's assistance. (*Ibid*.) A Memorandum of Understanding was eventually memorialized and signed on August 8, 2024 through October 9, 2024. (*Ibid*.).

The settlement class is defined as: "all individuals who were employed by one or more of the Defendants as non-exempt employees in the State of California, from December 9, 2016, through the date the Court preliminary approves the Settlement Agreement."

Defendants will pay a total settlement amount of Four Million U.S. Dollars ($4,000,000). The employer's share of any payroll taxes applicable to the settlement payments will be paid from the Gross Settlement Amount. Two Hundred Thousand U.S. Dollars ($200,000) is allocated as PAGA penalties, 25% of which shall be paid to eligible aggrieved employees, and 75% of which shall be paid to the California LWDA. Settlement administration costs are estimated at $18,950. Plaintiffs' counsel will apply for $1,400,000 in attorney fees. Each of the three Plaintiffs will receive a fee enhancement award of $15,000. All uncashed and remaining funds will be donated in equal proportions to West Marin Community Services and YWCA Sonoma County.

Plaintiffs' counsel states: "The Settlement Amount of $4,000,000 is 70% of the $5,710,019 estimate of risk-adjusted recovery (excluding interest) at this stage in the litigation. (Macias decl., ¶ ¶ 34-35.) For the approximately 1,900 members of the Class, the average gross recovery before deductions for taxes, fees, and other costs, is approximately $2,105 per Class Member, and the estimated average net recovery for each Class Member is approximately $1,211. (*Id.,* ¶ 34.) The Settlement Amount represents 18% of Plaintiffs' top-end estimated damages and 70% of the risk-adjusted recovery estimate.

The proposed settlement is presumptively fair because: (1) it is the product of non-collusive, arm's-length negotiations that were overseen and guided, in large part, by an independent mediator knowledgeable in wage and hour litigation; (2) it was negotiated by counsel with significant experience in similar wage-and-hour litigation; and (3) it occurred after counsel for the parties engaged in significant investigation to evaluate the strength and potential value of the action. (Macias Decl., at ¶¶28-33.)

The class is sufficiently ascertained and numerous, and Plaintiffs have established that class certification for settlement purposes is appropriate. Common questions of law or fact predominate. Class representatives' claims are typical of the class, and class representatives can adequately represent the class. The proposed notice to class members is sufficient to enable class members to make an informed decision about their participation.

Based upon the foregoing, preliminary approval of the settlement; certification of the proposed Settlement Class; appointment of the named Plaintiffs as Class Representatives; appointment of Plaintiffs' Counsel as Class Counsel; and approval of the proposed Class Notice is GRANTED. The final fairness hearing is hereby set for May 21, 2025, at 3:00 p.m., in Department 16. The court will sign the proposed order.

6. SCV-268610, Chettero v. Aurora Behavioral Healthcare-Santa Rosa LLC

Plaintiff Nicole Chettero ("Plaintiff") moves for preliminary approval of the proposed class action settlement, approving the form and manner of class notice, appointing the settlement administrator, and setting a hearing for final approval. **The motion is GRANTED. The final fairness hearing is hereby set for May 30, 2025, at 3:00 p.m., in Department 16.**

Plaintiff commenced this action on June 14, 2021,1 by filing a complaint against Defendants Aurora Behavioral Healthcare-Santa Rosa, LLC, dba Aurora Santa Rosa Hospital and Signature Healthcare Services, LLC, and DOES 1 through 20, inclusive, alleging causes of action for failure to provide proper meal and rest periods, failure to timely pay all wages owed at termination, failure to provide accurate wage statements, and unfair business practices. (Declaration of Xinying Valerian [hereafter "Valerian Dec."], ¶ 3.) The complaint also sought civil penalties pursuant to PAGA. (Ibid.) On March 29, 2023, Plaintiff substituted eleven named defendants for DOES 1 to 11. (Valerian Decl., ¶ 3.)

This court certified a class on December 7, 2023, consisting of "[a]ll former and current registered nurses ("RNs"), licensed vocational nurses and psychiatric technicians ("LVNs" or "LPTs"), and mental health workers and technicians ("MHWs" or "MHTs") who worked at least one shift in the Nursing Department at Aurora Santa Rosa Hospital (also known as Santa Rosa Behavioral Healthcare Hospital) from July 21, 2016 through the date of class notice." (Id., ¶ 11.) Notice was sent to 857 individuals on January 19, 2024. (Ibid.) Three individuals opted out of the class. (*Ibid*.)

The parties attempted mediation twice before reaching a settlement. The proposed settlement establishes a common fund of $6,250,000. (SA, ¶ 3.1.) Plaintiff proposes the fund be allocated as follows: $100,000 in civil penalties pursuant to PAGA, attorneys' fees up to $2,083,333.33 (one-third of the fund), class counsel expenses up to $200,000, a class representative award up to $30,000, and administration costs up to $17,000. (SA, ¶ 3.6.) The remaining $3,819,667 will be distributed to the class members without a claim form in proportion to the number of weeks worked. (SA, ¶ 3.6(e).) Plaintiff estimates that class members will receive an average of approximately $4,300, with a maximum distribution of $26,000. (Valerian Decl., ¶ 19.)

The settlement identifies Simpluris as the settlement administrator. (SA, ¶ 7.1.) The proposed notices are based on templates developed by the Impact Fund's Class Notice Project. (Valerian Decl., ¶ 22.) The mailed and emailed notice includes the workweek data upon which the class member's settlement allocation will be based and directs the recipient to the settlement website with a link and scannable QR code for the recipient to obtain more information about the settlement. (SA, Ex. A.) The notice also advises class members that they can object to the settlement or contest the number of workweeks reported in Defendants' data and tells class members how to do so. (*Ibid*.) The notice also advises class members that they can opt for electronic payment. (*Ibid*.) A long form notice to be posted on the settlement website will contain detailed information in a question-and-answer format. (SA, Ex. B.)

A presumption of fairness exists where a settlement is reached through arm's-length negotiation that was adequately informed and where there is no evidence of fraud or collusion. Discovery efforts allowed counsel to be well-informed. Plaintiff's expert prepared a detailed damages model. (Valerian decl., ¶ 8.) Key evidence for estimating damages included wage rates, employment dates, and punch data. (*Ibid*.) Where there were gaps in the employment data, reasonable assumptions were made. (*Ibid*.) Plaintiff's counsel's estimate for Defendants' liability was approximately $13.56 million without PAGA, and $17.5 million with PAGA. (Ibid.) Out of the non-PAGA liability, $4.74 million came from derivative waiting time penalties and wage statement statutory penalties, while $8.82 million came from meal and rest break wages and interest. (*Ibid*.)

Based upon the foregoing, the proposed settlement is GRANTED. Simpluris is appointed settlement administrator. The notice plan as set forth in the settlement agreement is approved. The final fairness hearing is hereby set for May 30, 2025, at 3:00 p.m., in Department 16. The court will sign the proposed order.

7. SCV-269445, Abarca Carlos v. Fernandez Landscape Maintenance, Inc.

Defendant Fernandez Landscape Maintenance, Inc. ("Defendant Fernandez") moves for an order granting summary judgment of the complaint filed by Plaintiff Juventino Abarca Carlos ("Plaintiff") on the grounds that there are no triable issues of material fact. **The motion is DENIED.**

On October 7, 2021, Plaintiff filed a complaint against defendant Edwin Benedicto Valle Morales ("Defendant Valle Morales") and Defendant Fernandez. The complaint alleges general and motor vehicle negligence. Plaintiff alleged Defendant Valle Morales was driving a 2005 GMC truck owned by Defendant Fernandez. Plaintiff alleged that Defendant Valle Morales was within the course and scope of his employment with Defendant Fernandez when Plaintiff was in a wheelchair crossing within a marked crosswalk at an intersection when Defendant Valle Morales struck Plaintiff causing him severe injuries.

1. Objections in Reply

Defendant Fernandez's objections in reply are overruled.

2. Owner of the Subject Vehicle and Its Use by Defendant Fernandez

Defendant Fernandez argues that he did not own the subject GMC truck that struck Plaintiff and that it was never used for his business.

Defendant Valle Morales drove the vehicle that struck Plaintiff. (Undisputed Material Facts ["UMF"] Nos. 2-4.) The vehicle driven by Defendant Valle Morales was registered to Defendant Valle Morales's father, Benedicto Valle ("Valle"). (UMF Nos. 7, 8.) Plaintiff disputes that Valle was the sole owner based upon DMV vehicle registration information.

The accident occurred on July 20, 2021. (UMF No. 1.) Valle's DMV registration for the subject vehicle, a GMC truck, was issued on April 4, 2021, and was valid from March 31, 2021, through March 31, 2022. (Defendant Fernandez's Exhibit B.) The Certificate of Title to the subject vehicle was issued on October 20, 2020, to Valle. (*Id.,* Exhibit C.) The transfer date of the vehicle is listed as October 15, 2020. (*Ibid*.) DMV vehicle registration information as of December 21, 2023, shows that the subject vehicle was transferred to Jorge Alberto Fernandez ("Jorge Fernandez") on May 28, 2015. (*Id.,* Exhibit D.) The DMV vehicle registration information confirms that Valle owned the subject vehicle on October 15, 2020. (*Ibid*.) Valle testified that Jorge Fernandez gave the vehicle to him. (*Id.,* Exhibit F, pg. 15.) DVM registration information also shows that the subject vehicle was transferred to Defendant Fernandez on January 18, 2023. (*Ibid*.) The GMC Truck had Defendant Fernandez's information on its doors. (Plaintiff's Exhibit 2.)

Valle worked for Defendant Fernandez starting in about 2015. (*Id.,* Exhibit F, pgs. 6, 7.) He testified that his son, Defendant Valle Morales, drove the truck to work every day and that during the workday it was parked in the shop. (*Id.,* pgs. 19-20, 46.) Valle testified that the blowers and yard waste in the back of the subject vehicle were his own blowers, and the yard waste was from separate work. (*Id.,* pgs. 32-33.) Valle testified that he paid for the insurance on the subject vehicle and that Defendant Valle Morales was on his insurance. (*Id.,* pg. 39.) Valle testified that the subject vehicle was never used for work done for Defendant Fernandez. (*Id.,* pg. 46.)

Defendant Valle Morales worked for Defendant Fernandez. (Exhibit G, pg. 10.) On the morning of the accident, Defendant Valle Morales had picked up Luis Flores and San Jose

Constante ("Constante") and they were headed to work. (*Id.* pgs. 10, 22.) Defendant Valle Morales testified that Defendant Fernandez's employees would go to a storage yard where two trailers were parked; they would take the trailers with the necessary equipment from storage and then go to the jobsite. (*Id.,* pgs. 13, 42.) Defendant Valle Morales testified that if he drove the subject truck, he parked it in the storage yard all day while he worked. (*Id.,* pg. 17.) Defendant Valle Morales used a Ford truck to dump yard waste. (*Id.,* pg. 19-20.)

The evidence presented in opposition raises a triable issue of material fact as to who actually controlled the subject vehicle. Constante worked for Defendant Fernandez at the time of the subject accident. (Plaintiff's Exhibit 1, pg. 8.) Constante testified that he drove the subject GMC truck after the accident for work he did with Defendant Fernandez. (*Id.,* pgs. 9-10.) He stated he did not drive the truck prior to the accident. (*Ibid*.) Contrary to testimony from Valle and Defendant Valle Morales, Constante testified that the blowers in the back of the subject GMC truck were owned by Defendant Fernandez and that the yard debris in the back of that truck at the time of the accident was from jobs done on behalf of Defendant Fernandez. (*Id.,* pgs. 10-13.) Constante testified that he used a credit card owned by Defendant Fernandez to fill up the subject GMC truck. (*Id.,* pg. 14.) Also contrary to testimony by Valle and Defendant Valle Morales, Constante testified that the GMC truck was in continuous use for Defendant Fernandez during the time Constante was employed with Defendant Fernandez. (*Id.,* pg. 14.) He testified it was never parked all day long while Defendant Fernandez's employees worked. (*Id.,* pg. 15.) In addition, he testified that the GMC truck was usually parked overnight at his house. (*Ibid*.) Defendant Valle Morales would come by in a car, another worker would come, and they would all go put gas in the GMC truck using Defendant Fernandez's credit card. (*Id.,* pg. 15.) At the gas station, Defendant Fernandez's employees would discuss where they were going. (*Id.,* pg. 16.) From there, they would go pick up the trailers with the yard maintenance equipment from the storage yard parking lot. (*Ibid*.) Constante testified that on the day of the accident, they were on their way to get gas when they turned onto Dutton Avenue and Constante heard a strange noise and thought something had broken in the truck. (*Id.,* pg. 17.) He then heard other motorists honking their horns; when they stopped, they found they had run over Plaintiff. (*Ibid*.) After the accident, the employees went to pick up the trailer and continued to their job sites. (*Id.,* pgs. 20-21.) Constante testified that Valle stated that Constante should testify that the subject GMC was not used for work for Defendant Fernandez. (*Id.,* pgs. 22-23.) Constante understood that this order came from Jorge Fernandez. (*Id.,* pgs. 23-27.) Constante also stated that Jorge Fernandez told him directly to lie and say that the GMC truck was not used for the business. (*Id.,* pg. 30.) Constante testified that the GMC truck actually belonged to Jorge Fernandez; that it was put into Valle's name in order to avoid paying higher insurance rates. (*Id.,* pgs. 49-50.)

Defendant Fernandez's former employee Jose Antonio Recinos Ayala ("Recinos") testified that Jorge Fernandez asked him to register the GMC truck in his name. (Plaintiff's Exhibit 5, pg. 10-11.) The reason given was to save on insurance costs. (*Id.,* pg. 11.) He testified that Jorge Fernandez also asked Valle the same thing. (*Id.,* pgs. 12-14.) Recinos testified that the subject truck was always used in the business. (*Id.,* pgs. 14-15.)

Jorge Fernandez, on behalf of Defendant Fernandez, signed a settlement agreement with Plaintiff whereby Defendant Fernandez agreed to assign his insurance coverage over to Plaintiff. (Plaintiff's Exhibit 8.) The settlement states Defendant Fernandez had liability coverage of $500,000 at the time of the accident. (*Ibid*.) However, at his deposition, Jorge Fernandez admitted that he only had $100,000 of liability insurance on the GMC truck at the time of the accident and that he increased coverage to $500,000 five days after the subject accident. (*Id.,* Exhibit 7.)

In reply, Defendant Fernandez argues that any evidence supporting finding that the gift of the subject vehicle to Valle was a sham is irrelevant and not framed by the pleadings. The court

disagrees. Actual ownership and/or control of the subject vehicle is absolutely framed by the pleadings in this case.

On a motion for summary judgment, the court does not weigh the evidence or determine credibility. (CCP section 437c(e); *Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal. 4th 826, 856.) This court cannot determine on this motion that the testimony of Constante and/or Recinos is not credible. Such testimony raises a triable issue of fact regarding whether, despite legal title being in the name of Valle, Defendant Fernandez owned and controlled the subject vehicle.

3. Conclusion and Order

The motion is DENIED. Based upon the above, a triable issue of material fact remains regarding who owned and/or controlled the subject vehicle. Defendant Fernandez has not met his burden to show that Defendant Valle Morales was not in the course and scope of his employment when the subject accident occurred.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

8. SCV-270409, Fischer v. Fischer

Court-Appointed Receiver, Randy Sugarman ("Receiver"), moves for entry of an order establishing a claims bar date and a last date for submission of claims. The motion is made on the grounds that Fischers Enterprises, LLC ("Enterprises") was terminated on September 22, 2023, and is in liquidation together with its successor entity, Fischers Collision Center, LLC ("Collision Center").

Defendants Craig Fischer, Janice Chancey, CJ Fischer LLC, and Collision Center ("Defendants") do not oppose the request to establish a claims bar date or last date for submission of claims regarding creditors of Enterprises. However, Defendants oppose the request that Collision Center should be part of this order.

The Receiver's request is in relation to the liquidation of Enterprises. While Enterprises may have been rebranded as Collision Center, this court has not ordered Collision Center liquidated. To the extent that assets of Enterprises have been appropriated by Collision Center, those assets will need to be accounted for as an asset of Enterprises and either liquidated, distributed to Defendants in their share of Enterprises' remaining assets, or formally purchased by Collision Center. However, a determination of the details of which of Enterprises' assets have been appropriated by Collision Center goes beyond the scope of this motion.

On this motion, the sole issue is prescribing the expiration date for the presentation of claims. **The court will establish July 22, 2025, as the bar date for filing of claims against the liquidating estate of Enterprises.**

The court will modify and sign the proposed order.