TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, April 8, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
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) 521-6724**, 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=aW1JTWlIL3NBeE9LVHU2NVVpQlVRUT09

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. 25CV02059 Looney vs Chekyung Park

Judgment Creditor's unopposed motion to appoint receiver to take possession and, if necessary, sell Judgment Debtors' liquor license is **GRANTED**.

If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

Judgment was entered against Judgment Debtor on July 18, 2025, in the amount of $8,589.22 to be paid to Judgment Creditor Gary Looney dba Collectronics of California. Judgment Creditor has propounded postjudgment discovery on Judgment Debtor and has received no response. Judgment Creditor has attempted several times to contact Judgment Debtor via phone and letter to no avail. Judgment Creditor represents several attempts to enforce the judgment have been unsuccessful. Judgment Creditor submits that the only attachable asset is the liquor license. Judgment Creditor has met his burden of proving that the appointment of a receiver is necessary.

The Court approves Landon McPherson as the receiver. Mr. McPherson shall post an undertaking in the amount of $1,000.00 upon his appointment.

2., 3. <u>25CV06900 Silverman vs CSAA Insurance Services, Inc.</u>

<u>Motion to Compel Arbitration:</u>

Defendant CSAA Insurance Services, Inc.'s motion to compel arbitration is **DENIED**. Defendant's request for judicial notice is **DENIED**. The declarations submitted in support of motions to compel arbitration in cases underlying appellate court decisions are not relevant to the Court's determination of the controlling law.

Plaintiff's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

On November 6, 2028, as part of his new-employee onboarding experience with Defendant CSAA Insurance Services, Inc., Plaintiff electronically submitted his assent to an Arbitration Agreement. The Arbitration Agreement provides that,

> Except as otherwise stated in this Agreement, this Agreement also applies, without limitation, to disputes arising out of or related to the employment relationship or the termination of that relationship, trade secrets, unfair competition, compensation, incentive and bonus plans, classification, minimum wage, seating, expense reimbursement, overtime, breaks and rest periods, termination, discrimination or harassment. This Agreement also applies to claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, […] and all other federal or state legal claims arising out of or relating to Employee's employment or the termination of employment.

(Decl. of Karolyn Wilhelmsen, Ex. 1.) The Arbitration Agreement also contains a Class, Collective, and Representative Action Waiver, which states,

> This Agreement affects your ability to participate in class, collective or representative actions. Both the Company and Employee agree to bring any dispute in arbitration on an individual basis only, and not on a class, collective, or private attorney general representative basis. There will be no right or authority for any dispute to be brought, heard or arbitrated as a class, collective, representative or private attorney general action, or as a member in any purported class, collective, representative or private attorney general proceeding ("Class Action Waiver")… The Class Action Waiver shall be severable (in other words, removable from this Agreement) in any case in which the dispute is filed as an individual action and severance is necessary to ensure that the individual action proceeds in arbitration.

(Decl. of Karolyn Wilhelmsen, Ex. 1.)

Defendant raises several arguments in its motion to compel arbitration. Defendant argues that a valid and enforceable arbitration agreement exists between the parties. It argues that the delegation clause mandates any other dispute must be resolved by binding arbitration. Even if the Court does not enforce the delegation clause, Defendant argues that the Court should still compel arbitration because the individual component of Plaintiff's PAGA claim is subject to arbitration and the agreement is not unconscionable.

Plaintiff does not object to the existence of an arbitration agreement between the parties. However, Plaintiff argues that the Class Action Waiver should not be interpreted as waiving arbitration of Plaintiff's individual PAGA claims under the authority of *LaCour v. Marshalls of CA, LLC* (2025) 117 Cal.App.5th 505. Plaintiff has not raised an unconscionability argument; therefore, none shall be addressed in this ruling.

I. The Parties' Agreement Provides that Disputes Regarding the Class Action Waiver Must be Resolved by the Court, not an Arbitrator

Defendant herein seeks to compel arbitration of Plaintiff's individual PAGA claims pursuant to the Class Action Waiver contained within the parties' Arbitration Agreement.

Defendant argues that once this Court determines the existence of an arbitration agreement and "its class action waiver has been upheld," the Court's analysis should stop and any question of arbitrability should be delegated to the arbitrator.

The Class Action Waiver contains a provision which states,

> Notwithstanding any other provision of this Agreement or the American Arbitration Association Rules, disputes regarding the validity, enforceability or breach of the Class Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator.

(Decl. of Karolyn Wilhelmsen, Ex. 1.)

Accordingly, issues regarding the Class Action Waiver must be determined by the Court and cannot be delegated. Since the Court herein finds that the Class Action Waiver does not apply to Plaintiff's individual PAGA claims, there remain no issues to be delegated to an arbitrator.

II. Plaintiff's Individual PAGA Claims Are Not Subject to Arbitration

Defendant argues that the Arbitration Agreement signed by Plaintiff unambiguously requires that he individually submit to arbitration any disputes arising out of or related to the employment relationship, compensation, incentive and bonus plans, minimum wage, expense reimbursement, overtime, breaks, and rest periods, and all other federal and state legal claims arising out of or relating to his employment. So, Defendant argues that under the explicit terms of the agreement, "there can be no doubt that the PAGA cause of action in Plaintiff's Complaint premised upon Labor Code violations are either explicitly listed under the Arbitration Agreement or otherwise arise out of and/or relate to Plaintiff's employment relationship with CSAA."

As argued by Defendant, under the authority set forth in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639 ("*Viking River*") and *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 ("*Adolph*"), the individual component of Plaintiff's PAGA claim is subject to arbitration.

In *Viking River*, the United States Supreme Court determined that a Plaintiff's asserted PAGA claim can be divided into two components: the individual PAGA claim and the non-individual PAGA claims. In *Adolph, supra,* the California Supreme Court recognized that "*Viking River* requires enforcement of agreements to arbitrate a PAGA plaintiff's individual claims if the agreement is covered by the FAA." (*Adolph, supra,* at 1119.) However, the *Adolph* Court found that it was "not bound by the high court's interpretation of California law." (*Ibid*.) The *Adolph* Court therefore answered the question of whether a Plaintiff loses standing to litigate non-individual PAGA claims in court if his individual claims are compelled into arbitration. The *Adolph* Court answered that question in the negative. (*Id*. at 1123.)

The case of *LaCour v. Marshalls of CA, LLC* (2025) 117 Cal.App.5th 505 ("*LaCour*") was decided on December 24, 2025, one day after Defendant filed the instant motion. The *LaCour* Court explained that prior to the *Viking River* decision in 2022, "the distinction *Viking River* drew between 'individual PAGA claims' and 'non-individual PAGA claims' was, if not unknown to California law, dimly perceived at best." (*Id.* at 521.)

Plaintiff argues in opposition that the *LaCour* case is controlling here because it involves substantially similar facts to those at bar. In *LaCour*, the arbitration agreement was signed by the parties in 2014 (prior to *Viking River* being decided). The agreement contained a class action waiver that stated in pertinent part "'[LaCour and Marshalls] agree to bring any dispute in arbitration on an individual basis only and not on a class, collective, or private attorney general representative action basis…There will be no right or authority for any dispute to be brought, heard or arbitrated as a private attorney general representative action ('[PAGA Waiver]')…'" The agreement also contained a provision that stated, "The ... [PAGA Waiver] shall be severable in any case in which the dispute is filed as an individual action and severance is necessary to ensure that the individual action proceeds in arbitration." (*Id*. at 508.)

The *LaCour* Court dedicated substantial effort in outlining the legal landscape applicable to the issue at bar, including the cases of *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348; *Viking River*, *supra*; and *Adolph*, *supra*.

Since the arbitration agreement was entered into prior to *Viking River* being decided, the *LaCour* Court's decision ultimately rested upon the mutual intent of the parties at the time of signing. It found that since *Viking River* has not yet been decided, and since prior to *Viking River* "no California court had ever intimated there are two constituent pieces to a PAGA action—an individual piece and a non-individual piece..." any reference to "individual actions" in the parties' arbitration agreement was "likely was an effort to distinguish PAGA actions from non-PAGA individual actions for violation of the Labor Code." (*LaCour*, *supra*, at 5505.)

This Court finds the same to be true here. Like in *LaCour*, the arbitration agreement in this matter was entered into many years before *Viking River* was decided. At that time, the distinction between individual PAGA claims and non-individual PAGA claims was "if not unknown to California law, dimly perceived at best." (*LaCour*, *supra*, at 521.) The language of the arbitration agreement in this matter is substantially similar to that of the agreement in *LaCour*. As the Court did in *LaCour*, this

Court finds that any reference in the Class Action Waiver to an "individual action" was likely an effort by the parties to distinguish PAGA actions from non-PAGA individual actions for violation of the Labor Code.

In reply, Defendant insists that the Court must focus on this portion of the severance clause, "but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration." Defendant argues that this portion of the clause is "identical" to the language of the severance clause in *Viking River*. (*Viking River*, supra, 596 U.S.at 662.) The *Viking River* Court stated,

> But the severability clause in the agreement provides that if the waiver provision is invalid in some respect, any "portion" of the waiver that remains valid must still be "enforced in arbitration." Based on this clause, Viking was entitled to enforce the agreement insofar as it mandated arbitration of Moriana's individual PAGA claim. The lower courts refused to do so based on the rule that PAGA actions cannot be divided into individual and non-individual claims. Under our holding, that rule is preempted, so Viking is entitled to compel arbitration of Moriana's individual claim.

(*Viking River*, *supra*, 596 U.S. at 662.)

Defendant's attempt to distinguish the language of the severance clause in *Viking River* from the one in *LaCour* is not persuasive. Though the language is not identical, the function is the same. Both severance clauses function to keep the "individual action" arbitrable. Furthermore, *Viking River* is not controlling on this particular issue of contract interpretation. Defendant also cites *Nickson v. Shemran, Inc.* (2023) 90 Cal.App.5th 121, 130 and *Barrera v. Apple American Group LLC* (2023) 95 Cal.App.5th 63, 84. Both of these cases predate *LaCour*. This Court finds *LaCour* to be controlling.

Accordingly, the individual PAGA claims that Plaintiff raises in this matter are not subject to arbitration under the parties' agreement. Defendant's motion to compel arbitration is denied.

Motion to Strike:

Defendant CSAA Insurance Services, Inc.'s motion to strike is **DENIED**. Defendant's request for judicial notice is **GRANTED**.

Plaintiff's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Defendant moves to strike the representative portions of Plaintiff's PAGA claim because, according to Defendant, the individual portions are subject to arbitration and because Plaintiff failed to exhaust his administrative remedies since Plaintiff failed to provide adequate notice with the LWDA within one year of the first alleged Labor Code violation Plaintiff suffered.

In the Court's concurrent ruling on Defendant's motion to compel arbitration, the Court has explained that Plaintiff's individual claims are not subject to arbitration. Therefore, the representative portions will not be stricken on these grounds.
Plaintiff filed a PAGA notice with the LWDA on September 26, 2024. Defendant argues that submission lacked any particularity regarding the alleged Labor Code violations and failed to

provide any facts or theories supporting any specific claims. Defendant argues that the September 26th notice was insufficient to provide adequate notice to Defendant. As such, Defendant argues that Plaintiff failed to exhaust his administrative remedies, as is a prerequisite to asserting PAGA claims. Plaintiff amended the PAGA notice on September 30, 2025.

Plaintiff alleges that he worked for Defendant from "approximately November 2018 through at least August 2024." Defendant does not argue that the September 30th notice was deficient. Rather, Defendant argues that it was untimely filed since it was filed more than one year after the last alleged date of Plaintiff's employment. The Court notes that Plaintiff alleged he was employed through "at least August 2024." Plaintiff does not allege a specific end-date of his employment.

I. Plaintiff's Initial PAGA Notice

Before an "aggrieved employee" may commence a civil action under PAGA, Labor Code § 2699.3(c)(1) requires the employee give written notice to LWDA and the employer "of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." This prelitigation notice obligation has been described as an "administrative exhaustion" requirement, and courts have affirmed that "[p]roper notice under section 2699.3 is a 'condition' of a PAGA lawsuit." (*Rojas-Cifuentes v. Superior Court* (2020) 58 Cal.App.5th 1051, 1056; *Uribe v. Crown Bldg. Maint. Co.* (2021) 70 Cal.App.5th 986, 1003.) "The notice 'must be specific enough such that the LWDA and the defendant can glean the underlying factual basis for the alleged violations.'" (*Ibarra v. Chuy & Sons Labor, Inc.* (2024) 102 Cal.App.5th 874, 882.) "'Nothing in ... section 2699.3, subdivision (a)(1)(A), indicates the "facts and theories" provided in support of "alleged" violations must satisfy a particular threshold of weightiness, beyond the requirements of nonfrivolousness generally applicable to any civil filing.'" (*Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824, 836.)

> The evident purpose of the notice requirement is to afford the relevant state agency, the [LWDA], the opportunity to decide whether to allocate scarce resources to an investigation, a decision better made with knowledge of the allegations an aggrieved employee is making and any basis for those allegations. Notice to the employer serves the purpose of allowing the employer to submit a response to the agency (see [ ] § 2699.3, subd. (a)(1)(B)), again thereby promoting an informed agency decision as to whether to allocate resources toward an investigation. Neither purpose depends on requiring employees to submit only allegations that can already be backed by some particular quantum of admissible proof."

(*Ibid*.) "'Under California's Labor Code, a written notice is sufficient so long as it contains some basic facts about the violations, such as which provision was allegedly violated and who was allegedly harmed.'" (*Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 350.) "[F]ew 'facts and theories' are needed to satisfy PAGA's notice requirement." (*Rojas-Cifuentes v. Superior Court* (2020) 58 Cal.App.5th 1051, 1057.)

Here, the Court finds that Plaintiff's September 26, 2024 notice was adequate under the Labor Code. The case law makes clear that "PAGA's prelitigation notice requirement is 'minimal.'" (*Ibarra v. Chuy & Sons Labor, Inc.* (2024) 102 Cal.App.5th 874, 882.) Plaintiff's initial notice contains the alleged parties, the period of time Plaintiff is alleged to have worked for Defendant, the alleged violations as well as facts and theories that support those allegations. While the alleged violations are numerous, Plaintiff does allege some basic facts supporting the alleged violations.

Plaintiff's allegations constitute more than simple rephrasing of the statute, as occurred in *Alcantar v. Hobart Service* (2015) 800 F.3d 1047, 1057, or *Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824, 837-838.

Defendant argues that the September 26, 2024 notice in this matter is identical to 137 notices that the LWDA found to be deficient under the Labor Code and required Plaintiff's counsel to amend. Admittedly, the present case is not one of the cases wherein the LWDA required such an amendment. (Def. MPA, p. 9.) Nonetheless, the Court does not find LWDA letter to Plaintiff's counsel regarding the deficient notices to be persuasive or to require a different result here. As stated above by the *Ibarra* Court, citing the *Gunther* Court, the prelitigation notice requirements are "minimal." The Court finds Plaintiff's initial PAGA notice met the prelitigation notice requirements. Accordingly, it is not apparent that Plaintiff failed to exhaust the administrative remedies.

II. Plaintiff's Amended PAGA Notice

Defendant next argues that since the initial PAGA notice was deficient and the PAGA notice was not amended until September 30, 2025, Plaintiff's PAGA claim is barred by the statute of limitations. A plaintiff is required to file notice with the LWDA within one year of his last day of employment. (Lab. Code, §§ 2699, 2699.3; CCP § 340.) Plaintiff alleges in the complaint that he worked for Defendant "from approximately November 2018 through at least August 2024." (Complaint, ¶ 38.)

First, the Court has found that the initial PAGA notice was not deficient. Accordingly, Defendant has failed to show that Plaintiff failed to exhaust the administrative remedies. *Arguendo*, even assuming the initial PAGA notice was deficient, it is not apparent that Plaintiff's claim is time-barred. Plaintiff does not allege a specific end date for his employment. He alleges that he worked for Defendant until "*at least* August 2024." The phrase "*at least*" indicates that his employment could have extended beyond August 2024. Accordingly, it cannot be said at this juncture that the September 30, 2025 amended notice was filed more than one year after the last day of his employment.

4. 25CV08661 BMO Bank N. A. vs Koch

Plaintiff BMO Bank, N.A.'s unopposed Application for Writ of Possession after hearing is **GRANTED** pursuant to CCP §§ 512.010 et seq.

Plaintiff's counsel shall submit a written order consistent with this tentative ruling, along with a [proposed] Order for Writ of Possession (CD-120), and a [proposed] Writ of Possession (CD-130). Due to the lack of opposition, compliance with Rule of Court 3.1312 is excused.

Analysis:

To obtain a writ of possession, a plaintiff must show by declaration that it has the right to immediate possession of tangible personal property and that the property is being wrongfully withheld by the defendant (CCP § 512.010) and that the claim is "probably valid" (CCP § 512.040(b)).

Plaintiff has shown that it has the right to immediate possession of the Peterbilt Tractor in question. Defendant entered into an agreement with Plaintiff in connection with the acquisition of a tractor. Pursuant to the agreement, Defendant was to pay 72 monthly installments of $3,242.50 commencing on February 17, 2021, and continuing thereafter with each payment due on the twenty-first day of each consecutive month thereafter. Pursuant to the agreement, Defendant accepted delivery and took possession of the tractor. Thereafter, Plaintiff obtained a Certificate of Title from the State of California Department of Motor Vehicles, thereby perfecting its ownership interest in the tractor. Defendant failed to make a payment due on April 17, 2025. As of December 3, 2025, Defendant has continued to fail and refuse to make any further payments coming due pursuant to the agreement. After default, Defendant has retained possession of the tractor. Pursuant to the parties' agreement, Plaintiff is entitled to immediate possession of the tractor upon default. The foregoing establishes Plaintiff's right to a writ of possession. Furthermore, the Application meets the applicable procedural requirements in that it specifies the property and its location.

Plaintiff has demonstrated that the bond requirement is waived because Defendant does not have an interest in the property. (CCP § 515.010(a) (bond required "in an amount not less than twice the value of the defendant's interest in the property" and "[t]he value of the defendant's interest in the property is determined by the market value of the property less the amount due and owing on any conditional sales contract or security agreement and all liens and encumbrances on the property, and any other factors necessary to determine the defendant's interest in the property.")

CCP § 515.010(b) provides that where, as here, a bond by Plaintiff is waived, the Court "shall include in the order for issuance of the writ the amount of the defendant's undertaking sufficient to satisfy the requirements of subdivision (b) of Section 515.020." This pertains to the amount of a counter-bond which must be posted by Defendant if he seeks to retain the tractor. CCP § 515.020(b) provides: "The undertaking shall state that, if the plaintiff recovers judgment on the action, the defendant shall pay all costs awarded to the plaintiff and all damages that the plaintiff may sustain by reason of the loss of possession of the property. The damages recoverable by the plaintiff pursuant to this section shall include all damages proximately caused by the plaintiff's failure to gain or retain possession."

Plaintiff has not requested any specific figure for the counter-bond. However, Plaintiff has represented that the current fair market value of the tractor is $70,075.00. The Court finds this to be a reasonable amount to set for the bond. An additional $1,000 shall be set for Plaintiff's reasonable costs. The bond that must be posted by Defendant to retain possession of the tractor is $71,075.00.

5. 24CV07818 Hayes vs Morales Cuevas

Defendant Sutter Roofing & Sheet Metal, Inc. ("Sutter Roofing")'s motion for summary judgment is **DENIED**. Defendant's alternative motion for summary adjudication is **GRANTED** in part and **DENIED** in part. Summary adjudication is **GRANTED** as to issues 3 and 4 regarding Plaintiff's second cause of action for premises liability. It is **DENIED** as to issues 1 and 2 regarding Plaintiff's first cause of action for motor vehicle negligence.

Defendant's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Evidentiary objections:

Defendant Julian Morales Cuevas's objections to Defendant Sutter Roofing's evidence are **OVERRULED**.

Defendant Sutter Roofing's objections to Plaintiff's evidence are **OVERRULED**.

Defendant Sutter Roofing seeks to exclude most portions of the declarations of Nelson Rivas and Jose Valencia based on the argument that Plaintiff did not disclose surveillance evidence in his June 2, 2025 document production.

"[W]ithout a demonstration of 'discovery abuse,' there is no general prohibition against 'introducing previously undisclosed evidence in opposition to a summary judgment motion.'" (*Browne v. Turner Construction Co.* (2005) 127 Cal.App.4th 1334, 1349.) Furthermore, "There is no statutory duty in California to supplement [discovery] responses." (*Id*. at 1349.) "Even if plaintiff had violated a duty to supplement his responses it would not ordinarily justify the exclusion of evidence in the absence of a *willful* violation of an *order* for disclosure." (*Ibid*. Italics in original.) "If a party who fails to amend or supplement [discovery] responses can be categorically precluded from offering undisclosed information in opposition to a later filed summary judgment motion, the need for a burden-shifting rule would be eliminated." (*Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1329.)

Plaintiff's failure to disclose the surveillance evidence will not on its own support exclusion absent a showing of a discovery abuse. While Defendant argues that discovery abuse is present, the Court does not agree that such is reflected in the record. Nelson Rivas and Jose Valencia testify regarding surveillance conducted on Defendant Morales between November 2024 through February 2025. Plaintiff served responses to Defendant's request for production of documents on June 2, 2025.

Defendant's requests for production of documents requested, in pertinent part:

> RFP No. 3: All DOCUMENTS REGARDING statements made by any witness PERSON(S) REGARDING the INCIDENT.
>
> RFP No. 4: All documents made by Plaintiff regarding the incident; and
>
> RFP No. 13: All photographs regarding the incident.

Absent from the record is evidence that Plaintiff had such documentary evidence in Plaintiff's possession prior to June 2, 2025. Though the surveillance occurred prior to June 2, 2025, the Court would have to make an assumption that Plaintiff had documentary evidence relating to the surveillance prior to June 2nd. The Court will not make such an assumption without evidentiary support. There is nothing in the record that would indicate to the Court that Plaintiff intentionally withheld such evidence. Notably absent from Defendant's argument is any indication that Defendant was not made aware of these witnesses prior to now. The Court finds that, based on the record before the Court at this time, no discovery abuse occurred. As such, the surveillance evidence will not be excluded.

Summary of Facts:

Defendant Sutter Roofing is a California corporation that performs roofing installations. It leases a portion of the premises located at 5715 Sebastopol Avenue, Sebastopol, California 95472 from Leland K. Smith and Kathryn R. Smith Trust (the "Smith Trust"), pursuant to a lease agreement entered into in August of 2023. (Undisputed Material Fact "UMF," 1-2.)

The leased premises, as defined in the Lease and pursuant to the custom, practice, and understanding of Sutter Roofing and its landlord the Smith Trust, consists of the "Yard Area" of the premises. The Lease gives Sutter Roofing the right to park on the leased premises only, with right of access through the common area driveway to the leased yard. (UMF, 3.)

Sutter Roofing's yard is on leased premises that have access to a common area driveway, which leads to Highway 12. This driveway does not have anything blocking a driver's view of the road, traffic, or pedestrians as he or she exits the driveway toward Sebastopol Avenue, such as vegetation, buildings, or terrain features. (UMF, 4.) Pursuant to the Lease and the custom, practice, and understanding between Sutter Roofing and The Smith Trust, Sutter Roofing has never had the authority to modify or address, and has never modified and addressed, any vegetation, buildings, or terrain features on or near the common area driveway of the premises. (UMF, 5.) Pursuant to the Lease, Paragraph 2.10(a), only the lessor, the Smith Trust, has the right, in its sole discretion, to make changes to premises' common areas, "including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways." (UMF, 6.)

For about fifteen years, including on September 4, 2024, Sutter Roofing employed Defendant Julian Morales Cuevas ("Defendant Morales") to perform roofing installation jobs. His job duties included going to roofing job sites to perform roofing installation work. (UMF, 7.)

On September 4, 2024, Mr. Morales fully completed his shift at 4:00 p.m. (UMF, 8.) Defendant Morales testified at his deposition that he worked his normal shift of 7:00 in the morning to 4:30 that day; however, he also testified that he left work to go home at approximately 4:15. (Morales Compendium of Exhibits, Ex. C. p. 23, ln. 18-19; p. 24, ln. 11-19.) He testified that he arrived at the yard at 4:00 and "At 4:15 I was already coming out of the yard with my truck." (*Id*. p. 38, ln. 18-25; p. 39, ln. 1-17.)

After completing their work shifts, Sutter Roofing's employees, such as Defendant Morales on September 4, 2024, are free to leave Sutter Roofing's premises and are not under the direction, control, or supervision of Sutter Roofing. (UMF, 9.) Sutter Roofing submits that it is its regular policy that employees, such as Defendant Morales, are not permitted or expected to perform work duties once they have completed their work shifts. Sutter Roofing submits that it does not require employees to use personal vehicles for company business unless expressly instructed and no such instruction was given to Defendant Morales on September 4, 2024. (UMF, 10.)

When asked at his deposition whether Defendant Morales ever used his personal vehicle in 2024 for work, Defendant Sutter Roofing's owner, Nate Sutter, responded, "I'm going to say 'yes.' Out of the 365 years, he probably did once or twice, but that's about it. To go straight to the job, you mean from his house for any reason? Q. Or—or for any reason. A. Yeah, I'm going to say out of the—

yeah that he did once or twice but only because—you know, the situation, like, he was going to be late or had to leave early or something like that." (Plaintiff's Index of Exhibits, Ex. 3, p. 23, ln. 5-15.) Mr. Sutter also testified that while in 2024 his employees were expected to drive a company vehicle to job sights, he is "trying to move more to certain people driving straight to the job because it was costing me too much money to do—pay for all that travel time—or have people sit around while we load trucks, and it's just not the way I'm—I'm trying to get away from doing that now." (*Id*. at p. 37, ln. 5-14.)

Defendant Morales was followed for 11-days by a private investigator and, of those 11-days, he used his personal truck for Sutter Roofing work on at least 5 separate days between November 4, 2024 through February 21, 2025. (Plaintiff's Additional Material Facts "PAMF," 15.) Defendant Morales was observed during surveillance loading roofing and gutter materials into his personal truck at the Sutter Roofing yard, leaving the Sutter Roofing yard in his truck with roofing and gutter materials, and going to Sutter Roofing job sites in the field where he was seen performing roofing and gutter work for Sutter Roofing. (PAMF, 16-26.)

On September 4, 2024, after he completed his work shift, Defendant Morales had not been authorized or requested to use his personal vehicle to run errands for Sutter Roofing, transport goods or personnel, make deliveries, meet with clients or vendors, or perform any job-related function. (UMF, 11.) Defendant Morales was not required to report to anyone on site or to do anything to check out from Sutter Roofing for the day, once his work shift was completed. At that point, he was free to leave the premises. (UMF, 13.) On completing his work at 4:00 p.m. on September 4, 2024, Defendant Morales entered his own personal vehicle, a blue Dodge Ram pickup truck, which was parked in a lot adjacent to the premises. (UMF, 14.)

After he entered his Dodge Ram, Defendant Morales drove it toward the driveway that leads from the premises toward Highway 12. Shortly afterward, at approximately 4:28 p.m., Mr. Morales was involved in a motor vehicle collision with a motorcyclist, Plaintiff, on Highway 12. (UMF, 17.) At the scene of the crash Defendant Morales had ladders and other tools that were used for Sutter Roofing work in his personal truck. (PAMF, 27.)

Analysis:

I. Triable Issues of Material Fact Exist as to Plaintiff's First Cause of Action for Motor Vehicle Negligence

Defendant Sutter Roofing argues that Plaintiff's first cause of action for motor vehicle negligence should be summarily adjudicated in its favor because the record reflects that Defendant Morales had finished his workday and was driving home in his personal vehicle at the time of the collision. Defendant points to the "going and coming rule."

Under the "going and coming rule" "an employee is not regarded as acting within the scope of employment while going to or coming from the workplace." (*Jeewarat v. Warner Bros. Entertainment Inc.* (2009) 177 Cal.App.4th 427, 435.) "This is based on the concept that the employment relationship is suspended from the time the employee leaves work until he or she returns, since the employee is not ordinarily rendering services to the employer while traveling." (*Ibid*.)

Plaintiff argues in opposition that several exceptions to the going and coming rule exist and are applicable here. Plaintiff points to the "required vehicle exception" and the "incidental benefit exception."

"The 'required-vehicle exception' covers situations where there is an express or implied employer requirement." (*Pierson v. Helmerich & Payne Internat. Drilling Co.* (2016) 4 Cal.App.5th 608, 625.) "'If an employer *requires* an employee to furnish a vehicle as an express or implied condition of employment, the employee will be in the scope of his employment while commuting to and from the place of his employment.'" (*Ibid*.)

Under the "incidental benefit exception," "The drive to and from work may...be within the scope of employment if the use of the employee's vehicle provides some direct or incidental benefit to the employer." (*Pierson*, *supra*, at 629.) "'There may be a benefit to the employer if (1) the employee has agreed to make the vehicle available as an accommodation to the employer, and (2) the employer has reasonably come to rely on the vehicle's use and expects the employee to make it available regularly.'" (*Ibid*.) "The 'agreement may be either express or implied.'" (*Ibid*.) "The existence of an express or implied agreement can be a question of fact for the jury." (*Ibid*.)

> "CACI No. 3725 allows a plaintiff to prove the exception applies in two ways. The simplest way is to prove "the use of the employee's vehicle provides some direct or incidental benefit to the employer."…Under this approach, " 'the key inquiry is whether there is an incidental benefit derived by the employer. [Citation.]' "… The alternate way to establish the exception applies is for the plaintiff to prove "(1) the employee has agreed to make the vehicle available as an accommodation to the employer, and (2) the employer has reasonably come to rely on the vehicle's use and expects the employee to make it available regularly."

(*Pierson*, *supra*, at 629-630.)

Here, the Court agrees with Defendant Sutter Roofing that there are no triable issues of material fact regarding whether Defendant Morales was still working at the time of the collision. The record is clear that he had concluded his workday and was leaving work for the day in his personal vehicle. However, the Court also agrees with Plaintiff that triable issues of material fact exist as to whether an exception to the going-and-coming rule applies here.

The record contains conflicting evidence regarding whether Defendant Morales ever used his personal truck for work, whether doing so was allowed or expected, and whether doing so conferred an incidental benefit onto Defendant Sutter Roofing. Nate Sutter testified that Defendant Morales probably used his personal truck for work one or two times in 2024. Surveillance evidence showed him using his personal truck 5 out of 11 days from November 2024 to February 2025. There is evidence suggesting that his personal truck had Sutter Roofing equipment in it. Nate Sutter testified that sometimes it makes more economical sense to allow employees to drive their personal vehicle to job sites and that is why he is moving toward allowing it to happen. Triable issues of material fact exist as to whether an exception to the going and coming rule applies here. As such, summary adjudication of Issues 1 and 2 relating to the First Cause of Action is denied.

The Court notes that Defendant Morales argues that the "special risk exception" to the going and coming rule applies here, as described in *Zenith Ins. Co. v. Workers' Comp. Appeals Bd.* (2025) 110

Cal.App.5th 1164, 1172. However, the *Zenith* Court described this exception in the context of workers' compensation. The Court does not agree that it extends outside of that scope.

II. No Triable Issues of Material Fact Exist as to Plaintiff's Second Cause of Action

Plaintiff alleges a cause of action for premises liability against Defendant Sutter Roofing based on allegations that Sutter Roofing owned and maintained the driveway located near 5715 Sebastopol Ave. Plaintiff alleges that the driveway was dangerous and defective in that it had sight distance obstructions, visibility issues, and other physical and non-physical defects.

Sutter Roofing has submitted evidence showing that, while it leases a yard at 5715 Sebastopol Avenue, it does not lease, own, control, or maintain the driveway. Rather, the driveway is owned, controlled, and maintained by the Smith Trust and Sutter Roofing has never had the authority to modify or address any vegetation, buildings, or terrain features on or near the common area driveway of the premises. These facts are undisputed by Plaintiff. In fact, Plaintiff does not respond to Defendant Sutter Roofing's arguments regarding premises liability in Plaintiff's opposition.

"A defendant cannot be held liable for the defective or dangerous condition of property which it did not own, possess, or control. Where the absence of ownership, possession, or control has been unequivocally established, summary judgment is proper." (*Isaacs v. Huntington Memorial Hospital* (1985) 38 Cal.3d 112, 134.) Defendant Sutter Roofing has unequivocally established that it does not own, possess, or control the driveway that is alleged to have been defective or dangerous. Therefore, summary adjudication of the second cause of action in Defendant Sutter's favor shall be granted.

6. 25CV05030 Rodgers vs Petty

Plaintiff's motion to compel further responses from Defendant Santa Rosa City Schools to Plaintiff's Request for Production of Documents, Set One, is **GRANTED** in part and **DENIED** in part. It is granted as to request numbers 2, and 4-8. It is further **GRANTED** as to requests numbers 13-15 only as relating to Alan Petty only and **DENIED** in relation to any other coaching staff.

Plaintiff's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Plaintiff alleges in his complaint that he was punched in the genitals by his high school football coach, Alan Petty. He alleges that Coach Petty is employed by Defendant Santa Rosa City Schools ("SRCS"), was acting within the course and scope of his employment when he assaulted Plaintiff, and that SRSC was notified of the incident by both Plaintiff and his mother.

Plaintiff alleges that SRCS is directly liable for Plaintiff's injury by failing to adequately and reasonably train, supervise, and manage Alan Petty. Furthermore, Plaintiff alleges that SRCS is a mandatory report under the law and failed to comply with their mandatory reporter requirements under Penal Code §§ 11165.7 and 11166. Plaintiff also alleges that SRCS delayed the investigation into the incident for 6 weeks, during which time Coach Petty was allowed to continue interacting with the boys from the football team.

Plaintiff propounded his Request for Production of Documents, Set One on Defendant SRCS on October 22, 2025. The requests sought documentation concerning:

> (1) The personnel file and related documents for Defendant Alan Petty;
>
> (2) Notes and other documentation concerning the incident between Defendant Petty and Plaintiff Rodgers; and
>
> (3) Documentation of Defendant SRCS's education, training and supervision of its personnel regarding the safety of its students.

Defendant SRCS timely provided responses, some of which Plaintiff deemed to be insufficient. This motion followed. Plaintiff now seeks to compel further responses to requests numbers 2, 4-8, and 13-15. Defendant objected to many of these requests on attorney-client privilege, work product privilege, and privacy rights grounds.

I. Request Number 2

Request number 2 seeks, "All documents that comprise, evidence, relate or refer to the Santa Rosa City Schools' education, training and supervision of its teachers, school administrators, school counselors, and other pupil personnel service providers, in principles of school safety, during the time period of 2020 to present."

Defendant responded, "This Request is objected to on the grounds that it is vague, ambiguous, overbroad, burdensome and not reasonably calculated to lead to the discovery of admissible evidence." Defendant did not raise attorney-client privilege, work product privilege, or privacy rights objections to this request. The Court does not agree that the request is vague, ambiguous, overbroad, burdensome, or not reasonably calculated to lead to the discovery of admissible evidence. Defendant shall provide complete, code-compliant, and objection free responses to this request.

II. Request Numbers 4-8

Requests numbers 4-8 seek documents relating to the personnel file and related documents for Defendant Alan Petty and notes and other documentation concerning the incident between Defendant Petty and Plaintiff Rodgers.

Defendant provided the same response for request numbers 4-6, "This Request is objected to on the grounds that it is violative of the attorney-client and attorney work product privileges and the privacy rights of an employee of the School District. Without waiving those objections, the following response is provided: The School District withholds notes taken by Assistant Superintendent Vicki Zands."

The Court notes that Defendant has represented in its opposition that the redacted notes of Assistant Superintended Vicki Zands have now been produced. Plaintiff does not respond to this in his reply; therefore, it is not apparent that the motion is moot as to these requests. Furthermore, it is not apparent that redacted notes are sufficient considering the Court's analysis of Defendant's objections below.

Defendant responded to request number 7 with, "This Request is objected to on the grounds that it is violative of the privacy rights of an employee of the School District." Finally, Defendant responded to request number 8 with, "This Request is objected to on the grounds that it is violative of the privacy rights of an employee of the School District."

Neither in Defendant's responses to the Request for Production of Documents nor in Defendant's opposition to this motion has Defendant provided any justification for its attorney-client privilege or work product privilege objections. The court finds these objections to be without merit.

Defendant objects to each of these requests based on the privacy interest of Alan Petty. "The party asserting a privacy right must establish a legally protected privacy interest, an objectively reasonable expectation of privacy in the given circumstances, and a threatened intrusion that is serious." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 552.) "The party seeking information may raise in response whatever legitimate and important countervailing interests disclosure serves, while the party seeking protection may identify feasible alternatives that serve the same interests or protective measures that would diminish the loss of privacy." (Ibid.) "A court must then balance these competing considerations." (*Ibid*.)

> A " 'compelling interest' " is still required to justify "an obvious invasion of an interest fundamental to personal autonomy." [Citation.] But whenever lesser interests are at stake, the more nuanced framework discussed above applies, with the strength of the countervailing interest sufficient to warrant disclosure of private information varying according to the strength of the privacy interest itself, the seriousness of the invasion, and the availability of alternatives and protective measures.

(*Id*. at 556.)

As mentioned above, Alan Petty is a defendant and is alleged to have battered Plaintiff while in the course and scope of his employment as a football coach for Defendant SRCS. Plaintiff's interest in obtaining the documents sought in these requests is significant. While Alan Petty has a privacy interest in his employment records, that interest is outweighed by Plaintiff's countervailing interest. Furthermore, Alan Petty's privacy interest could be sufficiently protected with a stipulation, as contemplated by the parties, or with a protective order—though one has not been requested. Defendant's privacy objections are overruled.

III. Request Number 13-15

Requests numbers 13-15 seek documents relating to the hiring, training, and supervision of all coaching staff for the Montgomery High School football program during 2020 through 2025. Defendant objected on privacy grounds.

The Court agrees with Defendants that the individual coaching staff have a right to privacy in records pertaining to their employment. While Plaintiff has articulated a strong interest in obtaining employment records that pertain to Alan Petty, Plaintiff has not done so relating to any other coach. The Court finds that the privacy interests of coaching staff that are not parties to this action outweigh any interest Plaintiff might have in their employment records. The Court also agrees with Defendant that, in so far as they request documents relating to staff that is not Alan Petty, these

requests are overbroad. Therefore, Defendant shall provide documents responsive to requests 13-15 only as they relate to Alan Petty and not as they relate to any other coaching staff.

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