TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, May 1, 2024 3:00 p.m.
Courtroom 17 – Hon. Bradford DeMeo
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

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

TO JOIN ZOOM ONLINE:

D17 – Law & Motion
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252

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** Judge DeMeo's Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1. 23CV007873, County of Sonoma v. Chand

Plaintiff County of Sonoma's (the "County") motion for default judgment and request for permanent injunction against Defendant James Thomas Halter ("Defendant" or "Halter") are **GRANTED**, per Code of Civil Procedure ("C.C.P.") section 585(b). The Court grants relief in the amount of $79,489.25 as requested in the Complaint, per C.C.P. section 580(a).

PROCEDURAL HISTORY

The County commenced this action to abate public nuisance and to abate building, grading, septic, and zoning code violations regarding unpermitted cannabis cultivation at 8910 Hwy 116 North, Forestville, California (APN 084-230-015) (the "Property"). The Property is owned by Defendant Chand and leased out to Defendant Cortina for $10,000.00 per month. Per the County's motion, Halter is an investor in the cannabis cultivation and owns 11% personally while also representing investors who own 51% of the cannabis. The County inspected the property on July 28, 2023, and verified that cannabis was removed from the barn and other structures but also observed that in the lower barn there was still cannabis cultivation equipment remaining. Based on this, the inspectors explained these remaining items were still in violation of the Sonoma County Code and must be abated. None of these were abated.

The County contacted Halter to discuss the default that was entered against him for failing to file a responsive pleading, but Defendant Halter has not moved to set aside the default. Now, the County seeks a default judgment and permanent injunction to be entered against Halter.

REQUEST FOR JUDICIAL NOTICE

Pursuant to Evidence Code section 452(d), the County requests judicial notice of the following:

1. Complaint filed in this matter on September 28, 2023;
2. Proof of Substituted Service of on Defendant Halter filed November 20, 2023;
3. Request for Entry of Default and this Court's Entry of Default on January 18, 2024;
4. Memorandum of Costs filed with the Court.

Pursuant to *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 549, the County requests judicial notice of the following recorded deeds:

1. Grant Deed (Recorded Doc. No. 2018024621);
2. Notice of Abatement Proceedings (Recorded Doc. No. 2023034564).

The County's request for judicial notices on all of the above items is **GRANTED**.

ANALYSIS

Legal Standard

Code of Civil Procedure section 585(b) allows for default where the defendant has been served, other than by publication, and there has been no response or appearance by the defendant. The plaintiff can, after the request for entry of default and the Court entering a default, apply to the Court for the relief demanded in the Complaint. (C.C.P. § 585(b).) Per Code of Civil Procedure section 580(a), "[t]he relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint." Additionally, "if the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment or to carry the judgment into effect, the court

may take the account or hear the proof, or may, in its discretion, order a reference for that purpose." (C.C.P. § 585(b).)

County of Sonoma's Motion

County moves for default judgment against Halter per Code of Civil Procedure section 585(b) for failure to properly respond to the complaint and requests a permanent injunction to abate the nuisance. The County claims attorney's fees and costs of $22,870.50, and daily penalties of $145,600.00. The costs, fees, and penalties identified in the Complaint were $5,631.25 in Permit Sonoma Costs, $5,183.00 in counsel's fees, and $68,675.00 in penalties as of date of filing.

Application

The Court finds that the County is entitled to an entry of default judgment per section 585(b) and a permanent injunction against Halter. Per the proof of service of summons, the County effectuated substituted service on Halter on October 27, 2023. A process server left the summons, complaint, and other documents in this matter with Halter's father who lives with him. Halter has neither timely filed any responsive pleading nor moved to set aside the default. The total fees, costs, and penalties requested in the Complaint were $79,489.25 with note that the penalties and costs will continue to accrue. Pursuant to C.C.P. section 580(a), relief granted in a default judgment cannot exceed the amount demanded in the Complaint by the County. As such, the Court will only award what was requested in the Complaint.

CONCLUSION

Based on the foregoing, the County's motion for default judgment and request for permanent injunction as requested in the Motion against Halter are **GRANTED**, with relief granted in the amount of $79,489.25 as requested in the Complaint. Unless parties request oral argument, attendance is not required at the hearing. The County shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

2. 23CV01507, Haygooni v. Solairus Aviation LLC

Defendants Solairus Aviation LLC and Dan Drohan's motion for sanctions of $37,500.00 per Code of Civil Procedure section 128.7 against Plaintiff Robert Haygooni is **CONTINUED** to Friday, May 31, 2024, at 3:00 p.m. in Department 17. The motion will be heard on the same day as Defendants' demurrer and motion to strike Plaintiff's first amended complaint.

3. SCV-264723, Addington v. Ridgeway Distribution, LLC

Defendants/Cross-Complainants Humboldt Growers Network, Inc., Tobias Dodge, and Steve Dodge's (together "Defendants") motion for attorney's fees per Civil Code section 1717 and Code of Civil Procedure ("C.C.P.") section 1033.5(a)(10)(A) is **GRANTED**, for the amount of $336,590.00.

PROCEDURAL HISTORY

The parties intended to create a "cannabis distribution hub" that involved various sub-leases between the parties. The sub-leases contained attorney's fees clauses. Plaintiffs David Addington and Piner Partners ("Plaintiffs") commenced this action against Defendants for breach of partnership agreement and interference with business. Defendants cross-complained for the same causes as well as other causes of action. Ultimately, this Court awarded Defendants breach of contract damages of $2.58 million against Plaintiffs jointly and severally. Defendants bring this motion for attorney's fees per the attorneys' fees clause in the lease agreement. Plaintiff Addington has opposed and has filed a Notice of Appeal on March 25, 2024.

REQUEST FOR JUDICIAL NOTICE

Plaintiff Addington's request for judicial notice of Case No. 265383, MCV-251745, and AAA Case No. 01-19-0004-011 are **GRANTED** per Evidence Code section 452(d).

ANALYSIS

Legal Standard

Attorney's fees are an allowable cost when authorized by contract, statute, or law. (C.C.P. § 1033.5(a)(10).) Additionally, in any action involving a contract, a prevailing party may claim fees where the contract specifically provides that attorney's fees and costs, when the fees are incurred to enforce that contract. (Cal. Civ. Code § 1717.)

Defendants' Motion for Attorney's Fees

As the prevailing party to whom judgment has been awarded, Defendants seek attorney's fees based on Civil Code section 1717 and C.C.P. section 1033.5(a)(10)(A). For 721 hours worked at a rate of $450.00 per hour and 60.7 hours of paralegal fees at a rate of $200.00 per hour, Defendants seek a total of $336,590.00. The billing has been broken down into five different phases summarizing hundreds of hours of attorney's fees and the fee for working on this instant motion. (Declaration of Ross Jones, ¶ 14.) Counsel's declaration details the type of work put into each phase of the billings summarized, as he was the only attorney who worked on this matter. Defendants point to Trial Exhibits 3A, 11, which are the sub-leases containing the attorney fee clauses. The clause reads: "the [arbitration] award may include an award of costs, including reasonable attorneys' fees and disbursements."

Plaintiff Addington argues that both the parties' leases have a reciprocal clause for attorney's fees which limits the fees to arbitration. The arbitrator's award may include reasonable attorney's fees but does not mention any other attorney's fees. Plaintiff points out that the heavily summarized billing is not sufficient for the Court to determine actual fees incurred by Defendants.

In reply, Defendants argue that Plaintiff Addington has not raised any issue with the reasonableness of Defendants' attorney's fees and that he misinterprets the attorney's fees award clause related to arbitration in the sub-lease. They argue that the clear intent of the parties' provision is that the one who ultimately prevails in a final resolution of their dispute is entitled to recover his fees. Defendants also contend it is neither reasonable nor required to provide 53 months of attorney's invoices, which may contain references to attorney-client privileged communications and attorney work product. In the reply, Defendants request an additional amount of attorney's fees for 5.8 hours of work.

Application

As the prevailing party in this matter, Defendants are entitled to reasonable attorney's fees. As the billings cover five years of defense counsel's work in the matter, counsel has supplied a declaration to break down the 721 hours of attorney's fees and 60.7 hours of paralegal fees into five phases of work briefly summarized. Counsel has also offered the Court to provide each of the billings *in camera*, but argued it was too burdensome to provide all 53 months' worth of billings to the Court in support of this motion. The Court will not consider the additional fees requested for the first time in the reply brief as Plaintiffs have not had the opportunity to evaluate them. Per Civil Code section 1717 and C.C.P. section 1033.5(a)(10)(A), the Court will grant the fees requested based on counsel's lodestar calculation.

CONCLUSION

Based on the foregoing, the motion is **GRANTED**, for the amount of $336,590.00. Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4. SCV-268148, Abarca-Rueda v. Foley Family Wines, Inc

The Court **GRANTS** Plaintiffs Octavio and Huber Abarca-Rueda ("Plaintiffs") motion pursuant to California Rules of Court ("C.R.C."), rule 3.769, and California Code of Civil Procedure ("C.C.P.") section 382 for an order:

1. Granting final approval of the Class Action and PAGA Settlements;
2. Certifying the proposed Class for settlement purposes;
3. Approving the Class Notices and plan for distribution of the Class Notices;
4. Appointing Plaintiffs as Class Representatives for settlement purposes;
5. Appointing Plaintiffs' Counsel, Justin F. Marquez and Benjamin H. Haber of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes; and
6. Appointing Simpluris Class Action Settlement Administration as the Settlement Administrator.

PROCEDURAL BACKGROUND

Defendant Foley Family Wines, Inc. and Foley Family Farms (“Foley”) and Defendant Ferrari-Carano Vineyards and Winery, LLC (“Ferrari-Carano”) employed Plaintiffs and approximately 625 Class Members. Plaintiffs allege that Defendants’ failure to pay minimum and straight time, to pay overtime wages, to provide meal periods, to authorize and permit rest periods, to timely pay final wages at termination, to provide accurate itemized wage statements, and to indemnify employees for expenditures, resulted in Labor Code and Private Attorneys General Act violations and unfair business practices. The parties reached settlement after engaging in private mediation and settlement negotiations after exchanging discovery. The total settlement is $1,050,000, which represents 57.4% of the realistic maximum recovery of $1,828,586.40.

ANALYSIS

Legal Standard for Final Fairness and Approval

After preliminary approval of a settlement, the court must determine the settlement is fair, adequate, and reasonable. (C.R.C., Rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A presumption of fairness exists where: 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The test is not for the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250, disapproved of by *Hernandez v. Restoration Hardware, Inc*. (2018) 4 Cal.5th 260.) In making this determination, the court considers all relevant factors including “the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

Final Approval Considerations in Plaintiffs’ Motion

The Court considers the following for final approval of Plaintiffs’ motion regarding settlement:

1. *Class Members*: “Class” or “Class Members” in the Ferrari-Carano Settlement include all persons who worked for Ferrari-Carno in California as hourly, non-exempt employees during the period of April 7, 2017, through August 25, 2020. In the Foley Settlement, it includes all persons employed by Foley who worked for Ferrari-Carano in California as an hourly-paid or non-exempt employee during the period of August 26, 2020, through September 15, 2022. Aggrieved employees for Ferrari-Carano are participating class members who worked during April 7, 2020, through August 25, 2020, or for Foley during the period of August 26, 2020, through September 15, 2022.

2. *Settlement*: Total settlement is $1,050,000.00, with $750,000.00 allocated from Ferrari-Carano and $300,000.00 allocated from Foley.

3. *Administrator*: Simpluris Class Action Settlement Administrators shall act as Settlement Administrator and will ensure that Notices are provided to the current addresses of class members.

4. *Attorney fees*: Settlement provides that Defendants will not oppose a fee application of 33.33% of the combined settlement amounts, plus out-of-pocket costs not to exceed $20,000.

5. *LWDA*: Settlement also provides for a combined $40,000 allocated to Plaintiffs' claims under PAGA, with $30,000 allocated to Ferrari-Carano and $10,000 allocated to Foley, for payment to the LWDA.

6. *Class Representative Service Award*: Subject to Court approval, the Settlement provides for a Class Representative Service Award not to exceed $15,000, of which $7,500 will be allocated to each named Plaintiff.

7. *Net Settlement Amount*: Per the Settlement, this includes the Settlement Amount minus any award of attorneys' fees and litigation costs, administrative costs, enhancements to the named Plaintiffs, and penalties recoverable pursuant to the PAGA.

8. *Fair, adequate, and reasonable*: Plaintiffs claim that the settlement is fair, reasonable, and adequate, and the product of investigation, litigation, and negotiation. The settlement was reached following one day of arm's length mediation with an experienced employment mediator. Before reaching settlement, Class Counsel conducted extensive informal discovery regarding the claims set forth in the complaint and Defendants' policies and procedures, issued wage statements, timekeeping, and other relevant information. The proposed settlement amount represents substantial recovery compared to Plaintiffs' reasonably forecasted recovery and class members will be able to receive timely, guaranteed relief and avoid the risk of an unfavorable judgment. Finally, Class Counsel has extensive experience in Class Action Litigation.

9. *Notice*: The notice of proposed class action settlement appeared thorough and sufficient to adequately notify class members pursuant to Rule 3.769.

Application

Based on the above, there is a presumption of fairness. The parties participated in arm's length mediation with an experienced employment mediatory and extensive discovery prior to reaching settlement. The settlement amount is substantial in total and a significant percentage of what Plaintiffs could obtain if prevailing at trial. Class Counsel also has extensive experience in Class Action litigation. Overall, the Court finds that the settlement, payment of fees and costs, and distribution of funds is fair, reasonable, and adequate, and is in the best interests of the Class Members.

CONCLUSION

Final approval of Plaintiffs' motion is **GRANTED**. Plaintiffs' counsel shall submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

5. SCV-268752, Western Manufactured Housing Communities Association v. Basinger

Plaintiffs Western Manufactured Housing Communities Association ("Western") and Rincon Valley dba Rincon Valley Mobilehome Park ("Rincon Valley", together with Western, "Plaintiffs") filed the currently operative first amended complaint ("FAC") in this action against defendants the City of Santa Rosa (the "City") and Megan Basinger, in her official capacity as Interim Director of the Department of Housing & Community Services of the City of Santa Rosa (together with City, "Defendants"), and Does 1-10 for three causes of action requesting two forms of declaratory relief and a writ of mandate.

This matter is on calendar for the motion by the Defendants for summary judgment or in the alternative summary adjudication of Plaintiffs' first cause of action pursuant to Cal. Code Civ. Proc. ("CCP") § 437c. Defendants' Motion for Summary Judgment is **GRANTED.**

I. Procedural and Evidentiary Issues

Defendants' unopposed request for judicial notice is GRANTED as to the Executive Order B-43-17.

II. Underlying Facts

Rincon Valley operates a mobilehome park located within the City of Santa Rosa, County of Sonoma and is a member of Western's nonprofit association. Defendant's Separate Statement of Undisputed Facts ("DUMF") ¶¶ 5-7. In October 2017, due to wildfires, Governor Jerry Brown Declared a state of emergency as to the County of Sonoma in Executive Order B-43-17. DUMF ¶ 8. This declaration of state of emergency triggered the price gouging protections in Penal Code § 396 (e). DUMF ¶ 9. Governors Brown and Newsom have issued a series of Executive Orders since then extending the price gouging protections. DUMF ¶ 10. In a letter dated August 13, 2020, Rincon Valley informed the City's Department of Housing and Community Services of its intent to implement an automatic annual rent increase of 1.6% on all of it's mobile home spaces effective November 2020, in conformity with City Code § 6-66.040 (A) and the Consumer Price Index ("CPI"). DUMF ¶ 11. On January 29, 2021, the Department of Housing and Community Services emailed a notice to Rincon Valley notifying it of the adjusted maximum base rent allowed under City Code § 6-66.040. DUMF ¶ 12. On March 31, 2021, the Department of Housing and Community Services sent a notice to Rincon Valley that the restrictions imposed by Penal Code § 396 caused by the state of emergency declared in 2017 were in effect, and that it would be a violation of Penal Code § 396 for any proposed rent increases to exceed 10% of the pre-state of emergency rate. DUMF ¶ 13. As a result of the letter, Rincon Valley has not implemented the rent increases typically allowable under City Code § 6-66.040 (A). Plaintiffs

disagree with the legal position articulated in the Department of Housing and Community Services letter. DUMF ¶ 15.

Defendants were previously granted summary judgment as to Plaintiffs' second cause of action for declaratory relief regarding "mobile home park owners' right to recoup lost rent increases" caused by the state of emergency declared in Executive Order N-85-20. See DUMF ¶¶ 1-2. Plaintiffs have dismissed their third cause of action for petition for writ of mandate without prejudice. DUMF ¶¶ 3-4.

III. <u>The Burdens and Standards on Summary Judgement and Adjudication</u>

A. <u>Generally</u>

Summary adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (CCP § 437c(c).) All evidence and inferences drawn reasonably drawn therefrom must be viewed in the light most favorable to the party opposing summary adjudication. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.)

Summary adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c(c). A moving defendant meets its initial burden to show that one or more elements of a cause of action "cannot be established" (CCP § 437c(p)(2)) by presenting evidence that, if uncontradicted, would constitute a preponderance of evidence that an essential element of the plaintiff's case cannot be established. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851; *Kids Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 879. Alternatively, a defendant may show that there is a "complete defense" to a cause of action. CCP § 437c(p)(2). To show a complete defense, a defendant must present admissible evidence of each essential element of the defense upon which it bears the burden of proof at trial. *See, e.g. Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 289. A defendant cannot base its "showing" on the plaintiff's lack of evidence to disprove its claimed defense. *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 472.

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840. If the moving defendant does not meet its initial burden, the plaintiff has no evidentiary burden. CCP § 437c(p)(2).

If a defendant meets its initial burden to show a "complete defense," the burden shifts to the plaintiff to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(2). *Consumer Cause, Inc.*, 91 Cal.App.4th at 468. An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at 845.

"(T)he pleadings determine the scope of relevant issues on a summary judgment motion." *Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74. "(T)he burden of a defendant moving for summary judgment only requires that he or she negate plaintiff's theories of liability *as alleged in the complaint;* that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings." *Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493 (emphasis in original). Where the deficiency is with the complaint, and not the evidence presented, the legal effect of a motion for summary judgment is the same as that of a motion for judgment on the pleadings. *American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1117.

B. Statutory Interpretation

In addressing the instant case, both parties agree that the controversy is one of statutory interpretation, and not necessarily one of factual dispute.

> In interpreting a statute, our primary goal is to determine and give effect to the underlying purpose of the law. (*People v. Valladoli* (1996) 13 Cal.4th 590, 597, 54 Cal.Rptr.2d 695, 918 P.2d 999.) "Our first step is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning." (*Ibid.*) " 'If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.' " (*California Teachers, supra,* 28 Cal.3d at p. 698, 170 Cal.Rptr. 817, 621 P.2d 856.) In other words, we are not free to "give words an effect different from the plain and direct import of the terms used." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349, 45 Cal.Rptr.2d 279, 902 P.2d 297; see § 1858.) However, " 'the "plain meaning" rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute.' " (*County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 943, 64 Cal.Rptr.2d 814, 938 P.2d 876.) To determine the most reasonable interpretation of a statute, we look to its legislative history and background. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 543, 67 Cal.Rptr.3d 330, 169 P.3d 559 (*Doe*).)

(*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332)

C. Penal Code § 396

PC § 396(e) establishes the restriction on rental increases and applicable penalties, which reads in relevant part:

> Upon the proclamation of a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make that declaration in any city, county, or city and county, and for a period of 30 days following that proclamation or declaration, or any period the proclamation or declaration is extended by the applicable authority, it is unlawful for any person, business, or other entity, to increase the rental

> price, as defined in paragraph (11) of subdivision (j), advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10 percent. . . . This subdivision does not authorize a landlord to charge a price greater than the amount authorized by a local rent control ordinance.

Subsequently, the statute defines rental prices as related to residential rentals including mobilehome spaces within PC § 396 subsection (j)(11)(D), which provides:

> "Rental price" for housing means any of the following:
>
> (D) For mobilehome spaces rented to existing tenants at the time of the proclamation or declaration of emergency and subject to a local rent control ordinance, the amount authorized under the local rent control ordinance. For new tenants who enter into a rental agreement for a mobilehome space that is subject to rent control but not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for a space in the same mobilehome park. For mobilehome spaces not subject to a local rent control ordinance and not rented at the time of the proclamation or declaration of emergency, the amount of rent last charged for the space.

Violations of PC§ 396 shall constitute unlawful business practices and acts of unfair competition as defined under Cal. Bus. & Prof. Code, § 17200. PC § 396 (i).

D. Santa Rosa City Code

The Santa Rosa City Code provides the rent control provisions that determine the rent increases allowable for mobile home spaces within the City of Santa Rosa. Santa Rosa City Code § 6-66.040. "An owner, once in any 12-month period, may impose a rent increase for a mobilehome space by 70 percent of the percentage increase, if any, in the Consumer Price Index (CPI) during the most recent 12-month period ending in August". Santa Rosa City Code § 6-66.040 (A)[1].

> A written notice of each rent increase or new or increased capital improvement or capital replacement pass through charge made under the provisions of this section shall be filed by the owner with the Clerk, and provided to each affected mobilehome owner, at least 90 days before the rent increase goes into effect or as required by the MRL. The notice shall identify the park and shall specify the dollar amount of the increase, the percentage of the increase, an itemization of all new or increased pass throughs and additional rent charges, the specific space affected, the date the increase will go into effect, how each increase was calculated, and the date the rent on each affected space was last increased. The notice shall also advise each affected mobilehome owner of any right to petition for review of a proposed rent increase and that a petition form may be requested from the Clerk.

Santa Rosa City Code § 6-66.040 (A).

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[1] The Court notes that this City Code has been amended pursuant to Santa Rosa City Ordinance No. ORD-2023-009. Plaintiffs quote the prior version of the Code. While the difference is substantial in practical effect, it has no impact on the purely legal ruling before the Court.

E. Preemption

The party claiming that state law preempts that of local ordinances bears the burden of demonstrating that presumption. *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149. "(W)hen local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." *Id.* "(I)t is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication." *Los Angeles County v. Frisbie* (1942) 19 Cal.2d 634, 644.

F. Cause of Action

Declaratory relief is a statutory cause of action, which may be filed either after or before a breach of rights and duties in order to receive a ruling on its future enforceability. Civ. Code. § 1060.

IV. Analysis

A. Effect of the Prior Ruling

Both parties make reference to a prior ruling of the Court. On December 30, 2021, Plaintiffs filed a motion for summary judgment, or in the alternative, adjudication. The Hon. Rene Chouteau held a hearing on the motion on April 6, 2022, after issuing a tentative ruling. At the hearing, the Court adopted the tentative ruling in its entirety denying Plaintiffs' motion. The Court signed the order thereon on June 1, 2022 (the "2022 Order").

Defendants urge the Court to follow the 2022 Order, and grant summary judgment. Defendants aver that the 2022 Order requires the Court to grant summary judgment. Plaintiffs state that this Court is not bound by the 2022 ruling. Plaintiffs are correct in this assessment. The 2022 order was based on the Plaintiffs' motion for summary adjudication. The court made clear at that time that its analysis was as to Plaintiffs' burden, and as such it does not provide binding authority on the motion before this Court. "As a result, Plaintiffs have not carried their burden that there is no triable material fact, as they have failed to present a prima facia case of each element of their declaratory relief cause of action. Similarly, when considering all the evidence provided by Plaintiffs, there exists a triable fact as to whether the City denied the rent increase such that they can through writ be ordered to approve it." See Court's 2022 Order, Section III (D).

Despite this, the 2022 ruling is persuasive. Plaintiffs aver that Hon. Judge Chouteau was incorrect in his interpretation of Penal Code § 396 and the City Code. Plaintiffs provide no authority or persuasive argument why the Court's 2022 Order was erroneous.

Here, just as in 2022, there are no factual disputes between the parties. The issue before the Court turns entirely on the legal interpretation of Penal Code § 396, City Code § 6-66-040, and their mutual regulation of mobile home park spaces.

B. Plaintiffs Misinterpret Penal Code § 396

The basis of the instant suit is Plaintiffs' argument that the Defendants have misinterpreted Penal Code § 396 and that the attempted application of Penal Code § 396 to their rent increases were erroneous. Plaintiffs' argument rests largely on the first sentence of Penal Code § 396 (j)(11)(D), which defines that the rental price for purposes of Penal Code § 396, "(f)or mobilehome spaces rented to existing tenants at the time of the proclamation or declaration of emergency and subject to a local rent control ordinance, the amount authorized under the local rent control ordinance." Plaintiffs aver that this creates a variable "rental price" during the pendency of the state of emergency, since the amount authorized by City Code § 6-66-040 adjusts each year in accordance with CPI.

Defendants argue that Plaintiffs' position is without supporting legal authority, and that the rental price becomes fixed upon the proclamation of the state of emergency. Defendants aver that as a result, Plaintiffs' proposed rent increase would have violated Penal Code § 396, and that the Defendants' letter warning of said violation was properly issued.

Defendants carry their burden to show there is no triable issue of fact. Plaintiffs legal position is not in conformity with either the language or policy of Penal Code § 396, and as such is not legally viable.

Plaintiffs' interpretation of the first sentence of Penal Code § 396 (j)(11)(D) is meretricious. While reading that sentence in a vacuum may lead to Plaintiffs' interpretation, in the full context of the statute, it becomes nonsensical. If the Court were to adopt Plaintiffs' interpretation, it would result in disparate treatment of people who have continually resided in their mobile home during the state of emergency from those who begin residing there during the state of emergency. A new tenant who rents during the state of emergency has their rent capped at 10% over "the amount of rent last charged for a space in the same mobilehome park." Penal Code § 396 subds. (e), (j)(11)(D). Of particular note is that this is not left to the discretion of local rent control ordinances. Similarly, for individuals who rent mobilehome spaces not subject to rent control, the 10% cap applies. Penal Code § 396, subds. (e), (j)(10), (j)(11)(A) and (D). Plaintiffs concede this point. See Opposition pg. 7:27-8:11. The same logic applies to renters of other housing regardless of whether that housing is subject to rent control ordinances. Penal Code § 396 (j)(11)(A) through (C). Plaintiffs offer no reason that individuals actively protected by rent control ordinances at the time the state of emergency is declared should experience more adverse outcomes than those who have no protections.

Plaintiffs' position fails on the full language of the statute as well. Relevantly, Penal Code § 396 (e) sets the 10% cap. "Upon the proclamation of a state of emergency ... and for ... any period the proclamation or declaration is extended by the applicable authority, it is unlawful for any person, business, or other entity, to increase the rental price, as defined in paragraph (11) of subdivision (j), advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10 percent." Penal Code § 396 (e). This language strongly cuts against any presumption that the legislature intended a variable definition of rental price. Penal Code § 396 (e) prohibits Plaintiffs from "**inreas(ing) the rental price** … by more than 10 percent." For the

rental price to be variable would create self-conflicting language as to the amount of rent increase allowable under Penal Code § 396. An increase allowable under local rent control provisions is still an increase, and as such the only internally consistent interpretation of Penal Code § 396 (j)(11)(D) is to interpret it as the Court did in the 2022 Order. The "rental price" for mobilehome spaces currently rented and subject to rent control becomes fixed "(u)pon the proclamation of a state of emergency". Penal Code § 396, subds. (e), (j)(11)(D).

Further, under Plaintiffs' interpretation, there would be no circumstance where Plaintiffs would be capable of violating § 396 as to currently rented spaces without also violating local rent ordinances by more than 10 percent. This would render the inclusion of currently rented spaces as largely surplusage within the statute. Rather, the reasonable reading of the vagueness within the statute is that mobilehome park owners should not be punished for charging below the amount allowable by local ordinance by then being capped at the current amount charged. Instead, at the time the state of emergency is declared, the amount allowable under local ordinance is the benchmark set by Penal Code § 396.

Therefore, Defendants have carried their burden to show that there is no triable issue of fact as to the cause of action for declaratory relief.

C. Penal Code § 396 is not pre-empted

Plaintiffs' argument that Penal Code § 396 does not pre-empt the local ordinance is correct, but the conclusion they draw thereon is erroneous. Plaintiffs continue to assert that the existence of the Local Ordinance somehow fully occupies the area of law that Penal Code § 396 attempts to legislate. The primary authority Plaintiffs rely upon in discussing preemption is *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149. This case, and in fact all the cases cited by Plaintiffs, properly apply preemption in the context of *state law* preempting *local law*. Plaintiffs' argument is that the City Code fully occupies the rent control space, and therefore Penal Code § 396 cannot be applied. While Plaintiffs attempt to frame this as § 396 not preempting the City Code, Plaintiffs' argument is effectively that the City Code preempts § 396. Plaintiffs provide no authority showing that the inverse may occur, that local law may somehow preempt state law.

Plaintiffs' argument is predicated on the concept that the state is without the power to enact such regulation when the City has a rent control ordinance in place. While Plaintiffs provide several authorities around the regulation of residential rent control is typically a matter of local regulation, they ignore the full context of Penal Code § 396. Penal Code § 396 relates to the powers of the state when a state of emergency is declared. In these types of exigent circumstances, the powers of government are generally heightened in deference to the powers and resources necessary to deal with substantial disasters. The state of emergency at issue here particularly was triggered by the Tubbs Fire. The Emergency Service Act "recognizes and responds to a fundamental role of government to provide broad state services in the event of emergencies resulting from conditions of disaster or extreme peril to life, property, and the resources of the state," and "confers broad powers on the Governor to deal with emergencies". *Martin v. Municipal Court* (1983) 148 Cal.App.3d 693. Plaintiffs provide no authority that emergency powers do not extend to areas that traditionally are "a peculiarly local concern which

is left to local regulation." *Beeman v. Burling* (1990) 216 Cal.App.3d 1586, 1598. Plaintiffs provide no case showing that an express provision of state law may be precluded by local ordinance.

While Plaintiffs argue that the City has "manufactured" a conflict between Penal Code § 396 and the City Code, it is Plaintiffs who truly aver that there is an issue. Both the City Code and Penal Code § 396 are a restriction on Plaintiffs' ability to freely increase rents. Plaintiffs instead argue that the City Code gives them an affirmative right to increase rents, but in the absence of the City Code, there would be no barrier to Plaintiffs performing whatever rent increases they found appropriate. As two prohibitions relating to similar subject matters, the City Code and § 396 are not in conflict, and both may simultaneously apply. Where Plaintiffs have interpreted a conflict of laws, the Court has found two laws interacting as intended for the protection of particularly vulnerable consumers where a state of emergency exists. Plaintiffs' construction of the interplay between the City Code and Penal Code § 396 is not persuasive. The City Code does not "fully occupy" the regulation of mobile home rental prices during a state of emergency.

V. Conclusion

Based on the foregoing, Defendants Motion for Summary Judgment is **GRANTED.**

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

6. SCV-272136, Smith v. The Zones

Defendant Boys & Girls Clubs of America's ("BGCA") motion to quash the service of summons and first amended complaint ("FAC") is **GRANTED**.

PROCEDURAL HISTORY

Plaintiffs allege in the FAC that Defendant Scott Bagley ("Bagley") sexually abused, molested, and assaulted them physically and mentally, when he was an employee of Defendant The Zones formerly known as Boys & Girls Club of Greater Santa Rosa, Inc. ("Zones") while Plaintiffs were minor children. Plaintiffs allege that Defendants Zones and Gerald Nelson ("Nelson"), Zones' supervisor/manager, knowingly or negligently allowed the abuse to occur when Plaintiffs were in their care even though Plaintiffs complained to them that it was occurring. They also allege that BGCA had ultimate, direct supervisory control over the other Defendants, and governed, owned, operated, and controlled the program in which Plaintiffs were enrolled. Plaintiffs further allege that BGCA was, along with Zones, responsible for hiring, training, supervising, and managing all employees and agents of Zones, including Bagley and Nelson. Finally, Plaintiffs allege that BGCA owned and operated the Facility, knew of the abuse, and had authority to stop it, but did nothing.

BGCA moved the Court to quash the service of the summons and FAC for lack of personal jurisdiction. Plaintiffs opposed the motion in part on the basis that they wished to conduct

specific discovery into the basis for personal jurisdiction. The hearing on the motion has been continued multiple times to allow the parties to engage in further discovery regarding personal jurisdiction. The parties have since submitted new supplemental briefs in opposition and reply.

REQUEST FOR JUDICIAL NOTICE

BGCA has submitted multiple requests for judicial notice the following items:

1. *Exhibit A:* Proof of Service of Summons and First Amended Complaint for BGCA;
2. *Exhibit B:* BGCA Charter, Chapter 29, section 706, recodified at 36 U.S.C. § 31101;
3. *Exhibit C:* BGCA's Constitution and Membership Requirements;
4. *Exhibit D:* Boys & Girls Club of Santa Rosa's Certificate of Amendment of Articles of Incorporation dated 2005;
5. *Exhibit E:* Boys & Girls Club of Santa Rosa's Certificate of Amendment of Articles of Incorporation dated 2023;
6. *Exhibit F:* Boys & Girls Club of Santa Rosa's website;
7. *Exhibit G:* BGCA's 1978 Constitution and Membership Requirements;
8. *Exhibit H:* Articles of Incorporation of California Alliance of Boys & Girls Clubs, Inc. dated 2000;
9. *Exhibit I:* Venture County Superior Court's order granting BGCA's motion to quash in *J.L. v. Doe 1, et al.* (Ventura County No. 56-2022-00567552); and
10. *Exhibit J*: February 28, 2024, Opinion of the Appellate Division of the Superior Court of New Jersey in *E.T. v. Boys & Girls Clubs of America*, Docket No. A-3720-22.

Plaintiffs oppose the request as to all documents except the proof of service, but only to the extent that BGCA asks the court to judicially notice the contents of the documents, as opposed to the existence of the documents. BGCA responds to this objection in its reply papers.

Judicial notice of official acts and court records is statutorily appropriate. (Evid. Code §§ 452(c)-(d).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) Courts may take notice of public records, but not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.) 1375.)

Subject to these restrictions, BGCA's requests for judicial notice are **GRANTED**. Plaintiffs' objections to judicial notice are **OVERRULED**.

EVIDENTIARY OBJECTIONS

"All written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion. Objections to specific evidence must be referenced by the objection number in the right column of a separate statement in opposition or reply to a motion, but the objections must not be restated or reargued in the separate statement." (C.R.C., Rule 3.1354.) A fact within the separate statement being undisputed waives any evidentiary objections to the support for that fact. (*Hurley Construction Co. v. State Farm Fire & Casualty*

Co. (1992) 10 Cal.App.4th 533, 540–541.) Plaintiff bears the burden of showing that there are no triable facts. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

BGCA objects to portions of Plaintiffs' evidence in support of opposition and supplemental opposition. These objections are **OVERRULED**.

BGCA'S MOTION TO QUASH

Legal Standard

Motion to Quash

Code of Civil Procedure ("C.C.P.") section 418.10 allows a defendant to file a motion to quash service of summons or stay or dismiss the action based on, among others, lack of personal jurisdiction. When a defendant moves to quash a summons for lack of personal jurisdiction, the plaintiff has the burden of proving personal jurisdiction by a preponderance of the evidence. (*Mihlon v. Sup. Ct. (Murkey)* (1985) 169 Cal.App.3d 703, 710.) An unverified pleading has no evidentiary value for determining personal jurisdiction but can be used to determine whether the cause of action arises out of defendant's alleged local activities. (*Ibid*.)

Personal Jurisdiction

Personal jurisdiction over a party may be either general or specific. (*Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County* (2017) 582 U.S. 255, 262.) Where an out-of-state defendant has contacts on a "substantial, continuous and systematic" basis, that nonresident is subject to "general" or "unlimited" jurisdiction and may be sued on any cause of action, even if unrelated to their activities within the state. (*Ibid*.) Even if a nonresident defendant's contacts with California are not sufficiently "continuous and systematic" to support general jurisdiction, the defendant may be subject to "limited" or "specific" jurisdiction on claims related to its activities or contacts in the state. (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 477-478.)

Limited jurisdiction may apply where the defendant purposefully established contacts with the forum state, where the cause of action arises out of or is related to the contacts, and where the exercise of jurisdiction comports with "fair play and substantial justice." (*Ibid*.) The defendant must have purposefully directed activities to a forum resident or availed itself of the privilege of conducting business in the forum, invoking the benefits of the local law. (*Hanson v. Denckla* (1958) 357 U.S. 235, 253.) The defendant's contacts must be such that the defendant reasonably anticipates being summoned to court in that forum; even a single act may suffice if it is not isolated or too attenuated of a connection. (*World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297; *McGee v. International Life Ins. Co.* (1957) 355 U.S. 220, 223.)

A foreign corporation is not subject to personal jurisdiction in California solely because it is registered to do business here and maintains an agent for service here, absent other factors showing minimum contacts. (*Gray Line Tours of Southern Nevada v. Reynolds Electrical & Engineering Co., Inc.* (1987) 193 Cal.App.3d 190, 193-194.) Per Corps. Code section 2105,

corporations must register and maintain an agent for service in order to qualify for business in California. Mere ownership or even control of a subsidiary in California is alone not enough to subject a foreign corporation to jurisdiction in California. (*DVI, Inc. v. Sup.Ct.* (2002) 104 Cal.App.4th 1080, 1092.) However, the parent company will be subject to personal jurisdiction where the subsidiary is merely an alter ego. (*Sonora Diamond Corp. v. Sup.Ct.* (2000) 83 Cal.App.4th 523, 538.)

Moving Papers

BGCA moves to quash the service of the summons and FAC for lack of personal jurisdiction. BGCA is incorporated and domiciled in the District of Columbia, has its headquarters in Atlanta, Georgia, and is registered as a business in California. Based on this, BGCA argues that it is not constitutionally "at home" in California to grant general personal jurisdiction. BGCA also argues in the motion, the reply, and supplemental reply that it lacks minimum contacts with California because the alleged criminal acts in the FAC do not relate to BGCA's contacts with or directed towards California and because BGCA operates a federated structure with the local club providers that operates independently.

Plaintiffs oppose the motion, arguing that BGCA has purposefully directed its activities at the forum state, their harm relates to BGCA's control over its local clubs, and exercising jurisdiction comports with fair play and substantial justice. Plaintiff submitted a supplemental opposition in which Plaintiffs argue that BGCA represents itself to the general public as a national organization and not as an independent legal entity, so it has continuous and systematic contacts with California. Plaintiffs deposed Nelson who testified that BGCA was involved in club management and engaged with the local club's Board of Directors about raising funds from the community and provided guidelines and requirements for local members to follow in their programming, as well as problem-solving information for clubs. Furthermore, local chapters pay an annual fee to the national organization.

In the reply and supplemental reply brief, BGCA reaffirms the arguments made in its motion. BGCA argues that no evidence has been offered that allows general or specific jurisdiction over BGCA because it is a congressionally chartered organization incorporated in the District of Columbia and headquartered in Georgia. BGCA claims that the Santa Rosa chapter and Zones were an independent corporate authority.

Application

The Court finds that Plaintiffs offered testimony of Nelson does not sufficiently show minimum contacts necessary to show that BGCA is subject to personal jurisdiction in California. It is a corporation headquartered, incorporated, and domiciled out-of-state and the Santa Rosa chapter and Zones operated with independent corporate authority in its local management of affairs.

CONCLUSION

Based on the foregoing, BGCA's motion is **GRANTED**. BGCA shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

7. SCV-272627, Smith v. Torrez

Plaintiffs' unopposed application for an order of this Court permitting counsels Anne E. Linder and Daniel A. Grossman to appear as counsel *pro hac vice* is **GRANTED** pursuant to California Rules of Court, Rule 9.40. Plaintiffs shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).