TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 17, 2024, 3:00 p.m.
Courtroom 16 –Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

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

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

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6729**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.
Parties in motions for claims of exemption are exempt from this requirement.

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

1. **SCV-270624, Pedraza v Leanos**

1. Plaintiff Lopez's Motion for Summary Adjudication

Plaintiff Sergio Lopez ("Lopez") moves for summary adjudication of the first through fifth, and ninth causes of action alleged in the [third] amended complaint, and for an award of attorney's fees and costs.

Lopez alleges he worked for Defendant Raul Valdivia Leanos dba Valdivia Trucking ("Defendant") as a truck driver from June 1, 2020, through December 2021. Plaintiffs' third amended complaint ("TAC") alleges causes of action for (1) Failure to Pay All Wages; (2) Failure to Pay Overtime Wages; (3) Liquidated Damages; (4) Failure to Provide Accurate Wage Statements; (5) Waiting Time Penalties; (6) Failure to Provide Meal Breaks; (7) Fraudulent Business Practices; (8) Unreimbursed Business Expenses; (9) Statutory Prejudgment Interest; and 10) Spoilation of Evidence.

A. Amended Separate Statement

Defendant complains that Lopez filed and served an amended separate statement on June 14, 2024, in violation of CCP section 437c's 75-day notice period. Defendant's request to strike the amended separate statement is GRANTED.

B. Failure to Pay All Wages Due

The causes of action at issue in this motion pertain to the allegations that Defendant failed to pay employees all wages due and the corresponding damages Plaintiffs allege they are entitled to. Plaintiffs' first cause of action alleges Lopez was an hourly, non-exempt employee; that Defendant failed to pay him for all hours worked; and that Defendant required him to perform pre- and post-trip vehicle inspections for which he was not paid. Lopez alleges he is entitled to recover all unpaid wages. Lopez also alleges that he was not paid prevailing wages when Defendant contracted to provide labor for public works projects and is therefore entitled to damages.

Plaintiffs' second cause of action alleges that Defendant failed to pay Lopez overtime premium wages for every hour of overtime he worked. Lopez alleges Defendant did not even attempt to determine overtime requirements.

Plaintiffs' third cause of action alleges that they are entitled to recover liquidated damages for Defendant's failure to pay for all hours worked.

Plaintiffs' fourth cause of action alleges that Defendant failed to provide accurate wage statements as required by Labor Code section 226, which shows the gross wages earned, the total hours worked, and the applicable hourly rate(s).

Plaintiffs' fifth cause of action alleges that Plaintiffs, including Lopez, are entitled to waiting time penalties for Defendant's failure to timely pay wages after an employee is discharged or quits.

Plaintiffs' ninth cause of action alleges that Plaintiffs, including Lopez, are entitled to prejudgment interest on all unpaid wages.

C. Failure to Pay Wages/Overtime

To establish a claim for nonpayment of wages, Lopez must prove that he performed work for Defendant, that Defendant owed him wages under the terms of employment, and the amount of unpaid wages. (CACI 2700.)

To establish a claim for nonpayment of overtime pay, Lopez must prove that he performed work for Defendant, that he worked overtime hours, that Defendant knew or should have known that Lopez had worked overtime hours, that Plaintiff was not paid or paid less than the overtime rate for some or all of the overtime hours worked, and the amount of overtime owed. (CACI 2702.)

Lopez worked for Defendant as a truck driver to deliver construction materials. (Lopez's Undisputed Material Fact ["UMF"] No. 5.) Lopez's duties included hauling materials to private projects as well as for public works projects. (UMF No. 6.) Lopez's wages and rates depended on whether he was performing regular wage or prevailing wage work. (UMF No. 11.) Lopez reported his daily work hours on a timesheet and turned in trip sheets containing recorded times of his daily loading and unloading destinations and arrival and departure times. (UMF No. 12.)

The parties disagree on which day Lopez started. Lopez states it was on June 1, 2020. Defendant states it was on June 17, 2020. Paystubs for Lopez show that he was first paid for the pay-period of June 1, 2020 through June 14, 2020. (Kletter decl., Exhibit B.) His last day of work was on or around December 11, 2021. (UMF, No. 7.)

Lopez states that he is owed at least $41,244.95 in unpaid wages, at least $104,442.23 in unpaid prevailing wages, and at least $21,695.80 in unpaid overtime wages. (Lopez decl., ¶¶29-31; Kletter decl. ¶7.) Defendant's objections, numbers 19-21 are sustained. Neither Lopez nor his counsel provided how they calculated damages. Lopez's counsel merely states that the calculation is based upon Lopez's declaration "and other evidence." (Kletter decl., ¶7.) This is insufficient to establish the amount owed.

In addition, Lopez's separate statement consists of conclusions—not facts—followed by citation to paragraphs of evidence. For example, number 13 states that Defendant did not keep track of or record his hours worked accurately for all his hours worked. Lopez cites to all of his paystubs and timesheets as well as numerous pages of deposition testimony.

Lopez argues that Defendant did not keep track of or record his hours accurately, failed to pay him accurately for all his hours worked, and failed to pay overtime when his work hours exceeded 40 hours per week. Number 30 in his separate statement sets forth his calculation of unpaid wages. He claims he is owed $41,244.95. This is calculated as follows:

> According to LOPEZ's 2020 and 2021 timesheets, his average hourly rate between regular wage and prevailing wage is $44.52. ($24.90+$64.14 = $89.04/2). LOPEZ worked 2,664 hours of regular wage work and 561.7 hours of prevailing wage work. The total hours worked = 3,225.7.
>
> 3,225.7 (total hours works) x $44.52 (Average rate/per hour of regular wage and prevailing wage) = $143,615.23. This amount represents the wages that LOPEZ should have been paid for his total work hours.
>
> LOPEZ was paid $66,342.19 for his regular wage hours (2,664 hours x $24.90)
>
> LOPEZ was paid $36,028.09 for his prevailing wage hours (561.7 hours x $64.14)
>
> The total amount of regular wage and prevailing wage LOPEZ was paid =$102,370.28.
>
> The difference between the amount LOPEZ is supposed to be paid as wages versus the amount LOPEZ was paid is $41,244.95 ($143,615.23- $102,370.28)

(Lopez separate statement, number 30.)

The evidence cited is Lopez's declaration at paragraph 28 and Kletter's declaration at paragraph 7. Paragraph 28 of Lopez's declaration states: "VALDIVIA falsely reported to third parties that it paid me cash for benefits although VALDIVIA never did so." It appears that Lopez meant to cite to paragraph 29, which states: "I am owed at least $41,244.95 of unpaid wages because VALDIVIA failed to pay me accurately for all my hours worked." However, this is a conclusory statement not supported by any substance.

Paragraph 7 of Kletter's declaration states:

> Based on LOPEZ's declaration and other evidence, VALDIVIA owes LOPEZ:

A. at least $41,244.95 for unpaid wages.

B. at least $104,442.23 for unpaid prevailing wages;

C. at least $21,695.80 in overtime wages;

D. at least $62,938.89 in liquidated damages;

E. $3,850.00 in penalties for failing to provide accurate wage statements;

F. at least $ 12,450.98 in waiting time penalties;

G. statutory prejudgment interest at 10% per year; and

H. attorneys' fees and costs in an amount in excess of $ 15,000 to be determined at a later hearing.

This also consists of conclusory statements not supported by substance.

Lopez's determination of alleged unpaid prevailing wages, overtime wages, liquidated damages, wage statement penalties, and waiting time penalties cite equally conclusory and unsubstantiated evidence. (Plaintiff's Separate Statement, Numbers 31- 35.)

In opposition, Defendant concedes that DOT drivers are entitled to overtime pay after 40 hours per week. (Oppo., 1:10.) It argues that not all public works projects equate to prevailing wages for drivers such as Lopez.

Lopez attaches numerous paystubs and timesheets; however he has not cited to each of these and explained how they establish he is owed at least $41,244.95 in unpaid wages, at least $104,442.23 in unpaid prevailing wages, and at least $21,695.80 in unpaid overtime wages. It is not the duty of this court to search through and make sense of plaintiff's evidence. The separate statement is meant to lay out all of the moving party's material facts plainly and concisely for easy reference. (CCP section 437c(b)(1).) Lopez has not done so in his separate statement.

Lopez lists the number of total hours he claims he worked at page 11 of his memorandum:

Pay Period	Total Hours Worked	Total OT Paid	Total Deficient OT Hours Owed to Plaintiff (Based on 80 hour pay period)
Year 2020:			
6/15 - 6/28/20	111.3	30	**1.3**
6/29 - 7/12/20	131.6	6.6	**45**
7/13 - 7/26/20	133.5	23.7	**29.8**
7/27 - 8/9/20	139.6	6.6	**53**
8/10 - 8/23/20	110.8	21.1	**9.7**
8/24 - 9/6/20	124.6	30.1	**14.5**
9/7 - 9/20/20	111.6	10.9	**20.7**
9/21 - 10/4/20	133.5	52.5	**1**
10/5 - 10/18/20	127.3	32.4	**14.9**
10/19 - 11/1/20	122.6	25.3	**17.3**
11/2 - 11/15/20	88.7	1.3	**7.4**
11/30 - 12/13/20	92.7	5	**7.7**
Year 2021:			
5/17 - 5/30/21	109.8	10.1	**19.7**
6/14 - 6/27/21	89.2	5.4	**3.8**
6/28 - 7/11/21	86.8	0.5	**6.3**
7/12 - 7/25/21	127.5	17.7	**29.8**
7/26 - 8/8/21	111.7	3.5	**28.2**
8/9 - 8/22/21	102.8	9.5	**13.3**
8/23 - 9/5/21	99	1.4	**17.6**
9/6 - 9/19/21	96.3	3.1	**13.2**
11/1 - 11/14/21	93.7	10.4	**3.3**
11/29 - 12/12/21	93.9	2.8	**11.1**
TOTAL			**368.6**

Lopez cites to his Exhibits B through E. Exhibit B consists of copies of Lopez's paystubs for 2020. (Kletter decl., ¶8.B.) Exhibit C consists of Lopez's paystubs for 2021. (*Id.*, ¶8.C.) Exhibit D consists of Lopez's timesheets for 2020. (*Id.*, ¶8.D.) Exhibit E is Lopez's timesheets for 2021. (*Id.*, ¶8.E.)

Lopez's first timesheet for 2020 starts June 8 through June 13 and records that he worked 41.73 hours. The first paystub is for June 1 through June 14 and lists a total of 41.90 hours paid.

Lopez's next timesheet is from June 15 through July 3. It does not list the total number of hours but contains his start time and time out. The start time does not indicate if it is in the a.m. or

p.m. Therefore, this court cannot determine the precise number of hours Lopez indicated that he had worked for that pay period.

Regardless, even if this court were to go through each of Lopez's timesheets and match them up with his paystubs, Lopez has not provided testimony that he was the one who filled out the time sheets and that he filled them out on or near the day he worked and for the correct amount of time he worked. He states in his declaration that he "recorded [his] work hours on a weekly timesheet and turned them in regularly to VALDIVIA." (Lopez decl., ¶10.) It is not clear that the timesheets provided are reliable evidence.

In deposition, PMK Mary Valdivia ("Valdivia") testified regarding her general understanding of non-prevailing jobs, prevailing wage jobs, and overtime hours. (See Kletter decl., Exhibit N, pg. 24-25.) Valdivia testified that she did not always pay employees the amount listed on the trip sheets and their time sheets. (*Id.*, pg. 31-32.) Valdivia testified that she sometimes edits timesheets and has corrected errors on trip sheets. (*Id.*, pgs. 33, 41-42, 59.) Valdivia explained that Defendant gave drivers 10 minutes to do the post-inspection but that some employees were still adding time on top of that, that they were adding 30 minutes extra for the post-inspection. (*Id.*, pg. 78.) Lopez does not cite evidence that establishes any or all errors that may have been corrected were actually correct.

With respect to Lopez's timesheets, Valdivia was first asked about the pay period of June 15 through June 28, 2020. (*Id.*, pg. 103.) His wage statement showed that he worked 80 hours of regular time and 30 hours of overtime. (*Ibid*.) Bates document 3450[1] showed that Lopez worked 111.3 hours. (*Ibid*.)

His wage statement for June 29 through July 12, 2020, showed that he worked 58 hours at the prevailing wage and 5.2 hours at the prevailing wage overtime rate. (*Ibid*.) Bates stamped document 3475 showed that he worked 66.8 hours at the regular rate and 1.4 at the overtime rate. (*Id.*, at 104-105.) Valdivia testified Lopez worked 122.6 hours during this pay period. (*Id.*, pgs. 106-108.) However, despite working over 40 hours each of the two weeks, he was only paid approximately 7 hours of overtime. (*Id.*, pg. 108.) Valdivia testified that she and Raul Valdivia Leanos decided to keep prevailing rate hours and non-prevailing rate hours separately. (*Id.*, pg. 109; Exhibit O, pg. 85.)

From July 13 through July 26, Lopez worked 58.7 hours at the regular rate, 21.7 hours at regular overtime, and 53 hours and 10 minutes at the prevailing rate for a total of 133.5 hours over two weeks. (*Id.*, pg. 109-110.) Despite working 53.5 overtime hours, he was only paid for 21 hours of regular overtime and 2 hours of prevailing wage overtime.

From July 27 to August 9 of 2020, Lopez was paid for 67.3 hours at the prevailing rate, 4.6 hours at the prevailing overtime rate, 65.7 hours at the regular rate, and two hours at the regular overtime rate. (*Id.*, pg. 110-111.) Despite working more than 130 hours over two weeks, he was only paid overtime for less than ten hours. (*Id.*, at pg. 111.)

From August 24 through September 6, 2020, Lopez worked 124.6 hours but was only paid overtime for 30 of those hours. (*Id.*, pg. 112.)

Valdivia eventually stated that she agreed she owned overtime to each of the plaintiffs, but she did not know how much. (*Id.*, pg. 30.)

Lopez cites *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715 for his position that if the employer fails to maintain accurate time records, the burden of proof is on the employer to show that the hours claimed by the employee were not worked.

Initially, the employee has the burden of proving that he performed work for which he was not properly compensated. (*Id.*, at 747.) Where an employer fails to keep proper records, courts should not penalize the employee on the ground that he is unable to prove the precise extent of uncompensated work. (*Ibid*.) The standard discussed in *Bell* was that an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work *as a matter of just and reasonable inference* the burden then shifts to the employer to come forward with evidence of the precise amount of work performed. (*Ibid*.) If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate. (*Ibid*.)

While it is clear that Lopez was not paid overtime for all hours worked over 40 hours a week, it appears that there is evidence available to determine how many hours Lopez worked over 40 hours a week and how many overtime hours remain unpaid. However, Lopez must present this information in an ascertainable manner rather than leaving it for the court to figure out. Lopez has not established the total amount of prevailing wages he should have been paid or the total number of prevailing wage overtime hours or regular overtime hours earned but not paid. While Lopez appears correct that he was not fully paid all wages owed, he has not established the amount of damages owed either exactly or relying on less exact evidence. Lopez only provides his conclusion regarding the amount of damages he claims without laying out how those calculations were made.

Lopez argues that, even if the amount of damages is disputed, summary adjudication should at least be granted for his cause of action for inaccurate wage statements because damages is not part of the cause of action.

Plaintiffs' fourth cause of action alleges that Defendant violated Labor Code section 226 because the wage statements provided do not account for all hours worked, do not accurately show wages due, and do not accurately reflect the number of hours each plaintiff, including Lopez, was entitled to in prevailing wages.

"Labor Code section 226, subdivision (a), requires employers to furnish their employees with itemized statements showing, among other things, the total hours worked by the employee (except as provided in subd. (j)), all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate. 'An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.' (Lab. Code, § 226, subd. (e)(1).)" (*Furry v. East Bay Publishing, LLC* (2018) 30 Cal.App.5th 1072, 1083.)

An employee is deemed to have suffered injury from an inadequate wage statement if the employee "cannot promptly and easily determine from the wage statement" (Lab. Code, § 226, subd. (e)(2)(B)) certain required information, including the total hours worked, the applicable hourly rates, and the corresponding number of hours worked at each hourly rate. (See Lab. Code, § 226, subd. (e)(2)(B)(i).) (*Furry, supra*, at pg. 1084.)

With respect to showing all hours worked, Lopez has not established that the combined paystubs do not accurately show the total hours worked during each pay period. Nor has Lopez established which jobs qualified for prevailing wages for which he was only paid non-prevailing rates. However, Lopez has established that some of his wage statements do not account for the total number of overtime wages due, specifically, four pay periods: June 29, 2020 through July 12, 2020; July 13, 2020 through July 26, 2020, July 27, 2020 through August 9, 2020; and, August 24 through September 6, 2020. As to these pay periods, Lopez's fourth cause of action for inaccurate wage statements is GRANTED. Lopez is entitled to $50 for the first violation and $100 for each subsequent violation for a total of $350. Reasonable attorney fees are also available based upon this recovery. However, this court will not entertain the amount of attorney fees that are, or will be, owed until all claims are adjudicated.

D. Conclusion and Order

Lopez does not lay out authenticated evidence that clearly establishes that he submitted reliable timesheets for a specific number of hours but was not paid for those hours. While the evidence indicates that Defendant's practice of providing two different paychecks for regular and prevailing wages caused Lopez not to be paid for all overtime hours worked, Lopez has not clearly laid out that evidence.

The motion is DENIED as to all causes of action except the fourth cause of action for inaccurate wages statements, which is GRANTED, but only as to the four pay periods discussed above.

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

2. Plaintiff Rodriguez's Motion for Summary Adjudication

Plaintiff Veronica Gil Rodriguez ("Rodriguez") moves for summary adjudication of the first through fifth, and ninth causes of action alleged in the [third] amended complaint, and for an award of attorney's fees and costs.

Rodriguez alleges she worked for Defendant Raul Valdivia Leanos dba Valdivia Trucking ("Defendant") as a truck driver from May 3, 2021, through December 12, 2021. Plaintiffs' third amended complaint ("TAC") contains the same allegations for Rodriquez as for Lopez as discussed in Lopez's motion for summary adjudication. The TAC alleges causes of action for (1) Failure to Pay All Wages; (2) Failure to Pay Overtime Wages; (3) Liquidated Damages; (4) Failure to Provide Accurate Wage Statements; (5) Waiting Time Penalties; (6) Failure to Provide Meal Breaks; (7) Fraudulent Business Practices; (8) Unreimbursed Business Expenses; (9) Statutory Prejudgment Interest; and 10) Spoilation of Evidence.

As noted in the tentative ruling applicable to plaintiff Lopez, the first cause of action in the TAC alleges Rodriguez was an hourly, non-exempt employee; that Defendant failed to pay her for all hours worked; and that Defendant required Rodriguez to perform pre- and post-trip vehicle inspections for which she was not paid. Rodriguez alleges she is entitled to recover all unpaid wages. Rodriguez also alleges that she was not paid prevailing wages when Defendant contracted to provide labor for public works projects and is therefore entitled to damages.

Plaintiffs' second cause of action alleges that Defendant failed to pay Rodriguez overtime premium wages for every hour of overtime she worked. Rodriguez alleges Defendant did not even attempt to determine overtime requirements.

Plaintiffs' third cause of action alleges that plaintiffs, including Rodriguez, are entitled to recover liquidated damages for Defendant's failure to pay for all hours worked.

Plaintiffs' fourth cause of action alleges that Defendant failed to provide accurate wage statements as required by Labor Code section 226, which shows the gross wages earned, the total hours worked, and the applicable hourly rate(s).

Plaintiffs' fifth cause of action alleges that Plaintiffs, including Rodriguez, are entitled to waiting time penalties for Defendant's failure to timely pay wages after an employee is discharged or quits.

Plaintiffs' ninth cause of action alleges that Plaintiffs, including Rodriguez, are entitled to prejudgment interest on all unpaid wages.

A. Amended Separate Statement

Rodriguez also filed an amended separate statement on June 14, 2024. Defendant's objection is sustained, and the amended separate statement is hereby stricken.

B. Failure to Pay Wages Due

Rodriguez's motion for summary adjudication is essentially the same as Lopez's motion and fails for the same reasons. Rodriguez also does not lay out authenticated evidence that clearly establishes that she submitted reliable timesheets for a specific number of hours but was not paid for those hours. While the evidence indicates that Defendant's practice of providing two different paychecks for regular and prevailing wages caused Rodriguez not to be paid for all overtime hours worked, Rodriguez has not clearly laid out that evidence establishing the number of hours that qualify for prevailing wages versus regular wages to establish she was not paid all wages due. However, unlike Lopez's motion, Rodriguez has not highlighted testimony from Defendant's PMK which establishes that wage statements were inaccurate. Accordingly, Rodriguez's motion is **DENIED** in its entirety.

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

2. 24CV00337, Schmid v County of Sonoma

Defendant County of Sonoma ("County") demurs to the complaint filed by Plaintiffs Frear Stephen Schmid and Astrid Schmid ("Plaintiffs"). **The demurrer is SUSTAINED without leave to amend.**

On January 24, 2024, Plaintiffs filed a complaint alleging causes of action for: 1) Breach of Contract; 2) Equitable Estoppel; 3) Promissory Estoppel; 4) False Promise; 5) Intentional Interference with Contractual Relations; 6) Negligent Interference with Economic Advantage; 7) Intentional Interference with Economic Advantage; 8) Cancellation of Deeds; 9) Invalidation of Deeds; 10) Cancellation of Set-back Waiver; and 11) Invalidation of Set-Back Waiver Due to Fraud. The first through third, and fifth through seventh causes of action are alleged against the County.

The allegations in the complaint are based upon a land dispute. Plaintiffs allege that they own 61 acres of land located at 7585 Valley Ford Road in Two Rock Valley. They allege that defendant Two Rock Fire Department ("TRFD") occupies under false pretenses a 0.84-acre parcel ("the Parcel") of property located at 7599 Valley Ford Road which borders Plaintiffs property on the north, south, and west sides. Plaintiffs allege that the Parcel is in a designated scenic corridor subject to protection under the county's general plan.

Plaintiffs allege that in late 2018, TRFD applied to obtain a conditional use permit for the building of a garage facility for storing its fire fighting vehicles and equipment on the Parcel. The fire station is located at 7618 Valley Ford Road. Plaintiffs allege that when approached about the project, they agreed to waive the 20-foot setback requirement for the proposed storage building in reliance on the project description that the storage building would only be used to store firetrucks and apparatus and in reliance on the alleged misrepresentation that TRFD owned the parcel.

Plaintiffs list other cases involving disputes over the Parcel: Sonoma County Superior Court cases SCV-266225 (including consolidated cases SCV-266731 and SCV-270339) and related California First District Court of Appeal case A164620; Sonoma County Superior Court cases SCV-270332; SCV270568; and SCV-270771; and United States Northern District of California case 3:21- CV 01920-TLT and related Ninth Circuit Appeal 23-15314, *Schmid v. Thompson Gas Sonoma County Superior Court* case SCV-270322, *Schmid v. Air Exchange*, Sonoma County Superior Court case SCV-270568 and *Schmid v. Sonoma County Superior Court* case SCV-270771.

Plaintiffs allege that they entered into a settlement agreement on November 10, 2022 at the mandatory settlement conference with the Hon. Barbara Zuniga resolving all pending lawsuits. Plaintiffs allege that the parties agreed that Exhibit 1 represented the layout of the parking area of the Parcel, subject to the removal of the generator and the relocation of the water tank. The parties allegedly further agreed that the solid-board 6-foot fence would be relocated on the westerly line of the parking spaces so that it would enclose the water tank. Plaintiffs allege the parties further agreed to other various changes on the Parcel including the location of the exhaust ventilator, natural vegetation, propane tank, and apex lights; the color of the roof; and types of on-site training and activities. Plaintiffs also allege that Defendant agreed to pay them $100,000 by December 9, 2022. All of these were in exchange for dismissing all cases.

Plaintiffs allege that on December 9, 2022, TRFD presented a map that all defendants alleged comported with the agreed upon changes on the Parcel. Plaintiffs rejected the map as not

conforming to the agreement. Plaintiffs request an order directing the parties to perform pursuant to the parties' agreement, and for an order cancelling and invalidating any deed or recorded document purporting to give TRFD any rights of ownership in the Parcel.

The County argues that this current action makes claims that are barred by the doctrine of collateral estoppel/claim preclusion as the court has previously ruled in *Schmid v. Two Rock Volunteer Fire Department, County of Sonoma, et al.* consolidated case No. SCV-266225, that there is no enforceable settlement between Plaintiffs, TRFD, and the County.

In SCV-266225, *Schmid, et al. v. Two Rock Fire Department*, the County filed a Motion to Enforce Judicial Settlement pursuant to CCP section 664.6. The Court denied the motion finding that the County had not adequately shown that there was a final agreement as to all material terms as discussed by the parties on November 10, 2022. (RJN, Exhibit 4.) The court found that neither party could be bound by the terms discussed by the parties. (*Ibid*.)

The settlement agreement that was sought to be enforced encompassed the subject matter of the complaint in this action, and thus the trial court's determination that no settlement was reached is final and binding on the parties under the doctrine of collateral estoppel. (*Smith v. Golden Eagle Ins. Co*. (1999) 69 Cal.App.4th 1371, 1374.)

In opposition, Plaintiffs argue that the court's decision noted above was only interlocutory, not final, and thus cannot have any preclusive effect.

Plaintiffs' position is not supported by the authority cited. An interlocutory order or judgment is merely one that is not final. The decision regarding the County's motion to enforce the purported settlement agreement was not interlocutory. It was a final determination on the merits of that motion. The court found that there was no meeting of the minds so that the purported agreement reached on November 10, 2022 was not enforceable by either party.

In addition, via the County's motion, all parties had a chance to address the issue. It is the opportunity to litigate that is the important factor, not whether the litigant took advantage of the opportunity. (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1179.) Whether the parties reached settlement on November 10, 2022 was actually litigated. Plaintiffs agreed that the parties had reached settlement. However, the court determined otherwise. Therefore, Plaintiffs cannot now bring an action alleging facts contrary to that decision.

The County's demurrer is **SUSTAINED without leave to amend.**

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

3. 23CV01611, Looney v Wimpy's California Delta Resort, LLC

Plaintiff Gary E. Looney ("Plaintiff") moves to appoint a receiver to take possession of and, if necessary, sell the liquor license of Judgment Debtor Wimpy's California Delta Resort, LLC ("Judgment Debtor"). Plaintiff requests Michael Brewer be appointed receiver pursuant to CCP

sections 564, 708.620, and 708.630 in order to enforce Plaintiff's judgment for $4,834.45. However, the declaration of Landon McPherson is attached to the motion indicating that Plaintiff is actually seeking to appoint Mr. McPherson as the receiver.

Plaintiff states that since the judgment was entered, he has investigated the Judgment Debtor's finances to locate a bank or deposit account but has not found any such accounts. (Looney decl., ¶6.) According to the Judgment Debtor's website, its business is open. (*Ibid*.) Plaintiff sent a letter to the Judgment Debtor and its personal guarantor on March 12, 2024 requesting payment on the judgment. (*Id.*, ¶8.) Plaintiff states that he has not received any response to this letter. (*Ibid*.) On March 13, 2024, Plaintiff states that he served Judgment Debtor and its personal guarantor with post-judgment interrogatories and a post-judgment request for production of documents. (*Id.*, ¶9.) Plaintiff states that he has not received a response to that discovery. (*Ibid*.) Plaintiff sent a follow-up letter regarding the discovery requests. (*Id.*, at ¶10.)

Plaintiff includes in his declaration his usual statement that, since the imposition of various stay at home orders in California, he has found that Sheriff offices are currently not willing to use till taps at businesses that receive money or credit cards or install an 8-hour keeper. (*Id.*, ¶11.) While this may have been true a couple of years ago, the court is not convinced Covid practices are still in place.

Plaintiff also includes his usual statement that the size of the judgment makes it impractical to levy on the Judgment Debtor's equipment, fixtures, or inventory pursuant to a seize and sell order. (*Id.*, ¶12.)

The court is not convinced that the seizure of Judgment Debtor's liquor license is appropriate under the circumstances in light of the small judgment amount and the high cost of a receivership. Plaintiff has not described what efforts he has made to actually obtain payment on the judgment. For example, Plaintiff merely states he has "investigated" Judgment Debtor's finances and has not found any bank accounts. Generally, businesses do have bank accounts; thus, if Plaintiff were to move to enforce the post-judgment discovery, those accounts would likely be brought to light. In addition, it appears Plaintiff only contacted the Judgment Debtor by mail. Calling the Judgment Debtor or its personal guarantor may determine to be more effective.

Based upon the very low judgment amount, and the lack of effort established to obtain post-judgment discovery or to contact the Judgment Debtor or its personal guarantor directly over the phone, this court is not convinced that Plaintiff has sufficiently attempted to obtain the judgment amount so that the much more expensive route of appointing a receiver is warranted.

Accordingly, **the motion is DENIED.** Due to the lack of opposition, this court's minute order shall constitute the order of the court.

4. <u>23CV00505, MS Services LLC v Fitzgerald</u>

Plaintiff MS Services LLC ("Plaintiff") moves for an order amending the default judgment entered against Defendant and Judgment Debtor Floriene Fitzgerald ("Defendant") on April 8, 2024. Plaintiff requests the default judgment be amended as follows: As to Plaintiff's First and Second

Causes of Action for Breach of Retail Installment Sale Contract, page 3, lines 21 through 25, page 4, lines 15 through 16 and page 3 4, lines 7 through 12 and lines 17 through 18, should be amended to read as follows: "Judgment is hereby entered in favor of Plaintiff against FLORIENE G. FITZGERALD ("Defendant") in the total sum of **$28,870.77** plus prejudgment interest of **$6.32** per day from February 18, 2021 through December 19, 2023 in the amount of **$6,534.88**, plus costs of suit in the amount of **$560.00**, plus attorney costs of **$3,400.00** for a total Default Judgment Amount of **$39,365.64**." (Emphasis added.)

Plaintiff argues that a clerical error caused the judgment actually entered to be less than what Plaintiff is entitled to. The default judgment entered on April 8, 2024, entered damages in the amount of $24,870.77, prejudgment interest at the annual rate of 7.99% in the amount of $5,624.96, attorney fees in the amount of $3,400, and costs in the amount of $560, for a total of $34,455.73.

In Plaintiff's complaint it alleges that the principal balance now due and owing on the subject contract is $28,870.77. (Complaint, ¶15.) Plaintiff's counsel states that he inadvertently included the incorrect principal balance and calculation of prejudgment interest. (Olson decl., ¶4.) Based upon the correct amount owed of $28,870.77, the interest owed is $6,534.88, for a total judgment of $39,365.65. (*Ibid*.)

Notice of the motion was mailed to Defendant on June 5, 2024. No opposition has been received.

The motion is GRANTED. The court will sign the proposed order.

5. 24CV00074, County of Sonoma v Polidori Jr

Plaintiff County of Sonoma ("County") moves this court for entry of default judgment and permanent injunction against Defendant Thomas F. Polidori, Jr. ("Defendant"). As stated in form CIV-100, the County seeks a total of $70,477.50, which includes civil penalty damages, costs, and attorney fees. **The motion is GRANTED.**

Defendant Thomas F. Polidori, Jr. ("Defendant"), has had ownership interest in the real property located at 18350 Siena Avenue, Sonoma, CA (the "Property") since at least July 30, 2001, when a Grant Deed was recorded which granted the Property to Defendant Thomas F. Polidori, Jr., recorded Doc. No. 2001102005. (Gomez decl., ¶3; RJN 4(A).)

The County brought this action to abate violations of Sonoma County Code ("SCC") 26 Chapter 7 (Building), and 26 (Zoning) as to the unlawful uses of the real property at 18350 Sierra Drive, Sonoma, ("the Property") in the unincorporated area of Sonoma County, California, formally known as Assessor's Parcel Number 056-433-071. The complaint sets forth the code violations and requests costs, attorney fees, civil damages for SCC violations, and a permanent injunction. Defendant's default was entered on April 2, 2024.

Beginning in June 2016, the Permit Resources and Management Department ("Permit Sonoma") received complaints regarding multiple occupied Recreational Vehicles ("RVs") on the

Property and sewage from RVs being dumped on the Property, as well as possible junkyard conditions. (Smith decl., ¶7.)

In February 2017, Adult Protective Services ("APS") received a complaint regarding financial abuse, isolation, mental abuse, and neglect by others living on the Property. APS and the County Sheriff's Department went to the site and observed that there were multiple transients living in the three homes on the Property, and many more living in RVs, trailers, cars, and makeshift shanties. They saw numerous broken-down vehicles, piles of trash, and miscellaneous debris scattered throughout the Property and there was a rat infestation due to severe hoarding. (*Id.,* ¶8.)

On February 21, 2017, Permit Sonoma sent a courtesy letter to Defendant, notifying him that a complaint had been received concerning possible violations of the County's Building and Zoning codes on the Property, including multiple occupied RVs; sewage from the RVs being dumped on the Property; junkyard conditions; and non-operative motor vehicles. (*Id.,* ¶10.)

On March 23, 2017, Permit Sonoma conducted a site inspection with Defendant and the Sonoma County Sheriff's Office. Inspectors verified the complaint as they observed nonoperational motor vehicles, an occupied travel trailer, a contractor's storage yard, junkyard conditions, and an accessory structure that had been converted into an dwelling unit without permits. (*Id.,* ¶11.)

On April 3, 2017, Permit Sonoma issued and posted on the Property multiple Notice and Orders for violations of the SCC as follows: a) Contractors' storage yard, junkyard conditions, and a non-operative motor vehicle storage yard (VPL17-0074); and b) Barn converted into a dwelling unit (VBU17-0104) without a permit. (*Id.,* ¶12.)

On April 5, 2017, Permit Sonoma issued and posted on the Property a Notice and Order for a violation of the SCC as follows: Occupied travel trailer (VPL17-0081).) (*Id.,* ¶13.)

The Notices and Orders advised Defendant that the violations must be removed within thirty days to avoid the assessment of daily civil penalties, and that a failure to bring the Property into compliance would subject Defendant to mandatory civil penalties, abatement costs, and investigation fees. (*Id.,* ¶14.)

When Defendant had not abated any of the violations, on February 15, 2019, Permit Sonoma sent Defendant a letter regarding Civil Penalties due and payable. The letter notified Defendant that because no appeal had been received to Notice and Order (VBU17-0104), and no permits had been applied for, a Determination had been made that a daily civil of $5 per day had been assessed which would continue to accrue until the violations were abated and verified by Permit Sonoma.

On April 24, 2019, a Notice of Abatement Proceedings was recorded against the Property. (Recorded Document No. 2019026876.) (*Id.,* ¶20.)

On December 30, 2019, Permit Sonoma sent Defendant a letter regarding Civil Penalties due and payable. The letter notified Defendant that because no appeal had been received to the Notice and Orders (VPL17-0074, VPL17-0081), and the violations were not abated, a determination had been made that a daily civil of $5 per day had been assessed which would continue to accrue until the violation is abated and verified by Permit Sonoma. (*Id.,* ¶21.)

Over the next four years, Defendant failed to obtain permits to legalize the unpermitted construction and failed to abate the zoning violations on the Property. (*Id.*, ¶23.)

On September 12, 2023, Permit Sonoma inspected the property and found non-operational vehicles, and over 750 square feet of junk, scrap, trash, and debris, including car batteries, tires, and old paint. The conditions remained through the filing of the complaint. (*Id.*, ¶29.)

Defendant eventually abated the violations as follows: Non-operational motor vehicles removed as of February 27, 2024 (VPL17- 0074); Contractor's storage yard removed as of September 12, 2023 (VPL17-0074); Junkyard conditions removed as of February 27, 2024 (VPL17-0074); Occupied travel trailer removed as of November 14, 2023 (VPL17-0081); Accessory structure converted into an illegal dwelling unit, removed as of February 21, 2024 (VBU17-0104). (*Id.*, ¶31.)

Code Enforcement Inspector II, Andrew Smith, states that as of May 8, 2024, Permit Sonoma is owed abatement costs totaling $3,222.25. (*Id.*, ¶32.) He states civil penalties have accrued and are due and payable for the violations as follows:

a. Non-operational motor vehicle storage (VPL17-0074), Civil Penalties totaling $12,610.00 (beginning April 3, 2017, and ending on February 27, 2024, at $5 per day or [2522] days x $5.00);

b. Contractor's storage yard (VPL17-0074), Civil Penalties totaling $11,770.00 (beginning Apri1 3, 2017, and ending on September 12, 2023, at $5 per day or 2354 days x $5.00);

c. Junkyard conditions (VPL17-0074), Civil Penalties totaling $12,610.00 (beginning April 3, 2017, and ending on February 27, 2024, at $5 per day or [2522] days x $5.00);

d. Occupied travel trailer (VPL17-0081), Civil Penalties totaling $12,075.00 (beginning April 5, 2017 and ending on November 14, 2023, at $5 per day or 2415 days x $5.00); and

e. Accessory structure converted into illegal dwelling unit (VBU17-0104) [totaling $12,570] (beginning April 5, 2017 and ending on February 21, 2024, at $5 per day or 251[4] days x $5.00). (Smith decl., ¶33.)

All violations have been abated, but no costs or penalties have been paid. (*Id.*, ¶35.)

County Counsel, Diana Gomez, states that as of May 8, 2024, County Counsel has incurred costs of $356.25 and attorney's fees in the amount of $5,254.00. (Gomez decl., ¶19.)

Accordingly, as of May 8, 2024, Defendant owes a total of $61,635 in civil penalties, for a total of $70,467.50 including costs and fees.

The motion is GRANTED. County counsel is directed to submit a written order to the court consistent with this ruling.

6. SCV-268096, Schram v Shiloh Homeowners Association

Plaintiffs Richard Schram and Katherine Schram ("Plaintiffs") move pursuant to Code of Civil Procedure sections 598 and 1048(b) for an order to bifurcate the causes of action in this action so as to sever the injunctive relief cause of action and the first cause of action for breach of the covenants, conditions, and restrictions form the non-equitable causes of action. **The motion is DENIED.**

This action involves a dispute over landscaping. Plaintiffs filed this action for Breach of the CC&Rs, Breach of Fiduciary Duty, Injunctive Relief, Public Nuisance, Private Nuisance, and Breach of the Covenant of Good Faith and Fair Dealing. Plaintiffs seek to sever the first cause of action for Breach of the CC&Rs and the cause of action for Injunctive Relief from the remaining causes of action.

CCP section 598 provides:

> The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order, no later than the close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case, except for special defenses which may be tried first pursuant to Sections 597 and 597.5. The court, on its own motion, may make such an order at any time. Where trial of the issue of liability as to all causes of action precedes the trial of other issues or parts thereof, and the decision of the court, or the verdict of the jury upon such issue so tried is in favor of any party on whom liability is sought to be imposed, judgment in favor of such party shall thereupon be entered and no trial of other issues in the action as against such party shall be had unless such judgment shall be reversed upon appeal or otherwise set aside or vacated.
>
> If the decision of the court, or the verdict of the jury upon the issue of liability so tried shall be against any party on whom liability is sought to be imposed, or if the decision of the court or the verdict of the jury upon any other issue or part thereof so tried does not result in a judgment being entered pursuant to this chapter, then the trial of the other issues or parts thereof shall thereafter be had at such time, and if a jury trial, before the same or another jury, as ordered by the court either upon its own motion or upon the motion of any party, and judgment shall be entered in the same manner and with the same effect as if all the issues in the case had been tried at one time.

CCP section 1048(b) provides:

> The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action, including a cause of action asserted in a cross-complaint, or of any separate issue or of any number of causes of action or issues, preserving the right of trial by jury required by the Constitution or a statute of this state or of the United States.

Plaintiffs' initial memorandum does not provide any reason why bifurcation would be appropriate in this case. In reply, Plaintiffs argue that when there are both legal and equitable issues, the equitable issues should be severed and tried first by the court without a jury. Plaintiffs argue that if the equitable issues are tried by the court, the court's resolution of the matter may leave nothing for a jury to resolve, thus promoting judicial efficiency.

Whether defendants violated the CC&Rs as alleged in Plaintiffs' complaint is a legal issue. Plaintiffs' request for injunctive relief is an equitable issue. These issues are intertwined such that it promotes judicial economy to hear the matters together. The jury can determine the legal issues while the court can determine the equitable issues.

Plaintiffs' **motion is DENIED.**

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

7. <u>SCV-272344, Wilde v Morrone</u>

Plaintiffs Jane Doe 1, Jane Doe 2, Linnet Vacha, Clio Wilde, Savannah Turley, Morgan Apostle, Jane Doe 3, Jane Doe 4, Jane Doe 5, Jane Doe 6, Jane Doe 7, and Hannah Holt ("Plaintiffs") move for a protective order regarding thirty-four (34) subpoenas for Plaintiffs' medical records issued by Defendant Ellie Dwight. The motion was initially heard on June 12, 2024, and continued to allow Defendants Sonoma Academy ("SA") and Ellie Dwight to provide further briefing regarding the need for the requested records.

This suit arises from the alleged repeated failure of defendant Sonoma Academy and its administrators, defendants Janet Durgin and Ellie Dwight, to protect under-age female students from childhood sexual assault by its faculty members Marco Morrone and Adrian Belic, as well as defendants' alleged cover-up of incidents of sexual assault of female students by male students.

Defendant Ellie Dwight served thirty-four subpoenas seeking production of medical records, without limitation, for eight of the twelve Plaintiffs. Plaintiffs do not argue that no records should be produced, only that there should be a mechanism to prevent disclosure of some highly sensitive, private information that Defendants are not entitled to.

The records sought in 28 of the subpoenas seek: "Any and all records, documents, reports, psychiatric reports, psychological evaluation, treatment for alcohol, drug related disorders, including doctors entries, nurses charts, progress reports, lab reports, special tests and any sign-in sheets pertaining to the care and treatment, diagnosis, prognosis, condition, discharge, and statement of charges, payment of charges, whether rendered to or by the below named individual or any insurance or other entity, affecting or relating to [Plaintiff's name and DOB]."

The other eight subpoenas seek: "Any and all records, including but not limited to health insurance claim information such as receipts, invoices, and computer generated ledgers with the names and addresses of the treating healthcare providers, dates of treatment, descriptions of services provided, amounts billed by the healthcare provider, amounts paid as payment in full to the healthcare provider, amounts not paid to the healthcare provider, amounts paid by the insured,

reimbursements of any sort, and any agreements with the healthcare provider describing the amounts and/or percentages that your company will pay as payment in full for treatment rendered to [Plaintiff's name and DOB]."

In their supplemental briefing, SA argues that the subpoenaed records are from healthcare providers identified in Plaintiffs' responses to Form Interrogatory No. 6.4, which sought the identity of all healthcare providers who treated Plaintiffs for injuries attributed to the subject incident. SA concludes that because the identified provider treated the Plaintiffs, SA is entitled to the records.

It is not clear from SA's supplemental brief whether the named providers only dealt with each of the Plaintiffs regarding the subject incident or whether they may have also dealt with issues that are not relevant to the subject incident. For example, it is not clear if Dr. Jennifer Griesbach only treated a plaintiff for issues pertaining to the subject incident or if she treated a plaintiff for unrelated conditions. SA's supplemental briefing is not helpful in establishing how highly private and irrelevant information involving, for example, Plaintiffs' sexual history, contraception use, gynecological issues, couples therapy issues, third-party medical histories, and other information to which Defendants are not entitled in this action, will not be produced in response to the subpoena.

SA also concludes that the subpoenaed insurance records "are also essential for evaluating Plaintiffs' claims." (Supp. Brief, 5:15.) The only rationale provided is that if Plaintiffs received treatment from other healthcare providers relevant to their claims, these details would be documented in their health insurance records.

SA's rationale does not support allowing Defendants to obtain every insurance document regarding any provider that any of the Plaintiffs used for any treatment ever received. In addition, SA states itself that Plaintiffs' responses to Form Interrogatory Number 6.4 identified all providers who performed any treatment related to the subject incident.

The court hereby construes this motion as a motion to quash the subject subpoenas. Plaintiffs have established that the subpoenas are overly broad. Defendants have not justified the need for all documents requested. Therefore, **the motion is GRANTED.**

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