

**TENTATIVE RULINGS  
LAW & MOTION CALENDAR  
Wednesday, July 24, 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. 23CV01989, Looney v. Dorsey**

Plaintiff Looney moves to compel Defendant Dorsey, individually and as personal guarantor of Social Restaurant Group, LLC, to provide full and complete responses to post-judgment interrogatories and demand for production. The unopposed motion is **GRANTED**, and sanctions are awarded only as to the \$60.00 cost of filing. Defendant shall provide complete, objection-

free verified responses to Plaintiff and pay \$60.00 in sanctions within 30 days of service of the notice of entry of order.

### **PROCEDURAL HISTORY**

Plaintiff propounded post-judgment written interrogatories and demands for production on Defendant. He never responded, requested any extensions, or acknowledged Plaintiff's efforts to meet and confer. Plaintiff notified Defendant of intent to file this motion to compel.

### **ANALYSIS**

Plaintiff's unopposed motion is based on Code of Civil Procedure ("C.C.P.") sections 708.010, 708.020, 708.030, and 2023.030, for Defendant's failure to respond to the post-judgment discovery. Plaintiff requests the Court to compel Defendant's objection-free, verified responses and impose sanctions of \$60.00 for filing costs plus reasonable attorneys' fees.

A judgment creditor may propound interrogatories and requests for documents to a judgment debtor. (C.C.P. § 708.010, et seq.) These may be served on the judgment debtor any time while the judgment is enforceable, except not within 120 days after the judgment creditor examined the judgment debtor, or after the judgment debtor responded to an earlier set of such discovery. (C.C.P. §§ 708.010(a), 708.020(b).)

A responding party who fails to serve timely responses to interrogatories waives all objections, including privilege and work-product based objections, and the propounding party may move for an order compelling responses. (C.C.P. § 2030.290(a)-(b); *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.) Likewise, failure to serve timely responses to requests for production of documents results in waiver of all objections and allows for a motion to compel responses. (C.C.P. § 2031.300(a)-(b).) Additionally, the Court "shall" award sanctions for failure to respond. (C.C.P. 708.020.)

Plaintiff has sufficiently demonstrated that post-judgment discovery was properly served to Defendant, who failed to respond. (See, Looney Declaration, ¶¶ 1-4.) Defendant has not been examined by Plaintiff or the judgment creditor or responded to any other discovery within 120 days before the motion was filed. (*Id.* at ¶ 5.) Accordingly, the Court will grant the motion.

### **CONCLUSION**

Based on the foregoing, Plaintiff's motion is **GRANTED**, and sanctions are awarded in the amount of \$60.00 for filing costs. Defendant Dorsey shall serve complete, objection-free verified responses to Plaintiff and pay \$60.00 in sanctions within 30 days of service of the notice of entry of order. Plaintiff 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. **24CV01857, Jara v. Fisher**

Defendants' demurrer to Plaintiff's complaint brought under the Private Attorneys' General Act ("PAGA") is **partially SUSTAINED with leave to amend**.

Defendants' motion to strike the phrase "including, without limitation" in various parts of the complaint and references to Labor Code section 226.3 is **partially GRANTED with leave to amend**.

### **PROCEDURAL HISTORY**

Plaintiff's complaint alleges a single cause of action for civil penalties under PAGA against Defendants Fisher and Regus Management Group LLC under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699. Defendant Regus Management Group LLC is a national company that provides flexible physical and virtual shared workspaces and Defendant Fisher is an area vice president for Regus in California. (Demurrer Memorandum of Points and Authorities, 2:7-10.) Plaintiff brings the PAGA action, as an aggrieved employee of Defendants, for violations including failure to pay overtime, failure to accurately track and/or pay for all minutes actually worked, allowing employees to work off the clock, failing to include remuneration, etc. (Complaint, ¶¶ 10-25.)

Defendants met and conferred with Plaintiff prior to bringing the motion, but the parties were unable to resolve the issues. Defendants now demur to and move to strike portions of the complaint, arguing that Plaintiff's allegations are unsupported and conclusory. Plaintiff opposes the motions. Defendants submitted a reply brief to the oppositions.

### **REQUEST FOR JUDICIAL NOTICE**

Defendants request judicial notice of Plaintiff's PAGA Notice Letter dated December 7, 2023.

The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under Evidence Code section 452. (Evid. Code § 453.) Furthermore, courts may take judicial notice of documents that are reference in the complaint, as Defendants argue. (*City of Warren Police and Fire Ret. System v. Natera Inc.* (2020) 46 Cal.App.5th 946, 950.)

Subject to these restrictions, Defendants' request for judicial notice is **GRANTED**.

### **DEMURRER**

#### **Legal Standard**

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.)

Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." (*Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.)

### Defendants' Demurrer

Defendants specially and generally demur to Plaintiff's single PAGA cause of action, arguing that it is uncertain, ambiguous, and unintelligible, per Code of Civil Procedure section 430.10(f). Defendants argue that Plaintiff's allegations are overinclusive and do not apprise Defendants of her claims. Defendants also find issue with all allegations stated against Defendant Fisher because they are based upon Plaintiff's "information and belief" that Defendant Fisher is personally liable for all of the labor code violations as an area vice president. Defendants also argue that Plaintiff has failed to support the cause of action as to Defendant Fisher with any factual allegations that she specifically violated or cause the Labor Code to be violated.

Plaintiff argues in the opposition that enough facts have been stated to support the allegations. Plaintiff also notes that Defendants alone control all of the evidence critical to the action, so has alleged plentiful facts to apprise Defendants with the extent of the PAGA cause of action. As Plaintiff is still engaging in discovery, Plaintiff argues that at this stage it is too early yet to require provide greater specificity in the complaint. Plaintiff notes that similar allegations in other representative suits have been deemed sufficiently specific to provide notice. Plaintiff also argues that Defendant Fisher may be held liable under the agency theory as a corporate officer of the company who is responsible for ensuring the company policies and practices are enforced.

In Defendants' reply, Defendants reaffirm arguments made in demurrer.

### Application

The Court finds that the complaint sufficiently identifies the labor code sections violated and alleges enough facts such that Defendant Regus is apprised of and has notice of the allegations stated against it. However, the Court does not find that Plaintiff has sufficiently stated enough facts to support the allegation that Defendant Fisher personally violated the stated Labor Code sections or personally caused them to be violated. The Court will sustain the demurrer on that basis with leave to amend as the Court finds a reasonable possibility that Plaintiff might be able to cure the defect.

## **MOTION TO STRIKE**

### Legal Standard

A motion to strike lies where a pleading contains “irrelevant, false, or improper matter[s]” or is “not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (C.C.P. § 436(b).) However, “falsity” must be demonstrated by reference to the pleading itself or judicially noticeable matters, not extraneous facts. (C.C.P. § 437.)

### Defendants’ Motion to Strike

Defendants request that the Court strike all references to the phrase “including, without limitation” in Plaintiff’s complaint. Defendants contend that this phrase leaves Defendants subjected to “theoretical, unalleged wrongdoing” that have not been alleged in the complaint. They also move to strike all requests for heightened penalties under Labor Code section 226.3. Defendants state that penalties under section 226.3 are available where the employer either fails to provide a wage statement or fails to keep required records as required under section 226(a), citing *Gunther v. Alaska Airlines* (2021) 72 Cal.App.5th 334, 354, and other cases. As Plaintiff alleges that Defendants provided wage statements, but that they were incorrect, Defendants claim that this code section does not apply.

Plaintiff argues that the *Gunther* case can be distinguished from this matter because that case did not discuss whether a motion to strike heightened penalties was proper per sections 226.3 or 226, but rather discussed whether it was proper to apply the heightened civil penalties under these sections following a judgement. Otherwise, Plaintiff argues that it is too early in this stage of litigation to strike Plaintiff’s section 226.3 claims as discovery is still ongoing.

In Defendants’ reply, Defendants reaffirm arguments made for the motion to strike in the motion.

### Application

In paragraph 15 of the complaint, Plaintiff alleges that Defendants intentionally failed to furnish Plaintiff and other aggrieved employees with documents signed to obtain or hold employment, personnel records, and time records, which made it difficult to for Plaintiff and other employees to calculate their unpaid wages or premium payments. Section 226(a) requires employers to furnish these items to employees. On this basis, the Court will not grant the motion to strike as to Labor Code section 226.3 penalties.

However, the motion to strike is granted with leave to amend as to the phrase “including, without limitation” because it leaves ambiguous whether the cause of action is only referring to the Labor Code sections actually stated, or other code sections that have not been stated.

## CONCLUSION

Based on the foregoing, the demurrer is **partially SUSTAINED with leave to amend**. The motion to strike is **partially GRANTED with leave to amend**. Plaintiff shall file a first amended complaint within 20 days of notice of this order. 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).

**3. SCV-269115, Griffin v. Dixon, DDS**

Plaintiffs move to strike, or in the alternative to tax, costs from Defendants' memorandum of costs filed by counsel The Goldman Law Firm("Goldman") claiming \$77,150.38. The motion is **DENIED** as to each request, per Code of Civil Procedure sections 998 and 1033.5.

**PROCEDURAL HISTORY**

Plaintiffs commenced this medical malpractice action against Defendants regarding Defendant Dixon's medical treatment of Plaintiff Linda. Plaintiffs issued two separate offers to compromise per Code of Civil Procedure ("C.C.P.") section 998 for \$249,999.00 and \$49,999.00 on the same day. Defendants did not accept these. After discovery, Defendants issued Plaintiffs two separate offers per section 998 for \$125,000.00 and \$25,000.00. Plaintiffs neither responded to nor objected to these offers. Ultimately, after a jury trial, the jury rendered a verdict in Defendants favor against Plaintiffs entitling Defendants to recover costs as the prevailing party.

Defendants filed a memorandum of costs for \$77,150.38. Plaintiffs seek to strike this entire amount. Defendants have opposed and Plaintiffs submitted a reply.

**ANALYSIS**

Legal Standard

*Fees & Costs*

C.C.P. section 1032 allows the prevailing party of an action to recover costs. C.C.P. section 1033.5(a) lists the costs that the prevailing party may claim, while section 1033.5(b) lists the costs that are not allowed.

*Motion to Tax Costs*

A party seeking to tax costs on a memorandum of costs has the burden of showing that the costs were not reasonable or necessary. (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774.) If this burden is met using proper objections, the burden of proof shifts to the party claiming costs by providing documentary evidence. (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1265.) Once documentation is provided, the party challenging the costs must provide contradicting evidence and the trial court will determine if the disputed costs were reasonably necessary. (*Id.* at 1265-1266.) If a cost claimed is expressly allowed by a statute, the party seeking to tax the costs must show that it was unnecessary and unreasonable; however, where costs are not expressly allowed by statute, the burden is on the party claiming the costs to show the charges were reasonable and necessary. (*Foothill-De Anza Community College Dist. v. Emerich* (2007) 158 Cal.App.4th 11, 29.)

Moving Papers

Plaintiffs seek to strike or cost the following:

1. Defendants' entire memorandum of costs because there are no receipts or invoices to support it and because the claimed costs were not "reasonably necessary to the conduct of the litigation" per C.C.P. section 1033.5(c)(2).
2. All costs that predate Defendants' 998 offers to compromise because per C.C.P. section 998(c)(1), "if an offer made by defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall pay the defendant's costs from the time of the offer."
3. Item 1 for the \$120.00 claimed in filing costs because Plaintiffs argue that there is no statutory authority for the recovery of filing fees for a motion to continue the trial date.
4. Item 8 for the \$48,797.66 claimed in expert witness fees because these costs were not reasonably necessary to conduct the litigation per C.C.P. sections 1033.5(c)(2)-(3).
5. Item 11 for court reporter fees in the amount of \$13,114.89 because costs relating to transcripts not ordered by the court are excluded by C.C.P. section 1033.5(b)(5).
6. Item 16 for anatomy warehouse fees claimed in the amount of \$134.13 because the item should have been listed under Item 13 instead of 16 and the cost was not reasonably necessary to the conduct of the litigation.

Defendants oppose the motion for the following reasons:

1. Plaintiffs' objection and request to strike the entire cost memorandum is without merit because per authority cited by Defendants, "there is no requirement that copies of bills, invoices, statements or any other such documents be attached to the memorandum." (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1267.)
2. Defendants obtained a judgment more favorable than Defendants' section 998 offer to compromise to Plaintiffs, which offers Defendants argue were reasonable and made in good faith at the time.
3. Plaintiffs' objection to Item I for filing fees and costs is without merit because they are expressly allowed by C.C.P. section 1033.5(a)(1).
4. Plaintiffs' objection to witness fees is without merit because these are recoverable under section 998 because they were incurred in the defense of the action and Plaintiffs have not sufficiently demonstrated the fees were unreasonable. Under section 998, a court may award a prevailing party expert witness fees incurred in preparing of or during trial.

5. Plaintiffs' objection to Item 11 is without merit because court reporter fees are specifically recoverable under C.C.P. section 1033.5(a)(11) and Government Code 68086(c).
6. Defendants argue Plaintiffs' objection to Item 16 is without merit because costs incurred for models and exhibits are expressly allowed under C.C.P. section 1033.5(a)(13). The Anatomy Warehouse fee of \$134.13 was specifically expended for the model and trial exhibit "Colon Anatomy Model with Pathologies."

### Application

1. Per *Ladas* and *Jones*, when items appear to be proper charges on the face of a verified memorandum of costs, then it is prima facie evidence that they are proper and the burden is on the party seeking to tax costs to show that they were not reasonable or necessary. Here, Plaintiffs have not demonstrated that the entire memorandum of costs is without merit just because receipts were not attached. This motion is **DENIED** as to this request to strike the entire memorandum of costs.
2. Plaintiffs *must* pay costs from the time Defendants made an offer to compromise in good faith if later Defendants obtained a more favorable judgment than the offer to compromise that was made. However, this does not preclude Defendants from also seeking fees and costs incurred prior to the offer to compromise if the costs were reasonably necessary to conduct the litigation and are allowable by statute. The motion is **DENIED** as to this request to strike costs predating Defendants' offers to compromise.
3. Per C.C.P. section 1033.5(c)(1), costs are allowable if incurred. Defendants incurred \$120.00 in costs for filing of the motion, so the Court will allow it. The motion is **DENIED** as to this request to strike filing costs.
4. Per C.C.P. section 998, when an offer to compromise is made by a defendant and not accepted and plaintiff later fails to obtain a favorable judgment, then the Court may require the plaintiff to pay post-offer expert witness fees. Section 1033.5(c)(1) does not allow fees of experts not order by the court, *unless* they are expressly authorized by law, such as section 998. For these reasons, the Court **DENIES** Plaintiffs' motion as to this request to tax expert witness fees.
5. Court reporter fees as established by statute, such as the government code section cited by Defendants, are authorized by C.C.P. section 1033.5(a)(11). On this basis, the Court **DENIES** Plaintiffs' motion as to this request to tax court reporter fees.
6. The Court finds the cost of \$134.13 expended for the model and trial exhibit "Colon Anatomy Model with Pathologies" a reasonable expense necessary to conduct litigation and an allowable cost under C.C.P. section 1033.5(a)(13). Therefore, the motion is **DENIED** as to Item 16.

### CONCLUSION



Based on the foregoing, Plaintiffs' motion is **DENIED** in its entirety. 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).