TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, September 6, 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. 23CV00625, County of Sonoma v. Hagemann

Plaintiff County of Sonoma's motion for reconsideration is **DENIED**, for failure to comply with Civil Procedure ("C.C.P.") section 1008(a).

Plaintiff requests the Court to reconsider its order issued May 24, 2024, (the "Order") granting Plaintiff's unopposed motion for default judgment and permanent injunction against Defendant

Hagemann. In the Order, the Court found that the procedural restriction set by Code of Civil Procedure section 580(a) did not allow for assessing additional fines in a default judgment when those amounts were not specifically stated in the complaint. Section 580(a) prohibits a court from granting relief in a default judgment against a defendant when the requested amount in judgment exceeds whatever amount was demanded initially in the complaint. Based on section 580(a), the Order found that the additional fines assessed by Plaintiff in the amount of $281,880.75 in civil penalties against Defendant Hagemann for the six-month period *after* the filing of the complaint, but before the filing of the motion for default, were excessive per section 580(a). The Court further supported this finding with the case *People ex rel Lockyer v. R.J. Reynolds Tobacco Co.* (2005) 37 Cal.4th 707, 728, which discussed constitutional prohibitions on excessive fines and the four-part *Bajakajian* test addressed in Plaintiff's motion to determine whether ongoing civil penalties were an excessive or a constitutional violation.

Plaintiff argues that issues regarding excessive fines per the 8th Amendment were neither briefed by the parties nor raised during oral argument, so the Order is the first time this argument was put forth. As Plaintiff had no opportunity to present relevant authorities and case law regarding excessive fines in a code enforcement context, Plaintiff requests reconsideration or that the Court revoke that portion of the Order. Plaintiff also argues that if the Court should revoke its ruling regarding excessive fines, then the remainder of the Court's ruling remains vague and unclear with respect to the applicability of code section 580(a). Plaintiff relies on the case *People v. Braum* (2020) 49 Cal.App.5th 342, in which the Court upheld a City's judgment against Defendant that imposed over $6 million in civil penalties because the defendant in that matter consistently resisted a city's enforcement efforts and instead allowed unpermitted uses and nuisances to continue on the subject property. In Plaintiff's reply to non-opposition brief, Plaintiff claims a total of $574,565.00 in civil penalties are owed as of the hearing on May 22, 2024.

On review of the *Braum* case, the Court finds that this matter is distinguishable. The *Braum* matter did not involve a default judgment, but rather a motion for summary judgment in which defendant appeared and contested the $6 million in civil penalties that were assessed by the plaintiff city. Code of Civil Procedure section 580(a) applies in this matter because it involves a default judgment, but it does not apply in the *Braum* where the defendant was not in default and had appeared to litigate the matter. Here, the *additional* amount in civil penalties requested for the first time in Plaintiff's motion or default judgment and permanent junction were in excess of the amount that was requested in the complaint, even if the complaint stated that the amount would continue to accrue. Plaintiff has requested more than that amount in the reply brief as well. Section 580(a) applies and places a restriction on the Court to award a default judgment for only the amount requested in the complaint and not whatever has been requested beyond that.

The Court also finds that motions for reconsideration per section 1008(a) must be based upon "new or different facts, circumstances, or law" regarding the underlying motion that moving party failed to previously offer. (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.) Failure to show new facts or law is jurisdictional; a motion for reconsideration that does not offer any new fact as to the merits of the underlying motion must be denied. (*Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368, 380; *Gilberd v. AC Transit* (1995) 32 Cal.App.4th

1494, 1500.) There are no new or different facts stated in the motion for reconsideration that warrant reconsideration of the Court's previous order.

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

2. 23CV00658, County of Sonoma v. Alvarez

County of Sonoma's ("Plaintiff" or "County") motion for non-jury trial is **GRANTED**.

PROCEDURAL HISTORY

The County commenced this action against Defendants, an elderly married couple, to abate public nuisances and permanently enjoin Defendants' building, grading, and zoning code violations related to unpermitted greenhouses, solar arrays and cannabis cultivation on their large, multi-acre, densely wooded remote property. The County assessed nearly a million in civil penalties on top of abatement costs and fees, which Defendants argue may result in the County seizing their property from them.

Defendants requested a jury trial in this matter and posted a $150.00 jury fee deposit. The County filed this motion for a non-jury trial, which Defendants have opposed.

REQUEST FOR JUDICIAL NOTICE

Plaintiff requests judicial notice of the following items:

1. Court records and filings in the docket for *County of Sonoma v. Alvarez*, case number 23CV00658, per Evidence Code section 452(d)(1).
2. A number of Sonoma County Code sections in Chapters 1, 7, 11, and 26, per Evidence Code section 452(b).
3. Recorded documents, pursuant to *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 549, including Grant Deed (No. 2015033698), Deed of Trust (No. 2019063554), Notice of Abatement (No. 2019092331), Notice of Abatement (No. 2019010328), Notice of Abatement (No. 20190010323), and Notice of Lis Pendens (No. 2023061998).

Judicial notice of official acts and court records is statutorily appropriate. (Evid. Code §§ 452(b)-(d).) 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.) 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.)

Subject to these restrictions, the County's requests for judicial notice are **GRANTED**.

ANALYSIS

Legal Standard

"The essence of an action to abate a public nuisance and for injunctive relief is equitable and there is no right to a jury trial." (*People v. Englebrecht* (2001) 88 Cal.App.4th 1236, 1245; see also *People v. Once 1941 Chevrolet Coupe* (1951) 37 Cal.2d 283, 298; *People v. Frangadakis* (1960) 184 Cal.App.2d 540, 545-546.)

"In determining whether the action was one triable by a jury at common law, the court is not bound by the form of the action but rather by the nature of the rights involved and the facts of the particular case—the *gist* of the action." (*DiPirro v. Bondo Corp.* (2007) 153 Cal.App.4th 150, 179.) "'A jury trial must be granted where the *gist* of the action is legal, where the action is in reality cognizable at law…. On the other hand, if the action is essentially one in equity and the relief sought 'depends upon the application of equitable doctrines,' the parties are not entitled to a jury trial." (*Ibid*.) "Injunctive relief is invariably an equitable remedy, and a demand for civil penalties does not in itself require a jury trial." (*Id*. at 182-183.) "The incidental award of monetary damages by a court in the exercise of its equitable jurisdiction does not convert the proceeding into a legal action." (*Snelson v. Ondulando Highlands Corp.* (1970) 5 Cal.App.3d 243, 259.)

Moving Papers

The County argues in the motion and the reply brief that that Defendants are not entitled to a jury trial as this code enforcement action is for equitable relief. The County cites multiple legal authorities that hold that the right to jury trial is available at law but is not available in actions in equity.

Defendants oppose the motion arguing that this matter is less about equitable relief, and more about the collection of $1 million in civil penalties or the acquisition of land that rightfully belongs to Defendants. Based on that, they demand a jury trial.

The County notes in the reply that civil penalties sought in the complaint do not require a jury trial; the gist of this action still remains as equitable relief. In an abatement action, which is an equitable remedy, civil penalties may be sought and do not require a jury trial per the holding in *DiPirro* as mentioned above.

Application

Here, similarly to *Wolford v. Thomas* (1987) 190 Cal.App.3d 347 cited by Plaintiff and in *DiPirro*, the gist of the Plaintiff's claims is equitable in nature and the request for civil penalties does not automatically convert the equitable action into a legal one. The bulk of the relief sought here is equitable. Accordingly, there is no right to a jury trial.

CONCLUSION

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

3. 23CV01534, Johnson v. NOCAL AG INC.

Plaintiff Johnson's unopposed motions to compel further responses to Demand for Production, Set One, and Special Interrogatories, Set One, are **GRANTED**. NOCAL shall serve objection-free further responses and the responsive documents within 10 days of receiving notice of entry of this Court's order.

PROCEDURAL HISTORY

Plaintiff commenced this action against Defendants for violations of the Consumers Legal Remedies Act as well as nine other causes of action regarding a Jeep Wrangler that Defendant NOCAL AG, INC. ("NOCAL") sold to Plaintiff. NOCAL represented that it was in good condition and covered by Defendant FCA US LLC's warranty. Plaintiff experienced issues with the Jeep and took it in for warranty repairs, but the Jeep was not repaired.

On February 12, 2024, Plaintiff served Request for Production of Documents, Set One, and Special Interrogatories, Set One, on Defendant NOCAL. NOCAL failed to provide timely responses on March 15, 2024, and never requested an extension. Plaintiff's counsel requested objection-free responses on March 27, 2024. On April 10, 2024, NOCAL served unverified responses with objections, but without any responsive documents. Plaintiff's counsel met and conferred by correspondence to outline the deficiencies in the unverified responses. Ultimately, no further responses or responsive documents were ever served on Plaintiff.

Plaintiff filed two motions to compel further responses to the above discovery and attached separate statements outlining the deficiencies. Plaintiff obtained extensions from NOCAL's counsel for the deadline to file the motions to compel. Plaintiff filed a proof of service showing that the motions were served on NOCAL's counsel on June 18, 2024, but NOCALs has not opposed the motions.

ANALYSIS

Legal Standard

Interrogatories

A propounding party may move to compel a further response to an interrogatory if: "(1) An answer to a particular interrogatory is evasive or incomplete. (2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate. (3) An objection to an interrogatory is without merit or too general." (C.C.P. § 2030.300(a).) The motion to compel must be accompanied by a meet and confer declaration per section 2016.040, which requires that, "a meet and confer declaration in support

of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." (C.C.P. §§ 2016.040, 2030.300(b)(1).) While the propounding party has the burden of filing a motion to compel further responses to when responses provided were deemed deficient, the responding party has the burden of justifying any objections stated and failure to respond.

Demand for Production

A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. (C.C.P. §2031.210(a).) If a responding party is not able to comply with a particular request, or part thereof, that party "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." (C.C.P. § 2031.230.) The response shall also specify "whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party" and also must set forth the "name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." (C.C.P. § 2031.230.) Otherwise, if a responding party is objecting to a demand only, then the responding party must identify the demanded document, tangible thing, land, or electronically stored information to which an objection is being made, set forth the grounds for objection, and if privileged, provide a privilege log for the demanded items that are privileged. (CCP § 2031.240.)

Moving Papers

Per the separate statements, Plaintiff requests further responses to Demands for Production numbers 1 through 9 and Special Interrogatories numbers 1 through 16. Plaintiff argues that NOCAL's responses were unverified, so equal to no response at all per *Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636. Plaintiff points out that responsive documents were never produced to the document demands. Plaintiff also argues that NOCAL waived its objections because NOCAL did not serve timely responses. Finally, Plaintiff argues that NOCAL's responses were evasive and incomplete because they were not substantive responses.

Application

NOCAL did not oppose either motion to justify the lack of response to Plaintiff's meet and confer efforts regarding deficiencies in the discovery responses, or to justify NOCAL's failure to provide the responsive documents that were promised. As such, the Court will grant Plaintiff's motions. The Court notes that neither motion requested sanctions.

CONCLUSION

Based on the foregoing, Plaintiff's motions are **GRANTED**. Unless oral argument is requested, the Court will sign the proposed orders lodged with each of the motions. NOCAL shall serve objection-free further responses and the responsive documents within 10 days of receiving notice of entry of this Court's order.

4. 24CV01886, Oblad v. Diaz

Petitioner Oblad moves unopposed per Civil Code section 8488 for attorneys' fees of $20,717.50 and costs of $1,424.57. The motion is **GRANTED** for the reduced amount of **$19,215.00 for attorneys' fees** and for the requested amount of **$1,424.57 for costs**.

PROCEDURAL HISTORY

Petitioner filed this action seeking a release order from the Court for real property from three claims of mechanics liens recorded by Respondents Diaz and Diaz Marble Title and Stone, LLC. On May 6, 2024, this Court issued an order ruling that per Civil Code section 8460 the three claims of mechanics liens recorded were expired and unenforceable against Petitioner and releasing the property under Civil Code section 8488(b). The Order also allows Petitioner to recover reasonable attorneys' fees incurred in bringing the Petition, pursuant to a regularly noticed motion per Civil Code section 8488.

Petitioner now brings this motion for attorneys' fees and costs, which Respondents have not opposed. Petitioner filed proofs of service on June 12, 2024, and July 12, 2024, showing that the moving papers and amended notice of motion was served by mail to Respondents.

ANALYSIS

Legal Standard

Under Code of Civil Procedure section 1032, attorney's fees are an allowable cost when authorized by contract, statute, or law. (C.C.P. § 1033.5(a)(10)(B).) In general, the "prevailing party" is entitled as a matter of right to recover costs of suit in any action or proceeding. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 606.)

Per Civil Code section 8488(c), the prevailing party on a petition for an order releasing property from a claim of mechanics lien is entitled to recover reasonable attorneys' fees.

Moving Papers

Petitioner moves for fees and costs per Civil Code section 8488 and Code of Civil Procedure sections 1032 and 1033.5.

Petitioner incurred a total of $15,542.50 in attorneys' fees in bringing the Petition. An additional $3,375.00 in attorneys' fees was incurred in preparing and filing of this motion by counsel. Counsel anticipates an additional $1,800.00 in fees for four hours anticipated in reviewing Respondent's opposition to the motion, preparing a reply, and appearing the hearing for this motion. The hourly rate requested by counsel Thomas is $450.00 per hour. The hourly rate for paralegals Cook and Bortolussi is $225.00 per hour.

In total, $1,348.87 were incurred in costs in the filing of the petition in this matter and clearing the liens against Petitioner's property, as well as $75.70 in filing fees for filing this motion.

Application

Based on the moving papers, the Court finds Plaintiff is entitled to attorney's fees per Civil Code section 8488(c) and Code of Civil Procedure sections 1032 and 1033.5. The Court finds the hours worked by counsels to be reasonable but will reduce the amount requested for attorney's fees by $1,800.00 as Respondent did not file any opposition. The Court will award fees and costs as follows:

Name	***Position & Experience***	***Hours***	***Hourly Rate***	***Fees***
Ryan F. Thomas	Attorney	32.9	450.00	$14,805.00
Jenna Cook	Paralegal	18.4	225.00	$4,140.00
Danielle Bortolussi	Paralegal	1.2	225.00	$270.00
			TOTAL FEES:	$19,215.00
			TOTAL COSTS:	$1,424.57
			TOTAL FEES:	$20,639.57

CONCLUSION

Based on the foregoing, Plaintiff's motion for attorneys' fees is **GRANTED** for the reduced amount of **$19,215.00 for attorneys' fees** and for the requested amount of **$1,424.57 for costs**. Unless oral argument is requested, the Court will sign the proposed order lodged with the motion.

5. 24CV04258, Clay v. Harris

APPEARANCES REQUIRED. Petitioners must appear to establish facts alleged in the unopposed petition and to establish compliance with service requirements for the petition.

Civil Code section 8480 allows the owner of property or the owner of any interest in property subject to a claim of lien may petition the court for an order to release the property from the claim of lien if the claimant has not commenced an action to enforce the lien within the 90-day time limit provided in Section 8460. Section 8482 requires the owner to file a demand to execute and record a release. Section 8484 details the required contents for a petition for release. Per section 8488, the hearing on the petition is Petitioners' opportunity to argue the petition and establish compliance with the service and date requirements.

Petitioners here own real property located at 40 Oxford Court, Santa Rosa, California, 95403 ("the Property"). (Petition, ¶ 1.) Respondent David Harris is an individual who also does business as Oracle Consulting for construction design consultation and coordination. (Petition, ¶ 2.) Respondent, claiming to have contributed to the work of improvement on the Property for the amount of $12,223.35 for labor, services, equipment, or materials, recorded a claim of mechanics lien against the Property on October 18, 2022, under No. 2022066736. (Petition, ¶ 3, Exhibit A.)

Respondent commenced an action under case number SCV-271905 on October 28, 2022, regarding this mechanics lien, but the case was subsequently dismissed on January 16, 2024, for Respondent's failure to prosecute. (*Id*. at ¶ 4.) Thereafter, Respondent did not file any other action to foreclose the lien and did not record any extension of credit within the 90-day time period required under Civil Code section 8460. (Petition, ¶ 4.)

Petitioner alleges that respondent also did not record any notice of lis pendens within 20 days of the date of filing the dismissed action under case number CV-271905, as is required under Civil Code section 8461.) (*Id*. at ¶ 5.) As such, Petitioners issued a written demand as is required for the release of the lien from the Property to Respondent through their counsel on March 18, 2024, and independently on April 9, 2024, but Respondent did not respond to either of these written demands and also did not execute any release of the lien. (Petition, ¶¶ 6-8, Exhibits B-C.) In counsel's declaration, counsel requests attorneys' fees and costs for $6,134.75 in total for work done, not including any fees incurred for appearing at the hearing on this Petition.

Petitioner filed this petition and also filed a Notice of Hearing on Petition on July 3, 2024. There does not appear to be any summons on the Court's record. Respondent signed a return receipt for the petition, notice of hearing, and counsel's declaration sent by mail to the address 113 Todd Road, Santa Rosa, CA 95407 on August 3, 2024. Per Petitioners' other proof of service, Respondent was served by personal service by a registered process server at the Todd Road address with all the documents listed above on August 1, 2024.

Based on the foregoing, the Court orders that Petitioners shall appear per Civil Code section 8488(a) to establish what has been alleged in the petition and their compliance with the service and date for hearing requirements for a petition for release of a claim of lien.

6. SCV-271760, Perry v. County of Napa

Defendant County of Napa ("Napa County") moves for a judgment on the pleadings as to Plaintiff Perry's first amended complaint ("FAC") per Code of Civil Procedure ("C.C.P.") section 438. Alternatively, Napa County requests the Court to stay the present action until the California Court of Appeal determines the constitutionality of Assembly Bill 218 ("A.B. 218"). Sonoma County joins in the motion and the Court **GRANTS** the motion for joinder. Napa County's motion is **DENIED**, for the reasons stated below.

PROCEDURAL HISTORY

Plaintiff's FAC alleges five causes of action against Napa County and Sonoma County for negligence and breach of mandatory duty. The FAC is filed pursuant to C.C.P. section 340.1 and it alleges physical, psychological, and emotional injuries suffered as a result of sexual assault and abuse of a minor while under the legal custody, care, and control of Defendants in foster care. The alleged abuse occurred approximately from 1988 to 1992 when Plaintiff was one to five years old, and the person alleged to have committed the assault was Plaintiff's foster father ("Perpetrator"). Plaintiff disclosed the abuse to his social worker when it was occurring, but

Plaintiff's social worker requested that the abuse not be reported, so no action or investigation was taken and Perpetrator continued to sexually abuse and assault Plaintiff.

As explained in the motion, A.B. 218 amended C.C.P. section 340.1 opened a three-year window for plaintiffs to commence actions related to previously time-barred claims of childhood sexual abuse regardless of how long ago the abuse allegedly occurred. A.B. 218 also amended Government Code section 905 to remove the claims presentation requirement for abuses that occurred prior to 2009. Previously, section 905 required the advance presentation of claims for money damages to a public entity before a suit can be maintained.

Napa County requests the Court to grant judgment on the pleadings and dismiss plaintiff's FAC without leave to amend, or alternatively to stay the present action until the California Court of Appeal determines the constitutionality of A.B. 218. Napa County has complied with the meet and confer requirements of this motion, but the parties could not reach an agreement regarding the issue of constitutionality of A.B. 218.

Sonoma County submitted a joinder on Napa County's motion. Plaintiff opposes the motion.

REQUEST FOR JUDICIAL NOTICE

Pursuant to California Evidence Code section 451-453 and California Rules of Court, rules 3.1113(1) and 3.1306(c). Napa County requests judicial notice of the following items:

1. California Government Code section 905, Westlaw copy;
2. Assembly Bill 218;
3. Senate Bill 640;
4. Contra Costa County's case *Doe v. Acalanes Union High School District* (Case No. C22-02613):
    a. Order After Hearing on Contra Costa County's Demurrer;
    b. Order on Plaintiff's Motion for Reconsideration;
    c. Judgment of Dismissal;
    d. Notice of Appeal;
    e. First District Court of Appeal's Register of Actions in *Doe v. Acalanes Union High School* (Case No. A169013);
5. Contra Costa County's case *Doe C.W. v. Doe #1 Public Entity* (Case No. C22-02488), Order Sustaining Defendant's Demurrer;
6. Contra Costa County's case *Doe C.W. v. Mt. Diablo Unified School District* (Case No. C22-02544), Order Sustaining Defendant's Demurrer;
7. Contra Costa County's case *D.H. v. West Contra Costa Unified School District* (Case No. C22-02410):
    a. Minute Order on Defendant's Demurrer;
    b. First District Court of Appeal, Register of Actions (Case No. A169354);
8. Stanislaus County's case *B.H. v. County of Contra Costa* (Case No. C22-02730):
    a. Notice of Entry of Judgment or Order on Defendant's Demurrer;
    b. First District Court of Appeal, Register of Actions (Case No. A170468);
9. Monterey County's case *Jane Doe v. Sergio Marquez* (Case No. 22CV003767):

a. Order After Hearing on Defendant's Demurrer;
b. Sixth District Court of Appeal, Register of Actions, (Case No. H052095);

10. Los Angeles County's case *E.L. v. Pasadena Unified School District* (Case No. 22STCV23228), Order After Hearing on Defendant's Demurrer; and
11. Butte County's case *D.N. v. Doe 1* (Case No. 22CV03060), County's Minute Order on Defendant's Demurrer and/or Motion to Strike.

Judicial notice of official acts and court records is statutorily appropriate. (Evid. Code §§ 452(c)-(d).) The Court, however, may not consider the factual contents of such documents for truth of the matters asserted. Subject to these restrictions, Napa County's requests for judicial notice are **GRANTED**.

ANALYSIS

Legal Standard

A defendant may move for judgment on the pleadings on the grounds that (1) "the court has no jurisdiction of the subject of the cause of action alleged in the Complaint" or (2) "the complaint does not state facts sufficient to constitute a cause of action against that defendant." (C.C.P. § 438(c).)

A motion for judgment on the pleadings performs the same way as a general demurrer. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) The grounds for a motion for judgment on the pleadings appears on the face of the challenged pleading or from any matter judicially noticed by the court. (C.C.P. § 438(d).) In considering a motion for judgment on the pleadings, trial courts accept plaintiff's factual allegations in the pleading as true and give them liberal construction. (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 515.) Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings. (*Cloud v. Northrop Grumman Corp.*, supra, at p. 999; *Sykora v. State Dept. of State Hospitals* (2014) 25 Cal.App.4th 1530, 1534.) The complaint must be viewed in isolation and matters set forth in the answer will not be considered. (*Hughes v. Western MacArthur Co.* (1987) 192 Cal.App.3d 951.

Leave to amend should be granted if there is any reasonable possibility that the plaintiff can state a good cause of action. (*Gami v. Mullikin Med. Ctr.* (1993) 18 Cal.App.4th 870, 876.)

Napa County's Motion and Sonoma County's Joinder

Napa County moves for judgment on the pleadings on the grounds that the FAC fails to state facts sufficient to constitute a cause of action against it because the FAC is based on an unconstitutional statute. Sonoma County moves to join the motion and puts forth the same arguments as Napa County in support of Napa County's motion.

Napa County cited multiple cases in California superior courts across multiple counties in which courts sustained demurrers or granted motions to strike or motions for judgment on the pleadings on complaints brought under the new amendments per A.B. 218, containing causes of action that

stemmed from childhood sexual abuse that occurred prior 2009. Napa County argues that no higher court has yet acted on the constitutionality of A.B. 218, but there are pending appeals on several of these demurrers or motions in the First District Court of Appeal. Napa County argues that the retroactive imposition of liability for cases in which plaintiffs did not timely present a government claim constitutes an unlawful gift of public funds and violates the California Constitution. For this reason, Napa County argues that A.B. 218 is unconstitutional and requests that the Court dismiss Plaintiff's FAC without leave to amend. Alternatively, Napa County requests that the Court stay the present action until the California Court of Appeal determines the constitutionality of A.B. 218.

Plaintiff's Opposition

Plaintiff opposes the motion. Plaintiff argues that childhood sexual assault claims are expressly exempt from the claim presentation requirement under the Government Claims Act, so Plaintiff did not allege compliance with these requirements.

Plaintiff argues that California courts have rejected the argument put forth by County Defendants that A.B. 218 violates the gift clause because it is not based in current law. Under *County of Alameda v. Carleson*, 5 Cal.2d 730, 745-46, an appropriate use of public funds that benefits particular individuals does not violate the "gift" prohibition under the California Constitution where the funds are going to be used for a "public" purpose as opposed to a "private" purpose. Plaintiff argues that courts may infer a public purpose from other legislation or in the manner in which the legislation is enacted, rather than requiring legislation to expressly declare the public purpose. (*Scott v. State Bd. of Equalization* (1996) 50 Cal.App.4th 1597, 1604.) Plaintiff proposes that the legislative history leading to the enactment and analysis of Senate Bill No. 640, the public purpose was to ensure that victims severely damaged by childhood sexual abuse are able to seek compensation from those responsible, whether those responsible are private or public entities, because for many victims of childhood sexual abuse suffer from emotional and psychological trauma that does not manifest until well into adulthood. (*Coats v. New Haven Unified School Dist.* (2020) 46 Cal. App. 5th 415, 422.) Plaintiff also notes that courts have expressly stated that there is a public purpose in making the courts available for victims of child sexual abuse, so the retroactivity provision added to Code of Civil Procedure section 340.1 indicates a clear legislative intent to maximize claims of sexually-abused minor plaintiffs for as expansive a period of time as possible. (*Liebig v. Superior Court* (1989) 209 Cal.App.3d 828, 834.) Overall, Plaintiff summarizes the public purposes for A.B. 218's retroactive elimination of claim presentation requirements as: (1) the need for justice and accountability for failure to protect children; (2) deterrence and meaningful liability for those who failed to protect children; (3) positive internal change by exposing child sexual abuse within public institutions; (4) reduction of societal costs because childhood sexual abuse has long-lasting physical, psychological and emotional consequences that hamper an individual's well-being and social productivity; and (5) increasing public trust and transparency by holding individuals accountable for their harms to others and failures.

Plaintiff also argues that a stay of this action is not warranted here because Napa County does not show that arguments regarding the unconstitutionality of the exempted child sex abuse claims are likely to succeed. Plaintiff argues that the legislature has authority to enlarge

limitations periods retroactively and also extend or eliminate the claims presentation requirement and cites several cases to support this argument. Plaintiff also contends that County Defendants will not be irreparably injured without a stay where the only harm the County may suffer is payment of damages awards or settlements to Plaintiff. These awards may be reversed if A.B. 218 is ultimately found unconstitutional and litigation costs are incurred in every lawsuit. Plaintiff does argue that a stay would injure Plaintiff because Plaintiff has already waited 20 years for justice for the harms suffered as a result of the childhood sexual abuse. Additionally, Plaintiff states that there is a public interest in moving forward child sex abuse cases because of the probability of death of witnesses and destruction or loss of evidence.

Plaintiff finally argues that the First District Court of Appeal has already determined that A.B. 218 is not unconstitutional in the case *West Contra USD v. Superior Court* (Case No. A169314). On July 31, 2024, the Court of Appeal issued a ruling in this appeal rejecting the same arguments County Defendants rely on as the basis for this motion.

Reply Brief

Napa County makes similar arguments as in the motion in the reply brief that AB 218 violates the constitutional prohibition on "gifts" of public funds. Napa County argues that there is no public purpose being served by the legislation because there is no public purpose served by compensating a potential plaintiff when there is no colorable claim of liability. Napa County notes that even public purposes set forth by legislature are still subject to interpretation by the courts.

Napa County's position is that Plaintiff's reliance on the *Coats* case is misplaced because the issues addressed in that matter were extremely narrow and limited to the facts of that case involving abuse in 2014 and 2015, but not prior to 2009.

Napa County also argues that the *Liebig* case is inapplicable here because it is not relevant to assessing any public purpose with respect to any public entity or to the time frame when A.B. 218 was enacted.

Finally, Napa County argues that a stay of this action is warranted pending appellate resolution of the constitutionality of A.B. 218 for the same reasons argued in the motion. Napa County argues that the pending appeals shows that the case is likely to succeed on the merits and denying the stay will severely prejudice County Defendants. Napa County contends that a stay would not injure Plaintiff because Plaintiff already waited over a decade to file this lawsuit.

Application

Napa County has not sufficiently shown that that there is no public purpose being served by the legislation. Plaintiff potentially has a valid claim of liability and put forth multiple public purposes that A.B. 218 serves that shown that it benefits particular individuals (victims of childhood sexual abuse) and does not violate the "gift" prohibition under the California Constitution. Napa County also has not sufficiently shown why none of these public purposes are adequate.

While Napa County argues that a stay of this action is warranted, Napa County has not demonstrated any likelihood to succeed on the merits. Plaintiff has pointed to the recent determination by the First Appellate District on July 21, 2024, rejecting the arguments regarding the "gift" prohibition. Napa County has not shown that there is a likelihood of succeeding on the matters that are currently pending appeal. Napa County has also not sufficiently shown that it will be irreparably injured without a stay.

CONCLUSION

Based on the foregoing, Napa County's motion is **DENIED**. 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).