

**TENTATIVE RULINGS  
LAW & MOTION CALENDAR  
Friday, January 31, 2025 9:00 a.m.  
Courtroom 19 –Hon. Oscar A. Pardo  
3055 Cleveland Avenue, Santa Rosa**

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

**TO JOIN ZOOM ONLINE:**

**Department 19 Hearings**

MeetingID: 160-421-7577

Password: 410765

<https://sonomacourt-org.zoomgov.com/j/1604217577>

**TO JOIN ZOOM BY PHONE:**

By Phone (same meeting ID and password as listed for each calendar):

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**PLEASE NOTE:** The Court’s Official Court Reporters are “not available” within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

**1. 24CV05279, McCoy v. Dooley**

This action arises from an Order, Decision, or Award (“ODA”) of the Labor Commissioner issued on February 27, 2024, against Defendants/Appellants (“Defendants”) for \$63,499.40. Defendants filed an appeal to the ODA and Plaintiff/Respondent (“Plaintiff”) moved to dismiss the appeal. Plaintiff’s motion to dismiss the appeal of the Labor Commissioner’s ODA is **GRANTED**. Plaintiff is entitled to attorney’s fees pursuant to Labor Code Section 98.2(c).

Plaintiff’s request for judicial notice (“RFJN”) is **GRANTED**.

Defendant’s request for judicial notice is **GRANTED**.

**I. Procedural History**

The original dispute (WC-CM-880306) involved claims filed with the Department of Industrial Relations – Labor Commissioner’s Office by Plaintiff against Defendants of failure to pay overtime wages and violations of Labor Code (“L.C.”) §210. After conducting a hearing, the Labor Commissioner issued an ODA against Defendants on February 27, 2024, that was served via mail

on August 26, 2024. (Motion to Dismiss, p. 3; Defendants RFJN – Ex. A.) The ODA awarded Plaintiff \$63,499.40, which included outstanding overtime wages, liquidated damages, waiting time penalties and penalties pursuant to L.C. §210.

Defendants filed an appeal to the ODA on September 5, 2024, and later amended the appeal on November 25, 2024. (See Notice of Appeal and Notice of Amended Appeal.) The Notice of Undertaking was executed on November 13, 2024. (Notice of Amended Appeal, Exhibit B.) Plaintiff now motions the Court to dismiss the appeal of the Labor Commissioner’s ODA arguing that the Defendants failed to timely post the undertaking as required by Labor Code Section 98.2. (Motion to Dismiss, pp. 4–7.)

Defendants oppose the motion, contending that there was no proper or timely service of the ODA and therefore the 10-day deadline for posting an undertaking never began. (Opposition, pp. 5–8.)

In Plaintiff’s reply, he claims that Defendants waived service by certified mail and consented to service by first class mail at their attorney’s address. (Reply, pp. 3–4.) Therefore, there was proper service, and Defendants failed to timely post an undertaking or bond making their appeal untimely. (Reply, pp. 4–5.)

## **II. Governing Law**

### **1. Requests for Judicial Notice**

Judicial notice of official acts is statutorily appropriate. (Evid. Code § 452(c).) The court may take judicial notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code § 452(h).) 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.)

### **2. Undertaking of an Appeal of the Labor Commissioner’s ODA**

Labor Code Sections 98.2(a) and (b) govern the appeal of an order, decision, or award of the Labor Commissioner. “As a condition to filing an appeal, an employer shall first post an undertaking with the reviewing court in the amount of the order, decision, or award.” (Lab. Code § 98.2 (b).) The undertaking requirement of Section 98.2(b) is mandatory and jurisdictional. (*Tabarrejo v. Superior Ct.* (2014) 232 Cal. App. 4th 849, 860.) The employer must post the undertaking before it files its notice of appeal, and no later than 10 days after service of the Commissioner's order. (*Palagin v. Paniagua Construction, Inc.* (2013) 222 Cal.App.4th 124, 131.)

## **III. Analysis**

### **1. Request for Judicial Notice**

#### *A. Plaintiff’s Request*

Plaintiff submitted a request for judicial notice of three documents connected to underlying state case WC-CM-880306: (1) waiver to certified mail and appearance sheet; (2) letter from counsel to Plaintiff, notice of telephonic hearing, complaint, answer form; and (3) application with relief with declarations of Defendants and Defendants' counsel. (Plaintiff's Request for Judicial Notice, pp. 1–2.) Defendants oppose this request.

The Court **GRANTS** Plaintiff's request for judicial notice of the documents related to WC-CM-880306 subject to the evidentiary limitations stated above.

### B. *Defendants' Request*

Defendants submitted a request for judicial notice of a copy of the Notice and Order of the California Labor Commissioner in this matter. (Defendants' Request for Judicial Notice, p. 1.)

The Court **GRANTS** Defendants' request for judicial notice of the Notice and Order of the California Labor Commissioner subject to the evidentiary limitations stated above.

#### 2. Undertaking of an Appeal of the Labor Commissioner's ODA

Plaintiff claims that the Court is without jurisdiction to oversee this matter because Defendants failed to timely post the mandatory undertaking and cannot obtain relief. (Motion to Dismiss, p. 7.)

Defendants argue that the ODA was improperly served and thus, that the 10-day deadline for Defendants to post an undertaking never began. (Opposition, pp. 5–8.) Defendants are confused to their detriment by the mode in which the administrative appeal process must occur under L.C. §98.2. Defendants could have preserved the 'defective service' argument had they properly perfected their appeal. L.C. §98.2 (b) is unequivocally clear that "[A]s a *condition* to filing an appeal pursuant to this section, an employer *shall first post* an undertaking." (emphasis added). "The immediate purpose of the undertaking is to provide assurance that a judgment in favor of the employee will be satisfied." (*Palagin v. Paniagua Construction, Inc.* (2013) 222 Cal.App.4th 124, 130). Even if Defendants contest service of the ODA, they cannot contest the fact that they filed their appeal on September 5, 2024. (Opposition, pp. 2–3; Appeal of the Labor Commissioner's ODA.) However, as a precondition of filing the appeal Defendants were required to post an undertaking in the amount identified in the ODA. Here, Defendants did not post an undertaking until November 13, 2024. (Notice of Amended Appeal, Exhibit B.) Defendants argue that the clock on the undertaking never began due to improper service of the ODA. Yet, Defendants fail to recognize that the pertinent clock here was triggered when they decided to file an appeal to the ODA. Their first step was then to post an undertaking before filing the appeal, which they failed to do. (Opposition, pp. 2–3; Notice of Amended Appeal, Exhibit B.) Defendants presents no authority to excuse the late undertaking.

Unfortunately for Defendants, the failure to post the undertaking now becomes a jurisdictional issue. Although L.C. § 98(b) does not expressly state that this requirement is "jurisdictional," the absence of that word is not dispositive. (*Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831,

837–838 [deadline for filing notice of appeal under § 98.2(a) is jurisdictional].) “Indeed, when viewed in the context of the statutory scheme, the language that *is* contained in the subdivision compels the conclusion that the requirement *is* jurisdictional, and a court therefore cannot extend the deadline for compliance.” (supra, *Palagin v. Paniagua Construction, Inc.* (2013) 222 Cal.App.4th at 131).

Section 98.2(a) provides a 10–day deadline for filing the notice of appeal. *This* deadline is itself a jurisdictional requirement, because the filing of the notice of appeal vests jurisdiction in the superior court to conduct the trial de novo. (See *Pressler, supra*, 32 Cal.3d at p. 836, 187 Cal.Rptr. 449, 654 P.2d 219.) And yet, an employer cannot file a notice of appeal under section 98.2—and thus the trial court cannot obtain jurisdiction—unless the “condition” of posting the undertaking has been satisfied “first.” In other words, the Legislature has explicitly tied the “condition” of posting an undertaking to the process by which the court *obtains jurisdiction*, thus making the posting requirement—quite obviously—“jurisdictional.” (See *Progressive Concrete, Inc. v. Parker* (2006) 136 Cal.App.4th 540, 547 [requirement to post a bond as a “condition precedent” of filing an appeal from Commissioner's wage order under § 2673.1 is “mandatory and jurisdictional”]; as cited in *Palagin v. Paniagua Constr., Inc.*, supra 222 Cal. App. 4th 124, 131–32, 165 Cal. Rptr. 3d 612, 617 (2013), as modified on denial of reh'g (Jan. 15, 2014)

Since Defendants failed to timely post an undertaking pursuant to Labor Code Section 98.2(b), and the Court has no jurisdiction, Plaintiff’s motion to dismiss the Defendants’ appeal of the Labor Commissioner’s ODA is **GRANTED**.

### 3. Attorney’s Fees and Costs

Plaintiff asserts that he is entitled to attorney’s fees and costs pursuant to Labor Code Section 98.2(c). (Motion to Dismiss, p. 8). The Court finds that the Plaintiff is entitled to attorney’s fees pursuant to Section 98.2(c). However, Plaintiff has not supported the request for fees with any requested rate or amount. Thus, the Court will allow Plaintiff to bring a motion for fees within 10 (ten) days of entry of this Order.

## IV. Conclusion

Plaintiff’s request for judicial notice is **GRANTED**. Defendant’s request for judicial notice is **GRANTED**.

Plaintiff’s motion to dismiss is **GRANTED**. Plaintiff must bring a motion for fees within 10 (ten) days of entry of this Order. The moving party shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

## 2. SCV273527, Sullivan v. DeSimas

**APPEARANCES ARE REQUIRED**. Plaintiff’s counsel Mindy S. Bish requests to be relieved as legal counsel of Plaintiff Tracy Sullivan. However, the Court has no evidence establishing that Plaintiff’s counsel properly served notice of the hearing in compliance with California Rules of

Court, Rule 3.1362(d). Counsel is ordered to appear to explain and provide proof that, by Proof of Service, that Plaintiff was timely served with proper notice of this motion prior to the hearing.

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