

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, November 19, 2025, 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) 521-6725**, 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. 24CV02971, Maverick Excavating, Inc. v. Dalk

I. Demurrer

Defendant Mustang Court Community, LLC (“Mustang”) demurs to the first cause of action for Mechanic’s Lien and fourth cause of action for Conspiracy to Commit Fraud alleged in the Second Amended Complaint (“SAC”) filed by Plaintiffs Maverick Excavating, Inc. (“Maverick”) and Herring & Son Construction, Inc. (“Plaintiffs”). **Mustang’s demurrer to the first cause of action for mechanic’s lien is OVERRULED. The demurrer to the fourth cause of action for conspiracy is MOOT.**

1. First Cause of Action – Mechanic’s Lien

Mustang argues that pursuant to Civil Code sections 8416 and 8460, Plaintiffs’ cause of action for a mechanic’s lien is untimely.

Civil Code section 8416 lists the requirements for a claim of mechanic’s lien. It notes that the legal action to foreclose on a mechanic’s lien must be filed no later than 90 days after the date the mechanic’s lien is recorded.

Civil Code section 8460 provides more specifically: “(a) The claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable.

“(b) Subdivision (a) does not apply if the claimant and owner agree to extend credit, and notice of the fact and terms of the extension of credit is recorded (1) within 90 days after recordation of the claim of lien or (2) more than 90 days after recordation of the claim of lien but

before a purchaser or encumbrancer for value and in good faith acquires rights in the property. In that event the claimant shall commence an action to enforce the lien within 90 days after the expiration of the credit, but in no case later than one year after completion of the work of improvement. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable.”

Plaintiffs’ SAC states that the mechanic’s lien was filed on or about December 11, 2023. (SAC, ¶88.) The Mechanic’s Liens are attached as Exhibits F and G and show they were recorded on December 11, 2023. As such, unless subsection (b) is applicable, the claim on the mechanic’s lien must have been filed by Monday, March 11, 2024. Because this action was not commenced until May 10, 2024, it would be untimely.

Plaintiffs argue that Mustang agreed that this action could be filed by May 10, 2025. They argue this issue is addressed by paragraphs 93-99 of the SAC. They state that the parties agreed on March 4, 2024, for an extension on enforcement of the lien through and including May 10, 2024, i.e., an “extension of credit” giving Mustang more time to pay the debt or for the parties to continue negotiating payment of the debt. (SAC, ¶93.) The SAC alleges that they asked Mustang to sign a mechanic’s lien extension form but Mustang refused. (SAC, ¶95.) The SAC alleges no third party purchaser for value has acquired an interest in the property. (SAC, ¶98.) The SAC alleges, and Plaintiffs argue, that the mechanic’s lien remains valid under subsection (b)(2) of Civil Code section 8460.

Attached as Exhibit K is the purported recorded notice of the fact and terms of the extension. (SAC, ¶99.) Exhibit K was recorded on July 19, 2024. It is entitled “Notice of Pendency of Action.” It gives notice that an action has been filed against Mustang and others pertaining to the subject real property.

Exhibit J consists of the declaration of Plaintiffs’ former attorney, William Adams, signed on January 15, 2025. Mr. Adams states that the parties agreed Plaintiffs had until May 10, 2024, to file this action. Attached to his declaration are some emails between Mr. Adams and Susan Riggle and Linnda McSweyn, the latter noted she was an inactive California attorney but could talk on Ms. Riggle’s behalf. Ms. Riggle responded to Mr. Adams’ email but did not make any affirmative statement about granting an extension. However, based upon the language in the emails, it appears that the parties had orally agreed to one.

The SAC alleges that the recorded *lis pendens*, together with the Adams declaration filed with this court, give notice of the foreclosure action and the extension of time to file suit. (SAC, ¶99.)

To recap, the Mechanic’s Liens were recorded within 90 days of the “completion” of Maverick’s work—the date Mustang terminated it on November 29, 2023. The action was not filed within 90 days of the recordation of the Mechanic’s Liens. This is because of the agreement between the parties to extend the time to file the action. However, no such notice was recorded showing the fact of the extension and the terms of the extension. Despite this, Plaintiffs filed their action on May 10, 2024.

Subsection (b) of section 8460 states that if there is an agreement to an extension, notice of that extension can be recorded *more than* 90 days after recordation of the claim of lien if it is recorded before a purchaser or encumbrancer for value and in good faith acquires rights in the property. Subsection (b) goes on to state: “In that event the claimant shall commence an action to enforce the lien within 90 days after the expiration of the credit, but in no case later than one year after completion of the work of improvement. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable.”

Thus, because Mr. Adams had negotiated an extension, recordation of the notice of the extension need only be made prior to a purchaser or encumbrancer for value acquiring a good faith

right in the subject property. The SAC alleges there has been no such occurrence and Mustang has not shown otherwise. Mustang has not provided authority that it must sign the extension. Nor has it provided evidence no extension agreement existed. This action was filed within 90 days after expiration of the extension and within a year of the time Maverick was terminated on November 29, 2023. Thus, Mustang has not established that subsection (b) is inapplicable such that the cause of action is untimely.

2. Fourth Cause of Action – Conspiracy

Mustang argues that Plaintiffs amended their complaint to allege this cause of action without obtaining leave of court. This issue was addressed pursuant to motion to strike brought by defendant Jason Dalk. As a result of that motion, this court struck Plaintiffs’ cause of action for conspiracy. Therefore, this issue is moot.

3. Conclusion and Order

Mustang’s demurrer to the first cause of action for mechanic’s lien is **OVERRULED**. The demurrer to the fourth cause of action for conspiracy is **MOOT**.

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

II. Motion to Strike

Defendant Mustang Court Community, LLC (“Mustang”) moves to strike portions of Plaintiff’s Second Amended Complaint (“SAC”) including the fourth cause of action for conspiracy, paragraphs 98-118, 168-184, 190-195 which purport to pertain to settlement negotiations, and paragraphs 7 and 8 of the prayer pertaining to punitive damages. **The motion is GRANTED as to paragraphs 100 through 118, 192, 193, and the language stating “of the above for breach of the covenant of good faith and fair dealing” in paragraph 8 of the prayer. The motion is DENIED as to paragraphs 98, 99, 190, 191, 194, 195, 168, 169, and paragraphs 7 of the prayer. As to paragraphs 170-186 the motion is MOOT.**

1. Fourth Cause of Action – Conspiracy

As this cause of action has already been stricken, the motion as to it is moot.

2. Settlement Discussions

Mustang seeks to have paragraphs 98-118 stricken. It represents these paragraphs relate to statements made in preparation for litigation and in a privileged settlement conference.

Paragraphs 98 and 99 pertain to the parties’ agreement to extend the time for filing this action. Therefore, the motion as to these paragraphs is **DENIED**.

Paragraphs 100 through 117 pertain to the parties’ meet and confer efforts. Paragraph 118 pertains to the suggestion that the parties mediate their dispute. This court struck these allegations on November 12, 2025, stating: “Paragraph 100 through 117 pertain to the Mustang’s counsel’s estimate of necessary corrections to the trenching work. Plaintiffs allege Mustang’s counsel presented the estimate as a fake invoice. These allegations do not support any of Plaintiffs’ causes of action. While they are presented apparently in support of Plaintiffs’ cause of action for fraud, the SAC does not allege any reliance thereon or subsequent damages. Therefore, the motion to strike these allegations is **GRANTED**.” The reference to mediation is irrelevant to Plaintiffs’ claims. Therefore, paragraph 118 is also stricken.

3. Conspiracy

Paragraphs 170-186 allege a cause of action for conspiracy. These paragraphs were stricken for failure to obtain leave of court.

4. Paragraphs 190-195

Mustang represents that these paragraphs relate to statements made in preparation for litigation and in a privileged settlement conference.

Paragraph 190 states: “Plaintiff HSCI did all or substantially all of the things they were supposed to do under Contracts (A-C), yet MCC and DALK unfairly and deceptively interfered in payments to HSCI regarding the work of their employee and their subcontractor(s).”

Paragraph 191 states: “Beyond contract violations, paying DALK directly for work he was not entitled to be paid for, instead of paying the Plaintiffs directly, is dishonest and violates a whole host of contracting, tax, and employment wage reporting regulations.”

Paragraph 192. Second, while trying to resolve final billing to MAVERICK on Contract #D, in the meet and confer on April 5, 2024, when defendant MCC could not get a compromise they liked, they instead presented a fabricated document intending to suggest they really need pay nothing for the work performed by Plaintiff MAVERICK. This was a knowing misrepresentation. Then MCC claimed they paid Mr. Garcia to do corrections to the irrigation trench, which was a misrepresentation, then they admitted that MCC had paid DALK the \$30,937 amount that was presented in the fake invoice. This dishonesty during negotiations show that they were not really striving for a just and reasonable settlement.”

Paragraph 193 states: “Plaintiff MAVERICK did all or substantially all of the things they were supposed to do under Contract D, and tried to settle in good faith. Defendants MCC and DALK acted unfairly, deceptively, fraudulently and maliciously when they sabotaged the negotiation.”

Paragraph 194 states: “Third, there never would have been a meeting on April 5, 2024, but for MCC’s agreement to an extension of time to file suit on the Mechanics Liens. Plaintiffs appropriately asked for the extension multiple times in multiple emails, and insisted on agreement in writing. After MCC agreed to the extensions in writing on March 4, 2024, “through and including May 10, 2024,” all parties were acting in reliance on their good faith agreement and the hope to settle without filing a complaint.”

Paragraph 195 states: “California Civil Code §8460 (b)(2) allows the extension form to be recorded: “more than 90 days after recordation of the claim of lien but before a purchaser or encumbrancer for value and in good faith acquires rights in the property.” As such the extension of time remains valid, however their refusal to honor their agreement again shows that they are acting in bad faith.”

Mustang cites Evidence Code section 1152(a), which provides: “(a) Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain or claims that he or she has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his or her liability for the loss or damage or any part of it.”

Only paragraphs 192 and 193 pertain to the settlement negotiations. The motion as to these is GRANTED. As to paragraphs 190, 191, 194, and 195, the motion is DENIED.

5. Punitive Damages

Mustang seeks to strike paragraphs 168 and 169, and paragraphs 7 and 8 of the Prayer for Relief, which seeks treble punitive/exemplary damages.

Paragraphs 168 and 169 pertain to punitive damages. They state: “168. Defendants DALK’s fraudulent actions and misrepresentations, were a substantial factor in causing Plaintiffs harm. These actions were despicable and malicious.

“169. Consistent with the application of Civil Code §3294, Plaintiff MAVERICK requests judgment, for exemplary damages as a multiplier of all amounts paid to DALK, both prior to November 27, 2023, and the \$30,937 amount, in total to deter further forgeries and fraud.”

Paragraph 7 of the prayer states: “Judgment against Defendants MCC and DALK jointly and severally, for Conspiracy to Commit Fraud, jointly and severally, for the change orders on Contracts

A-C, the TBD additional work, and the \$30,937.50 that was paid to DALK on Contract D, plus attorney fees, and treble punitive / exemplary damages as a multiplier of the above.”

As these paragraphs pertain to Plaintiffs’ cause of action for fraud, which allows for punitive damages, the motion as to paragraphs 168, 169, and 7 of the Prayer is DENIED.

Paragraph 8 of the Prayer states: “Judgement [sic] against Defendant MCC for Breach of the Covenant of Bad Faith and Fair Dealing in the amount of compensatory damages delineated in the breach and fraud claims, plus attorney fees, and exemplary damages as a multiplier of the above for breach of the covenant of good faith and fair dealing.”

A cause of action for breach of the covenant of good faith and fair dealing does not support punitive damages. However, the bulk of this paragraph does not pertain to that cause of action. The motion is GRANTED as to the following language: “of the above for breach of the covenant of good faith and fair dealing.”

6. Additional requests in reply

In reply, Mustang requests additional paragraphs be stricken. These are represented as being related to new allegations which Plaintiffs were not given leave to assert and are based upon defendant Jason Dalk’s request to have these allegations stricken. This court’s ruling on the motion to strike the new cause of action for conspiracy was stricken outright as improper because Plaintiffs did not request leave to amend. Therefore, Mustang need not also bring a motion to strike this cause of action.

Mustang also sites additional paragraphs which do not pertain to the fourth cause of action for conspiracy. As to these, as they were not identified in Mustang’s notice of motion; therefore, the request is denied.

7. Conclusion and Order

The motion is GRANTED as to paragraphs 100 through 118, 192, 193, and the language stating “of the above for breach of the covenant of good faith and fair dealing” in paragraph 8 of the prayer. The motion is DENIED as to paragraphs 98, 99, 190, 191, 194, 195, 168, 169, and paragraphs 7 of the prayer. As to paragraphs 170-186 the motion is MOOT.

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

2. 25CV05669, In Re Petition of Peachtree Settlement Funding, LLC.

This matter is on calendar for the hearing of Petitioner Peachtree Settlement Funding, LLC, for hearing on its Petition for Approval for Transfer of Payment Rights from Zola Ruiz to itself.

The motion is DENIED.

1. Court’s review of proposed transfer

“A transfer of structured settlement payment rights is void unless a court reviews and approves the transfer and finds the following conditions are met:

“(a) The transfer of the structured settlement payment rights is fair and reasonable and in the best interest of the payee, taking into account the welfare and support of his or her dependents.

“(b) The transfer complies with the requirements of this article, will not contravene other applicable law, and the court has reviewed and approved the transfer as provided in Section 10139.5.” (Ins. Code section 10137.)

“A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or annuity issuer is not required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express written findings by the court that:

“(1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents. (Ins. Code, § 10139.5(a)(1).)

Ms. Ruiz seeks to transfer 1 payment of \$500,000.00 due on 6/27/32; 1 payment of \$945,000.00 due on 6/27/2037; \$1,000,000.00 due on 6/27/42; and \$1,000,000.00 due on 6/27/47. If approved, she will receive \$1,000,000.00 from the transaction.

Ms. Ruiz is 28 years old. She is not married and has no minor children. She is employed 30-40 hours per week and earns \$2,500 a month. On March 16, 2022, she transferred 1 payment of \$211,000.00 due on 6/27/2027 to Symetra Assigned Benefits Service Company. She received \$130,612.17 from that transfer.

Ms. Ruiz states that she is currently experiencing financial hardship. In support of this petition, she states: “I have developed a clear and responsible plan for how these funds will be managed and invested. Over the past several months, I have taken intentional steps to ensure that this plan is structured for long-term stability, growth, and accountability. I have entered into an agreement with a licensed Financial Adviser, Securities and Insurance specialist. Together, we have already begun formal investment planning to allocate funds into diversified stock portfolios and secure financial instruments. This ensures that my assets will be handled responsibly and monitored under proper professional oversight. In addition, I have retained a licensed realtor to assist me in identifying investment properties that will generate ongoing rental income and equity over time. These real estate purchases are intended not for personal luxury, but to establish sustainable income streams and long-term financial security. I am also in the process of acquiring a Mission Foods distribution route, a tangible business venture producing consistent weekly income. This business acquisition will diversify my portfolio and create a reliable foundation for future growth. Each of these decisions has been made with guidance from qualified professionals and with careful attention to both risk management and long-term return. My goal is to use these funds not for short-term consumption, but to build assets that provide stability, independence, and a foundation for future opportunities. For these reasons, I respectfully state that accessing my funds currently is in my best interest.”

The proposed investment portfolio is attached as Exhibit A to Ms Ruiz’s declaration. It shows a proposed portfolio of \$200,000 invested into the Mission Foods route, \$400,000 invested in a market portfolio, \$200,000 invested in real estate, \$150,000 invested in crypto and private ventures, and \$50,000 in an interest earning cash reserve. “Expected” annual returns are listed as being from 4% to up to 60% for the Missions Foods route.

Ms. Ruiz obtained \$130,612.17 in 2022. She does not explain why, despite that influx of capital, that she is currently experiencing hardship. In reviewing that petition, Ms. Ruiz stated that she had reduced income, paying for her elderly father’s care, and was at risk of foreclosure. The money received was to pay off her mortgage.

While a business and investments may become profitable through skill, experience, and diligence, Ms. Ruiz has not explained the proposed business nor established its probable success. If her business plan is viable, a bank loan would be a more prudent route. Ms. Ruiz’s plan is to forego guaranteed future payments in exchange for potentially higher yielding investments. However, investment results are not guaranteed. Nor is a return on real estate investments. It is not clear where Ms. Ruiz would obtain a real estate investment for \$200,000 that would provide for rental income that would not be a financial drain due to rehabilitation and maintenance costs. Moreover, the claim of financial hardship, or the desire to buy a business or to gamble for higher returns, does not support transferring all future payments consisting of \$3,445,000.

This court cannot find that the proposed transfer is in Ms. Ruiz’s best interest.

2. Conclusion and Order

Based on the foregoing, the motion is DENIED.

Due to the lack of opposition, the court's minute order shall constitute the order of this court.

3. SCV-270338, Salazar v. Moreno Consulting Group Inc.

1. Noticed Discovery Motions

a. Motion to Compel Deposition of PMK

Plaintiff Olegario Santino Salazar ("Plaintiff") moves pursuant to CCP section 2025.010 et seq., specifically section 2025.450, to compel Defendant Moreno Consulting Group, Inc.'s ("Defendant") Person Most Knowledgeable ("PMK") to attend and testify at deposition and to produce the documents specified in the deposition notice. Plaintiff also requests Defendant's answer be stricken and Plaintiff be allowed to take Defendant's default for failure to respond to discovery.

b. Motion to Compel Request for Production of Documents

Plaintiff moves pursuant to CCP section 2030.010, et seq., specifically 2031.300, for an order compelling Defendant to produce verified responses, without objection, to Plaintiff's request for production of documents. Plaintiff also requests Defendant's answer be stricken and Plaintiff be allowed to take Defendant's default for failure to respond to discovery.

c. Form Interrogatories

Plaintiff moves pursuant to CCP section 2030.010, et seq., specifically section 2030.290(b), for an order compelling Defendant to produce verified responses, without objections, to form interrogatories, set two. Plaintiff also requests Defendant's answer be stricken and Plaintiff be allowed to take Defendant's default for failure to respond to discovery.

d. Special Interrogatories

Plaintiff moves pursuant to CCP section 2030.010, et seq., specifically section 2030.290(b), for an order compelling Defendant to produce verified responses, without objections, to form interrogatories, set two. Plaintiff also requests Defendant's answer be stricken and Plaintiff be allowed to take Defendant's default for failure to respond to discovery.

e. Request for Admissions

Plaintiff moves pursuant to CCP section 2033.010, et seq., specifically section 2033.280, for an order deeming admitted Defendant's responses to Plaintiff's Request for Admissions, Set Two. Plaintiff also requests Defendant's answer be stricken and Plaintiff be allowed to take Defendant's default for failure to respond to discovery.

2. Motion to Strike Answer

Each of Plaintiff's motions request that this court strike Defendant's answer so that Plaintiff may take Defendant's default. Plaintiff has not provided any legal authority to support this request, which is DENIED.

3. Motions to Compel

On May 2, 2025, Plaintiff served Defendant with Form Interrogatories, Special Interrogatories, and Demands for Production of Documents, Set Two. (Carr decl. ¶6.) Despite Plaintiff's counsel's attempt to meet and confer with Defendant's principals, Plaintiff did not receive a response to his discovery requests. (*Id.*, ¶¶7-10, 12.)

Pursuant to CCP sections 2030.290 and 2031.300, Plaintiff's motions to compel Defendant to provide responses, without objections to Plaintiff's Form and Special Interrogatories, Set Two, and Request for Production of Documents, Set Two, is GRANTED. Defendant Moreno Consulting Group, Inc. is directed to provide responses within 20 days of the service of this order.

4. PMK

On May 2, 2025, Plaintiff served Defendant with its notice of deposition of Defendant's PMK. (Carr decl., ¶6.) The deposition notice scheduled the deposition for June 5, 2025. (*Id.*, Exhibit 2.) Plaintiff's counsel attempted to take the deposition on June 5, 2025. (*Id.*, ¶11.) There was no appearance by Defendant or anyone on Defendant's behalf. (*Ibid.*, Exhibit 6.)

The notice of deposition requires the production of documents. Under CCP section 2025.450(c), the motion must set forth specific facts showing good cause justifying the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice. As Plaintiff has not shown good cause to produce the requested documents, the motion is DENIED, without prejudice.

5. Requests for Admissions

On May 2, 2025, Plaintiff served Defendant with its Requests for Admissions, Set Two. (Carr decl., ¶6.) Despite meet and confer efforts, no response was provided. (*Id.*, ¶¶9-10, 12.)

Pursuant to CCP section 2033.280(b), **unless Defendant Moreno Consulting Group, Inc. provides responses before the hearing on this motion, the motion will be GRANTED and Plaintiff's requests for admissions, set two, will be deemed admitted.**

6. Conclusion and Orders

Plaintiff's motions to compel responses to his form interrogatories, special interrogatories, and request for production of documents are GRANTED. Plaintiff's motion to compel deposition of Defendant's PMK is DENIED. Plaintiff's motion to deem requests for admissions admitted will be granted if Defendant fails to provide responses prior to the hearing on the motion. This court will sign the applicable orders.

4. SCV-272344, Doe v. Sonoma Academy

Defendant Sonoma Academy ("Defendant") moves for an order permitting it to file portions of its application for the determination of a good faith settlement and supporting documents under seal. **The motion to allow Plaintiffs' names to be sealed is GRANTED. The motion to seal the settlement amounts is DENIED.**

Cal. Rules of Court, Rule 2.550(c) specifies that "[u]nless confidentiality is required by law, court records are presumed to be open."

Defendants' motion is made pursuant to subsection (d) of Rule 2.550, which provides: The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest.

1. Overriding Interest

Defendant argues that the overriding interest is the parties' contractual right to maintain the confidentiality of the settlement amounts and the allocation of payments, which are material terms of the parties' agreement. Defendant also argues that the Plaintiffs' right to privacy supports the request.

Plaintiffs' right to privacy is currently protected by the use of pseudonyms. However, assuming their actual names are part of the settlement agreement, their right to privacy in this matter has already been determined to be an overriding interest. As to their names, the motion is GRANTED.

With respect to the parties' agreement to maintain the confidentiality of the settlement amounts, Rule, 2.551(a) provides that the "court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties."

The cases cited by the parties do not support sealing the record based solely upon the parties' agreement to keep certain information confidential. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal. 4th 1178 pertains mainly to the right of access to ordinary civil trials and proceedings under Code of Civil Procedure section 124. The Supreme Court of California affirmed the appellate court's determination that the trial court erred in issuing an exclusion order and delaying the disclosure of the closed hearing transcripts until after the trial. The Supreme Court found that while the right to a fair trial is an overriding interest supporting close and sealing of the transcript, the trial court made no findings that prejudice to that interest was substantially probable and that the order closing the courtroom during all nonjury proceedings was not narrowly tailored. Moreover, less restrictive means were available.

In *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, the motion to seal was denied as the movie company failed to demonstrate substantial prejudice to its business interests if the settlement agreement was not sealed. The court noted that financial and accounting data attached to the judicial notice request were not entitled to be sealed.

As to the settlement amounts, the motion is DENIED.

2. Conclusion and Order

The motion to allow Plaintiffs' names to be sealed is GRANTED. The motion to seal the settlement amounts is DENIED. Defendant has not cited legal authority that the parties' agreement to keep the settlement amount confidential is an overriding interest supporting sealing that information.

Due to the lack of opposition, the court's minute order shall constitute the order of this court.

5. **SCV-273748, Heinichen v. Rogers**

Defendant Moore Services Holdings, LLC, dba Moore Homes Services ("Moore") moves for summary judgment in its favor against Plaintiffs Kevin Heinichen and Jennifer Heinichen, individually and as Guardian Ad Litem for Troy Cox, Jaxon Shallert, and Hannah Heinichen ("Plaintiffs"). **The motion is DENIED.**

1. Complaint

On July 14, 2023, Plaintiffs filed their complaint against Moore and others alleging thirteen causes of action. Three are alleged against Moore: two causes of action for general negligence and one for negligent infliction of emotional distress. As to Moore, the complaint alleges they hired Moore to inspect and repair their furnace. Plaintiffs allege that due to Moore's negligence, a fire started in the garage, entered the home, injured Plaintiffs and destroyed their property.

2. Plaintiffs' Objections

Plaintiffs' objections, numbers 1, 2, 3, and 8 are sustained. Objection number 4, 5, 6, 7, and 9 are overruled.

3. Moore's Objections in Reply

Moore's objections, numbers 1 through 4 are overruled.

4. Overview of Arguments

Moore argues that Plaintiffs' only evidence to support allegations of its negligence is the fire investigation report created by Inspector Pham. Moore argues the fire investigation report is inadmissible, unsupportable, and does not establish its negligence. Moore argues that Inspector

Pham failed to follow his own stated protocols to come to his conclusion that a gas leak in the line to the furnace caused the fire. Moore argues there was no gas leak when it completed its work in February, and that Moore did not have exclusive control of the furnace, or any control, for five months. Moreover, Moore argues other work was performed in the area of the gas leak during those five months, which breaks any chain of causation between Moore's work and the fire. Lastly, Moore argues lithium-ion batteries, lithium powered tools, and lithium-ion bike batteries were found in the area of fire origin impliedly creating doubt about Inspector Pham's findings.

5. Furnace

On December 21, 2021, Moore technicians installed a new furnace at the Subject Property. (UMF 2.) The furnace was last worked on by Moore on February 23, 2022, when the gas line was relocated by Moore technician Jason Wall. (UMF 4.) The fire occurred on July 14, 2022, approximately five months thereafter. (UMF 23.)

6. Fire Investigation Report ("FIR") and testimony

Plaintiff's discovery responses indicate that the fire report, supplemental fire report, and any documentation contained in the City of Santa Rosa permitting department provide the details supporting their claim that the coupling adapter on the furnace was loose and not secured, which caused the fire. (UMF 80). The FIR states that the burn patterns show the origin of the fire was within the vicinity of the furnace and water heater in the southeast corner of the garage. (Exhibit 7.) Investigator Quang Pham concluded, based upon his inspection and interview of witnesses, that the fire started from the furnace. (*Ibid.*) He found that the coupling for the connector for the gas line feeding the furnace was not secured, causing natural gas to leak. (*Ibid.*) The inspector testified that when the igniter inside the furnace started, it ignited leaked gas. (Pham depo., 135:16-136:6.)

From the time Plaintiffs moved into the home on May 15, 2022, until the date of the fire on July 14, 2022, Plaintiffs did not smell gas. (UMF 11, 12.) In early June the water heater in the home was not heating water properly. (UMF 13.) Jennifer Heinichen called the Property Manager, Anthony Pereira, who came to the Subject Property and adjusted the pilot light on the water heater. (UMF 14; J. Heinichen depo., 32:25-33:6; 33:22-34:2.) The water heater and furnace are located next to each other and share the same gas line. (UMF 5.) Inspector Pham did not know whether work on the water heater could have caused the coupling on the gas line to become loose. (UMF 63.) The furnace itself was not found to have malfunctioned. (UMF 74.)

Plaintiff Jennifer Heinichen first turned on the furnace one week prior to the fire and did not notice anything unusual with it at that time. (UMF 16.) She did not smell gas. (UMF 17.) She turned the furnace on a second time sometime in the week before the fire and cannot recall whether she thereafter turned the furnace off or if she just left it on. (UMF 19.) She did not smell gas in the garage the day before or in the morning before the fire. (UMF 20; J. Heinichen depo., 23:24-24:5; 24:16-18.) Nor did she smell gas in the family room closest to the garage before the fire. (UMF 21.) She stated: "Shortly after 10:00 a.m., I logged into Zoom and heard a noise that sounded like a thump. Soon after the noise I smelled smoke and then saw smoke coming from around the edges of the door leading from the garage." (J. Heinichen depo., 24:21-24.)

Inspector Pham's determination that the furnace was the source of the fire was based upon his experience, training, and looking at the indicators and the items that were inside the room and the burn patterns. (Pham depo. 139:19-25.) He testified that when the igniter inside the furnace started, it ignited leaked gas. (*Id.*, 135:20-22.)

7. Admissibility of Fire Report

Moore argues that the FIR is inadmissible hearsay and does not fall under the public records exception under Evidence Code section 1280, was not based on sufficient evidence, Inspector Pham strayed from NFPA 921 standards, and because Inspector Pham is not sufficiently qualified to opine on gas leaks.

a. Evidence Code section 1280

Evidence Code section 1280 provides: “Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies:

- “(a) The writing was made by and within the scope of duty of a public employee.
- “(b) The writing was made at or near the time of the act, condition, or event.
- “(c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.”

Moore does not discuss why the FIR does not meet the elements of section 1280. Rather, he argues accident reports and the like compiled by police based upon statements of participants, bystanders, measurements, deductions and conclusions of their own fail to qualify as admissible official records or business records. He cites *People v. Flaxman* (1977) 74 Cal.App.3d Supp. 16, *Hoel v. Los Angeles* (1955) 136 Cal.App.2d 295, and *Harrigan v. Chaperon* (1953) 118 Cal.App.2d 167.

People v. Flaxman (1977) 74 Cal.App.3d Supp. 16, 20 notes that Evidence Code section 1280 establishes the criteria by which a determination can be made to admit a public record into evidence. The court noted that the inclusion of conclusions and opinions in a record does not render it inadmissible per se. (*Ibid.*) The overriding consideration is the trustworthiness of the record. (*Ibid.*) The *Flaxman* court concluded a court may admit a certified copy of an engineering and traffic survey. (*Id.*, pp. 20-22.)

The court in *Hoel v. City of Los Angeles* (1955) 136 Cal.App.2d 295, 297 determined that accident reports, especially those compiled by police at the scene of an accident-based on statements of participants, bystanders, measurements, deductions and conclusions of their own fail to qualify as admissible “official” records or “business records.”

In *Harrigan v. Chaperon* (1953) 118 Cal.App.2d 167, 168, a fire inspector found: “Evidence reveals that Harry Price a welder had been working on the back of a Yellow Taxi Lic BE PC CC 709 with a welding torch when the sparks ignited some gasoline spilt on the floor from the cab which had been jacked up on the side opposite the gasoline intake allowing gasoline to spill on the floor causing a spark from the welders torch to ignite it and cause the fire.” No witnesses were produced. The trial court determined that the evidence did not disclose and no testimony was offered tending to show what the “evidence” was that revealed these facts. (*Ibid.*)

The authority cited does not support finding that the FIR, or evidentiary findings documented therein and supported by the testimony of Inspector Pham, are inadmissible as a matter of law.

b. Evidence supporting the FIR

Moore argues that there is insufficient evidence supporting the FIR making it inadmissible. Moore has not established that the FIR and supporting testimony are inadmissible. A trier of fact could reasonably infer that because Moore’s employee installed the coupling, that it was not installed correctly or was left loose. What weight to give this evidence is for the trier of fact.

c. Intervening Causes

Moore emphasizes the fact that its work on the furnace and gas line occurred several months before the fire and that there was work performed thereafter. This fact appears insignificant because Plaintiffs did not use the furnace until the week of the fire. Plaintiffs only used the furnace once after the gas line was relocated and prior to the fire. The fire occurred during the second use, after the furnace was left on for several days. Inspector Pham stated a small leak could have existed without allowing sufficient gas accumulation for people to smell. Based upon this, the trier of fact

could reasonably infer that having the furnace on for multiple days allowed sufficient gas leakage to cause an ignition once the furnace came on.

Moore also argues that the property owner “worked on” the furnace prior to when Plaintiffs moved in. This appears to be based upon a statement made by Plaintiffs’ neighbor, who is not identified, to Jennifer Heinichen stating the neighbor saw the property owner “installing” the furnace. But, because Moore installed the furnace that was at the house during the fire, it appears this hearsay statement made by Plaintiffs’ neighbor is not accurate.

d. NFPA guidelines

Moore argues that Inspector Pham did not follow National Fire Protection Agency 921 guidelines arguing against reliance on the FIR. (UMF 26-57.) Inspector Pham did not test for a leak or the natural gas system because that would have been unsafe. (UMF 30-33; Pham depo., 152:2-4; 170:7-9.) He did not determine the supply pressure. (UMF 34.) He did not check the gas meter to determine whether gas, if any, had escaped or been used by the home at the time of the incident. (UMF 46-52.) He concluded that “gas filled the area until the concentration of the fuel in the environment was ready for ignition” (UMF 66) but did not know what the gas concentration was. (UMF 67). He did not take measurements to determine the area that was required to fill with gas in order to ignite nor did he take measurements regarding how much gas would be needed in order to reach the ignition portion of the furnace. (UMF 69).

Moore runs through various NFPA 921 methodologies and argues that Pham’s inspection did not comply with those requirements. Moore ignores Pham’s reason for not checking for leaks or for performing other examinations. Pham explained in his testimony that it would have been unsafe to do so. Moore does not cite authority that Pham should not have taken safety into consideration in deciding what inspections and examinations to do. Moore has not shown that Inspector Pham’s report or testimony is unreliable.

e. Physical Evidence

Moore argues that Inspector Pham did not document valuable physical evidence in contravention of NFPA 921. Inspector Pham found lithium-ion batteries, lithium powered tools, and lithium-ion batteries resembling those of a bike but did not document this information in his report. (UMF 38-40.) Investigator Pham agreed that combustible materials stored near the furnace created a fire hazard. (UMF 60.) He testified that certain physical evidence was not mentioned in the report because it was not determined to be the cause of the fire. (Pham depo, 104; 22-105:7; 109:2-4; 112:8-12.)

In addition, important details relied upon by Moore are not sufficiently explained. Moore has not explained where the coupling was located, how it could have been disturbed by installation of a water heater, or when exactly that water heater was installed. The evidence indicates the coupling is on the line that feeds the furnace. Moore has not provided evidence to support an inference that installation of a water heater could have loosened a coupling on the gas line feeding the furnace. But, even if it did, this court must construe the evidence and all inferences in Plaintiffs’ favor.

Finally, Moore has not attempted to explain a critical question. The noise heard by Jennifer Heinichen right before the fire erupted is a critical clue to what caused the fire. Provision of a possible explanation would help clarify what started the fire. Hearing this noise immediately before the fire started supports Inspector Pham’s analysis.

f. Inspector Pham’s Qualifications

Moore argues that Inspector Pham is not qualified to opine on gas leaks such that his conclusion that a gas leak from the coupler should be excluded. Moore’s argument is not based upon any lack of credentials. Rather, it argues that certain findings made by Inspector Pham show he is not qualified. Moore has not cited any authority that its determination that Pham is incorrect in

his findings can be used to establish he is not qualified. Nor has Moore explained how Pham's findings could be inaccurate.

8. Expert – Michael O'Connor

Moore's expert, Michael O'Connor, Senior Principal Engineer at EFI Global, opines that from his review of the FIR and physical examination of the Subject Property, gas was not leaking after Moore completed its work on February 23, 2022, and no failure of the furnace was found. (UMF 71, 73.) He opines that Moore's work did not cause or contribute to any gas leak or to the fire. (UMF 72, 73.)

Mr. O'Connor's opinions are conclusory. As in *Harrigan v. Chaperon, supra*, he does explain what evidence supports his conclusions. An expert must present evidence supporting conclusions—not legal conclusions, which are for the trier of fact. Mr. O'Connor does not present any evidence based upon his review of the FIR and inspection of the subject property to rebut the FIR. His status as an expert does not mean his unsubstantiated conclusions must be accepted.

9. HVAC Technician Jason Wall

Mr. Waller states that he has been an HVAC technician for 15 years. (Wall decl., ¶4.) He states that he would not have left a coupling connected to a furnace loose and that he has never previously done so. (*Id.*, ¶9.) Wall's declaration that he would not have left a coupling loose does not mean he did not leave it loose, or that he correctly installed it. Credibility is not accessed on a motion for summary judgment. It is an issue for the trier of fact. Whether the trier of fact believes Mr. Wall's testimony regarding the installation of the coupling on the subject furnace is a triable issue of fact.

10. Conclusion and Order

On a motion for summary judgment, all inferences and evidence must be construed in Plaintiffs' favor. Based upon the foregoing, the motion is DENIED. Moore has failed to meet its burden to establish that Plaintiffs do not have any evidence that would create a triable issue of material fact regarding whether Moore's negligence contributed to the fire.

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