TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, December 10, 2025 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
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.

CourtCall is not permitted for this calendar.

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

TO JOIN D17 ZOOM ONLINE:
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 Gaskell'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. 24CV01533, Kaplan, ESQ v. London

The hearing on Defendant A.V.C.H., Inc.'s motion to compel arbitration of Plaintiff Simone Woods' claims is **CONTINUED** to Wednesday, February 11, 2026, at 3:00 P.M. in Department 17, per the parties' stipulation to continue the hearing.

2. 24CV05839, Harris v. Sonoma Specialty Hospital, LLC

Counsel Dawn Smith of Smith Clinesmith LLP's moves unopposed to be relieved as counsel for client John Harris by and through his power of attorney Heather Harris. The hearing on the motion is **CONTINUED** to Friday, January 23, 2026, at 3:00 P.M. in Department 17.

Counsel's proof of service stated that the moving papers were served on the client's power of attorney, Heather Harris, on August 7, 2025. However, the Court's record indicates that the motion filing and the proof of service were not accepted until August 14, 2025, and as such, the hearing date on the motion was also not assigned until then. The Court notes that no notice of hearing for the motion has been filed with the Court. For that reason, the Court is uncertain whether the parties in this matter had sufficient notice of the hearing date on

this motion. Counsel shall submit proof to demonstrate that the moving papers and notice of the hearing date were timely and properly served on all parties prior to the next hearing date, otherwise the Court will deny the motion.

3. 24CV05965, White v. Alimpic

Defendant George Alimpic's ("Defendant") demurrer to Plaintiff Keith White's Second Amended Complaint ("SAC") is **OVERRULED** as to the Fifth Cause of Action and **SUSTAINED with leave to amend** as to the Sixth Cause of Action. Defendant's requests for judicial notice are **GRANTED.** Plaintiff shall file the Third Amended Complaint within 20 days of service of notice of entry of this Court's order.

I. PROCEDURAL HISTORY

Plaintiff owned real property located at 2975 Calistoga Road, Santa Rosa, California, APN 028-100-002 (the "Property"), which is approximately 116 acres of undeveloped land. (SAC, ¶¶ 1, 8.) Plaintiff intended to level the area to use it as a horse arena and for agricultural outbuildings like a barn and shed. (*Id*. at ¶ 9.) Plaintiff alleges that Defendant agreed to deliver and install sufficient fill material and perform the necessary grading to meet Plaintiff's needs. (*Id*. at ¶ 11.) Defendant did the work, but failed to apply for or obtain the required governmental approvals for the Project or grading permits from the County of Sonoma. (*Id*. at ¶ 13.) Permit Sonoma issued a Notice of Violations requiring environmental restoration of the Property per the County Code. (*Id*. at ¶ 15.)

Defendant demurred to Plaintiff's First Amended Complaint, which was partially sustained with leave to amend as to the Fifth and Sixth Causes of Action and overruled as to the other causes. (See Order on Defendant's Demurrer to Plaintiff's First Amended Complaint.) Plaintiff filed the Second Amended Complaint, which continues to allege the Fifth and Sixth Causes of Action for indemnity and unfair competition in violation of California Business and Professions Code section 17200 et seq. (SAC, ¶¶ 35-57.)

Defendant now demurs again to the Fifth and Sixth Causes of Action in the SAC arguing that they fail to state facts sufficient to constitute a claim and because they are uncertain. (Notice of Demurrer, 1:23-27, 2:1-2.) The parties met and conferred via correspondence regarding Defendant's issues with the allegations in the SAC, but Plaintiff indicated that she would not amend the SAC, so Defendant filed this demurrer. (Falace Decl., ¶¶ 2-3.) Plaintiff filed an opposition, to which Defendant filed a reply brief.

II. REQUEST FOR JUDICIAL NOTICE

Per California Evidence Code sections 452 and 453, California Rules of Court, Rules 3.1113(l) and 3.1306(c), and *People v. Bratton* (2023) 95 Cal.App.5th 1100, Defendant requests judicial notice of the following documents:

1. Violation VGR23-0025 issued by the County of Sonoma (Permit Sonoma) on August 30, 2023;
2. Report from North Coast Regional Water Board, dated November 27, 2023;

3. Aerial imagery from the National Oceanic and Atmospheric Administration website dated January 23, 2023;
4. Aerial imagery from the County of Sonoma's Geographical Information Systems dated from 2021; and

The Court **GRANTS** judicial notice as to the above.

III. DEMURRER

Legal Standard

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Fifth Cause of Action for Indemnity

For a cause of action for indemnity, the plaintiff can allege that an obligation of indemnity arose from indemnity expressly provided for by a contract, indemnity implied from a contract not specifically mentioning indemnity, or from the equities of a particular circumstances. (*Prince v. Pacific Gas & Electric Co.* (2009) 45 Cal.4th 1151, 1157.) The elements of a cause of action for indemnity are: "(1) a showing of fault on the part of the indemnitor and (2) resulting damages to the indemnitee for which the indemnitor is . . . equitably responsible." (*Bailey v. Safeway, Inc.* (2011) 199 Cal.App.4th 206, 217.) In fact the right to indemnity "flows from payment of a joint legal obligation on another's behalf." (*AmeriGas Propane, LP v. Landstar Ranger, Inc.* (2014) 230 Cal.App.4th 1153, 1167.)

The Court sustained Defendant's previous demurrer to this cause of action on the basis that the claim was unripe and, though Plaintiff claims that restoring the Property per the County's instructions will be a costly endeavor, Plaintiff did not allege that any costs have actually been incurred for which Defendant should be held liable for indemnification. (Demurrer, 8: 12-15.) Furthermore, even though Plaintiff alleges that he is subject to code enforcement demands, but not that he has paid any cost, fine, or penalty to restore the Property. (Order on Defendant's Demurrer to Plaintiff's First Amended Complaint, p. 9.)

Plaintiff added an allegation that, "Plaintiff has spent in excess of $82,000 on various consultants to prepare a restoration plan for the Subject Property, including engineering and biological consultants." (SAC, ¶ 40.) Defendant argues that the Fifth Cause of Action is still defective because the parties had no agreement and the claim is still not ripe because there were not yet any fines or penalties levied against Plaintiff's Property and a right to equitable indemnity accrues only when plaintiff has suffered actual loss through payment because Plaintiff never paid Defendant and the money spent on consultants to prepare a restoration plan as that does not count towards fines or penalties. (Demurrer, 9:1-12.)

Plaintiff argues that Defendant provides no authority that Plaintiff's claimed costs have to count towards fines or penalties, but rather that the Court required Plaintiff to allege actual loss to satisfy the accrual requirement of indemnity. (Opposition, 5:9-28, 6:1-23.)

The Reply reaffirms arguments made in the Demurrer.

As Plaintiff now alleged actual loss suffered to prepare a restoration plan as required by the County to mitigate all environmental damage caused due to the imported fill provided by Defendant, the Court finds the SAC satisfies the accrual requirement for Plaintiff's indemnity claim. The Demurrer is **OVERRULED** as to the Fifth Cause of Action.

Sixth Cause of Action for Unfair Competition in Violation of California Business and Professions Code section 17200 et seq.

The Demurrer argues that Plaintiff fails to state sufficient facts to constitute a cause of action for the violation of the UCL because the SAC makes generalized conclusory allegations of misconduct falling short of the requirement to state with reasonable particularity the specific facts supporting the violation. (Demurrer, 9:17-21.) Defendant argues that Plaintiff never paid for any of his work and does not state fact showing Defendant's conduct violated or threatened a violation of an antitrust law or significantly threatened or harmed competition. (*Id*. at 9:22-28, 10:1-20.) In the case *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.* (1999) 20 Cal.4th 163 "*Cel-Tech*" cited by Defendant, the Supreme Court of California ruled that, "when a plaintiff who claims to have suffered injury from a direct competitor's 'unfair' act or practice invokes section 17200, the word 'unfair' in that section means conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition." (*Cel-Tech*, supra, at p. 187.) Defendant argues that Plaintiff failed to plead facts showing that Defendant's conduct violated or threatened to violate an antitrust law or otherwise significantly threatened or harmed competition. Defendant also argues that the exception under section 7048 applies because Plaintiff's project was standalone and because the aggregate contract price was less than $1,000.00 because Plaintiff did not pay Defendant for the work. However, Defendant was silent as to whether a permit was required for the type of work done.

Plaintiff argues in the Opposition, that even if Defendant was not paid, he was still required to have a building permit under section 7028 and so the exception under 7048 cannot be established here. (Opposition, 7:15-21.) Plaintiff additionally claims to have incurred $82,000.00 to retain the consultants to prepare the restoration plan to remove the import fill and argues that he adequately pleaded an "unfair" business practice under the governing consumer unfairness standard for that reason. (*Id*. at pp. 6-9.)

In the Reply, Defendant reargues what was stated in the Demurrer.

Though Plaintiff did not pay Defendant at least $1,000.00 for the aggregate contract price, the Court does not find that the exception under section 7048 applies here because Defendant did not demonstrate that no permit was required for the work done. Per Bus. & Prof. Code, § 17204, "actions for relief pursuant to this

chapter shall be prosecuted exclusively in a court of competent jurisdiction …by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition." Even though Plaintiff claims $82,000.00 lost through consultants hired after the fact and also alleges that Defendant collected over $1,000.00 from other individuals, not including Plaintiff, for the job, Plaintiff did not sufficiently allege an "injury in fact" or "lost money or property" directly as a result of unfair competition. Under *Cel-Tech*, Plaintiff's allegations in support of the Sixth Cause of Action did not state specific conduct that violated or threatens an incipient violation of an antitrust law or significantly threatens or harms competition by Defendant. As such, the Court will **SUSTAIN** the Demurrer as to the Sixth Cause of Action with leave to amend.

IV. CONCLUSION

Based on the foregoing, the Demurrer is **OVERRULED** as to the Fifth Cause of Action and **SUSTAINED with leave to amend** as to the Sixth Cause of Action. Plaintiff shall file the Third Amended Complaint within 20 days of service of notice of entry of this Court's order on the Demurrer.

Defendant 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).

4. 24CV07290, Wolkenhauer v. American Refrigeration Supplies, Inc.

The Court **GRANTS** Plaintiff Anthony Wolkenhauer's ("Plaintiff") unopposed motion for preliminary approval of class and representative PAGA action settlement. The Final Fairness Hearing shall be held on Wednesday, **April 15, 2026**, at 3:00 p.m. in Department 17.

I. PROCEDURAL HISTORY

Plaintiff brought this class action against Defendant American Refrigeration Supplies, Inc. for labor code violations by way of their employment practices and policies. (Memorandum of Points & Authorities ["MPA"], 3:8-14.) After Plaintiff filed the Complaint, the parties exchanged information informally including statistical data and written policies and procedures relating to wages, meal breaks, rest breaks, overtime compensation, and expense reimbursement. (MPA, 4:9-16.) The parties then participated in a private mediation, which included arms-length, informed negotiations. (*Id*. at 4:17-18.) The parties ultimately agreed to settle this action on an all-inclusive basis for $260,000.00 (*Id*. at 2:5-6.) Now, Plaintiff moves unopposed for preliminary approval of the class and representative PAGA action settlement.

II. ANALYSIS

Legal Standard for Preliminary Approval

A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing. (C.R.C., Rule 3.769(a).) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. (C.R.C., Rule 3.769(c).) The settlement agreement and proposed notice to class members must be filed with the motion,

and the proposed order must be lodged with the motion. (*Ibid.*) The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (C.R.C., Rule 3.769(d).) If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing. (C.R.C., Rule 3.769(e).) Additionally, rule 3.769(f) states that, "if the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement."

The court must determine the settlement is fair, adequate, and reasonable. (C.R.C., Rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A presumption of fairness exists where: 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The test is not the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.) In making this determination, the court considers all relevant factors including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

Plaintiff's Motion for Preliminary Approval

Plaintiff moves unopposed for preliminary approval of the Court for the below terms outlined under the parties' proposed Settlement Agreement attached as Exhibit B to the Declaration of counsel Otkupman.

a. Class Members

The Class is all current and former non-exempt employees of Defendant who worked for Defendant in California as a non-exempt employee at any time during the Class Period, from December 2, 2020, through June 30, 2025. (Otkupman Decl., Ex. B, Settlement Agreement, §§ 1.5, 1.12.)

b. Settlement

The Settlement means the disposition of this action effected by the parties' agreement and the Judgment entered by the Court after final approval, for the maximum settlement amount of $260,000.00 to be paid by Defendant. (Otkupman Decl., Ex. B, Settlement Agreement, §§ 1.1, 1.19, 1.21, 1.22, 1.25, 1.28, 1.44.)

c. Administrator

The parties have agreed to ILYM Group as Settlement Administrator and seek approval of administrator expenses payment up to $5,550.00. (*Id.* at Ex. B, Settlement Agreement, §§ 1.2, 1.3, 3.2.3.)

d. Attorney Fees and Costs

Plaintiff seeks approval of Otkupman Law Firm, A Law Corporation, as Class Counsel and an approval of attorney fees will be up to $91,000.00 and costs up to $20,000.00. (*Id*. at Ex. B, Settlement Agreement, §§ 1.6, 1.7, 3.2.2.)

e. PAGA/LWDA Allocation

The PAGA Payment shall be $20,000.00 with 65% for the LWDA award ($13,000.00) and 35% for the Individual PAGA Aggrieved Employee award ($7,000.00). (*Id*. at Ex. B, Settlement Agreement, §§ 1.34, 3.2.5.)

f. Class Representative Service Payment

Plaintiff as Class Representative seeks approval of up to $10,000.00 for Plaintiff's Class Representative Service Payment. (*Id*. at Ex. B, Settlement Agreement, §§ 1.13, 3.2.1.)

Application

Prior to settlement, the parties engaged in informal discovery and participated in private, arms-length mediation, and determined that the proposed settlement was fair and reasonable. (MPA, 11:15-18.) Plaintiff argues that the settlement amount and the payment and expenses requested are presumptively fair and reasonable under all relevant circumstances considering Plaintiff's claims. (*Id*. at pp. 10-17.) No party has filed any objection or opposition to the preliminary approval motion. Furthermore, the proposed notice attached to the Declaration of Otkupman as Exhibit C appears thorough and sufficient to adequately notify class members pursuant to Rule 3.769. For these reasons, the Court will grant preliminary approval.

III. CONCLUSION

Plaintiff's motion for preliminary approval and certification of the class, the Settlement Agreement, and class notice is **GRANTED**. The Final Fairness Hearing is hereby set for **Wednesday, April 15, 2026, at 3:00 p.m.** in Department 17. The Court will sign the proposed order lodged with the motion.

5. SCV-270994, Gold County Capital, Inc. v. LIS

Plaintiff Gurnam Sandhu's motion to compel Defendant Preferred Builders Group, LLC's responses to Request for Production of Documents, Set One is **CONTINUED** to Friday, January 23, 2026, at 3:00 P.M. in Department 17.

Plaintiff's proof of service attached to the motion states that the moving papers were served on July 22, 2025, by mail. These were served on Plaintiff on the same date that Plaintiff's other eight discovery motions were served. The Court's record indicates that the other eight discovery motions were accepted as filed on July 22, 2025. However, this discovery motion was not accepted until later on August 5, 2025. Hence, the hearing date for this motion was not assigned until then and the motion was set to be heard on a later date than the other eight motions. The Court notes that no updated proof of service giving the parties notice of the hearing date on this motion was filed with Court. As the Court is uncertain whether the parties in this matter had sufficient

notice of the hearing date for this motion, the hearing is continued to allow Plaintiff to submit proof that the moving papers and notice of the hearing date were timely and properly served. If the Court does not receive such proof prior to the next hearing date, the Court will deny the motion as procedurally deficient.

6. SCV-271254, Ramirez v. City of Rohnert Park

Defendant City of Rohnert Park ("Rohnert Park") moves for summary judgment against Plaintiffs Hugo and Rosemarie Ramirez's Second Amended Complaint ("SAC"), pursuant to Code of Civil Procedure ("C.C.P.") section 437c. The motion is **DENIED**. Plaintiffs' requests for judicial notice are **GRANTED**. Rohnert Park's objections are addressed below.

I. PROCEDURAL HISTORY

Plaintiffs filed this action as the surviving parents of Decedent Hugo A. Ramirez ("Decedent"), a Sonoma State University student who was struck and killed in a traffic collision while crossing East Cotati Avenue on or about noon on July 5, 2021. (Undisputed Material Facts ["UMF"] Nos. 1, 7.) Plaintiffs named the driver, the vehicle owner, Rohnert Park, and the Board of Trustees of the California State University (on behalf of Sonoma State University) as defendants alleging various causes of action against them. (SAC, ¶¶ 10-34.) As to Rohnert Park, Plaintiffs only allege the Third Cause of Action for dangerous condition of public property. (*Id*. at ¶¶ 16-22; UMF No. 8.) Plaintiffs allege that the portion of East Cotati Avenue and the adjacent sidewalks ("Subject Roadway") where Decedent was killed was owned and controlled by Rohnert Park at the time of the incident and multiple decades prior. (SAC, ¶¶ 16-22; UMF Nos. 5-6.) They claim that the design and layout of East Cotati Avenue at the location where Decedent attempted to cross created a substantial, reasonably foreseeable risk to pedestrians acting with reasonable care in a foreseeable manner. (SAC, ¶¶ 16-22; UMF Nos. 9-10.)

The County of Sonoma constructed the Subject Roadway in 1967 and Rohnert Park later annexed it. (UMF No. 14.) Initially, the County of Sonoma constructed the Subject Roadway pursuant to a design plan prepared and approved by the County's Road Commissioner and the County Board of Supervisors. (UMF No. 15.) Later, Rohnert Park designed and implemented improvements in 1989, including establishing the width and structure of the lanes. (UMF No. 16.) In 1991, Rohnert Park implemented further improvements to the Subject Roadway, including traffic signals at the intersection of Bodway Parkway and Cotati Avenue, pursuant to a design plan prepared by a licensed engineer and approved by Rohnert Park's City Engineer under the authority vested in him by the City Council. (UMF Nos. 18-19.) In 2010, Rohnert Park implemented more improvements to the Subject Roadway, including resurfacing, restriping of the roadway, additions of bicycle sharrows, addition of merge arrows and button dividers, again pursuant to a design plan reviewed and approved by Rohnert Park's City Engineer. (UMF No. 20.) Rohnert Park also completed a speed survey of the Subject

Roadway in 2018 and determined that the speed limit posted at the time was reasonable and appropriate, so no changes were necessary. (UMF No. 21.)

Rohnert Park now moves for summary judgment on the basis of design immunity arguing that the designs for the Subject Roadway were consistent with applicable roadway design and safety standards and also that Plaintiff cannot otherwise demonstrate Rohnert Park had notice of any dangerous condition. (Notice of Motion, 2:9-14.) Plaintiffs opposed the MSJ and Rohnert Park replied and filed objections to evidence.

II. REQUESTS FOR JUDICIAL NOTICE

Plaintiffs request judicial notice of the following items:

1. Photographs of the street level view of East Cotati Avenue at the incident site looking eastbound and westbound, as are publicly available from the "Google Streetview" software application, as of the dates closest in time to the incident;
2. Overhead photographic imagery of East Cotati Avenue and adjacent roads and land uses, as are publicly available from the "Google Maps" software application;
3. Overhead map schematic imagery showing the location of retail food service businesses within the environs of the Sonoma State University main campus, as are publicly available from the "Google Maps" software application; and
4. The content and existence of the December 13, 2016, public comment letter produced by Rohnert Park in this action, and the addressees of such letter. Judicial notice of the truth of the contents of the letter is not requested.

Judicial notice of State and Federal laws, regulations, legislative enactments, official acts and court records is statutorily appropriate. (Evid. Code §§ 451, 452.) The court must also take judicial notice of any matter requested by a party, so long as it complies with C.C.P. § 452. (C.C.P. § 453.) 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." (C.C.P. § 452(h).) However, while courts may take notice of public records, they may 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 limitations, Plaintiffs' requests are **GRANTED**.

III. EVIDENTIARY OBJECTIONS

The Court rules as follows to Rohnert Park's objections to the Declaration of Christian Engelmann:

1. Objection 1 to Paragraph 5, page 3, lines 1-3 as irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge and foundation, and improper opinion is **OVERRULED**.
2. Objection 2 to Paragraph 8, page 4, lines 20-24 as irrelevant, not appropriate expert testimony, and improper opinion is **OVERRULED**.

3. Objection 3 to all of Paragraph 9 as irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED**.
4. Objection 4 to all of Paragraph 11 as irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, improper opinion, and intruding upon province of court question on law is **OVERRULED**.
5. Objection 5 to all of Paragraph 12 as improper statement of law, improper legal conclusion, irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge and foundation, and improper opinion is **OVERRULED**.
6. Objection 6 to all of Paragraph 14 as not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED**.
7. Objection 7 to all of Paragraph 15 as irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge and foundation, and improper opinion is **OVERRULED.**
8. Objection 8 to Paragraph 16, page 6, lines 11-13 as improper statement of law, improper legal conclusion, irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED.**
9. Objection 9 to Paragraph 16, page 6, lines 19-22 as improper statement of law, improper legal conclusion, irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge and foundation, and improper opinion is **OVERRULED.**
10. Objection 10 to Paragraph 17, lines 23-27 as improper statement of law, improper legal conclusion, irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED.**
11. Objection 11 to Paragraph 17, from page 6, line 27 to page 7, line 3 as irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED.**
12. Objection 12 to Paragraph 18, lines 10-12 as improper statement of law, improper legal conclusion, irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED.**
13. Objection 13 to all of Paragraph 19, as improper statement of law, improper legal conclusion, irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED.**
14. Objection 14 to Paragraph 20, lines 1-3 as irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED.**
15. Objection 15 to Paragraph 20, lines 7-10 as irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED.**

16. Objection 16 to Paragraph 21, lines 18-19 as irrelevant, not appropriate expert testimony, and improper opinion is **OVERRULED.**
17. Objection 17 to Paragraph 22, lines 22-24 as improper statement of law, improper legal conclusion, irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED.**
18. Objection 18 to Paragraph 23, page 8, lines 25-27 as improper statement of law, improper legal conclusion, irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED.**
19. Objection 19 to Paragraph 23, page 9, lines 1-2 as improper statement of law, improper legal conclusion, irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED.**
20. Objection 20 to Paragraph 25, lines 13-17 as improper statement of law, improper legal conclusion, irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED.**
21. Objection 21 to Paragraph 26, lines 18-22 as improper statement of law, improper legal conclusion, irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED.**
22. Objection 22 to Paragraph 26, lines 24-25 as improper statement of law, improper legal conclusion, irrelevant, not appropriate expert testimony, improper speculation, lacking personal knowledge, and improper opinion is **OVERRULED.**

IV. ANALYSIS

Legal Standard

I. Motion for Summary Judgment

Per C.C.P. section 437c(a), any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. Summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (C.C.P. § 437c(c).)

II. Dangerous Condition of Public Property

Under Government Code section 835, a public entity can be found liable for an injury caused by a dangerous condition of its property if a plaintiff can establish that: (1) the property was in a dangerous condition at the time of the injury; (2) that the injury was proximately caused by the dangerous condition; (3) that the dangerous condition created a reasonable foreseeable risk of the kind of injury incurred; and (4) that either a negligent or wrongful act or omission within the scope of employment of a public entity's employee created the dangerous condition, or the public entity had actual or constructive notice of the dangerous condition a sufficient time prior to the injury to take measures and protect against it. (Gov. Code § 835.)

III. Design Immunity

Under Government Code section 830.6, "neither a public entity nor a public employee is liable … for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved…" For immunity to apply, a trial or appellate court must determine that there is "substantial evidence upon the basis of which (a) a reasonable public employee could have adopted the plan or design or the standards therefor or (b) a reasonable legislative body or other body or employee could have approved the plan or design or the standards therefor." (Govt. Code § 830.6.)

Where a public entity receives notice that constructed or improved public property no longer is in conformity with a reasonably approved plan or design or a standard, the immunity provided by section 830.6 continues for a reasonable period of time sufficient to allow the public entity to "obtain funds for and carry out remedial work necessary to allow such public property to be in conformity" with an approved plan or design. (Govt. Code § 830.6.) If the public entity cannot remedy the issue due to practical impossibility or lack of sufficient funds, then the immunity remains so long as the public entity "shall reasonably attempt to provide adequate warnings of the existence of the condition not conforming to the approved plan or design or to the approved standard." (*Ibid*.) Where such warnings exist and a person fails to heed that warning, the failure itself does not constitute an assumption of the risk of the danger indicated by the warning. (*Ibid*.)

However, a plaintiff may demonstrate loss of design immunity by showing that: "(1) the plan or design has become dangerous because of a change in physical conditions; (2) the public entity had actual or constructive notice of the dangerous condition thus created; and (3) the public entity had a reasonable time to obtain the funds and carry out the necessary remedial work to bring the property back into conformity with a reasonable design or plan, or the public entity, unable to remedy the condition due to practical impossibility or lack of funds, had not reasonably attempted to provide adequate warnings." (*Cornette v. Dept. of Transp.* (2001) 26 Cal.4th 63, 66.)

<u>Rohnert Park's Motion for Summary Judgment</u>

Design Immunity

Rohnert Park argues that it is entitled to design immunity pursuant to section 830.6. (Memorandum of Points and Authorities ["MSJ"], 1:11-14.) Rohnert Park cites *Cornette v. Dept. of Transp.* (2001) 26 Cal.4th 63 ("*Cornette*"), in which matter the Court of Appeal set forth the three elements described under section 830.6 required to establish design immunity. These included: (1) a causal relationship between the plan or design and the accident; (2) discretionary approval of the plan or design prior to construction; and (3) substantial evidence supporting the reasonableness of the plan or design. (*Cornette*, supra, at pp. 66, 69.)

Here, Rohnert Park argues that there is clearly a causal link alleged by Plaintiffs between Decedent's injuries and the Subject Roadway's design. (MSJ, 4:13-18.) There was discretionary approval by Sonoma County and Rohnert Park between 1967 and 2010 as to design plans regarding the construction and improvements on the Subject Roadway. (*Id*. at 4:19-26, 5:1-7.) Finally, Rohnert Park claims there is substantial evidence of the reasonableness of the designs prepared and approved by licensed, competent engineers, and that the Subject Roadway was designed and constructed in accordance with relevant standards for safety. (*Id*. at 5:8-26.) For these reasons, Rohnert Park argues that it is entitled to design immunity as to Plaintiffs' dangerous condition of public property claim. (*Id*. at 6:1-3.)

IV. Notice

Rohnert Park argues, even if Plaintiffs are able to show that the Subject Roadway was defective in some way beyond the approved design plans, that Plaintiffs have not and cannot show that Rohnert Park had notice of the alleged dangerous condition prior to Decedent's accident, which is a required element of Plaintiffs' claim under Government Code section 835. (MSJ, 1:15-17, 6:4-8.) Rohnert Park claims that it had no notice of any alleged defect in the Subject Roadway that made it unsafe for pedestrians using the roadway with due care because there was no history prior to Decedent's accident of complaints about unsafe crossings or pedestrian injuries. (*Id*. at 7:7-10.)

Plaintiffs' Opposition

Changed Physical Circumstances in Subject Roadway Bars Immunity

Plaintiffs cite *Baldwin v. State of California* (1972) 6 Cal.3d 424 ("*Baldwin*"), in which matter the Supreme Court of California held that, "where a plan or design of a construction of, or improvement to, public property, although shown to have been reasonably approved in advance or prepared in conformity with standards previously so approved, as being safe, nevertheless in its actual operation under changed physical conditions produces a dangerous condition of public property and causes injury, the public entity does not retain the statutory immunity from liability conferred on it by section 830.6." (*Baldwin*, supra, at pp. 438-439.) However, the Court must note that this case was superseded by statute enacted in response to *Baldwin* by the language noted above in this tentative ruling and also noted by the Supreme Court of California recently in *Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639, 663. For that reason the Court will not follow the superseded ruling in *Baldwin*.

Deviations from Approved Designs and Deteriorate Bar Immunity

Plaintiffs cite *Mozzetti v. City of Brisbane* (1977) 67 Cal.App.3d 565, to argue that that when a dangerous condition arises from aspects of the property not included or addressed in the approved design, design immunity does not apply. (Opposition, 11-20-26, 12:1-13.) Plaintiffs argue that there are relevant design deviations here, notably the north-side paved median approved by the 1967 and 1989/1991 designs was 6 feet wide, but the median shrunk to 2 feet wide by the date of incident due to lack of maintenance. (*Id*. at 12:14-15.) Furthermore, the plan included an "existing bikeway" which never was constructed. (*Id*. at 12:16-18.) Plaintiffs

also mentioned that the 1967 design approved by Sonoma County predates the construction of Bodway Parkway and Vine Street, so no design elements of the East Cotati-Bodway/Vine Street intersection were set forth in that approved design and the original plan for the East Cotati/Bodway intersection as it exists now has not been located. (*Id*. at 4:3-6; Additional Material Fact No. 12.)

Extensive Evidence Indicates Actual and Constructive Notice of Dangerous Condition

Plaintiffs presents evidence that Rohnert Park's own public safety committees (the Rohnert Park BPAC) discussed the issue of high volumes of mid-block crossing of East Cotati Avenue at the accident site at least across three meetings between September 2015 and April 2016. (Opposition, 13:9-27, 14:1-6.)

Plaintiff goes on to argue that substantial evidence shows that there is a dangerous condition on East Cotati Avenue due to its design which could be improved by features such as pedestrian barriers and/or channelization, raised crosswalks, or expanded center island safe zones. (Opposition, 19:15-20.)

Reply to Opposition

In the Reply, Rohnert Park re-argues that the required elements of design immunity were established in the MSJ and that there is no triable issue of fact as to notice. Rohnert Park takes issue with Plaintiffs' heavy reliance on the expert declaration of Christian Engelmann to establish that, due to a change in the physical characteristics in the land surrounding the Subject Roadway, pedestrians were choosing to cross the street midway instead of at the designated crosswalk. (Reply, p. 4) However, though Rohnert Park objected to the majority of Mr. Engelmann's declaration, the Court has overruled those objections.

Application

First, as indicated in Mr. Engelmann's Declaration and by other evidence submitted by Plaintiffs, there is a possibility that changes in the physical conditions of the approved design of the road, the lack of maintenance, and deviations over time from the approved designs of the Subject Roadway have eventually led to a high volume of pedestrians choosing to cross in the middle of the Subject Roadway. This is especially so when crossing in the middle is more convenient because of the time it takes to get to and across the designated crosswalks per the current design. As mentioned above, in 1967 when Sonoma County first approved construction and design of Cotati Avenue, Bodway Parkway did not exist, so the current physical condition of the Subject Roadway is different. These factors may evidence a dangerous condition due to deviation from or change in condition from a reasonably approved design or plan.

Second, the Court is not persuaded by Rohnert Park's argument that before Decedent's accident it never had notice at any time that there may be a high volume of pedestrians walking across the Subject Roadway in the area where Decedent was struck. As indicated in the Plaintiffs' submitted evidence, Rohnert Park's own public safety committees had notice of the high volume of pedestrians jaywalking in the exact location where Defendant was struck as early as 2015 and had multiple discussions about what action to take regarding that.

Finally, the Court finds that Rohnert Park had a reasonable amount of time since 2015 to obtain the funds and carry out the necessary remedial work to bring the Subject Roadway back into conformity with the

approved design or to plan for the road's safety but did not do so. Furthermore, Rohnert Park did not otherwise indicate that at least it took efforts to adequately warn pedestrians to use the designated crosswalks due to safety concerns because the city could not remedy the alleged dangerous condition due to practical impossibility or lack of funds.

Based on the above and *Cornette*, the Court finds a loss of design immunity and that there continues to exist a triable issue of fact as to the MSJ's UMF Nos. 22 and 23.

I. CONCLUSION

Based on the foregoing, Rohnert Park's Motion for Summary Judgment is **DENIED**. Plaintiffs 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).

7. SCV-271780, Lorange v. Reh

Petitioners Christopher and Jessica Lorange's unopposed petition to confirm the contractual arbitration award issued in their favor and against Respondent East-West Natural Medicine and Philip Reh jointly and severally is **GRANTED** per Code of Civil Procedure ("C.C.P.") section 1285. The Court orders as follows:

1. The final arbitration award is confirmed for $4,920,186.00 in damages; and
2. Petitioner shall be awarded in $5,722.04 for costs of suit.

I. PROCEDURAL HISTORY

Petitioners commenced this action against Respondents for medical malpractice, product liability, battery, and loss of consortium alleging that Petitioner Christopher Lorange was taken under the care of Defendants on July 14, 2021, for cupping therapy and other treatments and suffered burns to his back and body parts. (See generally Complaint, ¶¶ 1-15.) The parties stipulated to binding arbitration and the Court so ordered on December 3, 2024. (Petition, Attachment No. 4.b., p. 6.) The arbitrator, Matthew N. White, issued the arbitration award on July 1, 2025, which required Respondents to be jointly and severally liable for a total of $4,920,186.00 in damages to Petitioners. (Petition, Attachment No. 8.c., pp. 13-17.) The arbitration award also allowed Petitioners to recover costs of suit per C.C.P. section 1032, including the arbitrator's fees. (*Ibid*.) Petitioners now seek to confirm the contractual arbitration award and seek $5,722.04 for costs of suit. The motion is unopposed.

II. ANALYSIS

Per Code of Civil Procedure ("C.C.P.") section 1285, any party to an arbitration in which an award has been made may petition the court to confirm, correct, or vacate the award. The petition shall set forth the substance of or have attached a copy of the agreement to arbitrate, set forth the names of the arbitrators, and attach a copy of the arbitration award. (C.C.P. § 1285.4.) The petition must also set forth the grounds upon which the relief requested is based. (C.C.P. § 1285.8.) Where a court confirms, corrects, or vacates an award

under this section, the court may award to the prevailing party reasonable fees and costs incurred in obtaining confirmation, correction, or vacation of the award including, if applicable, fees and costs on appeal. (Cal. Bus. & Prof. Code § 6203(c).) Generally, the prevailing party is the one who obtains the judgment confirming, correcting, or vacating the award. (*Ibid*.)

Petitioner seeks to confirm the arbitration award for a total of $4,920,186.00 in damages in Petitioners' favor against Respondents and seeks $5,722.04 for costs of suit. (Petition, ¶¶ 8.b., 10.e.) The petition is unopposed and no other objection has been received by the Court.

The Court will confirm the unopposed final arbitration award entered in the amount of $4,920,186.00 in damages in Petitioners' favor against Respondents and seeks $5,722.04 for costs of suit.

III. CONCLUSION

Based on the foregoing, the Petition is **GRANTED** as follows:

1. The final arbitration award is confirmed for $4,920,186.00 in damages; and
2. Petitioner shall be awarded in $5,722.04 for costs of suit.

Unless oral argument is requested, the Court shall sign the proposed order lodged with the Petition.