TENTATIVE RULINGS: CIVIL LAW & MOTION

Friday, April 11, 2025 at 8:30 a.m.
Courtroom 18 – Hon. Kenneth G. English
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6604**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

TO JOIN ZOOM ONLINE:

Department 18:
Meeting ID: **160—739—4368**
Password: **000169**
https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWlIL3NBeE9LVHU2NVVpQlVRUT09

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
Call: +1 669 900 6833 US (San Jose)

Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. 24CV02598, DiLorenzo Santa Rosa Real Estate, LLC v. Daniel K. Mullin Architects, Inc.: Plaintiff's Motion to Compel Responses to Form Interrogatories and Request for Production

Plaintiff DiLorenzo Santa Rosa Real Estate, LLC ("Plaintiff") moves for an order compelling Defendant Daniel K. Mullins Architects, Inc. ("Defendant") to provide verified responses or verified supplemental responses to Plaintiff's Form Interrogatories, Set One, and Requests for Production of Documents, Set One. Plaintiff requests sanctions in the amount of $8,510.

Plaintiff's motion to compel responses is GRANTED. Defendant is ordered to provide verified responses to Plaintiff's Form Interrogatories and Requests for Production of Documents within 30 days of this order and to pay sanctions in the reduced amount of $2,810 within 15 days of this order. Plaintiff's motion to compel verified supplemental responses is DENIED.

On August 1, 2024, Plaintiff served its first set of written discovery requests on Defendant, consisting of Plaintiff's Form Interrogatories, Set One, ("Form Interrogatories") and Plaintiff's Requests for

Production, Set One, ("Requests for Production"). (Suarez decl., ¶2, Exhibit 1.) Per the parties' agreements, Defendant was given until October 4, 2024, to provide responses. (*Id.*, ¶¶3-6.)

On October 4, 2024, Defendant served unverified responses to Plaintiff's Form Interrogatories and Requests for Production, as well as an initial production of documents purportedly responsive to Plaintiff's Requests for Production. (*Id.*, ¶6, Exhibit 3.)

Subsequent to obtaining the responses, Plaintiff's counsel sent a meet and confer letter regarding some of the responses. (*Id.*, Exhibit 4.) That letter noted that the responses were not verified. (*Ibid*.) Defendant's counsel agreed to provide some supplemental responses and verifications. (*Id.*, Exhibit 6.)

The party to whom interrogatories have been propounded must respond, in writing and under oath separately to each interrogatory, and must do so within 30 days of receipt of the interrogatories. (Code Civ. Proc. §§ 2030.210(a), 2030.250(a).) Similarly, the party to whom a demand for inspection of documents is directed must sign the response thereto under oath, within 30 days, unless the response contains only objections. (Code Civ. Proc. §§ 2031.250(a), 2031.260(a). Accordingly, responses to both interrogatories and requests for production must be verified, under oath, by the party to whom such discovery requests are directed. (Code Civ. Proc. §§ 2030.250(a), 2031.250(a).) Where a verification is required, a party's failure to provide verified responses is tantamount to no response at all. (*Appleton v. Superior Ct.* (1988) 206 Cal. App. 3d 632, 636.) As Defendant failed to verify his responses, they are tantamount to no response at all. Accordingly, the motion to compel responses is **GRANTED**.

Plaintiff's motion also seeks to compel verified supplemental responses pursuant to CCP section 2031.310. Section 2031.310 supports a motion to compel further responses, which requires the filing of a separate statement establishing why further responses are necessary and proper. (CRC, Rule 3.1345.) In addition, to compel further responses to a request for production of documents, the moving party must show "good cause" for the further production. (CCP section 2031.310(b)(1).) Plaintiff's motion does not meet either of these requirements. Therefore, Plaintiff has not met his burden on this issue. The motion to compel further, aka, the motion to compel verified supplemental responses, is **DENIED**.

Plaintiff's counsel requests $8,510. This amount is based upon the $60 filing fee, $5,300 in attorney fees for meeting and conferring on the issue and preparing the motion, and $3,150 anticipated for preparing a reply and attending the hearing. (Suarez decl., ¶23.) Plaintiff's counsel states his billing rate for 2024 is $800 and his billing rate for 2025 is $900 per hour. (*Id.*, ¶24.) Counsel states he spent 30 minutes meeting and conferring with Defendant's counsel and at least 5 hours preparing, reviewing, and revising this motion. (*Id.*, ¶25.)

Plaintiff's counsel has not provided justification for his billing rate as he has not provided any information regarding his experience or skill. In addition, the work performed is not of the nature that supports the requested hourly fee. The court will grant sanctions in the reduced amount of $2,810.

Plaintiff's motion to compel responses is **GRANTED**. Defendant is ordered to provide verified responses to Plaintiff's Form Interrogatories and Requests for Production of Documents within 30 days of this order and to pay sanctions in the amount of $2,810 within 15 days of this order. Plaintiff's motion to compel verified supplemental responses is **DENIED**.

2. 23CV00204, Johnson v. Duncan: Defendant Duncan's Motion to Strike Attorney's Fees and Punitive Damages from Plaintiff's Complaint

Defendant Duncan's Motion to Strike is **CONTINUED to Wednesday, April 16, 2025** in Department 18 at 3:00 p.m. to be heard with his Demurrer.

3. & 4. 24CV03721, Zerah v. Guerneville School District: Defendant's Demurrer and Motion to Strike to Plaintiff's Second Amended Complaint

Defendants County of Sonoma and Sonoma County Water Agency's (together as "Defendants" or "County Defendants") demurrer to Plaintiffs Jerry Zerah and John Ross Mendenhall's (together as "Plaintiffs") Second Amended Complaint ("SAC") is **SUSTAINED in part and OVERRULED in part.**

Defendants' demurrer to the SAC is **SUSTAINED in part *without* leave to amend** as to causes of action 3, 5, 7, 8, 9, 10, 11, 12, and 13. Defendants' demurrer is **SUSTAINED with leave to amend** as to cause of action 6. Defendants' demurrer is **OVERRULED** as to cause of action 2.
Defendants' motion to strike references to County Defendants' employees as Defendants and punitive damages is **GRANTED**.

This action arises from the flooding of Fife Creek that damaged Plaintiffs real and personal property. (SAC, ¶ 6, filed December 26, 2024.) Plaintiffs filed their Complaint on June 26, 2024 and subsequently filed their First Amended Complaint ("FAC") on August 16, 2024. (See Complaint, filed June 26, 2024; FAC, filed August 16, 2024.) In their FAC, Plaintiffs sought damages for the following causes of action: inverse condemnation, negligence, dangerous and defective condition of property, trespass, nuisance, diversion of water, destruction of personal property, destruction of real property, loss of income, disruption of business, and personal injury. (FAC, filed August 16, 2024.) Defendants demurred to the FAC and the Court sustained the demurrer as to all causes of action except inverse condemnation with leave to amend. (See Minute Order, dated November 6, 2024.) Plaintiffs filed their SAC on December 26, 2024 asserting the following causes of action: inverse condemnation, defense against dangerous and defective conditions, negligence, dangerous and defective conditions, trespass, nuisance, diversion of water, damage to personal and real property, personal injury, nonfeasance/malfeasance, non-enforcement, harassment, and lack of assistance. (SAC, pp. 31–41.) Defendants now demurrer to causes of action 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, and 13 and move to strike Plaintiffs' references to County Defendants' employees as Defendants and punitive damages.

Causes of Action 2–3, 5, and 7–13

Defendants argue that ten of Plaintiffs' claims—dangerous and defective conditions of Defendants' property, negligence, trespass, diversion of water, damage to personal and real property, personal injury, nonfeasance and/or malfeasance by the County of Sonoma regarding the source of the invasive gravel, non-enforcement by Sonoma County Water Agency of the State Water Codes, ongoing harassment to the Plaintiffs by the actions of Defendants, and lack of any assistance by any Defendant to clean up from said creek flooding—fail to cite statutory authority that imposes liability on a public entity, and therefore, County Defendants cannot be liable for these causes of action as a matter of law. (Demurrer, 5:23–6:4.)

In opposition, Plaintiffs claim that Defendants' reliance on *Cochran v. Herzog Engraving Co.* (1984) 155 Cal.App.3d 405 and *Guzman v. County of Monterey* (2009) 46 Cal.4th 887 are improper because the facts of the case are too distinct to apply to Plaintiffs' case. (Amended Opposition, 5:17–6:1.)

While Defendants further argue that they were not served with Plaintiffs' Opposition or Amended Opposition in their Reply, they still filed their Reply on time and express no prejudice, so the Court will consider Plaintiffs' Amended Opposition. However, the Court reminds all Parties that they must comply with all Rules of Court and Code of Civil Procedure ("C.C.P."), including the rules governing proof of service (C.C.P. section 1005).

Upon examination of Plaintiffs' Amended Opposition, the Court is not persuaded by their arguments. As stated by Defendants in their Reply, the *Cochran* and *Guzman* cases discuss governmental liability requiring statutory exceptions and are supportive of Defendants' argument. Government Code section 815(a) clearly states that a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person, except as otherwise provided by statute. While Plaintiffs cite certain sections of California Government Code and California Water Code, Plaintiffs still fail to cite any relevant statutory authority allowing governmental liability for causes of action 3, 5, and 12. Plaintiffs further fail to state a viable cause of action for claims 7, 8, 9, 10, 11, and 13.

However, regarding cause of action 2 for dangerous and defective conditions of Defendants' property, a public entity can be liable for injury caused by a dangerous condition of its property if the public entity fails to establish "that the act or omission that created the condition was reasonable" or "the action [the public entity] took to protect against the risk of injury created by the condition or its failure to take such action was reasonable." (Gov. Code § 835.4(a)–(b).) Plaintiffs allege that they suffered injury due to Defendants' dangerous condition of its property and Defendants have failed to resolve the condition. Defendants offer no argument as to reasonableness. Therefore, Plaintiffs have alleged sufficient facts to state a claim for dangerous and defective conditions.

Defendants' demurrer to cause of action 2 is **OVERRULED**. Defendants' demurrer to causes of action 3, 5, 7, 8, 9, 10, 11, 12, and 13 is **SUSTAINED** for failure to state a claim.

Cause of Action 6–Nuisance

Defendants also demurrer to Plaintiffs' sixth cause of action for nuisance as being time-barred. Defendants allege this cause of action is a permanent nuisance which required Plaintiffs to file a government tort claim when the nuisance first occurred and thereby asks the Court to dismiss this cause of action. (Demurrer, 6:6–7:11.)

Plaintiffs allege the nuisance is not permanent but a continuous nuisance that can be altered, modified, or removed entirely. (Amended Opposition, 4:20–5:12.)

The Court agrees with Plaintiffs that the nuisance is continuous and not permanent. In *Baker v. Burbank-Glendale-Pasadena Airport Auth*., the Court reasoned that "permanent nuisances are of a type where 'by one act a permanent injury is done, [and] damages are assessed once for all'" and "[t]he cases finding the nuisance complained of to be unquestionably permanent in nature have involved solid structures." (*Baker v. Burbank-Glendale-Pasadena Airport Auth*. (1985) 39 Cal.3d 862, 868–69 [internal citation omitted].) "The classic example of a continuing nuisance is an ongoing or repeated disturbance, such as… [disturbances] caused by noise, vibration or foul odor." (*Id.* at 869–70 citing *United States v. Dickinson* (1946) 331 U.S. 745, 749 [finding that where a landowner sues to recover damages after the government flooded his land by damming a river was not a single event but was

continuous].) Therefore, Plaintiffs' sixth cause of action for nuisance may not be dismissed on this basis.

However, the Court in a prior ruling in this action cited that "[t]he Tort Claims Act requires that any civil complaint for money or damages first be presented to and rejected by the pertinent public entity. (Gov. Code, §§ 910, 912.4, 912.8, 945.4)." (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776.) "[F]ailure to allege facts demonstrating or excusing compliance with the claim presentation requirement subjects a claim against a public entity to a demurrer for failure to state a cause of action." (*State of California v. Superior Ct.* (2004) 32 Cal.4th 1234, 1239.) In their Opposition, Plaintiffs claim they attempted to file suit in 2018 but were not successful and eventually filed two cases in 2024 (24CV01074 currently pending in Department 19 and 24CV03721, this case). (Amended Opposition, 4:24–5:5.) However, neither of these claims are filed under the Tort Claims Act and Plaintiffs fail to allege that they have submitted any claim pursuant to the Government Tort Claims Act prior to commencement of this action. (SAC, 42:2–9.) Thus, Plaintiffs have failed to allege facts demonstrating or excusing compliance with the Tort Claims Act. Defendants' demurrer to Plaintiffs sixth cause of action for nuisance is **SUSTAINED** for failure to state a claim.

Leave to Amend

After amending their Complaint twice, Plaintiffs still fail to cite any statute allowing governmental liability for nine causes of action identified by Defendants. Therefore, the Court **DENIES** leave to amend as to causes of action 3, 5, 7–13 as Plaintiffs fail to show that there is a reasonable possibility they can cure this defect with amendment.

Plaintiffs have not alleged the filing of a claim under the Tort Claims Act as required but there is still a reasonable possibility Plaintiffs can show proof of such filing. The Court **GRANTS** leave to amend as to cause of action 6 for nuisance.

Defendants' Motion to Strike

Employees of County Defendants

Defendants move to strike Plaintiffs' reference to employees of County Defendants as Defendants as immaterial and irrelevant because Plaintiffs have not properly filed the action against them, have not served them, and do no allege they have caused or contributed to the flooding. (Motion to Strike, 2:26–3:5.)

Plaintiffs oppose the motion to strike, arguing that County Defendants' employees are properly listed as co-defendants and that California Government Code Sections 820–823 create a liability for public employees. (Amended Opposition, 2:13–4:7.)

In reply, Defendants assert that Plaintiffs have admittedly not filed a suit against Defendants' employees and that Plaintiffs failed to allege that they have ever served these individuals with the SAC or summons required by C.C.P. section 415.10. (Defendants' Reply Motion to Strike, 2:20–27.)

Plaintiffs have not filed a proof of service with the Court showing proof of service of the SAC or any motion on County Defendants' named employees. Additionally, Plaintiffs fail to allege any basis of liability for County Defendants' employees. As such, the Court **GRANTS** Defendants' motion to strike

the portions of the SAC referring to County Defendants' employees as Defendants (SAC, page 9, lines 16–20; page 16, lines 8–10) pursuant to C.C.P. section 436(a) as immaterial or irrelevant.

Punitive Damages

Defendants move to strike Plaintiffs' request for punitive damages because County Defendants are public entities and are not liable for damages awarded under C.C.P. section 3294 pursuant to Government Code section 818 (damages imposed primarily for the sake of example and by way of punishing the defendant). (Motion to Strike, 3:7–18.)

Plaintiffs do not address this claim in their Amended Opposition. The Court **GRANTS** Defendants' motion to strike the portions of the SAC referring to punitive damages (SAC, page 12, lines 3–14; page 12, line 18; page 14, lines 21–25) pursuant to C.C.P. section 436(a) for improperly requesting punitive damages from government entities.

Conclusion

Defendants' demurrer to the SAC is **SUSTAINED *without* leave to amend** as to causes of action 3, 5, 7, 8, 9, 10, 11, 12, and 13. Defendants' demurrer is **SUSTAINED with leave to amend** as to cause of action 6. Defendants' demurrer is **OVERRULED** as to cause of action 2.

Defendants' motion to strike references to County Defendants' employees as Defendants and punitive damages is **GRANTED**.

Defendants 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).

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