TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, May 15, 2024 3:00 p.m.
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

TO JOIN ZOOM ONLINE:

Department 19 Hearings
MeetingID: 160-421-7577
Password: 410765
https://sonomacourt-org.zoomgov.com/j/1604217577

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
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PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

24CV01822, Rutz v. Hernandez

The Hon. Oscar Pardo has been recused from this case under CCP § 170.1. The order to show cause re: preliminary injunction currently on the Court's calendar has been transferred to Department 12, to be heard by the Honorable Commissioner Kenneth English. The matter is not continued and will be heard at the scheduled date and time in Department 12. The tentative ruling from that court is available under the Civil tentative ruling page under "Special Set Tentative Rulings".

1. 23CV00163, County of Sonoma v. Jimenez

Defaulted Defendants have not filed an opposition. The Court issued a tentative ruling on May 7, 2024. Defendants then requested oral argument which took place the following day. Defendant Arturo Jimenez personally appeared at the hearing while Defendant Rosa Jimenez and County Counsel appeared remotely. Defendant Arturo Jimenez informed the Court that all code violations which the County had imposed on the subject project had been abated. County Counsel confirmed. The only real issue left for which the Court required additional time to review was the County's request for accumulated civil penalties, attorney's fees, and costs. County Counsel did confirm that Defendants failed to timely engage

with the County during the abatement process and also did not appeal any of the County's findings which eventually led to the imposition of the civil penalties.

In consideration of this information, Defendants' failure to file a formal response to the County's Complaint, and having received no opposition from Defendants, the Court rules as follows:

The County's Request for Judicial Notice is GRANTED. The County's Motion for a Default Judgment and Permanent Injunction is GRANTED and the County's requests for abatement costs, civil penalties, and attorneys' fees are also GRANTED.

The CCP provides that if the defendant has been served, other than by publication, and no response has been filed, "the clerk, upon written application of the plaintiff, shall enter the default of the defendant" and "[t]he plaintiff thereafter may apply to the court for the relief demanded in the complaint." (Code Civ. Proc. §585(b).) "The court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff's favor for that relief, not exceeding the amount stated in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115, as appears by the evidence to be just." (*Ibid*.) "If the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose." (*Ibid*.) Additionally, Sonoma County Code section 1-7 allows for the assessment of civil penalties and recover of costs, including "any administrative overhead, salaries and expenses incurred by the following departments: health services, permit and resource management, county counsel, district attorney, transportation and public works, agriculture/weights & measures, and fire and emergency services." (See, SCC at §1-7(d).)
In this case, the County's Complaint; entry of default; and this motion for a default judgment and permanent injunction provide a sufficient basis for the Court to enter the judgment and injunction as requested. Accordingly, the motion is GRANTED.

Unless oral argument is requested, the Court will sign the Proposed Amended Order lodged with the motion.

2-3. SCV-264530, Pelayo v. Utility Partners of America

Plaintiffs Pelayo, Hernandez, Andre, Munoz, and Medeiros' (together "Plaintiffs") unopposed motion to seal unredacted attorney's fees motion and supporting declarations is **GRANTED**.

Plaintiffs' motion for attorney's fees is **GRANTED** for the reduced amount of **$1,767,649.50** and for costs of **$49,678.73.**

Procedural History

This action arises from a contract between the City of Santa Rosa and Utility Partners of America, LLC, ("UPA") in 2016 for a public-works project. UPA agreed to pay its employees a prevailing wage for work done on the project. UPA employed Plaintiffs for this project but paid them less than the prevailing wage. Plaintiffs filed Stop Notices with the City of Santa Rosa against which UPA contested via affidavits. (Motion, Donahoo Decl. ¶11). Plaintiffs then

engaged present counsel and commenced this action against UPA and the City of Santa Rosa complaining of violations of various California Labor Codes. (Motion, Donahoo Decl. ¶13).

The parties then engaged in extensive discovery, which included extensive written discovery and depositions. (Motion, Donahoo Decl. ¶15-¶27). . Plaintiffs claim that UPA used tactics to avoid responding to discovery, which required Plaintiff to filed multiple discovery motions for compliance. (Motion, Donahoo Decl. ¶ 30, ¶32, ¶36 - ¶40). On these motions, the Court sanctioned UPA multiple times for failure to comply. (Motion, Donahoo Decl. ¶31). The parties were also involved in filing and opposing various summary judgment and summary adjudication motions. (Motion, Donahoo Decl. ¶34).

The parties also engaged in multiple global mediations to try to settle the matter. Though UPA rejected multiple settlement proposals, Plaintiffs and UPA finally reached an agreement to settle claims on January 16, 2024, after the parties had already begun to prepare for trial, which was set for January 19, 2024, at the time. The parties agreed that the Court shall determine Plaintiffs' attorneys' fees and costs to be paid by UPA.

Thus, Plaintiffs now seek fees and costs to be paid out by UPA. UPA opposes the amount sought and requests the Court to award a reduced amount.

EVIDENTIARY OBJECTIONS

The Court rules regarding UPA's objections to Pearl's declaration in support of Plaintiffs' motion for fees and costs as follows:

1. Objection 1 to Par. 5, 23-24, and 26-34 as irrelevant. **OVERRULED**.
2. Objection 2 to Par. 35 as lacking foundation, hearsay, irrelevant, and misstatement of law. **OVERRULED**.
3. Objection 3 to Par. 36 as lacking foundation, hearsay, and irrelevant. **OVERRULED**.
4. Objection 4 to Par. 37 as lacking foundation, hearsay, and irrelevant. **OVERRULED**.

The Court rules on Plaintiffs' objections to Buddie's declaration in support of UPA's opposition as follows:

1. Objection 1 to Par. 3 as lacking foundation and personal knowledge, irrelevant, legal conclusion, and hearsay. **OVERRULED**.
2. Objection 2 to Par. 5 as lacking foundation and personal knowledge, irrelevant, legal conclusion, and hearsay. **OVERRULED**.
3. Objection 3 to Par. 6 as lacking foundation and personal knowledge, irrelevant, legal conclusion, and hearsay. **OVERRULED**.
4. Objection 4 to Par. 7 as lacking foundation and personal knowledge, irrelevant, legal conclusion, and hearsay. **OVERRULED**.
5. Objection 5 to Par. 9 as lacking foundation and personal knowledge, irrelevant, legal conclusion, and hearsay. **OVERRULED**.

6. Objection 6 to Par. 10 as lacking foundation and personal knowledge, irrelevant, legal conclusion, and hearsay. **OVERRULED**.
7. Objection 7 to Par. 11 as irrelevant, legal conclusion, and hearsay. **OVERRULED**.
8. Objection 8 to Par. 12 as irrelevant, legal conclusion, and hearsay. **OVERRULED**.
9. Objection 9 to Par. 13 as lacking foundation and personal knowledge, irrelevant, legal conclusion, and hearsay. **OVERRULED**.
10. Objection 10 to Par. 14 as lacking foundation and personal knowledge, irrelevant, legal conclusion, and hearsay. **OVERRULED**.
11. Objection 11 to Par. 15 as lacking foundation and personal knowledge, irrelevant, legal conclusion, and hearsay. **OVERRULED**.
12. Objection 12 to Par. 16 as lacking foundation and personal knowledge, irrelevant, legal conclusion, and hearsay. **OVERRULED**.
13. Objection 13 to Par. 17 as irrelevant, legal conclusion, and hearsay. **OVERRULED**.
14. Objection 14 to Par. 19 as lacking foundation and personal knowledge, irrelevant, legal conclusion, and hearsay. **OVERRULED**.

Motion to Seal

Plaintiffs move unopposed per California Rules of Court, Rules 2.550 and 2.551 for an order sealing Plaintiffs' unredacted motion for fees and costs, the unredacted declaration of Richard E. Donahoo and exhibits to the declaration. Plaintiffs argue that the parties' overriding interest to preserve the confidentiality regarding their settlement agreement outweighs the public's right of access to this information, per Rule 2.550(d)(1) and per *NBC Subsidiary (KNBCTV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1217-18. Plaintiffs contend that that if the records are not sealed, then there is a substantial probability that prejudice will result to the parties from the disclosure of the terms of their settlement agreement, so they propose a narrowly tailored sealing of certain portions of the record and claim there are no less restrictive means to protect these portions of the moving papers for attorney's fees.

To protect confidentiality of the parties' settlement agreement, the motion to seal is **GRANTED**.

Motion for Attorney's Fees

Legal Standard

Labor Code Attorney's Fees

California Labor Code section 1194(a) allows employees that received less than the legal minimum wage or the legal overtime compensation to recover "the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit" in a civil action. Per Labor Code section 226(e)(1), any employee that suffers an injury due to an intentional failure of their employer to comply with the requirements listed in section 226(a) is entitled to damages for each violation as well as an award of costs and reasonable attorney's fees.

Lodestar Calculation

The "lodestar" calculation is the number of hours reasonably expended in legal representation multiplied by the reasonable hourly rate prevailing in the community for similar services by an attorney with similar skill and experience. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) The trial court may adjust the lodestar amount based on various factors specific to the case to fix the attorney fees at fair market value for the services provided, including: "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award." (*Ketchum, supra*, 24 Cal.4th at 1132.)

Moving Papers

Plaintiffs' Motion

Plaintiffs request attorneys' fees in the amount of **$2,401,622.62** and costs in the amount of **$49,678.73**. The motion is made per Labor Code sections 1194(a) and 226(e)(1) as well as the parties' stipulation that plaintiffs are entitled to attorneys' fees and costs as the prevailing parties in the action. Plaintiffs' counsels' hours incurred since April 2019 to the filing of the motion are 2,403.63 hours. Counsel's declaration for the motion details the billing records in support of the fees requested. Counsel also anticipated an additional 15 hours for analyzing the opposition to this motion, preparing a reply brief, and also participating in the hearing on the motion. The rates requested are as follows:

Name	***Position & Experience***	***Hours***	***Hourly Rate***	***Fees***
R. Donahoo	Attorney (28 yrs.)	835.18	825.00	689,023.50
Kokonas	Attorney (15 yrs.)	239.90	695.00	166,730.50
Camilleri	Attorney (12 yrs.)	874.70	595.00	520,446.50
W. Donahoo	Attorney (6 yrs.)	154.95	525.00	81,348.75
C. Donahoo	Attorney (6 yrs.)	209.90	525.00	110,197.50
Ung	Paralegal	18.90	395.00	7,465.50
Reyna	Paralegal	38.20	295.00	11,269.00
Duncan	Paralegal	25.50	325.00	8,287.50
Amador	Paralegal	21.40	295.00	6,313.00
			TOTAL:	**$1,601,081.75**
			Multiplier 1.5	**$2,401,622.62**

In further support of the above requested fees, Plaintiffs argue that UPA's aggressive defense tactics increased Plaintiffs' counsels' hours. Plaintiffs propose that the hourly rates are reasonable in both Los Angeles and Sonoma County markets. Plaintiffs' counsel are based in Los Angeles, so have previously been approved at these rates in Los Angeles. Plaintiffs also claim that the hours should not be reduced because they have already been reduced and should be awarded a 1.5 multiplier on the Lodestar calculation because it accurately reflects the fair market value of counsels' services as opined by Mr. Pearl in his declaration in support of the

motion. Mr. Pearl's was retained by Plaintiffs' counsel to render an opinion on the reasonableness of the attorneys' fees requested in this matter. Mr. Pearl has experience in litigation involving attorneys' fees and has written extensively regarding court-awarded attorneys' fees in California. Mr. Pearl is the author of several editions of California Continuing Education of the Bar's California Attorney Fee Awards.

Here, Plaintiffs attempted to resolve their claims prior to bringing suit by filing the Stop Notices and then engaged with counsel in April of 2019, at which time the firm engaged in a prefiling investigation, reviewed records in Plaintiffs' possession, spoke with investigators at the FFC, and reviewed public records. Counsel assisted Plaintiffs in pursuing the case because counsel believed the case was meritorious. Counsel did not offer any explanation of whether Plaintiffs sought out any counsel in Sonoma County before engaging with Counsel in Los Angeles.

Opposition

UPA opposes the motion claiming that Plaintiffs have not demonstrated they made a good faith attempt to obtain local counsel, that local counsel would not take the case, or that local counsel were incapable of taking the cause. UPA cites to *Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1243, which case held it was an abuse of discretion of the court to award out-of-town rates absent a factual showing that plaintiff made a good faith effort to find local counsel and was unsuccessful. UPA presents various Sonoma County cases in which lower rates have been awarded than that requested by Plaintiffs' counsel. UPA proposes the following rates:

Name	***Position & Experience***	***Hours***	***Hourly Rate***	***Fees***
R. Donahoo	Attorney (28 yrs.)	820.18	375.00	307,567.50
Kokonas	Attorney (15 yrs.)	239.90	325.00	77,967.50
Camilleri	Attorney (12 yrs.)	874.70	250.00	218,675.00
W. Donahoo	Attorney (6 yrs.)	154.95	250.00	38,737.50
C. Donahoo	Attorney (6 yrs.)	209.90	250.00	54,475.00
Ung	Paralegal	18.90	150.00	2835.00
Reyna	Paralegal	38.20	125.00	4775.00
Duncan	Paralegal	25.50	150.00	3,825.00
Amador	Paralegal	21.40	125.00	2,675.00
			TOTAL:	**711,532.50**

UPA's suggested rates above do not include the 15 hours requested by Plaintiffs' counsel for reviewing the opposition, preparing a reply brief, or appearing at the hearing. UPA further suggests denying the 1.5 multiplier requested by Plaintiffs, reducing the Lodestar amount 15% for limited success in litigation and 50% due to multiple billers working on the same task. Overall, UPA suggests the total attorneys and paralegal fees be reduced to $302,401.31 and for the Court to tax Plaintiffs' requested costs by $26,062.18 because certain costs claimed are not allowed by Code of Civil Procedure section 1033.5 absent court order.

Reply

Plaintiffs contend in their reply that UPA's opposition grossly misstated the record arguing that

UPA admitted early on it owed Plaintiffs prevailing wages, but Plaintiffs claim this is inaccurate. The hours spent in legal work were necessary to Plaintiffs, particularly for preparing the motion for summary adjudication, preparing and propounding discovery, and attending depositions. Plaintiffs also argue that Plaintiffs' attempts to obtain their wages through the Stop Notices were sufficient such that it satisfies the requirement that Plaintiffs searched for local counsel and were unsuccessful. Plaintiffs concede that there were "minor" billing errors as pointed out by UPA, but that the Court ought to reduce the billing by 10.75 hours for timekeeping errors. Plaintiffs disagree regarding the 50% reduction across the board, which they argue is wholly unsupported. Finally, Plaintiffs request that some multiplier be included and that their requested costs be awarded as all costs detailed were reasonably necessary to conduct this litigation.

Application

Based on the parties' arguments, the Court finds Plaintiffs are entitled to both fees and costs per Labor Code sections 1194 and 226. The Court finds that 2,0403hours of work appear reasonable for the five attorneys and four support staff that assisted Plaintiffs in this matter over the last five years. Although UPA is requesting that Plaintiffs counsel's time be reduced, the Court is familiar enough with this litigation to appreciate the extensive amount of work that was placed by counsel in this matter. There has been extensive discovery motion, dispositive motion, and pre-trial work conducted on this matter for the Court to determine that Plaintiffs counsel's time allotments are reasonable and will not be reduced.

However, Plaintiffs' counsel did not sufficiently show that their Los Angeles hourly rates are reasonable. They have not demonstrated that Plaintiffs attempted to find local counsel but were unsuccessful. Plaintiffs only submitted Stop Notices to the City of Santa Rosa, which cannot be considered the same as seeking local counsel. However, the Court will award the additional 15 hours of fees requested for Counsels' work on this motion. The Court finds that the costs expended by Plaintiffs' counsel were reasonably incurred to litigate the matter.

Considering the above and the timekeeping errors pointed out in the opposition, the Court will reduce the hourly rates but maintain the multiplier requested as follows:

Name	***Position & Experience***	***Hours***	***Hourly Rate***	***Fees***
R. Donahoo	Attorney (28 yrs.)	835.18	600.00	501,108.00
Kokonas	Attorney (15 yrs.)	239.90	500.00	119,950.00
Camilleri	Attorney (12 yrs.)	874.70	450.00	393,615.00
W. Donahoo	Attorney (6 yrs.)	154.95	400.00	61,980.00
C. Donahoo	Attorney (6 yrs.)	209.90	400.00	83,960.00
Ung	Paralegal	18.90	200.00	3,780.00
Reyna	Paralegal	38.20	150.00	5,730.00
Duncan	Paralegal	25.50	200.00	5,100.00
Amador	Paralegal	21.40	150.00	3,210.00
			TOTAL:	**1,178,433**
			Multiplier 1.5	**1,767,649.50**

CONCLUSION

Based on the foregoing, Plaintiffs unopposed motion to seal is **GRANTED** and their motion for fees and costs is **GRANTED** in the amount of $**1,767,649.50** and costs of **$49,678.73**. Plaintiffs 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. SCV-266243, Doe v. County of Sonoma

Plaintiff Jane Doe[1], by and through their Guardian ad litem, Claudia Dincin, ("Plaintiff"), filed the currently operative first amended complaint in this action against the County of Sonoma ("County"), , Universal Protection Service, LP ("Universal", dba Allied Universal Security Services, and named in the complaint as Allied Universal), First Security Services (now replaced by Universal), with causes arising out of the alleged sexual assault of Plaintiff while undergoing a psychiatric hold (the "FAC").

This matter is on calendar for the motion by Universal for summary judgment or in the alternative adjudication pursuant to Cal. Code Civ. Proc. ("CCP") § 437(c). The motion for summary judgment is **DENIED**.

I. Evidentiary and Pleading Issues

Plaintiff's objections are OVERRULED. Plaintiff presents issues of dispute of foundational facts, which is a matter for weighing in the motion, not an evidentiary objection by which the Court can refuse to consider evidence.

II. Underlying Facts

On February 19, 2019, Plaintiff was admitted to the Sonoma County Behavioral Health, Crisis Stabilization Unit ("CSU"). Universal's Separate Statement of Undisputed Material Facts ("USSUMF"), ¶ 6. Plaintiff alleges that while they were admitted, they were convinced to go to the bathroom by another minor patient. USSUMF ¶ 7. Plaintiff alleges that while in the bathroom, they were sexually assaulted by the other patient. USSUMF ¶ 8. On the day of the incident, Universal was contracted as the County's third-party security vendor. USSUMF ¶ 1. Universal was contacted to provide security services for compensation, including services to the CSU. USSUMF ¶ 2-3. These duties include anything incorporated into the "Post Orders". USSUMF ¶ 3-4; See also Declaration of Brittany Thornton in Support, Exhibit G (the "Post Orders"). Universal's understanding of their job was to "observe and report" any issues to County staff. USSUMF ¶ 5.

[1] The Court notes that Plaintiff is a transgender person born female but identifying as male. See FAC ¶ 1. The papers of both parties appear unclear on Plaintiff's preferred pronouns (See, e.g., FAC ¶ 22). Plaintiff's preferences not being clear, out of both clarity and respect, the Court uses they/them pronouns in this opinion.

The contract between the County and Universal approved by County staff on May 19, 2016 explicitly states that the contract is not for the benefit of, and does not create any rights for, third party beneficiaries. USSUMF ¶ 9. The County has rights under the contract "in its sole discretion" for reprisals if Universal's work does not meet the expected standard. USSUMF ¶ 10.

Plaintiff in turn shows that Universal's purpose at the CSU was to ensure the safety of all individuals there, including patients. Plaintiff's Additional Undisputed Material Facts ("PAUMF"), ¶ 6. The Post Orders provide that "(a)n officer's basic responsibility is to always be observing the patients and their behavior." PAUMF ¶ 7. Further, there is testimony reflecting that the contract provided by Universal may not have been the operative contract at the time of the incident. PAUMF ¶ 12.

III. The Burdens on Summary Judgment and Adjudication

1. *Generally*

Summary adjudication "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." CCP § 437c(c). A moving defendant meets its initial burden to show that one or more elements of a cause of action "cannot be established" (CCP § 437c(p)(2)) by presenting evidence that, if uncontradicted, would constitute a preponderance of evidence that an essential element of the plaintiff's case cannot be established. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851; *Kids Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 879. Alternatively, a defendant may show that there is a "complete defense" to a cause of action. CCP § 437c(p)(2). To show a complete defense, a defendant must present admissible evidence of each essential element of the defense upon which it bears the burden of proof at trial. *See, e.g. Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 289. A defendant cannot base its "showing" on the plaintiff's lack of evidence to disprove its claimed defense. *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 472.

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840. If the moving defendant does not meet its initial burden, the plaintiff has no evidentiary burden. CCP § 437c(p)(2).

If a defendant meets its initial burden to show a "complete defense," the burden shifts to the plaintiff to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(2). *Consumer Cause, Inc.*, 91 Cal.App.4th at 468. An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at

845.

"(T)he pleadings determine the scope of relevant issues on a summary judgment motion." *Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74. "(T)he burden of a defendant moving for summary judgment only requires that he or she negate plaintiff's theories of liability *as alleged in the complaint;* that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings." *Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493 (emphasis in original). Where the deficiency is with the complaint, and not the evidence presented, the legal effect of a motion for summary judgment is the same as that of a motion for judgment on the pleadings. *American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1117.

2. *Negligence and Security Professionals*

The elements of a negligence cause of action are: 1) a legal duty; 2) breach of the duty; 3) causation; and 4) damages. *Colonial Van & Storage, Inc. v. Superior Court* (2022) 76 Cal.App.5th 487, 496; *Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998. Whether a duty of care is owed is a question for the court and not a jury. *Ballard v. Uribe* (1986) 41 Cal.3d 564, 572. "Legal duties are not discoverable facts of nature, but merely conclusory expressions that, in cases of a particular type, liability should be imposed for damage done." *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 434. "Just as a business may be liable ... for its failure to take reasonable precautions to protect its customers (including, presumably, its failure to hire a competent security guard where there is such a need), a security guard hired by the business should be liable to an injured customer where the guard fails to act as would a reasonable security guard under similar circumstances and that failure causes the customer's injury." *Marois v. Royal Investigation & Patrol, Inc.* (1984) 162 Cal.App.3d 193, 199–200.

IV. Analysis

1. *Universal Fails to Shift its Initial Burden*

Universal attempts to argue that Plaintiff's cause of action fails because Universal owed Plaintiff no duty. Universal asserts that Plaintiff cannot establish the duty element of the negligence cause of action using either the relevant contract between Universal and the County, or under common law principles.

Universal fails to establish that they owed no duty to Plaintiff under common law principles. Universal avers that their status as a security company for the County does not create a duty to protect Plaintiff while under the County's care. The authorities provided by Universal are either clearly distinguishable, or serve to rebut Universal's point.

First, under *Marois v. Royal Investigation & Patrol, Inc.* (1984) 162 Cal.App.3d 193, 200 ("*Marios*"), it is clear that security companies owe special duties to customers when they are contracted to provide their services on behalf of a business. In *Marois,* the customer of a business was assaulted in front of the drive up window. *Id*. at 197. The security guards, employed by a security company and performing work under a contract with the business, observed the attack, called the police, but ultimately did not physically intervene. *Ibid*. After plaintiff's case in chief at jury trial, but before deliberations, the security company moved for nonsuit. *Ibid*. The trial court granted the motion for nonsuit, citing both that the security guards' actions were reasonable, and that the security company owed no duty to plaintiffs. *Ibid*. The Court of Appeal reversed. *Id.* at 202. In reversing the trial court, the Court of Appeal made clear that "(b)y contracting with the business to provide security services, the security guard creates a special relationship between himself and the business's customers. This relationship, in and of itself, is sufficient to impose on the guard the obligation to act affirmatively to protect such customers while they are on the business premises. *Id*. at 200. Here, given the plaintiff's proximity to the business, and his obvious status as a customer, the issue of whether the security guards owed him a duty was clear. *Id*. at 200-202, fn. 3. It was improper for the trial court to remove the reasonableness of the security guards' actions from the jury's hands. *Id.* at 202.

In an attempt to distinguish from the unfortunate results in *Marois,* Universal also cites to under *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 679 disapproved of by *Reid v. Google, Inc.* (2010) 50 Cal.4th 512 and *Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 249. Neither of these cases relate to the relationship created by a security company to business customers through a contract for services. *Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 249 states that by hiring a security guard, a business does not necessarily take on a duty to protect patrons. *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 679 is even less applicable, merely stating that a business does not have a duty to provide security guards to common areas where the harm inflicted was not foreseeable.

These points are unavailing. Universal does not provide any argument or authority that the County owed no duty to Plaintiff. It is clear under *Marois* that if the County owed a duty to Plaintiff, so too did Universal. *Marois, supra,* 162 Cal.App.3d at 200. Plaintiff alleges adequate facts to establish the County owed her a duty. Universal makes no showing that the County owed no duty to Plaintiff, and therefore Universal has not shown that they owed no duty to Plaintiff.

Universal's arguments regarding there being no obvious duty to Plaintiff based on the version of the contract they have provided and Post Orders is equally unavailing. As Plaintiff notes in opposition, the phrasing of the post orders is unambiguous that "(p)olicy dictates that if there are two adolescent clients in the adolescent unit at the same time, **an officer must be posted at the unit**." See Post Orders, pg. 3. This is obviously for the protection of individuals such as Plaintiff who are placed in the adolescent unit with other individuals. Universal's averment that the scope of their work is exclusively for the benefit of the staff members is not supported by this evidence.

Indeed, even the deposition of Michael Ferguson, which was also submitted by Universal in support of the motion, clearly indicates that the presence of Universal, even just to observe, is for "the safety of all individuals in that facility." See Thornton Decl., Exhibit B, pg. 94:2-3. Universal does not present any evidence that there was a guard stationed observing the adolescent unit at the time of the assault, as would be required under the Post Orders, which Universal themselves aver controls their duties. UMF ¶ 4. Universal presents no evidence that a guard reported that Plaintiff and their alleged assailant had both entered the adolescent unit restroom, where they could not be observed. Even the averred duty to observe and report is clearly present. Therefore, there is a triable issue of fact as to whether the failure to perform these duties is a "failure to act as would a reasonable security guard under similar circumstances". *Marois v. Royal Investigation & Patrol, Inc.* (1984) 162 Cal.App.3d 193, 199–200.

2. *Even if Universal Met Their Burden, Plaintiff Meets the Shifted Burden*

Even if the Court were to reach the second stage of analysis at summary judgment, Plaintiff would meet the shifted burden. Plaintiff presents evidence that the contract presented by Universal was not the operative contract at the time of the incident. The contract proffered by Plaintiff does not contain the same language regarding no third-party beneficiaries. As was previously noted, the Post Orders clearly support some duty to the Plaintiff. Therefore, even if the duty of common law was not dispositive on the issue, Plaintiff has presented a triable issue of fact as to which contract controls the transaction, and therefore whether Plaintiff may be owed a duty under the other contract.

Summary judgment is DENIED.

IV. Conclusion

Based on the foregoing, the motion for summary judgment is **DENIED**.

Plaintiff shall submit a written order to the court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5-8. SCV-272661, Calderon v. Hernandez

Plaintiffs Jorge Luis Barrera Calderon and Olman Alexi Martinez (together "Plaintiffs") filed the currently operative complaint (the "Complaint") in this action against defendants Deisy Hernandez ("Hernandez"), Marcelo Robledo ("Robledo"), Grape Land Vineyard Management, LLC ("Grape Land"), Harco National Insurance Company ("Harco"), International Fidelity Insurance Company ("Fidelity", all together "Defendants"), and Does 1-30, for causes of action arising from alleged violations of employment law. This matter is on calendar for five motions by counsel for Defendants to be relieved from representation of Defendants.

Counsel seek to withdraw due to a failure to pay fees. Robledo and Hernandez were both served personally with the motion. Hernandez is the principal for Grape Land and was served with the motion on Grape Land's behalf as well. Allowing counsel to withdraw as to these Defendants therefore appears appropriate. As to Robledo, Hernandez and Grape Land, the motions are GRANTED. The Court will sign the proposed orders that were submitted with the motions.

However, Counsel has also filed motions to withdraw as representation for Harco and Fidelity. The motion was only served to Hernandez in order to effectuate service on these entities. There is nothing before the Court to show that Hernandez is the principal for these entities, nor that she is properly authorized to accept service of process on their behalf. No proper service on these entities having occurred, the motions as to Harco and Fidelity are DENIED.

9. SCV-273099, Gaye Martin v. Kaiser Foundation Hospitals, et al.

Plaintiffs Gaye Martin ("Plaintiff"), both individually and as successor-in-interest to decedent William Thomas Martin ("Decedent"), Tiffany Collver, the Estate of Jamie Freeman, Jaeger Freeman and Dylan Martin, filed the complaint ("Complaint") in this action against Defendants Kaiser Foundation Hospitals ("KFH"), Kaiser Foundation Health Plan ("Health Plan"), The Permanente Medical Group, Inc. ("Medical Group") Matthew N. Joseph, D.O., Thuanthieu D. Ho, M.D., Allison Noesekabel, M.D., Colette McFadden, M.D., Quangminh D. Ly, M.D., Tannia H. Joson, M.D., Joe A. Saenz, M.D., Colin T. Iberti, M.D., Nanette L. Myers, M.D., Claire E. White, M.D., Elizabeth Au, M.D., (all together, "Defendants"), and Does 1-50, arising out of Defendants' care of Decedent. This matter is on calendar for Plaintiffs' motion to compel attendance at deposition and for monetary sanctions. Plaintiffs' motion is GRANTED.

I. Relevant Law

CCP § 2025.450(a), provides: "If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice." On non-appearance of a deponent, the moving party shall attempt to meet and confer in good faith regarding the non-appearance. *Leko v. Cornerstone Building Inspection Service* (2001) 86 Cal.App.4th 1109, 1124.

"If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition

and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." CCP § 2025.450(g)(1). The purpose of monetary sanctions is to mitigate the effects of the necessity of discovery motions and responses on the prevailing party. There is no requirement that the failure to comply with discovery be willful for the court to impose monetary sanctions. *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 878. Requests for costs must be both reasonable and actual. *See Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 74; *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1181.

For the court to order sanctions against an attorney, the Court must find that the attorney advised their client to engage in discovery misconduct. *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 81. Additionally, the motion must advise the attorney that joint and several liability against the attorney is sought for the sanctions. *Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, 319.

II. Analysis

Plaintiffs served several Notice of Depositions and requests for production of documents to Defendants on December 1, 2023. Plaintiff specifically sought to deposed Matthew N. Joseph, D.O., Thuanthieu D. Ho, M.D., Allison Noesekabel, M.D., Colette McFadden, M.D., Quangminh D. Ly, M.D., Tannia H. Joson, M.D., Joe A. Saenz, M.D., Colin T. Iberti, M.D., Nanette L. Myers, M.D., Claire E. White, M.D., and Elizabeth Au, M.D. ("Deposed Parties"). The deposition notice was for depositions to occur in two hour blocks beginning on December 21, 2023. Defendants served objections to the various deposition requests on December 12-14, 2023. Plaintiffs thereafter served amended Notice of Depositions to Defendants on December 14, 2023. The amended deposition notice was for depositions to occur in two hour blocks beginning on December 29, 2023. Again, Defendants objected, averring that neither counsel nor the deposed parties were available on the relevant dates. The parties met and conferred for weeks thereafter. The motion was filed on March 15, 2024. While Defendants generally averred that the parties could arrive at mutually acceptable deposition dates, Defendants provided no dates for deposition until after the motion was filed.

Defendants argue that it was improper that Plaintiffs "unilaterally" noticed deposition dates. Defendants aver that they have conferred with Plaintiffs and found mutually agreeable deposition dates, but that the motion itself was unnecessary. This is unpersuasive. Defendants' depositions were noticed originally starting December 21, 2023. The second notice of deposition noticed depositions to begin December 29, 2023. Plaintiffs filed their motion March 15, 2024. More than 60 days passed between the proposed deposition dates and Plaintiffs' motion. In that time, Defendants never provided alternative deposition dates, despite their averred unavailability. Defendants provide no legal authority that depositions are not to be noticed unilaterally. Plaintiffs have adequately met and conferred in an effort to obtain dates. Defendants' argument

that the motion was unnecessary is unpersuasive. The motion was clearly necessary to draw a substantive and timely response.

The parties have agreed that the depositions will occur in July, but no dates were provided to the Court. There is nothing within the record to indicate the depositions have already occurred. The motion is therefore not moot. The motion to compel is **GRANTED**. The Deposed Parties shall attend a properly noticed deposition from Plaintiffs within forty-five (45) days' notice of this order.

III. Sanctions

Sanctions are mandatory under the CCP for discovery abuses, absent substantial justification. Without a showing of substantial justification, the Court **must** grant compensatory monetary sanctions which represent reasonable and actual costs to Plaintiffs. Plaintiffs request sanctions against both Defendants and their counsel. There is no indication that the discovery abuse stems from the advice of counsel, and as such imposing sanctions against counsel here appears improper. *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 81.

Plaintiffs request sanctions of $2,560 against Defendant. *See* Declaration of Douglas Fladseth, ¶¶ 10-13. Plaintiffs request $2,500 of costs for attorney's fees, and $60 in filing fees for the motion. Filing fees of $60 is appropriate. Plaintiffs request a billing rate for counsel of $500 per hour for 5 hours expended on the motion. The Court **GRANTS** Plaintiffs' request for monetary sanctions in the amount of $2,560. Defendants shall pay $2,560 to Plaintiffs within 30 days' notice of this order.

IV. Conclusion

For the reasons above, the Motion is **GRANTED**. Deposed Parties shall attend the properly noticed deposition from Plaintiffs within forty-five (45) days' notice of this order.

Plaintiffs' request for sanctions is GRANTED. Defendants shall pay $2,560 to Plaintiffs within 30 days' notice of this order.

Plaintiffs' counsel 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).

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