TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, August 5, 2026 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) 521-6723**, 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. 24CV04591, Peter v. DeLeonflores

Defendant Precision Concrete Construction LLC's ("Defendant" or "PCC") motion for summary judgment against Plaintiff Steve Peter's single cause of action for Motor Vehicle in the Complaint is **DENIED**, pursuant to Code of Civil Procedure ("C.C.P.") section 437c. The parties' requests for judicial notice and objections to evidence are addressed below.

I. PROCEDURAL HISTORY

Plaintiff alleges that he is the surviving spouse of decedent Diana Peter, who died as a result of a motor vehicle collision on College Avenue north of the intersection with Orchard Street in Santa Rosa, California. (Undisputed Material Fact ["UMF"] Nos. 1-2; Complaint, ¶¶ 12, MV-1.) Defendant Melvin O. DeLeonflores ("Melvin") was the driver of the other vehicle and PCC, which entity employed Defendant Melvin as a concrete finisher, was added in as Doe 1 via amendment to the Complaint. (UMF Nos. 2-3; Additional Material Fact ["AMF"] No. 3; Complaint, ¶ MV-2; First Amendment to Complaint Substituting Defendants' True Names for Fictitious Names, 1:18-25.)

The Complaint alleges that Defendant Melvin was acting within the course and scope of his employment with PCC at the time of incident giving rise this action. (UMF No. 4; Complaint, MV-2.e.)

PCC disputes this arguing that Defendant Melvin was outside of the scope of his employment travelling from his personal residence to a jobsite at the time.

PCC moves for summary judgment ("MSJ") as to Plaintiff's sole cause of action arguing that PCC did not owe a duty to Plaintiff under the "going and coming" rule. (Amended Notice of Motion, 2:2-9.) Plaintiff opposes the MSJ and PCC filed a Reply to the Opposition.

II. REQUESTS FOR JUDICIAL NOTICE

Per California Evidence Code section 452(d), the Court **GRANTS** PCC's requests for judicial notice of Plaintiff's Complaint and Plaintiff's Amendment to the Complaint.

III. EVIDENTIARY OBJECTIONS

PCC's objections to Paragraphs 3 and 4 of the Declaration of John M. Sanford in support of Plaintiff's Opposition and Exhibit 3 attached to the Declaration are **OVERRULED**.

IV. ANALYSIS

Legal Standard

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).)

Vicarious Liability/Respondeat Superior

The doctrine of respondeat superior holds an employer vicariously liable for an employee's torts committed within the scope of the employment. (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 967.) This doctrine is based on the deeply rooted sentiment that it would be "unjust for an enterprise to disclaim responsibility for injuries occurring in the course of its characteristic activities." (*Mary M. City of Los Angeles* (1991) 54 Cal.3d 202, 208.)

Under the "going and coming" rule, an employee going to and from work is ordinarily considered outside the scope of employment so that the employer is not liable for his torts. (*Hinman v. Westinghouse Elec. Co.* (1970) 2 Cal.3d 956, 961.) There are exceptions to the "going and coming" rule where the trip "involves an incidental benefit to the employer, not common to commute trips by ordinary members of the work force." (*Id*. at p. 962.)

PCC's Motion for Summary Judgment

PCC argues that, at the time of the incident, Defendant Melvin was not performing any tasks or errands for PCC because PCC did not require him to use a personal vehicle as a condition of employment, because PCC did not reimburse him for mileage, fuel, maintenance, or any other expenses associated with his personal vehicle and tools, and because Defendant Melvin was off the clock at the time of the incident. (MSJ, pp. 2, 4-5; UMF Nos. 8, 15, 20, 22, 23, and 27.)

PCC relies on the going and coming rule to argue that Defendant Melvin was simply traveling from his personal residence in Sonoma to a jobsite in Healdsburg and that no recognized exceptions to the going and coming rule can be invoked, such as his personal vehicle was required to work or he was running a special errand for work. (MSJ, pp. 6-8.) PCC also argues that it did not receive any incidental benefit at the time. (*Id*. at 8:4-28.)

For these reasons, PCC argues that it is entitled to summary judgment as a matter of law regarding Plaintiff's sole cause of action for motor vehicle.

<u>Plaintiff's Opposition</u>

Plaintiff argues that there is triable issue of fact as to whether the vehicle use exception to the going and coming rule applies because Defendant Melvin testified that PPC required him to have his vehicle available during the workday so that he could drive himself to jobsites when asked to do so by PCC and to transport his 18 concrete finishing and carpentry tools that weighed approximately 170 pounds. (AMF Nos. 4-18; Opposition, pp. 7-10.)

Plaintiff also argues that there remains a triable issue of material fact as to whether the incidental benefit exception to the going and coming rule applies because PCC benefited from Defendant Melvin's use of his vehicle as it allowed him to drive to different jobsites throughout the work day and it was used to transport numerous tools to those jobsites as a part of performing his duties. (AMF Nos. 4-18; Opposition, pp. 10-12.)

<u>Reply to Opposition</u>

PCC argues in the reply that Defendant Melvin was just commuting from his personal residence in Sonoma to a jobsite, but he was not required to use his personal vehicle for the job although he was responsible for getting himself to jobsites and supplying his own tools. (Reply, pp. 3-5.) PCC also claims that most of the tools in Defendant Melvin's vehicle at the time of the incident were not required for work assigned at the jobsite he was going to that day. (Reply, pp. 5-8.)

<u>Application</u>

The Court finds there is a triable issue of fact remaining as to whether the vehicle-use exception and incidental-benefit exception apply because, as Defendant Melvin stated at his deposition, at the time of the incident he had his concrete and carpentry tools that he would always carry with him in his personal vehicle to be able to work. (Sanford Decl., Exhibit 5, pp. 35-36.) He was required to transport himself to various jobsites and he needed to have these tools available for assigned work at various jobsites throughout his workday. Thus, a triable issue remains as to whether these facts establish an exception to the going and coming rule for respondeat superior to apply.

V. <u>CONCLUSION</u>

Based on the foregoing, PCC's MSJ is **DENIED**. Plaintiff shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

2. 25CV02142, Bank of America N.A. v. Edwards

Plaintiff Bank of America, N.A.'s ("Plaintiff" or "Bank of America") unopposed motion to set aside and vacate the Court's prior order of dismissal and enter judgment pursuant to Code of Civil Procedure ("C.C.P.") section 664.6 is **GRANTED**. Judgment shall be entered in the amount of **$6,135.00** against Defendant Edwards ("Defendant"). Plaintiff's request for judicial notice of the Stipulation Agreement filed in this case is **GRANTED**.

I. PROCEDURAL HISTORY

Plaintiff brought this action against Defendant to collect payment on credit card debt owed. The parties entered into a Stipulation Agreement, according to which Defendant agreed to pay Plaintiff $9,662.67 to satisfy the debt owed under account number ending in 2587. (Request for Judicial Notice ["RJN"], Exhibit B, ¶¶ 1-2.) Defendant agreed to make the following payments under the Stipulation Agreement:

1. A one-time payment of $347.67 on or before April 24, 2025.

2. A minimum payment of $405.00 on or before the 24th day of each and every month commencing in May 24, 2025, until the entire Judgment Amount was paid.

(RJN, Exhibit B, ¶ 4.) Per the Stipulation, if Defendant defaulted on the payments, then the dismissal entered would be vacated and judgment would be entered for the amount remaining on the debt plus any court costs required. (*Id*. at Exhibit B, ¶ 7.) Defendant defaulted after paying off $3,587.67 and now Plaintiff moves that the dismissal be vacated and judgment be entered for the remaining unpaid amount plus court costs. (Langedyk Decl., ¶¶ 6-7.)

II. ANALYSIS

If parties to a pending litigation agree to sign a written stipulation for settlement of the case, then the court may upon noticed motion enter judgment pursuant to the terms of the settlement. (C.C.P. § 664.6(a).) The court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement if the parties request it. (*Ibid*.) "Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809.)

Bank of America requests to vacate the dismissal and enter judgment per the Stipulation and section 664.6. (Motion, pp. 3-4.) Bank of America properly and timely served notice of the hearing date and notice of this motion by mail on Defendant, who has not opposed. Bank of America now moves the Court to enter judgment in the amount of $6,135.00 against Defendant, which includes the balance remaining on the debt of $5,551.39 and court costs of $583.61. (Langedyk Decl., ¶ 7; See generally Memorandum of Costs.)

Bank of America has sufficiently demonstrated that the parties entered into a valid written and signed settlement agreement that was subject to C.C.P. section 664.6, under which Defendant continues to owe after defaulting on the agreed-upon payment obligations. Per the motion, the parties' Stipulation, and section 664.6, the Court finds it reasonable to enter judgment in the amount of $6,135.00 against Defendant for the remaining debt owed and court costs.

III. CONCLUSION

Accordingly, the unopposed motion is **GRANTED**. Judgment shall be entered in the amount of **$6,135.00** against Defendant for the outstanding debt plus costs. Unless the parties request and appear for oral argument, the Court will sign the proposed order setting aside the dismissal and the proposed judgment filed with this motion.

3. 25CV02399, Mork v. Sjogreen

Counsel Everett Dorey LLP and Sylvia Schaffer ("Counsel") move unopposed to be relieved as counsel for client Cross-Defendant Cody Thompson. The motion is **GRANTED**, per Code of Civil Procedure section 284(2).

Counsel's declaration states that Counsel filed this motion due to a "disabling conflict and a breach of a material term of the engagement agreement," and because the client failed to substitute new counsel after being requested to do so. (Counsel Decl., ¶ 2.) Counsel timely and properly served the moving papers and notice of hearing date. Only Plaintiffs filed non-oppositions to the motion. The next hearing date is trial on October 16, 2026. Unless oral argument is requested, the Court will sign the proposed order lodged with the motion.

4. 25CV04562, McCabe v. Grand Design RV, LLC

Plaintiff Tracy McCabe's motion for leave to amend the Complaint to add a cause of action for Magnuson-Moss Consumer Warranty Act and the Consumer Legal Remedies Act is **GRANTED**, pursuant to Code of Civil Procedure ("C.C.P.") sections 426.50 and 473(a)(1). Plaintiffs shall file and serve the proposed First Amended Complaint ("FAC") within 10 days of this Court's order.

I. PROCEDURAL HISTORY

Plaintiff's action under the Song-Beverly Consumer Warranty Act was brought due to alleged recurring issues with a 2025 Grand Design RV that Plaintiff purchased for personal and household use from Defendant Blue Compass RV. (Motion, 2:15:-18.) Though Plaintiff attempted to work out these issues with Blue Compass RV and Grand Design RV, LLC, the parties did not reach a resolution and Plaintiff filed this action alleging the Song-Beverly claims and negligence against defendants. (*Id*. at 2:18-22.)

Though discovery, Plaintiff determined that Blue Compass RV never completed a pre-delivery inspection and allegedly delivered the RV to Plaintiff in an "unmerchantable condition," which facts were not known to Plaintiff prior to the discovery stage. (Motion, 2:24-26.)

On March 30, 2026, Plaintiff's counsel sought a stipulation from Grand Design RV, LLC to file the proposed FAC Complaint to include additional claims under the Magnuson-Moss Consumer Warranty Act and the Consumer Legal Remedies Act, but did not obtain a stipulation. (Hendrickson Decl., ¶ 3.) Thus, Plaintiff filed this motion to add the additional claims to the Complaint via the proposed FAC attached as "Exhibit 1" to the Stipulation, which is attached as Exhibit A to Plaintiff's counsel's declaration. (*Id*. at Exhibit A, Exhibit 1.) Defendants oppose the motion, to which opposition Plaintiff replied.

II. ANALYSIS

Legal Standard

Motions for leave to amend pleadings are in discretion of the court, which may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading. (C.C.P. § 473.) Additionally, the court may allow the amendment of any pleading at any time before or after trial begins if it is in the furtherance of justice. (C.C.P. § 576.) A party who fails to plead a cause of action in a pleading, whether through oversight, inadvertence, mistake, neglect, or other cause, can apply to the court for leave to amend that pleading to include the additional cause of action for good cause at any time during the course of the action. (C.C.P. § 426.50.) C.C.P. section 473 and California Rules of Court, Rule 3.1324 require that the moving party accompany the motion for leave to amend with a copy of the amended pleading to be filed if leave is granted. When the plaintiff is the moving party, proximity to the trial date is not a ground for denial absent a showing of prejudice to defendant. (See *Mesler v Bragg Mgt. Co.* (1985) 39 Cal.3d 290, 297.) Even if some prejudice is shown, leave to amend may be permitted upon conditions imposed by the Court, such as, continuation of the trial date, reopening discovery, or ordering the party seeking amendment to pay opposing party's costs and fees incurred in preparing for trial. (C.C.P. §§ 473, 576; *Fuller v Vista Del Arroyo Hotel* (1941) 42 Cal.App.2d 400.)

Plaintiff's Motion

Plaintiff argues that there is good cause to include causes of action for the Magnuson-Moss Consumer Warranty Act and the Consumer Legal Remedies Act, which were not previously included in the Complaint, but facts supporting these claims were uncovered through discovery. (Motion, 3:16-21.) Though the motion fails to state it, the Court notes that Plaintiff's proposed FAC completely removes all Song-Beverly claims from the pleadings.

Opposition

Defendants oppose the motion claiming that Plaintiff is attempting to evade the pending Motion for Summary Adjudication on all of Plaintiff's Song-Beverly claims as a matter of law because the trailer was sold to Plaintiff in Reno, Nevada, rather than in California. (Opposition, 6:5-19.) Defendants argue that the proposed FAC is a sham pleading because it includes contrary facts to matters admitted in deposition testimony. (*Id*. at pp. 5-6.) For example, the proposed FAC states the following:

1. "Defendant BLUE COMPASS RV…is an unknown business entity doing business at 10000 South Virginia Street, Reno, Nevada that sold and delivered a consumer good to Plaintiff." (FAC, ¶ 3.)

2. "Plaintiff was referred to BLUE COMPASS RV's Reno, Nevada location and was told that location had the particular model she was seeking." (FAC, ¶ 8.)

3. "…Pursuant to an agreement at the time of purchase, delivery took place in Grass Valley, California, with the seller bearing all expenses and all risk of loss until the COACH was delivered." (FAC, ¶ 11.)

Defendants argue that amendment is futile because the additional claims Plaintiff proposes to add via the proposed FAC depend on the violation of an express or implied warranty created and governed by state law and Plaintiff has conceded that the Song-Beverly claims cannot be brought as they were removed from the proposed FAC. (Opposition, pp. 6-8.) Furthermore, Grand Design RV, LLC was not a party to any transaction with Plaintiff and the Consumer Legal Remedies Act only reaches "persons" that a party to a consumer transaction. (*Id*. at pp. 8-9.) Defendants also argue that the delay in bringing this motion after the Motion for Summary Adjudication was filed was strategic and the facts the new claims rely upon were already available in the initial pleading. (*Id*. at 9:8-24.). Finally, Defendants argue that amendment will severely prejudice them because the Motion for Summary Adjudication is fully briefed and initially set to be heard on June 12, 2026, and trial is set for November 13, 2026. (*Id*. at pp. 9-10.)

Reply

In the Reply, Plaintiff argues there was not an unreasonable delay in bringing the motion as it was filed in April and the facts supporting the additional claims became known to Plaintiff at the end of January. (Reply, 3:4-20.) Furthermore, there still remains sufficient time between now and trial to conduct additional discovery, which Defendants concede is not completed yet. (*Id*. at 2:11-28.)

Application

Following California's liberal policy in allowing amendments, the Court finds a sufficient basis here to grant Plaintiff's motion and does not find that the additional two claims proposed in the FAC will result in prejudice to Defendants, as Defendants have stated that discovery is ongoing and there are several months before trial is scheduled. As to Defendants' arguments regarding the legal sufficiency of the proposed FAC, these are not properly addressed in a motion for leave to amend and are more appropriately addressed in other types of motions designed to test pleadings. The Court, per the Hon. Dennis Hayashi's *ex parte* application order, continued the hearing date on the Defendants' Motion for Summary Adjudication to September 23, 2026, noting that "filing deadlines per statute" apply. As such, the Court does not find that Defendants will be severely prejudiced by allowing leave to amend.

III. CONCLUSION

As such, the motion is **GRANTED**. The proposed FAC shall be served and filed within 10 days of this Court's order. Unless oral argument is requested, the Court will sign the proposed order lodged with this Court regarding this motion.

5. 25CV04926, Rodriguez de Galvan v. California Automobile Insurance Company

Defendant California Automobile Insurance Company ("Defendant" or "CAIC") moves unopposed to consolidate this matter ("*Ortega I*") with *Rodriguez de Galvan v. California Automobile Insurance Company*, Case No. 25CV06659 ("*Ortega II*"), which is also pending before the Hon. Jane Gaskell in Department 17. The motion is **GRANTED**.

I. PROCEDURAL HISTORY

On July 11, 2025, Plaintiffs Jose Galvan Ortega and Silvia Rodriguez de Galvan filed *Ortega I* asserting causes of action for breach of contract and tortious bad faith against CAIC arising out of its denial of coverage on an homeowner's insurance policy on Plaintiffs' property, which suffered wind damage to the roof causing rainwater to leak into the interior of the home. (Motion, 2:24-28, 3:1-6.) Since then, Plaintiffs served the Summons and Complaint on CAIC and CAIC filed its Answer. (*Id*. at 3:7-16.) No trial date has been set in *Ortega I*. (*Id*. at 3:15-16.)

On or about September 24, 2025, Plaintiffs filed *Ortega II* against CAIC alleging causes of action for breach of contract and tortious bad faith arising out of the same denial of coverage under the same insurance policy at issue in *Ortega I*. (Motion, 3:18-24.) The Complaint and Summons were served in *Ortega II* and CAIC filed and serve their Answer. (*Id*. at 3:25-28.) Mr. Ortega passed away so a dismissal has been entered as to him in *Ortega II*. (*Id*. at 4:1-2.) Trial has been set in *Ortega II* for January 22, 2027. (*Id*. at 4:7-10.)

Now, Defendant moves unopposed to consolidate both *Ortega I* and *Ortega II*. Per California Rules of Court, Rule 3.300, Defendant filed the notice of motion to consolidate related cases in both actions. Though the moving papers and notice of hearing date have been timely and properly served, there have been no objections or oppositions filed. (See Notice of Non-Opposition filed July 29, 2026.)

II. MOTION TO CONSOLIDATE

Code of Civil Procedure section 1048(a) provides that "when actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." An order of complete consolidation results in separate actions becoming a single action, the pleadings in the various actions being considered as an overall set of pleadings, and a single verdict and judgment issuing for all parties on all issues. (*Kropp v. Sterling Sav. & Loan Ass'n* (1970) 9 Cal.App.3d 1033, 1046-47.) The Court ordinarily considers the following factors in deciding whether to order consolidation: the timeliness of the motion (*i.e.* whether granting consolidation would delay trial or whether discovery in one or more cases has proceeded without all parties present); complexity (*i.e.* whether joining the actions involved would make trial too confusing or complex); and prejudice (*i.e.* whether consolidation would adversely affect the rights of any party). (*See* Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (Rutter Group 2020) ¶ 12:362.)

CAIC moves to consolidate on the grounds that the two actions have identical facts, identical parties and counsel, and identical claims. (Motion, pp. 5-7.) CAIC argues that it will foster judicial efficiency, avoid duplicative discovery, and not delay trial or render a single trial too complex for a jury because the cases involve overlapping facts, witness testimony, and documentary evidence. (*Id*. at pp. 7-8.) Finally, CAIC argues that neither party would be prejudiced by consolidation. (*Id*. at 8:3-10.)

Here, the two actions involve the same facts, parties, counsels, and claims, so consolidation will likely not prejudice either party and will promote judicial economy.

III. CONCLUSION

Defendant CAIC's unopposed motion is **GRANTED**. The actions are consolidated under *Ortega I*. Unless oral argument is requested, the Court will sign the proposed order lodged with the motion.

6. 25CV07144, Kesler v. Pullins

Per Code of Civil Procedure ("C.C.P.") section 430.10(e), the State of California Department of Transportation ("Caltrans") demurs to the Second, Third, and Fourth Causes of Action in the Complaint brought by Plaintiffs David and Kim Kessler, individually and as successors in interest to Taylor Kesler ("Decedent").

The Demurrer is **SUSTAINED with leave to amend** as to the Second and Third Causes of Action. The Demurrer is **SUSTAINED without leave to amend** as to the Fourth Cause of Action under Government Code section 840.

I. PROCEDURAL HISTORY

On or about October 12, 2024, Decedent was traveling as a passenger in a vehicle driven by Defendant Jace Pullins, which was owned by Defendant Deborah Pullins. (Complaint, ¶ 16.) The Complaint alleges that vehicle lost traction and Defendant was unable to regain control due to:

> "the unreasonably dangerous condition of the Subject Location, including but not limited to grade and superelevation of the roadway, lack of adequate shoulders, inadequate and/or lack of signage, lack of barriers/guardrails/barricades along the roadway, the improper and/or inadequate placement of metal poles, metal posts, and/or metal I-beams adjacent to the roadway, the concealed and hidden nature of said dangerous conditions, and due to the Public Entities' failure to adequately warn motorists of said dangerous conditions and failure to adequately maintain the roadway and adjacent areas."

(*Id*. at ¶ 16.) The Complaint makes further allegations as to the condition of the roadway, but as to the County, alleges causes of action for Dangerous Condition of Public Property (C.C.P. §§ 835, 840.2), Failure to Warn of Dangerous Condition (C.C.P. §§ 830, 830.8, 835, and 835.2), and Vicarious Liability (C.C.P. §§ 815.4, 815.2, and 820(a)). (*Id*. at ¶¶ 22-55.)

Caltrans demurs to the Complaint on the grounds that Plaintiffs fail to state a claim against it under C.C.P. section 430.10(e) as to the Second, Third, and Fourth Causes of Action. (Demurrer, pp. 1-2.) Caltrans' counsel attempted to meet and confer with Plaintiffs' counsel, but the parties did not reach a resolution. (Love Decl., ¶¶ 3-6; Infuso Decl., ¶¶ 2-5.) Plaintiffs opposed to which Caltrans replied.

II. 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).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts, but the distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The burden of proving that there is a reasonable possibility to cure the defect is squarely on the party that filed the pleading, but if that burden is met and leave to amend is not granted, then that constitutes an abuse of discretion by the trial court. (*Ibid*.)

Second Cause of Action Dangerous Condition of Public Property

Caltrans argues that California public entities are only liable if a specific statute imposes liability. (Demurrer, 4:14-27.) Plaintiffs' Complaint makes reference to Government Code section 840.2, which involves to an individual public employee's liability for negligence or wrongful act that was directly attributable to a dangerous condition. (Complaint, ¶¶ 22-35.) Caltrans argues that this a different and distinct cause of action from a public entity's liability for a dangerous condition under Government Code section 835, so the Complaint is uncertain in the Second Cause of Action as to which of the two claims is being alleged. (Demurrer, 5:2-9.) Caltrans only argues that references to Government Code section 840.2 be eliminated from the Second Cause of Action as it conflicts with California Rule of Court, Rule 2.112, which states that each cause of action must be separately stated and the Complaint makes no allegation as to a negligent employee's actions, but rather makes allegations as to the condition of the subject road. (*Id*. at 6:16-25.)

Plaintiffs concede in the Opposition that the Second Cause of Action is intended to be a claim for Dangerous Condition under Government Code section 835 and that references to section 840.2 can be cured by amendment. (Opposition, pp. 3-4.)

The Reply notes that Plaintiffs have conceded the issues as to the references to section 840.2 in the Complaint. (Reply, pp. 2:3-20.)

Based on the above, Caltrans' Demurrer is **SUSTAINED with leave to amend** as to the Second Cause of Action and the references to Government Code section 840.2 shall be removed.

Third Cause of Action for Failure to Warn of Dangerous Condition of Public Property

Caltrans argue that none of the Government Code sections cited, including sections 830, 830.8, 835, and 835.2, set forth a statutory cause of action for "failure to warn" so the claim fails and cannot be reasonably cured through amendment. (Demurrer, 7:2-14.)

Plaintiffs argue that even if Caltrans does not prefer the title of the Third Cause of Action as "Failure to Warn" that there is a claim for injury due to failure to provide warning signals, markings, or devices under Government Code section 830.8 and that there are notice requirements included in the Dangerous Condition statute in section 835. (Opposition, pp. 4-5.)

The Reply argues that the Demurrer should be sustained because Plaintiffs acknowledge that the Third Cause of Action is a party of Dangerous Condition liability which is already being brought as part of the Second Cause of Action. (Reply, pp. 2-3.) The Reply argues that section 830.8 is not a standalone cause of action because it provides immunity to both public entities and the public employee for failure to post traffic or warning signs. (*Ibid*.)

As Plaintiffs have already alleged Dangerous Condition liability in the Second Cause of Action, there is no reason to state a separate "Failure to Warn" claim in the Third Cause of Action in reference to section 835. While the Court also agrees that section 830.8 prevents a plaintiff from claiming liability against a public entity or public employee based on the failure to provide traffic regulatory or warning signals or devices of a type not listed in section 830.4, a plaintiff may still claim liability under the plain language of the statute for a public entity's failure to provide such a signal or device where the alleged dangerous condition endangers safe movement of traffic even when a reasonable person is using due care.

As such, the Court does find there is a reasonable possibility that Plaintiffs may cure the defects through amendment for this claim. The Demurrer is **SUSTAINED with leave to amend** as to the Third Cause of Action.

Fourth Cause of Action for Vicarious Liability

Caltrans argues that the Fourth Cause of Action against lumps together three separate claims that should be brought separately per California Rules of Court, Rule 2.112, and these claims are under Government Code sections 815.2(a) (Independent Contractor Liability), 815.4 (Employee Vicarious Liability), and 820(a) (Employee Liability). (Demurrer, 7:17-25.) Caltrans also argues that section 840 precludes liability under any of these other sections because public employees are immune from liability on a theory of dangerous condition of public property. (*Id*. at pp. 7-9.)

The Opposition argues that Caltrans' argument is too broad and, at the pleading stage, Plaintiffs may plead alternative and overlapping statutory theories and duplicative theories are not a ground for dismissing a claim on Demurrer. (Opposition, pp. 5-6.)

The Reply argues that the Opposition fails to remedy the issues stated in the Demurrer and reaffirms the arguments made therein. (Reply, pp. 3-5.)

The Court finds that section 840 expressly holds public employees as immune from liability for injury caused by "a condition of public property where such condition exists because of any act or omission of such employee within the scope of his employment." The plain language of statute is unequivocal; there is no reasonable possibility that Plaintiffs can cure this claim by amendment where public employees are immune from liability on the basis of a dangerous condition for acts or omissions within the scope of their employment.

The Demurrer is **SUSTAINED without leave to amend** as to this claim.

III. CONCLUSION

Based on the foregoing, the Demurrer is **SUSTAINED with leave to amend** as to the Second and Third Causes of Action and **SUSTAINED without leave to amend** as to the Fourth Cause of Action under Government Code section 840. Caltrans 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).

7. 26CV00427, Simmons v. Aurora Behavioral Healthcare Santa Rosa, LLC

Defendant Aurora Behavioral Healthcare – Santa Rosa, LLC ("Defendant" or "Aurora") moves to compel Plaintiff Bernadette Simmons' ("Plaintiff") individual claims to arbitration, strike or dismiss the class claims, and stay the action as to Plaintiff's representative Private Attorneys General Act ("PAGA") claims pending completion of arbitration pursuant to the partiers Mutual Agreement to Arbitrate ("Agreement") and the Federal Arbitration Act ("FAA").

The motion is **GRANTED**. Plaintiff's individual claims shall be submitted to arbitration, Plaintiff's class action claims shall be dismissed, and the action shall be stayed as to Plaintiff's representative PAGA claims pending the arbitration. The provision in the Agreement regarding "sex" or "sexual orientation" harassment shall be severed from the Agreement, for the reasons stated below.

I. PROCEDURAL HISTORY

Plaintiff's First Amended Class Action and Representative Action alleges various Labor Code violations against Aurora, her former employer, on behalf of herself and aggrieved employees under PAGA. (Memorandum of Points and Authorities ["MPA"], 1:3-11, 2:15-22.) As a part of her onboarding process, Plaintiff signed the Agreement by hand. (*Id*. at 1:19-23.)

The Agreement is a "Voluntary Mutual Agreement to Arbitrate Claims" that exists to resolve by arbitration "all claims, disputes, and/or controversies… whether or not arising out of Employee's employment or the termination of employment, that Company may have against Employee or that Employee may have against Company or its employees or agents in their capacity as employees or agents." (Sturgeon Decl., Exhibit A, § 1.) The Agreement requires a Class and Representative Action Waiver for the employee's own individual claims, but not the representative claims that cannot be waived as a matter of law. (*Id*. at Exhibit A, § 2.) The Agreement expressly excludes any claims for "workers' compensation or for unemployment compensation benefits, or…injunctive relief..." and expressly states that the Agreement does not preclude any employee from filing a complaint with the Equal Employment Opportunity Commission (EEOC), the U.S. Department of Labor (DOL), the National Labor Relations Board (NLRB), the California Department of Fair Employment and Housing (DFEH), and the California Division of Labor Standards Enforcement (DLSE). (*Id*. at Exhibit A, § 3.)

Aurora now moves to compel arbitration of Plaintiff's individual PAGA claims pursuant to the signed Agreement, to dismiss the accompanying class action claims, and to stay the action as to the representative PAGA claims pending the arbitration. Plaintiff filed an Opposition. Defendant submitted a Reply. These are considered below.

II. ANALYSIS

<u>The FAA</u>

The FAA applies to any "contract evidencing a transaction involving commerce" which contains an arbitration clause. (9 U.S.C. § 2.) The FAA favors the enforcement of arbitration agreements affecting interstate commerce. (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 380.) When it applies, the FAA preempts state laws that purport to create alternative grounds for confirming or vacating arbitration awards. (*C.T. Shipping, Ltd. v. DMI (USA) Ltd.* (S.D.N.Y. 1991) 774 F.Supp. 146, 148-149.)

The Agreement expressly states that arbitration shall be in accordance with the FAA. (MPA, pp. 3-4; Sturgeon Decl., Exhibit A, § 5.)

<u>Arbitration in California</u>

Generally, California has a strong public policy in favor of arbitration; any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration. (*Howard v. Goldbloom* (2018) 30 Cal.App.5th 659, 663.) C.C.P. section 1280 et seq. governs arbitration in California. Sections 1281.2 and 1281.4 allow a party to move to compel arbitration per an arbitration agreement, and to stay legal proceedings pending the arbitration's conclusion.

The Agreement expressly references being subject to California law. (MPA, pp. 4-5; Sturgeon Decl., Exhibit A, § 7.)

Assent to Arbitration

Generally, "one who signs an instrument which on its face is a contract is deemed to assent to all its terms…a party cannot avoid the terms of a contract on the ground that he or she failed to read it before signing." (*Marin Storage & Trucking, Inc. v. Benco Contracting & Eng'g, Inc.* (2001) 89 Cal.App.4th 1042, 1049.)

Aurora argues that Plaintiff signed the Agreement on June 21, 2021 by hand, so it is valid and enforceable. (MPA, pp. 5-6.)

Plaintiff argues that she does not specifically remember signing the Agreement, and to the extent that she does remember signing it, she thought it was it was required to start working and did not understand what the Agreement meant when signing. (Opposition, 5:4-10.)

The Reply argues that the Agreement was voluntary as stated in Section 1 of the Agreement and that Plaintiff failed to present any evidence to support the argument that it was mandatory to start employment or that she could not negotiate its terms. (Reply, 1:24-28, 2:1-11.)

The Court finds that Defendant has produced a hand-signed, written Arbitration Agreement and it is sufficiently authenticated for the purposes of this Motion.

Enforceability

Procedural Unconscionability

Plaintiff argues that the Agreement is unconscionable because Plaintiff did not have a meaningful opportunity to negotiate the Agreement, because it was a contract of adhesion on a take-it-or-leave-it basis, because Defendant did not explain the provisions to Plaintiff, and because applicable arbitration rules were not designated in the Agreement (such as JAMS or AAA). (Opposition, pp. 6-11.)

In the Motion, Aurora addressed the objection related to the arbitration rules by stating that the statutory deadlines and filing requirements in the Agreement mirror those in state court and agreeing to submit to all parts of arbitration to JAMS. (MPA, 9:1-7.) In the Reply, Aurora also adds that there is no procedural unconscionability because the Agreement was wholly voluntary, even by its express terms and by Aurora's testimonial evidence so it was not a contract of adhesion on a take-it-or-leave-it basis. (Reply, pp. 1-3.) Furthermore, Plaintiff was allowed an opportunity to review and ask questions about the Agreement before signing it, but she did not ask any. (*Id*. at pp. 3-4.)

The Court does not find that, based on the above arguments, the Agreement was either procedurally unconscionable. It was a voluntary, stand-alone arbitration agreement which Plaintiff had the opportunity to ask about and was not pressured into signing in-person solely because it was part of the onboarding process.

Substantive Unconscionability

The Opposition argues that the Agreement is substantive unconscionable because sections 4 and 5 of the Agreement requires other contractual prerequisites that must be satisfied to preserve her statutory claims that are more burdensome than California law, because the Agreement has an injunctive relief carve-out that is one-sided, and because it requires arbitration of sexual harassment claims. (Opposition, pp. 11-15.)

The Reply argues that sections 4 and 5 simply restate limitation periods that are already required per statute and expressly ties administrative exhaustion to applicable state and federal law. (Reply, pp. 5-6.) Aurora also argues that the plain terms of the Agreement apply the injunctive relief carve-out mutually by stating: "Claims that Employee may have for workers' compensation or for unemployment compensation benefits, or that Company or Employee may have for injunctive relief are not covered by this Agreement." (*Id*. at ¶¶ 6-7.) However, the Reply does concede that Section 1 explicitly states that the Agreement covers "claims for discrimination or harassment, including, but not limited to,… harassment on account of… sex, sexual orientation…" (*Id*. at pp. 7-8.) Aurora states that any unconscionable provision can be severed without permeating the remainder of the Agreement. (*Ibid*.)

The Court finds that the provision as to "sex" or "sexual orientation" harassment claims to be substantively unconscionable, even if such claims are not the subject of this litigation, but these specific claims can be severed from the Agreement without impacting the remainder of the Agreement that does cover Plaintiff's claims. As to Plaintiff's other arguments, the Court does not find the Agreement to be substantively unconscionable.

<u>Application</u>

Aurora has produced a valid and enforceable signed Arbitration Agreement. The Court orders that that the provisions as to claims for sex or sexual orientation harassment be severed from the Agreement. Otherwise, the Court finds sufficient grounds to grant this motion/petition of arbitration per California and Federal policy encouraging arbitration. The action is stayed as to Plaintiff's representative PAGA claim.

III. <u>CONCLUSION</u>

Based on the foregoing, the Court **GRANTS** the motion/petition to compel arbitration of the Plaintiff's individual claims, dismiss the class action claims, and stay proceedings as to Plaintiff's representative PAGA claims pending the arbitration. The provision in the Agreement regarding "sex" or "sexual orientation" harassment shall be severed from the Agreement. Aurora shall submit a proposed order on this motion consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

<u>8. 26CV03009, Levy v. Watts Guerra</u>

Petitioner Greg Levy ("Petitioner") petitions to vacate or correct the Attorney Client Fee Arbitration Award ("Award") issued in Sonoma County Mandatory Fee Arbitration Case No. 1201 (*Levy v. Watts*) is **DENIED** as to Respondent Miller, the only responding party.

Under Business and Professions Code section 6203(c). the Court may award Respondent Miller with reasonable fees and costs as the prevailing party, but Respondent Miller has not provided any evidence of fees and costs incurred in responding to the Petition. As such, the Court will allow Respondent Miller to submit a notice motion for fees on the basis that Respondent was the prevailing party under section 6203(c).

I. PROCEDURAL HISTORY

The *Tubbs* Fire in 2017 destroyed or damaged Petitioner's property and caused subsequent business losses over the next several years. (Petition, ¶ 6.) In December of 2019, Petitioner scheduled to meet with attorney Roy Miller, who at the time had allegedly advertised throughout Sonoma County as a "fire victim attorney," to discuss the 2020 PG&E bankruptcy claims deadline rapidly approaching at the end of that month. (Petition, ¶ 7.) At Hanson & Miller (the "Firm"), Petitioner met with Jon Givens, who Petitioner states was not admitted to the California State Bar at the time but represented himself as an associate attorney with the firm. (*Id*. at ¶ 8.)

Petitioner signed a "Contract of Employment and Consent to Fee Sharing (California Fires)" ("Fee Agreement") with contained a contingency fee of 33.3%. (*Id*. at ¶ 9; Petitioner's Decl., Exhibit 3, § 3) Petitioner alleges that he was deceived by the Firm as they omitted that one of the lead attorneys of Watts Guerra LLP was a Texas attorney, not a California attorney, and they withheld disclosing the Bankruptcy Order that required disclosing Watts Guerra LLP's main office location. (Petition, ¶ 9.2.) Ultimately, Petitioner claims that Respondents' deficient legal services caused him business losses around $72,000.00. (*Id*. at ¶¶ 15-17.) Petitioner submitted a Request for Arbitration of a Fee Dispute to the Sonoma County Bar Association ("SCBA") on October 17, 2024. (*Id*. at ¶ 17.1.)

The parties appeared at an arbitration hearing on September 9, 2025, before a three-arbitrator panel of the SCBA, which upheld a full one-third contingency fee and authorized the PG&E Fire Victims Trust ("FVT") to pay Respondents one-third of all sums recovered on Petitioner's behalf and did not make any findings as to the approximate $72,000 loss Petitioner claimed were caused by Respondents' errors or various other claims Petitioner now asserts in the Petition. (Petition, ¶¶ 19-20; Petitioner's Declaration, Exhibit 1.)

Petitioner seeks to correct or vacate the Award. Only Defendant Roy E. Miller filed a Response. At Petitioner's request, the Court entered defaults as to Respondents Watts Guerra, John Cox, Mikal Watts, Guy Watts, and Jon Givens. Petitioner submitted a Reply to Miller's Response.

II. ANALYSIS

Legal Standard

Motion to Vacate an Arbitration Award

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 much also set forth the grounds upon which relief requested is based. (C.C.P. § 1285.8.)

Section 1286.2 sets forth all of the reasons due to which a court shall vacate an arbitration award. An arbitration award may be corrected by the court where: (a) there was an evident miscalculation of figures or an evident mistake in the description of any person referred to in the award; (b) the arbitrators exceeded their powers but the award may be corrected without affecting the merits of the controversy submitted; or (c) the award is imperfect in a matter of form, not affecting the merits of the controversy. (C.C.P. § 1286.6.)

An award cannot be corrected or vacated until the petition is duly served and filed and all petitioners and respondents have been given reasonable notice that the court will be requested to correct the award. (C.C.P. § 1286.8.) A petition to vacate or correct an arbitration award must be filed and served within 100 days after the date of the service of a signed copy of the award on the petitioner. (C.C.P. § 1288.) Section 1290.4 provides how the petition and notice of hearing may be served on a request to vacate or correct an arbitration award.

Fees under Business & Professions Code § 6203(c)

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*.)

<u>Petition</u>

The Petition argues that the Arbitrators exceeded their powers by enforcing a fee agreement that is void pursuant to public policy and in violation of Business & Professions Code sections 6125 and 6126, because Jon Givens was not licensed to practice law at the time the fee agreement was given to Petitioner. (Petition, ¶¶ 27-28.)

Furthermore, Petitioner claims he was not provided with a copy of the contingency fee agreement at the time it was signed. (*Id*. at ¶¶ 30-32.) Petitioner claims that his rights were substantially prejudiced by the Arbitrators' failure to consider material evidence Petitioner presented, such as: (1) no lien provision in the fee agreement; (2) undisclosed DocuSign process Petitioner signed under "economic duress"; (3) Petitioner's loss of around $72,000.00; (4) Watts Guerra LLP attorneys not being licensed to practice in California; and (5) withholding the Bankruptcy Order and not disclosing Watts Guerra LLP's main office in Texas. (*Id*. at ¶ 33.) Petitioner claims that the Award was procured by undue means as a result. (*Id*. at ¶¶ 35-26.)

Alternatively, if the Award is not vacated, Petitioner requests that it be corrected and Petitioner receive $210,990.08 for: (1) $72,041.00 loss claimed by Petitioner; (2) $57,831.56 to be returned by Respondents for the inverse condemnation claims amounting to 25%; (3) $77,108.75 to be returned by Respondents for "illegal/unauthorized attorney fees"; and (4) $4,008.77 for the arbitration costs. (Petition, pp. 19-23.)

<u>Response</u>

The Response describes the two frameworks in California law for arbitration of disputes: (1) California Arbitration Act covered by C.C.P. section 1280 et. seq.; and (2) the Mandatory Fee Arbitration under Business & Professions Code section 6203 under which the local bar association conducts arbitrations specifically and solely dealing with attorney client disputes over legal fees and costs. (Response, 3:20-27.) Challenging an arbitration award under either framework is the same procedure via a petition to correct or vacate the award through the court system. (Response, 4:6-13.) Here, Petitioner specifically elected Mandatory Fee Arbitration in his Request to Arbitrate with the SCBA. (*Id*. at Exhibit C.)

A claim for affirmative relief based upon malpractice or professional conduct is not permitted under Mandatory Fee Arbitration unless those claims bear upon the fees, costs, or both, to which the attorney is entitled. (Bus. & Prof. Code § 6203(a).) Arbitrators also are prohibited from awarding affirmative relief such as damages, offset, or otherwise, for injuries underlying the claim, but they can award the client a refund of unearned fees, costs, or both already paid to the attorney. (*Ibid*.) Based on this, the Response argues that the Court may not correct the Award or vacate it on the basis of Petitioner's claims for additional business losses that were never included in calculations submitted to the FVT, in Petitioner's Request for Arbitration to the SCBA, or even specifically identified in the Award as no calculations were included for it. (Response, 6:11-19.)

Furthermore, Respondent Miller argues that the other deficiencies stated in the Petition are legally insufficient and factually inadequate. (*Id*. at pp. 6-7.) He asserts that there were no express findings in the Award regarding the following items: (1) the lien provision; (2) the DocuSign provisions; and (3) any disqualifications of the lay Arbitrator that was not an attorney. (*Id*. at pp. 7-8.) As such, Respondent argues that these claims were without support and not sustainable. (*Id*. at 7:24-26.) Respondent claims that Petitioner failed to make a substantial showing that the Arbitrators failed to make any require disclosures. (*Id*. at pp. 8-9.)

Finally, Respondent argues that Business & Professions Code section 6203(c) provides for reasonable fees and costs if a Petition is denied or dismissed, so if the Court denies or dismisses this Petition then Respondent is entitled to an award of fees in an amount to be determined at the conclusion of the hearing. (Response, 9:14-20.)

Reply

The Reply states that Petitioner reserves the right to seek relief as to the parties who have failed to respond to the Petition and have had defaults entered against them. (Reply, 2:2-8.) The Reply concedes that Petitioner cannot seek affirmative relief on a malpractice claim but argues that the amount requested for the $72,041.00 or $57,831.56 is to "offset evidence 'bearing upon the fees'…including…calculation error and legal errors…" (*Id*. at 2:9-21.) The Reply otherwise generally reaffirms arguments that were stated in the Petition. (*Id*. at pp. 4-9.)

Application

As explained above, the Petition must set forth the grounds upon which the request to correct or vacate the Award is based. Here, the Petition requests the Court to vacate or correct the Award due to: (1) miscalculation of figures; and (2) the arbitrators exceeding their powers.

First, the Court does not find it appropriate to correct the Award to include the affirmative relief requested for additional business losses of $72,041.00 for "damages" for injuries underlying Petitioner's claim, which are expressly prohibited under section 6203. Furthermore, these were neither claimed in Petitioner's Request for Arbitration to the SCBA nor included in the calculation of the Award. As such, the Arbitrators did not exceed their powers in not considering these additional business losses that were never claimed and were prohibited from being considered even if they were claimed. They also did not miscalculate figures as these were never included in the calculation of the Award.

Second, the Award states that "Petitioner presented evidence that his calls for explanation and clarification were not answered timely and for his position that the fee agreement he signed was voidable and that he should only owe the respondent law firms $2,000 for the services." He also claimed that "the fee disagreement, in addition to the question of a valid fee agreement, was also about the extent, quality and value of services rendered and the reasonableness and conscionability of fees demanded and paid." (Petitioner's Decl., Exhibit 1, pp. 1-2.) It is unclear to the Court whether Petitioner requested the amounts stated in the Petition at the Arbitration, but the Award did not refund the $57,831.56 for the inverse condemnation claims from the FVT or the $77,108.75 for attorneys' fees. As stated in the Award, Respondents did provide the services contemplated in their valid, enforceable, written, and signed Contingency Fee Retainer Agreement and Respondents did obtain a significant recovery for Petitioner. Petitioner did not meet his burden of showing that there was any miscalculation in the Award not issuing these refunds or that the Arbitrators exceeded their powers by finding a valid and enforceable contingency fee agreement between the parties. For these reasons, the Court does not find a reasonable basis for the issuance of a refund on these earned fees.

Third, Petitioner has not stated any reasonable basis for the Court to correct the Award to require Respondent to pay $4,008.77 for arbitration costs as Petitioner requested the Arbitration.

Finally, as the prevailing party on this Petition, the Court may award Respondent Miller with reasonable fees and costs. Respondent did not submit evidence of fees and costs incurred, but Respondent may bring a separate motion for fees under Business & Professions Code section 6203(c). Respondents did not expressly request the Court to confirm the Award in the Response.

III. CONCLUSION

Based on the foregoing, the Petition to Correct or Vacate the Award is **DENIED**. Sanctions were not expressly requested for a certain amount, but as the prevailing party, Respondent Miller may file a separate motion for the recovery of fees under Business and Professions Code section 6203(c). Respondent 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).