January 30, 2026
Dept. 9
Tentative Rulings

1.	**23CV1958**	**ROTH v. GT TRUCK REPAIR**
Application and Order for Appearance and Examination		

TENTATIVE RULING #1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON JANUAY 30, 2026, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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2.	**25CV0816**	**RIBEIRO CALIFORNIA II, LLC v. EL DORADO FILMS, LLC et al**
Further Responses to Special Interrogatories / Sanctions		

Plaintiff landlord and Defendant tenant entered into a three-year lease of commercial real property. Complaint, para. 9; Exhibit A. The lease specifies the base monthly rent and late fees if not paid by the fifth day that it is due, with additional late fees if not paid after 30 days of the due date. Complaint, paras. 11-13; Exhibit A, Sections 4.1, 4.3, 4.6.

Defendant was entering into the lease on behalf of El Dorado Films, LLC, and further executed a personal guarantee to be responsible for payments under the lease. Complaint, Exhibit B. In June, 2024 the parties executed a "Termination of Lease Agreement" for early termination of the lease which, according to the Complaint, was at the Defendant's instigation "for the purpose of ending the Lease Agreement and eliminating Lessee's on going [sic] liability for the Lease Agreement." Complaint, Exhibit C. The Lease Termination Agreement provided that Defendant was to pay all amounts due under the lease up to June 30, 2024, plus a $30 lease buyout fee if the lease was terminated, but would avoid liability for the full lease term and would receive his deposit back. Complaint, Exhibit C. According to the Complaint, Defendant is in arrears for lease payments for February and June 2024 in the amount of $2,472.55 and additionally owes a lease buyout payment in the amount of $230.

As to the period beginning in June 2024, Plaintiff asserts that, having breached the Termination Agreement by failing to pay the outstanding lease charges, Defendant remains responsible for the underlying lease through September, 2024, and the additional amounts due for the full lease term, for a total $4,835.88.

Plaintiff filed suit in March, 2025, and an Answer was filed on behalf of the individual Defendant, but not on behalf of the LLC. Accordingly, default was entered as to the LLC on May 8, 2025.

Plaintiff propounded discovery on July 12, 2025, including Requests for Admission (RFAs) Request for Production of Documents (RPDs), Special Interrogatories (SROGs) and Form Interrogatories (FROGs). Declaration of John P. Gutierrez, dated December 1, 2025, ("Gutierrez Declaration"), Exhibit B. On August 8, 2025, Defendant served responses only to the FROGs. Gutierrez Declaration, para. 5.

Plaintiff engaged in meet and confer communications regarding overdue responses to RFAs, RPDs and SROGs between August 13, 2025, and August 25, 2025. Gutierrez Declaration, paras. 8-11 and Exhibits B, C, D, E. Defendant finally provided RFA responses on September 2, 2025, which were still several weeks late and did not include responses to Plaintiff's other outstanding SROG and RPDs. Gutierrez Declaration, paras. 12-13 and Exhibit F. On October 9, 2025, Plaintiff sent another meet and confer letter regarding deficiencies in the RFA responses.

Gutierrez Declaration, paras. 15-18 and Exhibits G and H. That was followed up with a phone call. Gutierrez Declaration, paras. 19-29 and Exhibit I.

Defendant has never responded to the SROGs or RPDs served by Plaintiff. Gutierrez Declaration, paras. 3-6, 37, Exhibit A.

On October 9, 2025, in response to Defendant's interrogatories Plaintiff provided a comprehensive, color coded ledger showing charges, payments and balances due under the lease and itemizing all missed payments that were alleged. Gutierrez Declaration, Exhibit H.

Plaintiff also continued to communicate regarding defects in Defendant's RFA responses and requested compliant responses by October 13, 2025. Plaintiff further requested Defendant to agree to a 45-day extension to file a motion to compel in order to allow time to work out discovery issues and explore settlement. Gutierrez Declaration, Exhibits G and H. Defendant did not respond to this communication. Plaintiff again requested responses by October 20, 2025, and an agreement to extend the deadline for filing a motion to compel. Gutierrez Declaration, Exhibit J. Having received no response, Plaintiff resent that request on October 20, 2025, Gutierrez Declaration, Exhibit K.

Meanwhile, the day before his own discovery responses were due, Defendant propounded discovery in the form of interrogatories on August 12, 2025, and the Plaintiff's September 15, 2025, response to those interrogatories is placed at issue by Defendant's October 30, 2025, motion to compel further responses.

Defendant's motion to compel is accompanied by a declaration, as required by Code of Civil Procedure § 2030.300(b)(1), 2016.040 ("A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.") However, that Declaration does not attach the correspondence to which it refers, and lists Defendant's meet and confer efforts as one letter dated October 20, 2025, and one phone call. Declaration of Daniel Bernardi, dated October 30, 2025, paragraph 4.

The Gutierrez Declaration, Exhibit L, does attach Defendant's October 20, 2025, "meet and confer" response as Exhibit L, partially summarized below:

1. Defendant demanded proof of personal service of the RFAs. That proof of service is attached to the Gutierrez Declaration as Exhibit A, showing personal service on the Defendant on July 12, 2025, by a registered process server. Defendant has not filed any challenge to that proof of service with the Court.
2. Defendant claimed that the September 22, 2025, response to the RFAs was not late, citing two additional court days granted by Code of Civil Procedure § 1010.6 for

electronic service, and asserted that Defendants objections were accordingly not waived under Code of Civil Procedure § 2033.280(a). However, even allowing two additional court days for electronic service the responses were due on August 13, 2025, and the September 22, 2025, responses were late by any calculation.

3. Defendant refused to admit the genuineness of documents bearing his signature until Plaintiff provides "clean, fully executed copies" of the operative documents, documents that are attached to the Complaint, at which time he represented that he would review them and supplement his responses as appropriate.
4. Defendant demanded that Plaintiff confirm whether conditions precedent to the Termination Agreement under the Lease were satisfied, although Plaintiff's position on that issue is stated in the Complaint, paras. 25, 43-45.
5. Defendant demanded that Plaintiff's Ledger responding to Defendant's discovery requests be provided "in a native format".
6. Defendant refused to agree to extend the deadline for a motion to compel to allow the parties to meet and confer regarding outstanding discovery issues and to explore settlement negotiations.

Plaintiff asserts that Defendant has failed to meet and confer in good faith, and that Plaintiff already served responses to the contested Interrogatories on October 20, 2025.

The Court finds that Defendant has failed to meet and confer in good faith and denies his motion to compel. Further, the Court finds that Defendant has engaged in misuse of discovery by failing to respond to discovery, making unmeritorious objections to discovery, making a motion to compel without substantial justification, and failing to confer with an opposing party in a reasonable and good faith attempt to resolve discovery disputes. Code of Civil Procedure § 2023.010(d), (e), (h), (i).

As a consequence of failure to meet and confer, Code of Civil Procedure § 2023.020 compels the Court to impose sanctions representing the reasonable expenses, including attorneys' fees. incurred by anyone as a result of that conduct. Plaintiff claims attorneys' fees in the amount of $1,550, representing five billable hours at a rate of $310 per hour, reduced from twelve hours of actual billable time spent in opposing this motion.

The Court further finds that Defendant failed to serve a timely response to Plaintiff's Requests for Admissions, and that accordingly, Defendant's objections are waived pursuant to Code of Civil Procedure § 2033.280(a).

TENTATIVE RULING #2: DEFENDANT'S MOTION IS DENIED. DEFENDANT IS ORDERED TO PAY TO PLAINTIFF THE AMOUNT OF $1,550 WITHIN TEN DAYS OF SERVICE OF THE SIGNED ORDER.

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3.	PC20150072	SPEEGLE v. MOTHER LODE, LLC
Motion to Compel / Sanctions		

In 2023, Judgment debtor Adams reached an agreement with judgment creditor Sommers for salary withholdings. When those withholdings ceased in August 2023, Sommers brought a motion for an Order requiring Adam's employer, Autozoner, to withhold the agreed upon amounts. The Court denied the motion in an Order dated December 1, 2023, finding the explicit language of Code of Civil Procedure section 706.077 prohibited the requested wage withholding given a withholder order for taxes with already in effect.

Sommers filed a new motion to garnish wages in excess of the levy amount per Code of Civil Procedure section 706.077, subdivision (b). At the hearing on May 30, 2025, the Court affirmed the settlement agreement of the parties for Adams to pay Sommers $375 per month or to have his wages garnished monthly for that amount if he did not make payment. Autozoners complains that it did not receive service of notice of the May 30, 2025, hearing; however, the court is aware of no authority requiring them to receive notice. On September 17, 2025, this Court entered an Order requiring Autozoners to withhold $375.00 per pay period of Adams' salary as garnishment to satisfy the judgment. (The court notes that the amount in the order is in error as electronic transcript reflects that the agreement was for garnishments of $375 per month, not per pay period; regardless, the motion is denied for other reasons as set forth below.)

On November 17, 2025, Sommers filed a motion to compel Autozoners to withhold payments toward the judgment from Adams' paycheck or face sanctions for non-compliance with a Court Order. Sommers requests sanctions in the amount of $1,500, as well as $110 for costs of filing and service, and $750 per month for three months that payments were due and unpaid since the date of the Court's September 17, 2025, Order, reflecting two pay periods per month between October and December, 2025. Proof of service of notice of the motion and served on Autozoners by mail on December 5, 2025, and was filed with the Court on December 22, 2025, At the hearing on January, 2, 2026 the Court continued the matter.

On January 16, 2026, Autozoners filed an Opposition to the motion, noting that on December 1, 2023, this Court issued an Order denying Sommers' previous motion to compel Autozoners to withhold payments toward the judgment because they would have been in addition to withholdings that were being collected by the State of California to satisfy a tax debt, which had priority over Sommers' claims.

In its tentative ruling adopted by the court on December 1, 2023, the Court noted that withholding for Sommers' claims could resume after the tax liability was satisfied. Autozoners represents that the tax debt is not yet satisfied. Declaration of McKenzie Podesta, dated January 15, 2026, para. 4.

Autozoners further argues that the December 1, 2023, Order has never been the subject of a motion for reconsideration or an appeal and remains in effect.

Sommers' again argues, as he did in 2023, that there is statutory authorization for withholding an amount greater than the current tax levy, and that additional amounts could be withheld to satisfy the judgment debt. However, as the Court stated in 2023, Code of Civil Procedure section 706.077 expressly requires any other withholding to "cease" when tax debt is being withheld.

At the May 30, 2025 hearing, the court mistakenly overlooked its prior order denying what was substantially the same request for relief and notably was based on the same statute upon which the court denied Sommers relief in 2023. The court therefore vacates the portion of its order granted on May 30, 2025 authorizing the wage garnishment finding the court had no authority to issue said order in the first place, despite the agreement of the parties. The court similarly vacates its September 17, 2025 order, both due to its lack of authority and due to the wrong amount noted on the order as discussed above.

Accordingly, the Court denies the motion to compel compliance and for sanctions.

TENTATIVE RULING #3: THE COURT'S ORDER GRANTED AT THE MAY 30, 2025 HEARING REGARDING THE WAGE GARNISHMENT AND THE SEPTEMBER 17, 2025 ORDER IS VACATED. THE MOTION TO COMPEL COMPLIANCE AND FOR SANCTIONS IS DENIED.

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4.	PC20180406	FLOURNOY v. CJS SOLUTIONS GROUP LLC ETAL
Final Approval of Settlement		

On September 12, 2025, the Court issued preliminary approval of the proposed class action settlement and set a date for hearing on the final approval.

On January 8, 2026, the Class Action Settlement Administrator filed a declaration stating that, of the 98 class members:

- 11 notices that were returned and were resent with an updated address obtained through skip tracing.
- 0 notices remain undeliverable.
- 0 requests for exclusion from the class were received.
- 0 notices of objection were received.
- 0 workweek disputes were received.
- The Gross Settlement Amount is $1,000,000, from which the following amounts will be deducted to reach the Net Settlement Amount of $541,166.67:
    - $20,000 is allocated to penalties under the Private Attorneys General Act ("PAGA Amount"), including $15,000 to be paid to the Labor and Workforce Development Agency, and $5,000 to be allocated among to all current and former hourly non-exempt individuals who are or were employed by Defendant during the PAGA Period (51 individuals), the highest amount being $496, and the average payment being $98.04.
    - Defendant has agreed to fund the employer-side taxes due separately and apart from the Gross Settlement Amount.
    - Administrator costs will be paid in the amount of $4,500.
    - The Class Counsel Award is in the amount of $333,333.33, and Class Counsel Costs amount to$100,000.
    - The Class Representative Enhancement Award to Plaintiff Flournoy is $1,000.
- From the Net Settlement Amount, the highest settlement share to be paid to class members is $29,555.93, and the lowest is $122.13, with an average of $5,522.11 based on the number of weeks worked during the PAGA Period, at the rate of $122.13 per week.

TENTATIVE RULING #4: THE COURT APPROVES THE APPLICATION FOR FINAL SETTLEMENT. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANAURY 30, 2026, IN DEPARTMENT NINE, TO DETERMINE THE DATE OF THE FINAL REPORT HEARING.

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5.	**PC20210130**	**MUIR v. GENERAL MOTORS**
Attorneys' Fees		

The parties entered into a settlement agreement pursuant to Code of Civil Procedure § 998, pursuant to which Defendant would pay to Plaintiff the amount of $33,000. The date of the settlement agreement ("Settlement") was October 30, 2024, and the Plaintiff signed it on November 12, 2024.

The Settlement provided that Defendant would pay either the fixed amount of $10,000 for attorney's fees, or that Plaintiff could elect to bring a motion, and the Court could determine the amount of "attorney's fees, expenses and costs that have been reasonably incurred pursuant to California Civil Code § 1794(d)[1] . . . ." Declaration of Kevin Jacobson, dated January 21, 2026 ("Jacobsen Declaration"), Exhibit 1, paras. 2-3.

Defendant raises the issue of the timeliness of this attorneys' fee motion, which was filed on December 29, 2025, more than a year after the Settlement was executed.

Timeliness

Defendant relies upon California Rules of Court, Rule 3.1702(b), which provides:

(b) Attorney's fees before trial court judgment

(1) Time for motion

A notice of motion to claim attorney's fees for services up to and including the rendition of judgment in the trial court-including attorney's fees on an appeal before the rendition of judgment in the trial court-must be served and filed within the time for filing a notice of appeal under rules 8.104 and 8.108 in an unlimited civil case or under rules 8.822 and 8.823 in a limited civil case.

Defendant also cites California Rules of Court, Rule 8.104:

(a) Normal time
(1) Unless a statute or rules 8.108, 8.702, or 8.712 provides otherwise, a notice of appeal must be filed on or before the earliest of:

[1] Civil Code § 1794
(a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief.
* * *
(d) If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.

(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, showing the date either was served;
(B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or
(C) 180 days after entry of judgment.

Finally, Defendant relies on the case of DeSaulles v. Cmty. Hosp. of Monterey Peninsula, 62 Cal. 4th 1140 (2016) for the proposition that the conclusion of a settlement agreement is tantamount to a judgment for the purpose of calculating a deadline for an attorneys' fee motion. That case stated: "[A]s between the parties thereto and for purposes of enforcement of settlement agreements, a compromise agreement contemplating payment by defendant and dismissal of the action by plaintiff is the legal equivalent of a judgment in plaintiff's favor." DeSaulles, 62 Cal. 4th at 1155, quoting Goodstein v. Bank of San Pedro (1994) 27 Cal.App.4th 899, 906–907 (1994). However, that case involved a settlement agreement that was silent on the issue of attorneys' fees. The court considered whether a dismissal following settlement involving a payment to the plaintiff could result in a determination that the Defendant is the prevailing party because the lawsuit was ultimately dismissed, or whether a payment to the plaintiff would make the plaintiff the "prevailing party" even though there was no judgment in the case. In fact, that case drew a distinction between a settlement agreement and a stipulated judgment, in that a stipulated judgment results in automatic dismissal where the parties must ask the court to retain jurisdiction over the settlement, whereas a settlement requires voluntary dismissal of the case.

Plaintiff counters Code of Civil Procedure § 664.6 allows the Court to retain jurisdiction until all conditions of the Settlement have been met:

If the parties to the settlement agreement or their counsel stipulate in writing or orally before the court, the court may dismiss the case as to the settling parties without prejudice and retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

Further, Plaintiff argues that the Settlement itself contains no language that limits the timing for an attorneys' fee motion, and in fact leave the timing open, including:

"This Court will retain jurisdiction to enforce this offer of compromise under Code of Civil Procedure § 664.6" Jacobsen Declaration, Exhibit 1, para. 9.

"Plaintiffs will file a Request for Dismissal of the entire action, with prejudice, within five business days after receiving all payments from GM due Plaintiffs and their counsel." Jacobsen Declaration, Exhibit 1, para. 10.

The Court concludes that the plain language of the applicable rules, statutes and cases does not convert a settlement agreement into a stipulated judgment, and the deadline set by of California Rules of Court, Rule 3.1702(b) does not apply to the Settlement. The parties could have specified a deadline for bringing a motion and they did not.

As to the amount of fees, the court has reviewed the pleadings of the parties, including Defendant's objections as to the reasonableness, particularly the allegation that Plaintiff used templates for a significant portion of its pleadings. The court reviewed line-by-line the billing statements of Plaintiff's attorneys and finds that the time spent on certain tasks are inflated, that in certain instances attorneys duplicated others' efforts, and that in other instances attorneys with higher rates conducted activities that could have been easily handled by attorneys with a lower billing rate. As such, reductions are appropriate. The court applies the following reductions categorized by the billable rate of the attorneys: 0.8 hours for the rate of $320, 12.3 hours for the rate of $350, 7.8 hours for the rate of $395, 17.5 hours for the rate of $400, 1.7 hours for the rate of $475, 0.4 hours for the rate of $500. This yields a total reduction of $15,649.50 from the initial $50,822 in fees requested. The court additionally agrees with Defendant that the $4,000 in anticipated fees are excessive. The court reduces this amount to $1,185, based on 3 hours at a rate of $395. Altogether, this results in fees award of $36,357.50

The court grants Plaintiff's motion for attorney's fees in the amount of $36,357.50, payable within 30 days of service of the signed order.

TENTATIVE RULING #5: THE COURT FINDS THAT CALIFORNIA RULES OF COURT, RULE 3.1702(B) DOES NOT APPLY TO PRECLUDE THE MOTION FOR ATTORNEYS' FEES. THE COURT GRANTS PLAINTIFF'S MOTION FOR ATTORNEY'S FEES IN THE AMOUNT OF $36,357.50, PAYABLE WITHIN 30 DAYS OF SERVICE OF THE SIGNED ORDER.

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6.	24CV1518	MARK WALLACE V. CHRISTOPHER JONES
Motion for leave to file tardy expert witness disclosure		

On January 23, 2026, the court granted an Order Shortening Time for Plaintiff's pending motion for leave to file a tardy expert witness disclosure. The court ordered Plaintiff to formally file the motion with the hearing set on January 30, 2026, with Defendant directed to file any opposition by January 28, 2026. Both parties complied with these directives, and the court has reviewed all the pleadings.

Defendant objects to the motion based on the purported prejudice in the shortened time frame in conducting the expert depositions. Code of Civil Procedure section 2034.720 provides that:

> The court shall grant leave to submit tardy expert witness information only if all of the following conditions are satisfied:
>
> (a) The court has taken into account the extent to which the opposing party has relied on the absence of a list of expert witnesses.
>
> (b) The court has determined that any party opposing the motion will not be prejudiced in maintaining that party's action or defense on the merits.
>
> (c) The court has determined that the moving party did all of the following:
>
> > (1) Failed to submit the information as the result of mistake, inadvertence, surprise, or excusable neglect.
> >
> > (2) Sought leave to submit the information promptly after learning of the mistake, inadvertence, surprise, or excusable neglect.
> >
> > (3) Promptly thereafter served a copy of the proposed expert witness information described in Section 2034.260 on all other parties who have appeared in the action.
>
> (d) The order is conditioned on the moving party making the expert available immediately for a deposition under Article 3 (commencing with Section 2034.410), and on any other terms as may be just, including, but not limited to, leave to any party opposing the motion to designate additional expert witnesses or to elicit additional opinions from those previously designated, a continuance of the trial for a reasonable period of time, and the awarding of costs and litigation expenses to any party opposing the motion.

The court finds that Defendant has not reasonably relied on the absence of a list of expert witness, particularly since a prior disclosure of experts was made by Defendant giving notice that experts would be disclosed, (subd. (a)) and that the failure to timely disclose was due to excusable neglect, which is undisputed, and that counsel sought leave to submit the information promptly after the excusable neglect and promptly served a copy of the proposed expert information (subd. (c)). As to subdivision (b), the court finds that the Defendant will not be prejudiced by the tardy disclosure, particularly since under subdivision (d) the court is required

to condition the grant of the motion on making experts available to be deposed, including continuing the trial if necessary to permit such depositions to occur.

The court grants the motion for leave to file a tardy expert witness disclosure and conditions its order on Plaintiff making the experts immediately available for depositions. The court orders the parties to meet and confer on deposition dates for all experts designated by Plaintiff and to report to the court on the status at the January 30, 2026 hearing. If the parties are unable to find time for the deposition of all these experts, the court on its own motion will consider continuing the trial date for a reasonable period of time.

As to sanctions under Code of Civil Procedure section 2034.730, the court finds substantial justification for Defendant's position regarding the availability of Plaintiff's experts to be deposed and therefore declines to impose sanctions.

TENTATIVE RULING #6: THE COURT GRANTS THE MOTION FOR LEAVE TO FILE A TARDY EXPERT WITNESS DISCLOSURE AND CONDITIONS ITS ORDER ON PLAINTIFF MAKING THE EXPERTS IMMEDIATELY AVAILABLE FOR DEPOSITIONS. THE COURT ORDERS THE PARTIES TO MEET AND CONFER ON DEPOSITION DATES FOR ALL EXPERTS DESIGNATED BY PLAINTIFF AND TO REPORT TO THE COURT ON THE STATUS AT THE JANUARY 30, 2026 HEARING. IF THE PARTIES ARE UNABLE TO FIND TIME FOR THE DEPOSITION OF ALL THESE EXPERTS, THE COURT ON ITS OWN MOTION WILL CONSIDER CONTINUING THE TRIAL DATE FOR A REASONABLE PERIOD OF TIME. THE COURT DECLINES TO IMPOSE SANCTIONS.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7.	**25CV0994**	**M.R. v. SIERRA ELEMENTARY SCHOOL AKA PLACERVILLE UNION ELEMENTARY SCHOOL DISTRICT**
Judgment on the Pleadings		

In this case, the Plaintiff, as guardian ad litem for a minor child, claims that the school district ("Defendant") is liable for injury caused by a wild deer that entered the fenced school property when the gate was opened to allow the school bus to enter to drop off children on their way to school. The causes of action are for general negligence, premises liability negligence, and dangerous condition of public property.

Defendant moves for Judgment on the Pleadings, on the basis that 1) the school district enjoys immunity from liability for natural conditions on unimproved property, 2) the Complaint does not allege any defect of public property, and 3) the cause of action for general negligence does not come within any statutory provision for public entity liability under the California Tort Claims Act.

Request for Judicial Notice

Defendant has filed a Request for the court to take judicial notice of the Complaint and Answer filed in this action. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Defendant's request for judicial notice is granted.

Standard of Review

When a motion for judgment on the pleadings is made by a defendant, the court must find that the complaint on its face does not state facts sufficient to constitute a cause of action against the defendant. Code of Civil Procedure § 438(c)(1)(B)(ii). The court may consider the allegations of the complaint and any matter of which the court is required to take judicial notice. In ruling on motions for judgment on the pleadings, the court need not treat as true contentions, deductions or conclusions of fact or law. (People ex rel. Harris v. Pac Anchor Transp., Inc. (2014) 59 Cal.4th 772, 777.)

The school district is a public entity. Government Code § 811.2. The Government Code provides immunity from liability to public agencies except as provided by statute. Government Code § 815. Central to this case is Government Code § 831.2, which grants a public agency immunity "for an injury caused by a natural condition of any unimproved public property, . . ."

Defendant argues that the presence of a wild animal is a "natural condition of . . . unimproved public property" that provides immunity from Plaintiff's causes of action for dangerous condition of public property and negligence.

I. Statutory Immunity: Natural Condition on Unimproved Property

A. A Wild Animal is a "Natural Condition"

The case of Arroyo v. State of California, 34 Cal. App. 4th 755 (1995) involved injuries caused by a wild animal within a state park. In that case a child was attacked and injured by a mountain lion in the park, and the court observed that the Section 831.2 immunity is an exception to the Section 835 liability for dangerous conditions on public property. However, the question of liability for wild animal attacks was one of first impression for that court. The court examined the legislative intent behind the "natural condition" immunity, noting that the Legislature wanted the public to be able to use recreational property, and that those areas might be placed of limits if public agencies were required to anticipate all potential dangers and make them safe to avoid the expense of defending claims. "[I]t is not unreasonable to expect persons who voluntarily use unimproved public property in its natural condition to assume the risk of injuries arising therefrom as a part of the price to be paid for benefits received. (See Sen. Legislative Com. com., Wests Ann. Gov. Code, (1980) § 831.2, p. 293.) . . . Section 831.2 requires the public to assume the risk of using hiking trails in state parks." Arroyo v. State of California, 34 Cal. App. 4th 755, 761–62 (1995). The court concluded that the inherent risks presented by wild animals are a "natural condition" under the statute. Id. at 762.

B. The Location of the Injury was not on Unimproved Property

Complicating the facts of this case, the deer at issue came from unimproved property, but was located on improved school property at the time it caused injury.

Defendant argues that the injury was caused by a "natural animal of unimproved property that entered improved property" (Memorandum of Points and Authorities, page 2:5-6), and that application of the natural condition immunity does not inquire as to the location of the injury but whether the injury was caused by a natural condition within the meaning of the statute. Defendant's argument, is, in essence, that a natural condition that originates on unimproved property but of its own volition wanders onto improved public property, remains a "natural condition" for which the public agency is statutorily immune.

In support of this argument Defendant cites the case of City of Chico v. Superior Ct., 68 Cal. App. 5th 352 (2021), in which a jogger was injured by a falling tree branch. The plaintiff contended, among other things, that the tree was located in an area between improved areas, including the jogging path where Plaintiff was injured. On this issue the court held in favor of the City, ruling that "'[B]ecause the phrase "of any unimproved public property" in section 831.2 modifies the "natural condition" that caused the injury, the relevant issue for determining whether the immunity applies is the character (improved or unimproved) of the property at the location of the natural condition, not at the location of the injury.'" City of Chico v. Superior Ct., 68 Cal. App. 5th 352, 364 (2021). This case doesn't help the Defendant's position, because while the deer may have started its day as a natural condition on unimproved property, when it wandered into the fenced area of the school's property it wandered outside of the scope of immunity of the statute.

Similarly, a plaintiff injured by a falling tree branch while standing in an improved parking lot was not successful in suing the public agency because the tree grew and was standing in an unimproved area, even though a part of it fell onto the plaintiff in the parking lot. Meddock v. Cnty. of Yolo, 220 Cal. App. 4th 170 (2013). In this and the City of Chico case, both involving limbs falling from trees, the deciding factor was the location of the tree, not the location of the limb that fell. A tree is located for all time in the place where it grows. A wild animal, on the other hand, is not permanently located on unimproved property and carries with it a risk of unpredictable behavior wherever it happens to stand. Taking Defendant's argument to its logical extreme, if the mountain lion from the Arroyo case had been observed on school property by school staff at the location where the children were about to disembark from the school bus, the children would be assuming the risk of mountain lion attack by going to school, and the school would be immune from liability if its employees on the scene failed to intervene.

Defendant argues that the immunity of Section 831.2 must be given a "broad application", but the language it cites for that proposition only holds that minimal improvements (some fire rings and restrooms) did not convert a beach into an improved area that would defeat immunity where the plaintiff in that case was injured after diving into the water from a cliff. Fuller v. State of California, 51 Cal. App. 3d 926, 937 (1975).

Recognizing the potential for liability in this case would not defeat the legislative purpose of the immunity for natural conditions, because neither school children nor their parents voluntarily choose to avail themselves of the natural resources and recreational opportunities offered by the school grounds. Rather, they are required by law to attend a school belonging to the district where they reside. Children do not "assume the risk of injuries arising therefrom as a part of the price to be paid for benefits received" at school. Arroyo v. State of California, at 762.

Further, there is a special relationship in this case that did not exist in Arroyo. The plaintiff in Arroyo made the same argument as the Plaintiff in the instant case-that a mountain

lion attack was a dangerous condition regarding which it was reasonably foreseeable that there was a risk of injury. The court rejected that argument. "Absolute immunity is the rule, 'so long as the public entity's conduct does not amount to negligence *in creating or exacerbating the degree of danger normally associated* with a natural condition.' (McCauley, supra, at pp. 990–991, 235 Cal.Rptr. 732, emphasis added.)" Id. at 764. Finally, the court noted that "there are no allegations here of specific facts showing actual reliance upon the performance or omission of particular mandatory duties to particular people which directly caused injury, nor are there allegations of a special relationship." Id.

In this case, there does exist a special relationship between school children and the public entity operating a school. "A school district owes a duty of care to its students because a special relationship exists between the students and the district." Guerrero v. S. Bay Union Sch. Dist., 114 Cal. App. 4th 264, 268 (2003), citing Rodriguez v. Inglewood Unified School District (1986) 186 Cal.App.3d 707, 723 (1986). Guerrero, which involved a child injured crossing the street adjacent to school property after school hours, held that the school district was not liable. There was no negligent supervision in that case because the school had no duty to supervise a public street after school hours at a time and place where the school did not, as a matter of course, provide staffing or crossing guards to supervise students who had already been released and who were located off property. "There is no evidence the District undertook any duty to supervise Norma until she was safely united with her parent and nothing to show that it erred in the manner in which Norma was released from school on the date of the accident." Guerrero v. S. Bay Union Sch. Dist., 114 Cal. App. 4th 264, 271 (2003).

In this case, to distinguish the facts from the Guerrero case, the Complaint alleges that the injury happened on school property immediately leading up to school hours, at a time and place when Defendant knew that school children would be dropped off by the bus and school staff was both normally present, and actually were present at the time of the incident. Complaint, Attachment A. The Complaint, Attachment A, alleges that the injury occurred on school property. The Complaint, Prem. L-4, alleges that Defendant's employees had actual and constructive notice of the presence of the deer and did not take action to remove it from school property.

The Cout finds that Government Code § 831.2 does not provide Defendant statutory immunity.

II. Dangerous Condition Liability

The Complaint includes a cause of action based on Government Code § 835, which provides that a public entity will be responsible for injury caused by a dangerous condition of its property if:

"the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

A. Dangerous Condition

Government Code § 830 defines "dangerous condition" and the public agency's duty to "protect against" potential injury for the purpose of determining public agency liability:

(a) "Dangerous condition" means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.

(b) "Protect against" includes repairing, remedying or correcting a dangerous condition, providing safeguards against a dangerous condition, or warning of a dangerous condition.

Defendant argues that Plaintiff's allegations of the existence of a dangerous condition are contradictory, in that Plaintiff alleges that the injury happened in a "secured" area, which contradicts the allegation it was left unsecured. The Court understands the Complaint's allegation that the area was secured to mean that the injury occurred on property that was not "unimproved." Defendant's pleadings are consistent with this conclusion, because it argues that the deer "originated from unimproved land, whereas the improved property (school) serves as the site of the injury . . . ." Defendant's Memorandum of Points and Authorities, page 3:7-9. The Court agrees that it is not the fenced condition of the property or the condition of the fence that is alleged to be the dangerous condition that caused the injury (secured vs. unsecured), it is the presence of an unpredictable wild animal in the vicinity where the children were about to alight from the school bus.

This is where the Complaint fails. In a case where a woman was murdered by her ex-husband when she came to a court appearance, the County was sued for failing to prevent the killer from bringing weapons inside the courthouse. The California Supreme Court held:

> If the risk of injury from third parties is in no way increased or intensified by any condition of the public property ... courts ordinarily decline to ascribe the resulting injury to a dangerous condition of the property. In other words, there is no liability for injuries caused *solely* by acts of third parties. [Citations.] Such liability can arise only when third party conduct is coupled with a defective condition of property." (2 Cal. Government Tort Liability Practice (Cont.Ed.Bar 4th ed., May 2001 update) Dangerous Condition of Public Property, § 12.19, p. 732.)

Zelig v. Cnty. of Los Angeles, 27 Cal. 4th 1112, 1137 (2002).

In this case, the deer is alleged to be the dangerous condition, and like the enraged husband in the Zelig case, the transitory presence of a dangerous third party on the public property was the cause of the injury. However, the Complaint in this case, as in the Zelig case, doesn't allege any defect in the public property that contributed to the injury.

"[T]hird party conduct by itself, unrelated to the condition of the property, does not constitute a 'dangerous condition' for which a public entity may be held liable." (*Peterson v. San Francisco Community College Dist., supra,* 36 Cal.3d at p. 810, 205 Cal.Rptr. 842, 685 P.2d 1193.) Zelig v. Cnty. of Los Angeles, 27 Cal. 4th 1112, 1134 (2002). "Liability for injury caused by a dangerous condition of property has been imposed when an unreasonable risk of harm is created by a combination of defect in the property and acts of third parties." (*Hayes,* at p. 472, 113 Cal.Rptr. 599, 521 P.2d 855, italics omitted.) . . . "[C]ourts have consistently refused to characterize harmful third party conduct as a dangerous condition—absent some concurrent contributing defect in the property itself." Id. at 1135.

III. General Negligence

Defendant challenges the Complaint on the grounds that the public agency may not be held liable for common law causes of action, and that the Complaint must plead liability on the basis of applicable statutes under the California Tort Claims Act. The Court agrees.

The Court will grant the motion for Judgment on the Pleadings with leave to amend to plead in accordance with any applicable statutory grounds for liability.

TENTATIVE RULING #7: DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED. DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITH LEAVE TO AMEND WITHIN TEN DAYS OF RECEIPT OF THE SIGNED ORDER.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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