TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, May 15, 2024, 3:00 p.m.
Courtroom 16 –Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359
https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)

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 the Court by telephone at **(707) 521-6729**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.
Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. **SCV-266406, Brahma Brewery Inc v Toby's Trucking, Inc**

Defendants Louis A. Vierra III, Maria G. Vierra, and Vierra Fine Homes ("Defendants") demur to each cause of action alleged in the complaint filed by Plaintiff Brahma Brewery, Inc. ("Plaintiff"). **The demurrer is OVERRULED.**

Plaintiff's first amended complaint ("FAC") alleges causes of action for: (1) Negligence; (2)-(4) Negligent Hiring/Supervision; (5) Misrepresentation; (6) Fraud and Deceit; (7) Private Nuisance; (8) Public Nuisance; (9) Trespass; (10) Declaratory Relief; and, (11) Unfair Business Practices. Plaintiff alleges it owns real property located at 800 Helman Lane in Cotati ("the Property"). The Property is approximately 10 acres and contains federal and state protected wetlands and waterways, and habitat for the California Tiger Salamander protected by the Endangered Species Act.

With respect to Defendants, Plaintiff alleges that defendants Louis A. Vierra, III, and Maria G. Vierra ("Vierras") operate a home development company, defendant Vierra Fine Homes ("VFH"). Defendants allegedly contracted with defendant Toby's Hauling ("Toby's") to clear, haul away, and dispose of construction spoils from the construction site at 5366 Linda Lane in Santa Rosa, which is owned by the Vierras and was destroyed by the 2017 Tubbs Fire. Plaintiff alleges that Toby's dumped construction waste on Plaintiff's property and that the Vierras had a nondelegable duty to be responsible for hiring, supervising, overseeing, and monitoring its subcontractor Toby's to ensure that the construction spoils hauled away by Toby's were not

dumped in a protected wetland or in critical habitat. Plaintiff alleges that its president, Brahma Swami ("Swami") agreed to allow Toby's to dump the construction spoils because Swami was informed that Toby's was going to dispose of "clean dirt" and Swami was not aware of the need for grading permits. Toby's is alleged to have dumped contaminated dirt and construction spoils.

In support of each of Plaintiff's causes of action, Plaintiff alleges that Defendants had the expertise and duty to not dump or dispose of construction spoils on Plaintiff's property located in federal and/or state protected wetlands, waterways, and protected habitat; and that Defendants had a duty to obtain grading permits before disposing of the material.

In addition, in support of Plaintiff's third cause of action for negligent hiring/supervision 2, Plaintiff alleges that Defendants had the duty to properly hire and supervise Toby's so that it properly disposed of Defendants' construction project spoils. Plaintiff's sixth cause of action for fraudulent-criminal misrepresentation alleges that Toby's employee, Greg, came to Plaintiff's Property and in a face-to-face conversation knowingly made criminally false statements that the dumping of proposed dirt on the Property was lawful. Plaintiff's seventh and eighth causes of action allege Defendants' conduct created a private and public nuisance. Plaintiff's tenth cause of action alleges Defendants' actions violated Business and Professions code section 17200.

Plaintiff's second and fourth causes of action for negligent hiring/supervision 1 and 3 are not alleged against Defendants.

The substantive allegations are that Defendants contracted with Toby's Trucking, Inc. to dump construction materials from their construction site located at 5366 Linda Lane. VFH is alleged to be the "shipper" and "consignee" of the construction spoils excavated from 5366 Linda Lane. Plaintiff alleges that Defendants acted "in concert with" Toby's as shown by invoices attached to the FAC as Exhibit C. The invoices list VRH as either the shipper, the consignee, or the customer, and list the Property as the dump site.

Defendants argue that, at common law, a person who hired an independent contractor to perform a task generally was not liable to third parties for injuries caused by the independent contractor's negligence. Central to this rule of nonliability " 'was the recognition that a person who hired an independent contractor had " 'no right of control as to the mode of doing the work contracted for.' " ' " (*Delgadillo v. Television Center, Inc*. (2018) 20 Cal.App.5th 1078, 1086.)

Here, the allegations in the complaint allege a contractor-subcontractor relationship. (FAC, ¶17.) The cases cited by Defendants are not construction cases. *Delgadillo v. Television Center, Inc*. (2018) 20 Cal.App.5th 1078 involved a building owner and the fatality of a hired window-washer. In that case, the appellate court determined that when a property owner hires an independent contractor, the property owner is not liable for injuries sustained by the contractor's employees unless the defendant's affirmative conduct contributed to the injuries. (*Id.,* at 1080.) In that case, the undisputed evidence was that the building owner did not direct how the window washing should be done and did not interfere with the means or methods of accomplishing the work. (*Ibid*.) While the Vierras are in one sense just property owners, the issue here is more complicated because they are also alleged to have utilized their own company, VFH, to perform construction work on their property. Thus, this case is unlike *Delgadillo.* Defendants are not mere property owners hiring a knowledgeable independent contractor to perform work for them. Rather, they are alleged to be a

knowledgeable contractor performing construction work on their own property and hiring a subcontractor to handle a specific portion of that work.

SeaBright Ins. Co. v. US Airways, Inc. (2011) 52 Cal.4th 590 involved an airline which hired an independent contractor to maintain and repair the conveyor. *Padilla v. Pomona College* (2008) 166 Cal.App.4th 661 involved a college which hired a general contractor to remodel a dormitory. *Koepnick v. Kashiwa Fudosan America, Inc*. (2009) 173 Cal.App.4th 32 is a personal injury action involving injury from an elevator. In that case, both the building's owner and the elevator maintenance company were found to be negligent.

Henderson Brothers Stores, Inc. v. Smiley (1981) 120 Cal.App.3d 903 involved a roofing contractor whose tar kettle exploded and caught the neighboring building on fire. In that case, the court reversed judgment of nonsuit for the owner of the building who hired the roofer stating that the "peculiar risk" or "inherently dangerous work" exception, where the type of work performed involves special risks peculiar to the work to be done, was potentially applicable. The *Henderson* court noted that the rule of nonliability of a hirer of an independent contractor is now the exception; i.e., the so-called general rule is followed only where no good reason is found for departing from it. (*Id.*, at 910.)

Here, the allegations are dissimilar from the cases cited by Defendants because Defendants are alleged to have been the contractor performing construction work at their property on Linda Lane. VFH is alleged to be a home development company in charge of rebuilding the Vierras' prior home. Louis Vierra, III, is a contractor and a principal of VFH and a partner of VFH with Maria Vierra. As the contractor of the construction project, Defendants are alleged to have hired Toby's as a subcontractor. This is similar to the example in *Luce v. Holloway* (1909) 156 Cal. 162, in which a contractor was hired to grade portions of a city street. Under the doctrine of respondeat superior, the contractor was responsible for the negligence of the subcontractor hired to do the grading. Similarly, Plaintiff alleges that Defendant contractors are liable for the negligence of their subcontractor.

Defendants also argue that the economic loss doctrine bars tort claims against them. There is no alleged contract between Defendants and the Plaintiff; rather, Defendants argue that it is the contract between Toby's and Plaintiff from which all recovery must stem. However, Plaintiff's allegations are not that the terms of the contract were breached, he argues that the terms were fraudulent because Toby's and Defendants knew they were not providing "clean" dirt as had been represented.

With respect to Plaintiff's cause of action for negligent hiring or supervision, Defendants cite *Federico v. Superior Court* (Jenry G.) (1997) 59 Cal.App.4th 1207, a case involving the sexual assault of minors by an employee. That court held an employer's duty is breached only when the employer knows, or should know, facts which would warn a reasonable person that the employee presents an undue risk of harm to third persons in light of the particular work to be performed. *Alexander v. Community Hospital of Long Beach* (2020) 46 Cal.App.5th 238 involved allegations of a hostile work environment and assault by a hospital's employee.

Plaintiff cites Sonoma County codes that require contractors to obtain permits to lawfully dispose of construction spoils resulting from grading operations and prohibiting construction debris disposal onto premises other than in a County designated and approved disposal facility. Here, the

allegations imply that Defendants did not obtain needed permits because Toby's dumped their construction spoils without the requisite permits and outside of an approved disposal facility.

With respect to Plaintiff's negligent misrepresentation cause of action, Defendants argue that there are no facts alleged to create an agency relationship so that Toby's employee could be said to be acting on behalf of the Defendants. Defendants cite *Olson v. La Jolla Neurological Associates* (2022) 85 Cal.App.5th 723, a debt-collection case alleging violation of the Rosenthal Act as a result of sending multiple bills and making incessant phone calls seeking payment for neurological services. The court determined that the service provider, La Jolla Neurological Associates, could be held vicariously liable for the actions of an agent collecting a debt on its behalf under the Rosenthal Act if the independent contractor is the creditor's agent. Agency and independent contractor relationships are not necessarily mutually exclusive legal categories. (*Id.,* at 738.) If control may be exercised only as to the result of the work, and not the means by which it is accomplished, the relationship is an independent contractor relationship rather than an agency. (*Ibid*.) Defendants argue that Plaintiff has not established the existence of an agency relationship. However, on demurrer it is the Defendants' burden to establish that the allegations in the FAC do not sufficiently allege an agency relationship. Defendants have not shown that the allegations are such that Defendants could not, as a matter of law, have exercised the means by which the dumping of construction spoils was accomplished. Therefore, they have not met their burden to establish that Toby's was not Defendants' agent.

The remainder of Defendants' arguments fail to cite supportive authority and rely on the above arguments. Accordingly, Defendants have failed to meet their burden to establish that Plaintiff's seventh through eleventh causes of action do not allege facts sufficient to constitute a cause of action.

Defendants' demurrer is OVERRULED.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

2. SCV-269143, Sears v Roseland MHP, LLC

This matter is on calendar for the motion of Defendant Roseland MHP, LLC ("Defendant") for entry of judgment against Plaintiff Laurie D. Sears aka Ashley Maserati ("Plaintiff") and dismissing the action.

Although leave to amend was granted as to the entire complaint after Defendant's motion for judgment on the pleadings was granted on January 31, 2024, Plaintiff has not filed an amended pleading. As such, judgment is required to be entered in favor of moving party. (Code Civ. Proc. § 438 subd. (h)(4)(C).) **The motion is GRANTED.**

Defendant's counsel is directed to submit a written order to the court consistent with this ruling.

3-5. SCV-269821, County of Sonoma v Lecker

APPEARANCE REQUIRED.

6. SCV-270596, Briano Martinez v Nor Cal Foods, LLC

This matter is on calendar for the motion of Plaintiff Martha P. Briano Martinez, on behalf of herself, all others similarly situated, the general public, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorney General Act of 2004 ("Plaintiff") confirming the class certification of the class solely for settlement purposes pursuant to Code of Civil Procedure section 382; (2) finally approving the Class Action and PAGA Settlement Agreement and Class Notice; (3) confirming the appointment of David Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel for the Class; (4) confirming the appointment of Plaintiff as Class Representative for the Class; (5) finally approving an award of Class Counsel Fees Payment in the amount of $40,000.00 for attorneys' fees and an award of Class Counsel Litigation Expenses Payment in the amount of $7,819.07 to Class Counsel; (6) finally approving a Class Representative Service Payment in the amount of $5,000.00 to Plaintiff; (7) finally approving Administrator's fees in the amount of $7,150.00 to ILYM Group, Inc.; (8) finally approving a payment of $4,000.00 in PAGA penalties under the Labor Code Private Attorneys General Act 0f 2004 (Labor Code § 2698 et seq.), seventy five percent (75%) or $3,000.00 0f which will be distributed to the LWDA and the remaining twenty-five percent (25%) or $1,000.00 will be distributed to the Participating Class Members as part of the Net Settlement Amount; and (9) directing that the Final Order and Judgment Approving Class Settlement be entered.

The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Ibid.*, citing *Dunk, supra,* at 1802.)

The court considered class certification factors in its preliminary approval process and there have not been any subsequent events that would impact the court's determinations on that motion. (Spivak decl., ¶4.)

Notice of this settlement was mailed on February 8, 2024. (Polites decl., ¶7.) As of April 24, 2024, none of the 157 class members have submitted a dispute, have objected, or have requested to be excluded from the settlement. (*Id.* ¶¶11-13.)

Class Counsel's request for attorneys' fees of $40,000.00 is fair and reasonable based on their lodestar calculation cross-checked against the percentage of the recovery. Class Counsel have a total lodestar of approximately $110,919.50 without the use of any multiplier.

Class Counsel's total expenses are $7,819.07, and the administrator's fees are $7,150.00. The class representative's award of $5,000 remains the same.

Based upon Plaintiff's memorandum of points and authorities, the declarations and evidence submitted in support thereof, and the lack of objectors and opposition to this motion, the court finds that the settlement is fair and reasonable. Accordingly, **the motion is GRANTED**. The court will sign the proposed order.

7. <u>SCV-272389, Muelrath v Langley</u>

Defendants Carolyn Langley and Pete Langley ("Defendants") move to stop Plaintiff Corinne Muelrath ("Plaintiff") as a vexatious litigant, to restrict abusive litigation, and for a competency evaluation for Plaintiff. Defendants request Plaintiff be prohibited from filing new lawsuits without court authorization; have her court filings limited; limit the scope of discovery; require Plaintiff to post a bond for lawyers' fees; have sanctions imposed against her; and place conditions on or prohibit appeals. **The motion is DENIED.**

1. Vexatious Litigant

CCP section 391(b) defines a vexatious litigant as a person who satisfied one of four alternatives: (1) A person who brings five unmeritorious cases in the preceding 7 years; (2) A person who repeatedly litigates against the same defendant; (3) A person who engages in repeated frivolous or unnecessary delaying tactics; or (4) A person who has previously been declared a vexatious litigant. Here, it appears that Defendants move pursuant to subsection (b)(3): "In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay." (CCP § 391(b)(3).)

Defendants provide a list of facts in support of their position that Plaintiff has been harassing them and their families, has taken false positions in litigation pending in this court, that Plaintiff abused the parties' father, as well as other alleged behavior by Plaintiff outside of court proceedings. These facts are not relevant to a vexatious litigant motion. Such motion requires a showing that Plaintiff has repeatedly filed motions or other papers, conducted unnecessary discovery, or engaged in other court-related tactics that were frivolous or solely intended to cause unnecessary delay in the court proceedings. In review of the court's file, Plaintiff filed her complaint for partition of real property, one motion for valuation of real property, and one motion for an interlocutory judgment of partition and appointment of a referee. None of these motions were frivolous. Plaintiff has a right to partition property and her motion for valuation of real property led to the appointment of an appraiser to help determine how the subject real property should be partitioned. Defendants have not established that Plaintiff has repeatedly filed unmeritorious motions. Nor have they shown that Plaintiff has served any discovery or engaged in any tactics to delay the instant court proceeding.

2. Competency Evaluation

Defendants have not provided any legal authority that this court may order a competency evaluation of a party to a partition action.

3. Conclusion and Order

The motion is DENIED. Plaintiff is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

8. <u>SCV-272876, Vilce v Berton</u>

Defendant James Peter Berton ("Defendant") moves for an order compelling Plaintiff Mark Vilce ("Plaintiff") to answer Defendant's form interrogatories, set one; special interrogatories, set one; and requests for production of documents, set one, served on Plaintiff on June 13, 2023.

Defendant has established that discovery was served and, as of the date of this motion, no responses have been received. (Bennett decl., ¶¶2, 3.) Accordingly, **the motion is GRANTED. Plaintiff Vilce is ordered to: (1) serve verified responses to form interrogatories, set one; (2) serve verified responses to special interrogatories, set one; and (3) serve verified responses to request for production of documents, set one, within fifteen (15) days of the service of this order.**

Defendant's counsel is directed to submit a written order to the court consistent with this ruling.