Dept. 1
Civil Law and Motion Tentative Rulings for Friday, June 27, 2025, at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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1. CV66884 Eden v. Reich's Outpost LLC
Hearing on: Motion to Approve Settlement
Moving Party: Plaintiff
Tentative Ruling: HEARING REQUIRED

This is an action for injunctive relief based on alleged exposure to an environmental toxin, or more accurately defendant's alleged failure to have conspicuously posted at its business premises a clear and reasonable warning thereof (hereinafter "Prop 65 warning"). According to plaintiff, testing revealed the presence of vaporized particulate matter at its service station in Soulsbyville, and an absence of any Prop 65 warning in plain view. Plaintiff does not allege to have been exposed while patronizing the service station. Plaintiff appears to be an aspiring career plaintiff, lending his name to a number of similar lawsuits around the state alleging that small service stations are (1) exposing customers and (2) failing to post warnings. California is no stranger to this type of litigation (see Unruh, UCL, PAGA, etc.). Nevertheless, the parties are here to have a settlement approved, not to revisit *National Paint & Coatings Assn. v. State of California* (1997) 58 Cal.App.4th 753.

Pursuant to H&S Code §25249.7, a person who, in the course of doing business, has "knowingly and intentionally" exposed any individual to a toxin without first giving a clear and reasonable warning "is liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day," taking into account (1) the nature and extent of the violation, (2) the number of, and severity of, the violations, (3) the economic effect of the penalty on the defendant, (4) whether the defendant took good faith measures to comply, (5) the willfulness of the defendant's misconduct, (6) the deterrent effect on both the defendant and the regulated community as a whole, and (7) any other factor that justice may require. Many of these disputes do not come to the trial court for a contested evidentiary hearing in which the aforementioned factors are considered and weighed. Instead, the majority of these cases are presented to the trial court for approval of a settlement already negotiated.

Prop 65 settlements are treated much like PAGA settlements. The parties reach an agreement on a number that makes sense, and inform the state agency overseeing toxic enforcement about the terms thereof. If the agency does not intervene or object, the settlement is presented to the trial court for approval. Because the suit is intended to aid the public, not the private plaintiff, the state agency received 75% of the penalties collected, and the plaintiff keeps 25% (the plaintiff also gets to keep legal fees).

A settlement can only be approved by the trial court after the plaintiff has demonstrated by a preponderance of the evidence that (1) the warning that is required by the settlement complies with this chapter, (2) the award of attorney's fees is reasonable under California law, and (3)

the penalty amount is reasonable based on the aforementioned seven factors. That is not to say that the trial court is required to consider and weigh all seven factors as if it were proceeding carte blanche, because even in the "career plaintiff" climate there remains some over-arching preference for settlements. This is commonly referred to as the "ballpark" approach, meaning that any settlement which is objectively within the "ballpark" of what a trier of fact could ultimately decide if the case went to trial, a settlement therein should be approved. However, "settlement without consideration of the public interest eviscerates the purpose of Proposition 65." *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 62. Thus, in addition to the three considerations, trial courts have an additional "duty to find that the settlements were in the public interest." *Id*. at 65.

The warning proposed to be posted at the two service stations owned by defendants is appropriate – even though there is no evidence of exposure taking place.

The penalty amount sought ($4,000) is *de minimus*. There is no analysis provided by plaintiff to explain how this number shares any relationship at all with the seven factors listed in §25249.7(b). Given that a standard per diem penalty without proof of actual exposure would rarely exceed $100, the parties have essentially agreed to 40 days' worth of penalties. Given that it takes only a few days to print out a Prop 65 warning from the internet and tape it to the window, 40 days seems like a long time; however, there was six months between Notice and commencement, so from that perspective the penalty portion of this settlement should be larger. Of course, there is a disincentive to apportion too much to the penalty part because most defendants just agree on the gross amount (here, $20,000) without too much concern about who gets what. $4,000 is acceptable.

The bone of contention, as it were, involves the legal fee. In this community, lawyers do not command – let alone receive – fees that exceed $450/hour. In addition, lawyers seeking fees do not often rely on generic block billing submissions to support what would otherwise seem like an inflated request for fees. Counsel here advises that he invested 31.25 hours doing pre-litigation preliminary Prop 65 stuff (which he claims to be an expert in), various forms of "communication" with others, settlement talks, and "anticipated" work on this settlement motion. Subtracting the hard costs ($1,288.89) from the $16,000 sought, that leaves $14,711.11, or 32.69 hours @ $450/hr. As it turns out, counsel is not asking for $600/hr., he is asking for $450/hr., which is acceptable – as are the hard costs he seeks reimbursement for.

A hearing is nevertheless required because "the plaintiff shall serve the motion and all supporting papers on the Attorney General, who may appear and participate in a proceeding without intervening in the case." §25249.7(d)(5). In other words, the Attorney general is authorized to appear at the hearing, without having made a prior appearance, to argue against the settlement.

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2. CV65320 Taylor v. Larson Farms
Hearing on: Motion to Quash
Moving Party: Plaintiff
Tentative Ruling: Denied

This is a premises liability "slip and fall" case commenced by way of complaint nearly two years ago. Although the details are not set forth in the operative pleading, plaintiff elaborates on the basis of the claim this way:

> "This case arises from a serious incident at the property owned and maintained by Defendant. Defendant's claim that Plaintiff suffered a 'mere slip and fall' does not accurately reflect the circumstances. Plaintiff was injured while standing in stagnant water caused by a leaking appliance, as Plaintiff tried to unplug an extension cord that was daisy-chained to power a marijuana grow operation on the property. This property was not only infested with rats and bats actively chewing through its walls, but also harbored birds and squirrels and scorpions, suffered leaking plumbing, had a backups from a septic tank that had not been emptied in over 30 years, and presented numerous other maintenance failures and fire hazards that created significant electrical and environmental and sanitary issues. Plaintiff had repeatedly notified the Defendants of these hazardous conditions, but the complaints were ignored. Defendants retaliated by blocking Plaintiff's phone number and threatening eviction. Immediately following the incident, Plaintiff suffered serious injuries including a Ulan, Radius, Elbow, Olecranon, and Humorous bone, neck and spine … diagnosed with vascular insufficiency [and] Complex Regional Pain."

Before the Court this day is a motion to quash deposition subpoenas directed at Cedars-Sinai, UCSF, UCLA, RadNet, Beverly Hills Center for Rehab, and Olympic Medical. These subpoenas were initially issued between May 13 and May 22, but reissued once plaintiff's attorney withdrew from the case. According to the defense, these are the locations where plaintiff alleges she received treatment for the aforementioned injuries suffered as a result of the condition(s) she encountered at defendant's property. Plaintiff generally contends that the defense is trying to invade her privacy, making the discovery process more difficult, and taking advantage of her "pro per" status. However, as pointed out by the defense, plaintiff's concerns regarding the subpoenas are not really legal challenges to the subpoenas per se, but more in the realm of complaints about civil discovery and litigation in general.

Although plaintiff is correct that she has a basic right to privacy, whether or not she is registered in the Safe At Home program for victims of domestic violence, that does not bar the defense from exploring her injury claims. The basic purpose of all discovery is to take the "game" element out of case preparation by enabling parties to obtain the evidence necessary to evaluate and resolve their dispute beforehand. *Emerson Electric Co. v. Superior Court* (1997)

16 Cal.4th 1101, 1107; *Reales Investment, LLC v. Johnson* (2020) 55 Cal.App.5th 463, 473-474. Each party has a presumptive right to inquire about any matter which – based on reason, logic and common sense – might (1) be admissible, (2) lead to admissible evidence, or (3) reasonably assist that party in evaluating the case, preparing for trial and/or facilitating resolution. See CCP §2017.010; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557.

There is a counterbalance to this broad right to discovery in the Constitutional right to privacy. See Cal. Const. Art. 1, §1; and *County of Los Angeles v. Los Angeles County Employee Relations Commission* (2013) 56 Cal.4th 905, 927; *Board of Registered Nursing v. Superior Court* (2021) 59 Cal.App.5th 1011, 1039. However, it is the party opposing disclosure which has the burden to establish the existence of these privacy rights. The factors a court must consider include "the purpose of the information sought, the effect that disclosure will have on the parties and on the trial, the nature of the objections urged by the party resisting disclosure, and ability of the court to make an alternative order which may grant partial disclosure, disclosure in another form, or disclosure only in the event that the party seeking the information undertakes certain specified burdens which appear just under the circumstances." *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 712; in accord, *In re Marriage of Tamir* (2021) 72 Cal.App.5th 1068, 1087; *Fortunato v. Superior Court* (2003) 114 Cal.App.4th 475, 480. When it comes to medical conditions, the right to privacy is presumptively waived as soon as a party is claiming a right to recover damages for injuries thereto. See *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853-1857; *Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1017. That is the contention here.

Motion denied. Although the defense is seeking sanctions against plaintiff for her motion and various delays, this Court notes that most of the angst to date appears to be at the hands of former counsel and not so much from plaintiff herself or defense counsel. Sanctions are denied. The parties are simply encouraged to work together to complete discovery.