

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar  
HONORABLE DANNY CHOU Y. CHOU  
Department 22

**CENTRAL COURTHOUSE**  
**COURTROOM I**  
**800 NORTH HUMBOLDT STREET, SAN MATEO**

Thursday, December 1, 2022

IF YOU ***INTEND TO APPEAR*** ON ANY CASE ON THIS CALENDAR YOU MUST DO ONE OF THE FOLLOWING:

1. EMAIL [Dept22@Sanmateocourt.org](mailto:Dept22@Sanmateocourt.org) BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING
2. YOU MUST CALL (650) 261-5122 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.
3. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do both items 1 or 2 and 3 will result in no oral presentation.

**At this time, personal appearances are allowed but not required. Parties may appear by Zoom, advance authorization is not required for remote appearances.**

**Zoom Video/Computer Audio Information:**

<https://sanmateocourt.zoomgov.com/>

**COURTROOM I**

Meeting ID: 160 226 9361

Password: 289347

**Zoom Phone Information Please note: You must join by dialing in from a telephone:**

Dial in: +1 (669)-254-5252

*(Meeting ID and passwords are the same as above)*

**TO ASSIST THE COURT REPORTER, the parties are ORDERED** to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case

Title / Nature of Case

2:00 (LINE 1)  
18-CIV-06455 LESLEY TOWERS, LLC VS. ANNE K. PHILLIPS, ET AL.

LESLEY TOWERS, LLC  
ANNE K. PHILLIPS

CHRISTOPHER J. HERSEY  
JEROME CURRAN PANDELL

---

DEFENDANT PERFORMANCE MECHANIC, INC.'S MOTION FOR GOOD FAITH SETTLEMENT  
TENTATIVE RULING:

Defendant Performance Mechanic, Inc's (PMI) Motion for Good Faith Settlement (Motion) is GRANTED.

PMI seeks a determination that its agreement to pay Plaintiff Lesley Towers LLC \$250,000 to settle Plaintiff's breach of contract and negligence claims against it was made in good faith. In support, PMI submits declarations from Rangi Perera, its counsel, and attaches the Settlement and Release Agreement (Settlement Agreement) to one of those declarations.

The Settlement Agreement defines the scope of work performed by PMI on the construction project that resulted in the lawsuit and is covered by the release (PMI's Scope of Work). Specifically, the Agreement defines PMI's Scope of Work as "providing and installing two (2) boilers, three (3) pumps, one (1) expansion tank, one (1) air separator, one (1) chemical pot feeder; the installation and supports for piping to two hundred (200) heating hot water fan coil units (FCU); Chemical treatment on the piping; Provide and install metraflex BBS to supply and return of the heating hot water (HHW) for each (FCU) at building expansion joint 'F' line; Support roof top piping, disconnect piping for 5 new foam roof pipe supports, furnish and install new roof pipe supports, trim to new roof elevation, and remove temporary supports." (Perera Decl., ex. A.) The Agreement also defines in some detail the scope of work covered by the lawsuit that does not fall within PMI's Scope of Work and is not covered by the release (Other Scope of Work). (See *ibid.*)

Under the terms of the Settlement Agreement, the payment of \$250,000 by PMI "represent[s] full compensation for any and all damages and/or losses sustained by reason of PMI's Scope of Work and PMI's work at the Property as it pertains to this Action and/or as alleged or which could have been alleged in the Action against PMI or SC's Scope of Work to the extent it arises out of or in connection with PMI's operations performed at the Property." (Perera Decl., ex. A.) Even though neither Defendant SC Builders, Inc. (SC) nor any other subcontractor defendant has made any payments under the Agreement, Plaintiff further "release[s] and discharge[s] SC and its owners, agents, subcontractors and its Related Persons from and against any and all Claims arising out of or in connection with PMI's Scope of Work for the Project and those defects alleged against or otherwise arising out of or in connection with PMI's Scope of Work. For the avoidance of doubt, the foregoing release shall not apply to any" Other Scope of Work. (*Ibid.*)

Among the other eight Defendants and Cross-Defendants, only SC opposes the Motion. SC contends the Motion should be denied because "[t]here is no evidence regarding the respective fault of the settling party" and because "[t]here is no allocation" of the settlement funds "between Plaintiff's alleged damages." (Opp., at p. 3.) The Court disagrees.

As a threshold matter, the Court finds that PMI has met its initial burden to show that the settlement was reasonable. Perera's initial declaration sets forth sufficient facts concerning the litigation to permit the court to

---

assess the settlement's good faith. Accordingly, the burden shifts to SC to show that the settlement was not made in good faith. (*City of Grand Terrace v. Superior Court (Boyster)* (1987) 192 CA3d 1251, 1261-62 (*City of Grand Terrace*); see Code Civ. Proc., § 877.6, subd. (d).) If SC has submitted declarations establishing that the settlement lacked good faith, then PMI would need "to file responsive counterdeclarations to negate the lack of good faith asserted by" SC. (*Id.* at p. 1262.)

Here, SC has not met its burden of showing that the settlement was not made in good faith.

First, SC has presented no evidence that PMI is liable for any of Plaintiff's damages. Thus, SC's assertion that the settlement does not adequately account for "the respective fault" of PMI has no support. As a result, PMI did not need to file responsive counterdeclarations to establish good faith. (*City of Grand Terrace, supra*, 192 Cal.App.3d at p. 1262.)

Second, the Court, In exercising its discretion after a review of the factors set forth in *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, finds that the settlement was made in good faith. Because SC has provided no evidence that PMI will ultimately be found liable, the Court concludes that the settlement amount falls within the " 'ballpark' " of PMI's proportionate liability. (*Id.* at p. 1265.) The Court further recognizes that the moving party should pay less in settlement than it would if it were found liable after a trial. Finally, there is no evidence of collusion, fraud, or tortious conduct aimed to injure the interests of SC or any other non-settling defendant.

Finally, SC's complaint about the lack of any allocation of the settlement funds is belied by the terms of the Settlement Agreement. The Agreement makes it clear that PMI's payment of \$250,000 is allocated to damages relating to PMI's Scope of Work, but not the Other Scope of Work. (See Perera Decl., ex. A.) Indeed, the Agreement expressly states that the payment of \$250,000 represents "full" compensation for any damages relating to PMI's Scope of Work or caused by PMI. (*Ibid.*) More importantly for SC and the other subcontractor defendants, the Agreement releases SC and those subcontractors from any of Plaintiff's claims "arising out of or in connection with PMI's Scope of Work and those defects alleged against or otherwise arising out of or in connection with PMI's Scope of Work." (*Ibid.*) This is sufficient to satisfy any allocation requirement for a finding of good faith.

Indeed, the Settlement Agreement, as a practical matter, eliminates the negative consequences to SC that may otherwise have been created by a good faith settlement determination. A good faith settlement typically "has two important consequences." (*Dillingham Construction, N.A., Inc. v. Nadel Partnership, Inc.* (1998) 64 Cal.App.4th 264, 278.) First, it reduces Plaintiff's claims against SC. (*Ibid.*) "This is known as the offset or setoff, and comes into play when the plaintiff settles for a figure which he or she believes represents partial damages, and then goes against the remaining defendant or defendants for the remainder." (*Ibid.*) Second, it prevents SC from seeking any contribution or indemnity from PMI " 'based on comparative negligence or comparative fault.' " (*Id.* at pp. 278-279.) "This means that defendants who have settled for less than their proportionate share of damages cannot be required to pay any more, and the nonsettling defendants can be forced to make up the shortfall." (*Id.* at p. 279.) But any concern that SC may have about these consequences appears to be mitigated, if not eliminated, by Plaintiff's agreement under the Settlement Agreement to forego any claim against SC for damages caused by PMI. (See Perera Decl., ex. A.) In other words, this is not a partial settlement of Plaintiff's claims against PMI; instead, Plaintiff has agreed not to go after SC (or any subcontractor defendant) for the remainder of any damages caused by PMI even if the settlement amount of \$250,000 only represents a portion of those damages. Because the Settlement Agreement absolves SC of any liability for damages caused by PMI, there is no apparent need for an offset/setoff or a claim for indemnity or contribution by SC. In fact, a jury finding of comparative fault on the part of PMI would presumably reduce SC's liability by the percentage of fault attributable to PMI.

---

Accordingly, SC has provided no basis for a finding of bad faith or that the allocation is inadequate or that the settlement amount is grossly disproportionate to a reasonable estimate of PMI's potential liability. The Motion is therefore granted.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for PMI shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. **The proposed order MUST be filed (e-filing is permitted) and MUST ALSO be emailed to the Court at dept22@sanmateocourt.org in Word format. The subject heading of the email shall include the case name, case number, and the phrase "Proposed Order."**

---

2:00 (LINE 2)  
19-CIV-06531 INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA

INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA  
CALIFORNIA INSURANCE COMPANY

MICHAEL J. STRUMWASSER  
SHAND S. STEPHENS

---

INTERESTED PARTY STATE OF NEW MEXICO'S APPLICATION FOR MARK W. ALLEN (NEW MEXICO BAR # 143108)  
TO APPEAR AS COUNSEL PRO HAC VICE  
TENTATIVE RULING:

The Unopposed Verified Application of Mark W. Allen to Appear as Counsel Pro Hac Vice for Proposed Intervenor State of New Mexico is GRANTED.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for the State of New Mexico shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. **The proposed order—which MUST include Mr. Allen's New Mexico bar number—MUST be filed (e-filing is permitted) and MUST ALSO be emailed to the Court at dept22@sanmateocourt.org in Word format. The subject heading of the email shall include the case name, case number, and the phrase "Proposed Order."**

---

2:00

(LINE 3)

20-CIV-02998

MARGARITA CONCEPCION ASENCION TELLEZ, ET AL. VS. KATE CUEVAN, ET AL.

MARGARITA CONCEPCION ASENCION TELLEZ  
KATE CUEVAN

JOSHUA H. HAFFNER  
ALEXANDRA V. ATENCIO

---

PLAINTIFF VANESSA ROSAS'S PETITION FOR COMPROMISE OF MINOR'S (AISHA ROSAS) CLAIM  
TENTATIVE RULING:

Based on the Weinberg Declaration filed on November 28, 2022, Plaintiff Vanessa Rosa's Petition for Compromise of Minor's (Aisha Rosas) Claim is GRANTED. Nonetheless, Plaintiff is ORDERED TO APPEAR. Zoom appearances are permitted but not required.

---

2:00 (LINE 4)

20-CIV-02998 MARGARITA CONCEPCION ASENCION TELLEZ, ET AL. VS. KATE CUEVAN, ET AL.

MARGARITA CONCEPCION ASENCION TELLEZ  
KATE CUEVAN

JOSHUA H. HAFFNER  
ALEXANDRA V. ATENCIO

---

PLAINTIFF RUBY ROMERO'S PETITION FOR COMPROMISE OF MINOR'S (JOSEPH ROSALES) CLAIM

TENTATIVE RULING:

Based on the Weinberg Declaration filed on November 28, 2022, Plaintiff Ruby Romero's Petition for Compromise of Minor's (Joseph Rosales) Claim is GRANTED. Nonetheless, Plaintiff is ORDERED TO APPEAR. Zoom appearances are permitted but not required.

---

2:00 (LINE 5)  
21-CIV-00594 ABIGAIL MASIC-MAHARAJ BY AND THROUGH GUARDIAN AD LITEM SARA MASIC VS.  
DESIGNER BRANDS INC., ET AL.

ABIGAIL MASIC-MAHARAJ BY AND THROUGH GUARDIAN AD LITEM SARA ELAN ZEKTSER  
MASIC  
DESIGNER BRANDS INC. DAVID E. RUSSO

---

PLAINTIFF'S COUNSEL ELAN ZEKTSER'S MOTION FOR TO BE RELIEVED AS COUNSEL  
TENTATIVE RULING:

Elan Zektser's unopposed Motion to be Relieved as Counsel for Plaintiff Abigail Masic-Maharaj by and through Guardian Ad Litem Sara Masic (Motion) is GRANTED upon the filing of a proof of service that Plaintiff was personally served by a professional messenger service as represented by the Proof of Service filed by Zekster on or about November 22, 2022. Zekster is ORDERED to file that proof of service on or by **December 8, 2022** together with a proposed order using the statutorily required Judicial Council form.

Until that proof of service has been filed, the Court will not sign any proposed order granting the Motion. Pursuant to rule 3.1362, subdivision (e) of the California Rules of Court, this order does not become effective until proof of service of a copy of the signed order on the client has been filed with the Court.

Because Plaintiff will no longer have counsel if this Motion is granted, the Court, upon signing the proposed order submitted by Zekster, will VACATE the trial date of February 6, 2023, the pretrial date of January 23, 2023, and mandatory settlement conference date of January 19, 2023 to give Plaintiff time to find new counsel. The Court has already continued the hearing on Defendants' Motion for Summary Judgment to **February 2, 2023 at 2 pm** pursuant to a stipulation and order signed by the Court on November 28, 2022. Upon the signing of the proposed, the Court will, however, also VACATE the deadlines for Plaintiff's opposition established in that stipulation and order. The deadlines for any further briefing would now be determined per code. Finally, the Court will SET a Trial Setting Conference/Case Management Conference for **February 15, 2023 at 2:00 p.m.** Plaintiff is ORDERED to appear. Zoom appearances will be permitted but not required. All of this information should be included in the proposed order prepared by counsel.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. **The proposed order MUST be filed (e-filing is permitted) and MUST ALSO be emailed to the Court at dept22@sanmateocourt.org in Word format. The subject heading of the email shall include the case name, case number, and the phrase "Proposed Order."**

---

2:00 (LINE 6)  
22-CIV-00948 CYNTHIA WILCOX VS. JOSEPH VILLAFUERTE, ET AL.

CYNTHIA WILCOX  
JOSEPH VILLAFUERTE

GREGORY C. CATTERMOLE  
LAURA MATTEIS

---

DEFENDANT JOSEPH VILLAFUERTE'S MOTION TO COMPEL PLAINTIFF CYNTHIA WILCOX'S RESPONSES TO FORM INTERROGATORIES (SET ONE) AND DEMAND FOR INSPECTION AND IDENTIFICATION OF DOCUMENTS (SET ONE) TENTATIVE RULING:

Defendant Joseph Villafuerte's Motion to Compel Plaintiff Cynthia Wilcox's Responses to Form Interrogatories (Set One) and Demand for Inspection and Identification of Documents (Set One) is DENIED WITHOUT PREJUDICE. Plaintiff did not request or participate in an informal discovery conference (IDC) before filing the Motion as required by San Mateo County Superior Court Local Rule 3.700. The Motion may be re-noticed, if necessary, after the completion of an IDC before the Civil Commissioner.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

---

2:00 (LINE 7)

22-CIV-02948 SHORELINE VENTURE PARTNERS III, LP, ET AL. VS. DIXON DOLL, JR, ET AL.

SHORELINE VENTURE PARTNERS III, LP  
DIXON DOLL

PHILIP C. TENCER  
JONATHAN A. SHAPIRO

---

DEFENDANT DIXON DOLL, JR.'S DEMURRER TO PLAINTIFFS' COMPLAINT  
TENTATIVE RULING:

Defendant Dixon Doll Jr.'s Demurrer to Plaintiffs' Complaint is TAKEN OFF CALENDAR because Plaintiffs filed a First Amended Complaint on November 18, 2022.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

---

2:00 (LINE 8)

22-CIV-02948 SHORELINE VENTURE PARTNERS III, LP, ET AL. VS. DIXON DOLL, JR, ET AL.

SHORELINE VENTURE PARTNERS III, LP  
DIXON DOLL

PHILIP C. TENCER  
JONATHAN A. SHAPIRO

---

DEFENDANT NASUNI CORPORATION'S DEMURRER TO PLAINTIFFS' COMPLAINT  
TENTATIVE RULING:

Defendant Nasuni Corporation's Demurrer to Plaintiffs' Complaint is TAKEN OFF CALENDAR because Plaintiffs filed a First Amended Complaint on November 18, 2022.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

---

2:00                                      (LINE 9)  
22-CIV-02948                      SHORELINE VENTURE PARTNERS III, LP, ET AL. VS. DIXON DOLL, JR, ET AL.

SHORELINE VENTURE PARTNERS III, LP  
DIXON DOLL

PHILIP C. TENCER  
JONATHAN A. SHAPIRO

---

DEFENDANT NASUNI CORPORATION'S APPLICATION FOR CHRISTOPHER J. CUNIO TO APPEAR AS COUNSEL PRO HAC VICE

TENTATIVE RULING:

The unopposed Notice of Hearing and Verified Application of Christopher J. Cunio to Appear as Counsel Pro Hac Vice (Notice and Application) is CONTINUED to **December 8, 2022 at 2:00 p.m.** so he can provide proof that: (1) the Notice and Application were served on the State Bar of California as required by rule 9.40, subdivision (c) of the California Rules of Court; and (2) the \$50 fee was paid to the State Bar of California as required by rule 9.50, subdivision (d) of the California Rules of Court. Although the Notice and Application states that counsel has done both, that statement is unsworn. Moreover, the proof of service does not indicate that the Notice and Application were served on the State Bar of California at the correct address.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

---

2:00 (LINE 10)

22-CIV-02948 SHORELINE VENTURE PARTNERS III, LP, ET AL. VS. DIXON DOLL, JR, ET AL.

SHORELINE VENTURE PARTNERS III, LP  
DIXON DOLL

PHILIP C. TENCER  
JONATHAN A. SHAPIRO

---

DEFENDANT NASUNI CORPORATION'S APPLICATION FOR SHAUNA R. TWOHIG TO APPEAR AS COUNSEL PRO HAC VICE

TENTATIVE RULING:

The unopposed Notice of Hearing and Verified Application of Shauna R. Twohig to Appear as Counsel Pro Hac Vice (Notice and Application) is CONTINUED to **December 8, 2022 at 2:00 p.m.** so she can provide proof that: (1) the Notice and Application were served on the State Bar of California as required by rule 9.40, subdivision (c) of the California Rules of Court; and (2) the \$50 fee was paid to the State Bar of California as required by rule 9.50, subdivision (d) of the California Rules of Court. Although the Notice and Application states that counsel has done both, that statement is unsworn. Moreover, the proof of service does not indicate that the Notice and Application were served on the State Bar of California at the correct address.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

---

POSTED: 10:40 PM

---