November 14, 2025, Civil Law & Motion Tentative Rulings

1. CL0003150 Rodney Dale Wilson vs. Samantha Smith, et al.

On the Court's motion, Defendant's motion to set aside default is continued to December 5, 2025, at 10:00 a.m. There is no evidence that Plaintiff has been properly notified of the November 14, 2025 hearing. Any opposition shall be filed and served by November 26, 2025, noon; any reply shall be filed and served by December 1, 2025, noon. The writ of possession is stayed through December 5, 2025 or other order of the Court. The clerk and Defendant shall give notice to Plaintiff of this ruling.

2. CU0001580 Adrienne Schram vs. Bradley Shipley, et al.

On the Court's motion, Defendant Bradley Ray Shipley's motion for summary adjudication is continued to November 21, 2025, at 10:00 a.m. in Department 6.

3. CU0001848 Pamela Bell vs. Dan Powers, et al

Defendant Sierra Nevada Hot Tubs, Inc., dba Hot Tub Super Store ("HTSS")'s motion for dismissal of Defendant's demurrer with prejudice, and request to dismiss the action with prejudice with retention of jurisdiction to enforce the settlement agreement are denied without prejudice.

Pursuant to Code of Civil Procedure section 581(b), an action may be dismissed with prejudice upon written request of the plaintiff to the clerk, filed with papers in the case, or by oral or written request to the court, or "with or without prejudice, by any party upon the written consent of all other parties." Code Civ. Proc. 581(b)(1)-(2). At bar, only Defendant HTSS has provided written consent to dismissal; there is no written consent provided by either Plaintiff Pamela Bell nor Defendant Dan Powers. Therefore, the request is insufficient to allow the Court to grant dismissal with prejudice.

Defendant HTSS also requests the court to retain jurisdiction to enforce the terms of the settlement agreement. The court has authority to do so "[i]f the parties to the settlement agreement or their counsel stipulate in writing or orally before the court." Code Civ. Proc. § 664.6(a). There is no such stipulation by the parties in the case. As such, the present request is insufficient.

The parties are encouraged to file a stipulation to effectuate their settlement and appropriate dismissals.

4. CU0002203 Eva Schauffler v. W. Gregory Klein, et al.

Defendant W. Gregory Klein's July 28, 2025, anti-SLAPP special motion to strike causes of action for legal malpractice, abuse of process, and intentional infliction of emotional distress against is continued on the Court's motion until December 12, 2025, in Department 6, for status as to reassignment of the case and further setting of the motion. All judicial officers from this Court have recused themselves.

5. CU0002247 DRB Capital, LLC vs. T.W.

The petition for approval of transfer of structured payments is denied without prejudice.

Background

This September 5, 2025, matter was previously continued at the request of the petitioner who was granted leave to file and serve supplemental declarations no later than October 31, 2025. No supplemental filings have been made.

Analysis

Per the petition, payee became entitled to certain structured settlement payments resulting from settlement of a lawsuit. Pet. ¶ 6. The petition does not detail when the settlement agreement was entered, nor what the terms of the structured settlement were. There is also no copy of the structured settlement agreement attached to the petition. Payee has agreed to sell, to petitioner, one-hundred and thirty-two (132) $500 monthly payments in exchange for $20,033.52. Ex. A. Payee is 58 years old, single, and has no minor children. Ex. B. Payee currently has a monthly income of $2,000 from the structured settlement annuity. *Id.* The petition is verified by a paralegal of petitioner.

The transfer of structured settlement payments is authorized in California provided the transfer is first approved by the court. Ins. Code § 10139.5(a). The court shall consider the totality of the circumstances, including, but not limited to a list of considerations described in Insurance Code section 10139.5(b), when determining whether the proposed transfer should be approved, including whether the transfer is fair, reasonable, and in the payee's best interest, taking into account the welfare and support of the payee's dependents.

At bar, the record as developed is insufficient to support approval of the transfer and a finding that the transfer is fair, reasonable and in the payee's best interest. The petition and declaration do not describe payee's financial and economic situation, beyond an indication that her monthly income is a $2,000.00 annuity. There is no discussion of whether payee is facing a hardship situation and no indication of how payee will support herself in the absence of annuity payments. Insurance Code § 10139.5(b)(3), (8), (13). There is no apparent disclosure of previous transactions. Insurance Code § 10139.5(b)(10)-(12). The petition does not describe the terms of the structured settlement and it is unclear whether payee is transferring all or a portion of her future payments. Insurance Code § 10139.5(b)(4). Additionally, the court is missing a copy of the annuity contract and the underlying structured settlement agreement, or, if unavailable, a description of the terms. Insurance Code § 10139.5(f). Finally, there is no proof demonstrating that the prior attorney involved with the settlement was served, or that notice of the same was not required. *Id.*

6. TCU22-8066 Theodore Lachowicz, et al. vs. Mark Tanner Construction Inc., et al.

Cross-Defendant Eric Schwedt dba Eric Schwedt Builders' ("Eric Schwedt") unopposed motion for good faith settlement is granted.

Code of Civil Procedures section 877.6 states that "[a]ny party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligators in a contract debt shall be entitled to a hearing of good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligators…." Rulings on a motion for good faith settlement must be made "in view of the equitable goals of the statute, in conformity with the spirit of the law and in a manner that serves the interests of justice," and must serve the goals of "encouraging settlement among all interested parties" and "equitably allocating costs among multiple tortfeasors," as opposed to allowing a party to obtain "protection from its indemnification obligation at bargain-basement prices." *Long Beach Memorial Medical Center v. Sup. Ct.* (2009) 172 Cal. App. 4th 865, 873, 876.

The following factors are considered in determining whether a settlement is within the ballpark of a reasonable settlement range: (1) a rough approximation of plaintiff's total recovery and the settling defendant's proportionate liability; (2) the amount paid in settlement; (3) allocation of settlement amounts among plaintiffs; (4) recognition that a settlor should pay less in settlement than it would if it were found liable after trial; (5) financial conditions and insurance policy limits of the settling defendant; and (6) the existence of collusion, fraud, or tortious conduct aimed to injure the interests of non-settling defendants. *Tech-Bilt Inc. v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, 499-500. The settlement lacks good faith if the settlement is "'grossly disproportionate to what a reasonable person at the time of settlement would estimate the settling defendant's liability to be.'" *Id.* (citation omitted). The burden of proof in asserting that a settlement lacks good faith falls upon the party making the assertion and it must show that "the settlement is so far 'out of the ballpark' in relation to these factors as to be inconsistent with the equitable objectives of [Code of Civil Procedure section 877.6]." *Id*.

The moving party seeking a determination of a good faith settlement is only required to present a "barebones" motion. *City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1261. "The burden is upon the party objecting to the proposed settlement to prove an absence of good faith. Code Civ. Proc. § 877.6. The challenger must prove the settlement is so far "out of the ballpark" in relation to these factors as to be inconsistent with the equitable objectives of the statute.'" *North County Contractor's Assn. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1091; *see also* Code Civ. Proc. § 877.6(d). When approximating a plaintiff's total recovery or the settling defendant's proportionate liability, "judges should . . . not yearn for the unreal goal of mathematical certainty. Because the application of section 877.6 requires an educated guess as to what may occur should the case go to trial, all that can be expected is an estimate, not a definitive conclusion." *North County, supra*, 27 Cal.App.4th at 1090. Lastly, even though "an offer of settlement must bear some relationship to one's proportionate liability, bad faith is not 'established by a showing that a settling defendant paid less than his theoretical proportionate or fair share.'" *North County, supra*, 27 Cal.App.4th at 1090 (citation omitted). "Such a rule would unduly discourage settlements" and "convert the pretrial settlement approval procedure into a full-scale mini-trial." *Tech-Bilt, supra*, 38 Cal.3d at 499.

Cross-Defendant's motion asserts that Mark Tanner has allocated about $1,600,000 of Plaintiffs' $9.5 million claim to Eric Schwedt, of which $840,000 is the amount allocated to Plaintiffs' repair costs, while the remaining relates to other claims sought by Plaintiffs which Schwedt and Tanner agree are not recoverable by Plaintiffs. Joyce Decl., ¶ 7. Cross-Defendants were hired by the general contractor Cross-Complainant Mark Tanner as a masonry subcontractor for the project. Joyce Decl., ¶ 3. The Cross-Complaint is against fourteen cross-defendants for equitable indemnity, contribution, declaratory relief, breach of contract, and express indemnity for the causes of action asserted by Plaintiff, which includes over fifty (50) separate violations. Cross-Complaint, ¶¶ 2-15; FAC, ¶ 15. Thus, the masonry work is part of the overall project and based on Cross-Defendant's declaration appears to represent a reasonable approximation of Cross-Defendant's proportionate liability, taking into account that settlors should pay less in settlement than they would if the case went to trial. Additionally, the settlement amount is the amount of the insurance policy limit of Cross-Defendant's insurer. Joyce Decl., ¶ 5. Further, Cross-Defendant asserts the settlement was the product of arms-length settlement negotiations, with no collusion, fraud, or other conduct intended to injury any of the non-settling parties. Joyce Decl., ¶ 8. Lastly, there is no opposition to this motion or claim of bad faith.

On this record, the Court finds that the settlement was made in good faith and in compliance with the *Tech-Bilt* factors.