

**PLACER COUNTY SUPERIOR COURT  
CIVIL LAW AND MOTION TENTATIVE RULINGS  
FRIDAY, SEPTEMBER 4, 2020, AT 8:30 A.M.**

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These are the tentative rulings for civil law and motion matters set at **8:30 a.m., Friday, September 4, 2020**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Thursday, September 3, 2020**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

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Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES** and if oral argument is requested, it will be heard in **Department 3**, located at **101 Maple Street, Auburn California**.

**PLEASE NOTE: TELEPHONIC APPEARANCE IS REQUIRED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**1. M-CV-0075341 Capital One Bank (USA), N.A. vs. Dollar, Diana K.**

Plaintiff's motion for order deeming admissions admitted is granted. Plaintiff's Request for Admissions, Set One, are deemed admitted by defendant Diana K. Dollar.

**2. S-CV-0040437 Deuschel, Laurie A. vs. Clear Point Financial Group, Inc., et al**

The demurrers to first amended complaint are continued to September 25, 2020, at 8:30 a.m. in Department 3.

**3. S-CV-0041645 Krake, Denise, et al vs. Central Valley Diner, Inc.**

Motion for Final Approval of Class Action Settlement

Plaintiffs' motion for final approval of class action settlement is granted.

The court has broad discretion to determine whether a settlement is fair, adequate, and reasonable. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235. When reviewing the fairness of the settlement, the court is to give due regard to the parties'

agreement, ensuring that the agreement is not a product of fraud, overreaching parties, or collusion and that the settlement, as a whole, is fair, reasonable, and adequate. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145. A presumption of fairness exists where: (1) the settlement was reached through arms-length bargaining; (2) the investigation and discovery were sufficient to allow class counsel and the court to act intelligently; (3) class counsel is experienced in similar litigation; and (4) there is a small percentage of objectors. *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at 245. The court has carefully reviewed and considered the Stipulation of Settlement of Class Action and Release of Claims (“Settlement Agreement”) and plaintiffs’ moving papers filed in connection with the motion. The court determines a sufficient showing has been made that the settlement is fair, adequate, and reasonable.

The court grants final approval of the Settlement Agreement, including approval of the individual settlement payments to the settlement class members, payment to the California Labor and Workforce Development Agency with respect to plaintiffs’ PAGA claims, and settlement administration costs of \$45,000 to ILYM Group, Inc. The court incorporates by reference the findings and orders as outlined by the plaintiffs in the proposed order. The court retains jurisdiction over the parties to enforce the terms of the judgment. Cal. R. Ct., rule 3.769(h).

Motion for Class Counsel Award and Class Representative Award

Plaintiffs’ motion for class counsel award and class representative award is granted. The court approves class counsel fees in the amount of \$349,478.13. The court approves costs actually incurred by counsel in the amount of \$23,850.42. (Declaration of Jean-Claude Lapuyade, ¶ 49.) The court approves Class Representative Service Awards for Denise Krake and Suzie McClain in the amount of \$7,500 each.

**4. S-CV-0042543 De Lara, Guadalupe Esparza vs. La Familia Ramirez, Inc.**

The motion for sanctions was dropped by the moving party.

**5. S-CV-0042659 Faulkner, Mercedes, et al vs. Brazil, Anastasia, et al**

The motion for summary judgment, or in the alternative, summary adjudication, is continued to October 8, 2020, at 8:30 a.m. in Department 42, to be heard by the Honorable Charles D. Wachob.

**6. S-CV-0042913 Whitworth, Chadwick M. vs. Salazar, Johnny, et al**

Plaintiff moves to compel the deposition of defendant Johnny Salazar.

Plaintiff first served notice of the deposition of defendant on August 13, 2019. Since that time, the parties have engaged in on-again, off-again discussions about the date of the deposition. On October 1, 2019, defense counsel provided several dates in late

October and early November, but plaintiff's counsel indicated that he wanted the deposition to go forward on an earlier date due to a heavy trial calendar after October 21. (Declaration of Mary Talmanoff, Exh. I.) The parties did not resolve the issue at that time, and no further discussions were held until December 4, 2019. On that date, following inquiry by plaintiff's counsel, defense counsel conditionally offered February 3, 2020, but noted that she needed to clear the date with her client, and would follow up. (Id., Exh. J.) It does not appear that defense counsel took any steps to follow up, nor did plaintiff's counsel at that time. On April 6, 2020, plaintiff's counsel again raised the issue, and was told by an individual with defense counsel's office that dates would be provided "by no later than this Friday." (Id., Exh. K.) However, defense counsel admittedly never provided any deposition dates "[a]s a result of an oversight". (Id., ¶ 18.) Nor did plaintiff's counsel seek to meet and confer further on the issue prior to filing the instant motion.

In response to the filing of this motion, defense counsel states that she has now provided multiple available dates for the deposition in an attempt to informally resolve the issue, but plaintiff has declined to take the motion off calendar, or engage in further discussions about available dates.

"A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at informal resolution of each issue presented in the motion." Code Civ. Proc. § 2016.040. This is not a pro forma requirement. The statute requires the parties to seriously engage in negotiations and informal resolution. *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1438. Further, Placer County Superior Court Local Rule 20.2.1 requires the moving party to make a reasonable and good faith attempt to resolve the matter prior to filing any motion, and if resolution is not possible, to coordinate hearing dates with any opposing parties. In this case, neither side is entirely free from blame for the current impasse. While counsel for defendant failed to follow through on an agreement to supply dates, the issue may have been resolved without the need for the current motion by a simple phone call. In any event, although the court notes prolonged, albeit disjointed, meet and confer discussions as described in part above, it also appears that the matter can yet be resolved informally through a reasonable and good faith effort by counsel for both sides to communicate about available dates.

**The motion is continued to October 2, 2020, at 8:30 a.m. in Department 3.**

The parties are directed to meet and confer *in good faith* about available dates for the deposition of defendant. The parties may file and serve a status update regarding the result of the parties' meet and confer at least five court days prior to the continued hearing date. At the continued hearing date, the court will determine whether an order compelling the deposition is necessary, and whether sanctions should be imposed on any party.

**7. S-CV-0043457 In re Petition of Sarah Prevost, et al**

The petition to approve compromise of disputed claim of person with disability is granted. Petitioner shall submit an amended proposed order, as the proposed order submitted to the court appears to contain an error regarding the amount of the balance of settlement as stated in Section 7(c)(2)(b). If oral argument is requested, appearance of the claimant is excused.

**8. S-CV-0043619 Easton, Jennifer Jo vs. Rawlins, Shawn L., et al**

Motion for Preliminary Injunction

Rulings on Objections

Defendant's objections to the declaration of Jennifer Jo Easton are ruled on as follows: Objection Nos. 1, 3-6, 8-11 and 13, and Objection to Exhibits Nos. 2-5, are sustained. The remaining objections are overruled.

Defendant's objections to the declaration of Robert Sinclair are ruled on as follows: Objection Nos. 3-6 and 8 are sustained. The remaining objections, including objections to exhibits, are overruled.

Defendant's objections to the declaration of Daniel McLain are ruled on as follows: Objection Nos. 2-5 and Objection to Exhibits No. 2 are sustained. The remaining objections are overruled.

Defendant's objections to the declaration of Sue Thompson are ruled on as follows: Objection Nos. 1-2 and 6-7 are sustained. The remaining objections are overruled.

Defendant's objections to the declaration of Marilyn Bell are ruled on as follows: Objection No. 5 and Objection to Exhibits Nos. 3-8 are sustained. The remaining objections are overruled.

Defendant's objections to the declaration of Eleanor Wolf are overruled.

Plaintiff's objections to evidence are ruled on as follows: Objection Nos. 106, 8-21, 23-24, 26-27, and 29-49 are sustained. The remaining objections are overruled.

Ruling on Motion

Plaintiff Jennifer Jo Easton seeks a preliminary injunction which prevents defendant Shawn Rawlins from blocking, restricting, or interfering with access along Pepper Ranch Road within property owned by defendant.

The court may grant a preliminary injunction when it appears from the complaint that the plaintiff is entitled to the demanded relief, and would suffer irreparable injury if the

enjoined action were allowed to proceed. Code Civ. Proc. § 526(a). The general purpose of a preliminary injunction is to preserve the status quo pending a trial on the merits. *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.

Plaintiff purchased her home in or about January 2018. From that time until March 30, 2019, plaintiff traveled via Pepper Ranch Road, a private road which passes through defendant's property, in order to access her mailbox and garbage collection service at the intersection of Pepper Ranch Road and Clipper Gap Road, and from there, to access the freeway. On or about March 30, 2019, defendant placed a gate across Pepper Ranch Road on his property, which blocks plaintiff's access. Plaintiff contends that defendant has blocked a roadway easement which she has the legal right to use, whereas defendant disputes plaintiff's claim of an easement and asserts that her right to travel on Pepper Ranch Road was by permission only, which could be revoked at any time. Since defendant blocked access on Pepper Ranch Road, plaintiff has used the Boole Road route for ingress and egress, which is a much longer route than the Pepper Ranch Road route.

Plaintiff's deed expressly includes:

A non-exclusive easement for roadway, public and private utilities and drainage purposes over, under and across that portion of land shown and designated as Area "K" of Parcel Map #73942, filed in the office of the Placer County Recorder on August 7, 1981 in Book 18 of Parcel Maps, at page 98.

The parties submit conflicting evidence regarding the location of the easement in question. In particular, the parties dispute whether the easement described in plaintiff's deed is located to the northwest of her property, via Pepper Ranch Road on defendant's property, or to the east of her property, where it intersects with Boole Road. To that end, both sides have submitted expert testimony and evidence regarding property ownership, division, and the granting of access rights going back almost 70 years. Based on its review of this evidence, the court does not believe that either plaintiff or defendant's position is inherently unreasonable. The court finds that there is at least some possibility that plaintiff will prevail in this action.

Nevertheless, the court must also consider whether the balance of harm tips in plaintiff's favor. In this case, plaintiff fails to establish that she is likely to suffer a greater injury from denial of the injunction than defendant is likely to suffer if it is granted. *Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 633. The fact that plaintiff used an alternate route for 15 months before moving for the relief requested by this motion suggests that while plaintiff has certainly been inconvenienced by defendant's action, the lack of access through Pepper Ranch Road will not cause great injury or irreparable harm. *See O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1464 (delay in seeking relief may be considered in determining whether injury is irreparable). On the other hand, granting the injunction would require defendant to

permit plaintiff and her family members to continuously travel through his private property pending a determination of whether they hold any legal right to do so.

The court is also mindful of the purpose of a preliminary injunction, to preserve the status quo pending trial. In this case, the court finds that issuing the injunction would not preserve the status quo, as plaintiff has not used Pepper Ranch Road for approximately 17 months.

Based on the foregoing, plaintiff's motion for preliminary injunction is denied.

**9. S-CV-0044339 Cornacchioli, Rachael, et al vs. Ramsden, Susan, et al**

The demurrer to complaint is continued to September 25, 2020, at 8:30 a.m. in Department 3.

**10. S-CV-0044393 McCreary, Cameron vs. R & D Holdings Placer, LP, et al**

Defendant R&D Holdings Placer, LP's motion to compel, and to deem requests for admissions admitted, is granted. Plaintiff shall serve verified responses, without objections, to defendant's Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One, within 10 days of service of notice of entry of the court's ruling on this motion. Defendant's Request for Admissions, Set One, are deemed admitted by plaintiff Cameron McCreary.

Defendant R&D Holdings Placer, LP, is awarded sanctions from plaintiff Cameron McCreary in the amount of \$610.

**11. S-CV-0044539 Kemp, Dominic vs. Fat City, Inc.**

Defendant's request for judicial notice is granted.

Defendant Fat City, Inc. demurs to the second cause of action of plaintiff's complaint, for religious discrimination.

A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable they may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

Plaintiff alleges that he worked as a food server at Fat's Asian Bistro in Roseville for approximately one year before he was constructively discharged in October 2019. (Complaint, ¶10.) A few months prior to being suspended, plaintiff's manager Sherien Nand approached him and stated, "[y]ou and your boyfriend should go to my church. They are friendly to the LGBT community." (Id., ¶11.) Plaintiff declined and

informed Ms. Nand that he was uncomfortable with the conversation. (Id.) Thereafter, Ms. Nand began mocking plaintiff's sexual orientation in the presence of plaintiff and his co-workers, and attempted to sabotage plaintiff's job performance. (Id., ¶¶12-14.) After complaining to the Human Resources Department about Ms. Nand's behavior, plaintiff was reprimanded for his attitude, continued to be harassed by Ms. Nand, had his hours reduced and later eliminated, and finally was suspended. (Id., ¶¶17-20.)

The court finds that the foregoing allegations do not adequately support plaintiff's second cause of action for religious discrimination. As noted by plaintiff, it is an unlawful employment practice under FEHA for an employer to discriminate against an employee because of the employee's religious creed. In this case, plaintiff does not allege what his religious creed is, does not allege defendant's knowledge of his religious creed, and does not allege that he declined Ms. Nand's invitation to attend services at her church because of his religious creed. Plaintiff otherwise fails to allege sufficient facts to support the claim that he was discriminated against on account of his religious creed.

The demurrer is sustained; plaintiff is granted leave to amend. Any amended complaint shall be filed and served on or before September 25, 2020.

**12. S-CV-0044907 Ahlquist, Maxwell vs. Placer Union High School District, et al**

The demurrer to complaint is continued to September 25, 2020, at 8:30 a.m. in Department 3.

**13. S-CV-0045037 Lucero, Jennifer, et al vs. Dudley, Matthew Thomas, et al**

Defendants and cross-complainants' motion to appoint referee and for entry of interlocutory judgment is **continued to September 25, 2020, at 8:30 a.m. in Department 3**, in light of the parties' representations that they intend to submit a stipulation and joint request for entry of interlocutory judgment which resolves the issues raised by the current motion.

**14. S-CV-0045213 In re Petition of DRB Capital, LLC**

The petition to approve transfer of structured settlement payment rights is dropped in light of the dismissal of the action entered August 25, 2020.

**15. S-PR-0010311 In re Huguette N. Burnett Revocable Trust**

Demurrer to petition to surcharge trustee and for other relief

The demurrer to the petition to surcharge trustee and for other relief is continued, on the court's own motion, to September 18, 2020, 8:30 a.m., in Department 40, to be heard by Commissioner Glenn M. Holley.

Motion to strike portions of petition to surcharge trustee and for other relief

The motion to strike portions of the petition to surcharge trustee and for other relief is continued, on the court's own motion, to September 18, 2020, 8:30 a.m., in Department 40, to be heard by Commissioner Glenn M. Holley.

Judicial disclosure

The court now recognizes and discloses that from approximately 2016 to 2018, Commissioner Holley, then in private practice, served as a volunteer board member of the Association of Defense Counsel, a professional organization, at the same time as attorney William Muñoz. The court is confident it can remain fair and impartial in this matter.

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