SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/19/24 TIME: 1:30 P.M. DEPT: E CASE NO: CV2103854

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: JOEY DALE

PLAINTIFF: SUSAN DAVIA vs. DEFENDANT: PAUL H. GESSWEIN & CO. INC.	

NATURE OF PROCEEDINGS: 1) MOTION – OTHER: ON PROPOSITION 65 SETTLEMENT
2) CASE MANAGEMENT CONFERENCE
3) ORDER TO SHOW CAUSE – FAILURE TO APPEAR; DEFENSE COUNSEL FOR FAILURE TO APPEAR ON 12/06/2023

RULING

The Motion to Approve Proposition 65 Settlement and Enter Judgment as to Defendant Paul H. Gesswein & Co., Inc. is GRANTED. The Court will sign the proposed Order and the proposed Judgment that were submitted on January 17, 2024.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2024 is as follows:
https://www.zoomgov.com/j/1605153328?pwd=eUU1OE9BTG5tWHgrOFNKMmVvd2tFQT09
Meeting ID: 160 515 3328
Passcode: 360075

If you are unable to join by video, you may join by telephone by calling* 1-669-254-5252 *and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/19/24 TIME: 1:30 P.M. DEPT: E CASE NO: CV2201172

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: JOEY DALE

PLAINTIFF: STUART L. PETERSON, ET AL vs. DEFENDANT: COUNTY OF MARIN	

NATURE OF PROCEEDINGS: HEARING – OTHER: ON COMPLAINT FOR REFUND OF PROPERTY TAXES PAID

RULING

The Court remands this action to the Marin Assessment Appeals Board to reconsider Plaintiffs' appeals without the assumption previously made about Plaintiffs' agents' compensation. The Court makes no findings regarding the merits of Plaintiffs' claim against the County.

Plaintiffs' Complaint

Plaintiffs Stuart L. Peterson and Gina R. Peterson, individually and as Trustees of the Stuart L. Peterson and Gina R. Peterson 2002 Revocable Trust dated October 7, 2002 ("Plaintiffs") filed their Complaint for Refund of Property Taxes Paid against Defendant County of Marin ("County") on April 27, 2022. Plaintiffs seek to appeal an administrative decision by the County of Marin Assessment Appeals Board No. 1 (the "Board") regarding the assessed values for Plaintiffs' property in Tiburon (the "Property"). Plaintiffs challenge certain aspects of the Board's decision and assert a single cause of action for recovery of property taxes paid pursuant to Revenue and Taxation Code Section 5140.

Actions for Refunds under the Revenue and Taxation Code

Section 5096 of the Revenue and Taxation Code provides that "[a]ny taxes paid before or after delinquency shall be refunded if they were: (a) Paid more than once. (b) Erroneously or illegally collected. (c) Illegally assessed or levied. (d) Paid on an assessment in excess of the ratio of assessed value to the full value of the property as provided in Section 401 by reason of the assessor's clerical error or excessive or improper assessments attributable to erroneous property information supplied by the assessee. (e) Paid on an assessment of improvements when the improvements did not exist on the lien date. (f) Paid on an assessment in excess of the value of the property as determined pursuant to Section 1614 by the county assessment appeals board. (g) Paid on an assessment in excess of the value of the property as determined by the assessor

pursuant to Section 469." (Rev. & Tax. Code § 5096.) "The person who paid the tax . . . may bring an action only in the superior court . . . against a county or a city to recover a tax which the board of supervisors of the county or the city council of the city has refused to refund on a claim filed pursuant to Article 1 (commencing with Section 5096) of this chapter . . . ." (*Id.* § 5040.)

Standard of Review

"The appeals board is a constitutional agency exercising quasi-judicial powers delegated to it by the California Constitution. The board's factual determinations are entitled on appeal to the same deference due a judicial decision, i.e., review under the substantial evidence standard. However, when the appeals board purports to decide a question of law, the decision is renewed de novo." (*Church v. San Mateo Cty. Assessment Appeals Bd.* (2020) 52 Cal.App.5th 310, 321.) While a challenge to the validity of a valuation method is reviewed de novo, a challenge to the application of a valuation method is reviewed under the substantial evidence standard. (*Id.*; *Charter Communications Properties, LLC v. City of San Luis Obispo* (2011) 198 Cal.App.4th 1089, 1101.)

Request for Judicial Notice

Plaintiffs' request for judicial notice of the State Board of Equalization documents attached as Exhibits A-E to their request is granted. (Evid. Code § 452(c), (h); *SHR St. Francis, LLC v. City and County of San Francisco* (2023) 94 Cal.App.5th 622, 641-642; *Hunt-Wesson Foods, Inc. v. County of Alameda* (1974) 41 Cal.App.3d 163, 180.)

Procedural Background

In late November/early December 2019, Plaintiffs filed an Assessment Appeal Application for the value of the Property as of January 1, 2019. (AAB 1-5.)[1] In July 2020, Plaintiffs filed an Assessment Appeal Application for the value of the property as of January 1, 2020. (AAB 10-14.)

A hearing was held on August 13, 2021 for both applications, for Assessor's Parcel No. 039-171-12. (AAB 37-190.) Chief of Assessment Standards Andrea Balf ("Balf") noted that the valuation reports previously provided to the Clerk were substantially modified before the hearing, and that the assessors would be using the revised evaluation reports. (AAB 46-47.) The assessed value for 2019 was $45,315,997 and the assessed value for 2020 was $46,222,086. (AAB 331-374.) Appraiser David Siebe ("Siebe") presented the market approach, using properties in Marin County and Atherton as comparisons. (AAB 48-63.) Appraiser John Opferman presented the cost approach which he stated was appropriate given the lack of comparably similar homes in the area. (AAB 64-73.) Appraiser Brian Karr stated that a reconciliation of the market approach and the cost approach supported the assessments made for 2019 and 2020. (AAB 74-76.)

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[1] Two administrative records were submitted, one by Plaintiffs and one by the County. The Court's references to the AR in this ruling are to the administrative record filed by the County on June 27, 2023 ("AAB"), which Plaintiffs cite to in their Reply as well as their updated Opening Trial Brief.

Plaintiffs' agent Mark Ong ("Ong") stated that he had requested, prior to the hearing, the appraisal that was going to be presented and had been given only a portion of that appraisal. He requested a postponement under Revenue and Taxation Code Section 408. (AAB 76-77, 82.) Balf responded that the Assessor's office had not finished the valuation report at the time it submitted it to the clerk the Friday before the hearing and that the report had since been "completely revamped and revised." The Assessor's staff finished the report the morning of the hearing. (AAB 77-78.) Balf further stated that Plaintiffs' agents had also not finished their full valuation report to share, so she offered a postponement but they declined. She stated that Plaintiffs' representatives waited until the Assessor made its presentation before they requested the postponement, and further that Plaintiffs had still not provided the information they had compiled to the Assessor. (AAB 78-79.) County Counsel Brandon Halter ("Halter") also pointed out that Plaintiffs' agents waited until Assessor staff finished an hour-long presentation before making their request for a postponement, which he contended was gamesmanship. (AAB 79-80.) He also argued that Plaintiffs were not entitled to records under Section 408 that did not yet exist. (AAB 80.)

Upon questioning, Ong stated that had not received, prior to the hearing, the sales comparison approach that the appraisers had just presented. He had received, however, the addresses of the comparable properties the Assessor intended to use. (AAB 87-88.) The Board then concluded that it would take an hour and a half lunch, which would give Plaintiffs' agents time to review the material. (AAB 88.) Following the break, Plaintiffs' agents cross-examined the Assessor's staff. (AAB 96-148, 155-161.) The Board also asked questions of staff. (AAB 148-155, 161-168.)

Following the questioning, Plaintiffs' agents requested that the Board consider unappealed Assessor's Parcel No. 039-171-08, which was serving as the backyard of the Property and was originally sold as part of the Property, together with Assessor Parcel No. 039-171-12, as one appraisal unit. (AAB 169.) Balf responded that this request should have been made to the Board before the Assessor's office presented its case, and further stated that the main parcel could be sold without the second so she objected to its inclusion. (AAB 170.) The hearing was continued to conclude testimony on the two applications as well as to discuss inclusion of the second parcel. (AAB 23-24, 182-186.)

On August 26, 2021, Plaintiffs' agents emailed the Assessor's staff with a revised valuation analysis, based in part on a revised calculation of gross living area. The Assessor's staff provided Plaintiffs' agents with their revised analyses the following day. (AAB 27-28.)

At the continued hearing on September 13, 2021, Siebe discussed the Assessor's modified analysis based on living area and with the addition of Assessor Parcel No. 03-171-08 as part of the appraisal unit, and the Assessor's conclusion that these changes did not change its opinion of value for 2019 or 2020. (AAB 204-210, 374-513.) Plaintiffs' agents began cross-examining staff, and Halter objected to questions that were based on information available to Plaintiffs' agents at the prior hearing. (AAB 210-214.) Board chair Rollins ("Rollins") asked Plaintiffs' agents to move on with respect to information previously available. (AAB 214.) Plaintiffs' agents continued questioning on the revised information and the Board asked some questions as well. (AAB 214-223.) Plaintiffs' agents then presented their valuation, which was $25,500,000 revised to $26,000,000, and both Plaintiffs' agents and Assessor staff answered questions. (AAB

224-302, 514-1130.) Rollins asked Plaintiffs' agents about how they were being paid, and Ong responded that their "compensation is based on the value that's provided to the taxpayer." (AAB 297.) Plaintiffs' agents then made a rebuttal presentation and Assessor staff cross-examined them on that presentation. (AAB 306-321.) Plaintiffs' agents made their closing remarks, followed by staff's closing remarks. The Board took the appeals under submission. (AAB 33, 321-329.)

On November 19, 2021, the Board issued its Findings of Fact and Decision, finding that the Assessor met her burden of proof. The Board found that the evidence presented was reasonable and supported by a preponderance of the evidence that the 2019 and 2020 values were at or below fair market value of the Property, and that Plaintiffs' valuation analysis was not credible. The Board stated that Plaintiffs' analysis lacked necessary and material adjustments for differences between the view of the Property and Plaintiffs' most significant comp (800 Corte Madera Ave), as well as another comp (Trestle Glen), and made inadequate adjustments for differences between the physical attributes of the properties as required by Property Tax Rule 4. The Board also stated that it "found it significant that [Plaintiffs'] representatives were being paid based on the value that they brought to their client. In other words, the representatives' compensation here is based on the value reduction they are able to achieve for [Plaintiffs]. Although taxpayers certainly have the right to hire any representative they choose, and to pay those representatives in any manner they see fit, those decisions ultimately bear on the credibility of the evidence presented by those representatives. The Applicant's valuation analyses were not performed by an impartial or disinterested party." The Board concluded: "Consequently, based on the foregoing, the Board denies the Applications and finds that the assessed value of the Property for the 2019/20 and 2020/21 tax years should remain unchanged. The foregoing findings of fact and decision are supported by a preponderance of the evidence presented during the hearing, in the opinion of this Board." (AAB 1131-1138.)

Discussion

Plaintiffs argue, among other things, that the Court cannot conclude the Board's decision was based on substantial evidence because the Board relied at least in part on speculation and conjecture rather than admissible evidence when it assumed Plaintiffs' representatives were being paid based on the amount of the reduction they achieved.

"The Board need not adhere to technical evidentiary rules, but the record must contain some 'legal' evidence to support the Board's decision." (*Madonna v. County of San Luis Obispo* (1974) 39 Cal.App.3d 57, 61 [citations omitted].) California Code of Regulation, Title 18, Ch. 1, Rule 313(e) provides in part that "[t]he board may act only upon the basis of proper evidence admitted into the record." Rule 302(c) provides that "[t]he board acts in a quasi-judicial capacity and renders its decision only on the basis of proper evidence presented at the hearing." Rule 324(b) provides in part that "[t]he board . . . shall make its own determination of value based upon the evidence properly admitted at the hearing." The Board cannot base its decision on "speculation and conjecture." (*County of San Diego v. Assessment Appeals Board No. 2* (1983) 148 Cal.App.3d 548, 558; see also *Minnegren v. Nozar* (2016) 4 Cal.App.5th 500, 507 ["Speculation or conjecture alone is not substantial evidence"].)

The Court agrees with Plaintiffs that the Board improperly based its ruling, at least in part, on an assumption that Plaintiffs' representatives were paid based on the value of any reduction they achieved which affected the credibility of their valuation analysis. This problem arose from the following exchange at the September 13th hearing:

> CHAIR ROLLINS: . . . Are you being paid an hourly fee or do you receive a percentage of the tax savings you might obtain for your client? And if you're versed in appraising, you'd know this is a uniform standards-type request question, and I am a USPAP instructor.
>
> MR. ONG: Madam Rollins, our compensation is based on the value that's provided to the taxpayer.

(AAB 297.)

Ong's response was not clear as to the type of compensation he was receiving or was to receive for his representation of Plaintiffs. Yet, the Board made no attempt to clarify what Ong meant by his response. Instead, it assumed that Plaintiffs' representatives were being paid essentially on a contingency or commission-type basis, and concluded as a result that the credibility of the valuation analysis they presented was questionable. The Board's decision stated:

> The Board also found it significant that the Applicant's representatives were being paid based on the value that they brought to their client. In other words, the representatives' compensation here is based on the value reduction they are able to achieve for the Applicant. Although taxpayers certainly have the right to hare any representative they choose, and to pay those representatives in any manner they see fit, those decisions ultimately bear on the credibility of the evidence presented by those representatives. The Applicant's valuation analyses were not performed by an impartial or disinterested party.

(AAB 1137.)

Based on the record before the Court, it is difficult to tell how much the Board's decision was tainted by its reliance on its assumption as to the meaning of Ong's statement. While this statement may have been a minor consideration that was not in any way dispositive of the Board's ultimate decision, the Board's language that this assumption was "significant" indicates that this may not have been the case. It could be that this assumption affected the Board's consideration of both Plaintiffs' cross-examination of the Assessor's witnesses as well as Plaintiffs' own presentation, and the Board's ultimate determination as to whether the Assessor met her burden of proof. While the Assessor argues that other evidence in the record supported the Board's decision and therefore any error would be harmless, it is not possible to discern from the record whether the Board would have reached the same conclusion absent the assumption it made.

If the Board drew a correct inference, then the Board significantly discounted the credibility of Plaintiff's evidence based on the manner in which Plaintiff compensated their representatives and concluded Plaintiff's valuation analysis was not performed by an impartial or disinterested party because of the manner in which the advocates was compensated. The Board's analysis confuses credibility of representation with credibility of witnesses. Credibility of representatives is not relevant to credibility of witnesses. The manner the advocates was compensated does not have a tendency in reason to prove or disprove the truthfulness of the witnesses testimony. (Ev. Code § 780.)

In light of the above, the Court remands this matter back to the Board for a new hearing. (*Universal Consol. Oil v. Byram* (1944) 25 Cal.2d 353, 362; see also *Norby Lumber Co. v. County of Madera* (1988) 202 Cal.App.3d 1352, 1366-1367.) The scope of the hearing is limited to the valuations and supporting documentation previously submitted by the parties (i.e., the parties shall not introduce any new evidence), but the Board is instructed not to take into consideration its assumption regarding how Plaintiffs' representatives were compensated. (See *Prudential Ins. Co. v. City and County of San Francisco* (1987) 191 Cal.App.3d 1142, 1161-1162.) Because the Court remands the matter on this basis, it does not address Plaintiffs' additional arguments regarding the propriety or adequacy of the continuance they was granted by the Board, whether Plaintiffs were denied due process, whether the Assessor met her burden of proof based on the evidence before the Board, whether the Board adequately considered comparable properties, and whether the Board's findings following the hearings were sufficient.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2024 is as follows:
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/19/24 TIME: 1:30 P.M. DEPT: E CASE NO: CV2201383

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: JOEY DALE

PLAINTIFF: STEVEN KERN vs. DEFENDANT: MORGAN STANLEY SMITH BARNEY LLC	

NATURE OF PROCEEDINGS: MOTION – COMPEL ANSWERS TO INTERROGATORIES

RULING

By stipulation, this matter is continued to June 7, 2024 at 1:30 p.m. in Department E.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/19/24 TIME: 1:30 P.M. DEPT: E CASE NO: CV2201700

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: JOEY DALE

PLAINTIFF: STEVEN RENTERIA vs. DEFENDANT: NERI ARMANDO ORTEGA LOPEZ, ET AL	

NATURE OF PROCEEDINGS: MOTION – GOOD FAITH SETTLEMENT

RULING

The Motion for Good Faith Settlement is GRANTED in part.

BACKGROUND

The instant matter arises out of a three-vehicle collision. On July 28, 2020, Plaintiff Steven Renteria ("Plaintiff") was traveling northbound on a two-lane section of Highway US-101, near Novato, California in Marin County. Plaintiff was approaching a road crew performing tree trimming maintenance when cones fell out of the bed of the roadway crew's truck ("the Wilhelm truck"), and into the roadway. Plaintiff, an approaching vehicle, was following by a Bluerock vehicle, which was followed by the Black Horse truck. Plaintiff was able to stop safely (prior to hitting many of the cones, as was the Bluerock vehicle; unfortunately, the Black Horse truck was unable to stop in time, and rear-ended the Bluerock vehicle, which in turn rear-ended a trailer being hauled by Plaintiff. Plaintiff alleges injuries as a result of the collision.

With this Motion, Defendants and Cross-Complainant Wilhelm, LLC, Alex Cervantes, Olivia Suales Cruz, and MLU Services, Inc. ("Wilhelm Defendants") and Defendants and Cross-Complainants Neri Armando Ortega Lopez and Bluerock Enterprises, Inc. dba Bay Area Bluestone ("Bluerock Defendants") move the Court for a determination that the settlements entered into between them and Plaintiff were made in good faith and for an order dismissing all pending or possible future cross-complaints by any and all parties, known or unknown, against the Wilhelm Defendants and the Bluerock Defendants arising out the claim asserted in this action by Plaintiff.

LEGAL STANDARD

California Code of Civil Procedure section 877.6 provides that a party to an action involving two or more alleged joint tortfeasors may seek a determination that a settlement was made in good faith. Such a determination "shall bar any other joint tortfeasor ... from any further claims against the settling tortfeasor ... for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." (Code Civ. Proc., § 877.6, subd. (c).) The amount paid by the settling defendant reduces the claim against the other defendants. (Code Civ. Proc., § 877, subd. (a).)

As to the good faith determination itself, there is no precise yardstick for measuring "good faith" of a settlement with one of several tortfeasors. But it must harmonize the public policy favoring settlements with the competing public policy favoring equitable sharing of costs among tortfeasors. To accomplish this, the settlement must be within the "reasonable range" (within the "ballpark") of the settling tortfeasor's share of liability for the plaintiff's injuries. (*Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.* (1985) 38 Cal. 3d 488, 499.)

In *Tech-Bilt, Inc,* the Supreme Court set forth factors to be considered in approving a good faith settlement, including a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants. (*Id.* at p. 499.) "[O]nly when the good faith nature of a settlement is disputed," however, is it "incumbent upon the trial court to consider and weigh the *Tech-Bilt* factors." (*City of Grand Terrace v. Superior Court (Boyter)* (1987) 192 Cal.App.3d 1251, 1261.)

The court may consider affidavits and counter-affidavits, and may receive other evidence at the hearing on the motion in its discretion. (Code Civ. Proc., § 877.6, subd. (b).) "The party asserting the lack of good faith shall have the burden of proof on that issue." (Code Civ. Proc., § 877.6, subd. (d).) Bad faith may be established by "demonstrat[ing] that the settlement is so far 'out of the ballpark' in relation to [the *Tech-Bilt*] factors as to be inconsistent with the equitable objectives of the statute." (*Tech-Bilt v. Woodward-Clyde & Associates*, *supra*, 38 Cal.3d at pp. 499-500.) "[W]hen no one objects, the barebones motion which sets forth the ground of good faith, accompanied by a declaration which sets forth a brief background of the case is sufficient." (*City of Grand Terrace v. Superior Court*, *supra*, 192 Cal.App.3d at p. 1261.)

DISCUSSION

This Motion is made on the grounds that the settlements between Plaintiff and the Wilhem and Bluerock parties were entered into in good faith, after arm's length negotiations between the parties and their respective counsel. (Declaration of Randall W. Stanton ("Stanton Decl."), at ¶ 3.) There was no fraud, collusion, or other tortious conduct aimed at injuring any of the non-settling parties to this action. (*Id.*) Moving Parties contend the settlement is fair, equitable, and fulfills all requirements set forth within Sections 877 and 877.6 of the California Code of Civil Procedure and the *Tech-Bilt* factors. (*Id.*)

Specifically, Plaintiff has agreed to release the Wilhelm Defendants and the Bluerock Defendants from any and all claims and future claims in return for the payment of the total sum of One Hundred and Ten Thousand and 00/100 ($110,000) from the Wilhelm Defendants and a waiver of costs from the Bluerock Defendants.

Defendants and Cross-Complainants Black Horse Recycling, Inc. dba Junk King and Hector Contreras Arriaga (collectively "Black Horse Defendants") do not oppose the portion of the Motion for Good Faith Settlement determination regarding the settlement between Plaintiff and the Bluerock Defendants. Assuming that this portion of the Motion is granted, Black Horse agrees to dismiss its Cross-Complaint against the Bluerock in exchange for a waiver of costs.

The Black Horse Defendants do, however, oppose the Motion as to the Wilhelm Defendants, arguing that but for the Wilhelm Defendants' negligence in dropping the cones on the roadway, the subject accident would never have occurred. Further, they point out that the proposed payment amount is approximately 21% of Plaintiff's demand at the time of settlement and approximately 11% of the total damages claimed. (Fife Decl., ¶¶ 4-5.) The Wilhelm Defendants are potentially jointly and severally liable for all of Plaintiff's medical expenses (currently claimed at $650,000) and all of Plaintiff's alleged $250,000-$350,000 loss of income claim. (*Ibid.*) The Black Horse Defendants point out that the proposed settlement does not resolve a single medical lien. Rather, they posit that the entire purpose of the settlement seems to be to obtain funds to allow Plaintiff to finance their litigation against the Black Horse Defendants.

Moreover, upon learning of the settlement, Black Horse immediately offered Plaintiff the same amount as offered by the Wilhelm Defendants ($110,000). (Fife Decl., ¶ 4.) However, in response, Plaintiff demanded $400,000 from Black Horse. (*Id.*)

Black Horse further points out that the damages Plaintiff claims are about $1,000,000 (approximately $650,000 for medical specials, and another approximate $350,000 for lost wages and earning capacity). (Fife Decl., ¶¶ 4-5.) Black Horse however acknowledges that there are substantial causation defenses. (Fife Decl., ¶ 5.) For example, Plaintiff's truck was not damaged, Plaintiff's wife and three children who were in the car with Plaintiff did suffer any injury whatsoever. (*Id.*)

While Black Horse is exposed to liability, given that its driver was unable to stop, it argues that Plaintiff saw the Wilhelm truck merging from the shoulder into their lane of traffic and the cones dropping in front of them. Plaintiff at least had some warning that danger was near and adjusted his speed. On the other hand, The Black Horse driver's view was blocked by the Bluerock truck and forklift. The Black Horse driver had no warning of sudden danger that he was driving towards. As a result, while a percentage of liability is justifiably attributed to Black Horse, Black Horse argues that it is nowhere near the 79-89% that is contemplated by the proposed settlement.

A settlement does not lack good faith solely because the settling tortfeasor pays "less than his or her theoretical proportionate or fair share." (*Ibid.*) Discounting a settling tortfeasor's proportional share is appropriate because a plaintiff's " 'damages are often speculative, and the probability of legal liability therefor is often uncertain or remote....' " (*Ibid.*) "[P]ractical considerations obviously require that the evaluation be made on the basis of information available at the time of settlement." (*Id.* at p. 1465.)

In the end, "[t]he ultimate determinant of good faith is whether the settlement is grossly disproportionate to what a reasonable person at the time of settlement would estimate the settlor's liability to be." (*Ibid.*) "[A] 'good faith' settlement does not call for perfect or even nearly perfect apportionment of liability. In order to encourage settlement, it is quite proper for a settling defendant to pay less than his proportionate share of the anticipated damages. What is required is simply that the settlement not be grossly disproportionate to the settlor's fair share." (*Ibid.*)

The Court finds that Wilhelm has failed to present sufficient, admissible evidence to make a *prima facie* showing that its settlement is in the "ballpark" of its proportionate liability to the alleged injuries suffered by Plaintiff. Although the party asserting the lack of good faith has the burden of proof on that issue, (Code Civ. Proc., § 877.6(d)), where the application is contested, as here, the settling party must make *a prima facie* showing of all the *Tech-Bilt* factors, either through the moving papers or in counter-declarations. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1995) 38 Cal.App.4th 1337, 1350, n. 6; *City of Grand Terrace v. Superior Court, supra,* 192 Cal.App.3d at p. 1261-1262.)

The *prima facie* showing must be based on facts presented through counsel's affidavits, expert declarations, or other means. Without such an evidentiary showing, there is no substantial evidence to establish the nature and extent of the settling party's liability. (*Mattco Forge, supra,* 38 Cal.App.4th at p. 1350 [settling parties did not proffer any evidence of their proportionate liability in their moving or reply papers; only "a series of questionable assumptions [] to show the settlement amount was reasonable"].)

A settling party's "[a]ffidavits or declarations setting forth only conclusions, opinions or ultimate facts are to be held insufficient; even an expert's opinion cannot rise to the dignity of substantial evidence if it is unsubstantiated by facts. [Citation.]" (*Greshko v. County of Los Angeles* (1987) 194 Cal.App.3d 822, 834.)

"Another key factor is the settling tortfeasor's potential liability for indemnity to joint tortfeasors. (*Far West Financial Corp. v. D & S Co.* (1988) 46 Cal.3d 796, 816, fn. 16.)" (*Long Beach Memorial Medical Center v. Superior Court* (2009) 172 Cal.App.4th 865, 873.)

Wilhelm has failed to present sufficient *prima facie* evidence to show that its settlement was in the "ballpark" of its proportionate liability to Plaintiff's alleged injuries. While there is some conflicting evidence about whether the Black Rock truck should have been able to stop, or whether the driver's negligence contributed to his inability to do so, the undisputed facts (at this time) show that the roadway hazard (cones) fell out of the Wilhelm truck and but for that hazard, the accident would not have occurred at all. The proposed settlement has Wilhelm paying significantly less than its proportionate share of Plaintiff's (roughly approximated) recovery.

For these reasons, the Motion for Good Faith Settlement is DENIED as to the Settlement between Plaintiff and the Wilhelm Defendants. The unopposed portion of the Motion as to the settlement between Plaintiff and the Bluerock Defendants is GRANTED.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/19/24 TIME: 1:30 P.M. DEPT: E CASE NO: CV2202251

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: JOEY DALE

PLAINTIFF: JOHN DOE vs. DEFENDANT: TAMALPAIS UNION HIGH SCHOOL DISTRICT, ET AL	

NATURE OF PROCEEDINGS: MOTION – STAY

RULING

Defendant Tamalpais Union High School District's ("the District") motion to stay is denied. (Code Civ. Proc., § 128, subd. (a)(3); see also *OTO, LLC v. Kho* (2019) 8 Cal.5th 111, 141.)

BACKGROUND

This is a childhood sexual assault case. Plaintiff John Doe ("Plaintiff") alleges that when he was a fifteen-year-old student at Tamalpais High School in 1999 and 2000, he was sexually assaulted by Normandie Burgos, a teacher and coach at the school. (Complaint, ¶ 1, 10-11, 14.) The Complaint alleges that despite numerous complaints about Burgos to District personnel, the District did not intervene to protect Plaintiff. (*Id.*, ¶ 13, 16, 19.) Plaintiff now asserts claims for negligent hiring, supervision, and retention; failure to report suspected child abuse; and negligent supervision of a minor against the District. (See Gov. Code, §§ 815.2, 815.6, 820.)

Section 340.1 and the Claims Presentation Requirement

Plaintiffs bring this case pursuant to Code of Civil Procedure, section 340.1 ("Section 340.1"), which sets forth the statute of limitations for certain claims relating to childhood sexual assault. (See Complaint, ¶ 2.) Section 340.1 was amended in 2019 by Assembly Bill 218 ("AB218"). AB218 extended the statute of limitations for childhood sexual abuse from 26 to 40 years of age and created a three-year window (starting January 1, 2020) in which old claims of childhood sexual abuse were revived, regardless of how long ago the abuse occurred. (Code Civ. Proc., § 340.1, subd. (q).)

Additionally, AB218 amended Government Code, section 905 to retroactively strip the statutory protection it afforded to public entities. At the time of the alleged misconduct in this case, the Government Code expressly provided that "no suit for money damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity." (Gov. Code, § 945.4.) Under then-

existing law, a claim was required to be presented not later than six months after the accrual of the cause of action. (Gov. Code, § 911.2.) Where an individual with a claim against a public entity missed the six-month deadline to present the claim, the Government Claims Act authorized the claimant to file an application for leave to present a late claim "within a reasonable time not to exceed one year after the accrual of the cause of action." (Gov. Code, § 911.4.) If the individual failed to timely present an application to submit a late claim, the courts no longer had jurisdiction over the matter and were powerless to grant relief. (*Hom v. Chico Unified Sch. Dist.* (1967) 254 Cal.App.2d 335, 339.)

These rules applied to claims for childhood sexual abuse until 2009. That year, the Legislature exempted childhood sexual abuse claims from the claims presentation requirement, but only those claims arising from conduct that occurred after January 1, 2009. (Former Gov. Code, § 905, subd. (m); *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 914.) AB218 changed this by eliminating the language that limited the exemption to claims arising from conduct occurring after January 1, 2009 and adding language stating that such change operated retroactively. (Gov. Code, § 905, subd. (p).) The effect was to fully exempt all claims of childhood sexual abuse from the claims presentation requirement, regardless of when the alleged abuse happened and even if the conduct at issue occurred before AB218 was passed.

AB218's change to the claims presentation requirement has been subject to constitutional challenge in trial courts throughout the state on the basis that it violates Article XVI, section 6 of the California Constitution (the "gifts clause"), which prohibits gifts of public funds. Trial courts in cases similar to this one have both rejected and found valid constitutional gift clause challenges.

If the retroactive application of an exemption from the claims presentation requirement is unconstitutional, plaintiffs bringing childhood sexual abuse cases are required to comply with the claims presentation requirement as a condition of bringing their claims, and failure to do so precludes courts from granting relief. (See *State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1240 ["California statutes or ordinances which condition the right to sue the sovereign upon timely filing of claims and actions are . . . elements of the plaintiff's cause of action and conditions precedent to the maintenance of the action"].)

Jane Doe, et al. v. Acalanes Union High School District

On June 13, 2023, the Superior Court of Contra Costa County issued an order sustaining a demurrer without leave to amend in *Jane Doe, et al. v. Acalanes Union High School District*, Case No. C22-02613 ("*Acalanes*"). (See Garcia Dec. Re: Judicial Notice[1] (hereafter "RJN") Ex. 3, p. 1.) *Acalanes*' plaintiffs ("Jane Doe #1" and "Jane Doe #2"), alumni of Miramonte High School, relied on Section 340.1 to assert claims arising out of alleged childhood sexual abuse by a teacher against the defendant school district. (*Id.*, p. 1.) The court noted that "the constitutional validity of [AB218] [was] the single question raised" by the demurrer and held AB218's retroactive removal of the claims presentation requirement unconstitutional: "[T]his Court finds that retrospectively removing a substantive element of [plaintiffs'] causes of action (i.e., the presentation of a Government Code claim at a time such claim was required) violated the

[1] All of the District's requests for judicial notice are granted. (Evid. Code, § 452, subd. (d).)

California Constitution prohibiting the gift of public funds [sic]." (*Id.*, p. 2.) Notably, the court in *Acalanes* found that plaintiffs had failed to adequately address the important concept of public purpose or public benefit, which is a quintessential element to a gift clause challenge because if funds are used for a public purpose they are not a gift within the meaning of Article XVI, section 6 of the California Constitution. (*Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630, 637 [superseded by statute in unrelated part as stated in *Sturgeon v. County of Los Angeles* (2015) 242 Cal.App.4th 1437, 1440]; see also RJN Ex. 3, pp. 6-7.)

The court later gave Jane Doe #2 leave to amend her complaint to plead specific facts that would cause her claim to no longer implicate AB218 (see RJN Ex. 6), but entered judgment in favor of the District as to Jane Doe #1. (RJN Ex. 7.)

On November 2, 2023, Jane Doe #1 filed a notice of appeal. (RJN Ex. 8.) The appeal, Case No. A169013, is pending with the First District Court of Appeal. (RJN Ex. 9.)

The District now moves to stay this case pending the issuance of the First District Court of Appeal's opinion in *Acalanes*.

LEGAL STANDARD

Every court has the power to "provide for the orderly conduct of proceedings before it[.]" (Code Civ. Proc., § 128, subd. (a)(3); see also *OTO, supra*, 8 Cal.5th 111, 141 [referring to "'the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants'"] [quoting *Landis v. North American Co.* (1936) 299 U.S. 248, 254].) Inherent in this is the power, in the court's discretion, "to stay proceedings when such a stay will accommodate the ends of justice.'" (*Ibid.* [quoting *People v. Bell* (1984) 159 Cal.App.3d 323, 329].)

DISCUSSION

In the Court's view, a stay pending the outcome of *Acalanes* will not accommodate the ends of justice.

Initially, it is no certainty that any decision in *Acalanes* would be dispositive of this action. The First District Court of Appeal could proceed in any number of ways. For example, it is not clear that the Court of Appeal will reach the merits of the constitutional claim (or that they will affirm the trial court's decision) or limit its decision to *Acalanes*' unique facts such as Appellant-there's failure to adequately argue public purpose or find, as this court did, that the constitutional challenge is not appropriate on demurrer. (See RJN, Ex. 2 at Ex. A, p. 2.) Nor is it clear that a decision in *Acalanes* will be dispositive in this case where the parties are unrelated. In *Farmland Irrigation Co. v. Dopplmaier* (1957) 48 Cal.2d 208, cited by the District,[2] the Supreme Court

[2] The other cases the District cites are similarly unpersuasive. Some considered a stay pending the resolution of a separate action in a different jurisdiction between the same or substantially identical parties and so are distinguishable on the same ground as *Farmland*. (*Montrose Chemical Corporation v. Super. Ct.* (1993) 6 Cal.4th 287, 301; *Leadford v. Leadford* (1992) 6 Cal.App.4th 571, 573; *Engle v. Super Ct.* (1956) 140 Cal.App.2d 71, 73-74; *Caiafa Prof. Law Corp. v. State Farm Fire & Casualty Co.* (1993) 15 Cal.App.4th 800, 803; *Simmons v. Superior Court in and for Los Angeles County* (1950) 96 Cal.App.2d 119, 130.) The rest are not instances of trial courts considering stays of litigation, but instead merely instances of the Supreme Court granting review of an appellate decision and postponing said review pending its own resolution of a separate case, which is significantly

addressed a motion to stay a state court case pending the outcome of an action between the *same parties* in a federal court in Oregon. (48 Cal.2d 208, 215.) The test the Supreme Court articulated was specifically described as applying where a party seeks to stay a case pending another case in another jurisdiction involving "the same parties" and is not readily applicable where the parties are unrelated. (See *ibid.* [court should consider "whether the rights of the parties can best be determined by the court of the other jurisdiction"].) Here, it is just not clear that the rights of the parties here can be best determined by the Court of Appeal decision in *Acalanes*.

In addition, the District's argument that failure to stay will be costly is unavailing given the uncertainty that a decision in *Acalanes* will be dispositive of this case. The District also failed to present the court with any information regarding costs from which a reasoned analysis could be performed.

Finally, the Legislature has expressed a clear intention that claims of childhood sexual abuse should see the light of day. That includes an ability to propound discovery and to prosecute their cases. A stay that could last for years would unfairly inhibit Plaintiff's ability to do this.

Accordingly, the District's motion to stay proceedings pending the issuance of the First District's opinion in *Acalanes* is denied.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2024 is as follows:
https://www.zoomgov.com/j/1605153328?pwd=eUU1OE9BTG5tWHgrOFNKMmVvd2tFQT09
Meeting ID: 160 515 3328
Passcode: 360075

If you are unable to join by video, you may join by telephone by calling* 1-669-254-5252 *and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: marin.courts.ca.gov

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different. (*People v. Miller* (2007) 146 Cal.App.4th 545, 549; *People v. Hill* (2004) 118 Cal.App.4th 1344, 1346; *Winter v. DC Comics* (2003) 30 Cal.4th 881, 886; *Allen v. Sully-Miller Contracting Co.* (2002) 28 Cal.4th 222, 226.)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/19/24 TIME: 1:30 P.M. DEPT: E CASE NO: CV2301012

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: JOEY DALE

PLAINTIFF: JAMES MORMON MILBOURN vs. DEFENDANT: MARK GAINER	

NATURE OF PROCEEDINGS: MOTION – CONSOLIDATE

RULING

Plaintiff's motion for consolidation is denied.

The Solano County Action

On December 2, 2021, James Milbourn ("Milbourn") filed a complaint against Defendants Comcast Corporation and Gaily Bordallo Alcantrara ("Alcantara") in Solano County, Case No. FCS057491 (the "Solano County Action"), alleging that he sustained injuries when Alcantara, who was acting in the course of his employment with Comcast, rear-ended Milbourn's vehicle on September 21, 2021. (Declaration of Kellan Mayberry ("Mayberry Decl."), ¶9.) Milbourn filed a First Amended Complaint on January 31, 2022 and a Second Amended Complaint on February 23, 2022.

The Marin County Action

Milbourn filed his Complaint against Defendant Mark Gainer ("Gainer") in this case on April 6, 2023, alleging that he sustained injuries when Garner's vehicle rear-ended Milbourn's vehicle on June 7, 2021. (Mayberry Decl., ¶10.)

Discussion

Milbourn seeks to consolidate the Solano County Action with this action pursuant to Code of Civil Procedure Section 1048. He argues that the accident at issue in the Solano County Action occurred only three months after the accident at issue in this action, and most of his medical care overlaps and pertains to both collisions. No trial date has been set in either case. (Mayberry Decl., ¶¶9, 10.)

Milbourn's motion is denied. The two actions are pending in different courts and consolidation is appropriate only when the actions are pending in the same court. (Edmon and Karnow, Cal. Prac. Guide Civ. Pro. Before Trial Ch. 12(I)-E (The Rutter Group 2023) ["Consolidation is limited to cases pending in the *same court*"] [emphasis in original].) Further, even if the two cases were both pending in the same court, the Solano County Action was filed first, so moving papers would be filed in that action rather than in this action. There is also no indication that all counsel from both actions have been served. (Cal. Rule of Court 3.350(a).)

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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