

TENTATIVE RULINGS for LAW and MOTION
March 30, 2023

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted on Yolo Court’s Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Ten	(530) 406-6816
Telephone number for the clerk in Department Eleven	(530) 406-6843
Telephone number for the clerk in Department Fourteen	(530) 406-6800

TENTATIVE RULING

Case: **Dolmo v. Cannery Lofts Investors**
Case No. CV-2021-1732

Hearing Date: **March 30, 2023** **Department Fourteen** **9:00 a.m.**

Defendants Cannery Loft Investors, Susan Kinloch and Bartlett Commons Manager’s motion for award of mandatory attorney’s fees and costs is **GRANTED**. (Civ. Proc. Code § 425.16, subd. (c).) The Court finds that all the fees and costs requested by defendants were incurred in extricating themselves from plaintiff’s baseless causes of action. (*Ibid.*; See *Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 446, citations omitted; Bass Decl., ¶¶ 11 – 13, Exhibit A.)

Plaintiff shall pay defendants the requested fees and costs in the total amount of **\$8,402.32** by **May 1, 2023**.

The notice of motion does not provide notice of this Court’s tentative ruling system as required by Local Rule 11.2(b). Counsel for moving party, or the moving party if unrepresented by counsel, is ordered to notify the opposing party or parties immediately of the tentative ruling system.

If no hearing is requested, and no party appears at the hearing, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Figgins, et al. v. Nathong, et al.**
Case No. CV-2022-0622

Hearing Date: **March 30, 2023** **Department Fourteen** **9:00 a.m.**

Motion re: California Department of Public Health subpoena:

Defendants Covenant Care Courtyard, LLC, CTR Partnership, L.P., and Derrek Nathong’s (“defendants”) motion to quash or in the alternative request for protective order, to plaintiffs’ deposition subpoena for production of business records to custodian of records of California

Department of Public Health (“CDPH”) is **GRANTED**. (Code Civ. Proc., § 1987.1.) The Court finds that CDPH has no authority to disclose any of the requested documents to plaintiffs, and that plaintiffs must request the documents in the possession of CDPH through the Freedom of Information Act. (45 C.F.R. § 2.1, et seq., 45 C.F.R. § 5.1, et seq.; see *In re Complex Blood Bank Litigation* (1991) 812 F.Supp. 160, 161 [documents may only be produced in private litigation in accordance with regulations].) Plaintiffs’ argument that defendants have no standing to assert this position is not supported by any persuasive or binding authority.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

Motion re: Consumer Protection Services Program, Physical Therapy Board of California subpoena:

Defendants’ motion to quash or in the alternative request for protective order, to plaintiffs’ deposition subpoena for production of business records to Consumer Protection Services Program, Physical Therapy Board of California (“CPSP”) is **GRANTED IN PART**. (Code Civ. Proc., § 1987.1.) The Court finds that the subpoena directed to CPSP is overbroad in that it requests documents not related to a “licensee” or “former licensee”, or are protected from disclosure pursuant to Business & Professions Code section 800, subdivision (c)(1). (See Bus. & Prof. Code §§ 800, subd. (c)(1), 803.1, subd. (a); see also *Board of Trustees v. Superior Court* (1981) 119 Cal. App. 3d 516, 525, overruled in part on other grounds.) However, the Court also finds that some of the requested documents are not protected from disclosure pursuant to Business & Professions Code section 803.1. Therefore, the Court modifies the subpoena to CPSP, as follows:

Pursuant to Business & Professions Code section 803.1, the Consumer Protection Services Program, Physical Therapy Board of California, shall produce documents in its custody or control regarding Derrek Nathong, PTA, within the past five (5) years. Specifically:

(a) Notwithstanding any other law, the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall disclose to an inquiring member of the public information regarding any enforcement actions taken against a licensee, including a former licensee, by the board or by another state or jurisdiction, including all of the following:

- (1) Temporary restraining orders issued.
- (2) Interim suspension orders issued.
- (3) Revocations, suspensions, probations, or limitations on practice ordered by the board, including those made part of a probationary order or stipulated agreement.
- (4) Public letters of reprimand issued.

(5) Infractions, citations, or fines imposed.

(b) Notwithstanding any other law, in addition to the information provided in subdivision (a), the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall disclose to an inquiring member of the public all of the following:

(1) Civil judgments in any amount, whether or not vacated by a settlement after entry of the judgment, that were not reversed on appeal and arbitration awards in any amount of a claim or action for damages for death or personal injury caused by the licensee's negligence, error, or omission in practice, or by rendering unauthorized professional services.

(2)(A) All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the low-risk category if there are three or more settlements for that licensee within the last 10 years, except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the high-risk category if there are four or more settlements for that licensee within the last 10 years except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. Classification of a licensee in either a "high-risk category" or a "low-risk category" depends upon the specialty or subspecialty practiced by the licensee and the designation assigned to that specialty or subspecialty by the Medical Board of California, as described in subdivision (f). For the purposes of this paragraph, "settlement" means a settlement of an action described in paragraph (1) entered into by the licensee on or after January 1, 2003, in an amount of thirty thousand dollars (\$30,000) or more.

(B) The board shall not disclose the actual dollar amount of a settlement but shall put the number and amount of the settlement in context by doing the following:

(i) Comparing the settlement amount to the experience of other licensees within the same specialty or subspecialty, indicating if it is below average, average, or above average for the most recent 10-year period.

(ii) Reporting the number of years the licensee has been in practice.

(iii) Reporting the total number of licensees in that specialty or subspecialty, the number of those who have entered into a settlement agreement, and the percentage that number represents of the total number of licensees in the specialty or subspecialty.

(3) Current American Board of Medical Specialties certification or board equivalent as certified by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine.

(4) Approved postgraduate training.

(5) Status of the license of a licensee. By January 1, 2004, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall adopt regulations defining the status of a licensee. The board shall employ this definition when disclosing the status of a licensee pursuant to Section 2027.

(6) Any summaries of hospital disciplinary actions that result in the termination or revocation of a licensee's staff privileges for medical disciplinary cause or reason, unless a court finds, in a final judgment, that the peer review resulting in the disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. In addition, any exculpatory or explanatory statements submitted by the licensee electronically pursuant to subdivision (f) of Section 805 shall be disclosed. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(c) Notwithstanding any other law, the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall disclose to an inquiring member of the public information received regarding felony convictions of a licensee.

(d) The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may by regulation establish categories of information that need not be disclosed to an inquiring member of the public because that information is unreliable or not sufficiently related to the licensee's professional practice.

"Some studies have shown that there is no significant correlation between malpractice history and a licensee's competence. At the same time, the State of California believes that consumers should have access to malpractice information. In these profiles, the State of California has given you information about both the malpractice settlement history for the licensee's specialty and the licensee's history of settlement payments only if in the last 10 years, the licensee, if in a low-risk specialty, has three or more settlements or the licensee, if in a high-risk

specialty, has four or more settlements. The State of California has excluded some class action lawsuits because those cases are commonly related to systems issues such as product liability, rather than questions of individual professional competence and because they are brought on a class basis where the economic incentive for settlement is great. The State of California has placed payment amounts into three statistical categories: below average, average, and above average compared to others in the licensee's specialty. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high-quality care by selecting a licensee based solely on malpractice history.

When considering malpractice data, please keep in mind:

Malpractice histories tend to vary by specialty. Some specialties are more likely than others to be the subject of litigation. This report compares licensees only to the members of their specialty, not to all licensees, in order to make an individual licensee's history more meaningful.

This report reflects data only for settlements made on or after January 1, 2003. Moreover, it includes information concerning those settlements for a 10-year period only. Therefore, you should know that a licensee may have made settlements in the 10 years immediately preceding January 1, 2003, that are not included in this report. After January 1, 2013, for licensees practicing less than 10 years, the data covers their total years of practice. You should take into account the effective date of settlement disclosure as well as how long the licensee has been in practice when considering malpractice averages.

The incident causing the malpractice claim may have happened years before a payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to settle. Some licensees work primarily with high-risk patients. These licensees may have malpractice settlement histories that are higher than average because they specialize in cases or patients who are at very high risk for problems.

Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the licensee. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

You may wish to discuss information in this report and the general issue of malpractice with the licensee.”

(e) The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall, by regulation, develop standard terminology that accurately describes the different types of disciplinary filings and actions to take against a licensee as described in paragraphs (1) to (5), inclusive, of subdivision (a). In providing the public with information about a licensee via the internet pursuant to

Section 2027, the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall not use the terms “enforcement,” “discipline,” or similar language implying a sanction unless the licensee has been the subject of one of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(f) The Medical Board of California shall adopt regulations no later than July 1, 2003, designating each specialty and subspecialty practice area as either high risk or low risk. In promulgating these regulations, the board shall consult with commercial underwriters of medical malpractice insurance companies, health care systems that self-insure physicians and surgeons, and representatives of the California medical specialty societies. The board shall utilize the carriers’ statewide data to establish the two risk categories and the averages required by subparagraph (B) of paragraph (2) of subdivision (b). Prior to issuing regulations, the board shall convene public meetings with the medical malpractice carriers, self-insurers, and specialty representatives.

(g) The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall provide each licensee, including a former licensee under subdivision (a), with a copy of the text of any proposed public disclosure authorized by this section prior to release of the disclosure to the public. The licensee shall have 10 working days from the date the board provides the copy of the proposed public disclosure to propose corrections of factual inaccuracies. Nothing in this section shall prevent the board from disclosing information to the public prior to the expiration of the 10-day period.

(h) Pursuant to subparagraph (A) of paragraph (2) of subdivision (b), the specialty or subspecialty information required by this section shall group licensees by specialty board recognized pursuant to paragraph (5) of subdivision (h) of Section 651 unless a different grouping would be more valid and the board, in its statement of reasons for its regulations, explains why the validity of the grouping would be more valid.

Plaintiffs are directed to prepare and serve a new subpoena upon CPSP and the parties in accordance with this ruling.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Pacific Gas and Electric Co. v. Estes Terminals of CA, et al.
Case No. CV-2022-2225
Hearing Date: March 30, 2023 Department Eleven 9:00 a.m.

Plaintiff Pacific Gas and Electric Company’s unopposed motion for order for pre-judgment possession is **GRANTED**. (Code Civ. Proc., § 1255.410; Compl., Exhibits A – A-1; Brickey Decl., ¶¶ 6 – 13; Pattison Decl., ¶¶ 4 – 5, Exhibit A.)

Plaintiff is directed to lodge a proposed order with the Court that fully complies with Code of Civil Procedure section 1255.460, and states the following:

- (a) Recite that it has been made under this section.
- (b) Describe the property to be acquired, which description may be by reference to the complaint.
- (c) State the date after which plaintiff is authorized to take possession of the property.

No appearance is necessary.

TENTATIVE RULING

Case: Zhou v. Hotel Winters, LLC et al.
Case No. CV-2022-1963
Hearing Date: March 30, 2023 Department Ten 9:00 a.m.

On the Court’s own motion, all matters set for Thursday March 30, 2023 are **CONTINUED** to Thursday, May 4, 2023 at 9:00 a.m. in Department 10.