Tentative Rulings for March 4, 2025
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

24CECG04146 ***Thomas Gattie, JR vs. County of Fresno*** **is continued to April 29, 2025, at 3:30 p.m. in Dept. 502**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(27)

Tentative Ruling

Re: ***Lanisha Stanley v. Orchard Post Acute***
Superior Court Case No. 23CECG01075

Hearing Date: March 4, 2025 (Dept. 502)

Motion: By Plaintiff to Approve Settlement to the Labor Code Private Attorneys General Act (Lab. Code, § 2898, et seq.)

Tentative Ruling:

To grant the motion and approve the PAGA settlement agreement.

Explanation:

"PAGA settlements are subject to trial court review and approval, ensuring that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549, citing Labor Code section 2699(l)(2) ["The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court."])

The trial court is to "evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) "Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement." (*Ibid*.)

1. *Notice to LWDA*

Plaintiff's counsel's declaration attaches the receipt of the notice provided to the LWDA.

2. *Fairness of the settlement amount*

A presumption of fairness exists where the settlement is reached through arm's length mediation between adversarial parties, where there has been investigation and discovery sufficient to allow counsel and the court to act intelligently, and where counsel is experienced in similar litigation. (See *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802.) Here, counsel describes a one-day mediation with Hon. Daniel Buckley after formal discussions and discovery. Counsel also claims the settlement was the product of arms-length negotiations.

The settlement agreement also provides that plaintiff's counsel would receive up to one-third of the total gross settlement for attorney's fees, plus costs. In analogous contexts – class actions - courts have approved awards of fees that are based on a percentage of the total common fund recovery subject to cross check with a lodestar calculation. (*Laffitte v. Robert Half Internat.* (2016) 1 Cal.5th 480, 503.) A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney … involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate. …" (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.)

Here, plaintiff's counsel provides the court with sufficient information find both the requested attorneys' fees and costs awards reasonable. Similarly, the enhancement payment appears supported by plaintiff's declaration and the payment to the claim administrator appears reasonable considering the number of employees.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 02/28/25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***In re Anecia Joline Salinas***
Superior Court Case No.: 25CECG00575

In re Isaiah Luis Salinas
Superior Court Case No.: 25CECG00576

Hearing Date: March 4, 2025 (Dept. 502)

Motion: Petitions to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

In re Anecia Joline Salinas: To grant. Orders signed. No appearances necessary.

Pursuant to Superior Court of Fresno County, Local Rules, Rule 2.8.4, the court sets a Case Status Minors Comp on Thursday, May 29, 2025, at 3:30 p.m. in Department 502 for confirmation of deposit of the minors' funds into a blocked account. If petitioner files the Acknowledgments of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least ten (10) court days before the hearing, the status conference will come off calendar.

In re Isaiah Luis Salinas: To deny without prejudice.

Explanation:

At issue with the petition regarding claimant Isaiah Luis Salinas is Item 12 regarding reimbursement to medical providers. The providers identified at 12b(5) are Community Regional Medical Center ("CRMC") and Valley Children's Hospital ("Valley Children's"). CRMC charged $5,908.76 and after a negotiated reduction was paid $5,094.32. Valley Children's charged and was paid $1,548.00 (i.e. no reduction). The overview of expenses at 12a indicates that a total of $6,642.32 was paid out of the $7,456.76 in medical expenses (i.e. a reduction of $814.44.) Petitioner indicates at 12b(4) that the expenses were paid by Medi-Cal, although she does not list an amount paid by Medi-Cal.

Petitioner presents that there is no outstanding Medi-Cal lien. Petitioner attaches a letter from DHCS as Attachment 12b(4)(c), which pertinently states:

> "Reference is made to our Notice of Lien, dated May 29, 2024…. After reviewing our records, we have not found any Medi-Cal paid services for this injury under the referenced name and case number. Please contact our office if you receive additional information that may indicate Medi-Cal involvement."

Petitioner uses this as evidence that there is no Medi-Cal lien. However, the letter indicates there was no Medi-Cal involvement rather than acts as a reduction letter. It is

contradictory for petitioner to indicate that expenses were paid by Medi-Cal and then provide a letter indicating there was no Medi-Cal involvement.

Petitioner needs to clarify and demonstrate that the expenses were paid and by whom. If it turns out that Medi-Cal was not involved, petitioner would still need to provide evidence of the medical expenses, payment, and any negotiated reduction or release.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 02/28/25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***John Roe 9 v. Riverdale Assembly of God Inc.***
Superior Court Case No. 22CECG01315

Hearing Date: March 4, 2025 (Dept. 502)

Motion: By Defendant CT Scribes, Inc. for Summary Judgment

Tentative Ruling:

To grant. Defendant The Southern California District Council of the Assemblies of God is directed to submit a proposed judgment consistent with this order within five days of service of the minute order by the clerk.

Explanation:

On May 20, 2022, plaintiff John Roe 9 ("Plaintiff") filed a Second Amended Complaint for six causes of action: (1) negligence; (2) childhood sexual assault pursuant to Code of Civil Procedure section 340.1; (3) negligent supervision/failure to warn; (4) negligent hiring/retention; (5) intentional infliction of emotional distress; and (6) breach of statutory duty under Civil Code section 51.7. The Complaint is brought against, among others, defendant The Southern California District Council of the Assemblies of God ("Defendant"). Plaintiff alleges that between 1991 and 1994, he attended Riverdale Christian Academy where he was sexually assaulted and groomed by James Davis. Defendant now seeks summary judgment.

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc. §437c, subd. (c); *Schacter v. Citigroup* (2009) 47 Cal.4th 610, 618.) The issue to be determined by the trial court in consideration of a motion for summary judgment is whether or not any facts have been presented which give rise to a triable issue, and not to pass upon or determine the true facts in the case. (*Petersen v. City of Vallejo* (1968) 259 Cal.App.2d 757, 775.)

The moving party bears the initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he or she carries this burden, the burden shifts to plaintiff to make a prima facie showing of the existence of a triable issue. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) A defendant has met his burden of showing that a cause of action has no merit if he has shown that one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. (*Ibid.*) Once the defendant has met that burden, the burden shifts to the plaintiff to show a triable issue of one or more material facts exists as to the cause of action or a defense thereto. (*Ibid.*)

Defendant submits that there are no triable issues of material fact in general as to it on each cause of action because vicarious liability does not attach, and it owed no duty of its own to Plaintiff. Defendant submits the following facts.

Defendant submits that there was no relationship between Defendant and Davis, nor Defendant and Plaintiff. (Defendant's Undisputed Material Facts ["UMF"], Nos. 5-7, 9, 10, 12-17.) Defendant submits that it had no role in hiring, retaining or supervising individuals pertinent to the allegations of this action. (Defendant's UMF Nos. 5-7, 14-16.) Defendant submits it had no involvement with Davis, including monitoring Davis's day-to-day activities. (*Ibid.*) Defendant submits that its member churches are sovereign, autonomous, and responsible for their own day-to-day activities. (Defendant's UMF Nos. 2, 5-7.) Defendant submits that it had no involvement with the specific hiring, retention or supervision of Davis. (Defendant's UMF Nos. 5-7, 14-16.) Davis was not an agent or employee of Defendant. (Defendant's UMF No. 15.)

Based on the above, Defendant has met its moving burden of negating essential elements of every cause of action regarding duties owed, or liability through respondeat superior. The burden shifts to Plaintiff to raise triable issues of material fact.

Plaintiff submits in opposition that he is unable to raise triable issues of material fact due to insufficient time to pursue discovery. Plaintiff seeks a continuance of the motion pursuant to Code of Civil Procedure section 437c, subdivision (h), which provides

> If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other orders as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.

The purpose of the affidavit required by Code of Civil Procedure section 437c, subdivision (h) is to inform the court of outstanding discovery which is necessary to resist the summary judgment motion. (*Scott v. CIBA Vision Corp*. (1995) 38 Cal.App.4th 307, 325-326.) It is not sufficient under the statute to merely indicate further discovery or investigation is contemplated. (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 548.) The statute makes it a condition that the party moving for a continuance show facts essential to justify opposition may exist. (*Ibid.*) In sum, the affidavit is required to show (1) the facts to be obtained are essential to the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain or discover these facts. (*Braganza v. Albertson's LLC* (2021) 67 Cal.App.5th 144, 152-153.)

Here, the affidavit submitted with the opposition does not address any basis to continue the present motion. Rather, the only statement submitted was that the parties contemplated continuing trial through stipulation. (*See generally* Forscythe Decl.) The declaration acknowledged that, at the time of filing the opposition, the stipulation for an order continuing trial was not filed. The stipulation is not competent evidence of anything other than meet and confer efforts. Neither does the declaration, or stipulation, address any of the three necessary factors to warrant a continuance. Rather, the stipulation indicates that discovery is in its early stages without explanation and despite the

origination of this action on May 2, 2022. The stipulation suggests that there are other lawsuits pending related to Davis. However many cases may be filed between some or all of the parties is immaterial to this action and this motion, which is not consolidated or coordinated with any other action. Moreover, the stipulation, in spite of these statements, did not seek to continue this motion. Accordingly, Plaintiff fails to demonstrate a basis to continue the motion pursuant to Code of Civil Procedure section 437c, subdivision (h). (*Braganza v. Albertson's LLC*, *supra*, 67 Cal.App.5th at pp. 152-153.)

The motion for summary judgment is granted, in favor of defendant The Southern California District Counsel of the Assemblies of God, and against plaintiff John Roe 9.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 03/03/25.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re:	***Modesto Irrigation District v. California State Water Resources Control Board/CEQA/COMPLEX/LEAD CASE*** Superior Court Case No. 23CECG04124 (Consolidated with Case Nos. 23CECG04199 & 23CECG04201)
Hearing Date:	March 4, 2025 (Dept. 502)
Motion:	Petitioners Modesto Irrigation District, San Joaquin Tributaries Authority, and Merced Irrigation District's Motions for Attorney's Fees

Tentative Ruling:

To deny petitioners' motions for attorney's fees.

Explanation:

Petitioners have moved to recover their fees under Code of Civil Procedure section 1021.5, which codifies the private attorney general doctrine. The private attorney general doctrine provides an exception to the "American rule" that each party bears its own attorney fees. (*Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1147.) The fundamental objective of the private attorney general doctrine is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants in such cases. (*Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 565 (*Graham*).) Under section 1021.5, the court may award attorney fees to (1) a successful party in any action (2) that has resulted in the enforcement of an important right affecting the public interest (3) if a significant benefit has been conferred on the general public or a large class of persons, and (4) the necessity and financial burden of private enforcement are such as to make the award appropriate. (*Ibid*.) The burden is on the claimant to establish each prerequisite to an award of attorney fees under section 1021.5. (*Serrano v. Stefan Merli Plastering Co., Inc*. (2010) 184 Cal.App.4th 178, 185.)

With regard to the first prong of the test under section 1021.5, a party seeking an award of section 1021.5 attorney fees must first be "a successful party." A favorable final judgment is not necessary; the critical fact is the impact of the action. (*Ebbetts Pass Forest Watch v. California Dept. of Forestry and Fire Protection* (2010) 187 Cal.App.4th 376, 382.) "[A] party who does not obtain any judicial relief may be entitled to section 1021.5 attorney fees under what is known as the 'catalyst theory,' which permits an award of attorney fees 'even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.'" (*Marine Forests Society v. California Coastal Commission* (2008) 160 Cal.App.4th 867, 877, citations omitted.) As the California Supreme Court explained in *Graham*, *supra*, 34 Cal.4th 553, "'[i]n determining whether a plaintiff is a successful party for purposes of section 1021.5, "[t]he critical fact is the impact of the action, not the manner of its resolution."'" (*Id*. at p. 566, citation omitted.) Accordingly, even if the plaintiff did not obtain judicial relief, "'an award of attorney fees may be appropriate

where "plaintiffs' lawsuit was a catalyst motivating defendants to provide the primary relief sought...." A plaintiff will be considered a "successful party" where an important right is vindicated "by activating defendants to modify their behavior."'" (*Id*. at p. 567, citations omitted.)

To obtain an award of attorney fees on a catalyst theory, "a plaintiff must establish that (1) the lawsuit was a catalyst motivating the defendants to provide the primary relief sought; (2) that the lawsuit had merit and achieved its catalytic effect by threat of victory, not by dint of nuisance and threat of expense, as elaborated in *Graham*; and (3) that the plaintiffs reasonably attempted to settle the litigation prior to filing the lawsuit." (*Tipton–Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (*Tipton–Whittingham*); see also, *Graham*, *supra*, 34 Cal.4th at pp. 575, 577.)

Here, petitioners did not obtain the relief that they sought in their petitions, and thus they were not the "successful party" for the purposes of section 1021.5. Petitioner San Joaquin Tributaries Authority sought a writ of mandate directing respondent to vacate and set aside its adoption of the Resolution, a writ of mandate directing respondent to comply with the Porter-Cologne Water Quality Act, APA, CEQA, the CEQA Guidelines, and all requirements for certified regulatory programs, rules of water right priority, and all other applicable laws, rules, and regulations, for a judgment declaring that the adoption of the Biological Goals is void, invalid and unenforceable, and for an award of attorney's fees and costs. Modesto Irrigation District sought a court order to stay the Board's implementation of the Goals, or a preliminary and permanent injunction to prevent the Board from using the Goals, as well as a writ of mandate to set aside the Board's approval of the Goals, in addition to its attorney's fees. Merced Irrigation District sought injunctive relief to prevent the Board from implementing or taking any action to implement, institute, or enforce the Goals pending resolution of this action and full compliance with the Porter-Cologne Act, CEQA, and related regulations and laws, and an award of its attorney's fees and costs.

However, petitioners did not obtain a writ of mandate or an injunction ordering the Board not to implement the Goals until it complied with CEQA, nor did they obtain a declaratory judgment stating that the Goals were void as they were adopted in violation of CEQA. In fact, the court dismissed their petitions as moot when the Board adopted a new Resolution in 2024 that reapproved the prior Goals without any changes, thus superseding the prior 2023 Resolution that the petitioners challenged in this case. Thus, petitioners did not obtain the primary relief that they sought, namely a writ declaring that the Goals were void because they were adopted in violation of CEQA and requiring the Board to follow CEQA procedures in subsequent rulemakings.

While petitioners argue that the Board effectively gave them the relief that they sought by adopting the new Resolution in 2024 reapproving the Goals and thus superseding the prior 2023 Resolution that they challenged in the present case, petitioners ignore the fact that the 2024 Resolution readopted the Goals with no changes. The 2024 Resolution also added some new language to clarify that the Goals were not a "project" under CEQA and thus did not require any further study of potential environmental impacts, or even if the Goals are a project they were categorically exempt from CEQA. (STJA's Request for Judicial Notice, Exhibit 9.) The Board did nothing to change the Goals themselves, and did not admit that the Goals were a project under CEQA or state that the Goals required further environmental review, which was the relief that petitioners sought. In effect, the 2024 Resolution simply placed the parties back in

the same position that they were in when the 2023 Resolution was adopted. Such a result can hardly be considered a victory for the petitioners, since it gave them nothing that they did not already have when the 2023 cases were filed.

Indeed, petitioners apparently believed that the 2024 Resolution readopting the Goals did not provide them with any meaningful relief, as they immediately filed new petitions that made the same arguments and sought the same relief as the prior 2023 petitions. If petitioners had actually obtained the relief they sought when the Board adopted the 2024 Resolution, then it would not have been necessary for them to file new petitions seeking the same relief again.

Also, when the Board demurred to the petitions in the present case on the ground that the 2024 Resolution rendered them moot, petitioners opposed the demurrer and argued that the 2024 Resolution had not granted them any meaningful relief because the Board had not determined whether the Goals were subject to CEQA and thus their 2023 petitions were not moot. (See Exhibits A-C to Lake decl.) Petitioners have now taken the inconsistent position that the 2024 Resolution gave them the relief that they sought in their present petitions. However, as discussed above, the 2024 Resolution simply readopted the same Goals that were adopted in the 2023 Resolution without making any changes to the Goals themselves. The Board did not concede that the Goals were a "project" under CEQA or that any further environmental review was required. Nor did it declare that the prior Goals were void and could not be implemented without further review. Instead, the Board reiterated that the Goals were not a project under CEQA, but even if they were, they were categorically exempt and therefore did not require further review. As a result, petitioners never obtained the primary relief that they sought, and they have not shown that they are entitled to their fees under the private attorney general doctrine.

In fact, the court previously found in its ruling sustaining the demurrer to the petitions without leave to amend that petitioners had not obtained the relief that they sought and thus they were not entitled to an award of attorney's fees. (See Court's Order on Demurrer dated September 26, 2024, p. 5.) "[T]o the extent that SJTA contends that it is entitled to its attorney's fees in the 2023 petition because it prevailed on its claims, there has been no judgment, order, or settlement awarding it any relief in the 2023 case. Respondent did adopt a new Resolution which superseded the 2023 Resolution, but the 2024 Resolution did not make any substantive changes to the biological goals or otherwise concede that the 2023 Resolution was defective and did not comply with the law. In fact, the 2024 Resolution reiterated that the biological goals were not a 'project' under CEGA, or even if they are, they are categorically exempt. Therefore, it would be premature to determine that SJTA is the prevailing party in the 2023 action and that it is entitled to an award of attorney's fees in that action. The question of whether SJTA is entitled to its fees must be resolved later, after the court hears and rules on the merits of its petition in the 2024 case." (*Id*. at p. 5, ¶ 5.)

The same reasoning applies equally to the present motions for attorney's fees, as it would be premature to declare that petitioners are the prevailing parties on their claims when they are still challenging the same Goals in a new set of cases. Only if and when those cases have been resolved in their favor can petitioners truly show that they have prevailed on their claims and thus they are entitled to their attorney's fees. Any ruling granting their fees now would be premature and might cause conflicting rulings, as it is possible that petitioners might not prevail in their new cases and thus would not be

entitled to their fees in those cases. This would lead to the inconsistent and contradictory result that petitioners were the prevailing parties in the 2023 litigation, even though those cases were dismissed as moot, but were not the prevailing parties in the 2024 cases. The court will not sanction such a result by granting premature relief here. Petitioners may ultimately be entitled to their fees if they prevail on their 2024 cases, but the court will not grant them fees now when they have not obtained the primary relief that they sought.

Since petitioners have not shown that they are the successful parties in the present cases, they are not entitled to an award of fees and the court does not have to address the other factors set forth in *Graham*. However, it is worth noting that petitioners have also failed to show that they engaged in any reasonable attempts to settle their claims before filing the present petitions.

To discourage nuisance suits brought by attorneys hoping to obtain fees by dropping lawsuits upon obtaining some relatively insignificant relief, the California Supreme Court adopted several "sensible limitations on the catalyst theory...." (*Graham*, *supra*, 34 Cal.4th at p. 575.) Not only must the lawsuit have some merit but also "the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to litigation." (*Id*. at p. 561.) "Awarding attorney fees for litigation when those rights could have been vindicated by reasonable efforts short of litigation does not advance that objective and encourages lawsuits that are more opportunistic than authentically for the public good. Lengthy prelitigation negotiations are not required, nor is it necessary that the settlement demand be made by counsel, but a plaintiff must at least notify the defendant of its grievances and proposed remedies and give the defendant the opportunity to meet its demands within a reasonable time." (*Id*. at p. 577.)

In the present case, petitioners have not shown they ever contacted respondent and made a reasonable effort to resolve their dispute before filing their petitions. They contend that they submitted comments and participated in the administrative process when the Board was considering whether to adopt the Goals, which is sufficient to satisfy the requirement to make reasonable efforts to settle their claims under *Graham*.

However, in *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (2010) 190 Cal.App.4th 217, the court disagreed that "exhaustion of its administrative remedies will necessarily satisfy prelitigation settlement requirements in every case. The purpose of the doctrine of exhaustion of administrative remedies is to give the administrative agency the opportunity to decide matters within its area of expertise prior to judicial review. The doctrine is premised on the notion that the agency 'is entitled to learn the contentions of interested parties before litigation is instituted.' Informing the agency of these contentions gives the agency 'its opportunity to act and to render litigation unnecessary,' if it chooses to do so." (*Id*. at p. 237, citations omitted.)

"Exhaustion thus ensures the agency will be informed of the full range of an interested party's objections. Litigation may still ensue, however, if the agency agrees with some of a party's objections but disagrees with others. While an interested party might raise a large number of objections to a particular administrative decision, some of its objections will likely be weightier than others. A party might well choose not to litigate if it can persuade the agency to address its most important concerns, even if its less significant objections will go unmet. The question a trial court must address in making its necessity determination is whether a reasonable settlement offer might have prevented

a lawsuit. This question cannot be answered simply by identifying the entire universe of a party's objections to an agency's decision." (*Ibid*, citations omitted.)

Thus, while a party's comments during the administrative rulemaking process might potentially satisfy the requirement to make reasonable settlement efforts, not all such comments will be sufficient to meet the requirement. A party cannot meet the settlement requirement by simply stating that it submitted a variety of comments or objections to a proposed rulemaking or other decision without explaining what comments it made and how those comments were the equivalent of an attempt to settle the case before filing litigation.

Here, petitioners have not explained how their comments satisfied the settlement effort requirement, or even what their comments were and how they were the equivalent of an effort to settle the dispute before filing the petitions. They appear to have made many comments over the course of several years. It is unclear what comments they made or how they were the equivalent of an attempt to settle their dispute before they filed their cases. As a result, the court intends to find that petitioners have not met the requirement to make a reasonable effort to settle their claims before filing them, which is an additional reason to deny their motions for attorney's fees.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 03/03/25.
(Judge's initials) (Date)