Tentative Rulings for December 4, 2024
Department 403

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.

23CECG04934 ***Victor Vargas v. Manuel Hernandez Romero*** **is continued to Thursday, December 12, 2024 at 3:30 p.m. in Department 403.**

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Tentative Rulings for Department 403

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(03)

Tentative Ruling

Re: ***Barnes v. Stonebridge Association***
Case No. 23CECG03903

Hearing Date: December 4, 2024 (Dept. 403)

Motion: Defendant Stonebridge Association's Motion for Summary Judgment

Tentative Ruling:

To grant defendant Stonebridge Association's motion for summary judgment. Defendant shall submit a proposed judgment consistent with the court's order within 10 days of the date of service of this order.

Explanation:

Defendant Stonebridge Association moves for summary judgment on the ground that plaintiff previously executed a settlement and release of her prior lawsuit against the homeowners, Andrew Aydelott and Martha Ann Hosier, on September 16, 2022. Plaintiff accepted a payment of $500,000 to settle her claims. (Defendant's Undisputed Material Fact Nos. 10-12.) Stonebridge points out that the settlement agreement states that the plaintiff agreed to release not only the homeowners and dog owners from liability, but also "*any other* person, corporation, *association* or partnership allegedly responsible for injuries to the person and/or property of the Releasors, and any other claims , demands, causes of action, damages, losses, judgments, actions, or lawsuits, known or unknown, anticipated or unanticipated against Releasee(s) as the result of an accident, incident, casualty or event (the 'Incident') which occurred or is alleged to have occurred on 07/26/2022 in Fresno, CA." (Defendant's Undisputed Material Fact No. 14, italics added.) Thus, Stonebridge argues that, under a plain reading of the settlement agreement and release, plaintiff released not only the homeowners, but also all other persons and entities that might be liable for her injuries, including Stonebridge. In essence, Stonebridge argues that it is an intended third party beneficiary to the settlement agreement, and thus it is entitled to enforce the agreement. As a result, Stonebridge concludes that the court must dismiss plaintiff's case against it, as plaintiff's claims are barred by the release.

"Civil Code section 1559 provides '[a] contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.' Case law applying this statute has held '[t]he third party need not be identified by name. It is sufficient if the claimant belongs to a class of persons for whose benefit it was made. A third party may qualify as a contract beneficiary where the contracting parties must have intended to benefit that individual, an intent which must appear in the terms of the agreement.'" (*Brinton v. Bankers Pension Services, Inc*. (1999) 76 Cal.App.4th 550, 558, citations omitted.) Also, "[t]he principles generally applicable to contracts also govern settlement agreements." (*Id.* at p. 558, citations omitted.)

Under well-established principles of contract interpretation, "[a] contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the

time of contracting, so far as the same is ascertainable and lawful." (Civ. Code, § 1636.) "The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." (Civ. Code, § 1638.) Also, "[w]hen a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this Title." (Civ. Code, § 1639.) "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (Civ. Code, § 1641.) "A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties." (Civ. Code, § 1643.) "The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed." (Civ. Code, § 1644.) "A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates." (Civ. Code, § 1647.)

In addition, the fact that a party to the contract failed to read and understand the terms of the agreement before signing it is usually not a valid reason to refuse to enforce the agreement. "One who signs a contract must exercise, in doing so, the care of a reasonably prudent person in the circumstances. If he has failed to read it, its provisions bind him nevertheless, unless he can offer 'a satisfactory explanation of his failure to read it.'" (*Berard Construction Co. v. Municipal Court* (1975) 49 Cal.App.3d 710, 722, citations omitted, superseded by statute on other grounds as stated in *Profit Concepts Management, Inc. v. Griffith* (2008) 162 Cal.App.4th 950, 954.)

There is a split of authority on the issue of whether a broadly worded release can be enforced by a defendant who was not a party to the settlement. Defendant cites to *Brinton v. Bankers Pension Services, Inc*., *supra*, 76 Cal.App.4th 550, in which the Court of Appeal found that the defendant in a second action could enforce the settlement of an earlier case against a different set of defendants. In *Brinton*, the plaintiff, who was represented by counsel, agreed to a broadly worded settlement of one lawsuit while a second lawsuit with a different defendant was pending. (*Id*. at p. 559.) The court held that the settlement also released the defendant in the second action due to the broad language in the agreement. "The present settlement agreement's language is very broad and comprehensive in scope. It covered all present and future litigation concerning Hill Williams. The suggestion that the settlement was only intended to release Titan and its employees is undermined by the fact both Titan and Thon were named defendants in the Tauf action. Such an interpretation would render the reference to principals and others mere surplusage and violate the principle that, where possible, the entire contract should be given effect." (*Id.* at pp. 560, citation omitted.) Thus, "[t]he trial court properly found the release contained in the Tauf action settlement agreement bars plaintiff's current claim concerning the Hill Williams investment." (*Id.* at p. 561.)

On the other hand, in her opposition, plaintiff relies on the Court of Appeal's decision in *Neverkovec v. Fredericks* (1999) 74 Cal.App.4th 337, which reached the opposite conclusion when interpreting a similarly broadly worded release, which "appears to excuse everyone in the world from liability." (*Id.* at p. 341.) The trial court granted summary judgment in favor of Fredericks, a driver involved in the accident that injured the plaintiff, after the plaintiff settled with a second driver and executed a broadly worded release. The Court of Appeal reversed, finding that Fredericks had not met his

burden of showing that he was an intended third party beneficiary of the release. (*Id.* at p. 341.)

The court explained that "Release agreements are governed by the generally applicable law of contracts. 'A third party should not be permitted to enforce covenants made not for his benefit, but rather for others. He is not a contracting party; his right to performance is predicated on the contracting parties' intent to benefit him.' The circumstance that a literal contract interpretation would result in a benefit to the third party is not enough to entitle that party to demand enforcement. The contracting parties must have intended to confer a benefit on the third party." (*Id.* at p. 348, citations omitted.) "It is not necessary for the third party to be specifically named in the contract, but such a party bears the burden of proving that the promise he seeks to enforce was actually made to him personally or to a class of which he is a member. In making that determination, the court must read the contract as a whole in light of the circumstances under which it was entered. (*Id.* at pp. 348–349, citations omitted.)

"Thus, to obtain summary judgment on the ground that a general release has discharged him from liability, a third party to the release agreement must affirmatively show that the parties intended to release him. The burden of proof is on the third party, under both contract law and the summary judgment statute. Because the court must consider the circumstances of the contracting parties' negotiations to determine whether a third party not named in the release was an intended beneficiary, it will seldom be sufficient for the third party simply to rely on a literal application of the terms of the release. 'The fact that ... the contract, if carried out to its terms, would inure to the third party's benefit[,] is insufficient to entitle him or her to demand enforcement.' 'However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.' 'Whether a third party is an intended beneficiary ... to the contract involves construction of the parties' intent, gleaned from reading the contract as a whole in light of the circumstances under which it was entered.'" (*Ibid*, citations omitted.)

The *Neverkovec* court also held that the court may consider extrinsic evidence to determine whether the parties to the settlement intended to release the moving party. "Our Supreme Court has held that '[i]n determining the meaning of a written contract allegedly made, in part, for the benefit of a third party, evidence of the [surrounding] circumstances and negotiations of the parties in making the contract is both relevant and admissible. And, "[i]n the absence of grounds for estoppel, the contracting parties should be allowed to testify as to their actual intention...."' No grounds for estoppel appear in this case." (*Id.* at p. 351, citations omitted.)

The court also noted that the settlement agreement in that case was somewhat ambiguous, as, while it seemed to release everyone in the world from liability, it also provided that "Howard (on Larry's behalf) must 'repay' any additional amounts that anyone chargeable with liability for Larry's injury might be compelled to pay in the future. This repayment provision is curious, and creates ambiguity as to the parties' actual intentions. If the release was to be operative against anyone liable for Larry's injuries, Larry could not be expected to recover further amounts from which to make repayments." (*Id.* at p. 352.)

"Moreover, even if the broad language of the release were deemed sufficient to shift the burden of proof in the summary judgment proceeding to Howard, the

circumstances surrounding the release agreement disclose a triable issue regarding the parties' intent to foreclose any claim against Fredericks. The release was provided by the insurer to implement a settlement agreement negotiated among claimants, including Fredericks, who had agreed to release only Jason Neverkovec. After the release was signed, Alexander & Associates joined with Howard (acting for Jason) to seek a determination of good faith settlement under section 877.6. The only purpose for such a motion is to 'bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor.' If the release had accomplished that purpose already, there would have been no reason for Jason or Alexander & Associates to seek the protection offered by section 877.6." (*Id.* at pp. 352–353, citation and footnote omitted.)

The Court of Appeal also pointed out that the parties and attorneys who signed the release had provided their own declarations stating that they did not intend to release Fredericks, the driver of the other vehicle. (*Id*. at p. 353.) "These statements, to the extent they merely reveal the declarants' undisclosed intentions, would alone be insufficient to establish a triable issue on the determinative question of how a reasonable person signing the release would have understood the insurer's intentions regarding the release of third parties. However, in view of the terms of the release and the surrounding circumstances — particularly the settlement agreement preceding the release and the motion for determination of good faith settlement following it — we conclude that whether Fredericks was actually an intended beneficiary of the release agreement is a triable issue." (*Ibid.*)

Likewise, in *Appleton v. Waessil* (1994) 27 Cal.App.4th 551, the Court of Appeal held that a broadly worded release is not necessarily enough by itself to show that the parties intended to release a third party from all liability. "The standard release form that was executed by appellant discharged only GMC and NMA by name. However, the boilerplate language included in the form purported to release 'all other persons, firms, associations and corporations....' Respondent seizes on the term 'all other persons' as including him. We disagree." (*Id.* at p. 554.)

"Under the facts presented in the instant case, the evidence offered by appellant raised an issue of the parties' intent as to whether respondent was to be included in the category of 'all persons' in the release agreement. It bears repeating that respondent was not just a peripheral actor in this matter. As mentioned, he was the cause of the accident and was a named party defendant. If it was the intent of the parties to release respondent, one has to wonder why such an important player in the cast of characters was not specifically named in the document. The simple fact that respondent was not named created an apparent ambiguity. The extrinsic evidence provided by appellant tended to show that the intent of the parties was not to include respondent in the settlement. The release agreement was therefore reasonably susceptible of the interpretation urged by appellant and the extrinsic evidence was admissible to assist in determining whether or not the agreement actually is ambiguous, and if so, what construction should be given to its terms." (*Id.* at pp. 555–556.)

"[W]e find that the term 'all persons' is ambiguous and that the extrinsic evidence raises a triable issue as to whether there was an intent by any of the settling parties to include respondent as a releasee. Had they so intended, respondent, the known driver and a named defendant, could have been specifically named in both the release and the dismissal. [¶] We hold that the failure to specifically name respondent creates a

triable issue of fact and the cases cited by respondent do not persuade us otherwise." (*Id.* at p. 556.)

In *Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, the California Supreme Court found that a broadly worded release that seemed to release everyone in the world from liability was the product of mutual mistake by the parties to the agreement, and that the parties did not intend to release the moving party from liability. "To determine whether Hess has proven that a mutual mistake occurred, we consider the extrinsic evidence of the contracting parties' intent introduced at trial. This extrinsic evidence is uncontroverted and establishes, as a matter of law, that the inclusion of contractual language ostensibly releasing Ford from liability was a mutual mistake." (*Id*. at pp. 525–526, citation and footnote omitted.)

"As an initial matter, the uncontroverted testimony about the circumstances surrounding the formation of the Release demonstrates that the contracting parties did not intend to release Ford. Ford was not involved in the negotiations and did not sign the Release. Hess's attorney at the time and Sommers, the claims adjuster who negotiated the settlement on behalf of Phillips and Continental, openly discussed Hess's intention to sue Ford after the settlement and to use the settlement proceeds to fund future litigation against Ford. Sommers even acknowledged that Hess would not have settled or signed the Release if Phillips and Continental had wanted to discharge Ford from liability. The purchase of the Ford truck by Hess's attorney *after* agreeing to the settlement further confirms that Hess did not intend to release Ford." (*Id*. at p. 526.)

"The uncontroverted testimony also explains how the mistake occurred. Continental provided the Release and used a standard form with boilerplate language. Sommers, the claims adjuster who negotiated the terms of the settlement on behalf of Continental, did not choose or review the form before Continental mailed it. While the failure of both sides to catch the erroneous language under these circumstances may not be excusable, it is hardly uncommon." (*Ibid*.) Also, "Phillips's filing of a motion for determination of good faith settlement in response to cross-complaints asserted against him instead of relying on the language of the Release confirms that Phillips and Continental had no intention to release Ford." (*Ibid*, citation omitted.)

"Here, the extrinsic evidence is uncontroverted, and all of this evidence points to a mutual mistake and establishes that the parties to the Release did not intend to discharge Ford from liability. Hess was therefore entitled to a directed verdict on the Release issue despite the contractual language." (*Id.* at p. 527, citation omitted.) The Supreme Court also found that the language of the release did not support a conclusion that the parties intended to release Ford. "For example, the small amount of the settlement—$15,000—despite the severity of Hess's injuries strongly suggests that the Release did not cover Ford. The failure of the Release to specifically name Ford even though the signatories to the Release had counsel and were aware of Hess's claims against Ford also suggests that the Release did not cover those claims." (*Ibid*, citations omitted.)

"Ford's invocation of third party beneficiary status does not compel a contrary conclusion. Determining whether Ford was a third party beneficiary of the Release is a question of ordinary contract interpretation. Because the rules of contract law establish that the parties to the Release did not intend to benefit Ford, Ford is an 'intermeddler' and cannot enforce the terms of the Release. In any event, Ford acquired no rights for

value and could therefore suffer no prejudice from any reformation of the Release." (*Id.* at p. 528, citations omitted.)

On the other hand, the Court of Appeal in *Rodriguez v. Oto* (2013) 212 Cal.App.4th 1020 found that a broadly worded release was sufficient to constitute a complete defense to claims brought by the plaintiff against Toshiba, the employer of the tortfeasor driver, even though Toshiba was not named in the release and there was no affirmative evidence that the parties intended to release Toshiba. "The release signed by plaintiff extended not only to the named releasees Hertz and Oto, and their agents and successors, but to 'all other persons, firms, corporations, associations or partnerships.' As a matter of plain logic, Toshiba—along with every other person or corporation in the universe—belongs to the class thus absolved of liability. The question is whether this logic alone is enough to establish, in the absence of countervailing evidence, that Toshiba is entitled to the protection of the release. We are confident that under the circumstances shown here, this question warrants an affirmative answer." (*Id.* at p. 1027.)

"Plaintiff contends that a third party who is not named in a release, but who seeks to bring himself within its terms, bears the burden of showing that the lease applies to him—and, moreover, that '[t]his burden is ordinarily not met by simply relying on a literal interpretation of the contract.' (Italics omitted.) In addition, he asserts, a third party must present 'evidence of the contracting parties' *actual intent* to benefit the third party.' (Original italics.) Later he asserts that Toshiba failed to carry this burden because it presented no 'testimony or other extrinsic evidence that would support the issue of the *intention* of the parties who actually made out the release.' We do not find this approach consistent with the governing principles of contract law; nor do we believe it is sustained by the authorities plaintiff cites." (*Ibid.)*

"In the absence of fraud, mistake, or another vitiating factor, a signature on a written contract is an objective manifestation of assent to the terms set forth there. If the terms are unambiguous, there is ordinarily no occasion for additional evidence of the parties' subjective intent. Their 'actual intent,' for purposes of contract law, is that to which they manifested assent by executing the agreement." (*Ibid,* citations omitted.) "It is true that in determining the meaning of a contract, the dominant objective is to 'give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.' But in ascertaining the parties' mutual intention, their agreed language 'is to govern ... if the language is clear and explicit, and does not involve an absurdity.' When the contract has been 'reduced to writing,' the parties' intention 'is to be ascertained from the writing alone, if possible,' subject to other rules of interpretation." (*Id.* at pp. 1027–1028, citations omitted.)

"The governing substantive principle is that a nonparty who claims benefits under the contract is entitled to do so as long as the claimed benefit does not flow to him as a mere *incident* of the agreement, but is one the contracting parties *intended* to confer." (*Id.* at p. 1028, citations omitted, italics in original.) "The rights of a third party beneficiary thus depend upon the intent of the contracting parties. 'Ascertaining this intent is a question of ordinary contract interpretation.' It follows that if the requisite intent appears unambiguous from the face of the contract, the third party makes a prima facie showing of entitlement merely by proving the contract. This is what Toshiba did here. Under ordinary principles of contract law, this satisfied both its substantive burden as a third party beneficiary and its procedural burden as the moving party asserting an affirmative defense on summary judgment." (*Ibid,* citation omitted.)

The Court of Appeal disagreed with the holding of *Neverkovec* to the extent that court stated that, "The circumstance that a literal contract interpretation would result in a benefit to the third party is not enough to entitle that party to demand enforcement', and that 'Because the court must consider the circumstances of the contracting parties' negotiations to determine whether a third party not named in the release was an intended beneficiary, it will seldom be sufficient for the third party simply to rely on a literal application of the terms of the release." (*Id.* at pp. 1029-1030, quoting *Neverkovec, supra*, at pp. 348-349, italics omitted.) "We have no doubt that for a contract to confer rights on a third party, the contracting parties must intend it to do so. Beyond that we have grave reservations about the reliability of the above passage as a statement of the law applicable to a case where, as here, the contract expresses unambiguously an intent to confer rights on a class of persons including the third party asserting rights under the contract. The gravamen of the passage appears to be that even where the contract plainly expresses an intent to grant rights to the party claiming them, he can only establish those rights by presenting extrinsic evidence sufficient to show that the parties really meant what they said. Such an approach flies in the face of 'the generally applicable law of contracts" —which, as we have said, determines the parties' intent in the first instance from what they said, and moves on to other evidence only if some recognized ground is shown to do so, such as ambiguity, fraud, mistake, or unconscionability." (*Id.* at p. 1030, citation omitted.)

"For that reason we cannot subscribe to several other premises emanating from the above passage, as applied to an instrument such as the release before us. Thus we do not accept it as a general rule that, in a case such as this one, the rights of a third party cannot be determined without 'consider[ing] the circumstances of the contracting parties' negotiations.' That proposition too flies in the face of the basic principles of contract law we have already described. Again, the cases cited for it involved agreements that were silent or facially ambiguous with respect to the rights of third parties. The courts were discussing problems of proof on the pivotal question whether an agreement was intended to confer enforceable benefits on the third party or whether the benefit to him, if any, was incidental to the agreement." (*Ibid,* citation and footnote omitted.)

"The very essence of a release is to grant legally enforceable rights, in the form of an immunity or excuse from suit. Insofar as the release extends its benefits to third parties, there can be no question of their being denied enforcement on grounds that they are incidental. The nature of the benefit conferred cannot be an issue. Any benefit conferred by the release is either intentional, or nonexistent. The only question is to whom those rights are granted, and specifically, whether the party now asserting them is among them. Cases where a contract is silent or ambiguous with respect to the rights of third parties are wholly inapposite, and statements of law appearing in them cannot be uncritically imported into the present context without doing serious violence to the basic principles noted above—and sowing confusion and uncertainty among those dependent on those principles to guide their affairs." (*Id.* at p. 1031.)

"Nor can we endorse the corollary of the above premise, that a third party belonging to a class unambiguously exonerated by a release cannot ordinarily carry its prima facie burden of establishing standing under the release by relying solely on the language of the release. If a contract expressly and unambiguously grants rights to a class including the person now seeking to enforce it, proof of the contract makes out the

third party's threshold case. It is of course competent for the party opposing enforcement to establish grounds to avoid the apparent effect of the agreement. But there is no general burden on the person invoking the agreement to find a way to prove, as plaintiff insists, an "*actual intent* to benefit the third party." (Original italics.) The agreement itself is such proof." (*Id.* at p. 1031.)

Thus, there is a split of authority as to whether a broadly worded release like the one in the present case, which purports to release "any other person, corporation, association or partnership allegedly responsible for injuries to the person and/or property of [plaintiff]" can be enforced by a third party like the defendant Stonebridge Association. However, this court intends to follow the holding of *Rodriguez v. Oto, supra*, and find that Stonebridge is entitled to enforce the release as a third party beneficiary. The release clearly states that it applies to "any other person, corporation, *association* or partnership allegedly responsible for injuries to [plaintiff]." (Exhibit A to Defendant's Index of Evidence, italics added.) Under the holding of *Rodriguez*, the release's literal language is enough to meet defendant's burden of showing that it is an intended third party beneficiary to the release, and thus it is allowed to enforce the release's terms. (*Rodriguez, supra*, at p. 1031.) Stonebridge is not required to prove through extrinsic evidence that the parties intended to release it, as the language of the release itself is enough. (*Ibid*.) Thus, Stonebridge has met its burden of showing that the release provides a complete defense to plaintiff's claims against it here, since plaintiff agreed to release all such claims against all other persons, corporations, associations, and partnerships.

Also, while plaintiff has attempted to raise triable issues of material fact with regard to the question of whether the parties intended to release Stonebridge when they signed the settlement agreement, plaintiff's evidence is insufficient to raise a material issue of fact here.[1] First of all, to the extent that plaintiff contends that she did not read or understand the release's language and thus did not intend to release Stonebridge here, the fact that plaintiff did not read the release before she signed it is not enough to show that she did not consent to its terms. (*Berard Construction Co. v. Municipal Court*, *supra*, 49 Cal.App.3d at p. 722.) Plaintiff is deemed to have read and understood the terms of the agreement that she signed. (*Ibid*.) She was represented by counsel at the time she entered into the agreement, which was negotiated by the parties over the course of several months. Thus, her alleged failure to read and understand the implications of the agreement does not relieve her from the consequences of the release.

In addition, the extrinsic evidence that plaintiff has submitted to support her opposition fails to show that the parties to the settlement agreement did not intend to release all other persons, corporations, associations, or partnerships from liability for her injuries, as the agreement clearly states. Plaintiff has submitted the declaration of her attorney, Nathan Miller, who states that he and the representative of Travelers Insurance never discussed releasing any claims against Stonebridge during negotiations regarding the settlement. (Miller decl., ¶ 5.) He also points out that, after he filed the present lawsuit against Stonebridge, Stonebridge then filed a cross-complaint against the homeowners. (*Id*. at ¶ 6.) Travelers then demanded that plaintiff provide indemnity for them pursuant

[1] Defendant has objected to several portions of plaintiff's evidence. The court intends to sustain the objections to Ms. Barnes' declaration, paragraphs 6, 16, and 17. The court also intends to sustain the objections to the declaration of Mr. Miller, paragraphs 7, 11, and 12. In addition, the court intends to sustain the objections to the declaration of Mr. Vannucci, paragraphs 3 and 4.

to the terms of the settlement agreement. (*Ibid*.) He further claims that he did not intend to release Stonebridge as part of the settlement agreement, and that he does not believe that Travelers intended to release Stonebridge either. (*Id*. at ¶ 7.) He further claims that he made it clear to Travelers while he was negotiating the settlement that he did not believe that the $500,000 policy limits would be enough to compensate plaintiff for her injuries, and that he believed that plaintiff would be able to recover more than $500,000 in damages if the case went to trial. (*Id*. at ¶¶ 8-9.) Furthermore, he alleges that Travelers, which also insures Stonebridge, never stated or represented to him during the negotiations prior to the filing of the present action that Stonebridge was covered by the settlement. (*Id*. at ¶ 11.) In fact, Travelers' representative recommended that Miller file the present lawsuit against Stonebridge in order to allow the parties to engage in preliminary discovery. (*Ibid*.)

However, none of plaintiff's evidence raises a triable issue of material fact with regard to whether the parties to the settlement intended to release Stonebridge. At most, plaintiff's evidence shows that that parties did not discuss releasing Stonebridge while they were negotiating the settlement. Yet they still included broad language that clearly stated that they intended to release all other people, corporations, associations, and partnerships from liability, which would by its plain terms include Stonebridge.

Also, the situation here is distinguishable from cases like *Neverkovec* and *Appleton*, where there was evidence that the parties actually discussed their plans to bring a claim against the party who later claimed to have been released, or had already named that party as a defendant. (*Neverkovec, supra,* 74 Cal.App.4th 337; *Appleton, supra,* 27 Cal.App.4th 551.) There were no similar discussions in the present case, and instead the parties apparently simply entered into the settlement without any consideration of whether the settlement might affect their right to bring future claims. Nor was Stonebridge already named as a defendant in the earlier action. Plaintiff did not seek to sue Stonebridge until months after settling her claims against the homeowners.

In addition, in *Neverkovec*, the settling defendants had filed a motion for a good faith settlement determination, which was inconsistent with the idea that the release had already barred any other claims against them. (*Id*. at pp. 852-853.) By contrast, here the homeowners did not file a motion for good faith settlement, and instead plaintiff simply dismissed her case after it settled.

Hess v. Ford Motor Co., supra, 27 Cal.4th 516 is also distinguishable, as the Supreme Court in Hess determined that the release language was the result of a mutual mistake of the settling parties. (*Hess, supra*, at pp. 526-527.) Here, plaintiff has not attempted to show that the release was the result of a mutual mistake.

Thus, there is no evidence showing that plaintiff intended to bring a claim against Stonebridge at the time she negotiated her settlement with the homeowners, or that is otherwise inconsistent with the notion that the parties intended to release all other persons, corporations, associations, and partnerships from liability as the release clearly states.[2]

[2] Plaintiff has also submitted the declaration of John Vannucci, who is an attorney who specializes in personal injury claims. Mr. Vannucci's declaration is apparently offered to show that plaintiff's

Therefore, the court intends to find that the release was effective to bar all claims against other persons, corporations, associations, and partnerships, including Stonebridge, and it will grant summary judgment as to the entire complaint in favor of Stonebridge.

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: JS on 11/22/2024.
(Judge's initials) (Date)

claim is worth far more than the $500,000 she received from the homeowners to settle, and may be worth in excess of $2 million. However, it is unclear how Mr. Vannucci's declaration is either relevant or admissible in the present case. In any event, his declaration does not establish any triable issues of material fact, as the amount of plaintiff's potential damage recovery if the case went to trial is not at issue in the present motion. The only real issue is whether the parties intended to make Stonebridge a third party beneficiary of the settlement and release. Therefore, Mr. Vannucci's declaration fails to raise any triable issues of material fact that would affect the outcome of the present motion.