

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA**

**MINUTE ORDER**

DATE: 09/25/2020

TIME: 08:20:00 AM

DEPT: 20

JUDICIAL OFFICER PRESIDING: Matthew P. Guasco

CLERK: Miriam Hernandez

REPORTER/ERM: None

CASE NO: **56-2019-00535055-CU-PA-VTA**

CASE TITLE: **Stewart vs. City of Ojai**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: PI/PD/WD - Auto

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**EVENT TYPE:** Motion - Other (CLM) to Contest the Application for Good Faith Settlement between Esther Bishop Holland and Plaintiffs

**MOVING PARTY:** The People of the State of California acting by and through the Department of Transportation

**CAUSAL DOCUMENT/DATE FILED:** Motion to Contest Good Faith Settlement between Esther Bishop Holland and Plaintiffs, Declaration of Alexander Prieto in Support of and Supporting Evidence, 09/01/2020

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**EVENT TYPE:** Joinder to Oppose Defendant Esther Bishop Hollands Application of Determination of Good Faith Settlement

**MOVING PARTY:** City of Ojai

**CAUSAL DOCUMENT/DATE FILED:** Joinder Motion to Oppose Defendant Esther Bishop Hollands Application of Determination of Good Faith Settlement, 09/15/2020

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**EVENT TYPE:** Motion To Quash Notices of Deposition and for Protective Order

**MOVING PARTY:** City of Ojai

**CAUSAL DOCUMENT/DATE FILED:** Motion to Quash Notices of Deposition and for Protective Order, Memorandum of Points and Authorities and Declaration of James N Procter II in Support thereof, 07/28/2020

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**APPEARANCES**

Stephen K McElroy, counsel, present for Plaintiff(s) telephonically.

David S Canter, counsel, present for Defendant(s) telephonically.

Alexander Prieto, counsel, present for Defendant(s) telephonically.

James N. Procter, II, counsel, present for Defendant(s) telephonically.

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At 08:42 a.m., court convenes in this matter with all parties present as previously indicated.

Counsel have received and read the court's written tentative ruling.

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Matter submitted to the Court with argument.

The Court finds/orders:

### **Motion to Quash Notices of Deposition and for Protective Order**

The Court's tentative is adopted as the Court's ruling.

The Court GRANTS the motion to quash the deposition notices served by plaintiffs on Ojai City Council members Suza Francina, Johnny Johnston, Bill Weirick, and Ryan Blatz for the following reasons:

(1) The general rule is that the heads of agencies and other top governmental executives and officials are not subject to depositions in civil cases absent compelling reasons. (*Westly v. Superior Court (Cates)* (2004) 125 Cal.App.4<sup>th</sup> 907, 910, 23 Cal.Rptr.3d 154; *Nagle v. Superior Court (Green)* (1994) 28 Cal.App.4<sup>th</sup> 1465, 1467-68, 34 Cal.Rptr.2d 281.)

(2) An exception to this rule exists if and only if the top governmental official has direct personal factual information about the case and that information is not reasonably available from any other source. (*Westly v. Superior Court (Cates)*, *supra*, 125 Cal.App.4<sup>th</sup> at p. 911, 23 Cal.Rptr.3d 154; *Deukmajian v. Superior Court (Wilson)* (1983) 143 Cal.App.3d 632, 634-35, 191 Cal.Rptr. 905.)

(3) The Court finds that plaintiffs have failed to meet their burden of demonstrating that City Council members Francina, Johnston, Weirick and/or Blatz have any personal knowledge of facts relevant to this case. None of these public officials are alleged to have witnessed the tragic accident which resulted in the death of Ms. Rubaloff. Their alleged notice or knowledge of a dangerous condition at the pedestrian street crossing in question is information readily available from other sources, including but not limited to traffic collision reports, Cal Trans, Ventura County and City traffic engineering surveys and reports, and other anecdotal information or media reports made known to City.

Accordingly, the Court GRANTS the motion and hereby enters its ORDER quashing the deposition notices as to each and every one of the above City Council members.

Counsel for City shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the Rules of Court.

### **Motion to Contest the Application for Good Faith Settlement; and Joinder to Oppose**

The Court's tentative is adopted as the Court's ruling, as modified.

The Court OVERRULES State's objections to Holland's declaration and references to the court file in the criminal case against Holland (which was dismissed).

Defendant City of Ojai ("City") has filed a Joinder in State's Motion, as well as a separate motion opposing the settlement as to which the Court takes judicial notice.

The Court DENIES the motion of State and GRANTS the application of Holland for a determination of good faith settlement for the following reasons:

(1) Code of Civil Procedure section 877.6 provides, in pertinent part, as follows:

"(a)(1) Any party to an action in which it is alleged that two or more parties are joint tortfeasor . . . shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff . . . and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in

subdivision (b) of Section 1005 . . . .

"(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, an any counteraffidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing.

". . .

"(d) A determination by the court that the settlement is in good faith shall bar any other joint tortfeasor . . . from any further claims against the settling tortfeasor . . . for equitable comparative contribution or comparative indemnity, based on comparative negligence or comparative fault."

(2) The party asserting lack of good faith has the burden of proof on that issue. (Code of Civ. Proc., § 877.6, subd. (d).) "[I]n moving under section 877.6 for a good faith settlement determination, the moving party must set forth the value of the consideration paid and an evidentiary basis for that valuation, and must demonstrate that the valuation 'was reached in a sufficiently adversarial manner to justify the presumption that a reasonable valuation was reached.' [Citations.] A nonsettling defendant may then challenge the settlement by 'attempt[ing] to prove that the parties' assigned value is too low and that a greater reduction in plaintiff's claims against the remaining defendants is actually warranted.' [Citation.]" (*Franklin Mint Co. v. Superior Court (Manatt, Phelps & Phillips)* (2005) 130 Cal.App.4th 1550, 1559-1560, 31 Cal.Rptr.3d 319; see also Code of Civ. Proc., § 877.6(a)(2).)

(3) Once the moving party makes a threshold showing, the burden shifts to the nonsettling party opposing a good faith determination to demonstrate that the settlement is not in good faith. (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499, 213 Cal.Rptr. 256, 698 P.2d 159 ("*Tech-Bilt*").)

(4) In making the determination of whether a settlement is in good faith within the meaning of Code of Civil Procedure section 877.6, the Court addresses the following factors:

- (a) The "rough approximation of plaintiffs' total recovery and the settlor's proportionate liability";
- (b) The amount paid in settlement;
- (c) The "allocation of settlement proceeds among plaintiffs";
- (d) The "recognition that a settlor should pay less in settlement than he would if he were found liable after a trial";
- (e) The "financial conditions and insurance policy limits of settling defendants"; and
- (f) The "existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants."  
(*Tech-Bilt, supra*, 38 Cal.3d 488, 499, 213 Cal.Rptr. 256, 698 P.2d 159.)

(5) The Court's evaluation of the *Tech-Bilt* factors is as follows:

(a) A rough approximation of plaintiffs' total recovery is difficult given the information presented. The Court finds, based on its considerable experience over the years with the litigation, mediation, and trial of major personal injury actions, including wrongful death automobile/pedestrian accidents, that Holland's estimate of \$250,000-\$400,000 total potential verdict range for economic and non-economic damages is on the low end of the spectrum. A potential gross verdict in a much higher range is probable on these facts.

Assessing Holland's probable proportionate liability is easier. Holland's car struck Ms. Rubaloff while

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Ms. Rubaloff was walking in or around the pedestrian cross-walk. Holland, therefore, is directly responsible for the impact between her car and Ms. Rubaloff, thus enhancing the likelihood of a substantial comparative fault assessment against her by the trier of fact. The precise numerical range of that apportionment is speculative based on the information presented.

Other defendants, including the City of Ojai ("City") and State may face substantial comparative fault exposures depending upon the success of plaintiffs' case against them on a dangerous condition of public property theory. Thus, there is a probability that comparative fault will be apportioned between Holland, City and State. The precise apportionment as between these three defendants is speculative based on the information presented.

(b) The amount paid in settlement consists of the policy limit of \$100,000 by Holland's automobile liability insurer. Given Holland's substantial, direct contributory role in the fatal accident, this settlement is low in comparison to the probable potential apportionment of fault to Holland and the probable jury verdict damages range.

(c) The Court was not provided with any information about the allocation of the settlement proceeds among the plaintiffs.

(d) The policy limit settlement of \$100,000 is consistent with a reasonable discount for settlement as opposed to the risk of trial.

(e) The settlement is for the full policy limit of \$100,000, and Holland has declared that she has no other insurance available to indemnify her as to this accident. State has not presented the Court with any evidence Holland has other assets available in the event of an excess recovery. Plaintiffs are represented by skilled and experienced counsel. If Holland had assets which could be reached in the event of an excess recovery, the Court doubts plaintiffs would have agreed to accept the policy limit. State has not presented any evidence Holland has assets available to pay for an excess judgment. Holland's declaration refers to a renter's insurance policy which does not cover this risk, from which the Court infers that Holland rents and does not own her current residence.

(f) There is no evidence of collusion, fraud or tortious conduct aimed at harming the interests of the non-settling defendants.

(6) Weighing and balancing the above factors, the Court finds that the settlement between Holland and plaintiffs is in good faith, and it is within the ballpark of reasonable settlements for cases of this nature.

(7) Accordingly, the Court enters its ORDERS that State's motion contesting the settlement is DENIED, and that Holland's motion for determination of good faith settlement pursuant to Code of Civil Procedure section 877.6 is GRANTED.

(8) The Court enters its further ORDER that any and all other joint tortfeasors shall be forever barred from bringing any claims against Holland for equitable comparative contribution or comparative indemnity, based on comparative negligence or comparative fault arising from the accident which is the subject of this action.

The Court takes City's motion opposing the settlement, which is set for hearing on October 1, 2020 at 8:20 a.m. in Courtroom 20, off calendar in light of the above ruling.

Counsel for Holland shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the Rules of Court.