Tentative Rulings for September 22, 2026
Department 501

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.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(20)

Tentative Ruling

Re: ***Garreth Rathjanes vs. Maclynn Dockstader***
Superior Court Case No. 25CECG04969

Hearing Date: September 22, 2026 (Dept. 501)

Motion: By Defendants Fix Auto – Fresno Body Works South and Maclynn Dockstader to Compel Arbitration

Tentative Ruling:

To deny. (Code Civ. Proc., § 1281.2)

Explanation:

This motion was originally set to be heard on August 25, 2026. The motion was continued by the court to September 22, with the direction that "[t]he deadlines for opposition and reply papers will remain the same as for the original hearing date." Plaintiff filed an untimely opposition, as admitted in the opposition papers. Apparently unaware that plaintiff filed untimely opposition, moving parties Fix Auto – Fresno Body Works South and Maclynn Dockstader (collectively, "defendants") filed a reply brief advising the court that no opposition had been filed, without addressing the opposition.

Because the court would deny the motion even if unopposed because of the below obvious defects, the opposition will not be considered (Cal. Rules of Court, rule 3.1300(d)), and no substantive reply is necessary or will be permitted.

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc., § 1281.2) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Cal.App.4th 1497, 1505.) Thus, when a motion to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine: (1) whether the agreement exists, and (2) if any defense to its enforcement is raised, whether it is enforceable. The moving party bears the burden of proving the existence of an arbitration agreement by a preponderance of the evidence. The party claiming a defense bears the same burden as to the defense. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413-414.)

Defendants move to compel plaintiff to arbitrate his employment-related claims pursuant to three different arbitration agreements purportedly signed or acknowledged electronically by plaintiff. However, defendants do not submit evidence authenticating plaintiff's electronic signature/acknowledgement.

Where the agreement was purportedly signed electronically, the petitioner has the burden of proving by a preponderance of the evidence that the electronic signature was authentic. (*Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 846.)

In *Ruiz*, a declaration that failed to explain how Ruiz's printed electronic signature, or the date and time printed next to the signature, came to be placed on the arbitration agreement was insufficient. A supplemental declaration did not provide the necessary authentication where the declarant explained that the agreement was part of an employee acknowledgment form that "is" presented to all employees and that each employee is required to log into the company's HR system, using his or her "unique login ID and password," to review and sign the employee acknowledgment form. This too was insufficient, as the declarant did not explain how, or upon what basis, she inferred that the electronic signature was "the act of" Ruiz, leaving a critical gap in the evidence supporting the petition. (*Id.* at pp. 843-844.)

Espejo v. Southern California Permanente Medical Group (2016) 246 Cal.App.4th 1047 provides an example of a showing that would be found adequate:

> Tellez detailed SCPMG's security precautions regarding transmission and use of an applicant's unique username and password, as well as the steps an applicant would have to take to place his or her name on the signature line of the employment agreement and the DRP. Based on this procedure, she concluded that the "name Jay Baniaga Espejo could have only been placed on the signature pages of the employment agreement and the DRP by someone using Dr. Espejo's unique user name and password.... [¶] Given this process for signing documents and protecting the privacy of the information with unique and private user names and passwords, the electronic signature was made by Dr. Espejo" on the employment agreement and the DRP at the date, time, and IP address listed on the documents. These details satisfactorily meet the requirements articulated in *Ruiz* and establish that the electronic signature on the DRP was "the act of" Espejo (*Civ.Code, § 1633.9, subd. (a)*), and therefore provide the necessary factual details to properly authenticate the document.

(*Id.* at p. 1062, fn omitted.)

The evidence submitted by defendants is nowhere near enough to authenticate plaintiff's digital signatures. Dean Dockstader, Chief Financial Officer of Dockstader and Dockstader, Incorporated, states that all employees were "requested to agree to binding arbitration by signing the written arbitration agreement(s)." (Dockstader Decl., ¶ 6.) Mr. Dockstader then attaches three different arbitration policies that heobtained from plaintiff's personnel files, and which plaintiff signed acknowledged electronically. (Dockstader Decl., ¶¶ 8, 9, Exhs. 1-3.) There is no showing that Mr. Dockstader has personal knowledge that plaintiff electronically signed these agreements, and no showing that it could only have been plaintiff that electronically signed his name.

The motion must also be denied because there is no showing that plaintiff's employer is a party of the arbitration agreements. The Complaint alleges that plaintiff's employer was Fix Auto – Fresno Body Works South. The arbitration agreements / policies identify the contracting "Company" as "Fresno Body Works – North." The declaration of Mr. Dockstader does not address the difference or the relation between the two entities, such as showing that they are both dbas of the legal corporate entity. Mr. Dockstader says that Fix Auto – Fresno Body Works South is a dba of Dockstader and Dockstader, Incorporated – but neither entity is identified in the arbitration agreements. Since the arbitration agreements are with "Fresno Body Works – North," there is no showing that either named defendant is a party to the agreements or has standing to enforce them.

For these reasons the court intends to deny the motion, even without considering the late-filed opposition.

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 09/21/26 .
(Judge's initials) (Date)

(48)

Tentative Ruling

Re: ***LS Power Grid California, LLC v. Casaca Vineyards***
Superior Court Case No. 26CU00227

Hearing Date: September 22, 2026 (Dept. 501)

Motion: By Plaintiff for Prejudgment Possession

Tentative Ruling:

To grant. Plaintiff LS Power Grid California, LLC may take possession 30 days after service of the order. (Code Civ. Proc., §§ 1255.450, 1255.410.)

Explanation:

Plaintiff LS Power Grid California, LLC ("Plaintiff") seeks an order for prejudgment possession of an easement to property by eminent domain for a public use – construction of transmission line to the proposed Manning substation. All defendants have been timely served with the motion for prejudgment possession but an opposition has not been filed. (Code Civ. Proc. § 1255.410.)

Where a motion is unopposed, the court must grant the motion if it finds:

> (A) The plaintiff is entitled to take the property by eminent domain.
>
> (B) The plaintiff has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article.

(Code Civ. Proc., § 1255.410, subd. (d)(1).)

The evidence submitted by Plaintiff supports granting the application. For a nonpublic entity to qualify as a plaintiff entitled to take property by eminent domain, the entity must demonstrate that it is a person authorized by statute to exercise the power of eminent domain and that the requirements under Code of Civil Procedure section 1240.030 are met. (*Robinson v. Superior Court* (2023) 88 Cal.App.5th 1144, 1167.) Here, Plaintiff is an investor-owned public utility electrical corporation in the business of developing and operating regulated electric transmission facilities in California. As such, Plaintiff is entitled to take the transmission line easement by eminent domain pursuant to California Public Utilities Code sections 612, 217, and 218, and Code of Civil Procedure sections 1240.510 and 1240.610. Plaintiff has also demonstrated the requirements set forth by section 1240.030 are met, which states:

> The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

> (a) The public interest and necessity require the project.
>
> (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
>
> (c) The property sought to be acquired is necessary for the project.

Plaintiff has met its burden of demonstrating it is entitled to possession of the transmission line easement by eminent domain. First, the project is necessary in order to provide safe and reliable electrical service to existing and projected demands in Fresno County and surrounding areas. (Code Civ. Proc., § 1240.030, subd. (a).) Second, the California Public Utilities Commission determined that the project is located in a manner that minimizes adverse impacts. The property contains no residential dwellings and any impact of the construction of the transmission lines to farming activity should be restored once construction is complete. Last, the easement is necessary for the project because a transmission line between the existing Tranquility Switching Station to the proposed Manning substation is required under the current design and timeline of the project.

As to the second requirement under section 1255.410, Plaintiff has deposited with the State Treasury the probable amount of compensation.

Plaintiff's motion for prejudgment possession of the transmission line easement is granted. In regard to the effective date of the order, the court declines to grant Plaintiff's request for an order for possession on or after a specified date. Plaintiff may take possession after 30 days of service of the order in accordance with Code of Civil Procedure section 1255.450.

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 09/01/26.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***JT2, Inc. v. State Center Community College District***
Superior Court Case No. 24CECG02375

Hearing Date: September 22, 2026 (Dept. 501)

Motion: Defendant State Center Community College District's Motion for Summary Judgment, or in the Alternative Summary Adjudication, of Plaintiff JT2's Complaint and Harris Construction's Cross-Complaint

Tentative Ruling:

To grant State Center Community College District's motion for summary judgment/adjudication as to plaintiff JT2's tenth and eleventh causes of action. To deny the District's motion for summary adjudication of Harris Construction's fourth, fifth, and seventh cross-claims. To grant the District's motion for summary adjudication of Harris' sixth cross-claim for contribution. (Code Civ. Proc., §437c.)

Explanation:

Motion as to Plaintiff JT2's First Amended Complaint - Tenth Cause of Action for Negligence: The court intends to grant summary judgment on the plaintiff's claim for negligence against the District defendants, as the District and its employees are immune from negligence liability unless there is a statute that specifically authorizes a claim against them. Here, plaintiff has failed to cite any statute that authorizes a claim for negligence against the District under the circumstances, so plaintiff cannot prevail on its negligence or equitable indemnity claims.

"'The elements of a cause of action for negligence are well established. They are "(a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury."'" (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917–918, citation and italics omitted.)

However, public entities such as the District and its employees are not liable for negligence unless there is a statute that specifically provides for public entity liability. (Gov. Code, § 815.) "[T]here is no common law tort liability for public entities in California. Sovereign immunity is the rule and a public entity may be held liable only if there is a statute subjecting it to civil liability. To hold otherwise would contradict the Legislature's mandate that '[e]xcept as otherwise provided by statute [¶] ... [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity....'" (*Torres v. Department of Corrections & Rehabilitation* (2013) 217 Cal.App.4th 844, 850, citations omitted.)

Plaintiff has cited to multiple statutes and regulations in its first amended complaint in order to support its claim for negligence against the District and its employees. (FAC, ¶¶ 41-54.) However, none of the cited statutes includes an express waiver of the general rule of immunity. Instead, the statutes set forth the requirements and procedures for soliciting bidding on public works projects. For example, plaintiff cites to Public Contract Code sections 1100, 1104, 20111, 20651, 20112, 20651.7(a), and Tile 5 of the California Code of Regulations, section 53203, as well as the District's regulations AR 6330, 6340, and 6350. (*Ibid*.) These statutes and regulations do not expressly state that the public entity that solicits bids on a public works project may be held liable in negligence to a subcontractor for failure to comply with their requirements, or that the public entity may be held liable for any inaccuracies or omissions in the contract or bidding documents. The cited statutes and regulations merely establish the procedures and rules that a public entity must follow in soliciting bids, without providing that the entity may be held liable in tort if it fails to follow the rules.

While plaintiff contends that these statutes and regulations impose certain mandatory duties on the District and its employees to follow the required procedures regarding soliciting bids on public works projects, none of the cited statutes and regulations contain any language that clearly provides that the District may be liable if it negligently or intentionally fails to follow the statutory procedures. Therefore, since plaintiff has failed to show that there is a statute that clearly and expressly waives sovereign immunity that applies here, plaintiff cannot prevail on its negligence claim against the District or its employees for failing to issue an addendum that listed Local 246 as a signatory to the PLA.

In its opposition, plaintiff has not cited to any cases or other authorities that hold that a public entity may be held liable in tort to a subcontractor where it issues misleading, false, or incomplete information in the bid documents. Plaintiff has cited to *Los Angeles Unified School Dist. v. Great American Ins. Co.* (2010) 49 Cal.4th 739 for the proposition that the District may be held liable for issuing inaccurate or misleading information as part of the bid process. However, the California Supreme Court in *Los Angeles Unified School District* only held that a public entity could be sued by a contractor *for breach of contract* where it provided false or misleading information or failed to disclose relevant information during the bid process, and the contractor then submitted a low bid based on the false or omitted information. (*Id*. at pp. 747-748, 753-754.)

Here, plaintiff was not in privity with the District since it did not directly contract with the District. Instead, it entered into a subcontract with Harris Construction, which was the general contractor for the project. (The District's UMF No. 32.) Thus, plaintiff has not alleged a claim for breach of contract against the District, as it was not in a contractual relationship with the District. It has instead sued the District for negligence. Since plaintiff is not suing for breach of contract, the holding of *Los Angeles Unified School District* does not apply here. Plaintiff has failed to cite to any statute that would permit it to sue the District for negligence under the circumstances. Therefore, plaintiff cannot prevail on its claim for negligence. As a result, the court intends to grant summary adjudication of plaintiff's tenth cause of action for negligence against the District, Miktarian, and Vogt.[1]

[1] Plaintiff has argued that the court has already ruled on and rejected the same argument when it ruled on the demurrer to the first amended complaint. However, the court's ruling on the demurrer was an interim ruling and does not bind the court or the parties in later proceedings. Summary judgment is a separate proceeding from a demurrer and different standards apply to

Eleventh Cause of Action for Equitable Indemnity: Next, the court intends to grant summary adjudication of plaintiff's eleventh cause of action for equitable indemnity. "It is well-settled in California that equitable indemnity is only available among tortfeasors who are jointly and severally liable for the plaintiff's injury." (*Stop Loss Ins. Brokers, Inc. v. Brown & Toland Medical Group* (2006) 143 Cal.App.4th 1036, 1040, italics omitted; see also *The Travelers Indemnity Co. of Connecticut v. Navigators Specialty Ins. Co.* (2021) 70 Cal.App.5th 341, 362.) The equitable indemnity doctrine permits a concurrent tortfeasor to obtain partial indemnity from other concurrent tortfeasors on a comparative fault basis. (*American Motorcycle Assn. v. Superior Court* (1978) 20 Cal.3d 578, 598.) Thus, "a party's liability for equitable indemnity is based on its *proportional share of responsibility* for the damages to the injured party." (*Prince v. Pacific Gas & Electric Co.* (2009) 45 Cal.4th 1151, 1165, italics in original, citation omitted.) However, there can be no indemnity without liability, so if one defendant is immune from liability, then another defendant cannot sue the immune defendant for indemnity. (*Ibid*.)

Here, as discussed above, the District and its employees are immune from tort liability, as there is no statute that authorizes a negligence claim against them for failing to issue an addendum that showed Local 246 was a signatory to the PLA. Since the District is immune from liability, there is no basis for bringing an equitable indemnity claim against it. As a result, the court intends to grant summary adjudication of the eleventh cause of action for equitable indemnity in favor of the District, Miktarian, and Vogt.

Motion as to Harris' Cross-Complaint - Fourth Cross-Claim for Declaratory Relief: The District contends that there is no actual controversy between Harris and the District over whether Harris is obligated to defend and indemnify the District under the Prime Contract and the subcontract. The District also claims that there is no actual controversy about whether JT2 is entitled to indemnity from Harris. Therefore, the District concludes that the court should grant summary adjudication of the declaratory relief claim in its favor.

Under Code of Civil Procedure, section 1060, "Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract."

"To qualify for declaratory relief under section 1060, plaintiffs were required to show their action (as refined on appeal) presented two essential elements: '(1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party.' 'The "actual controversy" language in ... section 1060 encompasses a probable future controversy relating to the legal rights and duties of the parties.' It does not embrace controversies that are 'conjectural, anticipated to occur in the future, or an attempt to obtain an advisory opinion from the court.'" (*Lee v. Silveira* (2016) 6 Cal.App.5th 527, 546, citations and footnote omitted.)

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summary judgment motions. The court is not limited by its prior rulings on demurrer when ruling on a summary judgment motion.

Here, the District contends that there is no actual controversy about the rights and duties of the parties under the Prime Contract or subcontract, because the Prime Contract clearly states that Harris is required to "bind every subcontractor by the terms of this contract as far as applicable to the subcontractor's work." (District's UMF No. 30.) "If Contractor subcontracts any part of this contract, Contractor shall be responsible for any acts or omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors." (UMF No. 31.) "Nothing contained in this agreement shall create a contractual relationship between subcontractor and Owner." (UMF 32.) The Prime Contract also requires the contractors and subcontractors to employ apprentices in apprenticible occupations in a ratio of not less than one apprentice for each five journeymen. (UMF No. 33.) The District claims that there is no dispute that JT2 failed to request or use union journeymen or apprentices to perform work on the project, which was a violation of the PLA. (UMF No. 82.) Thus, the District contends that, under the clear language of the Prime Contract, Harris was responsible for the acts of JT2, its subcontractor. Since there is no dispute that JT2 violated the PLA when it failed to hire any union laborers, and there is also no dispute about whether Harris is responsible for JT2's actions, the District contends that there is no actual controversy between Harris and the District about their rights and duties of under the contracts.

"'The discretion to refuse to entertain an action in declaratory relief vested in the trial court by section 1061 is not unlimited. It may be exercised only when there is a basis in fact for the conclusion that the declaration is not necessary or proper… Any doubt should be resolved in favor of granting declaratory relief.'" (*Siciliano v. Fireman's Fund Ins. Co.* (1976) 62 Cal.App.3d 745, 755, citations omitted.)

"Where, therefore, a case is properly before the trial court, under a complaint which is legally sufficient and sets forth facts and circumstances showing that a declaratory adjudication is entirely appropriate, the trial court may not properly refuse to assume jurisdiction; and if it does enter a dismissal, it will be directed by an appellate tribunal to entertain the action. Declaratory relief must be granted when the facts justifying that course are sufficiently alleged." (*Columbia Pictures Corp. v. De Toth* (1945) 26 Cal.2d 753, 762.)

"[W]hile the court may under certain circumstances, in its discretion, refuse to accept jurisdiction and declare the rights of the parties it is not obligated to so exercise its discretion where the complaint shows that an actual controversy does exist; and in a case such as this where a multiplicity of actions would result unless the rights of the parties were first declared and relief given accordingly in the same action, it would be an abuse of discretion to deny relief." (*California Bank v. Diamond* (1956) 144 Cal.App.2d 387, 390, citations omitted.)

Here, Harris has submitted evidence that there is an actual controversy between itself, JT2 and the District over who is ultimately liable to pay the arbitration award against JT2. The District has taken the position that Harris must indemnify it from JT2's claim, and Harris has disputed the District's position. (Harris Disputed Material Fact Nos. 10-12, 22.) Harris also asserts that the District has refused to pay Harris over $100,000 due to JT2's alleged failure to comply with the PLA. (Brown decl., Exhibit B, ¶ 50.) JT2 has also brought claims against Harris for allegedly concealing the fact that Local 246 signed the PLA. (Brown decl., Exhibit A, ¶ 84.) Harris claims that the District is the party that ultimately created the problem by failing to publish an addendum that would have notified the bidders that Local 246 had signed the PLA. (Harris DMF Nos. 33, 35, 36, 39, 44, 49.) In fact, Harris contends that the District was actively negligent in failing to publish the addendum, so it is not allowed to pass the liability for its negligence to the general contractor, Harris. (Civil Code, § 2782, subd. (b)(2).)

Thus, Harris has shown that there is an actual controversy regarding the rights and duties of the parties under the Prime Contract and subcontract, as the parties have taken opposing positions on whether Harris or the District has any responsibility for JT2's failure to hire union workers on the project, which led to JT2 being held liable for over $1.6 million in arbitration. While the District contends that the Prime Contract clearly requires Harris to ensure that its subcontractors comply with the contract and indemnify it from any claims by its subcontractors, the District is not allowed to shift liability to the general contractor where the District was "actively negligent." (Civil Code, § 2782, subd. (b)(2).) Any contracts that seek to shift liability for the public entity's "active negligence" are void and unenforceable. (*Ibid*.) Here, Harris has presented evidence that the District was actively negligent when it failed to issue an addendum showing that Local 246 was a signatory to the PLA. As a result, despite the indemnity clause in the Prime Contract, there is an actual controversy over whether Harris can be required to indemnify the District because JT2's failure to use union workers on the project was allegedly caused by the District's own negligence. Therefore, the court intends to deny the motion for summary adjudication of the declaratory relief cause of action.

Fifth Cross-Claim for Implied Contractual Indemnity: The District also moves for summary adjudication of the fifth cross-claim for implied contractual indemnity. The District points out that there is an express indemnity clause in the Prime Contract, which requires Harris to indemnify, hold harmless and defend the District against all claims against it unless the injury or harm is caused solely and exclusively by the District's fault or negligence. (UMF No. 29.) The District contends that Harris cannot prevail on its claim for implied contractual indemnity because there is an express indemnity clause that trumps any claim for implied indemnity. It also contends that it was not the sole cause of the harm here, as JT2 "obstinately refused to use Union labor throughout the Project."

However, as discussed above, Civil Code section 2782 voids any contract that seeks to shift liability for the public entity's "active negligence" to the general contractor. There is a triable issue of fact with regard to whether the District was actively negligent in failing to issue an addendum showing that Local 246 had signed the PLA, which allegedly caused JT2 to use non-union labor on the project in violation of the PLA. Thus, the express indemnity clause may be void to the extent that it seeks to shift liability for the failure to use union labor to Harris rather than the District.

Also, the express indemnity clause only applies where the District did not "solely and exclusively" cause of the injury. (UMF No. 29.) Here, there is a factual dispute about whether the District was the sole cause of the harm suffered by JT2. JT2 and Harris allege that the District failed to issue an addendum that notified the bidders that Local 246 had signed the PLA, which in turn caused JT2 to use non-union labor on the project. (FACC, ¶ 56.) Whether the District was the sole cause of the harm is a factual issue that should be resolved at trial, rather than on summary judgment. Therefore, the court intends to deny summary adjudication of the fifth cross-claim for implied indemnity.

Sixth Cross-Claim for Contribution: The District argues that Harris cannot prevail on its contribution claim because no judgment has been entered in the case between Harris and the District. The District notes that the only judgment that has been entered was the result of arbitration between JT2 and Local 246, and that Harris and the District were not part of that case. Therefore, the District contends that the court should grant summary adjudication of the contribution claim.

Under Code of Civil Procedure section 875, subdivision (a), "Where a money judgment has been rendered jointly against two or more defendants in a tort action there shall be a right of contribution among them as hereinafter provided." "Such right of contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof." (Code Civ. Proc., § 875, subd. (c).)

"Contribution is a right created by statute that provides for the distribution of a loss equally among all tortfeasors. The right comes into existence only after the issuance of a judgment declaring more than one defendant jointly liable to the plaintiff." (*Sullins v. Exxon/Mobil Corp.* (N.D. Cal. 2010) 729 F.Supp.2d 1129, 1138, citations omitted.)

Here, as the District points out, there is no judgment between Harris and the District, so Harris cannot prevail on its claim to the extent that it seeks statutory contribution under section 875. Nevertheless, Harris argues that it has adequately alleged a claim for comparative equitable indemnity, and that the court should deem the cross-claim to be sufficient and deny the motion for summary adjudication.

In *American Motorcycle Assn. v. Superior Court* (1978) 20 Cal.3d 578, the California Supreme Court held that "the current equitable indemnity rule should be modified to permit a concurrent tortfeasor to obtain partial indemnity from other concurrent tortfeasors on a comparative fault basis." (*Id.* at p. 598.) The Supreme Court also held that the contribution statutes "should not be interpreted to preclude the recognition of a common law right of comparative indemnity." (*Id*. at p. 602.)

Thus, a party may seek indemnity from a joint tortfeasor under common law equity principles, even if the requirements of section 875 have not been satisfied because no judgment has been entered in the case. However, there must still be some basis to hold the District liable in tort before Harris could seek equitable contribution from it.

"Although the body of law defining and applying principles of equitable indemnity has not fully gelled but is still evolving, one thing is clear: The doctrine applies only among defendants who are jointly and severally liable to the plaintiff." As plaintiff maintains, joint and several liability in the context of equitable indemnity is fairly expansive. We agree it is not limited to "the old common term 'joint tortfeasor'...." It can apply to acts that are concurrent or successive, joint or several, as long as they create a detriment caused by several actors. [¶] One factor is necessary, however. With limited exception, there must be some basis for tort liability against the proposed indemnitor. (*BFGC Architects Planners, Inc. v. Forcum/Mackey Construction, Inc.* (2004) 119 Cal.App.4th 848, 852, citations omitted.)

Here, as discussed above, plaintiff JT2 cannot prevail on its negligence claim against the District, as there is no statutory basis for holding the District liable for its alleged negligence in failing to issue an addendum stating that Local 246 signed the PLA. Thus, even if the court were to interpret the contribution cross-claim as stating a claim for comparative equitable indemnity, the claim would still fail because the District is not a joint tortfeasor that is partially liable for plaintiff's damages. As a result, the court intends to grant summary adjudication of the sixth cross-claim in favor of the District.

Seventh Cross-Claim for Pass-Through: The District moves for summary adjudication of the seventh cross-claim, which alleges a "pass-through" claim against the District. The District concedes that California law allows a contractor to pass through a subcontractor's claim to the public entity property owner where the subcontractor lacks privity with the owner. (Public Contracts Code, § 9204, subd. (d)(5).) However, the District contends that JT2's claim here is not a proper pass-through claim because it is not a claim for unpaid work, but rather an improper attempt to force the District to pay the arbitration award against JT2 that was caused by JT2's own willful refusal to hire union labor despite being required to do so by the PLA. (District's UMF Nos. 113-119.) Therefore, the District concludes that the court should grant summary adjudication of the pass-through claim.

Under Public Contracts Code section 9204, subdivision (d)(5), "If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor." (Pub. Contract Code, § 9204, subd. (d)(5).)

"As a matter of law, a general contractor can present a subcontractor's claim on a pass-through basis. When a public agency breaches a construction contract with a contractor, damage often ensues to a subcontractor. In such a situation, the subcontractor may not have legal standing to assert a claim directly against the public agency due to a lack of privity of contract, but may assert a claim against the general contractor. In such a case, a general contractor is permitted to present a pass-through claim on behalf of the subcontractor against the public agency." (*Howard Contracting, Inc. v. G.A. MacDonald Construction Co., Inc.* (1998) 71 Cal.App.4th 38, 60, citation omitted.)

Here, Harris has alleged that it has submitted a pass-through claim from JT2 to the District for "damages arising from the project, as alleged in the Todd claim." (FACC, ¶ 64.) The Todd claims are solely attributable to the District's actions or omissions. (*Ibid*.) Harris agreed to pass through JT2's claims to the District under Public Contract Code section 9204. (*Id*. at ¶ 65.) The district is allegedly responsible for Todd's damages asserted in the pass-through claims. (*Id*. at ¶ 66.) However, Harris has not attached a copy of the pas-through claims asserted by JT2.

The District submits a copy of the pass-through claim as Exhibit 2 to its request for judicial notice. The court will take judicial notice of the claim and its contents, although not the truth of what it asserts. (*Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 369, fn. 1.) The District asserts that the only remaining claims are based on the arbitration award against JT2, as the other claims have all been settled. However, the claim itself indicates that JT2 is claiming not only indemnity for the arbitration award, but also other unspecified damages for work performed and delays. (Exhibit 2 to Request for Judicial Notice, Pass-Through Claim, p. 5:14-20.) The settlement agreement also excludes "all claims by Harris' subcontractor, Todd…" (Exhibit J to Miktarian decl., p. 1.) Thus, even assuming that the pass-through claim cannot be based on the arbitration award against JT2, it is unclear that the pass-through claim is only for indemnity of the arbitration award against JT2. The claim also includes other claims for work and project delay damages, which would clearly be allowed as pass-through claims under the language of section 9204. Therefore, the District has failed to meet its burden of showing that the cross-claim is improper.

The District cites to a federal case, *Severin v. U.S.* (1943) 99 Ct. Cl. 435, for the proposition that a contractor can only pass through a claim on behalf of a subcontractor where the general contractor has already paid the claim or remains liable to pay it in the future. Here, the District contends that Harris has not yet paid the claim of JT2 and disputes that it is liable for the claim, so the pass-through claim is improper.

First, *Severin* was decided under federal law, not California law, so the citation to *Severin* is not helpful here. The applicable statute here is California Public Contracts Code section 9204, not federal claims law. Section 9204 expressly permits pass-through claims by a subcontractor for unpaid work. The District has not cited to any authorities stating that a general contractor cannot pass through a claim by the subcontractor for damages arising out of the performance of the subcontract that were caused by an arbitration award against the subcontractor. As discussed above, JT2 and Harris have taken the position that it was the District's negligence that caused JT2 to fail to hire union laborers for the project, as the District failed to notify JT2 of the fact that Local 246 had signed the PLA. The District has not met its burden of showing that Harris could not make a pass-through claim based on the arbitration award under the circumstances.

In any event, as previously discussed, the claim included other damages, including unpaid work and delay damages, which are allowed as pass-through claims under section 9204. The District cannot obtain adjudication of only part of a cause of action. The motion must dispose of the entire cause of action, affirmative defense, claim for damages, or issue of duty. (Code Civ. Proc., § 437c, subd. (f)(1).) Here, the motion would only dispose of part of the cause of action, at best. Therefore, the District has not met its burden of showing that it is entitled to summary adjudication of the seventh cross-claim, and the court intends to deny the motion for summary adjudication.[2]

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[2] All parties have submitted multiple objections to each other's evidence. The court is only required to rule on the objections that are material to its ruling on the motion. (Code Civ. Proc., § 437c, subd. (q).) The court finds that most the objections are not material to its ruling, and therefore it will not make express rulings on most of the objections.

That being said, plaintiff JT2's objections to the District's request for judicial notice are overruled, although the court will only take judicial notice of the existence and contents of the arbitration award without accepting the truth of the arbitrator's findings.

The court will also overrule the District's objections to the declarations submitted with Harris' Compendium of Evidence, as well as the District's objections to the Diel, Mann and Paloutzian declarations.

The court will also overrule the District's objections to JT2's declarations submitted with its opposition, as well as the objections to the Todd declaration. The objection to JT2's request for judicial notice is also overruled, although the court will only take judicial notice of the existence and contents of the court's rulings, rather than their truth or legal effect.

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 09/21/26 .
(Judge's initials) (Date)