

**LAW & MOTION CALENDAR
TENTATIVE RULINGS**

May 9, 2024

**Judge Melissa R. McCormick
Dept. CX104**

Department CX104 hears law and motion on Thursdays at 2:00 p.m.

Court reporters: Official court reporters typically are not provided in this department for any proceedings. If the parties desire the services of a court reporter, the parties should follow the procedures set forth on the court's website at www.occourts.org.

Tentative rulings: The court endeavors to post tentative rulings on the court's website by 9:00 a.m. the day of the hearing. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted.

Submitting on tentative rulings: If all parties intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5304. Please do not call the department unless all parties submit on the tentative ruling. If all parties submit on the tentative ruling and so advise the court, the tentative ruling will become the court's final ruling and the prevailing party shall give notice of the ruling.

Appearances and public access: Appearances, whether in person or remote, must comply with Civil Procedure Code section 367.75, California Rule of Court 3.672, Orange County Superior Court Local Rule 375, and Orange County Superior Court Appearance Procedure and Information—Civil Unlimited and Complex (pub. 9/9/22).

Unless the court orders otherwise, remote appearances will be conducted via Zoom. All counsel and self-represented parties appearing via Zoom must check in through the court's civil remote appearance website before the hearing begins. Check-in instructions are available on the court's website.

The public may attend hearings by coming to court or via remote access as described above.

Photographing, filming, recording and/or broadcasting court proceedings are prohibited unless authorized pursuant to California Rule of Court 1.150 or Orange County Superior Court Local Rule 180.

Non-appearances: If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also might make a different order. See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442 n.1.

NO.	CASE NAME	MATTER
1	City of Santa Monica v. Insurance Company of the State of Pennsylvania, et al. 2022-01261243	<u>Plaintiff City of Santa Monica's Motion for Summary Adjudication against Defendant TIG Insurance Company</u> In this insurance coverage action, the City of Santa Monica seeks coverage from its insurers for numerous claims and lawsuits brought by over 200 participants in the Santa Monica Police Activities League (PAL) alleging that Eric Uller, a former

		<p>City employee and PAL volunteer, sexually abused them. The City moves for summary adjudication of 18 issues against defendant TIG Insurance Company. The City asserts that TIG has a duty to defend the City in three lawsuits under three TIG policies (No. SSP-37391435 for the period July 1, 1996-July 1, 1997; No. SSP-0037510979-00 for the period July 1, 1997-July 1, 1998; and No. SSP-0037510979-02 for the period July 1, 1998-July 1, 1999) (Issue Nos. 1-9), and that TIG breached that duty (Issue Nos. 10-18). For the following reasons, the City's motion is denied.</p> <p><i>Legal standard</i></p> <p>A party may move for summary judgment in an action or proceeding if it contends the action has no merit or that there is no defense to the action or proceeding. Civ. Proc. Code § 437c(a)(1). A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends the cause of action has no merit, there is no affirmative defense to the cause of action, there is no merit to an affirmative defense as to any cause of action, there is no merit to a claim for damages, as specified in Civil Code section 3294, or that one or more defendants either owed or did not owe a duty to the plaintiff. Civ. Proc. Code § 437c(f)(1). A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. <i>Id.</i> A motion for summary adjudication proceeds in all procedural respects as a motion for summary judgment. <i>Choochagi v. Barracuda Networks, Inc.</i> (2020) 60 Cal.App.5th 444, 453.</p> <p><i>Duty to defend (Issue Nos. 1-9)</i></p> <p>The City argues TIG has a duty to defend it in three lawsuits under the three above-identified TIG policies. TIG states in its opposition that it has acknowledged a duty to defend the City under the three policies in, among other lawsuits, the three lawsuits at issue in this motion. Opp. at 4:3-6, 5:1-5, 9:3-8. The City agrees in its reply that TIG has conceded the first issue in this motion (the duty to defend). Reply at 1:7. The City's motion for summary adjudication of Issue Nos. 1 through 9 is denied as moot.</p> <p><i>Breach of duty to defend (Issue Nos. 10-18)</i></p> <p>The City argues TIG breached its duty to defend by failing to acknowledge its duty to defend the three lawsuits until after the City filed the instant motion. In other words, the City argues TIG's acknowledgment of its duty to defend the three lawsuits was tardy, and that tardiness constitutes a breach of the duty to defend that can be summarily adjudicated in the City's favor.</p>
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		<p><u>Defendant TIG Insurance Company's Motion for Summary Adjudication</u></p> <p>In this insurance coverage action, the City of Santa Monica seeks coverage from its insurers for numerous claims and lawsuits brought by over 200 participants in the Santa Monica Police Activities League (PAL) alleging that Eric Uller, a former City employee and PAL volunteer, sexually abused them. Defendant TIG Insurance Company moves for summary adjudication. TIG argues it has no duty to defend or indemnify the City under "the TIG policies in effect from 1991 through</p>

		<p>1994” because the City cannot demonstrate it is an additional insured under those policies, and thus Causes of Action Nos. 21, 22, 23, 53, 54, 55, 56, 57, 58, 95, 96 and 97 should be summarily adjudicated in TIG’s favor (Issue No. 1). TIG also argues it has no duty to indemnify the City “under the TIG policies” and/or “under the 1997-2001 TIG policies” for abuse perpetrated anywhere other than the Santa Monica PAL Youth Center (Issue No. 2). For the following reasons, TIG’s motion for summary adjudication is denied.</p> <p><i>Legal standard</i></p> <p>A party may move for summary judgment in an action or proceeding if it contends the action has no merit or that there is no defense to the action or proceeding. Civ. Proc. Code § 437c(a)(1). A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends the cause of action has no merit, there is no affirmative defense to the cause of action, there is no merit to an affirmative defense as to any cause of action, there is no merit to a claim for damages, as specified in Civil Code section 3294, or that one or more defendants either owed or did not owe a duty to the plaintiff. Civ. Proc. Code § 437c(f)(1). A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. <i>Id.</i> A motion for summary adjudication proceeds in all procedural respects as a motion for summary judgment. <i>Choochagi v. Barracuda Networks, Inc.</i> (2020) 60 Cal.App.5th 444, 453.</p> <p><i>Procedural deficiencies</i></p> <p>As noted above, TIG seeks summary adjudication of two issues. California Rule of Court 3.1350(b) provides:</p> <p>If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts.</p> <p><i>Id.</i>; see also <i>Schmidlin v. City of Palo Alto</i> (2007) 157 Cal.App.4th 728, 743-44. TIG’s Separate Statement does not comply with rule 3.1350(b). The “issues” identified in TIG’s notice of motion are not “repeated, verbatim, in the separate statement of undisputed material facts.”</p> <p>In addition, with respect to Issue No. 1, the Notice of Motion does not specifically identify the policies to which Issue No. 1 is directed. The City argues this deficiency requires denial of TIG’s motion. Although the Notice of Motion does not specifically identify the policies to which Issue No. 1 is directed, the Notice</p>
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		<p>of Motion specifically identifies the causes of action to which Issue No. 1 is directed (Notice of Motion at 2:17), and those causes of action in turn identify the policies. The court does not find TIG's failure to identify the specific policies at issue in Issue No. 1 reason to deny the motion.</p> <p>As explained further below, Issue No. 2 is more problematic. TIG identifies Issue No. 2 in the Notice of Motion as: "TIG has no duty to indemnify the City for any alleged abuse that took place at locations other than the [Santa Monica] PAL Youth Center, as such abuse did not occur during Covered Activities under the TIG policies and, under the 1997-2001 TIG policies, the Scheduled Events." TIG identifies Issue No. 2 in the Separate Statement as: "No Duty to Indemnify for Abuse Taking Place at Locations Other Than the [Santa Monica] PAL Youth Center." As noted above, these different descriptions of Issue No. 2 do not comply with rule 3.1350(b). In addition, neither of TIG's descriptions of Issue No. 2 identifies the policies to which Issue No. 2 is directed. Moreover, as discussed further below, TIG's Separate Statement for Issue No. 2 does not contain all of the material facts on which the motion is based.</p> <p><i>Issue No. 1</i></p> <p>TIG issued commercial general liability policies to the National Association of Police Athletic Leagues, Inc. (National PAL). TIG Separate Statement (SS) No. 29. The TIG policies contain an endorsement that amends the named insured on the policies to be "[t]he National [PAL] and its member chapters and persons performing the duties of officials, directors, and coaches of the named insured for which a premium has been paid." SS No. 30.</p> <p>TIG argues it has no duty to defend or indemnify the City under the TIG policies in effect from 1991 through 1994 because the City cannot demonstrate it is an additional insured under those policies. TIG asserts the City "cannot meet its threshold burden to establish that [Santa Monica] PAL was a 'member chapter' for which a premium was paid so as to qualify as an insured" under the policies. TIG Brief at 10:19-21. TIG argues a lease agreement requiring PAL to obtain general liability insurance was not entered into until 1993, and that the City waived the insurance requirement until 1994. Accordingly, TIG contends, the City cannot be an additional insured under TIG policies predating 1995.</p> <p>The City argues that as early as 1988 PAL operated out of a Virginia Park facility owned by the City. City's Additional Material Facts (AMF) Nos. 40, 41. The City asserts, and TIG does not dispute, that the TIG policies in effect from 1991 through 1994 contain additional insured endorsements adding lessors of premises "with respect to liability arising out of the ownership, maintenance, or use of that part of the premises leased to you[.]" AMF Nos. 47, 53, 54, 64, 65, 71, 72, 79, 80,</p>
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		<p>92, 93, 104, 106. The City argues it is an additional insured as the owner of the Virginia Park facility.</p> <p>Triable issues of material fact preclude summary adjudication of Issue No. 1. TIG does not dispute the City's evidence that it owned the Virginia Park facility. See TIG Responsive Separate Statement No. 41. In addition, the City has presented evidence PAL was a member chapter of the National PAL in the relevant period. See Andrade Decl. Ex. U (SMPAL 000062) ("PAL is registered with the Secretary of State as a nonprofit organization and is a member of the National PAL program."); Joint Compendium of Exhibits (JC) 455 ("PAL is a non-profit organization and is a member of the national PAL program."). This evidence is sufficient to demonstrate a triable issue of fact regarding whether PAL was a member chapter for which a premium was paid. See <i>Aguilar v. Atlantic Richfield Co.</i> (2001) 25 Cal.4th 826, 843 (in ruling on a summary judgment motion, the court must consider all of the evidence and all of the inferences reasonably drawn therefrom, and must view such evidence and such inferences in the light most favorable to the opposing party). TIG's reply arguments that the City did not lease the Virginia Park facility to PAL, that the City was not endorsed on the policies in effect from 1991 through 1994, and that the City's liability on the underlying claims does not arise out of the City's ownership, maintenance or use of any part of the Virginia Park premises leased to PAL are not sufficiently developed in the brief or the Separate Statement for the court to conclude they warrant summary adjudication of Issue No. 1. TIG's motion for summary adjudication of Issue No. 1 is denied.</p> <p><i>Issue No. 2</i></p> <p>TIG argues it has no duty to indemnify the City under any TIG policies for abuse perpetrated anywhere other than the Santa Monica PAL Youth Center. TIG contends an endorsement in the policies defining "Covered Activities", and a "Schedule of Events" endorsement in the 1997-2001 TIG policies, should be interpreted to bar coverage for abuse perpetrated anywhere other than the Santa Monica PAL Youth Center.</p> <p>The Covered Activities Definition Endorsement states:</p> <p>WITH RESPECT TO ENDORSEMENT CG0001, COMMERCIAL GENERAL LIABILITY COVERAGE FORM, IT IS UNDERSTOOD AND AGREED THAT SECTION V. DEFINITIONS IS AMENDED TO INCLUDE THE FOLLOWING DEFINITION OF COVERED ACTIVITIES:</p> <p>COVERED ACTIVITIES:</p> <p>ALL DIRECTLY SUPERVISED ACTIVITIES RECOGNIZED BY NATIONAL P.A.L. AND CONDUCTED BY ITS INSURED CHAPTERS.</p>
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		<p><i>E.g.</i>, JC Ex. 443 (at 8103). By its plain terms the Covered Activities Definition Endorsement adds another defined term to the Definitions section (Section V) of the policy. Thus, where the term “covered activities” appears in the policy, the Covered Activities Definition Endorsement provides the definition of that term. The Covered Activities Definition Endorsement does not itself state that it reduces or limits coverage.</p> <p>TIG argues “it is clear that the scope of coverage under the TIG Policies . . . is limited to injury during ‘directly supervised activities recognized by National PAL and conducted by its member chapters.’” Brief at 12:9-12. TIG cites no evidence supporting this statement (<i>see id.</i>), nor does TIG’s Separate Statement for Issue No. 2 contain any material facts identifying the places in the policy where the term “covered activities” appears or otherwise addressing the scope of coverage. TIG has not demonstrated the Covered Activities Definition Endorsement bars coverage for abuse perpetrated anywhere other than the Santa Monica PAL Youth Center.</p> <p>TIG also has not demonstrated that the Schedule of Events bars coverage for abuse perpetrated anywhere other than the Santa Monica PAL Youth Center. TIG’s Separate Statement for Issue No. 2 does not identify the “specific types of activities” (Brief at 13:3) TIG asserts the Schedule of Events encompasses, i.e., TIG’s Separate Statement does not contain all of the material facts on which TIG’s motion is based. The motion therefore must be denied. <i>California-American Water Co. v. Marina Coast Water Dist.</i> (2022) 86 Cal.App.5th 1272, 1297 (“[I]f the separate statement does not contain all material facts on which the motion is based, the moving party has failed to meet its initial burden of production and is ‘not entitled to summary adjudication as a matter of law.’”). Moreover, even if one delves into the 484 exhibits in the Joint Compendium of Exhibits to locate the Schedule of Events in the policies, the Schedule of Events includes events that would not take place the Santa Monica PAL Youth Center, such as field trips, hiking, sailing, snowboarding, snow skiing and water skiing. <i>See, e.g.</i>, JC 448, 449, 450, 451, 452; <i>see also</i> AMF Nos. 82, 95, 109. TIG’s motion for summary adjudication of Issue No. 2 is denied.</p> <p>Plaintiff City of Santa Monica to give notice.</p>
		<p><u>Plaintiff City of Santa Monica’s Omnibus Motion to Seal Re: Parties’ Initial Motions for Summary Adjudication (ROA 727)</u></p> <p>Plaintiff City of Santa Monica moves to seal certain papers filed in connection with the parties’ initial summary adjudication motions. No oppositions have been filed. For the following reasons, the City’s motion to seal is granted.</p> <p>Unless confidentiality is required by law, court records are presumed to be open. Cal. R. Ct. 2.550(c). A record must not be filed under seal without a court order. Cal. R. Ct. 2.551(a). The court must not permit a record to be filed under</p>

		<p>seal based solely on the agreement or stipulation of the parties. <i>Id.</i></p> <p>A party requesting that a court record be filed under seal “must file a motion or an application for an order sealing the record.” Cal. R. Ct. 2.551(b)(1). “The motion or application must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing.” <i>Id.</i></p> <p>A court may order a record be filed under seal only if the court expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest. Cal. R. Ct. 2.550(d).</p> <p>An order sealing a record must specifically state the facts that support the findings, and direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. Cal. R. Ct. 2.550(e)(1). All other portions of each document or page must be included in the public file. <i>Id.</i></p> <p>The City has filed a motion seeking an order sealing the records set forth in the notice of motion and motion and in the accompanying Andrade Declaration. The motion is accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing. Andrade Decl. (ROA 727) ¶¶ 1-6. The records contain confidential, sensitive information regarding the claimants’ identities, the sexual abuse they suffered, and related information. These facts demonstrate an overriding interest in the privacy of sensitive personal information that overcomes the right of public access to the records, that interest supports sealing the records, and a substantial probability exists that that interest will be prejudiced if the records are not sealed. In addition, the proposed sealing is narrowly tailored, and no less restrictive means exist to achieve the overriding interest.</p> <p>The court will sign the proposed order (ROA 725) filed with the City’s motion.</p> <p>Plaintiff City of Santa Monica to give notice.</p>
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