SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar
Honorable David A. Silberman
800 North Humboldt Street, San Mateo, CA 94401
Department 11, Courtroom G
Monday, June 29, 2026, at 2 pm

If you intend to appear on any case on this calendar, you must give notice by 4:00 pm the court day before the hearing to the newly assigned department pursuant to California Rules of Court, Rule 3.1308(a)(1), and San Mateo County L.R. 3.403(b).

Failure to comply with notice as outlined will result in no oral presentation.

Notice of Appearance and Courtesy Copies

1. **Email Dept11@SanMateoCourt.org before 4:00 pm the court day before with a copy to all parties or their counsel of record. The email must include the name of the case, the case number, and the name of the party contesting the tentative ruling.**
2. **Courtesy Copies: You must email a copy of any reply brief, or an Opposition to a Motion for Summary Judgment in an Unlawful Detainer matter to: LawAndMotionReplyBriefs@SanMateoCourt.org**

Day of Hearing

Appearances can be In Person or Remote. If appearing remotely by Zoom, please use your first and last name and mute your audio until your case is called. All parties must use a device with a camera if you are appearing remotely. Please login to the zoom hearing by 1:50 pm.

Remote Appearance Zoom Information

RECORDING OF A COURT PROCEEDING IS STRICTLY PROHIBITED.

https://sanmateocourt.zoomgov.com/ **Meeting ID:** 160 964 0802 **Password:** 734616

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) connect from a computer if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any cases referenced; and (8) spell all names, even common names.

2:00 PM
LINE 1

25-CIV-02094 MARY THERESA ELMORE, ET AL VS. ERIC MARTIN ERNSTER, ET AL

MARY THERESA ELMORE NEWTON OLDFATHER
ERIC MARTIN ERNSTER

PLAINTIFFS' MOTION FOR TRIAL PREFERENCE PURSUANT TO CCCP SECTION 36

TENTATIVE RULING:

The Court notes that Plaintiffs' Motion for Trial Preference Pursuant to California Code of Civil Procedure Section 36 (the "Motion") filed on January 12, 2026, stated that the above-entitled matter was set in Department 19. However, effective May 11, 2026, by order of the Presiding Judge pursuant to San Mateo County Superior Court Local Rule 3.200(a), this matter was reassigned for all purposes, including the instant hearing, to the Honorable David A. Silberman, Department 11, located at 800 North Humboldt Street, San Mateo, CA 94401, Courtroom G. Cal. Rules of Court, Rule 3.1110 (the Notice "must specify" the location of the hearing). Plaintiff arguably should have re-noticed the motion, but the error is understandable, harmless and waived.

The Motion is GRANTED. The parties are Ordered to appear (regardless of whether the tentative is contested) to discuss, assuming the Court adopts its tentative, a date for trial and the parties' completion of alternative dispute resolution as well as whether the plaintiffs will be seeking to have a guardian ad litem appointed for Mary Theresa Elmore. The Court is likely to set trial to begin October 27, with a pretrial conference on October 5 and a mandatory settlement conference on September 18, 2026 (with the last date subject to change based on the convenience of the assigned settlement judge).

Per allegations, David Wayne Elmore died at Sutter Mills-Peninsula Medical Center in Burlingame on August 5, 2024, because even though he had been prescribed 0.5 mg of intravenous hydromorphone per hour, he was given ten times as much, for nine hours. Plaintiffs are Mr. Elmore's estate, as well as his spouse (Plaintiff Mary Theresa Elmore, herein, "Plaintiff") and children, who were with him in the hospital and watched him pass away as Defendants allegedly ignored their concerns.

Through the Motion, Plaintiffs seek a trial-setting preference. The governing statute provides that:

A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both of the following findings:

1. The party has a substantial interest in the action as a whole.

2. The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.

Code Civ. Proc. § 36 (a).

Further, "An affidavit submitted in support of a motion for preference under subdivision (a) of Section 36 may be signed by the attorney for the party seeking preference based upon information and belief as to the medical diagnosis and prognosis of any party." Code Civ. Proc. § 36.5. *Fox v. Superior Court* (2018) 21 Cal.App.5th 529, 535 (holding that it was error to deny preference where a party has legitimate concerns about significantly deteriorating health).

Moreover, "The express legislative mandate for trial preference is a substantive public policy concern which" is so strong that it "supersedes such considerations" as inconvenience to the trial Court, which also "has no power to balance the differing interests of opposing litigants in applying the provision." *Swaithes v. Superior Court* (1989) 212 Cal.App.3d 1082, 1085-86 (citation omitted).

The governing statute further provides that: Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference. Code Civ. Proc., § 36, subd. (e).

Plaintiff is over 70 years old. Code Civ. Proc., § 36 (a). Specifically, Plaintiff is currently 82 years old. Elmore Decl. ¶ 2.

Plaintiff is the late Mr. Elmore's surviving spouse, who witnessed Defendants' admitted error (Oldfather Decl., ¶ 7) and her late husband's resulting death. Elmore Decl. ¶ 3. As such, she has a substantial interest in the instant action as a whole. Code Civ. Proc., § 36(a).

Plaintiff suffers from a degenerative disease and other health conditions that risk prejudicing her interests in litigating the instant action. *Id.* Plaintiff's daughter, Tracy Elmore, has been Plaintiff's primary caregiver since Mr. Elmore's death, and has witnessed her mother's emotional distress and deterioration since then. Elmore Decl. ¶¶ 3, 6. Plaintiff was diagnosed with Alzheimer's disease in 2025 (*id.* ¶ 4), and her caregiving daughter declares her concerns "that additional delay will make it more difficult for her to articulately explain and present her damages claim to show the jury the effect that that loss of her husband and my father has had on her." *Id.* ¶ 7. Plaintiffs' counsel also declares his "concern[] that Plaintiff Mary Theresa Elmore's Alzheimer's will deteriorate her cognitive abilities to the point that she will have difficulty testifying regarding the incident and her damages." Oldfather Decl. ¶ 8; Code Civ. Proc. § 36.5.

The evidence indicates that Plaintiff's medical conditions increase the likelihood that she will pass away before trial, and further, that her ability to present her testimony at trial and otherwise participate in litigation, and to enjoy any compensation in her lifetime, will be prejudiced without a trial preference. Defendants attempt to characterize the declared risks as improper speculation. However, it is clear to the Court from the language of the statute and Plaintiffs' evidence that Plaintiff's health "is such that a preference is necessary to prevent prejudicing the party's interest in the litigation." Moreover, the Court of Appeal acknowledges the uncertainty and indeterminacy captured in the term, "risk" *Fox*, 21 Cal.App.5th at 535-36), and the clear intent of the Legislature is to safeguard litigants who qualify under subdivision (a) of section 36 against the acknowledged risk that death or incapacity might deprive them of the opportunity to have their case effectively tried and to obtain the appropriate recovery. *Swaithes*, 212 Cal.App.3d at 1085 (citation omitted).

Defendants also argue at length that granting the Motion would unfairly prejudice their ability to prepare for trial. However, the Court of Appeal expressly forbids the Court from considering such argument. *Swaithes*, 212 Cal.App.3d at 1085-86 (the Court "has no power to balance the differing interests of opposing litigants in applying the provision."). In advancing this argument, Defendants cite the Court of

Appeal's recognition that "there may be 'strong countervailing considerations'" arising from their right to prepare for trial (Opp., 8:11)—but the language is cited out of context:

Thus, relevant precedent upholds the absolute command of section 36(a) in light of its plain meaning, despite recognition that in certain instances there are strong countervailing considerations—deriving from principles of efficient trial court management; from fairness and due process to other litigants; and from divergent public policy or statutory contexts in which the section 36(a) mandate may be difficult, impractical, or impossible to realize. In short, we approach this case against a background of relevant precedent which holds section 36(a) is a comprehensive and final legislative judgment on the issue, which must prevail whenever the section 36(a) right is juxtaposed to another countervailing argument, based on whatever legitimate or seemingly compelling public interest. *Miller v. Sup. Ct.* (1990) 221 Cal.App.3d 1200, 1206.

While, due process concerns may exist with trial preferences in the abstract, this case is already more than 15 months old (and, while not necessary for the decision, there is a strong implication that defendants were aware that litigation was likely even before this case was filed), Defendants became aware of the risk that a preference might be granted almost six months ago when this motion was filed and had that last six months available to it (in addition to the prior nine months) to conduct discovery and prepare the theoretical summary judgment motion it references in its opposition. Defendants also do not dispute that substantial discovery has already occurred. Put another way, Defendants' due process argument is largely generalized and unpersuasive.

In addition, the Court believes the interests of justice warrant trial preference here, to mitigate the risk that Plaintiff's death or diminishing capacity might deprive/harm her (of the) opportunity to testify to the jury as to the effects of Defendants' admitted error. (Code Civ. Proc., § 36, subd. (e).)

Any party who contests a tentative ruling must email Dept.11@sanmateocourt.org with a copy to all other parties by 4:00 p.m. stating, without argument, the portion(s) of the tentative ruling that the party contests.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, plaintiff's counsel shall prepare for the Court's signature a written order consistent with the Court's ruling pursuant to California Rules of Court, rule 3.1312 and provide written notice of the ruling to all parties who have appeared in the action, as required by law and by the California Rules of Court. Please note that Local Rule 3.403(b)(iv) states in part "prevailing party on a tentative ruling is required to prepare a proposed order REPEATING VERBATIM the tentative ruling" (emphasis added). The order should be e-filed only, do not email or mail a hard copy to the Court.

2:00 PM
LINE 2

25-CIV-02450 VERONICA NAVARRO VS. STEPHEN PRESTON MEALIFFE, ET AL

VERONICA NAVARRO — STEPHEN R. JAFFE
STEPHEN PRESTON MEALIFFE

DEFENDANT ZOOX, INC.'S MOTION TO ENFORCE SETTLEMENT

TENTATIVE RULING:

The Motion to Enforce Settlement by Defendant Zoox, Inc. ("Defendant") is DENIED WITHOUT PREJUDICE.

Plaintiff Veronica Navarro ("Plaintiff") brought an action against Defendant, her former employer. In May 2025, the parties signed a Confidential Settlement and General Release Agreement. October 17, 2025 Compendium of Evidence ("Compendium") Exhs. 18 and 19. This settlement agreement includes a procedure for remediation of a Seagate hard drive that was owned by Plaintiff. *Id.* ¶ 2.1.2. Upon completion of the remediation, the parties agreed they would sign a Mutual General Release. *Id.* ¶ 2.2, and Exh. B.

Defendant brings this Motion seeking to enforce the settlement agreement under Code of Civil Procedure section 664.6.

On a motion under Code of Civil Procedure section 664.6, the court must determine whether the parties entered into a valid and binding settlement. *Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1182. "A settlement is enforceable under section 664.6 only if the parties agreed to all material settlement terms." *Id.* The court may consider the parties' declarations and other evidence in deciding what terms the parties agreed to. *Id.* However, while the court may receive evidence, determine disputed facts and enter the terms of a settlement agreement as a judgment, nothing in section 664.6 authorizes a judge to create the material terms of a settlement as opposed to deciding what terms the parties themselves agreed. *Machado v. Myers* (2019) 39 Cal.App.5th 779, 790.

Despite Plaintiff and Zoox signing the Confidential Settlement and General Release Agreement, Plaintiff argues that no settlement agreement ever existed and that she only indicated her agreement to participate in the remediation procedure set forth in Section 2.1.2. However, Plaintiff's interpretation is contradicted by the plain language of the Confidential Settlement and General Release Agreement ("Agreement"). The Agreement states that the parties desire to resolve any and all disputes arising from Plaintiff's employment. Compendium Exhs. 18 and 19. The agreement also includes a release of claims. *Id.* The agreement states that it shall become effective on the eighth calendar day after the last party executes the agreement if Plaintiff does not timely revoke the agreement as set forth in section 18.7, which provides for revocation from seven days following execution of the agreement. *Id.* Plaintiff executed the agreement on May 22, 2025. *Id.* Ex. 18. Plaintiff has not shown that she revoked the agreement within seven days of executing it.

Furthermore, Plaintiff is clearly wrong—the remediation procedure was not a condition precedent to the settlement agreement becoming effective. Civil Code, § 1436. Instead, the agreement provides that upon completion of the remediation, the parties agreed to sign and deliver the Mutual General Release and

Zoox would make a cash payment to Plaintiff upon compliance with the agreement and execution and delivery of the Mutual General Release. Compendium Exhs. 18 and 19. "If the Mutual General Release does not become final and effective for any reason, the Company's obligation to provide the Mutual General Release Consideration shall cease, and Employee shall have no right or entitlement to the Mutual General Release Consideration." *Id.* Accordingly, Plaintiff's argument that the agreement is only binding upon completion of the remediation is not supported by the text of the agreement.

Accordingly, the court finds that the parties entered into a binding settlement agreement.

In this Motion, Zoox asks the court to enter an order that (among other things): Setec permanently delete all data from the Seagate Drive that was not identified by Navarro as, and confirmed by Zoox's representative to be, "Personal Data" or "Authorized Data" (as those terms are in defined in the Settlement Agreement) on June 3, 2025 and return the Seagate Drive to Navarro within five calendar days of the order granting the Motion. It then asks the Court to make Orders enforcing terms that are to follow the completion of the remediation process.

The agreement sets forth a procedure that the parties agreed to related to the remediation of the Seagate drive, including that "the Neutral shall return the Seagate Drive to Employee." At the remediation, an alternative approach apparently took place in which Plaintiff's personal files were copied onto a new external hard drive. It appears that the Seagate drive did not get returned to Plaintiff as provided for in the agreement. While Zoox may very well have been acting in good faith in an attempt to work with Plaintiff and further negotiate return of the drive (and Plaintiff may have waived any objection to the alternate procedure and any delay effected by her agreement), nevertheless Zoox has not demonstrated to the Court's satisfaction that the remediation is complete **as set forth in the agreement** entitling it **at this time** to an order enforcing the agreement by requiring Plaintiff to sign the Mutual General Release and dismiss this action. While the Court hopes it becomes unnecessary, it would entertain a subsequent motion to enforce once the remediation process is complete pursuant to the parties agreement or if Zoox can establish that Plaintiff is in breach of her obligations in relation to the remediation process.

In the same vein, to the extent that Zoox also seeks an order for Setec to permanently delete all data from the Seagate Drive that was not identified by Navarro as, and confirmed by Zoox's representative to be, "Personal Data" or "Authorized Data" (as those terms are in defined in the Settlement Agreement) on June 3, 2025 and return the Seagate drive to Plaintiff, Zoox has not established why such an order is necessary when this language is already part of the settlement agreement. Such actions also pertain to Setec and not Plaintiff and Setec is not a party to this action or obviously subject to the Court's jurisdiction.

Based on the above, the court does not need to address Plaintiff's assertion of rescission of the settlement agreement at this time, but based on the submissions to date it has serious doubts about Plaintiff's ability to establish grounds of rescission for multiple reasons. The Court encourages the parties to work together to effectuate the terms of the settlement agreement and avoid additional motion practice.

Zoox's Evidentiary Objections are ruled on as follows:

Jaffe Declaration

Nos. 1, 2, 4, 10: SUSTAINED on ground(s) raised by Zoox.

Nos. 3, 5-9, 11-18: OVERRULED.

Plaintiff's Declaration

No. 1, 3, 15, 16, 20, 21: SUSTAINED on ground(s) raised by Zoox.

Nos. 2, 4-11, 12, 13, 17, 19, 22-27: OVERRULED.

No. 14: SUSTAINED to "illegal extortion" as legal conclusion and improper opinion testimony, and opinions regarding Zoox's motivations as speculation and OVERRULED to remainder.

Nos. 18: SUSTAINED based on Hearsay to the extent that the out-of-court statements are being offered for their truth.

No. 28: SUSTAINED to "No settlement agreement between me and Zoox has ever existed" as legal conclusion and improper opinion testimony and OVERRULED to remainder.

Any party who contests a tentative ruling must email Dept.11@sanmateocourt.org with a copy to all other parties by 4:00 p.m. stating, without argument, the portion(s) of the tentative ruling that the party contests.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, the prevailing party shall prepare for the Court's signature a written order consistent with the Court's ruling pursuant to California Rules of Court, rule 3.1312 and provide written notice of the ruling to all parties who have appeared in the action, as required by law and by the California Rules of Court. Please note that Local Rule 3.403(b)(iv) states in part "prevailing party on a tentative ruling is required to prepare a proposed order REPEATING VERBATIM the tentative ruling" (emphasis added). The order should be e-filed only, do not email or mail a hard copy to the Court.

2:00 PM
LINE 3

25-CIV-04686 STEPHANIE LIM VS. ELEXUM, ET AL

STEPHANIE LIM	CHRIS QUATTROCIOCCHE
ELEXUM	THOMAS J. WALSH

MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

TENTATIVE RULING:

Before the Court is Plaintiff Stephanie Lim's unopposed motion for an order granting leave to file a First Amended Complaint ("FAC").

Initially, the Court observes that Plaintiff's notice of hearing provides the improper address for the hearing because the matter was reassigned to the Honorable David A. Silberman, Department 11, on May 11, 2026. Department 11 is not located in Redwood City as the notice states, but instead at the Central Branch Courthouse, Courtroom G, at 800 North Humboldt Street, San Mateo, CA 94401. (See Cal. Rules of Court, rule 3.1110 (the Notice "must specify" the location of the hearing). While it remained Plaintiff's obligation to correct the notice, it is both understandable and harmless and the error is waived.

Next, the Court notes Plaintiff's motion includes three exhibits, but they are not properly bookmarked. That is, "electronic exhibits must include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit." Cal. Rules of Court, rule 3.1110(f)(4); *see also* San Mateo County Superior Court, L.R. 3.3 ("Failure to bookmark exhibits to electronically filed documents may result in rejection of the party's e-filing by the Clerk of the Court or in continuance of the hearing by the Court on the related motion."). Additionally, the motion contains two Exhibit A's, both the amended complaint and what appears to be one of two exhibits to the complaint (although oddly neither are referenced in the complaint). For this reason, electronic bookmarking is especially useful to avoid either uneconomic use of the Court's time in the best case, or inaccuracy at the worst.

In any event, the instant motion requests leave to eliminate the fourth cause of action for breach of contract raised in plaintiff's complaint filed June 20, 2025. The motion is unopposed and plaintiff asserts that Defendant Elexum has no objection to the filing of the attached First Amended Complaint (the Court noted that she is silent as to Apple and fails to provide any admissible evidence in support of the assertion, regardless).

Nevertheless, motions for leave to amend the pleadings are left to the sound discretion of the trial court judge. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading." Code Civ. Proc. § 473 (a)(1); Code Civ. Proc. § 576. Under code section 576 a "judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order." *McMillin v. Eare* (2021) 70 Cal.App.5th 893, 909 (italics in original omitted).

Accordingly, the Motion is GRANTED. Plaintiff shall file the FAC within 10 days of the date of this Order.

Any party who contests a tentative ruling must email Dept.11@sanmateocourt.org with a copy to all other parties by 4:00 p.m. stating, without argument, the portion(s) of the tentative ruling that the party contests.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, plaintiff's counsel shall prepare for the Court's signature a written order consistent with the Court's ruling pursuant to California Rules of Court, rule 3.1312 and provide written notice of the ruling to all parties who have appeared in the action, as required by law and by the California Rules of Court. Please note that Local Rule 3.403(b)(iv) states in part "prevailing party on a tentative ruling is required to prepare a proposed order REPEATING VERBATIM the tentative ruling" (emphasis added). The order should be e-filed only, do not email or mail a hard copy to the Court.

2:00 PM
LINE 4

26-CIV-01347 MARSH & MCLENNAN AGENCY LLC VS. ELMER "RICK" FERGUSON

MARSH & MCLENNAN AGENCY LLC	BENJAMIN A EMMERT
ELMER "RICK" FERGUSON	PRO/PER

RESPONDENT ELMER "RICK" FERGUSON'S MOTION TO VACATE ENTRY OF SISTER-STATE JUDGMENT AND/OR IN THE ALTERNATIVE TO STAY ENFORCEMENT

TENTATIVE RULING:

For the reasons stated below, Defendant/Judgment Debtor Elmer "Rick" Ferguson's unopposed "Motion to Vacate Entry of Sister-State Judgment and/or in the Alternative, to Stay Enforcement," filed May 18, 2026, is DENIED.

The Motion has not been properly served

Defendant/Judgment Debtor Ferguson has not demonstrated proper service of this Motion. On June 16, 2026, Ferguson filed a Proof of Service, which states the following:

[On May 15, 2026], I electronically served the following documents (exact titles):

Def Elmer Ferguson Response to Pltf Marsh Notice of Entry of Judgement on S-S Judgement

Also on June 16, 2026, Ferguson filed a document requesting that the Court Clerk file an attached Proof of Service. This document provides, in part:

Dear Clerk:

Please file the enclosed Corrected Proof of Electronic Service …

The attached Proof of Service does not, itself, have a file stamp, and thus, arguably, it has not yet been properly filed. But even assuming that it has been filed, the attached Proof of Service does not indicate that Plaintiff served the present Motion to Vacate. Instead, it states that the "exact title" of the served document reads as follows:

Def Elmer Ferguson Response to Pltf Marsh Notice of Entry of Judgement on S-S Judgement

Accordingly, there is no Proof of Service on file stating that Mr. Ferguson served, on Plaintiff's counsel, his May 18, 2026 "Motion to Vacate Entry of Sister-State Judgment and/or in the Alternative To Stay Enforcement."

The Court notes a few additional items. First, it seems highly unlikely in context that the law firm of Littler Mendelson would not have responded to this Motion had it been properly served. Second, the only evidence supporting Judgment Debtor Ferguson's present Motion to Vacate is his attached declaration, which is not signed under penalty of perjury, and therefore, does not constitute admissible evidence. Code

Civ. Proc. § 2015.5. Most important, it also appears to have been untimely-filed. *See* Code Civ. Proc. § 1710.40(b).

Any party who contests a tentative ruling must email Dept.11@sanmateocourt.org with a copy to all other parties by 4:00 p.m. stating, without argument, the portion(s) of the tentative ruling that the party contests.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, Counsel for the Plaintiff shall prepare for the Court's signature a written order consistent with the Court's ruling pursuant to California Rules of Court, rule 3.1312 and provide written notice of the ruling to all parties who have appeared in the action, as required by law and by the California Rules of Court. Please note that Local Rule 3.403(b)(iv) states in part "prevailing party on a tentative ruling is required to prepare a proposed order REPEATING VERBATIM the tentative ruling" (emphasis added). The order should be e-filed only, do not email or mail a hard copy to the Court.

POSTED: 3:00 PM