1. RICH XIBERTA GLASS, INC. v. GOLDLINE BRANDS, INC. PC-20200048

Judgment Debtor Exam.

The judgment debtor failed to appear at the hearing on December 17, 2021. The judgment creditor requested issuance of a bench warrant. A bench warrant was issued with bail set in the amount of $2,500. The court ordered the bench warrant to be held until the continued hearing date of February 4, 2022.

A proof of service declares that on December 20, 2021 the judgment creditor's counsel mailed correspondence to the judgment debtor's address informing him that a bench warrant was requested for his failure to appear on December 17, 2021 and if he failed to appear at the continued examination hearing on February 4, 2022 at 8:30 a.m. in Department Nine, a judge may order him to be arrested and brought before the court to show cause why he should not be cited for contempt.

TENTATIVE RULING # 1: THE PERSONAL APPEARANCE OF THE DEBTOR IS REQUIRED AT 8:30 A.M., FRIDAY, FEBRUARY 4, 2022 IN DEPARTMENT NINE.

2. PEOPLE v. $115,720 U.S. CURRENCY PC-20200401

Hearing Re: Claim Opposing Forfeiture.

On August 3, 2020 claimant Judkins filed a Judicial Council Form MC-200 claim opposing forfeiture in response to a notice of administrative proceedings.

On August 17, 2020 the People filed a petition for forfeiture of cash in the amount of $115,720, gold valued at $21,673, silver valued at $5,538, platinum valued at $785, and collectable U.S. Currency valued at $5,925 that was seized by the El Dorado County Sheriff's Department. The petition states: the funds and other property are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of various provisions of the Health and Safety Code. The People pray for judgment declaring that the money is forfeited to the State of California.

The proof of service of the petition declares that on August 17, 2020 the petition was served on the claimant by mail to his address of record.

"The following are subject to forfeiture: ¶ * * * (f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture,

sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." (Health and Safety Code, § 11470(f).)

"(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located. ¶ A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier." (Emphasis added.) (Health and Safety Code, § 11488.4(a).)

"(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not

personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim…" (Health and Safety Code, § 11488.5(a)(1).)

"(c)(1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488. ¶ (2) The hearing shall be by jury, unless waived by consent of all parties. ¶ (3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter." (Emphasis added.) (Health and Safety Code, § 11488.5(c).)

"(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be

affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

"(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant." (Emphasis added.) (Health and Safety Code, § 11488.5(e).)

"(2) In the case of property described in subdivision (f) of Section 11470, except cash, negotiable instruments, or other cash equivalents of a value of not less than twenty-five thousand dollars ($25,000), for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a

reasonable doubt that the property for which forfeiture is sought meets the criteria for forfeiture described in subdivision (f) of Section 11470." (Emphasis added.) (Health and Safety Code, § 11488.4(i)(2).)

"(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties." (Health and Safety Code, § 11488.4(i)(3).)

"In the case of property described in subdivision (f) of Section 11470 that is cash or negotiable instruments of a value of not less than twenty-five thousand dollars ($25,000), the state or local governmental entity shall have the burden of proving by clear and convincing evidence that the property for which forfeiture is sought is such as is described in subdivision (f) of Section 11470. There is no requirement for forfeiture thereof that a criminal conviction be obtained in an underlying or related criminal offense." (Emphasis added.) (Health and Safety Code, § 11488.4(i)(4).)

"(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial." (Health and Safety Code, § 11488.4(i)(5).)

The court was previously advised that there was a criminal proceeding pending.

At the hearing on June 16, 2021, claimant requested a continuance to retain counsel. The People did not object. The hearing was continued to August 13, 2021. At the hearing on August 13, 2021, the claimant/respondent confirmed that he has retained an attorney. Counsel has advised the People that while he helped claimant prepare the claim, he does not represent claimant in this matter

At the last hearing on October 29, 2021, the People advised the court the parties were working together and requested a continuance.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

3. PEOPLE v. CANALES PCL-20190258

Trial Setting Conference.

The court was advised at the trial setting conference on March 5, 2021 that although the criminal case trial was set later that month, it will probably be continued. The court granted the People's request to continue the hearing for three months. At the hearing on September 24, 2021 the court was advised that due to the active related matter a continuance was requested. The hearing was continued to February 4, 2022. The court has not received any further word from the parties.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

4. PEOPLE v. WILLIAM MCDONALD PC-20210445

Hearing Re: Claim Opposing Forfeiture.

Claimant William McDonald filed a claim opposing forfeiture in response to a notice of administrative proceedings to determine that certain funds are forfeited. The proof of service of non-judicial asset forfeiture proceedings dated May 13, 2021 is attached to the claim. The claim contends: the $11,500 in cash seized is from rent money and he does not keep large balances in the bank, because the Franchise Tax Board has locked the account and seized funds on deposit; and he claims all of the cash is rightfully his.

"The following are subject to forfeiture: ¶ * * * (f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." (Health and Safety Code, § 11470(f).)

"(j) The Attorney General or the district attorney of the county in which property is subject to forfeiture under Section 11470 may, pursuant to this subdivision, order forfeiture of personal property not exceeding twenty-five thousand dollars ($25,000) in value. The Attorney General

or district attorney shall provide notice of proceedings under this subdivision pursuant to subdivisions (c), (d), (e), and (f), including: ¶ (1) A description of the property. ¶ (2) The appraised value of the property. ¶ (3) The date and place of seizure or location of any property not seized but subject to forfeiture. ¶ (4) The violation of law alleged with respect to forfeiture of the property. ¶ (5) The instructions for filing and serving a claim with the Attorney General or the district attorney pursuant to Section 11488.5 and time limits for filing a claim and claim form. ¶ If no claims are timely filed, the Attorney General or the district attorney shall prepare a written declaration of forfeiture of the subject property to the state and dispose of the property in accordance with Section 11489. A written declaration of forfeiture signed by the Attorney General or district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited property. The prosecuting agency ordering forfeiture pursuant to this subdivision shall provide a copy of the declaration of forfeiture to any person listed in the receipt given at the time of seizure and to any person personally served notice of the forfeiture proceedings. ¶ If a claim is timely filed, then the Attorney General or district attorney shall file a petition of forfeiture pursuant to this section within 30 days of the receipt of the claim. The petition of forfeiture shall then proceed pursuant to other provisions of this chapter, except that no additional notice need be given and no additional claim need be filed." (Emphasis added.) (Health and Safety Code, § 11488.4(j).)

"(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of

forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located. ¶ A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier." (Emphasis added.) (Health and Safety Code, § 11488.4(a).)

"(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim…" (Health and Safety Code, § 11488.5(a)(1).)

The petition for forfeiture was filed on August 2, 2021. The proof of service declares it was served by mail on the claimant/respondent on August 2, 2021.

"(c)(1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases.

Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488. ¶ (2) The hearing shall be by jury, unless waived by consent of all parties. ¶ (3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter." (Health and Safety Code, § 11488.5(c).)

"(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

"(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in

accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant." (Health and Safety Code, § 11488.5(e).)

"(2) In the case of property described in subdivision (f) of Section 11470, except cash, negotiable instruments, or other cash equivalents of a value of not less than twenty-five thousand dollars ($25,000), for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought meets the criteria for forfeiture described in subdivision (f) of Section 11470." (Emphasis added.) (Health and Safety Code, § 11488.4(i)(2).)

"(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all

parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties." (Health and Safety Code, § 11488.4(i)(3).)

"(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial." (Health and Safety Code, § 11488.4(i)(5).)

The People and claimant/respondent appeared at the hearing on July 30, 2021. The court was advised the preliminary hearing in the criminal case was set for August 24, 2021. Upon request of the People, the hearing was continued to September 24, 2021. At the hearing on September 24, 2021 the court was advised that due to the active related matter a continuance was requested. The hearing was continued to February 4, 2022. The court has not received any further word from the parties.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

5. PEOPLE v. BETAMEN 21CV0088

Claim Opposing Forfeiture.

Claimant Betamen filed a claim opposing forfeiture in response to a notice of administrative proceedings to determine that certain funds are forfeited. The verified claim contends the claimant is the owner of all of the currency and requests that the claimed property not be ordered forfeited.

"The following are subject to forfeiture: ¶ * * * (f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." (Health and Safety Code, § 11470(f).)

"(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another

provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located. ¶ A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier." (Emphasis added.) (Health and Safety Code, § 11488.4(a).)

"(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim…" (Health and Safety Code, § 11488.5(a)(1).)

"(j) The Attorney General or the district attorney of the county in which property is subject to forfeiture under Section 11470 may, pursuant to this subdivision, order forfeiture of personal property not exceeding twenty-five thousand dollars ($25,000) in value. The Attorney General

or district attorney shall provide notice of proceedings under this subdivision pursuant to subdivisions (c), (d), (e), and (f), including: ¶ (1) A description of the property. ¶ (2) The appraised value of the property. ¶ (3) The date and place of seizure or location of any property not seized but subject to forfeiture. ¶ (4) The violation of law alleged with respect to forfeiture of the property. ¶ (5) The instructions for filing and serving a claim with the Attorney General or the district attorney pursuant to Section 11488.5 and time limits for filing a claim and claim form. ¶ If no claims are timely filed, the Attorney General or the district attorney shall prepare a written declaration of forfeiture of the subject property to the state and dispose of the property in accordance with Section 11489. A written declaration of forfeiture signed by the Attorney General or district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited property. The prosecuting agency ordering forfeiture pursuant to this subdivision shall provide a copy of the declaration of forfeiture to any person listed in the receipt given at the time of seizure and to any person personally served notice of the forfeiture proceedings. ¶ If a claim is timely filed, then the Attorney General or district attorney shall file a petition of forfeiture pursuant to this section within 30 days of the receipt of the claim. The petition of forfeiture shall then proceed pursuant to other provisions of this chapter, except that no additional notice need be given and no additional claim need be filed." (Emphasis added.) (Health and Safety Code, § 11488.4(j).)

Although the claim was filed, there is no proof of service in the court's file declaring that the District Attorney or Attorney General were served notice of the hearing and the claim opposing forfeiture. This needs to be remedied.

"(c)(1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such

a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488. ¶ (2) The hearing shall be by jury, unless waived by consent of all parties. ¶ (3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter." (Health and Safety Code, § 11488.5(c).)

"(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

"(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237,

and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant." (Health and Safety Code, § 11488.5(e).)

"(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties." (Health and Safety Code, § 11488.4(i)(3).)

"(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial." (Health and Safety Code, § 11488.4(i)(5).)

Appearances are required to address the issue of lack of proof of service of the claim opposing forfeiture and notice of the hearing.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

6. PEOPLE v. JILL MCDONALD PCL-20210446

Hearing Re: Claim Opposing Forfeiture.

Claimant Jill McDonald filed a claim opposing forfeiture in response to a notice of administrative proceedings to determine that certain funds are forfeited. The proof of service of non-judicial asset forfeiture proceedings dated May 13, 2021 is attached to the claim. The claim contends: the $11,500 in cash seized is from rent money and she does not keep large balances in the bank, because the Franchise Tax Board has locked the account and seized funds on deposit; and she claims all of the cash is rightfully hers.

"The following are subject to forfeiture: ¶ * * * (f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." (Health and Safety Code, § 11470(f).)

"(j) The Attorney General or the district attorney of the county in which property is subject to forfeiture under Section 11470 may, pursuant to this subdivision, order forfeiture of personal property not exceeding twenty-five thousand dollars ($25,000) in value. The Attorney General

or district attorney shall provide notice of proceedings under this subdivision pursuant to subdivisions (c), (d), (e), and (f), including: ¶ (1) A description of the property. ¶ (2) The appraised value of the property. ¶ (3) The date and place of seizure or location of any property not seized but subject to forfeiture. ¶ (4) The violation of law alleged with respect to forfeiture of the property. ¶ (5) The instructions for filing and serving a claim with the Attorney General or the district attorney pursuant to Section 11488.5 and time limits for filing a claim and claim form. ¶ If no claims are timely filed, the Attorney General or the district attorney shall prepare a written declaration of forfeiture of the subject property to the state and dispose of the property in accordance with Section 11489. A written declaration of forfeiture signed by the Attorney General or district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited property. The prosecuting agency ordering forfeiture pursuant to this subdivision shall provide a copy of the declaration of forfeiture to any person listed in the receipt given at the time of seizure and to any person personally served notice of the forfeiture proceedings. ¶ If a claim is timely filed, then the Attorney General or district attorney shall file a petition of forfeiture pursuant to this section within 30 days of the receipt of the claim. The petition of forfeiture shall then proceed pursuant to other provisions of this chapter, except that no additional notice need be given and no additional claim need be filed." (Emphasis added.) (Health and Safety Code, § 11488.4(j).)

"(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of

forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located. ¶ A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier." (Emphasis added.) (Health and Safety Code, § 11488.4(a).)

"(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim…" (Health and Safety Code, § 11488.5(a)(1).)

The petition for forfeiture was filed on August 2, 2021. The proof of service declares it was served by mail on the claimant/respondent on August 2, 2021.

"(c)(1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases.

Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488. ¶ (2) The hearing shall be by jury, unless waived by consent of all parties. ¶ (3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter." (Health and Safety Code, § 11488.5(c).)

"(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

"(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in

accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant." (Health and Safety Code, § 11488.5(e).)

"(2) In the case of property described in subdivision (f) of Section 11470, except cash, negotiable instruments, or other cash equivalents of a value of not less than twenty-five thousand dollars ($25,000), for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought meets the criteria for forfeiture described in subdivision (f) of Section 11470." (Emphasis added.) (Health and Safety Code, § 11488.4(i)(2).)

"(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all

parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties." (Health and Safety Code, § 11488.4(i)(3).)

"(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial." (Health and Safety Code, § 11488.4(i)(5).)

The People and claimant/respondent appeared at the hearing on July 30, 2021. The court was advised the preliminary hearing in the criminal case was set for August 24, 2021. Upon request of the People, the hearing was continued to September 24, 2021. At the hearing on September 24, 2021 the court was advised that due to the active related matter a continuance was requested. The hearing was continued to February 4, 2022. The court has not received any further word from the parties.

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

7. PEOPLE v. WILLIS PCL-20210048

Hearing Re: Claim Opposing Forfeiture.

Claimant Willis filed a claim opposing forfeiture in response to a notice of judicial forfeiture proceedings, which requests that the claimed property not be ordered forfeited and the claimant's interest in the claimed property not be ordered forfeited. The People responded by filing a petition for forfeiture. The unverified petition contends: $13,700 in U.S. Currency was seized by the El Dorado County Sheriff's Office; such funds are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of multiple sections of the Health and Safety Code. The People pray for judgment declaring that the money is forfeited to the State of California.

"The following are subject to forfeiture: ¶ * * * (f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition

under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." (Health and Safety Code, § 11470(f).)

"(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located. ¶ A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier." (Emphasis added.) (Health and Safety Code, § 11488.4(a).)

"(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in

which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim…" (Health and Safety Code, § 11488.5(a)(1).)

"In the case of property described in subdivision (f) of Section 11470 that is cash or negotiable instruments of a value of not less than twenty-five thousand dollars ($25,000), the state or local governmental entity shall have the burden of proving by clear and convincing evidence that the property for which forfeiture is sought is such as is described in subdivision (f) of Section 11470. There is no requirement for forfeiture thereof that a criminal conviction be obtained in an underlying or related criminal offense." (Health and Safety Code, § 11488.4(i)(4).)

"(c)(1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488. ¶ (2) The hearing shall be by jury, unless waived by consent of all parties. ¶ (3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter." (Health and Safety Code, § 11488.5(c).)

"(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

"(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant." (Health and Safety Code, § 11488.5(e).)

"(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties." (Health and Safety Code, § 11488.4(i)(3).)

"(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial." (Health and Safety Code, § 11488.4(i)(5).)

At the hearing on March 19, 2021 the court was advised that the pre-trial conference in the criminal case was set for May 14, 2021 and the People's request that the hearing be continued was granted. At the hearing on August 13, 2021 the court was advised there was a pending criminal matter and a continuance was requested. The hearing was continued to February 4, 2022. The court has not received any further word from the parties.

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

8. ALLIANCE FOR RESPONSIBLE PLANNING v. EL DORADO COUNTY PC-20160346

(1) Respondent County's Motion for Leave to Conduct Limited Discovery.

(2) Petitioners' Motion for Attorney Fees.

Respondent County's Motion for Leave to Conduct Limited Discovery.

On October 8, 2021 the court granted respondents County of El Dorado's and El Dorado County Board of Supervisors' (County's) Motion to Shorten Time to hear this motion for leave to conduct discovery. The court directed that the petitioner file any opposition to the motion by October 25, 2021.

Respondents County essentially argue that limited discovery is necessary concerning whether the members of the petitioner non-profit corporation had private economic interests advanced by this litigation such that the litigation costs did not transcend the individual members' personal economic interest in the litigation, otherwise neither the Court, nor the County can determine whether these private economic interests preclude an award of attorney fees if these interests are hidden by a public interest group petitioner/plaintiff.

Respondents County contends: petitioner argues in its motion for attorney fees that Measure E "posed an insurmountable hurdle for most discretionary development projects, including housing, office, retail, parks and recreation and services" (Petitioner's Points and Authorities, page 10, lines 3-8.) and if members of the Alliance or its pro bono counsel own real property burdened by such an alleged insurmountable hurdle, Section 1021.5 requires those interests be known; the court and County must look beyond the veil of the public interest corporate petitioner to determine whether its members and pro bono counsel were motivated to challenge Measure E to remove economic constraints imposed by Measure E on development of their properties; pro bono counsel is a member of the petitioner and the owner

of 76.7 acres of undeveloped land and one of the petitioner's officers is William Bacchi; County records indicate the Bacchi Family owns interests in substantial acreage in the County; and in recognition of associational privacy interests, the County discovery request excludes members of petitioner who do not own property in the County, is limited to the information necessary to oppose the fee motion, and further excludes parcels with primary residences that could not be further subdivided or developed.

The proofs of service declare that on October 12, 2021 the order shortening time to hear this motion, the October 8, 2021 minute order shortening time, notice of the hearing, and moving papers were electronically served on petitioner's counsels.

The parties subsequently stipulated to continue the hearing from November 5, 2021 to December 10, 2021, which was granted by the court on October 22, 2021.

The opposition was directed to be filed by November 22, 2021 and the reply to be filed by December 6, 2021. The court later continued the hearing to February 4, 2022.

Petitioner opposes the motion on the following grounds: Measure E applies to discretionary projects and not undeveloped land, even though as a condition of each new development of land Measure E requires that the project pay its fair share of the costs to mitigate the cumulative effect of all new development; the financial impacts of Measure E on discretionary projects depends on many variables; Alliance is unquestionably an independent entity with a history of involvement in education and advocacy and it is not a front to conceal the true identity of litigants so that they may bring litigation and be eligible for an award of attorney fees under Section 1021.5; Alliance has no members, no membership dues, no litigation fund, less means available to fund the litigation, and no quantifiable benefit to litigating the case; the financial burden as it relates to Alliance's counsel is not quantifiable; the public records reflect that the undeveloped land held by the Bacchi family members is held by multiple family

members on multiple parcels; at no time during the course of the litigation was any consideration given to the effect of Measure E on Mr. Bacchi's property and Mr. Bacchi has not funded or agreed to fund the Measure E litigation; and County's request to discover the identity and real property interests of all "members" of Alliance is overly broad and violates the constitutional rights of freedom of association and privacy of Alliance and the targeted individuals.

Respondent County replied to the opposition as follows: respondent has submitted sufficient evidence to suggest that petitioner's membership and petitioner's pro bono counsel have significant private economic benefits from this case that prelude them from obtaining an award of attorney fees under the private attorney general statute; before evaluating the propriety of any fee award, the court and County must have complete information about the private economic benefits respondent's membership and its pro bono counsel receive from this case; limited discovery of the petitioner's members' private property interests which are substantially burdened financially by Measure E prior to a decision in this case is appropriate under the circumstances presented; denial of such discovery would open the door for abuse of the private attorney general statute; the opposition seeks to prematurely argue the merits of a private benefit inquiry related to an award of attorney fees before the County has any opportunity to discover the evidence necessary to perform that analysis; contrary to petitioner's argument in opposition, the holding in Save Open Space Santa Monica Mountains v. Superior Court (2000) 84 Cal.App.4th 235 is not limited only to cases where there are contributions to litigation funds and did not even reference the litigation fund when it identified the issues on appeal; if the Save Open Space opinion was strictly limited to cases involving contributions to litigation funds, the holding and statement of issues to be resolved in the opinion would have expressly include that limitation; even in the absence of a litigation fund, the petitioner

organization assumed the financial obligations in bringing the case, such as covering costs of litigation and potential liability to intervenor costs and attorney fees if petitioner is unsuccessful, and the funding source for those obligations is unknown; petitioner mistakenly relies on Los Angeles Protective League v. City of Los Angeles (1986) 188 Cal.App.3d 1 as the leading standard to determine if private attorney general fees are recoverable as the case was expressly rejected by the appellate court opinion in Millview v County Water District (2016) 4 Cal.App.5th 759, 771-773.); submission of a project application by a member of the petitioner is not necessary to estimate the potential financial impacts of Measure E on that member's developable property interests; Measure E imposed significant financial burdens for funding capital improvements to develop the Hiddinge parcels; County has met its burden to present sufficient evidence suggesting that the petitioning public interest organization is primarily for the financial benefit of its membership, which justifies the limited discovery sought; the court should not be distracted by petitioner's submission of voluminous documents that are irrelevant to the narrow and relevant discovery necessary to understand the private economic interests hidden by petitioner's organization; and any privacy interests in the limited information sought do not weigh against allowing discover and an in camera review would not achieve the purpose of discovery as petitioner has previously published its list of members and petitioner has not sufficient established a reasonable expectation of privacy in ownership of property, which can be confirmed through public records absent the use of partnerships or other entities.

"Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another

public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code. ¶ Attorneys' fees awarded to a public entity pursuant to this section shall not be increased or decreased by a multiplier based upon extrinsic circumstances, as discussed in Serrano v. Priest, 20 Cal.3d 25, 49." (Code of Civil Procedure, § 1021.5.)

"Section 1021.5 codifies the private attorney general doctrine, which provides an exception to the " 'American rule' " that each party bears its own attorney fees. (*Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1147, 74 Cal.Rptr.3d 81, 179 P.3d 882.) The fundamental objective of the private attorney general doctrine is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants in such cases. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565, 21 Cal.Rptr.3d 331, 101 P.3d 140.) Under section 1021.5, the court may award attorney fees to (1) a successful party in any action (2) that has resulted in the enforcement of an important right affecting the public interest (3) if a significant benefit has been conferred on the general public or a large class of persons, and (4) the necessity and financial burden of private enforcement are such as to make the award appropriate. (*Ibid.*) The burden is on the claimant to establish each prerequisite to an award of attorney fees under section 1021.5. (*Serrano v. Stefan Merli Plastering Co., Inc.* (2010) 184 Cal.App.4th 178, 185, 108 Cal.Rptr.3d 777.)" (Emphasis added.) (Ebbetts Pass Forest Watch v. California Dept. of Forestry and Fire Protection (2010) 187 Cal.App.4th 376, 381.)

"The determination of private attorney general fee awards under section 1021.5 is reviewed under an abuse of discretion standard. (See *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (2000) 79 Cal.App.4th 505, 511–512, 94 Cal.Rptr.2d 205 (*Families Unafraid*), citing *Feminist Women's Health Center v. Blythe* (1995) 32 Cal.App.4th 1641, 1666, 39 Cal.Rptr.2d 189.)" (MBNA America Bank, N.A. v. Gorman (2006) 147 Cal.App.4th Supp. 1, 6.)

"The threshold requirement for a fee award under section 1021.5 is that the fee applicant must be a "successful party." (*Protect Our Water v. County of Merced, supra,* 130 Cal.App.4th at p. 493, 30 Cal.Rptr.3d 202.) In this case, Robinson obtained (1) a peremptory writ of mandate that required City to provide him with notice of removal, a statement of reasons, and an opportunity for an administrative appeal and (2) a final judgment awarding him damages for breach of contract. Based on the actions City was required to perform pursuant to the writ of mandate and the damages it was required to pay under the judgment as a result of Robinson prevailing on some of his claims, we conclude as a matter of law that Robinson was a successful party. (See *Urbaniak v. Newton* (1993) 19 Cal.App.4th 1837, 1843, 24 Cal.Rptr.2d 333 [success determined by the action or cessation of action produced by the judgment, such as specific performance or payment of damages].) ¶ The fact that Robinson did not obtain all of the relief he sought in his original pleading does not lead to the conclusion that City, rather than Robinson, was the successful party in this litigation. Instead, a plaintiff's partial success is a factor considered in determining the amount of any fee award. (*Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 249, 261 Cal.Rptr. 520 ["a reduced fee award is appropriate when a claimant achieves only limited success"].)" (Robinson v. City of Chowchilla (2011) 202 Cal.App.4th 382, 393.)

"In ruling upon a section 1021.5 fees request, the trial court will exercise " ' "its traditional equitable discretion." ' " (*RiverWatch, supra,* 175 Cal.App.4th at p. 776, 96 Cal.Rptr.3d 362.) The trial court " ' " 'must realistically assess the litigation and determine, *from a practical perspective* ' whether or not the statutory criteria have been met." ' " (*Ibid.,* italics added.) "Courts take a '*broad, pragmatic view of what constitutes a* "*successful party* " ' in order to effectuate the policy underlying section 1021.5." (*RiverWatch, supra,* at pp. 782–783, 96 Cal.Rptr.3d 362, citing *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565, 21 Cal.Rptr.3d 331, 101 P.3d 140 (*Graham*); italics added.)" (McGuigan v. City of San Diego (2010) 183 Cal.App.4th 610, 623.)

"In order to establish the prerequisite set forth in subdivision (b) of section 1021.5, the party seeking an award on the "private attorney general" theory "bears the burden of establishing that its litigation costs transcend its personal interest." (*Beach Colony II v. California Coastal Com.* (1985) 166 Cal.App.3d 106, 113, 212 Cal.Rptr. 485; *County of Inyo v. City of Los Angeles* (1978) 78 Cal.App.3d 82, 90, 144 Cal.Rptr. 71.) In deciding whether this burden has been met, a trial court is required to make a "comparison of the *litigant's* private interests with the anticipated costs of suit." (*California Licensed Foresters Assn. v. State Bd. of Forestry* (1994) 30 Cal.App.4th 562, 570, 35 Cal.Rptr.2d 396, emphasis added.) SOS, seizing on the word "litigant," points out that SOS was the litigant in this action, not the contributors who funded the litigation. SOS claims that since it has no stake in the outcome of the Stokes Canyon litigation, either economic or non-economic, the trial court should have held that the information requested by real parties is irrelevant to the issue of whether SOS's financial burden of attorney's fees is out of proportion to its personal interest in litigating the case, and should have concluded that the information is thus irrelevant to the issue of whether SOS qualifies for an attorney fee award under section 1021.5. ¶ SOS cites *Los Angeles Police*

Protective League v. City of Los Angeles (1986) 188 Cal.App.3d 1, 232 Cal.Rptr. 697 and *Baggett v. Gates* (1982) 32 Cal.3d 128, 185 Cal.Rptr. 232, 649 P.2d 874 for the proposition that where litigation is financed by a public interest organization a trial court is not entitled to consider the interests of nonparty donors in deciding whether "the necessity and financial burden of private enforcement ... are such as to make the award appropriate." (§ 1021.5, subd. (b).) Although language contained within *Los Angeles Police Protective League* and *Baggett* can be interpreted to mean that a trial court, in deciding whether an organization is entitled to an attorney fee award under section 1021.5, is required to focus on the interests of the organization rather than on the interests of its members, neither of these cases specifically discuss whether the interests of nonparty contributors to a litigation fund established by a public interest organization may be considered in the context of determining whether to award attorneys' fees under section 1021.5. Moreover, neither *Los Angeles Police Protective League* nor *Baggett* discuss whether information concerning the establishment of a public interest litigation fund and information concerning the contributors to the fund is discoverable by a party opposing a section 1021.5 attorney fee request. ¶ Courts have refused to award private attorney general fees to litigants who have obtained considerable benefit from litigation challenging public agency decisions. (See *Williams v. San Francisco Bd. of Permit Appeals, supra,* 74 Cal.App.4th 961, 965, 88 Cal.Rptr.2d 565 [homeowner who successfully blocked destruction of neighboring Victorian home denied award because he had a strong personal aesthetic interest in not having a large structure built next door to his residence]; *City of Hawaiian Gardens v. City of Long Beach* (1998) 61 Cal.App.4th 1100, 1113, 72 Cal.Rptr.2d 134 [city that successfully challenged neighboring city's street closure not entitled to attorneys' fees, in part because city's residents "received a substantial benefit when the proposed closure ... was blocked"]; *County of Inyo v. City of Los Angeles, supra,* 78 Cal.App.3d at p. 90, 144

Cal.Rptr. 71 [county that successfully challenged city's environmental impact report not entitled to private attorney general fees because the county's efforts had primarily benefited its own inhabitants]; *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 914, 223 Cal.Rptr. 379 [fees denied to a prevailing neighboring property owner because the owner's "primary purpose in bringing suit was to pursue and protect its own property rights rather than to further a significant public interest"]; *Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 49, 16 Cal.Rptr.2d 435 [fees denied to a nonprofit religious organization that brought suit to block expansion of a landfill on neighboring property because the organization's private interest with reference to the use of its property was the real "basis" of the action.].) ¶ We recognize that these cases all involve instances where the interested individuals and entities were parties to the lawsuit. However, we need not blind ourselves to the fact that if individuals or entities having an interest in real property located in the vicinity of Stokes Canyon had prosecuted this action in their own names, it is possible that application of the principles set forth in the foregoing cases would bar them from obtaining a private attorney general fee award. ¶ The parties have cited no authority, and we know of none, that specifically discusses the issue of whether a party opposing a private attorney general fee award is permitted to conduct discovery in order to determine (1) whether a public interest organization has litigated an action for and at the direction of a specific group of individuals, and (2) whether those individuals have a private interest in the outcome of the litigation that would preclude an attorney fee award under section 1201.5. [FN 7] ¶ FN 7. Although *Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal.App.3d 213, 231, 226 Cal.Rptr. 265 suggests that such discovery may not be allowed, it does not hold that such discovery is to be denied in all cases. ¶ SCF claims that all such discovery should be prohibited because tax laws governing the tax deductibility of contributions are already in place to reduce substantially the potential

that charitable organizations will serve as "unthinking conduits" for private interests. For example, a charitable organization must review any project it is considering sponsoring to ensure that the project comports with the organization's purpose. In addition, charitable organizations must retain complete discretion and control over the use of donated funds and, where the organization has established a specific project fund, the organization must maintain the authority to divert funds to other uses if the project ceases to advance the organization's goals. Consequently, donations that are earmarked for a specific project—i.e., that must be returned to the donor if not put to the specified use—are not tax deductible. ¶ Although state and federal tax agencies may well police nonprofit organizations in an ongoing effort to curb abuses, tax deductibility rules have no application to the question of whether discovery should be allowed to determine, in a private attorney general case, whether an organization is acting as an "unthinking conduit" in order to promote the private interests of a few individuals. The fact that SOS may have complied with applicable tax codes is but one factor to be considered by the trial court in deciding whether a public interest organization has litigated an action for and at the direction of a specific group of individuals. ¶ As real parties contend, there is evidence contained within the record suggesting that "[i]n reality, this case was litigated by and for the benefit of neighbors living in the vicinity of the [affected] subdivisions." For example, the retainer agreement itself makes clear that an individual owning real property in Stokes Canyon (James D. Wrigley) agreed to "assume personal financial responsibility for the payment of all attorneys' fees and expenses incurred in connection" with the Stokes Canyon litigation, with his liability limited to $10,000. In the event the law firm representing SOS prevailed on a section 1021.5 motion, Wrigley was to be reimbursed. His liability depended "upon the amount of cash available in the Stokes Canyon Litigation Fund for payment of attorneys' fees and expenses." In addition, Wrigley was designated as the "chief liaison," which meant that he was to send

copies of the billing statements to the SCF with an instruction to pay the law firm representing SOS. ¶ SOS and SCF claim that because SOS and SCF had complete control over the litigation, and because it is possible they will make no demand on Wrigley to pay the attorney fees and expenses, the fact that Wrigley agreed to be financially responsible for the Stokes Canyon litigation attorney fees and costs (up to a certain amount) should the organizations funding the litigation fail to receive donations sufficient to cover these fees and costs is irrelevant. We disagree. As long as Wrigley remains potentially liable to pay a certain percentage of the fees and expenses incurred by SOS with respect to the Stokes Canyon litigation, he has made a contribution to the litigation fund. It remains to be seen if this contribution is significant enough to compel the conclusion that he has received an important and substantial personal benefit from the litigation. ¶ We conclude that where, as here, the party opposing a section 1021.5 attorney fee award has produced evidence suggesting that a public interest organization is litigating an action primarily for the benefit of nonlitigants, the court should, in order to resolve the issue, allow the opposing party to conduct limited discovery. What kinds of discovery will be permissible is to be decided on a case-by-case basis. We caution, however, that before a trial court orders such discovery it must first determine whether the discovery ordered impermissibly infringes upon important associational privacy rights of third parties." (Emphasis added.) (Save Open Space Santa Monica Mountains v. Superior Court (2000) 84 Cal.App.4th 235, 247–250, disapproved on another ground in Williams v. Superior Court (2017) 3 Cal.5th 531, 557.)

"Real parties claim that the right to association is not implicated here because real parties are not seeking membership lists or information about the political or organizational affiliations of contributors to SOS, SCF or SEE. However, the right to associate with an organization is not limited to the right to become a member of that organization. Individuals can choose to

associate with groups in any of a number of forms, including the making of financial contributions. (See *Barnes v. State Farm Mut. Auto. Ins. Co.* (1993) 16 Cal.App.4th 365, 372, 20 Cal.Rptr.2d 87 [holding political expenditures and contributions are forms of political speech]; *Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 688, fn. 2, 47 Cal.Rptr.2d 108, 905 P.2d 1248, (conc. & dis. opn. of Baxter, J.) ["As the United States Supreme Court recognized in its landmark decision upholding federal campaign contribution limits, '[m]aking a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals.' [Citation.] For these reasons, the high court observed, contribution limits implicate fundamental First Amendment interests, such as the rights of political expression and association."].) ¶ It would thus appear that the right of privacy and a derivative right of confidentiality, as described in Britt, supra, are generally applicable to membership in and contribution to public interest organizations such as those affected by the trial court's discovery order in this case, i.e., SOS, SCF and SEE. ¶ **F. Balancing of the Competing Interests ¶** "Where discovery involves matters encompassed by the right of privacy, courts recognize that 'judicial discovery orders inevitably involve *state-compelled* disclosure....' [Citation.] Therefore, in reviewing a party's resistance to a discovery order, based on the claim that it entrenches upon a constitutional right, we treat the compelled disclosure as a product of state action subject to constitutional constraints. [Citation.]" (*Mendez v. Superior Court* (1988) 206 Cal.App.3d 557, 566–567, 253 Cal.Rptr. 731.) ¶ The right of associational privacy is not absolute. (*Britt, supra,* 20 Cal.3d at p. 855, 143 Cal.Rptr. 695, 574 P.2d 766, *Johnson, supra,* 80 Cal.App.4th at p. 1070, 95 Cal.Rptr.2d 864.) The party seeking discovery of private matters must do more than satisfy the relevancy standard set forth in section 2017. (See *Lantz v. Superior Court, supra,* 28 Cal.App.4th at p. 1853, 34 Cal.Rptr.2d 358.) He is required to

demonstrate a "compelling need" for the discovery, and "that compelling need must be so strong as to outweigh the privacy right when these two compelling interests are carefully balanced." (*Id.* at pp. 1853–1854, 34 Cal.Rptr.2d 358.) ¶ The *Britt* court, in analyzing the interests that would warrant disclosure, noted that the filing of a lawsuit "may implicitly bring about a partial waiver of one's constitutional right of associational privacy." (*Britt, supra,* 20 Cal.3d at p. 859, 143 Cal.Rptr. 695, 574 P.2d 766.) The court cautioned, however, that "the scope of such 'waiver' must be narrowly rather than expansively construed, so that plaintiffs will not be unduly deterred from instituting lawsuits by the fear of exposure of their private associational affiliations and activities. [Citation.]" It is only "[w]hen such associational activities are *directly relevant* to the plaintiff's claim, and disclosure of the plaintiff's affiliations is essential to the fair resolution of the lawsuit, [that] a trial court may properly compel such disclosure. [Citation.] Even under such circumstances, however, the general First Amendment principles ... dictate that the compelled disclosure be narrowly drawn to assure maximum protection of the constitutional interests at stake." (*Ibid.*) [Footnote omitted.] ¶ The court abuses its discretion to resolve discovery disputes if it fails to undertake the required balancing of the associational privacy interests against the interests allegedly compelling disclosure. (See *Johnson, supra,* 80 Cal.App.4th at p. 1073, 95 Cal.Rptr.2d 864; *Lantz v. Superior Court, supra,* 28 Cal.App.4th at p. 1857, 34 Cal.Rptr.2d 358.) ¶ "The strength of an individual's interest in keeping personal information private depends in large part on the consequences of disclosure. Courts look to 'human experience' to determine the likely effect of disclosure of the information at issue. [Citation.] For example, in [*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1024, 88 Cal.Rptr.2d 552] the court ruled that a newspaper could not compel a city to disclose the names, addresses and telephone numbers of individuals who had complained about airport noise. The court reasoned that it could infer from human experience

that public disclosure of that information would 'have a chilling effect on the number of complaints made' and that it would 'subject the complainants to the loss of confidentiality in their complaints, and also to direct contact by the media and by persons who wish to discourage complaints.' [Citation.]" (*Planned Parenthood Golden Gate v. Superior Court* (2000) 83 Cal.App.4th 347, 360, 99 Cal.Rptr.2d 627.) ¶ The donors to the Stokes Canyon litigation fund have an interest in preserving their right to freely and privately associate with SOS. SOS has an interest in protecting the associational privacy rights of its donors so as to encourage these same donors, and others, to contribute funds to future projects. ¶ Real parties, on the other hand, have a legitimate interest in ensuring that attorney fees are not awarded where the statutory requirements set forth in section 1021.5 are not met. And, because attorney fee awards paid by the County are necessarily paid from taxpayer funds, County taxpayers have an interest in limiting unwarranted attorney fee awards so that funds needed for public services are not diverted to pay unauthorized attorney fees. The state (and thus all taxpayers) has an interest in ensuring that charitable contributions are not shams—and that the donated funds truly become the property of the charity that receives them. Equally as important as these interests is the state's compelling interest, as reflected in its broad discovery statutes, in " 'facilitating the ascertainment of truth in connection with legal proceedings.' [Citation.]" (*Britt, supra,* 20 Cal.3d at p. 857, 143 Cal.Rptr. 695, 574 P.2d 766; *Johnson, supra,* 80 Cal.App.4th at p. 1071, 95 Cal.Rptr.2d 864.) ¶ To determine whether the state's interest in "seeking the truth in court proceedings" (*Johnson, supra,* 80 Cal.App.4th at p. 1071, 95 Cal.Rptr.2d 864) outweighs the privacy interests in this case, we must balance the privacy interests against real parties' need for discovery. (See, e.g., *Palay v. Superior Court* (1993) 18 Cal.App.4th 919, 934, 22 Cal.Rptr.2d 839; *Johnson, supra,* 80 Cal.App.4th at p. 1070, 95 Cal.Rptr.2d 864.) ¶ When ruling on a motion for attorney fees under section 1021.5, the court is required to

"realistically assess the litigation and determine, from a practical perspective," whether or not the statutory requirements have been met. (See *Woodland Hills Residents Assn., Inc. v. City Council, supra,* 23 Cal.3d at p. 938, 154 Cal.Rptr. 503, 593 P.2d 200; *Baggett v. Gates, supra,* 32 Cal.3d at p. 142, 185 Cal.Rptr. 232, 649 P.2d 874.) A trial court cannot realistically assess the interests of a fee applicant if the applicant (and hence the nature and extent of his interest) can be hidden behind a public interest organization. This case may, or may not be an example of a creative attempt to recover private attorney general fees through the use of a private interest organization. However, because different conclusions can be drawn from the evidence, in this case the trial court needs a complete record in order to assess the truth of the matter. To deny those opposing a fee request and, in turn, a trial court, the means to discover whether an organization is litigating a case to further private interests would open the door for abuse of the private attorney general statute. ¶ While the consequences of disclosure of donor information may properly be characterized as profound in some cases, this is not such a case. We are not convinced that disclosing, in increments and in camera, information concerning donations made to a litigation fund, and, if necessary, the names of some of the donors, will have, as SOS and amicus curiae contend it will, an undue chilling effect on the willingness of concerned citizens to contribute funds to public interest organizations." (Save Open Space Santa Monica Mountains v. Superior Court (2000) 84 Cal.App.4th 235, 252–254, disapproved of by Williams v. Superior Court (2017) 3 Cal.5th 531,537.)

"…Courts must instead place the burden on the party asserting a privacy interest to establish its extent and the seriousness of the prospective invasion, and against that showing must weigh the countervailing interests the opposing party identifies, as *Hill* requires. What suffices to justify an invasion will, as Marshalls recognizes, vary according to the context. Only obvious invasions of interests fundamental to personal autonomy must be supported by a

compelling interest. (*Hill*, at p. 34, 26 Cal.Rptr.2d 834, 865 P.2d 633.) To the extent prior cases require a party seeking discovery of private information to always establish a compelling interest or compelling need, without regard to the other considerations articulated in *Hill v. National Collegiate Athletic Assn.*, *supra*, 7 Cal.4th 1, 26 Cal.Rptr.2d 834, 865 P.2d 633, they are disapproved. [Footnote omitted.]" (Emphasis added.) (Williams v. Superior Court (2017) 3 Cal.5th 531, 557.)

Respondents County have filed several declarations in support of the motion for limited discovery and a request for judicial notice.

There is evidence that all three officers of Alliance own real property in El Dorado County, including potential significant land holdings by William Bacchi; and Alliance's counsel has an interest in a limited partnership that holds vacant land in El Dorado County. (Declaration of Julie Lopez in Support of Motion, paragraphs 4-7 and Exhibits A-C; and Declaration of Breann Moebius in Support of Motion, paragraphs 7 and 9.)

A Deputy County Counsel declares that during representation of the County in this matter several individuals informed counsel that one motivation for this litigation was the economic constraints that Measure E imposed on development of particular parcels, including Alliance members and Alliance's counsel; and counsel was informed that Alliance's counsel is a member of Alliance. (Declaration of Breann Moebius in Support of Motion, paragraph 5.)

These individual informants are not identified and their foundation for knowing such information is not described in the declaration, which leaves little, if any, probative value to the assertion that one motivation for this litigation was the economic constraints that Measure E imposed on development of particular parcels, including Alliance members and Alliance's counsel; and little, if any, support to the legal argument made in paragraph 11 of .the

Declaration of Breann Moebius in Support of Motion that it is likely that members of Alliance and Alliance's counsel have private economic interests that likely motivated this lawsuit.

There is evidence that petitioner Alliance is not governed by the decision of members as it has no members, petitioner is governed and decisions are made by the directors, Alliance previously published a list of volunteers and participants on its website under the heading "Who We Are", and when the website was updated in 2015 the list was removed and Alliance thereafter avoided disclosure of the identity of any participant, volunteer or email recipient to protect their rights of privacy and freedom of association. (See Declaration of James L. Brunello in Opposition to Motion, paragraphs 18 and 19.) Petitioner's counsel declares that Alliance has three officers/directors who are Maryann Argyres, Gordon Vicini and Bill Bacchi. (See Declaration of James L. Brunello in Opposition to Motion, paragraph 17.) Counsel further declares: petitioner has volunteers and participants, some of whom offer time and expertise to generate research papers, develop the website, and maintain a social media page; and that Alliance has never collected dues from any volunteer, participant or other person. (See Declaration of James L. Brunello in Opposition to Motion, paragraph 18.) Petitioner's counsel also declares: the assertion that a motivation for the litigation was Measure E's economic constraints imposed on development of particular parcels of members of Alliance and Alliance's counsel is untrue; at no time during the discussion of the merits of filing or during the pendency of the litigation did counsel consider the potential impact of Measure E on his personal financial interests; and he did not discuss with the Alliance Board the impact of the initiative on any real property owned by the Alliance Board members. (Declaration of James L. Brunello in Opposition to Motion, paragraph 47.)

The evidence establishes that there are no members of the Alliance, a non-profit Public Benefit Corporation; the three Alliance officers/directors necessarily made the decision of

whether to file the underlying petition challenging portions of Measure E; that Alliance does not collect dues from any volunteer, participant or other person; Alliance's Counsel made no effort at no time during the discussion of the merits of filing or during the pendency of the litigation to discuss with the Alliance Board the impact of the initiative on any real property owned by the Alliance Board members and did not consider the potential impact of Measure E on his personal financial interests.

As there is no Alliance membership, dues are not collected from any volunteer, participant or other person, and there are only three decision makers for the corporation, there is no evidence establishing that there is any likelihood that Alliance is acting as a front or unthinking conduit to serve the economic interests of Alliance's volunteers and participants, There is no basis for discovery of the names and real property economic interests of Alliance's volunteers and participants.

William Bacchi is only one of three directors/officers of Alliance. There is no evidence that he or any other of Alliance's officers/directors funded or assumed responsibility for payment of costs and expenses of this litigation. There is no evidence that William Bacchi discussed with or attempted to sway the other two officers/directors to vote to file the subject litigation due to his real property economic interests. While there is evidence that the other two officers/directors of Alliance own property in El Dorado County, there is no evidence that they own developable property that would be impacted by the operation of Measure E. In fact, there is no evidence as to the nature of their land holdings. Defense counsel denies any motivation to have the litigation filed in order to protect his economic interests and declares he did not discuss with the Alliance Board the impact of the initiative on any real property owned by the Alliance Board members, which weighs in favor of a finding that the Alliance Board decision was not motivated in any way by the real property interests of the officer/directors. The only

evidence that one likely motivation to file the lawsuit was the economic interests of the Alliance Board members and Alliance counsel is from anonymous sources with no information as to their foundation for that assertion, which leaves that evidence with essentially little or no weight.

Considering the totality of the circumstances presented, there is insufficient evidence to suggest that Alliance was motivated to litigate the action primarily for the benefit of the nonlitigant corporate officers/directors or Alliance's counsel and they were hiding behind Alliance's corporate front. Balancing the privacy interests against the County's need for discovery the right to privacy outweighs the County's need for discovery under the circumstances.

Respondent County's motion for leave to conduct limited discovery is denied.

Petitioners' Motion for Attorney Fees.

Pursuant to the court order entered on October 8, 2021, petitioner's motion for attorney fees was dropped from the calendar and the parties were instructed that within five days after the parties agree discovery is complete or an order denying discovery is issued by the court, the parties shall file a stipulation proposing a new hearing date and briefing schedule for the motion for attorney fees.

TENTATIVE RULING # 8: RESPONDENT COUNTY'S MOTION FOR LEAVE TO CONDUCT LIMITED DISCOVERY IS DENIED. PETITIONER'S MOTION FOR ATTORNEY FEES WAS DROPPED FROM THE CALENDAR. WITHIN FIVE DAYS AFTER THIS ORDER DENYING DISCOVERY IS ISSUED BY THE COURT, THE PARTIES SHALL FILE A STIPULATION PROPOSING A NEW HEARING DATE AND BRIEFING SCHEDULE FOR THE MOTION FOR ATTORNEY FEES. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO

APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

9. AORAKI HOLDINGS PARTY v. LABMOR ENTERPRISES PC-20190488

Hearing Re: Default Judgment.

On September 11, 2019 plaintiff file an action asserting 10 causes of action against defendants Labmor Enterprises, Inc., Casey Labbitt, Stephanie Labbitt, and DOES 1-50. On September 26, 2019 plaintiff filed a DOE amendment naming CMP Agg Innovations, LLC. as DOE 1, CMP Agg Innovations, LLC. as DOE 2, Constantly Growing, Inc. as DOE 3, Gardensmart, Inc. as DOE 4, Callarick Business, Inc. as DOE 5, Labtech Greenhouses, Inc. as DOE 6, Callarick Enterprises, LP as DOE 7, and 2nd Hand Hydro, LLC as DOE 8. On October 23, 2019 defendants Labmor Enterprises, Inc., Casey Labbitt, Stephanie Labbitt, CMP Agg Innovations, LLC., Constantly Growing, LLC, Constantly Growing, Inc., Callarick Business, Inc., Labtech Greenhouses, Inc., and Callarick Enterprises, LLC filed their answer to the complaint. On December 11, 2019 default was entered against defendant 2nd Hand Hydro, LLC.

The complaint alleges that defendants owe plaintiff $238,066.62. (Complaint, paragraphs 33, 34, 40, 53, and 56.)

On December 3, 2021 plaintiff filed a notice of hearing on the default prove up hearing on seeking entry of judgment against purportedly defunct corporate defendants Labmor Enterprises, Inc., Callarick Business, Inc., Labtech Greenhouses, Inc., CMP Agg Innovations, LLC., Gardensmart, Inc., and Constantly Growing, Inc., stating it was set for December 8, 2021. The proof of service declares the notice was personally served on defense counsel and the California Secretary of State's Office on December 2, 2021.

The default prove up hearing was continued to February 4, 2022 by minute order, which was served by the clerk on plaintiff's counsel and defense counsel by mail on November 29, 2021.

The court takes judicial notice that Labmor Enterprises, Inc. and Constantly Growing, Inc. are listed as active corporate entities by the California Secretary of State's Office.

The court also takes judicial notice that Callarick Business, Inc., Labtech Greenhouses, Inc., CMP Agg Innovations, LLC, and Gardensmart, Inc. are listed as FTB suspended corporate entities by the California Secretary of State's Office.

The court record reflects that at the October 8, 2021 hearing on plaintiff's motion to strike the answers of Labmor Enterprises, Inc., CMP Agg Innovations, LLC., Constantly Growing, Inc. Gardensmart, Inc., Callarick Business, Inc., and Labtech Greenhouses, Inc., and enter their defaults the court's tentative ruling was to grant the motion. The court was advised that there were certificates of revivor issued by the Secretary of State regarding Labmor Enterprises, Inc. and Constantly Growing, Inc. and that the parties stipulated to adopt the tentative ruling as to the remaining suspended corporations and deny the motion as to Labmor Enterprises, Inc. an Constantly Growing, Inc. The court ordered that the motion was denied as to Labmor Enterprises, Inc., and Constantly Growing, Inc. and granted the motion as to Gardensmart, Inc., Callarick Business, Inc., and Labtech Greenhouses, Inc., thereby striking their answers and entering their defaults.

After default the plaintiff may apply to the court for the relief demanded in the complaint; the court shall hear the evidence offered by the plaintiff, and shall render judgment in his or her favor for such sum not exceeding the amount stated in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115, as appears by such evidence to be just. (Code of Civil Procedure, § 585(b).)

The Third District Court of Appeal has held with regard to sufficient allegations of the amount of damages in order to enter a default judgment: "Under *Greenup* and *Schwab,* this is insufficient to give the requisite notice of the amount of damages claimed. In order to meet the notice requirements imposed by due process, a plaintiff must either give notice of the damages claimed in a separate statement of damages or by the allegations of the complaint. To pass constitutional muster, the complaint must either allege a specific dollar amount of damages in the body or prayer or at the very least allege the boilerplate damages are "in an amount that exceeds the jurisdictional requirements" of the superior court. An allegation seeking damages "according to proof" fails to fulfill the mandate of section 425.11 or of due process. After all, a "defendant is entitled to actual notice of the liability to which he or she may be subjected, a reasonable period of time before default may be entered." (*Schwab, supra,* 53 Cal.3d at p. 435, 280 Cal.Rptr. 83, 808 P.2d 226.)" (Parish v. Peters (1991) 1 Cal.App.4th 202, 216.)

The Third District Court of Appeal has held: "A defendant's failure to answer the complaint has the same effect as admitting the well-pleaded allegations of the complaint, and as to these admissions *no further proof of liability is required.* (§ 431.20, subd. (a); *Kim, supra,* 201 Cal.App.4th at pp. 281–282, 133 Cal.Rptr.3d 774.) Thus, in a default situation such as this, if the complaint properly states a cause of action, the only additional proof required for the judgment is that needed to establish the amount of damages. (See *Beeman v. Burling, supra,* 216 Cal.App.3d at p. 1597, 265 Cal.Rptr. 719; see also *Ostling v. Loring, supra,* 27 Cal.App.4th at p. 1745, 33 Cal.Rptr.2d 391.) ¶ "The 'well-pleaded allegations' of a complaint refer to ' " 'all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.' " ' [Citations.]" (*Kim, supra*, 201 Cal.App.4th at p. 281, 133 Cal.Rptr.3d 774.) A well-pleaded complaint "set[s] forth the ultimate facts constituting the cause of action, not the evidence by which plaintiff proposes to prove those facts." (*Committee on Children's Television, Inc. v.*

General Foods Corp. (1983) 35 Cal.3d 197, 211–212, 197 Cal.Rptr. 783, 673 P.2d 660, fn. omitted; see also *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550, 67 Cal.Rptr.3d 330, 169 P.3d 559 ["[T]he complaint ordinarily is sufficient if it alleges ultimate rather than evidentiary facts."].) "The complaint delimits the legal theories a plaintiff may pursue and the nature of the evidence which is admissible. [Citation.] 'The court cannot allow a plaintiff to prove different claims or different damages at a default hearing than those pled in the complaint.' [Citation.]" (*Electronic Funds Solutions, LLC v. Murphy* (2005) 134 Cal.App.4th 1161, 1182, 36 Cal.Rptr.3d 663.) Thus, the plaintiff cannot supplement the general allegations of the complaint by reference to the plaintiff's showing in the summary judgment proceeding. (Cf. *FPI, supra*, 231 Cal.App.3d at pp. 383–384, 282 Cal.Rptr. 508.)" (Carlsen v. Koivumaki (2014) 227 Cal.App.4th 879, 898–899.)

"Plaintiffs in a default judgment proceeding must prove they are entitled to the damages claimed. (Code of Civ.Proc., § 585; *Taliaferro v. Hoogs* (1963) 219 Cal.App.2d 559, 560, 33 Cal.Rptr. 415.)" (Barragan v. Banco BCH (1986) 188 Cal.App.3d 283, 302.)

""It is imperative in a default case that the trial court take the time to analyze the complaint at issue and ensure that the judgment sought is not in excess of or inconsistent with it. It is not in plaintiffs' interest to be conservative in their demands, and without any opposing party to point out the excesses, it is the duty of the court to act as gatekeeper, ensuring that only the appropriate claims get through." (*Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 868, 121 Cal.Rptr.2d 695 (*Heidary*).)" (Electronic Funds Solutions v. Murphy (2005) 134 Cal.App.4th 1161, 1179.)

There is no evidence submitted in support of the default prove-up that would establish the amount of damages incurred in an amount not exceeding the amount of $238,066.62 alleged

in the complaint. Appearances are required in order for plaintiff to submit evidence to prove up the amount of damages sought.

TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

10. ROSICK v. FINLEY PC-20200633

OSC Re: Failure to Appear at CMC and Failure to File Proof of Service.

On August 16, 2021 plaintiff's then counsel of record failed to appear at the CMC. The CMC was continued to November 15, 2021 and plaintiff was directed to file a proof of service. The August 16, 2021 minute order was served on counsel Joseph Weinberger by mail on August 16, 2021. On November 3, 2021 plaintiff filed a substitution of attorney naming Hank Greenblatt as plaintiff's new counsel of record. Plaintiff's new counsel failed to attend the Case Management Conference (CMC) on November 15, 2021 and failed to file proof of service of the summons and complaint as required by state and local court rules. The November 15, 2021 minute order was served on plaintiff's former counsel Joseph Weinberger by mail on November 17, 2021.

"A judicial officer shall have the power to impose reasonable money sanctions, not to exceed fifteen hundred dollars ($1,500), notwithstanding any other provision of law, payable to the court, for any violation of a lawful court order by a person, done without good cause or substantial justification. This power shall not apply to advocacy of counsel before the court. For the purposes of this section, the term "person" includes a witness, a party, a party's attorney, or both. ¶ Sanctions pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or on the court's own motion, after notice and opportunity to be heard. An order imposing sanctions shall be in writing and shall recite in detail the conduct or circumstances justifying the order." (Code of Civil Procedure, § 177.5)

""Due process, as well as the statute itself, requires that a person against whom Code of Civil Procedure section 177.5 sanctions may be imposed be given adequate notice that such sanctions are being considered, notice as to what act or omission of the individual is the basis

for the proposed sanctions, and an objective hearing at which the person is permitted to address the lawfulness of the order, the existence of the violation, and the absence of good cause or substantial justification for the violation." (*Seykora, supra,* 232 Cal.App.3d at p. 1088, 283 Cal.Rptr. 857 (dis. opn. of Grignon, J.).)" (People v. Hundal (2008) 168 Cal.App.4th 965, 970.)

On December 23, 2020 plaintiff filed a civil action against defendant for personal injury and property damage arising from an alleged motor vehicle accident. There is no proof of service of the complaint on defendant in the court's file and plaintiff has not obtained an order for publication of the summons. Plaintiff must serve all named defendants and file proofs of service on those defendants within 60 days after the filing of the complaint. When the complaint is amended to add a defendant, the added defendant must be served and proof of service must be filed within 30 days after the filing of the amended complaint. (Rules of Court, Rule 3.110(b).)

"If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed." (Rules of Court, Rule 3.110(f).)

"Responsive papers to an order to show cause issued under this rule must be filed and served at least 5 calendar days before the hearing." (Rules of Court, Rule 3.110(i).)

There is no evidence before the court that new counsel of record for plaintiff was provided notice of this hearing on the OSC Re: Sanctions. Therefore, the hearing was continued from January 7, 2022 to February 4, 2022.in order to serve notice on Hank Greenblatt as plaintiff's new counsel of record. The court directed the clerk to serve copies of the August 16, 2021, November 15, 2021, and January 7, 2022 minute orders to Hank Greenblatt. There is no proof of service of these rulings on new counsel Hank Greenblatt in the court's fie. The hearing must

be continued again and the clerk directed to serve copies of the August 16, 2021, November 15, 2021, January 7, 2022, and February 4, 2022 minute orders to Hank Greenblatt

TENTATIVE RULING # 10: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY MARCH 4, 2022 IN DEPARTMENT NINE.

11. DEBT MANAGEMENT PARTNERS, LLC v. SPECK PCL-20210411

Plaintiff's Motion to Deem Admitted Requests for Admission.

Plaintiff's counsel declares: on August 16, 2021 requests for admission were served on defendant; and despite a request for responses and an extension of time to respond, defendant failed to provide any responses to the discovery propounded. Plaintiff moves to deem admitted requests for admission. Plaintiff has not requested an award of monetary sanctions.

The proof of service in the court's file declares that on October 13, 2021 notice of the hearing and copies of the moving papers were served by mail to defendant's address of record and on November 29, 2021 the court served on plaintiff's counsel and defendant notice of the continuance of the motion to February 4, 2022. There is no opposition to the motion in the court's file.

Where a party fails to timely respond to requests for admission, the court is mandated to deem such requests admitted, "…unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion." (Code of Civil Procedure, § 2033.280(c).)

Absent opposition, it appears appropriate under the circumstances to grant the motion to deem admitted the requests for admission.

TENTATIVE RULING # 11: PLAINTIFF'S MOTION TO DEEM ADMITTED REQUESTS FOR ADMISSION IS GRANTED. THE COURT ORDERS THAT REQUESTS FOR ADMISSION,

SET ONE, PROPOUNDED UPON DEFENDANT SPECK ARE DEEMED ADMITTED. MONETARY SANCTIONS NOT HAVING BEEN REQUESTED, THE COURT DOES NOT AWARD ANY MONETARY SANCTIONS. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

12. COOK v. COOK SC-20160174

Plaintiff's Motion to Appoint Referee.

The parties in this action have a disagreement in relation to the sale of certain art work to effectuate the settlement of the case and concerning reimbursement for expenses incurred in restoration of one work of art that is to be sold.

On June 6, 2019 the court granted in part and denied in part plaintiff's motion to appoint referee. The court ordered that a referee be appointed to sell the three subject artworks through art dealers/art sales agents as agreed in the settlement agreement. each of the parties are to submit to the court and serve on the other party the names of up to three potential referees, describe each of their qualifications, and state the rates they charge for their services. The court further ordered that the names be submitted and served not later than June 13, 2019; and the parties are to meet and confer and attempt to select one referee agreeable to both parties. The court also set a review hearing re: selection of at which time the court will appoint the referee agreed to by the parties or, should the parties not agree, select a referee from the list and appoint that person the referee.

The parties reported to the court in the joint stipulation and request for continuance of appointment of referee filed on June 19, 2019 that the parties made considerable progress since June 6, 2019 in the following ways: the parties executed a written amendment to the settlement agreement; the parties agreed to a dealer for each of the works of art to be sold; the parties agreed to the term and conditions of dealer contracts for each of the three works of art to be sold; the dealer contracts are part of the written amendment to the settlement agreement; the parties agreed on the amount of reimbursement to the plaintiff; and the parties agreed on the amount of the equalizing payment required in the settlement agreement. The parties also

reported they were in the process of carting the works of art and/or shipping them to the respective dealers. The court granted the parties request to continue the review hearing.

On September 18, 2019 the parties requested a further continuance to October 18, 2019, which was granted. On October 18, 2019 the parties submitted a joint status report and requested a six month continuance, which was granted. The matter was set for hearing on April 3, 2020 and later continued due to the public health crisis.

At the hearing on June 5, 2020 plaintiff requested a six month continuance of the hearing and defendant asserted that March and December are the best months for art sales and the dealers are unsure if it will happen in December 2020. The court continued the hearing to January 15, 2021. At the hearing on January 15, 2016 the parties reported difficulties in selling a painting. The court continued the hearing to July 23, 2021 with instructions that Gina Cook was to make every effort to sell the painting.

Gina Cook and Kristin Cook filed status reports. Gina Cook reports that various problems have arisen concerning sale of the two remaining works of art; the parties have explored several alternatives, such as defendant buying out plaintiff's interests, an auction sale, donation to obtain a tax credit or deduction, and coordination related to better assess the marketplace and to determine who to contact next to sell the artwork; the parties can not come to an agreement as to what alternatives should be executed and are at a deadlock. Kristin Cook also reports difficulties in selling the two remaining works of art; she states the gallery where the sculpture is located stated it would be back to business as usual in the near future and would like the opportunity to continue to offer the piece for sale and requests that the court continue the hearing for another six months; the remaining artwork can not be sold as there is no willing dealer to offer it and no willing buyer; and she suggests that the artwork be donated.

At the hearing on July 23, 2021 the court stated it would continue the hearing for another six months. The court continued the hearing to February 4, 2022 and set an MSC for October 20, 2021.

At the MSC on October 20, 2021 the court found that the matter had not settled and the parties are not ready for trial. The court also directed the parties to file motions for appointment of a partition referee, "and to set them for hearing within 120 days." (Emphasis added.)

There are no motions for appointment of a partition referee in the court's file.

On January 24, 2022 plaintiff filed a status report stating that the case was not settled at the October 20, 2021 MSC and the parties were to submit motions for appointment of a partition referee within 120 days, which is February 17, 2022.

The parties were to set the hearing on the petition to take place within 120 days of the MSC, not merely submit the motions for filing within 120 days.

TENTATIVE RULING # 12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

13. IN RE: SEQUOIA COMPANIES, LLC 21CV0010

Petition to Approve Transfer of Structured Settlement Payment.

In 2001 the payee entered into a settlement of litigation for personal injuries wherein it was agreed to accept a structured settlement. The payee has agreed to sell a lump sum payment in the amount of $400,000 that is payable on July 24, 2044. The petitioner states that payment has a present value of $318,438.89. In exchange, payee will be paid $90,870.09, which payee declares will be used to put towards the purchase of a residence. The payee further declares: payee has no children; payee is not subject to any court orders or child support obligations; payee has no monthly income outside of the annuity; payee has previously completed three court approved transactions in 2019 and 2020 selling certain payments from the annuity; after this transaction is completed, payee will retain monthly payment rights in the amounts of $2,000 per month until June 24, 2024, $4,120 per month starting June 24, 2025 through June 24, 2044, and then for life thereafter with a 3% COLA and other lump sums payable over a period of years.

Petitioner seeks an order approving the transfer of the structured settlement payments pursuant to the provisions of Insurance Code, §§ 10134, et seq. on the ground that the transfer of the structured settlement payment rights is fair and reasonable and in the best interest of the payee, taking into account the welfare and support of the payee's dependents. (Insurance Code, 10137(a).)

"No transfer of structured settlement payment rights, either directly or indirectly, shall be effective by a payee domiciled in this state, or by a payee entitled to receive payments under a structured settlement funded by an insurance contract issued by an insurer domiciled in this state or owned by an insurer or corporation domiciled in this state, and no structured

settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to a transferee, unless all of the provisions of this section are satisfied." (Insurance Code, § 10136(a).)

"At any time before the date on which a court enters a final order approving the transfer agreement pursuant to Section 10139.5, the payee may cancel the transfer agreement, without cost or further obligation, by providing written notice of cancellation to the transferee." (Insurance Code, § 10136(e).)

"A transfer of structured settlement payment rights is void unless all of the following conditions are met: ¶ (a) The transfer of the structured settlement payment rights is fair and reasonable and in the best interest of the payee, taking into account the welfare and support of his or her dependents. ¶ (b) The transfer complies with the requirements of this article, will not contravene other applicable law, and is approved by a court as provided in Section 10139.5." (Insurance Code, § 10137.)

Notice of the hearing and copies of the petitioning papers must be filed and served 20 days prior to the hearing, plus 2 court days when served by express mail. (Insurance Code, §10139.5(f)(2) and Code of Civil Procedure, § 1013(c).)

The proofs of service in the court's file declare that petitioner served notice of the hearing, the petition, and supporting documents on the beneficiary/payee of the structured settlement payments, the Department of Justice, the annuity issuer and the payment obligor by Federal Express on November 12, 2021; served the payee's supplemental declaration on the beneficiary/payee of the structured settlement payments, the Department of Justice, the annuity issuer and the payment obligor by mail on November 18, 2021; and served the notice of continued hearing on the beneficiary/payee of the structured settlement payments, the

Department of Justice, the annuity issuer and the payment obligor by mail on December 3, 2021 .

Having reviewed the petition and documents filed in support of the petition, absent objections, it appears appropriate to grant the petition.

TENTATIVE RULING # 13: THE PETITION IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30

A.M. ON FRIDAY, FEBRUARY 4, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

14. SATO v. FOLSOM FAMILY & SPORTS MEDICAL PC-20190059

(1) Plaintiffs' Motion for Relief from Untimely Motion to Compel Further Responses.

(2) Plaintiffs' Motion to Compel Further Responses to Discovery.

Plaintiffs' Motion for Relief from Untimely Motion to Compel Further Responses.

Plaintiffs attempted to have the motion to compel further responses filed on October 26, 2021 in order to meet the 45 day time limit to file a motion to compel further responses to the requests for production propounded upon defendants. On October 27, 2021 the court clerk filed plaintiffs' motion to compel further responses to form interrogatory number 17.1, special interrogatories, requests for production, and requests for admission.

Plaintiffs argue that there was a mistake in that the moving papers were attempted to be fax filed and not eFiled with the court as counsel intended, which led to the court clerk rejecting the filing due to the failure to provide the mandatory cover sheet; relief from that mistake that resulted in filing the motion one day late can be granted by the court under Code of Civil Procedure, § 473; and Rule 8.77(d) allows the court to order the electronically transmitted document to be filed nunc pro tunc to the date the filer originally sought to transmit it to the court.

While there is no opposition to the motion for relief from untimely motion to compel further responses in the court's file, defendant's opposition to the motion to compel further discovery filed on December 23, 2021 addresses the issue by asserting that the motion to compel further responses to the requests for production must be denied as untimely as the motion to compel was not filed by October 26, 2021, which is the date the 45 day limitation would expire; and the court should deny relief from the untimely filing on October 27, 2021. (Emphasis the court's.) (See Defendants' Opposition to Plaintiffs' Motion to Compel Further Responses to Discovery,

page 14, line 22 to page 15, line 12.) Defendants state that the 45 day deadline for the motion to compel further responses to the requests for production was October 26, 2021. (See Defendants' Opposition to Plaintiffs' Motion to Compel Further Responses to Discovery, page 15, lines 1-3.)

"Unless notice of this motion is given within 45 days of the service of the response, or any supplemental response, or on or before any specific later date to which the demanding party and the responding party have agreed in writing, the demanding party waives any right to compel a further response to the demand." (Emphasis added.) (Code of Civil Procedure, § 2031.310(c).)

Rule 8.77(d) relief does not apply under the circumstances presented.

"If a filer fails to meet a filing deadline imposed by court order, rule, or statute because of a failure at any point in the electronic transmission and receipt of a document, the filer may file the document on paper or electronically as soon thereafter as practicable and accompany the filing with a motion to accept the document as timely filed. For good cause shown, the court may enter an order permitting the document to be filed nunc pro tunc to the date the filer originally sought to transmit the document electronically." (Emphasis added.) (Rules of Court, Rule 8.77(d).)

There is no evidence of a failure in the electronic transmission of the moving papers and receipt of the moving papers by the court. Plaintiff's counsel admits in his declaration in support of the motion that the failure that resulted in rejection of the filing was that the mandatory cover sheet had not been submitted to the court. (See Declaration of Benjamin Tagert in Support of Motion, paragraph 16.) In other words, the mandatory cover sheet was never attempted to be transmitted and the failure to receive the cover sheet not a result of error in the transmission.

Relief under Section 473 is also not available as the intent of the Legislature in removing authority of the court to grant an extension of the limitation period to file a motion to compel further responses upon finding good cause indicates that the relief provisions of Section 473 can not be applied to circumvent Legislative intent to not authorize the court to grant relief from untimely motions to compel further responses.

A court acts in excess of jurisdiction where it rules on a motion to compel further responses to interrogatories that was filed and served in excess of the 45 day limitation. "Section 2030 provides that once answers and objections have been filed, a motion to compel further responses must be filed within 30 days after receipt of the answers or the right to compel is waived. This statute is mandatory and the court may not entertain a belated motion to compel. (*Deyo v. Kilbourne,* (1978) 84 Cal.App.3d 771, 788, 149 Cal.Rptr. 499; *Karz v. Karl* (1982) 137 Cal.App.3d 637, 646, 187 Cal.Rptr. 183.)" (Vidal Sassoon, Inc. v. Superior Court (1983) 147 Cal.App.3d 681, 683.) Section 2030 in effect when the decision was made also provided that the notice must be given within the statutory limitation period, which was 30 days at the time. "(a) ... If the party who has submitted the interrogatories deems that further response is required, he may move the court for an order requiring further response. Such motion must be upon notice given within 30 days from date of service of the answers or objections unless the court, on motion and notice, and for good cause shown, enlarges the time. Otherwise, the party submitting the interrogatories shall be deemed to have waived the right to compel answer pursuant to this section." (Emphasis added.) (Vidal Sassoon, Inc. v. Superior Court (1983) 147 Cal.App.3d 681, 683, fn 1.)

"We find it significant the 1986 amendments of sections 2030, subdivision (*l*) and 2031, subdivision (*l*) did not include the earlier provision of section 2030 subdivision (a) allowing the court on motion and for good cause to extend the time for making a motion to compel further

answers to interrogatories. The elimination of the pre-1986 law which gave authority to extend the time for making a motion to compel further answers indicates an intention by the Legislature not to vest any authority in the court to permit discovery that is not timely made. The language of sections 2030, subdivision (*l*) and 2031, subdivision (*l*) could not be clearer: "Unless notice of this motion is given within 45 days of the service of the response, or any supplemental response, or on or before any specific later date to which the [propounding/demanding] party and the responding party have agreed in writing, the [propounding/demanding] party waives any right to compel a further response to the inspection demand [or the interrogatories]."" (Sexton v. Superior Court (1997) 58 Cal.App.4th 1403, 1409.)

"Given the symmetry of section 2030, subdivision (l) and 2031, subdivision (l), we conclude that the time within which to make a motion to compel production of documents is mandatory and jurisdictional just as it is for motions to compel further answers to interrogatories. ¶ We agree with the qualification expressed in *Standon Co. v. Superior Court* (1990) 225 Cal.App.3d 898, 275 Cal.Rptr. 833 regarding the qualified 'jurisdictional' nature of the time line limitation of section 2031, subdivision (l): 'Failure to [timely move to compel] within the specified period constitutes a waiver of any right to compel a further response; indeed, similar provisions have been held at least quasi-jurisdictional. (*Lincolnshire Condominium Ltd. v. Superior Court* (1984) 158 Cal.App.3d 524, 206 Cal.Rptr. 1 ...; cf. *Vidal Sassoon, Inc. v. Superior Court* [, supra,] 147 Cal.App.3d 681, 195 Cal.Rptr. 295....)' (Emphasis added.) We do not believe the 45-day limitation is 'jurisdictional' in the fundamental sense, but is only 'jurisdictional' in the sense that it renders the court without authority to rule on motions to compel other than to deny them. [Footnote omitted.]" (Sexton v. Superior Court (1997) 58 Cal.App.4th 1403, 1409-1410.)

The legal authorities cited by plaintiffs in support of the motion do not stand for the principle that the court can grant Section 473 relief from an untimely motion to compel further responses to production requests.

Plaintiffs cite footnote 3 of the appellate opinion in Weinstein v. Blumberg (2018) 25 Cal.App.5th 316 for the proposition that despite the 45 day limitation being mandatory and quasi-jurisdictional, the court may grant relief from that deadline. The appellate court stated in footnote 3: "Prejudice is not required; discovery deadlines are mandatory and we have treated them as jurisdictional (*Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410, 68 Cal.Rptr.2d 708), even though a trial court may grant relief from deadlines to file motions to compel. Where a party does not obtain trial court relief from the statutory deadline, "failure to move for further answers within the statutory time forecloses further relief ...." (*O'Brien v. Superior Court* (1965) 233 Cal.App.2d 388, 391, 43 Cal.Rptr. 815.)" (Weinstein v. Blumberg (2018) 25 Cal.App.5th 316, 322, fn 3.)

The facts in that case was that while the moving papers to compel further production in a deposition proceeding were filed, the moving papers were not served on the opposing deponent until 15 court days prior to the hearing date. The court's rationale for denying the motion as untimely was premised upon the motion not being made by filing and service of the motion within the 60 day limitation and didn't even analyze whether the party was entitled to relief under section 473. In fact, Section 473 type relief from the untimely motion was not at issue in the appeal.

The appellate court stated the issues to be resolved were as follows:" RPB contends that the motion to compel was untimely because the papers supporting the motion were not filed and served until well after the 60-day deadline to file the motion to compel. Because the motion was untimely, RPB argues, the trial court lacked jurisdiction to award sanctions based on that

motion. RPB also contends that it was denied due process by BRI's failure to serve the supporting documents until 15 court days before the noticed hearing, in violation of Code of Civil Procedure section 1005, subdivision (b). [Footnote omitted.] ¶ BRI counters that its motion to compel was timely served because the Code of Civil Procedure requires only that a notice of motion and motion be served within the 60-day deadline, not supporting papers. BRI argues that there are independent grounds upon which the trial court *could* have sanctioned RPB, so even if the motion was untimely, the sanction award should be affirmed. BRI also contends that its service of the supporting documents one court day after section 1005's required 16-days' notice was not prejudicial." (Weinstein v. Blumberg (2018) 25 Cal.App.5th 316, 319.)

The party in Weinstein seeking to compel further responses never raised the issue of Section 473 relief from failure to comply with the time limitation and the appellate court did not consider and rule on a claim of Section 473 relief. The appellate opinion in Weinstein v. Blumberg (2018) 25 Cal.App.5th 316 simply does not stand for the legal principle that the court can grant relief from the failure to timely file a motion to compel further discovery.

"An opinion is not authority for a point not raised, considered, or resolved therein. (E.g., *People v. Castellanos* (1999) 21 Cal.4th 785, 799, fn. 9, 88 Cal.Rptr.2d 346, 982 P.2d 211; *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 943, 55 Cal.Rptr.2d 724, 920 P.2d 669.)" (Styne v. Stevens (2001) 26 Cal.4th 42, 57-58.)

The appellate opinion in Zellerino v. Brown (1991) 235 Cal.App.3d 1097 does not hold that provisions of the discovery act where the Legislature previously removed the court's prior authority to extend time to file motions to compel from a previous version of the statute is to be construed to allow the court to continue to extend the time to file by granting relief under Section 473. In fact, the appellate court bases its decision on the existence of mistake,

inadvertence, surprise, or excusable neglect language being contained within the discovery statute in order to allow the court to apply Section 473 principles to grant relief from failure to timely exchange expert witness information.

The appellate court stated: "We agree with *City of Fresno, supra,* that the Legislature intended to incorporate the principles of section 473 into those provisions of the discovery act which employ similar language. Relief under section 473 is unavailable when the discovery act provides analogous, if more limited relief. As nothing in the section governing expert witness disclosure provides for relief from failure to file a timely demand for exchange of expert trial witnesses information, relief is available under section 473. In this case the court was authorized to grant relief under section 473." (Emphasis added.) (Zellerino v. Brown (1991) 235 Cal.App.3d 1097, 1106–1107.)

Code of Civil Procedure, § 2034.710 expressly authorizes the court to allow leave to file an untimely designation of expert witnesses.

"(a) On motion of any party who has failed to submit expert witness information on the date specified in a demand for that exchange, the court may grant leave to submit that information on a later date. ¶ (b) A motion under subdivision (a) shall be made a sufficient time in advance of the time limit for the completion of discovery under Chapter 8 (commencing with Section 2024.010) to permit the deposition of any expert to whom the motion relates to be taken within that time limit. Under exceptional circumstances, the court may permit the motion to be made at a later time. ¶ (c) The motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Emphasis added.) (Code of Civil Procedure, § 2034.710.)

As stated earlier, similar language allowing the court to grant relief from failure to timey file the motion to compel production is not included in the current version of Section 2031.310. Therefore, that case opinion is distinguishable and inapplicable to the instant case.

In addition, the appellate opinion in Comunidad en Accion v. Los Angeles City Council (2013) 219 Cal.App.4th 1116 does not set forth any legal principle that the limitation to file a motion to compel further discovery is subject to the court granting relief from an untimely filing under Section 473 principles. The appellate court was not faced with a timely discovery motion issue. It dealt with the issue of whether an untimely request for a CEQA hearing was subject to being granted relief under Section 473. The appellate court stated: "CEQA does not categorically bar relief under Code of Civil Procedure section 473. (*Miller v. City of Hermosa Beach* (1993) 13 Cal.App.4th 1118, 1136, 17 Cal.Rptr.2d 408; *McCormick v. Board of Supervisors* (1988) 198 Cal.App.3d 352, 359, 243 Cal.Rptr. 617.) Courts have afforded plaintiffs relief for the failure to properly request a hearing under Public Resources Code section 21167.4, but only when such failure constituted excusable error. (*Miller v. City of Hermosa Beach, supra,* at pp. 1136–1137, 17 Cal.Rptr.2d 408 [granting relief where attorney requested hearing on preliminary matters but not on petition operating under a mistake of law]; *McCormick v. Board of Supervisors, supra,* at p. 363, 243 Cal.Rptr. 617 [granting relief when request for hearing was made but no specific hearing date was requested].)" (Emphasis added.) (Comunidad en Accion v. Los Angeles City Council (2013) 219 Cal.App.4th 1116, 1132.)

The court finds the motion to compel further responses to requests for production was untimely and not subject to relief under Section 473. The motion for relief from untimely motion to compel further responses to requests for production is denied.

Plaintiffs' Motion to Compel Further Responses to Discovery.

Plaintiff Dr. Mimi K. Sato moves to compel responses to the following identical discovery propounded on each of the two defendants, Dr. Matossian and Folsom Family and Sports Medical Group, Inc. (Folsom Family): special interrogatories, Set One, numbers 1-55;

Requests of Admission, Set , Set One, numbers 1-64 and second request number 17; Form Interrogatories, Set One, number 17.1 (Dr. Matossian); Form Interrogatories, Set Two, number 17.1 (Folsom Family); Requests for Production, Set Two, numbers 1-9 and 11-24 (Folsom Family); and Requests for Production, Set One, numbers 1-9 and 11-24 (Dr. Matossian).

Plaintiff argues that further responses to the discovery should be compelled for the following reasons: defendants only provided improper boilerplate objections to the special interrogatories without a single substantive answer to any special interrogatory; defendants only provided an improper statement that form interrogatory, number 17.1 requesting information related to all responses to the requests for admission that were not an unqualified admission does not apply, which is unresponsive to the extent that further responses to the requests for admission are ordered and those further responses do not amount to an unqualified admission; defendants only provided improper boilerplate objections to the requests for admission without a single substantive answer to any request for admission; and defendants only provided improper boilerplate objections to 18 of the 23 requests for production serving as an incomplete joint production.

Plaintiffs further request an award of sanctions against defendants in the amount of $15,882.50.

Defendants oppose the motion on the following grounds: the motions to compel both defendants to provide further responses to requests for production are untimely; that it was improper to file a consolidated motion seeking further responses concerning multiple types of discovery propounded; and the notice of motion is defective. Defendants explain that no substantive opposition on the merits was asserted, because defendants believe that assertion of such an opposition on the merits at the same time as procedural and untimely filing objections are asserted would result in defendants waiving those objections. Defendants

request that sanctions be denied to plaintiffs, because there were inadequate meet and confer activities by plaintiffs.

Plaintiffs reply to the opposition: defendants had actual notice of the motion, the relief sought, and grounds asserted therein on October 26, 2021, and by defense counsel's own admission, defense counsel has been working on the motion since that day; there is no dispute that the timeliness objection is not asserted against the relief sought concerning discovery propounded other than as it relates to the requests for production; the court should rule on the merits as an unopposed motion, because defendants have refused to oppose the motion on the merits; and sanctions in the amount of $18,322.50 are appropriately imposed on defendants for refusal to respond to 95% of plaintiffs' discovery requests.

Untimely Motion to Compel Further Reponses to Requests for Production

The court incorporates its ruling on plaintiffs' motion for relief from untimely motion to compel further responses. For the same reasons as stated in that ruling, the court finds that the motion as it relates to the requests for production is untimely and will deny the portion of the motion seeking further responses to requests for production as untimely.

Defendants' Procedural Objection to Filing a Composite Motion Seeking to Compel Further Responses to Several Methods of Discovery Propounded on Defendants

Defendants cite no legal authority for their argument that there is a fatal procedural defect every time a party files a motion seeking to compel several methods of discovery in a single motion.

The court is unaware of any such legal authorities. The court also notes that it is fairly commonplace for consolidated motions to compel to be filed. The procedural objection lacks merit.

Defendants' Objection to Sufficiency of Notice

Citing Code of Civil Procedure, §§ 1005(a) and 1010 and Rule 3.1112(d), defendants argue that the motion is fatally defective, because it does not specify if the individual plaintiff or the corporate plaintiff is bringing the motion and plaintiff fails to identify the statute upon which the motion is predicated, which was not cured by the amended notice.

"Notices must be in writing, and the notice of a motion, other than for a new trial, must state when, and the grounds upon which it will be made, and the papers, if any, upon which it is to be based. If any such paper has not previously been served upon the party to be notified and was not filed by him, a copy of such paper must accompany the notice. Notices and other papers may be served upon the party or attorney in the manner prescribed in this chapter, when not otherwise provided by this code. No bill of exceptions, notice of appeal, or other notice or paper, other than amendments to the pleadings, or an amended pleading, need be served upon any party whose default has been duly entered or who has not appeared in the action or proceeding." (Emphasis added.) (Code of Civil Procedure, § 1010.)

"Unless otherwise provided by the rules in this division, the papers filed in support of a motion must consist of at least the following: ¶ (1) A notice of hearing on the motion; ¶ (2) The motion itself; and ¶ (3) A memorandum in support of the motion or demurrer." (Rules of Court, Rule 3.1112(a).)

"A motion must: ¶ (1) Identify the party or parties bringing the motion; ¶ (2) Name the parties to whom it is addressed; ¶ (3) Briefly state the basis for the motion and the relief sought; and ¶ (4) If a pleading is challenged, state the specific portion challenged." (Emphasis added.) (Rules of Court, Rule 3.1112(d).)

On November 23, 2021 plaintiffs filed an amended notice of hearing on plaintiff's motion to compel further responses to discovery. The proof of service attached to the amended notice

declares it was served by electronic transmission to defendants' counsel on November 22, 2021. The opposition was filed one month later on December 23, 2021.

The notice specifies that plaintiff Dr. Sato-Re is bringing the motion against defendants Matossian and Folsom Family on the grounds that defendants collectively failed to provide statutorily compliant responses to plaintiff's discovery requests proffering only meritless objections without any substantive responses to 95% of the discovery requests. (Amended Notice filed on November 23, 2021, page 1, line 27 to page 2, line 3.); and the motion is supported by a memorandum of points and authorities, the declaration of counsel, and the separate statements and exhibits filed with the motion (Amended Notice filed on November 23, 2021, page 3, lines 1-3.). A memorandum of points and authorities in support of the motion is in the court's file. The proof of service filed on October 27, 2021 declares that the memorandum was served on defense counsel by electronic transmission on October 26, 2021. That memorandum cites various statutes and case authorities in support of the motion.

The notice clearly identifies the party bringing the motion and grounds for the motion as required by Section 1010. The motion also meets the requirements of Rule 3.1112(d)

The court finds that the defendants' objections to the notice and motion to be without any merit and are overruled.

Sufficiency of Meet and Confer

Meet and confer declarations are required for motions to compel further responses to discovery, to compel further production of documents and things, and to compel a deponent to attend a duly noticed deposition or answer questions during the deposition. (See Code of Civil Procedure, §§ 2025.450(a), 2025.450(b), 2030.300(a), 2030.300(b), 2031.310(a), and 2030.310(b).)

It is a misuse of discovery to fail to confer in person, by telephone, or by letter with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that an attempt at informal resolution has been made. (Code of Civil Procedure, § 2023.010(i).) "Notwithstanding the outcome of the particular discovery motion, the court shall impose a monetary sanction ordering that any party or attorney who fails to confer as required pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct." (Code of Civil Procedure, § 2023.020.)

"It is a central precept to the Civil Discovery Act of 1986 (Code Civ.Proc., § 2016 et seq.) (hereinafter "Discovery Act") that civil discovery be essentially self-executing. (*Zellerino v. Brown* (1991) 235 Cal.App.3d 1097, 1111, 1 Cal.Rptr.2d 222.) The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain "an informal resolution of each issue." (§ 2025, subd. (o); *DeBlase v. Superior Court* (1996) 41 Cal.App.4th 1279, 1284, 49 Cal.Rptr.2d 229.) This rule is designed "to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order...." (*McElhaney v. Cessna Aircraft Co.* (1982) 134 Cal.App.3d 285, 289, 184 Cal.Rptr. 547.) This, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes. (*DeBlase v. Superior Court*, supra, 41 Cal.App.4th 1279, 1284, 49 Cal.Rptr.2d 229; see also *Volkswagenwerk Aktiengesellschaft v. Superior Court* (1981) 122 Cal.App.3d 326, 330, 175 Cal.Rptr. 888.)" (Townsend v. Superior Court (1998) 61 Cal.App.4th 1431, 1434-1435.)

"A determination of whether an attempt at informal resolution is adequate also involves the exercise of discretion. The level of effort at informal resolution which satisfies the 'reasonable

and good faith attempt' standard depends upon the circumstances. In a larger, more complex discovery context, a greater effort at informal resolution may be warranted. In a simpler, or more narrowly focused case, a more modest effort may suffice. The history of the litigation, the nature of the interaction between counsel, the nature of the issues, the type and scope of discovery requested, the prospects for success and other similar factors can be relevant. Judges have broad powers and responsibilities to determine what measures and procedures are appropriate in varying circumstances. (See, e.g., Gov.Code, § 68607 [judge has responsibility to manage litigation]; Code Civ. Proc., § 128, subd. (a)(5) [judge has power to control conduct of judicial proceeding in furtherance of justice].) Judges also have broad discretion in controlling the course of discovery and in making the various decisions necessitated by discovery proceedings. (Citations omitted.)" (Obregon v. Superior Court (1998) 67 Cal.App.4th 424, 431.) "Although some effort is required in all instances (see, e.g., *Townsend*, supra, 61 Cal.App.4th at p. 1438, 72 Cal.Rptr.2d 333 [no exception based on speculation that prospects for informal resolution may be bleak]), the level of effort that is reasonable is different in different circumstances, and may vary with the prospects for success. These are considerations entrusted to the trial court's discretion and judgment, with due regard for all relevant circumstances." (Obregon, supra at pages 432-433.)

Having read and considered the moving and opposition papers, including the declarations of the respective counsels, the court finds under the totality of circumstances that sufficient meet and confer activities were engaged in related to the discovery disputes at issue in this law and motion proceeding. The court rejects defendants' assertion that the plaintiffs did not engage in sufficient meet and confer activities.

Waiver of Jurisdictional and Notice Defects if the Party Objects and Also Address the Merits in the Opposition

Defendants cite Bohn v. Bohn (1913) 164 Cal. 532, Vlahovich v. Cruz (1989) 213 Cal.App.3d 317, and Tate v. Superior Court (1975) 45 Cal.App.3d 925 in support of their assertion that the defendants would waive their right to challenge of the notice deficiencies if they raised an argument on the merits of the motion prior to a ruling on their notice objection.

"Appellant complains he received inadequate notice of respondent's motion to modify the judgment. On March 30, 1987 appellant filed a document with the court wherein he asserted that respondent's motion papers were received with only two days' notice. ¶ " 'It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of motion. *This rule applies even when no notice was given at all.* Accordingly, a party who appears and contests a motion in the court below cannot object on appeal or by seeking extraordinary relief in the appellate court that he had no notice of the motion or that the notice was insufficient or defective.' " (*Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7–8, 207 Cal.Rptr. 233, quoting *Tate v. Superior Court* (1975) 45 Cal.App.3d 925, 930, 119 Cal.Rptr. 835; citing *Estate of Pailhe* (1952) 114 Cal.App.2d 658, 660–661, 251 P.2d 76, citations omitted.) ¶ After raising the argument in writing on March 30 appellant thereafter appeared at the hearing on the motion, addressed the merits of the motion and made no argument concerning the purportedly inadequate notice. By doing so he waived any defect in the notice and, thus, may not raise this issue on appeal. [FN 1] ¶ FN 1. Appellant asserts that the "express registering of [an] objection precludes waiver of rights." In support of this statement he cites *Farrar v. McCormick* (1972) 25 Cal.App.3d 701, 705, 102 Cal.Rptr. 190 and *Bohn v. Bohn* (1913) 164 Cal. 532, 538–539, 129 P. 981. Neither of these cases supports his position. *Farrar* stands for the opposite

proposition—that defects in a motion's timeliness are waived by an appearance at the hearing. In *Bohn* the court concluded that the objection had not been waived where, *unlike the instant case,* the appealing party made a limited appearance at the hearing, did not address the merits of the motion and only argued the motion was defective in form." (Emphasis added.) (Vlahovich v. Cruz (1989) 213 Cal.App.3d 317, 320–321.)

Therefore, the Vlahovich opinion holds that an appearance at the hearing on a motion and arguing the merits of the motion without also arguing the objection to notice defects waives the notice objection. It does not hold that a party who argues both the notice objection and the merits in opposition to the motion during the hearing waives the right to contest the alleged notice deficiencies.

"An opinion is not authority for a point not raised, considered, or resolved therein. (E.g., *People v. Castellanos* (1999) 21 Cal.4th 785, 799, fn. 9, 88 Cal.Rptr.2d 346, 982 P.2d 211; *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 943, 55 Cal.Rptr.2d 724, 920 P.2d 669.)" (Styne v. Stevens (2001) 26 Cal.4th 42, 57-58.)

Bohn v. Bohn (1913) 164 Cal. 532 holds that a special appearance for the sole limited purpose to argue the lack of sufficient advance notice to the opposing party is not a waiver of the right to contest the sufficiency of notice. (See Bohn v. Bohn (1913) 164 Cal. 532, 538-539.)

The appellate court in Tate v. Superior Court (1975) 45 Cal.App.3d 925 found that the appellant had waived the insufficiency of the notice of motion to dismiss the case because the party did not appear specially in the trial court to object to the court's jurisdiction or to the failure of the court to comply with the advance notice requirement, did not move to quash the notice as not providing sufficient advance notice of the hearing on the motion, and, instead, appeared at the hearing and argued the motion to dismiss on its merits. (See Tate v. Superior Court (1975) 45 Cal.App.3d 925, 930–931.)

The appellate court in Tate did not raise, consider, or resolve the issue of whether a party can object to the notice deficiency and, in the alternative, address the merits at the same time.

In other words, none of this case authority raised, considered, or held that there is a waiver of the right to assert lack of sufficient notice as a ground to deny a motion when the notice defects and the merits are argued in the same hearing.

On the other hand, there is no legal authority before the court that a party must raise both the notice objection and an argument on the merits at the same time, or be deemed to have waived an opposition and hearing on the merits of the motion.

Although the court denies the notice objection, the court also finds that when a notice objection has been asserted, which if granted would require denial of the motion on due process grounds, the party raising the due process notice objection is not required to also argue the merits of the motion or be deemed to have waived the opposition on the merits, particularly where the right to oppose the motion is expressly reserved. Therefore, the court will allow the defendants sufficient time to file an opposition on the merits and plaintiffs will be free to file a reply addressing that opposition on the merits. The hearing will be continued to allow for sufficient time to file the opposition and reply on the merits of the motion.

Sanctions

The issue of sanctions will be determined in the final ruling on the merits of the motion.

Discovery Referee

"When the parties do not consent, the court may, upon the written motion of any party, or of its own motion, appoint a referee in the following cases pursuant to the provisions of subdivision (b) of Section 640: ¶ * * * (5) When the court in any pending action determines that it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a

recommendation thereon." (Code of Civil Procedure, § 639(a)(5).) "Unless both parties have agreed to a reference, the court should not make blanket orders directing all discovery motions to a discovery referee except in the unusual case where a majority of factors favoring reference are present. These include: (1) there are multiple issues to be resolved; (2) there are multiple motions to be heard simultaneously; (3) the present motion is only one in a continuum of many; (4) the number of documents to be reviewed (especially in issues based on assertions of privilege) make the inquiry inordinately time-consuming. ¶ In making its decision, the trial courts need consider the statutory scheme is designed only to permit reference over the parties' objections where that procedure is necessary, not merely convenient. (§ 639, subd. (e).) Where one or more of the above factors unduly impact the court's time and/or limited resources, the court is clearly within its discretion to make an appropriate reference. ¶ On the other hand, certain factors will always militate against reference. Resolution of legal issues underlying discovery requests which are complex, unsettled or of first impression, lie peculiarly within the purview of the court. Further, where there are parties to the litigation who are not involved in these particular discovery proceedings, but who will be affected by the final rulings, it is the trial court which is best able to determine who these parties are and to what extent they may be affected, and best ensure they are properly noticed and their interests protected." (Taggares v. Superior Court (1998) 62 Cal.App.4th 94, 105-106.)

"A discovery referee must not be appointed under Code of Civil Procedure section 639(a)(5) unless the exceptional circumstances of the particular case require the appointment." (Rules of Court Rule. 3.920(c).)

The court is inclined to appoint a discovery referee for all purposes in this case as it appears necessary due to the following exceptional circumstances presented in this case: there are essentially multiple motions to be heard simultaneously; there are multiple issues to

be resolved; the present motion is only one in a continuum of many; the number of documents to be reviewed make the inquiry inordinately time-consuming; and these factors unduly impact the court's time and limited resources.

"If the referee is appointed under section 639(a)(5) to hear and determine discovery motions and disputes relevant to discovery, the order must state that the referee is authorized to set the date, time, and place for all hearings determined by the referee to be necessary; direct the issuance of subpoenas; preside over hearings; take evidence; and rule on objections, motions, and other requests made during the course of the hearing." (Rules of Court, Rule 3.922(e).)

Appearances are required for argument on the issue of appointment of a discovery referee.

TENTATIVE RULING # 14: PLAINTIFFS' MOTION FOR RELIEF FROM UNTIMELY MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION IS DENIED. APPEARANCES ARE REQUIRED ON THE PLAINTIFFS' MOTION TO COMPEL FURTHER RESPONSES TO DISCOVERY. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. NO HEARING ON PLAINTIFFS' MOTION FOR RELIEF FROM UNTIMELY MOTION TO COMPEL FURTHER RESPONSES WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID

NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

15. LACEY v. UNEMPLOYMENT INS. APPEALS BOARD PC-20200620

(1) Review Hearing Re: Status of Service and Receipt of Administrative Record.

(2) Hearing Re: Petition for Writ of Mandate.

Petitioner seeks to overturn the Unemployment Insurance Appeals Board's decision to reverse an Employment Development Department examiner's decision granting petitioner's claim for unemployment insurance benefits.

The real party in interest, Cameron Park Rent a Storage, answered the petition and filed an opposition.

Petitioner filed a response to the real party in interest's answer and opposition.

On December 13, 2021 respondent California Unemployment Insurance Appeals Board filed an answer to the petition.

"(a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. Where the petitioner has proceeded pursuant to Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the Government Code and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the

party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs." (Code of Civil Procedure, § 1094.5(a).)

"(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Code of Civil Procedure, § 1094.5(b).)

"(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record." (Code of Civil Procedure, § 1094.5(c).)

"If the administrative proceedings are quasi-judicial in character, judicial review will be stricter. Whereas quasi-legislative acts involve the formulation of rules of wide application, quasi-judicial action involves "the actual application of such a rule to a specific set of existing facts." (*Strumsky, supra,* 11 Cal.3d at pp. 34–35, fn. 2, 112 Cal.Rptr. 805, 520 P.2d 29.) Since such a proceeding adjudicates individual rights and interests, findings are required and the reviewing court looks to see whether the findings are supported by the evidence. (*Topanga*

Assn. For A Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 514–515, 113 Cal.Rptr. 836, 522 P.2d 12; *Stauffer Chemical Co. v. Air Resources Board, supra,* 128 Cal.App.3d at p. 794, 180 Cal.Rptr. 550.) If fundamental rights are implicated the court may be authorized to exercise its independent judgment to determine whether the findings are supported by the weight of the evidence. In all other cases the court examines the record for substantial evidence in support of the findings. (Code Civ.Proc., § 1094.5, subds. (b) and (c).)" (Shapell Industries, Inc. v. Governing Board (1991) 1 Cal.App.4th 218, 231.)

On February 4, 2021 the court received unauthenticated copies of documents, which is not the certified administrative record required to be filed in order for the court to review the previous administrative hearing related to petitioner's claim for unemployment benefits and the appeal from the initial decision concerning that claim.

At the hearing on March 12, 2021 petitioner explained that she gave the court the only copy of the administrative record she has. Counsel for respondent Cameron Park Rent A Storage stated that she only had an uncertified copy.

The court ordered the Unemployment Insurance Appeals Board to submit a certified copy of the administrative record directly to the court. The March 12, 2021 minute order was served by mail to the interested persons on March 12, 2021, including the Unemployment Insurance Appeals Board.

An uncertified administrative record was filed by petitioner on December 1, 2021. At the time this ruling was prepared, the certified record was not lodged.

TENTATIVE RULING # 15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED

AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

16. TOWNSEND v. SMITH PC-20200583

Motion to be Relieved as Counsel of Record for Defendant.

TENTATIVE RULING # 16: THE MOTION IS GRANTED. WITHDRAWAL WILL BE EFFECTIVE AS OF THE DATE OF FILING PROOF OF SERVICE OF THE FORMAL, SIGNED ORDER UPON THE CLIENT. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON

THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

17. MATTER OF THE MARTHA J. VOESTER LIVING TRUST PP-20160033

Hearing Re: Motion to Enter Default Against Respondent for Failure to Respond to 2nd Amended Petition.

This action is stayed by the respondent's bankruptcy proceeding.

Petitioner reports: the Bankruptcy case was referred to the Bankruptcy Court's settlement program; while the Bankruptcy Court notified counsel that the Bankruptcy case had settled, the COVID-19 pandemic has disrupted the orderly progression to completion; the final settlement agreement has not been executed; a motion to enforce the bankruptcy settlement agreement was required as not all parties signed the agreement; the order granting that motion was entered on March 29, 2021; the bankruptcy court judgment has not yet been ordered and bankruptcy counsel has not yet advised when such a judgment will enter and become final; the bankruptcy court jurisdiction and stay continues in effect.

Upon request of counsel, the May 7, 2021 hearing was continued to August 27, 2021. Petitioner filed a notice of continuing automatic bankruptcy stay, which reported: counsel was advised that a motion to enforce the settlement agreement in the Bankruptcy became necessary, which was granted by the Bankruptcy Court and entered on March 29, 2021; the order provided for a judgment of non-dischargeability of debt to be entered together with interest; the judgment was not entered for some time and petitioner's bankruptcy attorney has not yet advised as to when judgment would be entered, when it would be final, and when the time for appeal would expire; counsel has now been advised that the judgment was entered, however, the Bankruptcy Court also entered a stay of the judgment, leaving the date of finality of the judgment and time to appeal unknown; and the Bankruptcy Court jurisdiction and stay

continued in effect. Counsel requested and was granted a continuance of the hearing to February 4, 2022.

The court has not received any further information from the parties.

TENTATIVE RULING # 17: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

18. ALL ABOUT EQUINE ANIMAL RESCUE v. BYRD PC-20200294

(1) Defendants Byrd's, Rodarte's, Wilson's, and Saunders' Demurrer to 1st Amended Complaint in Consolidated Case Georgetown Divide v. Byrd (PC-20210234).

(2) Plaintiff All About Equine Animal Rescue, Inc.'s Motion for Attorney Fees.

TENTATIVE RULING # 18: THESE MATTERS ARE CONTINUED TO 8:30 A.M. ON FRIDAY, FEBRUARY 18, 2022 IN DEPARTMENT NINE.

19. GAUTSCHI v. KRICKFIT, INC. PC-20200074

Plaintiff's Motion for Protective Order.

On June 21, 2021 defendants filed a motion for summary judgment against plaintiff asserting that plaintiff's execution of a waiver, release and assumption of the risk form bars the current action. On September 16, 2021 plaintiff filed an opposition, which asserted, among other things, that the motion does not address the issue of gross negligence by defendants; there remains a triable issue of material fact concerning defendant's gross negligence causing plaintiff's injuries, which is not covered by the waiver, release and assumption of the risk form; and plaintiff's expert, Clarke Brodnicki, declares in opposition that defendants' conduct reflected indifference or want of even scant care, which raises the triable issue of gross negligence.

Defendants noticed plaintiff's expert's deposition for November 16, 2021. Plaintiff asserted objections to the deposition, including that the notice of deposition of the expert is premature, because experts had not yet been designated and a trial date not yet set. The deposition was renoticed and deposition set for November 24, 2021. On November 23, 2021 plaintiff filed the subject motion for protective order.

Plaintiff moves for a protective order barring the deposition of her expert witness, Clarke Brodnicki, or that the court strictly limit the deposition and document production to the foundational basis for his expert opinions in the expert's declaration filed in opposition to the defendants' motion for summary judgment. Plaintiff asserts: the opinion of the expert is protected from discovery by the attorney work product privilege stated in Code of Civil Procedure, § 2018; only after designation of the expert witness pursuant to the provisions of Code of Civil Procedure, § 2034.210 are the expert opinions a proper subject for discovery; no

trial date has been set; good cause exists to prevent production of expert's file material and deposition of the expert in order to prevent defense counsel taking unfair advantage of plaintiff's counsel's industry and efforts to prepare the case for trial; the limited exception to discovery set forth in St. Mary Medical Center v. Superior Court (1996) 50 Cal.App.4th 1531 does not apply, because there has been nothing presented by defendants that legitimately suggests a lack of candor or ambiguity in the expert declaration and defendants have not presented evidence that raises a legitimate question as to materials relied on by the expert or that the opinions presented are contrary to those materials; and the claim of legitimate questions about the expert declaration are speculative.

Defendants oppose the motion on the following grounds: there are serious concerns about the questionable or total lack of foundation for many of the expert opinions in the declaration; the declaration did not include a curriculum vitae demonstrating the requisite background and experience to qualify Mr. Brodnicki as an expert; Mr. Brodnicki failed to offer any description of his experience and/or training with the sole piece of equipment at issue – the Bosu Ball; while Mr. Brodnicki declared he reviewed various documents in preparing his opinions, he did not attach any of those documents to his declaration and does not cite to any exhibits to either the MSJ or opposition; due to such lack of documentation there is no way of knowing if the manufacturer's training and instruction manual mentioned in the declaration is the same one as attached as an exhibit to plaintiff's opposition; the defense should be afforded an opportunity to examine the witness regarding the foundation for his opinions; and plaintiff's suggestion that plaintiff should be allowed to cure the declaration defects in order to avoid the deposition is not allowed under Code of Civil Procedure, § 437c.

Plaintiff replies: defendant did not address the factual showing necessary for limited discovery concerning the expert declarant; defendant unreasonably delayed in seeking the

deposition; the Brodnicki declaration only supports a single basis for denying the MSJ and the motion must be denied if there are other triable issues totally unrelated to that triable issue; the court can not order an expert deposition in an ex parte proceeding, the court merely continued the MSJ hearing at the ex parte hearing, and did not rule on the merits of a claim that the expert deposition was appropriate; the timing of the filing of the motion for protective order the day that the deposition was to take place did not prejudice defendants, because the MSJ hearing was continued to February 4, 2022; and defendants have to prove that the waiver barred actions for both ordinary and gross negligence in order to prevail on the MSJ as the complaint allegations assert both ordinary and gross negligence, therefore, the Brodnicki declaration may not be dispositive and the expert should not be deposed or documents produced for a deposition.

"After the setting of the initial trial date for the action, any party may obtain discovery by demanding that all parties simultaneously exchange information concerning each other's expert trial witnesses to the following extent: ¶ (a) Any party may demand a mutual and simultaneous exchange by all parties of a list containing the name and address of any natural person, including one who is a party, whose oral or deposition testimony in the form of an expert opinion any party expects to offer in evidence at the trial. ¶ (b) If any expert designated by a party under subdivision (a) is a party or an employee of a party, or has been retained by a party for the purpose of forming and expressing an opinion in anticipation of the litigation or in preparation for the trial of the action, the designation of that witness shall include or be accompanied by an expert witness declaration under Section 2034.260. ¶ (c) Any party may also include a demand for the mutual and simultaneous production for inspection and copying of all discoverable reports and writings, if any, made by any expert described in subdivision (b) in the course of preparing that expert's opinion." (Code of Civil Procedure, § 2034.210.)

"We agree with petitioners that the juxtaposition of the time requirements of sections 2034 and 437c causes a problem for litigants in drafting and noticing an effective motion pursuant to section 437c. The designation of experts will not usually take place until 50 days or less prior to trial. Absent the court's ordering otherwise, this leaves no time to depose the opposition experts before the time that a motion for summary judgment is required to be noticed. Even then, assuming that a medical malpractice defendant notices a motion 58 days ahead of the trial date, opposition is called for in 14 days, or 44 days ahead of the trial date. (§ 437c, subd. (b).) A reply is then allowed to be filed within 5 days ahead of the hearing date, or 35 days ahead of trial. (*Id.*) Assuming that the names of experts are exchanged 50 days ahead of the trial date, this leaves only a window of 15 days for the moving party to notice, prepare for, take the depositions of the opposition experts, and file a reply to the opposition. This is an unreasonably short period of time in which to operate, especially if the parties cannot cooperate. ¶ "The purpose of summary judgment is to penetrate evasive language and adept pleading and to ascertain, by means of affidavits, the presence or absence of triable issues of fact. Accordingly, the function of the trial court in ruling on a motion for summary judgment is merely to determine whether such issues of fact exist, and not to decide the merits of the issues themselves. [Citations.]" (*Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1449–1450, 16 Cal.Rptr.2d 320.) Thus, it would defeat the purpose of the summary procedure were we to recognize an absolute right of a party involved in the process to depose any person who provides evidence in support of or opposition to the proceeding. On the reverse side of the coin, it would defeat the concept of a summary procedure if the opposition party were to be allowed to defeat the motion by less than candid declarations or affidavits in opposition. This is recognized in section 437c, subdivision (i) which allows the court to issue sanctions if "any of the affidavits are presented in bad faith or solely for purposes of delay." However, the statute

does not address when or how the court may address this issue. ¶ We believe that in proper circumstances the court should allow a party to a summary proceeding the opportunity to take limited discovery which may effectively dispose of the proceeding." St. Mary Medical Center v. Superior Court (1996) 50 Cal.App.4th 1531, 1538-1539.)

"Here, there has been a form of designation of experts, those identified in the motion for summary judgment and the opposition. We are not dealing with the "carefully crafted legislative scheme" of section 2034. In fact, no trial date has yet been assigned in this situation. Instead, we are dealing with the right of a party to challenge the litigation by means of summary judgment. While it is true that motions for summary judgment are to be heard on affidavits or declarations, contradictions raised by discovery may require the trial court to disregard the declarations or affidavits. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 22, 112 Cal.Rptr. 786, 520 P.2d 10.) This applies equally to party and nonparty deponents. (*Preach v. Monter Rainbow, supra,* 12 Cal.App.4th at p. 1451, 16 Cal.Rptr.2d 320.) For that reason, we believe that under the proper circumstances, the parties should be allowed to depose an expert who supplies a declaration or affidavit in support of or in opposition to summary judgment or summary adjudication where there is a legitimate question regarding the foundation of the opinion of the expert. ¶ We believe that is the situation presented in this case. Counsel for Drs. Tobias and Waider presented information to the court from which a serious question arose about whether or not Dr. Eber's declaration may have been factually incorrect, at least as to Dr. Waider. Counsel pointed out that Dr. Waider was not involved in the procedure of May 13. While counsel could have presented a reply declaration from Dr. Waider to that effect, it would have been contradictory to the declaration of Dr. Eber and the trial court would have been required to conclude that a triable issue of fact existed, at least on that issue. It is possible that upon deposition of Dr. Eber, confronted with proof that he may have been

mistaken in his belief that Dr. Waider was involved in the procedure, he may concede his mistake. In addition, counsel for petitioners submitted evidence which suggested that "the bases for Dr. Eber's conclusions to be untenable." Petitioners' counsel and Dr. Waider's counsel each indicated that the deposition would cover no more than the opinions rendered in the declaration of Dr. Eber. Thus, we conclude that failure to allow the discovery was an abuse of discretion. ¶ In reaching this conclusion we caution that the process should not be utilized to turn summary proceedings into mini-trials. Whether to grant discovery in a given case falls within the sound discretion of the trial court based upon all of the facts presented. There must be objective facts presented which create a significant question regarding the validity of the affidavit or declaration which, if successfully pursued, will impeach the foundational basis of the affidavit or declaration in question." (Emphasis added.) (St. Mary Medical Center v. Superior Court (1996) 50 Cal.App.4th 1531, 1540–1541.)

Attached to the reply declaration is the purported amended declaration of Clarke Brodnicki in opposition to the MSJ. The attached Exhibit is a single page profile of his expertise as a personal trainer.

Mr. Brodnicki declares his opinions related to the issue of gross negligence are premised upon his training and experience as a personal trainer; and his familiarity with the Bosu, including the materials made available by the manufacturer such as the manufacturer training and instruction manual and warning labels. (Declaration of Clarke Brodnicki in Opposition to MSJ, paragraphs 7-9.)

The declaration also describes the content of the manufacturer's manual provisions, instructions, warnings and warning labels that were considered in reaching his opinions. (Declaration of Clarke Brodnicki in Opposition to MSJ, paragraphs 8.b.-8f. and 9a.)

The court finds that under the totality of the circumstances, there are no legitimate questions regarding the foundation of the opinion of the expert. The motion for protective order is granted.

TENTATIVE RULING # 19: PLAINTIFF'S MOTION FOR PROTECTIVE ORDER IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 EITHER IN

PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

20. URBANA TAHOE INVESTOR v. TIMBER COVE HOLDINGS PC-20180579

Motion to Strike Portions of 3rd Amended Complaint

On February 21, 2020 the court granted the defendants' motion to strike the punitive damages allegations. The court noted: "Plaintiff acknowledges that the 2nd amended complaint fails to allege the name of any officer, director, or managing agent of defendants. (Plaintiff's Opposition, page 2, lines 18-19.) Plaintiff contends that naming the specific officers, directors, or managing agents is not required."; and "The problem with the allegations of the 2nd amended complaint related to the claim for punitive damages is that plaintiff has not cited allegations that an officer, director, or managing agent of the defendant corporations personally engaged in, authorized, and/or ratified the alleged misconduct." The court granted ten days leave to amend as "…there is a reasonable possibility the plaintiff can sufficiently allege an officer, director, or managing agent of the defendant corporations personally engaged in, authorized, and/or ratified the alleged misconduct." The 3rd amended complaint was filed February 28, 2020. On March 17, 2020 the parties stipulated to stay proceedings pending mediation in the Court of Appeal.

Defendants Timber Cove Holdings, Inc. and Urbana Tahoe TC, LLC move to strike the punitive damages prayer and allegations from the 3rd amended complaint and the addition of three individuals, Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia, as defendants to this action. Defendants contend: plaintiff has not sufficiently alleged that an officer, director, or managing agent of the defendant corporations personally engaged in, authorized, and/or ratified the alleged misconduct; plaintiff has only added the names of Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia as Tahoe Cove Holdings affiliated individuals wherever "TCH" is found in the complaint without any factual allegations as to who they are, their role in

the dispute, whether they exercised substantial authority over decisions affecting defendants, what they did on behalf of defendants, what specific acts they did that constituted approval or ratification of defendants' conduct, whether they had advance knowledge, or whether any facts show the acts were committed intentionally; although the plaintiff alleges in paragraphs 5-7 of the third amended complaint that Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia are officers, directors, principal and managing agents of both defendants, there is no description as to each of their specific job functions or activities; Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia should not have been added as defendants as that exceeded the scope of leave to amend granted by the court and plaintiff should have moved for leave to amend to add new defendants; and plaintiff has long known about Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia, yet they were never previously named as defendants in this action.

Plaintiff opposes the motion on the following grounds: the court should disregard defendant's redline exhibit showing the amendments to the 3rd amended complaint as compared to the 2nd amended complaint, because it fails to present the 3rd amended complaint on its face, it is hearsay as it is an out of court statement by the unknown word processor, and not reliable or trustworthy; the motion must be denied as the parties did not timely meet and confer; the 3rd amended complaint sufficiently alleges the identities of the individual officers, directors, or managing agents of the defendant corporations who personally engaged in the misconduct and their corporate positions which justifies imposing punitive damages on the corporate defendants; the corporate defendants lack standing to move to strike the allegations adding Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia as new defendants; the 3rd amended complaint properly names Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia

as new individual defendants as that amendment was within the scope of the court's order granting leave to amend; and the alleged defects can be cured by amendment.

Defendants replied to the opposition.

Defendants' Exhibit B – "Redlined" Third Amended Complaint

The court takes judicial notice of the 2nd and 3rd amended complaints and will make its own comparison of the allegations added by amendment.

Meet and Confer Requirement

Citing Code of Civil Procedure, § 435.5(a)(2), plaintiff argues that the motion to strike must be denied, because the meet and confer activities were untimely as the parties did not meet and confer in person or by telephone at least five days prior to when the motion to strike was due to be filed.

"A determination by the court that the meet and confer process was insufficient is not grounds to grant or deny the motion to strike." (Code of Civil Procedure, § 435.5(a)(4))

Even assuming the meet and confer process was not timely, that is not grounds to deny the motion.

Motion to Strike Principles

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: ¶ (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. ¶ (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code of Civil Procedure, § 436.)

"The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (Code of Civil Procedure, § 437(a).) "Where the motion to strike is based on matter of which the court may take judicial

notice pursuant to Section 452 or 453 of the Evidence Code, such matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit." (Code of Civil Procedure, § 437(b).)

"A motion to strike, like a demurrer, challenges the legal sufficiency of the complaint's allegations, which are assumed to be true. (See *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255, 79 Cal.Rptr.2d 747 [an order striking punitive damages allegations is reviewed de novo].)" (Blakemore v. Superior Court (2005) 129 Cal.App.4th 36, 53.)

"We emphasize that such use of the motion to strike should be cautious and sparing. We have no intention of creating a procedural "line item veto" for the civil defendant. However, properly used and in the appropriate case, a motion to strike may lie for purposes discussed in this opinion." (PH II, Inc. v. Superior Court (1995) 33 Cal.App.4th 1680, 1683.)

"In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth. (*Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519, 11 Cal.Rptr.2d 161; *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, 91, 168 Cal.Rptr. 319; see California Judges Benchbook, Civil Proceedings Before Trial (1995) § 12.94, p. 611.) In ruling on a motion to strike, courts do not read allegations in isolation. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6, 172 Cal.Rptr. 427.)" (Clauson v. Superior Court (1998) 67 Cal.App.4th 1253, 1255.)

"In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." (Code of Civil Procedure, § 452.)

With the above-cited legal principles in mind, the court will rule on the motion to strike.

Punitive Damages

"In determining whether a complaint states facts sufficient to sustain punitive damages, the challenged allegations must be read in context with the other facts alleged in the complaint. Further, even though certain language pleads ultimate facts or conclusions of law, such language when read in context with the facts alleged as to defendants' conduct may adequately plead the evil motive requisite to recovery of punitive damages. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6-7, 172 Cal.Rptr. 427.)" (Monger v. Superior Court (1986) 176 Cal.App.3d 503, 510.)

"In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166, 203 Cal.Rptr. 556; *Began v. Superior Court* (1981) 125 Cal.App.3d 959, 962–963, 178 Cal.Rptr. 470.) In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth. (*Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519, 11 Cal.Rptr.2d 161; *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, 91, 168 Cal.Rptr. 319; see California Judges Benchbook, Civil Proceedings Before Trial (1995) § 12.94, p. 611.) In ruling on a motion to strike, courts do not read allegations in isolation. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6, 172 Cal.Rptr. 427.) We review an order striking punitive damages allegations de novo. (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1223, 44 Cal.Rptr.2d 197.)" (Clauson v. Superior Court (1998) 67 Cal.App.4th 1253, 1255.)

"Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim. (Citation omitted.)" (Grieves v. Superior Court (1984) 157 Cal.App.3d 159, 166.)

"Punitive damages are "available to a party who can plead and prove the facts and circumstances set forth in Civil Code section 3294." *Hilliard v. A.H. Robins Co.,* 148 Cal.App.3d 374, 392, 196 Cal.Rptr. 117 (1983). "To support punitive damages, the complaint ... must allege ultimate facts of the defendant's oppression, fraud, or malice." *Cyrus v. Haveson,* 65 Cal.App.3d 306, 316–317, 135 Cal.Rptr. 246 (1976). Pleading the language in section 3294 "is not objectionable when sufficient facts are alleged to support the allegation." *Perkins v. Superior Court,* 117 Cal.App.3d 1, 6–7, 172 Cal.Rptr. 427 (1981)." (Altman v. PNC Mortg. (E.D. Cal. 2012) 850 F.Supp.2d 1057, 1085.)

"In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." (Civil Code, § 3294(a).)

" 'Malice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civil Code, § 3294(c)(1).)

" 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civil Code, § 3294(c)(2).)

" 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civil Code, § 3294(c)(3).)

"The punitive damages theory cannot be predicated on the breach of contract cause of action without an underlying tort. (*Chelini v. Nieri* (1948) 32 Cal.2d 480, 486–487, 196 P.2d 915; *Crogan v. Metz* (1956) 47 Cal.2d 398, 405, 303 P.2d 1029; *Ericson v. Playgirl, Inc.* (1977) 73 Cal.App.3d 850, 854, 140 Cal.Rptr. 921; *Quigley v. Pet, Inc.* (1984) 162 Cal.App.3d 877,

887, 208 Cal.Rptr. 394.) Neither evidence of mere negligence (*Kendall Yacht Corp. v. United California Bank* (1975) 50 Cal.App.3d 949, 959, 123 Cal.Rptr. 848; see *Nolin v. National Convenience Stores, Inc.* (1979) 95 Cal.App.3d 279, 284–288, 157 Cal.Rptr. 32) nor constructive fraud (*Delos v. Farmers Insurance Group* (1979) 93 Cal.App.3d 642, 656–657, 155 Cal.Rptr. 843, and cases there cited; *Estate of Witlin* (1978) 83 Cal.App.3d 167, 177, 147 Cal.Rptr. 723; compare *Day v. Rosenthal* (1985) 170 Cal.App.3d 1125, 1160, 217 Cal.Rptr. 89) will support a punitive damages award without a showing of the statutory fraud, malice, or oppression." (Palmer v. Ted Stevens Honda, Inc. (1987) 193 Cal.App.3d 530, 536.)

"California does *not* recognize punitive damages for conduct that is grossly negligent or reckless. (See *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 899–900 [157 Cal.Rptr. 693, 598 P.2d 854] [noting "ordinarily, routine negligent or even reckless disobedience of [the] laws would not justify an award of punitive damages"]; *Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 828 [169 Cal.Rptr. 691, 620 P.2d 141] [noting that punitive damages should be awarded "only in the most outrageous cases" and noting that to be awarded, the "act complained of must not only be willful, in the sense of intentional, but it must be accompanied by some aggravating circumstance amounting to malice"].)" (Colombo v. BRP US Inc. (2014) 230 Cal.App.4th 1442, 1456, fn. 8.)

Under the statute, "malice does not require actual intent to harm. [Citation.] Conscious disregard for the safety of another may be sufficient where the defendant is aware of the probable dangerous consequences of his or her conduct and he or she willfully fails to avoid such consequences. [Citation.] Malice may be proved either expressly through direct evidence or by implication through indirect evidence from which the jury draws inferences. [Citation.]" (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1228, 44 Cal.Rptr.2d 197.)" (Pfeifer v. John Crane, Inc. (2013) 220 Cal.App.4th 1270, 1299.)

The Third District Court of Appeal has stated: "The adjective "despicable" connotes conduct that is " '... so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people.' " (*Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 331, 5 Cal.Rptr.2d 594, quoting BAJI No. 14.72.1 (1989 rev.); *Cloud v. Casey* (1999) 76 Cal.App.4th 895, 912, 90 Cal.Rptr.2d 757.) " '[A] breach of a fiduciary duty alone without malice, fraud or oppression does not permit an award of punitive damages. [Citation.] The wrongdoer " 'must act with the intent to vex, injure, or annoy, or with a conscious disregard of the plaintiff's rights. [Citations.]' " Punitive damages are appropriate if the defendant's acts are reprehensible, fraudulent or in blatant violation of law or policy. The mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages.... Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate.' " (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1287, 31 Cal.Rptr.2d 433.) ¶ The definition of malice has not always included the requirement of willful and despicable conduct. Prior to 1980, section 3294 did not define malice. It **[*1211]** was construed to mean malice in fact, which could be proven directly or by implication (*Taylor v. Superior Court* (1979) 24 Cal.3d 890, 894, 157 Cal.Rptr. 693, 598 P.2d 854 (*Taylor*); 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 1335, p. 793) and could be established by conduct that was done only with "a conscious disregard of the safety of others...." (*Taylor, supra,* at p. 895, 157 Cal.Rptr. 693, 598 P.2d 854.) Relying on the reasoning in *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 122 Cal.Rptr. 218, the *Taylor* court recognized that recklessness alone is insufficient to sustain an award of punitive damages because " '[t]he central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone.' " (24 Cal.3d at p. 895, 157 Cal.Rptr. 693, 598 P.2d

854.) The court concluded that "[i]n order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences." (*Id.* at pp. 895-896, 157 Cal.Rptr. 693, 598 P.2d 854.) Applying that test, the Supreme Court directed the trial court to reinstate a claim for punitive damages where it was alleged the defendant was operating a motor vehicle while intoxicated, under circumstances which disclosed a conscious disregard of the probable dangerous consequences. [FN 14.] ¶ FN14. The circumstances alleged in *Taylor* were that a car driven by the defendant collided with plaintiff's car causing him serious injuries, that at the time of the collision, the defendant was drinking an alcoholic beverage and under its influence, he had been an alcoholic for a substantial period of time and was well aware of the serious nature of his alcoholism, he had a history and practice of driving a motor vehicle while under the influence of alcohol, he had previously caused a serious automobile accident while under the influence of alcohol, and had been convicted numerous times for driving under the influence of alcohol. (*Id.* at p. 893, 157 Cal.Rptr. 693, 598 P.2d 854.) ¶ In 1980, the Legislature amended section 3294 by adding the definition of malice stated in *Taylor, supra,* 24 Cal.3d 890, 157 Cal.Rptr. 693, 598 P.2d 854. (Stats.1980, ch. 1242, § 1, pp. 4217-4218; *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 713, 34 Cal.Rptr.2d 898, 882 P.2d 894.) That definition was amended in 1987. As amended, malice, based upon a conscious disregard of the plaintiff's rights, requires proof that the defendant's conduct is "despicable" and "willful." (Stats.1987, ch. 1498, § 5.) The statute's reference to "despicable conduct" represents "a new substantive limitation on punitive damage awards." (*College Hospital, Inc. v. Superior Court, supra,* 8 Cal.4th at p. 725, 34 Cal.Rptr.2d 898, 882 P.2d 894.) ¶ Additionally, the 1987 amendment increased the burden of proof. Malice or oppression must now be established "by clear and convincing evidence." (Stats.1987, ch.

1498, § 5.) That standard "requires a finding of high probability .... ' "so clear as to leave no substantial doubt"; "sufficiently strong to command the unhesitating assent of every reasonable mind." ' [Citation.]" (*In re Angelia P.* (1981) 28 Cal.3d 908, 919, 171 Cal.Rptr. 637, 623 P.2d 198, superseded by statute on other grounds as stated in *Orange County Social Services Agency v. Jill V.* (1994) 31 Cal.App.4th 221, 229, 36 Cal.Rptr.2d 848; *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 891, 93 Cal.Rptr.2d 364.)" (Emphasis added.) (Lackner v. North (2006) 135 Cal.App.4th 1188, 1211-1213.)

The Third District Court of Appeal has also stated: ""' 'The wrongdoer " 'must act with the intent to vex, injure, or annoy, or with a conscious disregard of the plaintiff's rights. [Citations.]' " Punitive damages are appropriate if the defendant's acts are reprehensible, fraudulent or in blatant violation of law or policy. The mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages.... Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate.' " (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1287, 31 Cal.Rptr.2d 433.)" (George F. Hillenbrand, Inc. v. Insurance Co. of North America (2002) 104 Cal.App.4th 784, 815.) The Third District Court of Appeal further stated: ""' ' "Despicable conduct" is conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people.' " (*Mock*, supra, 4 Cal.App.4th at p. 331, 5 Cal.Rptr.2d 594.)" (George F. Hillenbrand, Inc. v. Insurance Co. of North America (2002) 104 Cal.App.4th 784, 817.)

"An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or

was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." (Emphasis added.) (Civil Code, § 3294(b).)

"Ratification is a question of fact. The burden of proving ratification is upon the party asserting its existence. But ratification may be proved by circumstantial as well as direct evidence. Anything which convincingly shows the intention of the principal to adopt or approve the act in question is sufficient. (2 Cal.Jur.2d, Agency, § 102, pp. 768–769.) It may also be shown by implication. ' " ... where an agent is authorized to do an act, and he transcends his authority, it is the duty of the principal to repudiate the act as soon as he is fully informed of what has been thus done in his name, ... else he will be bound by the act as having ratified it by implication." ' (*Ralphs v. Hensler* (1893) 97 Cal. 296, 303 [32 P. 243].)" (*Hale v. Farmers Ins. Exch.* (1974) 42 Cal.App.3d 681, 691–692, 117 Cal.Rptr. 146 disapproved on other grounds in *Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 822, fn. 5, 169 Cal.Rptr. 691, 620 P.2d 141.)" (Emphasis added.) (StreetScenes v. ITC Entertainment Group, Inc. (2002) 103 Cal.App.4th 233, 242.)

"An act of oppression, fraud or malice, by an officer, director or *managing agent,* is sufficient to impose liability on a corporate employer for punitive damages, without any additional showing of ratification by the employer. (§ 3294, subd. (b); *Agarwal, supra,* 25 Cal.3d at p. 950, 160 Cal.Rptr. 141, 603 P.2d 58.)" (Kelly-Zurian v. Wohl Shoe Co. (1994) 22 Cal.App.4th 397, 420.)

Plaintiff has added the following allegations relevant to the claim for punitive damages against defendants: upon information and belief, defendants Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia are officers, directors, principal and managing agents of

defendants TCH and Urbana Tahoe TC; the Amended Operating Agreement was executed by Cameron Chartouni as president of TCH; defendant TCH, Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia engaged in alleged wrongful conduct, including fraud, that reduced plaintiff's 10% of the membership interests in defendant Urbana Tahoe TC, LLC to zero without the consent and approval of plaintiff and resulted in defendants claiming plaintiff was not entitled to any compensation for liquidation of its interest; and Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia authorized and ratified the misconduct on behalf of the corporate defendants. (Third Amended Complaint, paragraphs 5-7, 9, 32, 34-37, 47-49, 57, 60, 70-74 88, 89, 104-107, 123-128, 130, and 131 .)

Assuming the allegations that Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia are officers, directors, principal and managing agents of defendants TCH and Urbana Tahoe TC are sufficient, the remaining allegations would appear to be sufficient to make a claim for punitive damages for the conduct alleged to have been personally engaged in by those individuals and alleged ratification of the conduct by the individuals.

Citing White v. Ultramar, Inc. (1999) 21 Cal.4th 563, 572-573, defendants argue that the operative pleading must allege the specific job functions and activities of each and every individual who is alleged to be an officer, director, principal and managing agent of corporate defendants in order to adequately allege that Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia are officers, directors, principal and managing agents of defendants TCH and Urbana Tahoe TC.

The California Supreme Court in White, supra held: "Using the doctrine to aid our interpretation of "managing agent," we note that section 3294, subdivision (b), placed that term next to the terms "officer" and "director," intending that a managing agent be more than a mere supervisory employee. The managing agent must be someone who exercises substantial

discretionary authority over decisions that ultimately determine corporate policy. Thus, by selecting the term "managing agent," and placing it in the same category as "officer" and "director," the Legislature intended to limit the class of employees whose exercise of discretion could result in a corporate employer's liability for punitive damages. (Emphasis added.) (White v. Ultramar, Inc. (1999) 21 Cal.4th 563, 573.)

The California Supreme Court in White, supra, was presented with a case that had been tried to a judgment and appealed. It was not presented with any issues about sufficiency of allegations of pleadings and did not issue any decision holding that the plaintiff was required to allege specific facts establishing that the allegation of ultimate fact that a person was a managing agent actually was a managing agent as defined in White. The California Supreme Court only held that the plaintiff must prove that the claimed managing agent for the defendant corporation exercised substantial discretionary authority over significant aspects of a corporation's business in the same manner as an officer and director. The California Supreme Court stated: "In order to demonstrate that an employee is a true managing agent under section 3294, subdivision (b), a plaintiff seeking punitive damages would have to show that the employee exercised substantial discretionary authority over significant aspects of a corporation's business." (White v. Ultramar, Inc. (1999) 21 Cal.4th 563, 573–577.)

The California Supreme Court did not raise, consider, or resolve the issue of whether alleging the ultimate fact of being a managing agent was sufficient at the pleading stage of litigation of a claim for punitive damages.

"Decisions of California's Supreme Court are not controlling authority for propositions not considered. (*Ginns v. Savage* (1964) 61 C.2d 520, 39 C.R. 377, 393 P.2d 689; *People v. Harris* (1989) 47 C.3d 1047, 1071, 255 C.R. 352, 767 P.2d 619; *People v. Superior Court* (*Marks*) (1991) 1 C.4th 56, 65, 2 C.R.2d 389, 820 P.2d 613; *People v. Saunders* (1993) 5 C.4th

580, 592, 20 C.R.2d 638, 853 P.2d 1093, footnote 8; *People v. Banks* (1993) 6 C.4th 926, 945, 25 C.R.2d 524, 863 P.2d 769; *Cobb v. University of So. Calif.* (1995) 32 C.A.4th 798, 803, 38 C.R.2d 543, supra, § 146.)" (9 Witkin, California Procedure (4th ed 1997) Appeal, § 928, page 966.)

"An opinion is not authority for a point not raised, considered, or resolved therein. (E.g., *People v. Castellanos* (1999) 21 Cal.4th 785, 799, fn. 9, 88 Cal.Rptr.2d 346, 982 P.2d 211; *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 943, 55 Cal.Rptr.2d 724, 920 P.2d 669.)" (Styne v. Stevens (2001) 26 Cal.4th 42, 57-58.)

In any event, plaintiff also alleges that Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia were officers and directors. White, supra, did not hold that additional proof was required to establish that officers and directors were persons who exercised substantial discretionary authority over decisions that ultimately determine corporate policy.

Unfortunately for plaintiff, the allegations that Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia are officers, directors, principal and managing agents of defendants TCH and Urbana Tahoe TC are insufficient, because those allegations of fact are alleged under information and belief without any facts alleged to support that belief.

""[P]laintiff may allege on information and belief any matters that are not within his personal knowledge, if he has information leading him to believe that the allegations are true." (*Pridonoff v. Balokovich* (1951) 36 Cal.2d 788, 792, 228 P.2d 6.)" (Doe v. City of Los Angeles (2007) 42 Cal.4th 531, 550.) However, a pleading upon information and belief is not sufficient if it merely asserts the facts upon information and belief without also alleging the information that led the plaintiff to believe the allegations are true. (Doe v. City of Los Angeles (2007) 42 Cal.4th 531, 551, fn. 5.)

The motion to strike is granted.

"It is an abuse of discretion to deny leave to amend if there is a reasonable possibility that the pleading can be cured by amendment. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349, 134 Cal.Rptr. 375, 556 P.2d 737.): (Roman v. County of Los Angeles (2000) 85 Cal.App.4th 316, 322.) Under the totality of the circumstances presented, the court finds that there is a reasonable possibility the plaintiff can sufficiently allege an officer, director, or managing agent of the defendant corporations personally engaged in, authorized, and/or ratified the alleged misconduct. The court grants ten days leave to amend.

Adding New Defendants in the Amendment

- Defendants Timber Cove Holdings, Inc.'s and Urbana Tahoe TC, LLC's Standing to Strike the Addition of New Individual Defendants in this Action Where Plaintiff Did not Move for Leave to Amend to Add Such New Defendants

Plaintiff asserts that only the new individual defendants have standing to demurrer or seek to strike the new allegations adding them to the action as new defendants. Plaintiff does not cite any direct legal authority for that proposition. Plaintiff only argues that the cases cited for the general proposition that adding new parties or causes of action after a court sustains demurrers or grants motions to strike with leave to amend is improper all involved challenges brought by the new defendants added to the case and not the original parties.

There is sufficient statutory authority for maintaining a motion to strike new defendants improperly added by amendment by any party required to respond to the amended pleading, even an original party who is not a newly named defendant.

"Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof, but this time limitation shall not apply to motions specified in subdivision (e)." (Emphasis added.) (Code of Civil Procedure, § 435(b)(1).)

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: ¶ (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. ¶ (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Emphasis added.) (Code of Civil Procedure, § 436.)

Read together, Sections 435(b)(1) and 436 statutorily authorizes any party to maintain a motion to strike any improper matter inserted into the pleading and any other portion of the pleading that was not drawn in conformity with the laws of this state or an order of the court. (Emphasis the court's.) Therefore, it is appropriate for defendants in their own capacity as a party to this action responsible to respond to the 3rd amended complaint to file a motion to strike purportedly improper allegations adding new defendants to the operative pleading after a motion to strike was granted with leave to amend.

- Propriety of Adding New Defendants After a Motion to Strike is Granted with Leave to Amend

"Following an order sustaining a demurrer, the plaintiff may amend the complaint only as authorized by the court's order. The plaintiff may not amend the complaint to add a new cause of action without obtaining permission to do so, except when the new cause of action is within the scope of the order granting leave to amend. (*Harris v. Wachovia Mortg., FSB* (2010) 185 C.A.4th 1018, 1023, 111 C.R.3d 20.)" (5 Witkin, California Procedure (2011 supp.) Pleadings, § 988, supp page 17.) It is appropriate for a court to sustain a demurrer to causes of action added to an amended complaint where such additions exceed the scope of the court's order granting leave to amend the original complaint. (Harris v. Wachovia Mortg., FSB (2010) 185 Cal.App.4th 1018, 1022-1023.) However, this rule is inapplicable where the new cause of

action directly responds to the court's reason for sustaining the earlier demurrer. (Patrick v. Alacer Corp. (2008) 167 Cal.App.4th 995, 1015.)

"This situation is, however, different from the situation where the trial court sustains a demurrer to a pleading but grants leave to amend. In such a situation the granting of leave to amend is not a sanctioning of a particular amendment which the pleader has submitted to the trial court. Rather, as pointed out in Taliaferro, such granting of leave to amend must be construed as permission to the pleader to amend the cause of action which he pleaded in the pleading to which the demurrer has been sustained. Thus, in the instant case since the leave to amend which the trial court gave to Clausen was granted upon the sustaining of State's demurrer to his original cross-complaint, such leave to amend did not entitle Clausen to add new parties as cross-defendants. {Footnote omitted.}" (Emphasis added.) (People By and Through Dept. of Public Works v. Clausen (1967) 248 Cal.App.2d 770, 785-786.)

However, where the new cause of action directly responds to the court's reason for sustaining the earlier demurrer, then adding a new cause of action is appropriate. "First, Alacer contends plaintiff could not add a new cause of action to the third amended complaint. They claim the order sustaining the demurrer to the prior complaint with leave to amend granted plaintiff leave to amend *only the causes of action asserted in the prior complaint,* not leave to add entirely new causes of action. (*People ex rel. Dept. of Pub. Wks. v. Clausen (1967) 248 Cal.App.2d 770, 785, 57 Cal.Rptr. 227* ["such granting of leave to amend [in an order sustaining a demurrer] must be construed as permission to the pleader to amend the cause of action which he pleaded in the pleading to which the demurrer has been sustained"].) ¶ This rule is inapplicable here because the new cause of action directly responds to the court's reason for sustaining the earlier demurrer. The court found plaintiff failed to allege she had standing as a beneficial shareholder of Alacer to bring shareholder derivative claims. The new

declaratory relief cause of action supports her standing claim by seeking a declaration that she has a community property interest in Alacer--i.e., that she is a beneficial shareholder of Alacer. Plaintiff may not have been free to add any cause of action under the sun to her complaint, but the court should have allowed her to add *this* cause of action to establish her standing." (Patrick v. Alacer Corp. (2008) 167 Cal.App.4th 995, 1015.)

The court's order granting leave to amend was specifically directed at the reasonable possibility the plaintiff can sufficiently allege an officer, director, or managing agent of the defendant corporations personally engaged in, authorized, and/or ratified the alleged misconduct. The order can not be read to have granted plaintiff leave to amend by adding allegations that individual officers, directors, or managing agents of the defendant corporations are liable as individual defendants. Leave to amend was limited to adding allegations of fact to support a claim of corporate liability for punitive damages and not assert the named corporate officers, directors, or managing agents of the defendant corporations are also individually liable.

In short, the allegations naming new individual defendants was improperly inserted into the 3rd amended complaint and was not drawn in conformity with the laws of this state or an order of the court as that amendment did not directly respond to the court's reason for granting the motion to strike.

The motion to strike the allegations that Cameron Chartouni, Nabil Chartouni, and Vinod Vaghadia are new defendants is granted only to the extent that these individuals are being alleged as individual defendants individually liable to plaintiff. To the extent that they are otherwise properly alleged to have engaged in wrongful conduct as an officer, director, or managing agent of the defendant corporations leading to corporate liability for a claim of punitive damages, those allegations would be proper where sufficient facts are alleged to

establish the plaintiff's information and belief that those individuals are officers, directors, or managing agents of the defendant corporations.

TENTATIVE RULING # 20: DEFENDANTS' MOTION TO STRIKE PORTIONS OF THE 3RD AMENDED COMPLAINT IS GRANTED WITH TEN DAYS LEAVE TO AMEND. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION

CALENDAR AT 8:30 A.M. ON FRIDAY, FEBRUARY 4, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.