1. PEOPLE v. WILLIAM MCDONALD PCL-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 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 appeared at the hearing on May 20, 2022. The People stated that respondent had pled, and the publication date will be complete on May 25, 2022. The People requested and were granted a continuance of this hearing.

The hearing was continued from May 20, 2022, to July 1, 2022. Respondent was not present at the May 20, 2022, hearing The People were directed to give notice to respondent McDonald. There is no proof of service of notice of the continued hearing on William McDonald in the court's file. The court can not consider the matter until proof of adequate notice of the continuance of the hearing is submitted.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JULY 1, 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.

2. 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 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 appeared at the hearing on May 20, 2022. The People stated that respondent had pled, and the publication date will be complete on May 25, 2022. The People requested and were granted a continuance of this hearing.

The hearing was continued from May 20, 2022, to July 1, 2022. Respondent Jill McDonald did not appear at the May 20, 2022, hearing. The People were directed to give notice to respondent McDonald. There is no proof of service of notice of the continued hearing on Jill McDonald in the court's file. The court can not consider the matter until proof of adequate notice of the continuance of the hearing is submitted.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JULY 1, 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. MACEIUNAS 22CV0482

Petition for Forfeiture.

On March 15, 2022, the People filed a petition for forfeiture of cash seized by the El Dorado County Sheriff's Department. The petition states: $27,000 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; 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.

Petition for Forfeiture Proof of Service

"(c) The Attorney General or district attorney shall make service of process regarding this petition upon every individual designated in a receipt issued for the property seized. In addition, the Attorney General or district attorney shall cause a notice of the seizure, if any, and of the intended forfeiture proceeding, as well as a notice stating that any interested party may file a verified claim with the superior court of the county in which the property was seized or if the property was not seized, a notice of the initiation of forfeiture proceedings with respect to any interest in the property seized or subject to forfeiture, to be served by personal delivery or by registered mail upon any person who has an interest in the seized property or property subject to forfeiture other than persons designated in a receipt issued for the property seized. Whenever a notice is delivered pursuant to this section, it shall be accompanied by a claim

form as described in Section 11488.5 and directions for the filing and service of a claim." (Emphasis added.) (Health & Safety Code, § 11488.4(c).)

The proof of service declares on April 19, 2022, the petition for forfeiture, notice of judicial asset forfeiture proceeding, blank claim form opposing forfeiture (MC-200) and disclaimer of interest were served by certified mail on John Maceiunas to a certain street address.

On May 12, 2022, respondent filed a claim opposing forfeiture.

"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." (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).)

"(i)(1) With respect to property described in subdivisions (e) and (g) of Section 11470 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 was used, or intended to be used, to facilitate a violation of one of the offenses enumerated in subdivision (f) or (g) of Section 11470." (Health and Safety Code, § 11488.4(i)(1).)

"(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).)

At the hearing on May 20, 2022, respondent requested a continuance to get his documents together. The People stated respondent plead on May 19, 2022 and requested a continuance. The court continued the hearing to July 1, 2022.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JULY 1, 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. MATTER OF KAELA S., ABIGAYLE S., AND MAECILEE S. 22CV0625

OSC Re: Name Change.

The petition seeks to change the name of a minor; the minor's father has not joined in the petition. Since the non-consenting parent is stated in the petition to reside outside the State of California, service of the petition and notice of the hearing may be by personal service or service by first-class mail, postage prepaid, requiring a return receipt. Service by first-class mail, return receipt, is deemed complete on the tenth day after mailing. (Code of Civil Procedure, §§ 415.10, 415.40, and 1277(a).)

The proof of service in the court's file declares that the father was served the OSC Re: Name Change by mail, return receipt requested to his address in Idaho on May 31, 2022.

TENTATIVE RULING # 4: ABSENT OBJECTIONS, THE PETITION IS GRANTED.

5. CODY v. NEILSEN 21CV0025

Respondent's Motion for Attorney Fees.

Petitioner Cody filed a civil harassment complaint against respondent. Trial was held on this case on February 18, 2022. The court found that there was no clear and convincing evidence to support issuance of a civil harassment restraining order. The petition was denied. Petitioners' counsel requested to rest on the related civil harassment petitions in case numbers 22CV0026, 22CV0027, and 22CV0028, to not continue, and not to waste the court's time.

Respondent moves as the prevailing party in the action for an award of legal fees in the amount of $9,586.63 for legal fees and costs incurred in defending against the petition and to prepare the moving papers pursuant to the provisions of Code of Civil Procedure, § 527.6(s).

Petitioner opposes the motion on the following grounds: the petitioners believed they had a valid case for issuance of a civil harassment restraining order, particularly after the Sheriff's Department told her they needed to file a restraining order; the request for legal fees awards for all four related cases totaling $41,695.77 is unreasonable and excessive; and that a reasonable attorney fee amount for all four cases would be $8,050 calculated at 23 total hours of attorney time at $350 per hour.

Respondent Neilsen replied to the opposition: a defense on each of the four cases were necessitated by the serious nature of the allegations; each of the cases contained distinct allegations going back a number of years and pertaining to a history of the dispute over the access road; each case contained separate and distinct facts that required separate defenses; petitioners' counsel has not submitted a declaration regarding the reasonableness of the fees claimed by respondents; requests for continuances and failure to cooperate in discovery drove up attorney fees incurred by respondents; petitioner's opposition seeks to improperly relitigate

the facts of the case through the respondent's declaration filed in support of the opposition and the declarations filed in opposition to the motions for attorney fees in the other cases; and the times billed for services and fees incurred were reasonable under the circumstances.

Respondent Neilsen also objected to the petitioner's requests for judicial notice and the declarations of petitioners Cody, Williams, Pearson, and Wright.

Request for Judicial Notice

Petitioner Cody requests the court to take judicial notice of the declarations filed in related case numbers 22CV0026, 22CV0027, and 22CV0028 on the ground that they are court records.

Respondent objects that the court can not take judicial notice of the truth of the matters asserted in these declarations.

"Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451: ¶ * * * (d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States…" (Evidence Code, § 452(d).)

"The trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and: ¶ (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and ¶ (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." (Evidence Code, § 453.)

"Evidence Code section 452(d) permits the court to take judicial notice of court records. However, a court cannot take judicial notice of the truth of hearsay statements simply because the statements are part of a court record. (*Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 879, 138 Cal.Rptr. 426; *People v. Thacker* (1985) 175 Cal.App.3d 594, 598-599, 221 Cal.Rptr. 37.) As stated in *Day v. Sharp* (1975) 50 Cal.App.3d 904, 123 Cal.Rptr. 918, '"A court

may take judicial notice of the *existence* of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments.'" (Id. at p. 914, 123 Cal.Rptr. 918, quoting Jefferson, Cal.Evid.Benchbook (1972) Judicial Notice, § 47.3, p. 840.)" (Magnolia Square Homeowners Assn. v. Safeco Ins. Co. (1990) 221 Cal.App.3d 1049, 1056.)

While the declarations of Wesley Williams, Ross Pearson, and Michelle Wright were filed in opposition to motions for attorney fees in related case numbers 22CV0026, 22CV0027, and 22CV0028, they are not filed in cases consolidated with this case. The court can not take judicial notice of the truth of the facts set forth in those declarations, because they are not orders, findings of fact and conclusions of law, and/or judgments in those cases The objection to taking judicial notice is sustained.

Objections to Declarations Submitted in Opposition to Motions for Attorney Fees Filed in Case Numbers 22CV0025, 22CV0026, 22CV0027, and 22CV0028

- Declarations of Wesley Williams, Ross Pearson, and Michelle Wright Filed in Opposition to Motions for Attorney Fees in Related Case Numbers 21CV0026, 21CV0027, and 21CV0028

These declarations not having been filed in case number 21CV0025 in opposition to the instant motion and the court having sustained the objection to taking judicial notice of those declarations, these declarations are not before the court for consideration in ruling on the instant motion and the specific evidentiary objections to portions of each of these declarations have been rendered moot.

- Objections to Declaration of Petitioner Cody in Opposition to Motion in Case Number 21CV0025

  Objection numbers 58-62, and 64-66 are sustained.

Objection number 63 is overruled.

Award of Attorney Fees as Prevailing Party

"The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any." (Code of Civil Procedure, § 527.6(s).)

In rejecting a plaintiff's argument that attorney fees may only be awarded to a prevailing defendant in a civil harassment action where the action was filed frivolously, or in bad faith, an appellate court held: "…[S]ection 527.6(i) states that the prevailing party "may" be awarded attorney fees. The normal rule of statutory construction is that when the Legislature provides that a court or other decisionmaking body "may" do an act, the statute is permissive, and grants discretion to the decisionmaker. (See, e.g., *Lewis v. Clarke* (2003) 108 Cal.App.4th 563, 569, 133 Cal.Rptr.2d 749; *Woodbury v. Brown–Dempsey* (2003) 108 Cal.App.4th 421, 433, 134 Cal.Rptr.2d 124.) Appellant has not convinced us, through statutory analysis or legislative history, that a different rule of construction should apply to Section 527.(i). Accordingly, we conclude that the decision whether to award attorney fees to a prevailing party—plaintiff or defendant—under section 527.6(i) is a matter committed to the discretion of the trial court." (Krug v. Maschmeier (2009) 172 Cal.App.4th 796, 802.) The costs and attorney's fee provision are now found in Section 527.6(s).

In discussing the determination of who is the prevailing party for the purposes of an award of attroney's fees under Section 527.6, an appellate court has stated: "We turn to the fundamental question of whether respondents can be prevailing parties when the terms of the injunction apply to them as well as to appellants. ¶ A plaintiff prevails, in essence, when he gets most or all of what he wanted by filing the action. "A plaintiff will be considered a prevailing party when the lawsuit ' "was a catalyst motivating defendants to provide the primary relief sought" ' or succeeded in ' "activating defendants to modify their behavior." ' [Citation]"

(*California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 741, 246 Cal.Rptr. 285.) Moreover, "[a] plaintiff should not be denied attorney's fees because resolution in the plaintiff's favor was reached by settlement...." (Id. at p. 742, 246 Cal.Rptr. 285.) [Footnote omitted.]" (Elster v. Friedman (1989) 211 Cal.App.3d 1439, 1443-1444.)

Relitigation of the underlying case is not appropriate. The court finds respondent Neilsen is the prevailing party. Respondent is not required to establish that the petition was maintained frivolously or in bad faith for the court to exercise its discretion to award fees and costs to the prevailing party. The trial consisted of testimony from petitioner Cody and review of a videotape of the road easement. Thereafter the court concluded that petitioner Cody had not met her burden of proof by clear and convincing evidence and counsel for petitioner Cody and the other petitioners in case numbers 21CV0026, 21CV0027, and 21CV0028 rested on those cases. The court will exercise its discretion to award legal fees and costs to respondent. The question then becomes what reasonable legal fees were incurred to defend against the petition.

Petitioners in all four cases contend that the amount of fees sought are excessive in that the fees should be limited to $350 per hour and hours limited to 23 hours for defense against all four petitions.

Each of the four petitions assert that the alleged harassment has been ongoing for years and appear to allege differing time periods, though the allegations of timelines are not always certain in the petitions; each of the petitions allege different types of harassment by respondent Nicolas Neilsen; and the one petition asserted against Elizabeth Neilsen alleges Elizabeth Neilsen assisted Nicholas Neilsen in some unspecified manner to block the entrance to the Wright home, she knows her spouse is harassing petitioner and her spouse and is a

background participant, she will not stop her spouse, and she made threats and attempted to blackmail petitioner by seeking payment of money to not call code enforcement.

Considering the totality of the allegations faced by respondents to defend against in these four cases, though they are related, they do not arise from the exact same facts of alleged harassment and the court finds it was reasonable to deal with each individually. In addition, the allegations of years of alleged harassment without many specifics alleged in each of the petitions would reasonably require extensive discovery and preparation for trial as to each of these cases.

In the instant case, respondent seeks legal fees plus the $60 filing fee for the motion in the total amount of $11,009.51, which includes legal fees incurred to reply to the opposition. The only objection is that the total fees requested for all cases should not have exceeded $8,050 for all four cases. Petitioners have not identified any entries in the fee billings submitted in support of the motion as excessive for each individual case. The billing statements justify the amounts requested. The court grants the motion and awards $11,009.51 in legal fees and costs incurred in defense against the petition in case number 21CV0025.

TENTATIVE RULING # 5: THE COURT GRANTS THE MOTION FOR ATTORNEY FEES AND AWARDS $11,009.51 IN LEGAL FEES AND COSTS INCURRED IN DEFENSE AGAINST THE PETITION IN CASE NUMBER 21CV0025 PAYABLE BY PETITIONER JULIE CODY. 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, JULY 1, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

6. WRIGHT v. NEILSEN 21CV0027

Respondent Neilsen's Motion for Attorney Fees.

Petitioner Cody filed a civil harassment complaint in case number 21CV0025 against respondent. Trial was held on this case on February 18, 2022. The court found that there was no clear and convincing evidence to support issuance of a civil harassment restraining order. The petition was denied. Petitioners' counsel requested to rest on the related civil harassment petitions in case numbers 22CV0026, 22CV0027, and 22CV0028, to not continue, and not to waste the court's time. The petition brought by Michelle Wright in case number 22CV0027 against Nicolas Neilsen was thereafter denied on that same date.

Respondent moves as the prevailing party in the action for an award of legal fees in the amount of $10,076.63 for legal fees and costs incurred in defending against the petition and to prepare the moving papers pursuant to the provisions of Code of Civil Procedure, § 527.6(s).

Petitioner opposes the motion on the following grounds: the petitioners believed they had a valid case for issuance of a civil harassment restraining order, particularly after the Sheriff's Department told the four neighbors of respondent Nicolas Neilsen that they needed to file a restraining order; the request for legal fees awards for all four related cases totaling $41,695.77 is unreasonable and excessive; and that a reasonable attorney fee amount for all four cases would be $8,050 calculated at 23 total hours of attorney time at $350 per hour..

Respondent Neilsen replied to the opposition: a defense on each of the four cases were necessitated by the serious nature of the allegations; each of the cases contained distinct allegations going back a number of years and pertaining to a history of the dispute over the access road; each case contained separate and distinct facts that required separate defenses; requests for continuances and failure to cooperate in discovery drove up attorney fees incurred

by respondents; petitioner's opposition seeks to improperly relitigate the facts of the case through the respondent's declaration filed in support of the opposition and the declarations filed in opposition to the motions for attorney fees in the other cases; and the times billed for services and fees incurred were reasonable under the circumstances.

Respondent Neilsen also objected to the petitioner's requests for judicial notice and the declarations of petitioners Cody, Williams, Pearson, and Wright.

Request for Judicial Notice

Petitioner Wright requests the court to take judicial notice of the declarations filed in related case numbers 22CV0025, 22CV0026, and 22CV0028 on the ground that they are court records.

Respondent objects that the court can not take judicial notice of the truth of the matters asserted in these declarations.

"Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451: ¶ * * * (d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States…" (Evidence Code, § 452(d).)

"The trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and: ¶ (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and ¶ (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." (Evidence Code, § 453.)

"Evidence Code section 452(d) permits the court to take judicial notice of court records. However, a court cannot take judicial notice of the truth of hearsay statements simply because the statements are part of a court record. (*Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 879, 138 Cal.Rptr. 426; *People v. Thacker* (1985) 175 Cal.App.3d 594, 598-599, 221

Cal.Rptr. 37.) As stated in *Day v. Sharp* (1975) 50 Cal.App.3d 904, 123 Cal.Rptr. 918, '"A court may take judicial notice of the *existence* of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments."' (Id. at p. 914, 123 Cal.Rptr. 918, quoting Jefferson, Cal.Evid.Benchbook (1972) Judicial Notice, § 47.3, p. 840.)" (Magnolia Square Homeowners Assn. v. Safeco Ins. Co. (1990) 221 Cal.App.3d 1049, 1056.)

The declarations of Julie Cody, Wesley Williams, Ross Pearson, and Michelle Wright that were filed in opposition to motions for attorney fees in related case numbers 22CV0025, 22CV0026, and 22CV0028 were not filed in cases consolidated with this case. The court can not take judicial notice of the truth of the facts set forth in those declarations, because they are not orders, findings of fact and conclusions of law, and judgments in those cases The objection to taking judicial notice is sustained.

Objections to Declarations Submitted in Opposition to Motions for Attorney Fees Filed in Case Numbers 22CV0025, 22CV0026, 22CV0027, and 22CV0028

- Declarations of Julie Cody, Wesley Williams, Ross Pearson, and Michelle Wright Filed in Opposition to Motions for Attorney Fees in Related Case Numbers 21CV0025, 21CV0026, and 21CV0028

These declarations not having been filed in case number 21CV0027 in opposition to the instant motion and the court having sustained the objection to taking judicial notice of those declarations, these declarations are not before the court for consideration in ruling on the instant motion and the specific evidentiary objections to portions of each of these declarations have been rendered moot.

- Objections to Declaration of Ross Pearson Filed in Opposition to Motion in Case Number 21CV0027

Two declarations of Ross Pearson were filed, one in case number 21CV0027 and another in 21CV0028. The declaration filed in the instant case is properly before the court. Objection numbers 16-23 are sustained.

- Objections to Declaration of Petitioner Wright in Opposition to Motion in Case Number 21CV0027

Two declarations of Michelle Wright were filed, one in case number 21CV0027 and another in 21CV0028. The declaration filed in the instant case is properly before the court. Objection numbers 45-57 are sustained.

Award of Attorney Fees as Prevailing Party

"The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any." (Code of Civil Procedure, § 527.6(s).)

In rejecting a plaintiff's argument that attorney fees may only be awarded to a prevailing defendant in a civil harassment action where the action was filed frivolously, or in bad faith, an appellate court held: "…[S]ection 527.6(i) states that the prevailing party "may" be awarded attorney fees. The normal rule of statutory construction is that when the Legislature provides that a court or other decisionmaking body "may" do an act, the statute is permissive, and grants discretion to the decisionmaker. (See, e.g., *Lewis v. Clarke* (2003) 108 Cal.App.4th 563, 569, 133 Cal.Rptr.2d 749; *Woodbury v. Brown–Dempsey* (2003) 108 Cal.App.4th 421, 433, 134 Cal.Rptr.2d 124.) Appellant has not convinced us, through statutory analysis or legislative history, that a different rule of construction should apply to Section 527.(i). Accordingly, we conclude that the decision whether to award attorney fees to a prevailing party—plaintiff or defendant—under section 527.6(i) is a matter committed to the discretion of the trial court."

(Krug v. Maschmeier (2009) 172 Cal.App.4th 796, 802.) The costs and attorney's fee provision are now found in Section 527.6(s).

In discussing the determination of who is the prevailing party for the purposes of an award of attroney's fees under Section 527.6, an appellate court has stated: "We turn to the fundamental question of whether respondents can be prevailing parties when the terms of the injunction apply to them as well as to appellants. ¶ A plaintiff prevails, in essence, when he gets most or all of what he wanted by filing the action. "A plaintiff will be considered a prevailing party when the lawsuit ' "was a catalyst motivating defendants to provide the primary relief sought" ' or succeeded in ' "activating defendants to modify their behavior." ' [Citation]" (*California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 741, 246 Cal.Rptr. 285.) Moreover, "[a] plaintiff should not be denied attorney's fees because resolution in the plaintiff's favor was reached by settlement...." (Id. at p. 742, 246 Cal.Rptr. 285.) [Footnote omitted.]" (Elster v. Friedman (1989) 211 Cal.App.3d 1439, 1443-1444.)

Relitigation of the underlying case is not appropriate. The court finds respondent Neilsen is the prevailing party. Respondent is not required to establish that the petition was maintained frivolously or in bad faith for the court to exercise its discretion to award fees and costs to the prevailing party. The trial consisted of testimony from petitioner Cody and review of a videotape of the road easement. Thereafter the court concluded that petitioner Cody had not met her burden of proof by clear and convincing evidence and counsel for petitioner Cody and the other petitioners in case numbers 21CV0026, 21CV0027, and 21CV0028 rested on those cases. The instant case was thereafter denied on the same date. The court will exercise its discretion to award legal fees and costs to respondent. The question then becomes what reasonable legal fees were incurred to defend against the petition.

Petitioners in all four cases contend that the amount of fees sought are excessive in that the fees should be limited to $350 per hour and hours limited to 23 hours for defense against all four petitions.

Each of the four petitions assert that the alleged harassment has been ongoing for years and appear to allege differing time periods, though the allegations of timelines are not always certain in the petitions; each of the petitions allege different types of harassment by respondent Nicolas Neilsen; and the one petition asserted against Elizabeth Neilsen alleges Elizabeth Neilsen assisted Nicholas Neilsen in some unspecified manner to block the entrance to the Wright home, she knows her spouse is harassing petitioner and her spouse and is a background participant, she will not stop her spouse, and she made threats and attempted to blackmail petitioner by seeking payment of money to not call code enforcement.

Considering the totality of the allegations faced by respondents to defend against in these four cases, though they are related, they do not arise from the exact same facts of alleged harassment and the court finds it was reasonable to deal with each individually. In addition, the allegations of years of alleged harassment without many specifics alleged in each of the petitions would reasonably require extensive discovery and preparation for trial as to each of these cases.

In the instant case, respondent seeks legal fees plus the $60 filing fee for the motion in the total amount of $11,445.51, which includes legal fees incurred to reply to the opposition. The only objection is that the total fees requested for all cases should not have exceeded $8,050. Petitioners have not identified any entries in the fee billings submitted in support of the motion as excessive for each individual case. The billing statements justify the amounts requested. The court grants the motion and awards $11,445.51 in legal fees and costs incurred in defense against the petition in case number 21CV0027.

TENTATIVE RULING # 6: THE COURT GRANTS THE MOTION FOR ATTORNEY FEES AND AWARDS $11,445.51 IN LEGAL FEES AND COSTS INCURRED IN DEFENSE AGAINST THE PETITION IN CASE NUMBER 21CV0027 PAYABLE BY PETITIONER MICHELLE WRIGHT. 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, JULY 1, 2022, EITHER IN PERSON

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

7. WILLIAMS v. NEILSEN 21CV0026

Wesley Williams' Motion for Attorney Fees.

On October 25, 2021, a TRO was issued in this case and on November 1, 2021, proof of firearms turned into the Sheriff's Department was filed. At the hearing in Williams v. Neilsen, case number 21CV0026, on January 21, 2022, the court ordered no reissuance of the TRO. The order continuing the trial date in Williams v. Neilsen, case number 21CV0026, that was filed on January 24, 2022, states that the court terminated the previously issued TRO upon agreement of the parties.

Petitioner Cody filed a civil harassment complaint in case number 21CV0025 against respondent. Trial was held on this case on February 18, 2022. The court found that there was no clear and convincing evidence to support issuance of a civil harassment restraining order. The petition was denied. Petitioners' counsel requested to rest on the related civil harassment petitions in case numbers 22CV0026, 22CV0027, and 22CV0028, to not continue, and not to waste the court's time. The petition brought by Wesley Williams in case number 22CV0026 against Nicolas Neilsen was thereafter denied on that same date.

Respondent moves as the prevailing party in the action for an award of legal fees in the amount of $11,737.48 for legal fees and costs incurred in defending against the petition and to prepare the moving papers pursuant to the provisions of Code of Civil Procedure, § 527.6(s). Respondent contends that additional legal fees were incurred in this case to have the TRO issued in this case dissolved and to retrieve his firearms that had been surrendered due to the TRO.

Petitioner opposes the motion on the following grounds: the petitioners believed they had a valid case for issuance of a civil harassment restraining order, particularly after the Sheriff's

Department told the four neighbors of respondent Nicolas Neilsen that they needed to file a restraining order; the request for legal fees awards for all four related cases totaling $41,695.77 is unreasonable and excessive; and that a reasonable attorney fee amount for all four cases would be $8,050 calculated at 23 total hours of attorney time at $350 per hour.

Respondent Neilsen replied to the opposition: a defense on each of the four cases were necessitated by the serious nature of the allegations; each of the cases contained distinct allegations going back a number of years and pertaining to a history of the dispute over the access road; each case contained separate and distinct facts that required separate defenses; request for continuances and failure to cooperate in discovery drove up attorney fees incurred by respondents; petitioner's opposition seeks to improperly relitigate the facts of the case through the respondent's declaration filed in support of the opposition and the declarations filed in opposition to the motions for attorney fees in the other cases; and the times billed for services and fees incurred were reasonable under the circumstances.

Respondent Neilsen also objected to the petitioner's requests for judicial notice and the declarations of petitioners Cody, Williams, Pearson, and Wright.

Request for Judicial Notice

Petitioner Williams requests the court to take judicial notice of the declarations filed in related case numbers 22CV0025, 22CV0027, and 22CV0028 on the ground that they are court records.

Respondent objects that the court can not take judicial notice of the truth of the matters asserted in these declarations.

"Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451: ¶ * * * (d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States…" (Evidence Code, § 452(d).)

"The trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and: ¶ (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and ¶ (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." (Evidence Code, § 453.)

"Evidence Code section 452(d) permits the court to take judicial notice of court records. However, a court cannot take judicial notice of the truth of hearsay statements simply because the statements are part of a court record. (*Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 879, 138 Cal.Rptr. 426; *People v. Thacker* (1985) 175 Cal.App.3d 594, 598-599, 221 Cal.Rptr. 37.) As stated in *Day v. Sharp* (1975) 50 Cal.App.3d 904, 123 Cal.Rptr. 918, '"A court may take judicial notice of the *existence* of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments."' (Id. at p. 914, 123 Cal.Rptr. 918, quoting Jefferson, Cal.Evid.Benchbook (1972) Judicial Notice, § 47.3, p. 840.)" (Magnolia Square Homeowners Assn. v. Safeco Ins. Co. (1990) 221 Cal.App.3d 1049, 1056.)

While the declarations of Julie Cody, Ross Pearson, and Michelle Wright were filed in opposition to motions for attorney fees in related case numbers 22CV0025, 22CV0027, and 22CV0028, they are not filed in cases consolidated with this case. The court can not take judicial notice of the truth of the facts set forth in those declarations, because they are not orders, findings of fact and conclusions of law, and judgments in those cases The objection to taking judicial notice is sustained.

Objections to Declarations Submitted in Opposition to Motions for Attorney Fees Filed in Case Numbers 22CV0025, 22CV0026, 22CV0027, and 22CV0028

- Declarations of Julie Cody, Ross Pearson, and Michelle Wright Filed in Opposition to Motions for Attorney Fees in Related Case Numbers 21CV0025, 21CV0027, and 21CV0028

These declarations not having been filed in case number 21CV0026 in opposition to the instant motion and the court having sustained the objection to taking judicial notice of those declarations, these declarations are not before the court for consideration in ruling on the instant motion and the specific evidentiary objections to portions of each of these declarations have been rendered moot.

- Objections to Declaration of Petitioner Wesley Williams in Opposition to Motion in Case Number 21CV0026

Objection numbers 1-9 are sustained.

Award of Attorney Fees as Prevailing Party

"The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any." (Code of Civil Procedure, § 527.6(s).)

In rejecting a plaintiff's argument that attorney fees may only be awarded to a prevailing defendant in a civil harassment action where the action was filed frivolously, or in bad faith, an appellate court held: "…[S]ection 527.6(i) states that the prevailing party "may" be awarded attorney fees. The normal rule of statutory construction is that when the Legislature provides that a court or other decisionmaking body "may" do an act, the statute is permissive, and grants discretion to the decisionmaker. (See, e.g., *Lewis v. Clarke* (2003) 108 Cal.App.4th 563, 569, 133 Cal.Rptr.2d 749; *Woodbury v. Brown–Dempsey* (2003) 108 Cal.App.4th 421, 433, 134 Cal.Rptr.2d 124.) Appellant has not convinced us, through statutory analysis or legislative history, that a different rule of construction should apply to Section 527(i). Accordingly, we conclude that the decision whether to award attorney fees to a prevailing party—plaintiff or

defendant—under section 527.6(i) is a matter committed to the discretion of the trial court." (Krug v. Maschmeier (2009) 172 Cal.App.4th 796, 802.) The costs and attorney's fee provision are now found in Section 527.6(s).

In discussing the determination of who is the prevailing party for the purposes of an award of attroney's fees under Section 527.6, an appellate court has stated: "We turn to the fundamental question of whether respondents can be prevailing parties when the terms of the injunction apply to them as well as to appellants. ¶ A plaintiff prevails, in essence, when he gets most or all of what he wanted by filing the action. "A plaintiff will be considered a prevailing party when the lawsuit ' "was a catalyst motivating defendants to provide the primary relief sought" ' or succeeded in ' "activating defendants to modify their behavior." ' [Citation]" (*California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 741, 246 Cal.Rptr. 285.) Moreover, "[a] plaintiff should not be denied attorney's fees because resolution in the plaintiff's favor was reached by settlement...." (Id. at p. 742, 246 Cal.Rptr. 285.) [Footnote omitted.]" (Elster v. Friedman (1989) 211 Cal.App.3d 1439, 1443-1444.)

Relitigation of the underlying case is not appropriate. The court finds respondent Neilsen is the prevailing party. Respondent is not required to establish that the petition was maintained frivolously or in bad faith for the court to exercise its discretion to award fees and costs to the prevailing party. The trial consisted of testimony from petitioner Cody and review of a videotape of the road easement. Thereafter the court concluded that petitioner Cody had not met her burden of proof by clear and convincing evidence and counsel for petitioner Cody and the other petitioners in case numbers 21CV0026, 21CV0027, and 21CV0028 rested on those cases. The instant case was thereafter denied on the same date. The court will exercise its discretion to award legal fees and costs to respondent. The question then becomes what reasonable legal fees were incurred to defend against the petition.

Petitioners in all four cases contend that the amount of fees sought are excessive in that the fees should be limited to $350 per hour and hours limited to 23 hours for defense against all four petitions.

Each of the four petitions assert that the alleged harassment has been ongoing for years and appear to allege differing time periods, though the allegations of timelines are not always certain in the petitions; each of the petitions allege different types of harassment by respondent Nicolas Neilsen; and the one petition asserted against Elizabeth Neilsen alleges Elizabeth Neilsen assisted Nicholas Neilsen in some unspecified manner to block the entrance to the Wright home, she knows her spouse is harassing petitioner and her spouse and is a background participant, she will not stop her spouse, and she made threats and attempted to blackmail petitioner by seeking payment of money to not call code enforcement.

Considering the totality of the allegations faced by respondents to defend against in these four cases, though they are related, they do not arise from the exact same facts of alleged harassment and the court finds it was reasonable to deal with each individually. In addition, the allegations of years of alleged harassment without many specifics alleged in each of the petitions would reasonably require extensive discovery and preparation for trial as to each of these cases.

In the instant case, respondent seeks legal fees plus the $60 filing fee for the motion in the total amount of $15,214.01, which includes legal fees incurred to reply to the opposition. The objection is that the total fees requested for all cases should not have exceeded $8,050. Petitioner Williams by means of paragraph 6 of his declaration in opposition identified various categories of items billed which he thought in his opinion should not be billed or were not necessary to prepare a defense against the petition, including work to prepare a motion to exclude evidence that petitioner did not offer into evidence, because he conceded the case

prior to the trial on his petition on the date of trial. He declared no factual foundation to establish he has an expertise in how lawyers should or should not defend against a civil harassment action brought against the attorney's client or what are reasonable hours and amounts to bill for services under the circumstances presented. The petition in this case contained vague allegations of threats that were ongoing for several forcing him off the road, driving respondent's van in front of petitioner's tractor, and that various persons were present during these incidents, including Julie Cody, Ross Pearson, and Michelle Pearson-Wright. Having read and considered the entries on the billing statements, the court finds the amounts billed and requested were reasonable and justified. The court grants the motion and awards $15,214.01 in legal fees and costs incurred in defense against the petition in case number 21CV0026.

TENTATIVE RULING # 7: THE COURT GRANTS THE MOTION FOR ATTORNEY FEES AND AWARDS $15,214.01 IN LEGAL FEES AND COSTS INCURRED IN DEFENSE AGAINST THE PETITION IN CASE NUMBER 21CV0026 PAYABLE BY PETITIONER WESLEY WILLIAMS. 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, JULY 1, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

8. WRIGHT v. NEILSEN 21CV0028

Michelle Wright's Motion for Attorney Fees.

Petitioner Cody filed a civil harassment complaint in case number 21CV0025 against respondent. Trial was held on this case on February 18, 2022. The court found that there was no clear and convincing evidence to support issuance of a civil harassment restraining order. The petition was denied. Petitioners' counsel requested to rest on the related civil harassment petitions in case numbers 22CV0026, 22CV0027, and 22CV0028, to not continue, and not to waste the court's time. The petition brought by Michelle Wright in case number 22CV0028 against Elizabeth Neilsen was thereafter denied on that same date.

Respondent moves as the prevailing party in the action for an award of legal fees in the amount of $8,481.38 for legal fees and costs incurred in defending against the petition and to prepare the moving papers pursuant to the provisions of Code of Civil Procedure, § 527.6(s).

Petitioner opposes the motion on the following grounds: the petitioners believed they had a valid case for issuance of a civil harassment TRO, particularly after the Sheriff's Department told the four neighbors of respondent that they needed to file a restraining order; and that a reasonable attorney fee amount for all four cases would be $8,050 calculated at 23 total hours of attorney time at $350 per hour.

Respondent Elizabeth Neilsen replied to the opposition: a defense on each of the four cases were necessitated by the serious nature of the allegations; each of the cases contained distinct allegations going back a number of years and pertaining to a history of the dispute over the access road; each case contained separate and distinct facts that required separate defenses; request for continuances and failure to cooperate in discovery drove up attorney fees incurred by respondents; petitioner's opposition seeks to improperly relitigate the facts of

the case through the respondent's declaration filed in support of the opposition and the declarations filed in opposition to the motions for attorney fees in the other cases; and the times billed for services and fees incurred were reasonable under the circumstances.

Respondent Elizabeth Neilsen also objected to the petitioner's requests for judicial notice and the declarations of petitioners.

Request for Judicial Notice

Petitioner Wright requests the court to take judicial notice of the declarations filed in related case numbers 22CV0025, 22CV0026, and 22CV0027 on the ground that they are court records.

Respondent objects that the court can not take judicial notice of the truth of the matters asserted in these declarations.

"Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451: ¶ * * * (d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States…" (Evidence Code, § 452(d).)

"The trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and: ¶ (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and ¶ (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." (Evidence Code, § 453.)

"Evidence Code section 452(d) permits the court to take judicial notice of court records. However, a court cannot take judicial notice of the truth of hearsay statements simply because the statements are part of a court record. (*Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 879, 138 Cal.Rptr. 426; *People v. Thacker* (1985) 175 Cal.App.3d 594, 598-599, 221 Cal.Rptr. 37.) As stated in *Day v. Sharp* (1975) 50 Cal.App.3d 904, 123 Cal.Rptr. 918, '"A court

may take judicial notice of the *existence* of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments.'" (Id. at p. 914, 123 Cal.Rptr. 918, quoting Jefferson, Cal.Evid.Benchbook (1972) Judicial Notice, § 47.3, p. 840.)" (Magnolia Square Homeowners Assn. v. Safeco Ins. Co. (1990) 221 Cal.App.3d 1049, 1056.)

While the declarations of Julie Cody, Wesley Williams, Michele Wright, and Ross Pearson were filed in opposition to motions for attorney fees in related case numbers 22CV0025, 22CV0026, and 22CV0028, the declarations are not filed in cases consolidated with this case. The court can not take judicial notice of the truth of the facts set forth in those declarations, because they are not orders, findings of fact and conclusions of law, and judgments in those cases The objection to taking judicial notice is sustained.

Objections to Declarations Submitted in Opposition to Motions for Attorney Fees Filed in Case Numbers 22CV0025, 22CV0026, 22CV0027, and 22CV0028

- Declarations of Julie Cody, Ross Pearson, Michelle Wright, and Wesley Williams Filed in Opposition to Motions for Attorney Fees in Related Case Numbers 21CV0025, 21CV0026, and 22CV0027

These declarations not having been filed in case number 21CV0028 in opposition to the instant motion and the court having sustained the objection to taking judicial notice of those declarations, these declarations are not before the court for consideration in ruing on the instant motion and the specific evidentiary objections to portions of each of these declarations have been rendered moot.

- Objections to Declaration of Ross Pearson Filed in Opposition to Motion in Case Number 21CV0028

Two declarations of Ross Pearson were filed, one in case number 21CV0027 and another in 21CV0028. The declaration filed in the instant case is properly before the court. Objection numbers 10-15 are sustained.

- Objections to Declaration of Petitioner Wright in Opposition to Motion in Case Number 21CV0028

Two declarations of Michelle Wright were filed, one in case number 21CV0027 and another in 21CV0028. The declaration filed in the instant case is properly before the court. Objection numbers 24-44 are sustained.

Award of Attorney Fees as Prevailing Party

"The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any." (Code of Civil Procedure, § 527.6(s).)

In rejecting a plaintiff's argument that attorney fees may only be awarded to a prevailing defendant in a civil harassment action where the action was filed frivolously, or in bad faith, an appellate court held: "…[S]ection 527.6(i) states that the prevailing party "may" be awarded attorney fees. The normal rule of statutory construction is that when the Legislature provides that a court or other decisionmaking body "may" do an act, the statute is permissive, and grants discretion to the decisionmaker. (See, e.g., *Lewis v. Clarke* (2003) 108 Cal.App.4th 563, 569, 133 Cal.Rptr.2d 749; *Woodbury v. Brown–Dempsey* (2003) 108 Cal.App.4th 421, 433, 134 Cal.Rptr.2d 124.) Appellant has not convinced us, through statutory analysis or legislative history, that a different rule of construction should apply to Section 527 (i). Accordingly, we conclude that the decision whether to award attorney fees to a prevailing party—plaintiff or defendant—under section 527.6(i) is a matter committed to the discretion of the trial court."

(Krug v. Maschmeier (2009) 172 Cal.App.4th 796, 802.) The costs and attorney's fee provision are now found in Section 527.6(s).

In discussing the determination of who is the prevailing party for the purposes of an award of attroney's fees under Section 527.6, an appellate court has stated: "We turn to the fundamental question of whether respondents can be prevailing parties when the terms of the injunction apply to them as well as to appellants. ¶ A plaintiff prevails, in essence, when he gets most or all of what he wanted by filing the action. "A plaintiff will be considered a prevailing party when the lawsuit ' "was a catalyst motivating defendants to provide the primary relief sought" ' or succeeded in ' "activating defendants to modify their behavior." ' [Citation]" (*California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 741, 246 Cal.Rptr. 285.) Moreover, "[a] plaintiff should not be denied attorney's fees because resolution in the plaintiff's favor was reached by settlement...." (Id. at p. 742, 246 Cal.Rptr. 285.) [Footnote omitted.]" (Elster v. Friedman (1989) 211 Cal.App.3d 1439, 1443-1444.)

Relitigation of the underlying case is not appropriate. The court finds respondent Neilsen is the prevailing party. Respondent is not required to establish that the petition was maintained frivolously or in bad faith for the court to exercise its discretion to award fees and costs to the prevailing party. The trial consisted of testimony from petitioner Cody and review of a videotape of the road easement. Thereafter the court concluded that petitioner Cody had not met her burden of proof by clear and convincing evidence and counsel for petitioner Cody and the other petitioners in case numbers 21CV0026, 21CV0027, and 21CV0028 rested on those cases. The instant case was thereafter denied on the same date. The court will exercise its discretion to award legal fees and costs to respondent. The question then becomes what reasonable legal fees were incurred to defend against the petition.

Petitioners in all four cases contend that the amount of fees sought are excessive in that the fees should be limited to $350 per hour and hours limited to 23 hours for defense against all four petitions.

Each of the four petitions assert that the alleged harassment has been ongoing for years and appear to allege differing time periods, though the allegations of timelines are not always certain in the petitions; each of the petitions allege different types of harassment by respondent Nicolas Neilsen; and the instant petition asserted against Elizabeth Neilsen alleges she assisted Nicholas Neilsen in some unspecified manner to block the entrance to the Wright home, she knows her spouse is harassing petitioner and her spouse and is a background participant, she will not stop her spouse, and she made threats and attempted to blackmail petitioner by seeking payment of money to not call code enforcement.

Considering the totality of the allegations faced by respondents to defend against in these four cases, though they are related, they do not arise from the exact same facts of alleged harassment and the court finds it was reasonable to deal with each individually. In addition, the allegations of years of alleged harassment and respondent Elizabeth Neilsen assisting Nicolas Neilsen without many specifics alleged in each of the petitions would reasonably require extensive discovery and preparation for trial as to each of these cases.

In the instant case, respondent seeks legal fees plus the $60 filing fee for the motion in the total amount of $9,904.26, which includes legal fees incurred to reply to the opposition. The only objection is that the total fees requested for all cases should not have exceeded $8,050. Petitioners have not identified any entries in the fee billings submitted in support of the motion as excessive for each individual case. The billing statements justify the amounts requested. The court grants the motion and awards $9,904.26 in legal fees and costs incurred in defense against the petition in case number 21CV0028.

TENTATIVE RULING # 8: THE COURT GRANTS THE MOTION FOR LEGAL FEES AND AWARDS $9,904.26 IN LEGAL FEES AND COSTS INCURRED IN DEFENSE AGAINST THE PETITION IN CASE NUMBER 21CV0028 PAYABLE BY PETITIONER MICHELLE WRIGHT. 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, JULY 1, 2022, EITHER IN PERSON

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

9. GARCIA v. ZAPANTA PC-20210530

Plaintiff's Motion for Order for Publication of Summons on Defendant Zapanta.

Plaintiff filed an action asserting causes of action for general negligence and premises liability for injuries allegedly sustained when plaintiff slipped in the driveway of a rental home owned by defendant that was allegedly not properly plowed. Plaintiff moves for an order authorizing service on defendant Zapanta on the ground that despite reasonably diligent efforts to locate and serve the defendant owner of the subject real property, the defendant could not be located and served.

Code of Civil Procedure, § 415.50 provides: "(a) A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article and that: ¶ (1) A cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action; or ¶ (2) The party to be served has or claims an interest in real or personal property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property. ¶ (b) The court shall order the summons to be published in a named newspaper, published in this state, that is most likely to give actual notice to the party to be served and direct that a copy of the summons, the complaint, and the order for publication be forthwith mailed to the party if his or her address is ascertained before expiration of the time prescribed for publication of the summons. Except as otherwise provided by statute, the publication shall be made as provided by Section 6064 of the Government Code unless the court, in its discretion, orders publication for a longer period. ¶ (c) Service of a summons in this manner is deemed complete as provided in Section 6064 of the Government

Code. ¶ (d) Notwithstanding an order for publication of the summons, a summons may be served in another manner authorized by this chapter, in which event the service shall supersede any published summons…"

The Judicial Council Comments to Section 415.50 state in pertinent part: "Section 415.50 provides a method for effecting service upon a defendant whose whereabouts are unknown and who has no known fixed location where service can be otherwise effected in a manner specified in this article. It is the traditional method of service of process by publication. The applicable rules dealing with such service are essentially the same as under the former law, except that service by publication under Section 415.50 is limited to instances where a better method of service specified in Sections 415.10 through 415.40 is not available, *i.e.*, by delivering process to the defendant or his agent personally (Sections 415.10, 416.90), or at his dwelling house, usual place of abode, or usual place of business (Section 415.20), or by means of ordinary first-class mail or airmail, or registered or certified airmail (Sections 415.30, 415.40). (See generally *Vorburg v. Vorburg* (1941) 18 Cal.2d 794, 117 P.2d 875; Rue v. Quinn (1902) 137 Cal. 651, 656, 70 P. 732; *Forbes v. Hyde* (1866) 31 Cal. 342, 350; see also Comment, 37 Cal.L.Rev. 80, 86-88.) These methods of service make service by publication unnecessary except where a defendant's whereabouts and his dwelling house or usual place of abode, etc., cannot be ascertained with reasonable diligence, and where no person who may be served on his behalf can be located with reasonable diligence. ¶ The term "reasonable diligence" takes its meaning from the former law: it denotes a thorough, systematic investigation and inquiry conducted in good faith by the party or his agent or attorney (See *Vorburg v. Vorburg*, *supra*, at 797; *Stern v. Judson* (1912), 163 Cal. 726, 736, 127 P. 38; *Rue v. Quin*n, *supra*, at 657). Several honest attempts to learn defendant's whereabouts or his address by inquiry of relatives, friends, and acquaintances, or of his employer, and by

investigation of appropriate city and telephone directories, the voters' register, and the real and personal property index in the assessor's office, near the defendant's last known location, are generally sufficient. These are the likely sources of information, and consequently must be searched before resorting to service by publication. ¶The first step in service by publication is the filing of a prescribed affidavit showing in detail (1) probative facts indicating a sincere desire and a thorough search to locate the defendant, including the dates thereof and any attempts to serve the defendant by another method of service (*Rue v. Quinn*, *supra*, at 656; *Chapman v. Moore* (1907) 151 Cal. 509, 513, 91 P. 324; *Forbes v. Hyde*, *supra*, at 350), and either (2) that a cause of action exists against the defendant or that he is a necessary or proper party, or (3) that the action consists in whole or in part in excluding defendant from any interest in property in this state that is subject to the jurisdiction of the court. Such an affidavit in proper form is a jurisdictional basis of the order for publication. (*Forbes v. Hyde*, *supra*, at 350.)

Plaintiff's counsel declares: plaintiff retained the services of a registered process server to serve defendant at the address in South San Francisco listed in a real property ownership search of the subject property in South Lake Tahoe; the registered process server attempted to serve defendant at the address and was informed that the address was not valid for defendant as defendant no longer lived there; plaintiff then had the process server attempt service at the address of the subject property in South Lake Tahoe; the process server was advised by the neighbor that the subject property had been vacant for about one year; after two attempted services, plaintiff hired a private investigator to find he defendant; the private investigator reported in Exhibit E to the declaration that defendant was associated with an address in San Bruno, California, in addition to the South San Francisco and South Lake Tahoe addresses; and the process server attempted to serve defendant at the San Bruno address, was informed that defendant no longer lived at that address and that she lived in South San Francisco..

It appears under the circumstances presented that the defendant cannot with reasonable diligence be served in another manner; and a cause of action exists against the defendant upon whom service is to be made.

The motion is granted.

TENTATIVE RULING # 9: PLAINTIFF'S MOTION FOR ORDER FOR PUBLICATION OF SUMMONS ON DEFENDANT ZAPANTA 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 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, JULY 1, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

10. MATTER OF AVA G. 22CV0508

Petition to Approve Compromise of Disputed Claim of Minor.

The petition states the minor sustained injuries during a rear end motor vehicle collision, which caused a headache and dizziness that was treated in the emergency room, and one follow up visit.

Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $14,000.

The petition states the minor incurred $15,964.97 in medical expenses, with $6,205.94 paid by the petitioner, the minor's mother, $4,896.37 paid by an insurance plan, and it appears there were reductions in the amount claimed due to the insurance coverage. The petition states that the insurer is not seeking reimbursement. Petitioner seeks reimbursement from the gross settlement amount, leaving $7,794.06 to be deposited into a blocked account with the balance to be available for withdrawal by the minor when the minor becomes 18 years old. There are copies of the bills substantiating the claimed medical expenses attached to the petitions as required by Local Rule 7.10.12A.(6).

The petition states that the minor has fully recovered from the injuries allegedly suffered. The doctor's follow-up exam report one week after the subject incident stated the plan was observation, reassurance, to avoid contact activities for another week, follow up as needed, and a yearly check.

The petitioner prepared this petition in pro per. Therefore, no legal fees or costs are requested to be deducted from the gross settlement amount.

Pursuant to Rules of Court, Rule 7.952(a) the petitioner and the minor are required to appear at hearings on petitions to approve minor compromises, unless the court dispenses with the requirement upon finding good cause.

TENTATIVE RULING # 10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JULY 1, 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.

11. MATTER OF ANTONIO G. 22CV0509

Petition to Approve Compromise of Disputed Claim of Minor.

The petition states the minor sustained injuries during a rear end motor vehicle collision consisting of a low-grade open tibia and fibular fractures and complained of neck and back pain. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $28,000. This amount was a result of mediation by the parties, which resulted in payments to multiple parties injured because of the accident in relation to their injuries and the payments totaling the full policy coverage limit.

The petition states the minor incurred $101,468.28 in medical expenses for emergency room treatment, further follow up treatment after the incident, and physical therapy, with $77,891.55 paid by insurance, $9,801.28 paid by the petitioner, the minor's mother, and it appears there were reductions in the amount claimed due to the insurance coverage. The petition states that the insurer is not seeking reimbursement. Petitioner seeks reimbursement from the gross settlement amount, leaving $18,198.72 to be deposited into a blocked account with the balance to be available for withdrawal by the minor when the minor becomes 18 years old. There are copies of the bills substantiating the claimed medical expenses attached to the petition as required by Local Rule 7.10.12A.(6).

The petition states that the minor has not fully recovered from the injuries allegedly suffered. While there are various reports attached to the petition, there is no current doctor's report concerning the minor's condition and prognosis of recovery as required by Local Rule 7.10.12A.(3).

The petitioner prepared this petition in pro per. Therefore, no legal fees or costs are requested to be deducted from the gross settlement amount.

Pursuant to Rules of Court, Rule 7.952(a) the petitioner and the minor are required to appear at hearings on petitions to approve minor compromises, unless the court dispenses with the requirement upon finding good cause.

TENTATIVE RULING # 11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JULY 1, 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.

12. WANLAND v. BEST LEGAL SUPPORT TEAM, LLC 21CV0383

Defendant's Demurrer to Complaint and Motion to Stay Action in the Alternative.

Plaintiff Georgia Wanland filed an action against defendants Best Legal Support Team, LLC, a California LLC, Best Legal Support Team, LLC, a Nevada LLC, and Donald Wanland asserting a derivative cause of action on behalf of the California LLC as an alleged member of the California LLC for alleged misconduct by defendant Donald Wanland allegedly amounting to breach of fiduciary duty.

Defendants Donald Wanland, Best Legal Support Team, LLC, a California LLC, and Best Legal Support Team, LLC, a Nevada LLC demur to the complaint on the following grounds: the civil court lacks jurisdiction to decide the disputes raised in the complaint as the Family Law Court has sole jurisdiction to hear this case; there is another action pending in the Family Law Court in Wanland v. Wanland, case number PFL-20190812 and the claims raised in this case must be determined in that case; and plaintiff lacks legal standing and legal capacity to bring this action, because plaintiff changed her last name from Wanland to Conkling, therefore, the complaint fails to state a cause of action. Defendants seek dismissal of the action or a stay pending litigation in the family law case.

Defendants request the court to take judicial notice of the Family Court litigation in Wanland v. Wanland, case number PFL-20190812; and the fact that the court in another civil case between the parties, Wanland v. Wanland, case number PC-20210242, cited cases in that proceeding standing for the proposition that once a matter is before the Family Law Court the Civil Court lacks jurisdiction or the power to adjudicate those disputes.

Plaintiff opposes the demurrers on the following grounds: the demurrer and motion to stay was not served in compliance with Code of Civil Procedure, § 1005; the demurrer and motion to stay fails to comply with Local Rule 7.10.05(C)(1); the complaint is a derivative action on behalf of the California LLC, therefore, the claims do not belong to plaintiff Georgia Wanland personally; California case law holds that the only demurrer that can be maintained regarding a derivative action is the plaintiff lacks standing due to not being a shareholder/member of the LLC and since plaintiff is a member of the California LLC, she has a statutory right to file this derivative action; and there are no legal authorities cited by defendants to support their contention that a derivative action brought on behalf of an LLC is subject to demurrer because two of the LLC members are parties to a family law action.

Defendants replied to the opposition.

Compliance with Code of Civil Procedure, § 1005 and Local Rule 7.10.05(C)(1)

Plaintiff has not provided any argument directing the court's attention as to how service of the demurrer and motion to stay failed to comply with Section 1005, therefore, the opposition lacking any support whatsoever for the objection, the court overrules the objection.

Local Rule 7.10.05(C)(1) requires all notices of motions to contain a specified notification of the West Slope tentative ruling procedure. The notice in this case does not have the required notification. However, that does not inescapably lead to denial of the motion.

The court notes that it has long been held that noncompliance with court rules, to which no penalty was attached, does not prevent the court from hearing and disposing of motions. (See Johnson v. Sun Realty Co. (1934) 138 Cal.App. 296, 299.)

The court notes that no prejudice from the lack of the tentative ruling notification has been claimed by plaintiff and plaintiff is now aware of that procedure having cited it in the opposition. No apparent prejudice from the failure to include the required notification in the notice of

hearing, the court exercises its discretion to hear and dispose of the demurrer and motion to stay.

Plaintiff's Standing and Legal Capacity

Citing Code of Civil Procedure, § 430.10(b) and County of Fresno v. Shelton (1998) 66 Cal.App.4th 996, 1009, defendants argue that a party merely changing his or her name extinguishes that party's standing and legal capacity to maintain an action that was commenced in the party's former name.

"" '[A] plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.' " (*Independent Roofing Contractors v. California Apprenticeship Council* (2003) 114 Cal.App.4th 1330, 1341, 9 Cal.Rptr.3d 477.)" (United Farmers Agents Assn., Inc. v. Farmers Group, Inc. (2019) 32 Cal.App.5th 478, 488.)

""The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: ¶ * * * (b) The person who filed the pleading does not have the legal capacity to sue." (Code of Civil Procedure, § 430.10(b).)

"Where, as here, it is alleged that a party lacks standing to sue, the complaint can be challenged by general demurrer for failure to state a cause of action *in this plaintiff.* (Weil & Brown, CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL 1 (the Rutter group 1997) ¶ 7.77.3, p. 7–29.)" (County of Fresno v. Shelton (1998) 66 Cal.App.4th 996, 1009.)

Neither of the authorities cited in support of the lack of standing and capacity argument stand for the proposition that a mere legal name change of a party with standing and capacity to sue suddenly divests that proper party from standing and capacity to sue where the action was commenced in the former name. The plaintiff is asserting in her former name her own

legal rights and interests as an LLC Member entitled to maintain a derivative action for the benefit of the California LLC and, therefore, has standing and legal capacity to maintain the action.

Defendants' Request for Judicial Notice

First, except for the Statement of Issues filed in PFL-20190812 and the Judgment purportedly changing the plaintiff's legal name, defendants have not specified what documents in the court records of case numbers PFL-20190812 and PC-20210242 that defendants seek the court to take judicial notice of. The defendants have also not provided the plaintiff and the court with a copy of the material sought to be judicially noticed from those cases. Defendants refer to the name change judgment as "Exhibit A" attached to the demurrer papers. There is no Exhibit A attached to the demurrer in the court's file.

"A party requesting judicial notice of material under Evidence Code sections 452 or 453 must provide the court and each party with a copy of the material. If the material is part of a file in the court which the matter is being heard, the party must: ¶ (1) Specify in writing the part of the court file sought to be judicially noticed; and (2) make arrangements with the clerk to have the file in the courtroom at the time of the hearing." (Rules of Court, Rule 3.1306(c).)

The failures cited above alone justifies the court denying the requests for judicial notice.

Second, the court can only take judicial notice of the existence of documents in a court file and the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments.

"Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451: ¶ * * * (d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States…" (Evidence Code, § 452(d).)

"The trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and: ¶ (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and ¶ (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." (Evidence Code, § 453.)

"Evidence Code section 452(d) permits the court to take judicial notice of court records. However, a court cannot take judicial notice of the truth of hearsay statements simply because the statements are part of a court record. (*Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 879, 138 Cal.Rptr. 426; *People v. Thacker* (1985) 175 Cal.App.3d 594, 598-599, 221 Cal.Rptr. 37.) As stated in *Day v. Sharp* (1975) 50 Cal.App.3d 904, 123 Cal.Rptr. 918, '"A court may take judicial notice of the *existence* of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments."' (Id. at p. 914, 123 Cal.Rptr. 918, quoting Jefferson, Cal.Evid.Benchbook (1972) Judicial Notice, § 47.3, p. 840.)" (Magnolia Square Homeowners Assn. v. Safeco Ins. Co. (1990) 221 Cal.App.3d 1049, 1056.)

Defendants have not cited to, and the court is unable to find any mention of an order or judgment in case number PC-20210242 and case number PFL-20190812 that would contain findings of fact and conclusions of law that the instant dispute is solely within the jurisdiction of the Family Law Court in case number PFL-20190812.

The court denies the above cited requests for judicial notice.

Demurrer Principles

When any ground for objection to a complaint appears on its face, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by demurrer to the pleading. (Code of Civil Procedure, § 430.30(a).)

"'A demurrer admits all material and issuable facts properly pleaded. [Citations.] However, it does not admit contentions, deductions or conclusions of fact or law alleged therein.' (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 713 [63 Cal.Rptr. 724, 433 P.2d 732].) Also, '... "plaintiff need only plead facts showing that he may be entitled to some relief [citation]." [Citation.] Furthermore, we are not concerned with plaintiff's possible inability or difficulty in proving the allegations of the complaint.' (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572 [108 Cal.Rptr. 480, 510 P.2d 1032].)" (Highlanders, Inc. v. Olsan (1978) 77 Cal.App.3d 690, 696-697.)

"A demurrer challenges only the legal sufficiency of the complaint, not the truth of its factual allegations or the plaintiff's ability to prove those allegations. (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140 [248 Cal.Rptr. 276].) We therefore treat as true all of the complaint's material factual allegations, but not contentions, deductions or conclusions of fact or law. (*Id*. at p. 141; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [216 Cal.Rptr. 718, 703 P.2d 58].) We can also consider the facts appearing in exhibits attached to the complaint. (See *Dodd v. Citizens Bank of Costa Mesa*, supra, 222 Cal.App.3d at p. 1627.) We are required to construe the complaint liberally to determine whether a cause of action has been stated, given the assumed truth of the facts pleaded. (*Rogoff v. Grabowski* (1988) 200 Cal.App.3d 624, 628 [246 Cal.Rptr. 185].)" (Picton v. Anderson Union High School Dist. (1996) 50 Cal.App.4th 726, 732-733.)

""To determine whether a cause of action is stated, the appropriate question is whether, upon a consideration of all the facts alleged, it appears that the plaintiff is entitled to any judicial relief against the defendant, notwithstanding that the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged. (*Elliott v. City of Pacific Grove*, 54 Cal.App.3d 53, 56, 126 Cal.Rptr. 371.) Mistaken labels and

confusion of legal theory are not fatal because the doctrine of "theory of the pleading" has long been repudiated in this state. (*Lacy v. Laurentide Finance Corp*., 28 Cal.App.3d 251, 256-257, 104 Cal.Rptr. 547.)" (Spurr v. Spurr (1979) 88 Cal.App.3d 614, 617.)

The rule is that a general demurrer should be overruled if the pleading, liberally construed, states a cause of action under any theory. (Brousseau v. Jarrett (1977) 73 Cal.App.3d 864, 870-871.)

With the above cited principles in mind, the court will rule on the demurrers to the complaint.

Civil Court Jurisdiction vs. Family Law Court Jurisdiction

Citing Family Code, § 2010(e) and Neal v. Superior Court (2001) 90 Cal.App.4th 22, 25, defendants assert that the Family Law dissolution action in PFL-20190812 has sole jurisdiction to determine the dispute concerning defendant Donald Wanland's alleged misconduct in the management and operation of the LLCs to the detriment of the California LLC.

Plaintiff argues in opposition that she is not asserting a personal claim against the LLCs and LLC Member Donald Wanland but is instead asserting a derivative action on behalf of the California LLC and it is the California LLC's claims being asserted, not hers, therefore, the family law court does not have jurisdiction over the dispute between two LLCs and LLC Member Donald Wanland.

"Even though a superior court is divided into branches or departments, pursuant to California Constitution, article VI, section 4, there is only one superior court in a county and jurisdiction is therefore vested in that court, not in any particular judge or department. Whether sitting separately or together, the judges hold but one and the same court. (*Williams v. Superior Court* (1939) 14 Cal.2d 656, 662, 96 P.2d 334, hereafter "*Williams.*") Because a superior court is but one tribunal, "[a]n order made in one department during the progress of a cause can neither be ignored nor overlooked in another department...." (*People v. Grace*

(1926) 77 Cal.App. 752, 759, 247 P. 585.) ¶ " '... It follows, ... where a proceeding has been ... assigned for hearing and determination to one department of the superior court by the presiding judge ... and the proceeding ... has not been finally disposed of ... it is beyond the jurisdictional authority of another department of the same court to interfere with the exercise of the power of the department to which the proceeding has been so assigned.... If such were not the law, conflicting adjudications of the same subject-matter by different departments of the one court would bring about an anomalous situation and doubtless lead to much confusion. [Citation.]' ..." (*Ford v. Superior Court* (1986) 188 Cal.App.3d 737, 741–742, 233 Cal.Rptr. 607, hereafter "*Ford, "* quoting *Williams, supra,* 14 Cal.2d at p. 662, 96 P.2d 334; *People v. Madrigal* (1995) 37 Cal.App.4th 791, 43 Cal.Rptr.2d 498, 500.) ¶ "One department of the superior court cannot enjoin, restrain, or otherwise interfere with the judicial act of another department of the superior court. Even between superior courts of different counties, having coequal jurisdiction over a matter, *the first court of equal dignity to assume and exercise jurisdiction over a matter acquires exclusive jurisdiction.* [Citations.] [¶] A judgment rendered in one department of the superior court is binding on that matter upon all other departments until such time as the judgment is overturned. [Citation.] ..." (*Ford, supra,* 188 Cal.App.3d at p. 742, 233 Cal.Rptr. 607, italics added; accord *Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 631, 5 Cal.Rptr.2d 742; *Sandco American, Inc. v. Notrica* (1990) 216 Cal.App.3d 1495, 1508, 265 Cal.Rptr. 587.) [Footnte omitted.] ¶ "... '[I]f the principle of priority of jurisdiction over an assigned case ... is applicable to ordinary departments, it must be even more true of departments exercising distinct subject matter jurisdiction.' ..." (*Slone v. Inyo County Juvenile Court* (1991) 230 Cal.App.3d 263, 269, 282 Cal.Rptr. 126, quoting 2 Witkin, Cal.Procedure (3d ed. 1985) Courts, § 192, p. 218.)" (Emphasis added.) (Glade v. Glade (1995) 38 Cal.App.4th 1441, 1449-1450.)

"In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has jurisdiction to inquire into and render any judgment and make orders that are appropriate concerning the following: ¶ * * * (e) The settlement of the property rights of the parties…" (Family Code, § 2010(e).)

"A recurrent theme in the family law opinions of this court is the disfavoring of civil actions which are really nothing more than reruns of a family law case. Not only *Askew,* but *Bidna v. Rosen* (1993) 19 Cal.App.4th 27, 23 Cal.Rptr.2d 251, and *d'Elia v. d'Elia* (1997) 58 Cal.App.4th 415, 68 Cal.Rptr.2d 324 all stand for the central idea that family law cases should not be allowed to spill over into civil law, regardless of whether the family law matter may be characterized as an action for fraud (*Askew*), malicious prosecution (*Bidna*), or securities law violation (*d'Elia*). Almost all events in family law litigation can be reframed as civil law actions if a litigant wants to be creative with various causes of action. It is therefore incumbent on courts to examine the substance of claims, not just their nominal headings." (Neal v. Superior Court (2001) 90 Cal.App.4th 22, 25.) The appellate court in Neal, supra, stated the following with respect to the argument that the civil court had jurisdiction to hear the matter: "The argument is predicated on the assumption that unless the family law judgment specifically retained jurisdiction over all disputes regarding the note and deed of trust (and there is no language to that exact effect), any dispute over the note may be brought in civil court. This argument fails because it is framed too broadly. Herman's civil complaint is essentially about whether he paid the money that the family law judgment obligated him to pay. The note's role is wholly ancillary. Moreover, as explained above, the substance of Herman's claims against Judith all stem directly from the family law case." (Neal v. Superior Court (2001) 90 Cal.App.4th 22, 26.)

The complaint alleges: Donald Wanland and Georgia Wanland are members of Best Legal Support Team, LLC, a California LLC; the principal business office of Best Legal Support

Team, LLC, a California LLC is in El Dorado County; defendant Best Legal Support Team, LLC, a Nevada LLC has its principal business office in El Dorado County; defendant Dona Wanland is the registered agent for both defendants Best Legal Support Team, LLC, a California LLC and Best Legal Support Team, LLC, a Nevada LLC; defendant Donald Wanland exercises complete control over Best Legal Support Team, LLC, a California LLC by maintaining exclusive control over the books, records, and bank accounts belonging to Best Legal Support Team, LLC, a California LLC; defendant Donald Wanland has excluded LLC member Georgia Wanland from participation in the business and accessing books, records, and bank accounts of the California LLC; on October 23, 2020 defendant Donald Wanland formed the Nevada LLC with an identical name and thereafter opened a bank account for the Nevada LLC; plaintiff is informed and believes that defendant Donald Wanland is a member of the Nevada LLC, has majority ownership of the Nevada LLC, and exercises complete control over the Nevada LLC by exercising exclusive control over its books, records, and bank accounts; this is a derivative action brought on behalf of Best Legal Support Team, LLC, a California LLC by LLC Member Georgia Wanland; plaintiff is informed and believes that defendant Donald Wanland formed the Nevada LLC with an identical name to the California LLC so that he could divert and hide monies generated by the California LLC by using the Nevada LLC to invoice customers for work performed by the California LLC, depositing payments for work performed by the California LLC in the bank account opened in Nevada for the Nevada LLC, and diverting customers from the California LLC to the Nevada LLC; defendant Donald Wanland has also unfairly competed with the California LLC by providing his personal services to the Nevada LLC, which are identical to those services he formerly provided to the California LLC, for the benefit now of the Nevada LLC instead of the California LLC, and to the same customers that were previously customers of the California LLC; and

while plaintiff does not know the exact amount of money defendant Donald Wanland diverted from Best Legal Support Team, LLC, a California LLC to Best Legal Support Team, LLC, a Nevada LLC, plaintiff is informed and believes that defendant Donald Wanland has diverted monies in excess of $25,000. (Complaint, paragraphs, 1, 2, 4-6, 8-13, and 18-20.)

The court must take these allegations as true for the purposes of demurrer. (Picton v. Anderson Union High School Dist. (1996) 50 Cal.App.4th 726, 732-733.)

""[A] limited liability company is a hybrid business entity formed under the Corporations Code consisting of at least two members who own membership interests. The company has a legal existence separate from its members. While members actively participate in the management and control of the company, they have limited liability for the company's debts and obligations to the same extent enjoyed by corporate shareholders. [Citations.]" (*Kwok v. Transnation Title Ins. Co.* (2009) 170 Cal.App.4th 1562, 1571, 89 Cal.Rptr.3d 141 (*Kwok*).) Under Corporations Code section 17300, a member of an LLC "has no interest in specific limited liability company property." (Accord, *Kwok,* at pp. 1570–1571, 89 Cal.Rptr.3d 141.)" (Emphasis added.) (Capon v. Monopoly Game LLC (2011) 193 Cal.App.4th 344, 357, fn. 11.)

"Under proper circumstances a stockholder may bring a representative action or derivative action on behalf of the corporation. *Klopstock v. Superior Court*, 17 Cal.2d 13, 108 P.2d 906, 135 A.L.R. 318; *Nessbit v. Superior Court*, 214 Cal. 1, 3 P.2d 558; *Difani v. Riverside County Oil Co.*, 201 Cal. 210, 256 P. 210; *Gorham v. Gilson*, 28 Cal. 479; 6A Cal.Jur. s 456, et seq. But 'If the injury is one to the plaintiff as a stockholder and to him individually, and not to the corporation, as where the action is based on a contract to which he is a party, or on a right belonging severally to him, or on a fraud affecting him directly, it is an individual action. * * * The action is derivative, i. e., in the corporate right, if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock or property without any severance or

distribution among individual holders, or if it seeks to recover assets for the corporation or to prevent the dissipation of its assets.' Fletcher Cyc. Corps. (perm. ed.) s 5911. See *Shenberg v. De Garmo*, 61 Cal.App.2d 326, 143 P.2d 74. And a stockholder may sue as an individual where he is directly and individually injured although the corporation may also have a cause of action for the same wrong. *Coronado Development Corporation v. Millikin*, 175 Misc. 1, 22 N.Y.S.2d 670; *Hammer v. Werner*, 239 App.Div. 38, 265 N.Y.S. 172; *Witherbee v. Bowles*, 201 N.Y. 427, 95 N.E. 27; *Von Au v. Magenheimer*, 126 App.Div. 257, 110 N.Y.S. 629, affirmed 196 N.Y. 510, 89 N.E. 1114; *Stinnett v. Paramount-Famous Lasky Corporation*, Tex.Com.App., 37 S.W.2d 145; White v. First Nat. Bank, 252 Pa. 205, 97 A. 403; *Brachman v. Hyman*, 298 Mich. 344, 299 N.W. 101; 18 C.J.S., Corporations, s 559." (Sutter v. General Petroleum Corp. (1946) 28 Cal.2d 525, 530.)

"The criteria for derivative and individual actions were summarized by our Supreme Court in *Jones v. H. F. Ahmanson & Co.* (1969) 1 Cal.3d 93, 106-107, 460 P.2d 464. The action is in the corporate right, if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock and property without any severance or distribution among individual holders. A derivative suit is brought to enforce a cause of action which the corporation itself possesses against some third party, a suit to recompense the corporation for injuries which it has suffered as a result of the acts of third parties. The management owes to the stockholders a duty to take proper steps to enforce all claims which the corporation may have. When it fails to perform this duty, the stockholders have a right to do so. The corporation nevertheless is the real plaintiff and it alone benefits from the decree; the stockholders derive no benefit therefrom except the indirect benefit resulting from a realization upon the corporation's assets. A stockholder's individual suit, on the other hand, is a suit to enforce a right against the

corporation which the stockholder possesses as an individual." (Emphasis added.) (Smith v. Tele-Communication, Inc. (1982) 134 Cal.App.3d 338, 342-343.)

Taking as true the allegations of the complaint, defendant Donald Wanland's alleged misconduct has significantly injured Best Legal Support Team, LLC, a California LLC, by diverting its monies and customers to another LLC with the same name formed in Nevada. The injury is to the LLC and not plaintiff Georgia Wanland and any recovery of damages will be specific limited liability company property that LLC member Georgia has no interest in. Her interest is her membership share and not the LLC property.

LLCs are separate legal entities separate and apart from the individual LLC members who only own interests in the LLC entity. While the shares representing the individual LLC members interest in a LLC are property assets of the members potentially subject to the jurisdiction of the family law court in a dissolution action, the separate and distinct LLC entity itself is not an asset of the individual members and, therefore, the LLC entity would not be subject to the sole jurisdiction of the family law court and any litigation seeking recovery of damages for injury to the LLC would not be a proper subject for the family law court to determine as neither of the parties to the dissolution action have any right to the benefit the LLC derives from the lawsuit and, at best, they may have an indirect benefit resulting from a realization upon the corporation's assets, which the family law court can exercise jurisdiction over as the dissolution action parties' membership shares in the LLC are their property subject to family law court jurisdiction.

The demurrer on the ground that the civil court lacks jurisdiction is overruled.

Another Action Pending

Defendants argue that the most recent statement of issues filed by Georgia Wanland in Wanland v. Wanland, case number PFL-20190812, establishes that the same issues are being

raised in the family law case as are raised in the instant action and, therefore, there is another action pending by the same parties concerning the same issues that requires dismissal of the instant action.

As stated earlier in this ruling, the court does not take judicial notice of that court document for the reasons stated earlier in this ruling.

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: ¶ * * * (c) There is another action pending between the same parties on the same cause of action…" (Code of Civil Procedure, § 430.10(c).)

"The pendency of another earlier action growing out of the same transaction and between the same parties is a ground for abatement of the second action. (*Lord v. Garland* (1946) 27 Cal.2d 840, 848, 168 P.2d 5; *Lawyers Title Ins. Corp. v. Superior Court* (1984) 151 Cal.App.3d 455, 458, 199 Cal.Rptr. 1.) The defendant may assert the pending action as a bar either by demurrer, or where fact issues must be resolved, by answer. (Code Civ.Proc., § 430.10, subd. (c); *Lord v. Garland*, supra, 27 Cal.2d at p. 848, 168 P.2d 5.) In either case, where the court determines there is another action pending raising substantially the same issues between the same parties, it is to enter the interlocutory judgment specified in Code of Civil Procedure section 597. (*Lord v. Garland*, supra, 27 Cal.2d at p. 851, 168 P.2d 5; and see *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 791-792, 274 Cal.Rptr. 147 [improper to dismiss subsequent action].)" (Leadford v. Leadford (1992) 6 Cal.App.4th 571, 574.)

"A plea in abatement pursuant to section 430.10, subdivision (c), may be made by demurrer or answer when there is another action pending between the same parties on the same cause of action. (*Lawyers Title*, supra, 151 Cal.App.3d at p. 459, 199 Cal.Rptr. 1; *Childs v. Eltinge*, supra, 29 Cal.App.3d at p. 848, 105 Cal.Rptr. 864.) In determining whether the causes of

action are the same for purposes of pleas in abatement, the rule is that such a plea may be maintained only where a judgment in the first action would be a complete bar to the second action. (*Lord v. Garland* (1946) 27 Cal.2d 840, 848, 168 P.2d 5.) Where a demurrer is sustained on the ground of another action pending, the proper order is not a dismissal, but abatement of further proceedings pending termination of the first action. (§ 597; *Lord v. Garland*, supra, at p. 850, 168 P.2d 5; *Franchise Tax Board v. Firestone Tire & Rubber Co.* (1978) 87 Cal.App.3d 878, 884, 151 Cal.Rptr. 460; *Childs v. Eltinge*, supra, 29 Cal.App.3d at p. 848, 105 Cal.Rptr. 864.)" (Plant Insulation Co. v. Fibreboard Corp. (1990) 224 Cal.App.3d 781, 787-788.)

A court in a civil action may not interfere with the family court's exercise of its powers in a pending family court proceeding that raises the same property claims. (Askew v. Askew (1994) 22 Cal.App.4th 942, 961–962.) "After a family law court acquires jurisdiction to divide community property in a dissolution action, no other department of a superior court may make an order adversely affecting that division. (*In re Marriage of Schenck* 1991) 228 Cal.App.3d 1474, 1483–1484, 279 Cal.Rptr. 651 [civil law and motion department had no authority to order the sale of the family home based on husband's accrued support arrearages when the family law court still had jurisdiction to divide the community interest in that home]; Hogoboom & King, *supra,* ¶ 8:237.2 ["Pending the ultimate valuation and division, no other department of the superior court may issue orders that would adversely affect the family law court's ability to exercise its reserved jurisdiction."].) Obviously, the actual division of community property is affected by the characterization of specific assets, so the issue of characterization also reposes in the family law court. (See Hogoboom & King, *supra,* ¶ 8:199.1 [Family Law Act "subject matter jurisdiction has always included authority to resolve all *characterization* disputes...."].) ¶ Here, the civil trial court in effect usurped the power and obligation of the

family law court to determine the character of the five properties. The civil court's judgment is necessarily predicated on the idea that the five properties which were put into joint tenancy were all Ronald's separate property. By imposing trusts on Bonnette's ostensible interests in the five properties, the civil court was removing from the family law court the power to characterize and divide those properties as community. Given that the family law court *already* had subject matter jurisdiction to divide the community property, the civil trial court had no jurisdiction to so act." (Askew v. Askew (1994) 22 Cal.App.4th 942, 961–962.)

For the same reasons as stated earlier in this ruling, the court finds that the derivative action is not an action between the same parties on the same cause of action as the family law dissolution action.

The demurrers are overruled and motion to stay denied.

TENTATIVE RULING # 12: DEFENDANTS' DEMURRERS TO THE COMPLAINT ARE OVERRULED AND MOTION TO STAY ACTION IN THE ALTERNATIVE DENIED. 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, JULY 1, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.