1. GENASCI v. MACRAE SC-20180229

Judgment Debtor Examination.

TENTATIVE RULING # 1: UPON REQUEST OF THE JUDGMENT CREDITOR, THIS MATTER WAS CONTINUED TO 8:30 A.M. ON FRIDAY, OCTOBER 7, 2022, IN DEPARTMENT NINE.

2. AORKAI HOLDINGS v. LABMOR ENTERPRISES PC-20190488

(1) Plaintiff's Motion to Compel Defendant Callrick Business, LP to Provide Further Responses to Requests for Production, Set Three, to Impose Monetary and/or Terminating Sanctions, and for an OSC Re: Contempt as to Defendant Callrick Business, LP.

(2) Plaintiff's Motion to Compel Defendant Constantly Growing, LLC to Provide Further Responses to Requests for Production, Set Three, to Impose Monetary and/or Terminating Sanctions, and for an OSC Re: Contempt as to Defendant Constantly Growing, LLC.

TENTATIVE RULING # 2: THESE MATTERS ARE CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 5, 2022, IN DEPARTMENT NINE

3. SCHAMP v. FRESNO SSYAP, LLC PC-20200045

(1) Motion for Final Approval of Class Settlement.

(2) Motion for Attorney Fees, Costs, and Service Payments.

Motion for Final Approval of Class Settlement.

Plaintiffs filed a class and representative action against the defendant allegedly on behalf of the defendant's employees for alleged unfair and unlawful business practices, alleged wage and hour violations, including alleged improper calculation and payment of overtime, failure to furnish meal breaks, failure to furnish rest breaks, failure to pay minimum wage, failure to pay sick leave, failure to indemnify employees for business expenses to discharge their duties, failure to pay all wages due and owing at the end of employment, and wage statement violations. Having settled, the plaintiffs moved for the court's preliminary approval of the class and PAGA action settlement. The gross settlement amount is $350,000. On March 18, 2022, the court granted preliminary approval and set deadlines for the following actions: providing the class list to the settlement administrator; for the settlement, administrator to mail class notice and establish a website; for class members to object to or opt-out of the settlement; and for the plaintiff to file motions for final approval, attorney's fees, costs, and service payments. The final approval hearing was set for July 8, 2022. The class notice was required to be mailed at least 75 days before the hearing.

On June 15, 2022, plaintiffs filed the instant motion for final approval of the settlement and class certification.

The proof of service declares that on June 10, 2022, defense counsel was served the notices of hearing and moving papers concerning the motion for final approval and motion for

attorney fees, costs, and service payments by email. There was no opposition or objection in the court's file when this ruling was prepared.

"A class action shall not be dismissed, settled, or compromised without the approval of the court, and notice of the proposed dismissal, settlement, or compromise shall be given in such manner as the court directs to each member who was given notice pursuant to subdivision (d) and did not request exclusion." (Civil Code, § 1781(f).)

"(d) If the action is permitted as a class action, the court may direct either party to notify each member of the class of the action. The party required to serve notice may, with the consent of the court, if personal notification is unreasonably expensive or it appears that all members of the class cannot be notified personally, give notice as prescribed herein by publication in accordance with Section 6064 of the Government Code in a newspaper of general circulation in the county in which the transaction occurred." (Civil Code, § 1781(d).)

"If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing." (Rules of Court, Rule 3.769(e).)

"If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (Rules of Court, Rule 3.769(f).)

"To accord with due process, notice provided to class members "must fairly apprise the class members of the terms of the proposed compromise and of the options open to the dissenting class members." (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 746, 99 Cal.Rptr.3d 436.) Under the California Rules of Court governing class actions,

"notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (Cal. Rules of Court, rule 3.769(f).) ¶ The language of California Rules of Court, rule 3.769(f) indicates objectors may both file a written objection and appear at the final approval hearing, although they are not required to do both to have their objections heard. As explained by a leading treatise on class actions, "[i]t is unnecessary for objectors to appear personally at the settlement hearing in order to have their written objections considered by the court." (4 Newberg on Class Actions (4th ed. 2002) § 11:56, p. 181.)" (Litwin v. iRenew Bio Energy Solutions, LLC (2014) 226 Cal.App.4th 877, 883-884.)

""The principal purpose of notice to the class is the protection of the integrity of the class action process, one of the functions of which is to prevent burdening the courts with multiple claims where one will do." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 970, 124 Cal.Rptr. 376.) The notice " 'must fairly apprise the class members of the terms of the proposed compromise and of the options open to the dissenting class members.' " (*Wershba v. Apple Computer, Inc., supra,* 91 Cal.App.4th at p. 251, 110 Cal.Rptr.2d 145.) The rules reflect a scheme that is designed to clearly describe class members who should be notified of the action and may be affected by its resolution. An order certifying a class " must contain a description of the class...." (Cal. Rules of Court, rule 3. 765(a).) When the court determines it is unnecessary or not feasible to personally notify all potential class members of an action, "the court may order a means of notice reasonably calculated to apprise the class members of the pendency of the action...." (Rule 3.766(f).) When the court approves the settlement or compromise of a class action, it must give notice to the class of its preliminary approval and

the opportunity for class members to object and, in appropriate cases, opt out of the class. (Rules 3.766(d), 3.769.) Once a settlement is approved, the court is required to enter judgment upon the settlement and the judgment "must include and describe those whom the court finds to be members of the class." (Rule 3.771(a).) These principles rest upon an assumption that the definition of a plaintiff class will be clear and free from obvious ambiguity." (Cho v. Seagate Technology Holdings, Inc. (2009) 177 Cal.App.4th 734, 745-746.)

"Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Rules of Court, Rule 3.769(g).)

"If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment." (Rules of Court, Rule 3.769(h).)

The Third District Court of Appeal has held: "We review an order approving a settlement as follows: ¶ "The trial court has broad discretion to determine whether the settlement is fair. [Citation.] It should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. [Citation.] The list of factors is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating

parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.' " (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, 56 Cal.Rptr.2d 483.) ¶ "Assuming the burden is on the proponents [of the settlement], a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Id.* at p. 1802, 133 Cal.Rptr.2d 828.)" (In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504-505.)

"A trial court must approve a class action settlement agreement and may do so only after determining it is fair, adequate, and reasonable. (*Dunk*, supra, 48 Cal.App.4th at pp. 1800-1801, 56 Cal.Rptr.2d 483.) It is vested with a broad discretion in making this determination. (Id at p. 1801, 56 Cal.Rptr.2d 483.) In exercising its discretion, that court should consider relevant factors, which may include, but are not limited to the strength of the plaintiffs' case, the risk, expense, complexity, and duration of further litigation as a class action, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of class members to the proposed settlement. At the same time, the trial court should give "[d]ue regard ... to what is otherwise a private consensual agreement between the parties." [FN14] (Ibid.) Such regard limits its inquiry "... 'to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.' " (Ibid, citing *Officers for Justice v. Civil Service Com'n, etc*. (9th Cir.1982) 688 F.2d 615, 625 (*Officers for Justice*).) The trial court operates under a presumption of fairness when the settlement is the result of arm's-length negotiation, investigation and discovery that

are sufficient to permit counsel and the court to act intelligently, counsel are experienced in similar litigation, and the percentage of objectors is small. (*Dunk*, supra, at p. 1802, 56 Cal.Rptr.2d 483.) Ultimately, the court's determination is simply " 'an amalgam of delicate balancing, gross approximations and rough justice.' " (*Dun*k, supra, at p. 1801, 56 Cal.Rptr.2d 483, citing Officers for Justice, supra, 688 F.2d at p. 625.) ¶ FN14. Public policy generally favors the compromise of complex class action litigation. (See 4 Conte & Newberg, supra, § 11:41, pp. 87-88.)" (In re Microsoft I-V Cases (2006) 135 Cal.App.4th 706, 723.)

"Class actions are statutorily authorized "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court...." (Code Civ. Proc., § 382.) The party seeking class certification must establish (1) "the existence of an ascertainable and sufficiently numerous class"; (2) "a well-defined community of interest"; and (3) "substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Brinker, supra,* 53 Cal.4th at p. 1021, 139 Cal.Rptr.3d 315, 273 P.3d 513.) The community of interest requirement in turn requires three additional inquiries: (1) whether common questions of law or fact predominate; (2) whether the class representatives have claims or defenses typical of the class; and (3) whether the class representatives can adequately represent the class. (*Ibid.*; accord, *Ayala, supra,* 59 Cal.4th at pp. 529–530, 173 Cal.Rptr.3d 332, 327 P.3d 165.) ¶ "The certification question is 'essentially a procedural one' " (*Sav–On, supra*, 34 Cal.4th at p. 326, 17 Cal.Rptr.3d 906, 96 P.3d 194) that examines "whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment" (*id.* at p. 327, 17 Cal.Rptr.3d 906, 96 P.3d 194). A certification motion " 'does not ask whether an action is legally or factually meritorious' [citation]," but rather whether the common issues it presents " 'are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial

process and to the litigants.' " (*Id.* at p. 326, 17 Cal.Rptr.3d 906, 96 P.3d 194; see *Mora v. Big Lots Stores, Inc.* (2011) 194 Cal.App.4th 496, 507, 124 Cal.Rptr.3d 535 ["the central issue in a class certification motion is whether the questions that will arise in the action are common or individual, not plaintiffs' likelihood of success on the merits of their claims"].) The court must assume the class claims have merit and resolve disputes regarding the claims' merits only when necessary to determine whether an element for class certification is satisfied. (*Brinker, supra,* 53 Cal.4th at pp. 1023–1025, 139 Cal.Rptr.3d 315, 273 P.3d 513.)" (Martinez v. Joe's Crab Shack Holdings (2014) 231 Cal.App.4th 362, 372.)

With the above-cited principles in mind, the court will rule on the motion for final approval of the settlement and final certification of the class.

The project manager for the claims administrator declares: on April 15, 2022 the notice attached to the declaration was mailed to each of the 206 class members by first class mail; 21 notices were returned without a forwarding address; one class member requested a re-mailed notice by email; if the mail was returned without a forwarding address the claims administrator performed an advanced address search; the search resulted in locating 17 addresses and the notice was served to those addresses; ultimately three addresses were undeliverable; the deadline to object was May 30, 2022; the claims administrator did not receive any objections to the settlement from class members; the claims administrator did not receive any requests for exclusion from class members; the claims administrator did not receive any disputes regarding work weeks from class members; there are 206 class members who will be paid their portion of the net settlement, with 172 individuals as part of the former employee subclass; after payment of attorney fees, litigation costs, the plaintiff's service award, PAGA LWDA payment, administrator costs, and employer taxes, the net settlement amount available for distribution is $199,191.42, with average payments of $966.95 to class members

and the highest estimated payment of $6,976.08; the average PAGA group member employee will receive $12.14; and the total costs for the claims administrator's work is $4,450, which includes payment for additional work to be performed concerning calculation of the settlement checks, issuance and mailing of the checks, necessary tax reporting of the payments, and etc. (Declaration of Lindsay Kline, paragraphs 1 and 8-17.)

The class notice states that the deadline to submit an objection or to opt-out was May 30, 2022, and the final approval hearing would take place on July 8, 2022, at 8:30 a.m. in Department Nine of the El Dorado County Superior Court at 3321 Cameron Park Blvd., Cameron Park, CA 95682. (Declaration of Lindsay Kline, Exhibit A.)

Counsel for plaintiffs declares: on September 6, 2019 notice was provided to the Department of Labor and Workplace Development Agency (LWDA) regarding the alleged Labor Code violations; on October 18, 2019 supplemental written notice was provided to the LWDA; plaintiffs propounded discovery on defendant consisting of form interrogatories, 30 special interrogatories, 24 requests for admission, and 32 requests for production; after the court granted in part and denied in part a motion to compel further responses to the discovery, the parties agreed to defendant providing further responses on May 14, 2021 and agreed to provide additional data and documents sufficient to allow the parties to participate in a meaningful and informed mediation; between August 2019 and July 2021 as part of the formal and informal discovery process and settlement negotiations, defendant provided hundreds of pages of documents relating to its policies, practices and procedures, as well as 10,000 lines of data constituting the time and payroll records for an agreed upon sampling of the class for the period of May 2016 through June 2021; class counsel retained an expert to analyze the data produced by defendant and separately completed its own analysis of the data, including calculating the damages of a number of the individual class members to confirm the accuracy

of their expert's calculations; after a full day of mediation on July 9, 2021 the parties were unable to agree to settle the matter; at the conclusion of the mediation, the mediator issued a mediator's proposal to try to help bring about a resolution; the mediator's proposal was accepted on July 20, 2021; after several months of negotiations regarding the terms of the settlement with further assistance of the mediator, the parties executed the memorandum of understanding setting forth the terms of the settlement on October 1, 2021; on December 17, 2021 after further negotiations, the parties executed the Joint Stipulation of Settlement; the settlement represents a compromise of highly disputed claims; the class action and settlement will result in substantial benefits to all class members; with the help of an expert and after completing its own analysis of the data, class counsel developed a damages model illustrating both defendant's maximum exposure and realistic potential for recovery for the alleged violations; under that model defendant faced up to a maximum of $2,482 in underpaid minimum wages, overtime and sick pay, $35,632 in unpaid minimum wages, overtime and double-time, plus $24,232.70 in liquidated damages, $111,993 in premiums for missed, late, or short meal breaks, $114,377 for missed meal breaks, $517,432.80 in waiting time penalties, $202,100 in statutory penalties, and $51,131 in pre-judgment interest for a maximum potential damages to the class amounting to $1,059,380.50; because 100% success in litigation is unrealistic, class counsel determined an aggressive, more realistic estimate for the potential recovery is $531,380.95; the maximum settlement amount of $350,000 allocates $340,000 to class claims, which is 63.98% of the realistic recovery and the expected net recovery of $198,500 is more than 37% of the realistic recovery; the net class recovery will be just under $1,000 each; while maximum PAGA penalties could range between $328,650-$859,400, penalties are discretionary and often reduced significantly by the courts; the settlement allocates $10,000 to PAGA civil penalties; $115,000 of the $198,500 of the net class

settlement will be distributed proportionally amongst participating current employee class members based upon the number of work weeks each worked during the class period; the remaining $83,500 will be shared equally amongst the estimated 172 participating former employee subclass members; the parties estimate that the average payment to each of the class members will be approximately $961.76; every PAGA group member employee will also receive an average payment of approximately $12.24 to resolve the PAGA claim; defendant asserted numerous defenses and planned a multipronged attack to circumscribe the scope of the class and available damages; defendant also intended to file a motion for summary judgment seeking to wipe out the ability of large segments of the class to participate in the class action and/or to receive under the settlement; based upon class counsel's experience and knowledge of the facts and circumstances of the case, it is counsel's opinion that the proposed settlement reflects a reasoned compromise that not only takes into consideration the inherent risks of such litigation, but the various issues unique to this case that have the potential to substantially reduce recovery by the class, if not wipe it out entirely; and counsel also believes that the proposed settlement is fair, reasonable, and adequate, preferable to continued litigation, and in the best interests of the class. (Declaration of Robert Wassermann in Support of Motions for Final Approval of Settlement and Attorney Fees, Costs, and Service Payments, paragraphs 4, 5, 8, 11-16, 20-26, 34-36, 38-42, 44, 45, and 50.)

It appears appropriate under the circumstances presented to grant the motion.

Motion for Attorney Fees, Costs, and Service Payments.

Plaintiffs move for approval of payment of attorney fees in the amount of 35% of the gross settlement amount, out of pocket litigation costs in the amount of $6,418.58, and an award of $3,500 to each of the two class representatives. Plaintiffs argue the following in support of the motion: the common fund method should be applied to award attorney fees from the settlement

fund; the fact that none of the class members objected to the settlement supports approval of the fess requested; an award of 35% of the gross settlement amount is reasonable under the circumstances regarding the substantial benefits obtained and the risks faced by class counsel; the positive results, risks associated with the litigation, skill and quality of class counsel's work, the contingent nature of the fee, and financial burden carried by class counsel justifies the fees requested; the lodestar cross-check confirms the reasonableness of the fees; counsel's out-of-pocket litigation expenses are reasonable; and the service payment for the class representatives are reasonable in amount.

The proof of service declares that on June 10, 2022, defense counsel was served the notices of hearing and moving papers concerning the motion for final approval and motion for attorney fees, costs, and service payments by email. There was no opposition or objection in the court's file at the time this ruling was prepared.

"Under the American rule, as a general proposition each party must pay his own attorney fees. This concept is embodied in section 1021 of the Code of Civil Procedure, [Footnote omitted.] which provides that each party is to bear his own attorney fees unless a statute or the agreement of the parties provides otherwise. ¶ Several exceptions to this general rule have been created by the courts. Three of these exceptions, discussed at length in *Serrano v. Priest* (1977) 20 Cal.3d 25, 34-47, 141 Cal.Rptr. 315, 569 P.2d 1303, base recovery of attorney fees to the prevailing party on the fact that the litigation has conferred benefits on others. Thus, if the litigation has succeeded in creating or preserving a common fund for the benefit of a number of persons, the plaintiff may be awarded attorney fees out of that fund. (*Estate of Stauffer* (1939) 53 Cal.2d 124, 131-132, 346 P.2d 748.)." (Gray v. Don Miller & Associates, Inc. (1984) 35 Cal.3d 498, 504-505.)

The project manager for the claims administrator declares: on April 15, 2022 the notice attached to the declaration was mailed to each of the 206 class members by first class mail; 21 notices were returned without a forwarding address; one class member requested a re-mailed notice by email; if the mail was returned without a forwarding address the claims administrator performed an advanced address search; the search resulted in locating 17 addresses and the notice was served to those addresses; ultimately three addresses were undeliverable; the deadline to object was May 30, 2022; the claims administrator did not receive any objections to the settlement from class members; the claims administrator did not receive any requests for exclusion from class members; the claims administrator did not receive any disputes regarding work weeks from class members; there ae 206 class members who will be paid their portion of the net settlement, with 172 individuals as part of the former employee subclass; the net settlement available after payment of attorney fees, litigation costs, the plaintiff's service award, PAGA LWDA payment, administration costs, and employer taxes, the net settlement amount available for distribution is $199,191.42, with average payments of $966.95 and the highest estimated payment of $6,976.08; the average PAGA group ember employee will receive $12.14; and the total costs for the claims administrator's work is $4,450, which includes payment for work to be performed concerning calculation of the settlement cheeks, issuance and ailing of the checks, necessary tax reporting of the payments, and etc. (Declaration of Lindsay Kline, paragraphs, 1, and 8-17.)

Plaintiff's counsel declares: since the class notice was mailed, he has received numerous calls from class members about the settlement; not one of the class members he has spoken to has indicated any opposition to or dissatisfaction with the proposed service payment to plaintiffs, costs, or fees as set forth in the class notice; the proposed service payments are $3,500 to each of the two plaintiffs, which amounts to each of them receiving 1% of the gross

settlement amount, which counsel believes is fair, reasonable, and appropriate; while class members have been informed of the amount of these payments in the class notice served on them, not a single class member has filed an objection or voiced any concerns about the service payments; the lodestar amount of attorney fees for the nearly 230 hours worked on this case amounts to $186,014.94 for attorney fees ranging from $676 to $915 per hour and paralegal fee at $208 per hour; counsel's fees are consistent with attorneys of comparable class action experience and qualifications and consistent with rates approved in other class action matters; and actual costs in the amount of $6,418.58 have been incurred by counsel, including filing fees, process server fees, court reporter fees, postage, travel expenses, computerized legal research expenses, mediation fees, exert analysis fees, and etc. as stated in Exhibit 3 attached to the declaration. (Declaration of Robert Wassermann in Support of Motions for Final Approval of Settlement and Attorney Fees, Costs, and Service Payments, paragraphs 55, 62, 63, 71, 72, and 76; and Exhibit 3.)

It appears under the totality of the circumstances presented that it is appropriate to grant the motion and approve payment of attorney fees in the amount of $122,500, administrator costs in the amount of $4,450, out-of-pocket litigation costs in the amount of $6,418.58, and an award of $3,500 to each of the two class representatives.

TENTATIVE RULING # 3: ABSENT OBJECTIONS OR OPPOSITION, THE MOTIONS FOR FINAL APPROVAL OF SETTLEMENT AND FOR ATTORNEY FEES, COSTS, AND SERVICE PAYMENTS ARE GRANTED AS PRAYED FOR. 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 8, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

4. DRB CAPITAL, LLC v. IN RE: M.C. 22CV0756

Petition to Authorize Transfer of Structured Settlement Payment Rights.

Payee M.C. has agreed to sell an undisclosed total amount of payee's monthly payments. In exchange, payee M.C. will be paid an undisclosed amount. The payee declares: payee would like to pay off outstanding medical bills with the remainder to be used to purchase a car; without the proceeds of the transaction the payee does not have the financial resources to pay for the medical bills and a car; payee is single; he has an income of $5,800 per month from government benefits and the annuity; payee has no children; no prior transfers have been completed; the structured settlement was intended as compensation for a car accident; the future periodic payments were not intended to pay for future medical care and treatment related to the incident that was the subject of the settlement, and the future payments that are the subject of the proposed transfer were not intended to provide for necessary living expenses.

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

"A transfer of structured settlement payment rights is void unless all of the following conditions are met: ¶ (a) The transfer of the structured settlement payment rights is fair and reasonable and in the best interest of the payee, taking into account the welfare and support of his or her dependents. ¶ (b) The transfer complies with the requirements of this article, will not

contravene other applicable law, and is approved by a court as provided in Section 10139.5." (Insurance Code, § 10137.)

Notice of the hearing and copies of the petitioning papers must be filed and served 20 days prior to the hearing, plus 5 calendar days for mailing by U.S. Mail. (Insurance Code, §§ 10139.2 and 10139.5(f)(2).).)

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

""Interested parties" means, with respect to a structured settlement agreement, the payee, the payee's attorney, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party who has continuing rights or obligations under the structured settlement agreement. If the designated beneficiary is a minor, the beneficiary's parent or guardian shall be an interested party." (Insurance Code, § 10134(g).)

There was no proof of service of notice of the hearing, the petition, and the supporting declarations and documents on the interested persons in the court's file at the time this ruling was initially prepared.

In addition, the petition and attached Sale Agreement fails to provide critical information necessary for the court's determination as to whether the transfer of the structured settlement payment rights is fair and reasonable and in the best interest of the payee, such as the current structured settlement monthly payment amounts, the total number and dollar amount of payments to be sold, the present value of those payments, and the amount the payee is being paid in exchange.

Petitioner later filed the non-redacted documents only 14 calendar days prior to the hearing and served them just within the mandated period. The petition and supporting documents must be filed 20 days before the hearing. Due to the late filing of the documents, the petitioners have caused the hearing to be delayed.

TENTATIVE RULING # 4: THIS MATTER IS CONTINUED TO 8:30 A.M. ON AUGUST 5, 2022, IN DEPARTMENT NINE.

5. MUIR v. GENERAL MOTORS PC-20210130

Plaintiff's Motion to Compel Deposition of Defendant's Most Qualified Person.

On March 18, 2021, plaintiffs filed an action against the defendant asserting causes of action for Violation of the Song-Beverly Act – Breach of Express Warranty; Violation of the Song-Beverly Act – Breach of Implied Warranty; and Violation of the Song-Beverly Act – Section 1793.2.

Plaintiff moves to compel the deposition of defendant General Motors, LLC's most knowledgeable person and production of the documents requested in the notice of deposition.

Plaintiff argues: that the court should not allow the defendant to obstruct the plaintiffs' right to depose the defendant's most qualified person; the scope of discovery is broad; plaintiffs seek testimony and documents directly related to their claims under the Song-Beverly Consumer Warranty Act, and prevailing legal authority supports plaintiffs' discovery efforts.

Defendant General Motors, LLC opposes the motion on the following grounds: the motion should be denied because the plaintiffs did not satisfactorily meet and confer as plaintiffs did not address the defendant's objections or the contested categories informally before filing the motion to compel; the motion should be denied as plaintiffs seek to compel irrelevant testimony and information; plaintiffs' request seeks production of trade secret material; and the motion should be denied because plaintiffs failed to file a Rule 3.1345 separate statement with the motion.

Plaintiff filed a reply on May 9, 2022.

"The service of a deposition notice under Section 2025.240 is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a

party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying." (Code of Civil Procedure, § 2025.280(a))

If a party deponent fails to appear at a properly noticed deposition or fails to produce for inspection any document or tangible thing described in the deposition notice, then the party giving notice may move for an order compelling the deponent's attendance and testimony. (Code of Civil Procedure, § 2025.450(a).) "A motion under subdivision (a) shall comply with both of the following: ¶ (1) The motion shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice. ¶ (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040, or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance." (Code of Civil Procedure, § 2025.450(b).)

Meet and Confer Requirement

Meet and confer declarations are required for motions to compel the deponent's attendance and testimony and to produce the documents or things described in the deposition notice. (See Code of Civil Procedure, §§ 2025.450(a), 2025.450(b),)

"'The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain "an informal resolution of each issue." (§ 2025, subd. (o)....) This rule is designed "to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order...." (*McElhaney v. Cessna Aircraft Co.* (1982) 134 Cal.App.3d 285, 289, 184 Cal.Rptr. 547.) This, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes.

[Citations.]' (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1435, 72 Cal.Rptr.2d 333.)" (Stewart v. Colonial Western Agency, Inc. (2001) 87 Cal.App.4th 1006, 1016.) "A determination of whether an attempt at informal resolution is adequate also involves the exercise of discretion. The level of effort at informal resolution which satisfies the 'reasonable and good faith attempt' standard depends upon the circumstances. In a larger, more complex discovery context, a greater effort at informal resolution may be warranted. In a simpler, or more narrowly focused case, a more modest effort may suffice. The history of the litigation, the nature of the interaction between counsel, the nature of the issues, the type and scope of discovery requested, the prospects for success and other similar factors can be relevant. Judges have broad powers and responsibilities to determine what measures and procedures are appropriate in varying circumstances. (See, e.g., Gov.Code, § 68607 [judge has responsibility to manage litigation]; Code Civ. Proc., § 128, subd. (a)(5) [judge has power to control conduct of judicial proceeding in furtherance of justice].) Judges also have broad discretion in controlling the course of discovery and in making the various decisions necessitated by discovery proceedings. (Citations omitted.)" (Obregon v. Superior Court (1998) 67 Cal.App.4th 424, 431.) "Although some effort is required in all instances (see, e.g., *Townsend*, supra, 61 Cal.App.4th at p. 1438, 72 Cal.Rptr.2d 333 [no exception based on speculation that prospects for informal resolution may be bleak]), the level of effort that is reasonable is different in different circumstances, and may vary with the prospects for success. These are considerations entrusted to the trial court's discretion and judgment, with due regard for all relevant circumstances." (Obregon, supra at pages 432-433.)

"A single letter, followed by a response which refuses concessions, might in some instances be an adequate attempt at informal resolution, especially when a legitimate discovery objective is demonstrated. The time available before the motion filing deadline, and the extent to which

the responding party was complicit in the lapse of available time, can also be relevant. An evaluation of whether, from the perspective of a reasonable person in the position of the discovering party, additional effort appeared likely to bear fruit, should also be considered. Although some effort is required in all instances (see, e.g., *Townsend, supra,* 61 Cal.App.4th at p. 1438, 72 Cal.Rptr.2d 333 [no exception based on speculation that prospects for informal resolution may be bleak]), the level of effort that is reasonable is different in different circumstances, and may vary with the prospects for success. These are considerations entrusted to the trial court's discretion and judgment, with due regard for all relevant circumstances. In the instant case, whether reviewed according to the substantial evidence or the abuse of discretion standard, or an amalgam of the two, the trial judge's decision that a greater effort at informal resolution should have been made is amply supported by this record. The petition for a writ of mandate is therefore denied to this extent." (Obregon v. Superior Court (1998) 67 Cal.App.4th 424, 432–433.)

Having read and considered the declarations submitted in support of and opposition to the motion and the plaintiffs' February 22, 2022, meet and confer letter attached as Exhibit 11 to the plaintiff's counsel's declaration in support of the motion, the court finds that the attempt at informal resolution was adequate under the circumstances presented.

Separate Statement Requirement

Defendant's objections to the subject deposition served by email to plaintiffs' counsel on February 4, 2022, objected on numerous grounds to requests for production numbers 1-18, which are all categories of production requested in the notice of deposition. (See Declaration of Gregory Sogoyan in Support of Motion to Compel Deposition of Person Most Qualified, Exhibit 8 – Plaintiffs' Notice of Deposition of Person Most Knowledgeable, Exhibit A – Requests for Production, page 8, line 1 to page 10, line 15; and Exhibit 9 – Defendant's Objection to

Plaintiffs' Notice of Deposition of Person Most Knowledgeable, page 21, line 16 to page 31, line 18.)

"Any motion involving the content of a discovery request or the responses to such a request shall be accompanied by a separate statement. The motions that require a separate statement include: ¶ * * * (5) a motion to compel or to quash the production of documents or tangible things at a deposition…" (Rules of Court, Rule 3.1345(a).)

"A separate statement is a separate document filed and served with the discovery motion that sets forth all the information necessary to understand each discovery request and all the responses to it that are at issue. The separate statement shall be full and complete so that no person is required to review any other document in order to determine the full request and the full response. Material shall not be incorporated into the separate statement by reference. The separate statement shall include--for each discovery request (e.g., each interrogatory, request for admission, deposition question, or inspection demand) to which a further response, answer, or production is requested--the following: ¶ (1) the text of the request, interrogatory, question, or inspection demand; ¶ (2) the text of each response, answer, or objection, and any further responses or answers; ¶ (3) a statement of the factual and legal reasons for compelling further responses, answers, or production as to each matter in dispute; ¶ (4) if necessary, the text of all definitions, instructions, and other matters required to understand each discovery request and the responses to it; ¶ (5) if the response to a particular discovery request is dependent on the response given to another discovery request, or if the reasons a further response to a particular discovery request is deemed necessary are based on the response to some other discovery request, the other request and the response to it must be set forth; and ¶ (6) if the pleadings, other documents in the file, or other items of discovery are relevant to the motion,

the party relying on them shall summarize each relevant document." (Rules of Court, Rule 3.1345 (c).)

The motion is defective in that plaintiff has failed to file and serve a separate document which sets forth each request for production in the notice of deposition to which production is requested, the response given, and the factual and legal reasons for compelling it. (California Rules of Court, Rule 3.1345(c).) Such a statement is critical to the court's analysis of each request for production and the sufficiency of each response, particularly where there are numerous requests for production to which production are sought. Although Rule 3.1345 does not explicitly provide a remedy for failure to comply with it, at least one appellate court has cited with approval the trial court's dropping of a motion to compel discovery where the moving part failed to comply with Rule 335, which was renumbered as Rule 3.1345. (See BP Alaska Exploration, Inc. v. Superior Court (1988) 199 Cal.App.3d 1240, 1270 and Neary v. Regents of University of California (1986) 185 Cal.App.3d 1136, 1145.) A trial court is acting well within its discretion to deny a motion to compel discovery on the basis that the mandated separate statement was not provided or the statement provided does not comply with the requirements of the Court Rule. (Mills v. U.S. Bank (2008) 166 Cal.App.4th 871, 893.)

Plaintiffs filed a reply on May 9, 2022, wherein they apologized for failure to provide a separate statement and asserted that the moving papers contained the reasoning behind each of the requests for examination and documents. Plaintiffs also stated that they were willing to provide a separate statement within a short period of time upon instruction by the court.

Rather than deny the motion outright at the hearing on May 13, 2022, the court continued the hearing to June 24, 2022, and directed the following: Plaintiffs are to file and serve the separate statement by May 25, 2022. Defendant's response to the separate statement and a memorandum of points and authorities limited to addressing the legal points raised in the

plaintiffs' separate statement shall be filed and served by June 13, 2022. The reply was to be filed and served by June 17, 2022.

On May 23, 2022, defendant filed a declaration in opposition to the motion and another opposition to the motion.

At the hearing on June 24, 2022, plaintiff's counsel stated they were not advised to file a separate statement by May 25, 2022, or the date to file the reply. Counsel requested and was granted a continuance to allow counsel to file a separate statement.

There was no separate statement in support of the motion in the court's file as of the date this ruling was prepared.

TENTATIVE RULING # 5: PLAINTIFF'S MOTION TO COMPEL DEPOSITION OF DEFENDANT'S MOST QUALIFIED PERSON IS DENIED WITHOUT PREJUDICE. 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 8, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

6. DANIELS v. CROSBY HOMES PC-20190135

Plaintiff's Motion for Order Substituting Party.

Plaintiff Patrice passed away on February 21, 2022. Plaintiff Daniels, in his capacity as successor trustee of the Robert Daniels and Juliet Patrice Family Trust, moves for an order allowing him to continue the litigation as successor-in-interest to the deceased plaintiff.

The proof of service declares that notice of the hearing and the moving papers were served by electronically transmitting these documents to Case Anywhere on May 17, 2022. The plaintiff failed to attach a service list indicating which parties are receiving documents from Case Anywhere concerning this case. An amended proof of service was filed on June 27, 2022, which included the Case Anywhere electronic service list of parties served.

There is no opposition to the motion in the court's file.

"A cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent's successor in interest, subject to Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Probate Code, and an action may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest." (Code of Civil Procedure, § 377.30.)

"For the purposes of this chapter, "decedent's successor in interest" means the beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action." (Code of Civil Procedure, § 377.11.)

"For the purposes of this chapter, "beneficiary of the decedent's estate" means: ¶ (a) If the decedent died leaving a will, the sole beneficiary or all of the beneficiaries who succeed to a cause of action, or to a particular item of property that is the subject of a cause of action, under

the decedent's will. ¶ (b) If the decedent died without leaving a will, the sole person or all of the persons who succeed to a cause of action, or to a particular item of property that is the subject of a cause of action, under Sections 6401 and 6402 of the Probate Code or, if the law of a sister state or foreign nation governs succession to the cause of action or particular item of property, under the law of the sister state or foreign nation." (Code of Civil Procedure, § 377.10.)

"On motion after the death of a person who commenced an action or proceeding, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest." (Probate Code, § 377.31.)

Plaintiff Daniels declares: he is successor in interest to his deceased spouse who passed away on May 2, 2022; a certified copy of her death certificate is attached as Exhibit A; no proceeding is pending for administration of Ms. Patrice's estate; he is the successor trustee of the subject trust and executor of Ms. Patrice's will; the real property that is the subject of this litigation is identified as an asset of the Trust under the schedules of trust assets; and since he is already a party to the action, out of an abundance of caution, he is advised to clarify the parties and pleadings and seek substitution for his late spouse.

Under the circumstances presented, it appears that the Trust is the successor in interest to plaintiff Patrice's claims in the instant action, plaintiff Daniels is an initial trustee who continues to serve as a co-trustee of the Trust, and the court is inclined to grant the motion.

At the hearing on June 24, 2022, the court continued the hearing to July 8, 2022, and stated that if the amended proof of service was submitted, the hearing will be vacated and the order granting the motion will be signed.

TENTATIVE RULING # 6: PLAINTIFF'S MOTION FOR ORDER SUBSTITUTING PARTY IS GRANTED. NO FURTHER HEARING ON THIS MATTER WILL BE HELD.

7. STEPHENS v. WILLIAMS 22CV0694

OSC Re: Preliminary Injunction.

Plaintiff filed an action against the defendant asserting a cause of action for interference with the quiet use and enjoyment of the easement road through the defendant's land established by a grant deed created by the parties' predecessors in interest and recorded in 1973. On June 3, 2022, the court issued a TRO and OSC, which required the defendant to appear in Department Nine at 8:30 a.m. on July 8, 2022, and show cause why he should not be enjoined in the following manner: to remove the fence and/or hard to access gate, together with the "KEEP OUT" sign currently installed across the Kanaka Valley easement road at the intersection of Kanaka Valley Road and Donkey Lane; to refrain from installing or erecting any other barrier or impediment on or across any portion of Kanaka Valley Road; to refrain from impeding in any way plaintiffs from using Kanaka Valley Road for any lawful purpose including, but not limited to, access the South Fork of the American River as it runs on or through defendant's property; and to refrain from yelling at or threatening plaintiffs for using Kanaka Valley Road to access the South Fork of the American River.

The proof of service filed on June 1, 2022, declares defendant was personally served the summons and complaint, verified complaint, ex parte application for TRO/OSC, OSC, and notice of related case on June 1, 2022

Plaintiffs assert the following in support of their application for a TRO and Preliminary injunction: the recorded deed of easements is evidence of the plaintiffs' irrefutable right to use the subject easement across defendant's land and defendant has no legal or equitable right to prevent their access to the easement by erecting a gate and by threatening them.

Defendant opposes the application for preliminary injunction on the following grounds: this is just one of a long parade of vexatious filings by neighbors intended to harass and punish the new resident, the defendant, who is making improvements to his own private real property; this case is duplicative to the lawsuit brought by other neighbors, the Grottas, under case number PC-20200421; this case has already been litigated and resolved in other civil cases against him and the injunction is unnecessary as defendant resolved the access issue by installing a new gate; the easement is not a public easement and can not be extended to the friends and neighbors of the other parcel owner, therefore, a gate and signage warning the public and unpermitted guests is proper; the grant of easement does not prohibit the installation of a gate or require the installation of a motorized gate; and if a restraining order is issued, it should be narrowly tailored and be reciprocal with severe consequences should the plaintiffs go off the easement road.

Plaintiffs replied to the opposition.

Duplicative Action

The complaint filed in this case states a cause of action against the defendants that is personal to them, and no other neighbor is prosecuting this action. Though there are related cases referenced in the complaint, there is no showing that the case is subject to being required to be consolidated. Plaintiffs Stephens were not required to engage in settlement negotiations of the related case.

Preliminary Injunction Principles

A preliminary injunction shall not be granted without notice to the opposing parties. (Code of Civil Procedure, § 527(a).)

"An injunction may be granted in the following cases: ¶ (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof,

consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. ¶ (2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action. ¶ (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual. ¶ (4) When pecuniary compensation would not afford adequate relief. ¶ (5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. ¶ (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings. ¶ (7) Where the obligation arises from a trust." (Code of Civil Procedure, § 526(a).)

The general purpose of such an injunction is to preserve the status quo until there is a final determination of the matter on the merits. The term "status quo" has been defined to include the last actual peaceable, uncontested status which preceded the pending controversy. (Voorhies v. Greene (1983) 139 Cal.App.3d 989, 995.)

A preliminary injunction may be granted upon a verified complaint or upon affidavits which show that sufficient grounds exist for the issuance of such an injunction. (Code of Civil Procedure, § 527(a).) In deciding whether to issue a preliminary injunction, two factors must be weighed: the likelihood of the moving party ultimately prevailing on the merits and the relative interim harm to the parties from the issuance of a preliminary injunction. (Butt v. State of California (1992) 4 Cal.4th 668, 677-678.) "The latter factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. The determination whether to grant a preliminary injunction

generally rests in the sound discretion of the trial court. (Citation omitted.)" (Abrams v. St. John's Hospital & Health Center (1994) 25 Cal.App.4th 628, 636.)

"It is said: "To issue an injunction is the exercise of a delicate power, requiring great caution and sound discretion, and rarely, if ever, should (it) be exercised in a doubtful case. . . ." (*Willis v. Lauridson*, 161 Cal. 106, 117, 118 P. 530, 535; *West v. Lind*, 186 Cal.App.2d 563, 569, 9 Cal.Rptr. 288; *Mallon v. City of Long Beach*, 164 Cal.App.2d 178, 190, 330 P.2d 423.)" (Ancora-Citronelle Corp. v. Green (1974) 41 Cal.App.3d 146, 148.)

"The plaintiff bears the burden of presenting facts establishing the requisite reasonable probability: "[T]he drastic remedy of an injunction pendente lite may not be permitted except upon a sufficient factual showing, by someone having knowledge thereof, made under oath or by declaration under penalty of perjury." (*Ancora–Citronelle Corp. v. Green, supra,* 41 Cal.App.3d at p. 150, 115 Cal.Rptr. 879.)" (Fleishman v. Superior Court (2002) 102 Cal.App.4th 350, 356.)

Plaintiffs allege in the verified complaint: the signatories of the 1973 recorded "Deed of Easement" are plaintiffs' and defendant's predecessors in interest, Jacqueline and Louis Duncan, who owned three parcels of land, including the two 10 acre parcels now owned by plaintiffs and defendant, which are described in page 1 of the deed as parcel 2 and parcel 3; the easement granted by recorded deed is a non-exclusive right of way and easement for roadway and utilities along the described 50 foot wide strips of land across the subject parcels intended to be used for the mutual use and benefit of lands of the parties and for future divisions of the property and that the grantors mutually covenanted and agreed for themselves, their respective heirs, assigns and successors in interest that the described strips of land are for general public use; the easement road that was recognized, created and made pursuant to the recorded easement was named Kanaka Valley Road; Kanaka Valley Road has essentially

existed as it currently runs from the date the easement was recorded up through to the present; consistent with the scope of the non-exclusive rights of way and easement as described in the recorded easement, the road terminates on public land at the South Fork of the American River; all parties to the recorded easement, and their successors in interest, have relied on the recorded easement to use to access the river; such deeded easement access to the American River materially and substantially adds to the use enjoyment and value of plaintiffs' property; the easement road has been used consistent with the grant and terms of the easement and continuously used, enjoyed and relied on by the original parcel owners and each of their successors-in-interest, including plaintiffs, since its recording up through the present day, from where the easement road begins to its terminus at the South Fork of the American River; since 2018 when escrow closed on defendant's purchase of his 10 acre parcel he has consistently and repeatedly engaged in obnoxious, outrageous, malicious, and abhorrent behavior towards his neighbors' easement rights, including plaintiffs; despite the unequivocal and express terms of the easement and consistent use of the easement for nearly 50 years, defendant engaged in egregious conduct for which he knew or should have known that he had no plausible legal basis to do so and has resumed his malicious, oppressive and unlawful conduct that is now directed at plaintiffs and their right to quiet use and enjoyment of their easement rights; in early 2022, defendant erected a fence and difficult to open gate with a "KEEP OUT" sign across the easement road when there never was a gate or fence before and without any reasonable basis to erect a gate or fence at that location; the fence and gate was purposefully erected by defendant to prevent or impede plaintiffs and other neighbors from using the easement road; on May 7, 2022 while lawfully and properly exercising his right to use the easement road running through defendant's property, plaintiff Terry Stephens managed to pull back enough of the fence/gate to pass through on his way down to the river on his utility

vehicle; on his way back from the river when he reached the gate/fence, defendant came running down to plaintiff and in a menacing manner defendant yelled and screamed at plaintiff Terry Stephens to get off the easement road, because he had no right to be on it; with anxiety and fear plaintiff attempted to extricate himself by the situation by hurriedly pulling back the fence/gate erected across the easement by defendant causing several cuts on his finger resulting in an infection requiring medical treatment by a doctor, and a tetanus shot, antibiotics, and pain medication; during the time he was attempting to get away from the situation, defendant continued to yell and threaten him to stay off defendants' land; defendant's conduct created a condition to exist that unlawfully obstructed free passage or use of the recorded easement so as to unreasonably interfere with plaintiffs' comfortable enjoyment of their lives and their property; defendant's conduct was intentional and designed to interfere with plaintiffs' use and enjoyment of their land and to limit their easement rights; and the conduct was designed to intimidate plaintiffs from using the easement road that crosses defendant's property. (Complaint, paragraphs 6-12, 14, and 17-21; and also see Exhibit A – DEED OF EASEMENTS.)

Attached to the verified complaint as Exhibits B-D are an assessor's map and parcel maps, which allegedly depict the subject easement road, Kanaka Valley Road, that passes through plaintiffs' and defendant's properties.

Defendant declares in Opposition: he acquired the subject real property on Donkey Lane in 2018; the private easement only allows the resident neighbors access to the river; the easement path is located on the western side of the property consisting of a rough meandering path that cuts through brush and wood, which is impassable with a regular motorized vehicle such as a car, truck or emergency vehicle, such as a fire truck; currently the path can be traversed with a 4x4 or ATV or hiked/walked; after acquiring the property he made some

improvements, including a partially completed two bedroom residence on the eastern side of the ten acre property; he intends to install an irrigation system and vineyard; he has a shelter for his sheep and goats that assist caring for the land such as feeding on native vegetation and reducing the amount of fuel, which reduces wildfire risk; to prevent livestock escaping the property and prevent predators a farm gate was installed at the southwest corner of the property; the entire property is fenced along all four sides; while this is a private dirt path it is listed on Google maps as a public road called Kanaka Valley Road; he installed signs to dissuade trespassing and provide notice to the general public and guests; he also posted signs to request the gate to be kept closed by residents to prevent the escape of his livestock; the local residents have abused the private easement rights by deviating from the rough path and trespassing along the property; in particular, plaintiff Terry Stephens has deviated from the easement path and it is believed that he intentionally trespasses outside the easement to antagonize defendant and violate his right to privacy and quiet enjoyment of his land that remains exclusive of any easement; plaintiff Terry Stephens communicated to defendant that he trespassed to enjoy the views; and although he intended to remove the farm fence across the easement and replace it with a manual fence to comply with a settlement in another case, he had to act very quickly due to the June 3, 2022 hearing on the application for TRO and OSC and on June 2, 2022 he removed the old farm gate and replaced it with a hinged gate requiring five pounds of force to open and close, as depicted in Defense Exhibit D attached to the declaration. (Declaration of Joshua Williams in Opposition to Application for Preliminary Injunction, paragraphs 2-5 and 7.)

Plaintiff Terry Stephens declares in reply: plaintiffs purchased their property in 2017 and at the time of purchase they relied on the recorded easement, which was a material factor in their decision to purchase as a deeded easement down to the American River materially and

substantially adds to their use and enjoyment of their property; ever since they purchased the property the plaintiffs and their invited friends and guests have used the easement road to get down to the river; from conversations with previous owners and neighbors, he has obtained information that the easement road has been in continuous use since the easement was granted in 1973; he has an audio recording of the May 7, 2022 incident when defendant accosted and threatened him claiming that plaintiff had no right to be on the easement road, which substantiates the allegations of paragraph 19 of the complaint; he is 71 years old and he and his wife feel threatened and unsafe as a result of defendant's bullying and threats towards them as well as numerous threats made against the other neighbors; defendant's declaration in opposition contains several false statements; he emphatically denies that he trespassed on defendant's property outside the easement; he never attempted to antagonize defendant in any way; he only used the easement to access the river; even after issuance of the TRO, defendant has continued to obstruct the road as established by plaintiffs' Exhibit A attached to the reply declaration, which shows defendant installed a fence within the past two weeks that directly cuts into a portion of the easement road itself; as for the claim that defendant maintains sheep or goats on the property, plaintiff has not seen any and there could only be a few at most; even if there is a livestock issue to address, there a simple and reasonable solution by relocating the fence to the east side of the easement road, which would entirely remove any need for a gate; and defendant's assertion that his entire parcel is fully fenced on all four sides is not correct, because the west side where the easement exists is not fully fenced as it has many gaps and areas that are not enclosed due to terrain problems making it difficult to fence. (Declaration of Terry Stephens in Reply, paragraphs 2-8; and Exhibit A.)

"Easements are a type of servitude; the "extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired." (Civ. Code, § 806.) For

express easements like those contained in the deed reservations, " 'only those interests expressed in the grant and those necessarily incident thereto pass from the owner of the fee.' " (*Camp Meeker Water System, Inc. v. Public Utilities Com.* (1990) 51 Cal.3d 845, 867, 274 Cal.Rptr. 678, 799 P.2d 758 (*Camp Meeker*), superseded by statute on another ground, as stated in *Pacific Bell v. Public Utilities Com.* (2000) 79 Cal.App.4th 269, 281, 93 Cal.Rptr.2d 910.)" (Pear v. City and County of San Francisco (2021) 67 Cal.App.5th 61, 71.)

"The scope of an easement is determined by the terms of its grant. (Civ.Code, s 806.) The grant of an unrestricted easement, not specifically defined as to the burden imposed upon the servient land, entitles the easement holder to a use limited by the requirement that it be reasonably necessary and consistent with the purpose for which the easement was granted. (*Pasadena v. California-Michigan etc. Co.*, Supra, 17 Cal.2d 576 at p. 582, 110 P.2d 983; *Wall v. Rudolph* (1961) 198 Cal.App.2d 684, 692, 18 Cal.Rptr. 123, 128, 129, 3 A.L.R.3d 1242.) This permits a use consistent with 'normal future development Within the scope of the basic purpose (citations), but not an abnormal development, one which actually increases the burden upon the servient tenement * * *. California courts have set their faces firmly against such increases in the burden upon the servient tenement.' (*Wall v. Rudolph*, Supra (italics added).) So long as an easement exists, both parties have the right to insist that it shall remain substantially the same as it was when granted, regardless of the relative benefit or damage that would ensue to the parties by reason of a change in the mode and manner of its enjoyment. (*Whalen v. Ruiz* (1953) 40 Cal.2d 294, 302, 253 P.2d 457 (quoted, with additional citations, in *Wall v. Rudolph*, Supra, at pp. 694—695, 18 Cal.Rptr. 123.))" (Emphasis added.) (Atchison, T. & S. F. Ry. Co. v. Abar (1969) 275 Cal.App.2d 456, 464-465.)

"The grant of an easement must "be interpreted liberally in favor of the grantee." (*Norris v. State of California ex rel. Dept. Pub. Wks*. (1968) 261 Cal.App.2d 41, 46–47, 67 Cal.Rptr. 595,

citing Civ.Code, § 1069.) When an easement is based on a grant, as it is here, the grant gives the easement holder both "those interests expressed in the grant and those necessarily incident thereto." (*Pasadena v. California–Michigan etc. Co*. (1941) 17 Cal.2d 576, 579, 110 P.2d 983.) "Every easement includes what are termed 'secondary easements;' that is, the right to do such things as are necessary for the full enjoyment of the easement itself." (*North Fork Water Co. v. Edwards* (1898) 121 Cal. 662, 665–666, 54 P. 69.) ¶ A secondary easement can be the right to make "repairs, renewals and replacements on the property that is servient to the easement" (*Donnell v. Bisso Brothers* (1970) 10 Cal.App.3d 38, 43, 88 Cal.Rptr. 645) "and to do such things as are necessary to the exercise of the right" (*Smith v. Rock Creek Water Corp*. (1949) 93 Cal.App.2d 49, 53, 208 P.2d 705). Thus, where the easement was for flood control purposes, one court held, it carried a secondary easement for repair of the channel including the right "to take earth, rock, sand and gravel for the purpose of excavating, widening and deepening or otherwise rectifying the channel and the maintenance and repair of embankments and other protection work." (*Haley v. L.A. County Flood Control Dist*. (1959) 172 Cal.App.2d 285, 290, 342 P.2d 476.) A right-of-way to pass over the land of another carries with it "the implied right ... to make such changes in the surface of the land as are necessary to make it available for travel in a convenient manner." (*Ballard v. Titus* (1910) 157 Cal. 673, 681, 110 P. 118.) ¶ Incidental or secondary easement rights are limited by a rule of reason. "The rights and duties between the owner of an easement and the owner of the servient tenement ... are correlative. Each is required to respect the rights of the other. Neither party can conduct activities or place obstructions on the property that unreasonably interfere with the other party's use of the property. In this respect, there are no absolute rules of conduct. The responsibility of each party to the other and the 'reasonableness' of use of the property depends on the nature of the easement, its method of creation, and the facts and circumstances surrounding the

transaction." (6 Miller & Starr, Cal. Real Estate (3d ed.2011) § 15:63, p. 15-215 (rel. 8/2006).) ¶ As applied to dominant owners, the rule of reason allows them to exercise secondary easement rights "so long as the owner thereof uses reasonable care and does not increase the burden on or go beyond the boundaries of the servient tenement, or make any material changes therein." (*Ward v. City of Monrovia* (1940) 16 Cal.2d 815, 821–822, 108 P.2d 425; see *North Fork Water Co. v. Edwards, supra,* 121 Cal. at p. 666, 54 P. 69; *Haley v. L.A. County Flood Control Dist.,supra,* 172 Cal.App.2d at p. 290, 342 P.2d 476.) A secondary easement may be exercised "only when necessary and in such reasonable manner as not to increase the burden needlessly on the servient estate or to enlarge it by alteration in the mode of operation." (*Smith v. Rock Creek Water Corp*., *supra,* 93 Cal.App.2d at p. 53, 208 P.2d 705.) The easement owner does not have the right to "so change the surface of the land as seriously to damage the usefulness of the servient estate ... [¶] 'It is well settled that the owner of an easement cannot change its character, or materially increase the burden upon the servient estate, or injuriously affect the rights of other persons, but within the limits named he may make repairs, improvements, or changes that do not affect its substance.' " (*White v. Walsh* (1951) 105 Cal.App.2d 828, 832, 234 P.2d 276, citing *Burris v. People's Ditch Co.* (1894) 104 Cal. 248, 252, 37 P. 922.) In *Herzog v. Grosso* (1953) 41 Cal.2d 219, 259 P.2d 429, the Supreme Court held that the trial court properly recognized a right in the easement holder to construct and maintain a wooden guardrail along the northerly boundary of the roadway because, "[b]y the grant of the easement ... [the easement holder] acquired the right to do such things as are reasonably necessary to their use thereof. [Citations.]" (*Id*. at p. 225, 259 P.2d 429.) Where the road adjoined a steep embankment, guardrails were "reasonably necessary and would not unduly burden the servient tenement." (*Ibid.*) ¶ Likewise, the servient owner "who holds the land burdened by a servitude" (Rest.3d Property, Servitudes, § 4.9, p. 582) is

held to the same reasonableness standard. The servient owner is "entitled to make all uses of the land that are not prohibited by the servitude and that do not interfere unreasonably with the uses authorized by the easement... ." (*Ibid.*) "[T]he servient owner may use his property in any manner not inconsistent with the easement so long as it does not *unreasonably impede* the dominant tenant in his rights." (*City of Los Angeles v. Howard* (1966) 244 Cal.App.2d 538, 543, 53 Cal.Rptr. 274, italics added.) "*Actions that make it more difficult to use an easement, that interfere with the ability to maintain and repair improvements built for its enjoyment, or that increase the risks attendant on exercise of rights created by the easement are prohibited ... unless justified by needs of the servient estate*. In determining whether the holder of the servient estate has unreasonably interfered with exercise of an easement, the interests of the parties must be balanced to strike a *reasonable accommodation* that maximizes overall utility to the extent consistent with effectuating the purpose of the easement ... and subject to any different conclusion based on the intent or expectations of the parties... ." (Rest.3d Property, Servitudes, § 4.9, com. c, p. 583, italics added.) ¶ Given that reasonableness depends on the facts and circumstances of each case, "[w]hether a particular use of the land by the servient owner ... is an unreasonable interference is a question of fact for the jury. [Citations.]" (*Pasadena v. California–Michigan etc. Co*., *supra,* 17 Cal.2d at pp. 579–580, 110 P.2d 983; see *Red Mountain, LLC v. Fallbrook Public Utility Dist*. (2006) 143 Cal.App.4th 333, 354, 48 Cal.Rptr.3d 875.)" (Dolnikov v. Ekizian (2013) 222 Cal.App.4th 419, 428–430.)

"The conveyance of an easement limited to roadway use grants a right of ingress and egress and a right of unobstructed passage to the holder of the easement. A roadway easement does not include the right to use the easement for any other purpose. (See *Marlin v. Robinson* (1932) 123 Cal.App. 373, 377, 11 P.2d 70.) When the easement is "nonexclusive" the common users "have to accommodate each other." (*Applegate v. Ota* (1983) 146

Cal.App.3d 702, 712, 194 Cal.Rptr. 331.) An obstruction which unreasonably interferes with the use of a roadway easement can be ordered removed "for the protection and preservation" of the easement. (*Id.* at pp. 712–713, 194 Cal.Rptr. 331.)" (Emphasis added.) (Scruby v. Vintage Grapevine, Inc. (1995) 37 Cal.App.4th 697, 703.)

"As Scruby emphasizes, when the width of an easement is definitely fixed by the grant or reservation creating the same, its use may be interpreted as commensurate with the entire width thereof. (See, e.g., *Ballard v. Titus* (1910) 157 Cal. 673, 681, 110 P. 118; *Tarr v. Watkins* (1960) 180 Cal.App.2d 362, 366, 4 Cal.Rptr. 293.) It is equally well settled, however, that "[t]he specification of width and location of surface rights-of-way does not always determine the extent of the burden imposed on the servient land." (*Gaut v. Farmer* (1963) 215 Cal.App.2d 278, 282, 30 Cal.Rptr. 94, citations omitted.) ¶ This point is aptly illustrated in *Heath v. Kettenhofen* (1965) 236 Cal.App.2d 197, 45 Cal.Rptr. 778, a case brought to our attention at oral argument which has been supplementally briefed by the parties. That case involved the proper interpretation of an easement almost identical to the one at issue here. Plaintiffs in *Heath* were granted an easement described as 40 feet in width for roadway and utility purposes. (*Id.* at p. 200, 45 Cal.Rptr. 778.) Notwithstanding the specifically described easement area, the trial court interpreted this language as granting plaintiffs the right to reasonable use of the easement for access to and from their property. The court further held that defendant, the owner of the servient tenement, was entitled to use portions of the described easement area for uses such as parking vehicles, so long as those uses did not unreasonably interfere with plaintiffs' use. Plaintiffs appealed, contending they had the "an absolute right to use the easement to the full extent of its width, free of any interference by the owner of the servient estate." (*Id.* at p. 204, 45 Cal.Rptr. 778.) ¶ The appellate court in *Heath* rejected this argument and upheld the trial court's interpretation. In doing so, the court noted

that the precise specification of width and location of an easement does not always determine the extent of the burden placed upon the servient tenement; rather, that burden can properly be measured by the use and purpose for which the easement has been granted. (*Ibid.*) Furthermore, whether encroachments in the easement area constituted an unreasonable interference with plaintiff's use presented "a question of fact, to be resolved in the first instance by the trial court, whose determination is to be upheld on appeal if supported by substantial evidence." (*Id.* at p. 205, 45 Cal.Rptr. 778.) ¶ When there is any ambiguity or uncertainty about the scope of an easement grant, the surrounding circumstances, including the physical conditions and character of the servient tenement and the requirements of the grantee, play a significant role in the determination of the controlling intent. (See *Buehler v. Oregon, supra,* 17 Cal.3d at p. 528, 131 Cal.Rptr. 394, 551 P.2d 1226.) We cannot say there is no ambiguity on the face of the easement grant here concerning the matter of the physical area over which Scruby has roadway use. The language of the easement does not specifically describe the intended roadway as 52 feet in width ending in a 100–foot cul-de-sac. Instead, it provides a "nonexclusive easement, 52 feet in width, for road and utility purposes." This kind of ambiguity is frequently found, and the pertinent rule is accurately stated in 28 California Jurisprudence Third, Easements and Licenses, section 58, page 200 "[i]n determining the scope of an easement, extrinsic evidence may be used as an aid to interpretation unless such evidence imparts a meaning to which the instrument creating the easement is not reasonably susceptible." (See also Annot. (1953) 28 A.L.R.2d 253, 265.) ¶ Resort to surrounding circumstances leaves no doubt in our minds, as it left no doubt for the trial court, that the easement before us can be reasonably construed as granting Scruby the right of ingress and egress to the property. The court's opinion provides a full history of this easement and notes: "The court finds that the initial grant of easement in 1966 was made in connection with a

planned subdivision of the lands to which the easement was to provide access. Because these lands were never subdivided according to plan, the easement remained in place to service Parcel A [Scruby's property], but its dimensions were far greater than those contemplated or necessary for access to a single parcel, and were indeed far greater than that actually employed by the dominant tenement over the history of its use." Where the court's "construction appears to be consistent with the true intent of the parties an appellate court will not substitute another although it may seem equally tenable." (*Moakley v. Los Angeles Pacific Ry. Co.* (1934) 139 Cal.App. 421, 426, 34 P.2d 218.) [FN 2.} ¶ FN2. No pro-tanto extinguishment of the granted easement results from this decision which determines that Grapevine's current use of a portion of the easement does not interfere with Scruby's right of ingress and egress to their property as presently developed." (Scruby v. Vintage Grapevine, Inc. (1995) 37 Cal.App.4th 697, 704-706.)

There is evidence and verified allegations of the defendant yelling and screaming at plaintiff Terry Stephens to stay off the defendants' land while he was on the express, deeded easement and that defendant erected a fence and difficult to open the gate with a "KEEP OUT" sign across the easement road when there never was a gate of the fence before and without a reasonable basis to erect a gate or fence at that location.

There is conflicting evidence concerning plaintiff Terry Stephens allegedly trespassing outside the easement.

Contrary to the defendant's statements in his declaration that the easement is for private use only and limited to a meandering path solely for the purpose of access to the American River, the easement granted by recorded deed is a non-exclusive right of way and easement for roadway and utilities along the described 50 foot wide strips of land across the subject parcels intended to be used for the mutual use and benefits of lands of the parties and for

future divisions of the property and that the grantors mutually covenanted and agreed for themselves, their respective heirs, assigns and successors in interest that the described strips of land are for general public use. (Emphasis the court's.)

The court finds that plaintiffs have established a reasonable probability/likelihood of ultimately prevailing on the merits that establish the easement is a public road open to members of the public, as well as invitees and guests of plaintiffs.

However, the court also find that the preliminary injunction should address the issue of enclosing the defendant's livestock, if any, on the property, such as by fencing limited to the eastern 50-foot-wide boundary of the easement road, or by maintaining two gates at the North and South boundary lines of the defendant's parcel that are easily opened to allow access to the easement.

The Third District Court of Appeal has held: "We recognize that " '[u]nless it is expressly stipulated that the way shall be an open one, or it appears from the terms of the grant or the circumstances that such was the intention, the owner of the servient estate may erect gates across the way, if they are constructed so as not unreasonably to interfere with the right of passage.' " (*McCoy v. Matich* (1954) 128 Cal.App.2d 50, 53, 274 P.2d 714, quoting 73 A.L.R. 779.) [FN 5.] However, "[w]here an easement under a grant is specific in its terms, '[i]t is decisive of the limits of the easement' [citations]." (*Wilson v. Abrams, supra,* 1 Cal.App.3d at p. 1034, 82 Cal.Rptr. 272.) ¶ FN5. "[T]he grant of a way without reservation of the right to maintain gates does not necessarily preclude the servient estate owner from having such gates, and unless it is expressly stipulated in the grant that the way shall be an open one, or unless a prohibition of gates is implied from the circumstances, the servient owner may maintain a gate across the way if necessary for the use of the servient estate and if the gate does not unreasonably interfere with the right of passage." (Annot., Right to Maintain Gate or

Fence Across Right of Way (1973) 52 A.L.R.3d 9, 15, § 2, and cases cited.)" (Van Klompenburg v. Berghold (2005) 126 Cal.App.4th 345, 350.)

Having read and considered the verified complaint, and the evidence submitted in support of, opposition to, and reply to the opposition, the court finds that weighing the likelihood of the moving party ultimately prevailing on the merits and the relative interim harm to the parties from the issuance of a preliminary injunction, the balance tips in favor of granting the application for a preliminary injunction as requested.

TENTATIVE RULING # 7: PLAINTIFFS' APPLICATION FOR ISSUANCE OF A PRELIMINARY INJUNCTION IS GRANTED. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JULY 8, 2022, IN DEPARTMENT NINE FOR ORAL ARGUMENT AND TO DISCUSS THE ISSUE OF GATES. 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.