1. PEOPLE v. RODRIGUEZ PCL-20190512

Petition for Forfeiture.

The People filed a petition for forfeiture of certain funds seized pursuant to the provisions of Health and Safety Code, §§ 11469, et seq. The unverified petition contends: the sum of $2,775 in U.S. Currency was seized by the El Dorado County Sheriff's Office on or about March 28, 2019; 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 Health and Safety Code, § 11358; the claimant/respondent filed a claim opposing forfeiture in which he contends the funds are his; a criminal case pertaining to the property and related allegations of violations of Health and Safety Code, §§ 11351, 11366, 11352(a), and 11379(a) has been filed under case number P19CRF0095; and claimant was arraigned on May 21, 2019. The People pray for a judgment declaring that the money is forfeited to the State of California.

The People state that they do not waive their right to a jury trial, they intend to try the asset forfeiture case in conjunction with the related criminal trial pursuant to Health and Safety Code, §§ 11488.4(i)(3) and 11488.4(i)(5), and the People intend to conduct civil discovery pursuant to Health and Safety Code, § 11488.5(c)(3).

Claimant/Respondent Rodriguez filed a response to the petition denying the allegations of the unverified petition.

"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).)

"(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).)

Upon the request of the People, the court continued the hearing from May 13, 2022 to September 2, 2022. The proof of service filed on June 6, 2022 declares that notice of the continued hearing date was served by mail to the claimant and his counsel by mail on June 6, 2022.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, SEPTEMBER 2, 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 BROUSSARD 22CV0481

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: $66,570 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 that on April 14, 2022 the petition, notice of judicial asset forfeiture proceeding, blank claim form opposing forfeiture (MC-200), and disclaimer of interest was served by certified mail on Anthony Broussard at a street address and P.O. Box. At the time this ruling was prepared there was no response to the petition or claim opposing forfeiture in the court's file.

"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 the People and respondent requested the hearing be continued. The matter was continued to September 2, 2022.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, SEPTEMBER 2, 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. MATTER OF KUDA 22CV0659

OSC Re: Name Change.

There is no proof of publication in the court's file, which is mandated by Code of Civil Procedure, § 1277(a).

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, SEPTEMBER 2, 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. CITY OF ROCKLIN v. LEGACY FAMILY ADVENTURES – ROCKLIN, LLC PC-20190309

Motion for Leave to Withdraw as Attorney of Record for Defendants.

Defense counsel seeks to be relieved as counsel of record for defendants Busch and Legacy Family Adventures – Rocklin, LLC. The proof of service declares that on July 26, 2022 plaintiff's counsels, cross-defendants, and defendants were served notice of the motion and the moving papers by mail and email.

On August 25, 2022 substitutions of attorney were filed by defendants Busch and Legacy Family Adventures – Rocklin, LLC, which renders this motion moot.

TENTATIVE RULING # 4: THIS MATTER IS DROPPED FROM THE CALENDAR AS MOOT.

5. HARRIS v. PROGRESS HOUSE PC-20210440

Plaintiff's Motion to Compel Further Responses to Requests for Production, Set One, Numbers 4, 9, 11 and 15, to Compel Production of Documents Requested, and for an Award of Monetary Sanctions.

Plaintiff filed a complaint against defendant asserting causes of action for disability discrimination, hostile work environment, failure to accommodate, and violation of Labor Code, § 1102.5. The complaint alleges: plaintiff was hired by defendant in September 2012 and as of September 2020 plaintiff was promoted to Program Director; plaintiff has an asthma disability, which she has had her entire life and has had multiple hospitalizations for severe asthma attacks associated with viral infection; due to her asthma, she is considered a high risk for complications from COVID-19 with a higher probability of serious illness, complications, and death; commencing in March 2020 defendant Progress House operated under strict COVID-19 protocols following State and County guidelines; commencing March 2020 plaintiff and other employees in the administrative offices worked remotely; defendant established a rotation where plaintiff and other employees would work in offices one day a week, with a limited number of employees, each employee isolated in their office, and social distancing strictly maintained; during the period in question, Carlson was a managing agent of defendant; during the time in question, Durst was a managing agent of defendant; Carlson and Durst were openly hostile to mask wearing and COVID-19 protocols; at a Board meeting on March 17, 2021 Carlson and Durst questioned the necessity of the COVID-19 protocols and Carlson questioned why defendant should employ people with high risk medical conditions; in March 2021 Durst informed all managers that in April there would be an Emotional Intelligence meeting, every employee was required to attend the meeting indoors, and masks were

forbidden as it was necessary for the employees to see each other's faces; defendant's actions required the approval of defendant's medical director, who declined to approve that meeting; upon being informed about the meeting, plaintiff emailed Carlson and Durst informing them about her medical condition and that she was not comfortable attending the meeting; plaintiff was ordered to attend without consideration of her medical condition; on March 23, 2021 plaintiff was ordered to be in the office the next day for a meeting with Carlson and Durst; plaintiff protested and requested a virtual meeting; Durst instructed plaintiff she must personally attend; when plaintiff went to that meeting, she observed that Carlson and Durst were not wearing masks, so plaintiff stood in the doorway; Carlson and Durst mocked her for being afraid of COVID-19, were sadistic, and demeaning toward plaintiff, her medical condition, and her fear; during the March 24, 2021 meeting, they announced that Progress House was reopening; plaintiff requested the continued accommodation of remote work due to her high risk medical condition; Carlson scoffed at the request and emphatically said no and that plaintiff had to work in the office; subsequent to March 24, 2021 Carlson and Durst advised employees that masks were no longer required and instructed staff not to wear masks; the medical director at Progress House resigned in March 2021 due to the policies implemented in violation of State and County guidelines; during April and May 2021 plaintiff repeatedly advised Carlson of the County guidelines and protocols of COVID-19, that Progress House was in violation of such protocols, and problems could arise upon inspections of the facilities by the County Department of Health; Carlson was dismissive, angry and hostile about plaintiff's communications and told her that masks did not protect people from COVID and was hostile towards plaintiff for her desire to wear a mask and comply with COVID protocols; plaintiff was instructed in the first half of April 2022 by Carlson to call the County Heath Coordinator and inform him that Progress House was in full compliance with COVID protocols, which was

untrue and plaintiff refused to communicate that information; on April 22, 2021 the Emotional Intelligence meeting occurred in violation of State and County guidelines and protocols; employees were instructed by Carlson and Durst to keep a mask ready in the event a County inspector showed up; in April 2021 Carlson went to each of defendant's facilities and told the staff that masks were no longer required, which violated County mandates; in mid-May 2021 a letter from the County was received, which cited the Camino facility for mask violations; at that same time there was a COVID breakout at that facility; plaintiff advised defendant that the COVID-19 protocols needed to be followed or Progress House would be at risk of losing its County contract; Carlson responded with hostility, stating the protocols were nonsense and unnecessary and telling plaintiff in an angry tone that she should mind her own business; shortly after the citation letter from the County was received and the conversations between Carlson and plaintiff, Carlson informed plaintiff she should not expect to be the Program Manager for long; on May 26, 2021 plaintiff was informed by letter that she was demoted to Project Coordinator with a 24% pay cut in her hourly wage; plaintiff was advised her new position required her to visit all four facilities each week; plaintiff feared for her safety visiting the facilities due to the COVID outbreaks and lack of compliance with protocols; and due to the constant hostility and intimidation by Carlson and Durst about her medical condition, accommodation requests, and COVID protocols violation complaints, their attitude about the protocols, her demotion and being exposed to a greater risk by being required to visit all facilities each week, plaintiff felt continued employment with defendant was intolerable and she resigned on June 7, 2021, thereby being constructively discharged. (Complaint, paragraphs 5, 6, and 8-30.)

Defense counsel by email dated May 16, 2022 agreed to extend the time to file the motion to compel further responses and production to June 21, 2022. (See Declaration of Jeffrey

Lipow in Support of Motion, paragraph 11 and Exhibit 6.) The motion was filed on June 8, 2022.

Plaintiff moves for further responses to Requests for Production, Set One, Numbers 4, 9, 11, and 15 propounded upon defendant; a privilege log to be provided for the documents withheld from production in response to request numbers 4 and 15 premised upon a claim of privilege; and to provide further production of documents responsive to these requests for production. Plaintiff further requests an award of monetary sanctions in the amount of $3,100, based upon the number of hours of legal work to prepare the motion at a rate of $800 per hour, plus a $60 filing fee.

The proof of service declares that the notice of hearing and moving papers were served electronically on the defense counsels. On August 4, 2022 the court issued a minute order continuing the hearing on this motion from August 18, 2022 to September 2, 2022 at 8:30 a.m. in Department Nine due to unavailability of the court on August 18, 2022. The minute order was served by email to plaintiff's counsel and defense counsel.

Defendant filed a late opposition on August 25, 2022, a mere six court days before the hearing date.

"No paper shall be rejected for filing on the ground that it was untimely submitted for filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order shall so indicate." (Rules of Court, Rule 3.1300(d).)

"A trial court has broad discretion under rule 3.1300(d) of the Rules of Court to refuse to consider papers served and filed beyond the deadline without a prior court order finding good cause for late submission. (*Hobson v. Raychem Corp.* (1999) 73 Cal.App.4th 614, 623, 86 Cal.Rptr.2d 497, disapproved on other grounds in *Colmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019, 1031, fn. 6, 130 Cal.Rptr.2d 662, 63 P.3d 220; accord, *Lerma v.*

County of Orange (2004) 120 Cal.App.4th 709, 715–716, 15 Cal.Rptr.3d 609 [trial court has broad discretion to refuse to continue hearing where affidavit did not establish Code Civ. Proc., § 437c, subd. (h) conditions].)" (Bozzi v. Nordstrom, Inc. (2010) 186 Cal.App.4th 755, 765.)

The court would be justified in disregarding the late filed opposition papers.

Defendant opposes the motion on the following grounds: the motion must be denied as there are procedural defects in the notice of motion; a privilege log need not be produced under all circumstances as it is only required if necessary and the response provides a sufficient, specific factual description of the withheld documents in aid of substantiating a claim of privilege in connection with the subject requests for document production; no privilege log is required if disclosure of the information potentially breaches the attorney client privilege; the motion as it relates to requests for production, request numbers 9 and 11 is moot, because amended responses and production was provided recently to plaintiff; and the request for sanctions should be denied, because the parties were unable to resolve the disputes even after extensive meet and confer activities and the conduct did not amount to an abuse of the discovery process.

There was no reply in the court's file at the time this ruling was prepared.

Notice of Motion

Defendant contends that the motion must be denied outright on the following procedural grounds: the notice of motion failed to adequately notify defendant what set of requests for production were being sought to be compelled, because the notice stated "Set Two" and not set one and there are no set two requests received by defendant; the notice does not include requests to compel the production of a privilege log regarding request numbers 4 and 15, despite the fact that such requests are included in the points and authorities in support of the motion and separate statement in support of the motion; plaintiff has failed to cite in the notice

the appropriate code section that provides the grounds for the relief requested; and plaintiff failed to include in the notice a statement about the court's tentative ruling system as required by Local Rule 7.10.05(C).

"Notices must be in writing, and the notice of a motion, other than for a new trial, must state when, and the grounds upon which it will be made, and the papers, if any, upon which it is to be based…" (Code of Civil Procedure, § 1010.)

"A notice of motion must state in the opening paragraph the nature of the order being sought and the grounds for issuance of the order." (Rules of Court, Rule 3.1110(a).)

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.) Therefore, the court finds that the purported violations of Rule 3.1110(a) and Local Rule 7.10.05(C) is not sufficient grounds to deny the motion without reaching the merits of the motion.

While the notice of motion is short on detail, strict compliance with Section 1010 is not required in order for the court to reach the merits of the motion.

"The purpose of the notice requirements "is to cause the moving party to 'sufficiently define the issues for the information and attention of the adverse party and the court.' " (*Luri, supra,* at p. 1125, 132 Cal.Rptr.2d 680, quoting *Hernandez v. National Dairy Products* (1954) 126 Cal.App.2d 490, 493, 272 P.2d 799.) Sometimes this purpose is met notwithstanding deficient notice. For example, it may be sufficient that the supporting papers contain the grounds for the relief sought, even if the notice does not. (*Luri,* at p. 1125, 132 Cal.Rptr.2d 680; *366–386 Geary St., L.P. v. Superior Court* (1990) 219 Cal.App.3d 1186, 1200, 268 Cal.Rptr. 678.) It also may be sufficient if the omitted issue, or ground for relief, was raised without objection before the trial court. (*Fredrickson v. Superior Court* (1952) 38 Cal.2d 593, 598, 241 P.2d 541

[“accepting petitioner's claim that the notice of motion was insufficient, the grounds were raised without objection in the trial court at the hearing on the motion”].)” (Kinda v. Carpenter (2016) 247 Cal.App.4th 1268, 1277.)

“Even though the notice of motion fails to state a particular ground for the motion, where the notice states, as here, that the motion is being made upon the notice of motion and accompanying papers and the record, and these papers and the record support that particular ground, the matter is properly before the court and the defect in the notice of motion should be disregarded. (*Savage v. Smith* (1915) 170 Cal. 472, 474, 150 p. 353.)” (Carrasco v. Craft (1985) 164 Cal.App.3d 796, 808.)

The notice of motion clearly and unambiguously states: “**PLEASE TAKE FURTHER NOTICE** that pursuant to C.C.P. §§ 2023.010 and 2031.320(b), Plaintiff requests monetary sanctions against the Defendant Progress House and its attorneys, Duggan, McHugh Law Corporation, jointly and severally, in the amount of $3,100. ¶ This motion is based upon this Notice, the Declaration of Jeffrey A. Lipow and the Memorandum of Points and Authorities attached hereto, the Separate Statement filed concurrently herewith, and all pleadings, files and documents on file herein.”

The court finds that the notice of motion and accompanying papers sufficiently define the issues raised in this motion for the information and attention of the defendant and the court.

The incorrect reference to the set number of the requests was an obvious clerical error. Defendant suffered no prejudice from the error and, in fact, had actual knowledge that plaintiff was referring to set one requests for production as the only requests propounded and had no difficulty with opposing the matter on the merits and preparing a separate statement in opposition that opposed the issues raised related to the set one requests at issue.

The notice and moving papers correctly identify the relief sought. These matters are properly before the court and any defect in the notice of motion should be disregarded. (Carrasco v. Craft (1985) 164 Cal.App.3d 796, 808.)

The remedies sought in the requests to compel the production of a privilege log regarding request numbers 4 and 15 and to compel further responses and production concerning those requests are explicitly stated in the points and authorities in support of the motion and separate statement in support of the motion. These matters are properly before the court and any defect in the notice of motion should be disregarded. (Carrasco v. Craft (1985) 164 Cal.App.3d 796, 808.)

The appropriate code sections supporting the grounds for the requested relief are sufficiently cited in the notice and moving papers. These matters are properly before the court and any defect in the notice of motion should be disregarded. (Carrasco v. Craft (1985) 164 Cal.App.3d 796, 808.)

The request to deny the motion on procedural grounds is denied. The fundamental principles of due process were satisfied as defendant clearly had adequate notice and an opportunity to respond to the motion.

Motion to Compel Further Production General Principles

"(a) The party to whom an inspection demand has been directed shall respond separately to each item or category of item by any of the following: ¶ (1) A statement that the party will comply with the particular demand for inspection and any related activities. ¶ (2) A representation that the party lacks the ability to comply with the demand for inspection of a particular item or category of item. ¶ (3) An objection to the particular demand. ¶ (b) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the demanding party. ¶ (c)

Each statement of compliance, each representation, and each objection in the response shall bear the same number and be in the same sequence as the corresponding item or category in the demand, but the text of that item or category need not be repeated. (Code of Civil Procedure, § 2031.210.) "A statement that the party to whom an inspection demand has been directed will comply with the particular demand shall state that the production, inspection, and related activity demanded will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production." (Code of Civil Procedure, § 2031.220.) "(a) Any documents demanded shall either be produced as they are kept in the usual course of business, or be organized and labeled to correspond with the categories in the demand. ¶ (b) If necessary, the responding party at the reasonable expense of the demanding party shall, through detection devices, translate any data compilations included in the demand into reasonably usable form." (Code of Civil Procedure, § 2031.280.) "A representation of inability to comply with the particular demand for inspection shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." (Code of Civil Procedure, § 2031.230.) "(a) If only part of an item or category of item in an inspection demand is objectionable, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category. ¶ (b) If the responding party objects to the demand for

inspection of an item or category of item, the response shall do both of the following: ¶ (1) Identify with particularity any document, tangible thing, or land falling within any category of item in the demand to which an objection is being made. ¶ (2) Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted." (Code of Civil Procedure, § 2031.240.) "The party to whom the demand for inspection is directed shall sign the response under oath unless the response contains only objections." (Code of Civil Procedure, § 2031.250(a).)

"On receipt of a response to an inspection demand, the party demanding an inspection may move for an order compelling further response to the demand if the demanding party deems that any of the following apply: ¶ (1) A statement of compliance with the demand is incomplete. ¶ (2) A representation of inability to comply is inadequate, incomplete, or evasive. ¶ (3) An objection in the response is without merit or too general." (Code of Civil Procedure, § 2031.310(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 discovery sought by the inspection demand. ¶ (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2031.310(b).)

An appellate court has expressly found that good cause for discovery of the requested documents and things may be established by reference to the pleadings of the action. That appellate court held: "A party seeking to compel discovery must therefore "set forth specific facts showing good cause justifying the discovery sought." (§ 2031.310, subd. (b)(1); see *Calcor Space Facility, Inc. v. Superior Court, supra,* 53 Cal.App.4th at p. 223, 61 Cal.Rptr.2d

567.) To establish good cause, a discovery proponent must identify a disputed fact that is of consequence in the action and explain how the discovery sought will tend in reason to prove or disprove that fact or lead to other evidence that will tend to prove or disprove the fact. ¶ The facts of consequence in the New York lawsuit between UMG and Escape may be found in UMG's complaint and Escape's affirmative defenses and counterclaims." (Digital Music News LLC v. Superior Court (2014) 226 Cal.App.4th 216, 224.)

With the above-cited principles in mind, the court will rule on the motion to compel further resonses to requests for production and production of additional documents.

Request Number 4

Plaintiff requests any and all documents that reflect, evidence, and/or pertain to any adverse employment action against plaintiff from the date of her hire through the present, including, but not limited to terminations, demotions, transfers, notices to correct deficiencies, warnings, and comment cards.

Defendant asserted the following objections: overbroad as to time and/or scope; unduly burdensome and oppressive; the terms "reflect, evidence, and/or pertain" and "including but not limited to" are vague and ambiguous; the information sought is not relevant or reasonably likely to lead to the discovery of admissible evidence; it seeks commercially sensitive or private documents such that it violates the privacy rights of defendant and third parties, including clients and other employees; and it seeks documents privileged by the attorney client privilege or work product doctrine.

The response concluded that subject to and without waiving the objections, in addition to the documents already produced, defendant will produce all documents that reflect, evidence, and/or pertain to plaintiff's May 2021 demotion, except for any privileged attorney client communications.

The scope of the request is not overbroad as to the description of the types of records requested in light of the facts alleged and issues raised in this case. However, the request is overbroad as to the time period. Plaintiff allegedly resigned from her employment on June 7, 2021, which she alleges under the circumstances amounted to constructive discharge. (Complaint, paragraph 30.) There does not appear to be any justification for seeking documents concerning adverse employment action against plaintiff after she resigned, which would not appear to exist. The objection is overruled in part and sustained in part. The order compelling a further response and production is limited to documents from the date of plaintiff's hire to the date she resigned.

The request is not unduly burdensome and oppressive. ""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is unduly burdensome or expensive, the court takes into account "the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.) Requesting production of documents related to adverse employment action against plaintiff in light of the facts alleged and issues raised in this case can not be considered unduly burdensome or oppressive, particularly when limited to between the date of plaintiff's hire and the date plaintiff terminated her employment with defendant. The unduly burdensome and oppression objections are overruled.

The terms "reflect, evidence, and/or pertain" and "including but not limited to" are not vague and/or ambiguous. The objection is overruled.

The information sought is relevant or reasonably likely to lead to the discovery of admissible evidence.

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" (Code of Civil Procedure, § 2017.010.)

In discovery proceedings, information is within the scope of discovery if it is relevant to the subject matter of the litigation and information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. It need not be admissible, provided it can reasonably lead to admissible evidence. (Gonzalez v. Superior Court (1995) 33 Cal.App.4th 1539, 1546.) "The test of relevancy in discovery proceedings is a broad one." (Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 7.)

"The purpose of the discovery rules is to 'enhance the truth-seeking function of the litigation process and eliminate trial strategies that focus on gamesmanship and surprise.' (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254, 226 Cal.Rptr. 306.) In other words, the discovery process is designed to '"make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."' (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal.App.4th 377, 389.)

The relevancy objection is overruled.

- Privilege Log

Plaintiff's counsel declares that despite demands for a privilege log regarding request numbers 4 and 15, defendant refused to produce a privilege log or its equivalent in response to those requests for production. (Declaration of Jeffrey Lipow in Support of Motion, paragraph 21.)

"If the responding party objects to the demand for inspection, copying, testing, or sampling of an item or category of item, the response shall do both of the following: ¶ (1) Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made. ¶ (2) Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted." (Emphasis added.) (Code of Civil Procedure, § 2031.240(b).)

"(c)(1)If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log. ¶ (2) It is the intent of the Legislature to codify the concept of a privilege log as that term is used in California case law. Nothing in this subdivision shall be construed to constitute a substantive change in case law." (Code of Civil Procedure, § 2031.240(c).)

"Privilege logs have long been used by practitioners to list and describe the items to be protected. But the expression " 'privilege log' " appeared nowhere in the Code of Civil Procedure, rather it was merely "jargon, commonly used by courts and attorneys to express the requirements of [section 2031.240, subdivision (b)]." (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 292, 4 Cal.Rptr.3d 883 (*Hernandez*); see *Lockyer, supra,* 122 Cal.App.4th at pp. 1073–1074, 19 Cal.Rptr.3d 324; *Best Products, Inc. v. Superior Court* (2004) 119 Cal.App.4th 1181, 1188–1189, 15 Cal.Rptr.3d 154 (*Best Products*).) " 'The purpose of a "privilege log" is to provide a specific factual description of documents in aid of substantiating a claim of privilege in connection with a request for document production.

[Citation.] The purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege.' " (*Ibid.*) In 2012, the Legislature amended section 2031.240 "to codify the concept of a privilege log as that term is used in California case law." (§ 2031.240, subd. (c)(2).) The new section 2031.240, subdivision (c)(1), provides, "If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log." In adding this subdivision, the Legislature declared, "Nothing in this subdivision shall be construed to constitute a substantive change in case law." (§ 2031.240, subd. (c)(2).)" (Emphasis added.) (Catalina Island Yacht Club v. Superior Court (2015) 242 Cal.App.4th 1116, 1125.)

Defendant has claimed certain documents are protected by the Constitutional Right to Privacy of the defendant corporation, its employees and third parties; and the request seeks documents privileged by the attorney client privilege or work product doctrine. Defendant argues that defendant need not provide a privilege log and merely asserting the privilege is sufficient, because providing the specific factual description of the withheld documents in aid of substantiating a claim of privilege in connection with this request for document production could potentially breach the attorney-client privilege. Defendant is statutorily required to provide a privilege log that shall provide a specific factual description of these documents in aid of substantiating a claim of privilege in connection with the request for document production. Merely claiming the privilege is not the equivalent of a privilege log and does not meet the statutorily mandated disclosure.

The motion for a further response to request number 4 is granted in part and denied in part. Defendant is ordered to provide further responses and production of documents in the requested category limited to non-privileged documents from the date of plaintiff's hire to the

date she resigned from employment. Defendant is further ordered to provide a privilege log concerning the documents withheld on a claim of privilege.

<u>Request Number 9</u>

Request number 9 sought production of the minutes of all of defendant's board of director meetings from February 1, 2020 to the present.

Defendant asserted the following objections: overbroad as to time and/or scope; unduly burdensome and oppressive; it seeks documents that post-date plaintiff's employment; the information sought is not relevant or reasonably likely to lead to the discovery of admissible evidence; it seeks commercially sensitive or private documents such that it violates the privacy rights of defendant and third parties, including clients and other employees; and it seeks documents privileged by the attorney client privilege or work product doctrine.

The August 22, 2022 amended response to request number 9 added the following: "Subject to and without waiving the objections, Responding Party amends its response as follows: After a diligent search and reasonable inquiry, Responding Party will produce all non-privileged responsive documents in its possession, custody or control, including PHI_0001095-PHI_001129."

The motion to compel a further response and further production related to request number 9 was not rendered moot by the amended response and production. The amended response and production was subject to and without waiving a list of objections, which must be addressed.

Although plaintiff did not request a privilege log related to this request, due to the late opposition, plaintiff was not afforded a reasonably opportunity to reply to the opposition and to request a privilege log in light of the amended response. Should plaintiff wish to request a privilege log for this request number, plaintiff will need to seek oral argument and request it during the hearing.

The request is overbroad as to time and scope. The minutes sought extend until the present day, which is more than one year after plaintiff's resignation from employment with defendant. In addition, the entire complaint is directed at issues related to plaintiff's medical condition, requests for accommodation, defendant's alleged refusal to follow COVID-19 guidelines, plaintiff's demotion, and her alleged constructive discharge. Any other Board business on different subjects set forth in the minutes have nothing to do with the issues in this case.

The further response must be limited to Board minutes from January 1, 2020 to June 7, 2021 and limited to subjects concerning plaintiff's medical condition, requests for accommodation, defendant's alleged refusal to follow COVID-19 guidelines, plaintiff's demotion, and her alleged constructive discharge.

In addition, the wholesale nature of the request also goes beyond the scope of discovery. The relevancy objection is overruled in part and sustained in part.

The request is unduly burdensome and oppressive. ""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is unduly burdensome or expensive, the court takes into account "the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.) To alleviate the burden and oppression, the production must be limited to Board minutes from January 1, 2020 to June 7, 2021 and limited to subjects concerning plaintiff's medical condition, requests for accommodation, defendant's alleged refusal to follow COVID-19 guidelines, plaintiff's demotion, and her alleged constructive discharge.

In summary, the court grants the motion to compel a further response to request number 9 in part and denies the motion in part. The court orders defendant to provide a further response to request number 9 limited in time from January 1, 2020 to June 7, 2021 and limited to subjects concerning plaintiff's medical condition, requests for accommodation, defendant's alleged refusal to follow COVID-19 guidelines, plaintiff's demotion, and her alleged constructive discharge.

Request Number 11

Request number 11 seeks production of all documents pertaining to any communications between defendant and any agency or department of the County of El Dorado from January 1, 2020 through the present.

Defendant asserted the following objections: overbroad as to time and/or scope; unduly burdensome and oppressive; it seeks documents that post-date plaintiff's employment; the information sought is not relevant or reasonably likely to lead to the discovery of admissible evidence; it seeks commercially sensitive or private documents such that it violates the privacy rights of defendant and third parties, including clients and other employees; it seeks documents privileged by the attorney client privilege or work product doctrine; and the documents are equally available to plaintiff.

The August 22, 2022 amended response to request number 9 added the following: "Subject to and without waiving the objections, Responding Party amends its response as follows: After a diligent search and reasonable inquiry, Responding Party will produce all non-privileged responsive documents in its possession, custody or control, including PHI_0001130-PHI_001171."

The motion to compel a further response and further production related to request number 11 was not rendered moot by the amended response and production. The amended response

and production was made subject to and without waiving a list of objections, which must be addressed.

The request is overbroad as to time and scope. All communication documents between the defendant and any agency or department of the County about any subject is truly overbroad in scope and not limiting the time period to end on the date of plaintiff's termination makes the request overbroad as to time. The issues concerning compliance with COVID-19 requirements and the defendant's alleged departure from such mandates does not justify wholesale production of all documents sent between the plaintiff and County, including documents entirely unrelated to such issues.

The objection is sustained in part and overruled in part. The order compelling a further response to this request will be limited in time from January 1, 2020 to June 7, 2021 and the subject of the communications limited to defendant violating COVID protocols, violating contract terms, and contract cancellation.

In addition, the wholesale nature of the request also goes beyond the scope of discovery. The relevancy objection is overruled in part and sustained in part.

The request is unduly burdensome and oppressive as it seeks production of numerous documents unrelated to the issues in this case. ""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is unduly burdensome or expensive, the court takes into account "the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.) To alleviate the burden and oppression, the production must be limited to all documents pertaining to any communications between defendant and any agency

or department of the County of El Dorado from January 1, 2020 to June 7, 2021 and limited to the subject of defendant violating COVID protocols, violating contract terms, and contract cancellation.

The communications between the defendant and the County agencies and departments are not equally available to plaintiff, a former employee of a private corporation. As either the originator of the communication, or the recipient of a communication from the County, the defendant has immediate availability to those communication documents as they are kept in the corporate records, whereas the plaintiff as a former employee/citizen of the County would have to subpoena the documents from the County records, file a FOIA request to obtain the documents from the County, or request production from defendant, as plaintiff has done. The equally available objection is overruled.

Although plaintiff did not request a privilege log related to this request, due to defendant's late opposition, plaintiff was not afforded a reasonably opportunity to reply to the opposition and to request a privilege log in light of the amended response. Should plaintiff wish to request a privilege log for this request number, plaintiff will need to seek oral argument and request it during the hearing.

In summary, the court grants the motion to compel a further response to request number 11 in part and denies the motion in part. The court orders defendant to provide a further response to request number 11 limited in time from January 1, 2020 to June 7, 2021 and communications documents limited to the subject of defendant violating COVID protocols, violating contract terms and contract cancellation.

Request Number 15

Request number 15 seeks production of all documents, including, but not limited to emails, instant messages, text messages, letters, memoranda by and between any of your employees,

members of the Board of Directors, officers or agents pertaining to changing plaintiff's title to Project Coordinator and reducing her rate of pay to $19 per hour.

Defendant asserted the following objections: overbroad as to time and/or scope; unduly burdensome and oppressive; the term "pertaining to" is vague and ambiguous; the information sought is not relevant or reasonably likely to lead to the discovery of admissible evidence; the request fails to identify the documents sought with reasonable particularity sufficient to enable defendant to comply; it seeks commercially sensitive or private documents such that it violates the privacy rights of defendant and third parties, including clients and other employees; and it seeks documents privileged by the attorney client privilege or work product doctrine.

The response concluded that subject to and without waiving the objections, in addition to the documents already produced, defendant will produce all documents in its possession, custody or control that pertain to changing plaintiff's title to Project Coordinator and reducing her rate of pay to $19,00 per hour, except for any privileged attorney client communications.

While there is no time limitation, the request is limited to the subject matter of changing plaintiff's title to Project Coordinator, which effectively limits the time to a period shortly before the change and shortly thereafter. The overbroad objection is overruled.

The request is not unduly burdensome and oppressive. ""Oppression" means the ultimate effect of the burden of responding to the discovery is "incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417, 15 Cal.Rptr. 119, 364 P.2d 295.) In considering whether the discovery is unduly burdensome or expensive, the court takes into account "the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation." (Code Civ. Proc., § 2019.030, subd. (a)(2).)" (People v. Sarpas (2014) 225 Cal.App.4th 1539, 1552.)

The term "pertaining to" is not vague and ambiguous. The vague and ambiguous objection is overruled.

The information sought is relevant or reasonably likely to lead to the discovery of admissible evidence. The relevancy objection is overruled,

The request identifies the documents sought with reasonable particularity sufficient to enable defendant to comply. The identification objection is overruled.

- Privilege Log

Plaintiff's counsel declares that despite demands for a privilege log regarding request numbers 4 and 15, defendant refused to produce a privilege log or its equivalent in response to those requests for production. (Declaration of Jeffrey Lipow in Support of Motion, paragraph 21.)

"If the responding party objects to the demand for inspection, copying, testing, or sampling of an item or category of item, the response shall do both of the following: ¶ (1) Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made. ¶ (2) Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted." (Emphasis added.) (Code of Civil Procedure, § 2031.240(b).)

"(c)(1)If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log. ¶ (2) It is the intent of the Legislature to codify the concept of a privilege log as that term is used in California

case law. Nothing in this subdivision shall be construed to constitute a substantive change in case law." (Code of Civil Procedure, § 2031.240(c).)

"Privilege logs have long been used by practitioners to list and describe the items to be protected. But the expression " 'privilege log' " appeared nowhere in the Code of Civil Procedure, rather it was merely "jargon, commonly used by courts and attorneys to express the requirements of [section 2031.240, subdivision (b)]." (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 292, 4 Cal.Rptr.3d 883 (*Hernandez*); see *Lockyer, supra,* 122 Cal.App.4th at pp. 1073–1074, 19 Cal.Rptr.3d 324; *Best Products, Inc. v. Superior Court* (2004) 119 Cal.App.4th 1181, 1188–1189, 15 Cal.Rptr.3d 154 (*Best Products*).) " 'The purpose of a "privilege log" is to provide a specific factual description of documents in aid of substantiating a claim of privilege in connection with a request for document production. [Citation.] The purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege.' " (*Ibid.*) In 2012, the Legislature amended section 2031.240 "to codify the concept of a privilege log as that term is used in California case law." (§ 2031.240, subd. (c)(2).) The new section 2031.240, subdivision (c)(1), provides, "If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log." In adding this subdivision, the Legislature declared, "Nothing in this subdivision shall be construed to constitute a substantive change in case law." (§ 2031.240, subd. (c)(2).)" (Emphasis added.) (Catalina Island Yacht Club v. Superior Court (2015) 242 Cal.App.4th 1116, 1125.)

Defendant has claimed certain documents are protected by the Constitutional Right to Privacy of the defendant corporation, its employees and third parties; and the request seeks documents privileged by the attorney client privilege or work product doctrine. Defendant

argues that defendant need not provide a privilege log and merely asserting the privilege is sufficient, because providing the specific factual description of the withheld documents in aid of substantiating a claim of privilege in connection with this request for document production could potentially breach the attorney-client privilege. Defendant is statutorily required to provide a privilege log that shall provide a specific factual description of the withheld documents in aid of substantiating a claim of privilege in connection with this request for document production. Merely claiming the privilege is not the equivalent of a privilege log and does not meet the statutorily mandated disclosure.

The motion to compel further responses and production regarding request number 15 is granted. Defendant is ordered to provide a further response to request number 15 and to produce the documents responsive to the request, except those documents claimed to be privileged. Defendant is further ordered to provide a privilege log that shall provide a specific factual description of documents withheld in aid of substantiating a claim of privilege in connection with request for production number 15.

Sanctions

"…If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code of Civil Procedure, § 2023.030(a).)

"The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code of Civil Procedure, § 2031.320(b).)

The court may award sanctions under the Discovery Act in favor of the moving party even though no opposition to the motion to compel was filed, or the opposition was withdrawn, or the requested discovery was provided to the moving party after the motion was filed. (Rules of Court, Rule 3.1348(a).)

It appears appropriate under the circumstances presented to award plaintiff monetary sanctions in the amount of $1,355 payable by defendant within ten days.

TENTATIVE RULING # 5: PLAINTIFFS' MOTION TO COMPEL FURTHER RESPONSES AND PRODUCTION AND FOR MONETARY SANCTIONS IS GRANTED IN PART AND DENIED IN PART AS STATED IN THE TEXT OF THE RULING. DEFENDANT IS ORDERED TO PROVIDE A FURTHER RESPONSE TO REQUESTS FOR PRODUCTION, SET ONE, NUMBER 9 LIMITED IN TIME FROM JANUARY 1, 2020 TO JUNE 7, 2021 AND LIMITED TO SUBJECTS CONCERNING PLAINTIFF'S MEDICAL CONDITION, REQUESTS FOR ACCOMMODATION, DEFENDANT'S ALLEGED REFUSAL TO FOLLOW COVID-19 GUIDELINES, PLAINTIFF'S DEMOTION, AND HER ALLEGED CONSTRUCTIVE DISCHARGE, EXCEPT THOSE DOCUMENTS CLAIMED TO BE PRIVILEGED, WITHIN TEN DAYS. DEFENDANT IS ORDERED TO PROVIDE A FURTHER RESPONSE TO REQUESTS FOR PRODUCTION, SET ONE, NUMBER 11 LIMITED IN TIME FROM JANUARY 1, 2020 TO JUNE 7, 2021 AND COMMUNICATION DOCUMENTS LIMITED TO THE SUBJECT OF DEFENDANT VIOLATING COVID PROTOCOLS, VIOLATING CONTRACT TERMS AND CONTRACT CANCELLATION, EXCEPT THOSE DOCUMENTS CLAIMED TO BE PRIVILEGED, WITHIN TEN DAYS. DEFENDANT IS ORDERED TO PROVIDE A FURTHER RESPONSE AND PRODUCTION OF DOCUMENTS REQUESTED IN REQUESTS FOR PRODUCTION, SET ONE, NUMBER 4, LIMITED TO THE TIME PERIOD OF SEPTEMBER 2012 WHEN PLAINTIFF WAS HIRED UNTIL THE DATE SHE RESIGNED FROM

EMPLOYMENT ON JUNE 7, 2021, EXCEPT THOSE DOCUMENTS CLAIMED TO BE PRIVILEGED, WITHIN TEN DAYS. DEFENDANT IS ORDERED TO PROVIDE A FURTHER RESPONSE TO REQUESTS FOR PRODUCTION, SET ONE NUMBER 15 AND TO PRODUCE THE DOCUMENTS RESPONSIVE TO THE REQUEST, EXCEPT THOSE DOCUMENTS CLAIMED TO BE PRIVILEGED, WITHIN TEN DAYS. DEFENDANT IS FURTHER ORDERED TO PROVIDE A PRIVILEGE LOG THAT SHALL PROVIDE A SPECIFIC FACTUAL DESCRIPTION OF DOCUMENTS WITHHELD UNDER A CLAIM OF PRIVILEGE IN AID OF SUBSTANTIATING THE CLAIM OF PRIVILEGE IN CONNECTION WITH REQUESTS FOR PRODUCTION, SET ONE, NUMBERS 4 AND 15 WITHIN TEN DAYS. DEFENDANT IS ALSO ORDERED TO PAY PLAINTIFF MONETARY SANCTIONS IN THE AMOUNT OF $1,355 WITHIN TEN DAYS. NO HEARING ON THIS MATTER WILL BE HELD (<u>LEWIS V. SUPERIOR COURT</u> (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, SEPTEMBER 2, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

6. OGDEN v. JOHNSON 22CV0494

Defendant Johnson's Motion to Dissolve June 10, 2022 Preliminary Injunction.

On April 11, 2022, plaintiffs Levi Ogden and Jacqueline Slight filed a complaint asserting causes of action for quiet title (1st and 6th C/A), declaratory relief – easement by necessity (2nd and 7th C/A), declaratory relief – implied easement (3rd and 8th C/A), declaratory relief – prescriptive easement (4th and 9th C/A), and declaratory relief – equitable easement (5th and 10th C/A) against defendant Phillip Johnson. Also on April 11, 2022, plaintiffs filed an ex parte application for temporary restraining order and preliminary injunction. On April 13, 2022, the court granted the application for temporary restraining order, enjoining defendant from preventing plaintiffs and their guests and invitees from using Eagle Mine Road in any way, and defendant is required to (1) remove all barriers along Eagle Mine Road, (2) provide access to the electronic gate, and (3) unlock the back gate.

After oral argument at the hearing on the preliminary injunction on June 10, 2022 the court granted the request for a preliminary injunction. The court directed that gate card or key was to be provided to plaintiffs; plaintiffs are to make sure the gates are closed and locked; and plaintiffs shall not drive more than 10 miles per hour on the road.

On July 25, 2022 defendant filed a motion to dissolve the preliminary injunction on the grounds that the plaintiffs have repeatedly failed to close and lock the gates and have failed to drive less than 10 miles per hour on the road; this conduct has caused actual damages in the form of dust and materials kicked up; and plaintiffs have not posted the $2,500 bond ordered by the court..

Plaintiffs oppose the motion on the following grounds: defendant has failed to show a material change of facts justifying dissolution of the injunction; defendant failed to comply with

the injunction by relocation of the easement road since the injunction was issued; due to the lack of an electronic gate, plaintiff Slight has had to unlock, open, and close the manual gate to allow access to her property, which led to the confrontation between the parties; plaintiffs have done their best to comply with shutting the gates and locking them; if the injunction is dissolved, plaintiff Slight will lose all access to her residence and plaintiff Ogden will lose all access to his property; and after the motion was filed, the plaintiffs obtained and posted the bond.

Defendant replied to the opposition that plaintiff's failure to comply with the court's instructions in the preliminary injunction is a material change justifying dissolution of the injunction.

Plaintiffs' Objections to Evidence Submitted in Support of Motion

The objections to the portions of defendant's declaration in support of the motion where he states plaintiffs repeatedly failed to close and lock the gate and repeatedly failed to drive on the easement less than 10 miles per hour are sustained.

General Principles Re: Dissolution of Preliminary Injunction

"In any action, the court may on notice modify or dissolve an injunction or temporary restraining order upon a showing that there has been a material change in the facts upon which the injunction or temporary restraining order was granted, that the law upon which the injunction or temporary restraining order was granted has changed, or that the ends of justice would be served by the modification or dissolution of the injunction or temporary restraining order." (Code of Civil Procedure, § 533.)

"A superior court should modify or vacate an injunction upon motion by the enjoined party if it finds a change in the facts *or* law *or* the ends of justice would be served by modifying or revoking the injunction. (*Harbor Chevrolet Corp. v. Machinists Local Union 1484* (1959) 173

Cal.App.2d 380, 384, 343 P.2d 640; *Sontag Chain Stores Co. v. Superior Court, supra,* 18 Cal.2d 92, 94–95, 113 P.2d 689.) This rule applies to preliminary injunctions as well as permanent injunctions. (*Union Interchange, Inc. v. Savage* (1959) 52 Cal.2d 601, 606, 342 P.2d 249.)" (New Tech Developments v. Bank of Nova Scotia (1987) 191 Cal.App.3d 1065, 1072.)

"It is settled that where there has been a change in the controlling facts upon which a permanent injunction was granted, or the law has been changed, modified or extended, or where the ends of justice would be served by modification or dissolution, the court has the inherent power to vacate or modify an injunction where the circumstances and situation of the parties have so changed as to render such action just and equitable. (*Sontag Chain Stores Co. v. Superior Court*, 18 Cal.2d 92, 94–95, 113 P.2d 689; *Union Interchange, Inc. v. Savage*, 52 Cal.2d 601, 604, 342 P.2d 249; *Palo Alto-Menlo Park Yellow Cab Co. v. Santa Clara County Transit Dist.*, 65 Cal.App.3d 121, 130, 135 Cal.Rptr. 192; *Brunzell Constr. Co. v. Harrah's Club*, 253 Cal.App.2d 764, 772, 62 Cal.Rptr. 505.) This principle governs even though the judgment providing the injunctive relief is predicated upon stipulation of the parties. (*Palo Alto-Menlo Park Yellow Cab Co. v. Santa Clara County Transit Dist., supra*, 65 Cal.App.3d 121, 130, 135 Cal.Rptr. 192.) The trial court's decision to either continue, modify or dissolve a permanent injunction will not be set aside on appeal absent the establishment of an abuse of discretion. However, sound judicial discretion calls for modification of a stipulated injunctive decree when circumstances of law existing at the time of issuance have changed, making the original decree inequitable. (*System Federation v. Wright*, 364 U.S. 642, 647, 81 S.Ct. 368, 371, 5 L.Ed.2d 349.)" (Welsch v. Goswick (1982) 130 Cal.App.3d 398, 404–405, disapproved of on another ground in Barrett v. Lipscomb (1987) 194 Cal.App.3d 1524.)

Inasmuch as dissolution of a preliminary injunction is dependent upon defendant showing that there has been a material change in the facts upon which the injunction or temporary restraining order was granted, that the law upon which the injunction or temporary restraining order was granted has changed, or that the ends of justice would be served by the modification or dissolution of the injunction or temporary restraining order, the following evidence submitted in support of, opposition to, and reply to the application for the preliminary injunction is relevant and should be considered in determining if there has been a material change in circumstances, or the ends of justice would be served by modification or dissolution of the preliminary injunction.

Plaintiff Ogden declared in support of the TRO and OSC Re: Preliminary Injunction: plaintiff owns certain real property on Eagle Mine Road having purchased it in March 2019; due to some title issues, the grant deed transferring record title was not recorded until December 10, 2021; plaintiff has exclusively used Eagle Mine Road for access to plaintiff's property several times a month since it was purchased; prior to purchase, plaintiff used the road to visit his mother several times each month; on March 2, 2022, while delivering a load of rock to plaintiff's property, defendant blocked access to the property by locking a gate across the road and refusing to give plaintiff a key to the lock; defendant told plaintiff that plaintiff could no longer use the road; afterwards, defendant further blocked the road by placing logs across it; plaintiff has no way to drive to his property; and the property will lose all value to plaintiff should the TRO and preliminary injunction not be granted. (Declaration of Levi Ogden in Support of TRO and OSC, paragraphs 2-5.)

Plaintiffs' counsel's declaration was attached to the application for the TRO and OSC Re: Preliminary Injunction. Counsel authenticates Exhibits 1-3, which are a survey recorded on June 27, 1968 generally depicting the subject properties/parcels and a 40 foot easement that

tracks the physical location of Eagle Mine Road (Plaintiffs' Exhibit 1); a parcel map recorded on October 5, 1972 that depicts plaintiffs' properties and a non-exclusive road and utility easement that tracks the physical location of Eagle Mine Road (Plaintiffs' Exhibit 2.); and a survey recorded on March 6, 1981 that depicts defendant's property/parcel, the plaintiffs' parcels/properties, and Eagle Mine Road, which is labeled as the approximate location of an existing dirt road and clearly connects the defendant's property to plaintiffs' properties (Plaintiffs' Exhibit 3.). (Declaration of Richard Sopp in Support of TRO and OSC, paragraphs 2-4; and Exhibits 1-3.)

Defendant declared in opposition to the motion for issuance of the preliminary injunction: he owns certain real property on Grizzly Flat Road, which he obtained record title to on September 16, 2019; before defendant purchased the property defendant observed two gates on one end of the property that were secured by locks and keys; the previous owner did not disclose any information that other parcel owners should be allowed to enter and exit that property without permission, except for Frank Stenger, who had an express easement; plaintiffs have access to the main road by crossing through Old Mine Road instead of defendant's property; defendant has witnessed government vehicles use Eagle Mine Road to Access Old Mine Road and use Old Mine Road to access the main road; defendant initially provided plaintiff Slight with an access code to use the electronic gate to enter and exit defendant's property; plaintiff Slight failed to shut the gate properly, which posed a risk to defendant's livestock and personal property; defendant decided to revoke plaintiff Slight's access to the electronic gate; defendant has witnessed several vehicles speed through the road on defendant's property, which caused him fear for his family and livestock; and plaintiffs have not offered to pay for the maintenance and upkeep of the road and gates. (Declaration of Phillip Johnson in Opposition to Motion for Preliminary Injunction, paragraphs 2-11.)

Plaintiff Ogden declared in reply to the motion for issuance of the preliminary injunction: plaintiff has traveled over Eagle Mine Road for over 30 years to visit his mother's property and since 2019 to access plaintiff's own property; for some time there was a single gate across the entrance from Grizzly Fat Road to Eagle Mine Road, however, the gate has never been locked; from time to time a lock or pin was inserted in the gate to make it appear to be locked but it was never actually locked; property owners along the road could always get through the gate without the need for a key or combination of any kind; there was a second gate to defendant's property located 20 feet from where the main gate was located, but the property owners always used the main gate; driving a car over Eagle Mine Road to Old Mine Road is not possible, because both roads pass through numerous private properties over which plaintiff has no legal right to pass; the pathway is blocked by gates on both Eagle Mine Road and Old Mine Road as depicted on plaintiff's Exhibits 9 and 10 attached to the declaration; Old Mine Road is extremely steep, narrow and very rugged; a car without four wheel drive cannot make the trip over the road and it would be impassable with snow in the winter; in recent months defendant has done grading on defendant's property that appears to be an attempt relocate to Eagle Mine Road over defendant's property; the new path is narrow, very steep and would be very difficult to use during winter snows; the new path is depicted in plaintiff's exhibits 11 and 12 attached to the declaration; and over the time plaintiff has used Eagle Mine Road, plaintiff and the other property owners have maintained it from time to time as needed at a cost that never exceeded more than a few hundred dollars in any single year. (Declaration of Levi Ogden in Reply to Motion for Preliminary Injunction, paragraphs 2-5; and Plaintiff's Exhibits 9-12.

Defendant declares in support of the motion to dissolve the preliminary injunction that plaintiffs' failures have caused him imminent and actual harm, such as dust and materials kicked up that have entered his home and made breathing and living in his home difficult.

Defendant also requests the court to take judicial notice that the plaintiffs have not posted the bond in the amount of $2,500 as directed by the court's order.

Plaintiff Levi Ogden declares in opposition to the motion to dissolve the Preliminary Injunction: following issuance of the preliminary injunction, he only accessed his property over the Eagle Mine Road one time; at that time he closed the gates and then locked them; he did not exceed 10 miles per hour while driving across defendant's property; on the date the preliminary injunction was issued, he and his counsel met with defendant and defense counsel in order to attempt to resolve the dispute; they discussed the possibility of relocating the road across defendant's property and they agreed to discuss it further; because of those discussions and his belief that the matter would be resolved, he did not immediately obtain the injunction bond; and when he learned about this motion, he immediately obtained the bond. (Declaration of Plaintiff Levi Ogden in Opposition to the Motion to Dissolve the Preliminary Injunction, paragraphs 2 and 3.)

Plaintiff Jacqueline Slight declares in opposition: after issuance of the preliminary injunction defendant removed the electronic gate and installed a new gate approximately 30 feet from the location of where the electronic gate had been, which also resulted in relocation of the road; since the new gate does not have an electronic opener, every time anyone wants to visit her she must be called by the visitor to have her go down and open the gate; as she was recently assisting her friends who were attempting to leave defendant's property, she was accosted by defendant; during that encounter he swung at her, knocking a flashlight out of her hands; following the encounter she turned and drove back to her house; due to the confrontation, she

did not get out of her car to close and lock the gate, but defendant was standing right by it; since the issuance of the preliminary injunction, she has done her best to shut and lock the gates; other than the previously described incident, she does not recall ever leaving the gates open or unlocked; she has also tried to keep her speed down; and given the condition of the road, it is difficult to go much more than ten miles per hour. (Declaration of Plaintiff Jacqueline Slight in Opposition to the Motion to Dissolve the Preliminary Injunction, paragraphs 2-4.)

Daniel Shelly declares in reply: he is defendant's friend and neighbor; he responded to defendant's property on August 1, 2022 to check on his safety as it takes police a considerable amount of time to arrive at defendant's property; he observed that defendant's gate appeared to have been hit by the driver of a silver BMW as the gate and car were damaged; the driver was large and belligerent; the driver appeared to be inebriated; the driver got out of the vehicle; there appeared to be a man and woman in their early twenties in the car; the driver yelled, cursed and screamed at defendant; he threatened to beat defendant and blast him; he witnessed plaintiff Slight yelling cursing and screaming; and plaintiff Slight refused to provide the driver's name to the police officer. (Declaration of Daniel Shelly in Reply to Opposition, paragraphs 2-9.)

Daniel Shelly did not observe the purported collision incident itself and merely asserts an opinion as to the cause of damage to the vehicle and the gate merely because he observed damage to the car and the damage to the fence. In addition, there is no statement that he had personal knowledge and the basis of personal knowledge that the gate was undamaged up until that date and time.

Karen Johnson declares in reply: she recorded a log of numerous incidents (Exhibit 1.) wherein plaintiff Slight and her guests failed to properly lock the gate, drove at excessive speeds, released their animals, or damaged the property since March 2, 2022; she included

videos, photos (Exhibit 2.), and other supporting documents of each incident in the log; she has explained the photos attached as Exhibit 3 relate to the gate, lock and dogs being released by plaintiff Slight; on August 1, 2022 plaintiff Slight's guest threatened to harm defendant Phillip Johnson and he damaged the gate with his vehicle; and the preliminary injunction causes her fear, anxiety, stress, and overall incapability of enjoying her property in peace. (Declaration of Karen Johnson in Reply to Opposition, paragraphs 2-4.)

Defendant Phillip Johnson declares in reply: to the best of his knowledge, Lance, a friend of Jacqueline Slight, damaged defendant's electronic gate and the electronic gate has not operated properly since the last court hearing; all parties must use the manual non-electronic gate on the property when it was purchased; he has not received any funds for maintenance of the road or gates, including the electronic gate, from plaintiffs; an individual knocked on his door on a date and at a time that is not specified; the individual appeared inebriated, stated his name was Rob, and he was a friend of plaintiff Slight; he demanded access to the gate; the man was a stranger, so he told him to call plaintiff Slight to acquire access; the stranger threatened defendant's life and damaged the defendant's fence with his vehicle; he called the authorities, who took reports; and the preliminary injunction causes him fear, anxiety, stress, and overall incapability of enjoying his property in peace. (Declaration of Defendant Phillip Johnson in Reply to Opposition, paragraphs 2-9.)

The CHP and Sheriff's Department Reports are not attached to Phillip Johnson's declaration as Exhibits 1 and 2 as stated in his declaration. His declaration "to the best of his knowledge" is insufficient to establish personal knowledge of the facts stated thereafter.

The court is unable to find any direction in the preliminary injunction mandating plaintiffs pay for maintenance of the road or electronic gate.

Defendant has raised an entirely new single incident that he claims should require the preliminary injunction to be dissolved and has now submitted a purported log of incidents that was withheld from the initial moving declarations. While Karen Johnson declares she recorded in writing the purported incidents in the log, she does not declare that each and every purported incident logged was personally witnessed by declarant Karen Johnson. The log also includes references to videos that are not in evidence before the court.

Reply evidence is improper under most circumstances as consideration of such evidence after the opposing party submitted an opposition and evidence supporting its opposition violates the fundamental principles of due process, because the opposing party never had a reasonable opportunity to respond and be heard on the new reply evidence.

"The general rule of motion practice, which applies here, is that new evidence is not permitted with reply papers. This principle is most prominent in the context of summary judgment motions, which is not surprising, given that it is a common evidentiary motion. "[T]he inclusion of additional evidentiary matter with the reply should only be allowed in the exceptional case ..." and if permitted, the other party should be given the opportunity to respond. (*Plenger v. Alza Corp.* (1992) 11 Cal.App.4th 349, 362, fn. 8, 13 Cal.Rptr.2d 811; *see Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252, 100 Cal.Rptr.3d 296; *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 316, 125 Cal.Rptr.2d 499.) The same rule has been noted in other contexts as well. (*Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1308, 72 Cal.Rptr.3d 259 [in preliminary injunction proceeding, "the trial court had discretion whether to accept new evidence with the reply papers"].) ¶ This rule is based on the same solid logic applied in the appellate courts, specifically, that "[p]oints raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument."

(*American Drug Stores v. Stroh* (1992) 10 Cal.App.4th 1446, 1453, 13 Cal.Rptr.2d 432; see *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, 720, fn.10, 153 Cal.Rptr.3d 62.) ¶ To the extent defendants argue they had the right to file any reply declarations at all, they are not wrong. Such declarations, however, should not have addressed the substantive issues in the first instance but only filled gaps in the evidence created by the limited partners' opposition. Defendants' decision to wait until the reply briefs to bring forth *any* evidence at all, when the limited partners would have no opportunity to respond, was simply unfair. Thus, while the trial court had discretion to admit the reply declarations, it was not an abuse of discretion to decline to do so. "(Jay v. Mahaffey (2013) 218 Cal.App.4th 1522, 1537–1538.)

In order for the court to consider the reply evidence and not violate plaintiffs' right to due process, the court must allow plaintiffs an opportunity to submit evidence in response to the reply declarations. This matter is continued to 8:30 a.m. on Friday, October 7, 2022 in Department Nine. The plaintiffs' evidence by declarations in response to the declarations in reply shall be filed and served by September 26, 2022. No further declarations or additional filings will be considered at the continued hearing.

Bond Requirement

At the time this ruling was prepared, the court's file indicated the bond had not been posted with the court. While the bond may have been obtained, the bond must be posted on or before the continued hearing date.

TENTATIVE RULING # 6: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, OCTOBER 7, 2022 IN DEPARTMENT NINE. THE PLAINTIFFS' EVIDENCE BY DECLARATIONS IN RESPONSE TO THE DECLARATIONS IN REPLY SHALL BE FILED AND SERVED BY SEPTEMBER 26, 2022. NO FURTHER DECLARATIONS OR ADDITIONAL FILINGS WILL BE CONSIDERED AT THE CONTINUED HEARING.

7. GADDINI v. BOWMAN 22CV0712

Defendant's Motion to Change Venue to Lemhi County, Idaho.

On June 1, 2022 plaintiffs filed a complaint asserting the following causes of action against defendants: negligence (negligent infliction of emotional distress) and intentional infliction of emotional distress. On July 29, 2022 the prayers for property damages and loss of use of property damages were dismissed from the complaint with prejudice.

Defendant moves to transfer venue to the Lemhi County Court in Idaho on the ground that the action involves a dispute over real property located in Lemhi County, Idaho and the action should be brought there. Defendant also requests an award of attorney's fees and expenses.

On August 19, 2022 defendant filed a notice of non-opposition asserting that plaintiffs were required to file and serve the opposition for the hearing set for September 2, 2022 not later than August 11, 2022 and plaintiffs failed to meet that deadline. Defendant's calculation of the due date for the opposition is incorrect.

"…All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days...before the hearing…" (Code of Civil Procedure, § 1005(b).) Local Rule 7.10.02B is consistent with the statute, as it must be. It provides that the opposition must be filed not later than 9 court days before the hearing date. The opposition was due to be filed and served on or before August 22, 2022, which is nine court days before the September 2, 2022 hearing date.

On August 22, 2022 plaintiffs filed a timely opposition and the proof of service declares that the opposition was timely serve on August 22, 2022 by email.

Plaintiffs oppose the motion on the following grounds: the action filed against defendant is specifically limited to the defendant's conduct directed at plaintiffs that allegedly caused them

to suffer emotional distress and allegedly caused plaintiff Bertram to suffer a heart attack requiring a triple bypass surgery; the claims in the instant action have nothing to do with the parties' property rights dispute involving real property in Idaho; and the action is limited to the alleged conduct of defendant directed at plaintiffs that allegedly caused them personal injury in El Dorado County, thereby making El Dorado County Superior Court the proper venue. Plaintiffs request an award of $1,060 in attorney fees and expenses incurred in opposing the motion pursuant to Code of Civil Procedure, § 396b(b).

There was no reply in the court's file at the time this ruling was prepared.

"(a) Except as otherwise provided in Section 396a, if an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof, other than the court designated as the proper court for the trial thereof, under this title, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time he or she answers, demurs, or moves to strike, or, at his or her option, without answering, demurring, or moving to strike and within the time otherwise allowed to respond to the complaint, files with the clerk, a notice of motion for an order transferring the action or proceeding to the proper court, together with proof of service, upon the adverse party, of a copy of those papers. Upon the hearing of the motion the court shall, if it appears that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court. ¶ (b) In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or resisting the motion to transfer whether or not that party is otherwise entitled to recover his or her costs of action. In determining whether that order for expenses and fees shall be made, the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith given the facts and law the party making the

motion or selecting the venue knew or should have known. As between the party and his or her attorney, those expenses and fees shall be the personal liability of the attorney not chargeable to the party. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after opportunity to be heard." (Code Civil Procedure, § 396b.)

"We note at the outset that the county where the complaint was filed is presumptively the proper county for a trial of the action, and the burden of proving otherwise rests with the party moving to change venue, here CIGA. (*Mission Imports, Inc. v. Superior Court* (1982) 31 Cal.3d 921, 929, 184 Cal.Rptr. 296, 647 P.2d 1075 (*Mission Imports*).) To succeed on a motion to change venue, it must be shown that the county in which the action was filed was "improper under any applicable theory." (*La Mirada Community Hospital v. Superior Court* (1967) 249 Cal.App.2d 39, 42, 57 Cal.Rptr. 42.)" (Black Diamond Asphalt, Inc. v. Superior Court (2003) 109 Cal.App.4th 166, 170.)

An action may be tried in the court where it was commenced unless the defendant at the time he answers, demurs, or moves to strike, files a notice of motion for change of venue. (Code of Civil Procedure, § 396b(a).) If the defendant does not answer, demur, or move to strike, he or she may file the motion for change of venue within the time otherwise allowed to respond to the complaint. (Code of Civil Procedure, § 396b(a).)

In discussing the effect of the filing of a motion to change venue, Witkin states: "The timely filing of a motion for change in proper form on the ground of wrong court *suspends that court's jurisdiction to act*. While the motion is pending, the court's power is limited to the hearing and determination of the motion, and it can not take any other judicial action in the case. (Citations omitted.)" (Emphasis in the original.) (3 Witkin, California Procedure, (5th ed. 2008) Actions, § 914, page 1142.)

"The court may, on motion, change the place of trial in the following cases: ¶ (a) When the court designated in the complaint is not the proper court." (Code of Civil Procedure, § 397(a).) The moving party has the burden of proof that the action was brought in the wrong court. (3 Witkin, California Procedure, (5th ed. 2008) Actions, § 912, pages 1139-1140.) "The presumption is, in the absence of an affirmative showing in that particular, that the county in which the title of the action shows it is brought is, prima facie, the proper county…" (Lakeside Ditch Co. v. Packwood Canal Co. (1920) 50 Cal.App. 296, 306.)

"…If the action is for injury to person or personal property or for death from wrongful act or negligence, the superior court in either the county where the injury occurs or the injury causing death occurs or the county where the defendants, or some of them reside at the commencement of the action, is a proper court for the trial of the action…" (Code of Civil Procedure, § 395(a).)

The complaint alleges: on May 17, 2021 defendant maliciously, and without basis, lashed out at plaintiffs, alienating both of these lifelong friends; defendant engaged in venomous rantings that ended by texting plaintiff Bertram's wife accusing plaintiff Bertram of having numerous affairs and numerous prostitutes in Nevada on the way to Idaho and "this is the truth so help me god"; laser focused to target the thing plaintiff Bertram values most, his marriage, there was severe fall out from this conduct, resulting in plaintiff Bertram suffering a heart attack shortly thereafter and requiring a triple bypass surgery; as deer season approached, plaintiffs feared that if given the opportunity, defendant would endanger their safety as defendant had a long history of physical abuse and alcohol abuse; the disjointed and conspiratorial nature of defendant's ravings led plaintiffs to a reasonable conclusion that defendant had fallen back into a routine of heavy alcohol consumption; and these circumstances and the deeply malicious and personal nature of defendant's actions left plaintiffs fearful that defendant will continue to

escalate the conflict into physical violence; defendant's negligent conduct caused plaintiff Bertram's heart attack and the damages resulting from that heart attack; and defendant's conduct caused both plaintiffs to suffer severe emotional distress.. (Complaint, paragraphs 12, 18, 23, 36, 37, and 40-44.)

First, this court has no authority whatsoever to transfer a case to another state. If the court has no subject matter jurisdiction over a dispute concerning real property located in another state, then the remedy would be dismissal for lack of jurisdiction for a California court to decide the issues. If the case asserts claims to real property in Idaho, it is not a matter of just finding a proper venue in California to hear the case.

Second, the complaint in this action does not involve real property rights and the determination of such rights between the parties. The complaint is solely directed against alleged personal injuries from alleged misconduct that apparently arose during the real property dispute between these parties, but does not involve causes of action seeking a determination of the rights and obligations of the parties concerning that real property located in Idaho.

There is no evidence before the court that the physical stress and emotional distress injuries were suffered by plaintiffs in another County in California. Therefore, it appears that defendant has not met his burden to prove El Dorado County where the action was filed is an improper venue. It appears this personal injury case was brought in the proper venue. The motion is denied.

The next question is whether to award attorney fees and expenses to plaintiffs.

Attorney Fees and Expenses

"In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or resisting the motion to transfer whether or

not that party is otherwise entitled to recover his or her costs of action. In determining whether that order for expenses and fees shall be made, the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith given the facts and law the party making the motion or selecting the venue knew or should have known. As between the party and his or her attorney, those expenses and fees shall be the personal liability of the attorney not chargeable to the party. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after opportunity to be heard." (Emphasis added.) (Code of Civil Procedure, § 396b(b).)

Given the prior litigation proceedings between the parties wherein plaintiff originally sought to combine their claims for personal injuries and real property rights disputes to the land in Idaho in a single case in California (Gaddini v. Bowman, Case Number 21CV0218.) and the fact that the complaint in the instant case originally included prayers for property damage and loss of use, which was not dismissed from this action until after this motion was filed and served, the court will exercise its discretion to deny plaintiffs' request for an award of attorney fees and expenses.

TENTATIVE RULING # 7: DEFENDANT'S MOTION TO CHANGE VENUE IS DENIED. PLAINTIFFS' REQUEST FOR AN AWARD OF ATTORNEY FEES AND EXPENSES IS 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, SEPTEMBER 2, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

8. BRANDON v. NORCAL WATER SYSTEMS PC-20190311

Defendants' Motion to Reopen Discovery.

This action was filed on June 4, 2019. A jury trial is set to commence in this action on October 25, 2022 in Department Nine.

Both parties were present at the ex parte hearing on August 12, 2022. Defendants moved to shorten time to hear defendants' motion to reopen discovery and allow discovery to be completed by October 25, 2022, the trial date set in this action. The court set the matter for hearing at 8:30 a.m. on Friday, August 19, 2022 in Department Nine. The court further directed that briefs are due on August 16, 2022 and oppositions are due on August 18, 2022. The motion was continued to September 2, 2022 as the additional/supplemental moving papers and oppositions were not in the courts file at the time the tentative ruling was prepared.

Defendants move to reopen discovery to allow discovery until a cut-off date that is set by the current trial date of October 25, 2022 on the following grounds: plaintiff has continued to treat for inures incurred during the period of time after the June 1, 2021 general discovery cut-off date and August 15, 2021 expert discovery cut-off date set by a court's order at an MSC; after discovery was cut-off and before the October 25, 2022 trial date was set, plaintiff's experts testified that plaintiff will need extensive future medical treatment for his alleged injuries, including weekly treatments; defendants will be severely and unfairly prejudiced if discovery is not reopened, because depending on the outcome of plaintiff's treatment during the over one year period since all discovery was cut-off, the opinions of the experts may have changed and the experts may have additional opinions not previously disclosed at deposition over one year prior to the current trial date; Dr. Reddy has testified plaintiff could return to work with restrictions; defendants should be allowed to explore with discovery whether in the past year plaintiff has mitigated damages by seeking other forms of employment; the P&G person

most knowledgeable deposition needs to be completed so that defendants can understand plaintiff's work conditions, accommodations, and related work issues; and severe and unfair prejudice to defendants will occur in the form of a trial by ambush wherein plaintiffs have all the current medical and employment information and at the same time defendants are deprived from obtaining the same.

Defendant opposes the motion on the following grounds: defendants have failed to diligently perform discovery, including the deposition of the P&G person most knowledgeable; plaintiff is willing to allow limited discovery of plaintiff's medical condition; there is no good cause to generally reopen discovery; there is no need to re-open expert discovery; allowing defendant to perform discovery after the cut-off dates is against the policy of discovery time limits to expedite and facilitate trial preparation and prevent delay; and defendant did not act diligently in bringing the motion as it was filed in April 2022 and the discovery was cut off in June 2021.

Defendants replied to the opposition.

Plaintiff and defendants also filed several declarations and supplemental briefs.

"Except as otherwise provided in this chapter, any party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action." (Code of Civil Procedure, § 2024.020(a).)

"On motion of any party, the court may grant leave to complete discovery proceedings, or to have a motion concerning discovery heard, closer to the initial trial date, or to reopen discovery after a new trial date has been set. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code of Civil Procedure, § 2024.050(a).)

"In exercising its discretion to grant or deny this motion, the court shall take into consideration any matter relevant to the leave requested, including, but not limited to, the

following: ¶ (1) The necessity and the reasons for the discovery. ¶ (2) The diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that the discovery was not completed or that the discovery motion was not heard earlier. ¶ (3) Any likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party. ¶ (4) The length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action." (Code of Civil Procedure, § 2024.050(b).)

"The purposes of California's discovery statutes are well known. They are intended, among other things, to assist the parties and the trier of fact in ascertaining the truth; to encourage settlement by educating the parties as to the strengths of their claims and defenses; to expedite and facilitate preparation and trial; to prevent delay; and to safeguard against surprise. (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376, 15 Cal.Rptr. 90, 364 P.2d 266.) We must construe the statutes time limitations in a way which is consistent with the overall purposes of discovery cited above. (Id. at p. 371, 15 Cal.Rptr. 90, 364 P.2d 266.)" (Beverly Hospital v. Superior Court (1993) 19 Cal.App.4th 1289, 1294-1295.)

"…decisions about whether to grant a continuance or extend discovery "must be made in an atmosphere of substantial justice. When the two policies collide head-on, the strong public policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency." (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 398–399, 107 Cal.Rptr.2d 270.)" (Hernandez v. Superior Court (2004) 115 Cal.App.4th 1242, 1246.)

The initial trial date set in this case is October 25, 2022. The parties agree that the court issued an order regarding discovery cut-off dates at a March 17, 2021 MSC wherein general discovery was to be completed on or before June 1, 2021 and expert disclosure was to be

completed on or before August 17, 2021, well over one year prior to the initial trial date that was later set.

Plaintiff agrees to limited discovery of medical records, yet seeks to prevent reopening expert discovery regarding plaintiff's current condition and prognosis. Plaintiff does not articulate any prejudice that outweighs the strong public policy favoring disposition of this case on the merits. Three of the critical purposes for discovery are to assist the parties and the trier of fact in ascertaining the truth; to facilitate preparation and trial; and to safeguard against surprise. The trial date will not be delayed by reopening discovery and setting the cut-off dates by the current trial date. On the other hand, if not allowed to complete discovery, defendants will be prejudiced in defending the case on the merits without unfair surprise and the ascertainment of the truth will be impaired by preventing completion of discovery.

Having read and considered the various declarations and briefs filed in support of the motion, opposition to the motion, and reply, the court finds that in order to accomplish the purposes of California's discovery statutes in an atmosphere of substantial justice, defendants should be allowed to complete discovery prior to cut-off dates set by the current trial date. The motion is granted.

TENTATIVE RULING # 8: DEFENDANTS' MOTION TO REOPEN DISCOVERY IS GRANTED. THE DISCOVERY CUT-OFF DATE WILL BE SET BY THE OCTOBER 25, 2022 TRIAL DATE. 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, SEPTEMBER 2, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

9. COUNTY OF EL DORADO v. WALDOW 21CV0122

Motion to be Relieved as Counsel of Record for Defendant.

TENTATIVE RULING # 9: ABSENT OPPOSITION. THE MOTION IS GRANTED. WITHDRAWAL WILL BE EFFECTIVE AS OF THE DATE OF FILING PROOF OF SERVICE OF THE FORMAL, SIGNED ORDER UPON THE CLIENT. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30

A.M. ON FRIDAY, SEPTEMBER 2, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.