1. PEOPLE v. CANALES PCL-20190258

Status of Criminal Case and Trial Readiness Hearing.

At the hearing on August 26, 2022 the court was advised that the criminal case remained pending. The court continued the status of criminal case and trial readiness hearing to September 9, 2022.

There is no proof of service of the August 26, 2022 minute order continuing the hearing on respondent in the court's file.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, SEPTEMBER 9, 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. MATTER OF GERKAN 22CV1021

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 # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, SEPTEMBER 9, 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. GLINES v. KABIRINASSAB PC-20190655

Defendants' Application for Michael Meyer to Appear Pro Hac Vice.

Michael Meyer applies for leave of the court to appear as counsel pro hac vice for defendants in this action. Michael Meyer declares: he is admitted to practice in Colorado, Nevada, and the U.S. District Courts of Colorado and Nevada; is a member in good standing in each of those courts, and is not currently suspended or disbarred in any court; resides in Colorado and maintains his office in Colorado; he is not regularly employed in California or regularly engaged in substantial business, professional, or other activities in California; the California local counsel who is attorney of record for defendants is Gayle Kono, who maintains an office at a certain address in Sacramento, California; and in the preceding two years has not filed any prior applications to appear pro hac vice in California.

The applicant has also provided evidence of payment of the $50 fee to the State Bar of California, which is mandated by Rules of Court, Rule 9.40(e). (See Declaration of Gayle Kono in Support of Application, paragraph 5 and Exhibit B.)

"A person who is not a member of the State Bar of California but who is a member in good standing of and eligible to practice before the bar of any United States court or of the highest court in any state, territory or insular possession of the United States, and who has been retained to appear in a particular cause pending in a court of this state, may in the discretion of such court be permitted upon written application to appear as counsel *pro hac vice*, provided that an active member of the State Bar of California is associated as attorney of record. No person is eligible to appear as counsel *pro hac vice* pursuant to this rule if the person is: ¶ (1) A resident of the State of California; ¶ (2) Regularly employed in the State of California; or ¶ (3)

Regularly engaged in substantial business, professional, or other activities in the State of California." (Rules of Court, Rule 9.40(a).)

"A person desiring to appear as counsel *pro hac vice* in a superior court must file with the court a verified application together with proof of service by mail in accordance with Code of Civil Procedure section 1013a of a copy of the application and of the notice of hearing of the application on all parties who have appeared in the cause and on the State Bar of California at its San Francisco office. The notice of hearing must be given at the time prescribed in Code of Civil Procedure section 1005 unless the court has prescribed a shorter period." (Rules of Court, Rule 9.40(c)(1).)

Gayle Kono declares that Exhibit A attached to her declaration is an August 10, 2022 email acknowledgement from the California State Bar that the Bar received the application to appear pro hac vice and it is pending review. There was no notification from the State Bar objecting to the application in the court's file at the time this ruling was prepared.

The proof of service declares that plaintiff's counsel was emailed the notice of hearing and the moving papers on August 11, 2022. No opposition to the application was in the court's file at the time this ruling was prepared.

Under the circumstances presented, it appears appropriate to grant the application.

TENTATIVE RULING # 3: DEFENDANTS' APPLICATION FOR MICHAEL MEYER TO APPEAR PRO HAC VICE IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY

TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, SEPTEMBER 9, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

4. CBL SERVICES v. WECKWORTH ELECTRIC PCL-20200638

Judgment Debtor Examination.

TENTATIVE RULING # 4: THE PERSONAL APPEARANCE OF THE DEBTOR IS REQUIRED AT 8:30 A.M., FRIDAY, SEPTEMBER 9, 2022 IN DEPARTMENT NINE, PROVIDED PROOF OF SERVICE OF THE ORDER TO APPEAR FOR EXAMINATION IS FILED PRIOR TO THE HEARING SHOWING THAT PERSONAL SERVICE ON THE DEBTOR WAS EFFECTED NO LATER THAN TEN DAYS PRIOR TO THE HEARING DATE (CCP, § 708.110(d)). IF THE APPROPRIATE PROOF OF SERVICE IS NOT FILED, NO EXAMINATION WILL TAKE PLACE.

5. CONCERNED RESIDENTS OF EL DORADO v. LENNAR HOMES 22CV0640

(1) Defendants El Dorado Hills Community Services District's and Loewen's Demurrer to Complaint.

(2) Defendants El Dorado Hills Community Services District's and Loewen's Motion to Strike Portions of Complaint.

On July 18, 2022 defendant El Dorado Hills Community Services District and Loewen filed the demurrers to the initial complaint and motion to strike portions of the initial complaint. On August 24, 2022 plaintiff exercised its option to file an amended complaint prior to the hearing on the demurrer and not later that the date for filing an opposition to the demurrer. (See Code of Civil Procedure, § 472(a).) The 1st Amended Complaint supersedes the Complaint, making the demurrer moot. The same holds true for the motion to strike.

"" 'It is well established that an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading.' " (*Foreman & Clark Corp. v. Fallon, supra,* 3 Cal.3d at p. 884, 92 Cal.Rptr. 162, 479 P.2d 362, quoting *Meyer v. State Board of Equalization* (1954) 42 Cal.2d 376, 384, 267 P.2d 257.) Thus, an amended complaint supersedes all prior complaints. (*Grell v. Laci Le Beau Corp.* (1999) 73 Cal.App.4th 1300, 1307, 87 Cal.Rptr.2d 358; *Lee v. Bank of America* (1994) 27 Cal.App.4th 197, 215, 32 Cal.Rptr.2d 388; 1 Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2009) ¶ 6:704, p. 6–177.) The amended complaint furnishes the sole basis for the cause of action, and the original complaint ceases to have any effect either as a pleading or as a basis for judgment. (*Anmaco, Inc. v. Bohlken* (1993) 13 Cal.App.4th 891, 901, 16 Cal.Rptr.2d 675.) ¶ Because there is but one complaint in a civil action (*Ford v. Superior Court* (1973) 34 Cal.App.3d 338, 343, 109 Cal.Rptr. 844), the filing of an amended complaint moots a motion directed to a prior

complaint. (See *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054, 18 Cal.Rptr.3d 882 [filing of first amended complaint rendered moot demurrer to original complaint].)" (Emphasis added.) (State Compensation Ins. Fund v. Superior Court (2010) 184 Cal.App.4th 1124, 1130–1131.)

TENTATIVE RULING # 5: A 1ST AMENDED COMPLAINT HAVING BEEN FILED ON AUGUST 24, 2022, THESE MATTERS ARE DROPPED FROM THE CALENDAR AS MOOT.

6. TIPTON v. KUCERA PC-20210086

Petition to Approve Compromise of Disputed Claim of Minor.

The petition states the minor sustained injuries in a motor vehicle accident consisting of laceration to the forehead and abrasion to the right arm and hand. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $87,500.

The petition states the minor incurred $53,587.77 in medical expenses for emergency room care, chiropractic care, and follow-up; the claimed amount of expenses was reduced; the amount of $25,709.05 was paid by private health insurance; the insurer reduced its lien to $17,139.37; and other health care providers are owed $4,051.71. There are no copies of the bills substantiating the claimed medical expenses attached to the petitions as required by Local Rule 7.10.12A.(6).

The petition states that the minor has fully recovered from the injuries allegedly suffered. There is no current doctor's report concerning the minor's condition and prognosis of recovery as required by Local Rule 7.10.12A.(3).

The minor's attorney requests attorney's fees in the amount of $21,520, which represents approximately 25% of the settlement. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Rules of Court, Rule 7.955(a)(1).) The fee appears to be reasonable. The minor's attorney also requests reimbursement for costs in the amount of $550. There are no copies of bills substantiating the claimed costs attached to the petition as required by Local Rule 7.10.12A.(6).

The net settlement amount is to be invested in a single premium deferred annuity payable as a single lump sum payment in 2027

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

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, SEPTEMBER 9, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

7. GROCERY OUTLET, INC. v. PGO, INC. 22CV0961

Hearing Re: Preliminary Injunction.

Plaintiff filed an action against defendant asserting causes of action arising from plaintiff's claim that it validly terminated its independent operator agreement with defendants after notice of various defaults in performance of the agreement. Plaintiff applied for a TRO and preliminary injunction that would, among many other things, enjoin defendants from operating the market, prohibit defendants from interfering with the requirements for transition of the market to a new independent operator, and effectively evict defendants from the market location. Defendants depict defendants' possessory interest as a tenancy at sufferance and not a leasehold.

Defendants appeared in pro per at the July 29, 2022 hearing. The court heard oral argument of the parties and continued the hearing to August 12, 2022 without issuing a TRO and without issuing the proposed TRO/OSC. The court directed that any supplemental documents were due July 29, 2022; opposition as due on August 5, 2022; and the reply was due on August 9, 2022.

Supplemental documents were filed by plaintiff on July 29, 2022. The proof of service declares that the supplemental declaration and supplemental exhibits were served on defendants by overnight mail and email on July 29, 2022.

On August 5, 2022 defendants submitted an ex parte request to extend the time to file and serve an opposition in order to allow for defendants to retain counsel and file an opposition. The ex parte application was denied.

The OSC Re: Preliminary Injunction was not issued until August 12, 2022. The OSC provided that the opposition was to be filed and served not later than August 31, 2022 and the reply was to be filed and served not later than September 7, 2022.

Where the order to show cause is issued without a temporary restraining order, the court may hear the matter, provided if the moving and opposing papers are served within the time period required by Code of Civil Procedure, § 1005. (Code of Civil Procedure, § 527(f)(1).)

"A party requesting a preliminary injunction may give notice of the request to the opposing or responding party either by serving a noticed motion under Code of Civil Procedure section 1005 or by obtaining and serving an order to show cause (OSC). An OSC must be used when a temporary restraining order (TRO) is sought, or if the party against whom the preliminary injunction is sought has not appeared in the action. If the responding party has not appeared, the OSC must be served in the same manner as a summons and complaint." (Rules of Court, Rule 3.1150(a).)

Plaintiff's Counsel recently filed a declaration stating that at the August 12, 2022 hearing defense counsel agreed to accept personal service of the OSC on behalf of the defendants; and defense counsel and plaintiff's counsel were personally served a copy of the OSC Re: Preliminary Injunction by court staff present at the hearing.

An Opposition was filed by defense counsel on September 2, 2022. The proof of service declares that the Opposition was served by mail and electronically on plaintiff's counsel on September 1, 2022.

Plaintiff argues that the plaintiff has submitted sufficient evidence by means of declarations and authenticated documents to establish a likelihood that plaintiff will prevail on its causes of action asserted against plaintiff due to defendants' defaults under the independent operator agreement that entitled plaintiff to terminate the agreement and demand that the defendants' occupancy of the market and its contents transition from defendants to the new independent operator by August 2, 2022; plaintiff will suffer irreparable harm by defendants' continued operation of the store while this action remains pending; and plaintiff will suffer irreparable

harm in the form of threatened irreparable harm to Grocery Outlet Bargain Markets everywhere as plaintiff is unable to access the Placerville store to ensure defendants operate properly and do not waste, divert, or damage plaintiff's property between now and the August 2, 2022 changeover date; the success of the Placerville store depends on customer goodwill and desire to return to that store location out of habit and loyalty, and any disruption to the store can negatively impact desire to return; and Grocery Outlet has already experienced injury to its brand and business goodwill due to defendants' past breaches, including numerous brand standards violations, unsafe conditions at the store, not complying with restocking and merchandising duties, and keeping a dirty store, as well as anticipated further defaults.

"An injunction may be granted in the following cases: ¶ (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. ¶ (2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action. ¶ (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual. ¶ (4) When pecuniary compensation would not afford adequate relief. ¶ (5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. ¶ (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings. ¶ (7) Where the obligation arises from a trust." (Code of Civil Procedure, § 526(a).)

The general purpose of such an injunction is to preserve the status quo until there is a final determination of the matter on the merits. The term "status quo" has been defined to include

the last actual peaceable, uncontested status which preceded the pending controversy. (Voorhies v. Greene (1983) 139 Cal.App.3d 989, 995.)

A preliminary injunction may be granted upon a verified complaint or upon affidavits which show that sufficient grounds exist for the issuance of such an injunction. (Code of Civil Procedure, § 527(a).) In deciding whether to issue a preliminary injunction, two factors must be weighed: the likelihood of the moving party ultimately prevailing on the merits and the relative interim harm to the parties from the issuance of a preliminary injunction. (Butt v. State of California (1992) 4 Cal.4th 668, 677-678.) "The latter factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. The determination whether to grant a preliminary injunction generally rests in the sound discretion of the trial court. (Citation omitted.)" (Abrams v. St. John's Hospital & Health Center (1994) 25 Cal.App.4th 628, 636.)

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

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

"The trial court considers two interrelated factors when deciding whether to issue preliminary injunctions: the interim harm the applicant is likely to sustain if the injunction is denied as compared to the harm to the defendant if it issues, and the likelihood the applicant will prevail on the merits at trial. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286, 219 Cal.Rptr. 467, 707 P.2d 840; *IT Corp. v. County of Imperial, supra,* 35 Cal.3d at pp. 69–70, 196 Cal.Rptr. 715, 672 P.2d 121.) However, before the trial court can exercise its discretion the applicant must make a prima facie showing of entitlement to injunctive relief. The applicant must demonstrate a real threat of immediate and irreparable injury (6 Witkin, Cal.Procedure (3d ed. 1985) Provisional Remedies, § 254; *E.H. Renzel Co. v. Warehousemen's Union* (1940) 16 Cal.2d 369, 373, 106 P.2d 1) due to the inadequacy of legal remedies. (6 Witkin, *op. cit. supra,* § 253.)" (Triple A Machine Shop, Inc. v. State of California (1989) 213 Cal.App.3d 131, 138.)

""To obtain a preliminary injunction, a plaintiff ordinarily is required to present evidence of the irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits." (*White v. Davis, supra,* 30 Cal.4th at p. 554, 133 Cal.Rptr.2d 648, 68 P.3d 74; see generally Code Civ. Proc. § 526, subd. (a)(2) [preliminary injunction may issue when it appears the plaintiff would suffer great or irreparable injury from the commission or continuance of some act during the litigation].) While the mere possibility of harm to the plaintiffs is insufficient to justify a preliminary injunction, the plaintiff are "not required to wait until they have suffered *actual harm* before they apply for an injunction, but may seek injunctive relief against the *threatened infringement* of their rights." (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292, 240 Cal.Rptr. 872, 743 P.2d 932, italics added; accord, *City of Torrance v. Transitional Living Centers for Los Angeles, Inc.* (1982) 30 Cal.3d 516, 526, 179 Cal.Rptr. 907, 638 P.2d 1304 [injunctive relief is available where the injury sought to be avoided is " 'actual or

threatened' "]; *7978 Corporation v. Pitchess* (1974) 41 Cal.App.3d 42, 46, 115 Cal.Rptr. 746 [same].) ¶ If the threshold requirement of irreparable injury is established, then we must examine two interrelated factors to determine whether the trial court's decision to issue a preliminary injunction should be upheld: "(1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction." (*Butt v. State of California* (1992) 4 Cal.4th 668, 677–678, 15 Cal.Rptr.2d 480, 842 P.2d 1240.) Appellate review is generally limited to whether the trial court's decision constituted an abuse of discretion. (*Ibid.*). (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463, 47 Cal.Rptr.3d 147.) However, [t]o the extent that the trial court's assessment of likelihood of success on the merits depends on legal rather than factual questions, [such as when the meaning of a contract or a statute are at issue,] our review is de novo.' " (*City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413, 1428, 138 Cal.Rptr.3d 332; *Garamendi v. Executive Life Ins. Co.* (1993) 17 Cal.App.4th 504, 512, 21 Cal.Rptr.2d 578.)" (Costa Mesa City Employees' Assn. v. City of Costa Mesa (2012) 209 Cal.App.4th 298, 305–306.)

An irreparable injury is established where the evidence submitted shows actual or threatened injury to property or personal rights which cannot be compensated by an ordinary damage award. (See Brownfield v. Daniel Freeman Marina Hospital (1989) 208 Cal.App.3d 405, 410.)

""Irreparable harm" is a cornerstone of the availability of another provisional remedy, injunctive relief (§ 526, subd. (a)(2)), a provisional remedy also expressly allowed by section 1281.8. In the context of injunctions, insolvency or the inability to otherwise pay money damages is a classic type of irreparable harm. (*Leach v. Day* (1865) 27 Cal. 643, 646; *Friedman v. Friedman* (1993) 20 Cal.App.4th 876, 890, 24 Cal.Rptr.2d 892.) A close

examination of section 1281.8 confirms that both insolvency and the inability to otherwise pay damages are appropriate measures of irreparable harm that might render an arbitration award ineffectual when a writ of attachment is sought." (California Retail Portfolio Fund GmbH & Co. KG v. Hopkins Real Estate Group (2011) 193 Cal.App.4th 849, 857.)

A trial court's decision on a motion for preliminary injunction is not a adjudication of the ultimate rights in controversy (Association for Los Angeles Deputy Sheriffs v. County of Los Angeles (2008) 166 Cal.App.4th 1625, 1634.); the order is not a determination of the merits of the case; and the order may not be given issue-preclusive effect with respect to the merits of the action (Upland Police Officers Ass'n v. City of Upland (2003) 111 Cal.App.4th 1294, 1300.).

Because a reply is not in the court's file due to a late filing of the opposition, the court continues the hearing date to allow for filing and consideration of a reply.

TENTATIVE RULING # 7: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, SEPTEMBER 12, 2022. 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 9, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

8. HIGH HILL RANCH, LLC v. COUNTY OF EL DORADO 21CV0178

Review Hearing Re: Receipt of Administrative Record.

High Hill Ranch appeals from the administrative decision in a code enforcement case. Plaintiff lodged the purported administrative record on May 26, 2022.

The matter was continued from June 10, 2022 to June 24, 2022 by agreement of the parties. At the June 24, 2022 hearing counsel for defendant was unable to appear due to illness. Plaintiff's counsel stated that defense counsel will stipulate to correct the administrative record. The court requested counsel to sign a stipulation as to the record.

On July 26, 2022 respondent County filed a stipulation and agreement that the administrative record previously submitted by petitioner is the administrative record.

TENTATIVE RULING # 8: THIS MATTER IS DROPPED FROM THE CALENDAR. THE COURT SETS A CASE MANAGEMENT HEARING RE: SETTING THE HEARING DATE, MSC, AND BRIEFING SCHEDULE DATES FOR 8:30 A.M. ON FRIDAY, OCTOBER 14, 2022 IN DEPARTMENT NINE.

9. ABEL v. CURTIS 22CV0224

Defendant's Motion to Vacate Judgment.

On February 22, 2022 plaintiff filed a small claims action against defendant for non-payment of rent on a commercial lease. Plaintiff further sought an award of late fees and attorney fees incurred for beginning to commence an unlawful detainer proceeding where defendant vacated the premises before a default could be entered in the unlawful detainer proceeding. The proof of service filed on April 8, 2022 declares that defendant was served by substituted service at a vacant industrial storage yard at the end of Truck Street in Diamond Springs, CA by leaving the Form SC-100 plaintiff's claim and order to go to small claims court with manager Dean Olson on February 22, 2022 with follow-up mailing to that address on February 22, 2022. The Form SC-100 notified defendant that he had to go to court in Department Ten at 8:30 a.m. on April 19, 2022. Judgment was entered on April 19, 2022 against defendant in the amount of $6,205.

Defendant moves to vacate and set aside the default pursuant to Code of Civil Procedure, § 473(d) on the grounds that he was prevented from responding due to an unexpected condition or situation which arose, without any default or negligence on his part, and which ordinary care could have not prevented; and he did not receive notice of the proceeding until it was too late to respond.

The proof of service in the court's file declares that on July 26, 2022 notice of the hearing and a copy of the moving papers were served on plaintiff by substituted service on office manager Kayla Jalquin at a street address on Lime Kiln Road in Placerville with follow-up mailing to that address on July 26, 2022.

There was no opposition to the motion in the court's file at the time this ruling was prepared.

Defendant declares: he was prevented from responding due to an unexpected condition or situation which arose, without any default or negligence on his part, and which ordinary care could have not prevented; he did not receive the summons and complaint until June 21, 2022; and he did not receive notice of the proceeding until it was too late to respond.

"It is settled that the law favors a trial on the merits (*Elms v. Elms* (1946) 72 Cal.App.2d 508, 513, 164 P.2d 936; *Benjamin v. Dalmo Mfg. Co.* (1948) 31 Cal.2d 523, 525, 190 P.2d 593; *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 904, 170 Cal.Rptr. 328; *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233, 211 Cal.Rptr. 416, 695 P.2d 713; *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 243 Cal.Rptr. 902, 749 P.2d 339) and therefore liberally construes section 473. (*Elms v. Elms*, supra, 72 Cal.App.2d at p. 513, 164 P.2d 936.) Doubts in applying section 473 are resolved in favor of the party seeking relief from default (*Elston v. City of Turlock*, supra, 38 Cal.3d at p. 233, 211 Cal.Rptr. 416, 695 P.2d 713) and if that party has moved promptly for default relief only slight evidence will justify an order granting such relief." (Iott v. Franklin (1988) 206 Cal.App.3d 521, 526.)

"When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered." (Code of Civil Procedure, § 473.5(a).) "A notice of motion to set aside a default or default judgment and for leave to defend the action shall designate as the time for making the motion a date prescribed by subdivision (b) of Section 1005, and it shall be accompanied by an affidavit showing under oath that the party's

lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action." (Code of Civil Procedure, § 473.5(b).) "Upon a finding by the court that the motion was made within the period permitted by subdivision (a) and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action." (Code of Civil Procedure, § 473.5(c).)

Absent opposition, it appears appropriate to grant the motion.

TENTATIVE RULING # 9: ABSENT OPPOSITION, DEFENDANT'S MOTION TO VACATE JUDGMENT IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY

PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, SEPTEMBER 9, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

10. BOLLA v. CARLISLE 22UD0216

Motion to Vacate and Set Aside Default and Default Judgment.

On July 22, 2022 plaintiff filed an unlawful detainer complaint against defendant. A registered process served declares in the proof of service filed on August 2, 2022 that the summons, complaint, mandatory cover sheet, supplemental allegations – UD, and UD verification by landlord regarding rental assistance were personally served on defendant at the residence address on July 29, 2022. On August 9, 2022 default was entered against defendant. A clerk's judgment for restitution only and issuance of a writ for possession was also entered that same date.

Defendant's first motion to set aside the default and default judgment and to quash the writ for possession was denied at the hearing on August 19, 2022.

Defendant shortly thereafter filed a second motion to set aside the default and default judgment and to quash the writ for possession. At the hearing on August 26, 2022 the court declined to hear the matter on an ex parte basis, set the hearing on the motion for September 9, 2022 and stayed the writ for possession pending hearing of the motion on September 9, 2022. Plaintiff was not present at that hearing.

Defendant moves to vacate and set aside the default pursuant to Code of Civil Procedure, § 473(d) on the sole ground that he was never served at all or was improperly served with the summons and complaint.

Plaintiff was not at the August 26, 2022 hearing when the September 9, 2022 hearing date was set and there is no proof of service of a copy of the August 26, 2022 minute order on plaintiff in the court's file. In addition, there is no proof of service in the court's file establishing

that the defendant served notice of the hearing and a copy of the moving papers on plaintiff and there is no opposition to the motion in the court's file.

This lack of proof of proof of service is an independent reason to deny the motion.

Code of Civil Procedure, § 473(d) provides that the court may set aside any void judgment or order. Defendant essentially contends that the default and default judgment are void, because of improper service. "Notice of the litigation does not confer personal jurisdiction absent substantial compliance with the statutory requirements for service of summons. (See *Ault v. Dinner For Two, Inc.* (1972) 27 Cal.App.3d 145, 148, 103 Cal.Rptr. 572.)" (MJS Enterprises, Inc. v. Superior Court (1983) 153 Cal.App.3d 555, 557-558.)

The Supreme Court has stated: "Essentially, jurisdictional errors are of two types. "Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties." (*Id.* at p. 288, 109 P.2d 942.) When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and "thus vulnerable to direct or collateral attack at any time." (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 119, 101 Cal.Rptr. 745, 496 P.2d 817 (*Barquis*).)" (People v. American Contractors Indem. Co. (2004) 33 Cal.4th 653, 660.)

"It is well settled in this state that a court has no power to set aside on motion a judgment or order not void on its face unless the motion is made within a reasonable time, and it has been definitely determined that such time will not extend beyond the limited time fixed by section 473 of the Code of Civil Procedure as at present in force. *Smith v. Jones*, 174 Cal. 513, 516, 163 P. 890; *People v. Temple*, 103 Cal. 447, 453, 37 P. 414; *Richert v. Benson Lumber Co.*, 139 Cal.App. 671, 675, 34 P.2d 840; *Vaughn v. Pine Creek Tungsten Co.*, 89 Cal.App. 759, 761, 265 P. 491. However, to the rule just stated there is a well established exception which provides that although the judgment or order is valid on its face, if the party in favor of whom

the judgment or order runs admits facts showing its invalidity, or, without objection on his part, evidence is admitted which clearly shows the existence of such facts, then it is the duty of the court of declare the judgment or order void." (Thompson v. Cook (1942) 20 Cal.2d 564, 569.)

Code of Civil Procedure, § 473(d) provides that the court may set aside any void judgment or order. Defendant essentially contends that the default and default judgment are void, because of improper service. "Notice of the litigation does not confer personal jurisdiction absent substantial compliance with the statutory requirements for service of summons. (See *Ault v. Dinner For Two, Inc.* (1972) 27 Cal.App.3d 145, 148, 103 Cal.Rptr. 572.)" (MJS Enterprises, Inc. v. Superior Court (1983) 153 Cal.App.3d 555, 557-558.)

"A judgment void on its face because rendered when the court lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant, is subject to collateral attack at any time. (See *County of Ventura v. Tillett* (1982) 133 Cal.App.3d 105, 110, 183 Cal.Rptr. 741; disapproved of on other grounds by *County of Los Angeles v. Soto* (1984) 35 Cal.3d 483, 198 Cal.Rptr. 779, 674 P.2d 750; see also *Security Pac. Nat. Bank v. Lyon* (1980) 165 Cal.Rptr. 95, 105 Cal.App.3d Supp. 8, 13.) An attack on a void judgment may also be direct, since a court has inherent power, apart from statute, to correct its records by vacating a judgment which is void on its face, for such a judgment is a nullity and may be ignored. (*Olivera v. Grace* (1942) 19 Cal.2d 570, 574, 122 P.2d 564.)" (Rochin v. Pat Johnson Manufacturing Co. (1998) 67 Cal.App.4th 1228, 1239**.)**

The Supreme Court has stated: "Essentially, jurisdictional errors are of two types. "Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties." (*Id.* at p. 288, 109 P.2d 942.) When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and "thus vulnerable to direct or collateral attack at any time." (*Barquis v.*

Merchants Collection Assn. (1972) 7 Cal.3d 94, 119, 101 Cal.Rptr. 745, 496 P.2d 817 (*Barquis*).)" (People v. American Contractors Indem. Co. (2004) 33 Cal.4th 653, 660.) "The distinction between void and voidable orders is frequently framed in terms of the court's jurisdiction. "Essentially, jurisdictional errors are of two types. 'Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.' ([*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288, 109 P.2d 942.]) When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and 'thus vulnerable to direct or collateral attack at any time.' (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 119, 101 Cal.Rptr. 745, 496 P.2d 817.)" (*People v. American Contractors Indemnity Co. (2004) 33 Cal.4th 653, 660, 16 Cal.Rptr.3d 76, 93 P.3d 1020.*) For example, if a defendant is not validly served with a summons and complaint, the court lacks personal jurisdiction and a default judgment in such action is subject to being set aside as void. (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1441, 29 Cal.Rptr.2d 746.)" (Emphasis added.) (Lee v. Ji Hae An (2008) 168 Cal.App.4th 558, 563-564.)

Defendant declares: since the last UD action was dismissed over two months ago, he was not served a 3 day, 30 day, or 60 day notice; he needs time to find a new place to live and to empty a three bedroom home with separate garage; he requests at least 40 days to find a new home to move to that is close enough for his roommate, Jeannie, to drive a reasonable distance to care for her seriously ill mother; and he has nowhere to go at the present time and he and Jeannie will be homeless.

Defendant has not presented any evidence whatsoever that the personal service of the summons and complaint and other litigation documents was improper or invalid, which would

render entry of a default and default judgment void. He has not presented any evidence he was never served.

"A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery. ¶ The date upon which personal delivery is made shall be entered on or affixed to the face of the copy of the summons at the time of its delivery. However, service of a summons without such date shall be valid and effective." (Code of Civil Procedure, § 415.10.)

The registered process server declares under penalty of perjury that defendant was personally served.

"The return of a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code upon process or notice establishes a presumption, affecting the burden of producing evidence, of the facts stated in the return." (Evidence Code, § 647.)

As stated earlier in this ruling, no evidence has been produced that conflicts with the registered process server's statement under oath that defendant was personally served.

The motion is denied for lack of proof of service of notice of the hearing and the moving papers on plaintiff and for failure of proof that the personal service was improper or invalid or did not occur.

TENTATIVE RULING # 10: DEFENDANT'S MOTION TO VACATE AND SET ASIDE DEFAULT AND DEFAULT JUDGMENT IS DENIED FOR LACK OF PROOF OF SERVICE OF NOTICE OF THE HEARING AND THE MOVING PAPERS ON PLAINTIFF AND FOR FAILURE OF PROOF THAT THE PERSONAL SERVICE WAS IMPROPER OR INVALID OR DID NOT OCCUR. 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 9, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

11. TWO JIN, INC. V. WALDOW 22CV0460

Defendant's Motion to Set Aside Default and Default Judgment.

On March 14, 2022 plaintiff filed a complaint against defendants for breach of contract, account stated, open book account and quantum meruit arising from an alleged failure to pay the cost for a bail bond. A registered process server declares in the proof of service filed on May 18, 2022 that on April 21, 2022 defendant Imler was personally served the summons and complaint. Default was entered against defendant Imler on June 10, 2022. A default judgment was entered against defendant Imler by the court in the amount of $1,383.70 on July 8, 2022.

Defendant essentially moves to vacate the default and default judgment pursuant to the provisions of Code of Civil Procedure, § 473 on the grounds of mistake, inadvertence, surprise, or excusable neglect.

The proof of service declares that notice of the hearing and the moving papers were served by mail on plaintiff's counsel on August 10, 2022.

There was no opposition to the motion in the court's file at the time this ruling was prepared.

Code of Civil Procedure, § 473(b) allows for a party to obtain relief from a default and default judgment which was taken against the party through his or her mistake, inadvertence, surprise, or excusable neglect. The application for relief shall be accompanied by a copy of the proposed response to be filed, otherwise the application shall not be granted. (Emphasis added.) (Code of Civil Procedure, § 473(b).)

"It is settled that the law favors a trial on the merits (*Elms v. Elms* (1946) 72 Cal.App.2d 508, 513, 164 P.2d 936; *Benjamin v. Dalmo Mfg. Co.* (1948) 31 Cal.2d 523, 525, 190 P.2d 593; *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 904, 170 Cal.Rptr. 328; *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233, 211 Cal.Rptr. 416, 695 P.2d 713; *Shamblin v. Brattain*

(1988) 44 Cal.3d 474, 243 Cal.Rptr. 902, 749 P.2d 339) and therefore liberally construes section 473. (*Elms v. Elms*, supra, 72 Cal.App.2d at p. 513, 164 P.2d 936.) Doubts in applying section 473 are resolved in favor of the party seeking relief from default (*Elston v. City of Turlock*, supra, 38 Cal.3d at p. 233, 211 Cal.Rptr. 416, 695 P.2d 713) and if that party has moved promptly for default relief only slight evidence will justify an order granting such relief." (Iott v. Franklin (1988) 206 Cal.App.3d 521, 526.)

Defendant declares in support of the motion: defendant submitted a timely answer to the complaint, however, it was rejected by the Court clerk due to plaintiff failing to provide a stamped envelope, which defendant did not know needed to be included; defendant was not notified by the clerk that the answer was rejected; and defendant never received any notice of the rejection.

Defendant is unrepresented. The court takes judicial notice that on May 13, 2022 the defendant's forms SC-105 (Request for Court Order and Answer) and SC-112A (Proof of Service by Mail), which she attempted to file were rejected as they are small claims forms and the instant case is a limited civil case. The notification of rejection also stated there was no SASE. Although the clerk's rejection letter states that the documents were returned/placed in will-call, there is no proof of service of the notice of rejection by mail to defendant.

Matters of which the court may take judicial notice establishes that defendant attempted to file an answer to the complaint on or about May 13, 2022 and default was not entered until nearly one month later on June 10, 2022.

Defendant has not submitted a proposed answer with the moving papers. The court can not consider a request to grant relief from the default and default judgment unless a proposed answer was submitted. The court will continue this hearing to 8:30 a.m. on Friday, October 7,

2022. Defendant is to file/lodge with the court and serve the plaintiff with a copy of the proposed answer not later than September 19, 2022.

TENTATIVE RULING # 11: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, OCTOBER 7, 2022. DEFENDANT IS TO FILE/LODGE WITH THE COURT AND SERVE THE PLAINTIFF WITH A COPY OF THE PROPOSED ANSWER NOT LATER THAN SEPTEMBER 19, 2022.

12. STEVENSON v. SHECKLER PC-20180142

Review Hearing Re: Enforcement of Judgment and Removal of Personal Property.

At the Mandatory Settlement and Trial Setting Conference on June 24, 2020 the parties entered into a settlement of the case and agreed that the court would retain jurisdiction to enforce the settlement under Code of Civil Procedure, § 664.6. The parties and their counsel executed a five page written settlement agreement that same date. Temporary Judge Pechner executed the order at the conclusion of the written settlement stating that having sworn the parties and inquired as to their understanding of this agreement, accepts the settlement as set forth above, and orders the parties to comply with each and every provision thereof

The agreement included a provision wherein defendant Charlene Sheckler and/or her agents were to remove all of her property from the premises on or before October 23, 2020 and plaintiff agreed not to interfere with her or her agents who do so. (Defense Exhibit A – Settlement Agreement, paragraph 1.a.ii.) There were also specific instructions as to who may remain on the property during removal of the property; only Ryan MacLeod was to remain on the premises during removal of defendants' property; and giving 3 days' notice of intent to remove. The agreement specified that in the event of a dispute regarding the personal property defendant asserts is her property, that dispute shall be brought before Temporary Judge Pechner for further hearing and resolution. (Defense Exhibit A – Settlement Agreement, paragraph 1.a.iii.) Paragraph 16 of the settlement agreement further provided that the settlement is judicially supervised and the court shall retain jurisdiction to enforce the settlement until performance in full of the terms pursuant to Section 664.6 and the prevailing party in any motion to enforce the agreement shall be entitled to attorney's fees for such motion. The agreement further provided: the terms of the settlement agreement constitute a full

and complete release of all defendants and a full and complete release of plaintiff; and the parties waived the provisions of Civil Code, § 1542 that a general release does not extend to unknown claims that if known would have materially affected the settlement. (Defense Exhibit A – Settlement Agreement, paragraphs 6, 7, and 9.)

Defendants filed an amended motion to enforce the settlement agreement. Plaintiff opposed the motion.

The court's tentative ruling posted for August 5, 2022 hearing concluded, in part, that the court is authorized to enter the settlement agreement as a judgment in this case and enforce it by court order; and the court is inclined to order the settlement agreement entered as a final judgment in this action and issue further orders that both parties are to abide by in effectuating the retrieval of the remaining 70% of the personal property belonging to the defendants' at the subject real property. The court's tentative ruling further stated that the court was considering issuing the following orders: the court will set the exact date(s) for the pick up of the property with input by the parties; the parties will meet and confer through counsel to attempt to come to an agreement as to one person to be present on the property during the removal that will represent the interests of each party; failure to agree will result in the court selecting those two persons, which could be their respective counsels or a person designated by the respective counsels; the court will designate those two persons at the review hearing set three weeks prior to the date(s) set for retrieval of the property; three weeks prior to the date set to pick up the property, the defendants through their counsel and plaintiff through her counsel will exchange lists of the property they each claim belongs to defendants that remains in the house and barn and also submit those lists to the court; the court will hold a review hearing two weeks prior to the date set for retrieval and incorporate into a single list the items that are undisputed and leave the disputed items, if any, for determination on a later date as allowed by

paragraph 1.a.iii. of the settlement agreement; the items that they agree are defendants' property shall be placed in the barn by plaintiff for defendants' retrieval on the date(s) ordered; only the two designated party representatives and moving company personnel will be present on the subject real property at the time the property is retrieved; no other parties, agents, relatives, or affiliated persons are to be on the property; a third party moving company shall be given unfettered access to all entry points of the barn and the moving company is to pick up the property on the court issued list from the barn; and a review hearing will be held two weeks after the date designated as the last date of retrieval to determine if all parties are satisfied that the retrieval of defendants' property provision of the settlement agreement has been sufficiently completed.

At the August 5, 2022 hearing the parties could not agree on who will present on the real property at the time of the move. Should they fail to agree as to their respective representatives who will be present during the property removal at this review hearing, the court will select those two persons at this review hearing, which could be their respective counsels or a person designated by the respective counsels.

At the conclusion of the August 5, 2022 hearing the court issued the following orders: movers are to show up on October 6 and 7, 2022 to remove defendants' personal property and are to have access to the barn location to move the property; the parties are to comply with the order as outlined in the tentative ruling; the parties are to prepare and exchange a listing of items; items not included in the listing will be forfeited; and a review hearing will take place on Friday, September 9, 2022 in Department Nine.

TENTATIVE RULING # 12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, SEPTEMBER 9, 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.