1. MULBERRY TRAMPLE AND CO. v. GOLDLINE BRANDS, INC. PCL-20200253

Judgment Debtor Examination.

TENTATIVE RULING # 1: THE PERSONAL APPEARANCE OF THE REGISTERED AGENT OF THE DEBTOR IS REQUIRED AT 1:00 P.M. ON FRIDAY, SEPTEMBER 16, 2022 IN DEPARTMENT TEN, 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.

2. MATTER OF KORZEWSKI 22CV0945

OSC Re: Name Change.

TENTATIVE RULING # 2: THE PETITION IS GRANTED.

3. PEOPLE v. VALENCIA PC-20200369

Petition for Forfeiture.

On August 3, 2020 the People filed a petition for forfeiture of cash seized in the amount of $729,247.58 by the El Dorado County Sheriff's Department. The petition states: the funds are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of various provisions of the Health and Safety Code. The People pray for judgment declaring that the money is forfeited to the State of California.

Claimant Valencia filed a Judicial Council Form MC-200 claim opposing forfeiture in response to a notice of 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).)

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

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

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

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

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

hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

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

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

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

Upon request of counsel, the hearing was continued from May 20, 2022 to September 16, 2022.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:00 P.M. ON FRIDAY, SEPTEMBER 16, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

4. PEOPLE v. HARRIS PC-20200368

Petition for Forfeiture.

On August 3, 2020 the People filed a petition for forfeiture of cash in the total amount of $285,347.90 seized by the El Dorado County Sheriff's Department. The petition states: the funds are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of various provisions of the Health and Safety Code. The People pray for judgment declaring that the money is forfeited to the State of California.

Claimant Harris filed a Judicial Council Form MC-200 claim opposing forfeiture in response to a notice of 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).)

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

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

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

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

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

hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

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

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

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

Upon request of counsel, the hearing was continued from May 20, 2022 to September 16, 2022.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:00 P.M. ON FRIDAY, SEPTEMBER 16, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

5. PEOPLE v. KRYLOV PC-20200443

Claim Opposing Forfeiture.

On August 21, 2020 claimant Krylov filed a verified Judicial Council Form MC-200 claim opposing forfeiture of $25,510 in response to a notice of administrative proceedings.

On October 2, 2020 the People filed a petition for forfeiture of currency in the amount of $25,510 that was seized by the El Dorado County Sheriff's Department. The petition states: the funds and other property are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of various provisions of the Health and Safety Code. The People pray for judgment declaring that the money is forfeited to the State of California.

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

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

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

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

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

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

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

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

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

"(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant." (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." (Health and Safety Code, § 11488.4(i)(2).)

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

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

"(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in

conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial." (Health and Safety Code, § 11488.4(i)(5).)

At the hearing on July 15, 2022 respondent's counsel requested the matter be continued for 60 days. The court continued the hearing to September 16, 2022.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 1:00 P.M. ON FRIDAY, SEPTEMBER 16, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

6. BROWN v. JOHNSON PC-20200320

Defendant's Motion to Strike or Tax Costs.

On July 1, 2020 plaintiff filed an action against defendant for negligence and motor vehicle negligence related to injuries allegedly sustained in a motor vehicle accident

On May 3, 2021 defendant offered to compromise the action brought against him by payment of $20,000 with each party to bear their own costs and attorney fees. On May 5, 2022 defendant offered to compromise the action brought against him by payment of $50,000 with each party to bear their own costs and attorney fees.

On July 7, 2022 the court entered judgment on the jury's verdict finding defendant liable to plaintiff for past economic damages in the amount of $6,550 and past non-economic damages in the amount of $5,040. The jury found that defendant was not liable for any future economic or non-economic damages. The total amount awarded plaintiff was $11,590.

On July 27, 2022 plaintiff filed a memorandum of costs seeking an award of $24,067.25 in costs.

Defendant moves to strike or tax the following costs from plaintiff's memo of costs in the following grounds: filing fees incurred in the amount of $137 for filing a motion on May 13, 2021 seeking to set Dr. Winter's fees should be taxed as not recoverable, because it was incurred after plaintiff's rejection of a Code of Civil Procedure, § 998 offer to compromise; filing fees claimed for courier expenses in the amounts of $65 and $85 to deliver documents to the court should be stricken as not a recoverable cost; and deposition costs in the amount of $8,741.79, jury fees in the amount of $1,205, court reporter fees incurred at trial in the amount of $10,243.88, and fees for hosting electronic documents in the amount of $1,844.33 should be taxed, because all these costs were incurred after serving plaintiff with the Section 998 offers

to compromise, plaintiff rejected the offers, and plaintiff did not obtain a more favorable judgment than the two offers.

The proof of service declared that the notice of motion and moving papers were served by email to plaintiff's counsel. Although the proof of service identifies plaintiff's counsel as being served and his firm and street address, the proof of service fails to identify the email address to which the notice and moving papers were served, rendering the proof of service defective. This needs to be explained.

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

Absent proof of adequate service on plaintiff's counsel, the court can not rule on the merits of the motion.

Motion to Tax or Strike Costs General Principles

"If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that were not reasonable or necessary. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs. (*Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 624, 134 Cal.Rptr. 602; *Oak Grove School Dist. v. City Title Ins. Co.* (1963) 217 Cal.App.2d 678, 698-699, 32 Cal.Rptr. 288.)" (Ladas v. California State Auto. Assn. (1993) 19 Cal.App.4th 761, 774.) "[T]he mere filing of a motion to tax costs may be a "proper objection" to an item, the necessity of which appears doubtful, or which does not appear to be proper on its face. (See *Oak Grove School Dist. v. City Title Ins. Co.* (1963) 217 Cal.App.2d 678, 698-699, 32 Cal.Rptr. 288.) However, "[i]f the items appear to be proper charges, the verified memorandum is prima facie evidence that the costs, expenses and services therein listed were necessarily incurred by the defendant [citations], and the burden of showing that an item is not properly chargeable or is unreasonable is upon the [objecting party]." (Id., at p. 699, 32 Cal.Rptr. 288; see also, Miller v.

Highland Ditch Co. (1891) 91 Cal. 103, 105-106, 27 P. 536.)" (Nelson v. Anderson (1999) 72 Cal.App.4th 111, 131.)

"Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation" (Code of Civil Procedure, § 1033.5(c)(2).) and "Allowable costs shall be reasonable in amount" (Code of Civil Procedure, § 1033.5(c)(3).). In other words, "To recover a cost, it must be reasonably necessary to the litigation and reasonable in amount. (*Perko's Enterprises, Inc. v. RRNS Enterprises* (1992) 4 Cal.App.4th 238, 244, 5 Cal.Rptr.2d 470.)" (Thon v. Thompson (1994) 29 Cal.App.4th 1546, 1548.)

"…[T]he intent and effect of section 1033.5, subdivision (c)(2) is to authorize a trial court to disallow recovery of costs, including filing fees, when it determines the costs were incurred unnecessarily." (Perko's Enterprises, Inc. v. RRNS Enterprises (1992) 4 Cal.App.4th 238, 245.)

With the above legal principles in mind, the court will rule on defendant's motion to tax or strike the costs claimed in plaintiff's memorandum of costs.

Courier Fees

Plaintiff has claimed as costs the fees charged by Moe's Process Service in the amounts of $65 and $85 for "Court Service" on November 10 and October 14, 2020 as reflected in the invoices attached to the memo of costs filed with the court. These appear to be courier charges to deliver documents to the court.

"Messenger fees are not expressly authorized by statute, but may be allowed in the discretion of the court. (*Ladas v. California State Auto. Assn.*, supra, 19 Cal.App.4th at p. 776, 23 Cal.Rptr.2d 810; Code Civ. Proc., § 1033.5, subd. (c)(4).)" (Nelson v. Anderson (1999) 72 Cal.App.4th 111, 132.) The appellate court in Nelson, supra, found that the trial court did not abuse its discretion in denying messenger filing costs claimed where the court found the

messenger filings to be of doubtful necessity and unreasonable on their face, when compared to the probable cost of alternatives such as mail, Federal Express, or personal filing

Rejection of Offer to Compromise

"The purpose of section 998 is to 'encourage settlement by providing a strong financial disincentive to a party--whether it be a plaintiff or a defendant--who fails to achieve a better result than that party could have achieved by accepting his or her opponent's settlement offer.' (*Bank of San Pedro v. Superior Court* (1992) 3 Cal.4th 797, 804, 12 Cal.Rptr.2d 696, 838 P.2d 218.)" (Mesa Forest Products, Inc. v. St. Paul Mercury Ins. Co. (1999) 73 Cal.App.4th 324, 330.)

"(b) Not less than 10 days prior to commencement of trial or arbitration (as provided in Section 1281 or 1295) of a dispute to be resolved by arbitration, any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time. The written offer shall include a statement of the offer, containing the terms and conditions of the judgment or award, and a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted. Any acceptance of the offer, whether made on the document containing the offer or on a separate document of acceptance, shall be in writing and shall be signed by counsel for the accepting party or, if not represented by counsel, by the accepting party. ¶ (1) If the offer is accepted, the offer with proof of acceptance shall be filed and the clerk or the judge shall enter judgment accordingly. In the case of an arbitration, the offer with proof of acceptance shall be filed with the arbitrator or arbitrators who shall promptly render an award accordingly. ¶ (2) If the offer is not accepted prior to trial or arbitration or within 30 days after it is made, whichever occurs first, it shall be deemed withdrawn, and cannot be given in evidence upon the trial or arbitration. ¶ (3) For purposes of this subdivision,

a trial or arbitration shall be deemed to be actually commenced at the beginning of the opening statement of the plaintiff or counsel, or, if there is no opening statement, at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence." (Code of Civil Procedure, § 998(b).)

"The offer must be sufficiently specific to allow the recipient to meaningfully evaluate it and make a reasoned decision whether to accept it. (*Taing v. Johnson Scaffolding Co.* (1992) 9 Cal.App.4th 579, 585, 11 Cal.Rptr.2d 820 (*Taing*).) Further, the offeree must be able to clearly evaluate the worth of the offer. (See *Barella*, at p. 801, 101 Cal.Rptr.2d 167.)" (Duff v. Jaguar Land Rover North America, LLC (2022) 74 Cal.App.5th 491, 499.)

The Third District Court of Appeal has recently held: "As explained in *Berg*, where a section 998 offer sets out certain settlement terms but fails to specify whether acceptance would result in judgment, an award, or dismissal, "the offer, by virtue of default to the statutory language, is simply intended as one to 'allow judgment to be taken' in exchange for the specified amount of funds." (*Berg, supra*, 120 Cal.App.4th at p. 728, 15 Cal.Rptr.3d 829.) As the *Berg* court explained, under section 998, entry of judgment is "the expected and standard procedural result unless specific terms and conditions stated in the offer provide otherwise." (*Id*. at p. 730, 15 Cal.Rptr.3d 829.) ¶ As the drafter, BMW had the duty to make clear in its section 998 offer any intention to stray from the usual path under section 998 of entry of judgment. (See *Taing v. Johnson Scaffolding Co*. (1992) 9 Cal.App.4th 579, 585, 11 Cal.Rptr.2d 820 [the offeror bears the burden of assuring the offer is drafted with sufficient precision to permit the recipient to meaningfully evaluate it and make a reasoned decision whether to accept it].) If BMW had wished to deviate from the standard procedural result of section 998, it could have proposed a general release coupled with a dismissal or otherwise stated clearly in the offer that dismissal was required. As courts have explained, "[t]he true, subjective, but unexpressed intent of a

party is immaterial and irrelevant." (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 690, 22 Cal.Rptr.2d 807 [finding a party had no right to recover attorney fees when he failed to reserve this right in the agreement].) ¶ Given that appellants unconditionally accepted the section 998 offer as written, we are not persuaded that BMW's e-mailed "clarifications" should alter the result. [Footnote omitted.] (See *Ignacio v. Caracciolo* (2016) 2 Cal.App.5th 81, 86, 206 Cal.Rptr.3d 76 [a section 998 offer "must be strictly construed in favor of the party sought to be bound by it"]; *Pazderka v. Caballeros Dimas Alang, Inc., supra*, 62 Cal.App.4th at pp. 671-672, 73 Cal.Rptr.2d 242 [reversing trial court's order to set aside a judgment where counsel had mistakenly failed to include attorney fees and costs in the section 998 offer to compromise]; see also *Poster v. Southern Cal. Rapid Transit Dist.* (1990) 52 Cal.3d 266, 272, 276 Cal.Rptr. 321, 801 P.2d 1072 [favoring "bright line" rule in interpreting section 998].) ¶ In finding that the section 998 offer did not contemplate judgment, the trial court abused its discretion and modified the offer's terms. We therefore will reverse the trial court's order." (Emphasis added.) (Arriagarazo v. BMW of North America, LLC (2021) 64 Cal.App.5th 742, 749–750.)

The first Section 998 offer stated that defendant "offers to settle this matter with Plaintiff BRIANNA BROWN, pursuant to Section 998 of the California Code of Civil Procedure for the sum of $20,000, to be paid by draft issued to Brianna Brown and Weinberger Law Firm, in exchange for a dismissal with prejudice of the complaint against offering defendant, each party to bear their own costs and attorney fees." (Defense Exhibit A.)

The second Section 998 offer to compromise stated that defendant "offers to settle this matter with Plaintiff BRIANNA BROWN, pursuant to Section 998 of the California Code of Civil Procedure for the sum of $50,000, to be paid by draft issued to Brianna Brown and Weinberger

Law Firm, in exchange for a dismissal with prejudice of the complaint against offering defendant, each party to bear their own costs and attorney fees." (Defense Exhibit A.)

Each offer included a place for plaintiff's counsel to execute an acceptance of the offer.

The identity of the parties to the settlement agreement, plaintiff and defendant, and the terms of the agreement, payment of a specified amount in exchange for dismissal of the action and each party to bear their own costs and fees, were sufficiently specific to allow the recipient to meaningfully evaluate it and make a reasoned decision whether to accept it.

"If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the time of the offer. In addition, in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the plaintiff to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the defendant." (Code of Civil Procedure, § 998(c)(1).)

"(2)(A) In determining whether the plaintiff obtains a more favorable judgment, the court or arbitrator shall exclude the postoffer costs." (Code of Civil Procedure, § 998(c)(2)(A)

Defense counsel declares that the two offers to compromise are attached as Exhibit A; the offer to compromise for $20,000 served on April 30, 2021 was not accepted and expired; and the offer to compromise for $50,000 served on May 5, 2022 was not accepted and expired; and the jury verdict after trial awarded only $11,590 to plaintiff. (Declaration of Rebekah Morrissey, paragraph 2.)

The jury verdict award of $11,590 plus pre-offer costs appear to fall short of the amounts of $20,000 and $50,000 offered to compromise and settle the case.

The $137 fee for filing on May 13, 2021 the plaintiff's motion seeking to set Dr. Winter's fees was incurred after service of a Code of Civil Procedure, § 998 offer to compromise on plaintiff, which was rejected

The Litigation Productions, Inc. invoice in the amount of $1,844.33 attached to the plaintiff's memorandum of costs states that all services claimed in the invoice took place during the period of June 21, 2022 through July 6, 2022, which is after the two rejected Section 998 offers to compromise were served on plaintiff.

Court reporter fees in the amount of $10,243.88, which are approximately 50% of the amounts charged in the invoices of the trial court reporter attached to the plaintiff's memorandum of costs, were incurred during trial after the two rejected offers to compromise were served on plaintiff.

Plaintiff claims $9,708.94 for deposition costs. Defendant concedes that the depositions of Ryan Johnson, which cost $377.50 and $589.65 as stated in the invoices attached to plaintiff's memorandum of costs, were properly claimed as costs. Defendant asserts that the remainder of the claimed deposition costs were incurred after the rejected offers to compromise were served on plaintiff and, therefore, cannot be recovered. The deposition invoices attached to the memorandum of costs indicates that the costs for the remaining depositions were incurred after the offers to compromise were served. There is no invoice attached for Brianna Brown's deposition cost, which is claimed to be $814.16.

It appears that $7,927.19 in deposition costs were incurred after the rejected offers to compromise were served on plaintiff and there is no documentation to establish that the cost for the Brianna Brown deposition was $814.16 or when it was taken.

As stated earlier, the court is unable to rule on the motion on its merits until the moving defendant addresses the proof of service issue. Therefore, appearances will be required.

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 1:00 P.M. ON FRIDAY, SEPTEMBER 16, 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. FLYNN v. NICHOLSON PC-20210040

Motion to be Relieved as Counsel of Record for Plaintiff.

TENTATIVE RULING # 7: 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 1:00 P.M. ON FRIDAY, SEPTEMBER 16, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

8. APONTE v. MARSHALL MEDICAL CENTER PC-20210413

Defendant's Motion for Terminating Sanction.

At the hearing on June 17, 2022 the court granted defendant's motion to compel discovery and ordered plaintiff to answer interrogatories and produce documents without objections within ten days; ordered that requests for admission, set one were deemed admitted; and further directed plaintiff to pay $1,540.50 in monetary sanctions within ten days. The formal order was entered on July 6, 2022. The proof of service of the notice of ruling filed on July 7, 2022 declares that on July 7, 2022 notice of the ruling was served on plaintiff by mail to plaintiffs' address of record.

Arguing that the plaintiff has not complied with the court's discovery order, defendants move for an order imposing the terminating sanction of dismissal of plaintiff's action with prejudice for plaintiff's failure to comply with the court's order compelling discovery responses.

The proofs of service in the court's file declare that notice of the hearing and the moving papers were served by mail to plaintiffs' address of record on August 17, 2022. There is no opposition to the motion in the court's file.

Defense counsel declares: on August 22, 2022 counsel sent plaintiff a meet and confer letter concerning the instant motion stating that this motion would be filed if full and complete discovery responses and payment of the sanctions were not received by August 16, 2022; as of the date of the filing of the motion, plaintiff has not responded to any of the discovery requests served on October 18, 2021 and has not responded to the meet and confer letter; and plaintiff failed to appear at the CMC on June 20, 2022. (Declaration of Kelli Kennaday in Support of Motion, paragraphs 10-12.)

"A trial court has broad discretion to impose discovery sanctions, but two facts are generally prerequisite to the imposition of nonmonetary sanctions such as the evidence sanction imposed here: (1) absent unusual circumstances, there must be a failure to comply with a court order, [Footnote omitted.] and (2) the failure must be willful. (See, e.g., *R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496, 89 Cal.Rptr.2d 353 [terminating sanctions properly imposed for repeated efforts to thwart discovery, including violation of two discovery orders].)" (Biles v. Exxon Mobil Corp. (2004) 124 Cal.App.4th 1315, 1327.)

Failure to obey a court order compelling answers to interrogatories and production of documents and things, and failure to appear at a deposition as ordered may result in additional sanctions as are just, including an issue sanction, evidence sanction, and/or a terminating sanction, and the court may also impose additional monetary sanctions. (Code of Civil Procedure, §§ 2030.290(c), and 2031.300(c).) "To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process: ¶ * * * (b) The court may impose an issue sanction ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process. The court may also impose an issue sanction by an order prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses. ¶ (c) The court may impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence. ¶ (d) The court may impose a terminating sanction by one of the following orders: ¶ (1) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of the discovery process. ¶ (2) An

order staying further proceedings by that party until an order for discovery is obeyed. ¶ (3) An order dismissing the action, or any part of the action, of that party. ¶ (4) An order rendering a judgment by default against that party." (Code of Civil Procedure, §§ 2023.030(b), 2023.030(c), and 2023.030(d).)

Failure to obey a court order compelling answers to interrogatories and production of documents and things as ordered may result in additional sanctions as are just, including a terminating sanction, and the court may also impose additional monetary sanctions. (Code of Civil Procedure, §§ 2030.290(c), and 2031.300(c).) "To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process: ¶ * * * The court may impose a terminating sanction by one of the following orders: ¶ (1) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of the discovery process. ¶ (2) An order staying further proceedings by that party until an order for discovery is obeyed. ¶ (3) An order dismissing the action, or any part of the action, of that party. ¶ (4) An order rendering a judgment by default against that party." (Code of Civil Procedure, § 2023.030(d).)

"'Discovery sanctions "should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery." [Citations.] "'The trial court has a wide discretion in granting discovery and ... is granted broad discretionary powers to enforce its orders but its powers are not unlimited.... [¶] The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks, but the court may not impose sanctions which are designed not to accomplish the objects of discovery but to impose

punishment. [Citations.]'" [Citations.]' (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, 487-488, 282 Cal.Rptr. 530; accord *Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7 Cal.App.4th 27, 35, 9 Cal.Rptr.2d 396.)" (Vallbona v. Springer (1996) 43 Cal.App.4th 1525, 1545.) "We recognize that terminating sanctions are to be used sparingly, only when the trial court concludes that lesser sanctions would not bring about the compliance of the offending party." (R.S. Creative, Inc. v. Creative Cotton, Ltd. (1999) 75 Cal.App.4th 486, 496.) "Discovery sanctions must be tailored in order to remedy the offending party's discovery abuse, should not give the aggrieved party more than what it is entitled to, and should not be used to punish the offending party. We review the trial court's order under the deferential abuse of discretion standard. (*Do It Urself, supra,* 7 Cal.App.4th at p. 35, 9 Cal.Rptr.2d 396.) [Footnote omitted.]" (Karlsson v. Ford Motor Co. (2006) 140 Cal.App.4th 1202, 1217.)

The Third District Court of Appeal has held: "The sanction of dismissal or the rendition of a default judgment against the disobedient party is ordinarily a drastic measure which should be employed with caution. (*Deyo v. Kilbourne*, supra, 84 Cal.App.3d at p. 793, 149 Cal.Rptr. 499.) The sanction of dismissal, where properly employed, is justified on the theory the party's refusal to reveal material evidence tacitly admits his claim or defense is without merit. (Ibid.; *Kahn v. Kahn*, supra, 68 Cal.App.3d at p. 382.)" (Puritan Ins. Co. v. Superior Court (1985) 171 Cal.App.3d 877, 885.)

The court finds that it is not appropriate to impose the drastic measure of termination of the plaintiff's case with prejudice in the first instance of failure to comply with a discovery order. The court is not convinced that lesser sanctions will not bring about compliance. The motion for terminating sanctions is denied.

TENTATIVE RULING # 8: DEFENDANT'S MOTION FOR A TERMINATING SANCTION 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 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 1:00 P.M. ON FRIDAY, SEPTEMBER 16, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

9. NEFF v. ROSEN 22CV0137

Plaintiff's Motion for Interlocutory Judgment of Partition and Appointment of Referee.

On January 25, 2022 plaintiff filed a complaint against defendant Rosen and all unknown persons asserting causes of action for partition by sale, declaratory relief, and accounting related to certain real property acquired in 2019 where record title is held in the names of plaintiff and defendant Rosen in joint tenancy.

Plaintiff moves for an interlocutory judgment of partition of the subject real property by sale on following grounds: he owns 50% of the real property and is no longer interested in maintaining his co-ownership with defendant Rosen; his 50% interest is dictated by the recorded grant deed that grants plaintiff and defendant Rosen the property as joint tenants; plaintiff has an absolute right to partition as a co-owner of the property and can not be denied because of any supposed difficulty; the court need only simply determine that plaintiff and defendant Rosen each own 50% of the property and order the property sold by partition by a referee; and a referee should be appointed under certain suggested terms and instructions pursuant to Code of Civil Procedure, §§ 873.070 and 873.060.

Defendant Rosen opposes the motion on the following grounds: plaintiff has failed to join and serve all necessary parties, such as all unknown persons with claimed interests in the property and the beneficiary of the deed of trust that secures the loan; plaintiff has not satisfied the requirements to issue an interlocutory judgment for partition by sale as there remains issues as to the exact interests each interested party holds in the subject property and additional evidence is required to determine such interests in light of the disputes over how much each owner of record has paid into the property; and the request for appointment of a

referee is premature at this time until all preconditions to issuance of an interlocutory judgment for partition by sale have been met.

At the time this ruling was prepared there was no reply in the court's file.

The Third District Court of Appeal has held: "That the court had the right to try questions of title we think well settled. In *Adams v. Hopkins*, 144 Cal. 19, 29, 77 Pac. 712, 716, objection was made that the rights of defendants, as adverse occupants, could not be determined in that case. The court said: ¶ "It is settled in this state that the rights of adverse occupants of land sought to be partitioned 'may be put in issue, tried, and determined in such action"'—citing *De Uprey v. De Uprey*, 27 Cal. 335 [87 Am. Dec. 81]; *Gates v. Salmon*, 35 Cal. 577 [95 Am. Dec. 139]; *Martin v. Walker*, 58 Cal. 597; *Jameson v. Hayward*, 106 Cal. 689 [39 Pac. 1078, 46 Am. St. Rep. 268]. ¶ In *Morenhout v. Higuera*, 32 Cal. 290, 295, the court said: ¶ "The interest of each, or all, may be put in issue by the others; and if so, such issues are to be first tried and determined, and no partition can be made until the respective interests of all the parties have been ascertained and settled by a trial." ¶ See Freeman on Cotenancy and Partition, § 531." (Kuns v. Dias (1917) 32 Cal.App. 651, 658.)

"This title governs actions for partition of real property and, except to the extent not applicable, actions for partition of personal property." (Code of Civil Procedure, § 872.020.)

"The answer shall set forth: ¶ (a) Any interest the defendant has or claims in the property. ¶ (b) Any facts tending to controvert such material allegations of the complaint as the defendant does not wish to be taken as true. ¶ (c) Where the defendant seeks sale of the property, an allegation of the facts justifying such relief in ordinary and concise language." (Code of Civil Procedure, § 872.410.)

"The interests of the parties, plaintiff as well as defendant, may be put in issue, tried, and determined in the action." (Code of Civil Procedure, § 872.610.)

"To the extent necessary to grant the relief sought or other appropriate relief, the court shall upon adequate proof ascertain the state of the title to the property." (Code of Civil Procedure, § 872.620.)

"(a) If the court finds that the plaintiff is entitled to partition, it shall make an interlocutory judgment that determines the interests of the parties in the property and orders the partition of the property and, unless it is to be later determined, the manner of partition. ¶ (b) If the court determines that it is impracticable or highly inconvenient to make a single interlocutory judgment that determines, in the first instance, the interests of all the parties in the property, the court may first ascertain the interests of the original concurrent or successive owners and thereupon make an interlocutory judgment as if such persons were the sole parties in interest and the only parties to the action. Thereafter, the court may proceed in like manner as between the original concurrent or successive owners and the parties claiming under them or may allow the interests to remain without further partition if the parties so desire." (Code of Civil Procedure, § 872.720.)

"Two points are made clear by these provisions. First, an interlocutory judgment in a partition action is to include two elements: a determination of the parties' interests in the property and an order granting the partition. (§ 872.720, subd. (a).) Second, the manner of partition—i.e., a physical division or sale of the property—is to be decided when or after the parties' ownership interests are determined, but not before. (*Ibid*.)" (Summers v. Superior Court (2018) 24 Cal.App.5th 138, 143.)

"If the court finds that the plaintiff is entitled to partition, it shall make an interlocutory judgment that determines the interests of the parties in the property and orders the partition of the property and, unless it is to be later determined, the manner of partition." (Code of Civil Procedure, § 872.720(a).)

"The court shall order that the property be divided among the parties in accordance with their interests in the property as determined in the interlocutory judgment." (Code of Civil Procedure, § 872.810.)

With the above-cited legal principles in mind the court will rule on the motion for issuance of an interlocutory judgment of partition by sale.

Necessary Parties

"A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party." (Code of Civil Procedure, § 389(a).)

"…"[a] person is an indispensable party [only] when the judgment to be rendered necessarily must affect his rights." *Hartman Ranch Co. v. Associated Oil Co.* (1937) 10 Cal.2d 232, 262, 73 P.2d 1163.)" (Olszewski v. Scripps Health (2003) 30 Cal.4th 798, 808-809.) and in determining if a party is an indispensible party due to the inability to provide complete relief in the action, the focus is on whether complete relief can be afforded the parties named in the action. (Deltakeeper v. Oakdale Irrigation Dist. (2001) 94 Cal.App.4th 1092, 1101.)

The Third District Court of Appeal has recently stated: "The interests protected by Code of Civil Procedure section 389 are those personal interests that may be concretely prejudiced by a judgment rendered in the person's absence. (*Van Atta v. Scott* (1980) 27 Cal.3d 424, 451,

166 Cal.Rptr. 149, 613 P.2d 210, superseded by statute on another point as stated in *In re York* (1995) 9 Cal.4th 1133, 1143, 40 Cal.Rptr.2d 308, 892 P.2d 804.) " 'Typical [indispensable party situations] are the situations where a number of persons have undetermined interests in the same property, or in a particular trust fund, and one of them seeks, in an action, to recover the whole, to fix his share, or to recover a portion claimed by him. The other persons with similar interests are indispensable parties. The reason is that a judgment in favor of one claimant for part of the property or fund would necessarily determine the amount or extent which remains available to the others. Hence, any judgment in the action would inevitably affect their rights.' " (*Serrano v. Priest* (1976) 18 Cal.3d 728, 753, 135 Cal.Rptr. 345, 557 P.2d 929.)" (Ramirez v. Workers' Compensation Appeals Board (2017) 10 Cal.App.5th 205, 218–219.)

The complaint names as parties defendant all persons unknown claiming any legal or equitable right, title, estate, lien, or interest in the subject property adverse to plaintiff's title.

"Where partition is sought as to all interests in the property, the plaintiff may join as defendants "all persons unknown claiming any interest in the property," naming them in that manner." (Code of Civil Procedure, § 872.550.)

"(a) The form, content, and manner of service of summons shall be as in civil actions generally. ¶ (b) Service on persons named as parties pursuant to Sections 872.530(b) and 872.550, and on other persons named as unknown defendants, shall be by publication pursuant to Section 415.50 and the provisions of this article." (Code of Civil Procedure, § 872.310.)

The court has been unable to find any proof of service of the summons and complaint on all unknown defendants. Therefore, all named defendants are not before the court to determine the relative interests of the persons claiming interests in the property. A critical finding that

must be made in order to enter an interlocutory judgment of partition by sale is the court must determine the interests of the parties in the property. (Code of Civil Procedure, § 872.720(a).) The court needs all parties before it and they must all be provided with notice and an opportunity to be heard prior to the court issuing an interlocutory judgment finding what interests, if any, each party plaintiff and defendant is entitled to upon partition of the property.

This provides an independent justification to deny the motion.

In addition, the deed of trust beneficiary is a necessary party to the partition action that has not been joined and served with the complaint, notice of this hearing, and the motion for interlocutory judgment of partition by sale and appointment of a partition referee.

"The plaintiff shall join as defendants in the action all persons having or claiming interests of record or actually known to the plaintiff or reasonably apparent from an inspection of the property, in the estate as to which partition is sought." (Code of Civil Procedure, § 872.510.)

Plaintiff admits he took out a mortgage on the property in the amount of $251,250 with Pacific Services Credit Union. (Plaintiff's Declaration in Support of Motion, paragraph 1.) He also admits in the verified complaint that there is a readily apparent lien or encumbrance on the subject real property in the amount of $251,250, which is the home loan taken against the subject property by both parties. (Verified Complaint, paragraph 22.)

The deed of trust securing the loan in the amount of $251,250 was recorded on October 25, 2019. (See Plaintiff's Counsel's Declaration in Support of Motion, Exhibit B.)

"Of course the California real property security instrument known as a deed of trust creates rights or interests in real property. (Cf. inter alia, 2 Bowman, Ogden's Revised California Real Property Law (Cont.Ed.Bar 1975) Mortgages and Trust Deeds, s 17.54, pp. 930-931; 3 Witkin, Summary of Cal.Law (8th ed. 1973) Security Transactions in Real Property, ss 4-9, pp. 1493-1497.)" (Massae v. Superior Court (1981) 118 Cal.App.3d 527, 536.)

"…a trust deed definitely does represent an interest in the land, for the title is in the trustee for the benefit of the creditor. *Bank of Italy Nat. Trust & Sav. v. Bentley*, 217 Cal. 644, 655, 20 P.2d 940; *Hagge v. Drew*, 27 Cal.2d 368, 376, 165 P.2d 461; *Snyder v. Western Loan & Bldg. Co.,* 1 Cal.2d 697, 701, 37 P.2d 86; *Py v. Pleitner*, 70 Cal.App.2d 576, 579, 161 P.2d 393; *Mortgage Guarantee Co. v. Lee*, 61 Cal.App.2d 367, 375, 143 P.2d 98." (In re Moore's Estate (1955) 135 Cal.App.2d 122, 131–132.)

As stated earlier in this ruling, a critical finding that must be made in order to enter an interlocutory judgment of partition by sale is the court must determine the interests of the parties in the property. (Code of Civil Procedure, § 872.720(a).) Determining the various interests in the property without the beneficiary of the deed of trust would deprive the beneficiary of a reasonable opportunity to be heard on the partition of the proceeds from the sale of the property according to the interests of the parties before the court thereby necessarily affecting the beneficiary's rights.

This failure to join and serve the beneficiary of the deed of trust provides an independent justification to deny the motion.

Proof of the Exact Interests of Each Party in the Subject Real Property

Plaintiff asserts that the determination of the interests in the property between plaintiff and defendant Rosen is a simple 50/50 partition as they took title to the property by recorded grant deed as unmarried persons in joint tenancy.

Defendant Rosen argues in opposition that in order to truly determine the parties' respective interests in the real property there remains issues to be tried by presentation of evidence concerning the defendant's claim that the entire down payment for the real property was from funds due and owing to her from the sale of other real property and evidence to establish the

exact total amount of funds plaintiff claims to have paid on the mortgage, property taxes, fire insurance and utilities.

The court's right to try questions of title is well settled. (Kuns v. Dias (1917) 32 Cal.App. 651, 658.)

The trial court lacks the authority to order the sale of the property before it determines the parties' respective ownership interests. (Summers v. Superior Court (2018) 24 Cal.App.5th 138, 144.)

Plaintiff declares: he purchased the subject property as his own property on October 25, 2019; he took out a mortgage on the property in the amount of $251,250; on December 13, 2019 he signed a grant deed conveying the subject property to himself and defendant Rosen as joint tenants, which was recorded by defendant Rosen on October 25, 2021; he has been paying the monthly mortgage payments of $1,254.45; he paid the 2019, 2020, and 2021 real property taxes in the amount of $7,998.47; he also paid the fire insurance totaling $4,549; he has paid the utilities on the property; he has been advised Pam Rosen is expecting a settlement sometime in the Fall of 2022; he can not wait to see if defendant Rosen gets the money that will enable her to buy out plaintiff's share; he can not afford to continue to make the payments on the subject property; defendant Rosen has not contributed in any way towards the house payments, taxes, insurance or utilities; and he needs to sell this house as soon as possible. (Plaintiff's Declaration in Support of Motion, paragraphs 2-11.)

Defendant Rosen declares in opposition that she gave plaintiff $92,912.25 to be used as the down payment on the subject real property, which should be applied to increase her ownership interest in the subject property. (Declaration of Defendant Rosen in Opposition to Motion, paragraph 2.) The answer places at issue the use of the $92,912.25 claimed as defendant's

funds to be used for the down payment for the subject real property. (See Answer to Complaint, paragraph 9.)

The evidence before the court is insufficient to establish that plaintiff's interest in the subject property is 50% and defendant Rosen's interest in the subject property is 50%. The evidence presented being insufficient to establish the parties' respective ownership interests, the court must deny the motion for the interlocutory judgment of partition by sale without prejudice.

TENTATIVE RULING # 9: PLAINTIFF'S MOTION FOR INTERLOCUTORY JUDGMENT OF PARTITION AND APPOINTMENT OF REFEREE IS DENIED WITHOUT PREJUDICE. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE 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 1:00 P.M. ON FRIDAY, SEPTEMBER 16, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

10. STYLES v. MARIES 22CV0014

(1) Demurrer to Complaint.

(2) Motion to Strike.

TENTATIVE RULING # 10: THESE MATTERS HAVE BEEN CONTINUED TO 8:30 A.M. ON FRIDAY, OCTOBER 21 2022 IN DEPARTMENT NINE.

11. HART v. FEDERAL HOME LOAN MORTGAGE CORP. 22CV0286

(1) Defendants Federal Home Loan Mortgage Corp.'s and Select Portfolio Servicing, Inc.'s Demurrer to Complaint.

(2) Defendants Federal Home Loan Mortgage Corp.'s and Select Portfolio Servicing, Inc.'s Motion to Strike Portions of Complaint.

Defendants Federal Home Loan Mortgage Corp.'s and Select Portfolio Servicing, Inc.'s Demurrer to Complaint.

On March 2, 2022 plaintiff Stephen Hart filed a complaint against defendants asserting causes of action for violation of the homeowners' bill of rights (HBOR) and unfair business practices allegedly arising from the non-judicial foreclosure proceedings concerning plaintiff's loan after he admittedly fell behind in payments in 2014. (See Complaint, paragraph 15.). Defendants Federal Home Loan Mortgage Corp. and Select Portfolio Servicing, Inc. demur to the complaint on the following grounds: plaintiff failed to join necessary parties Lisa Hart, the co-borrower, and the current holder of record title to the property, the Stephen D and Lisa L. Hart Trust; as plaintiff does not have record title to the property, he is not the real party in interest and, therefore, can not assert the causes of action related to the subject property; plaintiff is judicially estopped from asserting the causes of action because he has filed for Chapter 13 bankruptcy protection on three occasions, failed to list in his bankruptcy schedule of assets the causes of action asserted against defendants as a right to sue asset, and each case was finally determined by dismissal of the bankruptcy proceeding; the allegations concerning the substitution of the trustee of the deed of trust can not support any causes of action; the HBOR cause of action is fatally defective, because plaintiff failed to plead this statutory cause of action with the mandated reasonable particularity of allegations of fact and

as plaintiff is not an owner with record title to the subject real property, he has no standing to assert any cause of action under HBOR; the claims for violation of Civil Code, §§ 2923.5 and 2923.6 fail; plaintiff has failed to alleged sufficient facts that establish when taken as true for the purposes of demurrer that any of the alleged HBOR violations were material violations; plaintiff has failed to allege sufficient facts that establish when taken as true for the purposes of demurrer that defendants engaged in any unfair, unlawful, or fraudulent business practices; plaintiff failed to plead a valid underlying claim to support the unfair business practices cause of action; the unfair business practices cause of action is defective in that plaintiff has not adequately alleged standing as plaintiff has not alleged he lost money or property due to unfair, unlawful, or fraudulent business practices; and plaintiff has failed to allege sufficient facts that establish when taken as true for the purposes of demurrer that unfair, unlawful, or fraudulent business practices proximately caused plaintiff to lose money or property.

The proof of service filed with the court declares that plaintiff's counsel was served with notice of the hearing and the documents submitted in support of the demurrer by mail on April 18, 2022.

The hearing was continued to July 29, 2022 upon stipulation of the parties. Plaintiff Hart was present without counsel at the hearing on July 29, 2022 when the court ordered the demurrers and motion to strike continued to 8:31 a.m. on Friday, September 16, 2022 in Department Nine. The hearing is being trailed to 1:00 p.m. on Friday, September 16, 2022 in Department Nine.

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

No papers opposing the demurrers having been filed with the court at least nine court days before the hearing (Code of Civil Procedure, § 1005(b).), the court exercises its discretion to treat the plaintiff's failure to file an opposition as an admission that the demurrers are

meritorious and sustains the demurrers with ten days leave to amend. (See Local Rule 7.10.02C.)

Defendants Federal Home Loan Mortgage Corp.'s and Select Portfolio Servicing, Inc.'s Motion to Strike Portions of Complaint.

The motion to strike has been rendered moot by the sustaining of the demurrers with leave to amend. The amended complaint will supersede the initial complaint.

"" '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.) (State Compensation Ins. Fund v. Superior Court (2010) 184 Cal.App.4th 1124, 1130–1131.)

TENTATIVE RULING # 11: DEFENDANTS FEDERAL HOME LOAN MORTGAGE CORP.'S AND SELECT PORTFOLIO SERVICING, INC.'S DEMURRERS TO COMPLAINT ARE SUSTAINED WITH TEN DAYS LEAVE TO AMEND. THE MOTION TO STRIKE PORTIONS OF THE COMPLAINT IS DROPPED FROM THE CALENDAR AS MOOT. NO HEARING ON THESE MATTERS 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 1:00 P.M. ON FRIDAY, SEPTEMBER 16, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.