

**1. BAILEY HOME IMPROVEMENT INC. v. PULVINO 22CV1634**  
**Case Management Conference**

**TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 9, 2023, IN DEPARTMENT NINE.**

**PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

**2. ARNAUT v. THORNE, ET AL PC20170230**

**Order to Show Cause – Contempt/Failure to Comply**

On July 31, 2020, the court made orders approving the compromises of the minor plaintiffs. The orders instructed Defendants to deposit settlement funds into the specified bank account. However due to the COVID-19 pandemic and Plaintiff's relocation, the funds could not be deposited. The matter has been continued several times to allow the parties to reach a resolution.

**TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 9, 2023, IN DEPARTMENT NINE.**

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**3. CAPITAL ONE BANK v. PAINE**

**PCL20190185**

**Claim of Exemption**

A Writ of Execution was filed on January 25, 2023, for a total amount due of \$4,210.06 on a judgment entered on June 7, 2019.

A Claim of Exemption was received by the Sacramento County Sheriff's Office on April 23, 2023.

The judgment debtor opposes the Claim of Exemption because the judgment is four years old and Defendant "is not willing to have any of his wages withheld" and "has never attempted to satisfy the judgment." Notice of Opposition to Claim of Exemption, ¶4a. Judgment debtor lists objections that include:

- 1) Defendant's failure to include spouse's income of \$3,991 on his income statement;
- 2) Defendant lists a payroll deduction for a 410K contribution that should not take precedence over satisfaction of the judgment;
- 3) Defendant lists a wage garnishment deduction that likely references this judgment and not an additional garnishment and has not submitted evidence of any additional garnishment;
- 4) Defendant claims rent plus maintenance expenses-if renting, Defendant's maintenance should be performed by property owner, not by tenant;
- 5) Defendant claims monthly expenses including \$902 for utilities and telephone, \$1,850 for food and household supplies that are excessive;
- 6) Defendant claims monthly expenses of \$125 for clothing and \$200 per month for entertainment that are unnecessary;
- 7) Defendant claims installment payments of \$1,241 that should not have precedence over judgment creditors.

Notice of Opposition to Claim of Exemption, ¶¶ 2, 4.

Plaintiff requests the court to deny the claim of exemption. Plaintiff states that it is willing to accept \$312.00 per pay period as payment toward satisfying the judgment.

**TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 9, 2023, IN DEPARTMENT NINE.**

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**4. REFFNER v. APPLE MOUNTAIN LP PC20190130**

**Motion for Undertaking CCP 1030**

This matter involves claims for injuries sustained by Plaintiffs while using a golf cart supplied by Defendant and on Defendant's property. Defendant requests that Plaintiffs file an undertaking pursuant to Code of Civil Procedure § 1030, which provides in pertinent part:

(a) When the plaintiff in an action or special proceeding resides out of the state . . . , the defendant may at any time apply to the court by noticed motion for an order requiring the plaintiff to file an undertaking to secure an award of costs and attorney's fees which may be awarded in the action or special proceeding. . . .

(b) The motion shall be made on the grounds that the plaintiff resides out of the state . . . and that there is a reasonable possibility that the moving defendant will obtain judgment in the action or special proceeding. The motion shall be accompanied by an affidavit in support of the grounds for the motion and by a memorandum of points and authorities. The affidavit shall set forth the nature and amount of the costs and attorney's fees the defendant has incurred and expects to incur by the conclusion of the action or special proceeding.

(c) If the court, after hearing, determines that the grounds for the motion have been established, the court shall order that the plaintiff file the undertaking in an amount specified in the court's order as security for costs and attorney's fees.

Request for Judicial Notice

Defendant has filed a request for the court to take judicial notice of the Complaint filed in this action. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Defendant's request for judicial notice is granted.

Late-Filed Reply Brief

Defendant's Reply to Plaintiffs' Opposition to the motion was filed on June 1, 2023 (six days after Defendant received Plaintiff's Opposition on the Friday before a national holiday

weekend), for a hearing scheduled on June 9, 2023. Plaintiffs argue that Defendant's Reply was not timely filed and should be disregarded. Plaintiffs cite Code of Civil Procedure § 1005(b), which requires filing of papers 16 days before a hearing date "[u]nless otherwise ordered or specifically provided by law . . . . The court may prescribe a shorter time". In this case, Local Rules of the El Dorado County Superior Court, Rule 7.10.02(B) are applicable: ("responsive papers to a calendared motion must be filed with the clerk by 3:00 p.m. no later than nine (9) court days prior to the date of hearing, excluding the date of filing but including the date of the hearing."). Whether to disregard an untimely filed document is within the court's discretion. Local Rules of the El Dorado County Superior Court, Rule 7.10.02(C). The court elects to exercise its discretion hear the matter on its merits.

### Motion for Undertaking

There are two prerequisites for the court to order an undertaking to cover the Defendant's costs and attorney fees: 1) the Plaintiff resides out of state, and 2) there is a reasonable possibility that the moving Defendant will obtain a judgment in its favor in the action. Code of Civil Procedure § 1030(b). In this case, there is no dispute that the Plaintiffs reside out of state. (Declaration of Randy S. Perlman, dated March 3, 2023, Exhibits A & B [Plaintiffs' Response to Form Interrogatory No. 2.5]), and so the only question is whether the Defendant has shown that it has a "reasonable possibility" of prevailing in this case.

Unfortunately, there is a lack of applicable case law directly on point that would be helpful elaborate on the meaning of the phrase "reasonable possibility" in this context.<sup>1</sup> Looking to the plain meaning of the words, "possibility" is defined as "a thing that may happen or be true; the fact that something might happen or be true, but is not certain," (Oxford Learner's Dictionary<sup>2</sup>); "being something that may or may not occur" (Merriam-Webster Dictionary<sup>3</sup>), "a chance that something may happen or be true" (Cambridge Dictionary<sup>4</sup>). The word is further modified by the word "reasonable", which would indicate that a reasonable

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<sup>1</sup> *Shannon v. Sims Serv. Ctr., Inc.*, 164 Cal. App. 3d 907 (Ct. App. 1985), is not helpful because defendants in that case were able to show more than a mere possibility of success based on having already prevailed in arbitration. Plaintiffs cite the case of *Yao v. Superior Ct.*, 104 Cal. App. 4th 327 (2002) because that court states that section 1030 is intended to protect California residents "when *there is no reasonable possibility* the out-of-state plaintiff will prevail" and "in the *likely event* the plaintiff's action is defeated" *Id.* at 333-334 (emphasis added). However, *Yao* decision principally addressed whether the statute would apply equally to a defendant who filed a cross-complaint, and that court's paraphrasing of the statute in *dicta* quoted by Plaintiffs is at odds with the clear language of the statute itself, which states that an undertaking may be required if there is a "reasonable possibility that the defendant will obtain judgment." To state there is a reasonable possibility of something happening is quite different than to state that there is no reasonable possibility that it could happen.

<sup>2</sup> <https://www.oxfordlearnersdictionaries.com/definition/english/possibility>

<sup>3</sup> <https://www.merriam-webster.com/dictionary/possible>

<sup>4</sup> <https://dictionary.cambridge.org/dictionary/english/possibility>

person could foresee that such a thing could happen without straining the imagination. What is clear is that the Defendant does not have a burden of proving that it is *likely* or *more likely than not* to prevail, only that it could prevail, given the evidence that it can produce in this early stage of the case.

This is a case involving a golf course that is owned by, and a golf cart that was provided by Defendant. Plaintiff alleges that either the golf cart, or the golf course, or both, were defective or inadequate such that the golf cart overturned and injured the Plaintiffs because of Defendant's negligence, "due to a cart out of specifications and pathways that were not to code and posed a great hazard of causing just this type of incident and injury in the event of rainfall and mud on the pathways." (Complaint at ¶ 9).

Defendant makes the following points in support of its motion:

1. The course was designed by a licensed designer and approved by the County.
2. Plaintiffs' Response to Form Interrogatories No. 20.8 indicating that the cart slipped on mud and running water, as well as deposition testimony that "slippery conditions", "muddy wet grass" and [w]ater running down the sides" were factors contributing to the incident, is not supported by records of precipitation around the date of the incident or the watering schedule for the course at the time. (Declaration of Randy S. Perlman, dated June 1, 2023, Exhibit A [August 27, 2020 Deposition of Jerry Reffner at pp. 61, 64, 66], Exhibit C [U.S. Department of Commerce Record of Climatological Observations & Local Climatological Data] Exhibit D [December 11, 2019 Deposition of Dan Eden re: golf course watering schedule];
3. The path where the incident occurred was an obvious condition regarding which the owner of the premises has no duty to warn invitees in the exercise of ordinary care, but Defendant alleges that it did provide both written and verbal warnings to use caution when driving on steep slopes and in wet conditions. (See Declaration of Randy S. Perlman, dated March 3, 2023, Exhibit C [December 11, 2019 Deposition of Ryan Bill, pp.58-61]).

In a similar case, the appellate court overruled a trial court's grant of summary judgment to the defendant where the plaintiff admitted she saw water on the pavement where she slipped and fell. The appellate court noted that even if the obviousness of a condition relieves a premises owner of a duty to warn of it, if the injury is foreseeable then there might still be a duty to remedy the condition, and that duty might form the basis of liability. Martinez v. Chippewa Enterprises, Inc., 121 Cal. App. 4th 1179, 1184 (2004). The court held that this was a triable issue of fact and summary judgment for the defendant was not appropriate: "Depending on the ultimate evidence, how plaintiff navigated the area may pose an issue of comparative negligence." (See also, Beauchamp v. Los Gatos Golf Course, 273 Cal. App. 2d 20 (1969)).

The instant case involves highly factual determinations of the nature of the conditions surrounding the operation of the golf cart, Plaintiffs' conduct in operating the golf cart, what warnings were or were not provided to the Plaintiffs prior to operation of the cart, whether there were any other similar incidents that would have made Plaintiffs' injuries more or less foreseeable, and the condition of the golf cart. Defendant may have greater or lesser liability depending on the results of discovery and findings made at trial on these issues.

Plaintiffs argue that Defendant is required to submit "admissible evidence" to meet its "burden of proof". While Code of Civil Procedure § 1030 does require the motion to be accompanied by an affidavit, that affidavit is required to set forth "the nature and amount of the costs and attorney's fees the defendant has incurred and expects to incur by the conclusion of the action or special proceeding", it is not required to contain any quantity of sufficiently admissible evidence to support the defendant's factual or legal assertions.

The Defendant having met the requirements of the statute, the motion is granted.

Defendant has filed an affidavit declaring its anticipation of expending \$58,435.00 in costs for this action, not including attorney's fees.

**TENTATIVE RULING # 4: DEFENDANT'S MOTION IS GRANTED; THE AMOUNT OF THE UNDERTAKING IS SET AT \$58,000.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A 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. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).**

**NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

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**5. NAME CHANGE OF VALINETE-KEATES 23CV0529**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on April 12, 2023.

Proof of publication was filed on May 15, 2023, as required by Code of Civil Procedure § 1277(a). A background check has been filed with the court as required by Code Civ. Pro. §1279.5(f).

**TENTATIVE RULING # 5: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.**

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**6. NAME CHANGE OF TROMBLEY 23CV0168**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on February 2, 2023, on behalf of a minor.

There is nothing in the court's records indicating that the OSC has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a). Petitioner is ordered to file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks. Proof of publication is to be filed with the court prior to the next hearing date.

A background check has been conducted as required by Code of Civil Procedure § 1279.5(f).

The hearing on this matter is continued to allow Petitioner time to file proof of publication with the court.

**TENTATIVE RULING # 6: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 4, 2023, IN DEPARTMENT NINE.**

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**7. NAME CHANGE OF STANTON 23CV0511**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on April 11, 2023. In order to be granted a name change by the court, the Petition must include a statement of residence in El Dorado County and Petitioner's place of birth. Code of Civil Procedure § 1275. While Petitioner does list an address in the "Attorney or Party without an Attorney" section of the NC-100 form which would satisfy the jurisdictional residence requirement, paragraph 1(a) of the NC-100 form indicating El Dorado County residence is not checked, and more importantly, no place of birth is listed under paragraph 7 of the form, which is a statutory requirement.

There is nothing in the court's records indicating that the OSC has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a). Petitioner is ordered to file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks. Proof of publication is to be filed with the court prior to the next hearing date.

A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

The hearing on this matter is continued to allow Petitioner time to file proof of publication and an amended NC-100 form specifying Petitioner's birthplace with the court.

**TENTATIVE RULING # 7: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 4, 2023, IN DEPARTMENT NINE.**

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**8. NAME CHANGE OF SNELGROVE 23CV0526**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on April 12, 2023.

Proof of publication was filed on May 17, 2023, as required by Code of Civil Procedure § 1277(a). A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

**TENTATIVE RULING # 8: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.**

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**9. PEOPLE OF THE STATE OF CALIFORNIA v. KUNG**

**PC20210120**

**Trial Setting**

**TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 9, 2023, IN DEPARTMENT NINE.**

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**10. NAME CHANGE OF XIE 23CV0368**

**Petition for Name Change**

Petitioner filed a Petition for Change of Name on March 20, 2023.

There is nothing in the court's records indicating that the OSC has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a). Petitioner is ordered to file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks. Proof of publication is to be filed with the court prior to the next hearing date.

Upon review of the file, the court has yet to receive the background check for petitioner, which is required under the law. Code of Civil Procedure §1279.5(f).

The hearing on this matter is continued to allow Petitioner time to file proof of publication and a background check with the court.

**TENTATIVE RULING # 10: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 4, 2023, IN DEPARTMENT NINE.**

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**11. PEOPLE OF THE STATE OF CALIFORNIA v. KELLY**

**PCL20210332**

**Claim Opposing Forfeiture**

Claimant Kelly filed a claim opposing forfeiture in response to a notice of administrative proceedings to determine that certain funds are forfeited. The People responded by filing a petition for forfeiture. The unverified petition contends: \$13,914 in U.S. Currency was seized by the El Dorado County Sheriff's Office; such funds are currently in the hands of the El Dorado County District Attorney's Office; 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 Health and Safety Code, § 11358. The People pray for judgment declaring that the money is forfeited to the State of California.

"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).)

**TENTATIVE RULING # 11: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 9, 2023, IN DEPARTMENT NINE.**

**PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**