

1. CITIBANK v. RAINSFODGE PCL20210374

Review Hearing - Status of Settlement

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 23, 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. COUNTY OF EL DORADO v. NAGEL 22CV1577

Prejudgment Possession and Order for Certification of Taxes – Eminent Domain

On November 1, 2022 Plaintiff County of El Dorado (“County”) filed a Complaint seeking to obtain certain real property by means of eminent domain. Defendant Nagel is the owner of the residential property, and the Wopumnes Niesen-an-Mewuk Tribe (“the Tribe”) holds an easement that would be affected by the County’s proposed use.

The County moves pursuant to the provisions of Code of Civil Procedure, § 1255.010. *et seq.*, for an Order for Prejudgment Possession of the subject real property after depositing with the State Treasury the County’s estimation of the probable amount of compensation, based on an appraisal, that will be awarded in the instant proceeding. The County further seeks an order directing the County Tax Collector to certify the specific information enumerated in Code of Civil Procedure, § 1260.250(c).

Code of Civil Procedure, § 1255.410(a) provides:

At the time of filing the complaint or at any time after filing the complaint and prior to entry of judgment, the plaintiff may move the court for an order for possession under this article, demonstrating that the plaintiff is entitled to take the property by eminent domain and has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article. ¶ The motion shall describe the property of which the plaintiff is seeking to take possession, which description may be by reference to the complaint, and shall state the date after which the plaintiff is seeking to take possession of the property. ...” (.)

On January 11, 2023, the County served notice of the Motion for an Order for Prejudgment Possession on Defendants by electronic service. The court finds that the content of the Motion and the notice of the Motion provided by the County meets the statutory requirements under Code of Civil Procedure § 1255.410(a) and (b).

Defendant Nagel filed an Opposition to the Motion on February 21, 2023, and the Tribe filed a separate Opposition on February 17, 2023.

In addition, both Defendants filed separate Oppositions to the Declaration of Chandra Ghimire in Support of Plaintiff’s Motion for an Order of Prejudgment Possession, dated January 10, 2023. (“Ghimire Declaration”)

The Proposed Project

The County proposes to use the subject property to construct bridge and road improvements along Weber Creek (“the Project”). This proposed use includes a temporary

easement for the period of construction for an emergency access road and area for stockpiling materials and equipment and parking construction vehicles.

The affected land area includes 1,114 sf to be used for replacement of the existing bridge, 2,031 sf of slope and drainage easement within the creek to maintain the slope and drainage of the new bridge, and 8,312 sf of temporary construction easement to be used as work area and access during construction for up to three years during construction. Active construction on the Project is anticipated to take 6-8 months. Eleven trees currently located on the owner's property would have to be removed, and an additional ten trees that are within the County's right of way on the Defendant's property along the current roadway would also be removed.

In addition to Defendant Nagel's residence, the Tribe holds an easement in the riparian area which it uses for sacred site activities including periodic inspections, maintenance and cultivation of the vegetative landscape, biological and archeological studies and to conduct ceremonies. See, Declaration of Brenda Aguilar-Guerrero, in Support of Plaintiff County of El Dorado's Motion for Prejudgment Possession and Order for Certification of Taxes, dated January 11, 2023, Exhibit A (Easement Agreement).

Standard of Review

In order to grant the County's Motion, the court would be required to make the following findings as required by Code of Civil Procedure § 1255.410(d)(2):

1. That the County is entitled to take the property by eminent domain;
2. That the County has deposited an amount that satisfies the requirements of Code of Civil Procedure § 1255.010;
3. That there is an overriding need for the County to possess the property prior to the issuance of a final judgment in the case, and the plaintiff will suffer a substantial hardship if the application for possession is denied or limited;
4. That the hardship that the County will suffer if possession is denied or limited outweighs any hardship on the Defendants that would be caused by granting the Order of Possession.

Defendants argue that the County failed to establish an overriding need, and that the amount of proposed compensation deposited is inadequate.

Overriding Need

Defendants argue that the County has failed to establish that it has an "overriding need" for the property that would support prejudgment possession.

Objections to Ghimire Declaration

Defendants raise evidentiary objections to the Ghimire Declaration, which is the principal evidentiary basis for the County's assertion of overriding need, and in particular to the following paragraphs of the Declaration:

- Paragraph 12: "The County needs prejudgment possession of the Property Interests as soon as possible. The County must begin construction of the Project in early spring 2024 to avoid increased construction costs and so that the public can enjoy the full benefits of the Newtown Road Bridge Replacement project, including the safety and circulation benefits of the project. The Project must start construction in early spring to minimize the amount of time Newtown Road is closed during fire season."
- Paragraph 13: "In order for construction to begin in the early spring of 2024, several milestones must be accomplished before construction can commence. First, the County must be able to show proof to Caltrans that it has obtained physical possession of the Property Interests so that Caltrans can certify that the properties are ready for use by the Project. The certification approval process can take weeks and cannot get started until the County can show that it has obtained prejudgment possession of all properties needed for the Project. The funding programming occurs during August/September each year".
- Paragraph 14: "The certification from Caltrans is pre-requisite to the County being able to request the funding program for construction for the following Federal fiscal year. In order to maintain the Project's schedule, the right of way certification must be obtained as soon as possible so programming of funding can be requested as soon as the certification is complete. The County then needs to receive authorization for construction funding, advertise the construction contract, open bids and provide the required bid protect period in order for the construction contract to be awarded so that construction can then begin."
- Paragraph 15: "Prejudgment Possession is also required for the Project funding to be advanced. The County is expecting to receive approximately \$5.75 million total in Highway Bridge Program ('HBP') which require specific timelines to be met to ensure timely use of funds. The County has committed to completing the Project by fall of 2024, therefore Prejudgment Possession is essential to meet the schedule."
- Paragraph 16: "Failure to meet these timelines as described above would delay the public from receiving the substantial benefits of the Project and would likely result in increased construction costs. Additionally, delays in obtaining possession of the

Subject Property will jeopardize the Project construction schedule and HBP funding for this Project.”

Both Defendants argue that Paragraphs 12, 13, 14, 15 and 16 of the Ghimire Declaration are objectionable and should not be considered by the court because they are: (1) conclusory, not supported by a reasonable foundation or substantive facts or evidence and do not state the basis for Ghimire’s knowledge; (2) vague, ambiguous, uncertain, overly broad as to time/scope; and (3) inadmissible hearsay.

1. Lack of Foundation

Defendants cite Evidence Code §§ 720, 800-803 as invalidating the quoted paragraphs of the Ghimire Declaration. Section 720 defines the qualifications of an expert witness, but Defendants do not question Ghimire’s status as an expert. Therefore, Section 720 does not apply to the issues at hand.

Section 800 limits opinion testimony of an expert witness to “such an opinion as is permitted by law, including but not limited to an opinion that is: (a) Rationally based on the perception of the witness; and (b) Helpful to a clear understanding of his testimony.”

Section 801 provides:

If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:

- (a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and
- (b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.

Defendants’ objections overlook the earlier paragraphs of the Declaration, wherein the basis for Declarant’s knowledge is stated as her professional experience as a registered civil engineer and as Senior Engineer for El Dorado County for 16 years, and as project manager for the Project for nine years, with “primary responsibility for overseeing [the Project’s] implementation.” Ghimire Declaration, ¶¶ 3-4. Ghimire’s tenure as project manager for the Project coincided with a public meeting in 2015 and the drafting of an Initial Study/Mitigated Negative Declaration in 2018. Ghimire Declaration ¶ 11. This experience is sufficient foundation for expert knowledge of the Project’s construction schedule, the requirements for Caltrans funding, the current condition of the facilities that the Project will replace, the safety and

circulation benefits that will result from the Project, the budget and anticipated construction costs for the Project and the construction contract award process.

Defendants cite Greshko v. Cnty. of Los Angeles, 194 Cal. App. 3d 822 (1987) in support of their challenge to this testimony. However, that case involved conclusory statements of counsel as to liability of a party based on the attorney's consultation with a liability expert. The trial court's determination was overturned when it relied upon that testimony as "substantial evidence" and rejected contradictory expert testimony. In that case the appellate court found that the attorney whose affidavit was in question "did not even attempt to lay the slightest factual foundation for his opinions. He does not even state what specific facts he relied upon, or what the expert opinion was that supported his conclusion that respondents had no liability to plaintiffs." Greshko at 834. That fact pattern is not comparable to the level of specialized professional experience and extensive experience specific to this Project that is attested to in the Ghimire Declaration.

Defendants' foundation objections are overruled.

2. Ambiguity/Overbreadth

The court agrees with the County that the Defendants' objection to the testimony as ambiguous, vague and overbroad does not include any specific examples of testimony that is alleged to be ambiguous, vague or overbroad. In general the Ghimire Declaration lays out a clear sequence of the need for possession of the property: the overriding interest is the need to adhere to a schedule that will promptly respond to the current dilapidated state of the infrastructure and provide public benefits in the nature of increased safety and improved circulation and to complete the project with the summer fire season in mind; that the federal fiscal year dictates the need for promptly certifying readiness to proceed to Caltrans so that funding requests will be accepted for the funding cycle that takes place in the next federal fiscal year, allowing time for the County to award a construction contract.

Defendants' objections as to ambiguity and overbreadth are overruled.

3. Hearsay

As discussed above, the court finds adequate support for the conclusions drawn in the challenged paragraphs from Ghimire's personal knowledge and experience as project manager for the Project and the language of those paragraphs does not constitute hearsay. The cases cited by Defendants do not require a different result. In Korsak v. Atlas Hotels, Inc., 2 Cal. App. 4th 1516 (1992) the expert offered testimony of "best practices" based on his informal survey of unidentified employees of other hotels that were not parties to the case. In the case of Grimshaw v. Ford Motor Co., 119 Cal. App. 3d 757 (1981) the court noted that an expert cannot testify to the details of matters that helped form the expert's opinion that would otherwise be

inadmissible, such as reports or studies. Even though the defendant in that case raised the issue of hearsay with respect to that expert's testimony, the court found that, as in this case, "most of the matters to which [the expert] referred were within his personal knowledge and experience." Id at 789.

Defendants' hearsay objections are overruled.

Having resolved the evidentiary objections to the County's assertion of overriding need for the prejudgment possession of the property, the court now turns to the substance of that assertion.

Defendants argue that the County's demand is premature because it has not finalized its design plans or hired a contractor for the construction, which is not scheduled until the spring of 2024.

The County responds that Defendants' arguments do not consider the nature of public construction projects, in which the selection of a contractor requires time to follow public procurement procedures, which in turn depend on identification of funding sources for the contract. In this case, the proposed funding source is a Caltrans program that processes funding requests at a certain time during an annual cycle that is in turn defined by the federal fiscal year. Ghimire Declaration at ¶¶13-14. To qualify for funding the local agency has to show that it is ready to proceed by demonstrating that it has access to the proposed Project site. Ghimire Declaration at ¶13. This Project, for which environmental review was conducted during 2018, (Ghimire Declaration at ¶11) requires advance planning for timely completion and from that perspective, the proposal to commence construction in the spring of 2024 is in fact imminent.

Additionally, the existing bridge presents a current public safety risk. Ghimire Declaration at ¶10.

Defendants argue that the County's Motion is deficient in that it does not assert any hardship if the Motion is denied. While it is true that the court is required to make a finding that "[t]he hardship that the plaintiff will suffer if possession is denied or limited outweighs any hardship on the defendant or occupant that would be caused by the granting of the order of possession," (Code of Civil Procedure § 1255.410(d)(2)(D)), it does not follow that the Motion is defective if it does not expressly reference any "hardship". The court is required to make findings based on the evidence presented with the Motion and the court can assess that evidence to determine "overriding need" and, if the "need" is not met, the resulting "hardship" by inference from the facts presented. In this case, the "hardship" to the County would be the inability to access construction funds through the federal government in the current fiscal year and having to postpone the Project for another annual funding cycle, or to identify other funds to accomplish the work, which might require postponing or cancelling other projects. There is

“hardship” implicit in delaying the repair of a deteriorating structure in the form of risk of injury to the public and liability to the County. See Complaint, Exhibit 1 (El Dorado County Board of Supervisors Resolution of Necessity).

Just Compensation

As part of the prejudgment possession procedure, Code of Civil Procedure, § 1255.010(b) requires a valuation of the subject property interest:

Before making a deposit under this section, the plaintiff shall have an expert qualified to express an opinion as to the value of the property (1) make an appraisal of the property and (2) prepare a written statement of, or summary of the basis for, the appraisal. The statement or summary shall contain detail sufficient to indicate clearly the basis for the appraisal, including, but not limited to, all of the following information:

(A) The date of valuation, highest and best use, and applicable zoning of the property.

(B) The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the appraisal.

(C) If the appraisal includes compensation for damages to the remainder, the compensation for the property and for damages to the remainder separately stated, and the calculations and a narrative explanation supporting the compensation, including any offsetting benefits.”

A Notice of Deposit in the amount of \$11,400 was filed on December 19, 2022, representing the Countys’ calculation of “the probable amount of compensation, based on an appraisal, that will be awarded in the proceeding”, as required by Code of Civil Procedure § 1255.010. The basis for the determination of probable compensation is the appraisal detailed in the Declaration of Dwight Pattison in Support of the Notice of Deposit, dated December 9, 2022, and attached to the Notice of Deposit as Exhibit B. (“Pattison Declaration”)

Defendants argue that the amount of deposited by the County does not represent the probable amount of compensation because it fails to account for the impacts of the elimination of 21 trees, the conversion of a natural streambed into a concrete slope and up to three years of elimination of the right to quiet enjoyment and invasion of privacy that will be caused by construction of the Project, including the stockpiling of materials and equipment and the operation of heavy machinery. Further, Defendants argue, the appraisal, such as it is, values Defendant Nagel’s front yard as “vacant land”. Pattison Declaration at ¶12. The appraisal considered the Tribe’s interest in the affected area as “nominal” and assigned no value to the Tribe’s cultural resources and the destruction of the natural riparian area. Pattison Declaration at ¶15. The value assigned to the removal of thirteen mature trees, including eight oak trees and three ornamental trees was \$6500, measured by the cost of buying new trees at the

nursery. Pattison Declaration at ¶19. Adequate compensation to Defendant Nagel for having construction operations on her property for up to three years, in an 8,312 space that neither she nor the Tribe will be able to access during that period, was determined by the County to be \$1708. Pattison Declaration at ¶18.

While Defendants have argued that the amount deposited by the County is not sufficient, they have not proposed an alternate amount that would represent sufficient compensation for the eminent domain action. Code of Civil Procedure § 1255.030(b) provides:

If the plaintiff has not taken possession of the property and the court determines that the probable amount of compensation exceeds the amount deposited, the court may order the plaintiff to increase the deposit or may deny the plaintiff possession of the property until the amount deposited has been increased to the amount specified in the order.

Findings

Under the totality of the circumstances presented the court finds the declarations in support of the motion establish the following:

1. The County is entitled to take the property by eminent domain;
3. There is an overriding need for the County to possess the property prior to the issuance of a final judgment in the case, and the plaintiff will suffer a substantial hardship if the application for possession is denied or limited;
4. The hardship that the County will suffer if possession is denied or limited outweighs any hardship on the Defendants that would be caused by granting the Order of Possession.

The court additionally finds that additional information is required to determine the probable amount of compensation that would be due to Defendants for this action. The court will hear arguments on the appropriate deposit amount for the probable amount of compensation before granting the order.

Once the appropriate deposit amount for probable amount of compensation has been determined, the court will grant the motion for prejudgment possession, at which time the court will also direct the County Tax Collector to certify the information enumerated in Section 1260.250(c).

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 23, 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.

3. EWING IRRIGATION PRODCUTIONS v. LAND TECH INDUSTRIES, INC. 22CV1565

Order of Examination Hearing

A Notice of Entry of Judgment on Sister-State Judgment was filed with this court on October 28, 2022, for a judgment amount of \$34,828.25. Substituted service of the Notice was effected on November 17, 2022 at the residence of Lawrence Joseph Petretti and filed with this court on December 15, 2022. Service of the Notice was again made on November 30, 2022, by substituted service at the residence of Lawrence Joseph Petretti in his capacity as CEO of Land Tech Industries, Inc. A Writ of Execution was issued on March 10, 2023.

An Application and Order for Appearance and Examination was filed on April 14, 2023. Personal service of notice of the examination hearing, meeting the requirements of Code of Civil Procedure § 415.10, is required. Cal. Code Civ. Pro. § 708.110(d). Personal service of the Application was effected on May 17, 2023 and proof of service was filed with the court on May 31, 2023.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 23, 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.

4. IN RE: 3883 ARROWHEAD DR., EL DORADO HILLS, CA 23CV0593

Entitlement and Distribution of Surplus Funds from Trustee's Sale

A Petition was filed on April 20, 2023 by Clear Recon Corp, as trustee of the deed of trust for certain real property that was sold at a trustee's foreclosure sale on December 8, 2022. The Petition states that there remains to be distributed to several potential claimants with conflicting claims the amount of \$303,922.06 in surplus funds remaining from the sale proceeds after deducting trustee fees, expenses, and the court filing fee. The Petition further states that the trustor passed away on August 1, 2009, and his estate was distributed pursuant to probate proceedings in El Dorado Superior Court Case No. PP20090112 (Estate of Curtis D. Hall). The Order Directing Final Distribution on Waiver of Account was filed with the El Dorado Superior Court on June 10, 2011, and provides for a distribution of the interest in the real property located at 3882 Arrowhead Dr., El Dorado Hills, CA and any other property of decedent be distributed to David Z. Hill, Jr. and Jacqueline R. Thomas equally.

Pursuant to Civil Code § 2924j(a), on December 12, 2022, Petitioner sent a notice to all potential claimants with recorded interests in the real property, including Shimbra, Inc. (\$175,000) and the El Dorado Hills Community Services District (\$446.86). In addition, Petitioner received notice of claims from the El Dorado Irrigation District (\$1,748.02), Jacqueline Thomas and David Z. Hill, Jr.

A Disclaimer to Surplus Funds was received from Shimbra, Inc., dated February 18, 2023, however, Petitioner was not able to ascertain the ownership of the company, which holds the second deed of trust to the subject property.

Civil Code § 2924j(c) provides that:

"If, after due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's sale surplus of multiple persons or if the trustee determines there is a conflict between potential claimants, the trustee may file a declaration of the unresolved claims and deposit with the clerk of the superior court of the county in which the sale occurred, that portion of the sales proceeds that cannot be distributed, less any fees charged by the clerk pursuant to this subdivision. The declaration shall specify the date of the trustee's sale, a description of the property, the names and addresses of all persons sent notice pursuant to subdivision (a), a statement that the trustee exercised due diligence pursuant to subdivision (b), that the trustee provided written notice as required by subdivisions (a) and (d) and the amount of the sales proceeds deposited by the trustee with the court. Further, the trustee shall submit a copy of the trustee's sales guarantee and any information relevant to the identity, location, and priority of the potential claimants with the court and shall file proof of service of the notice required by subdivision (d) on all persons described in subdivision

(a). ¶ The clerk shall deposit the amount with the county treasurer or, if a bank account has been established for moneys held in trust under paragraph (2) of subdivision (a) of Section 77009 of the Government Code, in that account, subject to order of the court upon the application of any interested party. The clerk may charge a reasonable fee for the performance of activities pursuant to this subdivision equal to the fee for filing an interpleader action pursuant to Chapter 5.8 (commencing with Section 70600) of Title 8 of the Government Code. Upon deposit of that portion of the sale proceeds that cannot be distributed by due diligence, the trustee shall be discharged of further responsibility for the disbursement of sale proceeds. A deposit with the clerk of the court pursuant to this subdivision may be either for the total proceeds of the trustee's sale, less any fees charged by the clerk, if a conflict or conflicts exist with respect to the total proceeds, or that portion that cannot be distributed after due diligence, less any fees charged by the clerk." (Emphasis added.)

The Petition meets the requirements of Civil Code § 2924j(c). The proof of service in the court's file indicates that the potential claimants known to the trustee were served the notice of the Petition by mail on April 19, 2023.

The Petition requests the court to (1) enter an Order authorizing the deposit of \$303,992.06 with the clerk of the court, (2) discharge the Petitioner of further responsibility for distributing the sale proceeds, (3) set a hearing within 90 days of the deposit to consider the claims for the surplus funds, (4) send notice of the hearing by first-class mail to all claimants identified in the Petition that the court will consider all claims filed with the court at least 15 days prior to the hearing date, and (5) distribute the deposited funds to any and all claimants entitled thereto pursuant to Civil Code § 2924k, which provides for an order of priority for distribution of these funds:

(a) The trustee, or the clerk of the court upon order to the clerk pursuant to subdivision (d) of Section 2924j, shall distribute the proceeds, or a portion of the proceeds, as the case may be, of the trustee's sale conducted pursuant to Section 2924h in the following order of priority:

- (1) To the costs and expenses of exercising the power of sale and of sale, including the payment of the trustee's fees and attorney's fees permitted pursuant to subdivision (b) of Section 2924d and subdivision (b) of this section.
- (2) To the payment of the obligations secured by the deed of trust or mortgage which is the subject of the trustee's sale.
- (3) To satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority.

(4) To the trustor or the trustor's successor in interest. In the event the property is sold or transferred to another, to the vested owner of record at the time of the trustee's sale.

In this case, the amount to be deposited with the court already includes deductions for the trustee's costs and expenses. (Civil Code § 2924k(a)(1)).

TENTATIVE RULING # 4: ABSENT OBJECTION THE MOTION IS GRNTED AS REQUESTED.

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.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5. RUSSI v. TRAIL BROTHERS LLC 21CV0315

Order of Examination Hearing

On February 2, 2023, judgment creditor filed an Application and Order for Appearance and Examination to require judgment debtor Zachary Leyden to appear on March 17, 2023. Personal service of notice of the examination hearing, meeting the requirements of Code of Civil Procedure § 415.10, is required. Cal. Code Civ. Pro. § 708.110(d).

On March 15, 2017, counsel for the judgment creditor filed a declaration stating that there have been multiple attempts to personally serve the judgment debtor. Attached were two declarations by process servers stating that attempts to effectuate personal service have been unsuccessful. Accordingly, the judgment creditor requested postponement of the examination hearing date to give more time to accomplish personal service and the hearing was continued to May 19, 2023.

At the May 19, 2023, hearing, Plaintiff presented a proof of service which the court found to be valid. The court continued the hearing to June 23, 2023. The court issued a bench warrant against Defendant with bail set \$2,500 and ordered the bench warrant to be stayed until June 23, 2023. The court stated that if the Defendant fails to appear at the June 23, 2023 hearing, the bench warrant will be released and attorney fees will be awarded to the judgment creditor. Proof of service of this order was served by mail on Defendant on May 23, 2023 and filed with the court on May 24, 2023.

Plaintiff's counsel has filed a Declaration, dated May 23, 2023, that estimates attorney fees at \$3,200 in connection with this examination to date, plus an additional \$1050 anticipated for the examination hearing, for a total of \$4,250 that should be added to and become part of the judgment pursuant to Code of Civil Procedure § 708.170(a)(2).

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JUNE 23, 2023, IN DEPARTMENT NINE.

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6. **MCMILLAN v. RAZUMOVSKY ET AL**

PC20210256

Attorney Withdrawal

Counsel for the Defendants has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that there has been a breakdown in the attorney-client relationship that prevents the attorney from effectively representing the client in this case, and that the client has failed to cooperate with counsel.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. The proposed Order and accompanying Declaration state that the attorney has served the client with notice of the motion by mail, email and has phoned the client's last known telephone number.

The next scheduled hearing date for the case is a Case Management Conference scheduled for 9:30 a.m. on July 31, 2023 in Department 10.

TENTATIVE RULING #6: THE MOTION IS GRANTED, EFFECTIVE AS OF THE DATE OF THE FILING OF THE PROOF OF SERVICE WITH THE COURT SHOWING SERVICE OF THE ORDER ON THE CLIENT. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).

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).

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Tentative Rulings

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 BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7. NAME CHANGE OF BAGGERMAN 23CV0402

Petition for Name Change

Petitioner filed a Petition for Change of Name on March 27, 2023.

Proof of publication was filed on May 8, 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 # 7: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

8. NAME CHANGE OF KEYT 23CV0120

Petition for Name Change

Petitioner filed a Petition for Change of Name and Order to Show Cause on January 18, 2023. At the hearing of May 5, 2023, the court noted that no proof of publication or background check had been filed.

Petitioner is required to publish the OSC in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a), with proof of publication to be filed with the court. Petitioner is further required to file proof of a background check with the court, as required by Cal. Code of Civil Procedure § 1279.5(f).

TENTATIVE RULING # 8: THE HEARING ON THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, AUGUST 18, 2023, TO ALLOW PETITIONER TIME TO FILE PROOF OF PUBLICATION AND A BACKGROUND CHECK WITH THE COURT.

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).

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9. NAME CHANGE OF CARVALHO 23CV0662

Petition for Name Change (Minor)

Petitioner filed a Petition for Change of Name on April 11, 2023.

Proof of publication was filed on June 7, 2023, as required by Code of Civil Procedure § 1277(a).

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

TENTATIVE RULING # 9: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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).

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10. NAME CHANGE OF CARROLL 23CV0583

Petition for Name Change

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

Proof of publication was filed on May 23, 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 # 10: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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).

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11. GREEN ET AL v. SNIPES CONSTRUCTION ET AL

PC20200191

Determination of Good Faith Settlement

Defendant/Cross-Complainant Sierra Pacific Industries (“SPI”) has agreed to pay \$5,000 in settlement of claims brought by Plaintiffs. SPI now moves for a determination of good faith settlement under Code of Civil Procedure Section 877.6. According to the proof of service all parties were electronically served on May 8, 2023. The motion is not opposed.

Any party to an action in which it is alleged that two or more parties are joint tortfeasors is entitled to a court hearing on the issue of the good faith of a settlement between the plaintiff and one or more of the alleged tortfeasors. Cal. Civ. Pro. § 877.6(a)(1). A determination by the court that the settlement was made in good faith bars any other joint tortfeasor from bringing any further claims against the settling tortfeasor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault. Cal. Civ. Pro. § 877.6(c).

In Tech-Built v. Woodward-Clyde & Associates, the California Supreme Court addressed the good faith requirement for settlements under Section 877.6. The policies underlying the requirement, “...require that a number of factors be taken into account including a rough approximation of plaintiffs’ total recovery and the settlor’s proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of non-settling defendants.” Tech-Built v. Woodward-Clyde & Associates, 38 Cal.3d 448, 499 (1985).

However, as noted in City of Grand Terrace v. Superior Court, the overwhelming majority of applications for a good faith determination are unopposed and a full factual response to all of the Tech-Built factors would be a waste of valuable time and resources. So, when no one objects, a “barebones motion which sets forth the ground of good faith, accompanied by a declaration which sets forth a brief background of the case is sufficient.” City of Grand Terrace v. Superior Court, 192 Cal.App.3d 1251, 1261 (1987).

In the present case, the court has reviewed the application of SPI and determined that it sets forth the basic statutory elements as required. As such, the motion for determination of good faith settlement is granted.

TENTATIVE RULING #11: THE MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT IS GRANTED.

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).

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