07-14-23
Dept. 9
Tentative Rulings

1. CAMBRIDGE ET AL v. MARSHALL MEDICAL CENTER 22CV1292

Motion to Compel Joinder of Necessary Party

This action alleges wage and hour violations brought by individual former employees of the El Dorado Women's Health Medical Group, Inc. ("Medical Group") against Defendant Marshall Medical Center.

Request for Judicial Notice

Defendant requests that the court take judicial notice of the Certificate of Dissolution of the Medical Group filed with the California Secretary of State on June 17, 2022.

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() allows the court to take judicial notice of "official acts of the legislative, executive and judicial departments of the United States and of any state of the United States." This includes corporate documents filed with the Secretary of State. *See* O'Gara Coach Co., LLC v. Ra, 30 Cal. App. 5th 1115, 1121, (2019). 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.

Compulsory Joinder

According to the pleadings on file with the court, in 2004 Defendant and the Medical Group entered into a professional services agreement whereby Defendant paid the Medical Group a fee for the Medical Group's provision of professional health care services at Defendant's facilities.[1] The Medical Group employed individual medical professionals and, according to Defendant, was responsible for paying salaries and benefits of these individual service providers. Most of the Plaintiffs in this action also served in various capacities as corporate officers of the Medical Group. The Plaintiff's First Amended Complaint ("FAC") alleges that the contractual fee paid by Defendant to the Medical Group was for monthly "base compensation" for the service providers for salary and benefits, and that Defendant controlled hiring decisions, and wages, hours and working conditions of and paid bonuses to the individuals who provided services under the agreement, functioning as a "joint employer". This arrangement continued for 15 years, with periodic negotiated amendments to the agreement.

[1] The court granted Defendant's request to file the agreement under seal in an order dated February 14, 2023. The same order granted Defendant's request for judicial notice of the agreement, as well as various corporate documents of the Medical Group.

Defendant terminated the agreement on September 30, 2021, thirteen months in advance of its negotiated termination date. Plaintiffs allege that at the time of termination, individual service providers had accrued rights to paid time off and accrued wages were still due to be paid. Plaintiffs allege that the contract had been the Medical Group's sole source of revenue and so there were no other sources of funds to satisfy those obligations. Plaintiffs allege violations of the Labor Code for unpaid wages and accrued paid time off hours.

Defendant argues that the Medical Group is a necessary party to the action and moves for compulsory joinder of the Medical Group pursuant to Code of Civil Procedure § 389.

Code of Civil Procedure § 389 provides:

> (a) 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.

"The determination of whether a party is necessary or indispensable is one in which the court 'weighs "factors of practical realities and other considerations." Dreamweaver Andalusians, LLC v. Prudential Ins. Co. of Am., 234 Cal. App. 4th 1168, 1173 (2015). The "motion must be determined in the context of the particular litigation because it is fact specific." Id. at 1174.

Impairment of the Medical Group's Interests

There is no doubt that the Medical Group has an interest relating to the subject of the action. If, as alleged, it is a joint employer with Defendant, it shares joint and several liability for unpaid wages. It was a party to the agreement that created the funding for such wages and has interests as a party to that contract. The failure to join the Medical Group could potentially "impair or impede" its ability to protect its interests, because neither party has an identity of interest with the Medical Group.

Defendant denies that it is a joint employer with the Medical Group, and Defendant was a party to an agreement with the Medical Group pursuant to which it holds potentially conflicting interests in this action involving that agreement's termination. In this action Defendant could use the Medical Group as an "empty chair" in which assign liability for non-payment of wages. Although Plaintiffs claim that the "interests of Plaintiffs and the Medical

Group are necessarily aligned," Plaintiff's Opposition to Defendant's Motion Compelling Joinder at p. 7, as employees asserting Labor Code claims their interests are directly in conflict with those of their employer.

Plaintiffs claim that the Medical Group cannot satisfy outstanding wage demands because of the termination of payments from Defendant through the professional services agreement. The performance of the professional services agreement and payments made pursuant to its terms are relevant to the resolution of Plaintiffs' claims against Marshall, as it is must be established whether Defendant's payments that might have been distributed as wages to Plaintiff were in fact retained by the Medical Group, or otherwise distributed in a manner that did not satisfy these individual Plaintiff's claims for earned wages and paid time off. Several of these individual Plaintiffs suing as employees of the Medical Group also serve as officers of that corporation, and as such might have had involvement with the distribution of its assets that would complicate wage and hour claims made against one entity but not against the entity in which they as individuals have served as corporate officers.

The FAC alleges that the cessation of payments from Defendant ended the Medical Group's existence as a going concern, FAC ¶ 10, but Plaintiffs later admit that the entity continues in existence and "has abandoned actions directed towards dissolution of the corporate entity." Plaintiff's Opposition to Defendant's Motion Compelling Joinder at p. 6. Accordingly, the Medical Group continues to hold interests that it has a right to assert through some party other than those who are actively asserting claims against it.

These issues are all central to the claims asserted in the action, and no existing party is capable of representing the Medical Group's interest among these conflicting claims.

Risk of Inconsistent Obligations

While it is true, as Plaintiffs argue, that the mere possibility of separate litigation is not sufficient to require joinder, there is a risk of inconsistent results when separate actions between different parties are pursued on the same set of facts. Here we have one agreement between two corporate entities and claims of unpaid employment contracts owed by either one or both entities that are funded by that same agreement.

Defendant could potentially secure a judgment holding that it is not in fact an employer in a suit against the Medical Group, while Plaintiffs could potentially sustain claims for unpaid wages against Defendant as the only discernable funding source in the absence of the entity that actually hired the employees and calculated and distributed the payroll. Defendant could be held liable for amounts based on claims by Plaintiffs, only to later find in a subsequent action for indemnification or contribution that the Medical Group holds records refuting those claims. Alternatively, a subsequent action could establish that in fact the Medical Group does have

assets to satisfy its obligations and that Defendant should not have been held responsible for those claims.

For the reasons stated above, the court finds that the Medical Group is a necessary party to this action.

TENTATIVE RULING # 1:

1. DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.

2. ABSENT OBJECTION, DEFENDANT'S MOTION FOR JOINDER OF THE MEDICAL GROUP AS A NECESSARY PARTY 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).

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.

2. CLAIM OF BRANDYN HERRERA 23CV0515

Petition for Forfeiture

Claimant filed a Claim Opposing Forfeiture regarding $2,981 on April 11, 2023.

On May 22, 2023, the People of the State of California filed a Petition for Forfeiture pursuant to Health and Safety Code § 11469, *et seq.* regarding $2,981 that was seized from Claimant's person on February 2, 2023 and is currently in the possession of the El Dorado County District Attorney's Office.

At the hearing on May 26, 2023, the court found that no proof of service had been filed and there had been no meet and confer efforts and continued the hearing.

Proof of publication was filed on July 5, 2023.

* * *

"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 # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JULY 14, 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. HIDDEN SPRINGS VILLA v. ESTATE OF DANIELLE BUDA 23CV0117

Petition for Declaration of Abandonment

This Petition relies upon the procedures set for the in Civil Code § 798.61 regarding the procedures for declaring a mobile home abandoned and for the recovery of unpaid rents.

On March 31, 2014, Danielle Buda entered into a rental agreement with Petitioner, a mobile home park, for the rent of the mobile home at issue in this Petition. Petition, Exhibit 2. In April, 2022, Buda did not pay rent when it came due. Petitioner sent Buda a notice to sell or remove the mobile home on April 13, 2022, as required by Civil Code § 798.55(b), (see Petition, Exhibit 3) whereupon Petitioner learned of Buda's death and the appointment of the Public Administrator to manage her estate. Petition, Exhibit 5. The Public Administrator notified Petitioner that it was abandoning the mobile home and that the estate was insolvent.

Currently the amount of past due rent and utilities is $7,484.97.

On June 27, 2022 Petitioner issued a 30 day Notice of Belief of Abandonment pursuant to Civil Code § 798.61(b). Petition, Exhibit 4.

On January 26, 2023, Petitioner filed this Petition pursuant to Civil Code § 798.61(c). The statute requires copies of the Petition to be served on the homeowner/registered owner, and upon any known person having a lien or security interest of record, which in this case would be the Public Administrator. There is no proof of service of the Petition on the Public Administrator; however, the August 25, 2022 letter from the Public Administrator to Petitioner declares that "the Public Administrator abandons this property" to Petitioner "to sell or otherwise use to offset the debt owned by Danielle Buda to the Park." Petition, Exhibit 5. The Public Administrator also requested arrangements to visit the property to collect any "essential papers and family items" that are part of the estate. Id.

In order to dispose of an abandoned mobile home, the Civil Code § 798.61(c)(2) lists the following requirements, language that is not currently included in the Petition as filed:

> (A) Declare in the petition that the management will dispose of the abandoned mobilehome, and therefore will not seek a tax clearance certificate as set forth in Section 5832 of the Revenue and Taxation Code.

(B) Declare in the petition whether the management intends to sell the contents of the abandoned mobilehome before its disposal.[2]

(D) Declare in the petition that management intends to file a notice of disposal with the Department of Housing and Community Development and complete the disposal process consistent with the requirements of subdivision (f).

Once these requirements regarding the contents of the Petition are met, Section 798.61(d) provides direction with respect to the court hearing:

(2) If, at the hearing, the petitioner shows by a preponderance of the evidence that the criteria for an abandoned mobilehome has been satisfied and no party establishes an interest therein at the hearing and tenders all past due rent and other charges, the court shall enter a judgment of abandonment, determine the amount of charges to which the petitioner is entitled, and award attorney's fees and costs to the petitioner. For purposes of this subdivision, an interest in the mobilehome shall be established by evidence of a right to possession of the mobilehome or a security or ownership interest in the mobilehome.

(3) A default may be entered by the court clerk upon request of the petitioner, and a default judgment shall be thereupon entered, if no responsive pleading is filed within 15 days after service of the petition by mail.

Within 10 days following a judgment of abandonment, Section 798.61(e)(1)(B) requires Petitioner to post and mail a notice of intent to dispose of the abandoned mobile home and its contents, and announcing the date of disposal, in the same manner as provided for the notice of determination of abandonment under Section 798.61(b), as well as to the county tax collector. Section 798.61(f)(1)(C) also requires such notice be provided to the Department of Housing and Community Development within 30 days od the judgment of abandonment.

Within 30 days following the sale of the mobile home and any personal property contained within it, Petitioner is required to file with the court an accounting of the moneys received from the sale and the disposition of the money and the items contained in the

[2] Although correspondence from the Public Administrator indicated its intention to remove essential documents and family items from the home, there is no indication in the Petition regarding the remaining contents. Within ten days of a judicial determination of abandonment, Section 798.61(f)(1)(A) requires the management of the mobile home park too complete an inventory of the contents of the mobile home and file that inventory with the court.

inventory, and a statement that the mobile home was disposed of, with supporting documentation. Civil Code §§ 798.61(e)(3); 798.61(f)(3)(A)(i); 798(f)(3)(B).

Although it is clear that the Public Administrator expressly informed Petitioner in writing that it was abandoning the mobile home, there are presumably family members who have an interest in the estate, and who may be entitled to surplus proceeds, if any, from the sale. These parties also have rights under the statute to reclaim the property at any time prior to the sale:

> At any time prior to the sale of an abandoned mobilehome or its contents under this section, any person having a right to possession of the abandoned mobilehome may recover and remove it from the premises upon payment to the management of all rent or other charges due, including reasonable costs of storage and other costs awarded by the court.

Civil Code § 798.61 (e)(1)(C).

Accordingly, in addition to the elements listed in Civil Code § 798.61(c)(2)(A)-(D) that are required to be included in the Petition, the requirements for proof of service must be met prior to a judicial declaration of abandonment.

TENTATIVE RULING #3: THIS MATTER IS CONTINUED TO 8:30 A.M., FRIDAY, AUGUST 25, 2023, IN DEPARTMENT NINE, TO ALLOW PETITIONER AN OPPORTUNITY TO RE-FILE THE PETITION IN COMPLIANCE WITH ALL REQUIREMENTS OF CIVIL CODE SECTION 798.61(c)(2), AND TO SERVE NOTICE OF THE PETITION IN COMPLIANCE WITH CIVIL CODE SECTION 798.61(c).

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.

4. STOCKTON v. HALLIDAY MANAGEMENT, ET AL PC20190220

Motion for Summary Judgment
Motion to Bifurcate Trial

This is a personal injury action for injuries sustained while Plaintiff Jonathan Stockton was moving his boat into a storage unit operated by Defendant Smart Self Storage of El Dorado Hills, LLC ("SSS"). Defendant Thomas Management LLC ("TM") was the business entity engaged by SSS to be responsible for property management of the storage facility. Plaintiff was seriously injured while using a "Trailer Tug Hydro 10" ("Trailer Tug"), a piece of boat-moving equipment that was provided to Plaintiff by Gary Risley, who was employed by TM as a manager of the storage space rental business. Plaintiff Shayna Stockton is Jonathan Stockton's wife, who has joined the suit with a claim of loss of consortium.

In 2017 Plaintiff Jonathan Stockton executed a rental agreement with SSS for the rental of storage unit #E7 on property owned by SSS and managed by TM. That rental agreement contained a Release of Liability as follows:

> Landlord, Landlord's agents and employees, Manager and Manger's employees shall not be liable to Tenant for injury or death as a result of Tenant's use of the Premises or Property, including claims for Landlord's pr Manager's active or passive acts, omissions or negligence.

Defendant TM has filed a motion for summary judgment as to Plaintiffs' Second Amended Complaint ("SAC").

<u>Request for Judicial Notice</u>

Defendant has filed a Request for the court to take judicial notice of the following documents:

1. Second Amended Complaint filed in this action, filed on December 30, 2020;
2. The Request for Dismissal as to Thomastown Builders, Inc., filed on June 13, 2023;
3. The Order for Motion on Summary Judgment of Judge Dylan Sullivan, dated December 21, 2020

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.

Collateral Estoppel

This action was filed on May 2, 2019, and in September of 2020 Defendant SSS filed a motion for summary judgment, arguing that the Release of Liability clause barred Plaintiff from suing for his injuries. This court heard the matter and indicated its inclination to grant the summary judgment motion but gave the Plaintiffs an opportunity to amend the Complaint to include allegations of Defendants' gross negligence, which might have defeated the motion but were not included in the original Complaint. Once the Complaint was amended, the court dismissed the summary judgment motion as moot because the pleadings on which the motion was based had been superseded.

Plaintiff argues that the court's decision on the prior motion for summary judgment prevents Defendant from raising essentially the same issues in its most recent motion on the theory of collateral estoppel.

Collateral estoppel or claim preclusion applies when "(1) the decision in the prior proceeding is final and on the merits; (2) the present proceeding is on the same cause of action as the prior proceeding; and (3) the parties in the present proceeding or parties in privity with them were parties to the prior proceeding." (Citation). Plan. & Conservation League v. Castaic Lake Water Agency, 180 Cal. App. 4th 210, 226 (2009); Colombo v. Kinkle, Rodiger & Spriggs, 35 Cal. App. 5th 407, 416 (2019).

Collateral estoppel cannot defeat Defendants' summary judgment motion in this case because the prior motion was not decided on the merits.

Motion for Summary Judgment

> [S]ummary judgment or summary adjudication is to be granted when there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law." (Mills v. U.S. Bank (2008) 166 Cal.App.4th 871, 894–895, 83 Cal.Rptr.3d 146.) The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 861–862, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

> "A defendant seeking summary judgment bears the initial burden of proving the cause of action has no merit by showing that one or more of its elements cannot be established or there is a complete defense to it.... [Citations.]" (Cucuzza v. City of Santa Clara (2002) 104 Cal.App.4th 1031, 1037, 128 Cal.Rptr.2d 660.)

Alvarez v. Seaside Transportation Servs. LLC, 13 Cal. App. 5th 635, 641–42 (2017).

Defendant argues that it is entitled to summary judgment because the storage space rental agreement contains a release of liability which is a complete defense to the allegations of the SAC and that Defendant is entitled to judgment as a matter of law. Code of Civil Procedure 437c(c). Although the Second Amended Complaint now includes allegations of gross negligence, Defendants argue that Plaintiff has not alleged sufficient facts to sustain a finding of gross negligence by Defendants.

Plaintiff argues against the summary judgment motion, on the following grounds:

1. TM was not a party to the rental agreement that contains the release of liability.
2. The scope of the release of liability did not include the circumstances of Plaintiff's injury because the agreement related to the rental of a particular space, and Plaintiff's injury occurred in a common area of the facility.
3. Plaintiff's injury was caused by the Trailer Tug equipment, which is specialized equipment owned by Defendant and not mentioned or included in the release of liability.
4. The release of liability must be construed in favor of Plaintiff and against the drafter.
5. The release does not absolve Defendant from gross negligence.

The court need not reach all of the arguments forwarded by Plaintiffs to reach a decision on this motion. If the SAC contains sufficient allegations to support a theory of gross negligence, then the court must view those allegations in the light most favorable to, and with all inferences drawn in favor of, the Plaintiffs. Anderson v. Fitness Internat., LLC, 4 Cal. App. 5th 867, 881 (2016).

"[N]o published California case has upheld, or voided, an agreement purporting to release liability for future *gross* negligence." City of Santa Barbara v. Superior Ct., 41 Cal. 4th 747, 758 (2007). "Whether there has been such a lack of care as to constitute gross negligence is generally a triable question of fact." Colich & Sons v. Pac. Bell, 198 Cal. App. 3d 1225, 1241 (1988).

Defendant cites Eriksson v. Nunnink, 233 Cal.App.4th 708 for the proposition that the non-moving party has the burden of proving gross negligence by a preponderance of the evidence, but that case was decided procedurally on a motion for judgment *after* the

presentation of evidence in a trial court pursuant to Code of Civil Procedure § 631.8. The instant motion is a pre-trial motion on the pleadings, where the "party moving for summary judgment bears an initial burden of production to make prima facie showing of the nonexistence of any triable issue of material fact." Alvarez v. Seaside Transportation Servs. LLC at 631, citing Aguilar v. Atl. Richfield Co., 25 Cal. 4th 826, 850 (2001).

> [I]n cases involving a waiver of liability for future negligence, courts have held that conduct that substantially or unreasonably increased the inherent risk of an activity or actively concealed a known risk could amount to gross negligence, which would not be barred by a release agreement. (See *Eriksson*, *supra*, 191 Cal.App.4th at p. 856, 120 Cal.Rptr.3d 90). Evidence of conduct that evinces an extreme departure from manufacturer's safety directions or an industry standard also could demonstrate gross negligence. (See *Jimenez v. 24 Hour Fitness USA, Inc.*, *supra*, 237 Cal.App.4th at p. 561, 188 Cal.Rptr.3d 228.) Conversely, conduct demonstrating the failure to guard against, or warn of, a dangerous condition typically does not rise to the level of gross negligence. (See *DeVito v. State of California* (1988) 202 Cal.App.3d 264, 272, 248 Cal.Rptr. 330.)

Anderson v. Fitness Internat., LLC, 4 Cal. App. 5th 867, 881, 208 Cal. Rptr. 3d 792, 803 (2016)

There are very few undisputed material facts established at this stage of the litigation, and none of those are helpful to reaching a decision on this motion. The allegations made in the SAC are supported by the deposition testimony of Norman Ragland, who created the Trailer Tug and sold the unit that resulted in Plaintiff's injury to Defendant's predecessor in 2010. Plaintiff's Appendix of Exhibits in Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Exhibit 5: Deposition of Norman Ragland, September 10, 2020 ("Ragland Deposition") at 34:2-8. Ragland provided the buyers with an operating manual. SAC ¶16, Ragland Deposition at 35:13-36:1, Plaintiff's Appendix of Exhibits in Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Exhibit 6.

Defendants argue that Ragland's testimony must be rejected as irrelevant, because he sold the Trailer Tug to Defendant SSS' predecessor, and any representations he made to those buyers were not made to Defendant SSS, which acquired the Trailer Tug when it purchased the storage rental business property. However, Mr. Ragland's testimony is relevant as to his conclusions following inspection of the Trailer Tug equipment that it was in a state of disrepair and unsafe to operate when it was provided to Plaintiff for his use. His testimony also provides foundation for the existence and contents of the operating manual for the Trailer Tug. Gary Risley, who served as the on-site manager of the storage facility, was familiar with the existence and contents of the operating manual. Plaintiff's Appendix of Exhibits in Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Exhibit 3: Deposition of Gary Risley (Risley Deposition), August 18, 2021, at 107:12-19.

The SAC alleges that Defendants provided the Trailer Tug equipment to Plaintiff without instructing him in its operation or providing him with the owners' manual, and without supervising or assisting his use of the equipment. SAC ¶19. The SAC alleges that the untrained and unsupervised use was contrary to the manufacture's safety directions. SAC ¶ 18. The SAC alleges that Defendants were aware of the incline on which Plaintiff rental unit was located and that the manufacturer recommended against operating the equipment on an incline. SAC ¶ 31-32. The SAC alleges that the equipment had not been maintained and that multiple safety features that might have prevented the injury were malfunctioning at the time it was operated by Plaintiff. SAC ¶24-26. The SAC alleges that the manufacturer of the Trailer Tug was unwilling to operate the equipment after observing the condition of disrepair in which it was maintained by Defendants because the direction it might go was unpredictable and the operator might not be able to get it to stop. SAC ¶ 27, Ragland Deposition at 104-106. Plaintiff Jonathan Stockton testified that the Trailer Tug continued in reverse even after he had put it into neutral. Plaintiff's Appendix of Exhibits in Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Exhibit 4: Deposition of Jonathan Stockton, July 9, 2020 ("Stockton Deposition") at 41-42. Ragland testified that a poorly adjusted belt and a cracked bell crank on the Trailer Tug "could affect the direction of the unit" and "would give you something other than what you selected" while attempting to operate the equipment and might prevent it from stopping. Ragland Deposition at 103:14-104:10.

The SAC alleges that the Defendants' failure to comply with even minimal safety standards constituted wanton, wilful conduct amounting to conscious disregard and deliberate indifference to human life and gross negligence, lacking even scant care for the safety of the Plaintiff. SAC ¶33.

Plaintiffs' SAC has raised a triable issue of material fact as to whether the conduct of Defendants amounted to gross negligence. The Motion for Summary Judgment is denied.

Summary Adjudication

The SAC lists four causes of action: Strict Product Liability, Product Negligence**,** Negligence and Loss of Consortium. For the same reasons that the Defendant is not entitled to a judgment as a matter of law on a summary judgment motion, the Defendant is not entitled to summary adjudication of any of the negligence-based causes of action.

The cause of action that is not based upon allegations of negligence is a strict product liability claim asserted against Defendant Trailertug Pro, LLC, which Defendant was dismissed from the action as of June 6, 2022.

Accordingly, the Motion for Summary Adjudication is denied.

TENTATIVE RULING # 4:

1. DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.

2. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED.

3. DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION IS DENIED.

4. DEFENDANT'S MOTION FOR BIFURCATION OF TRIAL IS CONTINUED TO 8:30 A.M., AUGUST 11, 2023 IN DEPARTMENT NINE.

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. GLIDDEN v. COUNTY OF EL DORADO PC20200282

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JULY 14, 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.

6. NAME CHANGE OF BLACKOWL 23CV0752

Petitioner filed a Petition for Change of Name on May 17, 2023.

Proof of publication was filed on June 26, 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 #6: 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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7. NORTHERN CA COLLECTION SVC v. CUNNINGHAM PCL20191007

Order of Examination Hearing

TENTATIVE RULING #7: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JULY 14, 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.

8. LIGHT v. CAMERON PARK SENIOR LIVING LLC 22CV0135

Motion to Compel Further Responses to Special Interrogatories, Request for Production of Documents, Set One

TENTATIVE RULING #8: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JULY 14, 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.

9. PEOPLE OF THE STATE OF CALIFORNIA v. VALENCIA PC20200369

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).)

TENTATIVE RULING #9: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JULY 14, 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.

10. PEOPLE v. MACEIUNAS 22CV0482

Petition for Forfeiture

On March 15, 2022, the People filed a petition for forfeiture of cash in the amount of $27,000.00 seized by the El Dorado County Sheriff's Department. According to The People, the property became subject to forfeiture pursuant to Health and Safety Code § 11470(f). Claimant Maceiunas filed a Judicial Council Form MC-200 claim opposing forfeiture in response to a notice of petition, along with a proof of service dated May 12, 2022.

Pursuant to Section 11470(f), items which are subject to forfeiture include all moneys and other items of value which are furnished or intended to be furnished in exchange for a controlled substance or which are used or intended to be used to facilitate a violation of a number of enumerated Penal and Health and Safety Code sections. Health & Safety § 11470(f). "[C]onduct which is the basis for the forfeiture [must have] 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 & Safety § 11470(f). "Any person claiming an interest in the property seized pursuant to Section 11488 may… 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 … a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property." Health and Safety Code, § 11488.5(a)(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." Health & Safety §11488.5(c).

It appears that all procedural matters have been complied with. There is no reference to a pending criminal trial in the file. Accordingly, the parties are ordered to appear to select trial dates.

TENTATIVE RULING # 10: APPEARANCES ARE REQUIRED AT 8:30 A.M., FRIDAY, JULY 14, 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.

11. NAME CHANGE OF KAUFMAN 23CV0660

Petitioner filed a Petition for Change of Name on May 2, 2023.

Proof of publication was filed on June 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 #11: 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.

12. NAME CHANGE OF GARCIA 23CV0728

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

Proof of publication was filed on June 12, 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 #12: 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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13. MALAKHOV v. MARTINEZ 22CV0690

Demurrer

Plaintiffs/Cross-Defendants Joshua Brost and Daniel Malakhov filed an action alleging breach of contract, breach of the covenant of good faith and fair dealing, fraudulent inducement of a contract, negligent and intentional infliction of emotional distress, negligence, fraud, deceptive business practices and attempted civil extortion in a dispute arising from the construction of a custom home by Defendants/Cross-Complainants.

Defendants/Cross-Complainants 5059 Greyson Creek Drive, LLC and Brian Morrow filed a Cross-Complaint against Plaintiffs for 1) breach of contract, 2) substantial performance, 3) anticipatory breach and 4) breach of covenant of good faith and fair dealing. The Cross-Complaint was filed on March 28, 2023.

Plaintiffs/Cross-Defendants filed a demurrer to the Cross-Complaint on May 11, 2023.

Timeliness of Demurrer/Lack of Notice

Cross-Complainants argue that Cross-Defendants' demurrer was late under the deadlines specified in Code of Civil Procedure § 430.40, which requires a demurrer to be filed within 30 days of the pleading it addresses. Cross-Defendants have provided documentation of Cross-Complainants' informal agreement to extend the deadline for filing to May 10, 2023. Declaration of Timothy Ivanovich Kokhanets, dated July 7, 2023, Exhibit 1. The demurrer was filed on May 11, 2023, along with a proof of service showing delivery of the demurrer and supporting documents to Cross-Complainants on May 10, 2023. Accordingly, the demurrer was timely filed in accordance with the parties' agreement to extend the statutory deadline to May 10, 2023.

Cross-Complainants further argue that the demurrer should not be heard because the notice of the demurrer was served without a hearing date, and that the lack of notice constitutes a violation of due process. It is not clear from the record when Cross-Complainants were notified of the hearing date; the Opposition alleges that they have never been served with notice of the date time and place for hearing on the demurrer.

This matter is continued to allow for proper service of notice of the hearing.

TENTATIVE RULING #13: THIS MATTER IS CONTINUED TO 8:30 A.M., FRIDAY, SEPTEMBER 15, 2023, IN DEPARTMENT NINE.

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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