

1. NAME CHANGE OF TROMBLEY 23CV0168

Petition for Name Change

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

There is nothing in the court's records indicating that the OSC has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a).

Petitioner is ordered to file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks.

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

At the hearing scheduled for June 9, 2023, the court continued the matter to allow Petitioner time to file proof of publication with the court. Proof of publication must be provided before the court is able to grant the Petition.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 4, 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.

2. NAME CHANGE OF STANTON 23CV0511

Petition for Name Change

Petitioner filed a Petition for Change of Name on April 11, 2023. In order to be granted a name change by the court, the Petition must include a statement of residence in El Dorado County and Petitioner's place of birth. Code of Civil Procedure § 1275.

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

While Petitioner does list an address in the "Attorney or Party without an Attorney" section of the NC-100 form which would satisfy the jurisdictional residence requirement, paragraph 1(a) of the NC-100 form indicating El Dorado County residence is not checked, and more importantly, no place of birth is listed under paragraph 7 of the form, which is a statutory requirement.

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

At the hearing on June 9, 2023, the court continued this matter to allow Petitioner time to file proof of publication and an amended NC-100 form specifying Petitioner's birthplace with the court. These documents must be provided before the court is able to grant the Petition.

TENTATIVE RULING #2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 4, 2023, IN DEPARTMENT NINE.

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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.

3. PEOPLE OF THE STATE OF CALIFORNIA v. GIAR KUNG

PC20210120

Trial Setting – Asset Forfeiture
No Notice of Remote Appearance

TENTATIVE RULING #3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 4, 2023, IN DEPARTMENT NINE.

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4. PEOPLE OF THE STATE OF CALIFORNIA v. BUTTERFIELD 21CV0167
Settlement Conference – Asset forfeiture - Nothing new filed

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 4, 2023, IN DEPARTMENT NINE.

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**5. PEOPLE OF THE STATE OF CALIFORNIA v. \$31,939.97 IN US CURRENCY
23CV0581**

Petition for Forfeiture - Nothing new filed

The unverified petition contends: \$31,939.97 in U.S. Currency was seized by the El Dorado County Sheriff's Office; such funds are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of Health and Safety Code, § 11358. The People pray for judgment declaring that the money is forfeited to the State of California.

A proof of service was sent by registered mail to an interested party on April 14, 2023. Service of notice of this hearing was delivered to an interested party by U.S. mail on June 30, 2023, and proof of service was filed with the court on July 5, 2023.

Proof of publication was filed with the court on July 5, 2023.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 4, 2023, IN DEPARTMENT NINE.

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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.

6. NAME CHANGE OF SANCHEZ 23CV0858

Petition for Name Change

Petitioner filed a Petition for Change of Name on June 6, 2023.

Proof of publication was filed on July 18, 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. PEOPLE OF THE STATE OF CALIFORNIA v. KELLY

PCL20210332

Claim Opposing Forfeiture & Petition for Forfeiture

Claimant Kelly filed a claim opposing forfeiture in response to a notice of administrative proceedings to determine that certain funds are forfeited. The People responded by filing a petition for forfeiture. The unverified petition contends: \$13,914 in U.S. Currency was seized by the El Dorado County Sheriff's Office; such funds are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of Health and Safety Code, § 11358. The People pray for judgment declaring that the money is forfeited to the State of California.

Notice of this hearing was served on Claimant by U.S. mail on July 21, 2023, and proof of service was filed with the court on July 24, 2023.

TENTATIVE RULING #7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 4, 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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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. RUGER v. COUNTY OF EL DORADO

23CV0238

Petition for Relief from Govt Code § 954.4 – No Reply filed.

Petitioner seeks relief from the six-month deadline for filing an action against the County imposed by Government Code § 954.4. That section prohibits the filing of an action against a public entity without first filing a written claim:

[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with [Section 900](#)) and Chapter 2 (commencing with [Section 910](#)) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.

The six-month deadline for filing such a claim is set forth in Government Code § 911.2(a):

A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with [Section 915](#)) not later than six months after the accrual of the cause of action.

Petitioner's son died in the custody of the County on **November 4, 2021**. Petitioner filed a claim against the County on **May 27, 2022**, approximately three weeks after the statutory deadline had expired. The County rejected the claim for being untimely. Petitioner filed an application for leave to present a late claim pursuant to **Government Code § 911.4** and received no response. By statute this application was deemed rejected as of August 19, 2022. **Government Code § 911.6(c)**.

A claimant may be relieved of the six-month deadline or upon petition to superior court. **Government Code § 946.6**. The court is required to grant the petition if the court finds that the failure to file the claim is based on "mistake, inadvertence, surprise, or excusable neglect, . . ." **Government Code § 946.6(c)**. "The court shall make an independent determination upon the petition. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition." **Government Code § 946.6(e)**.

The decision to grant or deny a petition seeking relief under section 946.6 is within the sound discretion of the trial court and will not be disturbed on appeal except for an abuse of discretion. However, the trial court's discretion to grant relief is not "unfettered." It is "to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.' "

Section 946.6 is a remedial statute intended "to provide relief from technical rules that otherwise provide a trap for the unwary claimant." As such, it is construed in favor of relief whenever possible.

Bettencourt v. Los Rios Cmty. Coll. Dist., 42 Cal. 3d 270, 275 (1986) (citations omitted.)

The Fourth District Court of Appeal has comprehensively summarized the applicable standard for reviewing a claim of “mistake, inadvertence, surprise or excusable neglect” in the case of N.G. v. Cnty. of San Diego, 59 Cal. App. 5th 63 (2020). The Court held that relief is “available ‘only on a showing that the claimant's failure to timely present a claim was reasonable when tested by the objective ‘reasonably prudent person’ standard,’” Id., quoting Dept. of Water & Power v. Superior Court 82 Cal.App.4th 1288, 1293 (2000). “Under the reasonably prudent person standard, ‘[e]xcusable neglect is that neglect which might have been the act of a reasonably prudent person under the circumstances.’ [Citation.] When relief is sought based on mistake, because of the reasonably prudent person standard ‘it is not every mistake that will excuse a default, the determining factor being the *reasonableness* of the misconception.’ [Citation.]” Id. at 73–74 (footnotes omitted).

A showing of reasonable diligence is required to establish that the petitioner acted as a reasonably prudent person. **When excusable neglect is claimed based on ignorance of a fact or failure to act on it, “[a] person seeking relief must show more than just failure to discover a fact until too late; or a simple failure to act. He [or she] must show by a preponderance of the evidence that in the use of reasonable diligence, he [or she] could not discover the fact or could not act upon it.”** (*Dept. of Water & Power, supra*, 82 Cal.App.4th at p. 1296, 99 Cal.Rptr.2d 173.) Similarly, when mistake is claimed, “[t]he party seeking relief based on a claim of mistake must establish he [or she] was diligent in investigating and pursuing the claim” (*Id.* at p. 1293, 99 Cal.Rptr.2d 173.) Under this standard, “[f]ailure to discover the alleged basis of the cause of action in time is ... not a compelling showing in the absence of reasonable diligence exercised for the purpose of discovering the facts.” (*Harrison v. County of Del Norte* (1985) 168 Cal.App.3d 1, 7, 213 Cal.Rptr. 658.) Further, “the mere ignorance of the time limitation for filing against a public entity is not a sufficient ground for allowing a late claim.” (*Ibid.*)

Id. at 74.

The Court of Appeal allowed that in some exceptional cases the **failure to take any action whatsoever during the six-month claims period could support relief based on excusable neglect where the “physical and/or mental disability so limited the claimant's ability to function and seek out counsel such that the failure to seek counsel could itself be considered the act of a reasonably prudent person under the same or similar circumstances,”** id. at 75. *See, e.g. Barragan v. County of Los Angeles*, 184 Cal.App.4th 1373 (2010) [decision to waive statutory deadline upheld where petitioner failed to seek counsel during the six month claims period where the claimant spent the first three months in the hospital, and the remainder of the six-month period confined to her bed at home, unable to sit up, and required to relearn basic bodily functions.]

However, because “every claimant is likely to be suffering from some degree of emotional upset, ... it takes an *exceptional showing* for a claimant to establish that his or her disability reasonably prevented the taking of necessary steps.” . . . A petitioner makes an exceptional showing by establishing that emotional trauma has “substantially interfered with his [or her] ability to function in daily life, take care of his [or her] personal and business affairs, or seek out legal counsel.” . . . As one court has observed, “[s]ignificant emotional anguish and depression on the part of those immediately affected may be expected in virtually every major personal injury and wrongful death case. [Citation.] The Legislature obviously did not believe these conditions could provide an escape hatch from the claim-filing requirement, as evidenced by the fact that ‘incapacitation’ is listed as a separate ground for relief, and is available only where the condition exists throughout the *entire* course of the claim-filing period. (§ 946.6, subd. (c)(3).)” (*Ibid.*)

N.G. v. Cnty. of San Diego, 59 Cal. App. 5th 63, 74–75 (citations omitted).

To support her Petition, Petitioner provided a declaration attaching notes from a Marriage and Family Therapist (MFT) who she consulted on three occasions beginning in late **June 2022**. These notes consisted of two sentences describing Petitioner’s symptoms, but do not indicate whether those symptoms presented during the six-month claim period, or from the time of the initial examination nearly two months after the claims period had expired.

The Petition also attaches a two-page letter from a psychologist who she consulted for two hours, dated **January 31, 2023**, fourteen months after the incident giving rise to the claim, and eight months after the claim period had expired. These documents describe Petitioner’s depression regarding the death of her son, diminished concentration, sleep disturbance and fatigue, and post-traumatic stress. However, the January 31, 2023, letter indicates that Petitioner continued to work at her job and took on additional responsibilities at work, and she engaged with her insurance carrier to repair extensive damage caused to her home and possessions during the arrest.

The present case is somewhat analogous to the facts in the case of County of Santa Clara v. Superior Court 4 Cal.3d 545 (1971), in which the California Supreme Court did not find an abuse of discretion in the trial court’s grant of relief from the deadline based on emotional trauma that delayed parents’ filing of a claim for a wrongful death action for their child. That case is also somewhat distinguishable because in that case the parents did not discover the cause of death until just before the deadline for filing a claim, whereas here Petitioner had knowledge of the circumstances leading up to and the caused of her son’s death during the full statutory period and that he was in custody of the County in the moments leading up to his death. The documentary evidence filed in support of the Petition is based on information collected after the six-month period and to the extent that it specifically addresses Petitioner’s

mental state during that period it shows that she continued her employment, engaged with her insurance company on the extensive repair of her home, and kept busy with daily activities.

Government Code § 946.6(e) requires the court to consider the documentary evidence submitted with the Petition, “and any additional evidence received at the hearing on the petition.” Accordingly, the court’s findings will be determined following presentation of further evidence at the hearing on the Petition.

TENTATIVE RULING #8: DENY THE PETITION. N.G. v. Cnty. of San Diego, 59 Cal. App. 5th 63, 74-75 (2020).

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 4, 2023, IN DEPARTMENT NINE.

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9. **MCGAGIN v. BLACK OAK LAND HOLDINGS, LLC**

PC20210551

Motion for Summary Judgment

The Complaint in this action alleges negligence/premises liability against Defendant, a winery and event venue. Plaintiff was injured while staffing an event at the facility. Defendant's motion for summary judgment alleges that the claim is barred because Plaintiff was an employee whose claim for Worker's Compensation benefits for the incident has been accepted by the State Compensation Insurance Fund ("SCIF").

Plaintiff responds that the action is not barred because Defendant misclassified Plaintiff as an employee in order to take advantage of Workers' Compensation insurance coverage when she was injured, and that there are triable issues of material fact.

According to Defendant's pleadings, there is an open claim for Workers' Compensation pending before the SCIF. The WCAB claim was filed first. That claim could be denied if the SCIF finds that Plaintiff was an independent contractor at the time of the incident. If the claim is accepted, this case may become moot. Accordingly, it is premature for the court to attempt to judicially classify Plaintiff's employment status until that administrative claim is processed by the State. Until that happens, Plaintiff's classification as employee or independent contractor is a triable issue of material fact.

TENTATIVE RULING #9: THE MOTION FOR SUMMARY JUDGMENT IS DENIED.

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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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

08-04-23
Dept. 9
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.

10. MULTI-HOUSING TAX CREDIT PARTNERS III v. CBM-96, LLC

22CV0205

Motion for Judgment on the Pleadings

TENTATIVE RULING #10: AT PLAINTIFF'S REQUEST, THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY OCTOBER 6, 2023, IN DEPARTMENT NINE TO ALLOW THE PARTIES TO BRIEF THE NEW ISSUES RAISED IN DEFENDANT'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES.

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. DANIELS ET AL. v. CROSBY HOMES, INC. ET AL.

PC20190135

Motion to Strike

On January 19, 2023, Plaintiff filed a voluntary request for dismissal of this construction defect action as to Defendant Chris Connolly dba Tile-It, and that request for dismissal was served on Mr. Connolly on February 14, 2023, via Case Anywhere, an electronic service that was mandated by the court in its Case Management Order dated April 30, 2021.

California Rule of Court, Rule 3.1700(a)(1) requires a prevailing party who claims costs must serve and file a memorandum of costs within 15 days “after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first.”

Plaintiff’s motion states the final deadline for the memorandum of costs would have been March 4, 2023, allowing for time for electronic service. The memorandum of costs was filed on March 7, 2023.

Even without an agreement of the parties, California Rule of Court, Rule 3.1700(a)(3) allows the court to “extend the times for serving and filing the cost memorandum or the notice of motion to strike or tax costs for a period not to exceed 30 days.”

TENTATIVE RULING #11: THE COURT EXTENDS THE TIME FOR DEFENDANT CONNOLLY DBA TILE-IT’S FILING OF A MEMORANDUM OF COSTS IN THE ACTION TO MARCH 7, 2023. PLAINTIFF’S MOTION TO STRIKE THE MOMERANDUM OF COSTS IS DENIED.

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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