**1. PEOPLE v. RODRIGUEZ PCL-20190512**

**Petition for Forfeiture.**

The People filed a petition for forfeiture of certain funds seized pursuant to the provisions of Health and Safety Code, §§ 11469, et seq. The unverified petition contends: the sum of $2,775 in U.S. Currency was seized by the El Dorado County Sheriff's Office on or about March 28, 2019; such funds are currently in the hands of the El Dorado County District Attorney's Office; 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 claimant/respondent filed a claim opposing forfeiture in which he contends the funds are his; a criminal case pertaining to the property and related allegations of violations of Health and Safety Code, §§ 11351, 11366, 11352(a), and 11379(a) has been filed under case number P19CRF0095; and claimant was arraigned on May 21, 2019. The People pray for a judgment declaring that the money is forfeited to the State of California.

The People state that they do not waive their right to a jury trial, they intend to try the asset forfeiture case in conjunction with the related criminal trial pursuant to Health and Safety Code, §§ 11488.4(i)(3) and 11488.4(i)(5), and the People intend to conduct civil discovery pursuant to Health and Safety Code, § 11488.5(c)(3).

Claimant/Respondent Rodriguez filed a response to the petition denying the allegations of the unverified 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).)

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

Upon the request of the People, the court continued the hearing from September 17, 2021 to February 18, 2022.

**TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 18, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.**

**2. PEOPLE v. ESQUIVEL PC-20200526**

**Petition for Forfeiture.**

The People filed a petition for forfeiture of cash. The unverified petition contends: $32,370 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 defendant's 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 Penal Code and Health and Safety Code. The People pray for judgment declaring that the money is forfeited to the State of California.

On November 23, 2020 respondent Esquivel filed a verified claim opposing the People's request for forfeiture.

"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).)

"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." (Health and Safety Code, § 11488.4(i)(4).)

"(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." (Health and Safety Code, § 11488.5(c).)

"(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

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

Upon the request of the People, the court continued the hearing from October 29, 2021 to February 18, 2022.

**TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 18, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.**

**3. PEOPLE v. ANDERSON PCL-202100122**

**Claim Opposing Forfeiture.**

On February 19, 2021 claimant Anderson filed a verified Judicial Council Form MC-200 claim opposing forfeiture of $4,646.52 in response to a notice of administrative proceedings. The proof of service declares that the endorsed claim opposing forfeiture was served by mail on the El Dorado County District Attorney on March 1, 2021.

"The following are subject to forfeiture: ¶ * * * (f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." (Health and Safety Code, § 11470(f).)

"(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another

provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located. ¶ A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier." (Emphasis added.) (Health and Safety Code, § 11488.4(a).)

"(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim…" (Health and Safety Code, § 11488.5(a)(1).)

"(c)(1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such

a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488. ¶ (2) The hearing shall be by jury, unless waived by consent of all parties. ¶ (3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter." (Emphasis added.) (Health and Safety Code, § 11488.5(c).)

"(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

"(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237,

and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant." (Health and Safety Code, § 11488.5(e).)

"(i)(1) With respect to property described in subdivisions (e) and (g) of Section 11470 for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought was used, or intended to be used, to facilitate a violation of one of the offenses enumerated in subdivision (f) or (g) of Section 11470." (Health and Safety Code, § 11488.4(i)(1).)

"(2) In the case of property described in subdivision (f) of Section 11470, except cash, negotiable instruments, or other cash equivalents of a value of not less than twenty-five thousand dollars ($25,000), for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought meets the criteria for forfeiture described in subdivision (f) of Section 11470." (Health and Safety Code, § 11488.4(i)(2).)

"(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which

offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties." (Health and Safety Code, § 11488.4(i)(3).)

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

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

At the hearing on April 16, 2021 the People stated that a response would be filed. The claimant's counsel was not present at the April 16, 2021 hearing. The April 16, 2021 minute order was served by mail on the District Attorney and claimant's counsel on April 19, 2021.

On May 10, 2021 the People filed a petition for forfeiture. The proof of service filed on May 14, 2021 declares that claimant's counsel was served the petition for forfeiture by fax on May 11, 2021.

Upon the request of the People, the court continued the hearing from December 3, 2021 to February 18, 2022.

**TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 18, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.**

**4. PEOPLE v. KELLY PCL-20210332**

**Claim Opposing Forfeiture.**

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

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

under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." (Health and Safety Code, § 11470(f).)

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

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

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

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

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

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

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

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

parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties." (Health and Safety Code, § 11488.4(i)(3).)

"(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).)

The People advised the court at the hearing on June 25, 2021 that a criminal case was pending.

Upon the request of the People, the court continued the hearing from December 3, 2021 to February 18, 2022.

**TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 18, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.**

**5. MATTER OF LABELLE-KANTOLA 21CV0329**

**OSC Re: Name Change.**

**TENTATIVE RULING # 5: THE PETITION IS GRANTED.**

**6. MATTER OF WHEELER 21CV0304**

**OSC Re: Name Change.**

The mandated CLETS report is not in the court's file. (See Code of Civil Procedure, § 1279.5(f).)

**TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 18, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.**

**7. FOULDS v. COLD SPRINGS MOBILE HOME PARK PC-20210033**

**Motion for Reconsideration of Defendants' Demurrer and Motion to Strike.**

Defendants Cold Springs Mobile Home Manor, LLC, Monolith Properties, Inc., Marlow, Natho, and Brache demurred to the causes of action of the 1st amended complaint and moved to strike the entire 1st amended complaint and the punitive damages allegations in the 1st amended complaint. Oral argument took place on October 22, 2021 and the court took the matters under submission. On November 4, 2021 the court entered its order adopting the tentative ruling as the ruing of the court overruling the demurrers to the 1st amended complaint and denying the motion to strike. On November 4, 2021 the clerk served the November 4, 2021 minute order by mail to plaintiff's counsel and defense counsel.

Defendants move for reconsideration of the court's order denying defendants' motion to strike and overruling their demurrers to the 1st amended complaint on the following grounds: reconsideration is appropriate due to a new fact that defense counsel was unaware of at the time of the hearing, which was that defendant Thomas Brache passed away on October 20, 2021, which was two days prior to the hearing on the demurrers and motion to strike and the death significantly impacted the motion, demurrers, the proper parties to the litigation, and the availability of an award of punitive damages against any defendant; the motion for reconsideration is timely as plaintiff has not served and filed a notice of entry of the order overruling the demurrers and denying the motion to strike and, in an abundance of caution, the motion was filed and served on November 19, 2021, which is within ten days, plus five days for mailing of the November 4, 2021 order; the motion to strike punitive damages should be granted as punitive damages can not be recovered from a deceased party's estate; a

deceased person is not a property party to litigation and judgment may not be taken against a deceased person; the action can not be prosecuted against a deceased person and can only be asserted against a personal representative or successor in interest; a personal representative is not a proper party unless proof of compliance with Part 4 (commencing with Section 9000) of Division 7 of the Probate Code governing creditor claims is first made; the court should exercise its discretion pursuit to Code of Civil Procedure, § 377.33 to dismiss defendant Thomas Brache; and court should reconsider its ruling on the motion to strike and strike the punitive damage allegations asserted against defendants Cold Springs Mobile Manor, LLC and Natho as the only grounds for punitive damages is the alleged conduct of deceased defendant Thomas Brache.

Plaintiff opposes the motion on the following grounds: the death of a party is not a new fact or new circumstance justifying a motion to reconsider a prior order; defense counsel can not represent decedent Thomas Brache in pursuing this motion as his death terminated the authority of defense counsel to act on his behalf; the causes of action against defendant Brache survives his death and does not abate; despite plaintiff's counsel's requests for information, defense counsel has not provided information concerning the decedent defendant's personal representative or successor in interest and when that personal representative, estate or personal representative moves to substitute into the case, plaintiff will file a supplemental complaint and will not seek punitive damages against the personal representative based upon Code of Civil Procedure, § 377.42; at this stage, a motion to strike is not appropriate; deceased defendant Brache was a managing agent of defendant Cold Springs Mobile Manor, LLC and Cold Springs Mobile Manor, LLC remains liable for punitive damages based upon deceased defendant Brache's conduct as a managing agent as alleged in the 1st amended complaint; and defendant Natho remains liable for punitive damages arising

from her own misconduct as a co-managing agent and acting jointly with decedent, whom plaintiff believes is her spouse.

Defendants replied to the opposition.

Defendants also requested in reply that the court take judicial notice that defendant Thomas Brache died on October 20, 2021 as shown on a certified copy of his death certificate.

Motion for Reconsideration Principles

In order for an interested party to obtain reconsideration of a prior ruling or order, the applicant is required to file the motion within 10 days after service upon the party of the written notice of entry of the order and the application must be based upon new or different facts, circumstances or law. (Code of Civil Procedure, § 1008(a).)

"Section 1008's purpose is " 'to conserve judicial resources by constraining litigants who would endlessly bring the same motions over and over, or move for reconsideration of every adverse order and then appeal the denial of the motion to reconsider.' " (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1067 (2011–2012 Reg. Sess.), as amended Apr. 25, 2011, p. 4.) To state that purpose strongly, the Legislature made section 1008 expressly jurisdictional, as subdivision (e) explains: "This section specifies the court's jurisdiction with regard to applications for reconsideration of its orders and renewals of previous motions, and applies to all applications to reconsider any order of a judge or court, or for the renewal of a previous motion, whether the order deciding the previous matter or motion is interim or final. No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section." (§ 1008, subd. (e).) To deter parties from filing noncompliant renewed applications, the Legislature provided that "[a] violation of this section may be punished as a contempt and with sanctions as allowed by Section 128.7." (§ 1008, subd. (d).) ¶ We have recognized only one exception to section

1008's "jurisdiction[al]" (*id.,* subd. (e)) exclusivity. In *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1096–1097, 29 Cal.Rptr.3d 249, 112 P.3d 636 (*Le Francois* ), we held the statute "do[es] not limit a *court's* ability to reconsider its previous interim orders on its own motion," even while it "prohibit[s] a *party* from making renewed motions not based on new facts or law...." We construed section 1008 in this manner to avoid serious doubts about its validity under the California Constitution's separation of powers clause. (Cal. Const., art. III, § 3.) " '[T]he Legislature,' " we explained, " 'generally may adopt reasonable regulations affecting a court's inherent powers or functions, so long as the legislation does not "defeat" or "materially impair" a court's exercise of its constitutional power or the fulfillment of its constitutional function.' " (*Le Francois,* at p. 1103, 29 Cal.Rptr.3d 249, 112 P.3d 636, quoting *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 58–59, 51 Cal.Rptr.2d 837, 913 P.2d 1046.) "One of the core judicial functions that the Legislature may regulate but not usurp is 'the essential power of the judiciary to resolve "specific controversies" between parties.' " (*Le Francois,* at p. 1103, 29 Cal.Rptr.3d 249, 112 P.3d 636, quoting *People v. Bunn* (2002) 27 Cal.4th 1, 15, 115 Cal.Rptr.2d 192, 37 P.3d 380.) To limit a court's ability to correct its own rulings, we reasoned, " 'would directly and materially impair and defeat' " that " 'core power.' " (*Le Francois,* at p. 1104, 29 Cal.Rptr.3d 249, 112 P.3d 636.)" (Even Zohar Const. & Remodeling, Inc. v. Bellaire Townhouses, LLC (2015) 61 Cal.4th 830, 839-840.)

With the above-cited principals in mind, the court will rule on plaintiff's motion for reconsideration.

Timeliness

"(a) When a motion is granted or denied, unless the court otherwise orders, notice of the court's decision or order shall be given by the prevailing party to all other parties or their

attorneys, in the manner provided in this chapter, unless notice is waived by all parties in open court and is entered in the minutes." (Code of Civil Procedure, § 1019.5(a).)

There is no indication in the minute order that the court directed that notice of entry of the order was to be served by the clerk. Therefore, the prevailing party was required to serve notice of entry of the order overruling the demurrer in order to start the ten day limitation to file a motion for reconsideration. There is no evidence before the court that plaintiff served defendant with notice of entry of the order. Therefore, the motion filed on November 19, 2021 was timely.

Representation of Deceased Defendant

"(a) Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated by any of the following: ¶ (1) Its revocation by the principal. ¶ (2) The death of the principal. ¶ (3) The incapacity of the principal to contract." (Civil Code, § 2356(a).)

: The Third District Court of Appeal held long ago: "The death of Mr. Morrison, however, absolutely terminated the authority of this appellant, Bryce Swartfager, to represent him, as attorney in that suit *Deiter v. Kiser*, 158 Cal. 259, 110 P. 921; 3 Cal.Jur. 631, § 40. In the text last cited it is said in that regard: "The authority of an attorney necessarily ceases with the death of the client, for no one can act for a dead man. After the death of the client, his attorney therefore becomes a stranger to the proceedings."" (Swartfager v. Wells (1942) 53 Cal.App.2d 522, 527–528.)

Defense counsel is not authorized to challenge on defendant Brache's behalf the continued prosecution of the action against deceased defendant Brache.

Action Against Deceased Defendant

Citing Blodgett v. Greenfield (1929) 101 Cal.App. 399, defendants contend that any party to the action can raise the issue of the death of a party at any time during the proceeding and the

court must then dismiss the action against the deceased where notice of the death is uncontroverted.

"A cause of action for libel or slander does not survive the death of the party charged therewith. An action of this nature which is pending, abates when the death of either party occurs before the judgment becomes final. 18 Standard Enc. of Proc. p. 891; 1 R.C.L. 48, § 47; Newell on Slander and Libel (2d Ed.) p. 375, § 30; 1 Cal.Jur. 71, § 41; De La Torre v. Johnson, 200 Cal. 754, 757, 254 P. 1105. Such an action may not be continued against the representative of the deceased. ¶ 2 When the death of a party to an action occurs pending the litigation, the death may be suggested to the court by any party to the action, at any stage of the proceeding, by means of an affidavit or verified pleading. Upon such notice when the death is not controverted it becomes the duty of the court to dismiss the action and to proceed no further against the deceased. *Judson v. Love*, 35 Cal. 463, 469; *Munchiando v. Bach*, 203 Cal. 457, 264 P. 762." (Blodgett v. Greenfield (1929) 101 Cal.App. 399, 400–401.)

Blodgett, supra, is distinguishable in that it held that the cause of action being asserted against the deceased defendant abated upon death and, therefore, it was the duty of the court to dismiss the action and proceed no further against the deceased defendant. The opinion did not raise, consider, or resolve the issue of whether dismissal was mandated where the cause of action did not abate.

"An opinion is not authority for a point not raised, considered, or resolved therein. (E.g., *People v. Castellanos* (1999) 21 Cal.4th 785, 799, fn. 9, 88 Cal.Rptr.2d 346, 982 P.2d 211; *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 943, 55 Cal.Rptr.2d 724, 920 P.2d 669.)" (Styne v. Stevens (2001) 26 Cal.4th 42, 57-58.)

"Except as otherwise provided by statute, a cause of action for or against a person is not lost by reason of the person's death, but survives subject to the applicable limitations period." (Emphasis added.) (Code of Civil Procedure, § 377.20(a).)

"A pending action or proceeding does not abate by the death of a party if the cause of action survives." (Code of Civil Procedure, § 377.21.)

Defendants have not cited any statutory authority that holds that the causes of action asserted against defendant Brache is lost by reason of his death, therefore, those causes of action against him survive and did not abate upon his death.

"Subject to Part 4 (commencing with Section 9000) of Division 7 of the Probate Code governing creditor claims, a cause of action against a decedent that survives may be asserted against the decedent's personal representative or, to the extent provided by statute, against the decedent's successor in interest." (Code of Civil Procedure, § 377.40.)

"On motion, the court shall allow a pending action or proceeding against the decedent that does not abate to be continued against the decedent's personal representative or, to the extent provided by statute, against the decedent's successor in interest, except that the court may not permit an action or proceeding to be continued against the personal representative unless proof of compliance with Part 4 (commencing with Section 9000) of Division 7 of the Probate Code governing creditor claims is first made." (Code of Civil Procedure, § 377.41.)

Plaintiff argues in opposition that the court can not dismiss a case where the party passes away, because the court can appoint a special administrator; and plaintiff may be forced to request that either defendant Natho, believed to be defendant Brache's spouse, or defendant Cold Springs Mobile Manor LLC be appointed as special administrator

A surviving spouse is the successor in interest to the surviving spouse's intestate share of the deceased spouse's assets without the need to administer the estate.

"For the purposes of this chapter, "decedent's successor in interest" means the beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action." (Code of Civil Procedure, § 377.11.)

In general, when a husband or wife dies intestate leaving property that passes to the surviving spouse under Probate Code, § 6401, or dies testate and by his or her will devises all or a part of his or her property to the surviving spouse, the property passes to the survivor subject to the provisions of Chapter 2 (commencing with Section 13540) and Chapter 3 (commencing with Section 13550), and no administration is necessary. (Probate Code, § 13500.)

"Except as provided in Sections 11446, 13552, 13553, and 13554, upon the death of a married person, the surviving spouse is personally liable for the debts of the deceased spouse chargeable against the property described in Section 13551 to the extent provided in Section 13551." (Emphasis added.) (Probate Code, § 13550.) "The liability imposed by Section 13550 shall not exceed the fair market value at the date of the decedent's death, less the amount of any liens and encumbrances, of the total of the following: ¶ (a) The portion of the one-half of the community and quasi-community property belonging to the surviving spouse under Sections 100 and 101 that is not exempt from enforcement of a money judgment and is not administered in the estate of the deceased spouse. ¶ (b) The portion of the one-half of the community and quasi-community property belonging to the decedent under Sections 100 and 101 that passes to the surviving spouse without administration. ¶ (c) The separate property of the decedent that passes to the surviving spouse without administration." (Probate Code, § 13551.)

There is also appellate authority for the proposition that the court lacks jurisdiction to enter any judgment related to a deceased defendant after the defendant's death.

The Supreme Court held well over a century ago: "The defendant having died, the court could, on motion, allow the action to be continued against his representative (section 385, Code Civ. Proc.), but it could regularly take no action in the case until there was a substitution of some one to defend the action, especially as the death of the defendant had been suggested to it. The rendition of judgment nunc pro tunc in *Fox v. Hale & Norcross S. M. Co.*, supra, was made after such substitution and on notice. Until such substitution was had, no judgment could legally be rendered, and, so far as the time of rendition of judgment is concerned, the case stands precisely as if no findings were ever filed." (Emphasis added.) (De Leonis v. Walsh (1903) 140 Cal. 175, 179.)

The Third District Court of Appeal has held: "Where a defendant dies and no personal representative is substituted, any judgment rendered is in excess of the court's jurisdiction to try the case. (*Judson v. Love* (1868) 35 Cal. 463, 467; *Bliss v. Speier* (1961) 193 Cal.App.2d 125, 126, 13 Cal.Rptr. 847.) Code of Civil Procedure section 583, subdivision (f), under which this appeal arises, recognizes that upon the defendant's death the court is deprived of jurisdiction to try the case in its status quo. That statute exempts from the five-year limit of section 583, subdivision (b), the period of time when the defendant is not amenable to service of process and the jurisdiction of the court to try the action is suspended. As *Wills v. Williams* (1975) 47 Cal.App.3d 941, 946, 121 Cal.Rptr. 420 interpreted them, the words "amenable to service of process" include any procedural requirement that must be met before the court obtains or regains jurisdiction. The clear meaning is that jurisdiction is lost for the time when the defendant is not amenable to service of process or when some other procedural requirement must be fulfilled to bring the defendant before the court. A defendant is not

amenable to service of process after his death (*Polony v. White* (1974) 43 Cal.App.3d 44, 48, 117 Cal.Rptr. 341) and either the deceased's personal representative must be substituted (Code Civ.Proc., s 385, subd. (a)) or his insurer served with process (s 385, subd. (b)) for the case to continue; hence, the court's jurisdiction to try a case is lost upon the defendant's death (*Wills v. Williams*, supra, 47 Cal.App.3d at p. 946, 121 Cal.Rptr. 420). ¶ The defendant here having died, the court could have allowed the action to continue against her personal representative or her insurer, but it could take no action without someone to defend the case. (*Estate of Edwards* (1978) 82 Cal.App.3d 885, 893, 147 Cal.Rptr. 458; *De Leonis v. Walsh* (1903) 140 Cal. 175, 179, 73 P. 813.) The record shows neither the appointment of a personal representative for defendant nor the service of process upon her insurance company. ¶ Nor does the continued presence of the deceased defendant's attorneys satisfy the rule. Power and authority of an attorney dies with the client. (*Judson v. Love*, supra, 35 Cal. at p. 467.) Since defendant's attorneys were neither joined as parties nor appeared on behalf of defendant's substituted representative or insurer, they acted without authority and cannot be deemed to have taken the place of defendant. ¶ There being no defendant in the case, the trial court's order to dismiss was in excess of its jurisdiction and void. [FN 5.] (*McCreery v. Everding* (1872) 44 Cal. 284, 286; *Judson v. Love*, supra, 35 Cal. at p. 467; *De Leonis v. Walsh*, supra, 140 Cal. at p. 179, 73 P. 813; *Estate of Edwards*, supra, 82 Cal.App.3d at p. 893, 147 Cal.Rptr. 458.) ¶ FN 5. There is authority stating a judgment rendered on behalf of a dead person is merely voidable, but all such cases are distinguishable from the present case. (See *Phelan v. Tyler* (1883) 64 Cal. 80, 82, 28 P. 114, concerning defendant's death pending appeal to Supreme Court; *Tyrrell v. Baldwin* (1885) 67 Cal. 1, 4-5, 6 P. 807, where deceased plaintiff's interest in the case had been transferred prior to his death; *Wallace v. Center* (1885) 67 Cal. 133, 134, 7 P. 441, with facts similar to the present case, but decided prior to the enactment

of Code Civ.Proc., s 583, subd. (f); *Todhunter v. Klemmer* (1901) 134 Cal. 60, 63, 66 P. 75, where the deceased plaintiff's interest in the case was assigned to other plaintiffs.)" (Emphasis added.) (Herring v. Peterson (1981) 116 Cal.App.3d 608, 611–613.)

The court is also expressly authorized by statute to make an order that it considers is appropriate under the circumstances to ensure proper administration of justice in the case.

"The court in which an action is commenced or continued under this article may make any order concerning parties that is appropriate to ensure proper administration of justice in the case, including appointment of the decedent's successor in interest as a special administrator or guardian ad litem." (Code of Civil Procedure, § 377.33.)

Dismissal of the action against the deceased defendant is not a mandatory action that must be taken by the court where the action survives the defendant's death and the court lacks jurisdiction to enter a judgment dismissing a case where the defendant passes away prior to entry of judgment. The court can appoint a special administrator to represent the deceased defendant's interests. Unless someone steps forward to petition to be appointed general or special administrator to be substituted into this case on behalf of defendant Brache's estate, the court is inclined to advise the Public Administrator of this action and the lack of a personal representative to look after defendant Brache's assets and inquire if the Public Administrator will be willing to petition for appointment as a general or special administrator of defendant Brache's estate.

The motion for reconsideration must be denied as the new fact and/or circumstance of the death of defendant Brache does not cause the causes of action of the 1st amended complaint asserted against him to suddenly fail to state a cause of action against him as the causes of action survived and did not abate. At best, the action can not proceed against defendant Brache until the personal representative or a successor in interest is substituted into the case

to defend against the action on his behalf. Therefore, the court denies the motion to reconsider its ruling overruling the demurrers to the causes of action of the 1st amended complaint asserted against him and denies the motion to reconsider the denial of the motion to strike the claim against him for punitive damages.

Furthermore, exercising its authority under Code of Civil Procedure, § 377.33 the court finds that it is appropriate to issue an order staying this action against defendant Brache pending appointment of a personal representative to be substituted into this case on behalf of the Estate or a successor in interest stepping forward to move to be substituted for defendant Brache. The court also sets a review hearing re: motion to substitute personal representative or successor in interest for defendant Brache for 8:30 a.m. on Friday, June 17, 2022 in Department Nine.

Motion to Strike Punitive Damages Claim

Defendants argue in reply that the only tortious misconduct alleged in the 1st amended complaint is asserted against deceased defendant Brache and no claim for punitive damages against him can be pursued after death, therefore, the court should reconsider defendant's motion to strike punitive damages against defendants Cold Springs Mobile Manor, LLC and Natho. (Defendants' Reply, page 4, lines 4-12.)

"In an action or proceeding against a decedent's personal representative or, to the extent provided by statute, against the decedent's successor in interest, on a cause of action against the decedent, all damages are recoverable that might have been recovered against the decedent had the decedent lived except damages recoverable under Section 3294 of the Civil Code or other punitive or exemplary damages." (Code of Civil Procedure, § 377.42.)

While punitive damages are not recoverable against decedent Brache's anticipated personal representative or his successor in interest, there is no personal representative or

successor in interest to raise that issue and decedent's former counsel can not raise it. Therefore, in relation to the motion on behalf of defendant Brache to reconsider striking the punitive damages allegations against him, the motion is denied.

On the other hand, the other defendants can raise the issue if the new fact/circumstance of defendant Brache's death impacts the claim of punitive damages against them.

"In determining whether a complaint states facts sufficient to sustain punitive damages, the challenged allegations must be read in context with the other facts alleged in the complaint. Further, even though certain language pleads ultimate facts or conclusions of law, such language when read in context with the facts alleged as to defendants' conduct may adequately plead the evil motive requisite to recovery of punitive damages. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6-7, 172 Cal.Rptr. 427.)" (Monge v. Superior Court (1986) 176 Cal.App.3d 503, 510.)

"In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166, 203 Cal.Rptr. 556; *Blegen v. Superior Court* (1981) 125 Cal.App.3d 959, 962–963, 178 Cal.Rptr. 470.) In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth. (*Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519, 11 Cal.Rptr.2d 161; *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, 91, 168 Cal.Rptr. 319; see California Judges Benchbook, Civil Proceedings Before Trial (1995) § 12.94, p. 611.) In ruling on a motion to strike, courts do not read allegations in isolation. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6, 172 Cal.Rptr. 427.) We review an order striking punitive damages allegations de novo. (*Angie M. v.*

*Superior Court* (1995) 37 Cal.App.4th 1217, 1223, 44 Cal.Rptr.2d 197.)" (Clauson v. Superior Court (1998) 67 Cal.App.4th 1253, 1255.)

"In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." (Code of Civil Procedure, § 452.)

"Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim. (Citation omitted.)" (Grieves v. Superior Court (1984) 157 Cal.App.3d 159, 166.)

"Punitive damages are "available to a party who can plead and prove the facts and circumstances set forth in Civil Code section 3294." *Hilliard v. A.H. Robins Co.,* 148 Cal.App.3d 374, 392, 196 Cal.Rptr. 117 (1983). "To support punitive damages, the complaint ... must allege ultimate facts of the defendant's oppression, fraud, or malice." *Cyrus v. Haveson,* 65 Cal.App.3d 306, 316–317, 135 Cal.Rptr. 246 (1976). Pleading the language in section 3294 "is not objectionable when sufficient facts are alleged to support the allegation." *Perkins v. Superior Court,* 117 Cal.App.3d 1, 6–7, 172 Cal.Rptr. 427 (1981)." (Altman v. PNC Mortg. (E.D. Cal. 2012) 850 F.Supp.2d 1057, 1085.)

"In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." (Civil Code, § 3294(a).)

" 'Malice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civil Code, § 3294(c)(1).)

" 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civil Code, § 3294(c)(2).)

" 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civil Code, § 3294(c)(3).)

"The punitive damages theory cannot be predicated on the breach of contract cause of action without an underlying tort. (*Chelini v. Nieri* (1948) 32 Cal.2d 480, 486–487, 196 P.2d 915; *Crogan v. Metz* (1956) 47 Cal.2d 398, 405, 303 P.2d 1029; *Ericson v. Playgirl, Inc.* (1977) 73 Cal.App.3d 850, 854, 140 Cal.Rptr. 921; *Quigley v. Pet, Inc.* (1984) 162 Cal.App.3d 877, 887, 208 Cal.Rptr. 394.) Neither evidence of mere negligence (*Kendall Yacht Corp. v. United California Bank* (1975) 50 Cal.App.3d 949, 959, 123 Cal.Rptr. 848; see *Nolin v. National Convenience Stores, Inc.* (1979) 95 Cal.App.3d 279, 284–288, 157 Cal.Rptr. 32) nor constructive fraud (*Delos v. Farmers Insurance Group* (1979) 93 Cal.App.3d 642, 656–657, 155 Cal.Rptr. 843, and cases there cited; *Estate of Witlin* (1978) 83 Cal.App.3d 167, 177, 147 Cal.Rptr. 723; compare *Day v. Rosenthal* (1985) 170 Cal.App.3d 1125, 1160, 217 Cal.Rptr. 89) will support a punitive damages award without a showing of the statutory fraud, malice, or oppression." (Palmer v. Ted Stevens Honda, Inc. (1987) 193 Cal.App.3d 530, 536.)

The 1st amended complaint only prays for punitive damages to be imposed against defendants Cold Springs Mobile Manor, LLC, Natho, and Brache. (1st Amended Complaint, Prayer for Punitive Damages, page 28, lines 9-10.)

Defendants Natho and Brache are allegedly the onsite managers of defendant Cold Springs Mobile Manor, LLC; and defendant Monolith Properties, Inc. is allegedly involved in the management of defendant Cold Springs Mobile Manor commencing in September 1, 2020. (1st Amended Complaint, paragraphs 6, 7, 8, and 16.)

The causes of action allege that defendants engaged in the following conduct: illegal dumping of sewage, sludge, and other materials on plaintiff's premises, which created a stench resulting in extreme hardship to plaintiff as his rented space smelled badly for over two months; while dumping the sewage, sludge and other foreign material on the plaintiff's rented premises, defendants' park maintenance manager, defendant Brache, acting as agent and/or employee of Cold Springs Mobile Manor, LLC stated "this is the owners property we can dump anything we want on your property"; the dumping was done intentionally for the purpose of harassing plaintiff; and defendants allowed four persons who were less than 55 years old to occupy a space in the senior community in violation of Cold Springs Manor Rule 3, resulting in a noise campaign by those occupants designed to disrupt and harass plaintiff and interfere with plaintiff's right to quiet enjoyment of his rented premises and defendant manager Natho and Monolith Properties, Inc. took no action to correct the problem even after plaintiff sent a letter to the management company requesting enforcement of the rule, that the occupants be moved from the space next to plaintiff, and/or evicted. (See 1st Amended Complaint paragraphs 18, 22, 23, 25, 34, 38(d), 50, 53(d), 53(e), 54, 56, 60(c), 60(d), 64, 66(c), 66(d), 71, 74, 81, 88, 92-95, and 97.)

"An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." (Civil Code, § 3294(b).)

"An act of oppression, fraud or malice, by an officer, director or *managing agent,* is sufficient to impose liability on a corporate employer for punitive damages, without any additional showing of ratification by the employer. (§ 3294, subd. (b); *Agarwal, supra,* 25 Cal.3d at p. 950, 160 Cal.Rptr. 141, 603 P.2d 58.)" (Kelly-Zurian v. Wohl Shoe Co. (1994) 22 Cal.App.4th 397, 420.)

As an alleged manager of Cold Springs Mobile Manor, LLC, defendant Brache's conduct, when taken as true for the purposes of a motion to strike, is sufficient to allege malice and oppression to support a claim for punitive damage against defendant Cold Springs Mobile Manor, LLC even where his estate is not liable for punitive damages under Section 377.42. Therefore, his death is not a new fact or circumstance that released Cold Springs Mobile Manor, LLC from a claim for punitive damage arising from a manager's alleged acts of oppression and malice against plaintiff.

Furthermore, there are allegations of what could be found to be a campaign of harassment by defendant Cold Springs Mobile Manor, LLC's management personnel, including defendant Brache, which defendant manager Natho allegedly joined and participated in by her allowing other tenants to engage in conduct designed to disrupt and harass plaintiff and interfere with plaintiff's right to quiet enjoyment of his rented premises and that could be found to amount to oppression and malice by defendant manager Natho. Therefore, defendant Brache's death is not a new fact or circumstance that relieves defendant manager Natho from her own conduct.

The motion for reconsideration of the motion to strike portions of the complaint asserting a claim for punitive damages is denied.

**TENTATIVE RULING # 7: DEFENDANTS' MOTION FOR RECONSIDERATION IS DENIED. EXERCISING ITS AUTHORITY UNDER CODE OF CIVIL PROCEDURE, § 377.33 THE COURT FINDS THAT IT IS APPROPRIATE TO ISSUE AN ORDER STAYING THIS ACTION**

**AGAINST DEFENDANT BRACHE PENDING APPOINTMENT OF A PERSONAL REPRESENTATIVE TO BE SUBSTITUTED INTO THIS CASE ON BEHALF OF THE ESTATE OR A SUCCESSOR IN INTEREST STEPPING FORWARD TO MOVE TO BE SUBSTITUTED FOR DEFENDANT BRACHE. THE COURT ALSO SETS A REVIEW HEARING RE: MOTION TO SUBSTITUTE PERSONAL REPRESENTATIVE OR SUCCESSOR IN INTEREST FOR DEFENDANT BRACHE FOR 8:30 A.M. ON FRIDAY, JUNE 17, 2022 IN DEPARTMENT NINE. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE 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 TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN**

**WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, FEBRUARY 18, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.**

**8. PHAN v. MARSHALL MEDICAL CENTER PC-20190029**

**Motion for Preliminary Approval of Class and PAGA Settlement.**

**TENTATIVE RULING # 8: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MARCH 18, 2022 IN DEPARTMENT NINE.**

**9. ZIEROLD v. BACCO-SCRIBNER PC-20200447**

**Defendants Motion to Modify/Clarify Restraining Order.**

On October 15, 2020 after a trial on the merits of a request for civil harassment restraining order, the court granted the request and issued a restraining order after hearing on October 15, 2020.

Defendant filed a request to modify the restraining order on September 17, 2021. At the hearing on October 22, 2021 the court heard oral argument and requested supplemental briefing on the merits of the request. On November 4, 2021 defendant filed her points and authorities in support of the request; on November 24, 2021 petitioners/plaintiffs filed a response/opposition; on November 30, 2021 defendant filed her reply.

At the hearing on December 3, 2021 defense counsel would not stipulate to a Commissioner hearing the matter and stated she wanted Judge Sullivan to hear the matter as she is familiar with the pleadings. The hearing was continued to January 7, 2022. On January 4, 2021 the court continued the January 7 2021 hearing to February 18, 2022 as Judge Sullivan was not available to hear the matter on January 7, 2021 and February 18, 2022 was the first available date.

Defendant requests that pursuant to Code of Civil Procedure, § 527.6(j)(1) the restraining order be modified/clarified to include all provisions of the plaintiff's and defendants' written stipulation executed on August 1, 2019 on the ground that such incorporation of all provisions was intended by the court. Defendant argues: the requested modification is not a new restraint on plaintiffs; plaintiffs' argument at the October 22 2021 hearing that the requested modification required an OSC and full evidentiary hearing on the merits is baseless; the court may order such a modification without an additional OSC and without a new trial and new

findings of fact as the modification under Section 527.6(j)(1) is merely a procedural vehicle that allows the court to fine tune the terms of the restraining order; modification is necessary to clarify the restraining order, because in recent months defendant has called law enforcement to enforce the terms of the stipulation as it related to plaintiffs' security cameras and law enforcement told defendant that without the stipulation attached to the order, they are unable to enforce the security camera provision under the subject restraining order; and plaintiffs' assertions that defendant violated the restraining order is irrelevant to the request to modify.

Plaintiffs responded in opposition: the plaintiffs were expressly allowed to video tape any encounters with the Scribners; the requested modification contradicts this express language of the restraining order; the restraining order imposed no restrictions on plaintiffs; defendant has repeatedly violated the restraining order in the past 13 months and violated the terms of the order by bringing this frivolous motion to restrain the protected party in order to harass plaintiffs; and this request should be denied and defendant be ordered to pay plaintiffs $7,000 in attorney fees incurred to obtain the October 15, 2020 restraining order and to oppose this request, plus defendant should be ordered to pay plaintiffs $4,700 as costs to repair a broken fence and to extend their privacy fence from 6 to 9 feet in height.

Defendant replied to the response and after the reply filed a supplemental brief, request for judicial notice, and declaration in December 2021 without leave of the court.

"(j)(1) In the discretion of the court, an order issued after notice and hearing under this section may have a duration of no more than five years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party…" (Emphasis added.) (Code of Civil Procedure, § 527.6(j)(1).)

"In the published portion of this opinion, we address and resolve several legal questions involving section 527.6, subdivision (j)(1) that have not been explicitly decided in a published

decision. First, the determination whether to modify or terminate a civil harassment restraining order is committed to "the discretion of the court." (§ 527.6, subd. (j)(1).) Second, the trial court's discretionary authority to modify or terminate a civil harassment restraining order includes, *but is not limited to*, the three grounds for modifying ordinary injunctions set forth in section 533. Third, a trial court has the discretion to modify a restraining order when, after considering the relevant evidence presented, it determines there is no reasonable probability of future harassment. This discretion extends to modifying a specific term in a restraining order that deals with a particular threat of future harm when that threat no longer exists. Thus, the court may eliminate or relax one restriction in the restraining order while leaving the remaining restrictions in place. Fourth, the restrained party seeking modification on the ground that there is no longer a reasonable probability of a future harm has the burden of proving this ground by a preponderance of the evidence." (Yost v. Forestiere (2020) 51 Cal.App.5th 509, 514–515.)

"To summarize, we conclude a trial court's discretion to modify a civil harassment restraining order includes, *but is not limited to*, the three grounds articulated in section 553. Those grounds are (1) a material change in the facts, (2) a change in the law, or (3) the ends of justice. (*Luckett v. Panos, supra*, 161 Cal.App.4th at p. 85, 73 Cal.Rptr.3d 745.)" (Yost v. Forestiere (2020) 51 Cal.App.5th 509, 526.)

"We conclude this principle about the prevention of reasonably probable future harm can be adapted to a restrained party's modification request to define the extent of the trial court's discretionary authority. Specifically, when a trial court, after considering the relevant evidence presented, determines there is no reasonable probability a particular act of harassment will be committed in the future, the court has the discretion to modify the terms of the restraining order addressing that particular act of harassment. [FN 6] On the fourth question of statutory interpretation, we conclude the restrained party, as the party requesting the

modification, has the burden of proving by a preponderance of the evidence that a reasonable probability does not exist. (See Evid. Code, §§ 115 [burden of proof], 500 [allocation of burden of proof].) ¶ FN 6. This statement is not an all-encompassing definition of the extent of a trial court's discretion. A request to modify a restraining order is a procedural mechanism that, among other things, allows the trial court to fine tune the terms of a restraining order after seeing how the specific terms have impacted the protected and restrained parties and their activities. It is beyond the scope of this opinion to describe the various types of fine tuning that may be appropriate under subdivision (j)(1) of section 527.6. ¶ A further question presented relates to the evidence relevant to this inquiry. We conclude " 'the determination of whether it is reasonably probable an unlawful act will be [occur] in the future rests upon the nature of the unlawful [harassment] evaluated in the light of the relevant surrounding circumstances of its commission and whether precipitating circumstances continue to exist so as to establish the likelihood of future harm.' " (*Harris, supra*, 248 Cal.App.4th at pp. 499-500, 204 Cal.Rptr.3d 1, quoting *Scripps Health, supra*, 72 Cal.App.4th at p. 335, fn. 9, 85 Cal.Rptr.2d 86.)" (Emphasis added.) (Yost v. Forestiere (2020) 51 Cal.App.5th 509, 528.)

With the above-cited legal principles in mind, the court will rule on the request to modify the restraining order.

Purported Violations of Restraining Order

The asserted violations of the restraining order are not properly before the court as there is no OSC re: contempt issued and personally served on defendant and no notice that a trial on the purported violations was set to be heard. This is a Section 527.6(j)(1) request to modify the restraining order. If plaintiffs wish to pursue claims of violations of the restraining order, then plaintiffs need to follow the appropriate procedural due process requirements.

Modification to Include Prior Stipulation by the Parties as Fully Enforceable

Plaintiffs seek to fully incorporate all provisions of the subject August 1, 2019 stipulation into the restraining Order After Hearing and, in particular, the provision that essentially restrains defendants' conduct by them requiring that any surveillance cameras be moved away from pointing towards the plaintiff's property.

Defendants oppose this modification as it imposes a new restraint on the defendants without a full hearing on the issue of entry of a restraining order against plaintiffs.

At the conclusion of the trial of the request for civil harassment order on October 15, 2020, the court expressly ordered in reference to defendant's contacting plaintiffs: "I'm going to order you are not to contact them either directly or indirectly in any way but not included to in person, by telephone, writing, or public or private mail except in compliance with the stipulated order of August 1st, if there is an issue with the animals out or something, but you are not to contact law enforcement. You are not to contact animal control." (Defendant's Declaration Filed on December 5, 2021, Exhibit B – Transcript of Proceedings on October 15, 2020, page 105, lines 8-14.)

The court takes judicial notice that the Restraining Order After Hearing entered on October 15, 2020 provides: defendant is not to contact plaintiffs either directly or indirectly in any way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by email, by text message, by fax, or by other electronic means, except per the stipulated order of August 1, 2019. (October 15, 2020 Restraining Order After Hearing, paragraphs 6(a)(1) and 6(a)(4).)

The stipulation includes the provisions related to defendant not contacting plaintiffs, except for Matt Scribner and Dustin Zierold agreeing to contact one another for any legitimate, true, and tangible property, community, or animal concerns by text message or phone call before

local authorities, HOA, or government agencies are contacted. (Defendant's Declaration filed on December 5, 2021, Exhibit A – August 1, 2019 Stipulation.) The stipulation also provides: "In addition, Toni and Dustin Zierold agree to move any surveillance cameras away from pointing toward the Scribner property." (Defendant's Declaration filed on December 5, 2021, Exhibit A – August 1, 2019 Stipulation.)

It appears that the express order of the court at the trial and in the order entered after hearing did not fully incorporate all provisions of the August 1, 2019 stipulation. At the conclusion of trial the court did not order that defendants were to move any surveillance cameras away from pointing toward the Scribner property and/or bar them from pointing surveillance cameras at the Scribner property. The court, however, did expressly order that plaintiffs were authorized to take videos "if any of this happens again." (Defendant's Declaration filed on December 5, 2021, Exhibit B – Transcript of Proceedings on October 15, 2020, page 104, lines 17-19.) The October 15, 2020 Restraining Order After Hearing expressly provides in Attachment 11: "The Zierolds are authorized to video tape any encounters with the Scribners."

The court is inclined to deny the request to modify the Restraining Order as the scope of modification includes the surveillance camera provision that is not what the court originally considered at trial and did not order that defendants be restricted in how they place surveillance cameras. The request is not a mere modification or clarification of the order to reflect what the court ordered after the hearing concluded. This requested modification would impose a new restraint on the Zierolds that was not at issue in the trial and violate the Zierolds' fundamental rights to due process by depriving them of notice of trial on the merits of the surveillance camera issue and an opportunity to be heard on that issue.

Belated Request to Clarify the Stay Away Portion of the Restraining Order

On December 15, 2021 defendant filed a supplemental memorandum in support of the motion and a declaration in support. The supplemental memorandum seeks the court to clarify the restraining order as not directing that plaintiff stay away from defendant at least 100 yards while at the plaintiff's and defendant's place of employment. The court did not grant defendant leave to file the supplemental memorandum or leave to amend the motion to include that request. Defendant requests that the court explain in its ruling on the motion that the Restraining Order does not and was not intended to prevent defendant from working at Sutter Roseville Medical Center and/or any other Sutter Health location.

The proofs of service declares that on December 15, 2021 the declaration filed on December 15, 2021 and the supplemental memorandum in support of the motion were served by mail and email on plaintiffs' counsel. There was no supplemental memorandum in opposition in the court's file at the time this ruling was prepared.

Plaintiff's declaration filed on December 15, 2021 seeks a court order clarifying paragraph 7 of the stay away portion of the restraining order. The stay away provision orders that defendant was to stay at least 100 yards away from the plaintiffs and their home, except while on defendant's own property and she is not to do anything to disturb the peace of the Zierolds. (October 15, 2020 Restraining Order After Hearing, paragraphs 7(a)(1)-7(a)3) and 7(a)(9).) The box on the form order that directs the defendant to stay at least 100 yards from the job or workplace of the plaintiffs is not checked, therefore it appears to have not been ordered by the court. (See October 15, 2020 Restraining Order After Hearing, paragraph 6(a)(4).)

The printed portion of the form further provides: "This stay away order does not prevent you from going to or from your home or place of employment." (October 15, 220 Restraining Order After Hearing, paragraph 6(b).)

Plaintiff's declaration filed on December 15, 2021 states that plaintiff and defendant are employed by the same employer in entirely different departments/areas; and despite the order being clear that she need not be 100 yards away from defendant while at her place of employment, her employer has placed defendant on unpaid administrative leave and was considering terminating defendant due to the restraining order.

In order for the court to determine this requested clarification on its merits, the court must grant the plaintiffs the opportunity to file a memorandum in opposition to the supplemental request and to orally argue opposition to the supplemental request. Appearances are required for oral argument and to discuss if plaintiffs want to file a supplemental opposition.

**TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 18, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.**

**10. PAINTER v. BENTION PC-20210202**

**Defendants' Motion to Strike Allegations and Claims for Attorney Fees from the 2nd Amended Complaint.**

**TENTATIVE RULING # 10: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MARCH 25, 2022 IN DEPARTMENT NINE.**

**11. DISCOVERY BANK v. MCDONAUGH PCL-20210673**

**Plaintiff's Motion for Judgment on the Pleadings.**

On September 13, 2021 plaintiff filed an action for common counts of open book account and account stated related to a credit card account. Plaintiff alleges: that defendant owes a principal balance in the amount of $6,990.21; and that the balance remains due and unpaid despite demand. Defendant answered the complaint by Judicial Council Form (Form PLD-C-010.)

Plaintiff moves for entry of judgment on the pleadings on the grounds that the complaint states a cause of action against defendant to collect the alleged debt, that defendant's answer does not raise a material issue of fact, and that it does not state a defense to the complaint.

The proof of service in the court's file declares that on January 6, 2022 defendant was served the moving papers and notice of this hearing by mail to defendant's address of record. A memorandum of costs seeking an award of $384.50 was filed on January 10, 2022. The proof of service attached to the memorandum of costs declares it was served by mail to defendant's address of record on January 6, 2022. There was no opposition to the motion in the court's file at the time this ruling was prepared.

Meet and Confer Prior to Motion for Judgment on the Pleadings

"(a) Before filing a motion for judgment on the pleadings pursuant to this chapter, the moving party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings. If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion for

judgment on the pleadings against the amended pleading. ¶ (1) As part of the meet and confer process, the moving party shall identify all of the specific allegations that it believes are subject to judgment and identify with legal support the basis of the claims. The party who filed the pleading shall provide legal support for its position that the pleading is not subject to judgment, or, in the alternative, how the pleading could be amended to cure any claims it is subject to judgment. ¶ (2) The parties shall meet and confer at least five days before the date a motion for judgment on the pleadings is filed. If the parties are unable to meet and confer by that time, the moving party shall be granted an automatic 30-day extension of time within which to file a motion for judgment on the pleadings, by filing and serving, on or before the date a motion for judgment on the pleadings must be filed, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the motion for judgment on the pleadings was previously filed, and the moving party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause. ¶ (3) The moving party shall file and serve with the motion for judgment on the pleadings a declaration stating either of the following: ¶ (A) The means by which the moving party met and conferred with the party who filed the pleading subject to the motion for judgment on the pleadings, and that the parties did not reach an agreement resolving the claims raised by the motion for judgment on the pleadings. ¶ (B) That the party who filed the pleading subject to the motion for judgment on the pleadings failed to respond to the meet and confer request of the moving party or otherwise failed to meet and confer in good faith. ¶ (4) A determination by the court that the meet and confer process was insufficient is not grounds to grant or deny the motion for judgment on the pleadings." (Code of Civil Procedure, § 439(a).)

Plaintiff's counsel declares the law office attempted to contact defendant by phone to meet and confer, however, defendant failed to respond. Absent opposition, it appears the meet and confer attempt was sufficient.

Motion for Judgment on the Pleadings Principles

"(c)(1) The motion provided for in this section may only be made on one of the following grounds: ¶ (A) If the moving party is a plaintiff, that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint…." (Code of Civil Procedure, § 438(c)(1)(A).)

"(2) The motion provided for in this section may be made as to either of the following: ¶ * * * (B) The entire answer or one or more of the affirmative defenses set forth in the answer…" (Code of Civil Procedure, § 438(c)(2).)

"The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. Where the motion is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit." (Code of Civil Procedure, § 438(d).)

"A motion for judgment on the pleadings performs the same function as a general demurrer...." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) "It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings." (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429, 73 Cal.Rptr.2d 646.) Consequently, when considering a motion for judgment on the pleadings, "[a]ll facts alleged in the complaint are deemed admitted...." (*Lance Camper*

*Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194, 198, 51 Cal.Rptr.2d 622.) "Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings." (*Cloud,* at p. 999, 79 Cal.Rptr.2d 544.)" (Sykora v. State Department of State Hospitals (2014) 225 Cal.App.4th 1530, 1534.)

""A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. (Code Civ. Proc., § 438, subd. (c)(3)(B)(ii).) A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review." (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672, 128 Cal.Rptr.2d 358.) "All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law...." (*Ibid.*) Courts may consider judicially noticeable matters in the motion as well. (*Ibid.*)" (People ex rel. Harris v. Pac Anchor Transp., Inc. (2014) 59 Cal.4th 772, 777.)

"If the allegations in the complaint conflict with attached exhibits, we rely on and accept as true the contents and legal effect of the exhibits. (*SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 83, 76 Cal.Rptr.3d 73; *Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505, 108 Cal.Rptr.2d 657.)" (Chisom v. Board of Retirement of County of Fresno Employees' Retirement Association (2013) 218 Cal.App.4th 400, 410.)

"A plaintiff's motion for judgment on the pleadings is analogous to a plaintiff's demurrer to an answer and is evaluated by the same standards. (See *Hardy v. Admiral Oil Co.* (1961) 56 Cal.2d 836, 840-842, 16 Cal.Rptr. 894, 366 P.2d 310; 4 Witkin, Cal. Procedure (1971) Proceedings Without Trial, § 165, pp. 2819- 2820.) The motion should be denied if the defendant's pleadings raise a material issue or set up an affirmative matter constituting a defense; for purposes of ruling on the motion, the trial court must treat all of the defendant's allegations as being true. (*MacIsaac v. Pozzo* (1945) 26 Cal.2d 809, 813, 161 P.2d 449.)"

(Allstate Ins. Co. v. Kim W. (1984) 160 Cal.App.3d 326, 330-331.) However, where the defendant's pleadings show no defense to the action, then judgment on the pleadings in favor of the plaintiff is proper. (See Knoff v. City etc. of San Francisco (1969) 1 Cal.App.3d 184, 200.)

In ruling on motions for judgment on the pleadings, the court need not treat as true contentions, deductions or conclusions of fact or law. (People ex rel. Harris v. Pac Anchor Transp., Inc. (2014) 59 Cal.4th 772, 777.)

"A motion for judgment on the pleadings should not be granted where it is possible to amend the pleadings to state a cause of action (*Tiffany v. Sierra Sands Unified School Dist.* (1980) 103 Cal.App.3d 218, 225, 162 Cal.Rptr. 669), but the burden of demonstrating such an abuse of discretion is on the appellant. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349, 134 Cal.Rptr. 375, 556 P.2d 737.)" (Atlas Assurance Co. v. McCombs Corp. (1983) 146 Cal.App.3d 135, 149.)

Defendant admits the debt in the answer by stating in paragraph 3.b. "…I admit I owe the money $6,990 to Discover Bank." The answer only claims he can not afford an attorney to file for bankruptcy, has to attend a free bankruptcy clinic to handle this bankruptcy on his own, and he intends to add this debt to the bankruptcy. Defendant also states as an affirmative defense that during COVID 19 he has incurred much larger bills for electricity and was left with a choice to pay for the electricity bills or the credit card bills; and he chose to pay the electric bills to maintain air flow from his air conditioner as protection against COVID 19 rather than pay his credit card bills.

The answer does not state a valid defense to the causes of action pled against defendant. At the time this ruling was prepared, defendant had not opposed the motion, had not filed a notice that defendant filed for bankruptcy protection, which would automatically stay this action,

and had not advised the court how the deficiency of the answer could remedied by amendment. It appears to the court that the deficiency can not be remedied by amendment. Under the circumstances presented, it appears appropriate to grant the motion without leave to amend and enter judgment in favor of plaintiff for the amount prayed.

**TENTATIVE RULING # 11: PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO AMEND. THE COURT ORDERS JUDGMENT ENTERED IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT IN THE PRINCIPAL AMOUNT OF $6,990.21 AND COSTS IN THE AMOUNT OF $384.50. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE 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 TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED**

**AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, FEBRUARY 18, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.**

**12. COUNTY OF EL DORADO v. WALDOW 21CV0122**

**OSC Re: Preliminary Injunction.**

Plaintiff County filed a complaint against defendants Apple Bistro, Jennette Waldow, International Farmers Kitchen, LLC and others asserting causes of action for violation of Health and Safety Code, §§ 114381 and 114405, violation of El Dorado County Environmental Health Permit Ordinance of the El Dorado County Ordinance Code, Chapter 8.05, and public nuisance. Plaintiff prays for a judgment imposing fines and penalties, as well as injunctive relief and an award of attorney fees and costs. Defendants Inman and Danette's Brick Oven Pub were voluntarily dismissed from the action with prejudice upon plaintiff's request on December 23, 2021.

Proofs of service filed on November 23, 2021 declare that the registered process server served defendants Jennette Waldow and Jennette Waldow d.b.a. Apple Bistro the summons and complaint and other litigation documents on November 9, 2021 by personal delivery to the party or person authorized to receive service for the party; and on November 9, 2021 defendant International Farmers Kitchen, LLC was served the summons and complaint and other litigation documents by personal delivery to Jennette Waldow as the party or person authorized to receive service for the party at the same time and location as defendants Jennette Waldow and Jennette Waldow d.b.a. Apple Bistro were served.

At the hearing of defendants' motion to quash service of the summons and complaint on January 7, 2021 Jennette Waldow presented argument and the motion to quash was denied

Plaintiff's ex parte application for a TRO and issuance of an OSC re: preliminary injunction was granted in part and denied in part.

The court denied the request for a TRO without prejudice and granted the request for issuance of an OSC Re: Preliminary Injunction which set the hearing for 8:30 a.m. on Friday, January 7, 2022 in Department Nine. The OSC directed defendants Jennette Waldow d.b.a. Apple Bistro, Jennette Waldow, and International Farmers Kitchen, LLC to appear and show cause why a preliminary injunction should not be issued and ordered them to file their opposition and serve the opposition on plaintiffs by email no later than December 30, 2022. The reply was to be filed and served by January 3, 2022.

The OSC directed plaintiff to serve the OSC on the Apple Bistro defendants by email no later than December 6, 2021 and later by personal service no later than December 10, 2021. The proof of service of notice of entry of order filed on December 1, 2021 declares that notice of entry of the order issuing the OSC, which included the OSC, was served on defendants Jennette Waldow d.b.a. Apple Bistro, Jennette Waldow, and International Farmers Kitchen, LLC by email on December 6, 2021. The proof of service filed on December 13, 2021 declares that John Doe manager was personally served the notice of entry of order on the OSC on December 6, 2021. There was no opposition to the OSC in the court's file prior to the January 7, 2022 hearing**.**

Where the order to show cause is issued without a temporary restraining order, the court may hear the matter, provided if the moving and opposing papers are served within the time period required by Code of Civil Procedure, § 1005. (Code of Civil Procedure, § 527(f)(1).)

The court notes that there is evidence that the Apple Bistro defendants were adequately served the summons and complaint. The proofs of service attached to the application for TRO and OSC and documents filed in support of the application on November 30, 2021 declare that on November 30, 2021 defendants were served those documents by email to Jennette Waldow. There is also evidence the OSC was served on defendants Jennette Waldow d.b.a.

Apple Bistro, Jennette Waldow, and International Farmers Kitchen, LLC by email on December 6, 2021 as directed by the court. Although the court directed personal service on the Apple Bistro defendants, the proof of service declares that the manager present at the Apple Bistro location was served for the defendants.

Jennette Waldow appeared telephonically on January 7, 2022 at the hearing on the OSC re: preliminary injunction without any statement that she was specially appearing. Jennette Waldow refused to be called by her name, stated she was a beneficiary, and argued she can not be called a U.S. Citizen. In addressing the issue of personal service, plaintiff argued that Jennette Waldow was served the OSC by substituted service on Ms. Waldow's manager and since Ms. Waldow appeared at the hearing on the OSC, she has acknowledged that she has notice of the preliminary injunction proceedings.

In an abundance of caution, the court continued the hearing on the preliminary injunction to January 28, 2022. Plaintiff requested that personal service of the OSC not be required, as Ms. Waldow appeared. Ms. Waldow objected. The court stated it did not make any implied findings as to Ms. Waldow's status and having asked her several times if she received a copy of the OSC, she refused to answer. Ms. Waldow also stated she would not accept service of the OSC with the new date by email. Plaintiff's counsel stated that they have been communicating by email.

The court noted that Ms. Waldow requested a 15 day continuance of the hearing and that continuance has been provided. The court advised Jennette Waldow in open court that the hearing was continued to January 28, 2022 at 8:30 a.m. in Department Nine and told her that any response to the OSC must be filed and served by January 26, 2022. Plaintiff's counsel stated he would accept service by email. The court also ordered that the County Counsel was to prepare a new OSC with the continued hearing date and that it can be served on Ms.

Waldow by email and regular mail. The OSC issued on January 10, 2022 stated that service was to be made by email and U.S. Mail no later than January 20, 2022. The January 7, 2022 minute order was served on plaintiff's counsel and defendant Waldo by mail on January 14, 2022.

The proof of service attached to the notice of entry of judgment or order filed on January 12, 2022 declares that of the new OSC attached to the notice was served by mail and email to defendants on January 11, 2022.

At the hearing on January 28, 2022 Ms. Jennette Waldow appeared in pro per and stated she was making a "special divine appearance" for Jennette. When the court asked her to state who she is, she repeated her previous statement. Ms. Waldow also stated the County is her fiduciary. The attorney appearing on behalf of the County denied that the County was a fiduciary of Ms. Waldow. The tentative ruling was to continue the hearing to 8:30 a.m. on Friday, February 18, 2022 in Department Nine. The court ordered that the text of the tentative ruling becomes the order of the court. Due to a clerical error, the minute order stated the hearing was continued to January 28, 2022. That error was corrected by the February 1, 2022 minute order setting the continued hearing as 8:30 a.m. on Friday, February 18, 2022 in Department Nine. That minute order was mailed to the parties on February 1, 2022.

At the time this ruling was prepared, there was no response to the OSC in the court's file and the time limitation to file a response had expired.

"William made a general appearance in the proceedings in the trial court. Where a person makes a general appearance, such appearance operates as a consent to jurisdiction of his person. (*Harrington v. Superior Court* (1924) 194 Cal. 185, 189, 228 P. 15; *Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 52, 12 Cal.Rptr.3d 711.) A general appearance occurs when a defendant takes part in the action or in some manner recognizes the authority of the

court to proceed. (*Dial 800 v. Fesbinder*, at p. 52, 12 Cal.Rptr.3d 711; see *In re Vanessa Q.* (2010) 187 Cal.App.4th 128, 135, 114 Cal.Rptr.3d 294.) A request for a continuance constitutes a general appearance because the relief could only be requested on a theory that a defendant was submitting to general jurisdiction of the court. (*Knoff v. City etc. of San Francisco* (1969) 1 Cal.App.3d 184, 201, 81 Cal.Rptr. 683, citing *Zobel v. Zobel* (1907) 151 Cal. 98, 100–102, 90 P. 191.) ¶ William appeared (in propria persona) at the initial hearing on the City's motion for appointment of a receiver, where he requested a continuance to answer the complaint. He made a general appearance and cannot now complain." (City of Riverside v. Horspool (2014) 223 Cal.App.4th 670, 679–680.)

"The general rule is that one who has been notified to attend a certain proceeding and does do so, cannot be heard to complain of alleged insufficiency of the notice; it has in such instance served its purpose. This rule applies to one who appears in a lawsuit after defective service of process upon him, 21 Cal.Jur. § 4, p. 477, to one who responds to a notice of motion without adequate notice, 18 Cal.Jur. § 7, p. 652. Also to one who appears in an administrative proceeding without the notice to which he is entitled by law. 2 Cal.Jur.2d § 108, p. 202; *Howe v. State Bar*, 212 Cal. 222, 231, 298 P. 25; *Light v. State Bar*, 14 Cal.2d 328, 331-332, 94 P.2d 35; *Farmers' etc., Bank v. Board of Equalization*, 97 Cal. 318, 325, 32 P. 312. The rule also applies to a hearing upon a zoning application. See *Hopkins v. MacCulloch*, 35 Cal.App.2d 442, 451, 95 P.2d 950; *Livingstone Rock, etc., Co. v. County of Los Angeles*, 43 Cal.2d 121, 129, 272 P.2d 4; *Keeling v. Board of Zoning Appeals*, 117 Ind.App. 314, 69 N.E.2d 613, 616; *Wilson v. Township Committee of Union Tp.*, 123 N.J.L. 474, 9 A.2d 771, 772; *Hancock v. City of Boston*, 1 Metc. 122, 123, 42 Mass. 122, 123." (Emphasis added.) (De Luca v. Board of Sup'rs of Los Angeles County (1955) 134 Cal.App.2d 606, 609.)

“"It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of motion. (Citations.) This rule applies even when no notice was given at all. (Citations.) Accordingly, a party who appears and contests a motion in the court below cannot object on appeal or by seeking extraordinary relief in the appellate court that he had no notice of the motion or that the notice was insufficient or defective." (*Tate v. Superior Court* (1975) 45 Cal.App.3d 925, 930, 119 Cal.Rptr. 835; see also *Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7- 8, 207 Cal.Rptr. 233.)” (Carlton v. Quint (2000) 77 Cal.App.4th 690, 697.)

The court takes judicial notice that defendant International Farmers Kitchen, LLC’s Statement of Information filed with the California Secretary of State by defendant Jennette Waldow as manager and member of the LLC admits that the LLC is located at 2740 Highway 50, Placerville, CA which is in El Dorado County and is in the business of operating a restaurant. The statement also admits that defendant Jennette Waldow is the sole manager/member and is agent for service of process with her address listed as 2740 Highway 50, Placerville, CA

The court record does not reflect that defendant Waldow ever stated she was specially appearing at the January 7, 2022 hearing on the OSC re: Preliminary Injunction. The court noted that Ms. Waldow requested a 15 day continuance of the hearing on the OSC, which was granted. It appears that defendant Waldow made a general appearance at the hearing on the OSC on behalf of all defendants regarding the OSC proceedings.

Furthermore, Ms. Waldow was served the new OSC attached to the notice of entry of judgment or order by mail and email on January 11, 2022 as directed by the court.

On January 27, 2022 plaintiff filed a reply and notice of non-opposition to the OSC and a supplemental declaration of the County’s Director of Environmental Management Department.

The proofs of service declare that on January 27, 2022 these documents were served by electronic mail on defendants.

Preliminary Injunction Principles

A preliminary injunction shall not be granted without notice to the opposing parties. (Code of Civil Procedure, § 527(a).)

"An injunction may be granted in the following cases: ¶ (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. ¶ (2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action. ¶ (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual. ¶ (4) When pecuniary compensation would not afford adequate relief. ¶ (5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. ¶ (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings. ¶ (7) Where the obligation arises from a trust." (Code of Civil Procedure, § 526(a).)

A preliminary injunction may be granted upon a verified complaint or upon affidavits which show that sufficient grounds exist for the issuance of such an injunction. (Code of Civil Procedure, § 527(a).) In deciding whether to issue a preliminary injunction, two factors must be weighed: the likelihood of the moving party ultimately prevailing on the merits and the relative interim harm to the parties from the issuance of a preliminary injunction. (Butt v. State of California (1992) 4 Cal.4th 668, 677-678.) "The latter factor involves consideration of such

things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. The determination whether to grant a preliminary injunction generally rests in the sound discretion of the trial court. (Citation omitted.)" (Abrams v. St. John's Hospital & Health Center (1994) 25 Cal.App.4th 628, 636.)

"It is said: "To issue an injunction is the exercise of a delicate power, requiring great caution and sound discretion, and rarely, if ever, should (it) be exercised in a doubtful case. . . ." (*Willis v. Lauridson*, 161 Cal. 106, 117, 118 P. 530, 535; *West v. Lind*, 186 Cal.App.2d 563, 569, 9 Cal.Rptr. 288; *Mallon v. City of Long Beach*, 164 Cal.App.2d 178, 190, 330 P.2d 423.)" (Ancora-Citronelle Corp. v. Green (1974) 41 Cal.App.3d 146, 148.)

"The plaintiff bears the burden of presenting facts establishing the requisite reasonable probability: "[T]he drastic remedy of an injunction pendente lite may not be permitted except upon a sufficient factual showing, by someone having knowledge thereof, made under oath or by declaration under penalty of perjury." (*Ancora–Citronelle Corp. v. Green, supra,* 41 Cal.App.3d at p. 150, 115 Cal.Rptr. 879.)" (Fleishman v. Superior Court (2002) 102 Cal.App.4th 350, 356.)

"The trial court considers two interrelated factors when deciding whether to issue preliminary injunctions: the interim harm the applicant is likely to sustain if the injunction is denied as compared to the harm to the defendant if it issues, and the likelihood the applicant will prevail on the merits at trial. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286, 219 Cal.Rptr. 467, 707 P.2d 840; *IT Corp. v. County of Imperial, supra,* 35 Cal.3d at pp. 69–70, 196 Cal.Rptr. 715, 672 P.2d 121.) However, before the trial court can exercise its discretion the applicant must make a prima facie showing of entitlement to injunctive relief. The applicant must demonstrate a real threat of immediate and irreparable injury (6 Witkin, Cal.Procedure (3d ed. 1985) Provisional Remedies, § 254; *E.H. Renzel Co. v. Warehousemen's Union* (1940)

16 Cal.2d 369, 373, 106 P.2d 1) due to the inadequacy of legal remedies. (6 Witkin, *op. cit. supra,* § 253.)" (Triple A Machine Shop, Inc. v. State of California (1989) 213 Cal.App.3d 131, 138.)

""To obtain a preliminary injunction, a plaintiff ordinarily is required to present evidence of the irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits." (*White v. Davis, supra,* 30 Cal.4th at p. 554, 133 Cal.Rptr.2d 648, 68 P.3d 74; see generally Code Civ. Proc. § 526, subd. (a)(2) [preliminary injunction may issue when it appears the plaintiff would suffer great or irreparable injury from the commission or continuance of some act during the litigation].) While the mere possibility of harm to the plaintiffs is insufficient to justify a preliminary injunction, the plaintiff are "not required to wait until they have suffered *actual harm* before they apply for an injunction, but may seek injunctive relief against the *threatened infringement* of their rights." (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292, 240 Cal.Rptr. 872, 743 P.2d 932, italics added; accord, *City of Torrance v. Transitional Living Centers for Los Angeles, Inc.* (1982) 30 Cal.3d 516, 526, 179 Cal.Rptr. 907, 638 P.2d 1304 [injunctive relief is available where the injury sought to be avoided is " 'actual or threatened' "]; *7978 Corporation v. Pitchess* (1974) 41 Cal.App.3d 42, 46, 115 Cal.Rptr. 746 [same].) ¶ If the threshold requirement of irreparable injury is established, then we must examine two interrelated factors to determine whether the trial court's decision to issue a preliminary injunction should be upheld: "(1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction." (*Butt v. State of California* (1992) 4 Cal.4th 668, 677–678, 15 Cal.Rptr.2d 480, 842 P.2d 1240.) Appellate review is generally limited to whether the trial court's decision constituted an abuse of discretion. (*Ibid.*). (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463, 47 Cal.Rptr.3d 147.) However, [t]o the extent that the trial court's

assessment of likelihood of success on the merits depends on legal rather than factual questions, [such as when the meaning of a contract or a statute are at issue,] our review is de novo.' " (*City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413, 1428, 138 Cal.Rptr.3d 332; *Garamendi v. Executive Life Ins. Co.* (1993) 17 Cal.App.4th 504, 512, 21 Cal.Rptr.2d 578.)" (Costa Mesa City Employees' Assn. v. City of Costa Mesa (2012) 209 Cal.App.4th 298, 305–306.)

An irreparable injury is established where the evidence submitted shows actual or threatened injury to property or personal rights which cannot be compensated by an ordinary damage award. (See Brownfield v. Daniel Freeman Marina Hospital (1989) 208 Cal.App.3d 405, 410.)

A trial court's decision on a motion for preliminary injunction is not a adjudication of the ultimate rights in controversy (Association for Los Angeles Deputy Sheriffs v. County of Los Angeles (2008) 166 Cal.App.4th 1625, 1634.); the order is not a determination of the merits of the case; and the order may not be given issue-preclusive effect with respect to the merits of the action (Upland Police Officers Ass'n v. City of Upland (2003) 111 Cal.App.4th 1294, 1300.).

The unverified complaint alleges that despite the suspension and later revocation of the Apple Bistro health permit after a noticed hearing requested by the Apple Bistro defendants, the Apple Bistro defendants continued to operate the Apple Bistro restaurant without a valid health permit in violation of state statutes and the County Ordinance Code. (Complaint, paragraphs 35-39, 51, and 58.)

The director of the County Environmental Management Department declares: defendants Apple Bistro have operated and continued to operate the Apple Bistro food establishment/restaurant without the health permit mandated by statute and County Ordinance Code; despite the suspension of their permit on July 30, 2020 and revocation of their permit in

September 1, 2020, they continue to operate the business serving food as of the date of the declaration; it is the declarant's belief that it is essential for restaurants to obtain and maintain valid health permits in order to safeguard the public health, including efforts to preclude the spread of serious and sometimes deadly diseases and foodborne illnesses; the County has assessed fines against defendants amounting to $220,600 through October 31, 2021 for continuing to operate without a permit; the declarant believes that the continued operation of Apple Bistro without a valid health permit constitutes a serious and unnecessary public health risk to the local community and members of the public from other communities who travel and dine at the Apple Bistro; failure to enforce permitting requirements may sow distrust in the community relating to the food service industry and County Environmental Management Department's ability to regulate that industry; and the public relies on the County Environmental Management Department to ensure that restaurants in this community are safe. (See Declaration of Jeffrey Warren in Support of OSC re: Preliminary Injunction, paragraphs 10-17, 21, 22, 29, 30-35, 37, and 40-43.)

The County Environmental Management Department director's January 26, 2022 supplemental declaration declares: since the filing of his initial declaration in support of the OSC, no one has applied to the County EMD for a permit to operate the Apple Bistro; as of the date of the supplemental declaration there is no permit issued by the County EMD allowing for the operation of the Apple Bistro; notwithstanding the lack of a permit to operate, the Apple Bistro remains open for business as of the date of the supplemental declaration; on January 26, 2022 he went to the Apple Bistro and from the parking lot he could see that both of the "open" signs at Apple Bistro were on and lit up, there were cars in the parking lot, and he observed people sitting inside the Apple Bistro; and it was readily apparent to him that Apple

Bistro was open and serving customers. (Supplemental Declaration of Jeffrey Warren in Support of OSC re: Preliminary Injunction, paragraphs 2-4.)

Appearances are required for the purposes of oral argument.

**TENTATIVE RULING # 12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 18, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.**

**13. WELLS v. RAMOS PC-20210246**

**CSAA Insurance Exchange's Motion for Leave to Intervene.**

CSAA Insurance Exchange seeks to intervene in this action in order to defend its insured, defaulted defendant Eric Ramos.

The proof of service declares that on December 27, 2021 plaintiffs' counsel and defense counsel were served notice of the hearing and the moving papers by email

On January 14, 2022 plaintiffs stipulated to allow leave to intervene.

There is no opposition from defendants in the court's file.

The court takes judicial notice of the court's November 19, 2021 ruling denying defendant Eric Ramos' motion to vacate default without prejudice to the insurer filing a motion for leave to intervene in order to seek to vacate the default.

CSAA's counsel and a CSAA adjuster filed declarations in support of the motion.

Insurer Intervention and Standing to Seek Relief from Insured's Default

"Reasonably read, the court's written order of January 14, 1988, indicates the court permitted Truck to intervene and then denied on the merits Truck's motion to vacate. Under section 387 the superior court had broad discretion to permit or deny intervention. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736, fn. 4, 97 Cal.Rptr. 385, 488 P.2d 953.) We find the court acted within its discretion in permitting Truck to intervene." (Jade K. v. Viguri (1989) 210 Cal.App.3d 1459, 1468.)

Under the circumstances presented, it appears appropriate to grant the motion.

**TENTATIVE RULING # 13: CSAA INSURANCE EXCHANGE'S MOTION FOR LEAVE TO INTERVENE IS GRANTED. INTERVENOR CSAA INSURANCE EXCHANGE IS TO FILE AN ORIGINAL EXECUTED COMPLAINT IN INTERVENTION AS PROPOSED AND SERVE**

**COPIES OF THE EXECUTED COMPLAINT IN INTERVENTION AS PROPOSED TO PLAINTIFFS AND DEFENDANTS. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/onlineservices/vcourt.html. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, FEBRUARY 18, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.**

**14. MARTINEZ-MEDINA v. EL DORADO TRANSIT AUTHORITY PC-20200117**

**Defendant's Motion for Summary Judgment.**

**TENTATIVE RULING # 14: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, APRIL 1, 2022 IN DEPARTMENT NINE.**

**15. ALL ABOUT EQUINE ANIMAL RESCUE v. BYRD PC-20200294**

**(1) Defendants Byrd's, Rodarte's, Wilson's, and Saunders' Demurrer to 1st Amended Complaint in Consolidated Case Georgetown Divide v. Byrd (PC-20210234).**

**(2) Plaintiff All About Equine Animal Rescue, Inc.'s Motion for Attorney Fees.**

**Defendants Byrd's, Rodarte's, Wilson's, and Saunders' Demurrer to 1st Amended Complaint in Consolidated Case Georgetown Divide v. Byrd (PC-20210234).**

On August 31, 2021 plaintiff Georgetown Divide Recreation District (Recreation District) filed a 1st Amended Complaint asserting causes of action for quiet title, declaratory relief, trespass to land, trespass to chattel, and nuisance. On September 3, 2021 the court denied defendants' motion to expunge lis pendens On September 30, 2021 defendants filed a demurrer to the 1st amended complaint. The 1st amended demurrer to the 1st amended complaint was filed by defendants Byrd, Rodarte, Wilson's, and Saunders (defendants) on October 13, 2021.

Defendants assert the following grounds in support of their demurrers to the 1st and 2nd causes of action for quiet title and declaratory relief concerning the subject easement: plaintiff Recreation District is not a valid governmental entity in that plaintiff has not presented proof that it filed a certified copy of the resolution declaring the organization of the district with the office of the El Dorado County Recorder a mandated by Government Code, § 58133; the 1990 recorded grant deed transferring the subject property from El Dorado County to plaintiff District did not transfer all rights to the easement to the District and El Dorado County retained the easement rights not allocated to plaintiff; El Dorado County is a necessary party, because the 1977 grant deed granted the property and easement to the County and the County failed to allocate all rights in the easement to plaintiff District in the 1990 grant deed to the District; the court lacks jurisdiction over the subject of the 1st and 2nd causes of action as the right to install

and maintain a gate on the easement is exclusively within the jurisdiction of the County, because a permit is required and if any defendants removed such gates, they were entitled to remove them; the 1st and 2nd causes of action are premature, because plaintiff has not obtained a permit to install and maintain a gate on the easement; the 1st and 2nd causes of action are uncertain and fail to state a cause of action, because the specific facts concerning the alleged controversy between the parties is not set forth in the 1st amended complaint and there are no specific allegations of fact as to what potential easement obstructions and what the width and location of the easement should be, therefore, the allegations fail to set forth facts that would allow defendants to understand the allegations against them; and the allegations of fact fail to set forth a claim for punitive damages against defendants.

Plaintiff opposes the demurrers on the following grounds: defendants failed to properly meet and confer; matters of which judicial notice are taken and matters of which defendants are well aware of is evidence of the validity of the District as a governmental organization was presented in support of its application for TRO and issuance of an OSC re: preliminary injunction; the District has standing to sue for quiet title and declaratory relief concerning its rights and obligations concerning an easement on its own land; the County is not a necessary party as complete relief can be granted the parties currently in this action without the joinder of the County, because the 1990 grant deed was a complete transfer of the property and the easement rights and obligations to the plaintiff District with no reservation of any rights concerning the placement or use of the easement and the only retention was a right of reversion that is only operative in the event that the District ever ceases to exist; the court has jurisdiction over the issues raised as the District is only suing in those causes of action with respect to the existence and location of the easement on its property and defendant's trespass and destruction of its property by defendants and the issue of whether the district applied for a

gate permit and fence is irrelevant as the permit issue must necessarily follow the issue of the existence and location of the easement in the first place; the quiet title and declaratory relief cause of action are not premature as the obtaining of a gate permit is not a prerequisite to quieting title to an easement and determination of the respective rights of the parties related to the easement; the facts alleged in the 1st amended complaint are sufficient to state causes of action to quiet title and for declaratory relief; and the punitive damages allegations are sufficient to claim such damages.

There was no reply in the court's file at the time this ruling was prepared.

Meet and Confer Requirement

Plaintiff argues that while the parties exchanged emails, at no time did they engage in the mandated in person or telephonic conference.

"(a) Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. If an amended complaint, cross-complaint, or answer is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a demurrer to the amended pleading. ¶ (1) As part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies. The party who filed the complaint, cross-complaint, or answer shall provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency. ¶ (2) The parties shall meet and confer at least five days before the date the responsive pleading is due. If the parties are not able to meet and confer at least five days prior to the date the responsive pleading is

due, the demurring party shall be granted an automatic 30-day extension of time within which to file a responsive pleading, by filing and serving, on or before the date on which a demurrer would be due, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the responsive pleading was previously due, and the demurring party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause. ¶ (3) The demurring party shall file and serve with the demurrer a declaration stating either of the following: ¶ (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer. ¶ (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith. ¶ (4) Any determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer." (Emphasis added.) (Code of Civil Procedure, § 430.41(a).)

The lack of a sufficient meet and confer process is not valid grounds to overrule the demurrers, therefore, the court will proceed to rule on the demurrers.

Demurrer Principles

When any ground for objection to an answer appears on its face, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by demurrer to the pleading. (Code of Civil Procedure, § 430.30(a).)

"'A demurrer admits all material and issuable facts properly pleaded. [Citations.] However, it does not admit contentions, deductions or conclusions of fact or law alleged therein.' (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 713 [63 Cal.Rptr. 724, 433 P.2d 732].) Also, '...

"plaintiff need only plead facts showing that he may be entitled to some relief [citation]." [Citation.] Furthermore, we are not concerned with plaintiff's possible inability or difficulty in proving the allegations of the complaint.' (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572 [108 Cal.Rptr. 480, 510 P.2d 1032].)" (Highlanders, Inc. v. Olsan (1978) 77 Cal.App.3d 690, 696-697.)

"A demurrer challenges only the legal sufficiency of the complaint, not the truth of its factual allegations or the plaintiff's ability to prove those allegations. (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140 [248 Cal.Rptr. 276].) We therefore treat as true all of the complaint's material factual allegations, but not contentions, deductions or conclusions of fact or law. (*Id*. at p. 141; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [216 Cal.Rptr. 718, 703 P.2d 58].) We can also consider the facts appearing in exhibits attached to the complaint. (See *Dodd v. Citizens Bank of Costa Mesa*, supra, 222 Cal.App.3d at p. 1627.) We are required to construe the complaint liberally to determine whether a cause of action has been stated, given the assumed truth of the facts pleaded. (*Rogoff v. Grabowski* (1988) 200 Cal.App.3d 624, 628 [246 Cal.Rptr. 185].)" (Picton v. Anderson Union High School Dist. (1996) 50 Cal.App.4th 726, 732-733.)

""To determine whether a cause of action is stated, the appropriate question is whether, upon a consideration of all the facts alleged, it appears that the plaintiff is entitled to any judicial relief against the defendant, notwithstanding that the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged. (*Elliott v. City of Pacific Grove*, 54 Cal.App.3d 53, 56, 126 Cal.Rptr. 371.) Mistaken labels and confusion of legal theory are not fatal because the doctrine of "theory of the pleading" has long been repudiated in this state. (*Lacy v. Laurentide Finance Corp*., 28 Cal.App.3d 251, 256-257, 104 Cal.Rptr. 547.)" (Spurr v. Spurr (1979) 88 Cal.App.3d 614, 617.)

If a defendant seeks to have facts pled with particularity, that point should be raised by special demurrer. (Good v. State (1962) 57 Cal.2d 512, 514.)

"A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. (5 Witkin, Cal.Procedure (3d ed. 1985) Pleading, § 927, p. 364; 1 Weil & Brown, Civil Procedure Before Trial (1990) § 7:85, p. 7-23.)" (Khoury v. Maly's of California, Inc. (1993) 14 Cal.App.4th 612, 616.)

"A special demurrer should be overruled where the allegations of the complaint are sufficiently clear to apprise the defendant of the issues which he is to meet. *People v. Lim*, 18 Cal.2d 872, 882, 118 P.2d 472. All that is required of a complaint, even as against a special demurrer, is that it set forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficiently specific to acquaint defendant of the nature, source, and extent of the cause of action. *Smith v. Kern County Land Co.*, 51 Cal.2d 205, 209, 331 P.2d 645." (Gressley v. Williams (1961) 193 Cal.App.2d 636, 643-644.)

The rule is that a general demurrer should be overruled if the pleading, liberally construed, states a cause of action under any theory. (Brousseau v. Jarrett (1977) 73 Cal.App.3d 864, 870-871.)

With the above cited principles in mind, the court will rule on the demurrers to the 2nd amended complaint.

Standing of Plaintiff Georgetown Divide Recreation District

- Validity of Formation of District

Defendants contend that plaintiff District is not a valid governmental entity in that plaintiff has not presented proof that it filed a certified copy of the resolution declaring the organization

of the district with the office of the El Dorado County Recorder as mandated by Government Code, § 58133.

Plaintiff District argues that matters of which judicial notice are taken and matters of which defendants are well aware of is evidence of the validity of the District as a governmental organization was presented in support of its application for TRO and issuance of an OSC re: preliminary injunction.

"Immediately after the passing of the resolution declaring the organization of the district, the clerk shall file a certified copy of the resolution with the Secretary of State and for record in the office of the county recorder of each county in which any land in the district is situated. Upon such filing the organization of the district is complete." (Government Code, § 58133.)

The 1st amended complaint alleges: plaintiff is a park and recreation special district locate in El Dorado County and a public entity organized under the California Government Code (1st Amended Complaint, paragraph 5.) Absent matters of which the court may take judicial notice that prove otherwise, the court must accept this factual allegation as true for the purposes of demurrer

In fact, matters of which the court may take judicial notice of establishes the District is a valid public entity. The court takes judicial notice that the certificate of completion of the designation of plaintiff District as a legal governmental entity was recorded pursuant to the Government Code in December 1988; and the Secretary of State issued a certificate of plaintiff's existence stating the resolution declaring plaintiff District as an organization was filed with the Secretary of State's Office in compliance with Government Code, § 58133 on February 14, 1990. (Plaintiff's Request for Judicial Notice, Exhibits 1A. and 2.)

Defendants' argument that there is insufficient proof that plaintiff is a valid governmental entity is entirely without merit.

- El Dorado County's Conveyance of Property and Easement Grant

Defendants argue that plaintiff District was not granted all of the easement and the County should have been sued related to its reserved easement rights.

The 1977 Grant Deed states the following with respect to the subject express easement: it is reserved to the grantor, its successors, and assigns as good and sufficient for all purposes to provide access, utilities and other services, to all present or future contiguous property of the grantor and is located generally in the area North of the existing Bayley House Barn and South of the toe of the knoll containing the Bayley grave sites as delineated on the Steves Ranch Master plan; and that the exact location of the easement shall be precisely determined upon arrival by the El Dorado County Planning Commission and El Dorado Board of Supervisors of a land division map submitted either by A & B Development Company or its successor or assigns which map covers the above described area with such easement delineated thereon; the County's 1990 Grant Deed does not expressly change any of the language designating the location of the subject easement reserved to the grantor, its successors, and assigns and defendants cite no portion of the 1990 Grant Deed that deprives the successor property owner from enforcing the easement as described in the 1977 grant deed; and the 1990 grant deed only provides for reversion of the property to the County in the event the District ceases to exist as a legal entity. (1st Amended Complaint, Exhibits 6 and 7.)

""An easement is an interest in the land of another, which entitles the owner of the easement to a limited use or enjoyment of the other's land." (4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 434, p. 614, italics omitted.) An easement appurtenant to the land is "attached to the land of the owner of the easement, and benefits him as the owner or possessor of that land." (*Id.,* § 435, p. 615.) ¶ "An easement differs from a covenant running with the land and from an equitable servitude, in that these are created by promises

concerning the land, which may be enforceable by or binding upon successors to the estate of either party, while an easement is an interest in the land, created by grant or prescription." (4 Witkin, *supra,* Real Property, § 434, p. 615, italics omitted.) A covenant running with the land is created by language in a deed or other document showing an agreement to do or refrain from doing something with respect to use of the land. (*Id.,* § 484, pp. 661–662.) An equitable servitude may be created when a covenant does not run with the land but equity requires that it be enforced. (*Id.,* § 493, p. 670.)" (Committee to Save Beverly Highlands Homes Ass'n v. Beverly Highlands Homes Ass'n (2001) 92 Cal.App.4th 1247, 1269.)

""An easement is an incorporeal interest in the land of another which gives its owner the right to use another's property." (*Tract Development Services, Inc. v. Kepler* (1988) 199 Cal.App.3d 1374, 1384, 246 Cal.Rptr. 469 (*Kepler*).) A right of way is among the easements that may be created by grant. (Civ. Code, § 802.) "A transfer of real property passes all easements attached thereto...." (Civ. Code, § 1104.) A reserved right of way is appurtenant to the retained land and passes by subsequent conveyance of that land without a particular reference in the grant deed. (*Nay v. Bernard* (1919) 40 Cal.App. 364, 370, 180 P. 827.) [FN 15] An easement or servitude created by grant cannot be lost by mere nonuse. (Civ. Code, § 811; *Kepler*, *supra*, at p. 1384, 246 Cal.Rptr. 469.) However, a recorded easement may be extinguished if the use of the servient tenement, the property burdened by the easement (Civ. Code, § 803), amounts to adverse possession of the easement, and nonuse by the dominant tenement may be a factor in determining whether possession has been adverse. (*Glatts v. Henson* (1948) 31 Cal.2d 368, 371-372, 188 P.2d 745 (*Glatts*); *Masin v. La Marche* (1982) 136 Cal.App.3d 687, 693, 186 Cal.Rptr. 619; *Kepler*, *supra*, 199 Cal.App.3d at p. 1386, 246 Cal.Rptr. 469.) ¶ FN 15. That a reserved a right of way remains appurtenant without explicit deed reference defeats Vieira's color of title contention that its grant deed extinguished the

recorded right of way by neglecting to mention it." (Emphasis added.) (Vieira Enterprises, Inc. v. McCoy (2017) 8 Cal.App.5th 1057, 1075.)

The same logically holds true when the land burdened by the easement is conveyed by a later recorded grant deed. The later recorded grant deed would not affect the easement expressly reserved to the grantor, its successors, and assigns.

Plaintiff District currently exists as a legal and valid governmental entity granted the subject real property, which would include all rights to and obligations of easements reflected in the 1990 and 1977 grant deeds. The County presently has only a reversion interest, which is not implicated in this case. The County's reversion interest does not deprive the current landowner, a legal and valid governmental entity, from asserting its rights related to the easement and the County at the current time would appear to have no right to assert any easement rights as it is not currently the lawful owner of the property.

Therefore, the County's subsequently recorded 1990 Grant Deed conveying the property to plaintiff did not affect the expressly granted location of the subject easement and defendant's argument that the plaintiff has no legal standing to maintain its claim that the current dirt road is not the easement granted in the 1977 grant deed, because the County retained a right to reversion should plaintiff cease to exist, is entirely without merit.

Joinder of Necessary Party

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: ¶ * * * (d) There is a defect or misjoinder of parties…." (Code of Civil Procedure, § 430.10(d).)

"Where the question of who are necessary parties defendant is raised by demurrer, it is to be determined ordinarily by reference to the allegations of the complaint." (Gill v. Johnson (1932) 125 Cal.App. 296, 300.)

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

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

The Third District Court of Appeal has stated: "The first clause, the "complete relief" clause, focuses not on whether complete relief can be afforded all possible parties to the action, but on whether complete relief can be afforded the parties named in the action. (*Countrywide Home Loans, Inc. v. Superior Court*, supra, 69 Cal.App.4th at pp. 793-794, 82 Cal.Rptr.2d 63.)" (Deltakeeper v. Oakdale Irrigation Dist. (2001) 94 Cal.App.4th 1092, 1101.)

The Third District also stated: “Under subdivision (b) of section 389 we must determine whether a necessary party to the action is indispensable. ¶ A party is indispensable only in the "conclusory sense that in [its] absence, the court has decided the action should be dismissed. Where the decision is to proceed the court has the power to make a legally binding adjudication between the parties properly before it." (Cal. Law Revision Com. com., 14 West's Ann.Code Civ. Proc. (1973 ed.) foll. § 389, p. 222.) The Supreme Court has warned that courts must " 'be careful to avoid converting [section 389 from] a discretionary power or a rule of fairness ... into an arbitrary and burdensome requirement which may thwart rather than accomplish justice.' [Citation.]" (*Countrywide Home Loans, Inc. v. Superior Court*, supra, 69 Cal.App.4th at p. 793, 82 Cal.Rptr.2d 63, quoting *Bank of California v. Superior Court* (1940) 16 Cal.2d 516, 521, 106 P.2d 879.)” (Deltakeeper v. Oakdale Irrigation Dist. (2001) 94 Cal.App.4th 1092, 1105.)

Defendants argue that the County must be joined as a necessary party, because the 1990 grant deed provided that should the District cease to exist the property reverts back to the County.

As stated earlier in this ruling, plaintiff District currently exists as a legal and valid governmental entity granted the subject real property, which would include all rights and obligations related to easements reflected in the 1990 and 1977 grant deeds. The County presently has only a reversion interest, which is not implicated in this case. The reversion interest does not deprive the currently legal and valid plaintiff District from asserting its rights related to the easement and the County at the current time would appear to have no right to assert any easement rights as it is not currently the lawful owner of the property.

Under the circumstances presented, it appears that complete relief can be afforded the parties named in the action, therefore, the County is not an indispensable party that must be joined in this action.

Jurisdiction over 1st and 2nd Causes of Action

Defendants argue that the court lacks jurisdiction over the subject of the 1st and 2nd causes of action as the right to install and maintain a gate on the easement is exclusively within the jurisdiction of the County, because a permit is required and if any defendants removed such gates, they were entitled to remove them.

Plaintiff argues in opposition that the court has jurisdiction over the issues raised as the District is only suing in those causes of action with respect to the existence and location of the easement on its property and defendant's trespass and destruction of its property by defendants and the issue of whether the district applied for a gate permit and fence is irrelevant as the permit issue must necessarily follow the issue of the existence and location of the easement in the first place.

The 1st amended complaint alleges the following facts: defendants, except All About Equine Rescue, Inc. and Saunders, without notice, decided to destroy plaintiff District's property under a pretense that they had an easement over the District's property along an existing dirt road located South of the Bayley Barn; the 1977 grant deed creating the express easement described the easement as the area north of the Bayley House Barn and south of the toe of the knoll containing the Bayley gravesites; with heavy equipment, defendants and/or their agents tore down and destroyed a roadway gate and wooden fencing owned by the District that the District relied upon for security of the property and tore up District land and removed a significant amount of branches from several old growth trees; defendants continued their unlawful conduct, including damage to an old growth Heritage oak tree on the District property

even after deputy sheriff requested that they cease any further construction until the "civil matter" could be resolved; plaintiff District is a public entity organized under the Government Code; plaintiff District is the owner of the subject real property by virtue of the 1977 grant deed conveying the property to El Dorado County and the 1990 grant deed transferring the property from the County to the plaintiff District; the 1977 grant deed placed the subject easement in the area to the North of the Bayley House barn and the South toe of the knoll containing the Bayley gravesites; the 1977 grant deed encumbered the district property with a single reserved easement in favor of some or all the defendants for access, utility and other services; the grant of easement did not delineate completely the exact location of that easement, although it specified it was to be North of the Bayley House barn; the exact location was to be precisely determined upon arrival by the El Dorado County Planning Commission and the El Dorado County Board of Supervisors of a land division map submitted either by A&B Development Company or its successors or assigns which covered the described area with such easement delineated thereon; at no time when the County owned the property, or thereafter, did either the County Board or planning commission approve a land division map delineating the location of the subject easement; access to the Bayley Barn was by way of a small dirt road approximately 10-15 feet wide located to the South of the barn; that dirt road South of the barn continues west through Bayley Park and then winds its way through to the parcels owned by defendants; it order to protect its property, the District installed the wood fencing and gate across the dirt road; the District provided the adjoining landowners with the combination to the gate lock; despite the express easement being stated to be in a different location, defendants continue to assert that they have an easement over the dirt road south of the barn; defendants have taken the position that the 1977 grant deed easement is 50 feet wide and that every square foot of that easement must remain unobstructed in any fashion, regardless of the

present needs of defendants' dominant estate; an actual controversy has arisen and exits between plaintiff and defendants concerning their respective rights and duties as they relate to their respective real properties and the easement described in the 1977 grant deed; and plaintiff desires judicial determination of the parties respective rights and duties, including, but not limited to parallel fencing along the north side of the dirt road and south of the Bayley barn and a gate across the dirt road. (1st Amended Complaint, paragraphs 1-3, 5, 13, 18, 27, 28, 30, 31, 32, 33, 34, 38, 39, 42, and 43.)

The allegations of the 1st amended complaint make it clear that the plaintiff seeks a determination of the rights and obligations of the parties concerning an actual controversy that has arisen as to the express easement stated in the 1977 grant deed. The court clearly has jurisdiction to determine the quiet title and declaratory relief cause of action concerning those issues.

Furthermore, the court would have jurisdiction to determine whether or not plaintiff District had complied with the County permit requirements for placing a gate across the dirt road thereby giving it the right to place the gate without intruding on the County's process related to issuing permits and whether defendants had a right of self-help to destroy plaintiff's gate even if the gate was not permitted.

- 1st and 2nd Causes of Action are not Premature

Defendants argue that the 1st and 2nd causes of action are premature, because plaintiff has not obtained a permit to install and maintain a gate on the easement.

Plaintiff argues in opposition that the quiet title and declaratory relief cause of action are not premature as the obtaining of a gate permit is not a prerequisite to quieting title as to an easement and determination of the respective rights of the parties related to the easement.

The 1st and 2nd causes of action are not premature for the same reasons as stated above with regards to the court's jurisdiction to hear the issues raises by the allegations in the 1st and 2nd causes of action.

Sufficiency of Allegations of 1st and 2nd Causes of Action

The Third District Court of Appeal has stated: "A quiet title action seeks to declare the rights of the parties in realty. A trial court should ordinarily resolve such dispute. This accords with the rule that a trial court should not dismiss a regular declaratory relief action when the plaintiff loses, but instead should issue a judgment setting forth the declaration of rights and thus ending the controversy. (See *Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal.2d 719, 729, 146 P.2d 673; *Haley v. L.A. County Flood Control Dist.* (1959) 172 Cal.App.2d 285, 292-294, 342 P.2d 476.) As stated in a case involving Western's predecessors, " 'The object of the action is to finally settle and determine, as between the parties, all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he may be entitled to.' " (*Yuba Invest. Co. v. Yuba Consol. Gold Fields* (1926) 199 Cal. 203, 209, 248 P. 672; see *Gazos Creek Mill etc. Co. v. Coburn* (1908) 8 Cal.App. 150, 153, 96 P. 359 ["all parties were before the court with their grievances"].)" (Emphasis added.) (Western Aggregates, Inc. v. County of Yuba (2002) 101 Cal.App.4th 278, 305.)

It appears that the holder of any interest in the real property, other than a mere equitable interest, has standing to bring an action to quiet title and have determined the respective interests to the subject real property.

""A quiet title action seeks to declare the rights of the parties in realty.... ' "The object of the action is to finally settle and determine, as between the parties, all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he may be entitled to." ' " (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 305,

130 Cal.Rptr.2d 436, quoting *Yuba Invest. Co. v. Yuba Consol. Gold Fields* (1926) 199 Cal. 203, 209, 248 P. 672.) "A description of the parties' legal interests in real property is all that can be expected of a judgment in an action to quiet title." (*Lechuza Villas West v. California Coastal Com.* (1997) 60 Cal.App.4th 218, 243, 70 Cal.Rptr.2d 399.) Title is quieted "as to legal interests in property." (*Id.* at p. 242, 70 Cal.Rptr.2d 399.) It follows that absent an interest in the property, a party has no standing to ask the court to quiet title in the property or to obtain damages for the cloud on title. An action to cancel a trustee's deed or other instrument purportedly transferring title is no different. "One without any title or interest in the property cannot maintain such an action." (*Osborne v. Abels* (1939) 30 Cal.App.2d 729, 731, 87 P.2d 404.)" (Emphasis added.) (Chao Fu, Inc. v. Wen Ching Chen (2012) 206 Cal.App.4th 48, 58-59.)

"ASA argues a quiet title action could not lie because GWBC has "neither legal nor equitable title" to any of the stadium property. It misses the mark. A quiet title action may be brought where the plaintiff alleges less than a fee interest in the estate, such as a leasehold. (*Dieterich Internat. Truck Sales, Inc. v. J.S. & J. Services, Inc.* (1992) 3 Cal.App.4th 1601, 1603–1604, 5 Cal.Rptr.2d 388 [quiet title to an easement for access]; *Kennecott Corp. v. Union Oil Co.* (1987) 196 Cal.App.3d 1179, 1182–1183, 242 Cal.Rptr. 403 [quiet title to lease]; *Twain Harte Homeowners Assn. v. Patterson* (1987) 193 Cal.App.3d 184, 188–189, 239 Cal.Rptr. 316 [quiet title to easement]; see also *German–Amer. Savings Bank v. Gollmer* (1909) 155 Cal. 683, 686, 102 P. 932 [title may be quieted to leasehold]; 5 Witkin, *supra,* Pleading, § 605, p. 63 [quiet title available to quiet any interest in real property]; but see Code Civ.Proc., § 761.020, subd. (b) [complaint shall allege plaintiff's "title"].) The court may give judgment in the plaintiff's favor for whatever interest the plaintiff establishes. (Code Civ.Proc., § 764.010; 5 Witkin, *supra,* Pleading, § 618, p. 74 [judgment shall be rendered in accordance with the

evidence and law].)" (Emphasis added.) (Golden West Baseball Co. v. City of Anaheim (1994) 25 Cal.App.4th 11, 50.)

"Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought." (Emphasis added.) (Code of Civil Procedure, § 1060.)

"A complaint for declaratory relief should show the following: ¶ (1) A proper subject of declaratory relief within the scope of C.C.P. 1060. (See infra, §858 et seq.) ¶ (2) An actual controversy involving justiciable questions relating to the rights or obligations of a party. (See *Tiburon v. Northwestern Pac. R. Co.* (1970) 4 C.A.3d 160, 170, 84 C.R. 469; infra, §817.)" (5 Witkin, California Procedure (5th ed.2008) Pleading, § 853, page 268.)

"'The rule that a complaint is to be liberally construed is particularly applicable to one for declaratory relief. (Citation.) It is the general rule that in an action for declaratory relief the complaint is sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the respective parties * * * and requests that the rights

and duties be adjudged. If these requirements are met, the court must declare the rights of the parties whether or not the facts alleged establish that the plaintiff is entitled to a favorable declaration. (Citation.)' (*Strozier v. Williams*, 187 Cal.App.2d 528, 531--532, 9 Cal.Rptr. 683, 685.)" (Jefferson, Inc. v. City of Torrance (1968) 266 Cal.App.2d 300, 302.)

""A complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the respective parties under a written instrument and requests that these rights and duties be adjudged by the court." (*Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal.2d 719, 728, 146 P.2d 673.)" (AICCO, Inc. v. Insurance Co. of North America (2001) 90 Cal.App.4th 579, 590.)

The factual allegations of the 1st amended complaint previously cited in this ruling are sufficient to state causes of action to quiet title and for declaratory relief related to the actual controversy that has arisen regarding the dispute over the easement over plaintiff District's real property. In addition, the court finds that the 1st amended complaint sets forth the essential facts of plaintiff's case with reasonable precision and with particularity sufficiently specific to acquaint defendant of the nature, source, and extent of the 1st and 2nd causes of action.

Punative Damages Claim

"The appropriate procedural device for challenging a portion of a cause of action seeking an improper remedy is a motion to strike. As stated by the court in *PH II*, "We recognize that in some cases a portion of a cause of action will be substantively defective on the face of the compliant. Although a defendant may not demur to that portion, in such cases, the defendant should not have to suffer discovery.... We conclude that when a substantive defect is clear from the face of a complaint, such as a violation of the applicable statute of limitations or a purported claim of right which is legally invalid, a defendant may attack that portion of the cause of action by filing a motion to strike. [Citation.]" (*PH II, supra,* 33 Cal.App.4th at pp.

1682–1683, 40 Cal.Rptr.2d 169; see also *Grieves v. Superior Court, supra,* 157 Cal.App.3d at p. 164, 203 Cal.Rptr. 556 [adequacy of punitive damage allegations could have been tested by motion to strike].)" (Caliber Bodyworks, Inc. v. Superior Court (2005) 134 Cal.App.4th 365, 385.)

"There is no cause of action for punitive damages. Punitive or exemplary damages are remedies available to a party who can plead and prove the facts and circumstances [set forth in Civil Code Section 3294 [Footnote omitted.]] … 'Punitive damages are merely incident to a cause of action, and can never constitute the basis thereof.' [quoting from *Gold v. Los Angeles Democratic League* (1975) 49 Cal.App.3d 365, 373, fn. 3, 122 Cal.Rptr. 732]." (*Hilliard v. A.H. Robins Co.* (1983) 148 Cal.App.3d 374, 391, 196 Cal.Rptr. 117.) Consequently, the trial court's ruling could have pertained only to the demurrers made on the ground the sixth cause of action failed to state a cause of action for battery. The adequacy of the punitive damage allegations could, however, have been tested by motion to strike. (Cf. *Blegen v. Superior Court* (1981) 125 Cal.App.3d 959, 962, 178 Cal.Rptr. 470; *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82, 85, 168 Cal.Rptr. 319.)" (Grieves v. Superior Court (1984) 157 Cal.App.3d 159, 163-164.)

Punitive damages are only ancillary to a valid cause of action. (Jackson v. Johnson (1992) 5 Cal.App.4th 1350, 1355.) "In California there is no separate cause of action for punitive damages. Plaintiffs must still prove the underlying tortious act causing actual, presumed or, where the difficulty lies in fixing the amount of damages with certainty, nominal damages. (See *Clark v. McClurg* (1932) 215 Cal. 279, 282-284, 9 P.2d 505; *Sterling Drug, Inc. v. Benatar* (1950) 99 Cal.App.2d 393, 400, 402, 221 P.2d 965.)" (McLaughlin v. National Union Fire Ins. Co. (1994) 23 Cal.App.4th 1132, 1164.)

The demurrer to the claim for punitive damages is overruled as the proper procedure to challenge the punitive damages allegations was by motion to strike and not demurrer to a portion of a cause of action.

In summary, the demurrers to the 1st amended complaint are overruled.

**Plaintiff All About Equine Animal Rescue, Inc.'s Motion for Attorney Fees.**

On September 3, 2021 the court denied defendants' Byrd's, Rodarte's, Saunders', and Conger Family Trust's motion to expunge lis pendens and ordered the moving defendants to pay plaintiff reasonable attorney fees incurred to oppose the motion in an amount to be set by noticed motion. On October 25, 2021 plaintiff All About Equine Animal Rescue, Inc. filed the instant motion for an award of attorney fees in the amount of $8,406.25 as representing the reasonable amount of attorney fees incurred to successfully oppose the motion and file this motion for attorney fees.

The proof of service declares that on October 13, 2021 plaintiff All About Equine Animal Rescue, Inc. served defense counsel and plaintiff Georgetown Divide Recreation District's counsel electronically and by U.S. Mail. There was no opposition to the motion in the court's file at the time this ruling was prepared.

"The court shall direct that the party prevailing on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust." (Code of Civil Procedure, § 405.38.)

"It is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court, whose decision cannot be reversed in the absence of an abuse of discretion. (*La Mesa-Spring Valley School Dist. v. Otsuka*, 57 Cal.2d 309, 316, 19 Cal.Rptr. 479, 369 P.2d 7; *Horn v. Swoap*, 41 Cal.App.3d 375, 386, 116 Cal.Rptr.

113; *Excelsior etc. School Dist. v. Lautrup*, 269 Cal.App.2d 434, 447, 74 Cal.Rptr. 835.) The value of legal services performed in a case is a matter in which the trial court has its own expertise. (*Excelsior etc. School Dist. v. Lautrup*, supra at p. 448, 74 Cal.Rptr. 835.) The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. (*Barlin v. Barlin*, 156 Cal.App.2d 143, 149, 319 P.2d 87; *Mitchell v. Towne*, 31 Cal.App.2d 259, 266, 87 P.2d 908.) The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case. (*La Mesa-Spring Valley School Dist. v. Otsuka*, supra; *Excelsior etc. School Dist. v. Lautrup*, supra, 269 Cal.App.2d at p. 447, 74 Cal.Rptr. 835.)" (Melnyk v. Robledo (1977) 64 Cal.App.3d 618, 623-624.)

"Correctly stated, the rule is that when the trial court is informed of the extent and nature of the services rendered, it may rely on its own experience and knowledge in determining their reasonable value. [Footnote omitted.] (See, e. g., *Lipka v. Lipka*, supra, 60 Cal.2d at p. 480, 35 Cal.Rptr. 71, 386 P.2d 671; *Elconin v. Yalen*, 208 Cal. 546, 549-550, 282 P. 791; *Kirk v. Culley*, 202 Cal. 501, 508-509, 261 P. 994; *Spencer v. Collins*, 156 Cal. 298, 307, 104 P. 320; *Patten v. Pepper Hotel Co*., supra, 153 Cal. at p. 472, 96 P. 296; *Estate of Straus*, 144 Cal. 553, 557-558, 77 P. 1122; *Peyre v. Peyre*, supra, 79 Cal. at pp. 339-340, 21 P. 838; *Jones v. Jones*, supra, 135 Cal.App.2d at p. 64, 286 P.2d 908 (see fn. 3, Ante ); see also, 1 Witkin, Cal. Procedure (2d ed. 1970) Attorneys, s 97, pp. 106-107.)" (In re Marriage of Cueva (1978) 86 Cal.App.3d 290, 300–301.)

"The use of the lodestar method for calculating attorney fees was established in California in Serrano III. As we recently noted, "[i]n so-called fee shifting cases, in which the responsibility

to pay attorney fees is statutorily or otherwise transferred from the prevailing plaintiff or class to the defendant, the primary method for establishing the amount of 'reasonable' attorney fees is the lodestar method. The lodestar (or touchstone) is produced by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative 'multiplier' to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." (*Lealao*, supra, 82 Cal.App.4th 19, 26, 97 Cal.Rptr.2d 797.) "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132, 104 Cal.Rptr.2d 377, 17 P.3d 735.) Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis. (Lealao, supra, at pp. 49-50, 97 Cal.Rptr.2d 797.)" (Thayer v. Wells Fargo Bank, N.A. (2001) 92 Cal.App.4th 819, 833.)

Having read and considered plaintiff's counsels' declaration in support of the motion, the court finds that plaintiff incurred $5,717.50 in attorney fees to oppose the motion to expunge and to prepare this motion for fees. Therefore, the court awards plaintiff $5,717.50 in attorney fees to plaintiff All About Equine Animal Rescue, Inc.

**TENTATIVE RULING # 15: DEFENDANTS BYRD'S, RODARTE'S, WILSON'S, AND SAUNDERS' DEMURRERS TO 1ST AMENDED COMPLAINT IN CONSOLIDATED CASE GEORGETOWN DIVIDE V. BYRD (PC-20210234) ARE OVERRULED. PLAINTIFF ALL ABOUT EQUINE ANIMAL RESCUE, INC.'S MOTION FOR ATTORNEY FEES IS GRANTED.**

**THE COURT ORDERS DEFENDANTS BYRD, RODARTE, SAUNDERS, AND CONGER FAMILY TRUST TO PAY PLAINTIFF ALL ABOUT EQUINE ANIMAL RESCUE, INC. THE AMOUNT OF $5,717.50 IN ATTORNEY FEES WITHIN TEN DAYS. NO HEARING ON THESE MATTERS WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE 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 TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, FEBRUARY 18, 2022 EITHER IN**

**PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.**