1. PEOPLE v KRYLOV PC-20200443

Claim Opposing Forfeiture.

On August 21, 2020 claimant Krylov filed a verified Judicial Council Form MC-200 claim opposing forfeiture of $25,510 in response to a notice of administrative proceedings.

On October 2, 2020 the People filed a petition for forfeiture of currency in the amount of $25,510 that was seized by the El Dorado County Sheriff's Department. The petition states: the funds and other property are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of various provisions of the Health and Safety Code. The People pray for judgment declaring that the money is forfeited to the State of California.

The proof of service of the petition declares that on August 17, 2020 the petition was served on the claimant by mail to his address of record.

"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 January 15, 2021 the People advised the court that a criminal action was filed against respondent/claimant and three co-defendants. Claimant's counsel filed a CMC statement on August 12, 2021 requesting the matter be continued while the criminal case is pending. The court continued the hearing to December 3, 2021.

TENTATIVE RUING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 3, 2021 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. ANDERSON PCL-20210122

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 hearing was continued to this date. 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. The court was informed by the People at the hearing on August 27, 2021 that defendant's/claimant's next hearing was set for September 21, 2021 and the People requested a continuance of the hearing. The hearing was continued to December 3, 2021.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 3, 2021 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. $33,700 IN U.S. CURRENCY AND $2,300 IN U.S. CURRENCY PC-20210071

Petition for Forfeiture.

On February 16, 2021 the People filed a petition for forfeiture of cash in the amount of $36,000 seized by the El Dorado County Sheriff's Department. The petition states: the funds are currently in the hands of the El Dorado County District Attorney's Office; the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of various provisions of the Health and Safety Code; and that a criminal case alleging violations of Health and Safety Code, §§ 11360 and 11366 was filed on January 31, 2020. 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).)

"(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." (Emphasis added.) (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 9, 2021 the People advised the court that the preliminary hearing on the criminal charges was continued to June 11, 2021.

"(c) The Attorney General or district attorney shall make service of process regarding this petition upon every individual designated in a receipt issued for the property seized. In addition, the Attorney General or district attorney shall cause a notice of the seizure, if any, and of the intended forfeiture proceeding, as well as a notice stating that any interested party may file a verified claim with the superior court of the county in which the property was seized or if the property was not seized, a notice of the initiation of forfeiture proceedings with respect to any interest in the property seized or subject to forfeiture, to be served by personal delivery or by registered mail upon any person who has an interest in the seized property or property subject to forfeiture other than persons designated in a receipt issued for the property seized. Whenever a notice is delivered pursuant to this section, it shall be accompanied by a claim form as described in Section 11488.5 and directions for the filing and service of a claim." (Emphasis added.) (Health and Safety Code, § 11488.4(c).)

Proofs of service were filed on April 28, 2021, which declare that notice of the proceedings, a copy of the petition, and blank forms for making claims in opposition were served by certified mail on the two respondents on April 29, 2021.

The court was informed by the People at the hearing on August 27, 2021 that defendants'/claimants' next hearing was set in late September 2021 and the People requested a continuance of the hearing. The hearing was continued to December 3, 2021. The court also directed that the People to provide notice of the continuance to the claimants. There is no proof of service of notice of the continuance of the hearing to December 3, 2021 in the court's file. Absent proof of service of notice of the continuance, the court can not consider the matter.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 3, 2021 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. The hearing was continued upon request of claimant's counsel to August 27, 2021.

At the August 27, 2021 hearing the court was informed that the claimant's next court appearance is on September 24, 2021 and claimant's counsel requested this matter be continued. The court continued the hearing to December 3, 2021.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 3, 2021 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. GENASCI v. MACRAE SC-20180229

Judgment Debtor Examination.

The proof of service filed on September 30, 2021 declares that the judgment debtor was personally served the order for appearance and examination on September 23, 2021. At the October 22, 2021 hearing the court noticed correspondence from the judgment creditor's counsel, which advised the court that he had been contacted by the judgment debtor's counsel, who told him that he had a scheduling conflict and requested a continuance of the hearing. The court continued the hearing to December 3, 2021. The October 22, 2021 minute order continuing the hearing was served by mail to both counsels on October 25, 2021.

On November 22, 2021 the court received correspondence from the judgment creditor's counsel requesting the court to continue the OEX hearing to a date after March 1, 2022. The court orders the hearing on this matter continued to 8:30 a.m. on Friday, March 4, 2022 in Department Nine.

TENTATIVE RULING # 5: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MARCH 4, 2022 IN DEPARTMENT NINE. THE CLERK IS TO SERVE COPIES OF THE MINUTE ORDER CONTINUING THE HEARING TO COUNSELS FOR THE JUDGMENT CREDITOR AND JUDGMENT DEBTOR.

6. MATTER OF HIBAH Q. PC-20210545

OSC Re: Name Change.

TENTATIVE RULING # 6: THE PETITION IS GRANTED.

7. MATTER OF OLIVER PC-20210528

OSC Re: Name Change.

TENTATIVE RULING # 7: THE PETITION IS GRANTED.

8. MATTER OF SANDLAND PC-20210546

OSC Re: Name Change.

TENTATIVE RULING # 8: THE PETITION IS GRANTED.

9. MATTER OF NORRIS PC-20210456

OSC Re: Name Change.

TENTATIVE RULING # 9: THE PETITION IS GRANTED.

10. MATTER OF CARLAND PC-20210526

OSC Re: Name Change.

TENTATIVE RULING # 10: THE PETITION IS GRANTED.

11. ANDERSON v. REED PC-20210259

Motion for Leave to Withdraw as Counsel of Record for Plaintiff.

TENTATIVE RUING # 11: THE MOTION IS GRANTED. WITHDRAWAL WILL BE EFFECTIVE AS OF THE DATE OF FILING PROOF OF SERVICE OF THE FORMAL, SIGNED ORDER UPON THE CLIENT. 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, DECEMBER 3, 2021 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

12. HARDEN v. POSTELNYAK PCL-20210536

Hearing Re: Permanent Injunction.

TENTATIVE RULING # 12: THE ENTIRE ACTION HAVING BEEN VOLUNTARILY DISMISSED ON NOVEMBER 30, 2021, THIS MATTER IS DROPPED FROM THE CALENDAR AS MOOT.

13. MATTER OF J.G. WENTWORTH ORIGINATIONS, LLC PC-20210549

Petition to Approve Transfer of Structured Settlement Payment Rights.

In settlement of litigation a structured settlement was accepted. Payee R.A. agreed to sell monthly payments commencing May 15, 2039 and ending April 15, 2056 in the total amount of $326,985.84 in payments, which the petitioner states has a present value of $251,392.54. In exchange, the petition states payee will be paid $12,850, which the payee declares will be used to purchase an enclosed trailer to transport an electric wheel chair when the payee's van is out of service and to purchase a small pop-up trailer to transport the payee's wheelchair.

The payee further declares: the payee is married and has five minor children; payee is not subject to any court orders or child support obligations; payee is self-employed earning $1,500 per month; payee is currently suffering from financial hardship; the structured settlement was intended as compensation for a personal injury claim; the future periodic payments were not intended to pay for future medical care and treatment related to the incident that was the subject of the settlement; and the future payments that are the subject of the proposed transfer were solely monetary in nature and not intended to provide for necessary living expenses.

During the period of August 2015 through October 18, 2021 the payee has completed 19 transactions selling monthly payments from the payee's structured settlements annuities.

Petitioner seeks an order approving the transfer of the structured settlement payments pursuant to the provisions of Insurance Code, §§ 10134, et seq. on the ground that the transfer of the structured settlement payment rights is fair and reasonable and in the best interest of the payee, taking into account the welfare and support of the payee's dependents. (Insurance Code, 10137(a).)

"No transfer of structured settlement payment rights, either directly or indirectly, shall be effective by a payee domiciled in this state, or by a payee entitled to receive payments under a structured settlement funded by an insurance contract issued by an insurer domiciled in this state or owned by an insurer or corporation domiciled in this state, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to a transferee, unless all of the provisions of this section are satisfied." (Insurance Code, § 10136(a).)

"At any time before the date on which a court enters a final order approving the transfer agreement pursuant to Section 10139.5, the payee may cancel the transfer agreement, without cost or further obligation, by providing written notice of cancellation to the transferee." (Insurance Code, § 10136(e).)

Due to the number of transactions completed within the past few years regarding the payee's settlement annuities, the court is concerned about whether there remains sufficient income to support the payee and the payee's family, which must be addressed.

Notice of the hearing and copies of the petitioning papers must be filed and served 20 days prior to the hearing, plus 2 court days when served by express mail. (Insurance Code, §10139.5(f)(2) and Code of Civil Procedure, § 1013(c).)

The proofs of service in the court's file declare that petitioner served notice of the hearing, the petition, and supporting documents on the beneficiary/payee of the structured settlement payments, the Department of Justice, the annuity issuer and the payment obligor by regular and overnight mail on October 20, 2021; the 1st amended petition was served on the beneficiary/payee of the structured settlement payments, the Department of Justice, the annuity issuer and the payment obligor by regular and overnight mail on November 18, 2021; and the payee's declaration was served on the beneficiary/payee of the structured settlement

payments, the Department of Justice, the annuity issuer and the payment obligor by regular and overnight mail on November 24, 2021.

The proofs of service are fatally defective in that they fail to state the address that the documents were mailed to the beneficiary/payee of the structured settlement payments; and the 1st amended petition and the payee's declaration were served and filed less than 20 days prior to the hearing date. Therefore, the court can not rule on this matter until an adequate declaration proving adequate service on the beneficiary/payee of the structured settlement payments is filed and the interested parties have been provided adequate advance notice of the documents and their contents that will be considered in this matter.

TENTATIVE RULING # 13: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JANUARY 28, 2022 IN DEPARTMENT NINE.

14. SEVERI v. THE GIFT OF KIDS, INC. PC-20210049

Petition to Approve the Compromise of a Disputed Claim of a Minor.

On February 9, 2021 plaintiff filed an action against defendants for negligence seeking damages for injuries allegedly sustained by the minor plaintiff after falling off a moveable stair case located on defendants' premises. On September 16, 2021 the plaintiff filed a notice of settlement of the entire case.

The petition states the minor sustained injuries consisting of buckle fractures of the left ulna bone and distal radius, which required treatment at Kaiser Roseville four times and Urgent Care one time. Petitioner requests the court authorize a compromise of the minor's claim against defendants/respondents in the gross amount of $15,000.

The petition states the minor incurred $536 in medical expenses, the insurer is not seeking reimbursement, and there are no statutory or contractual liens for payment of the minor's medical expenses. There are no copies of the bills substantiating the claimed medical expenses attached to the petition as required by Local Rule 7.10.12A.(6).

The petition states that the minor fully recovered from the alleged injuries after seven weeks. A doctor's progress report concerning the minor's condition, dated August 4, 2020 states that the patient is well healed and can slowly return to normal activities.

The minor's attorney requests attorney's fees in the amount of $3,300, which represents approximately 25% of the net settlement after costs are deducted. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Rules of Court, Rule 7.955(a)(1).) The fee requested appears to be reasonable. The minor's attorney also requests reimbursement for costs in the amount of $1,700. There are no

copies of bills substantiating the claimed costs attached to the petition as required by Local Rule 7.10.12A.(6).

The petition requests that the net settlement amount of $10,000 be transferred to the minor's parent, Michael Severi, as custodian for the benefit of the minor under the California Uniform Transfers to Minors Act

Pursuant to Rules of Court, Rule 7.952(a) the petitioner and the minor are required to appear at hearings on petitions to approve minor compromises, unless the court dispenses with the requirement upon finding good cause.

TENTATIVE RULING # 14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 3, 2021 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.

15. JOHNSON v BAGSBY 21UD0009

Defendants' Demurrer to Unlawful Detainer Complaint.

On October 27, 2021 plaintiff filed an unlawful detainer action against defendants. The complaint alleges: on October 10, 2020 plaintiff and defendants entered into an oral agreement for a month-to-month tenancy with rent fixed at $1,350 per month; the action is solely for non-payment of rent; the action is exempt from the Tenant Protection Act of 2019 pursuant to Civil Code, § 1946.2(a)(1)(A); defendants were served a 15 day notice to pay or quit on September 7 and October 4, 2021 by posting at the premises; on September 28, 2021 the period stated in the notice expired at the end of that day; the defendants failed to comply with the requirements of the notice by that date; all facts stated in the notice are true; the notice included an election of forfeiture; a copy of the notice is attached as Exhibit 2; the amount of rent due at the time the notice was served was $3,550; the fair rental value of the premises is $45 per day; defendants' tenancy is subject to the California Rent Relief Program; and plaintiff seeks judgment in the amount of $3,550, plus holdover damages of $45 per day commencing on October 1, 2021. (Complaint, paragraphs 6.a., 6.b., 6.f.(2), 7.a., 9.a.(7), 9.b.-9.e., 10a.(3), 12. 13, 16, 19.c., and 19.g.)

Defendants demur to the complaint on the following grounds: the language in the 15 day notice seeking payment of rental debt fails to state the language mandated by Code of Civil Procedure, §1179.03, therefore, the action can not be maintained; the 15 day notice fails to state the information mandated by Code of Civil Procedure, § 1161(2); the three day notice is ineffective, because it demands payment of rent incurred during the transition time period, which requires 15 days' notice to be provided; the proofs of service are insufficient as they only declare the property was posted with the 15 day notice and the three day notice was

"personally served" by taping the notice to the door; and the demurrers should be sustained without leave to amend as the defects can not be cured.

The proof of service declares that the notice of hearing and moving papers were served by mail to plaintiff's address of record on November 4, 2021. There was no opposition to the demurrers in the court's file at the time this ruling was prepared.

Demurrer Principles

When any ground for objection to a complaint 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.)

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.)

""It has long been recognized that the unlawful detainer statutes are to be strictly construed and that relief not statutorily authorized may not be given due to the summary nature of the proceedings. [Citation.] The statutory requirements in such proceedings ' "must be followed strictly...." ' " (*WDT–Winchester v. Nilsson* (1994) 27 Cal.App.4th 516, 526, 32 Cal.Rptr.2d 511; see *Underwood v. Corsino* (2005) 133 Cal.App.4th 132, 135, 34 Cal.Rptr.3d 542; *Cal–American Income Property Fund IV v. Ho* (1984) 161 Cal.App.3d 583, 585, 207 Cal.Rptr. 532.) "The remedy of unlawful detainer is a summary proceeding to determine the right to possession of real property. Since it is purely statutory in nature, it is essential that a party seeking the remedy bring himself clearly within the statute." (*Baugh v. Consumers Associates,*

Ltd. (1966) 241 Cal.App.2d 672, 674, 50 Cal.Rptr. 822.) Because Dr. Leevil served the three-day notice to quit before it perfected title, it did not bring itself within the scope of section 1161a(b), as that provision is most naturally read, before taking the first step in the removal process that the statute authorizes. Its notice to quit was, therefore, premature and void, and its unlawful detainer action, improper." (Dr. Leevil, LLC v. Westlake Health Care Center (2018) 6 Cal.5th 474, 480.)

Although the statutory requirements in unlawful detainer proceedings must be strictly followed as established by the facts alleged, in ruling on a demurrer, all of the alleged material facts in the complaint, including the facts appearing in exhibits attached to the complaint, that are applied to the strictly followed procedural requirements of unlawful detainer actions must be liberally construed and treated as true for the purposes of the demurrer to determine whether an unlawful detainer cause of action is stated wherein all procedurally requirements were strictly adhered to. In short, the standard is not strictly construing the facts. The standard is strictly construing whether the liberally construed facts that are taken as true sufficiently allege strict compliance with the statutory requirements for an unlawful detainer action.

With the above-cited legal principles in mind, the court will rule on the demurrer to the complaint.

15 Day Notice Requirements – Code of Civil Procedure, §§ 1161(2) and 1179.03

"(a)(1) Any notice that demands payment of COVID-19 rental debt served pursuant to subdivision (e) of Section 798.56 of the Civil Code or paragraph (2) or (3) of Section 1161 shall be modified as required by this section. A notice which does not meet the requirements of this section, regardless of when the notice was issued, shall not be sufficient to establish a cause of action for unlawful detainer or a basis for default judgment. ¶ (2) Any case based solely on a notice that demands payment of COVID-19 rental debt served pursuant to subdivision (e) of

Section 798.56 of the Civil Code or paragraph (2) or (3) of Section 1161 may be dismissed if the notice does not meet the requirements of this section, regardless of when the notice was issued." (Emphasis added.)(Code of Civil Procedure, § 1179.03(a)(1) and 1179.03(a)(2))

"(a) "Covered time period" means the time period between March 1, 2020, and September 30, 2021." (Code of Civil Procedure, § 1179.02(a).)

"(f) "Protected time period" means the time period between March 1, 2020, and August 31, 2020." (Code of Civil Procedure, § 1179.02(f).)

"(i) "Transition time period" means the time period between September 1, 2020, and September 30, 2021." (Code of Civil Procedure, § 1179.02(i).)

"(c) If the notice demands payment of rent that came due during the transition time period, as defined in Section 1179.02, the notice shall comply with all of the following: ¶ (1) The time period in which the tenant may pay the amount due or deliver possession of the property shall be no shorter than 15 days, excluding Saturdays, Sundays, and other judicial holidays. ¶ (2) The notice shall set forth the amount of rent demanded and the date each amount became due. ¶ (3) The notice shall advise the tenant that the tenant will not be evicted for failure to comply with the notice, except as allowed by this chapter, if the tenant delivers a signed declaration of COVID-19-related financial distress to the landlord on or before the date the notice to pay rent or quit or notice to perform covenants or quit expires, by any of the methods specified in subdivision (f)." (Code of Civil Procedure, §§ 1179.03(c)(1)-(3))

Section 1179.03(c) was amended effective June 28, 2021. Among other things, it set forth the mandated 15 day notice language by the date when the notices were served. Section 1179.03(c)(5) set forth the mandated notice language to be served during the period from February 1, 2021 and before July 1, 2021 and Section 1179.03(c)(6) was added, which modified the language required and applied to notices served on or after July 1, 2021.

"(6) For notices served on or after July 1, 2021, the notice shall include the following text in at least 12-point type: ¶ NOTICE FROM THE STATE OF CALIFORNIA--YOU MUST TAKE ACTION TO AVOID EVICTION. If you are unable to pay the amount demanded in this notice because of the COVID-19 pandemic, you should take action right away. ¶ IMMEDIATELY: Sign and return the declaration form included with your notice to your landlord within 15 days, excluding Saturdays, Sundays, and other judicial holidays. Sign and return the declaration even if you have done this before. You should keep a copy or a picture of the signed form for your records. ¶ BEFORE SEPTEMBER 30, 2021: Pay your landlord at least 25 percent of any rent you missed between September 1, 2020, and September 30, 2021. If you need help paying that amount, apply for rental assistance. You will still owe the rest of the rent to your landlord, but as long as you pay 25 percent by September 30, 2021, your landlord will not be able to evict you for failing to pay the rest of the rent. You should keep careful track of what you have paid and any amount you still owe to protect your rights and avoid future disputes.¶ AS SOON AS POSSIBLE: Apply for rental assistance! As part of California's COVID-19 relief plan, money has been set aside to help renters who have fallen behind on rent or utility payments. If you are behind on rent or utility payments, YOU SHOULD COMPLETE A RENTAL ASSISTANCE APPLICATION IMMEDIATELY! It is free and simple to apply. Citizenship or immigration status does not matter. You can find out how to start your application by calling 1-833-430-2122 or visiting http://housingiskey.com right away." (Code of Civil Procedure, § 1179.03(c)(6))

"(e) If a tenant owes a COVID-19 rental debt to which both subdivisions (b) and (c) apply, the landlord shall serve two separate notices that comply with subdivisions (b) and (c), respectively." (Code of Civil Procedure, § 1179.03(e).)

The notices specify that defendants owed past due rent for the period of June 1, 2021 to September 30, 2021, which falls within the transitional period and is outside the Section 1179.03(b) protected period. Therefore, only one 15 day notice needs to be provided that complies with the applicable subdivisions of Section 1179.03(c).

The complaint alleges that the 15 day notice was served by posting on the premises on September 7 and October 4, 2021. (Complaint, paragraph 10.a.(3).) Therefore, the specific language set forth in the Section 1179.03(c)(6) 15 day notice was required to be served on defendants. The Section 1179.03(c)(5) notice appears to be the version of the notice that was served, it only applies to notices served from February 1, 2021 and before July 1, 2021, and in fact, the notice served expressly states it is the Code of Civil Procedure, § 1179.03(c)(5) notice. Inasmuch as the specific notice language required to be served after July 1, 2021 was apparently not served, the notice served "…shall not be sufficient to establish a cause of action for unlawful detainer or a basis for default judgment. ¶ (2) Any case based solely on a notice that demands payment of COVID-19 rental debt served pursuant to subdivision (e) of Section 798.56 of the Civil Code or paragraph (2) or (3) of Section 1161 may be dismissed if the notice does not meet the requirements of this section, regardless of when the notice was issued." (Code of Civil Procedure, § 1179.03(a)(1) and 1179.03(a)(2).)

The demurrer on the ground that the 15 day notice does not comply with Section 1179.03(c)(6) is sustained.

- Additional Information to Include in Notice

"2. When the tenant continues in possession, in person or by subtenant, without the permission of the landlord, or the successor in estate of the landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, excluding Saturdays and Sundays and other judicial holidays, in writing,

requiring its payment, stating the amount that is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the property, shall have been served upon the tenant and if there is a subtenant in actual occupation of the premises, also upon the subtenant. * * * ¶ An unlawful detainer action under this paragraph shall be subject to the COVID-19 Tenant Relief Act of 2020 (Chapter 5 (commencing with Section 1179.01)) if the default in the payment of rent is based upon the COVID-19 rental debt." (Code of Civil Procedure, § 1161(2).)

Although the 15 day notice to pay or quit sets forth the total amount due and payable of $3,550 and itemizes the amounts that remain due and payable each month from June 2021 to September 2021 (Complaint, Exhibit 2, page 2.), the 15 day notice does not include the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment as mandated by Section 1161(2).

The three day notice does include that information. (Complaint, Exhibit 2, page 7.) However, as stated earlier, the mandated 15 day notice does not state that information. The

problem is the information should be contained in the 15 day notice and the three day notice merely injects uncertainty by stating two obligations to pay within 15 days of notice and three days of notice. Three days' notice to pay or quit is insufficient under the applicable COVID-19 unlawful detainer notice statute.

The demurrer on the ground that the above-cited information was not included in a 15 day notice to pay or quit is sustained.

Service of 15 Day Notice and Three Day Notice – Code of Civil Procedure, § 1162(a)

"(a) Except as provided in subdivision (b), the notices required by Sections 1161 and 1161a may be served by any of the following methods: ¶ (1) By delivering a copy to the tenant personally. ¶ (2) If he or she is absent from his or her place of residence, and from his or her usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his or her place of residence. ¶ (3) If such place of residence and business cannot be ascertained, or a person of suitable age or discretion there can not be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner." (Emphasis added.) (Code of Civil Procedure, § 1162(a).)

The verified complaint alleges that the notices were served by posting on the subject premises on September 7 and October 4, 2021. (Complaint, paragraph 10.a.(3).) Plaintiff failed to allege that a copy of the notices was given to a person residing on the premises, if such person can be found, and failed to allege a copy of the notices was mailed to the defendant at the premises on a specific date. There are insufficient allegations to establish service of the mandated notice by posting.

The demurrer on the ground of lack of sufficient allegations of valid service of the 15 day notice is sustained.

Leave to Amend

"It is an abuse of discretion to deny leave to amend if there is a reasonable possibility that the pleading can be cured by amendment. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349, 134 Cal.Rptr. 375, 556 P.2d 737.) Regardless of whether a request therefore was made, unless the complaint shows on its face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion. (*McDonald v. Superior Court* (1986) 180 Cal.App.3d 297, 303-304, 225 Cal.Rptr. 394.) The burden is on the plaintiff to demonstrate how he or she can amend the complaint. It is not up to the judge to figure that out. (*Blank v. Kirwan*, supra, 39 Cal.3d 311, 318, 216 Cal.Rptr. 718, 703 P.2d 58.)" (Roman v. County of Los Angeles (2000) 85 Cal.App.4th 316, 322.)

Although the insufficient allegations of service of the notice by posting could reasonably be cured by amendment, if there are sufficient facts to establish such service, plaintiff has not demonstrated that the service allegations defect can be cured by amendment in that plaintiff has not opposed the motion and offered additional facts that could be pled regarding service.

In addition, the defects related to the attached notice exhibits appear to be incapable of amendment to cure those defects.

While the court sustains the demurrers to the complaint in the instant action without leave to amend, the court also finds that the deficiencies could be corrected by proper service of the required notices and refiling the action after such notices are properly served. Therefore, this ruling is without prejudice to refiling the action.

TENTATIVE RULING # 15: DEFENDANTS' DEMURRERS TO THE COMPLAINT IN THE INSTANT ACTION ARE SUSTAINED WITHOUT LEAVE TO AMEND AND WITHOUT

PREJUDICE TO REFILING THE ACTION. 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, DECEMBER 3, 2021 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

16. ALL ABOUT EQUINE ANIMAL RESCUE, INC. v. BYRD PC-20200294

Plaintiff All About Equine Animal Rescue, Inc.'s Motion to Consolidate Case Number PC-20200294 with Case Number PC-20210234.

Plaintiff filed a complaint under case number PC-20200294 against defendants Byrd, Rodarte, Saunders, the Conger Trust, and the Christ Trust asserting causes of action for trespass to real property, trespass to chattel, quiet title to real property, and declaratory relief. The complaint alleges the dispute arises from defendant's use, conduct, and arguments concerning two easements across plaintiff's land.

On August 31, 2021 Georgetown Divide Recreation Dist. filed a 1st amended complaint in case number PC-20210234 against defendants Byrd, Rodarte, Wilson, Saunders, and All About Equine Animal Rescue, Inc. asserting causes of action for trespass to land, trespass to chattel, nuisance, declaratory relief, and to quiet title arising from a recorded easement.

On November 4, 2021 All About Equine Animal Rescue, Inc. filed a cross-complaint in case number PC-20210234 against cross-defendants Byrd, Wilson, U.S. Bank as Successor Trustee of the Conger Trust, Roger Crist as trustee of the Christ Trust, and Georgetown Divide Recreation Dist.

All About Equine Animal Rescue, Inc. moves to consolidate case numbers PC-20210234 with PC-20200294 on the following grounds: the court will be required to resolve a number of common issues arising from a single access easement to Highway 49 in order to determine the claims in both actions; and once those issues are resolved, all other issues posed in the two actions, whether common or not, are anticipated to be quickly resolved either through dismissal or settlement.

The proof of service declares that on October 12, 2021 the notice of motion and moving papers were served by mail on counsels for defendants Byrd, Rodarte, Wilson, U.S. Bank as Successor Trustee of the Conger Trust, Roger Crist as trustee of the Christ Trust, Saunders, and Georgetown Divide Recreation Dist.

On November 18, 2021, the plaintiff in Case Number PC-20210234, Georgetown Divide Recreation District, filed a notice of non–opposition to the motion to consolidate the two actions.

There was no opposition in the court's file from the other parties to the two actions at the time this ruling was prepared.

"When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." (Code of Civil Procedure, § 1048(a).)

The fact that all the parties are not the same does not bar a consolidation. (Jud Whitehead Heater Co. v. Obler (1952) 111 Cal.App.2d 861, 867.)

"…Consolidation under section 1048 is permissive, and the trial court granting consolidation must determine whether the consolidation will be for all purposes or will be limited. (*General Motors Corp. v. Superior Court* (1966) 65 Cal.2d 88, 92, 52 Cal.Rptr. 460, 416 P.2d 492.)" (Committee for Responsible Planning v. City of Indian Wells (1990) 225 Cal.App.3d 191, 196, fn.5.)

The court has discretion to consolidate actions, which have common questions of fact or law. Code of Civil Procedure, § 1048(a). "…Therefore it is possible that actions may be thoroughly "related" in the sense of having common questions of law or fact, and still not be

"consolidated," if the trial court, in the sound exercise of its discretion, chooses not to do so." (Askew v. Askew (1994) 22 Cal.App.4th 942, 964.)

"Consolidation is not a matter of right; it rests solely within the sound discretion of the trial judge, and his decision to consolidate, or his refusal to do so, will not be reviewed except upon a clear showing of abuse of discretion. *Realty Const. & Mfg. Co. v. Superior Court*, 165 Cal. 543, 546, 132 P. 1048." (Fisher v. Nash Bldg. Co. (1952) 113 Cal.App.2d 397, 402.)

"The fact that evidence in the one case might not have been admissible in the other does not bar a consolidation. See *Johnson v. Western Air Exp. Corp.*, 45 Cal.App.2d 614, 114 P.2d 688. Nor does the fact that all the parties are not the same. See *Aufdemkamp v. Pierce*, 4 Cal.App.2d 276, 40 P.2d 599; *People v. Ocean Shore R. R.*, 22 Cal.App.2d 657, 72 P.2d 167." (Jud Whitehead Heater Co. v. Obler (1952) 111 Cal.App.2d 861, 867.)

"Unless otherwise provided in the order granting the motion to consolidate, the lowest numbered case in the consolidated case is the lead case." (Rules of Court, Rule 3.350(b).)

Absent opposition, under the circumstances presented, it appears appropriate to grant the motion.

TENTATIVE RULING # 16: PLAINTIFF ALL ABOUT EQUINE ANIMAL RESCUE, INC.'S MOTION TO CONSOLIDATE CASE NUMBER PC-20200294 WITH CASE NUMBER PC-20210234 IS GRANTED. CASE NUMBER 20200294 IS THE LEAD CASE. 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, DECEMBER 3, 2021 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

17. GEORGETOWN DIVIDE RECREATION DIST. v. BYRD PC-20210234

Defendants' Byrd's, Rodarte's, Wilson's, and Saunders' Demurrer to 1st Amended Complaint.

On August 31, 2021 Georgetown Divide Recreation Dist. filed in case number PC-20210234 a 1st amended complaint against defendants Byrd, Rodarte, Wilson, Saunders, and All About Equine Animal Rescue, Inc. asserting causes of action for trespass to land, trespass to chattel, nuisance, declaratory relief, and to quiet title arising from a recorded easement.

On November 4, 2021 All About Equine Animal Rescue, Inc. filed a cross-complaint in case number PC-20210234 against cross-defendants Byrd, Wilson, U.S. Bank as Successor Trustee of the Conger Trust, Roger Crist as trustee of the Christ Trust and Georgetown Divide Recreation Dist.

Defendants Byrd, Rodarte, Wilson, and Saunders demur to 1st Amended Complaint on the following grounds: the quiet title and declaratory relief causes of action are uncertain and fail to state such causes of action; the quiet title and declaratory relief causes of action are defective because plaintiff failed to join El Dorado County as a necessary party as the County's Grant Deed conveying the subject property to the Georgetown Recreational District, a statutorily created subdivision of the State of California, only conveyed a life estate to the District, because the County failed to specify the exact location of the easement that is the subject of the litigation and, therefore, the County retained that interest in the property; the court lacks jurisdiction related to the quiet title and declaratory relief causes of action to determine whether a gate can be installed and maintained across the easement, because a permit to install a gate was required to be obtained from the County; the litigation of the quiet title and declaratory relief causes of action is premature, because plaintiff has not sought a permit to install a gate

across the easement; the facts pled are insufficient to state a claim for punitive damages; plaintiff lacks standing to bring the quiet title and declaratory relief causes of action, because the County did not convey all rights to the easement on the property to plaintiff and plaintiff's remedy is to sue the County; and plaintiff is not a valid subdivision of the State and lacks standing, because it has not filed proof that it filed a certified copy of the resolution declaring the organization of the District with the El Dorado County Recorder's Office as mandated by Government Code, § 58133.

The proof of service filed with the court declares that plaintiff Georgetown Divide Recreation District's counsel and counsel for All About Equine Animal Rescue, Inc. were served with notice of the hearing and the documents submitted in support of the demurrers by email on October 13, 2021. There was no opposition to the demurrers in the court's file at the time this ruling was prepared.

No papers opposing the demurrers having been filed with the court at least nine court days before the hearing (Code of Civil Procedure, § 1005(b).), the court exercises its discretion to treat the plaintiffs' failure to file an opposition as an admission that the demurrers are meritorious and sustains the demurrers with ten days leave to amend. (See Local Rule 7.10.02C.)

TENTATIVE RULING # 17: DEFENDANTS' BYRD'S, RODARTE'S, WILSON'S, AND SAUNDERS' DEMURRERS TO THE 1ST AMENDED COMPLAINT ARE SUSTAINED WITH TEN DAYS LEAVE TO AMEND. 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, DECEMBER 3, 2021 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

18. SCHMIDT v. LUPER PCU-20210101

Defendant's Motion to Quash Service of the Summons and Complaint.

Defendant specially appears to move to quash service of the summons and complaint on the grounds that those documents were not properly served on her as she was not personally served the summons and complaint and the attempt at substituted service failed as the process server served defendant's 12 year-old daughter at the home and not an adult as required by the Code of Civil Procedure.

The proof of service declares that on October 13, 2021 the motion was served by mail on plaintiff's counsel.

Although there was no opposition to the motion in the court's file at the time of the November 5, 2021 hearing date, the court noted that the motion was filed on October 14, 2021, the notice of hearing initially stated it was to take place on December 3, 2021, and the date was apparently changed by the clerk when the document was filed by striking out 12/3/2021 and entering 11-5-21 next to it. In addition, an attorney with the Legal Services of Northern California declares that the attorney contacted plaintiff's counsel and advised him the motion to quash was set for hearing on December 3, 2021. (Declaration of W.H. Whitaker in Support of Motion paragraphs 7.) These circumstances would appear to show that plaintiff only received notice the hearing would take place on December 3, 2021, which would require the opposition to be filed on November 22, 2021. At the hearing on November 5, 2021 the court continued the hearing date to December 3, 2021.

Plaintiff's opposition was filed on November 15, 2021.

Plaintiff opposes the motion on the ground that the proof of service and the declaration of the registered process server establishes that defendant was personally served the summons and complaint on October 3, 2021.

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

"A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes: ¶ (1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her." (Code of Civil Procedure, § 418.10(a)(1).)

""[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction. [Citation.] Thus, a default judgment entered against a defendant who was not served with a summons in the manner prescribed by statute is void." (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1444, 29 Cal.Rptr.2d 746.) ¶ When a defendant argues that service of summons did not bring him or her within the trial court's jurisdiction, the plaintiff has "the burden of proving the facts that did give the court jurisdiction, that is the facts requisite to an effective service." (*Coulston v. Cooper* (1966) 245 Cal.App.2d 866, 868, 54 Cal.Rptr. 302.) ¶ "When an issue is tried on affidavits, the rule on appeal is that those affidavits favoring the contention of the prevailing party establish not only the facts stated therein but also all facts which reasonably may be inferred therefrom, and where there is a substantial conflict in the facts stated, a determination of the controverted facts by the trial court will not be disturbed." (*Griffith Co. v. San Diego Col. for Women* (1955) 45 Cal.2d 501, 508, 289 P.2d 476.) But we "independently review [the trial court's] statutory interpretations and legal conclusions [citations]." (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1230, 113 Cal.Rptr.3d 147 (*Gorham*).)" (American Express Centurion Bank v. Zara (2011) 199 Cal.App.4th 383, 387.)

"Service of a substantially defective summons does not confer jurisdiction over a party. (Code Civ.Proc. s 412.20, Code Commissioners' Notes, Notes 1, 2, and 3.)" (Greene v. Municipal Court (1975) 51 Cal.App.3d 446, 451.)

When a defendant moves to quash on the grounds of lack of personal jurisdiction, the defendant as the moving party must present some admissible evidence, such as declarations or affidavits, to place the jurisdiction issue before the court by showing the absence of minimum contacts with the state. (School Dist. of Okaloosa County v. Superior Court (1997) 58 Cal.App.4th 1126, 1131.) The burden is then on the plaintiff to prove by a preponderance of the evidence that sufficient minimum contacts between the defendant and the state exist, such that the court can exercise personal jurisdiction. (School Dist. of Okaloosa County, supra at page 1131.)

"A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery. ¶ The date upon which personal delivery is made shall be entered on or affixed to the face of the copy of the summons at the time of its delivery. However, service of a summons without such date shall be valid and effective." (Code of Civil Procedure, § 415.10.)

"If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint

were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing." (Emphasis added.) (Code of Civil Procedure, § 415.20(b).)

Defendant declares: defendant presently resides at a specific street address in Cool; on October 3, 2021 at approximately 7:30 p.m. she was away from her home; no one attempted to serve defendant with the summons and complaint in person; at 7:30 p.m. on October 3, 2021 defendant's daughter was at home with her younger brother; the daughter, Chloe, is 12 years old; despite her age, she looks quite a bit like defendant; when defendant returned home later that evening, Chloe told defendant that a woman had come to the house and asked for defendant; Chloe told her defendant was not here and shut the door; the woman left some paperwork on the doorstep and left; and the paperwork was a copy of the summons and complaint. (Declaration of Defendant in Support of Motion, paragraphs 2 and 4-6.)

Defendant's daughter declares: she is defendant's daughter; she resides at the subject address with her mother and brother; she is currently 12 years-old; on October 3, 2021 at around 7:30 p.m. she was inside her house with her younger brother when someone came to the house; her mother was not there; a woman came to the door and asked for her mother; she opened the door because she thought it might be a friend of her mother's; she told her the woman that her mom was not at home and shut the door; the person then dropped some papers on the front door step. (Declaration of Chloe in Support of Motion, paragraphs 1, 2 and 4-6.)

The proof of personal service of the summons and complaint filed on November 15, 2021 declares: the registered process server personally served defendant at the subject address on October 3, 2021 at 7:31 pm.; and the person served was described as a 40 year-old white female, 5'5" in height, weighing 170 pounds, and having light brown hair.

The registered process service declaration submitted with the opposition declares: she arrived at the subject address on October 3, 2021 at 7:31 p.m.; the interior lights were on; the door was answered by a 12-14 year old female; the process service asked for defendant; the 12-14 year old female responded that the person was her mother; the process server asked if the defendant could come to the door; the door was closed, and shortly thereafter defendant came to the door; the process served stated hello Jaime, I have an unlawful detainer for you and the process server went to hand it to her; defendant did not take it from the process server, so the process server dropped it on the porch and told defendant she was served as defendant closed the door on the process server; and the process server left with the documents on the ground.

Having read and considered the documents filed in support of and opposition to the motion, including the declarations, the court finds the registered process server's declaration to be credible and denies the motion.

TENTATIVE RULING # 18: DEFENDANT'S MOTION TO QUASH IS DENIED. 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, DECEMBER 3, 2021 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.