

1. EL DORADO TRUSS CO., INC. v. ZEUGHE PSC-20200161

Judgment Debtor Examination.

TENTATIVE RULING # 1: THE PERSONAL APPEARANCE OF THE DEBTOR IS REQUIRED AT 8:30 A.M., FRIDAY, JANUARY 7, 2022 IN DEPARTMENT NINE, PROVIDED PROOF OF SERVICE OF THE ORDER TO APPEAR FOR EXAMINATION IS FILED PRIOR TO THE HEARING SHOWING THAT PERSONAL SERVICE ON THE DEBTOR WAS EFFECTED NO LATER THAN TEN DAYS PRIOR TO THE HEARING DATE (CCP, § 708.110(d)). IF THE APPROPRIATE PROOF OF SERVICE IS NOT FILED, NO EXAMINATION WILL TAKE PLACE.

2. MATTER OF J.C. 21CV0162

OSC Re: Name Change.

There is no proof of publication in the court's file, which is mandated by Code of Civil Procedure, § 1277(a).

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 7, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

3. LERCH v. RALEY'S PC-20200498

Motion to Compel Further Responses to Requests for Production.

**TENTATIVE RULING # 3: UPON REQUEST OF THE PARTIES, THIS MATTER IS
CONTINUED TO 8:30 A.M. ON FRIDAY, JANUARY 28, 2022 IN DEPARTMENT NINE.**

4. DEGRINIS v. LOWE'S HOME CARE CENTERS, LLC PC-20200291

Motion for Leave to Withdraw as Attorney of Record for Plaintiffs.

TENTATIVE RULING # 4: 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 TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/online services/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, JANUARY 7, 2022
EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE
NOTIFIED BY THE COURT.

5. COUNTY OF EL DORADO v. WALDOW 21CV0122

(1) Defendant Jennette Waldow's Motion to Quash Service of the Summons and Complaint.

(2) OSC Re: Preliminary Injunction.

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

Plaintiff County filed a complaint against defendants Apple Bistro, Jennette Waldow, International Farmers Kitchen, LLC and others asserting causes of action for violation of Health and Safety Code, §§ 114381 and 114405, violation of El Dorado County Environmental Health Permit Ordinance of the El Dorado County Ordinance Code, Chapter 8.05, and public nuisance. Plaintiff prays for a judgment imposing fines and penalties, as well as injunctive relief and an award of attorney fees and costs.

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

Defendant Jennette Waldow moves to quash service and dismiss the action on the ground that this court lacks personal and subject matter jurisdiction as she is a non-resident alien having exercised a right to self-determination to determine she is not a citizen of the United

States, but is a jus sanguinis American State National and a true Californian having been born in the Republic of California as a non-resident alien.

There is a certificate of service attached to the motion, which states that the County was either hand delivered or mailed the motion. The proof of service does not declare that the motion was served and is not executed by anyone under penalty of perjury, therefore, the proof of service is fatally defective.

Plaintiff County opposes the motion on the following grounds: the motion should be denied as procedurally defective, because defendant failed to file and serve a notice of motion containing notice of the date, time and location of the hearing; defendant Waldow is not an attorney and can not represent defendant International Farmers Kitchen, LLC; a claim that the court lacks subject matter jurisdiction can not be raised in a motion to quash; even if the issue of subject matter jurisdiction was properly before the court in the hearing of the motion to quash, the superior court has general subject matter jurisdiction concerning the matters raised in this case; the motion should be denied, because it is not supported by any admissible evidence; the court clearly has personal jurisdiction over the moving defendants; and the assertion of lack of personal jurisdiction is frivolous.

Notice of Hearing

Defendant Waldow failed to file a notice of hearing stating the date, time, and location of the hearing on the motion and there is no proof of service of such a notice on plaintiff in the court's file. Plaintiff objects to the lack of notice.

"The notice shall designate, as the time for making the motion, a date not more than 30 days after filing of the notice. The notice shall be served in the same manner, and at the same times, prescribed by subdivision (b) of Section 1005. The service and filing of the notice shall extend the defendant's time to plead until 15 days after service upon him or her of a written

notice of entry of an order denying his or her motion, except that for good cause shown the court may extend the defendant's time to plead for an additional period not exceeding 20 days.” (Code of Civil Procedure, § 418.10(b).)

Defendant's failure to serve and file notice of the hearing is fatal to this motion and provides an independent reason to deny the motion.

Motion to Quash Service

“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).)

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.)

“On a motion to quash service of summons, the plaintiff bears the burden of proving by a preponderance of the evidence that all jurisdictional criteria are met. (*Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 710, 215 Cal.Rptr. 442; *Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1232, 254 Cal.Rptr. 410 (Ziller).) The burden must be met by competent evidence in affidavits and authenticated documents; an unverified complaint may

not be considered as supplying the necessary facts. (*Ziller*, supra, 206 Cal.App.3d at p. 1233, 254 Cal.Rptr. 410.)” (*Nobel Floral, Inc. v. Pasero* (2003) 106 Cal.App.4th 654, 657-658.)

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

The causes of action asserted against defendants Apple Bistro, Jennette Waldow, International Farmers Kitchen, LLC all arise from the defendants’ alleged operation of the Apple Bistro without the mandated permits.

“Personal jurisdiction is not determined by the nature of the action, but by the legal existence of the party and either its presence in the state or other conduct permitting the court to exercise jurisdiction over the party. Subject matter jurisdiction, by contrast, is the power of the court over a cause of action or to act in a particular way. (See generally *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 109 P.2d 942; 2 Witkin, Cal. Procedure (3d ed. 1985) Jurisdiction, § 9, p. 374.) [Footnote omitted.]” (*Greener v. Workers’ Comp. Appeals Bd.* (1993) 6 Cal.4th 1028, 1034–1035.)

- Defendant’s Evidence in Support of Motion

Defendant Waldow has not submitted a declaration in support the motion wherein she states under oath that she is a non-resident alien having exercised a right to self-determination to determine she is not a citizen of the United States, but is a jus sanguinis American State National and a true Californian having been born in the Republic of California as a non-resident alien. Therefore, there is no initial evidence submitted in support of the motion to quash service to place the personal jurisdiction issue before the court. The failure to provide any admissible evidence to raise the issue of personal jurisdiction over the defendants fails to meet the defendant’s initial burden of proof (See *School Dist. of Okaloosa County v. Superior Court* (1997) 58 Cal.App.4th 1126, 1131.) and is an independent justification to deny the motion.

- Subject Matter Jurisdiction

“A motion to quash service of summons lies on the ground that the court lacks personal, not subject matter, jurisdiction over the moving party. (Code Civ.Proc., § 418.10.) ¶ A challenge to the subject matter jurisdiction of a court is properly brought by demurrer to the complaint (Code Civ.Proc., § 430.10, subd. (a); see, e.g., *Santiago v. Employee Benefits Services* (1985) 168 Cal.App.3d 898, 214 Cal.Rptr. 679; *Miller v. R.K.A. Management Corp.* (1979) 99 Cal.App.3d 460, 160 Cal.Rptr. 164). It may also be raised by a motion to strike (Code Civ.Proc., §§ 435, 437); motion for judgment on the pleadings (*Jarchow v. Transamerica Title Ins. Co.* (1975) 48 Cal.App.3d 917, 122 Cal.Rptr. 470); motion for summary judgment (Code Civ.Proc., § 437c; *Hisel v. County of Los Angeles* (1987) 193 Cal.App.3d 969, 238 Cal.Rptr. 678; *United States Borax & Chemical Corp. v. Superior Court* (1985) 167 Cal.App.3d 406, 213 Cal.Rptr. 155); or in an answer (*Horney v. Guy F. Atkinson Co.* (1983) 140 Cal.App.3d 923, 190 Cal.Rptr. 18). ¶ The challenge may not, however, be made in a “special appearance” by a motion to quash service of summons. The only situation in which a motion to quash service of summons has been approved as a procedure by which to challenge the sufficiency of the complaint is in unlawful detainer, where a demurrer is unavailable. (See *Delta Imports, Inc. v. Municipal Court* (1983) 146 Cal.App.3d 1033, 1035–1036, 194 Cal.Rptr. 685.) [Footnote omitted.] ¶ We do not, and indeed may not, approve the use of a motion to quash as an alternative to a demurrer, nor do we accept the assumption of the Board that by making its challenge by motion to quash and dismiss it avoided making a general appearance in the action. Notwithstanding a “special appearance” designation on a motion to quash, if the movant seeks relief on any basis other than lack of personal jurisdiction, he or she makes a general appearance. (See 2 Witkin, Cal. Procedure, *supra*, Jurisdiction, § 149 et seq., p. 534,

and cases cited.) [Footnote omitted.]” (Greener v. Workers' Comp. Appeals Bd. (1993) 6 Cal.4th 1028, 1036–1037.)

The court denies the portion of the motion to quash the service of the summons and complaint on the ground of lack of subject matter jurisdiction as lack of subject matter jurisdiction as it is procedurally improper and such a claim is not properly brought and maintained in such a motion.

The court further finds that the court has subject matter jurisdiction concerning the issues raised in this case.

“‘The principle of ‘subject matter jurisdiction’ relates to the inherent authority of the court involved to deal with the case or matter before it.” (*Conservatorship of O'Connor* (1996) 48 Cal.App.4th 1076, 1087, 56 Cal.Rptr.2d 386.) Thus, in the absence of subject matter jurisdiction, a trial court has no power “to hear or determine [the] case.” (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288, 109 P.2d 942 (*Abelleira*).) And any judgment or order rendered by a court lacking subject matter jurisdiction is “void on its face....” (*Rochin v. Pat Johnson Manufacturing* (1998) 67 Cal.App.4th 1228, 1239, 79 Cal.Rptr.2d 719 (*Rochin*).)” (Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal.4th 180, 196.)

“Subject matter jurisdiction is a fundamental requirement for judicial consideration of claims. “The California Supreme Court has defined subject matter jurisdiction thusly: ‘Subject matter jurisdiction ... is the power of the court over a cause of action or to act in a particular way.’ [Citations.] By contrast, the lack of subject matter jurisdiction means the entire absence of power to hear or determine a case; i.e., an absence of authority over the subject matter. [Citations.] Where the evidence is not in dispute, a determination of subject matter jurisdiction is a legal question subject to de novo review.” (*Dial 800 v.*

Fesbinder (2004) 118 Cal.App.4th 32, 42, 12 Cal.Rptr.3d 711.)” (Saffer v. JP Morgan Chase Bank, N.A. (2014) 225 Cal.App.4th 1239, 1248.)

This action involves the alleged unlawful operation of the Apple Bistro by defendants without the required health permits. Defendant International Farmers Kitchen, LLC’s Statement of Information filed with the California Secretary of State by defendant Jennette Waldow as manager and member of the LLC admits that the LLC is located at 2740 Highway 50, Placerville, CA which is in El Dorado County and is in the business of operating a restaurant. (Plaintiff’s Request for Judicial Notice, Exhibit A.) Clearly the Superior Court of El Dorado County has subject matter jurisdiction over the alleged unlawful operation of the Apple Bistro by defendants without the required health permits.

Even assuming for the sake of argument only that the issue of subject matter jurisdiction was properly before the court in this motion proceeding, the court denies the portion of the motion to quash the service of the summons and complaint on the ground of lack of subject matter jurisdiction as the court clearly has subject matter jurisdiction over the dispute raised in this action.

- Personal Jurisdiction

Defendant’s assertion of lack of personal jurisdiction is premised solely upon the assertion that defendant Waldow is a non-resident alien having exercised a right to self-determination to determine she is not a citizen of the United States, but is a jus sanguinis American State National and a true Californian having been born in the Republic of California as a non-resident alien

“Generally speaking, a civil court gains jurisdiction over a person through one of four methods. There is the old-fashioned method—residence or presence within the state’s territorial boundaries. (*Pennoyer v. Neff*, *supra*, 95 U.S. at p. 722.) There is minimum

contacts—activities conducted or effects generated within the state's boundaries sufficient to establish a “presence” in the state so that exercising jurisdiction is consistent with “ ‘traditional notions of fair play and substantial justice.’ ” (*International Shoe, supra*, 326 U.S. at p. 316, 66 S.Ct. 154, quoting *Milliken v. Meyer* (1940) 311 U.S. 457, 463, 61 S.Ct. 339, 85 L.Ed. 278.) A court also acquires jurisdiction when a person participates in a lawsuit in the courthouse where it sits, either as the plaintiff initiating the suit (*Mikulski v. Mikulski* (1969) 2 Cal.App.3d 1047, 1050, 83 Cal.Rptr. 15) or as the defendant making a general appearance. (§ 410.50, subd. (a).) [FN 7.] Finally, a party can consent to personal jurisdiction, when it would not otherwise be available. (*Estate of Heil* (1989) 210 Cal.App.3d 1503, 1512, 259 Cal.Rptr. 28.) ¶ FN 7. Acquisition of this type of jurisdiction is usually discussed in terms of consent. (See, e.g., *Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 52, 12 Cal.Rptr.3d 711.) It has, however, a distinct territorial component, and we wish to distinguish it from consent by private agreement, which is not limited by territory. ¶ Jurisdiction can be regarded from two points of view, that of the individual subject to it and that of the court exercising it.” (*Global Packaging, Inc. v. Superior Court* (2011) 196 Cal.App.4th 1623, 1629.)

As stated earlier in this ruling, defendant International Farmers Kitchen, LLC’s Statement of Information filed with the California Secretary of State by defendant Jennette Waldow as manager and member of the LLC admits that the LLC is located at 2740 Highway 50, Placerville, CA which is in El Dorado County and is in the business of operating a restaurant. The statement also admits that defendant Jennette Waldow is the sole manager/member and is agent for service of process with her address listed as 2740 Highway 50, Placerville, CA (Plaintiff’s Request for Judicial Notice, Exhibit A.) Clearly there is personal jurisdiction over defendant International Farmers Kitchen, LLC by its residence and presence within the California’s territorial boundaries.

Defendant Jeanette Waldow uses the address of the Apple Bistro located at 2740 Highway 50, Placerville, CA and 3501 Hidden Hills Lane, Placerville, CA as her addresses in correspondence with the County Environmental Management Department; and has submitted several documents to the County's Environmental Management Department wherein she admits her address is 3501 Hidden Hills Lane, Placerville, CA and claims to own the property located at 2740 Highway 50, Placerville, CA. (See Declaration of Jeffrey Warren in Opposition to the Motion, paragraphs 6-9; and Exhibits 4-6.)

Clearly there is personal jurisdiction over defendant Waldow as an individual and d.b.a. Apple Bistro by her presence within California's territorial boundaries.

In summary, defendants' motion to quash service of the summons and complaint is denied.

OSC Re: Preliminary Injunction.

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

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

other litigation documents by personal delivery to Jennette Waldow as the party or person authorized to receive service for the party at the same time and location as defendants Jennette Waldow and Jennette Waldow d.b.a. Apple Bistro were served.

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

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

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

Preliminary Injunction Principles

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

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

A preliminary injunction may be granted upon a verified complaint or upon affidavits which show that sufficient grounds exist for the issuance of such an injunction. (Code of Civil Procedure, § 527(a).) In deciding whether to issue a preliminary injunction, two factors must be weighed: the likelihood of the moving party ultimately prevailing on the merits and the relative interim harm to the parties from the issuance of a preliminary injunction. (Butt v. State of California (1992) 4 Cal.4th 668, 677-678.) “The latter factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. The determination whether to grant a preliminary injunction generally rests in the sound discretion of the trial court. (Citation omitted.)” (Abrams v. St. John's Hospital & Health Center (1994) 25 Cal.App.4th 628, 636.)

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

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

“The trial court considers two interrelated factors when deciding whether to issue preliminary injunctions: the interim harm the applicant is likely to sustain if the injunction is denied as compared to the harm to the defendant if it issues, and the likelihood the applicant will prevail on the merits at trial. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286, 219 Cal.Rptr. 467, 707 P.2d 840; *IT Corp. v. County of Imperial*, *supra*, 35 Cal.3d at pp. 69–70, 196 Cal.Rptr. 715, 672 P.2d 121.) However, before the trial court can exercise its discretion the applicant must make a prima facie showing of entitlement to injunctive relief. The applicant must demonstrate a real threat of immediate and irreparable injury (6 Witkin, *Cal.Procedure* (3d ed. 1985) Provisional Remedies, § 254; *E.H. Renzel Co. v. Warehousemen's Union* (1940) 16 Cal.2d 369, 373, 106 P.2d 1) due to the inadequacy of legal remedies. (6 Witkin, *op. cit. supra*, § 253.)” (*Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 138.)

““To obtain a preliminary injunction, a plaintiff ordinarily is required to present evidence of the irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits.” (*White v. Davis, supra*, 30 Cal.4th at p. 554, 133 Cal.Rptr.2d 648, 68 P.3d 74; see generally Code Civ. Proc. § 526, subd. (a)(2) [preliminary injunction may issue when it appears the plaintiff would suffer great or irreparable injury from the commission or continuance of some act during the litigation].) While the mere possibility of harm to the plaintiffs is insufficient to justify a preliminary injunction, the plaintiff are “not required to wait until they have suffered *actual harm* before they apply for an injunction, but may seek injunctive relief against the *threatened infringement* of their rights.” (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292, 240 Cal.Rptr. 872, 743 P.2d 932, *italics added*; accord, *City of Torrance v. Transitional Living Centers for Los Angeles, Inc.* (1982) 30 Cal.3d 516, 526, 179 Cal.Rptr. 907, 638 P.2d 1304 [injunctive relief is available where the injury sought to be avoided is “ ‘actual or threatened’ ”]; *7978 Corporation v. Pitchess* (1974) 41 Cal.App.3d 42, 46, 115 Cal.Rptr. 746 [same].) ¶ If the threshold requirement of irreparable injury is established, then we must examine two interrelated factors to determine whether the trial court's decision to issue a preliminary injunction should be upheld: “(1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction.” (*Butt v. State of California* (1992) 4 Cal.4th 668, 677–678, 15 Cal.Rptr.2d 480, 842 P.2d 1240.) Appellate review is generally limited to whether the trial court's decision constituted an abuse of discretion. (*Ibid.*). (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463, 47 Cal.Rptr.3d 147.) However, [t]o the extent that the trial court's assessment of likelihood of success on the merits depends on legal rather than factual questions, [such as when the meaning of a contract or a statute are at issue,] our review is *de novo*.” (*City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413,

1428, 138 Cal.Rptr.3d 332; *Garamendi v. Executive Life Ins. Co.* (1993) 17 Cal.App.4th 504, 512, 21 Cal.Rptr.2d 578.)” (Costa Mesa City Employees' Assn. v. City of Costa Mesa (2012) 209 Cal.App.4th 298, 305–306.)

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

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

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

The court notes that there is evidence that the Apple Bistro defendants were adequately served the summons and complaint. The proofs of service attached to the application for TRO and OSC and documents filed in support of the application on November 30, 2021 declare that on November 30, 2021 defendants were served those documents by email to Jennette Waldow. There is also evidence the OSC was served on defendants Jennette Waldow d.b.a. Apple Bistro, Jennette Waldow, and International Farmers Kitchen, LLC by email on December 6, 2021 as directed by the court. Although the court directed personal service on the Apple Bistro defendants, the proof of service declares that the manager present at the Apple Bistro location was served for the defendants.

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

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

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 7, 2022 IN DEPARTMENT NINE REGARDING THE HEARING OF THE OSC RE: PRELIMINARY INJUNCTION. 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. DEFENDANTS’ MOTION TO QUASH SERVICE OF THE SUMMONS AND COMPLAINT IS DENIED. NO HEARING ON THE MOTION TO QUASH SERVICE OF THE SUMMONS AND COMPLAINT 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/online services/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, JANUARY 7, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

6. SATO v. FOLSOM FAMILY AND SPORTS MEDICAL GROUP, INC. PC-20190059

(1) Plaintiffs' Motion for Relief from Untimely Motion to Compel Further Responses.

(2) Plaintiffs' Motion to Compel Further Responses to Discovery.

**TENTATIVE RULING # 6: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY,
FEBRUARY 4, 2022 IN DEPARTMENT NINE.**

7. BURKE LAW FIRM, INC. v. KRSHUL PCL-20180346

Hearing Re: Claim of Exemption.

**TENTATIVE RULING # 7: UPON REQUEST OF THE MOVING PARTY, THIS MATTER IS
DROPPED FROM THE CALENDAR.**

8. WELLS FARGO BANK v. MUISE PCL-20180772**Hearing Re: Claim of Exemption.**

On February 6, 2020 a default judgment in the amount of \$10,209.68 was entered against the judgment debtor. A writ of execution was issued and the judgment creditor enforced the judgment by wage garnishment.

The judgment debtor claims all of her earnings are exempt, because they are necessary for the support of herself. She is not willing to have anything withheld to pay on this judgment debt.

The judgment creditor opposes the claim on the following grounds: the claimed monthly expenses for clothing, transportation and auto expenses, laundry and cleaning, entertainment, and payments on other unsecured debt is not necessary to support herself; and the debtor has not met her burden of proof. The judgment creditor states that it will accept a wage garnishment of 15% of the reported net income in the amount of \$366.90.

The public policy of the state's wage exemption statutes is to insure that the debtor and his or her family will retain enough money to maintain a basic standard of living. (Barnhill v. Robert Saunders & Co. (1981) 125 Cal.App.3d 1, 6.) The exemption claimant has the burden of proof. (Code of Civil Procedure, § 703.580(b).) Absent the judgment debtor establishing his entire monthly net income is necessary for support of himself and his family, the amount subject to garnishment is 25% of his net monthly income (See 15 U.S.C. § 1673; and Code of Civil Procedure, § 706.050.), which amounts to \$611.50 per month.

The opposition includes the required verified financial statement. The statement declares: plaintiff's net monthly income is \$2,446; and the debtor pays \$769 monthly on other debts for a car loan, student loan and Amazon Store Card.

The court finds that servicing other debt to the exclusion of payments on judgment debt is not, in general, necessary to support the debtor and/or his or her family and not necessary to maintain a basic standard of living.

The exemption claimant has not met her burden of proof that all wages are exempt. (Code of Civil Procedure, § 703.580(b).)

The court denies the claim of exemption and orders that the amount of \$366.90 be garnished from her monthly wages.

TENTATIVE RULING # 8: THE COURT DENIES THE CLAIM OF EXEMPTION AND ORDERS THAT THE AMOUNT OF \$366.90 BE GARNISHED FROM THE JUDGMENT DEBTOR'S MONTHLY WAGES. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR

TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldoradocourt.org/online services/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, JANUARY 7, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

9. LINK v. HUNTSMAN 21UD0030

Fee Waiver Hearing.

On November 30, 2021 the court denied defendant's request for fee waiver on the ground that the stated total income from all sources exceeded expenses and the court needed further information about the seasonal work. The court set this hearing on the fee waiver and also directed the defendant to bring certain specified proof to support defendant's fee waiver request to the hearing. The proof of service declares that on December 3, 2021 the order denying the request was served by mail to defendant at the address listed on the order

TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 7, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

10. ESTATE OF BRACCO PP-20190004

Review Hearing Re: Status of Administration.

Letters of Administration were issued on May 23, 2019. The Final Inventory and Appraisal was filed on September 16, 2019.

The personal representative's counsel previously explained that there is pending litigation concerning the estate's real property as well as another probate case, which has been dismissed. Counsel advised the court that until the litigation is complete, they are unable to proceed in the probate case.

At the hearing on October 29, 2021 the court was advised that title had been cleared and counsel was preparing the waiver of final account. The personal representative's counsel requested a continuance of the hearing and the court continued the hearing to January 7, 2022.

There is no Petition for Order of Final Distribution on Waiver of Account in the court's file.

TENTATIVE RULING # 10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 7, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

11. ROSICK v. FINLEY PC-20200633**OSC Re: Failure to Appear at CMC and Failure to File Proof of Service.**

On August 16, 2021 plaintiff's then counsel of record failed to appear at the CMC. The CMC was continued to November 15, 2021 and plaintiff was directed to file a proof of service. The August 16, 2021 minute order was served on counsel Joseph Weinberger by mail on August 16, 2021. On November 3, 2021 plaintiff filed a substitution of attorney naming Hank Greenblatt as plaintiff's new counsel of record. Plaintiff's new counsel failed to attend the Case Management Conference (CMC) on November 15, 2021 and failed to file proof of service of the summons and complaint as required by state and local court rules. The November 15, 2021 minute order was served on plaintiff's former counsel Joseph Weinberger by mail on November 17, 2021.

"A judicial officer shall have the power to impose reasonable money sanctions, not to exceed fifteen hundred dollars (\$1,500), notwithstanding any other provision of law, payable to the court, for any violation of a lawful court order by a person, done without good cause or substantial justification. This power shall not apply to advocacy of counsel before the court. For the purposes of this section, the term "person" includes a witness, a party, a party's attorney, or both. ¶ Sanctions pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or on the court's own motion, after notice and opportunity to be heard. An order imposing sanctions shall be in writing and shall recite in detail the conduct or circumstances justifying the order." (Code of Civil Procedure, § 177.5)

""Due process, as well as the statute itself, requires that a person against whom Code of Civil Procedure section 177.5 sanctions may be imposed be given adequate notice that such sanctions are being considered, notice as to what act or omission of the individual is the basis

for the proposed sanctions, and an objective hearing at which the person is permitted to address the lawfulness of the order, the existence of the violation, and the absence of good cause or substantial justification for the violation.” (*Seykora, supra*, 232 Cal.App.3d at p. 1088, 283 Cal.Rptr. 857 (dis. opn. of Grignon, J.).)” (People v. Hundal (2008) 168 Cal.App.4th 965, 970.)

On December 23, 2020 plaintiff filed a civil action against defendant for personal injury and property damage arising from an alleged motor vehicle accident. There is no proof of service of the complaint on defendant in the court’s file and plaintiff has not obtained an order for publication of the summons. Plaintiff must serve all named defendants and file proofs of service on those defendants within 60 days after the filing of the complaint. When the complaint is amended to add a defendant, the added defendant must be served and proof of service must be filed within 30 days after the filing of the amended complaint. (Rules of Court, Rule 3.110(b).)

“If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed.” (Rules of Court, Rule 3.110(f).)

“Responsive papers to an order to show cause issued under this rule must be filed and served at least 5 calendar days before the hearing.” (Rules of Court, Rule 3.110(i).)

There is no evidence before the court that new counsel of record for plaintiff was provided notice of this hearing on the OSC Re: Sanctions. Therefore, the hearing must be continued and notice served on Hank Greenblatt as plaintiff’s new counsel of record. The court directs the clerk to serve copies of the August 16, 2021, November 15, 2021, and January 7, 2022 minute orders to Hank Greenblatt.

**TENTATIVE RULING # 11: THE HEARING ON THIS MATTER IS CONTINUED TO 8:30 AM.
ON FRIDAY, FEBRUARY 4, 2022 IN DEPARTMENT NINE.**

12. DISCOVERY BANK v. HASKETT PCL-20210236

Plaintiff's Motion for Summary Judgment.

**TENTATIVE RULING # 12: UPON REQUEST OF THE MOVING PARTY, THIS MATTER IS
DROPPED FROM THE CALENDAR.**

13. VALENCIA v BRYANT BOATS, INC. PC-20160552

Plaintiff's Motion to Strike Answer of Defendant Sweetwater Composites, Inc. f.k.a. Bryant Boats, Inc.

TENTATIVE RULING # 13: PLAINTIFF HAVING FILED A NOTICE OF UNCONDITIONAL SETTLEMENT OF THE ENTIRE CASE ON DECEMBER 30, 2021, THIS MATTER IS DROPPED FROM THE CALENDAR.

14. FOULDS v. COLD SPRINGS MOBILE MANOR PC-20210033

Motion to Reconsider Defendant's Demurrer and Motion to Strike.

**TENTATIVE RULING # 14: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY
FEBRUARY 11, 2022 IN DEPARTMENT NINE.**

15. FRANKLIN v. NORCAL GOLD PC-20200246

Defendants' Motion to Quash Subpoena Plaintiff Issued and Served on Wells Fargo Bank.

TENTATIVE RULING # 15: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY FEBRUARY 11, 2022 IN DEPARTMENT NINE.