

1. MATTER OF HILL 22CV0410

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).

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

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 13, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

2. MATTER OF MARKUM 22CV0038

OSC Re: Name Change.

The petition seeks to change the name of a minor; the minor's father has not joined in the petition; there is no proof of personal service of notice of the hearing or the order to show cause on the minor's father in the court's file; and there is no explanation provided in the verified petition to establish that notice of the hearing cannot reasonably be accomplished pursuant to Code of Civil Procedure, §§ 415.10 or 415.40. (Code of Civil Procedure, § 1277(a).) The court can not rule on the merits until proof of adequate service on the father has been filed.

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, MAY 13, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

3. PEOPLE v. RODRIGUEZ PCL-20190512

Petition for Forfeiture.

The People filed a petition for forfeiture of certain funds seized pursuant to the provisions of Health and Safety Code, §§ 11469, et seq. The unverified petition contends: the sum of \$2,775 in U.S. Currency was seized by the El Dorado County Sheriff's Office on or about March 28, 2019; such funds are currently in the hands of the El Dorado County District Attorney's Office; the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of Health and Safety Code, § 11358; the claimant/respondent filed a claim opposing forfeiture in which he contends the funds are his; a criminal case pertaining to the property and related allegations of violations of Health and Safety Code, §§ 11351, 11366, 11352(a), and 11379(a) has been filed under case number P19CRF0095; and claimant was arraigned on May 21, 2019. The People pray for a judgment declaring that the money is forfeited to the State of California.

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

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

"The following are subject to forfeiture: ¶ * * * (f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in

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

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

Upon the request of the People, the court continued the hearing from February 18, 2022 to May 13, 2022.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 13, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

4. PEOPLE v ESQUIVEL PC-20200526

Petition for Forfeiture.

The People filed a petition for forfeiture of cash. The unverified petition contends: \$32,370 in U.S. Currency was seized by the El Dorado County Sheriff's Office; such funds are currently in the hands of the El Dorado County District Attorney's Office; and the defendant's property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of various provisions of the Penal Code and Health and Safety Code. The People pray for judgment declaring that the money is forfeited to the State of California.

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

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

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

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

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

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

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

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

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

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

At the February 18, 2022 hearing counsels for both parties stipulated to continue the matter due to the status of a related case. The hearing was continued to May 13, 2022.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 13, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

5. PEOPLE v. BETAMEN 21CV0088

Claim Opposing Forfeiture.

Claimant Betamen filed a claim opposing forfeiture in response to a notice of administrative proceedings to determine that certain funds are forfeited. The verified claim contends the claimant is the owner of all of the currency and requests that the claimed property not be ordered forfeited.

“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).)

“(j) The Attorney General or the district attorney of the county in which property is subject to forfeiture under Section 11470 may, pursuant to this subdivision, order forfeiture of personal property not exceeding twenty-five thousand dollars (\$25,000) in value. The Attorney General

or district attorney shall provide notice of proceedings under this subdivision pursuant to subdivisions (c), (d), (e), and (f), including: ¶ (1) A description of the property. ¶ (2) The appraised value of the property. ¶ (3) The date and place of seizure or location of any property not seized but subject to forfeiture. ¶ (4) The violation of law alleged with respect to forfeiture of the property. ¶ (5) The instructions for filing and serving a claim with the Attorney General or the district attorney pursuant to Section 11488.5 and time limits for filing a claim and claim form. ¶ If no claims are timely filed, the Attorney General or the district attorney shall prepare a written declaration of forfeiture of the subject property to the state and dispose of the property in accordance with Section 11489. A written declaration of forfeiture signed by the Attorney General or district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited property. The prosecuting agency ordering forfeiture pursuant to this subdivision shall provide a copy of the declaration of forfeiture to any person listed in the receipt given at the time of seizure and to any person personally served notice of the forfeiture proceedings. ¶ If a claim is timely filed, then the Attorney General or district attorney shall file a petition of forfeiture pursuant to this section within 30 days of the receipt of the claim. The petition of forfeiture shall then proceed pursuant to other provisions of this chapter, except that no additional notice need be given and no additional claim need be filed. (Emphasis added.) (Health and Safety Code, § 11488.4(j).)

“(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 and counsel for the claimant appeared at the February 4, 2022 hearing. The People stated that the criminal case remained pending and requested a continuance of the hearing. The hearing was continued to May 13, 2022.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 13, 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.

6. 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 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.

At the February 18, 2022 hearing counsels for both parties stipulated to continue the matter due to the status of a related case. The hearing was continued to May 13, 2022.

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 13, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

7. PEOPLE v. \$33,700 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.

There are no responses or claims in the court’s file.

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 People appeared at the December 3, 2021 hearing, stated that a related matter is pending, and requested another continuance of this hearing.

Respondents/Claimants did not appear at the December 3, 2021 and April 15, 2022 hearings.

At the April 15, 2022 hearing the People requested a continuance of the hearing as the criminal case may have been resolved. The court continued the hearing to May 13, 2022.

The respondents/claimants have not been defaulted.

There is no proof of service of notice of the continuance of the hearing to May 13, 2022 in the court's file. Absent proof of service of notice of the continuance, the court can not consider the merits of the matter.

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 13, 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.

8. PEOPLE v. KELLY PCL-20210332**Claim Opposing Forfeiture.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Upon the request of the People, the court continued the hearing from February 18, 2022 to May 13, 2022.

TENTATIVE RULING # 8: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 13, 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.

9. AMERICAN EXPRESS v. LANGFORD PCL-20190206**Plaintiff's Motion to Enter Judgment Pursuant to Code of Civil Procedure, § 664.6.**

Plaintiff and defendant entered into a written settlement agreement and requested the court to retain jurisdiction to enforce the agreement. It appears that the individual parties executed the agreement. The Stipulation for Entry of Judgment Pending Performance was filed on November 6, 2019. Plaintiff moves to enter judgment pursuant to the terms of the settlement agreement on the grounds that defendant is in default of the obligation to make monthly payments in the amount of \$230 when due in June 2019 and every month thereafter; plaintiff provided defendant with notice of the default and time to cure the default as provided in the settlement agreement; defendant did not cure the default; and according to the terms of the agreement, plaintiff is entitled to entry of judgment in the amount of \$7,804.89, representing the principal balance due after applying a credit for \$355 in payments made by defendant, and adding costs of \$379.50.

The proof of service declares that on March 4, 2022 notice of the hearing and the moving papers were served by mail on defendant. There was no opposition to the motion in the court's file at the time this ruling was prepared.

The court may enter judgment pursuant to the terms of a settlement agreement and if requested by the parties, retain jurisdiction to enforce the settlement. (Code of Civil Procedure, § 664.6.)

Section 664.6 was enacted to provide a summary procedure for enforcing settlement agreements. In order to be enforceable under that statute, the settlement agreement must be either entered into orally before a court, or must be in writing and signed by the parties. (Weddington Productions, Inc. v. Flick (1998) 60 Cal.App.4th 793, 810.) The written settlement

agreement must be signed by the parties themselves (Levy v. Superior Court (1995) 10 Cal.4th 578, 585-586.) and must be signed by the individual parties seeking enforcement and the individual parties against whom enforcement is sought. (Harris v. Rudin, Richman & Appel (1999) 74 Cal.App.4th 299, 305.)

“Section 664.6 states that if the parties to pending litigation enter into a settlement either in a writing signed by the parties or orally before the court, the court, upon a motion, may enter judgment pursuant to the terms of the settlement. [Footnote Omitted.] The court retains jurisdiction to enforce a settlement under the statute even after a dismissal, but only if the parties requested such a retention of jurisdiction before the dismissal. (*Ibid.*) Such a request must be made either in a writing signed by the parties or orally before the court. (*Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 439–440, 118 Cal.Rptr.2d 502.)” (Hines v. Lukes (2008) 167 Cal.App.4th 1174, 1182.)

Plaintiff’s counsel declares: the parties entered into a stipulation for settlement of judgment, which is attached as Exhibit A; the agreement provided that defendant shall pay a total settlement amount of \$8,159.90 by March 19, 2022 by payment of \$125 on or before April 19, 2019 and monthly payments in the amount of \$230 paid on or before May 19, 2019 and every month thereafter through February 19, 2022, with the final payment of \$214.89 on or before March 19, 2022; it was further stipulated that in the event that payments were not made pursuant to that schedule, defendant would be in default; defendant defaulted by failure to make payments for the month of June 2019 and each month thereafter, with the last payment received on May 17, 2019; defendant acknowledges credit in the sum of \$355, which reduced the outstanding principal balance to \$7,804.89; pursuant to the terms of the settlement agreement, notice of the default was mailed to defendant on June 14, 2021, which is attached

as Exhibit B; and defendant did not cure the default within 15 days, or tender the outstanding monies as of the date of the declaration.

It appears appropriate under the circumstances presented to grant the motion and enter judgment in favor of plaintiff and against defendant in the principal amount of \$7,804.89, plus costs in an amount to be determined by the memorandum of costs procedure.

TENTATIVE RULING # 9: PLAINTIFF'S MOTION TO ENTER JUDGMENT PURSUANT TO CODE OF CIVIL PROCEDURE, § 664.6 IS GRANTED. JUDGMENT IS ORDERED ENTERED IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT IN THE AMOUNT OF \$7,804.89, REPRESENTING THE PRINCIPAL BALANCE DUE, PLUS COSTS IN AN AMOUNT DETERMINED BY THE MEMORANDUM OF COSTS PROCEDURE. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS V. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247.), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY

APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT”, WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES’ TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, MAY 13, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

10. GARBERO v. JEAN PC-20200370

Motion to be Relieved as Counsel of Record for Defendant Jean.

TENTATIVE RULING # 10: 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, MAY 13, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

11. MUIR v. GENERAL MOTORS PC-20210130

Plaintiff's Motion to Compel Deposition of Person Most Qualified.

On March 18, 2021 plaintiffs filed an action against defendant asserting causes of action for Violation of the Song-Beverly Act – Breach of Express Warranty; Violation of the Song-Beverly Act – Breach of Implied Warranty; and Violation of the Song-Beverly Act – Section 1793.2.

Plaintiff moves to compel the deposition of defendant General Motors, LLC's most knowledgeable person and production of the documents requested in the notice of deposition.

Plaintiff argues: the court should not allow defendant to obstruct plaintiffs' right to depose defendant's most qualified person; the scope of discovery is broad; plaintiffs seek testimony and documents directly related to their claims under the Song-Beverly Consumer Warranty Act; and prevailing legal authority supports plaintiffs' discovery efforts.

Defendant General Motors, LLC opposes the motion on the following grounds: the motion should be denied, because plaintiffs did not satisfactorily meet and confer as plaintiffs did not address defendant's objections or the contested categories informally before filing the motion to compel; the motion should be denied as plaintiffs seek to compel irrelevant testimony and information; plaintiffs' request seeks production of trade secret material; and the motion should be denied, because plaintiffs failed to file a Rule 3.1345 separate statement with the motion.

At the time this ruling was prepared, there was no reply in the court's file.

"The service of a deposition notice under Section 2025.240 is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying." (Code of Civil Procedure, § 2025.280(a))

If a party deponent fails to appear at a properly noticed deposition or fails to produce for inspection any document or tangible thing described in the deposition notice, then the party giving notice may move for an order compelling the deponent's attendance and testimony. (Code of Civil Procedure, § 2025.450(a).) "A motion under subdivision (a) shall comply with both of the following: ¶ (1) The motion shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice. ¶ (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040, or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance." (Code of Civil Procedure, § 2025.450(b).)

Meet and Confer Requirement

Meet and confer declarations are required for motions to compel deponent's attendance and testimony and to produce the documents or things described in the deposition notice. (See Code of Civil Procedure, §§ 2025.450(a), 2025.450(b),)

"The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain "an informal resolution of each issue." (§ 2025, subd. (o)....) This rule is designed "to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order...." (*McElhaney v. Cessna Aircraft Co.* (1982) 134 Cal.App.3d 285, 289, 184 Cal.Rptr. 547.) This, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes. [Citations.]' (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1435, 72 Cal.Rptr.2d 333.)" (*Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1016.) "A

determination of whether an attempt at informal resolution is adequate also involves the exercise of discretion. The level of effort at informal resolution which satisfies the ‘reasonable and good faith attempt’ standard depends upon the circumstances. In a larger, more complex discovery context, a greater effort at informal resolution may be warranted. In a simpler, or more narrowly focused case, a more modest effort may suffice. The history of the litigation, the nature of the interaction between counsel, the nature of the issues, the type and scope of discovery requested, the prospects for success and other similar factors can be relevant. Judges have broad powers and responsibilities to determine what measures and procedures are appropriate in varying circumstances. (See, e.g., Gov.Code, § 68607 [judge has responsibility to manage litigation]; Code Civ. Proc., § 128, subd. (a)(5) [judge has power to control conduct of judicial proceeding in furtherance of justice].) Judges also have broad discretion in controlling the course of discovery and in making the various decisions necessitated by discovery proceedings. (Citations omitted.)” (Obregon v. Superior Court (1998) 67 Cal.App.4th 424, 431.) “Although some effort is required in all instances (see, e.g., *Townsend*, supra, 61 Cal.App.4th at p. 1438, 72 Cal.Rptr.2d 333 [no exception based on speculation that prospects for informal resolution may be bleak]), the level of effort that is reasonable is different in different circumstances, and may vary with the prospects for success. These are considerations entrusted to the trial court’s discretion and judgment, with due regard for all relevant circumstances.” (Obregon, supra at pages 432-433.)

“A single letter, followed by a response which refuses concessions, might in some instances be an adequate attempt at informal resolution, especially when a legitimate discovery objective is demonstrated. The time available before the motion filing deadline, and the extent to which the responding party was complicit in the lapse of available time, can also be relevant. An evaluation of whether, from the perspective of a reasonable person in the position of the

discovering party, additional effort appeared likely to bear fruit, should also be considered. Although some effort is required in all instances (see, e.g., *Townsend, supra*, 61 Cal.App.4th at p. 1438, 72 Cal.Rptr.2d 333 [no exception based on speculation that prospects for informal resolution may be bleak]), the level of effort that is reasonable is different in different circumstances, and may vary with the prospects for success. These are considerations entrusted to the trial court's discretion and judgment, with due regard for all relevant circumstances. In the instant case, whether reviewed according to the substantial evidence or the abuse of discretion standard, or an amalgam of the two, the trial judge's decision that a greater effort at informal resolution should have been made is amply supported by this record. The petition for a writ of mandate is therefore denied to this extent.” (Obregon v. Superior Court (1998) 67 Cal.App.4th 424, 432–433.)

Having read and considered the declarations submitted in support of and opposition to the motion and the plaintiffs' February 22, 2022 meet and confer letter attached as Exhibit 11 to plaintiff's counsel's declaration in support of the motion, the court finds that the attempt at informal resolution was adequate under the circumstances presented.

Separate Statement Requirement

Defendant's objections to the subject deposition served by email to plaintiffs' counsel on February 4, 2022 objected on numerous grounds to requests for production numbers 1-18, which are all categories of production requested in the notice of deposition. (See Declaration of Gregory Sogoyan in Support of Motion to Compel Deposition of Person Most Qualified, Exhibit 8 – Plaintiffs' Notice of Deposition of Person Most Knowledgeable, Exhibit A – Requests for Production, page 8, line 1 to page 10, line 15; and Exhibit 9 – Defendant's Objection to Plaintiffs' Notice of Deposition of Person Most Knowledgeable, page 21, line 16 to page 31, line 18.)

“Any motion involving the content of a discovery request or the responses to such a request shall be accompanied by a separate statement. The motions that require a separate statement include: ¶ * * * (5) a motion to compel or to quash the production of documents or tangible things at a deposition...” (Rules of Court, Rule 3.1345(a).)

“A separate statement is a separate document filed and served with the discovery motion that sets forth all the information necessary to understand each discovery request and all the responses to it that are at issue. The separate statement shall be full and complete so that no person is required to review any other document in order to determine the full request and the full response. Material shall not be incorporated into the separate statement by reference. The separate statement shall include--for each discovery request (e.g., each interrogatory, request for admission, deposition question, or inspection demand) to which a further response, answer, or production is requested--the following: ¶ (1) the text of the request, interrogatory, question, or inspection demand; ¶ (2) the text of each response, answer, or objection, and any further responses or answers; ¶ (3) a statement of the factual and legal reasons for compelling further responses, answers, or production as to each matter in dispute; ¶ (4) if necessary, the text of all definitions, instructions, and other matters required to understand each discovery request and the responses to it; ¶ (5) if the response to a particular discovery request is dependent on the response given to another discovery request, or if the reasons a further response to a particular discovery request is deemed necessary are based on the response to some other discovery request, the other request and the response to it must be set forth; and ¶ (6) if the pleadings, other documents in the file, or other items of discovery are relevant to the motion, the party relying on them shall summarize each relevant document.” (Rules of Court, Rule 3.1345 (c).)

The motion is defective in that plaintiff has failed to file and serve a separate document which sets forth each request for production in the notice of deposition to which production is requested, the response given, and the factual and legal reasons for compelling it. (California Rules of Court, Rule 3.1345(c).) Such a statement is critical to the court's analysis of each request for production and the sufficiency of each response, particularly where there are numerous requests for production to which production are sought. Although Rule 3.1345 does not explicitly provide a remedy for failure to comply with it, at least one appellate court has cited with approval the trial court's dropping of a motion to compel discovery where the moving part failed to comply with Rule 335, which was renumbered as Rule 3.1345. (See BP Alaska Exploration, Inc. v. Superior Court (1988) 199 Cal.App.3d 1240, 1270 and Neary v. Regents of University of California (1986) 185 Cal.App.3d 1136, 1145.) A trial court is acting well within its discretion to deny a motion to compel discovery on the basis that the mandated separate statement was not provided or the statement provided does not comply with the requirements of the Court Rule. (Mills v. U.S. Bank (2008) 166 Cal.App.4th 871, 893.)

Rather than deny the motion outright, the court will allow plaintiffs the opportunity to comply with Rule 3.1345. This matter is continued to 8:30 a.m. on Friday, June 24, 2022 in Department Nine. Plaintiffs are to file and serve the separate statement by May 25, 2022. Defendant's response to the separate statement and a memorandum of points and authorities limited to addressing the legal points raised in the plaintiffs' separate statement shall be filed and served by June 13, 2022. The reply is to be filed and served by June 17, 2022.

TENTATIVE RULING # 11: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JUNE 24, 2022 IN DEPARTMENT NINE. PLAINTIFFS ARE TO FILE AND SERVE THE SEPARATE STATEMENT BY MAY 25, 2022. DEFENDANT'S RESPONSE TO THE SEPARATE STATEMENT AND A MEMORANDUM OF POINTS AND AUTHORITIES LIMITED TO

ADDRESSING THE LEGAL POINTS RAISED IN THE PLAINTIFFS' SEPARATE STATEMENT SHALL BE FILED AND SERVED BY JUNE 13, 2022. THE REPLY IS TO BE FILED AND SERVED BY JUNE 17, 2022.

12. ESTATE OF BRACCO PP-20190004

(1) 1st and Final Petition on Waiver of Account.

(2) Review Hearing Re: Administration of Estate.

TENTATIVE RULING # 12: THE PETITION IS GRANTED. FEES ARE FIXED AND PAYMENT ALLOWED AS REQUESTED. FINAL DISTRIBUTION IS ORDERED AS REQUESTED. INASMUCH AS THE SOLE BENEFICIARY ENTITLED TO FINAL DISTRIBUTION IS ALSO THE PERSONAL REPRESENTATIVE AND THERE IS NO REAL PROPERTY BEING DISTRIBUTED, THE COURT DROPS THE REVIEW HEARING RE: STATUS OF ADMINISTRATION FROM THE CALENDAR.

13. BAUGH, ET AL. V. GREENVIEW ASSETS, ET AL. PC 20190436

Motion for Protective Order Prohibiting the Deposition of Frack Watson

Motion for Monetary Sanctions.

TENTATIVE RULING #13: THIS MATTER IS CONTINUED TO FRIDAY, JUNE 24, 2022,

AT 8:30 A.M., IN DEPARTMENT NINE.