

**Tentative Rulings and Resolution Review Hearings
July 22, 2019
Department 8**

NOTE: This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court’s website (www.shasta.courts.ca.gov) and are available by clicking on the “Tentative Rulings” link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

Law and Motion – 8:30 a.m.

**DISCOVER BANK VS. HUTCHINSON
Case Number: 18CV1056**

Tentative Ruling on Motion for Summary Judgment: The Court notes that the motion is unopposed.

Request for Judicial Notice: Plaintiff’s Request for Judicial Notice is granted.

Merits of the Motion: Plaintiff has submitted competent evidence that establishes the necessary elements of its cause of action for common counts (based both on an open book account and an account stated basis). The evidence submitted by Plaintiff establishes that Plaintiff and Defendant had a financial transaction, Plaintiff kept an account of the debits and credits involved in the transaction(s); and Defendant owes Plaintiff \$3,149.76, all of which comprise entitlement to judgment on an open book account claim. Additionally, Plaintiff’s evidence establishes that Defendant owed Plaintiff money from previous financial transactions; Plaintiff and Defendant, by words or conduct, agreed that the amount stated in the account was the correct amount owed to Plaintiff; Defendant, by failing to cancel the account within 30 days of using the credit card, promised to pay the stated amount to Plaintiff; Defendant has not paid all of the amount owed under the account; and Defendant owes Plaintiff \$3,149.76, all of which comprise entitlement to judgment on an account stated claim. Defendant has failed to set forth any disputed facts with supporting evidence. The motion for summary judgment is GRANTED.

A proposed judgment has been submitted in the amount of \$2,939.76, plus costs. Plaintiff’s separate statement of undisputed facts indicates a payment was made by Defendant subsequent to this lawsuit being filed, thus explaining the difference between the prayer in the complaint and the judgment amount. The proposed judgment identifies \$793 in costs, in accordance with a memorandum of costs filed on May 2, 2019. The memorandum of costs is premature, and should be refiled and served in accordance with CRC 3.1700. Plaintiff must resubmit a proposed judgment which complies with Local Rule of Court 5.05(C), which instructs the costs portion of the judgment to be left blank.

**FRIENDS OF THE RIVER, ET AL VS. WESTLANDS
Case Number: 192490**

Tentative on Defendant’s Motion to Transfer Venue: Defendant Westlands Water District seeks to transfer this action from Shasta County to Fresno County on grounds that venue is proper in Fresno County under CCP § 395. As a preliminary matter, plaintiffs’ request for judicial notice is granted as to Exhibits A-G and denied as to Exhibits H-I.

Legal authority. Which county constitutes the proper venue in a particular case is determined according to CCP § 392 et seq. In applying these statutes, courts generally look to the main relief sought, as determined by the complaint. See *Massae v. Superior Court* (1981) 118 Cal.App.3d 527, 530. A defendant is entitled to have an action tried against him in his county of residence unless the proceeding comes under an exception. See CCP § 395. “Where a defendant has made a proper showing of nonresidence, the burden is on the plaintiff to show that the case comes clearly within one of the statutory exceptions to the general rule that actions are triable in the place of the defendant's residence.” *California State Parks Foundation v. Superior Court* (2007) 150 Cal.App.4th 826, 833, citing *Archer v. Superior Court In and For Humboldt County* (1962) 202 Cal.App.2d 417, 420.

Under Section 393(b), when an action is brought against a public officer for an act done by the officer, the county in which the cause, or some part thereof, arose, is the proper county for the trial. Section 393(b) governs whether plaintiffs complain rightly or wrongly of acts done by a public officer, even if the underlying proceedings of the defendant public officer have not yet concluded. *Tharp v. Super. Ct.* (1982) 32 Cal.3d 496, 502.

The cause of action “arises” wherever the plaintiff would be injured by the state action complained of: “A cause arises in the county where the effects of the administrative action are felt, not where the agency signs the challenged order or takes the challenged action.” “ ‘It is where the shaft strikes [the plaintiff], not where it is drawn, that counts.’ [Citation].”

California State Parks Foundation v. Superior Court (2007) 150 Cal.App.4th 826, 834 (internal citations omitted).

Merits of motion. CCP § 393(b) applies here. It is undisputed that Westlands is a public officer. Plaintiffs have alleged “acts done” within the meaning of Section 393(b). The complaint alleges that Westlands has assisted and cooperated with planning for a Shasta Dam raise in violation of Public Resources Code § 5093.542(c) by undertaking a CEQA process to analyze raising the dam (Complaint, ¶¶ 59, 60, 63, 73); participating in negotiations with the Bureau of Reclamation concerning the terms of a potential cost-share agreement for the dam raise (Complaint, ¶¶ 55-56, 61); and acquiring property to facilitate the raise (Complaint, ¶¶ 36, 62). Whether Westlands has actually done these things is immaterial to the present motion. The complaint alleges that if Westlands is permitted to continue its participation in the dam raise project, plaintiffs’ interest in fish and wildlife conservation and recreational quality will be harmed, as will their interests “in the dutiful execution, enforcement, and adherence to law by public officers and agencies of the state.” Complaint, ¶¶ 26-27.

Defendant asserts that Section 393(b) does not apply because plaintiffs have failed to allege present injury. Section 393(b) imposes no such requirement. The complaint seeks declaratory and injunctive relief and a writ of mandate halting Westlands’ assistance and cooperation with the planning of the Shasta Dam Raise Project. A plaintiff is not required to wait until they have suffered actual harm before they seek injunctive relief against the threatened infringement of their rights. CCP § 526(a)(2). *Costa Mesa City Employees' Assn. v. City of Costa Mesa* (2012) 209 Cal. App. 4th 298. Under defendant’s standard, plaintiffs would be barred from challenging the Shasta Dam Raise Project until after the environmental harm complained of has occurred. Plaintiffs’ allegations that continued assistance by Westlands with planning for a Shasta Dam raise would cause serious and specific environmental harm in Shasta County are sufficient to establish that CCP § 393(b) applies and that venue is proper in Shasta County. The Motion is DENIED. A proposed order has been submitted and will be executed by the Court.

IN RE HARP

Case Number: 29406

Tentative Ruling on Petition to Approve Compromise: Petitioner and Guardian Ad Litem, Sandra Harp, seeks

an order approving the compromise of a claim on behalf of claimant Katrina Harp. CRC Rule 7.950 states that a petition for court approval of a compromise of a person with a disability must contain a full disclosure of all information that has any bearing upon the reasonableness of the compromise. The Petition provides the required full disclosure of information.

Pursuant to Probate Code § 3604, the Court finds that 1) Katrina Harp has a disability that substantially impairs her ability to provide for her own care or custody and constitutes a substantial handicap; 2) That Katrina Harp is likely to have special needs that will not be met without the trust; and 3) That money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet the special needs of Katrina Harp. A special needs trust is appropriate under these circumstances. The Court hereby waives the requirements of CRC Rule 7.903(c)(5)-(7).

Hearing is required before the Petition can be approved. Appearances by the Guardian Ad Litem and the claimant are necessary unless good cause is presented for their non-appearance. CRC Rule 7.952. The Court finds good cause to dispense with a personal appearance by the claimant. Counsel will be asked to voir dire the Guardian Ad Litem, Sandra Harp, about the terms of the settlement and whether she understands that once the settlement is approved, it is final and binding on the claimant. Once satisfied, the Court intends to grant the Petition and vacate all future dates, if any.

A proposed order has been lodged, but the Court notes the following deficiencies: (1) the box marked “Compromise of Pending Action” should be changed to “Compromise of Disputed Claim” as no pending action has been filed; (2) Item 4b(1)(a) or (b) must be completed on the proposed order; (3) the billing records of the Urbatsch Law Firm as submitted with the Petition indicate that an attachment to the proposed order was prepared but no attachment has been lodged with the proposed order; and (4) the order must include a provision that all statutory liens in favor of the State Department of Health Services, the State Department of State Hospitals, the State Department of Developmental Services, and any county or city and county in this state shall first be satisfied, in compliance with Probate Code Section 3604(d). Petitioner is directed to submit an amended proposed order in compliance with Probate Code § 3604 and attach the Special Needs Trust Agreement.

JONES VS. BRADLEY

Case Number: 190342

Tentative Ruling on Motion to Quash Service: Defendant Donovan Bradley moves to quash service of plaintiff’s amended summons and second amended complaint. CCP § 418.10(a) provides that 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 to quash service of summons on the ground that the court lacks jurisdiction over him or her. When a defendant challenges the validity of service of process, plaintiff bears the burden of proving the facts establishing effective service. *Summers v. McClanahan* (2006) 140 CA4th 403, 413, 44 CR3d 338, 345. A defendant is not required to respond to a defectively service summons, even if he or she has actual knowledge of the action. *Kappel v. Bartlett* (1988) 200 CA3d 1457, 1466.

The statutory requirements for substitute service require that a copy of the summons and complaint be left at defendant’s dwelling house, usual place of business, or usual mailing address. See CCP § 415.20(b). “Dwelling house” refers to the place defendant holds out as his principal residence and where he is most likely to receive actual notice. *Zirbes v. Stratton* (1986) 187 Cal.App.3d 1407, 1415-1417 (service ineffective where creditor left copies of summons and complaint against wife at her mother’s home, which was listed as her residence on her driver’s license. Her “dwelling house or usual place of abode” was where she lived with her children and where she received her mail).

Defendant has provided a declaration stating that he lived outside of California at the time service was attempted

in November 2018 and last lived in Redding, California on March 31, 2018 at 750 Yuba Street, Apartment 15. He states that he did not reside in Apartment 5 of the Yuba Street address in the four years preceding service of process. Plaintiff argues that defendant has failed to submit any physical evidence to support his position that he did not reside at the address where he was served at the time of service. Defendant's personal declaration is sufficient evidence to establish these facts. Plaintiff has failed to satisfy her burden. The Motion is GRANTED. A proposed order has been lodged and will be executed by the Court.

PEOPLE VS. WESTLANDS WATER DISTRICT

Case Number: 192487

Tentative on Defendant's Motion to Transfer Venue: Defendant Westlands Water District seeks to transfer this action from Shasta County to Fresno County on grounds that under CCP § 395, venue is proper in Fresno County. As a preliminary matter, plaintiff People of the State of California's request for judicial notice is granted.

Legal authority. Which county constitutes the proper venue in a particular case is determined according to CCP § 392 et seq. In applying these statutes, courts generally look to the main relief sought, as determined by the complaint. See *Massae v. Superior Court* (1981) 118 Cal.App.3d 527, 530. A defendant is entitled to have an action tried against him in his county of residence unless the proceeding comes under an exception. See CCP § 395. "Where a defendant has made a proper showing of nonresidence, the burden is on the plaintiff to show that the case comes clearly within one of the statutory exceptions to the general rule that actions are triable in the place of the defendant's residence." *California State Parks Foundation v. Superior Court* (2007) 150 Cal.App.4th 826, 833, citing *Archer v. Superior Court In and For Humboldt County* (1962) 202 Cal.App.2d 417, 420.

Under Section 393(b), when an action is brought against a public officer for an act done by the officer, the county in which the cause, or some part thereof, arose, is the proper county for the trial. Section 393(b) governs whether plaintiffs complain rightly or wrongly of acts done by a public officer, even if the underlying proceedings of the defendant public officer have not yet concluded. *Tharp v. Super. Ct.* (1982) 32 Cal.3d 496, 502.

The cause of action "arises" wherever the plaintiff would be injured by the state action complained of: "A cause arises in the county where the effects of the administrative action are felt, not where the agency signs the challenged order or takes the challenged action." " 'It is where the shaft strikes [the plaintiff], not where it is drawn, that counts.' [Citation]."

California State Parks Foundation v. Superior Court (2007) 150 Cal.App.4th 826, 834 (internal citations omitted).

Merits of motion. CCP § 393(b) applies here. It is undisputed that Westlands is a public officer. Plaintiffs have alleged "acts done" within the meaning of Section 393(b). The complaint alleges that Westlands has assisted and cooperated with planning for a Shasta Dam raise in violation of Public Resources Code § 5093.542(c) by taking steps to become a cost-sharing partner with the federal government to raise Shasta Dam and expand Shasta Reservoir and developing an environmental impact report, as a lead agency under CEQA (Complaint, ¶¶ 27, 32). Whether Westlands has actually done these things is immaterial to the present motion. The complaint alleges that the People of the State of California have a direct and beneficial interest in upholding applicable California law and protecting the public trust in natural resources and are directly and adversely effected by Westlands' unlawful actions (Complaint, ¶ 25) and that Westlands' violation of the California Wild and Scenic Rivers Act could adversely affect the McCloud River and its wild trout fishery (Complaint, ¶ 26). Defendant asserts that Section 393(b) does not apply because plaintiff has failed to allege present injury. Section 393(b) imposes no such requirement. The complaint seeks declaratory and injunctive relief and a writ of mandate halting Westlands' assistance and cooperation with the planning of the Shasta Dam Raise Project. A plaintiff is not required to wait until they have suffered actual harm before they seek injunctive relief against the threatened infringement of their

rights. CCP § 526(a)(2). *Costa Mesa City Employees' Assn. v. City of Costa Mesa* (2012) 209 Cal. App. 4th 298. Under defendant's standard, plaintiff would be barred from challenging the Shasta Dam Raise Project until after the environmental harm complained of has occurred. Plaintiff's allegations that continued assistance by Westlands with planning for a Shasta Dam raise would cause serious and specific environmental harm in Shasta County are sufficient to establish that CCP § 393(b) applies and that venue is proper in Shasta County. The Motion is DENIED. A proposed order has been submitted and will be executed by the Court.

PORTFOLIO RECOVERY VS. WAUGH

Case Number: 1558

Tentative Ruling on Motion to Vacate Judgment: Plaintiff, Portfolio Recovery Associates, LLC, seeks to vacate the default judgment entered against defendant Diane K. Waugh on December 7, 2010 and to dismiss the entire action without prejudice. Plaintiff has presented evidence that Defendant's account was placed in dispute status and that plaintiff resolved the dispute in defendant's favor. The Court finds that the default judgment is void. The judgment is VACATED. The motion is GRANTED and the action is dismissed with prejudice. A proposed order was stapled to the moving papers but was not separately lodged as required by Local Rule 5.17(D). Plaintiff is ordered to submit a proposed order for the Court's execution.

RICHARDSON, ET AL VS. SHREE SHIVA, LLC.

Case Number: 188066

Tentative Ruling on Order to Show Cause Re: Sanctions: An Order to Show Cause Re: Sanctions issued on June 11, 2019 to Plaintiffs and Counsel for failure to timely obtain entry of default judgment as required by CRC Rule 3.110(h). In light of the response filed by plaintiff's counsel, today's hearing is continued to **Tuesday, September 3, 2019, at 8:30 a.m. in Department 8.** Today's Resolution Review hearing is continued to **Tuesday, September 3, 2019, at 9:00 a.m. in Department 8** for review regarding status of default judgment/dismissal. **No appearance is necessary on either the 8:30 a.m. or 9:00 a.m. calendars.**

SERRANO VS. FRANKLIN

Case Number: 190882

Tentative Ruling on Motion for Leave to Intervene: Berkshire Hathaway Homestate Insurance Companies (Berkshire) seeks to intervene as the worker's compensation insurance carrier for plaintiff's employer, Bejac Corporation. Berkshire has paid and continues to pay compensation benefits to plaintiff, who was injured in an industrial accident arising out of his employment.

A petition for leave to intervene may be made by noticed motion or ex parte application and must include a copy of the proposed complaint in intervention or answer in intervention and set forth the grounds upon which intervention rests. CCP § 387(c). Berkshire has satisfied the requirements of CCP § 387(c).

A nonparty must be allowed to intervene if (A) a provision of law confers an unconditional right to intervene or (B) the nonparty "claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties." CCP § 387(d)(1). Under Labor Code § 3853, an employer who has paid worker's compensation benefits to an employee suffering a workplace injury has the right to intervene in an action filed by the employee against the third party who caused the injury "at any time before trial on the facts." Labor Code § 3850(b) defines "employer" to include an insurer. Under Insurance Code § 11662, the workers' compensation insurer is subrogated to the rights of the employer to recover losses arising out of the insurer's assumption of the employer's liability for compensation and payment of any compensation for which the employer is liable.

Here, plaintiff has filed suit for injuries sustained in a workplace accident. His employer at the time was insured by a Berkshire workers' compensation policy. Berkshire has paid and continues to pay compensation benefits to plaintiff and incur related costs. Berkshire, through plaintiff's employer, has a subrogated interest in this litigation and a mandatory right to intervene under CCP § 387(d)(1) and Labor Code § 3853. The motion is GRANTED. A proposed order has been lodged and will be executed by the Court.

SPANNAUS VS. UNILAB CORPORATION, ET. AL.

Case Number: 190374

Tentative Ruling on Motion to Compel Responses to Form Interrogatories, Special Interrogatories and Request for Production of Documents, and for Sanctions: The Court notes that the motion is unopposed. Defendant's motion to compel is GRANTED. Plaintiff shall provide responses, without objections, to Defendant's Form Interrogatories, Set One; Special Interrogatories, Set One; and Request for Production of Documents, Set One, within 20 days of service of notice of entry of order. Defendant's request for sanctions is granted in the amount of \$690, which reflects 3 hours for preparation of the motion (at \$180/hour), the \$60 motion filing fee, 0.5 hours in attendance of the hearing on the motion (at \$180/hour); and additionally the Court Call fee, if desired by Defendant. The Court finds personal appearance at the unopposed motion is not reasonably necessary to incur 3 hours of travel time, and a Court Call appearance is more economic.

Defendant has submitted a proposed order, which will be modified to reflect the reduced sanction amount, as well as the deadline for providing discovery responses (20 days after service of notice of entry of order, not 20 days after the order is signed as proposed by Defendant).

Resolution Review – 9:00 a.m.

C.P. VS. RABIEE

Case Number: 191025

This matter is on calendar for status of Trial Setting. The Court is in receipt of plaintiffs' status report. Today's hearing is continued to **Monday, October 21, 2019, at 9:00 a.m. in Department 8**. **No appearance is necessary on today's calendar.**

D.L. VS. RABIEE

Case Number: 191024

This matter is on calendar for status of Trial Setting. The Court is in receipt of plaintiffs' status report. Today's hearing is continued to **Monday, October 21, 2019, at 9:00 a.m. in Department 8**. **No appearance is necessary on today's calendar.**

JH KELLY, LLC VS. AECOM TECHNICAL SERVICES

Case Number: 192600

This matter is on calendar to reset the Settlement Conference and Trial dates. The Court is in receipt of the stipulations and proposed orders regarding appearances by Attorneys Terry and Grasberger at today's Resolution Review hearing pending pro hac vice admission. The pro hac vice applications are scheduled to be heard on August 5, 2019. The stipulations are denied. The Court is unaware of any authority permitting out-of-state counsel to appear on behalf of party prior to the Court granting their pro hac vice applications.

The Court is in receipt of the Case Management Statement filed by Aecom Technical Services, Inc. on July 11, 2019 and the Status Report filed by JH Kelly on July 18, 2019. The parties are advised that Shasta County Superior Court does not conduct case management conferences. See Local Rule 3.02. A copy of the remand order dated

June 10, 2019 remanding this action back to Shasta County Superior Court has been provided. This matter was filed on January 29, 2019. In accordance with the Trial Court Delay Reduction Act, the Court designates this a Plan II case and intends to set this matter for trial to commence no later than Tuesday, July 28, 2020. **The parties are ordered to confer before today's hearing to provide the Court with mutually acceptable trial dates. An appearance is necessary on today's calendar.**

K&S STAFFING SOLUTIONS, INC VS. FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Case Number: 189440

This matter is on calendar for status of settlement. On September 10, 2018, this matter was first heard in Department 3 alongside Shasta County Case No. 189037, K&S Staffing vs. Titan D.V.B.E., et al. All defendants have been defaulted or answered, except for Fidelity and Deposit Company. While the matters are not coordinated or consolidated, the Court deemed them related and continued to call this matter in Department 3. Going forward, this matter will be called in Department 8, as the Order of Assignment issued March 12, 2018 indicates that the action is assigned to the Honorable Tamara L. Wood, Department 8.

Fidelity was served with the Summons and First Amended Complaint but has not filed a responsive pleading, nor has plaintiff requested default be entered. The Court was previously informed that K&S and Fidelity entered into a settlement agreement on May 8, 2019, the terms of which they are in the process of finalizing. No Notice of Settlement has been filed. K&S has made repeated representations since the May 13, 2019 hearing that a request for dismissal of the First Cause of Action against Fidelity would be filed within 30 days. Because no responsive pleading has been filed, this matter is not at issue and cannot be set for trial. CRC Rule 3.110(g) requires that plaintiff file a request for entry of default within 10 days after the time for service has elapsed. The Court hereby issues an Order to Show Cause to plaintiff and counsel pursuant to CRC Rule 3.110(g) for failure to timely seek entry of default against defendant Fidelity and Deposit Company, scheduled to be heard on **Tuesday, September 3, 2019, at 8:30 a.m. in Department 8.** Today's Resolution Review hearing is continued to **Tuesday, September 3, 2019, at 9:00 a.m. in Department 8.** **No appearance is necessary on today's calendar.**

RICHARDSON, ET AL VS. SHREE SHIVA, LLC.

Case Number: 188066

This matter is on calendar for review regarding status of default judgment/dismissal. In light of the Court's tentative on the Order to Show Cause Re: Sanctions, today's Resolution Review hearing is continued to **Tuesday, September 3, 2019, at 9:00 a.m. in Department 8** for review regarding status of default judgment/dismissal. **No appearance is necessary on today's calendar.**

ROBERTSON & DOMINICK VS. MCDILDA

Case Number: 165050

This matter is on calendar for review regarding status of bankruptcy. A Joint Status Report was filed July 16, 2019 that is nearly identical to the one filed January 16, 2019 and again requests that this matter be continued an additional six months. Today's hearing is continued to **Tuesday, January 21, 2020, at 9:00 a.m. in Department 8** for review regarding status of bankruptcy. The parties are ORDERED to file a Status Report no later than five court days prior to the continued hearing date advising the Court when the Chapter 11 Plan payments are anticipated to be completed such that this matter may be dismissed. **No appearance is necessary on today's calendar.**

THORSTEINSON VS. GIBBONS

Case Number: 190643

This matter is on calendar for review regarding status of service/responsive pleading. Proof of Service of Summons by Publication was filed on June 18, 2019, indicating that service by publication was completed on June 5, 2019. Service by publication is complete on the 28th day following the first day of publication, including therein the first day. CCP § 415.50(c); Government Code § 6064. Here, the first day of publication was May 15,

2019. Therefore, service was complete on June 11, 2019. No responsive pleading has been filed. If a responsive pleading is not timely served, plaintiff must file a request for entry of default within 10 days after the time for service has elapsed. CRC Rule 3.110(g). The Court may issue an order to show cause why sanctions should not be imposed if plaintiff fails to comply with this rule. Today's hearing is continued to **Monday, August 19, 2019, at 9:00 a.m. in Department 8** for review regarding status of responsive pleading/default. **No appearance is necessary on today's calendar.**

WHALEN VS. DIGNITY HEALTH

Case Number: 187598

This matter is on calendar for status of trial setting. This matter was previously continued on June 17, 2019 to allow plaintiff to obtain new counsel. The Court intends to reset the Settlement Conference and Trial dates today. This case was filed on June 9, 2017. The Court has designated this matter as exempt from the Trial Court Delay Reduction Act. **The parties are ordered to meet and confer prior to today's hearing regarding mutually acceptable settlement conference and trial dates. An appearance is necessary on today's calendar to set the mandatory settlement conference and trial dates and to provide the Court with a trial time estimate.**