

CAPITAL ONE, NA v YATES

23CV46838

DEFENDANT'S MOTION TO ACKNOWLEDGE TITLE 48 CFR AFFIDAVIT PRESENTED AS LETTER OF ROGATORY

On July 24, 2023, Capital One, N.A. ("Plaintiff") filed a Complaint for common counts or account stated against Deanna K. Yates ("Defendant.") Defendant filed a response on December 4, 2023.

Defendant now moves "to Acknowledge Title 48 CFR International Commercial Affidavit Presented as Letter of Rogatory." Plaintiff opposes the motion. For the reasons set forth below, the Motion is denied.

The motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Effective 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court [emphasis in original.]

Failure to include this language in the notice may be a basis for the Court to deny the motion.

While the Court has authority to deny the motion on this ground alone, in the interests of justice it has considered the substantive merits of the Defendant's motion and denies the motion on that basis.

Legal Analysis

Defendant appears to be arguing that Plaintiff's complaint is invalid on the grounds of what is known as the Sovereign Citizen Movement. The Sovereign Citizen movement is a "loose grouping of litigants, commentators, and tax protestors who often take the position that they are not subject to state or federal statutes and proceedings." (*United States v. Weast* (5th Cir. 2016), 811 F.3d 743, 746 fn. 5.) In essence, subscribers to this movement will show up in court "asserting various theories to the effect the court has no jurisdiction over them." (*Ibid.*)

Courts across all jurisdictions have consistently designated these types of arguments as frivolous. (See e.g., *United States v. Studley* (9th Cir. 1986), 783 F.2d 934, 937, fn. 4 [the sovereign citizen argument has been "consistently and thoroughly rejected by every branch of the government for decades. Indeed advancement of such utterly meritless arguments is now the basis for serious sanctions imposed on civil litigants who raise them"]; (*U.S. v. Benabe*, (7th Cir. 2011, 54 F.3d 753, 767 [such theories that a "sovereign citizen" is beyond the jurisdiction of the courts "should be rejected summarily, however they are presented"]; *Ceja v. Birkholz*, CV 22-1636-FWS(E) (C.D. Cal. May 3, 2022) [citing numerous cases finding sovereign citizen claims to be frivolous and without merit].)

California courts may exercise jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." (Code of Civil Procedure §410.10.) This Court has personal jurisdiction because Defendant was properly served with the Summons and Complaint at her residence of 4628 S. Burson Rd., Valley Springs, CA 95252. As regards subject matter jurisdiction this "relates to the inherent authority of the court involved to deal with the case or matter before it." (*Varian Medical Systems, Inc. v. Delfino* (2005), 35 Cal.4th 180, 186.) The Defendant has failed to make any valid argument that the Court lacks subject matter jurisdiction.

Based on the foregoing, Defendant's motion is **DENIED**.

The Clerk shall provide notice of the Ruling forthwith. No further formal Order is required.

GUARANTY HOLDINGS OF CALIFORNIA, INC. v CATTANEO

20CV44713

DEFENDANTS' DEMURRER AND MOTION TO STRIKE PORTIONS OF FIRST AMENDED COMPLAINT

This case involves a landlord-tenant dispute over the condition of the residence after being surrendered back to the homeowner. At the core of the dispute is Defendants' removal of floating boat dock and other items on the property owned by Plaintiff Guaranty Holdings of California, Inc ("GHOC"). The First Amended Complaint (FAC) was filed on May 27, 2023. As against all Defendants, including Bernadette Cattaneo ("Cattaneo") and David Robinson ("Robinson") (collectively "Moving Defendants") the FAC alleges causes of action for conversion and receipt of stolen property. As against Defendant Christopher Dufresne ("Dufresne") and the Estate of Sylvia Brown ("Estate") the FAC also alleges a cause of action for fraud. As against Cattaneo, the FAC also alleges a cause of action for private nuisance. Now before the Court are the Moving Defendants' Demurrer and Motion to Strike Portions of the First Amended Complaint.

The Court denies the Request for Judicial Notice as to: (A) the obituary as irrelevant, and grants as to (B) and (C) as these are government agency documents, though the Court did not find them relevant to its analysis and decision.

I. Factual Background

In or about December 2018, GHOC purchased the residence known as 108 Sanguinetti Court, Copperopolis, California (the "Residence") at a Trustee's Sale. At the time GHOC purchased the Residence, Dufresne occupied the Residence and owed approximately \$400,000.

Following GHOC's purchase of the Residence, counsel for GHOC and counsel for Dufresne and the Estate, entered into negotiations regarding when Dufresne would vacate the Residence. In January 2019, GHOC's former attorney received a letter dated January 9, 2019, signed by Dufresne (hereinafter "the Letter") that read, in pertinent part:

This letter is meant to serve as my written assurance to you that I Christopher Michael Dufresne have no intentions of stripping or removing the dock, lift, fixtures or anything else from property address: 108 Sanguinetti Ct. Copperopolis, CA 95228."

GHOC alleges that in reliance on the Letter, it did not take any additional precautions prior to May 8, 2019, to secure the fixtures affixed to the Residence as real and not personal property.

Calaveras County Superior Court ordered Dufresne and the Estate to vacate the residence on or before May 9, 2019. Plaintiff alleges that Defendants Dufresne, Robinson, Cattaneo, Holman, and others “acted in concert” to remove the following fixtures that were affixed to the real property of the Residence: 1) A marine dock attached to the Residence; 2) Three (3) ceiling fans; 3) Lights; 4) Several Viking refrigerators; 5) Wine cooler; and 6) Kitchen Aid refrigerator (collectively, “the Property”). At the core of the dispute is Defendants’ removal of the floating boat dock (“Dock”).

Plaintiff alleges that the Property is worth approximately \$205,000.00.

According to GHOC, it later learned that Dock was taken by Moving Defendants and the other defendants to the Resort, where it remained for several years. GHOC believes that the Dock has since been damaged beyond repair and is no longer at the Resort.

Thereafter, GHOC incurred costs in excess of \$165,000 to replace Dock at the Residence. However, following installation of the new dock, Cattaneo and others with control of the Residence began intentionally blocking GHOC’s access to the new dock.

II. Standard for Demurrer

“A demurrer tests the sufficiency of a complaint and admits all facts properly pleaded.” (*Setliff v. E.I. Du Pont de Nemours & Co.*(1995) 32 Cal. App. 4th 1525, 1533.) The court assumes the truth of the allegations asserted but does not assume the truth of “contentions, deductions, or conclusions of law.” (*California Logistics, Inc. v. State of California* (2008) 161 Cal. App. 4th 242, 247.) The court can further look at those facts that “reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken.” (*Fremont Indemnity Co. v. Fremont General Corp.* (2007), 148 Cal.App.4th 97, 111.) If a complaint does not sufficiently state a cause of action, “but there is a reasonable probability that a defect can be cured by amendment, leave to amend must be granted.” (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal. 4th 26, 38.)

Moving Defendants asserts that the FAC is subject to demurrer pursuant to Civ. Code 430.10 (e) (failure to state a claim) and 430.10(f) (uncertainty). “[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.” (*Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 842, 848 fn.3 [citing *Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135].)

III. Analysis

A. Conversion

“Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff’s ownership or right to possession of the property; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and (3) damages....” (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240, internal citation and quotations omitted.) In order to prove a cause of action for conversion, “the plaintiff must show the defendant acted intentionally to wrongfully dispose of the property of another.” (*Duke v. Sup. Ct.* (2017) 18 Cal.App.5th 490, 508, citation omitted.)

The FAC alleges that GHOC purchased the Residence and that there was an understanding between GHOC and Dufresne that all fixtures would remain on the Residence, including the Dock. (FAC ¶¶ 12, 15.) GHOC next alleges that Cattaneo and Robinson acted in concert with other defendants to wrongfully remove the Property. (FAC ¶ 18.) Finally, GHOC alleges that as a result of the wrongful removal of the Property, it was damaged in excess of \$200,000.00.¹

GHOC has stated a cause of action for conversion. Accordingly, **the demurrer is overruled as to the first cause of action.**

B. Receipt of Stolen Property (Penal Code §§ 496(A) and (C))

Penal Code section 496(a) provides:

Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170.

¹ Defendants made a lengthy argument about whether the floating dock is readily moveable and whether under the factual circumstances the dock is personal or real property. In support, Defendants cite to a 1983 letter from the California Board of Equalization regarding floating docks in a completely different lake in a different part of California. While the Court takes judicial notice of the letter as requested, the letter is irrelevant to the issues on demurrer. Undermining Defendants’ argument is the fact that within that letter it specifically states that whether something is a fixture or not is “one of fact to be determined from the evidence in a particular case.” Defendants’ reliance on statements made in depositions are also improper at the demurrer stage.

Penal Code section 496(c) provides:

Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.

Moving Defendants argue that the FAC fails to state a claim for this cause of action because Penal Code section 496(a) also states: "no person may be convicted both pursuant to this section and of the theft of the same property." They argue that because the FAC alleges that they committed the wrongfully taking of the Property, they cannot also be liable for receiving those stolen goods.

Moving Defendants argument is misplaced. First, the language in Section 496(a) states that person cannot be *convicted* of both the crime of theft and of receiving stolen property. (See, *People v. Jaramillo* (1976), 16 Cal.3d 752, 757 [stating it is a "fundamental principle that one may not be convicted of stealing and of receiving the same property"].) It does not state that a person cannot be civilly liable under subsection (c) for both taking and receiving stolen property. Further, there is legal authority to the contrary. (See *Siry Investment L.P. v. Fakhondehpour* (2022) 13 Cal. 5th 333 [limited partner could bring a civil cause of action under section 496(c) against general partner and others even where the defendants had both undertaken the theft and received the stolen property].)

Moving Defendants also argue that this cause of action is barred by the three year statute of limitations set forth in Penal Code section 801. They assert that the FAC alleges the theft occurred on May 8, 2019 but the FAC was not filed until May 17, 2023. This argument is also without merit. Under the relation-back doctrine, an amended complaint will relate back to the date the original complaint was filed if the amended complaint: "(1) rests on the same general set of facts; (2) involves the same injury; and (3) refers to the same instrumentality as the original complaint." (*Norgart v. Upjohn Co.* (1999), 21 Cal.4th 383, 409.) An amended complaint "relates back to the original complaint even if the plaintiff alleges a new legal theory or cause of action, so long as the amended complaint is based on the same general set of facts." (*Hutcheson v. The Superior Court* (2002), 74 Cal.App.5th 932, 940.) Here the original complaint which was timely filed and the FAC allege a nearly identical set of facts, causation, and injury. Accordingly, Defendant's statute of limitations argument is meritless.

Accordingly, **the demurrer as to the second cause of action for receipt of stolen property is overruled.**

C. Fraud

The FAC alleges a cause of action for fraud against Dufresne and the Estate but not against the Moving Defendants. Accordingly, **the demurrer to this cause of action is moot as to the Moving Defendants.**

D. Private Nuisance

A private nuisance includes “[a]nything which is injurious to health . . . or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.” (Civ. Code, § 3479.)”

GHOC alleges it owns the Dock and that Cattaneo purposefully installed, maintained, and positioned structures on Tulloch Reservoir to intentionally block GHOC’s access to the new dock. The allegation that Cattaneo obstructed GHOC’s access to the new dock and therefore the use and enjoyment of the dock is the type of physical interference with land use that “constitutes the most obvious and common type of nuisance.” (*Rancho Viejo v. Tres Amigos Viejos* (2002), 100 Cal.App.4th 550, 561 [citing 11 Witkin, Summar of Cal. Law (9th ed. 1990) Equity, § 126, p. 807.]

Moving Defendants argue that the FAC fails to state a claim for private nuisance because there is no allegation that Cattaneo owns the neighboring property where the obstructions apparently were placed. However, Moving Defendants fail to cite any legal authority that would require GHOC to allege Cattaneo owns the neighboring land in order to make claim for private nuisance. Moving Defendants also refer to photographs that show the obstructions are small and therefore could not be a nuisance. Reference to matters outside the pleadings, unless subject to judicial notice, is not proper at the demurrer stage. (*Kanter v. Reed* (2023), 92 Cal.App.5th 191, 203.)

GHOC has stated a cause of action for private nuisance and accordingly **the demurrer to this cause of action is overruled.**

E. Motion To Strike Punitive Damages

Punitive damages are recoverable where a plaintiff proves “by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice.” (Civ. Code, § 3294.) Relevant to this case, “malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of rights or safety of others. (*Ibid.*) “Oppression” means conduct that subjects a person to “cruel and unjust hardship in conscious disregard of that persons’ rights.” (Civ. Code. §3294(c)(2).)

The proper standard for a motion to strike punitive damages is whether plaintiff has alleged “ultimate facts” showing an entitlement to exemplary damages. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) Here, the FAC states that Cattaneo and Robinson willfully and with malice stole the Property and refused to return it to GHOC. The FAC further alleges that Cattaneo willfully and with malice intentionally blocked GHOC’s access to its new dock.

The FAC’s allegations have simply pleaded a claim for punitive damages in the language of the statute authorizing punitive damages. While this is not objectionable when sufficient facts are alleged to support the allegation, here the FAC lacks ultimate

facts showing a punitive damages claim. (See *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6 [citation omitted].)

Moving Defendants' motion to strike reference to punitive damages is granted, with 20 (twenty) days leave to amend.

F. Motion to Strike Reference to "Time and Money Spent"

Moving Defendants move to strike reference to "time and money spent" as part of the receipt of stolen property claim. (FAC ¶ 43.) Cal. Civil Code section 3336 allows for compensation for time and money spent in pursuit of converted property. In the prayer for relief, the FAC is clear that compensation for "time and money spent" is related to the conversion claim alone.

The motion to strike reference to "time and money spent" in Paragraph 43 is denied.

IV. Summary of rulings

The demurrer is overruled as to causes of action 1, 2, and 4. It is moot as to cause of action 3. The motion to strike punitive damages is granted, with leave to amend. The motion to strike Paragraph 43 is denied.

The Clerk shall provide notice of the Ruling forthwith. Plaintiff to prepare a formal Order in conformity with these rulings pursuant to CRC 3.1312..

FORD v GREENHORN GOLF, LLC.

23CV47102

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff's motion for preliminary injunction is on calendar for July 26, 2024. Defendant has requested a continuance of thirty days to obtain and analyze the relevant Parcel Map to determine if Plaintiff's claims in the Reply are correct. The court finds there is good cause for Defendant's request and grants the same. Accordingly, **the matter is continued to August 30, 2024, at 9:00 am in Department 2.**

PG&E v DKM, LLC

24CV47310

PLAINTIFF'S MOTION FOR PRE-JUDGMENT POSSESSION OF PROPERTY

This is an action in eminent domain where Pacific Gas and Electric ("PG&E") seeks to take certain property ("Property") located at 4150 Carson Street, in an unincorporated area of Calaveras County, near Vallecito, California, also known as Calaveras County Assessor's Parcel No. 066-025-04. DKM, LLC ("DKM") is the fee simple interest holder of the Property. Calaveras County Water District ("District") and Northern California Power Agency ("NCPA") both hold easements on the Property.

PG&E seeks this property for the purpose of replacing and upgrading a tower and transmission conductor as part of a larger scope of work that involves replacing approximately 410 existing electrical transmission structures with new steel structures (referred to as the Project). The Complaint states that the "new tower and conductor replacement necessitates a wider span of easement to accommodate sway in the electrical lines to ensure that PG&E's operations fall within its existing easements." (Complaint ¶ 6.)

PG&E seeks the following interests (the Easement Interests) in portions of the Property:

- a. Plaintiff seeks to modify its existing electric transmission easement rights in the Owner's real property described in EXHIBIT C, which modified easement rights are described as STRIP on EXHIBIT and depicted on EXHIBIT "A-1" and EXHIBIT "B", attached hereto and incorporated herein as though set forth in full by this reference.
- b. PG&E seeks to modify PG&E'S existing electric distribution pole line easement rights in the Owner's real property described in EXHIBIT C, which modified distribution easement rights are described in EXHIBIT "A" and shown on EXHIBIT "A-2, attached hereto and incorporated herein as though set forth in full by this reference, as STRIP ONE, STRIP TWO, STRIP THREE, STRIP FOUR, STRIP FIVE, AND STRIP SIX.
- c. The right to excavate for, construct, reconstruct, replace, remove, maintain, inspect, use facilities and associated equipment for public utility purposes, including but not limited to electric and communication facilities over and across the lands described in EXHIBIT "C" and shown on

EXHIBIT "C-1" as PG&E shall from time to time deem to be reasonably required for the transmission and distribution of electric energy, and for communication purposes within the STRIPS of lands described in EXHIBIT "A" and shown on EXHIBIT "A-1" EXHIBIT "A-Z".

- d. The right of ingress to and egress from the STRIPS of lands as described in EXHIBIT "A" and shown on EXHIBIT "A-1" EXHIBIT "A-2" over and across the lands described in EXHIBIT "C" and shown on EXHIBIT "C-1" by means of roads and lanes thereon, if such there be, otherwise by such route or routes as shall occasion the least practicable damage and inconvenience, provided, that such right of ingress and egress shall not extend to any portion of the lands which is isolated from said STRIPS of lands by any public road or highway, now crossing or hereafter crossing said lands.
- e. The right from time to time to enlarge, improve, reconstruct, relocate and replace any facilities constructed with any other number or type of facilities either in the original location or at any alternate location or locations within the STRIPS of lands as described in EXHIBIT "A" and shown on EXHIBIT "A-1" EXHIBIT "A-2".
- f. The right, from time to time, to trim or to cut down, without PG&E paying compensation, any and all trees and brush now or hereafter within the STRIPS of lands as described in EXHIBIT "A" and shown on EXHIBIT "A-1" EXHIBIT "A-2", and shall have the further right, from time to time, to trim and cut down trees and brush along each side of said STRIPS of lands which now or hereafter in the opinion of PG&E may interfere with or be hazard to PG&E facilities, or as PG&E deems necessary to comply with applicable state or federal regulations.
- g. The right to use such portion of said said lands contiguous to the STRIPS of lands as described in EXHIBIT "A" and shown on EXHIBIT "A-1" EXHIBIT "A-2" as may be reasonably necessary in connection with the excavation, construction, reconstruction, replacement, removal, maintenance and inspection of PG&E facilities.
- h. The right to install, maintain and use gates in all fences which now cross or shall hereafter cross the STRIPS of lands as described in EXHIBIT "A" and shown on EXHIBIT "A-1" EXHIBIT "A-2". I. The right to mark the location of the STRIPS of lands as described in EXHIBIT "A" and shown on EXHIBIT "A-1" EXHIBIT "A-2" by suitable markers set in the ground.

Plaintiff also seeks the enjoin the owner from:

- a. Placing or constructing any building or other structures, storing flammable substances, drill or operate any well, constructing any reservoir or other

obstruction, diminishing or substantially adding to the ground level within the STRIPS of lands as described in EXHIBIT "A" and shown on EXHIBIT "A-1" EXHIBIT "A-2", or construct any fences that will interfere with the maintenance and operation of PG&E facilities.

- b. Depositing or allowing to be deposited, earth, rubbish, debris or any other substance or material whether combustible or noncombustible within the STRIPS of lands as described in EXHIBIT "A" and shown on EXHIBIT "A-1" EXHIBIT "A-2", which not or hereafter in the opinion of PG&E may interfere with or be hazard to the PG&E facilities installed.

Now before the Court is PG&E's motion for prejudgment possession of the Property. NCPA has filed a timely opposition to the motion. On July 9, 2024, DKM filed a notice of joinder in NCPA's opposition. The notice of joinder was filed more than thirty days after PG&E's notice of its intent to seek prejudgment possession. Pursuant to Code of Civil Procedure ("CCP") § 1255.410(d), all defendants needed to oppose the motion within 30 days of April 4, 2024. As DKM's notice of joinder was untimely, NCPA's opposition is the only one that will be considered by the Court.

I. Legal Standard and Analysis

Under Code of Civil Procedure section 1255.410, a moving party may seek immediate possession of the property to be taken or condemned. Where the motion for immediate possession is opposed, as in this case, the Court may order prejudgment possession after a hearing on the motion if the Court finds each of the following: 1) The plaintiff is entitled to take the property by eminent domain; 2) The plaintiff has deposited an amount that satisfies the legal requirements; 3) There is an overriding need for the plaintiff to possess the property prior to the issuance of final judgment in the case, and the plaintiff will suffer a substantial hardship if the application for possession is denied or limited and 4) The hardship that the plaintiff will suffer if possession is denied or limited outweighs any hardship on the defendant or occupant that would be caused by the granting of the order of possession. (Code Civ. Proc. §1255.410(d)(2).)

Plaintiff claims all four necessary elements for prejudgment possession are satisfied.

A. Entitled to Take Property By Eminent Domain

Generally, to establish entitlement to take property for a project, a plaintiff must establish, all of the following: (a) the public interest and necessity require the project, (b) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and (c) the property sought to be acquired is necessary for the project." (Code of Civil Procedure section 1240.030.)

In support of its claim that it is entitled to take the property by eminent domain, PG&E provides the declaration of Sanjeev S. Bhatawadekar, who is a Senior Consulting Project Manager for PG&E. (Declaration of Sanjeev S. Bhatawadekar ("SB Decl." ¶ 4.)

Mr. Bhatawadekar oversees the implementation of complex transmission system projects. (*Ibid.*) According to Mr. Bhatawadekar, the Project is part of PG&E's goal of improving and enhancing the safety of its operations and the reliability of utility service because they are upgrading and replacing hundreds of transmission structures. (*Id.* ¶ 8.) The Project is necessary in order for PG&E to continue providing safe and reliable electric service the public. (*Id.* ¶10.) Mr. Bhatawadekar further states that there is little risk of private injury because there are no residences within the easement area and any risk to grazing livestock will be mitigated. (*Id.* ¶ 13.) Finally, Mr. Bhatawadekar states that the location has been chosen because PG&E already has existing structures in that area. (*Id.* ¶ 9.) The Project only needs "a wider span of easement to accommodate overhead sway in the electrical lines to ensure PG&E's operations fall within its existing easements."(*ibid.*).

In opposition, Defendants argue that PG&E has failed to meet this first required element because Plaintiff has not made a showing that it is entitled to take the property by eminent domain as a compatible use with the Defendants' existing public use. (Code Civ. Proc. §1240.520). Pursuant to section 1240.510:

Any person authorized to acquire property for a particular use by eminent domain may exercise the power of eminent domain to acquire for that use property appropriated to public use if the proposed use will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future.

Pursuant to section 1240.520, if it is established that the property is appropriated to public use, the Plaintiff has the burden of proof that its proposed use satisfies the requirements of Section 1240.510. Defendants argue PG&E acknowledges that the Property is already appropriated to public use and that Plaintiff has failed to bear its burden of showing that it the proposed use will not "unreasonably interfere with or impair the continuance" of the Defendants' current public use. Defendants argue that Mr. Bhatawadekar's conclusory statement that "PG&E has no evidence or reason to believe that early possession will unreasonably displace or affect anyone in lawful possession of the Property" (SB Decl. ¶ 13) is insufficient.

In support of its opposition, NCPA submits the declaration of Jake Eymann who is employed by NCPA as the Hydroelectric Manager. (Declaration of Jake Eymann ("Eymann Decl.") ¶ 1.) NCPA acquired the generation tie line at issue in this case in 1988. (*Id.* ¶ 3.) Mr. Eymann declares:

NCPA operates the Collierville & Spicer Meadow Transmission Line Project (Federal Energy Regulatory Commission [FERC] No. 11197, "Collierville TL Project"). NCPA's rights are "project property" under NCPA's FERC license for the Collierville TL Project, which comprises the primary transmission lines that connect CCWD's North Fork Stanislaus River Hydroelectric Project (FERC No. 2409) to the California Independent System Operator (CAISO) controlled grid. NCPA must protect its rights,

use, and ability to operate and maintain the Collierville TL Project to ensure compliance with its FERC license and to ensure its line remains safe and operational.

Mr. Eymann further submits photos that show that PG&E's and NCPA's lines are near each other on the Property. (Eymann Decl. ¶ 4, Ex. A.). Finally, Mr. Eymann avers that based on the information provided by PG&E, "I am unable to conclude that PG&E's Project and proposed easement will not interfere with or impact NCPA's operation and maintenance of the Collierville TL Project." (*Id.* ¶ 5.) NCPA argues that until PG&E can establish compatibility with NCPA's uses, the motion for prejudgment possession must be denied. However, Mr. Eymann does not state any specific concerns about how PG&E's proposed Project would impact NCPA's existing public use nor how it could impact its FERC compliance.

In Reply, PG&E details the extensive communication between itself and NCPA regarding the Project. In April of 2021, PG&E and NCPA entered into confidential, nondisclosure agreements (NDA) to provide free and full disclosure of information by PG&E to NCPA and NCPA's technical representatives about the Project. (Declaration of Randy Kihara ("Kihara Decl.") ¶ 5.) Over the ensuing months and years, PG&E provided NCPA with specific information and drawings of the Project for NCPA's review. (*Id.* ¶ 6.) In April of 2024, PG&E and NCPA entered into another NDA to allow NCPA to "review all technical engineering and electrical transmission aspects of the project." (*Id.* ¶ ¶ 7, 9.) When NCPA raised concerns about whether there were sufficient clearances between the varying structures, PG&E provided information which it believed had been accepted as sufficient to show there would be no interference with NCPA's lines. (*Id.* ¶ ¶ 10-11.) Specifically, PG&E's lines after the Project "will not extend beyond the boundary of PG&E's existing easement at rest conditions (no wind). Even with maximum calculated sway conditions, PG&E's lines will not come into physical contact with NCPA's lines." (*Id.* ¶ 14.)

NCPA also argues NCPA is federally mandated to protect the property rights of a FERC-licensed project. (Opposition p. 4.) NCPA states that NCPA is thus required to seek prior FERC approval of any transfer of "project property" via condemnation. NCPA further argues that FERC would not likely transfer its property rights to PG&E and even if the Court ordered such transfer, FERC would condemn the rights back from PG&E pursuant to its federal eminent domain powers. Accordingly, NCPA argues that this would be an ultimate waste of judicial resources.

In Reply, PG&E points out that over the months and years of discussing this Project, NCPA has never raised any concerns about its FERC-license. Further, it is unclear how the Project would impact FERC's property interests. PG&E already has a concurrent easement on the Property. (Declaration of Trevor R. LaTurner ("LaTurner Decl.") ¶ 5, Ex. 1.) This easement preceded NCPA's easement. (*Id.* ¶ 7, Ex. 3.) PG&E's easement specifically states that it has authority to enter the property to maintain, operate, repair or reconstruct the transmission lines. (*Id.*, Ex. 1.)

PG&E has sufficiently met its burden to show that its proposed use will not unreasonably interfere with or impair the continuance NCPA's use as it then exists or may reasonably be expected to exist in the future. Accordingly, PG&E has demonstrated that it is entitled to take the property by eminent domain.

B. Plaintiff's Deposit

Under Section 1255.010(a), PG&E is required to deposit "the probable amount of compensation, based on an appraisal, that will be awarded in the proceeding." Here, PG&E states that it has deposited with the State Condemnation Deposit Fund "probable just compensation for the easement rights being acquired." (SB Decl. ¶ 10.) According to the declaration of appraiser Michelle Patton, the just compensation for the Property is \$12,300.00. (Declaration of Michelle Patton ¶ 6, Ex. A.)

NCPA does not object to the amount of the deposit.

C. Whether Plaintiff has demonstrated overriding need and substantial hardship.

PG&E argues it has an overriding need to take the Property immediately and begin its Project because it is a "priority project" for PG&E. (BS Decl. ¶ 11.) PG&E argues that construction at this location and other Project locations "must be planned, coordinated and implemented (as to materials, workers, equipment, securing necessary permit(s), etc.) in an orderly fashion." (*Id.* ¶ 11.) PG&E further argues that any delay in obtaining possession of the Property "may result in major delays with completion of this part of the Project and other segments of the Project." (*Id.* ¶ 12.)

NCPA does not address PG&E's arguments about overriding need and substantial hardship. The Court finds the PG&E has demonstrated an overriding need to begin the Project.

D. Balancing of the hardships between Plaintiff and Defendants.

PG&E argues that NCPA will not suffer any hardships if the motion is granted because prejudgment possession will not "displace or unreasonably affect any person in actual and lawful possession of the subject property interests being acquired." (MPA p. 6.) In contrast, PG&E states that without prejudgment possession it cannot plan and finalize contracts, materials, and personnel and the delayed project could cause "great expense and potential harm to PG&E and the public at large." (*Ibid.*)

The Court finds that PG&E has demonstrated that its hardships will outweigh any hardships to others.

The Motion for Prejudgment Possession is **GRANTED**. **The parties are ordered to come to the hearing prepared to discuss whether they can reach an agreement on**

the terms and conditions pursuant to CCP section 1240.530 or whether the Court will need to fix the terms and conditions.