

**PERRY v. HERNDON**

**19CV44210**

**DEFENDANT'S MOTION TO COMPEL DISCOVERY  
RESPONSES**

This is a motor vehicle personal injury suit. Before the Court is a discovery motion by defendant seeking responses to Special Interrogatories, Set One, and a Request for Production of Documents, Set Two. No opposition has been filed.

On 2/1/22, defendant served on plaintiff by counsel, via electronic mail, Special Interrogatories, Set One, and Request for Production of Documents, Set Two. Plaintiff did not serve any responses.

On 3/31/22, counsel for plaintiff emailed defense counsel to inquire about the overdue responses to the RPD. Defense counsel did not respond.

On 07/18/22, plaintiff filed and served the pending motion. Although the motion involves both the Special Interrogatory and the RPDs, thus requiring the tender of two filing fees per Govt. Code §70617, plaintiff has not responded to the motion.

This Court would like to believe that the silence is explainable, but for present purposes all this Court has is a prima facie display of a discovery abuse. The motion to compel a substantive, verified, objection-free response to the Special Interrogatories and the RPDs is GRANTED. Plaintiff is ordered to answer the special interrogatory and provide a response, including all responsive documents in his care, custody, or control, verified, without objection, within 20 days. Moreover, pursuant to CCP §2023.030(a) and CRC 3.1348(a) (given the absence of opposition), plaintiff is ordered to reimburse defendant \$191.40 (representing 1 hour of attorney's fees at counsel's going rate of \$131.40 per hour plus filing fee) within the same 20 days.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

**MURRAY v. SUCHY, et al.**

**20CV45088**

**PLAINTIFF'S MOTION TO AMEND AND SUPPLEMENT  
COMPLAINT**

This is an action alleging, trespass, negligence, nuisance, and conspiracy. Plaintiff seeks to amend and supplement the complaint.

Pursuant to Calaveras County Superior Court Local Rule 3.3.7 (adopted 1/1/18), "all matters noticed for the Law & Motion calendar shall include" specified language in the Notice of Motion, and "failure to include this language in the notice may be a basis for the Court to deny the motion." Based on plaintiff's failure to include the required language, the motion is **DENIED**, without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to relevant statutes.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order is required.

# PEOPLE v. \$32,000.00

22CV45789

## MOTION FOR JUDGMENT OF FORFEITURE BY DEFAULT

This is a special proceeding pursuant to H&S Code §11488 to declare certain funds seized as part of a criminal investigation forfeited. The funds were discovered during the execution of a search warrant on 03/02/21 at 5691 McCauley Road, Valley Springs, by the Calaveras County Sheriff's Department. According to the petition and supporting declarations, most of the funds (\$30,800.00) were neatly wrapped, bundled, and placed underneath a mattress in a room containing the suspect's personal effects. The balance of the funds (\$1,200.00) were located inside the suspect's wallet, which was on the mattress in question. The house was filled with cannabis plants (1,562) and a reasonably sophisticated growing operation. According to Deputy Seawell, the "street value" of the cannabis collected from the residence exceeded \$4M, removing the operation from any "personal use" exemption.

In California, there are three types of forfeiture proceedings available in conjunction with controlled substances offenses: summary forfeiture, administrative forfeiture, and judicial forfeiture. The cannabis plants were presumably subject to summary forfeiture (see H&S Code §§ 11054, 11477), but are not at issue in this petition. Assets not exceeding \$25,000 can be administratively forfeited if nobody files a claim after due notice. (H&S §11488,4(j).) For assets in excess of \$25,000, or for assets to which a claim has been made, the only option is judicial forfeiture – and for that a number of procedure safeguards must be observed. This petition may not be heard on the merits at this time, as there are procedural defects as presently constituted.

First, "the district attorney shall make service of process regarding this petition upon every individual designated in a receipt issued for the property seized." (H&S Code §11488.4(c).) Petitioner has not included a copy of the 03/02/21 receipt, but presumably it identifies at least the suspect. There is no proof of service on the suspect.

Second, "the district attorney shall cause" (1) notice of the seizure, (2) notice of any intended forfeiture proceeding, and (3) notice of the claim form process "to be served by personal delivery or by registered mail upon any person who has an interest in the seized property." (H&S Code §11488.4(c).) Deputy Rader avers that the receipt, notice and claim form "were left in a prominent place in the residence," *not* personally served on the occupant or the registered owner (who might not occupy the residence). Given that the money was found inside a residence, both the occupants and the owner are entitled to proper notice.

Third, whenever a notice is delivered as indicated, “it shall be accompanied by a claim form as described in Section 11488.5 and directions for the filing and service of a claim.” Although petitioner advises that no claim form has been filed, there is no confirmation that the claim form with instructions was included in the formal notice provided to the occupant/suspect or any owner of record.

Petitioner contends that the aforementioned notice/service requirements set forth in subsection (c) are not necessary if notice was provided by publication consistent with subsection (e). That is not accurate; the publication requirement is *in addition to* the required service and notice, not in lieu thereof. (See The Rutter Guide: California Criminal Procedure §32:29 (2022 Update).) Petitioner’s reliance on CCP §415.50(a) is misplaced. First, §415.50(a) only supplants direct service of the summons when there is evidence that the defendant “cannot with reasonable diligence be served in another manner,” and petitioner provides no such evidence. Second, §415.50(a) does not apply to forfeiture proceedings. (See H&S Code §11488.5(c)(3).) Although H&S Code §11488.5(a) provides that an interested person only has 30 days “from the date of the last publication” to challenge the forfeiture, this pertains to any claimant who was not entitled by statute to specific service and notice.

Assuming proper service and notice *of the petition*, and the lapse of 30 days, petitioner is then entitled to seek a default judgment *by noticed motion*. (H&S Code §11488.5(b)(1).) Since the Uniform Controlled Substances Act does not include a special rule of notice of such a motion, the notice period must be at least 16 court days. CCP §1005(b). This period is extended up to five calendar days if the motion is served within the State of California by regular US mail. (*Id.*) Since the occupant of the subject property is a Chinese national, service might be extended up to 20 calendar days. (*Id.*) The motion here was filed on 08/04/22. There is no proof of service with the motion, but even if it had been served on the occupant/suspect and the owner of record of the subject property, the motion was clearly set too soon. The hearing date of 08/19/22 was only 11 court days from filing, and that does not account for any service short of personal delivery.

Finally, even if the *petition* had been properly served and noticed, and the *motion* itself properly served and noticed, the memorandum of points and authorities is not adequate. Petitioner must “establish a prima facie case in support of its petition for forfeiture.” (H&S Code §11488.5(b)(1).) To meet that burden, petitioner must present evidence from which a reasonable trier of fact could conclude that the money was “furnished or intended to be furnished by any person in exchange for a controlled substance” or “traceable to such an exchange” or “used or intended to be used to facilitate” a violation of the Uniform Controlled Substances Act, and most notably Article 2. Petitioner contends that the evidence presented provides a sufficient basis for concluding that the money was fruit of an effort to possess cannabis for sale, in violation of H&S §11359, but without any discussion of §11362.2. The evidence submitted is bare-boned, and is not enough to connect the dots between illegal possession for sale and the money being the fruit thereof. Petitioner has neglected to inform this Court

whether a criminal action related to the seizure has been filed – which impacts the proceedings. (See H&S §11488.4(h).)

Motion DENIED without prejudice. The Clerk shall provide notice of this Ruling to the parties forthwith. No further order pursuant to Rule of Court 3.1312 is required.

**FOSTER v. IRBC2 PROPERTIES LLC et al**  
**21CV45573**

**DEMURRER TO COMPLAINT**

This is a wrongful foreclosure case. Before the Court this day is a demurrer by co-defendant Real Time Resolutions Inc. to parts of the operative Complaint. Although the demurrer is technically deficient (see CCP §430.60 and CRC 3.1320(a)), a review of the supporting memorandum reveals that the demurrer is directed to just the 1<sup>st</sup> (cancellation) and 2<sup>nd</sup> (slander of title) causes of action. On 07/22/22, this Court sustained a demurrer to these same causes of action (filed by other parties), and gave plaintiff 30 days with which to amend to cure. In opposition to this pending demurrer, plaintiff acknowledges his intent to amend the operative pleading in such a way as to also cure the concerns raised by Real Time Resolutions Inc. Thus, as a practical matter, the demurrer may be treated as substantively MOOT, although there is the related question of whether plaintiff should be allowed to move Real Time Resolutions Inc. from the cancellation and slander causes of action over to the accounting cause of action, but to make sure all parties are on the same page, the demurrer is SUSTAINED on uncertainty grounds, with 20 days leave to amend, for the same reasons stated in this Court's 07/22/22 order.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendants to prepare formal Orders pursuant to Rule of Court 3.1312 in conformity with these rulings.