

GREER v. CALAVERAS COUNTY

18CV43460

MOTION TO INTERVENE IN PUTATIVE CLASS ACTION

This is a class action regarding the county's former system of collecting fees and taxes for cannabis cultivation pursuant to Calaveras County Urgency Ordinance Chapter 17.95 and Measure C. Before the Court this day is an opposed motion for intervention.

Intervention permits a nonparty, deemed an intervenor, to become a party to an action or proceeding between other persons. The purpose of allowing intervention is to promote fairness by involving all parties potentially affected by a judgment. Intervenor here claims to be potential members of a class based on the operative allegations, but are concerned that their interests are not being adequately protected by the current class representatives. According to intervenors, the current class representatives and class counsel "propose to take the case in a different direction [and] are neither committed nor prepared to diligently represent the interests of the entire putative class." Jost Decl Para 7; Garcia Decl Para 7.

Unnamed class members may become parties to the action, aligned on the plaintiff's side, by seeking to intervene pursuant to CCP §387. "If parties seek permissive intervention under section 387, subdivision (a), they must show they have an interest in the litigation. For intervention as a matter of right under section 387, subdivision (b), intervenors must show they are class members whose interests are not adequately represented by the existing parties." *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 267.

Mandatory intervention based upon an impairment or impedance of the intervenors' ability to protect their own interests (CCP §387(d)(1)(B)) is rare since unnamed class members always retain the right to opt-out of any proposed class settlement, and intervention cannot be granted solely for the purpose (though laudable) of protecting the rights of others. See *Edwards v. Heartland Payment Systems, Inc.* (2018) 29 Cal.App.5th 725, 733. No basis is shown at all for intervention as a matter of right.

Permissive intervention in a class action is only authorized when intervention will not enlarge the issues in the litigation, will not impinge on the right of the original parties to litigate the matter in their own fashion, and when the reasons for the intervention outweigh any opposition by the parties presently in the action. *Edwards* at 736; in accord, *Carlsbad Police Officers Association v. City of Carlsbad* (2020) 49 Cal.App.5th 135, 148-149. In this instance, while there does not appear to be any concern with permitting intervenors to join as party-plaintiffs, there is much concern regarding intervenors' choice of counsel. These attorneys filed a motion to substitute out the current class representatives without their knowledge or consent, and then refused to accept their discharge until a motion for that purpose was filed. It may be that counsel have invested much time in the case, and could assert an equitable lien in the legal fees generated, but the case does not "belong" to them even if they helped give it birth. Based on the whole of the files, their conduct in the case to date suggests to this Court that allowing them back will enlarge the issues, impinge on current counsel's ability to manage the case, and cause unnecessary angst. As such, permissive intervention is denied, without prejudice to a change in circumstances. There will be opportunities for intervenors to

follow the progress, object to certification, and even conduct limited discovery before deciding to opt-in or out of any proposed settlement. They have options.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling, and a proposed Judgment thereon.