

1. ALLIED BUILDING PRODUCTS CORP. v. HOLBERT PC-20140356

Judgment Debtor Examination.

TENTATIVE RULING # 1: THE PERSONAL APPEARANCE OF THE DEBTOR IS
REQUIRED AT 8:30 A.M., THURSDAY, SEPTEMBER 3, 2015 IN DEPARTMENT NINE.

2. PEOPLE v. TRACY Z. PC-20060359

Petition.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON THURSDAY,
SEPTEMBER 3, 2015 IN DEPARTMENT NINE.

3. REGELBRUGGE v. GONZALES PC-20140277

Defendants/Cross-Complainants Gonzales’ Motion for Separate Trials and Separate Discovery.

Defendants/Cross-Complainants Gonzales move to have three separate trials on the punitive damage claim, the quiet title causes of action for quiet title and declaratory relief, and the tort causes of action for property damage, assault, battery and negligence. Defendants/Cross-Complainants Gonzales further move for a court order that the parties conduct three separate and distinct discovery processes that are tied to the three separate trials, thereby allowing parties that are only involved in each separate trial to only be involved in the related separate and distinct discovery processes.

Plaintiffs oppose the motion on the following grounds: the trial on punitive damages generally follows after a prima facie case has been established for the recovery of punitive damages; the rules relating to discovery of financial condition for the purpose of establishing punitive damages are well known and there is no need for an order prohibiting discovery of financial condition at this time; the handling of the punitive damages phase of the trial should be left to the trial judge; severance of the trial on the tort causes of action from the quiet title claims is not appropriate, because the facts are equally important and relevant to each of those causes of action and judicial economy will be promoted by their joint trial; the claimed vested interest in title directly affects the right to recover tort damages claimed; and there is no need for separating the discovery process.

Defendants/Cross-Complainants Gonzales replied to the opposition.

Punitive Damages

“The court shall, on application of any defendant, preclude the admission of evidence of that defendant's profits or financial condition until after the trier of fact returns a verdict for plaintiff awarding actual damages and finds that a defendant is guilty of malice, oppression, or fraud in accordance with Section 3294. Evidence of profit and financial condition shall be admissible only as to the defendant or defendants found to be liable to the plaintiff and to be guilty of malice, oppression, or fraud. Evidence of profit and financial condition shall be presented to the same trier of fact that found for the plaintiff and found one or more defendants guilty of malice, oppression, or fraud.” (Civil Code, § 3295(d).)

The motion to bifurcate the trial on punitive damages from the remainder of the trial is granted.

Tort Causes of Action and Quiet Title Causes of Action

“The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action, including a cause of action asserted in a cross-complaint, or of any separate issue or of any number of causes of action or issues, preserving the right of trial by jury required by the Constitution or a statute of this state or of the United States.” (Code of Civil Procedure, § 1048(b).)

Under the totality of the circumstances presented, it does not appear that holding separate trials on the tort causes of action and the causes of action related to title would further the convenience or be conducive to expedition and/or judicial economy.

Discovery- Financial Condition

“No pretrial discovery by the plaintiff shall be permitted with respect to the evidence referred to in paragraphs (1) and (2) of subdivision (a) unless the court enters an order permitting such discovery pursuant to this subdivision...Upon motion by the plaintiff supported by appropriate affidavits and after a hearing, if the court deems a hearing to be necessary, the court may at any time enter an order permitting the discovery otherwise prohibited by this subdivision if the court finds, on the basis of the supporting and opposing affidavits presented, that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294. Such order shall not be considered to be a determination on the merits of the claim or any defense thereto and shall not be given in evidence or referred to at the trial.” (Civil Code, § 3295(c).)

“Section 3295(c) (Sen. Bill No.1989 (Sept. 2, 1980) (1979-1980 Reg. Sess.)) was enacted in 1980 in order to protect defendants from being subjected to pretrial discovery into their financial affairs until a plaintiff establishes the likelihood he will prevail on his punitive damages claim. (See *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1151, 74 Cal.Rptr.2d 510.) As stated by the bill's author, Senator Kenneth L. Maddy, the statute is ‘intended to protect defendants from being pressured into settling non-meritorious cases in order to avoid divulging their financial privacy in civil discovery.’ (Letter from Senator Kenneth L. Maddy to Governor Edmund G. Brown, Jr. (Sept. 2, 1980) p. 4.)” (Jabro v. Superior Court (2002) 95 Cal.App.4th 754, 757.)

The statutory and case law is clear that pre-trial discovery of a party’s financial condition is prohibited absent the court granting a motion allowing such discovery. Therefore, there is no

need for the court to issue an order prohibiting pre-trial discovery of defendants Gonzales' financial condition. The motion for such an order is denied.

- Other Discovery

“Except as otherwise provided by a rule of the Judicial Council, a local court rule, or a local uniform written policy, the methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or another method, shall not operate to delay the discovery of any other party.” (Code of Civil Procedure, § 2019.020(a).)

“Notwithstanding subdivision (a), on motion and for good cause shown, the court may establish the sequence and timing of discovery for the convenience of parties and witnesses and in the interests of justice.” (Code of Civil Procedure, § 2019.020(b).)

The moving defendants have failed to show good cause establishing that it is convenient to the parties and witnesses and in the interests of justice to specify by court order that the discovery process is separated according to categories of causes of action pled in the complaint. The request to split up the discovery process is denied.

In summary, the motion is granted in part and denied in part as stated in this ruling.

TENTATIVE RULING # 3: THE MOTION IS GRANTED IN PART AND DENIED IN PART. THE COURT ORDERS A TRIAL OF ALL CAUSES OF ACTION OF THE COMPLAINT AND CROSS-COMPLAINT TO PRECEDE THE TRIAL ON THE ISSUE OF PUNITIVE DAMAGES AND THE TRIAL ON THE ISSUE OF PUNITIVE DAMAGES SHALL ONLY PROCEED IN THE EVENT THAT THE TRIER OF FACT RETURNS A VERDICT FOR PLAINTIFF AWARDING ACTUAL DAMAGES AND FINDS THAT A DEFENDANT IS GUILTY OF MALICE, OPPRESSION, OR FRAUD IN ACCORDANCE WITH CIVIL CODE, § 3294. THE REMAINDER OF THE MOTION IS DENIED. 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. 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 THURSDAY, SEPTEMBER 3, 2015 IN DEPARTMENT NINE UNLESS OTHERWISE NOTIFIED BY THE COURT. ALL OTHER LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING WITHIN TEN COURT DAYS OF THE ISSUANCE OF THE TENTATIVE RULING. (EL DORADO COUNTY SUPERIOR COURT LOCAL RULES, RULE 7.10.05, et seq.)

4. HOEFLER v. SOURCE REFRIGERATION AND HVAC, INC. PC-20130446**Hearing Re: Default Judgment.**

Plaintiffs filed a form complaint against defendant Source Refrigeration and HVAC, Inc. asserting causes of action for general negligence and loss of consortium. The complaint prays for compensatory damages according to proof. The proofs of service in the court file declare that defendant was served the summons, complaint, and a statement of damages by personal delivery to corporate operation specialists on May 8 and August 21, 2014. Default was entered on July 18, 2014. Plaintiff seeks entry of judgment in the amount of \$494,464.27 representing claims of \$79,464.27 in past and projected future medical expenses, \$300,000 for pain and suffering, \$50,000 for emotional distress, and \$65,000 for loss of consortium.

Plaintiff Jay Hoefler declares: he has been married to plaintiff Terri Hoefler for nearly 40 years; his spousal relationship with his wife has been harmed as a result of the August 31, 2011 accident; he has been deprived of his wife's companionship, comfort, care, assistance, protection, affection, society, solace, moral support, and has lost enjoyment of sexual relations and her physical assistance in operating and maintaining the home; the focus of the marriage has become his wife's injuries and her recovery; his wife has withdrawn from any physical affection, including hugs, embraces and kisses; intimacy has stopped in the relationship; after the incident his wife was very emotional and cried a lot; she was emotionally defeated when she could not perform work to her prior standard and in tears most days after returning home from work; she was devastated when she lost her job; she has been unable to participate in outdoor activities since the accident as they had done prior to the accident; he does all the shopping, takes her to doctors, gets her medications, he often runs errands, and feels he is a full time caregiver; they socialized with friends every couple of weeks prior to the accident and

have stopped all socializing; and he feels he has lost about 40% of his wife as a result of the accident.

Plaintiff Terri Hoefler declares: defendant's employees were performing HVAC work at her place of employment on the date in question; that evening at the end of her shift at approximately 9:20 p.m. she went outside to inform defendant's employees that she and her co-workers were leaving and defendant's employees were responsible to secure the back doors to the Grocery Outlet store; as she walked along the south side of the building and turned the corner to try to find defendant's employees, she walked into the glare of a bright light from a construction lamp pointed in her direction, did not see a compressor sitting on a pallet left in the middle of a pathway, and tripped over it causing her injuries; there was no caution tape, cones, or any other kind of warning; she suffered painful injuries to her chin, right hip, right groin, right buttocks, right leg, low back, and mid back; she was treated and evaluated by multiple health care providers; she made a workers compensation claim and was provided benefits; due to her injuries, her work hours decreased from 40 hours per week to 20 hours per week; she was unable to perform her duties due to her injuries and eventually lost her job on May 1, 2013; she settled her workers compensation claim in April 2015; she has not been able to return to the same kind of work since; she still suffers from ongoing hip and groin pain, right leg pain with numbness, and low back pain; she has scar tissue and a bone chip floating in her chin where she struck her face; she takes medications for pain and depression; she is currently receiving physical therapy; she limits her normal activities of daily life in order to manage her pain symptoms; and she still suffers pain on a daily basis, which greatly impacts her quality of life.

“It is imperative in a default case that the trial court take the time to analyze the complaint at issue and ensure that the judgment sought is not in excess of or inconsistent with it. It is not

in plaintiffs' interest to be conservative in their demands, and without any opposing party to point out the excesses, it is the duty of the court to act as gatekeeper, ensuring that only the appropriate claims get through.” (*Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 868, 121 Cal.Rptr.2d 695 (*Heidary*)).” (*Electronic Funds Solutions v. Murphy* (2005) 134 Cal.App.4th 1161, 1179.)

The Third District Court of Appeal has held: “Ordinarily the complaint delimits the nature of the legal theories which plaintiff may pursue and the nature of the evidence which is admissible. ‘Under either [the common law or code pleading] system [plaintiff’s] allegations and proofs must agree, and it is not sufficient that his evidence discloses a cause of action against the defendant unless it be the cause of action he has alleged in his complaint.’ (*Barrere v. Soms* (1896) 113 Cal. 97, 102, 45 P. 177, orig. italics; also see 5 Witkin, Cal.Proc. (3d ed. 1985) Pleading, § 1137.) If the plaintiff wholly departs from the existing complaint at a hearing on damages, beyond the limitations of the doctrine of curable variance, the trial court should hew to the complaint. (See Code Civ.Proc., § 471.) In such a case the court should deny relief or limit relief to that which is appropriate considering only the evidence which is within this pale.” (*Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1744-1745.)

“In all default judgments, the demand sets the ceiling on recovery. (Id.) A defendant who decides to default need not examine the allegations of the complaint to determine the extent of liability if the case were contested. (6 Witkin, Cal.Procedure (3d ed.1985), Proceedings Without Trial, § 251, at p. 549.)” (*Barragan v. Banco BCH* (1987) 188 Cal.App.3d 283, 305.)

“Plaintiffs in a default judgment proceeding must prove they are entitled to the damages claimed. (Code of Civ.Proc., § 585; *Taliaferro v. Hoogs* (1963) 219 Cal.App.2d 559, 560, 33 Cal.Rptr. 415.)” (*Barragan v. Banco BCH* (1986) 188 Cal.App.3d 283, 302.)

Although the proofs of service declare that a statement of damages was served on defendant, the court is unable to find a copy of the statement of damages in the court's file. Absent submission of the statement, the court is unable to determine the limit of damages set by the statement. The defendant is subject only to a judgment as the plaintiff demands in the prayer of the complaint or in the statement of damages served on defendant and any greater or different relief by default judgment is unauthorized. (See 6 Witkin (5th ed. 2008) Proceedings Without Trial, § 149, pages 583-584.)

Plaintiff requested and was granted a continuance of the hearing in order to file additional documentation in support of entry of the judgment.

TENTATIVE RULING # 4: UPON REQUEST OF PLAINTIFF, THIS MATTER IS CONTINUED TO 8:30 A.M. ON THURSDAY, OCTOBER 1, 2015 IN DEPARTMENT NINE.

5. CITIBANK v. COPE PC-20100090

Hearing Re: Claims of Exemption.

The judgment debtor claims the funds obtained in the bank levy are exempt paid earnings that were just deposited as partial payment for his current job and to purchase materials. The judgment debtor admits he is self-employed.

His spouse claims the account was a joint account, the funds belong to her, and she requests return of the funds.

The judgment creditor's verified opposition to the claims of exemption objects to the claims on the following grounds: the judgment creditor has confirmed with the bank that the account levied upon is only held in the name of the judgment debtor and no other person; the judgment debtor has not traced the claimed paid earnings into the accounts; the judgment debtor has not established that all funds on deposit are paid earnings; and some of the claimed expenses appear to be excessive.

Judgment Debtor Claim of Exemption

The exemption claimant has the burden of proof. (Code of Civil Procedure, § 703.580(b).) "The claim of exemption is deemed controverted by the notice of opposition to the claim of exemption and both shall be received in evidence. If no other evidence is offered, the court, if satisfied that sufficient facts are shown by the claim of exemption (including the financial statement if one is required) and the notice of opposition, may make its determination thereon. If not satisfied, the court shall order the hearing continued for the production of other evidence, oral or documentary." (Code of Civil Procedure, § 703.580(c).)

"Subject to any limitation provided in the particular exemption, a fund that is exempt remains exempt to the extent that it can be traced into deposit accounts or in the form of cash

or its equivalent.” (Code of Civil Procedure, §703.080(a).) “The exemption claimant has the burden of tracing an exempt fund.” (Code of Civil Procedure, §703.080(b).)

Earnings paid to the debtor employee during the 30 day period ending on the date of levy on the bank account are fully exempt if those earnings were the subject to an earnings withholding order or an earnings assignment order for support. If the earnings were not subject to such orders, 75% of the earnings for the 30 days prior to the levy on deposit in the account are exempt. (Code of Civil Procedure, §§ 704.070(a)(2) and (b).) “Paid earnings’ means earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy. For the purposes of this paragraph, where earnings that have been paid to the employee are sought to be subjected to the enforcement of a money judgment other than by a levy, the date of levy is deemed to be the date the earnings were otherwise subjected to the enforcement of the judgment.” (Code of Civil Procedure, §§ 704.070(a)(2).) “Earnings’ means compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise.” (Code of Civil Procedure, § 706.011(a).) “Employee’ means a public officer and any individual who performs services subject to the right of the employer to control both what shall be done and how it shall be done.” (Code of Civil Procedure, § 706.011(c).) “Employer’ means a person for whom an individual performs services as an employee.” (Code of Civil Procedure, § 706.011(d).) The appellate court in Moses v. DeVersey (1985) 157 Cal.App.3d 1071 found that the term “employee” as defined in Section 706.011 did not include self-employed persons. The appellate court further held that a self-employed person’s compensation was not “earnings” as defined in Section 706.011 and, therefore, was not subject to a claim of statutory exemption from wage garnishment. The appellate court stated: “Defendants contend that the earnings of a self-employed certified

public accountant fall within the definition of Code of Civil Procedure section 706.011 because Mr. DeVersecy's clients can control his work. Defendants cite *Gamble v. Utley* (1927) 86 Cal.App. 414, 260 P. 930, for the proposition that an attorney's earnings fall within the exemption of Code of Civil Procedure section 706.011. *Gamble* dealt with the garnishment of a district attorney's wages. A district attorney is employed by the county and this relationship is quite different from a self-employed certified public accountant. A self-employed certified public accountant is not subject to the control of his clients in what work could be done or how the work should be done." (*Moses v. DeVersecy* (1985) 157 Cal.App.3d 1071, 1074.) Similarly here, should it be established that the funds on deposit is income from the claimants' self-employment, the funds would not be subject to the statutory exemption for "paid earnings".

The judgment debtor having admitted he is self-employed and the funds are from his self-employment, he can not claim them as paid earnings. The judgment debtor's claim of exemption is denied.

Spouse's Third Party Claim of Exemption

A third party claim of exemption is made pursuant to Code of Civil Procedure, §§ 720.010, et seq. The third party claim procedures are to be utilized by third parties, not named defendants in the underlying action. (*Commercial & Farmers Nat. Bank v. Hetrick* (1976) 64 Cal.App.3d 158, 165.)

"A third person claiming ownership or the right to possession of property may make a third-party claim under this chapter in any of the following cases if the interest claimed is superior to the creditor's lien on the property: (a) Where real property has been levied upon under a writ of attachment or a writ of execution. (b) Where personal property has been levied upon under a writ of attachment, a writ of execution, a prejudgment or postjudgment writ of possession, or a writ of sale." (Code of Civil Procedure, § 720.110.) "The Enforcement of Judgments Law (§

680.010 et seq.) includes procedures for determining the claims of third persons, i.e. those other than the judgment debtor and creditor. (§ 720.010 et seq.) The purpose of third-party claims is to give a quick and effectual remedy to third parties whose property has been levied upon by mistake. (*Rubin v. Barasch* (1969) 275 Cal.App.2d 835, 836, 80 Cal.Rptr. 337.) ¶ The third-party claims procedure is available to a person claiming a superior ownership or possessory right in real property that is subjected to attachment or execution to satisfy a money obligation. The third-party claims procedure also may be utilized to assert superior claims of ownership or right to possession where personal property has been levied upon. (§ 720.110, subs. (a), (b), and Cal.Law Revision Com. com., 17 West's Ann.Code Civ.Proc. (1987 ed.) foll. § 720.110, pp. 530-531.) ¶ In ruling on a third-party claim, the trial court renders 'judgment determining the validity of the third-party claim and may order the disposition of the property or its proceeds in accordance with the respective interests of the parties.' (§ 720.390.)" (Regency Outdoor Advertising, Inc. v. Carolina Lanes, Inc. (1995) 31 Cal.App.4th 1323, 1329.) "The third-party claim procedures are optional and the third-party does not waive a superior interest in the property levied upon by failure to make such a third-party claim. (Cal.Law Revision Com. com., 17 West's Ann.Code Civ.Proc. (1987 ed.) foll. § 720.110, p. 531; Legis.Com. com.-- Assem. foll. § 720.150, p. 539.) This principle is a corollary of the general rule a judgment or levy reaches only the interest of the debtor in the property because a judgment creditor can acquire no greater right in the property levied upon than that of its judgment debtor. (Legis.Com. com.-- Assem., 17 West's Ann.Code Civ.Proc. (1987 ed.) foll. § 720.150, p. 539; *Jensen v. Hugh Evans & Co.* (1941) 18 Cal.2d 290, 301, 115 P.2d 471.)" (Regency Outdoor Advertising, Inc., supra at pages 1329-1330.)

The Sheriff's Department reports that the bank is holding \$8,743.01 in funds. The financial statement declares that the spouse's net income is only \$501.71 per month. To accumulate

over \$8,000 in spousal earnings in the account, the spouse would have had to save her entire claimed net earnings for over 17 months even in the face of an admitted \$1,700 deficit in monthly income versus expenses. The claim to all the funds has not been established.

In addition, there is insufficient evidence tracing the spouse's earnings into the subject account. The spouse's third party claim of exemption is denied.

In summary, the claims of exemption are denied.

TENTATIVE RULING # 5: THE JUDGMENT DEBTOR'S CLAIM OF EXEMPTION IS DENIED. THE JUDGMENT DEBTOR'S SPOUSE'S THIRD PARTY CLAIM OF EXEMPTION IS DENIED. 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. 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 THURSDAY, SEPTEMBER 3, 2015 IN DEPARTMENT NINE UNLESS OTHERWISE NOTIFIED BY THE COURT. ALL OTHER LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING WITHIN TEN COURT DAYS OF THE ISSUANCE OF THE TENTATIVE RULING. (EL DORADO COUNTY SUPERIOR COURT LOCAL RULES, RULE 7.10.05, et seq.)

6. RAY v. WESTWOOD HOMES, INC. PC-20110475

Travelers Casualty Co. of America’s Motion for Leave to Intervene.

Travelers Casualty Co. of America (Travelers) states that it is the insurer of defendants Westwood Homes, Inc. and Westwood Promontory, Ltd. (Westwood) pursuant to the provisions of the insurance policy issued to Clarion Electric, Inc. in which defendants Westwood are named as additional insureds. Travelers moves for leave to intervene on the ground that it is entitled to intervene as a matter of right, because its insured, defendants Westwood, is entitled to recover from various sub-contractors under contractual indemnity claims and Travelers is entitled to partial subrogation in relation to those claims of contractual indemnity.

The proof of service declares that notice of the motion and the moving papers were served by electronic service to interested parties’ counsels on August 5, 2015. There is no opposition to the motion in the court’s file.

The regional claims manager declares: general liability insurance policies were issued to Clarion Electric, Inc., which provided that in the event an insured has a right to recover loss from a third party for payments Travelers has made, those rights are transferred to Travelers; Travelers agreed to defend defendants Westwood subject to a reservation of rights as additional insureds under the subject policies; to date Travelers has incurred in excess of \$127,000 in defense costs; defendants Westwood tendered their defense to the action to Travelers; and to date none of the non-defending sub-contractors have agreed to defend or indemnify defendants Westwood.

“Upon timely application, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or

proceeding. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court and served upon the parties to the action or proceeding who have not appeared in the same manner as upon the commencement of an original action, and upon the attorneys of the parties who have appeared, or upon the party if he has appeared without an attorney, in the manner provided for service of summons or in the manner provided by Chapter 5 (commencing with Section 1010) Title 14 of Part 2. A party served with a complaint in intervention may within 30 days after service move, demur, or otherwise plead to the complaint in the same manner as to an original complaint.” (Code of Civil Procedure, § 387(a).)

“If any provision of law confers an unconditional right to intervene or if the person seeking intervention claims an interest relating to the property or transaction which is the subject of the action and that person is so situated that the disposition of the action may as a practical matter impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by existing parties, the court shall, upon timely application, permit that person to intervene.” (Code of Civil Procedure, § 387(b).)

“A determination that a settlement was made in good faith bars the nonsettling defendants from asserting claims against the settling tortfeasor for equitable comparative contribution and partial or comparative indemnity. (Code Civ. Proc., § 877.6, subd. (c).) Because an insurer stands in the shoes of its insured in a subrogation action, the insurer cannot pursue those types of indemnity claims against the settling tortfeasor. (See *Wilshire Ins. Co. v. Tuff Boy Holding, Inc.* (2001) 86 Cal.App.4th 627, 631–633, 640, 103 Cal.Rptr.2d 480.) ¶ However, a

good faith settlement order does not bar a non-settling tortfeasor from asserting an indemnification claim against the settling defendants based on an express contract. (*Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1031–1032, 269 Cal.Rptr. 720, 791 P.2d 290 [good faith settlement bars claim for implied contractual indemnity, but not express contractual indemnity]; *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 790, 274 Cal.Rptr. 147; *C.L. Peck Contractors v. Superior Court* (1984) 159 Cal.App.3d 828, 834, 205 Cal.Rptr. 754 [“We hold that an indemnity claim against a codefendant based on express contract survives a good faith [Code of Civil Procedure] section 877.6 settlement”].) Because an insurer stands in the shoes of its insured, the insurer can pursue a cause of action against the settling tortfeasor for breach of an express contractual indemnification clause.” (*Interstate Fire and Cas. Ins. Co. v. Cleveland Wrecking Co.* (2010) 182 Cal.App.4th 23, 32-33.)

“Subdivision (b) of Code of Civil Procedure section 387 is in substance an exact counterpart to rule 24(a) of the Federal Rules of Civil Procedure; “ [t]herefore, the Legislature must have intended that they should have the same meaning, force and effect as have been given the federal rules by the federal courts [citations].’ ” (*Kahn v. Kahn* (1977) 68 Cal.App.3d 372, 384, 137 Cal.Rptr. 332.) Accordingly, the Legislature, in adopting subdivision (b) of Code of Civil Procedure section 387, intended it to be interpreted consistently with federal cases interpreting rule 24(a)(2) as giving a subrogated insurer a right to intervene in its insured's lawsuit against the responsible third party.” (*Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540, 556.)

Absent opposition, under the circumstances presented, it appears appropriate to grant the motion.

TENTATIVE RULING # 6: ABSENT OPPOSITION, THE MOTION FOR LEAVE TO INTERVENE IS GRANTED. 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. 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 THURSDAY, SEPTEMBER 3, 2015 IN DEPARTMENT NINE UNLESS OTHERWISE NOTIFIED BY THE COURT. ALL OTHER LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING WITHIN TEN COURT DAYS OF THE ISSUANCE OF THE TENTATIVE RULING. (EL DORADO COUNTY SUPERIOR COURT LOCAL RULES, RULE 7.10.05, et seq.)

7. LEE v. LITWIN PC-20120475

Defendant Litwin's Motion for Leave to File 1st Amended Cross-Complaint and 1st Amended Answer.

TENTATIVE RULING # 7: THIS MATTER IS CONTINUED TO 8:30 A.M. ON THURSDAY, OCTOBER 1, 2015 IN DEPARTMENT NINE.

8. SERRANO EL DORADO OWNERS' ASSOC. v. TRUONG PC-2011465**Plaintiff's Motion to Assign Community Spouse's Wages.**

On October 23, 2013 judgment was entered against defendant Shannon Ma in the amount of \$25,084.04. The judgment creditor homeowners' association moves for an order for an earnings withholding order against Thomas J. Chu. The judgment creditor contends that Thomas Chu is married or in a registered domestic partnership with the judgment debtor.

“An earnings withholding order may not be issued against the earnings of the spouse of the judgment debtor except by court order upon noticed motion.” (Code of Civil Procedure, § 706.109.) “Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.” (Family Code, § 910(a).)

The Assembly Legislative Committee Comments to Section 706.109 states: “Section 706.109 recognizes that despite the general rule that community property is liable for debts of a spouse, community property earnings are unique and may not be liable in some situations. See, e.g., Civil Code § 5120.110 (liability of community property). For this reason an earnings withholding order against the spouse of the judgment debtor may only be issued upon noticed motion. [17 Cal.L.Rev.Comm. Reports 1 (1984); 18 Cal.L.Rev.Comm. Reports 61 (1984)].”

“The earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person's spouse has no right of withdrawal and are uncommingled with other property in the community estate, except property insignificant in amount.” (Family Code, § 911(a).)

First, the judgment debtor failed to provide proof of service of notice of the motion and the moving papers on the judgment debtor and the purported spouse.

Second, there is no evidence submitted in support of the motion to establish that Thomas Chu is married to or the registered domestic partner of the debtor. There is no declaration submitted in support of the motion that sets forth facts establishing such a marriage or domestic partnership. While there is a copy of the first page of an OSC re: name change wherein Thomas J. Chu and Shannon N.M. Chu are petitioners, the document is unauthenticated and there is no evidence establishing Shannon N.M. Chu is Shannon Ma and that she adopted the Chu family name as a result of marriage or a registered domestic partnership.

The motion is denied.

TENTATIVE RULING # 8: THE MOTION IS DENIED. 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. 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 THURSDAY, SEPTEMBER 3, 2015 IN DEPARTMENT NINE UNLESS OTHERWISE NOTIFIED BY THE COURT. ALL OTHER LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR

HEARING WITHIN TEN COURT DAYS OF THE ISSUANCE OF THE TENTATIVE RULING.

(EL DORADO COUNTY SUPERIOR COURT LOCAL RULES, RULE 7.10.05, et seq.)

9. SPEARS v. SPEARS PFL-20120489

Request for Temporary Order and Modification.

**TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON THURSDAY,
SEPTEMBER 3, 2015 IN DEPARTMENT NINE.**

10. PEOPLE v. SPEARS P12CRM1092

Order of Examination.

TENTATIVE RULING # 10: THE PERSONAL APPEARANCE OF THE PARTY TO BE EXAMINED IS REQUIRED AT 8:30 A.M., THURSDAY, SEPTEMBER 3, 2015 IN DEPARTMENT NINE, PROVIDED PROOF OF SERVICE OF THE ORDER TO APPEAR FOR EXAMINATION IS FILED PRIOR TO THE HEARING SHOWING THAT PERSONAL SERVICE ON THE PARTY TO BE EXAMINED WAS EFFECTED NO LATER THAN TEN DAYS PRIOR TO THE HEARING DATE (CCP, § 708.110(d)). IF THE APPROPRIATE PROOF OF SERVICE IS NOT FILED, NO EXAMINATION WILL TAKE PLACE.