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12 CITY OF SAN BUENAVENTURA

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES

16 SANTA BARBARA CHANNELKEEPER,
a California non-profit corporation,

17 Petitioner,

18 v.

19 STATE WATER RESOURCES
20 CONTROL BOARD, etc., et al.,

21 Respondents.

22 CITY OF SAN BUENAVENTURA, etc.,

23 Cross-Complainant

24 v.

25 DUNCAN ABBOTT, an individual, et al.

26 Cross-Defendants.
27
28

Case No. 19STCP01176

Judge: Honorable William F. Highberger

EX PARTE APPLICATION BY CROSS
COMPLAINANT CITY OF SAN
BUENAVENTURA TO SET AN ORDER TO
SHOW CAUSE HEARING RE FINAL
ORDER FOR PUBLICATION OF
SUMMONS ON UNSERVED CROSS-
DEFENDANTS; MEMORANDUM OF
POINTS AND AUTHORITIES

[CCP §§ 415.50]

Filed concurrently with:

1. Declaration of Marnie Prock;
2. [Proposed] Order

Action Filed: Sept. 19, 2014

Trial Date: Not Set

1 **TO THIS HONORABLE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS**
2 **OF RECORD:**

3 Respondent and Cross-Complainant, City of San Buenaventura (“CITY”) hereby applies
4 for an Order directing that an Order to Show Cause hearing be set to obtain a final order re
5 service of the Summons of the Third Amended Cross-Complaint for Violation of Reasonable
6 Use; Violation of Public Trust; Declaratory Relief – Pueblo and/or Treaty Water Rights;
7 Declaratory Relief – Prescriptive Water Rights; Declaratory Relief – Appropriative Water
8 Rights; Comprehensive Adjudication; Declaratory Relief – Municipal Priority; Declaratory Relief
9 – Human Right to Water and Declaratory Relief filed in this action on January 2, 2020
10 (hereinafter “Third Amended Cross Complaint”) on the 79 cross-defendants named in this action
11 which remain unserved because the service addresses are fenced and gated, cross-defendants are
12 evading or cannot be located, by publication in a newspaper of general circulation, pursuant to
13 Code of Civil Procedure section 415.50.

14 This Application is made on the grounds that the Cross-Defendants indicated above have
15 an interest in real property (the “Properties”), which are subject to the Court’s jurisdiction.
16 However, as outlined below, CITY has been unsuccessful in its personal service and mail
17 attempts specified in Code of Civil Procedure sections 415.10 through 415.30 for more than a
18 year. Thus, CITY respectfully requests that this Court issue an order for service of the Summons
19 by publication.

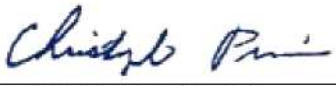
20 CITY’s Application is based on this Application, the attached Memorandum of Points and
21 Authorities, the declaration of Marnie Prock, and the complete files and records in this action.

22 The CITY notes here that it does not expect this application to be considered during the
23 June 21, 2021 Status Conference. However, the CITY is asking the Court to set an Order to
24 Show Cause hearing on June 30, 2021, or as soon thereafter as the Court is available, in order to
25 serve via Publication any remaining cross-defendants. The CITY understands and appreciates
26 that the Court will rule on this application when the Court has ample time to consider it.

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Dated: June 18, 2021

BEST BEST & KRIEGER LLP

By: 

SHAWN HAGERTY
CHRISTOPHER M. PISANO
SARAH CHRISTOPHER FOLEY
PATRICK D. SKAHAN
Attorneys for Respondent and
Cross-Complainant
CITY OF SAN BUENAVENTURA

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 1. INTRODUCTION

4
5 Respondent and Cross-Complainant, City of San Buenaventura (“CITY”) hereby applies
6 for an Order directing that an Order to Show Cause hearing be set to obtain a final order re
7 service of the Summons of the Third Amended Cross-Complaint for Violation of Reasonable
8 Use; Violation of Public Trust; Declaratory Relief – Pueblo and/or Treaty Water Rights;
9 Declaratory Relief – Prescriptive Water Rights; Declaratory Relief – Appropriative Water
10 Rights; Comprehensive Adjudication; Declaratory Relief – Municipal Priority; Declaratory Relief
11 – Human Right to Water and Declaratory Relief filed in this action on January 2, 2020
12 (hereinafter “Third Amended Cross Complaint”) on the 79 Cross-Defendants named in this action
13 which remain unserved because (1) the service addresses are fenced and gated, (2) Cross-
14 Defendants are evading service, or (3) Cross-Defendants cannot be located. The CITY seeks an
15 Order from the Court allowing for service by publication in a newspaper of general circulation for
16 these Cross-Defendants, pursuant to Code of Civil Procedure section 415.50. Service on these
17 remaining unserved Cross-Defendants is requested to be by publication pursuant to Code of Civil
18 Procedure section 415.50 in the *Ventura County Star*, which is a newspaper of general circulation
19 in the County of Ventura which is the location of the Properties. This newspaper is the one most
20 likely to give notice to the Cross-Defendants because it is the major newspaper covering the area
21 wherein the Properties at issue in this case lie, and therefore where these Cross-Defendants are
22 residing. (Code Civ. Proc., § 415.50, subd. (b).)

23
24 A copy of the Summons and Third Amended Cross-Complaint could not be served on
25 those Cross-Defendants listed in Exhibit "A" by any of the following methods:

- 26
27 1. Handing a copy to the person to be served. (Personal service – Code Civ. Proc., §
28 415.10).

1 2. Leaving a copy, during usual office hours and in the office of the person to be
2 served, with the person who apparently was in charge and by thereafter mailing copies (by first
3 class mail, postage prepaid) to the person to be served at the place where the copies were left.
4 (Service on a corporation, partnership, association, or public entity - Code Civ. Proc., §
5 415.20(a)).

6
7 3. Leaving a copy at the dwelling house, usual place of abode, or usual place of
8 business of the person to be served in the presence of a competent member of the household or
9 person apparently in charge of his office or place of business, at least 18 years of age, who shall
10 be informed of the general nature of the papers and by thereafter mailing copies (by first class
11 mail, postage prepaid) to the person to be served at the place where the copies were left. (Service
12 on natural person, minor, incompetent, or candidate - Code Civ. Proc., § 415.20(b)).

13
14 4. Sending (by first class mail or airmail) a copy to the person to be served, together
15 with two copies of required form of notice and acknowledgement and a return envelope, postage
16 prepaid, addressed to the sender. (Service by mail - Code Civ. Proc., § 415.30).

17
18 5. Any other method (Code Civ. Proc., §§ 413.10, 413.30).

19
20 (See Declaration of Marnie Prock (“Prock Decl.”), filed concurrently herewith.) CITY
21 seeks an order from the Court to publish the Summons of its Third Amended Cross-Complaint for
22 the subject properties which are surrounded by fences and gates, for Cross-Defendants who are
23 evading service, or for Cross-Defendants who cannot be located. As discussed herein, service of
24 the Summons by publication is proper because each Cross-Defendant has an interest in the
25 Property, which is subject to the Court’s jurisdiction. (See Code Civ. Proc. § 415.50, subds.
26 (a)(1)-(2).) Additionally, CITY has exhausted all reasonable efforts to serve such Cross-
27 Defendants in any other manner specified in Code of Civil Procedure sections 415.10 through
28 415.30. Thus, CITY seeks to serve the Cross-Defendants by publication pursuant to Code of

1 Civil Procedure section 415.50 so that it may proceed with this Action.

2
3 I. LEGAL STANDARD FOR SERVICE BY PUBLICATION

4 A party may effectuate service by publication when it appears to the satisfaction of the
5 Court that a party to be served cannot with reasonable diligence be served by another method
6 specified in Code of Civil Procedure sections 415.10 through 415.30. Reasonable diligence
7 requires a “thorough systematic investigation and inquiry conducted in good faith by that party,
8 agent or attorney.” (*Watts v. Crawford* (1995) 10 Cal.4th 743, 749, n. 5 [citations omitted].)

9
10 In addition to the reasonable diligence requirement, the Court must also find the
11 following:

12
13 (1) A cause of action exists against the party upon whom
14 service is to be made or he or she is a necessary or proper party to
the action.

15 (2) The party to be served has or claims an interest in real or
16 personal property in this state that is subject to the jurisdiction of
the court.

17 (Code Civ. Proc., § 415.50, subd (a)(1)-(2).) Upon completion of service by publication, service
18 of the summons is deemed complete as required by Government Code section 6064. (Code Civ.
19 Proc., § 415.50, subd. (c).) All requisite facts are present to afford the Court authority to issue an
20 order for publication of the Summons pursuant to Code of Civil Procedure section 415.50.

21 II. SERVICE BY PUBLICATION IS APPROPRIATE BECAUSE CITY HAS
22 EXHAUSTED ALL REASONABLE EFFORTS TO SERVE KNOWN CROSS-
DEFENDANTS

23 Based on a thorough and systematic investigation in good faith, CITY cannot with
24 reasonable diligence serve the Cross-Defendants listed in Exhibit “A”, other than by publication.
25 Specifically, CITY has conducted exhaustive research through the Ventura County Assessor
26 records, real property records and TLO searches of records related to ownership of the gated
27 properties at issue. Additionally, over the past year, CITY has twice, and sometimes three times,
28 attempted personal service, and sent mailings with Notices of Acknowledgment of Receipt and

1 self-addressed stamped return envelopes pursuant to Code of Civil Procedure § 415.30. These
2 efforts all proved unsuccessful, and the CITY therefore seeks an order for publication pursuant to
3 Code of Civil Procedure section 415.50.

4
5 **III. PUBLICATION IN VENTURA COUNTY STAR IS APPROPRIATE**

6 Pursuant to Code of Civil Procedure section 415.50, subdivision (c), the duration of the
7 publication of the summons is determined by Government Code section 6064, which provides:

8 Publication of notice pursuant to this section shall be once a week
9 for four successive weeks. Four publications in a newspaper
10 regularly published once a week or oftener, with at least five days
11 intervening between publication dates, are sufficient. The period of
12 notice commences with the first day of publication and terminates
13 at the end of the twenty-eighth day, including therein the first day.

14 *The Ventura County Star* is a newspaper of general circulation published and distributed
15 in Ventura County, where the Property is located, and which is most likely to give actual notice of
16 the pendency of the proceedings herein to the unserved Cross-Defendants. (Prock Decl., ¶ 19.)

17
18 **IV. CONCLUSION**

19 Based on the foregoing, CITY respectfully requests that:

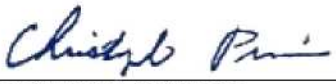
20 1. The Court issue an order to set an order to show cause hearing regarding an order
21 for publication of the Summons as to the remaining Cross-Defendants listed in Exhibit "A", and
22 allow CITY to serve the Summons by publication in *Ventura County Star* once a week for four
23 consecutive weeks on or about June 30, 2021;

24 2. The order to show cause hearing will address all remaining unserved Cross-
25 Defendants as specified in Exhibit "A."

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Dated: June 18, 2021

BEST BEST & KRIEGER LLP

By: 

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