

IN RE FORFEITURE OF \$3,800.00

22CF13701

RESPONDENT'S MOTION TO STRIKE CLAIM OPPOSING FORFEITURE

APPEARANCES REQUIRED

This is a special proceeding by which an individual allegedly aggrieved by a government seizure may challenge a forfeiture thereof. Although the claimant is not a defendant in any pending criminal matter, the claim here is related to 21C19856 and 21CF13584 and the alleged fruit of an unlawful marijuana cultivation venture.

Before the Court is the continued motion by The People to strike the claim as untimely. A proper declaration pursuant to CCP §435.5 and H&S Code §11488.5(c)(3) has been submitted, and the claimant has now filed a formal opposition. She has also filed an amended claim form containing a proper signature rather than the ambiguous e-signature which appeared on her original claim form.

Pursuant to H&S §11488.5(a)(1), any person laying claim to property seized pursuant to the Uniform Controlled Substances Act has 30 days from actual notice of the seizure, or 30 days from the last published notification of seizure, to file with the superior court a verified claim establishing a legal right to the property seized. The People first contend that claimant had "actual notice" of the seizure because she was present when it occurred, but this contention is not supported with any competent evidence. However, notice of the seizure ran in the Valley Springs News on 09/15/21, 09/22/21, and 09/29/21 – leaving claimant 30 days thereafter to file the claim. Her claim was not filed until 01/14/22, and was thus untimely.

Claimant's opposition brief does not directly address the issue of timeliness, and instead argues that she ought to be heard on the merits. A similar equitable approach was employed by the Court of Appeal in *People v. Property Listed In Exhibit One* (1991) 227 Cal.App.3d 1, which held that "to construe the 30-day limitation as a mandatory statute of limitations would defeat the legislative intent of the forfeiture statutes." Although this decision relates to the 30-day period for the prosecutor to file a petition for forfeiture, the analysis applies with equal force to the 30-day period for a claim to be filed, especially since "statutes imposing forfeitures are disfavored and are to be strictly construed in favor of the persons against whom they are sought to be imposed." (*Cuevas v. Superior Court* (2013) 221 Cal.App.4th 1312, 1320.) Thus, this Court finds good cause to accept claimant's late filing.

The parties by and through counsel, are ordered to appear at the scheduled hearing on Friday, April 15, 2022, at 9:00 a.m. in Dept. 2 prepared to advise as to trial length estimates, available trial dates, and whether a jury is requested or waived. (See H&S Code §11488.5(c).)

LVNV FUNDING v. COPPS

21CF13587

PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT

This is a limited jurisdiction collections case involving a debt of \$2,793.06. Before the Court is an unopposed motion by plaintiff for entry of judgment following this Court's order striking defendant's barren answer with leave to amend. This Court advised that "if no Answer is filed, then plaintiff may proceed via default prove-up." (See Minute Order of 01/07/22.)

Although defendant was given 30 days to file an amended answer, no amended answer appears in the Court file. However, also missing from the Court file is any proof that plaintiff served defendant with notice of the Court's Order. (See CCP §1019.5(a): "when a motion is granted or denied, unless the court otherwise orders, notice of the court's decision or order shall be given by the prevailing party to all other parties"). As such, there is no competent proof that the time to file an amended answer has expired.

Separately, plaintiff contends that it is entitled to a judgment pursuant to CCP §438(g)(4)(C)(i)(B). There is no such section. The proper citation is to §438(h), which provides in pertinent part that if no amended answer is *ever* filed, "judgment shall be entered forthwith in favor of the moving party." This is premature given that defendant may still have time to file an answer. Moreover, this Court treated the §438 motion as a §435 motion to strike, and specifically advised plaintiff that the proper recourse is to proceed with a default prove-up – which plaintiff may still do.

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.

LARSON v. MARK TWAIN MEDICAL CENTER

19CV44062

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

This is a wage/hour dispute involving alleged rounding and rest/meal deficiencies suffered by those in the employ of Mark Twain Medical Center. Before the Court is a continued hearing on plaintiff's motion to certify a proposed class. Since the last hearing, plaintiff has filed a copy of the reporter's transcript and a new appellate case recently certified for publication. While it would be ordinary to seek briefing from both sides regarding the new case authority, the Court believes that the parties have adequately briefed the issues and will take additional time on its own to consider the new information, and revisit the case citations already provided.

Hearing continued to April 29, 2022, at 9:00 a.m. in Dept. 2. No further briefing is permitted unless specific Court permission is granted.

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