

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

3 Respondent and Cross-Complainant, City of Buenaventura (“CITY”) hereby applies for
4 an Order directing that the Summons of the Third Amended Cross-Complaint for Violation of
5 Reasonable Use; Violation of Public Trust; Declaratory Relief – Pueblo and/or Treaty Water
6 Rights; Declaratory Relieve – Prescriptive Water Rights; Declaratory Relief – Appropriative
7 Water Rights; Comprehensive Adjudication; Declaratory Relief – Municipal Priority; Declaratory
8 Relief – Human Right to Water and Declaratory Relief filed in this action on January 2, 2020
9 (hereinafter “Third Amended Cross Complaint”) be served on the 51 cross-defendants named in
10 this action which remain unserved because the service addresses are fenced and gated, by
11 publication in a newspaper of general circulation, pursuant to Code of Civil Procedure
12 section 415.50.

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

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

21 The CITY notes here that it does not expect this application to be considered during the
22 April 19, 2021 Status Conference. However, the CITY is providing it to the Court now, and the
23 CITY understands and appreciates that the Court will rule on this application when the Court has
24 ample time to consider it.

04/21/2021

1 Dated: April 16, 2021

BEST BEST & KRIEGER LLP

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3 By: *Christy B. Pini*

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10 CITY OF SAN BUENAVENTURA
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1 MEMORANDUM OF POINTS AND AUTHORITIES

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3 1. INTRODUCTION

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5 Respondent and Cross-Complainant, City of Buenaventura (“CITY”) hereby applies for
6 an Order directing that the Summons of the Third Amended Cross-Complaint for Violation of
7 Reasonable Use; Violation of Public Trust; Declaratory Relief – Pueblo and/or Treaty Water
8 Rights; Declaratory Relief – Prescriptive Water Rights; Declaratory Relief – Appropriative
9 Water Rights; Comprehensive Adjudication; Declaratory Relief – Municipal Priority; Declaratory
10 Relief – Human Right to Water and Declaratory Relief filed in this action on January 2, 2020
11 (hereinafter “Third Amended Cross Complaint”) be served on the 51 cross-defendants named in
12 this action which remain unserved because the service addresses are fenced and gated, by
13 publication in a newspaper of general circulation, pursuant to Code of Civil Procedure section
14 415.50. Service on these remaining unserved Cross-Defendants is requested to be by publication
15 pursuant to Code of Civil Procedure section 415.50 in the *Ventura County Star*, which is a
16 newspaper of general circulation in the County of Ventura which is the location of the Properties.
17 This newspaper is the one most likely to give notice to the Cross-Defendants because it is the
18 major newspaper covering the area wherein the Properties at issue in this case lie, and therefore
19 where these Cross-Defendants are residing. (Code Civ. Proc., § 415.50, subd. (b).)

20
21 A copy of the Summons and Third Amended Cross-Complaint could not be served on
22 those Cross-Defendants listed in Exhibit "A" by any of the following methods:

- 23
24 1. Handing a copy to the person to be served. (Personal service – Code Civ. Proc., §
25 415.10).
26
27 2. Leaving a copy, during usual office hours and in the office of the person to be
28 served, with the person who apparently was in charge and by thereafter mailing copies (by first

1 class mail, postage prepaid) to the person to be served at the place where the copies were left.
2 (Service on a corporation, partnership, association, or public entity - Code Civ. Proc., §
3 415.20(a)).
4

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

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

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

18 (See Declaration of Marnie Prock ("Prock Decl."), filed concurrently herewith.) CITY
19 seeks an order from the Court to publish the Summons of its Third Amended Cross-Complaint for
20 the subject properties which are surrounded by fences and gates. As discussed herein, service of
21 the Summons by publication is proper because each Cross-Defendant has an interest in the
22 Property, which is subject to the Court's jurisdiction. (See Code Civ. Proc. § 415.50, subds.
23 (a)(1)-(2).) Additionally, CITY has exhausted all reasonable efforts to serve such Cross-
24 Defendants in any other manner specified in Code of Civil Procedure sections 415.10 through
25 415.30. Thus, CITY seeks to serve the Cross-Defendants by publication pursuant to Code of
26 Civil Procedure section 415.50 so that it may proceed with this Action.
27
28

1 I. LEGAL STANDARD FOR SERVICE BY PUBLICATION

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

7
8 In addition to the reasonable diligence requirement, the Court must also find the
9 following:

10
11 (1) A cause of action exists against the party upon whom
12 service is to be made or he or she is a necessary or proper party to
13 the action.

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

24 Based on a thorough and systematic investigation in good faith, CITY cannot with
25 reasonable diligence serve the Cross-Defendants listed in Exhibit “A”, other than by publication.
26 Specifically, CITY has conducted exhaustive research through the Ventura County Assessor
27 records, real property records and TLO searches of records related to ownership of the gates
28 properties at issue. Additionally, over the past year, CITY has twice attempted personal service,
and sent three mailings with Notices of Acknowledgment of Receipt and self-addressed stamped
return envelopes pursuant to Code of Civil Procedure § 415.30. For these Cross-Defendants
behind fences and gates, the CITY also attempted to make appointments for personal service by

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1 researching current telephone numbers and calling each property owner. (Prock Decl. ¶¶ 10-28.)
2 These efforts all proved unsuccessful, and the CITY therefore seeks an order for publication
3 pursuant to Code of Civil Procedure section 415.50.
4

5 2. PUBLICATION IN VENTURA COUNTY STAR IS APPROPRIATE
6

7 A. The Ventura County Star is a Newspaper of General Circulation and will
8 Satisfy the Publication Requirements in this Action
9

10 Pursuant to Code of Civil Procedure section 415.50, subdivision (c), the duration of the
11 publication of the summons is determined by Government Code section 6064, which provides:
12

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

16 *The Ventura County Star* is a newspaper of general circulation published and distributed
17 in Ventura County, where the Property is located, and which is most likely to give actual notice of
18 the pendency of the proceedings herein to the unserved Cross-Defendants. (Prock Decl., ¶ 29.)
19

20 III. CONCLUSION

21 Based on the foregoing, CITY respectfully requests that:
22

23 1. The Court issue an Order for Publication of the Summons as to the Cross-
24 Defendants listed in Exhibit "A", and allow CITY to serve the Summons by publication in
25 *Ventura County Star* once a week for four consecutive weeks as soon as is reasonably practicable;

26 2. The Court Order that the published Summons shall name each Cross-Defendant as
27 specified in Exhibit "A."
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Dated: April 16, 2021

BEST BEST & KRIEGER LLP

By: Christy Pini

SHAWN HAGERTY
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EXHIBIT A

GATED/FENCED PROPERTY OWNERS FOR PUBLICATION

1.	Aaron Hoekstra
2.	Angela Hoekstra
3.	Brittany Sanders
4.	Bryan Crawford
5.	Chad Ress
6.	Christopher Hart
7.	Culbert Family Partnership
8.	Danny Haar
9.	Darren Lisle
10.	Deborah Gomez
11.	Donna Deitch, Trustee of the Donna E. Deitch Trust
12.	Donna Epstein, Trustee of the Epstein Survivors' Trust, Trustee of the Epstein Marital Trust, and Trustee of the Epstein Bypass Trust
13.	Edward Lansberg
14.	Ernesto Vega
15.	Eva Prince Weiss
16.	Gay Thomsen
17.	Gordon Hanusek
18.	Gregory Hammed
19.	Hermann Thomsen
20.	Janet Peck
21.	Jerry Kenton
22.	Karen L. Hanson, Trustee of the Hanson L.S. Revocable Living Trust

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23.	Kenneth Vadnais
24.	Kevin Ruf
25.	Kim Jirka, Trustee of the Kim Jirka Trust
26.	Lawrence S. Hanson, Trustee of the Hanson L.S. Revocable Living Trust
27.	Lisa Ayala Johnson
28.	Lisa Lisle
29.	Lore Exner
30.	Malinda Chouinard
31.	Marisa Martinez
32.	Mariska De Feiter
33.	Michele Hammed
34.	Michelle Wells
35.	Myra Toth
36.	Nathaniel O Grady
37.	Nicole Crawford
38.	Ory Names
39.	Patricia Lansberg
40.	Peter Dufau
41.	Peter Strauss
42.	Rachel Ticotin
43.	Rebecca Adams
44.	Rincon Water and Road Works
45.	Robert Polidori
46.	Sally Crain

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47.	Scott Alan Weiss
48.	Suzette O Grady
49.	Terry Wilson, Trustee of the Terry Coultas Wilson Living Trust
50.	Theodor Exner
51.	Yvon Chouinard

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