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FILED
Superior Court of California
County of Los Angeles

AUG 13 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By Kristina Vargas Deputy
Kristina Vargas

11 Attorneys for Respondent and Cross-Complainant
12 CITY OF SAN BUENAVENTURA

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

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

Case No. 19STCP01176

17 Petitioner,

Judge: Honorable William F. Highberger

18 v.

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

21 Respondents.

EX PARTE APPLICATION BY CROSS
COMPLAINANT CITY OF SAN
BUENAVENTURA TO SET AN ORDER TO
SHOW CAUSE HEARING RE ORDER FOR
PUBLICATION OF SUMMONS ON HEIRS
AND DEVISEES OF CERTAIN DECEASED
CROSS-DEFENDANTS AND CERTAIN
GATED/FENCED UNSERVED CROSS-
DEFENDANTS and AN ORDER
DIRECTING SERVICE OF SUMMONS BY
DELIVERY TO THE SECRETARY OF
STATE; MEMORANDUM OF POINTS AND
AUTHORITIES

22 CITY OF SAN BUENAVENTURA, etc.,

23 Cross-Complainant

24 v.

25 DUNCAN ABBOTT, an individual, et al.

26 Cross-Defendants.

[CCP §§ 415.50]

Filed concurrently with:

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

Action Filed: Sept. 19, 2014

Trial Date: Feb. 14, 2021

- 1 -

Ex Parte Application to Set an OSC Hearing Re Order For Publication of Summons and Service of
Summons by Delivery to Secretary of State; MPAs

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 an order for service of
5 the Summons of the Third Amended Cross-Complaint for Violation of Reasonable Use; Violation
6 of Public Trust; Declaratory Relief – Pueblo and/or Treaty Water Rights; Declaratory Relieve –
7 Prescriptive Water Rights; Declaratory Relief – Appropriative Water Rights; Comprehensive
8 Adjudication; Declaratory Relief – Municipal Priority; Declaratory Relief – Human Right to
9 Water and Declaratory Relief filed in this action on January 2, 2020 (hereinafter “Third Amended
10 Cross Complaint”) on the heirs and devisees of four cross-defendants named in this action, who
11 are deceased but for whom successors could not be located and one unserved Cross-Defendants
12 behind gate and fence, by publication in a newspaper of general circulation, pursuant to Code of
13 Civil Procedure section 415.50.

14 This Application is made on the ground that the heirs and devisees of Cross-Defendants
15 indicated above have an interest in real property (the “Properties”), which are subject to the
16 Court’s jurisdiction. However, as outlined below, CITY has been unsuccessful in locating
17 successors in interest to the deceased Cross-Defendants in order to serve the third amended cross-
18 complaint as specified in Code of Civil Procedure sections 415.10 through 415.30 for more than a
19 year. In addition the CITY has been unable to serve one unserved Cross-Defendants behind gate
20 and fence for more than a year as specified in Code of Civil Procedure Sections 415.10 through
21 415.30. Thus, CITY respectfully requests that this Court issue an order for service of the
22 Summons by publication on the heirs and devisees and one Cross-Defendant behind gate and
23 fence.

24 CITY also applies for an Order allowing service of its Summons to the Third Amended
25 Cross-Complaint and supporting documents on Cross-Defendant Shanks Investment Group LLC,
26 by serving the California Secretary of State, and that such Order be allowed without hearing.

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

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Dated: August 13, 2021

BEST BEST & KRIEGER LLP

By: Christopher P. Pisciotta
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 I. INTRODUCTION

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 Relieve – 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 heirs and devisees of four deceased
11 Cross-Defendants named in this action which remain unserved because successors in interest to
12 the four deceased Cross-Defendants cannot be located. The CITY also seeks to serve two
13 remaining unserved Cross-Defendants located behind gate and fence. The CITY seeks an Order
14 from the Court allowing for service by publication in a newspaper of general circulation for the
15 heirs and devisees of Cross-Defendants and on one unserved Cross-Defendant behind gate and
16 fence, pursuant to Code of Civil Procedure section 415.50. Service on these unserved Cross-
17 Defendants is requested to be by publication pursuant to Code of Civil Procedure section 415.50
18 in the *Ventura County Star*, which is a newspaper of general circulation in the County of Ventura
19 which is the location of the properties. This newspaper is the one most likely to give notice to the
20 heirs and devisees of 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 CITY has also been unable to effectuate service of process on Shanks Investment Group,
24 LLC in the manner provided in Code of Civil Procedure Sections 415.10, 415.20, 415.30,
25 416.10(a)-(c) and 416.40, although CITY has made diligent efforts to do so, this Cross-
26 Defendant’s Agent for Service of Process is behind a locked gate and fence. Having exhausted
27 all reasonable efforts to serve Shanks Investment Group LLC, CITY respectfully requests that
28 this Court order service of the Summons, Third Amended Cross Complaint and related pleadings

1 on Shanks Investment Group LLC, by delivery to the California Secretary of State, together with
2 a copy of the order authorizing such service.

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

5 1. Handing a copy to the person to be served. (Personal service – Code Civ. Proc., §
6 415.10).

7 2. Leaving a copy, during usual office hours and in the office of the person to be
8 served, with the person who apparently was in charge and by thereafter mailing copies (by first
9 class mail, postage prepaid) to the person to be served at the place where the copies were left.
10 (Service on a corporation, partnership, association, or public entity - Code Civ. Proc., §
11 415.20(a)).

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

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

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

22 (*See* Declaration of Marnie Prock (“Prock Decl.”), filed concurrently herewith.) CITY seeks an
23 order from the Court to publish the Summons of its Third Amended Cross-Complaint for the
24 subject properties which remain owned by said deceased Cross-Defendants and which successors
25 in interest cannot be located and as to one unserved Cross-Defendant behind gate and fence. As
26 discussed herein, service of the Summons by publication is proper because each of the heirs and
27 devisees of Cross-Defendants or Cross-Defendants have an interest in the Property, which is
28 subject to the Court’s jurisdiction. (*See* Code Civ. Proc. § 415.50, subs. (a)(1)-(2).) Additionally,

1 CITY has exhausted all reasonable efforts to locate such heirs and devisees of Cross-Defendants
2 in any other manner or serve such Cross-Defendants as specified in Code of Civil Procedure
3 sections 415.10 through 415.30. Thus, CITY seeks to serve the heirs and devisees of Cross-
4 Defendants, and one Cross-Defendant behind gate and fence by publication pursuant to Code of
5 Civil Procedure section 415.50 so that it may proceed with this Action.

6 CITY has also been unable to effectuate service of process on Shanks Investment Group,
7 LLC in the manner provided in Code of Civil Procedure Sections 415.10, 415.20, 415.30,
8 416.10(a)-(c) and 416.40, and respectfully requests that this Court order service of the Summons,
9 Third Amended Cross Complaint and related pleadings on Shanks Investment Group LLC, by
10 delivery to the California Secretary of State, together with a copy of the order authorizing such
11 service.

12 II. LEGAL STANDARD FOR SERVICE BY PUBLICATION

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

18 In addition to the reasonable diligence requirement, the Court must also find the
19 following:

20
21 (1) A cause of action exists against the party upon whom
22 service is to be made or he or she is a necessary or proper party to
the action.

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

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

1 III. LEGAL STANDARD FOR SERVICE OF PROCESS ON THE SECRETARY OF
2 STATE

3 Service on a limited liability company is effectuated by serving the person designated as
4 its agent for service of process. (Corp. Code § 17701.16(b).) The designated agent may be
5 served either by personal service (Code Civ. Proc. § 415.10), or service by mail with
6 acknowledgment of receipt. (Code Civ. Proc. § 415.30(a).) However, if the plaintiff is unable to
7 serve a defendant by these methods, the plaintiff may file an affidavit showing that the designated
8 agent has resigned or cannot be located, or that service cannot be effectuated by the above-
9 mentioned methods. Upon receipt of plaintiff's affidavit, the court may order service of process
10 as to the non-served defendant business entity by delivery to the Secretary of State, together with
11 a copy of the order authorizing such service. (Corp. Code §§ 1702, 17701.16(c)(1)).

12 Here, this Court should order service on Shanks Investment Group LLC's Agent for
13 Service of Process, which cannot be served because the property is surrounded by gate and fence.
14 (Prock Decl. ¶ 9, 10.) CITY has attempted numerous times to serve the current identified Agent
15 for Service of Process at the addresses indicated on the Secretary of State website. (Prock Decl.
16 ¶ 10, 13.) As part of its efforts to effectuate service, CITY retained First Legal ("First Legal") to
17 serve Shanks Investment Group LLC among other unserved Cross-Defendants. (Prock Decl. ¶ 6.)
18 First Legal was able to effectuate service of process because the address listed for the Agent for
19 Service of Process is located behind gate and fence. (Prock Decl. ¶ 9, 10.) Thus, based on a
20 thorough and systematic investigation in good faith, CITY cannot with reasonable diligence
21 locate or serve Shanks Investment Group LLC.

22 CITY respectfully requests that the Court grant an Order allowing it to serve a copy of the
23 Summons, Third Amended Cross Complaint, and supporting pleadings on Shanks Investment
24 Group LLC by delivery to the California Secretary of State, in order that CITY be able complete
25 its more than eighteenth month service of process of this Cross-Defendant.

1 IV. SERVICE BY PUBLICATION IS APPROPRIATE BECAUSE CITY HAS
2 EXHAUSTED ALL REASONABLE EFFORTS TO LOCATE KNOWN SUCCESSORS
3 IN INTEREST TO SUCH DECEASED CROSS- DEFENDANTS OR CROSS-
4 DEFENDANTS BEHIND GATES AND FENCES

5 Based on a thorough and systematic investigation in good faith, CITY cannot with
6 reasonable diligence serve the Cross-Defendants listed in Exhibit "A", other than by publication.
7 Specifically, CITY has conducted exhaustive research through the Ventura County Assessor
8 records, real property records and TLO searches of records related to successor in interest or heirs
9 and devisees of Cross-Defendants which own the properties or alternative addresses in which to
10 serve the Cross-Defendants behind gate and fence at issue. These efforts all proved unsuccessful,
11 and the CITY therefore seeks an order for publication pursuant to Code of Civil Procedure section
12 415.50.

13 V. PUBLICATION IN VENTURA COUNTY STAR IS APPROPRIATE

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

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

20 *The Ventura County Star* is a newspaper of general circulation published and distributed
21 in Ventura County, where the Property is located, and which is most likely to give actual notice of
22 the pendency of the proceedings herein to the heirs and devisees of Cross-Defendants and gated
23 and fenced Cross-Defendant. (Prock Decl., ¶ 17.)

24 VI. CONCLUSION

25 Based on the foregoing, CITY respectfully requests that:

- 26 1. The Court issue an order to set an order to show cause hearing regarding an order
27 for publication of the Summons as to the heirs and devisees of Cross-Defendants and one
28 unserved Cross-Defendants behind gate and fence listed in Exhibit "A", and allow CITY to serve

1 the Summons by publication in *Ventura County Star* once a week for four consecutive weeks
2 starting on or about August 22, 2021;

3 2. The Court issue an order to set an order to show cause hearing regarding an order
4 for service on Shanks Investment Group LLC by delivery to the Secretary of State.

5 3. The order to show cause hearing will address the heirs and devisees of Cross-
6 Defendants and two unserved Cross-Defendants behind gate and fence as specified in Exhibit
7 "A."

8
9 Dated: August 13, 2021

BEST BEST & KRIEGER LLP

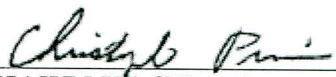
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11 By: 
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17 Cross-Complainant
18 CITY OF SAN BUENAVENTURA
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EXHIBIT A

EXHIBIT A

Heirs and devisees of Marvel Pierce, Roe 422	Unknown successor– Service by Publication
Heirs and devisees of Lloyd Smith, Roe 423	Unknown successor– Service by Publication
Heirs and devisees of William Lowes, Roe 424	Unknown successor– Service by Publication
Heirs and devisees of Irma Tracy, Roe 425	Unknown successor– Service by Publication
Shanks Investment Group, LLC	Gated/Fenced – Service by Delivery on Secretary of State
Ole Behrendtsen	Gated/Fenced – Service by Publication

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