

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 6**

**Honorable Evette D. Pennypacker, Presiding**

David Criswell, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: (408) 882-2160

**DATE: September 26, 2023      TIME: 9:00 A.M.**

**TO REQUEST ORAL ARGUMENT:** Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
  - (2) Other side by phone or email that you plan to appear at the hearing to contest the ruling
- (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

**IN PERSON HEARINGS:** The Court strongly prefers in person appearances for contested law and motion matters. We are open and look forward to seeing you in person again.

**VIRTUAL HEARINGS:** Whenever feasible, please use video when appearing for your hearing virtually through Microsoft Teams. To attend virtually, click or copy and paste this link into your internet browser, and scroll down to Department 6: [https://www.sccourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml)

**TO HAVE YOUR HEARING REPORTED:** The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here: [https://www.sccourt.org/general\\_info/court\\_reporters.shtml](https://www.sccourt.org/general_info/court_reporters.shtml)

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
<a href="#"><u>1</u></a>	2011-1-CV-195803	Creditors Adjustment Bureau, Inc. vs W. Ng	Parties are ordered to appear for order of examination.
<a href="#"><u>2</u></a>	2014-1-CV-271852	Developers Surety And Indemnity Company vs Weinstock Family Trust, et al	Off calendar.
<a href="#"><u>3</u></a>	2014-1-CV-271852	Developers Surety And Indemnity Company vs Weinstock Family Trust, et al	Off calendar.
<a href="#"><u>4</u></a>	2014-1-CV-271852	Developers Surety And Indemnity Company vs Weinstock Family Trust, et al	Off calendar.

<a href="#"><u>5</u></a>	20CV370481	Keren Guy et al vs Noa Inbar-HersHKovitz et al	Defendants' Yuval Gerson and Roni Gerson's Motion for Summary Judgment is GRANTED. An amended notice of motion with the September 26, 2023 hearing date was served on Plaintiff by electronic mail on June 1, 2023. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) The undisputed evidence also demonstrates that the Gersons had no prior knowledge of the dog's propensity for dangerous behavior. Accordingly, summary judgment in their favor is appropriate. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Moving party to prepare formal order.
<a href="#"><u>6</u></a>	22CV396791	Kimberly Patterson vs LUCILE SALTER PACKARD CHILDREN'S HOSPITAL AT STANFORD	The motion to compel is off calendar. The Parties submitted a notice of unconditional settlement of the entire case on September 5, 2023. A hearing for dismissal after settlement is set for November 9, 2023 at 10:00 in Department 6.
<a href="#"><u>7</u></a>	23CV419027	Hakan Kavlak vs John Kim et al	Plaintiff's Order for Sale of Dwelling should not be issued is continued to November 30, 2023 to permit timely service. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.

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**Calendar Line:** 7

**Case Name:** *Kavlak v. John Hyosoo Kim, et.al.*

**Case No.:** 23CV419027

The Court ordered Defendants to appear and to show cause, if any, why the Order for Sale of Dwelling should not be issued. Defendants have not submitted any response to the Order to Show Cause. However, for the reasons explained below, the Court concludes service of the Order to Show Cause documents was not timely and was otherwise flawed and therefore continues the hearing so that proper service can be effectuated.

## **I. Background**

On November 29, 2018, Alameda Superior Court entered judgment against Defendant John Hyosoo Kim in the amount of \$345,086.64 ("Judgment") in favor of Plaintiff. To date, Defendant has not paid any sums toward satisfaction of the Judgment.

Defendants, John Hyosoo and Senna Sunghee Kim are husband and wife and title holders of a residential property located at 2165 Ceynowa lane, San Jose, CA 9512 ("Property"). On February 15, 2023, the Alameda Superior Court declared the Property a marital community asset and the Judgment a community debt.

To enforce his Judgment, Plaintiff obtained a Writ of Execution and levied the Property. Since the Property is in Santa Clara County, on July 13, 2023, Plaintiff filed a petition in this court for an Order for Sale of Dwelling. On July 24, 2023, Plaintiff applied, ex-parte, for an Order for Sale of Dwelling and issuance of Order to Show Cause why the Order for Sale should not be issued.

On July 25, 2023, pursuant to Plaintiff's application, the Court ordered the Defendants to appear on September 26, 2023, and show cause why Plaintiff's requested Order for Sale should be denied ("Order").

## **II. Legal Standard**

Code Civ. Proc. § 704.740 subdivision (a) states that, with exceptions not applicable here, "the interest of a natural person in a dwelling may not be sold under this division to enforce a money judgment except pursuant to a court order for sale obtained under this article and the dwelling exemption shall be determined under this article."

Code Civ. Proc. §§ 704.740 – 704.780 set forth procedures for the sale of a dwelling, like the Property, that has been levied upon to collect the Judgment:

- Code Civ. Proc. § 704.750 permits a judgment creditor to file an application for an order for the sale of real property after receipt of a levying officer's notice that the real property has been levied upon. "If the dwelling is located in a county other than the county where the judgment was entered ... [t]he judgment creditor shall apply to the superior court of the county where the dwelling is located [and] ... shall file with the application an abstract of judgment." (Code Civ. Proc., § 704.750(b)(1)-(2).)
- Code Civ. Proc. § 704.760 states the requirements of the Application for Order for Sale:

"The ... application shall be made under oath, shall describe the dwelling, and shall contain all of the following: (a) A statement whether or not the records of the county tax assessor indicate that there is a current homeowner's exemption or disabled veteran's exemption for the dwelling and the person or persons who claimed any such exemption. (b) A statement, which may be based on information and belief, whether the dwelling is a homestead and the amount of the homestead exemption, if any, and a statement whether or not the records of the county recorder indicate that a homestead declaration under Article 5 (commencing with Section 704.910) that describes the dwelling has been recorded by the judgment debtor or the spouse of the judgment debtor. (c) A statement of the amount of any liens or encumbrances on the dwelling, the name of each person having a lien or encumbrance on the dwelling, and the address of such person used by the county recorder for the return of the instrument creating such person's lien or encumbrance after recording. (d) A statement that the judgment is based on a consumer debt, as defined in subdivision (a) of Section 699.730, or that the judgment is not based on a consumer debt ...." (Code Civ. Proc., § 704.760.)
- Code Civ. Proc. § 704.770(a) provides: "Upon the filing of the application by the judgment creditor, the court shall set a time and place for hearing and order the judgment debtor to show cause why an order for sale should not be made in accordance with the application. The time set for hearing shall be not later than 45 days after the application is filed or such later time as the court orders upon a showing of good cause."

### III. Analysis

The Court ordered Plaintiff to serve the required documents on (1) John Hyosoo Kim by personal service or mail, (2) Senna Sunghee Kim by personal service or mail, and (3) any of the occupant(s) of the dwelling by personal service; should no occupants be available for service, copies of all documents shall be posted in a conspicuous place at the dwelling. The Court, further, ordered Plaintiff to accomplish service and posting at least 30 days before the September 26, 2023, hearing.

Plaintiff filed three proofs of “substitute-service” for John Hyosoo Kim, Senna Sunghee Kim, and occupants of the Property. Each proof contains a declaration of due diligence showing that attempts were made on July 26, July 27, July 28, and July 29 to personally serve these individuals with no success. On August 8, 2023, Plaintiff’s agent served John Doe, who was leaving the premises, on behalf of each Defendant and occupant.

On August 17, 2023, Plaintiff’s agent mailed two sets of the required documents to the Property addressing one to John Hyosoo Kim and the other to Senna Sunghee Kim. No proof of service is in the court file showing whether a set was also mailed addressed to the occupant.

Pursuant to Code. Civ. Proc. § 415.20 (b), where legal documents cannot with reasonable diligence be personally served, the documents may be served by leaving a copy at the person’s known address in the presence of a competent adult, and by thereafter mailing a copy of the documents to the person to be served at the place where copies of document were left. Code of Civil Procedure section 415.20 (b) states: “Service ... in this manner is deemed complete on the 10th day after the mailing.”

Accordingly, service on John Hyosoo Kim and Senna Sunghee Kim was deemed complete on August 27, 2023. However, the Order required Plaintiff to serve the Defendants *at least 30 days* before the September 26th hearing. (*Emphasis added.*) Thirty days before this hearing was August 27, a Sunday. Under California Rules of Court, rule 1.10(b), the deadline to complete service was Friday August 25, 2023. (See, Cal. Rules of Court, rule 1.10(b) (“Unless otherwise provided by law, if the last day for the performance of any act that is required by these rules to be performed within a specific period of time falls on a Saturday, Sunday, or other legal holiday, the period is extended to and includes the next day that is not a holiday.”)). Thus, service was not timely.

Code of Civil Procedure section 415.45 allows documents to be served by posting where it is sworn that the party to be served cannot with reasonable diligence be served in any other manner than publication. Posting must be in a manner most likely to give actual notice to the party to be served and a copy of the documents must be sent, by *certified mail*, to such party at their last known address. (*Emphasis added.*) Such a service deemed completed 10 days after posting and mail.

Plaintiff’s filed proof of service shows the required documents were posted in a conspicuous place at the Property at 5:46 p.m. on Sunday August 17, 2023. However, Plaintiff failed to send copies of the required documents to the Defendants by certified mail, and the service was not timely for the same reasons set forth above.

Accordingly, the Court continues the hearing on the order to show cause to November 30, 2023 at 9 a.m. in Department 6 to permit proper, timely service of the necessary documents.

