

**DEPARTMENT TWELVE
JUDGE CHRISTINE CARRINGER
707-207-7312
TENTATIVE RULINGS SCHEDULED FOR
WEDNESDAY, FEBRUARY 28, 2024**

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**PEOPLE OF THE STATE OF CALIFORNIA, et al. v. DIAVATIS
Case No. FCS056113**

Motion by CITY OF BENICIA for (1) Charging Order Against Defendant as to his Interest in The Loft Benicia, LLC; (2) Assignment Order Against Defendant Concerning Proceeds of the Sale of Real Property by The Loft Benicia, LLC; and (3) Restraining Order Against Defendant's Transfer of Interest in The Loft, Benicia

TENTATIVE RULING

While it appears that enforcement of judgment efforts were not stayed by the filing of the appeal, and this motion could thus be filed before the appellate court's November determination of that appeal and its January remittitur, there is another procedural concern which interferes with the court's ability to consider all of the requests contained within this motion.

This case (FCS056113) was filed solely against JASON DIAVATIS ("Defendant"), not THE LOFT BENICIA, LLC (the "LLC"). Thus, the judgment obtained was against Defendant only, not the LLC.

Among the types of orders sought in this motion was a charging order.

C.C.P. §708.310 authorizes the court to issue a charging order when a money judgment has been issued against a member of an LLC, but not the LLC itself, to apply to the member's interest in the LLC, to satisfy part or all of the judgment amount. However, to obtain such a charging order, in addition to serving the judgment debtor, the LLC itself must be served.

Because the LLC is not a party to this case, and has made no prior appearance in this case, it must be served with the charging order motion papers in a manner authorized for service of summons and complaint. Ahart, California Practice Guide (The Rutter Group), Enforcing Judgments and Debts, §§6:1471-6:1472, pp. 6G-57 and 6G-58.

The only proof of service filed for the motion papers here claimed service only by mail on the LLC's agent for service of process, which absent inclusion and return of a signed acknowledgement of receipt of service is not a manner of service authorized for service of a summons and complaint.

The court therefore continues hearing on this motion to April 24, 2024, at 8:30 a.m. in Dept. 12. At least 16 court days prior to this continued hearing date, CITY is to complete service of the motion papers and notice of continued hearing on the LLC in a manner authorized for service of summons and complaint. The court additionally directs CITY to serve Defendant's new counsel with a copy of the motion papers and notice of continued hearing, at least 16 court days before the continued hearing date. CITY shall file these proofs of service at least five days before the continued hearing date.