7. SCV-262241, Friends of the Gualala River v. California Department of Forestry and Fire Protection

Motion GRANTED. The court finds an administrative stay appropriate and finds that it will not be against the public interest.

The court also finds that Petitioner has met its burden for a preliminary injunction.

There is an imminent threat of irreparable injury. Petitioner demonstrates sufficient likelihood of success with evidence demonstrating possible defects in the THP analysis. The court notes that this determination is limited by the fact that the administrative record is not yet available. This inherently affects the information the parties, particularly Petitioner, provide on this motion and the court's determination is made with this in mind, considering that the lack of a record should not impair Petitioner's ability to obtain a preliminary injunction or a stay.

Given the nature of the irreparable injury to Petitioner and the public, and the alleged but unsupported nature of any possible injury to Real Party in Interest from the injunction, the balancing factors weigh in favor of the injunction.

The injunction also will maintain the status quo and prevent it from being irreparably and permanently altered.

The court finds no basis for requiring more than a nominal $500 bond in this situation.

All objections are overruled.

Request for judicial notice granted.

The Petitioner is to prepare an order conforming with the order of the court, submitting it to the opposing party for review five days prior to submitting it to the court.

FACTS:

Petitioner challenges Respondent's approval of the "Dogwood" Timber Harvest Plan 1-15-042-SON (the Plan), which Real Party in Interest submitted for its property (the Property), allowing Real Party in Interest to log mature redwood forest over the next 3 years (the Project).

The Parties

Petitioner Friends of the Gualala River is an advocacy group focused on protecting the watershed area of the Gualala River. Respondent is the California Department of Forestry and Fire Protection (CDF or CalFire), the lead agency which approved the project and THP at issue, and Real Party in Interest is Gualala Redwood Timber, LLC, the Project applicant and registered "timberland" and "timber" owner of record for the land where the Project will take place (the Site).

The Project

The Project Site is upstream from the mouth of the Gualala River on land which Real Party in Interest owns along the river. Real Party in Interest owns in total about 29,600 acres of land and in the Project will over the course of 3 years log over 400 acres of mature redwood forest.

History

Petitioner initially challenged the Project and Plan in SCV-259216 but on a motion to augment the record to include information on another project which Real Party in Interest had submitted for approval, on the basis that it needed to be considered for cumulative impacts, Respondent stipulated that there was prejudicial error and violation of CEQA so in March 2017 the court granted the petition and overturned Respondent's approval of the Plan.

MOTION:

Petitioner moves the court to stay the approval of the Plan or, alternatively, issue a preliminary injunction.

Respondent and Real Party in Interest oppose the motion, arguing that Petitioner is not likely to succeed on the merits because the THP sufficiently analyses the various impacts. Real Party in Interest also claims that Petitioner has failed to show irreparable harm while the balance of harms and the public interest weigh against an injunction. Real Party in Interest also objects to Petitioner's evidence.

PROCEDURAL ISSUES:

As of June 1, 2018, the record does not appear to have been lodged. The request to prepare it was filed only on April 2, 2018.

The stipulation setting the hearing on this motion did not indicate a briefing schedule and as of May 25, 2018 no opposition or reply has been filed.

ANALYSIS:

Administrative Stay

In actions for administrative mandamus, under Code of Civil Procedure section 1094.5 and Public Resources Code section 21168 challenging private projects, the court has discretion to stay the administrative decision. The only requirement is that the stay not be against the public interest. A bond is not required but may be imposed when appropriate. Venice Canals Resident Home Owners Assn. v. Sup.Ct. (1977) 72 Cal.App.3d 675, 679-681 (bond imposed on appellant who acted with unfair delay on specious claims).

Petitioner asks for a stay as an alternative to a preliminary injunction and nothing before the court indicates that the stay would be against the public interest. The stay would be in favor of the public interest by preserving the environment that would otherwise be irreparably altered and potentially preventing traffic impacts prior to the court's review of the THP. Petitioner appears to have a reasonable probability of prevailing, providing further support for such a stay.

Preliminary Injunction

The purpose of a preliminary injunction is to preserve the status quo. Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528. The court may only grant such a preliminary injunction where the

petitioner has a right to equitable relief if the case goes to trial. Voorhies v. Greene (1983) 139 Cal.App.3d 989, 995-998.

Preliminary injunction will issue only if there is no adequate legal remedy. Code of Civil Procedure section 526. The party seeking the injunction must show an imminent threat of irreparable injury, often equated with an "inadequate legal remedy." Code of Civil Procedure section 526(a)(2); Korean Philadelphia Presbyterian Church v. Cal. Presbytery (2000) 77 Cal.App.4th 1069, 1084.

The requirement that the injury be "imminent" simply means that the party to be enjoined is, or realistically is likely to, engage in the prohibited action. Korean Philadelphia Presbyterian Church, supra. The court should not grant the injunction if the conduct or injury complained of is not occurring. Cisneros v. U.D. Registry, Inc. (1995) 39 Cal.App.4th 548, 574. The irreparable injury will exist if the party seeking the injunction will be seriously injured in a way that later cannot be repaired. People ex rel. Gow v. Mitchell Bros., etc. (1981) 118 Cal.App.3d 863, 870-871.

The party seeking a preliminary injunction must also demonstrate a reasonable probability of success. Code of Civil Procedure section 526(a)(1); San Francisco Newspaper Printing Co., Inc. v. Sup.Ct. (Miller) (1985) 170 Cal.App.3d 438, 442. Petitioner must make a prima facie showing that it is entitled to relief under these standards, but need not rise to the requirements for a final determination. Triple A Machine Shop, Inc. v. State of California (1989) 213 Cal.App.3d 131, 138.

The court must conduct a two-prong equitable balancing test, weighing the probability of prevailing on the merits against the determination as to who is likely to suffer greater harm. Robbins v. Sup. Ct. (1985) 38 Cal.3d 199, 206. Shoemaker v. County of Los Angeles (1995) 37 Cal.App.4th 618, 633. This determination involves a mix of the two elements, and the greater the petitioner's showing on one element, the weaker it may be on the other. Butt v. State of Calif. (1992) 4 Cal.4th 668, 678.

A verified complaint may be sufficient evidence to support a preliminary injunction if it contains evidentiary facts. Code of Civil Procedure section 527(a); Bank of America Nat'l Trust & Sav. Ass'n v. Williams (1948) 89 Cal.App.2d 21, 29.

Objections

Real Party in Interest objects to the evidence of Petitioner's experts as well as Petitioner's attorney. Regarding the attorney, it contends that his statements are irrelevant because they "merely contradict" the THP and the record, and they are outside of the record.

At this stage, the record is not available so the parties and the court must rule based on what is available.

The court OVERRULES Real Party in Interest's objections.

Real Party in Interest also objects to Petitioner's reply papers. The objections to the reply brief is noted but regardless of what portions of the reply brief the court considers the outcome of this motion will be the same. The court also notes that while Real Party in Interest complains that Petitioner has tried to evade limits on reply papers, Real Party in Interest has itself attempted to provide an additional post-reply opposition brief, without authority or leave to do so, by including legal argument in the merits in its "objections" to the reply. At this point, the court notes that both parties may arguably be

trying improperly to add additional briefing to their papers, notes that in this instance there is no effect on the outcome of this motion, and cautions the parties against attempting any further such tactics.

The court OVERRULES the objections to the evidence submitted on reply. Petitioner has apparently struggled to obtain evidence to use on this motion since, as noted, there is no prepared administrative record and the reply papers appear to be a proper attempt to respond to Real Party in Interest's argument that Petitioner failed to provide evidence from the record.

Petitioner objects to portions of Real Party in Interest's Vanderhoof declaration on the basis that he is an officer of Pacific States Industries, Inc., but he states that he oversees the operations of its "sister" businesses, including Real Party in Interest. Petitioner also questions or impeaches the testimony on this basis but this is neither persuasive nor material at this point.

The court OVERRULES Petitioner's objections.

Request for Judicial Notice

Petitioner seeks judicial notice of this court's 2016 order granting the preliminary injunction for this very plan in the prior lawsuit. The court grants judicial notice on this issue.

Irreparable Injury

There is a threat of irreparable harm where there is an "inadequate legal remedy" or where the injury cannot be readily repaired or undone. Code of Civil Procedure section 526(a)(2); see People ex rel. Gow v. Mitchell Brothers' Santa Ana Theater (1981) 118 Cal.App.3d 863, 870-871.

In the context of CEQA, the court in County of Inyo v. City of Los Angeles (1976) 61 Cal.App.3d 91, at 100, stated that "[w]e draw a distinction between the relatively limited scope of the main action and the effective range of an interim injunctive order. A court exercising injunctive power may do so upon conditions that protect all—including the public—whose interests the injunction may affect."

Allowing activities to go forward under a challenged project, which will result in changes that cannot be undone and which may nullify the entire basis of the action, may in fact render the entire action moot, especially if the petitioner makes no effort to stop the activities pending litigation. See, e.g., Santa Monica Baykeeper v. City of Malibu (2011) 193 Cal.App.4th 1538, 1550-1551; Environmental Protection Information Center, Inc. v. Maxxam Corp. (1992) 4 Cal.App.4th 1373, 1380.

As is common in CEQA cases, it is clear that without an injunction there will be irreparable injury that cannot be cured with a legal remedy and the parties do not truly dispute this. There is a threat of irreparable injury since cutting down mature redwood trees cannot simply be remedied with money or undone. Petitioner also specifically demonstrates that the Project area includes sensitive floodplains, wetland, and rare plants, which may be irreparably destroyed or lost as a result of the operations. Baye Dec., ¶5; Kamman Dec.

Petitioner has met its burden on this issue.

Likelihood of Success on the Merits

Timber Harvest Plans – A State Regulatory Program

According to CEQA, the Secretary of Resources may certify that state regulatory programs meeting certain environmental standards may comply with truncated CEQA requirements. Public Resources Code section 21080.5; Guidelines 15250-15253. These "certified regulatory programs" may use a review document that is the "functional equivalent of an EIR." Mountain Lion Foundation v. Fish and Game Commission (1997) 16 Cal.4th 105, 113-114, 126-127; see also Public Resources Code section 21080.5(a), (d), (e). Regulation of timber harvesting plans (THPs) is one such certified regulatory program. Guideline 15251(a); Forest Practice Rules, Cal. Code Regs., tit.14, section 896[2].

The Z'berg-Nejedly Forest Practice Act of 1973, Public Resources Code sections 4511 et seq. (FPA), governs the preparation and approval of THPs. T.R.E.E.S. v. Department of Forestry & Fire Protection (1991) 233 Cal.App.3d 1175, 1180.

The agency's role is to determine whether the THP complies with the Forest Practice Rules and these are the only criteria the agency may employ when reviewing a THP. Public Resources Code sections 4582.7(a), 4582.75. The Forest Practice Rule (FPR) 896(a) states that:

"The purpose of the Forest Practice Rules is to implement the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 in a manner consistent with other laws, including but not limited to, the Timberland Productivity Act of 1982, the California Environmental Quality Act (CEQA) of 1970, the Porter Cologne Water Quality Act, and the California Endangered Species Act. The provisions of these rules shall be followed by Registered Professional Foresters (RPF's) in preparing Timber Harvesting Plans, and by the Director in reviewing such plans to achieve the policies of the Act...."

However, Public Resources Code section 4582.75 does not manifest a legislative intent to exempt the FPA from the provisions of CEQA. EPIC v. Johnson (1985) 170 Cal.App.3d 604, 618-619. The purpose of section 4582.75 is purely to limit the discretion of the agency director and ensure he or she operates within the practice rules, not to exempt the logging industry from CEQA. EPIC, 619; see also Sierra Club v. State Bd. of Forestry, (1994) 7 Cal.4th 1215, 1229-1230.

For example, analysis of certified regulatory programs, and specifically programs under the FPA such as THPs, must include analysis of cumulative impacts and alternatives in accordance with CEQA. Friends of the Old Trees v. Dept. of Forestry & Fire Protection (1st Dist.1997) 52 Cal.App.4th 1383, 1393-1395 (Friends of Old Trees).

Failing to Proceed in the Manner Required by Law vs. Lack of Substantial Evidence

The reviewing court must determine if Respondent abused its discretion by 1) failing to proceed in the manner required by law, or 2) because its decision is not supported by substantial evidence. Public Resources Code section 21168; Laurel Heights I, supra 47 Cal.3d 392, fn.5.

These two standards vary greatly and apply to different issues, so "a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 435.

While courts must give deference as to substantive factual decisions, they demand strict compliance with "legislatively mandated CEQA requirements." Citizens of Goleta Valley v. Bd. of Supervisors (1990) 52 Cal.3d 553, 564 (Goleta II). A respondent is entitled to no deference where the

law has been misapplied, or where the decision was based on "an erroneous legal standard." East Peninsula Educ. Council, Inc. v. East Peninsula Unif. Sch. Dist. (1989) 210 Cal.App.3d 155, 165.

The substantial-evidence test does not apply, therefore, to a claim that an EIR failed to include mandatory information or elements. Vineyard Area Citizens, 435, citing Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564. Failure to include required information is a failure to proceed in the manner required by law and demands strict scrutiny. Sierra Club v. State Bd. of Forestry (1994) 7 Cal.4th 1215, 1236; Vineyard Area Citizens, 435. Courts must determine such a question de novo. Vineyard Area Citizens, 435.

The Supreme Court in Vineyard Area Citizens, at 435, favorably cited the much older case of Santiago County Water Dist. v. County of Orange (1981) 118 Cal.App.3d 818, at 829, which found an EIR legally inadequate for failing to proceed in the manner required by law because it lacked analysis of water supply and facilities.

Nevertheless, a claim that the EIR lacks sufficient information regarding an issue will be treated as an argument that the EIR is not supported by substantial evidence. Barthelemy v. Chino Basin Munic. Water Dist. (1995) 38 Cal.App.4th 1609, 1620. The petitioners in Barthelemy asserted that it was a failure to proceed in the manner required by law where an EIR did not include key information. The court rejected that argument.

Agency actions are also presumed to comply with applicable law unless the petitioner presents proof to the contrary. Evidence Code section 664; Foster v. Civil Service Commission of Los Angeles County (1983) 142 Cal.App.3d 444, 453. The petitioner in a CEQA action thus has the burden of proving that an EIR is insufficient. Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners (1993) 18 Cal.App.4th 729, 740.

Standard of Review: Substantial-Evidence Test

The substantial-evidence test applies to a substantive issues in a decision certifying an EIR and the court must uphold the decision if it is supported by substantial evidence in the record as a whole. Bowman v. City of Petaluma (1986) 185 Cal.App.3d 1065, 1075; see River Valley Preservation Project v. Metropolitan Transit Dev. Bd.(1995) 37 Cal.App.4th 154, 166; see Santa Teresa Citizen Action Group v. City of San Jose (2003) 114 Cal.App.4th 689, 703. The "substantial evidence" test requires the court to determine "whether the act or decision is supported by substantial evidence in the light of the whole record." Chaparral Greens v. City of Chula Vista (1996) 50 Cal.App.4th 1134, 1143; River Valley Preservation Project v. Metropolitan Transit Develop. Bd. (1995) 37 Cal.App.4th 154, 168.

When applying the substantial-evidence standard, in other words, the court must focus not upon the "correctness" of a report's environmental conclusions, but only upon its "sufficiency as an informative document." Laurel Heights I 47 Cal.3d 393. The court must resolve reasonable doubts in favor of the findings and decision. Id. The findings of an administrative agency are presumed to be supported by substantial evidence. Taylor Bus. Service, Inc. v. San Diego Bd. of Education (1987) 195 Cal.App.3d 1331.

The Definition of "Substantial Evidence"

Substantial evidence is not simple "uncorroborated opinion or rumor" but "enough relevant information and reasonable inferences" to allow a "fair argument" supporting a conclusion, in light of the whole record before the lead agency. 14 CCR section 15384(a); Public Resources Code section 21082.2; City of Pasadena v. State of California (2nd Dist.1993) 14 Cal.App.4th 810, 821-822. Other decisions define "substantial evidence" as that with "ponderable legal significance," reasonable in nature, credible, and of solid value. Stanislaus Audubon Society, Inc. v. County of Stanislaus (1995) 33 Cal.App.4th 144.

Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. Public Resources Code section 21082.2(c); see also Guidelines 15064(g)(5), 15384. It does not include argument, speculation, unsubstantiated opinion or narrative, clearly incorrect evidence, or social or economic impacts not related to an environmental impact. Guideline 15384.

Petitioner's Arguments and Evidence

Petitioner argues that the THP failed to address potentially significant impacts regarding water use and supply, Anadromous Salmonid (AS) protection, watercourse and flood-prone areas; pool stability; water quality including erosion and sedimentation; Marbled Murrelet (MM),California red-legged frog (CRLF), foothill yellow-legged frog (FYLF), and western pond turtle (WPT).

Petitioner as yet is unable to point to the actual administrative record because it is not available yet, a factor which makes this part of the analysis more problematic and which this court must consider carefully. On the one hand, the lack of reliance on the record does render Petitioner's evidence less relevant and persuasive on this point because ultimately the court must only look to the record or evidence allowed in as an exception. On the other hand, this is a natural problem on a CEQA case, where the record is ordinarily not available at the very outset, thus requiring the court to exercise leeway in what it considers at this point. Moreover, extrinsic evidence may still be considered at this point if simply to explain how the THP analysis is flawed or missing elements, or if it was in substance presented in the record.

Petitioner provides three expert declarations which together provide evidence, with explanation, of the need for surveys of sensitive flora and fauna, threat of long-term and irreparable damage to the local ecology, and other impacts. Baye Dec., Li Dec., Kamman Dec. They show that the THP "ignores National Wetland Inventory Maps identifying seasonal wetlands, and ignores evidence on record demonstrating that seasonal wetlands occur extensively… in the THP area"; "fails to adequately disclose and analyze the impacts to salmonids" and "omits site specific [sic] data, such as surveys by qualified specialists" on the issues; the THP deferred mitigation measures, even such foundational and preliminary ones as assessment of impacts and plant surveys.

In addition, in its reply papers, Petitioner provides documents that are from the THP proceedings and thus appear to be documents that will be included in the record if and when it is prepared. Yates Reply Dec. These include public comments such as a long, detailed letter from Peter Baye, Ph.D., one of Petitioner's proffered experts who provided a declaration in the moving papers. In this, he provides a detailed criticism of the THP and points to many flaws which he claims to find.

Real Party in Interest relies on documents which will be included in the record. However, the import of these is hardly clear and they do not demonstrate that Petitioner lacks a probability of success.

Petitioner's evidence is sufficient for a preliminary injunction and raises several potential defects in the THP. For example, Petitioner points to evidence claiming that the THP lacks explanation for not using soil stabilization measures on skid roads, which could lead to soil erosion and may violate the FPR 916.9(v), which allows "[s]ite-specific measures or nonstandard operational provisions" but "only when the Plan incorporates an evaluation of the beneficial functions of the Riparian zone as set forth in subsection (3)," which must include an array of detailed descriptions and analyses supporting the practice adopted. The THP portions on which Respondent and Real Party in Interest themselves rely appear to employ very vague discussion based on assumptions with no meaningful explanation, analysis of evidence, etc. See Respondent's Oppo. 11. These are not the nature or quality of information which the rule requires.

Petitioner raises many more such issues which at least facially present a reasonable basis for potentially finding the THP to violate CEQA. Detailed discussion of all of these is not necessary and would amount to a full CEQA analysis, a particularly futile exercise at this moment given that the record is not even available and given that the court may simply issue an administrative stay without such analysis.

Petitioners have provided enough evidence to demonstrate some likelihood of success on the merits.

Balancing Test

Both factors support the injunction here. The likelihood of injury to Real Party in Interest from the injunction seems insignificant by comparison to the injuries without it, and much less irreparable.

Real Party in Interest claims that the injunction will be against the public interest because preventing it from logging will reduce the supply of lumber, but does not present evidence that the impact is significant or important to the public interest while the fact is that it is at least as clear that the injury to the environment clearly may be against the public interest.

Real Party in Interest also contends that the injunction will harm it because without the new wood to feed to its sister company's mill, that company, Redwood Empire (RE), will need to continue to buy wood. This is of dubious relevance given that RE seems to be a separate entity, even if they are "sisters." In any case, the fact that RE will need to spend money on wood is not the type of injury that would counter balance the irreparable injury Petitioner shows but merely means that RE may not be able to make as much profit as it would with the Project, a point that is particularly unpersuasive given that this is apparently how it currently operates anyway. Petitioner's reply, moreover, demonstrates that RE's own webpage claims to have access to ample sources of redwood timber to sustain its business. Schoonover Dec. Petitioner also provides evidence, including photographs, showing the RE mill to have large stockpiles of timber and to be in full operation. Jackson Dec., Hanson Dec., Mills Dec.

Real Party in Interest more persuasively contends that it may suffer injury because inability to harvest the wood may impair its ability to pay off its loan. This clearly is a concern but a normal part of business and the evidence, in the Vanderhoof declaration, is rather vague, conclusory, and equivocal. It

merely discusses Real Party in Interest's expense in buying the property and its "expected" loss of revenue pending the injunction, nothing unusual and entirely expected while also not the actual impact on Real Party in Interest. Notably, Real Party in Interest fails to provide any showing on its financial resources, possible loan options, or the like, which could actually show that it would, for example, lose the property and go out of business. Instead, Real Party in Interest only really shows that it will likely suffer a delay in revenues and profits. The evidence, and Petitioner's reply evidence from the Schoonover declaration, also shows that Real Party in Interest seems to be part of a larger corporation with various branches and, as discussed above, ample sources of timber at its disposal. This indicates that Real Party in Interest is not in danger of going out of business should the court issue the injunction, only that it may not be able to make as much profit as it could as soon as it would like. It is also monetary injury and not "irreparable," in contrast to the environmental destruction that the Project could cause. This cannot override the injury threat to the public and environment.

Status Quo

Finally, the injunction would preserve the status quo while denying the injunction and allowing the Plan to go forth would irreparably alter the status quo.

Based on the above analysis, the court grants the preliminary injunction requested by Petitioner.

Undertaking

If the court grants a preliminary injunction, it ordinarily must consider an undertaking or a cash deposit, at least if the opposing party requests one and does not waive the right. Code of Civil Procedure section 529; Smith v. Adventist Health System/West (2010) 182 Cal.App.4th 729, 740; Abba Rubber Co. v. Seaquist (1991) 235 Cal.App.3d 1, 10 (in ordinary tort actions, the bond requirement is mandatory, not discretionary). The amount must cover any damages to defendant if the court finally determines that petitioner was not entitled to the injunction. Code of Civil Procedure section 529; see Top Cat Productions, Inc. v. Michael's Los Feliz (2002) 102 Cal.App.4th 474, 478. The court must thus determine the potential likely harmful effect of the injunction as the basis for the amount. Abba Rubber Co. v. Seaquist (1991) 235 Cal.App.3d 1, 14.

The court also has the authority to waive the bond requirement if it finds that the petitioner is indigent or unable to obtain sufficient sureties, but the court must weigh all relevant factors. Code of Civil Procedure section 995.240. The Supreme Court in Conover v. Hall (1974) 11 Cal.3d 842, at 850-853, interpreted similar "mandatory" language in the statute as still leaving the court its "common law discretion" to waive the bond requirement for an indigent litigant in a decision which ultimately led to section 995.240. Code of Civil Procedure sections 529.1 and 529.2, applying to undertakings in litigation challenging "construction projects," allow a court to require a petitioner to post a bond only if found to be acting in bad faith and if the bond will not cause economic hardship. Courts in CEQA cases, like Federal decisions on environmental actions, ordinarily require no more than a nominal bond in order to avoid a chilling effect or make such actions impracticable given that they are designed not to seek damages but protect the environment and the public interest. See, e.g., No Oil v. City of Los Angeles (1974) 13 Cal.3d 68, 86, n.21; People ex rel. Van De Kamp v. Tahoe Regional Plan (9th Cir.1985) 766 F.2d 1319.

Real Party in Interest asks for a bond of $26,668 per month, which includes not only Real Party in Interest's claimed loss of income but Redwood Empire's as well, particularly dubious given that Redwood Empire is not a party to this action. The court finds that a nominal bond of $500 is in the public's interest.

[1] Apart from adding paragraphs 26, 27 & 30 to the FAC, plaintiffs now allege violations of Civil Code sections 2923.5 and 2923.11 in the first and second causes of action, respectively. The court notes these statutes, although similar to Civil Code sections 2923.55 and 2923.6, are inapplicable here because they only became effective in January 2018, which is after the violations alleged by plaintiffs occurred.

[2] The Forest Practice Rules (hereinafter, the Rules) are found at Cal. Code Regs., tit.14, section 895, et seq. I shall refer to the Rules as "Rule [number]."

END