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10  
11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
12 COUNTY OF PLACER

13 MEADOW VISTA PROTECTION,  
14  
15 Petitioner and Plaintiff,

Case No.: SCV 19614

Complaint Filed: 7/12/06

16 v.

NOTICE OF MOTION AND MOTION  
FOR AN AWARD OF SANCTIONS  
PURSUANT TO CODE OF CIVIL  
PROCEDURE SECTION 128.7

17 CHEVREAUX AGGREGATES, INC.;  
18 COUNTY OF PLACER; COUNTY OF  
19 PLACER PLANNING DEPARTMENT;  
20 and DOES 1 through 50, inclusive,

Date: TBA  
Time: TBA  
Dept.: 4  
Trial: none

Respondents and Defendants.

The Hon. Charles D. Wachob

21 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

22 NOTICE IS HEREBY GIVEN that plaintiff Meadow Vista Protection (MVP) will move  
23 for an award of sanctions against defendant ChevreauX Aggregates, Inc. (ChevreauX) pursuant to  
24 Code of Civil Procedure section 128.7 for the filing of a frivolous motion for judgment on the  
25 pleadings. The motion improperly repeats arguments already raised in ChevreauX's previous  
26 unsuccessful demurrer to MVP's complaint without showing a material change in existing case  
27 or statutory law since the demurrer was overruled and well past the time when reconsideration of  
28 the demurrer ruling would have been proper. Moreover, the motion is brought for the improper

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1 purposes of driving up MVP's litigation costs and "sandbagging" MVP with additional briefing  
2 responsibilities during the time MVP must prepare its reply brief on its pending motion for  
3 summary adjudication, which is scheduled for hearing on the same date as Chevreaux's motion.  
4 Also, the procedural requirements of Local Rule 20.2.1 were not followed, as Chevreaux's  
5 counsel did not meet and confer with MVP's counsel prior to filing the motion.

6 MVP filed its complaint in the instant action on July 12, 2006. On August 22, 2006,  
7 Chevreaux filed its general and special demurrer to MVP's complaint, including the causes of  
8 action for declaratory and injunctive relief. Specifically, the demurrer claimed that MVP's  
9 declaratory and injunctive relief causes of action were barred by failure to exhaust administrative  
10 remedies, several statutes of limitation, absence of a justiciable controversy, lack of ripeness,  
11 lack of subject matter jurisdiction and nonjoinder of indispensable parties/lack of standing. On  
12 October 16, 2006, this Court overruled the demurrer as to both declaratory relief causes of action  
13 and the injunctive relief cause of action.

14 Now, Chevreaux seeks to have a second bite at the apple. It has filed its motion for  
15 judgment on the pleadings alleging substantially the same objections it previously included in its  
16 unsuccessful demurrer, including lack of subject matter jurisdiction, statutes of limitation and  
17 failure to join indispensable parties/lack of standing.

18 Chevreaux also bases much of its motion on a "straw-man" argument that MVP's  
19 complaint attempts to effect enforcement of SMARA. This is not the case. MVP's complaint  
20 seeks enforcement of use permits issued by Placer County which pre-date SMARA and have  
21 nothing whatsoever to do with Chevreaux's reclamation plan. Indeed, one of the permits at  
22 issue, LDA-786 for asphalt production, has nothing whatsoever to do with surface mining.  
23 Thus, the holding in *Calvert v. County of Yuba* (2006) 145 Cal. App. 4th 613 regarding private  
24 enforcement of SMARA, upon which Chevreaux relies almost exclusively, is not even applicable  
25 here.

26 Finally, Chevreaux bases its motion on evidence not appearing on the face of the  
27 complaint and/or which cannot be properly judicially noticed. Chevreaux improperly invokes its  
28 answer and affirmative defenses, introduces evidence obtained during discovery in this case, and

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1 attempts to judicially notice documents not falling within the enumerated categories of Evidence  
2 Code sections 451 or 452. Since a motion for judgment on the pleadings may only be based on  
3 what appears on the face of the complaint and matters properly subject to judicial notice, the  
4 presence of this additional evidence renders Chevreaux's motion unsupportable.

5 Because Chevreaux's motion is utterly without merit and serves no purpose other than to  
6 harass MVP and cause a needless increase in the cost of this litigation, this Court should award  
7 MVP the attorneys' fees incurred in filing the instant motion and in opposing the motion for  
8 judgment on the pleadings.

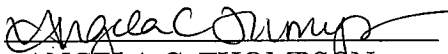
9 This motion for sanctions will be based upon this notice, the supporting memorandum of  
10 points and authorities when filed, the declaration of Angela C. Thompson when filed, and on  
11 such other evidence as may be presented at the time of hearing.

12 Chevreaux personally served its motion for judgment on the pleadings on MVP's counsel  
13 at 4:05 p.m. on April 23, 2007. April 23, 2007 was the sixteenth court day prior to the hearing  
14 date of May 15, 2007 and thus the last possible day for the motion to be served. The instant  
15 notice of motion for sanctions was personally served on Chevreaux one day later, on April 24,  
16 2007, which was the twenty-first calendar day before the hearing date. MVP requested that  
17 Chevreaux withdraw its frivolous motion for judgment on the pleadings and notified Chevreaux  
18 that MVP would seek an award of sanctions sufficient to cover its attorneys' fees incurred in  
19 opposing the offensive motion if it were not withdrawn within 21 days. Pursuant to Code of  
20 Civil Procedure section 128.7, this motion will not be filed if defendant withdraws its motion for  
21 judgment on the pleadings within 21 days.

22 DATED: April 24, 2007.

Respectfully submitted,

23 RONALD A. ZUMBRUN  
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25 ANGELA C. THOMPSON  
26 THE ZUMBRUN LAW FIRM

27 By   
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