

1 STEVEN M. WOODSIDE, COUNTY COUNSEL
David L. Zaltsman, Deputy (SBN 113053)
2 3501 Civic Center Drive, Room 275
San Rafael, CA 94903
3 Tel.: (415) 473-6117, Fax: (415) 473-3796

FILED

JUL 08 2015

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

4 Attorney(s) for the COUNTY OF MARIN
5
6
7

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN
9

10 Community Ventures Partners, Inc.,

11 Petitioner/Plaintiff,

12 v.

13 County of Marin,

14 Respondent/Defendant
15
16
17

Case No.: CV 1404718

**DECLARATION OF DAVID ZALTSMAN
IN OPPOSITION TO MOTION TO
COMPEL ATTENDANCE AT
DEPOSITIONS**

DATE: July 22, 2015

TIME: 8:30 a.m.

DEPT: B

Honorable Rov O. Chernus

18 David Zaltsman declares as follows:
19

- 20 1. I am a Deputy County Counsel for the County of Marin, and the attorney of record for the
21 Respondent herein.
- 22 2. The Petition for Writ of Mandate herein was filed on December 16, 2014 and received by our
23 office on December 19, 2014. I received the case for handling on January 5, 2015.
- 24 3. The Petition attached ten (10) exhibits.
- 25 4. I first contacted counsel for the Petitioner on January 15, 2015 by e-mail. In that e-mail,
26 among other things, I asked if there was going to be an "administrative record" in this case or
27
28

1 whether the attachments to the petition were intended to be the full record. (See Exhibit "A"
2 hereto.)

3 5. Counsel for Petitioner's response was as follows: "Since this is traditional mandamus and
4 not an administrative mandamus case, there won't be an administrative record. But I will
5 have some additional exhibits to attach to future motions or briefs. And you are right – it is a
6 noticed motion course." (See Exhibit "A".)

7
8 6. The County filed its Answer to the Petition on January 30, 2015.

9 7. On Friday February 13, 2015, counsel for petitioner wrote me by e-mail to ask if the County
10 would "...stipulate to an order shortening time for the CMC and for an accelerated hearing
11 schedule." (See Exhibit "B" hereto.)

12
13 8. On Tuesday February 17, 2015 I replied that the County was already in the process of filing
14 what we believed was an appropriate dispositive motion and that a hearing date would be set.
15 (See Exhibit "B" hereto.)

16
17 9. In our opening brief on our motion we stated that we were not disputing any "material fact"
18 contained in the petition, therefore the petition could be "determined" by the Court upon the
19 noticed motion of any party pursuant to Code of Civil Procedure section 1094.

20 10. In their opposition, although petitioner claimed the County was using the CCP 1094 process
21 to attempt to preempt the petitioner from conducting discovery, petitioners actual argument
22 agreed with the County that the CCP section 1094 process "...precludes the County from
23 challenging any facts alleged by Petitioner." At no point in their opposition brief –or
24 otherwise prior to the hearing- did petitioner request a continuance of the hearing to conduct
25 discovery. This was despite the fact that the two (2) declarations that now seem to be the
26
27
28

1 focus of petitioner's concerns were filed with our opening brief. In addition, petitioner
2 submitted five (5) additional exhibits with their opposition brief.

3 11. Despite this, this Court refused to address the merits of the motion, treating the motion as one
4 for "judgment on the pleadings" as opposed to "judgment on the peremptory writ" pursuant
5 to the plain language of CCP section 1094.
6

7 12. The County pointed out this discrepancy at the oral argument on the Court's tentative ruling,
8 but the Court elected to stay with the tentative ruling. And at the oral argument, Petitioner
9 claimed they did object to the CCP 1094 process. They now claimed that they wanted to
10 conduct discovery based upon the declarations submitted with the County's motion from two
11 (2) members of the Board of Supervisors. (So that the true record is clear, the County has
12 obtained and attaches hereto a true and correct copy of the transcript of the hearing held on
13 March 25, 2015 hereto as Exhibit "C.")
14

15 13. At the hearing, the Court stated that it understood that its ruling might "open the door" to
16 inappropriate and unnecessary discovery since the "...facts are fairly clear..." The Court
17 therefore stated that "...I will expect that there will be some motion on whether there is a
18 need for discovery or not a need for discovery..." (Exhibit "C" at page 7.)
19

20 14. However, rather than discuss whether there was a legitimate need for discovery in this
21 matter, petitioner simply served the County with a "Request for Production of Documents
22 and Things, Set One." Since the requested documents –to the extent there were any- would
23 constitute public records, the County elected not to bring any motion opposing this discovery
24 at that time. The hope, as we stated at the subsequent CMC on May 28, 2015, was that with
25 that additional information –if there was any- the parties could get on with briefing the merits
26 of this case.
27
28

- 1 15. On June 1, 2015 I therefore wrote counsel for petitioner by e-mail asking if we could go
2 ahead and set a briefing schedule. Counsel responded: "We do plan to engage in other
3 discovery and I am not ready right now to propose any schedule until we determine the
4 extent of discovery." (See Exhibit "D" hereto.)
5
- 6 16. Thereafter on Friday June 12, 2015 our office received a Notice of Taking of Deposition of
7 Defendants" scheduled for June 25, 2015. As I was on vacation at that time, I did not see the
8 notice until I returned June 19, 2015.
- 9 17. Since petitioner had not to my knowledge at any time specified what material, relevant facts
10 were disputed in this matter, it is my understanding of the law that "extra-record evidence" is
11 inappropriate and not allowed. Therefore on June 23, 2015 I informed counsel that unless he
12 could inform me what material facts were in dispute that might be relevant to the
13 determination of this petition, the county officials would not be attending the deposition and
14 the County would be filing a motion to terminate discovery and set a briefing schedule. (See
15 the e-mail exchange attached hereto as Exhibit "D.")
16
17
- 18 18. However, the very next day I received petitioner's notice of motion and motion to compel
19 (albeit without any hearing date noted.) Once again, in my opinion there is nothing in
20 counsel for petitioner's declaration that specifies what evidence, relevant to the single issue
21 in this proceeding, was disputed by the declarations of Supervisor Rice and Arnold that
22 would allow for extra-record evidence to be sought in this proceeding via discovery.
23
24
25
26
27
28

1 Dated: July 7, 2015.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully Submitted,

PATRICK K. FAULKNER
COUNTY COUNSEL

By: 
DAVID L. ZALTSMAN, DEPUTY
Attorneys for Defendant County of Marin

69430