

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/01/17

DEPT. F49

HONORABLE STEPHEN PFAHLER

JUDGE

A. CHEBISHYAN

DEPUTY CLERK

HONORABLE
4

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

V. KRBOYAN, CA

Deputy Sheriff

DREENA TABOR, CSR 5504

Reporter

8:35 am

PC056481

Plaintiff
Counsel

TRACY SWANN (X)

PEOPLE OF THE STATE OF CALIFORNIA
VS.
BARTON WAYNE FISHBACKDefendant
Counsel

MAINAK D'ATTARAY (X)

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANTS (1) CLARIFICATION OF THE DECEMBER 23, 2015 ORDER GRANTING PRELIMINARY INJUNCTION (THE "INJUNCTION");(2) IN THE ALTERNATIVE, MODIFICATION OF THE ORDER

MOTION OF PLAINTIFF FOR MODIFICATION AND REQUEST FOR CLARIFICATION OF DECEMBER 23, 2015 PRELIMINARY INJUNCTION ORDER

The Order Appointing Court Approved Reporter as Official Reporter Pro Tempore is signed and filed this date.

The matters are called for hearing.

The Court reads and considers the moving papers in support of, in opposition to and reply to the above stated motions.

After oral argument, the Court takes the matter under submission and later rules as follows:

The Court issues its Ruling and is ordered attached to this minute order and incorporated as part of the record.

Both Plaintiffs' and Defendants' requests for modification of the Court's 12/23/15 Preliminary Injunction Order are denied. The Order is clarified

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NATURE OF PROCEEDINGS:

as stated in the Court's Ruling.

Clerk is to give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Chatsworth, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 05/03/17

Sherri R. Carter, Executive Officer/Clerk

By: _____



A. CHEBISHYAN

<p>MINUTES ENTERED 05/01/17 COUNTY CLERK</p>
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Defendant
Counsel

MAINAK D'ATTARAY (X)

NATURE OF PROCEEDINGS:

TRACY SWANN
648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CA 90012

D'ATTARAY LAW
111 WEST OCEAN BOULEVARD
SUITE 400
LONG BEACH, CA 90802

<p>MINUTES ENTERED 05/01/17 COUNTY CLERK</p>
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RULING

SP

TRIAL DATE: 6/19/17

Dept. F-49
Calendar # 4
Date: 5/1/17
Case #PC056481

MOTIONS RE 12/23/15 PRELIMINARY INJUNCTION ORDER

Ps People of the State of California and County of L.A. and Ds Barton Wayne Fishback and Alpha Bravo Corporation dba ABC Waste Management Corp. have each filed motions regarding the 12/23/15 Preliminary Injunction Order issued by this Court.

RELIEF REQUESTED BY Ps: An order to modify and/or clarify the 12/23/15 order granting a preliminary injunction against Ds Barton Wayne Fishback (Fishback); Alpha, Bravo, Coca Waste Management Corp. (ABC Waste Management); Charles Lee (Lee); and Cepheid V, LLC (Cepheid).

Ps request the Court clarify and/or modify the Injunction Order to expressly state the inherent ban on importation of concrete, brick, demolition and construction debris, and construction waste material to certain real properties located along Browns Canyon Road (Parcel 30 APN 2821-009-030; Parcel 31 APN 2821-009-031; Parcel 23 APN 2821-002-023; Parcel 25 APN 2821-002-025) in the unincorporated community of Oat Mountain, L.A. County, California and from any other property within the unincorporated areas of the County.

Ps also seeks to modify the Injunction Order to enjoin the importation and deposit of solid fill as defined by the Title 22 of the L.A. County Code (Zoning Code) without a conditional use permit.

Ps also seek an order clarifying the term "truck" as used in the court's 2/24/17 order which allowed "trucks" to enter the properties. Ps seek to have the term "truck" limited to class 1, 2 and 3 vehicles/trucks with a maximum gross vehicle weight of 14,000 pounds onto the properties.

RELIEF REQUESTED BY Ds: An order clarifying the Court's 12/23/15 order granting preliminary injunction regarding the following terms in the Order: (1) "deposit," (2) "fill material," (3) "any other property in the unincorporated County," and "any grading and excavation without grading permits from the County."

Alternatively or in addition, Ds seek an order modifying the Order to allow Ds to import and utilize agricultural amendments, fertilizers, mulch and other materials as necessary to prevent soil erosion from the recent and ongoing precipitation events.

RULING: Both Ps' and Ds' requests for modification of the Court's 12/23/15 Preliminary Injunction Order are denied. The Order is clarified as set forth below.

Neither Ps nor Ds have shown that there has been a material change in the facts upon which the injunction was granted, that the law upon which the injunction was granted has changed, or that the ends of justice would be served by the modification of the injunction. As such, the court declines to modify the 12/23/15 Injunction Order. See CCP 533.

The 12/23/15 Order states that Ds are enjoined from "depositing and/or allowing to be deposited fill material consisting of concrete, brick, demolition and construction debris, and construction waste material" at certain real properties. The Court finds the definition "fill material" to be clearly set forth without any need for further clarification. The term "deposit" and its derivatives means bringing such material onto the property.

The court declines to modify the order to include materials not previously expressly included in the prohibited materials. However, to clarify, the Court notes that the Order goes on to state that Ds are enjoined "from performing and allowing to be performed any grading and excavation without grading permits from the County at the Properties and at any other property in the unincorporated County." Therefore, if any other materials are deposited, imported and/or brought onto the property for any grading and excavation without permits, such conduct would be in violation of the Order. The prohibition against any grading and excavation activity without permits is clear and requires no clarification.

The Court by way of its 2/24/17 and 2/28/17 orders allowed Ds to bring clean soil onto the property for the limited purpose of repairing eroded hillsides and slopes caused by the heavy rains during that month. Those orders have expired, and the Court declines to extend or reinstate them as there has been an insufficient showing of any imminent harm based on the current weather conditions.

The court declines to define the term "truck" as used in its 2/24/17 order as requested by Ps. The types of vehicles accessing the properties was not at issue in the original preliminary injunction and is not sought to be enjoined by the First Amended Complaint. It has not been shown that the only purpose such vehicles could serve would be in violation of the Preliminary Injunction Order.

With regard to the phrase "any other property in the unincorporated County" used in the Preliminary Injunction Order, that phrase is intended to cover properties owned and/or controlled by Ds in the general vicinity of the other parcels specifically noted in the Order.

Ps' and Ds' objections to the other's evidence are overruled.