

**PARTIES/ATTORNEYS**

Plaintiff	Kenneth P. Brown Jeffrey Brown Heather Brunson Sandra L. Camp Chris Cavazos Lelia Sarranzana Peggy A. Warwick	Allen K. Hutkin
Defendant	Scott Brown	Paul F. Ready

**PROPOSED TENTATIVE**

On August 2, 2018, plaintiffs Kenneth Brown, Sandra Camp, Peggy Warwick, Jeffrey Brown, Chris Cavazos, Lelia Serranzana, and Heather Brunson (plaintiffs), filed a complaint against defendant Scott Brown (and all persons with an unknown interest in the property located at 1901 Ironwood Driver, Santa Maria (real property)) for injunctive relief, partition, private nuisance, waste, and declaratory relief. Briefly, plaintiffs and defendant are co-owners of the real property. As of June 2010, defendant moved into and became the occupant of the real property. Thereafter, defendant caused damage to, left abandoned vehicles on, allowed excessive trash on, and failed to pay taxes on the real property. On several occasions, County of Santa Barbara, Planning and Development Department, notified plaintiffs of several Municipal Code violations involving the real party, caused by defendant. Plaintiffs demanded defendant to stop his wrongful conduct, to no avail, and spent \$3,158.16 on fines and waste removal services, and \$14,402.69 on taxes, insurance, and other expenses, for which defendant has not contributed. Defendant was served personally on August 7, 2018. Defendant did not file an answer, and entry of default was made on November 27, 2018. On February 15, 2018, the court entered judgment against defendant and in favor of plaintiffs collectively for \$76,350.17, consisting of general damages of \$50,108.49; prejudgment interest of \$18,024.18; costs of \$1,022.50; and attorney fees of \$7,285.

A new default judgment in plaintiffs favor was entered on March 19, 2019, in the same amount. The court expressly retained jurisdiction to determine 1) the partition by sale and the proceeds from the sale to be divided among all tenants in common (including defendant); 2) the parties' pro rata share of amounts incurred and to be incurred for investigation, assessment, monitoring, treatment, removal and/or radiation of materials from the real property; 3) the diminution in value of the real property, including the loss of use and loss of rent; 4) statutory treble damages pursuant to Code of Civil Procedure section 732; and 4) the amount of post-judgment interest. In addition, the court enjoined defendant from occupying the real property; divided the real property in 1/6 each to plaintiffs Kenneth Brown, Sandra Camp, Peggy Warrick, Jefferey Brown, and defendant Scott Brown, with 5.55 % to plaintiff Chris Cavazos, Lelia Serranzana, and Heather Brunson. Judgment was reserved as to defendant Brown's "pro rata share of costs of partition, any and all amounts incurred and to be incurred for the investigation, assessment, monitoring, treatment, removal, and/or remediation of hazardous materials from the Real Property, the diminution in value of the Real Property, the loss of use and loss of rent from the use of the Real Property," as well as "statutory treble damages pursuant to [Code] Civ. Procedure [] § 732, and interest at the rate of ten (10%) per annum from the date of each

aforementioned expenditure.” “The judgment shall be secured by a lien on Defendant Brown’s interest in the Real Property or proceeds of sale of the Real Property.”

A writ of possession was ultimately obtained on December 12, 2024.

On February 19, 2025, the court appointed referee Paul Ready to conduct the partition sale of the real property, with a signed order on January 20, 2025, detailing the enumerated powers the referee had, namely to list, market, accept offers, execute all documents necessary, engage in all services necessary, open and manage an escrow account for the sale of, deliver a deed and other documents about, and receive and distribute funds for, the real property. The referee was directed to conduct the sale in accordance with existing law and file a report of sale and petition for conformation of sale with the court. Reasonable fees and expenses were to be paid from the sale, subject to court approval.

On June 19, 2025, the court approved the Referee’s Proposed Notice of Sale. Proof of publication was submitted on July 14, 2025; a second order, dated July 16, 2025, approved the form of the notice of sale of the real property. The sale of \$391,000 was approved by order on August 4, 2025, with the court also approving receipt of the buyer’s deposit, disbursement of the real estate commission, and authorizing the referee to pay all reasonable and customary costs of sale. On October 22, 2025, the court approved the Referee’s Final Account and Report, allowing payment of \$16,763.91 for referee fees, with the remaining amounts to be deposited with the Clerk of the court. The Clerk presently holds \$333,444.15 plus nominal interest from the sale.

The matter before the court is the “Motion for Order Determining and Allocating Costs, Damages, and Disbursement of Proceeds,” following the unresolved issues in the court’s March 19, 2019, judgment. It appears plaintiff Kenneth Brown died on March 14, 2023, and his personal representatives of his estate (Kenneth P. Brown, Jr. and Kymberlee L. Wilkins) are prosecuting the matter through the estate. Plaintiffs now ask the court to enter judgment as part of the partition action (per the court’s retained jurisdiction for determination in the March 19, 2019, judgement), in favor of plaintiffs, as follows:

- Costs in the amount of \$23,526.31 associated with defendant’s conduct, including clean-up, boarding, and travel expenses;
- Diminution of lost value in the real property of \$84,000, trebled to \$252,000, pursuant to Code of Civil Procedure section 732,<sup>1</sup> based on defendant’s wasteful misconduct. Plaintiffs argue the real property’s fair market value of \$450,000 to \$500,000 was reduced to an actual sale price of \$391,000, with a diminution of between \$59,000 to \$109,000. Based on the declaration of Jim Settle, a real estate expert, filed contemporaneously with the motion, the diminution in value of the real property was \$84,000, which is “directly attributable to the waste and neglect by” defendant.

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<sup>1</sup> This provision provides in full as follows: “If a guardian, conservator, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.”

- Total estimated lost rent of \$282,800 (from January 1, 2017, to December 10, 2024), with prejudgment interest of \$92,500, for a total of \$375,300. Because defendant “was entitled to 1/6 of the rent for the [real property] (i.e., 16.666667%), the amount is reduced to \$312,750 (i.e., \$375,300-\$62,550 = \$312,750; and
- The original judgment amount of \$76,350.17 (entered on March 19, 2019), with post-judgment interest of 10% (\$51,841.77), for total amount of \$128,191.94.

Plaintiffs therefore ask the court to enter judgment in plaintiffs’ favor, against defendant Brown, for \$23,526.31 + \$252,000 + \$312,750 + \$128,191.94, for a total judgment of \$716,468.25.

Plaintiffs acknowledge the court has a total of \$333,444.15, and that this amount will offset the judgment amount entered. Plaintiffs contend that the full amount (\$333,444.15) should be reduced by the amounts plaintiffs spent for the common benefit of all owners of the property during the litigation odyssey, as follows: \$5,109.95 paid by plaintiff Serranzana; \$1,000 paid by Jeffrey Brown; \$500 by Sandra Camp; and \$61,836.05 by the Estate of Kenneth Brown, which totals \$68,446. This leaves \$264,998.15. Further, as defendant Brown had a 1/6 interest in the property (16.666667%), defendant is entitled to \$44,166.36 of the remaining \$264,998.15, meaning the judgment amount of \$716,468.25 can be offset by \$44,166.36, leaving a judgment amount of \$672,301.89.

Plaintiffs then ask the court to distribute the amount held by the court from the \$333,444.15 as follows:

- \$17,666.54 to plaintiff Heather Brunson (1/15th fractional interest in real property);
- \$17,666.54 to plaintiff Chris Cavazos (1/15th fractional interest in real property);
- \$22,776.49 to plaintiff Leila Serranzana (\$17,666.54 (1/15th fractional interest in real property) + \$5,109.95 (for common benefit expenses);
- \$53,999.63 to Jeffrey Brown (\$52,999.63 (20% interest in real property) + \$1,000 for common benefit expenses);
- \$53,499.63 to Sandra Camp (\$52,000.63 (20% interest in real property) + \$500 for common benefit expenses);
- \$118,185.88 to the Estate of Kenneth Brown (\$52,999.63 (20% interest in real property), plus \$61,836.05 for common benefit expenses, plus, \$3,350 reimbursement for money advanced to Peggy Warwick)
- \$49,649.63 to Peggy Warwick (\$52,999.63 (20% interest in property), minus \$3,350 for money advanced by Estate of Brown.

$\$17,666.54 + \$17,666.54 + \$22,776.49 + \$53,999.63 + 53,499.63 + \$118,185.68 + \$49,649.63 = \$333, 444.14$  (the court holds \$333,144.15.)

The court pursuant to Code of Civil Procedure section 872.140 “may, in all cases, order allowance, accounting, contribution, or other compensatory adjustment among the parties

according to the principles of equity.” Treble damages are appropriate for waste, per Code of Civil Procedure section 732. Code of Civil Procedure section 874.040 empowers the court to apportion costs of partition among the parties in proportion to their interests or make such other apportionment as may be equitable. Code of Civil Procedures section 874.020 provides that the costs of partition are those “necessarily incurred by a party for the common benefit in prosecuting or defending other actions or other proceedings for the protection, confirmation, or perfection of title . . . .” Pursuant to Code of Civil Procedure section 874.010, subdivision (e), the costs of partition include “other disbursements or expenses determined by the court to have been incurred or paid for the common benefit.”

Plaintiffs’ application comports with the statutory scheme noted above, and falls within the court’s retained jurisdictional power following the March 19, 2019 order. Plaintiffs supplement their application with detailed declarations from real estate agent Jim Settle (discussing the diminution of value); and a declaration from Kymberlee Wilkens (detailing the amounts paid by plaintiffs for remediation of the real property, including invoices and copies of payments, her authority to act on behalf of the Estate of Kenneth Brown, and the fair market value of the property). All plaintiffs and defendant were served with the current application and attendant evidence, and no opposition has been submitted.

The court will grant the motion and enter judgment against defendant Scott Brown for \$672,301.89, and distribute \$333,444.15 (currently being held by the Clerk following the sale of the real property), as follows: \$17,666.54 to plaintiff Brunson; \$17,666.54 to plaintiff Cavazos; \$22,776.49 to plaintiff Serranzana; \$53,999.63 to plaintiff Jeffrey Brown; \$53,4999.63 to plaintiff Camp; \$118,185.68 to the Estate of Kenneth Brown; and \$49,649.63 to plaintiff Warwick. This totals \$333,444.14, leaving one cent with the court (and perhaps some nominal interest). The parties may want to readjust the amounts to cover disbursement of all monies current held by the court.

Plaintiffs are directed to provide a proposed order and judgment for signature commensurate with the court’s conclusions.