

## TENTATIVE RULINGS

**FOR: June 14, 2018**

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

**Unlawful Detainer Cases** – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

**Court Reporting Services** – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

**CIVIL LAW & MOTION CALENDAR – Hon. Elia Ortiz, Dept. H (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.**

**Jackson Street Wine Warehouse LLC v. Sarah Ruggiero, et al.**

**26-66082**

1) PLAINTIFF’S/CROSS-DEFENDANTS’/CROSS-COMPLAINANTS’ MOTION FOR LEAVE TO AMEND CROSS-COMPLAINT TO SUBSTITUTE ROCKZILLA AS A DOE DEFENDANT

**TENTATIVE RULING:** The Motion is DENIED. As an initial matter, moving party failed to comply with California Rules of Court, rule 3.1324(a). The proposed amended complaint shows amendments as compared to the First Amended Cross-Complaint, which was stricken. The operative pleading is the original Cross-Complaint; any proposed amendment would be from the Cross-Complaint, as the previous pleading.

In addition, the Order Denying Ex Parte Application for Order of Dismissal filed May 30, 2018 required Cross-Complainants Callahan and Raja to verify any proposed amended cross-complaint. The proposed amended cross-complaint is not verified.

The Motion is also not supported by a separate declaration specifying when the facts giving rise to the amended allegations were discovered and the reasons why the request for amendment was not made earlier. Without this information, the Motion is not properly supported. However, in reviewing the evidence presented in opposition, it appears that such a declaration was not provided because the facts are not in the moving party’s favor.

“The modern rule with respect to actions involving parties designated by their true names in the original complaint is that, where an amendment is sought after the statute of limitations has run, the amended complaint will be deemed filed as of the date of the original complaint provided recovery is sought in both pleadings on the same general set of facts.”

(*Austin v. Massachusetts Bonding & Ins. Co.* (1961) 56 Cal.2d 596, 600.) Code of Civil Procedure section 474 allows “for adding defendants after the statute of limitations has expired, but this procedure is available only when the plaintiff is actually ignorant of the facts establishing a cause of action against the party to be substituted for a Doe defendant. [Citation.] ‘The question is whether [the plaintiff] knew or reasonably should have known that he had a cause of action against [the defendant].’ [Citation.]” (*McClatchy v. Coblenz, Patch, Duffy & Bass, LLP* (2016) 247 Cal.App.4th 368, 371-372.)

Here, the Doe amendment to add Rockzilla suffers from the same problem as the previously stricken First Amended Cross-Complaint: the allegations do not arise from the same set of facts that were in the original Cross-Complaint. Furthermore, the original Cross-Complaint alleged the Doe Cross-Defendants were “acting as the agent, employee and co-venturer of each of the remaining Cross-Defendants and at all times each Cross-Defendant was acting within the course and scope of such agency, employment and joint venture.” (Cross-Complaint, para. 9.) The Cross-Complaint focused entirely on the Ruggieros and Crown Realty as property managers and real estate agents for Mr. Callahan and Raja, and their alleged breach of their duties in that capacity and associated fraudulent conduct. Rockzilla is not alleged to be an agent, employee or co-venturer of the Ruggieros and Crown Realty, and as a tenant, would have an entirely different relationship vis-à-vis Mr. Callahan and Raja.

In addition, Rockzilla is alleged to have “hid” the 25 year lease with rent locked in at a below market rate in 2008, and did not disclose the 25 year lease until October 2015. (Proposed Second Amended Cross-Complaint at para. 16.) This is directly disputed by the 2013 Subordination, Non-Disturbance and Attornment Agreement dated December 12, 2013 (“Subordination Agreement”) and October 11, 2013 Credit Application, attached to the Declaration of James M. Marshall. The Subordination Agreement, signed by Mr. Callahan, expressly references the 25 year lease. The Credit Application also indicates that Mr. Callahan supplied the 25 year lease to the Rabobank as part of his Credit Application.

As the proposed Second Amended Cross-Complaint adds new facts and claims against Rockzilla, and Mr. Callahan/Raja were not actually ignorant of the facts establishing the alleged claims against Rockzilla, the relation back doctrine does not apply to Rockzilla as a later-identified Doe defendant. Allowing amendment would be futile based on the evidence produced in opposition.

## 2) PLAINTIFF’S/CROSS-DEFENDANTS’/CROSS-COMPLAINANTS’ MOTION FOR LEAVE TO FILE SECOND AMENDED CROSS-COMPLAINT

**TENTATIVE RULING:** The Motion is DENIED for the same reasons stated above.

**PROBATE CALENDAR – Hon. Francisca Tisher, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.**

**Estate of Evelyn Chystella Biddenback**

**17PR000034**

FIRST AND FINAL ACCOUNT AND REPORT OF EXECUTOR AND PETITION FOR ITS SETTLEMENT; FOR ALLOWANCE OF COMPENSATION TO EXECUTOR AND HIS ATTORNEY FOR STATUTORY AND EXTRAORDINARY SERVICES; FOR REIMBURSEMENT OF ADVANCES; AND FOR FINAL DISTRIBUTION

**TENTATIVE RULING:** GRANT Petition.

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**Conservatorship of Richard Wilczak**

**17PR000240**

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

**TENTATIVE RULING:** The court investigator's report is not on file. The review hearing is continued to July 19, 2018, at 2:00 p.m. in Dept. C to allow time for completion of the court investigator's report.

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**Conservatorship of Jeffrey Monroe**

**26-67844**

ACCOUNTING

**APPEARANCE REQUIRED** to address the accounting.

**CIVIL LAW & MOTION CALENDAR – Hon. Francisca Tisher, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.**

**Global Acceptance Credit Comp. v. Cary Shott**

**26-55966**

MOTION OF DEFENDANT CARY SHOTT TO SET ASIDE DEFAULT JUDGMENT BASED ON EXTRINSIC FRAUD

**TENTATIVE RULING:** Defendant's motion is GRANTED. The proof of service filed by defendant reflects proper service of this motion on both the assignor and assignee of the judgment in this matter, and no opposition has been filed. Thus, the court will conclude based on defendant's representation that she was never properly served with a summons in this case that she is, therefore, entitled to equitable relief from the default despite the significant passage of time since its entry. The case is set for an OSC re: Dismissal on July 31, 2018, at 2:00 p.m. in Dept. C. The clerk is directed to send notice.