

TENTATIVE RULINGS

FOR: July 27, 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. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. 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.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. C (Historic Courthouse) at 2:00 p.m.

Estate of William Dale Marshall

17PR000146

FIRST AND FINAL REPORT OF ADMINISTRATOR ON WAIVER OF ACCOUNT AND PETITION FOR ALLOWANCE OF STATUTORY COMPENSATION TO ATTORNEYS AND FOR FINAL DISTRIBUTION

TENTATIVE RULING: GRANT Petition.

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Conservatorship of Raymond Michael Hayes

26-61509

REVIEW HEARING

TENTATIVE RULING: On July 26, 2016, the Court ordered the co-conservators to file Notice of Conservatee’s Rights (Judicial Council form GC-341) and Determination of Conservatee’s Appropriate Level of Care (Judicial Council form GC-355). The co-conservators have not filed the documents. Moreover, if the co-conservators seek to waive the court investigator fees, they need to file Request to Waive Court Fees (Judicial Council form FW-001-GC), and Order on Court Fee Waiver (Judicial Council Form FW-003-GC). The matter is continued to August 17, 2018, at 2:00 p.m. in Dept. I to allow the co-conservators time to file the materials. The clerk is directed to send notice to the parties, including attorney Michael Voorhees. Although a substitution of attorney was filed on September 11, 2014, there is an ambiguity as to whether the substitution applied to both co-conservators or just to co-conservator Randolph Hayes. If Voorhees is no longer representing co-conservator Jacqueline Chikoyak, he needs to clear up the ambiguity by filing a substitution of attorney.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. C (Historic Courthouse) at 2:00 p.m.

Kayleigh Slusher, et al. v. City of Napa, et al.

16CV001186

MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

TENTATIVE RULING: Plaintiffs move for leave to file an amended complaint in order to substitute Ken Adams as defendant Doe 1, add allegations supporting their claims uncovered during discovery, and remove the Bane Act claim. The Court turns to the opposition arguments from defendants County of Napa, Rocio Diaz-Lara, and Nancy Lefler-Panela (County Defendants) and the opposition arguments from defendants City of Napa, Garrett Wade, Dominic DeGuilio, Robert Chambers, and Garrett Smith (Napa Defendants).

A. County Defendants' Opposition

County Defendants assert the proposed amendments as to Adams are time-barred based on an initial discovery exchange on August 28, 2015. According to County Defendants, because Adams was disclosed as a witness, plaintiffs knew Adams was involved in the case well in advance of filing the case on December 20, 2016. The assertion fails.

Code of Civil Procedure section 474 allows a plaintiff to designate as "Doe" defendants those parties whose true identities are unknown at the time the complaint was filed. "The reference in section 474 to "[w]hen the plaintiff is ignorant of the name of a defendant" includes situations where the plaintiff "knew the identity of the person but was ignorant of the facts giving him a cause of action against the person" (*Snoke v. Bolen* (1991) 235 Cal.App.3d 1427, 1431-32, quoting *Marasco v. Wadsworth* (1978) 21 Cal.3d 82, 88.) Ignorance of the facts is the critical issue. (*Id.* at p. 1432.) The question, therefore, is whether plaintiffs knew of their claim against Adams for the purposes of § 474 at the time plaintiffs filed their original complaint. They did not.

Plaintiffs make clear they first learned of Adams' role in the incident during the depositions of Lefler-Panela and Diaz-Lara, which took place on December 19, 2017, and January 9, 2018. (Sherwin Decl., ¶ 8.) Because plaintiffs lacked knowledge of the facts bearing upon Adams' liability when they filed this action in December 2016, they have properly named him as a "Doe" defendant under § 474 and there is no statute of limitations issue. (See *Gen. Motors Corp. v. Super. Ct.* (1996) 48 Cal.App.4th 580, 592-94 [§ 474's purpose is to enable plaintiffs to bring an action before the statute of limitations bars a claim, and then later to bring in a defendant when his identity or the claim against him is discovered].) County Defendants otherwise have not shown that plaintiffs had actual knowledge of the basic facts against Adams when they filed this action.

B. Napa Defendants' Opposition

Napa Defendants maintain the proposed amendments will cause delay and prejudice and are largely futile due to immunity. The opposition is not well-taken. Any delay or prejudice is not compelling on balance with the policy of great liberality in permitting amendments to a pleading, especially considering the Trial Management Conference is set nearly a year from now

on July 6, 2019. (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761; see *Bd. of Trustees v. Super. Ct.* (2007) 149 Cal.App.4th 1154, 1163 [detailing that it is a rare case in which a court will be justified in refusing a party leave to amend his or her pleading so that he or she may properly present his or her case].) Napa Defendants' contentions regarding the allegations about Wade's purported immunity are not appropriate for resolution here. Although Napa Defendants may have a procedural vehicle available to challenge the allegations, this ruling should not be interpreted as permitting a second bite of the apple regarding issues already ruled on in the Court's prior order.

C. Conclusion

Plaintiffs' motion for leave to file an amended complaint is GRANTED. (Code Civ. Proc., § 473, subd. (a)(1).) Plaintiffs shall file and serve their proposed first amended complaint within 10 calendar days. Paragraph 26 from the proposed first amended complaint shall not appear in the filed pleading. In the April 4, 2017 Order, the Court (Hon. Price) granted the motion to strike that paragraph. Plaintiffs may re-number the paragraphs in the amended pleading as necessary to account for the deletion.

The Case Management Conference scheduled for July 27, 2018, is continued to September 27, 2018, at 2:00 p.m. in Dept. C.

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Ned Goldstein, et al. v. National Title Insurance of New York, Inc. 17CV000869

MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND THE DEPOSITION OF DEFENDANT NATIONAL TITLE INSURANCE COMPANY OF NEW YORK'S PERSON MOST QUALIFIED

TENTATIVE RULING: The Notice of Motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Plaintiffs' counsel is directed to contact Defendant's counsel forthwith and advise Defendant's counsel of Local Rule 2.9 and the Court's tentative ruling procedure. If Plaintiffs' counsel is unable to contact Defendant's counsel prior to the hearing, Plaintiffs' counsel shall be available at the hearing, in person or by telephone, in the event Defendant's counsel appears without following the procedures set forth in Local Rule 2.9.

Plaintiffs' Request for Judicial Notice is GRANTED. The Court may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments. (Evid. Code, § 452, subd. (d); *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914.)

Plaintiffs' Motion is GRANTED. Plaintiffs previously obtained an order from the Los Angeles Superior Court granting its Motion to Compel the Deposition of the PMQ of Defendant and For Monetary Sanctions on May 26, 2017. In making that ruling, the Los Angeles Superior Court had before it Plaintiffs' notice of deposition for March 10, 2017, which included a request for production of the claims manual. Pursuant to the order, Defendant's PMQ attended the June 12, 2017 deposition, but still did not produce the claims manual. Counsel for both parties met and conferred and reached an agreement for production of the claims manual subject to a protective order; this is clearly reflected in the deposition transcript. Plaintiffs' counsel drafted a

protective order and sent it to Defendant's counsel, and then agreed to all of Defendant's counsel's June 22, 2017 revisions to the protective order on October 5, 2017. Defendant's subsequent renegeing on that agreement is essentially in violation of the May 26, 2017 court order compelling Defendant's PMQ's attendance, testimony, and production of documents as described in the March 10, 2017 deposition notice. Defendant is ordered to finalize the protective order as agreed and then produce the claims manual. If Defendant fails to do so, the Court will entertain a motion pursuant to Code of Civil Procedure section 2025.450, subdivision (h).

The Court will not rule on either parties' evidentiary objections as they are unnecessary for disposition of this Motion.