

## TENTATIVE RULINGS

**FOR: May 4, 2021**

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

**Remote appearances via Zoom are mandatory to prevent the spread of COVID-19.** Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

### **Dept. A Zoom**

**Join by Video (Preferred)**

<https://us02web.zoom.us/j/85897874559?pwd=Nk1VTnNQZmIzNXQwbVNiUk1iQTNCZz09>

**Join by Phone:** 877 853 5247 or 888 788 0099      **Meeting ID:** 858 9787 4559      **Password:** 704959

### **Dept. B Zoom**

**Join by Video (Preferred)**

<https://us02web.zoom.us/j/89902611018?pwd=OXJRM2FFWHZ4YXJ4b2szZW51UFJYZz09>

**Join by Phone:** 877 853 5247 or 888 788 0099      **Meeting ID:** 899 0261 1018      **Password:** 776773

**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. A (Historic Courthouse) at 8:30 a.m.**

**Conservatorship of Wanda D. Kelley**

**21PR000060**

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

**APPEARANCE REQUIRED.** As stated in the March 30, 2021 Minute Order, the Court does not object to the proposed conservator’s request to appear in person for the hearing. Petitioner shall file the proposed order (GC-340) and letters (GC-350) conforming to the petition.

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**Estate of Patsy Jane Lamm**

**21PR000076**

PETITION FOR PROBATE OF LOST WILL AND FOR LETTERS OF ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

**TENTATIVE RULING:** GRANT petition.

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**Estate of Susan R. Sjoldal**

**18PR000260**

FIRST AND FINAL REPORT OF EXECUTOR ON WAIVER OF ACCOUNT AND PETITION FOR ALLOWANCE OF COMPENSATION TO EXECUTOR AND ATTORNEY FOR ORDINARY SERVICES, AND FOR FINAL DISTRIBUTION

**TENTATIVE RULING:** GRANT petition, including fees as modified in the supplement filed on April 29, 2021.

**CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.**

**Global Liberty Insurance Co. of New York v. Matthew Nagy**

**20CV000568**

DEFENDANT’S DEMURRER TO FIRST AMENDED COMPLAINT

**TENTATIVE RULING:** The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND. The Court sets the matter for an OSC re: Dismissal hearing on July 1, 2021, 8:30 a.m. in Dept. A. The clerk to provide notice.

Defendant Matthew Nagy demurs to the First Amended Complaint (FAC) on the ground that it fails to state a cause of action against Defendant. Specifically, Defendant argues that Plaintiff’s cause of action is barred by the applicable statute of limitations.

A complaint must contain “facts constituting the cause of action.” (Code Civ. Proc. § 425.10, subd. (a)(1).) A demurrer is treated as “admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Comm. on Children’s Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14.) A general demurrer will also lie “where the complaint has included allegations that clearly disclose some defense or bar to recovery.” (*Cryolife, Inc. v. Super. Ct.* (2003) 110 Cal.App.4th 1145, 1152.)

As Defendant notes in his moving papers, the Court granted Defendant's demurrer to Plaintiff's original complaint (Original Demurrer) on the ground that the single cause of action asserted therein was barred by the statute of limitations. (See December 18, 2021 Minute Order (12/18 MO).) Plaintiff opposed the Original Demurrer arguing that the statute was equitably tolled. (See Opposition to Original Demurrer at 3:27, *et seq.*)

Relying on *Cryolife, Inc. v. Super. Ct.*, *supra*, 110 Cal.App.4th at 1152 in the 12/18 MO, the Court concluded that, "[b]ecause the Complaint was filed more than three years after the incident alleged therein to have given rise to the claim, it 'clearly discloses' facts from which the Court may conclude that the claim is barred by the statute of limitations." The Court then stated, "the Court finds no allegations in the Complaint that would support a finding that the statute of limitations period is equitably tolled or that Farmer's should be equitably estopped from asserting the statute as a bar to recovery. At oral argument, however, Plaintiff's counsel argued there are additional allegations that could be made regarding continued settlement representations that would sufficiently plead around the statute of limitations in this case."

The only allegations in the FAC that differ materially from those in the original Complaint are found in paragraphs 13-16 (of the FAC).<sup>1</sup> Of these, only one sentence contains allegations of an event occurring prior to the filing of the original complaint in this action.<sup>2</sup> The original Complaint alleged that "[t]his settlement agreement fell through on May 29, 2019." (Complaint at ¶ 13.) The FAC alleges that "[t]his original settlement agreement fell through on May 29, 2019. However, settlement negotiations between the parties continued." (FAC at ¶ 13.)

Defendant argues, through his moving papers, that the FAC fails to allege facts that, if true, would entitle Plaintiff to a finding that the statute of limitations would subject to equitable tolling. (See Support memo at 4:14, *et seq.*) Plaintiff concedes the point by failing to oppose the present demurrer.

Even if Plaintiff had renewed its argument, the Court finds that the allegation that "settlement negotiations between the parties continued" does not create a question of material fact that would support a finding of equitable tolling of the statute of limitations. Plaintiff's equitable tolling argument was based on citation to authority holding that "courts have adhered to a general policy which favors relieving plaintiff from the bar of a limitations statute when, possessing several legal remedies he, reasonably and in good faith, pursues one designed to lessen the extent of his injuries or damage." (*Addison v. State* (1978) 21 Cal.3d 313, 317.)

The Court does not find any allegations in the FAC that Plaintiff pursued an "alternative legal remedy." (See FAC.) The reasoning set out by the Court in its 12/18 MO applies to the FAC. "The Court agrees with Defendant Nagy that Plaintiff's argument is essentially an attempt

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<sup>1</sup> The original complaint alleged settlement discussions between defendant Farmers Insurance (representing Mr. Nagy) and "Atlas Financial Holdings" regarding the subject motor vehicle collision. (Complaint at ¶ 10.) The amended complaint re-alleges the same facts, however, it alleges that the discussions were had between Farmers Insurance and "Global Liberty Insurance Company of New York (through its claims administrator, Atlas Financial Holdings)." (FAC at ¶ 10.) The Court concludes that this change is immaterial to the present analysis.

<sup>2</sup> The Court finds that because the allegations of paragraphs 14 and 15 of the FAC relate to discussions that (allegedly) took place after the expiration of the statute of limitations, and indeed after the filing of the original complaint, they are not relevant to the question of whether the statute was equitably tolled.

to have statutes of limitations periods equitably tolled whenever settlement negotiations are occurring, or it appears a settlement is imminent. And, although Plaintiff indicates that ‘[t]he case law is replete with equitable estoppel being used to toll the statute of limitations in situations like this...,’ the Court did not find a citation to a single such authority in the Opposition Brief...Allowing for equitable tolling of the statute of limitations under these circumstances would render the statute virtually meaningless.”

Generally, it is an abuse of discretion for a court to deny leave to amend where there is any reasonable possibility that a plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) However, plaintiff bears the burden of showing such reasonable possibility. (*Ibid.*) Here, the burden is on Plaintiff to show in what manner it can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Ibid.*; *Medina v. Safe Guard Products* (2008) 164 Cal.App.4th 105, 112, n.8; see *Heritage Pac. Fin’l, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 994 [court did not abuse discretion in denying leave to amend where, despite ample opportunity, plaintiff failed to demonstrate it could cure defect].)

Again, Plaintiff does not oppose the present demurrer, and otherwise fails to request leave to amend and/or to present argument tending to show a reasonable possibility that it can state a good cause of action against Defendant.

Based on the foregoing, Defendant Nagy’s demurrer is SUSTAINED without leave to amend.

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**In the Matter of Keith Grey, et al.**

**21CV000036**

PETITION FOR CHANGE OF NAME

**TENTATIVE RULING:** Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.

**PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.**

**Estate of Terrence R. McBride**

**19PR000067**

PETITION FOR DETERMINATION OF HEIRS

**TENTATIVE RULING:** There is no proof of service on Richard Raymond. The matter is continued to May 28, 2021, at 8:30 a.m. in Dept. B to allow for service.

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AMENDED PETITION FOR PROBATE OF WILL AND FOR LETTERS OF ADMINISTRATION WITH WILL ANNEXED AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

**TENTATIVE RULING:** GRANT amended petition.

PETITION HEARING NINTH ACCOUNT AND REPORT OF TRUSTEES AND PETITION FOR SETTLEMENT OF ACCOUNT AND APPROVAL OF TRUSTEES’ FEES

**TENTATIVE RULING:** GRANT petition, including fees as prayed.

**CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.**

MOTION TO SET ASIDE ENTRY OF DEFAULT

**TENTATIVE RULING:** Defendant LMR Wine Estates, LLC’s motion to set aside entry of default based upon mistake under Code of Civil Procedure section 473, subdivision (b), is GRANTED. On March 12, 2021, a request for entry of default was filed against defendant after it failed to file an answer or challenge the pleading. Defendant’s CEO, Chris Hall, mistakenly believed he could wait until the case management conference in July 2021 before taking any action. (Hall Decl., ¶¶ 9-12.) Upon realizing the mistake, Hall hired counsel on March 23, 2021, and filed the motion after meet and confer efforts failed. (Hein Decl., ¶ 2.) This constitutes mistake under the circumstances. Even if Hall’s “attestations and assertions” are dubious or not the result of an “honest mistake” as plaintiff Gallo Vineyards, Inc. believes, policy favors hearing matters on the merits, especially when there is no prejudice to plaintiff.

Defendant shall file and serve its proposed answer, attached as Exhibit B to the memorandum of points and authorities, within 5 calendar days. Although section 473, subdivision (b), allows a motion to set aside to “be accompanied by a copy of the answer or other pleading proposed to be filed therein,” defendant discusses no authority that this provision applies to allow the filing of a petition to compel arbitration. The Court makes no finding as to whether defendant has waived its ability to compel arbitration under the agreement by bringing its motion to set aside or being ordered to file its answer.

Defendant objects to the late filing of plaintiff’s opposition. Assuming the opposition was filed late, the Court elects to exercise its discretion to consider the filing. (Cal. Rules of Court, rule 3.1300(d).) The objection is OVERRULED.

In light of this ruling, plaintiff's motion to enter default judgment against defendant set for May 5, 2021, is deemed moot and vacated.