

## **TENTATIVE RULINGS**

**FOR: August 8, 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.**

**Conservatorship of Kiana Stagner**

**17PR000109**

REVIEW HEARING

**TENTATIVE RULING:** Based on the report of the court investigator, the Court determines by clear and convincing evidence that the conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process, and therefore orders the conservatee disqualified from voting pursuant to Elections Code section 2208. After a review of the matter, the Court finds the co-conservators are acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on August 8, 2020, at 8:30 a.m. in Dept. I. The court investigator shall prepare a biennial investigator report for the next hearing date. The court investigator fees were waived. The clerk is directed to send notice to the parties.

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

**Stacee Cootes v. Jackson Street Wine Warehouse, LLC, et al.**

**17CV000427**

MOTION TO COMPEL RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE AND MONETARY SANCTION

**TENTATIVE RULING:** Plaintiff failed to timely serve her Opposition. Code of Civil Procedure section 1005, subdivision (b), provides that “[a]ll papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days before the hearing. Plaintiff filed and served her Opposition only six days before the hearing. The Court

therefore declines to consider Plaintiff's late-filed opposition. (Cal. Rules of Court, rule 3.1300(d).)

The Motion is GRANTED IN PART and DENIED IN PART. The Motion is GRANTED as to Defendants' Request for Production of Documents, Set One. As to the request for sanctions, the Motion is DENIED. Defendants' notice of motion fails to identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. (Code Civ. Proc., § 2023.040.) Defendants have also failed to cite to the correct authority to support an award of sanctions (Code Civ. Proc., § 2030.290(c) applies to interrogatories).

Defendants are to submit a proposed order.

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**Robert Squires v. Eric Hellman**

**17CV000964**

**MOTION FOR LEAVE TO FILE A FIRST AMENDED CROSS-COMPLAINT**

**TENTATIVE RULING:** Cross-complainant Eric Hellman's motion to file a first amended cross-complaint is GRANTED. Plaintiff/cross-defendant Robert Squires alleges Hellman's use of the private access road is a nuisance because Hellman is using it to truck in building materials for a large residence. (Compl., ¶ 9.) Squires alleges the road is buckling and deteriorating as it is not designed for such heavy use. (*Id.*) Squires believes Hellman is ruining the road to such an extent that no one in the area will be able to access their properties. Consequently, Squires argues the proposed amendment seeking to add new causes of action for quiet title and declaratory relief, along with new cross-defendants, is unrelated to the controversy in the original complaint.<sup>1</sup> According to Squires, by seeking to add new claims and cross-defendants, Hellman wants to bootstrap a larger, separate controversy with his neighbors, that has nothing to do with Squires' original claims.

Squires, however, fails to focus on his trespass cause of action and the impact of his allegations. Squires specifically alleges Hellman has used the private access road entering Squires' property without consent or the authority to do so. (*Id.*, ¶ 22.) Indeed, Squires alleges he gave Hellman written notice to terminate his use of the Private Road or at least limit access to the road (by weight, number, etc., which will effectively cause Hellman to be unable to build his home). (*Id.*, ¶ 23.) It is of little surprise, therefore, that based on the original claims in the complaint, Hellman now seeks to quiet title to an easement/right of way for all lawful purposes over and across all cross-defendants' properties, including Squires' along the private access road. This easement is based on allegations of continuous, open, notorious, and adverse use of the road for more than five years dating back decades. In fact, Hellman alleges access to the properties has for at least seventy-five years been accomplished via the private access road.

In short, Hellman alleges cross-defendants prevented him from developing his property, which is serviced by a jointly held right to use a private access road. A quiet title action requires as necessary all parties claiming an interest in the land dispute. Although most of the private access road is located on the Winge property, the Winge property ends at the location along the road where the Marceau property and Squires property commence. This necessarily

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<sup>1</sup> Squires does not oppose the remaining grounds for amendment.

encompasses the other property owners as cross-defendants.<sup>2</sup> The Court does not believe a separate lawsuit is appropriate under these alleged circumstances.

Even if the original complaint had nothing to do with the amended cross-complaint, the Court has discretion to permit *any* sort of amendment; i.e., the amendment need not relate to the claims or defenses originally pleaded. Thus, amended pleadings may set forth entirely different claims, add new parties, seek a different or greater remedy, etc. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2018) ¶ 6:640.) The Court finds such an amendment is proper here.

Squires also maintains the proposed amendment is prejudicial to him because the new claims are complex, will require numerous depositions, involve discovery disputes, require law and motion activity, and delay the outcome of the original complaint. The opposition is misguided. Any delay or prejudice is not compelling on balance with the policy of great liberality in permitting amendments to a pleading, especially considering Squires elected to bring claims effectively limiting access to the road (even sending Hellman a letter seeking to terminate his use of the private access road). As noted, the natural fall-out of such a position is for Hellman to seek a judicial determination of his rights to use the road. (*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].)

Cross-defendants Jeffery J. Baier (individually and as trustee of the Jeffery J. Baier and Holly B. Baier Family Trust) and Holly B. Baier (individually and as trustee of the Jeffery J. Baier and Holly B. Baier Family Trust) joinder to the opposition is GRANTED.

Hellman shall file and serve his proposed first amended cross-complaint within 10 calendar days. The August 8, 2018 Case Management Conference is continued to September 27, 2018, in Dept. C.

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**Khajag Sarkissian, et al. v. Ronda Christine Austin, et al.**

**18CV000502**

MOTION FOR TRIAL PREFERENCE

**TENTATIVE RULING:** Plaintiffs Khajag Sarkissian and Hildegard Sarkissian's motion for trial preference is DENIED WITHOUT PREJUDICE. (Code Civ. Proc., § 36, subd. (a).) Subdivision (a) provides that "[a] party to a civil action who is over 70 years of age may petition the court for a preference, which the court *shall* grant if the court makes both of the following findings: [¶] (1) The party has a substantial interest in the action as a whole. [¶] (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation." (*Fox v. Super. Ct.* (2018) 21 Cal.App.5th 529, 533.) Although the motion is unopposed, the accompanying attorney declaration does not explain plaintiffs' medical issues to show a preference is necessary to prevent prejudicing [their] interest[s] in the

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<sup>2</sup> Contrary to Squires' position, the Court did not already rule that these other owners were not necessary or indispensable to Squires' claims. The demurrer ruling did not address the merits of the argument raised because the contention relied on facts that were not the proper subject of judicial notice. Squires has misrepresented the Court's ruling.

litigation.ö (Code Civ. Proc., § 36, subd. (a)(2).) Moreover, ðadmissible evidence is still required as to the *party's age* (e.g., declarations by party or admissible records showing he or she is over 70). The attorney's declaration is *not* sufficient for this purpose.ö (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2018) ¶ 12:247.3.) There is no admissible evidence as to either moving plaintiff's age.

The September 25, 2018 Case Management Conference shall remain on calendar. The Court notes the preference issue can be raised then, rather than going through the expense of another motion. (Cal. Rules of Court, rule 3.727(12).)

**CIVIL LAW & MOTION CALENDAR – Hon. Cynthia Smith, Dept. F (Criminal Courts Bldg.-1111 Third St.) at 8:30 a.m.**

**Jackson Street Wine Warehouse LLC v. Sarah Ruggiero, et al.**                      **26-66082**

1) ROCKZILLA's APPLICATION FOR ORDER DISMISSING VERIFIED FIRST-AMENDED CROSS-COMPLAINT WITH PREJUDICE

**TENTATIVE RULING:** Cross-Complainant's 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.)

Pursuant to Code of Civil Procedure section 581, subdivisions (f)(3) and (m), the Motion is GRANTED only as to Rockzilla, LLC. The Verified First Amended Cross-Complaint of C. Randall Callahan and Raja Development Inc. (FACC) was only stricken as to Rockzilla, LLC. Rockzilla's Motion to Strike, filed March 2, 2018, was limited to the claims against Rockzilla. (See Motion, 5:8-9, ðthe entirety of the cross-complaint as against Rockzilla should be stricken.ö) The arguments made in the Motion all focused on the allegations made against Rockzilla. Likewise, the Court's Order dated April 9, 2018 addressed only the causes of action alleged against Rockzilla. The FACC is dismissed with prejudice as to Rockzilla only. To be clear, the First through Sixth Causes of Action remain as to all other named Cross-Defendants.

2) CROSS-DEFENDANTS CRYRAG, INC., DBA CROWN REALTY PROPERTY MANAGEMENT's MOTION FOR ENTRY OF DISMISSAL WITH PREJUDICE OF THE CALLAHAN/RAJA CROSS-ACTION

**TENTATIVE RULING:** Both parties' Requests for Judicial Notice are 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.)

The Motion is DENIED. The Verified First Amended Cross-Complaint of C. Randall Callahan and Raja Development Inc. (FACC) was only stricken as to Rockzilla, LLC.

Rockzilla's Motion to Strike, filed March 2, 2018, was limited to the claims against Rockzilla. (See Motion, 5:8-9, "the entirety of the cross-complaint as against Rockzilla should be stricken.") The arguments made in the Motion all focused on the allegations made against Rockzilla. Likewise, the Court's Order dated April 9, 2018 addressed only the causes of action alleged against Rockzilla. Cross-Defendants did not join Rockzilla's Motion to Strike (nor could they as they were subject to arbitration, and the stay was not lifted to allow such a Motion). Rockzilla's Motion to Strike sought to strike Rockzilla from the FACC, and this is the relief the Court granted.