

## **TENTATIVE RULINGS**

**FOR: November 29, 2017**

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.

### **PROBATE CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)**

**Estate of Helen Zerba**

**17PR000041**

FIRST AND FINAL ACCOUNT AND REPORT OF CO-EXECUTORS AND PETITION FOR ITS SETTLEMENT; FOR DETERMINATION OF PERSONS ENTITLED TO DISTRIBUTION; FOR FINAL DISTRIBUTION; FOR ALLOWANCE OF STATUTORY COMPENSATION FOR CO-EXECUTORS AND FOR ATTORNEY; AND FOR COSTS

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

### **CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)**

**Adrienne Radakovic v. Christina Ligouri**

**17CV000381**

(1) DEMURRER TO THE FIRST AMENDED CROSS-COMPLAINT

**TENTATIVE RULING:**

The notice states the demurrer is directed at the cross-complaint. (Ntc. at p. 1:27.) This appears to be a typo. The Court construes the demurrer as being directed to the first amended cross complaint based on the underlying papers.

Cross-defendant Adrienne Radakovic's demurrer to the second cause of action for public nuisance on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. "A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or

damage inflicted upon individuals may be unequal.” (Civ. Code, § 3480.) “A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.” (*Id.*, § 3493.) That is, a claim for public nuisance requires “facts showing special injury to himself in person or property of a character different *in kind* from that suffered by the general public.” (*Venuto v. Owens-Corning Fiberglas Corp.* (1971) 22 Cal.App.3d 116, 124.)

Cross-defendant contends cross-complainant Christina Ligouri lacks standing to maintain the claim because she has not alleged facts showing special injury to herself in person or property of a character different in kind from that suffered by the general public. The Court agrees. Cross-complainant alleges cross-defendant has used her home as a temporary rental in violation of local law, which has harmed the surrounding neighbors and herself. (First Amended Cross-Compl., ¶¶ 21, 22-23, 54-55.) These allegations merely indicate cross-complainant and the neighbors are suffering from the same kind of disruption due to the renting of the property and that cross-complainant is suffering from it to a greater degree. Cross-complainant’s alleged damage, therefore, is not different in kind but only in degree from that shared by the surrounding neighbors. Thus, the allegations do not support an action based on a public nuisance.

Cross-complainant’s assertion that the repeated trespassing allegations are sufficient based on *Sierra Screw Products v. Azusa Greens, Inc.* (1979) 88 Cal.App.3d 358 is misplaced. *Sierra Screw Products* involved a private nuisance rather than a public nuisance. And the assertion is belied by the pleading, which alleges that the “vacationing outsiders” have created “obtrusive” conditions on the street by blocking driveways and “obstruct[ed] the free use” of the street, which implies multiple trespasses. (First Amended Cross-Compl., ¶¶ 22, 55.) This again shows the trespass is not different in kind but only in degree as cross-complainant apparently acknowledges in her pleading. (*Id.*, ¶¶ 25-26; see *id.*, ¶ 57 [“the increased traffic has only exacerbated the trespasses and damage to her property”].) Cross-complainant is given leave to amend, but the Court believes the proper causes of action here are for private nuisance and trespass.

Cross-defendant’s demurrer to the fourth cause of action for intentional infliction of emotional distress on the ground of failure to state sufficient facts is OVERRULED. One of the elements of a cause of action for IIED is extreme and outrageous conduct. (*Michaelian v. State Comp. Ins. Fund* (1996) 50 Cal.App.4th 1093, 1113-14.) Cross-defendant argues the claim fails to allege conduct that was so outrageous and extreme as to warrant recovery of damages. As cross-complainant proffers, she alleges cross-defendant has invaded her land, made physical threats, incited others to initiate physical altercations, and incited others to damage property. These allegations go beyond “our current political and social climate” of “insults, belittling and vocal confrontations.” (Reply at p. 3:25-26.) These actions could rise to the level of outrageous conduct so extreme as to exceed all bounds of that usually tolerated in a civilized community.

If cross-complainant elects to do so, she shall file an amended pleading within 10 calendar days of service of notice of entry.

(2) MOTION TO STRIKE THE FIRST AMENDED CROSS-COMPLAINT

**TENTATIVE RULING:**

Cross-defendant Adrienne Radakovic's motion to strike large portions of the first amended cross-complaint is **GRANTED IN PART AND DENIED IN PART**. Cross-defendant seeks to strike seven categories of allegations: (A) conduct affecting other persons; (B) tortious conduct of others; (C) complaints to law enforcement and filing the civil complaint; (D) damages to pool equipment and reasons for the camera surveillance; (E) actions were oppressive, despicable, or willful and in conscious disregard; (F) disclosures and diminution in value to cross-complainant's property; and (G) attorney's fees.

The motion is denied as to Categories A-F. Category A serves as corroborating evidence of the conduct that directly affects cross-complainant. Categories B and C are relevant to the private nuisance, trespass, and intentional infliction of emotional distress claims, although there could be future assertions of privilege as to the law enforcement complaints. Likewise, Category D is relevant, but cross-complainant does not, at this time, know who damaged the pool equipment. The responsible party may be revealed during discovery. Category E alleges sufficient facts to support the prayer for punitive damages. Category F is necessary since cross-defendant's purported actions could require disclosure to a potential buyer.

The motion is granted as to Category G. Based on the allegations in the pleading, the Court does not believe this is a private attorney general case.

(3) DEFENDANT'S MOTION TO QUASH SUBOENAS FOR RECORDS

**TENTATIVE RULING:** Defendant Christina Ligouri's motion to quash subpoenas for records to Chelsea Cortese and James Cortese is **DENIED**. On November 8, 2017, the Court continued the motion and ordered the following: "In light of the November 7, 2017 Order granting in part defendant's motion for a protective order regarding the Nest security camera, the parties are ordered to meaningfully meet-and-confer. The order should be used as a guide to resolve this discovery dispute. The parties shall work with the Corteses and address any objections they may have to production. The parties shall either withdraw the motion or file a joint statement as to what issues remain by 4 p.m. on November 27, 2017." Since the motion was not withdrawn, a joint statement based on a meaningful meet-and-confer was required. The statement was not filed. The motion is denied for failing to follow the Court's order.

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**Matthew Denny, et al. v. Norman Alumbaugh, et al.**

**26-65828**

REVIEW HEARING: PETITION TO APPROVE COMPROMISE OF PENDING ACTION -  
MINOR

**APPREANCE REQUIRED**