

**Judge Benson – Law & Motion – Wednesday, November 15, 2023 @ 9:00 AM  
TENTATIVE RULINGS**

**To Be Heard By Judge Mosbarger**

**1. 23CV02415 In re: Smiley, Natalie Elise**

*EVENT: Change of Name (Adult and Minor)*

There is no proof of service concerning the minor as required by CCP § 1277. The Court will hear from Petitioner.

**2. 23CV02522 In re: Reynolds, Marie**

*EVENT: Change of Name (Adult)*

The Court is in receipt of the proof of publication and will sign the decree provided.

**3. 23CV02558 In re: Solis, Ismael Mendez**

*EVENT: Change of Name (Adult)*

The Court is in receipt of the proof of publication and will sign the decree provided.

4. **22CV02736 AIC Electric v. Pioneer Nut Co. et al.**

*EVENT: Motion to Compel Response to Interrogatories*

Motion to Compel Response to Interrogatories is GRANTED. Sanctions in the amount of \$828.70 are awarded in favor of Plaintiff AIC Electric and Cross Defendant Wizard Manufacturing and against Defendant and Cross-Complainant Suneel Sharma. Defendant and Cross-Complainant Suneel Sharma is ordered to provide code complaint responses without objection within 20 days of receiving notice of this order. The Court will sign the Proposed Order.

5-6. **22CV02898 Dasbach, Catherine et al v. Nelson, Marcia, MD et al.**

*EVENT: (1) Defendant Suresh Pasya, M.D.'s Demurrer to Plaintiff's Complaint  
(2) Motion to Strike Portions of Plaintiffs' Complaint*

On the Court's motion, both motions are continued to December 6, 2023 at 9:00am.

**7-8. 21CV01030 Anguiano, Rogelio v. Bains, Jaswant et al.**

*EVENT: (1) Motion to Quash Service of Summons and Complaint*

*(2) Roy E. Lanza, As Trustee of the Roy and Sondra Lanza Family Trust's Demurrer to Plaintiff's Negligence and Premises Liability Causes of Action Alleged in the Complaint*

Roy E. Lanza, As Trustee of the Roy and Sondra Lanza Family Trust's Motion to Quash Service of Summons and Complaint is DENIED.

Defendant's argument that the amendment does not relate back because a motion was filed under CCP § 473 instead of § 474 is unpersuasive. First, the Court notes that the actual substance of that motion requests Defendant be substituted in as Doe 4.

Secondly, the stipulation and order provides that Defendant is to be substituted in as Doe 4. Based on the Doe language the only reasonable inference is that the stipulation and order was pursuant to CCP § 474. Thus, the pending motion under § 473 was moot.

Regarding the issue of ignorance, based on the evidence provided by Plaintiff, the Court makes the factual finding that Plaintiff was actually ignorant of Defendant's identity, which is the standard. (See *Hahn v. New York Air Brake LLC*, (2022) 77 Cal. App. 5th 895, 900.) Contrary to Defendant's contention, Plaintiff had no duty to investigate reasonably available facts. (*Id*)

Thus, whether Plaintiff should have pursued further investigation after receiving the Parcel Quest report is a non-issue. Because the Motion to Quash is DENIED, Defendant's demurrer necessarily fails. Defendant shall file his answer within 20 days of notice of this order.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 2 weeks.

**9. 22CV02543 Christian, Kevin v. Hammond, Dylan et al.**

*EVENT: Defendant Theta Chi Fraternity, Inc.'s Demurrer to Plaintiff's Amended Complaint*

Defendant Theta Chi Fraternity, Inc.'s (Hereinafter Defendant "TCF") Demurrer to Plaintiff's Amended Complaint is OVERRULED IN ITS ENTIRETY. Defendant shall file its answer within 2 weeks.

The Court notes that for pleading purposes, the Complaint has sufficiently alleged Defendant TCF to be the alter ego of the other defendants. The requirement of specificity is relaxed when the allegations indicate that "the defendant must necessarily possess full information concerning the facts of the controversy". (*Tarmann v. State Farm Mut. Auto.*

*Ins. Co.*, (1991) 2 Cal. App. 4th 153, 158.) In the context of alter ego allegations, it is clear that Defendant TCF would necessarily possess full information on the issue.

Consequently, unlike *Barenborg v. Sigma Alpha Epsilon Fraternity*, (2019) 33 Cal. App. 5th 70, the general “no duty” rule is inapplicable in the context of this motion. The Court disagrees with Defendant’s reading of *Barenborg* that the “no duty” rule applies even in the context of alter ego allegations.

Appellant does not argue that the alter-ego doctrine applies to the relationship between Cal. Gamma and respondent. Thus, Cal. Gamma was a third party for purposes of the duty analysis.

(*Barenborg*, supra at p. 77) [Emphasis Added]

Further, as Plaintiffs correctly note, whether the decedent’s suicide was foreseeable is inherently a question for the trier of fact. (*Green v. Healthcare Services, Inc.* (2021) 68 Cal.App.5th 407, 416)

Regarding vicariously liability, as with the alter ego allegations, the Court finds the vicarious liability allegations relate to information that would be expected to be within Defendant TCF’s possession. Consequently, the pleading standard is relaxed and for purposes of demurrer vicarious liability has been adequately plead.

Defendant TCF shall prepare and submit the form of order consistent with this ruling within 2 weeks.

#### **10. 21CV00322 Wade, Clyde Lee et al. v. Wallace, Robert M. et al.**

*EVENT: Motion to be Relieved as Counsel (Defense)*

Motion to be Relieved as Counsel is GRANTED. The Court will sign the Proposed Orders.

**11. 21CV00287 Peters, Ed et al. v. Foster, Lionel, Jr. et al**

*EVENT: Defendants' Motion for Separate Trial of Defendants' Statute of Limitations Affirmative Defense*

Defendants' Motion for Separate Trial of Defendants' Statute of Limitations Affirmative Defense is GRANTED. In interests of judicial economy, the jury will hear the statute of limitations affirmative defense first and if the Plaintiff prevails, the same jury will proceed to hear the remainder of the case. Defendants shall prepare the form of order.

**12. 23CV02364 In re: Yuhnke, Kathleen**

*EVENT: Change of Name (Minor) (Continued from 11/1/23)*

The Court is in receipt of the proof of publication and will sign the decree provided.

**13-14. 22CV00013 Wood, Jennifer v. Hood, Ria**

*EVENT: Motion to Set Aside Default*

Motion to Set Aside Default is DENIED. The motion is untimely pursuant to Code of Civil Procedure Section 473(b). Plaintiff shall prepare the form of order.