

Judge Benson – Law & Motion – Wednesday, January 22, 2025 @ 9:00 AM
TENTATIVE RULINGS

1. 23CV02521 GCFS, Inc v. Navistky

EVENT: Opposition to Claim of Exemption

The Court will conduct a hearing.

2. 24CV03050 In re: Collins, Alisha

EVENT: Change of name (minor) (Continued from 10/23/24)

The Court is in receipt of the proof of service indicating father was served on December 26, 2024. CCP § 1277(a)(4) requires a minimum of 30 days' notice. December 26 is 27 days before the hearing. As a result, the hearing is continued to February 5, 2025 at 9:00am. The Court is directed to mail notice of the hearing to father at the address listed on the December proof of service.

3. 24CV03384 In re: Lincoln, Ethyn Alek Mana

EVENT: Change of Name (minor)

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

4. **24CV03950 In re: Plivarez, Mary Jessie**

EVENT: Change of name (adult)

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

5. **24CV04017 In re: Bellante, Lynne Deborah**

EVENT: Change of name (adult)

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

6. **25CV00013 In re: Bell, Wyatt Alexander**

EVENT: Petition for Change of Name and Gender – Fee Waiver

The Court will hear from Petitioner.

7-8. 24CV00672 Dupree, Clifford G et al. Spaid, Michelle et al.

EVENT: (1) Demurrer to Complaint

(2) Motion to Strike Portions of Complaint

The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.

Rutter Group Civil Procedure Before Trial

[6:511] Compulsory if related to plaintiff's complaint

If defendant's cause of action against plaintiff is related to the subject matter of the complaint, it must be raised by cross-complaint; failure to plead it will bar defendant from asserting it in any later lawsuit. [CCP § 426.30; see *AL Holding Co. v. O'Brien & Hicks, Inc.* (1999) 75 CA4th 1310, 1313-1314, 89 CR2d 918, 920]

The same rule applies where the defendant raised the same claim as a cross-complaint in a prior action but voluntarily dismissed it before it was adjudicated. [See *Hill v. City of Clovis* (1998) 63 CA4th 434, 445, 73 CR2d 638,645; *Carroll v. Import Motors, Inc.* (1995) 33 CA4th 1429, 1436, 39 CR2d 791, 795]

It is undisputed Plaintiffs' Cross-Complaint in 23CV00220 was compulsory, was dismissed without prejudice, and that the instant action is premised on the same allegations and legal theories. Consequently, the instant action is barred by CCP § 426.30. The Court finds the fact the complaint in 23CV00220 was dismissed is of no legal relevance. Plaintiff's course of action is to seek relief from the dismissal in 23CV00220.

In light of this ruling, the Court declines ruling on the Motion to Strike as the motion is moot.

Defendant to prepare and submit form of order consistent with this ruling within 2 weeks.

9. **24CV02513 In re: Josephson, Kristoffer Allen**

EVENT: Change of name (adult) (Continued from 10/9/24, 11/20/24, and 1/15/25)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.