

## TENTATIVE RULINGS

**FOR: October 9, 2019**

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.

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

Merryvale Vineyards LLC v. V2 Wine Group, LLC, et al.

19CV000482

DEFENDANTS’ MOTION TO COMPEL DISCOVERY FROM PLAINTIFF

**TENTATIVE RULING:** The motion, of Defendants V2 Wine Group, LLC and Delicato Vineyards, to compel discovery from Plaintiff is DENIED WITHOUT PREJUDICE. The Notice of Motion must state, “in the opening paragraph,” the grounds on which the motion will be made. (Code Civ. Proc. § 1010, Cal. Rules of Ct., rule 3.1110, subd. (a).) As a general rule, the Court may consider only the grounds stated in the notice of motion. (See *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1125-26.)

The Notice of Defendant’s Motion to Compel Discovery from Plaintiff is silent as to the grounds for the motion. It states simply that Defendants “will move the court for an order compelling discovery from Plaintiff...in accordance with Code of Civil Procedure section 2031.” (Notice at 2:4-5.) There is no section 2031 in the California Code of Civil Procedure.

The Court may overlook an omission in the notice when the supporting papers make clear the grounds for the relief that is sought. (*Luri v. Greenwald, supra*, 107 Cal.App.4th at 1125-27.) Here, the Court finds no clarity in Defendants’ motion papers. Defendants cite the requirements for the nature and format of responses to inspection demands. (Support Memo. at 12:8-13.) But they do not clearly articulate the grounds on which the present motion is being made. So far as the Court can determine, the present motion may seek an order compelling further responses under Code of Civil Procedure section 2031.310, an order compelling compliance under section 2031.320, both, or neither.

This Court seeks, wherever possible, to avoid ruling on technical deficiencies. However, where, as here, a party’s failure to comply with formal and technical motion practice

requirements results in genuine ambiguity regarding the grounds for the relief sought, the Court is compelled to deny the motion.

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**Marshall Coffey v. Frank Rizzuti, et al.**

**19CV000700**

**MOTION TO STRIKE CLAIM FOR PUNITIVE DAMAGES**

**TENTATIVE RULING:** Defendant’s motion to strike claim for punitive damages is GRANTED with 10-days’ leave to amend.

The notice of motion does not provide notice of the Court’s tentative ruling system as required by Local Rule 2.9. Defendant’s counsel is directed to contact Plaintiff’s counsel forthwith and advise Plaintiff’s counsel of Local Rule 2.9 and the Court’s tentative ruling procedure. If Defendant’s counsel is unable to contact Plaintiff’s counsel prior to the hearing, Defendant’s counsel shall be available at the hearing, in person or by telephone, in the event Plaintiff’s counsel appears without following the procedures set forth in Local Rule 2.9.

Upon noticed motion, the Court may strike any “irrelevant, false or improper matter inserted in any pleading.” (Code Civ. Proc. § 436, subd. (a).) Among these, the Court may strike any language in a cause of action that seeks an improper remedy. (*Caliber Bodyworks, Inc. v. Super. Court* (2005) 134 Cal.App.4th 365, 385.) In ruling on a motion to strike, the Court is to “read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth.” (*Turman v. Turning Point of Central Cal., Inc.* (2010) 191 Cal.App.4th 53, 63.)

To adequately state a claim for punitive damages, a complaint must contain allegations that the defendant has been guilty of oppression, fraud or malice. (Civil Code § 3294, subd. (a); *Turman v. Turning Point of Central Cal., Inc.*, *supra*, 191 Cal.App.4th at 63.) “Malice” includes “despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.” (Civil Code § 3294, subd. (c)(1).) “Oppression” means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.” (*Id.* at subd. (c)(2).) “[T]he adjective “despicable” is a powerful term that refers to circumstances that are ‘base,’ ‘vile,’ or ‘contemptible.’” (*College Hospital Inc. v. Super. Ct. of Orange County* (1994) 8 Cal.4th 704, 725.) Proof of gross negligence or recklessness is insufficient to warrant an award of punitive damages. (*Dawes v. Super. Ct.* (1980) 111 Cal.App.3d 82, 87.) Rather, “the term ‘malice’ as used in Civil Code section 3294 has been interpreted as including a conscious disregard of the probability that the actor’s conduct will result in injury to others.” (*Id.* at 88.)

Plaintiff alleges, through the Complaint, that Defendant became intoxicated and, while intoxicated, drove his vehicle the wrong way on a way one street, collided with Plaintiff’s car, and thereby caused Plaintiff serious injury. (Complaint at p. 5.) It has been noted that “one who voluntarily commences, and thereafter continues, to consume alcoholic beverages to the point of intoxication, knowing from the outset that he must thereafter operate a motor vehicle demonstrates, in the words of Dean Prosser, ‘such a conscious and deliberate disregard of the

interests of others that his conduct may be called willful or wanton.” (*Taylor v. Super. Ct. of Los Angeles County* (1979) 24 Cal.3d 890, 899.) But the question of whether the actions are undertaken with malice, and therefore subject to punitive damages, requires a plaintiff to plead specific facts, “from which the conscious disregard of probable injury to others may reasonably be inferred.” (*Dawes v. Super. Ct., supra*, 111 Cal.App.3d at 90.)

Defendant argues, in essence, that the present Complaint does not contain specific allegations of fact from which such conscious disregard could be inferred. The Court is considerate of the fact that the public’s attitude regarding the culpability of the decision to drive a vehicle while intoxicated has shifted significantly since 1980 (the year *Dawes v. Super. Ct.* was decided, and the year after *Taylor v. Super. Ct. of Los Angeles* was decided.) However, the Court agrees with Defendant that the Complaint simply does not allege ultimate facts from which a reasonable jury could infer a “conscious disregard of probable injury to others.” (*Dawes v. Super Ct., supra*, 111 Cal.App.3d at 90.)

Where the court grants a motion to strike but determines that the pleading defect is capable of being cured by, for instance, plaintiff supplying omitted allegations, the Court should grant leave to amend. (*See Grieves v. Super. Ct.*, 157 Cal.App.3d 159, 168; Code Civ. Proc. § 576.) The Court finds that the defect identified in the Complaint is capable of such cure, and therefore grants Plaintiff 10 days’ leave to amend the Complaint. Moreover, the Court is mindful of the possibility that facts – which would support an inference of conscious disregard of probable injury to others – may become known to Plaintiff during the course of the litigation. Regardless of whether Plaintiff amends the Complaint within the instant 10-day window, the present order is made without prejudice to Plaintiff’s right to seek to amend the Complaint at a later time. (See Code Civ. Proc. § 576.)

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

**In the Matter of Colleen Maxwell Trust Agreement  
Dated November 4, 2016**

**19PR000063**

**FIRST AND FINAL ACCOUNT AND REPORT OF SUCCESSOR TRUSTEE AND  
PETITION FOR SETTLEMENT OF ACCOUNT**

**TENTATIVE RULING:** The Petition states that Petitioner has paid the sum of \$27,989.55 to Dickenson Peatman & Fogarty for legal representation in this matter. However, the evidence submitted shows that only \$24,050.80 in fees and costs have been billed in connection with the same. With this correction, the Court GRANTS the petition, including fees as prayed. The Petition is silent regarding the resignation of Petitioner as Successor Trustee, and appointment of beneficiary Georgina J. Maxwell as Successor Trustee. This substitution of trustee is, however, provided for in the Stipulation and Order filed June 21, 2019, and is in the Proposed Order filed by Petitioner on September 9, 2019. Absent objection, the Court further orders that the resignation of Kim Louise McWilliams as Successor Trustee is effective as of the

date of this Order; and further that Trust beneficiary Georgina J. Maxwell shall be substituted as Successor Trustee as of the date of this Order.

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

**Monica Davis v. Hamilton Nichol森**

**16CV000201**

MOTION TO ENFORCE SETTLEMENT AGREEMENT PURSUANT TO CALIFORNIA  
CODE OF CIVIL PROCEDURE SECTION 664.6

**TENTATIVE RULING:** The Court notes that the present motion to enforce settlement agreement has now been pending for some 17 months. The Court was comfortable with repeated continuances so long as the parties appeared to be making progress towards consummating the settlement agreement. It appears, from the report filed October 8, 2019, that the parties are no longer making such progress. For this reason, the Court is granting one final continuance of the matter, to November 7, 2019, 8:30 a.m. in Dept. B. The Court intends to rule on the motion at that time. Any additional briefing in support of the motion shall be filed by October 28, 2019, and any additional briefing in opposition shall be filed by November 4, 2019. Defendant to provide notice.