

TENTATIVE RULINGS for LAW and MOTION

April 21, 2023

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted on Yolo Court's Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Two	(530) 406-6787
Telephone number for the clerk in Department Eleven	(530) 406-6843
Telephone number for the clerk in Department Fourteen	(530) 406-6800

TENTATIVE RULING

Case: **Accardi v. Jimenez**
Case No.: **CV-2023-0621**
Hearing Date: **April 21, 2023** **Department Two** **1:30 p.m.**

Defendant Lorenzo Mera Jimenez' motion to set aside judgment is **GRANTED**. (Code Civ. Proc., § 473, subd. (b); Roth decl., ¶¶ 1-6; Answer-Unlawful Detainer.)

The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties. (Code Civ. Proc., § 473, subd. (b), emphasis added; see Roth decl.)

Plaintiff's counsel is directed to file by the hearing an attorney affidavit setting forth a factual basis for the Court to consider reasonable compensatory legal fees and costs. Service and filing must comply with this Court's local rule 7.2 mandating electronic service and filing. (YCR 7.2)

Parties are **DIRECTED TO APPEAR** to discuss reasonable compensatory legal fees and costs to opposing counsel.

TENTATIVE RULING

Case: **EM 850 Sacramento, LLC v. Chvanov, Dzhangetova-Chvanov**
Case No. CV-2023-0605
Hearing Date: **April 21, 2023** **Department Eleven** **9:00 a.m.**

Defendants Oleg Chvanov and Marina Dzhangetova-Chvanov's motion to quash service of summons is **GRANTED**. (Cal. Rules of Court, rule 3.1327; Code Civ. Proc., §§ 1167.4, 1013, 418.10.) The burden is on the plaintiff to prove the existence of jurisdiction by proving, among other things, the facts required for effective service. (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439-1440, as modified on denial of reh'g (May 26, 1994); defendants' motion to quash; Chvanov decl.)

On April 11, 2023, this Court granted defendants Chvanov and Dzhangetova-Chvanov's first motion to quash service. On April 17, 2023, defendants filed a second motion to quash service. Plaintiff EM 850 Sacramento, LLC's opposition to the second motion to quash service is based upon personal service and substituted service completed April 7, 2023. (Panlilio decl., ¶¶ 1-2, Exs. A-B.) Plaintiff asks this Court to modify its order of April 11, 2023, but fails to set forth any legal authority to do so. (Opposition, p. 1.)

The notice of motion does not provide notice of this Court's tentative ruling system as required by Local Rule 11.2(b). Counsel for moving party, or the moving party if unrepresented by counsel, is ordered to notify the opposing party or parties immediately of the tentative ruling system.

If no hearing is requested, and no party appears at the hearing, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Estate of Ruff et al. v. KAG West et al.**
Case No. CV-2021-1246
Hearing Date: **April 21, 2023** **Department Fourteen** **9:00 a.m.**

The Court notes that no further paperwork should be filed into case no. CV-2022-1762.

Demurrer

Defendants' requests for judicial notice nos. 1-5 are **GRANTED**. (RJN, Exs. A-E; Evid. Code, §§ 452, subds. (d), (h), 453.)

Plaintiffs' request for judicial notice is **GRANTED**. (Kronenberg decl., ¶ 7, Ex. 3; Evid. Code, §§ 452, subd. (h), 453.)

Defendants' joint demurrer is **SUSTAINED IN PART, as noted**. (Code Civ. Proc., § 430.10.)

1. Defendants' joint demurrer on the ground that plaintiff lacks capacity to sue is **OVERRULED AS MOOT**. (Code Civ. Proc., § 430.10, subd. (b), 377.32; Ruff decl., ¶¶ 1-6, Ex. A.)

2. Defendants' joint demurrer on the ground that Ruff II is a duplicative action is **SUSTAINED IN PART WITHOUT LEAVE TO AMEND, as noted**. (Code Civ. Proc., § 430.10, subd. (c).)

Defendants' joint demurrer to plaintiff's second cause of action: negligent product liability-failure to warn against Jack's Tire & Oil Management Company, Inc., Michelin Retread Technologies, Inc. is **SUSTAINED WITHOUT LEAVE TO AMEND** on the ground that there is another action pending between the same parties on the same cause of action. (Code Civ. Proc., § 430.10, subd. (c); *Ruff I* fifth cause of action; *Ruff II* second cause of action.)

Defendants' joint demurrer to plaintiff's third cause of action: strict product liability-failure to warn against Jack's Tire & Oil Management Company, Inc., Michelin Retread Technologies, Inc. is **SUSTAINED WITHOUT LEAVE TO AMEND** on the ground that there is another action pending between the same parties on the same cause of action. (Code Civ. Proc., § 430.10, subd. (c); *Ruff I* sixth cause of action; *Ruff II* third cause of action.)

Defendants' joint demurrer to plaintiff's fourth cause of action: strict product liability-manufacturing defect against Jack's Tire & Oil of California, Inc., Jack's Tire & Oil Management Company, Inc., Michelin Retread Technologies, Inc. is **SUSTAINED WITHOUT LEAVE TO AMEND** on the ground that there is another action pending between the same parties on the same cause of action. (Code Civ. Proc., § 430.10, subd. (c); *Ruff I* seventh cause of action; *Ruff II* fourth cause of action.)

Defendants' joint demurrer to plaintiff's fifth cause of action: strict product liability-design defect against Jack's Tire & Oil of California, Inc., Jack's Tire & Oil Management Company, Inc., Michelin Retread Technologies, Inc. is **SUSTAINED WITHOUT LEAVE TO AMEND** on the ground that there is another action pending between the same parties on the same cause of action. (Code Civ. Proc., § 430.10, subd. (c); *Ruff I* eighth cause of action; *Ruff II* fifth cause of action.)

Defendants' joint demurrer to plaintiff's sixth cause of action: negligent product liability-failure to recall/retrofit against Jack's Tire & Oil of California, Inc., Jack's Tire & Oil Management Company, Inc., Michelin Retread Technologies, Inc. is **SUSTAINED WITHOUT LEAVE TO AMEND** on the ground that there is another action pending between the same parties on the same cause of action. (Code Civ. Proc., § 430.10, subd. (c); *Ruff I* ninth cause of action; *Ruff II* sixth cause of action.)

Defendants' joint demurrer on the ground of duplicative action is **OVERRULED** as to the remaining causes of action in *Ruff II*.

The remaining causes of action are different causes of action. (Code Civ. Proc., § 430.10, subd. (c).)

Defendants cite *Kirman v. Borzage* (1949) 89 Cal.App.2d 898, 903 for the proposition that the pendency of another action growing out of the same transaction is ground for abatement of the second action. In *Kirman v. Borzage*, “[s]ubsequent to the filing of the [first] action, plaintiffs filed another action to preserve their rights on the second cause of action alleged in their original complaint....” (*Kirman v. Borzage*, *supra*, 89 Cal.App.2d at p. 903.) There is no analysis in *Kirman v. Borzage* establishing a broader rule than that already contained in Code of Civil Procedure section 430.10, subdivision (c), that a party may demur on the ground that there is another action pending between the same parties on the same cause of action. The underlying theory of the plea of another action pending is that the first action will normally be an ample remedy, and the second action...is therefore unnecessary and vexatious. (*California Union Ins. Co. v. Trinity River Land Co.* (1980) 105 Cal.App.3d 104, 108–109.) Here, *Ruff II* asserts a survival action not made in *Ruff I*. The damages permitted under that survival action are not duplicative of the remedies in *Ruff I*.

The doctrine of exclusive concurrent jurisdiction—which is broader than section 430.10, subdivision (c)—is inapplicable. Under the rule of exclusive concurrent jurisdiction, “when two superior courts have concurrent jurisdiction over the subject matter and all parties involved in litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matters have been resolved.” (*Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 786–787, quotation marks in original.) The consolidated cases before the Court are not in two different superior courts. The doctrine of exclusive concurrent jurisdiction does not bar *Ruff II*.

3. Defendants’ joint demurrer on the ground that there is a defect/misjoinder of parties is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (d).)

Wrongful death heirs are necessary parties that must be joined under Code of Civil Procedure section 389. (*Sanders v. Fuller* (1975) 45 Cal.App.3d 994, 1001-02.) Generally, there may be only a single action for wrongful death, in which all heirs must join. (*Gonzales v. Southern California Edison Co.* (1999) 77 Cal.App.4th 485, 489.) There cannot be a series of such suits by individual heirs. (*Ibid.*) This is the so-called one action rule. (*Ibid.*) The consolidated cases before the Court, are not a series of wrongful death actions brought by different individual heirs. *Ruff I* asserted a wrongful death cause of action by all heirs. *Ruff II* asserts a survival cause of action by the Estate. Neither mandatory joinder nor the “one action” rule bar *Ruff II*.

4. Defendants’ joint demurrer on the ground that *Ruff II* fails to state facts sufficient to constitute a cause of action is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Defendants argue that *Ruff II* is an attempt to make an end-run around the plain language of Code of Civil Procedure section 377.34. Not so. The plain language of section 377.34 provides “in an action or proceeding by a decedent's personal representative or successor in interest on the decedent's cause of action, the damages recoverable may include damages for pain, suffering, or disfigurement if the action or proceeding was granted a preference pursuant to Section 36 before January 1, 2022, or was filed on or after January 1, 2022, and before January 1, 2026.” (Code Civ. Proc., § 377.34, subd. (b), emphasis added.) The plain language of Code of Civil Procedure section 377.34 permits plaintiff to file a survival cause of action on or after January 1, 2022 and before January 1, 2026. The language is not ambiguous. Resort to legislative history is appropriate only where statutory language is ambiguous. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 29.) Finally, neither *Fleishbein v. Western Auto Supply Agency* (1937) 19 Cal.App.2d 424 [equitable estoppel unsuccessfully asserted against statute of limitations defense] nor *Berkowitz v. Palm Springs La Quinta Development Co.* (1940) 37 Cal.App.2d 249 [cause of action must exist at the time an action is commenced], cited by defendants, dictate a different result. The survival cause of action existed on October 4, 2022, the time *Ruff II* was filed, as required.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

Motion to strike

Defendants' joint motion to strike *Ruff II*'s first cause of action for survival and related paragraphs and prayer for damages is **DENIED**. (Code Civ. Proc., § 435, 436, 437.) The court may upon terms it deems proper: (a) Strikeout any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. Code of Civil Procedure section 377.34, subdivision (a) does not bar *Ruff II*'s survival cause of action, thus, none of the challenged portions of *Ruff II* are subject to strike.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: Heritage Oaks WCC LP v. McAlary
Case No.: CV-2022-2072
Hearing Date: April 21, 2023 Department Two 1:30 p.m.

Defendant Caitlyn McAlary's motion to set aside judgment is **GRANTED**. (Code Civ. Proc., § 473, subd. (b); McAlary decl.)

The notice of motion does not provide notice of this Court's tentative ruling system as required by Local Rule 11.2(b). Counsel for moving party, or the moving party if unrepresented by counsel, is ordered to notify the opposing party or parties immediately of the tentative ruling system.

If no hearing is requested, and no party appears at the hearing, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.