

### **Tentative Rulings – March 4, 2004**

To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

### **Twin Rivers Ranch v. Renwood Properties, Inc., et al. 02CV2419 – Defendants' Motion to Continue Trial Date**

The motion of Renwood Properties, Inc., Renwood Winery, Inc., and Robert Smerling (referred to collectively as "Renwood") to continue the current trial date of April 12, 2004, is denied. The moving parties have failed to establish good cause for the continuance.

Renwood contends that the continuance is justified because it was recently required to obtain new counsel due to a conflict of interest with their previous attorney, Mr. Tourtelot. However, Mr. Tourtelot was aware of the conflict of interest issue at least as early as January 2003 but a substitution of attorney was not filed until January 2004. Given the nature of this case and the advice of counsel defense asserted on behalf of the moving parties, the conflict of interest was created when the answer was filed. Renwood fails to explain the delay in obtaining new counsel.

In addition, the court considered the fact that Mr. Davis will be starting another trial in March, which may conflict with the trial date in this case. Under the circumstances, Mr. Davis' calendar conflict does not establish good cause for a continuance of the trial date. Mr. Davis knew, or should have known, of the trial date when he agreed to represent Renwood. If he was unable to proceed to trial on the date originally scheduled, Mr. Davis should have declined the offer to represent Renwood.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is notice required.

### **Vigil v. Kimes – 03CV259 – Plaintiff's Motion to File an Amended Complaint**

The plaintiff's motion to file an amended complaint is granted. The clerk is directed to file the First Amended Complaint signed by attorney Glen L. Moss, dated January 12, 2004. The defendant's response to the First Amended Complaint shall be filed and served on or before March 23, 2004. If the defendant does not file a response by that date, the answer to the original complaint will be deemed an answer to the First Amended Complaint.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is notice required.

**Vigil v. Kimes – 03CV259 – Defendant’s Motion for Summary Judgment**

Based on the court’s ruling on the plaintiff’s motion to file an amended complaint, the defendant’s motion for summary judgment is denied. The amended complaint supercedes the original complaint because it includes substantive changes. Because the issues to be determined on a motion for summary judgment are framed by the pleadings and the original complaint is no longer operative, the motion must be denied as moot.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is notice required.