

Tentative Rulings – July 14, 2005

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.

Bravot v. California Dept. of Corrections, et al. 05CV3687- Defendant's Motion to Quash Service

Defendants California Department of Corrections, Campbell, Lincoln, Robinson, Johnson, and Reyes brought the instant Motion to Quash Service. Said defendants allege that service was improper, as they did not receive a copy of the Summons on May 5, 2005 when the Amador County Sheriff's Department served the Complaint. Defendants claim that Plaintiff cannot prove that Defendants were served with Summons.

Numerous Proofs of Services were filed with the court on June 15, 2005. According to the Proof, Michael Prizmich of the Sheriff's Department served Defendants with several documents, including the Summons, on May 5, 2005.

Defendants' Motion to Quash is denied. According to the Proofs of Service filed with the Court on June 15, 2005, Defendants were served with copies of the Summons on May 5, 2005.

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 further notice of this ruling required.

Citicorp Credit Services v. Sparks 05CV3647- Defendant's Demurrer to Plaintiff's First Amended Complaint

In the instant action, Defendant is being sued both individually and in his capacity as executor of the Estate of Sheryl Alabona.

Defendant filed a demurrer to Plaintiff's first amended complaint. Previously, Defendant filed a demurrer to the complaint, which was granted with leave to amend. The first demurrer was granted on the basis that the complaint was barred by the statute of limitations and because the untimely creditor's claim could not serve to toll the statute of limitations.

Plaintiff filed an amended complaint and the instant demurrer follows. It does not appear that Plaintiff's amended complaint avoids the statute of limitations bar. Plaintiff's

amended complaint states that the creditor's claim was filed within one year of the death of decedent. It does not appear that any new facts are alleged to defeat the demurrer.

Plaintiff failed to file an opposition to the instant demurrer.

The defendant's Demurrer to First Amended Complaint is unopposed and granted without leave to amend. The court has taken judicial notice of the related probate matter Estate of Alabona Amador Superior Court Case No. 03PR0488.

The plaintiff's complaint is barred by the statute of limitations applicable to actions against a decedent or the decedent's estate, which requires the action to be filed within one-year of the date of death. (Code of Civil Procedure Section 366.2) The date of death was October 25, 2003. This action was not filed until January 25, 2005. Because the creditors claim was not timely, it did not serve to toll the statute of limitations. (Probate Code Section 9100.)

Unless a hearing is requested, this minute order is effective immediately. Moving party to provide notice of this ruling and submit an order to the court pursuant to Code of Civil Procedure California Rules of Court, Rule 391.

Lubenko v. Crocker 04CV3377- Defendant's Motion for Leave to File Amendments To Complaint

Plaintiffs filed a motion for leave to file amendments to complaint. Said amendments involve adding the City of Plymouth as a defendant and adding causes of action for writ of mandamus, inverse condemnation, and under the Permit Streamlining Act.

No opposition was filed. All parties and the City of Plymouth were timely served with the Motion.

Plaintiffs' Motion for Leave to File Amendments to Complaint is unopposed and granted.

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 further notice of this ruling required.

Option Card LLC v. Sandra Burke 05CV03637-Order to Show Cause for FTA at Case Management Conference

There is no tentative ruling in this matter. Appearance required by both parties.