

## **Tentative Rulings – July 21, 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.

### **Ditty v. Turpin 04CV3515- Defendant Ronald Tachibana's Demurrer to Plaintiff's Complaint**

The defendant's demurrer to the plaintiff's complaint is sustained with 20 days leave to amend.

The plaintiff's complaint is barred by the statute of limitations applicable to medical malpractice actions, which require the action to be filed within either three years of the injury or one year after the plaintiff discovers, or should have discovered, the injury, whichever occurs first. (C.C.P. §340.5.) Plaintiff was aware of the injury on August 5, 2003. This action was not filed until October 15, 2004. There is no evidence that the statute of limitations was tolled.

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 Section 437c(g) and California Rules of Court, Rule 391.

### **Serber v. Estate of Martin 04CV3608-Plaintiff's Motion for Order for Production of California Motor Vehicle License Photographs**

Plaintiff filed the instant Motion for an Order for Production of California Motor Vehicle License Photographs. Plaintiff was involved in a motor vehicle collision on January 4, 2004. The other vehicle was registered to Martin Johnson, who passed away in October 2003. The driver of Martin Johnson's vehicle represented himself as being Martin Johnson at the time of the collision. Plaintiff is informed that Mr. Johnson has three sons: Nicholas Johnson, Brandon Johnson, and Jeremiah Johnson. Plaintiff believes that, more likely than not, the driver of Mr. Johnson's vehicle was one of the three sons. Plaintiff believes that the driver's license photographs of the three sons would provide a basis for him to identify which son, if any, was the driver of the vehicle on the date of the collision.

Plaintiff has brought the instant action against the Estate of Martin Johnson only. Plaintiff has not named Mr. Johnson's sons as defendants at this juncture.

Plaintiff requests the photographs pursuant to Vehicle Code §1808 and 18 U.S.C. §12800. It appears the applicable code sections are Vehicle Code §1808, 18 U.S.C. §2721, and Vehicle Code §12800.5. Said sections provide that personal information of licensees shall not be released, except under certain enumerated circumstances, one of which is pursuant to a court order.

However, the sole procedure to obtain discovery from a non-party to the litigation is via deposition subpoena. (C.C.P. §2020.010.) Such a subpoena can request personal

appearance and testimony, production of documents, or both. (C.C.P. §2020.010.)  
Moreover, if one seeks personal records of a consumer, the procedures outlined in Code of Civil Procedure §1985.3 must be complied with prior to the release of any records.

There is no evidence that a subpoena was issued and, subsequently, served on the Department of Motor Vehicles and the three consumers in question. Said persons must be given notice and an opportunity to respond to the instant request. Accordingly, this motion is premature and denied without prejudice to its reassertion after the proper procedure has been followed to subpoena consumer personal records.

**Jackson Indian Rancheria Band of the Miwuk Indians v. Preferred Properties 04CV3536-Cross-Complainant's Motion for Leave to File Amended Cross-Complaint**

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

**Jackson Indian Rancheria Band of the Miwuk Indians v. Preferred Properties 04CV3536-Cross-Defendant's Demurrer to Cross-Complaint**

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

**Jackson Indian Rancheria Band of the Miwuk Indians v. Preferred Properties 04CV3536-Cross-Defendant's Motion to Strike Claims for Punitive Damages Asserted in the Cross-Complaint**

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