

TENTATIVE RULINGS: CIVIL LAW & MOTION

**Wednesday, May 13, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403**

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

TO JOIN ZOOM ONLINE:

Department 18:

Meeting ID: 160—739—4368

Password: 000169

<https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWIL3NBcE9LVHU2NVVpQIVRUT09>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

Call: +1 669 900 6833 US (San Jose)

Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. 24CV07853, American Express National Bank v. Hoeksema

The unopposed motion by Jerry Wang to be relieved as counsel for Defendant is **GRANTED**. Counsel represents that a conflict of interest has arisen and there has been a breakdown in the attorney-client relationship.

If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

2. 25CV03775, Samuelsen v. Providence Health System

Plaintiff’s motion for leave to file an amended complaint is **CONTINUED** to May 20, 2026, at 3:00 p.m. in Department 18 in order for Plaintiff to properly attach the proposed amended complaint to the declaration submitted in support of this motion.

Cal. Rules of Court, Rule 3.1324(a)(1) provides that “A motion to amend a pleading before trial must: (1) Include a copy of the proposed amendment or amended pleading, which must be serially numbered to differentiate it from previous pleadings or amendments...”

Plaintiff’s counsel states in his declaration supporting this motion that the proposed amended complaint is attached as Exhibit A to his declaration. However, it was not attached to the declaration. It was instead filed as a separate document—and, as such, was rejected by the Clerk of Court. The proposed amended complaint is not in the Court’s file. Plaintiff’s counsel shall file a supplemental declaration that properly attaches the proposed amended complaint no later than May 15, 2026.

3. SCV-272285, Desforges v. Nessinger

Defendant Chavez Plumbing, Inc.’s unopposed motion for determination of good faith settlement is **GRANTED**.

If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

Analysis:

A “plaintiff or other claimant” can settle with one or more joint tortfeasors or co-obligors without releasing others, provided the settlement is in “good faith.” (CCP § 877.6.) A good-faith settlement discharges the settling defendant from liability to other parties for equitable contribution or comparative indemnity.

The amount of the settlement and whether it is grossly disproportionate to potential liability is the “ultimate determinant of good faith.” (*City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1262; see also *River Garden Farms, Inc. v. Superior Court* (1972) 26 Cal.App.3d 986, 996.) The determination of good faith settlement is in the discretion of the trial court. (*Tech-Bilt Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 502.)

There is no precise standard to determine good faith, but the court must harmonize public policy favoring settlements with public policy favoring equitable sharing of costs among tortfeasors. The settlement must be within the “reasonable range of the settling tortfeasor’s proportional share of comparative liability for the plaintiff’s injuries,” taking into consideration the facts and circumstances of the particular case and evaluating the settlement on the basis of information available at the time of settlement. (*Tech-Bilt, supra*, 38 Cal.3d at p. 499) The factors include:

- 1) A rough approximation of the total recovery and settlor's proportionate liability;
- 2) The amount paid in settlement;
- 3) The allocation of settlement proceeds;
- 4) A recognition that a settlor should pay less in settlement than if found liable after trial;
- 5) The allocation of the settlement proceeds among plaintiffs;
- 6) Settlor's financial condition and insurance policy limits, if any; and
- 7) Evidence of any collusion, fraud or tortious conduct between the settlor and the plaintiffs aimed at making non-settling parties pay more than their fair share.

(*Ibid.*)

“Although an offer of settlement must bear some relationship to one's proportionate liability, bad faith is not ‘established by a showing that a settling defendant paid less than his theoretical proportionate or fair share.’ [Citation.]” (*N. Cnty. Contractor's Assn. v. Touchstone Ins. Servs.* (1994) 27 Cal.App.4th 1085, 1090.) “In other words, “a ‘good faith’ settlement does not call for perfect or even nearly perfect apportionment of liability.” [Citation.] All that is necessary is that there be a ‘rough approximation’ between a settling tortfeasor's offer of settlement and his proportionate liability.” (*Id.* at pp. 1090-1091.) “The challenger must prove ‘the settlement is so far ‘out of the ballpark’ in relation to these factors as to be inconsistent with the equitable objectives of the statute.” (*Id.* at p. 1091.)

This matter arises from alleged construction defects that occurred during the remodeling of a single-family home located at 555 Shiloh Valley Road, in the City of Santa Rosa, County of Sonoma. In May 2017, homeowners Suzanne and Peter Desforges retained E. West Construction (“EWC”) to serve as the contractor. In May 2017, the Desforges entered into a home improvement contract with EWC for the base price of \$2,845,631, whereby EWC agreed to serve as the contractor and provide services for a major remodel. However, during construction, EWC changed management and was subsequently renamed New West Property Development. Ed Nessinger, the Responsible Managing Officer (“RMO”) for EWC, transferred the title to Brian Cameron, who became the new RMO. During construction, several change orders were allegedly issued that substantially increased the total cost. Plaintiffs contend that these change orders did not comply with Section 7159 of the California Business and Professions Code and are not enforceable.

During the construction of the Subject Property, Chavez Plumbing, Inc. (“Chavez”) was retained to perform plumbing-related work. Based on the facts available to date, the only alleged claim regarding Chavez's work is the reversal of the hot-and-cold water lines at the lower-level guest bathroom shower valve.

The settlement agreement provides, in summary, that Chavez will pay Plaintiffs \$10,000; the settlement is not an admission of liability by Chavez; the settlement with Plaintiffs will include a waiver of Civil Code §1542; each party shall bear its own costs and fees; and the settlement is contingent upon a finding of good faith by the Court.

The Court finds that the amount of the settlement was the product of arms' length negotiations and is proportionate to Chavez's potential liability. There is no opposition to this motion. Considering the *Tech-Bilt* factors listed above, the Court finds the settlement to have been reached in good faith.

4. **SCV-272285, Desforges v. Nessinger**

Cross-Complainant's motion for leave to file a First Amended Cross-Complaint is **GRANTED**.

Cross-Defendants' request for judicial notice is **GRANTED**.

Cross-Defendants' objections to evidence are **OVERRULED**.

The Court will sign the proposed order lodged with the moving papers.

Analysis:

Judicial policy favors resolution of all disputed matters between the parties in the same lawsuit, and courts are bound to apply a policy of great liberality in permitting amendments to the complaint "at any stage of the proceedings, up to and including trial," absent prejudice to the adverse party. (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761.) "Generally, leave to amend must be liberally granted (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 939, 101 Cal.Rptr. 568, 496 P.2d 480), provided there is no statute of limitations concern, nor any prejudice to the opposing party, such as delay in trial, loss of critical evidence, or added costs of preparation. (*Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 490.)" (*Solit v. Tokai Bank, Ltd. New York Branch* (1999) 68 Cal.App.4th 1435, 1448.) As long as the motion is timely and will not prejudice a party, it is normally an abuse of discretion to refuse to allow amendment if the denial will deprive a party of a meritorious claim or defense. (*Morgan v. Sup.Ct.* (1959) 172 Cal.App.2d 527, 530.)

This matter arises out of the construction of Plaintiffs' new home in Santa Rosa. Plaintiffs, the Desforges', filed suit against Defendant, Edward Nessinger, his construction company (New West Property Development, Inc., formerly known as E. West Construction, Inc., hereinafter "EWC"), and other subcontractors and related parties involved in the construction of the home. The Desforges claim, in part, that Defendants in the original Complaint violated home improvement laws and were negligent.

Mr. Nessinger filed a Cross-Complaint on November 7, 2023, against several subcontractors seeking implied and equitable indemnity, contribution, breach of contract, breach of express indemnity, negligence, breach of express warranty, breach of implied warranty, and declaratory relief.

Mr. Nessinger now seeks leave to file an amended cross-complaint in order to allege two new causes of action for fraud-deceit and negligent misrepresentation against the Desforges'. Mr. Nessinger represents that he has gathered evidence through recent discovery (depositions occurring on March 11 and 13th) that confirmed unusually heavy use of change orders by Mr. Desforges to re-design the home, which supports Mr. Nessinger's claim that the Desforges obtained Mr. Nessinger's agreement and reduced bid under false premises.

Trial is set for May 29, 2026. Mr. Nessinger represents that he is mindful of the soon-approaching trial date but believes the current trial date need not move. According to Mr. Nessinger, the evidence that supports Nessinger's First Amended Cross-Complaint is already in the "main" case, and there is therefore no need for a trial continuance.

The Desforges Cross-Defendants oppose this motion on the grounds that Mr. Nessinger cannot establish “good faith” under CCP § 426.50, that the delay to the eve of trial will prejudice them, and that the proposed FACC does not and cannot state valid claims.

Good Faith

As to the argument that Mr. Nessinger cannot establish good faith under CCP § 426.50, the Court does not find this argument to be persuasive. Mr. Nessinger has represented that these new causes of action came to light during third-party depositions taken March 11 and 13th. This motion was filed on March 27th. The case cited by Cross-Defendants, *Kendall v. Barker* (1988) 197 Cal.App.3d 619, is distinguished because, unlike in *Kendall*, Mr. Nessinger’s substantive showing in support of this motion does not solely consist of “a conclusory declaration by his counsel stating on information and belief that respondent’s previous attorney ‘excusably neglected’ to answer the complaint.” (*Id.* at 624.) Rather, here, Mr. Nessinger’s counsel has filed a declaration explaining the circumstances that gave rise to the newly alleged causes of action and when such circumstances came to light.

Furthermore, the Court finds no evidence of a strategic delay, as suggested by Cross-Defendants. As stated above, Mr. Nessinger filed this motion only two weeks after taking the depositions that provided the evidence supporting the new causes of action. This is not a substantial delay. The Court finds that Mr. Nessinger acted in good faith.

Prejudice to Cross-Defendants

Cross-Defendants argue that this amendment will cause a delay of trial, which will prejudice them because they will need to conduct discovery specific to these new fraud allegations. They have not shown that a trial continuance is entirely necessary. However, even if it is, it need not be for long. While such a continuance would prejudice Cross-Defendants to some degree, the Court does not find such prejudice to be substantial enough to outweigh the interests of resolving all claims between the parties.

Sufficiency of Allegations

Finally, Cross-Defendants challenge the sufficiency of the new allegations and Mr. Nessinger’s standing to assert them. However,

“Ordinarily, the judge will *not* consider the validity of the proposed amended pleading in deciding whether to grant leave to amend. Grounds for demurrer or motion to strike are premature. After leave to amend is granted, the opposing party will have the opportunity to attack the validity of the amended pleading...”

(Weil & Brown, *Civil Procedure Before Trial* (2025) § 6:644, citing *Kittredge Sports Co. v. Sup.Ct. (Marker, U.S.A.)* (1989) 213 Cal.App.3d 1045, 1048.) Accordingly, these arguments are premature and do not persuade the Court against granting leave to amend.

*****This is the end of the Tentative Rulings*****