TENTATIVE RULINGS

FOR: May 13, 2021

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

Remote appearances via Zoom are mandatory to prevent the spread of COVID-19. Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

Dept. A Zoom
Join by Video (Preferred)
https://us02web.zoom.us/j/85897874559?pwd=Nk1VTnNQZmIzNXQwbVNiUk1iQTNCZz09
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Dept. B Zoom
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https://us02web.zoom.us/j/89902611018?pwd=OXJRM2FFWHZ4YXJ4b2szZWs1UFJYZz09
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Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to http://napacountybar.org/court-reporting-services/ for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Matter of the Trust Created Under the Will of Warren Clark **26-67502**

FIFTH ACCOUNT OF SUCCESSOR TRUSTEE AND PETITION FOR ITS SETTLEMENT; FOR TRUSTEE FEES; FOR ATTORNEY'S FEES; AND SETTING BOND

TENTATIVE RULING: GRANT petition, including fees as prayed. (Cal. Rules of Court, rule 7.776.) The Court notes paragraph 10(D) contains a typographical error for the period of time attorney services were provided, which should read January 1, 2020, to December 31, 2020, as confirmed in the attached invoice.

Conservatorship of Jeffrey Monroe **26-67844**

[1] ACCOUNTING AND REPORT OF CONSERVATOR AND PETITION FOR ITS SETTLEMENT AND FOR FEES

[2] BIENNIAL REVIEW

TENTATIVE RULING: The matter is continued to June 15, 2021, at 8:30 a.m. in Dept. A, to allow for preparation of an accounting. The clerk is directed to send notice to the parties. If there remains no accounting on file in advance of the June 15, 2021 hearing, Conservator will be required to appear to explain the delay.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Estate of Troy L. Pelzl **18PR000089**

FIRST AND FINAL ACCOUNT AND REPORT OF EXECUTOR AND PETITION FOR ITS SETTLEMENT, FOR ALLOWANCE OF COMMISSIONS, ATTORNEY'S STATUTORY FEES, COSTS ADVANCED AND FOR FINAL DISTRIBUTION

TENTATIVE RULING: GRANT petition, including fees as prayed.

Conservatorship of Rose Jackson **21PR000029**

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

TENTATIVE RULING: The petition is DENIED WITHOUT PREJUDICE. Petitioner has not taken any steps to comply with the April 15, 2021 minute order.

CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Martin Orgel v. Robert Medina, et al. **19CV000439**

MOTION TO STRIKE

TENTATIVE RULING: Plaintiff Martin Orgel's motion to strike defendants 820 Lincoln LLC and Dove Distributors, Inc.'s answers and entering defaults against the corporate defendants is GRANTED. Attorney Andrew Cantor substituted out as counsel for these corporate defendants on April 2, 2021, and was replaced by Robert Medina who is not an

attorney. Counsel must represent corporate defendants in court. (*Clean Air Transp. Sys. v. San Mateo Cnty. Transit Dist.* (1988) 198 Cal.App.3d 576, 578.)

Orgel's request for judicial notice is GRANTED as to the two substitution of attorney submissions.

Todd Hearn v. Pacific Gas and Electric Co. **20CV000391**

[1] PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

TENTATIVE RULING: The motion is GRANTED. Plaintiff is granted 10 days' leave to file a First Amended Complaint in the form attached as Exhibit B to his Memorandum of Points and Authorities filed in support of the present motion (Support Memo). However, consistent with the statements made in his Reply Brief, Plaintiff may omit therefrom the allegations of re-publication to the Human Resources Eligibility Review Committee set forth in paragraphs 53, 54, and 55 of the proposed First Amended Complaint (pFAC).

Plaintiff moves, pursuant to Code of Civil procedure sections 576 and 473, for leave to file a proposed First Amended Complaint (pFAC) to add a cause of action for defamation against Defendant Pacific Gas and Electric Company (PG&E).

The Court may, "at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper," allow a plaintiff to amend the operative complaint. (Code Civ. Proc. §576; see also *Id*. at §473, subd. (a)(1).) Leave to amend is left to the sound discretion of the trial court and, "will not be disturbed on appeal absent a clear showing of abuse." (*Branick v. Downey Savings & Loan Association* (2006) 39 Cal.4th 235, 242.) Generally, it is an abuse of discretion for a court to deny leave to amend where there is any reasonable possibility that a Plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) However, the pleading party bears the burden of showing such reasonable possibility. (*Ibid*.) Moreover, "[w]hen amendment would be futile because the amended [complaint] would be barred by the statute of limitations, the trial court does not abuse its discretion in denying the motion for leave to amend." (*Royalty Carpet Mills, Inc. v. City of Irvine* (2005) 125 Cal.App.4th 1110, 1124.)

The Court finds that Plaintiff has established a reasonable probability that he can state a good cause of action for defamation.

PG&E argues that the pFAC clearly discloses facts establishing that the proposed claim is barred by the statute of limitations. (See Opposition at 9:27 *et seq.*) A claim for defamation must be brought within one year from accrual. (See Code Civ. Proc. §340, subd. (c).) "[A] cause of action for libel generally accrues when the defamatory matter is published." (*Bernson v. Browning-Ferris Industries* (1994) 7 Cal.4th 926, 931.)

It appears uncontroverted that an original publication of the allegedly defamatory material occurred by and through PG&E's letter terminating Plaintiff, which PG&E is alleged to

have disseminated more than one year ago, on January 22, 2019. (See Complaint at ¶ 44; see also Declaration of Todd Hearn at ¶¶ 4-5 (Hearn Decl.), Opposition at 7:16-23.)

Plaintiff presents a two-step argument rebutting PG&E's contention that the defamation claim is time-barred.[1]

Plaintiff first asserts that the proposed cause of action for defamation "relates back" to the filing of the original Complaint because it relies on factual allegations contained in the original Complaint. (See Support Memo at 4:24-5:13.) The Court agrees, finding that the facts alleged in the Complaint and pFAC all relate to PG&E's termination of Plaintiff's employment – "the same general set of facts." (*Honig v. Financial Corp. of America* (1992) 6 Cal.App.4th 960, 966-967.) PG&E appears to concede this limited point (that the defamation cause of action relies on factual allegations contained in the original Complaint) by failing to argue it through its opposition.

PG&E argues that the relation-back doctrine doesn't aid Plaintiff here because the alleged dissemination of the termination letter – the alleged "publication" supporting the defamation claim – occurred more than one year before the filing of the original Complaint. (Opposition at 11:5-7.) The original Complaint was filed on June 1, 2020, more than one year after the date on which Plaintiff alleges he was terminated and given the termination letter. (See Complaint at ¶ 44; see also Hearn Decl. at ¶¶ 4-5.) Pursuant to PG&E's argument, since Plaintiff's claim for defamation was untimely as of the June 1, 2020 filing of the original Complaint, it is untimely even under application of the relation-back doctrine.

On Reply, Plaintiff argues, for the first time, that the claim is not time-barred because limitations periods were tolled based on both the automatic bankruptcy court stay of this action, and the COVID-19 related emergency of March-May, 2020. (See Reply at 1:8-15.) "[T]he court may disregard arguments or grounds…first raised in a reply brief." (Weil & Brown, et al., Cal. Practice Guide: Civ. Proc. Before Trial (The Rutter Group 2020) §7:122.9, p. 7(I)-54; see also *Balboa Ins. Co.* v. *Aguirre* (1983) 149 Cal.App.3d 1002, 1010 ["[t]he salutary rule is that points raised in a reply brief for the first time will not be considered unless good cause is shown for the failure to present them before"].) Ultimately, the point of whether these arguments are properly before the Court is moot because the Court need not rely on this argument in finding good cause to grant Plaintiff's motion.

Plaintiff is able to overcome this potential deficiency through the second step of his argument. Plaintiff initially argued that (1) PG&E has "republished the defamatory statement" to a Human Resources Eligibility Review Committee and (2) that Plaintiff has been forced to republish the defamatory statement(s) and that PG&E may be liable under either theory. (Support Memo at 1:14-20.) However, through his Reply, Plaintiff states that he "no longer seeks to allege defamation in the form of re-publication [by PG&E]." (Reply at 2:15-16.)

The Court finds that based on Plaintiff's self-republication theory, the pFAC alleges facts sufficient to state a cause of action for defamation that is not clearly barred by the statute of limitations. "In some cases, the originator of a statement may be liable for defamation when the

[1] PG&E's argument was apparently developed through the meet and confer process sufficiently to allow Plaintiff to present his rebuttal through his opening brief. (See Support Memo at 4:19-23.)

person defamed republishes the statement, provided that the originator 'has reason to believe that the person defamed will be under a strong compulsion to disclose the contents of the defamatory statement to a third person after he has read it or been informed of its contents. [Citations.]' [Citation.]" *Beroiz v. Wahl* (2000) 84 Cal.App.4th 485, 497.) "[T]his rule 'has been limited to a narrow class of cases, usually where a plaintiff is compelled to republish the statements in aid of disproving them.' [Citation.] Moreover, the originator of the statement must foresee the likelihood of compelled republication when the statement is originally made." (*Ibid*.)

The Court finds that the facts alleged through the Complaint place this case among this "narrow class of cases." (See *McKinney v. Co. of Santa Clara* (1980) 110 Cal.App.3d 787 (*McKinney*).) The plaintiff in *McKinney* argued that "having given allegedly false reasons to appellant for his dismissal, it must have been foreseeable to [defendant] that [plaintiff] would be under a strong compulsion to republish the statements to prospective employers upon their inquiry." (*Id*. at 795.) The court held that under such facts, plaintiff's claims for libel and slander were "not without merit and should not have been dismissed." (*Id*. at 798.) The Court reasoned that, "[t] he rationale for making the originator of a defamatory statement liable for its foreseeable republication is the strong causal between the actions of the originator and the damage caused by the republication. This causal link is no less strong where the foreseeable republication is made by the person defamed operating under a strong compulsion to republish the defamatory statement and the circumstances which create the strong compulsion are known to the originator of the defamatory statement at the time he communicates it to the person defamed." (*Id*. at 797-98.)

Plaintiff's pFAC alleges facts analogous with those material to the holding in *McKinney.* (See pFAC, attached to Support Memo, at ¶ 37, 42, 44, 56-57.)

Defendant appeals to the holding in *Davis v. Consolidated Freightways* (1994) 29 Cal.App.4th 354, 373 (*Davis*), arguing that Plaintiff's motion for leave to amend should be denied because "Hearn does not claim he was under a strong compulsion to republish the alleged defamatory matter in response to a negative job reference attributable to PG&E." (Opposition at 12:12-14.) The Court disagrees, finding that Plaintiff alleges facts through the pFAC which, if true, are sufficient to support a finding that the requisite "strong compulsion" existed. (See pFAC at ¶ 56.)

Again, as discussed in detail herein above, the critical issue is whether the facts alleged in Plaintiff's pFAC clearly disclose that the claim for defamation is barred by the statute of limitations. The Court finds that it does not.

Based on the foregoing, Plaintiff's motion is GRANTED.

[2] DEFENDANT'S MOTION SEEKING LEAVE TO FILE FIRST AMENDED ANSER TO THE ORIGINAL COMPLAINT

TENTATIVE RULING: The motion is MOOT based on the Court's ruling granting Plaintiff leave to file a First Amended Complaint.