**AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS**

**Monday, April 26, 2021**

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**TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. 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 WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.**

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**18-FCD-06916** HOLM, RUBY VS. HOLM, MARK

**FAMILY LAW MOTION TO COMPEL**

TENTATIVE RULING:

On the court's own motion Respondent's Motion to Compel is continued to May 3, 2021 at 8:30 a.m. in Department 1.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

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**19-CVC-11080** JUDSON, ERIC VS. SALERNO, GIOVANNI

**MOTION TO CONSOLIDATE CASES**

TENTATIVE RULING:

Plaintiffs Motion to Consolidate Case No. 19 CVC 11080 with Case No. 20 CVC 11849 for Trial Only is GRANTED.

CCP 1048(a) provides:

(a) When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

In support of the motion, Plaintiff argues that the factual issues of both cases are very similar. Dr. Salerno performed a laparoscopic inguinal hernia repair with 3D Bard mesh on both JACK and JUDSON. Both JACK and JUDSON's surgeries failed and both allege they failed because Dr. Salerno failed to properly place the Bard mesh over the hernia defect. Both JACK and JUDSON allege Dr. Salerno dismissed their concerns and reassured both patients that they did not have an ongoing hernia defect. Both JACK and JUDSON ultimately had their hernia defects repaired through subsequent surgeries by the same surgeon, Dr. David Melniczek. The likely witnesses will be the same in both cases.

In opposition, Defendant concedes to the factual similarities of the two cases but argues that the cases are procedurally very different in that significant discovery has already taken place in JUDSON's case and JACK's case is in the early stages. Further, that prejudice will occur against Defendants if the cases are tried together, effectively permitting Plaintiff's to use evidence in one case to prove the other, rather than requiring Plaintiffs to prove each case on its own merits.

In reply, Plaintiff argues there is no trial date set in either case and both will be ready for trial at the same time. Discovery has already commenced in JACK's case. Further, that the risk of prejudice is outweighed by the judicial economy of holding one trial because the court can instruct the jury accordingly to consider each case on its own merits.

Whether separate actions shall be consolidated for trial is a matter within the discretion of the trial court and its decision will not be disturbed on appeal absent a clear showing of abuse of discretion. (Fellner v. Steinbaum (1955) 132 Cal.App.2d 509, 511.)

The court finds the Defendant's concern about the possible prejudicial impact of consolidating the cases for trial only is outweighed by the judicial economy of having one trial.

The court will sign the proposed order granting the motion.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.