July 31, 2026, Civil Law & Motion Tentative Ruling (Judge Kellegrew)

The following tentative ruling is issued by the Hon. Judge Kent Kellegrew.

1. CU0001723 UMPQUA BANK, as Successor by Merger to Columbia State Bank, an Oregon State Chartered Bank vs. Joseph A. Miller, DMD, Inc., a California Corporation et al

On the Court's own motion, this hearing is continued to July 31, 2026, at 2:00 p.m. in Department 6.

Defendants' motion for leave to file a cross-complaint is denied.

Legal Standard

While Code of Civil Procedure § 428.50, subdivision (a) provides that a defendant's cross complaint against a plaintiff must be filed against the plaintiff before or at the same time as the answer, subdivision (c) of that same statute, provides a mechanism for filing such cross-complaint later. "Leave may be granted in the interest of justice at any time during the course of the action."

Code of Civil Procedure § 426.50 provides that a party who initially fails to bring a compulsory cross-complaint, "whether through oversight, inadvertence, mistake, neglect, or other cause," may seek leave from the court to file a cross-complaint at any time during the course of the action. If such leave is sought, and upon notice to the other party, the court must grant such leave "if the party who failed to plead the cause acted in good faith." The statute further provides that it must be liberally construed to avoid forfeiture of causes of action. Code Civ. Proc. § 426.50. The sort of "forfeiture" mentioned in § 426.50 is also addressed in Code of Civil Procedure § 426.30(a), which clarifies that a defendant who fails to allege related causes of action in a cross-complaint against plaintiff may not thereafter assert those claims in any other action.

> The legislative mandate is clear. A policy of liberal construction of section 426.50 to avoid forfeiture of causes of action is imposed on the trial court. A motion to file a cross-complaint at any time during the course of the action *must* be granted unless bad faith of the moving party is demonstrated where forfeiture would otherwise result. Factors such as oversight, inadvertence, neglect, mistake or other cause, are insufficient grounds to deny the motion unless accompanied by bad faith.

Silver Orgs. v. Frank (1990) 217 Cal.App.3d 94, 98-99, emphasis added.

Thus, if the proposed cross-complaint is compulsory, leave must be granted so long as defendant is acting in good faith. Code Civ. Proc. § 426.50. Cross-complaints are only compulsory when the cause of action existed at the time the answer was filed. Causes of action which arise from facts which occurred after the filing of the answer are always permissive, regardless of their relation to the complaint. *Crocker Nat. Bank v. Emerald* (1990) 221 Cal.App.3d 852, 864.) "Permission to file a permissive cross-complaint is solely within the trial court's discretion." *Ibid*.

Analysis

At bar, the Complaint was filed on November 14, 2024. The Receiver was appointed on February 21, 2025. The proposed cross-complaint alleges:

> Between February 2, 2024, and April 4, 2024, the Receiver, with the knowledge and encouragement, and for the sole benefit of Umpqua Bank, performed and committed the following: At a time presently unknown to Cross-Complainant, from either a location in Utah or Idaho, knowingly and remotely accessed Dr. Miller's office management computer system and downloaded or otherwise viewed and duplicated Confidential Health Records and Protected Health Information of approximately 10,000 patients without the consent of either Cross-Complainant or the individual patients, and further disable Dr. Miller's access to communicate with the patients.

Proposed Cross-Complaint, at ¶ 13(A).

The proposed cross-complaint continues, alleging, "After the Court entered its order temporarily expanding the Receiver's powers on April 4, 2025, The Receiver, for the benefit of Cross-Defendants…". Proposed Cross-Complaint, at ¶ 14(C).

While on its face, the cross-complaint alleges actions which existed at the time of the Complaint, occurring between February 2, 2024 and April 4, 2024, the fact that the actions allege actions by the Receiver, who was not appointed until February 2025 and note the date of April 5, 2025 as the date the Receiver's powers were expanded indicate the former dates of 2024 are a typo and should read 2025. Therefore, the causes of action arise from actions arising after the facts which occurred after the filing of the answer, and thus, are permissive.

Additionally, the claims contained within the Cross-Complaint are based on actions made by, the Court appointed Receiver, and which were explicitly approved of in the Order Approving Final Disposition of Assets; Terminating the Receivership; Discharging the Receiver; and Granting Related Relief, entered on March 12, 2026 (the "Order"). Specifically, the Conclusions of Law in the Order states:

> The receiver's actions taken with respect to the marketing and sale of the dental practice and, specifically, the sale of the patient list, were specifically authorized by the Court in the Sale Order, and the Court finds that the Receiver acted diligently and in all respects consistent within the scope, authorization, and directives of this Court and its several orders. No party has made a credible claim that the Receiver has at any time acted outside of its authority granted in the Temporary Receivership Order, the Receivership Order, the Sale Order, or the other orders obtained from this Court, and thus this Order constitutes a finding fo fact that all of the Receiver's actions have been within the scope of the authority granted by this Court.

Order, ¶ E.

Additionally, the Order concludes, "Actions against the Receiver for any act or omission by the Receiver in its capacity as the receiver in this case are barred after the entry of this Order of Discharge under principles of *res judicata*…and by the common law judicial proceedings/litigation privilege and California Civ. Code s. 47." Order, ¶¶ X-Y.

While the Cross-Complaint is purportedly an action against Plaintiff, and not the Receiver, the actions described therein are the actions of the Receiver, not Plaintiff. Additionally, it appears Defendant's claims are encompassed in another Cross-Complaint filed in Case No. CU0002494. Kornberg Decl., Ex. D.

If the Court had analyzed the issue under the compulsory standard, it would be forced to determine whether Defendant is acting in bad faith, including if Defendants', "words or conduct…suggest[ed] dishonest purpose, moral obliquity, sinister motive, furtive design or ill will." *Silver Organizations Ltd. v. Frank* (1990) 217 Cal.App.3d 94, 100. " 'Bad faith,' is defined as '[t]he opposite of "good faith," generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake ..., but by some interested or sinister motive[,] ... not simply bad judgment or negligence, but rather ... the conscious doing of a wrong because of dishonest purpose or moral obliquity; ... it contemplates a state of mind affirmatively operating with furtive design or ill will. [Citation.]' [Citations.]" *Ibid*. While the Court does not make a conclusion regarding whether Defendant is acting in bad faith, it notes Defendants' conflation of the actions of the Receiver as the actions of Plaintiff, as well as the apparent typo regarding the dates of the underlying actions taken by the Receiver.

Thus, in conclusion, Defendants have not presented any compelling argument why their allegations against the Receiver are not barred by the Order, nor have they addressed the fact the allegations are being pursued already in a separate action. Therefore, Defendants motion for leave to file a cross-complaint is denied.