

1 Basil Plastiras, SBN: 69283
2 Gillian Emmerich, SBN: 293109
Plastiras & Terrizzi, A Professional Corporation
24 Professional Center Parkway, Suite 150
3 San Rafael, CA 94903
Telephone: (415) 472-8100
4 Facsimile: (415) 472-8110

5 Attorneys for Plaintiffs

ELECTRONICALLY
FILED

*Superior Court of California,
County of San Francisco*

12/14/2015
Clerk of the Court

BY:ROMY RISK

Deputy Clerk

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8

9 COUNTY OF SAN FRANCISCO
10

JOHN GALL; SFOL, a California Corporation;) Case No. CGC 15 543472
10 SAN FRANCISCO OFFICE LOFTS; and 1049)
MARKET STREET LLC,)
11 Plaintiffs,)
v.)
13 L PETER RYAN, an individual; FOX)
ROTHSCHILD LLP; MBV LAW LLP; and)
14 DOES 1-10,)
15 Defendants,)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
Plaintiffs' Memorandum of
Points and Authorities in
Support of Motion to Stay
Proceedings Pending Resolution
of Underlying Action
DATE: February 10, 2016
TIME: 9:30 a.m.
DEPT: 302
RESERVATION NUMBER: 12140210-01

I. Introduction

This is a legal malpractice action brought by plaintiffs John Gall, SFOL, San Francisco Office Lofts, and 1049 Market Street LLC (“Plaintiffs”) against Defendants L Peter Ryan, Fox Rothschild LLP, and MBV Law LLP (“Defendants”). There is a Writ of Mandate filed in one of the underlying actions; as well as a cross-complaint. As the ultimate outcome of the underlying actions are uncertain, and there are many issues in the instant malpractice action that would be affected thereby, Plaintiffs respectfully request that this Court stay the proceedings in the instant action.

II. Factual and Procedural History

The instant action arises from Plaintiffs’ attempt to evict several tenants at 1049 Market Street in San Francisco, CA. Defendants were retained *inter alia* to advise and represent

1 Plaintiffs during the eviction process—this included, but was not limited to, acquiring a San
2 Francisco building permit; and providing 15-day notice to the tenants at 1049 Market Street. In
3 the instant action, Plaintiffs allege *inter alia* that Defendants improperly failed to provide fifteen-
4 day notice to tenants at 1049 Market Street, which resulted in a slew of wrongful eviction
5 allegations against Plaintiffs in various underlying actions (some of which have settled, and some
6 of which are ongoing); and improperly handled the permit application process such that the
7 permit was suspended by the City.

8 The *active* underlying actions affecting this matter are: *1049 Market Street LLC v. Aaron*
9 *Miller Et. Al.*, San Francisco Superior Court Case No. CGC-15-545950; *1049 Market Street LLC*
10 *v. Chad Potter et. al.*, San Francisco Superior Court Case No. CGC-15-543999. There is a writ of
11 mandate in *1049 Market Street LLC v. Arron Miller et. al.* that may result in the permit's
12 reinstatement, among other possible results. At that time, it's possible that Plaintiffs could
13 attempt to move forward with eviction actions against the tenants. However, as of the writing of
14 this motion, Plaintiffs cannot file evictions until the City reinstates the permit, and twenty tenants
15 are still in possession.

16 The other active underlying action, *1049 Market Street LLC v. Potter et. al.* is an action
17 against the tenants for both unjust enrichment (ongoing monetary damages) and ejectment
18 (possession). There is also an active cross-complaint against Plaintiffs for breach of contract and
19 wrongful eviction. The outcome of this matter will have a direct effect on the measure of
20 damages in this matter, as well as causation.

21 **III. The Court Has Authority to Stay the Instant Action**

22 Trial courts have inherent authority to stay malpractice suits, holding them in abeyance
23 pending resolution of the underlying litigation. (*Adams v. Paul*, (1995) 11 Cal.4th 583, 593,
24 citing *Rosenthal v. Wilner* (1988) 197 Cal.App.3d 1327, 1331). Further, an action is properly
25 stayed where the full extent of a plaintiff's damages cannot be determined until the resolution of
26 the pending litigation. (*Sindell v. Gibson, Dunn & Crutcher* (1997) 54 Cal.App.4th 1457, 1473 fn
27 11).

1 In *Rosenthal*, judgment was entered against Rosenthal (an attorney) for legal malpractice.
2 Defendant attorneys were retained by Rosenthal's liability insurers to represent Rosenthal in
3 appealing that judgment. However, the defendant attorneys withdrew from their representation
4 after the insurers and the underlying plaintiff entered into a settlement in which the judgment
5 would be satisfied.

6 Yet, while the appeal was pending, Rosenthal filed a legal malpractice action against
7 defendant attorneys alleging, *inter alia*, that the settlement agreement left him monetarily liable
8 for some portions of the judgment not satisfied by the agreement. Defendant attorneys' moved to
9 stay the action—but their motion was denied by the trial court. Following this, the appellate
10 court issued an order directing the superior court to vacate its denial.

11 The appellate court found that the proximate causation and damages could not be
12 ascertained until the appeal was resolved. (*Rosenthal* 197 Cal.App.3d at 1331). Regardless of
13 whether Rosenthal could establish defendant attorneys negligently represented him—the Court
14 found that Rosenthal could not successfully prove that their negligence was the proximate cause
15 of the damages he allegedly sustained until the merits of the underlying action had been resolved.
16 (*Id.*).

17 Just as in *Rosenthal*, here, irrespective of if Plaintiffs succeed in establishing that
18 Defendants were negligent, *Plaintiffs cannot prove that said purported negligence was the*
19 *proximate cause of the damages that Plaintiffs sustained* until the merits of the underlying
20 actions are resolved. Until the permit is either reinstated, or revoked, Plaintiffs cannot fully
21 determine the damages, since they cannot yet file evictions. Further, Plaintiffs still have twenty
22 tenants (still in possession) that can claim wrongful eviction because of Defendants' actions. In
23 addition, there is an active cross-complaint against Plaintiffs for wrongful eviction pertaining to
24 the alleged negligence of Defendants.

25 The instant malpractice issues could clearly be affected by the outcome of the underlying
26 actions. Continuing the instant action runs the threat of conflicting decisions on liability, as well
27 as damages. To eliminate the risk of inconsistent factual and legal determinations that could
28

1 severely prejudice Plaintiffs, Plaintiffs respectfully request that this Court grant the instant
2 Motion to Stay, thus staying all proceedings pending resolution of the underlying action.
3

4 **IV. Conclusion**
5

6 For the foregoing reasons, Plaintiffs respectfully request that this Court grant the instant
7 Motion and stay proceedings pending resolution of the underlying actions.
8

9
10 Dated: December 14, 2015

PLASTIRAS & TERRIZZI

11 By _____
12 Basil Plastiras
13 Attorneys for Plaintiffs
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 PROOF OF SERVICE
2 (CCP SECTION 1013a - 2015)

3 I am over the age of eighteen years and not a party to the within action. I am employed
4 in the City of San Rafael, County of Marin, California and my business address is 24
5 Professional Center Parkway, Suite 150, San Rafael, CA 94903

6 On December 14, 2015, I served a true copy of:

7 **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF UNDERLYING
ACTION**

8 on the interested parties in this action by placing a true copy thereof in a sealed envelope
9 addressed as follows and mailing same:

10 Jonathan S. O'Donnell Esq.
11 Fox Rothschild LLP
12 345 California Street, Suite 2200
13 San Francisco, CA 94104

14 /XX / (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid, on the
15 date of execution of this declaration, with our office's outgoing mail following ordinary business
16 practices. I am readily familiar with my employer's business practice for collection and
17 processing of correspondence for mailing. Such correspondence is deposited with the United
18 States Postal Service, the same day in the ordinary course of business.

19 // (BY EXPRESS MAIL (OVERNIGHT DELIVERY)) I deposited in a box or other facility
20 regularly maintained by an express service carrier for overnight delivery, or delivered to a
21 courier or driver authorized by said express service carrier to receive the above-designated
22 documents, together with a signed copy of this declaration, in an envelope designated by the said
23 express service carrier, with deliver fees paid or provided for.

24 // (BY E-MAIL) I caused the said document(s) to be transmitted by e-mail to the parties
25 indicated above.

26 // (BY FACSIMILE) I caused the said document(s) to be transmitted by Facsimile to the
27 numbers indicated above.

28 // (BY HAND SERVICE) I delivered to a courier authorized to receive the above-designed
documents, together with a signed copy of this declaration in an envelope designed by courier,
with delivery fees paid or provided for.

I certify under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on December 14, 2015, in the City of San Rafael,
California.


Jean D. Carpenter