

TENTATIVE RULINGS

FOR: January 9, 2018

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. 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. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Estate of Jude E Matysiak

26-67916

FIRST AND FINAL ACCOUNT AND REPORT OF EXECUTOR AND PETITION FOR ITS SETTLEMENT, FOR ALLOWANCE OF COMPENSATION TO EXECUTOR AND ATTORNEY FOR ORDINARY SERVICES AND FOR FINAL DISTRIBUTION

TENTATIVE RULING: GRANT petition, including fees as prayed.

.....
Conservatorship of Cathy Cameron

16PR000146

FIRST ACCOUNT AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO ATTORNEY FOR CONSERVATOR; FOR WAIVER OF BOND AND FUTURE ACCOUNTINGS

TENTATIVE RULING: GRANT petition, including fees as prayed. After a review of the matter, the Court finds the conservator is acting in the best interest of the conservatee. The Court notes the conservatee was disqualified from voting on November 1, 2016. Future accountings are waived as long as the requirements of Probate Code section 2628 are satisfied. Bond is waived. Thus, the matter is set for a biennial review hearing in two years, on January 9, 2020, at 8:30 a.m. in Dept. F. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

In the Matter of Bradeon Raymond Ruiz

17CV001326

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition for name change is GRANTED without need for appearance.

.....
Atha Jo Mallare v. Divina B. Samson

17CV000868

MOTION TO COMPEL DEPOSITION

TENTATIVE RULING:

The notice of motion does not provide notice of the Court’s tentative ruling system as required by Local Rule 2.9. Plaintiff’s counsel is directed to contact the opposing party forthwith and advise the opposing party of Local Rule 2.9 and the Court’s tentative ruling procedure. If plaintiff’s counsel is unable to contact the opposing party prior to the hearing, plaintiff’s counsel shall be available at the hearing, in person or by telephone, in the event opposing party appears without following the procedures set forth in Local Rule 2.9.

Plaintiff Atha Jo Mallare’s motion to compel the deposition of defendant Divina B. Samson is GRANTED. Samson shall appear for a deposition and produce documents on or before January 31, 2018, at a location chosen by Mallare’s counsel. The parties shall meet-and-confer regarding the time of the deposition.

Mallare’s request for monetary sanctions is DENIED. (Code Civ. Proc., § 2025.450, subd. (g).) Samson’s request for monetary sanctions for opposing is DENIED. (*Id.*) The imposition of sanctions would be unjust since both sides are engaging in inappropriate gamesmanship.

The parties shall meaningfully meet-and-confer for any future motions.

.....
Felipe Lopez v. Constellation Brands, et al.

26-65500

1) PLAINTIFF’S MOTION FOR: (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT; (2) ENTRY OF JUDGMENT; AND (3) AWARDING ATTORNEYS’ FEES AND COSTS, ENHANCEMENT AWARDS, AND PAYMENT OF COSTS AND FEES TO CLAIMS ADMINISTRATOR

TENTATIVE RULING: Plaintiff’s unopposed Motion is GRANTED.

2) PLAINTIFF’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND COSTS AND CLASS REPRESENTATIVE SERVICE AWARD

TENTATIVE RULING: Plaintiff’s unopposed Motion is GRANTED.

PROBATE CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)

Estate of Elizabeth A. Van Winden

17PR000258

SPOUSEAL PROPERTY PETITION

TENTATIVE RULING: The matter is continued to January 26, 2018, at 8:30 a.m. in Dept. I to allow petitioner to include allegations necessary to establish the community property claim as to the two properties at issue.

.....
Estate of Sharon M. Simpson

17PR000265

PETITION FOR PROBATE OF WILL AND FOR LETTERS OF ADMINISTRATION WITH WILL ANNEXED AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: GRANT petition. The Court construes the petition as seeking petition for probate of will and for letters of administration with will annexed despite the box checked on the petition’s heading.

.....
Conservatorship of Michelle Lynette Nunley

26-50623

REVIEW HEARING

TENTATIVE RULING:

Based on the report of the court investigator, the Court determines by clear and convincing evidence that the conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process, and therefore orders the conservatee disqualified from voting pursuant to Elections Code section 2208.

After a review of the matter, the Court finds the co-conservators are acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on January 9, 2020, at 8:30 a.m. in Dept. I. At least 30 days prior to the next hearing, the co-conservators shall file Notice of Conservatee’s Rights (Judicial Council form GC-341) and Determination of Conservatee’s Appropriate Level of Care (GC-355). The court

investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)

Alan H. Friedman, et al. v. County of Napa, et al.

17CV000843

DEMURRER TO THE COMPLAINT

TENTATIVE RULING:

Real Parties in Interest John L. Tuteur (Assessor), Tracy Schulze (Auditor-Controller), and Tami Frasier’s (Treasurer-Tax Collector) (collectively “moving parties”) demurrer to the first cause of action for refund of property taxes, second cause of action for declaratory relief, third cause of action for denial of constitutional rights under Article XIII A and Article 1, sections 1 and 7 of the California Constitution, and fifth cause of action for writ of administrative mandamus on the ground of failure to state sufficient facts is **OVERRULED**. The moving parties argue the vineyard on the property falls into the interpretation of an area of “reasonable size” that is used for “incidental purposes.” Plaintiffs allege the vineyard on the property was a “bona fide business operation, and not merely incidental to the residence located on the property.” (Compl., ¶¶ 11, 25.) Determining whether the nonresidential use is more than just incidental to the property cannot be resolved on demurrer. The moving parties will have an opportunity through discovery to uncover the extent of the business and use of the vineyard on the Hagen property and what plaintiffs did with the grapes to possibly fall under applicable provisions of the Tax & Revenue Code. Moreover, the moving parties proffer that “[p]laintiffs argue that the Replacement Property should be split for purposes of assessment, with part of their land not included in the assessment value of the Replacement Property. Pursuant to the holding in *Wunderlich* [*v. Cnty. of Santa Cruz* (2009) 178 Cal.App.4th 680, 695], land and structures cannot be separated.” (Dem. at p. 7:1-3.) The moving parties cite no paragraphs from the pleading to support this position. The Court deems the unsupported argument waived.

The moving parties’ demurrer to the fourth cause of action for denial of procedural due process rights under Article 1, sections 1 and 7 of the California Constitution on the ground of failure to state sufficient facts is **OVERRULED**. Citing no applicable allegations in the complaint, the moving parties assert they were not required to show plaintiffs exhibits and documents before the hearing because plaintiffs did not invoke Napa County Board of Equalization Rule 4. Plaintiffs acknowledge this assertion is correct as to paragraph 41 in the pleading. (Opp. at p. 12:9-11.) Plaintiffs, however, state the allegation in paragraph 42 remains as a basis for the claim. The moving parties did not address this argument in their reply, thereby conceding it is meritorious.

The Court is unable to decipher what claim applies to the argument appearing on page 7 of the memorandum of points and authorities. No citations to the complaint are provided. The argument has been disregarded.

To the extent the parties improperly relied on facts not contained in the pleading, the Court has not considered them.

The moving parties' notice of demurrer failed to fully comply with California Rules of Court, rule 3.1320(a). Where there are several grounds for demurrer, each *must* state whether it applies to the entire pleading or to some specific cause of action therein. Here, the notice states the demurrer is to the entire "Complaint." (Ntc. at p. 1:25, 1:27.) Several grounds thereafter are listed, but no cause of action is listed. This serves as an additional basis to overrule the demurrer, especially since the memorandum of points and authorities did not make completely clear, as noted, what causes of action or allegations applied to particular contentions. The moving parties should review Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2017) at ¶ 7:109 ["Suggested format"].

Defendants County of Napa and Napa County Board of Equalization's joinder to the demurrer is GRANTED.

The moving parties and the joined defendants shall file their answers by January 22, 2018. The moving parties shall prepare the order.

.....
Farmers Insurance Exchange v. Denise Marie Azevedo, et al.

26-43829

MOTION TO ISSUE EARNINGS WITHHOLDING ORDER AGAINST SPOUSE OF JUDGMENT DEBTOR

TENTATIVE RULING: Plaintiff/judgment creditor Farmers Insurance Exchange's motion to issue an earnings withholding order against Christopher Azevedo, the spouse of judgment debtor Denise Marie Azevedo, is DENIED WITHOUT PREJUDICE. There is no proof of service on Christopher Azevedo in the court file.