

TENTATIVE RULINGS

FOR: January 11, 2019

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. 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.

Conservatorship of William C. Whitt

17PR000135

(1) FIRST ACCOUNT AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF THE PERSON AND ESTATE AND FOR ATTORNEY FOR CONSERVATOR

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. Thus, the matter is set for a biennial review hearing and an accounting in two years on January 12, 2021, at 8:30 a.m. in Dept. B. All accounting documents must be filed at least 30 days prior to the hearing. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

(2) PETITION FOR AUTHORITY TO SELL CONSERVATEE’S RESIDENCE

TENTATIVE RULING: GRANT petition.

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The Frances A. Wignall Living Trust of 2003

18PR000238

PETITION FOR ORDER DETERMINING TITLE

TENTATIVE RULING: GRANT petition.
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Guardianship of Crystal de Haro Lares, et al.

26-67162

PETITION FOR ORDER DISPENSING WITH ACCOUNTS, ALLOWANCE OF ATTORNEY’S FEES, AUTHORITY TO DELIVER ASSETS, AND TO TERMINATE GUARDIANSHIP

TENTATIVE RULING: As to the request for attorney’s fees for the paralegal’s work, the declaration does not address *all* the requirements under California Rules of Court, rule 7.703(e). The attorney declaration currently does not: (1) describe the paralegal’s education, certification, continuing education, and experience; (2) specifically state the total hours spent by the paralegal for her services; (3) state why it was appropriate to use the paralegal’s services in this case; and (4) demonstrate that the total amount requested for the paralegal does not exceed the amount appropriate if an attorney had performed the services without the paralegal’s assistance. In addition, for the December 21, 2018 billing invoice, there is no date provided to show when this entry purportedly was earned. The Court believes the 1.5 hours claimed may be for the upcoming hearing. The Court does not award fees for anticipated time. Moreover, paragraphs 8 and 10 from the attorney declaration do not fully support the request for fees and costs as they reference a conservatorship and a temporary conservatorship. Finally, additional information is needed in a declaration as to the total number of hours the certified law student worked along with an explanation as to why the \$185 hourly rate claimed is reasonable under the circumstances. The matter is continued to January 18, 2019, at 8:30 a.m. in Dept. A to allow the attorney an opportunity to file a supplemental declaration addressing these issues.

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Conservatorship of Jacob Liam Kuchta

26-67851

REVIEW HEARING

TENTATIVE RULING: 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 12, 2021, at 8:30 a.m. in Dept. B. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

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At 9:00 a.m.

In The Matter of The Scruggs Family Irrevocable Trust

17PR000190

(1) SECOND AMENDED PETITION FOR INSTRUCTIONS FILED 05/24/18

TENTATIVE RULING: The petition raises both jurisdictional issues and factual issues, each of which is addressed as follows:

Jurisdiction.

The court agrees with respondent that petitioners are seeking relief beyond what the court has jurisdiction to order in response to a petition for instructions filed only in this irrevocable trust case. As such, the court could simply deny the bulk of the petition, at least insofar as it pertains to the revocable trust. However, all interested parties here understand the unique inextricability of these two trusts. All interested parties are duly on notice of the issues raised and will have had an adequate opportunity to respond. And it would benefit no parties for the court to raise form over substance and require that the same issues be re-filed in the other matter under a different title, causing needless expense and delay. Thus, the court is inclined to exercise its equitable powers to construe this petition also as a motion to enforce the settlement agreement between the two trusts, and to deem said motion to also be filed in case number 26-64244. It is undisputed that jurisdiction was reserved for the court to enforce the terms of the parties' settlement agreement.

Factual issues.

Construing this petition for instructions as a motion to enforce the parties' settlement agreement leaves this court with questions as to what factual disputes exist and the appropriate framework for resolving them.

Preliminarily, it appears enforcement of the settlement agreement requires some contractual interpretation by the court, since the settlement agreement does not specifically address the intended consequence of Ms. Sturges being removed as trustee. In looking at the overall structure and intent of the agreement, it seems most logical to interpret the agreement to require that Ms. Sturges' nominated replacement trustee should replace her both in her capacity as sole trustee of the irrevocable trust, and as co-trustee/operating trustee of the revocable trust. Under this interpretation, the court would be inclined to now appoint Mr. Armstead as the operating trustee of the revocable trust, and to apply all other terms of the agreement in the same manner as indicated for Ms. Sturges. (The court would like to hear further from Mr. Armstead as to his suggestion that Mr. Scruggs remain sole trustee of the revocable trust.)

Within that framework, and without presentation of evidence, the court would then be inclined to grant Mr. Armstead's remaining requests as an appropriate exercise of his discretion as trustee and operating trustee of the respective irrevocable and revocable trusts.

If an evidentiary hearing is required, it will likely need to be specially set on a different day. The parties should be prepared to explain the need for and time estimate for an evidentiary hearing on this petition.

(2) ACCOUNTINGS OF TRUST

APPEARANCE REQUIRED: The court intends to continue the hearing on the accountings to a convenient date that allows sufficient time for their completion.

(3) PETITION FOR INSTRUCTIONS FILED 12/17/18

TENTATIVE RULING: The petition is DENIED on procedural grounds that it is unverified and was not timely served. The court further notes that, of the petition's two prayers for relief, the first is substantively improper for a revocable trust and the second is moot in light of the court's above ruling.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Thomas Eugene Fronек, et al. v. FCA US LLC, et al.

16CV000786

MOTION FOR ATTORNEYS' FEES, COSTS AND EXPENSES

TENTATIVE RULING: Plaintiffs Thomas Eugene Fronек and Karen Diane Fronек move for an award of attorneys' fees in the amount of \$107,508.75, and costs and expenses in the amount of \$11,663.68 for a total award of \$119,172.43 after the parties settled claims brought under the Song-Beverly Consumer Warranty Act, Civil Code sections 1790 *et seq.*

Plaintiffs and Defendants are in accord that Plaintiffs are entitled to costs and expenses including attorneys' fees, based on: a) actual time expended; which, b) the Court determines to have been reasonably incurred in connection with the action. (Civil Code, § 1794, subd. (d).)

The party moving for an award of costs and expenses bears the burden of showing that they "were 'allowable,' were 'reasonably necessary to the conduct of the litigation,' and were 'reasonable in amount.'" (*Levy v. Toyota Motor Sales, USA, Inc.* (1992) 4Cal.App.4th 807, 816.) The determination of what fees are reasonably incurred is within the trial court's discretion. (*Id.* at p. 815.) "The person seeking such an award 'is not necessarily entitled to compensation for the value of attorney services according to his own notion or to the full extent claimed by him.'" (*Id.* at p. 816, quoting *Denham v. Super. Ct.* (1970) 2 Cal.3d 557, 564.) Courts use the lodestar method for determining the amount of attorney's fees to be awarded. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-32.) The lodestar is arrived at by multiplying the number of hours reasonably expended by counsel, times a reasonable hourly rate. (*Id.*) Once the Court determines a lodestar amount it may then augment or diminish that amount by taking various relevant factors into account, "including (1) the novelty and difficulty of the questions involved and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; and (3) the contingent nature of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the award." (*Robertson v. Fleetwood Travel Trailers of Cal.* (2006) 144 Cal.App.4th 785, 819.)

Plaintiffs were represented by Knight Law Group, LLP and the Law Offices of Michael H. Rosenstein, LC in this matter. Plaintiffs present evidence that their hourly rates of between \$350 and \$550 per hour for attorneys in the Knight Law Group, and \$275 to \$550 for the Law Offices of Michael H. Rosenstein, LC are reasonable rates for individuals who worked on this matter. The Court, however, finds that the rates charged are unreasonable for Napa County. The

Court finds that a 25% reduction in the rates requested by Plaintiffs for work completed brings them into line with prevailing rates for similar work in Napa County.

The Court finds the hours worked, including those incurred for this motion, were reasonable with one categorical exception. Defendants argue in their opposition that the retention of the Rosenstein firm as trial counsel resulted in redundant activity and consequent duplicative billing. The Court agrees as it relates to those entries in the Rosenstein's firm corresponding to the review of client file on November 21 and 23, 2017. The total amount for these entries was \$3,450.

Finally, Plaintiffs' request that the attorneys' fees be enhanced by a multiplier, while Defendants argue that Plaintiffs' fees should be diminished. Both suggestions are rejected. The Court finds that this case did not present novel questions. The difficulty and complexity of the issues involved were fairly average and the skill displayed by Plaintiffs' counsel was not of a quality that warrants a lodestar multiplier. The nature of the case was not one that would prevent Plaintiffs' counsel from taking on additional work.

Plaintiffs have failed to persuade the Court that counsel faced a particular "uncertainty of prevailing on the merits" sufficient to justify a multiplier. Plaintiffs' counsel presents significant evidence of their experience in precisely this type of case. In addition, the proximity of the amount of Defendants' Code of Civil Procedure section 998 offer to compromise (\$22,000) to the amount of settlement (\$23,000) and the fact that the section 998 offer was made on the day Defendants answered the complaint suggests that the certainty of prevailing on the merits, and the worth of doing so were estimable both to a striking degree of certainty and at the outset of litigation.

The Court finds sufficient evidence to support Plaintiffs' request for \$11,663.68 in costs and expenses and finds the requested amount reasonable.

For the foregoing reasons, Plaintiffs' motion for attorneys' fees and costs and expenses is GRANTED IN PART in the amount of \$62,830.54. This represents $(\$71,672.50 - \$3,450) \times (.75) = \$51,166.86$ in attorneys' fees and \$11,663.68 in costs.

Plaintiffs' evidentiary objections are OVERRULED. Plaintiffs failed to provide authority in support.

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In the Matter of Kelly Reed

18CV001126

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Petitioner was previously ordered to complete and file Judicial Council form NC-110G. The form was filed, but it is fatally deficient because it includes no information regarding the minor's three other grandparents besides petitioner. Petitioner was also previously ordered to provide notice to the minor's other grandparents or to provide death

certificates because the minor's parents were deceased or could not be located. (Code Civ. Proc., § 1277, subd. (e).)

Petitioner did not comply with this order, but instead filed a declaration of due diligence indicating she has "no due diligence on Michael Steinkamp's family." If petitioner is seeking to have the court waive the requirement of notice to the minor's three other grandparents, she needs to first make diligent efforts to attempt to identify those people (internet searches, Facebook posts, etc.) and to procure a mailing address for them if alive, or to procure their death certificates if they are deceased. If petitioner is ultimately unsuccessful after making sufficient efforts to identify and/or locate them, then the declaration of due diligence could be utilized to explain to the court what efforts she made, so that the court can then determine whether she exercised sufficient due diligence to justify a waiver of the notice requirements.

Petitioner has made it clear she is frustrated with the legal hurdles she is encountering. However, these are statutory requirements the court cannot simply ignore.

Because petitioner has been given multiple opportunities to satisfy the requirements for this petition and has repeatedly failed to follow court orders, the petition is DENIED. The denial is without prejudice to re-filing AFTER petitioner has made sufficient efforts to identify and/or locate the minor's other grandparents, and is prepared to provide adequate information in her court filings.

CIVIL LAW & MOTION CALENDAR – Hon. Cynthia Smith, Dept. A (Historic Courthouse) at 8:30 a.m.

Soda Canyon Group vs. County of Napa, et al.

17CV001063

MOTION TO AUGMENT THE ADMINISTRATIVE RECORD

TENTATIVE RULING: The matter is continued to January 24, 2019, at 1:30 p.m. in Dept. C.