

TENTATIVE RULINGS

FOR: January 14, 2021

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

Remote appearances via Zoom are mandatory to prevent the spread of COVID-19. Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

Dept. A Zoom

Join by Video (Preferred)

<https://us02web.zoom.us/j/85897874559?pwd=Nk1VTnNQZmIzNXQwbVNiUk1iQTNCZz09>

Join by Phone: 877 853 5247 or 888 788 0099 **Meeting ID:** 858 9787 4559 **Password:** 704959

Dept. B Zoom

Join by Video (Preferred)

<https://us02web.zoom.us/j/89902611018?pwd=OXJRM2FFWHZ4YXJ4b2szZW51UFJYZz09>

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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. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Conservatorship of Rachel Elizabeth Thomas

26-24593

CONFIRM STATUS OF CONSERVATOR

APPEARANCE REQUIRED

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Conservatorship of Michael David Thomas

20PR000242

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

APPEARANCE REQUIRED for an update as to the status of the capacity declaration and proof of service.



Conservatorship of Christian Andres Sanchez Cisneros

20PR000255

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON

APPEARANCE REQUIRED

CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Marilyn J. Tudal-Fidge v. Cerruti Cellars, Inc.

17CV001382

MOTION TO COMPEL INITIAL RESPONSES TO JUDGMENT DEBTOR INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TENTATIVE RULING: Plaintiff/defendant/cross-defendant Marilyn J. Tudal-Fidge (as successor trustee of the Alma Tudal Survivor’s Trust), plaintiff/defendant Tudal Winery, LLC, defendant Marilyn J. Tudal-Fidge, and defendant Janet Tudal Baltas’ (collectively, “moving parties”) motion to compel an “additional order to compel” initial responses to judgment debtor interrogatories (set one) and judgment debtor requests for production of documents (set one) is GRANTED. The motion stems from defendants/judgment debtors John Tudal and Cerruti Cellars, Inc.’s apparent refusal to comply with the Court’s (Hon. Wood) September 30, 2020 discovery order compelling them to serve verified code-compliant initial responses without objections. Defendants argue the debtor discovery is abusive as the moving parties already are in legal possession of assets worth more than \$1,000,000. This is an argument that could have been raised in opposition to the motion that resulted in the September 30, 2020 Order. Defendants elected not to oppose the motion or file a motion for reconsideration. The Court will not address these untimely objections. (See *In re Marriage of Niklas* (1989) 211 Cal.App.3d 28, 34-35 [disobedient parties may *not* avoid sanctions by challenging the validity of the order].) Defendants shall serve verified code-compliant initial responses, without objections, within 30 calendar days of service of notice of entry of order.¹

¹ The Court notes defendants’ counsel represents John Tudal is under psychiatric treatment, which the attached letters from his treating physician confirm. Although the letters do not state he cannot respond to discovery, just that he was advised not to attend court proceedings, defendants’ counsel represents that John Tudal has stated the responses are forthcoming. It is the Court’s hope that John Tudal will follow through and provide the information the moving parties seek without the need for further court intervention. The Court has obliged the request for 30 calendar days to complete service of the discovery. (Tudal Decl., ¶ 6.)

The moving parties' request for monetary sanctions is DENIED. A prerequisite to imposing monetary sanctions is a code-compliant request, which the moving parties have not made. The notice of motion states: "Plaintiff seeks monetary sanctions in connection with such order and attorneys' fees, costs, [sic] given such [sic] Defendants' earlier failure to respond to post-judgment discovery after an earlier court order to do so. Such sanctions are authorized by statute in CCP §§ 708.020(c), 708.030(c), 2023.030, and 2023.050." The moving parties did not name all parties and/or attorneys against whom sanctions are being sought or accompany the notice with a declaration "setting forth facts supporting the amount" of the monetary sanction sought. (Code Civ. Proc., § 2023.040; see *id.*, § 2023.050, subd. (d) ["Sanctions pursuant to this section shall be imposed only after notice to the party, person, or attorney against whom the sanction is proposed to be imposed and opportunity for that party, person, or attorney to be heard."].) Beyond failing to set forth the amount sought in the notice of motion, the only paragraph in the McCoy declaration addressing the amount sought simply provides, "Plaintiff requests that monetary sanctions in the amount at least equal to the attorneys' fees and costs incurred by moving party be assessed pursuant to CCP § 1218(a); with additional sanctions to encourage compliance with the Court's order." (McCoy Decl., ¶ 16.) Those fees and costs are zero as presented. Indeed, the accompany declaration appears to be partially recycled from the failed contempt attempts.

The Court has elected not to address the moving parties' four evidentiary objections to the Knox declaration as resolution is not pertinent to the outcome of the motion.

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Yount Mill Vineyards, Inc. v. Coniglio S., et al.

26-62579

MOTION FOR EARNINGS WITHHOLDING ORDER

TENTATIVE RULING: The motion, reasonably construed as one for an order permitting an earnings-withholding-order to issue against the earnings of the spouse of the judgment debtor, is GRANTED.

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Moving party/counsel is directed to contact the opposing party/ies forthwith and advise of Local Rule 2.9 and the Court's tentative ruling procedure. Notwithstanding the procedures set forth in Local Rule 2.9, the moving party/counsel shall appear at the hearing, by Zoom, unless it is confirmed that no party requests oral argument.

Moving Party's Request for Judicial Notice is DENIED. The subjects of the request are not relevant to the Court's resolution of the issues raised in the motion.

Moving Party's Evidentiary Objection is DENIED. Moving party fails to cite to authority by which it can raise evidentiary objections in motion practice. Moreover, the subject "evidence" is not relevant to the Court's resolution of the issued raised in the motion.

Cal-West Equities, Inc. (Cal-West), as Assignee of Record of Yount Mill Vineyards, Inc. “appl[ies] to the Court for the issuance of an Earnings Withholding Order against Janice Coniglio.” (See Notice of Motion and Motion at 1:23-25.) The Notice of Motion continues by stating that “[t]his motion is being made pursuant to the provisions of Code of Civil Procedure, Section 706.109.”² (*Id.* at 1:25-26.)

As an initial matter it does not appear that the notice of motion states what relief is sought and upon what grounds that relief is sought. (See §1010 [“the notice of a motion, other than for a new trial, must state...the grounds upon which it will be made”]; see also Rules of Court, Rule 3.1110 [“[a] notice of motion must state in the opening paragraph the nature of the order being sought and the grounds for issuance of the order”]; see also *People v. American Sur. Ins. Co.* (1999) 75 Cal.App.4th 719, 726.)

Section 706.109 does not provide for the issuance of an “earnings withholding order.” Section 706.102 does.³ Section 706.109 provides that “[a]n earnings withholding order may not be issued against the earnings of the spouse of the judgment debtor except by court order upon noticed motion.” (Code Civ. Proc. §706.109.) It therefore appears that Cal-West seeks, not an “earnings withholding order” as stated in the notice of motion but instead, an order permitting the appropriate “levying officer” to issue an earnings withholding order against the earnings of the spouse of the judgment debtor in this action. (*Ibid.*) Section 706.109 does not, however, authorize the Court to *issue* such an order. It simply limits the circumstances under which a creditor may obtain an earnings withholding order against the earnings of a judgment debtor’s spouse.

Cal-West’s Memorandum of Points and Authorities in Support of the motion (Support Memo) suggests that the Court may issue such an order based on the provisions of Family Code sections 910. Judgment Debtor Charles Coniglio (Mr. Coniglio) appears to understand that the motion is based on claims under Family Code section 910. (See Opposition at 2:7-10.) Moreover, he raises no objection to Cal-West’s failure to assert these grounds in the notice of motion.

Family Code section 910 provides that, “[e]xcept as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.”⁴ (Family Code §910, subd. (a).) As Cal-West further notes, “except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property.” (Family Code §760.)

² All subsequent statutory references are to the Code of Civil Procedure unless otherwise indicated.

³ That statute provides that, “[i]f a writ of execution has been issued to the county where the judgment debtor’s employer is to be served and the time specified in subdivision (b) of Section 699.530 for levy on property under the writ has not expired, a judgment creditor may apply for the issuance of an earnings withholding order by filing an application with a levying officer in such county who shall promptly issue an earnings withholding order.” (§706.102, subd. (a).)

⁴ Cal-West also notes that, “[t]he earnings of a married person during marriage are not liable for a debt incurred by the person’s spouse before marriage.” (Family Code §911, subd. (a), emphasis added.) However, because the Court finds that the subject debt was incurred during the marriage, this statute has no bearing on the present motion.

Cal-West submits a single piece of evidence supporting its claim that Mr. Coniglio and Janice Coniglio were married at the time the subject debt was incurred. “The Judgment Debtor, Charles Coniglio, has been married to Janice Coniglio for over forty (40) years.” (Declaration of Dan Townsend at ¶ 3.) Mr. Coniglio acknowledges that Janice Coniglio is his spouse. (See Opposition at 2:1-2.) He does not deny the assertion by Cal-West that the marriage existed at the time the debt was incurred, thereby conceding the point. The debt underlying the judgment was incurred within the past 40 years. (See Complaint at ¶¶ 10-11; Entry of Default; and Court Judgment.) Based on the foregoing, the Court finds that the community of the marriage is liable for the debt. Because Janice Coniglio’s earnings acquired during the marriage while domiciled in this state are community property, there appear grounds for permitting the levying officer to issue an earnings withholding order against Janice Coniglio. (See Family Code §760, Code Civ. Proc. §706.102.)

Judgment Debtor argues that “California Family Code §914(a)(1) provides an exemption [*sic*] to the general rule – a married person is personally liable for debt incurred by the person’s spouse during marriage **only** if such debts were incurred for the ‘necessaries of life.’” (*Id.* at 2:10-12, emphasis in original.) Coniglio fundamentally misrepresents the statute.

Family Code section 913, provides that “[e]xcept as otherwise provided by statute...[t]he *separate* property of a married person is not liable for a debt incurred by the person’s spouse before or during marriage.” (Emphasis added.) In this context, Family Code section 914, subdivision (a) provides that, “[n]otwithstanding Section 913, a married person is personally liable for the following debts incurred by the person’s spouse during marriage...[a] debt incurred for necessities of life of the person’s spouse before the date of separation of the spouses.” Family Code section 914, subdivision (b) further provides that, “[t]he separate property of a married person may be applied to the satisfaction of a debt for which the person is personally liable pursuant to this section.”

With this full context, it is clear that Family Code section 914, subdivision (a)(1) is one component of a statutory scheme providing that – in contrast with the general rule – a married person’s *separate* property may be applied to satisfy debts incurred, during the marriage, by the person’s spouse for “necessaries.” Here we are not concerned with separate property, but with earnings which are community property pursuant to Family Code section 760.

Mr. Coniglio next argues that “Code of Civil Procedure section 695.020(b) provides the Court with discretion in spousal garnishment cases ‘unless the provision or context otherwise requires.’” (Opposition at 3:16-17.) Section 695.020, subdivision (b) does not support the argument. “Unless the provision or context otherwise requires, if community property that is subject to enforcement of a money judgment is sought to be applied to the satisfaction of a money judgment: (1) Any provision of this division that applies to the property of the judgment debtor or to obligations owed to the judgment debtor also applies to the community property interest of the spouse of the judgment debtor and to obligations owed to the other spouse that are community property. (2) Any provision of this division that applies to property in the possession or under the control of the judgment debtor also applies to community property in the possession

or under the control of the spouse of the judgment debtor.” (§ 695.020, subd. (b).) The Court finds no support for Coniglio’s argument in this language.

Coniglio next appeals to Family Code section 1000(b)(2). However, that statute, by its terms, applies only to “[t]he liability of a married person for death or injury to a person or property....” (Family Code §1000, subd. (b).) This case involved breach of contract and related causes of action arising out of a grape purchase agreement. (See Complaint.)

Finally, Coniglio asserts that, “the Judgment in question has already been satisfied in full.” (Opposition at 4:14-17.) There is no Satisfaction of Judgment in the Court’s register of actions. (See Code Civ. Proc. §724.020.) Coniglio has not filed an application or motion pursuant to section 724.050, subdivision (d) with the Court. Finally, Coniglio fails to cite authority by which the Court may, as part of the present motion, conduct an evidentiary hearing on whether the various payments cited by Coniglio have satisfied the judgment.

Based on the foregoing, the motion is GRANTED.

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Ashley D’Adamo, et al. v. Jose Castro, et al.

26-67787

MOTION TO BE RELIEVED AS COUNSEL

TENTATIVE RULING: The Motion is CONTINUED to February 18, 2021 to permit counsel to address the following. There is no Attorney Declaration (Judicial Council form MC-052), no proof of service, and no Proposed Order (form MC-053) on file. (see Rules of Court, rule 3.1362, subds (c), (d), and (e).)