

TENTATIVE RULINGS

FOR: February 27, 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.

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

Armida Zavala, et al. v. Napa Valley Country Club, et al.

17CV000932

DEFENDANTS' MOTION TO COMPEL ARBITRATION AND STAY JUDICIAL PROCEEDINGS

TENTATIVE RULING: The Notice of Motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Defendants' counsel is directed to contact Plaintiffs' counsel forthwith and advise Plaintiffs' counsel of Local Rule 2.9 and the Court's tentative ruling procedure. If Defendants' counsel is unable to contact Plaintiffs' counsel prior to the hearing, Defendants' counsel shall be available at the hearing, in person or by telephone, in the event Plaintiffs' counsel appears without following the procedures set forth in Local Rule 2.9.

Defendants' Motion is GRANTED. Pursuant to Code of Civil Procedure section 1281.2, "[i]n a petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: ... (b) Grounds exist for the revocation of the agreement." Here, there is no dispute that there is a written agreement to arbitrate in the Employment Application signed by Plaintiffs. Rather, Plaintiffs argue that the agreement to arbitrate is subject to revocation because it is unconscionable.

"Unconscionability has both a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results. The prevailing view is that procedural and substantive unconscionability must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability." (*Carmona v. Lincoln*

Millennium Car Wash, Inc. (2014) 226 Cal. App. 4th 74, 83 (*Carmona*), quoting *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114 (internal quotations and citations omitted).) Plaintiffs have not shown sufficient procedural or substantive unconscionability. Unlike the Plaintiffs in *Carmona*, Plaintiffs here received the Employment Application before they began work and had an opportunity to take it home and review it with assistance from others if necessary. Even if Plaintiffs' English skills are as limited as they claim, they were able to retain assistance to complete the Employment Application in English. Ordinarily, one who accepts or signs an instrument, which on its face is a contract, is deemed to assent to all its terms, and cannot escape liability on the ground that he has not read it. If he cannot read, he should have it read or explained to him. (¶ *Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal.App.4th 158, 163, quoting 1 Witkin, Summary of Cal. Law (9th ed. 1987) § 120, p. 145.) In addition, the entire Employment Application was in English, unlike the agreement in *Carmona* which was only translated in part, leaving out key provisions that the plaintiffs in that case were surprised to discover later.

This case also differs from *Carmona* as to the alleged substantive unconscionability of the arbitration agreement because here the provisions in the agreement apply equally to both parties; the unilateral provisions in *Carmona* that gave the employer significant advantages over the employees are absent.

Pursuant to Code of Civil Procedure section 1281.4, this action is stayed until completion of the arbitration. A case status review hearing is set for August 29, 2018 at 8:30 a.m. in Dept. F.

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

Conservatorship of Barbara Simon

16PR000130

FINAL ACCOUNTING & TERMINATION OF CONSERVATORSHIP

TENTATIVE RULING: Hearing on the matter is continued to March 27, 2018, at 8:30 a.m. in Dept. F to allow for filing of the final accountings.

Conservatorship of E.G. Blackburn

16PR000191

FIRST ACCOUNTING AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF PERSON AND ESTATE, FOR ATTORNEY FEES, AND FOR TERMINATION OF CONSERVATORSHIP

TENTATIVE RULING: GRANT petition, including fees as prayed.

Conservatorship of Dennis A. Smith

16PR000201

FIRST ACCOUNTING AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF PERSON AND ESTATE, FOR ATTORNEY FEES AND FOR TERMINATION OF CONSERVATORSHIP

TENTATIVE RULING: The Petition is GRANTED as prayed.

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Conservatorship of Harry Ray Davis

17PR000094

FIRST ACCOUNTING AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF PERSON AND ESTATE, FOR ATTORNEY FEES, AND FOR TERMINATION OF CONSERVATORSHIP

TENTATIVE RULING: GRANT petition, including fees as prayed.

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In the Matter of the Erling Johnsen

18PR000023

PETITION FOR ORDER CONFIRMING TRUST ASSETS

TENTATIVE RULING: GRANT petition.

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Estate of Erling Johnsen

18PR000024

PETITION FOR LETTERS OF SPECIAL ADMINISTRATION WITH GENERAL POWERS AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: GRANT petition.

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Estate of George E.B. King

PR23206

(1) FOURTH ACCOUNT AND REPORT OF TRUSTEE AND PETITION FOR SETTLEMENT: GEORGE E.B. AND BERYL M. KING TRUST B FOR BENEFIT OF LISA KING

TENTATIVE RULING: GRANT petition, including fees as prayed.

(2) TWENTY-SEVENTH ACCOUNT AND FINAL ACCOUNT AND REPORT OF TRUSTEE
AND PETITION FOR SETTLEMENT OF TRUST B AND FOR DISTRIBUTION

TENTATIVE RULING: GRANT petition, including fees as prayed.

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

In the Matter of Christin Ruiz

17CV001458

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.