

**TENTATIVE RULINGS**

**FOR: May 10, 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. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.**

**Conservatorship of Steven Simas**

**17PR000062**

REVIEW HEARING

**TENTATIVE RULING:** After a review of the matter, the Court finds the Conservator is acting in the best interest of the Conservatee. Thus, the case is set for a biennial review hearing in two years, on May 7, 2020 at 8:30 a.m. in Dept. I. The court investigator shall prepare a biennial investigator report for the next hearing date.



**In the Matter of the David and Victoria Bradshaw Family Trust**

**18PR000074**

PETITION FOR ORDER CONFIRMING ASSETS OF TRUST AND CONFIRMING IDENTITY AND POWERS OF TRUSTEE

**TENTATIVE RULING:** The notice does not comply with Probate Code section 851, subdivision (c). The matter is continued to June 15, 2018, at 2 p.m. in Dept. C to allow for proper notice.

**CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.**

**Kelly Dillingham v. John P. Zimmerman, et al.**

**16CV000328**

PLAINTIFF'S MOTION TO TAX COSTS SOUGHT BY DEFENDANTS

**TENTATIVE RULING:** The unopposed Motion is GRANTED. Plaintiff is to submit a proposed Order.

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**L.A. Commercial Group, Inc. v. Shawn Duarte**

**26-30168**

MOTION FOR ORDER AUTHORIZING LEVY ON JUDGMENT DEBTOR'S SPOUSE'S EARNINGS AND FOR ORDER RESTRAINING JUDGMENT DEBTOR'S SPOUSE

**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 the opposing party forthwith and advise the opposing party of Local Rule 2.9 and the Court's tentative ruling procedure. If defendants' counsel is unable to contact the opposing party prior to the hearing, defendants' 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/judgment creditor LA Commercial Group, Inc.'s motion for an order authorizing a levy on judgment debtor's spouse's earnings and for an order restraining judgment debtor's spouse is GRANTED. The motion is unopposed.

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**Gerald L. Nunn, et al. v. JPMorgan Chase Bank, N.A., et al.**

**26-56767**

DEMURRER TO DEFENDANTS' ANSWER

**TENTATIVE RULING:**

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Plaintiffs' 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 plaintiffs' counsel is unable to contact the opposing party prior to the hearing, plaintiffs' 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.

Defendant's JPMorgan Chase and California Reconveyance Company's request for judicial notice of the recorded deed of trust is GRANTED.

Plaintiffs Gerald L. Nunn and Judith L. Nunn's demurrer to affirmative defenses in the answer on the ground of uncertainty is SUSTAINED WITH LEAVE TO AMEND. The defenses do not "refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished." (Code Civ. Proc., § 431.30, subd. (g).) Moreover, defendants need to clarify whether each defense applies to both defendants or to a particular defendant and not the other.

Plaintiffs' demurrer to affirmative defenses in the answer on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. Affirmative defenses cannot be pled as mere legal conclusions, but must be alleged with as much factual detail as the allegations of a complaint. (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 813.) Defendants' defenses are pled as terse legal conclusions. For example, the first affirmative defense for unclean hands merely alleges "Plaintiffs are not entitled to relief because Plaintiffs come to this Court with unclean hands." Defendants acknowledge defense numbers 12 (no damages), fifteen (attorney's fees not permissible), and twenty-one (no formation of contract) are not affirmative defenses. The demurrer is sustained as to these defenses without prejudice to being asserted at a later date.

Defendants shall file their answer(s) within 10 calendar days of service of notice of entry of order. Defendants shall prepare the order. The verifications filed on May 8, 2018, are not dated. (See Code Civ. Proc., § 2015.5.) Plaintiffs are given leave to re-submit any missing verifications for their pleading.

The motion to consolidate currently on calendar for May 31, 2018, is continued to June 8, 2018, at 2 p.m. in Dept. C with Judge Wood.