

TENTATIVE RULINGS

FOR: May 15, 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. Francisca Tisher, Dept. C (Historic Courthouse) at 2:00 p.m.

Conservatorship of Samuel Joseph Emmett

18PR000076

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON ó
LIMITED CONSERVATORSHIP

APPEARANCE REQUIRED. The proposed conservatee need not appear.

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In the Matter of Craig Conolly

18PR000086

PETITION FOR ORDER DECLARING ASSET TO BE A TRUST ASSET AND FOR
AUTHORITY TO TRANSFER ASSET TO THE TRUSTEE OF THE CRAIG CONOLLY
TRUST UNDER TRUST AGREEMENT DATED AUGUST 31, 2016

TENTATIVE RULING: GRANT petition.

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In the Matter of the Herrod Family Exempt Trust

18PR000088

PETITION FOR INSTRUCTIONS RE MODIFICATION OF EXEMPT TRUST

TENTATIVE RULING: GRANT petition.
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Conservatorship of Samira Hammoud

26-68154

PETITION FOR ORDER DISPENSING WITH ACCOUNTINGS

TENTATIVE RULING: The Petition is GRANTED, so long as the estate continues to satisfy the conditions of Probate Code section 2628, subdivision (a).

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 in two years, on April 23, 2020 at 8:30 a.m. in Dept. C. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

The review hearing and accounting currently set for May 31, 2018 are vacated.

CIVIL LAW & MOTION CALENDAR – Hon. Francisca Tisher, Dept. C (Historic Courthouse) at 2:00 p.m.

Mark Halper v. G.L. Mezzetta, Inc.

17CV001416

MOTION FOR MEDICAL LEAVE

TENTATIVE RULING: Plaintiff Mark Halper’s motion for medical leave is DENIED WITHOUT PREJUDICE. The notice period is insufficient. (Code Civ. Proc., § 1005, subd. (b).) Moreover, Halper states he is not physically, mentally, or psychologically able to participate as a plaintiff because he is undergoing physical therapy following knee replacement surgery. Halper, however, submits no evidence to support his motion. The May 23, 2018, case management conference shall remain on calendar.

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

In the Matter of the Margaret A. Hyatt 1993 Revocable Intervivos Trust and the Hyatt Irrevocable Grantor Trust

18PR000015

PETITION FOR (1) BREACH OF FIDUCIARY DUTY; (2) MODIFICATION OF TRUST; (3) INVALIDATION OF TRUST; (4) CONSTRUCTIVE TRUST; (5) TRANSFER OF PROPERTY BELONGING TO TRUST; AND (6) FINANCIAL ABUSE OF AN ELDER

APPEARANCE REQUIRED

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

TENTATIVE RULING: GRANT petition.

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

DEMURRER TO THE FIRST AMENDED COMPLAINT

TENTATIVE RULING: Defendant Flora Springs Wine Co.ø demurrer to each cause of action in the first amended complaint on the ground of failure to state sufficient facts is **OVERRULED**. The Court previously sustained the demurrer because the complaint was comprised entirely of generic factual and legal conclusions that defendant violated various Labor Code provisions (i.e. plaintiff Marcia Garcia failed to allege any facts to support any of her claims). Defendant contends there are no facts to support the class allegations. The contention is not well-taken. Garcia alleges numerous specific facts relating to her claims such as working 9.55 hours, but being paid for only 9.05 hours on a particular occasion. (First Amended Compl., ¶¶ 33-56.) The class allegations in paragraphs 103-05, which defendant raised as an example of ðcannedö pleading, are based on the prior specific allegations with the key word being ðsimilarly.ö Defendantø presentation of the purported offending paragraphs is far too narrow since Garcia has ðalleg[ed] facts that would plausibly suggest that members of the putative class are subjected to the same offending policies.ö (*Mendez v. H.J. Heinz Co., L.P.* (C.D. Cal. Nov. 13, 2012, No. CV 12-5652-GHK (DTBx)) 2012 U.S. Dist. LEXIS 170785, at *13; see, e.g., First Amended Compl., ¶ 57.) As a result, the Court cannot conclude ó as defendant would have it do ó that ðassuming the truth of the factual allegations in the complaint, there is no reasonable certainty that the requirements for class certification will be satisfied.ø (*Tucker v. Pacific Bell Mobile Servs.* (2012) 208 Cal.App.4th 201, 211, quoting *Bridgeford v. Pacific Health Corp.* (2012) 202 Cal.App.4th 1034, 1041-42.) Similarly, there is at least an inference in Garciaø favor that the fifth cause of action is adequately pled based on prior allegations even if the claim is not alleged ðon information and beliefö as the other causes of action. Defendant shall file its answer within 10 calendar days of service of notice of entry of order.

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MOTION TO STRIKE

TENTATIVE RULING: Plaintiff/cross-defendant Edward Jonesø motion to strike the prayer for attorneyø fees in the cross-complaint is **GRANTED WITHOUT LEAVE TO**

AMEND. (Code Civ. Proc., § 435.) The request is improper as fees are not recoverable except by contract, statute, or law, none of which apply here. Jones shall file his answer to the cross-complaint within 10 calendar days.