

**TENTATIVE RULINGS**

**FOR: May 15, 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.**

**Estate of John Albert Cauchi**

**19PR000060**

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

**APPEARANCE REQUIRED**

(2) COURT’S MOTION TO CONSOLIDATE

**TENTATIVE RULING:** The Court, on its own motion, consolidates Case No. 19PR000087 with the current case.

.....

**Conservatorship of Brian Mourad**

**26-63950**

PETITION FOR REMOVAL OF CONSERVATOR OF THE PERSON

**TENTATIVE RULING:** The Public Defender represents the conservatee. The Public Defender needs to receive notice of the hearing to properly represent the conservatee, i.e. to indicate whether removing a co-conservator at this time is in the best interests of the conservatee. The matter is continued to June 11, 2019, at 8:30 a.m. in Dept. A to allow petitioner to provide notice to the Public Defender and to file an amended proof of service with the Court. This is the second continuance for this issue.

.....

**Estate of Sheveland, Elfrada Halley**

**PR18712**

THIRTY-NINTH ACCOUNT AND REPORT OF TRUSTEE AND PETITION FOR ITS SETTLEMENT

**TENTATIVE RULING:** GRANT petition, including fees as prayed.

.....

**Conservatorship of Joseph Leonard Shea**

**PR20420**

BIENNIAL REVIEW HEARING

**TENTATIVE RULING:** Based on the report of the court investigator, the Court determines by clear and convincing evidence that the Conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process, and therefore orders the Conservatee disqualified from voting pursuant to Elections Code section 2208. 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 18, 2021, at 8:30 a.m. in Dept. A. The court investigator shall prepare a biennial investigator report for the next hearing date. The Clerk is directed to send notice to the parties.

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

**Mark Silva v. Olson and Co. Steel**

**17CV001045**

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

**TENTATIVE RULING:** The motion for final approval of class action settlement is GRANTED.

The Court has reviewed the moving papers and evidence submitted in support of the Motion. No objections to the proposed settlement were made through the notification and objection/opt-out process, and none have been filed with the Court. After considering the strength of Plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and the reaction of the class members to the proposed settlement, the Court finds the proposed settlement fair, adequate, and reasonable. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801.) The motion for final approval of class action settlement is therefore GRANTED.

The Court finds that Plaintiffs' counsel is entitled to an award of attorneys' fees. The moving papers request attorneys' fees in the amount of \$141,666.67. The Court finds that this amount is justified and reasonable under both lodestar and percentage method calculations.

However, the settlement agreement, the Court's order granting preliminary approval of class action settlement, and the Class notice, previously approved by the court, all provide for an award of attorneys' fees, "up to \$141,652.50." The Court, therefore, awards attorneys' fees in the amount of \$141,652.50. plus \$8,844.23 in costs to be paid from the \$425,000.00 total settlement amount. The Court finds Plaintiff's request for an incentive award in the amount of \$7,500.00 reasonable for his contributions to the class members.

Plaintiffs' counsel to provide notice, by U.S. Mail to each class member, of entry of order giving final approval of class action settlement, and of judgment.

**PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.**

**Estate of Harrison Russell Burr**

**19PR000085**

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

**Citibank, N.A. v. Alberto Cuevas**

**18CV001295**

MOTION FOR JUDGMENT ON THE PLEADINGS

**TENTATIVE RULING:** Plaintiff Citibank, N.A.'s request for judicial notice of the Court's March 6, 2019 Order deeming admitted particular requests for admissions is GRANTED. "[A] court may take judicial notice of a party's admissions or concessions, but only in cases where the admission 'can not reasonably be controverted,' such as in answers to interrogatories or requests for admission, or in affidavits and declarations filed on the party's behalf. [Citations.]" (See *Arce v. Kaiser Found. Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 485.) Here, the Court's order regarding the discovery responses are not subject to different interpretations as the responses admit the allegations supporting the complaint.

Plaintiff's motion for judgment on the pleadings under Code of Civil Procedure section 438, subdivision (c)(1)(A), is GRANTED. (See *Evans v. California Trailer Ct., Inc.* (1994) 28 Cal.App.4th 540, 548 ["The grounds for a motion for judgment on the pleadings must appear on the face of the challenged complaint or be based on facts which the court may judicially notice."].) Defendant Alberto Cuevas has admitted all the elements of plaintiff's complaint via the order on the discovery responses.

The June 6, 2019 case management conference is vacated. The Court sets an OSC re: Dismissal for July 16, 2019, at 8:30 a.m. in Dept. B.

-----

**Joana David v. Queen of the Valley Medical Center**

**26-67321**

**PLAINTIFF’S MOTION TO STRIKE OR TAX COSTS**

**TENTATIVE RULING:** Plaintiff Joana David’s motion to strike/tax costs is continued to June 7, 2019, at 8:30 a.m. in Dept. B. David maintains in her reply that under Labor Code section 218.5 defendant is not entitled to an award of costs because the statute requires a finding of bad faith, and “[d]efendant has made no claim that Plaintiff’s action was brought in bad faith . . . .”

Section 218.5 applies to “any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions.” (*USS-Posco Industries v. Case* (2016) 244 Cal.App.4th 197, 215-16, quoting Lab. Code, § 218.5, subd. (a).) “In such actions, ‘the court shall award reasonable attorney’s fees and costs to the prevailing party if any party to the action requests attorney’s fees and costs upon the initiation of the action.’” (*Id.*) “Now, if an employer defeats an employee’s wage action, ‘attorney’s fees and costs shall be awarded . . . only if the court finds that the employee brought the court action in bad faith.’” (*Id.*) In the case at bar, because David filed claims for failure to pay minimum wages, failure to pay overtime wages, etc., Labor Code section 218.5 may apply, and in such a case, bad faith needs to be shown to allow defendant to recover its costs. Because David improperly raised her argument under this statute for the first time in her reply brief, defendant has not had an opportunity to respond or claim David brought her causes of action in bad faith.

If defendant elects to do so, it may file and serve via email a supplemental brief on or before May 27, 2019, of no more than 8 pages to address David’s argument related to Labor Code section 218.5. David may file and serve via email a sur-reply on or before May 31, 2019, of no more than 5 pages in response to defendant’s supplemental brief. The parties shall not further address *Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97.

The parties also are ordered to meet-and-confer to see if they can resolve this dispute over approximately \$9,000. The parties shall submit a joint meet-and-confer declaration detailing their efforts, which David is responsible for filing with the Court. If the parties reach a settlement, the supplemental briefing and joint meet-and-confer declaration are not required.