

TENTATIVE RULINGS

FOR: June 8, 2017

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. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

In the Matter of Zulfikar R Sayani

17PR000093

PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY

TENTATIVE RULING: The petition is premature. Petitioners shall draft a proposed order requiring the: (1) bank to reveal the amount in the account; and (2) storage unit manager to provide reasonable access to the storage space for purposes of taking inventory of its contents. Having this information will allow petitioners to file an inventory and appraisal. Once petitioners know the value of the estate and obtain the inventory and appraisal, the petition can move forward via an amended declaration, and if necessary, an amended petition. The matter is continued to August 8, 2017, at 8:30 a.m. in Dept. 2, to allow petitioners time to comply with this ruling.

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Conservatorship of Blayne Christian

26-63602

SECOND ACCOUNT AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF PERSON AND ESTATE AND FOR ATTORNEY’S FEES

TENTATIVE RULING: GRANT petition, including fees as prayed. 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 and an accounting in two years, on June 11, 2019, at 8:30 a.m. in Dept. F. All accounting documents must be filed at least 30 days prior to the hearing, including Notice of Conservatee’s Rights and Determination of Conservatee’s Appropriate Level of Care. The conservator shall file Judicial Council form GC-042 prior to the

next hearing to ensure the inventory and appraisal and its supplements have been mailed to the appropriate parties. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

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Conservatorship of Antoine C. Farray

26-63646

REVIEW HEARING AND ACCOUNTING

APPEARANCE REQUIRED. The Conservator has failed to file an accounting as required for conservatorships of the estate pursuant to Probate Code section 2620, subdivision (a).

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Guardianship of Amber Joanne Monteleone

26-67736

ACCOUNT AND REPORT OF GUARDIAN

APPEARANCE REQUIRED by Annie Tang Monteleone.

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

Chris Cochran v. Ana’s Cantina, Inc.

16CV001171

DEMURRER TO THE COMPLAINT

TENTATIVE RULING:

The Court previously continued the demurrer because defendant’s attorney did not comply with the requirements under Code of Civil Procedure section 430.41 by filing a meet-and-confer declaration. The Court ordered defendant’s attorney to file her meet-and-confer declaration by June 5, 2017. Nothing has been filed. Defendant’s attorney is admonished for disobeying a court order and disregarding her obligation under the Code of Civil Procedure. In light of the attorney’s action, and rather than continue the demurrer again, which would further delay this case, the Court reaches the merits of the matter.

Defendant Ana’s Cantina, Inc. improperly relies on facts and evidence falling outside the four corners of the complaint, which the Court has not considered. (See Code Civ. Proc., § 430.30; *Comm. on Children’s Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14 [“A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.”].)

The Court has not considered the declaration submitted with the reply. The introduction of this evidence is not proper on demurrer. (See *Comm. on Children's Television, Inc., supra*, 35 Cal.3d at pp. 213-14.)

Defendant's request for judicial notice submitted in support of its reply is DENIED. First, defendant is improperly attempting to present new evidence that could have been raised with the initial papers. Second, defendant did not present an adequate foundation as to the source of these materials. Third, defendant has not explained how these documents are court records, how they are universally known, or how they are not reasonably subject to dispute.

Defendant's demurrer to the complaint on the ground that the claim is within the exclusive jurisdiction of the workers' compensation appeals board is OVERRULED. "A plaintiff's action against an employer upon allegations of a work-related injury is barred unless the plaintiff also alleges that the employer has failed to secure the payment of workers' compensation through mandated insurance." (*Gibbs v. Am. Airlines* (1999) 74 Cal.App.4th 1, 13.) Plaintiff alleges on information and belief that defendant did not obtain workers' compensation insurance. (Compl., ¶ 13.) Defendant contends the workers' compensation appeals board must determine coverage issues, and that an allegation made on information and belief is not satisfactory when evaluating a matter of exclusive jurisdiction. Defendant, however, did not support its contentions with any authority. (Dem. at pp. 3:25-26-4:2-3.) Indeed, it is defendant's burden to plead and prove the Workers' Compensation Act applies. This Court has jurisdiction "unless and until" defendant proves otherwise. (*Ventura v. ABM Indus. Inc.* (2012) 212 Cal.App.4th 258, 265.) Defendant has not proven otherwise for purposes of this demurrer.

Defendant also demurs on the ground that there are "conflicting allegations that the alleged injury was a personal injury, not an employment injury." (Ntc. at p. 1:26-27.) The Court construes this as a demurrer on the ground of uncertainty. An uncertainty demurrer is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. (See *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty should only be sustained when the complaint is so bad that the defendant cannot reasonably respond. (*Id.*) Here, the complaint is certain enough to allow defendant to understand the nature of the allegations, and the theory of liability in order to fashion an appropriate response. The demurrer on the ground of uncertainty, therefore, is OVERRULED.

In light of defendant's attorney's action in delaying this case, defendant shall file its answer within 5 days of service of notice of entry of order.

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MOTION FOR TERMINATING SANCTIONS ON SAFEWAY'S CROSS-COMPLAINT FOR VIOLATION OF COURT ORDER OR, ALTERNATIVELY, FOR ISSUE AND EVIDENTIARY SANCTIONS

TENTATIVE RULING: The Motion is GRANTED. On March 28, 2017, the Court issued its "Order on Motion to Compel Depositions of the Persons Most Knowledgeable for Defendant Safeway, Inc. And to Produce Documents Pursuant to Code of Civil Procedure Section 2025.450(a) and Request for Monetary Sanctions." The Court issued this order because Defendant Safeway had unreasonably delayed and cancelled duly noticed PMK depositions over a period of months. Pursuant to the Court's order, Defendant Safeway was to produce its PMK for deposition and produce documents within 10 days.

When the deposition finally occurred on April 20, 2017, Defendant Safeway failed to produce documents, or at least verify that all documents had been produced, and its PMK testified that he had not looked for documents requested in the deposition notice, nor was he prepared to answer questions regarding the matters stated in the deposition notice. He had only seen the deposition notice the week before the deposition (Yon Depo. at 15:7-10), did not talk to any other employees regarding the information sought in the deposition notice (Yon Depo. at 15:25-17:11), even though he could have done so (Yon Depo. at 52:14-53:5, 63:4-65:1, 66:23-69:15), and agreed that he had little, if any knowledge about ADA mats (Yon Depo. at 47:20-23). Despite the Court's March 28, 2017 order compelling the deposition and imposing monetary sanctions, Defendant Safeway willfully failed to produce a PMK as ordered. "Lack of diligence may be deemed willful in the sense that the party understood his obligation, had the ability to comply, and failed to comply." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 787.)

Defendant Safeway argues in opposition that there is no information regarding maintenance of the ADA mat to produce, but Defendant Safeway's PMK testified that he had not even sought out such information, and stated there were other employees that were more knowledgeable regarding ADA mats than himself (Yon Depo. at 45:3-11, 55:25-56:19). Despite there only being four matters for the PMK to address in the deposition notice, the PMK was not prepared to fully address any of them. Defendant Safeway provides no evidence in opposition that indicates its PMK's testimony was incorrect as to the existence of more knowledgeable employees.

The Court declines to issue the alternative sanction requested by the Moyer Defendants, as the alternative sanction seeks to definitively determine liability and indemnification in the Moyer Defendants' favor against Defendant Safeway. The Court finds this sanction to be too severe for these circumstances, and therefore opts for the lesser requested sanctions.

The Court orders Defendant Safeway's Cross-Complaint, filed on October 23, 2015, stricken, pursuant to Code of Civil Procedure section 2023.030, subdivision (d)(1). Defendant Safeway is further ordered to pay the Moyer Defendants sanctions in the amount of \$3,735 within 10 days. Defendant Safeway is to appear at the hearing to address its failure to pay the previously ordered monetary sanctions.