

TENTATIVE RULINGS

FOR: June 13, 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. Rodney Stone, Dept. C (Historic Courthouse)

Estate of Lucille Myron

17PR000095

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. C (Historic Courthouse)

County of Napa v. Wesner, D., et al.

26-59313

REMITTITUR

APPEARANCE REQUIRED. The Court has received the remittitur and will follow the appellate court's opinion that there is no final judgment in this matter. Pursuant to the appellate court's writ of mandate, the Court vacates its October 8, 2015 orders requiring David Wesner to appear at a debtor's exam and the motion to compel production of documents at the debtor's exam. The Court enters a new order denying the motion to compel production of documents at the debtor's exam filed on August 25, 2015. The parties shall appear to discuss any pertinent matters as well as the next steps in this litigation in light of the appellate court's ruling.

PROBATE CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

In the Matter of Zulfikar R Sayani

17PR000093

AMENDED PETITION TO DETERMINE SUCCESSION TO PERSONAL PROPERTY

TENTATIVE RULING: GRANT amended petition.

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

Patricia Alioto v. Constellation Brands, Inc., et al.

16CV000262

DEMURRER TO THE CROSS-COMPLAINT

TENTATIVE RULING:

The notice of motion does not provide notice of the Court’s tentative ruling system as required by Local Rule 2.9. Cross-defendant’s 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 cross-defendant’s counsel is unable to contact the opposing party prior to the hearing, cross-defendant’s 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.

Cross-defendant PPG Industries, Inc.’s (sued and served as PPG Automotive Refinish) (“PPG”) request for judicial notice of the event contract is DENIED. First, the request is unclear. The notice requests the Court take judicial notice of the contract itself, yet PPG then argues in its memorandum of points and authorities the Court should take judicial notice of the contract’s *terms*. (Compare RJN Ntc. at p.2:5-9 with RJN Mem. at pp. 3:17, 4:7-12; but see Mem. at p. 5:8-9 [concluding the Court should take judicial notice of the contract].) Second, the event contract and its terms are not the proper subject of judicial notice under Evidence Code section 452, subdivision (h). (*Gould v. Maryland Sound Indus., Inc.* (1995) 31 Cal.App.4th 1137, 1146 [“[B]efore a trial court could find that the existence of a contract was not reasonably subject to dispute the court would have to engage in the kind of fact-finding appropriate for a trial on the merits, not for a hearing on demurrer. While most matters subject to judicial notice can be established by reference to a statute, court file, treatise or other document, a court cannot simply look at a piece of paper and conclude as a matter of law it is a contract between the parties.”].)

Moreover, PPG quotes *Gould, supra*, 31 Cal.App.4th at p. 1146, for the proposition that “[o]n demurrer to the complaint the court took judicial notice of the terms of the alleged contract under Evidence Code” [sic] § [sic] 452(h) [sic].” (RJN Mem. at p. 4:9-12; Dem. at p. 12:4-6.) Not only does this sentence have nothing to do with the actual holding of the case, the sentence also is incorrectly cited as it appears in footnote two on page 1145 and is misquoted to boot.

Such errors occur during the editing process and with the subsequent failure to cite-check, but the sentence ignores the holding of the case, which even a cursory reading should have revealed. The appellate court specifically provided: “we hold the existence of a contract between private parties cannot be established by judicial notice under Evidence Code section 452, subdivision (h).” (*Id.* at p. 1145.) PPG’s attorneys are admonished for their misrepresentation of law to this Court. The attorneys are reminded of their duty of candor to the Court. (Bus. & Prof. Code, § 6068, subd. (d) [providing that an attorney has a duty not to “mislead the judge” by any “false statement of fact or law”].)

PPG’s demurrer to the first cause of action for implied equitable indemnity and second cause of action for equitable contribution on the ground of failure to state sufficient facts is MOOT. On May 9, 2017, cross-complainant/defendant Constellation Brands, Inc. dismissed these claims against PPG. (Opp. at p. 2:14-15; Reply at p. 3:5-7.)

PPG’s demurrer to the third cause of action for express indemnity and fourth cause of action for declaratory relief on the ground of failure to state sufficient facts is OVERRULED. PPG’s argument as to the third claim depends on portions of the contract’s terms that are not the proper subject of judicial notice. (See Dem. at p. 12:3-6.) Because the third claim fails, PPG’s contention regarding declaratory relief necessarily fails.

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Stanley Paul Farris v. Walt Mickens, et al.

16CV000794

DEFENDANT QUEEN OF THE VALLEY MEDICAL CENTER’S DEMURRER TO
PLAINTIFF’S COMPLAINT AND MOTION TO STRIKE

TENTATIVE RULING: The unopposed Demurrer is SUSTAINED WITHOUT
LEAVE TO AMEND and the Motion is GRANTED WITHOUT LEAVE TO AMEND.