

**TENTATIVE RULINGS**

**FOR: June 15, 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 James G. Fitch**

**17PR000091**

SPOUSAL PROPERTY PETITION

**TENTATIVE RULING:** The Petition is GRANTED.

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**Guardianship of Kyle Scott Fletcher, et al.**

**26-55593**

KENDYL ROSE FLETCHER – THIRD ACCOUNT AND REPORT, FOURTH AND FINAL ACCOUNT AND REPORT, AND PETITION FOR TERMINATION OF GUARDIANSHIP ESTATE, FOR ORDER DIRECTING PAYMENT OF FEES TO COURT INVESTIGATOR, AND FOR ALLOWANCE OF COMPENSATION TO GUARDIAN’S COUNSEL

**TENTATIVE RULING:** GRANT petition, including fees as prayed. The petition to terminate the guardianship as to Kendyl Rose Fletcher is dropped from calendar without prejudice to be renewed ex parte.

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**In the Matter of Beard Family Trust**

**26-58301**

MOTION TO DECLARE LINDA BEARD A VEXATIOUS LITIGANT AND FOR SURCHARGE ORDER

**TENTATIVE RULING:**

Successor trustee Sara A. Henry's joinder to the motion is GRANTED. The request to surcharge is DENIED.

Edgar D. Beard, Jr.'s (attorney-in-fact and guardian ad litem for Janice A. Beard) ("Edgar") motion to declare Linda Beard ("Linda") a vexatious litigant and for surcharge order is DENIED WITHOUT PREJUDICE. Code of Civil Procedure section 391, subdivision (b), identifies four situations in which a litigant may be deemed vexatious. Although Edgar does not raise the statute in his notice of motion, it is apparent his motion is based on section 391, subdivision (b)(3), by quoting the following: a person is a "vexatious litigant" if she, *while acting in propria persona*, "repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay." (Mem. at p. 7:7-9.)

Edgar argues Linda has filed various motions and filings, which have been unsuccessful, and acted in a manner that has resulted in more litigation. Edgar does not specifically argue any these motions/filings and tactics were frivolous (i.e. a flagrant abuse) or solely intended to cause unnecessary delay. Edgar also has not shown Linda filed these motions/filings and made tactical decisions while in pro per. (See Mem. at p. 6:26-27.) The code provision specifically states the motions/filings and actions must be done *while acting in pro per*. Linda's counsel withdrew on August 27, 2014. Thus, Edgar fails in his moving papers to satisfy his burden by presenting sufficient evidence to enable the Court to find Linda a vexatious litigant under subdivision (b)(3).

The Court notes Henry previously moved to have Linda deemed a vexatious litigant, which was denied on November 5, 2014.

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**Conservatorship of DeLong, George**

**26-58383**

**THIRD ACCOUNT AND REPORT OF CONSERVATORS AND REQUEST FOR PAYMENT OF ATTORNEY'S FEES**

**TENTATIVE RULING:** GRANT Petition, including fees as prayed. After a review of the matter, the court finds the Conservators are 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 May 23, 2019 at 8:30 a.m. in Dept. 2. All accounting documents must be filed at least 30 days prior to the hearing. The court investigator shall prepare a biennial investigator report for the next hearing date.

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

**Conservatorship of David L Webster**

**16PR000032**

FIRST AND FINAL ACCOUNTING AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF PERSON AND ESTATE, FOR ATTORNEY’S FEES, FOR TERMINATION OF CONSERVATORSHIP, FINAL DISCHARGE OF CONSERVATOR AND FOR WAIVER OF COURT INVESTIGATOR FEES

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

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**In the Matter of Jacqueline Nicole Canavesio**

**17CV000348**

PETITION FOR CHANGE OF NAME

**TENTATIVE RULING:** On May 23, 2017, the Court instructed John Ruiz, the minor’s father, to file a proper objection and mail a copy to petitioner. Nothing has been filed. Because notice has been properly published and no written objections have been filed, the petition for name change is GRANTED without need for appearance.

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**In the Matter of the Boney Family Survivor’s Trust**

**17PR000096**

PETITION FOR ORDER DETERMINING OWNERSHIP OF PROPERTY

**TENTATIVE RULING:** GRANT Petition.

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**Conservatorship of Pamela Young**

**26-65152**

FIRST AND FINAL ACCOUNTING AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF PERSON AND ESTATE, FOR ATTORNEY FEES, FOR TERMINATION OF CONSERVATORSHIP, AND FINAL DISCHARGE OF CONSERVATOR

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

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

**The People of the State of California v. Calistoga Inn, LLC, et al.**

**16CV000264**

MOTION PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1260.040 RE: LEGAL AND EVIDENTIARY ISSUES AFFECTING COMPENSATION

**TENTATIVE RULING:**

Plaintiff the People of the State of California (acting by and through the Department of Transportation) moves to exclude evidence referring to alleged damages for: (1) claims for temporary losses due to temporary construction; (2) temporary diminishment of access; (3) losses due to claims of noise, dust, and fumes from construction; (4) defendants' valuation of the temporary construction easement area; and (5) defendant Michael Dunsford's financial condition. The motion is granted in part and denied in part.

**A. Issues 1-3**

Plaintiff argues defendants are not entitled to compensation for losses, including loss of goodwill due to temporary project construction activities, and seeks to exclude all references by defendants to any evidence regarding such temporary activities, including temporary construction activities, the presence of machinery and equipment, traffic rerouting or congestion, the potential for negative online reviews, diminished views or ambiance, lack of access, and the presence of noise, dust, and fumes. Two issues are embedded in plaintiff's argument: temporary damages and compensation for loss of goodwill.

**1. Temporary Damages**

Ordinarily, mere temporary damage, e.g. inconvenience or interference with the enjoyment of property by reason of the presence of machinery and materials used in the public work, is not compensable. (See *People ex rel. Department of Public Works v. Ayon* (1960) 54 Cal.2d 217, 228-29 ["Temporary injury resulting from actual construction of public improvements is generally noncompensable. Personal inconvenience, annoyance or discomfort in the use of property are not actionable types of injuries."] ) But compensation is allowed where there is an "unnecessary and substantial temporary interference with the property owner's rights in the property." (*Id.* at p. 229)

Defendants assert "this standard is easily satisfied in these circumstances." (Opp. at p. 14:1-2.) While defendants proffer the construction activity will be significant, they have not detailed why this construction activity is unnecessary. Defendants, therefore, are not entitled to compensation for losses due to temporary project construction activities such as from the presence of machinery and equipment, traffic rerouting or congestion, lack of access, the potential for negative online reviews, diminished views or ambiance, and the presence of noise, dust, and fumes. (See *Ayon, supra*, 54 Cal.2d at p. 228 ["Appellants are not entitled to compensation for temporary interference with their right of access, provided such interference is

not unreasonable, that is, occasioned by actual construction work. It is often necessary to break up pavement, narrow streets and provide inconvenient modes of ingress and egress to abutting property during the time streets are being repaired or improved. Such reasonable and temporary interference with the property owner's right of access is noncompensable."]; *Heimann v. City of Los Angeles*, *supra*, 30 Cal.2d at p. 755, overruled on other grounds in *Cnty. of Los Angeles v. Faus* (1957) 48 Cal.2d 672 ["It would unduly hinder and delay or even prevent the construction of public improvements to hold compensable every item of inconvenience or interference attendant upon the ownership of private real property because of the presence of machinery, materials, and supplies necessary for the public work which have been placed on streets adjacent to the improvement."].)

## 2. Loss of Goodwill

Plaintiff seeks to extend the "unnecessary and substantial" standard to compensation for loss of goodwill by relying on *Heimann*, *supra*, 30 Cal.2d at p. 755, *Ayon*, *supra*, 54 Cal.2d at p. 228, and *Orpheum Bldg. Co. v. San Francisco Bay Area Rapid Transit Dist.* (1978) 80 Cal.App.3d 863, 869. The Court cannot extend the rule from these cases to defendants' loss of goodwill claim. *Heimann* and *Orpheum* are inverse condemnation cases dealing with damages adjacent to the property, not direct condemnation as in the case at bar. Nor does either case address loss of goodwill. Arguably, *Ayon* could apply, but any reference to goodwill is undermined by the fact that it was decided before the eminent law changed to allow for recovery of goodwill compensation.

Since 1975, eminent domain law authorizes compensation for the loss of business goodwill under Code of Civil Procedure section 1263.510. (*People ex rel. Dep't of Transp. v. Muller* (1984) 36 Cal.3d 263, 265.) This section "was enacted in response to widespread criticism of the injustice wrought by the Legislature's historic refusal to compensate condemnees whose ongoing businesses were diminished in value by a forced relocation." (*Id.* at p. 270.) "The purpose of the statute was unquestionably to provide monetary compensation for the kind of losses which typically occur when an ongoing small business is forced to move and give up the benefits of its former location." (*Id.*) Goodwill under section 1263.510 is not limited to loss of patronage but extends to loss of the benefits of the location. (*Id.* at pp. 271-71; see *Unocal Cal. Pipeline Co. v. Conway* (1994) 23 Cal.App.4th 331, 335-36 [in eminent domain proceeding by pipeline corporation seeking subsurface easement, defendant ranch could recover for loss of goodwill even though it was not forced to relocate].) Following plaintiff's argument would undermine the purpose of the goodwill statute.

Thus, defendants are entitled to compensation for loss of goodwill if they prove: (1) the loss is caused by the taking of the property or the injury to the remainder; (2) the loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill; (3) compensation for the loss will not be included in payments under Government Code section 7262; and (4) compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner. (Code Civ. Proc., § 1263.510, subd. (a).) If defendants make this showing, evidence regarding temporary activities such as the presence of machinery and equipment, traffic rerouting or congestion, lack of access, the potential for negative online

reviews, diminished views or ambiance, and the presence of noise, dust, and fumes is permissible if it pertains to the loss of goodwill.

**B. Issue 4**

Defendants maintain the value of the temporary construction easement (“TCE”) area should be excluded as an improper valuation. Defendants’ position fails. First, defendants cite no authority to support their contention that the use of the income approach is improper “as a matter of law.” Second, defendants’ assertion is premised on the conclusion that the TCE area is limited and/or unused. Defendants ignore the fact that the TCE area is part of the natural ambiance of the property, which makes the grounds desirable for patrons to visit.

**C. Issue 5**

Plaintiff seeks to exclude evidence of defendant Michael Dunsford’s financial condition. Plaintiff’s argument on this issue is difficult to follow. To the extent the financial condition is caused by construction of the project and is connected to the loss of goodwill, the evidence is permissible. To the extent the financial condition is related to “business risks” unrelated to the loss of goodwill, the evidence is irrelevant to the determination of just compensation. (Evid. Code, § 352.)

**D. Conclusion**

Plaintiff’s motion is GRANTED IN PART AND DENIED IN PART. The motion is granted as to the request to exclude defendants from presenting evidence of losses due to temporary project construction activities such as from the presence of machinery and equipment, traffic rerouting or congestion, lack of access, the potential for negative online reviews, diminished views or ambiance, and the presence of noise, dust, and fumes.

The motion is granted to the extent defendant Michael Dunsford’s financial condition is related to “business risks” unrelated to the loss of goodwill.

The motion is denied as to the request to exclude defendants from presenting evidence of compensation for loss of goodwill. If defendants make the proper showing for this compensation, evidence regarding temporary activities such as the presence of machinery and equipment, traffic rerouting or congestion, lack of access, the potential for negative online reviews, diminished views or ambiance, and the presence of noise, dust, and fumes is permissible as it pertains to the loss of goodwill.

The motion is denied as to the request to exclude the value of the TCE area.

The motion is denied to the extent defendant Michael Dunsford’s financial condition is caused by construction of the project and is connected to the loss of goodwill.