

**TENTATIVE RULINGS**

**FOR: September 9, 2020**

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

**Remote appearances via Zoom are mandatory to prevent the spread of COVID-19.** Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

**Dept. A Zoom**

**Join by Video (Preferred)**

<https://us02web.zoom.us/j/85897874559?pwd=Nk1VTnNQZmIzNXQwbVNiUk1iOTNCZz09>

**Join by Phone:** 877 853 5247 or 888 788 0099      **Meeting ID:** 858 9787 4559      **Password:** 704959

**Dept. B Zoom**

**Join by Video (Preferred)**

<https://us02web.zoom.us/j/89902611018?pwd=OXJRM2FFWHZ4YXJ4b2szZW51UFJYZz09>

**Join by Phone:** 877 853 5247 or 888 788 0099      **Meeting ID:** 899 0261 1018      **Password:** 776773

**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.**

**In the Matter of William W. DeBaere Living Trust**

**20PR000150**

VERIFIED PETITION FOR INSTRUCTIONS REGARDING GIFT TO STEPHANIE CASTANEDO

**TENTATIVE RULING:** GRANT petition.

.....  
**In the Matter of Norma E. Solari Revocable Trust**

**20PR000152**

PETITION BY SUCCESSOR CO-TRUSTEES TO DETERMINE TITLE TO PROPERTY

**TENTATIVE RULING:** GRANT petition.

.....  
**Conservatorship of William Ashworth Cummins**

**26-63046**

REVIEW HEARING

**APPEARANCE REQUIRED** for further information regarding the conservatee's voting rights. Mr. Cummins was previously disqualified from voting, but the current court investigator's report (and the previous report) indicates he is able to communicate a desire to vote. When a person has previously been disqualified from voting, Elections Code section 2209, subd. (b), provides that, "[i]f the investigator finds that the person is not incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, the court *shall* hold a hearing to determine if, by clear and convincing evidence, the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process." (Emphasis added.) If the court restores the conservatee's voting rights, it must notify the Napa County Elections Division and the Secretary of State.

.....  
**\*At 9:30 a.m.\***

**Conservatorship of Ronald Taylor**

**20PR000098**

STATUS REVIEW

**APPEARANCE REQUIRED**

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

**Wells Fargo Bank, N.A. v. Gemma H. Westman**

**19CV000428**

MOTION FOR JUDGMENT ON THE PLEADINGS

**TENTATIVE RULING:** Good cause appearing, and no opposition having been filed, Plaintiff Wells Fargo Bank, N.A.'s motion for judgment on the pleadings is GRANTED as prayed. Plaintiff's Request for Judicial Notice is GRANTED in its entirety. The matter is set for an OSC re: Dismissal on December 9, 2020, 8:30 a.m. in Dept. A.

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

**In the Matter of Dean and Arleen Phillips 2005 Revocable Trust**

**18PR000267**

PETITION FOR APPROVAL OF FINAL ACCOUNT AND REPORT OF TRUSTEE AND FOR TRUSTEE FEES

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

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

**Spring Mountain Vineyard, Inc. v. Blackburn Consulting, et al.**

**18CV000721**

(1) DEFENDANT BLACKBURN CONSULTING’S MOTION FOR SUMMARY ADJUDICATION

(2) DEFENDANT CRAWFORD ASSOCIATES’ MOTION FOR SUMMARY ADJUDICATION

**TENTATIVE RULING:** Defendants Blackburn Consulting and Crawford Associates, Incorporated’s separate motions for summary adjudication pursuant to Code of Civil Procedure section 437(c), subdivision (f), are denied as MOOT. The notices of motion indicate the motions are made upon the following grounds: (1) the limitation-of-liability provision (“LOL”) in the written agreements between Blackburn/Crawford and plaintiff Spring Mountain Vineyard, Inc. is enforceable; (2) Blackburn/Crawford did not commit gross negligence and, as such, the alleged gross negligence is not a proper basis for not enforcing the LOL; and (3) whether or not Blackburn/Crawford did commit gross negligence, the LOL’s prohibition on the recovery of consequential damages is enforceable.

No specific causes of action in the complaint or affirmative defenses tied to an answer (first cause of action, thirteenth affirmative defense, etc.) are identified, which makes review difficult. The memorandums of points and authorities reference an affirmative defense as to issue one even though it is not mentioned in the notices of motion. The memorandums of points and authorities also reference the complaint. By all accounts, the moving parties appear to be moving for summary adjudication of an affirmative defense pled in their answers, summary adjudication of a cause of action in the complaint (to a gross negligence claim that does not exist as it was not added until the first amended complaint), and summary adjudication of a claim for damages.

The moving parties filed their motions on June 26, 2020. A first amended complaint was filed on July 23, 2020. The moving parties filed a joint answer to the first amended complaint on August 25, 2020. The pleadings serve as the “outer measure of materiality” in a summary adjudication motion, and the motions may not be granted or denied on issues not raised by the

pleadings. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; see *Nieto v. Blue Shield of Cal. Life & Health Ins.* (2010) 181 Cal.App.4th 60, 74 [“the pleadings determine the scope of relevant issues on a summary judgment motion”].) The moving parties are bound by the pleadings for their motions, which now are the first amended complaint and their answer from August 25, 2020, filed after the motion was filed. It would be impossible for the Court to grant relief to the moving parties on a complaint and answer that are no longer at issue. Because the original complaint and original answers are no longer the operative pleadings, the motion as brought before the Court must be denied as moot.