

TENTATIVE RULINGS

FOR: September 10, 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=OXJRM2FFWHZ4YXJ4b2szZWs1UFJYZz09>

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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.

Conservatorship of Ida D Nunez

20PR000108

(1) PUBLIC GUARDIAN’S PETITION FOR APPOINTMENT OF PROBATE
CONSERVATOR OF THE PERSON AND ESTATE

(2) ADULT CHILDREN’S PETITION FOR APPOINTMENT OF PROBATE
CONSERVATOR OF THE PERSON AND ESTATE

APPEARANCE REQUIRED. Subject to any objections, the Court intends to grant the adult children’s petition and deny the Public Guardian’s petition. As a result, the Public Guardian need not appear.

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Estate of Ronald Edmund Birtcher

20PR000146

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT WITH LIMITED AUTHORITY

TENTATIVE RULING: The Petition is GRANTED.

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Estate of George L Vouchilas

20PR00154

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

TENTATIVE RULING: The Petition is GRANTED.

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

Capital One Bank (USA), N.A. v. Keith J. Rivers

19CV001888

MOTION FOR ORDER THAT MATTERS IN REQUEST FOR ADMISSION OF TRUTH OF FACTS BE ADMITTED

TENTATIVE RULING: Good cause appearing, and no opposition having been filed, the Motion is GRANTED. The truth of the matters asserted in the Requests for Admission attached as Exhibit A to the Declaration of Anthony DiPiero in Support of the motion, are deemed admitted by Defendant Keith J. Rivers. (Code Civ. Proc. § 2033.280, subd. (b).)

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

Conservatorship of Lee, Mary Margaret

26-58701

STATUS REVIEW

APPEARANCE REQUIRED

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[1] PETITION FOR LETTERS OF ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: The Petition is DENIED without prejudice.

The Petition, filed June 29, 2020 (Petition for Letters) seeks letters of administration and declares that the Decedent died intestate. (See Petition for Letters at Caption, §3, subd. (f).) The Petition further asserts that all heirs at law are adults and have waived bond. (See *Id.* at §3, subd. (e).) In its Tentative Rulings posted in advance of the two previous hearings on this matter, the Court indicated that no such waiver was on file.

On August 11, 2020, Petitioner filed a second Petition seeking an order compelling attorney Thomas K. Porta to produce planning documents for the estate of Christine Hannah that Mr. Porta has in his possession (Petition for Order). The merits of that Petition are addressed hereinbelow. Through his opposition to the Petition for Order, Mr. Porta indicates that he has an electronic copy of “the will and trust...that was communicated to Christine Hannah.” (Opposition to Order to Produce at 3:13-16.) Moreover, through his Response to Objection to Petition for Order to Produce Will (Reply) Petitioner concedes that, “the other beneficiary...has indicated that she objects to the Petition and specifically refused to waive the bond....” (Reply at 4:5-7.)

In light of the fact that the Decedent appears to have died testate, and further that an heir or beneficiary refuses to waive bond, the Petition for Letters of Administration is DENIED.

[2] PETITION FOR ORDER TO PRODUCE WILL

TENTATIVE RULING: The Petition is GRANTED in part. Mr. Porta is ordered to produce a copy of the will of Decedent Christine Hannah.

Petitioner seeks, pursuant to Probate Code section 8201, an order compelling Thomas K. Porta to provide copies of Decedent’s estate planning documents that are in Mr. Porta’s possession. That section provides that “[i]f, on petition to the superior court of the county in which the estate of the decedent is being or may be administered alleging that a person has possession of a decedent’s will, the court is satisfied that the allegation is true, the court shall order the person to produce the will.”

Objector Thomas K. Porta, through his opposition, indicates he has an electronic copy of “the will and trust...that was communicated to Christine Hannah.” (Opposition to Order to Produce at 3:13-16.) Based on this statement, the Court is satisfied that the allegation is true. (Prob. Code §8201.)

Mr. Porta asserts that the documents are communications that are subject to the lawyer-client privilege pursuant to Evidence Code section 950 *et seq.* The Court disagrees.

“There is no privilege under this article as to a communication relevant to an issue concerning the intention of a client, now deceased, with respect to a deed of conveyance, will, or other writing, executed by the client, purporting to affect an interest in property.” (Evidence Code §960.) Moreover, “[t]here is no privilege under this article as to a communication relevant to an issue concerning the validity of a deed of conveyance, will, or other writing, executed by a client, now deceased, purporting to affect an interest in property.” (Evidence Code §961.)

Electronic copies of the will and trust quite clearly fall within these exceptions and are not, therefore, subject to the lawyer-client privilege. Moreover, the privilege does not apply to any other “communications” in Mr. Porta’s possession that falls within the ambit of either of the foregoing statutes.

Mr. Porta further asserts that, “[a]fter the court has determined that some statute or ethical rule applies then the ‘holder’ of the privilege must decide whether to waive the privilege.” (Opposition at 5:9-10.) Although not entirely clear, this appears to be a misreading of the statutes discussed herein above.

To ensure that there is no misunderstanding: no lawyer-client privilege exists as to any communication that is in any way relevant to either: (a) the intention of the Decedent Christine Hannah with respect to a deed of conveyance, will, or other writing, executed by the client, purporting to affect an interest in property; and/or (b) the validity of a deed of conveyance, will, or other writing, executed by a client, now deceased, purporting to affect an interest in property. Since no privilege exists, there is no holder of such privilege, and no privilege to waive. (Evidence Code §§ 960, 961.)

It is the Court’s hope that with this clarification, Mr. Porta will have no further objection to producing all of the requested documents. Regardless, pursuant to Probate Code section 8201 the Court orders Mr. Porta to produce a copy of Decedent’s will.

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

Robert Jordan v. Romero Vineyard Management, LLC, et al.

20CV000609

DEMURRER TO THE COMPLAINT

TENTATIVE RULING: The matter is continued to October 8, 2020, at 8:30 a.m. in Dept. B to allow the demurring party’s attorney to comply with the meet and confer requirements under Code of Civil Procedure section 430.41. In addition to the requirements under the statute, defendants’ attorney shall file a meet and confer declaration detailing what, if any, grounds that are the subject of the demurrer have resolved or remain at issue. The meet and confer declaration shall be filed on or before September 29, 2020. If, after meeting and conferring, plaintiff would like an opportunity to amend his complaint, he has leave to do so. Any amended pleading shall be filed no later than 10 calendar days following the October 8, 2020 continued hearing date.

Plaintiff's request for attorney's fees for preparing the opposition is denied. The Discovery Act does not provide a statutory basis for awarding attorney's fees for failing to meet and confer prior to filing a demurrer. Moreover, plaintiff has not satisfied the procedural requirements to request attorney's fees under Code of Civil Procedure section 128.5, subdivision (a), and even if he did, it does not appear the failure to meet and confer was a tactic made in bad faith or solely intended to cause unnecessary delay.

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In the Matter of Ashley Amber Reiser

20CV000699

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.

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Conservatorship of Wilson James Davis

20PR000055

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON – LIMITED CONSERVATORSHIP

APPEARANCE REQUIRED

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At 9:00 a.m.

Bennett Lane Property, LLC v. PG Capital, LLC, et al.

20CV000837

EX PARTE APPLICATION TO STAY THE TRUSTEE'S SALE

TENTATIVE RULING: Plaintiff Bennett Lane Property, LLC filed an ex parte application for an order to stay the September 11, 2020 trustee's sale. The Court construes the application as seeking a temporary restraining order under Code of Civil Procedure section 527.

“[T]he decision to grant [a restraining order] rests in the sound discretion of the trial court.” (*Church of Christ in Hollywood v. Super. Ct.* (2002) 99 Cal.App.4th 1244, 1251.)
“[T]rial courts should evaluate two interrelated factors when deciding whether or not to issue [a restraining order]. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the [restraining order] were denied as compared to the harm that the defendant is likely to suffer if the [order] were issued.” (*Ibid.*)

Plaintiff is likely to prevail on the merits of its claim for violations of the HBOR based on defendant Private Capital Investments' failure to contact plaintiff to assess its financial situation and explore options to avoid foreclosure. Plaintiff owns properties at 1275 Tubbs Lane and 3105 Bennett Lane in Calistoga, California. (Sanli Decl., ¶ 2.) Koray Sanli is plaintiff's managing

member. (*Ibid.*; Sanli Supp. Decl., ¶ 1.) Sanli is the owner of a business known as “Old Faithful Geyser of California,” which is a tourist attraction. (Sanli Decl., ¶ 3.) Through this business, Sanli has paid the mortgage and associated expenses for the Bennett Lane and Tubbs Lane properties. (*Ibid.*) Since Governor Gavin Newsom issued emergency orders in March 2020 to close businesses during the COVID-19 pandemic, the geyser business closed its doors, laid off employees, and has not been able to pay the mortgages. (*Id.*, ¶ 4.) After the governor modified his COVID-19 orders, the business was able to reopen, but has had an 80% reduction in business with the recent fires driving away the remaining 20%. (*Id.*, ¶ 5.) Sanli has listed the properties for sale, but marketing has been difficult because of COVID-19 and the recent fires. (*Id.*, ¶ 12.) Plaintiff presents evidence that defendant declined and refused plaintiff’s requests for accommodation or assistance to avoid foreclosure despite the impact of the pandemic and the fires on the business. (*Id.*, ¶¶ 6-11.)

Defendant argues plaintiff cannot demonstrate likelihood of success on the claim for violations of the HBOR protections because the loan is not secured against the principal residence and made for “personal, family, or household purposes” under Civil Code section 2924.15. Plaintiff, however, has submitted evidence to counter this argument. Sanli resides at the property. (Sanli Supp. Decl., ¶ 2.) Plaintiff holds title to the property as part of Sanli’s family’s estate plan. (*Ibid.*) Although the word “principal” is not used before “resides” in his supplemental declaration, such is implied. Likewise, based on the information provided, it appears the loan is for a personal and family purpose.

Because the property is a principal residence for Sanli, there is no doubt that the interim harm favors plaintiff compared to the financial harm defendant is likely to suffer.

Defendant’s request for judicial notice is GRANTED as to the deeds of trust for both properties and the notice of default and election to sell.

Plaintiff’s application for a temporary restraining order is GRANTED. Plaintiff has not requested a preliminary injunction. It only seeks relief from the September 11, 2020 trustee’s sale. The temporary restraining order shall be in effect against all named defendants for 22 days, for good cause shown, due to the pandemic and recent fires. At the conclusion of the 22-day period, the temporary restraining order shall automatically expire. The parties are encouraged to meet and confer to reach a resolution as it appears plaintiff is willing to make payments on the loan.