

TENTATIVE RULINGS

FOR: September 12, 2018

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. 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. Diane Price, Dept. C (Historic Courthouse) at 2:00 p.m.

In the Matter of Taylor Wessel

17PR000138

PETITION TO APPROVE COMPROMISE OF DISPUTED CLAIM 6 PERSON WITH A DISABILITY

TENTATIVE RULING: In light of the Status Report of the Guardian ad Litem, hearing on the Petition is continued to October 24, 2018 at 2:00 p.m. in Dept. I.

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Estate of Dimple Lee Sayles

17PR000234

PETITION AND REPORT FOR FINAL DISTRIBUTION, REQUEST FOR WAIVER OF ORDINARY ATTORNEY’S FEES, ALLOWANCE OF ADMINISTRATIVE COSTS, WAIVER OF ADMINISTRATOR’S FEE AND WAIVER ON ACCOUNTING

TENTATIVE RULING: GRANT petition.

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Conservatorship of Joseph Schneider

18PR000111

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

APPEARANCE REQUIRED

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Estate of Gruening

18PR000198

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

TENTATIVE RULING: GRANT petition. Counsel is reminded for the future to list the relationship to decedent in paragraph 8 of the petition.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. C (Historic Courthouse) at 2:00 p.m.

In the Matter of Shiena Trinidad Enerio-Lo

18CV000785

PETITION FOR CHANGE OF NAME

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

PROBATE CALENDAR – Hon. Victoria Wood, Dept. I (Criminal Courts Bldg.- 1111 Third St.) at 4:00 p.m.

In the Matter of the Bouillon Marital QTIP Trust

26-18519

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

TENTATIVE RULING: GRANT petition, including fees as prayed. The September 10, 2018 Mackenzie declaration supports the amount of attorney's fees paid.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 4:00 p.m.

BVK Gaming, Inc. v. Timothy J. Long

17CV001155

PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, REQUEST FOR ADMISSIONS, AND PRODUCTION OF DOCUMENTS; AND SANCTIONS

TENTATIVE RULING: Plaintiff BVK Gaming, Inc. (BVK) motion to compel defendant Timothy J. Long to serve further responses to form interrogatories (set two) numbers 15.1 and 17.1, requests for production of documents (RPD) (set two) numbers 5-18, 21-24, 27-

28, 33-34, and 37-44, and requests for admissions (RFA) (set two) numbers 19-20, 22, 24, and 26-27 is MOOT.¹

On May 9, 2018, BVK served its second set of written discovery on Long. Long served his initial responses on June 15, 2018. After meeting-and-confering, Long indicated he would serve amended responses (other than to the RFA) and produce additional documents during the week of July 23, 2018. Instead of waiting for the amended responses and further document production, on July 24, 2018, BVK filed its motion to compel further responses. Defendant thereafter served amended responses on August 10, 2018, produced further documents on August 15, 2018, and served verifications on August 16, 2018.

In a situation where further responses are served after a motion to compel further responses is filed, the Court has substantial discretion to decide how to rule on the motion. (See *Sinaiko Healthcare Consulting, Inc. v. Pac. Healthcare Consultants* (2007) 148 Cal.App.4th 390, 409.) For example, the Court might grant the motion if the further responses are not code-compliant, deny the motion as moot but still award sanctions, take the matter off-calendar, or order the parties to meet-and-confer. (*Id.*) Here, the best solution is to deem the motion as moot after reviewing the amended responses and BVK's reply, and taking into consideration BVK prematurely filed this motion when amended responses were forthcoming. Even though BVK contends various further responses remain inadequate, the filing of the further responses would have at least narrowed the scope of the discovery requests at issue in the current motion or resolved the entire dispute after additional meet-and-confer efforts between the parties based on the amended responses.

If BVK believes the amended responses remain inadequate, it shall meaningfully meet-and-confer with Long, and if necessary, only file a new motion to compel after exhausting the meet-and-confer process. Although not a finding on the merits, the Court provides the following guidance to facilitate the meet-and-confer efforts: (1) Long's further response to RFA number 20 appears deficient as it does not comport with Code of Civil Procedure section 2033.220; and (2) with regard to the disputed RPD, BVK seeks an almost unlimited amount of information regarding transactions and interactions between Long and third parties to this action without adequately explaining why the information is relevant.

BVK's request for monetary sanctions for bringing its motion to compel is DENIED. The request is not code-compliant. BVK did not cite in the notice of motion the proper code sections authorizing monetary sanctions.²

¹ Despite the title to the motion, in its notice of motion, BVK did not seek the further production of documents responsive to the RPD at issue. (See Code Civ. Proc., § 1010 [a notice of motion should state in the first paragraph the nature of the order being sought and the grounds for issuance of such order]; see also Cal. Rules of Court, rule 3.1110(a).) Moreover, BVK is reminded that a motion concerning interrogatories, inspection demands, or admission requests must identify the interrogatories, demands, or requests by set and number in the notice of motion. Since BVK failed to do so, the Court has expended time deciphering what discovery requests are at issue in this motion. The future failure to specifically list the request sets and numbers in the notice of motion may necessitate denial of the discovery motion.

² BVK cites in its notice of motion to Code of Civil Procedure sections 2023.010, 2030.290, subdivision (c), and 2031.300, subdivision (c), as well as California Rules of Court, rule 3.1030, as authority for imposing monetary sanctions. Section 2023.010 does not create an independent basis for awarding monetary sanctions. Section

Long's request for monetary sanctions for opposing the motion is DENIED as not code-compliant. Long did not invoke a code section authorizing monetary sanctions.

2023.030 makes clear that the Court's authority to impose sanctions must be authorized by another provision of the Discovery Act. (Code Civ. Proc., § 2023.030.) Sections 2030.290 and 2031.300 cannot serve as that authority because they deal with motions to compel initial responses to discovery requests. BVK moved for further responses. BVK's reliance on rule 3.1030 is misplaced as it was renumbered in 2009 to rule 3.1348. Any citations to other authority in the memorandum of points and authorities or reply raises due process concerns making the imposition of monetary sanctions improper.