

TENTATIVE RULINGS

FOR: October 3, 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. Francisca Tisher, Dept. G (Criminal Courts Bldg.-1111 Third St.)

Estate of James R. Hunt

17PR000149

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

TENTATIVE RULING: GRANT Petition.

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Estate of James R. Hunt

17PR000182

PETITION FOR PROBATE OF WILL AND FOR LETTERS OF ADMINISTRATION WITH WILL ANNEXED

TENTATIVE RULING: Petition is DENIED. The Petition lacks: 1) proper notice (completed form DE-121), 2) proof of publication, 3) completed Duties and Liabilities form (DE-147), 4) proposed bond, and 5) nomination of Petitioner, as Petitioner is not listed as an executor in the will, and the executors listed in the will have nominated Jennifer Sunseri as administrator in case number 17PR000149.

PROBATE CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)

Conservatorship of Sean Darryl Jones

17MH000023

PETITION FOR APPOINTMENT OF CONSERVATOR OF PERSON

APPEARANCE REQUIRED

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In the Matter of the Frances Marie Jackson and Eugene Jackson Living Trust

17PR000173

PETITION FOR APPOINTMENT OF NEW SUCCESSOR TRUSTEE; PETITION FOR AUTHORIZATION FOR FATHER TO ACT IN THE BEST INTEREST OF HIS MINOR CHILDREN RATHER THAN APPOINT A GUARDIAN AD LITEM; PETITION TO DETERMINE TRUST'S TITLE TO PROPERTY

TENTATIVE RULING: GRANT petition.

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Conservatorship of Erlinda C. Vidal

26-56126

THIRD ACCOUNT AND REPORT OF CONSERVATOR OF THE PERSON AND ESTATE, AND PETITION FOR APPROVAL OF ACCOUNT; FOR CONSERVATOR FEES; FOR ATTORNEY'S FEES; FOR COSTS; AND FOR CONTINUATION OF CONSERVATORSHIP

TENTATIVE RULING:

GRANT petition and the supplement, including fees as prayed. Based on the report of the court investigator, the Court determines by clear and convincing evidence that the conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process, and therefore orders the conservatee disqualified from voting pursuant to Elections Code section 2208.

After a review of the matter, the Court finds the conservator is 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 October 3, 2019, at 8:30 a.m. in Dept. F. 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. The clerk is directed to send notice to the parties.

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In the Matter of Elizabeth D. Phair 1998 Trust

26-61270

FIFTH ACCOUNT AND REPORT OF TRUSTEE AND PETITION FOR SETTLEMENT OF ACCOUNT, AND FOR APPROVAL OF TRUSTEE FEES

TENTATIVE RULING: The matter is continued October 17, 2017, at 8:30 a.m. in Dept. I to allow petitioner time to submit declarations supporting the claimed “reasonable” attorney’s fees and trustee’s fees.

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In the Matter of The Leonardo Survivor’s Trust

26-62877

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

TENTATIVE RULING: GRANT Petition, including fees as prayed.

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)

Vannessa Scott-Allen v. KRM, Inc., et al.

16CV000854

MOTION TO COMPEL FURTHER DISCOVERY RESPONSES FROM DEFENDANT KRM, INC.

TENTATIVE RULING: Pursuant to stipulation, the matter is off-calendar.

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Sandra Callahan v. Gary Linowski

16CV001017

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING: The Notice of Motion does not provide notice of the Court’s tentative ruling system as required by Local Rule 2.9. Plaintiff’s counsel is directed to contact Defendant’s counsel forthwith and advise Defendant’s counsel of Local Rule 2.9 and the Court’s tentative ruling procedure. If Plaintiff’s counsel is unable to contact Defendant’s counsel prior to the hearing, Plaintiff’s counsel shall be available at the hearing, in person or by telephone, in the event Defendant’s counsel appears without following the procedures set forth in Local Rule 2.9.

The Motion is DENIED. “A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action.” (Code Civ. Proc. § 437c(p)(1).) Plaintiff has failed to shift the burden because Plaintiff’s Motion is not supported by admissible evidence. Defendant’s Objection to Evidence is SUSTAINED. Plaintiff attempts to remedy the lack of foundation for the May 15, 2012 promissory note with a reply declaration by Plaintiff, but the reply declaration fails to include the referenced Exhibit C.

Even if Plaintiff had managed to produce admissible evidence, there are triable issues of material fact as to Plaintiff's Material Fact No. 1 in regards to the amount loaned.

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Maxine Box v. James Sveum, et al.

17CV000160

PLAINTIFF'S MOTION TO CHANGE VENUE AND TRANSFER CASE TO SOLANO COUNTY

TENTATIVE RULING: The unopposed Motion is GRANTED.

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Raja Development Co., Inc. v. Napa County Regional Open Space District, et al.

17CV000211

DEMURRER TO THE FIRST AMENDED 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. 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 defendant's counsel is unable to contact the opposing party prior to the hearing, 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.

Defendant Napa County Regional Park and Open Space District's demurrer to the first cause of action for breach of written contract, third cause of action for common counts, and fourth cause of action for unjust enrichment on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. Plaintiff Raja Development Co., Inc. acknowledges it did not allege compliance with the California Government Claims Act. The demurrer as to this issue should have been resolved during the meet-and-confer process.

Defendant's demurrer to the fifth cause of action for declaratory relief on the ground of failure to state sufficient facts is MOOT. Defendant argues the claim is a "specifically dependent remedy and is therefore barred." (Dem. at p. 3:21-22.) Since the breach of contract claim is not adequately pled, the Court need not reach the demurrer as to the declaratory relief claim.

If plaintiff elects to do so, it shall file its second amended complaint within 5 calendar days of service of notice of entry of order.

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MOTION FOR RECONSIDERATION OF ORDER DENYING RENEWED MOTION FOR CHANGE OF VENUE

TENTATIVE RULING:

Defendants Richard Klein and Dot429, Inc.’s motion for reconsideration of the August 17, 2017 Order denying their renewed motion for change of venue is DENIED.¹ Defendants contend new evidence from Klein’s August 9, 2017 supplemental declaration demonstrates he is not Dot429’s alter ego. The Court disagrees with defendants’ characterization of the supplemental declaration as “new evidence.” The declaration was presented to the Court the day before the renewed motion came on for hearing on August 10, 2017. The Court elected to strike the declaration for the reasons stated in the order. In any event, as the Court noted, “Klein had ample opportunity to present fully detailed declarations to support his renewed motion.” (August 17, 2017 Order at p. 2.)



PETITION FOR CHANGE OF NAME

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



MOTION TO BIFURCATE LIQUIDATED DAMAGES

TENTATIVE RULING: Defendant City of Napa’s motion to bifurcate is DENIED. (Code Civ. Proc., § 598.) The matter will be heard in a single trial. The Court and the jury will then decide their respective issues at the conclusion of the evidence. (*See In re Cellphone Termination Fee Cases* (2011) 193 Cal.App.4th 298, 305.) Based on the arguments presented, the Court believes there will be overlap in the evidence. (*Id.*) The Court does not believe presenting all evidence to the jury will create substantial danger of undue prejudice, of confusing the issues, or misleading the jury. (Evid. Code, § 352.)

¹ The Court notes, once again, it did not receive courtesy copies from defendants despite requesting them in its June 1, 2017 Minute Order.