

## TENTATIVE RULINGS

**FOR: October 4, 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.

### CIVIL LAW & MOTION CALENDAR – Hon. Francisca Tisher, Dept. G (Criminal Courts Bldg.-1111 Third St.)

**Kevin Brackett, et al. v. Queen of the Valley Hospital, et al.**

**17CV000036**

DEMURRER TO THE FIRST AMENDED COMPLAINT

#### **TENTATIVE RULING:**

Judge Francisca Tisher discloses she has used the services of Queen of the Valley Medical Center in the past and it is likely she will continue to use its services in the future. Nevertheless, Judge Tisher believes she can and will be fair and impartial in this case.

Defendant Queen of the Valley Medical Center's (sued as Queen of the Valley Medical Hospital) demurrer to the third cause of action for NIED on the ground of failure to state sufficient facts is OVERRULED. The Court (Hon. Price) previously sustained the demurrer as to this claim with leave to amend because no duty or a breach of that duty was alleged. Plaintiff Rona Brackett now alleges defendant owed her a duty of care to refrain from exposing her to unreasonable harm, which included a duty to refrain from introducing a disease into the marriage as a result of the negligent cleaning and sterilizing protocols and practices. (First Amended Compl., 3rd Cause of Action, ¶ 3.) The Court must accept the allegation as true for purposes of this demurrer. The Court does not concern itself with whether plaintiff can prove this duty allegation. Plaintiff, therefore, has adequately alleged a duty for pleading purposes.

Defendant shall file its answer within 10 calendar days of service of notice of entry of order.

The Case Management Conference is continued to December 5, 2017, at 8:30 a.m. in Dept. F.

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

**Estate of Paul F Ledermann**

**16PR000131**

FIRST AND FINAL ACCOUNT AND REPORT OF EXECUTOR AND PETITION FOR SETTLEMENT, FOR ALLOWANCE OF COMPENSATION TO EXECUTOR AND ATTORNEYS FOR ORDINARY AND EXTRAORDINARY SERVICES AND FOR FINAL DISTRIBUTION

**TENTATIVE RULING:** The matter is continued to October 18, 2017, at 8:30 a.m. in Dept. I to allow petitioner time to file: (1) an amended proof of service correcting the September 13, 2016 date of service; and (2) declarations supporting the extraordinary fees requested. (See Cal. Rules of Court, rules 7.702-7.703.)

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**Conservatorship of Shirley Harris**

**17PR000141**

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

**APPEARANCE REQUIRED.** Petitioner should also be prepared to show what assets are part of the trust, and what assets will remain in the conservatorship estate. If assets will remain in the conservatorship estate, a bond will be required. (Prob. Code § 2320.) Petitioner has not provided any authority for allowing waiver of a bond in a conservatorship matter, as requested in the waiver of bond filed on August 22, 2017.

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

**Michael Saunders v. Sears Holding Management Corporation, et al.** 17CV000034

1) PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

**TENTATIVE RULING:** The unopposed Motion is GRANTED as prayed.

2) MOTION FOR AWARD OF REASONABLE ATTORNEYS’ FEES AND COSTS AND CLASS REPRESENTATIVE ENHANCEMENT

**TENTATIVE RULING:** The unopposed Motion is GRANTED as prayed.  
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(1) DEFENDANTS STEVE POTTER AND KEITH MARKS' DEMURRER TO THE SECOND AMENDED COMPLAINT

**TENTATIVE RULING:**

On August 8, 2017, the Court ruled on three different demurrers from the various defendants. The Court noted that over the course of five weeks plaintiff Perfecto Bauer Garcia filed a complaint, an amended complaint, and a motion to file a second amended complaint followed by the actual filing of the proposed second amended pleading. The Court then, on its own motion, struck Garcia's second amended complaint filed on July 11, 2017. The operative pleading was the first amended complaint filed on June 27, 2017. Following the sustaining of one of the demurrers with leave to amend, Garcia filed his second amended complaint on August 22, 2017. Since the Court's ruling, Garcia filed another amended complaint on September 5, 2017. The Court, on its own motion, strikes Garcia's amended complaint filed on September 5, 2017. (Code Civ. Proc., § 436, subd. (b).) The operative pleading is the second amended complaint filed on August 22, 2017.

Defendants Steve Potter and Keith Marks' demurrer to each cause of action in the second amended complaint on the ground of failure to state sufficient facts is **SUSTAINED WITHOUT LEAVE TO AMEND**. The Court previously granted Garcia leave to allege sufficient facts as to these defendants. He has failed to do so.

(2) DEFENDANTS ALLISON HALEY AND GARY LIEBERSTEIN'S DEMURRER TO THE SECOND AMENDED COMPLAINT

**TENTATIVE RULING:**

On August 8, 2017, the Court ruled on three different demurrers from the various defendants. The Court noted that over the course of five weeks plaintiff Perfecto Bauer Garcia filed a complaint, an amended complaint, and a motion to file a second amended complaint followed by the actual filing of the proposed second amended pleading. The Court then, on its own motion, struck Garcia's second amended complaint filed on July 11, 2017. The operative pleading was the first amended complaint filed on June 27, 2017. Following the sustaining of one of the demurrers with leave to amend, Garcia filed his second amended complaint on August 22, 2017. Since the Court's ruling, Garcia filed another amended complaint on September 5, 2017. The Court, on its own motion, strikes Garcia's amended complaint filed on September 5, 2017. (Code Civ. Proc., § 436, subd. (b).) The operative pleading is the second amended complaint filed on August 22, 2017.

Defendants Allison Haley and Gary Lieberstein's demurrer to each cause of action in the second amended complaint on the ground of failure to state sufficient facts is **OVERRULED** due to insufficient notice. Defendants served their demurrer on September 13, 2017, via "certified mail – return receipt." The hearing date is October 4, 2017, which is well-short of the statutory notice period. (Code Civ. Proc., § 1005, subd. (b).) Defendants shall file their answer within 10 calendar days.

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**Matthew Denny, et al. v. Norman Alumbaugh, et al.**

**26-65828**

PETITION TO APPROVE COMPROMISE OF PENDING ACTION - MINOR

**APPEARANCE REQUIRED**