

TENTATIVE RULINGS

FOR: October 11, 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. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)

In the Matter of The Bessie C Rose Family Trust

17CV000156

PETITION FOR ORDER CONFIRMING SUCCESSOR TRUSTEE AND TRUST ASSETS

TENTATIVE RULING: The Petition is GRANTED as prayed.

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Estate of E.E. Rose

PR13133

PETITION FOR ORDER APPOINTING SUCCESSOR TRUSTEE OF TESTAMENTARY TRUST TO SERVE WITHOUT BOND; AND FOR INSTRUCTIONS TO SELL REAL PROPERTY

APPEARANCE REQUIRED. The Court wishes to discuss the need for a bond in light of the following: Probate Code section 15602, subdivision (a)(3) provides that a trustee is required to give a bond when “an individual who is not named as a trustee in the trust instrument is appointed as a trustee by the court.” Section 15602, subdivision (b) states: “The court may not...excuse the requirement of a bond for the individual described in [(a)(3)], except under compelling circumstances. For the purposes of this section, a request by all adult beneficiaries of a trust that bond be waived for an individual described in [(a)(3)] is deemed to constitute a compelling circumstance.” The Court would like counsel to be prepared to address the value of the trust estate, should a bond be required.

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THIRD AND FINAL ACCOUNT AND REPORT OF CONSERVATORS; PETITION FOR ALLOWANCE OF FEES TO ATTORNEY FOR CONSERVATORS; AND FOR ORDER DISTRIBUTING PROPERTY TO EXECUTOR; AND DISCHARGING CONSERVATORS OF THE ESTATE

TENTATIVE RULING: The Accounting must be amended to reflect two separate accounting periods: until date of death, and subsequent to the date of death. (Prob. Code § 2620(b).) Hearing on the Petition is continued to October 31, 2017 at 8:30 a.m. in Dept. F.

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

DEMURRER TO THE COMPLAINT

TENTATIVE RULING:

Plaintiff Ole Health’s request for judicial notice of filings from the dismissed unlawful detainer action, Case No. 17CV000803, is GRANTED, but not necessarily for the truth of the matters asserted therein.

Defendant Clinic Pharmacies III, Inc.’s demurrer to the first cause of action for declaratory relief (Pharmacy Services Agreement (“PSA”)) and second cause of action for declaratory relief (Commercial Sublease) on the ground of failure to state sufficient facts is OVERRULED. Plaintiff alleges an actual controversy regarding the parties’ rights under the PSA and sublease. (See Compl., ¶¶ 39 [defendant stated in a letter that plaintiff “has no basis to terminate the PSA or to terminate the Sublease”], 48 [defendant maintains plaintiff does not have the right to terminate the PSA or sublease], 49-50, 54 [defendant contends termination clause of PSA is unenforceable and/or inapplicable], 55 [defendant contends termination of the PSA is invalid], 58-50, 63 [defendant contends it did not breach the sublease and/or it cured any such breaches and/or plaintiff waived any breaches], 65 [defendant contends the termination clause of the sublease is unenforceable and/or inapplicable].)

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



(1) DEMURRER TO THE COMPLAINT

TENTATIVE RULING:

Defendant Ford Motor Co.’s request for judicial notice of the complaint, excerpts of complaints from other cases, and the definition of “automatic transmission” is GRANTED.

Ford’s demurrer to the third cause of action for fraudulent inducement (concealment), fourth cause of action for fraudulent inducement (intentional misrepresentation), and fifth cause of action for fraudulent inducement (negligent misrepresentation) on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. Ford argues the three-year statute of limitations bars the claims. The argument is well-taken. Cano purchased the vehicle on May 24, 2013. (First Amended Compl., ¶ 79.) On March 29, 2017, Cano filed his complaint. Cano alleges it was not until Ford sent him a July 2014 customer satisfaction program letter that he discovered the facts giving rise to his fraud causes of action. (First Amended Compl., ¶ 97; see Code Civ. Proc., § 338, subd. (d).) The Court previously held that Cano’s allegation of reasonable diligence was conclusory due to the allegations regarding the *Vargas* class action as well as a press release, magazine articles, and technical service bulletins indicating information was available to Cano before that July 2014 date regarding the type of transmission used. Cano has adequately addressed the *Vargas* class action allegation. (First Amended Compl., ¶¶ 102-03, 112.) Cano, however, has not addressed the articles criticizing the PowerShift transmission, the March 10, 2010 press release, or the May 2012 customer satisfaction letter sent out to Ford Focus drivers. (*Id.*, ¶¶ 23, 37-38, 45, 54-56, 162.) Although Cano alleges repeatedly he could not, through reasonable and diligent investigation, have discovered before July 2014 the defects in the PowerShift transmission, the allegations regarding diligence remain conclusory in light of the other allegations noted above. (*Id.*, ¶ 97; see *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808 [stating that “a plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show: (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence”].) The Court need not reach Ford’s remaining arguments on demurrer in light of the deficiency.

If Cano elects to do so, he shall file a second amended complaint within 10 calendar days of service of notice of entry of order.

(2) MOTION TO STRIKE

TENTATIVE RULING

Defendant Ford Motor Co.’s request for judicial notice of the complaint, excerpts of complaints from other cases, and the definition of “automatic transmission” is GRANTED.

Ford’s motion to strike the claim for punitive damages is MOOT in light of the Court’s ruling on the demurrer.



PETITION FOR CHANGE OF NAME

TENTATIVE RULING: As to the name change for Natalia Veronica Scholl, the Court will GRANT the request to waive notice based on the information provided in the declaration. The Petition is GRANTED without need for appearance.

However, as to the name change for Maria Christina Scholl, Maria must file her own Petition as she is an adult over 18 years of age. If Maria's Petition and proposed Order is prepared and filed by the hearing, the Court will GRANT Maria's Petition as well.