

**TENTATIVE RULINGS**

**FOR: October 25, 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. Victoria Wood, Dept. C (Historic Courthouse) at 2:00 p.m.**

**Conservatorship of Andrew Lunceford**

**17PR000168**

REVIEW HEARING

**TENTATIVE RULING:** The review hearing is continued to November 15, 2018 at 2:00 p.m. in Dept. JAR to allow time for receipt of the provisional order from Oregon accepting the transfer of this conservatorship matter. If such proof is on file in advance of the November 15, 2018 review hearing, the review hearing will be vacated.

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**Conservatorship of Knox, Kevin Douglas**

**PR22014**

REVIEW HEARING

**TENTATIVE RULING:** Hearing on this matter is continued to November 15, 2018 at 2:00 p.m. in Dept. JAR to allow time for the court investigator report to be prepared. The clerk is directed to send notice to the parties.

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

**Jackson Street Wine Warehouse LLC v. Sarah Ruggiero, et al.**

**26-66082**

ROCKZILLA’S MOTION FOR AWARD OF REASONABLE ATTORNEY FEES AND COSTS

**TENTATIVE RULING:** Rockzilla’s Motion is GRANTED. Rockzilla is a prevailing party because it obtained a dismissal of the claims against it in this action. (Code Civ. Proc., § 1032(a)(4).) Rockzilla is entitled to an award of reasonable attorney fees pursuant to Civil Code section 1717, Code of Civil Procedure section 1021, and paragraph 40 of the Commercial Lease Agreement (CLA) between Raja Development Inc.’s property manager, Crown Realty, and Rockzilla.

In opposition, Cross-Complainants argue that they are not bound by the terms of the CLA, but in the Verified First Amended Cross-Complaint of C. Randall Callahan and Raja Development Inc. (FACC), Cross-Complainants alleged otherwise. Cross-Complainants alleged that they retained Crown Realty to manage their real property at 849 Jackson Complex in Napa (paras. 7, 8) and that Mr. Callahan was the sole shareholder of Raja (para. 9). The FACC further asserted that Crown Realty negotiated and executed a 25-year lease with Rockzilla for Raja’s 849 Jackson Complex property (para. 10), that Cross-Complainants were entitled to rent from Rockzilla (paras. 28, 44, 47), and that Cross-Complainants were entitled to rescind the Rockzilla lease and be awarded restitution and attorney’s fees (para. 49; also in Prayer, item H.)

“ ‘Where a nonsignatory plaintiff sues a signatory defendant in an action on a contract and the signatory defendant prevails, the signatory defendant is entitled to attorney fees only if the nonsignatory plaintiff would have been entitled to its fees if the plaintiff had prevailed.’ ” (*Sessions Payroll Management, Inc. v. Noble Const. Co.* (2000) 84 Cal.App.4th 671, 679 (*Sessions*), quoting *Real Property Services Corp. v. City of Pasadena* (1994) 25 Cal.App.4th 375, 382.) Cross-Complainants themselves were making a claim against Rockzilla for attorney’s fees in connection with rescinding the CLA. Cross-Complainants were also the intended beneficiaries of the CLA, as they owned the 849 Jackson Complex property and received the rents Rockzilla paid under the CLA. “A third party beneficiary may enforce a contract made expressly for his or her benefit.” (*Sessions, supra*, 84 Cal.App.4th at p. 680, citing *Kaiser Engineers, Inc. v. Grinnell Fire Protection Systems Co.* (1985) 173 Cal. App. 3d 1050, 1055 and Civ. Code, § 1559.) Cross-Complainants would have been able to enforce the attorney fee provision against Rockzilla had they prevailed on their claims; therefore, the attorney fee provision may be enforced against Raja.

The Court finds the attorney’s fees claimed by Rockzilla to be reasonable and properly supported.

**CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.**

**Sarah Henderson v. Geoffrey Michalski**

**17CV001425**

MOTION TO CONTINUE THE TRIAL DATE

**TENTATIVE RULING:** Defendant Geoggrey Michalski's motion to continue the trial date is GRANTED. The parties shall appear to discuss the setting of a new trial date and other associated dates.

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**Stacee Cootes v. Jackson Street Wine Warehouse, LLC, et al.**

**17CV000427**

MOTION TO COMPEL PARTY ATTENDANCE AT DEPOSITION

**TENTATIVE RULING:** The Motion is DENIED WITHOUT PREJUDICE. The Declaration of Michael Rupprecht is not properly sworn, as required by Code of Civil Procedure section 2015.5. Therefore, the Motion is not supported by competent evidence. The Court does note that Plaintiff's counsel never filed an objection to the notice of deposition, as required by Code of Civil Procedure section 2025.410, and therefore any objections were waived. Defendant's counsel is also reminded to follow California Rules of Court, rule 2.111 and include Ms. Kraml's name and State Bar membership number on the first page. Plaintiff's counsel is to submit a proposed order.