

TENTATIVE RULINGS

FOR: October 30, 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. JAR (Historic Courthouse) at 2:00 p.m.

Conservatorship of Ellen Graham

18PR000224

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

APPEARANCE REQUIRED. The proposed conservatee need not appear.

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

Robert Trieber v. Pleasure Cove Marina, LLC

17CV001436

DEFENDANT PLEASURE COVE MARINA, LLC'S MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING: Defendant's Motion for Summary Judgment is GRANTED. "A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c(p)(2).)

Defendant has shown that Plaintiff cannot prove his claims that Defendant maintained the premises in a negligent manner or that Defendant's acts and/or omissions caused a dangerous and hazardous condition to exist on the premises. "The elements of a cause of action for premises liability are the same as those for negligence: duty, breach, causation, and damages." (*Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998, citing *Ortega v. Kmart Corp.*)

(2001) 26 Cal.4th 1200, 1205.) Defendant’s Motion showed that Plaintiff cut his toe on a submerged sharp object in Lake Berryessa 50 to 75 yards from shore (Undisputed Fact No. 11), that Defendant does not own, lease, occupy, or control Lake Berryessa (Undisputed Fact No. 5), that Plaintiff recalled underwater visibility in Lake Berryessa was less than 12 inches (Undisputed Fact No. 11), and that Plaintiff never saw what he cut his toe on but believes it was on old metal cable (Undisputed Fact No. 12). Based on the evidence presented in the Motion, Plaintiff cannot establish: 1) what exactly caused his injury, or 2) that Defendant was responsible for the injury-causing instrument. Defendant’s Request for Judicial Notice is GRANTED.

“Once the defendant or cross-defendant has met [its] burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto.” (Code Civ. Proc., § 437c(p)(2).) Plaintiff has failed to show that a triable issue of material fact exists. Plaintiff claims that Defendant left dangerous, sharp cables in Lake Berryessa, but provides no evidence in support of this claim. The photos show the shoreline, not the waters of Lake Berryessa, and were not taken at or close to the time of the incident. Defendant’s Objections to Declaration of Christopher Shenfield are SUSTAINED as to objections 1 and 4, OVERRULED as to objection 3. As to objections 2 and 4, the Court only considered the deposition testimony that consisted of full questions and answers; the Court did consider the attached photographs. None of the admissible evidence presented by Plaintiff establishes that Plaintiff cut his toe on any object that Defendant was responsible for.

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<u>First American Title Company of Napa v. Larry Frattini, et al.</u>	18CV000164
<u>Larry Frattini, et al. v. Jonathan Karpuk, et al.</u>	18CV000671

(1) MOTION TO CONSOLIDATE IN CASE NO. 18CV000164

(2) MOTION TO CONSOLIDATE IN CASE NO. 18CV000671

TENTATIVE RULING: Defendants Jonathan Karpuk, Erin Karpuk, Lorall Karpuk, and Napa Property Investments LLC’s motions to consolidate Case No. 18CV000671 with Case No. 18CV000671 for trial only pursuant to Code of Civil Procedure section 1048 is DENIED. Defendants have not shown the actions involve a common question of law or fact. (Code Civ. Proc., § 1048, subd. (a).) Case No. 18CV000671 deals with First American Title’s allegations that, inter alia, Larry Frattini and other former employees breached their fiduciary duties and misappropriated trade secrets when they purportedly took First American’s customer database (the NAF List) and joined a rival company. Case No. 18CV000671, by contrast, encompasses Jonathan Karpuk’s self-dealing and enrichment in violation of his fiduciary duties as CEO and Chairman of the Board of Directors of First American Title. There is no risk of inconsistent judgment.

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INDIVIDUAL DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING: The motion of defendants Kenneth Browne, Avery Browne, and Peter Faragmeharib Saied for summary judgment on the “grounds that the undisputed facts establish that no facts exist to support a fraud, reformation, and negligence cause of action” is DENIED. (Amended Ntc. at p. 1:24-25.)

Plaintiff Joseph Nichelini filed an amended complaint alleging claims of motor vehicle negligence, reformation of contract, and fraud. Resolution of the motor vehicle negligence cause of action against the moving defendants is contingent on the reformation of contract and fraud claims because, if plaintiff prevails on his claims for fraud or reformation as against any defendant, then the release would be invalidated and would no longer serve as a bar to plaintiff's motor vehicle negligence cause of action against the moving defendants.

The moving defendants' motion fails to establish that there are no triable issues of material fact on plaintiff's fraud and reformation claims against Geico Indemnity Company (Geico). For example, whether plaintiff negotiated with Geico regarding a release of Kenneth Brown, which is submitted in the separate statement as a material fact, is clearly in dispute and at the heart of the reformation and fraud claims. Defendants' cited evidence of written communications listing Kenneth Brown as an additional driver do not affirmatively establish an intention on the part of plaintiff to have him included in the release agreement. Where there remain triable issues of material fact, the summary judgment motion must be denied. (See Code Civ. Proc., § 437c, subd. (c).)

The Court does not address whether the moving defendants would be entitled to summary adjudication as to the second and third causes of action because the motion only sought summary judgment of the entire action. (See *Maryland Cas. Co. v. Reeder* (1990) 221 Cal.App.3d 961, 974 n.4 [a court cannot grant summary adjudication where the *only* motion noticed for hearing is for summary judgment].)

Defendants' evidentiary objections submitted with their reply is DENIED as not code-compliant. (Cal. Rules of Court, rule 3.1354(b)-(c).)

Plaintiff's request for a continuance is DENIED in light of this ruling.

Geico's request for joinder is GRANTED. The Court has not considered any of the evidence Geico submitted for its motion for summary judgment scheduled for December 4, 2018.

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

Conservatorship of Bruce Albert Nelson

18PR000215

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE ESTATE

APPEARANCE REQUIRED

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

People of the State of California v. \$2,000 in U.S. Currency

18CV000871

MOTION TO STRIKE CLAIM

TENTATIVE RULING: Plaintiff’s motion to strike pursuant to Code of Civil Procedure section 436 on the ground claimant Michael Leonardi’s claim is untimely is DENIED. Leonardi has shown good cause for not complying with the 30-day deadline. (Health & Safety Code, § 11488.5, subd. (a)(1).) Leonardi was in the Intensive Outpatient Substance Abuse Program with Muir Wood Adolescent and Family Services from May 21, 2018 to July 25, 2018. (Reply, Attachment A.) He would have been hard-pressed to file a timely claim, especially at the beginning of his program. Moreover, plaintiff acknowledges an “inadvertent” listing of the seizure date rather than the notice date from the confiscating officer. But there is no corroborating declaration from the officer as to the correct notice date of either May 12 or May 25, 2018. If the latter was the notice date, then as noted, Leonardi was at the beginning of his substance abuse program and likely would have been physically unable to file a timely claim.

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In the Matter of Heather A. Relaford

18CV001197

PETITION FOR CHANGE OF NAME

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

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VERIFIED PETITION TO RELEASE PROPERTY FROM MECHANIC'S LIEN

TENTATIVE RULING: Petitioners Paul Rodman and Victoria Rodman's verified petition to release property from mechanic's lien is GRANTED. The petition is unopposed. The Court will award reasonable attorney's fees if an attorney declaration is submitted before or at the hearing supporting the reasonableness of the \$3,000 in fees sought. (Civ. Code, § 8488, subd. (c) ["The prevailing party is entitled to reasonable attorney's fees."].) Otherwise, the request for attorney's fees will be denied.