

**TENTATIVE RULINGS**

**FOR: November 20, 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. Elia Ortiz, Dept. H (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.**

**Estate of Iris D. Danforth**

**18PR000250**

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

**TENTATIVE RULING:** GRANT petition.

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

**Conservatorship of Edward J. Baker**

**17PR000142**

FIRST ACCOUNT, REPORT OF CONSERVATOR AND PETITION FOR FEES

**TENTATIVE RULING:** GRANT Petition, including fees as prayed. 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 22, 2020 at 8:30 a.m. in Dept. C. 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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**Conservatorship of Robyn Simmons**

**17PR000160**

FIRST ACCOUNTING AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF PERSON AND ESTATE AND FOR ATTORNEY'S FEES

**TENTATIVE RULING:** GRANT petition, including fees as prayed. 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 November 20, 2020, at 8:30 a.m. in Dept. A. 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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**Estate of Marie Weir Manley**

**18PR000222**

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

**TENTATIVE RULING:** The petition is DENIED. Beyond the lack of a proper proof of service and failure to attach Schedules A-B identified in the "Revocable Living Trust," there is insufficient evidence to overcome the presumption in Probate Code section 6124 that decedent destroyed the "will" with intent to revoke it. A petition for letters of administration shall be filed.

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**Conservatorship of Lucy K. Clarke**

**18PR000104**

ORDER TO SHOW CAUSE RE: CAPACITY DECLARATION

**TENTATIVE RULING:** In light of the Petition to Amend Conservatorship Orders and Letters filed on November 15, 2018, this hearing is vacated.

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**In the Matter of the Anderson Child Trust**

**18PR000229**

PETITION FOR ORDER ACCEPTING RESIGNATION OF TRUSTEE; FOR APPOINTMENT OF SUCCESSOR CO-TRUSTEES; FOR WAIVER OF ACCOUNTING AND WAIVER OF BOND; AND FOR MODIFICATION OF IRREVOCABLE TRUST

**APPEARANCE REQUIRED**

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

**Daisy Hernandez v. Daniel Pautenis**  
**Jessica Lopez, et al. v. Daniel Pautenis**

**16CV001053**  
**16CV001054 (consolidated**  
**with lead case 16CV001053)**

**1) DAISY HERNANDEZ’S MOTION FOR REASONABLE STATUTORY ATTORNEY FEES AND COSTS**

**TENTATIVE RULING:** The Motion is GRANTED. Plaintiff has obtained a net monetary recovery and is therefore the prevailing party. (Code Civ. Proc., § 1032(a)(4).) Civil Code sections 789.3, 1942.4, and 1942.5 all mandate awards of reasonable attorneys’ fees and costs to parties prevailing on these statutory claims. The Court had also previously ordered, on May 23, 2018, that Defendant was to pay all discovery costs going forward as a condition of continuing trial and reopening discovery. The Confirmation of Settlement further indicated that Plaintiff was entitled to her attorneys’ fees and costs, as the language stating each party was to bear their own fees and seek costs was struck out and replaced with an attachment that provided Plaintiff was to bring a separate motion for her attorneys’ fees and costs within 90 days, that the “parties agree to accept the decision/ruling of the NCSC [Napa County Superior Court] judge re: attorney fees and costs and such amount shall be added to the [] settlement,” and that “payment of this settlement, including attorney’s fees and costs, shall be made from the sale of” certain property referenced in the agreement. The Court finds Plaintiff’s counsel’s attorney’s fees and costs to be reasonable and supported by the billing statement presented, and therefore awards Plaintiff attorney’s fees in the amount of \$84,700 and costs in the amount of \$5,698. The Court did not consider Defendant’s sur-reply filed on November 16 or the declaration filed on November 19, 2018. Because the filings are improper, the Court strikes the materials on its own motion. (Code Civ. Proc., § 436.)

**2) MOTION FOR ORDER AWARDING ATTORNEY’S FEES AND COSTS TO PLAINTIFFS JESSICA LOPEZ AND ANTONIO LOPEZ**

**TENTATIVE RULING:** The Motion is GRANTED. Plaintiffs have obtained a net monetary recovery and are therefore the prevailing parties. (Code Civ. Proc., § 1032(a)(4).) Civil Code sections 789.3, 1942.4, and 1942.5 all mandate awards of reasonable attorneys’ fees and costs to parties prevailing on these statutory claims. The Court had also previously ordered, on May 23, 2018, that Defendant was to pay all discovery costs going forward as a condition of continuing trial and reopening discovery. The Confirmation of Settlement further indicated that Plaintiffs were entitled to their attorneys’ fees and costs, as the language stating each party was to bear their own fees and seek costs was struck out and replaced with an attachment that provided Plaintiffs were to bring a separate motion for their attorneys’ fees and costs within 90 days, that the “parties agree to accept the decision/ruling of the NCSC [Napa County Superior Court] judge re: attorney fees and costs and such amount shall be added to the [] settlement,” and that “payment of this settlement, including attorney’s fees and costs, shall be made from the sale of” certain property referenced in the agreement. The Court finds Plaintiffs’ counsel’s attorney’s fees and costs to be reasonable and supported by the billing statement presented, and therefore

awards Plaintiffs attorney's fees in the amount of \$99,895 and costs in the amount of \$5,042.20. The Court did not consider Defendant's sur-reply filed on November 16 or the declaration filed on November 19, 2018. Because the filings are improper, the Court strikes the materials on its own motion. (Code Civ. Proc., § 436.)

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**Ruben Roncancio v. Per Ingvar**

**18CV000419**

**MOTION TO RELEASE PROPERTY FROM MECHANIC'S LIEN AND EXPUNGE NOTICE OF PENDANCY OF ACTION AND REQUEST FOR ATTORNEY'S FEES**

**TENTATIVE RULING:** Defendant Per Rosdahl's (erroneously sued as Per Ingvar) motion to release property from mechanic's lien and to expunge notice of pendency of action is **GRANTED**. Plaintiff Ruben Roncancio did not bring a legal action to foreclose on the mechanic's lien within the time required by Civil Code section 8460. His complaint is limited to claims for breach of contract and fraud. The mechanic's lien has expired and is unenforceable. (Civ. Code, § 8460, subd. (a).) Moreover, plaintiff improperly filed the Notice of Pending Action as he was first required to bring an action to enforce the lien under Civil Code sections 8460-61. As noted, he failed to do so as he elected instead to bring a complaint for breach of contract and fraud.

Defendant's request for attorney's fees against plaintiff is **GRANTED IN PART** in the amount of \$760, payable to defendant's counsel. (Code Civ. Proc., § 405.38.) Plaintiff was not substantially justified in opposing the motion and no other circumstances make the imposition of attorney's fees and costs unjust. The amount awarded represents the attorney's two hours of work at \$350 per hour plus the \$60 filing fee. (Murray Decl., ¶ 6.) The Court does not award for anticipated time.

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**In the Matter of Amber Nicole Guzman**

**18CV001261**

**PETITION FOR CHANGE OF NAME**

**TENTATIVE RULING:** There is no proof of publication in the court file. If one is filed before the hearing, the petition will be **GRANTED** without need for appearance. If no proof of publication is filed, the petition will be **DENIED** without prejudice.

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**In the Matter of Huong Que Nguyen**

**18CV001332**

**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.