

**TENTATIVE RULINGS**

**FOR: December 5, 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. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)**

**Conservatorship of Iris S. Guillery**

**16PR000100**

FIRST ACCOUNT AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF PERSON AND ESTATE AND ATTORNEY FOR CONSERVATOR

**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 7, 2019, at 8:30 a.m. in Dept. F. 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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**In the Matter of The 1997 Shirley A. Quaini Trust**

**17PR000136**

FIRST AMENDED PETITION FOR INSTRUCTION AND ORDER DETERMINING OWNERSHIP OF MANUFACTURED HOME

**TENTATIVE RULING:** The Petition is DENIED. In its previous ruling on November 7, 2017, the Court ordered the Petition to be properly served on James Quaini, pursuant to Probate Code sections 851 and 17203, and noted that the verification attached to the Petition was not signed. Service and verification remain incomplete.

**CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)**

**Megan Porsley, et al. v. William Katsaros, et al.**

**17CV000061**

MOTION TO COMPEL

**TENTATIVE RULING:**

Defendant Gregory Owen's motion to compel plaintiffs Megan Porsley and Michael Snyder to serve initial responses to request for production of documents (oRPDö) (set one) number 27 is GRANTED. Plaintiffs acknowledge they missed this request when responding to the discovery requests. (Opp. at p. 3:20-21.) All objections are waived for failure to file a timely response. Plaintiffs provided initial responses on November 17, 2017, indicating they produced all responsive non-privileged documents in their custody and control. (Rooney Decl., ¶ 5.) The responses remain deficient due to the waiver of any objections, including privilege. Plaintiffs shall serve code-compliant further responses, without objections, within 20 calendar days of service of notice of entry of order.

Defendants' motion to compel plaintiffs to serve documents responsive to the RPDs is MOOT. Plaintiffs acknowledge they did not produce documents, but now have done so. (Opp. at p. 3:22-23; Rooney Decl., ¶ 5.)

Defendant's motion to compel plaintiffs to serve further responses to RPD numbers 20 and 25, form interrogatory (oFIö) (set one) numbers 7.3 and 9.3, and special interrogatory (set one) numbers 20-23 and 27-28 is MOOT. Plaintiffs provided further responses on November 17, 2017. (Rooney Decl., ¶ 5.) Defendant does not indicate any deficiencies with these further responses in his reply.

Defendant's motion to compel plaintiffs to serve further responses to RPD number 26 is GRANTED. Plaintiffs provided further responses on November 17, 2017. (*Id.*) Plaintiffs are continuing to withhold information due to the marital privilege. Plaintiffs shall produce a privilege log in accord with *Catalina Island Yacht Club v. Super. Ct.* (2015) 242 Cal.App.4th 1116, 1130, within 20 calendar days of service of notice of entry of order.

Defendant's motion to compel plaintiffs to serve further responses to FI number 2.5 is GRANTED. Plaintiffs provided further responses on November 17, 2017. (Rooney Decl., ¶ 5.) The responses to FI number 2.5, however, remain deficient since plaintiffs have not listed their addresses from January 5, 2017, to March 2017. Plaintiffs shall serve code-compliant further responses, without objections, within 20 calendar days of service of notice of entry of order.

Owen's request for monetary sanctions against plaintiffs' attorney, Jeffrey Rooney, is GRANTED in the amount of \$3,049.50, payable to defendant's attorney within 20 calendar days of service of notice of entry of order. This amount represents the opposing attorney's 10.7 hours of work (7.8 drafting the motion and 2.9 hours reviewing the opposition and drafting the reply) at \$285 per hour. (Prendergast Reply Decl., ¶ 3.) Plaintiffs were not substantially justified in opposing the motion and the imposition of monetary sanctions is not unjust. This motion could

have been avoided if plaintiffs' attorney had meaningfully met-and-conferred. (See *id.*, Ex. 17 [October 3, 2017 letter in response to meet-and-confer effort stating attorney would supplement the responses to FI number 2.5 and providing the other 'claimed deficiencies [were] trifling or without merit].) Plaintiffs' attorney gave no information to opposing counsel about needing an extension of time due to his client's health. (*Id.*, ¶ 4.) Plaintiffs' counsel instead waited until after this motion was filed to provide responses that he previously labeled as 'trifling.'  
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**Erik Chaum, et al. v. Redbird Investment Group, LLC**

**17CV001099**

**MOTION TO EXPUNGE LIS PENDENS**

**TENTATIVE RULING:** The Notice of Motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Defendant's counsel is directed to contact Plaintiffs' counsel forthwith and advise Plaintiffs' counsel of Local Rule 2.9 and the Court's tentative ruling procedure. If Defendant's counsel is unable to contact Plaintiffs' counsel prior to the hearing, Defendant's counsel shall be available at the hearing, in person or by telephone, in the event Plaintiffs' counsel appears without following the procedures set forth in Local Rule 2.9.

The Motion was not sufficiently noticed. Code of Civil Procedure section 1005, subdivision (b) requires moving papers to be served and filed at least 16 court days before the hearing, with an additional five calendar days if notice is served by mail. Code of Civil Procedure section 12c, subdivision (a) provides the method for counting backwards from the hearing date to determine when notice should be given. Section 12c, subdivision (b) provides that any additional days added to the notice period are computed by counting backward from the day determined in subdivision (a). In this case, 16 court days prior to the hearing date was November 8, 2017, due to the Veterans Day and Thanksgiving holidays. Five additional calendar days for service by mail would be November 3, 2017. Defendant did not serve this Motion by mail until November 6, 2017 (service by email would have been timely had Plaintiffs consented to electronic service). Nonetheless, while Plaintiffs have objected to the late notice, they have also responded to the Motion on the merits; defective notice may be deemed waived once opposing counsel addresses the merits of a motion. (See *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697.) The Court will therefore allow this Motion to be heard.

The Motion is GRANTED IN PART AND DENIED IN PART. The Motion is GRANTED as to the expungement of the lis pendens. Plaintiffs' Complaint does contain a real property claim pursuant to Code of Civil Procedure section 405.31. A 'real property claim' is defined in Code of Civil Procedure section 405.4 as 'the cause or causes of action in a pleading which would, if meritorious, affect... (b) the use of an easement identified in the pleading....' Plaintiffs' Complaint alleges that there is a dispute whether use of the easement is limited to only ingress and egress. (Complaint, ¶¶ 20-22, 27-28.)

However, Plaintiffs have not shown the probable validity of their claim, as required by Code of Civil Procedure section 405.32 ('the court shall order that the notice be expunged if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim.'). The Easement Maintenance Agreement was never

executed, and is therefore unenforceable. Plaintiffs' Complaint claims that the easement is limited to ingress and egress, but "[a] right-of-way to pass over the land of another carries with it the implied right . . . to make such changes in the surface of the land as are necessary to make it available for travel in a convenient manner." (*Dolnikov v. Ekizian* (2013) 222 Cal.App.4th 419, 428, quoting *Ballard v. Titus* (1910) 157 Cal. 673, 681.) The improvements described in the Reply Declaration of Bruce J. Cardinal appear to be generally limited to those necessary to make the easement available for travel in a convenient manner. Furthermore, Plaintiffs' Complaint still contains allegations regarding Lot 2, which if true, would require the owners of Lot 2 to be added to the case as necessary parties.

The Motion is DENIED as to the request for attorney's fees. The court finds the imposition of attorney's fees for this motion would be unjust as there is a good faith dispute over whether the filing of the lis pendens is appropriate under these circumstances. (Code Civ. Proc., § 405.38.)