

**TENTATIVE RULINGS**

**FOR: April 4, 2019**

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. A (Historic Courthouse) at 8:30 a.m.**

**Conservatorship of Ryan Blom**

**26-67466**

SECOND ACCOUNT AND REPORT OF CO-CONSERVATORS

**TENTATIVE RULING:** The matter is continued to May 31, 2019, at 8:30 a.m. in Dept. A to allow the co-conservators to file an accounting. This is the second continuance. If an accounting is not completed by the next court date, the Court will consider issuing an OSC regarding failure to file an accounting and possible monetary sanctions. The clerk is directed to send notice to the parties.

.....  
**Conservatorship of Richard P. de Lone**

**26-68236**

REVIEW HEARING

**TENTATIVE RULING:** After a review of the matter, the Court finds the conservator is acting in the best interest of the conservatee. However, it appears the conservatee’s needs are not being met by his current placement. Thus, the case is set for a review hearing on September 10, 2019, at 8:30 a.m. in Dept. A to allow the co-conservators time to determine if a more appropriate placement can be found. The court investigator shall prepare a supplemental investigator report for the next hearing date limited to the status of the conservatee’s placement. The clerk is directed to send notice to the parties.

**PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.**

**Estate of Joan K. Douma**

**19PR000059**

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

**TENTATIVE RULING:** GRANT petition.

.....  
**Conservatorship of Janice Hoffman**

**26-68013**

REVIEW HEARING

**TENTATIVE RULING:** The matter is continued to June 28, 2019, at 8:30 a.m. in Dept. B. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

**CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.**

**Richard Kenneth Webster v. David Benjamin Hill**

**17CV000813**

(1) MOTION TO CONTINUE TRIAL DATE

**TENTATIVE RULING:** Defendant’s motion to continue trial date is DENIED.

A. Background

Plaintiff filed the complaint in this action on July 20, 2017. On February 28, 2018, the Court set the matter for trial on January 17, 2019. The evidence submitted shows that defendant conducted significant discovery relating to plaintiff’s injuries including interrogatories, subpoenas for medical records, and two defense medical examinations. Defendant took plaintiff’s deposition in October, 2018, and apparently made extensive inquiry regarding plaintiff’s injuries. Plaintiff testified during deposition that he anticipated having a second shoulder surgery. Plaintiff disclosed his expert witnesses in this matter on November 28, 2018.

On December 10, 2018, plaintiff moved ex-parte for an order continuing the trial date based on the instability of plaintiff’s right shoulder injuries. The moving papers explicitly declared that plaintiff was scheduled to undergo a second right shoulder surgery in January, 2019. At that time, defendant stipulated to a 90-day continuance. Trial was thereafter rescheduled to April 15, 2019, with trial management conference scheduled for April 11, 2019.

Plaintiff had the planned second shoulder surgery on February 22, 2019. Plaintiff notified defendant and provided defendant with updated medical records. On March 5, 2019, plaintiff submitted to defendant his expert witness reports (excepting an economic evaluation not yet prepared).

Between March 19, and March 21, 2019, defendant served ten expert witness deposition notices on plaintiff's counsel, for depositions to be held April 1 through 3. Plaintiff's counsel objected to each deposition notice on the ground that the deposition was scheduled after the discovery cut-off (March 27, 2019, based on an April 11, 2019 trial management conference date).

## B. Analysis

Defendant moves to further continue the trial in this matter citing plaintiff's second shoulder surgery and an asserted need to allow additional recovery time, and counsel's mistake in calculating the discovery cutoff based on an April 18 trial management conference date (rather than the actual April 11 date).

"To ensure the prompt disposition of civil cases, the dates assigned for a trial are firm. All parties and their counsel must regard the date set for trial as certain." (Cal. Rules of Court, rule 3.1332, subs. (a).) A party may move the court for a continuance of the date set for trial. However, "[t]he party must make the motion or application as soon as reasonably practical once the necessity for the continuance is discovered." (*Id.* at subs. (b).) Continuances of trials are disfavored and, "the court may grant a continuance only on an affirmative showing of good cause requiring the continuance." (*Id.* at subs. (c).)

Defendant fails to make a showing of good cause requiring the requested continuance. Defendant presents evidence that, "Plaintiff underwent a second shoulder surgery on February 22, 2019, and is still recovering from that surgery." (Pena Decl. in Support of Motion to Continue Trial Date at p.10:5-6.) Defendant further contends that "Plaintiff is still in a sling and the extent of his recovery is unknown." (Motion to Continue Trial Date at p.2:13-14. Finally, Defendant claims, "[u]ntil the shoulder has been given sufficient time to heal it will be impossible for the defense to determine if plaintiff's shoulder has fully healed or still has limitations." (*Id.* at p.2:18-19.)

First, plaintiff's second shoulder surgery was the ground on which the court granted the first continuance of trial from January 17 to April 11. Defendant presents no new information that would justify the need for additional continuance based on the same facts.

Next, defendant fails to cite authority supporting the proposition that a plaintiff in a personal injury case must be fully healed, or healed to a specific degree, prior to trial. The Court knows of none. Consequently, Defendant's claim that plaintiff is not fully healed does not constitute good cause to continue the trial date.

Defendant further contends that the excess carrier for defendant only recently became involved in the case. As a result, a continuance "would enhance meaningful settlement

discussions.” (Memo. in Support of Motion to Continue Trial Date at p.2:21-23.) The complaint in this action was filed over 20 months ago. Defendant fails to provide any explanation for why the excess carrier was not involved in the case earlier. Defendant also fails to explain how a continuation of the trial date would “enhance” settlement discussions.

Defendant makes several references to its failure to timely serve expert deposition notices. Defendant does not specifically argue that this failure justifies a continuance. The Court does not believe that it would. However, Defendant does suggest that if its motion for an order deeming the deposition notices timely is granted, “the time frame to complete expert discovery would be extremely compressed.” For the reasons set forth below, however, the motion for an order deeming the deposition notices timely is moot.

Related to the foregoing, Defendant finally argues that “CCP 473(2) [sic] provides its own basis for the continuance of trial.” (Memo. In Support of Motion to Continue Trial Date at p.8:10.)

The Court disagrees. “The Court may, upon such terms as may be just, relieve a party or his or her legal representative from a judgment, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (Code Civ. Proc. § 473, subs. (b).) Defendant contends the holding in *Zellerino v. Brown* (1991) 235 Cal.App.3d 1097 stands for the proposition that “a discovery demand [is] a proceeding within the meaning of CCP 473 and thus relief for a mistake in a discovery demand [is] available.” (Defendant’s Memorandum in Support of Motion to Deem Expert Deposition Notices Timely at p.5:8-9.)

Defendant’s reading of *Zellerino* is overbroad. “Relief under section 473 is unavailable when the discovery act provides analogous, if more limited, relief.” (*Zellerino v. Brown*, 235 Cal.App.3d at 1107.) *Zellerino* involved the defective demand for exchange of expert trial witnesses pursuant to Code of Civil Procedure section 2034 in Chapter 18 of the Civil Discovery Act. The court specifically held “as nothing in the section governing expert witness disclosure provides for relief from failure to file timely demand for exchange of expert trial witnesses information, relief is available under section 473.” (*Id.*)

Here, the “proceeding(s)” from which Defendant seeks relief are, alternatively, the discovery cutoff date provided for in Chapter 8 of the Civil Discovery Act (Code Civ. Proc. § 2024, *et seq.*) and the trial date. Section 2024.050 provides relief from the consequences of the discovery cutoff date by providing a mechanism by which parties may obtain discovery closer to the trial date and/or move to reopen discovery. Because the discovery act provides specific relief for the discovery proceeding at issue here, section 473 is unavailable. (*Zellerino v. Brown*, 235 Cal.App.3d at 1107.) Analogously, as discussed at length above, California Rules of Court rule 3.1332 provides relief from the trial date by providing a mechanism for obtaining a continuance.

For the foregoing reasons, Defendant’s motion to continue trial is DENIED. The Court exercised its discretion and did not consider Defendant’s reply as it was filed after the deadline ordered in the amended March 27, 2019 Minute Order, and the document was filed barely over an hour before the posting of the tentative ruling. (Cal. Rules of Court, rule 3.1300(d).)

(2) MOTION TO DEEM EXPERT DEPOSITION NOTICES TIMELY

**TENTATIVE RULING:** Defendant's motion to deem expert deposition notices timely is MOOT. The expert depositions at issue were scheduled to take place on April 1 – 3. Those dates have passed. An order from the Court deeming the deposition notices timely would therefore be inconsequential.

The Court notes, however, that even if Defendant's motion were not moot, Defendant would not be entitled to relief under Code of Civil Procedure section 473, based on the reasoning set forth above.