TENTATIVE RULINGS

FOR: April 11, 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.

Estate of Bonnie Jo Daly **19PR000038**

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

TENTATIVE RULING: GRANT petition subject to the filing of the duties and liabilities form. Petitioner shall file the proposed letters. The Court will lodge the original will filed with the petition.

Conservatorship of John W. Lafeber **19PR000058**

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

APPEARANCE REQUIRED. The proposed conservatee need not appear.

Conservatorship of Katherine Alison Taylor **26-09822**

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the co-conservators are acting in the best interest of the conservatee. Because the conservatee lives with

the co-conservators in Oxnard, California, the Court transfers this matter to the Ventura County Superior Court.

The case is set for a review hearing on June 11, 2019 at 8:30 a.m. in Dept. A, at the Napa County Superior Court. The hearing is to confirm receipt of the notification from the Ventura County Superior Court that it has received the transferred case. If the notification has not been made, this Court will make a reasonable inquiry into the status of the matter.

The co-conservators are instructed to contact the Civil Filing Division at the Napa County Superior Court to pay, subject to any applicable fee waiver, the: (1) transfer fees from the Napa County Superior Court; and (2) the filing fee for the Ventura County Superior Court. If the co-conservators seek to have any fees waived in the Ventura County Superior Court, they must submit to the Civil Filing Division at the Napa County Superior Court a new completed fee waiver application for transmittal.

The clerk is directed to transmit to the clerk of the court in Ventura County a certified or exemplified copy of this order, together with all papers in the proceeding on file. The clerk is directed to send notice to the parties.

Conservatorship of Max Hendrickson **26-58414**

REVIEW HEARING

TENTATIVE RULING: Based on the report of the court investigator, the Court determines by clear and convincing evidence that the conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process, and therefore orders the conservatee disqualified from voting pursuant to Elections Code section 2208.

After a review of the matter, the Court finds the co-conservators are acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on April 9, 2021, at 8:30 a.m. in Dept. A. 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. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Lawrence R. Solomon, *et al.* v. John G. Belcher, *et al.* **17CV001464**

MOTION TO DISQUALIFY AND EXCLUDE TESTIMONY OF EXPERT WITNESS JON WEBB

APPEARANCE REQUIRED: Plaintiffs' motion to exclude testimony of expert witness Jon Webb is GRANTED. In the context of this litigation, the court finds the expert witness

disclosure for Mr. Webb was too vague to adequately encompass his new opinion that the 1951 survey should prevail over the 1978 survey.

Defendants' expert witness disclosure for Jon Webb provides that he would be testifying "regarding the surveyed location of the access road and easement, as well as possibly the topographical survey of the drainage area at issue in the complaint." While Defendants certainly made clear throughout this litigation that they dispute Plaintiffs' claim that the easement at issue in this case is interrupted by a triangular encroachment, both sides have consistently referred to the 1978 survey as the operative survey. Until Mr. Webb's deposition, which occurred after the deadline for Plaintiffs to disclose expert witnesses had passed, Defendants never gave any indication they were disputing the accuracy of the 1978 survey. Under these circumstances, the Court finds that the failure of the Webb disclosure to include any general substance regarding the now threshold dispute between the 1951 and 1978 surveys violated the spirit of section 2034.260 of the Civil Discovery Act and resulted in unfair surprise to Plaintiffs.

Defendants argue, in essence, that the surprise to Plaintiffs is not unfair and should not be blamed on the vagueness of the Webb disclosure because it was incumbent on Defendants to have designated a survey expert simply for purposes of proving their underlying claim regarding the encroachment. While the Court certainly agrees that designation of a survey expert by Plaintiffs for this purpose would have been prudent, the Court does not agree that it was absolutely necessary in the absence of a dispute as to the accuracy of the 1978 survey. On this point, Defendants cite *Poseidon Development, Inc. v Woodland Lane Estate, LLC* (2007) 152 Cal.App.4th 1106, for the proposition that "recorded surveys and deeds are not sufficient alone to prove [Plaintiffs'] claim because the court may not accept the contents of such documents as true for the matters asserted therein." While *Poseidon* is one of many cases establishing the well-established rule that the court may not judicially notice the truth of such documents, the court is unaware of any case establishing that these types of documents cannot be presented as evidence for the court to consider and, particularly in the absence of contrary evidence, ultimately find as persuasive to prove particular facts in a case.

The Court has no discretion in crafting a remedy for what it finds here to be a disclosure violation as to Mr. Webb's proposed testimony—the only option is exclusion of the new opinion regarding the 1978 survey. (See *Bonds v. Roy* (1999) 20 Cal.4th 140, 149.) The court notes, however, that Defendants do have the option of moving for leave to amend to expand the scope of the expert testimony. (See *ibid*. ("[t]o expand the scope of an expert's testimony beyond what is stated in the declaration, a party must successfully move for leave to amend the declaration…").) Where, as here, the trial date has already been continued, leave to amend for this purpose would likely be granted, but would probably include a condition that Plaintiffs also be granted leave to disclose an expert to rebut the new opinion. Under these circumstances, the Court urges the parties to meet and confer regarding a stipulation to the same to avoid unnecessary motion practice.

Counsels' appearance is required for purposes of re-setting the trial date.

Susan DeMatai v. Wendell Coleman, et al. **18CV000049**

MOTION TO BE RELIEVED AS GUARDIAN AD LITEM

TENTATIVE RULING: The motion is GRANTED.

Wendell Coleman, Sr. v. Wendell Coleman, Jr., et al. **18CV000622**

MOTION TO BE RELIEVED AS GUARDIAN AD LITEM

TENTATIVE RULING: The motion is GRANTED.

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

Conservatorship of Phillip Warren **17PR000217**

REVIEW HEARING AND ACCOUNTING

APPEARANCE REQUIRED to discuss the procedural history and the need for an accounting.

Guardianship of Isabel Parrado **17PR000271**

ACCOUNTING

TENTATIVE RULING: There is no accounting on file as ordered in the February 13, 2018 Minute Order. Moreover, the guardian has not filed Judicial Council form GC-251. The matter is continued to May 31, 2019, at 8:30 a.m. in Dept. B to allow the guardian to file an accounting and the GC-251 form. The clerk is directed to send notice to the parties.

Conservatorship of Carli Aileene Bell **18PR000051**

REVIEW HEARING

TENTATIVE RULING: Based on the report of the court investigator, the Court determines by clear and convincing evidence that the conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process, and therefore orders the conservatee disqualified from voting pursuant to Elections Code section 2208.

After a review of the matter, the Court finds the conservator is acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on April 9, 2021, 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.

Estate of Amalia H. Segura **18PR000183**

PETITION FOR DETERMINATION OF OWNERSHIP OF PROPERTY AND FOR ORDER FOR SALE OF THE PROPERTY

TENTATIVE RULING: The notice does not comply with Probate Code section 851, subdivision (c), by providing a description of the real property that is subject of the § 850 petition sufficient to provide adequate notice to any party who may have an interest in the property or a statement advising any person interest in the property that they may file a response to the petition. The matter is continued to May 24, 2019, at 8:30 a.m. in Dept. B to allow for proper notice.

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

Thomas D. Vence v. Cindy Tzafopoulos, *et al.* **19CV000484**

PETITION FOR WRIT OF MANDATE

TENTATIVE RULING: Petitioner's Request for Judicial Notice is GRANTED IN PART. The Court takes judicial notice of the following: the Argument in Favor of Measure F attached as Exhibit C to Petitioner's Request for Judicial Notice, but not for the truth of the matters contained therein; The Rebuttal to Argument Against Measure F attached as Exhibit D to Petitioner's Request for Judicial Notice, but not for the truth of the matters contained therein; and City of St. Helena Resolution No. 2009-24 attached as Exhibit E to Petitioner's Request for Judicial Notice, but not for the truth of the matters contained therein.

The Petition for writ of mandate is DENIED. The matter is set for OSC re: Dismissal on Thursday, May 23, 2019, 8:30 a.m., in Dept. B.

A. Factual Background

On November 27, 2018, the City Council of the City of St. Helena (City) adopted an ordinance known as the "City of St. Helena Mobilehome Park Rent Stabilization Ordinance" (RSO). Certain citizens of the City, including Petitioner filed a petition and referendum against the adoption of the ordinance. The City was then required to either repeal the RSO or present it as a referendum to all of the voters. On February 26, 2019, the City Council considered a resolution calling for a special election on June 4, 2019, to present to St. Helena voters the question of whether to adopt the RSO. The agenda packet prepared by staff for the meeting

included a draft resolution. This resolution called for the RSO to be submitted to the voters as Measure F, and contained the following proposed ballot question[1]:

> "Shall Ordinance No. 2018-9 be adopted to 1) establish a voluntary rent stabilization process for St. Helena mobile home park residents who choose to participate; 2) provide mobile home park owners a just and reasonable return on investment; and 3) create a dispute resolution process for the park owner and residents in the event the owner proposes an annual rent increase that is above the permissible limit?" (Verified Petition at p. 6:15-19.)" (Draft Question.)

On February 25, 2019, Respondent City Clerk received a letter from Petitioner's attorney claiming that certain language in the ballot question was false, misleading, and argumentative in violations of the Elections Code. In reaction to the points raised in the letter, the City's vice-mayor and a city councilmember produced and distributed to City Council members the following alternative ballot question language:

> "Shall Ordinance No. 2018-9 be adopted to 1) establish a rent stabilization program for St. Helena mobile home park residents who opt into the program by signing a lease of twelve months or less; 2) provide mobile home park owners a just and reasonable return on investment; and 3) create a dispute resolution process for the park owner and residents if the owner proposes an annual rent increase that is above the permissible limit?" (Final Question.)

At the February 26, 2019 meeting, the City Council adopted the resolution as Resolution 2019-24, expressly with the *revised* Final Question language. Thereafter, pursuant to the resolution and Elections Code, Respondent City Clerk notified Napa County Registrar of Voters of the special election and provided him with a copy of Measure F. The City then began the process of assembling the pamphlet to be distributed to voters prior to the special election. The City Council prepared arguments in favor of Measure F, and the city attorney prepared an impartial analysis.

The evidence shows that the City Clerk received, on March 15, 2019, the proposed argument against Measure F. The City Clerk then received, on March 22, 2019, the rebuttal to the argument in favor of Measure F. Importantly, there is no suggestion by Respondent that any of these materials were received late or after their respective deadline. Pursuant to the Elections Code, The City Clerk maintained, in her office and for the purpose of public inspection: the text of Ordinance 2019-24, including the ballot title and question (which together form the "ballot label"), arguments for and against, and rebuttal to argument against the Measure, and the city attorney's impartial analysis.

On March 25, 2019, Petitioner filed the instant petition challenging the propriety, under the Elections Code, of the Measure F ballot question, the argument in favor of Measure F, and

[1] A ballot question is the text of the yes/no question that is to appear on the ballot.

the rebuttal to the argument against Measure F, on the grounds that each is false, misleading, and/or improperly argumentative.

B. Timeliness of Petition

Respondents urge that the Petition is time-barred pursuant to Election Code section 9295.[2] The Court disagrees.

Section 9295 provides that "the election official shall make a copy of the material referred to in Sections 9223, 9280, 9281, and 9285 available for public examination in the elections official's office for a period of 10 calendar days immediately following the filing deadline for submission of those materials." (§ 9295, subs. (a).) These materials consist of: the ordinance or measure to be submitted to the voters (§ 9223); the impartial analysis of the measure by the city attorney (§ 9280); arguments in favor and against the ballot measure or ordinance (§ 9281); and rebuttal arguments (§9285). The statute then provides, "[d]uring the 10-calendar-day public examination period provided by this section, any voter of the jurisdiction . . . may seek a writ of mandate or an injunction requiring any or all of the materials to be amended or deleted." (§ 9295, subs. (b)(1).)

Respondents urge that the deadline began to run on March 1, 2019, when the City Clerk made the ordinance available to the public. Under this theory, the deadline for filing a petition challenging the rebuttal would have run on March 12, 2019, ten days *before* the rebuttal was received by the City Clerk. Respondents' interpretation is therefore unsupportable.

The evidence shows that the time period in this case began to run on March 23, 2019 (the date immediately following the filing deadline for submitting the rebuttal). (Tzafopoulos Decl. at p.6:16-20, and Exh. 9.) The Petition, filed on March 25, 2019 was therefore filed within the prescribed 10-day period.[3]

For the foregoing reasons, the Court finds Petitioners claims are not time-barred by section 9295.

C. First Cause of Action – Measure F Ballot Label

Petitioner prays the Court amend the ballot label for Measure F, contending that the label as currently proposed is false, misleading, and argumentative. The Court disagrees.

Section 13314 provides that "an elector may seek a writ of mandate alleging . . . that any neglect of duty has occurred or is about to occur." (Elec. Code § 13314, subs. (a)(1).) Such a peremptory writ shall issue only upon proof that the neglect is in violation of the [elections] code or constitution, and that issuance of the writ will not substantially interfere with the conduct of the election. (*Id.* at subs. (a)(2).)

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[2] All statutory citations herein are to the Elections Code unless otherwise stated.

[3] Even if section 9295 were interpreted to provide a *separate* 10-day period for challenging each of the enumerated materials, the Petition would be timely as to the argument in favor (filed March 15). Moreover, as Respondents acknowledge, the statute does not include the ballot question among the materials it governs. The Court finds no absurdity in the legislature's apparent election to treat ballot labels – which actually appear on the ballot - differently from materials appearing only in the voter pamphlet.

McDonough v. Super. Ct. presents a nearly identical factual context – a petition for writ of mandate under sections 9295 and 13314 based on allegations that the ballot question was misleading and biased in favor of passage. (*McDonough v. Super Ct.*, *supra*, 204 Cal.App.4th at 1172.) There, the court held that such writ "may be issued 'only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of this chapter, and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law.'" (*Id.* at 1173, quoting § 9295, subs. (b)(2)). The court noted that this same writ procedure is also mandated by section 9092 for statewide election materials, and section 9190 for county election materials. (*Id.*) "The constitutional guarantees of equal protection and freedom of speech as applied to public elections 'mean, in practical effect, that the wording on a ballot or the structure of the ballot cannot favor a particular partisan position.'" (*Id.* at 1174, quoting *Huntington Beach City Council v. Super Ct.* (2002) 94 Cal.App.4th 1417, 1433.)

Initially, we note that all but two of Petitioner's requested changes appear already to have been made to the ballot question.

Petitioner alleges that the subject ballot label language is the Draft Question. The evidence does not support this allegation. Rather, the evidence shows that the Final Question is the ballot label language properly at issue.[4]

Petitioner prays for a writ of mandate directing Respondents to alter the ballot label language as follows (proposed deletions in ~~strikethrough~~, additions in *italics*):

> "Shall Ordinance No. 2018-9 be adopted to 1) establish a ~~voluntary~~ rent ~~stabilization~~ *control* process for St. Helena mobile home park ~~residents who choose to participate~~ *owners*; 2) provide mobile home park owners a just and reasonable return on investment; and 3) create a dispute resolution process for the park owner and residents in the event the owner proposes an annual rent increase that is above the permissible limit?" (Verified Petition at p. 11:18-21.)

The Final Question language is as follows:

> "Shall Ordinance No. 2018-9 be adopted to 1) establish a rent stabilization program for St. Helena mobile home park residents who opt into the program by signing a lease of twelve months or less; 2) provide mobile home park owners a just and reasonable return on investment; and 3) create a dispute resolution process for the park owner and residents if the owner proposes an annual rent increase that is above the permissible limit?" (Tzafopoulos Decl. at pp. 4:11 – 5:27, p. 6:25-26, Exhs. 5, 6, and 10.)

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[4] Respondents urge the Court to rule in their favor on Petitioner's First Cause of Action on this ground. As described herein below, some of the ballot label language Petitioner challenges persists in the Final Question. For this reason, the Court elects to proceed to the merits of Petitioner's claims as if they were properly made against the Final Question language.

The words "voluntary" and "choose," which were of particular concern to Petitioner, are removed, and Petitioner's arguments relating thereto are moot. The only challenges, relating to the ballot label, that remain are: the use of "stabilization" rather than "control," and the phrase "residents who choose to participate" rather than the word "owners."

Petitioner claims the phrase "rent stabilization" is partisan and/or favors a particular position. Petitioner explains his reasoning as follows. "Stabilization is a loaded term in this context because nothing suggests that rents at mobile home parks are unstable."

The Court disagrees. There is nothing inherently partisan about use of the word stabilization rather than control. The use of the word in this context is equally, or more likely to communicate an effort to ensure that rents *remain* stable over time.

Second, Petitioner fails to suggest how, even under his proffered interpretation, use of the term stabilization favors a particular position. The Court finds that the terms are commonly used interchangeably. Petitioner submits no evidence tending to show any such favor. Therefore, Petitioner fails to show by proof that the material in question is inconsistent with the obligation to remain impartial. (§ 13314, *McDonough v. Super Ct., supra*, 204 Cal.App.4th at 1173-74.)

The Court is similarly unmoved by Petitioner's arguments in support of his claim that the phrase, "for mobile home park residents" renders the ballot label false and misleading. Petitioner claims that the ordinance "only applies to owners of mobile home parks." Such suggestion is patently false. The proposed ordinance would impact both mobile home park residents and mobile home park owners / landlords.

"[T]he completeness of a ballot question is not the test; the test is whether it is partial [to one side or another] (or false or misleading)." *Martinez v. Super. Ct., supra*, 142 Cal.App.4th at 1248.

The Court does not find the proposed language "for mobile home park residents" false or misleading. The ordinance, if passed, would "establish a rent stabilization program" that would have certain consequences for mobile home park residents who opted to take advantage of its provisions. It can, therefore, be said to operate "for mobile home park residents."

For the foregoing reasons, the Court finds for Respondents on Petitioner's First Cause of Action.

D. <u>Second and Third Causes of Action – Arguments in Favor of Measure F and Rebuttal to Argument Against Measure F.</u>

Voter pamphlet arguments, of course, are expected to be partial to a particular viewpoint. Section 9295 provides that a writ of mandate or injunction against a voter pamphlet argument, "shall be issued only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of this chapter, and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law." (§ 9295, subs. (b)(2).) In determining whether statements made in voter pamphlet arguments are false or misleading, "courts look to whether the challenged

statement is subject to verifiability, as distinct from 'typical hyperbole and opinionated comments common to political debate.'" (*Huntington Beach City Council v. Super. Ct.* (2002) 94 Cal.app.4th 1417, 1432. quoting *San Francisco Forty-Niners v. Nishioka* (1999) 75 Cal.App.4th 637, 649.) "An 'outright falsehood' or a statement that is 'objectively untrue' may be stricken." (*Ibid.*) In addition, a statement that may be literally true may be stricken if materially misleading in context. (*Id.*) However, "the standard, as defined by the Legislature, is necessarily a high one: Courts may intervene *only* if clear and convincing evidence shows the statement to be false or misleading." (*Id.*)

Petitioner argues that the phrase, "for park residents, rent stabilization is a CHOICE" in the argument in favor of Measure F is false and misleading. He also prays the Court strike other similar language in the argument and rebuttal using terms like "choice" and "opt-in."[5] In his Memorandum in support of the petition, Petitioner's argument amounts to the following. Under Measure F, mobile home park residents would not be able to enter into either a rent stabilized lease of longer than 12 months, or leases shorter than 12 months without rent stabilization. Ergo, a statement is false if it suggests that rent stabilization is a "choice" or that residents may "opt in" or "opt out" of rent stabilization.

It does not follow that residents would be without a choice simply because these particular selections would not be available. The evidence submitted shows that pursuant to Measure F, residents would have a choice between: (a) a lease of less than 12 months subject to rent stabilization or, (b) a lease of 12 months or longer that is not subject to rent stabilization. Petitioner's argument is akin to suggesting that a new car buyer is not free to choose a sunroof, where a sunroof is only available in a package that includes other options. It would be inaccurate to say that because a sunroof is not available a la carte, such a buyer does not have the choice of a sunroof. Similarly, it does not follow that, simply because rent stabilization would be available only on leases of less than 12 months' term, a mobile home park resident will not be able to choose a rent stabilized lease. Therefore, language suggesting a choice is not objectively false.

Petitioner refines his argument by suggesting that *if* mobile home parks did not offer long-term leases, all residents would be bound to participate in the rent stabilization program. First, Petitioner fails to present any evidence, let alone clear and convincing proof, that mobile home parks do not now or likely will not in the future offer long-term leases. As such, he fails to meet his burden under section 9295. Moreover, the mere *possibility* that a sequence of events *could* lead to a future scenario that would be inconsistent with a statement on a voter pamphlet argument is insufficient to render that statement false or misleading.

For the foregoing reasons, the Court finds for Respondents on Petitioner's Second and Third Causes of Action.

E. <u>Conclusion</u>

[5] The exact phrases Petitioner objects to are: "A resident opts in by signing a renewable lease of 12 months or less." "When a home subject to a stabilized lease is sold, the purchaser may continue to opt in and maintain the base rent." "Measure F is not 'mandatory.'" "Tenants must affirmatively choose to opt into Measure F. All tenants have that choice upon lease expiration." And "They are not free to participate. Why vote 'No' and revoke the choice for those tenants who want it." (Verified Petition at p. 11:26 – 12:14.)

Based on the foregoing, the Petition is hereby DENIED.