

TENTATIVE RULINGS

FOR: April 21, 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.)

Estate of James Pail Gondola, Jr.

17PR000068

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

TENTATIVE RULING: GRANT petition.

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Conservatorship of Mary Diane Van Laanen

26-49772

FOURTH ACCOUNT CURRENT AND REPORT OF CONSERVATOR, AND PETITION REQUESTING APPROVAL OF ACCOUNTING

APPEARANCE REQUIRED. Conservators should also be prepared to address the status of the bond. (Prob. Code § 2320.)

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Conservatorship of Rosalia Mendez

PR25788

SEVENTH ACCOUNTING AND REVIEW HEARING

TENTATIVE RULING: The matter is continued to May 24, 2017, at 8:30 a.m. in Dept. F to allow the co-conservators to file an accounting. The co-conservators also are instructed to file: (1) Notice of Conservatee’s Rights (Judicial Council form GC-341) mailed to relatives of the conservatee within the second degree; and (2) Inventory and Appraisal (GC-040) that is properly served (GC-042).

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

Nellie Flash v. GGNSC Equity Holdings, LLC, et al.

16CV000782

DEFENDANT DR. GROTEN’S DEMURRER TO PLAINTIFF’S FIRST CAUSE OF ACTION FOR ELDER ABUSE IN THE SECOND AMENDED COMPLAINT

TENTATIVE RULING: Defendant’s Demurrer is OVERRULED. “[A] claim of neglect under the Elder Abuse Act requires a caretaking or custodial relationship — where a person has assumed significant responsibility for attending to one or more of those basic needs of the elder or dependent adult that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance.” (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 155 (*Winn*)). The allegations added to the Second Amended Complaint from 3:26 through 5:4 are sufficient to allege a caretaking or custodial relationship between Defendant Dr. Groten and Ms. Flash.

Defendant is to file an answer within 20 days of the date Plaintiff serves notice of entry of the court’s order.

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Brian John Deutsch v. Michael Perreault, et al.

26-66780

PLAINTIFFS’ MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

TENTATIVE RULING: Plaintiffs’ Motion is DENIED. Plaintiffs’ Motion seeks to add a cause of action for Breach of Mandatory Duties pursuant to Government Code section 815.6, the same argument Plaintiffs raised in opposition to Defendant’s Motion for Summary Judgment. However, this claim fails because the MOU is not an enactment under Government Code section 815.6. Resolution No. 2010-088 simply authorizes the City Manager to execute the MOU; it does not enact the MOU as a rule or statute.

Plaintiffs’ Motion appears to be a transparent attempt to avoid summary judgment. When a party’s underlying objective in seeking leave to amend when a summary judgment motion is under consideration is to change their theory of recovery, a court may grant summary judgment without granting leave to amend. (See *Hobson v. Raychem Corp.* (1999) 73 Cal.App.4th 614, 625-626, disapproved on another point in *Colmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019, 1031, fn. 6.) “[T]he facts submitted in support of and in opposition to the summary judgment motion permitted the court to conclude that [Plaintiff] would be barred as a matter of law under either theory. An appropriate analogy would be an attempt to amend a complaint, which would apparently be barred by statute of limitations, to state a new date of discovery which would also be barred by the statute of limitations.” (*Id.* at p. 626.) The facts submitted in support of and in opposition to Defendant’s Motion for Summary Judgment permits the Court to conclude that Plaintiffs cannot prevail on a claim under Government Code section 815.6.