

**TENTATIVE RULINGS**

**FOR: May 9, 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. Rodney Stone, Dept. C (Historic Courthouse)**

**Conservatorship of Dylan Edward Miller**

**16PR000029**

REVIEW HEARING

**TENTATIVE RULING:** After a review of the matter, the court finds the Conservators are 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 May 9, 2019 at 8:30 a.m. in Dept. 2. 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.

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**Estate of Douglas C. Howard**

**16PR000076**

FIRST AND FINAL REPORT OF CO-EXECUTRIXES ON WAIVER OF ACCOUNT AND PETITION FOR ALLOWANCE OF STATUTORY COMPENSATION TO ATTORNEY FOR ORDINARY SERVICES AND FOR FINAL DISTRIBUTION

**TENTATIVE RULING:** GRANT Petition.

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**In the Matter of Constance Kaanii Cleaver**

**17CV000285**

PETITION FOR CHANGE OF NAME

**TENTATIVE RULING:** Notice has been properly published and no written objections have been filed. The petition for name change is GRANTED without need for appearance.

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**In the Matter of Kellie Ann Williams**

**17CV000328**

PETITION FOR CHANGE OF NAME AND GENDER

**TENTATIVE RULING:** The Petition is GRANTED without need for appearance. Petitioner shall file a certified copy of the Court's decree within 30 calendar days with the California Secretary of State and since a new birth certificate is requested, with the State Registrar. (Health & Safety Code, § 103435.) Upon its receipt, the State Registrar shall establish a new birth certificate as provided in the Health & Safety Code.

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**Conservatorship of Michael J. Miller**

**17PR000069**

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

**APPEARANCE REQUIRED**

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**Conservatorship of Richard Lloyd Fisher**

**26-67782**

FIRST ACCOUNTING AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF PERSON AND ESTATE, FOR ATTORNEY FEES, AND FOR TERMINATION OF CONSERVATORSHIP

**TENTATIVE RULING:** GRANT Petition, including fees as prayed.

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**Estate of Elfrada Halley Sheveland**

**PR18712**

THIRTY-SEVENTH ACCOUNT AND REPORT OF TRUSTEE AND PETITION FOR ITS SETTLEMENT

**TENTATIVE RULING:** GRANT petition, including fees as prayed.

**CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. C (Historic Courthouse)**

**Jordan Kendall v. Meritage Resort and Spa LLC, et al.**

**16CV000075**

MOTION FOR LEAVE TO FILE CROSS-COMPLAINT

**TENTATIVE RULING:** Defendants the Meritage Resort, LLC and Pacific Hospitality Group Ventures, Inc.'s motion for leave to file a cross-complaint is GRANTED. Defendants shall file their cross-complaint within 10 calendar days of service of notice of entry of order. All future

dates are vacated, including the July 20, 2017 Mandatory Settlement Conference. A Case Management Conference is set for July 20, 2017, at 8:30 a.m. in Dept. 2.

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**In Re: 33 Belvedere Court Napa, CA 94559**

**17CV000114**

MOTION ON ORDER TO DEPOSIT SURPLUS FUNDS, DISCHARGING PETITIONER OF FURTHER RESPONSIBILITY FOR DISBURSING OF FUNDS; AND EXCUSING PETITIONER FROM FURTHER HEARINGS OR PARTICIPATION

**TENTATIVE RULING:** The Motion is GRANTED. Petitioner is to deposit the funds with the clerk of the court by May 16, 2017. A hearing pursuant to Civil Code section 2924j, subdivision (d), is set for July 20, 2017 at 8:30 a.m. in Dept. F. The clerk is to give notice to the parties.

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**California Capital v. A.O. Smith Corp.; Broan-Nutone LLC**

**26-66283**

MOTION FOR LEAVE TO FILE PLAINTIFF'S SECOND AMENDED COMPLAINT

**TENTATIVE RULING:** The Motion is GRANTED, pursuant to Code of Civil Procedure section 473, subdivision (a). "California allows great liberality in the amendment of pleadings, particularly when the only change is a substitution of parties without alteration of the substantive grounds of the suit." (*Olsen v. Lockheed Aircraft Corp.* (1965) 237 Cal.App.2d 737, 741.) As the Court of Appeal in *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1279 explained:

A claim that is first asserted by amendment after the limitations period has passed will not be barred so long as the amendment is based on the same general set of facts and involves the same injury. This holds true even where the amendment names or substitutes a new party plaintiff, as long as the new plaintiff is not seeking to enforce an independent right or to impose a greater liability on the defendant. (*Klopstock v. Superior Court* (1941) 17 Cal. 2d 13, 20622 [108 P.2d 906] [plaintiff entitled to benefit of relation back to substitute proper party plaintiff as long as cause of action against defendant has not factually changed such that amendment asserts wholly distinct legal obligation]; *Pasadena Hospital Assn., Ltd. v. Superior Court* (1988) 204 Cal. App. 3d 1031, 103461037 [251 Cal. Rptr. 686] [relation-back doctrine will apply where plaintiff timely filed complaint and later sought amendment to add his professional corporation as a plaintiff because both plaintiffs were asserting the same injury and damages and the substantive basis of the cause of action had not changed]; *Garrison v. Board of Directors* (1995) 36 Cal.App.4th 1670 [43 Cal. Rptr. 2d 214]; [\*\*\*42] [relation-back doctrine applied to save identical cause of action stated by substituted plaintiff since no new or different obligation was alleged by amendment].)

Plaintiff's Motion to substitute the name of the wholly owned subsidiary in place of the parent corporation, without any substantive change to the underlying claim, is properly allowed.

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**Krueger Bros. Builders v. Renee Morales, et al.**

**26-67665**

MOTION FOR JUDGMENT ON THE PLEADINGS

**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 Plaintiff's counsel forthwith and advise Plaintiff's counsel of Local Rule 2.9 and the Court's tentative ruling procedure. If Defendant's counsel is unable to contact Plaintiff's counsel prior to the hearing, Defendant's counsel shall be available at the hearing, in person or by telephone, in the event Plaintiff's counsel appears without following the procedures set forth in Local Rule 2.9.

The Motion is GRANTED WITH LEAVE TO AMEND. "The requirements for pleading fraud in most cases is well established: fraud must be pled specifically; general and conclusory allegations do not suffice. Thus the policy of liberal construction of the pleadings will not ordinarily be invoked to sustain a pleading defective in any material respect." (*Morgan v. AT&T Wireless Services, Inc.* (2009) 177 Cal.App.4th 1235, 1261-1262 (internal quotations and citations omitted).) "This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered." (*Id.* at p. 1262, (internal quotations and citations omitted).) Plaintiff's arguments in opposition include allegations which do not appear in the Complaint.

Any amended complaint shall be filed and served within 10 days of the date Defendant serves notice of entry of the court's order. (Code Civ. Proc., § 472b.)