

## TENTATIVE RULINGS

**FOR: August 3, 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.

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

**Felipe Lopez v. Constellation Brands, et al.**

**26-65500**

#### 1) PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

**TENTATIVE RULING:** Plaintiff's Motion is GRANTED. The Court will sign the proposed order, and insert the following dates: Hearing on Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees and Representative Plaintiff Enhancement Award = December 13, 2017 at 8:30 a.m. in Dept. F; Effective Date of Settlement = December 14, 2017; Defendant to deposit Maximum Settlement Amount to Settlement Administrator = December 29, 2017; Settlement Administrator to Distribute Funds = January 12, 2018.

#### 2) PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

**TENTATIVE RULING:** Plaintiff's Motion is VACATED in light of the settlement above.

**PROBATE CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)**

**Conservatorship of Anna-Claire Emily DeWitt**

**17PR000124**

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON ó  
LIMITED CONSERVATORSHIP

**APPEARANCE REQUIRED.** The proposed conservatee need not appear.

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**Conservatorship of William C. Whitt**

**17PR000135**

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON  
AND ESTATE

**APPEARANCE REQUIRED**

**CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)**

**James Baskett v. Raja Development Company, Inc., et al.**

**16CV001003**

1) CROSS-DEFENDANT JAMES BASKETTóS DEMURRER TO THE THIRD CAUSE OF  
ACTION (FOR FRAUD) OF THE FIRST AMENDED CROSS-COMPLAINT

**TENTATIVE RULING:** The meet and confer requirements of Code of Civil Procedure section 430.41, subdivision (a) ó õthe demurring party shall meet and confer **in person or by telephone** with the party who filed the pleadingö ó have not been met. Hearing on the Demurrer is continued to August 23, 2017 at 8:30 a.m. in Dept. I to allow time for compliance with the meet and confer procedure outlined in Code of Civil Procedure section 430.41. The Case Management Conference currently set for August 16, 2017 is also continued for hearing at the same time as Cross-DefendantóS Demurrer on August 23, 2017.

2) CROSS-DEFENDANT JAMES BASKETTóS MOTION TO STRIKE SPECIFIED  
ALLEGATIONS SET FORTH IN THE FIRST AMENDED CROSS-COMPLAINT

**TENTATIVE RULING:** Hearing on this Motion is also continued August 23, 2017 at 8:30 a.m. in Dept. I to be heard as the same time as Cross-DefendantóS Demurrer.

3) DEMURRER BY CROSS-DEFENDANTS BRAD BRANAGAN, BRAD BRANAGAN INSURANCE AGENCY, INC., AND WINE COUNTRY INSURANCE SERVICES TO SEVENTH CAUSE OF ACTION OF FIRST AMENDED CROSS-COMPLAINT

**TENTATIVE RULING:** The Demurrer is SUSTAINED WITHOUT LEAVE TO AMEND. Cross-Complainants have not alleged facts supporting a claim for breach of fiduciary duty. Cross-Complainants have alleged that Cross-Defendants were Cross-Complainants' insurance broker. The California Supreme Court has determined that "[t]he insurer-insured relationship, however, is not a true 'fiduciary relationship' in the same sense as the relationship between trustee and beneficiary, or attorney and client (see *Croskey et al.*, Cal. Practice Guide: Insurance Litigation (The Rutter Group 2000) ¶ 11:150, p. 11-31.)" (*Vu v. Prudential Property & Casualty Insurance Company* (2001) 26 Cal.4th 1142, 1150 (*Vu*)). Subsequently, in *Hydro-Mill Co., Inc. v. Hayward, Tilton & Rolapp Ins. Associates, Inc.* (2004) 115 Cal.App.4th 1145, 1158, the Court of Appeal, in reviewing *Vu* and *Eddy v. Sharp* (1988) 199 Cal.App.3d 858, reasoned that "[i]f an insurer is not a fiduciary, then arguably, neither is a broker." The Court of Appeal noted that while a broker was not a fiduciary, it may have fiduciary duties in connection with particular financial transactions. (*Id.*) Cross-Complainants have not alleged Cross-Defendants breached their fiduciary duties in connection with any particular financial transactions.