

TENTATIVE RULINGS

FOR: August 8, 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. I (Criminal Courts Bldg.-1111 Third St.)

Conservatorship of Jeffrey Monroe

26-67844

HEARING RE: REMOVAL OF CONSERVATOR AND APPOINTMENT OF PUBLIC GUARDIAN

APPEARANCE REQUIRED

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

Diane S. Silver v. Rajesh Sisodia, et al.

16CV000746

DEMURRER TO THE FIRST AMENDED COMPLAINT, AND MOTION TO STRIKE (ANTI-SLAPP)

TENTATIVE RULING:

Plaintiff Diane S. Silver included letter attachments to her opposition. To the extent this information is raised in opposition to the demurrer, the evidence falls outside the four corners of the complaint. The Court has not considered this material as its introduction is not proper on demurrer. (See Code Civ. Proc., § 430.30; *Comm. on Children's Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14 [“A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.”].)

Silver's comments directed to opposing counsel are inappropriate. (See Opp. at p. 5:11-12.)

Defendant Queen of the Valley Medical Center's demurrer to the second cause of action for declaratory relief on the ground of failure to state sufficient facts because there is no existing actual controversy between the parties is SUSTAINED WITHOUT LEAVE TO AMEND. Silver has not cured the deficiency detailed in the May 23, 2017 Minute Order. There still is no settlement or judgment proceeds upon which QVMC may enforce the lien.

Defendant's motion to strike (anti-SLAPP) the second cause of action for declaratory relief is MOOT in light of the Court's ruling on the demurrer.

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Perfecto Bauer Garcia v. Darrel Joseph Hanson, et al.

17CV000624

(1) DEFENDANTS ALLISON HALEY AND ANDREW HIGGINS' DEMURRER TO THE COMPLAINT

(2) DEFENDANTS STEVE POTTER'S DEMURRER TO THE COMPLAINT

(3) DEFENDANTS STEVE POTTER AND KEITH MARKS' DEMURRER TO THE FIRST AMENDED COMPLAINT

TENTATIVE RULING:

Over the course of five weeks Perfecto Bauer Garcia filed a complaint, an amended complaint, and a motion to file a second amended complaint followed by the actual filing of the proposed second amended pleading. The Court, on its own motion, strikes Garcia's second amended complaint filed on July 11, 2017. (Code Civ. Proc., § 436, subd. (b).) The current operative pleading is the first amended complaint filed on June 27, 2017.

Defendants Allison Haley and Andrew Higgins' demurrer to each cause of action in the complaint is MOOT. On June 6, 2017, Garcia filed his first amended complaint. In addition, Garcia dismissed Higgins as a defendant on June 22, 2017.

Defendant Steve Potter's demurrer to each cause of action in the complaint is MOOT since Garcia filed his first amended complaint.

Potter and defendant Keith Marks' demurrer to each cause of action in the first amended complaint on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. The demurrer is unopposed.

If Garcia elects to do so, he shall file his second amended complaint and make any necessary changes in light of the arguments raised in the sustained demurrer within 10 calendar days of service of notice of entry of order. Garcia's motion to file his second amended complaint, on calendar for September 6, 2017, is MOOT and the hearing is VACATED.