

**TENTATIVE RULINGS**

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

**In The Matter of the Amended and Restated Lynch 1982 Living Trust**                      **17PR000129**

PETITION FOR ORDER APPROVING MODIFICATION OF TRUST TERMS

**TENTATIVE RULING:** The Petition is GRANTED as prayed.

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**In The Matter of the Andrew J. Lipnosky Irrevocable Trust**                      **26-59329**

PETITION FOR ORDER APPROVING SIXTH ACCOUNT AND FIFTH REPORT OF TRUSTEES, APPROVING PAYMENT OF ATTORNEYS' FEES, APPROVING TRUSTEES' FEES, AND AUTHORIZING PAYMENT OF TRUSTEES' FEES (Trust A)

**TENTATIVE RULING:** The Petition is GRANTED as prayed.

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**Conservatorship of Robledo, Edgar Trujillo**    **26-64493**

REVIEW HEARING

**TENTATIVE RULING:** After a review of the matter, the Court finds the Conservators are acting in the best interest of the Conservatee. Based on the report of the court investigator, the Court determines by clear and convincing evidence that Conservatee can communicate a desire to participate in the voting process, and therefore orders Conservatee's right to register to vote shall be restored, pursuant to Elections Code section 2209, subdivision (b). The case is set

for a biennial review hearing in two years, on August 8, 2019 at 8:30 a.m. in Dept. 2. The court investigator shall prepare a biennial investigator report for the next hearing date.

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

**Monica Davis v. Hamilton Nichol森**

**16CV000201**

**MOTION FOR TRIAL CONTINUANCE AND TO REOPEN DISCOVERY**

**TENTATIVE RULING:** The Motion is GRANTED. Plaintiff has provided sufficient circumstances to warrant continuance of the trial pursuant to California Rules of Court, rule 3.1332(c), (d). The Court also finds it appropriate to reopen discovery after considering the necessity for the discovery, the diligence of Plaintiff in seeking discovery, and the lack of prejudice to other parties. (Code Civ. Proc., § 2024.050(b).) The parties are to appear to discuss a new trial date.

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**Oakridge Berryessa Estates Inc. v. Angelo Tuvo, et al.**

**16CV000741**

**MOTION TO QUASH SUBPOENA FOR MEDICAL RECORDS**

**TENTATIVE RULING:**

Plaintiff Oakridge Berryessa Estates, Inc.ø request for judicial notice of a July 6, 2017 memorandum of points and authorities filed in support of the motion to continue the trial date is GRANTED, but not for the truth of the matters asserted therein.

Defendants Angela and Sandra Tuvoø motion to quash two subpoenas for medical records from Kaiser Permanente Martinez Medical Offices and VA Northern California Health Care System East Bay Division is DENIED. The Kaiser and VA subpoenas seek any medical records, including pharmacy records, office visit information, diagnosis information, treatment information, physician notes, and billing records. Defendants argue the information is protected by the right to privacy and the patient-physician privilege. The objection based on privacy is overruled. Plaintiff demonstrates a particularized need for these records, and the Court is convinced that these records are directly relevant to this action. (See *Bd. of Trustees v. Super. Ct.* (1981) 119 Cal.App.3d 516, 525; *Britt v. Super. Ct.* (1978) 20 Cal.3d 844, 859-62.) The objection based on the physician-patient privilege is overruled. Angelo waived the privilege. In addition, Angelo put his medical records at issue by asserting his medical condition requires non-medical care in his home, and that defendantsøtenants provide that care instead of paying rent. (LaCount Decl., ¶ 3.) Defendantsøobjection that the subpoenas are overbroad is waived as it was raised for the first time in the reply. (Reply at p. 2:10-11.)

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**MOTION FOR ORDER SETTING ASIDE THE DEFAULT AND DEFAULT JUDGMENT  
AND FOR SANCTIONS**

**TENTATIVE RULING:** The Motion is GRANTED, except sanctions are awarded in the lesser amount of \$3,000 against Plaintiffs Dennis and Lauren Maykowski. Sanctions are warranted pursuant to Code of Civil Procedure section 128.5 because Plaintiffs acted in bad faith when they made misrepresentations to the Court to obtain an order for publication of summons. The Declaration of Ethan A. Glaubiger in Support of Application For Order For Publication of Summons filed on April 1, 2016 states, at paragraph 7, that they were unable to locate said defendants... despite reasonable efforts and diligence, which included... researching the public records, and conducting an Internet search. This was clearly not true, as Plaintiffs had Defendants' email address, telephone number, and Defendants' parents' home address, and yet no attempt to reach them was made. (See Exhibit C to the Declarations of Brian and Brianna Forgie.) However, the full amount of sanctions requested is not warranted as Plaintiffs were willing to set aside the default and default judgment within a reasonable amount of time after Defendants' counsel's request; Defendants' counsel would have accrued substantially less attorney's fees if he had simply waited a week and followed up with Plaintiffs' counsel regarding the proposed stipulation. Defendants' proposed answer and cross-complaint is to be filed forthwith. A Case Management Conference is set for September 14, 2017 at 8:30 a.m. in Dept. I.