TENTATIVE RULINGS

FOR: October 1, 2019

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. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. 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. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Conservatorship of Janet Irene Francis **18PR000091**

ACCOUNT AND REPORT OF CONSERVATOR AND PETITION FOR ITS SETTLEMENT AND FOR FEES

TENTATIVE RULING: The Petition is GRANTED. After a review of the matter, the Court finds the Conservator is 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 October 1, 2021, at 8:30 a.m. in Dept. B. 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. The clerk is directed to send notice to the parties.

In the Matter of the Francis Family Trust U/A Dated June 9, 1999 **18PR000266**

ACCOUNT AND REPORT OF TRUSTEES AND PETITION FOR ITS SETTLEMENT AND FOR FEES

TENTATIVE RULING: The Petition is GRANTED, including fees as prayed. The Court orders the matter assigned to Dept. B for all purposes.

Conservatorship of Wayne Brownlee **19PR000180**

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

APPEARANCE REQUIRED

Conservatorship of Juan Espinoza **19PR000182**

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

APPEARANCE REQUIRED

CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Mike Timmons, et al. v. Konecranes, Inc., et al. **17CV001261**

(1) CROSS-DEFENDANT NOVA GROUP INC.'S MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING: Cross-defendant Nova Group, Inc.'s (NGI) motion for summary judgment is DENIED. Labor Code section 3864 states an employer shall have no liability to reimburse or hold a third person harmless if there is not an agreement executed prior to the injury. NGI presents evidence it never executed the March 13, 2008 Annual Preventative Maintenance and Inspection Proposal (2008 Proposal) as required under Labor Code section 3864. NGI further presents evidence that the indemnification provision was not included in any of the service reports, work orders, or invoice documents. Thus, according to NGI, there was no agreement to indemnify cross-complainant Konecranes, Inc. (Konecranes).

Konecranes, however, submits evidence that the 2008 Proposal included Konecranes' terms and conditions, which contained the indemnification provision. The evidence shows NGI signed the terms and conditions on at least five separate occasions, when it signed Konecranes' service reports. The service reports expressly incorporated by reference the Konecranes terms and conditions, including the indemnification provision.

Consequently, there remains issues of material fact as to whether NGI executed or agreed to the terms and conditions to the indemnification provision. (Konecrane's Response to UMF, Nos. 5-7, 10-12; see *Douglass v. Serenivision, Inc.* (2018) 20 Cal.App.5th 376, 392 [subject to certain elements, "[o]ne contract may incorporate the terms of another"]; *Republic Bank v. Marine Nat. Bank* (1996) 45 Cal.App.4th 919, 922 ["The phrase 'incorporation by reference' is almost universally understood, both by lawyers and nonlawyers, to mean the inclusion, within a body of a document, of text which, although physically separate from the document, becomes as much a *part* of the document as if it had been typed in directly."].)

The Court has not reached the Ohio law issue. The parties did not move for adjudication of this issue under the Code of Civil Procedure.

(2) DEFENDANT KONECRANES, INC.'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

TENTATIVE RULING: Defendant Konecranes, Inc.'s motion for summary judgment or, in the alternative, summary adjudication is DENIED. The crux of Konecranes's position is that plaintiffs Mike Timmons and Laurie Timmons cannot demonstrate breach or causation to support their claims because Konecranes is too far removed in time from the accident as it stopped servicing Crane 2 in August 2014 and the accident occurred three years later in August 2017.

There remain issues of material fact as to breach and causation based on the additional undisputed material facts. From 2008 to 2014, Nova was in contract with Konecranes for service on its bridge cranes, which included service calls, performing quarterly service and maintenance checkups, purchasing and installing replacement and repair parts, and annually inspecting and certifying cranes. (Plaintiffs' Additional UMF, No. 5.) Gene Moorefield was the primary Konecranes technician servicing and inspecting the Nova cranes from 2008 to 2014. (*Id*., No. 9.) On August 5, 2013, Mike saw Crane 2 move by itself, without an operator using the remote control to control its movements. (*Id*., No. 11.) Mike reported the spontaneous activation to Nova who called Konecranes to diagnose and correct the problem. (*Id*., No. 11.) Moorefield responded to the Nova service call on August 5, 2013, and inspected the remote control system. (*Id*., No. 14.)

Konecranes' crane service provider should have been able to identify the dipswitch settings and the subject incident the very first time he was told the unit was spontaneously activating in 2013, but he never did. (*Id*., No. 35.) Correctly identifying hazardous defects was within the responsibilities of the crane's services providers and repairpersons from Konecranes. (*Id*., No. 40.) The crane service providers and repairpersons should have identified the problem the first time they were called to respond to spontaneous activation at the Nova facility. (*Id*., No. 41.) When Moorefield called Magnetek for help and Magnetek stated it could not help him, Moorefield should have done more to diagnose the problem than just ordering a new remote and hoping that fixed the issue. (*Id*., No. 42.) Moorefield believed the cause of the problem was radio interference, but to remedy the problem, he installed suppressors, which have nothing to do with radio interference. (*Id*., No. 43.) The crane service providers and repairpersons never reported to Nova that the unresolved radio control malfunction was a safety hazard or that they could not determine the cause of the hazard, instead they reported they had fixed the problem and the crane was "ok." (*Id*., No. 44.)

Based on these additional facts, plaintiffs have brought forth evidence that Konecranes failed to identify the inadvertent pairing as a cause of the hazardous condition of the crane, failed to fix the condition, and failed to inform Nova or diagnose or remedy the problem. Plaintiffs' theory is that if Konecranes had identified the cause of the crane's spontaneous activation back in 2013, Moorefield would have been able to fix it then, in which case Mike's injury never

would have occurred years later. Although there is other evidence that various repairs and events took place following the 2013 repair incident, the additional facts at least support a reasonable inference for summary judgment that Konecranes' actions were the probable cause, as distinguished from a possible cause, of Mike's injury.

Leea Robinson, et al. v.
Adventist Health Clearlake Hospital, Inc. et al. **18CV000301**

[1] DR. BENJAMIN STONE'S MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING: The Court is without jurisdiction to hear the motion.

Notice of a motion for summary judgment, and supporting papers, must be served on all parties to the action at least 75 days before the hearing date. (Code Civ. Proc. § 437c, subd. (a)(2).) Where, as here, a party serves notice of a motion by electronic mail, two court days are added to the notice period. (Code Civ. Proc. § 1010.6, subd. (a)(4)(B).) By the Court's calculation, July 16, 2019 was the last day for service, by electronic mail, of a motion for summary judgment set for hearing on October 1, 2019. Service of the present motion was made July 18, 2019. "The court lacks jurisdiction to rule on a motion that has not been properly noticed for hearing on the date in question." (*Diaz v. Prof. Community Management, Inc.* (2017) 16 Cal.App.5th 1190, 1204-05.) Moreover, where a moving party notices a hearing on motion for summary judgment in less than the required time, notice must begin anew, and the court is without authority to cure the defect by continuing the hearing for the missing number of days. (*Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1268.)

[2] DR. OMID JAFARI, M.D.'S MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING: The motion is GRANTED.

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

The party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A defendant meets this burden by showing that one or more elements of plaintiff's cause of action cannot be established, or that there is a complete defense thereto. (*Ibid.*) The moving party also bears an initial burden of production to make a prima-facie showing of the nonexistence of any triable issue of material fact. (*Id.* at p. 850-51.) If the party carries this burden, there is a shift and the opposing party is then subjected to a burden of production to make a prima-facie showing. (*Ibid.*) "In ruling on the motion, the trial court views the evidence and inferences therefrom in the

light most favorable to the opposing party." (*Collin v. CalPortland Co.* (2014) 228 Cal.App.4th 582, 588.)

Having reviewed Defendant's Separate Statement and evidence submitted in support of his motion for summary judgment, the Court finds that Defendant has met his burden of production and persuasion by showing that Plaintiff cannot establish a breach of duty by Defendant, as alleged through the pleadings. Plaintiffs do not oppose the present motion. Based on the foregoing, Defendant's motion is GRANTED.

[3] DAVID RACKER, M.D.'S MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING: The motion is GRANTED.

The party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A defendant meets this burden by showing that one or more elements of plaintiff's cause of action cannot be established, or that there is a complete defense thereto. (*Ibid.*) The moving party also bears an initial burden of production to make a prima-facie showing of the nonexistence of any triable issue of material fact. (*Id.* at p. 850-51.) If the party carries this burden, there is a shift and the opposing party is then subjected to a burden of production to make a prima-facie showing. (*Ibid.*) "In ruling on the motion, the trial court views the evidence and inferences therefrom in the light most favorable to the opposing party." (*Collin v. CalPortland Co.* (2014) 228 Cal.App.4th 582, 588.)

Having reviewed Defendant's Separate Statement and evidence submitted in support of his motion for summary judgment, the Court finds that Defendant has met his burden of production and persuasion by showing that Plaintiff cannot establish a breach of duty by Defendant, as alleged through the pleadings. Plaintiffs do not oppose the present motion. Based on the foregoing, Defendant's motion is GRANTED.