

**TENTATIVE RULINGS**

**FOR: October 8, 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. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.**

**In the Matter of the Robert J. Gibson Revocable Trust**

**19PR000176**

(1) PETITION TO INVALIDATE AMENDMENT AND RESTATEMENT OF TRUST; TO CONFIRM VALIDITY OF EARLIER TRUST INSTRUMENT; AND TO REMOVE ACTING TRUSTEE AND APPOINT PROFESSIONAL FIDUCIARY TO SERVE AS SUCCESSOR TRUSTEE

**APPEARANCE REQUIRED**

(2) PETITION TO INVALIDATE RESTATEMENT OF TRUST DATED APRIL 4, 2019, AND RESTATEMENT OF TRUST DATED JULY 31, 2017; AND FOR FINANCIAL ELDER ABUSE

**APPEARANCE REQUIRED**

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**In the Matter of Gertrude Ann Caldwell Trust**

**26-35822**

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

**TENTATIVE RULING:** The Petition is GRANTED, including fees as prayed.  
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**Conservatorship of Gotelli, Susan**

**26-43204**

REVIEW HEARING

**TENTATIVE RULING:** The Court has been informed that the Conservatee is deceased. The conservatorship is terminated.

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**In the Matter of Runyon Family Trust**

**26-56652**

NINTH ACCOUNT AND REPORT OF TRUSTEES AND PETITION FOR ITS SETTLEMENT AND FOR FEES (See Pr.C. §§ 1060-1064, 16063)

**TENTATIVE RULING:** The Petition is GRANTED, including fees as prayed.

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**Conservatorship of Judith M. Franzi-Price**

**26-59300**

REVIEW HEARING AND ACCOUNTING

**TENTATIVE RULING:** The matter is continued to November 22, 2019, at 8:30 a.m. in Dept. A to allow for the filing of the accounting.

**CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.**

**First American Title Company of Napa v. Larry Fratini, et al.**

**18CV000164**

DEFENDANTS' MOTION FOR LEAVE TO FILE AMENDED ANSWERS TO FIRST AMENDED COMPLAINT

**TENTATIVE RULING:** The Court finds that permitting Defendants to amend their respective answers to the first amended complaint would serve justice by allowing a full and fair resolution of Plaintiff's claims on the merits. (See Code Civ. Proc. §§ 473, subd. (a)(1), 576.) No opposition having been filed, and no prejudice to Plaintiff appearing from Defendants' proposed amendments, the motion is GRANTED. Defendants to file, within 10 days of entry of the present order, amended pleadings consistent with those attached as Exhibits to the Declaration of Kevin Block in support of the present motion.

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DEMURRER TO THE COMPLAINT AND MOTION TO DISMISS

**TENTATIVE RULING:** Defendant Davey Tree Surgery Co.’s demurrer to the first cause of action for negligence, second cause of action for private nuisance, third cause of action for trespass, and fourth cause of action for violation of Health & Safety Code section 13007 on the ground of defect or misjoinder of parties [Code Civ. Proc., § 430.10, subd. (d)] is **SUSTAINED WITHOUT LEAVE TO AMEND**. Defendant argues PG&E is an indispensable party to this action in that its absence will subject defendant to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations, and PG&E is an alleged active participant in whose absence complete relief cannot be afforded to the existing parties. The Court agrees. PG&E is a necessary party. (Code Civ. Proc., § 389.) Plaintiffs seek to hold defendant responsible for all damages they might have suffered as a result of the fire, including those damages that might have been the result of PG&E’s installation, operation, or maintenance of its power lines and equipment.

Defendant’s request to dismiss the action is **GRANTED**. The four factors set out in Code of Civil Procedure section 389, subdivision (b), weigh in favor of dismissal of this action as presented in defendant’s memorandum of points and authorities. Because PG&E is a necessary party, and cannot be joined as a party due to the federal bankruptcy case, the action must be dismissed without prejudice. The bankruptcy court can resolve the dispute regarding the fire in its entirety.

Defendant’s request for judicial notice is **GRANTED**, but not for the truth of the matters asserted therein, as to the summons and complaint (exhibit A) from the San Francisco County Superior Court (exhibit A), and various court records from the San Francisco County Superior Court and U.S Bankruptcy Court (exhibits B-O).

Plaintiffs’ request for judicial notice is **GRANTED**, but not for the truth of the matters asserted therein, as to the memorandum of points and authorities from the U.S. Bankruptcy case.

Defendant’s supplemental request for judicial notice is **GRANTED**, but not for the truth of the matters asserted therein, as to the notice and first amended joint Chapter 11 plan of reorganization from the U.S. Bankruptcy Court.



PETITION FOR CHANGE OF NAME

**TENTATIVE RULING:** There is no proof of publication in the court file. If one is filed before the hearing, the petition will be **GRANTED** without need for appearance. If no proof of publication is filed, the petition will be **DENIED** without prejudice.

**PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.**

**Conservatorship of Heather-Rebecca Lovecchio**

**26-34099**

REVIEW HEARING

**TENTATIVE RULING:** After a review of the matter, the Court finds the conservator is acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on October 8, 2021, at 8:30 a.m. in Dept. B. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

The conservatee previously had been disqualified to vote under the completion of affidavit standard. However, based on the report of the court investigator, the Court determines by clear and convincing evidence that the conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process, and therefore orders the conservatee disqualified from voting pursuant to Elections Code section 2208.

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**Conservatorship of Michaela V. Wong**

**PR24054**

[1] BIENNIAL REVIEW

[2] PETITION FOR APPOINTMENT OF SUCCESSOR 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.**

**BVK Gaming, Inc. v. Timothy J. Long**

**17CV001155**

MOTION FOR A PROTECTIVE ORDER

**TENTATIVE RULING:** Attorney Jarhett Blonien’s motion for a protective order is DENIED. Plaintiff BVK Gaming, Inc. (BVK) sent a deposition subpoena to Blonien. Blonien represents he is an attorney who has advised, counseled, and performed legal work for all the defendants in this action. “Depositions of opposing counsel are presumptively improper, severely restricted, and require ‘extremely’ good cause—a high standard.” (*Carehouse Convalescent Hosp. v. Super. Ct.* (2006) 143 Cal.App.4th 1558, 1562.) However, the good-cause requirement for deposing an attorney applies when the deponent is “opposing counsel” in the litigation. (*Spectra-Physics, Inc. v. Super. Ct.* (1988) 198 Cal.App.3d 1487, 1494-95.) Blonien is not opposing counsel.

It is apparent, as BVK demonstrates, that Blonien wears different hats beyond providing legal advice to the defendants. To the extent Blonien has knowledge beyond that acquired in his role as an attorney, BVK is entitled to explore those areas. Even Blonien recognizes there are some areas of inquiry that may be appropriate given the documents that were disclosed such as the October 2017 letter.

Although the motion is denied, the Court makes clear that Blonien still may object to questions that violate the attorney-client privilege or work product doctrine in his role as an attorney who provided legal advice for the defendants.

A written examination in lieu of the deposition is not appropriate.

BVK's request for judicial notice is GRANTED IN PART AND DENIED IN PART. The request is granted as to the dockets from other cases (exhibits 3-16, and 18), but only to the fact that Blonien was not mentioned as counsel of record in these various actions. The request is denied as not relevant as to the Court's January 17, 2018 Order (exhibit 1), the Court's April 10, 2018 Order (exhibit 2), the January 12, 2016 Order from the San Mateo County Superior Court (exhibit 17), the second amended complaint (exhibit 19), and the notice of entry of judgment and special verdict form from Case No. 26-56249 (exhibit 20).

The Court has not considered BVK's seven evidentiary objections. BVK raises no authority that evidentiary objections are permitted for motions filed under the Discovery Act. *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 525, is inapplicable as it dealt with evidentiary objections for a summary judgment motion. Resolving the evidentiary objections also is not pertinent to resolution of this motion.

For the same reasons, the Court has not considered Blonien's eleven evidentiary objections.

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**Kari L. Langlois, et al. v. John and Michele Truchard**

**18CV001649**

CROSS-DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

**TENTATIVE RULING:** Cross-Defendants' motion for summary judgment or, in the alternative, summary adjudication is DENIED.

Cross-Complainants have asserted three causes of action – for prescriptive easement, declaratory relief, and injunction – and seek an order recognizing that they enjoy certain prescriptive easement rights on and over defined portions of Cross-Defendants' property. Cross-Defendants here assert that each of these causes of action fails, as a matter of law, because Cross-Complainants “are seeking relief through their Cross-Complaint that would give them a prescriptive easement with exclusive use of the [subject areas of Cross-Defendants' property].” (Support Memo. at 4:25-26.)

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.)

Cross-Defendants argue that they are entitled to summary judgment, or summary adjudication because, “[c]learly, Cross Complainants are intending that their easement would be exclusive to them.” (Support Memo. at 6:21.) The Court does not find language in the Amended Cross-Complaint that supports that conclusion. Moreover, through their opposition to the present motion, Cross-Complainants expressly waive any claim to such exclusive use. (See Opposition Memo. at 4:15-16, 9:16-17 [“Truchards do not want or seek exclusive use of the improved Area, and they invite the Langloises’ use of the improved Area and the landscaping and structures on it”].)

Cross-Complainants’ intentions aside, the Court recognizes that, “[w]hen a claimant cannot satisfy the requirements for adverse possession, the claimant may not receive a prescriptive easement which extends so far that it becomes the equivalent of a fee interest and dispossesses the record title owners of part of their property.” (*Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1300.) A determination of whether particular easement rights would have the effect of depriving the servient tenement owner of the ability to “use, occupy, or enjoy [their land] in any meaningful way” involves questions of fact regarding the nature and extent of the uses on which the claims of prescriptive rights are made, and the nature of the property. (*Id.* at 1308.) Cross-Defendants make no prima-facie showing of the nonexistence of such facts. (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at 850-51.)

For the foregoing reasons, Cross-Defendants’ motion for summary judgment or, in the alternative, summary adjudication, is DENIED.

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**In the Matter of Edwige Termonfils**

**19CV001221**

PETITION FOR CHANGE OF NAME

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

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PETITION FOR CHANGE OF NAME

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

**CIVIL LAW & MOTION CALENDAR – Hon. Mark Boessenecker, Dept. E  
(Historic Courthouse) at 11:00 a.m.**

**\*At 11:00 a.m.\***

**Brian R. Silver v. Steven G. Hasty, et al.**

**26-67005**

DEFENDANT’S MOTION FOR ATTORNEY’S FEES AND COSTS ON APPEAL

**TENTATIVE RULING:** Defendant Steven G. Hasty moves for attorney’s fees and costs on appeal in the amount of \$40,845. This amount represents \$36,257.50 in attorney’s fees and \$4,587.50 in costs. Plaintiff Brian R. Silver opposes.

**A. Background**

On August 24, 2016, Silver filed his second amended verified complaint. For his sixth cause of action, Silver pled a claim for civil harassment under Code of Civil Procedure section 527.6. On September 15, 2017, the Court granted Hasty’s motion to sever the equitable claims, including the sixth cause of action, from the legal claims. A court trial commenced on the third cause of action for declaratory relief and quiet title (Code of Civil Procedure sections 1060, 760.020, 761.020), fourth cause of action for abatement of private nuisance (Civil Code sections 3479, 3481, and 3501, and Code of Civil Procedure section 731), fifth cause of action for injunctive relief (Civil Code section 3420 and Code of Civil Procedure sections 526 and 527), and sixth cause of action for harassment (Code of Civil Procedure section 527.6).

Following Silver’s opening statement at trial, the Court granted Hasty’s motion for nonsuit as to the third claim. After Silver rested his case, the Court granted Hasty’s motion for nonsuit as to the fourth and fifth claims. The Court, however, later permitted the fourth cause of action to proceed to the jury as to the damages claim. On October 3, 2017, the Court ruled in favor of Hasty as to the civil harassment claim.

On December 27, 2017, the court granted in part Hasty’s motion for an award of attorney’s fees and costs. In its order, the Court found Hasty was the prevailing party to the sixth claim brought under section 527.6. Notice of entry of judgment was filed on January 24, 2018.

Silver appealed. Specifically, he appealed the judgment entered after the court trial.<sup>1</sup> (Mackenzie Decl., ¶ 4, Ex. B [appellate brief].) He contended before the appellate court that this Court was biased and erred in denying his motion to change venue, excluded certain expert

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<sup>1</sup> The Court takes judicial notice of its court file.

witness testimony, and prejudiced him during voir dire. (*Id.*, ¶ 5, Ex. C [appellate opinion].) Silver additionally requested the appellate court overturn the judgment entered against him. (*Id.*, ¶ 4, Ex. B [appellate brief].)

On June 25, 2019, the appellate court affirmed the judgment and ordered Hasty was entitled to recover his costs on appeal.

## **B. Hasty is Entitled to Attorney’s Fees and Costs Under Section 527.6**

Hasty asserts he is entitled to attorney’s fees and costs under Code of Civil Procedure section 527.6, subdivision (s). This section provides: “The prevailing party in an action brought pursuant to this section may be awarded court costs and attorney’s fees, if any.” Silver maintains attorney’s fees are not appropriate because the code provision pertains only to an action seeking injunctive relief to prevent a defendant from continuing to harass a plaintiff.<sup>2</sup> According to Silver, Hasty had sold and vacated his building and ceased to obstruct Silver’s use of the easement long before the case came to trial. He claims no appeal was taken on the issue. Silver presents no authority or evidence to support his position.

Absent any legal or evidentiary support to the contrary, the Court rests on its prior order from December 2017 declaring that Hasty is the prevailing party to the claim brought under section 527.6. Consequently, he is entitled to his reasonable attorney’s fees and costs if the appeal encompassed this Court’s ruling on the civil harassment cause of action. It did. Silver appealed the judgment entered after the court trial, which consisted solely of the harassment claim under section 527.6. As Hasty proffers, if the appellate court had reversed the judgment, it would have included the judgment in Hasty’s favor on the section 527.6 cause of action. As the appeal threatened the judgment Hasty obtained in his favor on the harassment claim, he was forced to incur attorney’s fees and costs to oppose the appeal. Because the appeal was decided in his favor, he is entitled to attorney’s fees and costs under section 527.6, subdivision (s).

## **C. The Lodestar**

Because Hasty is the prevailing party and is entitled to attorney’s fees and costs under section 527.6, subdivision (s), the Court turns to the application of the lodestar. Courts use the lodestar method for determining the amount of attorney’s fees to be awarded to the prevailing party. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-32.) The lodestar is arrived at by multiplying the number of hours reasonably expended by counsel, times a reasonable hourly rate. (*Id.*)

Hasty presents evidence that \$375 per hour for attorney Elizabeth Mackenzie, and \$125 and \$100 per hour for three legal assistants are reasonable rates for the individuals who worked on this matter. (Mackenzie Decl., ¶ 6.) Hasty also submits evidence regarding the number of hours reasonably expended by the attorney and the three legal assistants. (*Id.*, ¶ 2, Ex. A [billing

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<sup>2</sup> Silver also raises his belief that this judicial officer is biased against him and should not decide any disputed issue in this case. Silver acknowledges the appellate court rejected the facts and reasons for this contention. Silver reiterates it here for the sole reason of retaining the right to raise it in any subsequent proceeding in which it may be relevant. Thus, the Court does not view this issue as serving as a basis for opposing the motion.

records].) Silver's opposition does not maintain these rates or hours worked are unreasonable. Even if Silver had questioned the reasonableness of the hours worked or the hourly rates, the Court adopts, as reasonable, the rates Hasty proposes, and the Court finds the hours worked, including those incurred for this motion, were reasonably related to opposing the appeal.

**D. Conclusion**

Hasty's motion for an award of attorney's fees and costs is GRANTED in the amount of \$40,845. This amount represents \$36,257.50 in attorney's fees and \$4,587.50 in costs.