

TENTATIVE RULINGS

FOR: October 10, 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.

Estate of Scott Benson

19PR000188

PETITION FOR PROBATE OF LOST WILL AND FOR LETTERS OF ADMINISTRATION WITH WILL ANNEXED AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: GRANT petition on the condition a signed supplemental proof of service is filed.



Conservatorship of Savinovich, Matthew P.

26-54312

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the Conservator is acting in the best interest of the Conservatee. The Court files indicate that the Conservatee moved to Contra Costa County in December 2018. The Court Investigator reports that it is the parties' intention that Conservatee remain a resident of that county for the foreseeable future. For the foregoing reasons, the Court orders the matter transferred to the Superior Court of California, County of Contra Costa. Conservators are instructed to contact the Civil Filing Division at the Napa County Superior Court to pay the: (1) transfer fees from the Napa County Superior Court; and (2) the filing fee for the Contra Costa County Superior Court. The Clerk is directed to transmit to the clerk of the Superior Court for Contra Costa County a certified or exemplified copy of this order, together with all papers in the proceeding on file. The Conservators are directed to send notice. The case is set for a review hearing on December 11, 2019 at 8:30 a.m. in Dept. A of the Napa County Superior Court. The hearing is to confirm receipt of the

notification from the Contra Costa County Superior Court that it has received the transferred case. If the notification has not been made, this Court will make a reasonable inquiry into the status of the matter.

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Conservatorship of Antoine C. Farray

26-63646

PETITION FOR ATTORNEYS FEES AND COSTS BY COURT-APPOINTED COUNSEL FOR CONSERVATEE

TENTATIVE RULING: Good cause appearing, and no objections having been filed, the Petition is granted including fees and costs as prayed.

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

Conservatorship of Tracy Lynne Hall

26-33421

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 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.

The court investigator reports that the Conservators and Conservatee moved to San Francisco County in or around 2013. The Court Investigator further reports that it is the parties' intention to remain residents of that county for the foreseeable future. The Court finds it is, therefore, in the best interest of the Conservatee to transfer the proceedings to San Francisco County.

The Conservators are instructed to contact the Civil Filing Division at the Napa County Superior Court to pay, subject to any applicable fee waiver, the: (1) transfer fees from the Napa County Superior Court; and (2) the filing fee for the San Francisco County Superior Court.

If the Conservators seek to have any fees waived in the San Francisco County Superior Court, they must submit to the Civil Filing Division of the Napa County Superior Court a new completed fee waiver application for transmittal.

The clerk is directed to transmit to the clerk of the court in San Francisco County a certified or exemplified copy of this order, together with all papers in the proceeding on file. The clerk is directed to send notice to the parties.

The case is set for a review hearing on December 11, 2019 at 8:30 a.m. in Dept. B of the Napa County Superior Court. The hearing is to confirm receipt of the notification from the San Francisco County Superior Court that it has received the transferred case. If the notification has not been made, this Court will make a reasonable inquiry into the status of the matter.

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

Sylvia Seconi et al. v. Balloons Above the Valley, Ltd., et al

18CV00087

DEFENDANT BOB BARBARICK’S DEMURRER TO FIRST AMENDED COMPLAINT

TENTATIVE RULING: Defendant Bob Barbarick’s request for judicial notice is GRANTED. Barbarick’s demurrer is OVERRULED. Barbarick shall file his answer within 10 calendar days of service of notice of entry of order. (Rules of Court, Rule 3.1320, subd. (g).)

The Plaintiffs filed the First Amended Complaint (FAC) in this matter on February 1, 2018, asserting multiple causes of action against Doe defendants, named defendant Balloons Above the Valley, Ltd., a California limited liability company (BAV), and named defendant Scott Carroll. These causes of action arise out of allegations that Plaintiff Sylvia Seconi was injured in an accident involving a hot air balloon owned and operated by BAV and piloted by Carroll. On June 20, 2019, Plaintiff substituted Defendant Bob Barbarick for Doe 1.

Barbarick demurs to the FAC on the ground that it fails to allege facts sufficient to state a cause of action against him. Through his moving papers Barbarick asserts that he is the owner of BAV and argues that his substitution for Doe 1 “is nothing more than an improper attempt to pierce the corporate veil.” (Support Memo. at 2:11-13, 4:2-3.) Through their opposition papers, Plaintiffs aver that, “the causes of action [asserted in the FAC] against [Barbarick] are for his own personal negligence, and do not derive through respondeat superior or attempts to pierce the corporation veil.” (Opposition Memo. at 4:24-26.)

In this context, the question before the Court is whether the FAC asserts a cause of action against Doe 1, now Barbarick, in his individual capacity.

A complaint must contain “facts constituting the cause of action.” (Code Civ. Proc. § 425.10, subd. (a)(1).) A demurrer is treated as “admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “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.” (*Comm. on Children’s Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14.) In reviewing a demurrer, the court must “construe the allegations of a complaint liberally in favor of the pleader.” (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 438.)

Plaintiff argues that paragraph 17 of the FAC alleges that the Doe Defendants performed the acts alleged in the Complaint directly, and/or aided and abetted the performance thereof. (Opposition Memo. at 2:9-13.) Not true. Paragraph 17 of the FAC makes these allegations exclusively as to Does 26-50. As noted above, Plaintiff substituted Barbarick for Doe 1.

However, the Court finds that the FAC states causes of action against Doe 1, now Barbarick, in his individual capacity as one of the “Balloon Defendants.” The FAC provides that “Defendants other than Houston Casualty are denominated herein as ‘Balloon Defendants.’” (FAC at 2:8-9.) The Court finds that this definition includes defendant Doe 1 with sufficient clarity to put Barbarick on notice that any allegations made against “Balloon Defendants” are made against him, individually. Finally, the Court finds that the Complaint contains allegations of wrongdoing asserted against the “Balloon Defendants,” sufficient to state causes of action against each of them, including Barbarick. (See, *e.g.*, Complaint at ¶¶ 37-38.)

Based on the foregoing, the Court finds that the FAC alleges facts sufficient to state a cause of action against Barbarick. The demurrer is therefore OVERRULED.

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Charles Berry v. Pope Valley Union Elementary School District, et al. 19CV000733

DEFENDANT OFFICE OF EDUCATION’S DEMURRER TO THE FIRST AMENDED COMPLAINT

TENTATIVE RULING: The matter is continued to October 16, 2019, at 8:30 a.m. in Dept. B to coincide with the other previously continued demurrer.