

TENTATIVE RULINGS

FOR: January 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.

Conservatorship of Harry Fried

17PR000233

REVIEW HEARING

TENTATIVE RULING: 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.

After a review of the matter, the Court finds the co-conservators are acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on January 12, 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.

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Conservatorship of Josef P. Hausted

17PR000242

REVIEW HEARING

TENTATIVE RULING: The Court has been informed that the conservatee is deceased. The review hearing is vacated. An OSC re: Dismissal is set for February 8, 2019, at 8:30 a.m. in Dept. A.

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In the Matter of the Anderson Child Trust

18PR000229

SUPPLEMENT TO PETITION FOR ORDER ACCEPTING RESIGNATION OF TRUSTEE; FOR APPOINTMENT OF SUCCESSOR CO-TRUSTEES; FOR WAIVER OF ACCOUNTING AND WAIVER OF BOND; FOR APPROVAL OF ATTORNEY’S FEES; AND FOR WITHDRAWAL OF REQUEST FOR MODIFICATION OF IRREVOCABLE TRUST

TENTATIVE RULING: GRANT petition, as supplemented by the attorney’s declaration from January 9, 2019.

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In the Matter of the Gregory and Kathryn Compagno Family Trust

18PR000264

PETITION FOR ORDER CONFIRMING TRUST ASSETS

TENTATIVE RULING: The Court notes that the subject bank accounts are not described in the notice of hearing as mandated by Probate Code section 851(c)(1). Moreover, it is unclear to the Court whether petitioner seeks to confirm other assets – e.g. “the Brentwood Parcel” referred to in section 7 of the petition. If so, all such assets must be described in the notice of hearing. The matter is CONTINUED to February 15, 2019, at 8:30 a.m. in Dept. A, to allow for the filing and service of an amended notice of hearing and, if necessary, an amended petition.

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In the Matter of the Donna Mae Cox Irrevocable Special Trust

26-48777

EIGHTH ACCOUNT AND REPORT OF TRUSTEE AND PETITION FOR SETTLEMENT OF ACCOUNT, AND FOR APPROVAL OF TRUSTEE’S FEES

TENTATIVE RULING: GRANT petition, including fees as prayed.

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Conservatorship of Lorraine E Hazen

26-68127

ACCOUNTING

TENTATIVE RULING: The court investigator reports issues with the conservatee’s home needing repair and maintenance. Thus, the matter is continued to April 16, 2019, at 8:30 a.m. in Dept. B to allow the conservator time to correct or improve the safety and maintenance issues at the home. The court investigator shall prepare an investigator report limited to the issues at the home. Moreover, the conservator shall file its accounting before the next hearing date. The clerk is directed to send notice to the parties.

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Conservatorship of Henrietta Schmidtpott

PR21998

REVIEW HEARING

TENTATIVE RULING: The court investigator reports possible issues with the conservatee’s residence at the Griffin Family Care Home. Thus, the case is set for a review hearing on April 16, 2019, at 8:30 a.m. in Dept. A to allow for a home inspection to ensure that the concerning issues with the residence have been corrected. The court investigator shall prepare an investigator report limited to the possible issues at the residence. In addition, before the next hearing, the conservator shall file: (1) Notice of Conservatee’s Rights (Judicial Council form GC-341); and (2) Determination of Conservatee’s Appropriate Level of Care (GC-355). The clerk is directed to send notice to the parties.

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

Ivan Salinas Sanchez vs. American Tow et al.

18CV001024

MOTION FOR LEAVE TO INTERVENE

TENTATIVE RULING: The motion is GRANTED subject to the following.

The proposed complaint in intervention is not subscribed. Counsel for intervenor shall file a subscribed copy of the proposed complaint in intervention not later than January 17, 2019.

The notice of motion does not provide notice of the Court’s tentative ruling system as required by Local Rule 2.9. Intervenor’s counsel is directed to contact counsel for plaintiff, counsel for defendant, and defendant in intervention or counsel for defendant in intervention, if any, forthwith and advise each of Local Rule 2.9 and the Court’s tentative ruling procedure. If intervenor’s counsel is unable to contact any of counsel for plaintiff, counsel for defendant, or defendant in intervention (or counsel for defendant in intervention) prior to the hearing, intervenor’s counsel shall be available at the hearing, in person or by telephone, in the event any of counsel for plaintiff, counsel for defendant, or defendant in intervention (or counsel for defendant in intervention) appears without following the procedures set forth in Local Rule 2.9.



City of American Canyon vs. GSM Landscape Architects, Inc.

18CV001027

DEFENDANT’S DEMURRER TO PLAINTIFF’S COMPLAINT

TENTATIVE RULING: Defendant GSM Landscape Architects, Inc.’s demurrer to the third cause of action for Express Contractual Indemnity on the ground of failure to state a claim is OVERRULED. Defendant argues the express contractual indemnity provision alleged in the complaint applies only to third-party claims. As defendant concedes, contractual indemnity

provisions can encompass direct claims where the parties so intend. (*Hot Rods, LLC v. Northrop Grumman Sys. Corp.* (2015) 242 Cal.App.4th 1166, 1178-79.) “When indemnity is expressly provided by contract, the extent of the duty to indemnify must be determined from the contract itself.” (*Zalkind v. Ceradyne, Inc.* (2011) 194 Cal.App.4th 1010, 1024.) So long as plaintiff’s allegations as to the meaning of a contract provision are not clearly erroneous, in testing the sufficiency of the complaint we must accept them as correct. (*Marina Tenants Ass’n. v. Deauville Marina Dev. Co.* (1986) 181 Cal.App.3d 122, 128.) The Court finds the indemnity provision alleged in the complaint is reasonably subject to plaintiff’s interpretation that it includes direct claims. Under this interpretation, plaintiff’s third cause of action states a claim for relief.

The Court disagrees with defendant’s assertion that section 2782.8 of the Civil Code in effect at the time the parties entered into the contract at issue compels a different result. That section provided that indemnification provisions in contracts for design professional services entered into by a public agency were enforceable only for claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the design professional. Plaintiff’s third cause of action is specifically alleged to arise out of and “as a direct and proximate result of GSM’s negligence and/or recklessness . . .” The Court finds nothing in the text of the statute that limited or altered the right of public agencies and design professionals to include in contracts for design professional services indemnity provisions that encompass direct claims.

Defendant’s demurrer to the fourth cause of action for Declaratory Relief on the ground of failure to state a claim is **OVERRULED**. Defendant claims, without explanation, that the fourth cause of action is “entirely based on GSM’s alleged obligation to indemnify the City.” The Court is not persuaded that this is so. Even if it were, however, the demurrer would fail for the reasons set forth above.

Defendant shall file its answer within 10 calendar days.

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.