

TENTATIVE RULINGS

FOR: March 4, 2020

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.

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

Center for Biological Diversity and Sierra Club v. Napa County, et al.

17CV000060

HEARING ON REMITTITUR

APPEARANCE REQUIRED.

When a public agency’s decision, determination, or finding does not comply with CEQA, a peremptory writ of mandate must be issued. (Pub. Resources Code § 21168.9, subd. (a).) Pursuant to the September 30, 2019 Opinion of the Court of Appeal in this matter, “substantial evidence does not support the EIR’s conclusion that the project would have a less-than-significant GHG emission impact.” (*Living Rivers Council v. Cty. of Napa*, 2019 Cal. App. Unpub. LEXIS 6612 (*Opinion*) at p. 87.)

Respondent and Real Party in Interest (collectively, Respondent) urge the Court to issue a so-called “partial writ” and judgment directing the County to reconsider its finding of substantial evidence on this single issue. (See Memorandum of Points and Authorities in Support of Proposed Judgment (Respondent’s Memo) at 5:4-7.) Respondent further argues that “the judgment and writ need not direct the County to decertify the EIR. (*Id.* at 5:9-10.)

Respondent’s position appears to find support in the following language of the Opinion. “[w]e remand the CBD matter to the trial court *to grant the petition as to the following EIR issue*: to ensure that the GHG emissions associated with the Project, as mitigated, constitute a less-than-significant impact, as set forth in Section II.F of this opinion.” (*Opinion* at 87-88, italics added.)

There appears to be some tension, however, between Respondent’s position and this Court’s authority to grant a “partial writ.” The Court may only issue a “partial writ” upon a finding that: “(1) the portion or specific project activity or activities are severable; (2) severance will not prejudice complete and full compliance with this division; and (3) the court has not found the remainder of the project to be in noncompliance with this division.” (Pub. Resources Code § 21168.9(b); see also *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2017) 17 Cal.App.5th 1245, 1254 [“[u]nder section 21168.9, subdivision (a)(1), a court has authority to order partial decertification of an EIR so long as the severability criteria pursuant to subdivision (b) of that section are satisfied”].)

It is not clear to the Court, by the arguments advanced in Respondent’s Memo, what “portion or specific project activity or activities are severable” and therefore whether the Court can make the requisite findings for issuing a partial writ. In such case, CEQA “requires the local agency to set aside all project approvals and the certification of the EIR, but the writ of mandate need only require the preparation, circulation and consideration under CEQA of a legally adequate EIR on limited issues.” (*LandValue 77, LLC v. Board of Trustees of Cal. State Univ.* (2011) 193 Cal.App.4th 675, 681-82, quoting Robie, et al., *Cal. Civil Practice: Environmental Litigation* (2010) § 8:33, p. 61.) It appears that, if the Court is unable to make the requisite findings for granting a partial writ, then granting the Petition “as to the [identified] EIR issue” would require a judgment along the lines of the proposal submitted by Petitioners.

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

Estate of Roy E. Gibb

**19PR000157
19PR000171**

PETITION FOR LETTERS OF SPECIAL ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: GRANT petition.

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

City of Calistoga v. Northern Pacific Corp., et al.

19CV001269

MOTION FOR ORDER DISCHARGING STAKEHOLDER OR FOR RELATED ORDERS

TENTATIVE RULING: Plaintiff has invoked Code of Civil Procedure section 386.5 as the statutory basis for this motion. That provision, however, only applies to a defendant, not a plaintiff. (See Code Civ. Proc., § 386.5, emphasis added [“Where the only relief sought against one of the defendants is the payment of a stated amount of money alleged to be wrongfully withheld, such *defendant* may, upon affidavit that he is a mere stakeholder with no interest in the

amount or any portion thereof and that conflicting demands have been made upon him for the amount by parties to the action, upon notice to such parties, apply to the court for an order discharging him from liability and dismissing him from the action on his depositing with the clerk of the court the amount in dispute and the court may, in its discretion, make such order.”].) If the provision applies to a plaintiff, the moving party has not raised any authority so showing. If section 386 is the basis for the motion, it is not clear how it applies.

Plaintiff shall submit a supplemental brief of no more than 5 pages restricted to these issues on or before March 16, 2020. Any defendant may file a response to the supplemental brief of no more than 5 pages on or before March 23, 2020. The matter is continued to March 26, 2020, at 8:30 a.m. in Dept. B.