

## **TENTATIVE RULINGS**

**FOR: March 11, 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.**

**Deborah Geske v. Ben Pipic**

**19CV001804**

MOTION FOR LEAVE TO INTERVENE

**TENTATIVE RULING:** Good cause appearing, and no opposition or objection having been filed, the motion is GRANTED. Moving party is directed to file, with the Court, the Complaint in Intervention for Reimbursement of Workers' Compensation Benefits, in the form attached as Exhibit A to the Motion.

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

**Estate of Adrienne Barbara Zinn**

**20PR000009**

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY  
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.**

**Jack Daniels, et al. v. Alyssa Samrick, et al.**

**18CV001467**

[1] PLAINTIFFS MOTION FOR ORDER GRANTING LEAVE TO SUPPLEMENT AND AMEND OPPOSITION PAPERS AS TO DEFENDANT ALYSSA SAMRICK'S MOTION FOR SUMMARY JUDGMENT

**TENTATIVE RULING:** The motion is GRANTED.

“The summary judgment procedure, inasmuch as it denies the right of the adverse party to a trial, is drastic and should be used with caution.” (*Huynh v. Ingersoll-Rand* (1993) 16 Cal.App.4th 825, 830.) Because it is a drastic remedy, “any doubts about the propriety of summary adjudication must be resolved in favor of the party opposing the motion.” (*See's Candy Shops, Inc. v. Super. Ct.* (2012) 210 Cal.App.4th 889, 900.)

The Court is sympathetic to Defendant's complaints regarding the burden stemming from Plaintiffs' counsel's election to submit, as evidence in opposition to the underlying motion for summary judgment, interrogatory responses, rather than preparing and filing – or at least upon receipt of Defendants' January 23, 2020 objections, seeking leave to file – the declaration that is the subject of the present motion. This path of conduct has placed a significant burden not only on Defendant's counsel, but on the Court as well.

Nevertheless, the Court simply cannot ignore the fact that denying the present motion would, in effect, deny the Plaintiffs their day in court without fully resolving the central question of whether a triable issue of fact exists. (Code Civ. Proc. § 437c, subd. (c).) The Court ultimately finds no justice in taking such a “drastic step” based on the fact that Plaintiffs' counsel submitted possible evidence in a procedurally defective form.

As previously noted, the contents of Plaintiff's interrogatory responses assert facts that, in the Court's view, may create a triable issue as to whether Samrick had acted in a way that created a duty of agency owing to Plaintiffs during the times relevant to the allegations in the complaint and was therefore serving as a “dual-agent.” However, a party responding to a motion for summary judgment may not use its own interrogatory responses as evidence, in its own favor, in support of its statement of undisputed facts. (*Great American Insurance Companies v. Gordon Trucking, supra*, 165 Cal.App.4th at 450; see also Code Civ. Proc. § 2030.410.) And Samrick properly objected, on this ground, to Plaintiffs' offering their own interrogatory responses as evidence. (See Samrick's Objection to Plaintiffs' Evidence.)

At the hearing on Samrick's motion for summary judgment, and through supplemental briefings, Plaintiffs' counsel argues that, pursuant to the holding in *Sweetwater Union High School Dist. V. Gilbane Bldg. Co.* (2019) 6 Cal.5th 931 (*Sweetwater*), “verified interrogatory responses, which are made under penalty of perjury under the laws of the State of California, are the equivalent of declarations for purposes of these motion proceedings.” (Plaintiffs' Supp. Briefing at 2:2-4.) The Court disagrees.

The facts in *Sweetwater* are fundamentally distinguishable from those here. *Sweetwater* involved the question of “what kind of evidence a court may consider in ruling on a pretrial anti-SLAPP motion in determining a plaintiff’s probability of success.” (*Sweetwater, supra*, 6 Cal.5th at 937.) The present motion is one for summary judgment. *Sweetwater* involved a plaintiff’s attempted use, against defendants, of previously sworn testimony and sworn plea statements by *defendants’* agents and officers. (*Id.* at 938-39.) Here, Plaintiffs attempt to use their own statements. Finally, and perhaps most importantly, *Sweetwater* did not involve interrogatory responses. The Court finds this distinction dispositive because Code of Civil Procedure section 2030.410 expressly provides that “any party *other than the responding party*” may use any answer or any part of an answer to an interrogatory *only against the responding party*.” (See also *Great American Insurance Companies v. Gordon Trucking, supra*, 165 Cal.App.4th at 450.) Based on this specific language, the Court declines to find that, “by implication, *Sweetwater* disapproves, abrogates, or overrules *Great American*.” (Plaintiffs’ Supp. Brief at 2:4.)

Moreover, Plaintiffs fail to demonstrate that the specific interrogatory responses involved here “show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations.” (Code Civ. Proc. § 437c, subd. (d).)

Returning to the present motion, Defendant is correct in noting that each of the cases cited by Plaintiffs relate to deficient separate statements, and not to the failure to submit evidence in a proper form. However, the Court finds that the reasoning behind the holdings in those cases is applicable to the instant matter – that where a question of fact may exist, a trial court generally should not enter summary judgment against a party based solely on the failure of that party’s evidentiary filings to conform to procedural requirements. (See *e.g. Parkview villas Assn., Inc. v. State Farm Fire & Casualty Co.*, 133 Cal.App.4th 1197, 1214-15.)

For the foregoing reasons, the Court finds good cause to grant Plaintiffs’ request for leave to file supplemental and amended opposition papers. The following documents are deemed filed as of the date of entry of this order: (1) the Declaration of Jack Daniels in Support of Plaintiffs’ Opposition to Defendant Alyssa Samrick’s Motion for Summary Judgment; (2) Plaintiff’s Amended Separate Statement of Disputed and Additional Facts in Opposition to Defendant Alyssa Samrick’s Motion for Summary Judgment; and, (3) Plaintiff’s Amended Opposition to Defendant Alyssa Samrick’s Motion for Summary Judgment.

## [2] DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

**TENTATIVE RULING:** Because the Court is granting Plaintiffs leave to, in effect, re-file their opposition papers, the hearing on Defendant Alyssa Samrick’s Summary Judgment motion is CONTINUED to March 25, 2020, 8:30 a.m. in Dept. B. Defendant Samrick may, no later than March 20, 2020, serve and file an Amended Reply, or Supplement to the Reply already on file, to address any matters addressed in, or affected by, the newly filed opposition documents cited herein above.