

## TENTATIVE RULINGS

**FOR: March 12, 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.

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

**Conservatorship of Jeanne Marie Tarbox**

**17PR000243**

REVIEW HEARING

**TENTATIVE RULING:** The Court has been informed that the Conservatee is deceased. Based on the foregoing, the Conservatorship is terminated.

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**In the Matter of the Jane J. Campbell Surviving Grantor's Trust**

**19PR000051**

(1) DEMURRER TO PETITION IN CASE NO. 20PR000010

**TENTATIVE RULING:** Respondent Todd H. Andersen's (individually and as a beneficiary of the Dewey K. Andersen Survivor's Trust and as trustee of the trust established for the benefit of Kim J. Andersen) demurrer to the first cause of action to compel distribution, second cause of action of action for breach of trust and fiduciary duty, third cause of action to compel an accounting, fourth cause of action to invalidate contract or exercise of power of appointment based upon undue influence, fraud, and mistake, fifth cause of action for removal and surcharge of trustee, sixth cause of action for imposition of constructive trust, and seventh cause of action to restrain the trustee from using trust assets to defend on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND.

All claims as currently pled are barred by the statutes of limitation. In May 2014, respondent, as Kim J. Anderson's financial advisor and trustee, told Kim she was broke and would be living on the streets if she did not sign a contract with him to accept \$2,500 per month

for the rest of her life in exchange for her 1/3 interest in her father's estate with an estimated value of approximately \$9,000,000. (Pet., ¶ 25.) In November 2014, Kim was admitted to the hospital after going into a coma-like state. (*Id.*, ¶ 26.) She came out of the coma eight days later and then remained in the hospital for "several weeks." (*Id.*) A "couple of days" after Kim came out of her coma, she told petitioner Scott K. Andersen about the contract she had signed with respondent. (*Id.*, ¶ 28.) Petitioner informed Kim she was not broke as respondent had represented and she had been deceived. (*Id.*) It was at this time that Kim asked petitioner to recommend an attorney to help invalidate the contract. (*Id.*) Kim retained an attorney on December 26, 2014. (*Id.*, ¶ 29.) Kim's attorney, Amy Harrington, sent a series of letters on Kim's behalf in early 2015. (*Id.*, ¶¶ 30-35.) Petitioner also sought information regarding the administration and distribution. (*Id.*, Exs. E-I.) Petitioner demanded an accounting in January 2015 and demanded distribution in April 2015. (*Id.*, Exs. E, I.) Kim passed away on May 17, 2017. (*Id.*, ¶ 7.) Petitioner filed the instant petition on January 10, 2020.

These allegations demonstrate Kim was aware of wrongdoing that occurred in 2014 and elected not to act before her death. Petitioner also was aware of the wrongdoing yet took no action. Leave to amend is granted to allow petitioner an opportunity to plead around the limitations bar by alleging facts establishing tolling or estoppel.

Moreover, petitioner alleges he is a successor in interest to Kim pursuant to Code of Civil Procedure section 377.30 et seq. (*Id.*, ¶ 1; see *id.* [alleging successor in interest under Welfare and Institutions Code section 15657.3, subdivision (d)(1)(B)].) Petitioner has not alleged the prerequisites for standing under Code of Civil Procedure section 377.32. Petitioner represents he intends to file the statutory declaration prior to the hearing to satisfy the code requirements. Leave to amend is granted to allow petitioner to plead his compliance with this code provision.

Respondent's remaining contentions that petitioner lacks standing is not well-taken. Petitioner alleges he is a beneficiary of the Dewey K. Andersen Survivor's Trust, and an interested person under Probate Code section 48. (*Id.*) Petitioner also is a residual beneficiary under paragraph 3.1 of the trust established for Kim's benefit.

Petitioner is not entitled to an evidentiary hearing on a demurrer.

The Court has not considered the additional facts not contained within the four corners of the petition such as from the opposition or the Mayhew reply declaration.

Petitioner shall file an amended petition within 10 calendar days of service of notice of entry of order.

(2) PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS FROM RESPONDENT ANDERSEN

**TENTATIVE RULING:** Petitioner Scott Andersen's motion to compel further responses to special interrogatories (set one) and requests for production of documents (set one

and set two) from respondent Todd Andersen is GRANTED.<sup>1</sup> (Code Civ. Proc., §§ 2030.300, subd. (a)(1), 2031.310, subd. (b)(1).) The meet and confer efforts were adequate under the circumstances. Petitioner does not directly set forth specific facts showing good cause justifying the discovery sought by the demands. A review of petitioner’s papers, however, allows the Court to make a finding of good cause. (*Id.*, § 2031.310, subd. (b)(1); *Kirkland v. Super. Ct.* (2002) 95 Cal.App.4th 92, 98.) All of the objections except for those pertaining to the attorney-client privilege and work product doctrine lack merit. (*Fairmont Ins. Co. v. Super. Ct.* (2000) 22 Cal.4th 245, 254; *Korea Data Systems Co. v. Super. Ct.* (1997) 51 Cal.App.4th 1513, 1516; *Best Product, Inc. v. Super. Ct.* (2004) 119 Cal.App.4th 1181, 1188.) Respondent shall provide a privilege log if he believes that certain files are privileged. (Code Civ. Proc., § 2031.240, subd. (b); *Hernandez v. Super. Ct.* (2003) 112 Cal.App.4th 285, 291-92.) Responses to written interrogatories must be complete and straightforward as to “the information reasonably available to the responding party” and “shall be answered to the extent possible” if they cannot be answered completely. (Code Civ. Proc., § 2030.220, subs. (a)-(b).) Respondent shall serve verified code compliant further responses, without objections except for the attorney-client privilege and work product doctrine, within 20 calendar days of service of notice of entry of order. Respondent shall serve his privilege log within 20 calendar days of service of notice of entry of order.

Respondent’s request for judicial notice of the petitions in Case Nos. 20PR000010 and 20PR000028 is GRANTED, but not for the truth of the matters asserted therein.

Petitioner’s request for monetary sanctions for bringing his motion to compel further responses is DENIED. The request is not code-compliant. Petitioner did not cite in the notice of motion a specific code section authorizing sanctions. (Code Civ. Proc., §§ 2023.030-2023.040; see Weil & Brown, Cal. Practice Guide: Civil Proc. Before Trial (Rutter Group 2018) at § 8:2000 [“The notice of motion must contain a request for sanctions and must: . . . Cite the *authority* for such sanctions.”].) Petitioner generally cites to Code of Civil Procedure sections 2023.010 and “2023(a)” as authority for his request for monetary sanctions. Section 2023.010 simply lists possible misuses of the discovery process. The code provision does not create an independent basis for awarding monetary sanctions. The citation to section “2023(a)” cannot serve as a basis for monetary sanction as the statute was repealed in 2005. Any reference to code sections in the memorandum of points and authorities is a violation of due process.

Respondent’s request for monetary sanctions for opposing the motion to compel further responses is DENIED. Petitioner was substantially justified in bringing his motion.

Petitioner’s request for evidentiary sanctions is DENIED WITHOUT PREJUDICE. “The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks, but the court may not impose sanctions which are designed not to accomplish the objects of discovery but to impose

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<sup>1</sup> Respondent represents he produced documents responsive to four of the document requests. (Mayhew Decl., ¶ 3.) In a situation where documents are served after a motion to compel further responses is filed, the Court has substantial discretion to decide how to rule on the motion. (See *Sinaiko Healthcare Consulting, Inc. v. Pac. Healthcare Consultants* (2007) 148 Cal.App.4th 390, 409.) The best solution is to reach the merits of petitioner’s motion.

punishment.” (*Laguna Auto Body v. Super. Ct.* (1991) 231 Cal.App.3d 481, 488, quoting *Motown Records Corp. v. Super. Ct.* (1984) 155 Cal.App.3d 482, 489.) The sanctions imposed must be tailored to “fit the crime.” (*Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1293.) The imposition of evidentiary sanctions, at this point, would be unjust because the penalty is not “appropriate to the dereliction.” (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 793.) Petitioner also did not set forth the evidentiary sanctions he wants the Court to impose in the notice of motion.

The Court reserves for the future the issue of whether to appoint a discovery referee on its own motion.

### (3) PETITIONER’S MOTION TO COMPEL COMPLIANCE WITH DEPOSITION FOR PRODUCTION OF BUSINESS RECORDS FROM NON-PARTY LANG, RICHERT & PATCH

**TENTATIVE RULING:** Petitioner Scott Andersen’s motion to compel non-party Lang Richert & Patch (“LRP”) to produce documents pursuant to the deposition subpoena is **GRANTED IN PART AND DENIED IN PART**. LRP represents it has no responsive documents as to decedent Jane Campbell due to a fire at a former law office. LRP also represents attorney Stan Blyth never represented Kim Andersen, meaning they do not have an estate planning file for her. The motion as to these requests, therefore, is denied.

To the extent documents exist and respondent Todd Andersen has invoked the attorney-client privilege and/or work product doctrine, LRP and/or Andersen shall provide a privilege log if they believe certain files are privileged. (Code Civ. Proc., § 2031.240, subd. (b); *Hernandez v. Super. Ct.* (2003) 112 Cal.App.4th 285, 291-92.) The parties shall meet and confer to see if they can resolve any of the privilege issues after the privilege log is served. Petitioner may file an additional motion to compel regarding these materials if necessary. LRP/Andersen shall serve the privilege log within 20 calendar days of service of notice of entry of order. The motion as to these requests, if any, is granted.

Petitioner’s request for judicial notice of the petitions in Case Nos. 19PR000051 and 20PR000010 is **GRANTED**, but not for the truth of the matters asserted therein.

LRP’s request for judicial notice of the responsive separate statement from respondent in response to the motion to compel further responses is **GRANTED**, but not for the truth of the matters asserted therein.

Petitioner’s request for monetary sanctions for bringing his motion to compel is **DENIED**. The request is not code-compliant. Petitioner did not cite in the notice of motion a specific code section, with the requisite subsection, authorizing sanctions. (Code Civ. Proc., §§ 2023.030-2023.040; see Weil & Brown, Cal. Practice Guide: Civil Proc. Before Trial (Rutter Group 2018) at § 8:2000 [“The notice of motion must contain a request for sanctions and must: . . . Cite the *authority* for such sanctions.”].) Petitioner generally cites to Code of Civil Procedure section 2025.480, but does not specify the requisite subsection. Additionally, Code of Civil Procedure sections 2023.010, subdivisions (e) and (h), simply list possible misuses of the

discovery process. The code provision does not create an independent basis for awarding monetary sanctions. Section 2023.030, subdivision (a), states the Court may impose monetary sanctions if a party misuses the discovery process. This code provision, however, makes clear that the Court's authority to impose sanctions must be authorized by another provision of the Discovery Act. Any reference to code sections in the memorandum of points and authorities is a violation of due process.

LRP's request for monetary sanctions for opposing the motion to compel is DENIED. Imposition of monetary sanctions would be unjust. It is unclear why LRP would serve 90 pages of objections to the document requests when it apparently knew no such documents existed due to the fire and non-representation.

The Court reserves for the future the issue of whether to appoint a discovery referee on its own motion.

(4) PETITIONER'S MOTION TO COMPEL COMPLIANCE WITH DEPOSITION FOR PRODUCTION OF BUSINESS RECORDS FROM NON-PARTY LEE, LAWLESS & BLYTH

(5) PETITIONER'S MOTION TO COMPEL COMPLIANCE WITH DEPOSITION FOR PRODUCTION OF BUSINESS RECORDS FROM NON-PARTY BLYTH LEE & ASSOCIATES

**TENTATIVE RULING:** Petitioner Scott Andersen's motions to compel non-parties Lee, Lawless & Blyth and Blyth Lee & Associates to produce documents pursuant to the deposition subpoenas are DENIED. Both firms have been disbanded. The custodian of records, Richard Lee, declares there are no responsive records or client files due to a fire at the office building.

Petitioner's requests for judicial notice of the petitions in Case Nos. 19PR000051 and 20PR000010 are GRANTED, but not for the truth of the matters asserted therein.

Petitioner's requests for monetary sanctions for bringing his motions to compel are DENIED. The request is not code-compliant. Petitioner did not cite in the notice of motion a specific code section, with the requisite subsection, authorizing sanctions. (Code Civ. Proc., §§ 2023.030-2023.040; see Weil & Brown, Cal. Practice Guide: Civil Proc. Before Trial (Rutter Group 2018) at § 8:2000 ["The notice of motion must contain a request for sanctions and must: . . . Cite the *authority* for such sanctions."].) Petitioner generally cites to Code of Civil Procedure section 2025.480, but does not specify the requisite subsection. Additionally, Code of Civil Procedure sections 2023.010, subdivisions (e) and (h), simply list possible misuses of the discovery process. The code provision does not create an independent basis for awarding monetary sanctions. Section 2023.030, subdivision (a), states the Court may impose monetary sanctions if a party misuses the discovery process. This code provision, however, makes clear that the Court's authority to impose sanctions must be authorized by another provision of the Discovery Act. Any reference to code sections in the memorandum of points and authorities is a violation of due process.

The Court reserves for the future the issue of whether to appoint a discovery referee on its own motion.

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**Estate of Daniel Lee Calaway**

**20PR000033**

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

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

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**Estate of Patricia Ann Hartley**

**20PR000039**

PETITION FOR LETTERS OF ADMINISTRATION

**TENTATIVE RULING:** The Court notes that the caption of the Petition does not indicate that petitioner is seeking authorization to administer under the Independent Administration of Estates Act. However, the body of the petition, the notice, the affidavit of publication of notice, the proposed letters, and the proposed order are all consistent in seeking such powers. Based on the foregoing, the Court finds that the failure to include this request in the caption of the Petition is a scrivener's error, and the Petition seeks authorization to administer under the Independent Administration of Estates Act.

The Court further notes that the proposed order on file does not recite the proper amount for the bond. In the Supplemental Declaration of Jonathan D. Hollister, Petitioner indicates that she will be submitting a corrected Proposed Order. If a corrected Proposed Order conforming to the Petition, and directing bond be fixed at \$250,000, is filed prior to the hearing, the Petition will be GRANTED. If no such corrected order is filed, the matter will be CONTINUED to March 26, 2020, 8:30 a.m. in Dept. B to allow for such filing.

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

**Christopher Miller v. Mary Hardin, et al.**

**18CV001303**

MOTION TO CONTINUE THE TRIAL DATE

**TENTATIVE RULING:** The matter is continued to March 20, 2020, at 8:30 a.m. in Dept. B.