

## TENTATIVE RULINGS

**FOR: March 14, 2018**

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. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. 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. Diane Price, Dept. C (Historic Courthouse)

**Estate of Lee Joseph Peak**

**16PR000110**

FIRST AND FINAL ACCOUNT AND REPORT OF EXECUTOR, PETITION FOR FINAL DISTRIBUTION AND ALLOWANCE OF COMPENSATION TO ATTORNEYS FOR STATUTORY AND EXTRAORDINARY SERVICES, FOR ALLOCATION OF ESTATE, AND STATUS REPORT

**TENTATIVE RULING:** GRANT Petition, including fees as prayed.

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**In the Matter of the Iventosch Family Trust**

**26-53253**

PETITION FOR INSTRUCTIONS RE: ADDITIONAL MODIFICATION OF BYPASS TRUST

**TENTATIVE RULING:** GRANT petition.

**CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. C (Historic Courthouse)**

**Napa County v. John Alex Bremer, et al.**

**17CV000884**

DEFENDANTS’ MOTION FOR A JURY TRIAL

**TENTATIVE RULING:**

Defendant John Alex Bremer and Laura Joyce Bremer (trustees of the Bremer Family 1995 Living Trust) and Bremer Group, LLC’s Motion for a Jury Trial is DENIED. Defendants contend they are entitled to a jury trial on plaintiff Napa County’s claims because the County is seeking monetary penalties. Defendants further argue the monetary penalties are not incidental to the injunction request because Defendants have applied to the County for permit modifications to bring their winery into compliance.

The status of the winery’s permit modifications are speculative and irrelevant at this juncture. The Complaint seeks a prohibitory injunction regarding Defendants’ conduct, not a mandatory injunction requiring Defendants to apply for permit modifications.

Because the essence of an action to abate a nuisance and for injunctive relief is equitable, there is no right to a jury trial. (*People v. Englebrecht* (2001) 88 Cal.App.4th 1236, 1245; *Wolford v. Thomas* (1987) 190 Cal.App.3d 347, 353.) The gravamen of the County’s complaint is its request for injunctive relief. If the County is awarded civil penalties but not an injunction after trial, the County’s victory would be hollow, as it would not have succeeded in stopping the conduct that gave rise to its complaint. Thus, the County’s request for civil penalties is incidental to its efforts to enjoin Defendants’ alleged illegal conduct. Moreover, even if the civil penalties are legal relief, the equitable and legal issues cannot be severed because the same alleged misconduct is the basis for the injunctive relief and civil penalties. (*People v. Witzerman*, 29 Cal.App.3d 169, 176-177.)

Defendants’ reliance on *Tull v. United States* (1987) 481 U.S. 412, is misplaced. In *Tull*, the United States Supreme Court found the imposition of civil penalties under the Clean Water Act required trial by jury because the statute’s provision of civil penalties was separate from a remedy for injunctive relief, allowing the government to seek either or both remedies. (*Tull, supra*, 481 U.S. at p. 425.) That is not the case here. Napa County Ordinance 1.20.155(A) provides that when the County commences a civil proceeding for violation of county “ordinances or any rule, regulation, order, permit or conditions of approval,” the County can seek an injunction “and requir[e] the violator to pay civil penalties and/or abatement costs.” In other words, when the County seeks an injunction to abate a nuisance, it is required to seek civil penalties; it may not choose in that situation. Because the remedies at issue in this proceeding are intertwined and not separate, *Tull* does not mandate a trial by jury for the civil penalties portion of the proceeding.

**PROBATE CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)**

**In the Matter of the Margaret A. Hyatt 1993 Revocable Intervivos Trust and the Hyatt Irrevocable Grantor Trust**

**18PR000015**

PETITION FOR (1) BREACH OF FIDUCIARY DUTY; (2) MODIFICATION OF TRUST; (3) INVALIDATION OF TRUST; (4) CONSTRUCTIVE TRUST; (5) TRANSFER OF PROPERTY BELONGING TO TRUST; AND (6) FINANCIAL ABUSE OF AN ELDER

**APPEARANCE REQUIRED.** This petition contains a Probate Code section 850 claim. On January 1, 2018, new notice requirements for Probate Code section 850 petitions became effective. Specifically, Probate Code section 851(c) has been added. It mandates that a notice of hearing for a section 850 petition contain a description of the property at issue, a description of any relief sought under Probate Code section 859, and an advisory statement concerning the filing of a response. The notice of hearing filed on January 16, 2018, does not satisfy any of the above-listed requirements. If respondent Patricia Hyatt is willing to waive the defects in notice, this petition may proceed to the date-setting phase. Otherwise, the petition must be continued at least 30 days for an amended notice of hearing to be served.

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**The Estate of Michael Tselentis**

**26-67620**

PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT AND PARTIAL DISTRIBUTION ON WAIVER OF NOTICE AS PROVIDED THEREIN

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

**CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)**

**Duckhorn Wine Company v. Calistoga Wine LLC, et al.**

**26-66885**

THREE PALMS CROSS-DEFENDANTS' MOTION FOR SANCTIONS AGAINST CROSS-COMPLAINANTS AND THEIR COUNSEL

**TENTATIVE RULING:** Hearing on the Motion is continued to March 28, 2018 at 8:30 a.m. in Dept. I.