TENTATIVE RULINGS

FOR: March 17, 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.

Maria del Carmen Balerio Rascon, et al.
v. Standard Deviation, LLC, et al. **18CV001172**

MOTION TO CONTINUE TRIAL DATE

TENTATIVE RULING: Defendants Baker Enterprises (dba Barrel Safe, incorrectly sued as Standard Deviation, LLC) and Patrick Baker's motion to continue the trial date is GRANTED. There is good cause for the continuance due to the addition of a new party and the need to conduct discovery to prepare for trial as to the new party. Plaintiffs filed a notice of non-opposition and join in the request for a continuance. The mandatory settlement conference is continued to July 30, 2020, at 8:30 a.m. The trial management conference is continued to August 13, 2020, at 8:30 a.m. in Dept. A. The Jury Trial: Long Cause is continued to August 17, 2020, at 8:30 a.m. in Dept. A.

Martha Kongsgaard v. Francis Wang **19CV000286**

MOTION TO QUASH TERRA FIRMA SUBPOENA

TENTATIVE RULING: Cross-Defendants' motion to quash is DENIED. Cross-Defendants' request for discovery sanctions is also DENIED.

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Moving party/counsel is directed to contact the opposing party/ies forthwith and advise of Local Rule 2.9 and the Court's tentative ruling procedure. Notwithstanding the procedures set forth in Local Rule 2.9, the moving party/counsel shall

appear at the hearing, in person or by CourtCall, unless it is confirmed that no party requests oral argument.

Plaintiff and Cross-Defendant Martha Kongsgaard, and Cross-Defendants John Kongsgaard and Mary Kongsgaard (collectively Cross-Defendants) move to quash the business records subpoena issued by Defendants and Cross-Claimants Francis Wang and Laura Young (collectively Wang-Young) to third-party Terra Firma Surveys. (Notice of Motion and Motion at 2:5-8.) Specifically, Cross-Defendants seek "to limit the scope of documents demanded in categories 1, 2, 4, 7, 8, 9, and 10 of the Subpoena to documents relating to the properties located at 550 Stonecrest Drive, Napa, California and 460 Stonecrest Drive, Napa California" and "to limit the scope of the documents demanded in categories 4, 7, 8, 9 and 10 of the Subpoena to documents created in 2010 and 2011." (*Id.* at 2:9-13; Palozola Decl. at Exh. 1, Attachment 3.)) Cross-Defendants also seek sanctions in the amount of $5,525.00 against Cross-Complainants. (Notice of Motion and Motion at 2:14-15; Palozola Decl. at Exh. 1, Attachment 3.)

Cross-Defendants fail to set forth, in the Notice of Motion, the grounds on which they bring the present motion. (See Code Civ. Proc. § 1010 ["the notice of a motion, other than for a new trial, must state…the grounds upon which it will be made"].) It appears from Cross-Defendants' moving papers, however, that the motion is based on the assertion that the subpoena, absent the requested limitations, would exceed the permissible scope of discovery. (See *e.g.* Support Memo at 8:8-13, 9:3-5.)

"[A]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Code Civ. Proc. § 2017.010.)

Cross-Defendants first appear to argue that, as relates to Subpoena categories 1, 2, 4, 7, 8, 9, and 10, "[n]one of the documents relating to 500 Stonecrest are themselves 'relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action,' nor are they likely to lead to the discoverability of such evidence." (Support Memo at 9:11-14; see also Palozola Decl. at Exh. 1, Attachment 3.)

The Wang-Young Cross-Complaint asserts causes of action for breach of contract and breach of the covenant of good faith and fair dealing. (See Cross-Complaint at pp. 7-8.) The alleged July 8, 2010 agreement at the heart of these claims explicitly calls for Cross-Defendants to "first apply to Napa County for a lot-line adjustment between 500 Stonecrest and 550 Stonecrest…." (See Cross-Complaint at Exhs. B and C.) The series of maps allegedly depicting the sequence of parcel adjustments anticipated in that agreement depicts and identifies the real properties known as 460, 500, and 550 Stonecrest Drive, and is stamped "Prepared by Terra Firma Surveys" and dated October 27 and 28, 2010, respectively. (*Id*. at Exh. D.) Finally, Cross-Complainants allege that sometime on or after April 5, 2011, Cross-Defendants notified Cross-Complainants that they "questioned the enforceability and interpretation" of the agreement, and "were no longer interested in pursuing negotiations." (*Id*. at ¶¶ 18-20.)

In light of the foregoing claims and allegations, the Court finds that the business records (1) identified in categories 1, 2, 4, 7, 8, 9, and 10 of the subject Subpoena, and (2) relating to the real property commonly known as 500 Stonecrest Drive, are directly relevant to the subject matters alleged in the Cross-Complaint. As such, they seek documents that are within the scope of discovery in this action. (See Code Civ. Proc. § 2017.010.)

In Reply, Cross-Defendants argue that, "even if the lot line adjustment were properly within the scope of discovery (and the Kongsgaards do not believe it is) the Kongsgaards did not object to request for production number 5 of the Subpoenas, which called for the production of" applications for the subject lot-line adjustment. (Reply at 4:13-16, underlining omitted.) First, as noted herein above, the lot line adjustment appears, to the Court, to be well within the scope of discovery. Second, Cross-Defendants make no effort to explain why, if applications for the lot line adjustment and supporting documents may be admissible or reasonably calculated to lead to the discovery of admissible evidence," the other documents identified in categories 1, 2, 4, 7, 8, 9, and 10, and relating to 500 Stonecrest Drive, are not.

Cross-Defendants next appear to argue that, because "the lot line adjustment between 550 Stonecrest and 500 Stonecrest occurred in 2011 and the Wangs' alleged breach of contract occurred in 2010" none of the documents identified in Subpoena categories 4, 7, 8, 9 and 10, "other than those from 2010 and 2011 are either admissible or likely to lead to the discovery of admissible evidence." (Support Memo at 9:15-16, 19-20; see also Palozola Decl. at Exh. 1, Attachment 3.)

As a preliminary matter it is worth noting that Category four is explicitly limited to "all surveys…at any time after January 1, 2008." (Palozola Decl. at Exh. 1, Attachment 3.) Moreover, during meet and confer, Cross-Complainants agreed to limit categories six through ten "to the period after January 1, 2010." (See Opposition at 2:115-18.) The Court interprets this to mean "documents created after January 1, 2010."

Cross-Complainants allege that they "have, since September 8, 2010, remained ready, willing and able to perform the obligations pursuant to the terms" of the alleged agreement. (See Cross-Complaint at ¶ 32.) They further allege that, "as of [May 24, 2019,] the Cross-Defendants have failed and refused to comply with the terms of the [alleged agreement] and have breached that agreement…." (*Id*. at ¶ 33.) Moreover, Plaintiff herself alleges in the Complaint that Cross-Complainants have encroached and are still encroaching on Plaintiff's property.

Based on the foregoing, the Court finds that the business records (1) identified in categories 4, 7, 8, 9 and 10 of the Subpoena, as limited by Cross-Complainants during meet and confer, are, at the very least, reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc. § 1017.010.)

Because the documents sought through the Business Records Subpoena are either relevant to admissible evidence or reasonably calculated to lead to the discovery of admissible evidence, Cross-Defendants' motion to quash is DENIED. Cross-Defendants' request for discovery sanctions is similarly DENIED.

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

Conservatorship of Maya Derr **17PR000015**

REVIEW HEARING

TENTATIVE RULING: 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 March 17, 2022, 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.

Estate of Edward J. Baker **20PR000049**

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

TENTATIVE RULING: Petitioner indicates decedent had a child, but whether decedent was survived by a spouse, the spouse is deceased, or was divorced or never married is not identified in item 5(a). The will identifies multiple spouses. Depending on the answer to item 5, items 6 or 7 may need to be completed. Moreover, the relationships to decedent are not listed in item 8. Finally, one of the individuals listed in item 8 is a minor. A separate copy of the notice must be sent to a person or persons having legal custody of the minor, with whom the minor resides. (Cal. Rules of Court, rule 7.51(d).) This requirement may have been satisfied by service on Gina Ianiero, but whether the requirement was met is unknown as the relationships are not identified in item 8.

Petitioner may file a supplement or a declaration addressing these issues on or before the hearing. If all issues are addressed and are satisfactory, the petition will be granted. Otherwise, the matter will be continued to April 17, 2020, at 8:30 a.m. in Dept. B to file the appropriate information and provide notice.

Conservatorship of Ryan Obranovich **26-60931**

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the co-conservators are acting in the best interest of the conservatee. The Notice of Conservatee's Rights was filed on March 26, 2013. Thus, the case is set for a biennial review hearing in two years, on March 17, 2022, 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.

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

Wells Fargo Bank, N.A. v. Melina Diaz **19CV001133**

MOTION FOR JUDGMENT ON THE PLEADINGS

TENTATIVE RULING: Plaintiff Wells Fargo Bank, N.A.'s request for judicial notice of the answer, motion to deem admitted requests for admissions, and order granting its motion to deem admitted request for admissions (set one) is GRANTED. For the answer and the motion, the Court does not take judicial notice of the truth of the matters asserted therein.

Plaintiff's motion for judgment on the pleadings is GRANTED. The motion is unopposed and all matters have been admitted regarding the claims for breach of contract and common counts.

The Court cannot sign the proposed order or the proposed judgment as drafted if plaintiff seeks $1,244.50 in costs, including $800 of attorney's fees. The declaration in support of attorney's fees does not contain adequate information regarding the attorney's hourly rate, experience, and hours worked to allow the Court to apply the lodestar to determine whether the fees requested are reasonable. The $345 in costs is supported by the court record. The Court would like to see proof of the $99.50 claimed for the costs of service of process.

If plaintiff can justify the attorney's fees and costs with a supplemental declaration, the Court will enter judgment in the amount of $9,627.39 ($8,382.89 from the complaint + $1,244.50 in costs, including attorney's fees). Otherwise, the Court will enter judgment in the amount of $8,727.89 ($8,382.89 from the complaint + $345 in costs).

The Court sets a status review date for April 17, 2020, at 8:30 a.m. in Dept. B to allow time for plaintiff to file a supplemental declaration to support the attorney's fees and proof of service costs. If a supplemental declaration is not filed before the review hearing or is inadequate, the Court will enter judgment at that time for $8,727.89.

Shawn Dunning v. Faye Smyle, et al. **19CV001725**

RESPONDENTS' DEMURRER TO PETITION FOR WRIT OF MANDATE

TENTATIVE RULING: The demurrer is SUSTAINED without leave to amend.

Respondents Robert Harris and Damien Sandoval demur to the Petition for Writ of Mandate on three grounds. First, Respondents assert that the Petition fails to allege facts sufficient to support relief against either Harris or Sandoval and that they are therefore misjoined pursuant to Code of Civil Procedure section 430.10, subdivision (d). (Notice of Demurrer and Demurrer at 2:2-4.) Respondents next assert that decisions made by Harris and Sandoval are not final administrative orders or decisions for purposes of a writ of mandate pursuant to Code of

Civil Procedure section 1094.5. (*Id*. at 2:5-8.) Finally, Respondents assert that decisions made by Harris and Sandoval are subject to other plain, speedy and adequate remedies in the ordinary course of law, precluding the writ relief requested pursuant to Code of Civil Procedure section 1085. (*Id*. at 2:9-12.)

Petitions for writ of mandate are subject to demurrer under section 430.30. (*Chapman v. Super. Ct.* (2005) 130 Cal.App.4th 261, 271.) A demurrer is treated as "admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The court may also consider as grounds for a demurrer any matter that is judicially noticeable under Evidence Code sections 451 or 452. (Code. Civ. Proc., § 430.30, subd. (a).) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Comm. on Children's Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14.) In reviewing a demurrer, the court must "construe the allegations of a complaint liberally in favor of the pleader." (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 438.) A general demurrer will also lie "where the complaint has included allegations that clearly disclose some defense or bar to recovery." (*Cryolife, Inc. v. Super. Ct.* (2003) 110 Cal.App.4th 1145, 1152.)

Based on the Court's reading of the Petition, it seeks two forms of relief: a writ of administrative mandamus under Code of Civil Procedure section 1094.5 and a writ of traditional mandamus under Code of Civil Procedure section 1085. (See Petition at 5:20-22.)

Harris and Sandoval argue that Petitioner is not entitled to obtain relief, pursuant to Code of Civil Procedure section 1094.5, against them because they are not individuals empowered to set aside the final administrative order or decision that is the subject of the Petition. (*See State v. Super. Ct.* (1974) 12 Cal.3d 237, 255 [held: in mandamus petition seeking relief against a commission decision, no relief is available against commission employees].) The Court agrees. The Petition affirmatively alleges facts that, if true, would establish that neither Harris nor Sandoval are persons empowered to set aside the final administrative decision Petitioner complains of. (See *e.g.* Petition at 20:21-23:8.)

Harris and Sandoval also argue that Petitioner is not entitled to relief as against them pursuant to Code of Civil Procedure section 1085. The Court again agrees. The Petition affirmatively alleges that Petitioner had and availed himself of (and the Court notes that through the Petition against co-respondents Faye Smyle and Napa Valley College, Petitioner continues to have and continues to avail himself of) a "plain, speedy and adequate remedy, in the ordinary course of law" (Code Civ. Proc. §1086.) The Petition affirmatively alleges that Petitioner was provided with specific, respective remedies for seeking a reversal of the decisions of Harris and Sandoval. (See Petition at 22:1-22.) As such, mandamus is not the proper remedy to be invoked in this matter. (See *Nider v. City Commission of Fresno* (1939) 36 Cal.App.2d 14, 26 [held "mandamus is not the proper remedy to be invoked… in this case…[b]ecause the law furnishes petitioner with another remedy…"].)

Petitioner failed to file any opposition or objection to the demurrer. The Court acknowledges that, generally, it is an abuse of discretion for a court to deny leave to amend where there is any reasonable possibility that a petitioner can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) However, Petitioner bears the burden of showing such reasonable possibility. (*Ibid*; see Opposition at 2:2-3.) Here, the burden is on Petitioner to show in what manner he can amend the Petition, and how that amendment will change the legal effect of the pleading. (*Ibid*.; *Medina v. Safe Guard Products* (2008) 164 Cal.App.4th 105, 112 n.8; see *Heritage Pac. Fin'l, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 994 [court did not abuse discretion in denying leave to amend where, despite ample opportunity, plaintiff failed to demonstrate it could cure defect].) Petitioner has not met his burden. Moreover, Petitioner appears to concede, through his silence on this issue, that he is without ability to amend the Petition to state viable claims for relief against either respondent Harris or Sandoval.

Based on the foregoing, the demurrer is SUSTAINED without leave to amend.