

TENTATIVE RULINGS

FOR: May 3, 2019

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. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

In the Matter of Keenan Lake

17PR000112

SPECIAL NEEDS TRUST –ACCOUNTING

TENTATIVE RULING: Pursuant to the April 12, 2018 Minute Order and Article 15 of the special needs trust, co-trustees Harry M. Lake and Beverly Lake are required to file an accounting. Nothing has been filed. The matter is continued to June 28, 2019, at 8:30 a.m. in Dept. A to allow the co-trustees to file the accounting. Failure to file an accounting may require the removal of the co-trustees. The clerk is directed to send notice. The court directs Attorney Richard Day to notify the co-trustees of their obligation to prepare and file an accounting.

.....
Conservatorship of Taylor Wessel

26-66598

REVIEW HEARING: CONFIRM COMMENCEMENT OF CONSERVATORSHIP IN IDAHO

TENTATIVE RULING: With commencement of proceedings in Idaho, the conservators are discharged and the California conservatorship is terminated. The review hearing set for December 11, 2020, is vacated.

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

James Neil v. Automotive, Inc. et al.

18CV001342

APPLICATION TO SET STATUS CONFERENCE RE GUIDANCE ON CASE ISSUES AND TO ORDER DEFENDANT TO PROVIDE NAMES AND CONTACT INFORMATION OF AGGRIEVED EMPLOYEES

TENTATIVE RULING: The Court **DECLINES** to issue the requested order.

The original complaint in this matter, filed September 28, 2018, was a putative class action and representative complaint for violations of various provisions of the Labor Code. On November 2, 2018, Defendants filed a petition to compel arbitration and stay proceedings. That petition was based on an arbitration agreement with a class action waiver between Plaintiff and Defendant. On December 21, 2018, Plaintiff filed a First Amended Complaint asserting only one cause of action under California Labor Code, section 2698, *et seq.* (PAGA claim). Thereafter, Defendants renewed their petition to compel arbitration and stay proceedings.

As an initial matter, Defendants contend that the filing of their petition triggered an automatic stay of proceedings pursuant to Code of Civil Procedure section 1281.4. Defendants' argument is sound, so far as it goes. However, the Court notes that in the context of Plaintiff asserting a single, PAGA cause of action, Defendants acknowledged "the true PAGA claims for civil penalties alleged in this case are not subject to arbitration pursuant to *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348" (Points and Authorities in Support of Petition to Compel Arbitration at 6:7-8.) The Court further notes that the hearing on Defendant's petition to compel is not scheduled until June 4, 2019. Based on the foregoing, and in light of the matters raised by the parties in the present application (discussed below), the Court elects to proceed to the merits of the application by exercising its inherent authority to control the proceedings before it. (Code Civ. Proc. §§128, 187.)

Through this application, Plaintiff requests "that this Court immediately order Defendants to provide the names and contact information for both current and aggrieved employees (as defined in the operative complaint)." (Ex Parte Application at 4:13-14.) Plaintiff fails to provide authority for such order.

Plaintiff argues the requested order is appropriate because, "[w]here a named plaintiff or proposed class representative no longer wishes to serve, discovery to ascertain a suitable replacement is proper under the discretion of the court." (*Id.* at 5:1-2, with subsequent string citation to case law.) The cited authority is not controlling. Plaintiff's amended complaint contains no class action cause of action. Plaintiff presents no authority suggesting that the asserted discovery rule should be applied in a PAGA context. As Defendants explain in their opposition, there are a number of significant differences between the relationship of class action plaintiffs to putative class members on one hand, and the relationship of a PAGA plaintiff to other similarly situated employees on the other. (See April 3, 2019 Opposition at 7:3-24.) The Court concurs with Defendants' position that these distinctions counsel against applying the

proffered discovery rule in the present case. For the foregoing reasons, the Court DECLINES to issue the requested order.

The Court notes the volume of discussion in both moving and opposition papers dedicated to issues implicated by Plaintiff's apparent intention, acknowledged by counsel for both parties, to alter his position in the case. Among these issues are substitution/withdrawal of counsel, approval of settlement of PAGA claims, and dismissal of the action. However, none of these issues is properly before the Court. Plaintiff's appearance in this application is like Socrates – while there is much discussion of his words, his writings don't actually appear in the record (in this instance, properly). The Court urges counsel for both parties to review their obligations under the Rules of Professional Conduct, and to proceed formally and diligently to resolve these issues according to the appropriate processes.