

**TENTATIVE RULINGS**

**FOR: May 8, 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. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.**

**Estate of Lucia P Rocha**

**16PR000207**

FIRST AND FINAL ACCOUNT AND REPORT OF ADMINISTRATOR AND PETITION FOR ITS SETTLEMENT, FOR ALLOWANCE OF STATUTORY COMPENSATION TO ADMINISTRATOR AND HER ATTORNEY AND FOR FINAL DISTRIBUTION

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

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**Conservatorship of Stephen Raymond**

**17PR000023**

ACCOUNT AND REPORT OF CONSERVATOR AND PETITION FOR ITS SETTLEMENT AND FOR FEES

**TENTATIVE RULING:** GRANT petition, including fees as prayed. Within 30 calendar days, the conservator shall mail Judicial Council form GC-042 to the conservatee’s brother and sister and file it with the Court. After a review of the matter, the Court finds the conservator is acting in the best interest of the conservatee. Thus, the matter is set for a biennial review hearing and an accounting in two years, on May 7, 2020, at 8:30 a.m. in Dept. I. All accounting documents must be filed at least 30 days prior to the hearing. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

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**Estate of Louise R. Maddox**

**18PR000090**

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. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.**

**Bruce Tucker Construction, Inc. v. The Reliant Group, et al.**  
**The Reliant Group, Inc. v. Bruce Tucker Construction, Inc.**

**17CV000421**

**18CV000337**

MOTION TO CONSOLIDATE PURSUANT TO CODE OF CIVIL PROCEDURE § 1048(a)

**TENTATIVE RULING:** The unopposed Motion is GRANTED for all purposes including trial. Case number 18CV000337 is consolidated with case number 17CV000421; 17CV000421 is the lead case

**Bruce Tucker Construction, Inc. v. The Reliant Group, et al.**

**17CV000421**

MOTION TO ENFORCE SETTLEMENT AGREEMENT PURSUANT TO CODE OF CIVIL PROCEDURE §§ 664.6, 664.7

**TENTATIVE RULING:** The Motion is DENIED. There is a material disagreement as to provision 9.2.1 of the Settlement Agreement. From the evidence presented, it appears that Plaintiff is proposing a repair of the fountain that is not in accordance with the express terms of provision 9.2.1. “A settlement agreement, like any other contract, is unenforceable if the parties fail to agree on a material term or if a material term is not reasonably certain.” (*Lindsay v. Lewandowski* (2006) 139 Cal.App.4th 1618, 1622.) In addition, Defendant gave Plaintiff notice of rescission of the Settlement Agreement on February 26, 2018, and is pursuing a claim for rescission in its Complaint filed March 13, 2018. Even if the material term regarding the repair of the fountain was reasonably certain, there needs to be a final determination as to whether the Settlement Agreement has been rescinded before the Court could order enforcement. Both parties’ request for attorneys’ fees is denied; Plaintiff has not prevailed on its Motion, and Defendant has not provided any authority for an award of fees.

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**Perfecto Bauer Garcia v. Darrel Joseph Hanson, et al.**

**17CV000624**

DEFENDANT DARREL HANSON’S MOTION FOR JUDGMENT ON THE PLEADINGS TO THE THIRD AMENDED COMPLAINT

**TENTATIVE RULING:** Defendant Darrel Hanson’s motion for judgment on the pleadings to the third amended complaint on the ground of failure to state sufficient facts is

GRANTED WITHOUT LEAVE TO AMEND. The motion is unopposed, and there is no cognizable claim alleged against Hanson. Plaintiff Perfecto Bauer Garcia has had multiple opportunities to allege any cause of action. The Court (Hon. Price) indicated on January 10, 2018, that Garcia could file one last pleading, which he did when he filed his third amended complaint on January 31, 2018. Based on the history of this action, there is no reasonable possibility that Garcia can cure the defective pleading.

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**Peter Kleidman v. Feeva Technology, Inc.**

**17CV000625**

(1) MOTION TO COMPEL INITIAL RESPONSES TO SPECIAL INTERROGATORIES (SET ONE)

(2) MOTION TO COMPEL INITIAL RESPONSES TO SPECIAL INTERROGATORIES (SET TWO)

**TENTATIVE RULING:**

Plaintiff/judgment creditor Peter Kleidman's request for judicial notice of the June 6, 2017 Judgment and an amended proof of service of notice of entry of sister-state judgment is GRANTED.

Kleidman's motions to compel initial responses to special interrogatories (sets one and two) from defendant/judgment creditor Feeva Technology, Inc. are GRANTED. The motions are unopposed. Feeva Technology shall provide code-compliant initial responses, without objections, within 10 calendar days of service of notice of entry of order.

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**In the Matter of Jose Antonio Avelar Chavez**

**18CV000368**

PETITION FOR CHANGE OF NAME

**TENTATIVE RULING:** Pursuant to Code of Civil Procedure section 1279.5, subdivision (c), the petition is DENIED. Petitioner's parole agent or probation officer has not granted prior written approval for the name change.

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**In the Matter of Julian Flores**

**18PR000082**

AMENDED EXPEDITED PETITION TO APPROVE COMPROMISE OF DISPUTED MINOR'S CLAIM

**APPEARANCE REQUIRED.** The contract containing the attorney's fee provision in this case was entered into by the mother on behalf of the claimant minor. Under Family Code section 6602, any contract for attorney's fees and services on behalf of a minor is void unless approved by the Court. No contract for attorney's fees has been approved in this matter. The

Court must use a reasonable fee standard when approving the amount of attorney's fees payable from money to be paid for the benefit of a minor. (Cal. Rules of Court, rule 7.955(a)(1).) The factors the Court considers in determining reasonableness are contained in subdivision (b). Although counsel has reduced her fees, her declaration currently does not address *any* of the factors. Without additional evidence regarding reasonableness, no attorney's fees will be awarded. However, before or at the hearing, counsel may submit a supplemental declaration utilizing the appropriate factors outlined in rule 7.955(b). This will allow the Court to make its reasonableness determination.

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**Old Republic General Insurance Corp. v. Somerston Wine Co.**

**26-68134**

MOTION TO COMPEL INDEPENDENT MEDICAL EXAMINATION

**TENTATIVE RULING:**

Defendant Somerston Wine Co.'s motion to compel an independent medical examination under Code of Civil Procedure sections 2032.250 and 2032.320 is DENIED. These code provisions are not applicable.

Defendant's motion to compel an independent medical examination with Dr. Harry Khasigian under Code of Civil Procedure section 2032.310 is DENIED WITHOUT PREJUDICE. The motion is not code-compliant. A motion under this provision "shall specify the time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty, if any, of the person or persons who will perform the examination." (Code Civ. Proc., § 2032.310, subd. (b).) The notice of motion only identifies the time, place, and the person who will perform the examination. There is no mention of the manner, conditions, scope, and nature of the examination. Moreover, it is contrary to the intent of the statute to allow unnamed "assistants and colleagues as the physician may call upon" to participate without more information.

Defendant's request for monetary sanctions under Code of Civil Procedure sections 2032.030, 2032.240, and 2032.410 is DENIED. Defendant did not raise §§ 2032.240 or 2032.410 as the basis for its motion, and § 2032.030 does not exist.

Although the motion is denied without prejudice due to procedural deficiencies, plaintiff should prepare to submit to a physical examination. The parties shall meet-and-confer regarding when the examination will occur. Further motion practice is not necessary on this issue considering plaintiff has waived objections to the demand by failing to serve a response, the Court has continued the trial in this matter (i.e. there no longer is a basis for plaintiff to further delay the examination), and the examination must occur for any meaningful settlement discussions to take place. (Code Civ. Proc., § 2032.240, subd. (a); Corliss Decl., Exs. C-D.)<sup>1</sup>

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<sup>1</sup> Counsel should review Code of Civil Procedure section 2032.420 as a possible basis for any renewed motion, if necessary, since it does not appear defendant desires to obtain discovery by a physical examination other than that described in Code of Civil Procedure section 2032.210 et seq. Such a motion, however, also contains time, place, manner, conditions, scope, nature of the examination, and identity requirements.