

**TENTATIVE RULINGS**

**FOR: June 5, 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. Victoria Wood, Dept. C (Historic Courthouse) at 2:00 p.m.**

**Conservatorship of John S. Fimby**

**17PR000048**

REVIEW HEARING

**TENTATIVE RULING:** The court investigator’s report is not on file. The review hearing is continued to July 12, 2018, at 2:00 p.m. in Dept. C to allow time for completion of the court investigator’s report.

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**Estate of James Peter Graham**

**17PR000114**

FIRST AND FINAL ACCOUNT; PETITION FOR SETTLEMENT OF FINAL ACCOUNT; FOR FINAL DISTRIBUTION; AND FOR ALLOWANCE OF STATUTORY ATTORNEY’S FEES

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

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**In the Matter of The Capp Family Trust**

**18PR000065**

PETITION FOR ORDER ESTABLISHING RIGHTS IN REAL PROPERTY AND INSTRUCTIONS REGARDING TRUST PROPERTY

**APPEARANCE REQUIRED**  
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**Conservatorship of Janet Irene Francis**

**18PR000091**

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

**APPEARANCE REQUIRED**

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**Estate of Harry E. Fosdick**

**18PR000110**

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

**TENTATIVE RULING:** GRANT Petition.

**CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. C (Historic Courthouse) at 2:00 p.m.**

**In the Matter of Margaret Gail Newton Showley**

**18CV000449**

PETITION FOR CHANGE OF NAME

**TENTATIVE RULING:** Notice has been properly published and no written objections have been filed. The Petition for Change of Name is GRANTED without need for appearance

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**In the Matter of Cindy Chavez**

**18CV000468**

PETITION FOR CHANGE OF NAME

**TENTATIVE RULING:** Notice has been properly published and no written objections have been filed. The Petition for Change of Name is GRANTED without need for appearance.

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**Igor Sill, et al. v. Jack L. Malan, Jr., et al**

**18CV000648**

MOTION FOR PRELIMINARY INJUNCTION

**TENTATIVE RULING:** Plaintiffs' motion for preliminary injunction is GRANTED.

On May 17, 2018, the Court heard Plaintiffs Igor Sill and Cynthia Sill's *ex parte* application for a temporary restraining order and order shortening time to hear Plaintiffs' motion

for preliminary injunction. After hearing from the parties, and based on Defendants' representation that they would not build anything on Plaintiffs' property pending a hearing on the matter, the Court granted Plaintiffs' request to shorten time as to the preliminary injunction, and continued the application for temporary restraining order.

Plaintiffs and Defendants own neighboring properties along Atlas Peak Road in Napa, California. Through this action, Plaintiffs contend Defendants have trespassed on Plaintiffs' property during Defendants' efforts to build on their property located at 2943 and 2945 Atlas Peak Road. Plaintiffs seek a temporary restraining order, a preliminary injunction, and a permanent injunction enjoining Defendants from (a) entering or trespassing upon Plaintiffs' property, (b) parking vehicles upon the right of way, and (c) harassing or interfering with Plaintiffs' employees and contractors.

The decision whether to grant a preliminary injunction is within the trial court's discretion. (*IT Corp v. County of Imperial* (1983) 35 Cal.3d 63, 69.) The trial court must evaluate two interrelated factors when deciding whether to issue a preliminary injunction: (1) the likelihood the Plaintiff will prevail on the merits at trial; and (2) the interim harm that will occur if the injunction is denied as compared with the harm that the Defendant would be likely to suffer if the preliminary injunction were issued. (*Department of Fish & Game v. Anderson-Cottonwood Irrig. Dist.* (1992) 8 Cal.App.4th 1554, 1560.) Plaintiff has the burden to show they are entitled to relief. (*Casmalia Resources, Ltd. v County of Santa Barbara* (1987) 195 Cal.App.3d 827, 838.)

As of June 4, 2018, Defendants have failed to submit any opposition to Plaintiffs' motion. The lack of opposition demonstrates Defendants concede as to each point raised by Plaintiffs, as failure to file and/or serve an opposition constitutes an admission the motion is meritorious. (*Rooney v. Vermont Inv. Corp.* (1973) 10 Cal.3d 351, 367.) Having received no opposition, the Court GRANTS Plaintiffs' motion in full. Plaintiffs shall present an order for the Court's execution at the hearing.