

TENTATIVE RULINGS

FOR: June 12, 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.

**In the Matter of the Anthony Usher 2016 Trust
Under the Trust Agreement Dated August 30, 2016**

16PR000230

FIRST ACCOUNT AND REPORT OF TRUSTEE, AND PETITION FOR ALLOWANCE OF TRUSTEE’S FEES AND ATTORNEY’S FEES

TENTATIVE RULING: The petition references an attorney declaration and a billing invoice attached as Exhibit A, but they are not in the court file. In addition, the names and addresses of the beneficiaries are not listed in the petition as required under California Rules of Court, rule 7.902, and none of the factors under California Rules of Court, rule 7.776 regarding trustee compensation are listed or explained. Without a showing under the rule, the Court cannot approve trustee compensation. Petitioner shall file: (1) the missing attorney declaration and billing invoice; (2) an addendum with the requisite beneficiary information in order to comply with rule 7.902; and (3) a declaration applying the relevant factors from rule 7.776. The matter is continued to June 27, 2018, at 2:00 p.m. in Dept. C to allow petitioner to file the necessary materials.

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Conservatorship of John S. Fimby

17PR000048

PETITION FOR ORDER DISPENSING WITH ACCOUNTINGS

TENTATIVE RULING: The petition is GRANTED. The accounting requirement is waived as long as Probate Code section 2628 is satisfied.

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In the Matter of the Samuel Cohen Trust Dated June 12, 2007

17PR000078

PETITION FOR SETTLEMENT OF ACCOUNT AND APPROVAL OF TRUSTEE,
ATTORNEY, AND BOND FEES

TENTATIVE RULING: GRANT petition, including fees as prayed.

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Estate of Maxine A. Weldon

18PR000118

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

TENTATIVE RULING: GRANT petition. Petitioner shall obtain a surety bond in the amount of \$684,000. Petitioner shall file the proposed order (Judicial Council form DE-140) and letters (DE-150) conforming to the petition.

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Conservatorship of Donna Brown

26-50972

REVIEW HEARING

APPEARANCE REQUIRED

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Conservatorship of Arnold J. Koenig

26-58619

1) AMENDED PETITION FOR SETTLEMENT OF ACCOUNT AND APPROVAL OF
TRUSTEE, ATTORNEY AND BOND FEES

TENTATIVE RULING: GRANT Petition, including fees as prayed.

2) AMENDED FOURTH ACCOUNTING AND REPORT OF CONSERVATOR

TENTATIVE RULING: The Accounting is APPROVED. After a review of the matter, the Court finds the Conservator is acting in the best interest of the Conservatee. Based on the report of the court investigator, the Court determines by clear and convincing evidence that Conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process, and therefore orders Conservatee disqualified from voting pursuant to Elections Code section 2208.

The case is set for a biennial review hearing on March 5, 2020 at 8:30 a.m. in Dept. I. The court investigator shall prepare a biennial investigator report for the next hearing date. The

clerk is directed to send notice to the parties. The Review Hearing currently set for December 13, 2018 is vacated.

3) HEARING TO SET EVIDENTIARY HEARING

APPEARANCE REQUIRED to address whether an evidentiary hearing is still necessary.

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

In the Matter of Heather Hilton

18CV000317

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Pursuant to Code of Civil Procedure section 1277, the non-petitioning parent must be personally served with the petition for name change and given 30 days' notice of the hearing. The court file contains no proof of service on minors Cypress and Crea's father. If a proper proof of service is filed before the hearing, the petition shall be GRANTED. If no proof of service is filed, the matter will be DENIED WITHOUT PREJUDICE.

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Kevin Nickerson v. Deborah Fitch

18CV000434

MOTION FOR CHANGE OF VENUE AND FOR COSTS AND ATTORNEY'S FEES

TENTATIVE RULING: The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Defendant's counsel is directed to contact the opposing party forthwith and advise the opposing party of Local Rule 2.9 and the Court's tentative ruling procedure. If defendant's counsel is unable to contact the opposing party prior to the hearing, defendant's counsel shall be available at the hearing, in person or by telephone, in the event opposing party appears without following the procedures set forth in Local Rule 2.9.

Defendant Deborah Fitch's motion to change venue under Code of Civil Procedure section 397, subdivision (a) [not the proper court], is GRANTED and her request for attorney's fees and costs for bringing the motion is DENIED for the following reasons:

A defendant has the right to have a transitory action against her tried in the county where she resides unless the action falls within an exception to the general venue rule. (Code Civ. Proc., § 395, subd. (a).) According to the verified complaint, Fitch resides in Santa Clara County. (Compl., ¶ 8.) Venue, therefore, is proper in Santa Clara County unless an exception applies. Plaintiff Kevin Nickerson contends the residence requirement does not apply and venue is proper in Napa County because: (1) the injury occurred here; (2) the fraudulent contract, if it occurred, was entered into here; (3) Code of Civil Procedure section 393, subdivision (a), governs; and (4) Civil Code section 2984.4 applies. These contentions fail.

First, an action for injury to personal property is triable either where defendant resides or in the county where the injury occurred. (Code Civ. Proc., § 395, subd. (a).) An injury, however, was “not intended to include every invasion of personal and property rights.” (*Mason v. Buck* (1929) 99 Cal.App. 219, 221.) An injury is limited to a “corporeal or physical” injury to the property. (*Id.*; see *Spangenberg v. Spangenberg* (1932) 123 Cal.App. 387, 391 [“The words ‘injury to person or property’ are limited to physical or corporeal injury . . . and conversion is not that sort of injury.”].) Nickerson’s injury relates to his ownership right in the vehicle. The causes of action do not arise from a “corporeal or physical” injury to the property.

Second, an action for breach of contract is triable in the county where defendant resides or where the contract was entered into or where it was to be performed (if specified in writing). (Code Civ. Proc., § 395, subd. (a).) Nickerson does not allege a claim for breach of contract or that the parties entered into a contract. It is not proper for Nickerson to mold his allegations into a narrative about a “fraudulent contract” in order to fall under the contract venue requirement contained in § 395. (See *Haurat v. Super. Ct.* (1966) 241 Cal.App.2d 330, 337 [“Venue is determined on the basis of the complaint as it stands at the time the motion to change is made[.]”].)

Third, Code of Civil Procedure section 393, subdivision (a), provides the county in which the cause or some part of the cause arose is the proper county for the trial of an action for “the recovery of a penalty or forfeiture imposed by statute” The complaint contains five causes of action: declaratory relief, fraud, specific performance, conversion, and theft by false pretense. As alleged in the complaint, although the first four claims are based on statutes, they are not governed by statutes imposing a statutory penalty or requiring forfeiture. The fifth cause of action is a closer question as the underlying statute does impose a penalty. The claim is based on Penal Code section 496, subdivision (c), which provides that any person “who has been injured by a *violation of* [§ 496(a)] . . . may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney’s fees.” (Emphasis added.) By its terms, the statute requires as a prerequisite a violation of § 496(a) to impose the treble damages penalty. However, Nickerson does not allege a cause of action for violation of § 496(a). Because the fifth claim is based solely on the treble damages available under § 496(c), Code of Civil Procedure section 393 does not apply. (See *Haurat, supra*, 241 Cal.App.2d at p. 337.)

Fourth, Civil Code section 2984.4 states “an action on a contract or purchase order under this chapter shall be tried in the superior court in the county where the contract or purchase order was in fact signed by the buyer, where the buyer resided at the time the contract or purchase order was entered into, where the buyer resides at the commencement of the action, or where the motor vehicle purchased pursuant to the contract or purchase order is permanently garaged.” This code provision is inapplicable to the case at bar as it falls under the Automobile Sales Finance Act, which governs a contract for the sale of a motor vehicle by a seller who is engaged in the business of selling vehicles. (Civ. Code, §§ 2981-2984.6.) There are no allegations in the verified pleading that Fitch is engaged in such a business.

Finally, the court exercises its discretion to deny Fitch’s request for attorney’s fees and costs for bringing the motion. Although an offer to stipulate to change of venue was reasonably made and rejected, it appears to the court that Nickerson’s attorney selected the venue and opposed the change of venue in good faith.

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In the Matter of Griselda Martinez Santos

18CV000527

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.

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In the Matter of Diane Lynn Dame Shepp

18CV000561

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.

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World Wine Bottles LLC v. Terravant Wine Company

26-68226

MOTION FOR ENTRY OF AMENDED JUDGMENT PURSUANT TO TERMS OF STIPULATED SETTLEMENT

TENTATIVE RULING: The Motion is DENIED. Plaintiff presents no proper authority for amending the judgment. While the Court does have “jurisdiction to correct mistakes in its orders and records which are not actually the result of the exercise of judgment,” it cannot amend a judgment that was properly entered as it was in this case on May 17, 2018. (*In re Estate of Burnett* (1938) 11 Cal.2d 259, 262.) In its reply, Plaintiff raises for the first time the court’s power to amend the judgment under Code of Civil Procedure section 473, subdivision (d), to “correct clerical mistakes in its judgment.” However, Plaintiff has not shown any evidence that the judgment contains any clerical mistakes; Plaintiff intended to obtain the judgment entered on May 17, 2018, and then moved to execute on that judgment immediately.