

TENTATIVE RULINGS

FOR: June 27, 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. I (Criminal Courts Bldg.- 1111 Third St.) 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: GRANT petition, including fees as prayed.

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Estate of Allen Stuart Press

17PR000238

PETITION FOR ORDER SETTING ASIDE PROBATE HOMESTEAD

TENTATIVE RULING: GRANT petition.

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In the Matter of the Edward M. Stone Revocable Trust

18PR000122

PETITION FOR ORDER DETERMINING TITLE TO PROPERTY

TENTATIVE RULING: GRANT petition.
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In the Matter of the George W. Chaney Inter Vivos Trust

18PR000123

PETITION FOR ORDER DETERMINING TITLE TO PROPERTY

TENTATIVE RULING: GRANT petition.

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In the Matter of Gerson Bakar 1984 Trust

18PR000137

PETITION FOR ORDER DETERMINING TITLE TO PROPERTY

TENTATIVE RULING: GRANT petition.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.

Peter Kleidman v. Feeva Technology, Inc.

17CV000625

MOTION FOR ISSUE SANCTIONS

TENTATIVE RULING: Plaintiff/judgment creditor Peter Kleidman’s motion for issue sanctions against defendant/judgment creditor Feeva Technology, Inc. (FTI) for failing to comply with the Court’s (Hon. Stone) May 8, 2018 Order is GRANTED. Failure to comply with a court order to provide discovery constitutes a misuse of the discovery process. (Code Civ. Proc., § 2023.010, subd. (g).) Faced with misuse of the discovery process, the Court may impose whatever sanctions are just, including issue sanctions, evidence sanctions, terminating sanctions, and monetary sanctions. (*Id.*, § 2023.030.) An issue sanction is an order that designated facts be taken as established against the party guilty of discovery misuse. (*Id.*, § 2023.030, subd. (b).)

It is the moving party’s burden to demonstrate the responding party’s failure to obey the earlier discovery order. (*Corns v. Miller* (1986) 181 Cal.App.3d 195, 201.) Then the burden of proof shifts to the party seeking to avoid sanctions to establish a suitable justification for his conduct. (*Id.*) Two facts are generally prerequisite to the imposition of non-monetary sanctions: (1) there must be a failure to comply with a court order; and (2) the failure must be willful. (*Liberty Mutual Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1102.)

“The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks, but the court may not impose sanctions which are designed not to accomplish the objects of discovery but to impose punishment.” (*Laguna Auto Body v. Super. Ct.* (1991) 231 Cal.App.3d 481, 490, citing *Motown Records Corp. v. Super. Ct.* (1984) 155 Cal.App.3d 482, 489.) The sanctions imposed must be tailored to “fit the crime.” (*Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1293.)

FTI has willfully not complied with the Court’s discovery order as it has not produced initial responses or made an appearance since this case was filed over a year ago. Moreover,

entering issue sanctions at this stage is “suitable and necessary” because they are designed to accomplish the discovery Kleidman seeks. The imposition of issue sanctions would not be unjust because the penalty is “appropriate to the dereliction.” (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 793.) It is apparent that any lesser sanctions at this point would not entice FTI to comply with the Court’s order or compel it to produce responses to the discovery. The Court, therefore, imposes the following issue sanctions: (1) all of FTI’s personal property is subject to the enforcement of a money judgment (special interrogatory number 10); (2) no exemptions apply to any of FTI’s personal property in connection with the enforcement of the instant judgment (special interrogatory number 11); and (3) defendant is not entitled to relief from the Delaware judgment (special interrogatory number 17).

Kleidman’s request for judicial notice is GRANTED as to the June 6, 2017 judgment, October 23, 2017 amended proof of service of notice of entry of judgment on sister-state judgment, and the May 8, 2018 Order.