

TENTATIVE RULINGS

FOR: September 5, 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.

Conservatorship of Andrea J. Fontecchio

16PR000106

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the conservator is acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on September 8, 2021 at 8:30 a.m. in Dept. A. 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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Conservatorship of Elizabeth P Hilton

17PR000064

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON

APPEARANCE REQUIRED

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Conservatorship of Corinne T. Rau

18PR000156

REVIEW HEARING PER STIPULATION FROM MARCH 4, 2019

APPEARANCE REQUIRED
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Estate of Catherine Campbell Harberts

19PR000162

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

TENTATIVE RULING: GRANT petition.

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Estate of Margaret Gert

19PR000172

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

James L Bachor v. County of Napa, et al.

18CV000188

(1) DEMURRER TO THE FIRST AMENDED COMPLAINT

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 plaintiff’s counsel forthwith and advise plaintiff’s counsel of Local Rule 2.9 and the Court’s tentative ruling procedure. If defendant’s counsel is unable to contact plaintiff’s counsel prior to the hearing, defendant’s counsel shall be available at the hearing, in person or by telephone, in the event plaintiff’s counsel appears without following the procedures set forth in Local Rule 2.9.

Defendant County of Napa demurs to the pleading on the ground it does not comply with the California tort claims requirement. This is not a statutory ground for a demurrer under Code of Civil Procedure section 430.10. The Court, however, has construed the demurrer as being brought under section 430.10, subdivision (e), for failure to state sufficient facts.

The County’s demurrer to the amended pleading on the ground it fails to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. “It is well settled that a government claim must be filed with the public entity before a tort action is brought against the public entity or public employee.” (*Watson v. State of Calif.* (1993) 21 Cal.App.4th 836, 843.) “[E]ach cause of action must [be] reflected in a timely claim. In addition, the factual circumstances set forth in the written claim must correspond with the facts alleged in the complaint; even if the claim were timely, the complaint is vulnerable to a demurrer if it alleges a factual basis for recovery which is not fairly reflected in the written claim. [Citations.]” (*Id.* at p. 844, quoting *Nelson v. State of Calif.* (1982) 139 Cal.App.3d 72, 79.)

The issue here is whether the factual basis for Bachor's amended complaint was "fairly reflected" in the claim he filed with the County. Bachor pled in his claim to the County the following: "Near midnight on 2/7/17, a large tree fell completely blocking traffic in both directions. The tree took [sic] out a power line, as well. Initial responders were St. Helena Fire Department. PG&E arrived and dressed [sic] the power line issues. Napa County Fire sent an engine. Both St. Helena and Napa County Fire were released from the scene by Napa County Roads, a division of Napa County Public Works, failed to block [sic] traffic [sic], initially, and did nothing to warn oncoming traffic of the road closure except [sic] a warning sign placed [sic] right at the tree, affording oncoming [sic] traffic no notice on that rainy dark night. Moreover, while, eventually, after the accident, the road was barricaded, nothing was done to warn any inhabitant of [sic] any of the numerous residences that are located between the two barriers, who again, had no notice of the downed tree. Mr. Bachor, while traveling at a safe and legal speed, left his residence and ran into the tree, causing significant injuries and totaling his vehicle, as hereafter described. Napa County Public Works/Napa County Roads Department, by assuming responsibility for the scene, accepted the responsibility to leave in [sic] a safe condition[.] They failed to do so and left it in an ultra-hazardous condition, with the predictable resulting injuries to Mr. Bachor[.]" (RJN, Ex. A.)

Bachor now alleges that two weeks prior to February 7, 2017, PG&E determined the tree was unstable and in danger of falling and interfering with the power transmission lines. (First Amended Compl., ¶ 7.) When PG&E assembled a crew to remove the tree, Jens Stangland, the Public Works Superintendent for the County, ordered the work halted. (*Id.*) He told PG&E the tree was not in a dangerous condition. (*Id.*) When the tree fell, the incident was immediately reported over the California All Incident Reporting System. (*Id.*, ¶ 10.) The incident was reported to the Napa County Fire Department at 11:49:47 p.m. (*Id.*) The County was notified of the situation at that time. (*Id.*) The County failed to check on the status of the road and did not maintain the roadway in a safe condition. (*Id.*)

The County contends that in Bachor's original complaint and claim, he did not allege the County performed any actions prior to February 7, 2017. (RJN, Exs. A [claim], D [original complaint].) The contention is well-taken. The claim to the County, based on a failure to give adequate notice to drivers on the night in question, has morphed into an amended complaint alleging a dangerous condition of the tree that the County knew about two weeks earlier as well as the failure to give notice on the day of the incident. The claim cannot be read to encompass the new allegations regarding the dangerous condition from prior to the tree falling as Bachor proffers.

Thus, the Court disagrees with Bachor that this new allegation is "fairly reflected" in his claim to the County. In making this determination, the Court is "mindful that 'so long as the policies of the claims statutes are effectuated, they should be given a liberal construction to permit full adjudication on the merits. [Citation.]'" (*Smith v. County of L.A.* (1989) 214 Cal.App.3d 266, 280, quoting *Minsky v. City of Los Angeles* (1974) 11 Cal.3d 113, 123.) Although Bachor originally alleged liability for failure to maintain the roadway in a safe manner (and continues to do so), he has added allegations stretching to two weeks prior to the "ultra-hazardous condition" that the County purportedly "left" on the road. (RJN, Ex. A.) The new

alleged negligent act of the County is based on a different time and on a different action than what was alleged in the claim. This is not sufficient to put the County on fair notice of the nature of the cause of action against it. (See *Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4th 441, 446 [“The purpose of these statutes is ‘to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation.’ [Citation.] Consequently, a claim need not contain the detail and specificity required of a pleading, but need only ‘fairly describe what [the] entity is alleged to have done.’ [Citations.] As the purpose of the claim is to give the government entity notice sufficient for it to investigate and evaluate the claim, not to eliminate meritorious actions [citation], the claims statute ‘should not be applied to snare the unwary where its purpose has been satisfied’ [citation].” Bachor, therefore, is barred from raising his cause of action against the County, at least to the extent it is based on actions from two weeks prior to the incident.

The County’s request for judicial notice is GRANTED as to the request for the tort claim (exhibit A), receipt of claim letter (exhibit B), notice of rejection letter (exhibit C), the original complaint (exhibit D), the answer (exhibit E), the stipulation to continue the trial date (exhibit F), the ex parte application to file an amended complaint (exhibit G), the order granting the request for leave to file an amended complaint (exhibit H), the amended complaint (exhibit I), and the fact there was no notice of entry of order filed as to the request for leave to file an amended complaint. (Evid. Code, § 452, subs. (c)-(d); see *Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 376 [“If a plaintiff alleges compliance with the claims presentation requirement, but the public records do not reflect compliance, the governmental entity can request the court to take judicial notice under Evidence Code section 452, subdivision (c) that the entity’s records do not show compliance.”].)

The Court has not considered the evidence attached to the Miroglio declaration or any other information not contained in the amended pleading. (See Code Civ. Proc., § 430.30; *Comm. on Children’s Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14 [“A demurrer tests only the legal sufficiency of the pleading.”].)

If Bachor elects to do so, he shall file his second amended complaint within 10 calendar days of service of notice of entry of order. Any amendments relating to the County are limited to actions that took place on the day of or the day before the incident.

(2) MOTION TO STRIKE

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 plaintiff’s counsel forthwith and advise plaintiff’s counsel of Local Rule 2.9 and the Court’s tentative ruling procedure. If defendant’s counsel is unable to contact plaintiff’s counsel prior to the hearing, defendant’s counsel shall be available at the hearing, in person or by telephone, in the event plaintiff’s counsel appears without following the procedures set forth in Local Rule 2.9.

The motion to strike is well-taken, but the moving defendant may only strike allegations and the claim related to it. (Cal. Rules of Court, rule 3.1203(a); Miroglio Decl., ¶ 10

[acknowledging failure to provide notice of the ex parte application].) Because those allegations and the claim are deficient as stated in the ruling on the demurrer, defendant County of Napa's motion to strike the amended complaint on the ground it was not filed in conformity with the law is deemed MOOT.

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In the Matter of Ashley Keever

19CV001076

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 order to show cause and given 30 days' notice of the hearing. The father was personally served on August 7, 2019. The hearing date is August 5, 2019. Counting backward from the hearing date (excluding the hearing date) to the date of service is 29 days. (Code Civ. Proc., § 12c.) Because the father did not receive 30 days' notice, the Court cannot grant the name change at this time. Rather than deny the petition, the matter is continued to October 17, 2019, at 8:30 a.m. in Dept. A to allow time for proper service. No further publication is required.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Conservatorship of Janet Irene Francis

18PR000091

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

TENTATIVE RULING: In light of the August 28, 2019 filing of the First Accounting and Report, the matter is CONTINUED to October 1, 2019 at 8:30 a.m. in Dept. B.

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Estate of Virginia Rose Savage

19PR000165

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

TENTATIVE RULING: There is no proof of service on file. If a proper proof of service is filed prior to the hearing, the petition will be GRANTED. Otherwise, the petition will be DENIED without prejudice.

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Estate of Charles H. Brusco

19PR000167

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

TENTATIVE RULING: GRANT petition.

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Conservatorship of Donohoe, Mary Anne

26-59649

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the conservators are acting in the best interest of the conservatee. The case is set for a biennial review hearing in two years, on September 7, 2021 at 8:30 a.m. in Dept. B. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Midland Funding LLC v. Simri Casas

19CV000168

MOTION TO SET ASIDE AND VACATE JUDGMENT

TENTATIVE RULING: Good cause appearing and no opposition having been filed, the motion is GRANTED.

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

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BVK Gaming, Inc., et al. v. Timothy J. Long, et al.

26-62431

MOTION TO ENFORCE SETTLEMENT AGREEMENT AND FOR ENTRY OF JUDGMENT

TENTATIVE RULING: Plaintiffs BVK Gaming, Inc. (dba Napa Valley Casino, NVC Land, LLC, and Brian Altizer’s motion to enforce the settlement agreement pursuant to Code of Civil Procedure section 664.6 and for entry of judgment against defendant Raneri and Long Roofing Company, Inc. is GRANTED. The motion is unopposed.