

TENTATIVE RULINGS

FOR: September 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. 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.

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

Nicole Riedel, et al. v. Patrick Elliott-Smith, et al.

18CV000524

DEFENDANTS' MOTION TO STRIKE PORTIONS OF PLAINTIFF'S 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. Defendants' 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 Defendants' counsel is unable to contact Plaintiff's counsel prior to the hearing, Defendants' 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.

Defendants' Request for Judicial Notice is GRANTED. Defendants' Motion is DENIED. When reviewing a motion to strike a prayer for punitive damages, the court looks to see if the complaint as a whole contain[s] sufficient facts to apprise the defendant of the basis upon which the plaintiff is seeking relief. [Citations.] The stricken language must be read not in isolation, but in the context of the facts alleged in the rest of petitioner's complaint. Taken in context, the words "wrongfully and intentionally" [may] describe a knowing and deliberate state of mind from which a conscious[] disregard of petitioner's rights might be inferred -- a state of mind which would sustain an award of punitive damages. [Citations.] (Perkins v. Superior Court (1981) 117 Cal.App.3d 1, 6.) In Plaintiff's First Amended Complaint, Plaintiff alleges that Defendants were aware of the damage caused to Plaintiff's property due to overflow from Defendants' ponds and property, and expressly agreed to seed their property for erosion control to resolve the prior dispute. (First Amended Complaint (FAC) at para. 11.) Despite this knowledge, Plaintiff alleges that Defendants purposely confined a horse or horses in the area that was seeded to cause loss of vegetation and grass to allow increased runoff and erosion onto

Plaintiff's property. (FAC at paras. 12-13.) This alleged intentional conduct supports a claim that Defendants are maliciously causing damage to Plaintiff's property, for which a prayer for punitive damages would be appropriate.

PROBATE CALENDAR – Hon. Diane Price, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.

Estate of Thomas Hugh Williams

17PR000105

FIRST AND FINAL ACCOUNT, PETITION FOR FEES, AND FOR DISCHARGE OF EXECUTOR

TENTATIVE RULING: GRANT Petition, including fees as prayed.