

TENTATIVE RULINGS

FOR: December 28, 2017

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. Mark Boessenecker, Dept. E (Criminal Courts Bldg.-1111 Third St.) at 10:30 a.m.

Estate of Mary Anne Cole

16PR000161

FIRST AND FINAL ACCOUNT AND REPORT OF EXECUTOR AND PETITION FOR ITS SETTLEMENT, AND PETITION FOR FINAL DISTRIBUTION, FOR ALLOWANCE OF COMPENSATION TO EXECUTOR AND ATTORNEY FOR ORDINARY SERVICES

TENTATIVE RULING: GRANT petition, including fees as prayed.

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Estate of William Conrad Studebaker

17PR000239

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

TENTATIVE RULING: The Petition is GRANTED. The Court notes that although box 5(b) of the Petition is checked öwasö, counsel has informed the Court that it should have been checked öwas not.ö

CIVIL LAW & MOTION CALENDAR – Hon. Mark Boessenecker, Dept. E (Criminal Courts Bldg.-1111 Third St.) at 10:30 a.m.

Calvary SPV I, LLC v. Michael H Field

17CV000375

MOTION TO DEEM FACTS AS ADMITTED

TENTATIVE RULING: 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 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 prior to the hearing, Plaintiff's counsel shall be available at the hearing, in person or by telephone, in the event Defendant appears without following the procedures set forth in Local Rule 2.9.

The unopposed Motion is GRANTED. Pursuant to Code of Civil Procedure section 2033.280, subdivision (c), sanctions in the amount of \$200 are imposed against Defendant in favor of Plaintiff.

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Nor. Cal. Collection Service, Inc. v. Landgrebe Lath & Plastering, Inc. 17CV000703

1) MOTION FOR ORDER VACATING AND SETTING ASIDE DEFAULT AND DEFAULT JUDGMENT

TENTATIVE RULING: The Motion is GRANTED. Pursuant to Code of Civil Procedure section 473, subdivision (b), Defendant has made a sufficient showing that the default judgment was taken against Defendant due to Defendant's mistake. "Section 473 is often applied liberally where the party in default moves promptly to seek relief, and the party opposing the motion will not suffer prejudice if relief is granted. [Citations.] In such situations "very slight evidence will be required to justify a court in setting aside the default." [Citations.] Moreover, because the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default [citations]." (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.) Plaintiff has made no showing of prejudice that would result from vacating the default and default judgment in this case.

The Court notes that although default and default judgment were entered, which gives rise to Defendant's "mistake" in assuming service was not proper, it does appear the summons and complaint was improperly served. Plaintiff left the documents with "Rico" despite being told by Rico that he was not associated with the business and that Mark Landgrebe lived most of the year in Cabo. (See Declaration of Diligence, first unsuccessful attempt.) Rico was not a member of Mr. Landgrebe's household or a person in charge of his office or place of business, as required by Code of Civil Procedure section 415.20, subdivision (b). Nonetheless, the default and default judgment are vacated. Defendant's proposed answer is to be filed forthwith. The Court will not be ruling on the evidentiary objections as they are not material to the disposition of this Motion

A Case Management Conference is set for February 15, 2018 at 8:30 a.m. in Dept. I.

2) MOTION TO RECALL AND QUASH WRIT OF EXECUTION AND VACATE LEVY

TENTATIVE RULING: The Motion is GRANTED. Recalling and quashing a writ of execution after a judgment has been vacated is proper. (*Stegge v. Wilkerson* (1961) 189 Cal.App.2d 1, 5.)