

## TENTATIVE RULINGS

**FOR: October 8, 2020**

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

**Remote appearances via Zoom are mandatory to prevent the spread of COVID-19.** Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

### **Dept. A Zoom**

**Join by Video (Preferred)**

<https://us02web.zoom.us/j/85897874559?pwd=Nk1VTnNQZmIzNXQwbVNiUk1iQTNCZz09>

**Join by Phone:** 877 853 5247 or 888 788 0099      **Meeting ID:** 858 9787 4559      **Password:** 704959

### **Dept. B Zoom**

**Join by Video (Preferred)**

<https://us02web.zoom.us/j/89902611018?pwd=OXJRM2FFWHZ4YXJ4b2szZW51UFJYZz09>

**Join by Phone:** 877 853 5247 or 888 788 0099      **Meeting ID:** 899 0261 1018      **Password:** 776773

**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. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.**

**Estate of Lee Andrew Dunham, Sr.**

**20PR000128**

(1) RAYMOND DUNHAM’S PETITION FOR LETTERS OF ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT WITH LIMITED AUTHORITY

**TENTATIVE RULING:** The petition is DENIED. Petitioner Raymond Dunham represents he is decedent’s son. He also represents Bernetta H. Rand Dunham is the surviving spouse. She filed a competing petition for administration. The priority of those persons entitled to administer an estate is wholly statutory, as established by Probate Code section 8461. The statutory rankings are absolute; so long as a person in a higher priority class is otherwise eligible and has not waived the right to priority of appointment, the Court has no discretion to appoint someone in a lower class. (*Estate of Garrett* (2008) 159 Cal.App.4th 831, 836-37; *Estate of*

*Lewis* (2010) 184 Cal.App.4th 507, 513.) As pertinent here, persons are entitled to appointment as administrator in the following order of priority: surviving spouse, then children. (Prob. Code, § 8461, subs. (a)-(b).) Thus, Bernetta, as the surviving spouse, has priority to serve over Raymond.

(2) BERNETTA H. RAND DUNHAM’S PETITION FOR LETTERS OF ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

**TENTATIVE RULING:** The petition is GRANTED. Petitioner Bernetta H. Rand Dunham, as the surviving spouse, has priority of appointment over decedent’s son, Raymond Dunham. (Prob. Code, § 8461, subs. (a)-(b); *Estate of Garrett* (2008) 159 Cal.App.4th 831, 836-37; *Estate of Lewis* (2010) 184 Cal.App.4th 507, 513.)



**In the Matter of Ted D. Weddell Trust**

**20PR000185**

PETITION FOR ORDER DETERMINING TITLE TO PROPERTY

**TENTATIVE RULING:** The Petition is DENIED without prejudice. Petitioner is required to provide 30-days’ notice of the hearing. (Probate Code §17203.) The proof of service on file indicates that service of notice was made on September 11, 2020, some 27 days prior to the hearing. The court is without authority to shorten the time for giving the notice of hearing on a petition, like this one, brought pursuant to Probate Code section 850, *et seq.* (See Prob. Code §851, subd. (d); see also Petition at 1:19.)

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

**Cavalry SPV I, LLC v. Adam C. Eckenwiler**

**19CV001685**

PLAINTIFF’S MOTION TO DEEM FACTS AS ADMITTED

**TENTATIVE RULING:** 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. Moving party/counsel is directed to contact the opposing party/ies forthwith and advise of Local Rule 2.9 and the Court’s tentative ruling procedure. Notwithstanding the procedures set forth in Local Rule 2.9, the moving party/counsel shall appear at the hearing, by Zoom, unless it is confirmed that no party requests oral argument.

Plaintiff Cavalry SPV I, LLC (Cavalry) moves the Court for an order deeming admitted each matter stated in Request for Admissions Set Number One as propounded on Defendant, and for sanctions pursuant to Code of Civil Procedure section 2033.280.

“If a party to whom requests for admission are directed fails to serve a timely response... [t]he requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction.” (Code Civ. Proc. §2033.280, subd. (b).) “The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220.” (*Id.* at subd. (c).) Moreover, “[i]t is mandatory that the court impose a monetary sanction...on the party...whose failure to serve a timely response to requests for admission necessitated this motion.” (*Ibid.*)

Good cause appearing, and no opposition having been filed, the motion is GRANTED. The Court orders that the genuineness of documents identified, and matters set forth, in Plaintiff’s Request for Admissions (Set One) served on Defendant Adam C. Eckenwiler in this action are deemed ADMITTED. (See Civ. Proc. Code §2033.280, subd. (b), (c).) The Court further imposes a monetary sanction on Defendant in the amount of \$200. (See *Ibid*; see also Civ. Proc. Code §2023.010, *et seq.*)

.....  
**Robert Jordan v. Romero Vineyard Management, LLC, et al.**

**20CV000609**

DEMURRER TO THE COMPLAINT

**TENTATIVE RULING:** Defendants Jesus Romero, Jesus Romero Jr., and Romero Vineyard Management LLC’s joint demurrer to the first cause of action for unfair business practices on the ground of failure to state sufficient facts is OVERRULED. Defendants argue the claim for unfair business practices [Bus. & Prof. Code, § 17200] between competitors may only be based upon allegations of violating the letter or spirit of antitrust laws, which plaintiff Robert Jordan does not allege. Defendants correctly cite the law on the issue: “When a plaintiff who claims to have suffered injury from a direct competitor’s ‘unfair’ act or practice invokes section 17200, the word ‘unfair’ in that section means conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition.” (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 187.)

However, *Cel-Tech* along with *Drum v. San Fernando Valley Bar Ass’n* (2010) 182 Cal.App.4th 247, 254, and *Stevenson Real Estate Services, Inc. v. CB Richard Ellis Real Estate Services, Inc.* (2006) 138 Cal.App.4th 1215, 1225, all deal with the “unfair” aspect of a section 17200 claim. Plaintiff also alleges defendants’ conduct of doing business as a farm labor contractor without a valid license as required by Labor Code section 1683 is *unlawful*. (Compl., ¶¶ 5, 18.) “A demurrer does not lie to only a portion of a cause of action.” (*PH II, Inc. v. Super. Ct.* (1995) 33 Cal.App.4th 1680, 1682-83.) Defendants have not demonstrated the *Cel-Tech* test for a claim falling under the unfair prong, relevant to competitors, applies to a cause of action alleging unlawful conduct between competitors.

Defendants' demurrer to the first cause of action for unfair business practices on the ground of failure to state sufficient facts is **OVERRULED**. Defendants maintain the claim is not pled with particularity as to the violation of the borrowed law, the harms plaintiff suffered, and the causation of plaintiff's harm as a result of defendants' conduct. Other than a section 17200 claim based on fraud, claims for unfair/unlawful business practices need not be pled with specificity. (*Quelimane Co. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 46-47.) To the extent, defendants assert a causal connection is not alleged, the Court disagrees as plaintiff alleges he lost money and property to defendants as a result of them doing business as farm labor contractors without a valid license as required by Labor Code section 1683. (Compl., ¶¶ 5, 19.)

Defendants' demurrer to the first cause of action for unfair business practices on the ground of uncertainty is **OVERRULED**. An uncertainty demurrer is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. (See *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty should only be sustained when the complaint is so bad that the defendant cannot reasonably respond. (*Ibid.*) Here, the pleading is certain enough to allow defendants to understand the nature of the allegations, and the theory of liability in order to fashion an appropriate response.

Defendants' demurrer to the entire complaint on the ground of lack of jurisdiction is **OVERRULED**.<sup>1</sup> Defendants contend the abstention doctrine applies. "[U]nder the abstention doctrine, courts may decline to decide UCL claims where a regulatory or administrative mechanism addresses the conduct at issue." (*Feitelberg v. Credit Suisse First Boston, LLC* (2005) 134 Cal.App.4th 997, 1009.) Labor Code section 1683, subdivision (b)(2), provides that if the Labor Commissioner determines a person has acted as a farm labor contractor without a license, the commissioner shall issue a citation. Monetary penalties are imposed for such violations for failure to obtain a license. (Lab. Code, § 1683, subd. (b)(1).) The Labor Commissioner, however, is not entrusted with deciding whether the failure to have a license constitutes unfair/unlawful conduct under section 17200. Nor is it an issue best left to the Labor Commissioner. The Court will not abstain from hearing this matter.

Plaintiffs' request for judicial notice is **GRANTED** as to the California Secretary of State electronic registration filing for Romero Vineyard Management LLC (Exhibit A), and the fact that no data was found for searches for farm labor contractor license verifications on CA.gov for each of the defendants (Exhibits B-D).

Defendants' request for judicial notice filed on October 1, 2020, is **DENIED** as to the letters addressed to the individual defendants to appear before the Labor Commissioner (Exhibits 1-2). The request was filed after the time in which to file a reply and the Court did not request additional material when it continued this matter for failure to meet and confer.

Defendants' counsel is reminded that pinpoint cites are necessary when citing to case authority.

---

<sup>1</sup> Defendants demur to the entire complaint on the ground that the Court should deny jurisdiction and abstain from hearing the case under the abstention doctrine. The Court construes this line of argument as falling under the lack of jurisdiction ground for a demurrer pursuant to Code of Civil Procedure section 430.10, subdivision (a).

Defendants shall file their answers within 10 calendar days of service of notice of entry of order.