

TENTATIVE RULINGS

FOR: November 8, 2016

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 – No tentative ruling will be posted because access to records is not permitted until 60 days after the complaint is filed. Parties **must appear** for all unlawful detainer demurrers, motions to quash, and other matters. After 60 days, tentative rulings will be posted in accordance with the local rules.

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. Diane Price, Dept. C (Historic Courthouse)

Estate of Terry Lynn Paiva

16PR000046

FIRST AND FINAL REPORT OF ADMINISTRATOR WITH WILL ANNEXED ON WAIVER OF ACCOUNT, PETITION FOR ALLOWANCE THEREOF, FOR ALLOWANCE OF STATUTORY ATTORNEY'S FEES, FOR FINAL DISTRIBUTION AND DISCHARGE OF ADMINISTRATOR WITH WILL ANNEXED

TENTATIVE RULING: GRANT petition, including fees as prayed.

.....
In The Matter of The Frank Galopin Special Needs Trust

26-59306

PETITION TO APPROVE THIRD ACCOUNT AND REPORT OF TRUSTEE FROM 6/1/2014 THROUGH 5/31/2015, TO MAINTAIN BOND AMOUNT, TO CONFIRM TRUSTEE'S FEES, AND TO APPROVE ATTORNEY'S FEES

TENTATIVE RULING: The Petition is GRANTED. The matter is set for a fifth accounting on November 8, 2017 at 8:30 a.m. in Dept. F. All accounting documents must be filed at least 30 days prior to the hearing. The clerk is directed to send notice to the parties.
.....

Conservatorship of Janice Hinahon Soriano

26-62418

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the court finds the Conservators are acting in the best interest of the Conservatee. Based on the report of the court investigator, the court determines by clear and convincing evidence that Conservatee can communicate a desire to participate in the voting process, and therefore orders Conservatee’s right to register to vote shall be restored, pursuant to Elections Code section 2209, subdivision (b).

The case is set for a biennial review hearing in two years, on November 8, 2018 at 8:30 a.m. in Dept. F. 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. Diane Price, Dept. C (Historic Courthouse)

The People of the State of California v. Gerald Ross Bennett

16CV000778

PETITION FOR FORFEITURE

TENTATIVE RULING: The matter is continued to November 11, 2016, at 8:30 a.m. in Dept. C.

.....
Mezzetti Financial Services, Inc. v. Estrada, R., et al.

26-61490

MOTION TO ENFORCE SETTLEMENT AND ENTER JUDGMENT

TENTATIVE RULING: The Notice of Motion does not provide adequate notice of the court’s tentative ruling system as required by Local Rule 2.9. Plaintiff’s counsel is directed to contact Defendants forthwith and advise Defendants of Local Rule 2.9 and the court’s tentative ruling procedure. If Plaintiff’s counsel is unable to contact Defendants prior to the hearing, Plaintiff’s counsel shall be available at the hearing, in person or by telephone, in the event Defendants appear without following the procedures set forth in Local Rule 2.9.

The Motion is DENIED WITHOUT PREJUDICE. The Motion fails to provide the claimed amount of fees and costs incurred for litigation and enforcement and bank fees, or provide any evidentiary support for such amounts. There is also no calculation of the total interest claimed. Any future filing should also include a proposed judgment.

The OSC re Dismissal is continued to December 21, 2016 at 8:30 a.m. in Dept. C.
.....

MOTION TO ENFORCE SETTLEMENT AND ENTER JUDGMENT

TENTATIVE RULING: The Notice of Motion does not provide adequate notice of the court’s tentative ruling system as required by Local Rule 2.9. Plaintiff’s counsel is directed to contact Defendants forthwith and advise Defendants of Local Rule 2.9 and the court’s tentative ruling procedure. If Plaintiff’s counsel is unable to contact Defendants prior to the hearing, Plaintiff’s counsel shall be available at the hearing, in person or by telephone, in the event Defendants appear without following the procedures set forth in Local Rule 2.9.

The Motion is DENIED WITHOUT PREJUDICE. The Motion fails to provide the claimed amount of fees and costs incurred for litigation and enforcement and bank fees, or provide any evidentiary support for such amounts. There is also no calculation of the total interest claimed. Any future filing should also include a proposed judgment.

The OSC re Dismissal is continued to December 21, 2016 at 8:30 a.m. in Dept. C.

**CIVIL LAW & MOTION CALENDAR – Hon. Thomas Warriner, Dept. F
(Criminal Courts Bldg.-1111 Third St.)**

(1) MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES

(2) MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

TENTATIVE RULING: The motions are vacated based on the application that the parties have resolved their discovery dispute.

DEFENDANT GERALDINE GORNEY’S MOTION FOR ORDER GRANTING PREFERENCE AND SETTING CASE FOR TRIAL

TENTATIVE RULING: Defendant Geraldine Gorney’s Motion for an Order Granting Preference and Setting Case for Trial is granted.

The Court must grant a motion for preferential trial setting filed by a party to a civil action who is over age 70 if it finds (1) the party has a substantial interest in the action as a whole, and (2) the party’s health warrants preference to prevent prejudicing the party’s interest in the litigation. Cal. Civ. Proc. § 36(a). It is irrelevant that the application of this statutory preference may result in inconvenience to the court or other litigants or may prevent the completion of discovery or other pretrial matters. *Swaithes v Superior Court*, 212 Cal. App. 3d 1082, 1085-1086 (1989).

Defendant Gorney moves for an order granting preference and setting the case for trial on the grounds that she has a substantial interest in the action, is over 70 years of age, has a heart condition, and her health has deteriorated over the course of this litigation. Plaintiffs joined in the arguments in support of Ms. Gorney's Motion and on the further grounds that Plaintiff Timothy Reilley is 72 years old, was diagnosed with cancer earlier this year, is currently undergoing surveillance and treatment and has been advised to travel to the Mayo Clinic for further analysis.

Defendants Kathleen M. Hanni and Hannico, LLC (the "Hanni Defendants") and Defendants Pacific Union International, Inc. and James Earl Perry (the "Pacific Union Defendants")(collectively, the "Opposing Defendants") filed oppositions. The Opposing Defendants contend, in essence, that the declarations submitted by Ms. Gorney's counsel, Mr. Rose, and by Plaintiff Timothy Reilley are insufficient to satisfy the requirements of section 36(a); and, that Ms. Gorney and Plaintiffs' actions in this lawsuit to date undermine the current Motion, amount to unreasonable delay, and cause undue prejudice to the Opposing Defendants.

The Hanni Defendants argue that Mr. Rose's declaration fails to identify a specific medical diagnosis or prognosis for his client. Similarly, the Pacific Union Defendants contend that the fact Ms. Gorney sat for a deposition for the better part of a day calls into question the severity of her deteriorating health. The Hanni and Pacific Union Defendants also argue that Plaintiffs' joinder fails because Mr. Reilley does not specify the type of cancer he was diagnosed with, whether he is being actively treated, or what his prognosis is.

"An affidavit submitted in support of a motion for preference under subdivision (a) of Section 36 may be signed by the attorney for the party seeking preference based upon information and belief as to the medical diagnosis and prognosis of any party." Cal. Civ. Proc. Code § 36.5. The Pacific Union Defendants accurately contend that admissible evidence - beyond an attorney's declaration - is required regarding a party's age. However, suggesting denial of the Motion on that ground amounts to an absurd exaltation of form over substance, particularly here as Plaintiff Timothy Reilley joined in the Motion and provided admissible evidence that he is over the age of 70.

The Opposing Defendants fail to provide any authority for their position that detailed medical history, diagnosis, treatment specifics and prognosis are required to make the findings required by 36(a). Here, the evidence is that Ms. Gorney has a heart condition and is in deteriorating health. Moreover, the evidence demonstrates that Mr. Reilley has been diagnosed with cancer and as his declaration provides, "is currently undergoing active surveillance and treatment." In these circumstances, preference is warranted to prevent prejudicing the party's interest in the litigation.

The Hanni Defendants also contend that Reilley and Gorney were dilatory in efforts to move the case along. This argument is based, in part, on an unsupported argument that because Plaintiffs and Defendant Gorney failed to produce any documents, discovery responses or reports to the Hanni Defendants, it necessarily means they have not done any discovery. And, the Pacific Union Defendants also argue that Ms. Gorney's delay in moving to compel arbitration and then subsequently requesting the Court lift the stay contradicts the expressed need for an accelerated trial date.

While mindful of the challenges that an order granting trial preference will present to the opposing Defendants - such that it may be necessary for the parties to meet and confer with each

other and the Court to discuss shortened discovery periods or notice periods for dispositive motions - such considerations are irrelevant here. “[R]elevant precedent upholds the absolute command of section 36(a) in light of its plain meaning, despite recognition that in certain instances there are strong countervailing considerations-deriving from principles of efficient trial court management; from fairness and due process to other litigants; and from divergent public policy or statutory contexts in which the section 36(a) mandate may be difficult, impractical, or impossible to realize.” *Miller v. Superior Court*, 221 Cal. App. 3d 1200, 1206 (1990).

This Court’s “authority and jurisdiction are limited by section 36, subdivisions (a) and (e), to setting trial for a date within 120 days of granting the preference motion.” *Id.* at 1205 (internal quotations and citations omitted). “Mere inconvenience to the court or to other litigants is irrelevant. Failure to complete discovery or other pretrial matters does not affect the absolute substantive right to trial preference for those litigants who qualify for preference under subdivision (a) of section 36. The trial court has no power to balance the differing interests of opposing litigants in applying the provision. The express legislative mandate for trial preference is a substantive public policy concern which supersedes such considerations.” *Swaithes v. Superior Court*, 212 Cal. App. 3d 1082, 1085–86 (1989), *as modified* (Aug. 17, 1989; Aug. 23, 1989)(internal quotations and citations omitted).

Accordingly, the Motion for an Order granting Preference and Setting the Case for Trial is granted.