

## TENTATIVE RULINGS

**FOR: November 17, 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 Elisabeth L. M. Achilles**

**16PR000180**

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. Diane Price, Dept. C (Historic Courthouse)

**Leyda Heisch v. Queen of the Valley Medical Center, et al.**

**16CV000339**

1) MOTION TO STRIKE THE FIFTH CAUSE OF ACTION IN PLAINTIFF LEYDA HEISCH'S  
FIRST AMENDED COMPLAINT PURSUANT TO CAL. CODE CIV. PROC. § 425.16

**TENTATIVE RULING:** The Motion is DENIED. The court evaluates an anti-SLAPP motion using a two-step process. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

Defendants have not shown the Fifth Cause of Action for Defamation is one arising from any act of that person in furtherance of the person's right of petition or free speech under the United

States Constitution or the California Constitution in connection with a public issue[.]” (Code. Civ. Proc., § 425.16(b)(1).) “[A] matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest.” (*Baughn v. Department of Forestry & Fire Protection* (2016) 246 Cal.App.4th 328, 336.) There also needs to “be some degree of closeness between the challenged statements and the asserted public interest [citation]; the assertion of a broad and amorphous public interest is not sufficient [citation].” (*Id.*, quoting *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132-1133.) Here, the defamation claim is based on a letter from Defendants to Plaintiff and copied to the Human Resources Department and Plaintiff’s department in which Plaintiff’s employment was terminated. This is an employment matter between employer and employee involving alleged patient care mistakes that are isolated and disputed; Defendants’ attempt to link this employment dispute to regional health care standards is an insufficient “assertion of a broad and amorphous public interest.” (*Id.*)

Even if the court were to accept Defendants’ claim that the issue was of interest to a limited, “definable portion of the public (a private group, organization, or community), the constitutionally protected activity must, at a minimum, occur in the context of an ongoing controversy, dispute or discussion, such that it warrants protection by a statute that embodies the public policy of encouraging participation in matters of public significance.” (*Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107, 119.) Here, there is no ongoing controversy, as Plaintiff’s employment was terminated by the letter at issue. This distinguishes the case from the cases cited by Defendants: *Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450 and *Hailstone v. Martinez* (2008) 169 Cal.App.4th 728.

2) DEFENDANTS’ DEMURRERS TO FIFTH CAUSE OF ACTION IN PLAINTIFF’S FIRST AMENDED COMPLAINT

**TENTATIVE RULING:** Defendants’ Demurrers are SUSTAINED WITH LEAVE TO AMEND. The tort of defamation “involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage.” (*Taus v. Loftus* (2007) 40 Cal.4th 683, 720, citing 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 529, p. 782, citing Civ. Code, §§ 45646 and cases.) While Plaintiff produces the alleged defamatory letter in question in opposition, details regarding that letter are missing from her Fifth Cause of Action for Defamation.

Any amended complaint shall be filed and served within 10 days of the date Defendants serve notice of entry of the court’s order. (Code Civ. Proc., § 472b.) The Case Management Conference scheduled for October 20, 2016 is continued to January 11, 2016 at 8:30 a.m. in Dept. F.

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**Emanuel Macias v. James McDonald, et al.**

**26-66958**

MOTION FOR AN ORDER FOR EXAMINATION IN JAIL UPON DEPOSITION [C.C.P. § 1995]

**TENTATIVE RULING:** Defendants’ unopposed Motion is GRANTED.

**PROBATE CALENDAR – Hon. Rodney Stone, Dept. F (Criminal Courts Bldg.-  
1111 Third St.)**

**Estate of Ann T. Sambrotto**

**16PR000050**

FIRST AND FINAL REPORT OF EXECUTORS AND PETITION FOR ITS SETTLEMENT,  
FOR ALLOWANCE OF COMPENSATION TO ATTORNEYS FOR ORDINARY SERVICES,  
AND FOR FINAL DISTRIBUTION

**TENTATIVE RULING:** GRANT petition, including fees as prayed.

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**In the Matter of Gertrude Ann Caldwell Trust**

**26-35822**

SIXTH ACCOUNT AND REPORT OF TRUSTEE AND PETITION FOR SETTLEMENT OF  
ACCOUNT AND FOR APPROVAL OF TRUSTEE FEES

**TENTATIVE RULING:** GRANT Petition, including fees as prayed.

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**In the Matter of Runyon Family Trust**

**26-56652**

SIXTH ACCOUNT AND REPORT OF TRUSTEE AND PETITION FOR SETTLEMENT OF  
ACCOUNT AND FOR APPROVAL OF TRUSTEE FEES

**TENTATIVE RULING:** GRANT Petition, including fees as prayed.