# TENTATIVE RULINGS

## FOR: May 27, 2021

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.

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**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. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

**Conservatorship of Louisa Row** **19PR000194**

FINAL ACCOUNTING

**TENTATIVE RULING:** The Petition is GRANTED, including fees as prayed. The Court has been informed that the Conservatee is deceased. The conservatorship is terminated.

**In the Matter of Betty G. Binstock Trust** **21PR000058**

PETITION CONCERNING INTERNAL AFFAIRS OF TRUST AND FOR ORDER: (1) APPROVING TRUSTEE'S FIRST ACCOUNT AND REPORT; (2) APPROVAING TRUSTEE'S SECOND ACCOUNT AND REPORT; (3) APPROVING TRUSTEE COMPENSATION; AND (4) INSTRUCTING TRUSTEE WITH REGARD TO DISTRIBUTION OF THE TRUST ASSETS

**TENTATIVE RULING:** Pursuant to request, the matter is continued to June 24, 2021, at 8:30 a.m. in Dept. A.

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**Estate of Edgardo Del Rosario** **21PR000074**

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

**TENTATIVE RULING:** The handwritten Annex A, dated August 12, 2020, is not attached to the amended petition despite previously being attached to the original petition. Petitioner has not explained why this document is not attached to the amended petition and has not submitted a Proof of Holographic Instrument (Judicial Council form DE-135) as mentioned in the May 6, 2021 Minute Order. The matter is continued to June 9, 2021, to allow petitioner to file a declaration, supplement, or amendment as appropriate, to provide an explanation or to remedy the omission.

## CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

**Fiona Shelton v. Richard J. Parent, M.D. *et al.*** **18CV000128**

[1] MOTION OF DEFENDANTS ADVENTIST HEALTH ST HELENA AND ADVENTIST HEALTH SYSTEM/WEST TO STRIKE

**TENTATIVE RULING:** The motion is DENIED. Defendants Adventist Health St Helena and Adventist Health System/West (collectively Adventist Health SH/West) are granted 10 days' leave to file an answer to the Complaint. (Cal Rules of Court, rule 3.1320, subd. (g).)

Adventist Health SH/West move "to strike all claims for punitive damages" from Plaintiff's Complaint on the grounds that Plaintiff "has failed to comply with Code of Civil Procedure [section] 425.13." (Notice of Motion at 2:3-4.)

As an initial matter, Defendants' motion suffers from a lack of clarity. Defendants fail to identify, with any more particularity than the foregoing quoted language, specifically what portions of the Complaint it would have the Court strike. There is no specific reference in the

Notice of Motion or Memorandum of Points and Authorities in support of the motion, and Defendants have not filed a proposed Order. Defendants *argue* that, "Objections to a complaint's prayer for damages typically lie within a motion to strike. [Citation.]" (Support Memo at 3:1-2.) From this argument, the Court reasonably concludes that Defendants seek an order striking "claims for punitive damages" from the Complaint's prayer for relief. (See Complaint at 12:2.)

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc. §436.) "The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (*Id.* at §437, subd. (a).) In ruling on a motion to strike, the Court is to "read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." (*Turman v. Turning Point of Central Cal., Inc.*, (2010) 191 Cal.App.4th 53, 63.)

Among these, the Court may strike any language in a cause of action that seeks an improper remedy. (*Caliber Bodyworks, Inc. v. Super. Court* (2005) 134 Cal.App.4th 365, 385.) An order striking a claim for punitive damages is improper where the complaint provides notice to the defendants of a plaintiff's "precise claims against them." (*Perkins v. Super. Court* (1981) 117 Cal.App.3d 1, 6-7.)

Defendants do not argue that the Complaint's allegations lack the requisite specificity. Rather, the sole grounds asserted by Defendants in support of the present motion is that Plaintiff's claim for punitive damages is barred because Plaintiff failed to comply with the requirements of Code of Civil Procedure section 425.13. [1]

"In any action for damages arising out of the professional negligence of a health care provider, no claim for punitive damages shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed." (§ 425.13, subd. (a).) No such order has been issued in this action.

Plaintiff renews the argument she made in opposing the motion to strike punitive damages claims brought by co-defendants Richard Parent, M.D. and Adventist Health California Medical Group, Inc. (Co-Defendants) – asserting that the statute does not apply where a plaintiff has included a claim for punitive damages in a complaint "from the inception." (Opposition at 3:9-12.) As the Court ruled in sustaining Co-Defendants' motion to strike, Plaintiff's argument is directly undermined by the plain language of the statute: "[i]n any action for damages arising out of the professional negligence of a health care provider, no claim for punitive damages shall be included in a complaint or other pleading unless the court enters an order allowing [it]." (§ 425.13, subd. (a); see Minute Order of May 6, 2021.) It is also inconsistent with the purpose of the statute, as indicated by our Supreme Court. "[T]he statute imposes certain pretrial procedural requirements on plaintiffs attempting to plead a punitive-damages claim against a health care provider." (*College Hospital Inc. v. Super. Ct.* (1994) 8 Cal.4th 704, 713.)

[1] All subsequent statutory references herein are to the Code of Civil Procedure unless otherwise noted.

Plaintiff next argues that she was not required to fulfill the requirements of section 425.13 (prior to making a claim for punitive damages against Advent Health SH/West) because, "Defendants have not demonstrated that they fall under the definition of health care providers." (Opposition at 4:12-14.)

Again, "[t]he grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (*Id.* at §437, subd. (a).) Defendants argue that "Plaintiff's complaint includes numerous factual allegations acknowledging that defendants [Advent Health SH/West] were and are medical providers." (*Id.* at 2:21-22.) For purposes of the following discussion, the Court assumes, *arguendo*, that it does, and that these allegations are sufficient to establish the fact for purposes of the present motion.

Adventist Health SH/West's motion fails, regardless of whether the Complaint alleges that they are health care providers because Plaintiff has not alleged that Advent Health SH/West, or either of them, are liable to Plaintiff for damages arising *out of their* respective professional negligence *as* health care providers.

As noted in the May 6, 2021 Minute Order, Plaintiff seeks punitive damages under only the fourth and fifth causes of action. (See Complaint at ¶ 34 and 39.) Plaintiff alleges that "Defendant PARENT committed the acts herein alleged despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and acted with a conscious disregard of Plaintiff's rights. Because the acts taken toward Plaintiff were carried out by Defendant PARENT acting in a deliberate, cold, callous, despicable, and intentional manner, Plaintiff is entitled to punitive damages from Defendants in an amount according to proof." (*Ibid*, emphasis in original.) Defendant then alleges that Adventist Health SH/West are liable for Dr. Parent's acts based on a theory of vicarious liability / respondeat superior. (See Complaint at ¶¶ 32 and 37.) Plaintiff does not, so far as the Court can find, allege facts that would support a finding that either of the Adventist Health SH/West defendants were directly liable to Plaintiff for their own actions or inactions.

Punitive damages are available, under certain circumstances, against an employer or principal for the conduct of an agent or employee. (See generally, 2 CACI No. 3943.) Plaintiff alleges on information and belief that "each of the Defendants named herein were the agents servants, employees joint venturers, and/or representatives of each of the remaining Defendants, and in doing the things herein mentioned, were acting in the course and scope of such agency, employment and/or joint venture…." (Complaint at ¶ 10.)

Thus, even assuming that Advent Health SH/West are both health care providers, the allegations of the Complaint do not assert liability based on activities undertaken "*in their professional capacity as providers*…." (*Covenant Care, Inc. v. Super. Ct.* (2004) 32 Cal.4th 771, 785 ["the legislative history of section 425.13 demonstrates that the Legislature's intent in enacting the statute was to protect health care providers (or practitioners) only in their professional capacity as providers; there was no intent to protect them in any other capacity"].) Because the Complaint alleges that Advent Health SH/West are liable for punitive damages based on their capacity as Dr. Parent's employers and/or principals, Plaintiff is not, pursuant to the authority cited to the Court, obligated to satisfy the requirements of section 425.13. (See *Ibid.*

See also *Central Pathology Service Medical Clinic, Inc. v. Super. Ct.* (1992) 3 Cal.4th 181, 191-92 ["whenever an injured party seeks punitive damages for an injury that is directly related to the professional services provided by a health care provider acting in its capacity as such, then the action is one 'arising out of the professional negligence of a health care provider,' and the party must comply with [Code of Civil Procedure] section 425.13(a)"].)

Based on the foregoing, the Court is unable to find, based on the authority presented by Advent Health SH/West, that the claims for punitive damages asserted against them are improper. (See *Turman v. Turning Point of Central Cal., Inc.*, *supra*, 191 Cal.App.4th at 63.)

The Court recognizes that the result of this ruling may *appear* awkward vis-à-vis the Court's ruling on Co-Defendants' motion to strike. Had the Court ruled, there, that Plaintiff failed to allege facts sufficient to sustain an award of punitive damages against Dr. Parent, then Plaintiff's claims that Advent Health SH/West are vicariously liable for Dr. Parent's acts would also fail. (See 2 CACI No. 3943.) The Court did not make such ruling, however. Rather, in ruling on Dr. Parent's motion to strike, the Court simply found that Plaintiff failed to satisfy the procedural prerequisite for bringing punitive damages claims against Dr. Parent. Because Advent Health SH/West fail to provide authority from which the Court can conclude that claims for punitive damages against them are subject to the same prerequisite, the Court cannot conclude that the claims are or should be barred based on the arguments and authority presented.

[2] PLAINTIFF'S MOTION TO QUASH SUBPOENA FOR PLAINTIFF'S MEDICAL RECORDS

**TENTATIVE RULING:** The motion is DENIED.

Plaintiff Fiona Shelton moves to quash "all of the subpoenas issued by Defendant Richard Parent, M.D., on or about March 30, 2021, which seek medical records and medical bill records for the Plaintiff." (Notice of Motion at 2:4-7.) Plaintiff also seeks $2,450.00 in monetary sanctions against the Law Offices of Leonard & Lyde, and Defendant Richard Parent, M.D. for misuse of the discovery process. (See *Id*. at 2:7-10.)

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.

A notice of motion must state exactly what relief is sought and upon what grounds that relief is sought. (See Code Civ. Proc. §1010 ["the notice of a motion, other than for a new trial, must state…the grounds upon which it will be made"]; see also Rules of Court, rule 3.1110 ["[a] notice of motion must state in the opening paragraph the nature of the order being sought and the grounds for issuance of the order"]; see also *People v. American Sur. Ins. Co.* (1999) 75 Cal.App.4th 719, 726.)

The notice of motion is woefully deficient in this regard. It states that Plaintiff seeks an order quashing "all of the subpoenas issued by Defendant Richard Parent, M.D., on or about March 30, 2021, which seek medical records and medical bill records for the Plaintiff." The moving papers fail, however, to identify which subpoenas fall into this category. The Memorandum filed in support of the motion (Support Memo) asserts only that "Defendant Richard Parent, M.D., through counsel, issued numerous subpoenas to numerous medical providers where Plaintiff Fiona Shelton had received treatment." (Support Memo at 3:6-7.) The Support Memo does identify the entities upon whom the subject subpoenas were served. (See Support Memo at 3:14-4:3.) However, it appears that Defendant served multiple subpoenas on some, if not all of these entities. (See Declaration of John Henning at ¶ 2, Exh. A (Henning Decl.).)

The deficiency might have been rectified through the filing of a separate statement. "A separate statement is a separate document filed and served with the discovery motion that provides all the information necessary to understand each discovery request…. The separate statement must be full and complete so that no person is required to review any other document in order to determine the full request." (Rules of Court, rule 3.1345, subd. (c).) A motion to quash production of documents at a deposition must be accompanied by a separate statement. (See Rules of Court, rule 3.1345, subd. (a)(5).) No separate statement in support of the motion appears, however, in the Court's file. Failure to provide a separate statement in compliance with California Rules of Court, rule 3.1345 may constitute grounds for denying the subject motion. (See *Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 893.)

Plaintiff has attached a number of subpoenas, as Exhibit 2, to the Henning Declaration. As discussed herein above, however, there is no indication in the moving papers that these constitute, "all of the subpoenas issued by Defendant Richard Parent, M.D., on or about March 30, 2021, which seek medical records and medical bill records for the Plaintiff." (Notice of Motion at 5-7.) Moreover, there is no discussion specific to any of these attached subpoenas in the moving papers. Rather, it appears that Plaintiff expects the Court to review and inventory them and thereafter determine which of Plaintiff's substantive arguments applies to which subject subpoena and in what particulars it so applies.

In addition, the notice of motion fails to identify the grounds on which Plaintiff seeks to have the subject subpoenas quashed. While Plaintiff asserts that it seeks sanctions "for misuse of the discovery process," she asserts no grounds in support of her motion to quash. (See Notice of Motion.) The Court endeavors, where possible, to look past technical procedural defects in an effort to resolve matters on their merits. Where, as here, a notice of motion fails to state the grounds on which it is sought, the Court looks to the Memorandum filed in support thereof (Support Memo) for clarification.

Plaintiff asserts through the Support Memo that, "Code of Civil Procedure Sections 1985.3, 1987.1, 2017.020, 2025.410, and 2025.420 all provide authority and legal grounds to quash the subpoenas as [*sic*] issue."[2] (Support Memo at 4:18-19.) Plaintiff's "laundry list" citation to these varied authorities does not aid the Court's efforts to discern the specific grounds on which the motion is brought. Section 1985.3 governs a subpoena duces tecum for production

[2] All subsequent statutory references herein are to the Code of Civil Procedure unless otherwise noted.

of personal records. However, the Court can find no suggestion in Plaintiff's moving papers that the subpoenas at issue call for the production of personal records, nor any argument or authority relating thereto. Sections 2017.020 and 2025.420 do not authorize the Court to quash a subpoena. Rather, these provide for protective orders under certain circumstances. The Notice of Motion, however, does not request a protective order, and there is no discussion of a protective order in the moving papers. Section 2025.410 governs the service of written objections to a deposition notice. Plaintiff makes no assertion or argument that it served any such objection, and there is no evidence of any such objection in the record.

Adding to the confusion, each of the subject subpoenas are on Judicial Council of California form SUBP-010 and are therefore Deposition Subpoenas for Production of Business Records served pursuant to sections 2020.410-2020.440. (See Henning Decl. at ¶ 2, Exh. A.) Such deposition subpoenas are authorized for use "to obtain discovery within the state from a *person who is not a party to the action*…." (§ 2020.010, subd. (a)(3), emphasis added.) The Court notes that at least some of the subject subpoenas are directed to St. Helena Hospital – which is named as a defendant in the action. (Compare Support Memo at 3:15-16 with Complaint at ¶ 6.) However, Plaintiff does raise any objections to these subpoenas on the grounds that they were served on a party.

Because the Court is unable to discern the grounds for the motion and has not been provided with any clear statement – whether in a formal separate statement, or the Support Memo – providing the information necessary to understand each discovery request and all the responses to it that are at issue, Plaintiff fails to make a showing of good cause for an order quashing all of the subject subpoenas in their entirety, and the motion to quash is therefore DENIED.

Plaintiff's notice of motion fails to identify the authority under which she seeks sanctions. Through her Support Memo she asserts that, "[a] court granting a motion to quash is required to also impose a monetary sanction under California Code of Civil Procedure Sections 2030.290(c), 2031.300(c), and 2033.280(c), against the party and/or counsel, unless the Court finds the party opposing the motion did so with substantial justification." (Support Memo at 8:1-4.) Not true.

Section 2030.290 governs sanctions against a *party to the action* who fails to adequately respond to interrogatories. Section 2031.300 governs sanctions against a party to the action who fails to adequately respond to inspection demands. Section 2033.280 governs sanctions against a party to the action who fails to adequately respond to requests for admissions. Plaintiff presents no authority, and the Court is aware of none, by which the Court may impose sanctions under any of these statutes in the context of a motion to quash a deposition subpoena. Thus, Plaintiff's request for sanctions is DENIED.

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

**Estate of Ireneo Ochoa** **19PR000033**

HEARING RE: STATUS OF THE ADMINISTRATION AND TO CONFIRM FILING OF THE CORRECTED PROPOSED LETTERS

**TENTATIVE RULING:** On March 25, 2021, the Court ordered administrator Juana Maria Hernandez to file a statutory status report advising the Court and interested persons of the status of the estate administration and the reasons for the delay in closing. (See Prob. Code, §§ 12200-12206; Cal. Rules of Court, rule 7.103.) The report is to show the condition of the estate, the reasons why it cannot be distributed and closed, and an estimate of the time needed to close the estate administration. (Prob. Code, § 12201, subd. (a).) Moreover, Hernandez was ordered to file corrected proposed letters (DE-150) to rectify the error in paragraph 3 indicating Hernandez has full authority under the IAEA when she was only granted limited authority instead of full authority. On May 6, 2021, the Court extended another opportunity to Hernandez to comply with the Court's order.

Hernandez filed amended letters as requested. The Court notes the caption should have checked "Of Administration" instead of "Special Administration." Hernandez was appointed the administrator with limited authority.

Hernandez also filed a status report using a local form from the Los Angeles County Superior Court (form PRO 039). Hernandez answered "no" to Items 5(b), 5(d), and 5(f), but did not provide an explanation as required. Moreover, the date of signature for the report and the verification are not complete.

The matter is continued to June 24, 2021, at 8:30 a.m. in Dept. B to allow Hernandez to file a second amended corrected letters (DE-150) and an amended status report addressing the omissions mentioned in this ruling. If Hernandez seeks full authority in order to obtain a loan on the property, she needs to file an appropriate petition.

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

**Denise Lynn Sanchez v. Glenn Elton Weeks, *et al*.** **21CV000455**

PLAINTIFF'S PETITION FOR LEAVE TO FILE ACTION AGAINST AMERICAN CANYON FIRE PROTECTION DISTRICT

**TENTATIVE RULING:** The Petition is GRANTED. Petitioner shall file suit on the cause of action to which the claim relates with the court within 30 days after entry of the present order.

Plaintiff Denise Sanchez moves, pursuant to Government Code section 946.6, for an order relieving her from the claim filing requirements of Government Code section 945.4, and for leave to file a civil action against American Canyon Fire Protection District.[3]

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.

Based on the petition and the declarations filed in support thereof, the Court finds as follows:

1. Petitioner alleges that she was injured on February 28, 2020, in an automobile accident involving one Glen Elton Weeks (Incident). (See Complaint at p.5.)

2. Prior to filing suit against American Canyon Fire Protection District (ACFPD) for alleged injuries stemming from the Incident, Petitioner was required to present a written claim therefor to ACFPD pursuant to §945.4.

3. Petitioner was required to present the claim not later than August 28, 2020. (§912, subd. (a).)

4. On July 24, 2020, Petitioner's previous counsel was informed by an employee of Napa County that claims against the ACFPD should be brought against Napa County. (See Declaration of Bruce J. Levitz at ¶ 8 (Levitz Decl.).)

5. After several telephone calls with Napa County personnel, on July 24, 2020, counsel filed a claim against County of Napa for the incident. (See *Id*. at ¶11.)

6. On July 30, 2020, counsel received a letter from a claims adjustor for George Hills Company stating that they were processing the claim filed against Napa County. (See *Id*. at 14.) Thereafter, representatives of George Hills Company requested information regarding the alleged incident. (*Id*. at ¶ 15.)

7. On October 30, 2020, counsel received a letter from Napa County indicating that the claim was rejected by operation of law on September 12, 2020. (*Id*. at ¶ 16.)

8. At no time during the foregoing process was counsel for Petitioner informed by any of the representatives of Napa County that he had filed the claim with the wrong agency. (*Id*. at ¶¶ 14-16.)

9. In or around November, 2020, Petitioner retained current counsel. While investigating the matter, counsel happened upon a newspaper article indicating that the driver of the vehicle alleged to have struck Petitioner was the American Canyons Fire Chief. (See Declaration of Jeremy Jessup at ¶¶ 5-6 (Jessup Decl.).)

10. On January 25, 2021, counsel submitted an application to ACFPD for leave to present the claim pursuant to section 911.4. (See Jessup Decl. at ¶ 7, Exh. D.)

[3] All subsequent statutory references herein are to the Government Code unless otherwise noted.

11. The application was submitted less than one year after the alleged incident. (§ 911.4, subd. (b).) The proposed claim is attached to the application. (See Jessup Decl. at Exh. D.)

12. On March 16, 2021, ACFPD rejected the claim "because it was not presented within six (6) months after the event or occurrence, as required by law." (Jessup Decl. at ¶ 9, Exh. E.)

13. Petitioner filed the present Petition on April 23, 2021. Petitioner served the Petition on ACFPD care of the District Counsel who had notified Petitioner of ACFPD's rejection of her application to present the claim. (See Proof of Service; see also Jessup Decl. at Exh. E.)

14. As discussed herein above, the Petition establishes the reason for Petitioner's failure to present her claim to ACFPD within six months of the Incident.

15. The Petition contains the information required by section 910.

16. The Petition was filed within six months of ACFPD's denial of Petitioner's application to file a claim pursuant to 911.4.

Based on the foregoing, the Court finds that Petitioner's failure to present the claim was made through the mistake, inadvertence, surprise, and excusable neglect. (See § 946.6, subd. (c)(1).) ACFPD failed to file opposition to the motion, and therefore fails to establish that it would be prejudiced in the defense of the claim if the court relieves the petitioner from the requirements of Section 945.4. (See §946.6, at subd. (c)(2).)

The Petition is therefore GRANTED. Petitioner shall file suit on the cause of action to which the claim relates with the court within 30 days after entry of the present order.

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**Rabobank N.A. v. Paul M. Jeffery, et al.** **26-65584**

MOTION TO VACATE CONDITIONAL DISMISSAL AND ENTER JUDGMENT PURSUANT TO WRITTEN STIPULATION

**TENTATIVE RULING:** Plaintiff's motion to vacate the conditional dismissal and to enter judgment pursuant to written stipulation is GRANTED. The Court will sign the proposed order filed on April 23, 2021.

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***At 9:00 a.m.***
**Napa County v. Mt. Veeder Property, LLC, et al.** **21CV000655**

OSC RE: APPLICATION FOR A PRELIMINARY INJUNCTION

**TENTATIVE RULING:** Plaintiff Napa County's application for an order to show cause why a preliminary injunction should not issue is GRANTED. "Where a governmental entity seeking to enjoin the alleged violation of an ordinance which specifically provides for injunctive relief establishes that it is reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the

defendant. If the defendant shows that it would suffer grave or irreparable harm from the issuance of the preliminary injunction, the court must then examine the relative actual harms to the parties." (*IT Corp. v. Cnty. of Imperial* (1983) 35 Cal.3d 63, 72; see *People ex rel. Gascon v. HomeAdvisor, Inc.* (2020) 49 Cal.App.5th 1073, 1088 [applying the *IT Corp.* standard to a case concerning a preliminary injunction order sought by a governmental entity alleging defendant violated statutes specifically providing for injunctive relief].)

The County demonstrates it is likely to prevail on the merits of its cause of action for public nuisance (violation of Napa County Code section 18.104.410) in its complaint. Section 18.104.410 provides that transient commercial occupancies of dwelling units are prohibited in all residential and agricultural zoning districts. "Transient commercial occupancy of dwelling units" means any commercial use of a dwelling unit for less than 30 consecutive days. Any violator is subject to a public nuisance abatement action.

The accompanying declarations show defendants have been short-term renting 3119 Mt. Veeder Road in Napa, they were repeatedly warned to cease all advertisements, negotiations, and rentals of the property of less than 30 days, and they have continued to engage in those actions. (Ssenkumba Decl., ¶¶ 2-11; Cahill Decl., ¶¶ 2-12.) Based on this evidence, it is reasonably probable the County will prevail on the merits of its cause of action for public nuisance. (*IT Corp., supra,* 35 Cal.3d at p. 72.) Because the County has established it is reasonably probable it will prevail on the merits of its claim for public nuisance, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to defendants. (*Ibid*.) Defendants did not submit an opposition or any evidence to rebut the presumption or to show they would suffer grave or irreparable harm from the issuance of the preliminary injunction. (*Ibid*.)

No undertaking is required as the County is a public entity. (Code Civ. Proc., § 529, subd. (b)(3).)

The County is instructed to prepare a proposed order of the activities it seeks to restrict.