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ENDORSED

JUN 24 2016

CLERK OF THE NAPA SUPERIOR COURT
BY C. FRANKIE
DEPUTY

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF NAPA**

11 Unlimited Civil Case

13 MIHOKO KANEMATSU,)

14 Plaintiff)

16 v.)

17 TIMOTHY WILKENS, an individual;)
18 NAPA VILLA PARTNERS, LLC, a)
19 California Limited Liability)
20 Company; GREAT WESTERN HOLDINGS)
21 LIMITED, a Chinese Corporation;)
22 GREAT WESTERN HOLDINGS, INC., A)
23 Nevada Corporation; GREAT)
24 WESTERN HOLDINGS, INC., A Nevada)
25 Corporation; GLOBAL 8)
26 PROPERTIES, INC., a California)
27 Corporation; FIDELITY NATIONAL)
28 TITLE COMPANY, a California)
29 Corporation, and Does 1 through)
30 160,)

31 Defendant(s).)

No. 26-65976

**NOTICE OF MOTION AND MOTION
TO STRIKE DEFENDANT GREAT
WESTERN HOLDINGS LIMITED'S
ANSWER AND GLOBAL 8
PROPERTIES, INC.'S ANSWER;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Department: I

Date: July 26, 2016

Time: 8:30AM

32 The Napa Court uses a Tentative Ruling System. To receive the
tentative ruling, visit the court's website at
<http://www.napa.courts.ca.gov> or telephone the court at (707)
299-1270 after 3:00 p.m. the court day before the scheduled
hearing date. Unless the court directs otherwise, no oral

NOTICE OF MOTION AND MOTION TO STRIKE DEFENDANT GREAT WESTERN HOLDINGS LIMITED'S
ANSWER AND GLOBAL 8 PROPERTIES, INC.'S ANSWER; MEMORANDUM OF POINTS AND AUTHORITIES -

1 argument will be permitted unless a party or counsel for a party
2 requests a hearing by calling the court and all other parties or
counsel no later than 4:00 p.m. the court day before the hearing.

3 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

4
5 PLEASE TAKE NOTICE THAT on July 26, 2016 at 8:30am, or as
6 soon thereafter as the matter can be heard, in Department No.
7 I of the above-entitled Court, located at 825 Brown Street,
8 the plaintiff will move for an order from the Court for an
9 order striking the entire Answer served on this office on June
10 16, 2016 and received June 20, 2016 by Defendants Great
11 Western Holdings Limited and Global 8 Properties, Inc.
12 ("Defendants"). The grounds for this Motion to Strike are set
13 forth below.

14 This motion is made under California Code of Civil
15 Procedures (CCP) §§ 435-437, California Corporations Code
16 (CORP) § 2105 and California Revenue & Taxation Code (RTC) §
17 23301, on the grounds that Defendants, as forfeited and/or
18 suspended entities, are not legally competent to answer the
19 instant complaint.
20

21 The motion is based on this notice; the pleadings, records,
22 and files in this action; the attached memorandum and
23 declaration; and oral or documentary evidence that may be
24 presented at the hearing on the motion.
25

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 **I. PARTIES**

28
29 1. Plaintiff Mihoko Kanematsu (hereinafter "Plaintiff" or
30 "Kanematsu") is a resident of Shanghai, China.
31
32

- 1 2. Defendant Timothy Wilkens aka Tim Wilkens (hereinafter
2 "Wilkens") was and now is an individual, and at all
3 relevant times up to and including the date of filing of
4 this motion, was the manager, managing member, and/or
5 general partner, as appropriate, of Defendants Great
6 Western Holdings Limited, and/or Global 8 Properties, Inc.
7 Defendant Wilkens resides and works in Napa, California.
- 8
9 3. Plaintiff is informed and believes and thereon alleges that
10 at all times alleged herein defendant Great Western
11 Holdings Limited ("GWHL") is a defunct Hong Kong Stock
12 Company doing business throughout the United States of
13 America and has its principal place of business in Napa,
14 California. GWHL's address registered with the Government
15 of the Hong Kong Special Administrative Region Companies
16 Registry is 29/F Edinburgh Tower, The Landmark 15 Queen's
17 Road, Central Central, Hong Kong. On information and
18 belief, the address where GWHL conducts its business and
19 maintains its records is and always has been 855 Bordeaux
20 Way Suite 200, Napa, CA 94558.
- 21
22 4. Defendant Global 8 Properties, Inc. ("Global 8") is defunct
23 California Corporation doing business throughout the United
24 States of America and has its principal place of business
25 in Napa, California. At all times relevant to this action,
26 Global 8 was a California Corporation with an address
27 registered with the California Secretary of State of PO Box
28 2490, Napa, CA 94558. On information and belief, the
29 address where Global 8 conducts its business and maintains
30 its records is and always has been 855 Bordeaux Way Suite
31 200, Napa, CA 94558.
- 32

1 5. Each and every Defendant was the agent, servant, employee,
2 joint venturer, partner subsidiary, and/or co-conspirator
3 of each other Defendant and, that in performing or failing
4 to perform the acts herein alleged, each was acting
5 individually as well as through and in the foregoing
6 alleged capacity and within the course and scope of such
7 agency, employment, joint venture, partnership, subsidiary
8 and/or conspiracy, and each other Defendant ratified and
9 affirmed the acts and omissions of the other Defendants.
10 Plaintiff is further informed and believes that each
11 Defendant, in taking the actions alleged herein and/or
12 ratifying the actions alleged herein, acted within the
13 course and scope of such authority and, at the same time,
14 for their own financial and individual advantage, as well
15 as in the course and scope of such employment, agency and
16 as an alter ego therein.

17
18 6. Whenever, in this motion, reference is made to any actions
19 of a corporate, limited liability, partnership, and/or
20 joint venture entity, including, but not limited to GWHL,
21 and/or Global 8, such allegations shall mean that the
22 directors, officers, employees or agent(s) of said entity
23 did perform or authorize the alleged acts or actively
24 engaged in the management, direction and control of such
25 entity and were acting within the course and scope of their
26 employment. Whenever, in this motion, reference is made to
27 any actions of Wilkens, or any other person who is an
28 employee or agent of any of the entities and/or legal
29 persons specifically named or otherwise referred to in this
30 Paragraph, such allegations shall also mean that person's
31 employer or the entity through which that person is acting,
32 by and through said individual.

1 7. Any reference to Defendant shall refer to Great Western
2 Holdings Limited, or Global 8 Properties, Inc., and any
3 reference to Defendants shall refer to all of them. Any
4 reference to Defendant or Defendants shall not refer to
5 Defendants Napa Villa Partners, LLC or Fidelity National
6 Title Company, Inc., both of whom have been dismissed from
7 this action, unless explicitly stated as referring to that
8 defendant.

9
10 **II. INTRODUCTION**

11 8. Plaintiff hereby submits this motion to strike the answer
12 of Defendants, which, for the reasons set forth below, was
13 wrongfully filed by Counsel for Defendants GWHL and Global
14 8, as they were not in good standing in the State of
15 California at the time they caused the answers to be filed.

16
17 9. For the reasons stated below, the Court should grant this
18 motion and Plaintiff's application to set aside Defendants'
19 answers.

20
21 **III. ARGUMENT**

22 **A. A MOTION TO STRIKE IS APPROPRIATE WHERE THE ANSWER CONTAINS**
23 **IRRELEVANT MATTER OR IS NOT DRAWN IN CONFORMITY WITH THE**
24 **LAWS OF THIS STATE**

25
26 10. Code of Civil Procedure § 436 states in pertinent part
27 that a Motion to Strike may be filed to strike any false,
28 irrelevant or improper matter inserted in any pleading, and
29 to strike any pleading or part thereof not drawn in
30 conformity with the laws of this state.

1 11. Plaintiff contends that the entire answer of both
2 Defendants should be stricken on the grounds that both
3 Defendants have been suspended and/or forfeited (See
4 Exhibits 1 and 2), as appropriate, by the Franchise Tax
5 Board for failure to comply with Revenue and Taxation Code
6 § 23301, which provides:

7 "Except for the purposes of filing an application for exempt status or
8 amending the articles of incorporation as necessary either to perfect
9 that application or to set forth a new name, the corporate powers,
10 rights and privileges of a domestic taxpayer may be suspended, and the
11 exercise of the corporate powers, rights and privileges of a foreign
12 taxpayer in this state may be forfeited, if any of the following
13 conditions occur:

14 (a) If any tax, penalty, or interest, or any portion thereof, that is
15 due and payable under Chapter 4 (commencing with Section 19001) of Part
16 10.2, or under this part, either at the time the return is required to
17 be filed or on or before the 15th day of the ninth month following the
18 close of the taxable year, is not paid on or before 6 p.m. on the last
19 day of the 12th month after the close of the taxable year.

20 (b) If any tax, penalty, or interest, or any portion thereof, due and
21 payable under Chapter 4 (commencing with Section 19001) of Part 10.2,
22 or under this part, upon notice and demand from the Franchise Tax
23 Board, is not paid on or before 6 p.m. on the last day of the 11th
24 month following the due date of the tax.

25 (c) If any liability, or any portion thereof, which is due and payable
26 under Article 7 (commencing with Section 19131) of Chapter 4 of Part
27 10.2, is not paid on or before 6 p.m. on the last day of the 11th month
28 following the date that the tax liability is due and payable."

29 Under RTC § 23301, Defendants' rights as entities suspended
30 by the Franchise Tax Board are limited to filing an
31 application for exempt status or amending the articles of
32 incorporation as necessary either to perfect that
application or to set forth a new name.

12. "[A] suspended corporation may not prosecute or defend
an action in a California court." *Timberline, Inc. v.*
Jaisinghani, (1997) 54 Cal. App. 4th 1361 (citing *Ransome-*
Crummey Co. v. Superior Court, (1922) 188 Cal. 393, 396-
397).

1 13. Thus, the answer is not drawn in conformity with the
2 laws of this state.

3 **IV. REQUEST FOR SANCTIONS**

4
5 14. Counsel for Defendants, Michael Brook, Esq. himself
6 admitted at the hearing on December 15th, 2015, it is
7 improper for an attorney to represent a corporation that
8 the attorney knows is suspended. *Palm Valley Homeowners*
9 *Assn., Inc. v. Design MTC*, (2000) 85 Cal. App. 4th 555, 561
10 ("The statutory language of the relevant sections, as well
11 as legislative policy, are more than sufficient to put any
12 reasonable attorney on notice or at least to entertain a
13 reasonable suspicion that a corporation suspended under the
14 Corporations Code, like a corporation suspended for
15 nonpayment of taxes, is well and truly suspended, and
16 disabled from participating in any litigation activities.")
17 In *Palm Valley*, the court upheld sanctions against a law
18 firm that knowingly continued litigation after learning its
19 client was not in good standing with the Secretary of
20 State. The court held that the basis of the
21 suspension/forfeiture was not material to whether that
22 corporation may participate in litigation.

23
24 15. After the December 15th hearing and each subsequent
25 hearing, Mr. Brook should have investigated GWHL and Global
26 8's corporate status, and on verifying that GWHL and Global
27 8 were at all times during the pendency of this lawsuit in
28 forfeited status, withdrawn from representation. Instead,
29 Mr. Brook proceeded with defending GWHL and Global 8 in bad
30 faith, either for the purposes of delaying these
31 proceedings or for harassing Plaintiff, or both, each of
32 which is a violation of California Code of Civil Procedure

1 § 128.5. Plaintiff respectfully requests that sanctions be
2 awarded against Mr. Brooks in an amount the court
3 determines is appropriate, but in no event less than
4 \$5,000.00, which represents the time necessary for
5 Plaintiff and Plaintiff's counsel to consider and respond
6 to Mr. Brook' repeated moving papers stating that his
7 defense of GWHL and Global 8 was proper.

8
9 **V. CONCLUSION**

10 16. As suspended and/or forfeited entities, Defendants'
11 options in this matter are curtailed to seeking
12 reinstatement and/or revivor. Such rights do not include
13 filing answers and/or defending themselves in litigation.
14 This court has given ample opportunity, beginning at the
15 hearing on December 15, 2015 to counsel for Defendants to
16 return Defendants to good standing in California, but
17 despite that opportunity, neither GWHL nor Global 8 has
18 been reinstated to good standing.

19
20 17. For the reasons stated above, Plaintiff, by and
21 through counsel, respectfully requests that the Court
22 strike the answers of Great Western Holdings Limited and
23 Global 8 Properties, Inc., wrongfully filed by defense
24 counsel.

25
26 18. Plaintiff further requests the court to enter
27 sanctions against Mr. Brook as it deems appropriate.

28
29 DATED: June 24, 2016

Respectfully submitted,

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32 Jason Luros, Attorney for
Plaintiff Mihoko Kanematsu

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EXHIBIT 1

[Secretary of State Main Website](#)[Business Programs](#)[Notary & Authentications](#)[Elections](#)[Campaign & Lobbying](#)**Business Entities (BE)**

Online Services

- [E-File Statements of Information for Corporations](#)
- [Business Search](#)
- [Processing Times](#)
- [Disclosure Search](#)

Main Page

Service Options

Name Availability

Forms, Samples & Fees

Statements of Information
(annual/biennial reports)

Filing Tips

Information Requests
(certificates, copies & status reports)

Service of Process

FAQs

Contact Information

Resources

- [Business Resources](#)
- [Tax Information](#)
- [Starting A Business](#)

Customer Alerts

- [Business Identity Theft](#)
- [Misleading Business Solicitations](#)

Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, June 21, 2016. Please refer to [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	GREAT WESTERN HOLDINGS LIMITED WHICH WILL DO BUSINESS IN CALIFORNIA AS GWHL
Entity Number:	C3388998
Date Filed:	06/27/2011
Status:	FTB FORFEITED
Jurisdiction:	HONG KONG
Entity Address:	P.O. BOX 2490
Entity City, State, Zip:	NAPA CA 94558
Agent for Service of Process:	PETER GUMAER
Agent Address:	142 VICTOR AVE
Agent City, State, Zip:	CAMPBELL CA 95008

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

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EXHIBIT 2

[Secretary of State Main Website](#)[Business Programs](#)[Notary & Authentications](#)[Elections](#)[Campaign & Lobbying](#)**Business Entities (BE)**

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(annual/biennial reports)**Filing Tips****Information Requests**
(certificates, copies & status reports)**Service of Process****FAQs****Contact Information**

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Customer Alerts

- [Business Identity Theft](#)
- [Misleading Business Solicitations](#)

Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, June 21, 2016. Please refer to **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	GLOBAL 8 PROPERTIES, INC.
Entity Number:	C3416722
Date Filed:	09/28/2011
Status:	FTB SUSPENDED
Jurisdiction:	CALIFORNIA
Entity Address:	PO BOX 2490
Entity City, State, Zip:	NAPA CA 94558
Agent for Service of Process:	PETER GUMAER
Agent Address:	142 VICTOR AVE
Agent City, State, Zip:	CAMPBELL CA 95008

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
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- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

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TENTATIVE RULINGS

FOR: July 26, 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.

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

Joseph Montano v. City of Napa, et al.

26-68187

(1) THE COUNTY’S DEMURRER TO THE COMPLAINT

TENTATIVE RULING:

Defendant County of Napa’s request for judicial notice of the Cooperative Agreement, Resolution R2002 193, and Agreement Nos. 182(FC) and 8218 is GRANTED. (Evid. Code, § 452, subd. (c).)

The County’s demurrer to the first cause of action for negligence, second cause of action for dangerous condition of public property (Gov. Code, §§ 835, 835.2), third cause of action for unsafe design and concealed trap, and fourth cause of action for liability for actions of independent contractor (Gov. Code, § 814) on the ground of uncertainty is OVERRULED. A demurrer based on uncertainty 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 Cal., 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. (*Id.*) Here, the causes of action are certain enough to allow the County to understand the nature of the allegations and the theory of liability to fashion an appropriate response.

The County’s demurrer to the first cause of action for negligence and third cause of action for unsafe design and concealed trap on the ground of failure to state sufficient facts is

SUSTAINED WITH LEAVE TO AMEND. Plaintiff Joseph Montano acknowledges the claims are deficient as he failed to set forth any statutory basis for these causes of action. Due to the deficiency, the Court does not reach the County's remaining arguments.

The County's demurrer to the second cause of action for dangerous condition of public property (Gov. Code, §§ 835, 835.2) on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. Montano argues under *Huffman v. City of Poway* (2000) 84 Cal.App.4th 975, 990, and *Low v. City of Sacramento* (1970) 7 Cal.App.3d 826, 833-34, that the County's relationship to the dangerous property is not clear. Under this authority, control exists if the County had the "power to prevent, remedy or guard against the dangerous condition." (*Low, supra*, 7 Cal.App.3d at pp. 833-34.) This potential basis of liability and the supporting factual allegations are not alleged.

The County's demurrer to the fourth cause of action for liability for actions of independent contractor (Gov. Code, § 814) on the ground of failure to state sufficient grounds is SUSTAINED WITH LEAVE TO AMEND. This claim is based on allegations contained in the second cause of action. Because the second cause of action is deficient, the fourth cause of action necessarily fails.

The County's notice of demurrer failed to comply with California Rules of Court, rule 3.1320(a). Any future demurrer must comply with the rule or may be disregarded.

If Montano elects to do so, he shall file an amended pleading within 10 calendar days of service of notice of entry of order.

(2) THE CITY'S DEMURRER TO THE COMPLAINT

TENTATIVE RULING:

Defendant City of Napa's demurrer to the first cause of action for negligence, second cause of action for dangerous condition of public property (Gov. Code, §§ 835, 835.2), third cause of action for unsafe design and concealed trap, and fourth cause of action for liability for actions of independent contractor (Gov. Code, § 814) on the ground of uncertainty is OVERRULED. A demurrer based on uncertainty 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 Cal., 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. (*Id.*) Here, the causes of action are certain enough to allow the City to understand the nature of the allegations and the theory of liability to fashion an appropriate response.

The City's demurrer to the first cause of action for negligence and third cause of action for unsafe design and concealed trap on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. Plaintiff Joseph Montano acknowledges the claims are deficient as he failed to set forth any statutory basis for these causes of action.

The City's demurrer to the second cause of action for dangerous condition of public property (Gov. Code, §§ 835, 835.2) on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. Montano has not alleged each element with the requisite particularity. (Compl., ¶¶ 24-29; see *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 439 [“[A] plaintiff must plead: (1) a dangerous condition existed on the public property at the time of the injury; (2) the condition proximately caused the injury; (3) the condition created a reasonably foreseeable risk of the kind of injury sustained; and (4) the public entity had actual or constructive notice of the dangerous condition of the property in sufficient time to have taken measures to protect against it.”].)

The City's demurrer to the fourth cause of action for liability for actions of independent contractor (Gov. Code, § 814) on the ground of failure to state sufficient grounds is SUSTAINED WITH LEAVE TO AMEND. This claim is based on allegations contained in the second cause of action. Because the second cause of action is deficient, the fourth cause of action necessarily fails.

If Montano elects to do so, he shall file an amended pleading within 10 calendar days of service of notice of entry of order.

(3) CALTRANS' DEMURRER TO THE COMPLAINT

TENTATIVE RULING:

Defendant the State of California's (by and through the Department of Transportation (Caltrans)) demurrer to the first cause of action for negligence and third cause of action for unsafe design and concealed trap on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. Plaintiff Joseph Montano acknowledges the claims are deficient as he failed to set forth any statutory basis for these causes of action.

Caltrans' demurrer to the fourth cause of action for liability for actions of independent contractor (Gov. Code, § 814) on the ground of uncertainty is OVERRULED. A demurrer based on uncertainty 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 Cal., 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. (*Id.*) Here, the cause of action is certain enough to allow Caltrans to understand the nature of the allegations and the theory of liability to fashion an appropriate response.¹

If Montano elects to do so, he shall file an amended pleading within 10 calendar days of service of notice of entry of order.

¹ Caltrans contends in its memorandum of points and authorities that Montano failed to allege sufficient facts. Caltrans, however, did not include this ground in its notice of demurrer.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. G (Criminal Courts Bldg.-1111 Third St.)

Mihoko Kanematsu v. Timothy Wilkens, et al.

26-65976

MOTION TO STRIKE GREAT WESTERN HOLDINGS LIMITED’S ANSWER AND GLOBAL 8 PROPERTIES, INC.’S ANSWER

TENTATIVE RULING: The unopposed Motion is GRANTED. However, as to the amount of sanctions, there is no declaration on file in support of the claimed amount. Hearing as to the amount of sanctions is continued to August 16, 2016 at 8:30 a.m. in Dept. I to allow Plaintiff to file a declaration outlining the attorney’s fees and costs incurred as a result of Defendants’ counsel’s conduct.

.....
Linda J. Beard v. Basil Plastiras, et al.

26-67148

CROSS-DEFENDANTS’ MOTION TO VACATE JUDGMENT

TENTATIVE RULING: Default was entered against cross-defendants Linda Beard and Michael Applegate on December 8 and 9, 2015. Cross-defendants previously moved to set aside the defaults entered against them. Those motions were denied without prejudice. Cross-defendants now move to “vacate judgment.” Default judgment, however, has not yet been entered. Once judgment is entered, cross-defendants may file a motion under Code of Civil Procedure section 473, subdivision (b), which explains their failure to respond to the lawsuit based on their “mistake, inadvertence, surprise, or excusable neglect.” Such a motion must be made within six months of the judgment and be “accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted” (*Id.*) Thus, cross-defendants’ motion to vacate judgment is DENIED WITHOUT PREJUDICE.

PROBATE CALENDAR – Hon. Mark Boessenecker, Dept. I (Criminal Courts Bldg.-1111 Third St.)

Estate of Timothy Arnstein

16PR000088

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

TENTATIVE RULING: The proof of publication submitted is the Customer Ad Proof. Petitioner must file the Affidavit of Publication from the Napa Valley Register. If this document is filed prior to the hearing, the petition will be GRANTED. Otherwise, the petition will be DENIED without prejudice.

Estate of Barbara Howell

16PR000091

SPOUSAL PROPERTY PETITION

TENTATIVE RULING: GRANT petition.

.....

Estate of Ronald K. Karow

16PR000094

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

TENTATIVE RULING: There is no original will on file. Hearing on the matter is continued to August 9, 2016 at 8:30 a.m. in Dept. I to allow the original will to be filed, or for submission of evidence that testator did not intend to revoke the will. (Prob. Code § 6124.)

.....

Conservatorship of Raymond Michael Hayes

26-61509

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the co-conservators are acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on July 27, 2018, at 8:30 a.m. in Dept. F. The court investigator shall prepare a biennial investigator report for the next hearing date. Before the next hearing, the co-conservators shall file Notice of Conservatee's Rights (Judicial Council form GC-341) and Determination of Conservatee's Appropriate Level of Care (Judicial Council form GC-355). The clerk is directed to send notice to the parties.

Based on the report of the court investigator, the Court determines by clear and convincing evidence that the conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process, and therefore orders the conservatee disqualified from voting pursuant to Elections Code section 2208. The clerk is directed to inform the Napa County Elections Division and the Secretary of State.

**CIVIL LAW & MOTION CALENDAR – Hon. Mark Boessenecker, Dept. I
(Criminal Courts Bldg.-1111 Third St.)**

Napa County v. Brian R. Silver, et al.

26-66540

(1) DEFENDANTS' MOTION TO VACATE JUDGMENT

TENTATIVE RULING:

Defendants Brian Silver and Diane Silver's (collectively "defendants") motion to vacate the June 17, 2016 judgment is DENIED. "It is well settled that entry of judgment divests the trial court of authority to rule on a motion for reconsideration." (*Safeco Ins. Co. v. Architectural Facades Unlimited, Inc.* (2005) 134 Cal.App.4th 1477, 1482.) Because judgment was entered, the Court lacks jurisdiction to rule on defendants' motion for reconsideration or to reconsider its prior ruling. (See *APRI Ins. Co. v. Super. Ct.* (1999) 76 Cal.App.4th 176, 181 [explaining that a court lacks jurisdiction to rule on a motion for reconsideration after final judgment is entered in a case, even if the motion was filed before entry of judgment].) Moreover, defendants are attempting to re-raise issues and arguments.² Defendants have not identified any newly discovered facts or circumstances or identified a change of law in order to vacate the judgment such that the ends of justice would be served. (See *Bagley v. TRW, Inc.* (1999) 73 Cal.App.4th 1092, 1097 [reformatting, condensing, and cosmetically repackaging does not constitute newly discovered facts or circumstances].)

(2) DEFENDANTS' MOTION TO STRIKE AND TAX COSTS

TENTATIVE RULING:

A. Request for Judicial Notice

The Court has not considered defendants Brian Silver and Diane Silver's (collectively "defendants") request for judicial notice contained in their notice of motion. The request is based on a previous request made on May 31, 2016 (as amended), which the Court denied as irrelevant on June 9, 2016. In addition, defendants failed to comply with California Rules of Court, rule 3.1113(1), requiring a separate filing of a request for judicial notice.

B. Motion to Strike

Defendants' motion to strike the memorandum of costs lacks merit. Defendants' arguments regarding the timing of the memorandum of costs are unavailing. Judgment was entered on June 17, 2016. Plaintiff Napa County timely filed its memorandum of costs on June 27, 2016. Defendants' contentions regarding the merits of the underlying judgment similarly are misplaced.

² Indeed, on October 15, 2015, the Court denied defendants' Motion to Dissolve Mandatory Injunction and to Enter Judgment for Defendants.

C. Motion to Tax Costs

After judgment was entered in favor of the County, it filed a memorandum of costs in the amount of \$40,823.70.³ This amount represents \$257.08 in service costs and \$40,566.62 in “other” costs attached as Exhibits 13a and 13b. Exhibit 13a shows \$31,953.45 in abatement costs. This amount includes \$27,511.70 in abatement costs (\$7,914.94 for “Ag Staff” and \$19,596.76 for Rios Farming Company, LLC), \$4,126.75 incurred due to a 15% penalty, and \$315 for expert Martin Mochizuki. Exhibit 13b details \$8,613.17 in administrative costs. This amount includes \$7,353.17 for Tracy Cleveland and \$1,260 for Mochizuki. Defendants seek to tax all costs claimed.

1. Service Costs

The services costs in the amount of \$257.08 are reasonable and recoverable. (Code Civ. Proc., § 1033.5, subd. (a)(4).)

2. Exhibit 13a Abatement Costs

The County seeks \$31,953.45 in abatement costs as highlighted in Exhibit 13a.

The “Ag Staff” costs in the amount of \$7,914.94 are not reasonable. (*Id.*, § 1033.5, subd. (b)(3).) It is unclear why “[p]roperty walk/dead vine marking” required eight staff members to spend 50.5 hours performing this task. (Cleveland Decl., ¶ 6.) A tax of costs is warranted in the amount of \$2,575.05 (Cleveland \$731.72, Music \$460.45, Cooledge \$300.29, Samansky \$111.33, Stewart \$233.64, Borgen \$131.22, Brooks \$290.80, Poppe \$315.60). The remaining hours are reasonable and were necessary to the abatement. (Code Civ. Proc., § 1033.5, subds. (b)(2)-(3).)

The Rios Farming Company, LLC costs in the amount of \$19,596.76 were necessary and are reasonable as the company removed the dead vines from defendants’ property. (*Id.*, § 1033.5, subds. (b)(2)-(3), (c)(4); see Clark Decl., ¶ 13, Cleveland Decl., ¶¶ 7-8.)

The 15% penalty in the amount of \$4,126.75 is a civil penalty under Food and Agricultural Code section 5639. The Court denied the County’s request for civil penalties on April 28, 2016.

The costs in the amount of \$315 for expert Mochizuki are not recoverable. (Code Civ. Proc., §, 1033.5(b)(1).) The Court declines to exercise its discretion as to the necessity of these fees. (*Id.*, § 1033.5, subd. (c)(4).)

Thus, based on the items listed in Exhibit 13a, a tax of costs is warranted in the amount of \$7,016.80. The County is entitled to \$24,936.65 in abatement costs.

³ On April 28 and June 9, 2016, the Court denied without prejudice the County’s motion for costs.

3. Exhibit 13b Administrative Costs

The County seeks \$8,613.17 in administrative costs as shown in Exhibit 13b. The costs in the amount of \$7,353.17 for Cleveland are reasonable and were necessary to the abatement. (*Id.*, § 1033.5, subds. (b)(2)-(3).) The costs in the amount of \$1,260 for expert Mochizuki are not recoverable as noted. (*Id.*, §, 1033.5(b)(1).) The Court declines to exercise its discretion as to the necessity of these fees. (*Id.*, § 1033.5, subd. (c)(4).) As a result, a tax of costs is warranted in the amount of \$1,260 based on the items listed in Exhibit 13b. The County is entitled to \$7,353.17 in administrative costs.

D. Conclusion

Defendants' motion to strike is DENIED. Defendants' motion to tax costs is GRANTED IN PART AND DENIED IN PART. The motion to tax is granted in the amount of \$8,276.80. The motion to tax is otherwise denied.

(3) PLAINTIFF'S MOTION FOR JUDGMENT AWARDING COSTS

TENTATIVE RULING:

Plaintiff Napa County's motion for judgment awarding costs is GRANTED IN PART AND DENIED IN PART. The motion is granted in the amount of \$32,546.90 (\$257.08 service costs + \$24,936.65 abatement costs + \$7,353.17 administrative costs). As indicated in the ruling on defendants Brian Silver and Diane Silver's motion to strike and to tax costs, these amounts are recoverable and reasonable, and were necessary to the abatement. The motion is otherwise denied.

1 JASON S. LUROS, SBN 254047
2 MARY A. LUROS, SBN 256326
3 HUDSON & LUROS, LLP
4 952 SCHOOL STREET STE 280
5 NAPA, CA 94559
6 JASON@HUDSONLUROS.COM
7 TEL: 707-418-5118
8 FAX: 877-350-0815

9 Attorney for Plaintiffs,
10 Mihoko Kanematsu

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF NAPA**

14 MIHOKO KANEMATSU,) No. 26-65976
15)
16 Plaintiff) DECLARATION IN SUPPORT OF
17) SANCTIONS
18 v.)
19)
20 TIMOTHY WILKENS, an individual;)
21 NAPA VILLA PARTNERS, LLC, a)
22 California Limited Liability)
23 Company; GREAT WESTERN HOLDINGS)
24 LIMITED, a Chinese Corporation;)
25 GREAT WESTERN HOLDINGS, INC., A)
26 Nevada Corporation; GREAT)
27 WESTERN HOLDINGS, INC., A Nevada)
28 Corporation; GLOBAL 8)
29 PROPERTIES, INC., a California)
30 Corporation; FIDELITY NATIONAL)
31 TITLE COMPANY, a California)
32 Corporation, and Does 1 through)
160,)
Defendant(s).)

I, Jason Luros, declare:

1. I am the attorney for Plaintiff Mihoko Kanematsu in this action.

- 1 2. Plaintiff, by and through counsel, brought a motion on June
2 24, 2016 to strike the answers Great Western Holdings
3 Limited ("GWHL") and Global 8 Properties, Inc ("Global 8").
- 4 3. Having received no response from defendants' attorney,
5 Michael Brook, the court granted plaintiff's motion on July
6 26, 2016, and continued the hearing as to the amount of
7 sanctions to be awarded to July 16, 2016 at 8:30AM in
8 Department I to provide plaintiff an opportunity to
9 substantiate the amount of fees and costs.
- 10 4. Plaintiff objected to Mr. Brook's continued representation
11 of suspended entities beginning on December 15, 2015, when
12 Mr. Brook first acknowledged that it would be improper to
13 represent a suspended entity, which Mr. Brook repeated in
14 court on January 7, 2016.
- 15 5. Despite Mr. Brook's own admissions, his representation and
16 defense of GWHL and Global 8, both suspended entities, has
17 continued without interruption to the present date.
- 18 6. Mr. Brook has done nothing to move this case forward,
19 instead relying on procedural devices to "run the clock" on
20 this case and further waste plaintiff's resources without
21 advancing any legitimate defense(s) in an effort to get
22 plaintiff to abandon her claims.
- 23 7. Jason Luros's time spent in opposing Mr. Brook's actions,
24 including work described in the attached invoices, is
25 reasonable. The calculable amount of time spent includes
26 all hours incurred working compensable services, including,
27 but not limited to, investigation, evaluation of claims,
28 drafting and revising pleadings (including the application
29 for attorney's fees), research and briefing of factual and
30 legal issues, and conferring with clients and/or other
31
32

1 counsel. All litigation work by me and my partner, Mary
2 Luros in this matter described in the attached invoices has
3 concerned the status of GWHL and Global 8, and
4 specifically, Mr. Brook's continued representation of those
5 entities. See e.g., *People ex rel. Dept. of Trans. v. Yuki*,
6 31 Cal.App.4th 1754, 1775 (1995); *Stokus v. Marsh*, 217
7 Cal.App.3d 647, 656 (1990); *California Common Cause v.*
8 *Duffy*, 200 Cal.App.3d 730, 753 (1987). The submission of
9 the information contained in Jason Luros's declaration is
10 prima facie evidence that the costs, expenses, fees and
11 services listed therein were necessarily incurred. See,
12 *Hadley v. Krepell*, 167 Cal.App.3d 677, 682 (1985).

- 13 8. Furthermore, the hourly rate at which Plaintiff's attorney
14 is entitled to be compensated is the reasonable market
15 value of their service in the community. See *Serrano v.*
16 *Unruh*, 32 Cal.3d 621, 639 (1982); *PLCM Group, Inc. v.*
17 *Drexler*, 22 Cal.4th 1084, 1095 (2000). As a matter of law,
18 actual billing rates are presumptively the reasonable
19 market value of the attorney's rates. *Mandel v. Lackner*,
20 92 Cal.App.3d 747, 761 (1979) ("the value of an attorney's
21 time is reflected in his normal billing rate"). In
22 addition, a court evaluating the reasonableness of an
23 attorney's rate may consider the skill, experience,
24 reputation, education, and professional accomplishment of
25 the attorney, as well as the nature of the work performed.
26 *Flannery v. California Highway Patrol*, 61 Cal.App.4th 629,
27 632-633 (1998); *City of Oakland v. Oakland Raiders*, 203
28 Cal.App.4th 78, 82 (1998).
- 29 9. In this matter, Jason Luros's hourly rate was \$275.00 per
30 hour. Jason Luros has eight years of experience as a
31 litigation attorney. This rate is comparable to rates
32

1 approved by courts even dating back several years, for
2 attorneys of similar skill and knowledge. Bihun v. AT&T
3 Information Sys., Inc., 13 Cal.App.4th 976, 997-998 (1993)
4 (approving hourly rate for \$450 per hour for Los Angeles
5 area attorney). Accordingly, the billing rates charged by
6 Plaintiff's attorney are reasonable.

7 10. Plaintiff has incurred the following expenses relating to
8 the above described matter involving the suspended entities
9 (See redacted invoices attached as Exhibit 1):

10 1 hour and \$60.00 in costs, as shown on invoice # 1951,
11 dated Dec. 17, 2015;

12 2.7 hours, as shown on invoice # 1977 dated Jan. 9, 2016;

13 1.4 hours as shown on invoice # 2023, dated Feb. 5, 2016;

14 1.5 hours as shown on invoice # 2068, dated Mar. 30, 2016;

15 .4 hours as shown on invoice # 2106, dated May 7, 2016;

16 1.5 hours as shown on invoice # 2153, dated Jun. 6, 2016;

17 3 hours and \$60.00 in costs, as shown on invoice # 2183,
18 dated Jul. 10, 2016;

19 Time incurred after Jul. 10, 2016, but not yet billed of .2
20 hours;

21 Time to prepare this declaration and attend the hearing on
22 sanctions anticipated to be 2 hours total.

23 Total time above: 13.7 hours @ \$275.00/hour = \$3,767.50;
24 costs of \$120.00; Total of \$3,887.50.

25 11. If sworn as a witness, I could testify competently to the
26 facts stated herein.
27
28
29
30
31
32

1 I declare under penalty of perjury under the laws of the State
2 of California that the foregoing is true and correct.

3 DATED: August 4, 2016

Respectfully submitted,

4
5 
6 Jason Luros, Attorney for
7 Plaintiff Mihoko Kanematsu

Exhibit 1

Hudson & Lueros, LLP
 A Full Service California Law Firm
 952 School Street Ste. 280
 Napa, CA 94559
 T: (707) 418-5118
 F: (877) 350-0815
 www.HudsonLueros.Com

Invoice

Bill To:
Buliding 10 Unit #18 Yanlord Garden #99 Puming Lu Road Lujiazui Pudong New District, Shanghai China

Terms	Date	Invoice No.
Due on receipt	12/17/15	1951

Job
Napa Villas Lot 20B

Date	Item	Description	Quantity	Rate	Amount
10/16/15	Jason Lueros				
12/08/15	Jason Lueros				
12/08/15	Jason Lueros				
12/09/15	Jason Lueros				
12/10/15	Jason Lueros				
12/15/15	Jason Lueros	Attend hearing on application to set aside default	0.6	275.00	165.00
12/15/15	Jason Lueros	Prepare for hearing	0.4	275.00	110.00
12/14/15		File default judgment package		60.00	60.00
Thank you for your business.				Total	\$1,242.50
				Balance Due	\$1,242.50

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 www.HudsonLueros.Com

Invoice

Bill To:
Buliding 10 Unit #18 Yanlord Garden #99 Puming Lu Road Lujiazui Pudong New District, Shanghai China

Terms	Date	Invoice No.
Due on receipt	01/09/16	1977

Job
Napa Villas Lot 20B

Date	Item	Description	Quantity	Rate	Amount
12/18/15	Jason Lueros				
12/21/15	Jason Lueros				
01/04/16	Jason Lueros	Communications w. Det. Piersig	0.3	275.00	82.50
01/06/16	Jason Lueros	Prepare response to M. Brook's brief re. Great Western Holdings Limited	1.8	275.00	495.00
01/07/16	Jason Lueros	Finalize, file reply brief	0.6	275.00	165.00
	Reimb Group				
12/21/15					
12/21/15					
12/21/15					
12/21/15					
12/24/15		Total Reimbursable Expenses			104.81

Thank you for your business.	Total	\$1,342.31
	Balance Due	\$1,342.31

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Invoice

Bill To:
Buliding 10 Unit #18 Yanlord Garden #99 Puming Lu Road Lujiazui Pudong New District, Shanghai China

Terms	Date	Invoice No.
Due on receipt	02/05/16	2023

Job
Napa Villas Lot 20B

Date	Item	Description	Quantity	Rate	Amount
01/12/16	Jason Lueros	Prepare case management statement	0.2	275.00	55.00
01/19/16	Jason Lueros	Serve case management statement	0.4	275.00	110.00
01/27/16	Jason Lueros	Attend case management conference	0.8	275.00	220.00
02/04/16	Jason Lueros				
01/25/16					
Thank you for your business.				Total	\$475.00
				Balance Due	\$475.00

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Invoice

Bill To:
Buliding 10 Unit #18 Yanlord Garden #99 Puming Lu Road Lujiazui Pudong New District, Shanghai China

Terms	Date	Invoice No.
Due on receipt	03/30/16	2068

Job
Napa Villas Lot 20B

Date	Item	Description	Quantity	Rate	Amount
02/23/16	Jason Lueros	Prepare summons and complaint to serve on M. Brook	0.5	275.00	137.50
03/22/16	Jason Lueros	Prepare case management statement	1	275.00	275.00
Thank you for your business.				Total	\$412.50
				Balance Due	\$412.50

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 Napa, CA 94559
 T: (707) 418-5118
 F: (877) 350-0815
 www.HudsonLuroes.Com

Invoice

Bill To:
Buliding 10 Unit #18 Yanlord Garden #99 Puming Lu Road Lujiazui Pudong New District, Shanghai China

Terms	Date	Invoice No.
Due on receipt	05/07/16	2106

Job
Napa Villas Lot 20B

Date	Item	Description	Quantity	Rate	Amount
04/06/16	Jason Lueros	Prepare for and attend case management conference	0.4	275.00	110.00

Thank you for your business.	Total	\$110.00
	Balance Due	\$110.00

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 Napa, CA 94559
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 www.HudsonLueros.Com

Invoice

Bill To:
Buliding 10 Unit #18 Yanlord Garden #99 Puming Lu Road Lujiazui Pudong New District, Shanghai China

Terms	Date	Invoice No.
	06/06/16	2153

Job
Napa Villas Lot 20B

Date	Item	Description	Quantity	Rate	Amount
05/19/16	Jason Lueros	Prepare opposition to GWHL motion; prepare case management statement	1.5	275.00	412.50

Thank you for your business.	Total	\$412.50
	Balance Due	\$412.50

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 www.HudsonLueros.Com

Invoice

Bill To:
Buliding 10 Unit #18 Yanlord Garden #99 Puming Lu Road Lujiazui Pudong New District, Shanghai China

Terms	Date	Invoice No.
Due on receipt	07/10/16	2183

Job
Napa Villas Lot 20B

Date	Item	Description	Quantity	Rate	Amount
06/14/16	Jason Lueros	Serve M. Brook w. complaint, summons, and notice and acknowledgment of receipt after court's order	0.8	275.00	220.00
06/24/16	Jason Lueros	Prepare motion to strike answer	2.2	275.00	605.00
06/26/16		Motion to strike answer filing fee		60.00	60.00

Thank you for your business.	Total	\$885.00
	Balance Due	\$885.00

TENTATIVE RULINGS

FOR: August 16, 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. I (Criminal Courts Bldg.- 1111 Third St.)

In re: Yarelle Paez

16CV000570

PETITION FOR APPROVAL OF TRANSFER OF STRUCTURED SETTLEMENT

TENTATIVE RULING: The petition is GRANTED. Based on the papers submitted in support of the petition, the Court finds that: (1) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents, if any; (2) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived that advice in writing; (3) the transferee has provided the payee with a disclosure form that complies with section 10136 and the transfer agreement complies with sections 10136 and 10138; (4) the transfer does not contravene any applicable statute or the order of any court or other government authority; (5) the payee reasonably understands the terms of the transfer agreement, including the terms set forth in the disclosure statement required by section 10136; and (6) the payee reasonably understands and does not wish to exercise the payee’s right to cancel the transfer agreement. (See Cal. Ins. Code, § 10139.5.)

.....

Conservatorship of Iris S. Guillery

16PR000100

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

APPEARANCE REQUIRED

.....
Conservatorship of Stanley L. Price

26-65972

FIRST ACCOUNT AND REPORT OF CONSERVATOR, AND PETITION FOR ALLOWANCE OF COMPENSATION FOR CONSERVATOR'S SERVICES AND FOR ATTORNEY'S FEES

TENTATIVE RULING: The matter is continued to August 31, 2016, at 8:30 a.m. in Dept. F.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. I (Criminal Courts Bldg.-1111 Third St.)

Capell Valley Estates, Inc. v. Richard Curtis Rasmussen, et al.

16CV000546

DEMURRER TO THE COMPLAINT

TENTATIVE RULING:

Defendants Richard Curtis Rasmussen and Lisa Reddi's request for judicial notice of a notice to comply with rules and regulations is DENIED. The document and its contents are not the proper subject of judicial notice.

Defendants' demurrer to the complaint on the ground of uncertainty and failure to state sufficient facts is OVERRULED. Defendants argue that "[e]xpiration of a properly served notice to quit is a prima facie element of Plaintiff's case." (Mem. at p. 4:24.) Defendants cite no authority to support their argument that expiration is a necessary element. Defendants contend the complaint is deficient because plaintiff failed to attach all addenda forming part of the rental agreement. This contention lacks merit since this action is based on defendants' continued possession of the property. (See Code Civ. Proc. §§ 1161(2), 1166, subd. (d)(1)(B)(iii) [an action based on continued possession of residential property does not require the attachment to the complaint of any addenda to a written agreement].) Defendants' assertions under the rules and regulations that were not the proper subject of judicial notice are unavailing. Defendants aver that plaintiff "has not adequately alleged the terms of the rental agreement to support a cause of action based on the notice attached to the complaint." (Mem. at p. 6:14-15.) This averment is undeveloped and thus not meritorious. Finally, defendants maintain that the notices require that rent shall be paid by cashier's check or money order, which changes the terms of the tenancy agreement permitting a personal check. As plaintiff proffers, whether or not payment of

rent is required to be made by check or money order does not create any uncertainty in the pleading since plaintiff does not allege that defendants paid the rent by improper means. Rather, the complaint is brought against defendants because they have made no payment whatsoever, but continue in possession without plaintiff's permission. Indeed, defendants do not state that they attempted to pay their rent by personal check, and that plaintiff refused to accept payment.

.....
Carla Slater v. Gil Pridmore, et al.

26-64500

(1) PLAINTIFF'S MOTION TO TAX COSTS

TENTATIVE RULING: Pursuant to stipulation, the matter is continued to September 30, 2016, at 8:30 a.m. in Dept. I. Any updated briefing shall be filed by September 21, 2016.

(2) DEFENDANTS PRIDMORE BROTHERS CONSTRUCTION, INC. AND GIL PRIDMORE'S MOTION TO TAX COSTS

TENTATIVE RULING: Pursuant to stipulation, the matter is continued to September 30, 2016, at 8:30 a.m. in Dept. I. Any updated briefing shall be filed by September 21, 2016.

.....
Mihoko Kanematsu v. Timothy Wilkens, et al.

26-65976

MOTION TO STRIKE GREAT WESTERN HOLDINGS LIMITED'S ANSWER AND GLOBAL 8 PROPERTIES, INC.'S ANSWER

TENTATIVE RULING:

On July 26, 2017, the Court granted plaintiff Mihoko Kanematsu's unopposed motion to strike. The Court, however, continued the request for monetary sanctions to allow plaintiff's counsel to file a supporting declaration. The Court has reviewed the declaration and the moving papers, and has provided defendant Global 8 Properties, Inc.'s attorney, Michael Brook, an opportunity to be heard.

Plaintiff's request for monetary sanctions against Michael Brook is GRANTED in the amount of \$3,887.50, payable to plaintiff's counsel within 20 calendar days of service of notice of entry of order. (Code Civ. Proc., § 128.5, subd. (a).) It is improper for an attorney to represent a corporation that the attorney knows is suspended. Instead of withdrawing as counsel, Brook proceeded with defending the suspended corporation, in bad faith, for the purpose of delaying these proceedings and to employ tactics intended to harass plaintiff in violation of Code of Civil Procedure section 128.5. (*Id.*, § 128.5, subds. (a)-(c).)

Plaintiff's counsel shall comply with the reporting requirement detailed in Code of Civil Procedure section 128.5, subdivision (h), within 20 calendar days of service of notice of entry of order. Plaintiff's counsel shall subsequently notify the Court that he has complied with the statute by filing a one-page Notice of Transmittal.

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

In the Matter of Ana Rodriguez

16CV000489

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: There is no Proof of Publication in the court file. If one is filed before the hearing, the petition for name change will be granted without need for appearance. If no Proof of Publication is filed, the petition will be denied without prejudice.

.....

In the Matter of the Yeager Family Trust UDT

Dated January 25, 2016

16PR000103

PETITION FOR ORDER DETERMINING TRUST’S TITLE TO PROPERTY; FOR INSTRUCTIONS REGARDING DISTRIBUTION OF TRUST

TENTATIVE RULING: GRANT petition.

.....

Estate of Mary Ann Yeager

16PR000102

SPOUSAL PROPERTY PETITION

TENTATIVE RULING: GRANT petition.

.....

In the Matter of the Robert Rojas Senior Revocable Trust

Dated January 23, 2016

16PR000105

CONTEST OF TRUST, PETITION FOR CANCELLATION OF TRUST, AND FOR IMPOSITION OF A CONSTRUCTIVE TRUST

TENTATIVE RULING: The matter is continued to September 30, 2016, at 8:30 a.m. in Dept. F. Petitioner shall file a supplemental brief, supported by evidence, outlining the decisional law of testamentary capacity and how the facts here apply. Petitioner shall serve Blanca Azalea with the petition and all future filings.

.....

Conservatorship of Evans, Linda

26-43227

PETITION TO APPOINT SUCCESSOR CONSERVATOR OF THE PERSON

APPEARANCE REQUIRED

.....
Conservatorship of Maria Elena

26-48848

PETITION FOR RENEWAL OF APPOINTMENT OF LPS CONSERVATOR

APPEARANCE REQUIRED

.....
The Estate of Goldie Ann Hutchings

26-68260

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

TENTATIVE RULING: GRANT petition, including fees as prayed.