

**Tentative Rulings and Resolution Review Hearings
December 18, 2017
Department 3**

This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court’s website (www.shasta.courts.ca.gov) and are available by clicking on the “Tentative Rulings” link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

8:30 a.m. – Law & Motion

**DYCK VS. MITTRY, ET AL
Case Number: 185292**

THIS MATTER WILL BE HEARD IN DEPARTMENT 7.

Tentative Ruling on Motion for Leave to File First Amended Complaint: As a preliminary matter, the Court notes that the reply was filed two days late. See CCP § 1005. The Court has discretion to refuse to consider a late filed paper. CRC 3.1300(d). The Court will exercise its discretion and consider the late filed reply but counsel is warned that any further late filings may be disregarded in the Court’s discretion.

Plaintiff, Brian Alan Dyck moves for leave to file a First Amended Complaint (“FAC”) pursuant to CCP § 473(a)(1). The proposed changes would add an additional cause of action for negligent hiring/retention against Defendant, Demo N. Mittry, individually and dba Demo Mittry Trucking (hereinafter “Mittry”) and add a demand for punitive damages as against all parties. The amendment is based on information recently obtained at the deposition of Defendant, Benjamin Smith (hereinafter “Smith”).

CCP § 473 permits any pleading to be amended in further of justice and on any terms as may be proper, after notice to the adverse party. The Court’s discretion in this regard will usually be exercised liberally to permit amendment. *Nestle v. Santa Monica* (1972) 6 Cal. 3d 920, 939. “If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion.” *Morgan v. Sup.Ct.* (1959) 172 Cal.App.2d 527, 530.

The Court has reviewed Smith’s deposition testimony and finds that it provides sufficient new evidence to permit an amendment. Trial remains two months away which should allow Defendant to seek discovery on the new issues or in the alternative to seek a trial continuance to complete any new discovery. For this reason the Court finds no prejudice to the Defendants. Finally, the Court finds the motion was brought within a reasonable timeframe. Smith’s deposition took place in July 2017 and Plaintiff shortly thereafter informed Defendant of his intent to file an amended complaint. Plaintiff’s counsel even requested a stipulation. Any delay by Plaintiff in bringing the motion is partially due to Defendant’s delay in responding to the request to stipulate.

The motion is GRANTED. No proposed order was lodged with the Court as required by Local Rule 5.17(D). Plaintiff shall prepare the order. Plaintiff is also ordered to file and serve a copy of the FAC. Defendants’ prior

answer is not deemed the answer to the FAC and Defendant remains entitled to challenge the FAC.

IN RE TELLES

Case Number: 188411

Tentative Ruling on Petition for Change of Name: Petitioner, Jamie Telles seeks to change the name of her minor daughter. Proper proof of publication has been provided. No proof of service has been provided for the non-petitioning parent. The Court requires proof of service on the father before the Petition may be granted. If proof of service is provided, the Court intends on granting the Petition and vacating all future dates. Otherwise, the Court will hear from the Petitioner related to efforts to locate the non-petitioning parent to determine an appropriate method of alternative service.

IN RE WATSON

Case Number: 29355

Tentative Ruling on Petition to Approve Minor's Claim: Guardian Ad Litem, Crystal Harper, seeks an order approving the compromise of claims on behalf of minor, Jewel Watson. California Rules of Court Rule 7.950 states that a petition for court approval of a minor's compromise must contain a full disclosure of all information that has any bearing upon the reasonableness of the compromise. The present Petition along with the Supplemental Declaration complies with those requirements. Considering the extent of Plaintiff's injuries, it appears that the settlement is reasonable and in the best interest of the minor.

The Court notes this is not an expedited petition brought on Judicial Council Form MC-350EX. See CRC 7.950.5. Hearing is thus needed on the Petition before it can be approved. The Guardian Ad Litem and the minor's appearances are necessary at the hearing unless good cause is presented for their non-appearance. CRC 7.952. An appearance is required by the Guardian Ad Litem and minor. Counsel will be asked to voir dire the Guardian Ad Litem: the terms of the settlement; and whether the Guardian Ad Litem understands that once approved, the settlement is final and binding on the minor. Once satisfied, the Court intends to sign the proposed order and set this matter for a review hearing to confirm deposit of the settlement funds into the court blocked account.

IN RE WILSON

Case Number: 28765

Tentative Ruling on Petition to Approve Minor's Claim: The hearing scheduled for today was vacated by the Court's order dated December 11, 2017. No appearance is necessary on today's calendar.

JASON VS. READ, ET AL

Case Number: 186961

Tentative Ruling on Motion to Set Aside Default: Defendants, Steve Schade and Linda Schade (hereinafter collectively the "Schades") move for an order setting aside their respective defaults pursuant to CCP § 473(b). CCP § 473(b) permits the Court "upon terms as may be just, relieve a party...from a judgment...taken against him or her through his or her mistake, inadvertence, surprise or excusable neglect." "Excusable neglect" is defined as what a "reasonably prudent person" would do in the same situation. *Ambrose v. Michelin North America, Inc.* (2005) 134 Cal.App.4th 1350, 1354. The application for relief must be made within six months of the contested order, for example an entry of default. CCP § 473(b). The discretion granted by section 473(b) is liberally construed. The public policy preference for trial on the merits favors resolving doubts in favor of the moving party and relief should be granted except in cases of clear insufficiency of the "excuse" or unjustified delay in bringing the motion to the other party's prejudice. *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233–

234. The Court should liberally exercise their power in setting aside default judgments. *Carbondale Mach. v. Eyraud* (1928) 94 Cal.App. 356, 360. Courts traditionally favor trial on the merits whenever possible. *Moore v. California Mineral Products Corp.* (1953) 115 Cal.App.2d 834, 836. Any doubts in applying CCP § 473 must be resolved in favor of the party seeking relief. *Rogalski v. Nabers Cadillac* (1992) 11 Cal.App.4th 816, 821. When a moving party promptly seeks relief and there is no prejudice to the opposing party, very slight evidence is required to justify relief. *Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1443.

The Schades' have established that their default was the result of their excusable neglect based on the belief they were no longer members of the Architectural Committee. Additionally, the Court finds that Plaintiff has not established any type of prejudice that would justify denying the present motion. *Mink, supra* 2 Cal.App.4th at 1443. The Court also notes that setting aside the default would be consistent with public policy which favors trial on the merits. *Moore, supra* 115 Cal.App.2d at 836.

The motion is GRANTED. A proposed order was not lodged with the Court as required by Local Rule 5.17(D). Schades shall prepare the order. Schades are GRANTED 10 days leave to file their answer and cross-complaint.

OUELLETTE VS. HILL
Case Number: 188857

Tentative Ruling on Petition for Control of Disposition of Decedent's Remains: Petitioner filed the instant petition on December 12, 2017 seeking an order that he be vested with the right and duty of control of disposition of the remains of his daughter, Alexes Hill, who was killed in a fatal car accident on November 22, 2017. The Petition was originally set for hearing by Petitioner on December 18, 2017 at 2:30 p.m. in Department 7 but was reset for Monday, December 18, 2017 at 8:30 a.m. in Department 3. The Court issued a minute order on December 13, 2017 ordering petitioner to give notice of the new hearing date and time by personal service upon Defendant Jonalee Hill. Proof of service shows that said notice was properly given.

A quasi-property right to the possession of a dead body is recognized for the limited purpose of determining who is entitled to have its custody for burial. *Moore v. Regents of University of California* (1990) 51 Cal. 3d 120. Under Health & Safety Code § 7100(a), the right to control the disposition of the remains of a deceased person, the location and conditions of interment, and arrangements for funeral goods and services to be provided, vests in the following individuals in the order named:

- (1) An agent under a power of attorney for health care who has the right and duty of disposition.
- (2) The competent surviving spouse.
- (3) The sole surviving competent adult child of the decedent or, if there is more than one competent adult child of the decedent, the majority of the surviving competent adult children.
- (4) The surviving competent parent or parents of the decedent.** If one of the surviving competent parents is absent, the remaining competent parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving competent parent.
- (5) The sole surviving competent adult sibling of the decedent or, if there is more than one surviving competent adult sibling of the decedent, the majority of the surviving competent adult siblings
- (6) The surviving competent adult person or persons respectively in the next degrees of kinship or, if there is more than one surviving competent adult person of the same degree of kinship, the majority of those persons.
- (7) A conservator of the person appointed under Part 3 (commencing with Section 1800) of Division 4 of the Probate Code when the decedent has sufficient assets.

(8) A conservator of the estate appointed under Part 3 (commencing with Section 1800) of Division 4 of the Probate Code when the decedent has sufficient assets.

(9) The public administrator when the deceased has sufficient assets.

Pursuant to Health & Safety code § 7105(a) and (b), if the person(s) listed above in paragraphs (1), (3), (4), (5), (6), (7), and (8) fail to act or delegate their authority to some other person, or cannot be found within seven days of the date when that right and duty devolves upon them, or for a person listed in paragraph (2) above, within 10 days of that date, the right to control disposition passes to the next person(s) in accordance with Section 7100(a).

Where any of the persons listed in paragraphs (1), (3), (4), (5), (6), (7), or (8) above, with equal rights to control the disposition, fail to agree on disposition within seven days of the date on which that right and duty devolved upon them, that person may file a petition in the superior court in the county in which the decedent resided at the time of his or her death, or in which the remains are located, naming as a party to the action those persons who would otherwise have equal rights to control the disposition and seeking an order of the court determining, as appropriate, who among those parties will have the control of disposition and to direct that person to make interment of the remains. Health & Safety Code § 7105(c).

Petitioner and respondent are the surviving parents of the decedent, although the Court notes that the petition is silent on whether any of the persons listed in paragraphs (1), (2), or (3) exist. Petitioner states that the decedent's sole sibling as well as other relatives support his petition but no evidence has been provided to support these representations. The petition is also silent on whether there is actual disagreement by decedent's mother with petitioner's plan of disposition and funeral services or whether there is another reason he is filing his petition (such as failure or inability to respond or communicate with petitioner on the matter).

The petition and supporting declaration do not provide sufficient evidence for the Court to determine whether granting petitioner the right and duty to control disposition of his daughter's remains is just and proper and for the best interests of the public health. Petitioner will need to present sufficient evidence at hearing for the Court to make those findings before this petition will be granted.

9:00 a.m. – Review Hearings

BEAVER VS. TARGET CORP.

Case Number: 187253

This matter is on calendar for review for status of removal. On June 21, 2017, the Court received a "Notice to the Superior Court of Removal..." Based on the Notice, the Court suspended its jurisdiction pursuant to 28 USC § 1446 and set this matter for review regarding status. Plaintiff has submitted a Status Report which indicates this matter will proceed to trial on the Eastern District in November 2018 or January 2019. No remand appears likely and therefore the Court will administratively close this file. No appearance is necessary on today's calendar.

DAHLE-TABER, ET AL VS. CARRINO, JR, ET AL

Case Number: 185207

This matter is on calendar for review regarding status of settlement and/or dismissal. This litigation settled at the mandatory settlement conference on September 25, 2017. No dismissal has been filed. No Notice of Settlement has been filed. The parties are ordered to appear to provide the Court with a status of the settlement

and/or dismissal.

IN RE BELMONT
Case Number: 29372

This matter is on calendar for review regarding status of receipt of funds. On November 13, 2017, the Court granted the minor's compromise permitting the funding of an annuity for minor Andrew Belmont. No documentation has been filed to reflect the annuity has been funded. Counsel for the Petitioner is ordered to appear to provide the court with a status of the annuity.

JASON VS. READ, ET AL
Case Number: 186961

This matter is on calendar for review regarding trial re-setting. At this morning's law and motion calendar, the Court granted Defendants, Steve and Linda Schade's motion to set aside their default. In light of the foregoing, this matter is continued to **Monday, February 5, 2018 at 9:00 a.m. in Department 3** to permit the filing of Schade's answer and cross-complaint to make this matter at issue. No appearance is necessary on today's calendar.

JONES VS. THE ESTATE OF ELSIE JACKSON
Case Number: 182583

This matter is on calendar for review regarding status of judgment/dismissal. A Notice of Settlement was filed on September 19, 2017 which indicates that the case would be dismissed within 45 days of June 14, 2017. No dismissal is on file. The Court intends on dismissing this case pursuant to California Rule of Court 3.1385(b) unless the parties appear at today's hearing and show good cause why the case should not be dismissed.

ROBINSON VS. KEMPER FINANCIAL
Case Number: 187081

This matter is on calendar for review regarding status of appeal, applicability of the stay to further proceedings involving Defendant Sanford, status of filing of an amended complaint. On December 12, 2017, jurisdiction was remanded to this Court from the Third Appellate District via remittitur. No appeal is now pending and therefore the issues related to the appeal and potential stay are moot. The Court notes that Plaintiff has not filed an amended complaint as ordered by the Court on August 28, 2017. Defendants previously moved to dismiss this matter based on Plaintiff's failure to file an amended complaint but the request to dismiss was denied without prejudice. Given the recent remitter the Court sets this matter for review regarding status of pleadings on **Tuesday, February 20, 2018, at 9:00 a.m. in Department 3**. No appearance is necessary on today's calendar.

SWIFT VS. REDDING HARLEY DAVIDSON, ET AL
Case Number: 185433

This matter is on calendar for review regarding trial re-setting. The Court previously designated this matter as EXEMPT from the case disposition time standards. The Court notes that Plaintiff's attorney of record is deceased and that Peter Myers is the appointed practice administrator. The parties are ordered to appear to provide the Court with a status of Plaintiff's representation and if possible to re-set this matter for trial.

FRUITS, ET AL VS. MEYERS, ET AL
Case Number: 187269

Tentative Ruling on Motion to Be Relieved as Counsel: The present motion is unopposed. Counsel, Stewart Altemus, moves to be relieved as counsel for Plaintiff, David L. Fruits on the grounds that he has been unable to contact his client by mail or telephone.

CRC 3.1362 specifies the requirements for a motion to be relieved as counsel. CRC 3.1362(c) requires that the declaration state in general terms and without compromising the confidentiality of the attorney-client relationship why a motion to be relieved as counsel is brought instead of filing a consent under CCP § 284(1). Mr. Altemus has provided in very general terms why he cannot proceed as Plaintiff’s counsel but has failed to provide sufficient information as to why a consent (i.e. substitution of attorney) could not be filed. Mr. Altemus’ declaration has not provided any facts related to whether he requested his client to sign a substitution of attorney. Further the Court has insufficient information to find that the last known address was confirmed within the last 30 days. The supporting declaration states that the last known address was confirmed by telephone but also states that counsel has been unable to make contact with the client by telephone. If counsel has been unable to contact his client by phone how then was he able to verify the address by phone. In conclusion, Mr. Altemus has failed to provide sufficient information to be relieved as counsel.

This matter is concurrently set for a mandatory settlement conference. At the hearing on December 11, 2017, Mr. Altemus stated he intended to stay on through the mandatory settlement conference. After the mandatory settlement conference the Court intends on issuing a final ruling denying the motion without prejudice.