

TENTATIVE RULINGS for CIVIL LAW and MOTION February 5, 2015

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Two: (530) 406-6843

TENTATIVE RULING

Case: Haykingdom, Inc. v. Norstar Enterprises
Case No. CV CV 14-1152

Hearing Date: February 5, 2015 Department Two 9:00 a.m.

Plaintiff Haykingdom, Inc.'s motion to compel responses to form interrogatories, set one and request for production of documents, set one, is **DENIED AS MOOT**. Pursuant to plaintiff's notice of non-opposition filed on January 28, 2015, plaintiff concedes that defendants Norstar Enterprises and William Kang provided verified responses to form interrogatories, set one, and request for production of documents, set one, on January 26, 2015. (Decl. of Sean C. Adams, ¶¶ 2-4.)

Plaintiff's request for monetary sanctions is **DENIED**. Based on the evidence before the Court, defendants acted with substantial justification and the imposition of sanctions would be unjust. (Code Civ. Proc., § 2023.030; Decl. of Christie S. Lee, ¶¶ 2-4.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

TENTATIVE RULING

Case: In the Matter of the McCray Trust
Case No. CV P2 14-106

Hearing Date: February 5, 2015 Department Two 9:00 a.m.

Cross-defendant Shauna Rimel's motion to bifurcate proceedings on George Carll's cross-complaint is **GRANTED**. (Code of Civ. Proc., §§ 598, 1048.)

Cross-defendant's motion to stay is **DENIED**. Cross-defendant provides no legal authority to support her contention that further proceedings on the cross-complaint are required to be stayed until after the beneficiaries of the McCray Trust are determined.

Cross-defendant's motion for attorney's fees is **DENIED** as premature. (Prob. Code, § 4545, subd. (a).)

Cross-defendant's motion to strike the claim for punitive damages in the cross-complaint is **DENIED**. Cross-defendant fails to cite the paragraph(s) in the cross-complaint to be stricken. (Cal. Rule of Court, rule 3.1322(a).)

Cross-defendant's demurrer to the cross-complaint's first cause of action for an accounting is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) The cross-complaint does not allege whether cross-defendant failed to provide an accounting within 60 days after written request from cross-complainant. (Prob. Code, 4541, subd. (c).) Having sustained the demurrer on this ground, the Court need not reach the other ground asserted for the demurrer.

Cross-defendant's demurrer to the cross-complaint's second cause of action for conversion and breach of fiduciary duty is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) The cross-complaint does not allege facts sufficient to demonstrate cross-complainant suffered damages as a result of cross-defendant's conduct. (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066.) Having sustained the demurrer on this ground, the Court need not reach the other ground asserted for the demurrer.

Cross-defendant's demurrer to the cross-complaint's third cause of action for elder abuse is **OVERRULED**. (Code Civ. Proc., § 430.10, subds. (b), (e) & (f).) Cross-defendant does not establish that cross-complainant lacks capacity to sue, as that term is defined in section 430.10(b). (*Hagan v. Fairfield*, supra, 194 Cal.App.2d 240, 243.) Additionally, cross-complainant has alleged sufficient facts to constitute a cause of action for elder abuse. (Cross-complaint, Second Cause of Action ¶ IT-4, Third Cause of Action, ¶ IT-4, Welf. & Inst. Code, 15610.30, subd. (a).) Finally, the allegations for financial abuse are not so uncertain that cross-defendant cannot reasonably respond. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.)

The notice of motion does not provide notice of this Court's tentative ruling system as required by Local Rule 11.4(b). Counsel for moving party is ordered to notify the opposing party or parties immediately of the tentative ruling system and to be available at the hearing, in person or by telephone, in the event the opposing party or parties appear without following the procedures set forth in Local Rule 11.4(a).

TENTATIVE RULING

Case: Parnow v. Universal Protection Service LP
Case No. CV CV 14-334

Hearing Date: February 5, 2015 Department Two 9:00 a.m.

Defendants Universal Protection Service, LP and Universal Services of America, LP's moving papers fail to comply with California Rules of Court, rule 3.1110(f). Defendants' attorneys are reminded that they must comply with the California Rules of Court.

Plaintiffs Michael Parnow, Shawn Lisenby, Bob Andrade, Gabriel Bautista, and Saiyaz Abdul's objection to the declaration of Paula Malone is **SUSTAINED**.

Plaintiffs' request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (h).)

Defendants' motion to compel individual arbitration is **DENIED**. The Arbitration Agreements, entered into by the parties on January 31, 2013, incorporation of the American Arbitration Association's National Rules for the Resolution of Employment Disputes is clear and unmistakable evidence of the parties' intent to delegate the issue of class arbitrability to the arbitrator. (*Ajamian v. CantorCO2e, L.P.* (2012) 203 Cal. App. 4th 771; *Dream Theater, Inc. v. Dream Theater* (2004) 124 Cal.App.4th 547; Decl. of Paula Malone in Support of Motion, ¶ 2, Exhs. A-E.)

Defendants' motion to stay proceedings is **GRANTED**. (Code Civ. Proc., §§ 1281.4, 1292.8; Lab. Code, § 2699; Cal. Rules of Court, rule 3.650.) This action is stayed pending the arbitration of plaintiffs' claims.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.