

TENTATIVE RULINGS for CIVIL LAW and MOTION
May 7, 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: Kolb v. City of West Sacramento
Case No. CV CV 14-1710
Hearing Date: May 7, 2015 Department Two 9:00 a.m.

Defendant City of West Sacramento's demurrer to the first cause of action for federal civil rights violations in plaintiff Klaus Kolb's first amended complaint is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Defendant concedes that plaintiff can maintain this cause of action under the Fourth Amendment based on plaintiff's personal property. Because plaintiff can establish a claim based on the Fourth Amendment violation, and the Fourteenth Amendment violation is one of two parts of the first cause of action, the Court need not reach the merits of the due process aspect of the challenge to this claim. A general demurrer does not lie to only part of a cause of action. If there are sufficient allegations to entitle plaintiff to relief, other allegations cannot be challenged by general demurrer. (*Kong v. City of Hawaiian Gardens Redevelop. Agency* (2003) 108 Cal.App.4th 1028, 1046.)

Defendant's demurrer to the second cause of action for conversion is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Defendant concedes in its reply that plaintiff's claim is timely under Tort Claims Act, and that plaintiff has pled an ownership interest in his personal property. Contrary to defendant's contention, plaintiff does not admit that the Jeep was abandoned. This is a misstatement of plaintiff's allegations. (FAC, ¶¶ 7, 8.) To the extent that defendant belatedly makes an immunity argument in its reply, the Court does not consider it because it was not in defendant's demurrer and plaintiff did not have an opportunity to respond to it.

Defendant's demurrer to the third cause of action for declaratory relief is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Defendant does not show that possibility of the repetition of defendant's conduct as to others besides plaintiff is conjectural. (*Brownfield v. Daniel Freeman Marina Hospital* (1989) 208 Cal.App.3d 405, 410.)

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.