

TENTATIVE RULINGS for CIVIL LAW and MOTION
June 23, 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
Telephone number for the clerk in Department Fourteen: (530) 406-6888

TENTATIVE RULING

Case: Clark v. EMQ FamiliesFirst
Case No. CV CV 14-1250
Hearing Date: June 23, 2015 Department Fourteen 10:00 a.m.

Defendant EMQ FamiliesFirst, Inc.'s request for judicial notice is **GRANTED**. (Evid. Code, § 452, subds.(a) & (d).)

Defendant's demurrer to the first cause of action for negligence is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff Dino Clark fails to state facts sufficient to support the existence of the special relationship necessary to establish a duty of care. (*Beauchene v. Syanon Foundation, Inc.* (1979) 88 Cal.App.3d 342, 347.) Having once afforded plaintiff leave to amend this cause of action, the Court declines further leave to amend.

The second cause of action for liability under Civil Code section 1714.1 is **STRICKEN**. Plaintiff did not obtain leave of Court to add this cause of action. (*People v. Clausen* (1967) 248 Cal.App.2d 770,785-86; *Harris v. Wachovia Mortg., FSB* (2010) 185 Cal.App.4th 1018, 1023.)

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: Day & Night Truck Trailer Repair, Inc.
Case No. CV CV 15-508
Hearing Date: June 23, 2015 Department Two 9:00 a.m.

Defendants River City Petroleum, Inc. and Leonard Robinson's demurrer to the second cause of action for "breach of covenants of good faith dealing" is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) A covenant of good faith and fair dealing is implied in all contracts. (See e.g., *Cleary v. American Airlines* (1980) 111 Cal.App.3d. 443, 456.)

Defendants' demurrer to the third cause of action for conspiracy to commit fraud and fourth cause of action for fraud is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Defendants reference to the provisions of the lease do not defeat the entirety of the causes of action, and the authority cited by defendants does not preclude pleading breach of contract and fraud in the alternative.

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: **Hughes v. Harmann**
Case No. CV G 14-1105
Hearing Date: **June 23, 2015** **Department Two** **9:00 a.m.**

Plaintiff Peter W. Hughes's motion for attorneys' fees is **DENIED**. (Civ. Code, § 1717.) Counsel relies upon time records to establish the amount of attorneys' fees incurred, but does not satisfy the foundational requirements of the business records exception to the hearsay rule. (Baxter Decl., ¶ 12; Evid. Code, § 1271.)

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: **Salazar v. Bank of America, N.A.**
Case No. CV CV 13-1158
Hearing Date: **June 23, 2015** **Department Two** **9:00 a.m.**

Defendant Bank of America, N.A.'s motion to continue trial is **DENIED**. (Cal. Rules of Court, rule 3.1332.) Defendant contends that a continuance is warranted based on its inability to obtain discovery from plaintiff that it propounded in February, 2015. But defendant fails to explain why it delayed seeking discovery and what diligence it utilized to obtain discovery in 2013 and 2014.

Having received fully verified responses to defendant's requests for admission from plaintiffs Juan Salazar and Reyna Salazar, defendant's motion to deem requests for admission admitted as against these plaintiffs is **DENIED**. However, monetary sanctions are mandatory despite the service of responses. Accordingly, the request for monetary sanctions is granted against both plaintiffs in the amount of \$510.00. (Code Civ. Proc., § 2033.280, subd. (c).)

Defendant's motion to compel further responses to requests for production, and responses to form interrogatories is **DENIED**. (Code Civ. Proc., §§ 2030.290, subd. (b), 2031.300, subd. (b).) Responses have now been served.

The Court still imposes monetary sanctions, however, since defendant was forced to incur attorneys' fees to procure these responses. Accordingly, the request for monetary sanctions is granted against both plaintiffs in the amount of \$510.00. (Code Civ. Proc., §§ 2030.290, subd.

(c), 2031.300, subd. (c); Cal. Rules of Court, rule 3.1348(a) [sanctions may be awarded even though the requested discovery is provided].)

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: **Scaccia v. Scaccia**
Case No. CV CV 14-1820
Hearing Date: **June 23, 2015** **Department Two** **9:00 a.m.**

Defendants John Scaccia and Lida Scaccia's motions to quash are **GRANTED**. (Code Civ. Proc., § 418.10, subd. (a)(1).) The only admissible evidence before the Court is plaintiff Brian Scaccia's declaration which he submits with his opposition brief. The verified first amended complaint, and John Scaccia and Lida Scaccia's affidavits are not properly verified. (Code. Civ. Proc., § 2015.5.) Plaintiff does not provide sufficient evidence to justify the exercise of personal jurisdiction over John and Lida Scaccia. (*Burger King. v. Rudzewicz* (1985) 471 U.S. 462, 477-78.)

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).