

TENTATIVE RULINGS for LAW and MOTION
July 21, 2020

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 on Yolo Court's 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 Nine (530) 406-6819

NOTICE: Effective May 4, 2020, all court appearances are by Zoom or Conference call. Yolo Superior Court Virtual Courtroom and conference call information is posted on the Yolo Court's Website at www.yolo.courts.ca.gov.

TENTATIVE RULING

Case: **Barker v. Renwick**
Case No. CVPO 19-1796
Hearing Date: **July 21, 2020** **Department Ten** **9:00 a.m.**

Defendant Elizabeth Pham, M.D.,'s unopposed motion to compel plaintiff's responses to discovery is **GRANTED**. (Code Civ. Proc., §§ 2030.290, 2031.300, 425.11.) Plaintiffs are ordered to provide complete responses, without objections, to defendant's form interrogatories, set one, special interrogatories, set one, request for production of documents, set one, and request for statement of damages by **August 11, 2020**.

Defendant Elizabeth Pham, M.D.,'s unopposed motion to deem admitted request for admissions, set one, is **GRANTED**. (Code Civ. Proc., § 2033.280, subd. (b).) Defendant Elizabeth Pham, M.D.,'s request for sanctions is **DENIED**. (Code Civ. Proc., § 2033.280, subd. (c).) Defendant has failed to submit a factual basis for the Court to award sanctions.

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: **Leistikow v. The University Covenant Church of Davis**
Case No. CV CV 20-115
Hearing Date: **July 21, 2020** **Department Nine** **9:00 a.m.**

Defendants The University (Evangelical) Covenant Church of Davis', Jason DeJong's, Julie DeJong's, Barbara Paulson's, Kenneth Paulson's, and Amanda Kaschube's unopposed request for judicial notice is **GRANTED**. (Evid. Code, §§ 452, subd. (d), 453.)

Defendants' demurrer to plaintiff Bruce Leistikow's first amended complaint is **SUSTAINED IN PART**.

Plaintiff's first cause of action: Defendants' demurrer to plaintiff's first cause of action for enticement of minors is **OVERRULED**. (Code Civ. Proc., § 430.10, subds. (e), (f).) Plaintiff's first cause of action, is not fatally ambiguous or uncertain. (Code Civ. Proc., § 430.10, subd. (f).) Plaintiff has pleaded that defendants provided smart phone, service plan, and gaming computer as "enticements" under the statute, over and above only shelter and sustenance. (Civ. Code, § 49; Code Civ. Proc., § 430.10, subd. (e); *Robbins v. Hamburger Home for Girls* (1995) 32 Cal.App.4th 671, 681-682; *see also* Rest.2d Torts, § 700.) The Court does not have before it, at demurrer, undisputed material facts establishing that the minors at issue would have suffered immediate physical harm if they returned home. (*Robbins v. Hamburger Home for Girls* (1995) 32 Cal.App.4th 671, 682; *see also* Rest.2d Torts, § 700.)

Plaintiff's second cause of action: Defendants' demurrer to plaintiff's second cause of action for negligent infliction of emotional distress is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff has failed to plead and state facts constituting the duty owed by defendants to plaintiff. There is no duty to avoid negligently causing emotional distress to another unless the defendant has assumed a duty to plaintiff in which the emotional condition of the plaintiff is an object. Recovery is available only if the emotional distress arises out of the defendant's breach of some other legal duty and the emotional distress is proximately caused by that breach of duty. (*Gu v. BMW of North America, LLC* (2005) 132 Cal.App.4th 195, 204.) The Court sustains with leave to amend, as it is an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility that the defect identified by the defendants can be cured by amendment. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.)

Plaintiff's third and fourth causes of action: Defendants' demurrer to plaintiff's third and fourth causes of action is **OVERRULED**. (Code Civ. Proc., §§ 430.10, subds. (g), (f), and (e).) A plaintiff may plead the legal effect of the contract rather than its precise language. Plaintiff's failure either to attach or to set out verbatim the terms of the contract was not fatal to his breach of contract cause of action. (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 401-402, emphasis added.) Less specificity is required when it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy. (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 403.) Plaintiff's third and fourth causes of action are not fatally uncertain or ambiguous. (Code Civ. Proc., § 430.10, subd. (f).) Plaintiff's third and fourth causes of action state facts sufficient to constitute causes of action. (Code Civ. Proc., § 430.10, subd. (e).)

Defendants' motion to strike portions of plaintiff's first amended complaint is **DENIED**. (Code Civ. Proc., § 435 et seq.) This Court cannot determine as a matter of law that plaintiff's request for punitive damages is improper. (Civ. Code, § 3294.) The gatekeeper statutes do not apply to the first amended complaint as pleaded. (Code Civ. Proc., §§ 425.14, 425.15.)

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: Rutaganira v. Mitchell
Case No. CV UD 19-2712
Hearing Date: July 21, 2020 Department Nine 9:00 a.m.

Defendant’s objections to plaintiff’s exhibits C and D are **SUSTAINED**. (Evid. Code, § 1200.)

Plaintiff Thomas Rutaganira’s motion for summary judgment is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(1).) Plaintiff fails to prove each element of the cause of action for unlawful detainer based upon a three-day notice to perform covenant(s) of the lease or quit. (Code Civ. Proc., §§ 437c, subd. (p)(1), 1161, subd. (3); UMF 1-6.) If the moving party fails to meet their burden, their motion must be denied; the other party need not make any showing at all. (*Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 468.)

Defendant Krista Mitchell filed a “Cross-Motion for Summary Judgment.” The Court deems defendant’s paperwork to be an opposition as defendant already filed a motion for summary judgment which was denied and defendant fails to establish newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion. (Code Civ. Proc., § 437c, subd. (f)(2).) If defendant’s Cross-Motion for Summary Judgment is a motion for reconsideration, it is **DENIED**. Defendant does not state any new facts, circumstances, or law. (Code Civ. Proc., § 1008.)

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