TENTATIVE RULINGS for CIVIL LAW and MOTION
August 6, 2010

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 Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **Atencio v. Hoover**
Case No. CV CV 10-279
Hearing Date: **August 6, 2010** **Department Fifteen** **9:00 a.m.**

The motion at bar appears to be directed against Roslynn Hoover only because plaintiff asks the Court to "deny" Roslynn Hoover's affirmative defense of *res judicata*. The action against Roslynn Hoover is stayed by the filing of a bankruptcy petition. (11 U.S.C. § 362.) If appropriate, plaintiff may renew his motion against Roslynn Hoover when the bankruptcy stay terminates. Plaintiff must cite California or applicable federal authority supporting any relief requested.

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

TENTATIVE RULING

Case: **Bank of America, N.A. v. Gearhead Productions, Inc., et al.**
Case No. CV CV 09-1271
Hearing Date: **August 6, 2010** **Department Fifteen** **9:00 a.m.**

Plaintiff's unopposed motion for summary adjudication as to the fifth cause of action against Michael Lavella: This motion is **GRANTED**. (Pham Declaration ¶¶ 1-20 and exhibits thereto.)

Plaintiff is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

Plaintiff's request for entry of default judgment against Gearhead Productions, Inc.: This request is **DENIED WITHOUT PREJUDICE**. Plaintiff did not submit the mandatory Judicial Council form. (Cal. Rules of Court, rule 3.1800(a).) Plaintiff did not submit a

memorandum of costs. (Cal. Rules of Court, rule 3.1800(a)(4).) Plaintiff's request for attorney's fees is inconsistent with Local Rule 11.6. (Cal. Rules of Court, rule 3.1800(b).) Plaintiff requests a judgment of $21,103.97 for interest through March 23, 2010. It appears that this amount is calculated using the "Bank Index Rate" plus 3.5% per annum. (Pham Declaration ¶ 15.) This interest rate is different from that stated in the 2005 agreement -- Wall Street Journal Prime Rate plus 2.8750 percentage points (Exhibit 4 to Pham Declaration).

If no hearing is requested, the tentative ruling as to the request for default judgment is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Creditors Trade Association, Inc. v. Hawkins**
Case No. CV G 08-998

Hearing Date: **August 6, 2010** **Department Fifteen** **9:00 a.m.**

This matter is **CONTINUED** on the Court's own motion to Wednesday, September 29, 2010, at 9:00 a.m. in Department Fifteen so that it may be heard with plaintiff's motion to amend the judgment.

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

TENTATIVE RULING

Case: **Hansi v. Mid-Century Insurance Company**
Case No. CV PT 10-1352

Hearing Date: **August 6, 2010** **Department Fifteen** **9:00 a.m.**

The motion to compel arbitration is **DENIED**. The parties have already agreed to arbitrate this matter. The motion for an order that this Court retain jurisdiction to decide discovery disputes is **GRANTED**. (*Miranda v. 21st Century Ins. Co.* (2004) 117 Cal.App.4th 913, 926.)

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

TENTATIVE RULING

Case: **Twin Pines Cooperative Foundation v. Davis Area Cooperative Housing Assoc., Inc.**
Case No. CV PO 08-3424

Hearing Date: **August 6, 2010** **Department Fifteen** **9:00 a.m.**

Defendants' requests for judicial notice: The request to take notice of Exhibits 1 through 12 to the Request to Judicial Notice filed on May 20, 2010, is **GRANTED**. (Evid. Code, § 452, subd. (d).) The request to take notice of Exhibit 13 to the Request for Judicial Notice filed on May 20, 2010, is **DENIED**. The copy provided is not a filed-endorsed copy. The request to

take notice of Exhibits 14 through 18 to the Request for Judicial Notice filed on May 20, 2010, is **GRANTED**. (Evid. Code, § 452, subd. (c).) The Court does not, however, take notice of the factual matters stated in the recorded documents. (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117-1118.)

The request to take notice of Exhibit 19 to the Request to Judicial Notice filed on July 16, 2010, is **GRANTED**. (Evid. Code, § 452, subd. (d).) The request to take notice of Exhibit 20 to the Request to Judicial Notice filed on July 16, 2010, is **DENIED**.

Defendants' demurrer to the first amended complaint: The demurrer to the first, second, third and fourth causes of action based on failure to state a cause of action against the City of Davis and the Redevelopment Agency of the City of Davis is **SUSTAINED WITH LEAVE TO AMEND**. Health and Safety Code section 33007.5 has been repealed. To the extent the first cause of action is based on Civil Code section 817, the first amended complaint fails to allege facts to show that the City of Davis and/or its redevelopment agency is/are obligated to do anything pursuant to that statute and how the City and/or its redevelopment agency can be found to violate Civil Code section 817. The first amended complaint does not allege any facts to show the basis for liability by the City of Davis and/or its redevelopment agency under the second, third and fourth causes of action.

Because the first amended complaint does not allege any cause of action against the demurring defendants, it is not necessary for the Court to determine whether the plaintiff's claims against these defendants are subject to the Government Claims Act, time-barred, or barred by the doctrine of estoppel.

Plaintiff shall file an amended pleading **by no later than August 16, 2010**.

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