

**TENTATIVE RULINGS for CIVIL LAW and MOTION**  
**August 22, 2014**

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](http://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 Eight: (530) 406-6843  
Telephone number for the clerk in Department Three: (530) 406-6816

**TENTATIVE RULING**

**Case:** Cleveland v. Hoblit Chrysler Jeep Dodge  
Case No. CV CV 12-2594  
**Hearing Date:** August 22, 2014 Department Three 9:00 a.m.

Plaintiffs Alisha Cleveland and Debora Cleveland's motion for leave to file a third amended complaint is **DROPPED FROM CALENDAR**. It was not filed at least 16 court days before the hearing date. (Code Civ. Proc., § 1005.)

**TENTATIVE RULING**

**Case:** Davis Enterprise v. Fairfield Publishing Co.  
Case No. CV CV 06-68  
**Hearing Date:** August 22, 2014 Department Eight 9:00 a.m.

Plaintiff Davis Enterprise, Inc.'s motion to enforce the deposition subpoena of non-party witness Robert Logan is **DROPPED FROM CALENDAR**. A discovery referee has been appointed. Counsel Jennifer H. King is reminded to submit an order after hearing as the Court ordered on August 14, 2014.

The Court rules upon defendant City of Davis's ("City") motions directed to plaintiff Davis Enterprise, Inc.'s fourth amended complaint as follows:

The Court declines to consider any documents filed after August 8, 2014, as there is no statutory authority for filing and serving papers after the moving party's reply papers have been filed and served. (Code Civ. Proc., § 473c.)

The motion for judgment on the pleadings to the first cause of action for hazard substance indemnity and the fourth cause of action for continuing private nuisance is **DENIED**. Plaintiff states facts sufficient to state each cause of action. (Civ. Code, § 3479; Code Civ. Proc., § 438; Health & Saf. Code § 25363, subd. (e); *Wells Fargo Bank, N.A. v. Renz* (N.D. Cal. 2011) 795 F.Supp.2d 898, 910; *Adobe Lumber, Inc. v. Hellman* (E.D. Cal. 2009) 658 F.Supp.2d 1188, 1193;

*FMC Corp. v. Vendo Co.* (E.D. Cal. 2002) 196 F.Supp.2d 1023, 1040; *Mangini v. Aerojet-Gen. Corp.* (1991) 230 Cal.App.3d 1125; Plaintiff's Fourth Amended Complaint, ¶¶ 1-28.)

City's evidentiary objection nos. 1 and 2 are **SUSTAINED**. (Evid. Code, § 702.) City's remaining evidentiary objections are **OVERRULED**. (Evid. Code, §§ 350 et seq., 700 et seq., 800 et seq., 1400 et seq.)

The motion for summary adjudication to plaintiff's first cause of action for hazard substance indemnity is **DENIED**. (Code Civ. Proc., § 437c, subd. (f)(1).) Triable issues of material facts exist. (City's Statement of Undisputed Material Facts ("UMF") 3, 11, 14-16, 21-23, 26, 28-30, 32-35, and 37.) These issues include, but are not limited to, whether plaintiff provided written notice to the director of the California Department of Toxic Substances Control of its claims against City, whether City is the owner and operator of a facility, and whether plaintiff has incurred removal or remedial action costs. (42 U.S.C.A. §§ 9607(a), 9613; Health & Saf. Code, § 25300 et seq.; *Wells Fargo Bank, N.A. v. Renz*, *supra*, 795 F.Supp.2d at 910; *Adobe Lumber, Inc. v. Hellman*, *supra*, 658 F.Supp.2d at 1193; *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252; *FMC Corp. v. Vendo Co.*, *supra*, 196 F.Supp.2d at 1040; City's UMFs 3, 11, 14-16, 21-23, 26, 28-30, 32-35, and 37; Decl. of Jennifer Hartman King, ¶ 14, Exhs. 4, 8-15, 18-20; Decl. of Jan Greben, Exhs. V, HH, NN, and PP; Decl. of Peter Krasnoff, ¶ 10, Exh. C; Decl. of Keith M. O'Brien, ¶ 8.)

City's motion for summary adjudication to plaintiff's fourth cause of action for a continuing private nuisance is **DENIED**. (Code Civ. Proc., § 437c, subd. (f)(1); City's UMFs 40-43, 45-48.) A triable issue of material fact exists as to whether the alleged contamination has substantially and unreasonably interfered with plaintiff's use and enjoyment of its property. Additionally, a triable issue of material fact exists regarding whether the alleged nuisance is abatable, and therefore continuing. (*McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, 84; *Mangini v. Aerojet-Gen. Corp.*, *supra*, 230 Cal.App.3d at 1137; City's UMFs 40-43, 45-48; Decl. of King, Exhs. 4 and 14-15.)

The motion for summary judgment is **DENIED**.

If no hearing is requested, plaintiff is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c(g) and California Rule of Court 3.1312.

The Court rules upon City's motions directed to Daily Republic, Inc.'s ("Daily Republic") third amended cross-complaint as follows:

The Court declines to consider any documents filed after August 8, 2014, as there is no statutory authority for filing and serving papers after the moving party's reply papers have been filed and served. (Code Civ. Proc., § 473c.)

The motion for judgment on the pleadings to the fifth cause of action for declaratory relief and the sixth cause of action for contribution and indemnity pursuant to Health and Safety Code section 25363(e) is **DENIED**. Daily Republic states facts sufficient to constitute each cause of

action. (Code Civ. Proc., § 438; Health & Saf. Code § 25363, subd. (e); *Wells Fargo Bank, N.A. v. Renz, supra*, 795 F.Supp.2d at 910; *Adobe Lumber, Inc. v. Hellman, supra*, 658 F.Supp.2d at 1193; *FMC Corp. v. Vendo Co., supra*, 196 F.Supp.2d at 1040; Daily Republic's Third Amended Cross-Complaint, ¶¶ 1-37.)

City's evidentiary objection no. 1 is **SUSTAINED**. (Evid. Code, § 1401.) City's evidentiary objection no. 2 is **OVERRULED**. (*Ibid.*)

The motion for summary adjudication to the fifth cause of action for declaratory relief is **DENIED**. (Code of Civ. Proc., § 437c, subd. (f)(1).) City's separate statement of undisputed material facts fails to separately identify, and state verbatim, the specific cause of action that City seeks to have adjudicated as required. (Cal. Rules of Court, rule 3.1350(b) & (d).)

The motion for summary adjudication to the sixth cause of action for contribution and indemnity pursuant to Health and Safety Code section 25363(e) is **DENIED**. (Code Civ. Proc., § 437c, subd. (f)(1).) Triable issues of material facts exist. (City's UMFs 6, 17, 20-23, 25-26, and 30-34.) These issues include, but are not limited to, whether Daily Republic provided written notice to the director of the California Department of Toxic Substances Control of its claims against City, whether City is the owner and operator of a facility, and whether Daily Republic has incurred removal or remedial action costs. (42 U.S.C.A. §§ 9607(a), 9613; Health & Saf. Code, § 25300 et seq.; *Wells Fargo Bank, N.A. v. Renz, supra*, 795 F.Supp.2d at 910; *Adobe Lumber, Inc. v. Hellman, supra*, 658 F.Supp.2d at 1193; *Nazir v. United Airlines, Inc., supra*, 178 Cal.App.4th at 252; *FMC Corp. v. Vendo Co., supra*, 196 F.Supp.2d at 1040; City's UMFs 6, 17, 20-23, 25-26, and 30-34; Decl. of Jennifer Hartman King, ¶ 18, Exhs. 7, 12-13, 15-17, 19-20; Decl. of Probal Young, Exhs. 1-4, 7, 9.)

The motion for summary judgment is **DENIED**.

If no hearing is requested, Daily Republic is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c(g) and California Rule of Court 3.1312.

#### **TENTATIVE RULING**

**Case:** **Lira v. Russell**  
**Case No. CV PM 13-1382**  
**Hearing Date:** **August 22, 2014** **Department Eight** **9:00 a.m.**

The petition for minor's compromise will be denied if petitioner fails to file the reports required by item 9 of the petition.

The petitioner, Maria Lira, and the minor, Joanna Lira, are directed to appear. (Cal. Rules of Court, rule 7.952.) If the parties fail to appear at the hearing and the Court has not excused their personal appearance, the petition will be denied without prejudice. No request for a hearing is required.

**TENTATIVE RULING**

**Case: Portfolio Recovery v. Moore**  
**Case No. CV G 14-358**

**Hearing Date: August 22, 2014 Department Eight 9:00 a.m.**

Defendant Yolanda Moore's unopposed motion to compel plaintiff Portfolio Recovery Associates, LLC to serve further responses to requests for production of documents is **GRANTED**. (Code Civ. Proc., § 2031.300.)

Verified responses, together with any responsive documents, shall be served by no later than September 8, 2014.

Defendant's unopposed motion to deem requests for admission admitted is **GRANTED**. (Code Civ. Proc., § 2033.280.)

Monetary sanctions are **DENIED**. The notices of motion are not drawn in compliance with Code of Civil Procedure section 2023.040.

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.