

TENTATIVE RULINGS for CIVIL LAW and MOTION
August 29, 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. 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 Seven: (530) 406-6942

TENTATIVE RULING

Case: Brown Construction, Inc. v. King's Drywall
Case No. CV CV 13-1092

Hearing Date: August 29, 2014 Department Seven 3:00 p.m.

Defendant Eric Evan's motion to set aside the default entered on November 20, 2013, is **GRANTED**. Defendant establishes that he did not receive actual notice in time to defend the action, and his lack of notice was not caused by his avoidance of service. (Code Civ. Proc., § 473.5, subs. (b), (c); Decl. of Eric Evans in Support of Motion, ¶¶ 1-13; Decl. of Cameron Evans in Support of Motion, ¶¶ 1-11.)

Defendant shall file and serve a response to plaintiff Brown Construction, Inc.'s complaint no later than September 5, 2014.

The hearing on the motion to establish judgment, set for September 5, 2014, in Department Seven at 3:00 p.m., is **VACATED**.

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: Kurowski v. City of West Sacramento
Case No. CV PM 12-2457

Hearing Date: August 29, 2014 Department Seven 8:30 a.m.

Defendants City of West Sacramento and Stephen Freitas's objection to the declaration of Kelsey Fischer is **SUSTAINED**.

Defendants' motion for reconsideration of the Court's order denying summary judgment is **DENIED**. (Code Civ. Proc., § 1008.) The motion does not present any "new or different facts, circumstances or law." (Code Civ. Proc., § 1008, subd. (a); *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690.)

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: Peabody Hotel Group, Inc. vs. John Odum dba Lynnlux International, Inc.
Case No. CV G 14-390

Hearing Date: August 29, 2014 Department Two 9:00 a.m.

Plaintiff Peabody Hotel Group, Inc.'s motion to strike defendant Lynnlux Logistic LLC's answer to the complaint is **DENIED**. A motion to strike on the ground stated by plaintiff is not permitted in a limited civil case. (Code Civ. Proc., § 92, subd. (d).)

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 11.4(b). Counsel for the 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: Treat v. City of Winters
Case No. CV PO 14-593

Hearing Date: August 29, 2014 Department Two 9:00 a.m.

Defendant City of Winters's demurrer to count two, for willful failure to warn, of the first cause of action for premise liability in plaintiff Karen Treat's first amended complaint is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e); *Steiner v. Rowley* (1950) 35 Cal.2d 713.) Civil Code section 846 does not apply to public entities. (*Delta Farms Reclamation Dist. v. Superior Court* (1983) 33 Cal.3d 699, 704-705; *Avila v. Citrus Cmty. Coll. Dist.* (2006) 38 Cal.4th 148, 156.)

Defendant's demurrer to count three, for dangerous condition of public property, of the first cause of action for premise liability is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e); *Steiner v. Rowley* (1950) 35 Cal.2d 713.) Plaintiff fails to allege facts sufficient to establish that the alleged condition existed for such a period of time and was of such an obvious nature that defendant, in the exercise of due care, should have discovered the condition and its dangerous character. (Gov. Code, §§ 835, 835.2, subd. (b); *Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 4-5.)

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.