

## **TENTATIVE RULINGS for CIVIL LAW and MOTION September 12, 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 One: (530) 406-6777

### **TENTATIVE RULING**

**Case:** Lewis v. Bank of America, N.A.  
Case No. CV CV 14-111

**Hearing Date:** September 12, 2014 **Department One** **9:00 a.m.**

Defendant Bank of America, N.A.'s request for judicial notice is GRANTED. (Evid. Code, § 452, subd. (c).)

Defendant's demurrer to the first cause of action for negligent misrepresentation and second cause of action for intentional misrepresentation is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs fail to plead facts supporting that they actually relied on defendant's misrepresentations. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 976.)

Plaintiffs Kevin Lewis and Ermalinda Lewis's third cause of action for breach of contract in their second amended complaint ("SAC") is **STRICKEN**. (Code Civ. Proc., § 472; Cal. Rules of Court, rule 3.1324.) Plaintiffs did not first obtain leave of court to file a new cause of action for breach of contract. Therefore, the third cause of action is not properly before the Court for purposes of the demurrer filed by defendant.

Plaintiffs request for leave to amend their complaint to add a cause of action for breach of contract is **DENIED**. The proper method for requesting leave to amend a complaint is by noticed motion. (Code Civ. Proc., § 473.)

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:**                    **Sharma v. Tyannikov**  
                              **Case No. CV CV 13-740**

**Hearing Date:**        **September 12, 2014**                    **Department One**                    **9:00 a.m.**

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Plaintiffs Rudra and Kamla Sharma’s motion for summary adjudication of their first cause of action for trespass against defendants Yelena and Andrey Tyannikov is **DENIED**. (Code Civ. Proc., § 437c(p)(1).) There are triable issues of material fact. (UMF 7 & 13.) Plaintiffs have conceded the materiality of these facts by including them in their separate statement. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4<sup>th</sup> 243, 252.)

The Court declines to rule on defendants’ objections since they are directed to plaintiffs’ separate statement, not evidence. (Cal. Rules of Court, rule 3.1354.)

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