

TENTATIVE RULINGS for CIVIL LAW and MOTION
October 2, 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

TENTATIVE RULING

Case: Hulse v. Cottonwood Healthcare
Case No. CV CV 13-354
Hearing Date: October 2, 2014 Department Two 9:00 a.m.

The expedited petition for approval of the claimant's compromise of the disputed claim is **DENIED**. An expedited petition is not authorized where the claim for damages is for the wrongful death of a person. Further, petitioner failed to include attachment 19a as required. (California Rules of Court, rule 7.950.5(a)(2).)

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: Northern California Collection Service, Inc. v.
ONE STEP Enters., Inc.
Case No. CV CV 13-2080
Hearing Date: October 2, 2014 Department Two 9:00 a.m.

Plaintiff Northern California Collection Service, Inc.'s motion for leave to file a first amended complaint is **GRANTED**. (Code Civ. Proc., § 473, subd. (a)(1).) *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, does not counsel against amendment merely because plaintiff is amending the amount of damages sought. *Thurman* does not address whether an allegation in an *unverified* pleading, as here, is a judicial admission one cannot contradict by amendment. Additionally, as defendant has not shown any prejudice from any delay in amendment, any such delay does not constitute a basis for denying leave to amend. (*Higgins vv. Del Faro* (1981) 123 Cal.App.3d 558, 564-65.)

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: **Sanchez v. Adams Grain Co.**
Case No. CV PO 14-446
Hearing Date: **October 2, 2014** **Department Two** **9:00 a.m.**

Plaintiff Hector Sanchez’s motions to compel further responses to form interrogatories from defendants Adam Grain Co. (“AGC”) and Adams Group, Inc. (“AGI”) are **GRANTED IN PART**, as to Form Interrogatory Nos. 15.1 and 17.1. (Code Civ. Proc., § 2030.300.) Defendants shall provide responsive information for each subpart of each interrogatory, and if they lack personal knowledge sufficient to answer the interrogatory, they shall so state. The motion to compel further responses to Form Interrogatory No. 12.3 is **DENIED AS MOOT**, given defendants’ representation in their opposition that they have served amended responses.

Plaintiff’s request for monetary sanctions against defendant AGC and its counsel Zachary Young, jointly and severally, is **GRANTED**, in the amount of \$1,520.00. (Code Civ. Proc., § 2030.290, subd. (d).)

Plaintiff’s request for monetary sanctions against defendant AGI and its counsel Zachary Young, jointly and severally, is **GRANTED IN PART**, in the amount of \$460.00. (Code Civ. Proc., § 2030.290, subd. (d).) The two motions are largely duplicative of one another and counsel’s declaration does not explain why 7.3 hours were necessarily incurred to prepare each motion.

Plaintiff’s motion to compel further responses to requests for admission from AGC is **GRANTED**. (Code Civ. Proc., § 2033.300.) The responses to Requests for Admission Nos. 7 and 8 do not comply with Code of Civil Procedure section 2033.220, and defendant made no vagueness and ambiguity objection in its original responses, so these objections are waived.

Plaintiff’s request for monetary sanctions against defendant AGC and its counsel Zachary Young, jointly and severally, is **GRANTED**, in the amount of \$840.00. (Code Civ. Proc., § 2033.290, subd. (d).)

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: **Thompson v. The Bank of New York Mellon**
Case No. CV CV 14-658
Hearing Date: **October 2, 2014** **Department Two** **9:00 a.m.**

Defendants the Bank of New York Mellon, Bank of America, N.A., and ReconTrust Company, N.A.’s request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (c).)

Defendants’ demurrer to the first cause of action for wrongful foreclosure in plaintiffs Ted Thompson and Patricia Thompson’s first amended complaint is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs may not challenge the propriety of the foreclosure on their property without offering to repay what they borrowed against the

property. (*Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1053; *Karlsen v. American Sav. & Loan Ass'n* (1971) 15 Cal.App.3d 112, 117.)

Defendants' demurrer to the second cause of action for breach of contract is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs fail to plead terms of the contract, verbatim, in the body of the complaint or attach a copy of the written agreement to the FAC. Further, the obligation to repay a home loan, when set down in a security instrument like a deed of trust, must be in writing. (*Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 459; *Secrest v. Sec. Nat. Mortgage Loan Trust 2002-2* (2008) 167 Cal.App.4th 544, 552; Civ. Code, §§ 1624, 2922.)

Defendants' demurrer to the third cause of action for unfair business practices is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs fail to allege sufficient facts to support their allegation that defendants engaged in an unlawful business act or practice. (*Khoury v. Maly's of Cal., Inc.* (1993) 14 Cal.App.4th 612, 619.)

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.