TENTATIVE RULINGS for CIVIL LAW and MOTION
October 28, 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
Telephone number for the clerk in Department Fourteen: (530) 406-6888

TENTATIVE RULING

Case: **Atria Management Co., LLC v. Ballard**
Case No. CV CV 14-296
Hearing Date: October 28, 2014 Department Two 9:00 a.m.

Defendant Malcolm Ballard's motion to set aside the default judgment is **DENIED**. (Code Civ. Proc., § 473, subd. (b).) Defendant fails to submit sufficient evidence to establish that his failure to timely file an answer was due to his mistake, inadvertence, surprise, or excusable neglect. (Decl. of Malcolm Ballard, ¶¶ 1-5.)

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.

TENTATIVE RULING

Case: **Estate of Childers**
Case No. CV PB 13-195
Hearing Date: October 28, 2014 Department Two 9:00 a.m.

Matthew Crider of Crider Law PCs unopposed motion to be relieved as counsel for respondent Kathleen Childers is **GRANTED.** (Cal. Rules of Court, rule 3.1362.) This order is not effective until Matthew Crider files a proof of service with the court showing service of a copy of the signed order on his client. (Cal. Rules of Court, rule 3.1362(e).)

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: **Done Again LLC v. Sierra Nevada Reconveyance, Inc.**
Case No. CV CV 12-2574

Hearing Date: October 28, 2014 Department Seven 9:00 a.m.

Defendant Peter Becker's demurrer to the second cause of action in plaintiff Done Again LLC's third amended complaint ("TAC") is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff fails to plead facts which 'show how, when, where, to whom, and by what means the representations were tendered.'" (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.)

Defendant's demurrer to the fourth cause of action for breach of fiduciary duty is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff pleads sufficient facts to support the existence of a fiduciary duty between plaintiff and defendant. (*Ford v. Shearson Lehman American Express, Inc.* (1986) 180 Cal.App.3d 1011, 1020.)

Defendant's demurrer to the seventh cause of action for unjust enrichment is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff pleads sufficient facts to support a right of restitution. (*McBride v. Boughton* (2004) 123 Cal.App.4th 37, 387.)

Defendant's demurrer to the eighth cause of action for violation of Business and Professions Code section 17200 is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff pleads sufficient facts to support the existence of economic injury and an allegation of an unlawful business practice. (Bus. & Prof. Code, § 17200; *Kwikset Corp. v.Superior Court* (2011) 51 Cal.4th 310, 322.)

Defendant's demurrer to the entirety of the TAC on the ground of uncertainty is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (f); *Khoury v. Maly's of Calif., Inc*. (1993) 14 Cal.App.4th 612, 616.)

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: **Gunter v. Gaddini**
Case No. CV CV 12-1948
Hearing Date: **October 28, 2014** **Department Fourteen** **9:00 a.m.**

The Court rules upon defendant Ernest W. Gaddini's motion to tax costs as follows:

Defendant's motion to tax costs is **GRANTED IN PART**:

Defendant's motion to tax costs for filing and motion fees is **DENIED.** (Code Civ. Proc., § 1033.5, subd. (a)(1).)

Defendant's motion to tax costs for deposition costs in the amount of $2,690.60 is **GRANTED**. (Code Civ. Proc., § 1033.5, subd. (a)(3).)

Defendant's motion to tax costs for attachment expenses in the amount of $659.70 is **GRANTED**. (Decl. of Etan Rosen in Opposition, ¶ 2.)

Defendant's motion to tax costs for witness fees in the amount of $4,750.00 is **GRANTED**. (Code Civ. Proc., § 1033.5, subds. (a)(7), (b)(1).)

Defendant's motion to tax costs for models, blowups, and photocopies of exhibits in the amount of $150.00 is **GRANTED**. Plaintiff fails to establish that these costs were for copies of exhibits. (Code Civ. Proc., § 1033.5, subd. (a)(12); Decl. of Rosen in Opposition, ¶ 2.)

Defendant's motion to tax costs for "other" costs in the amount of $388.18 is **GRANTED**. (Code Civ. Proc., § 1033.5, subd. (b)(3); Decl. of Rosen in Opposition, ¶ 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.

The Court rules upon plaintiff John S. Gunter's motion for attorney's fees as follows:

Plaintiff's motion to for attorney's fees is **GRANTED IN PART,** in the amount of $53,905.55. (Civ. Code, § 1717.) Plaintiff is only entitled to fees related to the breach of contract cause of action. (Decl. of Jennifer L. Pruski, ¶¶ 8-12.)

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 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: **Sacramento Floormasters, Inc. v. Sac Profloors, Inc.**
Case No. CV CV 13-2165

Hearing Date: **October 28, 2014** **Department Two** **9:00 a.m.**

Respondent Sacramento Floormasters, Inc.'s motion for an order staying enforcement of the Court's order granting petitioner's petition for writ of mandate compelling the inspection of corporate records is **DENIED**. (Code Civ. Proc., § 917.8, subd. (b).) Respondent fails to show that substantial questions will be presented on the appeal and that some special reason exists why inspection of records should be stayed pending appeal. (*Laher Spring & Tire Corp. v. Superior Court of Alameda County* (1942) 52 Cal.App.2d 467.)

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.