

TENTATIVE RULINGS for CIVIL LAW and MOTION
November 5, 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: Crosscheck, Inc. v. Cassidy
Case No. CV G 13-1694

Hearing Date: November 5, 2014 Department Two 9:00 a.m.

Plaintiff Crosscheck, Inc.'s request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Plaintiff's unopposed motion for summary judgment is **GRANTED**. All papers submitted show that there is no triable issue as to any material fact and that plaintiff is entitled to judgment on the complaint against defendant Donna J. Cassidy in the amount of \$5,209.83, plus \$1,500 in treble damages. (Code Civ. Proc., § 437c, subds. (c), (p)(1); Civ. Code, § 1719; Plaintiff's Separate Statement of Undisputed Material Facts 1-10; Decl. of D. Lilah McLean, ¶¶ 1-5, Exh. B; Request for Judicial Notice, Exhs. 3-4.)

Plaintiff's request for attorney's fees and costs is **DENIED** as premature. A prevailing party who claims costs must serve and file a memorandum of costs pursuant to Rule of Court 3.1700. Additionally, attorneys' fees must be sought by noticed motion. (Code Civ. Proc., § 1033.5, subd. (c)(5); Cal. Rules of Court, rule 3.1702.)

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.

TENTATIVE RULING

Case: Unifund CCR, LLC v. Raspa
Case No. CV G 14-414

Hearing Date: November 5, 2014 Department Two 9:00 a.m.

Plaintiff Unifund CCR, LLC's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d); *Able v. Van Der Zee* (1967) 256 Cal. App. 2d 728, 734.)

Plaintiff's unopposed motion for judgment on the pleadings against defendant Samuel Raspa is **DENIED**. (Code Civ. Proc., § 438, subd. (c)(1)(A).) Defendant's fifth affirmative defense states

facts sufficient to constitute a defense to plaintiff's third cause of action for an open book account. (Plaintiff's Request for Judicial Notice ("RJN"), nos. 1-4.) Based on the pleadings and the matters the Court is required to take judicial notice of, there is no evidence that defendant did not make any payments to plaintiff *after* January 12, 2012. (Plaintiff's RJN, no. 3.) Therefore, for purposes of a motion for judgment on the pleadings, plaintiff cannot prove that defendant did not make any payments to plaintiff after January 12, 2012, and defendant has properly raised a defense to attack any entries in the open book account that were made after that date.

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).