

TENTATIVE RULINGS for CIVIL LAW and MOTION

November 18, 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: **Jull v. Fourth and Hope**
Case No. CV CV 13-1860

Hearing Date: **November 18, 2014** **Department Two** **9:00 a.m.**

Plaintiff Leona Jull's untimely opposition has not been considered. (Code Civ. Proc., § 1005.)

Defendants Fourth and Hope and Fourth and Hope's Board of Directors's unopposed demurrer to the first cause of action for breach of contract in plaintiff's second amended complaint ("SAC") is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) If an action is based on an alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written instrument must be attached and incorporated by reference. (*Wise v. Southern Pacific Co.* (1963) 223 Cal.App.2d 50, 59.) Plaintiff's complaint fails to comply with either of these requirements. (Plaintiff's SAC, ¶¶ 10-17.)

Defendants' unopposed demurrer to the second cause of action for intentional infliction of emotional distress is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff fails to plead facts sufficient to support a finding of any extreme or outrageous conduct by defendants, or any severe or extreme emotional distress suffered by plaintiff. (Plaintiff's SAC, ¶¶ 18-23; *Hughes v. Pair* (2009) 46 Cal. 4th 1035, 1050-1051.)

Defendants' unopposed demurrer to the third cause of action for negligent infliction of emotional distress is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Negligent infliction of emotional distress is not a cause of action. (Plaintiff's SAC, ¶¶ 24-29; *Bidna v. Rosen* (1993) 19 Cal.App.4th 27, 39; *Slaughter v. Legal Process & Courier Serv.* (1984) 162 Cal.App.3d 1236, 1249.) Plaintiff also fails to plead facts sufficient to support a negligence cause of action. (*Ibid.*)

Defendants' unopposed demurrer to plaintiff's fourth cause of action for breach of the implied covenant of good faith and fair dealing is **SUSTAINED WITHOUT LEAVE TO AMEND**. Plaintiff fails to state facts sufficient to support this cause of action. (Plaintiff's SAC, ¶¶ 30-34; *Cates Constr., Inc. v. Talbot Partners* (1999) 21 Cal.4th 28, 43; *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 352.)

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: Rosman v. Westlake Plaza Shopping Center, LLC
Case No. CV PO 13-131**

Hearing Date: November 18, 2014 Department Two 9:00 a.m.

Attorney Joseph R. Yates's motion to be relieved as counsel is **DROPPED FROM CALENDAR**. Mr. Yates failed to file a proof of service, at least five days prior to the hearing, to establish that his client was personally served with the moving papers. (Declaration in Support of Motion, ¶ 3a(1); Code Civ. Proc., § 1011.)