

TENTATIVE RULINGS for CIVIL LAW and MOTION
January 23, 2015

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: **Barbour v. City of Winters**
Case No. CV ED 14-1850
Hearing Date: **January 23, 2015** **Department Two** **9:00 a.m.**

Defendant City of Winters’s request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Plaintiffs Michael Barbour and Valerie Whitworth’s request for judicial notice is **DENIED**. (Evid. Code, § 452, subd. (h).) Plaintiffs cite Evidence Code section 452(h), which provides that the Court may take judicial notice of “[f]acts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.” The Court finds no authority which considers tolling agreements to be the proper subject of this subdivision. (See e.g., *Gould v. Maryland Sound Indus.* (1995) 31 Cal.App.4th 1137, 1145 [existence of employment contract between private parties cannot be established by judicial notice as fact not reasonably subject to dispute].) Accordingly, the Court does not consider the tolling agreement quoted but not attached to the declaration of Steven Kaiser in its evaluation of the demurrer. The content of the tolling agreement does not appear on the face of the complaint or from matters that are judicially noticeable. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

Defendant’s demurrer to the complaint is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs’ complaint is time-barred under Code of Civil Procedure section 338(j), and plaintiffs do not demonstrate the existence of any ongoing activities sufficient to justify a later accrual. (Complaint, ¶ 12; *Lyles v. State of Calif.* (2007) 153 Cal.App.4th 281, 290-91.) Having sustained the demurrer on this ground the Court need not reach the other grounds asserted for the demurrer.

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: Kirby v. Unum Group
Case No. CV CV 14-710

Hearing Date: January 23, 2015 Department Two 9:00 a.m.

Plaintiff William Kirby, M.D.'s motion for summary adjudication is **CONTINUED** on the Court's own motion to January 30, 2015 at 9:00 a.m. in Department Two, so that the Court may more thoroughly consider the motion.

TENTATIVE RULING

Case: Sanchez v. Adams Grain Co.
Case No. CV PO 14-446

Hearing Date: January 23, 2015 Department Two 9:00 a.m.

Plaintiff Hector Sanchez's motion for leave to file a first amended complaint is **GRANTED**. (Code Civ. Proc., § 473, subd. (a)(1).)

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.