

TENTATIVE RULINGS for CIVIL LAW and MOTION

April 28, 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: **In re 120 Tennessee Avenue**
Case No. CV PT 14-1367
Hearing Date: **April 28, 2015** **Department Two** **9:00 a.m.**

Having reviewed the petition and declaration regarding unresolved claims and deposit of undistributed surplus proceeds of trustee's sale, the Court finds that no claims were made to the surplus funds of \$48,563.64. The Court grants petitioner Fidelity National Title Company's application for additional compensation in the amount of \$1,372.00. The aforementioned statement of surplus funds reflects a reduction in this amount. The Court will sign the proposed order submitted by petitioner.

The remainder of the funds on deposit will remain with the Court unless and until a properly verified and supported claim is made and notice to all potential claimants is given. Absent that, the monies will escheat to the state under Gov't Code section 68084. 1.

TENTATIVE RULING

Case: **Koehler v. Pavone**
Case No. CV CV 15-125
Hearing Date: **April 28, 2015** **Department Two** **9:00 a.m.**

The Court does not consider the contents of the declaration of attorney Daniela Pavone. Demurrers may only be directed to the face of the complaint or to matters which the Court may judicially notice. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

The Court will consider plaintiff and defendants' papers, even though plaintiff and defendants' papers were not timely filed (Code of Civil Procedure section 1005(b)), and the length of plaintiff's brief violates California Rule of Court 3.1113(g). All parties are cautioned that future violations of section 1005 and the Rules of Court will result in the parties' papers not being considered.

The Court considers only those arguments defendants make to each cause of action in their moving papers. To the extent defendants supplement these arguments in their reply, the Court does not consider these arguments because plaintiff did not have an opportunity to respond to them.

Defendants Daniela Pavone and Theta Omega Association's demurrer to the first cause of action for interpleader is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) The allegations of the first amended complaint ("FAC") do not establish that plaintiff is a person against whom claims are being made, or may be made. (Code Civ. Proc., § 386, subd. (b).)

Defendants' demurrer to the second cause of action for declaratory relief is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Defendants do not show that plaintiff cannot establish an actual controversy between plaintiff and Theta. (Code Civ. Proc., § 1060; *Kong v. City of Hawaiian Gardens Redevelop. Agency* (2003) 108 Cal.App.4th 1028, 1046.)

Defendants' demurrer to the third cause of action for breach of written contract is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Defendants' arguments do not dispose of the entirety of plaintiff's claim, and the retainer agreement does not contain any terms governing the timing of billing of Theta for compensation under the agreement. (*Kong*, supra.) The Court does not consider the Pavone declaration.

Defendants' demurrer to the fourth cause of action for indebitatus assumpsit is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff cites no legal authority which precludes plaintiff from seeking relief on this theory without a valid lien.

Defendants' demurrer to the fifth cause of action for quantum meruit is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) The Court applies the reasoning of *Fracasse v. Brent* (1972) 6 Cal.3d 784, 791, in finding that plaintiff's claim did not accrue until date of settlement. The claim is therefore timely.

Defendants' demurrers to the sixth cause of action for civil conspiracy and seventh cause of action for foreclosure of nonpossessory special or equitable lien are **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff does not establish that he has a valid and enforceable lien. (*Fletcher v. Davis* (2004) 33 Cal.4th 61, 71.)

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: **April 28, 2015** **Department Two** **9:00 a.m.**

Plaintiff Hector Sanchez's request for judicial notice is **GRANTED** as to Exhibits A-L, and **DENIED** as to Exhibit M. (Evid. Code, § 452, subs. (c) & (d); Lab. Code, § 6304.5.)

Defendants Adams Grain Co. and Adams Group, Inc.'s motion to strike the punitive damages allegations in the prayer and paragraphs 123-125 of the first amended complaint is **DENIED**. (Code Civ. Proc., § 436.) Plaintiff's allegations, if true, support a finding of malice. (FAC, ¶¶ 8, 11, 16-22.)

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.