

TENTATIVE RULINGS for CIVIL LAW and MOTION
October 21, 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.

Please take note that Yolo Superior Court is now located at 1000 Main Street, in Woodland.

Telephone number for the clerk in Department Eleven: (530) 406-6843

TENTATIVE RULING

Case: **Duran v. Meritage Homes of California, Inc.**
Case No. CV CV 12-1805

Hearing Date: **October 21, 2015** **Department Eleven** **9:00 a.m.**

Attorney Jon A. Van Woerkom of the Law Offices of Timothy R. Wagner’s motion to be relieved as counsel for Toliver Plastering, Inc. is **DENIED**. The moving papers fail to include a declaration on the *Declaration in Support of Attorney’s Motion to Be Relieved as Counsel – Civil* (form MC-052) as required. (Cal. Rules of Court, rule 3.1362(c).)

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: **Kent v. Ocwen Loan Servicing, LLC**
Case No. CV CV 14-2050

Hearing Date: **October 21, 2015** **Department Eleven** **9:00 a.m.**

Defendant Ocwen Loan Servicing, LLC’s unopposed motion to strike portions of plaintiffs Stephen B. Kent and Rebecca B. Kent’s second amended complaint is **GRANTED**. Plaintiffs’ first amended complaint (“FAC”) asserted a single cause of action for quiet title. On July 14, 2015, defendant’s demurrer to plaintiffs’ FAC was sustained with leave to amend. On August 5, 2015, plaintiffs filed a second amended complaint which included new causes of action for fraud, negligent misrepresentation, and violations of Business and Professions Code section 17200. A plaintiff may not amend a complaint to add a new cause of action without obtaining permission of the court. (Code Civ. Proc., §§ 436, subd. (b), 473; *Pagett v. Indemnity Ins. Co. of North America* (1942) 54 Cal.App.2d 646, 649.) On this basis, paragraphs 23 through 58 and paragraph 7 of the prayer for relief in plaintiffs’ second amended complaint are **STRICKEN**.

Plaintiffs have 10 days to file an amended complaint that conforms to the Court's ruling on July 14, 2015, sustaining the demurrer to the cause of action for quiet title, with leave to amend.

Defendant's demurrer to the second amended complaint is **DROPPED FROM CALENDAR** as moot.

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).