

**TENTATIVE RULINGS for CIVIL LAW and MOTION
November 19, 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
Telephone number for the clerk in Department Twelve: (530) 406-6778

TENTATIVE RULING

Case: **American Express Bank, FSB v. Myers**
Case No. CV G 15-1228

Hearing Date: **November 19, 2015** **Department Eleven** **9:00 a.m.**

Plaintiff American Express Bank, FSB's unopposed motion for an order transferring venue of this action to the Superior Court of the State of California for the County of Contra Costa is **GRANTED**. (Code Civ. Proc., § 396a, subd. (b).) Based on the face of the complaint, defendant Robbie L. Myers resides in Contra Costa County. (Complaint, ¶ 2.)

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: **Ferriero v. Decamp**
Case No. CV PO 14-2027

Hearing Date: **November 19, 2015** **Department Eleven** **9:00 a.m.**

The Court declines to consider any extrinsic evidence that is not judicially noticeable in its determination of the current motion for judgment on the pleadings. (Code Civ. Proc., § 438, subd. (d).)

Defendants Gerald Roy Decamp and Diane Phaff-Decamp's request for judicial notice is **GRANTED IN PART**. The Court takes judicial notice of the existence of the documents identified as Exhibits A and B, but does not take notice of the facts contained therein. (Evid. Code, § 452, subs. (d), (h); *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1145.) The Court declines to take judicial notice of Exhibits C through K as they contain matters that are reasonably disputable.

Defendants' motion for judgment on the pleadings directed to plaintiff Joseph Ferriero's complaint is **DENIED**. (Code Civ. Proc., § 438, subd. (c)(1)(B).) Based on the face of the complaint, and those matters judicially noticeable, the Court cannot determine as a matter of law that defendants carried workers' compensation insurance at the time plaintiff was injured. (Labor Code, § 3706; Complaint, pp. 5-7.)

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: **Humphrey v. Eugene Burger Management Corp.**
Case No. CV CV 14-1136
Hearing Date: **November 19, 2015** **Department Eleven** **9:00 a.m.**

Defendant Kirt Weatherwax's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Defendant's motion for judgment on the pleadings as to the first, second, and third causes of action is **DENIED**. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) Defendant fails to demonstrate that, as a matter of law, Mr. Weatherwax cannot be properly held liable given the allegations in plaintiff's complaint. (Complaint, ¶ 5.)

The notice of motion does not provide notice of this 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: **Kess v. Pacific Mountain Partners, LLC**
Case No. CV CV 14-1457
Hearing Date: **November 19, 2015** **Department Eleven** **9:00 a.m.**

Cross-defendant Kenyon Plastering, Inc.'s unopposed motion for determination of good faith settlement is **GRANTED**. (Code Civ. Proc., § 877.6.)

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: **Lenk v. Gomez**
Case No. CV UD 15-1434
Hearing Date: **November 19, 2015** **Department Eleven** **9:00 a.m.**

Defendant Hilda Gomez’s demurrer to the complaint is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) No notice must be given to a tenant who remains in occupancy after the expiration of a fixed term. (*Stephens v. Perry* (1982) 134 Cal.App.3d 748, 757, n4.)

The notice of motion does not provide notice of this 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: **Perkins Real Estate, LP v. Ramirez**
Case No. CV UD 15-784
Hearing Date: **November 19, 2015** **Department Twelve** **9:00 a.m.**

Defendant Nellie Ramirez’s motion for a new trial is **DENIED**. (Code Civ. Proc., § 657, subd. (4).) Newly discovered evidence offered as a ground for new trial must be material to the issues and so important as to satisfy the court that it may reasonably be inferred that verdict would have been different if evidence had been introduced. (*Brannock v. Bromley* (1939) 30 Cal.App.2d 516.) Here, while plaintiff did not promptly return the money orders to defendant, there is undisputed evidence that plaintiff did not negotiate them. (*EDC Associates, Ltd. v. Gutierrez* (1984) 153 Cal.App.3d 167, 171 [“The landlord had the obligation of going forward with the evidence in order to prove that the money orders were not negotiated or that it took other action to insure that there was no waiver.”].) This evidence suffices to show that plaintiff did not waive the ability to recover possession of the premises. Accordingly, defendant has not shown that the Court would have found differently had this evidence been introduced at trial.

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.