

TENTATIVE RULINGS for CIVIL LAW and MOTION
January 21, 2016

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: Aurora Production and Publishing, LLC v. Jenkins
Case No. CV CV 13-637
Hearing Date: January 21, 2016 Department Eleven 9:00 a.m.

Cross-defendants Patrick James LeMieux, Yana Tkachuk, Aurora Production and Publishing, LLC, and Standard Fulfillment Services, LLC's demurrer and motion to strike portions of cross-complainant Adam Jenkins's first amended cross-complaint ("FACC") are **DROPPED FROM CALENDAR**. The demurrer and motion to strike are untimely. Demurrers and motions to strike must be filed within 30 days of service of the complaint. (Code Civ. Proc., §§ 430.40, subd. (a), 435, subd. (b)(1).) Here, the demurrer and motion to strike were filed on December 18, 2015. However, the FACC was personally served on cross-defendants on September 23, 2015. (Code Civ. Proc., § 413.40; Decl. of Alfonso L. Poirè, ¶ 3; Court's Order dated September 23, 2015; Cross-complainant's Proof of Service filed January 5, 2016.) On September 23, 2015, a hearing was held wherein the Court granted cross-complainant's motion for leave to file the FACC. Cross-defendants' counsel, Alfonso L. Poirè, was present at the September 23, 2015 hearing and Mr. Poirè acknowledges that he was served with a copy of the proposed FACC prior to the hearing. (Decl. of Poirè, ¶ 3.) Cross-defendant cites no legal authority determining that a cross-complaint must be filed first in order for it to be effectively served. To the contrary, California Rule of Court 3.110(c), requires a cross-complaint be served, on all parties who have appeared in the case, *prior* to the filing of the cross-complaint. (Cal. Rules of Court, rule 3.110(c).) Cross-complainant's delay in filing his proof of service does not negate the fact that cross-defendants were personally served on September 23, 2015.

TENTATIVE RULING

Case: Barbour v. Moreno
Case No. CV PO 15-1145
Hearing Date: January 21, 2016 Department Eleven 9:00 a.m.

Defendant Alfredo Moreno's unopposed motion to dismiss, or in the alternative, quash service of summons and complaint is **GRANTED IN PART**. Based on the proof of service filed with the Court on November 12, 2015, plaintiff Michael Barbour failed to mail a copy of the summons and complaint by first-class mail, with postage prepaid, to defendant. (Code Civ. Proc., §

415.20.) Substituted service is only deemed complete on the 10th day after the mailing. (*Ibid.*) Therefore, defendant's motion to quash the service of summons and complaint attempted on October 29, 2015 is **GRANTED**. However, defendant fails to establish that plaintiff's complaint should be dismissed, and therefore, defendant's motion to dismiss is **DENIED**.

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: **Kendrick v. Weltch**
Case No. CV PT 04-1319
Hearing Date: **January 21, 2016** **Department Eleven** **9:00 a.m.**

Petitioner Michael L. Kendrick's motion for a new mediator and motion "to assign or post amount of judgment of December 8, 2005" is **DROPPED FROM CALENDAR**. Mr. Kendrick has failed to file a proof of service for the moving papers at least five court days before the date of the hearing. (Cal. Rules of Court, rule 3.1300(c); Code Civ. Proc., § 1005, subd. (b).)