

## **TENTATIVE RULINGS for CIVIL LAW and MOTION November 1, 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 on Yolo Court's Website, at [www.yolo.courts.ca.gov](http://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:** **BNK Construction, Inc. v. Woodland State Theatre, LLC**  
**Case No. CV CV 16-873**

**Hearing Date:** **November 1, 2016** **Department Eleven** **9:00 a.m.**

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Defendants Woodland State Theatre, LLC, Bay Commercial Bank, and the City of Woodland's unopposed motion to compel arbitration and stay judicial proceedings is **GRANTED** based on plaintiff BNK Construction, Inc.'s Notice of Non-Opposition filed with the Court on October 19, 2016. (Code Civ. Proc., § 1280 et seq.)

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:** **Cach, LLC v. Haass**  
**Case No. CV G 14-1173**

**Hearing Date:** **November 1, 2016** **Department Eleven** **9:00 a.m.**

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Judgment creditor Cach, LLC's unopposed motion for an assignment order and an order restraining the judgment debtor Elisabeth H. Haass is **GRANTED**. (Code Civ. Proc., §§ 708.510, 708.520, 708.550; Decl. of Ryan E. Vos, ¶¶ 2-9; Decl. of Marilou Wijangco, ¶¶ 1-2.) Cach, LLC is directed to submit a proposed order with the Court that complies with the notice requirements of Code of Civil Procedure section 708.520(d).

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:** Scaccia v. Scaccia  
Case No. CV CV 14-1820

**Hearing Date:** November 1, 2016 **Department Eleven** **9:00 a.m.**

Defendant Sutter Health Sierra Region dba Sutter Davis Hospital's ("SDH") motion for summary judgment, or in the alternative, summary adjudication:

Defendant SDH's motion for summary judgment is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(2).) A claim for wrongful death may be based on an intentional act, e.g., battery. (*Barrett v. Superior Court* (1990) 22 Cal.App.3d 1176, 1190 ["wrongful act" as used in the wrongful death statute means "any tortious act"].) Plaintiff's first amended complaint does not allege a failure to comply with the standard of care. Rather, it alleges an intentional act by defendants without plaintiff's consent. (FAC, ¶¶ 438-443.)

A separate statement effectively concedes the materiality of whatever facts are included. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4<sup>th</sup> 243, 252.) If there is a single such issue, the motion must be denied. (*Versa Tech., Inc. v. Superior Court (Motsinger)* (1978) 78 Cal.App.3d 237, 240.) Here, there is a disputed issue of material fact as to whether plaintiff consented to the removal of his mother's ventilator. (UMF 26.) Defendant has conceded the materiality of this fact by including it in its separate statement. This disputed issue precludes summary judgment.

The Court declines to rule on the parties' evidentiary objections since they are not material to the resolution of the motion. (Code Civ. Proc., § 437c, subd. (q).)

If no hearing is requested, defendant is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c(g) and California Rules of Court, rule 3.1312.

Defendants Daniel J. Kennedy, M.D. and Sutter Medical Foundation's motion for summary judgment:

Defendants' motion for summary judgment is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(2).) There is a disputed issue of material fact as to whether plaintiff consented to the removal of his mother's ventilator. (UMF 15.) Defendants have conceded the materiality of this fact by including it in their separate statement. This disputed issue precludes summary judgment.

The Court declines to rule on the parties' evidentiary objections since they are not material to the resolution of the motion. (Code Civ. Proc., § 437c, subd. (q).)

If no hearing is requested, defendants are directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c(g) and California Rules of Court, rule 3.1312.

**TENTATIVE RULING**

**Case:**                    **Yolo County Probation Association v. County of Yolo**  
                              **Case No. CV PT 16-1015**

**Hearing Date:**        **November 1, 2016**                                **Department Eleven**        **9:00 a.m.**

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Respondents County of Yolo and Yolo County Probation Department’s demurrer is **DROPPED FROM CALENDAR**. Respondents failed comply with Code of Civil Procedure section 430.41(a). Before filing a demurrer, the demurring party is required to “meet and confer *in person* or *by telephone* with the party who filed the pleading that is subject to demurrer.” (Code Civ. Proc., § 430.41, subd. (a), emphasis added.) Further, the demurring party is required to file and serve a declaration with the demurrer in compliance with Code of Civil Procedure section 430.41(a)(3).