

## **TENTATIVE RULINGS for CIVIL LAW and MOTION July 29, 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](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.

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

### **TENTATIVE RULING**

**Case:** Koehler v. Pavone  
Case No. CV CV 15-125

**Hearing Date:** July 29, 2015 **Department Two** **9:00 a.m.**

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Defendants Daniela Pavone and Theta Omega Association's demurrer to the first cause of action for interpleader in plaintiff Robert F. Koehler, Jr.'s second amended complaint ("SAC") is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff fails to allege facts sufficient to support a finding that he is in possession of the settlement funds that he seeks to have deposited in order to discharge him from liability from multiple claims. (Code Civ. Proc., § 386; SAC, ¶ 11.)

Defendants' demurrer to the second cause of action for declaratory relief, fourth cause of action for indebitatus assumpsit, and fifth cause of action for quantum meruit is **OVERRULED**. Plaintiff fails to establish that a new fact, or facts, were pled in the SAC to justify a review of the Court's prior order on April 28, 2015, wherein each cause of action was overruled. (Code Civ. Proc., § 1008; *Bennett v. Suncloud* (1997) 56 Cal.App.4th 91, 96-97.)

Defendants' demurrers to the sixth cause of action for civil conspiracy and seventh cause of action for foreclosure of nonpossessory special or equitable lien is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff does not establish that he has a valid and enforceable lien or that an equitable lien should be created. (Rules of Prof. Conduct, rule 3-300; *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:** Perrigo v. Perrigo  
Case No. CV CV 15-200  
**Hearing Date:** July 29, 2015 Department Two 9:00 a.m.

Defendant Honey Rose Perrigo’s demurrer to plaintiffs James Owen Perrigo and Chet Perrigo’s request for judgment in their verified first amended complaint is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) A demurrer is not the proper procedural vehicle for challenging damages claims. (Code Civ. Proc., § 436, 431.10, subd. (b)(3).)

Defendant’s demurrer to the second cause of action for illegal ejectment, conversion, and damages is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs plead sufficient facts to support ejectment, and need not plead facts to support ouster. (5 Witkin Cal. Procedure (5<sup>th</sup> ed. 2008) Pleading, § 635, pp. 67-68; *Payne & Dewey v. Treadwell* (1860) 16 Cal. 220, 244.) Because plaintiffs can establish a claim of ejectment, the Court need not reach the merits of defendant’s demurrer to the conversion claim. A general demurrer does not lie to only part of a cause of action. (*Kong v. City of Hawaiian Gardens Redevelop. Agency* (2003) 108 Cal.App.4<sup>th</sup> 1028, 1046.)

Defendant’s demurrer to the entire complaint based on uncertainty is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (f).) The complaint is not so unintelligible that the defendant cannot reasonably respond; i.e., he or she cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. (*Khoury v. Maly’s of Calif., Inc.* (1993) 14 Cal.App.4<sup>th</sup> 612, 616.)

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.