

TENTATIVE RULINGS for LAW and MOTION

December 12, 2023

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. 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 Eleven

(530) 406-6843

TENTATIVE RULING

Case: **Hills v. Omni Healthcare Services, Inc.**
Case No. CV-2018-939

Hearing Date: **December 12, 2023** **Department Eleven** **9:00 a.m.**

The hearing on a petition for minor's compromise is **DROPPED FROM CALENDAR**.
Plaintiff failed to file documents supporting a petition for minor's compromise.

TENTATIVE RULING

Case: Polley v. Tumber
Case No. CV-2023-0941

Hearing Date: December 12, 2023 **Department Eleven** **9:00 a.m.**

The Court notes that plaintiff/cross-defendant David Polley (“Polley”) failed to properly meet and confer “in person or by telephone” prior to the filing of the demurrer and motion to strike, as required. (Code Civ. Proc., §§ 430.41, 435.5.) Nonetheless, the Court will rule upon the merits of the demurrer and motion to strike. (See Code Civ. Proc., §§ 430.41, subd. (a)(4), 435.5, subd. (a)(4).)

Demurrer:

Polley’s demurrer to the third cause of action (civil RICO 18 U.S.C. § 1961 et seq.) within defendants/cross-complainants Ravinder Tumber and You Only Live Once Farms LLC’s (“cross-complainants”) cross-complaint is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10; *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) The Court finds that the cross-complaint fails to state facts sufficient to constitute a cause of action pursuant to 18 U.S.C. section 1961 et seq. (18 U.S.C. § 1962; see *Kehr Packages v. Fidelcor, Inc.* (1991) 926 F.2d 1406, 1411 [case law has established separate pleadings requirements for certain subsections]; Cross Compl., ¶¶ 44 & 45.)

Polley’s demurrer to the eighth and ninth causes of action (breach oral contract and breach of written contract, respectively) within the cross-complaint is **OVERRULED**. (Code Civ. Proc., § 430.10.) The Court finds that the cross-complaint sufficiently alleges facts sufficient to constitute these causes of action. (Cross-Compl., ¶¶ 10, 73 – 75, 80 – 82; Exhibit 1) Moreover, Polley relies upon the same Promissory Note (“contract”) alleged in the cross-complaint in support of his own first amended complaint (“FAC”). (*Valerio v. Andrew Youngquist Construction* (2002) 103 Cal. App. 4th 1264, 1271 [the admission of fact in a pleading is a judicial admission]; Cross Compl., ¶ 10, Exhibit 1; FAC, ¶ 8, Exhibit A.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

Motion to Strike:

The Court rules upon Polley’s motion to strike portions of cross-complainants’ cross-complaint as follows:

- The Court **GRANTS WITHOUT LEAVE TO AMEND** Polley’s motion regarding the allegations found in Paragraph 90 at 21:8 – 21:9 of the cross-complaint. The Court finds that cross-complainants have failed to provide any legal authority to support their claim that they are entitled to an accounting from Polley personally [and unrelated to You Only Live Once Farms, L.L.C.] or Polley’s other cannabis business that are not parties to the contract or to this action. (Code Civ. Proc., §§ 435, 436; see *Quantum Cooking Concepts, Inc. v. LV Associates, Inc.* (2011) 197 Cal.App.4th 927, 934; citing *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52 [*Quantum*] [where a motion is supported by a deficient

memorandum, the trial court is justified in denying the motion on procedural grounds]; Cross Compl., ¶ 10, Exhibit 1.)

- The Court **GRANTS WITH LEAVE TO AMEND** Polley's motion regarding Request for Relief item 5 in the cross-complaint. The Court finds that "Farm" is not a business entity or a party to this action and is solely owed by defendant/cross-complainant Rajinder Tumber. (FAC, ¶¶ 7, 9; *Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761, 768.)
- The Court **DENIES** Polley's motion regarding Request for Relief item 6 in the cross-complaint. The Court finds that the cross-complaint sufficiently alleges facts to support the request for recovery of attorney's fees and Polley has not provided any legal authority that Code of Civil Procedure section 1033.5(a)(10)(A) does not apply to the contract. (*Quantum, supra*, 197 Cal.App.4th at p. 934; Cross Compl., ¶ 10, Exhibit 1.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Torres, et al. v. Tauzer Apiaries, Inc., et al.**
Case No. CV-2023-1329

Hearing Date: **December 12, 2023** **Department Eleven** **9:00 a.m.**

On the Court's own motion, the hearing on defendants Tauzer Apiaries, Inc., Trevor Tauzer, Claire Tauzer and Mark Tauzer's demurrer and motion to strike is **CONTINUED** to **January 24, 2023**, at 9:00 a.m. in Department Eleven.

By **December 29, 2023**, the parties are **DIRECTED** to meet and confer about *all issues* raised in defendants' demurrer and motion to strike plaintiffs Roberto Carlos Torres and Luiz Gonzalez' complaint.

By **January 16, 2023**, the parties **SHALL** concurrently file and serve supplemental briefs, and declarations in support thereof, regarding any remaining issues, if any, raised by the demurrer or the motion to strike.