

## **Tentative Rulings –April 6, 2006**

To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

### **Ballesteros v. Carter: 05CV4153**

#### ***Defendant's Demurrer to Complaint***

Defendant's demurrer is overruled.

Demurrers are used to challenge defects that occur on the face of the complaint or from matters that may be judicially noticed. (Blank v. Kirwan (1985) 39 Cal. 3d 311, 318.) The complaint will be construed liberally with an eye to substantial justice between the parties. (C.C.P. §452.)

In this instance, the complaint alleges that there was an agreement between the parties. The complaint then states that the defendant refuses to give the defendant a copy of said agreement. This would infer a written contract. The complaint is to be construed liberally. Therefore, although it is not the most precise pleading, the complaint appears to plead sufficient facts to support the causes of action alleged therein. If the allegations in the complaint are, in fact, untrue, the defendant may plead appropriate affirmative defenses in his answer and bring a motion for summary judgment if necessary.

Based upon the foregoing, the demurrer is overruled. Defendant is to file and serve an answer to the complaint within 20 days of the date of this order.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required