TENTATIVE RULINGS for CIVIL LAW and MOTION
January 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. 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
Telephone number for the clerk in Department Nine: (530) 406-6787

TENTATIVE RULING

Case: **In the Matter of the McCray Trust**
Case No. CV P2 14-106
Hearing Date: January 29, 2015 Department Two 9:00 a.m.

On the Court's own motion, the status conference, motions and demurrer filed by Shauna Rimel are **CONTINUED** to February 5, 2015, at 9:00 a.m. in Department 2, so that the Court may more thoroughly consider the motions and demurrer.

TENTATIVE RULING

Case: **Thompson v. Bank of New York Mellon**
Case No. CV CV 14-658
Hearing Date: January 29, 2015 Department Two 9:00 a.m.

Defendant The Bank of New York Mellon, Bank of America, N.A., and ReconTrust Company, N.A.'s request for judicial notice is **GRANTED**. (Evid. Code, § 452, subds. (c) & (d).)

Defendants' demurrer to the first cause of action for wrongful foreclosure is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) *Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 514, forecloses a claim for wrongful foreclosure on the ground pled by plaintiffs. (Complaint, ¶¶ 39, 41, 42.)

Defendants' demurrers to the second cause of action for breach of contract and third cause of action for violation of Business and Professions Code section 17200 are **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs have alleged sufficient facts to constitute an excuse for their nonperformance of the contract and damages. A breach of contract cause of action may form the predicate for a section 17200 claims, provided it also constitutes conduct that is 'unlawful, or unfair, or fraudulent.'" (*Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 645.)

The notice of motion does not provide notice of this 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: **Yamoah v. The Regents of the University of California**
Case No. CV CV 14-913

Hearing Date: January 29, 2015 Department Nine 1:00 p.m.

Plaintiff Ebenezer N. Yamoah's "corrected" first amended complaint, filed on November 19, 2014, is **STRICKEN**. (Code Civ. Proc., § 472; Cal. Rules of Court, rule 3.1324.) Plaintiff failed to first obtain leave of court to file a second amended complaint. Plaintiff's first amended complaint ("FAC"), filed on September 24, 2014, is the operative complaint.

Defendants the Regents of the University of California ("the Regents") and Cameron S. Carter's demurrer to the first and second causes of action for rescission and restitution based on false promises and intentional misrepresentations is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e); Gov. Code, § 818.8.) Both causes of action for rescission, as pled, are tort claims based on fraud. (*Edwards v. Centex Real Estate Corp*. (1997) 53 Cal.App. 4th 15, 40; *Little v. Speckert* (1959) 170 Cal.App.2d 725, 727; FAC, ¶¶ 19-20, 31-32, 35-39.) The Regents, as a public entity, cannot be held liable for an injury caused by a misrepresentation by an employee, whether or not such misrepresentation is negligent or intentional. (Gov. Code, § 818.8; FAC, ¶ 2.)

Defendants' demurrer to the third cause of action for declaratory judgment is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff fails to allege facts sufficient to establish that a present and actual controversy exists. (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117.)

Defendants' demurrer to the fourth and fifth causes of action for employment discrimination, seventh cause of action for wrongful termination, and eighth cause of action for intentional infliction of emotional distress is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Pursuant to the separation agreement and general release ("Separation Agreement") signed by plaintiff on December 11, 2013, and attached to the FAC within Exhibit 1, plaintiff has released and discharged defendants from any and all claims arising from any incidents or events which occurred on or before the effective date of the Separation Agreement. (FAC, Exh. 1, Separation Agreement, ¶¶ 8-9.)

Defendants' demurrer to the sixth cause of action for harassment under the California Fair Employment and Housing Act is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Pursuant to the Separation Agreement, plaintiff has released and discharged defendants from any and all claims arising from any incidents or events which occurred on or before the effective date of the Separation Agreement. (FAC, Exh. 1, Separation Agreement, ¶¶ 8-9.) Further, plaintiff fails to allege facts sufficient to establish that he was subjected to harassment by the University after the effective date of the Separation Agreement. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 130-131; FAC, ¶¶ 26-27.)

Defendants' request that the Court strike plaintiff's claim for punitive damages is **DENIED**. The proper method to attack a claim for damages is a motion to strike, not a demurrer. (Code Civ. Proc., § 435.)

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.