

TENTATIVE RULINGS for CIVIL LAW and MOTION October 20, 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. 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: Mehl v. Countrywide Bank, N.A.

Case No. CV CV 16-990

Hearing Date: October 20, 2016 **Department Eleven** **9:00 a.m.**

Defendants Bank of America, N.A., Countrywide Bank, Mortgage Electronic Registration Systems, Inc., and Deutsche Bank National Trust Company's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (c).)

Defendants' motion for judgment on the pleadings on the bases of vagueness, uncertainty, and/or ambiguity is **DENIED**. These are not statutory bases for motions for judgment on the pleadings. (Code Civ. Proc., § 438.)

Defendants' motion for judgment on the pleadings as to the first and seventh causes of action for "lack of standing" and declaratory relief, respectively, is **GRANTED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) These causes of action are foreclosed by *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1156.

Defendants' motion for judgment on the pleadings as to the second cause of action for fraud in the concealment and the third cause of action for fraud in the inducement is **GRANTED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) The facts pled in support of these claims do not satisfy the specificity requirement applicable to fraud causes of action. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

Defendants' motion for judgment on the pleadings as to the fourth cause of action for intentional infliction of emotional distress is **DENIED**. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) Plaintiff sufficiently alleges extreme and outrageous conduct. The factual circumstances in the cases cited by defendants are distinguishable. (See e.g. *Mehta v. Wells Fargo Bank, N.A.* (S.D. Cal. 2010) 737 F. Supp. 2d 1185, 1204 [plaintiff was in default on his loan, Wells Fargo had the legal right to foreclose, and First American had the right to complete the foreclosure sale].) Plaintiff has also alleged sufficient facts to support his claim of severe emotional distress. (Complaint, ¶ 101.)

Defendants' motion for judgment on the pleadings as to the fifth cause of action for slander of title is **GRANTED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) Plaintiff fails to allege facts to support the alleged falsity of the actions/documents recorded by defendants and fails to plead the absence of privilege. (*Appel v. Burman* (1984) 159 Cal.App.3d 1209, 1214.)

Defendants' motion for judgment on the pleadings as to the sixth cause of action for quiet title is **GRANTED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) Plaintiff's complaint is not verified. He does not state what title he seeks or the date of which his determination is sought. Plaintiff has not alleged that he has tendered the amount owed on the property. (Code Civ. Proc., § 761.020; *Hamilton v. Bank of Blue Valley* (E.D. Cal. 2010) 746 F.Supp.2d 1160, 1177.)

Defendants' motion for judgment on the pleadings as to the eighth and ninth causes of action for violation of TILA and HOEPA, 15 U.S.C. section 1601, and violation of RESPA, 1 U.S.C. section 2601, respectively, is **GRANTED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) Plaintiff concedes that additional facts should be alleged to support any applicable tolling of the statutes of limitation to these claims.

Defendants' motion for judgment on the pleadings as to the tenth cause of action is **DENIED**. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) Defendants provide no law or argument to support judgment on this claim.

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: **Winfunke v. The Regents of the University of California**
Case No. CV CV 14-2059
Hearing Date: **October 20, 2016** **Department Eleven** **9:00 a.m.**

The Court does not consider "plaintiff's further opposition to defendant's reply" filed on October 4, 2016. To the extent it is a sur-reply, it is not authorized because leave of Court was not obtained. To the extent it requests a continuance of the hearing based on plaintiff's inability to obtain discovery, it does not comply with Code of Civil Procedure section 437c(h) and it is untimely. Accordingly, the request for a "stay" is **DENIED**.

Defendant The Regents of the University of California's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Defendant's evidentiary objection nos. 2, 3 and 5-11 are **SUSTAINED**. (Evid. Code, §§ 403, 1200.) Evidentiary objection nos. 1 and 4 are **OVERRULED**. The Court will consider plaintiff's revised declaration that now complies with Code of Civil Procedure section 2015.5.

Defendant's motion for summary adjudication of the first through fourth causes of action, for retaliation, harassment, unlawful termination, and failure to prevent harassment and discrimination, respectively, is **GRANTED**. (Issues 1-4, 6, 8, 11, 13, and 15; Code Civ. Proc., § 437c, subd. (p)(2).) Plaintiff fails to create a triable issue of material fact as to whether he was an employee within the meaning of the Fair Employment and Housing Act. (UMF 5, 7, 10; *Avalos v. University of San Francisco*, 2013 WL 1390406 (N.D. Cal. 2013), *5.) As the Court has granted summary adjudication based on Issues 1-4, 6, 8, 11, 13, and 15, it need not reach Issues 5, 7, 9, 10, 12, 14, 16, and 17-19, which seek summary adjudication of these claims on other grounds.

Defendant's motion for summary adjudication of the fifth cause of action for breach of contract and sixth cause of action for breach of the implied covenant of good faith and fair dealing is **GRANTED**. (Issues 21 and 28; Code Civ. Proc., § 437c, subd (p)(2).) Plaintiff fails to create a triable issue of material fact as to whether the 2010 Catalog and Handbook, as alleged in the complaint, contained specific, unequivocal promises that could form the basis of a contract. (Complaint, ¶ 127; UMF 63-65; *Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809, 832-833.) As the Court has granted summary adjudication based on issues 21 and 28, it need not reach Issues 20, 22-27, and 29-33, which seek summary adjudication of these claims on other grounds.

Defendant's motion for summary adjudication of the seventh cause of action for negligence is **GRANTED**. (Issue 35; Code Civ. Proc., § 437c, subd. (p)(2).) Defendant is immune from liability for negligence. Plaintiff has not pled the violation of a mandatory duty in his complaint. (*Thompson v. City of Lake Elsinore* (1993) 18 Cal.App.4th 49, 54.)

Defendant's motion for summary adjudication of the eighth cause of action for violation of Business and Professions Code section 17200 is **GRANTED**. (Issue 34: Code Civ. Proc., § 437c, subd. (p)(2).) The Regents are a public entity, and not a person, as a matter of law. (*Cal. Medical Ass'n, Inc. v. Regents of Univ. of Calif.* (2000) 79 Cal.App.4th 542, 551.)

Defendant's motion for summary adjudication of plaintiff's prayer for punitive damages is **GRANTED**. (Issue 36; Code Civ. Proc., § 437, subd. (f)(1).) Plaintiff cannot maintain the first through fourth causes of action against defendant, and such awards cannot be obtained against a public entity. (Gov. Code, § 818.)

Defendant's motion for summary judgment is **GRANTED**.

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.