

TENTATIVE RULINGS for CIVIL LAW and MOTION September 1, 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.

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
Telephone number for the clerk in Department Four: (530) 406-6942

TENTATIVE RULING

Case: Hart v. Select Portfolio Servicing, Inc.
Case No. CV CV 14-1991
Hearing Date: September 1, 2015 Department Eleven 9:00 a.m.

The Court rules upon defendant JP Morgan Chase Bank, N.A.'s demurrer as follows:

Defendant's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (c).)

Defendant's demurrers to the first cause of action for intentional misrepresentation and second cause of action for negligent misrepresentation are **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff has pled sufficient facts to establish justifiable reliance and damages. (Second Amended Complaint ("SAC"), ¶¶ 4, 18, 59a(i), 61, & 69; *Lazar v. Superior Court of Los Angeles County* (1996) 12 Cal.4th 631, 645; *Continental Airlines, Inc. v. McDonnell Douglas Corp.* (1989) 216 Cal.App.3d 388, 402.)

Defendant's demurrer to the third cause of action for negligence is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff has pled sufficient facts to establish a duty of care owed by defendant to plaintiff. (SAC, ¶¶ 71 & 72; *Alvarez v. BAC Home Loans Servicing, L.P.* (2014) 228 Cal.App.4th 941, 948.)

Defendant's demurrer to the fourth cause of action for declaratory relief is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) This is not a viable claim for relief given the facts pled to support a right to declaratory relief. (*Kan v. Guild Mortgage Co.* (2014) 230 Cal.App.4th 736, 741-42, quoting *Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 511.) Having already given plaintiff the right to amend this claim, the Court denies further leave to amend.

Defendant's demurrer to the fifth cause of action for conversion is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Money cannot be the subject of an

action for conversion unless the plaintiff claims a “specific, definite sum capable of identification.” (SAC, ¶ 87; *Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1589; *Zeigler v. Wells, Fargo & Co.* (1863) 23 Cal. 179, 180.) Having already given plaintiff the right to amend this claim, the Court denies further leave to amend.

Defendant’s demurrer to the sixth cause of action for violation of Business and Professions Code section 17200 is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff pleads sufficient facts to establish an unlawful business practice and that he has lost money or property. (SAC, ¶ 35; Bus. & Prof., §§ 17204.)

The notice of motion does not provide notice of the 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).

Defendants Select Portfolio Servicing, Inc. and U.S. Bank National Association’s demurrer:

The demurrer is **DROPPED FROM CALENDAR**. It was not timely filed, given when it was served on these answering defendants. (Code Civ. Proc., §§ 430.40, subd. (a), 1013, subd. (a).)

TENTATIVE RULING

Case: **Ponce v. Wells Fargo Bank, N.A.**
Case No. CV CV 13-1769
Hearing Date: **September 1, 2015** **Department Eleven** **9:00 a.m.**

Defendants Wells Fargo Bank, N.A. and Specialized Loan Servicing LLC’s motions for sanctions are **CONTINUED** on the Court’s own motion to September 10, 2015, at 9:00 a.m. in Department Eleven, to be heard together with defendants’ motions for summary judgment.

TENTATIVE RULING

Case: **Wallis v. PHL Associates, Inc.**
Case No. CV CV 06-72352
Hearing Date: **September 1, 2015** **Department Four** **9:00 a.m.**

The motion for a special pre-trial conference and the motion for relief from waiver of objections are **CONTINUED** on the Court’s own motion to September 4, 2015, at 3:30 p.m. in Department Ten.