

TENTATIVE RULINGS for CIVIL LAW and MOTION
September 15, 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

TENTATIVE RULING

Case: **Foster v. Tindell**
Case No. CV CV 14-2092
Hearing Date: **September 15, 2015** **Department Eleven** **9:00 a.m.**

Plaintiffs John Foster, Michelle Foster, Lloyd Lowrey Jr., Carol Lowrey, Timothy Lowrey, Kathy Lowrey, Richard Bloom, and Betty Bloom’s request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Plaintiffs’ unopposed motion for a preliminary injunction is **GRANTED**. (Code Civ. Proc., § 526.)

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: **Hart v. Select Portfolio Servicing, Inc.**
Case No. CV CV 14-1991
Hearing Date: **September 15, 2015** **Department Eleven** **9:00 a.m.**

Defendants Select Portfolio Servicing, Inc. and U.S. Bank National Association as trustee, successor in interest to Bank of America, National Association as trustee for WAMU Mortgage pass-through Certificates Series 2007-OA6 Trust’s request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (c).)

Defendants’ demurrer to the first cause of action for intentional misrepresentation is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff has pled sufficient, specific facts to establish the making of misrepresentations, justifiable reliance and damages. (Second Amended Complaint (“SAC”), ¶¶ 23, 24, 26, 27, 59a., 59c., 59g., 61, 69, and 75; *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.)

Defendants' demurrer to the second cause of action for negligent misrepresentation is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff has pled sufficient facts to establish a duty of care, the making of misrepresentations, justifiable reliance and damages. (SAC, ¶¶ 65, 68, & 69; *Continental*, supra, at p. 402; *Lingsch v. Savage* (1963) 213 Cal.App.2d 729, 735.)

Defendants' 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 plaintiffs. (SAC, ¶ 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 plaintiffs 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).) Plaintiffs have not pled sufficient facts to establish that they have standing to assert US Bank is not the owner of the subject loan. (*Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497.) Having already given plaintiffs 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).) Plaintiffs pleads sufficient facts to establish a pattern of conduct amounting to an unlawful business practice and that plaintiffs have lost money or property. (SAC, ¶ 35; Bus. & Prof., §§ 17204.)

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: **Turner v. Superior Court**
Case No. CV CV 05-517

Hearing Date: **September 15, 2015** **Department Eleven** **9:00 a.m.**

The Honorable Timothy L. Fall has recused himself from hearing this matter pursuant to Code of Civil Procedure section 170.1.

Plaintiff Anthony Turner's motion for entry of a default matter is **CONTINUED** on the Court's own motion to be heard in Department 13, at 9:00 a.m. on September 17, 2015.