

TENTATIVE RULINGS for CIVIL LAW and MOTION September 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.

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: National Collegiate Loan Trust 2006-1 v. Mitchell
Case No. CV CV 15-115

Hearing Date: September 29, 2015 **Department Eleven** **9:00 a.m.**

Cross-defendant National Collegiate Loan Trust 2006-1's unopposed motion for judgment on the pleadings with respect to the first cause of action for declaratory relief in cross-complainant Carl Mitchell's cross-complaint is **GRANTED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 438.) Cross-complainant has not pled facts showing the existence of a present and actual controversy between the parties. (Code Civ. Proc., § 1060; *Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872.)

Cross-defendant's motion for judgment on the pleadings with respect to the second through fifth causes of action, for consumer fraud, fraud/deceit, fraud and negligent misrepresentation, deceit (promise made without intent to perform), respectively, is **GRANTED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 438.) Cross-complainant has not satisfied the particularity requirements applicable to claims for fraud. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

Cross-defendant's motion for judgment on the pleadings with respect to the sixth cause of action for negligence is **GRANTED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 438.) Cross-complainant does not allege sufficient facts to support the existence of a duty of care owed to cross-complainant. (*Nymark v. Hart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.)

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: National Collegiate Loan Trust 2006-1 v. Mitchell
Case No. CV CV 15-245

Hearing Date: September 29, 2015 Department Eleven 9:00 a.m.

Cross-defendant National Collegiate Loan Trust 2006-1's unopposed demurrer to the first cause of action for declaratory relief in cross-complainant Daniel Mitchell's cross-complaint is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Cross-complainant has not pled facts showing the existence of a present and actual controversy between the parties. (Code Civ. Proc., § 1060; *Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872.)

Cross-defendant's demurrer to the second through fifth causes of action, for consumer fraud, fraud/deceit, fraud and negligent misrepresentation, deceit (promise made without intent to perform), respectively, is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Cross-complainant has not satisfied the particularity requirements applicable to claims for fraud. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

Cross-defendant's demurrer to the sixth cause of action for negligence is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Cross-complainant does not allege sufficient facts to support the existence of a duty of care owed to cross-complainant. (*Nymark v. Hart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.)

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: The Regents of the Univ. of Calif. v. Flintco
Case No. CV CV 12-1852

Hearing Date: September 29, 2015 Department Eleven 9:00 a.m.

In the future, cross-defendant Zimmer Gunsul Frasca Architects, LLP shall comply with California Rule of Court 3.1110(f), or its filings will not be considered.

Cross-defendant's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Cross-defendant's motion to sever is **DENIED**. (Code Civ. Proc., § 1048, subd. (b).) Cross-defendant's motion to continue trial is **GRANTED**. (Cal. Rules of Court, rule 3.1332.) The trial date of January 19, 2016 is **VACATED**. The parties are directed to appear at a case management conference on October 26, 2015, in Department 6 at 9:00 a.m.

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).