

TENTATIVE RULINGS for CIVIL LAW and MOTION December 7, 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: **Davis Enterprise, Inc. v. Fairfield Publishing Company**
Case No. CV CV 06-68
Hearing Date: **December 7, 2015** **Department Eleven** **9:00 a.m.**

The motion for good faith settlement determination filed by Daily Republic, Inc. is **DENIED WITHOUT PREJUDICE**. (Code Civ. Proc., § 877.6) The motion is contingent on the execution of the drafted Agreement and Covenant Not to Sue which is attached as Exhibit A to the Declaration of Probal G. Young (“Covenant”). However, the City of Davis, who opposes the current motion, is a settling party under the terms of the Covenant. (Decl. of Young, Exh. A, ¶ 1.1.) As the Covenant has not yet been executed, this motion is premature. (*Id.* at Exh. A, ¶ 4.1.)

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: **Nunez v. Nationstar Mortgage LLC et al.**
Case No. CV CV 15-1277
Hearing Date: **December 7, 2015** **Department Eleven** **9:00 a.m.**

Defendant Nationstar Mortgage LLC’s request for judicial notice is **GRANTED**. (Evid. Code, § 452, subs. (c) & (d).)

Defendant’s demurrer to the first cause of action for violation of the Homeowners’ Bill of Rights (“HBOR”) is **OVERRULED**. (Code Civ. Proc., § 430.10, subd (e).) Defendant fails to establish that each violation of the HBOR that supports this cause of action cannot be shown. (Civ. Code, § 2923.7; Request for Judicial Notice, Exs. E, F [loan modification and subordinate deed of trust, respectively].)

Defendant’s demurrer to the second cause of action for unfair competition in violation of Business and Professions Code section 17200 is **OVERRULED**. (Code Civ. Proc., § 430.10, subd (e).) Plaintiff has pled sufficient facts to establish a violation of the “unlawful” prong of

Business and Professions Code section 17200, and that she suffered damages. (See e.g., *Davis v. HSBC Bank Nevada, N.A.* (9th Cir. 2012) 691 F.3d 1152; Complaint, ¶¶ 49-50.)

Defendant's demurrer to the third cause of action for common law unfair competition is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd (e).) Plaintiff does not allege that defendant passed off anyone's goods as its own. (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1263.)

Defendant's demurrer to the fourth cause of action for breach of the implied covenant of good faith and fair dealing is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd (e).) Plaintiff has not pled sufficient facts to establish that defendant had any contractual, common law, or statutory duty to modify the loan. (*Agosta v. Astor* (2004) 120 Cal.App.4th 596, 607; *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 67.)

Defendant's demurrer to the fifth cause of action for negligence is **OVERRULED**. (Code Civ. Proc., § 430.10, subd (e).) Plaintiff has pled that defendant mishandled documents and that she suffered lost equity in her home. (Complaint, ¶¶ 15, 65.)

Defendant's demurrer to the sixth cause of action for negligent infliction of emotional distress is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd (e).) California does not recognize this tort. (*Delfino v. Agilent Techs., Inc.* (2006) 145 Cal.App.4th 790, 818.)

Defendant's demurrer to the seventh cause of action for declaratory relief is **OVERRULED**. (Code Civ. Proc., § 430.10, subd (e).) Plaintiff alleges sufficient facts to establish that there is an actual controversy between the parties as to whether defendant complied with the HOBR. (Complaint, ¶ 74.)

Defendant's demurrer to the eighth cause of action for injunctive relief is **OVERRULED**. (Code Civ. Proc., § 430.10, subd (e).) Plaintiff can properly maintain this cause of action to enjoin violations of section 2923.7. (Civ. Code, § 2924.12, subd. (a)(1).)

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).