

**TENTATIVE RULINGS for LAW and MOTION**  
**October 1, 2020**

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](http://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.

Telephone number for the clerk in Department Ten (530) 406-6816  
Telephone number for the clerk in Department Nine (530) 406-6819

**NOTICE:** Effective May 4, 2020, all court appearances are by Zoom or Conference call. Yolo Superior Court Virtual Courtroom and conference call information is posted on the Yolo Court’s Website at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov).

**TENTATIVE RULING**

**Case: Harris v. Bellard**  
**Case No. CV 2018-1129**  
**Hearing Date: October 1, 2020 Department Nine 9:00 a.m.**

Defendant Zandra Guiten Bellard’s motion to set aside default judgment is **GRANTED**. (Code Civ. Pro., § 473, subd. (b).) Defendant has shown that the judgment was taken against her through her mistake, inadvertence, surprise, or excusable neglect. (*Ibid.*; Bellard, ¶¶ 2-3; see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 980 [“Because the law favors disposing of cases on their merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default.”].)

The parties are directed to appear at a trial setting conference on October 5, 2020, at 9:00 a.m. in Department 9.

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: Izhari v. CP Capital Group**  
**Case No. CV 2019-2172**  
**Hearing Date: October 1, 2020 Department Ten 9:00 a.m.**

Defendant CP Capital Group, Inc., d/b/a Country Inn & Suites’ unopposed motion to compel plaintiffs’ discovery responses is **GRANTED**. (Code Civ. Proc., §§ 2030.290, 2031.300.) Plaintiffs Kfir Izhari, Ravid Meir, Izhak Givoni, and Avi Knafo shall serve verified responses, without objections, together with any responsive documents by no later than October 22, 2020.

Defendant's request for monetary sanctions is **GRANTED IN PART**, in the total amount of amount of \$850.00, against plaintiffs Kfir Izhari, Ravid Meir, Izhak Givoni, and Avi Knafo. (Code Civ. Proc., § 2023.030; Harris decl., ¶ 7.) The Court declines to award sanctions for time not yet incurred. Plaintiffs shall pay the sanction by November 2, 2020.

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, or the moving party if unrepresented by counsel, is ordered to notify the opposing party or parties immediately of the tentative ruling system.

If no hearing is requested, and no party appears at the hearing, 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:** **Ponce v. Wells Fargo Bank, N.A.**  
**Case No. CV 2013-1769**

**Hearing Date:** **October 1, 2020** **Department Nine** **9:00 a.m.**

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Defendant Specialized Loan Servicing LLC's ("SLS") request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Plaintiffs' evidentiary objections are **OVERRULED**. (*Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4<sup>th</sup> 60, 70-73.)

Defendant's motion for summary adjudication of the first cause of action for wrongful foreclosure is **DENIED**. (Code Civ. Proc., 437c, subd. (p)(2).) Plaintiffs proffer evidence that they were excused from tendering the amount of indebtedness because the loan modification review process was not complete. (*Majd v. Bank of America, N.A.* (2015) 243 Cal.App.4<sup>th</sup> 1293, 1306-1307; UMF Nos. 1-11, 15-26; Dec. of Alama Ponce, ¶ 1-5A-N, P, Q, U, V-Z, AA-LL, 8-9, 13-16, 18, 21, 23; Dec. of Williams ¶¶ 5, 8-13, Exh. A-I.)

Defendant's motion for summary adjudication of the second cause of action for breach of contract is **GRANTED**. (Code Civ. Proc., § 437c, subd. (p)(2).) Defendant shows that one or more of the elements of this cause of action cannot be established. (Dec. of Williams, ¶¶ 5-7; UMF Nos. 1-4, 29-30.) Plaintiffs fail to create a triable issue of material fact as to whether there is in fact a contract between WFB and SLS or that they are a creditor beneficiaries of any contract between WFB and SLS. ([\*Goonewardene v. ADP, LLC\* \(2019\) 6 Cal. 5th 817, 829-30.](#))

Defendant's motion for summary adjudication of the fourth cause of action for promissory estoppel is **GRANTED**. (Code Civ. Proc., § 437c, subd. (p)(2); *Granadino v. Wells Fargo Bank, N.A.* (2015) 236 Cal. App. 4th 411, 416.) "The party claiming estoppel must specifically plead all facts relied on to establish [each of these] elements." (*Smith v. City & County of San Francisco* (1990) 225 Cal.App.3d 38, 48.) The third amended complaint fails to allege that SLS made any promise at all, or that they relied on any such promise in a way that caused them harm.

Plaintiffs' allegations that SLS had the *authority* to both promise and implement a loan modification as the servicer does not show a promise clear and unambiguous in its terms. (TAC, ¶¶ 131-139.)

Defendant's motion for summary adjudication of the fifth cause of action for fraud is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(2).) As the party moving for summary judgment, a defendant has the burden to show it is entitled to judgment with respect to all theories of liability asserted by plaintiff. (*Lopez v. Sup. Ct. (Friedman Bros. Inv. Co.)* (1996) 45 CA4th 705, 717.) The moving party bears an initial production burden, *i.e.*, to produce evidence sufficient to make a prima facie showing of the nonexistence of any triable issue of material fact as to the elements of the claim or defense. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) SLS fails to satisfy its initial production burden.

Defendant's motion for summary adjudication of the sixth cause of action for negligent misrepresentation is **GRANTED**. (Code Civ. Proc., § 437c, subd. (p)(2).) The cause of action is barred by the statute of limitations. (Code Civ. Proc., § 335.1; UMF Nos. 10, 62; RJN ¶ 2, Exh. B.)

Defendant's motion for summary adjudication of the seventh cause of action for negligence is **GRANTED**. (Code Civ. Proc., § 437c, subd. (p)(2).) The cause of action is barred by the statute of limitations. (Code Civ. Proc., § 335.1; UMF 10, 73; RJN ¶ 2, Exh. B.)

Defendant's motion for summary adjudication of the eighth cause of action for violation of Business and Professions Code section 17200 is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(2).) The sale of a home through a foreclosure sale is a deprivation of property to which a plaintiff has a cognizable claim under section 17200. (*Lueras v. BAC Homes Loans Servicing, LP* (2013) 221 Cal.App.4th 49.) Plaintiffs have provided evidence that defendant concealed the status of the foreclosure sale and conducted a scheduled foreclosure sale before the modification process was complete. (UMF Nos. 6-8, 10-11, 78-85; Dec. of Alama Ponce, ¶ 1-5A-N, P, Q, U, V-Z, AA-LL, 8-9, 13-16, 18, 21, 23; Dec. of Williams ¶¶ 5, 8-13, Exh. A-I.)

Defendant's motion for summary judgment is **DENIED**. (Code Civ. Proc., § 437c, subd. (c).) The moving papers fail to show that there is no triable issue as to any material fact that that the moving party is entitled to judgment as a matter of law. (UMF 6, 7, 9, 11.)

If no hearing is requested, and no party appears at the hearing, 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:** **Remarck Partners LLC v. Gibson Center LP**  
**Case No. CV 2017-1747**

**Hearing Date:** **October 1, 2020** **Department Nine** **9:00 a.m.**

Cross-complainants Malcolm Leiser, Gibson Center, L.P., and Gibson Pioneer Company, LLC's request for judicial notice is **DENIED**. (Evid. Code, §§ 452, 453.) The proffered documents are

irrelevant to the Court's determination of the instant motions. (*People v. Rowland* (1992) 4 Cal.4th 238, 268 fn. 6.)

Cross-defendants Anytime Fitness, LLC and Franchise Real Estate, LLC's demurrer to the first, second, and third causes of action in the first amended cross-complaint is **OVERRULED**. (Code Civ. Proc., § 430.10.) Cross-complainants have pled their first and second causes of action with sufficient particularity, given that cross-complainants are asserting cross-defendants' nondisclosure of information. (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384; FACC, ¶¶ 44-60.) Additionally, the first and second causes of action are not based on future events. (*Gentry v. eBay, Inc.* (2002) 99 Cal.App.4th 816, 835; FACC, ¶¶ 22, 25-26, 45-46.) Finally, the FACC adequately alleges cross-defendants' duty of disclosure regarding the first, second, and third causes of action. (Civ. Code, §§ 1709, 1710; *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 346-347; *Biakanja v. Irving* (1958) 49 Cal.2d 647, 650; FACC, ¶¶ 48, 54, 65.) Cross-defendants have failed to establish that such duties do not exist as a matter of law.

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.