IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar
Judge: HONORABLE LELAND DAVIS, III
Department 1

400 County Center, Redwood City
Courtroom 4C

Monday, February 11, 2019

IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR YOU MUST DO THE FOLLOWING:

1. **YOU MUST CALL (650) 261-5019 BEFORE 4:00 P.M. TO INFORM THE COURT OF YOUR INTENT TO APPEAR.**
2. **You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).**

Failure to do both items 1 and 2 will result in no oral presentation.

Notifying CourtCall with your intent to appear is not an alternative to notifying the court.

All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.

Case	Title / Nature of Case

9:00

LINE: 1

16-CIV-02945 PETER TU VS. TSAI-LUAN HO, ET AL.

PETER TU	JEFFREY S. GOODFRIED
TSAI-LUAN HO	JEFFREY G. HURON

MOTION TO AWARD ATTORNEY'S FEES BY PLAINTIFF AND CROSS-DEFENDANT CHIN I TU AKA PETER TU ("TU")

TENTATIVE RULING:

The parties are ordered to appear in order to advise the Court regarding the status of the bankruptcy proceedings.

9:00

LINE: 2

17-CIV-00385 IAN BRADFORD WRIGHT VS. PV HOLDING CORP, ET AL.

IAN BRADFORD WRIGHT	PAULA M. SHAW
PV HOLDING CORP	GENE S. STONE

IAN BRADFORD WRIGHT'S MOTION TO COMPEL DEFENDANT MICROSOFT CHINA CO. LTD'S FURTHER RESPONSES TO REQUESTS FOR ADMISSIONS AND REQUEST FOR SANCTIONS

TENTATIVE RULING:

Plaintiff's motion to compel further responses to Request for Admissions numbers 1 and 2 is GRANTED.

A response to a Request for Admission must admit "so much of the matter involved in the request is true." (Code of Civ. Proc. Sect. 2033.220, subd. (b).) Defendant MICROSOFT's responses state that "lack of information and belief" is the reason for an inability to admit or deny the requests. When lack of information or belief is the stated reason for failing to admit the request, a responding party must "state . . . that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter." (*Id*. sect. 2033.220, subd. (c).) Defendant MICROSOFT's responses fail to comply with this requirement.

Plaintiff's request for sanctions is DENIED.

Defendant shall serve verified supplemental responses to Request for Admissions (Set One) numbers 1 and 2 in a manner that complies with Code of Civil Procedure section 2033.220, subdivision (c). The verified supplemental responses shall be served no later than February 25, 2019, or one week after service of written notice of this ruling, whichever is later.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

9:00

LINE: 3

17-CIV-02281 JOSEPH C. PASSALACQUA VS. TINA M. PASSALACQUA, ET AL.

JOSEPH C. PASSALACQUA	KATHRYN S. DIEMER
TINA M. PASSALACQUA	BRADLEY KASS

PLAINTIFF'S MOTION TO ENFORCE THE PARTIES' SETTLEMENT AGREEMENT

TENTATIVE RULING:

Plaintiff's motion to enforce the parties' settlement agreement is DENIED.

Notably, Plaintiff's moving papers fail to (1) set forth standards of contract interpretation, (2) provide analysis as to whether the court can consider extrinsic evidence under the parol evidence rule, or (3) identify the extent of the relief requested; i.e. what specific performance is sought by court order.

In any case, however, the court finds that the contractual provision at issue is inscrutable. The disputed language provides:

> **The valuation shall not include any discounts including discounts for lack of control or lack of marketability of the interest in the LLC, though the appraiser may consider discounts if necessary to be considered for an appraisal using normal standardized techniques.**

Chuang Decl, Ex. A, ¶ 1. Notably, this dispute arose when the appraiser contacted the parties to indicate his confusion regarding this provision: "The above statement seems to be contradictory, in that it forbids the application of discounts, but notes they can be considered." Chuang Decl, Ex. B, p.1.

Neither party has offered a plausible interpretation of the second clause of the sentence in dispute. Plaintiff contends that it means the appraisal "could include *other* discounts." Reply, p.3 (emphasis added). That language, however, is not in the agreement. The suggested interpretation also contradicts the language providing that "The valuation shall not include *any* discounts . . ." Defendants, for their part, have asserted that "The sentence [] prohibit[s] an *automatic* discount given for these factors." Chuang Decl., Ex. B, p.1 (emphasis added). This interpretation also adds a term that is not contained in the parties' agreement.

Plaintiff has offered extrinsic evidence to aid the court's interpretation of the contract. As noted above, however, he has provided no argument or pertinent authority indicating that the court can consider extrinsic evidence in interpreting the parties' agreement. The agreement is integrated. It provides, at Paragraph 12, that "The parties agree that this Settlement Agreement constitutes the entire agreement between the parties and that this Settlement Agreement may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by all the parties." Accordingly,

pursuant to the parol evidence rule, the court can consider extrinsic evidence only to the extent that evidence is consistent with the agreement. 2 Witkin, Cal. Evid. 5th Docu Evid § 76 (2018). The court cannot consider extrinsic evidence that contradicts the terms of the agreement. As written, the agreement provides that discounts for lack of marketability may not be considered *and* that discounts may be considered "if necessary." Because this term is internally inconsistent, any extrinsic evidence offered is potentially contradictory to the agreement.

Nonetheless, even if the court could consider extrinsic evidence under the parol evidence rule, the parties have not offered evidence that allows the court to determine the parties' intended meaning. Plaintiff notes that a previous version of the agreement, which was rejected, provided that "The valuation shall not include any discounts including discounts for lack of control or lack of marketability, *unless the appraiser determines these factors are necessary to be considered for an appraisal using normal standardized techniques*." Chuang Decl., Ex. K. It is not clear, however, that Defendants understood this language to carry any different meaning than that which appears in the signed agreement. Plaintiff also notes that, in an email dated March 19, 2018, Plaintiff's counsel stated that the terms that had been discussed included "No discounts for the value of the business – e.g. no discount for lack of control or marketability." Chuang Decl. in Support of Reply, Ex I. Plaintiff, however, has provided no evidence of Defendant's intent to agree to that term. Accordingly, even if the court could consider extrinsic evidence, Plaintiff has offered no convincing evidence to support his interpretation of the settlement agreement.

Ultimately, the court finds Plaintiff has not demonstrated a meeting of the minds as to the terms of the parties' agreement. Plaintiff's request to enforce the settlement necessitates that the court add a term to the parties' agreement, which the court is not authorized to do. *J.B.B. Inv. Partners, Ltd. v. Fair*, 232 Cal. App. 4th 974, 983–84, 182 Cal. Rptr. 3d 154, 161 (2014), *as modified* (Dec. 30, 2014). Accordingly, Plaintiff has failed to persuade the court that the settlement agreement should be enforced in accordance with his interpretation of the agreement.

Plaintiff's request for sanctions is DENIED.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

9:00

LINE: 4

17-CIV-02443 MD ANIS UZZAMAN, ET AL. VS. BRANDON K. HILL, ET AL.

MD ANIS UZZAMAN	TIMOTHY B. BRODERICK
BRANDON K. HILL	SEAN TAMURA-SATO

PLAINTIFFS' MOTION TO COMPEL INSPECTION AND COPYING OF ELECTRONIC DEVICES AND PRODUCTION OF DOCUMENTS

TENTATIVE RULING:

Good cause appearing, Plaintiffs' Motion to Compel Inspection and Copying of Electronic Devices and Production of Documents is GRANTED pursuant to Code of Civ. Proc. § 2031.010.

Plaintiff's request for sanctions is DENIED.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

9:00

LINE: 5

17-CIV-04789 SUZANNE HEDMAN VS. RICHARD A. KEATING, ET AL.

SUZANNE HEDMAN	TODD A. ROBERTS
RICHARD A. KEATING	CORYELL BRYAN

PLAINTIFF SUZANNE HEDMAN'S MOTION FOR LEAVE TO FILE A THIRD AMENDED COMPLAINT

TENTATIVE RULING:

Plaintiff Suzanne Hedman's Motion for Leave to File a Third Amended Complaint (TAC) is GRANTED. Code Civ. Proc. §§ 379, 473(a)(1), 576. California's judicial policy is to exercise discretion liberally to permit amendments to pleadings. *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939. The improperly-served Opposition (see Code Civ. Proc. § 1005(b), requiring service by overnight delivery), does not dispute that joining the proposed new defendants is proper, and does not identify any meaningful prejudice or other basis for disallowing the proposed TAC.

Defendant questions the viability of the proposed new claims for "nuisance per se" and "interference with easement," and the punitive damages claim against the proposed new defendants. Ordinarily, the Court does not consider the validity of the proposed amended pleading in deciding whether to grant leave to amend, and thus the asserted grounds for demurrer or motion to strike are premature. *Kittredge Sports Co. v. Sup. Ct.* (1989) 213 Cal.App.3d 1045, 1048. When filed, defendant(s) will have the opportunity to attack the validity of the amended pleading.

Plaintiff shall separately file the proposed TAC within 10 days of this Order. The proposed TAC submitted with the moving papers is *not* deemed filed by virtue of the Court granting this motion.

9:00

LINE: 6

17-CIV-05657 MELE M. UPERESA VS. WORLD SAVINGS BANK, ET AL.

MELE M. UPERESA **JONATHAN MATTHEWS**
WORLD SAVINGS BANK

DEMURRER OF DEFENDANTS MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), BANK OF NEW YORK MELLON ("BONYM") AND BAYVIEW LOAN SERVICING LLC ("BAYVIEW") (ALSO COLLECTIVELY "DEFENDANTS") TO THE SECOND AMENDED COMPLAINT

TENTATIVE RULING:

The Demurrer of Defendants Mortgage Electronic Registration Systems, Inc. ("MERS"), Bank of New York Mellon ("BONYM") and Bayview Loan Servicing LLC ("Bayview") (also collectively "Defendants") to the Second Amended Complaint ("SAC") of Plaintiff Mele M. Uperesa ("Plaintiff") is ruled on as follows:

(1) Demurrer to the Second Cause of Action for Cancellation of Instruments is **SUSTAINED WITHOUT LEAVE TO AMEND** based on failure to allege facts sufficient to support this claim.

This claim is alleged against MERS and BONYM. Plaintiff seeks to cancel written instruments that purport to be Assignment of the Note and Deed of Trust executed by Defendants. (SAC ¶ 43.) Plaintiff alleges that such instruments are void because they were issued by World Savings Bank after Plaintiff's note was sold or assigned without notice to Plaintiff by parties who were not owners of Plaintiff's note. (SAC ¶ 44.) Plaintiff claims that Defendants fail to demonstrate that they hold or possess the Note and Deed of Trust. (SAC ¶ 45.) Further, Plaintiff alleges that Defendants executed documents through a renown robosigner, clouding the chain of title and rendering the Substitution of Trustee illegitimate. (SAC ¶ 46.)

First, to the extent that Plaintiff's claim is based on the alleged securitization of her loan, Plaintiff fails to allege facts sufficient to support this claim. Plaintiff claims she does not dispute the right to securitize her mortgage, but claims that as a result of improper procedures the true owner is unclear and Plaintiff has been paying improper parties an excess amount. (SAC ¶ 32.) No facts are alleged to support these conclusory allegations.

Second, as the court previously ruled, Plaintiff's allegations are contradicted by the Deed of Trust. The Deed of Trust signed by Plaintiff lists MERS as the beneficiary. (See Defendants' Request for Judicial Notice, Exh. A, p.2.) The Deed of Trust includes that "Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but if necessary to comply with law of customer, MERS…has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument." (See Defendants' Request for Judicial Notice, Exh. A, p.3.) MERS assigned the Deed of Trust to BONYM as trustee for Defendant Cwalt Inc. Alternative Loan Trust. (See Defendants' Request for Judicial Notice, Exh. B.) Thus, Plaintiff's allegation that

the Assignment by MERS to BONYM is void because of lack of authority, is contradicted by the express language in the deed of trust.

Third, Plaintiff also brings this claim on the ground that the Substitution of Trustee is void because it was executed purportedly on behalf of BONYM by Loryn Stone, who is a renown robosigner. (SAC ¶¶ 17, 46, 47.) Plaintiff fails to demonstrate any standing to challenge any alleged fraudulent transfer regarding the Substitution of Trustee though. (See *Maynard v. Wells Fargo Bank N.A.* (S.D. Cal. 2013) 2013 WL 4883202, *9 [plaintiffs' allegations of robo-signing of an Assignment of the Deed of Trust failed because the plaintiffs lacked standing to challenge the alleged fraudulent transfers because they were not parties to the Assignment, nor were they the intended recipients of the Assignment].) Furthermore, even if robo-signed, it would be voidable, not void, at the injured party's option, who were not the plaintiffs. (*Id.*) Similarly here, Plaintiff fails to demonstrate any standing to challenge the purported robo-signing of the Substitution of Trustee.

(2) Demurrer to the Third Cause of Action for Violation of Homeowner Bill of Rights ("HBOR") is **SUSTAINED WITH LEAVE TO AMEND** for Plaintiff to allege facts sufficient to support this claim. This claim is alleged against Bayview, not MERS and BONYM.

Civil Code section 2924.11(a) provides that:

> (a) If a borrower submits a complete application for a foreclosure prevention alternative offered by, or through, the borrower's mortgage servicer…shall not record a notice of sale or conduct a trustee's sale while the complete foreclosure prevention alternative application is pending, and until the borrower has been provided with a written determination by the mortgage servicer regarding that borrower's eligibility for the requested foreclosure prevention alternative.
>
> …

(Civ. Code, § 2924.11(a).)

Plaintiff's allegations still fall short of alleging facts to support a violation of section 2924.11(a). Plaintiff now alleges that she submitted "multiple complete applications" to Bayview in 2017, including May 2, 2017. (SAC ¶ 21.) Plaintiff has not alleged facts to support though that a Notice of Trustee's Sale was recorded or that the Trustee's Sale was conducted while one of these complete applications was still pending or before she had been provided with a written determination.

Moreover, Plaintiff's allegation that a loan modification request was still under review when Quality Loan recorded a Notice of Default on June 7, 2016 (see SAC ¶ 20) is insufficient to support this claim. Section 2924.11(a) precludes a Notice of Sale from being recorded, not a Notice of Default.

(3) Demurrer to the Fourth Cause of Action for Violation of Business and Professions Code Section 17200 is **SUSTAINED WITHOUT LEAVE TO AMEND as to MERS and BONYM, and SUSTAINED WITH LEAVE TO AMEND as to Bayview**. Plaintiff fails to allege facts to support an unfair, unlawful or fraudulent business act or practice by Defendants. This claim is based on the same allegations against Defendants in the other causes of action, and therefore fails for the reasons set forth above.

(4) Demurrer to the First Cause of Action for Declaratory Relief is **SUSTAINED WITHOUT LEAVE TO AMEND** based on failure to allege facts sufficient to support this claim.

Plaintiff alleges that an actual controversy exists over Defendants' standing to foreclose based on the fabricated and invalid Assignments of Plaintiff's Note and Deed of Trust, and asks that the Court declare that none of the Defendants have any legal title or interest in Plaintiff's Note or mortgage. (SAC ¶¶ 33-35, 40.)

The purpose of the declaratory relief statute is to afford a new form of relief where needed and not to furnish a litigant with a second cause of action for the determination of identical issues. (*General of America Ins. Co. v. Lilly* (1968) 258 Cal.App.3d 465, 470.) The court may refuse to exercise to grant declaratory relief where such relief is not necessary or proper at the time under all of the circumstances. (*Id.* at 471.) This discretionary power of the court to deny declaratory relief may be invoked by general demurrer. (*Id.*) Defendants correctly point out that this claim is duplicative of both Plaintiff's quiet title claim that has already been dismissed, as well as Plaintiff's claim for cancellation of instruments.

(5) Defendants' Request for Judicial Notice is **GRANTED**.

(6) Defendants MERS and BONYM are DISMISSED from this action.

(7) Plaintiff has 20 days from the date of the Order to file and serve a Third Amended Complaint against Bayview.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

9:00

LINE: 7

18-CIV-05432 JUDITH RUTHERFORD VS. KEITH KAPLAN, ET AL.

JUDITH RUTHERFORD	TIMOTHY A. GRISWOLD
KEITH KAPLAN	PRO/PER

MOTION FOR JUDGMENT ON THE PLEADINGS
TENTATIVE RULING:

The motion for judgment on the pleadings is GRANTED WITH LEAVE TO AMEND the answer to specify the allegations defendant denies. CCP §438(h)(1). Defendant shall file an amended answer within 14 days of notice of entry of the court's order.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

9:00

LINE: 8

19-UDL-00005 ELIZABETH L. NASH VS. SELINDA L. NASH, ET AL.

ELIZABETH L. NASH	MICHAEL BITONDO
SELINDA L. NASH	PRO/PER

DEMURRER TO COMPLAINT FOR UNLAWFUL DETAINER

TENTATIVE RULING:

The demurrer is OVERRULED on all grounds. Defendant shall file an answer within 5 days of notice of entry of the court's order.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

9:00

LINE: 9

CIV534203 JONATHAN MCDOUGALL VS. MANUEL SEDILLO, ET AL.

JANE DOE #1	TODD P. EMANUEL
COUNTY OF SAN MATEO	PETER H. CRUZ

DEFENDANT COUNTY OF SAN MATEO'S MOTION TO COMPEL PLAINTIFF JANE DOE #1'S FURTHER RESPONSES TO REQUEST FOR PRODUCTION (SET ONE), REQUEST NOS. 1-9

TENTATIVE RULING:

Defendant COUNTY OF SAN MATEO's Motion to Compel Plaintiff JANE DOE #1's Further Responses to Request for Production (Set One), Request Nos. 1-9 is GRANTED.

The Discovery Act requires a responding party to respond to each request for production of documents with (1) a statement that the party will comply; (2) a statement that the party lacks the ability to comply; or (3) an objection. Code Civ. Proc. § 2031.210.

- **Where a statement of *compliance* is made, the party must state whether it will comply with a demand in whole or in part, and that all documents or things in the demanded category that are in the possession, custody or control of the party will be produced. Code Civ. Proc. §§ 2031.220.**

- **Where a responding party is *unable to comply* with a particular demand, it must state that a diligent search and reasonable inquiry was made in an effort to comply, and state whether the inability to comply is because the particular item never existed, has been destroyed, lost, misplaced, stolen, or has never been in the possession, custody or control of the responding party. If the documents are in the possession, custody or control of others, the responding party must state their names and addresses. Code Civ. Proc. § 2031.230.**

- **If an *objection* is made to a demand, the responding party must identify the documents to which the objection is being made, and set forth clearly the specific ground for the objection. Code Civ. Proc. § 2031.240. Where the objection is based on a claim of privilege or a claim that the information sought is protected work product, the response must provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log. Code Civ. Proc. § 2031.240(c).**

On January 30, 2019, Plaintiff JANE DOE #1 served supplemental responses to the County's Request for Production (Set One), and served additional documents. (Decl. Smith, ¶ 18, Exh. B; Reply Decl. Sheng, ¶ 6, Exh. 4.) Plaintiff's supplemental responses, however, fail to comply with the requirements set forth above. The County takes issue with Plaintiff's responses with respect to the following two categories of documents: (1)

cellphone records from T-Mobile and Metro PCS; and (2) responsive documents from Plaintiff's social media accounts, specifically iCloud, Facebook, Snapchat, and Instagram.

The Court GRANTS the County's request for an order requiring Plaintiff to execute authorizations, so that the County may subpoena her cellphone records from T-Mobile and Metro PCS directly.

The Court further GRANTS the motion with respect to Plaintiff's iCloud, Snapchat, Instagram, and multiple Facebook accounts. It is insufficient for Plaintiff's counsel to state that their retained expert could not access the accounts due to incorrect user IDs and/or passwords. (Decl. Smith ¶¶ 11, 12, attached to Decl. Sheng as Exh. 4.) A demonstrated effort must be made by Plaintiff to recover the user IDs and/or passwords for these accounts and to produce all responsive, non-privileged documents contained therein.

Plaintiff's executed authorizations and further discovery responses must be served no later than March 1, 2019.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

9:00

LINE: 10

CIV534203 JONATHAN MCDOUGALL VS. MANUEL SEDILLO, ET AL.

JANE DOE #1	TODD P. EMANUEL
COUNTY OF SAN MATEO	PETER H. CRUZ

DEFENDANT COUNTY OF SAN MATEO'S UNOPPOSED MOTION TO COMPEL COMPLIANCE WITH DEPOSITION SUBPOENA

TENTATIVE RULING:

Defendant COUNTY OF SAN MATEO's unopposed Motion to Compel Compliance with Deposition Subpoena is DENIED WITHOUT PREJUDICE for lack of notice.

The County's moving papers indicate that the deposition subpoena was successfully personally served on third-party witness Alicia Spangenberg at 6151 Shadow Lane, Apt. 220, Citrus Heights, CA 95621 on November 6, 2018. (Decl. Sheng, Exh. 4.) However, County Counsel's meet-and-confer correspondence prior to filing this motion was mailed to 6011 Shadow Lane, Citrus Heights, CA 95621. (Decl. Sheng, Exh. 7.) The moving papers for this motion were then mailed to 6011 Shadow Lane, Apt. 220, Citrus Heights, CA 95621. (Proof of Service filed on December 19, 2018.) Given the apparent confusion over Ms. Spangenberg's correct mailing address, and the fact that she did not respond to the meet-and-confer correspondence or oppose the instant motion, it appears that notice was not properly given. Accordingly, the motion is denied without prejudice.

POSTED: 3:00 PM