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

**Law and Motion Calendar**
**Judge: HONORABLE SUSAN GREENBERG**
**Department 3**

**400 County Center, Redwood City**
**Courtroom 2B**

**Wednesday, May 16, 2018**

## NOTICE TO ALL COUNSEL

**Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.**

**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

17-CIV-03501 NAPEAN CAPITAL GROUP, LLC, ET AL. VS. SELECT PORTFOLIO SERVICING INC., ET AL.

| | |
|---|---|
| NAPEAN CAPITAL GROUP, LLC | CARLOS A. ALVAREZ |
| SELECT PORTFOLIO SERVICING INC. | THOMAS A. WOODS |

MOTION TO COMPEL

**TENTATIVE RULING:**

The hearing on this motion is continued to June 18, 2018 at 9 am in the Law and Motion Department.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 2

17-CIV-03501 NAPEAN CAPITAL GROUP, LLC, ET AL. VS. SELECT PORTFOLIO SERVICING INC., ET AL.

| | |
|---|---|
| NAPEAN CAPITAL GROUP, LLC | CARLOS A. ALVAREZ |
| SELECT PORTFOLIO SERVICING, INC. | THOMAS A. WOODS |

MOTION TO COMPEL FURTHER RESPONSES

**TENTATIVE RULING:**

The hearing on this motion is continued to June 18, 2018 at 9 am in the Law and Motion Department.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 3

17-CIV-03501 NAPEAN CAPITAL GROUP, LLC, ET AL. VS. SELECT PORTFOLIO SERVICING INC., ET AL.

| | |
|---|---|
| NAPEAN CAPITAL GROUP, LLC | CARLOS A. ALVAREZ |
| SELECT PORTFOLIO SERVICING, INC. | THOMAS A. WOODS |

HEARING ON DEMURRER
**TENTATIVE RULING:**

The Demurrer brought by defendant Quality Loan Service Corporation is OVERRULED. The Request for Judicial Notice brought by defendant Quality Loan is GRANTED.

For clarity, the Court notes at the outset that this is a case involving a mortgage lien that has been securitized. Due to the complexity of the entity names and capacities contained in the recorded history, this Court will at times merely refer herein to the bank name (i.e. WaMu, Chase, LaSalle Bank, U.S. Bank, Bank of America, etc.) even though the ownership oftentimes described in the documents is in a securitized capacity "as trustee." For example, references will be to "U.S. Bank" rather than to:

U.S. Bank NA,
successor trustee of Bank of America, NA,
successor interest to LaSalle Bank, NA,
as trustee, on behalf of the holders of the WAMU Mortgage Pass-Through Certificates, Series 2007-HY7

These simplified references are not intended to overlook or diminish the more lengthy and complex designations that appear in the allegations and in the recorded documents; they are merely for simplicity.

**Request for Judicial Notice.** Quality Loan requests judicial notice of several documents. As all of those documents have been recorded in the Official Records of San Mateo County, the Court takes judicial notice of them pursuant to Evidence Code § 452.

Additionally, on its own motion, the Court takes judicial notice of the entire record and files in this action, and, in particular, those documents for which this Court has previously granted judicial notice—namely, the numerous recorded documents attached to the Request for Judicial Notice filed Oct 10, 2017. See Minute Order (f: 12/06/17) (granting request for judicial notice as to all documents attached to the Request for Judicial Notice filed Oct 10, 2017).

**The First and Second Causes of Action (Quiet Title and Declaratory & Injunctive Relief).** Quality Loan argues that, by law, the recording of a "Substitution" constitutes *conclusive evidence* of the authority of the substituted trustee. Civil Code § 2934a(d). While it is true that *valid* substitution is entitled to such weight as a matter of statutory law, to obtain that statutory presumption the substitution itself must have been validly made. See *Pro Value Properties, Inc. v. Quality Loan Service Corp.* (2009) 170 Cal.App.4th 579. The allegations here indicate that the substitution by which Quality Loan purported to have the power to act as trustee was, itself, invalid. Specifically, it is alleged that U.S. Bank made the substitution, but it is also alleged that the underlying assignment to U.S. Bank was invalid because it was made by Chase *after Chase had already assigned the loan to LaSalle Bank in 2009* and thus did not have the power to re-assign it to U.S. Bank in 2015. See *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 938 ("[t]he borrower owes money *not to the world at large* but to a particular person or institution, and *only the person or institution entitled to payment may enforce the debt by foreclosing on the security*.") (emphasis added); see also *Sciarratta v. U.S. Bank National Association* (2016) 247 Cal.App.4th 552, 565 ("A homeowner experiences prejudice or harm when an entity with no interest in the debt forecloses."); see also 3 Miller & Starr, *Cal. Real Estate* (4th ed. 2015) § 8.18 ("When title has been conveyed to the wrong grantee's name, a subsequent 'corrective deed' by the original grantor is outside the chain of title and ineffective to correct the error. For the same reason, re-recording the same deed with the name corrected on the face of the deed is ineffective to establish marketability of title in the 'true' grantee's name.'") (emphasis removed).

The actual recorded documents supporting this theory are not attached to the Second Amended Complaint. They are also not attached to the request for judicial notice made by Quality Loan. The facts supporting this theory are, however, generally alleged. SAC ¶¶ 15-17. They are also supported by documents that this Court has previously judicially noticed. Specifically, this Court previously granted a request for judicial notice brought by defendants U.S. Bank and Select Portfolio Servicing (see Minute Order (f: 12/06/17) and thereby took judicial notice of numerous documents that have been recorded in the Official Records of San Mateo County regarding the chain of title to the property at issue. Request for Judicial Notice (f: 10/10/17). Those documents are in accord with the allegations of the Second Amended Complaint. See Request for Judicial Notice (f: 10/10/17), Exs. 3 (Assignment to LaSalle Bank), 15 (Corrective Assignment from Chase (as receiver) to Chase (outright)), 16 (Assignment to U.S. Bank), and 21 (Substitution of Quality Loan by U.S. Bank). A court may consider the entire record on file in the case and, here, the case file shows judicially-noticeable documents that are consistent with the Junior Lienholder's allegations.

Finally, Quality Loan argues that a plaintiff making a quiet title claim must unconditionally allege that he or she will tender payment of the full amount of the debt. For that proposition, Quality Loan cites *Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 527. That case, however, notes that the tender rule is "based on equitable principles." *Id*. It further specifies that, "plaintiffs [did not] propose any facts showing it would be inequitable to require a full

tender." *Id.* Here, the Junior Lienholders *have* alleged such facts, namely, they allege that the debt was already paid off in the re-financing process and that there is a "pay-off" letter. SAC ¶ 7. While the Court notes that there has been a previous ruling in this case weighing the factual credibility of that "pay-off" letter for purposes of determining whether to grant a *preliminary injunction* (Minute Order (09/14/17)), *on demurrer*, a court must indulge the allegations made by the complaining party—in this case, the Junior Lienholders. Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group 2017) ¶ 7:44, citing *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; also citing *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034. Thus, on the issue of tender of payment, the Court must indulge the Junior Lienholders' allegation that the loan has been paid off during the refinancing, and it would be inequitable to apply the tender rule where it is alleged that the debt has been paid off via refinancing.

For the reasons set forth above, the litigation privilege that Quality Loan is attempting to invoke does not apply since, *as alleged*, Quality Loan was not a legitimate trustee and had not been duly substituted by an entity with authority to appoint Quality Loan as trustee.

**The Third Cause of Action (Slander of Title).** Quality Loan argues that recording foreclosure documents is a privileged act. Civil Code §§ 47 and 2924(d); *Albertson v. Raboff* (1956) 46 Cal.2d 375, 378-381. This argument fails for the reasons set forth above—the allegations describe a situation in which Quality Loan was not the legitimate trustee because it was not duly substituted by an entity that had an actual ownership interest in the loan. The privilege at issue only applies to a legitimate trustee—not to anyone in the world who purports to be a trustee. See *Pro Value Properties, Inc. v. Quality Loan Service Corp.* (2009) 170 Cal.App.4th 579; see also *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 938; see also *Sciarratta v. U.S. Bank National Association* (2016) 247 Cal.App.4th 552.

Quality Loan also argues that the Junior Lienholders' slander of title claim fails because the underlying information contained in the allegedly slanderous publication was true, and conveying *true* information cannot be a basis for claiming slander of title. The Junior Lienholders respond that the slanderous documents were not the foreclosure documents, but, rather, the corrective assignments recorded in 2015. Indulging the Junior Lienholders' allegations, the "corrective" assignment documents contained an untrue representation (i.e. that Chase had the authority to assign the lien to U.S. Bank and that U.S. Bank was the owner of the lien at issue when it purported to substitute Quality Loan as the new trustee). It necessarily follows from this that, if Chase did not have authority to convey to U.S. Bank, then U.S. Bank did not have authority to substitute Quality Loan—making the subsequent foreclosure recordings by Quality Loan invalid as well.

Lastly, Quality Loan argues that special damages are required to support a claim for slander of title and suggest that because the only thing the Junior Lienholders have alleged as damages is the cloud on title that has inhibited the marketability of the property. However, "the weight of

authority makes it clear that the owner can recover damages without proving that he or she lost a prospective lender, purchaser, or lessee as a result of the disparagement." 4 Miller & Starr, *Cal. Real Est*. (4th ed. 2017) § 10:48.

> These damages are generally limited to (1) the expense of legal proceedings, including attorney's fees, necessary to remove the doubt of the title cast on the disparagement,[ftnt] and (2) the financial loss resulting from the impairment of marketability of the property. The loss of marketability is measured by the diminution of the value of the property caused by the slanderous publication.[ftnt]

*Id*. (citations omitted). Therefore, the Junior Lienholders have sufficiently alleged the element of damages.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 4

17-CIV-05079 JOHN HERNANDEZ VS. CASTLE AURA ENTERPRISE INC., ET AL.

| | |
|---|---|
| JOHN HERNANDEZ | WILLIAM L. MARDER |
| CASTLE AURA ENTERPRISE, INC. | ELISE O'BRIEN |

MOTION FOR RELIEF

**TENTATIVE RULING:**

The motion for relief from default is granted. Defendant shall file its responsive pleading no later than May 18, 2018.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 5

17-CIV-05120 DARYL JOSEPHSON, ET AL. VS. JP MORGAN CHASE BANK, N.A., ET AL.

DARYL JOSEPHSON GLENN L. MOSS
JP MORGAN CHASE BANK, N.A.

MOTION TO EXPUNGE LIS PENDENS
**TENTATIVE RULING:**

On the Motion of Defendants U.S. Bank and Select Portfolio Servicing, Inc. ("Defendants") to Expunge Notice of Pendency of Action, PARTIES ARE TO APPEAR.

The court continued the motion for:

(1) the parties to provide supplemental briefing addressing the effect of the bankruptcy court proceeding on this action, and (2) for Defendants to serve the bankruptcy trustee with notice of the new hearing date and this motion since it is unclear if the bankruptcy trustee has an interest in this action.

Specifically, Plaintiffs contend that there is an automatic stay as a result of Elizabeth's bankruptcy filing, while Defendants contend that the bankruptcy filing is wholly irrelevant. Neither party cites any authority in support of their argument though.

Although Plaintiffs contend that there is a stay in place, Plaintiffs have not requested judicial notice of any bankruptcy order showing a stay is in effect nor have they filed a Notice of Bankruptcy Stay in this action. In Plaintiffs' supplemental briefing, Plaintiffs are to address the following:

(1) What authority supports this action, which was filed by Plaintiffs, is stayed as a result of Elizabeth's bankruptcy filing;
(2) What type of bankruptcy Elizabeth filed for, e.g. Chapter 7, 11 or 13, and whether or not Elizabeth's claims in this action belong to the bankruptcy trustee;
(3) What is the current status of Elizabeth's bankruptcy case;
(4) What impact, if any, does Elizabeth's bankruptcy have on Daryl's claims in this action, particularly in light of Plaintiffs' claim that they are currently making mortgage payments ordered by the bankruptcy court.

As for Defendants' supplemental briefing, Defendants are to explain why they contend that Elizabeth's bankruptcy case is irrelevant, why a stay does not apply, and to provide any authority they contend supports their argument.

Supplemental briefs are to be filed and served by May 7, 2018.

(See court's April 9, 2018 order.)

While Defendants filed a supplemental brief, Plaintiffs failed to file a supplemental brief addressing the issues raised by the court. Therefore, PLAINTIFF ELIZABETH JOSEPHSON AND PLAINTIFFS' COUNSEL ARE TO APPEAR AT THE HEARING and be prepared to address the issues raised in the court's April 9, 2018 order.

Further, the court is in receipt of Defendants' supplemental brief arguing that a bankruptcy stay under 11 U.S.C. section 362 does not apply to an action brought by a debtor, in contrast to an action against the debtor. Even if a stay does not apply though, the court also ordered Defendants to serve trustee with notice of the hearing and this motion since it was unclear if the bankruptcy trustee has an interest in this action, which it does not appear Defendants have done. (See court's April 9, 2018 order.) Since it is unclear what type of bankruptcy Elizabeth filed, it is further unclear whether the bankruptcy trustee has an interest in this action and should be provided notice of this motion. (See e.g. *Bostanian v. Liberty Savings Bank* (1997) 52 Cal.App.4$^{th}$ 1075, 1080-1081 [a Chapter 7 debtor may not prosecute his or her own cause of action belonging to the bankruptcy estate unless the claim has been abandoned by the trustee.].) Accordingly, DEFENDANTS' COUNSEL IS TO APPEAR to address why the bankruptcy trustee was not served as ordered by the court, and whether the bankruptcy trustee should be served with this motion.

9:00

LINE: 6

17-CIV-05120 DARYL JOSEPHSON, ET AL. VS. JP MORGAN CHASE BANK, N.A., ET AL.

DARYL JOSEPHSON GLENN L. MOSS
JP MORGAN CHASE BANK, N.A.

HEARING ON DEMURRER
**TENTATIVE RULING:**

On the Demurrer of Defendants U.S. Bank and Select Portfolio Servicing, Inc. ("Defendants") to the Complaint of Plaintiffs Daryl Josephson ("Daryl") and Elizabeth Josephson ("Elizabeth") (also collectively ("Plaintiffs")), PARTIES ARE TO APPEAR.

The court continued the demurrer for:

(1) the parties to provide supplemental briefing addressing the effect of the bankruptcy court proceeding on this action, and (2) for Defendants to serve the bankruptcy trustee with notice of the new hearing date and the demurrer since it is unclear if the bankruptcy trustee has an interest in this action.

Specifically, Plaintiffs contend that there is an automatic stay as a result of Elizabeth's bankruptcy filing, while Defendants contend that the bankruptcy filing is wholly irrelevant. Neither party cites any authority in support of their argument though.

Although Plaintiffs contend that there is a stay in place, Plaintiffs have not requested judicial notice of any bankruptcy order showing a stay is in effect nor have they filed a Notice of Bankruptcy Stay in this action. In Plaintiffs' supplemental briefing, Plaintiffs are to address the following:

(1) What authority supports this action, which was filed by Plaintiffs, is stayed as a result of Elizabeth's bankruptcy filing;
(2) What type of bankruptcy Elizabeth filed for, e.g. Chapter 7, 11 or 13, and whether or not Elizabeth's claims in this action belong to the bankruptcy trustee;
(3) What is the current status of Elizabeth's bankruptcy case;
(4) What impact, if any, does Elizabeth's bankruptcy have on Daryl's claims in this action, particularly in light of Plaintiffs' claim that they are currently making mortgage payments ordered by the bankruptcy court.

As for Defendants' supplemental briefing, Defendants are to explain why they contend that Elizabeth's bankruptcy case is irrelevant, why a stay does not apply, and to provide any authority they contend supports their argument.

Supplemental briefs are to be filed and served by May 7, 2018.

(See court's April 9, 2018 orders.)

While Defendants filed a supplemental brief, Plaintiffs failed to file a supplemental brief addressing the issues raised by the court. Therefore, PLAINTIFF ELIZABETH JOSEPHSON AND PLAINTIFFS' COUNSEL ARE TO APPEAR AT THE HEARING and be prepared to address the issues raised in the court's April 9, 2018 order.

Further, the court is in receipt of Defendants' supplemental brief arguing that a bankruptcy stay under 11 U.S.C. section 362 does not apply to an action brought by a debtor, in contrast to an action against the debtor. Even if a stay does not apply though, the court also ordered Defendants to serve the bankruptcy trustee with notice of the hearing and the demurrer since it was unclear if the bankruptcy trustee has an interest in this action, which it does not appear Defendants have done. (See court's April 9, 2018 order.) Since it is unclear what type of bankruptcy Elizabeth filed, it is further unclear whether the bankruptcy trustee has an interest in this action and should be provided notice of this demurrer. (See e.g. *Bostanian v. Liberty Savings Bank* (1997) 52 Cal.App.4$^{th}$ 1075, 1080-1081 [a Chapter 7 debtor may not prosecute his or her own cause of action belonging to the bankruptcy estate unless the claim has been abandoned by the trustee.].) Accordingly, DEFENDANTS' COUNSEL IS TO APPEAR to address why the bankruptcy trustee was not served as ordered by the court, and whether the bankruptcy trustee should be served with the demurrer.

9:00

LINE: 7

17-CIV-05235 CARMEN L. RIEBEL VS. KRISTIE DUNBAR, ET AL.

| | |
|---|---|
| CARMEN L. RIEBEL | WILLIAM M. AUDET |
| KRISTIE DUNBAR | KURT MILLER |

APPLICATION TO APPEAR AS COUNSEL PRO HAC VICE

**TENTATIVE RULING:**

The application of John Cabaniss to appear pro hac vice is granted.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Susan L. Greenberg, Department 3.

9:00

LINE: 8

18-UDL-00334 BRECKENRIDGE PROPERTY FUND 2016, LLC VS. ROSARIO CARRERA, ET AL.

| | |
|---|---|
| BRECKENRIDGE PROPERTY FUND 2016, LLC | SAM CHANDRA |
| ROSARIO CARRERA | TIMOTHY I. MCCANDLESS |

MOTION TO STRIKE
**TENTATIVE RULING:**

The motion to strike is denied without prejudice for failure to provide proof that it was served on plaintiff in compliance with CCP §1005.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 9

18-UDU-00136 KATHERINE WONG, ET AL. VS. SCHEHEREZADE SHARABIANLOU, ET AL.

| | |
|---|---|
| KATHERINE WONG | MICHAEL J KALLIS |
| SCHEHEREZADE SHARABIANLOU | WILLIAM E. GILG |

HEARING ON DEMURRER
**TENTATIVE RULING:**

Defendants Scheherezade Sharabianlou and Farrokh Sharabianlou, both individually and dba PIP Printing, and PIP Printing (collectively "Defendants") Demurrer to Plaintiffs Katherine Wong's and Anna Kuk Sau Hsu's ("Plaintiffs") First Amended Complaint (FAC) is OVERRULED. The demurring parties are all properly named as defendants. Code Civ. Proc. Sect. 379. The allegation that the individual defendants are/were doing business as PIP Printing is a sufficient allegation to justify naming them as defendants. *Id*; *Pinkerton's, Inc. v. Sup. Ct.* (1996) 49 Cal.App.4th 1342, 1348.

Plaintiffs' Request for Judicial Notice of the recorded Fictitious Business Name Statement is GRANTED. Evid. Code Sect. 452(c). The "objection" thereto is OVERRULED. Defendants' Request for Judicial Notice of the Grant Deed recorded 4-16-15 is GRANTED. Evid. Code Sect. 452(c).

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 10

CIV515647 WELLS FARGO BANK, N.A. VS. RANON LUY

| | |
|---|---|
| WELLS FARGO BANK, N.A. | MATTHEW W. QUALL |
| RANON LUY | JAMES HAAN |

MOTION FOR ATTORNEY FEES

**TENTATIVE RULING:**

Defendant RANON LUY's Motion for Attorney's Fees is DENIED. There has been no determination by this Court that Defendant is the "prevailing party" for purposes of recovering attorney's fees. This Court issued a tentative ruling on October 30, 2017, dropping Defendant's Motion to Dismiss off calendar in light of the filing and entry of Plaintiff's Request for Dismissal on October 18, 2017. Defendant requested a hearing, and argued before this Court as to why she should be deemed the prevailing party. The Court declined to grant her request, and adopted the tentative ruling.

Pursuant to Code Civ. Proc. § 581(b)(1), Plaintiff had the right to voluntarily dismiss its Complaint "at any time before the actual commencement of trial". At the time Plaintiff's Request for Dismissal was filed and entered, no Court ruling or tentative ruling had been issued in Defendant's favor, and it was not "inevitable" that Defendant would have prevailed on her Motion to Dismiss. Accordingly, the instant motion is denied.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 11

CIV536798 MONICA ZENO VS. AMGEN INCORPORATED, ET AL.

MONICA ZENO LAUREL MOUSSEAU
GORDON SUN

MOTION TO STRIKE AND TAX COSTS
**TENTATIVE RULING:**

The motion is denied in its entirety.

Based on the record regarding Defendants' motion for summary judgment, the Court concludes that Plaintiff's claims lacked all merit from the beginning. Plaintiff filed this action in January 2016. The initial trial date was in June 2017. By stipulation, trial was continued to November 2017, and then again to April 30, 2018.

Defendants filed their motion for summary judgment on August 1, 2017, for hearing on October 18, 2017. The parties stipulated to continue the hearing to December 15, 2017, and again to January 22, 2108. (The court continued the hearing once more to February 22, 2018.) From the time Plaintiff filed this action until the date she filed her Opposition to Motion for Summary Judgment, she had ample time to conduct discovery. She failed to obtain any evidence to support her claims, or even to raise a triable issue of fact in opposition to summary judgment.

Based on the utter lack of evidence in support of Plaintiff's claims, the Court concludes that Plaintiff's action was meritless, for purposes of awarding costs under Government Code 12965, subd. (b). Plaintiff argues that a difference exists between making a weak argument with little chance of success and making a frivolous argument with no chance of success. Here, the evidence showed that Plaintiff's claims had no chance of success.

The challenged items (e-discovery, witness subpoenas, and service fees) were reasonably incurred and are recoverable.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendants 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.

POSTED: 3:00 PM