These are the tentative rulings for civil law and motion matters set for Thursday, December 1, 2011, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, November 30, 2011. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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1. M-CV-0049400 Asset Acceptance LLC vs. Sheehan, Laura Dinapoli

Plaintiff's unopposed motion for an order that the requests for admission served on defendant be deemed admitted is granted. The declaration submitted in support of the request for attorneys fees is wholly conclusory and insufficient to support a finding of reasonableness and necessity of the fees requested. The request for monetary sanctions is therefore denied.

2. M-CV-0050578 American Express Bank, FSB vs. Trobaugh, Jason D.

Plaintiff's unopposed motion for an order that the requests for admission served on defendant be deemed admitted is granted. Sanctions are awarded in the amount of $490.00, payable within ten days.

3. M-CV-0050840 Capital One Bank USA, N.A. vs. Robinson, Thomas L.

Appearance required on plaintiff's Motion for Summary Judgment.

The unopposed motion is granted. Undisputed Material Facts Nos. 1-11, inclusive, and the evidence submitted in support thereof, demonstrate plaintiff's entitlement to judgment as a matter of law.

4. M-CV-0051754 Baughman, Clinton, et al vs. Smith, Glen

The unopposed motion by Glen Smith dba MEM Construction to quash service of the summons is granted.

5. M-CV-0052500 HSBC Bank USA, N.A. vs. Ballard, Denise

The unopposed motion by the plaintiffs to strike portions of the defendant's answer is granted.

6. M-CV-0052558 U.S. Bank, NA vs. Gibson, Mark

The demurrer was dropped.

7. S-CV-0023834 Gonzales, Paula vs. Sacramento Infiniti Inc.

Plaintiff's motion for summary judgment is denied for failure to file the separate statement required by CCP 437c(b)(1).

Plaintiff's motion to reinstate the complaint is denied without prejudice. The court's November 30, 2010 dismissal order was "without prejudice for reopening the case for entry of judgment on the settlement or enforcement of the settlement pursuant to CCP 664.6" [please see 11.30.10 OSC minute order]. However, plaintiff has not moved to "reopen the case for entry of judgment on the settlement" or for "enforcement of the settlement pursuant to CCP 664.6." She has only asked that the complaint be "reinstated" without making the showing required by CCP 473 for that relief.

8. S-CV-0026928 Dwelle, David W. vs. Frederick, Mark R., et al

Plaintiff's motion for order quashing trial subpoenas, and for a protective order is denied as moot. Defendant states that he has cancelled all trial subpoenas that were the subject of plaintiff's motion. Plaintiff's request for sanctions in connection with the instant motion is denied, as the court finds that the motion was not opposed in bad faith or without substantial justification. Plaintiff's request for an order setting a deadline for previously awarded sanctions is denied. The only statutory support stated by plaintiff for such an order is Code of Civil Procedure section 1987.2. However, section 1987.2 does not address the issue of enforcing payment of previously awarded sanctions.

Defendant's motion for leave to file first amended cross-complaint is granted. Defendant avers that he has obtained new information through documents produced through discovery approximately one month prior to the scheduled trial date, giving rise to additional legal theories. Leave to amend is liberally granted in such cases. *Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 596. Plaintiff's argument that he will be prejudiced because of time and money spent on abandoned legal theories is without merit. Nothing would prevent defendant from abandoning any of the causes of action asserted by way of cross-complaint at any time. The additional facts identified by defendant relate to the same general set of facts asserted in the initial cross-complaint. As no trial date is currently set, allowing the amended pleading to be filed will not delay trial in this action. Plaintiff's objections to the declaration of Robert F. Sinclair in support of the motion are sustained as to the identified sentences in paragraphs 2, 3, 4, 8, 17, and lines 8-9 of paragraph 18. Plaintiff's objections are otherwise overruled. Plaintiff's objections to the declarations of Robert F. Sinclair and John M. Sinclair in support of the reply brief are overruled.

9. S-CV-0027046 Stamper, Patricia, et al vs. Bostic, Jonathan, et al

Appearance required on the motion by Roxanne M. Mosley for leave to withdraw as defendant's counsel.

The unopposed motion is granted, effective upon service of the order upon defendant and plaintiff's counsel.

10. S-CV-0027214 Bank of America, N.A. vs. Highlands Hotel Company, LLC

The demurrer to the second amended complaint in intervention was dropped.

11. S-CV-0028202 Catron, Linda vs. Dick Read Realty, Inc., et al

On defendant's motion to dismiss heard October 27, 2011 the Court issued, and later adopted, a tentative ruling which stated, in applicable part:

> ***On September 6, 2011, plaintiff untimely filed her First Amended Complaint. She did so without leave of court, nor with any explanation as to why the complaint was not amended timely. For reasons that are unclear, the clerk interpreted the amended pleading as omitting Dick Read, individually, and Placer Foreclosure, Inc. and entered dismissal of those parties. This appears to be an error, and the dismissal as to those parties is vacated. Plaintiff did not serve her amended pleading; the complaint was served by her new counsel on October 14, 2011.***
>
> ***The court construes the tardily-filed amended pleading as a motion to amend the complaint. The matter is set for further hearing on December 1, 2011 at 8:30 a.m. in Department 40, the issue being whether the court will allow the amended pleading to stand, or will strike it to the extent of the claim(s) covered by the prior demurrer. Plaintiff will timely notice a motion to amend for that date, time and department, and pay the hearing fee. Her points and authorities and declaration(s) must discuss the issue of why the complaint was not amended timely. Pending said hearing, the filing of responsive pleadings to the first amended complaint is stayed.***

Plaintiff did not notice the hearing, nor otherwise comply with the court's instructions. The motion to amend is therefore denied, and the fifth and sixth causes of action of the first amended complaint are stricken. The stay is lifted; responsive pleadings shall be filed and served within twenty days.

12. S-CV-0028272 Wells Fargo Bank, et al vs. Frayji Design Group

The motion for attorneys' fees was dropped.

13. S-CV-0028300 Herold, Eldridge vs. Salix Pharmaceuticals, Inc., et al

The motion for a protective order was dropped.

14. S-CV-0028457 Matheny Sears Linkert & Jaime, LLP v. Moore, Wm. Andrew

The hearing was continued from November 29, 2011 for additional oral argument on the motion for summary adjudication.

15. S-CV-0028674 Sweeney, Denise, et al vs. American Brokers Conduit, et al

The demurrer to the first amended complaint is dropped. No moving papers were filed.

16. S-CV-0028696 VFC Partners 6 LLC vs. DiMeo, Michael C., et al

The demurrer and motion to quash are dropped. Plaintiff has dismissed its complaint.

17. S-CV-0028706 Smith, Shaun Tyler vs. Sloper-Ivey, Sharon Gail, et al.

The demurrer to the first amended complaint was dropped.

18. S-CV-0028724 Lowery, Jackie et al. vs. Citimortgage, Inc. et al

Defendant Quality Loan Service Corporation's ("Quality's") unopposed demurrer to the complaint is sustained without leave to amend. Defendant's request for judicial notice is granted as to Exhibits A through F.

Plaintiffs' first and second causes of action, to set aside trustee sale and cancel trustee's deed, do not state valid claims against Quality, as plaintiffs have not alleged tender of payment of the indebtedness owing. "A valid and viable tender of payment of the indebtedness owing is essential to an action to cancel a voidable sale under a deed of trust." *Karlsen v. Amer. Sav. & Loan Ass'n* (1971) 15 Cal.App.3d 112, 117; *see also Ferguson v. Avelo Mortgage, LLC* (2011) 195 Cal.App.4th 1618, 1624. Plaintiffs allege only that "[i]n the event it is determined that plaintiffs … are bound by their actions in their individual capacities with respect to the note and deed of trust, plaintiffs offer to tender to defendant CitiMortgage, Inc. all amounts found to be due and owing so that the claimed default may be cured." (Cmplt., ¶ 14). This allegation is not of a valid and viable tender of payment of the indebtedness owing.

For the same reason, plaintiffs' third cause of action to quiet title fails to state a valid claim against Quality. Plaintiffs must tender full payment of their debt to bring a claim for quiet title. *Mix v. Sodd* (1981) 126 Cal.App.3d 386, 390. Finally, plaintiffs' fourth cause of action for an accounting fails to state a valid claim against Quality. Plaintiffs have not adequately alleged a relationship between themselves and Quality that requires an accounting, or that some balance is due to plaintiffs that can only be ascertained by an accounting. *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179.

Plaintiffs bear the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer shall be sustained without leave to amend absent a showing by plaintiffs that a reasonable possibility exists that the defects can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The complaint does not suggest on its face that it is somehow capable of amendment and as plaintiffs have not opposed the demurrer, they have

failed to make any showing that complaint can be amended to change its legal effect. Consequently, the demurrer is sustained without leave to amend.

19. S-CV-0028754 Ruiz, Frank, et al vs. County of Placer, et al

The unopposed motion by defendant Psomas for leave to file a cross complaint is granted. The clerk is directed to file the previously-lodged pleading. Cross-defendants will file and serve responsive pleadings on or before January 5, 2012.

20. S-CV-0028942 Homa, Eitan, et al vs. NHJV-Tahoe-Phase I, G.P.

The motion to compel is dropped. No moving papers were filed.

21. S-CV-0028963 Umfolozi Properties, LLC vs. Lohman, William Martin, et al

The motion of plaintiff for a preliminary injunction is denied. The motion was not timely served and defendants objected, in part, on that ground. CCP 1005(b), 12c. Further, assuming plaintiff has title and the right to possession, the legal remedy of unlawful detainer is presumed adequate. *Flying Dutchman Park, Inc. v. City and County of San Francisco* (2001) 93 Cal.App.4th 1129, 1138. Also, although plaintiff claims the property is derelict in certain respects (Lisa Nixon declaration at paragraph 10), plaintiff does not aver that defendants created these problems or that the problems were not present when defendants took possession. Defendants also dispute the damage allegations. Finally, an injunction cannot be granted to compel the payment of money. *See Fretz v. Burke* (1967) 247 Cal.App.2d 741, 745.

22. S-CV-0029093 Hammer Lane Management, LLC, et al vs. HLMS, LLC, et al

Defendants' special motion to strike (anti-SLAPP) is pending before the court. The motion papers include: the motion with a notice of joinder; three separate oppositions by plaintiff; two separate replies and a notice of joinder in reply; more than 8 full file volumes of evidence, including more than 175 exhibits; at least 11 declarations; 298 written objections by plaintiff with responses by defendants; 186 written objections by defendants with responses by plaintiff; and at least 6 post-reply additional filings.

The court has been unable to complete its review of the filed documents for the current hearing date. The matter is continued, on the court's motion, to December 15, 2011, 8:30 a.m., in Department 42.

23. S-CV-0030058 Davidson, Nicholas P. vs. California Housing Finance Agency

The motion to consolidate actions is continued to December 22, 2011 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

24. S-CV-0030094 Barney, Glenn J. vs. JP Morgan Chase Bank, N.A., et al

The order to show cause regarding preliminary injunction is denied. Plaintiff has not shown a reasonable likelihood of prevailing on the merits. *San Francisco Newspaper Printing*

Co., Inc. v. Superior Court (1985) 170 Cal.App.3d 438, 442. Plaintiff argues that defendants did not have the authority to initiate foreclosure proceedings in May 2008, but based on documents of which the court may take judicial notice, this argument lacks merit. While plaintiff asserts that the notice of default was issued by Chase Home Finance, LLC as beneficiary, when Chase Home Finance, LLC had no authority to act as the beneficiary, page two of the notice of default clearly identifies JPMorgan Chase Bank, N.A. as the beneficiary of the loan. JPMorgan Chase Bank, N.A. had the authority to initiate foreclosure proceedings, or to authorize an agent to initiate foreclosure proceedings on its behalf. Civ. Code § 2924(a)(1).

Plaintiff's only other argument is that defendant's loan modification process was fraudulent, and that plaintiff can assert a violation of Civil Code section 2923.6. However, plaintiff fails to set forth any evidentiary facts to support this contention, and therefore fails to show a reasonable likelihood of prevailing on the merits.

The court declines to consider several federal district court cases cited by the parties, as trial court decisions, either of the state or federal courts, are not precedential to this court. Defendants' request for judicial notice is granted as to Exhibits A through E. The temporary restraining order issued on October 27, 2011 is dissolved forthwith.

Commissioner Michael A. Jacques discloses that, for several months ending in mid-2010, Steve Gimblin, Esq., one of the attorneys for plaintiffs, served as an intern at the Yuba County Superior Court, and that Commissioner Jacques was his supervisor. This disclosure does not require self-recusal. Code Civ. Proc. § 170.1.

25. S-CV-0030147 U.S. Bank, N.A. v. Pacific Park Apartments, LLC

Plaintiff's order to show cause re confirmation of receiver is denied for its failure to effectuate timely service on defendant and to file the receiver's oath and bond. The temporary restraining orders issued on November 8, 2011, are dissolved forthwith.

26. S-PR-0005218 Ebert, Ronald L. and Judith A. - In Re the Trust of

The unopposed motion of Ronald L. Ebert to reduce the parties' settlement to judgment (CCP 664.6) and for fees and costs is granted. Counsel for moving party is directed to prepare the proposed judgment and submit it to opposing counsel for approval as to form before submitting it to the court for signature. Based upon counsel's showing, the court awards fees and costs to attorney Timothy Weir in the amount of $1,765.00. The fees and costs shall be paid to attorney Weir by respondent Deanna L. Lyman, in her capacity as Trustee of the Ronald L. Ebert and Judith A. Ebert Trust dated August 28, 2000, from said Trust within 10 days from the date of this order.

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