

**DEPARTMENT EIGHT
JUDGE WENDY G. GETTY
707-207-7308
TENTATIVE RULINGS SCHEDULED FOR
FRIDAY, MARCH 23, 2018**

**STOOPS VS. CARLIN, ET AL.
Case No. FCS047505**

Motion to Continue Trial

TENTATIVE RULING:

The complaint in this case was filed on August 10, 2016. On October 25, 2017, this case was set for trial to commence May 1, 2018. On December 19, 2017, Plaintiff amended the complaint to substitute Maryland State Bar as a Doe Defendant. Maryland State Bar answered on February 14, 2018. Defendant Paul Carlin has not opposed or objected to the tardy amendment to add a new Defendant.

By adding Maryland State Bar as a defendant after trial was set, Plaintiff has caused this case to no longer be at issue. The trial is vacated and a Case Management Conference 2 is scheduled for May 18, 2018 at 9:30 a.m.

**FANAIAN v. FEDERAL NATIONAL MORTGAGE ASSOCIATION, et al.
Case No. FCS048248**

(1) Demurrer by Defendants SETERUS, INC. and FEDERAL NATIONAL MORTGAGE ASSOCIATION to Plaintiff's 1st Amended Complaint; and
(2) Motion by Defendants SETERUS, INC. and FEDERAL NATIONAL MORTGAGE ASSOCIATION to Strike Portions of Plaintiff's 1st Amended Complaint

TENTATIVE RULING

The unopposed demurrer by SETERUS, INC. ("SETERUS") and FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FANNIE MAE") is sustained as to each and every cause of action.

The court takes judicial notice that the trustee of the deed of trust at issue recorded on July 27, 2017 a notice of rescission of the notice of default and election to sell under deed of trust. [Defendants' Request for Judicial Notice,

Exhibit 7]. (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

Insofar as all of Plaintiff's causes of action are based upon alleged violations in initiating the foreclosure process prior to July 2017, the revocation of the documents recorded to initiate the foreclosure process renders the entirety of Plaintiff's 1st amended complaint moot.

Plaintiff does not identify a manner in which the complaint could be amended to cure the alleged defects.

The demurrer by SETERUS and FANNIE MAE is therefore sustained to the entirety of Plaintiff's 1st amended complaint, without leave to amend.

Although SETERUS and FANNIE MAE also raised more specific arguments about defects in the pleading of those causes of action, this ruling renders further discussion of those defects moot.

The sustaining of the demurrer as to the entirety of Plaintiff's 1st amended complaint also renders moot the motion to strike filed by SETERUS and FANNIE MAE.

FANAIAI VS. FEDERAL NATIONAL MORTGAGE, ET AL.
Case No. FCS048248

Citimortgage Inc.'s Motion to Deem Matters Admitted and Sanctions

TENTATIVE RULING

Defendant CITIMORTGAGE INC.'s motion to deem Requests for Admission (Set Two) to be admitted and request for sanctions is granted. Plaintiff shall be deemed to have admitted all propounded Requests for Admission and the authenticity of documents identified therein.

Plaintiff has been on actual and constructive notice of the pending discovery requests. Discovery was pending when Plaintiff was represented by prior counsel. The existence of pending discovery has been brought to Plaintiff's attention at Case Management Conferences and by email. Plaintiff's representation that he did not receive the duplicate discovery via the U.S. mail lacks credibility given that this was his same explanation for failure to respond to Defendant Seterus's discovery which was delivered by courier.

Plaintiff is awarded reasonable attorneys fees and costs of \$405 as sanctions.

Prevailing party to prepare the order. The order may be directly submitted to the court.

RUBANG VS. BROOKS, ET AL.
Case No. FCS049561

Motion To Set Aside Default

TENTATIVE RULING

The motion of Defendant Eric R. Brooks to set aside the default is granted.

Plaintiff should not have been issued a summons until he had paid his fees or satisfied his fee payment plan. (CCP, § 412.10.) However, it is unclear from the minute order whether the judicial officer who established a payment plan intended for the clerk to issue a summons based upon the ordered payment plan or upon satisfaction of the payment plan.

Per defense counsel, the court's online docket reflected a status of "off-calendar" which would seem consistent with the delay in issuance of a summons pending final payment of filing fees.

Plaintiff paid his final installment after the final due date. However, in the interim the court had reassigned Plaintiff's many pending cases to one judicial officer and rescheduled numerous hearing dates, including an Order to Show Cause related to Plaintiff's failure to pay filing fees. Prior to the hearing, Plaintiff paid his third fee installment in this case. On the same date, he submitted default paperwork to the clerk.

The failure to file a responsive pleading under the circumstances is excused due to mistake, inadvertence or neglect.

Defendants shall have 20 days to file a responsive pleading.