'O'

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

| Case No. | 2:16-cv-04870-CAS(JCx) | | | Date | May 8, 2017 | | |
|-----------------------------------|------------------------|--------------------------------------|-----------------------------------|------|-------------|----------|--|
| Title | KEVIN A. FU | ULTON v. BANK OF AMERICA N.A. ET AL. | | | | | |
| | | | | | | | |
| | | | | | | | |
| Present: Th | e Honorable | CHRISTINA A. SNYDER | | | | | |
| Catherine Jeang | | Not Present | | | N/A | | |
| Deputy Clerk | | Cou | Court Reporter / Recorder | | r | Tape No. | |
| Attorneys Present for Plaintiffs: | | Plaintiffs: | Attorneys Present for Defendants: | | | | |
| Not Present | | | Not Present | | | | |

Proceedings: (IN CHAMBERS) - DEFENDANT BANK OF AMERICA, N.A.'S MOTION TO DISMISS (Dkt. 27, filed February 14, 2017)

The Court finds this motion appropriate for decision without oral argument. <u>See</u> Fed. R. Civ. P. 78; C.D. Cal. Local Rule 7-15. Accordingly, the hearing date of May 15, 2017 is vacated, and the matter is hereby taken under submission.

On July 7, 2016 plaintiff Kevin A. Fulton, proceeding *pro se*, filed the instant action against defendants Bank of America, N.A. ("BANA"), as successor in interest to America's Wholesale Lender, and Does 1–10 inclusive. Dkt. 1 ("Compl."). Plaintiff raises four claims: (1) declaratory relief, seeking a declaration that BANA and its successors and/or assigns do not have any rights or interest in plaintiff's Note or Deed of Trust, or the property which authorized them to enforce the terms of the Note and Deed of Trust; (2) the cancellation of the Deed of Trust, which plaintiff alleges is void for fraud in the execution; (3) failure to comply with plaintiff's notice to rescind in violation of 15 U.S.C. § 1601 et seq.; and (4) quiet title relating to violations of the Truth in Lending Act. Id.¹

On August 11, 2016, plaintiff requested an entry of default against BANA. Dkt. 10. On July 18, 2016, the Clerk entered a default pursuant to Federal Rule of Civil Procedure 55(a). Dkt. 13. On August 25, 2016, plaintiff filed a motion for default judgment against BANA. Dkt. 14.

On December 6, 2016, the Court denied plaintiff's motion for a default judgment because plaintiff "failed to establish the merits of any alleged claim as would be required

¹ The parties are familiar with plaintiff's allegations, which are set forth in greater detail in the Court's prior order dated December 6, 2016. <u>See</u> dkt. 22.

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL 'O'

| Case No. | 2:16-cv-04870-CAS(JCx) | Date | May 8, 2017 | | |
|----------|--|------|-------------|--|--|
| Title | KEVIN A. FULTON v. BANK OF AMERICA N.A. ET AL. | | | | |

for entry of default judgment against BANA." Dkt. 22 at 9. The Court directed BANA to file a motion to set aside the default, along with a proposed answer, within 30 days. Id.

On February 6, 2017, the Court granted BANA's motion to set aside the Clerk's default. Dkt. 26.

On February 14, 2017, BANA filed the instant motion to dismiss plaintiff's complaint. Dkt. 27. The Court twice continued the deadline for plaintiff's opposition and the hearing on BANA's motion to ensure that plaintiff was aware that he was required to file an opposition. <u>See</u> dkts. 30, 31. However, plaintiff has not filed an opposition to BANA's motion to dismiss.

"The failure to file any required document, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion[.]" C.D. Cal. L.R. 7-12. In addition, in its order denying of plaintiff's motion for a default judgment, the Court has already concluded that plaintiff fails to state a claim against BANA on which relief may be granted. See dkt. 22 at 5–7.

Accordingly, the Court **GRANTS without prejudice** BANA's motion to dismiss plaintiff's complaint.

Plaintiff shall file an amended complaint addressing the deficiencies identified in the Court's December 6, 2016 order **within fourteen (14) days** of the date of this order. Failure to do so shall result in dismissal with prejudice.

IT IS SO ORDERED.

| | 00 | _ : | 00 |
|----------------------|----|-----|----|
| Initials of Preparer | | CMJ | |