

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ESTELL DAVIS,

Plaintiff,

No. C 10-0489 PJH

v.

ORDERWELLS FARGO BANK, NATIONAL
ASSOCIATION, et al.,Defendants.

Plaintiff Estell Davis filed this action on February 3, 2010. Following considerable motion practice, the court held the initial case management conference, at which the dispositive motions hearing date was set for August 30, 2011, the pretrial conference was set for November 10, 2011, and the trial date was set for December 5, 2011. Further motion practice ensued, as well as mediation.

On July 15, 2011, the court signed a stipulation and proposed order setting a dispositive motions hearing date of August 24, 2011. On July 20, 2011, defendants filed a motion for summary judgment, set for hearing on August 24, 2011. The parties agreed that the opposition would be due on August 3, 2011, and that the reply would be due on August 24, 2011. On July 27, 2011, the parties submitted a stipulation in which they agreed that the hearing date for the motion for summary judgment would be September 7, 2011. On July 31, 2011, the parties submitted yet another stipulation, in which they agreed that the plaintiff's opposition brief would be due on August 17, 2011, and that the defendants' reply brief would be due on August 24, 2011.

On August 16, 2011, plaintiff filed an opposition to defendants' motion, and a "counter-motion" for summary judgment, which she claims she is "entitled" to bring, in

1 addition to filing her opposition to defendants' motion, based on a statement in a practice
2 treatise. See Schwarzer, Tashima and Wagstaffe, Federal Civil Procedure Before Trial
3 (2011 ed.) § 14:118. On August 24, 2011, defendants filed their reply brief, and also filed a
4 response to plaintiff's "counter-motion," arguing that the motion is untimely and fails to
5 provide defendants with sufficient notice.

6 While it is true that the court frequently rules on cross-motions for summary
7 judgment, where there is a pending deadline for hearing dispositive motions that has been
8 set by the court, such cross-motions are usually filed simultaneously. Where a party files a
9 cross-motion for summary judgment in conjunction with an opposition to a motion filed by
10 the opposing side, the opposing side requires sufficient time to oppose the motion, and,
11 more importantly, the court requires sufficient time to consider both motions (a fact of which
12 the parties seem oblivious).

13 In addition, in this case, the pretrial conference is set for November 10, 2011, which
14 means that the parties are required to meet and confer regarding the preparation of the
15 pretrial statement no later than October 6, 2011, and the pretrial papers are required to be
16 submitted no later than October 10, 2011. Thus, if the court continues the hearing date,
17 which it evidently must do if it is to allow defendants sufficient time to oppose the motion,
18 and is to allow itself sufficient time to read and consider both motions, it will be left with very
19 little time to issue an order on the parties' cross-motions.

20 Also on August 16, 2011, plaintiff filed a motion to "strike" the Declaration of Peter
21 Knapp, filed on July 20, 2011, in support of defendants' motion for summary judgment.
22 Plaintiff also moves to "strike" any evidence that defendants might submit in support of their
23 reply brief (which has not yet been filed as of the date of plaintiff's motion). Defendants
24 filed an opposition to the motion on August 24, 2011, at which time they also filed separate
25 "Objections" to the Declaration of Dr. Wacht in opposition to defendants' motion for
26 summary judgment.

27 Plaintiff's motion to "strike" is DENIED, and defendants' objections are
28 OVERRULED. Under Civil Local Rule 7-3, "[a]ny evidentiary and procedural objections to

1 [a] motion must be contained within the brief or memorandum [in opposition],” and “[a]ny
2 evidentiary and procedural objections to the opposition must be contained within the reply
3 brief or memorandum.” Civ. L.R. 7-3(a), (c).

4 The date for the hearing on the parties’ cross-motions, previously set for September
5 14, 2011, is CONTINUED to September 21, 2011.

6
7 **IT IS SO ORDERED.**

8 Dated: September 1, 2011



9 PHYLLIS J. HAMILTON
10 United States District Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28