



(PS) Becker et al v. Wells Fargo Bank, NA, Inc. et al

2014 | Cited 0 times | E.D. California | March 12, 2014

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNL Y R. BECKER, et al.,

Plaintiffs, v. WELLS FARGO BANK, N.A., INC., et al.,

Defendants.

No. 2:10-cv-2799 TLN KJN PS

ORDER

filed a Motion for Summary Judgment, which is set for hearing before the undersigned on March 27, 2014. (ECF No. 179.) On March 4, 2014, plaintiff Dennly ex parte motion requesting the court to continue the plaintiff leave to file a motion for Rule 37 discovery sanctions against defendant. (ECF No. 180.) On March 6, 2014, defendant filed an opposition to pla Plaintiff filed a reply on March 10, 2014. (ECF No. 182.) For the reasons stated below, the court denies

Plaintiff bases his request for a continuance on Federal Rule of Civil Procedure 56(d). Under this Rule, f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition judgment], the court may: (1) defer considering the motion or deny it; (2) allow time to obtain Civ. P. 56(d). In order to obtain a continuance under Rule 56(d), the nonmovant must show:

(1) the specific facts they hope to elicit from additional discovery; (2) the facts exist; and (3) the facts are essential to counter the summary judgment motion. State of Cal., on Behalf of Control v. Campbell, 138 F.3d 772, 779 (9th Cir. 1998). Mere declarations to a need for additional discovery do not satisfy these requirements. Brae Transp., Inc. v. Coopers & Lybrand, 790 F.2d 1439, 1443 (9th Cir. 1986). Failure by the nonmovant to comply with the requirements of Rule 56(d) constitutes proper grounds for denying See Tatum v. City & Cnty. of San Francisco, 441 F.3d 1090, 1100 (9th Cir. 2006) the district court did not abuse its discretion by denying her request for a continuance. United

States v. Kitsap Physicians Serv., 314 F.3d 995, 1000 (9th Cir. 2002). 1 Plaintiff advances four arguments in support of his request for a continuance: (1) plaintiff was unable to depose Lindsay Vasquez -compliance g the



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ary judgment makes it difficult for

plaintiff to effectively oppose the motion within the deadline for doing so. Plaintiff first argues that he to request two weeks to prepare and serve Rule 37 his inability to depose Lindsay Vasquez alleged

non- s orders. (ECF No. 180 at 3.) Plaintiff states that he needed to depose Vasquez in order to verify his conclusion that she stated that the computer showed that a loan modification would be acceptable to Wachovia after plaintiff stated that he

1 An amendment to Rule 56 in 2010 placed the provisions of the former subdivision (f) under subdivision (d) without any substantial changes to the standard articulated by those provisions. See Fed. R. Civ. P. 56, Notes of Advisory Comm. on 2010 amendments. could make payments of \$1,800 per month for his Shelborne Loan. (Id. at 6.) Plaintiff states that he also (Id. at 5.)

nce pursuant to Rule 56[(d)] must identify by affidavit the specific facts that further discovery would reveal, and explain why those facts would preclude Tatum request for a continuance does not identify the specific facts that these depositions would likely have revealed or explain why those facts would preclude summary judgment with respect to any of his claims. See Tatum, 441 F.3d 1100; State of Cal., 138 F.3d at 779; Gregory v. Nationwide Mut. Ins. Co., 2012 WL 6651342 at *8 (E.D. Cal. Dec. 19, 2012) (unpublished). Accordingly, plaintiff does not make a showing sufficient for a continuance under Rule 56(d) with regard to these two depositions. Furthermore, plaintiff fails to mention what sanctions he would seek to obtain via his planned Rule 37 motion with regard to establishing facts that would support his opposition to any knowledge beyond mere speculation as to what facts, if any, plaintiff would seek to have the court establish via his Rule 37 motion, the court cannot determine whether plaintiff will seek sanctions that will result in the establishment of facts summary judgment motion. See Terrell v. Brewer, 935 F.2d 1015, 1018 (9th Cir. 1991) where it is clear that the evidence sought is almost certainly nonexistent or is the object of pure

Volk v. D.A. Davidson & Co., 816 F.2d 1406, 1416 (9th Cir. 1987) (is on the party seeking to conduct additional discovery to put forth sufficient facts to show that

; VISA International Service Association v. Bankcard Holders of America, 784 F.2d 1472, 1475 (9th Cir.1986); State of Cal., 138 F.3d at 779. Second, plaintiff argues that a continuance is warranted because defendant has not provided plaintiff with documents that provide a complete ownership history of his loans and that he s consideration in ruling on However, this argument is unavailing. As plaintiff has been reminded on a number of occasions, the issue of note ownership For this same reason, this issue is irrelevant P foreclose were dismissed with prejudice by a prior order years ago. (See ECF

Nos. 49, 58.) Plaintiff argues in his motion that he will use the time provided by the requested continuance to file a Rule 37 motion for discovery sanctions requesting a ruling that establishes that



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defendant has not provided documents that provide a complete loan ownership history and that this information is related to his claims for fraud, defamation, negligence, intentional infliction of emotional distress, civil RICO violations, and UCL violations. However, plaintiff in no way articulates how the establishment of this fact is material to these claims or will assist him See State of Cal., 138 F.3d at 779 (holding that, to obtain a continuance under Rule 56(d), a party must show that the facts sought to be established must be essential to counter the summary judgment motion). Accordingly, plaintiff does not make the showing required for a continuance under Rule 56(d) because he in no way shows how the establishment of facts in connection with this issue will raise . See Hancock v. Montgomery Ward Long Term Disability Trust, 787 F.2d 1302, 1306 (9th Cir. 1986) (citing Taylor v. Sentry Life Insurance Co., 729 F.2d 652, 656 (9th Cir. 1984)). An opposing party has the burden under Rule 56(d) to show what facts she hopes to discover to raise an issue of mater Plaintiff next contends that a continuance of the hearing is warranted because he needs

of citations make it impossible for plaintiff to find, review, and understand them and still have Id. well taken. While the court realizes that plaintiff is proceeding pro se, it does not mean that this fact excuses him from meeting all deadlines and other obligations imposed upon him in furthering this litigation. pp to individuals appearing in propria persona Velez v. Awning Windows, Inc., 375 F.3d 35, 40 (1st Cir. 2004) exempt him from meeting court- more, the fact that plaintiff has

present motion, which is 125 pages long when exhibits are taken into account, indicates that plaintiff is capable of prepa so.

Finally, plaintiff for summary judgment because he is still waiting for a certified copy of the deposition testimony of Michael Dolan . However, this contention appears to now be moot.

deposition transcript has been made available to the parties and that he was able to obtain a copy on March 4, 2014. (Decl. of David Newman, ECF No. 181-1 at ¶3.) Furthermore, plaintiff states in his reply that he received a certified copy of the PMK deposition in the mail on March 6, 2014. (ECF No. 182 at 3.) Plaintiff also asserts in his reply, however, that a continuance should still be granted because he is proceeding pro se in this action and the deposition is over one hundred pages in length, which makes it difficult for him develop an opposition that is based, at least in part, on this deposition. (Id.) However, for the reasons

court finds this argument unpersuasive. It would appear that plaintiff now has the ability to review this transcript and still has sufficient time to prepare and file his opposition to motion to dismiss. For the above reasons, plaintiff fails to show that a continuance of the hearing on defe Nevertheless, in light within the shortest period of time permitted under the Local Rules, and the proximity of plaintiff filing of the present motion to his opposition filing deadline of March 13, 2014, the undersigned will grant plaintiff a reprieve in the form of allowing him an additional fourteen days, until March 27, 2014, to file an op Furthermore, on the court s own motion and pursuant to Local



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Rule 230(g), it will take under submission without oral argument. Accordingly, the hearing date of March 27, 2014 is vacated. If the court determines that oral argument is needed, it will be scheduled at a later date. 2

Plaintiff is cautioned that failure to timely file his opposition within the new deadline may result in the imposition of sanctions, including the court - motion for summary judgment. Plaintiff is further instructed that the grant of additional time is and not for him to make any additional filings, including the motion for Rule 37 sanctions plaintiff identifies in his present motion. Accordingly, plaintiff is warned that the filing of any additional motions requesting discovery sanctions against defendant will likely not be well received by the court. Defendant may file a reply, if any, within seven days of plaintiff filing an opposition. For the foregoing reasons, IT IS HEREBY ORDERED THAT: 1. March 27, 2014 hearing on defendant summary judgment and to grant plaintiff leave to file a motion for Rule 37 sanctions (ECF No.

180) is DENIED. 2. motion for summary judgment under submission without oral argument. The hearing date of

March 27, 2014 is VACATED. If the court determines that oral argument is needed, it will be 2 determination of its motion for summary judgment is delayed too long because it would have to prepare for the Final Status Conference currently set for June 10, 2014, and would needlessly expend additional time and money if its motion were to be ultimately granted. If the court were to later decide after all of the briefing has been filed that a hearing on necessary or that it will take an inordinate amount of time for the court to issue a ruling, then the court would be amenable to any future requests to have the final scheduling conference continued e the parties needed to engage in extensive preparations for the final scheduling conference. scheduled at a later date. 3. Plaintiff is granted an additional fourteen days, until March 27, 2014, to file an

Rule of Civil Procedure 56 and Eastern District Local Rule 260(b), including but not limited to the filing of a Separate Statement of Disputed Facts. Plaintiff is strongly cautioned that failure to file an opposition in a timely manner may result in the court treating plain statement of non- Plaintiff is further

motion only, and not for him to make any additional filings, including the motion for Rule 37

sanctions plaintiff identifies in his present motion. No further extensions of time will be granted. IT IS SO ORDERED. Dated: March 12, 2014

