

**1. 1671 CRYSTAL AIR, LLC v. LAKE TAHOE LIAISON, LLC, ET AL., 23CV1306****Default Judgment Prove-Up Hearing**

Default was entered against defendants Lake Tahoe Liaison, LLC and Heather Flynn on September 12, 2023, and against defendant Ryan Flynn on October 2, 2023. Plaintiff seeks default judgment against all three defendants.

The court is required to render default judgment only “for that relief ... as appears by the evidence to be just.” (Code Civ. Proc., § 585, subd. (b).) “The only evidentiary facts that have a place at a prove-up hearing are those concerning the damages alleged in the complaint. [Citations.]” (*Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 899–900.) Where a cause of action is stated in the complaint, plaintiff merely needs to introduce evidence establishing a prima facie case for damages. (*Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361.) “ ‘Prima facie evidence is that which will support a ruling in favor of its proponent if no controverting evidence is presented.’ ” (*People v. Zamora* (2022) 73 Cal.App.5th 1084, 1091.)

The Complaint alleges, “[b]ased on available records, Plaintiff suffered damages due to Defendants’ wrongful conducts in the sum of Twenty-One Thousand Eight Hundred Sixty-Two Dollars and Seventy-Four Cents (\$21,862.74) for untendered payment of rental income which belongs to Plaintiff and for fees and penalties imposed upon Plaintiff due to Defendants’ mismanagement.” (Compl. at 8:22–26.) The declaration of Cheuk Tam in support of the request for default judgment merely restates this amount. (See Tam Decl., ¶ 14.) Nonetheless, the court finds that this is prima facie evidence and plaintiff has satisfied its burden.

Based on the above, the court grants the motion for default judgment.

**TENTATIVE RULING # 1: GOOD CAUSE APPEARING, DEFAULT JUDGMENT WILL BE ENTERED AS REQUESTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO**

APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

## 2. CURTIS JOHNSON, ET AL. v. KENT JOHNSON, SC20180141

(A) Referee's Motion to Distribute Sale Proceeds and for Order Ascertaining State of Title

(B) Plaintiffs' Motion to Recover Costs of Partition

**Referee's Motion to Distribute Sale Proceeds and for Order Ascertaining State of Title**

Before the court is the Referee's motion to distribute sale proceeds and for order ascertaining state of title. No response or opposition was filed.

Civil Procedure section 873.820 provides, "[t]he proceeds of sale for any property sold shall be applied in the following order: [¶] (a) Payment of the expenses of sale. [¶] (b) Payment of the other costs of partition in whole or in part or to secure any cost of partition later allowed. [¶] (c) Payment of any liens on the property in their order of priority except liens which under the terms of sale are to remain on the property. [¶] (d) Distribution of the residue among the parties in proportion to their shares as determined by the court."

Here, the Referee has received \$603,116.11 available for distribution. The court finds that the following allocations shall be made:

Amount of allowed costs set aside per court order:	\$50,000.00
Amount reimbursed to Buyers per court order:	\$85,000.00
Amount due Attorney Escrow Holder:	\$8,866.00
Amount of Referee fees and costs:	\$116,799.64 (as adjusted <sup>1</sup> )

These allocations leave \$342,450.47 to be disbursed equally between the plaintiffs.

Additionally, the court grants the Referee's request for an order declaring the Buyers, Robert Riva and Jeanette Rive, as the sole owners of the subject property.

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<sup>1</sup> The Referee has informed the court that he discovered an errant entry in the client ledger he submitted in support of the motion to distribute. Whereas the Referee originally claimed \$116,889.64, the Referee indicates that this amount should actually be \$116,799.64.

**Plaintiffs' Motion to Recover Costs of Partition**

Before the court is plaintiffs' motion to recover costs of partition. On April 22, 2024, the Referee filed a response. Defendant did not file an opposition.

**1. Request for Judicial Notice**

Pursuant to Evidence Code section 452, subdivisions (d)(1) and (2), the court grants plaintiffs' unopposed request to take judicial notice of the entire case file for the following cases: (1) El Dorado County Superior Court case number SC20180141; (2) El Dorado County Superior Court case number SP20190015; (3) United States District Court for the Eastern District of California case number 2:20-cv0614-JAM-KJN; (4) Court of Appeal of the State of California, in and for the Third Appellate District, case number C090505; (5) Court of Appeal of the State of California, in and for the Third Appellate District, case number C092347; (6) Court of Appeal of the State of California, in and for the Third Appellate District, case numbers C090195 and C090522 (these cases were consolidated); (7) Court of Appeal of the State of California, in and for the Third Appellate District, case number C094348; (8) Supreme Court of California case number S280023; (9) United States District Court for the Eastern district of California case number 2:23-cv-02843-DJC-CKD; and (10) United States Courts of Appeal for the Ninth Circuit case numbers 23-4328 and 24-438.

**2. Discussion**

Code of Civil Procedure section 874.010 provides, "[t]he costs of partition include: [¶] (a) Reasonable attorney's fees incurred or paid by a party for the common benefit. [¶] (b) The fee and expenses of the referee. [¶] (c) The compensation provided by contract for services of a surveyor or other person employed by the referee in the action. [¶] (d) The reasonable costs of a title report procured pursuant to Section 872.220 with interest thereon at the legal rate from the time of payment or, if paid before commencement of the action, from the time of commencement of the action. [¶]

(e) Other disbursements or expenses determined by the court to have been incurred or paid for the common benefit.”

Code of Civil Procedure section 874.040 provides, “[e]xcept as otherwise provided in this article, the court shall apportion the costs of partition among the parties in proportion to their interests or make such other apportionment as may be equitable.” As explained by the court in *Lin v. Jeng* (2012) 203 Cal.App.4th 1008 (*Lin*): “There is no ambiguity in the language of section 874.040. It simply states that the trial court must apportion the costs incurred in a partition action based upon either the parties’ interests in the property, or equitable considerations. The statute’s broad language does not limit the trial court’s equitable distribution ....” (*Id.* at p. 1025.)

In this case, plaintiffs request the court to apportion the costs of partition based on equitable considerations, where defendant launched frivolous challenges and attacks in response to the partition action. Specifically, plaintiffs seek to allocate to defendant \$160,610.30 of the \$190,610.30 in attorney fees and costs that plaintiffs have incurred. (Mtn. at 11:13–14.) As to the Referee’s fees, plaintiffs seek to allocate to defendant \$87,716.84 of the \$116,799.64 incurred.<sup>2</sup> (Mtn. at 11:14–16.) As to the private escrow facilitator’s fees, plaintiffs seek to allocate to defendant \$17,866 of the \$18,866 incurred. (Mtn. at 11:16–19.) Lastly, plaintiffs claim that defendant should be ordered to reimburse plaintiffs one-third of the \$25,854.77 that plaintiffs incurred for the benefit of the Property. (Mtn. at 11:19–21.)

The court agrees with plaintiffs that, due to defendant’s frivolous tactics in this case, the costs of partition should be allocated to defendant as requested. The motion is granted.

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<sup>2</sup> The Referee has informed the court that he discovered an errant entry in the client ledger he submitted in support of the motion to distribute. Whereas the Referee originally claimed \$116,889.64, the Referee indicates that this amount should actually be \$116,799.64.

TENTATIVE RULING # 2: THE REFEREE'S MOTION TO DISTRIBUTE SALE PROCEEDS AND FOR ORDER ASCERTAINING STATE OF TITLE IS GRANTED. PLAINTIFF'S MOTION TO RECOVER COSTS OF PARTITION IS ALSO GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

**3. KUSHNER v. RIGHTPATH SERVICING, LLC, ET AL., 23CV1329****Demurrer**

Before the court is defendant Nationstar Mortgage LLC, doing business as Mr. Cooper's (collectively, "Nationstar") demurrer to plaintiff Robert Kushner's ("plaintiff") Complaint. Defendant U.S. Bank National Association, as trustee for the Certificateholders of Harborview Mortgage Loan Trust 2005-08, Mortgage Loan Pass-Through Certificates Series 2005-08 ("US Bank") joined in the demurrer on April 5, 2024. Plaintiff did not file an opposition.

On April 25, 2024, the court issued a tentative ruling in this matter. Nationstar and US Bank submitted a notice of intent to appear and contest the tentative ruling. On April 26, 2024, the court received oral argument from the parties and continued the matter to May 3, 2024. The following is the court's modified tentative ruling.

**1. Background**

Plaintiff has brought this action seeking to block the foreclosure of his home located in South Lake Tahoe, California. Defendants are Nationstar, Barrett Daffin Frappier Treder & Weiss, LLP, and US Bank.

On June 16, 2005, plaintiff and his wife, Valerie Kushner, as trustees of the Kushner Living Trust Dated December 9, 1991, obtained a loan for \$645,000.00 secured by a deed of trust against real property in South Lake Tahoe. (Request for Judicial Notice ("RJN") Ex. 1.)

On February 15, 2012, an assignment of the deed of trust was recorded to US Bank. (RJN Ex. 2.) On June 29, 2022, a notice of default was recorded. (RJN Ex. 4.) On August 2, 2023, a notice of trustee's sale was recorded. (RJN Ex. 5.)

Plaintiff filed the instant lawsuit on August 8, 2023. The Complaint states causes of action against all defendants for (1) violations of California's Homeowner Bill of Rights; (2) violation of Civil Code section 2923.5; (3) declaratory relief; (4) injunctive relief; and (5) accounting.

## 2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (d), the court grants Nationstar's request for judicial notice of Exhibits 1 through 15. However, the truth of the matters asserted in such documents is not subject to judicial notice. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.)

In general, judicial notice of the existence and facial contents of recorded documents is proper, but courts may not take judicial notice of the truth of facts asserted within judicially noticed documents. (See *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 924, fn. 1 (*Yvanova*); *Julian Volunteer Fire Co. Assn. v. Julian-Cuyamaca Fire Protection Dist.* (2021) 62 Cal.App.5th 583, 600 (*Julian*)). Appellate courts have distinguished between "the truth of specific factual representations within a document" and "facts that can be deduced, and/or clearly derived from, [the] legal effect" of "an official document," such as "the names and dates contained in the document, and the legal consequences of the document." (*Julian, supra*, 62 Cal.App.5th at p. 600; see also *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 265, disapproved on other grounds by *Yvanova, supra*, 62 Cal.4th at p. 939, fn. 13 ["a court may take judicial notice of the fact of a document's recordation, the date the document was recorded and executed, the parties to the transaction reflected in a recorded document, and the document's legally operative language, assuming there is no genuine dispute regarding the document's authenticity"]; *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1374–1375; *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117–1118.)

## 3. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations. [Citations.]" (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc.,

§ 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives “the complaint a reasonable interpretation, reading it as a whole and its parts in their context.” (*Blank, supra*, 39 Cal.3d at p. 318.)

#### **4. Discussion**

##### **4.1. First C/A for Violation of Homeowner Bill of Rights**

“The Homeowner Bill of Rights ([Civ. Code, §§] 2920.5, 2923.4-7, 2924, 2924.9-12, 2924.15, 2924.17-20) ... , effective January 1, 2013, was enacted ‘to ensure that, as part of the nonjudicial foreclosure process, borrowers are considered for, and have meaningful opportunity to obtain, available loss mitigation options, if any, offered by or through the borrower’s mortgage servicer, such as loan modifications or other alternatives to foreclosure.’ ([Civ. Code,] § 2923.4)” (*Valbuena v. Ocwen Loan Servicing, LLC* (2015) 237 Cal.App.4th 1267, 1272.) The statute, however, also emphasizes that “[n]othing in the act that added this section ... shall be interpreted to require a particular

result of that process.” (Civ. Code, § 2923.4.) Plaintiff’s Complaint alleges that Nationstar violated Civil Code sections 2923.5,<sup>3</sup> 2923.6,<sup>4</sup> 2923.7,<sup>5</sup> 2924.9,<sup>6</sup> 2924.11,<sup>7</sup> and 2924.18.<sup>8</sup>

Nationstar contends that plaintiff lacks standing to invoke any statutory rights or protections under the Homeowner Bill of rights (“HBOR”) because such protections apply only to first lien mortgages and deeds of trust against “owner-occupied residential real property.” (Dem. at 9:24–26 (citing Civ. Code, § 2924.15, subd. (a)(1)(A)).) Civil Code section 2924.15, subdivision (a) provides:

Unless otherwise provided, paragraph (5) of subdivision (a) of [Civil Code] Section 2924 and Sections 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.18 shall apply only to a first lien mortgage or deed of trust that meets either of the following conditions:

(1)(A) The first lien mortgage or deed of trust is secured by owner-occupied residential real property containing no more than four dwelling units.

[¶] ...

(2) The first lien mortgage or deed of trust is secured by residential real property that is occupied by a tenant and that contains no more than four dwelling units and meets all of the conditions described in subparagraph (B) and one of the conditions described in subparagraph (C).

(Civ. Code, § 2924.15, subd. (a).)

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<sup>3</sup> Civil Code section 2923.5 requires a mortgage servicer to contact a borrower to assess their financial situation and explore options to avoid foreclosure before recording a notice of default.

<sup>4</sup> Civil Code section 2923.6 prohibits “dual tracking,” in which a lender proceeds with the foreclosure process while reviewing a loan modification application.

<sup>5</sup> Civil Code section 2923.7 requires a mortgage servicer to provide a borrower a single point of contact for discussion regarding foreclosure prevention alternatives if the borrower requests one.

<sup>6</sup> Under Civil Code section 2924.9, subdivision (a), a mortgage servicer must provide written communication to a borrower detailing foreclosure alternatives within five business days after a notice of default is recorded, unless the borrower has previously exhausted the first lien loan modification process offered by, or through, his or her mortgage servicer described in Civil Code section 2923.6.

<sup>7</sup> Civil Code section 2924.11, subdivision (a) provides, in pertinent part: “If a foreclosure prevention alternative is approved in writing prior to the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default under [certain] circumstances.”

<sup>8</sup> Like Civil Code section 2923.6, Civil Code section 2923.18 prohibits “dual tracking” (i.e., proceeding with foreclosure while an application for a loan modification is pending).

“Standing is a threshold issue, because without it no justiciable controversy exists.” (*Iglesia Evangelica Latina, Inc. v. Southern Pacific Latin American Dist. Of the Assemblies of God* (2009) 173 Cal.App.4th 420, 445.) “Standing goes to the existence of a cause of action.” (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 128.)

Nationstar argues plaintiff fails to allege that (1) the deed of trust is a first lien mortgage, (2) the subject property is his principal residence, and (3) the home is security for a loan made for personal, family or household purposes. (Dem. at 10:1–3.) In fact, Nationstar argues, it appears from the recorded deed of trust that the loan was made for investment purposes. (Dem. at 10:3–5.) A Second Home Rider attached to the deed of trust states, “Occupancy. [Plaintiff] shall occupy, and shall only use, the Property as [his] second home.” (See RJN Ex. 1.) While the court granted Nationstar’s request to take judicial notice of the deed of trust (RJN Ex. 1), the truth of the matters asserted in the document is not subject to judicial notice. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.)

The court agrees with Nationstar that plaintiff has failed to allege facts establishing standing for any of his claims of alleged HBOR violations.<sup>9</sup> Therefore, the demurrer is sustained with leave to amend.

Nationstar also demurrers to the First C/A on the ground that plaintiff’s Complaint fails to allege a valid tender of the entire debt owed to the foreclosing creditor or any

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<sup>9</sup> Nationstar argues that plaintiff lacks standing because he did not allege that “[t]he first lien mortgage or deed of trust is secured by *owner-occupied* residential real property containing no more than four dwelling units.” (See Civ. Code, § 2924.15, subd. (a)(1)(A) [italics added].) However, the court notes that, under Civil Code section 2924.15, subdivision (a)(2), a plaintiff can also establish standing by pleading that “[t]he first lien mortgage or deed of trust is secured by residential real property that is *occupied by a tenant*, contains no more than four dwelling units, and meets all of the conditions described in subparagraph (B) and one of the conditions described in subparagraph (C).” (See Civ. Code, § 2924.15, subd. (a)(2) [italics added].)

valid excuse from the tender requirement. (Dem. at 12:26–13:7 (citing *Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101, 1109; *FPCI RE-HAB 01 v. E & G Investments, Ltd.* (1989) 207 Cal.App.3d 1018, 1022; *Arnolds Management Corp. v. Eischen* (1984) 158 Cal.App.3d 575, 574).)

It is settled law that in order to maintain any cause of action for irregularity in the sale procedure, a plaintiff must allege tender of the amount of the debt for which the property was security. (See *Abdallah, supra*, 43 Cal.App.4th at p. 1109; *Arnolds Management Corp., supra*, 158 Cal.App.3d at pp. 578–579.) “This rule is premised upon the equitable maxim that a court of equity will not order that a useless act be performed. ‘Equity will not interpose its remedial power in the accomplishment of what seemingly would be nothing but an idly and expensively futile act, nor will it purposely speculate in a field where there has been no proof as to what beneficial purpose may be subserved through its intervention.’ [Citation.]” (*Arnold Management Corp., supra*, at pp. 578–579.)

Here, plaintiff has not alleged a valid tender of the entire debt owed to the foreclosing creditor. Therefore, the demurrer is sustained on this ground with leave to amend.

#### **4.2. Second C/A for Violation of Civil Code section 2923.5**

Civil Code section 2923.5 requires a mortgage servicer to contact a borrower to assess their financial situation and explore options to avoid foreclosure before recording a notice of default. Paragraph 17 of the Complaint alleges, “Defendants violated the provisions of Civil Code § 2923.5 in that they recorded a notice of default even though they had not contacted Plaintiffs in person or by telephone in order to assess the financial situation of Plaintiffs and explore options for Plaintiffs to avoid foreclosure.” (Compl., ¶ 17.)

However, Nationstar argues that the Notice of Default includes a declaration of compliance dated January 26, 2022, signed under penalty of perjury, stating that Nationstar “has contacted the borrower to assess the borrower’s financial situation and explore options for the borrower to avoid foreclosure as required under California Civil Code Section 2923.55(b)(2). Thirty days have passes [sic] since the initial contact was

made.” (Dem. at 10:17–22 (citing RJN Ex. 4).) While the court granted Nationstar’s request to take judicial notice of Exhibit 4, the truth of the matters asserted in Exhibit 4 is not subject to judicial notice. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th at p. 482.) At the demurrer stage, the court must accept all properly pleaded allegations as true. (*Blank, supra*, 39 Cal.3d at p. 318.) Therefore, the demurrer is overruled on this ground.

For the reasons previously discussed under the First C/A, the demurrer is sustained as to the Second C/A with leave to amend.

#### **4.3. Third C/A for Declaratory Relief**

In his Third C/A for declaratory relief, plaintiff claims there is a justiciable dispute as to whether defendants have the contractual authority to initiate foreclosure proceedings where (1) defendants allegedly failed to comply with the requirements of the deed of trust, which provides that, “Lender shall give notice to Borrower prior to acceleration following Borrower’s breach of any covenant or agreement in this Security Instrument...”(Compl., ¶ 22); (2) defendants allegedly failed to comply with “Regulation X” (12 C.F.R. 1024.41), which imposes a 120-day waiting period after default before one can initiate foreclosure proceedings (Compl., ¶ 23); and (3) there is an alleged dispute regarding the amount plaintiff owes on the mortgage (plaintiff contends that \$453,468.09 is owed and defendant contends that \$465,104.42 is owed). (Compl., ¶ 24.)

The statute permitting independent claims for declaratory relief provides, in relevant part: “Any person interested under a written instrument ... or under a contract, or who desires a declaration of his or her rights or duties with respect to another ... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make

a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time.... The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.” (Code Civ. Proc., § 1060.)

“ ‘A general demurrer is usually not an appropriate method for testing the merits of a declaratory relief action, because the plaintiff is entitled a declaration of rights even if it is adverse to the plaintiff’s interest.’ [Citation.]” (*Qualified Patients Assn. v. City of Anaheim* (2010) 187 Cal.App.4th 734, 751.) When the complaint sets forth facts showing the existence of an actual controversy between the parties relating to their respective legal rights and duties, and requests that these rights and duties be adjudged, the plaintiff has stated a legally sufficient claim for declaratory relief. (*Alborzian v. JPMorgan Chase Bank, N.A.* (2015) 235 Cal.App.4th 29, 40.)

As it relates to the pre-foreclosure notice required under the deed of trust, Nationstar argues this does not raise a justiciable dispute, and even if it did, the required notice was sent to plaintiff. (Dem. at 11:19–26.) However, Nationstar’s allegation that the required notice was sent to plaintiff does not appear on the face of the Complaint and is not a fact that the court has judicially noticed. Moreover, the court finds there is a justiciable dispute as to whether Nationstar is entitled to proceed with the trustee’s sale where it allegedly failed to give the required notice under the deed of trust.

As it relates to Regulation X, Nationstar argues that the face of the recorded Notice of Default shows that Nationstar waited 120 days after default to initiate foreclosure proceedings. (Dem. at 11:19–23.) The court takes judicial notice of the date that the Notice of Default and the Notice of Trustee’s Sale were recorded and executed. (*Fontenot, supra*, 198 Cal.App.4th at p. 265.) The Notice of Default was recorded on June 29, 2022. (See RJN Ex. 4.) The Notice of Trustee’s Sale was recorded on August 2, 2023. (See RJN Ex. 5.) Thus, the court agrees with Nationstar that the judicially noticed documents, on their face, show that Nationstar complied with Regulation X.

In its demurrer, Nationstar does not address the disputed amount owed on the mortgage. However, the court finds there is a justiciable dispute regarding the amount owed.

Based on the above, the court overrules the demurrer as to the Third C/A for declaratory relief.

#### **4.4. Fourth C/A for Injunctive Relief**

“Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may be granted. [Citation.]” (*Shell Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168; see also *County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 973 [a permanent injunction is attendant to an underlying cause of action].) As such, the court finds that plaintiff has failed to state a claim. The court sustains the demurrer. Because there is no reasonable possibility that the defect can be cured by amendment, the court denies leave to amend.

#### **4.5. Fifth C/A for Accounting**

A cause of action for an accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting. (*Brea v. McGlashan* (1934) 3 Cal.App.2d 454, 460; 5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 819, p. 236.) The purpose of the accounting is, in part, to discover what, if any, sums are owed to the plaintiff.

Here, there is no allegation that any sum of money is owed to plaintiff. Therefore, the court finds that plaintiff has failed to state a claim for accounting. Further, there does not appear to be a reasonable possibility that the defect can be cured by amendment because this is an action based on plaintiff’s default on his mortgage payment. Therefore, the court denies leave to amend.

**TENTATIVE RULING # 3: THE DEMURRER IS SUSTAINED IN PART, WITH AND WITHOUT LEAVE TO AMEND, AND OVERRULED IN PART. AS TO THE FIRST AND SECOND CAUSES**

OF ACTION, THE DEMURRER IS SUSTAINED WITH LEAVE TO AMEND; AS TO THE THIRD CAUSE OF ACTION, THE DEMURRER IS OVERRULED; AND AS TO THE FOURTH AND FIFTH CAUSES OF ACTION, THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.

NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.