

1. HENDERSON, ET AL. v. YP JACKS, LLC, 23CV1866

Motion to Be Relieved as Counsel

TENTATIVE RULING # 1: THE MOTION IS 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.

**2. CAPITAL ONE, N.A. v. McGINNIS, 25CV0267****Demurrer**

Pursuant to Code of Civil Procedure section 430.10, subdivisions (e) and (f), defendant generally and specially demurs to plaintiff's complaint on the grounds that it fails to state a claim for relief and is uncertain.

Defense counsel declares he attempted to meet and confer with plaintiff's counsel prior to filing the instant demurrer, as required under Code of Civil Procedure section 430.41, subdivision (a), by leaving a voicemail for plaintiff's counsel on March 20, 2025. (Huckaby Decl., ¶ 2.) However, plaintiff's counsel declares, "[a]t no point in time has Defendant or anyone from opposing counsel contacted my office to discuss any merits of Plaintiff's Complaint." (D'Anna Decl., ¶ 5.)

Plaintiff filed an opposition to the demurrer. Defendant filed no reply.

**1. Background**

This matter arises from an alleged default on a credit card account. The complaint asserts one cause of action for breach of contract.

**2. 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." (*Amarel v. Connell* (1998) 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 facts 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.)

### 3. Discussion

The elements of a breach of contract claim are: (1) the existence of a contract; (2) plaintiff's performance or excuse for non-performance; (3) defendant's breach; and (4) the resulting damages to the plaintiff. (*San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 439.)

Defendant contends, "plaintiff makes conclusory allegations of an amount owed on account without required supporting facts, particularly plaintiff fails to make any record or accounting to identify the dates and amounts of charges on the subject account." (Dem. at p. 4, ¶ 3.) The court rejects defendant's argument and finds that plaintiff has sufficiently alleged a cause of action for breach of contract. The complaint alleges the parties entered into a written credit card cardholder agreement and on or about October 20, 2023, defendant failed to pay the amount due, and sets forth the amount of damages. (Compl., ¶¶ 6–7, 10.) Plaintiff is not required to allege the underlying dates of transactions and amounts of charges on the subject account.

The demurrer is overruled.

**TENTATIVE RULING # 2: THE DEMURRER IS OVERRULED. 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. GERLACH v. BARRET DAFFIN FRAPPIER TREDER & WEISS, LLP, 24CV2132****Demurrer**

Pursuant to Code of Civil Procedure section 430.10, subdivisions (e) and (f), defendants Nationstar Mortgage, LLC doing business as Mr. Cooper (“Nationstar”) and Lakeview Loan Servicing, LLC (“Lakeview”) generally and specially demur to plaintiff’s third amended complaint (“TAC”) on the grounds that each cause of action alleged therein fails to state a claim for relief and is uncertain. Defendant Barrett Daffin Frappier Treder & Weiss, LLC (“Barrett Daffin”) filed a motion to join in the demurrer, which plaintiff does not oppose.

Counsel for defendants Nationstar, Lakeview, and Barret Daffin each declare they met and conferred with plaintiff’s counsel, as required under Code of Civil Procedure section 430.41, subdivision (a). (Cheong Decl., ¶ 2; Lauvray Decl., ¶ 4.)

**1. Background**

This is an action for wrongful foreclosure and related claims arising from the foreclosure on plaintiff’s property located at 3774 Paradise Drive in South Lake Tahoe, California (the “Property”). (TAC, ¶ 1.) Defendant Lakeview was the foreclosing creditor and defendant Nationstar was the mortgage servicer. (TAC, ¶¶ 4–5.) Defendant Barrett Daffin was the substitute trustee under the deed of trust that conducted the foreclosure sale. (TAC, ¶ 3.)

In 2008, plaintiff’s mother, who is now deceased, obtained a loan for \$384,950.00 secured by a deed of trust on the Property. (TAC, ¶¶ 2, 9.) After her mother’s death, plaintiff inherited the Property. (TAC, ¶ 2.)

In or about April 2024, defendant Nationstar “offered and finalized a written loan modification agreement” (the “2024 Loan Modification”). (TAC, ¶ 11.) From April through August 2024, plaintiff complied fully with the terms of the 2024 Loan Modification. (TAC, ¶ 12.)

In August 2024, defendants initiated foreclosure proceedings despite the loan modification remaining in full force and effect and plaintiff being current on the modified payments. (TAC, ¶ 13.)

On September 26, 2024, defendant Barrett Daffin conducted a foreclosure sale of the Property. (TAC, ¶ 14.) “Plaintiff appeared at or near the sale with the present ability to tender the amount alleged due (\$459,123.15).... Defendants prevented Plaintiff from tendering any amount, and the Property was sold at foreclosure.” (TAC, ¶ 14.)

Defendant Nationstar withdrew multiple mortgage payments from plaintiff’s bank account after the foreclosure sale but later returned these payments to plaintiff without explanation. (TAC, ¶ 15.)

## **2. Requests for Judicial Notice**

Pursuant to Evidence Code section 452, subdivision (c), the court grants defendants Nationstar’s and Lakeview’s unopposed request for judicial notice of Exhibit A (recorded deed of trust), Exhibit B (recorded corporate assignment of deed of trust), Exhibit C (recorded notice of default), and Exhibit D (recorded notice of trustee’s sale); and grants defendant Barret Daffin’s unopposed request for judicial notice of Exhibit AA (recorded substitution of trustee) and Exhibit BB (recorded trustee’s deed upon sale).

## **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.” (*Amarel v. Connell* (1998) 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 facts 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 Wrongful Foreclosure**

The elements of a wrongful foreclosure cause of action are: “ ‘(1) [T]he trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering.’ ” (*Miles v. Deutsche Bank Nat’l Trust Co.* (2015) 236 Cal.App.4th 394, 408.) “[M]ere technical violations of the foreclosure process will not give rise to a tort claim; the foreclosure must have been entirely unauthorized on the facts of the case.” (*Id.* at p. 409.)

Plaintiff’s TAC alleges all defendants orchestrated and executed a wrongful foreclosure by: (1) foreclosing on the Property while plaintiff was compliant with the 2024 Loan Modification; (2) failing to serve proper notice, in violation of Civil Code sections 2924b and 2924f; and (3) accepting payments from plaintiff under the 2024 Loan Modification after commencing the foreclosure proceedings. (TAC, ¶ 18, subds. (a)–(c).)

Accepting the pleaded allegations as true, as the court must do when analyzing a demurrer, the court finds that plaintiff’s allegation that defendants foreclosed on the Property while plaintiff was compliant with the 2024 Loan Modification would generally support a wrongful foreclosure claim. The issue, however, is whether the statute of frauds bars the alleged 2024 Loan Modification. “The statute of frauds requires any contract subject to its provisions to be memorialized in a writing subscribed by the party to be charged or by the party’s agent. ([Civ. Code,] § 1624; *Secrest v. Security National*

*Mortgage Loan Trust 2002-2* (2008) 167 Cal.App.4th 544, 552.)” (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1503.) “A mortgage or deed of trust ... comes within the statute of frauds,” as does an agreement modifying a mortgage or deed of trust. (*Secrest*, at p. 552.)

Unlike plaintiff’s previous complaints in this case, the TAC alleges that the 2024 Loan Modification was memorialized in writing. (TAC, ¶ 11.) Defendants argue, however, that the 2024 Loan Modification still does not satisfy the statute of frauds because the TAC does not allege that the agreement was signed by the lender. The court agrees with defendants and sustains the demurrer on this ground with a final leave for plaintiff to amend.

Plaintiff’s allegation that defendants failed to serve proper notice of the foreclosure proceedings does not support the wrongful foreclosure claim in this case because, as defendants point out, there is a rebuttable presumption under Civil Code section 2924, subdivision (c)<sup>1</sup> that the sale was conducted regularly and properly because the trustee’s deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure were satisfied. (See RJN, Ex. BB.)

Even if the 2024 Loan Agreement is not barred by the statute of frauds, defendants argue the TAC fails to allege tender or excuse from tender. Plaintiff claims she satisfied the tender requirement because she “appeared at or near the sale with the present ability to tender the amount alleged due.” (Opp. at 4:10–13.) The court finds this is not a sufficient tender. “The rules which govern tenders are strict and are strictly applied, and where the rules are prescribed by statute or rules of court, the tender must be in such

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<sup>1</sup> Civil Code section 2924, subdivision (c) provides: “A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.” (*Ibid.*)

form as to comply therewith. The tenderer must do and offer everything that is necessary on his part to complete the transaction, and must fairly make known his purpose without ambiguity, and the act of the tender must be such that it needs only acceptance by the one to whom it is made to complete the transaction.” (*Gaffney v. Downey Savings & Loan Assn.* (1988) 200 Cal.App.3d 1154, 1165 [quoting 86 C.J.S., Tender, § 27, pp. 570–571 (fns. omitted)]).) Merely appearing at the sale with the present ability to tender is not an unambiguous offer to complete the transaction. In fact, the TAC alleges defendants “prevented” plaintiff from tendering any amount. (TAC, ¶ 14.)

Alternatively, plaintiff claims she was excused from the tender requirement because the sale was void, as there was a valid loan modification in effect. (Opp. at 4:14–20.) Assuming that the 2024 Loan Modification is not barred by the statute of frauds, the court finds that plaintiff would have sufficiently alleged the sale was void and she was excused from the tender requirement.

The court notes Barrett Daffin’s argument in its joinder to the demurrer that it had no role or responsibility to evaluate loan modification requests or appoint a single point of contact because those obligations rest solely on the mortgage servicer.<sup>2</sup> (Barrett Daffin’s Joinder in Dem. at 6:17–19, citing Civ. Code, §§ 2923.6, 2923.7.) However, at the demurrer stage, the court may only consider the allegations in the challenged pleading and matters subject to judicial notice. The TAC alleges Barrett Daffin conducted the foreclosure sale of the Property. (TAC, ¶ 3.) Barrett Daffin’s argument that it had no role or responsibility to evaluate loan modification requests or appoint a single point of contact does not appear on the face of the TAC or matters judicially noticed.

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<sup>2</sup> This argument appears directed at the second cause of action for violation of the Homeowner Bill of Rights. However, the TAC does not assert the second cause of action against defendant Barrett Daffin (the second cause of action is against defendants Nationstar and Lakeview only).



**4.2. Second C/A for Violation of California Homeowner Bill of Rights**

“The Homeowner Bill of Rights [HBOR] ([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 a 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.)

Plaintiff alleges defendants Nationstar and Lakeview violated the following provisions of the HBOR: (1) Civil Code section 2923.6 (prohibiting dual tracking); and (2) Civil Code section 2923.7 (requiring single point of contact). (TAC, ¶¶ 24–25.)

To invoke the protections of the HBOR that were in effect at the time of the alleged violations in 2024,<sup>3</sup> a plaintiff must show that the first lien mortgage or deed of trust satisfies either of the following conditions: (1) that “the first lien mortgage or deed of trust is secured by owner-occupied residential real property containing no more than four dwelling units” where “owner-occupied” “means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes;” or (2) “the first lien mortgage or deed of trust is secured by residential property that is occupied by a tenant....” (Civ. Code, § 2924.15, subd. (a).)

Here, the TAC alleges, “Civ. Code § 2924.15 extends [HBOR] protections to rental properties of four units or fewer that are occupied by tenants under an arm’s-length lease as their primary residence, provided the tenancy began before March 4, 2020. The Property meets these criteria.” (TAC, ¶ 23.)

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<sup>3</sup> The HBOR has since been amended. As of January 1, 2025, a plaintiff must show that the first lien mortgage or deed of trust is secured by an owner-occupied residential property. (Civ. Code, § 2924.15.)

Defendants argue, however, that plaintiff has failed to allege the other requirements set forth in the 2020 amendment to Civil Code section 2924.15, namely: (1) that the tenant occupying the property shall have been unable to pay rent due to a reduction in income resulting from COVID-19 (Civ. Code, § 2924.15, subd. (a)(B)(2)(iii)); and (2) that the mortgagor owns no more than three residential real properties, each of which contains no more than four dwelling units (Civ. Code, § 2924.15, subd. (a)(B)(2)(i).) However, these requirements that defendants point to under the 2020 amendment to Civil Code section 2924.15 only remained in effect until January 1, 2023, and as of that date were repealed. (2020 Cal. Legis. Serv. Ch. 37 (A.B. 3088).)

Based on the above, the court finds that plaintiff has sufficiently alleged that the HBOR applies to her for the violations that allegedly occurred in 2024. The demurrer to the second cause of action for violation of the HBOR is overruled.

#### **4.3. Third C/A for Cancellation of Instruments**

To claim cancellation of an instrument, the plaintiff must allege: (1) the instrument is void or voidable due to, for example, fraud; and (2) the plaintiff has a reasonable apprehension of serious injury including pecuniary loss or the prejudicial alteration of their position. (Civ. Code, § 3412; *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1193–1194.)

The TAC seeks cancellation of the following instruments: (1) notice of default; (2) notice of trustee's sale; and (3) trustee's deed upon sale.

Assuming the 2024 Loan Modification is not barred by the statute of frauds, the court finds that plaintiff would have adequately alleged that the challenged instruments are void. However, as previously discussed, the 2024 Loan Modification is still barred by the statute of frauds because, although the TAC alleges the agreement was in writing, the TAC does not allege that the agreement was signed by the lender.

The court sustains the demurrer to the third cause of action for cancellation of instruments with a final leave to amend.

**4.4. Fourth C/A for Breach of Written Contract**

The elements of a breach of contract claim are: (1) the existence of a contract; (2) plaintiff's performance or excuse for non-performance; (3) defendant's breach; and (4) the resulting damages to the plaintiff. (*San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 439.)

Plaintiff alleges defendants Nationstar and Lakeview breached the 2024 Loan Modification. As previously discussed, the 2024 Loan Modification is still barred by the statute of frauds because, although the TAC alleges the agreement was in writing, the TAC does not allege that the agreement was signed by the lender.

The court sustains the demurrer to the fourth cause of action for breach of contract with a final leave to amend.

**4.5. Fifth C/A for Promissory Estoppel**

The elements of a promissory estoppel claim are: (1) a clear and unambiguous promise; (2) reasonable and foreseeable reliance by the party to whom the promise is made; (3) enforcement is necessary to avoid injustice; (4) causation; and (5) harm or injury to the party asserting estoppel. (*US Ecology, Inc. v. State of Cal.* (2005) 129 Cal.App.4th 887, 901–905, 908.)

Plaintiff's promissory estoppel claim against defendants Nationstar and Lakeview is based on the alleged 2024 Loan Modification. As previously discussed, the 2024 Loan Modification is still barred by the statute of frauds because, although the TAC alleges the agreement was in writing, the TAC does not allege that the agreement was signed by the lender.

The court sustains the demurrer to the fifth cause of action for promissory estoppel with a final leave to amend.

**4.6. Sixth C/A for Declaratory Relief**

To state a claim for declaratory relief, the plaintiff must allege facts showing there is a dispute between the parties concerning their legal rights, constituting an "actual

controversy” within the meaning of the declaratory relief statute. (Code Civ. Proc., § 1060; *Artus v. Gramercy Towers Condominium Assn.* (2018) 19 Cal.App.5th 923, 930.)

A claim for declaratory relief fails when it is “ ‘ “wholly derivative” of other failed claims.’ ” (*Smyth v. Berman* (2019) 31 Cal.App.5th 183, 191–192, quoting *Ball v. FleetBoston Financial Corp.* (2008) 164 Cal.App.4th 794, 800.)

The TAC seeks a judicial declaration against all defendants that: (1) the foreclosure sale and trustee’s deed are void *ab initio*; (2) the loan modification remains valid and enforceable; and (3) title to the Property belongs with plaintiff, free from any void instruments recorded by defendants. (TAC, ¶ 43, subds. (a)–(c).)

Assuming the 2024 Loan Modification is not barred by the statute of frauds, the court finds that plaintiff would have adequately alleged that the challenged instruments are void. However, as previously discussed, the 2024 Loan Modification is still barred by the statute of frauds because, although the TAC alleges the agreement was in writing, the TAC does not allege that the agreement was signed by the lender.

The court sustains the demurrer to the fourth cause of action for declaratory relief with a final leave to amend.

#### **4.7. Seventh C/A for Violation of Bus. & Prof. Code, § 17200**

The court previously overruled defendants’ demurrer to the seventh cause of action for violation of Business and Professions Code section 17200 in plaintiff’s SAC. However, there is authority for allowing demurrers to amended pleadings on grounds previously overruled because “[t]he interests of all parties are advanced by avoiding a trial and reversal for defect in pleadings.” (*Pacific States Enterprises, Inc. v. City of Coachella* (1993) 13 Cal.App.4th 1414, 1420 (internal quotes omitted) (citing text); see *Pavicich v. Santucci* (2000) 85 Cal.App.4th 382, 389, fn. 3; see also *Carlton v. Dr. Pepper Snapple Group, Inc.* (2014) 228 Cal.App.4th 1200, 1211.)

The Unfair Competition Law (“UCL”) (Bus. & Prof. Code, § 17200) prohibits “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or

misleading advertising.” “ ‘Because Business and Professions Code section 17200 is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent.’ ” (*Capito v. San Jose Healthcare System, LP* (2024) 17 Cal.5th 273, 284.)

Unlawful practices are practices “forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made.” (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838–839.) “To state a cause of action based on an unlawful business act or practice under the UCL, a plaintiff must allege facts sufficient to show a violation of some underlying law.” (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1133.)

A business act or practice is unfair when the conduct “threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition.” (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 187.) To establish an unfair business act or practice, a plaintiff must establish the unfair nature of the conduct and that the harm caused by the conduct outweighs any benefits that the conduct may have. (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1473.)

Finally, a fraudulent business act or practice is one in which members of the public are likely to be deceived. (*Olsen v. Breeze, Inc.* (1996) 48 Cal.App.4th 608, 618, [“ ‘ “Fraudulent,” as used in the statute, does not refer to the common law tort of fraud but only requires a showing members of the public “ ‘are likely to be deceived’ ” ’ ”].) Thus, in order to state a cause of action based on a fraudulent business act or practice, the plaintiff must allege that consumers are likely to be deceived by the defendant's conduct. (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 211.)

The TAC alleges all defendants engaged in unlawful business practices by: (1) violating the HBOR (Civ. Code, §§ 2923.6, 2924.15, etc.) and nonjudicial foreclosure statutes (Civ. Code, § 2924b); (2) foreclosing on the Property while simultaneously accepting monthly payments from plaintiff;<sup>4</sup> and (3) concealing alleged “missing documents” and failing to provide a single point of contact, misrepresenting the true status of plaintiff’s loan. (TAC, ¶ 46, subds. (a)–(c).)

Accepting the factual allegations in the TAC as true, as the court must when ruling on a demurrer, the court finds that plaintiff has stated a claim for violation of Business and Professions Code section 17200 based on the following allegations: (1) that defendants violated the HBOR and nonjudicial foreclosure statutes; and (2) that defendants concealed alleged “missing documents” and misrepresented the true status of plaintiff’s loan.

The demurrer to the seventh cause of action for violation of Business and Professions Code section 17200 is overruled.

**TENTATIVE RULING # 3: THE DEMURRER IS SUSTAINED IN PART WITH A FINAL LEAVE TO AMEND AND OVERRULED IN PART. REFER TO FULL TEXT. 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.**

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<sup>4</sup> Plaintiff alleges that defendant Nationstar later returned these payments to plaintiff without explanation. (TAC, ¶ 15.)

**4. GUILLEN v. EL DORADO COUNTY, 25CV1083****OSC Re: Preliminary Injunction**

On May 1, 2025, plaintiff filed an ex parte application for a temporary restraining order and order to show cause why a preliminary injunction should not be issued. That same day, the court denied plaintiff's request for a temporary restraining order and issued an order to show cause regarding preliminary injunction.

Plaintiff seeks a preliminary injunction enjoining defendant from "issuing baseless citations, imposing excessive fines, and harassing Plaintiff for her short-term rental activities [at] her property which are authorized by a valid homestay permit and approved but 'unissued' VHR permit until a declaratory relief trial can be held to validate the permit."

On May 16, 2025, defendant filed a response to the order to show cause. Plaintiff filed no reply.

**1. Request for Judicial Notice**

Pursuant to Evidence Code section 452, subdivision (d), the court grants defendant's unopposed request for judicial notice of Exhibit 1 (plaintiff's complaint).

**2. Legal Principles**

"As its name suggests, a preliminary injunction is an order that is sought by a plaintiff prior to a full adjudication of the merits of its claim. [Citation.]" (*White v. Davis* (2003) 30 Cal.3d 528, 554.) The purpose of such an order is to preserve the status quo pending a determination on the merits of the action. (*Id.*, at p. 553; *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.)

The decision to grant a preliminary injunction rests in the sound discretion of the trial court. (*Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1420.) However, "[a] cause of action must exist before a court may grant a request for injunctive relief. [Citations.]" (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 65.) "[B]efore the trial court can exercise its discretion the applicant must make a prima facie

showing of entitlement to injunctive relief.” (*Triple A Machine Shop, Inc. v. State of Cal.* (1989) 213 Cal.App.3d 131, 138.)

### 3. Discussion

Plaintiff’s verified complaint, filed April 25, 2025, asserts causes of action for: (1) injunctive relief; (2) declaratory relief; and (3) attorney fees under Code of Civil Procedure section 1021.5.<sup>5</sup>

Defendant argues plaintiff has not alleged a cause of action entitling her to injunctive relief. The court agrees. “[I]njunctive and declaratory relief are equitable remedies, not causes of action. [Citation.]” (*Faunce v. Cate* (2013) 222 Cal.App.4th 166, 173.) Additionally, a claim for attorney fees under Code of Civil Procedure section 1021.5 does not independently authorize injunctive relief. (See *Snatchko v. Westfield LLC* (2010) 187 Cal.App.4th 469, 497 [“Such fees are not part of the underlying cause of action, but are incidents to the cause and are properly awarded after entry of a ... judgment[.]”].)

The court finds injunctive relief is not warranted under these circumstances because plaintiff’s complaint does not state a sufficient cause of action for injunctive relief.

**TENTATIVE RULING # 4: THE REQUEST FOR A PRELIMINARY INJUNCTION IS DENIED. 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.**

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<sup>5</sup> Code of Civil Procedure section 1021.5 authorizes the court to award attorney fees to a successful party in any action which has resulted in the enforcement of an important right affecting the public interest, subject to conditions. (Code Civ. Proc., § 1021.5.)



**5. PEOPLE v. FRAGRANICE, INC., 24CV2330**

**Status Conference**

**TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY,  
MAY 23, 2025, IN DEPARTMENT FOUR.**

**6. NAME CHANGE OF MELENDEZ, 25CV0754**

**OSC Re: Name Change**

**TENTATIVE RULING # 6: PETITION IS GRANTED.**

**7. ROFF v. CENLAR CAPITAL CORP., 24CV0450****(A) Motion to Deem Matters Admitted****(B) Motion to Compel Response to Interrogatories and Request for Production****Motion to Deem Matters Admitted**

Defendant moves under Code of Civil Procedure section 2033.280 to deem matters admitted. Plaintiff filed no opposition to the motion.

A party served with request for admission must serve a response within 30 days. (Code Civ. Proc., § 2033.250.) Failure to serve a response entitles the requesting party, on motion, to obtain an order that the genuineness of all documents and the truth of all matters specified in the requests for admission be deemed admitted. (Code Civ. Proc., § 2033.280, subd. (b).) When such a motion is made, the court must grant the motion and deem the requests admitted unless it finds that prior to the hearing, the party to whom the requests for admission were directed has served a proposed response that is in substantial compliance with the provisions governing responses. (Code Civ. Proc., § 2033.280, subd. (c); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 776, 778; see also *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 395–396 [“two strikes and you’re out”].)

On January 30, 2025, defendant served Requests for Admission (Set One) on plaintiff by mail to plaintiff’s address in Reno, Nevada. (Learned Decl., Exs. 1 & 5.) Accordingly, the deadline for plaintiff to serve his verified response was March 13, 2025 (30 days plus 10 calendar days for mail service to address outside the State of California but within the United States). (Code Civ. Proc., §§ 1013, subd. (a), 2033.250, subd. (a).) To date, however, plaintiff has served no response. (Learned Decl., ¶ 8.)

The motion to deem matters admitted is granted.

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**Motion to Compel Response to Interrogatories and Request for Production**

Defendant moves to compel plaintiff's verified response to Form Interrogatories (Set One), Special Interrogatories (Set One), and Request for Production (Set One). Additionally, defendant requests \$2,310.00 in monetary sanctions against plaintiff to reimburse defendant for fees and costs incurred in bringing this motion to compel, as well as the motion to deem matters admitted.<sup>6</sup> Plaintiff filed no opposition to the motion.

If a party to whom interrogatories or request for production were directed fails to serve a timely response, the propounding party may move for an order compelling response. (Code Civ. Proc., §§ 2030.290, subd. (b) [interrogatories], 2031.300 [request for production]; see *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.) All that need be shown in the moving papers is that a set of interrogatories or request for production was properly served on the opposing party, that the time to respond has expired, and that no response of any kind has been served. (See *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905–906.)

On January 30, 2025, defendant served Form Interrogatories (Set One), Special Interrogatories (Set One), and Request for Production (Set One) on plaintiff by mail to plaintiff's address in Reno, Nevada. (Learned Decl., Exs. 2–5.) Accordingly, the deadline for plaintiff to serve his verified responses was March 13, 2025 (30 days plus 10 calendar days for mail service to address outside the State of California but within the United States). (Code Civ. Proc., §§ 1013, subd. (a), 2030.260, subd. (a) [interrogatories], 2031.260, subd. (a) [request for production].) To date, plaintiff has served no verified response. (Learned Decl., ¶ 8.) Therefore, the motion to compel is granted.

Having reviewed and considered the declaration from defense counsel, the court finds that the total sum of \$990.00 is a reasonable sanction against plaintiff for both motions.

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<sup>6</sup> Code of Civil Procedure section 2033.280 requires the court to impose a monetary sanction on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated the motion. (Code Civ. Proc., § 2033.280, subd. (c).)

Counsel declares his current hourly rate is \$330.00, he spent 1.6 hours preparing the motion to deem matters admitted, and he spent 1.4 hours preparing the motion to compel. (Learned Decl., ¶ 9.) Counsel declared that he anticipated spending an additional four hours reviewing and responding to plaintiff's oppositions; however, plaintiff filed no opposition.

**TENTATIVE RULING # 7: THE MOTIONS ARE GRANTED. THE COURT DEEMS THE MATTERS IN REQUESTS FOR ADMISSION (SET ONE) NUMBERS 1 THROUGH 17 ADMITTED (THE PROPOUNDED REQUESTS FOR ADMISSION REPEAT NUMBER 15, WHICH IS ACTUALLY NUMBER 17). PLAINTIFF SHALL SERVE HIS VERIFIED RESPONSE, WITHOUT OBJECTION, TO DEFENDANT'S FORM INTERROGATORIES (SET ONE), SPECIAL INTERROGATORIES (SET ONE), AND REQUEST FOR PRODUCTION (SET ONE), AND PAY DEFENDANT \$990.00 IN MONETARY SANCTIONS WITHIN 30 DAYS AFTER THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. 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.**