**1. B.D. VS ROBERT SCONTRINO 23CV0177**

This is a petition to compromise a minor's claim. The petition states the minor sustained neck and back injuries in an auto accident in 2019. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $10,000.

The petition states the minor incurred $2,750 in medical expenses. Copies of a bill substantiating payment of the claimed medical expenses for Dr. R. Erwin for $1,425 are attached to the petition as required by Local Rule 7.10.12A.(6). However, no invoice for $1,325 for the services of Dr. Matthew Shepard is attached to the petition.

The petition states that the minor has fully recovered from the injuries allegedly suffered and there are no permanent injuries. A doctor's report concerning the minor's condition and prognosis of recovery is attached, as required by Local Rule 7.10.12A.(3).

The minor's attorney requests attorney's fees in the amount of $2,500, which represents 25% of the gross settlement amount. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Rules of Court, Rule 7.955(a)(1).)

The minor's attorney also requests reimbursement for costs in the amount of $795. There are no copies of bills substantiating the claimed costs attached to the petitions as required by Local Rule 7.10.12A.(6). Local Rule 7.10.12A(4) also requires a copy of any existing accident investigation report be filed with the petition.

The petitioner also requests an order to deposit money into a blocked account in the minor's behalf, in the amount of $3,955. The order is missing the name and address of the depository, as required by Local Rule 7.10.12A(7).

**TENTATIVE RULING # 1: PURSUANT TO RULES OF COURT, RULE 7.952(a), APPEARANCES BY THE PETITIONER AND THE MINOR ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 7, 2023, IN DEPARTMENT NINE.**

**IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

**2. CATALINA MARTINEZ-MEDINA VS EL DORADO TRANSIT AUTHORITY PC20200117**

The petition, filed by Elvia Garcia as guardian ad litem for the minor, states that the minor sustained injuries in an auto accident consisting of a concussion/head injury, abrasion to chin, laceration, left knee contusion and right knee and ankle injury. Petitioner requests the court authorize a compromise of the gross amount of $15,000 of the minor's claim against cross-defendant in the action, her grandmother who was driving the vehicle that was involved in the accident.

The petition states that the minor has not fully recovered from the injuries allegedly suffered, in that she has permanent scarring and continuing stress from the accident. The petition states that the minor was treated at the Marshall Hospital in Placerville, and Kaiser in Folsom, but there is no doctor's report concerning the minor's condition and prognosis of recovery as required by Local Rule 7.10.12A.(3).

The minor's attorney has waived attorney's fees, but requests reimbursement for costs in the amount of $2000. The minor's attorney has waived an additional $3,496 in costs. There are no copies of bills substantiating the claimed costs attached to the petitions as required by Local Rule 7.10.12A.(6).

The petition requests an order for proceeds to be deposited into a blocked account but does not provide the name or address of the depository, as required by Local Rule 7.10.12.A(7).

The petitioner has checked paragraph 17(a)(2) of Judicial Council form MC-350 on which this petition was filed, indicating that petitioner has an agreement for services in connection with the claim giving rise to the petition but does not attach that agreement as the form requires.

Petitioner's counsel has filed a declaration requesting that the minor not be required to appear at the hearing due to emotional trauma.

**TENTATIVE RULING # 2: TO RULES OF COURT, RULE 7.952(a), APPEARANCES BY THE PETITIONER IS REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 7, 2023, IN DEPARTMENT NINE. PURSUANT TO LOCAL RULE 7.10.12.D, APPEARANCE BY THE MINOR IS NOT REQUIRED.**

**PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

**3. CRISTINA CASTRO VS PERFORMING GROUPS FOR YOUTH 22CV1597**

Plaintiff filed this action against her employer alleging various claims of discrimination, harassment, retaliation, negligence, wrongful termination, and breach of contract. Defendant responded with this Motion to Compel Arbitration based on an arbitration agreement that was part of the employment contract that plaintiff signed at the commencement of each school year. The full text of the arbitration agreement is set forth in Exhibit A, paragraph 7 of the Declaration of Melissa Crangle in Support of the Motion to Compel Arbitration.

The court finds that the arbitration agreement is not 'unconscionable' under the test set forth in Armendariz v. Foundation Health Psychare Services, 24 Cal.4th 83 (2000). The agreement provides procedures for selection of a neutral arbitrator. It allows for discovery in the arbitration proceeding through the application of the National Rules for the Resolution of Employment Disputes of the American Arbitration Association and provides for the same legal and/or equitable remedies that would be available in a judicial or administrative forum. Defendant would assume the costs of the arbitrator's fee, and attorney's fees and costs would be assigned in the same manner as if the matter was head in a court of law. There are provisions for a written decision when the arbitration is concluded. Notwithstanding the arbitration clause, plaintiff remains free to pursue her claims in administrative fora such as the Fair Employment and Housing Administration or National Labor Relations Board. Thus, the agreement comports with the factors set forth in the Armendariz decision and the arbitration agreement is not 'unconscionable' to the detriment of plaintiff's position.

Defendant requests that this litigation be stayed pending the outcome of arbitration. The Federal Arbitration Act provides that:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 3.

**TENTATIVE RULING # 3: THE INSTANT CASE IS STAYED AND DEFENDANT'S MOTION TO COMPEL PLAINTIFF'S INDIVIDUAL CLAIMS TO ARTIBTRATION IS GRANTED.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).**

**NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

**LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

**4. JERROD WALLACE VS ORION MANAGED SERVICES LLC 22CV1463**

Plaintiff brought suit against his employer for multiple violations of the California Labor Code, on his own behalf, as a representative of a class of persons who were non-exempt employees of defendant between October 11, 2021 and the present, and as a private attorney general on behalf of the State of California pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code §§ 2698-2699.6.

Defendant has responded to the Complaint with a Motion to Compel Arbitration, on the ground that the employment relationship between the parties was the subject of an agreement that requires this dispute to be resolved through arbitration. The arbitration agreement at issue was entered into approximately a year after plaintiff's initial employment, when defendant began using a private firm to handle its human resources matters, and that firm sent out the agreement to defendant's employees for signature. The full text of the arbitration agreement that plaintiff signed is set forth in defendant's Motion to Compel Arbitration, Exhibit A.

Defendant argues that the arbitration agreement is legally valid under the test set forth in the opinion Armendariz v. Foundation Health Psychare Services, 24 Cal.4th 83 (2000). For example, the agreement was voluntary, in that plaintiff was not required to sign the agreement as a condition of employment and had 30 days to opt out of the agreement at his election but did not do so. Further, defendant notes that plaintiff would have access to all legally available remedies through arbitration, that there are procedures in place for selection of a neutral arbitrator, that discovery would be available in the arbitration proceeding, that plaintiff's costs in entering into arbitration would be limited, and that there are provisions for a written decision when the arbitration is concluded. The court agrees that the agreement comports with the factors set forth in the Armendariz decision and the arbitration agreement is not 'unconscionable' to the detriment of plaintiff's position.

The plaintiff has brought this case on behalf of himself, on behalf of similarly situated employees of defendant, and on behalf of the State of California under the PAGA statute. However, the U.S. Supreme

Court, in Viking River Cruises, Inc. v. Moriana, 142 S.Ct. 1906 (2022), has recently held that "a party may not be compelled under the [Federal Arbitration Act, 9 U.S.C. § 1 et seq.] to submit to class arbitration unless there is a contractual basis for concluding that the party agreed to do so," Viking River Cruises at 1918, quoting Stolt-Nielsen S.A. v. Animal Feeds Int'l Corp., 559 U.S. 662, 685, 130 S.Ct. 1758 (2010). In this case, the arbitration agreement expressly provides that all employment-related claims will be arbitrated on an individual basis. (Exh. A, ¶ 1.F.) Accordingly, only plaintiff's *individual* claim is the subject of the arbitration agreement.

Defendant requests that all remaining claims of plaintiff on behalf of a class and on behalf of the State of California be dismissed for lack of standing once the individual claim is referred to arbitration, or in the alternative that this litigation be stayed pending the outcome of arbitration. The Federal Arbitration Act provides that:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 3.

**TENTATIVE RULING # 4: DEFENDANT'S MOTION TO COMPEL PLAINTIFF'S INDIVIDUAL CLAIMS TO ARTIBTRATION IS GRANTED; THE INSTANT CASE IS STAYED PENDING THE CONCLUSION OF ARBITRATION.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).**

**NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado**

**County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

**LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

**5. JUDITH NAPOLEON V. UNITED SERVICES AUTOMOBILE ASSC. PC20210289**

Defendant United Services Automobile Association ("Defendant") demurrers to all causes of action as listed in Plaintiff's First Amended Complaint filed on January 17, 2023 ("FAC"). The Notice of Demurrer and Demurrer and the supporting Memorandum of Points and Authorities, Declaration of Jodi K. Swick, and Request for Judicial Notice were served on February 16, 2023 and filed on February 17, 2023. Plaintiff filed and served her opposition papers on March 24th. Defendant's Reply was filed and served on March 30th.

Request for Judicial Notice

Defendant requests the court take judicial notice of the following: (1) Defendant USAA Life Insurance Company is authorized to transact life and disability insurance in the State of California; (2) Defendant United Services Automobile Association is not authorized to transact life and disability insurance in the State of California; (3) A document titled "Management's Discussion and Analysis" for USAA for the year 2021 which is on file with the California Department of Insurance; (4) A document titled "Management's Discussion and Analysis" for USAA Life Insurance Company for the year 2021 on file with the California Department of Insurance; and (5) A document titled "Key Annual Statement Pages" for USAA Life Insurance Company for the year 2021 on file with the California Department of Insurance.

Plaintiff objects to the admission of the proposed documents as the information contained therein cannot be independently verified and is disputed. Plaintiff argues printouts from the Department of Insurance website do not constitute official government acts and cannot, therefore, be judicially noticed. Likewise, the financial statements submitted by Defendant to the Department of Insurance are not subject to judicial notice. Finally, Plaintiff objects to the portions of the demurrer that cite to Defendant's website but are not included in the FAC.

Defendant argues the documents at issue are simply complete versions of the documents referenced in the FAC. In fact, the FAC identifies the documents by title, year of filing, and the website where they can be located. Thus, their content is not reasonably subject to dispute.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy" and "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." Cal. Ev. Code § 452(h) & (c). In some cases, "[w]hile the *existence* of a document, such as a document recorded in the official records of a government body, may be judicially noticeable, the truth of statements contained in the document and *their proper interpretation* are not subject to judicial notice. [Citation]." Tenet Healthsystem Desert, Inc. v. Blue Cross of California, 245 Cal. App. 4th 821 (2016) (emphasis original).

First, Defendant asks the court to take notice of the fact that USAA Life is authorized to transact disability and life insurance business within the state of California and Defendant is not. According to print outs from the Department of Insurance, Defendant is authorized to conduct insurance business regarding automobile, burglary, fire, liability, marine, miscellaneous, plate glass and team and vehicle insurance. Making such authorizations are official acts of the California Department of Insurance. They are facts that are not reasonably subject to dispute and are easily verifiable by searching the California Department of Insurance website. As such, Defendant's request for judicial notice of these facts is granted.

Defendant further proffers for judicial notice two documents entitled "Management's Discussion and Analysis" and a documented entitled "Key Annual Statement Pages," all of which are on file with the California Department of Insurance which were cited by Plaintiff in the FAC giving the date and web link to access them. It is clear that the existence of these documents and their status as being on file with the Department of Insurance are facts not reasonably subject to dispute. However, their judicial noticeability ends there. The documents contain financial and other information that was prepared by Defendant and USAA Life internally and as such, their contents appear to be the very epitome of an item subject to

dispute. Further, the fact that Plaintiff finds the subject documents to stand for the proposition that USAA Life is in financial straits, while Defendant argues they show otherwise, is indicative of the fact that the interpretation of the documents is subject to dispute, and they are therefore not judicially noticeable. For the foregoing reasons, Defendant's Request for Judicial Notice of both "Management's Discussion and Analysis" documents and the document entitled "Key Annual Statement Pages" is denied.

Demurrer

This matter arises from a policy of life insurance issued by USAA Life Insurance Company ("USAA Life") to Plaintiff's husband, George Napoleon. Sadly, Mr. Napoleon passed away due to injuries suffered in a fire that occurred at his and Plaintiff's home. Thereafter, Plaintiff made a claim for the insurance benefits which USAA Life refused to pay until the conclusion of an investigation as to the cause of the fire. USAA Life has since paid out the policy. However, by way of the present lawsuit, Plaintiff seeks to hold Defendant accountable for the actions of USAA Life on the basis that Defendant is the parent company to USAA Life. The sole cause of action at issue is a claim for Breach of Implied Covenant of Good Faith and Fair Dealing ("bad faith") which Plaintiff asserts against Defendant on the theories of alter ego liability and joint venture liability.

Defendant notes that the insurance policy was a contract between the decedent and USAA Life. Because Defendant was not a party to the contract, Defendant argues it cannot be held liable for bad faith. Defendant further argues that it cannot be held liable under an alter ego theory because Plaintiff has not, and cannot, plead facts sufficient to establish a unity of interest between the defendant companies and an inequitable result that would befall Plaintiff should Defendant not be held liable. Simply by establishing that USAA Life is authorized to conduct insurance business in California, the FAC has established that it has gone through all of the checks and balances of the state to establish its financial viability. Finally, with regard to joint venture liability, Defendant points to the fact that the FAC establishes that USAA Life is wholly owned and controlled by Defendant thereby making it a subsidiary, not a joint venture.

Plaintiff opposes the Demurrer, first and foremost, on the basis that Defendant submits improper extrinsic evidence in an attempt to turn its demurrer into a Motion for Summary Judgment. Plaintiff further

argues that Defendant is a joint venturer of USAA Life regardless of its position as a parent company. Both companies contribute to the enterprise of selling life insurance policies and both companies benefit by sharing the profits of those policies. Plaintiff also argues Defendant is subject to liability on the basis of alter ego liability. Plaintiff lays out 14 different ways in which it feels the two companies share a unity of interest sufficient to disregard the separate corporate status. Plaintiff notes that at the demurrer stage, the factual allegations as stated in the FAC are presumed to be true and therefore sufficient unity of interest has been established. Additionally, Plaintiff asserts an injustice will occur if Defendant is allowed to wholly control the acts of USAA Life and then shield itself from liability for its unjust acts simply by arguing that it is a separate entity.

*Standard on Demurrer*

A demurrer raises only issues of law, not fact, regarding the form and content of the pleadings of the opposing party. Cal. Civ. Pro. §§ 422.10 and 589. It is not the function of the demurrer to challenge the truthfulness of the complaint, instead, for the purposes of testing the sufficiency of the cause of action, the demurrer admits the truth of all material facts in the pleading but not contentions, deductions or conclusions of fact or law. Aubry v. Tri-City Hosp. Dist, 2 Cal. 4th 962, 966-967 (1992); Serrano v. Priest, 5 Cal. 3d 584 (1971); Adelman v. Associated Int'l Ins. Co., 90 Cal. App. 4th 352, 359 (2001). A demurrer can only challenge defects that appear on the face of the pleading and other matters that are judicially noticeable, the challenging party cannot make allegations of fact to the contrary. Blank v. Kirwan, 39 Cal. 3d 311, 318 (1985); Donabedian v. Mercury Ins. Co., 116 Cal. App. 4th 968 (2004); Harboring Villas Homeowners Assn. v. Sup. Ct., 63 Cal. App. 4th 426 (1998). For that reason, "[t]he hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable." Fremont Indemnity Co. v. Fremont General Corp., 148 Cal. App. 4th 97, 114 (2007).

Failure to plead the ultimate facts supporting a cause of action subjects the complaint to a demurrer. Cal. Civ. Pro. § 430.10(e); Berger v. Cal. Ins. Guar. Ass'n, 128 Cal. App. 4th 989, 1006 (2005). "To determine whether a cause of action is stated, the appropriate question is whether, upon a

consideration of all the facts alleged, it appears that the plaintiff is entitled to any judicial relief against the defendant, notwithstanding that the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged." Elliot v. City of Pacific Grove, 54 Cal. App. 3d 53, 56. Otherwise stated, the demurrer is to be overruled if the allegations of the complaint are sufficient to state a cause of action under any legal theory. Brousseau v. Jarrett, 73 Cal. App. 3d 864 (1977); see also Nguyen v. Scott, 206 Cal. App. 3d 725 (1988).

*Good Faith and Fair Dealing*

The crux of Plaintiff's FAC is a claim for bad faith. Because a claim for bad faith is premised on the fact that every contract carries with it an implied covenant of good faith and fair dealing, there must be a contractual relationship between the parties to subject one to liability for bad faith. *See* Waller v. Truck Ins. Exchange, Inc., 11 Cal. 4th 1 (1995). Accordingly, to survive Defendant's Demurrer, Plaintiff must show that the FAC adequately establishes some basis upon which USAA Life's parent company can be held liable for the contractual relations of its subsidiary. Plaintiff sets forth two arguments in this regard: (1) alter ego liability; and (2) joint venture liability.

*Alter Ego Liability*

> "Ordinarily, a corporation is regarded as a legal entity, separate and distinct from its stockholders, officers and directors, with separate and distinct liabilities and obligations. [Citations] A corporate identity may be disregarded – the 'corporate veil' pierced – where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation. [Citations]. Under the alter ego doctrine, then, when the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts will ignore the corporate entity and deem the corporation's acts to be those of the persons or organizations actually controlling the corporation…[Citations]. In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone. [Citations]…No one characteristic governs, but the courts must look at all circumstances to determine whether the doctrine should be applied. [Citations] Alter ego is an extreme remedy, sparingly used." Sonora Diamond Corp. v. Sup. Ct., 83 Cal. App. 4th 523, 538-539 (2000).

Here, there is much discussion on both sides regarding the unity of interest and joint control between the corporations. Much of which Defendant would need extrinsic evidence to argue against; however, the court finds Plaintiff's FAC to be deficient on the grounds that it fails to establish some injustice will befall her should USAA Life be held solely liable for its alleged wrongful conduct.

The FAC states, in pertinent part, "United Services Automobile Association's management and financial structure allows it to manipulate USAA Life's assets to minimize potential liabilities of the USAA enterprise allowing it to take advantage [of] subscribers, like Judith. This allows USAA to commit fraud or injustice." FAC, ¶ 44. The FAC does not specify what exactly constitutes the fraud or injustice committed by USAA. While there is some discussion regarding the financial viability of USAA Life and an allegation that it lacks the necessary cash to satisfy all short-term liability, it does not go so far as to state that Plaintiff believes USAA Life does not have sufficient cash flow to satisfy any judgment rendered in her favor. Moreover, the FAC concedes that USAA Life "is authorized to borrow up to $900 million each ear from USAA Capital Corporation to meet its financial obligations." FAC pg. 11, ¶37. This is in direct contradiction of any argument that may be made that USAA Life cannot satisfy a judgment against it.

Plaintiff's opposition shies away from the argument that there may not be sufficient funding to satisfy a judgment in her favor but instead she focuses her argument on the fact that USAA Life has been established as a shell company which operates to allow Defendant to perpetrate fraud or injustice while minimizing its own liability. But again, there are no facts alleged to establish fraud and while the delayed insurance payment may be found to be unjust, there are no facts to support that USAA Life was created solely for the purpose of committing bad faith against its insureds without thereafter being held accountable. In fact, when USAA Life is held accountable it has the ability to borrow up to $900 million from USAA Capital Corporation to satisfy its judgments.

Without establishing the necessary element that Plaintiff will suffer an injustice without the piercing of the corporate veil, Plaintiff's FAC for alter ego liability fails to establish bad faith liability on that ground. The court must then turn to the joint venture argument.

*Joint Venture*

Plaintiff argues Defendant's liability on the basis that it was a joint venturer with USAA Life and all members of a joint venture are liable for the torts committed by any one member in connection with the venture. *See* Grant v. Weatherholt, 123 Cal. App. 2d 34 (1954). This theory relies on the fact that joint venturers are agents of one another and are therefore able to act on behalf of each other. *Id.* Thus, to establish liability, one must establish agency between the parties in furtherance of a business enterprise, not simply the ownership of one party over the other.

A joint venture requires joint ownership, joint control and shared profits of some business enterprise. *See* Scottsdale Ins. Co. v. Essex Ins. Co., 98 Cal. App. 4th 86, 91 (2002). "A joint venture has been defined in various ways but most frequently perhaps as an association of two or more persons who combine their property, skill or knowledge to carry out a single business enterprise for profit." Holtz v. United Plumbing & Heating Co., 49 Cal. 2d 501, 506 (1957).

The facts at hand are quite simple. USAA Life is a subsidiary of Defendant. Once USAA Life incorporated it did become its own separate entity operating its own business enterprise, selling and providing life insurance. USAA Life and Defendant did not, enter into a separate business enterprise in which they *each* had an ownership interest. Instead, the ownership is linear, not triangular. Defendant owns USAA Life. USAA Life conducts business of providing life insurance. In other words, Plaintiff's argument is missing the *joint* part of a joint enterprise.

The fact that Defendant is the sole shareholder of USAA Life and in that capacity may exercise control over USAA Life is not sufficient to establish that the two companies are working as joint venturers. The court is not inclined to find that a corporation is acting as joint venture with its shareholders simply because of their status as shareholders. To do so would effectively eviscerate the shareholder liability protections at the heart of the corporate structure.

Ultimately, this is an attempt to hold a shareholder liable for the acts of the corporation. Because the FAC fails to allege the necessary elements for alter ego liability, and it fails to establish a joint venture by which USAA can be held liable, the demurrer is sustained with 10 days leave to amend.

**TENTATIVE RULING # 5: DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED IN PART AND DENIED IN PART. JUDICIAL NOTICE OF FACT NUMBER 1 AND FACT NUMBER 2 IS GRANTED. JUDICIAL NOTICE OF EXHIBITS 1-3 TO DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS DENIED. THE FAC FAILS TO ALLEGE THE NECESSARY ELEMENTS FOR ALTER EGO LIABILITY, AND IT FAILS TO ESTABLISH A JOINT VENTURE BY WHICH USAA CAN BE HELD LIABLE, THE DEMURRER IS SUSTAINED WITH 10 DAYS LEAVE TO AMEND.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).**

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**6. LEWIS ADAMS ET AL v. LATROBE HILLS HOMEOWNERS ASSOC. 22CV1352**

**TENTATIVE RULING # 6: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, APRIL 14, 2023 IN DEPARTMENT NINE.**

**7. NAME CHANGE OF ANDREA TROMBLEY 23CV0168**

Petitioner filed a Petition for Change of Name of a Minor on February 2, 2023. A background check has been completed. There is no Proof of Publication in the court's file.

**TENTATIVE RULING # 7: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JUNE 9, 2023 IN DEPARTMENT NINE.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).**

**NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

**LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

**8. NAME CHANGE OF DUNCAN B. MCKENZIE 23CV0184**

Petitioner filed a Petition for Name Change for three individuals, Duncan B. McKenzie, Kelley Raelene Shobert-McKenzie, and Autumnraine Freya Shobert-Mckenzie (a minor), on February 6, 2023. Background checks have been completed. Proof of Publication was filed on March 29, 2023.

**TENTATIVE RULING # 8: THE PETITION IS GRANTED.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).**

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**9. NAME CHANGE OF ESTHER ALICIA TROFIMCZUK 23CV0203**

Petitioner filed a Petition for Name Change on February 9, 2023. A background check has been completed. Proof of Publication was filed on March 13, 2023.

**TENTATIVE RULING # 9: THE PETITION IS GRANTED.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).**

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**10. NAME CHANGE OF S. PLATT 23CV0268**

Petitioner filed a Petition for Name Change for four individuals, including three minors, on February 21, 2023. Background checks have been completed for the minors DeForest Brennan Davenport, Keith Abram Davenport and Emberlyn Rose Davenport. However, there is no background check on file for the adult petitioner Sara Deforest Platt. Proof of Publication was filed on April 3, 2023.

**TENTATIVE RULING # 10: THE PETITION IS GRANTED AS TO DEFOREST BRENNAN DAVENPORT, KEITH ABRAM DAVENPORT AND EMBERLYN ROSE DAVENPORT. THE HEARING ON THE PETITION FOR NAME CHANGE OF SARA DEFOREST DAVENPORT IS CONTINUED TO 8:30 A.M. ON FRIDAY, APRIL 21, 2023, IN DEPARTMENT NINE.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).**

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**11. PETITION FOR NAME CHANGE OF ERICA AND JUSTIN JABALI 23CV0182**

Petitioner filed a Petition for Name Change for a minor on February 6, 2023. There is no background check in the court's file, which is required under the law. Proof of Publication was filed on March 7, 2023.

**TENTATIVE RULING # 11: THE HEARING ON THE PETITION IS CONTINUED TO 8:30 A.M. ON FRIDAY, APRIL 21, 2023, IN DEPARTMENT NINE.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).**

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**12. STEPHEN D. HART VS FEDERAL HOME LOAN MORTGAGE CORP. AS TRUSTEE FOR SEASONED CREDIT RISK TRANSFER TRUST 22CV0286**

Plaintiff filed the First Amended Complaint ("FAC") on January 19, 2023, for injunctive and declaratory relief and damages, alleging 1) violations of Business and Professions Code §§ 17200 et seq.; 2) violations of civil Code §§ 2923.5, 2923.6 and 2923.7, and 3) negligence/negligence per se on the part of Defendants.

Factual Background

Stephen Hart and his wife Lisa Hart, as joint tenants, took out a mortgage with Wells Fargo Bank for their primary residence ("the Property") in the amount of $354,400.00 ("First Loan"). FAC para. 20. The First Loan was eventually assumed by Select Portfolio Servicing, Inc. ("SPS"). FAC para. 21. Later, Stephen and Lisa Hart took out a second mortgage ("Second Loan") against the Property for $88,600. FAC para. 22. Some time later, the Second Loan was also assumed by SPS. FAC para. 23.

On or around December 31, 2007, Stephen and Lisa Hart recorded a Trust Transfer Deed to Plaintiff, their trust. FAC para. 25.

In February 2016, Lisa Hart passed away, and in April 2016 Stephen Hart in his capacity as trustee of the Plaintiff trust contacted SPS to request a loan modification because of his resulting loss of income. ("2016 Assistance Request"). FAC para. 26-27. In December 2018, Stephen Hart again contacted SPS regarding the 2016 Assistance Request. FAC para 29.

In early 2019, Plaintiff submitted a complete loss mitigation application to SPS. ("2019 Modification Application"). FAC para. 31. SPS responded with proposed terms for a loan modification that Plaintiff declined because the mortgage payment amounts would have increased. FAC para. 32.

On May 28, 2019, a Notice of Default and Election to Sell Under Deed of Trust, was recorded as to the First Loan. FAC para. 33.

Stephen Hart continued to request loan modifications for the Second Loan during 2020 ("2020 Assistance Requests). FAC para. 37. However, no loan modification resulted from these efforts and on August 22, 2022, a Notice of Default was recorded as to the Second Loan. FAC para. 41.

Standing

Defendants' demurrer alleges that Plaintiff, a trust that was formed by the borrower and his wife, into which they transferred their real property interest in the Property, is not the "real party in interest" for the purpose of the Homeowner's Bill of Rights because the trust is not the 'borrower'. Civil Code § 2920.5(c)(1) defines "borrower" for the purposes of the HOBR as "any *natural person* who is a mortgagor . . . ." (emphasis added). The Plaintiff in the First Amended Complaint is "Stephen Hart as Trustee of the Stephen D. and Lisa L. Hart Trust". The borrower of funds with respect to the loans at issue were the individuals Stephen Hart and his wife Lisa Hart. The loans were taken out to acquire the Property that was their primary residence. While the trust document is not in the record, it is undisputed that the Property was Stephen Hart's primary residence at the time of the conduct at issue.

A similar issue was raised in Matter of Nolan, No. 21-55204, 2022 WL 327927 (9th Cir. Feb. 3, 2022), where a bankruptcy court considered whether a debtor could claim a homeowner's exemption in bankruptcy where he was not the owner of the property, but he was both a 50 percent beneficiary and the trustee of a trust that held title to the property that was his residence. The court allowed the exemption, and that decision was affirmed by the Ninth Circuit. The opinion noted that:

> "California's homestead exemption 'ensures that insolvent debtors and their families are not rendered homeless by virtue of an involuntary sale of the residential property they occupy." *Amin v. Khazindar*, 5 Cal. Rptr. 3d 224, 228 (Ct. App. 2003). "This strong public policy requires courts to adopt a liberal construction of the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor." *Id.*

Matter of Nolan, No. 21-55204, 2022 WL 327927, at *2 (9th Cir. Feb. 3, 2022)

Similarly, the California Homeowner's Bill of Rights was enacted to "mitigate the negative effects on the state and local economies and the housing market that are the result of continued foreclosures by modifying the foreclosure process to ensure that borrowers who may qualify for a foreclosure alternative

are considered for, and have a meaningful opportunity to obtain, available loss mitigation options." 2012 Cal. Legis. Serv. Ch. 87 (S.B. 900). In the instant case, the 'borrower' is a resident of the Property, the title to which is formally held in the name of a legal entity that was created by and is administered by and for the benefit of the borrower. To find that the Plaintiff trust is not a real party in interest and thus is not entitled to maintain this legal action brought by Stephen Hart, in his capacity as a trustee for his own benefit as a beneficiary, would be an overly legalistic interpretation that would defeat the legtive purpose of the Homeowner's Bill of Rights and deny a homeowner the protections of those statutes.

Motion to Strike Causes of Action for Violations of Cal. Civil Code §§ 2923.6 and 2924.10

Plaintiff filed the original Complaint on March 2, 2022, and Defendants SPS and Federal Home Loan Mortgage Corporation filed a demurrer. At the hearing on September 16, 2022, the court sustained Defendants' demurrer to the original Complaint because plaintiff had filed no opposition to the motion, and eventually the case was dismissed. Plaintiff later succeeded in setting aside the dismissal and was given leave by the court to file an amended Complaint, whereupon Plaintiff filed the FAC on January 19, 2023. Defendants request that parts of the FAC be stricken as beyond the scope of the leave to amend the Complaint that was granted by the court.

Plaintiff's original Complaint contained two causes of action. Neither the caption ('Violation of Homeowner Bill of Rights") nor the cause of action headings list particular statutory violations, but the first cause of action includes explicit reference to Civil Code §§ 2923.5, 2923.55, 2923.6, 2923.7, 2924.12 2924.17, and 2924.18. The FAC filed on January 19, 2023, specifically lists violations of Civil Code §§ 2923.5 (First Cause of Action), 2923.6 (Second Cause of Action) and 2923.7 (Third Cause of Action). Additionally, the First Amended Complaint continues with a mis-labelled Third Cause of Action for violation of Civil Code § 2923.10. Allegations of violations of § 2923.10 were not included in the original Complaint.

Further, the FAC also contains a Fourth Cause of Action for "Negligence and Negligence Per Se", a theory of liability that also was not included in the original Complaint.

> Following an order sustaining a demurrer or a motion for judgment on the pleadings with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court's

> order. (*People ex rel. Dept. Pub. Wks. v. Clausen* (1967) 248 Cal.App.2d 770, 785, 57 Cal.Rptr. 227 [leave to amend complaint does not constitute leave to amend to add new defendant].) The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend.

Harris v. Wachovia Mortg., FSB, 185 Cal. App. 4th 1018, 1023.

Defendants' motion to strike addressed Civil Code § 2923.10, but did not include the cause of action for negligence/negligence per se. However, Code of Civil Procedure § 436 provides that "[t]he court may, . . .at any time in its discretion . . . [s]trike out all or any part of a pleading not . . . filed in conformity with . . . the laws of this state . . . or an order of the court." Accordingly, Plaintiff's causes of action for violation of Civil Code § 2923.10 and for negligence/negligence per se are stricken from the Complaint as beyond the scope of the leave to amend.

Request for Judicial Notice

"Judicial notice may be taken of the following matters . . .: (d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States…" (Cal. Evidence Code, § 452(d).) Accordingly, the court takes judicial notice of Exhibit 13 of the Defendants' Request for Judicial Notice. For the reasons stated below, it is not necessary to take judicial notice of any of the other Exhibits to Defendants' Request for Judicial Notice for the purposes of this ruling.

Judicial Estoppel

Defendants claim that Plaintiff should be judicially estopped from maintaining this action because he failed to include this lawsuit as a "contingent and unliquidated claim" in his bankruptcy petition. This argument is chronologically unsupported. Stephen Hart's Voluntary Petition for Individuals Filing for Bankruptcy, in which any contingent claims are required to be disclosed, was filed on January 13, 2020. Request for Judicial Notice, Exhibit 13. The original Complaint in this matter was filed on March 2, 2022.

Demurrer

Defendants SPS, US Bank Trust National Association as trustee for Firstkey Master Funding 2021-A Collateral Trust (US Bank"), Federal Home Loan Mortgage Corporation as trustee for Seasoned Credit Risk Transfer Trust, Series 2016-1, MTC Financial, Inc. and Clear Recon Corporation have demurred to Plaintiff's First Amended Complaint pursuant to Code of Civil Procedure § 430.10(e).

"A demurrer challenges only the legal sufficiency of the complaint, not the truth of its factual allegations or the plaintiff's ability to prove those allegations. (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140 [248 Cal.Rptr. 276].) We therefore treat as true all of the complaint's material factual allegations, but not contentions, deductions or conclusions of fact or law. (*Id*. at p. 141; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [216 Cal.Rptr. 718, 703 P.2d 58].) We can also consider the facts appearing in exhibits attached to the complaint. (See *Dodd v. Citizens Bank of Costa Mesa*, supra, 222 Cal.App.3d at p. 1627.) We are required to construe the complaint liberally to determine whether a cause of action has been stated, given the assumed truth of the facts pleaded. (*Rogoff v. Grabowski* (1988) 200 Cal.App.3d 624, 628 [246 Cal.Rptr. 185].)" (Picton v. Anderson Union High School Dist. (1996) 50 Cal.App.4th 726, 732-733.)

""To determine whether a cause of action is stated, the appropriate question is whether, upon a consideration of all the facts alleged, it appears that the plaintiff is entitled to any judicial relief against the defendant, notwithstanding that the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged. (*Elliott v. City of Pacific Grove*, 54 Cal.App.3d 53, 56, 126 Cal.Rptr. 371.)

Demurrer as to Conduct Related to Second Loan

Defendants correctly assert that any claim under Civil Code Sections 2923.5, 2923.6 and 2923.7 are only applicable to a first lien. Civil Code §§ 2923.5(f); 2924.15. Accordingly, to the extent that any claim by Plaintiff is related to conduct associated with the Second Loan, the referenced statutes would not apply. However, it is not necessary to separately rule on this issue because Defendants' demurrer is sustained as to all claims under those statutes.

Defendants' Demurrer is Sustained with Leave to Amend as to Alleged Violation of Civil Code § 2923.5

Defendants claim that Plaintiff has failed to adequately plead a violation of Civil Code § 2923.5, noting that according to Plaintiff's own allegations contact between the lender and borrower regarding the First Loan took place in early 2019, and the Notice of Default with respect to the First Loan was recorded on May 28, 2019.

Civil Code § 2923.5, in pertinent part, first requires a lender to wait at least 30 days after either making contact with a borrower prior to filing a notice of default. This requirement is deemed satisfied if the "borrower has provided a complete application [for loan modification] as defined in [Civil Code § 2924.18(d) (an application shall be deemed "complete" when a borrower has supplied the mortgage servicer with all documents required by the mortgage servicer . . . ")]. Civil Code §§ 2923(a)(1), 2924.18(d). Section 2923.5 also prohibits the mortgage servicer from filing a notice of default while the loan modification application is pending or before the borrower has been provided with a written determination about the borrower's eligibility for the requested loan modification. Civil Code § 2924.18(a)(1).

In this case, the FAC alleges that Plaintiff received a loan modification offer based on a complete loss mitigation application that the borrower submitted "in early 2019". FAC paras. 31-32. Elsewhere, the FAC alleges that "in early 2019", the borrower submitted the 2019 Modification Application to SPS, and that he received a loan modification offer that he rejected because it would have increased his monthly payments. FAC paras. 57-58.

To satisfy the statute, communication between the borrower and mortgage servicer would have had to occur at some time before late April, 2019, well into the second quarter of the year. Plaintiff's own allegation states that "on or around December, 2018 PLAINTIFF contacted SPS regarding his 2016 ASSISTANCE REQUESTS" when he was current on the mortgage but aware that his available funds were dwindling, and that he was in communication with SPS and completed a loan modification application "in early 2019." FAC paras. 29, 31-32, 57-58.

Accordingly, the court finds that the borrower was contacted by the mortgage servicer, submitted a complete loan modification application and received a loan modification offer more than 30 days before the Notice of Default was recorded, in compliance with Civil Code § 2923.5.

Defendants' Demurrer is Sustained with Leave to Amend as to Alleged Violation of Civil Code § 2923.6

Plaintiff alleges that Defendants violated Civil Code § 2923.6(f) by failing to provide certain information listed in that subsection following denial of a loan modification, *e.g.* how to appeal the denial of the loan modification application, specific reasons for the denial of the application and other options that might be available to the borrower. However, the FAC specifically states that the borrower was offered a loan modification but elected not to pursue it because he did not agree to its terms. FAC para. 58. Accordingly, the requirements of Section 2923.6(f) do not apply to this case.

While Plaintiff alleges that additional requests for loan modifications were communicated to Defendants (FAC para. 74), as to the first deed of trust, the Notice of Default was filed on May 28, 2019. Any subsequent inquiries were necessarily related to the Second Loan and the August 2022 Notice of Default, to which the Homeowner's Bill of Rights statutes do not apply.

Defendants' Demurrer is Sustained with Leave to Amend as to Alleged Violation of Civil Code § 2923.7

Plaintiff's Third Cause of Action alleges that Defendants failed to provide a single point of contact and to meet other requirements of Civil Code § 2923.7(b)(1) through (b)(5) "due to the fact that US BANK and SPS denied PLAINTIFF a meaningful opportunity to avoid foreclosure. . . ."; "SPS had lost the 2020 ASSISTANCE REQUESTS" and "DEFENDANTS recorded the NOD while the 2020 ASSISTANCE REQUESTS were pending review." FAC para. 80-81. These statements refer to facts that are specific to the Second Loan, to which the Homeowner's Bill of Rights statutes do not apply. Civil Code § 2923.5(f).

Defendants' Demurrer is Sustained with Leave to Amend as to Alleged Violation of Business and Professions Code § 17200

Plaintiff's Fifth Cause of Action requires allegation of some unlawful, unfair, fraudulent or deceptive or misleading business practice or representation. Plaintiff's theory is that the terms of the loan modification that was offered in 2019 were unfair, and that Defendants' declarations of compliance with the Homeowner's Bill of Rights statutes were untrue.

"A plaintiff alleging unfair business practices . . . must state with reasonable particularity the facts supporting the statutory elements of the violation." Khoury v. Maly's of California, Inc., 14 Cal. App. 4th 612, 619 (1993). In the Khoury case, [d]emurrer was properly sustained . . . because the . . . complaint identifies no particular section of the statutory scheme which was violated and fails to describe with any reasonable particularity the facts supporting violation." Id.

The Civil Code sections listed in the FAC do not require a borrower to be agreeable to the loan modification terms offered by a lender. Plaintiff has not alleged with specificity any support for its assertion that the proposed loan modification terms were "oppressive [or] unscrupulous". FAC para. 126.

Further, there is nothing in the FAC that specifies any false statements related to the First Loan by the Defendants.

**TENTATIVE RULING #12:**

**1. DEFENDANTS' MOTION FOR JUDICIAL ESTOPPEL IS OVERRULED.**

**2. DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED IN PART AND DENIED IN PART. JUDICIAL NOTICE OF EXHIBIT 13 IS GRANTED. JUDICIAL NOTICE OF ALL OTHER EXHIBITS IS DENIED.**

**3. DEFENDANTS' MOTION TO STRIKE FROM THE FIRST AMENDED COMPLAINT THE "THIRD CAUSE OF ACTION" FOR VIOLATION OF CIVIL CODE § 2925.10, IS SUSTAINED.**

**4. DEFENDANT'S MOTION FOR TO STRIKE THE SECOND CAUSE OF ACTION FOR VIOLATION OF CIVIL CODE SECTION 2923.6, IS OVERRULED.**

**5. PLAINTIFF'S "FOURTH CAUSE OF ACTION" FOR NEGLIGENCE AND NEGLIGENCE PER SE IS STRICKEN ON THE COURT'S OWN MOTION.**

**6. DEFENDANTS' DEMURRER AS TO PLAINTIFF'S STANDING, IS OVERRULED.**

**7. DEFENDANTS' DEMURRER THE FIRST, SECOND AND THIRD CAUSES OF ACTION FOR VIOLATIONS OF CIVIL CODE SECTIONS 2923.5, 2923.6 AND 2923.7, IS SUSTAINED WITH LEAVE TO AMEND.**

**8. DEFENDANTS' DEMURRER TO THE FIFTH CAUSE OF ACTION FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200, IS SUSTAINED WITH LEAVE TO AMEND.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).**

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