

1.	23CV1294	MID-STATE PRECAST v. THOMPSON BUILDERS
Motion to Compel, Motion for Sanctions		

The court issued a tentative ruling regarding this issue on March 27, 2025. At the hearing on March 28, 2025, the court found that Plaintiff's opposition was untimely and indicated that it did not consider it in the drafting of the tentative ruling. The court indicated that it found good cause to adopt the tentative ruling without consideration of the late opposition, but acknowledged that thereafter Plaintiff might file a motion under California Code of Civil Procedure ("CCP") § 473(b) to set that order aside. For efficiency's sake, the court deemed Plaintiff to be making an oral motion under CCP § 473(b) for relief from the court's intended order. In the interests of resolving the case on its merits and consistent with CCP § 473(b), the court declined to adopt the tentative ruling at the hearing, continued the hearing to May 2, 2025 to give it time to consider Plaintiff's opposition, afforded Defendant the right to file a reply per the code if appropriate, and set a hearing on May 2, 2025 on its own motion for reasonable attorney's fees and costs under CCP § 473(b). The court ordered the parties to file any pleadings regarding fees under CCP § 473(b) by April 21, 2025, with any replies by April 25, 2025.

On April 21, 2025, Defendant filed a request for fees, costs, and sanctions under CCP § 128.5. To the extent Defendant seeks sanctions under CCP § 128.5, the court denies the motion without prejudice, finding that it was not filed at least 16 court days before the May 2 hearing, as required by the code. However, as to the fees and costs issues, the court deems the request to be Defendant's pleading regarding fees and costs under CCP § 473(b).

On April 25, 2025, Defendant filed a reply to Plaintiff's late opposition to the original motion. On April 28, 2025, Plaintiff filed an opposition to the request for fees, which the court notes is late by one court date.

As to the merits of the motion to compel arbitration, Defendant argues that Plaintiff mistakenly relies on CCP §1281.5 in their opposition, which does not apply to public projects, because mechanic's liens are not enforceable on public property. (See, *R. Baker v. Motel 6* (1986) 180 Cal.App.3d 928 involving a mechanic's lien claimant and its right to enforce arbitration under CCP 1281.5). The court has considered both sides' pleadings and is persuaded by Defendant's position. The motion to compel arbitration is granted.

As to the fees and costs issue, CCP § 473(b) states in pertinent part that, "[t]he court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties." While Plaintiff's counsel did not submit an affidavit of fault, the court deems counsel's representation that he did not file a timely opposition to be the result of his mistake, which was the basis for the court considering the late opposition. Moreover, the court notes that CCP § 473(c)(1)(C) grants the court authority to grant other relief as appropriate whenever relief is granted from a

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default, default judgment or dismissal. The court finds it consistent with the intent of the statute therefore to consider the award of fees or costs against Plaintiff.

The court has reviewed Defendant's request as well as Plaintiff's (untimely) opposition and finds that fees are appropriate under the circumstances. Had Plaintiff filed a timely response, Defendant could have timely replied, and the matter would have been resolved at the first hearing. Instead, a second hearing had to be scheduled as well as the cost of filing pleadings regarding the fees issue to make Defendant whole. The court considered Plaintiff's argument that counsel was awaiting a response regarding a proposed stipulation to resolve the motion without the need for a hearing. However, per the pleadings, it appears the first attempt to seek this stipulation occurred on March 18, 2025, a day after the March 17, 2025 deadline to file a response. Plaintiff could have sought a stipulation prior to the response deadline to continue the hearing to allow time to negotiate possible resolution of the motion, but it does not appear any efforts were taken in this regard. Instead, due to Plaintiff filing the response two days prior to the hearing, the matter was continued to afford Defendant a chance to file a reply, so the motion could be resolved on its merits.

Defendant seeks \$3,465 in fees and costs, based on an attorney billing rate of \$385 per hour, 4.8 hours of attorney time, and \$227 in costs for traveling from counsel's office in Oakland to and from the hearing. While finding fees to be appropriate, the court reduces the amount to be ordered. The court finds it reasonable to only base costs on fees incurred for the continued hearing, since the initial hearing would have occurred anyway as a result of the underlying motion, and the costs of pleadings regarding the fees issue. The court declines to grant fees for the costs of the reply as these costs relate to the underlying motion and were reasonably anticipated at the time of filing the motion.

The court finds the reasonable amount of time to prepare the pleadings regarding fees and to review Plaintiff's opposition to be 4 hours, totaling \$1,540, based on the attorney billing rate of \$385 which the court finds to be reasonable for this particular legal community. Plaintiff is ordered to pay Defendant \$1,540 payable within 30 days of the service of the filed order.

If additional time is expended at the hearing on May 2, 2025, the court will consider augmenting the award if appropriate. The court notes that, if the award is augmented based on hearing time tomorrow, the court will not include time and costs incurred to travel to the courthouse, as the matter can be effectively handled remotely without having to incur those costs.

**TENTATIVE RULING #1:**

**MOTION TO COMPEL ARBITRATION IS GRANTED. PLAINTIFF IS ORDERED TO PAY DEFENDANT \$1,540 PAYABLE WITHIN 30 DAYS OF SERVICE OF THE FILED ORDER.**

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2.	24CV0536	RANDOLPH v. AMERICAN HONDA MOTOR CO.
Motion to Compel		

Plaintiff brings this Motion to Compel the Further Deposition for the Person Most Knowledgeable (“PMK”) for Defendant, the Production of Documents at Deposition, and for Monetary Sanctions. Plaintiff’s Notice does not comply with Local Rule 7.10.05.

**TENTATIVE RULING #2:**

**APPEARANCES REQUIRED ON FRIDAY, MAY 2, 2025, AT 8:30 AM IN DEPARTMENT NINE.**

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3.	24CV0676	COCHRAN V. MARSHALL MEDICAL CENTER
Motion to be Relieved as Counsel		

**TENTATIVE RULING #3:**

**MATTER CONTINUED TO MAY 30, 2025 AT 8:30 A.M. IN DEPARTMENT 9.**

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<b>4.</b>	<b>24CV2015</b>	<b>TRUMBLY v. BAILEY</b>
<b>Demurrer</b>		

Defendant filed a Demurrer on April 8, 2025. Pursuant to California Code of Civil Procedure §472, Plaintiff responded by filing a First Amended Complaint on April 18, 2025. As such, the Demurrer is moot.

**TENTATIVE RULING #4:**

**HEARING IS DROPPED FROM CALENDAR.**

5.	24CV2460	ARMSTRONG v. SAMPLE
Motion to Compel		

Defendant moves the Court to compel arbitration of the claims of Plaintiffs and stay the civil action pending resolution of the arbitration proceedings. This case involves Plaintiffs' purchase of a home previously owned by Defendant, and Plaintiffs' allegation that Defendant failed to disclose damage to the deck. The purchase was made using a California Residential Purchase Agreement ("RPA"). Defendant argues that a written arbitration provision exists in the parties' contract that Plaintiffs voluntarily signed and initialed, the arbitration provision is valid and enforceable under Code of Civil Procedure § 1281, et seq., and it expressly covers all claims asserted by Plaintiffs in this action.

Defendant requests that the Court take judicial notice of Plaintiffs' Complaint filed in this action. Pursuant to Evidence Code §452(d), Defendant's request is granted. Attached to the Complaint as Exhibit A is the RPA.

"California law, like federal law, favors enforcement of valid arbitration agreements." (*Armendariz v. Foundation Health Psychcare Services* (2000) 24 Cal.4th 83, 97.) There is "a strong public policy in favor of arbitration and any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration." (*Rice v. Downs* (2016) 248 Cal.App.4th at 175, 185 [internal citation omitted].) The moving party must only prove, by a preponderance of the evidence, the existence of an arbitration agreement and that the dispute is covered by the agreement. (See *Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396-397.) Because Plaintiffs' claims fall squarely within the scope of the Arbitration Provision, they must be compelled to arbitration.

The Court finds that the RPA does contain an arbitration provision, that would cover the dispute at issue in this case. Further, Plaintiff filed no opposition to the Motion.

**TENTATIVE RULING #5:**

**MOTION IS GRANTED.**

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6.	24CV0625	LOAN ASSET ISSUER LLC v. SCARBROUGH
Motion to Set Aside		

Plaintiff moves the Court to set aside and vacate the California Code of Civil Procedure ("CCP") §664.6 dismissal without prejudice and enter judgment pursuant to the terms of the settlement agreement and against Defendant. Plaintiffs' Notice does not comply with Local Rule 7.10.05.

This case involves a debt owed by Defendant to Plaintiff. The parties entered into a Conditional Stipulated Settlement Agreement on July 21, 2024, and it was filed with the Court on September 16, 2024. On September 19, 2024, the Court ordered Dismissal of the case without prejudice and retaining jurisdiction pursuant to CCP §664.6. Defendant made some payments and then stopped, making her last payment on November 19, 2024. Pursuant to the terms of the Settlement Agreement, Defendant is in default.

The California Code of Civil Procedure States, in pertinent part, that, "If parties to pending litigation stipulate . . . for settlement of the case, or part thereof, the court, upon motion, may enter Judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." CCP § 664.6.

The Motion is granted.

**TENTATIVE RULING #6:**

**MOTION GRANTED.**

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<b>7.</b>	<b>23CV0157</b>	<b>RUSSI v. FOLSOM LAKE FORD</b>
<b>Motion for Summary Judgment</b>		

**TENTATIVE RULING #7:**

**HEARING CONTINUED TO FRIDAY, MAY 30, 2025, AT 8:30 AM IN DEPARTMENT NINE.**

8.	24CV1638	WILLIAMS v. OLYMPIA MORTGAGE
Demurrer		

This case involves Plaintiff's purchase of real property and eventual foreclosure. The property was mortgaged by Olympia Mortgage & Investment Company, Inc. ("Olympia") and the Deed of Trust was assigned to Foothill Mortgage Fund of Olympia, LLC "Foothill"). This Demurrer is brought by Defendants Olympia and Foothill only (collectively "Defendants"). Any other Defendants are not part of this Demurrer.

#### **Standard of Review - Demurrer**

A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe*, 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula*, 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679.**

Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517.

#### **Meet and Confer Requirement**

Code of Civil Procedure ("CCP") §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

The demurring party shall file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

*Dumas v. Los Angeles County Bd. of Supervisors* (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be

productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort”).

Pursuant to the Declaration of Benjamin Levinson, he attempted to contact Plaintiff’s counsel by phone and received no response, so he sent a letter as a further meet and confer attempt.

**Requests for Judicial Notice**

Cal. Rules of Court, rule 3.1113(l), also covers judicial notice, requiring that “[a]ny request for judicial notice shall be made in a separate document listing the specific items for which notice is requested and shall comply with rule 3.1306(c).”

Defendants request judicial notice of a copy of the Promissory note obtained by Plaintiff from Defendant Olympia Mortgage, several recorded deeds of trust and assignments, recorded Notice of Default, and two court dockets from Plaintiff’s former and current bankruptcy cases.

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. A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. (Evidence Code § 453)

Defendants’ request for judicial notice is granted.

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The Complaint includes 5 causes of action: (1) Wrongful Foreclosure; (2) Breach of Good Faith and Fair Dealing; (3) Cancellation of Instruments; (4) Violation of Business & Professions Code §17200; and (5) Quiet Title.

Defendants demur to all five causes of action on the following grounds:

1. The First Cause of Action fails to state facts sufficient to constitute a cause of action and is vague and ambiguous.
2. The Second Cause of Action fails to state facts sufficient to constitute a cause of action and is vague and ambiguous.
3. The Third Cause of Action fails to state facts sufficient to constitute a cause of action.
4. The Fourth Cause of Action fails to state facts sufficient to constitute a cause of action.
5. The Fifth Cause of Action fails to state facts sufficient to constitute a cause of action and is vague and ambiguous.

Defendants argue that the Complaint is vague and uncertain because the Exhibits referenced in the Complaint do not match up with the allegations.

**First Cause of Action (Wrongful Foreclosure)**

Defendants argue that Plaintiff's allegations that the notice of default does not give credit for all payments made on the deed of trust before its recording does not give rise to a cause of action for wrongful foreclosure. Civil Code § 2924 and § 2924c together govern the content of a Notice of Default.

The elements of wrongful foreclosure are well-established: (1) a duty owed by the foreclosing party; (2) a breach of that duty; (3) a causal connection between the breach and the resulting harm; and (4) damages. (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 408.) Plaintiff argues he sufficiently alleges all four elements, including breach by alleging that Defendants failed to properly credit payments, issuing an inaccurate Notice of Default, and pursuing foreclosure without legal authority. (Complaint ¶¶ 26-30.)

Based on Civil Code §§2924 and 2924c, the Court finds that the notice of default was accurate and therefore Plaintiff did not allege facts sufficient to establish this cause of action. The Demurrer is sustained as to the First Cause of Action with leave to amend.

**Second Cause of Action (Breach of Implied Covenant of Good Faith & Fair Dealing)**

Defendants argue that a claim for breach of good faith and fair dealing must be based on an underlying contract, and that Plaintiff does not make any allegations indicating what contract he is referring to. (Complaint ¶¶ 32-35.)

It is black letter law that every contract contains an implied covenant of good faith and fair dealing. (*Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371.) This covenant prohibits a contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement. (*Id.*)

Plaintiff pleads that Defendants breached this duty by misapplying payments, misstating the default amount, and pursuing foreclosure without lawful authority, thereby depriving Plaintiff of his contractual and equitable rights. (Complaint ¶¶ 31-35.) Plaintiff argues these allegations, if proven, constitute a breach of the implied covenant.

The Court agrees with Defendants, that the Second Cause of Action does not allege which contract – the note, one of the tree deeds of trust, or one of the three notices of default – he is referring to. The Demurrer is sustained as to the Second Cause of Action with leave to amend.

**Third Cause of Action (Cancellation of Instruments)**

Despite Plaintiff's allegations that the notice of default was not based on "reliable and competent evidence and was inaccurate in the amount demanded which did not give Plaintiff credit for all payments made under the DOT" Defendants argue that does not give rise to a cause of action for cancellation of instruments. (Complaint ¶38).

California Civil Code §3412 provides that a written instrument may be cancelled if it creates a serious risk of injury by clouding title. (*Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 333.) Plaintiff alleges the notice of default and Notice of Trustee's Sale contain materially inaccurate amounts and are therefore void or voidable. (Complaint ¶¶ 36-39.)

Based on Civil Code §§2924 and 2924c, the Court finds that the notice of default was accurate and therefore Plaintiff did not allege facts sufficient to establish this cause of action. The Demurrer is sustained as to the Third Cause of Action with leave to amend.

**Fourth Cause of Action (Violation of Business & Professions Code)**

Plaintiff alleges Defendants (1) Violated Civil Code §§2924.17 and 2943 by failing to rely on competent evidence and issue accurate demands; and (2) Engaged in practices that were unfair and fraudulent, increasing fees and costs and risking sale of property based on materially inaccurate data. (Complaint ¶42.) Defendants argue that those allegations do not give rise to a cause of action.

The Court finds that the Complaint does not contain allegations sufficient to state a cause of action, as the allegations in ¶42 have been addressed above, and ¶43 merely contains broad conclusions and not specific allegations. The Demurrer is sustained as to the Fourth Cause of Action with leave to amend.

**Fifth Cause of Action (Quiet Title)**

Defendants first point out that the Complaint is unverified, although the Court notes it is titled Verified Complaint. Defendants argue that a Complaint containing an action for Quiet Title must be verified, pursuant to CCP § 761.020.

Plaintiff opposes, arguing that the Complaint is verified and that the Complaint further pleads the legal description, title basis, adverse claims, and date as of which determination is sought, and prays for quiet title. (Complaint ¶¶ 44- 52.)

The Court disagrees and finds that the Complaint is not verified. The Demurrer is sustained as to the Fifth Cause of Action with leave to amend.

**TENTATIVE RULING #8:**

- 1. DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
- 2. THE DEMURRER IS SUSTAINED AS TO ALL FIVE CAUSES OF ACTION WITH LEAVE TO AMEND WITHIN TEN (10) DAYS OF THIS ORDER.**

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