

<b>1.</b>	<b>24CV0053</b>	<b>NICHOLAS JAMES GRAY v. ZBS LAW LLP</b>
<b>Demurrer</b>		

On June 6, 2025, pursuant to Code of Civil Procedure section 430.10, subdivisions (e) and (f), defendant NewRez LLC dba Shellpoint Mortgage Servicing (“defendant”) filed a general and special demurrer to plaintiff Nicholas James Lee Gray’s (“plaintiff”) first amended complaint (“FAC”) on the grounds that each cause of action alleged therein fails to state a claim for relief, and additionally, that the second cause of action is uncertain.<sup>1</sup>

Defense counsel declares he met and conferred with plaintiff via telephone prior to filing the demurrer in compliance with Code of Civil Procedure section 430.41, subdivision (a). (Gonzalez Decl., ¶ 4–5.)

On June 20, 2025, plaintiff, who is representing himself in this matter in pro per, filed a declaration, which the court deems to be an opposition to the demurrer.

Defendant filed no reply.

### 1. Background

This is an action for wrongful foreclosure and related claims arising from the January 2024 foreclosure on plaintiff’s property located at 2929 Maple Avenue in Pollock Pines, California (the “Property”).

### 2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (c), the court grants defendant’s unopposed request for judicial notice of Exhibits A through I.

### 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

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<sup>1</sup> Defendant’s memorandum of points and authorities in support of its demurrer argues the entire FAC is uncertain. (See Dem. at 4:8–5:6.) However, defendant’s demurrer does not identify the ground of uncertainty in a separate paragraph under either the first or third causes of action. (Cal. Rules Ct., R. 3.1320, subd. (a).)

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.)

The FAC alleges, “Defendants lacked the legal standing to initiate foreclosure proceedings due to the lost original documents, Note Fully Reconveyed, Inactive MERS number, Improper Assignment of the Mortgage, Improper Notice of Default, Accepted 1099A, as well as improper notice to beneficial owners and a lack of good faith.” (FAC, ¶ 22.)

The court finds these allegations are conclusory and do not state a claim for wrongful disclosure. The court sustains the demurrer to the first cause of action with leave to amend, as plaintiff has not had a previous opportunity to cure the defects. (*Courtesy Ambulance Serv. v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519, fn. 12.)

##### 4.2. Second C/A for Assignment of Rents

The FAC alleges, “[defendant] collected rents on the Property from 2020 to the date of foreclosure, despite the improper and invalid foreclosure proceedings.” (FAC, ¶ 27.) “[Plaintiff] seeks an accounting and restitution of all rents and money collected by Shellpoint Mortgage Servicing during this period.” (FAC, ¶ 28.) “[Plaintiff] seeks Fair Market Value for the property that was wrongfully sold.” (FAC, ¶ 29.)

Plaintiff has not stated a valid claim for relief. Because there does not appear to be a reasonable possibility that amendment will cure the defect, the court sustains the demurrer without leave to amend.

##### 4.3. Third C/A for Breach of 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

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resulting damages to the plaintiff. (*San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 439.)

The FAC alleges, “ZBS Law, LLP, as trustee, had a contractual obligation to protect the interests of the beneficiaries, including [plaintiff].” (FAC, ¶ 33.) “ZBS Law, LLP breached this obligation by failing to properly verify the validity of the foreclosure proceedings and protect [plaintiff’s] beneficial interests.” (FAC, ¶ 34.)

Plaintiff’s allegations are not directed toward demurring-defendant, and even if there were, they do not state a claim for breach of contract. The court sustains the demurrer to the third cause of action with leave to amend, as plaintiff has not had a previous opportunity to cure the defects. (*Courtesy Ambulance Serv. v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519, fn. 12.)

**TENTATIVE RULING #2: THE DEMURRER IS SUSTAINED WITH AND WITHOUT LEAVE TO AMEND. THE COURT GRANTS PLAINTIFF LEAVE TO AMEND THE FIRST AND THIRD CAUSES OF ACTION, AND DENIES LEAVE TO AMEND THE SECOND CAUSE OF ACTION.**

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

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2.	22CV1554	ALDEN VEGA V. NELSON VEGA
Motion to Correct Order and to Bifurcate		

On July 18, 2025, the parties appeared in court regarding Plaintiff's motion to enforce the settlement agreement. The court took the matter under submission and then on July 21, 2025 issued an ex parte minute order granting Plaintiff's request for relief.

On August 18, 2025, Defendant filed a motion to correct this order to remove the purported improper language regarding Code of Civil Procedure section 664.6 and to order bifurcation, specifically to determine the ownership interests and offset claims prior to resolving any other issues. Defendant argues that the agreement at issue, the March 23, 2023 "Stipulation of Value for Partition by Appraisal," is a procedural agreement and that it would be inappropriate to enter it as a judgment under Code of Civil Procedure section 664.6. Defendant cites two cases in support of this position: *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793 and *Levy v. Superior Court* (1995) 10 Cal.4th 578. These cases are inapposite. In both cases, at least one of the actual parties did not sign or otherwise agree to the alleged settlement. Those are not the circumstances here, where both parties signed the agreement. Not even Defendant argues that there was not an agreement.

Defendant also cites to several code sections regarding the partition of property, arguing that the inclusion of the Code of Civil Procedure section 664.6 language somehow offends the law and Defendant's substantive rights. The court is not persuaded by this argument. Rather, the court finds that its orders entering judgment pursuant to the terms of the stipulation is consistent with Code of Civil Procedure section 664.6, which provides that "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or **part thereof**, the court, upon motion, may enter judgment pursuant to the terms of the settlement." (Emphasis added.) The court interprets this provision to allow the entry of an order that settles a portion of the case.

The court finds that absent a setting aside of the underlying stipulation the orders contained therein remain as orders of the court. Certainly, there may be some ambiguity. The parties stipulated that they own the property as tenants in common. There is no clarity in the stipulation as to what percentage interest each party has. The court continues to reserve jurisdiction over any questions regarding the interpretation of the stipulation.

However, the court finds no legal error in entering the order as a judgment of the court under Code of Civil Procedure section 664.6. The court therefore declines to "correct" its July 21, 2025 order or otherwise modify the language. If the parties disagree on the interpretation of the order, either side can file a motion to seek such relief. Defendant's motion is denied.

**TENTATIVE RULING #2: DEFENDANT'S MOTION TO CORRECT THE JULY 21, 2025 ORDER AND TO BIFURCATE THE CASE IS DENIED.**

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<b>3.</b>	<b>23CV0577</b>	<b>ROBERT MOHR v. STATE FARM AUTO INSURANCE COMPANY</b>
<b>Motion for Summary Judgment</b>		

**TENTATIVE RULING #3: THE COURT, ON ITS OWN MOTION, CONTINUES THE MATTER TO  
8:30 A.M., FRIDAY, OCTOBER 3, 2025, IN DEPARTMENT 9.**

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4.	25CV0172	DONALD AUSTIN v. GREG HANSEN
Demurrer		

This matter originated with a Complaint filed by Plaintiffs on January 22, 2025. Defendants filed their Answer on February 20, 2025. Plaintiffs now demur to the Answer.

“A party who has filed a complaint or cross-complaint may, within 10 days after service of the answer to his pleading, demur to the answer.” Cal. Civ. Pro. § 430.40(b). Plaintiffs filed their Demurrer to Portion of Answer on May 27, 2025, well over the 10 days as allotted by Section 430. Notably, the portion of the pleading targeted by the demurrer is entitled “Counterclaims Against Plaintiffs Donald L. Austin and Sheila E. Austin.” It is unclear if this is intended to be a Cross-Complaint. Even assuming arguendo, that it is a Cross-Complaint, Civil Procedure § 430.40(a) mandates a 30 day period to demur. The motion is still untimely.

The demurrer is denied as untimely.

**TENTATIVE RULING #4: THE DEMURRER IS DENIED AS UNTIMELY.**

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<b>5.</b>	<b>24CV1751</b>	<b>WILLIAM L. HOLLAND v. JOSEPH D. LONG</b>
<b>Motion for Summary Judgment</b>		

On June 26, 2025, Plaintiffs filed a Motion for Summary Judgment seeking an interlocutory judgment on their cause of action for partition. Defendants filed their Opposition to Motion for Summary Judgment on August 29, 2025. Plaintiffs' Reply papers were filed on September 8, 2025.

Both parties filed objections to evidence submitted by the opposing party. Rulings on those objections are set forth in the attached.

The complaint in this matter was filed on August 14, 2024 alleging one cause of action for partition. By way of their Motion for Summary Judgment, Plaintiffs seek an interlocutory judgment for partition by sale. Plaintiffs and Defendants own, as tenants in common, real property located at Assessor's Parcel Number 038-082-007, more commonly referred to as 7110 Sierra Pines Road, Twin Bridges, California (hereinafter the "Property"). Each side owning a 50% undivided interest thereto. A disagreement has arisen amongst the parties, and they no longer wish to jointly own the Property. It is undisputed that physically dividing the Property is infeasible as it is a residential cabin. The question before the court is whether or not Plaintiffs are entitled to an interlocutory judgment for partition by sale.

Plaintiffs argue that they have a right to partition by sale as it is the only alternative to partition in kind. Defendants argue that division by sale is an unfavored remedy and there are more equitable alternatives such as assumption of the mortgage on the property or appraisal. They argue there are questions of material fact as to the most equitable remedy available and the value of the Property therefore the motion must be denied. If the court does order partition by sale, Defendants request a right of first refusal to match the highest bid.

"The Partition of Real Property Act [{"PRPA"}] applies to all actions for partition of real property filed on or after January 1, 2023, where the real property is held in tenancy in common and there is no agreement in a record binding all the cotenants that governs the partition of the property." Cal. Civ. Pro. § 874.311. The PRPA works in tandem with the other provisions of the general partition statute, however where the two conflict the PRPA controls. Cal. Civ. Pro. § 874.313.

The general statutory provisions governing partition establish a clear timeline of events in partition actions. First, "[a]t trial, the court shall determine whether the plaintiff has the right to partition." Cal. Civ. Pro. § 872.710. Second, "[i]f the court finds that the plaintiff is entitled to partition, it shall make an interlocutory judgment that determines the interests of the parties in the property and orders the partition of the property and, unless it is to be later determined, the manner of partition." Cal. Civ. Pro. § 872.720. Third, the court is to determine the manner of partition if no such determination has already been made.

Here, to the extent that the motion before the court seeks to address the first step of the process and do away with the necessity for a trial, the court does find that Plaintiffs have a right to partition of the Property. Both parties concede that they each own a 50% interest in the Property, which effectively



addresses the second step in the process as well. As such, the remaining issue is to determine the manner of partition.

There are two primary forms of partition: partition by sale, and partition in kind. *See* Cal. Civ. Pro. § 874.312(b) & (c). Partition by appraisal is also a remedy available to the parties but that remedy is only available upon agreement of the parties. *See* Cal. Civ. Pro. § 873.910. Where there has been no agreement between the parties for partition by appraisal, the only available options to the court are partition in kind or partition by sale. *Id.*; *See also* Cummings v. Dessel, 13 Cal. App. 5<sup>th</sup> 589 (2017) (the court cannot order partition by appraisal where the parties have not agreed to it).

Civil Procedure § 874.319 sets forth the factors to be addressed when determining whether partition in kind is appropriate. Here, however, the parties each concede that because the Property contains a residential cabin, partition by kind is impractical. Accordingly, there is no need to address the Section 874.319 factors in detail. Instead, because partition by kind is impractical, and because the parties have not agreed to partition by appraisal, the court is left only with partition by sale.

When ordering partition by sale, the court must first “...determine the fair market value of the property...” Cal. Civ. Pro. § 874.316. Upon doing so, the court is then required to allow the non-selling cotenant the first opportunity to purchase the interests of the selling co-tenant. Cal. Civ. Pro. § 874.317.

Plaintiffs’ moving papers, and their proposed order, seem to indicate that they are seeking partition by sale on the open market. Specifically, the proposed order gives the appointed referee “full power to sell the real property as soon as possible for the highest available price that the market will bear.” [Proposed] Order Granting Motion, p2, ln 2-3. However, doing so would patently ignore the statutory requirement of Section 874.317. The court is not willing to go so far as to forego the procedural requirements of the PRPA and to deny Defendants’ their statutory right to potentially purchase Plaintiffs’ interest in the Property. Moreover, neither party has provided the court with information sufficient to make a finding as to the value of the Property. For the foregoing reasons, the court declines to sign Plaintiffs’ proposed order.

While the proposed order is not being signed, the motion is granted in that the court does find that Plaintiffs have a right to partition by sale. The court hereby orders partition of the property located at 7110 Sierra Pines Road, Twin Bridges (APN 038-082-007-000). Plaintiffs William Lee Holland and Andrea Marie Holland, as Trustees of the Holland Family Trust dated February 15, 2024 are found to own a 50% undivided interest in the Property, and defendants Joseph Daniel Long and Rebekah Lyn Long are found to own an undivided 50% interest in the Property. A referee from Receivership Specialists is appointed to obtain an appraisal of the Property so the court may make a determination as to its value. Plaintiffs are to prepare an interlocutory judgment for the court’s signature.

**TENTATIVE RULING #5: THE MOTION IS GRANTED IN THAT THE COURT DOES FIND THAT PLAINTIFFS HAVE A RIGHT TO PARTITION BY SALE. THE COURT HEREBY APPOINTS A REFEREE FROM RECEIVERSHIP SPECIALISTS. THE REFEREE IS DIRECTED TO OBTAIN AN APPRAISAL OF THE PROPERTY SO THE COURT MAY MAKE A DETERMINATION AS TO THE VALUE OF THE PROPERTY. PLAINTIFFS ARE TO PREPARE AN INTERLOCUTORY JUDGMENT FOR THE COURT’S SIGNATURE.**

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