

TENTATIVE RULINGS: CIVIL LAW & MOTION

**Wednesday, June 3, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403**

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

TO JOIN ZOOM ONLINE:

Department 18:

Meeting ID: 160—739—4368

Password: 000169

<https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWIL3NBcE9LVHU2NVVpQIVRUT09>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. 25CV02064, 435 SR Ave, LLC v. Anderson

Plaintiff’s unopposed motion for preliminary injunction is **GRANTED**. Plaintiff’s request for judicial notice is **GRANTED**.

Plaintiff’s counsel shall submit a written order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

Analysis:

Plaintiff is a California limited liability company within its principal place of business located at 435 Santa Rosa Avenue. Plaintiff has brought suit against Defendants Eric Gustav Anderson and Defendant Urban Green Foods, LLC seeking declaratory relief and raising causes of action for breach of fiduciary duty, conversion, trespass, and waste.

On or around November 1, 2017, Andreas Pfanner and Defendant Eric Gustav Anderson, on behalf of himself and Defendant Urban Green Foods, LLC (“Defendant UGF”), executed Plaintiff’s Operating Agreement. At that time, Defendant UGF was a 50% member and Mr. Pfanner was a 50% member as well as Plaintiff’s sole manager. Pursuant to subsequent capital contributions made by Mr. Pfanner, as outlined in the declaration of Mr. Pfanner in support of this motion, as of March 8, 2025, and continuing until the present date, Mr. Pfanner held a 62.73% interest in Plaintiff, Defendant UGF held the remaining 37.26%, and Mr. Pfanner remained Plaintiff’s sole manager.

On February 25, 2026 this Court granted Plaintiff’s motion for order to deem Plaintiff’s Requests for Admission to as admitted. Accordingly, the truth of Plaintiff’s Requests for Admission (“RFAs”) Nos. 1 through 33 have been deemed admitted by Defendants. This includes the following,

REQUEST FOR ADMISSION NO. 19: Admit that PFANNER is currently the majority member of 435 SR.

REQUEST FOR ADMISSION NO. 20: Admit that PFANNER is currently the sole manager of 435 SR.

REQUEST FOR ADMISSION NO. 21: Admit that YOU (i.e. Defendant Anderson) are not the current manager of 435 SR.

REQUEST FOR ADMISSION NO. 22: Admit that YOU (i.e. Defendant Anderson) are not 435 SR’s Winding-Up Partner.

REQUEST FOR ADMISSION NO. 23: Admit that YOU (i.e. Defendant Anderson) are not 435 SR’s Tax Matters Partner.

Further, Defendants have been deemed to have conceded the genuineness of Plaintiff’s corporate documents referenced above, in addition to having admitted the respective membership interests also alluded to above.

Plaintiff asserts that notwithstanding the above, Defendant Anderson continues to hold himself out as Plaintiff’s manager and owner. According to Plaintiff, as recently as November 21, 2025, Defendant Anderson (through his New York attorney, Andrew Hayes) filed and submitted to the California Secretary of State an erroneous Statement of Information (“November SOI”) identifying himself (as opposed to Mr. Pfanner) as Plaintiff’s sole manager/member.

Furthermore, Plaintiff (through Mr. Pfanner) has discovered that Defendant Anderson – without notice to or consent by Plaintiff – caused to be submitted allegedly erroneous and fraudulent tax returns for 2023 and 2024 on behalf of Plaintiff.

Plaintiff now seeks a preliminary injunction enjoining Defendant Anderson from acting or representing himself to third parties as Plaintiff’s manager, Tax Matters Partner, Winding-Up Partner, or owner, in any capacity, as well as explicitly precluding Defendant Anderson from: (i) transferring any funds or real property owned by Plaintiff; (ii) filing any tax related documentation to the IRS and California Franchise Tax Board (“FTB”); and (iii) submitting documentation to the California Secretary of State on Plaintiff’s behalf. The motion is unopposed.

I. Plaintiff Has Met its Burden on this Motion

The purpose of a preliminary injunction is to maintain the status quo and prevent irreparable harm until the matter can be heard on the merits. (See *Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1418.) “Trial courts traditionally consider and weigh two factors in determining whether to issue a preliminary injunction. They are (1) how likely it is that the moving party will prevail on the merits, and (2) the relative harm the parties will suffer in the interim due to the issuance or non-issuance of the injunction.” (*Dodge, Warren & Peters Ins. Services, supra* at 1420; see also *Butt v. State* (1992) 4 Cal.4th 668, 677-678; *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1449; *ReadyLink Healthcare v. Cotton* (2005) 126 Cal.App.4th 1006, 1016.)

The burden is on the moving party to show all elements necessary to support issuance of a preliminary injunction. Plaintiff must show that the remedy at law is inadequate, irreparable harm will result, Plaintiff will probably prevail on the merits of his or her action, and equities weigh in favor of injunction. (*White v. Davis* (2003) 30 Cal.4th 528, 554; *O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481; see also CCP § 526 (a).)

The court’s determination must be guided by a “mix” of the “potential merit” and “interim harm” factors; the greater the requesting party’s showing on one factor, the less must be shown on the other to support an injunction. (*Butt v. State of California, supra*, 4 Cal.4th at 677-678.) However, the trial court may not issue an injunction, regardless of the amount of interim harm, “unless there is some possibility” that plaintiff will ultimately prevail on the merits of the claim. (*Jamison v. Department of Transp.* (2016) 4 Cal.App.5th 356, 362.)

Likelihood of Prevailing on Merits

This motion seeks only to enjoin Defendant Anderson from acting and representing that he is the manager or owner of Plaintiff. Therefore, Plaintiff’s burden here is to demonstrate its likelihood of success as to the Complaint’s First and Second Causes of Action for Declaratory Relief as to the management of Plaintiff, and the parties’ ownership of Plaintiff, respectively. The Court finds that this burden is met through the supporting declaration of Mr. Pfanner as well as through the admitted RFAs regarding the management and ownership of Plaintiff. Accordingly, Plaintiff has shown the likelihood of prevailing on the merits to support the requested preliminary injunction.

Irreparable Harm

Plaintiff has submitted evidence that Defendant Anderson has already submitted corporate documents to the California Secretary of State holding himself out as Plaintiff’s manager/owner. Though Plaintiff has since submitted a corrected/amended Statement of Information, Plaintiff argues that, absent a court order, Defendant Anderson can and likely will simply file another amended Statement of Information, which can mislead third parties and induce them into believing that Defendant Anderson has authority to act on Plaintiff’s behalf.

Furthermore, Plaintiff argues that Defendant Anderson’s submission of a tax return in Plaintiff’s name subjects Plaintiff to ongoing exposure to governmental penalties, investigations, and compliance risks which are not readily compensable through monetary damages.

Plaintiff has shown that such unauthorized activity will expose Plaintiff to face regulatory exposure, reputational injury, and unauthorized governmental filings in its name, which indeed could cause irreparable harm to Plaintiff's business governance and identity. Plaintiff has shown that a preliminary injunction is proper.

2. **SCV-270527, Jane Doe v. Foppoli: Defendant Active 20-30 US & Canada's Motion for Summary Adjudication**

Defendant Active 20–30 US & Canada (“Active National”) moves for summary adjudication of the two claims asserted by Jane Doe #5: the First Cause of Action for Sexual Assault and Battery and the Eighth Cause of Action for Intentional Infliction of Emotional Distress (“IIED”). Pursuant to C.C.P. section 437c(f), summary adjudication is **GRANTED** in favor of Active National.

I. Material Facts

Jane Doe #5 alleges that Defendant Foppoli sexually assaulted her in 2016. (Undisputed Material Fact [“UMF”], No. 1.) In the spring of 2016, Ben Lehr, his sister, and Jane Doe #5 all went out together in Santa Rosa when they ran into Defendant Foppoli and he invited the group back to Christopher Creek Winery to drink wine and swim in the pool and hot tub for an informal social gathering. (UMF, Nos. 3, 9, 12, 13.) Jane Doe #5 alleges that Defendant Foppoli sexually assaulted her in the hot tub that evening at Christopher Creek Winery. (UMF, No. 14; Second Amended Complaint, ¶ 50.) Neither Jane Doe #5 nor the people that the group went out with in Santa Rosa that evening were ever members of Active National. (UMF, Nos. 5, 7.) Defendant Foppoli and Ben Lehr were both members of the local Santa Rosa Active 20–30 #50 Foundation but never held any leadership position in Active National. (UMF, Nos. 8, 11.) Active National was not part of the group's plans for that evening, and the events of the evening were not an Active National event or ever reported to the Board of National Active. (UMF, Nos. 6, 15, 16.) Defendant Foppoli was never an officer or member of the Board of Directors of Active National, never entered into any partnership or joint venture agreement with Active, never had personal control over the actions of Active National, and never received remuneration for any volunteer services he performed for Active National, if any. (UMF, Nos. 19–21, 26.) Active National has never had any ownership interest in Christopher Creek Winery or ever promoted Defendant Foppoli as a means of gaining members or national recognition as a networking organization. (UMF, Nos. 17, 23.) Active National never encouraged or enabled Defendant Foppoli to abuse or commit acts of sexual violence against women and expelled Defendant Foppoli in 2021 from the organization when it learned of Jane Doe #5's allegation. (UMF, Nos. 22, 24.)

II. Standard at Summary Adjudication

A party moving for summary adjudication of a cause of action must prove that the cause of action has no merit and summary adjudication may only be granted if it completely disposes of the cause of action. (C.C.P. § 437c(f)(1).) “A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action.” (C.C.P. § 437c(p)(2).) “Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto.” (*Ibid.*)

“From commencement to conclusion,” the moving party bears the burden of persuasion and production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) “There is no obligation on the opposing party...to establish anything by affidavit unless and until the moving party has by affidavit stated facts establishing every element...necessary to sustain a judgment in his favor.” (*Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 468.) Defendants can meet their burden by showing a cause of action has no merit by showing that one or more elements of the cause of action “cannot be established.” (See C.C.P. § 437c(p)(2).) Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or defense. (*Aguilar, supra*, 25 Cal.4th at p. 849.)

III. Discussion

A. Active National Did Not Need to Obtain a Finding of Good Cause from the Court

Jane Doe #5 opposes the motion for summary adjudication (“MSA”) solely on a procedural basis. Jane Doe #5 argues the MSA cannot be heard later than 30 days before trial pursuant to C.C.P. 437c(a)(3) and relying on *Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1268, which warrants a procedural denial of the motion. However, as argued by Active National in its Reply, *Robinson* presented a different factual scenario where the defendants noticed their motion for a hearing within 30 days of the trial date without first obtaining a finding of good cause from the trial court. Here, the Court itself set the hearing on June 3, 2026, which does not require the moving party to obtain a finding of good cause. The Court chose June 3, 2026, for the hearing date with great consideration, weighing many factors, including Defendant Two Kings Wine Company’s MSA already being set on this date and the Court’s limited calendar space to have this motion heard as early as possible before the June 26, 2026, trial but still accounting for the required 81 days under C.C.P. section 437c(a)(2). (See Super. Ct. Sonoma County, Local Rules, rule 5.1.A.) The hearing date was properly set as the Court impliedly found good cause to set the hearing within 30 days of trial given the reasons above. Notably, the Court set the June 3rd hearing date on March 9, 2026, and neither Plaintiffs nor any other party objected to this hearing date or moved to advance the June 3rd hearing date. Additionally, the Court held a hearing on May 8, 2026, to discuss TKW’s request to continue the June 26th trial, which Plaintiffs vociferously objected to, and the Court ultimately denied TKW’s request. (See Minute Order, dated May 8, 2026, and served May 11, 2026.) Thus, there is no procedural basis to deny the motion.

B. Jane Doe #5 Fails to State Causes of Action Against Active National and Fails to Present Triable Issues of Fact Against Active National

Active National argues that it cannot be liable for Defendant Foppoli’s alleged sexual assault and battery of Jane Doe #5 under any theory. Active National contends it is not vicariously liable for Jane Doe #5’s alleged assault against Defendant Foppoli because he was not an agent or employee of Active National. Active National next argues it was not in a joint venture with Defendant Foppoli because Active National is a non-profit mutual benefit corporation and cannot enter into a joint venture by definition. Active National maintains it did not ratify Defendant Foppoli’s alleged assault of Jane Doe #5 and that it did not owe a duty of care towards Jane Doe #5. Lastly, Active National argues that there is no factual basis to support Jane Doe #5’s IIED claim as she was not a member of National Active and the gathering at Christopher Creek Winery was not an Active National event.

An actual agency may be created by ratification. (*UFCW & Employers Benefit Trust v. Sutter Health* (2015) 241 Cal.App.4th 909, 932.) “Ratification is the voluntary election by a person to adopt in some manner as his own an act which was purportedly done on his behalf by another person, the effect of which, as to some or all persons, is to treat the act as if originally authorized by him. [Citations.] A purported agent’s act may be adopted expressly or it may be adopted by implication based on conduct of the purported principal from which an intention to consent to or adopt the act may be fairly inferred, including conduct which is ‘inconsistent with any reasonable intention on his part, other than that he intended approving and adopting it.’ ” (*Rakestraw v. Rodrigues* (1972) 8 Cal.3d 67, 73.) A principal’s failure to discharge an agent after learning of his wrongful acts may be evidence of ratification. (*Dickinson v. Cosby* (2019) 37 Cal.App.5th 1138, 1158, citing *Delfino v. Agilent Technologies, Inc.* (2006) 145 Cal.App.4th 790, 810.) A principal may ratify an agent’s act through either “ ‘confirmatory conduct’ ” or “ ‘conduct inconsistent with disapproval.’ ” (*Dickinson, supra*, 37 Cal.App.5th at 1159, citing *Gates v. Bank of America* (1953) 120 Cal.App.2d 571, 576.)

Here, it is undisputed that Defendant Foppoli and Jane Doe #5 were never employees of Active National or ever created an employer-employee relationship. However, Active National may be liable for Defendant Foppoli’s torts on an agency theory by means of ratification. Jane Doe #5 has failed to oppose the motion on its merits and present any evidence of ratification or agency. There is no evidence that the gathering was sponsored or held by Active National, that any of the parties involved were Active National members, that Active National owed a duty to Jane Doe #5 or that it had a special relationship with Jane Doe #5, that the gathering was used to facilitate Active National business (officially or unofficially), that Active National had any notice or knowledge of the alleged assault prior to 2021, or evidence of confirmatory conduct supporting Active National’s ratification of Defendant Foppoli’s actions. Thus, by failing to oppose the motion on the merits, Jane Doe #5 has failed to meet her burden and present evidence of a triable issue of fact of Active National’s liability for torts committed by Defendant Foppoli. Summary adjudication is **GRANTED** in favor of Active National for the First and Eighth Causes of Action asserted by Jane Doe #5.

IV. Conclusion

Active National’s motion for summary adjudication of the First and Eighth Causes of Action pertaining to Jane Doe #5 is **GRANTED**.

Active National’s counsel shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

3. SCV-270527, Jane Doe v. Foppoli: Defendant Two Kings Wine’s Motion for Summary Adjudication

Defendant Two Kings Wine Company, LLC (doing business as Christopher Creek Winery) (“TKW”) moves for summary adjudication of all causes of action asserted by Jane Doe #1 and Jane Doe #4 (together as “Plaintiffs”). Pursuant to C.C.P. section 437c(f), summary adjudication is **GRANTED**.

TKW's objections to Plaintiffs' evidence in support of their Opposition are **SUSTAINED** in part and **OVERRULED** in part. TKW's request for judicial notice is **GRANTED with limitations** as discussed below.

I. Material Facts

TKW moves for summary adjudication ("MSA") of the First (Sexual Assault and Battery), Second (Violation of the Bane Civil Rights Act), Third (Violation of the Ralph Act), and Eighth (Intentional Infliction of Emotional Distress ["IIED"]) Causes of Action asserted by Jane Doe #1 and Jane Doe #4 as they are the only remaining Plaintiffs with claims against TKW.¹ TKW was organized on September 25, 2012 and purchased Christopher Creek Winery located at 641 Limerick Lane in Healdsburg, CA (the "Winery") around October 2012. (Undisputed Material Fact ["UMF"], Nos. 2, 3.) The current ownership of TKW is as follows: (1) Dominic Foppoli – 61.8%; (2) Richard and Terry Foppoli – 25%; (3) Joe Foppoli – 4.4%; (4) Laim McCormick– 4.4%; (5) Brian Noble – 2.2%; and (6) Christina Foppoli – 2.2%. (UMF, No. 5.) Joe Foppoli attempted to have Defendant Foppoli's shares placed into a trust and remove him from the company, but Defendant Foppoli refused to comply. (UMF, No. 8.)

Jane Doe #1 and Defendant Foppoli were in a romantic relationship beginning in 2001 when she was 19 years old and alleges that Defendant Foppoli assaulted her from 2001 to 2005 and once in 2010. (UMF, No. 13.) None of Defendant Foppoli's alleged actions against Jane Doe #1 occurred at the Winery. (UMF, No. 14.) The parties dispute whether Jane Doe #1 reported her assaults to TKW or whether TKW had knowledge of Defendant Foppoli's alleged misconduct. (See UMF and Response, Nos. 17, 18, 19.) Jane Doe #4 alleges that Defendant Foppoli sexually assaulted her in June 2012 at the Active 20-30 US & Canada National Convention in Reno, Nevada. (UMF, No. 20, 21, 22.) None of Defendant Foppoli's alleged actions against Jane Doe #4 occurred at the Winery. (UMF, No. 23.) The parties dispute whether Jane Doe #4 reported her assaults to TKW or whether TKW had knowledge of Defendant Foppoli's alleged misconduct. (See UMF and Response, Nos. 16, 27, 28.) The primary dispute in this motion is the timeline surrounding the creation of TKW, the entities merged with TKW (if any), and whether Defendant Foppoli was acting as an agent at the time the alleged misconduct occurred. (UMF and Response, Nos. 15, 16, 24, 25.)

II. Standard at Summary Adjudication

A party moving for summary adjudication of a cause of action must prove that the cause of action has no merit and summary adjudication may only be granted if it completely disposes of the cause of action. (C.C.P. § 437c(f)(1).) "A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action." (C.C.P. § 437c(p)(2).) "Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (*Ibid.*) "From commencement to conclusion," the moving party bears the burden of persuasion and production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) "There is no obligation on the opposing

¹ The Court notes that certain Jane Does have settled with TKW and others are awaiting Defendant Foppoli to sign the settlement agreement, which is why the instant MSA only addresses the remaining Jane Does.

party...to establish anything by affidavit unless and until the moving party has by affidavit stated facts establishing every element...necessary to sustain a judgment in his favor.” (*Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 468.) Defendants can meet their burden by showing a cause of action has no merit by showing that one or more elements of the cause of action “cannot be established.” (See C.C.P. § 437c(p)(2).) Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or defense. (*Aguilar, supra*, 25 Cal.4th at p. 849.)

III. Discussion

A. The Protective Order

Plaintiffs previously objected to evidence submitted by Defendant Foppoli in support of his MSA on the basis that supporting evidence contained Plaintiffs’ identifying information without redaction in violation of the Protective Order. However, the Court finds evidence filed in support of Plaintiff’s Opposition to TKW’s MSA also violates the Protective Order by containing identifying information of Plaintiffs without redaction. For example, Exhibit A to Jane Doe’s Declaration, included in Plaintiffs’ Evidence in Opposition and filed separately, contains identifying information. Therefore, the Court **ORDERS** Plaintiffs to file redacted versions of any and all documents filed in support of their Opposition that contains Plaintiffs’ identifying information within 5 (five) days of notice of this Order. Upon such filing, the Court shall remove unredacted documents from public view.

B. TKW’s Request for Judicial Notice

The court may take judicial notice of facts 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. (Evid. Code § 452(h).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under Evidence Code section 452. (Evid. Code § 453.) Courts may “take judicial notice of the *existence* of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact.” (*People v. Harbolt* (1997) 61 Cal.App.4th 123, 126–127 [citations omitted]; Evid. Code §§ 452, 453.)

TKW filed an RJN in support of its MSA requesting judicial notice of the Second Amended Complaint (“SAC”) filed on June 13, 2025, TKW’s Answer to the SAC, and the Court’s September 1, 2023, ruling on TKW’s Demurrer to the First Amended Complaint. The Court **GRANTS with limitations** judicial notice of the SAC, TKW’s Answer, and the Court’s September 1, 2023, ruling. The Court takes judicial notice of the existence of these documents but does not take judicial notice of the truth of hearsay statements in the SAC, TKW’s Answer, or the September 1, 2023, ruling.

C. TKW’s Objections to Plaintiff’s Evidence

TKW asserts five objections to Plaintiff’s evidence in support of their Opposition to the MSA. Objection No. 1 to the Declaration of Jane Doe #1 **SUSTAINED in part** as to the third sentence “It is my understanding that this business was one of multiple companies that later became defendant Two Kings Wine Company LLC dba Christopher Creek Winery (‘Defendant Winery’).” Objection No. 1 is **OVERRULED** as to the first two sentences. Objection No. 2 to the Declaration of Jane

Doe #1 is **OVERRULED**. Objection Nos. 3, 4, and 5 to Plaintiffs' Additional Material Facts are **SUSTAINED**.

D. TKW Did Not Need to Obtain a Finding of Good Cause from the Court

Plaintiffs oppose the motion on a procedural basis, arguing the MSA cannot be heard later than 30 days before trial pursuant to C.C.P. 437c(a)(3) and *Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1268. As explained in Active National's MSA, *Robinson* is inapposite to the facts here. The Court set the hearing on June 3, 2026, which does not require the moving party to obtain a finding of good cause. The Court chose June 3, 2026, for the hearing date considering its limited calendar space to have this motion heard as early as possible before the June 26, 2026, trial but still accounting for the required 81 days under C.C.P. section 437c(a)(2). (See Super. Ct. Sonoma County, Local Rules, rule 5.1.A.) The hearing date was properly set as the Court impliedly found good cause to set the hearing within 30 days of trial given the reasons above. Notably, the Court set the June 3rd hearing date on March 6, 2026, and neither Plaintiffs nor any other party objected to this hearing date or moved to advance the June 3rd hearing date. Additionally, the Court held a hearing on May 8, 2026, to discuss TKW's request to continue the June 26th trial, which Plaintiffs vociferously objected to, and the Court ultimately denied TKW's request. (See Minute Order, dated May 8, 2026, and served May 11, 2026.) Thus, there is no procedural basis to deny the motion.

E. Plaintiffs Fail to Raise Substantial Triable Issues of Fact Regarding TKW's Liability for Defendant Foppoli's Intentional Torts

TKW argues it cannot be liable for any of the claims asserted by Jane Doe #1 and Jane Doe #4 because it did not owe any legal duty to Plaintiffs, it is not vicariously liable for the alleged misconduct of Defendant Foppoli, and it did not ratify Defendant Foppoli's alleged misconduct. Plaintiffs argue that FFTV Import and Export ("FFTV"), Foppoli Wines, LLC ("Foppoli Wines"), and Benevolo Wines, Inc. ("Benevolo Wines") were merged into TKW and their assets were taken over by TKW, so it is irrelevant when TKW was registered as an LLC but that a triable issue of fact remains as to whether Defendant Foppoli was TKW's agent as a result.

A limited liability company is an entity distinct from its members and is formed when the Secretary of State has filed the articles of organization. (Corp. Code §§ 117701.04(a), 17702.01(d).) While members of an LLC are generally not personally liable for the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager for the LLC, this does not affect a member's liability to third parties for his participation in tortious conduct. (Corp. Code §§ 17703.04(a), (c).) Upon a merger of two or more corporations, the surviving corporation assumes all debts and liabilities of each of the disappearing corporations as if the surviving corporation had itself incurred them. (Corp. Code § 1107(a).) "[A] successor company has liability for a predecessor's actions if: (1) the successor expressly or impliedly agrees to assume the subject liabilities [], (2) the transaction amounts to a consolidation or merger of the successor and the predecessor, (3) the successor is a mere continuation of the predecessor, or (4) the transfer of assets to the successor is for the fraudulent purpose of escaping liability for the predecessor's debts." (*CenterPoint Energy, Inc. v. Superior Court* (2007) 157 Cal.App.4th 1101, 1120, citing *Ray v. Alad Corporation* (1977) 19 Cal.3d 22, 31.)

Here, for the first time in the Opposition to TKW's MSA, Plaintiffs assert a successor liability theory naming FFTV, Foppoli Wines, and Benevolo Wines as predecessor entities that merged to

form TKW in 2012. However, there is no evidence supporting this theory and it is improperly asserted in Plaintiffs' opposition to the MSA. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, fn. 7 ["To allow an issue that has not been pled to be raised in opposition to a motion for summary judgment in the absence of an amended pleading, allows nothing more than a moving target. For Code of Civil Procedure section 437c to have procedural viability, the parties must be acting on a known or set stage."].) FFTV, Foppoli Wines, and Benevolo Wines are not named defendants and are not named anywhere in the SAC. The only allegation in the SAC related to the makeup or formation of TKW is that Defendant Foppoli at all times was an agent, employee and/or officer of TKW. (SAC, ¶ 5.)

Assuming *arguendo* Plaintiffs pled a successor liability theory, Plaintiffs' evidence does not create a triable issue of fact. It is undisputed that TKW was formed on September 25, 2012, and the LLC purchased Christopher Creek Winery, and was founded prior to its acquisition of Christopher Creek. (UMF, Nos. 3–4.) Plaintiffs contend that TKW's date of formation is irrelevant because Christopher Creek was founded in 1974. However, Plaintiffs fail to present any facts or evidence of any fiduciary relationship between Defendant Foppoli and Christopher Creek Winery any time between 2001 (Defendant Foppoli's earliest act of sexual assault of Plaintiffs) and October 2012 (TKW's acquisition of Christopher Creek Winery) that would then impute liability from Christopher Creek Winery to TKW. Plaintiffs present evidence of various business records for the three predecessor entities including: the Articles of Organization from the California's Office of the Secretary of State for Foppoli Wines LLC dated April 9, 2009 (Plaintiff's Evidence in Opposition, Exhibit 17); Commercial Credit Bureau Records for FFTV stating that it was established in 2003 (Plaintiff's Evidence in Opposition, Exhibit 14), and California Secretary of State Business Search for Benevolo Wines stating an initial filing date of November 10, 2010 with current status as suspended as of April 2, 2024 (Plaintiff's Evidence in Opposition, Exhibit 14.) However, there is minimal evidence of any connection between the entities and their connection to TKW or that TKW is somehow comprised of these predecessor entities. Jane Doe #1 filed a declaration in support of Plaintiffs' Opposition that is based upon what Defendant Foppoli told her: FFTV "was one of multiple companies that later became defendant Two Kings Wine Company LLC dba Christopher Creek Winery." (Jane Doe #1 Decl., ¶ 5.) Dana Von Sternberg testified that Benevolo Wines was incorporated in 2010 and it was "disbanded" when he left Christopher Creek/Two Kings in 2016, but that Benevolo Wines was sold to Christopher Creek to then resell. (Plaintiffs' Evidence in Opposition, Exhibit 8, Von Sternberg Decl., 15:15–71:21.) Liam McCormick testified that Christopher Creek bought out Benevolo Wines, which was formed in late 2009 or 2010, but technically still exists as an entity and has not made a vintage since 2018 but is sold at Christopher Creek Winery. (Plaintiffs' Evidence in Opposition, Exhibit 13, McCormick Decl., 25:7–29:22.) Thus, Benevolo Wines and TKW were not merged because Benevolo Wines was not dissolved. Even if these three entities were in fact merged with TKW upon its inception, Plaintiffs fail to present evidence that creates triable issues of fact regarding any fiduciary relationship or agency between Defendant Foppoli and the three predecessor entities between 2001 and October 2012 that would then impute liability from these entities to TKW. Principally, there is still no evidence that TKW expressly or impliedly agreed to assume the subject liabilities, that there was a transaction amounting to a consolidation or merger of TKW and the three predecessor entities or some combination thereof, or that TKW is a mere continuation of the predecessor entities.

Plaintiffs further argue that Defendant Foppoli is liable because he "is the Winery" and that he was an agent of TKW when he assaulted Jane Doe #1 and Jane Doe #4. However, such argument is conclusory and not supported by evidence or the law. An LLC is an entity distinct from its members

and is formed when the Secretary of State has filed the articles of organization, which was September 25, 2012, for TKW. It is impossible for Defendant Foppoli to have been an agent of TKW when he assaulted Jane Doe #1 and Jane Doe #4 because they both allege their assaults occurred prior to September 25, 2012. (UMF, Nos. 13, 22.) Nor could TKW have ratified Defendant Foppoli's conduct because TKW did not legally exist at the times of the assault and Plaintiffs have failed to plead or present a triable issue of fact of a successor liability theory. Plaintiffs present evidence from 2003 that Jane Doe #1 reported Defendant Foppoli's unwanted touching to his mother, Terry Foppoli. (Jane Doe #1 Decl., ¶ 11, Exhibit A.) While Terry Foppoli and Richard Foppoli currently jointly own 25% of TKW, this is not enough to impose liability onto TKW as it was not formed until 2012, and Plaintiffs do not show any successor liability of prior entities or a connection to Terry Foppoli. (UMF, No. 5.) Furthermore, Plaintiffs point to Jane Doe #4's report of her June 2012 assault to Dana Von Sternberg in 2013. However, Jane Doe #4's report to Dana Von Sternberg occurred in the context of Active 20-30's rather than TKW. The report was concerning two Santa Rosa Active 20-30's members (Jane Doe #4 and Defendant Foppoli), made during a 2013 Regional Meeting for Active 20-30's, with other Santa Rosa Active members present, to Dana Von Sternberg in his role related to Active 20-30's which he then consulted with Andrew Bain, the then President of Santa Rosa Active 20-30's. (Plaintiffs' Evidence in Opposition, Exhibit 8, Von Sternberg Decl., 32:9-37:1.) Dana Von Sternberg's role as an owner of TKW at the time of the report is insufficient to show TKW's ratification as Mr. Von Sternberg was not purporting to be an agent of TKW at the time of the report and the assault happened prior to TKW's formation as a legal entity. Jane Doe #4 contends that Defendant Foppoli gave her wine from an unlabeled bottle of wine prior to her assault stating that it was from "his winery" but that allegation is insufficient to impute liability to TKW which was not formed until June 2012. (See Additional Material Fact and Response, No. 7.) Furthermore, a 2013 complaint from a wine club member does not create a triable issue of fact of TKW's ratification of Jane Doe #1 and Jane Doe #4's sexual assaults. (Additional Material Fact and Response, No. 10.) Lastly, Jane Doe #1 and Jane Doe #4 both stated that they did not report their assaults to TKW and that Defendant Foppoli was not an employee and/or officer of TKW at the time of the assaults. (Tonan Decl., Exhibits H-I, Responses to Special Interrogatories, Nos. 3, 59.)

In sum, Plaintiffs fail to show triable issues of fact related to TKW's ratification of Defendant Foppoli's acts that occurred prior to the entity's formation in September 2012 that would impute any liability to TKW. Plaintiffs' arguments are conclusory and not supported by the evidence. For example, Plaintiffs contend "[b]ut for Defendant Foppoli's remaining as an owner of Defendant Winery, Jane Doe #1 and #4 would not have been assaulted." (Opposition, 11:13-14.) However, "ratification is possible only when the person whose unauthorized act is to be accepted purported to act as agent for the ratifying party." (*Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, fn. 13, citing *van't Rood v. County of Santa Clara* (2003) 113 Cal.App.4th 549, 571.) Even though Defendant Foppoli is the majority shareholder of TKW, Defendant Foppoli's acts must be ascribed to him as an individual because he could not have served as an agent to principal entity that did not exist in 2001-2005, 2010, and June 2012 when he committed such assaults. Plaintiffs fail to present substantial responsive evidence to carry their burden in showing a triable issue of fact. (See *Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163 ["responsive evidence that gives rise to no more than mere speculation cannot be regarded as substantial, and is insufficient to establish a triable issue of material fact."].)

IV. Conclusion

TKW's MSA is **GRANTED** as to the First, Second, Third, and Eighth Causes of Action asserted by Jane Doe #1 and Jane Doe #4.

Plaintiffs are **ORDERED** to file redacted versions of any and all documents filed in support of their Opposition that contains Plaintiffs' identifying information within 5 (five) days of notice of this Order.

TKW's counsel shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4. 25CV05455, Century Surety Company v. Garcia

Plaintiff's motion to deem its requests for admissions admitted is **DROPPED** from calendar. Plaintiff filed a conditional notice of settlement of entire case on May 28, 2026.

5. 25CV01064, Hamilton v. Hamilton

Defendants' demurrer to Plaintiff's First Amended Complaint ("FAC") is **OVERRULED**.

Defendant's request for judicial notice is **DENIED**. The filings in the related probate and family law cases are not pertinent to whether Plaintiff has stated a sufficient claim for breach of contract against these defendants.

Plaintiff's counsel shall submit an order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

As alleged in the FAC, Plaintiff John Douglas Hamilton ("Doug") is the natural father of decedent Ryan Douglas Hamilton ("Ryan"). Defendant Alaina Katheryn Hamilton aka Alaina Hamilton aka Alaina Skolnik ("Alaina") is Ryan's widow; the Executor of the Estate of Ryan Douglas Hamilton ("Estate"); and, upon information and belief, the Trustee of the Hamilton Family Trust ("Trust").

Ryan and Alaina were married on April 22, 2017. Ryan and Alaina created the Trust on March 6, 2018. Among other things, the Trust provides that the Trustee of the Trust shall pay the legally enforceable claims against the Deceased Trustor from the Deceased Trustor's share of the Trust.

On or about June 2, 2022, Ryan left the home he shared with Alaina and began living on his own. Ryan was suffering from psychiatric ailments at the time he left the home he shared with Alaina and could not work. Around the time Ryan left the shared home and began living on his own, Ryan and Doug made an oral agreement that Doug would lend Ryan money to pay for his living expenses, medical expenses, and attorneys' fees and costs ("Loan"). Ryan and Doug agreed that Ryan would repay the principal amount owed on the Loan upon the resolution of the status of Ryan's

relationship with Alaina. The sum total of all amounts owed by Ryan to Doug is \$315,534.38.

Ryan passed away on April 25, 2024. Ryan and Alaina were married at the time of his passing. Doug now raises a cause of action for breach of contract against Alaina, personally, and as trustee and executor of Ryan's estate, claiming that since Ryan failed to repay the loan prior to his passing, Alaina, individually, as executor of the Estate, and as Trustee of the Trust is liable to pay it.

Defendants demurrer to the FAC on the grounds that Plaintiff has failed to state a claim against Alaina in her personal capacity and, therefore, she is not properly named as a defendant. Defendants also argue that Plaintiff has failed to allege that the condition precedent to Ryan's oral promise has been fulfilled. For the reasons stated below, Defendants' demurrer is overruled.

I. Plaintiff Has Stated a Claim against Alaina Skolnik Personally; As Such, she is Properly Joined as a Defendant

Defendants demur to the First Cause of Action on the ground that it fails to state a claim against Alaina Hamilton (Skolnik) in her personal capacity. Defendants argue that since the debt was incurred while Ryan and Alaina were separated, it is Ryan's separate debt and neither the community estate nor Alaina personally is liable for it.

Defendants rely on Family Code § 910 that provides that the community estate is liable for debts incurred by either spouse "during marriage," which expressly does not apply to time following the date of separation. Defendants also point to Family Code § 2623 and submit that it provides that "the community is liable for Ryan's separate property debts only if they were incurred for the benefit of the community." This is not exactly what the code section says.

Family Code § 2623 provides that debts incurred for the "common necessities of life" of either spouse during the period of separation shall be confirmed to *either* spouse according to the parties' respective needs and abilities to pay at the time the debt was incurred, while debts incurred for "nonnecessaries [sic]" shall be confirmed without offset to the spouse who incurred the debt.

Defendants argue that "Ryan's alleged debt was incurred solely for the purpose of supporting Ryan post-separation, and funding litigation against Alaina, and not for the benefit of the community." Therefore, as argued, Alaina has no personal liability to pay Ryan's post-separation property debt with the community estate.

Plaintiff opposes by arguing that debts incurred during the separation should be treated as community property since they are no longer being analyzed under the context of a divorce. This argument is not persuasive. Nonetheless, while the Court does not agree with Plaintiff's theory, the Court does agree that the Plaintiff has sufficiently pleaded this cause of action against Alaina personally.

Though neither party cited to it, Family Code § 914(a)(2) provides that a married person is *personally liable* for the debts of the person's spouse incurred after the date of separation of the spouses if the debt was incurred for "common necessities of life."

Plaintiff alleges that the debt was incurred "to pay for his living expenses, medical expenses, and attorneys' fees and costs." (FAC, ¶ 11.) Whether the funds were in fact used for "common

necessaries of life” is a question of fact not appropriate for determination on demurrer. However, Plaintiff has sufficiently pleaded as such. Therefore, Plaintiff has sufficiently pleaded the cause of action against Alaina personally and she is properly joined as a defendant in her personal capacity.

II. Plaintiff Has Stated a Claim for Breach of Contract

Defendants argue that Plaintiff has failed to state a cause of action for breach of contract because pursuant to the terms of the alleged oral agreement, the debt was not due until the status of Ryan’s relationship with Alaina was “resolved.” Defendants argue that this allegation establishes a condition precedent that must be satisfied before Doug may recover on a claim for breach of contract. As argued, this condition precedent is “a meeting of the minds that Ryan’s death ‘resolved’ the status of the marriage...”

Plaintiff argues in opposition that the allegation is consistent with Ryan’s intention to repay Doug regardless of the outcome of the dissolution proceeding, e.g., a divorce judgment, dismissal upon reconciliation, or otherwise. As argued, “Since the only condition required to compel repayment of the debt was resolution of the relationship between Ryan and Lainey, that condition was satisfied when Ryan died.”

The Court agrees that “resolution of the relationship” was a condition precedent that must have occurred prior to Ryan’s obligation to pay being triggered. However, the Court does not agree with Defendants that the terms of the condition should be so narrowly construed. The Court agrees with Plaintiff that the phrase “resolution of the status of Ryan’s relationship with [Ms. Skolnik]” is broad and could include a number of outcomes including reconciliation or death of either spouse. The Court agrees with Plaintiff that Plaintiff has sufficiently alleged that the condition precedent to Ryan’s obligation to pay occurred.

6. 25CV06507, Shipley v. Provencher

Defendant’s motion to set aside default is **GRANTED**.

Defendant’s counsel shall submit a written order consistent with this ruling and in compliance with Rule 3.1312.

Plaintiff filed his complaint against Defendant on September 18, 2025. Following some purported issues with service of the initial papers, Defendant agreed to acknowledge service as having been complete as of February 11, 2026 and agreed to file a responsive pleading by February 27, 2026.

Plaintiff asserts that service was complete on November 25, 2025; therefore, Defendant’s deadline to respond was December 26, 2025. Plaintiff submits that he did not agree to any extensions. The proof of service of process states that service occurred on November 25, 2025. Defendant did not move to quash service of summons despite the alleged irregularities in service.

On February 27, 2026, Defendant filed a Declaration of Demurring or Moving Party in Support of Automatic Extension, which, if timely filed, would automatically extended his deadline to file a responsive pleading by an additional 30 days. Plaintiff filed a request for default on March 17, 2026 and the Court entered Defendant’s default that day.

CCP § 430.41(a)(2) provides, that the demurring party shall not be subject to default during the period of extension if a declaration for automatic extension is timely filed. Defendant argues that the default should be set aside pursuant to CCP § 473(d) because it was entered as a result of clerical error since it should not have been entered considering the declaration for automatic extension. The timeliness of such declaration is disputable considering the proof of service of summons and the lack of action by Defendant to quash service if Defendant felt service was inadequate. Defendant represents that “the parties agreed” that Defendant could file a responsive pleading by February 27, 2026, but such agreement is not reflected in the record. Defendant unilaterally stated that it would do so and Plaintiff did not respond. This does not reflect an agreement. Defendant has not demonstrated that the default was entered as a result of clerical error.

Nevertheless, Defendant also seeks to set aside the default pursuant to the discretionary provisions of CCP §473(b). Under that provision, the Court may grant relief from default that was taken against a party through the party’s mistake, inadvertence, surprise, or excusable neglect. Taking the totality of the circumstances into consideration, the Court finds discretionary relief to be appropriate. Considering the parties’ communications regarding the sufficiency of service, Defendant has demonstrated a good faith belief, though mistaken, that his time to file the responsive pleading had been extended. The record also reflects diligence on Defendant’s part considering that this motion was filed only 6 weeks after default was entered. Defendant’s request to set aside default is accordingly granted pursuant to CCP §473(b).

7. 25CV05334, Hunter v. Pulp Farms, LLC

Plaintiff’s motion to compel discovery responses; deem matters in requests for admissions admitted; and for monetary sanctions is **CONTINUED** to July 1, 2026 at 3:00 p.m. in Department 18 to be heard together with Defendants’ motion for relief from waiver of objections to discovery.

8. 25CV08531, Martinez v. US Bank Trust National Association

Defendants’ demurrer to Plaintiff’s Complaint is **SUSTAINED**.

Defendants’ counsel shall submit an order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

This is an action for wrongful foreclosure. As alleged in the Complaint, on May 24, 2022, Plaintiff executed a promissory note for \$764,750.00 and a Deed of Trust recorded May 27, 2022. On March 11, 2024, an Assignment of Deed of Trust was recorded. On October 31, 2024, a second Assignment of Deed of Trust was recorded. On June 12, 2025, a Substitution of Trustee was executed substituting Prestige Default Services, LLC as trustee; it was recorded June 27, 2025.

On June 27, 2025, Prestige Default Services, LLC recorded a Notice of Default and Election to Sell. Page 4 contains a Beneficiary Declaration signed under penalty of perjury by Alexis Solano of SN

Servicing Corporation declaring that the servicer contacted the borrower on April 7, 2025 in full compliance with Civil Code §§ 2923.5 and 2923.55.

Plaintiff alleges that this is a misrepresentation and rather,

1. The only attempts ever made were four telephone calls on April 7, 2025 only, all from the same number (800-603-0836).
2. Plaintiff was unavailable to answer any of the calls; no voicemail was left and no further attempts were made on any other day or at any other time.
3. Defendants never attempted contact on three different days at three different times as expressly required by Civil Code §§ 2923.5(a)(2) and 2923.55(a)(2).
4. No certified mail with return receipt requested was ever sent or received.
5. No HUD-certified housing counselor was ever provided or contacted on Plaintiff's behalf.

On or about July 17, 2025, Plaintiff served Prestige Default Services, LLC with an Affidavit of Non-Compliance with §§ 2923.5 and 2923.55 via certified mail. Plaintiff alleges that Defendants ignored the notice and continued the foreclosure.

On September 29, 2025, Prestige recorded a Notice of Trustee's Sale. The Property was sold at trustee's sale on or about November 26, 2025 and a Trustee's Deed Upon Sale was recorded December 4, 2025, conveying title to U.S. Bank Trust National Association, as Trustee for BMCF-EG Hanok Series II Trust, for a credit bid of \$847,064.86.

Plaintiff alleges that the foreclosure sale is void because Defendants never satisfied the mandatory conditions precedent of actual borrower contact or due diligence and instead relied on a knowingly false declaration. Plaintiff alleges that no tender is required due to fraud. Plaintiff raises causes of action for (1) Wrongful Foreclosure; (2) Violation of Civ. Code § 2923.5; (3) Violation of Civ. Code § 2923.55; (4) Violation of Civ. Code § 2924.17; (5) Unfair Business Practices; (6) "To Set Aside Trustee's Sale;" (7) Quiet Title; and (8) Cancellation of Instruments. Defendants demur to each cause of action.

I. Uncertainty

As a threshold matter, Defendants demur to the Complaint as being uncertain. A demurrer for uncertainty pursuant to CCP § 430.10(f) will be sustained only where a defendant cannot reasonably respond, i.e. cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; see also *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 ["A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures."]) Plaintiff's complaint is not uncertain as it can easily be determined what claims must be admitted or denied. The demurrer on this basis is overruled.

II. First Cause of Action – Wrongful Foreclosure

To maintain a cause of action for wrongful foreclosure, "a plaintiff must allege that (1) the defendants caused an illegal, fraudulent, or willfully oppressive sale of the property pursuant to a power of sale in a mortgage or deed of trust; (2) the plaintiff suffered prejudice or harm; and (3) the

plaintiff tendered the amount of the secured indebtedness or was excused from tendering.” (*Chavez v. Indymac Mortgage Services* (2013) 219 Cal.App.4th 1052, 1062.) “Recognized exceptions to the tender rule include when: (1) the underlying debt is void, (2) the foreclosure sale or trustee's deed is void on its face, (3) a counterclaim offsets the amount due, (4) specific circumstances make it inequitable to enforce the debt against the party challenging the sale, or (5) the foreclosure sale has not yet occurred.” (*Ibid.*)

Here, Plaintiff alleges that the foreclosure sale is void because Defendants never satisfied the mandatory conditions precedent of actual borrower contact or due diligence and instead relied on a knowingly false declaration. Plaintiff alleges that tender is not required “due to fraud.” The general elements of fraud are “misrepresentation, knowledge of falsity, intent to induce reliance on the misrepresentation, justifiable reliance on the misrepresentation, and resulting damages.” (*Reeder v. Specialized Loan Servicing LLC* (2020) 52 Cal.App.5th 795, 803.) Plaintiff has not alleged facts supporting each of these elements. Accordingly, Plaintiff’s fraud allegations are unsupported.

To the extent Plaintiff asserts that the trustee’s deed of sale is *void* due to the alleged irregularities in the notice or sale procedures, such is inconsistent with the law. Irregularities in the notice or sale procedures would render a sale *voidable*, not void. (*Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 6.) Plaintiff has not alleged facts that would show that the sale or deed are void on their face.

Plaintiff has failed to allege tender and has failed to allege sufficient facts supporting an excuse from the tender requirement. As such, Plaintiff has failed to plead this cause of action.

III. Second Cause of Action – Violation of Civil Code § 2923.5

Plaintiff supports this cause of action with the following allegation:

Civil Code § 2923.5(a)(2) requires telephone contact attempts “at least three times at different hours and on different days” (or due diligence). Defendants made only four calls on a single day and filed a false declaration claiming compliance. This is a material breach of duty. No tender is required because the sale is void ab initio and due to fraud.

Civil Code § 2923.5(a)(2) does not state as such. It states, “A mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure...” It appears that Plaintiff is referring to subsection (e)(2)(A) which provides, “After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days.” Subsection (e) provides the procedure the mortgage servicer must comply with if it has not contacted the borrower as required by subsection (a)(2). In such a case, the mortgage servicer must first attempt contact by first-class letter. Then, once the letter is sent, must attempt contact by telephone at least three times. Plaintiff has not alleged facts supporting such a cause of action.

IV. Third and Fourth Causes of Action – Violation of Civil Code §§ 2923.55 and 2924.17

Civil Code § 2923.55 requires mortgage servicers to contact or make diligent efforts to contact the borrower to assess the borrower’s financial position and explore foreclosure prevention alternatives.

Civil Code § 2924.17 provides that foreclosure documents recorded by a mortgage servicer be “accurate and complete and supported by competent and reliable evidence.”

Civil Code § 2924.12 provides statutory remedies for “material violations” of the above Code sections. It provides that if the trustee’s deed upon sale has not yet been recorded, a borrower may bring an action for injunctive relief to enjoin a “material violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17.” However, if a trustee’s deed upon sale has been recorded, only economic damages are available to the borrower against “a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent...resulting from a material violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17...”

“The remedies are different, depending on whether a trustee's deed upon sale has been recorded.” (*Bustos v. Wells Fargo Bank, N.A.* (2019) 39 Cal.App.5th 369, 376.) ““If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation...”” (*Ibid.*) ““After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall be liable to a borrower for actual economic damages pursuant to Section 3281...where the violation was not corrected and remedied prior to the recordation of the trustee's deed upon sale.”” (*Ibid.*)

Here, since it is alleged that the trustee’s deed upon sale has been recorded, only actual economic damages for a material breach are available to Plaintiff for these causes of action.

Neither the HBOR nor California case law expressly defines the term “material” for purposes of section 2924.12. However, federal district courts applying California law have held that a violation is material if it affected the borrower's loan obligations, disrupted the loan-modification process, or otherwise harmed the borrower in connection with the borrower's efforts to avoid foreclosure.

(*Billesbach v. Specialized Loan Servicing LLC* (2021) 63 Cal.App.5th 830, 845; see also *Reese v. Select Portfolio Servicing, Inc.* (2024) 107 Cal.App.5th 1179, 1188.)

Plaintiff alleges that Defendants never “achieved contact or due diligence” and that they relied upon a materially false declaration in support of the Notice of Default. Plaintiff asserts in conclusory terms for each cause of action that “This is a material breach of duty.” However, Plaintiff has failed to allege facts supporting how the violations are material. As such, Plaintiff has failed to support her claim of damages for such violations.

V. Fifth Cause of Action – Unfair Business Practices

Plaintiff alleges that “The foregoing conduct constitutes unlawful, unfair, and fraudulent business practices.” Since Plaintiff failed to state a viable cause of action in any of the foregoing causes of action, Plaintiff has failed to allege unfair business practices.

VI. Sixth Cause of Action – “To Set Aside Trustee’s Sale”

Plaintiff asserts that the Trustee’s Deed Upon Sale is void and must be set aside. As explained above, Plaintiff has not alleged any facts that would render the Trustee’s Deed Upon Sale void. Even if Plaintiff had sufficiently supported her allegations supporting the above causes of action,

such allegations would at most support a showing that the Trustee's Deed Upon Sale is *voidable*. Furthermore, "[A]s a condition precedent to an action by the borrower to set aside the trustee's sale on the ground that the sale is voidable because of irregularities in the sale notice or procedure, the borrower must offer to pay the full amount of the debt for which the property was security." (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 112.) Plaintiff has not sufficiently alleged tender, offer of tender, or excuse from tender.

Moreover, setting aside a trustee's sale is an equitable remedy. It is not its own cause of action.

VII. Seventh Cause of Action – Quiet Title

"A borrower may not...quiet title against a secured lender without first paying the outstanding debt on which the mortgage or deed of trust is based." (*Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 86.) Tender of the indebtedness is required to set aside a completed sale. (*Ibid.*) Plaintiff has not alleged tender and has failed to allege sufficient facts to support an exception to the tender requirement. Accordingly, Plaintiff cannot state a claim for quiet title.

VIII. Eighth Cause of Action – Cancellation of Instruments

Civil Code section 3412 provides that: "A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled." However, "because a cause of action to cancel a written instrument under section 3412 sounds in equity, a debtor must generally allege tender or offer of tender of the amounts borrowed as a prerequisite to such claims." (*Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 819.) As explained above, Plaintiff has failed to allege sufficient fact showing that the instruments are void or voidable. Furthermore, Plaintiff has failed to sufficiently allege tender, offer of tender, or an exception to the tender requirement. Therefore, Plaintiff has failed to state this cause of action.

IX. Leave to Amend

It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) However, Plaintiff has the burden of showing in what manner the complaint can be amended and how that amendment will change the legal effect of the pleading. (*Ibid.*)

Plaintiff has not shown how the complaint can be amended to cure the defects. Nonetheless, since this is the first time the complaint has been reviewed by the Court, and since it is an abuse of discretion to deny leave to amend if there is a reasonable possibility Plaintiff can state a good claim, the Court will grant Plaintiff an opportunity to amend.

*****This is the end of the Tentative Rulings*****