TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, November 4, 2026 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

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) 521-6602**, 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.

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1. 25CV01461, Weber v. Bettencourt

Defendant and Cross-Complainant's Motion to Compel Further Responses is **GRANTED IN PART**. Within 10 calendar days after service of notice of entry of this order, Cross-Defendant Timber Cove Homes Association shall serve either: (1) A verification expressly covering every operative substantive response served on June 19, 2026 that was not superseded by the October 22, 2026 amended responses, or (2) An integrated and verified set of responses to Form Interrogatories, Set One, incorporating all operative original and amended responses.

The Motion is **MOOT** to the extent it seeks further substantive responses that were supplied in Cross-Defendant Timber Cove Homes Association's verified amended responses served on October 22, 2026.

Defendant and Cross-Complainant's Request for Sanctions is **GRANTED**. Defendant Timber Cove Homes Association and its counsel of record shall pay to Plaintiffs monetary sanctions in the amount of **$3,532.50**, jointly and severally, within 30 days of this order.

I. FACTUAL AND PROCEDURAL HISTORY

On April 24, 2026, Defendant and Cross-Complainant Joe Bettencourt ("JB") propounded Form Interrogatories, Set One, on Cross-Defendant Timber Cove Homes Association ("THCA"). (Daws, Decl., ¶ 3, Exhibit 1.) The responses were originally due on May 27, 2026. (Daws, Decl. ¶ 4.) At TCHA's request, JB granted several extensions, ultimately extending the deadline to June 19, 2026. (Daws, Decl., ¶¶ 5–8, Exhibits 2–5; Opposition, 2:18–19.)

On June 19, 2026, TCHA served responses containing both objections and substantive answers, but did not provide a verification. (Daws, Decl., ¶ 8, Exhibit 5.) JB contends that several responses were incomplete or evasive, specifically challenging responses to Form Interrogatory Nos. 12.1, 12.2, 12.4, 12.7, 15.1, 16.7, 16.8, and 17.1. (Daws, Decl., 9.)

On July 6, 2026, JB's counsel sent THCA's counsel a letter meeting and conferring on the absence of a verification and the asserted substantive deficiencies. (Daws, Decl., ¶ 9, Exhibit 6.) The letter requested supplemental responses by July 20, 2026, while indicating that additional time could be accommodated. (*Id*.) THCA's counsel advised that she had been engaged in trial and would be unavailable during a planned vacation. (Daws, Decl., ¶ 10, Exhibit 7.) JB's counsel thereafter offered additional time in exchange for a corresponding extension of the deadline to move to compel. (Daws, Decl., ¶ 11.) Following TCHA's nonresponse, JB filed the instant motion on August 11, 2026, seeking further verified responses and $3,532.50 in sanctions against TCHA and its counsel, jointly and severally. (Daws, Decl., ¶¶ 12–20.)

II. GOVERNING LAW

A. Motion to Compel Further Responses

Civil discovery is intended to operate with a minimum of judicial intervention. "[I]t is a 'central precept' of the Civil Discovery Act. . . that discovery 'be essentially self-executing.'" (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 434, quoting *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1434.)

A propounding party may move to compel a further response to an interrogatory if: "(1) An answer to a particular interrogatory is evasive or incomplete. (2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate. (3) An objection to an interrogatory is without merit or too general." (Code Civ. Proc. § 2030.300(a).) The motion to compel must be accompanied by a meet and confer declaration per Section 2016.040, which requires that, "a meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." (Code Civ. Proc. §§ 2016.040, 2030.300(b)(1).) While the propounding party has the burden of filing a motion to compel further responses to when responses provided were deemed deficient, the responding party has the burden of justifying any objections stated and failure to respond.

Service of amended responses while a discovery motion is pending may render prospective relief moot to the extent the amended responses provide the relief sought. It does not, however,

necessarily preclude monetary sanctions for conduct underlying the motion. (Cal. Rules of Court, rule 3.1348(a).)

B. Sanctions

The court shall impose a monetary sanction against any party who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless the court finds that the sanctionable party acted with substantial justification or that other circumstances make it unjust to impose sanctions. (Code Civ. Proc. § 2030.300(d).)

III. DISCUSSION

A. Motion to Compel Further Responses

TCHA's October 22, 2026 verified amended responses moot the Motion only as to the answers they replace. They do not affect unchanged substantive answers from the unverified June 19, 2026 set, which remain operative. TCHA asserted the same objections cumulatively across multiple responses, without tying any objection to the language or subject matter of the particular interrogatory. These cumulative recitations of boilerplate objections did not identify what responsive information was allegedly privileged or protected, explain how the asserted protection applied, or permit JB and the Court to evaluate their merit.

An objection must identify a specific ground applicable to the particular interrogatory. (Code Civ. Proc. § 2030.240(b).) Here, even where an objection applies in part, THCA was required to answer the remainder fully and straightforwardly. (Code Civ. Proc. § 2030.240(a).) Nor could THCA shift that burden to JB by directing him to other discovery responses or the potential availability of public records. Such cross-references are contrary to the intentions of the Civil Discovery Act by leaving the propounding party to determine which materials are responsive and to construct THCA's answer on its behalf. The burden to identify and provide the responsive information remained with TCHA. Nevertheless, because TCHA has served amended supplemental responses and JB seeks no further interrogatory-specific relief beyond verification of the unchanged answers, no further substantive response will be compelled at this time. (Reply, 3:19–21.)

B. Monetary Sanctions

The Court finds the Motion to be reasonably necessary when filed. THCA received multiple extensions but served unverified responses containing substantive answers and cumulative boilerplate objections insufficiently tailored to the interrogatories at issue. JB identified these deficiencies, offered additional time, and attempted to resolve them informally. THCA did not serve verified amended responses until October 22, 2026, more than two months after the Motion was filed. (Daws, Reply Decl., ¶ 5.) Still, THCA has yet to serve a verification for its June 19, 2026 responses. (Daws, Reply Decl., ¶ 7.)

Counsel's trial obligations and planned vacation explain some delay, but do not substantially justify the failure to provide any verification, respond meaningfully to meet-and-confer efforts, or seek a definite additional extension. (Opposition, 2:20–24.) Moreover, the opposition's factual assertions concerning THCA counsel's unavailability were not supported by a declaration.

THCA's eventual service of amended responses mitigated the need for prospective relief but did not eliminate the expenses reasonably incurred in bringing the Motion. The Court therefore awards monetary sanctions of **$3,532.50** against THCA and its counsel, jointly and severally.

IV. DISPOSITION

Defendant and Cross-Complainant Joe Bettencourt's Motion to Compel Cross Defendant Timber Cove Homes Association's Further Verified Responses to Form interrogatories (Set One) is **GRANTED in part**. The Motion is **MOOT** to the extent it seeks further substantive responses that were supplied in Cross-Defendant Timber Cove Homes Association's verified amended responses served on October 22, 2026.

Within 10 calendar days after service of notice of entry of this order, Cross-Defendant Timber Cove Homes Association shall serve either (1) a verification expressly covering every operative substantive response served on June 19, 2026 that was not superseded by the October 22, 2026 amended responses, or (2) an integrated and verified set of responses to Form Interrogatories, Set One, incorporating all operative original and amended responses.

Defendant and Cross-Complainant Joe Bettencourt's accompanying request for sanctions is **GRANTED** in the amount of **$3,532.50**.

The moving party 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).

2. 25CV04454, Rebentisch v. FCA US LLC

Plaintiffs Janelle Rebentisch and Delton R Rebentisch (together "Plaintiffs") filed the complaint (the "Complaint") against defendants FCA US, LLC ("Defendant"), Healdsburg Chrysler Dodge Jeep Ram ("Repair Facility", now dismissed) and Does 1-10 for claims arising out of alleged violations of the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act"), negligent repair, and fraudulent inducement – concealment.

This matter is on calendar for the motion by Plaintiff to compel production of categories of documents under CCP § 871.26 and sanctions thereon. The motion is DENIED.

I. Underlying Facts

Defendant filed their demurrer and motion to strike on October 3, 2025. Defendant served production of documents related to categories under CCP § 871.26 (h) on December 1, 2025. Thereafter, the parties entered a Stipulated Protective Order which was signed by the Court on December 19, 2025. Defendant thereafter produced additional documents on February 27, 2026. Defendant served "verified written initial disclosures" on May 27, 2026. Plaintiffs sent a meet and confer letter on June 30, 2026, averring the incomplete production. Plaintiff followed with this motion on August 10, 2026, averring that Defendant's production is incomplete.

II. Governing Law

Effective January 1, 2025 matters under the Song-Beverly Act are subject to mediation requirements with accompanying discovery requirements. CCP § 871.26. Within 120 days of the filing of the answer or other responsive pleading, each party is entitled a deposition of the opposing party or their person most knowledgeable. CCP § 871.26 (c). The parties are also entitled to exchange of documents enumerated by the statute. CCP § 871.26 (g-h).

(h) The defendant or manufacturer shall provide the following documents to all other parties pursuant to the timelines prescribed in subdivision (b):
(1) Copy of or access to a version of the owner's manual for a motor vehicle of the same make, model, and year.
(2) Any warranties issued in conjunction with the sale of the motor vehicle.
(3) Sample brochures published for the motor vehicle.
(4) The motor vehicle's original invoice, if any, to the selling dealer.
(5) Sales or lease agreement, if the manufacturer is in possession.
(6) Motor vehicle information reports, including build documentation, component information, and delivery details.
(7) Entire warranty transaction history for the motor vehicle.
(8) Listing of required field actions applicable to the motor vehicle.
(9) Published technical service bulletins ("TSBs")[1] for the same make, model, and year reasonably related to the nonconformities pertaining to the motor vehicle.
(10) Published information service bulletins ("ISBs") for the same make, model, and year reasonably related to the nonconformities pertaining to the motor vehicle.
(11) Records relating to communications between the manufacturer or dealership and the owner or lessee of the motor vehicle, including those related to repair orders or claims involving the motor vehicle.
(12) Warranty policies and procedure manuals.
(13) Service manuals reasonably related to the nonconformities pertaining to the motor vehicle.
(14) If a pre-suit restitution or replacement request is made, all call recordings of pre-suit communications with the consumer available at the time of service of the complaint.
(15) If a pre-suit restitution or replacement request is made, the manufacturer's written statement of policies and procedures used to evaluate customer requests for restitution or replacement pursuant to "Lemon Law" claims.
(16) If a pre-suit restitution or replacement request is made, any nonprivileged, prelitigation evaluation.
(17) Any warranty extensions or modifications issued by the manufacturer on the motor vehicle.

Code Civ. Proc., § 871.26.

Discovery is stayed in the matters except for under this statute until mediation is concluded. CCP § 871.26 (e). Failure to comply with any portion of this statute is punishable by monetary sanctions, and nonmonetary sanctions for repeated noncompliance. CCP § 871.26(j).

III. Analysis

Plaintiffs argue that Defendant has produced incomplete responses to their required disclosures under CCP § 871.26 (h), and that they must be compelled to produce further responses.

CCP § 871.26 is a relatively new statute, having only become effective on January 1, 2025. At this time, there are no published California cases relating to its interpretation. However, in actually reviewing the statutory language, the Court notes that unlike discovery statutes, no motion or procedure to compel is contemplated. The Legislature appears to have effectuated the statute with the acceptance that where the stay is in place and a party fails to comply with the discovery provisions within this restitution and replacement litigation phase the only remedy is a motions for sanctions. CCP §871.26(j). After the stay dissolves and standard discovery would otherwise apply.

Both parties extensively opine regarding the verified or unverified nature of various productions. While verifications are typically quite clearly delineated in discovery issues, CCP § 871.26 notably omits any process of verification or effect thereon. While obviously, as a pragmatic effect, responses under CCP § 871.26 must be reliant on some verification process to ensure the accuracy of the production, no party provides seemingly binding authority to address the issue. Plaintiff's reliance on CCP § 2016.090 is not persuasive. Defendant accurately points out that CCP § 871.26 is clear on this point. "Except as provided in subdivisions (b) and (c), all other discovery shall be stayed until mediation is concluded. If the case is not resolved at the conclusion of mediation, standard discovery procedures prescribed in Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedures shall apply…" Plaintiff's reliance on general discovery cases does not sufficiently address the narrow nature of CCP § 871.26's disclosures.

Defendant persuasively argues that Plaintiff did not even appear to contemplate the bringing of this motion until significantly after Defendant served their initial production on December 1, 2025. Plaintiff's motion only shows that they sent their meet and confer letter on June 30, 2026. Rucker Declaration, Ex. 2. This seems to be at best a tardily identified deficiency. The protective order was filed on December 19, 2025. Plaintiff opines that Defendant did not produce the documents subject to the protective order along with verifications until May 27, 2026. Despite this, the instant motion was not filed for an additional 75 days. Under any other method of production, the time to compel further responses would have long since passed. See CCP § 2031.310. No reason is offered for the delay. Mediation was to occur under the statute no later than *March 2, 2026*. The balance of these matters comes to nothing more than egregious delay the statute was designed to abrogate.

To the substance, Plaintiffs' argument is largely that the information missing is related to Defendant's willfulness, but CCP § 871.26 targets the substance of a repurchase claim, not Plaintiffs' possible penalties. See CCP § 871.26 (j)(4) (evidentiary sanctions for noncompliance may be for "whether the motor vehicle had a nonconformity that substantially impaired the use, value, or safety of the motor vehicle, or whether the motor vehicle was repaired to match the written warranty after a reasonable number of opportunities to do so."). Plaintiff appears to be cutting to litigate the case in full while bypassing the intended quick resolution by mediation under which they move. Plaintiff's method of discovery goes beyond the statute.

Those disclosures contemplated by the Discovery Act are deferred until such time that the mediation mandated by CCP § 871.26 has run its course. There is no cause to expand the nature of disclosures expressly required by the statute to the full panoply of productions typical in Song-Beverly cases when discovery proceeds in earnest. Plaintiff wants to hold Defendant's feet to the fire over *its* records of repair attempts, but Defendant only must produce *one* category related to repairs, its communications with Plaintiff. CCP § 871.26 (h)(11). Otherwise, Plaintiff argues that it falls under "warranty transactions", but that presumes repair attempts under the very particular purview of warranty repairs under the statute. At this stage in the litigation, *plaintiff* is the party with superior knowledge of repair attempts. CCP § 871.26 (f)(4 and 9). Plaintiff seeks to expand the nature of these preliminary disclosures into something they are not.

This is not to say that the Court finds the piecemeal production, obstruction in the name of "trade secrets" without affirmative action, or general untimeliness of the process as proper conduct under the circumstances. However, that misses the purpose of CCP § 871.26. Defendant filed their demurrer over a year prior to this hearing, and the parties have yet to mediate the case.

Defendant opines the volume of the production as an indicator it is thorough. Plaintiff points out that while Defendant has produced more than 20,000 pages, nearly 18,000 pages of that is the service manual for the vehicle. Mere volume does not appear to be a proxy for responsiveness to the 17 categories the legislature has provided. What needs to be examined is the "substance" of those productions.

Plaintiff notes that Defendant *entirely* failed to produce some of the required categories. Plaintiffs note that Defendant does not produce any Information Service Bulletins, while Defendant has told Plaintiffs (in a purportedly "unverified" manner) that they do not have any. While Plaintiff avers that Warranty "Policies and Procedures" are not produced, they appear covered by the FCA Warranty Administration Manual (Bates 001660 – 001772). Plaintiff opines that Defendant's production of warranty transactions is deficient because Plaintiff has outside knowledge of Defendant's method of cataloguing warranty transactions. Given Plaintiffs' overbroad interpretation of the purpose of this disclosure renders their assertion of what is responsive unavailing.

Generally, the motion appears to go beyond the nature of the disclosures contemplated by CCP § 871.26, and Plaintiff has delayed beyond what is justifiable in accomplishing the mediation under the statute. There is not a basis to compel responses, and sanctions appeal to be justified by neither the substance of Plaintiff's assertions nor the posture of the case. Notably, Plaintiff does not provide the substance of the production with their motion, making any identification of responsiveness impossible. Plaintiff fails to give the Court the information necessary to determine whether the responses are sufficient.

IV. Conclusion

Based on the foregoing, Plaintiff's motion is **DENIED**.

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

3. 25CV05965, Wells Fargo Bank, N.A. v. Chea

Plaintiff Wells Fargo Bank, N.A. ("Wells Fargo") filed the Complaint against defendant Jenny Chea ("Defendant"). This matter is on calendar for the motion by Plaintiff pursuant to Code of Civil Procedure § 438 granting judgment on the pleadings on the ground that the Defendant cannot state sufficient facts to constitute a defense to the causes of action in this matter. **The motion is GRANTED without leave to amend.**

I. Governing Law

A. Judgment on the Pleadings

A motion for judgment on the pleadings may only be made on the grounds specified in the statute. CCP section 438(c)(1). If the moving party is a defendant, the motion may be made on the grounds that the complaint does not state facts sufficient to constitute a cause or causes of action against the defendant. CCP § 438(c)(1)(B). A motion for judgment on the pleadings may be targeted to the entire complaint, or to any of the causes of action therein. CCP § 438 (c)(2)(A). "The fundamental question for the *reviewing court* is whether any cause of action is framed by the facts alleged in the complaint." *Surina v. Lucey* (1985) 168 Cal.App.3d 539, 541, emphasis added; cited by *Guild Mortgage Co. v. Heller* (1987) 193 Cal.App.3d 1505, 1508 ("Our primary task is to determine whether the facts alleged provide the basis for a cause of action against defendants under any theory."). As with a demurrer, the challenged pleading must be "liberally construed, with a view to substantial justice between the parties" and the court should give the pleading "a reasonable interpretation, reading it as a whole and its parts in their context." Code Civ. Proc. §452; see also, *Perez v. Golden Empire Transit Dist*. (2012) 209 Cal.App.4th 1228, 1238 (where allegations are subject to different reasonable interpretations, court must draw "inferences favorable to the plaintiff, not the defendant.").

The grounds for a motion for judgment on the pleadings must appear on the face of the challenged pleading or be based on facts which the court may judicially notice, and not upon other extrinsic evidence. CCP § 438 (d). Where the motion is based on matters the court may judicially notice (under Evidence Code §§ 452, 453), such matters must be specified in the notice of motion or supporting points and authorities. CCP § 438(d); compare *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal. App. 4th 1, 5.

At judgment on the pleadings, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal.4th 861, 872.

If the motion for judgment on the pleadings is granted, it may be granted with or without leave to amend. (CCP § 438(h)(1).) In ruling on the motion, the trial court should, ordinarily, permit the party whose pleadings are attacked to amend if it so desires. *Hardy v. Admiral Oil Co*. (1961) 56 Cal.2d 836, 841–842. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

II. Requests for Judicial Notice

Plaintiff requests judicial notice of the Court's Order Deeming Admissions Admitted, issued May 28, 2026. (Court's 5/28/2026 Order).

Judicial notice of official acts and court records is statutorily appropriate. See Cal. Evid. Code § 452(c) and (d). Yet since judicial notice is a substitute for proof, it "is always confined to those matters which are relevant to the issue at hand." *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301. Courts may take notice of public records, but not take notice of the truth of their contents. *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375. Factual findings found within a prior judicial opinion are not an appropriate subject of judicial notice. *Kilroy v. State* (2004) 119 Cal.App.4th 140, 148.

The Court's 5/28/26 order appears judicially noticeable. As a court record, it is appropriate for judicial notice. Judicial notice is GRANTED as to the order, but not factual findings therein.

III. Analysis

Plaintiff moves for judgment on the pleadings. Defendant has filed an answer denying the allegations. Subsequently, Plaintiff has obtained an order deeming admissions admitted. Plaintiff contends that the admissions are in a form which is judicially noticeable because they were entered as part of a Court order. Plaintiff moves for a judgment in the amount of $5,988.53.

"Judicial admissions may be made in a pleading, by stipulation during trial, or by response to request for admission." *Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 746. Judicial admissions are generally judicially noticeable material. *Alameda County Waste Management Authority v. Waste Connections US, Inc.* (2021) 67 Cal.App.5th 1162, 1174. Additionally, the Court is allowed to judicially notice the legal effect of a prior ruling. *White v. Davis* (2023) 87 Cal.App.5th 270, 276. The admissions go to establish each element of Plaintiff's cause of action. Admissions are "conclusively established against the party making the admission in the pending action, unless the court has permitted withdrawal or amendment of that admission under Section 2033.300." CCP, § 2033.410 (a). Defendant has filed no opposition expressing why judgment on the pleadings is improper. Defendant cannot seemingly amend around their admissions to answer the Complaint.

As such, the motion for judgment on the pleadings is GRANTED without leave to amend.

Plaintiff requests their costs but their memorandum of costs is not yet on file. The Court grants judgment in the amount of $5,988.53.

I. Conclusion

For the reasons stated above, the motion is **GRANTED without leave to amend**.

Plaintiff's counsel shall submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

4. 25CV06504, VistaJet US, Inc. v. Malvesta

This matter is on calendar for the unopposed application by Michael H. McGinley, Esq. ("Counsel") to appear *pro hac vic*e on behalf of Nonparties' Bond Aviation Holdings, Bond Opco, BridgePoint Air Advisors, and Bill Papriella, in coordination with California-based counsel.

The Court notes that "[n]o person shall practice law in California unless the person is an active licensee of the State Bar." (Bus. & Prof. Code § 6125.) An out-of-state attorney who has not been granted *pro hac vice* admission is neither an active licensee of the State Bar, nor authorized by the court to appear in the case and therefore lacks the authority to practice law in California. Yet here, Counsel signed and submitted the following papers in this action before the Court authorized his *pro hac vice* appearance:

1. **August 10, 2026**: Ex Parte Application for Order Continuing Motion to Compel (*Denied August 10, 2026 for reasons unrelated to Counsel's admission status*);

2. **September 15, 2026:** Motion to Enforce Stipulated Protective Order, or in the Alternative, for Entry of a Protective Order (*Set to be heard December 9, 2026*).

Because Counsel was not authorized to practice law in California when the September 15 motion was filed, the December 9, 2026 hearing is **TAKEN OFF CALENDAR.**

Nonparties' Bond Aviation Holdings, Bond Opco, BridgePoint Air Advisors, and Bill Papriella's unopposed applications for orders of the Court permitting counsel Michael H. McGinley, Esq. to appear *pro hac vice* is **GRANTED** pursuant to California Rules of Court, Rule 9.40. Unless oral argument is requested, the Court shall sign the proposed order lodged on August 7, 2026.

5. 25CV07191, Sawyer-Garcia v. Indigenous Medicine Conservation Fund

Plaintiff Ivan Sawyer-Garcia ("Plaintiff") filed the complaint (the "Complaint") against defendants Indigenous Medicine Conservation Fund. ("Defendant") and Does 1-50 for causes of action arising out of alleged employment relationship. This matter is on calendar for Plaintiff's motion for attorney's fees under Labor Code sections 1194, 2802, 226, 1102.5, and 218.5 Code of Civil Procedure sections 1021, 1032, 1033.5, and the parties' settlement agreement.

The Motion is **GRANTED**, in the amount of **$34,255.**

I. Procedural and Evidentiary Issues

Defendant filed their opposition to the motion one day late. While Plaintiff asks that the Court disregard the late filing, the Court considers the Opposition on its merits.

Plaintiff also argues that the Aparicio Declaration oversteps its appropriate function and instead functions as an extension of the brief. Plaintiff asks the Court to disregard it as a result. The substance of the Aparicio Declaration is only five pages, but attached is a 10 page "Schedule A" describing the proposed reductions argued by Defendant. This does not appear to exceed the appropriate scope of a declaration so much that it functions as a memorandum. Instead, it largely presents the time entries for reduction in a manner similar to Plaintiff's presentation of them in the first place, showing line by line the promised reductions, functioning to assist the Court in determining what reductions to apply.

II. The Basis for Fees

Fee award calculations generally begin with the "lodestar," which is the number of hours reasonably expended multiplied by the reasonable hourly rate prevailing in the community for similar services by an attorney with similar skill and experience. *See, e.g. PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. The trial court may adjust the lodestar amount based on various factors specific to the case to fix the attorney fees at fair market value for the services provided, including: "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award." *Ketchum*, 24 Cal.4th at 1132. *See also Gorman v. Tassajara Dev. Corp.* (2009) 178 Cal.App.4th 44, 92 ("The first step involves the lodestar figure—a calculation based on the number of hours reasonably expended multiplied by the lawyer's hourly rate. 'The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided.'…The factors to be considered include the nature and difficulty of the litigation, the amount involved, the skill required and employed to handle the case, the attention given, the success or failure, and other circumstances in the case." (internal citations omitted).

Defendant served Plaintiff with an offer under CCP § 998 on May 7, 2026, offering Plaintiff a payment of $17,500, plus allowing Plaintiff to move for reasonable attorney's fees due to the multiple fee shifting statutes at issue in the Complaint. Plaintiff accepted the CCP § 998 offer and the instant motion followed.

According to the Motion, Plaintiff has had four attorneys work on this case, two law clerks (one of whom later became one of the attorneys), and four paralegals, accruing billed hours of 154.25 hours for billed fees of 40,550.00.

Defendant' opposition raises a number of arguments (addressed below) resulting in a request that the award be reduced by over forty percent.

III. The Rates Requested are Reasonable

Beginning with counsel's rates, "[t]he reasonable hourly rate is that prevailing in the community for similar work." *PLCM*, 22 Cal.4th at 1095. Plaintiffs request a billing rate of between $300 and $600 per hour for their Counsel. Law Clerks and Paralegals were all billed at $200 per hour.

The Court finds that the hourly rates are reasonable based on the expected rate in Sonoma County for similar work. The "experienced trial judge is the best judge of the value of professional services rendered in his court…" *Serrano v. Priest* (1977) 20 Cal.3d 25, 49 (internal citation omitted). A court is entitled to rely on its own practical experience in determining what is a proper rate within the community. See *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009 (*Heritage Pacific Financial*) ["The court may rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate"]; accord, *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 437 (*569 East County Boulevard*).

Defendant generally argues that the rate is excessive. The Court looks to the particular facts and circumstances of the case. While Plaintiff offers a "comparator case", the more important issue is that the fees requested are well within what is expected based on the experience of the attorneys at issue. Paralegals and law clerks are often billed at or around the rates opined.

IV. The Hours Were Somewhat Above Reasonable

Plaintiff seeks to recover for a total of 154.25 hours. Defendant identifies various time entries that it argues are unreasonable or not compensable.

Defendant opines that $2,225 worth of time (totaling 6.75 hours) related to administrative tasks is not compensable. The Court finds that most of the "clerical" work described is not necessarily outside what is recoverable, but nearly seven hours for a case that ended at this early stage exceeds reasonableness. Defendant's citation to *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 883 does *not* state that paralegal work is not compensable, merely noting that the attorney improperly was taking numerous tasks outside her reasonable rate, and that the court did not abuse its discretion in denying some of the requested fees on that basis. However, some of the entries are either excessive in length or appear nonbillable (entries 39, 74, 96,155, 158, 159, 160), and the Court reduces the amount by $400 as a result.

Defendant persuasively argues that Plaintiff's abandonment of the administrative claims does not relate to the prosecution of this action. This reduces the appropriate award by $1,200. The Court does not reduce the Mixed PAGA related work, as intermingled with the civil work with sufficient overlap to justify the expenditure.

Defendant argues that Plaintiff's entries are also vague and block-billed, but the Court does not find that to be the case. Plaintiff sufficiently describes the nature of each entry such that its reasonableness may be assessed.

Defendant also persuasively argues that the request for fees is plagued by duplicative work, likely because Plaintiff had nine staff work on the case. This is generally persuasive, and Defendant argues for a reduction of 50% to $9,250, resulting in a reduction of $4,625. The amount of duplicative work produced appears large, likely because of the lion's share of the time billed being performed by either non-attorneys or very junior attorneys. The time exceeds what is reasonable, and reviewing the time sheet, a reduction of 30% appears proper. This is a reduction of $2,775.

"Layered" drafting and review results in billing of $6,400, which appears similarly excessive to the duplicative conferencing and meeting above. A similar reduction of 30% appears proper, reducing appropriate fees by $1,920.

None of the other proposed reductions appear appropriate. As a result, the Court GRANTS Plaintiff's motion in the amount of $34,255.

V. Costs

The parties have stipulated to costs and the request has been rendered MOOT as a result.

VI. Conclusion

Plaintiff's motion for fees and costs is GRANTED. Total fees are granted in the amount of $**34,255.**

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

6-7. 26CV00812, Boccaleoni v. Carrington Mortgage Service, LLC

Plaintiffs Guido Raymond Boccaleoni ("Plaintiff") filed the complaint (the "Complaint") in this action against defendants the Carrington Mortgage Services, LLC ("Carrington"), Clear Recon Corp. ("Recon", together with Carrington, "Defendants"), and Does 1-10, for multiple alleged causes of action arising out of a reverse mortgage foreclosure.

This matter is on calendar for the demurrers brought by both Carrington and Recon to causes of action one through thirteen within the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") § 430.10(e) for failure to state facts sufficient to constitute a cause of action. Each Demurrer is **SUSTAINED with leave to amend in part and OVERRULED in part.**

I. Procedural and Evidentiary Issues

Carrington asks that the Court take judicial notice of nine documents outside the Court's record. All nine are recorded documents related to the property title. Carrington argues that such matters are within the scope of judicial notice because they are not reasonably subject to dispute.

Judicial notice of official acts and court records is statutorily appropriate. See Cal. Evid. Code § 452(c) and (d) (judicial notice of official acts). Yet since judicial notice is a substitute for proof, it "is always confined to those matters which are relevant to the issue at hand." *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301. Courts may take judicial notice of the existence and legal effect of legally operative documents. *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 754. Courts may take notice of public records, but not take notice of the truth of their contents. *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375. The scope of the judicial notice taken is limited to the action of the executive agency. *Herrera* at 1375. It is not appropriate for the Court to take notice of additional information which is included in the documentation or contentions as to the truth of the contents. *Id.*

Carrington's citation to *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 265-266 (disapproved of on other grounds by *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919) is inaccurate and misleading. Carrington opines that it stands for the principle that "notarization of documents assures their reliability". Instead, the court in *Fontenot* walks the fine line of describing the precise basis on which judicial notice of recorded documents may be taken. Carrington fails to present the elucidated standard. As our supreme court stated in *Yvanova*, "The existence and facial contents of these recorded documents were properly noticed in the trial court under Evidence Code sections 452, subdivisions (c) and (h), and 453. … We therefore take notice of their existence and contents, though not of disputed or disputable facts stated therein." *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 924, fn. 1. Carrington's other citations are no more instructive. *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1609 (judicial notice of bankruptcy orders and filings); *AL Holding Co. v. O'Brian & Hicks, Inc*. (1999) 75 Cal.App.4th 1310, 1313-14 (judicial notice of dates within the court's own docket.).

Carrington's request for judicial notice of recorded documents is not itself improper, but as the Court addresses below, they weave the contents of the documents into their arguments. The truthfulness of such contentions exceeds the appropriate scope of judicial notice. Judicial notice is GRANTED as to the existence of the documents and their legal function as to RFJN Exhibits 1-9. No conclusion as to the truth of their contents is taken.

II. Legal Standards

A. Demurrers Generally

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

"On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. [Citation.] 'A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.' [Citation.] The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents

whose truthfulness or proper interpretation are disputable. [Citation.]"). *Bounds v. Sup. Ct.* (2014) 229 Cal.App.4th 468, 477-478.

At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

B. Statute of Limitations

Demurrers shall not be sustained based on statute of limitations unless the complaint shows clearly and affirmatively that the action is so barred. *Geneva Towers Ltd. Partnership v. City of San Francisco* (2003) 29 Cal.4th 769, 780. "It is not enough that a complaint shows that the action may be barred." *Id*. If the failure of the cause of action due to the statute of limitations is apparent on the face of the complaint, the demurrer must be sustained. *SLPR, L.L.C. v. San Diego Unified Port District* (2020) 49 Cal.App.5th 284, 321.

C. Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

The elements of a cause of action for breach of contract are: "'(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.'" *See Coles v. Glaser* (2016) 2 Cal.App.5th 384, 391; quoting *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614, 126 Cal.Rptr.3d 174. "It is the general rule that if an instrument is ambiguous the party pleading is required to set forth the meaning of the writing. The meaning attributed to the writing must be one to which it is reasonably acceptable, and where 'a pleaded instrument is, because of the uncertainty of the language in which it is expressed, susceptible of more than one construction As to its nature or as to the purpose intended by the parties to be attained by it, … the construction of the party pleading it should be accepted, if such construction be reasonable' in considering a pleading attacked by general demurrer." *Connell v. Zaid* (1969) 268 Cal.App.2d 788, 794–795 (internal citations omitted). Breach of lease is merely a form of breach of contract. See *Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1414.

"The implied covenant of good faith and fair dealing is implied by law in every contract to prevent a contracting party from depriving the other party of the benefits of the contract." *See, e.g., Moore v. Wells Fargo Bank, N.A.*, 2019 WL 4051754, at *5; *see also*, *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371; *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 683–684; *Thrifty Payless, Inc. v. The Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1244. The covenant requires each contracting party to refrain from doing "anything which will injure the right of the other to receive the benefits of the agreement." *Kransco v. American Empire Surplus Lines Ins.* Co. (2000) 23 Cal.4th 390, 400; *see also*, *Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 818. The implied covenant rests upon the existence of a specific contractual obligation and "cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." *Agosta v. Astor* (2004) 120 Cal.App.4th 596, 607; *see also*, *Racine & Laramie, Ltd. v. California Dept. of Parks & Rec.* (1992) 11 Cal.App.4th 1026, 1031-32.

D. Intentional Interference with Contract

"It has long been held that a stranger to a contract may be liable in tort for intentionally interfering with the performance of the contract." *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126. "To prevail on a cause of action for intentional interference with contractual relations, a plaintiff must plead and prove (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Citation.*) To establish the claim, the plaintiff need not prove that a defendant acted with the primary purpose of disrupting the contract, but must show the defendant's knowledge that the interference was certain or substantially certain to occur as a result of his or her action." *Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148

E. Financial Elder Abuse

Financial elder abuse is defined by Welfare and Institutions Code ("W&I") § 15610.30 as where a party "(t)akes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both", or assists in such actions. See W&I § 15610.30 (a)(1-2). "A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult." W&I § 15610.30 (b). "(A) person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult." W&I § 15610.30 (c). Entering fraudulent escrow instructions that encumbered a property, and thereby interfered with an elder adult's ability to transfer that property, was sufficient to constitute a "taking" under the financial elder abuse statute. *Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 483.

F. Unfair Competition Law (the "UCL")

Business & Professions Code section 17200, prohibits "any unlawful, unfair or fraudulent" business practices. Bus. & Prof. Code §17200. "Since section 17200 is [written] in the disjunctive, it establishes three separate types of unfair competition" and "prohibits practices that are either 'unfair' or 'unlawful,' or 'fraudulent.'" *Pastoria v. Nationwide Ins.* (2003) 112 Cal.App.4th 1490, 1496; see also *CelTech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, (1999) 20 Cal.4th163, 180 (1999).

A party may bring a section 17200 claim only if he or she shows that he or she "suffered injury in fact and has lost money or property as a result of the unfair competition." Bus. & Prof. Code § 17204. To have standing, a plaintiff must sufficiently allege that (1) he has "lost 'money or property' sufficient to constitute an 'injury in fact' under Article III of the Constitution" and (2) there is a "causal connection" between the defendant's alleged UCL violation and the plaintiff's injury in fact. See, *Rubio v. Capital One Bank* (9th Cir. 2010) 613 F.3d 1195, 1203-1204. The UCL incorporates other laws and treats violations of those laws as unlawful business practices independently actionable under state law. *Chabner v. United Omaha Life Ins. Co.* (9th Cir. 2000) 225 F.3d 1042, 1048. Violation of almost any federal, state, or local law may serve as the "unlawful" basis for a UCL claim. *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839. In addition, a business practice may be "unfair or fraudulent in violation of the UCL even if the practice does not violate any law." *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 827.

Where plaintiff's UCL claim is entirely derivative of other fatally flawed causes of action, the UCL claim also fails. See, *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 277 [finding plaintiff's "UCL claim is derivative of [his] defamation cause of action, that is, it is based on the same [allegations] and likewise that cause of action stands or falls with that underlying claim."]. "A breach of contract may ... form the predicate for Section 17200 claims, *provided it also constitutes conduct that is 'unlawful, or unfair, or fraudulent.*" *Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 645 (internal quotations omitted, emphasis original).

"With respect to the *unlawful* prong, virtually any state, federal or local law can serve as the predicate for an action under section 17200." *People ex rel. Bill Lockyer v. Fremont Life Ins. Co.* (2002) 104 Cal.App.4th 508, 515 (internal quotations omitted). "Unlike common law fraud, a UCL fraud claim "can be shown even without allegations of actual deception, reasonable reliance and damage"; what is required to be shown is that members of the public are likely to be deceived." *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 258 (internal quotations omitted)("*Collins*"). Fraud claims under the UCL must be stated with "reasonable particularity". *Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1261; *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 619.

G. The Rosenthal Fair Debt Collection Practices Act

The Rosenthal Fair Debt Collection Practices Act ("RFDCPA") is stated in Civil Code sections 1788, *et seq*. The RFDCPA was enacted "to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts…" Civ. Code §1788.1(b). The

RFDCPA applies to the collection of consumer debts resulting from "consumer credit transactions" in which "property, services or money is acquired on credit ... primarily for personal, family, or household purposes." Civ. Code § 1788.2(e). The prohibited unfair or deceptive practices include use of threats, harassment, profanity and making false representations about the nature or status of the debt. Civ. Code §§1788.10-1788.16. "The Rosenthal Act ... incorporates the FDCPA, so that a violation of the FDCPA is per se a violation of the Rosenthal Act." *Young v. Midland Funding LLC* (2023) 91 Cal.App.5th 63, 89 (internal quotations omitted).

The Rosenthal Act has a statute of limitations of one year. *Komarova v. National Credit Acceptance, Inc.* (2009) 175 Cal.App.4th 324, 343.

H. Declaratory Relief

> Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.

Code Civ. Proc., § 1060.

"Declaratory relief operates prospectively, and not merely for the redress of past wrongs. It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them." *SJJC Aviation Services, LLC v. City of San Jose* (2017) 12 Cal.App.5th 1043, 1062 (internal quotations omitted).

I. Wrongful Foreclosure and Set Aside of Trustee's Sale

"A wrongful foreclosure is a common law tort claim. It is an equitable action to set aside a foreclosure sale, or an action for damages resulting from the sale, on the basis that the foreclosure was improper." *Sciarratta v. U.S. Bank National Assn.* (2016) 247 Cal.App.4th 552, 561 (opining the elements of wrongful foreclosure and set aside). "[T]he elements of an equitable cause of action to set aside a foreclosure sale are: (1) the 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." *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 104.

J. Slander of Title

"Slander or disparagement of title occurs when a person, without a privilege to do so, publishes a false statement that disparages title to property and causes the owner thereof 'some special pecuniary loss or damage.' " (*Citation*.) The elements of the tort are (1) a publication, (2) without privilege or justification, (3) falsity, and (4) direct pecuniary loss." *Sumner Hill Homeowners' Assn., Inc. v. Rio Mesa Holdings, LLC* (2012) 205 Cal.App.4th 999, 1030 (internal citation omitted).

K. Cancel Trustee's Deed

"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." Civ. Code, § 3412. "To prevail on a claim to cancel an instrument, a plaintiff must prove (1) the instrument is void or voidable due to, for example, fraud; and (2) there is a reasonable apprehension of serious injury including pecuniary loss or the prejudicial alteration of one's position. *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1193–1194 (internal quotations omitted). The same tender requirements apply to actions to cancel an instrument as to quiet title causes of action. *Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 819.

"(A) complaint which consists of two counts, one to quiet title to real property and the other, as incidental to the first count, to have declared void an instrument under which particular defendants assert title states only one cause of action." *Ephraim v. Metropolitan Trust Co. of Cal.* (1946) 28 Cal.2d 824, 833. "In a suit to remove a cloud the complaint must state facts, not mere conclusions, showing the apparent validity of the instrument designated, and point out the reason for asserting that it is actually invalid." *Id*. at 833–834.

L. Quiet Title

A cause of action for quiet title requires a plaintiff to seek determination of title to which there are adverse claims. CCP § 761.020. "An action to quiet title, however, may address adverse claims in addition to those traditionally referred to as clouds on title. As stated earlier, a quiet title action, unlike in a cancellation action, 'is for the purpose of stopping the mouth of a person who has asserted or is asserting a claim to the plaintiff's property .... It is not aimed at a particular piece of evidence, but at the pretensions of an individual.'" *Water for Citizens of Weed California v. Churchwell White LLP* (2023) 88 Cal.App.5th 270, 284–285. "For purposes of quiet title actions, a claim 'includes a legal or equitable right, title, estate, lien, or interest in property or cloud upon title.' (§ 760.010, subd. (a).)" *Id.* at 281. A void instrument garners no validity from the fact that it is recorded. *OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1331.

"A borrower may not, however, 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. However, tender is not required if the borrower attacks the validity of the underlying debt. *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 87. "Second, a tender will not be required when the person who seeks to set aside the trustee's sale has a counterclaim or setoff against the beneficiary. In such cases, it is deemed that the tender and the counterclaim offset one another, and if the offset is equal to or greater than the amount due, a tender is not required." *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 113. "Third, a tender may not be required where it would be inequitable to impose such a condition on the party challenging the sale." *Ibid*. "Tender is not required where the foreclosure sale is void, rather than voidable, such as when a plaintiff proves that the entity lacked the authority to foreclose on the property." *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, 1100. In contrast, "full tender of the indebtedness must be made to set aside a foreclosure sale based on irregularities in the foreclosure procedure." *Ibid.*

III. The Complaint

Plaintiff's complaint is entitled to liberal factual construal. Where facts are open to different interpretations, Plaintiff receives the benefit of the most beneficial interpretation of those facts. However, Plaintiff is not entitled to any form of legal liberality. Plaintiff still must plead adequate facts to meet viable legal theories. Where Plaintiff's legal theories are flawed, causes of action may be fatally deficient.

Generally, Plaintiff alleges that his wife, Charlotte Boccaleoni ("Decedent") held 2283 W Hearn Ave., Santa Rosa, CA (the "Property") as her sole and separate property. Complaint ¶ 2, 13. Decedent entered a reverse mortgage loan contract (the "RMC", Complaint, Ex. 2), which gave Plaintiff rights as a non-borrowing spouse. Complaint ¶ 13, 15, 17. Plaintiff was entitled to stay in the property and defer the debt due after Decedent's death if he certified continuing compliance with five conditions under RMC, Paragraph 10(a)(i). Complaint ¶ 17. Decedent passed away on January 4, 2021. Complaint ¶ 18. Plaintiff filed his certification of compliance in 2021. Complaint ¶ 19. Defendants recorded notice of default against the Property on October 19, 2021. Complaint ¶ 21. Notice of Trustee's Sale followed on June 21, 2024. Complaint ¶ 22. Plaintiff was contacted by attorney Fred T. Winter on September 5, 2024, who is alleged to have had actual authority on behalf of Defendants. Complaint ¶ 24. Mr. Winter informed Plaintiff that he had to make a payment of $1,583.33 to cure the default and make particular showings that other matters were in compliance with the RMC. Complaint ¶ 25-26. Plaintiff engaged in performance of those requirements, including tendering the required funds, but Defendants nonetheless performed a trustee's sale, at which Carrington was the purchaser. Complaint ¶ 27-28.

Plaintiff alleges 13 resulting causes of action.

IV. Carrington's Demurrer

Carrington demurs to each cause of action.

A. Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

Carrington opines, largely relying on the matters within judicial notice, that Plaintiff has failed to allege facts sufficient to support causes of action for either breach of contract or breach of the covenant of good faith and fair dealing. For their part, the elements largely overlap. Plaintiff must allege both the existence of a contract, and his performance thereon. Plaintiff alleges that he qualifies for the deferral period, under the RMC, so long as he files the required Annual Non-Borrowing Spouse Certification. Complaint ¶ 19. Plaintiff states that he filed the certification. Carrington contends that the Court should read further into the veracity of the Complaint through its requests for judicial notice, pointing particularly to the performance of those requirements of which Plaintiff affirmed his performance. This appears to create a pleading condition to breach of contract that Carrington fails to support with citation to law. Plaintiff opines that he has pled compliance with the conditions of the contract, and Defendants take issue with *whether* he was in compliance. This is a factual issue not properly resolved at demurrer.

Carrington also argues that Plaintiff failed to continue to maintain the other terms of the RMC, particularly maintaining the Property and avoiding code violations and maintaining insurance. Carrington's use of judicial notice goes to the truth of the recorded document and not the legal effect thereon. Carrington relies on their Request for Judicial Notice, Ex. 3. However, the act and effect of recording does not establish the truthfulness of the purported code violation. As a result, the judicial notice does not evidence a pleading deficiency such that demurrer may be sustained on this basis. As to the failure to maintain insurance, nothing places that factual contention before the Court at demurrer.

Carrington's contention that Plaintiff failed to display an ownership interest in the property or other ongoing right to remain in the property fairs no better. Again, Carrington misattributes the burdens at demurrer. Carrington's position requires the Court to assume that Plaintiff is not the recipient of any interest as a result of Decedent's passing of property interests after her death. Defendant in essence asks that the Court assume Plaintiff has no property right as Decedent's successor in interest. That is not the full scope of the contractual provision at issue, requiring Plaintiff to either have "established legal ownership **or** other ongoing legal right to remain in the property". RMC ¶ 10(a)(i) (emphasis added). Neither is contradicted by the allegations, and such contradiction cannot be read into the Complaint. This does raise pleading issues with other causes of action addressed below.

Carrington's averment that Plaintiff failed to pay foreclosure costs is perhaps its least meritorious contention. Nothing places this before the Court beyond Carrington's hypothetical argument for costs, and therefore nothing about this argument raises any substantive objection to Plaintiff's pleading.

Plaintiff alleges facts sufficient to state that Carrington breached the deed of trust by proceeding with default while Plaintiff was qualified for the Deferral Period under the RMC. This sufficiently states a cause of action for breach of contract.

Plaintiff's allegation of breach of the covenant of good faith and fair dealing is also sufficiently stated. Plaintiff alleges that Defendants' actual agent, Mr. Winter, gave him the steps for

reinstatement, but failed to provide the appropriate place to send the required payments, resulting in his inability to undertake the curative steps. This is sufficient to state an interference with the contractual terms.

Carrington's Demurrer to the First and Second causes of action is OVERRULED.

B. Intentional Interference with Contract

As to Carrington, Plaintiff fails to state a cause of action for intentional interference with contract. That cause of action must be pled to "a stranger to [the] contract". *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126. There is one contract alleged in the Complaint, the RMC. Carrington is not a stranger to the contract, but a party, and as such the appropriate remedy is in the realm of contract and not tort. Plaintiff offers no substantive argument related to this cause of action. Plaintiff has failed to plead intentional inference with contract against Carrington as a result.

Carrington's demurrer to the Third cause of action is sustained with leave to amend.

C. Fraud

Carrington takes issue with every element of Plaintiff's alleged fraud claim. To start, Carrington argues that Plaintiff "does not allege that Mr. Winter had any authority to speak on Carrington's behalf". Carrington's Memorandum, pg.12:12-13. Plaintiff clearly alleges that "Mr. Winter held himself out as having actual authority on behalf of Defendants". Complaint ¶ 24. Carrington's other contentions equally ignore the allegations of the Complaint. Plaintiff alleges that Winter represented that he did not know where Plaintiff should tender the required payment (Complaint ¶ 53), that he did in fact know where the payment was to be sent (Complaint ¶ 55), and that he knowingly made the false statement for Carrington's benefit (Complaint ¶ 54-55). Plaintiff relied on Winter's statement. Complaint ¶ 56. These are clearly pled with adequate specificity to survive demurrer.

Carrington also argues that Plaintiff fails to plead causation and damages. They provide no authority showing that loss of a right to inhabit is not "damages" sufficient to state a claim for fraud. Carrington's argument regarding lack of causation fairs little better. Plaintiff alleges that the misrepresentation occurred on October 14, and the foreclosure occurred on October 17. Carrington opines that Plaintiff must allege that he specifically was ready to tender the funds, but this overstates the specificity required for pleading, even when examining fraud claims. Carrington in essence opines that the Court should read into the Complaint that Plaintiff was *not* ready to make the payment at the time of his conversation with Mr. Winter. No authority states as much. The relevant allegation states that even despite not receiving instruction from Mr. Winter, Plaintiff eventually tendered payment to where he believed it should go, because he was lacking sufficient instruction.

Carrington's demurrer to the Fourth cause of action is OVERRULED.

D. Financial Elder Abuse

Carrington opines that Plaintiff has not pled financial elder abuse because it is not elder abuse to foreclose as allowed by the terms of the RMC. For this, they rely on *Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 528. The *Stebley* court found that the elder abuse claims failed because "plaintiffs failed to allege any property was taken *wrongfully.*" *Id*. at 527. As the Court has addressed above, Plaintiff has adequately pled facts sufficient to state that Carrington *wrongly* undertook foreclosure in contravention of the deed of trust. Entry of false escrow instructions is sufficient to state a cause of action for financial elder abuse. *Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 483. This is sufficient to distinguish this matter from *Stebley* and accordingly the demurrer must be overruled.

Carrington's demurrer to the Fifth cause of action is OVERRULED.

E. Rosenthal Fair Debts Collection Practices Act

Carrington demurs to the RFDCPA claim, arguing that the Complaint is clearly precluded by the one year statute of limitations. The statute of limitations for RFDCPA claims is one year. The foreclosure sale allegedly occurred in October 2024, with attempted payment in November 2024. The Complaint was not filed until February 2026. There is no apparent basis for tolling the statute of limitations, and Plaintiff does not argue that the RFDCPA claim is timely.

Carrington's demurrer to the Sixth cause of action is sustained with leave to amend.

F. Declaratory Relief

Declaratory relief is a method by which to receive a declaration of the rights of the parties subject to an instrument. Plaintiff pleads a genuine dispute as to the execution and rights under the RMC, and as such has stated a claim for declaratory relief.

Carrington's demurrer to the Seventh cause of action is OVERRULED.

G. Unfair Competition Law

Unfair competition claims may rely on claims of unfair, unlawful, or fraudulent conduct. See Bus. & Prof. Code § 17200. Here, Plaintiff has adequately pled both unlawful conduct (violations of Welf. And Inst. Code § 15610.30), and fraudulent conduct. Accordingly, the cause of action for UCL violations is adequately supported.

Carrington's demurrer to the Eighth cause of action is OVERRULED.

H. Wrongful Foreclosure, Set Aside, Cancellation of Instrument, Quiet Title and Slander of Title

The last five causes of action relate to issues of title, and as such have overlapping legal issues. Carrington opines that there are significant issues with the causes of action attacking

Carrington's transfer of the Property. There are at least two significant matters rendering the causes of action deficient.

First, as Carrington argues in the quiet title segment of their memorandum, Plaintiff does not express a basis upon which he has title to the Property, and accordingly his cause of action for Quiet Title fails. This logic appears to apply equally to Plaintiff's claim for Slander of Title. *Sumner Hill Homeowners' Assn., Inc. v. Rio Mesa Holdings, LLC* (2012) 205 Cal.App.4th 999, 1030 (slander of title of property may be brought by "the owner thereof…"). The same would seem to apply to Cancellation of Instrument. Plaintiff alleges various causes of action, but never alleges that Plaintiff either holds any form of title, or is Decedent's successor in interest to title. See, e.g., Civ. Code § 2924b. Indeed, Complaint ¶ 89 quite clearly omits any interest in the Property beyond Plaintiff's occupation and upkeep. While Plaintiff opines that the default casts doubt on Plaintiff's "interests to the [Property's] title", he never expresses the nature of his title interest. These causes of action require that Plaintiff have an interest in title which either must be affirmed over that of Defendants, or is clouded by Defendants' conduct. Since Plaintiff fails to express an interest in title, the causes of action are deficiently asserted.

Carrington also argues that Plaintiff fails to plead either tender or its exceptions. Plaintiff argues that the tender required for these causes of action falls under the exception for either counterclaims, or that such tender would be inequitable. Plaintiff pleads neither of these, and as such has failed to adequately plead satisfaction of tender. This is easily remedied with amendment.

Set aside of trustee's sale and wrongful foreclosure appear to be repetitious causes of action. Wrongful foreclosure either forms the basis for monetary damages, or set aside of the sale. In the Complaint, Plaintiff vaguely references Civ. Code § 2923.3 as to his Wrongful Foreclosure cause of action, but he neither cites a specific provision in the Complaint nor expounds with any authority in his opposition. Set Aside and Wrongful Foreclosure do *not* rely on contentions of standing based on property title, instead requiring merely that, Plaintiff suffer "harm" from the wrongful foreclosure. Nonetheless, for set aside, Plaintiff must satisfy the pleading of tender to adequately state the cause of action. *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 104.

Plaintiff's claim for wrongful foreclosure is pleaded in a manner rendering it either insufficiently articulated (if it is based Civ. Code § 2923.3), or redundant. In either instance, it is insufficiently articulated as either lacking elements, or not pleading tender or an exception thereon.

Carrington's demurrer to the Ninth, Tenth, Eleventh, Twelfth and Thirteenth causes of action is SUSTAINED with leave to amend.

V. Recon's Demurrer

Recon also demurs to each cause of action in the Compliant, but largely repeats those arguments already raised by Carrington and addressed above. Indeed, in some instances, Recon appears to have copied Carrington's memorandum, without regard for their status as a distinct party. This is addressed further below.

A. Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

Recon demurs to the breach of contract claims on the same bases as Carrington. Accordingly, they arrive at the same result for the reasons expressed above.

Recon's Demurrer to the First and Second causes of action is OVERRULED.

B. Intentional Interference with Contract

Recon copies Carrington's argument related to intentional interference with contract, seemingly missing the nature of the claim. Both Recon and Carrington state:

> Plaintiff's intentional interference with must fail because Plaintiff does not allege a valid contract between himself and a third party. Rather, Plaintiff's claims relate to a contract between himself and Carrington, the beneficiary under the Deed of Trust.

Carrington's Memorandum, pg. 11:24-26; Recon's Memorandum, pg. 4:9-11.

Recon fails to address or raise their own position. Accordingly, they fail to state a basis for sustaining the demurrer.

Recon's demurrer to the Third cause of action is OVERRULED.

C. Fraud

Again, Recon repeats Carrington's arguments without seeming acknowledgement that they are distinct from Carrington. Plaintiff adequately pleads the elements of fraud against Recon for the reasons expressed above.

Recon's demurrer to the Fourth cause of action is OVERRULED.

D. Financial Elder Abuse

Plaintiff has adequately stated a cause of action for financial elder abuse for the same reasons addressed above.

Carrington's demurrer to the Fifth cause of action is OVERRULED.

E. Rosenthal Fair Debts Collection Practices Act

Plaintiff's cause of action for violations of the RFDCPA remains untimely.

Recon's demurrer to the Sixth cause of action is sustained with leave to amend.

F. Declaratory Relief

Declaratory relief is a method by which to receive a declaration of the rights of the parties subject to an instrument. Plaintiff pleads a genuine dispute as to the execution and rights under the RMC, and as such has stated a claim for declaratory relief.

Recon's demurrer to the Seventh cause of action is OVERRULED.

G. Unfair Competition Law

Unfair competition claims may rely on claims of unfair, unlawful, or fraudulent conduct. See Bus. & Prof. Code § 17200. Here, Plaintiff has adequately pled both unlawful conduct (violations of Welf. And Inst. Code § 15610.30), and fraudulent conduct. Accordingly, the cause of action for UCL violations is adequately supported.

Recon's demurrer to the Eighth cause of action is OVERRULED.

H. Wrongful Foreclosure, Set Aside, Cancellation of Instrument, Quiet Title and Slander of Title

Plaintiff's pleading deficiencies identified above are equally appliable to their claims against Recon, and accordingly come to the same result.

Recon's demurrer to the Ninth, Tenth, Eleventh, Twelfth and Thirteenth causes of action is SUSTAINED with leave to amend.

VI. Conclusion

Based on the foregoing, **Carrington's Demurrer is SUSTAINED with leave to amend as to the Third, Sixth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth causes of action. Carrington's Demurrer is OVERRULED as to the First, Second, Fourth, Fifth, Seventh, and Eighth causes of action.**

Recon's Demurrer is SUSTAINED with leave to amend as to the Sixth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth causes of action. Carrington's Demurrer is OVERRULED as to the First, Second, Third, Fourth, Fifth, Seventh, and Eighth causes of action.

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

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