TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 1, 2026 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

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

TO JOIN D17 ZOOM ONLINE:
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252

The following 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 as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1-2. 24CV03326, Melo v. Vosburg

The Court rules as follows on Defendant Sarabeth N. Vosburg's ("Defendant") unopposed discovery motions filed against Plaintiff Pricilla M. Melo ("Plaintiff"):

1. Defendant's Motion to Compel Plaintiff's responses to Form Interrogatories, Set One, is **GRANTED**. Plaintiff shall serve verified, objection-free responses to these interrogatories on Defendant within 20 days of this Court's order.

2. Defendant's Motion to Deem Plaintiff's Requests for Admission, Set One, as admitted is **GRANTED**.

   Mandatory sanctions are awarded as requested for the amount of $540.00 per motion.

I. PROCEDURAL HISTORY

On October 13, 2025, Defendant served the first set of discovery responses on Plaintiff, which

included Form Interrogatories and Requests for Admissions. (Piotrowski Declarations, ¶ 2.) Plaintiff's counsel, Counsel Young, failed to request any extensions and Plaintiff failed to ever respond. (Piotrowski Declarations, ¶¶ 4-9.)

On March 10, 2026, Defendant filed four motions to compel regarding the first set of discovery to which Plaintiff failed to respond. The Court considers the above-described motions now and will rule on the remaining two motions at the hearing set on July 8, 2026.

Defendant filed Notices of Non-Opposition to both motions stating that the moving papers were served properly on Plaintiff, but that no opposition had been timely filed. Under C.C.P. section 1005(b), the oppositions were due 9 court days before the July 1, 2026, hearing date, but none have been filed. Now, the Court considers the two unopposed motions.

II. ANALYSIS

Legal Standard

a. Interrogatories

A party who fails to serve a timely response to interrogatories absent evidence showing mistake, inadvertence, or excusable neglect, waives any right to object to the interrogatory, including objections based on privilege or work product, and the court shall impose monetary sanctions upon the party who unsuccessfully opposes a motion to compel initial the responses. (C.C.P. § 2030.290.)

b. Requests for Admission

A party who "fails to serve a timely response" to requests for admissions waives any objection to those requests. (C.C.P. § 2033.280(a).) After a lack of response, the requesting party can move for an order "that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted." (C.C.P. § 2033.280(b).) However, if the Court finds that the lack of response was the result of mistake, inadvertence, or excusable neglect, and that the party who obtained the admission will not be substantially prejudiced in maintaining the party's action or defense on the merits, then the Court may permit leave to withdraw or amend an admission after notice to all parties. (C.C.P. § 2033.300(a)-(b).)

Defendant's Motions to Compel

Defendant moves unopposed to compel verified, objection-free responses from Plaintiff in response to the Form Interrogatories, Set One, to which Plaintiff failed to timely respond. (Motion to Compel Form Interrogatories, 3:3-20.) Defendant requests sanctions of $540.00, which includes 2 hours of work on the motion at a rate of $240.00 per hour and $60.00 in filing costs. (Piotrowski Decl., ¶ 10.)

Defendant moves unopposed for this Court to deem Requests for Admission, Set One, as admitted against Plaintiff due to her failure to respond to them. (Motion to Deem Requests for Admission Admitted, 3:3-23.) Defendant requests sanctions of $540.00 for this motion as well. (Piotrowski Decl., ¶ 10.)

Application

Both motions are warranted as Plaintiff has failed to request any extensions, to serve any objection or response to the discovery requests to date, or to oppose these motions to offer any substantial justification for the lack of response. The Court will grant both motions.

III. CONCLUSION

Based on the foregoing:

1. Defendant's Motion to Compel Plaintiff's responses to Form Interrogatories, Set One, is **GRANTED**. Plaintiff shall serve verified, objection-free responses to these interrogatories on Defendant within 20 days of this Court's order.

2. Defendant's Motion to Deem Plaintiff's Requests for Admission, Set One, as admitted is **GRANTED**.

Mandatory sanctions are awarded as requested for the amount of $540.00 per motion. Unless oral argument is requested, the Court will sign the proposed orders lodged with the motions.

3. 25CV00393, LaFortune v. Adams

Defendants Robert M. Eisenhauer ("Eisenhauer") demurs to the Second and Third Causes of Action in Plaintiffs Noel, Michael, Jonathan LaFortune, and Michele Yockey's (together "Plaintiffs") Second Amended Complaint ("SAC"). The demurrer is **OVERRULED**.

I. PROCEDURAL HISTORY

Decedent Charles LaFortune ("Decedent") was involved in a motor vehicle collision with Defendant Richard Earl Adams' ("Adams") vehicle driving westbound on State Route 12. (SAC, ¶¶ 1-7.) Defendant Adams allegedly failed to stop his vehicle and rear-ended Decedent's vehicle at a high speed, which resulted in fatal injuries to Decedent. (*Id*. at ¶¶ 7-8.) Decedent was survived by his wife and children who are all named Plaintiffs in this matter. (*Id*. at ¶¶ 9-10.)

Eisenhauer was named as a defendant in this action because he allegedly owns, operates, manages, and controls Defendant Eisenhauer Construction, Inc., the company that owned the vehicle that Adams was driving at the time of the collision. (SAC, ¶¶ 12-13.) In Plaintiffs' First Amended Complaint ("FAC"), Plaintiffs had alleged the Second Cause of Action for negligence and wrongful death based on alter ego liability and the Third Cause of Action for survival action against Eisenhauer.

(FAC, ¶¶ 30-39.) The Court sustained Eisenhauer's demurrer as to these two causes of action, but allowed Plaintiffs leave to amend. (Demurrer, 2:4-6.)

Plaintiffs filed the SAC on March 10, 2026, including additional facts as to their allegation that Eisenhauer is personally liable as the alter ego of Eisenhauer Construction. (SAC, ¶¶ 30-43.) However, Eisenhauer once more demurs to the SAC arguing that there are still insufficient facts for a supporting of alter ego liability. (Demurrer, 3:4-13.) Plaintiffs oppose the demurrer, to which Eisenhauer replied.

II. DEMURRER

Legal Standard

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. (C.C.P. § 430.30(a).) 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 judicially noticed facts are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) 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, but the distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) 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.) The burden of proving that there is a reasonable possibility to cure the defect is squarely on the party that filed the pleading, but if that burden is met and leave to amend is not granted, then that constitutes an abuse of discretion by the trial court. (*Ibid*.)

Eisenhauer's Demurrer

To support their Second and Third Causes of Action, Plaintiffs allege that Eisenhauer Construction, Inc. and Eisenhauer were vicariously and directly liable for the acts of Adams for unknown reasons because they allowed Adams to use their vehicle as their agent and because Adams was in the course and scope of his employment relationship with Eisenhauer and Eisenhauer Construction, Inc. (FAC, ¶¶ 32, 40.)

Furthermore, they allege that there is a unity in interest and ownership between Eisenhauer Construction and Eisenhauer because Eisenhauer uses the corporate assets as his own, commingles corporate funds for his personal funds, fails to segregate corporate funds, diverts corporate funds and assets for non-corporate uses, treats corporate assets as his own, holds himself out as personally liable for debts of the corporation, fails to maintain adequate corporate records, owns all of the stock in the corporation, fails to adequately capitalize the corporation, fails to maintain an arm's length relationship from the corporation, uses the corporate entity to procure labor, services, and merchandise for himself, forms and uses the corporation to shield himself from liability, and fails to observe corporate

formalities. (*Id*. at ¶¶ 33, 41.) The SAC also alleges that alter ego liability is necessary to avoid an inequitable result and promote justice because without it, a judgment obtained against Eisenhauer Construction cannot also be held against Eisenhauer. (*Id*. at ¶¶ 34, 42.)

Eisenhauer argues that to recover on an alter ego theory, Plaintiffs must allege sufficient facts to show a unity of interest and ownership, and an unjust result if the corporation is treated as the sole actor. (Demurrer, 5:22-27.) Eisenhauer argues that, like in the FAC, the SAC also fails to plead sufficient facts that if successful against Eisenhauer Construction Inc., an inequitable result will occur if Eisenhauer and the corporation are both not treated as one and the same. (*Id*. at 6:11-28, 7:1-27.)

Opposition

Plaintiffs point to Paragraphs 34 and 42 in their SAC that specifically alleges that the alter ego liability is required to avoid an inequitable result and promote injustice and without it, a judgment against Eisenhauer Construction cannot be recovered from Eisenhauer as well. (Opposition, pp. 6-7.)

Reply

Eisenhauer argues that, even if a demurrer admits all material facts as properly pleaded, contentions, deductions or conclusions of fact or law should not be allowed without more facts supporting those contentions. (Reply, pp. 1-3.) Eisenhauer's position is that the additional allegations are not sufficient to support the Second and Third Causes of Action adequately against Eisenhauer. (*Id*. at pp. 3-5.)

Application

The Court finds that Plaintiffs have sufficient alleged enough for the pleadings stage to state the elements required for an alter ego theory against Eisenhauer. Plaintiffs do not at this time have the evidentiary burden of proving that the alter ego theory is certainly viable against Eisenhauer, as that is not appropriate at the pleadings stage.

III. CONCLUSION

Based on the foregoing, the demurrer is **OVERRULED**. Plaintiffs 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).

4-5. 25CV01483, Coturri v. U.S. Bank N.A.

Defendants Select Portfolio Servicing, Inc. ("SPS") and U.S. Bank N.A., successor trustee to Bank of America, N.A, Successor to LaSalle Bank N.A. for the WaMu Mortgage Pass-Through Certificates, Series 2005-AR3 (the "Trust")(U.S. Bank") demur to Plaintiff Anthony H. Coturri's First Amended Complaint ("FAC"). The demurrer is **SUSTAINED without leave to amend**.

Quality Loan Service Corporation's ("Quality Loan") demurrer to the FAC is also **SUSTAINED without leave to amend**.

The parties' requests for judicial notice are **GRANTED**.

I. PROCEDURAL HISTORY

Plaintiff Coturri's action concerns real property he owns located at 6725 Enterprise Road, Glen Ellen, California 95442 (the "Property"). (FAC, 2:2-9.) Previously, U.S. Bank and SPS demurred to the initial Complaint for failure to state facts sufficient to constitute a cause of action, pursuant to C.C.P. sections 430.10(e) and 430.10(g), and the Court issued a tentative ruling sustaining the demurrer with leave to amend. (See Order dated October 31, 2025.) As no party contested the tentative ruling, it became the final ruling of the Court on U.S. Bank and SPS's demurrer and Plaintiff late filed the FAC on December 10, 2025.

The FAC alleges the same causes of action for: (1) Wrongful Foreclosure; (2) Quiet Title; (3) Declaratory Relief; and (4) Violation of Business and Professions Code section 17200. (FAC, ¶¶ 26-61.) Plaintiff alleges that on December 17, 2004, he borrowed $700,000.00 from Washington Mutual Bank FA secured by a deed of trust recorded against the Property on January 3, 2005. (*Id*. at ¶ 3.) Washington Mutual Bank FA transferred the promissory note underlying the deed of trust on the Property to a security entity named WaMu Mortgage Pass-Through Certificates, Series 2005-AR3 on August 15, 2005. (*Id*. at ¶ 4.) Thereafter, on February 17, 2006, LaSalle Bank was named as the successor trustee. (*Id*. at ¶ 5.) After a long series of substitutions and transfers, Quality Loan was substituted in as the successor trustee for the deed of trust on March 22, 2016. (*Id*. at ¶ 16, Exhibit H.) At one point, Plaintiff alleges that Bank of America was the successor trustee because LaSalle Bank was purchased and merged into Bank of America on October 17, 2008, and Plaintiff alleges that the interest on the Property never transferred to any other entity after that. (*Id*. at ¶¶ 16-25, 28.)

U.S. Bank, SPS, and Quality Loan demur to the FAC on the grounds that it fails to state facts sufficient to constitute Plaintiff's claims per C.C.P. section 430.10(e). (U.S. Bank/SPS Demurrer, 1:20-28, 2:1; Quality Loan's Notice of Demurrer, 1:24-26.) Plaintiff filed an Opposition to the Demurrers and Defendants filed a Reply.

II. REQUEST FOR JUDICIAL NOTICE

Judicial notice of State and Federal laws, regulations, legislative enactments, official acts and court records is statutorily appropriate. (Evid. Code §§ 451, 452.) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) Per Evidence Code section 452(h), 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." 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.)

Subject to the above restrictions, the Court **GRANTS** the parties requests for judicial notice for all of the below documents:

1. Order Number 2008-36 of the Office of Thrift Supervision, executed on September 25, 2008, appointing the Federal Deposit Insurance Corporation (FDIC) as receiver for Washington Mutual Bank, Henderson, Nevada contained in the records of the Office of Thrift Supervision, Department of the Treasury;

2. Substitution of Trustee recorded in the Official Records of Sonoma County on April 9, 2014, as Instrument No. 2014023675;

3. Notice of Trustee's Sale recorded in the Official Records of Sonoma County on November 12, 2024, as Instrument No. 2024055951; and

4. Signed order sustaining Defendants' demurrer dated October 31, 2025.

5. That deed of trust recorded on January 3, 2005, with the Sonoma County Recorder bearing document number 2005-000376 in the official records of Sonoma County;

6. Purchase and Assumption Agreement dated September 25, 2008, whereby the FDIC transferred substantially all of Washington Mutual's assets and liabilities to JPMorgan Chase Bank, N.A.;

7. FDIC report dated December 28, 2024, concerning the Washington Mutual receivership;

8. The fact that on October 17, 2008, La Salle Bank ceased to exist as a result of a purchase and merger into Bank of America NA as reflected in the records of the Comptroller of the Currency;

9. The fact that assignment recorded on July 13, 2013, with the Sonoma County Recorder bearing document number 2013-075688 in which Chase acting as the attorney-in-fact for the FDIC assigned the Deed of Trust to the WaMu Mortgage Pass-Through Certificates, Series 2005-AR3.;

10. The recorded substitution of trustee dated December 10, 2013, bearing Sonoma County Recorder's index number 2013-115774 in which Chase substituted California Reconveyance Company as the new trustee for the Deed of Trust;

11. Notice of default recorded by California Reconveyance Company on December 10, 2013, bearing Sonoma County Recorder's index number 2013-115775;

12. Notice of trustee sale recorded by ALAW on April 22, 2014, bearing Sonoma County Recorder's index number 2014-026806;

13. Substitution of trustee recorded by the WaMu Entity substituting Quality Loan Service Corporation as the successor trustee for the Deed of Trust recorded on March 22, 2016, bearing Sonoma County Recorder's index number 2016-025474;

14. Notice of trustee sale recorded by Quality Loan Service Corporation on March 25, 2016, bearing Sonoma County Recorder's index number 2016-026541;

15. Notice of trustee sale recorded by Quality Loan Service Corporation on September 13, 2016, bearing Sonoma County Recorder's index number 2016-80243;

16. Notice of trustee sale recorded by Quality Loan Service Corporation on July 25, 2018, bearing Sonoma County Recorder's index number 2018-052895;

17. Recission of notice trustee sale recorded by Quality Loan Service Corporation on December 7, 2018, bearing Sonoma County Recorder's index number 2018-083656;

18. Notice of default recorded by Quality Loan Service Corporation on July 22, 2022, bearing Sonoma County Recorder's index number 2022-049703;

19. Notice of default recorded by Quality Loan Service Corporation on October 20, 2022, bearing Sonoma County Recorder's index number 2022-067091;

20. Notice of trustee sale recorded by Quality Loan Service Corporation on December 20, 2022, bearing Sonoma County Recorder's index number 2022-079818; and

21. Notice of trustee sale recorded by Quality Loan Service Corporation on September 26, 2023, bearing Sonoma County Recorder's index number 2023-044566.

22. Trustee's Deed Upon Sale, recorded on July 9, 2025, in the Sonoma County Recorder's Office as Instrument No. 2025032032.

III. ANALYSIS

Legal Standard

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. (C.C.P. § 430.30(a).) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

U.S. Bank & SPS Demurrer

First Cause of Action for Wrongful Foreclosure

U.S. Bank and SPS argue that Plaintiff was allowed leave to amend the initial Complaint to demonstrate how LaSalle and/or Bank of America, rather than the Trust, retained sole and exclusive authority to foreclose under the Deed of Trust, but that Plaintiff failed to take advantage of this opportunity by only adding three vague and conclusory allegations and not attaching a single document that demonstrates that LaSalle and/or Bank of America is the current beneficiary of the Deed of Trust.

(U.S. Bank/SPS Demurrer, 1:14-26.) As such, U.S. Bank and SPS argue that Plaintiff failed to state facts sufficient to allege a cause of action for wrongful foreclosure.

Plaintiff makes the same arguments that were made in the Opposition to the previous Demurrer. Plaintiff argues in the Opposition that he alleged that the Deed of Trust was transferred to LaSalle Bank and from there to Bank of America in a merger prior to the FDIC taking over Washington Mutual in a recorded chain of title which Defendants did not dispute. (Opposition, 6:2-9.) Plaintiff states that sufficient facts were alleged to support this cause of action because Defendants lacked authority to foreclose as that authority was held and continued to be held by LaSalle Bank/Bank of America. (*Id*. at 6:28, 7:1-9.)

In the Reply, U.S. Bank and SPS argue that the deed of trust was never "assigned" to LaSalle Bank, which later merged with Bank of America, but rather LaSalle Bank was the trustee of the WaMu trust that held the beneficial interest under the deed of trust. (Reply, 4:7-12.) The long chain of documents shows that each entity was at some point the trustee of the securitized loan pool of mortgages that held the beneficial interest in the deed of trust and their sole role was to act as trustee for the WaMu trust that held the beneficial interest in the deed of trust. (*Id*. at 5:17-23.) Thus, LaSalle never had any independent authority to foreclose. (*Ibid*.)

Plaintiff failed to cure the defect that existed in the initial Complaint because the FAC continues to fail to allege that U.S. Bank or SPS caused any illegal, fraudulent, or willfully oppressive sale of real property when the judicially noticed documents show that the Trust was assigned the entire beneficial interest in the Property and none of the Trustees ever held any actual interest in the Property. In the Opposition, Plaintiff failed to address the issue and how it could be fixed through further amendment, so the Court does not find there is a reasonable possibility it can be cured. The demurrer is **SUSTAINED without leave to amend** as to the Wrongful Foreclosure claim as to U.S. Bank and SPS.

Second Cause of Action for Quiet Title

U.S. Bank and SPS make the same argument as was made in the Demurrer to the Complaint that the FAC's allegations are not sufficient to establish a valid quiet title claim against SPS because it has no direct interest in the property as the servicer of the secured mortgage loan, and because the claim lacks an independent factual basis as a valid claim and relies on Plaintiff's other claims that U.S. Bank or SPS wrongfully claim interest to the Property. (U.S. Bank/SPS Demurrer, 11:15-17, 12:3-6.)

Plaintiff argues that, because there was a prior transfer to another bank which voided the foreclosure sale, Plaintiff alleged sufficient facts to support the Quiet Title claim. (Opposition, 8:22-27, 9:1-6.)

As explained above, the Reply attempts to clear up confusion regarding the chain of title to explain why Defendants had the authority to foreclose.

As with the initial Complaint, the FAC fails to allege facts that sufficiently state a cause of action for Quiet Title against U.S. Bank or SPS as the parties' judicially noticed items do not indicate that the Trust was assigned to LaSalle Bank/Bank of America and remained in those entities' ownership. The demurrer is **SUSTAINED without leave to amend** as to the Second Cause of Action as to U.S. Bank or SPS.

Third Cause of Action for Declaratory Relief

As was argued in the Demurrer to the Complaint, U.S. Bank again argues that Plaintiff's claim for declaratory relief fails because there is no actual controversy where Plaintiff failed to sufficiently allege the invalidity of the deed of trust or the promissory note in the FAC. (U.S. Bank/SPS Demurrer, 12:23-28.)

Plaintiff again argues as Defendants lacked the authority to foreclose because the authority was held and continued to be held by LaSalle Bank/Bank of America, Plaintiff alleged sufficient facts to support the Declaratory Relief claim. (Opposition, 9:25-28, 10:1-6.)

As explained under the First and Second Causes of Action, the Reply attempts to clear up confusion regarding the chain of title to explain why Defendants had the authority to foreclose.

For the same reasons stated above regarding the First and Second Causes of Action, the Court again finds that Plaintiff has not sufficiently alleged the existence of an actual controversy in the FAC to claim declaratory relief. The demurrer is **SUSTAINED without leave to amend** as to the Third Cause of Action as to U.S. Bank and SPS.

Fourth Cause of Action for Violation of Business & Professions Code section 17200

U.S. Bank and SPS make the same argument as was made in the first Demurrer that Plaintiff's UCL claim fails because it is premised upon Plaintiff's claim that Defendants never received any assignment of the deet of trust from Bank of America. Therefore they lacked standing to assign the deed of trust, make a substitution of trustee, or record a notice of default or notice of trustee sale, and that claim is itself insufficiently pleaded. (U.S. Bank/SPS Demurrer, 13:2-5.)

For the same reasons stated in the above three causes of action, Plaintiff claims that enough facts were alleged to support the Fourth Cause of Action because Defendants lacked authority to foreclosure on property because LaSalle Bank/Bank of America had that authority. (Opposition, 10:18-24.)

As explained above regarding the First, Second, and Third Causes of Action, the Reply attempts to clear up confusion regarding the chain of title to explain why Defendants had the authority to foreclose.

For the same reasons stated above, the Court does not find that Plaintiff sufficiently alleged facts in the FAC that support a claim under the UCL against U.S. Bank and SPS because Plaintiff did

not allege the acts constituting unfair business practices that they engaged in. The demurrer is **SUSTAINED without leave to amend** as to the Fourth Cause of Action as to U.S. Bank and SPS.

Quality Loan's Demurrer

Litigation Privilege

Quality Loan argues that the nonjudicial foreclosure is statutorily protected under the Litigation Privilege in Civil Code section 47 because nonjudicial foreclosure is a codified and comprehensive process regulated by the legislature. (Quality Loan Demurrer, pp. 4-6.) Under this legislative framework, a trustee under a deed of trust does not owe any duties in exercising the power of sale beyond those specified in the deed and the statutes. (*Id*. at pp. 4-6; *I.E. Associates v. Safeco Title Ins. Co.* (1985) 39 Cal.3d 281, 285, 288.) Quality Loan cites to Civil Code section 2924, which states that, "in performing acts required by this article…the trustee shall not incur liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage," and that performance of procedures under this code section "shall constitute privileged communications pursuant to Section 47."

In the Opposition, Plaintiff argues that the Litigation Privilege does not apply to a trustee conducting foreclosure actions if there is not a legal basis to proceed, which Plaintiff argues there was not because there was a lack of prior transfer from LaSalle Bank and/or Bank of America to Quality Loan. (Opposition, 6:2-20.)

In the Reply, Quality Loan argues that, as the Court already found in sustaining the first Demurrer brought by U.S. Bank/SPS, Plaintiff's allegations do not identify any problem with chain of title, but rather indicate that the Trust was assigned the entire beneficial interest in the Property. (Reply, 2:4-27.)

The Court does find that based on Civil Code sections 47 and 2924, the Litigation Privilege does apply to the statutory nonjudicial foreclosure completed by Quality Loan as a Trustee of the Deed of Trust, which was assigned the entire beneficial interest in the Property, and the FAC fails to allege any bad faith on the part of Quality Loan in doing so when no evidence was submitted that demonstrates an issue with the chain of title.

Wrongful Foreclosure

Quality Loan argues that Plaintiff failed to establish that the foreclosure was conducted by an unauthorized entity and that a substituted trustee under a deed of trust has no duty to verify that the beneficiary received a valid assignment of the loan or verify the authority of the person who signed the substitution of trustee. (Quality Loan Demurrer, pp. 6-8.)

Plaintiff argues that there was a prior substitution of trustee "conveyed to LaSalle Bank/Bank of America" and there was no further substitution after that, so the right to foreclosure is still held by

LaSalle Bank and/or Bank of America. (Opposition, pp. 6-8.)

Quality Loan's Reply argues that Plaintiff's Opposition failed to address the argument in the Demurrer that as Trustee under the Deed of Trust, Quality Loan had no duty to investigate or confirm the authority of the foreclosing beneficiary. (Reply, 3:3-26.)

The Court finds that Plaintiff failed to allege facts sufficient to state a claim for wrongful foreclosure as to Quality Loan because the FAC's allegations do not establish Quality Loan was an unauthorized entity. As such, the demurrer is **SUSTAINED without leave to amend** as to this cause of action.

Quiet Title

Quality Loan argues that the Trustee of the Deed of Trust is not a proper party to a quiet title claim because the Trustee does not hold any interest in owning the Property, especially where a third-party buyer has recorded the Trustee's Deed Upon Sale transferring the title to that buyer. (Quality Loan Demurrer, 9:2-28, 10:1-6.)

Plaintiff argues that the FAC states all elements of a quiet title action and alleges sufficiently that the Deed of Trust was transferred to LaSalle Bank and from there to Bank of America by merger prior to the FDIC taking over Washington Mutual, which Plaintiff claims is enough to show Quality Loan never had any authority to foreclose. (Opposition, pp. 8-11.)

The Reply mainly emphasizes that Plaintiff's Opposition fails to address the argument that the FAC does not allege that Quality Loan claims any adverse interest at all in the subject real property. (Reply 4:3-21.)

The Court does not find that the FAC sufficiently alleges that Quality Loan retains any claim or interest at all in the Property as is required for a quiet title claim. The demurrer is **SUSTAINED without leave to amend** as to this cause of action.

Declaratory Relief

Quality Loan argues that there is no present and actual controversy between Plaintiff and Quality Loan because the foreclosure has already been completed, so any claims about the completed foreclosure are regarding *past* alleged wrongs. (Quality Loan Demurrer, 10:8-28.) For that reason, Quality Loan argues that the declaratory relief claim is duplicative, improper, and unnecessary because other adequate and potential remedies exist. (*Ibid*.)

Plaintiff argues that the present controversy is that Quality Loan lacked any authority to foreclose as that authority was held and continued to be held by LaSalle Bank/Bank of America. (Opposition, pp. 9-10.)

In the Reply, Quality Loan reaffirms the arguments made in the Demurrer. (Reply, pp. 4-5.)

The Court does not find that Plaintiff has established in the Opposition that the FAC alleges a present and actual controversy between Plaintiff and Quality Loan because Plaintiff seeks relief for past alleged wrongs, specifically the alleged unauthorized sale of the Property, for which relief there are other adequate potential remedies. As such, the demurrer is **SUSTAINED without leave to amend** as to this claim.

UCL Claim

Quality Loan argues that the FAC fails to allege any material misrepresentations made by Quality Loan to Plaintiff or to allege that members of the public would be deceived by the Notices of Default or Notices of Trustee's Sale recorded by Quality Loan. (Quality Loan Demurrer, 11:2-27.) Quality Loan also argues that the UCL Claim is derivative of the other claims that Quality Loan argues are unsupported by sufficient facts. (*Ibid*.)

Plaintiff in the Opposition again reiterates the same argument that the evidence of fraud is the unauthorized sale of the Property, when only LaSalle Bank/Bank of America had that authority. (Opposition, pp. 10-11.)

Quality Loan refers back to the arguments made in the Demurrer in the supporting Reply. (Reply, pp. 5-6.)

As the Court is sustaining the demurrer as to the other claims and the UCL claim is derivative of those claims, the Court will also **SUSTAIN** the demurrer **without leave to amend** as to this cause of action. The Court also does not find that the FAC sufficiently alleges unfair business practices done or material misrepresentations made by Quality Loan to support the UCL claim.

Leave to Amend

Quality Loan argues that Plaintiff will not be able to state a viable cause of action against Quality Loan as Trustee of the Deed of Trust because of the Litigation Privilege and because as Trustee, Quality Loan's duties did not include any requirement that it verify the authority of the foreclosing beneficiary. Quality Loan contends that Plaintiff cannot cure these issues by amendment, and also that Plaintiff failed to show, at or before hearing, that some substantive amendment might reasonably cure the defects in the FAC, so the Court should not allow leave to amend. (Quality Loan Demurrer, 12:9-17.)

As Plaintiff was not able to amend the FAC to cure the defects raised by the previous demurrer by U.S. Bank and SPS, which raised similar issues as Quality Loan has raised in this demurrer, the Court does not find that there is a reasonable possibility that Plaintiff can cure these defects by a further amendment. As Plaintiff has already been allowed the opportunity to fix the issues and Plaintiff has not been able to do so, the Court will sustain this demurrer without leave to amend.

IV. CONCLUSION

Based on the foregoing, both demurrers are **SUSTAINED without leave to amend** as to each cause of action. Quality Loan and U.S. Bank/SPS shall submit written orders on their demurrers consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

6. 25CV05389, Tesfamicael v. Ford Motor Company

Defendant Ford Motor Company ("Ford") moves for summary judgment or adjudication alternatively ("MSJ-MSA") against Plaintiff Benjamin A. Tesfamicael's ("Plaintiff") three Song-Beverly Consumer Warranty Act claims asserted in the Complaint. The MSJ-MSA is **GRANTED** per Code of Civil Procedure ("C.C.P.") section 437c. The parties' requests for judicial notice and objections to evidence are addressed below.

I. PROCEDURAL BACKGROUND

Plaintiff brings this action against Ford regarding a 2023 Ford F-150 ("Subject Vehicle") that Plaintiff purchased from Ford. (Complaint, ¶ 8; Undisputed Material Fact ["UMF"] Nos. 1, 11.) Plaintiff alleges that Ford warranted the Subject Vehicle and agreed to preserve or maintain the utility performance of the vehicle, or to otherwise provide compensation if there was a failure in such utility or performance. (Complaint, ¶ 9.) Plaintiff further alleges that the Subject Vehicle was delivered with serious defects and nonconformities including, but not limited to, structural and electrical system defects. (*Id*. at ¶ 10.) Finally, Plaintiff claims that Plaintiff presented the Subject Vehicle for repairs in 2024 and 2025 and now revokes acceptance of the sales contract. (Complaint, ¶¶ 11-13.)

On July 9, 2025, Plaintiff sent Ford correspondence expressing dissatisfaction with the Subject Vehicle which eventually led to Ford sending Plaintiff a formal repurchase offer on July 16, 2025, which Plaintiff ultimately did not accept and instead commenced litigation. (UMF Nos. 2-11.) Ford requested that Plaintiff provide information about the purchase price and other out-of-pocket expenses that Ford was willing to reimburse Plaintiff for, but Plaintiff instead filed this action and valued the Subject Vehicle at approximately $96,486.00. (Complaint, ¶ 8.) The Retail Installment Sale Contract also indicates that the total sale price was $96,486.00. (Ihara Decl., Exhibit 1.) Ford has continued to attempt to settle the matter after litigation started.

Plaintiff's Complaint asserts three Song-Beverly claims in the Complaint against Ford. (*Id*. at ¶¶ 18-59.) Ford moves for summary judgment, or alternatively adjudication, of all three claims on the basis that Ford made a prompt prelitigation offer to repurchase the F-150, so Plaintiff is not entitled to civil penalties and cannot establish damages due to Plaintiff's own failure to cooperate in informal dispute resolution by accepting the repurchase offer. (Notice of Motion, 2:3-23.) Plaintiff opposed the MSJ-MSA and filed objections to evidence and Ford in turn replied and also filed objections.

II. REQUESTS FOR JUDICIAL NOTICE

Judicial notice of State and Federal laws, regulations, legislative enactments, official acts and court records is statutorily appropriate. (Evid. Code §§ 451, 452.) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.)

Per sections 451 and 452, the Court **GRANTS** Plaintiff's request for judicial notice of:

1. Minute Order and Order Re Tentative Ruling issued by the Los Angeles Superior Court in *Martinez Arias v. General Motors LLC* (Los Angeles Superior Court Case No. 24PSCV03569), denying Defendant General Motors LLC's Motion for Summary Judgment.

2. Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney Fees, Costs, and Expenses issued by the United States District Court for the Southern District of California in *Martinez v. Ford Motor Company*, Case No. 25-cv-01213-AJB-DDL.

III. EVIDENTIARY OBJECTIONS

1. Plaintiff's Objections Nos. 1, 2, 6, and 7 to the Declaration of Karyn L. Ihara are **OVERRULED**.

2. Plaintiff's objections to the "Declaration of Amanda Pannell" appear to be erroneously labeled as they refer to language stated in the Declaration of Karyn L. Ihara. As to Objection Nos. 4 and 5 mislabeled as objecting to Declaration of Amanda Pannell instead of Karyn L. Ihara, the objections are **OVERRULED**.

3. Ford's objections to the Declaration of Olga L. Ponce are **OVERRULED** as to Objection Nos. 1-2 and 9-10, but **SUSTAINED** as to Objection Nos. 3-8, which relate to the deposition testimony of Ford's Person Most Knowledgeable in another separate and unrelated Song-Beverly action that does not involve Plaintiff.

IV. ANALYSIS

Legal Standard

Per C.C.P. section 437c(a), any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. Summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (C.C.P. § 437c(c).) Per C.C.P. section 437c(f), a party may move for summary adjudication "as to one or more causes of action within an action, one or more affirmative defenses… if the party contends that… there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs."

An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 845.) A moving party does not meet the initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 840.) If the moving defendant cannot meet the initial burden, the plaintiff has no evidentiary burden. (C.C.P. § 437c(p)(2).)

Ford's MSA

Ford cites to *Carver v. Volkswagen Group of Am., Inc.* (2024) 107 Cal.App.5th 864 ("*Carver*"), another Song-Beverly action brought against the manufacturer. In *Carver,* the manufacturer made a written offer to repurchase within 23 days of receiving the plaintiff's first request for repurchase of the allegedly defective vehicle, which the Court of Appeal determined was "prompt" as a matter of law. (*Carver v. Volkswagen Group of Am., Inc.* (2024) 107 Cal.App.5th 864, 880, review denied (Apr. 16, 2025).) As the Court of Appeal explained:

> "To succeed on a claim for breach of an express warranty for a vehicle, the buyer plaintiff must prove that (1) the vehicle had a defect or nonconformity covered by a written warranty that substantially impaired the vehicle's use, value, or safety to a reasonable person in plaintiff's shoes (the nonconformity element); (2) the vehicle was presented to an authorized representative of the manufacturer for repair (the presentation element); (3) the manufacturer or its authorized repair facility did not repair the defect after a reasonable number of repair attempts (the failure to repair element); and (4) the manufacturer did not promptly replace or repurchase the vehicle from the plaintiff (the failure to replace or repurchase element)."

(*Carver*, supra, at p. 879.) As the manufacturer's offer to repurchase was prompt, the Court of Appeal held that it was plaintiff's choice to refuse the offer and defendants did not damage plaintiff, so all of the elements of a breach of express warranty claim could not be met, which also meant that the plaintiff could not prove damages to support the breach of implied warranty of merchantability claim either. (*Id*. at pp. 889-890.)

Here, Ford relies on *Carver* to argue that Ford made four attempts to repurchase Plaintiff's vehicle after Plaintiff demanded repurchase on July 9, 2025: (1) on July 16, 2025 (7 days after the demand); (2) on October 9, 2025 (92 days after the demand); (3) on October 30, 2025 (113 days after the demand); and (4) November 5, 2025 (119 days after the demand). (MSJ-MSA, 5:26-28, 6:1.) Ford argues that the first offer (and the continued offers after) were prompt as a matter of law under *Carver*, and it was Plaintiff's choice to refuse the offer, but it means that Plaintiff cannot establish that Ford failed to satisfy its duty to replace/repurchase the vehicle. (MSJ-MSA, 8:11-21.)

For the same reasons, Ford argues that Plaintiff cannot recover a civil penalty under section 1794(c) or prove damages required for the implied warranty claim. (MSJ-MSA, pp. 8-10.) Ford moves

for summary judgment for Plaintiff's failure to informally resolve the dispute with Ford through the prompt offer to repurchase.

Plaintiff's Opposition

Plaintiff argues that Ford's July 16, 2025, letter stated that Ford would like to repurchase the vehicle without any financial terms, so it was a "non-offer." (Opposition, pp. 2-3.) As there was no statutorily compliant repurchase offer, Plaintiff argues that summary judgment is not appropriate because the July 16, 2025, offer contained no specific details as were contained in the repurchase offer from the manufacturer in *Carver*. (*Id*. at pp. 5-7.) Plaintiff also argues that the Court cannot consider the post-suit offers because they are inadmissible settlement communications. (*Id*. at pp. 7-8.) Furthermore, there is a triable issue of fact as to Plaintiff's civil penalty claim. (*Id*. at pp. 8-9.)

Ford's Reply

Ford argues that Plaintiff's own demand letter did not include any dollar amounts or sufficient information about Plaintiff's vehicle, so Ford's offer to repurchase could not provide a specific amount either, but offered to repurchase and requested more information about the vehicle to complete the repurchasing process. (Reply, pp. 2-4.) Furthermore, Plaintiff called Ford to notify Ford he did not have information but would have his legal team send it over. (*Ibid*.) However, shortly after, the lawsuit was filed. (*Ibid*.) Ford otherwise reaffirmed the agreements made in the motion.

Application

Under Civil Code section 1793.2(e)(1), "if the goods cannot practicably be serviced or repaired by the manufacturer…to conform to the applicable express warranties…the manufacturer shall either replace…or reimburse the buyer in an amount equal to the purchase price paid by the buyer…"

Here, on July 9, 2025, Plaintiff wrote a letter to Ford demanding it fix the ongoing issues with the Subject Vehicle. (Ihara Decl., Exhibit 1.) There was no purchase agreement attached to the repair demand, any request for repurchase, or any purchase price stated on the letter. On July 16, 2025, Ford's repurchase coordinator reached out to Plaintiff stating that Ford conducted a good faith evaluation of the request and would like to repurchase the vehicle, which refund would be based on any down payment, vehicle trade-in, payments made to lending institution, sales tax, title, license fees, mileage usage, manufacturer rebates, and items such as an extended warranty, accessories and so on, purchased with the vehicle. (Ihara Decl., Exhibit 4.) Ford also requested any information about out-of-pocket expenses Plaintiff would like to be included in the refund, such as out-of-pocket repairs, tow expenses, rental vehicle expenses, vehicle registration expenses, and other items. (*Ibid*.) Plaintiff emailed back stating, "I don't have any information with me but I will have my legal team send it over to you as soon as they can," after which Ford's representative notified Plaintiff that she was not able to speak with Plaintiff directly anymore because she was legally represented. (*Id*. at Exhibit 6.)

The Court finds that, with the information available to Ford, Ford made a valid offer to repurchase the Subject Vehicle not knowing what the purchase price was, but offered to also reimburse

Plaintiff for more than just the purchase price which is what was required under section 1793.2. It was Plaintiff's choice, through counsel, not to accept the offer or provide any further information about funds to be reimbursed. The offer was prompt containing only the details available to Ford, but Plaintiff through counsel filed this action rather than continuing with the repurchase process offered by Ford.

Under *Carver*, the Court finds that Plaintiff cannot establish a necessary element of the breach of express warranty claim to show damages because Ford complied with section 1793.2 and Plaintiff chose not to accept the offer and engage further with the repurchase coordinator. As such, Plaintiff cannot also establish the other claims in the Complaint. The Court finds that summary judgment is appropriate here.

V. CONCLUSION

Ford's MSJ-MSA is **GRANTED**. Ford shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with California Rules of Court, Rules 3.1312(a) and (b).

7. SCV-270955, Tellez-Cuevas v. Shaw

Plaintiff Cuauhtemoc Tellez-Cuevas ("Plaintiff Tellez-Cuevas") moves to vacate the Order Granting Motion for Summary Judgment, or in the Alternative, Summary Adjudication dated May 7, 2025 ("MSJ Order") and the Order and Notice of Entry of Dismissal of Entire Action Without Prejudice dated May 23, 2025 ("Dismissal Order"). The motion is **DENIED** per Code of Civil Procedure ("C.C.P.") section 473(b). The parties' requests for judicial notice and objections are addressed below.

I. PROCEDURAL HISTORY

In this action, Plaintiffs alleged intentional misrepresentation, negligent misrepresentation, and concealment against all named defendants, breach of fiduciary duty only as to defendants Kerston and Frausto-Ramirez, and fraudulent transfer against moving Defendants regarding property located at 4454 Hargrave Avenue, Santa Rosa, California 94507. (FAC, ¶¶ 36-69.)

Plaintiff Tellez-Cuevas was represented by counsel from the law firm of Krogh & Decker in the Spring 2022 to bring this action. (Motion to Vacate, 3:3-6.) Previous counsel helped Plaintiffs file the action and two years later sought to be relieved as counsel on October 30, 2024, due to difficulties in communicating with or reaching Plaintiff. (*Id*. at 3:6-9.) Plaintiff claims that he was totally unaware of this because the Court's Order granting the motion to be relieved was sent to a wrong address. (Telles Cuevas Decl, ¶¶ 2-3.) Plaintiff also claims that he tried to contact previous counsel at Krogh & Decker multiple times throughout this litigation. (*Id*. at ¶ 6.)

On May 7, 2025, the Court granted Defendants Radix Group, LLC ("Radix"), Conrad Jackson ("Conrad") , and Avena Jackson's ("Avena") unopposed motion for summary judgment or

adjudication claiming they were not involved in any of the refinancing of the loans for the Plaintiffs' properties that gave rise to Plaintiffs' claims and otherwise had no interaction with Plaintiffs in May 2019. (See MSJ Order, p. 2.)

On May 23, 2025, the Court entered an Order and Notice of Entry of Dismissal of the Entire Action Without Prejudice for lack of prosecution after a hearing for Order to Show Cause re: Dismissal at which the Court noted Plaintiffs' non-appearance and lack of activity throughout the litigation and other counsel involved in this case stated they had no contact with Plaintiffs. (See Dismissal Order; See Minute Order dated May 22, 2025.)

Now, only Plaintiff Tellez-Cuevas moves to vacate the MSJ Order and Dismissal Order under C.C.P. section 473(b). Defendants Radix, Conrad, Avena, Peter Kerston, Luis Manuel Frausto-Ramirez, Sherry Shaw and A-1 Loans & Investments (together "Defendants") all oppose the motion. Plaintiff Tellez-Cuevas did not submit a reply to any of the oppositions.

II. REQUESTS FOR JUDICIAL NOTICE

Per Evidence Code section 452(d), the Court **GRANTS** Radix, Conrad, and Avena's request for judicial notice of the six court records in this matter listed in their request. The Court also **GRANTS** Kerston and Frausto-Ramirez's requests for judicial notice of the ten court records in this matter listed in their request.

III. EVIDENTIARY OBJECTIONS

Defendants Kerston and Frausto-Ramirez's objection to the Motion to Vacate Judgment under C.C.P. section 1005(b) is **OVERRULED**, as the initial hearing on the motion was continued by the Court per stipulation of the parties to allow sufficient time to oppose.

IV. ANALYSIS

Legal Standard

A court may relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect, but an application for this relief shall be accompanied by "a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (C.C.P. § 473(b).) Although a statement of reasons would be helpful and may sometimes be relevant to prove the causal link between the conduct and the default, default judgment, or dismissal, a statement of reasons is not required. (*Martin Potts & Assocs., Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 435.) In determining whether the mistake or inadvertence was excusable, the court considers whether a reasonably prudent person under the same or similar circumstances might have made the same error. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 258.)

Plaintiff Tellez-Cuevas's Motion to Vacate

Plaintiff Tellez-Cuevas, through limited-scope legal representation, moves to vacate the MSJ Order and the Dismissal Order under C.C.P. section 473(b) requesting the Court to note his surprise and failures to respond to Defendants' discovery motions and summary judgment motion in this case were caused by his total unawareness of the events in this case because the notice of entry of order granting his previous counsel's motion to be relieved as counsel were sent to the wrong address. (Motion to Vacate, 4:8-16.) In Plaintiff Tellez-Cuevas' declaration, he states that he received the mailing of the Court's order granting the motion to be relieved back in November 2024. (Tellez-Cuevas Decl., ¶ 5.) Between November 2024 and June 2025, he sought new counsel but states that their retainers were too expensive for him, so he represented himself in June 2025. (*Id*. at ¶ 11.)

Defendants Oppositions

Above-mentioned Defendants all oppose the motion arguing that, Plaintiff Tellez-Cuevas has been aware that he was not represented by counsel since November 2024 and was aware that his previous counsel had provided the Court and defense counsel with an incorrect address for his residence, yet he took no action to correct that from November 2024 through June of 2025, after the MSJ Order and Dismissal Order had already been entered. (Radix, Conrad, and Avena's Opposition, 1:20-26; Kerston and Frausto-Ramirez's Opposition, 3:8-28; Shaw and A-1 Loans & Investments' Opposition, pp. 2-5.)

Defendants all argue that Plaintiff Tellez-Cuevas did not demonstrate excusable neglect, but rather failed to act with diligence or ordinary prudence since finding out he was self-represented in November 2024. (Radix, Conrad, and Avena's Opposition, pp. 5-6; Kerston and Frausto-Ramirez's Opposition, pp. 4-7; Shaw and A-1 Loans & Investments' Opposition, pp. 6-9.)

Application

The motion to vacate was timely brought, even though the initial hearing was continued by stipulation of the parties due to Plaintiff's failure to give adequate notice of the hearing date to the other parties. As noted above, due to the stipulation, the Court also overruled objections made against the motion under C.C.P. section 1005(b).

However, the Court does not find that Defendant's motion makes any satisfactory argument for relief under C.C.P. section 473 because Plaintiff has known for almost two years that he is a self-represented litigant and has not been diligent in notifying the other defendants of his correct contact information or in prosecuting this case by engaging in discovery and responding to discovery or discovery motions filed by Defendants. The Court is aware that Plaintiff was self-represented while these motions were filed but cannot find that Plaintiff was "surprised" by the filing of the discovery motions or subsequent motion for summary judgment because, even if he did not legal representation, he was responsible for litigating this matter on his behalf since discovering the Court relieved his previous counsel in November 2024. Plaintiff failed to communicate with other counsel in this matter

to notify them of his correct address, meet and confer regarding discovery, or make any appearances to notify the Court of his current address (or lack thereof) and difficulties in retaining new counsel.

For the above reasons, the Court does not find that Plaintiff has been diligent in the last two years in prosecuting this action or exercised reasonable prudence since discovering he was no longer represented by previous counsel. As such, the Court will deny the motion.

V. CONCLUSION

Based on the foregoing, the motion is **DENIED**. Defendants shall submit a written order consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).