IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar
HONORABLE JEFFREY R. FINIGAN
Department 24

800 North Humboldt Street, San Mateo
Courtroom H

Friday, June 27, 2025 at 9:00 AM

IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR, YOU MUST DO THE FOLLOWING:

1. **EMAIL Dept24@Sanmateocourt.org BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING OR;**

2. **CALL (650) 261-5124 BEFORE 4:00 P.M. WITH THE CASE NAME, NUMBER, AND THE NAME OF THE PARTY CONTESTING.**

3. **GIVE NOTICE BEFORE 4:00 P.M. TO ALL PARTIES OF YOUR INTENT TO APPEAR PURSUANT TO CALIFORNIA RULES OF COURT 3.1308(A)(1).**

Failure to comply with 1 or 2, and 3 will result in no oral presentation.

At this time, personal appearances are allowed but not required. Parties may appear via Zoom. Advance authorization is not required for remote appearances. Mute your line until your case is called. RECORDING OF A COURT PROCEEDING IS PROHIBITED.

Zoom Video Information:

https://sanmateocourt.zoomgov.com/

Meeting ID: 161 510 6013
Password: 987732

Please note: Zoom Meeting can be joined directly from Judge Finigan's page on the court's website.

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case	Title / Nature of Case

9:00
LINE 1

22-CIV-01911 VIVA CAPITAL 3, L.P. VS. JERRY GARRETT, IN HIS INDIVIDUAL CAPACITY AND IN HIS PURPORTED CAPACITY AS SPECIAL ADMINISTRATOR FOR THE ESTATE OF FRANK GARRETT JR.., AND THE FRANK GARRETT JR. 2006 INSURANCE TRUST DATED FEBRUARY 2, 2006

VIVA CAPITAL 3, L.P. JERRY GARRETT, IN HIS INDIVIDUAL CAPACITY AND IN HIS PURPORTED CAPCITY AS SPECIAL ADMINISTRATOR FOR THE ESTATE OF FRANK GARRETT JR.., AND THE FRANK GARRETT JR. 2006 INSURANCE TRUST DATED FEBRUARY 2, 2006	KHAI LEQUANG BETHANY A. VASQUEZ

DEFENDANT'S MOTION TO DISMISS ON THE GROUND OF FORUM NON CONVENIENS

TENTATIVE RULING:

The Motion to Dismiss ("Motion") brought by Defendant/Cross-Complainant Jerry Garrett, in His Individual Capacity and in His Purported Capacity as Special Administrator for the Estate of Frank Garrett, Jr., is **DENIED**.

For starters, this Court did not "invite" this Motion from Defendant and the representation that it did mischaracterizes the record. (MP&A at p. 6.) The Court noted in a prior ruling that Defendant's attempt to bring this Motion in the context of the Motion to Lift Stay was improper. (Minute Order 4.25.25.) Without a transcript of that hearing the Court cannot be certain what was said, but it recollects Defendant's counsel inquired whether the present Motion, although improperly brought at that time, could be brought at all by Defendant. Again, the Court does not recall its exact response, if any, but it may have said counsel was not so prohibited or would need to bring a motion separately if it wished to have such a motion heard. That is not "inviting," i.e. "formally requesting" (per Merriam-Webster), this Motion.

Background

This action is to declare the rightful owner of a death benefit of $21,129,278.51 that was paid to Plaintiff under an insurance policy on the life of Frank Garrett, Jr. Mr. Garrett sold the policy over ten years before he died, and Plaintiff purchased it as an investment years thereafter.

Defendant/Cross-Complainant cross-complains against Plaintiff/Cross-Defendant Viva Capital 3, L.P. and Cross-Defendant U.S. Bank, National Association ("U.S. Bank"), to obtain the life insurance proceeds at issue, which Defendant/Cross-Complainant claims to have lacked an insurable interest at its inception. A life-insurance policy has an insurable interest when its purchaser will benefit more if the insured person is alive, rather than deceased. To mitigate the

potential risk of murder for profit, a life insurance policy that lacks insurable interest is deemed void, as an illegal wager on the life of the insured. Defendant/Cross-Complainant argues that Mr. Garrett had allowed strangers to obtain large insurance policies on his life through a "STOLI" (STranger-Originated Life Insurance) scheme, which offends Delaware law (specifically, its Constitution and 18 Delaware Code section 2704, subdivision (b)) and policy. Accordingly, the Delaware statute enables the wrongfully insured (or the insured's estate) to "recover" or obtain benefits received by any payee under a contract that violates it. (18 Del. Code, § 2704(b).)

This Court granted Plaintiff/Cross-Defendant's motion to lift the stay that had been imposed pending the outcome of a related proceeding before a sister Court in Connecticut. (Minute Order, April 25, 2025.) The Connecticut case was dismissed on August 31, 2024, and a related action was filed in a sister Delaware Court on September 5, 2024. This Court noted that it had briefly continued the motion to lift the stay specifically for the purpose of awaiting the outcome of a motion to stay that was pending in the Delaware action. On April 4, 2025, the parties jointly advised the Court that the Delaware Court had ordered the "entire matter" pending before it to be "stayed 'until final disposition' of this California matter." (*Id*., p.2.)

Accordingly, this Court requested supplemental briefing of the question "why this Court should not order the stay lifted in light of the Delaware Court's ruling." (*Ibid*.) However, instead of addressing the Court's question, Defendant/Cross-Complainant improperly directed its brief to arguing that this action should be dismissed. This Court granted the motion to lift the stay for the reasons therein and those presented in the supplemental briefing of Cross-Defendant U.S. Bank.

Defendant/Cross-Complainant now brings the instant Motion on the grounds of forum non conveniens, arguing that the Delaware Court—which itself has stayed the action before it until the final disposition of *this* case—actually is the more convenient forum. Defendant/Cross-Complainant adds to the Motion an unnoticed, alternative argument pursuant to CCP §1061.

This Court finds it significant that Judge Wallace ordered the pending Delaware action stayed "until final disposition" of this matter. (Krebs Decl. Exh. 3.) Judge Wallace's Order is very succinct and this Court is not privy to the pleadings underlying the motion Judge Wallace considered, but reasonably infers that he considered many of the same arguments asserted herein, yet he … with obviously greater familiarity with Delaware law than this Court … concluded it was appropriate to stay the Delaware action. Defendant essentially ignores this ruling and Plaintiff makes a surprisingly cursory reference to it. (Opposition at pp. 14 – 15.)

Forum Non Conveniens

"Forum non conveniens is an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere." (*Stangvik v. Shiley Incorporated* (1991) 54 Cal.3d 744, 751 (citations omitted).) The doctrine is also codified in CCP 410.30(a): "When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just".

A movant's burden of proving that the action should be dismissed is greater than the showing required for a stay. (*Century Indemnity Company v. Bank of America* (1997) 58

Cal.App.4th 408, 411, "The trial court, however, has considerably wider discretion to grant stays precisely because under a stay California retains jurisdiction.") Addressing the operation of the *forum non conveniens* question in the context of a nearly identical action pending in a foreign Court, the Supreme Court of California explains that:

> The pendency of the nearly identical action in federal court in Texas has no bearing on the *forum non conveniens* question presented here. Such a pending action may be grounds for a stay of the proceedings in California, but not for a dismissal.

(*Thomson v. Continental Insurance Company* (1967) 66 Cal.2d 738, 746 (internal citations and footnotes omitted).) Generally:

> In determining whether to grant a motion based on *forum non conveniens*, a court must first determine whether the alternate forum is a "suitable" place for trial. If it is, the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in California. The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation.

(*Stangvik, supra*, 54 Cal.3d at 751.) The threshold question of whether the alternate forum is "suitable" depends on whether it may yield a valid judgment, which in turn raises questions including whether Defendant would be subject to jurisdiction there, and whether Plaintiff's cause of action there would be barred by a statute of limitations. (*Stangvik, supra*, 54 Cal.3d at 752.)

The applicability of the law of another forum is not a weighty consideration in this calculus:

> California courts are able to and do routinely apply non-California law—federal law, the law of foreign countries, and the law of other states—when required by a choice-of-law provision. … [Litigants] have not cited any authority, nor are we aware of any, that justifies staying or dismissing a case on forum non conveniens grounds simply because a California court must apply the law of another state.

(*Animal Film, LLC v. D.E.J. Productions, Inc.* (2011) 193 Cal.App.4th 466, 475 (internal citations omitted).) Neither is there a strong presumption in favor of a nonresident plaintiff's choice of forum in California. (*National Football League v. Fireman's Fund Insurance Company* (2013) 216 Cal.App.4th 902, 924, 924-31.)

As noted, the decision of the Superior Court of the State of Delaware that there is no urgency to proceed with the instant parties' case before it, in deference to the instant action, is significant. As the Supreme Court of California explains, while the pendency of the nearly identical action in a sister Court may be grounds for a *stay* of the proceedings in California, it does *not* provide grounds for their dismissal. (*Thomson, supra*, at p. 746.) In light of the Delaware Court's ruling, and keeping in mind Defendant's burden of proof here, Defendant's

position is not well taken.

The Delaware Court granted the motion to stay the action before it on April 3, 2025. This Court lifted the stay on this action after having requested supplemental briefing as to why it should not do so, which Defendant declined to provide, instead arguing this Motion therein. (Minute Order, April 25, 2025.)

Defendant originally chose to litigate in a forum located in California, but now prefers to proceed in Delaware. Defendant cannot now meet its burden to prove that the instant forum is inconvenient or that "the private interests of the litigants and the interests of the public in retaining the action for trial in California" are sufficiently outweighed by litigating in Delaware. (*Stangvik, supra.*) Defendant argues that as a California resident, its choice of forum, which is now a Delaware Court, should be given particular weight. However, California's interest is not simply in supporting any forum choice of its residents, but instead, "California has a significant interest in *providing* a forum for its residents." (*Animal Film, LLC v. D.E.J. Prods., Inc.* (2011) 193 Cal.App.4th 466, 475, citation omitted, emphasis added.) Defendant also ignores the capability of California Courts to apply Delaware law. (*Ibid*.) In addition, discovery is proceeding in California (Krebs Decl., ¶¶ 5-7), where most or all of Plaintiff's witnesses are located (*Id*., ¶¶ 8-15.) Plaintiff and Cross-Defendant alleges that the life insurance policy of a California resident originated in California, and California has a strong interest in such policy.

As to Defendant's unnoticed argument pursuant to CCP §1061, Plaintiff's position that such was improper is well taken. Nevertheless, Plaintiff responded substantively and the Court will reach the merits for the sake of a complete record.

> A complaint seeking declaratory relief must, of course, allege facts which justify the declaration of rights or obligations in respect of a matter of "controversy," the controversy being "actual" within the purview of section 1060, Code of Civil Procedure, and involving justiciable rights. "Doubtless, the requirement is met by allegations showing a controversy respecting the rights of parties to a written instrument, accompanied by a request that these rights be determined and declared."
>
> …
>
> Where, therefore, a case is properly before the trial court, under a complaint that is legally sufficient and sets forth facts and circumstances showing that a declaratory adjudication is entirely appropriate, the trial court may not properly refuse to assume jurisdiction;
>
> …
>
> The complaint herein, while not a model pleading, sufficiently states a cause of action for declaratory relief. Consequently, the dismissal by the trial court amounted to an abuse of discretion.

(*Wilson v. Los Angeles County Civil Service Commission* (1951) 106 Cal.App.2d 572, 577-78, quotations and citations omitted.) The Court declines to exercise its discretion under §1061 to refuse to hear this matter and the Motion is DENIED on that basis as well. The Complaint sets forth a legally sufficient claim for declaratory relief and the Court cannot say that its

determination thereof "is not necessary or proper at [this] time under all the circumstances" of this record. (CCP §1061.)

Request for Judicial Notice (RJN)

Defendant/Cross-Complainant's unopposed Request for Judicial Notice is **GRANTED**. Plaintiff takes issue with Defendant's citation to *Hoefer* in its Opposition, but does not formally oppose any part of the RJN. (Opposition at pp. 11 – 12.) (Evid. C. § 452(d) & (h), and § 453; *StorMedia Incorporated v. Superior Ct.* (1999) 20 Cal.4th 449, 457, n.9.) Judicial notice of the documents in Exhibits A-C, H, and I is limited to their existence, and does not extend to the truth of the factual matters contained therein. (*Dominguez v. Bonta* (2022) 87 Cal.App.5th 389, 400.) Judicial notice of the documents in Exhibits D-G extends to their existence and contents, though not to disputed or disputable facts stated therein. (*Yvanova v. New Century Mortgage Corporation* (2016) 62 Cal.4th 919, 924, fn. 1.)

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to CRC rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the CRC. The Court alerts the parties to revised Local Rule 3.403(b)(iv) regarding the wording of proposed orders. The order should be efiled only, as that is the way it will get to the Court for signature. Do not submit a hard copy of the order to the Court.

9:00
LINE 2
23-CIV-00104 ADRIENNE SEPANIAK KING VS. META PLATFORMS, INC.

ADRIENNE SEPANIAK KING	RUSSEL DAVID MYRICK
META PLATFORMS, INC.	JACOB M. HEATH

PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO PLAINTIFF'S SPECIALLY-PREPARED INTERROGATORIES (SET TWO)

TENTATIVE RULING:

Plaintiff Adrienne King's Motion to Compel Further Responses to Plaintiff's Specially-Prepared Interrogatories (Set Two) is **DENIED**.

Plaintiff's Motion seeks to compel Meta to provide a further response to a single interrogatory. In Meta's First Amended Answer ("FAA"), filed 7.10.24, Meta stated that it terminated Plaintiff's account for the following reason:

> "… [O]n April 9, 2024, Meta informed Plaintiff that her account was disabled for violating Meta's Community Standards, as her account shared posts that violated Meta's policies regarding offline movements and organizations that are tied to violence, such as Qanon."

(7-10-24 FAA at 2.) Plaintiff thereafter served Meta with a second set of Special Interrogatories. In this second set, the second interrogatory (referred to herein as "Set Two Second Question," which Meta refers to as Special Interrogatory No. 10), asked Meta the following:

> "2. In FACEBOOK's First Amended Answer ('FAA') to Plaintiff's Complaint filed on July 10, 2024, FACEBOOK stated in answer to paragraph 2 of the Complaint that FACEBOOK informed Plaintiff in discovery on April 9, 2024, that 'her account was disable for violating Meta's Community Standards, as her account shared posts that violated Meta's policies regarding offline movements and organizations that are tied to violence, such as Qanon.'
>
> With respect to this statement in FACEBOOK's FAA, for each post to which FACEBOOK refers were shared to Plaintiff's account state:
>
> (a) The date the post was shared on Plaintiff's account;
> (b) The exact text of the post;
> (c) Which Community Standard the post violated; and
> (d) In what way the Community Standard was violated."

Although the Court finds Plaintiff's request seeks potentially discoverable evidence and that the majority of Meta's objections are without merit, the Motion must nevertheless be denied

because Meta asserts at least one valid objection and, more importantly, has advised Plaintiff it does not possess any further responsive information. Perhaps this explains Plaintiff's lack of a reply.

Defendant's objection on the basis that the Interrogatory is compound pursuant to CCP §2030.060(f) is well taken and Plaintiff filed no reply rebutting it. Plaintiff's two and a half page block quote citation (in clear violation of the spirit of the 15-page limit to its Motion) to a non-binding federal case on this issue is not persuasive. (Motion at pp. 9 – 12, citing *Prolo v. Blackmon*, (C.D. Cal. March 25, 2022) 2022 WL 2189643.) The Court could stop here, but further notes the following. Defendant responded that it "conducted a reasonable and diligent search for documents and information responsive to [the Interrogatory in question] … [and] did not uncover any additional information." (Heath Decl. Exh. B.) "Verification of the answers is in effect a declaration that the party has disclosed all information which is available to him." (*Deyo v. Kilbourne*, (1978) 84 Cal.App.3d 771, 782.) Defendant's counsel has also unequivocally communicated to Plaintiff's counsel that Defendant is not in possession of any responsive material. (Heath Decl. ¶¶ 3 and 7.) The Court cannot compel a party to respond with or produce information it represents it does not possess.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to CRC Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the CRC. The Court alerts the parties to revised Local Rule 3.403(b)(iv) regarding the wording of proposed orders. The order should be efiled only, as that is the way it will get to the Court for signature. Do not submit a hard copy of the order to the Court.

9:00
LINE 3

23-CIV-00683 GREGORIO CONTRERAS SANCHEZ VS. FIDEL CONTRERAS SANCHEZ, ET AL

GREGORIO CONTRERAS SANCHEZ	MANUEL A. JUAREZ
FIDEL CONTRERAS SANCHEZ	ANDREW G. WATTERS

DEFENDANTS' MOTION TO ENFORCE PLAINTIFF'S COUNSEL'S COMPLIANCE WITH COURT ORDER

TENTATIVE RULING:

The Motion by Defendants Fidel Contreras Sanchez and Guadalupe Contreras Sanchez to Enforce Compliance by Plaintiffs' counsel with Court Order is **CONTINUED** to November 14, 2025, at 9:00 a.m. in Department 24.

The parties' inability to work out such a ministerial function and taking up Court resources to resolve it is stunning.

Defendants have not yet established that Plaintiffs' counsel failed to comply with the Court's February 7, 2025 Order because they do not appear to have even tried to deposit the cashier's check sent by Plaintiffs' counsel. (Castillo Decl., ¶¶ 5-6.) Instead, they returned the check due to "potential" concerns. Accordingly, Plaintiffs' counsel is to return the cashier's check to Defendants' counsel for deposit, or alternatively Plaintiffs' counsel may issue a new cashier's check using Defendants' correct first and last names. Plaintiffs' counsel is to comply by no later than July 3, 2025.

Defendants are to file and serve a supplemental declaration at least ten court days before the continued hearing addressing the status of the cashier's check.

Plaintiffs' counsel may file and serve a response at least five court days before the continued hearing.

The Court reserves its ruling on Defendants' and Plaintiffs' requests for sanctions until the continued hearing. Alternatively, if the check issue is resolved in the interim, Defendant may file a Notice of Withdrawal of the Motion.

If the tentative ruling is uncontested, it shall become the order of the Court.

9:00
LINE 4

24-CIV-03237 LISA DUNNE VS. MARTIN F. RYAN, ET AL

LISA DUNNE	E. JOHN VODONICK
MARTIN RYAN	EDWARD ROMERO

MOTION OF MARTIN F. RYAN, RYAN ENGINEERING, INC. AND RYAN TRUCKING, INC. TO STRIKE FIRST AMENDED COMPLAINT OF LISA DUNNE

TENTATIVE RULING:

Defendant Martin F. Ryan, erroneously sued as Martin Ryan, Ryan Engineering, Inc. and Ryan Trucking Inc.'s Motion to Strike ("Motion") 25 allegations in Plaintiffs First Amended Complaint ("FAC") filed December 6, 2024, is **GRANTED in part** and **DENIED in part**.

This action stems from a probate action brought by Plaintiff Lisa Dunne, widow of Francis Noel Kenny who was Defendant Martin F. Ryan's business partner. Defendant contends that the Motion is warranted because Plaintiff asserts a "laundry list" of claims against a company that is not a party to this action, Tooard Property, LLC, and against Defendant Ryan and the companies that he owns. (Original Motion, at p.1.) Defendant filed this Motion on January 7, 2025, and requested that the Court strike 46 grounds in the FAC. The Court continued the matter and ordered the parties to meet and confer in person then file supplemental pleadings setting forth specifically what issues remain to be resolved by the Court. (Minute Order 4.25.25.)

The parties did not meet in person as ordered, apparently due to Plaintiff's counsel being out of the country. Nevertheless, they engaged in two separate telephone calls and additional rounds of email correspondence. As a result, Defendant withdrew the request to strike 21 of the allegations originally challenged in the FAC, acknowledging that the request was improper because it relied upon evidence beyond the face of the pleadings. (Supplemental Memo ISO Motion, at p.1.)

Defendant's supplemental briefing requests the Court strike 25 allegations from the FAC, pursuant to CCP §436, on the basis that these allegations are false, irrelevant and improper. (Def. Supp. Memo. At p. 1, fn. 1.) Despite this Court's previous Order for the parties to streamline and better organize this Motion, Defendant's Motion remains unwieldy and cumbersome because of the way it is organized. The Court's rulings herein correspond to the numbered requests in Defendant's original Notice of Motion and as repeated in Defendant's Supplemental Memorandum at p. 1, fn. 1. The parties are responsible for aligning these rulings with the FAC and making sure they are accurately incorporated into the second amended complaint (SAC).

The standard here is straightforward:

The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper:

(a) Strike out any irrelevant, false, or improper matter inserted in any pleading.
(b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.

(CCP §436.)

Plaintiff's Opposition doubles down on its inapt argument that the Motion is one for Summary Judgment or Adjudication. (Opposition at pp. 1 – 3.) The Court's only response to this nonsense is that it makes no rulings on any merits herein. Rather, the Court is addressing the fact that Plaintiff's FAC contains numerous instances of "improper matter" that are appropriately ordered stricken. (CCP §436(a).)

Rulings on Requests:

2. GRANTED as to the "first" ¶58.G. on p. 21 of FAC. Tooard is not a party to this action and it is therefore improper for Plaintiff to seek a declaration of rights against any person or entity whom Plaintiff fails to properly include in the case so that such person or entity can, if it so chooses, defend against Plaintiff's claim. Plaintiff has offered no opposition to this basis for the Motion to Strike.

3. GRANTED as to the "first" ¶58.H. on p. 21 of FAC. Same reasons as #2.

4. GRANTED. Same reasons as #2.

5. GRANTED. Same reasons as #2.

6. GRANTED. Same reasons as #2. Further reason to strike is that the paragraph is incoherent, as it is unclear how a "property" can make rental payments versus the person/entity renting the property.

7. GRANTED. Same reasons as #6.

10. GRANTED. Same reasons as #6.

11. GRANTED. Same reasons as #6.

12. DENIED because the Motion and Supplemental Motion are incomprehensible regarding this request.

17. DENIED because the paragraph seeks remedies related to the "parties" and Defendant's expansive reading that it includes "Tooard" is inexplicable. (Supp. Memo. at p. 2.)

20. DENIED because it is a disputed fact and Defendant improperly seeks to adjudicate it on the merits at this stage.

21. DENIED. Same reasons as #20.

22. DENIED. Same reasons as #20.

23. GRANTED. The Court agrees with Defendant that this "second" ¶58.H. on p. 22 of the FAC is so incomprehensible that it is properly stricken as irrelevant under CCP §436(a).

24. GRANTED. Sam reasons as #23.

26. DENIED because it is a disputed fact and Defendant improperly seeks to adjudicate it on the merits at this stage.

30. DENIED because it is a disputed fact and Defendant improperly seeks to adjudicate it on the merits at this stage. Defendant's reliance on *Lazar* is misplaced, as that case dealt with a demurrer, not a motion to strike. (Supp. Memo. At p. 6, citing *Lazar v. Superior Court*, (1996) 12 Cal.4th 631.)

31. DENIED. Although listed in the Notice and in the Supp. Memo. at p. 1, fn. 1., the Court can find no argument by Defendant related to this paragraph.

35. DENIED. Plaintiff has pled a cause of action based on fraudulent conduct. (Pl. Supp. Memo. at p. 10, citing *Quezada v. Hart*, (1977) 67 Cal.App.3d 754, 761.) It is unclear what March 21, 2025 Order Defendant is referring to in support of its argument. (Def. Supp. Memo. at p. 4.)

36. DENIED. Defendant reliance on *Estate of Kraus* is misplaced, as the holding therein does not stand for the proposition that a party must always prove recoverability under Prob. C. §850 to obtain damages pursuant to §859. (Def. Supp. Memo. at p. 4, citing *Estate of Kraus*, (2010) 184 Cal.App.4th 103.) Such damages are awarded in other contexts. (See *Keading v. Keading* (2021) 60 Cal.App.5th 1115.)

43. GRANTED. Same reasons as #6.

44. GRANTED. Same reasons as #6.

45. DENIED. Although listed in the Notice and in the Supp. Memo. at p. 1, fn. 1., the Court can find no argument by Defendant related to this paragraph.

46. DENIED. Although listed in the Notice and in the Supp. Memo. at p. 1, fn. 1., the Court can find no argument by Defendant related to this paragraph. This is the third such Request frivolously included in this list and further evidence of significant time spent and wasted by this Court due to the quality of this pleading. As another example, the Court notes that although Defendant did not include original Request #29 in the 25 remaining requests being objected to, Defendant nevertheless argues that request in its Supp. Memo. at p. 3. Having made this issue unclear, the Court must note that to the extent Defendant revives request to strike # 29,

such request is DENIED.

47. DENIED. Same reason as #36. Probate C. §859 allows an award of attorney's fees in the Court's discretion.

Plaintiff's and Defendant's respective Requests for Judicial Notice are **GRANTED**.

Plaintiff is ORDERED to file a SAC **no later than ten (10) days after service of written notice of entry of the formal order** on this Motion. Plaintiff shall pay close attention to detail in the SAC and ensure the paragraphs therein are properly numbered/designated and not duplicated.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to CRC Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the CRC. The Court alerts the parties to revised Local Rule 3.403(b)(iv) regarding the wording of proposed orders. The order should be efiled only, as that is the way it will get to the Court for signature. Do not submit a hard copy of the order to the Court.

9:00
LINE 5

24-CLJ-02429 CAPITAL ONE, N.A. VS. BRET D. RIDGE, ET AL

CAPITAL ONE, N.A. LAURA M. D'ANNA
BRET D. RIDGE

PLAINTIFF'S MOTION TO SET ASIDE CCP 664.6 DISMISSAL, AND ENTER JUDGMENT AGAINST DEFENDANT

TENTATIVE RULING:

The Motion of Plaintiff Capital One, N.A. for Entry of Judgment Pursuant to Stipulation is **DENIED without prejudice**.

Plaintiff's Notice of Motion incorrectly states that Department 24 is located at 400 County Center in Redwood City. Department 24 is located at 800 North Humboldt Street, San Mateo. The Motion was originally notice for June 13, 2025, but the Clerk's Office assigned a later hearing date of June 27, 2025. Plaintiff addressed that issue by filing a subsequent Notice of Continued Motion, filed 4.18.25. However, that Notice also incorrectly states that Department 24 is located in Redwood City. Accordingly, Plaintiff is to give proper notice of the hearing to Defendants in any future motion.

If this tentative ruling is uncontested, it shall become the Order of the Court.

9:00
LINE 6
25-CIV-00912 YANG MIN YANG VS. JOSEPH GIRAUDO, ET AL

YANG MIN YANG JONATHAN E. MADISON
JOSEPH GIRAUDO

DEFENDANT ROYAL BUSINESS BANK'S DEMURRER TO PLAINTIFF'S COMPLAINT

TENTATIVE RULING:

Defendant Royal Business Bank's Demurrer to Plaintiff Yang Ming Yang's Complaint is **SUSTAINED in part** and **OVERRULED in part**.

Defendant Royal Business Bank's Request for Judicial Notice is GRANTED, but only as to the existence of the documents as court records and recorded documents but not to the truth of any matter asserted therein. (*Ragland v. U.S. Bank National Association* (2012) 209 Cal.App.4th 182, 194.)

Legal Standard on Demurrer

The purpose of a demurrer is to test the legal sufficiency of the facts alleged in the operative complaint to see whether they state a cause of action under any legal theory, as a matter of law. (*New Livable California v. Association of Bay Area Governments* (2020) 59 Cal.App.5th 709, 714–715.) To properly state a cause of action, a complaint must allege every element of that cause of action. (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1134 (emphasis added).) And to be sustained, a "demurrer must dispose of an entire cause of action." (*Fremont Indemnity Company v. Fremont General Corporation* (2007) 148 Cal.App.4th 97, 119.) In determining whether a complaint states facts sufficient to constitute a cause of action, courts accept the factual allegations of the complaint as true, as well as facts that may be implied or reasonably inferred from those expressly alleged, and any matters of which judicial notice can be taken but disregards contentions, deductions, and conclusions. (*Richtek USA, Inc. v. UPI Semiconductor Corporation* (2015) 242 Cal.App.4th 651, 658.) "The complaint must be given a reasonable interpretation and read as a whole with its parts considered in their context." (*Herman v. Los Angeles County Metropolitan Transportation Authority* (1999) 71 Cal.App.4th 819, 824.) The complaint is construed liberally, but with a "view to substantial justice between the parties." (CCP §452.)

1st Cause of Action: Negligence

The first cause of action is for negligence, based on the alleged failure of Defendant to "act reasonably in performing its duties as loan servicer in providing [Plaintiff Yang Ming Yang] a loan modification." (Complaint, ¶ 26.) The Complaint alleges that RBB owed a duty to do so under the factors expressed in *Biakanja v. Irving* (1958) 49 Cal.2d 647. (*Ibid.*)

This is contrary to the California Supreme Court's holding in *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905. The *Biakanja* factors do not apply. (*Sheen*, at p. 936.) And the economic loss rule bars any claim for negligence by a borrower against a loan servicer: "when a borrower requests a loan modification, a lender owes no tort duty sounding in general negligence principles to 'process, review and respond carefully and completely to' the borrower's application." (*Id.*, at p. 948.) The case on which Yang relies in his opposition, *Alvarez v. BAC Home Loans Servicing, L.P.* (2014) 228 Cal.App.4th 941, was expressly disapproved on this point. (*Id.*, at p. 948, fn. 12.)

Accordingly, the demurrer to the first cause of action is SUSTAINED without leave to amend.

2nd Cause of Action: UCL Violation

The second cause of action is for RBB's alleged violations of the Unfair Competition Law by, *inter alia*, engaging in business practices made unlawful by the California Homeowner Bill of Rights ("HBOR"). (Complaint, ¶ 39.) RBB contends this cause of action must fail because, according to RBB, the Complaint's other claims fail. However, as discussed below, the Complaint adequately alleges violations of HBOR, such that the UCL claim stands. Accordingly, the demurrer to the second cause of action is OVERRULED.

3rd & 4th Causes of Action: HBOR Violations

The third and fourth causes of action are for violations of HBOR, based on RBB's alleged failures to contact Yang before recording a notice of default and to provide a single point of contact. (Complaint, ¶¶ 15, 45, 58.)

RBB's first argument with respect to these causes of action is that the HBOR does not apply because Yang did not occupy the subject property as his principal residence. RBB points to certain bankruptcy filings purportedly filed by Yang and contends they constitute judicial admissions that the subject property was not owner-occupied. (See Mar. 13, 2025 Request for Judicial Notice ("RJN"), Exhs. 6–9.)

The Court is mindful that there is an argument for accepting the truth of some of the facts in the RJN materials, to the extent they constitute admissions by Plaintiff. (See, e.g., *Salazar v. Upland Police Department* (2004) 116 Cal.App.4th 934, 946 [fact party made admission in stipulation in other case was subject to judicial notice]; *Jones v. Tierney-Sinclair* (1945) 71 Cal.App.2d 366, 374 [statement in pleading filed in prior case was admissible admission against interest].) However, "[w]hen judicial notice is taken of a document … the truthfulness and proper interpretation of the document are disputable." (*Ragland, supra*, at p. 193.) Such potential seems to exist here, because even if the Court were to accept the truth of the matters asserted in Yang's bankruptcy filings, they do not establish that Yang did not occupy the real property that is the subject of *this* litigation at *none* of the relevant time periods. (See, Exhs. 6–9 [no affirmative indication of extended non-occupation].)

RBB also contends that the third cause of action fails to allege a violation of Civ. C. § 2923.55. That section provides in relevant part that a loan servicer shall not record a notice of default until thirty days after the servicer contacts the borrower "in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure" or attempts to make contact by undertaking statutorily defined "due diligence." (Civ. C. § 2923.55(b)(2)(A), (f).) According to RBB, the Complaint admits the requisite contact was made, because the notice of default recites it and the Complaint alleges Yang sought a loan modification from RBB and spoke with its agents telephonically. (Complaint, ¶¶ 12–13, Exh. B.)

Contrary to RBB's assertion on reply, the truth of the matters recited in recorded documents, if hearsay and/or disputable, are not subject to judicial notice. And, the fact the Complaint alleges that Yang spoke with RBB at an unspecified time does not mean RBB contacted Yang thirty days before recording the notice of default as required by HBOR.

As for the fourth cause of action, RBB contends it fails to allege a violation of Civ. C. § 2923.7. That statute requires a loan servicer to establish a single point of contact with whom the borrower can discuss alternatives to foreclosure. According to RBB, the Complaint admits a single point of contact was assigned.

The Complaint does allege that RBB initially assigned a single point of contact, but it also alleges that RBB repeatedly changed the contact without notice to Yang. (Complaint, ¶ 15.) If true, this would be a violation, because the statute requires "the single point of contact [to] remain assigned to the borrower's account until the mortgage servicer determines that all loss mitigation options offered by, or through, the mortgage servicer have been exhausted or the borrower's account becomes current." (Civ. C. § 2923.7(c).)

Accordingly, the demurrers to the third and fourth causes of action are OVERRULED.

5th Cause of Action: Quiet Title

The fifth cause of action is for quiet title. (Complaint, ¶¶ 63–65.) A complaint seeking quiet title must, *inter alia*, be verified and state the date as to which the determination of title is sought. (CCP § 761.020.)

First, the Complaint is not verified. However, a failure to verify is not a defect subject to demurrer. (*Butterfield v. Graves* (1902) 138 Cal. 155, 158; 5 Witkin, Cal. Procedure (6th ed. 2025) Pleading, § 1011.) The cause of action however, is subject to being stricken if RBB were to move for such an order.

Second, as RBB points out, the Complaint does not specify the date as of which determination is sought. This is a substantive defect subject to general demurrer, as it frustrates the purpose of the statutory requirement, which is to provide notice to third parties of which rights as of when are being adjudicated. (See *Deutsche Bank National Trust Company v. McGurk* (2012) 206 Cal.App.4th 201, 213–214.)

Third, "[a] court will not give equitable relief to a plaintiff unless the plaintiff acknowledges, or provides for, the equitable claims of the adverse party growing out of the controversy or connected with the same subject matter. Accordingly, a plaintiff seeking to quiet title might have to plead an offer to pay taxes or a mortgage debt." (5 Witkin, Cal. Procedure, *supra*, at § 669.) Whereas here the Complaint admits the existence of a lien on the subject property and does not directly challenge its validity, Yang is required to allege an offer of equity—that is, that he tendered the outstanding debt. (See *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 86.)

For these latter two reasons, which Yang fails to address in his opposition, the demurrer to the fifth cause of action is SUSTAINED with leave to amend. While RBB contends Yang should not be afforded leave to amend given he dismissed his prior action after RBB filed its demurrer, Yang has not yet had an opportunity to amend the pleading in response to a ruling sustaining a demurrer. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.)

6th Cause of Action: Wrongful Foreclosure

The sixth cause of action is for wrongful foreclosure, is based on the same alleged conduct constituting the purported negligence and underlying the purported HBOR violations. (Complaint, ¶¶ 66–68.)

Like a cause of action for quiet title, a borrower must allege a tender of the balance of the loan or an exception to the tender rule. (*Chavez v. Indymac Mortgage Services* (2013) 219 Cal.App.4th 1052, 1062.) As mentioned above, the Complaint fails to allege a tender or an exception. (See Complaint, ¶ 16 [alleging Yang "could afford the house mortgage payments" but unclear as to reference is to existing payment schedule or modified schedule]; cf. *Turner v. Seterus, Inc.* (2018) 27 Cal.App.5th 516, 555 [actual tender of reinstatement amount pursuant to Civ. Code § 2924c].)

Accordingly, the sixth cause of action is SUSTAINED with leave to amend.

7th Cause of Action: Fraud

Plaintiff's Opposition – filed on June 13, 2025 – re the seventh cause of action makes absolutely no sense. Plaintiff claims to assert a valid cause of action against "Defendant Giraudo" … a defendant for whom Plaintiff filed a Request for Dismissal with prejudice on May 27, 2025. (Opposition at p.3.)

The seventh cause of action is for fraudulent misrepresentation, based on the alleged misrepresentations of the since-dismissed defendant Joseph Giraudo. (Complaint, ¶ 70.) Unlike the preceding counts, the seventh cause of action does not state in its heading against whom the claim is asserted. However, there are no allegations pertaining to any misrepresentations by RBB, and the allegations use masculine personal pronouns inapplicable to the business entity RBB and only use the singular 'Defendant.' (Complaint, at ¶¶ 70–73.) By all appearances, the Complaint does not even intend to allege that RBB made any intentional misrepresentations, let

alone sufficiently under the heightened requirements for pleading fraud.

Yang has inexplicably opposed what would have seemed the unnecessary demurrer of RBB to this cause of action, contending that it adequately pleads a cause of action against Giraudo—with no mention of RBB. Thus, the demurrer to the seventh cause of action is SUSTAINED without leave to amend.

Plaintiff shall file a first amended complaint (FAC) **no later than ten (10) days after service of written notice of entry of the formal order** on this Demurrer.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to CRC Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the CRC. The Court alerts the parties to revised Local Rule 3.403(b)(iv) regarding the wording of proposed orders. The order should be efiled only, as that is the way it will get to the Court for signature. Do not submit a hard copy of the order to the Court.

9:00
LINE 7

25-CLJ-00454 ALEXANDER XUE VS. PETER J. SCHAUL

ALEXANDER XUE	PRO SE
PETER J. SCHAUL	PRO SE

DEFENDANT'S MOTION TO SET ASIDE ENTRY OF DEFAULT

TENTATIVE RULING:

Regardless of whether this tentative ruling is contested, **the parties are ORDERED to appear** on June 27, 2025, at 9:00 AM (remote appearances acceptable) to address the Declaration of Alexander Xue Re: Assignment filed on 6.23.25.

Defendant Peter Schaul's Motion to Set Aside the Default Judgment entered on March 4, 2025 in the action filed by Plaintiff Alexander Xue on January 9, 2025, is **GRANTED.**

The Court hereby adopts and incorporates its tentative ruling posted on June 12, 2025, in advance of the prior hearing on this matter, which was June 13, 2025. Since that date, Defendant filed an Answer to the Complaint, which was the sole condition the Court put on granting the Motion. Accordingly, as stated, the Motion is GRANTED and the Default Judgment entered on March 4, 2025 against Defendant is ORDERED set aside pursuant to CCP §473(b).

If this tentative ruling is uncontested, it shall become the Order of the Court.