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

Law and Motion Calendar

Judge: HONORABLE NINA SHAPIRSHTEYN
Department 11
1050 Mission Road, South San Francisco
Courtroom L

Thursday, May 15, 2025 AT 2:00 PM

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

1. **EMAIL Dept11@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. **YOU MUST CALL (650) 261-5111 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.**
3. **AND You must 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 do item 1, or both 2 and 3 will result in no oral presentation.

At this time, personal appearances are allowed but not required. Parties may appear by *Zoom*, advance authorization is not required for remote appearances

Zoom Video/Computer Audio Information COURTROOM 2B:

https://sanmateocourt.zoomgov.com/

Meeting ID: 161 576 6143
Password: 142907

Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC

Dial in: +1 (669)-254-5252

(Meeting ID and passwords are the same as above)

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.

New: You must email a copy of any reply briefs, or any Unlawful Detainer Opposition or Motion for Summary Judgment to: lawandmotionreplybriefs@sanmateocourt.org

Case	Title / Nature of Case

2:00

19-CIV-05937 BENNY XIAN VS. ARIJIT SENGUPTA, ET AL.

LINE 1

BENNY XIAN	KRISTEN L. NELSON
ARIJIT SENGUPTA	JESSE L. MILLER

PLAINTIFF'S COUNSELS: MICHAEL EGGENBERGER, THEODORE BRUENING, KATHRYN LEE BOYD, KRISTEN NELSON AND ANDREW LORIN (HECHT PARTNERS LLP) MOTION TO BE RELIEVED AS COUNSEL

TENTATIVE RULING:

Counsel for plaintiff Michael Eggenberger, Theodore Bruening, Kathryn Lee Boyf, Kristen Nelson, and Andrew Loring from Hecht Partners LLP's Motion to be Relieved as Counsel is **DENIED WITHOUT PREJUDICE** for failure to provide proof that the moving papers were served in compliance with California Rules of Court, Rule 3.1362(d).

The motion is unopposed. According to the attorney declaration, counsel and Plaintiff have suffered a breakdown in the relationship.

The court has discretion to allow an attorney to withdraw, and such a motion should be granted provided there is no prejudice to the client and it does not disrupt the orderly process of justice. (See *Ramirez v. Sturdevant* (1994) 21 Cal. App. 4th 904, 915.)

"A notice of motion and motion to be relieved as counsel under Code of Civil Procedure section 284(2) must be directed to the client and must be made on the Notice of Motion and Motion to Be Relieved as Counsel-- Civil (form MC-051)." (Cal. Rules of Court, rule 3.1362(a).) "The motion to be relieved as counsel must be accompanied by a declaration on the Declaration in Support of Attorney's Motion to Be Relieved as Counsel--Civil (form MC-052). The declaration must state in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1)." (*Id.*, subd. (c).)

"The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case. The notice may be by personal service or mail. If the notice is served on the client by mail under Code of Civil Procedure section 1013, it must be accompanied by a declaration stating facts showing that either: (1) The service address is the current residence or business address of the client; or (2) The service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved. As used in this rule, 'current' means that the address was confirmed within 30 days before the filing of the motion to be relieved. Merely demonstrating that the notice was sent to the client's last known address and was not returned is not, by itself, sufficient to demonstrate that the address is current. If the service is by mail, Code of Civil Procedure section 1011(b) applies." (*Id.*, subd. (d).)

"The proposed order relieving counsel must be prepared on the Order Granting Attorney's Motion to Be Relieved as Counsel--Civil (form MC-053) and must be lodged with the court with the moving papers. The order must specify all hearing dates scheduled in the action or proceeding, including the date of trial, if known. If no hearing date is presently scheduled, the court may set one and specify the date in the order. After the order is signed, a copy of the signed order must be served on the client and on all parties that have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court." (*Id.*, subd. (e).)

Plaintiff's counsel's moving papers do not comply with all statutory requirements and rules. The motions and accompanying declarations are made on the proper MC-051 and MC-052 Judicial Council forms, and the declarations show that the motion papers were served electronically on Defendants and by mail at Plaintiff's last known address. However, the moving papers do not show that Plaintiff's mail address was confirmed within the past 30 days. Counsel's declaration states the email address was confirmed, but it is silent as to the mail address where the client was served:

b. If the client has been served by mail at the client's last known address, attorney has
(1) ☑ confirmed within the past 30 days that the address is current
(a) ☐ by mail, return receipt requested.
(b) ☐ by telephone.
(c) ☐ by conversation.
(d) ☑ by other means *(specify)*:
I have confirmed that the client's email address, bennyxian@ai-compassion.com, is Mr. Xian's current and last known email address and have been on communications with Mr. Xian from that email address in the last 30 days.

(Dec. Eggenberger, ¶ 3(b)(1)(d).)

The motion also failed to include a proposed order on form MC-053 specifying all hearing dates scheduled in the action.

The motion is DENIED WITHOUT PREJUDICE.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, **counsel for Plaintiff shall prepare a written order repeating verbatim the tentative ruling** for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law. Judge Shapirshteyn will reject proposed orders that do not inform her of the opposing party's response, if any, to the proposed order. (Cal. Rules of Court, Rule 3.1312(b).)
The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00

19-CIV-05937 BENNY XIAN VS. ARIJIT SENGUPTA, ET AL.

LINE 2

BENNY XIAN	KRISTEN L. NELSON
ARIJIT SENGUPTA	JESSE L. MILLER

DEFENDANT ARIJIT SENGUPTA'S MOTION FOR ATTORNEY FEES

TENTATIVE RULING:

On the Motion of Defendant Arijit Sengupta ("Defendant") for Award of Attorney's Fees and Costs, PARTIES ARE TO APPEAR.

Defendant brings this Motion seeking $2,222,144.52 attorney's fees and $113,287.37 costs, for a total of $2,335,431.89. Defendant claims he is the prevailing party because all of Plaintiff's claims have been dismissed with prejudice and judgment entered in Defendant's favor.

The Court is inclined to CONTINUE the Motion for: (1) Defendant to bookmark his exhibits; and (2) Defendant to provide sufficient information to determine a reasonable amount of attorney's fees.

The Court also notes that Plaintiff's counsel has a motion to be relieved set for hearing on the same day as this motion. Plaintiff has not filed an opposition to this motion for attorney's fees.

Despite the lack of opposition, a trial court is not allowed to rubberstamp a request for attorney's fees, but instead must determine the number of hours reasonably expended. (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1325.) To that end, a trial court has discretion to request additional information to allow it to determine the number of hours reasonably worked for inclusion in the lodestar method. (*Ibid*.)

In this case, the court needs more information. Defendant's counsel attaches 104 exhibits to his declaration. (Miller Decl., Exhs. 1-104.) Defendant failed to bookmark a single exhibit. Accordingly, at least sixteen court days prior to the continued hearing date, Defendant is required to file and serve an amended declaration of Jesse L. Miller that includes bookmarked exhibits. Specifically, "electronic exhibits must include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit." (Cal. Rules of Court, rule 3.1110(f)(4); see also Super. Ct. San Mateo County, Local Rules, rule 3.3 [failure to bookmark exhibits to electronically filed documents may result in continuance of the hearing by the Court on the related motion].)

Defendant also redacted numerous portions of his billing statements, including entire entries. (See Miller Decl., Exhs. 15-77.) Defendant claims that these portions have been redacted based on attorney-client privilege and attorney work product privilege. (Miller Decl., ¶ 41, fn. 3.) An attorney's fees request may be supported by redacted copies of billing statements deleting any privileged information. (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1327.)

However, "[o]ne may not invoke the judicial process seeking affirmative relief and at the same time use the privileges granted by that process to avoid development of proof having a bearing upon his rights to such relief." (*Alvarez v.*

Sanchez (1984) 158 Cal.App.3d 709, 712.) Therefore, the Court needs sufficient information from Defendant in order to determine a reasonable amount of attorney's fees. The amount of attorney's fees to be awarded is usually calculated under the lodestar method. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1132 [court assessing attorney fees begins with a lodestar figure].) The lodestar figure is calculated based on a careful compilation of the time spent and reasonable hourly compensation of each attorney involved in the presentation of the case. (*Ibid*.) A trial court is not allowed to rubberstamp a request for attorney's fees, but instead it must determine the number of hours reasonably expended. (*Concepcion, supra,* 223 Cal.App.4th at p. 1325.) To that end, a trial court has discretion to request additional information to allow it to determine the number of hours reasonably worked for inclusion in the lodestar calculation. (*Ibid.*)

Accordingly, Defendant is to be prepared to address whether he may provide the Court with additional information without waiving any privilege. For instance, Defendant may consider revising the redactions since the Court is skeptical that so many of these entries, including entire entries, are privileged. Defendant could also consider providing something similar to a privilege log. Defendant could also provide a supplemental declaration that summarizes the total hours spent for each task by each attorney, such as time spent on the first demurrer, second demurrer, motion to compel, etc. Alternatively, the Court could reduce the amount of attorney's fees if it is unable to determine from the billing statements the work that was performed and whether such time was reasonable. (See *Los Angeles Unified School District v. Torres Construction Corp.* (2020) 57 Cal.App.5th 480, 518-519 [trial court properly applied a significant reduction to the amount of fees where the billing statements were heavily redacted].)

2:00

22-CIV-02985 WILLIAM ESPOSTO, ET AL. VS. JORDAN LEVY, ET AL.

LINE 3

WILLIAM ESPOSTO	STEVEN R. ROESER
JORDAN LEVY	COREY PAGE

DEFENDANT JORDAN LEVY'S MOTION TO SET ASIDE DEFAULT/JUDGMENT

TENTATIVE RULING:

Defendant Jordan Levy's Motion to Set Aside Default is GRANTED pursuant to Cal. Code of Civ. Proc. Section 473(b).

This action arises out of a dispute over Plaintiffs Marsh Dev. Co. LLC, Bill Esposto, and Victor Esposto's investment in a failed cannabis cultivation business, which they allege they were fraudulently induced into by Defendants Jordan Levy, Mark McCoy, and Nick Chirichillo.

On November 20, 2024, Plaintiff March Dev. Co. LLC's Request to Enter Default was entered as to Defendant Jordan Levy. On January 31, 2025, Defendant Jordan Levy, then acting in pro per, filed the present Motion to Set Aside Default. On May 7, 2025, Cory Page substituted as counsel for Defendant Levy.

Defendant here moves for discretionary relief from entry of default pursuant to Cal. Code of Civil Procedure Section 473(b), under which relief may be granted "upon any terms as may be just … from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect."

There is a strong policy and preference for resolving cases on their merits. As a result, all doubts must be resolved in favor of granting relief from a default. (See *Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134.) Discretionary relief under Section 473(b) is available within a reasonable time; there must be some evidence as the basis for the exercise of the court's wide discretion in determining whether the time taken to file such a motion is reasonable. (*Younessi v. Woolf* (2016) 244 Cal.App.4th 1137.)

In determining whether a mistake of law constitutes excusable neglect, the factors which present a question of fact are the reasonableness of the misconception and the justifiability of lack of determination of the correct law. (*Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096.)

Applying these standards, the Court finds that relief from default is warranted here. Defendant's request for relief was filed on January 31, 2025, two months after the entry of default. The reasonableness of the time for seeking relief is tied to Defendant's claimed mistake of law, since he did not find out about the deadline to respond to service of the summons and complaint until the end of December, 2024, apparently mistaking the February 19, 2025 Case Management Conference date as the deadline. (Levy Decl., 2:25-28.) In these circumstances, where a self-represented litigant was served years after the July 22, 2022 filing of the Complaint and a hearing was on calendar, Defendant's misconception in believing the date of the Case Management Conference was a deadline to respond was reasonable and the time taken to determine the correct law was justifiable.

Plaintiffs have not shown any specific prejudice that will result from Defendant's relief from default. The general delay Plaintiffs point to is much less significant than the two-year delay in serving the moving Defendant from the time of filing the Complaint in this action.

The November 20, 2024 Default entered against Defendant Jordan Levy is hereby **set aside and vacated**. **Defendant is to file a responsive pleading within 30 days of the service of the notice of entry of this order**.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, **counsel for Plaintiff shall prepare a written order repeating verbatim the tentative ruling** for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law. Judge Shapirshteyn will reject proposed orders that do not inform her of the opposing party's response, if any, to the proposed order. (Cal. Rules of Court, Rule 3.1312(b).)
The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00

22-CIV-03526 FOSTER CITY MARINA CENTER LLC VS. PAUL NAGENGAST, ET AL.

LINE 4

FOSTER CITY MARINA CENTER LLC	MARK C. WATSON
PAUL NAGENGAST	VON RYAN REYES

DEFENDANT, CROSS-COMPLAINANT, CROSS-DEFENDANT, CROSS-COMPLAINANT: CITY OF FOSTERCITY AND DEFENDANT CROSS-COMPLAINANT: THE ESTERO MUNICIPAL DISTRICT'S HEARING ON DEMURRER TO PLAINTIFF FOSTER CITY MARINA CENTER, LLC'S FIRST AMENDED COMPLAINT

TENTATIVE RULING:

This matter is continued to June 26, 2025 on the court's own motion.

2:00

23-CIV-00258 MIN HUO, ET AL . VS. ZAIHONG TU, ET AL.

LINE 5

MIN HUO	ZHENG LIU
ZAIHONG TU	PRO PER

DEFENDANT: HUI CHEN'S MOTION TO COMPEL FORM AND SPECIAL INTERROGATORIES, SET ONE

TENTATIVE RULING:

On Defendant and Cross-Complainant Hui Chen's Motion to Compel Form and Special Interrogatories, Sets One, parties are **ordered to appear.**

The Court is inclined to grant the motion upon a supplemental declaration attaching Hui Chen's proof of service of the interrogatories on Ms. Tu.

The Court is also inclined to grant in part Hui Chen's request for sanctions, but reduced from $3,660 to $1,260. Hui Chen requests sanctions for 5.5 hours drafting Defendant's Motion, researching and preparing exhibits and supporting documentation, 3.5 hours reviewing Tu's Opposition, drafting a Reply and attending the hearing. (Dec. Stone.) The court finds 9 hours is not reasonable. This basic motion and the one-page reply should not have taken more than 3 hours to prepare. Accordingly, the court is inclined to grant sanctions in the amount of $1260.00 ($400x 3 hours + $60 filing fee.)

2:00

23-CIV-00258 MIN HUO, ET AL. VS. ZAIHONG TU, ET AL.

LINE 6

MIN HUO	ZHENG LIU
ZAIHONG TU	PRO PER

DEFENDANT HUI CHEN'S MOTION TO COMPEL DEFENDANT AND CROSS-DEFENDANT: ZAIHONG HELEN TU'S RESPONSES TO REQUESTS FOR ADMISSION, SET ONE

TENTATIVE RULING:

On Defendant and Cross-Complainant Hui Chen's Motion to Compel Defendant and Cross-Defendant Zaihong "Helen" Tu's responses to Requests for Admissions, Sets One, parties are **ordered to appear.**

Code of Civil Procedure Section 2033.210 et seq. govern responses to requests for admission. Ms. Tu is ordered to review and follow these statutes.

The party to whom requests for admissions are directed must sign the response under oath, unless the response contains only objections. Code Civ. Proc. § 2033.240(a). No verified responses have been provided by Ms. Tu.

The Court is inclined to grant the motion upon a supplemental declaration attaching Hui Chen's proof of service of the requests for admissions on Ms. Tu.

The Court is also inclined to grant in part Hui Chen's request for sanctions. This motion and the declaration are almost identical to the motion to compel form and special interrogatories noticed for the same day. The Court will award sanctions in the amount of $400 for attorney's fee and $60 (filing fee).

2:00

23-CIV-00258 MIN HUO, ET AL. VS. ZAIHONG TU, ET AL.

LINE 7

MIN HUO	ZHENG LIU
ZAIHONG TU	PRO SE

DEFENDANT HUI CHEN'S MOTION TO COMPEL DEFENDANT AND CROSS-DEFENDANT: ZAIHONG HELEN TU'S RESPONSES TO DEFENDANT'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE

TENTATIVE RULING:

On Defendant and Cross-Complainant Hui Chen's Motion to Compel Defendant and Cross-Defendant Zaihong "Helen" Tu's responses to Requests for Production of Documents, Sets One, parties are **ordered to appear.**

The Court is inclined to grant the motion upon a supplemental declaration attaching Hui Chen's proof of service of the requests for production of documents, set one, on Ms. Tu.

Defendant appears to have served Ms. Tu with requests for production of documents, set one. Ms. Tu does not dispute this in her opposition and instead argues she mailed responsive documents to Defendant's counsel.

Code of Civil Procedure Sections 2031.210 et. Seq. govern responses to demand for inspection. Ms. Tu is ordered to review these statutes.

A response to an inspection demand **must be signed under oath** (verified) by the responding party. Code Civ. Proc. § 2031.250 (a). Typically, a party signs a response by signing a verification attached to the response. The verification generally states the party has read the inspection demand and the response and is familiar with their contents, and that the response is true based on the party's knowledge. A verification based simply upon "information and belief" is normally not sufficient. (See Weil & Brown, Cal Prac Guide: Civ Proc Before Trial (TRG 2024), § 8:1104 [discussing interrogatory verification])

Unverified inspection demand responses are tantamount to no responses at all. See *Appleton v. Superior Court* (1988) 206 Cal. App. 3d 632, 636. Accordingly, even though it appears Ms. Tu attempted to respond to the inspection demand, her mailing of the documents absent a verified response is tantamount to no response at all.

The Court is also inclined to grant in part Hui Chen's request for sanctions. This motion and the declaration are almost identical to the other motions to compel noticed for the same day. The Court will award sanctions in the amount of $400 for attorney's fee and $60 (filing fee).

2:00

24-CIV-03206 JOSE AGUILAR VS. THE BANK OF NEW YORK MELLON, AS TRUSTEE FOR CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2006-21CB, ET AL.

LINE 8

JOSE AGUILAR	SARAH SHAPERO
THE BANK OF NEW YORK MELLON, AS TRUSTEE FOR CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2006-21CB	IAN A. RAMBARRAN

DEFENDANT: THE BANK OF NEW YORK, MELLON'S HEARING ON DEMURRER TO FIRST AMENDED COMPLAINT

TENTATIVE RULING:

Defendants Bank of New York Mellon's ("BNYM") and NewRez LLC dba Shellpoint Mortgage Servicing's ("Shellpoint") (collectively, "Defendants") Demurrer, filed 2-4-25, to Plaintiff Jose Aguilar's 1-2-25 First Amended Complaint ("FAC"), is SUSTAINED with leave to amend. (Code Civ. Proc. Sect. 430.10(e).)

Defective meet and confer

The 2-4-25 Declaration of Kaleigh Thomas does not demonstrate compliance with Code Civ. Proc. Sect. 430.41's meet and confer requirement, which requires a declaration showing that the demurring party met and conferred, either *in-person or by telephone*, with the person who filed the targeted pleading, and discussed all of the arguments to be raised in the demurrer, or at a minimum, attempted to have an actual conversation. Merely sending a meet and confer letter/correspondence *does not suffice*. The Thomas declaration indicates that no attempt was made here to have an actual conversation. In this instance, the Court will overlook this defect and proceed to address the demurrer on the merits. However, the Court reminds counsel to strictly comply with all meet and confer requirements going forward.

Request for Judicial Notice

Defendants' 2-4-25 Request for Judicial Notice ("RJN**")** is GRANTED. (Evid. Code Sect. 452(c).) The Court takes judicial notice of the documents' recording dates and contents, but the Court does not take judicial notice of the truth of statements in the documents.

The FAC's allegations

Plaintiff alleges that in 2021, his loan was modified, requiring him to thereafter make monthly payments of $4,531.95/mo. (Compl. ¶ 18.) After the 2021 modification, "Plaintiff and the co-borrower began making the mortgage payments." (¶ 19.) In March 2023, Plaintiff was "approximately one or two months behind in payments." (¶ 20.)

"In or around January 2024," a document was posted on the property's fence, which contained information about "the status of the house," and advised Plaintiff to obtain legal representation. (¶¶ 23-24.) Plaintiff learned of the January 3, 2024 foreclosure sale after it occurred, and that before the sale, he "had not received" a copy of the Notice of Default or Notice of Trustee's Sale. (¶ 25.)

Plaintiff also alleges that "the default referenced in the Notice of Default is inaccurate." (¶ 27.) Defendants did not post the Notice of Trustee's Sale on Plaintiff's door (¶ 32), and did not mail the Notice of Trustee's Sale to the property at

least 20 days before the sale date, as required by statute. (¶ 33.) Based on the foregoing, Plaintiff's alleges a "wrongful foreclosure." (Id.)

Agency allegations

BNYM argues the FAC does not allege any specific actions or conduct by BNYM, and instead, bases the claims against BNYM on the conclusory allegation that Shellpoint was BNYM's agent. BNYM argues this conclusory allegation of agency does not suffice. BNYM's argument is not well-taken, however, because, "generally, an allegation of agency is an allegation of ultimate fact and is, of itself, sufficient to avoid a demurrer." (*Garton v. Title Ins. & Tr. Co.* (1980) 106 Cal.App.3d 365, 376.)

First Cause of Action

As to the First Cause of Action ("Violations of Civil Code § 2924, et seq."), the demurrer is SUSTAINED with leave to amend. Sect. 2924 et. seq. requires that a foreclosing party give proper notice to the borrower of the planned foreclosure sale. Here, Plaintiff's FAC alleges that Defendants did not comply with the HBOR's notice requirements by (1) failing to post a copy of the Notice of Trustee's Sale on the property prior to the sale; and (2) failing to mail a copy of the Notice of Trustee's Sale to the property at least 20 days before the sale. (FAC, ¶¶ 32-33.) (§§ 2924b(b)(2), 2924f(b)(3).)

As for posting the Notice of Trustee's Sale on the property, the FAC does not sufficiently allege non-compliance with the statute. Civ. Code Sect. 2924f(b)(3) states:

> (3) A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community.

Here, the FAC essentially admits that the Notice of Trustee's Sale was posted on the property's gate. Plaintiff' Opposition brief argues that the document posted on the gate "was not a Notice of Trustee's Sale," and that it was posted "*after the foreclosure sale occurred*." (Opp. at 5.) Plaintiff's counsel has no basis for making these arguments. Based on the FAC's allegations, the only logical inference is that the posted document was the Notice of Trustee's Sale. Although the FAC describes the posted document in intentionally vague terms, omitting even its title, the FAC essentially admits that the Notice of Trustee's Sale was posted on the property. Contrary to Plaintiff's suggestion, the statute does not necessarily require that it be posted on the door.

As for the requirement that Defendants post the Notice of Trustee's Sale 20 days before the sale, the FAC alleges that "in our around January 2024," an unidentified third-party noticed a posted document on the gate, and informed Plaintiff's son about it. Thus, based on the FAC's allegations, Plaintiff does not know when the Notice of Trustee's Sale was posted on the gate, and therefore, cannot say whether it was posted 20 days prior to the sale. Thus, the FAC does not sufficiently allege non-compliance with the posting requirement.

As for the mailing requirement, Plaintiff alleges that he and his son reside in the property, and that they did not receive a copy of the Notice of Trustee's Sale prior to the sale. The FAC alleges that "Defendants did not cause the Notice of Trustee's Sale to be … mailed to Plaintiff." (¶ 26.) Even assuming the FAC sufficiently pleads a violation of the mailing requirement, the Court finds that this cause of action is improperly plead, because Plaintiff does not sufficiently plead *resulting damage*.

A procedural irregularity in a foreclosure sale is not actionable if the defect did not cause any harm/prejudice to the plaintiff. (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 96.) Here, Plaintiff admits that his required monthly payment was $4,531.95/month (¶ 18), and that in March 2023, which was still almost a year before the foreclosure sale, Plaintiff was already "approximately one or two months behind in payments." (¶ 20.) Even assuming that Plaintiff's allegations are true, at the time of January 2024 sale, Plaintiff was approximately $50,000 in arrears.

The Court acknowledges ¶ 34 of the FAC, which alleges, in part:

> … Had Plaintiff had sufficient notice of the sale, Plaintiff could have and would have reinstated or taken other measures to save the property.

(FAC ¶ 34.) The foregoing, however, is not a clear allegation that, assuming Plaintiff received proper notice of the sale, Plaintiff had the ability to pay all arrears and to reinstate the loan. It is unclear what Plaintiff means by alleging that he could have taken "other measures to save the property." Presumably, Plaintiff would have had to pay the entire amount in arrears in order to prevent the sale. Notably, Plaintiff does not allege that he made even a single payment from March 2022 to the time of the Jan. 2024 foreclosure sale.

Accordingly, the demurrer to this cause of action is sustained with leave to amend. To state a claim for violation of Sect. 2924's mailing requirement, Plaintiff must plead facts establishing that Defendants' alleged failure to provide proper notice *resulted in damage*—i.e., that it would have made a difference. Specifically, Plaintiff must plead facts stating roughly how much Plaintiff owed at the time of notice, and that had Plaintiff been given proper notice, Plaintiff could have and would have paid the full amount of arrears to reinstate the loan.

Second Cause of Action

As to the FAC's Second Cause of Action ("Wrongful Foreclosure"), the demurrer is SUSTAINED with leave to amend. The wrongful foreclosure claim is predicated on Defendants' alleged violation of Civ. Code Sect. 2924 et. seq's notice requirements (First Cause of Action) and Sect. 2924.17's requirement that a mortgage servicer ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose prior to conducting the foreclosure (Third Cause of Action, see below.) Because the Court concludes that these predicate causes of action are insufficiently plead, the demurrer to the wrongful foreclosure claim is also sustained.

Third Cause of Action

As to the Third Cause of Action ("Violations of Civil Code § 2924.17"), the demurrer is SUSTAINED with leave to amend. Civ. Code § 2924.17(b) requires that, before recording a Notice of Default, a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose. Here, the FAC alleges:

> 49. … In 2021, Plaintiff's loan was modified with payments to begin in March 2021 in the amount of $4,531.95 per month. Despite this fact, Defendants recorded a Notice of Default in August 2023 which identified the default owed as approximately $82,958.21 for payments purportedly due since March 1, 2022. This amount is inaccurate.
>
> 50. Plaintiff alleges that the loan was just one or two payments behind in early 2023. Based on monthly payments of $4,531.95, the purported $82,958.21 is inaccurate.
>
> 27. … the default referenced in the Notice of Default is inaccurate given the 2021 loan modification and monthly payment thereunder.

Notably absent from the FAC are any allegations that Plaintiff made any mortgage payment(s) in the period from March 1, 2022 to the time of the August 2023 Notice of Default. Plaintiff's FAC alleges that after 2021, Plaintiff's loan terms required him to make monthly payments of $4,531.95. There are 18 months from March 2022 to Aug. 2023 ($4,531.95 x 18 = $81,575.10.) Thus, assuming that Plaintiff made no payments during this period (and Plaintiff and does not allege that he did), the $82,958.21 figure stated in the Notice of Default appears to be roughly correct.

As noted, Plaintiff's FAC does not allege that he made any payments from March 1, 2022 forward, and his FAC provides no facts, and no explanation as to why or how the $82,958.21 figure stated in the Notice of Default was purportedly incorrect.

For these reasons, the demurrer to this cause of action is sustained with leave to amend.

Fourth Cause of Action

As to the Fourth Cause of Action ("Violation of Bus. & Prof. Code Sect. 17200"), the demurrer is SUSTAINED with leave to amend. This cause of action is predicated on the viability of the other asserted claims. Because the demurrer to the other (the predicate) causes of action is being sustained, the Court also sustains the demurrer to the Sect. 17200 cause of action.

Leave to amend

The Court generally exercises a liberal policy with respect to permitting amendments to pleadings, especially where, as here, the Court has not previously ruled on any challenge to the pleading. Accordingly, the demurrer is sustained with leave to amend.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, **counsel for Defendant shall prepare a written order repeating verbatim the tentative ruling** for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law. Judge Shapirshteyn will reject proposed orders that do not inform her of the opposing party's response, if any, to the proposed order. (Cal. Rules of Court, Rule 3.1312(b).)
The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00

24-CIV-03206 JOSE AGUILAR VS. THE BANK OF NEW YORK MELLON, AS TRUSTEE FOR CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2006-21CB, ET AL.

LINE 9

JOSE AGUILAR	SARAH SHAPERO
THE BANK OF NEW YORK MELLON, AS TRUSTEE FOR CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2006-21CB	IAN A. RAMBARRAN

DEFENDANT: BANK OF NEW YORK MELLON'S MOTION TO STRIKE PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT

TENTATIVE RULING:

Defendants Bank of New York Mellon's ("BNYM") and NewRez LLC dba Shellpoint Mortgage Servicing's ("Shellpoint") (collectively, "Defendants") Motion to Strike, filed 2-4-25, which seeks to strike portions of Plaintiff Jose Aguilar's 1-2-25 First Amended Complaint ("FAC"), is GRANTED with leave to amend. (Code Civ. Proc. Sect. 435, 436.)

Defective meet and confer

The 2-4-25 Declaration of Kaleigh Thomas does not demonstrate compliance with Code Civ. Proc. Sect. 435.5's meet and confer requirement, which requires a declaration showing that the demurring party met and conferred, either *in-person or by telephone*, with the person who filed the targeted pleading, and discussed all of the arguments to be raised in the demurrer, or at a minimum, attempted to have an actual conversation. Merely sending a meet and confer letter/correspondence *does not suffice*. The Thomas declaration indicates that no attempt was made here to have an actual conversation. In this instance, the Court will overlook this defect and proceed to address the demurrer on the merits. However, the Court reminds counsel to strictly comply with all meet and confer requirements going forward.

Request for Judicial Notice

Defendants' 2-4-25 Request for Judicial Notice ("RJN") is GRANTED. (Evid. Code Sect. 452(c).) The Court takes judicial notice of the documents' recording dates and contents, but the Court does not take judicial notice of the truth of statements in the documents.

The Motion to Strike the FAC's request for attorney's fees and punitive damages is GRANTED
The FAC's request for both attorney's fees and punitive damages are predicated on the underlying causes of action. Because the Court is sustaining, with leave to amend, Defendants' demurrer to each cause of action in the FAC, Defendants' motion to strike the FAC's request for attorney's fees and punitive damages is also granted, with leave to amend.

Leave to amend

The Court generally exercises a liberal policy with respect to permitting amendments to pleadings, especially where, as here, the Court has not previously ruled on any challenge the pleading. Accordingly, the Motion to Strike is granted with leave to amend.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, **counsel for Defendant shall prepare a written order repeating verbatim the tentative ruling** for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law. Judge Shapirshteyn will reject proposed orders that do not inform her of the opposing party's response, if any, to the proposed order. (Cal. Rules of Court, Rule 3.1312(b).)

The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

2:00

24-CIV-06777 ITRIA VENTURES LLC VS. MARIO PEREZ BELTRAN, ET AL.

LINE 10

ITRIA VENTURES LLC JASON S. TAKENOUCHI
MARIO PEREZ BELTRAN

PLAINTIFF: ITRIA VENTURES LLC'S MOTION FOR SUMMARY JUDGMENT/ADJUDICATION

TENTATIVE RULING:

Plaintiff Itria Ventures LLC's Motion for Summary Adjudication is DENIED WITHOUT PREJUDICE.

As a preliminary matter, the motion was filed prematurely. A motion for summary adjudication may be made only after the general appearance of each party against whom the motion is directed. (Code of Civ. Proc., § 437c, subds. (a)(1), (f)(2).) Such a motion is considered "made" at the time of the hearing. (*Sadlier v. Superior Court* (1986) 184 Cal.App.3d 1050, 1054.) At the time the motion was filed, no defendants had yet appeared in this action. It is still unclear whether any defendant has appeared, given they have only filed a case management conference statement. (See March 26, 2025 Case Management Statement.) It is doubtful such limited participation constitutes a general appearance. (Cf. *Mansour v. Superior Court* (1995) 38 Cal.App.4th 1750, 1756–1758.) Without a general appearance, the motion cannot be heard.

However, even were the defendants deemed to have appeared in this action, the noticed hearing would be set for only fifty days after the appearance. The Court would only have discretion to hear the motion fewer than sixty days after the appearance "upon good cause shown," none of which appears here. (Code of Civ. Proc., § 437c (a)(1).)

From the moving papers, it appears an answer to the Complaint was served, but it was never filed. Accordingly, the motion is denied without prejudice to a renewed motion after the filing of the purported answer.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, **counsel for Defendant shall prepare a written order repeating verbatim the tentative ruling** for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law. Judge Shapirshteyn will reject proposed orders that do not inform her of the opposing party's response, if any, to the proposed order. (Cal. Rules of Court, Rule 3.1312(b).)
The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

UD LAW AND MOTION CALENDAR
THURSDAY, MAY 15, 2025

2:00

23-UDL-00795 930 LINDEN AVENUE, LLC, ET AL. VS. 930 LINDEN AVENUE, LLC, ET AL.

LINE 11

930 LINDEN AVENUE, LLC	CHARLES S. BRONITSKY
930 LINDEN AVENUE, LLC	CHARLES S. BRONITSKY

CROSS-COMPLAINANT: 930 LINDEN AVENUE, LLC'S MOTION TO EXPUNGE LIS PENDENS

TENTATIVE RULING:

The Motion to Expunge *Lis Pendens* brought by Defendant/Cross-Complainant 930 Linden Avenue, LLC is GRANTED. Attorney's fees in the amount of $5,250 are awarded to Defendant/Cross-Complainant.

Plaintiff's Objection to Late-Filed Evidence, filed on May 12, 2025, is SUSTAINED.

Defendant/Cross-Complainant's Request for Judicial Notice is GRANTED.

Plaintiff's Request for Judicial Notice is DENIED as to its Exhibit 1, and GRANTED as to its Exhibit 2.

Background

Movant 930 Linden Avenue, LLC refers to itself as "Defendant and Cross-Complainant," using the terminology of the civil action with which the instant UDL was consolidated, even though the latter is the lead action. The parties have adopted Movant's terminology, which is used here.

On September 18, 2023, Plaintiff Robert Lawrence McLennan filed a civil action in this Court alleging that Defendant/Cross-Complainant 930 Linden Avenue, LLC had breached an agreement (the "Lease") under which Plaintiff had undertaken a lease with an option to purchase commercial realty at 930 Linden Avenue, South San Francisco, California 94080 (the "Property"), by failing to help Plaintiff to obtain No Further Action letters regarding hazardous waste remediation at the Property, and by otherwise attempting to escape the agreement due to an increase in the value of the Property by $500,000 after the Lease had been signed. (Complaint, Case No. 23-CIV-04409, ¶¶ 7-11.)

Having served a three-day notice to cure or quit on June 22, 2023, Defendant-Cross-Complainant filed the instant unlawful detainer action alleging Plaintiff's multiple breaches of the Lease. This Court granted Defendant- Cross-Complainant's Motion for Summary Judgment, Plaintiff appealed, and the Appellate Division of this Court reversed and remanded (Case No. 23-AD-000042; 24-AD-000009 (23-UDL-00795), Appellate Opinion, filed on December 13, 2024).

With possession no longer in issue, the instant UDL case was consolidated with Case No. 23-CIV-04409 before this Court (Order, February 19, 2025) and became the lead case, through which Plaintiff continues to seek specific performance of the Lease which he alleges would result in his purchase of the Property, or alternatively, rescission of the Lease and reimbursement of $180,000 (Case No. 23-CIV-04409, Complaint, Prayers 2 & 4.)

Meanwhile, Plaintiff had filed a Notice of Recording of Pendency of Action (*Lis Pendens*) (a "Notice of Recordation") in each of the consolidated actions on December 4, 2024. The *lis pendens* was recorded on that day as well, providing notice that the Property is affected by Case No. 23-CIV-04409. (Notices of Recordation, pp. 5.) Specifically, the *lis pendens* states that the "action contains a claim for possession. The above-captioned action alleges a real property claim affecting" the Property. (*Ibid*.)

Legal Standard for Expungement

A Court must expunge a *lis pendens* if the pleading on which the *lis pendens* "is based does not contain a real property claim." (Code Civ. Proc., § 405.31.) A party has a real property claim where the cause of action in a pleading would, if meritorious, affect "title to, or the right to possession of, specific real property." (Code Civ. Proc., § 405.4.)

A court shall expunge a *lis pendens* if it finds that "the claimant has not established by a preponderance of the evidence the probable validity of the real property claim." (Code Civ. Proc., § 405.32.) A Court shall also order a *lis pendens* expunged if adequate relief can be secured by an undertaking. (Code Civ. Proc., § 405.33.) The Court shall not order an undertaking to be given as a condition of expungement "where the court finds the pleading does not contain a real property claim" (Code Civ. Proc., § 405.31) or that "the claimant has not established the probable validity of the real property claim" (Code Civ. Proc., § 405.32).

Expungement Is Ordered.

Each *lis pendens* states that the "action contains a claim for possession. The above-captioned action alleges a real property claim affecting" the Property. (Notices of Recordation, pp. 5.) However, possession is no longer at issue (Order, February 19, 2025).

Plaintiff has the burden of proving his Complaint contains a real property claim under Code of Civil Procedure, section 405.31. Plaintiff argues that the Lease is a purchase agreement, but the agreements is a Lease with a purchase option (*see, e.g.*, Lease, ¶ 62, at Brown Decl., pp. 25-26, in Exh. 1; Option to Purchase, ¶ 64(b), at Brown Decl., p. 31, in Exh. 1; Addendum Two, New Section 65, at Brown Decl., p. 62, in Exh. 2):

> an option to purchase property is "a unilateral agreement. The optionor offers to sell the subject property at a specified price or upon specified terms and agrees, in view of the payment received, that he will hold the offer open for the fixed time. Upon the lapse of that time the matter is completely ended and the offer is withdrawn. If the offer be accepted upon the terms and in the time specified, *then* a bilateral contract arises *which may become the subject of a suit to compel specific performance*, if performance by either party thereafter be refused."

(*Steiner v. Thexton* (2010) 48 Cal.4th 411, 418 (citation omitted) (emphasis added)).

Even assuming *arguendo* that such an option were to constitute a real property claim under Code of Civil Procedure section 405.31, Plaintiff still would bear the burden of establishing its probable validity by a preponderance of the evidence under section 405.32. Plaintiff has not met that burden.

Plaintiff asserts that he entered the Lease with Defendant "with the intention of ultimately purchasing the Property, once Defendant obtains the necessary permits and No Further Action letter." (Opp., 2:18-20; *see also* McLennan Decl., ¶ 7.) However, the Lease provides that a No Further Action letter might never be obtained. (Lease, ¶ 62, at Brown Decl., p. 25, in Exh. 1 ("Lessor makes no guarantee that No Further Action Conditions will be achieved during the Lease Term.").) Further, the Lease places responsibilities "for fully performing all due diligence with regard to the environmental matters and seeking legal advice re: same," and "concerning the implications of leasing and/or purchasing or financing a contaminated property" on Plaintiff. (Lease, ¶ 63(c), at Brown Decl., p. 26, in Exh. 1.)

Yet, Plaintiff persists in arguing he would have purchased the Property but for Defendant's failure to perform these purported obligatory services, even arguing that because Defendant has not assisted him in obtaining permits and a No Further Action Letter, Plaintiff did not have to pay rent nor honor any of his other obligations under the Lease. It appears that Plaintiff did not pay rent as of July 2023, though he continued to occupy the Property until January 2024. The Lease provides that "Lessee shall have no right to exercise an Option … during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee)," *inter alia*. (Lease, ¶ 39.4(a), at Brown Decl., p. 20, in Exh. 1.)

Also in persisting with this argument, Plaintiff admits that, "Under the Lease, if Plaintiff does not exercise the option, the $100,000 deposit will be forfeited to Defendant." (Opp., 6:16-17.)

In addition to the argument that Plaintiff did not exercise his option before it expired, there is the question whether the option period ever began. The first Addendum to Lease provides that the period of the option does not begin until No Further Action conditions have been achieved, which has yet to occur. (Lease, ¶ 62, at Brown Decl., pp. 25-26, in Exh. 1; see also Option to Purchase, ¶ 64(b), at Brown Decl., p. 31, in Exh. 1.) Addendum Two then arguably provided a temporary, new option period, which has expired:

> Notwithstanding anything herein, in the Lease or in the Purchase Option to the contrary, for the period starting January 1, 2023, through and including December 31, 2023, Lessor shall have the right to purchase the property in accordance with the terms of the Lease and the Purchase Option for a fixed price of three million, six hundred fifty thousand dollars ($3,650,000). The Option must be exercised, and the purchase closed within the one-year period stated herein. On January 1, 2024, the fixed price option shall expire and the provisions of paragraph 28 of the Purchase Option shall again apply.

(Addendum Two, New Section 65, at Brown Decl., p. 62, in Exh. 2.) Paragraph 28 (Addendum, at Brown Decl., p. 42, in Exh. 1) does not alter the Option Period, which again, appears not to have commenced.

In arguing that he was not required to obtain a Use Permit under the Lease, Plaintiff states that he:

> provides a letter from the City of South San Francisco to support his denial that a use permit was required for his intended use of the Property as a personal hobby shop. *See McLennan Decl.*, ¶ 12, Exhibit D. Specifically, the letter states "As we have subsequently discussed, Planning Division staff is initially supportive of allowing such a use under the condition that it be used by the applicant only, and not as an auto repair use that is open to the public." *Id*.

(Opp., 8:17-22.) However, Plaintiff selectively quotes the letter, omitting its next sentence in which the City of South San Francisco instructs Plaintiff regarding use of the Property for auto repair, that, "To ultimately review and approve such a use, please submit a formal Minor-Use Permit application to the Planning Division at your convenience, … ." (McLennan Decl., p. 69, in Exh. D.) In any case, The Lease requires Plaintiff to obtain a Use Permit from the City of South San Francisco or "to provide evidence, reasonably satisfactory to Lessor, that no such Use Permit is required." (Addendum Two, ¶ 1.7, at Brown Decl., p. 60, in Exh. 2 (emphasis added).) Apparently, this did not occur by the deadline stated in the Lease, nor has it since.

Plaintiff claims that he attempted to make the required insurance payment, but his Exhibit shows this to be incorrect (McLennan Decl., Exh. C (*see esp.* p. 65)) in that a payment over three times greater was to be paid in full within 30 days. (Lease, ¶ 8.1(b), at Brown Decl., p. 11, in Exh. 1.)

Without authority, Plaintiff asserts that the Property cannot be sold because it is contaminated. (Opp., 9:11-13.) At the same time, Plaintiff declares that, "I am making a claim to exercise my option to purchase the Property under the Lease and this claim has merit." (McLellan Decl., ¶ 15.) In contrast, Defendant has stated in the Motion that it is "ready, willing and able to sell the Property to Plaintiff right now, pursuant to the terms of the Lease" (Reply, 3:16-18), but in

Opposition, Plaintiff persists in arguing that Defendant is hindering him from exercising his option, and Plaintiff still has not attempted to do so even in the face of Defendant's instant offer.

As litigation unfolds, Plaintiff may or may not establish that the pleading on which the *lis pendens* is based contains a real property claim (Code Civ. Proc., § 405.31), and if a real property claim were there found, Plaintiff may or may not establish its validity (Code Civ. Proc., § 405.32). At this point in the litigation process, even if a real property claim were assumed, Plaintiff has not established its probable validity by a preponderance of the evidence for the reasons detailed above. The *lis pendens* on the real property commonly known as 930 Linden Avenue, South San Francisco, California 94080, recorded on December 4, 2024, as Document No. 2024-065309 in the Official Records of the County of San Mateo, by Plaintiff, is hereby ORDERED EXPUNGED. Defendant/Cross-Complainant is to comply with Code of Civil Procedure section 405.35 in recording the order expunging the *lis pendens*.

Fees Are Awarded to Defendant/Cross-Complainant Pursuant to Code of Civil Procedure Section 405.38.

Section 405.38 provides that:

> The court shall direct that the party prevailing on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust.

(Code Civ. Proc., § 405.38.)

Counsel for Defendant/Cross-Complainant declares that he spent seven hours preparing the Motion and expects to spend an additional three hours on the Reply and the hearing. His rate is $525 per hour. Thus, Defendant/Cross-Complainant requests $5,250 in attorney's fees in bringing the Motion. (Bronitsky Decl., ¶ 2.) This fee request is reasonable. Further, in granting Defendant/Cross-Complainant's motion to expunge, the Court finds that Plaintiff did not act the with the substantial justification required to defeat the Motion under section 405.38, nor is the imposition of attorney's fees thereunder unjust.

Attorney's **fees in the amount of $5,250 are awarded to Defendant/Cross-Complainant.**

Plaintiff's Objection to Evidence

Plaintiff's Objection to Late-Filed Evidence, filed on May 12, 2025, is SUSTAINED. Defendant/Cross-Complainant's video was filed only with its Reply. (*Carbajal v. CWPSC, Inc*. (2016) 245 Cal.App.4th 227, 241.)

Defendant/Cross-Complainant's Request for Judicial Notice in Support of Motion

Defendant/Cross-Complainant's Request for Judicial Notice accompanies the Motion. It is GRANTED pursuant to Evidence Code section 452, subdivision (c), as to the *lis pendens* recorded on December 4, 2024 (Exh. 1), and pursuant to Evidence Code section 452, subdivision (d), as to Plaintiff's Complaint in the civil action that has been consolidated with this action (Exh. 2). However, judicial notice of these documents 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.)

Plaintiff's Request for Judicial Notice in Opposition

Plaintiff's Request for Judicial Notice ("RJN") accompanies the Opposition. It is made under Evidence Code section 452, subdivision (d), as to two documents described as follows:

> An order granting Motion for Summary Judgment filed on November 15, 2023, in San Mateo County Superior Court, Case No. 23-UDL-00795 (Exh. 1); and

A memorandum opinion filed on November 5, 2024, in the Appellate Division of San Mateo County Superior Court, Case No. 23-UDL-00795 (Exh. 2).

However, Exhibit 1 is not file-stamped. The RJN as to this exhibit is DENIED.

The RJN as to Exhibit 2 is GRANTED. However, judicial notice of this document is limited to its existence, and does not extend to the truth of the factual matters contained therein. (*Dominguez v. Bonta* (2022) 87 Cal.App.5th 389, 400.)

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for **Defendant/Cross-Complainant** shall prepare for the Court's signature a written order consistent with the Court's ruling, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and by the California Rules of Court.

2:00

24-UDL-01514 NEIGHBOR TO NEIGHBOR HOMES, LLC VS. EUGENIO GURBINDO, ET AL.

LINE 12

NEIGHBOR TO NEIGHBOR HOMES, LLC SAM CHANDRA
EUGENIO GURBINDO

PLAINTIFF NEIGHBOR TO NEIGHBOR HOMES, LLC'S MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING:

This limited residential unlawful detainer action concerns the real property at 626 Price Street, Daly City CA 94014. Plaintiff purchased the property at a foreclosure sale on September 25, 2024. (Compl. ¶ 4.) No landlord-tenant relationship exists between the Plaintiff and the Defendants, but the Defendants continue to occupy the property without the consent or authorization of Plaintiff, the purchaser. (Compl. ¶ 10.) Plaintiff served a three-day written notice to quit on October 29, 2024. (Compl. ¶ 12.)

Defendant Gladys Gurbindo filed an Answer on December 5, 2024 containing a general denial with no elaboration. The Answer also noted that Defendant Eugenio Gurbindo is deceased and no longer making a claim of right of possession.

In an order signed March 20, 2025, the Court awarded sanctions in favor of Plaintiff and against Defendant of $555.00 based on Defendant's failure to respond to Plaintiff's Request for Admissions, Set One. The Court also deemed admitted the matters in the RFA Set One, Nos. 1-12, which were propounded by Plaintiff on January 3, 2025.

Now pending before the Court is Plaintiff's motion for summary judgment.
A motion for summary judgment in unlawful detainer is evaluated on the same basis as a motion under Section 437c. (Code Civ. Proc. § 1170.7.)

Where the plaintiff is the moving party, the plaintiff meets their burden by proving each element of the cause of action entitling plaintiff to judgment on that cause of action. (Code Civ. Proc. § 437c(p)(1).) Once the plaintiff meets that burden, the burden shifts to the defendant to show a triable issue of one or more material facts exists as to that cause of action. (*Ibid.*)

Plaintiff's Complaint is brought pursuant to Code of Civil Proc. § 1161a, which governs, *inter alia,* possession of a real property sold through nonjudicial foreclosure. Upon sale under a trust deed, as here, the purchaser has an immediate right to possession. (*Farris v. Pac. States Aux. Corp.* (1935) 4 Cal.2d 103, 106.) The Court has already granted Plaintiff's motion to deem matters admitted. Matters that are admitted or deemed are conclusively established in the litigation and are not subject to being contested through contradictory evidence. (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775.) Therefore, the elements of Plaintiff's claim under Code Civ. Proc. § 1161a are satisfied: it has been deemed admitted that title under the sale has been duly perfected, that the notice to quit was served, that Defendant remained in possession of the property, and that Plaintiff is entitled to possession. (*See Kessler v. Bridge* (1958) 161 Cal.App.2d Supp. 837, 841 [discussing elements of action under Code Civ. Proc. § 1161a and the definition of duly perfected title].) There do not appear to be any issues with the sufficiency of the notice given, and Defendant has not raised any. As Plaintiff has met its burden on summary judgment, and Defendant has not raised any triable issue of material fact, summary judgment in Plaintiff's favor on the issue of possession is therefore **GRANTED.**

Plaintiff also requests holdover damages covering the period from the date the notice expired (November 2, 2024) through the date of the Reyes declaration in support of summary judgment (April 7, 2025), for a total of 156 days, calculated at a daily rate of $122.33 per day based on a monthly rental value of $3,670.00. The proper measure of damages in a Section § 1161a action is measurable in the amount of a reasonable rental value that the plaintiff might have realized had the plaintiff not been denied possession. (*MCA, Inc. v. Universal Diversified Enterprises Corp.* (1972) 27 Cal.App.3d 170, 179.) Damages based on rental value are capped as of the entry of the UD judgment. (*Hudec v. Robertson* (1989) 210 Cal.App.3d 1156, 1163.)

Since $3,670.00 is a reasonable monthly rental value for the property, the Court **GRANTS the requested holdover damages of $19,083.48**. Plaintiff's request for judicial notice is GRANTED pursuant to Cal. Evid. Code § 452(c) and (d), but only as to the existence and legal effect of the documents, not as to the truth of any factual matter asserted therein.

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 California Rules of Court, 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 California Rules of Court.
The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

Posted: 11:10 a.m.