PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR AUGUST 27, 2020 AT 8:30 A.M.

These are the tentative rulings for the **THURSDAY, AUGUST 27, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, AUGUST 26, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: ALL LAW AND MOTION MATTERS WILL PROCEED BY TELEPHONIC APPEARANCES. (PLACER COURT EMERGENCY LOCAL RULE 10.28.)
More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard via telephonic appearance.

1. M-CV-0057266 WELLS FARGO v. RUGRODEN, ROBERT

Plaintiff's Motion to Vacate Judgment

In the current request, plaintiff seeks to vacate a five year old default judgment without also seeking dismissal of the action. The motion is continued for plaintiff to file further briefing as to whether it is also seeking dismissal of the case. If not, plaintiff needs to clarify what actions it intends to take if the default judgment is vacated in a case where the summons and complaint were originally filed on January 11, 2013.

The motion is continued to Thursday, September 10, 2020 at 8:30 a.m. in Department 42. Any supplemental briefing shall be filed and served by noon on Thursday, September 3, 2020.

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2. M-CV-0067944 STORY RENTALS v. KNOWLTON, GEORGE

The motion to be relieved as counsel is continued to Thursday, September 17, 2020 at 8:30 a.m. in a department to be assigned. The court apologizes to the parties for the inconvenience.

3. M-CV-0074612 MTGLQ INVESTORS v. LADD, DARREN

Defendants' Petition for Relief from Forfeiture and Motion for Stay

Ruling on Objections

Plaintiff's objections are overruled in their entirety.

Ruling on Petition

The relief is granted in part. The current request seeks two forms of relief. The first is relief from a rent or lease forfeiture under Code of Civil Procedure section 1179. The second is a request for stay of enforcement of a judgment and/or writ of possession. The request for relief from forfeiture is improper. Defendants brought a nearly identical request on July 9, 2020. As previously stated by the court, relief under Section 1179 is only available in those cases involving rental or lease agreements. The current unlawful detainer action stems from a foreclosure sale. There is no rent or lease agreement in this instance, so defendants cannot seek relief from forfeiture.

This leaves the request for stay. A party in an unlawful detainer action may seek a stay pending appeal upon the showing of irreparable injury and the posting of reasonable monthly rental value during the time of the appeal. (Code of Civil Procedure section 1176.) Defendants have made a sufficient showing of irreparable harm. Defendants shall be afforded a stay pending appeal subject to defendants posting a monthly payment of $2,250 with the court on the first day of each month during the pendency of the appeal. If defendants fail to file a timely notice of appeal and/or fail to post the $2,250 on the first of each month, the stay will be dissolved. Plaintiff may seek ex parte relief if defendants fail to post the monthly bond amount.

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4. M-CV-0076680 DYCUS HVAC v. SWANSON, JUSTIN

Defendants Jeanine Clark-Suarez and Loud & Clear Labs' Motion to Compel Arbitration and Stay Proceedings

Initially, the court excludes the evidence submitted by plaintiff in its "offer of proof". (Struck declaration ¶2.)

In the current motion, defendants assert to be nonsignatories to the underlying agreement in this case. They seek to compel arbitration and stay the current proceeding based upon an arbitration provision that appears in the contract agreement between plaintiff and defendant JBS Ventures, LLC. A threshold question for any motion to compel arbitration is whether there exists an agreement to arbitrate. (*Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396.) The moving party carries this initial burden by proving, by a preponderance of the evidence, the existence of a valid arbitration agreement. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) Defendants have failed to meet their burden here.

Defendants base their motion on an arbitration provision found in Article 6, section 9 of the contract agreement. (Clark-Suarez declaration, Exhibit 1.) They fail to sufficiently establish the existence of valid arbitration agreement between the parties. The five page contract agreement is purportedly between plaintiff and defendant JBS Ventures, LLC. (Ibid.) The signature lines on the attached contract are blank. (Ibid.) Defendants submit a copy of the signature page that is supposedly executed by JBS Ventures. (Ibid.) The signature line, however, does not identify the name or title of the individual executing the document. (Ibid.) Ms. Clark-Suarez attests that she executed the agreement on behalf of JBS Ventures. (Id. at ¶4.) She does not identify in what capacity she executed the document or her authority to enter into such an agreement on behalf of JBS Ventures. (see generally Clark-Suarez declaration.) In light of the evidence presented to the court, defendants have not sufficiently established the existence of a valid arbitration agreement between themselves and plaintiff, let alone for any other defendant in the action. For these reasons, the motion is denied without prejudice.

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5. S-CV-0017852 BACKUS, BARTLEY v. LAWICKA, DAVID

Petitioner Bartley Backus' Motion for Investigation and Evidentiary Hearing

The motion is denied. The current case involves an inactive petition where relief was denied back on April 8, 2005. The relief sought in the motion goes beyond on the scope of matters that may be addressed in a civil harassment petition, let alone one that was denied more than fifteen years ago.

6. S-CV-0040413 ABLES, SONYA v. GRANITE OAKS APTS

Defendants Granite Oaks Apartment Homes and First Pointe Management Group's Motion for Relief from Tardy Expert Witness Disclosure

Ruling on Objections

Plaintiff's objections are overruled.

Ruling on Motion

Defendant's seek relief from a one-day late supplemental disclosure of an expert witness. Defense counsel declares his office contacted potential expert witness Jeffrey Lapin and then disclosed him as a property management in their supplemental disclosure on December 9, 2019. Defense counsel states he was unaware plaintiff had disclosed Lapin as an expert until plaintiff's counsel notified him that same day. Defendants then disclosed expert witness Steven Epcar in a supplemental disclosure the next day. Defendants seek relief from this tardy – by one day – supplemental disclosure of expert witness Epcar. Defendants assert they had no idea plaintiff objected to the untimely disclosure until May 2020 when plaintiff prepared a motion in limine to preclude Mr. Epcar's testimony.

Plaintiff submits the declaration of Mr. Lapin wherein he shows he only discussed with defense counsel's office the possibility of using his services in general terms and with no indication that he agreed to be retained. Plaintiff argues, essentially, that defendants were haphazard in making a last minute disclosure without having actually discussed the case with Mr. Lapin or having retained him. Plaintiff points out that defendants failed to recognize that Mr. Lapin had already been retained and *disclosed*. Plaintiff apparently did not expressly voice any objections to the one-day late disclosure of Mr. Epcar but

proceeded to act as if the untimely supplemental disclosure was not effective, including not taking the deposition of Mr. Epcar, and then six months later moves in limine to exclude his testimony.

From the court's perspective, whether the defense acted haphazardly or whether plaintiff may be engaging in a "gotcha," what could have occurred early on was a good, old-fashioned phone call where counsel had a good faith, principled discussion of the situation in an attempt to resolve the matter without seeking judicial intervention many months later. But that is an unfulfilled wish. Trial is not set until October 19, 2020 and there is ample time for a deposition of the witness.

On balance, the motion is granted under Code of Civil Procedure sections 2034.710 and 2034.720. Defendants are relieved from the one day delinquency in service of their supplemental expert witness disclosure. Defendant shall make their expert immediately available to plaintiff for a deposition. (Code of Civil Procedure section 2034.720(d).)

7. S-CV-0041154 DEALVA, JORDYN v. ROSEVILLE CITY SCHOOL DIST

Petition to Approve Compromise of Minor's Pending Claim

The petition to approve compromise of minor's pending claim is continued to Thursday, September 10, 2020 at 8:30 a.m. in Department 42. At this time, the court is experiencing significant delays in the processing time for civil documents. The petition is continued to assure the briefing in this matter is complete as no supplemental declaration, as ordered by the court at the July 9, 2020 hearing, currently appears in the court file.

8. S-CV-0041450 FOLADRAY, MAHIN v. KHODAMARDI, GITI

Plaintiff's Motion for Leave to File First Amended Complaint and First Amended Verified Answer

The motion is granted. The court may permit a party to amend its operative pleading in the furtherance of justice and on such terms as may be just. (Code of Civil Procedure section 473(a)(1); Code of Civil Procedure section 576.) The moving party must also show that the amendment will not prejudice any opposing party. (*Douglas v. Superior Court* (1989) 215 Cal.App.3d 155, 158.) Plaintiff has made a sufficient showing to support the request for leave to amend

subject to a continuance of trial in order to afford defendant an opportunity to challenge the amended pleadings. (Code of Civil Procedure section 473(a)(2).)

Plaintiff shall file and serve her first amended complaint and first amended verified answer by September 4, 2020. The current trial dates are vacated. A case management conference to set trial dates is set for Tuesday, September 15, 2020 at 10:30 a.m. in Department 40. The parties shall meet and confer to provide the court with three alternative sets of dates for the setting of trial.

Defendant's Motion for Summary Judgment

The motion is dropped as moot in light of the court's ruling on plaintiff's motion for leave to amend.

Plaintiff's Motion to Continue Trial

The motion is dropped as moot in light of the court's ruling on plaintiff's motion for leave to amend.

9. S-CV-0042298 CLEAR ADVANTAGE DIRECT v. RESULTS ONLY

Defendants Results Only Consulting & Advertising, LLC; Matthew Neal; and Patrick Cardenas' (Result Only Defendants') Motion for Terminating Sanctions, Evidentiary Sanction, and/or Monetary Sanctions

The motion is granted in part. In the current request, the Result Only Defendants seek various forms of discovery sanctions based upon plaintiff's failure to comply with its discovery obligations. The relief sought includes terminating sanctions; evidentiary sanction; and/or monetary sanctions. The court grants the request for terminating sanctions.

The purpose of discovery sanctions is to prevent abuse of the discovery process and correct problems presented. (*Do v. Superior Court* (2003) 109 Cal.App.4th 1210, 1213-1214.) It is not a weapon to provide for punishment, forfeiture, or avoidance of trial on the merits. (*Ibid.*) The imposition of terminating sanctions is generally limited to extreme cases of discovery misuses that are so pervasive a less drastic sanction will not sufficiently address the discovery derelictions. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 77, 796-797.) In light of the extreme effect of terminating sanctions, courts do not impose them lightly. The totality of the circumstances surrounding the discovery violations are considered when

ordering terminating sanctions: (1) whether the party's conduct was willful; (2) the detriment to the propounding party; and (3) the number of formal and informal attempts to obtain discovery. (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 390.)

The court has carefully reviewed the entire court file along with the current briefing. The Result Only Defendants were named in the original complaint filed on December 28, 2018 and served on January 10, 2019. The defendants filed their answer on February 22, 2019. They served plaintiff with written discovery but received no responses, requiring defendants to file a motion. The court ordered plaintiff to provide discovery responses by July 24, 2020 along with ordering $950 in monetary sanctions.

Defendants received no discovery responses from plaintiff. They have had little communication with plaintiff regarding the litigation despite attempts to reach plaintiff. This is in line with plaintiff's historical approach to discovery here. Plaintiff also failed to respond to discovery propounded by other defendants. The Result Only Defendants find themselves in the same position as other defendants have in this case. Plaintiff fails to comply with discovery despite monetary sanctions and plaintiff generally fails to communicate with defendants. Defendants now left without discovery responses with a fast approaching trial date currently set for September 14, 2020. Plaintiff has demonstrated an unwillingness to resolve these matters short of court intervention and an unwillingness to comply with court discovery orders despite the imposition of monetary sanctions. Terminating sanctions are the only means to address the discovery abuses at this juncture. For these reasons, the motion is granted.

Defendants' alternative requests for evidentiary sanctions and monetary sanctions are denied as the terminating sanctions are sufficient to address plaintiff's discovery abuses.

The complaint, filed on December 28, 2018, is stricken as to defendants Results Only Consulting & Advertising, LLC; Matthew Neal; and Patrick Cardenas.

10. S-CV-0042658 LABEL, PATRICK v. BENTON, LORENZA

The motion to compel deposition is dropped from the calendar in light of the notice of withdrawal of motion filed on August 18, 2020.

11. S-CV-0043468 SIMPSON, MELODY v. BANK OF NY MELLON

Defendants' Bank of New York Mellon and Carrington Mortgage's Motion for Judgment on the Pleadings

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted under Evidence Code section 452.

The court declines to consider the declaration of plaintiff's counsel submitted in opposition to the demurrer.

Ruling on Motion

The motion is granted in part and denied in part. A motion for judgment on the pleadings has the same function as a demurrer but is brought where the time for a demurrer has expired. (Code of Civil Procedure section 438(g); *Southern California Edison Co. v. City of Victorville* (2013) 217 Cal.App.4th 218, 227.) A defendant challenging a complaint must show the pleading fails to state sufficient facts to constitute a cause of action. (Code of Civil Procedure section 438(c)(1)(B).) "[J]udgment on the pleadings must be denied where there are material factual issues that require an evidentiary resolution. (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216.)

The first and second causes of action rest on allegations of fraud. The elements of fraud are: "[1] misrepresentation (false representation, concealment, or nondisclosure); [2] knowledge of the falsity (or 'scienter'); [3] intent to defraud, i.e., to induce reliance; [4] justifiable reliance; and [5] resulting damage." (*Lazar v. Superior Court* (1996) 12, Cal.4th 631, 638.) Defendant Carrington is alleged to be the loan servicer of plaintiff's loan with Bank of Mellon and that Carrington acted as the agent with full authority to act on behalf of the Bank. The underpinning of both causes of action is that Carrington falsely represented that it would postpone the foreclosure sale of plaintiff's property. The first cause of action alleges the misrepresentation was made intentionally to induce plaintiff not to take action to protect against the foreclosure and that plaintiff was damaged when the foreclosure sale proceeded. The second cause of action alleges the misrepresentation was made to fraudulently induce her not to either seek a stay of the foreclosure or to transfer funds to cure the payment delinquency, resulting in damage to plaintiff. As with a demurrer, the court

accepts the truth of plaintiff's allegations for purposes of the motion for judgment on the pleadings. Plaintiff has sufficiently alleged facts to satisfy the elements of fraud to overcome defendants' motion as to these causes of action.

Plaintiff's third cause of action alleges defendant Carrington Defendant negligently advised that the foreclosure sale of her property had been postponed. "To state a cause of action for negligence, a plaintiff must allege (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, and (3) the breach proximately caused the plaintiff's damages or injuries." (*Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 62.) In California, the "general rule" is that "a financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money." (*Nymark v. Heart Fed. Sav. & Loan Assn. (*1991*)* 231 Cal. App. 3d 1089, 1096.) Plaintiff alleges defendants proceeded to foreclose on the property, a power defendants maintained under the deed of trust in light of her default in making payments and which is within the scope of the conventional role of a lender. The motion is granted as to the third cause of action.

The motion is denied as to the fourth cause of action for breach of the implied covenant of good faith and fair dealing. "The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made." (*Guz v. Bechtel* (2000) 24 Cal.4th 317, 349.) "Simply stated, the burden imposed [by the implied covenant] is that neither party will do anything which will injure the right of the other to receive the benefits of the agreement." (C*areau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1393 (internal quotation omitted).) Among other allegations, plaintiff alleges defendants falsely represented that the foreclosure sale was postponed and, therefore, in reliance thereon she did not seek a stay of the foreclosure or make payments to avoid foreclosure. Accepting the material allegations of her complaint as true at this pleading stage, plaintiff has sufficiently stated a cause of action arising from the alleged loan and deed of trust in that defendants allegedly frustrated her ability to maintain the property.

The motion is denied as to the first, second and fourth causes of action and granted as to the third cause of action.

12. S-CV-0043926 RICK MARTIN CONST v. IRA SERVICES

Defendants' Motion to Expunge Amended Lis Pendens

Ruling on Request for Evidentiary Hearing

Defendants' request for an evidentiary hearing is denied.

Ruling on Request for Judicial Notice and Request to Submit Additional Evidence

These requests are denied as plaintiff has not been afforded an opportunity to respond to this new evidence. (see *Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010; *Alliant Ins. Services, Inc. v. Gaddy* (2009) 159 Cal.App.4th 1292, 1307-1308.)

Ruling on Objections

Defendants' objections are overruled.

Plaintiff's objections to the length of defendants' memorandum is overruled as the court granted defendants' ex parte application seeking relief to file a lengthy memorandum.

Ruling on Motion

Defendants assert several grounds for expungement of the lis pendens.

First, defendants claim Martin failed to properly serve the Amended Notice of Lis Pendens on defendants by registered or certified mail, return receipt requested. Instead, defendant claims Martin only served David Durham Survivor's Trust DTD 10-4-2014 the Amended Notice of Lis Pendens by regular U.S. Mail. Thus, defendants contend the lis pendens must be expunged because plaintiff failed to comply with the service requirements of Code of Civil Procedure section 405.22.

A "claimant shall, prior to recordation of the notice, cause a copy of the notice to be mailed, by registered or certified mail, return receipt requested, to all known addresses of the parties to whom the real property claim is adverse .. ." (Code of Civil Procedure section 405.22.) "Any notice of pendency of action

shall be void and invalid as to any adverse party or owner of record unless the requirements of Section 405.22 are met for that party or owner..." (Code of Civil Procedure section 405.23.) When the basis for challenging the lis pendens is that it is "void and invalid" for noncompliance with the service and recording requirements of the lis pendens statute, the person seeking expungement has the burden of proof. (Code of Civil Procedure section 405.23.) Defendants fail to meet their burden of proof. The court file reflects that on October 31, 2019 plaintiff filed a proof of service showing service of the notice of lis pendens by certified mail. On February 28, 2020 plaintiff filed proof of service showing service of the amended notice by certified mail. Defendants' contention that the lis pendens must be expunged on these grounds is baseless.

Second, defendants assert that plaintiff has failed to allege a real property claim. The framework for analyzing this contention is summarized as follows: "When the person moving for expungement states that the pleadings do not set forth a real property claim, the claimant who has recorded the lis pendens has the burden of proof to establish that the pleading on which the action is based alleges a real property claim. The issue is decided solely by analysis of the pleadings without the admission of extrinsic evidence because the lis pendens is expunged if the court finds that "the pleading" does not set forth a real property claim. The demurrer-like analysis of the court in considering expungement of a lis pendens for failure to state a real property claim should occur without the taking of evidence, other than possibly such evidence which may be judicially noticed as on a demurrer. The hearing on this basis is similar to, but more limited than, a hearing on a general demurrer because the only issue is whether the pleadings state a real property claim. The evidentiary merit of the claim is entirely irrelevant to this analysis, whereas it will be relevant if the grounds for expungement is failure to prove probable validity of the claim." (Miller and Starr, California Real Estate 4th, § 10:154.)

Plaintiff has alleged a claim for specific performance to implement the Parcel Map Plan by effecting the reconfiguration between the parcels. Plaintiff alleges justifiable reliance on the agreement of those with interests in Lots 1 and 3 and on the CC&R's that split development of the lots into two phases so that Lot 2 could be reconfigured as a buildable lot. Plaintiff alleges reliance on defendants' approval as lenders in accepting the Agreement to settle in foregoing his right to sue on moneys owed for construction work performed by plaintiff. Plaintiff has sufficiently pleaded a real property interest.

Third, defendants assert plaintiff has not proven the probable validity of the claim by a preponderance of the evidence. When expungement is sought on the basis that the real property claim lacks probable validity, the claimant who filed the lis pendens has the burden of proof by a preponderance of the evidence that the claim has probable validity. (Code of Civil Procedure sections 405.30, 405.32.) It is not sufficient for the claimant merely to make a prima facie showing of probable validity; the demonstration of "probable validity" requires a determination that it is more likely than not that the claimant will obtain a judgment against the defendant on the claim. The court is required to weigh the evidence and make a preliminary determination based on the evidence submitted, of whether it is more probable than not, that the claimant will prevail on its real property claim. (*Mix v. Superior Court* (2004) 124 Cal. App. 4th 987, 994–995.) Even if the claimant alleges a real property claim, expungement must be granted if the claimant cannot meet the burden of proving the probable validity of the claim by a preponderance of the evidence. (*Amalgamated Bank v. Superior Court* (2007) 149 Cal. App. 4th 1003, 1015–1016; *Mix v. Superior Court*, supra, at 993-995.)

With these standards in mind, the court finds plaintiff has failed to prove the probable validity of the claim by a preponderance of the evidence. The deficiency is that plaintiff relies solely on the allegations and exhibits attached to the unverified first amended complaint as the basis to establish a probable validity of the real property claims. Simply put, plaintiff does not submit sufficient evidence to support its claims. Accordingly, the lis pendens must be expunged.

The remaining issue to address is attorney's fees. Defendants are entitled to fees as the prevailing party. (Code of Civil Procedure section 405.38; see *Castro v. Superior Court* (2004) 116 Cal.App.4th 1010, 1018.) The court has carefully reviewed defendants' declarations and determines the hourly rates and number of hours performed for legal services are too high for the work done related to this motion. The court determines that an hourly rate of $350 for 10 hours is reasonable under the circumstances. Defendants are also entitled to the costs of the $60 filing fee. In sum, defendants are awarded $3,560 in attorney's fees and costs.

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Defendants' Motion to Compel Further Responses to Written Discovery and Sanctions

Initially, the briefing of the parties suggests the scope of the current motion has narrowed in light of supplemental responses provided by plaintiff prior to the hearing. At this juncture, defendants seek to compel further responses to three sets of special interrogatories: (1) defendant Robert Moskowitz's special interrogatories nos. 15, 16, 17; (2) defendant Carol Link's special interrogatories nos. 20, 21, 22, 23, 24, 25, 29, 30, 31, 32, 33, 34; and (3) defendant Lhorn BPAC Ventures, LLC's special interrogatories no. 31. Defendants also seek $7,432.50 in monetary sanctions against plaintiff. It does not appear defendants have submitted a copy of the supplemental/amended responses to the court for review, which prevents the court from making a determination as to whether or not these responses are sufficient. Thus, the motion is denied.

The request for sanctions is also denied. Plaintiff did not oppose the motion, choosing to submit a declaration regarding its submission of supplemental/amended responses. Since plaintiff substantially complied with the written discovery, the court declines to award monetary sanctions at this time.

13. S-CV-0044248 SLOSS, ERIN v. MASTERS JEWELERS

Defendants Master Jewelers and Maurice Munoz's Motion to Reclassify Action

The motion is denied. In the current request, two of the three defendants in this action seek reclassification of the case from an unlimited civil to a limited civil under Code of Civil Procedure section 403.040. When considering whether to reclassify a case from unlimited to limited civil based on a damages recovery under $25,000, the court looks to whether it is clear plaintiff is unable to obtain a recovery in excess of $25,000 or that such a recovery is virtually unattainable. (*Ytuarte v. Superior Court* (2005) 129 Cal.App.4th 266.) This is shown where the absence of jurisdiction is apparent from the complaint; petition; or other related documents. (*Ibid*.) It may also be shown when pretrial discovery makes it clear that matter will result in a verdict below the $25,000. (*Ibid.*) The evidence presented by the moving defendants does not clearly establish plaintiff's damages fall below the jurisdictional limit. To the contrary, plaintiff's responses to discovery indicate she is claiming at least $100,00 in general damages to be established through expert testimony. (Tarkian declaration, Exhibit 4 - Special Interrogatories Response nos. 29, 30.) Since the

court cannot make a determination that recovery will fall below the jurisdictional limit, the motion is denied.

14. S-CV-0044532 PICKERING, AUSTIN v. PHH MORTGAGE

Defendant PHH Mortgage Corporation's Demurrer to the First Amended Complaint (FAC)

The demurrer is sustained in its entirety. In the current request, defendant demurs to first, second, fourth, and fifth causes of action. It does not demurrer to the third cause of action for TILA violations since this claim is not aimed at PHH Mortgage Corporation. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) All properly pleaded facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.)

Initially, plaintiff concedes the allegations in the second cause of action for violations of the Homeowners Bill of Rights (HBOR) are improperly asserted. The demurrer is sustained without leave to amend as to this claim.

Turning to the first cause of action, a wrongful foreclosure claim is an equitable action brought *after* the foreclosure sale of a property. (*Sciarratta v. U.S. Bank National Assn.* (2016) 247 Cal.App.4th 552, 561-562; *Munger v. Moore* (1970) 11 Cal.App.3d 1, 7.) Plaintiff does not allege a foreclosure sale has occurred, rather, he alleges under information and belief that defendants "are beginning and/or have begun commencing foreclosure proceedings against his home". (FAC ¶15.) This is insufficient to support a wrongful foreclosure claim. Plaintiff failed to challenge the demurrer as to the cause of action, which is deemed to be forfeiture of the claim. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.) Thus, the demurrer to the first cause of action is sustained without leave to amend.

The fourth cause of action alleges a claim for breach of the implied covenant of good faith and fair dealing. This claim stems from a contract, requiring the plaintiff to allege a valid contract between the parties for obligations stemming from the contract. (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1054; *Racine & Laramie v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1031-1032.) The allegations in

plaintiffs FAC are long on legal arguments but short on factual allegations. Plaintiff also provides contrary allegations, alleging in paragraph 46 that a notice of default has been recorded while previously alleging defendant was beginning to commence a foreclosure proceeding. The improper and contradictory allegations subject the fourth cause of action to demurrer.

The fifth cause of action asserts a claim for UCL violations. A UCL claim borrows violations from other laws, treating them as independently actionable unlawful practices. (*Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 643-644.) Here, plaintiff has not alleged a viable claim against defendant. Thus, the fifth cause of action is also subject to demurrer.

The remaining issue to address is whether leave to amend should be afforded to plaintiff. An overall review of the FAC shows plaintiff tailored the allegations for a wrongful foreclosure action, which is premature. Plaintiff has requested leave to amend but provided little showing as to what amendments could be made to cure the defects in the fourth or fifth causes of action. Nonetheless, the court has carefully reviewed the operative pleading, which does suggest some ability for amendment. Plaintiff is afforded leave to amend only the fourth and fifth causes of action.

In sum, the demurrer is sustained in its entirety. The demurer is sustained without leave to amend as to the first cause of action for wrongful foreclosure and second cause of action for HBOR violations. The demurrer is sustained with leave to amend as to the fourth cause of action for breach of implied covenant and fifth cause of action for UCL violations. The third cause of action for TILA violations is not pleaded against the moving defendant and has not been considered by the court.

15. S-CV-0045020 IN RE MATTER OF GARD E.I., LLC

The amended petition for approval for transfer of payments rights is continued to Thursday, September 10, 2020 at 8:30 a.m. in Department 42. At this time, the court is experiencing significant delays in the processing time for civil documents. The amended petition is continued to assure the briefing in this matter is complete as no supplemental declaration, as ordered by the court at the August 6, 2020 hearing, currently appears in the court file.