

1. COOK v. CIRCLE K STORES, INC., 22CV0404

OSC Re: Dismissal

On November 22, 2024, the court granted plaintiff's counsel's request for a continuance based on his declaration that the case settled on July 15, 2024, and the parties were waiting on the final lien amount. On February 18, 2025, plaintiff's counsel submitted a declaration stating that she recently received the final Medi-Cal lien amount and has provided it to defense counsel. The court grants plaintiff's request for another continuance to complete the settlement.

TENTATIVE RULING # 1: UPON PLAINTIFF'S REQUEST, THE MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MAY 23, 2025, IN DEPARTMENT FOUR.

2. MAISEL v. BUSSELL, ET AL., 23CV1464**(A) Motion for Leave to File Cross-Complaint****(B) OSC Re: Contempt / Failure to Comply**

Defendant moves pursuant to Code of Civil Procedure section 426.50 for leave to file his cross-complaint (attached to the instant motion), claiming that he failed to file said cross-complaint at the time of filing his answer due to a clerical oversight. Plaintiff filed no opposition to the motion.

Code of Civil Procedure section 426.50 provides: "A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action."

Having read and considered defense counsel's declaration, the court grants defendant leave to file his cross-complaint under Code of Civil Procedure section 426.50.

TENTATIVE RULING # 2: DEFENDANT RYAN BUSSELL'S MOTION FOR LEAVE TO FILE HIS CROSS-COMPLAINT IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, FEBRUARY 21, 2025, IN DEPARTMENT FOUR REGARDING DEFENDANT'S EX PARTE APPLICATION TO CONTINUE THE HEARING ON THE OSC TO MARCH 21, 2025.

3. GERLACH v. BARRETT DAFFIN FRAPPIER TREDER & WEISS, LLP, 24CV2132**Demurrer to Second-Amended Complaint**

Pursuant to Code of Civil Procedure section 430.10, subdivisions (e) and (f), defendants Nationstar Mortgage, LLC doing business as Mr. Cooper (“Nationstar”) and Lakeview Loan Servicing, LLC (“Lakeview”) generally and specially demur to plaintiff’s second-amended complaint (“SAC”) on the grounds that each cause of action alleged therein fails to state a claim and is uncertain. Defendant Barrett Daffin Frappier Treder & Weiss, LLC (“Barrett Daffin”) filed a motion to join in the demurrer.

Counsel for defendants Nationstar, Lakeview, and Barret Daffin each declare they met and conferred with plaintiff’s counsel, as required under Code of Civil Procedure section 430.41, subdivision (a). (Cheong Decl., ¶ 2; Lauvray Decl., ¶ 4.)

Plaintiff filed no opposition to the demurrer or the motion for joinder.

1. Background

This is an action for wrongful foreclosure and related claims arising from the foreclosure on plaintiff’s property located at 3774 Paradise Drive in South Lake Tahoe, California (the “Property”). (SAC, ¶ 1.) Defendant Lakeview was the foreclosing creditor and defendant Nationstar was the mortgage servicer. (SAC, ¶¶ 3–4.) Defendant Barrett Daffin was the substitute trustee under the deed of trust that conducted the foreclosure sale. (SAC, ¶ 3.)

In 2008, plaintiff’s mother, who is now deceased, obtained a loan for \$384,950.00 secured by a deed of trust on the Property. (SAC, ¶¶ 2, 10.) After her mother’s death, plaintiff inherited the Property. (SAC, ¶ 11.)

In early 2024, defendant Nationstar approved plaintiff for a loan modification (the “2024 Loan Modification”). (SAC, ¶ 13.) Plaintiff made regular payments under the 2024 Loan Modification from January through August 2024. (SAC, ¶ 13.) In August 2024, without proper notice or explanation, defendant Nationstar initiated foreclosure

proceedings while the 2024 Loan Modification was still in effect and payments were being made. (SAC, ¶ 14.)

On September 26, 2024, defendant Barrett Daffin conducted a foreclosure sale of the Property. (SAC, ¶ 15.) Defendant West Point Management, LLC purchased the Property for \$459,123.15. (SAC, ¶ 16, subd. (e).)

Defendant Nationstar withdrew a few mortgage payments from plaintiff's account after the foreclosure sale but later returned these payments to plaintiff without explanation. (SAC, ¶ 17, subds. (a)–(c).)

2. Requests for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (c), the court grants defendants Nationstar and Lakeview's unopposed request for judicial notice of Exhibit A (recorded deed of trust), Exhibit B (recorded corporate assignment of deed of trust), Exhibit C (recorded notice of default), and Exhibit D (recorded notice of trustee's sale); and grants defendant Barret Daffin's unopposed request for judicial notice of Exhibit AA (recorded substitution of trustee).

3. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank, supra*, 39 Cal.3d at p. 318.)

4. Discussion

4.1. First C/A for Wrongful Foreclosure

The elements of a wrongful foreclosure cause of action are: “(1) [T]he trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering.’” (*Miles v. Deutsche Bank Nat’l Trust Co.* (2015) 236 Cal.App.4th 394, 408.) “[M]ere technical violations of the foreclosure process will not give rise to a tort claim; the foreclosure must have been entirely unauthorized on the facts of the case.” (*Id.* at p. 409.)

Plaintiff’s SAC alleges all defendants caused an illegal, fraudulent, and willfully oppressive sale by: (1) engaging in dual tracking, in violation of Civil Code section 2923.6; (2) failing to provide proper notice, in violation of Civil Code section 2924b; (3) proceeding with the sale despite known defects; (4) accepting mortgage payments from plaintiff before and after the sale;¹ and (5) refusing to honor plaintiff’s succession rights to the Property. (SAC, ¶ 21.)

Defendants argue the SAC fails to allege that plaintiff: (1) attempted to tender the full amount of debt at the foreclosure sale; (2) had a court order enjoining the sale; or (3) recorded a lis pendens to cloud title. Further, defendants argue, plaintiff’s allegation that “proper notices, as required by law, were not given” (SAC, ¶ 23) does not overcome the statutory presumption under Civil Code section 2924, subdivision (c) that the sale was conducted regularly and fairly.

As discussed further below under the second cause of action for violation of the Homeowner’s Bill of Rights, plaintiff’s first two allegations – that defendants violated Civil

¹ However, plaintiff also alleges that defendant Nationstar later returned these payments to plaintiff without explanation. (SAC, ¶ 17, subd. (c).)

Code sections 2923.6 and 2924b – fail because plaintiff has not alleged that the Property was owner-occupied or occupied by a tenant, as required under Civil Code section 2924.15 to invoke the protections of the Homeowner’s Bill of Rights.

Regarding the tender requirement, plaintiff’s SAC alleges that she was excused from the tender requirement because the sale was void, rather than merely voidable. (SAC, ¶ 25, citing *Pfeifer v. Countrywide Home Loans* (2012) 211 Cal.App.4th 1250, 1280.) However, the court finds that plaintiff has not pleaded factual allegations that, if true, would establish the sale was void.

The demurrer to the first cause of action for wrongful foreclosure is sustained with leave to amend.

4.2. Second C/A for Violation of California Homeowner Bill of Rights

“The Homeowner Bill of Rights [HBOR] ([Civ. Code, §§] 2920.5, 2923.4-7, 2924, 2924.9-12, 2924.15, 2924.17-20) ... , effective January 1, 2013, was enacted ‘to ensure that, as part of the nonjudicial foreclosure process, borrowers are considered for, and have a meaningful opportunity to obtain, available loss mitigation options, if any, offered by or through the borrower’s mortgage servicer, such as loan modifications or other alternatives to foreclosure.’ ([Civ. Code,] § 2923.4)” (*Valbuena v. Ocwen Loan Servicing, LLC* (2015) 237 Cal.App.4th 1267, 1272.)

Plaintiff alleges defendants violated the following provisions of the HBOR: (1) Civil Code section 2923.6, subdivision (c) (prohibiting dual tracking); (2) Civil Code section 2924b (notice requirements); and (3) Civil Code section 2923.7 (single point of contact). (SAC, ¶¶ 29–32.)

To invoke the protections of the HBOR that were in effect at the time of the alleged violations in 2024,² a plaintiff must show that the first lien mortgage or deed of trust

² The HBOR has since been amended. As of January 1, 2025, a plaintiff must show that the first lien mortgage or deed of trust is secured by an owner-occupied residential property. (Civ. Code, § 2924.15.)

satisfies either of the following conditions: (1) that “the first lien mortgage or deed of trust is secured by *owner-occupied* residential real property containing no more than four dwelling units” where “owner-occupied” “means that the property is the *principal residence* of the borrower and is security for a loan made for personal, family, or household purposes;” or (2) “the first lien mortgage or deed of trust is secured by residential property that is occupied by a tenant....” (Civ. Code, § 2924.15, subd. (a), emphasis added.)

Defendants argue plaintiff fails to allege that the Property was owner-occupied or occupied by a tenant. Having reviewed the SAC, the court agrees. Paragraph 46 refers to “tenant relationships” but the SAC does not specifically allege that the Property was owner-occupied or occupied by a tenant at the time of the alleged violations. Therefore, the demurrer is sustained with leave to amend.

4.3. Third C/A for Cancellation of Instruments

To claim cancellation of an instrument, the plaintiff must allege: (1) the instrument is void or voidable due to, for example, fraud; and (2) the plaintiff has a reasonable apprehension of serious injury including pecuniary loss or the prejudicial alteration of their position. (Civ. Code, § 3412; *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1193–1194.)

The SAC seeks cancellation of the following instruments: (1) the trustee’s deed upon sale; (2) the notice of trustee’s sale; (3) the notice of default; and (4) any other documents relating to the allegedly void foreclosure. (SAC, ¶ 37.)

Similar to the wrongful foreclosure claim, defendants argue that plaintiff’s cancellation of instruments claim fails because plaintiff does not allege she attempted to tender the full amount due prior to the foreclosure sale. Rather, plaintiff alleges she has the “present ability” to tender the amount due. (SAC, ¶¶ 19, 25.)

As previously discussed, plaintiff has not pleaded factual allegations that, if true, would establish the sale was void. The demurrer to the third cause of action for cancellation of instruments is sustained with leave to amend.

4.4. Fourth C/A for Breach of Contract

The elements of a breach of contract claim are: (1) the existence of a contract; (2) plaintiff's performance or excuse for non-performance; (3) defendant's breach; and (4) the resulting damages to the plaintiff. (*San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 439.)

Plaintiff alleges defendants Nationstar and Lakeview breached the 2024 Loan Modification by: (1) proceeding with foreclosure while a loan modification was in effect; (2) accepting payments while simultaneously pursuing foreclosure; (3) failing to honor the terms of the modification; and (4) refusing to identify the documents said defendants claimed were allegedly missing. (SAC, ¶¶ 40, 43.)

However, defendants argue the breach of contract claim fails because plaintiff does not allege that the 2024 Loan Modification was a written agreement, as required under the statute of frauds. (*Rossberg v. Bank of Am., N.A.* (2013) 219 Cal.App.4th 1481, 1503 (finding that the statute of frauds applied to a loan modification agreement that modified the terms of the borrower's promissory note and deed of trust).)

The court agrees that plaintiff's breach of contract claim fails to satisfy the statute of frauds. The demurrer to the third cause of action for breach of contract is sustained with leave to amend.

4.5. Fifth C/A for Promissory Estoppel

The elements of a promissory estoppel claim are: (1) a clear and unambiguous promise; (2) reasonable and foreseeable reliance by the party to whom the promise is made; (3) enforcement is necessary to avoid injustice; (4) causation; and (5) harm or injury to the party asserting estoppel. (*US Ecology, Inc. v. State of Cal.* (2005) 129 Cal.App.4th 887, 901–905, 908.)

Plaintiff's promissory estoppel claim against defendants Nationstar and Lakeview is based on the alleged 2024 Loan Modification.

Defendants argue that the promissory estoppel claim fails for the same reason as the breach of contract claim—because the 2024 Loan Modification does not satisfy the statute of frauds—citing *Baskin Distribution, Inc. v. Pittway Corp.*, 141 F.3d 1173 (9th Cir. 1998). In *Baskin Distribution*, the court stated, “In interpreting and applying the statute of frauds under California law, this court has held that promissory estoppel cannot render an oral promise otherwise within the statute of frauds enforceable. [Footnote citation omitted.]”

This court agrees. Because a loan modification agreement is subject to the statute of frauds, it follows that, as a matter of law, a plaintiff cannot reasonably and foreseeably rely on an oral promise to modify the loan. Therefore, plaintiff has not alleged a valid promissory estoppel claim. The demurrer to the fifth cause of action for promissory estoppel is sustained with leave to amend.

4.6. Sixth C/A for Declaratory Relief

To state a claim for declaratory relief, the plaintiff must allege facts showing there is a dispute between the parties concerning their legal rights, constituting an “actual controversy” within the meaning of the declaratory relief statute. (Code Civ. Proc., § 1060; *Artus v. Gramercy Towers Condominium Assn.* (2018) 19 Cal.App.5th 923, 930.) A claim for declaratory relief fails when it is “ ‘wholly derivative’ of other failed claims.” (*Smyth v. Berman* (2019) 31 Cal.App.5th 183, 191–192, quoting *Ball v. FleetBoston Financial Corp.* (2008) 164 Cal.App.4th 794, 800.)

Plaintiff alleges an actual controversy exists between plaintiff and defendants concerning: (1) the validity of the foreclosure sale; (2) the legal status of title to the Property; (3) the rights and interests of defendant West Point Management, LLC as the purported buyer at the foreclosure sale; and (4) the effect of defendants' alleged violations of law on the validity and outcome of the foreclosure sale. (SAC, ¶ 49.)

Regarding the validity of the foreclosure sale, defendants counter that this issue does not raise a “present” controversy where the foreclosure sale was completed months ago. Additionally, defendants argue that the declaratory relief claim is unnecessary and should be refused because there are other forms of adequate relief available, citing *California Ins. Guarantee Assn. v. Superior Court* (1991) 231 Cal.App.3d 1617. In that case, the court stated, “ ‘Under section 1061 of the Code of Civil Procedure the court may refuse to exercise the power to grant declaratory relief where such relief is not necessary or proper at the time under all of the circumstances. The availability of another form of relief that is adequate will usually justify refusal to grant declaratory relief.’ ” (*California Ins. Guarantee Assn., supra*, at p. 1624, quoting *General of America Ins. Co. v. Lilly* (1968) 258 Cal.App.2d 465, 471.)

Plaintiff’s claim for declaratory relief fails as dependent on and derivative of her insufficient causes of action for wrongful disclosure, violation of HBOR, cancellation of instruments, breach of contract, and promissory estoppel. The demurrer is sustained with leave to amend.

4.7. Seventh C/A for Violation of Bus. & Prof. Code, § 17200

The Unfair Competition Law (“UCL”) (Bus. & Prof. Code, § 17200) prohibits “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” “ ‘Because Business and Professions Code section 17200 is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent.’ ” (*Capito v. San Jose Healthcare System, LP* (2024) 17 Cal.5th 273, 284.)

Unlawful practices are practices “forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made.” (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838–839.) “To state a cause of action based on an unlawful business act or practice under the UCL, a plaintiff must allege facts sufficient to show a

violation of some underlying law.” (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1133.)

A business act or practice is unfair when the conduct “threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition.” (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 187.) To establish an unfair business act or practice, a plaintiff must establish the unfair nature of the conduct and that the harm caused by the conduct outweighs any benefits that the conduct may have. (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1473.)

Finally, a fraudulent business act or practice is one in which members of the public are likely to be deceived. (*Olsen v. Breeze, Inc.* (1996) 48 Cal.App.4th 608, 618, [“ ‘ ‘Fraudulent,’ as used in the statute, does not refer to the common law tort of fraud but only requires a showing members of the public “ ‘are likely to be deceived’ ” ’ ”].) Thus, in order to state a cause of action based on a fraudulent business act or practice, the plaintiff must allege that consumers are likely to be deceived by the defendant's conduct. (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 211.)

Plaintiff alleges defendants engaged in unlawful business practices by violating the HBOR and conducting a void foreclosure sale. (SAC, ¶ 53.) Plaintiff alleges defendants engaged in unfair business practices by: (1) accepting payments from plaintiff while simultaneously pursuing foreclosure;³ (2) proceeding with the sale despite being aware of “known defects;” (3) refusing to honor the terms of the 2024 Loan Modification; and (4) creating “artificial barriers to the loan assumption process.” (SAC, ¶¶ 55–58.) And finally, plaintiff alleges defendants engaged in fraudulent business practices

³ But again, plaintiff also alleges that defendant Nationstar later returned these payments to plaintiff without explanation. (SAC, ¶ 17, subd. (c).)

by: (1) misrepresenting the status of loan modifications; (2) concealing allegedly missing documents; (3) making promises without any intention to perform; and (4) creating false impressions of compliance. (SAC, ¶ 61.)

Accepting the factual allegations in the SAC as true, as the court must when ruling on a demurrer, the court finds that plaintiff has stated a claim for violation of Business and Professions Code section 17200 based on the following allegations: (1) that defendants misrepresented the status of loan modifications; and (2) that defendants concealed allegedly missing documents.

The demurrer to the seventh cause of action for violation of Business and Professions Code section 17200 is overruled.

TENTATIVE RULING # 3: THE DEMURRER IS SUSTAINED IN PART WITH LEAVE TO AMEND AND OVERRULED IN PART. REFER TO FULL TEXT. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

4. IMPERIUM BLUE TAHOE HOLDINGS v. TAHOE CHATEAU LAND HOLDINGS, 22CV1204**Motion to Compel**

Plaintiff moves for an order compelling defendant Propriis, LLC's ("defendant") response to (1) Form Interrogatories (Set One); (2) Special Interrogatories (Set One); and (3) Request for Production (Set Two). Additionally, plaintiff requests a monetary sanction against defendant in the amount of \$1,565.

Defendant filed an opposition to plaintiff's request for attorney fees only on the ground that it is not opposing plaintiff's right to objection-free responses to the discovery at issue, and therefore, plaintiff is not entitled to discovery sanctions.

However, as plaintiff points out, California Rules of Court, Rule 3.1348 allows a court to award discovery sanctions pursuant to a motion to compel even if the opposing party files no opposition to the motion. (Cal. Rules Ct., Rule 3.1348, subd. (a).⁴) "Clearly forcing a party to resort to the court to get discovery is the sanctionable behavior." (*Masimo Corp. v. The Vanderpool Law Firm, Inc.* (2024) 101 Cal.App.5th 902, 909, fn. 9.)

Plaintiff argues the court should impose a monetary sanction here, especially where (1) plaintiff granted defendant a one-week extension to serve responses; and (2) plaintiff made multiple efforts to meet and confer with defendant even though plaintiff was not required to do so before filing the instant motion. (See Sherman Decl., ¶¶ 3–6 & Exs. D, E.)

Having read and considered the moving papers and declaration of plaintiff's counsel, the court finds that \$1,390.00 is a reasonable sanction under the Civil Discovery Act (3.8 hours of legal work at \$350 per hour, plus the \$60.00 filing fee.)

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⁴ California Rules of Court, Rule 3.1348, subdivision (a), provides in relevant part: "The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed..."

TENTATIVE RULING # 4: THE MOTION TO COMPEL IS GRANTED. DEFENDANT PROPRIIS, LLC SHALL SERVE A VERIFIED RESPONSE, WITHOUT OBJECTIONS, TO EACH OF THE DISCOVERY REQUESTS AT ISSUE AND PAY PLAINTIFF A MONETARY SANCTION OF \$1,390.00 WITHIN 30 DAYS OF THE NOTICE OF ENTRY OF ORDER. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

5. LVNV FUNDING LLC v. MURPHY, 22CV0804

OSC Re: Dismissal

Judgment was entered on October 30, 2024.

TENTATIVE RULING # 5: THE ORDER TO SHOW CAUSE IS DISCHARGED AND THE MATTER IS DROPPED FROM THE CALENDAR.

6. TAHOE ASPHALT, INC., ET AL. v. SOUTHWEST WEAR PARTS CO., INC., 24CV2723

(A) Plaintiffs' Motion to Strike Defendant's Amended Answer

(B) Plaintiffs' Motion for Judgment on the Pleadings

TENTATIVE RULING # 6: ON THE COURT'S OWN MOTION, THE MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, FEBRUARY 28, 2025. THE COURT APOLOGIZES TO THE PARTIES FOR ANY INCONVENIENCE.

7. VELOCITY INVESTMENTS v. GRIFFIN, SCL20170121**Motion to Set Aside Default and Default Judgment**

Default was entered on February 19, 2020, and default judgment was entered on February 20, 2020. On August 4, 2022, the court issued a writ of execution.

On January 13, 2025, defendant filed the instant motion to set aside default and default judgment⁵ on the grounds that (1) defendant was never served the summons and complaint, and (2) the alleged debt was settled. To date, however, there is no proof of service for the notice of motion in the court's file, as required under Code of Civil Procedure, section 1005, subdivision (a)(10).

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, FEBRUARY 21, 2025, IN DEPARTMENT FOUR.

⁵ Defendant's motion is filed on Local Form C-35 ("Notice of Motion and Motion for Order"). In Paragraph 1, defendant checked the box for setting aside default only, not default judgment. In Paragraph 7, defendant checked the box indicating that he is asking the court to set aside default judgment only, not default. The court construes defendant's motion as a motion to set aside both default and default judgment. (See *Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 930.)