1. PC20210147 12FIVE CAPITAL LLC v. ATHERSTONE FOODS INC. ET AL

Motion to Lift Stay

A stay of this action for a period of 18 months was entered on October 7, 2022, pursuant to a Stipulation for Stay of Proceedings and Order ("Stay Order"), in order to allow the parties to implement a settlement agreement pursuant to which the Defendant was one of several business entities that agreed to make payments in satisfaction of Plaintiff's claim. Plaintiff moves for an Order lifting the stay based on a breach of the terms of the settlement agreement, which are detailed in a Settlement Agreement and Mutual Release ("Settlement Agreement"), attached as Exhibit 1 to the Declaration of Jay Jaskiewicz, dated December 8, 2023.

Request for Judicial Notice

Plaintiff requests the court to take judicial notice of the Stay Order on file with the court as part of the filings in this case.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Plaintiff's request for judicial notice is granted.

The Stay Order provides for a stay of proceedings for a period of 18 months to allow the parties to implement their Settlement Agreement, which provides that the Defendant and other associated businesses are to make an initial payment of $70,000, followed by additional monthly payments of $65,000 and a final payment of $35,000 over the period of 13 months until Plaintiff's claim is fully paid. Plaintiff maintains this claim for repayment of a business loan as against various related businesses, and has brought separate lawsuits against each of those businesses in order to protect the pursuit of Plaintiff's claims against potential bankruptcy of one of the associated business entities. Accordingly, the Defendant named in this particular action is one of several who is party to the Settlement Agreement relating to the same business loan.

Section 1.1 of the Settlement Agreement details the single repayment agreement for settlement of this action, as well as for settlement of the other related actions. Section 1.2 states that all of the related lawsuits will be stayed pending "full performance of this Agreement," and that the related actions would be dismissed upon full payment.

Section 1.3 of the Settlement Agreement provides that "[i]f there is an uncured late payment, or any other material default of this Agreement, all the stays will be lifted by way of Notice to the Court issued by 12Five, and the cases and the parties' respective positions therein, shall be restored to the *status quo ante* as of March 12, 2021." Section 1.4 provides that if the court declines to lift the stay, 12Five reserves the right to dismiss the action without prejudice and refile the action as to any uncured default, with the statute of limitations tolled as of March 12, 2021.

There is no opposition on file with court to lifting the stay. Proof of service of notice of the hearing was filed with the court on December 13, 2023.

TENTATIVE RULING #1: ABSENT OBJECTION, THE PLAINTIFF'S MOTION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2. PC20210125 12FIVE CAPITAL LLC v. WCWS INC.

Motion to Lift Stay

A stay of this action for a period of 18 months was entered on October 7, 2022, pursuant to a Stipulation for Stay of Proceedings and Order ("Stay Order"), in order to allow the parties to implement a settlement agreement pursuant to which the Defendant was one of several business entities that agreed to make payments in satisfaction of Plaintiff's claim. Plaintiff moves for an Order lifting the stay based on a breach of the terms of the settlement agreement, which are detailed in a Settlement Agreement and Mutual Release ("Settlement Agreement"), attached as Exhibit 1 to the Declaration of Jay Jaskiewicz, dated December 8, 2023.

Request for Judicial Notice

Plaintiff requests the court to take judicial notice of the Stay Order on file with the court as part of the filings in this case.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Plaintiff's request for judicial notice is granted.

The Stay Order provides for a stay of proceedings for a period of 18 months to allow the parties to implement their Settlement Agreement, which provides that the Defendant and other associated businesses are to make an initial payment of $70,000, followed by additional monthly payments of $65,000 and a final payment of $35,000 over the period of 13 months until Plaintiff's claim is fully paid. Plaintiff maintains this claim for repayment of a business loan as against various related businesses, and has brought separate lawsuits against each of those businesses in order to protect the pursuit of Plaintiff's claims against potential bankruptcy of one of the associated business entities. Accordingly, the Defendant named in this particular action is one of several who is party to the Settlement Agreement relating to the same business loan.

Section 1.1 of the Settlement Agreement details the single repayment agreement for settlement of this action, as well as for settlement of the other related actions. Section 1.2 states that all of the related lawsuits will be stayed pending "full performance of this Agreement," and that the related actions would be dismissed upon full payment.

Section 1.3 of the Settlement Agreement provides that "[i]f there is an uncured late payment, or any other material default of this Agreement, all the stays will be lifted by way of Notice to the Court issued by 12Five, and the cases and the parties' respective positions therein, shall be restored to the *status quo ante* as of March 12, 2021." Section 1.4 provides that if the court declines to lift the stay, 12Five reserves the right to dismiss the action without prejudice and refile the action as to any uncured default, with the statute of limitations tolled as of March 12, 2021.

There is no opposition on file with court to lifting the stay. Proof of service of notice of the hearing was filed with the court on December 13, 2023.

TENTATIVE RULING #2: ABSENT OBJECTION, THE PLAINTIFF'S MOTION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

3. PC20210112 12FIVE CAPITAL LLC v. GRANITE SPRINGS WINERY, ET AL

Motion to Lift Stay

A stay of this action for a period of 18 months was entered on October 7, 2022, pursuant to a Stipulation for Stay of Proceedings and Order ("Stay Order"), in order to allow the parties to implement a settlement agreement pursuant to which the Defendant was one of several business entities that agreed to make payments in satisfaction of Plaintiff's claim. Plaintiff moves for an Order lifting the stay based on a breach of the terms of the settlement agreement, which are detailed in a Settlement Agreement and Mutual Release ("Settlement Agreement"), attached as Exhibit 1 to the Declaration of Jay Jaskiewicz, dated December 8, 2023.

Request for Judicial Notice

Plaintiff requests the court to take judicial notice of the Stay Order on file with the court as part of the filings in this case.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Plaintiff's request for judicial notice is granted.

The Stay Order provides for a stay of proceedings for a period of 18 months to allow the parties to implement their Settlement Agreement, which provides that the Defendant and other associated businesses are to make an initial payment of $70,000, followed by additional monthly payments of $65,000 and a final payment of $35,000 over the period of 13 months until Plaintiff's claim is fully paid. Plaintiff maintains this claim for repayment of a business loan as against various related businesses, and has brought separate lawsuits against each of those businesses in order to protect the pursuit of Plaintiff's claims against potential bankruptcy of one of the associated business entities. Accordingly, the Defendant named in this particular action is one of several who is party to the Settlement Agreement relating to the same business loan.

Section 1.1 of the Settlement Agreement details the single repayment agreement for settlement of this action, as well as for settlement of the other related actions. Section 1.2 states that all of the related lawsuits will be stayed pending "full performance of this Agreement," and that the related actions would be dismissed upon full payment.

Section 1.3 of the Settlement Agreement provides that "[i]f there is an uncured late payment, or any other material default of this Agreement, all the stays will be lifted by way of Notice to the Court issued by 12Five, and the cases and the parties' respective positions therein, shall be restored to the *status quo ante* as of March 12, 2021." Section 1.4 provides that if the court declines to lift the stay, 12Five reserves the right to dismiss the action without prejudice and refile the action as to any uncured default, with the statute of limitations tolled as of March 12, 2021.

There is no opposition on file with court to lifting the stay. Proof of service of notice of the hearing was filed with the court on December 13, 2023.

TENTATIVE RULING #3: ABSENT OBJECTION, THE PLAINTIFF'S MOTION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

4. PC20210138 12FIVE CAPITAL LLC v. OBSESSION WINE COMPANY, ET AL

Motion to Lift Stay

A stay of this action for a period of 18 months was entered on October 7, 2022, pursuant to a Stipulation for Stay of Proceedings and Order ("Stay Order"), in order to allow the parties to implement a settlement agreement pursuant to which the Defendant was one of several business entities that agreed to make payments in satisfaction of Plaintiff's claim. Plaintiff moves for an Order lifting the stay based on a breach of the terms of the settlement agreement, which are detailed in a Settlement Agreement and Mutual Release ("Settlement Agreement"), attached as Exhibit 1 to the Declaration of Jay Jaskiewicz, dated December 8, 2023.

Request for Judicial Notice

Plaintiff requests the court to take judicial notice of the Stay Order on file with the court as part of the filings in this case.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Plaintiff's request for judicial notice is granted.

The Stay Order provides for a stay of proceedings for a period of 18 months to allow the parties to implement their Settlement Agreement, which provides that the Defendant and other associated businesses are to make an initial payment of $70,000, followed by additional monthly payments of $65,000 and a final payment of $35,000 over the period of 13 months until Plaintiff's claim is fully paid. Plaintiff maintains this claim for repayment of a business loan as against various related businesses, and has brought separate lawsuits against each of those businesses in order to protect the pursuit of Plaintiff's claims against potential bankruptcy of one of the associated business entities. Accordingly, the Defendant named in this particular action is one of several who is party to the Settlement Agreement relating to the same business loan.

Section 1.1 of the Settlement Agreement details the single repayment agreement for settlement of this action, as well as for settlement of the other related actions. Section 1.2 states that all of the related lawsuits will be stayed pending "full performance of this Agreement," and that the related actions would be dismissed upon full payment.

Section 1.3 of the Settlement Agreement provides that "[i]f there is an uncured late payment, or any other material default of this Agreement, all the stays will be lifted by way of Notice to the Court issued by 12Five, and the cases and the parties' respective positions therein, shall be restored to the *status quo ante* as of March 12, 2021." Section 1.4 provides that if the court declines to lift the stay, 12Five reserves the right to dismiss the action without prejudice and refile the action as to any uncured default, with the statute of limitations tolled as of March 12, 2021.

There is no opposition on file with court to lifting the stay. Proof of service of notice of the hearing was filed with the court on December 13, 2023.

TENTATIVE RULING #4: ABSENT OBJECTION, THE PLAINTIFF'S MOTION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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5. PC20210141 12FIVE CAPITAL LLC v. PARKHURST WINE AND PROVISIONS

Motion to Lift Stay

A stay of this action for a period of 18 months was entered on October 7, 2022, pursuant to a Stipulation for Stay of Proceedings and Order ("Stay Order"), in order to allow the parties to implement a settlement agreement pursuant to which the Defendant was one of several business entities that agreed to make payments in satisfaction of Plaintiff's claim. Plaintiff moves for an Order lifting the stay based on a breach of the terms of the settlement agreement, which are detailed in a Settlement Agreement and Mutual Release ("Settlement Agreement"), attached as Exhibit 1 to the Declaration of Jay Jaskiewicz, dated December 8, 2023.

Request for Judicial Notice

Plaintiff requests the court to take judicial notice of the Stay Order on file with the court as part of the filings in this case.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Plaintiff's request for judicial notice is granted.

The Stay Order provides for a stay of proceedings for a period of 18 months to allow the parties to implement their Settlement Agreement, which provides that the Defendant and other associated businesses are to make an initial payment of $70,000, followed by additional monthly payments of $65,000 and a final payment of $35,000 over the period of 13 months until Plaintiff's claim is fully paid. Plaintiff maintains this claim for repayment of a business loan as against various related businesses, and has brought separate lawsuits against each of those businesses in order to protect the pursuit of Plaintiff's claims against potential bankruptcy of one of the associated business entities. Accordingly, the Defendant named in this particular action is one of several who is party to the Settlement Agreement relating to the same business loan.

Section 1.1 of the Settlement Agreement details the single repayment agreement for settlement of this action, as well as for settlement of the other related actions. Section 1.2 states that all of the related lawsuits will be stayed pending "full performance of this Agreement," and that the related actions would be dismissed upon full payment.

Section 1.3 of the Settlement Agreement provides that "[i]f there is an uncured late payment, or any other material default of this Agreement, all the stays will be lifted by way of Notice to the Court issued by 12Five, and the cases and the parties' respective positions therein, shall be restored to the *status quo ante* as of March 12, 2021." Section 1.4 provides that if the court declines to lift the stay, 12Five reserves the right to dismiss the action without prejudice and refile the action as to any uncured default, with the statute of limitations tolled as of March 12, 2021.

There is no opposition on file with court to lifting the stay. Proof of service of notice of the hearing was filed with the court on December 13, 2023.

TENTATIVE RULING #5: ABSENT OBJECTION, THE PLAINTIFF'S MOTION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

6. PC20210117 12FIVE CAPITAL LLC v. RED BUCKET WINES, LLC

Motion to Lift Stay

A stay of this action for a period of 18 months was entered on October 7, 2022, pursuant to a Stipulation for Stay of Proceedings and Order ("Stay Order"), in order to allow the parties to implement a settlement agreement pursuant to which the Defendant was one of several business entities that agreed to make payments in satisfaction of Plaintiff's claim. Plaintiff moves for an Order lifting the stay based on a breach of the terms of the settlement agreement, which are detailed in a Settlement Agreement and Mutual Release ("Settlement Agreement"), attached as Exhibit 1 to the Declaration of Jay Jaskiewicz, dated December 8, 2023.

Request for Judicial Notice

Plaintiff requests the court to take judicial notice of the Stay Order on file with the court as part of the filings in this case.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Plaintiff's request for judicial notice is granted.

The Stay Order provides for a stay of proceedings for a period of 18 months to allow the parties to implement their Settlement Agreement, which provides that the Defendant and other associated businesses are to make an initial payment of $70,000, followed by additional monthly payments of $65,000 and a final payment of $35,000 over the period of 13 months until Plaintiff's claim is fully paid. Plaintiff maintains this claim for repayment of a business loan as against various related businesses, and has brought separate lawsuits against each of those businesses in order to protect the pursuit of Plaintiff's claims against potential bankruptcy of one of the associated business entities. Accordingly, the Defendant named in this particular action is one of several who is party to the Settlement Agreement relating to the same business loan.

Section 1.1 of the Settlement Agreement details the single repayment agreement for settlement of this action, as well as for settlement of the other related actions. Section 1.2 states that all of the related lawsuits will be stayed pending "full performance of this Agreement," and that the related actions would be dismissed upon full payment.

Section 1.3 of the Settlement Agreement provides that "[i]f there is an uncured late payment, or any other material default of this Agreement, all the stays will be lifted by way of Notice to the Court issued by 12Five, and the cases and the parties' respective positions therein, shall be restored to the *status quo ante* as of March 12, 2021." Section 1.4 provides that if the court declines to lift the stay, 12Five reserves the right to dismiss the action without prejudice and refile the action as to any uncured default, with the statute of limitations tolled as of March 12, 2021.

There is no opposition on file with court to lifting the stay. Proof of service of notice of the hearing was filed with the court on December 13, 2023.

TENTATIVE RULING #6: ABSENT OBJECTION, THE PLAINTIFF'S MOTION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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7. PC20210136 12FIVE CAPITAL LLC v. SUN MOUNTAIN LLC

Motion to Lift Stay

A stay of this action for a period of 18 months was entered on October 7, 2022, pursuant to a Stipulation for Stay of Proceedings and Order ("Stay Order"), in order to allow the parties to implement a settlement agreement pursuant to which the Defendant was one of several business entities that agreed to make payments in satisfaction of Plaintiff's claim. Plaintiff moves for an Order lifting the stay based on a breach of the terms of the settlement agreement, which are detailed in a Settlement Agreement and Mutual Release ("Settlement Agreement"), attached as Exhibit 1 to the Declaration of Jay Jaskiewicz, dated December 8, 2023.

Request for Judicial Notice

Plaintiff requests the court to take judicial notice of the Stay Order on file with the court as part of the filings in this case.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Plaintiff's request for judicial notice is granted.

The Stay Order provides for a stay of proceedings for a period of 18 months to allow the parties to implement their Settlement Agreement, which provides that the Defendant and other associated businesses are to make an initial payment of $70,000, followed by additional monthly payments of $65,000 and a final payment of $35,000 over the period of 13 months until Plaintiff's claim is fully paid. Plaintiff maintains this claim for repayment of a business loan as against various related businesses, and has brought separate lawsuits against each of those businesses in order to protect the pursuit of Plaintiff's claims against potential bankruptcy of one of the associated business entities. Accordingly, the Defendant named in this particular action is one of several who is party to the Settlement Agreement relating to the same business loan.

Section 1.1 of the Settlement Agreement details the single repayment agreement for settlement of this action, as well as for settlement of the other related actions. Section 1.2 states that all of the related lawsuits will be stayed pending "full performance of this Agreement," and that the related actions would be dismissed upon full payment.

Section 1.3 of the Settlement Agreement provides that "[i]f there is an uncured late payment, or any other material default of this Agreement, all the stays will be lifted by way of Notice to the Court issued by 12Five, and the cases and the parties' respective positions therein, shall be restored to the *status quo ante* as of March 12, 2021." Section 1.4 provides that if the court declines to lift the stay, 12Five reserves the right to dismiss the action without prejudice and refile the action as to any uncured default, with the statute of limitations tolled as of March 12, 2021.

There is no opposition on file with court to lifting the stay. Proof of service of notice of the hearing was filed with the court on December 13, 2023.

TENTATIVE RULING #7: ABSENT OBJECTION, THE PLAINTIFF'S MOTION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

8. 22CV1317 NICHOLSON v. KEYSER

Motion to Deem Admitted Matters Specified in Request for Admissions

On October 9, 2023, Defendant served a Request for Admissions (RFA") on Plaintiff as part of discovery in this lawsuit. Responses to the RFA were due on November 13, 2023.[1] Plaintiff has not yet responded to this discovery. Defendant has filed this motion seeking to have the matters specified in the RFA deemed admitted, and served notice of the motion on Plaintiff by mail on November 30, 2023. Plaintiff opposes the motion and requests to be allowed to submit her discovery responses on the grounds of inadvertence, mistake and excusable neglect, pursuant to Code of Civil Procedure § 2033.280(a)(2).[2]

The Complaint was filed on September 13, 2022, to which Defendant filed a demurrer on February 6, 2023. In response to the issues raised in the demurrer, an Amended Complaint was filed on April 14, 2023. Defendant filed a second demurrer on May 18, 2023, which was overruled on June 30, 2023. Defendant then filed an Answer on July 5, 2023.

Defendant's Answer included a proof of service by US mail addressed to Plaintiff's address of record, the same address to which the RFA and the demurrer were previously sent. Declaration of Michael Thomas, dated January 11, 2024, ¶2. Plaintiff claims that she was not served with the Answer and expected a default judgment. Plaintiff argues that because she expected that a default judgment would be granted for failure to answer the Complaint, Plaintiff did not believe that responses to Defendant's discovery, which she apparently did receive by mail, were required. However, between the time that an Answer was due in July of 2023 and the time that the discovery was served in October, 2023, Plaintiff did not file a request for a default judgment.

Plaintiff has included in her Opposition the proposed discovery responses, which admit all but three of the thirteen RFAs, and are signed under penalty of perjury.

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[1] With the exception of unlawful detainer actions, "[w]ithin 30 days after service of requests for admission, the party to whom the requests are directed shall serve the original of the response to them on the requesting party, and a copy of the response on all other parties who have appeared, unless on motion of the requesting party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response." Code of Civil Procedure § 2033.250(a).

[2] Although Plaintiff actually cites Code of Civil Procedure § 2033.300(b), which authorizes the court to permit withdrawal or amendment of matters deemed admitted for the same grounds of inadvertence, mistake and excusable neglect, as of the date of the hearing on this motion nothing has been deemed admitted and so it would be premature to permit the withdrawal or amendment of admissions on the basis of the instant motion.

Defendant's Reply argues that Plaintiff's Opposition arguments requesting leave to serve late RFA responses should be rejected because 1) the Answer was served at the same address of records as all of the other pleadings in this action; 2) Plaintiff's proposed RFA responses are unverified,[3] and 3) Defendant's Opposition was filed and served on January 8, 2024, after the January 5, 2024, deadline for submitting an opposition to the motion.[4] Declaration of Michael Thomas, dated January 11, 2024, ¶4.

As to the verification of the proposed responses, Defendant cites case law holding that "[u]nsworn responses are tantamount to no responses at all. However, the case of Allen-Pac., Ltd. v. Superior Ct., 57 Cal. App. 4th 1546 addressed a discovery response that was unsigned. In Melendrez v. Superior Ct., 215 Cal. App. 4th 1343, (2013) a response on behalf of a corporation was signed by counsel, which did not meet the statutory requirement that the RFA response be signed by an officer or an agent of the corporation. Neither case mandates the rejection of Plaintiff's personal signature under penalty of perjury on the proposed RFA responses. It can presumed that this pro per Plaintiff has personally reviewed the proposed responses.

Code of Civil Procedure § 2033.280 addresses the failure to respond to requests for admissions:

> If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:
>
> (a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> (1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
>
> (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

[3] "The party to whom the requests for admission are directed shall sign the response under oath, unless the response contains only objections." Code of Civil Procedure § 2033.240(a). *See also* Code of Civil Procedure § 2033.210(a) ("The party to whom requests for admission have been directed shall respond in writing under oath separately to each request.")

[4] Plaintiff was served notice of the continuance of the hearing date from January 12, 2024, to January 19, 2024, on December 1, 2023.

(b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(c) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

The court finds that, given the proof of service and the Plaintiff's address of record in the court's files, the fact there have not been any other issues with receipt of other pleadings and correspondence, and the fact that Plaintiff never requested a default judgment before or after discovery commenced, Plaintiff has not provided sufficient factual basis to establish that she was not served with the Answer. However, the court finds that Plaintiff did serve a proposed response in substantial compliance with the code on the Defendant prior to the date of the hearing. As such, the court finds good cause under Code of Civil Procedure § 2033.280(c) to deny the motion and finds that Plaintiff's proposed response satisfies her obligation to respond to the discovery request.

However, Plaintiff's response only occurred as the result of this motion, which increases the litigation costs in this case. Defendant requests sanctions for misuse of discovery pursuant to Code of Civil Procedure § 2023.010 ("Misuses of the discovery processes include, but are not limited to ... (d) failing to respond or submit to an authorized method of discovery ... ") and Code of Civil Procedure § 2023.030. ("To the extent authorized by the Chapter governing any particular discovery method or any other provision of this title, the Court, after notice to any affected party, person or attorney, and after opportunity for hearing, may impose ... sanctions against anyone engaging in conduct that is a misuse of the discovery process ... "). In addition to these provisions, Code of Civil Procedure § 2033.280(c) makes it mandatory that the court impose a monetary sanction on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion. The court finds that sanctions are warranted and shall impose them.

Defendant requests sanctions be awarded against Plaintiff in the amount of $2,640 pursuant to Code of Civil Procedure § 2033.280(c). This includes a $60 filing fee, and two hours to prepare the motion, four hours to prepare for the hearing on the motion at the hourly rate of $340, and an additional $500 of attorney's fees to argue the motion at the hearing. Declaration of Michael Thomas, dated November 28, 2023, ¶¶10-15. The court finds that seven hours of attorney time is excessive, given the extent of pleadings filed and the limited issues before the court at this time. The court finds that a reasonable amount of time expended on the case is

about 2.5 hours. The court finds that the $340 hourly rate is reasonable and, along with the $60 in filing fees, the court orders Plaintiff to pay Defendant $910 as a sanction by February 16, 2024.

TENTATIVE RULING #8: DEFENDANT'S MOTION TO DEEM ADMITTED THE MATTERS SPECIFIED IN THE REQUESTS FOR ADMISSION IS DENIED. THE COURT FINDS SANCTIONS ARE APPROPRIATE UNDER CODE OF CIVIL PROCEDURE § 2033.280(C), DUE TO THE UNTIMELY RESPONSE WHICH NECESSITATED THE FILING OF THIS MOTION. THE COURT ORDERS PLAINTIFF TO PAY DEFENDANT $910 AS A SANCTION BY FEBRUARY 16, 2024.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

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9. 23CV2203 GRAVES-MERCADO v. GOMEZ

Compromise Minor's Claim

This is a Petition to compromise a minor's claim. Petitioner, the minor's parent, states the minor sustained injuries including a concussion, whiplash, a fractured right elbow and damage to his teeth in an auto accident in 2020. Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $115,000.

There is no accident investigation report by a law enforcement agency included with the Petition, as is required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A(4).

The Petition states the minor incurred $5,000 in medical expenses that were partially covered by private insurance. Petitioner indicates that $2,500 would be deducted from the settlement amount. There is no invoice or other documentation substantiating the claim for payment of $2,500 in medical expenses attached to the petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The Petition states that the minor has fully recovered from the injuries allegedly suffered and there are no permanent injuries. A doctor's report concerning the minor's condition and prognosis of recovery is attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

The Petition does not request the deduction of any attorney's fees from the settlement.

The Petition also requests reimbursement for costs in the amount of $575.00. There are no copies of bills substantiating the claimed costs attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6). Local Rule 7.10.12A(4) also requires a copy of any existing accident investigation report be filed with the petition.

Petitioner also requests an order to deposit money into a blocked account in the minor's behalf. The order is missing the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court**,** Rule 7.10.12A(7). The proposed Order filed by Petitioner also mis-states the amount to be deposited, as the $115,000 total does not reflect deductions for medical expenses ($2,500) and costs ($575).

TENTATIVE RULING #9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 19, 2024, IN DEPARTMENT NINE. PETITIONER IS ENCOURAGED TO BRING DOCUMENTATION OF MEDICAL EXPENSES AND COSTS THAT WILL BE DEDUCTED FROM THE SETTLEMENT AMOUNT, ANY EXISTING ACCIDENT REPORT FOR THE INCIDENT THAT CAUSED THE MINOR'S INJURIES, AND THE NAME AND ADDRESS OF THE INSTITUTION WHERE THE SETTLEMENT FUNDS WILL BE DEPOSITED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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10. 22CV1028 MUSCI v. BANK OF AMERICA, N.A.

Summary Judgment/Summary Adjudication

Plaintiff obtained a loan secured by real property from Bank of America on June 24, 2009. UMF No. 1. Defendant Rushmore Loan Management Services ("Rushmore") became the servicer of the loan in 2015. UMF No. 2. Plaintiff received two loan modifications from Defendant in 2017 and 2019. Declaration of Joshua Nelms, dated October 26, 2023 ("Nelms Declaration"), ¶¶9-10 and Exhibits 14-15. Plaintiff later applied for additional loan modifications, which Defendant denied in 2021 and 2022. Nelms Declaration, ¶11, Exhibits 15-16; Complaint ¶14. Plaintiff filed the instant action on July 26, 2022. UMF No. 5.

The core of Plaintiff's Complaint is that Defendant breached its contract, is subject to promissory estoppel for its representations, and has violated various statutory provisions because it did not grant Plaintiff's most recent loan modification requests. On December 9, 2022, as to Defendant Rushmore, a demurrer to the Complaint was granted as to the First, Second, Third, Fourth and Fifth Causes of Action, which left the Seventh and Eighth Causes of Action in place. Plaintiff was given leave to amend the Complaint within ten days of the Order. Plaintiff did not file a First Amended Complaint until December 31, 2022, and did not request leave of the court for the late filing. Accordingly, Defendant's Motion to Strike the First Amended Complaint was granted on March 3, 2023, and Plaintiff's Motion to Set Aside that order was denied on April 28, 2023.

Defendant now moves for summary judgment, or in the alternative, summary adjudication of two causes of action that remain, which are based on the Truth in Lending Act and the Fair Debt Collection Act.

Defendant argues that as to the Seventh Cause of Action for violation of the Truth in Lending Act, 15 U.S.C. §§ 1601-1667f ("TLA"), Defendant is not liable because the undisputed evidence establishes that 1) Defendant sent monthly statements, and 2) Defendant cannot be held liable for a violation because it does not meet the definition of a "creditor" under the TLA.

As to the Eighth Cause of Action based on the Fair Debt Collection Act ("FDCA") Defendant argues that it is entitled to summary judgment because the undisputed evidence establishes that Defendant did not misrepresent the amount of the debt.

<u>Summary Judgment Standard</u>

> [S]ummary judgment or summary adjudication is to be granted when there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law." (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894–895, 83 Cal.Rptr.3d 146.) The "party moving for summary judgment bears an initial burden of production to make a prima

> facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 861–862, 107 Cal.Rptr.2d 841, 24 P.3d 493.)
>
> "A defendant seeking summary judgment bears the initial burden of proving the cause of action has no merit by showing that one or more of its elements cannot be established or there is a complete defense to it.... [Citations.]" (*Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037, 128 Cal.Rptr.2d 660.)

Alvarez v. Seaside Transportation Servs. LLC, 13 Cal. App. 5th 635, 641–42, 221 Cal. Rptr. 3d 119, 124–25 (2017)

Undisputed Material Facts

There are only five undisputed material facts ("UMF") listed in the Separate Statement filed in support of this motion, and Plaintiff has registered objections to the evidence supporting those facts. Therefore, the court will address each in turn to establish the factual context on which this summary judgment motion depends.

Undisputed Material Fact No. 1: Bank of America issued a loan to Plaintiff.

Plaintiff objects to Exhibits 1 and 2 referenced in Paragraph 5 of the Nelms Declaration, which are the Note evidencing a loan to Plaintiff and the Deed of Trust which secures the loan against the Plaintiff's property. This objection is not well-taken, given that Exhibit 2 of the Nelms Declaration is the same document that Plaintiff attached to her verified Complaint as Exhibit A, and Exhibit 1 of the Nelms Declaration (the Note) corresponds to the Deed of Trust in all pertinent details, including the address of the property, the date and amount of the loan, and Plaintiff's notarized signature. Further, if Plaintiff's objection to the Note is that it is not the actual Note secured by the Deed of Trust that is attached to Plaintiff's Complaint, Plaintiff has not listed any contradicting evidence in its objection to Defendant's Separate Statement of Undisputed Facts, as required by Code of Civil Procedure § 437c(b)(3).[5]

Plaintiff's objections to Undisputed Material Fact No. 1 are overruled.

[5] "The opposition papers shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts the opposing party contends are disputed. *Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence*. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion." Code of Civil Procedure § 437c(b)(3) (emphasis added).

Undisputed Material Fact No. 2: Rushmore became servicer of the loan.

Plaintiff objects to Paragraphs 4 and 7 of the Nelms Declaration, and to Exhibit 3. Paragraph 4 states that the declarant has access to and has reviewed documents related to the loan secured by Plaintiff's property, that Defendant is the loan servicer for the current owner and beneficiary of the loan, and that Defendant is the primary source of information related to the servicing and documents concerning the loan. Given that the declarant is an employee of Defendant and access to the information recited in that Paragraph is within the scope of the declarant's duties, Plaintiff's objection based on lack of personal knowledge is unsupported. The statements in that paragraph do not depend on information in documents generated by third parties. See discussion under Undisputed Material Fact No. 3, below.

Paragraph 7 states that the "[s]ervicing of the Loan transferred to Rushmore effective October 1, 2015. A true and correct copy of the notice of servicing transfer is attached as Exhibit 4." The court notes that Plaintiff has not objected to Exhibit 4, which is a notification to Plaintiff that the "servicing of your mortgage loan has been transferred . . . to Rushmore Loan Management Services." In fact, every allegation of Plaintiff's Complaint assumes the truth of this document because it alleges that Rushmore has breached its contract with and its duties and statutory obligations toward with Plaintiff by denying requested loan modifications and failing to send loan documents.

Exhibit 3 evidences a loan modification that Plaintiff sought from Bank of America with a signature dated April 2, 2014. This document is not relevant to the identity of Defendant as servicer of the loan from 2015.

Plaintiff's objections to Undisputed Material Fact No. 2 are overruled.

Undisputed Material Fact No. 3: Rushmore sent Plaintiff monthly mortgage statements.

Plaintiff objects to Paragraph 8 of the Nelms Declaration, and to Exhibits 4-12. Exhibit 4 is discussed above. Exhibits 5-12 are the monthly mortgage statements which Defendant alleges were sent to Plaintiff between 2015 and 2022. Paragraph 8 declares that Rushmore sent these statements to Plaintiff beginning on October 9, 2015, and continuing monthly thereafter through 2022, and that Exhibits 5-12 are true and correct copies of those statements. This represents the only fact in Defendant's Separate Statement that Plaintiff disputes, and the admissibility of these documents underlie a key argument in Plaintiff's opposition to the instant motion.

Plaintiff objects to the monthly statements introduced as evidence of this undisputed material fact because they lack foundation as business records and because of a lack of declarant's personal knowledge to authenticate those records, citing Evidence Code § 400, 403,

1271, 1400[6], Herrera v. Deutsche Bank Nat'l Tr. Co., 196 Cal. App. 4th 1366 (2011) and People v. Crabtree, 169 Cal. App. 4th 1293.

In the Herrerra case, the issue was whether defendant CRC was a trustee under a deed of trust; plaintiff claimed CRC had not established through documentary evidence that it was a trustee and therefore had no authority to conduct the foreclosure sale on property that secured plaintiff's mortgage loan. The documents offered by defendants that would have proven that CRC was a trustee authorized to foreclose on the property were an Assignment of Deed of Trust showing that Deutsche Bank was the beneficiary of the mortgage loan, and a Substitution of Trustee recorded by Deutsche Bank that made CRC the trustee. To establish the authenticity of those two documents and the truth of their contents, the defendants relied on a declaration of a

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[6] A "'preliminary fact' means a fact upon the existence or nonexistence of which depends the admissibility or inadmissibility of evidence. The phrase "the admissibility or inadmissibility of evidence" includes the qualification or disqualification of a person to be a witness and the existence or nonexistence of a privilege. Evidence Code § 400.

"The proponent of the proffered evidence has the burden of producing evidence as to the existence of the preliminary fact, and the proffered evidence is inadmissible unless the court finds that there is evidence sufficient to sustain a finding of the existence of the preliminary fact, when:

(1) The relevance of the proffered evidence depends on the existence of the preliminary fact;
(2) The preliminary fact is the personal knowledge of a witness concerning the subject matter of his testimony;
(3) The preliminary fact is the authenticity of a writing; or
(4) The proffered evidence is of a statement or other conduct of a particular person and the preliminary fact is whether that person made the statement or so conducted himself."

Evidence Code § 403.

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

(a) The writing was made in the regular course of a business;
(b) The writing was made at or near the time of the act, condition, or event;
(c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and
(d) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

Evidence Code § 1271.

Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law. Evidence Code § 1400.

custodian of records employed by CRC, who declared that the records were made in the ordinary course of business by persons with a duty to make such records and were made about the time of the events reflected in the records. Herrerra, 196 Cal. App. 4th at 1372.

The Herrerra court noted that the two documents were critical to bridge an "evidentiary gap" establishing that Deutsche Bank was an assignee with authority to substitute the trustee, and that it had actually substituted CRC as trustee. The declaration by the CRC employee that purported to authenticate the Assignment of Deed of Trust and Substitution of Trustee documents that had been executed by CRC's predecessors in interest stated that those documents had been recorded, which in itself did not establish the truth of the facts contained in the documents. Herrerra at 1376. The declaration did not affirmatively show that the CRC-employed declarant was competent to testify as to the fact that the loan was assigned by JP Morgan Chase Bank to Deutsche Bank based on the CRC employee's personal knowledge. Id. Accordingly, the documents were considered hearsay by the court.

Although the defendant tried to argue the applicability of the business records exception to the hearsay rule, the court noted that the declaration did not provide any information "establishing that the sources of the information and the manner and time of preparation were such as to indicate trustworthiness." Id. at 1376. Nor was there evidence in the record as to how the declarant could have testified to the source of that information or how the documents were prepared. Id. The declaration did not include any statement that the documents introduced into evidence in that case were "true and correct copies." Id. at 1377, note 6. Finally, the declaration contained a confusing statement as to whether CRC was substituted as trustee for the Long Beach Mortgage Company or visa versa. Id. at 1378. The Herrerra court noted that "[o]n a motion for summary judgment, the affidavits or declarations of the moving party are strictly construed against the moving party" and declined to apply the business records exception to accept as undisputed the facts recited in the offered documents. Id. at 1377.

The declaration that seeks to establish the issuance of monthly statements in this case does not suffer from the same defects as the Herrerra declaration.[7] First, the declarant is an employee of Defendant, such that with respect to the monthly statements, the declarant

[7] Paragraph 8 of the Declaration states:

> Beginning on October 9, 2015, and continuing every month thereafter through the filing of the instant lawsuit, Rushmore sent Plaintiff monthly mortgage statements for the Loan. True and correct copies of the monthly statements Rushmore sent in 2015, 2016, 2017, 2018, 2019, 2020 and 2021 are attached as Exhibit 5 through 11. True and correct copies of the monthly statements sent in 2022 through the filing of the instant lawsuit are attached as Exhibit 12.

addresses business records issued by Defendant, not records generated by Defendant's predecessors in interest. Nelms Declaration, ¶1. The declarant regularly verifies Defendant's business records in the course of his employment, including documents related to loan accounts, and is familiar with Defendant's business operations. Nelms Declaration, ¶2. The declarant testified that Defendant's business record concerning individual loans are "made by persons employed by Rushmore who have a duty to make records accurately," that the business records are made at or near the time of their occurrence, thus evidencing the trustworthiness of the sources of information. Id. The declarant testifies that he has personal knowledge of the facts set forth in the Declaration. Id.

Plaintiff also objects to the monthly statements based on the holding of the court in People v. Crabtree, 169 Cal. App. 4th 1293. That case is not helpful to Plaintiff's argument, as it was a criminal case in which the court held that a retail sales receipt for the purchase of bubble bath did not meet the requirements of the business records exception to the hearsay rule because the FBI Special Agent who found the receipt among the possessions of an accused child molester was not a qualified witness to authenticate the sales receipt as a business record of the store where it was purchased. This case is distinguishable because the declarant in this case has fundamentally different qualifications to authenticate the business records of his own employer.

Plaintiff's objections to Undisputed Material Fact No. 3 are overruled.

Undisputed Material Fact No. 4: The loan's terms allow interest, valuation/inspection costs, late charges, property tax advances, insurance costs and other fees to be charged to the loan.

Plaintiff objects to Paragraph 12 of the Nelms Declaration, and to Exhibits 1-2. Exhibits 1-2 are discussed above, and Plaintiff's objections to those Exhibits are overruled.

Paragraph 12 of the Nelms Declaration states in part that "[b]etween June 25, 2021 and June 26, 2022, Rushmore charged Plaintiff for valuation/inspection costs . . . , late charges. . . , property tax advances . . . , and insurance charges". Plaintiff indicates this statement is "undisputed" even while asserting an objection to the paragraph containing that statement in the Declaration. Plaintiff admits the actual assessment of at least some of these charges in her Seventh and Eighth Causes of Action. Complaint, ¶77, 83. Exhibit A to the Complaint consists of the Deed of Trust that lists these as authorized charges.[8] If Plaintiff's objection is to declarant's

[8] The Deed of Trust defines "Note" as "the promissory Note signed by Borrower and dated June 24, 2009. The Note states that Borrower owes Lender [$342,900] plus interest . . ."

The Deed of Trust defines "Loan" as "the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest."

statement that "Rushmore has not charged Plaintiff any unauthorized amounts," that statement is a legal conclusion that is not listed in Defendant's Separate Statement as an undisputed material fact and so is beyond the scope of determining whether there is a triable issue of fact in this case.

Plaintiff's objections to Undisputed Material Fact No. 4 are overruled.

Undisputed Material Fact No. 5: Plaintiff filed the instant action on July 26, 2022.

Defendant seeks judicial notice of this fact, which is contained within the court's files. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453.

Plaintiff indicates this statement is "undisputed" even while asserting the same objection in the other sections of the Separate Statement directed at the Nelms Declaration for "lack of foundation". Plaintiff does not oppose or otherwise address Defendant's request that the court take judicial notice of the date the Complaint was filed. Accordingly, Defendant's request for judicial notice is granted and Plaintiff's objections to Undisputed Material Fact No. 5 are overruled.

Seventh Cause of Action.

The alleged statutory violations cited in the Seventh Cause of Action in Plaintiff's Complaint is of 12 CFR § 1026.41, which is set forth in Subpart E (Special Rules for Certain Home Mortgage Transactions) of 12 CFR Part 1026 ("Regulation Z"), "issued by the Bureau of

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Paragraph 1 of the Deed of Trust provides: "Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note."

Paragraph 14 of the Deed of Trust provides: "Lender may charge borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lenders' interest in the Property and rights under this Security Instrument, including but not limited to, attorney's fees, property inspection and valuation fees. In regard to other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or Applicable Law."

Consumer Financial Protection to implement the Federal Truth in Lending Act."[9] Plaintiff alleges that she "has not received any statement on the subject loan in a number of years." Complaint, ¶75.

Section 1026.41(a) requires periodic statements for residential mortgage loans:

> (1) Scope. This section applies to a closed-end consumer credit transaction secured by a dwelling, unless an exemption in paragraph (e) of this section applies. A closed-end consumer credit transaction secured by a dwelling is referred to as a *mortgage loan* for purposes of this section.
>
> (2) Periodic statements. A servicer of a transaction subject to this section shall provide the consumer, for each billing cycle, a periodic statement meeting the requirements of paragraphs (b), (c), and (d) of this section. If a mortgage loan has a billing cycle shorter than a period of 31 days (for example, a bi-weekly billing cycle), a periodic statement covering an entire month may be used. For the purposes of this section, *servicer* includes the creditor, assignee, or servicer, as applicable. A creditor or assignee that does not currently own the mortgage loan or the mortgage servicing rights is not subject to the requirement in this section to provide a periodic statement.

Plaintiff contends that these monthly statements were not provided by Defendant. As discussed above, Plaintiffs objections to Defendant's evidence of having sent such statements is overruled. Plaintiff does not address the issue of monthly statements in her Declaration, dated January 4, 2023[10], opposing this motion. The only contrary evidence offered in Plaintiffs' arguments (but not in the Separate Statement, as required by Code of Civil Procedure § 437c(b)(3)), is an excerpt of Plaintiff's deposition of August 30, 2023, which is attached to Defendant's Appendix of Evidence as Exhibit 17 to the Declaration of Neil Cooper, dated October 24, 2023 ("Cooper Declaration"). In that testimony Plaintiff acknowledged that she had received or recalled seeing documents that looked like Rushmore's monthly statements that she was shown during the deposition. Cooper Declaration, Exhibit 17, pages 24:12-25:14. Plaintiff argues that the deposition testimony only establishes that Plaintiff admitted to receiving documents that looked like the statements she was shown in the deposition but she never stated that they were the documents that she received or that the statements were provided monthly. Plaintiff also questions the evidentiary value of the Nelms Declaration, which declares that monthly

[9] Plaintiff also alleges a violation of 12 CFR § 1026.7, Complaint ¶78, but that section applies to "open-end credit" accounts, in which "the creditor reasonably contemplates repeated transactions" such as a home equity line of credit. Plaintiff's account with Defendant is a "closed-end" credit transaction (residential mortgage transaction) as defined by the regulations, and so Section 1026.7 is not applicable to this case.

[10] The Declaration is dated January 4, 2023, but was filed on January 5, 2024. The court presumes the date of the Declaration is a typographical error.

statements were sent to Plaintiff between 2015 and 2022, and attaches and authenticates each monthly statement generated between 2015 and 2022.

Plaintiff is correct that "the sole declaration of a party opposing a summary judgment motion which raises a triable issue of fact is sufficient to deny that motion. Est. of Housley, 56 Cal. App. 4th 342, 359 (1997). However, neither Plaintiff's declaration nor her deposition says that she did not receive monthly statements, and her deposition does not affirmatively say that the statements were not received on a regular basis. This absence of an affirmative factual representation does not raise a triable issue of material fact sufficient to contradict the Nelms Declaration and its attachments of statements for every month between 2015 and the date the Complaint was filed in 2022. The Est. of Housley case cited by Plaintiff involved an express statement in a declaration that affirmatively contradicted the evidence submitted in support of a summary judgment motion. Even giving Plaintiff's vague deposition statements a liberal construction, Saelzler v. Advanced Grp. 400, 25 Cal. 4th 763, 768 (2001), they do not amount to an affirmative factual contradiction of Defendant's evidence.

Accordingly, the court finds that there is uncontradicted evidence that monthly statements were sent to Plaintiff in accordance with statutory requirements, such that the sole allegation of a statutory violation that is the basis for the Seventh Cause of Action cannot be established and the Plaintiff has not produced evidence of any triable issue of material fact on this issue. Code of Civil Procedure § 437c(p)(2).

Having found no triable issue of fact regarding the monthly statements, the court need not address Defendant's argument that the TLA does not apply because Defendant is not included within statutory definitions of a "creditor".

Eighth Cause of Action: Fair Debt Collection Practice Act ("FDCPA")

Plaintiff alleges that Defendant misrepresented the amount of a debt in violation of the FDCPA. Complaint ¶83. While no specific statutory violation is listed in the Complaint, Plaintiff's Opposition indicates that the by failing to provide monthly statements as required by 12 CFR 1026.41, Defendant was not entitled to collect interest or fees on the loan, and accordingly, its communications to Plaintiff that included assessment of interest and fees misrepresented the amount of the debt in violation of the FCDPA. This issue is resolved by the finding discussed above that Defendant did provide monthly statements that complies with statutory requirements. Accordingly, its inclusion of interest and fees in calculating the amount of Plaintiff's debt was not a misrepresentation or a violation of the FDCPA.

TENTATIVE RULING #10:

(1) DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.

(2) PLAINTIFF'S EVIDENTIARY OBJECTIONS TO THE DECLARATION OF JOSHUA NELMS, DATED OCTOBER 26TH, 2023, ARE OVERRULED.

(3) DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

11. PC20200155 FOSTER v. LYON REAL ESTATE ET AL

Summary Judgment

TENTATIVE RULING #11: AT THE REQUEST OF THE PARTIES, THIS MATTER IS CONTINUED TO 8:31 A.M. ON MARCH 22, 2024, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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12. 23CV1153 HIGH HILL RANCH, LLC v. ALTER

Demurrer

Parties are ordered to appear.

TENTATIVE RULING #12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 19, 2024, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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13. 22UD0384 MURRAY v. CLAMPITT

Order of Examination Hearing

Petitioner obtained a final judgment against Respondent on September 15, 2023. Notice of the Petition and Application for Order of Examination hearing was personally served and filed with the court on November 27, 2023. Appearances are required.

The court also shall issue its oral decision from the November 21, 2023 trial at the hearing.

TENTATIVE RULING #13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 19, 2024, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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14. 23UD0381 ALI v. LACEY

Demurrer

On December 29, 2023, Defendant filed a Demurrer to Plaintiff's Unlawful Detainer Complaint, alleging that the Notice to Pay or Quit failed to include required information under Code of Civil Procedure (CCP) § 1161(2). As such, she argues that the Complaint incorporates a facially defective notice, subjecting it to a demurrer.

On January 2, 2024, Plaintiff filed a Response, in which he declares that the Notice does include the required information under CCP § 1161(2).

The court notes that Defendant has not identified what specific information she believes is required but not included in the Notice. Upon review of the Notice, the court finds that the Notice does include the information required under CCP § 1161(2).

The court overrules the Demurrer. Defendant is directed to answer the Complaint within 5 days.

TENTATIVE RULING #14: THE COURT OVERRULES THE DEMURRER. DEFENDANT IS DIRECTED TO ANSWER THE COMPLAINT WITHIN 5 DAYS.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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15. 23CV2097 HUMBOLDT PACIFIC LLC v. SCHIPPER

Order of Examination Hearing

Petitioner obtained a final judgment against Respondent on September 15, 2023. Notice of the order of examination hearing was personally served on December 10, 2023, and proof of service of the Petition and Application for Order of Examination was filed with the court December 13, 2023.

TENTATIVE RULING #15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JANUARY 19, 2024, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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16. 23CV2102 NAME CHANGE OF BASSARD

Petition for Name Change

Petitioner filed a Petition for Change of Name on December 1, 2023.

Proof of publication was filed on January 9, 2024**,** as required by Code of Civil Procedure § 1277(a).

A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

TENTATIVE RULING #16: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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