

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 6**

**Honorable Evette D. Pennypacker, Presiding**

David Criswell, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: (408) 882-2160

**DATE: November 9, 2023      TIME: 9:00 A.M.**

**TO REQUEST ORAL ARGUMENT:** Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
  - (2) Other side by phone or email that you plan to appear at the hearing to contest the ruling
- (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

**TO APPEAR AT THE HEARING:** The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

[https://www.sccscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml)

**TO HAVE THE HEARING REPORTED:** The Court does not provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

[https://www.sccscourt.org/general\\_info/court\\_reporters.shtml](https://www.sccscourt.org/general_info/court_reporters.shtml)

**TO SET YOUR NEXT hearing date:** You no longer need to file a blank notice of motion to obtain a hearing date. **Phone lines are now open for you to call and reserve a date before you file your motion.** If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Civil Local Rule 8C is in the amendment process and will be officially changed by January 2024.

**Where to call for your hearing date:**

408-882-2430

When you can call:

Monday to Friday, 8:30 am to 12:30 pm

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	23CV410362	The Kanavel Group, LLC, a Wyoming limited liability company vs 1-20 DOES et al	Redwood's Demurrer to Plaintiff's First Amended Complaint is SUSTAINED with 20 days leave to amend. Please scroll down to Lines 1-2 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
2	23CV410362	The Kanavel Group, LLC, a Wyoming limited liability company vs 1-20 DOES et al	Redwood's Motion to Strike is MOOT. Please scroll down to Lines 1-2 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
3	19CV355771	Hector Mendez et al vs Price-Simms, Inc. et al	Defendants' Motion for Summary Judgment is GRANTED. An amended notice of motion with this November 9, 2023 hearing date was served on Plaintiff by U.S. Mail on July 18, 2023. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) Plaintiff is self-represented. Self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure. ( <i>Kobayashi v. Superior Court</i> (2009) 175 Cal.App.4 <sup>th</sup> 536, 543; see also <i>County of Orange v. Smith</i> (2005) 132 Cal.App.4 <sup>th</sup> 1434, 1444; <i>Rappleyea v. Campbell</i> (1994) 8 Cal.4 <sup>th</sup> 975, 984-985.) Plaintiff has done little to move this case forward. On October 2, 2023, the Court granted Defendants' motion to enforce discovery order and ordered Plaintiff to (1) pay the previously ordered \$2,210 in sanctions on or before October 31, 2023 and (2) appear on November 9, 2023 and show cause why this case should not be dismissed for failure to prosecute. Plaintiff did not pay the sanctions and has not so far responded to the Court's order to show cause. Plaintiff also failed to participate in discovery, resulting in Defendants' requests for admissions being deemed admitted. Those admissions support granting Defendants' summary judgment motion. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Moving party to prepare formal order and judgment.

4	22CV406672	Glenn Steiner vs Maria Norins et al	<p>Plaintiff's Motion to Compel Defendant Maria Norins to provide written, verified responses, without objections to Plaintiff's Form Interrogatories and for \$2,994 in sanctions is GRANTED. An amended notice of motion with this November 9, 2023 hearing date was served on September 28, 2023. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) Defendant is self-represented; self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure. (<i>Kobayashi v. Superior Court</i> (2009) 175 Cal.App.4<sup>th</sup> 536, 543; see also <i>County of Orange v. Smith</i> (2005) 132 Cal.App.4<sup>th</sup> 1434, 1444; <i>Rapplelea v. Campbell</i> (1994) 8 Cal.4<sup>th</sup> 975, 984-985.) On March 1, 2023, Plaintiff served form interrogatories on Norins. Norins served unverified objections and one response on March 31 and a verification dated April 9, 2023—four days after the April 5 deadline. The Court has reviewed Plaintiff's separate statement and agrees that Norins must supplement her responses to be code compliant. The Court also finds sanctions appropriate for Norins' failure to meaningfully engage in the discovery process and that counsel's billing rate and number of hours spent is reasonable. Accordingly, Norins is ordered to serve complete, substantive, code compliant responses to these form interrogatories and to pay Plaintiff \$2,944 in sanctions within 30 days of service of this formal order. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Moving party to prepare formal order.</p>
5	22CV406672	Glenn Steiner vs Maria Norins et al	<p>Plaintiff's Motion to Compel Defendant Maria Norins to provide written, verified responses, without objections to Plaintiff's Request for Production of Documents (Set One) and for \$940 in sanctions is GRANTED. An amended notice of motion with this November 9, 2023 hearing date was served on September 28, 2023. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) Defendant is self-represented; self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure. (<i>Kobayashi v. Superior Court</i> (2009) 175 Cal.App.4<sup>th</sup> 536, 543; see also <i>County of Orange v. Smith</i> (2005) 132 Cal.App.4<sup>th</sup> 1434, 1444; <i>Rapplelea v. Campbell</i> (1994) 8 Cal.4<sup>th</sup> 975, 984-985.) Defendant was served with the requests for production on March 20, 2023. To date, she has failed to serve any response. The Court finds sanctions appropriate for Norins' failure to meaningfully engage in the discovery process and that counsel's billing rate and number of hours spent is reasonable. Norins is thus ordered to serve verified, code compliant written responses to Plaintiff's requests for production without objections, to produce all responsive documents, and to pay Plaintiff \$940 in sanctions within 30 days of service of this formal order. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Moving party to prepare formal order.</p>

6	22CV406672	Glenn Steiner vs Maria Norins et al	Plaintiff's Motion to Compel Defendant Maria Norins to provide written, verified responses, without objections to Plaintiff's Special Interrogatories (Set One) and for \$700 in sanctions is GRANTED. An amended notice of motion with this November 9, 2023 hearing date was served on September 28, 2023. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) Defendant is self-represented; self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure. ( <i>Kobayashi v. Superior Court</i> (2009) 175 Cal.App.4 <sup>th</sup> 536, 543; see also <i>County of Orange v. Smith</i> (2005) 132 Cal.App.4 <sup>th</sup> 1434, 1444; <i>Rappleveya v. Campbell</i> (1994) 8 Cal.4 <sup>th</sup> 975, 984-985.) Defendant was served with Plaintiff's special interrogatories (set one) on March 20, 2023. To date, Norins has failed to serve any responses. The Court finds sanctions appropriate for Norins' failure to meaningfully engage in the discovery process and that counsel's billing rate and number of hours spent is reasonable. Norins is therefore ordered to serve verified, code compliant responses to Plaintiff's special interrogatories (set one) without objections, and to pay Plaintiff \$700 in sanctions within 30 days of service of this formal order. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Moving party to prepare formal order.
7	17CV305505	Northern California Collection Service, Inc. et al vs Christopher Newman	Plaintiff's Motion to Enter Default Judgment is GRANTED. Please email a completed form of judgment on JUD-100 to <a href="mailto:Department6@scscourt.org">Department6@scscourt.org</a> , and the Court will promptly enter the order.
8	19CV355094	Persolve Legal Group, LLP vs ISMAIL KANU	Off calendar.
9	20CV363149	Jahan Faridnia vs HPK Corp.	John McCarthy's and Alexis Yudin's Motions to Withdraw as Attorney for Plaintiff Jahan Faridnia is CONTINUED to November 30, 2023 at 9 a.m. in Department 6. The Court's October 23, 2023 order granting counsels' ex parte application to shorten time on their motion stated: "The moving parties are ordered to file a proof of service demonstrating service of notice of the November 9, 2023 hearing date and time on all parties and moving parties' client." The Court could locate no such proof of service in the file. The Court accordingly continues this motion to November 30 at 9 a.m. in Department 6 and again orders counsel to serve notice on all parties and their client. If no proof of service of such notice is on file by the next hearing, the Court will reset this hearing for January 16, 2023 at 9 a.m.
10	20CV371982	2585 Bayshore, LLC vs Mustard Seed Learning Center Nonprofit Corporation et al	Plaintiff's Motion for Terminating Sanctions is CONTINUED and Plaintiff's Motion for Reconsideration is RESET to November 21, 2023 at 9 a.m. in Department 6. The December 19, 2023 hearing date is VACATED. No further notice is required. The Court intends to hear both motions, which are related, on November 21, 2023. Plaintiff's motion for reconsideration was filed on October 6, 2023. Defendant's opposition is due November 15, 2023; any reply is due November 17, 2023. The parties are ordered to file, serve, and email the opposition and reply to <a href="mailto:Department6@scscourt.org">Department6@scscourt.org</a> .

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## **Calendar Lines 1 & 2**

**Case Name:** *The Kanavel Group, LLC v. Milestone Financial, LLC, et al.*

**Case No.:** 23CV410362

Defendant Redwood Holdings, LLC (“Redwood”) demurs to plaintiff The Kanavel Group, LLC’s first amended complaint (“FAC”) and moves to strike portions contained therein.

### **I. Background**

This is an action for wrongful foreclosure. In 2016, Milestone Financial LLC dba Alviso Funding’s (“Milestone Financial”) loaned Plaintiff \$620,000 (the “Loan”) subject to a promissory note (“Note”) secured by real property located at 11820 Foothill Avenue in Gilroy (the “Property”).<sup>1</sup> (FAC, ¶¶ 1, 10.) A Deed of Trust was recorded on December 16, 2016. (FAC, ¶ 11.) In 2018 and 2020, Milestone Financial imposed amended terms for the Loan and Plaintiff had no choice but to agree to the demands each time. (FAC, ¶ 13.)

The 2020 Amended Loan Agreement called for 23 monthly interest-only payments of \$5,647.06 due on the first day of each month beginning March 1, 2020 through January 31, 2022, with an unpaid principal balance of \$662,360.06 due on January 31, 2022. (FAC, ¶ 14.) Plaintiff complied with the terms of the 2020 Amended Loan Agreement. (FAC, ¶ 17.) By December 2021, Plaintiff made all interest payments then due and was preparing to obtain financing to pay of the principal balance (the “Balloon Payment”), however, that month, Milestone Financial recorded a Notice of Default (“2021 NOD”). (FAC, ¶¶ 18-19.) Plaintiff contacted Milestone Financial and its loan servicer but did not receive a sensible explanation for the filing of the 2021 NOD. (FAC, ¶ 20.) As a result of the 2021 NOD, Plaintiff was unable to obtain refinancing and Milestone refused to accept Plaintiff’s offer to pay the principal amount. (FAC, ¶¶ 21-22.)

March 23, 2022, Plaintiff filed an action against Milestone Financial, which initiated settlement discussions with Milestone Financial. (FAC, 23.) On April 14, 2022, the Notice of Trustee’s Sale (“April 2022 NOTS”) was recorded but did not take place as the parties were in settlement discussions. (FAC, ¶ 24.)

On June 27, 2022, another Notice of Default (“2022 NOD”) was recorded, which stated Plaintiff was in default under the Loan in the amount of \$810,819.02. (FAC, ¶ 26.) On September 20, 2022,

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<sup>1</sup> Plaintiff is an LLC wholly-owned by Charles Kanavel.

Plaintiff entered a purchase and sale agreement with Foryou Revocable Living Trust and Orange Coast Title, as agent for the seller and buyer requested a payoff demand statement from Milestone Financial. (FAC, ¶ 29.) Milestone Financial knew of the pending sale, nevertheless, on October 20, 2022, another Notice of Trustee's sale ("October 2022 NOTS") was recorded. (FAC, ¶ 27.) On December 4, 2022, the Property was sold to Redwood.

Plaintiff initiated this action on January 23, 2023, and filed its FAC on June 27, 2023, asserting: (1) wrongful foreclosure; (2) violation of Business & Professions Code section 17200; (3) cancellation of instruments; (4) quiet title; (5) interference with contractual relations; and (6) interference with prospective economic relations. Redwood demurs to each cause of action on the grounds that they fail to allege sufficient facts to state a claim and are uncertain. (Code Civ. Proc., § 430.10, subd. (e).)

## **II. Request for Judicial Notice**

Redwood requests judicial notice of:

- (1) Deed of Trust, recorded on December 16, 2016: Exhibit 1;
- (2) Settlement Agreement, Indemnity, and Seconded Amendment to Promissory Note: Exhibit 2;
- (3) 2021 NOD, recorded on December 15, 2021: Exhibit 3;
- (4) 2021 NOTS, recorded on December 15, 2021: Exhibit 4;
- (5) Note of Rescission, recorded on December 15, 2021: Exhibit 5;
- (6) 2022 NOD, recorded on June 27, 2022: Exhibit 6;
- (7) October 2022 NOTS, recorded on October 20, 2022: Exhibit 7;
- (8) Trustee's Deed Upon Sale, recorded on January 26, 2023: Exhibit 8; and
- (9) Notice of Pendency of Action, recorded on January 30, 2023: Exhibit 9.

The Court may take judicial notice of property records under Evidence Code section 452, subdivisions (c) and (h). (See *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264 (*Fontenot*), disapproved of on other grounds by *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919 [stating that "a court may take judicial notice of the fact of a document's recordation, the date the document was recorded and executed, the parties to the transaction reflected in a recorded document, and the document's legally operative language, assuming there is no genuine dispute regarding the document's authenticity. From this, the court may deduce and rely upon *the legal effect* of

the recorded document, when that effect is clear from its face” (emphasis added)].) Judicial notice of court records is permitted under Evidence Code section 452, subdivision (d). Thus, Redwood’s request for judicial notice is GRANTED.

### **III. Legal Standard**

“The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain.” (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by “[t]he party against whom a complaint [ ] has been filed” to object to the legal sufficiency of the pleading as a whole, or to any “cause of action” stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer “as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children’s Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

Uncertainty is a disfavored ground for demurrer; it is typically sustained only where the pleading is so unintelligible and uncertain that the responding party cannot reasonably respond to or recognize the claims alleged against it. (See *Khoury v. Maly’s of Cal, Inc.* (1993) 14 Cal.App.4th 612, 616 (*Khoury*).) “A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.” (*Ibid.*)

“[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should

be overruled or plaintiff given leave to amend. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

#### **A. Demurrer based on Uncertainty**

Causes of action one through four are asserted against all defendants and causes of action five and six are asserted against Milestone Financial and Redwood, specifically. Whether Redwood was a bona fide purchaser is an issue separate from whether the pleading is uncertain. Moreover, there are specific allegations about Redwood throughout the FAC, and the allegations are not so unintelligible that Redwood cannot reasonably respond to them. (See *Khoury, supra*, 14 Cal.App.4th at p. 616.) Thus, Redwood's demurrer on uncertainty grounds is OVERRULED.

#### **B. Bona Fide Purchaser**

"As a general rule, the purchaser at a nonjudicial foreclosure sale receives title under a trustee's deed free and clear of any right, title or interest of the trustor." (*Moeller v. Lien* (1994) 25 Cal.App.4th 822, 831 (*Moller*).) "A properly conducted nonjudicial foreclosure sale constitutes a final adjudication of the rights of the borrower and lender." (*Id.*, citing *Smith v. Allen* (1968) 68 Cal.2d 93, 96.) "Once the trustee's sale is completed, the trustor has no further rights of redemption." (*Id.*, citing *Ballengee v. Sadlier* (1986) 179 Cal.App.3d 1, 5.) "If the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser." (*Id.*) The term bona fide purchaser means "one who pays value for property without notice of any adverse interest or of any irregularity in the sale proceedings." (*Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1250.) Thus, to qualify as a bona fide purchaser the buyer must: "(1) purchase the property in good faith *for value*, and (2) have no knowledge or notice of the asserted rights of another." (*Id.* at p. 1251, original italics.) Whether a buyer is a bona fide purchaser is ordinarily a question of fact. (*OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1331.)

Plaintiff seeks to set aside the wrongful foreclosure via cancellation of the 2022 NOD because it stated the incorrect amount owed. (FAC, ¶ 26.) Redwood purchased the property at the Trustee's sale on December 5, 2022, and a Trustee's Deed upon Sale was recorded on January 26, 2023. (FAC, ¶ 30.)



Plaintiff alleges Redwood knew or should have known the foreclosure sale was invalid as it was held without proper notice of the continuance of the foreclosure sale to Plaintiff and others. (FAC, ¶ 37.)

Redwood argues it purchased the Property as a bona fide purchaser because: (1) it perfected its interest by recording a Trustee's Deed Upon Sale (RJN at Exh. 8); (2) it had no actual knowledge or constructive notice of any irregularity with the sale (*Ibid.*); and (3) there was no lis pendens or notice of any issues relative to the Property at the time of the sale. (See Memorandum of Points and Authorities ("MPA"), p. 7:22-27.) These are factual matters that cannot be resolved on demurrer; indeed, Redwood's cited cases concerned appeals from judgment and considered evidence outside the pleadings to determine whether a buyer was a bona fide purchaser which the Court cannot do here. (*Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th 935, 950 [factual issues may not be resolved on demurrer]; *Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1058 [demurrer is not an appropriate vehicle for resolving disputed facts]; see also *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374 [court's function on demurrer is limited to testing the legal sufficiency of the complaint].) Thus, Redwood's demurrer on the basis that it is a bona fide purchaser is **OVERRULED**.

### **C. First Cause of Action- 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." (*Sciarratta v. U.S. Bank Natl. Assn.* (2016) 247 Cal.App.4th 552, 562 (*Sciarratta*)). "[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." (*Ibid.*) Plaintiff has the burden to "affirmatively to plead facts demonstrating the impropriety [of the sale]." (*Fontenot, supra*, 198 Cal. App. 4th at p. 270.)

A debtor cannot set aside a foreclosure based on irregularity in the sale procedure without alleging tender of the amount of the secured debt. (*Shuster v. BAC Home Loans Servicing, LP* (2012) 211 Cal.App.4th 505, 512 (*Shuster*)). The rationale is that without allegations of tender, any

irregularities in the sale were not the cause of damages to the borrower. (*Ibid*, citations omitted.) “Recognized exceptions to the tender rule include when: (1) the underlying debt is void; (2) the foreclosure sale or trustee’s deed is void on its face; (3) a counterclaim offsets the amounts due; (4) specific circumstances make it inequitable to enforce the debt against the party challenging the sale; or (5) the foreclosure sale has not yet occurred.” (*Chavez v. Indymac Mortgage Services* (2013) 219 Cal.App.4th 1052, 1062 (*Chavez*).)

Plaintiff alleges the foreclosure was unlawful because it was based on a void 2022 NOD, which led to the filing of the October 2022 NOTS and ultimately, the wrongful foreclosure. (FAC, ¶¶ 35-36.) Plaintiff was harmed by the foreclosure. (FAC, ¶ 40.) Plaintiff further alleges it offered to pay the amount Plaintiff believed was due under the Note and is still willing to do so. (FAC, ¶ 39.) Plaintiff argues it is excused from the tender requirement because the 2022 NOD is void.

Plaintiff relies on *Angell v. Superior Court* (1999) 73 Cal.App.4th 691 (*Angell*) in support of its contention that the 2022 NOD was void. *Angell* was an appeal from a summary judgment in which a mistake as to the amount owed was discovered after a trustee’s acceptance of a buyer’s bid but before the trustee’s deed was issued. (*Id.* at p. 695.) The buyers rescinded the sale after they were told the total obligation against the property was higher than their bid and they were incorrectly informed that the deed of trust was a first deed of trust, when there were actually two promissory notes. (*Id.* at p. 696.) They subsequently tried to tender the amount again, but it was refused. (*Ibid.*) The court found that the notice defects were substantial such that it was equivalent to no notice at all and thus, the sale was void. (*Id.* at p. 699.) *Angell* is distinguishable from the instant case for the following reasons: it pertains to an appeal post-judgment and there is only one loan at issue. Moreover, as the Court addresses below, Plaintiff offers no facts as to how the 2022 NOD is a gross misstatement of the amount owed. Thus, Plaintiff’s reliance on *Angell* is unavailing.

Redwood contends Plaintiff authorized the fees, in its dealing with Milestone Financial.

“While the ‘allegations [of a complaint] must be accepted as true for purposes of demurrer,’ the ‘facts appearing in exhibits attached to the complaint will also be accepted as true, and if contrary to the allegations in the pleading, will be given precedence.’” (*Brakke v. Economic Concepts, Inc.* (2013) 213 Cal.App.4th 761, 767 (*Bakke*); see also *SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th

68, 83 (*SC Manufactured Homes*) [“[i]f the allegations in the complaint conflict with the exhibits, we rely on and accept as true the contents of the exhibits”].)

Paragraph 18 of the Settlement Agreement, Indemnity, and Second Amendment to Promissory Note Secured by Deed of Trust, is titled “Lender Remedies on Default”, which provides,

Advancement for reimbursement by Borrower, any and all costs of collection, including but not limited to, reasonable attorney’s fees incurred on account of such collection activities, whether or not suit is filed herein, with all such sums becoming party of the indebtedness and secured by the Deed of Trust. Any advance paid by Lender, which may include, but not be limited to, past due property taxes, insurance premiums and other obligations required by Borrower shall be subject to an administrative fee provided for above in the paragraph entitled, Agreed Liquidated Damages.

(See FAC, Exh. C, ¶ 18; RJN, Exh. 2, ¶ 18.)<sup>2</sup>

The Agreed Liquidated Damages is contained in Paragraph 15 of the Settlement Agreement, Indemnity, and Second Amendment to Promissory Note Secured by Deed of Trust and it provides specific terms regarding late charges on monthly payments, the default interest rate, and lender advances. (*Id.* at ¶ 15.)

The 2022 NOD stated the default amount was \$810,819.02. (Complaint, Exh. E; RJN, Exh. 6.) It stated Plaintiff was in default due to “the unpaid principal balance of \$655,139.53, which became due on January 31, 2022, plus accrued interest, late charges, advances, attorney fees, and foreclosure fees.” (*Ibid.*) Plaintiff fails to allege how the amount in the 2022 NOD was excessive, how it contained unauthorized fees, or how the default amount was a gross misstatement in the amount such that the foreclosure sale is void. Therefore, Plaintiff fails to allege how the sale of the Property was unlawful. Plaintiff also fails to allege tender or excuse from the tender requirement. (*Shuster, supra*, 211 Cal.App.4th at p. 512.) As a result, Plaintiff fails to allege sufficient facts to state this claim. (*Sciarratta, supra*, 247 Cal.App.4th at p. 562.) Thus, Redwood’s demurrer to the first cause of action is SUSTAINED with 20 days leave to amend.

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<sup>2</sup> The Settlement Agreement, Indemnity, and Second Amendment to Promissory Note Secured by Deed of Trust is attached to the FAC, thus it is properly considered on this demurrer. (See *SCEcorp. V. Superior Court* (1992) 3 Cal.App.4th 673, 677.)

**D. Second Cause of Action-Violation of Business and Professions Code section 17200, et seq.**

“Business and Professions Code section 17200 et seq. prohibits unfair competition, including unlawful, unfair, and fraudulent business acts. The UCL covers a wide range of conduct. It embraces anything that can properly be called a business practice and that at the same time is forbidden by law.” (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143 (*Korea*).) “Section 17200 ‘borrows’ violations from other laws by making them independently actionable as unfair competitive practices. In addition, under section 17200, a practice may be deemed unfair even if not specifically proscribed by some other law.” (*Id.*)

Plaintiff’s UCL claim is based on conduct pertaining to the loan and the foreclosure process, but Plaintiff fails to allege Redwood was involved in any of that conduct, and since Redwood’s demurrer to the wrongful foreclosure claim has been sustained, Plaintiff has not sufficiently alleged Redwood’s title is invalid. Thus, Redwood’s demurrer to the second cause of action is SUSTAINED with 20 days leave to amend.

**E. Third Cause of Action-Cancellation of Instruments**

“Under Civil Code section 3412, ‘[a] written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.’ To prevail on a claim to cancel an instrument, a plaintiff must prove (1) the instrument is void or voidable due to, for example, fraud, and (2) there is a reasonable apprehension of serious injury including pecuniary loss or the prejudicial alteration of one’s position.” (*U.S. Bank National Assn. v. Naifeh* (2016) 1 Cal.App.5th 767, 778.)

Plaintiff alleges the 2021 NOD, April 2022 NOTS, 2022 NOD, October 2022 NOTS, and the Trustee’s Deed Upon Sale are all void. (FAC, ¶¶ 49-53.) It further alleges that if the instruments are left outstanding, it would cause serious injuries to Plaintiff. (FAC, ¶ 54.) On June 21, 2022, there was a rescission of the 2021 NOD. (RJN, Exh. 5.) Plaintiff alleges while the April 2022 NOTS was recorded and scheduled, it did not go through because the parties were engaged in settlement discussions. (FAC, ¶ 25.) As the Court stated above, Plaintiff fails to allege sufficient facts to establish that the 2022 NOD

is void. As a result, Plaintiff's allegations that the October 2022 NOTS and the Trustee's Deed Upon Sale are void because they are based on the 2022 NOD is contradicted by the allegations and judicially noticeable materials. (See *Brakke, supra*, 213 Cal.App.4th at p. 767; see also *SC Manufactured Homes, supra*, 162 Cal.App.4th at p. 83.) Thus, Redwood's demurrer to the third cause of action is SUSTAINED with 20 days leave to amend.

#### **F. Fourth Cause of Action-Quiet Title**

"To maintain an action to quiet title a plaintiff's complaint must be verified and must include (1) a description of the property including both its legal description and its street address or common designation; (2) the title of plaintiff as to which determination is sought and the basis of the title; (3) the adverse claims to the title of the plaintiff against which a determination is sought; (4) the date as of which a determination is sought and, if other than the date the complaint is filed, a statement why the determination is sought as of that date; and (5) a prayer for determination of plaintiff's title against the adverse claims." (Code Civ. Proc., § 761.020.) The purpose of a quiet title action is to settle all conflicting claims to the property and to declare each interest or estate to which the parties are entitled. (See *Newman v. Cornelius* (1970) 3 Cal.App.3d 279, 284.) "Quieting title is the relief granted once a court determines that title belongs in plaintiff... [T]he plaintiff must show he has a substantive right to relief before he can be granted any relief at all." (*Leeper v. Beltrami* (1959) 53 Cal.2d 195, 216 (*Leeper*).)

The Court is not persuaded by Redwood's argument that Plaintiff's claim cannot survive as a matter of law because Redwood relies entirely on district court cases, which are not binding on this Court. (See *Futrell v. Payday California, Inc.* (2010) 190 Cal.App.4th 1419, 1432, fn. 6 (*Futrell*).) Moreover, those cases are not persuasive because their holdings are conclusory and the only rationale advanced in support is that a quiet title action may not be used to challenge a foreclosure. (See, e.g., *Distor v. U.S. Bank N.A.* (N.D. Cal. 2009) 2009 U.S. Dist. LEXIS 98361 at p. \*17.) Furthermore, in post-foreclosure actions in California, a quiet title claim is frequently brought together with a claim for wrongful foreclosure. (See e.g., *Sciarratta, supra*, 247 Cal.App.4th at p. 558; *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 925; *Mendoza v. JPMorgan Chase Bank, N.A.* (2014) 228

Cal.App.4th 1020.) This makes sense since there is no discernible reason why such issues cannot be resolved at the same time.

Nevertheless, here, the demurrer to Plaintiffs' claims regarding its right to substantive relief have been sustained. As a result, Plaintiff fails to allege facts to establish it has a substantive right to relief. (*Leeper, supra*, 53 Cal.2d at p. 216.) Moreover, as the Court stated above, Plaintiff fails to allege satisfaction of its debt. (See *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 87 [sustaining demurrer due to plaintiff's failure to plead satisfaction of debt]; *Aguilar v. Bocci* (1974) 39 Cal.App.3d 475, 477 [borrower cannot quiet title without discharging the debt].) Thus, Redwood's demurrer to the fourth cause of action is SUSTAINED with 20 days leave to amend.

#### **G. Fifth Cause of Action-Interference with Contractual Relations**

"To state a claim for intentional interference with contractual relations, a plaintiff must plead (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruptions of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*The Kind & Compassionate v. City of Long Beach* (2016) 2 Cal.App.5th 116, 129 (internal citations and quotations omitted.)

Plaintiff alleges on September 26, 2022, it entered a contract with Foryou Revocable Living Trust for the purchase and sale of the Property, and Milestone Financial refused to provide an accurate payoff demand statement with the intent of preventing Plaintiff's performance. (FAC, ¶¶ 63, 65-66.) Redwood had actual knowledge that Milestone Financial was interfering with the contract and it substantially encouraged the interference so that it would obtain the Property at a discounted purchase price. (FAC, ¶¶ 67-68.)

First, Redwood purchased the Property for \$1,000,000 at the foreclosure sale and according to the Trustee's Deed Upon Sale, Plaintiff's debt was \$853,008.36. (See RJN, Exh. 8.) Thus, Plaintiff's allegation regarding purchase at a discounted price is contradicted by judicially noticed facts.

Next, Plaintiff argues that Redwood is vicariously liable for Milestone Financial's acts under aider and abettor theory. "Liability may ... be imposed on one who aids and abets the commission of an intentional tort if the person ... knows the other's conduct constitutes a breach of duty and gives

substantial assistance or encouragement to the other to so act ....” (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 846 [33 Cal. Rptr. 2d 438].)” (*Chen v. PayPal, Inc.* (2021) 61 Cal.App.5th 559, 583 (*Chen*).) However, knowledge alone, even specific knowledge, is not enough to state a claim for aiding and abetting. California law necessarily requires that for aiding and abetting liability to attach, a defendant have made a conscious decision to participate in tortious activity for the purpose of assisting another in performing a wrongful act. Or as the Court of Appeal put it in *Gerard v. Ross* (1988) 204 Cal.App.3d 968, 983 [251 Cal. Rptr. 604], an alleged aider and abettor must have “acted with the intent of facilitating the commission of that tort.” (*George v. eBay, Inc.* (2021) 71 Cal.App.5th 620, 641–642 (*George*), internal citation and quotation marks omitted.)

The FAC fails to plead facts to support aider and abettor liability; Plaintiff’s allegations regarding Redwood’s knowledge and encouragement are conclusory. (See *Casey v. U.S. Bank Nat. Assn.* (2005) 127 Cal.App.4th 1138, 1153 [conclusory allegations were “not ... supported by the rest of the complaint, which fails to allege the banks knew the DFJ Fiduciaries were misappropriating funds from DFJ”]; *George, supra*, 71 Cal.App.5th at p. 641 [“Appellants’ conclusory allegation that eBay was ‘aware’ of ‘unscrupulous buyers who take unfair advantage of sellers’ is manifestly insufficient.”].)

Redwood’s demurrer to the fifth cause of action is SUSTAINED with 20 days leave to amend.

#### **H. Sixth Cause of Action-Interference with Prospective Economic Relations**

To state a cause of action for intentional interference with prospective economic relations, a plaintiff must show “(1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff, (2) the defendant’s knowledge of the relationship, (3) intentionally wrongful acts designed to disrupt the relationship, (4) actual disruption of the relationship, and (5) economic harm proximately caused by the defendant’s action.” (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.) “Intentionally interfering with prospective economic advantage requires pleading that the defendant committed an independently wrongful act... [a]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.” (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130, 1142; see also *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 392-393 [stating that “a plaintiff seeking to

recover for alleged interference with prospective economic relations has the burden of pleading and proving that the defendant's interference was wrongful 'by some measure beyond the fact of the interference itself'"].)

Plaintiff alleges it was in an economic relationship with Foryou Revocable Living Trust, which would have sold the Property and benefitted Plaintiff. (FAC, ¶ 72.) Milestone Financial and Redwood knew about the economic relationship. (FAC, ¶ 73.) Milestone Financial refused to provide an accurate payoff demand statement. (FAC, ¶ 74.) It further alleges Redwood had actual knowledge of Milestone Financial's interference and it substantially encouraged said interference so it could obtain a discounted purchase price on the Property. As stated above, Plaintiff's allegation regarding purchase at a discounted price is contradicted by judicially noticed facts. Plaintiff again argues Redwood is vicariously liable based on aider and abettor theory. However, for reasons stated above, Plaintiff fails to allege sufficient facts in support of its theory. Thus, Redwood's demurrer to the sixth cause of action is SUSTAINED with 20 days leave to amend.

#### **IV. Motion to Strike**

##### **A. Legal Standard**

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.) The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63 (*Turman*), citing *Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.) "Thus, for example, defendant cannot base a motion to strike the complaint on affidavits or declarations containing extrinsic evidence showing that the allegations are 'false' or 'sham.'" (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2020) 7.169.)



A motion to strike portions of a complaint or petition may be brought on the ground that the allegations at issue are “irrelevant” or “improper.” (Code Civ. Proc., § 436, subd. (a).) Irrelevant matter includes (1) an allegation that is not essential to the statement of a claim or defense, (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense, and (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. (See Code Civ. Proc., § 431.10, subds. (b), (c).) Motions to strike are disfavored and cannot be used as a vehicle to accomplish a “line item veto” of allegations in a pleading. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683 (*PH II, Inc.*)). However, where irrelevant allegations are “scandalous, abusive, disrespectful and contemptuous,” they should be stricken from the pleading. (*In re Estate of Randall* (1924) 194 Cal. 725, 731.)

“While under Code of Civil Procedure section 436, a court at any time may, in its discretion, strike portions of a complaint that are irrelevant, improper, or not drawn in conformity with the law, matter that is essential to a cause of action should not be struck and it is error to do so. Where a whole cause of action is the proper subject of a pleading challenge, the court should sustain a demurrer to the cause of action rather than grant a motion to strike.” (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1281, internal citations omitted.)

## **B. Analysis**

Redwood moves to strike the following portions from the FAC, which pertain to punitive damages:

- (1) Paragraph 70: “Defendants...entitled to reasonable punitive damages...”;
- (2) Paragraph 79: “Defendants... entitled to reasonable punitive damages...”;
- (3) Prayer, Page 12, ¶ 9.

Plaintiff’s request for punitive damages is based on its fifth and sixth claims. The demurrer to those claims has been sustained, thus the motion to strike is MOOT.