

**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 14, 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.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml

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https://www.scsccourt.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	19CV342731	Ranjit Sidhu et al vs Jagdip Sidhu	Plaintiffs' motion for judgment on the pleadings is GRANTED; Jagdeep is permitted 10 days leave to file an amended answer in compliance with Code of Civil Procedure section 446. Please scroll down to Line 1 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	19CV340771	Yolande Afawubo vs HSBC Bank USA et al	Defendant's Motion for Summary Judgment is GRANTED. Please scroll down to Line 2 for full tentative ruling. Parties are ordered to appear for argument. Court to prepare formal order.
3	20CV371745	Sung Jung vs George Paik	Defendant Geroqe Paik's Motion to Compel Plaintiff's Responses to Form Interrogatories (General-Set One) and for \$585 in sanctions is GRANTED. An amended notice of motion with this November 14, 2023 hearing date was served on August 17, 2023. Plaintiff failed to file an opposition. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) Plaintiff is now 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 th 536, 543; see also <i>County of Orange v. Smith</i> (2005) 132 Cal.App.4 th 1434, 1444; <i>Rappleyea v. Campbell</i> (1994) 8 Cal.4 th 975, 984-985.) Defendant served this discovery on March 10, 2023 and granted an extension to serve a response to 30 days after the Court ruled on Plaintiff's counsel's motion to withdraw, which made Plaintiff's responses due on May 18, 2023. To date, Plaintiff has failed to serve any responses. The Court finds sanctions appropriate for Plaintiff's failure to engage in the discovery process and that counsel's billing rate and number of hours spent is reasonable. Plaintiff is thus ordered to serve verified, code compliant written responses to Defendant's form interrogatories (general-set one) without objections and to pay Defendant \$585 in sanctions for this motion 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.

4	20CV371745	Sung Jung vs George Paik	<p>Defendant Geroqe Paik's Motion to Compel Plaintiff's Responses to Form Interrogatories (Employment-Set One) and for \$585 in sanctions is GRANTED. An amended notice of motion with this November 14, 2023 hearing date was served on August 17, 2023. Plaintiff failed to file an opposition. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) Plaintiff is now 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.4th 536, 543; see also <i>County of Orange v. Smith</i> (2005) 132 Cal.App.4th 1434, 1444; <i>Rappleyea v. Campbell</i> (1994) 8 Cal.4th 975, 984-985.) Defendant served this discovery on March 10, 2023 and granted an extension to serve a response to 30 days after the Court ruled on Plaintiff's counsel's motion to withdraw, which made Plaintiff's responses due on May 18, 2023. To date, Plaintiff has failed to serve any responses. The Court finds sanctions appropriate for Plaintiff's failure to engage in the discovery process and that counsel's billing rate and number of hours spent is reasonable. Plaintiff is thus ordered to serve verified, code compliant written responses to Plaintiff's form interrogatories (employment-set one) without objections and to pay Defendant \$585 in sanctions for this motion 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	20CV371745	Sung Jung vs George Paik	<p>Cross-Complainant Geroqe Paik's Motion to Compel Cross-Defendant's Responses to Form Interrogatories (Set One) and for \$585 in sanctions is GRANTED. An amended notice of motion with this November 14, 2023 hearing date was served on August 17, 2023. Cross-Defendant failed to file an opposition. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) Cross-Defendant is now 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.4th 536, 543; see also <i>County of Orange v. Smith</i> (2005) 132 Cal.App.4th 1434, 1444; <i>Rappleyea v. Campbell</i> (1994) 8 Cal.4th 975, 984-985.) Cross-Complainant served this discovery on March 10, 2023 and granted an extension to serve a response to 30 days after the Court ruled on Cross-Defendant's counsel's motion to withdraw, which made Cross-Defendant's responses due on May 18, 2023. To date, Cross-Defendant has failed to serve any responses. The Court finds sanctions appropriate for Cross-Defendant's failure to engage in the discovery process and that counsel's billing rate and number of hours spent is reasonable. Cross-Defendant is thus ordered to serve verified, code compliant written responses to Cross-Defendant's form interrogatories (general-set one) without objections and to pay Cross-Complainant \$585 in sanctions for this motion 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	20CV371745	Sung Jung vs George Paik	<p>Defendant Geroge Paik's Motion to Compel Plaintiff's Responses to Special Interrogatories (Set One) and for \$585 in sanctions is GRANTED. An amended notice of motion with this November 14, 2023 hearing date was served on August 17, 2023. Plaintiff failed to file an opposition. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) Plaintiff is now 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.4th 536, 543; see also <i>County of Orange v. Smith</i> (2005) 132 Cal.App.4th 1434, 1444; <i>Rappleyea v. Campbell</i> (1994) 8 Cal.4th 975, 984-985.) Defendant served this discovery on March 10, 2023 and granted an extension to serve a response to 30 days after the Court ruled on Plaintiff's counsel's motion to withdraw, which made Plaintiff's responses due on May 18, 2023. To date, Plaintiff has failed to serve any responses. The Court finds sanctions appropriate for Plaintiff's failure to engage in the discovery process and that counsel's billing rate and number of hours spent is reasonable. Plaintiff is thus ordered to serve verified, code compliant written responses to Defendant's special interrogatories (set one) without objections and to pay Defendant \$585 in sanctions for this motion 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>
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7	20CV371745	Sung Jung vs George Paik	<p>Defendant Geroqe Paik’s Motion to Deem Admitted Requests for Admissions to Plaintiff Sung Su Jung dba AA Merchant Services, Inc. and for \$585 in sanctions is GRANTED. An amended notice of motion with this November 14, 2023 hearing date was served on August 17, 2023. Plaintiff failed to file an opposition. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) Plaintiff is now 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.4th 536, 543; see also <i>County of Orange v. Smith</i> (2005) 132 Cal.App.4th 1434, 1444; <i>Rappleyea v. Campbell</i> (1994) 8 Cal.4th 975, 984-985.) Defendant served this discovery on March 10, 2023 and granted an extension to serve a response to 30 days after the Court ruled on Plaintiff’s counsel’s motion to withdraw, which made Plaintiff’s responses due on May 18, 2023. To date, Plaintiff has failed to serve any responses. A party served with Requests for Admission must serve a response within 30 days. (Code of Civ. Pro. §2033.250.) When a party fails to respond—even in the face of a motion to have the matters in the Requests for Admission deemed admitted—as Defendant has done here, the Court must order the Requests for Admission deemed admitted. (Code of Civ. Pro. §2033.280(c); <i>St. Mary v. Superior Court</i> (2014) 223 Cal.App.4th 762, 775-776.) Such a “deemed admitted” order establishes that the nonresponding party has responded to the requests for admission by admitting the truth of the matters contained in the requests. (<i>Id.</i>) The Court finds sanctions appropriate for Plaintiff’s failure to engage in the discovery process and that counsel’s billing rate and number of hours spent is reasonable. The matters set forth in Defendant’s requests for admission are therefore deemed admitted, and Plaintiff is ordered to pay Defendant \$585 in sanctions for this motion 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>
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8	20CV371745	Sung Jung vs George Paik	Defendant Geroqe Paik's Motion to Compel Plaintiff Sung Su Jung dba AA Merchant Services, Inc. Responses to Form Interrogatories and for \$585 in sanctions is GRANTED. An amended notice of motion with this November 14, 2023 hearing date was served on August 17, 2023. Plaintiff failed to file an opposition. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) Plaintiff is now 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 th 536, 543; see also <i>County of Orange v. Smith</i> (2005) 132 Cal.App.4 th 1434, 1444; <i>Rappleyea v. Campbell</i> (1994) 8 Cal.4 th 975, 984-985.) Defendant served this discovery on March 10, 2023 and granted an extension to serve a response to 30 days after the Court ruled on Plaintiff's counsel's motion to withdraw, which made Plaintiff's responses due on May 18, 2023. To date, Plaintiff has failed to serve any responses. The Court finds sanctions appropriate for Plaintiff's failure to engage in the discovery process and that counsel's billing rate and number of hours spent is reasonable. Plaintiff is thus ordered to serve verified, code compliant written responses to Defendant's form interrogatories without objections and to pay Defendant \$585 in sanctions for this motion 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.
9	21CV385427	Urvashi Bhagat vs Hong Guo et al	Plaintiff's Motion to Compel is GRANTED, IN PART. Please scroll down to line 9 for full tentative ruling. Parties are ordered to appear for argument. Court to prepare formal order.
10	18CV321297	Zhiwei Xu et al vs 230 East Street and Avenue B, LLC	Plaintiffs' Motion to Enforce Settlement is GRANTED. An amended notice of motion with this hearing date was served by electronic and U.S. Mail on October 5, 2023. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) The record reflects that the parties entered a written settlement agreement and agreed that the court retained jurisdiction to enforce its terms pursuant to Code of Civil Procedure 664.6. Defendant failed to make the final settlement payment, even after being given more time to do so. Accordingly, good cause exists for the Court to enforce the parties' terms and enter judgment against Defendant. 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 form of judgment.

11	19CV343869	Luis Sanchez et al vs Ali Nowaid et al	Plaintiff's motion to enforce settlement and for attorneys' fees is GRANTED. While Defendant made the final settlement payment since Plaintiff filed its motion to enforce, it is apparent from this record that the payment was made in response to that motion. Paragraph 13 of the parties' settlement agreement states: "If any legal action is brought under this Agreement for an asserted breach of or to enforce the terms of this Agreement, then the prevailing party shall be entitled to recover costs and reasonable attorneys' fees." The Court finds Plaintiffs the prevailing party on this motion. The Court further finds the number of hours spent and the \$750 per hour rate reasonable for this market and counsel's experience. The Court accordingly orders Defendant to pay Plaintiff \$7,935 in attorneys' fees and costs. 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.
12	20CV363612	Jai Kumar vs Jade Global, Inc.	Motion to Approve Settlement of Individual PAGA Claims is APPROVED. Moving party to prepare formal order.
13	2014-1-CV-264065	C. Berg, Et Al Vs Metaview Wholesale Investments, Lp, Et Al	Plaintiffs' motion for terminating sanctions against Terry and Valerie Houghton is GRANTED. The Court served notice that this matter would be advanced and heard on November 14, 2023. Terry and Valerie Houghton failed to file an opposition. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) The Houghtons served no responses to Plaintiffs' discovery requests and failed to comply with the Court's September 27, 2023 order to produce code compliant responses by October 17, 2023. Trial is set for December 4, 2023. The Court previously issued \$2,060 in sanctions, which the Houghtons also have not paid. Given the Houghtons' willful failure to engage in the discovery process or comply with the Court's discovery order and the failure of monetary sanctions to prompt compliance, terminating sanctions are now appropriate. The Court accordingly strikes the Houghtons' answer and enters default against them. Moving party to prepare formal order.
14	18CV333565	Behnaz Beigi et al vs Bank of America, a Delaware Corporation et al	At the October 12, 2023 status conference regarding settlement, the Court set today's hearing on Bayview's Motion for Summary Judgment based on the representation that Plaintiffs were like to settle with Bank of America but not with Bayview. The Court did not locate either an amended notice of motion or an opposition to Bayview's summary judgment motion in the file. Nor did the Court locate further information regarding the parties' ongoing settlement discussions. The parties are accordingly ordered to appear at the hearing to provide status.

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Calendar Line 1**Case Name:** *Ranjit Sidhu, et al. v. Jagdeep Sidhu, et al.***Case No.:** 19CV342731

Before the Court is plaintiffs Ranjit Sidhu (“Ranjit”) and Gurdip Sidhu’s (“Gurdip”) (collectively “Plaintiffs”) motion for judgement on the pleadings against defendant Jagdeep Sidhu (“Defendant” or “Jagdeep”).¹

I. Background

This action arises from a business dispute between siblings regarding an agreement to operate an Arco franchise.

Plaintiffs initiated this action on May 6, 2019. On May 24, 2019, they filed their first amended complaint, which asserted claims for (1) breach of contract; (2) fraud and deceit- promise without intent to perform; (3) intentional misrepresentation; (4) negligent misrepresentation; (5) conversion; (6) accounting; and (7) declaratory relief. On November 13, 2019, the Court issued its order sustaining Defendants’ demurrer as to the fraud-based claims (the second, third, fourth and fifth causes of action) and overruling as to the remaining claims.

After Defendants filed their demurrer to the FAC, but before the hearing on the motion, Plaintiffs filed a second amended complaint (“SAC”) without the Court’s permission. On March 2, 2020, Plaintiffs filed a motion for leave to file a third amended complaint (“TAC”). On July 10, 2020, the Court issued its ruling on Plaintiffs’ motion, striking the SAC as improper because it was filed without the permission of the Court, but granting Plaintiffs leave to file a new TAC. The motion for leave was therefore denied as moot.

The TAC was filed on July 27, 2020, which asserted: (1) breach of contract by repudiation of general partnership agreement (Corp. Code §§ 16405, subd. (a) and 16401) (against Jagdeep); (2) conversion (Corp. Code §§ 16405, subd. (b)(1) and Civ. Code, §§ 1573 and 1710) (against Jagdeep); (3) breach of partnership fiduciary duty (Corp. Code, § 16404) (against Jagdeep); (4) partnership accounting (Corp. Code, §§ 16403, subds. (a), (b), 16405, subds. (a), (b)) (against Jagdeep and Kaur); (5) specific performance of general partnership agreement (Corp. Code, § 16405, subds. (a), (b)) (against Jagdeep);

¹ The parties share a surname, thus the Court will refer to individuals by their first name. No disrespect is intended. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

(6) equitable estoppel to deny existence of partnership contract/agreement (Corp. Code, § 16404, subd. (b)(1)) (against Jagdeep); (7) provisional remedies for mandatory and prohibitive injunction and court appointment of receiver (Corp. Code, § 16404, subd. (b)(1)) (against Jagdeep); (8) willful violation of the federal and California state mandatory partnership income tax reporting laws (against Jagdeep); and (9) imposition of constructive trust (Corp. Code, § 16040, subd. (b)(1)) (against Jagdeep and Kaur). On February 4, 2021, the Court issued its order granting the motion to strike in its entirety, thereby striking the third, fifth, sixth, seventh, eighth and ninth causes of action, as well as allegations pertaining to Plaintiffs' request for punitive damages.

In July 2022, Kaur filed a motion for judgment on the pleadings as to the third cause of action for partnership accounting pursuant to Corporations Code section 16403 ("Section 16403"), subdivisions (a) and (b), and section 16405 ("16405"), subdivisions (a) and (b)—the only remaining claim asserted against her. On July 28, 2022, the Court granted that motion with 20 days leave to amend.

On September 1, 2022, Plaintiffs filed the operative 4AC asserting: (1) breach of contract by repudiation of General Partnership Agreement- 2002 ARCO Franchise Partnership Agreement (Corp. Code, §§ 16401 and 16405, subd. (a)) (against Jagdeep); (2) conversion (Corp. Code, § 16405, subd. (b)(1) and Civ. Code, §§ 1573 and 1710) (against Jagdeep); (3) breach of partnership fiduciary duty (Corp. Code, § 16404) (against Jagdeep); and (4) partnership accounting (Corp. Code, §§ 16403, subds. (a) and (b), 16405, subds. (a) and (b)) (against Jagdeep and Kaur). On January 9, 2023, the Court sustained Kaur's demurrer to the fourth cause of action without leave to amend.

On October 11, 2023, Plaintiffs filed the instant motion for judgment on the ground that Jagdeep failed to file a verified answer in response to their verified complaint. (See Code Civ. Proc., §§ 438, 446.) Jagdeep opposes.

II. Legal Standard

A motion for judgment on the pleadings is the functional equivalent of a general demurrer. (*Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 548; *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999; *Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1254 (*Shea*).) A defendant can move for judgment on the pleadings on the grounds that (1) the court has no jurisdiction of the subject of the cause of action alleged in the

complaint and/or (2) the complaint does not state sufficient facts to constitute a cause of action. (Code Civ. Proc., § 438, subd. (c)(1)(B)(i)-(ii).) “The grounds for the motion must appear on the face of the complaint, and in any matters subject to judicial notice. The court accepts as true all material factual allegations, giving them a liberal construction, but it does not consider conclusions of fact or law, opinions, speculation, or allegations contrary to law or judicially noticed facts.” (*Shea, supra*, 110 Cal.App.4th at p. 1254 [citations omitted]; *Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672.)

III. Analysis

When a complaint is verified, the answer must be verified. (See Code Civ. Proc., § 446, subd. (a).) When a defendant files an unverified answer to a verified complaint, the plaintiff may seek a default judgment in his favor by filing a motion to strike the answer, or alternatively, may bring a motion for judgment on the pleadings with respect to the defective answer. (See *Hearst v. Hart* (1900) 128 Cal. 327, 328 (*Hearst*).)

Jagdeep’s answer to the 4AC, filed on January 1, 2023, is unverified. Thus, it does not comply with the requirements of Code of Civil Procedure section 446, and the motion for judgment on the pleadings is proper. (See *Hearst, supra*, 128 Cal. at p. 328.) Jagdeep requests leave to file an amended verified answer.

The failure to verify an answer is “no more than a defect in pleading” which can be cured by amendment. (*Jenssen v. R.K.O Studios* (1937) 20 Cal.App.2d 705, 707 (*Jenssen*).) The failure to verify is not jurisdictional and may be cured by amendment at the time of trial in the absence of prejudice. (*United Farm Workers of America v. Agricultural Labor Relations Bd.* (1985) 37 Cal.3d 912, 915; see also *Angier v. Masterson* (1856) 6 Cal. 61 [“it was no error to allow the defendant to verify his answer before trial, unless it in some way took the plaintiff by surprise, and this is not shown”].)

Here, Plaintiffs do not argue they will be prejudiced if amendment is permitted. Furthermore, Jagdeep states he will simply verify his answer “without making any other changes or edits”. (Opp., p. 4:17-18.) Jagdeep contends such an amendment will not prejudice Plaintiffs or surprise them. The Court agrees because the amendment will not alter the substance of the answer and over nine months passed between the filing of the answer and the objection as to verification, thus, Plaintiffs had months

to familiarize themselves with the substance of the answer and they should not be surprised by an amended answer. Accordingly, Plaintiffs' motion for judgment on the pleadings is GRANTED; Jagdeep is permitted 10 days leave to file an amended answer in compliance with Code of Civil Procedure section 446.

Calendar Line 2**Case Name:** *Yolande Afawubo vs HSBC Bank USA et al***Case No.:** 19CV340771

Before the Court is Defendants' Western Progressive, LLC, Ocwen Loan Servicing, LLC, HSBC Bank USA, National Association, as Trustee under Pooling and Servicing Agreement dated as of April 1, 2007, SG Mortgage Securities Trust 2007-NC1 Assetbacked Certificates, Series 2007-NCI motion for summary judgement or in the alternative summary adjudication. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Undisputed Factual Background

On or about October 5, 2006, Plaintiff obtained a \$564,000.00 Loan ("the Loan") secured by real property located at 702 Flannery Street, Santa Clara, CA 95051. (Separate Statement of Undisputed Material Facts ("SSUMF"), ¶ 1; Declaration of Kevin Flannigan ("Flannigan Decl.") ¶ 4, Ex. 1.) The Loan is evidenced by a Deed of Trust publicly recorded by the Santa Clara County Recorder on October 11, 2006. (SSUMF, ¶ 2; Flannigan Decl. ¶ 4, Ex. 1; SAC, Ex. A.)

On July 12, 2007, less than one year after she obtained the Loan, Plaintiff filed for her first Chapter 13 bankruptcy in the United States Bankruptcy Court for the Northern District of California, Petition Number 07-52077. (Request for Judicial Notice "RJN", Exs. 1-2.) After Ocwen filed a Notice of Transfer of Claim, Plaintiff filed an amended plan on July 14, 2011, indicating that HSBC Bank was the transferee of the mortgage claim and Ocwen was the servicer. (RJN, Ex. 4, SSUMF ¶ 5.)

On November 23, 2009, an Assignment of Deed of Trust was publicly recorded assigning the beneficial interest in the property to HSBC. (SSUMF ¶ 3; SAC, Ex. B.) Ocwen began servicing the loan in November 2010.

Plaintiff's first Chapter 13 case was dismissed on September 8, 2011, and on November 29, 2011, Plaintiff filed her second Chapter 13 bankruptcy in the United States Bankruptcy Court for the Northern District of California (San Jose), Petition No. 11-60932. (RJN, Exs. 5-6.) In Plaintiff's second bankruptcy proceeding, she filed a Plan on November 29, 2011, indicating that Ocwen was servicing the loan. (RJN, Ex. 7, SSUMF ¶ 6.)

On November 30, 2011, Plaintiff's bankruptcy counsel filed a declaration regarding the status of the loan modification indicating that the loan modification had yet to be submitted. (RJN, Ex. 8, SSUMF

¶ 7.) On June 19, 2012, Plaintiff's Bankruptcy counsel filed a Declaration by Debtor's Counsel regarding Status of Debtors' Request for Loan Modification and stated that Plaintiff had applied for a loan modification and was awaiting a decision. (RJN, Ex. 9; SSUMF ¶ 8.)

On July 17, 2012, HSBC filed a Proof of Claim in the amount of \$837,714.40, listing a total arrearage of \$278,678.79. (RJN, Ex. 11; SSUMF ¶10.) On April 23, 2015, HSBC filed a Declaration of Javier Rivera re: Non-Cure of Breach of Order Granting Adequate Protection. (RJN, Ex. 12; SSUMF ¶ 11.) The Declaration stated that HSBC caused a written notice of default to be served on Plaintiff and her Bankruptcy counsel by regular mail and Plaintiff had failed to cure the default. (RJN, Ex. 12; SSUMF ¶ 11.) The Declaration also attached a loan modification denial letter from Ocwen dated November 8, 2012. (RJN, Ex. 12; SSUMF ¶ 11.)

On June 2, 2015, Plaintiff's bankruptcy counsel filed a declaration regarding the status of the loan modification that Plaintiff's loan modification request, made on June 19, 2012, was updated on June 2, 2015, based on Plaintiff's change in income and that Plaintiff's request was pending. (RJN, Ex. 13; SSUMF ¶ 12.) On April 17, 2017, Plaintiff's Bankruptcy counsel filed a Declaration By Debtor's Counsel Regarding Status of Debtor's Request for Loan Modification and stated that Plaintiff's loan modification application was denied. (RJN, Ex. 15, SSUMF ¶ 14.) On September 12, 2017, Plaintiff's second bankruptcy was terminated.

On or about April 13, 2018, a Mortgage Assistance letter with a Request for Mortgage Assistance package was sent to Plaintiff at the Property address. (Flannigan Decl. ¶ 9, Ex. 7; SSUMF ¶ 17.) On June 5, 2018, Ocwen sent a letter, per Plaintiff's request, identifying the owner of the Loan as HSBC. (Flannigan Decl. ¶ 14, Ex. 12; SSUMF ¶ 31.) On June 18, 2018, per Plaintiff's request, Ocwen provided Plaintiff with the transaction history, the origination and servicing of the loan. (Flannigan Decl. ¶ 16, 17, Exs. 14-15; SSUMF ¶ 22.) On June 8, 2018, Defendants sent Plaintiff an initial due diligence letter that her account is past due. (Flannigan Decl. ¶ 15, Ex. 13; SSUMF ¶ 21.) On June 19, 2018, a Delinquency Notice was mailed to Plaintiff at the Property address because Plaintiff was in default on her payment obligations for the Loan. (Flannigan Decl. ¶ 18, Ex. 16; SSUMF ¶ 23.)

On July 16, 2018, Defendants approved Plaintiff to enter a trial period plan under an Ocwen Modification Plan. (Flannigan Decl. ¶ 20, Ex. 18; SSUMF ¶ 24.) Plaintiff failed to respond to the trial

period plan. (Flannigan Decl. ¶ 20; Howard Decl. ¶ 3, Ex. A; SSUMF ¶ 25.) On November 7, Ocwen confirmed receipt of Plaintiff's RMA package. (Flannigan Decl. ¶ 26, Ex. 24; SSUMF ¶ 27.) On November 26, 2018, Plaintiff was approved to enter a new trial period under an Ocwen Modification Plan. (Flannigan Decl. ¶ 27, Ex. 25; SSUMF ¶ 28.) Plaintiff failed to respond to the trial period plan. (Flannigan Decl. ¶ 27; SSUMF ¶ 29.)

On October 12, 2018, Ocwen mailed a letter to Plaintiff notifying her that she was in default on her payment obligations for the Loan. The letter noted that the Loan had been accelerated, the Loan was in foreclosure, that the Loan could be reinstated by bringing the Loan current, and that Plaintiff could submit an RMA package. (Flannigan Decl. ¶ 23, Ex. 21; SSUMF ¶ 32.)

When Plaintiff failed to cure her default on her obligation for the Loan, on October 23, 2018, a Notice of Default and Election to Sell Under Deed of Trust was publicly recorded. (Flannigan Decl. ¶ 24, Ex. 22; SAC, Ex. C; SSUMF ¶ 34.) The Notice of Default is supported by a Declaration of Compliance pursuant to Civil Code section 2923.5. To date, the property has not been sold. (SSUMF ¶ 35.)

Subsequently, Plaintiff filed her suit on January 3, 2019, and amended her complaint on March 22, 2019 and again on August 6, 2019 alleging: (1) violation of Civil Code §2923.5, (2) violation of Civil Code §2923.7, (3) breach of contract, (4) negligence, (5) violation of Civil Code §2937, and (6) unfair business practice. (Second Amended Complaint ("SAC").)

II. Legal Standard

A defendant moving for summary judgment has the initial burden to make a prima facie showing there is no merit to a cause of action and that therefore the defendant is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (p)(2); *Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) To satisfy this burden, the moving defendant must show that at least one of the elements of the cause of action has not been established by the plaintiff and cannot reasonably be established or must establish the elements of a complete defense to the cause of action. (Code Civ. Proc., § 437c, subds. (o), (p)(2); *Aguilar, supra*, at p. 849; *Jessen v. Mentor Corp.* (2008) 158 Cal.App.4th 1480 (*Jessen*).) If the moving defendant meets this burden, then the burden shifts to the plaintiff to show that there is at least one triable issue of material

fact regarding the cause of action or as to the complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar, supra*, at p. 849; *Jessen, supra*, at p. 1484.)

Summary judgement is appropriate if there are no triable issues of material fact, and the moving party is entitled to judgement as a matter of law. (Code of Civ. Proc. § 437c, subds. (c); *Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 618) “There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (*Aguilar, supra*, at p. 850, fn. omitted; accord, *Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, 1003.) Courts are required to liberally construe the opposing party’s evidence and resolve any doubts about the evidence in favor of that party. (*Regents of University of California v. Superior Court, supra*, 4 Cal.5th 607 at 618).

“A party may move for summary adjudication as to one or more causes of action within an action ... if that party contends that the cause of action has no merit” (Code Civ. Proc., § 437c, subd. (f)(1).) “The aim of the procedure is to discover whether the parties possess evidence requiring the weighing procedures of a trial. (*Marron v. Superior Court* (2003) 108 Cal.App.4th 1049, 1057 (*Marron*).) “A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment.” (Code Civ. Proc., § 437c, subd. (f)(2).)

III. Defendant’s Request for Judicial Notice

In support of their motion for summary judgment, Defendants request judicial notice of documents, plans, and decisions filed in Plaintiff’s bankruptcy Petitions No. 11-60932 and No. 07-52077. Plaintiff does not object to these requests.

Judicial notice “is always confined to those matters which are relevant to the issue at hand.” (*Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301 [*“Gbur”*].) Evidence Code sections 452 and 453 permit the trial court to “take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or

court files, including pleadings, affidavits, testimony, or statements of fact.” (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882 (“*Lockley*”).)

Defendants’ unopposed request for judicial notice is granted.

IV. Analysis

Defendants assert that Plaintiff’s first, second, fourth, fifth, and sixth causes of actions contain claims that are inconsistent with her previously asserted claims in the Bankruptcy Court and are thus barred under the doctrine of judicial estoppel. Alternatively, Defendants assert:

- They complied with the requirements of Civ. Code § 2923.5; and if not, they are protected by the HBOR “Safe Harbor.”
- They complied with requirement of Civ. Code § 2923.7 by providing Plaintiff with a single point of contact.
- They complied with Civ. Code §§ 2923.7 and 2923.5 and did not breach the notice requirement of the Deed of Trust.
- They owed no duty of care to the Plaintiff as a matter of law and cannot be held liable for negligence.
- They did not violate Bus. & Prof. Code § 17200 (Unfair Competition Law) because Plaintiff’s claim is premised on Defendants’ nonexistent violation of HBOR.

A. Judicial Estoppel

“Judicial estoppel, sometimes referred to as the doctrine of preclusion of inconsistent positions, prevents a party from asserting a position in a legal proceeding that is contrary to a position previously taken in the same or some earlier proceeding. It is an extraordinary remedy to be invoked when a party’s inconsistent behavior will otherwise result in a miscarriage of justice.” (*Jogani v. Jogani* (2006) 141 Cal.App.4th 158, 169 (internal citation and quotation marks omitted).)

“The doctrine applies when (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.” (*Jogani v. Jogani, supra*, 141 Cal.App.4th at p. 169 (internal citations and quotation marks

omitted).) “Numerous decisions have made clear that judicial estoppel is an equitable doctrine, and its application, even where all necessary elements are present, is discretionary.” (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 422.)

Defendants argue judicial estoppel bars these claims because of the following statements and representations made in Plaintiff’s bankruptcy petitions:

- Plaintiff’s July 14, 2011 amended plan proposing to resolve the first mortgage claim owed to HSBC Bank through a HAMP loan modification (RJN Ex. 4; SSUMF ¶ 5, pp.2-3);
- Plaintiff’s November 29, 2011 plan in her second bankruptcy petition proposing to resolve the first mortgage claim owed to OCWEN through a HAMP loan modification (RJN Ex. 7; SSUMF ¶ 6);
- Plaintiff’s bankruptcy counsel’s June 19, 2012 declaration stating Plaintiff had applied for a loan modification and was awaiting a decision (RJN, Ex. 9; SSUMF ¶ 8, p.3);
- HSBC’s April 23, 2015 declaration providing that a written notice of default was served on Plaintiff and submitting a loan modification denial letter dated November 8, 2012. (RJN Ex. 12; SSUMF ¶ 11, p.4);
- Plaintiff’s bankruptcy counsel’s June 2, 2015 declaration that Plaintiff’s loan modification was updated to reflect change of income. (RJN Ex. 13; SSUMF ¶ 12, p.4); and
- Plaintiff’s bankruptcy counsel’s April 17, 2017 declaration that Plaintiff’s loan application was denied and no current loan modification was under review as of April 17, 2017 (RJN Ex. 15; SSUMF ¶ 14, p.5).

Plaintiff alleges in her SAC that Ocwen never sent her default notices, failed to contact her for financial assessment, refused to consider her HAMP loan modification requests, and engaged in dual tracking. Defendants argue these positions are inconsistent, and Plaintiff’s variation is not a result of ignorance, fraud, or mistake.

Plaintiff denies any inconsistency and asserts her bankruptcy counsel’s declarations pertained to a 2012 request for loan modification, while the allegations in the SAC pertained to a 2018 modification request. However, Plaintiff provides no evidence to support her assertion. More importantly, this assertion is raised for the first time in her opposition; Plaintiff does not allege this in the SAC. The

papers filed in response to a motion for summary judgment or summary adjudication may not create issues outside the pleadings and are not a substitute for an amendment to the pleadings. (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 541; *Tsemetzin v. Coat Federal Savings & Loan Assn.* (1997) 57 Cal.App.4th 1334, 1342.) Accordingly, the Court finds that judicial estoppel applies to Plaintiff's first, second, fourth, fifth, and sixth causes of action and summary judgment could be granted on this basis. However, as detailed below, even if judicial estoppel did not apply, Plaintiffs claims still fail as a matter of law.

B. First Cause of Action: Violation of Civ. Code § 2923.5

Plaintiff claims Defendants did not contact her or even attempt to contact her to discuss her options for avoiding foreclosure prior to recording a Notice of Default, as required by Civil Code section 2923.5 and that although she was qualified, she was not reviewed for a first lien loan modification before the recording. Plaintiff thus concludes that Defendants' due diligence declaration attached to the Notice of Default is fraudulent.

Civil Code section 2923.5, subdivision (a)(1) provides that "[a] mortgagee, trustee, beneficiary, or authorized agent may not file a notice of default...until 30 days after contact is made as required by paragraph (2) or 30 days after satisfying the due diligence requirements as described in subdivision (g)." (Emphasis added.)

With respect to the above-referenced borrow contact, subdivision (a)(2) provides: "A mortgagee, beneficiary, or authorized agent shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure...." Civil Code section 2923.5(g) further provides: "A notice of default may be filed...when a mortgagee, beneficiary, or authorized agent has not contacted a borrower as required by paragraph (2) of subdivision (a) provided that the failure to contact the borrower occurred despite the due diligence of the mortgagee, beneficiary, or authorized agent." The statute sets forth specific actions the mortgagee, beneficiary, or the authorized agent must take to satisfy its "due diligence" requirement. (Civ. Code, § 2923.5, subds. (g)(1-5).)

In support of their position that they have complied with this code section or are covered by the safe harbor, Defendants point to:

- Plaintiff's bankruptcy counsel's June 19, 2012, declaration stating that Plaintiff had applied for a loan modification and was awaiting a decision (RJN, Ex. 9; SSUMF ¶ 8, p.3);
- HSBC's on April 23, 2015 declaration stating that a written notice of default was served on Plaintiff and attaching a loan modification denial letter dated November 8, 2012 (RJN Ex. 12; SSUMF ¶ 11, p.4);
- Plaintiff's bankruptcy counsel's June 2, 2015 declaration stating that Plaintiff's loan modification was updated to reflect change of income (RJN Ex. 13; SSUMF ¶ 12, p.4);
- Plaintiff's bankruptcy counsel's April 17, 2017 declaration that Plaintiff's loan application was denied and no current loan modification was under review as of April 17, 2017 (RJN Ex. 15; SSUMF ¶ 14, p.5);
- An April 13, 2018 mortgage assistance letter with a request for mortgage assistance package sent to Plaintiff at the property address (SSUMF ¶ 17, pp. 5-6; Declaration of Mr. Flannigan ¶ 9, Ex. 7);
- A June 8, 2018 initial due diligence letter notifying Plaintiff that her account was past due (SSUMF ¶ 21, p.6; Declaration of Mr. Flannigan ¶ 15, Ex. 13);
- On June 18, 2018, per Plaintiff's request, OCWEN provided Plaintiff with the transaction history, the origination and servicing of the loan (SSUMF ¶ 22, p.7; Declaration of Mr. Flannigan ¶¶ 16, 17, Exs. 14, 15);
- A June 19, 2018 delinquency notice mailed to Plaintiff (SSUMF ¶ 23, p.7; Declaration of Mr. Flannigan ¶ 18, Ex. 16); and
- Defendants' July 16, 2018 approval for Plaintiff to enter a trial period plan under an OCWEN Modification Plan (SSUMF ¶ 24, p.7; Declaration of Mr. Flannigan ¶ 20, Ex. 18).

Relying on her own deposition testimony, Plaintiff denies that a written notice of default was mailed to her on April 16, 2018, a written delinquency notice was mailed on May 18, 2018, and a written notice that foreclosure had been initiated was mailed on May 29, 2018. Plaintiff also denies Ocwen's phone contact attempts on July 12, 19, 26 and August 10, 2018. (Declaration of Puccini, Ex. B.)

Defendants argue not only that it is clear from the record that they did make these contacts, but that even if they did violate Civil Code section 2923.5 before recording the Notice of Default, Plaintiff's claim is still subject to dismissal because Civil Code section 2924.12 allows Defendants to correct any error before the property is sold at foreclosure, and it is undisputed that the property has not been sold. (SSUMF ¶ 19, p.14; Declaration of Mr. Flannigan ¶ 28.)

The Court finds Defendants' evidence sufficient to demonstrate their compliance with the statute. And even if Defendants did violate Civil Code section 2923.5, they corrected and remedied that violation through communication with Plaintiff on November 7, 2018, where they confirmed receipt of her Request for Mortgage Assistance and subsequently approved her mortgage assistance on November 26, 2018. (Declaration of Mr. Flannigan ¶¶ 26, 27). Therefore, the burden shifts to Plaintiff, and the Court finds Plaintiff's deposition testimony insufficient to demonstrate the existence of a triable issue of material fact on her Civil Code section 2923.5 cause of action.

Accordingly, Defendants are entitled to judgment on Plaintiff's first cause of action for violation of Civil Code section 2923.5.

C. Second Cause of Action: Violation of Civ. Code § 2923.7

Civil Code section 2923.7 provides that when a borrower "requests a foreclosure prevention alternative, the mortgage servicer shall promptly establish a single point of contact and provide to the borrower one or more direct means of communication with the single point of contact."

Defendants claim they complied with this statute, since shortly after March 31, 2017, Plaintiff was informed that Sujeet D. Amin would be her personal relationship manager. (Declaration of Mr. Flannigan ¶ 6, Ex. 4.) While Plaintiff disputes receiving a letter about this assignment, in her deposition, Plaintiff admits the letter was sent to her bankruptcy attorney. Also undisputed is that on April 13, 2018 a mortgage assistance letter was sent to Plaintiff and on November 7, 2018 Ocwen advised Plaintiff that Candida Gonsalves had been assigned as her relationship manager. (SSUMF ¶ 26, pp. 7-8; Declaration of Mr. Flannigan ¶ 25, Ex. 23.)

In her SAC, Plaintiff alleges in conclusory fashion that she did not receive a single point of contact. Her declaration submitted in opposition to this motion similarly fails to provide any facts to support this claim. At deposition, Plaintiff testified that she talked to an unidentifiable number of

Ocwen's employees about her loan modification, but Plaintiff fails to point to any authority suggesting that a borrower is entitled to the same single point of contact when multiple loan modification applications are submitted over a multi-year period. Section 2923.7 subdivision (e) provides: "single point of contact means an individual or team of personnel each of whom has the ability and authority to perform the responsibilities described in subdivisions (b) to (d), inclusive. The mortgage servicer shall ensure that each member of the team is knowledgeable about the borrower's situation and current status in the alternatives to foreclosure process."

Finally, since subject property has not even been sold, Plaintiff cannot present any facts or evidence to demonstrate that any purported violation of Section 2923.7 could be deemed material. Accordingly, Defendants are entitled to judgment on Plaintiff's second cause of action for violation of Civ. Code § 2923.7.

D. Third Cause of Action: Breach of Contract

Plaintiff claims Defendants breached provision 22 of the Deed of Trust when they failed to give her proper notice of default and lender's intent to accelerate the loan. (SAC ¶¶ 50, 51) However, it is undisputed that:

- on April 23, 2015, HSBC declared in the Bankruptcy Court that a written notice of default was served on Plaintiff and provided a loan modification denial letter dated November 8, 2012. (RJN Ex. 12; SSUMF ¶ 11, p.4);
- on June 19, 2018, a delinquency notice was mailed to Plaintiff at the property address (SSUMF ¶ 23, p.7); and
- on October 12, 2018 OCWEN mailed a letter to Plaintiff informing her that the loan had been accelerated, the loan was in foreclosure, and that the loan could be reinstated by bringing it current (SSUMF ¶ 32, pp. 8-9; Declaration of Mr. Flannigan ¶ 2, Ex. 21).

Plaintiff cannot prevail on her breach of contract claim since Defendants did not breach the terms of the Deed of Trust. Accordingly, Defendants are entitled to judgment on Plaintiff's third cause of action for breach of contract.

E. Fourth Cause of Action: Negligence

Plaintiff's negligence claim is based on Defendants' negligent handling of her loan modification and their alleged violation of Civil Code sections 2923.5 and 2923.7. (SAC ¶¶ 63, 65.) Plaintiff does not oppose or object to Defendants' motion for judgment on this cause of action. However, even if she had, this claim fails as a matter of law.

First, since the Court has ruled in favor of Defendants on the Civil Code section 2923.5 and 2923.7 claims, to the extent Plaintiff asserts negligence based on those claims, the negligence claim fails. Next, regarding the negligent handling of the loan modification, the Court agrees with Defendants that a loan servicer does not owe a plaintiff a duty of care during the loan modification process.

In *Nymark v. Heart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089 (*Nymark*) the court stated a "general rule" precluding certain tort claims in the lender-borrower context: "[A] financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money." (*Id.* at p. 1096.) In the recent case of *Sheen v. Wells Fargo Bank, N.A.*, (2022) 12 Cal. 5th 905, 929, the California Supreme Court settled that loan modifications fall squarely within the scope of a lending institution's conventional role as a lender of money and found that a lender owes no duty to a borrower in its processing of a loan modification application.

Accordingly, Defendants are entitled to judgment on Plaintiff's fourth cause of action for negligence.

F. Fifth Cause of Action: Violation of Civ. Code § 2937

Plaintiff alleges in the SAC that her loan was assigned to Ocwen without her knowledge, and Defendants failed to provide her written notice of this transfer in violation of Civil Code section 2937. (SAC ¶¶ 69, 70.) Defendants primarily rely on judicial estoppel to support summary judgment in their favor on this claim.

It is undisputed that on November 23, 2010, OCWEN filed a Notice of Transfer of claim in Plaintiff's first bankruptcy proceeding. (SSUMF ¶ 4, p.2.) This provided notice to all parties to the bankruptcy proceeding, including Plaintiff, that HSBC Bank was the transferee of the mortgage claim and OCWEN was the servicer. It is also undisputed that on July 14, 2011 Plaintiff amended her plan

listing HSBC bank as the lender, and on November 29, 2011 Plaintiff listed Ocwen as servicer in her second bankruptcy proceeding. (RJN Ex. 3, 4, 7.)

Plaintiff does not oppose or object to Defendants' motion for judgment on this claim. The Court finds Defendants are entitled to judgment on Plaintiff's fifth cause of action.

F. Sixth Cause of Action for Unfair Business Practice (B & P Code § 17200)

Business and Professions Code section 17200 *et seq.* ("UCL") prohibits unfair competition, including unlawful, unfair or fraudulent business acts. (*Cel-Tech Comm., Inc. v. Los Angeles Cellular Tele. Co.* (1999) 20 Cal. 4th 163, 180.) The viability of a UCL claim stands or falls with the antecedent substantive causes of action. (*Krantz v BT Visual Images, LLC* (2001) 89 Cal.App.4th, 164, 178.) A UCL action is also equitable in nature and the only remedy available is injunctive relief or restitution; damages cannot be recovered. (*Id.* at 179-80.)

Plaintiff asserts that her sixth cause of action is tethered to Defendants' violation of Civil Code sections 2923.5, 2923.7, 2937 and breach of contract claim. Defendants, citing *Singh v. Wells Fargo Bank, N.A.* (N.D. Cal. 2009) 2009 U.S. Dist. LEXIS 67123, 16-17, argue that where the underlying claims are deficient, the UCL claim must also fail. The Court agrees.

Here, there is no unlawful or unfair practice for the same reasons stated above with respect to first, second, third, and fifth causes of action. Accordingly, Defendants are entitled to judgement on Plaintiff's sixth cause of action.

Defendants' motion for summary judgment is GRANTED.

Calendar Line 9

Case Name: *Urvashi Bhagat vs Hong Guo et al*

Case No.: 21CV385427

Before the Court is Plaintiff's Motion to Compel Min Zhu to Produce Further Responses to Interrogatories and Request for Production of Documents.

I. Background

These consolidated cases arise out of related landlord tenant disputes. Hong Guo rented a room to Urvashi Bhagat. Min Zhu claims that she owns the property Mr. Guo rented to Ms. Bhagat and that renting to Ms. Bhagat was in violation of Mr. Guo's lease terms. It appears that Mr. Guo was evicted along with his sub-lessors. Mr. Guo sued Ms. Bhagat for \$5400, which he claims represents four months of rent, in a small claims action. Ms. Bhagat sued Mr. Guo and Ms. Zhu for breach of quiet enjoyment of premises, harassment of tenant, breach of habitability, housing discrimination, negligence, intentional infliction of emotional distress, and unfair and unlawful business practices in an unlimited civil action. Ms. Zhu claims Ms. Bhagat is seeking more than \$1,000,000; Mr. Guo is pending default in that portion of the case. The Court consolidated these related actions by order dated July 27, 2023.

The parties have already been before the Court on several discovery matters. By orders dated July 27, 2022, the Court (Hon. Christopher Rudy) denied Plaintiff's requests to deem requests for admissions admitted and granted, in part, Plaintiff's motion to compel requests for production and special and form interrogatories. Judge Rudy also issued \$750 in sanctions against Plaintiff for failing to meet and confer. The undersigned Court denied Defendant Zhu's motion for protective order wherein Zhu sought relief from responding to Plaintiff's second set of discovery on the grounds that those requests were duplicative. In that May 23, 2023 order, the Court rules:

Defendant's Motion for Protective Order regarding Form Interrogatories (Set Two) is GRANTED, IN PART. Plaintiff already served these exact [Form Interrogatories] on Defendant earlier. However, during the argument, Defendant agreed to supplement her responses to Form Interrogatory Nos. 14.1, 14.2, 15.1, 16.1-16.10, and 17.1 to the extent there is new information. The Court therefore orders Defendant to supplement her answers to these Form

Interrogatories to make clear that, after further investigation and/or discovery, Defendant either (a) has no further information to provide or (b) supplements her response as follows (then provides the new information).

Defendant's Motion for Protective Order is otherwise DENIED, without prejudice to asserting objections and/or referring Plaintiff to earlier discovery responses where appropriate. The Parties' respective motions for sanctions [are] DENIED.

Defendant is ordered to provide discovery responses consistent with this order within 20 days of service of the final order.

Now before the Court is Plaintiff's motion to compel further responses to her second set of discovery requests. Defendant opposes the motion.

II. Legal Standard

Discovery is generally permitted "regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Cal. Code Civ. Pro. § 2017.010.) Everything that is relevant to the subject matter is presumed to be discoverable. (*Id.*) The Discovery Act further declares that "the court shall limit the scope of discovery" if it determines that the burden, expense, or intrusiveness of that discovery "clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." (Code Civ. Pro. § 2017.020(a); *Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385.) The California Supreme Court teaches in *Greyhound* that the judge exercising discretion to limit discovery should construe disputed facts liberally in favor of discovery; reject objections such as hearsay that only apply at trial; permit fishing expeditions (within limits), avoid extending limitations on discovery, such as privileges; and, whenever possible, impose only partial limitations rather than denying discovery entirely. (*Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385; *see also Tylo v. Superior Court* (1997) 55 Cal.App.4th 1379, 1386.)

The party to whom a request for production of documents has been directed can make one of three responses: (1) a statement that the party will comply with the demand, (2) a representation that the party lacks the ability to comply, or (3) an objection. (Code Civ. Pro. §2031.210(a).) A party may move for an order compelling a further response to a document demand on the ground that (1) an objection is without merit or too general, (2) a statement of compliance with the demand is incomplete, or (3) a representation of inability to comply is inadequate, incomplete, or evasive. (Code Civ. Pro. §2031.210(a).) A party seeking to compel is required to “set forth specific facts showing good cause justifying the discovery sought by the demand.” (Code Civ. Pro. §2031.210(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) This burden may be satisfied by a fact-specific showing of relevance. (*TBG Ins. Services Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448.) Information is relevant to the subject matter of the action if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.)

A party responding to interrogatories must respond in writing, under oath separately to each interrogatory with an answer that contains the information sought, an exercise of the party’s option to produce writings from which the answer can be determined, or an objection to the interrogatory. (Code Civ. Pro. §2030.210(a).) The responding party must make a reasonable, good faith effort to obtain information to provide a response and generally may not respond to the interrogatory by simply stating it cannot respond. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 406; Code Civ. Pro. §2030.210(c).)

III. Analysis

In most of Defendant’s responses she states: “Discovery continues. Defendant reserves the right to amend accordingly.” The Court cautions that if information is not produced during discovery, it will be excluded at trial. (*Deeter v. Angus* (1986) 179 Cal. App. 3d 241; see also *Thoren v. Johnston & Washer* (1972) 29 Cal.App.3d 270.) It is with this in mind that the Court makes the following rulings.

A. Form Interrogatories

14.1: DENIED. This response is complete.

15.1: DENIED. Judge Rudy previously ruled Defendant could conduct discovery before supplementing this response. Defendant's response reflects she has no information.

16.1-16:10:

DENIED. Judge Rudy previously denied Plaintiff's motion to compel for this request.

17.1: DENIED. Judge Rudy previously denied Plaintiff's motion to compel regarding requests for admission.

B. Special Interrogatories

No. 1: GRANTED, IN PART. Defendant has not answered this question. Defendant is ordered to state the dates she has owned the property. This information should also be publicly available in the county recorders' office.

No. 2: DENIED. This is not relevant or likely to lead the discovery of admissible evidence.

No. 3: GRANTED, IN PART. Defendant is ordered to identify the number of prior renters and the dates when they rented the property. The Court is concerned about the privacy of prior renters, thus they can be identified as "Renter 1", "Renter 2", and so forth, at this time.

No. 4: DENIED.

No. 5: DENIED.

No. 6: GRANTED, IN PART. Defendant is ordered to identify and produce prior rental agreements. The rental agreements may redact the name and personal identifying information of the prior renter but should otherwise be produced.

No. 7: DENIED.

No. 8: DENIED.

No. 9: GRANTED, IN PART. Defendant is ordered to identify whether she knew Mr. Guo before renting to him and, if so, how she knew him, i.e., friend, acquaintance, co-worker, etc.

No 10: DENIED.

No. 12: GRANTED. Defendant is ordered to produce and identify these documents. Mr. Guo's bank account number(s), credit card, social security number, license number or other personal financial information may be redacted, but the documents must be identified and produced.

No. 13: DENIED. Defendant is bound by this response.

No. 14: DENIED.

No. 15: DENIED. This is overbroad.

No. 16: DENIED. This is overbroad and onerous; it is better suited for a request for production.

No. 17: GRANTED, IN PART. Defendant is ordered to produce her correspondence with Mr. Guo, including documents reflecting exchanges of money, and identify the bates ranges of that production in response to this interrogatory.

No. 18: DENIED. This does not appear likely to lead to the discovery of admissible evidence.

No. 19: DENIED. This does not appear likely to lead to the discovery of admissible evidence.

No. 20: DENIED. This does not appear likely to lead to the discovery of admissible evidence.

No. 21: GRANTED, IN PART. Defendant is ordered to identify repairs, remodeling, or renovations made to the property without her consent during the time Mr. Guo lived there.

No. 22: GRANTED. Defendant must know when she became aware of her property being rented on Airbnb. Defendant is ordered to respond to this interrogatory.

No. 23: GRANTED. Defendant is ordered to supplement this response, as the information is plainly in her possession, custody and control.

No. 24: GRANTED, IN PART. Defendant is ordered to produce non-privileged documents relating to 21CV386905 then identify those documents by bates number in response to this interrogatory.

No. 25: DENIED. This is included in No. 24.

Nos. 26-29: DENIED.

Nos. 30-52: DENIED.

C. Requests for Production

No. 7: DENIED. Defendant states she has no further documents responsive to this request and will be bound by this response.

Nos. 13-14: DENIED. These requests are overbroad.

No. 15: DENIED.

No. 16: GRANTED, IN PART. Judge Rudy's order denied production of "all documents that reference any monetary transactions between Defendant and HONG GUO" as "overbroad and seek[ing] Defendant's private financial information." Unlike that prior request, this request No. 16 specifically seeks unredacted bank statements for each bank account. The Court understands Plaintiff seeks discovery regarding whether Defendant reaped the benefits and/or therefore knew about Mr. Guo's sub-leasing activities. The Court thus orders Defendant to produce bank statements from each of her bank accounts for the months during which Mr. Guo lived at the subject premises. Defendant may redact the account number and any other personal identifying information such as social security number or driver's license and the total amount contained in the account. Plaintiff is also ordered to use this information solely for purposes of this lawsuit. For avoidance of doubt, Plaintiff is prohibited from filing these documents into the court record; posting, publishing, or disclosing these documents in any way whether directly or indirectly; or using these documents for any litigation, dispute, or activity of any kind other than for the purpose of preparing her claims in this case.

Nos. 17-18: GRANTED, IN PART. As noted above, Defendant is ordered to produce all non-privileged/work product documents in her possession, custody, or control from Case No. 21CV386905. The motion regarding these requests is otherwise denied.

Nos. 19-20: DENIED. These requests are addressed by the ruling above concerning Request Nos. 17-18.

Both parties seek sanctions. The Court declines to award either party sanctions on this record. Certain of Plaintiff's requests continued to be grossly overbroad; however, some of them were not, and Defendant did not provide any further information in response to the requests for which a protective order was denied. Accordingly, each party was substantially justified in bringing/defending this motion.