SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 34, RICHMOND
JUDICIAL OFFICER: LEONARD E MARQUEZ
HEARING DATE: 04/15/2025

INSTRUCTIONS FOR CONTESTING TENTATIVE RULING IN DEPARTMENT 34

The tentative ruling will become the ruling of the Court unless by 4:00PM of the Court day preceding the hearing, notice is given of an intent to argue the matter. Counsel or self-represented parties must email Department 34 (Dept34@contracosta.courts.ca.gov) to request argument and must specify, in detail, what provision(s) of the tentative ruling they intend to argue and why. Counsel or self-represented parties requesting argument must advise all other counsel and self-represented parties by no later than 4:00PM of their decision to argue, and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (Pursuant to Local Rule 3.43(2).)

ALL APPEARANCES TO ARGUE WILL BE IN PERSON OR BY ZOOM, PROVIDED THAT PROPER NOTIFICATION IS RECEIVED BY THE DEPARTMENT AS PER ABOVE.
Zoom link-

https://contracosta-courts-ca.zoomgov.com/j/1611085023?pwd=SUxPTEFLVzRFYXZycWdTWlJCdlhIdz09

Meeting ID: 161 108 5023
Passcode: 869677

Courtroom Clerk's Session

1. 9:00 AM CASE NUMBER: L24-03320
CASE NAME: JOSELY GARCIA VS. ARMANDO RAMIREZ
***FURTHER CASE MANAGEMENT CONFERENCE TO BE RESET AT DEMURRER HEARING**
FILED BY:
TENTATIVE RULING:

PARTIES TO APPEAR FOR CASE MANAGEMENT CONFERENCE.

Law & Motion

2. 9:00 AM CASE NUMBER: L22-02742
CASE NAME: WELLS FARGO BANK, N.A. VS. DR M HOWARD, DC

***HEARING ON MOTION IN RE: MOTION TO VACATE JUDGMENT AND OF NONAPPEARANCE**
FILED BY: WELLS FARGO BANK, N.A.
TENTATIVE RULING:

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff) filed a motion to vacate the judgment entered in this action on December 2, 2024 (the "Motion to Vacate Judgment"). The Motion to Vacate Judgment was set for hearing on April 15, 2025.

Background

A money judgment in the amount of $8,014.11 was entered herein by the Court on January 18, 2024, following entry of default against the defendant DR M HOWARD DC AKA MARTY BLAINE HOWARD SR AKA MARTIN BLAINE HOWARD ("Defendant"). Plaintiff seeks to vacate the Judgment and dismiss the action because Plaintiff received notice that Defendant is deceased, having passed away November 4, 2023.

Analysis

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. Motion to Vacate Judgment is GRANTED.
2. This action is hereby DISMISSED, without prejudice.
3. A proposed form of order was lodged with the Court which the Court shall execute and enter.

3. 9:00 AM CASE NUMBER: L22-05109
CASE NAME: CREDITORS ADJUSTMENT BUREAU, INC. VS. GREENTECH INDUSTRY INC.
***CASE MANAGEMENT CONFERENCE**
FILED BY:
TENTATIVE RULING:

PARTIES TO APPEAR FOR CASE MANAGEMENT CONFERENCE.

4. 9:00 AM CASE NUMBER: L23-00355
CASE NAME: WELLS FARGO BANK, N.A. VS. JEFFERY HIGLEY
HEARING ON DEMURRER TO: 3RD AMENDED CROSS-COMPLAINT OF JEFFERY HIGLEY
FILED BY: DISCOVER FINANCIAL SERVICES, INC
TENTATIVE RULING:

Cross-Defendant Discover Financial Services, Inc. ("Discover") filed a Demurrer to Third Amended Cross-Complaint on November 26, 2024 (the "Demurrer to TACC"). The Demurrer to TACC was set for hearing on March 3, 2025. The Demurrer to TACC was

subsequently continued for hearing to April 15, 2025.

Background

Discover's Demurrer to TACC demurs to the Third Amended Cross-Complaint ("TACC") filed by Cross-Complainant Jeffery Higley ("Mr. Higley") on October 4, 2024. Discover's demurrer contends that the second, fourth and seventh causes of action fail to state facts sufficient to constitute causes of action against Discover, as does as the entire TACC.

Analysis

The limited role of the demurrer is to test the legal sufficiency of the allegations in a complaint. *Lewis v. Safeway, Inc.* (2015) 235 Cal.App.4th 385, 388. It raises issues of law, not fact, regarding the form or content of the opposing party's pleading. *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994. A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. *Id*. For purposes of demurrer, all facts pleaded in a complaint are assumed to be true, but the court does not assume the truth of conclusions of law. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967. "Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227. However, leave to amend should not be granted where, in all probability, amendment would be futile. *Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 685.

1. **Second Cause of Action for Breach of Implied Covenant of Good Faith and Fair Dealing**

Mr. Higley's Second Cause of Action alleges a claim for Breach of Implied Covenant of Good Faith and Fair Dealing against multiple cross-defendants, including Discover.

Mr. Higley's TACC alleges that the various "banks issuing credit," including Discover, breached covenants of good faith and fair dealing implied in the governing contracts under which they extended credit to Mr. Higley. See TACC, ¶¶32-40. As to Discover, Mr. Higley alleges that certain "Card Member Agreement" language and the implied covenant of good faith and fair dealing required that any investigation by it of "claims of fraud and/or mistake" must be "adequate and fair." See *id*. at ¶¶34 and 37-39. Mr. Higley alleges that Discover breached those obligations as it "did not conduct an adequate investigation, were either deliberately or negligently sloppy in their investigations, and were biased in favor of finding the charges at issue to be authorized." See *id*. at ¶39.

Discover contends Mr. Higley's TACC fails to allege that he provided any written notice of any claim of fraud and/or mistake vis-à-vis any account with Discover so as to trigger any contractual obligation to conduct such an investigation and any attendant implied obligations as to the good faith nature of the investigation.

However, as Discover itself concedes, the allegations include a contention that Mr. Higley contacted Discover to dispute the subject charges:

> In or around January and February of 2021, **HIGLEY contacted** Cross-Defendants WELLS FARGO BANK, N.A., **DISCOVER FINANCIAL SERVICES, INC.** and PayPal,

> Inc. **to dispute the charges.** Cross-Complainant is informed and believes and thereon alleges that CIS and/or ALBA provided to WELLS FARGO BANK, N.A. false or forged documents to support its claim that the charges had been authorized.

TACC, ¶20 (emphasis added); See also TACC, ¶23. Whether true or not is beyond the scope of this demurrer, as the Court must assume the truth of the pled allegations.

The case authorities cited by Discover dealing with failure to state a Fair Credit Billing Act ("FCBA") or "triggering" obligations under that statute are inapposite. Mr. Higley's claim is not pled as a claim under FCBA.

Discover's contention that the claim is subject to demurrer because Mr. Higley "does not explain how Discover violated any duty to investigate his dispute" is not persuasive. The allegations on their face plead specific facts contended to show that the investigation was not done in good faith, including factual allegations that the investigation was "negligently sloppy" or that Discover was "biased in favor of finding the charges at issue to be authorized." See TACC, ¶39.

2. Fourth Cause of Action for Breach of Written Contract

Mr. Higley's Fourth Cause of Action alleges a claim for Breach of Written Contract against Wells Fargo Bank and Discover.

The claim alleges the existence of a written contract with Wells Fargo Bank on certain terms and conditions. See TACC, ¶46 *et seq*. As relates to Wells Fargo Bank, a copy of the alleged contract is attached to the TACC. *Id*. at ¶¶46-47 and **Exhibit 1**. As relates to Discover, a copy of the alleged contract is also attached to the TACC. *Id*. at ¶53 and **Exhibit 2**.

Mr. Higley alleges that Discover "breached the written contract by failing to adequately investigate [Mr. Higley's] claims that specific charges were unauthorized, violating both the spirit of the agreement and proper industry practices." *Id*. at ¶57.

Discover complains that Mr. Higley "offers no supporting facts about what Discover's response to the dispute was or what basis Discover provided for its conclusion following its investigation."

While such matters may certainly be relevant to the consideration of the merits of the claim, Mr. Higley's allegations are more than sufficient to constitute proper allegations of the nature of the alleged breach.

Taken in context, together with all of the allegations of the TACC, Mr. Higley has plead specific facts about the nature and extent of Discover's obligations—and alleged failure to perform those obligations—which, if true, would state facts sufficient to constitute a breach.

For example, the allegations include the contractual obligation on Discover's part to "explain to you why we believe the bill is correct." See *Id*. at ¶54. Mr. Higley was arguably entitled to a valid—or at least good faith—explanation of the correctness of the billings which Discover could not or did not render if failed to conduct a good faith investigation

and/or was biased, as alleged. Of course, whether it did make an effort to investigate substantially in compliance with its contractual obligations is a question of law and fact beyond the scope of a demurrer.

3. Seventh Cause of Action re UCL

Mr. Higley's Seventh Cause of Action alleges a claim for Unfair Business Practices under California's unfair competition law (UCL) against multiple cross-defendants, including Discover. The UCL defines "unfair competition" to include "any unlawful, unfair or fraudulent business act or practice." Bus. & Prof. Code § 17200; see *De La Torre v. CashCall, Inc.* (2018) 5 Cal.5th 966, 974.

Mr. Higley describes a broad range of conduct alleged to violate the UCL, including, as to Discover and Wells Fargo, doing the following:

> ... breaching a contract of adhesion by failing to fairly and adequately investigate Cross-Complainant's claims that specific charges were unauthorized.

TACC, ¶74.

Discover argues that relief under the UCL "is not available where a plaintiff would have an adequate remedy at law," citing Prudential Home Mortgage Co. v. Superior Court, among other caselaw. See *Prudential Home Mortgage Co. v. Superior Court* (1998) 66 Cal.App. 4th 1236, 1249. That case, however, the court concluded that the Legislature had prescribed a specific statutory remedy in Civil Code Section 2941 that adequately remedied the plaintiffs' claims. *Id*. at 1249-1250. The Court does not conclude, as a matter of law at the demurrer stage, that the contractual remedies available to Mr. Higley are adequate if a violation of the UCL were ultimately proven.

Moreover, the choice of remedy is not grounds for a demurrer on the grounds of a failure to state facts sufficient to constitute a cause of action. See *Venice Town Council v. City of L.A.* (1996) 47 Cal.App.4th 1547, 1562 ("[A] demurrer tests the sufficiency of the factual allegations of the complaint rather than the relief suggested in the prayer of the complaint.").

The Court has considered and rejects the further argument by Discover to the effect that Mr. Higley has failed to "show" that an "injury in fact" as a result of the conduct in violation of the UCL. To be clear, Mr. Higley is not required to "show" anything at the pleading stage. The allegations, such as they are, allege the fact of injury caused by the wrongful conduct described. See TACC, ¶76 ("As a direct result of Cross-Defendants' violation of California Business & Professions Code Section 17200 et seq., Cross-Complainant **HIGLEY was damaged and suffered out-of-pocket losses**") (emphasis added). Whether the allegations are ultimately borne out by the evidence is a different matter altogether.

<u>Disposition</u>

The Court finds and orders as follows:

1. The Demurrer is OVERRULED.
2. Discover's responsive pleading shall be filed and served within ten (10) days of the

date of this order. See Rule 3.1320(j) of the California Rules of Court (CRC).

5. 9:00 AM CASE NUMBER: L23-00355
CASE NAME: WELLS FARGO BANK, N.A. VS. JEFFERY HIGLEY
HEARING ON DEMURRER TO: 3RD AMENDED CROSS-COMPLAINT OF JEFFERY HIGLEY
FILED BY: WELLS FARGO BANK, N.A.
TENTATIVE RULING:

Cross-Defendant Wells Fargo Bank, N.A. ("Wells Fargo") filed a Demurrer to Third Amended Cross-Complaint on November 26, 2024 (the "Demurrer to TACC"). The Demurrer to TACC was set for hearing on March 3, 2025. The Demurrer to TACC was subsequently continued for hearing to April 15, 2025.

Background

Wells Fargo's Demurrer to TACC demurs to the Third Amended Cross-Complaint ("TACC") filed by Cross-Complainant Jeffery Higley ("Mr. Higley") on October 4, 2024. Discover's demurrer contends that the second, fourth and seventh causes of action fail to state facts sufficient to constitute causes of action against Wells Fargo.

Analysis

The limited role of the demurrer is to test the legal sufficiency of the allegations in a complaint. *Lewis v. Safeway, Inc.* (2015) 235 Cal.App.4th 385, 388. It raises issues of law, not fact, regarding the form or content of the opposing party's pleading. *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994. A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. *Id*. For purposes of demurrer, all facts pleaded in a complaint are assumed to be true, but the court does not assume the truth of conclusions of law. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967. "Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227. However, leave to amend should not be granted where, in all probability, amendment would be futile. *Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 685.

1. **Second Cause of Action for Breach of Implied Covenant of Good Faith and Fair Dealing**

Mr. Higley's Second Cause of Action alleges a claim for Breach of Implied Covenant of Good Faith and Fair Dealing against multiple cross-defendants, including Wells Fargo.

Mr. Higley's TACC alleges that the various "banks issuing credit," including Wells Fargo and Cross-Defendant Discover Financial Services, Inc. ("Discover") breached covenants of good faith and fair dealing implied in the governing contracts under which they extended credit to Mr. Higley. See TACC, ¶¶32-40. As to Wells Fargo, Mr. Higley alleges that certain language in the operative alleged agreement and the implied covenant of good faith and fair dealing required that any investigation by it of "claims of fraud and/or mistake" must be

"adequate and fair." See *id*. at ¶¶34-36 and 39. Mr. Higley alleges that Wells Fargo breached those obligations as it "did not conduct an adequate investigation, were either deliberately or negligently sloppy in their investigations, and were biased in favor of finding the charges at issue to be authorized." See *id*. at ¶39. The allegations on their face plead specific facts contended to show that the investigation was not done in good faith, including factual allegations that the investigation was "negligently sloppy" or that Wells Fargo and Discover were "biased in favor of finding the charges at issue to be authorized." *Id*.

Wells Fargo contends Mr. Higley's claim fails to state a cause of action because Wells Fargo "did investigate the disputes" under the explicit terms of the operative agreement. Wells Fargo acknowledges that the TACC alleges that Wells Fargo "did investigate the dispute" and argues that Mr. Higley "simply disagrees with the result of that investigation."

However, those are all arguments about the merits of the allegations. Mr. Higley alleges, plainly, that the investigation was not adequate and was biased. Whether true or not is beyond the scope of this demurrer, as the Court must assume the truth of the pled allegations. Wells Fargo may be correct that it did as much as it was required to do and did so in accordance with its contractual obligations, including any implied covenant of good faith and fair dealing, but that is a determination on the merits beyond the proper reach of a demurrer.

2. Fourth Cause of Action for Breach of Written Contract

Mr. Higley's Fourth Cause of Action alleges a claim for Breach of Written Contract against Wells Fargo Bank and Discover.

The claim alleges the existence of a written contract with Wells Fargo on certain terms and conditions. See TACC, ¶46 *et seq*. As relates to Wells Fargo, a copy of the alleged contract is attached to the TACC. *Id*. at ¶¶46-47 and **Exhibit 1**. As relates to Discover, a copy of the alleged contract is also attached to the TACC. *Id*. at ¶53 and **Exhibit 2**.

Mr. Higley alleges that Wells Fargo "breached the written contract by failing to adequately investigate [Mr. Higley's] claims that specific charges were unauthorized, violating both the spirit of the agreement and proper industry practices." *Id*. at ¶51.

Wells Fargo makes similar contentions that Mr. Higley's breach of contract claim is barred because he "simply disagrees" with the results of the investigation. This is rejected for the reasons discussed at length above.

The Court also rejects the argument that the TACC does not plead any allegations sufficient to give rise to any contract claim. Mr. Higley's allegations are more than sufficient to constitute proper allegations of the nature of the alleged breach.

Taken in context, together with all of the allegations of the TACC, Mr. Higley has plead specific facts about the nature and extent of Wells Fargo's obligations—and alleged failure to perform those obligations—which, if true, would state facts sufficient to constitute a breach.

For example, the allegations include the contractual obligation on Discover's part to

"explain to you why we believe the bill is correct." See *Id*. at ¶49. Mr. Higley was arguably entitled to a valid—or at least good faith—explanation of the correctness of the billings which Wells Fargo could not or did not render if failed to conduct a good faith investigation and/or was biased, as alleged. Of course, whether it did make an effort to investigate substantially in compliance with its contractual obligations is a question of law and fact beyond the scope of a demurrer.

3. Seventh Cause of Action re UCL

Mr. Higley's Seventh Cause of Action alleges a claim for Unfair Business Practices under California's unfair competition law (UCL) against multiple cross-defendants, including Wells Fargo. The UCL defines "unfair competition" to include "any unlawful, unfair or fraudulent business act or practice." Bus. & Prof. Code § 17200; see *De La Torre v. CashCall, Inc.* (2018) 5 Cal.5th 966, 974.

Mr. Higley describes a broad range of conduct alleged to violate the UCL, including, as to Discover and Wells Fargo, doing the following:

> ... breaching a contract of adhesion by failing to fairly and adequately investigate Cross-Complainant's claims that specific charges were unauthorized.

TACC, ¶74.

Wells Fargo contends that Mr. Higley had failed to plead facts to establish "the 'unfair' prong of the UCL. Wells Fargo's cursory briefing on this argument fails to adequately characterize the extent of the allegations of the TACC. Among other things, Mr. Higley's pleading sets out specific allegations regarding his assertions about the lack of a good faith investigation and/or bias in connection with such investigation, as discussed at length above. Whether meritorious or not is another matter, but the allegations are more than sufficient to survive demurrer. The Court arrives at the same conclusion with respect to the arguments by Wells Fargo as to the other grounds under the UCL.

Lastly, the Court has considered and rejects Wells Fargo's contention that that Mr. Higley lacks "standing" because of the lack of an "injury in fact" as a result of the conduct in violation of the UCL. The allegations, such as they are, allege the fact of injury caused by the wrongful conduct described. See TACC, ¶76 ("As a direct result of Cross-Defendants' violation of California Business & Professions Code Section 17200 et seq., Cross-Complainant **HIGLEY was damaged and suffered out-of-pocket losses**") (emphasis added). Whether the allegations are ultimately borne out by the evidence is a different matter altogether.

The Court does not conclude that the pleading is subject to demurrer on the grounds asserted because of the issue raised regarding a request for damages. The choice of remedy is not grounds for a demurrer on the grounds of a failure to state facts sufficient to constitute a cause of action. See *Venice Town Council v. City of L.A.* (1996) 47 Cal.App.4th 1547, 1562 ("[A] demurrer tests the sufficiency of the factual allegations of the complaint rather than the relief suggested in the prayer of the complaint.").

4. Uncertainty

In addition, the Court has considered and rejects the argument that Mr. Higley's pleading, and/or any of the causes of action therein, is uncertain. For the reasons discussed at length above, the Court concludes that the TACC adequately pleads the nature of the claims alleged. Demurrers for uncertainty are disfavored and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond. *Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135; see also *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616 ("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.").

Disposition

The Court finds and orders as follows:

1. The Demurrer is OVERRULED.
2. Wells Fargo's responsive pleading shall be filed and served within ten (10) days of the date of this order. See Rule 3.1320(j) of the California Rules of Court (CRC).

6. 9:00 AM CASE NUMBER: L23-01465
CASE NAME: KAMINSKIY CARE AND REPAIR EAST BAY, INC. VS. SUMMIT BANK
HEARING IN RE: STIP FOR RECONSIDERATION OF SUMMIT'S MTC
FILED BY: SUMMIT BANK
TENTATIVE RULING:

On March 20, 2024, defendant and cross-complainant plaintiff Summit Bank ("Summit") filed a Motion to Compel Verifications to Interrogatories and for Sanctions against plaintiff and cross-defendant Kaminskiy Care and Repair East Bay, Inc. ("Kaminskiy") and its attorney Joseph A. Lara (the "Motion to Compel"). The Motion to Compel was set for initial hearing on September 6, 2024.

Background

The Motion to Compel relates to a set of Special Interrogatories served on Kaminskiy in September 2023 (the "Discovery Request"). See Declaration of Steven B. Piser filed March 20, 2024 ("Piser Decl."), p. 1 *et seq*. The declaration describes a set of initial responses which were later supplemented. *Id*. at p. 2. The supplemental responses were not verified. *Id*. at p. 2, lns. 7-8. Further meet and confer ensued and extensions were given. *Id*. at p. 2. Further supplemental responses were provided on February 26, 2024. *Id*. However, they were not verified. *Id*. at pp. 2-3.

A tentative ruling on the Motion to Compel was published by the Court ahead of the scheduled hearing date, as follows:

> Motion to compel verified answers to special interrogatories, set one, is granted. Motion was unopposed. Verified responses are ordered to be served no later than 10/6. Sanctions are awarded to moving party and against counsel Joseph A. Lara

and Kaminsky Care and Repair East Bay, Inc., in the amount of $960.00 and are to be paid no later than 10/6/24.

That ruling was unopposed and adopted by the Court. See Minute Order dated September 6, 2024.

Thereafter, parties submitted and the Court approved a stipulation resetting the Motion to Compel on calendar because the Court had not reviewed Kaminskiy's opposition papers before issuing the tentative ruling. See Stipulation to Reconsider Summit's Motion to Compel filed October 23, 2024.

The Court has now reviewed and considered the opposition papers filed by Kaminskiy. See Opposition to Summit Bank's Motion to Compel filed August 23, 2024. The opposition asserts that the motion is moot because of the service of "two sets of further verified discovery responses" by Kaminskiy after the motion was filed. See Declaration of Joseph A. Lara ("Lara DecI."), ¶5, and **Exhibits A and B** thereto. Those responses included executed verifications. *Id*.

The Court has also reviewed and considered the reply papers. See Reply filed August 29, 2024.

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery 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. Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402.

Where a party to whom a discovery request is propounded fails to serve a timely response, the propounding party may move for an order compelling a response. See Code Civ. Proc. § 2030.290 (as to interrogatories); Code Civ. Proc. § 2031.300 (as to demand for inspection of documents). The propounding party may also seek the imposition of monetary sanctions. *Id*.

Having considered the moving papers and any further pleadings submitted, the Court makes the following findings as to the Discovery Request at issue:

1. Kaminskiy was duly served with the subject Discovery Request.
2. Kaminskiy failed to provide proper verified responses as of the bringing of the pending motion. Importantly, at the point at which the motion was filed, the supplemental responses provided in February 2024 were not verified. The February 2024 supplemental responses were not "objection only" responses and, therefore, were required to be verified. Code Civ. Proc. § 2030.250(a); *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 136 ("…a response which consists

of *both* objections and responses must be verified, the only exception to this requirement is a response that contains nothing but objections.). They were not verified. See Supplemental Declaration of Steven B. Piser filed August 29, 2024, **Exhibit P**. That issue was raised in meet and confer. See Piser Decl., **Exhibit N and O**.

3. While the issue of compelling verified responses is now moot, the further verified responses were not provided until after the motion was brought and after considerable delay.

Sanctions

Kaminskiy's failure to respond to the Discovery Request with proper verified responses even after the deadline had been extended and then, thereafter, after further demands for verified responses were made constitutes failing to respond to an authorized method of discovery, pursuant to Code of Civil Procedure section 2023.010(d), notwithstanding the eventual compliance.

The Court finds that the foregoing conduct by Kaminskiy constituted conduct that was a misuse of the discovery process within the meaning of Code of Civil Procedure section 2023.030 and that such conduct warrants the imposition of monetary sanctions. In failing to timely respond to the Discovery Request with a properly verified response, the Court finds that Kaminskiy did not act with substantial justification. Furthermore, the Court does not find any other circumstances that would make the imposition of monetary sanctions unjust.

Accordingly, the Court shall impose monetary sanctions upon Kaminskiy and its counsel in an amount to be determined by the Court (the "Monetary Sanctions").

In order to assess and fix the reasonable expenses, including attorney's fees or other costs, incurred by the moving party as a result of the foregoing conduct by Kaminskiy, the Court makes the following orders:

1. **Summit's Supplemental Declaration regarding Discovery Sanctions.** Within thirty (30) days of notice of entry of this order, Summit shall file and serve a declaration signed under penalty of perjury ("Supplemental Declaration regarding Discovery Sanctions") setting forth any and all reasonable expenses, including attorney's fees and costs, incurred by Summit as a result of the above discovery misconduct. Such submittal shall include any supporting billing statements
2. **Contents and Length of Supplemental Filing.** Summit's Supplemental Declaration regarding Discovery Sanctions shall not exceed 5 pages, excluding any evidentiary attachments such as supporting attorney billing statements or other documentation of reasonable expenses. Any redaction of billing statements regarding privilege issues should be as minimal as possible in order to facilitate the Court's review and consideration of the scope of legal services provided.
3. **Meet and Confer.** Within twenty-one (21) days after service of Summit's Supplemental Declaration regarding Discovery Sanctions, the parties shall meet

and confer, in good faith, to attempt to resolve the issue of Monetary Sanctions.

4. **Defendants' Further Response.** Within forty-five (45) days after service of Summit's Supplemental Declaration regarding Discovery Sanctions, Kaminskiy shall file and serve any further opposition declaration or other opposition papers regarding the Supplemental Declaration regarding Discovery Sanctions.
5. **No Reply.** No further reply papers shall be submitted regarding the issue of the Monetary Sanctions.
6. **Further Hearing.** The issue of Monetary Sanctions shall be separately set for further hearing.

Disposition

The Court finds and orders as follows:

1. The Motion to Compel is GRANTED IN PART to the extent that monetary sanctions are awarded.
2. The Motion to Compel is DENIED IN PART as relates to compelling verified responses, which is MOOT.
3. **PARTIES TO APPEAR to set the hearing date for determination of the amount of the Monetary Sanctions.** The Court reserves jurisdiction regarding the determination and imposition of the Monetary Sanctions.

7. 9:00 AM CASE NUMBER: L23-05564
CASE NAME: CITIBANK N.A. VS. RAQUEL DELASALAS
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE DISMISSAL/ENTER JUDGMENT UNDER STIP**
FILED BY PLN ON 9/18/24
FILED BY: CITIBANK N.A.
****TENTATIVE RULING:****

Plaintiff Citibank, N.A. ("Plaintiff") filed a Motion to Vacate Dismissal to Enter Judgment under Terms of Stipulated Settlement on September 18, 2024 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on February 14, 2025. The motion was subsequently continued for hearing on April 15, 2025. **However, no notice to the defendant Raquel R Delasalas ("Defendant") of the April 15, 2025 hearing date appears of record on the Court's docket.**

Background

The parties entered into that certain settlement agreement filed on January 17, 2024 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $4,430.16, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Settlement Agreement, ¶¶1-4; see also Declaration filed as part of Motion to Enter Stipulated Judgment after Default ("Supporting Declaration"), ¶¶2-3. The Court hereby takes judicial notice of the Settlement Agreement.

As part of the Settlement Agreement, the parties entered into a stipulation for entry of judgment in the event of a default. See Settlement Agreement, ¶¶1-4 and 7.

Defendant defaulted on the Payment Terms and Conditions. Supporting Declaration, ¶5. Defendant failed to cure after notice. *Id*. at ¶¶6-8 and **Exhibit A** thereto.

After credit for amounts paid, there remains $3,044.16 due and owing, plus costs of $578.50. See Supporting Declaration, ¶¶7-8.

Analysis

Defendant was duly served with the motion. The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. The Court finds that Defendant was duly served with the motion.
2. The Court finds that Defendant is in default of the Settlement Agreement.
3. The Court is inclined to GRANT the Motion to Enter Stipulated Judgment after Default and enter Judgment in favor of Plaintiff and against Defendant in the principal amount of $3,044.16, plus costs of $578.50.
4. However, out of an abundance of caution, the Court hereby continues the matter to **April 29, 2018, 9:00 p.m. in Department 34** of the Court to ensure that notice of the hearing has properly been given to the Defendant. The clerk of the Court is directed to give notice to Defendant and all other parties of the new hearing date.

8. 9:00 AM CASE NUMBER: L24-00604
CASE NAME: WELLS FARGO BANK, N.A. VS. FRANCESCA VOGEL
HEARING ON SUMMARY MOTION MOTION FOR SUMMARY JUDGMENT FILED BY PLN ON 11/25/24
FILED BY: WELLS FARGO BANK, N.A.
TENTATIVE RULING:

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") filed a Motion for Summary Judgment on November 25, 2024 (the "MSJ"). The MSJ was set for hearing on April 15, 2024.

Background

Plaintiff contends that it is entitled to summary judgment as a matter of law because there is no trial issue of fact and it is entitled to summary adjudication of its claims based on the contention that defendant Francesca D Vogel ("Defendant") became indebted to Plaintiff for unpaid amounts due and owing for credit card charges. See MSJ filed November 25, 2024, Memorandum of Points and Authorities ("Plaintiff's MPA"), p. 3 *et seq*.

Plaintiff's MSJ is supported by the Separate Statement of Undisputed Material Facts filed November 25, 2024 ("Plaintiff's Separate Statement"). The Separate Statement sets forth the asserted undisputed material facts ("UMF") supporting Plaintiff's claims.

No opposition papers were filed.

Analysis

The procedure by which a party may seek pretrial entry of judgment on the ground that there is no dispute of material fact is summary judgment or, when the request is for a dispositive ruling on one of multiple claims within an action, summary adjudication. Code Civ. Proc. § 437c; Rule 3.1350 of the California Rules of Court (CRC); see *Weiss v. People ex rel. Dept. of Transport*ation (2020) 9 Cal.5th 840, 864; see generally CJER, *California Judges Benchbook: Civil Proceedings before Trial* (2022) ("CJER Civ. Proc. before Trial"), § 13.2 *et seq*. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. Code Civ. Proc. § 437c(f)(1).

Courts deciding motions for summary judgment or summary adjudication may not weigh the evidence but must instead view it in the light most favorable to the opposing party and draw all reasonable inferences in favor of that party. *Weiss v. People ex rel. Dept. of Transportation*, *supra*, 9 Cal.5th at 864. To ensure that the opposing party has notice of the factual issues in dispute and an opportunity to present the evidence relevant to the motion, the parties must submit separate statements of undisputed facts. *Id*. at 864; see Code Civ. Proc. § 437c(c) and CRC 3.1350(d).

The party moving or summary judgment bears the burden of persuasion that there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; see CJER Civ. Proc. before Trial, § 13.60. 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. *Id*. A plaintiff bears the burden of persuasion that each element of the cause of action in question has been proved, and hence that there is no defense thereto. *Id*. A defendant bears the burden of persuasion that one or more elements of the cause of action in question cannot be established, or that there is a complete defense thereto. *Id*.

The party moving for summary judgment bears an initial burden of production to make a *prima facie* showing of the nonexistence of any triable issue of material fact; if the moving party carries its burden of production, the burden shifts to the opposing party who then has a burden of production to make a *prima facie* showing of the existence of a triable issue of material fact. *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at 850.

First Cause of Action: Breach of Contract (Written)

To establish a claim for breach of contract, a plaintiff must establish: (1) the existence of the contract, (2) plaintiffs' performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damage to Plaintiff. *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.

Plaintiff has carried its initial burden of production to make a *prima facie* showing of the nonexistence of any triable issue of material fact as to the elements of a breach of

contract.

Plaintiff's evidence shows the existence of the contract, i.e. that Defendant applied for and was issued a Wells Fargo credit card on the terms and condition of a written agreement. UMF Nos. 1 and 3. That evidence is set forth in the supporting declarations. See Declaration of Plaintiff's Qualified Witness filed November 25, 2024 ("Supporting Decl.") and the Declaration of Ashley Mulhorn ("Attorney Decl.") filed November 25, 2024. This includes, among other things, the admission of these facts by way of a "deemed admitted" order entered by the Court. See Attorney Decl., **Exhibits 1 through 3**.

Plaintiff proffered evidence of the indebtedness incurred on the credit card by Defendant and the fact of Defendant's breach due to the failure to pay the indebtedness. UMF Nos. 4-15; see Attorney Decl., **Exhibit 3** (RFA Nos. 1-9).

Plaintiff also proffered evidence of the damages suffered in the amount of $28,986.59 for the balance due and owing on the indebtedness. UMF Nos. 13 and 14.

Therefore, the burden shifts to the opposing party to make a *prima facie* showing of the existence of a triable issue of material fact.

No opposition has been filed by Defendant raising a triable issue of fact as to the balance due and owing or otherwise raising a material dispute over the liability on the debt asserted by Plaintiff.

Accordingly, the Court finds that there is no triable issue of material fact as to Plaintiff's first cause of action for breach of contract and that Plaintiff is entitled to judgment as a matter of law.

Second Cause of Action: Breach of Contract

Plaintiff's Separate Statement fails to address the second cause of action pled in Plaintiff's operative complaint which appears to be a secondary breach of contract claim based on an implied contract or other non-written contract theory.

Plaintiff's Separate Statement erroneously refers to "THE SECOND CAUSE OF ACTION FOR MONEY LENT" and mislabels each case of action in turn thereafter. The Court has addressed those causes of action below with reference to their designated number label in the operative Complaint.

Third and Fourth Causes of Action: Money Lent & Money Paid

When a party lends or pays out money at the request of another, the law will imply a promise or obligation to repay the money stemming from the equitable principle of avoiding unjust enrichment. *Old Republic Ins. Co. v. Fsr Brokerage* (2000) 80 Cal.App.4th 666, 676. The essential elements of the common count money lent or paid are: (1) defendant is indebted to plaintiff in a certain sum; and (2) the indebtedness is for money lent, paid or expended to, or for, the defendant. *Moya v. Northrup* (1970) 10 Cal.App.3d 276, 280.

As for reasons set forth above and based on the evidence proffered by Plaintiff in support of the undisputed material facts as to each of these causes of action, the Court finds that

Plaintiff has carried its burden of production to make a *prima facie* showing of the nonexistence of any triable issue of material fact as to the elements of these causes of action.

Therefore, the burden shifts to the opposing party to make a *prima facie* showing of the existence of a triable issue of material fact as to these causes of action.

No opposition has been filed by Defendant raising a triable issue of fact as to the balance due and owing or otherwise raising a material dispute over the liability on the debt asserted by Plaintiff.

Accordingly, the Court finds that there is no triable issue of material fact as to Plaintiff's third and fourth causes of action for money lent and money paid, respectively, and that Plaintiff is entitled to judgment as a matter of law.

Fifth and Sixth Causes of Action: Open Book Account and Account Stated

The elements of an open book account cause of action are: (1) that plaintiff and defendant had financial transactions; (2) that plaintiff kept an account of the debits and credits involved in the transactions; (3) that defendant owes plaintiff money on the account; and (4) the amount of money that defendant owes plaintiff. *State Comp. Ins. Fund v. ReadyLink Healthcare, Inc.* (2020) 50 Cal.App.5th 422, 449.

The elements of an account stated are: (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; and (3) a promise by the debtor, express or implied, to pay the amount due. *Zinn v. Fred R. Bright Co.* (1969) 271 Cal.App.2d 597, 600.

As for reasons set forth above and based on the evidence proffered by Plaintiff in support of the undisputed material facts as to each of these causes of action, the Court finds that Plaintiff has carried its burden of production to make a *prima facie* showing of the nonexistence of any triable issue of material fact as to the elements of these causes of action.

Therefore, the burden shifts to the opposing party to make a *prima facie* showing of the existence of a triable issue of material fact as to these causes of action.

No opposition has been filed by Defendant raising a triable issue of fact as to the balance due and owing or otherwise raising a material dispute over the liability on the debt asserted by Plaintiff.

Accordingly, the Court finds that there is no triable issue of material fact as to Plaintiff's fifth and sixth causes of action for open book account and account stated, respectively, and that Plaintiff is entitled to judgment as a matter of law.

<u>Attorneys' Fees, Prejudgment Interest and Costs</u>

No attorneys' fees or prejudgment interest was sought by Plaintiff. As part of the moving papers, a Memorandum of Costs was filed November 25, 2024. The Memorandum of

Costs reflects recoverable costs in the sum of $945.00.

Disposition

The Court finds and orders as follows:

1. Subject to Paragraph 2 below, the MSJ is GRANTED. Plaintiff shall have judgment against Defendant in the principal amount of $28,986.59, with costs in the amount of $945.00.
2. THE PARTIES ARE ORDERED TO APPEAR to address Plaintiff's second cause of action. The Court is prepared to grant summary judgment on Plaintiff's Complaint contingent upon dismissal of that cause of action.

9. 9:00 AM CASE NUMBER: L24-01400
CASE NAME: CAPITAL ONE N.A. VS. JOHN GARCIA
***HEARING ON MOTION IN RE: MOTION FOR JUDGMENT ON THE PLEADINGS**
FILED BY: CAPITAL ONE N.A.
****TENTATIVE RULING:****

Plaintiff CAPITAL ONE, N.A. ("Plaintiff") filed a Motion for Judgment on the Pleadings on August 22, 2024 (the "Motion for Judgment on the Pleadings"). The Motion for Judgment on the Pleadings was set for hearing on February 24, 2025. Subsequently, the matter was continued to April 15, 2025. Notice was given to the parties of the continued hearing date.

Background

The Motion for Judgment on the Pleadings is based on the contention that operative complaint states facts sufficient to constitute a cause of action and the answer does not state facts sufficient to constitute a defense. Plaintiff contends that defendant John Garcia (the "Defendant") admits all statements in the complaint are true and that Defendant owes the alleged debt.

Analysis

A motion for judgment on the pleadings may be brought by a plaintiff where the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint. Code Civ. Proc. § 438(c); see Weil & Brown, *et al*., *Cal. Prac. Guide: Civ. Pro. Before Trial* (The Rutter Group 2024) ("Rutter Civ. Pro.") § 7:290. The grounds for a motion for judgment on the pleadings must appear on the face of the pleadings or be based on facts that a court may judicially notice. Civ. Proc. § 438(d); Rutter Civ. Pro., § 7:291.

Plaintiff's Complaint alleges causes of action for Common Counts (Open Book Account, Account Stated, Money Lent and Money Paid at Defendant's Special Instance and Request) based on the allegation that Defendant became indebted in the amount of $15,808.96 on an account and/or for moneys lent/advanced as credit. See Complaint filed February 21, 2024, Attachment (First Cause of Action), p. 1, ¶¶ CC-1 through CC-2. It is alleged that the

Plaintiff is the successor-in-interest to the original creditor on this debt. *Id*. at p. 2, ¶9.

Defendant's Answer was filed May 6, 2024. The Answer does not deny any of the allegations of the Complaint. See Answer filed May 6, 2024. Box 3.a. of the Answer form (general denial) is not checked. *Id*. Box 3.b. of the Answer form (admission with specific denials) is checked. *Id*. However, no exceptions are stated contending any particular allegations of the Complaint are untrue. *Id*.

Rather, Defendant affirmatively acknowledged liability for the debt, indicating a desire to "start paying back the money i owe." Answer, p. 2, ¶5.

No other denials or affirmative defenses are set forth in the Answer. Box 4 regarding any affirmative defenses is blank. Answer, p. 2, ¶6.

Even liberally construing the pleading filed by a self-represented litigant, it is evident that Defendant admits the fact of the debt and does not state any cognizable defense to the liability. While the expressed desire to want to work about a payment arrangement is a laudable one, that does not change the plain conclusion that the Answer does not state facts sufficient to constitute a defense to the Complaint.

The Motion for Judgment on the Pleadings was unopposed.

Having considered the moving papers and any further pleadings submitted, the Court makes the following findings:

1. Plaintiff's Complaint states facts sufficient to constitute a cause or causes of action against the Defendant and Defendant's Answer does not state facts sufficient to constitute a defense to the Complaint.
2. Defendant became indebted in the amount of $15,808.96 on the subject account (the "Debt").
3. Plaintiff is the successor-in-interest to the original creditor on this Debt and is entitled to judgment as a matter of law against Defendant on the Complaint.

Costs

As part of the moving papers, a Memorandum of Costs was filed August 22, 2024. The Memorandum of Costs reflects recoverable costs in the sum of $503.61.

Disposition

The Court finds and orders as follows:

1. The Motion for Judgment on the Pleadings is GRANTED.
2. A proposed form of judgment was lodged with the Court which the Court shall execute and enter.

10. 9:00 AM CASE NUMBER: L24-02853
CASE NAME: CITIBANK N.A. VS. LOURDES GONZALEZ
***HEARING ON MOTION IN RE: MOTION FOR ORDER THAT MATTERS IN REQ FOR ADMISSION OF**

TRUTH OF FACTS BE DEEMED ADMITTED FILED BY PLN ON 10/8/24
FILED BY: CITIBANK N.A.
TENTATIVE RULING:

Plaintiff Citibank, N.A. ("Plaintiff") filed a Motion for Order that Matters in Request for Admission of Truth of Facts be Deemed Admitted on October 8, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on April 9, 2025. The Motion to Deem Admissions was subsequently continued to April 15, 2025.

Disposition

The Court orders as follows:

1. The parties appeared for a court trial on March 26, 2025 and the parties confirmed, in open court, that the matter has resolved.
2. In light of the resolution, the Motion to Deem Admissions is DROPPED from calendar without prejudice and the hearing date VACATED. The motion can be renewed if the matter is not dismissed pursuant to the settlement.

11. 9:00 AM CASE NUMBER: L24-03320
CASE NAME: JOSELY GARCIA VS. ARMANDO RAMIREZ
HEARING ON DEMURRER TO: DEMURRER FILED BY U.S. SPECIALTY INSURANCE COMPANY TO COMPLAINT OF GARCIA
FILED BY: U.S. SPECIALTY INSURANCE COMPANY
TENTATIVE RULING:

Defendant U.S. Specialty Insurance Company ("USSIC") filed a demurrer to the third cause of action in plaintiff's Complaint on October 30, 2024 (the "Demurrer"). The Demurrer was set for hearing on April 9, 2025. The Demurrer was subsequently continued for hearing to April 15, 2025.

Background

USSIC's Demurrer demurs to the third cause of action pled in the Complaint (the "Complaint") filed by plaintiff Josely Garcia ("Plaintiff") on April 24, 2024. The third cause of action is labeled as "Claim Against Dealer Bond" and contains allegations that the seller defendant made misrepresentations regarding the history and/or condition of the subject vehicle. See Complaint, ¶¶68-71. Plaintiff's alleges damages as a result, "entitling Plaintiff a right of action against SURETY, including attorney's fees, as to SELLER's bond, Pursuant to Vehicle Code section 11711, general surety law, and Civil Code section 2808." See *id*. at ¶71.

USSIC's Demurrer contends that this cause of action fail to state facts sufficient to constitute a cause of action against USSIC.

Analysis

The limited role of the demurrer is to test the legal sufficiency of the allegations in a complaint. *Lewis v. Safeway, Inc.* (2015) 235 Cal.App.4th 385, 388. It raises issues of law, not fact, regarding the form or content of the opposing party's pleading. *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994. A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. *Id*. For purposes of demurrer, all facts pleaded in a complaint are assumed to be true, but the court does not assume the truth of conclusions of law. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967. "Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227. However, leave to amend should not be granted where, in all probability, amendment would be futile. *Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 685.

1. **Third Cause of Action for Claim Against Dealer Bond**

USSIC contends that to prevail on a bond claim, a plaintiff must prove both a fraudulent representation with all elements of fraud and that the plaintiff has possession of a written instrument furnished by the dealer, containing stipulations and guarantees violated by the dealer.

USSIC argues that Plaintiff here failed to allege a written instrument furnished by the licensee containing stipulated provisions and guarantees violated by the licensee. See *Goggin v. Reliance Ins. Co.* (1962) 200 Cal.App.2d 361, 365 ("...in order to recover for loss or damage by reason of any fraud practiced on him or fraudulent representation made to him by a licensed bonded dealer, the plaintiff must have a writing furnished by the licensee containing stipulated provisions and guarantees which plaintiff believes have been violated..."). USSIC asserts that Plaintiff "has not alleged a written instrument furnished by CHEAP AUTO within the meaning of the statute."

Plaintiff overlooks the plain allegation set forth in the Complaint regarding the existence of such a writing. Paragraph 69 of the Complaint alleges that "**[a] writing exists** between SELLER and Plaintiff with stipulated provisions regarding the history and/or condition of the Vehicle." See Complaint, ¶69 (emphasis added).* This is sufficient to satisfy the pleading requirements as to the prerequisite writing.

Whether Plaintiff can produce such an instrument is a different matter. If the allegation is unfounded, then that may well play out in discovery and at trial. However, the Court cannot consider, in the context of a demurrer, USSIC's assertion that Plaintiff could not produce such an instrument in "meet and confer efforts."

The Court has considered and rejects USSIC's further arguments to the effect that the cause of action fails to allege the elements of fraud. Read in context with the other allegations, the allegations in the Complaint are more than sufficient to satisfy the pleading requirements for Plaintiff's claim against USSIC founded upon fraudulent misrepresentations or other misconduct by the seller of the subject vehicle.

The Court has also considered and rejects USSIC's contention regarding the damages sought. The choice of remedy is not grounds for a demurrer on the grounds of a failure to

state facts sufficient to constitute a cause of action. See *Venice Town Council v. City of L.A.* (1996) 47 Cal.App.4th 1547, 1562 ("[A] demurrer tests the sufficiency of the factual allegations of the complaint rather than the relief suggested in the prayer of the complaint."). If Plaintiff prevails on its claim against USSIC, the appropriate measure of damages can be ascertained by the trier of fact.

*USSIC's statement in its briefing that "No written instrument containing 'stipulated provisions and guarantees' about previous accidents or structural damage is alleged" is a borderline misrepresentation of the pleading. It is not clear to the Court how such a statement can be made in light of Paragraph 69. USSIC and its counsel are admonished to avoid making misrepresentations about the opposing party's pleading(s) in filed papers.

Disposition

The Court finds and orders as follows:

1. The Demurrer is OVERRULED.
2. USSIC's responsive pleading shall be filed and served within ten (10) days of the date of this order. See Rule 3.1320(j) of the California Rules of Court (CRC).

12. 9:00 AM CASE NUMBER: L24-04762
CASE NAME: LVNV FUNDING LLC VS. MATHEW NAVA
***HEARING ON MOTION FOR DISCOVERY NOTICE OF MOTION AND MOTION FOR ORDER THAT MATTERS IN REQUEST FOR ADMISSIONS BE DEEMED ADMITTED PURSUANT TO CCP 2033.280**
FILED BY: LVNV FUNDING LLC
TENTATIVE RULING:

Plaintiff LVNV Funding LLC ("Plaintiff") filed a Motion for Order that Matters in Request for Admissions be Deemed Admitted on November 13, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on April 7, 2025. Subsequently, the hearing was continued to April 15, 2025. **However, no notice to the defendant Mathew B Nava ("Defendant") of the April 15, 2025 hearing date appears of record on the Court's docket.**

Background

Plaintiff served Defendant with a Request for Admissions (Set One). See Declaration filed November 13, 2024 as part of Motion to Deem Admissions ("Supporting Declaration"), ¶2 and **Exhibit A** thereto (the "RFAs"). The RFAs were served on August 12, 2024 by mail. *Id.* at ¶2 and **Exhibit A** [attached Proof of Service dated August 12, 2024 (the "Proof of Service")].

With a five calendar day extension for service of the RFAs by mail, the responses were due to be served on or before September 16, 2024 (30 days from and after August 12, 2024 was September 11, 2024 and five calendar days thereafter fell on September 16, 2024). See *id.* at ¶5. No responses were received by that deadline or through the time of the filing of the

motion. See *id*. at ¶3.

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery 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. Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402.

Where a party to whom requests for admission are directed fails to serve a timely response, the propounding party may seek a court order that the genuineness of any documents and/or the truth of any matters specified in the requests be deemed admitted pursuant to Code of Civil Procedure section 2033.280. See Code Civ. Proc. § 2033.280(b). The propounding party may also seek the imposition of monetary sanctions. *Id*. There is no meet and confer requirement for a motion to deem matters admitted under Section 2033.280. See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 777.

Defendant was duly served with the motion. The motion is unopposed.

Having considered the moving papers and any further pleadings submitted, the Court makes the following findings as to the discovery requests at issue:

1. Defendant was duly served with the subject RFAs.
2. No timely response was made to the RFAs by Defendant.
3. No opposition or other responsive pleadings by Defendant have been filed with the Court.

Sanctions

No monetary sanctions were sought by the moving party.

Disposition

The Court further finds and orders as follows:

1. The Court is inclined to GRANT the Motion to Deem Admissions.
2. The truth of the facts recited in RFA Nos. 1 through 11 are DEEMED ADMITTED by Defendant.
3. However, out of an abundance of caution, the Court hereby continues the matter to **April 29, 2018, 9:00 p.m. in Department 34** of the Court to ensure that notice of the hearing has properly been given to the Defendant. The clerk of the Court is directed to give notice to Defendant and all other parties of the new hearing date.

13. 9:00 AM CASE NUMBER: L24-04783
CASE NAME: AMERICAN EXPRESS NATIONAL BANK VS. KRIS JELEV
***HEARING ON MOTION IN RE: MOTION TO VACATE THE CONDITIONAL DISMISSAL AND FOR ENTRY OF JUDGMENT PURS TO CCP 664.6**
FILED BY: AMERICAN EXPRESS NATIONAL BANK
****TENTATIVE RULING:****

Plaintiff American Express National Bank ("Plaintiff") filed a Motion to Vacate the Conditional Dismissal and for Entry of Judgment on November 27, 2024 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on April 15, 2025.

Background

The parties entered into that certain settlement agreement filed September 3, 2024 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $6,036.00, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Declaration of Scott D. Dyle filed November 27, 2024 ("Supporting Declaration"), ¶¶3-4 and **Exhibit A** thereto. As part of the Settlement Agreement, the parties entered into a stipulation for entry of judgment in the event of a default in the amount of the total indebtedness, $9,685.95 plus costs. *Id*., **Exhibit A,** ¶¶4-5.

Defendant defaulted on the Payment Terms and Conditions. See Supporting Declaration, ¶7. Defendant failed to cure after notice. *Id*. at ¶¶8-9 and **Exhibit B** thereto.

After credit for amounts paid, there remains $9,182.92 due and owing, plus costs of $365.00, for a total of $9,547.95. See Supporting Declaration, ¶10.

Analysis

Defendant was duly served with the motion. The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. The Court finds that Defendant was duly served with the motion.
2. The Court finds that Defendant is in default of the Settlement Agreement.
3. The Motion to Enter Stipulated Judgment after Default is GRANTED. Plaintiff shall have judgment against Defendant in the principal amount of $9,182.92, plus costs of $365.00, for a total of $9,547.95.
4. Plaintiff's submitted form of order and/or money judgment against Defendant will be entered by the Court. Any prior dismissal entered herein against the Defendant is hereby set aside in connection with entry of such judgment.

14. 9:00 AM CASE NUMBER: MSL12-06038

CASE NAME: EGC FINANCIAL VS GHUSHCHIAN
***HEARING ON MOTION IN RE: SET ASIDE DEFAULT & DEFAULT JUGMENT FILED BY LUSINE GHUSHCHYAN ON 1-15-25**
FILED BY:
****TENTATIVE RULING:****

Defendant and judgment debtor Lusine Ghushchian* ("Defendant") filed a Motion to Set Aside Default and Default Judgment on January 15, 2025 (the "Motion to Set Aside"). The Motion to Set Aside was set for hearing on April 8, 2025. Subsequently, the hearing date was continued to April 15, 2025.

*Although this is the spelling of Defendant's name on the Judgment, Defendant's moving papers spell the last name with a "y" as in "Ghushchyan." However, Defendant appears to acknowledge that Defendant is the same person against whom the Judgment was rendered in this case. The Court makes no further orders regarding this issue at this time.

Background

Plaintiff EGC FINANCIAL, LLC ("Plaintiff") filed a Complaint on August 30, 2012. A default was entered against Defendant on December 5, 2012. Thereafter, a default money judgment was entered on August 22, 2011 in the total amount of $9,523.24 (the "Judgment"). The Judgment was renewed January 25, 2022.

Analysis

1. **Purported Lack Of Proof Of Service**

The Court first addresses the contention that the default and Judgment should be set aside because of the lack of service. Defendant contends that Defendant was "never served." See Declaration filed as part of Motion to Set Aside (the "Supporting Declaration"), p. 10, ¶1 *et seq*. Defendant contends because of such lack of service and actual notice of the lawsuit, the default and Judgment are void, including pursuant to Code of Civil Procedure section 473(d).

Defendant's Supporting Declaration contends that there is no Proof of Service on file. See Supporting Declaration, p. 10, ¶1. However, this is plainly incorrect. The docket reflects proofs of service underlying the original Judgment as well as on the Judgment renewal. Indeed, Defendant makes reference to a proof of service filed by Plaintiff. *Id*. at ¶2 *et seq*.

Defendant's description of the grounds for the motion are inconsistent and appear to conflate issues with service of the Judgment renewal application with service of process underlying the original default and Judgment. Notwithstanding such confusion, the Court construes Defendant's pleading broadly to evaluate if any grounds appear to set aside the Judgment, including as subsequently renewed.

It appears that Defendant is contending that the service reflected in the proof of service on the renewal application was inadequate because Plaintiff used an "old address." *Id*. at ¶6. Defendant states that Defendant was "never served by mail." *Id*. Defendant states that Defendant first learned of the lawsuit in connection with a background check in connection with cosigning on a FHA loan for Defendant's daughter. *Id*. at ¶8. Defendant references service taking place at a "mail box" at "925 Promontory ter." *Id*. at ¶3. This appears to refer to the address location at which the application for Judgment renewal was served. See Application filed January 25, 2022 and Proof of Service filed February 25, 2022.

Defendant argues that Defendant could not possibly be served at "the above mentioned addresses" and Defendant offered tax returns showing that Defendant's address was 2824 Red Pine Ct. in Pleasanton. Motion to Set Aside, p. 9 and Supporting Declaration, **Exhibit C**.

2. Defendant Fails To Demonstrate That The Underlying Judgment Is Void Or Should Otherwise Be Set Aside.

The underlying Proof of Service was filed back in 2012. See Proof of Service filed October 3, 2012. It reflects personal service on Defendant on September 28, 2012 at 3:49 pm (and not substitute service as Defendant states in the moving papers). See Proof of Service, ¶5.a.

The service was done by a registered process server. See *id*. at ¶7. This raises a presumption of valid service. See *Floveyor Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 795 (the filing of a proof of service creates a rebuttable presumption that the service was proper).

The tax return materials are from 2020 through 2023, not 2012. Moreover, the Proof of Service appears to reflect service on Defendant personally at a place of business. See Proof of Service, ¶4. Assertions about Defendant's correct place of residence in the years 2020 through 2023 have no bearing on whether service was done at some other location on Defendant personally as shown in the original Proof of Service, back in 2012.

None of the evidence proffered by Defendant persuades the Court that Defendant was not personally served as stated in the Proof of Service more than twelve years ago. The Court does not find that the presumption of valid service has been rebutted by Defendant.

Moreover, to the extent that motion contends that the original Judgment is void because of a lack of actual notice, such relief is time barred under Code of Civil Procedure section 473.5. See Code Civ. Proc. § 473.5(a) ("The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a

written notice that the default or default judgment has been entered.").

3. **Defendant's Challenge Of The Renewal Judgment Is Untimely And Fails On The Merits As Well**

To the extent that Defendant's motion is based on challenging the renewal of the Judgment, the motion is also time barred. The motion was not served within the time allowed by Code of Civil Procedure section 683.160(a).

Section 683.160(a) provides, in pertinent part, that the notice of renewal of judgment shall inform the judgment debtor that "...the judgment debtor has 60 days within which to make a motion to vacate or modify the renewal." Code Civ. Proc. § 683.160(a). s 683.170(a) provides that "[t]he renewal of a judgment pursuant to this article may be vacated on any ground that would be a defense to an action on the judgment..." Code Civ. Proc. § 683.170(a). The judgment debtor has 60 days after service of the notice of renewal apply by noticed motion under this section for an order of the court vacating the renewal of the judgment. Code Civ. Proc. § 683.170(b). These sections were amended effective January 1, 2023. *Id*. Previously, the sections provided a 30 day deadline. *Id*. (commentary to annotated statutes). The renewal here, back in 2022, would have been subject to the 30 day limit.

Defendant failed to bring this motion within the statutorily allowed time period. The renewal application was brought back in January 2022 and Defendant's motion was not brought until January 2025, some three years later. See Application filed January 25, 2022 and Proof of Service filed February 25, 2022.

Even if Defendant's challenge to the renewal of the Judgment were not time barred because notice of the renewal application was not served to the correct address for Defendant as of 2022, the Court would still deny the motion on its merits because the motion does not otherwise establish that the original service was somehow defective or any other ground for concluding that the underlying default and default Judgment were somehow void.

<u>Disposition</u>

The Court finds and orders as follows:

1. The Motion to Set Aside is DENIED.

Law & Motion
Add On

15. 9:00 AM CASE NUMBER: L22-01554
CASE NAME: DISCOVER BANK VS. YOLANDA PAIGE
***HEARING ON MOTION IN RE: DEFENDANT'S COUNSEL'S MOTION TO BE RELIEVED AS ATTORNEY**
FILED BY:
TENTATIVE RULING:

Adam C. Fullman and the law office of THE FULLMAN FIRM, PC filed an Application to be Relieved as Attorney (the "Application") for defendant Yolanda Paige ("Defendant") on or about January 28, 2025. The matter was set for hearing on April 15, 2025. Notice of the hearing date was given to Defendant.

Background

The Application is based on completion of the scope of services under a limited scope representation.

Analysis

The Application is unopposed.

Disposition

The Court finds and rules as follows:

1. The Application is GRANTED.
2. Counsel has submitted proposed a form of order [Judicial Council Form CIV-153 ("Order on Application to be Relieved as Attorney on Completion of Limited Scope Representation"). The Court will execute and enter the lodged form of order.