SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 34, RICHMOND
JUDICIAL OFFICER: LEONARD E MARQUEZ
HEARING DATE: 05/06/2025

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

Law & Motion

1. 9:00 AM CASE NUMBER: L23-00459
CASE NAME: ONEMAIN FINANCIAL GROUP, LLC VS. BRANDY JACKSON
***HEARING ON MOTION FOR DISCOVERY NOTICE OF MOTION AND MOTION TO DEEM REQUESTS FOR ADMISSIONS ADMITTED AND OF NONAPPEARANCE**
FILED BY: ONEMAIN FINANCIAL GROUP, LLC
TENTATIVE RULING:

Plaintiff OneMain Financial Group, LLC ("Plaintiff") filed a Motion to Deem Requests for Admissions Admitted on December 12, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on May 6, 2025. The motion is unopposed.

Background

Plaintiff served Defendant Brandy N Jackson ("Defendant") with a Requests for Admission (Set One). See Declaration of Douglas Agne filed December 12, 2024 ("Supporting Declaration"), ¶1 and **Exhibit A** thereto (the "RFAs"). The RFAs were served on August 29, 2023 by mail. *Id*. at ¶1 and **Exhibit A** [attached Proof of Service dated August 29, 2023 (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 October 3, 2023 (30 days from and after August 29, 2023 was September 28, 2023 and five calendar days thereafter fell on October 3, 2023). No responses were received by that deadline. See *id*. at ¶2. Despite meet and confer efforts, no responses were received through the time of the filing of the motion. See *id*. at ¶3 and **Exhibit B**.

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.

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. Plaintiffs engaged in meet and confer efforts and Defendant did not responses to the RFAs.
4. No opposition or other responsive pleadings by Defendant have been filed with the Court.

Sanctions

Plaintiff does not seek imposition of sanctions.

Disposition

The Court further finds and orders as follows:

1. The Motion to Deem Admissions is GRANTED.
2. The truth of the facts recited in RFA Nos. 1 through 2 and RFA Nos. 4 through 10 are DEEMED ADMITTED by Defendant.
3. The genuineness of the document attached as Exhibit 1 to the RFAs, pursuant to RFA No. 3, is DEEMED ADMITTED by Defendant.
4. A proposed form of order was lodged with the Court which the Court shall execute and enter.

2. 9:00 AM CASE NUMBER: L23-05284
CASE NAME: WELLS FARGO BANK, N.A. VS. MELISSA URBANO
***HEARING ON MOTION IN RE: MOTION FOR JUDGMENT ON THE PLEADINGS FILED BY PLN ON 12/19/24**
FILED BY: WELLS FARGO BANK, N.A.
****TENTATIVE RULING:****

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") filed a Motion for Judgment on the Pleadings on December 19, 2024 (the "Motion for Judgment on the Pleadings"). The Motion for Judgment on the Pleadings was set for hearing on May 6, 2025.

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. Plaintiffs contends that defendant Melissa G Urbano (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. Matters that may be judicially noticed include a party's admissions or concessions which cannot reasonably be controverted. *Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 989-990.

Plaintiff's Complaint alleges causes of action for Breach of Contract and Common Counts

(Open Book Account, Account Stated, Money Had and Received, Goods Sold and Delivered, Money Lent and Money Paid at Defendant's Special Instance and Request) based on the allegation that Defendant became indebted in the amount of $6,629.45 on a credit card account. See Complaint filed September 13, 2024, p. 2, ¶¶8 and 10 and Attachments (1st and 2nd Causes of Action).

Defendant's Answer was filed November 22, 2023. The Answer denies the allegations of the Complaint and states various affirmative defenses. See Answer filed November 22, 2023.

Later, Plaintiff filed a motion to deem the truth of matters admitted in a set of Request for Admissions (the "RFAs") served on Defendant which was granted by the Court. See Order entered January 15, 2025 (the "Deemed Admitted Order"). The Court takes judicial notice of the underlying court filings in the connection with the Deemed Admitted Order.

Based upon the Deemed Admitted Order, it is evident that Defendant has been deemed to admit to the fact of the subject debt and the amount owing, $6,629.45. See Deemed Admitted Order; see also RFAs attached to Declaration of Breanne L. Reese filed July 25, 2024, attached as part of Exhibit B to Declaration of Douglas Agne filed December 19, 2024 (the "Supporting Declaration").

Those admissions are binding upon Defendant for purposes of a motion for judgment on the pleadings. *Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 746 ("Judicial admissions may be made in a pleading, by stipulation during trial, or by response to request for admission.").

While the Defendant pled denials and defenses by way of the Answer, Defendant failed to raise those issues timely in response to the requests for admissions and the Deemed Admitted Order has been made by the Court and has not been set aside. Nor has Defendant opposed this Motion for Judgment on the Pleadings.

Arguably, the RFAs do not contain a catch all admission to the effect that there is no cognizable defense to the liability that would negate all of the pled affirmative defenses. See Code Civ. Proc. § 438(c)(1)(A) ("[i]f the moving party is a plaintiff," a motion for judgment on the pleadings may be made on the grounds that "...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**.") (Emphasis added).

While some of the affirmative defenses are expressly negated by the admissions made as part of the Deemed Admitted Order, others are not. For example, the Answer pleads the defenses of "laches, equitable estoppel, and unclean hands." See Answer, p. 2, ¶1. There is no RFA which admitted that any of those particular affirmative defenses is without merit or otherwise constituted any admission that all of the pled affirmative defenses are without merit. See Supporting Declaration, Exhibit B, RFAs Nos. 1 through 10. There is an RFA that constitutes an admission that "If YOU have CREDIT DEFENSE, admit that YOU do not qualify for its benefits." See *id*. at RFA No. 10. However, as defined, it is evident that the

term “CREDIT DEFENSE” only refers to “any debt cancellation agreement between YOU and PLAINTIFF…” See *id*. at RFA No. 9.

Nonetheless, the Court concludes here that the admission made to the effect that “YOU owe this propounding party” implies an admission of no cognizable defense to the liability, especially in the absence of any opposition and showing to the contrary by Defendant.

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

1. Plaintiff’s Complaint, on its face and considering the Deemed Admitted Order, states facts sufficient to constitute causes of action against the Defendant for Breach of Contract (1st Cause of Action) and Common Counts (2nd Cause of Action). As to the 2nd Cause of Action for Common Counts, the Court finds that pleadings are sufficient to constitute a cause of action based on a theory of Open Book Account, Account Stated and Money Lent. The Court need not consider the other alternative theories of liability (Money Had and Received, Goods Sold and Delivered, and Money Paid at Defendant’s Special Instance and Request).
2. The Court further finds that the pleadings, in light of the Deemed Admitted Order, do not state facts sufficient to constitute a defense to the Complaint, as to Plaintiff’s 1st Cause of Action and 2nd Cause of Action.
3. Defendant became indebted in the amount of $6,629.45 on the subject credit card account, which amount is due and owing to Plaintiff.

Costs

No memorandum of costs was filed as part of the moving papers. Any recoverable costs may be sought by a timely filed memorandum of costs or otherwise in accordance with applicable law.

Disposition

The Court finds and orders as follows:

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

3. 9:00 AM CASE NUMBER: L24-00830
CASE NAME: WELLS FARGO BANK, N.A. VS. SHAKIRA NIAZI
***HEARING ON MOTION IN RE: MOTION TO DEEM REQUEST FOR ADMISSIONS ADMITTED AND OF NONAPPEARANCE FILED BY PLN ON 12/19/24**
FILED BY: WELLS FARGO BANK, N.A.
****TENTATIVE RULING:****

Plaintiff Wells Fargo Bank, N.A. (“Plaintiff”) filed a Motion to Deem Requests for

Admissions Admitted on December 19, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on May 6, 2025. The motion is unopposed.

Background

Plaintiff served Defendant Shakira Niazi ("Defendant") with a Requests for Admission (Set One). See Declaration of Pearse F. Early filed December 19, 2024 ("Supporting Declaration"), ¶1 and **Exhibit A** thereto (the "RFAs"). The RFAs were served on October 28, 2024 by mail. *Id*. at ¶1 and **Exhibit A** [attached Declaration of Service dated October 28, 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 December 2, 2024 (30 days from and after October 28, 2024 was November 27, 2024 and five calendar days thereafter fell on December 2, 2024). No responses were received by that deadline or through the time of the filing of the motion. See *id*. at ¶2.

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.

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

Plaintiff does not seek imposition of sanctions.

Disposition

The Court further finds and orders as follows:

1. The Motion to Deem Admissions is GRANTED.
2. The truth of the facts recited in RFA Nos. 1 through 6 and RFA Nos. 8 through 11 are DEEMED ADMITTED by Defendant.
3. The genuineness of the document attached as Exhibit A to the RFAs, pursuant to RFA No. 7, is DEEMED ADMITTED by Defendant.
4. A proposed form of order was lodged with the Court which the Court shall execute and enter.

4. 9:00 AM CASE NUMBER: L24-05255
CASE NAME: BANK OF AMERICA N.A. VS. KANJANA JANJOO
***HEARING ON MOTION IN RE: MOTION FOR ORDER THAT MATTERS IN REQ FOR ADMISSION OF TRUTH OF FACTS BE ADMITTED FILED BY PLN ON 12/31/24**
FILED BY: BANK OF AMERICA N.A.
****TENTATIVE RULING:****

HEARING VACATED. A dismissal of the action was entered April 24, 2025.

5. 9:00 AM CASE NUMBER: L24-05513
CASE NAME: BANK OF AMERICA N.A. VS. LATASHA DINH
***HEARING ON MOTION FOR DISCOVERY NOTICE OF PLAINTIFF'S MOTION TO DEEMREQUEST FOR ADMISSIONS ADMITTED (C.C.P.SECTION 2033.280), POINTS AND AUTHORITIES,DECLARATION, ORDER**
FILED BY: BANK OF AMERICA N.A.
****TENTATIVE RULING:****

Plaintiff Bank of America, N.A. ("Plaintiff") filed a Motion to Deem Request for Admissions Admitted on December 12, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on May 6, 2025. The motion is unopposed.

Background

Plaintiff served Defendant Latasha C. Dinh ("Defendant") with a Requests for Admission (Set One). See Declaration of Robert Kayvon filed December 12, 2024 ("Supporting Declaration"), ¶3 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on August 15, 2024 by mail. *Id*. at ¶3 and **Exhibit 1** [attached Proof of Service dated August 15, 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 19, 2024 (30 days from and after August 15, 2024 was September 14, 2024 and five calendar days thereafter fell on September 19, 2024). No

responses were received by that deadline. See *id*. at ¶4. Despite meet and confer efforts, no responses were received through the time of the filing of the motion. See *id*. at ¶5.

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.

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. Plaintiffs engaged in meet and confer efforts and Defendant did not provide responses to the RFAs.
4. No opposition or other responsive pleadings by Defendant have been filed with the Court.

Sanctions

Plaintiff does not seek imposition of sanctions.

Disposition

The Court further finds and orders as follows:

1. The Motion to Deem Admissions is GRANTED.
2. The truth of the facts recited in RFA Nos. 1 through 10 are DEEMED ADMITTED by Defendant.
3. A proposed form of order was lodged with the Court which the Court shall execute and enter.

6. 9:00 AM CASE NUMBER: L24-05794
CASE NAME: JPMORGAN CHASE BANK, N.A. VS. YEKATERINA RAMIREZ
***HEARING ON MOTION FOR DISCOVERY NOTICE OF MOTION AND MOTION FOR ORDER THAT MATTERS IN REQUEST FOR ADMISSION OF TRUTH OF FACTS BE DEEMED ADMITTED**
FILED BY: JPMORGAN CHASE BANK, N.A.
****TENTATIVE RULING:****

Plaintiff JPMorgan Chase Bank, N.A. ("Plaintiff") filed a Motion for Order that Matters in Request for Admission of Truth of Facts be Deemed Admitted on November 22, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on May 2, 2025. Subsequently, the motion was reset for hearing on May 6, 2025 in Department 34 of the Court. Notice was given to all parties. The motion is unopposed.

Background

Plaintiff served defendant Yekaterina Ramirez ("Defendant") with a Requests for Admission (Set One). See Declaration of Brian Langedyk filed November 22, 2024 as part of Motion to Deem Admissions ("Supporting Declaration"), ¶2 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on October 1, 2024 by mail. *Id*. and **Exhibit 1** [attached Proof of Service dated October 1, 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 November 5, 2024 (30 days from and after October 1, 2024 was October 31, 2024 and five calendar days thereafter fell on November 5, 2024). 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.

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

Plaintiff does not seek imposition of sanctions.

Disposition

The Court further finds and orders as follows:

1. The Motion to Deem Admissions is GRANTED.
2. The truth of the facts recited in RFA Nos. 1 through 5 are DEEMED ADMITTED by Defendant.
3. A proposed form of order was lodged with the Court which the Court shall execute and enter.

7. 9:00 AM CASE NUMBER: L24-06621
CASE NAME: BARCLAYS BANK DELAWARE VS. CHERYL THOMAS
***HEARING ON MOTION IN RE: MOTION TO MOTION TO DEEM REQUEST FOR ADMISSIONS ADMITTED FILED BY PLN ON 12/23/24**
FILED BY: BARCLAYS BANK DELAWARE
****TENTATIVE RULING:****

Plaintiff Barclays Bank Delaware ("Plaintiff") filed a Motion to Deem Request for Admissions Admitted on December 23, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on May 6, 2025. The motion is unopposed.

Background

Plaintiff served Defendant Cheryl K. Thomas ("Defendant") with a Requests for Admission (Set One). See Declaration of Robert Kayvon filed December 23, 2024 ("Supporting Declaration"), ¶3-4 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on September 19, 2024 by mail. *Id*. at ¶3 and **Exhibit 1** [attached Proof of Service dated September 19, 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 October 24, 2024 (30 days from and after September 19, 2024 was October 19, 2024 and five calendar days thereafter fell on October 24, 2024). No

responses were received by that deadline. See *id*. at ¶4. Despite meet and confer efforts, no responses were received through the time of the filing of the motion. See *id*. at ¶5 and Exhibit 2.

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.

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. Plaintiff engaged in meet and confer efforts and Defendant did not provide responses to the RFAs.
4. No opposition or other responsive pleadings by Defendant have been filed with the Court.

Sanctions

Plaintiff does not seek imposition of sanctions.

Disposition

The Court further finds and orders as follows:

1. The Motion to Deem Admissions is GRANTED.
2. The truth of the facts recited in RFA Nos. 1 through 10 are DEEMED ADMITTED by Defendant.
3. A proposed form of order was lodged with the Court which the Court shall execute and enter.

8. 9:00 AM CASE NUMBER: L24-06628
CASE NAME: BARCLAYS BANK DELAWARE VS. CHRISTINA BRET
***HEARING ON MOTION IN RE: MOTION TO DEEM REQUEST FOR ADMISSIONS ADMITTED FILED BY PLN ON 12/23/24**
FILED BY: BARCLAYS BANK DELAWARE
****TENTATIVE RULING:****

Plaintiff Barclays Bank Delaware ("Plaintiff") filed a Motion to Deem Request for Admissions Admitted on December 23, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on May 6, 2025. The motion is unopposed.

Background

Plaintiff served Defendant Christina Bret ("Defendant") with a Requests for Admission (Set One). See Declaration of Robert Kayvon filed December 23, 2024 ("Supporting Declaration"), ¶3 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on October 15, 2024 by mail. *Id*. at ¶3 and **Exhibit 1** [attached Proof of Service dated October 15, 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 November 19, 2024 (30 days from and after October 15, 2024 was November 14, 2024 and five calendar days thereafter fell on November 19, 2024). No responses were received by that deadline. See *id*. at ¶4. Despite meet and confer efforts, no responses were received through the time of the filing of the motion. See *id*. at ¶5 and **Exhibit 2**.

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.

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. Plaintiff engaged in meet and confer efforts and Defendant did not provide responses to the RFAs.
4. No opposition or other responsive pleadings by Defendant have been filed with the Court.

Sanctions

Plaintiff does not seek imposition of sanctions.

Disposition

The Court further finds and orders as follows:

1. The Motion to Deem Admissions is GRANTED.
2. The truth of the facts recited in RFA Nos. 1 through 10 are DEEMED ADMITTED by Defendant.
3. A proposed form of order was lodged with the Court which the Court shall execute and enter.

9. 9:00 AM CASE NUMBER: L25-00003
CASE NAME: KIM CRAWFORD VS. MARGARET LYMAN
***HEARING ON MOTION IN RE: MOTION TO BE RELIEVED AS COUNSEL FILED BY PLN ON 1/24/25**
FILED BY: CRAWFORD, KIM HEFNER
****TENTATIVE RULING:****

Mark R. Mittelman ("Counsel") filed a Motion to be Relieved as Counsel on January 24, 2024.

Background

Counsel indicates that contact with the client, plaintiff Kim Hefner Crawford ("Plaintiff"), has been lost. See Declaration filed January 24, 2025.

Analysis

Plaintiff was served with the Motion to be Relieved as Counsel and it is unopposed. However, it appears that the motion face page indicated a hearing date of June 20, 2025, notwithstanding the clerk of the Court having set the motion on the calendar for May 6, 2025. No notice to either party of the May 6, 2025 hearing date appears of record on the Court's docket.

Disposition

The Court finds and rules as follows:

1. The Court is inclined to GRANT the Motion to be Relieved as Counsel.
2. However, out of an abundance of caution, the Court hereby continues the matter to **May 20, 2025, 9:00 a.m. in Department 34** of the Court to ensure that notice of the

hearing has properly been given to all parties. The clerk of the Court is directed to give notice to all parties.

10. 9:00 AM CASE NUMBER: MSL14-01638
CASE NAME: CACH VS SHANKLE
HEARING IN RE: MOTION FOR DISMISSAL
FILED BY:
TENTATIVE RULING:

Defendant and Judgment Debtor Robert Shankle ("Defendant") filed a Motion for Dismissal on February 25, 2025 ("Motion for Dismissal"). The Motion for Dismissal was set for hearing on May 6, 2025. No opposition to the motion has been filed to date.

Background

A money Judgment was entered herein against Defendant nearly ten years ago. See Judgment entered September 11, 2015 (the "Judgment").

Defendant makes various contentions, including that the Judgment is based on a "false claim," that he is not person responsible for the underlying debt, and that he is the victim of identity theft. Motion for Dismissal, p. 1 *et seq*.

Analysis

Defendant's motion is procedurally defective in that no notice was given of the hearing date. Defendant's Proof of Service reflect service of the moving papers on "Mandarich Law Group LLP / CACH LLC. PO. Box 109032. Chicago. IL. 60610" by mail. Note that the Proof of Service is also defective for failure to check Box 6.b. (only Box 6.b.2. is checked).

Even if the Proof of Service were not defective for being incompletely filled out, the underlying moving papers served did not specify the assigned hearing date of May 6, 2025. Rather the "Date," "Dept." and "Time" were left unspecified:

> Date: Hearing Date
> Dept.: Department
> Time: Time

See Motion for Dismissal, p. 1.

It appears that the date was stated on the lodged form of proposed order. However, the Court finds that is insufficient to operate as valid notice of the hearing on the pending motion.

Disposition

The Court finds and orders as follows:

1. Motion for Dismissal is continued to **June 3, 2025, 9:00 am in Department 34** of the Court (the "Next Hearing Date"). The clerk of the Court is directed to give notice of

the Next Hearing Date to all parties.

2. Any opposition papers shall be filed and served no later than May 21, 2025.

11. 9:00 AM CASE NUMBER: MSL15-03044
CASE NAME: NATIONAL COLLEGIATE VS DONDI
HEARING IN RE: MOTION TO VACATE DEFAULT JUDGMENT
FILED BY:
TENTATIVE RULING:

Defendant and judgment debtor Edward K. Dondi ("Defendant") filed a Motion to Vacate the Default Judgment and for an Order to Show Cause re Contempt on March 4, 2025 (the "Motion to Vacate Default Judgment and for OSC"). The Motion to Vacate Default Judgment and for OSC was set for hearing on April 25, 2025. Subsequently, the hearing date was reset for hearing on May 6, 2025 in Department 34. All parties were given notice of the new hearing date.

Background

Plaintiff NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3 ("Plaintiff") filed the Complaint on October 5, 2015. A default was entered against defendants EVIE R DONDI and EDWARD K DONDI (collectively, the "Defendants") on December 14, 2015. Thereafter, a default money judgment was entered against the Defendants on January 28, 2016 in the total amount of $14,008.21 (the "Judgment").

Analysis

1. **Purported Lack Of Valid Service And/Or Notice Of The Lawsuit**

The Court first addresses the contention that the default and Judgment should be vacated because of the lack of service.

Defendant contends that the court records in this case show that Defendant was served with process by substitute service on a "John Doe" at an address (1455 Galindo St, APT 2312, Concord, CA, 94520) that "has never been Mr. Dondi's business, dwelling, or usual mailing address." See Declaration of Nathan D. Dondi ("Supporting Attorney Decl."), ¶2. Defendant asserts that Plaintiff's attorneys "were jointly aware that Mr. Dondi's correct address was 55 Grand Canyon Cir, Oakley, CA, 94561." *Id*. This based on an observation that this address was listed in a declaration filed January 28, 2016 by Plaintiff's attorneys. *Id*. and **Exhibit A** thereto.

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 counsel's declaration also asserts that based on a review of the relevant documents in the case, he is "informed and believe that counsel for the Plaintiff [list of nine separate names of attorneys omitted] jointly knew Mr. Dondi's correct address, initiated this case, and deliberately failed to provide Mr. Dondi with service of process and subsequent notice regarding material matters in this case at his last known address." See Supporting Attorney Decl., ¶4.

The operative Proof of Service of Summons as to Defendant was filed on November 17, 2015. See Proof of Service of Summons filed on November 17, 2015 ("POSS"). It reflects service by substitute service pursuant to Code of Civil Procedure section 415.20 on October 22, 2015. *Id*. The service was done by a registered process server. *Id*. 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).

Defendant's evidence fails to rebut the presumption of valid service. There was no declaration proffered by Defendant. Defendant does not offer any evidence based on his own personal knowledge as to his residence at the time of service or any connection or lack thereof with the location of the service ("1455 GALINDO ST APT 2312"). The proof itself recites that the person served was "a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party." POSS at ¶5.

Defendant's evidence boils down to an attorney declaration drawing conclusions based on a review of documents nearly ten years after the service. As noted, the service occurred on October 22, 2015. The fact that some records show that letters were sent to a different address for Defendant ("55 GRAND CANYON CIR") as of July 9, 2015 is not persuasive evidence that Defendant was not residing at the 1455 GALINDO ST address at the time of service. See Supporting Attorney Decl., **Exhibit A.** This is especially true in light of Defendant's failure to sign his own declaration under penalty of perjury setting out a plain assertion of his residence at the time of service. Presumably, Defendant could have offered other corroborating evidence of his residence in October 2015 and failed to do so. He offers no bank or utility bills rendered at the time or other documentation.

The evidence falls far short of demonstrating that service was not validly done and much less that Plaintiff's attorneys willfully orchestrated a scheme to default Defendant despite knowing he resided at another address.

The opposition papers demonstrate that efforts at personal service were made and that there was substantial indicia of the Defendant's connection to the place of service and,

perhaps more importantly, that Defendant had actual knowledge of the suit in as much as counsel representing both Defendants had made contact with Plaintiff's attorneys in November 2015, after the October 2015 service was done. See Declaration of Natahlia A. Aguirre, ¶6 *et seq*.

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.").

Lastly, the issue is moot as the subject Judgment has been satisfied in full, as addressed in the opposition papers. See *id*. at ¶17 *et seq*.

2. **Defendant Fails To Demonstrate That The Underlying Judgment Must Be Dismissed Because Of An Alleged Violation Of Federal Law.**

The Court has considered and rejects Defendant's contention that the Judgment must be vacated and other relief granted because of the referenced provisions of federal law and the cited Administrative Order. For the reasons discussed above, the Court does not conclude that any misrepresentation was made by Plaintiff or its attorneys to procure the Judgment. Moreover, the issue is moot, as discussed above.

3. **The Order To Show Cause (OSC) Is Rejected.**

The Court has considered and rejects Defendant's request that the Court issue an Order to Show Cause (OSC) to Plaintiff's attorneys. The Court does not find credible evidence raising a *prima facie* showing of contempt of court.

The supporting attorney declaration proffered by Plaintiff fails to make a *prima facie* showing of contempt by the litany of proposed citees. *In re Application of McDonald* (1932) 217 Cal. 29, 31 ("It is settled that the affidavit which forms the basis of a contempt proceeding must state sufficient facts to constitute the offense."). The willful refusal to obey a valid court order is an act of contempt. Code Civ. Proc. § 1209(a)(5); *In re Marcus* (2006) 138 Cal.App.4th 1009, 1014 ("Marcus"). The elements of proof necessary to support punishment for contempt are: (1) a valid court order, (2) the alleged contemnor's knowledge of the order, and (3) noncompliance. *Marcus*, *supra*, 138 Cal.App.4th at 1014, citing *Moss v. Superior Court* (1998) 17 Cal. 4th 396, 428 and Code Civ. Proc. § 1209(a)(5). The order must be clear, specific, and unequivocal. *Marcus*, *supra*, 138 Cal.App.4th at 1014. Abuse of the process of the court and other acts impugning the integrity of the court

may also be punishable as a contempt. See Code Civ. Proc. § 1209; see also *In re Ciraolo* (1969) 70 Cal.2d 389, 399 (false affidavit presented to a court as a device in repeated efforts to secure trial continuances punishable as contempt).

No evidence is proffered that any of the nine separate attorneys referenced violated any court order in relation to the Judgment or the underlying litigation at issue. No evidence is proffered that any of them willfully made any misrepresentation to the Court to secure the default. The assertion that they "were jointly aware" in October 2015 that Defendant was being substitute served at an address at which Defendant did not reside and that they intentionally choose to proceed with the default anyway is not supported by substantial, credible evidence on this record.

Indeed, the frivolousness of the blanket contention is evident when one considers that a number of the referenced attorneys were not even licensed members of the bar back in 2015.

Defendant's counsel is admonished regarding making such inflammatory blanket allegations against nine separate attorneys with little to no evidence.

Disposition

The Court finds and orders as follows:

1. The Motion to Vacate Default Judgment and for OSC is DENIED.

12. 9:00 AM CASE NUMBER: MSL19-02010
CASE NAME: CAPITAL ONE VS OECHSLI
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE NOTICE OF SETTLEMENT AND RESTORE CASE TO ACTIVE DOCKET FILED BY PLN ON 10/30/24**
FILED BY: CAPITAL ONE BANK (USA), N.A.
****TENTATIVE RULING:****

Plaintiff Capital One Bank (USA), N.A. ("Plaintiff") filed a Motion to Set Aside Notice of Settlement on October 30, 2024 ("Motion to Set Aside Notice of Settlement"). The Motion to Set Aside Notice of Settlement was set for hearing on April 4, 2025. Subsequently, the motion was reset for hearing on May 6, 2025 in Department 34 of the Court. Notice was given to all parties.

Background

Plaintiff filed that certain Notice of Settlement on or about January 13, 2020 (the "Notice of Settlement"). Thereafter, a Stipulation for Judgment was filed with the Court on or about January 3, 2024 (the "Stipulation for Judgment").

The Stipulation for Judgment, executed by the parties in the Fall of 2019 before the Notice

of Settlement was filed, provided for payment by the defendant Alexander Oechsli ("Defendant") in the form of regular payments (the "Payment Terms and Conditions"). See Stipulation for Judgment, ¶1; see also Declaration of Laura M. D'anna filed October 30, 2024 ("Supporting Declaration"), ¶¶5-6.

Defendant defaulted on the Payment Terms and Conditions by not making the monthly payments as due, with the last payment being made December 19, 2019. See Supporting Declaration, ¶¶7-8.

Plaintiff's motion simply seeks to vacate the Notice of Settlement and to "restore the case to the active docket."

Analysis

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. Motion to Set Aside Notice of Settlement is GRANTED.
2. A proposed form of order was lodged with the Court which the Court shall execute and enter.

13. 9:00 AM CASE NUMBER: MSL19-08297
CASE NAME: DMITRIY SHORNIKOV VS. LAKE ALHAMBRA PROPERTY OWNERS ASSOCIATION
***HEARING ON MOTION IN RE: MOTION FOR ATTY FEES AFTER DETERMINATION OF PREVAILING PARTY FILED ON 9/30/24 BY PLN**
FILED BY: SHORNIKOV, DMITRIY
****TENTATIVE RULING:****

Plaintiff Dmitriy Shornikov ("Plaintiff") filed a Motion for Attorney Fees on September 30, 2024 (the "Original Motion for Attorneys' Fees"). The Original Motion for Attorneys' Fees was set for hearing on February 27, 2025.

Following a hearing in October 31, 2024 on a related attorneys' fees motion by the opposing party, Plaintiff re-filed the motion. Plaintiff filed his Amended Motion for Attorney Fees on February 5, 2025 ("Plaintiff's Amended Motion for Attorneys' Fees"). It is Plaintiff's Amended Motion for Attorneys' Fees and the related papers filed at that time which are the operative moving papers. See Corrected Order Granting Parties' Stipulation to Continue Hearing for Plaintiff's Amended Attorney Fee Motions filed February 18, 2025 ("Order re Amended Motion").

The case was reassigned to Department 34 and the Plaintiff's Amended Motion for Attorneys' Fees was reset for hearing on May 6, 2024. All parties were given notice of the new hearing date.

Background

As forth at length in a prior ruling by the Court in October 2024, this matter arose from Plaintiff's challenge to the manner in which the defendant Lake Alhambra Property Owners Association (the "HOA") had conducted its 2019 election for its board of directors. See **Exhibit A** to Order Denying Defendant Lake Alhambra Property Owners Association's Motion for Attorneys' Fees entered December 3, 2024 ("Order Denying HOA Attorneys' Fees"). The Court also entered a separate Order Granting Plaintiff Dimitriy Shornikov's Motion to Strike or Tax Costs filed December 3, 2024. Both of these orders are collectively referred to herein as the "Orders Regarding HOA's Claimed Fees and Costs."

The Court's ruling described the underlying proceedings, including the summary judgment dismissing the underlying complaint in 2022 and the eventual decision of the Appellate Division of this Court that the case was moot because Plaintiff was elected to the board in 2021. The Court observed that "the entire lawsuit had been moot before the time of entry of judgment." See Order Denying HOA Attorneys' Fees, **Exhibit A**, p. 1.

As part of the Court's prior ruling, the Court determined that there is no prevailing party. The Court observed:

> Even if this case were governed by a bilateral fees statute, the Court would still deny this motion because there was no prevailing party. Moot is moot. When a lawsuit starts out as a live controversy, and then becomes moot because of the passage of time or extraneous events (other than the defendant complying with the plaintiff's substantive demands), then there is no winner and no loser. There is only a dismissal of a moot lawsuit on a no-longer-live controversy.

Order Denying HOA Attorneys' Fees, **Exhibit A**, p. 4.

The Court did observe, however, that a "plaintiff can be held to be nevertheless the prevailing party only on the basis of the 'catalyst theory' of entitlement to fees - the theory that a plaintiff has achieved its principal litigation objectives by the other side's acquiescence or by interim relief, even though his lawsuit does not reach successful final judgment." See Order Denying HOA Attorneys' Fees, **Exhibit A**, p. 5. The Court did not rule on Plaintiff's entitlement to fees and left that matter for subsequent determination based on Plaintiff's Amended Motion for Attorneys' Fees. See Order re Amended Motion, p. 1, lns. 14, through p. 2, ln. 2.

Plaintiff's Amended Motion for Attorneys' Fees is supported by the Declaration of Dmitriy Shornikov filed on February 5, 2025 (the "Supporting Declaration"). The Supporting Declaration does not contain any summary of the legal services rendered and expenses incurred in the litigation of the matter, but focuses, rather, on the history of the litigation and Plaintiff's view of how the lawsuit impacted the election practices of the HOA. See Supporting Declaration, p. 1 *et seq*.

A Notice of Appeal was filed on February 27, 2025 by the HOA. The HOA is appealing the Orders Regarding HOA's Claimed Fees and Costs. Plaintiff has filed a cross appeal. These pending appeals are collectively referred to herein as the "Pending Appeals."

Analysis

1. Objections to Evidence

Objections to Plaintiff's Evidence

The HOA filed an Objection to the Supporting Declaration. Having considered those objections, the Court rules as follows:

Objection No. 1: Overruled.

Objection No. 2: Sustained.

Objection No. 3: Sustained.

Objection No. 4: Overruled.

Objection No. 5: Sustained.

Objection No. 6: Overruled.

Objection No. 7: Overruled.

Objection No. 8: Overruled.

Objection No. 9: Sustained.

Objection No. 10: Sustained.

Objection No. 11: Sustained.

Objection No. 12: Sustained.

Objection No. 13: Sustained.

Objection No. 14: Sustained.

Objection No. 15: Sustained.

Objection No. 16: Sustained.

Objection No. 17: Sustained.

Objection No. 18: Sustained.

Objection No. 19: Overruled.

Objection No. 20: Overruled.

Objection No. 21: Overruled.

Objection No. 22: Sustained, except Overruled as to 2nd and 4th sentences.

Objection No. 23: Sustained.

Objection No. 24: Overruled.

Objection No. 25: Overruled.

Objection No. 26: Sustained, except Overruled as to 2nd sentence.

Objection No. 27: Overruled.

Objection No. 28: Sustained.

Objection No. 29: Overruled.

Objection No. 30: Sustained.

Objection No. 31: Sustained.

Objection No. 32: Overruled, except Sustained as to 2nd sentence.

Objection No. 33: Sustained.

Objection No. 34: Overruled.

Objection No. 35: Sustained.

Objection No. 36: Overruled.

Objection No. 37: Sustained.

Objection No. 38: Sustained.

Objection No. 39: Overruled.

Objection No. 40: Sustained.

Objection No. 41: Sustained.

Objection No. 42: Sustained.

Objection No. 43: Overruled.

Objection No. 44: Overruled.

Objection No. 45: Overruled.

Objection No. 46: Sustained.

Objection No. 47: Sustained.

Objection No. 48: Sustained.

Objection No. 49: Sustained.

Objection No. 50: Sustained.

Objection No. 51: Sustained.

Objection No. 52: Sustained.

Objection No. 53: Overruled.

Objection No. 54: Overruled.

Objection No. 55: Overruled.

Objection No. 56: Overruled.

As to any portion of the Supporting Declaration to which an objection has been sustained,

the Court has not considered such evidence in making the rulings herein.

In addition, Plaintiff and his counsel are admonished for the inclusion of inappropriate and uncivil *ad hominem* attacks and derogatory language in the Supporting Declaration. Such matter has no place in a pleading filed with the Court, especially a factual declaration under penalty of perjury. Those remarks include the following:

• Supporting Declaration, ¶26 ("…their vegetative presence…")

• Supporting Declaration, ¶28 ("…sycophants to form a gang…")

• Supporting Declaration, ¶54 ("…the Board ring leaders…" / "…sycophants…")

Objections to HOA's Evidence

Plaintiff filed an Objections to the HOA's evidence submitted in support of its opposition papers. Having considered those objections, the Court rules as follows:

Objection No. 1: Overruled. This objection purports to be an objection to the entire Declaration of Marsha Schandelmier, but makes vague assertions about its content without properly interposed objections as to specific portions of the filed pleading. See Weil & Brown, *et al.*, *Cal. Prac. Guide: Civ. Pro. Before Trial* (The Rutter Group 2024), § 9:102.5 (objections should specify the specific matters as to which the objections are made, such as by page and line number, as well as the specific legal objection(s) directed toward those matters) ("Weil & Brown"); see also *Schoendorf v. U.D. Registry, Inc.* (2002) 97 Cal.App.4th 227, 240, fn. 2.

Objection No. 2: Overruled.

Objection No. 3: Overruled.

Objection Nos. 4-6: Overruled. These objections purport to be objections to the entire Declaration of Declaration of Steve Armanini, but makes vague assertions about its content without properly interposed objections as to specific portions of the filed pleading. See Weil & Brown, § 9:102.5 ; see also *Schoendorf v. U.D. Registry, Inc.*, *supra*, 97 Cal.App.4th at 240, fn. 2.

2. Requests for Judicial Notice

HOA's RJN

The HOA submitted a Request for Judicial Notice ("HOA's RJN") in connection with its opposition papers. See HOA's RJN filed March 27, 2025. The HOA's RJN is GRANTED.

Plaintiff's RJN

Plaintiff submitted a Request for Judicial Notice ("Plaintiff's RJN") in connection with his opposition papers. See Plaintiff's RJN filed April 3, 2025. The Plaintiff's RJN is GRANTED.

3. Proceeding on the Amended Motion for Attorneys' Fees

Plaintiff's reply papers argue that the Court should "postpone a ruling on this subject Motion while awaiting the outcome of the appeal and cross-appeal." See Reply filed April

3, 2025.

The Court does not conclude that the Pending Appeals bar consideration of Plaintiff's Amended Motion for Attorneys' Fees by the Court at this time. Nor does the Court conclude that it ought to exercise its discretion to postpone consideration of this matter.

4. Plaintiff's Amended Motion for Attorneys' Fees

Plaintiff's Amended Motion for Attorneys' Fees seeks only a determination that Plaintiff is the prevailing party. See Plaintiff's Amended Motion for Attorneys' Fees, p. 3 *et seq*. Plaintiff endeavors to support this contention with evidence purporting to demonstrate that "he accomplished substantially all his litigation goals." *Id*. at p. 5. He argues he ought to be adjudged the prevailing party for purposes of an attorneys' fees award under the "catalyst theory" referenced in the Court's earlier ruling. *Id*. at p. 19. The Court has considered and rejects these contentions.

As pointed out in the Opposition papers, the HOA prevailed on summary judgment, defeating each of the claims pled in Plaintiff's Complaint. While the HOA was later determined to not be entitled to prevailing party status because of the issue of mootness—a matter that is on appeal—the Court does not conclude that Plaintiff is somehow the prevailing party.

No authority is cited by Plaintiff to the effect that a plaintiff may be found to be the prevailing party under the "catalyst theory" after losing on summary judgment on all of the plaintiff's pled causes of action, even if that result has become moot.

The cases cited by Plaintiff, *Graham v. DaimlerChrysler Corp.* and *Tipton-Whittingham v. City of Los Angeles*, are inapposite.

The *Graham* case dealt with an award of attorneys' fees under Code of Civil Procedure section 1021.5. *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 560* (plaintiffs "were awarded substantial attorney fees under Code of Civil Procedure section 1021.5."); see also Code Civ. Proc. § 1021.5 ("...a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest...").

Plaintiff's has not sought an award of fees pursuant to Section 1021.5. See Plaintiff's Amended Motion for Attorneys' Fees, p. 3 *et seq*. Plaintiff has not made a showing of the prerequisites for such an award, including that "a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons..." Code Civ. Proc. § 1021.5(a); see *Graham v. DaimlerChrysler Corp.*, *supra*, 34 Cal.4th at 565.

This case is not a public interest litigation case and Plaintiff has not cited any caselaw in which the catalyst theory has been applied to a non-public interest litigation case. *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 566 ("The catalyst theory is an application of the above stated principle that courts look to **the practical impact of the public interest litigation** in order to determine whether the party was successful, and therefore potentially eligible for attorney fees.") (emphasis added); see also *Tipton-Whittingham v.*

City of Los Angeles (2004) 34 Cal.4th 604, 610 [Considering application of catalyst theory in public interest litigation case under Section 1021.5 and Government Code section 12965(b)]

Even if the catalyst theory did somehow apply or prevailing party status could be found under another theory of recovery based on Plaintiff achieving his main litigation objectives (see e.g. Opposition filed March 27, 2025, p. 8), the Court does not conclude that the evidence demonstrates that Plaintiff achieved the relief sought by the specific causes of action alleged in the underlying complaint. Rather, Plaintiff lost on each of the substantive claims (or, at the very least, did not prevail upon the merits of the claims). The 2019 election results were never voided or somehow overturned. The Court does not find persuasive or credible on this record the vague contentions of Plaintiff's other supposed success in getting the HOA to act in regard to the election process, including by adopting new election rules. The Court does not conclude that but for Plaintiff's litigation, the HOA would not have done the things described regarding the HOA elections. See *Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2015) 238 Cal.App.4th 513, 522.

*Plaintiff's citation to this case ("34 Cal 4th 533") is erroneous.

**The HOA also contends that the Court should not consider the merits of Plaintiff's Amended Motion for Attorneys' Fees because it includes a memorandum of points and authorities in excess of 15 pages in violation of Rule 3.1113(d) of the California Rules of Court ("CRC"). See CRC 3.1113(d) ("Except in a summary judgment or summary adjudication motion, no opening or responding memorandum may exceed 15 pages."). Excluding the "the caption page, the notice of motion and motion, exhibits, declarations, attachments, the table of contents, the table of authorities, or the proof of service" as required by CRC 3.1113(d), Plaintiff's memorandum of points and authorities runs 18 pages long. See Plaintiff's Amended Motion for Attorneys' Fees, pp. 3-20 (18 pages). Notwithstanding this violation, the Court exercises its discretion to consider the over-length pleading in the interests of making a fully informed decision and expediting the resolution of this matter.

Disposition

The Court finds and orders as follows:

1. Plaintiff's Amended Motion for Attorneys' Fees is DENIED.
2. The Court shall issue the order after hearing.