SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 34, RICHMOND
JUDICIAL OFFICER: LEONARD E MARQUEZ
HEARING DATE: 06/10/2025

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: L24-01701
CASE NAME: WELLS FARGO BANK, N.A. VS. DORI DIAS
HEARING ON SUMMARY MOTION MOTION FOR SUMMARY JUDGMENT FILED BY PLN ON 1/10/25
FILED BY: WELLS FARGO BANK, N.A.
TENTATIVE RULING:

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") filed a Motion for Summary Judgment on January 10, 2025 (the "MSJ"). The MSJ was set for hearing on June 9, 2025. Thereafter, the hearing date was reset for June 10, 2025 in Department 34.

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 Dori Dias ("Defendant") became indebted to Plaintiff for unpaid amounts due and owing for credit card charges. See MSJ filed January 10, 2025,

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 January 10, 2025 ("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* (2025) ("CJER Civ. Pro.—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. Pro.—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 conditions of a written agreement. UMF Nos. 1 through 5. That evidence is set forth in the supporting declarations. See Declaration of Plaintiff's Qualified Witness filed January 10, 2025 ("Supporting Decl.") and the Declaration of Ashley Mulhorn ("Attorney Decl.") filed January 10, 2025. 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. 6-12; see Attorney Decl., **Exhibit 3** (RFA Nos. 1-9).

Plaintiff also proffered evidence of the damages suffered in the amount of $8,407.58 for the balance due and owing on the indebtedness. UMF Nos. 13 and 14; see Attorney Decl., **Exhibit 3** (RFA Nos. 6-7).

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.

Attorneys' Fees, Prejudgment Interest and Costs

No attorneys' fees or prejudgment interest was sought by Plaintiff. As part of the moving papers, a Memorandum of Costs was filed January 10, 2025. The Memorandum of Costs reflects recoverable costs in the sum of $800.00.

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 $8,407.58, with costs in the amount of $800.00.
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.

2. 9:00 AM CASE NUMBER: L24-03881
CASE NAME: JPMORGAN CHASE BANK, N.A. VS. GLADIS CUBAS
***HEARING ON MOTION IN RE: MOTION TO ENTER JUDGMENT PURS TO STIP FILED BY PLN ON 12/31/24**
FILED BY: JPMORGAN CHASE BANK, N.A.
****TENTATIVE RULING:****

Plaintiff JPMorgan Chase Bank, N.A. ("Plaintiff") filed a Motion to Enter Judgment Pursuant to Stipulation on December 31, 2024 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on June 2, 2025. Thereafter, the motion was reset for hearing on June 10, 2025. **However, it appears the Court's notice of the reset hearing date was only served upon the moving party.**

Background

The parties entered into that certain settlement agreement on or about August 7, 2024 (the "Settlement Agreement"), the terms of which included a judgment for the principal sum of $6,828.63 against the defendant debtor ("Defendant") and provisions for full satisfaction upon payments totaling $5,465.0, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Declaration of Counsel for Plaintiff filed as part of Motion to Enter Stipulated Judgment after Default ("Supporting Declaration"), ¶¶1-4 and **Exhibit 1** thereto. As part of the Settlement Agreement, the parties entered into a stipulation for entry of judgment in the event of a default. *Id.*, **Exhibit 1,** ¶¶1-4 and 7.

Defendant defaulted on the Payment Terms and Conditions. See Supporting Declaration, ¶¶3-7. No notice or opportunity to cure is required under Settlement Agreement. Settlement Agreement, ¶¶4 and 7. After credit for amounts paid, there remains $6,600.63 due and owing. See Supporting Declaration, ¶8.

Analysis

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

Disposition

The Court finds and orders as follows:

1. The Court is inclined to grant the Motion for Judgment on the Pleadings and to enter judgment against Defendant in the principal amount of $6,600.63.
2. **Motion Continued.** However, out of an abundance of caution, the Court hereby continues the matter to **July 8, 2025, 9:00 a.m. in Department 34** of the Court to ensure that notice of the hearing has properly been given to the Defendant. While it appears that the moving papers were served on Defendant, it does not appear that Defendant was given notice of the reset hearing date. **Plaintiff shall give notice of the new hearing date to Defendant.**

3. 9:00 AM CASE NUMBER: L24-04329
CASE NAME: JPMORGAN CHASE BANK N.A. VS. TERRI BESSETTE
***HEARING ON MOTION FOR DISCOVERY CONTINUED FROM MAY 20, 2025**
FILED BY:
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 September 19, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on May 16, 2025. Amended moving papers were filed on November 1, 2024. Subsequently, the hearing date on the Motion to Deem Admissions was reset for May 20, 2025 in Department 34 of the Court. The parties were given notice of the new hearing date.

It should be noted that since such notice was given on or about February 13, 2025, counsel for defendant Terri M. Bessette ("Defendant") has filed a motion to withdraw as Motion to be Relieved as Counsel. That motion was set for hearing concurrently with this motion for the May 20, 2025 hearing date.

On the May 20, 2025 hearing date, the Court granted the Motion to be Relieved as Counsel. Because of that, the Court continued the Motion to Deem Admissions to June 10, 2025.

Notice of the new date for the hearing on the Motion to Deem Admissions was to be given to the Defendant at "any designated last known address set forth in the Order Granting Attorney's Motion to be Relieved as Counsel entered by the Court on the Motion to be Relieved as Counsel." See Minute Order dated May 20, 2025. The order was entered and served by the Court on June 2, 2025. It included notice of the date for the Motion to Deem Admissions at the designated last known address.

No opposition has been filed to date by Defendant to this Motion to Deem Admissions.

Background

Plaintiff served Defendant with a Requests for Admission (Set One). See Declaration of Ruonan Wang filed November 1, 2024 as part of the amended moving papers on the Motion to Deem Admissions ("Supporting Declaration"), ¶2 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on July 2, 2024 by mail. *Id*. at ¶2 and **Exhibit 1** [attached Proof of Service dated July 2, 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 August 6, 2024 (30 days from and after July 2, 2024 was August 1, 2024 and five calendar days thereafter fell on August 6, 2024). No responses were received by that deadline. See *id*. at ¶3. Despite meet and confer efforts, no responses were received through the time of the filing of the motion. See *id*. at ¶4 and **Exhibit 2** thereto.

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 respond to those communications and 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 5 are DEEMED ADMITTED by Defendant.
3. A proposed form of order was lodged with the Court which the Court shall execute and enter.

4. 9:00 AM CASE NUMBER: L24-09677
CASE NAME: TRUIST BANK VS. JENNIFER KIM
***MOTION/PETITION TO COMPEL ARBITRATION**
FILED BY: KIM, JENNIFER
****TENTATIVE RULING:****

Defendant Jennifer Kim ("Defendant") filed a Motion to Compel Arbitration and Stay Proceedings (the "Arbitration Motion") on May 6, 2025. The Arbitration Motion was set for hearing on June 10, 2025. A Proof of Service, affixed to the Arbitration Motion, was filed on May 6, 2025, reflecting service of the motion on the opposing party by next day delivery. No opposition has been filed. However, it is not clear to the Court that notice was given to Plaintiff of the assigned hearing date. The Court's docket does not reflect any amended notice of motion having been filed and served.

Background

Contractual arbitration, also called private or nonjudicial arbitration, is a procedure for resolving disputes that arise from the parties' agreement. See CJER, *California Judges Benchbook: Civil Proceedings before Trial* (2022) ("CJER Civ. Proc. before Trial"), § 3.37. Arbitration involves the waiver of the right to a jury trial and generally involves limits on the scope of judicial review of an arbitration decision. *Id*.

Code of Civil Procedure section 1281 provides that an arbitration agreement must be in writing to be valid and enforceable. Code Civ. Proc. § 1281; see CJER Civ. Proc. before Trial, § 3.37. Absent certain exceptions, **arbitration must be compelled where it is shown that a written agreement to arbitrate exists, there is a controversy between the parties that is subject to that agreement, and the other party has refused to arbitrate.** Code Civ. Proc. § 1281.2; see *Ashburn v. AIG Financial Advisors, Inc.* (2015) 234 Cal.App.4th 79, 96.

A petition to compel arbitration is heard "in a summary way in the manner ... provided by law for the making and hearing of motions." Code Civ. Proc. § 1290.2; see *Ashburn v. AIG Financial Advisors, Inc.*, *supra*, 234 Cal.App.4th at 96. A party is generally not entitled to an evidentiary hearing with live witness testimony, although the Court has discretion to conduct such a hearing; for example, where there are sharply conflicting factual accounts requiring the hearing of such testimony. *Id*.

The party seeking to compel arbitration bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. *Ashburn v. AIG Financial Advisors, Inc.*, *supra*, 234 Cal.App.4th at 96, quoting *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972; see also *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.

The Federal Arbitration Act (9 U.S.C. § 1 *et seq*.) ("FAA") applies to agreements involving interstate commerce. See *Gamma Eta Chapter of Pi Kappa Alpha v. Helvey* (2020) 44 Cal.App.5th 1090, 1098. Where no party raises the issue of interstate commerce or applicability of the FAA, the court applies California law. *Id*.

Analysis

Defendant has established that a written agreement to arbitrate exists. Defendant's motion contends that the parties' contract "contains a binding arbitration provision..." See Arbitration Motion, ¶2. The operative complaint alleges and attaches a copy of the "LOAN AGREEMENT" which includes an arbitration clause (the "Loan Agreement"). See Complaint filed November 6, 2024 (the "Complaint"), Exhibit 1, pp. 4-8. A copy of the Loan Agreement containing the arbitration agreement is attached to the motion and the operative complaint. See Arbitration Motion, ¶3. Defendant attests that this is a true and correct copy of the agreement entered into between the parties. See Declaration in Support of Motion to Compel Arbitration and Stay Proceedings (the "Supporting Declaration"), ¶2*. The agreement is signed by Defendant. Loan Agreement, p. 9 (signature with notation dated 2/6/23 at 4:47:19 p.m.); see *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC*, *supra*, 55 Cal.4th at 236 ("A party's acceptance of an agreement to arbitrate may be express, as where a party signs the agreement...").

Defendant has further established that there is a controversy between the parties that is subject to that agreement. That arbitration clause** defines the claims subject to states:

> A "Claim" subject to arbitration is **any claim**, dispute or controversy **between you and us** (other than an Excluded Claim or Proceeding as set forth below), whether preexisting, present or future, **which arises out of or relates to the Credit**, this Agreement, any transaction conducted with us in connection with the Credit or this Agreement, or our relationship.

Loan Agreement, p. 5 (Emphasis added). The "Credit" includes the loan Defendant is receiving under the Loan Agreement. *Id*. ("'Credit' means the loan or other credit extension you are receiving under this Agreement."). Plaintiff's complaint is based the allegation that Defendant default in payment of the loan received under the Loan Agreement. See Complaint, ¶¶7-10.

Defendant attests that Defendant has not waived the right to arbitrate Plaintiff's claim. Supporting Declaration, ¶5. There has been no showing otherwise by Plaintiff.

Defendant's motion constitutes a demand and notice for arbitration in accordance with the

terms of the arbitration clause. Loan Agreement, p. 6 ("the electing party must notify the other party in writing. This notice can be given alter the beginning of a lawsuit **and can be given in papers filed in the lawsuit**.") (Emphasis added).

Accordingly, the Court finds that a written agreement to arbitrate exists, i.e. the arbitration clause set forth in the parties' Loan Agreement. The Court further finds that there is a controversy between the parties that is subject to that agreement as plead in the operative Complaint by Plaintiff. The Court further finds that Plaintiff has failed or refused to arbitrate in accordance with the agreement to arbitrate.

Lastly, the Court concludes that this matter ought to be stayed pending the outcome of the arbitration. See Code Civ. Proc. § 1281.4.

*The Court notes that it appears that the as-filed Supporting Declaration was not signed by Defendant. In the exercise of its discretion, the Court shall conditionally receive and consider the declaration, subject to Defendant's appearance in court to be sworn under penalty of perjury that the matters stated therein are true and correct or the filing of an amended declaration that is signed by Defendant.

**The arbitration clause is governed by the FAA. See Loan Agreement, p. 6 ("Notwithstanding any choice of law or other provision in this Agreement, you and we agree and acknowledge that this Arbitration Provision evidences a transaction involving interstate commerce and that the Federal Arbitration Act ... will govern its interpretation and enforcement and proceedings pursuant thereto."). Although an arbitration agreement may provide that the arbitration is to be governed by the FAA, generally the California Arbitration Act governs arbitral procedures brought in California courts. *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 922. There has been no showing of some FAA specific limitation relevant to enforcement of the subject arbitration clause in this context. In determining the rights of parties to enforce an arbitration agreement within the FAA's scope, courts apply state contract law while giving due regard to the federal policy favoring arbitration. *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC*, *supra*, 55 Cal.4th at 236.

<u>Disposition</u>

The Court finds and orders as follows:

1. The Court is inclined to GRANT Defendant's Arbitration Motion, as follows:
    a. Defendant's Arbitration Motion is GRANTED; and
    b. The pending action is STAYED until an arbitration is completed pursuant to the terms and conditions of the agreement to arbitrate or further order of the Court.
2. **However, out of an abundance of caution, the Court hereby continues the hearing on this matter to July 22, 2025, 9:00 a.m. in Department 34 of the Court to ensure that notice of the hearing has properly been given to Plaintiff.** The clerk of the Court is directed to give notice of this tentative ruling and continuance

of the hearing to all parties.

3. **In addition, Defendant to appear in court on the above continued hearing date, in-person, to be sworn to attest the matters stated in the Supporting Declaration <u>OR</u> Defendant shall file and serve an amended signed Supporting Declaration on or before June 20, 2025.**

5. 9:00 AM CASE NUMBER: L25-00066
CASE NAME: JOHN ELKINS VS. CONTRA COSTA COUNTY DEPARTMENT OF CONSERVATION AND DEVELOPMENTBUILDING INSPECTION DIVISION
***HEARING ON MOTION IN RE: DEMURRER**
FILED BY:
<u>*TENTATIVE RULING:*</u>

Respondent Contra Costa County (the "County") filed a Demurrer to Petitioner John Elkins' ("Petitioner") Appeal *de novo* from Decision of the Department of Conservation and Development Imposing Administrative Fine filed February 4, 2025 (the "Appeal De Novo"). The Demurrer was set for hearing on June 10, 2025, pursuant to a Scheduling Order issued by the Court. See Scheduling Order issued March 26, 2025. A briefing schedule was set by the Court. *Id*.

<u>Background</u>

This case involves a challenge to a final administrative decision (the "Administrative Decision") upholding a fine assessed by the County, by and through the Contra Costa County Department of Conservation and Development, on the record owner of the real property located at 27 Sunset Drive in the unincorporated Kensington area (the Subject Property). See Administrative Appeal, p. 1 *et seq*. and **Exhibit 1** thereto. The Appeal of the Administrative Decision is brought pursuant to Government Code section 53069.4, subdivision (b)(1).

The Administrative Decision found that the evidence presented established a number of hazardous conditions existed on the Subject Property in violation of state law and various County ordinances. Administrative Decision, pp. 2-3. The Administrative Decision made further findings regarding code enforcement efforts undertaken to redress those violations. *Id*. at pp. 3-5.

Those enforcement efforts included the imposition of a fine in the amount of $14,300 on the record owner of the Subject Property, which the County asserts is "U.S. Bank National Association, Trustee under the Pooling and Servicing Agreement dated April 1, 2002, Morgan Stanley Dean Witter Capital I Inc. Trust 2002-NC2" ("U.S. Bank"). *Id*. at pp. 2 and 14.

Thereafter, Petitioner appealed, administratively, the fine and a hearing was held, resulting in the Administrative Decision. Administrative Decision, p. 5. The Administrative Decision provided an opportunity to cure the underlying violations to avoid the imposition of the fine, but otherwise upheld the fine, on certain further conditions. *Id*.

As part of the Administrative Decision, the hearing officer concluded that Petitioner lacked

standing to contest the fine because he was not the record owner of the Subject Property. Administrative Decision, p. 5. Nonetheless, the Administrative Decision addressed the merits of the violations and found them substantiated. *Id*. at 5.

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. The County Can Demur to the Appeal De Novo.

Before addressing the merits, the Court considers the argument raised by Petitioner that no demurrer lies to challenge an appeal *de novo* taken pursuant to Government Code section 53069.4, subdivision (b)(1). Petitioner's Opposition contends that there is no authority for such a demurrer.

Section 53069.4(b)(1) provides that "a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo…" See Govt. Code § 53069.4 (b)(1). That provision further states that "[a] proceeding under this subdivision **is a limited civil case**." *Id*. (Emphasis added).

General demurrers* are permitted in limited civil cases. Code Civ. Proc. § 92(a); see CJER, *California Judges Benchbook: Civil Proceedings—Before Trial* (2025) ("CJER Civ. Pro.—Before Trial"), § 12.2.

Although Code of Civil Procedure section 92 does not refer to any type of initiating pleading other than "complaints" and "cross-complaints," read in context with the express statutory designation of a Section 53069.4(b)(1) proceeding as a limited case, the Court concludes that Section 92 would permit a general demurrer to the initiating pleading in that type of limited civil case. This is supported by Code of Civil Procedure section 91 which provides that "the provisions of this article apply to **every limited civil case**." Code Civ. Proc. § 91(a) (Emphasis added).

A plaintiff's lack of standing may be raised by a general demurrer. *The H.N. & Frances C. Berger Foundation v. Perez* (2013) 218 Cal.App.4th 37, 42 ("Where the complaint shows the plaintiff does not possess the substantive right or standing to prosecute the action, 'it is vulnerable to a general demurrer on the ground that it fails to state a cause of action."); see

CJER Civ. Pro.—Before Trial, § 12.21.

Therefore, the Court concludes that the County's general demurrer asserting a lack of standing is cognizable by the Court in this proceeding. The Court is not aware of any case authority otherwise and Petitioner has cited none.

*Special demurrers are not permitted in a limited civil case. Code Civ. Proc. § 92(c) ("Special demurrers are not allowed.").

2. The Court Does Not Conclude That The Matter Ought To Be Continued Because Of Any Issue As To Meeting And Conferring Regarding The County's Demurrer.

As another preliminary matter, Petitioner argues that the County did not make a good faith effort to meet and confer before filing its Demurrer.

Code of Civil Procedure section 430.41 provides, in pertinent part, that the "demurring party shall meet and confer in person, by telephone, or by video conference with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer." Code Civ. Proc. § 430.41(a)(1).

A declaration was provided by the County regarding efforts to meet and confer regarding the intention to file the Demurrer and the grounds for it. See Declaration of Tiffany F. Uhri Chu filed May 6, 2025. Petitioner concedes that there was some discussion of the parties' respective views on matters relating to the issues raised by the Demurrer, including, the County's views on ownership of the Subject Property, although Petitioner takes issue with the scope of the discussion. See Declaration of John Elkins filed as part of Opposition filed May 23, 2025, ¶¶2-3.

However, as Petitioner acknowledges, even if the meet and confer was inadequate was Petitioner contends, that does not require overruling of the demurrer. Code Civ. Proc. § 430.41(a)(4) ("A determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer."). Other remedies may be appropriate, such as a continuance and order for the parties to conduct further meet and confer. See CJER Civ. Pro.—Before Trial, § 12.8.

The Court has considered the matter and, in the exercise of its discretion, does not conclude that the matter ought to be continued for further meet and confer.

3. The County's Demurrer Must Be Sustained Because Petitioner Lacks Standing To Challenge Any Fine Imposed On U.S. Bank Under The Administrative Decision.

The County's Demurrer rests on the argument that the Appeal De Novo fails to state a cause of action because Petitioner "has not pleaded, and cannot plead, that he is the record owner of the Subject Property on whom the administrative fine was imposed. Demurrer, p. 5. A demurrer may properly be sustained for failure to state a cause of action where the named plaintiff lacks standing because he or she is not the real party in interest. *O'Flaherty v. Belgum* (2004) 115 Cal.App.4th 1044, 1095.

In his Appeal De Novo, Petitioner alleges that "[h]e has standing both as owner and recognized occupant of the Property." See Administrative Appeal, ¶3. However, this is insufficient because standing turns, as the County points out, not only on the assertion of Petitioner being the record owner, but also the person **on whom the fine was or is to be imposed**.

No where in the Appeal De Novo does Petitioner allege that any fine was or may be imposed on him. Rather, Petitioner's own pleading alleges, on its face, that it is U.S. Bank against whom the fine was or may be imposed. See Appeal De Novo, ¶16 ("....the obligation is "personal" only to the named party, U.S. Bank, and cannot be enforceable either against Appellant or the Property,..."). Indeed, that is precisely what is reflected on the face of the Administrative Decision itself—that the fine is only to be imposed on U.S. Bank. See Administrative Decision, p. 5 ("... a fine in the amount of $14,500 will be imposed on U.S. Bank.").

If the fine were somehow procedurally or substantively defective under state law or applicable local ordinances, it is U.S. Bank that has the substantive right to challenge it, because it is the real party in interest. *Del Mar Beach Club Owners Assn. v. Imperial Contracting Co.* (1981) 123 Cal.App.3d 898, 906 ("Generally, 'the person possessing the right sued upon by reason of the substantive law is the real party in interest.'") quoting *Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787. As noted above, it is undisputed that U.S. Bank will be the party legally obligated to pay any fine imposed by the County as a result of the Administrative Decision. *Zolly v. City of Oakland* (2022) 13 Cal.5th 780, 789 (The "real party in interest" is any person or entity whose interest will be directly affected by the proceeding, including anyone with a direct interest in the result.).

Whether or not Petitioner is the owner of the Subject Property—a matter addressed at considerable length in the Opposition papers—is entirely irrelevant to the question of whether Petitioner has standing to challenge the fine. The Court concludes that Petitioner does not.

The Court has considered and denies leave to amend. The nature of Petitioner's challenge to the Administrative Decision is clear and no reasonably possible amendment can cure the essential defect, i.e. that the fine was or may be imposed as to U.S. Bank, not Petitioner. Where the nature of the plaintiff's claim is clear, and no liability exists, a court should deny leave to amend because no amendment could change the result. *Suchard v. Sonoma Academy* (2025) 109 Cal.App.5th 1089, 1096 (trial court properly sustained demurrer without leave to amend where no basis to assert standing to bring claim).

<u>Disposition</u>

The Court finds and orders as follows:

1. The Demurrer is SUSTAINED without leave to amend.
2. The Appeal De Novo is DISMISSED.
3. All future dates, including the evidentiary hearing set for October 1, 2025, are VACATED.