

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar  
HONORABLE NANCY L. FINEMAN  
Department 4  
800 N Humboldt Street, San Mateo  
Courtroom Central-G

Tuesday, November 15, 2022

IF YOU **INTEND TO APPEAR** ON ANY CASE ON THIS CALENDAR YOU MUST DO ONE OF THE FOLLOWING:

1. EMAIL [Dept4@Sanmateocourt.org](mailto:Dept4@Sanmateocourt.org) BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING
2. YOU MUST CALL (650) 261-5104 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.
3. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do both items 1 or 2 and 3 will result in no oral presentation.

**At this time, appearances can be in person or by Zoom. When you sign in to Zoom, use your first and last name. Mute your line until your case is called. RECORDING OF A COURT PROCEEDING IS PROHIBITED.**

**Please check in by 1:50 pm.**

**Zoom Video/Computer Audio Information:**

<https://sanmateocourt.zoomgov.com/>

**Meeting ID:** 161 964 0802

**Password:** 734616

**Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC. VIDEO APPEARANCES ARE PREFERRED.**

**Phone number:** 1-669-254-5252

**Meeting ID:** 161 964 0802

**Password:** 734616

**TO ASSIST THE COURT REPORTER, the parties are ORDERED** to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

2:00 PM

18-CLJ-02375 TD BANK USA, N.A. VS. LUCILA J DELATRINIDAD, ET AL.

TD BANK USA, N.A.  
LUCILA J DELATRINIDAD

DONALD SHERRILL  
MATHEW K. HIGBEE

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MOTION FOR JUDGMENT ON THE PLEADINGS

**TENTATIVE RULING:**

Plaintiff TD Bank's Motion for Judgment on the Pleadings is DENIED.

The sole ground for a plaintiff to move for judgment on the pleadings is 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." (Code of Civ. Proc. Section 438, subd. (c)(1).) The motion fails to make that showing.

**A. For Judgment on the Pleadings, a General Denial Overcomes a Properly Pleaded Complaint.**

The Judicial Council Form Complaint sufficiently pleads common counts for account stated, goods sold and delivered, money lent, and money paid. The next question is whether the Answer controverts the Complaint's allegations. Defendant's Answer alleges a general denial, which is generally sufficient to defeat a motion for judgment on the pleadings because the motion admits the defendant's denial. (*MacIsaac v. Pozzo* (1945) 26 Cal.2d 809, 812-13.) For the purpose of ruling on a motion for judgment on the pleadings, "the trial court must treat all of defendant's allegations as being true, and since the moving party admits the untruth of his own allegations insofar as they have been controverted, all such averments must be disregarded whether there is a direct and specific denial or an indirect denial by virtue of affirmative allegations of a contrary state of facts." (*Id.*)

However, the Court may take judicial notice of an Order Deeming Matters Admitted when the admissions when the admissions negate an express denial. (*Evans v. California Trailer Court Inc.* (1994) 28 Cal.App.4th 540, 549.) Plaintiff could prevail on this motion if the Order Deeming Admissions is sufficient to overcome Defendant's Denial. The Order Deeming Admissions is insufficient to make that showing.

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**B. The Order Deeming Admissions Does not Establish All the Elements of any Common Count.**

**1. Account Stated**

An account stated is “an agreement, based on prior transactions between the parties, that the items of an account are true and that the balance struck is due and owing.” “[A]n element essential to render the account stated is that it receive the assent of both parties, but the assent of the party sought to be charged may be implied from his conduct.” (*Professional Collection Consultants v. Lauron* (2017) 8 Cal. App. 5th 958, 968.) The agreement to the balance may be shown by conduct, such as failing to object to a monthly statement sent by the creditor. (*Zinn v. Fred R. Bright Co.* (1969) 271 Cal. App. 2d 597, 600.)

The Order Deeming Admissions establishes that Defendant received account statements. Merely sending monthly statements does not create an account stated unless it is proven that the debtor failed to challenge the statement. (*Lauron, supra.*) The Order Deeming Admissions does not establish that Defendant “failed to object to the statement within a reasonable time.” Thus, the motion presents no pleading or judicially noticeable matter showing that an account was stated in writing.

**2. Goods Sold and Delivered.**

A common count for goods sold is a claim for payment for goods that were sold to the defendant. (*See, e. g., Ben-Hur Mfg. Co. v. Empire Factors* (1960) 181 Cal. App. 2d 123.) The common count for goods sold and delivered is generally a remedy for “one whose goods are wrongfully taken and used by another . . . .” (*See Canepa v. Sun Pac.* (1954) 126 Cal. App. 2d 706, 711.) The claim often arises when the plaintiff consents to taking of his property and “treats it as a sale, and recovers the value, due him under an implied contract of sale.” (*Id.* at 712.) The Answer denies that any goods were sold or delivered to Defendant, and the Order Deeming Matters Admitted does not address any Request for Admission that any goods were sold or delivered. The motion fails to establish a claim for goods sold and delivered.

**3. Money Lent.**

A common count for money lent is proven by showing that the defendant became indebted to the plaintiff in a particular amount for money “loaned” by plaintiff to the defendant at defendant's request. (*Moya v. Northrup* (1970) 10 Cal.App.3d 276, 278.) Defendant's Answer denies that Plaintiff lent any money to Defendant. The motion offers no pleadings or judicially noticeable matter to show that Plaintiff lent money to Defendant.

**4. Money Paid for Defendant at Defendant's Request.**

A common count for money paid must allege that the money was expended for the use and benefit of the defendant, at his instance and request. (*Division of Labor Law Enforcement v. Barnes* (1962) 205 Cal.App.2d 337, 347.) The Order Deeming Admissions establishes that a balance was owed

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on the last account statement, but it does not establish that the \$2,049.70 represents “money paid” on Defendant’s behalf. The Order leaves open the possibility that the balance consisted of interest, late fees, or other charges other than money “paid” to other at Defendant’s request. The order establishes a balance, but not that money was “paid out.”

## 5. Conclusion

Since Defendant’s Answer disputes all material allegations of the Complaint, and the Order Deeming Matters Admitted does not address all elements of the claims, the motion for judgment on the pleadings is denied.

### C. The Motion Does not Show that Defendant’s Answer Fails to States Facts that Could Constitute a Defense.

Plaintiff’s burden is to establish that Defendant Answer fails to plead facts constituting an affirmative defense. (Code of Civ. Proc. Section 438, subd. (c)(1).) Defendant’s Answer alleges that Plaintiff “has not properly credited payments made . . . .” (Answer, 4<sup>th</sup> Aff. Def.) The Order Deeming Admissions establishes that \$2,049.70 is the “balance owed.” The defense alleges that Plaintiff failed to credit her account sufficiently.

When liberally construing a pleading, courts give allegations an objectively reasonable interpretation, reading it as a whole and its parts in their context. In analyzing a motion for judgment on the pleadings, courts give allegations an objectively reasonable interpretation, reading it as a whole and its parts in their context. (*Davis v. Fresno Unified Sch. Dist.* (2020) 57 Cal.App.5<sup>th</sup> 911, 926.) Inferences must be drawn favorably to the pleader so long as it is objectively reasonable. (Id. at 934.)

The contention that Plaintiff did not properly credit payments made creates a dispute about whether the “balance owed” is correct. An objectively reasonable reading of the defense is that Defendant admits that \$2,049.70 is the “balance owed,” but if Plaintiff had properly credited all her payments, the “balance owed” would be lower. If Defendant can prove that Plaintiff failed to credit all her payments, then she can prove that the “balance owed” is excessive. A plaintiff’s motion for judgment on the pleadings must establish that the Answer fails to allege any facts sufficient to constitute a defense. The motion fails to address the Fourth Affirmative Defense.

### D. Conclusion

The motion for judgment on the pleadings is denied.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff TD Bank USA shall prepare a written order consistent with the Court’s ruling for the Court’s signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

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2:00 PM

20-CIV-02726 NACE REYNOLDS VS. SOCIAL CONCEPTS, INC., ET AL.

NACE REYNOLDS  
SOCIAL CONCEPTS, INC.

JACOB HARKER  
BRIDGET B BARRETT

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PLAINTIFF'S UNOPPOSED MOTION TO SERVE DEFENDANTS BY EMAIL, OR IN THE ALTERNATIVE, BY PUBLICATION

**TENTATIVE RULING:**

Plaintiff's Motion to Serve the Summons and Complaint by email is GRANTED pursuant to Code of Civil Procedure § 413.30.

Plaintiff has made more than reasonable efforts to identify a physical address for Defendants Mint Global Marketing (Mint) and BW Ventures, LLC (BWV), without success. The Court finds that service of process by email is most likely to give actual notice of this action to Mint and BWV. No other method of service is likely to provide actual notice to these defendants. Plaintiff demonstrates that the defendants have abandoned their physical addresses. There is no California authority directly on point. The Court finds federal authority on this issue persuasive. See e.g. *.Beqa Lagoon Support Services v. Hasselman* (S.D.Cal. Oct. 26, 2020) 2020 WL 6271032, \*1-2 (permitting service of summons by email); see also *Crane v. Dolihite* (2021) 70 Cal.App.5th 772, 786 ("when none of the four usual methods of service is available, the trial court has the discretion to authorize service by another means").

Within five days of notice this order, Plaintiff shall serve the Summons & Complaint by email at the following email addresses identified in Plaintiff's motion,

rob.shaner@mintglobalmarketing.com;  
accounting@mintglobalmarketing.com;  
compliance@mintglobalmarketing.com;  
2652866@privacy-link.com;

as well as via web submission at [www.mintglobalmarketing.com/#contact](http://www.mintglobalmarketing.com/#contact). The email shall be sent "high priority" and include a copy of the order and make it clear in the subject line that the defendants are being served with a lawsuit and have a limited time to respond.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

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2:00 PM

20-CIV-03642 CYNTHIA A. SMITH VS. STEPHANIE A BEDROSSIAN, ET AL.

CYNTHIA A. SMITH  
STEPHANIE A BEDROSSIAN

PRO SE  
QUENTIN L. KOPP

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MOTION FOR ORDER EXCUSING CASE FROM MANDATORY MEDIATION AND SCHEDULING  
A SETTLEMENT CONFERENCE

**TENTATIVE RULING:**

Parties are to APPEAR. Zoom appearances are allowed. Due to limited judicial resources, the Court finds that alternative dispute resolution generally best serves the Court and the parties. This Court will consider asking a judicial officer to conduct an early settlement conference, but only after the parties have met-and-conferred in person to work out a preliminary trial plan with each side identifying their witnesses, including the expected length of their testimony, the exhibits that each party intends to introduce, the potential motions in limine that will be brought, and any other issues that would be filed pursuant to Judge Fineman's standard Pretrial Order. See [https://www.sanmateocourt.org/documents/civil/dept4\\_orders.pdf](https://www.sanmateocourt.org/documents/civil/dept4_orders.pdf). The parties shall be prepared to discuss when they will be ready to have this conference and what needs to be done before the conference occurs.

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2:00 PM

20-CIV-03642 CYNTHIA A. SMITH VS. STEPHANIE A BEDROSSIAN, ET AL.

CYNTHIA A. SMITH  
STEPHANIE A BEDROSSIAN

PRO SE  
QUENTIN L. KOPP

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BEDROSSIAN DEFENDANTS' JOINDER AND NON-OPPOSITION TO DEFENDANT  
WOLVERINE VENTURES MANAGEMENT, LLC'S MOTION FOR ORDER EXCUSING CASE  
FROM MEDIATION AND SCHEDULING A SETTLEMENT CONFERENCE

**TENTATIVE RULING:**

The joinder is GRANTED.

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2:00 PM

21-CIV-02997 DARKHAN BYLKYLOV, ET AL. VS. STATE OF CALIFORNIA  
(CALIFORNIA DEPARTMENT OF TRANSPORTATION), ET AL.

DARKHAN BYLKYLOV  
STATE OF CALIFORNIA (CALIFORNIA DEPARTMENT OF TRANSPORTATION)

TERENCE D. EDWARDS  
JOSE GONZALEZ

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DEFENDANT STATE OF CALIFORNIA'S MOTION TO COMPEL FURTHER RESPONSE TO  
FORM INTERROGATORIES (SET TWO)

**TENTATIVE RULING:**

Defendant State of California's Motion to Compel the Further Response of Plaintiff Darkhan Bylkylov is GRANTED.

A propounding party may move for an order compelling further responses to an interrogatory if "[a]n answer to a particular interrogatory is evasive or incomplete." (Code of Civ. Proc., § 2030.300, subd. (a).) By this Motion, the State of California (the "State") seeks to compel a further response from Darkhan Bylkylov ("Bylkylov") to Form Interrogatory No. 17.1 propounded in its second set of form interrogatories. The interrogatory requests, *inter alia*, that Bylkylov provide all facts supporting each unqualified denial of the State's requests for admissions ("RFAs").

Each of the RFAs Nos. 2–5 propounded by the State essentially repeats the language of the allegations asserted in Bylkylov's complaint and asks Bylkylov to admit that the allegation is not true. (See October 10, 2022 Declaration of Yuping Lin ("Lin Decl."), exh. A; cf. June 1, 2022 Complaint, ¶ 9.) Having denied the requests, Bylkylov is thus required to state all the facts he knows that support these allegations.

In response, however, Bylkylov merely repeats the allegations himself. "Each answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits." (Code of Civ. Proc., § 2030.220, subd. (a).) "If an interrogatory cannot be answered completely, it shall be answered to the extent possible." (*Id.*, at subd. (b).)

Bylkylov's response is evasive and incomplete. A regurgitation of allegations from the pleadings, without more, is evasive in its attempt to deprive the propounding party of the underlying information. And a complete response requires a full explanation, to the extent of Bylkylov's available information, why each of the assertions set forth in the complaint and referenced by the RFAs are true.

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Importantly, Bylkylov did not respond to RFAs Nos. 2–5 by “[s]pecify[ing] so much of the matter involved in the request as to the truth of which [he] lacks sufficient information or knowledge.” (*Id.*, at § 2033.220, subd. (b).) He instead responded with a denial qualified only by his objections. He thereby implicitly indicated that he has knowledge or information tending to disprove the truth of the subject matter of each request.

“Parties must state the truth, the whole truth, and nothing but the truth in answering written interrogatories. (*Scheidung v. Dinwiddie Const. Co.* (1999) 69 Cal.App.4th 64, 76 [internal quotation marks omitted].) Bylkylov fails to do so in his response. If it is the case that Bylkylov has no information available to him, he may so state. (See Code of Civ. Proc., § 2030.220, subd. (c); see also *Bockrath v. Aldrich Chemical Co., Inc.* (1999) 21 Cal.4th 71, 83-84.)

Accordingly, Bylkylov is ordered to provide a further response, within twenty (20) days of service of written notice of entry of this order, that is consistent with this ruling and setting forth all information available to him that supports his denials of the requests for admission.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for the State shall prepare a written order consistent with the Court’s ruling for the Court’s signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

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2:00 PM

21-CIV-06796 CITIBANK N.A. VS. CYNTHIA FUNK

CITIBANK N.A.  
CYNTHIA FUNK

KEVIN BRENDON BUIZA  
PRO SE

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MOTION FOR ORDER THAT MATTERS IN REQUEST FOR ADMISSION OF TRUTH OF  
FACTS BE ADMITTED

**TENTATIVE RULING:**

Plaintiff's unopposed motion is GRANTED. The genuineness of any documents and the truth of any matters in plaintiff's Requests for Admission, Set One, are deemed admitted.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

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2:00 PM

21-CLJ-04810 CAPITAL ONE BANK (USA) N.A. VS. FRANCISCO ZAPATA

CAPITAL ONE BANK (USA) N.A.  
FRANCISCO ZAPATA

KERI L. SALET  
PRO SE

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MOTION FOR JUDGMENT ON THE PLEADINGS

**TENTATIVE RULING:**

The request for judicial notice is GRANTED pursuant to Evidence Code §452(d).

The motion for judgment on the pleadings is DENIED. Code of Civil Procedure §438(c)(1)(A) provides that a plaintiff may move for judgment on the pleadings on the grounds that the complaint states facts sufficient to constitute a cause of action and the answer does not state facts sufficient to constitute a defense. Plaintiff has not shown made this showing. Defendant's November 15, 2021 answer asserts affirmative defenses that are not addressed in the motion.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

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2:00 PM

22-CIV-00161 SHAYAN BOLBOLAN VS. VIJAY JOSEPH, ET AL.

SHAYAN BOLBOLAN  
VIJAY JOSEPH

PRO SE  
ILLISE SCHULMAN

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DEFENDANT HENRIQUE VERGARA TAVARES' MOTION TO COMPEL RESPONSES TO FORM INTERROGATORIES, SET ONE AND REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE AND REQUEST FOR SANCTIONS

**TENTATIVE RULING:**

Defendant Henrique Vergara Tavares' unopposed Motion to Compel Responses to Form Interrogatories, Set One, and Request for Production of Documents, Set One, from Plaintiff, and for monetary sanctions is GRANTED pursuant to Code of Civil Procedure §§ 2030 *et seq.*, and 2031, *et seq.*, and with respect to sanctions, §§ 2023.010, 2030.290 and 2031.300.

Defendant Tavares served discovery requests on Plaintiff on March 9, 2022, including Form Interrogatories, Set One, and Request for Production of Documents, Set One. Pinelli Decl., ¶¶2-3, Exh.'s A, B. Responses were due by April 11, 2022. *Id.* No responses were received, despite meet and confer correspondence sent on April 20, 2022 granting an extension to respond to April 20, 2022. *Id.*, ¶4-5, Exh. C.

Plaintiff is ordered to provide code compliant discovery responses to the above discovery requests without objection within twenty (20) days of notice of entry of this order.

Monetary sanctions are awarded against Plaintiff Shayan Bolbolan and in favor of Defendant Tavares in the amount of in the amount of \$510. representing 3 hours of attorney time at \$170/hour, which the Court finds as a reasonable award and a \$60 motion fee for filing this Motion for a total of \$570. Plaintiff shall pay this amount within thirty (30) days of notice of entry of this order. Failure to comply with this order may result in further sanctions including issue, evidence, and/or terminating sanctions.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

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2:00 PM

22-CIV-00161 SHAYAN BOLBOLAN VS. VIJAY JOSEPH, ET AL.

SHAYAN BOLBOLAN  
VIJAY JOSEPH

PRO SE  
ILLISE SCHULMAN

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MOTION TO COMPEL ANSWERS TO FORM INTERROGATORIES, SPECIAL INTERROGATORIES, AND REQUEST FOR PRODUCTION OF DOCUMENTS AND FOR SANCTIONS

**TENTATIVE RULING:**

Defendant Vijay Joseph's unopposed Motion to Compel Answers to Form Interrogatories, Special Interrogatories, and Request for Production of Documents from Plaintiff, and for monetary sanctions is GRANTED pursuant to Code of Civil Procedure §§ 2016.040, 2023.010(d); 2030.220(c); and 2031.300(b).

Defendant Vijay Joseph served discovery requests on Plaintiff on March 3, 2022, including Form Interrogatories, Special Interrogatories, and Request for Production of Documents. Mandal Decl., ¶3, Exh.'s A-C. Responses were due by April 4, 2022. *Id.*, ¶4, Exh. E. No responses were received, despite meet and confer correspondence sent on April 22, 2022 and May 2, 2022. *Id.*, ¶4, Exh.'s D, E. Plaintiff's objections to the above discovery have accordingly been waived.

Plaintiff is ordered to provide code compliant discovery responses to the above discovery requests without objection within twenty (20) days of notice of entry of this order.

Monetary sanctions are awarded against Plaintiff Shayan Bolbolan and in favor of Defendant Vijay Joseph in the amount of \$510. representing 3 hours of attorney time at \$170/hour, which the Court finds as a reasonable award and a \$60 motion fee for filing this Motion for a total of \$570. Plaintiff shall pay this amount within thirty (30) days of notice of entry of this order. Failure to comply with this order may result in further sanctions including issue, evidence, and/or terminating sanctions.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

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2:00 PM

22-CIV-01590 JING WANG VS. ERIC CHEN LI, ET AL.

JING WANG  
ERIC CHEN LI

STANLEY E. POND

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MOTION TO BE RELIEVED AS COUNSEL

**TENTATIVE RULING:**

Plaintiff's counsel Stanley E. Pond's unopposed motion to be relieved as counsel is GRANTED. On October 4, 2022, the Court denied the motion on procedural reasons. Those defects have been corrected, but Plaintiff's counsel did not serve another proposed order on Plaintiff as required by California Rule of Court Rule 1362(d),(e). However, a proposed order with all the mandatory language was served on Plaintiff on September 19, 2022 and thus the Court finds that Plaintiff received proper notice of all required documents. Plaintiff has not filed any opposition to the motion and Plaintiff's counsel declares that there are irreconcilable difference between him and Plaintiff.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

Mr. Pond's withdrawal is not effective until he files a proof of service of the signed order by the Court.

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2:00 PM

22-CIV-04439 THE GOLDEN AURORA TRUST VS. PNC BANK, ET AL.

THE GOLDEN AURORA TRUST  
PNC BANK

PRO SE  
JAMES J RAMOS

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ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT BE ORDERED

**TENTATIVE RULING:**

For the reasons stated below, Plaintiff The Golden Aurora Trust's Application for a Preliminary Injunction, filed 10-26-22, which seeks to enjoin Defendants PNC Bank National Association and Quality Loan Service Corporation from conducting a foreclosure sale of property located at 2990 Ralston Ave., Belmont, Ca., is GRANTED-IN-PART and DENIED-IN-PART.

The Application is GRANTED as to Parcel Nos. 043-102-170, 043-102-260, 043-102-270, and DENIED as to Parcel No. 043-102-180. Pending resolution of this case or until further Order from the Court, Defendants are HEREBY ENJOINED from conducting a foreclosure sale of Parcel Nos. 043-102-170, 043-102-260, 043-102-270.

Background. The following facts are taken from the parties' filings to date. In January of 2020, Yintau Yu, as Trustee of Plaintiff the Golden Aurora Trust, obtained a loan from Defendant PNC Bank in the amount of \$1,264,000, secured by a Deed of Trust on property owned by the Trust, located at 2990 Ralston Ave. in Belmont, Ca. (See 11-4-22 Hardrick Decl., Par. 3; Ex. 1). The 2990 Ralston Ave. address appears to consist of *four separate* parcels—Parcel Nos. 043-102-180, 043-102-170, 043-102-260, 043-102-270. It appears from the face of the document that the Deed of Trust securing PNC's 2020 loan to Mr. Yu encumbers/creates a lien on Parcel No. 043-102-180, but does not create a lien on the other three parcels that make up 2990 Ralston Ave. (*Id.*) It also appears that the only improvement/structure located at 2990 Ralston Ave. sits on Parcel Nos. 043-102-260 and 043-102-270. (See attachments to 10-25-22 Yu Decl.). Parcel No. 043-102-180 appears to be a vacant lot. (*Id.*)

As set forth in the 11-4-22 Hardrick Declaration, despite PNC agreeing, in 2020 and 2021, to extend several deadlines for Yu's loan payments, Yu has not made the required payments. (See 11-4-22 Hardrick Decl., stating Yu is 18 months and \$137,075.62 behind on his loan payments). Given the default, PNC initiated foreclosure proceedings. Plaintiff's 10-25-22 declaration states that in September 2022, Plaintiff received a Notice of Trustee's Sale stating that the house at 2990 Ralston Ave. would be sold at a trustee's sale on 10-26-22. The only Assessor's Parcel Number (APN) identified on the Notice of Trustee's Sale is 043-102-180. Given his contention that the house does not sit on Parcel No. 043-102-180, Yu contends PNC has no right to foreclose on/sell the house.

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On 10-24-22, Plaintiff filed a Complaint against PNC (and the loan servicer) alleging wrongful foreclosure. Plaintiff's Complaint alleges PNC and Yu reached a loan modification agreement in 2022, and therefore, that PNC is engaging in "dual-tracking" in violation of the Homeowner's Bill of Rights (HBOR) by foreclosing on the property despite having agreed to a loan modification. The next day, on 10-25-22, Yu appeared *ex parte* and obtained a Temporary Restraining Order enjoining the planned 10-26-22 foreclosure sale until a formal hearing could take place on Plaintiff's request for a preliminary injunction. Plaintiff's *ex parte* papers argue, in part, that Defendants are impermissibly attempting to foreclose on the wrong parcel(s).

Legal standard. Injunctions are equitable in nature; the general purpose of prejudgment injunctive relief is to preserve the status quo pending a determination on the merits. *Jamison v. Department of Transp.* (2016) 4 Cal.App.5th 356, 361. The grant or denial of a preliminary injunction does not amount to an adjudication of the ultimate rights in a controversy. *Id.* Rather, it merely determines that the court, balancing the respective equities of the parties, concludes that, pending a trial on the merits, exercise of the right claimed by the defendant should or should not be restrained. *Id.*

In deciding whether to issue a preliminary injunction, a court weighs two interrelated factors: (1) the likelihood that the moving party will ultimately prevail on the merits, and (2) the relative interim harm to the parties from issuance or non-issuance of the injunction. *Butt v. State of California* (1992) 4 Cal.4th 668, 677–678.

For multiple reasons, Plaintiff has not shown a likelihood of prevailing on his "dual-tracking"/HBOR claim. First, aside from his declaration, Plaintiff offers no compelling evidence that PNC agreed to the alleged loan modification in 2022, or that Plaintiff had submitted a complete loan modification application in 2022 that PNC was considering when it initiated the foreclosure. (See 11-4-22 Hardrick Declaration, setting forth, in detail, Yu's default]). It appears unlikely Plaintiff will be able to provide evidence supporting his dual-tracking/HBOR claim.

Further, Plaintiff appears to lack standing to assert the dual-tracking/HBOR claim because he apparently does not reside in the property. See Civ. Code Sect. 2923.6 (dual-tracking statute) and 2924.15(a)(1)(A) (dual-tracking applies to a "first lien mortgage or deed of trust [that] is secured by owner-occupied residential real property..."); Civ. Code Sect. 2924.15(a)(1)(B) ("owner occupied" means that the property is the principal residence of the borrower..."); see also Hardrick Decl., Ex. 1 (indicating Mr. Yu resides at 1047 Cherry St., San Carlos, Ca.).

The Court finds a "reasonable probability" Plaintiff will be able to show that Defendants are wrongfully foreclosing on the wrong parcel(s). As noted above, it appears PNC's Deed of Trust encumbers/creates a lien on Parcel No. 043-102-180, but not the other three parcels that make up 2990 Ralston Ave. Because the improvement/house at 2990 Ralston Ave. appears to sit on Parcel Nos. 043-102-260 and 043-102-270, the house presumably is not subject to foreclosure under the Deed of Trust. Thus, the evidence shows a reasonable probability that Defendants are attempting to wrongfully foreclose on Parcel Nos. 043-102-260 and 043-102-270.

The Court acknowledges that the first page of the Deed of Trust references four different parcel numbers. However, "Exhibit A" to the Deed of Trust only identifies Parcel No. 043-102-180 as the



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encumbered parcel. (See Hardrick Decl., Ex. 1 at “Exhibit A”). As noted, an order granting a preliminary injunction does not decide the case’s merits. For purposes of this Order, the Court makes/reaches no conclusion or ruling on the ultimately issue of whether the Deed of Trust covers *only* Parcel No. 043-102-180, or whether Defendants are “wrongfully foreclosing” on the wrong parcel(s).

Defendants’ Opposition papers *do not address* Plaintiff’s argument that Defendants are seeking to foreclose on the wrong parcel(s). Plaintiff asserts this argument in his 10-25-22 *ex parte* application, but not in his 10-24-22 Complaint. By any objective measure, however, this argument appears to be part of Plaintiff’s “wrongful foreclosure” claim, and thus the Court has considered it in assessing Plaintiff’s probability of prevailing on the wrongful foreclosure claim. Defendants have failed to address this argument or provide any counter-evidence; thus they have waived any argument. See *Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20 (“Plaintiff did not oppose the County’s [motion] to this portion of their seventh cause of action and have submitted no argument on the issue in their briefs on appeal. Accordingly, we deem plaintiff to have abandoned the issue.”);

The relative interim harm to the parties from issuance or non-issuance of a preliminary injunction favors granting the injunction in part. Given the prospect of PNC potentially foreclosing on parcels that are not encumbered by the deed of trust, the Court finds that the potential harm to Plaintiff weighs in favor of granting injunctive relief barring a foreclosure sale of Parcel Nos. 043-102-170, 043-102-260, 043-102-270 during the pendency of this case, or until further Order from the Court.

No injunction as to Parcel No. 043-102-180. Plaintiff offers no evidence or argument justifying an injunction barring the foreclosure/sale of Parcel No. 043-102-180. Thus, this Order does not restrict, in any way, PNC’s right to foreclose on Parcel No. 043-102-180.

No bond required. Given the foregoing, the Court will not require Plaintiff to post a bond as a prerequisite to obtaining the ordered preliminary injunction.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court’s ruling for the Court’s signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

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