Dept. 1 Civil Law and Motion Tentative Rulings for Friday, May 5, 2023 at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court at (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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1. **CV64010** **Sergeant v. Tinney et al**
   Hearing on: Demurrer to FAC
   Moving Party: Defendant Central Valley
   Tentative Ruling: Sustained with leave to amend

This is, in effect, a quiet title action involving APN 080-211-002-000, commonly referred to as 23981 Oxbow Lane S, Sonora, CA. Before the Court this day is Central Valley's demurrer to the First Amended Complaint filed 02/06/23. Although a demurrer constitutes a legal challenge to the pleading itself, a brief trip down memory lane is warranted.

According to plaintiff and court/public records:

- Plaintiff lived at the subject residence for the better part of 20 years (it appears she may have purchased the property for $106,000 on 06/07/01). Eventually plaintiff and her husband Rodney made friends with a neighbor, Aiden Tinney.

- In early 2019, plaintiff confided in Aiden that she was experiencing financial stressors due to an unpaid tax bill. Being a good friend/neighbor, Aiden offered to loan plaintiff the money she needed to resolve that tax debt ($8,783.27) in exchange for her promise to repay the loan and to put Aiden "on title" to the property as security for the loan.

- On 04/01/19, plaintiff and Aiden opened an escrow account at Yosemite Title Company (318013-BW). Aiden deposited $8,783.27 (the amount he agreed to lend plaintiff) into escrow, and plaintiff deposited a grant deed transferring all of her interest in the subject property to Aiden. (Plaintiff contends that she did not understand what she was signing.) After escrow was opened, a company called Bid4Assets reported this as a sale. The documentary transfer tax of $9.90 further supports this as a $9,000 sale.

- On 04/12/19, Aiden caused the grant deed to be recorded.

- On 07/06/21, Aiden reportedly served plaintiff with a 60-day notice to vacate.

- On 07/08/21, Aiden entered into a written agreement with MCB Homes, Inc. (aka Matthew Bristow) to market and sell the property. According to the terms of the contract: MCB gave Aiden $70,000 for this exclusive right; Aiden was required to provide "clear and marketable title" before closing; and "the tenants" were allowed to remain in possession for the remainder of their 60-day notice.

- On 07/17/21, someone (presumably MCB) caused the property to be listed for sale in the MLS for $285,000. As part of the escrow with MCB, Orange Coast Title issued a preliminary title report "intentionally omitting" paragraphs 9-16. It is not clear why that

report failed to disclose Aiden's alleged purchase of the property from plaintiff two years earlier for less than $9,000.

- On 08/20/21, plaintiff commenced this civil action to quiet title in her favor. Plaintiff generally alleged that she repaid Aiden in full via cash ($900.00) and with in-kind services like work at Aiden's property and driving Aiden into town. Plaintiff contended that Aiden was actually overpaid in-kind, and owes plaintiff both a refund and a reconveyance of that grant deed.

- On 08/24/21, plaintiff submitted a proposed Notice of Lis Pendens for this Court's signature. Due to no fault of plaintiff's, the CCP §405.21 request was misfiled and not timely acted upon.

- On 09/17/21, Central Valley RE Investors entered into a written agreement with MCB Homes to acquire its rights in the purchase agreement for $110,000. According to Patrick McGrath, Central Valley buys distressed properties with the intention of "flipping" them.

- On 09/24/21, Aiden executed a grant deed in favor of Central Valley. The deed was recorded just a few days later. Based on the documentary transfer tax, the sale amount was apparently reported as $70,000, not $110,000. Central Valley gave an encumbrance on the property to John and Colleen Myrakis in the amount of $135,000 (this is presumably the flip funds).

- On 10/29/21, this Court granted plaintiff permission to record a Notice of Lis Pendens. There is no indication in the file whether the Notice was ever served, or recorded.

- On 05/31/22, representatives of the Community Development Department performed an inspection of the property and observed violations of §8.05.030 (accumulated debris) and §15.04.010 (unpermitted use of a shed).

- On 06/17/22, Central Valley caused to be posted at the property notice of a need to correct the referenced violations or surrender possession.

- On 06/28/21, Central Valley caused a 3-day notice to cure or quit to be posted at the premises.

- On 07/21/22, Central Valley commenced an unlawful detainer action (CVL64666) against plaintiff (and others), claiming that plaintiff was subject to a "rental agreement" requiring the tender of $1,800/month, and that the agreement had been terminated for cause because she failed to take the corrective actions. See CVL64666.

- On 10/24/22, the parties appeared in court and reported on the record that a settlement had been reached whereby Aiden would pay plaintiff $9,000. While waiting for Aiden's

new attorney to file a substitution, plaintiff changed her mind.

- On 11/08/22, this Court consolidated CV64010 and CVL64666, with the latter being "stayed" and the former serving as the *de facto* lead.

- On 11/23/22, Aiden passed away. His son filed a petition to open a probate estate and for letters of administration (PR12219), indicating a "sizable estate."

Back to the demurrer …

Plaintiff's counsel failed to faithfully discharge the statutory meet and confer obligation under CCP §430.41. Although counsel indicates having sent a detailed written letter to plaintiff (albeit using an incomplete address), the statute requires that the parties meet and confer "in person or by telephone," or show why that could not occur. Attorney Wood has not provided a bona fide explanation for failing to reach out and call plaintiff. See Wood Dec., Para. 8. However, this Court will overlook the §430.41 shortcoming because, with all due respect to plaintiff, the operative pleading is uncertain and a jumbled mess.

First, the operative pleading must contain the full names of all parties on the left of the page, or at least the names of the primary plaintiff and defendant, with "an appropriate indication" of the others. See CCP §422.40. This pleading lists plaintiff (using a different name that appeared on the original complaint), the estate of Aiden Tinney (which was not a party when the case was commenced, and was never substituted in), Does 1-25 (when the original complaint had Does 1-50), and Central Valley Real Estate Investors (which was not added by leave of court or Doe Amendment).

Second, the operative pleading must list the type of pleading and nature of the action on the right side. CRC 2.111(6). Here, the pleading identifies itself as a "Notice of Pendency of Action" – which i.t legally is not – and then as a First Amended Complaint.

Third, each cause of action must be separately stated, separately numbered, and must specify against whom it is asserted. CRC 2.112. Plaintiff separately identifies six causes of action, but fails to specify against whom those are asserted. Save for the first cause of action for quiet title, it would appear that the remaining claims are not intended to run against the demurring party. If they are, plaintiff needs to make that clear.

Fourth, and perhaps most importantly, the pleading shall contain "a statement of the facts constituting the cause of action, in ordinary and concise language." CCP §425.10(a)(1). While background information can be helpful, the only facts that really need to be included are the ultimate facts supporting the essential elements, not every single evidentiary fact. See CCP §430.10(e); *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872; *Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1018; *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390. The operative pleading includes too much stream of

consciousness, dialogue, and personal attack, and not enough ultimate facts to support most of the causes of action. For example, this Court cannot tell from the operative pleading whether plaintiff is claiming that she signed the grant deed to Aiden without realizing it was a full grant deed, or that she intended to give the property to Aiden but expected to get it back (compare Paragraphs 14 and 20). There is a material difference, especially with regard to who has the burden of proof regarding the BFP issue (*infra*). There are also quite a few references to the Homeowner's Bill of Rights, but no connection to any cause of action. The third cause of action consists of a statement of law only. The fourth cause of action – unjust enrichment – is not a cause of action at all. *Everett v. Mountains Recreation and Conservancy Authority* (2015) 239 Cal.App.4th 541, 553; *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 231.

For purposes of the demurring party, the operative pleading does not set up or address the BFP issue. The proper standard to determine whether a buyer is a BFP is whether the buyer (1) purchased the property for value, and (2) had no actual or constructive notice of the asserted rights of another. Being an "investor" does not itself foreclose BFP status, but a buyer's experience may be considered in making the factual determination of whether he or she knew or should have known about a conflicting claim. *Melendrez v. D&I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1253-1254; *Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 442. An inordinately low sales price may further indicate that the purchase was not to a BFP. *Estate of Yates* (1994) 25 Cal.App.4th 511, 523. The issue of whether a buyer is a BFP is a question of fact based on the circumstances that existed at the time of the buyer's acquisition, and is typically addressed at summary judgment or trial. See *Triple A Management Co. v. Frisone* (1999) 69 Cal.App.4th 520, 530. Where, as here, plaintiff appears to be relying on equitable title (if she signed the grant deed with knowledge), "it is incumbent on the plaintiff, seeking to establish a superior equitable title, to plead and prove that the defendant is not an innocent purchaser for value." 54A Cal. Jur. 3d, Real Estate §711. See also, *First Fidelity Thrift & Loan Ass'n v. Alliance Bank* (1998) 60 Cal.App.4th 1433, 1442.

Plaintiff filed a "declaration" apparently in response to the demurrer. The declaration is similar to other pleadings filed by plaintiff (hard to track), but permits an inference that plaintiff can do better with the pleading if given an opportunity. In a perfect world, plaintiff would retain counsel to help her navigate this case, but that is up to her. The demurrer to the First Amended Complaint is SUSTAINED on all grounds. Plaintiff shall have 30 days leave to amend. The Second Amended Complaint, if there is to be one, must comport with all formatting/pleading requirements as described herein, shall carry the paragraph numbering throughout the document, shall not include case citations or law, shall not pose rhetorical questions to the reader, and shall not exceed 10 pages. Defendant to give notice.

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2. CV63883 **Pine Mountain Lake Association v. Chisolm**
Hearing on: Discovery motions (FRogs, RPDs, RFAs)
Moving Party: Plaintiff
Tentative Ruling: Motions granted; sanctions of $1,500 total awarded

This is a nuisance action by an HOA against resident Jennette Chisolm, who owns 12953 Jackson Mill Drive, Groveland CA. The HOA alleges that she has allowed the property to fall into disrepair. According to the HOA, defendant has since cleaned up her property. What remains of the dispute are unpaid fines, penalties and interest.

Before the Court this day are three unopposed discovery motions: compel an initial response to Form Interrogatories; compel an initial response to Request for Production of Documents; and deem admitted matters contained in the Request for Admissions. The motions, and for that, the discovery requests as well, were all mail-served to defendant at her identified address. She did not respond to either the discovery requests or these motions. In fact, a review of the ROA reveals that this Court has not heard from defendant in any capacity since the CMC on 08/29/22.

Plaintiff's motions are GRANTED. Defendant is hereby ordered to provide a complete, verified, substantive, and objection-free response to the Form Interrogatories and Request for Production of Documents within 20 days. As for the RFAs, the matters contained therein are deemed admitted. As for the mandatory imposition of monetary sanctions, this Court finds that $750 for the two motions filed is more than sufficient. Although counsel requests $2,601.00 for the FRog/RPD motion (see Nielsen Dec., Para. 5) and $4,590.00 for the RFA motion (see Menezes Decl., Para. 4), those amounts represent work never needed (review of opposition, preparation of reply, preparation of separate statement) and are based on experienced attorneys at a well-respected law firm taking an inordinately long time to "research" and "prepare" garden-variety cut-and-paste discovery motions, and billing hourly rates that exceed what is customary in this legal community. The sanction award of $750 for the FRog/RPD motion and $750 for the RFA motion must be paid within 20 days. Notice of this order shall be personally served on defendant, and proof of that service shall be filed with this Court.

3. CVL65019 **Portfolio Recovery Associates v. Coane**
Hearing on: Judgment on the Pleadings
Moving Party: Plaintiff
Tentative Ruling: JOP Granted with leave to amend

This is a limited jurisdiction collections case. Before the Court this day is a motion by plaintiff for judgment on the pleadings. Counsel has adequately attempted to discharge his obligation to meet and confer by calling defendant's phone and sending a letter. CCP §439.

A plaintiff moving for judgment on the pleadings must demonstrate that (1) the complaint states facts sufficient to constitute a viable cause of action against the defendant and (2) the

answer does not state facts sufficient to constitute a defense to that cause of action. CCP §438(c); see *Templo v. State of California* (2018) 24 Cal.App.5th 730, 735; *Bezirdjian v. O'Reilly* (2010) 183 Cal.App.4th 316, 321. The grounds for the motion must appear on face of pleadings (the complaint and the answer), or from facts judicially noticeable. CCP §438(d); *Tung v. Chicago Title Co.* (2021) 63 Cal.App.5th 734, 758-759; *Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 186-187. A court passing on the legal sufficiency of a pleading may also go outside the pleadings for the limited purpose of considering a party's indisputable sworn discovery responses so long as the hearing does not cross the line into an incomplete evidentiary hearing. *New Livable California v. Association of Bay Area Governments* (2020) 59 Cal.App.5th 709, 716; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

Reference is first made to the operative complaint filed 12/27/22. Plaintiff alleges two causes of action: account stated and open book. The complaint does not attach or incorporate any papers demonstrating defendant's application for the card, acceptance of the card, use of the card, or notices of default. Although the complaint shows an indebtedness, it does not include ultimate facts connecting that debt specifically to plaintiff. See *Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460; *Kawasho Internat., U.S.A. Inc. v. Lakewood Pipe Service, Inc.* (1983) 152 Cal.App.3d 785, 793. However, the attached billing statements do show that the statements were mailed to defendant's address of record, which certainly would have put her on notice that someone was using a card in her name. Thus, the operative pleading does adequately state a claim for account stated. See *Gleason v. Klamer* (1980) 103 Cal.App.3d 782, 786; *H. Russell Taylor's Fire Prevention Service, Inc. v. Coca Cola Bottling Corp.* (1979) 99 Cal.App.3d 711, 726; *California B.G. Assn. v. Williams* (1927) 82 Cal.App. 434, 442.

On to the answer. Defendant's answer, filed 02/22/23, is on the Judicial Council form. She did not check box 3.a. (general denial) and instead checked box 3.b. (general admission). When checking box 3.b., it is defendant's burden to specify what part of the Complaint is false. Defendant did not do this, and instead averred that the debt was valid but that she never had a chance to work it out with the creditor beforehand. This is not a true denial. Defendant did include affirmative defenses, but none of those are legal defenses; instead, defendant simply listed off a litany of personal stressors explaining why she failed to pay the bill. Defendant did not file any opposition to the motion for judgment on the pleadings, further confirming for this Court that she concedes the debt and would prefer an option to pay it back over time.

Having reviewed both pleadings, this Court finds 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. CCP §438(c)(1)(A). Since this is the first such pleading attack, and it appears that defendant wants a resolution, she will be given 30 days leave to amend her answer to state an affirmative defense, if any. CCP §438(h)(2).

Plaintiff to give notice.