CALAVERAS PLANNING COALITION v
CALAVERAS COUNTY BOARD OF SUPERVISORS, et al

19CV44471

DEFENDANTS' MOTION TO DISMISS

This case involves a writ of mandate brought by Petitioner Calaveras Planning Coalition ("CPC") against the Calaveras County Board of Supervisors ("Board") November 12, 2019 approval of the General Plan Update ("GPU.") CPC alleges that the GPU violates land use law. The Petition challenges the County's approval of the 2019 Calaveras County General Plan Update under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000, et seq.), the Planning and Zoning Law (Gov. Code, § 65300, et seq.), and the California Public Records Act (Gov. Code, § 6250, et seq., now § 7920 et seq.).

Now before the Court is a motion to dismiss pursuant to Code of Civil Procedure section 583.360 brought by the Board. CPC opposes the motion.

I. Legal Standard

California Code of Civil Procedure section 583.310 requires that "an action shall be brought to trial within five years after the action is commenced against the defendant."

Code of Civil Procedure section 583.360 provides:

> (a) An action shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial within the time prescribed in this article.
>
> (b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute.

Code of Civil Procedure section 583.360 forbids courts from exercising any discretion regarding the failure to bring its case to trial within the five-year timeframe "except as expressly provided by statute." (*Gaines v. Fidelity National Title Ins. Co.* (2016) 62 Cal.4th 10801, 1089.) The only grounds for courts to extend the five-year deadline are

set forth in Code of Civil Procedure section 583.340, which provides that the time during which any of the following conditions existed shall be excluded from the computation of time within which an action shall be brought to trial:

(a) The jurisdiction of the court to try the action was suspended;

(b) Prosecution or trial of the action was stayed or enjoined; or

(c) Bringing the action to trial, for any other reason, was impossible, impracticable, or futile.

II. Analysis

Board moves to dismiss this petition on the grounds that CPC filed the action on December 9, 2019. Board argues that even with the six month extension afforded during COVID-19, the time limit to bring this case to trial expired on June 9, 2025.[1] Board argues that none of the limited statutory exceptions that would extend the time to bring the matter to trial are present in this case.

In opposition, CPC argues that court can extend the five-year deadline because in this case it was "impossible, impracticable, or futile" to bring the matter to trial sooner. CPC has the burden to prove a circumstance of impracticability. (*Tamburina v. Combined Ins. Co. of America* (2007) 147 Cal.App.4th 323, 329.) "What is impossible, impracticable, or futile is determined in light of all the circumstances of a particular case, including the conduct of the parties and the nature of the proceedings." (*Brown & Bryant, Inc. v. Harford Accident & Indemnity Co.* (1994) 24 Cal.App.4th 247, 251.) Notably, "the critical factor is whether the plaintiff exercised reasonable diligence in prosecuting its case." (*Ibid*.)

CPC's primary argument is that the Board's own behavior caused the delay because for approximately seventeen months the Board refused to provide CPC with the documents needed to create the administrative record. CPC also asserts that the delay in creating the record allowed the Board to wait seventeen months to file its Answer which delayed the matter. However, CPC stipulated to allowing the Board to wait to file its Answer until

[1] Notably, CPC has never filed a motion for preferential trial setting.

after the administrative record was certified – which has never happened. (Supplemental Declaration of Christopher L. Stiles ("Supp. Stiles Decl.") ¶ 8, Ex. 13.) Although CPC cites to Declaration of Thomas Infusino, no such declaration was provided to the Court.

What is before the Court is a record of thirty-two stipulations between February 2020 and May of 2025 giving CPC more time to gather documents and organize the administrative record. While the Court acknowledges that the administrative record may be vast in this matter, CPC has not provided any legal authority that would authorize the Court to toll the five-year deadline based on years of stipulations to delay production of the administrative record. Moreover, the Court is persuaded by the Supplemental Declaration in which Mr. Stiles avers that his firm "has litigated hundreds of CEQA cases and has either prepared or participated in the preparation of hundreds of administrative records on behalf of both petitioners and respondents." (Supp. Stiles Decl. ¶ 3.) Some of those records have been over 500,000 pages. (*Id.* ¶ 4.) Mr. Stiles provides multiple examples of large administrative records which his firm has prepared, none of which have taken more than 79.6 paralegal hours. (*Id.* ¶ 7.) CPC has not provided any evidence explaining why or how it has been unable to prepare the record in this matter over the last five years.

Accordingly, the Board's Motion to Dismiss is **GRANTED**.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the Proposed Order submitted by Board.

ARIZA v LAKESIDE VENTURES, LLC

22CV46059

DEFENDANTS' MOTION FOR SANCTIONS

This matter involves a lengthy dispute over the sale of a mobile home estate located at 1475 Railroad Flat Road, Mokelumne Hill, CA ("Mobile Home Estate.") On June 13, 2025, the Court denied Helen Ariza ("Plaintiff")'s motion to disqualify attorney Kathleen E. Finnerty, Esq. ("Finnerty") who has been retained to represent Defendants Lakeside Ventures LLC ("Lakeside") and Bonnie Hurley (aka Tuckerman-Aho) ("Tuckerman-Aho") (collectively, "Defendants".)

Now before the Court is Defendants' motion for sanctions pursuant to Code of Civil Procedure section 128.7.

I. Background

During a phone call with Finnerty on April 18, 2025, Plaintiff alluded to her intention to file a motion to disqualify based on her unsubstantiated belief that Mr. Tuckerman was paying Defendants' legal fees. (Finnerty Decl. ¶ 4(a).) During that call, Finnerty informed Plaintiff that such unsubstantiated belief was not proper grounds to bring a motion to disqualify (*Id*., ¶ 4(a)(b).) Finnerty received a copy of the motion on May 9, 2025. (*Id.* ¶ 4(d).) On May 10, 2025, Finnerty wrote to Plaintiff outlining the multiple reasons her motion was far below pleading standards, even for self-represented litigants, and demanded a withdrawal of her motion by May 13, 2025. (*Id.* ¶ 4(e)., Ex. B.) Plaintiff did not respond to that letter and instead served it on the evening of May 15, 2025. (*Id*. ¶ 4(f).)

On May 16, 2025, Finnerty served her opposition to the motion and all supporting documents on Plaintiff together with correspondence stating that she had twenty-one days within which to withdraw the motion or she would file this motion for sanctions. (*Id*. ¶ 8, Ex. C.) Plaintiff did not withdraw the motion and the Court ruled against Plaintiff on June 13, 2025.

Defendants seek $8,733.50 in attorney's fees as well as an order striking the motion to disqualify.

II. Legal Standard

Code of Civil Procedure section 128.7 states:

> (b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:
>
> (1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.
>
> (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
>
> (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
>
> (c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the

attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(d) A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated.

II. Discussion

Code of Civil Procedure section 128.7 " 'authorizes trial courts to impose sanctions to check abuses in the filing of pleadings, petitions, written notices or motions or similar papers.'" (*Kumar v. Ramsey* (2021) 71 Cal.App.5th 1110, 1120 [citation omitted].) However, its use is rare and should only be utilized in the " 'rare and exceptional case where the action is clearly frivolous, legally unreasonable or without legal foundation, or brought for an improper purpose.' " (*Ibid*.) Defendants complied with the safe harbor provision required for motions under Code Civ. Procedure section 128.7.

Plaintiff's motion to qualify was brought without any legal basis and without standing. As the Court stated in its ruling denying the Plaintiff's motion to disqualify:

> Plaintiff's motion to disqualify lacks any showing that she has standing to bring this motion. First, there was clearly never an attorney-client relationship between Plaintiff and Finnerty. Second, the motion is completely devoid of any evidence (or coherent allegation) that Plaintiff has a personal stake in Ms. Finnerty's disqualification or any purported reason for the disqualification. The only stake Plaintiff has alleged is her general interest in the outcome of the litigation itself.

Plaintiff's opposition to the motion for sanctions repeats her arguments as to why Finnerty should be disqualified. Her only reference to the motion for sanctions is that Finnerty and Defendants' various behaviors probably increased any costs or fees incurred.

The Court previously found that Plaintiff's motion to disqualify was brought without any legal justification or evidentiary support and considers that it may well have been brought for the improper purpose of harassing Defendants. Plaintiff has a history of bringing motions before the Court which are procedurally defective or substantively meritless. The Court therefore exercises its discretion to grant sanctions against Plaintiff pursuant to Code Civil Procedure section 128.7(c.)

When imposing a sanction under this section of the Code, the Court must limit the sanction to "what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated." (*Id*. subd (d).) Given Plaintiff's propensity for filing legally unsubstantiated motions, the Court must award sanctions in an amount that may deter her from engaging in further such conduct. Initially the Court notes that while phrased as requested attorney's fees, the amount of $8,733.50, is requested without any details or basis for how that amount was derived. While presumably the total amount reflects the attorney's fees charged to defendants for efforts related to the motion to disqualify (and likely the current motion for sanctions) no information has been provided to the Court as to hours spent, tasks those hours were spent on, or the requested hourly billing rate, thus preventing the Court any analysis as to whether some or all of these factors meet the standard of meeting the going rate within this market. Additionally, CCP 128.7 does not provide for attorney's fees as such but, rather, a sanction to deter future improper conduct. Taking into account plaintiff's status as a self-represented litigant in the context of the statute, the Court finds sanctions in the amount of $1,500.00 such suffice as such a deterrent.

Accordingly, defendants' Motion to Impose Sanctions is **GRANTED**. Plaintiff is to pay defendants' counsel the amount of **$1,500.00, to be paid within thirty (30) calendar days** of the service of this Ruling.

The clerk shall provide notice of this ruling to the parties forthwith. Defendants to prepare a formal Order in conformity with the Ruling and complying with Rule of Court 3.1312.

JP MORGAN CHASE BANK N.A. v BURNELL

24CF14691

PLAINTIFF'S MOTION TO DEEM MATTERS ADMITTED

Plaintiff JP Morgan Chase Bank ("Plaintiff") sued Defendant Nicole M. Burnell ("Defendant") for the collection of a debt. Thereafter, Defendant filed an Answer. Now before the Court is Plaintiff's motion to deem admitted the matters specified in the Plaintiff's Requests for Admission ("RFAs").

On January 8, 2025, Plaintiff served by mail its first set of requests for admissions on Defendant. (Declaration of Gregory Parks ("Parks Decl.) ¶ 2, Ex. 1.) On or about February 28, 2205, Plaintiff's counsel attempted a meet and confer by sending a letter to Defendant regarding the outstanding discovery and offering additional time to respond. (Parks Decl. ¶ 4, Ex. 2.) As of the filing of Plaintiff's motion, Defendant has not responded to the letter or provided any responses to the RFAs. Defendant has also not filed any opposition to the Plaintiff's motion.

Pursuant to Code Civ. Proc. section 2033.280:

> (a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> > 1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
> >
> > 2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Further, the Court shall deem the facts admitted as truth, unless it finds that the party to whom the RFAs were directed, "has served, before the hearing on the

motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220." (Code Civ. Proc. § 2033.280(c).)

Defendant has not served any response and has not provided any evidence to the court that the failure is a result of mistake, inadvertence, or excusable neglect.

Accordingly, Plaintiff's motion is **GRANTED**.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign Plaintiff's submitted Proposed Order.

CAPITAL ONE N.A. v ADAMS

24CF14747

PLAINTIFF'S MOTION TO DEEM MATTERS ADMITTED

Plaintiff Capitol One ("Plaintiff") sued Defendant Steven J. Adams ("Defendant") for the collection of a debt. Thereafter, Defendant filed an Answer. Now before the Court is Plaintiff's motion to deem admitted the matters specified in the Plaintiff's Requests for Admission ("RFAs").

On 02/14/2025, Plaintiff served by mail its first set of requests for admissions on Defendant. (Declaration of Gregory Parks ("Parks Decl.) ¶ 2, Ex. 1.) Requests were due within 30 days of receipt. As of the Plaintiff's motion, Defendant has not responded to the letter or provided any responses to the RFAs. Defendant has also not filed any opposition to the Plaintiff's motion.

Pursuant to Code Civ. Proc. section 2033.280:

> (a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> > 1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
> >
> > 2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Further, the Court shall deem the facts admitted as truth, unless it finds that the party to whom the RFAs were directed, "has served, before the hearing on the

motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220." (Code Civ. Proc. § 2033.280(c).)

Defendant has not served any response and has not provided any evidence to the court that the failure is a result of mistake, inadvertence, or excusable neglect.

Accordingly, Plaintiff's Motion to Deem Matters Admitted is **GRANTED**.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the Proposed Order submitted by Plaintiff.

GIANOTTI v KLAUSE, et al

24CV47238

DEFENDANT'S PETITION TO COMPEL BINDING ARBITRATION AND STAY ALL PROCEEDINGS

Before the Court is a second motion to compel arbitration filed by Defendants Downey Management Group, Inc. ("Downey"), Airola Road Vineyards, LLC ("Airola"), George Klause ("Mr. Klause and Birgit Klause ("Ms. Klause") (collectively "Defendants").

I. Factual and Procedural Background

Plaintiff alleges that Defendants Downey and Airola are joint employers with a unity in interest and ownership and that Downey owns Airola. (Complaint ¶ 22.) Upon information and belief, Downey Management owns Airola Road Vineyards. George Krause is listed as the agent for both businesses. (*Ibid.*). Defendants own an 88-acre estate that operates as a vineyard and wedding venue. (*Id.* ¶ 23.) Defendants also own two residential properties on the estate, both of which operate as Airbnb rental properties. (*Ibid*.) Apparently, the entire estate is owned and operated by George and Birgit Klause. (*Ibid*.)

On or about December 1, 2022, Defendants hired Plaintiff on a full-time basis as a caretaker at a rate of pay of approximately $800.00 every two weeks, significantly below the California minimum wage of $15.00 per hour. (Complaint ¶ 24.) Plaintiff was required to live in an on-site residential unit as a condition of employment. (*Id*. ¶ 25.) As such, Plaintiff was treated not as a tenant but as a licensee. (*Ibid*.) In her capacity as a caretaker, Plaintiff's job duties and responsibilities included, but were not limited to, cleaning the rental properties, fountains, and pools, mowing the grass, nurturing plants and flowers, pruning trees, and pruning grapes. (*Id*. ¶ 26.)

Plaintiff alleges a number of wage and hour law violations. She also alleges that despite the fact that she was required to live on the premises as a caretaker, Defendants failed to secure the necessary permits to make the living space habitable. (Complaint ¶ 33.) Plaintiff was then allowed to live in one of the Airbnb units but was not allowed to unpack her belongings and was forced to accommodate Defendants' various guests without being asked first. (*Id*. ¶¶ 34, 35.) Plaintiff was required to pay rent when she used an Airbnb unit. (*Id*. ¶ 37.) Apparently, Defendants also forced Plaintiff to participate in religious proceedings. (*Id*. ¶ ¶ 42-46.) After Plaintiff complained about the various wage and hour violations, her living conditions, and other matters, she had her hours significantly reduced and then she was constructively terminated. (*Id*. ¶¶ 50-52.)

Plaintiff brings claims for various violations of California Labor Code, California Business and Professions Code, Fair Employment and Housing Act and the Private Attorney Generals Act (PAGA).

On October 18, 2024, Defendants moved for an order compelling the matter to binding arbitration pursuant to an alleged arbitration agreement ("Agreement") between Plaintiffs and Defendant Downey. The Court denied the motion, without prejudice, finding that Defendant had failed to carry its burden to show, in the face of Plaintiff's denial, that her signature allegedly on the arbitration agreement was authentic.

II. Procedure and Burden of Proof on Petition to Compel Arbitration

In determining the enforceability of an arbitration agreement, the court considers "two 'gateway issues' of arbitrability: (1) whether there was an agreement to arbitrate between the parties, and (2) whether the agreement covered the dispute at issue." (*Omar v. Ralphs Grocery Co.* (2004) 118 Cal.App.4th 955, 961.) The trial court must first determine whether an "agreement to arbitrate the controversy exists." (Code Civ. Proc., 1281.2.) "Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence." (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) The party seeking arbitration can meet its initial burden by attaching to the petition a copy of the arbitration agreement purporting to bear the respondent's signature. (*Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1060.) Alternatively, the moving party can meet its initial burden by setting forth the agreement's provisions in the motion. (Cal. Rules of Court, rule 3.1330.)

It then becomes Plaintiff's burden, in opposing the motion, to prove by a preponderance of the evidence any fact necessary to her opposition. (*Espejo*, *supra* 246 Cal.App.4th at 1057.) "Code of Civil Procedure section 1281.2 requires a trial court to grant a petition to compel arbitration 'if the court determines that an agreement to arbitrate the controversy exists.'" (*Avery v. Integrated Healthcare Holdings, Inc*. (2013) 218 Cal.App.4th 50, 59, quoting Code Civ. Proc. § 1281.2.)

Generally, on a petition to compel arbitration, the court must grant the petition unless it finds either (1) no written agreement to arbitrate exists; (2) the right to compel arbitration has been waived; (3) grounds exist for revocation of the agreement; or (4) litigation is pending that may render the arbitration unnecessary or create conflicting rulings on common issues. (*Desert Reg'l Med. Ctr. v. Miller*, (2022), 87 Cal.App.5th 295, 308.)

III. Legal Analysis

Once again, Defendants have met their initial burden of showing the existence of an Agreement that appears to have been signed by Plaintiff on November 19, 2022. (Declaration of George Klause ("Klause Decl.") ¶ 5, Ex. A.) (*Espejo v. S.Cal. Permanente Med. Grp*. (2016) 246 Cal.App.4th 1047, 1060 [party moving to compel arbitration may meet their initial burden to show an agreement to arbitrate by attaching a copy of the agreement purportedly bearing the opposing party's signature].) However, Plaintiff again disputes that the signature on the agreement is hers. She avers that she did not see the arbitration agreement before litigation, she did not sign the arbitration agreement, and that she could not have signed it on the date alleged because she was not hired until December 1, 2022. (Declaration of Kristin Gianotti ("Gianotti Decl.") ¶ ¶ 4,5,8.) Because Plaintiff has asserted under oath that she did not see or sign the arbitration agreement, she has successfully carried her burden of producing evidence that challenges the authenticity of the agreement. (*Gamboa v. Ne. Cmty. Clinic*, (2021) 72 Cal.App.5th 158, 165 [declaring under penalty of perjury that the opposing party never saw the arbitration agreement or signed it is sufficient evidence to challenge the authenticity of the agreement].) Plaintiff points out that her initials are missing from two key paragraphs in the Agreement where the employee's initials are clearly meant to appear. The first is the paragraph notifying the employee that by signing the Agreement she waives her right to a jury and any collective action. The second is an acknowledgment that the employee has been given an opportunity to discuss the Agreement with their own counsel and declined to do so. Neither of these are initialed, which Plaintiff argues further shows that she never saw nor signed the Agreement. (Gianotti Decl. ¶ 9.)

Accordingly, the burden returns to Defendants to show, by a preponderance of the evidence, that the agreement is valid. (*Gamboa*, *supra* 72 Cal.App.5th at 165.) In support of this, Defendant now submits the affidavit of forensic document examiner Jim Blanco. Mr. Blanco is a trained forensic document examiner who has provided "expert opinions regarding questioned documents on over 8,000 occasions." (Declaration of Jim Blanco ("Blanco Decl.") ¶ ¶ 2, 3, 8.) Mr. Blanco avers that defense counsel provided him with the Agreement in question and eight other documents purportedly known to have Plaintiff's signature on them. (*Id*. ¶ 10, 11.) Mr. Blanco avers that the signature on the Agreement has "fundamental handwriting similarities" with Plaintiff's known signature. (*Id*. ¶ 17.) He further avers that:

> "Kristin Gianotti is identified as the writer of the Exhibit 3 signature, hand printed name and date entry. An "identification" is a term of art in Forensic Document Examination opinion rendering and represents the highest degree of confidence expressed by document examiners in handwriting comparisons. That is, the examiner has no reservations whatsoever, and the examiner is certain, based on evidence contained in the handwriting, that the writer of the known material actually wrote the signature and other writings in question." (*Id*. ¶ 21.)

Plaintiff argues that the renewed motion to compel is in essence a motion for reconsideration and should be treated as such – which would preclude the introduction of new evidence that *could* have be brought in the previous motion. This is a meritless argument. The previous motion to compel was denied without prejudice, meaning Defendants were able to renew the same motion at a later date (*Herrington v. Hyundai Motor Am.* 2024 Cal. Super. LEXIS 62315 * 4 [defendants are not restricted from bringing a second motion to compel arbitration and are not prohibited from raising new arguments or facts that were not previously presented]) and the current motion specifically addresses the proof the Court noted was lacking from the original motion.

The Court notes that plaintiff failed to address the substance of the forensic document examiner's expert opinions, instead just renewing her claims that she did not sign the agreement. The Court finds her renewed protestations non-persuasive to rebut the offered expert opinions. As such, the Court finds defendants have met their burden to establish that the Agreement was valid.

Based on the foregoing, Defendants' Motion to Compel Binding Arbitration is **GRANTED**. All further proceedings in this Court are stayed, though the matter will remain on the Case Management calendar for monitoring for a dismissal once the binding arbitration ruling becomes final.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the Proposed Order submitted by Defendants.

HSU v DEL MUNDO

24CV47462

DEFENDANT'S SECOND DEMURRER TO PLAINTIFF'S AMENDED COMPLAINT

Plaintiff Mike Sheng Con Hsu. ("Plaintiff") filed his Complaint arising out of a real property dispute with Defendants Leonardo Del Mundo and Angela Del Mundo ("Defendants"). Now before the Court is Defendants' demurrer to the Plaintiff's First Amended Complaint.

The demurrer does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence Is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:
>
> **Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court** [emphasis in original.]
>
> Failure to include this language In the notice may be a basis for the Court to deny the motion.

The Demurrer is **OVERRULED**, without prejudice to refile. However, the Court notes defendant has previously been admonished for failing to include the mandatory notice language in previous motions. Defendant is advised that any future such failures will result in denials with prejudice.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

WALKER, et al v JODY A TAYLOR and SHARON L CLARK, TRUSTEES OF THE DOUBLE SPRINGS RANCH TRUST, et al

24CV47475

DEFENDANT'S MOTION FOR PRELIMINARY INJUNCTION

This civil action stems from dispute concerning an easement and questions over title to a certain stretch of property. Randy Walker ("Walker") and Jessica Albonico ("Albonico") (collectively, "Plaintiffs") filed this action to determine the parties' respective rights and duties, as well as to quiet title. Defendants are Jody A. Taylor ("Taylor") and Sharon L. Clark ("Clark") Trustees of the Double Springs Ranch Trust; Carol A. Gates, Trustee of the Carol A. Gates Family Trust ("Gates"); Perry Williard; Cheryl Willard Alden R. Houbein and Virginia A Houbein, Trustees of the Houbein Revocable Trust DTD March 21, 1996; John M. Taylor, Katherine L. Taylor, and Mark Van Lobel Sels and Mary Van Lobel Sels (collectively "Van Loben Sels").

On April 29, 2025, Taylor and Clark as Trustees, Gate as Trustee, and the Van Lobel Sels filed a Cross-Complaint against Plaintiffs for declaratory relief, quiet title, trespass, permanent injunction, and abuse of process. For ease of reference, the Court refers to the cross-claiming defendants collectively as "Cross-Complainants."

On June 18, 2025, the Court entered a temporary restraining order against Plaintiffs and an Order to Show Cause ("OSC") requiring Plaintiffs to show cause as to "why a preliminary injunction should not be ordered restraining and enjoining Plaintiffs from entering, traversing, or performing any acts of use upon the Cross-Complainants' real property."

Now before the Court is Cross-Complainants' motion for preliminary injunction and the order to show cause as to why Plaintiffs should not be subject to an injunction. The motion is opposed.

I. Background Facts and Relevant Procedural History

Taylor, Clark and Gates are joint legal owners of the following parcels: Calaveras County APN 040002009, 046017017, 046020001, 046020008, 046017052, and 046017018. The Van Lobel Sels are owners of several parcels, in particular to this dispute those known as Calaveras County APN 046017053 and APN 046026019 which prior to 2018 were owned by the City of Stockton for decades. For ease of reference,

the Court will refer to Cross-Claimants' property collectively as the "Taylor-Van Loben Sels Property."

Plaintiffs are the owners of approximately 20 acres off of Highway 12, near Hogan Dam, Calaveras County (APN 046-026-006) ("Walker Property.") (Declaration of Randy Walker ("Walker Decl.") ¶ 3.) According to Walker, his family has continuously used the land for either recreational or grazing purposes since the time it was a larger parcel and continuing once it was the 20 acres. (*Id.* ¶ 8.) Plaintiffs allege that access to their property has always been from Highway 12, starting over land not owned by the Defendants. (*Id.* ¶ 9.) Plaintiffs allege that Defendants have repeatedly observed Plaintiffs' continued use of the access point, have never stopped Plaintiffs, and have even provided Plaintiffs with gate codes to ensure unrestricted access. (*Id.* ¶ 9.) Plaintiffs allege that Walker has assisted with road repairs as well. (*Id.* ¶ 10.)

Plaintiffs' property is surrounded by portions of Taylor-Van Loben Sels Property. According to the Cross-Complaint, Walker was given revocable permission to cross the Taylor-Van Loben Sels Property to reach the Walker Property. This permission was revoked in 2022. Cross-Complainants allege that there is no easement and that Plaintiffs are impermissibly using the Taylor-Van Loben Sels Property.

II. Legal Standard and Discussion

When determining whether to issue a preliminary injunction, the court considers two interrelated questions: (1) the likelihood that the moving party will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief. (*White v. Davis* (2003) 30 Cal.4th 528, 554; *see also Robbins v. Sup. Ct*. (1985) 38 Cal.3d 199, 206; Code Civ. Proc., § 526.)

A preliminary injunction may be issued "when it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action." (Code Civ. Proc. § 526(a)(2).)

A. Likelihood of Success on the Merits

The Cross-Complaints bring causes of action for declaratory relief, quiet title, trespass, permanent injunction, and abuse of process. At the heart of each of these causes of action is Cross-Complainants' contention that the Plaintiffs have no easement rights and

should not be accessing any portion of the Taylor-Van Loben Sels Property. For purposes of their request for an injunction, Cross-Complainants seek to exercise their legal rights to prevent Plaintiffs from potentially creating an easement by adverse possession.

In order to obtain an easement by adverse possession, Plaintiffs need to show "open and notorious use that is hostile and adverse, continuous and uninterrupted for the five-year statutory period." (*Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 449.) A claimant's use "is adverse to the owner if the use if made without any express or implied recognition of the owner's property rights." (*McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1181.)

An easement by adverse possession "can arise only if the owner had an opportunity to protect his or her rights by taking legal action to prevent the wrongful use, yet failed to do so." (*Ibid*.) This is precisely what Cross-Complainants seek to prevent by bringing this petition for injunction.

The basis of Plaintiffs' claims are that they have openly and notoriously used the Taylor-Van Loben Sels Property, including continued use despite any such use rights being explicitly revoked by Cross-Complainants in 2022. At minimum, Cross-Complaints have shown a likelihood of success on the merits for the trespassing claim. They also have, as set forth below, shown that they will be significantly harmed if the injunction is not granted.

B. Balance of Harm to the Parties

The Court must next look at the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief. (*White v. Davis* (2003) 30 Cal.4th 528, 554.) The general purpose of a preliminary injunction is often to preserve the status quo. (*Harbor Chevrolet Corp. v. Machinists Local Union 1484* (1959) 173 Cal.App.2d 380, 384.)

The Court finds that an injunction is proper under Code Civ. Proc. section 526(a)(2) because the "continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action." Specifically, if Plaintiffs are not prohibited from accessing and using the Taylor-Van Loben Sels Property, they will likely continue using said property – potentially leading to the creation of an easement by adverse possession. This could cause great or irreparable injury to the Cross-Complainants who could then potentially lose property rights that they currently possess.

Notably, Plaintiffs do not claim that they will suffer any irreparable harm if the injunction is granted. Plaintiffs concede that they have not used their purported easement rights since 2022. (Opp p. 5.) They do not claim that this has caused them significant or irreparable harm. There are no allegations or evidence that traversing the Taylor-Van Loben Sels Property is the only means of ingress or egress from Plaintiffs' Property. There is simply no evidence that if the current status quo -- whereby Plaintiffs do not use the property at issue – is maintained during the pendency of this litigation that Plaintiffs will suffer any harm.

III. Conclusion

Cross-Complainants' request for preliminary injunction is **GRANTED**. Plaintiffs are therefore prohibited from entering, traversing, or performing any acts of use upon the Cross-Complaints' property, and any real property described in the Complaint, in order to prevent the creation of a prescriptive easement under civil code 1007 pending a full hearing.

The clerk shall provide notice of this ruling to the parties forthwith. Cross-Complainants to prepare a formal Order in conformity with the Ruling and complying with Rule of Court 3.1312.

MECHANICS BANK v TWISTED OAK WINERY, LLC

25CV47803

PLAINTIFF'S MOTION TO CORRECT CLERICAL ERROR AND AMEND JUDGMENT NUNC PRO TUNC

On or about April 10, 2025, Mechanics Bank ("Plaintiff") obtained a default judgment in against Twisted Oak Winery ("Twisted Oak".) (Declaration of Jeffrey B. Kirschenbaum ("Kirschenbaum Decl." ¶ 9.) On May 14, 2025, Plaintiff's counsel inadvertently submitted, and the clerk entered, a default Judgment against Twisted Oak pursuant to Code Civ. Proc. § 585(a), which states that "Defendant was sued only on a contract or judgment of a court of this state for the recovery of money." (*Id*. ¶ 11.) Plaintiff now seeks to amend the judgment to include a judgment of foreclosure in addition to money damages.

I. Background Facts

This action concerns a 120-acre vineyard and winery located in Vallecito, California (the "Property"). In 2004, the Stai Family Trust borrowed the purchase price from Plaintiff and agreed to repay the loan by monthly payments through October 2033. The loan is guaranteed by defendant Twisted Oak, an entity formed by Jeff Stai to own and operate the property. The guaranty is secured by a Deed of Trust given by Twisted Oak, in which Twisted Oak promised to maintain and to protect the Property, and not to cause or permit any nuisance or waste on the property.

On or about October 18, 2004, Plaintiff and the Stai Family Trust entered into a Business Loan Agreement. On that same date, Stai and Mary Stai, as trustees of the Stai Family Trust, executed and delivered to Plaintiff a Promissory Note (the "Note".) The Note evidenced a loan from Plaintiff to the Stai Family Trust ("Borrower") in the principal amount of $2,546,000 (the "Loan").

The Note is guaranteed by Twisted Oak. Twisted Oak's guarantee is secured by a Deed of Trust made by Twisted Oak in favor Plaintiff, dated October 18, 2004, and filed in the Official Records of Calaveras County on October 29, 2004, as document number 2004-23821 (the "Deed of Trust").

The Deed of Trust irrevocably grants, transfers and assigns to Plaintiff, in trust, with power of sale, all of Twisted Oak's right, title and interest in the real property located at 4280 Red Hill Access Road and 4002 Red Hill Access Road, Vallecito, CA 95251,

together with "all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation right); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters" (the "Property").

The Deed of Trust provides that upon an Event of Default, "Lender shall have the right in lieu of foreclosure by power of sale to foreclose by judicial foreclosure in accordance with and to the full extent provided by California law."

On or about August 23, 2013, Plaintiff and Borrower entered into a Change in Terms Agreement, whereby Mechanics Bank agreed to modify and amend the Loan by, among other things, deferring outstanding interest and changing the interest rate applicable to the Loan. All other terms as set forth in the original loan documents remained in full force and effect.

On or about October 4, 2021, Twisted Oak filed for bankruptcy protection under Subchapter V of Chapter 11 of the United States Bankruptcy Code. On or about October 5, 2022, the United States Bankruptcy Court for the Eastern District of California entered an Order confirming the Third Amended Subchapter V Plan filed by Twisted Oak Winery, LLC (the "Plan"). The Plan modified the terms of the loan. The Stai Family Trust failed to make the payment that was due under the Note on March 1, 2024, or any payment that came due thereafter, as required by the loan agreements as modified by the Plan.

By letter dated April 10, 2024, Plaintiff provided Borrower, Jeff Stai, Mary Stai, and Twisted Oak with written notice of their defaults under the Note, and of Plaintiffs intent to take immediate action to enforce its right to repayment. As of April 30, 2024, $2,460,128.47 was due and owing to Plaintiff by Borrower, and by Twisted Oak, Jeff Stai, and Mary Stai, as Guarantors.

II. Procedural History

On January 6, 2025, Plaintiff filed a Verified Complaint herein alleging three causes of action: (1) judicial foreclosure; (2) appointment of receiver; and (3) breach of guaranty.

Twisted Oak was served with the Summons and Verified Complaint by personal service upon Jeff Stai, Twisted Oak's registered agent for service of process, at Mr. Stai's home at 402 Allen Lane, Murphys, CA 95247. (Kirschenbaum Decl. ¶ 5, Ex. A.) Twisted Oak did not answer or otherwise respond to the Verified Complaint. (*Id.* ¶ 6.)

On January 21, 2025, Plaintiff filed an ex parte application for the appointment of a receiver over the Property. Notice of the ex parte application was provided to Twisted Oak through service on Jeff Stai as Twisted Oak's registered agent, as well as on two attorneys known to Plaintiff to be representing Twisted Oak and/or Jeff Stai in related matters. (Kirschenbaum Decl. ¶ 7, Ex. B.) Twisted Oak did not contest the ex parte application. (*Id.* ¶ 8) On January 31, 2025, this Court entered an order appointing Peter F. Martin as receiver over the Property. (*Ibid*.)

On April 10, 2025, the clerk entered Twisted Oak's default. (Kirschenbaum Decl. ¶ 9 and Ex. C.) On April 15, 2025, the clerk entered a Request for Clerk's Judgment based on the default previously entered on April 10, 2025. (Kirschenbaum Decl. ¶ 10 Ex. D.) On May 14, 2025, Plaintiff's counsel inadvertently submitted, and the clerk entered, a default Judgment against Twisted Oak pursuant to Code Civ. Proc. § 585(a), which states that "Defendant was sued only on a contract or judgment of a court of this state for the recovery of money." This was incorrect, because the Verified Complaint also pleaded clams for judicial foreclosure. Plaintiff's counsel tried to retrieve the Judgment shortly after submitting it for filing but was unable to do so, as it had already been delivered to the clerk for signature. (Kirschenbaum Decl. ¶ 11, Ex. E.)

III. Discussion

Plaintiff moves to amend the judgment pursuant to Code of Civil Procedure section 473 and 585. No opposition or other motion has been filed in response to this motion to amend.

Code of Civil Procedure section 473(d) states: "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order."

Thus, the Court has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts. (*In re Candelario* (1970) 3 Cal. 3d 702, 705.)

Unless the challenged portion of the judgment was entered inadvertently, it cannot be changed post judgment under the guise of correction of clerical error." (*Tokio Marine & Fire Ins. Corp. v. Western Pacific Roofing Corp.* (1999) 75 Cal.App.4th 110, 117 [internal citation omitted].)

A judgment that “substantially modifies the original judgment or materially alters the rights of the parties, may not be made by the court under its authority to correct clerical error, therefore, unless the record clearly demonstrates that the error was not the result of the exercise of judicial discretion.” (*In re Candelario, supra*, 3 Cal. 3d. at 705.)

Relief under section 473(d) is appropriate. The Plaintiff’s Complaint very clearly stated that it was an action for judicial foreclosure and at every stage of the litigation, Plaintiff unequivocally sought a judgment of foreclosure. (*See C.J.A. Corp. v. Trans-Action Fin. Corp.* (2001) 86 Cal. App. 4th 664, 670.) The failure to include the foreclosure in the judgment is a clerical error inadvertently made by the Plaintiff’s counsel. The fact that counsel immediately sought to rectify the erroneous judgment supports this contention.

Accordingly, the Court **GRANTS** the motion.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the submitted Proposed Order.

GREENROOT v WEBSTER

25CV48032

PLAINTIFF'S MOTIONS 1) TO STRIKE CROSS-COMPLAINT; 2) FOR LEAVE TO FILE THIRD AMENDED VERIFIED COMPLAINT; and 3) FOR ORDER TO PRESERVE AND PRODUCE ELECTRONIC COMMUNICATIONS

This case involves a contract dispute concerning real property brought by Lorna Greenroot ("Plaintiff") against Pennelope Webster ("Webster.") Now before the Court are three separate motions filed by Plaintiff: 1) Motion to Strike Cross-Complaint; 2) Motion for Leave to File Third Amended Complaint ("TAC"); and 3) Motion to Preserve Evidence. As the motions regard the same set of facts and procedural history, the Court will consider all three together herein. Webster opposes the motions.

Plaintiff filed amended notices which included the required language set forth in Local Rule 3.3.7.

I. Background

Plaintiff filed her original complaint on April 30, 2025, against Webster, alleging causes of action for: 1) quiet title, 2) breach of contract, and 3) unjust enrichment. Before Defendant filed an Answer, Plaintiff filed a First Amended Complaint ("FAC") against Webster which removed the cause of action for unjust enrichment.

On May 20, 2025, Webster filed a Cross-Complaint for 1) breach of lease agreement, 2) breach of lease to own agreement, 3) declaratory relief, 4) slander of title, 5) elder abuse, and 6) ejectment.

On May 22, 2025, Plaintiff sought leave to file a Second Amended Complaint against Webster in order to clarify her own theories of relief and rebut Webster's allegations in the cross-complaint. Webster had offered to stipulate to this amendment but Plaintiff did not respond to said offer. (Defendant's notice of non-opposition.)

This motion was denied as moot because on May 30, 2025, Plaintiff filed the instant motion for leave to file her TAC. Plaintiff seeks to add Randy Webster as a new defendant, as well as to add causes of action for fraud, conspiracy, of title, and intentional infliction of emotional distress.

II. Legal Standard and Discussion

A. Motion to Amend

Leave to amend is permitted under Code of Civil Procedure section 473, subdivision (a). California courts have a " 'policy of great liberality in allowing amendments at any stage of the proceeding so as to dispose of cases upon their substantial merits where the authorization does not prejudice the substantial rights of others.' " (*Douglas v. Superior Court* (1989) 215 Cal.App.3d 155, 158 [citations omitted].) The "policy favoring amendment is so strong that it is a rare case in which denial of leave to amend can be justified." (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428 [citation omitted].) Further, " 'leave to amend should be denied only where the facts are not in dispute, and the nature of the plaintiff's claim is clear, but under substantive law, no liability exists and no amendment would change the result." (*Id.* [citation omitted].)

A motion for leave to amend a pleading must also comply with the procedural requirements of California Rules of Court, Rule 3.1324, which requires a supporting declaration to set forth explicitly what allegations are to be added and where, and explicitly stating what new evidence was discovered warranting the amendment and why the amendment was not made earlier. The motion must also include (1) a copy of the proposed and numbered amendment, (2) specifications by reference to pages and lines the allegations that would be deleted and added, and (3) a declaration specifying the effect, necessity and propriety of the amendments, date of discovery and reasons for delay. (See Cal. Rules of Court, rule 3.1324, subds. (a), (b).) Plaintiff, who is representing herself, has substantially complied with these requirements.

Plaintiff seeks leave to amend her complaint for the third time in order to add a new defendant and to add multiple new causes of action. Webster opposes the motion on the grounds that Plaintiff had already made several motions to amend, despite Webster agreeing to stipulate to the SAC, and that the added causes of action are senseless and not well-pled.

At this point, the Court does not intend to engage in analyzing the TAC as if it were on demurrer. Plaintiff has alleged that she has recently been made aware of new facts and circumstances which have led to her amending the complaint. The matter is only newly filed, no discovery appears to have taken place, and aside from having to respond to multiple motions, Webster does not allege any real prejudice resulting from this amendment.

The Court cautions Plaintiff, however, that excessive motion filing (particularly when opposing counsel is willing to stipulate to amendments) is not well-regarded by the Court.

Thus, Plaintiff's **motion for leave to file a third amended complaint is GRANTED**.

B. Motion to Strike

A motion to strike lies either to strike: (1) any "irrelevant, false or improper matter inserted in any pleading"; or (2) any pleading or part thereof "not drawn or filed in conformity with the laws of this state, a court rule or order of court." (CCP § 436.) A motion to strike may also be used to strike allegations related to an improper request for relief. (*Saberi v. Bakhtiari* (1985) 169 Cal.App.3d 509, 517.) A motion to strike can be used to attack the entire pleading, or any part thereof—i.e., even single words or phrases. (*Warren v. Atchison, Topeka & Santa Fe Ry. Co.* (1971) 19 Cal.App.3d 24, 40.)

When bringing a motion to strike, the moving party is obligated to attempt to meet and confer with the opposing side prior to bringing the motion. (Code Civ. Proc. § 435.5(a)(I).) The moving party must also file a declaration setting forth their attempts at meet and confer. (*Id*. sub (a)(3).) However, the failure to do so is not grounds for granting or denying the motion. (*Id.* sub (a)(4).)

Plaintiff moves to strike the cross-complaint on the following grounds: 1) the cross-complaint is not verified, 2) allegations are conclusory, prejudicial, and legally insufficient, 3) cross-complaint contradicts prior sworn testimony and 4) cross-complaint names third parties without any legal basis.

In opposition, Webster argues that the motion is deficient for failure to comply with Local Rule 3.3.7, failure to meet and confer, and for substantive reasons. Plaintiff filed an amended notice with the requisite local rules language and as noted above, the mere failure to engage in a meet and confer process is insufficient grounds to deny the motion.

Webster first opposes the motion on the grounds that none of the causes of action in the cross-complaint require verification. (Opp. p. 3, citing Weil & Brown, Civ. Proc. Before Trial 6:310.) Plaintiff did not file a reply and did not provide any legal authority requiring that this particular cross-complaint needed to be verified.

Second, Webster argues that Plaintiff's unsubstantiated statement that the cross-complaint contains conclusory or legally insufficient claims is itself insufficient. Plaintiff does not identify, with any specificity whatsoever, which allegations in the cross-

complaint are problematic. For the same reason, Webster argues that the Plaintiff's argument that the cross-complaint contains allegations that contradict prior testimony is meritless. First, Plaintiff does not specify which allegations are contradicted. However, more importantly, when reviewing a motion to strike, the Court does not look beyond the face of the pleadings. (*CPF Agency Corp. v. R&S Towing* (2005) 132 Cal.App.4th 1014, 1032.)

Finally, Webster contends – and the Court agrees – that the Plaintiff's contention that the cross-complaint improperly adds a new party is meritless. Plaintiff has not provided any legal authority that would suggest she has standing to argue the merits of whether another person should be added as a co-cross-defendant.

For the foregoing reasons, Plaintiff's **Motion to Strike is DENIED**.

C. Motion to Preserve Evidence

Plaintiff moves for an order requiring Randy Webster to preserve evidence in this case. Randy Webster is not a party to this action and the Court has no jurisdiction over him to make any such order.

However, both parties are admonished that they are not to destroy any evidence relevant to this matter. Any ultimate evidence that a party (or associated person) destroyed evidence is likely to be met with sanctions, likely of an evidentiary nature.

Based on the foregoing, plaintiff's **Motion to Preserve Evidence is DENIED**, without prejudice to renew if the Court at some point obtains jurisdiction over Randy Webster,

III. Conclusion

Plaintiff's motion for leave to file a Third Amended Complaint is **GRANTED**. Plaintiff's motion to strike the cross-complaint is **DENIED**. Plaintiff's motion to preserve evidence is **DENIED**.

Plaintiff is admonished to review the local rules of court before any future filings, to comply with all meet and confer requirements in the future, and to avoid unnecessary motion practice.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

FARIDI v CARLSON

25CV48053

PLAINTIFF'S MOTION TO SET ASIDE TRUSTEE SALE

Plaintiff Tariq Jamil Faridi ("Plaintiff") filed his Complaint arising out of a real property dispute with Defendant Steve Carlson ("Defendant".) Now before the Court is Plaintiff's motion to set aside trustee sale.

The motion is deficient for multiple reasons. First, it does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence Is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:
>
> **Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court** [emphasis in original.]
>
> Failure to include this language In the notice may be a basis for the Court to deny the motion.

Second, and perhaps more importantly, the time for the Defendant to Answer has not yet run and, in fact, Defendant has not been served with the first amended complaint that was filed on July 3, 2025.

Accordingly, the motion is **DENIED**, without prejudice.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.