SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/09/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV2204259

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: G. MARTIN

PLAINTIFF: JENNIFER SWIFT vs. DEFENDANT: UNITED PARCEL SERVICE, INC., ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL - DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff's Motion to Compel is off calendar.

Pursuant to Marin County Rule, Civil 2.13B, on November 19, 2025, Phillip Diamond, Esq. was appointed to preside as Discovery Facilitator for Plaintiff's Motion to Compel Document Production, and Further Deposition regarding the person most qualified to testify on behalf of the Defendant corporation. The Court has not received a Declaration of Non-Resolution from either party, in particular *the moving party*, within five court days prior to the hearing on the motion, as required by MCR Civ 2.13H.

The Court reminds the parties that compliance with MCR Civ 2.13H not only includes the timely filing of the Declaration of Non-Resolution by each party five court days prior to the hearing, but also requires that "[t]he Declaration shall not exceed three pages and ***shall briefly summarize the remaining disputed issues and each party's contentions***." (MCR Civ 2.13H(1), emphasis added.)

The Court concludes that this discovery matter has been or is being resolved by the facilitator. The motion is therefore ordered **OFF CALENDAR**. (MCR Civ 2.13H(2).) Should the parties fail to reach resolution through the facilitator, either party may request (by ex parte application) that the Court re-set the motion for an expedited hearing.

Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.

IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.

FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/09/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV2300117

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: BRIDGEWAY MARINA CORP.	
vs.	
DEFENDANT: DCR MORTGAGE 10 SUB 3, LLC, ET AL	

NATURE OF PROCEEDINGS: MOTION - COMPEL

RULING

Defendant DCR Mortgage 10 Sub 3, LLC's motion to compel arbitration is DENIED.

Procedural Background

On January 19, 2023, Plaintiff Bridgeway Marina Corp. filed its Verified Complaint alleging wrongful foreclosure, breach of contract, negligence, and wrongful business practices against Defendants DCR Mortgage 10 Sub 3, LLC ("DCR") and Total Lender Solutions, Inc.

In April 2023, DCR filed a motion to compel arbitration with respect to the four causes of action asserted against it.

Plaintiff filed a First Amended Verified Complaint on August 24, 2023, adding Sterling Bank as a defendant and a cause of action for breach of the implied covenant of fair dealing against Sterling Bank.

On September 20, 2023, the Court entered an Order granting DCR's motion to compel arbitration.

An arbitration hearing was conducted on March 10, 2025. On July 17, 2025, the arbitrators issued a Final Award in which they determined among other things that Plaintiff could not assert a wrongful foreclosure claim because no foreclosure sale had occurred and because DCR had properly triggered the due-on-sale provision in the loan documents.

DCR filed a petition to confirm the arbitration award. Plaintiff filed a petition to vacate the award and a motion to amend its Complaint. On November 10, 2025, the Court entered an Order granting DCR's petition to confirm, denying Plaintiff's petition to vacate, and granting Plaintiff's motion to amend only as to Plaintiff's allegations regarding excessive fees charged by DCR.

Plaintiff filed a Second Amended Complaint on November 10, 2025. The only remaining claim following the Court's November 10, Order is the Eleventh Cause of Action for disgorgement against DCR, which alleges DCR demanded Plaintiff to pay default interest and other charges that are not permitted under California law, and that Plaintiff pay those charges to avoid a foreclosure sale. (Second Amended Complaint. ¶10.) Plaintiff seeks an order compelling DCR to disgorge those alleged unlawful charges, plus interest. (*Id.*, ¶68.)

DCR now moves to compel arbitration of the Eleventh Cause of Action and to stay this action pending completion of the arbitration.

Request for Judicial Notice

The Court grants DCR's request for judicial notice of the Court's September 20, 2023 Order granting DCR's motion to compel arbitration of Plaintiff's other claims. (Evid. Code §§ 452, 453.)

Discussion

DCR argues that Plaintiff's allegations regarding excessive fees stem from the Business Loan Agreement, Promissory Note, and Deed of Trust that all contain the same arbitration provision. This provision provides that the parties agree that "all disputes, claims and controversies . . . arising from this Agreement or otherwise . . . shall be arbitrated . . . ." and that "[a]ny disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any [Collateral/collateral securing this Note/Property], including any claim to rescind, reform, or otherwise modify any agreement relating to the [Collateral/collateral securing this Note/Property], shall also be arbitrated . . . ." (Declaration of Kelly M. Hagemann ("Hagemann Decl."), Exhs. E-G.) DCR notes that the Court previously granted DCR's motion to compel Plaintiff's other claims based on this same provision and later confirmed the Final Award of the arbitration panel. DCR argues that the fees it charged Plaintiff stem from the same lending relationship, as they were charged in connection with DCR's payoff demand, and thus Plaintiff's disgorgement claim as to these fees also falls within the scope of the arbitration provision.

Carve-out provision for equitable relief

Plaintiff argues that it can proceed with its Eleventh Cause of Action in this court because the arbitration provision in each loan document contains a carve out exception which provides: "Nothing in this [document] shall preclude any party from seeking equitable relief from a court of competent jurisdiction." (Hagemann Decl., Exhs. E-G.) Because disgorgement is an equitable remedy, Plaintiff argues, it is not required to arbitrate this claim.

The California Supreme Court has held that, at least in some contexts, disgorgement of funds is essentially the same as awarding money damages and therefore may be within the power of an arbitrator to award. (See *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303, 317-318.) However, parties may agree to a different result by including a provision that equitable claims can be brought in court. This includes claims for disgorgement. (See *Eminence Healthcare, Inc. v. Centuri Health Ventures, LLC* (2022) 74 Cal.App.5th 869, 881 ["We recognize the principle that UCL actions for equitable monetary relief, including restitution and disgorgement, are arbitrable. This principle, however, does not prevent parties from agreeing not to arbitrate such claims"] [citation omitted].)

DCR does not challenge the fact that a disgorgement claim is equitable. (Reply, p. 3 n. 1 ["No one is debating what kind of remedy disgorgement is . . . ."].) Instead, citing *Comedy Club, Inc. v. Improv West Associates* (9th Cir. 2009) 553 F.3d 1277, DCR argues that the language of the arbitration provision is reasonably susceptible to more than one interpretation and thus the federal presumption in favor of arbitration applies.

In *Comedy Club*, the arbitration provision included language stating "Notwithstanding this agreement to arbitrate, the parties, in addition to arbitration, shall be entitled to *pursue equitable remedies* and agree that the state and federal courts shall have exclusive jurisdiction for such purpose and for the purpose of compelling arbitration and/or enforcing any arbitration award." (Emphasis, the court.) After the plaintiff CCI filed a complaint in federal district court seeking declaratory relief, the defendant Improv West filed a demand for arbitration seeking damages. The court ordered the parties to arbitrate their dispute. (*Id.* at p. 1282.) The court confirmed a partial award and CCI appealed. The issue before the Ninth Circuit was whether the arbitrator acted with a manifest disregard for the law by arbitrating the declaratory relief claim. The Ninth Court held that it did not, reasoning:

> We conclude that the arbitration agreement is "capable of two different reasonable interpretations." *Oceanside 84,* 56 Cal.App.4th at 1448, 66 Cal.Rptr.2d 487. Under the federal presumption in favor of arbitration, because the arbitration agreement is ambiguous, it should be interpreted as granting arbitration coverage over "all disputes" arising from the Trademark Agreement. *See AT & T Techs.,* 475 U.S. at 650, 106 S.Ct. 1415; *Three Valleys,* 925 F.2d at 1139. We hold that the arbitration agreement gave the arbitrator authority over all disputes, equitable and legal, and that he did not exceed his authority by arbitrating equitable claims.

(*Id.* at pp. 1285-1286.)

Comedy Club does not support DCR's position here. The Ninth Circuit specifically stated that if the parties had intended to carve out an exception to arbitration for equitable claims, they could have done so without the language "in addition to arbitration". That is the case here, as the arbitration provision does not include this language. Rather, it states: "Nothing in this [document] shall preclude any party from seeking equitable relief from a court of competent jurisdiction." The court in *Cisco Systems, Inc. v. Chung*, 462 F.Supp.3d 1024, 1038-1039 (N.D. Cal. 2020), distinguished *Comedy Club* based on similar language and found that the plaintiff could seek injunctive relief in court. The language in the arbitration provision in this case is not

ambiguous and allows a party to pursue equitable relief such as disgorgement in the context of a court proceeding. The Court will enforce this language as agreed to by the parties. (See *Eminence*, 74 Cal.App.5th at p. 880 ["The policy favoring arbitration does not override the parties' freedom of contract. We will enforce their unambiguous agreement as written rather than rewriting it to contain limitations the parties did not express"].)

As the parties here expressly agreed that they can bring equitable claims in court, Plaintiff's Eleventh Cause of Action is not required to be arbitrated as it is rooted in equity.

Delegation of arbitrability

DCR argues that regardless of the merits of the parties' positions about the scope and meaning of the arbitration provision, the provision delegates the issue of arbitrability to the arbitrator. Thus, DCR argues, it is not for the Court to decide whether Plaintiff's disgorgement claim falls within the scope of the provision.

"The usual presumption is that a court, not an arbitrator, will decide in the first instance whether a dispute is arbitrable." (*Gostev v. Skillz Platform, Inc.* (2023) 88 Cal.App.5th 1035, 1048.) "Parties to an arbitration agreement may agree to delegate to the arbitrator, instead of a court, questions regarding the enforceability of the agreement. They 'can agree to arbitrate almost any dispute—even a dispute over whether the underlying dispute is subject to arbitration.'" (*Tiri v. Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, 241 [citations omitted].) A delegation clause is effective if it is "clear and unmistakable". (*Id.* at p. 242.) This heightened standard of proof is justified because the question who will decide issues of arbitrability "is not one that the parties would likely focus upon in contracting, and the default expectancy is that the court would decide the matter." (*Ajamian v. CantorCO2E, L.P.* (2012) 203 Cal.App.4th 771, 782.) Accordingly, an arbitration agreement's "silence or ambiguity about the arbitrator's power [to decide the question of arbitrability] cannot satisfy the clear and unmistakable evidence standard." (*Ibid.*)

DCR, correctly, does not contend there is an express "clear and unmistakable" delegation clause in the agreement. Rather, citing *Rodriguez v. American Technologies, Inc.* (2006) 136 Cal.App.4th 1110, DCR argues that it is sufficient that the agreement states that "all disputes" are to be arbitrated and also incorporates the AAA Rules, which themselves delegate arbitrability to an arbitrator. DCR cites specifically to AAA Commercial Rule 7(a) and Consumer Rule 14(a) to support its argument.[1]

California courts have declined to follow *Rodriguez*. In *Ajamian*, the First District rejected the argument that "all disputes" language such as that relied upon by DCR here is sufficient to meet the clear and unmistakable evidence standard: "It is true that one reasonable inference from this

[1] The current version of Rule 7(a) of the Commercial Rules, which were amended in 2022, provides: "The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim, without any need to refer such matters first to a court." The current version of Rule 7(a) of the Consumer Rules, which were amended in 2025, is similar and provides: "The arbitrator shall have the power to rule on their own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or the arbitrability of any claim or counterclaim." Rule 14 addresses only the location of the arbitration.

language is that the parties, in designating arbitration as the exclusive means for determining '*[a]ny* disputes, differences or controversies' (and precluding court actions and providing a defense to them on this ground) intended that even threshold issues of unconscionability would be decided by the arbitration panel. But another reasonable inference is that all of this language is only intended to bring within the exclusive scope of arbitration all *substantive* disputes, claims or controversies on which a court action might otherwise be brought, while the *enforceability* of the arbitration provision itself remains a matter for determination by a court. Indeed, because that is the usual expectancy of the parties, the absence of any express language pertaining to threshold enforceability questions either reinforces that proposition or at least fails to cure the ambiguity. In light of the possibility of these two conflicting inferences, the language fails to meet the test of *clear and unmistakable* evidence." (*Ajamian*, 203 Cal.App.4th at p. 783 [emphasis in original].) The court then found that incorporation of the AAA rules was also insufficient to satisfy this standard: "In our view, while the incorporation of AAA rules into an agreement might be sufficient indication of the parties' intent in other contexts, we seriously question how it provides *clear* and *unmistakable* evidence that [the parties] intended to submit the issue of the unconscionability of the arbitration provision to the arbitrator, as opposed to the court. There are many reasons for stating that the arbitration will proceed by particular rules, and doing so does not indicate that the parties' motivation was to announce who would decide threshold issues of enforceability." (*Id.* at p. 789 [emphasis in original].)

Other cases have reached similar conclusions as *Ajamian*. (See *Villaloboz v. Maersk, Inc.* (2025) 114 Cal.App.5th 1170, 1187-1188; *Mondragon v. Sunrun Inc.* (2024) 101 Cal.App.5th 592; *Jack v. Ring* (2023) 91 Cal.App.5th 1186, 1201; *Gostev*, 88 Cal.App.5th at p. 1050-1053.) In *Mondragon*, the court discussed an additional reason why incorporation alone may be insufficient to meet the clear and unmistakable standard. The noted that "the AAA rules do not state the arbitrator 'has exclusive authority' to determine arbitrability issues. The rules state only that the arbitrator has 'the power' to rule on the arbitrator's jurisdiction. But courts also have that power." (*Mondragon*, 101 Cal.App.5th at p. 606.) The AAA rules cited by DCR (see note 1) have the same language, and therefore the rationale discussed in *Mondragon* also applies here.

Further, the parties' agreement here provides that the AAA rules "in effect at the time the claim was filed" would apply. At the time the parties signed the loan documents in 2015, there was no way of knowing what the rules might say in the future and thus what rules might apply to some future dispute. The court in *Gilbert Street Developers, LLC v. La Quinta Homes, LLC* (2009) 174 Cal.App.4th 1185 distinguished *Rodriguez* on this basis. In *Gilbert Street*, the court found there was no clear and unmistakable evidence of an intent to delegate where the agreement stated that the AAA rules existing at the time of the dispute would apply. The court reasoned that in *Rodriguez*, "the parties could go look up the AAA rules to which they were agreeing beforehand, and see that, yes, they were conferring on arbitrators the power to decide if a dispute was arbitrable in the first place. To go beyond the incorporation of an *existent* rule and allow for the incorporation of a rule that might not even come into existence in the future, however, contravenes the clear and unmistakable rule . . . . Incorporating the *possibility* of a *future* rule by reference simply doesn't even meet the basic requirements for a valid incorporation by reference under simple state contract law. Most basically, what is being incorporated must *actually exist at the time of the incorporation,* so the parties can know exactly what they are incorporating." (*Id.* at p. 1193-1194 [emphasis in original].) Based on this rationale, Plaintiff and DCR could not

have incorporated the current AAA rules, cited by DCR in its Reply, into the agreements they signed over ten years ago.

Reconsideration

DCR argues that Plaintiff is improperly seeking reconsideration of the Court's September 2023 ruling granting DCR's motion to compel arbitration of Plaintiff's other claims. The Court disagrees as Plaintiff's disgorgement claim was not before the Court at the time the September 2023 Order was entered. Only Plaintiff's request for injunctive relief under Section 17200 was before the Court at that time, and that request was governed by *Clifford v. Quest Software Inc.* (2019) 38 Cal.App.5th 745. As a result, the Court's comment about the application of the carve-out provision in that ruling is not relevant here.

Law of the case doctrine

DCR argues that Plaintiff's position regarding arbitrability is barred by the law of the case doctrine. This argument is without merit as that doctrine applies to appellate court decisions on a question of law, not decisions by a trial court. (*People v. Barragan* (2004) 32 Cal.4th 236, 246; *Shaw v. County of Santa Clara* (2008) 170 Cal.App.4th 229, 248 n. 23; *Providence v. Valley Clerks Trust Fund* (1984) 163 Cal.App.3d 249, 256.)

Judicial estoppel

DCR's argument that the doctrine of judicial estoppel bars Plaintiff's argument is also without merit. "Judicial estoppel precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position.'" (*State Farm General Ins. Co. v. Watts Regulator Co.* (2017) 17 Cal.App.5th 1093, 1102 [citation omitted].) DCR contends that Plaintiff "affirmatively embraced arbitration". However, here Plaintiff opposed arbitration both with respect to the first motion and the current motion.

The parties' remaining arguments

While the Court denies the motion to compel arbitration, it does so based only on the grounds discussed above. The Court rejects Plaintiff's additional argument that the arbitration provision is unconscionable because the AAA previously charged $259,500 to decide a basic law and motion matter and the arbitration provision does not warn the parties that fees can be that high or excessive. "[A]n unconscionability assessment focuses on circumstances known at the time the agreement was made." (*Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 505.) The arbitration provision merely provides that claims "shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed . . . ." (Hagemann Decl., Exhs. E-G.) This language is not unconscionable, even if the AAA arbitrators ultimately ended up charging the parties a large sum for arbitration. Plaintiff has therefore failed to show the arbitration provision is unconscionable.

The Court does not address DCR's argument that Plaintiff's disgorgement claim is barred by the doctrine of res judicata because it was raised for the first time in DCR's Reply and, further, this

issue goes to the merits of the claim rather than its arbitrability. DCR currently has a demurrer pending which raises this same argument.

Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.

IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.

FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/09/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV2300181

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: STEFANO SCHIAVI vs. DEFENDANT: CANDICE O'DENVER, ET AL	

NATURE OF PROCEEDINGS: MOTION – LEAVE

RULING

Defendant Candice O'Denver's ("Defendant") Motion for Leave to File a Cross-Complaint is DENIED.

BACKGROUND

On or about January 25, 2023, plaintiff Stefano Schiavi ("Plaintiff") filed a Complaint against Candice O'Denver (A/K/A Candice Cain, Candice Warta, Candice Denver, Candice O. Denver, and/or Candice Feinberg), individually, and as Trustee for the Candice Cain O'Denver Trust.

After settlement, dismissal was requested and entered on August 14, 2025 as to the "Complaint" "[w]ithout prejudice and with the court retaining jurisdiction (Code Civ. Proc.,§ 664.6)."

On September 29, 2025, Defendant filed this Motion, seeking leave to file a "compulsory" Cross-Complaint. (See Motion, p. 2:22-23.)

LEGAL STANDARD

A defendant who fails to file a compulsory cross-complaint before or at the time of filing an answer must apply to the court for leave to file a cross-complaint. (Civ. Proc. Code, § 428.50, subd. (a).)

Code of Civil Procedure ("CCP") § 426.50 allows a party who fails to plead a cause of action in a compulsory cross-complaint, "whether through oversight, inadvertence, mistake, neglect, or other cause" to seek leave to file a cross-complaint to assert such cause "at any time during the course of the action." (CCP § 426.50.)

CCP § 426.30(a), which defines compulsory cross-complaints, states: "Except as otherwise provided by statute, if a party against whom a complaint has been filed and served fails to allege in a cross-complaint any related cause of action which (at the time of serving his answer to the complaint) he has against the plaintiff, such party may not thereafter in any other action assert against the plaintiff the related cause of action not pleaded." "Related cause of action" is defined in CCP § 426.10(c) as 'a

cause of action which arises out of the same transaction, occurrence or series of transactions or occurrences as the cause of action which the plaintiff alleges in his complaint. (*See also, Crocker Nat. Bank v. Emerald* (1990) 221 Cal.App.3d 852, 863.)

DISCUSSION

A motion to file a cross-complaint at any time during the course of the action must be granted unless bad faith of the moving party is demonstrated. (*Silver Organizations Ltd. v. Frank* (1990) 217 Cal.App.3d 94, 99.) The question here is whether the Motion was made "during the course of the action." There, the parties settled this matter. (Handelsman Decl., ¶ 9.) The court notes that the documents referred to in the declaration were not attached as exhibits.

The Complaint was also dismissed and although Defendant filed an Answer, Defendant did not file a Cross-Complaint before the settlement was reached.

The fact that the Court retained limited jurisdiction "over the parties to enforce the settlement until performance in full of the terms of the settlement" pursuant to CCP § 664.6 does not mean the action was ongoing. The type of motion a litigant may file under such retention of jurisdiction is specifically limited to those "pertaining to the settlement." (*Id.*, subd. (f)(1).)

The purpose of a settlement reached as part of arm's length negotiations is to resolve all claims.

The court does not make any determination of whether Defendant was acting in good faith.

For these reasons, the Motion is DENIED.

Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.

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FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/09/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0001402

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: CHARLES L. NORMAN vs. DEFENDANT: NORMAN WAY HOMEOWNERS ASSOCIATION ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendants Norman Way Homeowners Association, Ahmed Alkoraishi, John Kunzweiler and Michelle Farabaugh (collectively "Defendants") demurrer to the First Amended Complaint of Plaintiff Charles L. Norman, individually, ("Charles") is sustained without further leave to amend.

Background

In November 2023, Plaintiff Charles Norman, individually ("Charles") and as Co-Trustee of the Olav N. Norman and Anne G. Norman Living Trust, dated June 26, 2013, and all Sub Trusts Established Thereunder ("Trust") filed this action. Charles alleged he was the co-trustee for the trust that owns real property commonly known as 42 Norman Way, Tiburon, California ("the Property"). Charles also brought the complaint in his individual capacity.

Plaintiff alleges Defendants Norman Way Homeowners Association ("HOA") and individual defendants Ahmed Alkoraishi (Chief Executive Officer of the HOA), John Kunzweiler (Secretary of the HOA) and Michelle Farabaugh (Chief Financial Officer of the HOA) (collectively "Defendants") failed to enforce the HOA Bylaws and CC&Rs against neighboring property owners, Cynthia and John McGuinn ("the McGuinns"), the owners of 48 Norman Way, who erected a fence and removed several trees. Plaintiff asserts Defendants' refusal to enforce these governing documents compelled him to file a lawsuit against the McGuinns and subsequently initiate the instant action against Defendants.

Defendants successfully challenged the pleading by a motion for judgment on the pleadings on the ground Charles lacked standing to bring the action as an individual. Thereafter, Charles filed the operative First Amended Complaint ("FAC") alleging the following causes of action: 1) Breach of the Davis-Stirling Common Interest Development Act; 2) Declaratory Relief; 3) Breach of Fiduciary Duty; and 4) Breach of Contract. Charles now alleges he has standing as an individual based on a life estate.

LEGAL STANDARD

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (Hernandez v. City of Pomona (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (Del E. Webb Corp. v. Structural Materials Co. (1981) 123 Cal.App.3d 593, 604.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (Moore v. Regents of Univ. of Calif. (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.) "Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Sup. Ct.* (1995) 37 Cal.App.4th 1217, 1227; *Stevens v. Sup. Ct.* (1999) 75 Cal.App.4th 594, 601.)

REQUEST FOR JUDICIAL NOTICE

Defendants requests for judicial notice of Order Removing Charles as Co-Trustee dated January 30, 2025 (Exh. A) and Order denying Charles' Motion for Reconsideration dated February 10, 2025 in Case No. PR0000269 (Exh. B) as well as the original Complaint (Exh. C), operative FAC (Exh. D) and Order Granting Defendants Motion for Judgment on the Pleadings (Exh. E) in this action, are granted. (Evid. Code, § 452, subds. (c), (d).)

DISCUSSION

"Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute." (Code of Civ. Proc., § 367.) Defendants' demurrer is again based on Charles' lack of standing in his individual capacity. The caption of Charles' operative FAC identifies Charles as a Plaintiff both individually and as co-trustee. As to the trust, Charles was removed as co-trustee. (RJN, Exh. A & B.)

Charles' complaint is also brought in his individual capacity, however, upon amendment he has not alleged any standing to assert claims as an individual. Charles alleges that ""Owners" of real property within the Subdivision are subject to the Bylaws and the Declaration of Covenants, Conditions and Restrictions as amended (together "the CC&Rs")" (FAC ¶20.) However, the CC&Rs define an "Owner" as "the record owner, whether one or more persons or entities, of a fee simple title to any Lot." (FAC, Ex. B, § 1.02.) This language requires a current, recorded fee title interest to confer "Owner" status. Here, Charles has only alleged that he is "occupant or resident of the Property" (FAC, ¶ 22) and "third-party beneficiary" (FAC, ¶ 28). These allegations are not sufficient to confer standing.

Leave to amend must be granted if there is a reasonable possibility that defects can be cured. The burden is on the plaintiff to show how amendment would cure the defect. (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145.) Charles has not proposed specific facts that would overcome the legal deficiencies regarding is standing identified above. Where the facts are not in dispute and no liability exists as a matter of substantive law, denial of leave to amend is proper. (*Lawrence v. Bank of America* (1985) 163 Cal.App.3d 431, 436.)

As Charles has not presented any facts demonstrating that he has a viable claim, the DEMURRER IS SUSTAINED without further leave to amend.

Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.

IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.

FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/09/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0001650

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: SHAWNA SIMS vs. DEFENDANT: MARIN GENERAL HOSPITAL	

NATURE OF PROCEEDINGS: MOTION – SEAL

RULING

Defendant Marin General Hospital filed on October 9, 2025, a Motion to Seal Portions of Plaintiff's September 29, 2025, Opposition Defendant's Motion for a Protective Order. Proof of Service attached to the moving papers indicates that counsel for the Plaintiff was served the papers by mail.

Plaintiff has not filed a response or opposition to the motion. The failure to oppose is Treated as consent to the granting of the motion. (Cal. Rules of Court, rule 8.54(c); Civ. Local Rule 2.8 G.1.)

Defendant's motion is therefore GRANTED.

Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.

IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.

FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/09/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0001920

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: IVAN ARAUJO vs. DEFENDANT: CITY AND COUNTY OF SAN FRANCISCO, A PUBLIC ENTITY, ET AL	

NATURE OF PROCEEDINGS: 1) MOTION – ADMISSIONS – DISCOVERY FACILITATOR PROGRAM
2) MOTION – COMPEL ANSWERS TO INTERROGATORIES -DISCOVERY FACILITATOR PROGRAM

RULING

Defendant Golden Gate Bridge Highway and Transportation's Motion to Compel is off calendar.

Pursuant to Marin County Rule, Civil 2.13B, on October 27, 2025, Geri Green, Esq. was appointed to preside as Discovery Facilitator for Defendant's Motions to Compel Answers to Interrogatories. The Court has not received a Declaration of Non-Resolution from either party, in particular *the moving party*, five court days prior to the hearing on the motion as required by MCR Civ 2.13H.

The Court reminds the parties that compliance with MCR Civ 2.13H not only includes the timely filing of the Declaration of Non-Resolution by each party five court days prior to the hearing, but also requires that "[t]he Declaration shall not exceed three pages and ***shall briefly summarize the remaining disputed issues and each party's contentions***." (MCR Civ 2.13H(1), emphasis added.)

The Court concludes that this discovery matter is being resolved by the facilitator. The motion is therefore ordered **OFF CALENDAR**. (MCR Civ 2.13H(2).) Should the parties fail to reach resolution through the facilitator, either party may request (by *ex parte* application) that the Court re-set the motion for an expedited hearing.

Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing.

Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.

IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.

FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/09/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0003881

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: GARY GREEN vs. DEFENDANT: RALPH DIAZ, ET AL	

NATURE OF PROCEEDINGS: MOTION - QUASH

RULING

Defendant Ralph Diaz, et al filed a Motion to Quash Service of Summons on December 15, 2025. Proof of Service attached to the moving papers indicates the motion was served by mail on the plaintiff.

Plaintiff has not filed a response or opposition to the motion. The failure to oppose is Treated as consent to the granting of the motion. (Cal. Rules of Court, rule 8.54(c); Civ. Local Rule 2.8 G.1.)

Defendant's motion is therefore GRANTED.

Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.

IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.

FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/09/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0007509

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

IN THE MATTER OF N.S.	

NATURE OF PROCEEDINGS: MOTION – PRELIMINARY INJUNCTION

RULING

Appearances are required.

Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.

IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.

FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/09/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0007850

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: COUNTY OF MARIN vs. DEFENDANT: TIM SAKACH	

NATURE OF PROCEEDINGS: MOTION -DISMISS

RULING

Defendant Tim Sakach's motion to dismiss or stay is denied.

Allegations in the Complaint

On October 3, 2025, Plaintiff County of Marin, individually and on behalf of the People of the State of California (the "County"), filed a Complaint against Defendant Tim Sakach, as trustee of the Native Woodlands Orchards Trust ("Sakach").

The Complaint alleges that following a hearing at which all parties were permitted to submit evidence, an administrative law judge concluded that certain property owned by Sakach near Sidney Court in San Rafael (the "Property") was in violation of the following provisions of the Marin County Code: (1) Section 18.04.030(a)-(b) (construction of occupied building without required sewage disposal/impermissible placement of chemical toilet); (2) Section 19.04.010(1) (construction of occupied building without required permits); (3) Section 19.04.027 (substandard or unsafe building); and (4) Section 22.08.030 (operation of junkyard and accessory structures without established primary use).

The administrative law judge ordered Sakach to (1) pay enforcement and abatement costs in the amount of $12,820 to the County of Marin, Community Development Agency ("CDA") within thirty days; (2) pay civil penalties of $95,000 to CDA within thirty days; and (3) abate each of the code violations within thirty days.

The administrative law judge further ordered CDA to record in the Recorder's Office the decision and order and notice of code enforcement lien for enforcement and abatement costs against the title to the Property if the costs and penalties were not timely paid. (Complaint, ¶19 and Exh. E.) On December 20, 2023, CDA sent the Administrative Order to Sakach. (*Id.*, ¶20.)

On January 17, 2024, Sakach filed a Notice of Administrative Appeal, pursuant to California Government Code Section 53069.4(b)(1), in Case No. CV0003230. The court in that case sustained the County's demurrer without leave to amend because the administrative appeal was not filed within the requisite 20 day period. Accordingly, the Administrative Order became final under Government Code Section 53069.4(c). (*Id.*, ¶21.)

On May 2, 2025, Sakach filed an action in the U.S. District Court, Northern District under 42 U.S.C. § 1983 for alleged violations of the Fourth, Fifth and Eight Amendments to the U.S. Constitution, the Religious Land Use and Institutionalized Persons Act, and the California Subdivision Map Act, and sought injunctive relief. The district court denied the request for injunctive relief and dismissed the action under 28 U.S.C. § 1915, finding Sakach's claims to be barred by res judicata and/or the Rooker-Feldman doctrine "as a *de facto* appeal of the state administrative and judicial proceedings." (*Id.*, ¶¶23, 24.)

Sakach filed a notice of appeal of the District Court' s order with the Ninth Circuit, and the Ninth Circuit dismissed the appeal as frivolous. (*Id.*, ¶25.)

The County alleges that none of the code violations in the Administrative Order has been abated and the civil penalties and costs have not been paid, and further that the nuisance conditions on the Property pose a significant health and safety hazard. (*Id.*, ¶26.) The County asserts causes of action for abatement of public nuisance and civil penalties and costs.

Discussion

Sakach has filed a motion to dismiss or, in the alternative, to stay this case, pursuant to Code of Civil Procedure Sections 430.10 and 128, "and all other applicable law." Sakach argued in his moving papers that the Administrative Order is not final because the statutory administrative appeal in Case No. CV0003230 remained open. He contended that although the court sustained the County's demurrer without leave to amend, no judgment of dismissal was ever entered. Therefore, he argued, this case is premature because an administrative decision is not final for enforcement purposes until judicial review under Section 1094.5 concludes. (See *McKee v. Bell-Carter* (1967) 68 Cal.2d 333, 339; *Bollengier v. Doctors Medical Center* (1990) 222 Cal.App.3d 1115, 1124; *Kerrigan v. FEPC* (1979) 91 Cal.App.3d 43, 50; *County of San Diego v. Superior Court* (1979) 94 Cal.App.3d 33, 39.)

Sakach's motion to dismiss is DENIED.

- First, it is unclear as to what statutory authority supports Sakach's motion. The first code section Sakach cites, Section 430.10, applies to demurrers and answers. The second section Sakach cites, Section 128(a), recognizes limited inherent powers of the court and also does not provide authority for his motion to dismiss. Sakach does not cite any case law which would support the exercise of the Court's inherent powers to dismiss the County's action under the factual and procedural circumstances of this case.
- Second, the factual basis for Sakach's motion has changed. Since Sakach filed this motion, the court in Case No. CV0003230 entered a Judgment of Dismissal. The Court takes judicial notice, sua sponte, of the filings in Case No. CV0003230. (See *Scott v.*

JPMorgan Chase Bank, NA (2013) 214 Cal.App.4th 743, 752 ["the court may take judicial notice on its own volition"].)

- Third, the County can bring a civil action to abate a public nuisance, as it does in this case, independent from an action for administrative remedies. (See Civ. Code § 3491; *Flahive v. City of Dana Point* (1999) 72 Cal.App.4th 241, 244-45 (1999).) The County can therefore pursue this case regardless of the finality of Case No. CV0003230.

In his Reply, Sakach acknowledges that a Judgment of Dismissal was entered in Case No. CV0003230 but states that he has filed a Notice of Appeal. Sakach asks that the Court stay the current action or continue the hearing on this matter until clarification of the "appellate posture." (Reply, p. 2:17-20.) Sakach argues that without a stay there is a risk of inconsistent rulings and irreparable consequences.

While Code of Civil Procedure Section 916 may provide for a stay of Case No. CV0003230, an issue this Court does not decide, that section does not apply to this case. Sakach acknowledges in his Reply that the County can pursue this case independently from Case No. CV0003230. (Reply, p. 2:1-2.)

Every court has the power to "provide for the orderly conduct of proceedings before it[.]" (Code Civ. Proc., § 128(a)(3).) "Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency." (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489; see *OTO, LLC v. Kho* (2019) 8 Cal.5th 111, 141.) The Court does not exercise that inherent power here as doing so would not be in the interests of justice and would not promote judicial efficiency. The County has the authority to bring this separate abatement action against Sakach, who has had had multiple opportunities to make his arguments in Case No. CV0003230 and the federal courts. Here, a stay pending resolution of his appeal may last well over a year.

A stay of this action is not warranted. Sakach's motion is therefore DENIED.

Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.

IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.

FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.