

J. G. WENTWORTH ORIGINATIONS LLC (PETITIONER)

21CV45616

**RULING ON PETITION FOR APPROVAL OF TRANSFER OF
STRUCTURED SETTLEMENT PAYMENT RIGHTS**

J. G. Wentworth Originations, LLC has petitioned the Court pursuant to Insurance Code § 10139.5 to approve transfer of certain structured settlement payment rights of A.M. to it or its assignee.

The Court finds that all requirements of Insurance Code § 10139.5 have been met. Therefore, the Petition is Approved.

The clerk shall provide notice of this ruling to the parties forthwith. Petitioner to prepare a formal Order.

Lemke v. Mortgage Electronic Registration Systems Inc.

21CV45420

MOTION FOR ORDER DEEMING MATTERS ADMITTED

Plaintiff John F. Lemke moves for an order deeming the requests for admission admissions propounded on Defendant, LoanCity, Inc. be admitted and sanctions be admitted.

Moving party has failed to comply with Local Rule 3.3.7, enacted January 1, 2018, in that the Notice of Motion does not include the mandatory language regarding the Court's tentative ruling system. Pursuant to said local rule, lack of compliance provides a specific ground to deny any such procedurally-deficient motion. Based solely upon moving party's failure to comply with Local Rule 3.3.7, the motion is DENIED without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to relevant statutes.

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

Callison, et al. v. Ortiz, et al.

20CV45077

**DEFENDANTS' MOTION FOR JUDGMENT ON THE
PLEADINGS**

Defendants Rose Ortiz and Daniel Riordan move, pursuant to Code of Civil Procedure section 438, to dismiss Plaintiffs' complaint on the grounds that the first cause of action fails to allege facts sufficient to state a cause of action, is uncertain, or such cause of action does not exist.

Moving parties have failed to comply with Local Rule 3.3.7, enacted January 1, 2018, in that the Notice of Motion does not include the mandatory language regarding the Court's tentative ruling system. Pursuant to said local rule, lack of compliance provides a specific ground to deny any such procedurally-deficient motion. Based solely upon moving parties' failure to comply with Local Rule 3.3.7, the motion is DENIED without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to relevant statutes.

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

Krpan, et al. v. Slight, et al.

20CV44854

**DEFENDANTS' MOTION TO COMPEL RESPONSES TO
DISCOVERY AND PRODUCTION OF DOCUMENTS AND ESI,
AND RELATED DOCUMENTS**

Defendant Terri Bowman moves, pursuant to the Civil Discovery Act, for an order compelling Plaintiff Christopher Krpan to provide responses and produce documents in response to discovery requests propounded on Plaintiff by Defendant and for an award of monetary sanctions on the grounds that Plaintiff failed to serve timely responses to the subject discovery.

Moving party has failed to comply with Local Rule 3.3.7, enacted January 1, 2018, in that the Notice of Motion does not include the mandatory language regarding the Court's tentative ruling system. Pursuant to said local rule, lack of compliance provides a specific ground to deny any such procedurally-deficient motion. Based solely upon moving party's failure to comply with Local Rule 3.3.7, the motion is DENIED without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to relevant statutes.

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

LVNV Funding LLC v. Seagraves, et al.

21CF13407

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiff LVNV Funding, LLC moves, pursuant to Code of Civil Procedure section 438 (c)(1)(a), for judgment on the pleadings on the grounds that Plaintiff's complaint states facts sufficient to constitute a cause of action against Defendant, Defendant has been deemed to have admitted all material elements of Plaintiff's causes of action, and there are no material facts that require evidentiary resolution.

A Plaintiff may only move for Judgment on the Pleadings pursuant to Code of Civil Procedure section 438, on grounds "that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint." (Cal Code Civ. Proc., § 438, subd. (c)(1)(A).) "The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (*Id.* at subd. (d).)

Plaintiff, however, asks the Court to declare that its evidence establishes facts that entitle Plaintiff to a judgment because "there are no material facts that require evidentiary resolution." (Notice of Motion at 1:25.) The Court concludes that this type of relief is not available on a motion for judgment on the pleadings.

A motion for summary judgment tests the existence and sufficiency of evidence to support the complaint's allegations. (See *Columbia Casualty Co. v. Northwestern National Insurance Co.* (1991) 231 Cal.App.3d 457, 468 (*Columbia Casualty*)). "In a motion for summary judgment, judicial notice or an evidentiary admission or concession by the pleader/adversary can support the motion and thrust the burden on the [pleader/adversary] to come forward with facts in rebuttal." (*Ibid.*) "In contrast a motion for judgment on the pleadings is the equivalent of a general demurrer. [Citation.] This motion tests whether the allegations of the pleading under attack support the pleader's cause if they are true." (*Ibid.*)

Plaintiff argues, through its Support Memorandum, that the Court is permitted to take judicial notice of the matters deemed admitted by Defendant, pursuant to the Court's September 10, 2021 Order. The Court agrees. The relief Plaintiff seeks, however – judgment on Plaintiff's causes of action based on those facts – requires a motion for summary judgment. The shortcoming in Plaintiff's approach is revealed by the fact that Plaintiff has made no attempt to show that the "answer does not state facts sufficient to constitute a defense to the complaint."

(Cal Code Civ. Proc., § 438 (c)(1)(A).) Probably this is because Plaintiff recognizes that Defendant's answer appears to allege such facts.

Instead, as noted herein above, Plaintiff argues "Defendant has been deemed to have admitted all material facts supporting Plaintiff's complaint" and that as a result "[t]here are now no controverted material facts." (Support Memo at 7:23-28.) The truth of the matters deemed admitted do not, however, change the allegations of Defendant's answer in the procedural context of a motion for judgment on the pleadings.

"The contrasting treatment of writings incorporated by reference which varies from express allegations of the pleading and the distinction in impact of judicial notice and evidentiary admissions or concessions in motions for summary judgment and motions for judgment on the pleadings does not rest on mere technicalities of pleading and procedure. Rather it is rooted in the demand of due process that a party be given 'notice and opportunity for hearing appropriate to the nature of the case.'" (*Columbia Casualty, supra*, 231 Cal.App.3d at 468.) Here, by noticing a motion for judgment on the pleadings, Plaintiff has not provided Defendant with due process notice of an intent to seek factual determinations based on an evidentiary showing. It is quite possible that Defendant elected to not oppose the present motion based on her confidence in the adequacy of her answer. Entering judgment in Plaintiff's favor in this circumstance would deprive Defendant of her due process rights to notice of the need to "come forward with facts in rebuttal." (*Ibid.*)

Based on the foregoing, the motion is DENIED.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

**Gold Creek Estates Owners' Association v. Valley Springs
Gold Creek, Inc., et al.**

17CV42103

**MOTION TO CONSOLIDATE ACTIONS FOR
PRE-TRIAL PURPOSES**

Defendant Cleigh Ryan Voorhees (Voorhees) moves, pursuant to Code of Civil Procedure section 1048 (a), for an order consolidating Calaveras County Superior Court Case Nos. 17CV42103 and 20CV44819 for pre-trial purposes on the grounds that the actions involve common questions of law and fact and that consolidation would avoid unnecessary costs, delays, and duplication.

As an initial matter, through his support memorandum, Voorhees “requests that Special Master Sarah Burke manage both the *Valley Springs* and *Voorhees* matters.” (Support Memo at 6:16-17.) Voorhees did not, however, include this relief, or the grounds therefore, in the notice of motion. As such, the matter is not properly before the Court through the present motion. (See CCP §1010: “the notice of a motion, other than for a new trial, must state...the grounds upon which it will be made”; see also Rule of Court 3.1110: “[a] notice of motion must state in the opening paragraph the nature of the order being sought and the grounds for issuance of the order”; see also *People v. American Sur. Ins. Co.* (1999) 75 Cal.App.4th 719, 726.)

Case No. 20CV44819 involves only two parties: Plaintiff Gold Creek Estates Owners' Association (Plaintiff) and Defendant Voorhees. These parties are also the plaintiff and a defendant, respectively, in 17CV42103. Both Plaintiff and Voorhees are parties in and to that Stipulation and Order of Reference entered on February 28, 2018, in 17CV42103 (Reference). By that Reference, these parties agreed to have a Special Master “coordinate all discovery and all law and motion matters related to discovery.” (See Reference at 2:5-6.) Of note, however, it appears that three other defendants in 17CV42103 opted out of the Reference, and there is no evidence before the Court on this motion that a fourth defendant agreed to the Reference. (See Reference at p. 7.) It therefore appears that discovery matters involving these co-defendants remain with this Court.

In this context, Voorhees argues that consolidating the cases for pre-trial matters would “avoid unnecessary costs, delays, and duplications.” Voorhees fails to convince the Court that this is the case. Again, Voorhees' request to appoint the Special Master to “manage” 20CV44819 is not properly before the Court. Through this motion then, Voorhees asks the Court to consolidate a matter between himself and Plaintiff in which discovery matters are before the Court

(20CV44819) with one in which discovery matters between these two parties have been referred to the Special Master (17CV42103). The Court does not find that the requested consolidation would “tend to avoid unnecessary costs or delay.” (CCP§ 1048, (a).) In this context, the Court declines to exercise its discretion under CCP1048 and order the matters consolidated for pre-trial purposes.

Based on the foregoing, Defendant Voorhees’ motion is DENIED.

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