

**GIFFIN v. VASCONCELLOS**

**20CV45004**

**DEFENDANT'S MOTION FOR LEAVE  
TO FILE CROSS-COMPLAINT**

This is a quiet title action involving property put to temporary use as a location for the cultivation of recreational marijuana. Before the Court is defendant's motion for leave to file a cross-complaint.

Pursuant to Calaveras County Superior Court Local Rule 3.3.7 (adopted 1/1/18), "all matters noticed for the Law & Motion calendar **shall** include" specified language in the Notice of Motion, and "failure to include this language in the notice may be a basis for the Court to deny the motion." Although defendant is representing himself, he is still required to adhere to all the procedural requirements for law and motion, including all local rules. Based on defendant's failure to include the required language, 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.

**LEMKE v. MERS, INC., et al.**

**21CV45420**

**PLAINTIFF'S MOTION TO DEEM RFAS ADMITTED**

This is a wrongful foreclosure action. Before the Court is plaintiff's unopposed motion to deem admitted matters contained in a first set of Requests For Admission served upon defendant LoanCity, Inc.

On 07/28/21, plaintiff served a first set of Requests for Admission on said defendant.

Pursuant to CCP §§ 1013 and 2033.250, defendant had 32 days from the mailing to provide a verified written response, making the due date for compliance on 08/30/21. Defendant did not timely (or ever) serve responses. (See Freshman Decl Para 3.)

Pursuant to CCP §2033.280(b), the party propounding RFAs may "move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction." The trial court "shall" grant the motion unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response in substantial compliance with Section 2033.220. (See *St. Mary v. Superior Court* (2014) 223 Cal.App.4<sup>th</sup> 762, 777-778.) Trial courts have no discretion but to grant the admission motion, usually with fatal consequences for the defaulting party. (See *Lattimore v. Dickey* (2015) 239 Cal.App.4<sup>th</sup> 959, 971.)

Based on the foregoing, Plaintiff's motion is GRANTED. The twenty (20) matters contained in the RFAs are hereby deemed admitted, subject to counsel's confirmation that defendant did not serve substantially complaint responses before the hearing. In addition to the order deeming admitted all matters within the RFAs, the moving party is entitled as a matter of law to monetary sanctions. (CCP §2033.280(c).) Counsel for plaintiff requested a total of \$625.00 in fees and \$186.00 in costs. These amounts are reasonable under the circumstances, in particular noting the bulk of fees were at a paralegal rate. Defendant LoanCity, Inc. is ordered to pay a total of \$811.00 to plaintiff, by and through counsel, by the close of business on December 23, 2021.

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

**RISCHBIETER v. BLUE LAKE SPRINGS HOA**  
**15CV40810**

**DEFENDANT’S MOTION FOR ATTORNEY FEES**

This civil action involves a dispute over HOA monthly assessments, and whether an assessment per lot (rather than per member) was proper. Before the Court this day is an unopposed defense motion for both contractual and statutory attorney fees (see Civil Code §§ 1717 and 5975) related to defendant prevailing on appeal.

Code of Civil Procedure §§ 1032(b) and 1033.5(a)(10) collectively provide that the prevailing party in a civil action may recover, as a matter of right, attorney’s fees when authorized by contract or statute. The “prevailing party” is the party with a net monetary recovery or for whom judgment is entered. (CCP §1032(a)(4).) There is no question here that defendant is the prevailing party, having secured both a judgment in its favor (see 06/18/18 Judgment), as well as in the instant matter an unqualified affirmance before the Third District Court of Appeal. Defendant was previously awarded fees of \$263,361.97 in the underlying case and is entitled to additional fees incurred related to the appeal, as awarded by 3DCA..

Where a legal basis for the recovery of fees exists, courts will weight various factors to reach a “reasonable” amount to award – commonly referred to as the lodestar. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4<sup>th</sup> 1084, 1095.) Courts begin with an independent review of the evidence to determine the reasonableness of the hours actually spent litigating the matter and to assess whether there was padding, over-staffing, duplication or marked inefficiency. (*Donahue v. Donahue* (2010) 182 Cal.App.4<sup>th</sup> 259, 272.) Other factors courts consider include the development of the case, the complexity of the issues, and how long the court estimates it should have taken to perform the services. (*Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4<sup>th</sup> 1242, 1249.) After the courts determine the number of hours reasonably necessary to the conduct of litigation, the final step is to determine an appropriate hourly rate for the work performed, based on market trends in the particular region for that kind of work. (*Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4<sup>th</sup> 603, 619; *Chacon v. Litke* (2010) 181 Cal.App.4<sup>th</sup> 1234, 1260.)

Defense counsel proffers an hourly rate between \$305 and \$395 per hour, and a billing summary reflecting approximately 280 hours of attorney time. Although this Court often reduces hourly fees to the community going rate of \$300, and notes a number of time entries for analyzing and strategizing, and what amounts to several weeks’ of “drafting” the appellate brief, the Court declines to second guess work required to prevail on appeal as the appellate environment is quite different from trial court proceedings. Noting the requested attorney’s fees on appeal are roughly 1/3 of those previously awarded on the underlying case, the Court declines to second guess the current claims. Thus, defendant

shall recover \$89,728.25 in attorney's fees and \$3,034.20 in costs pursuant to the filed memorandum (noting no motion to tax those costs was ever filed), for a total fees and costs award of \$92,762.45, payable forthwith..

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.

**LVNV FUNDING v. COPPS**

**21CF13587**

**PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS**

This is a limited jurisdiction collections case involving a debt of \$2,793.06. Before the Court this day is an unopposed motion by plaintiff for a judgment on the pleadings directed at defendant's barren answer.

Pursuant to Calaveras County Superior Court Local Rule 3.3.7 (adopted 1/1/18), "all matters noticed for the Law & Motion calendar **shall** include" specified language in the Notice of Motion, and "failure to include this language in the notice may be a basis for the Court to deny the motion." Based on plaintiff's failure to include the required language in the notice, 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**

This is a breach of contract action relating to the sale of real property. Before the Court is an unopposed defense motion for judgment on the pleadings.

Defendants' Motion for Judicial Notice is granted pursuant to Evidence Code Sections 452 and 453.

This action was commenced by way of complaint filed on 12/02/20 by plaintiffs Dan Callison (hereinafter "Callison") and Pollock & James, LLP (hereinafter "P&J"). According to the allegations of the operative pleading, both Callison and P&J had vested interests in the referenced real property transaction.

On 10/06/21, new counsel for Callison filed a Request for Dismissal on behalf of P&J, despite there being no documentation in the court file that P&J ever retained Attorney Jeffrey in this action or that said counsel had in fact substituted as that party's representative. The dismissal was entered, but as it turns out, entered improvidently. The dismissal is vacated, returning P&J to the status of self-represented party.

As for the merits, a statutory motion for judgment on the pleadings is similar to a demurrer, except that the motion (1) can be made at any time 30 days prior to the initial trial date, but (2) only after defendant has answered and (3) only on the grounds of subject-matter jurisdiction or failure to state a cause of action. (CCP §438(c)-(f).) The rules governing pleading scrutiny are the same as those applicable to demurrers. (*Bezirdjian v. O'Reilly* (2010) 183 Cal.App.4<sup>th</sup> 316, 321; *Schabarum v. California Legislature* (1998) 60 Cal.App.4<sup>th</sup> 1205, 1216.) The motion is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein) or from matters outside the pleading which are judicially noticeable under Evidence Code §§ 451 or 452. In general, a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. (*Southern California Edison Company v. City of Victorville* (2013) 217 Cal.App.4<sup>th</sup> 218, 227; *Shields v. Hennessy Industries, Inc.* (2012) 205 Cal.App.4<sup>th</sup> 782, 785.)

The Court finds that the operative pleading herein does fail to state a cause of action upon which relief may be given. Whether the underlying agreement is written, oral, or implied, the elements for breach of contract are: (1) parties capable of contracting, (2) mutual consent, (3) a lawful object, (4) sufficient cause or consideration, (5) plaintiff's performance or excuse for failure to perform, (6) defendant's breach, and (7) damage. (Civil Code §§ 1550, 1605; *Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4<sup>th</sup> 437, 453; *Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4<sup>th</sup> 508, 525.) Precision or *in haec verba*

is not required, nor is attaching the actual contract if in writing; rather, pleading the legal effect (ie, enough facts to show actionable breach of an enforceable agreement) is good enough. (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4<sup>th</sup> 394, 401-402.)

Here, the operative pleading describes a written agreement in which defendants would pay to plaintiffs the equity received from a sale involving real property, but no description of the lawful object or consideration therefore. Defendants offer via judicial notice that defendant Riordan agreed in 2017 to pay Callison almost \$1Million, and plaintiffs may have believed that his agreement to repay that debt created an enforceable contract with Ortiz (as home owner). To the extent this suit is an effort to collect on a pre-existing debt from Riordan, defendants are correct that this would be a collection matter to be addressed in the Sonoma County proceeding. Either way, it is not clear how P&J or Ortiz are involved at all.

Based on the foregoing, defendants' motion is GRANTED. As no opposition was filed, the Court finds this is tantamount to a failure to indicate the nature of a proposed amendment or otherwise indicate the manner by which plaintiffs would cure the defect. Therefore, pursuant to *Tiffany v Sierra Sands Unified School District* (1980) 103 CalApp 3<sup>rd</sup> 218, the granting is without leave to amend.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendants to prepare a formal Judgment pursuant to Rule of Court 3.1312 in conformity with this ruling.