NOTICE:

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-7858 (Department 53) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 1.06.

Parties requesting services of a court reporter shall advise the court at the number stated above no later than 4:00 p.m. the court day before the hearing. Please be advised there is a $30.00 fee for court reporting services, which must be paid in Room 102 prior to the hearing unless otherwise ordered, for each civil proceeding lasting less than one hour. Govt. Code §68086(a)(1)(A).

The Court Reporter will not report any proceeding unless a request is made and the requisite fees are paid in advance of the hearing.

Department 53
Superior Court of California
800 Ninth Street, 3rd Floor
David I. Brown, Judge
E. Brown, Clerk
C. Chambers/J. Green,, Bailiff

Friday, October 03, 2014, 2:00 PM

Item 1 **2011-00096116-CU-OE**

Wendy L. Williams vs. IL Fornaio America Corporation

Nature of Proceeding: Hearing on Demurrer

Filed By: Case, Hope Anne

This matter is continued to 11/17/2014 at 02:00PM in this department.

Item 2 **2011-00096116-CU-OE**

Wendy L. Williams vs. IL Fornaio America Corporation

Nature of Proceeding: Motion to Strike

Filed By: Case, Hope Anne

This matter is continued to 11/17/2014 at 02:00PM in this department.

Item 3 **2012-00120535-CU-CR**

Jacinto Velasquez vs. County of Sacramento

Nature of Proceeding: Motion for Summary Judgment

Filed By: Lamb, Ronald R.

This matter is dropped from calendar.

Item 4 **2013-00144897-CU-BT**

Performance Contracting vs. Triumph Specialty Construction

Nature of Proceeding: Motion to Compel Removal of Designation Pursuant to Protective Order

Filed By: Boyd, Jesse A.

Plaintiff Performance Contracting, Inc's ("PCI") Motion to Compel Removal of "Attorneys Eyes Only" designation from certain documents Bates stamped CORE-MARK00000090-00000107 is granted.

The Declaration and exhibits that have been conditionally sealed are to remain conditionally sealed until the Court rules on the pending motion to seal.

PCI is a construction company that employed the individual defendants in its cold-storage division. PCI contends that the individual defendants formed their own competing construction company, Triumph Specialty Construction, and solicited projects from PCI's principal customer, Core-Mark, Inc. while they were still employed by PCI. PCI alleges defendants misappropriated trade secrets, violated their duties of loyalty, and unfairly competed with PCI in their dealings with Core-Mark.

Core-Mark, Inc. produced certain documents pursuant to a third party subpoena. Core -Mark has deferred to defendants to make the determination whether documents should be deemed "confidential" or "attorneys eyes only," the designation referring to highly sensitive information. (See Protective Order, Ex. G to Declaration of Jesse Boyd. PCI contends that the defendants' Business Plan and associated emails should not be deemed "Attorneys Eyes Only."

Documents designated "Attorneys Eyes Only" can only be viewed by counsel, court reporters, jury consultants, experts, the individual who prepared or received the information, and the Court. The information cannot be viewed or reviewed by an opposing party or its officers or employees not involved with the document. PCI contends that the documents do not contain any privileged information and will not provide PCI or anyone else a competitive advantage. PCI needs to review this information and the related email exchanges, so that it can evaluate what was taken from it and used by defendants.

The protective order in this case provides that when the parties cannot resolve a dispute regarding their designations informally, the party challenging the designation may seek appropriate relief from the Court. (Boyd Decl., Ex. G). However, the party asserting the confidentiality has the burden of proof. (Id.)

Pursuant to CRC Rule 2.550(d), the court may order that a record be filed under seal only if it expressly finds facts that establish an overriding interest that overcomes the right of the public access to the record...the proposed sealing is narrowly tailored; [and] [n]o less restrictive means exist to achieve the overriding interest. CRC Rule 2.550(d). The Attorneys Eyes Only designation provides that these documents may not be filed with the court but are subject to being sealed upon noticed motion.

In opposition, defendants contend that the Business Plan is highly confidential. However, defendants admit that the draft business plan sent to Core-Mark was never finalized and only summarized and laid out Triumph's general framework. (Declaration of Beaubien ¶ 13) The evidence submitted with the opposition fails to meet the burden that the information is highly sensitive and cannot be disclosed to PCI. Defendants have not established that any information in the Business Plan constitutes

a trade secret.

The documents are still designated "Confidential" and therefore still protected from disclosure outside this litigation.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 5 **2013-00152435-CU-BC**

Sally Wilkinson vs. Gary Simkins

Nature of Proceeding: Motion to Compel 1. Form 2. Special 3. Request for Identification,

Filed By: Bonotto, Phillip R.

This matter is continued to 10/10/2014 at 02:00PM in this department.

Item 6 **2013-00153055-CU-WT**

Sherilene Chycoski vs. Twin Rivers Unified School District

Nature of Proceeding: Motion to Strike

Filed By: Anwyl, James T.

This matter is dropped from calendar.

The First Amended Complaint was dismissed with prejudice on August 7, 2014.

Item 7 **2013-00153055-CU-WT**

Sherilene Chycoski vs. Twin Rivers Unified School District

Nature of Proceeding: Hearing on Demurrer

Filed By: Anwyl, James T.

This matter is dropped from calendar.

The First Amended Complaint was dismissed with prejudice on August 7, 2014.

Item 8 **2014-00161427-CU-MC**

Nicole Whitehouse vs. Sacramento Casino Royale, LLC

Nature of Proceeding: Hearing on Demurrer (Joinder by Pacific Gaming Services, LLC)

Filed By: Parker, Port J.

Defendant Sacramento Casino Royale LLC (“Casino Royale”) and Pacific Gaming Services’ (“PGS”) Demurrer to the Complaint is overruled.

Joinder by Pacific Gaming Services is granted.

Plaintiffs' Request for Judicial Notice is granted as to Item 1 but denied as to Item 2. The minutes from a meeting of the Gambling Control Commission are not the proper subject of judicial notice.

Defendant's Request for Judicial Notice is granted as RJN No. 6 and Ex. G, RFN, RJN No. 7, RJN No. 8, and RJN 13 (legislative history of Red Light Abatement Act.) The Request for judicial notice is denied as to the RJN 1, and Ex. A and B (letter granting approval of renewal of license and licenses, RJN 2 and Ex, C (Transcript of Commission Meeting), RJN 3, 4, Ex. D, E, F, (Game Rules), RJN 5 (fact that Casino Royale's approved games are variants of the standard approved games) RJN 9, 10, 11 (approved games), RJN 12 (State Compact with United Auburn Indian Tribe requires arbitration) and RJN 14 and Ex. J (approval of contract)

Plaintiffs allege a single cause of action for Violation of the Red Light Abatement Act. California Penal Code section 11225 et seq. Plaintiffs seek to abate an alleged public nuisance, alleging that Casino Royale, located at 500 Leisure Lane, Sacramento, is engaging in illegal gambling that should be enjoined as a public nuisance. Plaintiffs allege Casino Royale engages in "banking" games that are illegal pursuant to Penal Code section 330.

Plaintiffs allege that a "banking" game includes a game that does not provide for systematic and continuous rotation of the player-dealer position. Plaintiffs allege that Casino Royale is offering illegal blackjack, baccarat, and pai gow games. Plaintiffs' agents allegedly observed the alleged illegal gambling on eight separate occasions spanning a one month period. Plaintiffs contend that PGS, as agent for Casino Royale, provides third party proposition player services, acts as the "de facto" house and provides liquidity to the games by covering all or some of the bets that take place each round. Plaintiffs allege that the player-dealer position does not continuously and systematically rotate, therefore violating Penal Code section 330.

Plaintiffs are two individuals who live in the nearby Woodlake neighborhood and two members of the United Auburn Indian Community, a federally recognized Indian tribe.

Casino Royale contends that the Complaint must be dismissed for the following reason: (1) The Complaint fails to state a cause of action under the Red Light Abatement Act; (2) The Court has no jurisdiction over a cause of action under the Red Light Abatement Act; and (3) The Complaint is uncertain, ambiguous and unintelligible.

The Court finds that a cause of action is stated. CCP 430.10(e). The Court is required to assume the truth of the complaint's properly pleaded or implied factual allegations. *Schifando v City of Los Angeles* (2003) 31 Cal.4th 1074, 1081. The function of a demurrer is to test the legal sufficiency of the pleading by raising questions of law.(*Baldwin v. Zoradi* (1981) 123 Cal.App.3d 275, 278). Further, the Court is required to liberally construe the allegations in plaintiff's favor. (Code Civ. Proc., § 452) Even as against a special demurrer, the courts of this state have established the rule that it should be overruled if the allegations of the complaint are sufficiently clear to apprise the defendants of the issues they are to meet. (*Hudson v. Craft*, (1949) 33 Cal.2d 654, 661).

The Red Light Abatement Act, at Penal Code § 11225(a), provides: **"**(a) (1) Every building or place used for the purpose of illegal gambling as defined by state law or local ordinance, lewdness, assignation, or prostitution, and every building or place in or

upon which acts of illegal gambling as defined by state law or local ordinance, lewdness, assignation, or prostitution, are held or occur, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance. (2) Nothing in this subdivision shall be construed to apply the definition of a nuisance to a private residence where illegal gambling is conducted on an intermittent basis and without the purpose of producing profit for the owner or occupier of the premises.

Penal Code section 330 provides: "Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment."

Casino Royale contends that the Red Light Abatement Act does not apply to “legal gambling expressly authorized by statute.” However, the Complaint alleges that defendants are conducting “banking” games in *violation* of Penal Code section 330. Although defendant contends that plaintiffs’ use of the term “illegal gambling” is a legal conclusion, plaintiffs have specifically alleged that the manner in which the games are played violates Penal Code section 330. Thus, for pleading purposes, plaintiffs have alleged illegal gambling as defined by Penal Code section 330. Contrary to Casino Royale’s arguments, Plaintiffs are not alleging that Casino Royale is engaging in games that have been “approved” by the Board of Gambling Control. Plaintiffs specifically allege that the games are <u>not</u> being played in compliance with the approved rule requiring systematic and continuous rotation of the deal.

For the first time, in the Reply, defendants rely on Business & Professions code section 19805(c) and Penal Code section 330.11 to argue that the banking games alleged in the Complaint do not fall within the definition of "banking game" and therefore the conduct alleged in the Complaint is not "illegal gambling" that can be challenged under the Red Light Abatement Act.

Penal Code section 330.11 and B&P Code 19805(c) provide: "'Banking game' or 'banked game' does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, to ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game, and preclude the house, another entity, a player, or an observer from maintaining or operating as a bank during the course of the game. For purposes of this section it is not the intent of the Legislature to mandate acceptance of the deal by every player if the division finds that the rules of the game render the maintenance of or operation of a bank impossible by other means. The house shall not occupy the player-dealer position." Penal Code section 330.11 and Business & Professions Code section 19805(c).

Defendants argue that since the Complaint alleges only that the rules of an approved game are not being followed, there can be no illegal gambling. This argument is raised for the first time in the Reply and plaintiff has not had the opportunity to

respond; consequently, the Court will not consider this argument at this time. Moreover, it is not apparent on the face of the Complaint that Casino Royale is engaging only in approved games.

Defendants contend that the Red Light Abatement Act does not and was never intended to apply to gambling that takes place in a regulated card room. Defendants point to legislative history that shows that the 1969 amendment to the Red Light Abatement Act was in response to state-chartered private social clubs in Los Angeles that engaged in illegal Las Vegas-style gambling. Defendant contends that since Casino Royale is licensed by the California Gambling Control Commission ("CGCC"), it simply cannot be alleged to be a private or public nuisance under Penal Code section 11225 et seq.

The Court perceives this argument to miss the mark. The plain language of the statute prohibits "acts of illegal gambling as defined by state law or local ordinance." The Red Light Abatement Act exempts only private residences. The Act does not exempt regulated gambling establishments. The legislature could have exempted licensed card rooms but it did not. In applying or interpreting a statute, the courts must presume that the legislature intended to enact a valid statute. *In re Kay*, (1970) 1 Cal. 3d 930. Courts assume that the legislature intended the statute to have some effect and do not presume that the lawmakers indulged in an idle act. *Stafford v. Realty Bond Service Corp*., (1952) 39 Cal. 2d 797. Further, it is assumed that the legislature, when it enacts a statute, has in mind existing (*Shirk v. Vista Unified School Dist*., (2007) 42 Cal. 4th 2011 and related laws (*Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles*, (2009) 173 Cal. App. 4th 13) and that it was familiar with the prior enactments of the legislature. Thus, the legislature is deemed to be aware of statutes already in existence, and to have enacted or amended a statute in their light, (*Schmidt v. Southern Cal. Rapid Transit Dist*., (1993) 14 Cal. App. 4th 23) with an intent to maintain a consistent body of statutes. *Burlington Northern and Sante Fe Ry. Co. v. Public Utilities Com'n*, (2003) 112 Cal. App. 4th 881.

Defendants also contend that as a matter of law, controlled gambling cannot be a nuisance, relying on California Civil Code section 3482. That section provides "Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance." Civil Code 3482. True. However, plaintiffs have pleaded conduct that is not authorized by statute. Whether or not that is the case is beyond the scope of this demurrer. In addition, the plaintiffs are not challenging the Bureau's approval of the game rules, therefore Business & Professions Code section 19804 does not bar injunctive relief.

Defendants' also contend that the Court lacks jurisdiction over this matter and should abstain from ruling on this case. This argument is rejected. Defendants contend that plaintiffs are attempting to circumvent the regulatory and enforcement system for licensed and regulated gambling. Defendants contend that any relief obtained by this action would usurp the province of the Bureau of Gambling Control and effectively find that the regulatory agencies abused their discretion. However, this action is not an action that is contesting construction or enforcement of any act or regulation or order of board pursuant to B & P Code section 19804. The Gambling Control Act explicitly defers to state law regarding what gambling is "illegal." "State law prohibits commercially operated…banked…games…To the extent that state law categorically prohibits certain forms of gambling and prohibits gambling devices, nothing herein shall be construed, in any manner, to reflect a legislative intent to relax those

prohibitions." Business & Professions Code section 19801(a).

There are numerous cases in which courts have found that illegal gambling was occurring, even when the game was subject to agency regulation. Thus, this court has jurisdiction to determine whether defendants are engaged in illegal gambling as defined by the Penal Code, despite the existence of the Bureau of Gambling Control. See *W. Telecom, Inc. v Cal State Lottery* (1996) 13 Cal.4th 475 (game approved by the California State Lottery was an illegal banking game); *Oliver v City of Los Angeles* (1998) 66 Cal.App.4th 1397 (court found a game to be an illegal "banking" game where bank did not "continually and systematically" rotate among participants); *Kelly v First Astri Corp*.(1999) 72 Cal.App.4th 462, 490-495.(Court found "Sycuan 21" to be an illegal banking game because the bank did not rotate.) Courts even have jurisdiction to find that certain games are *not* illegal banking games. See, e.g. *Huntington Park Club Corp. v. County of Los Angeles* (1988) 206 Cal.App.3d 241, 249-250.

The demurrer for uncertainty is overruled. A demurrer for uncertainty will only be sustained where the complaint is so poorly drafted that the defendant cannot reasonably respond. *Khoury v Maly's of California, Inc*. (1993) 14 Cal.App.4th 612, 616.

Answer to be filed on or before October 20, 2014.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 9 **2014-00161811-CU-PA**

Alana Blake vs. Judith Ann Tomlinson

Nature of Proceeding: Motion to Compel 1. Form Interrogatories 2. Production of Documents

Filed By: Whitmore, LeeAnn E.

This matter is continued to 11/20/2014 at 02:00PM in this department.

Item 10 **2014-00164571-CU-OR**

Andrew Huston vs. Wells Fargo Bank

Nature of Proceeding: Hearing on Demurrer

Filed By: Riedman, Natilee S.

Defendant Wells Fargo Bank N.A's Demurrer to the Complaint is sustained/overruled as follows:

Defendants' request for judicial notice is granted. (*See Poseidon Devel., Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117-18; see also *Stratford Irrig. Dist. v. Empire Water Co.* (1941) 44 Cal.App.2d 61, 68 [recorded land documents, not contracts, are the subject of judicial notice on demurrer].) The court, however, does not accept the truth of any facts within the judicially noticed documents except to the extent such facts are beyond reasonable dispute. (*See Poseidon Devel*., 152 Cal.App.4th at 1117-18.) *see also Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 265 ("[A] court may take judicial notice of the fact of a document's recordation, the date the document was recorded and executed, the parties to the transaction reflected in the recorded document, and the document's legally operative

language, assuming there is no genuine dispute regarding the document's authenticity.")

Plaintiffs obtained a $216,601 loan in July of 2008. RJN Ex. A. Plaintiffs fell behind in payments in 2012 (Complaint ¶ 22) Plaintiffs allege that Wells Fargo engaged in dual tracking and other violations of the Homeowners Bill of Rights ("HOBR"). Plaintiffs allege that they sent Wells Fargo several completed loan modification applications but that Wells Fargo repeatedly delayed the process by stating that they needed updated information. Plaintiffs allege that the first application was submitted in March of 2013 and the last one was submitted October 31, 2013. Plaintiffs allege they never received a denial letter on any application. Defendant filed a notice of default on April 4, 2014.

Wells Fargo contends that the HOBR does not apply to this case and that plaintiffs have not alleged prejudice or tender. The Court rejects the argument that the HOBR does not apply because the loan was entered into in 2008, before the HOBR was enacted. The HOBR applies to any conduct that occurs on or after January 1, 2013, and plaintiffs have alleged some violations that took place in 2013 and 2014. The Court rejects the argument that plaintiffs' failure to tender the amount due absolves Wells Fargo from complying with the HOBR. The court also rejects the argument that plaintiffs have not adequately alleged prejudice.

Wells Fargo mischaracterizes the allegations as stating that Wells Fargo helped the plaintiffs avoid foreclosure and attempted to work with them for two years to explore the possibility of foreclosure alternatives. Wells Fargo contends plaintiffs submitted only "some financial documents." Wells Fargo contends that plaintiffs' allegations show that they never submitted a "complete financial package" and that they had "numerous opportunities to be reviewed." However, plaintiffs allege at ¶ 26 that a "complete application" was submitted. Whether plaintiffs submitted a "complete application" is a factual dispute that cannot be determined at the pleading stage. Similarly, whether the alleged HOBR violations are "material" is not apparent on the face of the Complaint and cannot be determined at the pleading stage. The terms of the HOBR require defendant to take certain steps through the review process to ensure that a bona fide review process is occurring, and plaintiffs have alleged that not all of those steps were taken.

1st cause of action Violation of Civil Code section 2923.5(a)(2): Overruled. The allegations regarding submission of loan modification applications does not necessarily establish compliance with this code section nor does it establish that Wells Fargo was under no obligation to evaluate the borrower for the possibility of a loan modification because the borrower had already had a fair opportunity to be evaluated. Plaintiffs allege that they were never offered a subsequent meeting within 14 days, as required by the statute.

2nd cause of action Violation of Civil Code section 2923.5(b): Sustained with leave to amend for failure to state facts sufficient to constitute a cause of action. The allegations of the Complaint admit that the parties had been in contact exploring alternatives to foreclosure. The statute does not require contact within the immediate 30 days prior to filing the notice of default. It only requires that no notice of default can be recorded until 30 days after initial contact is made. The Court is not persuaded that if the plaintiff initiates the contact there can be no compliance with this statute. (Complaint ¶¶ 24-25)

3rd cause of action Violation of Civil Code section 2923.55: Overruled. Plaintiffs allege that they did not receive all required information under subdivision (b)(1). Plaintiffs are not required to allege how the violation was "material," and plaintiffs have adequately alleged prejudice.

4th cause of action Violation of Civil Code section 2923.6(c): Overruled. Plaintiffs have adequately alleged that defendant did not render a written decision on the loan applications.

5th cause of action Violation of Civil Code section 2923.6(f): Overruled. Plaintiffs have adequately alleged that defendant failed to notify them why they were denied a loan modification.

6th cause of action Violation of Civil Code section 2923.7: Overruled. Plaintiffs have adequately alleged that they were not given a single point of contact as required by this section.

7th cause of action Violation of Civil Code section 2924.10: Overruled. Plaintiffs have adequately alleged that defendant failed to send receipts acknowledging the submission of their financial documents.

8th cause of action Violation of Civil Code section 2924.11(f): Overruled. Plaintiffs adequately allege that they were wrongfully charged late fees while they were led to believe that their loan modifications were under review. Plaintiffs have alleged that they submitted a complete loan modification, therefore this section applies.

9th cause of action Promissory Estoppel: Overruled. Plaintiffs allege that "WFB agents promised plaintiffs multiple times that as long as plaintiffs submitted each and every document requested of them pursuant to a loan modification, that plaintiffs would be considered for a loan modification and that no foreclosure actions may move forward until a decision was arrived at regarding their completed application. (Complaint ¶ 101.) Plaintiffs allege that they did not pursue other avenues of relief such as filing for a restructured bankruptcy and seeking out legal counsel at an earlier time. (¶ 106)

To state a claim for promissory estoppel, a party must allege (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) that his reliance was reasonable and foreseeable; and (4) that he was injured by his reliance. *Laks v. Coast Federal Savings & Loan Association* (1976) 60 Cal.App.3d 885, 890.) Plaintiffs must specifically plead all facts relied on to establish the promissory estoppel elements. *Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 48.) Detrimental reliance involves significant adverse consequences and cannot be the "doing or promising to do what one is already legally bound to do." (1 Witkin, Summary of California Law, Contracts, §221 (9th ed.); *Youngman v. Nevada Irr. Dist* (1969) 70 Cal.2d 240, 249.) These allegations are sufficient to apprise defendant of the claim, for pleading purposes.

10th cause of action Negligence Per Se: Overruled. Plaintiff has adequately alleged a duty of care based on the requirements of HOBR. *Nymark*, however, addressed the duty owed by a commercial lender to a borrower in originating the loan at issue. It did not consider the duties owed by a loan servicer in its day-to-day handling of a borrower's mortgage payments. Loan servicing constitutes participation in the financed

enterprise “beyond the domain of the usual money lender,” and the *Nymark* rule does not preclude liability for alleged negligence in processing loan modification applications where the servicer has undertaken that obligation. (*See Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 895 (“[P]rolonged communication - perhaps more accurately, miscommunication - about a possible loan modification raises a triable issue of fact of intent by [servicer] to profit by misleading [borrower] about his loan modification prospects…”).)

Motion to Strike

Motion to strike claim for damages under the HOBR is granted (Prayer, nos 5, 6, 7, 8, and 10.) Since no foreclosure sale has occurred, the remedy is confined to injunctive relief. CC 2924.12.

The motion to strike punitive damages is granted, with leave to amend.

Plaintiff may file and serve an Amended Complaint on or before October 14, 2014. Response to be filed and served within 20 days of service of the amended complaint, 25 days if served by mail.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 11 **2014-00164571-CU-OR**

Andrew Huston vs. Wells Fargo Bank

Nature of Proceeding: Motion to Strike

Filed By: Riedman, Natilee S.

See ruling on the demurrer.

Item 12 **2014-00165277-CU-TT**

California Rice Commission vs. Consumer Advocacy Group, Inc.

Nature of Proceeding: Motion to Strike (SLAPP)

Filed By: Yeroushalmi, Reuben

This matter is continued on the Court's own motion to 10/8/2014 at 02:00PM in this department.

The Court requires additional time to consider the documents filed on the afternoon of October 1, 2014.

Item 13 **2014-00166879-CU-PT**

In Re: Mahin Vali

Nature of Proceeding: Petition for Change of Name

Filed By: Vali, Mahin

Petition for Name Change is granted.

Item 14 **2014-00166883-CU-PT**

In Re: Alexis Pearl Tallon

Nature of Proceeding: Petition for Change of Name

Filed By: Guerra, Jamie

Petition for change of name is denied without prejudice.

The petitioner's declaration states that the child has had no contact with the father for ten years. There is no information in the declaration as to whether petitioner attempted to locate the father for service as required under CCP 1277.

The Court will grant a continuance to allow the petitioner to file a supplemental declaration explaining efforts to locate the father for service, or to explain why the father should not be required to be served. The declaration shall be filed in Department 53 at least five court days before the hearing.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 15 **2014-00157719-CL-CL**

Teletrac, Inc. vs. A3 Transportation, LLC

Nature of Proceeding: Motion to Strike

Filed By: Klavdianos, Denis

Plaintiff's Motion to Strike Answer filed after default was entered is unopposed and is granted.

The default was entered on May 2, 2014. On June 3, 2014, an Answer of defendants was accepted for filing. However, the Answer was improperly filed, because once a party's default is taken they may not appear in the action absent a motion to set aside the default. In sum, the court clerk was required to enter Defendants' default when the request for entry of default was filed. (CCP § 585(b); *W.A. Rose Co. v. Municipal Court* (1959) 176 Cal.App.2d 67, 71.) As a result, Defendants had no right to file their answer thereafter. (*Devlin v. Kearny Mesa Amc/Jeep/Renault* (1985) 155 Cal.App.3d 381, 385-386.) "A defendant against whom a default has been entered is out of court and is not entitled to take any further steps in the cause affecting plaintiff's right of action; he cannot thereafter, until such default is set aside in a proper proceeding, file pleadings . . . ." (*Brooks v. Nelson* (1928) 95 Cal.App. 144, 147-148; *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc*. (1984) 155 Cal. App. 3d 381, 385-386; see also 6 Witkin, Cal. Procedure (4th ed. 1997) Proceedings Without Trial, § 152, pp. 569-570; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2003) P 5:6, p. 5-2.) Because a defendant against whom a default has been entered "has no standing to file any responsive pleading without first obtaining relief from the default," any pleadings filed before such time are a nullity and have no legal effect. (*Forbes v. Cameron Petroleums, Inc.* (1978) 83 Cal. App. 3d 257, 262-263.)

Consequently, the motion to strike Defendants’ answer is granted

The prevailing party shall prepare a formal order for the Court's signature pursuant to C.R.C. 3.1312.