

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 01/31/12 TIME: 9:00 A.M. DEPT: L CASE NO: CV081080

PRESIDING: HON. LYNN DURYEE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: SUZIE ZUPAN, ET AL

vs.

DEFENDANT: JAMES WALL, ET AL

NATURE OF PROCEEDINGS: MOTION TO COMPEL – FURTHER RESPONSES TO FORM INTERROGATORIES, SPECIAL INTERROGATORIES, REQUESTS FOR ADMISSION, REQUESTS FOR PRODUCTION AND FOR MONETARY SANCTIONS [DEFT] JAMES WALL

RULING

The motion to compel discovery is denied. Moving party has failed to demonstrate an adequate meet and confer process. Last week the court heard the plaintiffs' motion to compel further responses from Mr. Wall. This week, the court has before it Mr. Wall's motion to compel further responses from the Zupans. The parties need to do a better job of resolving their discovery disputes without involving the court. This case calls for more than the exchange of pointed letters to resolve differences. The request for sanctions is denied.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 01/31/12 TIME: 9:00 A.M. DEPT: L CASE NO: CV092432

PRESIDING: HON. LYNN DURYEE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: INGRID ROBINSON

vs.

DEFENDANT: ONEWEST BANK, FSB, ET
AL

NATURE OF PROCEEDINGS: NOTICE OF MOTION – TO EXPUNGE RECORDED LIS
PENDENS AND FOR AWARD OF ATTORNEYS’ FEES AND COSTS [DEFT] ONEWEST
BANK, FSB [DEFT] MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

RULING

The motion to expunge the lis pendens is granted. If Mr. Holland has not yet provided OneWest with the expungement, he is ordered to do so within 2 days. The request for attorney’s fees is denied. Mr. Holland agreed in December to expunge the lis pendens, although he admittedly did fail to “immediately” comply with the request.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 01/31/12 TIME: 9:00 A.M. DEPT: L CASE NO: CV1002039

PRESIDING: HON. LYNN DURYEE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: SCOTT CALL JOLLEY

vs.

DEFENDANT: CHASE HOME FINANCE,
LLC, ET AL

NATURE OF PROCEEDINGS: MOTION FOR ATTORNEY FEES [DEFT] CHASE HOME FINANCE, LLC, A DELAWARE LIMITED LIAB. CORP.

RULING

No opposition and good cause appearing, the motion by JPMorgan Chase Bank for attorney's fees is granted in the sum of \$84,615.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 01/31/12 TIME: 9:00 A.M. DEPT: L CASE NO: CV1100710

PRESIDING: HON. LYNN DURYEE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: BILL ERICKSON

and

DEFENDANT: SUPRESS PRODUCTS, LLC,
ET AL

NATURE OF PROCEEDINGS: 1) MOTION TO COMPEL – RESPONSES TO PLAINTIFF’S REQUEST FOR PRODUCTION OF DOCUMENTS, SET TWO AND SANCTIONS AGAINST DEFENDANT SUPRESS PRODUCTS, LLC AND ITS ATTORNEY OF RECORD [PLTF] BILL ERICKSON
2) MOTION – FOR FURTHER SANCTIONS AGAINST DEFTS FOR FAILURE TO OBEY COURT ORDER [PLTF] BILL ERICKSON

RULING

Plaintiff filed this motion to compel on 12/20/11. On 1/17/12, this court granted plaintiff’s motion to strike the answer of defendant Supress Products and for entry of a default judgment. Although plaintiff’s default judgment has not yet been submitted the court, the court assumes that the 12/20/11 motion is moot and, accordingly, is ordered off calendar. In the future, counsel is asked to advise the court when a matter can be taken off calendar.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 01/31/12 TIME: 9:00 A.M. DEPT: L CASE NO: CV1102027

PRESIDING: HON. LYNN DURYEE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: ROBERT S. MILLER

and

DEFENDANT: VINCE CHENG LEE

NATURE OF PROCEEDINGS: MOTION – TO BE RELIEVED AS COUNSEL-CIVIL
[PLTF] ROBERT S. MILLER

RULING

No opposition and good cause appearing, the motion of Richard Wallace to be relieved as attorney of record is granted under the following conditions: The motion is reset for February 14, 2012, along with the court’s Order to Show Cause re dismissal. The moving papers incorrectly state that the next court date is “1/5/2012” [sic]. Mr. Wallace must give his client notice of the court’s intention to dismiss this matter for plaintiff’s failure to prosecute. Further, Mr. Wallace must provide the court with the last known address and telephone number of the plaintiff. Finally, Mr. Wallace must contact Mr. Buell and inform him that the court has reset the OSC re dismissal for 2/21/12 at 9:00 a.m. in Department L. Mr. Wallace is to provide proof of compliance to the court on or before 2/14/12.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 01/31/12 TIME: 9:00 A.M. DEPT: L CASE NO: CV1102385

PRESIDING: HON. LYNN DURYEE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: FAIRWAY BUILDERS INC.

and

DEFENDANT: ROBERT L. FISHER
TRUST, ET AL

NATURE OF PROCEEDINGS: NOTICE OF MOTION – FOR PROTECTIVE ORDER AND FOR SANCTIONS; ATTY FEES AND COSTS [PLTF] FAIRWAY BUILDERS INC.

RULING

The court declines to issue a protective order before plaintiff has made a good faith effort to comply with the discovery requests. Plaintiff has filed this action for recovery of a modest sum of money, and the parties are entitled to engage in reasonable discovery requests to determine the positions and evidence possessed by each side. If plaintiff believes certain discovery requests are overbroad, he should give a reasonable response and attempt to meet and confer over the disputed items. The court is not required to go through all of the discovery requests before plaintiff has done anything to advise plaintiff what he should answer and what he may ignore.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 01/31/12 TIME: 9:00 A.M. DEPT: L CASE NO: CV1104274

PRESIDING: HON. LYNN DURYEE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: INSTITUTE OF IMAGINAL
STUDIES, INC.

vs.

DEFENDANT: INSTITUTE OF NOETIC
SCIENCES (IONS)

NATURE OF PROCEEDINGS: HEARING OF DEMURRER – TO COMPLAINT [DEFT]
INSTITUTE OF NOETIC SCIENCES (IONS), A CA NON-PRFT CORP.

RULING

The demurrer to the first cause of action is overruled. From the dates on the amendments to the Letter of Intent, it appears that the amendment quoted in IONS’ reply memorandum (p.2:8-11) actually was not the “final” amendment. The amendment dated August 3, 2007, merely set forth an August 3 deadline for establishing a “revised *timeline* for the completion of the final agreement and the close of escrow....” (Ct., Exh.A, p.5; see also p.4, ¶14.) In any event, the complaint may be liberally construed to show a waiver of any August 3, 2007 deadline for negotiating a final agreement. The parties still were in active negotiations on and after August 3, 2007. (See, generally, 1 Witkin, Summary of Cal. Law (10th ed.2005), Contracts, §857, and Complaint, ¶¶26-28, 31. See also, e.g., *A.B.C. Dist. Co. v. Distillers Dist. Corp.* (1957) 154 Cal.App.2d 175, 187.) IONS’ argument that waiver may provide a defense to a contract claim, but not delay commencement of the statute of limitations, makes no sense. It would have the statute commence at a time when the plaintiff did not have the right to sue. (See also, generally, 3 Witkin, Cal. Procedure (5th ed.2008), Actions, §520 (contract claim ordinarily occurs at time of *breach*), and, e.g., *McMillan Process Co. v. Brown* (1939) 33 Cal.App.2d 279, 285 (statute began to run only when plaintiff “made his election to no longer rely upon the contract”).) The complaint may be read to show that an actual breach did not occur until the repudiation of August 28, 2007, which is within four years of its filing. (See 1 Witkin, Summary of Cal. Law, *supra*, §861 (period begins with repudiation, or “actual breach,” at time performance is due).)

The demurrers to the second cause of action are overruled. As explained above, the cause of action does not appear to be barred by the statute of limitations. Its allegations of breach go beyond specific terms of the parties' agreement. According to the complaint, IONS acted with the intent to deprive IIS of the benefits of the agreement, and "hid its intentions to back out of the deal from Plaintiff while securing funds from internal investors...." (Complaint, ¶¶74, 77; see also ¶¶21-22 (during this time period, IIS began publicizing its "new permanent campus" and released calendar for next year), ¶76 (IONS prevented completion of negotiations for a "mistake" that IIS had offered to resolve through its payment of the amount of additional taxes), and ¶¶69-71, 73.) Rather than a simple failure to complete a purchase agreement, this claim arises from IONS' delay, alleged "disingenuous excuse" and real purpose of generating other financial support. The allegations may be liberally construed to show IONS' manipulation of the process to frustrate IIS' reasonable expectations and prevent its performance. (See, e.g., *Celador Int'l Ltd. v. Walt Disney Co.* (C.D.Cal.2004) 347 F.Supp.2d 846, 853 (relevant inquiry is whether claims can be distinguished).) The inclusion of the allegations in paragraph 78 does not make the cause of action "uncertain." IONS points to no part of this paragraph too vague to permit a response. As a demurrer does not lie as to part of a cause of action (see 5 Witkin, Cal. Procedure (5th ed. 2008), §957), it is unnecessary for the court to rule on the sufficiency of paragraph 78's allegations concerning the office lease agreement.

The demurrers to the third cause of action are sustained without leave to amend. To avoid IONS' statute-of-frauds argument, IIS argues that the implied contract was one to "make" a contract. (See opposition memorandum, p.8:19-20.) However, the complaint shows that the parties *did* make a retreat center master contract. (See, e.g., Complaint, ¶¶61, 64.) Though the terms of this contract may be less favorable to IIS than the original contract, an implied contract is "one, the existence and terms of which are manifested by conduct." (Civil Code, §1621.) The cause of action does not clearly set forth any conduct of IONS which would show its continuing consent to terms of the original retreat center contract. IONS offered different terms. (Complaint, ¶61.) "There cannot be a valid express contract and an implied contract, each embracing the same subject, but requiring different results." (See, e.g., *Haggard v. Kimberly Quality Care, Inc.* (1995) 39 Cal.App.4th 508, 520, and cases cited therein.) Plaintiff has not offered any theory to actually invalidate the June 2011 retreat center master contract. Without that, it would not have a valid cause of action even if it amended to clarify that the implied contract was for "making" of a retreat center contract with favorable terms.

The demurrers to the fourth cause of action are sustained with leave to amend. It is not clear from the pleading which "promises" IIS wishes to have enforced. In its opposition memorandum, IIS points to paragraph 44 as containing one *example* of a promise. Even if such incorporated "example(s)" were enough, paragraph 44 does not set forth a clear and unambiguous promise by IONS. It alleges only IONS' *request* for information on what IIS would consider the "deal breaker" rates, followed by IIS' *proposal* of a rate reduction. However, since the complaint alleges various promises and representations, it is reasonably possible that plaintiff could amend to state a cause of action.

The demurrers to the fifth cause of action are sustained with leave to amend. IIS has not alleged interference and disruption of a valid contract with a third party, or interference

with a prospective economic relationship with a third party. (See, generally, *Mann v. Quality Old Time Serv., Inc.* (2004) 120 Cal.App.4th 90, 110.) However, since it claims disruption of its “entire business” (see opposition memorandum, p.10:14-15), and its business necessarily would involve many third-party relationships, the court will allow IIS an opportunity to state all essential elements of an “interference with economic relationships” claim.

The demurrers to the sixth and seventh causes of action are sustained with leave to amend. It is not clear which representation or representations are encompassed by these causes of action, which lack the detail required by *Lazar v. Sup. Ct.* (1996) 12 Cal.4th 631, 645. Moreover, even though the complaint appears to be barred by the three-year statute of limitations (see, e.g., ¶¶28-31, 68-69), IIS fails to plead facts to show “the time and manner of discovery” and “the inability to have made earlier discovery despite reasonable diligence.” (See, generally, *Doe v. Roman Catholic Bishop of Sacramento* (2010) 189 Cal.App.4th 1423, 1430.) In its opposition memorandum (p.11:1-2), IIS does not specify which “continued good faith efforts” might show its lack of information. It allegedly notified students “about the loss of the permanent campus” on a date outside the three-year period. (Complaint, ¶32.) Nonetheless, since this is an original complaint and IONS’ objections focus on lack of specificity, the court will allow IIS an opportunity to revise its pleading.

The demurrers to the eighth and ninth causes of action are sustained with leave to amend. The eighth cause of action appears to seek relief based on “the 2010 Lease agreement and subsequent promises....” (See Complaint, ¶¶107, 111.) The ninth cause of action alleges a controversy concerning the 2010 lease agreement. That agreement and “subsequent promises” are the subject of the third, fourth and fifth causes of action, where the court sustained demurrers with leave to amend. As IONS’ argument depends on the lack of an underlying claim, IIS could state a valid cause of action if it is able to successfully amend earlier causes of action.

Where the court granted leave to amend, IIS is to file its first amended complaint within twenty days of the date it is served with notice of the court’s written order on this motion.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 01/31/12 TIME: 9:00 A.M. DEPT: L CASE NO: CV1104282

PRESIDING: HON. LYNN DURYEE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: MARBLE BRIDGE
FUNDING GROUP, INC.

vs.

DEFENDANT: WEST BAY BUILDERS,
INC.

NATURE OF PROCEEDINGS: HEARING ON DEMURRER – TO MARBLE BRIDGE FUNDING GROUP, INC.’S FIRST AMENDED COMPLAINT [DEFT] WEST BAY BUILDERS, INC.

RULING

Defendant West Bay Builders, Inc.’s demurrer to the First Amended Complaint is Sustained in part.

1. The demurrer to the first cause of action for violation of Cal. Comm. Code § 9406 is Overruled.

The issue whether any or all of the three Notices of Assignment delivered to Defendant “reasonably identify” Fogg’s Lath & Plaster, Inc.’s rights to payment from Defendant and assigned to Plaintiff (§ 9406 (b)(1), cannot be answered from the face of the notices, but turns on the circumstances of the parties at the time the Notices were delivered, and requires a resolution of fact not suitable for a demurrer.

“A reasonable identification need not identify the right to payment with specificity, but what is reasonable also is not left to the arbitrary decision of the account debtor.” (Uniform Commercial Code Comment to former statute § 9-318(3).) “Section 9–318(3) does not prescribe any ‘magic words’ for a notice of assignment.” (*Bay Area Factors v. Target Stores, Inc.* (D. Minn., 1997) 987 F.Supp. 734, 737-738.)

2. The demurrer to the second cause of action for breach of contract is sustained for failure to allege a cause of action. (Code Civ. Proc. § 430.10(e).) The demurrer is also sustained for failure to plead whether the contract is written, oral or implied by conduct. (Code Civ. Proc. § 430.10(g).)

It is well settled that a contract may be pleaded *in haec verba*, or according to its legal intendment and effect. (*Scolinos v. Kolts* (1995) 37 Cal.App. 4th 635, 640.) Plaintiff has done neither of these things, nor has Plaintiff attached copies of the subject contracts to the Complaint.

3. The demurrer to the third cause of action for account stated, based on the ground that Plaintiff did not properly plead the existence of a contract, is Overruled.

The existence of the original contract(s) for goods/services between Fogg's and West Bay Builders is not an element of this cause of action. (*Gleason v. Klamer* (1980) 103 Cal.App.3d 782, 786-787.) Failure to plead those terms is not a ground for a demurrer.

4. The demurrer to the fourth cause of action for Quantum Meruit, on the ground that Plaintiff did not properly plead the existence of a contract between Fogg's and account debtor West Bay Builders, is Overruled.

The quasi-contractual Quantum Meruit theory "operates without an actual agreement of the parties, . . ." (*Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 455.)

Also, Plaintiff has properly alleged facts to support the inference that assignor Fogg's was acting pursuant to either an express or implied request for goods/services from the defendant West Bay Builders, and the services rendered were intended to and did benefit the defendant. (See *Ochs v. PacifiCare of California* (2004) 115 Cal.App.4th 782, 794.) These are the only elements required to allege a valid Quantum Meruit cause of action.

Defendant's Request to Take Judicial Notice of documents it filed in Defendant's motion for relief from default, is denied.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 01/31/12 TIME: 9:00 A.M. DEPT: L CASE NO: CV1104837

PRESIDING: HON. LYNN DURYEE

REPORTER:

CLERK: S. DIENER

<p>PLAINTIFF: VEANA G. SILVA PEARSON</p>	
---	--

vs.

<p>DEFENDANT: BAC HOME LOANS SERVICING, LP, ET AL</p>	
--	--

NATURE OF PROCEEDINGS: MOTION – TO STRIKE [DEFT] ERIC REA

RULING

No opposition and good cause appearing, the demurrer of Eric Rea to the fifth, sixth, seventh and ninth causes of action is sustained with 20 days' leave to amend.

The demurrer and motion to strike by Priority Lending Mortgage Corporation is likewise unopposed. These motions are sustained with 20 days' leave to amend.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 01/31/12 TIME: 9:00 A.M. DEPT: L CASE NO: CV1105019

PRESIDING: HON. LYNN DURYEE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: JOHN A. RUSSO, ET AL

and

DEFENDANT: THE BANK OF NEW YORK
MELLON, ET AL

NATURE OF PROCEEDINGS: 1) HEARING ON DEMURRER – TO PLAINTIFFS’ FIRST AMENDED COMPLAINT [DEFT] THE BANK OF NEW YORK MELLON [DEFT] COUNTRYWIDE HOME LOANS, INC. [DEFT] MORTGAGE ELECTRONICS REGISTRATION SYSTEMS, INC. [DEFT] RECONTRUST COMPANY, N.A. [DEFT] CTC REAL ESTATE SERVICES

2) MOTION – TO STRIKE PORTIONS OF PLAINTIFF’S FIRST AMENDED COMPLAINT [DEFT] THE BANK OF NEW YORK MELLON [DEFT] COUNTRYWIDE HOME LOANS, INC. [DEFT] MORTGAGE ELECTRONICS REGISTRATION SYSTEMS, INC. [DEFT] RECONTRUST COMPANY, N.A. [DEFT] CTC REAL ESTATE SERVICES

RULING

Defendants’ demurrer to the entire First Amended Complaint is overruled. Tender is not an unequivocal requirement in an action alleging fraud in the foreclosure process. The tender requirement may be excused if the beneficiary has lulled the trustor into not paying. (Bernhardt, California Mortgages, Deeds of Trust and Foreclosure Litigation, 4th ed. (CEB 2011), §7.41, p. 550.2; see FAC, ¶21.) Similarly, plaintiff’s allegations are sufficient to overcome the presumption of validity of the Trustee’s Deed. (6 Angels, Inc. v. Stuart-Wright Mortgage, Inc. (2001) 85 Cal.App.4th 1279, 1287, quoting Bank of America etc. Assn. v. Reidy (1940) 15 Cal.2d 243, 248.) Defendants’ contention that the Bank of NY was a bona fide purchaser appears incorrect as the Trustee’s Deed says “the Grantee was the beneficiary,” and the Bank’s credit bid was substantially less than the amount of the unpaid debt. (RJN Exh. 7.) A beneficiary who purchases at its own sale by a credit bid does not qualify as a BFP. (Bernhardt, supra, §7.65, pp. 578-579.) While defendants may be correct that plaintiffs’ “standing” allegations lack merit and defendants had no statutory duty to modify plaintiffs’ loan or approve short-sale offers, these allegations do not constitute the “gravamen” of plaintiffs’ claims and thus do not constitute grounds to sustain the demurrer as to the entire First Amended Complaint.

The demurrer is sustained as to the First Cause of Action-Unfair Business Practices-with leave to amend to delineate and clarify the “fraudulent” acts and practices that support the UCL claim. (See FAC, ¶s 45-47.)

The demurrer is sustained as to the Second Cause of Action-Violation of Civil Code §2923.5-without leave to amend. There is no private right of action under Section 2923.5 once the trustee’s sale has occurred. The only remedy available under the section is a postponement of the sale before it happens. (*Mabry v. Superior Court* (2010) 185 Cal.App.4th 208, 235.)

The demurrer is overruled as to the Third Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing based on the allegation that defendants instructed plaintiffs to default and then refused to consider or even respond in good faith to offers by three qualified buyers to purchase the property in lieu of foreclosure. (FAC, ¶ 65.) “The covenant of good faith finds particular application in situations where one party is vested with a discretionary power affecting the rights of another. Such power must be exercised in good faith.” (*Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 372.)

The demurrer is sustained as to the Fourth Cause of Action for Fraud and Intentional Representation [sic], with leave to amend, for failure to plead the elements of fraud or deceit with sufficient particularity. While plaintiffs’ “General Allegations” are sufficient to overcome the equitable tender requirement, they are not strictly speaking sufficient to plead a cause of action for fraud against a corporate defendant because plaintiffs merely allege representations were made by “Countrywide and its agents” (¶21) without specifying the “how, when, where, to whom, and by what means the representations were tendered.” (*Tarmann v. State Farm Mut. Auto Ins. Co.* (1991) 2 Cal.App.4th 153, 157; *Perlas v. GMAC Mortgage, LLC* (2010) 187 Cal.App.4th 429, 434.) In opposition, plaintiffs suggest the fourth cause of action is sufficient to withstand a general demurrer because it pleads some valid cause of action, even if it does not sufficiently plead fraud, citing *Saunders v. Cariss* (1990) 224 CA3d 905, 908-909. The problem with this argument is that plaintiffs do not demonstrate *what other* cause of action they might be able to plead under these facts. If plaintiffs are suggesting they might be able to plead a cause of action for negligence or breach of fiduciary duty they are mistaken because a lender owes no duty of care to a borrower in approving a loan. (*Perlas, supra*, 187 Cal.App.4th at 436.)

The demurrer is sustained as to the Fifth Cause of Action for Cancellation of Instruments, with leave to amend more specifically grounds rendering the Trustee’s Deed on Sale and other documents *void or voidable*. (Civil Code §3412.)

The demurrer is overruled as to the Sixth Cause of Action for Promissory Estoppel. (*Garcia v. World Savings, FSB* (2010) 183 Cal.App.4th 1031, 1044-1046.)

The demurrer is sustained as to the Seventh Cause of Action for Declaratory Relief, with leave to amend. Plaintiffs fail to specifically plead the facts of the respective claims that give rise to the controversy, in particular with respect to the alleged dispute concerning the

validity and amount of the liens prior to foreclosure. This is the first time this particular “dispute” is mentioned in the FAC, but only in the most general terms. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80 [“An actual, present controversy must be pleaded specifically and the facts of the respective claims concerning the underlying subject must be given.”].)

The demurrer is sustained as to the Eighth Cause of Action for Quiet Title, with leave to amend, based on the imperfectly pleaded fraud/cancellation claims.

Defendants’ motion to strike ¶78 is rendered moot by the sustaining of defendants’ demurrer to the fifth cause of action. Otherwise, the motion to strike ¶7 of the Prayer for Relief (“For punitive and exemplary damages”) is granted with leave to amend, as punitive damages are not supported under the 3rd c/a (for non-tortious breach of the implied covenant) or the 6th c/a for promissory estoppel, the only two claims withstanding demurrer.

Where allowed, plaintiff is granted 20 days leave to amend from the date of service of notice of entry of the order hereon.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 01/31/12 TIME: 9:00 A.M. DEPT: L CASE NO: CV1106035

PRESIDING: HON. LYNN DURYEE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: CAPITAL ONE BANK (USA), N.A.	
---	--

and

DEFENDANT: ROBERT VALDES	
--------------------------	--

NATURE OF PROCEEDINGS: MOTION TO QUASH – OF SUMMONS [DEFT] ROBERT VALDES

RULING

The motion to quash service of summons is denied. The proof of service shows that valid service was accomplished by substitute service. Mr. Valdes has five days to answer.