

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/28/10 TIME: 8:30 A.M. DEPT: E CASE NO: CV084736

PRESIDING: HON. JAMES R. RITCHIE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: VICTORIA E. MACLEOD

vs.

DEFENDANT: KAISER PERMANENTE

NATURE OF PROCEEDINGS: MOTION TO COMPEL – COMPLIANCE WITH COURT ORDER FOR DISCOVERY AND FOR TERMINATING AND MONETARY SANCTIONS [DEFT] KAISER PERMANENTE

RULING

NO OPPOSITION HAVING BEEN FILED AND FINDING GOOD CAUSE FOR THIS ORDER, THE COURT WILL GRANT DEFENDANT’S REQUEST FOR SANCTIONS, BASED UPON PLAINTIFF’S CONTINUING FAILURE TO RESPOND TO DISCOVERY REQUESTS. IN ITS ORDER, SIGNED AND FILED APRIL 5, 2010, BASED UPON THE TENTATIVE RULING ON MARCH 8, 2010, THE COURT ORDERED PLAINTIFF TO RESPOND TO FORM INTERROGATORIES AND DEFENDANT’S REQUEST FOR PRODUCTION OF DOCUMENTS BY MARCH 31, 2010 AND APPEAR FOR DEPOSITION BEFORE APRIL 30, 2010. BOTH DATES HAVE PASSED WITHOUT COMPLIANCE. THE COURT WILL GRANT DEFENDANT’S REQUEST FOR DEFENDANT’S FEES AS SANCTIONS FOR PLAINTIFF’S PRIOR NONCOMPLIANCE AND THE REASONABLE ATTORNEYS’ FEES EXPENDED ON THE CURRENT MOTION, IN THE TOTAL AMOUNT OF \$3,150 (AS REQUESTED, LESS THE AMOUNT SUGGESTED FOR PREPARATION AND APPEARANCE AT THIS MOTION, WHICH MAY NOT BE NECESSARY).

PLAINTIFF MAY PAY THIS SUM, RESPOND TO THE DISCOVERY PREVIOUSLY ORDERED, INCLUDING HER DEPOSITION, BY AUGUST 15, 2010, AND THUS AVOID TERMINATING SANCTIONS. IF SHE DOES NOT SO COMPLY WITH THIS ORDER, THE COURT WILL ORDER THAT THIS MATTER BE DISMISSED FOR PLAINTIFF’S FAILURE TO COMPLY WITH REASONABLE DISCOVERY REQUESTS AND THE COURT’S PRIOR ORDERS IN THAT REGARD. (CCP §2023.030(a)(3))

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/28/10 TIME: 8:30 A.M. DEPT: E CASE NO: CV090382

PRESIDING: HON. JAMES R. RITCHIE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: JANE ROE

vs.

DEFENDANT: PERRY'S DELI &
CATERING, ET AL

NATURE OF PROCEEDINGS: MOTION TO QUASH – DEPOSITION SUBPOENAS FOR EMPLOYMENT AND EDUCATIONAL RECORDS [PLTF] JANE ROE

RULING

PLAINTIFF'S MOTION TO QUASH THE DEPOSITION (RECORDS) SUBPOENAS IS DENIED.

PLAINTIFF'S ALTERNATIVE MOTION TO MODIFY THE SUBJECT SUBPOENAS IS GRANTED.

AS TO THE SUBPOENAS SEEKING EMPLOYMENT RECORDS, PLAINTIFF CLAIMS SHE HAS DIFFICULTY HOLDING DOWN A JOB, AND SHE SEEKS A SIGNIFICANT AMOUNT OF DAMAGES FOR “[L]OSS OF EARNINGS AND FUTURE WAGE LOSS AND LOSS OF EARNINGS POTENTIAL.” DEFENDANT MUST BE ABLE TO CHALLENGE AND REBUT THOSE CLAIMS AND HAS NO OTHER MEANS AVAILABLE TO DO SO. CONTRARY TO PLAINTIFF'S ARGUMENT, ABSENTEEISM AND PERFORMANCE ARE AN ISSUE BECAUSE PLAINTIFF MAY LOSE JOBS BECAUSE SHE IS ABSENT TOO MUCH OR DOES NOT PERFORM WELL. HOWEVER, THE COURT FINDS THAT DEFENDANT HAS NOT JUSTIFIED OBTAINING MEDICAL (INCLUDING PRE-EMPLOYMENT EXAM) AND WORKERS' COMPENSATION RECORDS. THEREFORE THE SUBPOENAS SHALL BE MODIFIED TO OMIT THOSE RECORDS.

AS TO THE SUBPOENAS SEEKING EDUCATION RECORDS, DEFENDANT HAS ONLY OFFERED ARGUMENT JUSTIFYING PRODUCTION OF RECORDS PERTAINING TO PLAINTIFF'S GRADES (I.E., TRANSCRIPTS). THEREFORE THE SUBPOENAS SHALL BE MODIFIED TO SEEK ONLY THOSE RECORDS.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/28/10 TIME: 8:30 A.M. DEPT: E CASE NO: CV095900

PRESIDING: HON. JAMES R. RITCHIE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: ROBERT CREVELON

vs.

DEFENDANT: CARY FINANCIAL, INC.,
ET AL

NATURE OF PROCEEDINGS: HEARING ON DEMURRER – TO FIRST AMENDED COMPLAINT [DEFT] LITTON LOAN SERVICING LP [DEFT] MTGLQ INVESTORS, LP

RULING

THE DEMURRER OF DEFENDANTS LITTON LOAN SERVICING LP AND MTGLQ INVESTORS, LP TO THE FIRST AMENDED COMPLAINT IS ORDERED OFF CALENDAR AS MOOT. A SECOND AMENDED COMPLAINT WAS FILED JULY 22, 2010.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/28/10 TIME: 8:30 A.M. DEPT: E CASE NO: CV1000873

PRESIDING: HON. JAMES R. RITCHIE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: MEDIMER

vs.

DEFENDANT: PETER PAPPAS

NATURE OF PROCEEDINGS: HEARING ON DEMURRER – TO COMPLAINT [DEFT]
PETER PAPPAS

RULING

**DEFENDANT’S DEMURRER TO THE COMPLAINT IS SUSTAINED IN PART AND
OVERRULED IN PART AS FOLLOWS:**

**FIRST CAUSE OF ACTION: OVERRULED. AS TO THE STATUTE OF
LIMITATIONS (COMM. CODE, § 2725), PLAINTIFF’S COMPLAINT RAISES A
FACTUAL QUESTION AS TO WHETHER CODE OF CIVIL PROCEDURE SECTION
360 (ACKNOWLEDGMENT OF DEBT) APPLIES. (¶16 AND EX. E) PLAINTIFF’S
ALLEGATIONS ARE ALSO SUFFICIENT TO RAISE A QUESTION AS TO
WHETHER DEFENDANT IS EQUITABLY ESTOPPED FROM ASSERTING THE
STATUTE OF LIMITATIONS. (¶21) AS TO THE STATUTE OF FRAUDS,
PLAINTIFF’S ALLEGATIONS SHOW THAT THE GOODS WERE “RECEIVED AND
ACCEPTED,” AND THEREFORE THE CONTRACTS ARE ENFORCEABLE EVEN
THOUGH NOT IN WRITING. (COMM. CODE, § 2201, SUBD. (3).)**

**SECOND CAUSE OF ACTION: OVERRULED. DEFENDANT’S STATUTE OF
LIMITATIONS ARGUMENT FAILS FOR THE SAME REASONS GIVEN ABOVE.**

**THIRD CAUSE OF ACTION: OVERRULED. DEFENDANT’S ARGUMENTS
FAIL SINCE HE HAS NOT SHOWN THAT THE FIRST CAUSE OF ACTION FAILS.**

**FOURTH CAUSE OF ACTION: OVERRULED. DEFENDANT’S STATUTE OF
LIMITATIONS AND STATUTE OF FRAUDS ARGUMENTS FAIL FOR THE SAME
REASONS GIVEN ABOVE.**

FIFTH CAUSE OF ACTION: SUSTAINED WITHOUT LEAVE TO AMEND. INITIALLY, “[T]HE PURPOSE OF THE UCL “IS TO PROTECT BOTH CONSUMERS AND COMPETITORS BY PROMOTING FAIR COMPETITION IN COMMERCIAL MARKETS FOR GOODS AND SERVICES.” (MCKELL V. WASHINGTON MUTUAL, INC. (2006) 142 CAL.APP.4TH 1457, 1470, CITATIONS OMITTED.) PLAINTIFF IS NEITHER A COMPETITOR NOR A CONSUMER OF DEFENDANT. EVEN IF PLAINTIFF CAN SOMEHOW BE CONSIDERED A “CONSUMER,” DEFENDANT’S FAILURE TO PAY FOR MATERIALS SUPPLIED BY PLAINTIFF DOES NOT MEET ANY OF THE TESTS APPLIED TO DETERMINE WHETHER A BUSINESS PRACTICE IS “UNFAIR.” (SEE DRUM V. SAN FERNANDO VALLEY BAR ASSN. (2010) 182 CAL.APP.4TH 247, 256-257.)

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/28/10 TIME: 8:30 A.M. DEPT: E CASE NO: CV1001101

PRESIDING: HON. JAMES R. RITCHIE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: JOSE MEJIA

vs.

DEFENDANT: SARAH WICKAM, ET AL

NATURE OF PROCEEDINGS: MOTION – TO BE RELIEVED AS COUNSEL AS TO PLTF
JOSE MEJIA BY [ATTY] NEAL KUVARA

RULING

UPON A SHOWING OF PROPER SERVICE OF THE MOTION TO BE RELIEVED AS COUNSEL, THE MOTION OF PLAINTIFF'S COUNSEL, NEAL KUVARA, WILL BE GRANTED, WITH NO OPPOSITION THERETO HAVING BEEN FILED. THE COURT WILL SIGN AN APPROPRIATE JUDICIAL COUNCIL FORM (MC-053) WITH A SHOWING OF THE NEXT SCHEDULED CMC AND OSC HEARING REGARDING SERVICE UPON AND APPEARANCE BY DEFENDANTS, NOW SET FOR AUGUST 10, 2010 IN THIS DEPARTMENT.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/28/10 TIME: 8:30 A.M. DEPT: E CASE NO: CV1001264

PRESIDING: HON. JAMES R. RITCHIE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: WILL BLOCK, ET AL

vs.

DEFENDANT: SAMUEL KORNHAUSER

NATURE OF PROCEEDINGS: HEARING ON DEMURRER – TO FIRST AMENDED COMPLAINT [DEFT] SAMUEL KORNHAUSER

RULING

DEFENDANT’S REQUEST FOR JUDICIAL NOTICE IS DENIED AS TO EXHIBITS 13 AND 14. THE COPIES OF THESE DOCUMENTS ARE NOT CERTIFIED, AND THEY ARE NOT MENTIONED IN DEFENDANT’S SUPPORTING DECLARATION FILED JULY 2, 2010. EXHIBIT 14 IS MENTIONED IN DEFENDANT’S DECLARATION FILED JULY 21, 2010. HOWEVER, A DEMURRER CANNOT BE BASED ON A REQUEST FOR JUDICIAL NOTICE MADE IN *REPLY TO THE OPPOSITION*. (SEE CODE CIV. PROCEDURE, §430.70, AND EV. CODE, §453 (REQUIRING INFORMATION ADEQUATE TO TAKE NOTICE, AS WELL AS ADVERSE PARTY’S OPPORTUNITY TO RESPOND).)

DEFENDANT’S REQUEST FOR JUDICIAL NOTICE IS DENIED AS TO EXHIBITS 9 AND 11. DEFENDANT SEEKS TO HAVE THESE DOCUMENTS NOTICED AS “COURT RECORDS.” (SEE REPLY MEMORANDUM, P.27-28, AND REQUEST FOR JUDICIAL NOTICE, P.2:1-4.) THEY DO NOT APPEAR TO BE PART OF COURT RECORDS, AND WOULD NOT BE DISPOSITIVE OF ANY ISSUE RAISED BY THE FIRST AMENDED COMPLAINT.

DEFENDANT’S REQUEST FOR JUDICIAL NOTICE IS DENIED AS TO EXHIBITS 1, 2, 3 AND 12. (SEE, GENERALLY, WEIL & BROWN, CAL. PRACTICE GUIDE, CIVIL PROCEDURE BEFORE TRIAL (TRG 2010), §7:15.) [JUDICIAL NOTICE GENERALLY LIMITED TO JUDGMENTS AND ORDERS IN A COURT FILE]

DEFENDANT’S REQUEST FOR JUDICIAL NOTICE IS DENIED AS TO EXHIBITS 7 AND 8. EXHIBIT 7 IS CONSISTENT WITH PLAINTIFFS’ ALLEGATIONS.

DEFENDANTS' MEMORANDA ALSO DO NOT EXPLAIN THE RELEVANCY OF EXHIBIT 8.

DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS DENIED AS TO EXHIBITS 4, 5 AND 10. ASSUMING THAT THE COURT COULD TAKE JUDICIAL NOTICE WITHOUT CERTIFIED COPIES OF THESE ORDERS, THE ORDERS WOULD NOT DEFEAT ANY OF PLAINTIFFS' ALLEGATIONS OR CLAIMS.

DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS DENIED AS TO EXHIBIT 6. THE CONTENT VARIES FROM THE CERTIFIED COPY OFFERED BY PLAINTIFFS. (SEE PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE, EXH.A.)

PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IS GRANTED AS TO THEIR EXHIBIT A. PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IS DENIED AS TO THEIR EXHIBITS B, C, D AND E. CONSIDERATION OF THE LATTER DOCUMENTS WOULD MAKE NO DIFFERENCE IN THE OUTCOME OF THE MOTION.

DEFENDANT'S DEMURRERS TO THE COMPLAINT OF LIFE ENHANCEMENT PRODUCTS, INC. (HEREINAFTER "LEP") ARE OVERRULED. DEFENDANT OFFERS "FACTS" NOT PART OF THE COMPLAINT OR EVEN HIS IMPROPER REQUESTS FOR JUDICIAL NOTICE. (SEE, E.G., SUPPORTING MEMORANDUM, P.7, FN.3.) A DEMURRER DOES NOT LIE AS TO PART OF A CAUSE OF ACTION. (SEE 5 WITKIN, CAL. PROCEDURE (5TH ED.2008), PLEADING, §957, AND, E.G., *PH II, INC. V. SUP. CT.* (1995) 33 CAL.APP.4TH 1680, 1682.) AS TO PLAINTIFF'S ALLEGATION THAT DEFENDANT "IGNORED THE CUSTOMARY AND USUAL MEANS OF ENFORCING A SISTER-STATE JUDGMENT" (SEE FIRST AMENDED COMPLAINT, ¶¶29-34, 36-37, 43, 48, 50, 52, 55), DEFENDANT HAS NOT SHOWN THAT LEP'S CLAIMS OF DAMAGE ARE SPECULATIVE AS A MATTER OF LAW. (COMPARE *THOMPSON V. HALVONIK* (1995) 36 CAL.APP.4TH 657, 661-663 (AFFIRMING A GRANT OF *SUMMARY JUDGMENT* BASED ON APPELLANT'S *EVIDENCE*).) NOR DID DEFENDANT SHOW THAT THE CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS IN CODE OF CIVIL PROCEDURE, SECTION 340.6. PLAINTIFFS ALLEGEDLY RETAINED DEFENDANT TO REPRESENT THEM "IN ALL THE POST-JUDGMENT AND APPEAL PROCEEDINGS...." (SEE FIRST AMENDED COMPLAINT, ¶26.) SUCH REPRESENTATION WOULD HAVE TOLLED THE STATUTE OF LIMITATIONS (SEE CODE CIV. PROCEDURE, §340.6, SUBD.(A)), REGARDLESS OF WHETHER LEP'S PRIOR ATTORNEYS *COULD HAVE* REQUESTED A SISTER-STATE JUDGMENT BEFORE DEFENDANT'S FORMAL SUBSTITUTION. AS DEFENDANT HAS NOT NEGATED CLAIMS REGARDING DEFENDANT'S ALLEGED FAILURE TO ENFORCE THE JUDGMENT, THE COURT NEED NOT ANALYZE WHETHER THE STATUTE OF LIMITATIONS WOULD BAR LEP'S CLAIMS INVOLVING EARLIER PROCEEDINGS.

DEFENDANT'S DEMURRERS TO THE COMPLAINT OF WILL BLOCK ARE OVERRULED. REGARDING DEFENDANT'S FAILURE TO TAKE ENFORCEMENT ACTION IN HAWAII, HIS CLAIM OF A BAR BY THE STATUTE OF LIMITATIONS

WOULD NOT APPLY TO BLOCK. (SEE DEFENDANT’S SUPPORTING MEMORANDUM, P.5:7-8, AND, E.G., FIRST AMENDED COMPLAINT, ¶¶15, 18-20.) NOTHING IN THE DEMURRER COMPELS A FINDING THAT BLOCK LACKS STANDING TO MAKE THESE CLAIMS. AS THE AMENDED COMPLAINT SUGGESTS THAT DEFENDANT HAD AN AGREEMENT WITH *BOTH* PLAINTIFFS AS TO ENFORCEMENT OF THE MONEY JUDGMENT (SEE, E.G., FAC, ¶¶26, 30), ANY MALPRACTICE WOULD NOT NECESSARILY BE A WRONG DONE ONLY TO LEP. (COMPARE *EISENBERG V. HUGHES* (9TH CIR. 2001) 2001 WL 50695 (SUMMARY JUDGMENT CASE).) IN ANY EVENT, THE “STANDING” ARGUMENT WOULD NOT APPLY TO OTHER ALLEGATIONS BY BLOCK. (SEE, E.G., FIRST AMENDED COMPLAINT, ¶¶15, 17-18, 20, 27.) THE STATUTE OF LIMITATIONS WOULD NOT APPEAR TO BAR THOSE CLAIMS. (SEE CODE CIV. PROCEDURE, §340.6, SUBD.(A).) FURTHER, AS NOTED ABOVE, NOTHING IN THE REQUESTS FOR JUDICIAL NOTICE WOULD CONCLUSIVELY NEGATE PLAINTIFF’S ALLEGATIONS THAT DEFENDANT “FAILED TO MEET THE APPLICABLE STANDARD OF PRACTICE...” (SEE FIRST AMENDED COMPLAINT, ¶¶42-43.)

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/28/10 TIME: 9:30 A.M. DEPT: E CASE NO: CV1001551

PRESIDING: HON. JAMES R. RITCHIE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: ANDREAS NOTTEBOHM,
ET AL

vs.

DEFENDANT: AMERICAN HOME
MORTGAGE SERVICING, INC.

NATURE OF PROCEEDINGS: 1) HEARING ON DEMURRER – TO PLAINTIFFS’
COMPLAINT [DEFT] AMERICAN HOME MORTGAGE SERVICING, INC.
2) MOTION – TO STRIKE PORTIONS OF PLAINTIFFS’ COMPLAINT [DEFT]
AMERICAN HOME MORTGAGE SERVICING, INC.

RULING

**WITH NO OPPOSITION HAVING BEEN RECEIVED AND GOOD CAUSE
APPEARING, THE DEMURRER OF DEFENDANT AMERICAN HOME MORTGAGE
SERVICING, INC. TO PLAINTIFFS’ COMPLAINT IS SUSTAINED WITHOUT
LEAVE TO AMEND FOR FAILURE TO STATE FACTS SUFFICIENT TO STATE A
CAUSE OF ACTION AGAINST THIS RESPONDING DEFENDANT. (CCP §430.10(e))**

**GIVEN THE COURT’S RULING ON DEMURRER, THE MOTION TO STRIKE IS
DENIED AS MOOT.**

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/28/10 TIME: 8:30 A.M. DEPT: E CASE NO: CV1002479

PRESIDING: HON. JAMES R. RITCHIE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: STEVEN FINKBINE, ET AL

vs.

DEFENDANT: ULI ZANGPO, ET AL

NATURE OF PROCEEDINGS: OSC – AND PRELIMINARY INJUNCTION [PLTF]
STEVEN FINKBINE [PLTF] SANDRA SIMICH

RULING

CONTINUED, PER THE PARTIES' STIPULATION, TO SEPTEMBER 15, 2010.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 07/28/10 TIME: 8:30 A.M. DEPT: E CASE NO: CV1003391

PRESIDING: HON. JAMES R. RITCHIE

REPORTER:

CLERK: S. DIENER

PLAINTIFF: LINDA CATRON

vs.

DEFENDANT: BANK OF AMERICA, N.A.,
ET AL

NATURE OF PROCEEDINGS: OSC – AND TRO [PLTF] LINDA CATRON

RULING

**APPEARANCES REQUIRED. PLAINTIFF TO PROVIDE FILE-STAMPED COPIES
OF ALL SUPPORTING PLEADINGS FILED WITH THE COURT AND SERVICED
UPON DEFENDANTS.**