

PROPOSED TENTATIVE

On January 16, 2024, plaintiffs Salvador J. Jimenez Santos and Victoria Rojas Martinez (plaintiffs) filed a complaint against defendants Nationstar Mortgage, LLC (dba Mr. Cooper) (Nationstar), Lakeview Loan Servicing, LLC (Lakeview), and Barrett, Daffin, Frappier, Treder, & Weiss, LLP (Barrett), for one cause of action based on four statutory violations of the Homeowners Bill of Rights, as follows: 1) Civil Code¹ section 2923.6; 2) section 2923.7; 3) 2023.11; and 4) 2923.12. Nationstar was the loan servicer on the relevant mortgage at issue, Lakeview was the lender, and Barrett was the foreclosure agent. Briefly, plaintiffs were the owners of property located at 2419 Ebony St., Santa Maria. Plaintiffs fell behind on the mortgage payments, and on November 10, 2022, “Defendant Nationstar advised Plaintiffs that they [could enter into a] forbearance agreement and that [it] would send the Plaintiffs the plan for them to sign.” According to the operative pleading, “Plaintiffs never received the documents to sign and return,” and Barrett recorded a “Notice of Sale” on December 20, 2022. Despite this, Nationstar representatives “assured Plaintiffs that they would not be foreclosed upon while they waited for the forbearance plan” “Plaintiffs never received the plan and [the property] was foreclosed upon by the Defendants” Plaintiffs claim that defendants never provided the reasons for denying the loan modification in writing, never provided for a single point of contact or communications, never paused the foreclosure process while the loan modification process was ongoing, never transferred the loan modification application to the loan server, and plaintiffs never received a denial letter for their loan modification application, all in violation of the statutory provisions detailed above. Defendant Nationstar filed an answer on April 29, 2024, and in an order signed by this court on November 26, 2024, the court permitted a first amended answer (adding defendant Lakeview). On March 6, 2024, Barrett filed a declaration of “Non-Monetary Status” pursuant to section 2924l, indicating it was named as a party solely in its capacity as substitute trustee under the relevant deed of trust, and that plaintiffs do not assert any legally viable claims for monetary relief against as there are no allegations of malice, as it was not involved in the loan modification process. Plaintiffs have not contested the substance of the Barrett declaration, and Barrett has not filed an answer.

On September 17, 2025,² Nationstar and Lakeview have filed a motion for summary judgment and/or summary adjudication as to the single cause of action advanced in the operative

¹ All further statutory references are to the Civil code unless otherwise indicated.

² The court on September 17, 2025, signed an order allowing the parties to shorten the 81-day time period for filing a summary judgment/adjudication, which is permissible, as the parties had stipulated to do so. The order required the pleading had to be submitted no later than September 19, 2025, and it appears that was done, as the declaration attached to the proof of service indicates the summary judgment/adjudication motion was served and filed on the same day (i.e., September 17, 2025). The order, however, is strangely silent about shortening any other dates, including the requirement that the opposition be filed at least 20 days before the scheduled hearing of November 4, 2025, and the reply be filed at least 11 days before the scheduled hearing of November 4, 2025. So is the joint unopposed “Motion to Shorten Statutory Notice Period for Filing . . . ,” attached to the court’s order, which

pleading. Defendants contend that summary adjudication is appropriate for the claimed violations of section 2923.6, 2923.7, 2923.11, and 2924.12, because, based on undisputed issues of material fact, the following occurred: 1) On June 1, 2020, plaintiffs were placed in a COVID-19 forbearance plan (which allowed them relief from mortgage payments) (Undisputed Issue No. 5); 2) the initial forbearance period was from June 2020 to November 2020 (6 months) (Undisputed Issue No. 7), and plaintiffs understood they could continue requesting additional forbearance periods (Undisputed Issue No. 8); 4) ultimately, servicing of the loans transferred to defendants on January 4, 2022 (Undisputed Issue No. 10); 5) on January 25, 2022, defendants sent plaintiffs a letter indicating that the COVID forbearance period had expired and asked plaintiffs to contact them to discuss loss mitigation options; (Undisputed Issue No. 12), and assigned to plaintiffs a single point of contact (on January 24, 2022, one Justin Harmel, on September 6, 2022, one Katherine Hansen, and on February 20, 2023, one Timotheus Crosby) (Undisputed Issue No. 13); 6) on July 5, 2022, defendants recorded a “Notice of Default and Election to Sell Under Deed of Trust” (Undisputed Issue No. 14), and thereafter, plaintiffs reached out to defendants to discuss loss mitigation options (Undisputed Issue No. 15), and plaintiffs advised defendants that they were ready to make payments again on the loan (Undisputed Issue No. 16); 7) nevertheless, defendants informed plaintiffs that they were approved for a loan modification under FHA’s “COVID-19 Recovery Standalone Partial Claim and that their first monthly payment would be due October 1, 2022” (Undisputed Issue No. 17), and sent the loan modification payment package via Federal Express on September 2, 2022 (Undisputed Issue No. 19), which advised plaintiffs that the agreement must be signed and returned by October 1, 2022, or the loan modification would be denied (Undisputed Issue No. 20); 8) plaintiffs did not return the agreement, claiming they never received the packages (Undisputed Issue No. 21); 9) defendants sent a letter on October 8, 2022, mailed to plaintiffs’ residence, stating that defendants were beginning the foreclosure process (Undisputed Issue No. 22), with another letter sent on November 5, 2022, notifying plaintiffs in writing that the loan modification has been withdrawn and that the loan would not be modified because “Plaintiffs failed to return a fully-executed loan modification agreement” (Undisputed Issue No. 23); 10) A “Notice of Trustee’s Sale was recorded on December 20, 2022, scheduling the sale for February 15, 2023, and indicating the amount due under the loan to be \$413,225.03) (Undisputed Issue No. 24); 11) defendants “mailed the [plaintiffs] numerous notices about the sale and each postponement of the sale,” and the property was sold to a bona fide third party buyer on May 31, 2023 (Undisputed Issue Nos. 25 and 26); 12) plaintiffs contacted defendants on June 1, 2023, after the sale, to inquire about the status of their loan modification, and were told that the loan modification had been denied because of their inaction (Undisputed Issues Nos. 27 and 28); 13) because the property sold for more than the loan amount, plaintiffs received \$125,726.51 following the Trustee’s Sale (Undisputed Issue No. 29); and 14) after plaintiffs were evicted, they initiated this lawsuit (Undisputed Issue No. 30).

makes no reference to any new filing deadline for either opposition or reply, meaning the statutory filing dates and rules remain operative.

Plaintiffs filed opposition on October 22, 2022. It appears to be untimely, as it was not filed at least 20 days before the November 4, 2025 hearing. (Code Civ. Proc., § 437c, subd. (b)(2).) There is nothing in either the court's order shortening time or the stipulated motion by both parties that agreed to shorten time for any opposition or reply.

On the merits, plaintiff disputes the following issues only: 1) while they do not dispute that defendants sent the loan modification package, they claim it was never received (Issue Nos. 19 and 20: 2) while they do not dispute that defendants sent a letter on October 18, 2022, mailed to plaintiffs, they dispute ever receiving the letter (Issues Nos. 22 and 23); and 3) while they do not dispute that defendants mailed numerous notices about the sale and each postponement of the sale, they dispute that they received the notices (Issue No. 25). In each instance plaintiff relies on the deposition testimony of plaintiff Salvador Jimenez Santos; the deposition transcript is not attached to the plaintiff's submission; but is attached to the declaration of Jennifer Wade, defendants' attorney. In the deposition, Mr. Jimenez Santos acknowledged the proper address on the documents, but did not receive the loan modification package (pp. 67 to 68); did not receive the letter indicating denial of the loan modification process and initiation of the foreclosure sale (p. 94); and did not receive the numerous notices thereafter about the foreclosure sale and its postponement (P. 94.)

Defendant filed a reply on October 29, 2025. It is also untimely, as it was not filed at least 11 days before the hearing. (Code Civ. Proc., § 473c, subd. (b)(4).) Nothing in the court's order or the joint motion agreeing to the shortened time for filing indicating a shortened time to file a reply. All briefing has nevertheless been reviewed.

The rules are settled. A "motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) "To secure summary judgment, a moving defendant may . . . disprove at least one essential element of the plaintiff's cause of action [citations] or show that an element of the cause of action cannot be established." (*Sanchez v. Swinerton & Walberg Co.* (1996) 47 Cal.App.4th 1461, 1465; *Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 482 .) A defendant shows that an element of a cause of action cannot be established by submitting evidence that the plaintiff does not possess, and cannot reasonably obtain, evidence supporting the element. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854; *Kaney v. Custance* (2022) 74 Cal.App.5th 201, 212.) Once the defendant has met that burden, the burden shifts to the plaintiff to show a triable issue of material fact exists as to the cause of action or defense. (Code Civ. Proc., § 437c, subd. (p)(2).)

The court grants defendants' request for judicial notice of the following documents: the Deed of Trust related to the property at 2419 Ebony Street, Santa Maria, recorded in 2017; the

Notice of Default and Election to Seel under the Teed of Trust recorded on July 5, 2022; the Notice of Trustee's Sale recorded on December 20, 2022; and Trustee's Deed recorded on June 30, 2023, following the foreclosure sale.

Defendants have met their initial burden to show undisputed facts that they did not violate any of the relevant provisions of the Homeowners Bill of Rights as identified in the operative pleading. Based on the undisputed facts as presented, defendants did all that plaintiffs' claim they did not do in the operative pleading – defendants sent a forbearance agreement to plaintiffs; defendants provided a single point of contact for communications; defendants stated in writing why plaintiffs' loan modification application was denied; the loan modification application was transferred to defendants when the loan servicing was transferred; and the foreclosure process was advanced only after the loan modification application was denied. The burden therefore shifts to plaintiff to create a disputed issue of material fact on each violation claimed.

As noted above, plaintiff's opposition was untimely, as it was not filed at least 20 days before the scheduled hearing. Defendant's reply was also untimely, as it was not filed at least 11 days before the scheduled hearing. The order signed by the court on September 17, 2025, along with the parties' motion in which they stipulated to a truncated filing deadline, are oddly silent about these statutory deadlines. The court is inclined, consequently, to strike both the opposition and reply as untimely. If the parties are going to agree to shorten time with regard to the initial 81 days for filing, it is not too much ask that they also address any shortened time for filing opposition and reply, which manifestly was not done. (See fn. 1, *ante*.) Leaving the filing dates unaddressed and open-ended means the statutory deadlines remain operative.

In any event (even if the court were to consider the opposition and reply on the merits), the opposition is barebones (to say the least). The central tenant of the opposition is that while uncontested evidence shows defendant sent numerous communications that satisfy their obligations under the Homeowner Bill of Rights, there are disputed issues of fact that plaintiffs received some (but not all) of those communications. Unaddressed by plaintiffs, however, is the fundamental proposition upon which their argument rests – can violations of the Homeowners Bill of Rights be advanced when the undisputed evidence shows defendants properly sent all communications to the plaintiffs in compliance with the statutory provisions at issue, but plaintiffs claim they never received some of them? Plaintiffs provides no authority that these facts can act as a basis for any violation of the Homeowners Bill of Rights.

Setting this issue aside, plaintiffs have failed in opposition to address the import of Evidence Code section 641, which provides in full as follows: "A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail." Evidence Code section 604 prescribes the effect of such a rebuttable presumption: "The effect of a presumption affecting the burden of producing evidence is to require the trier of fact to assume the essence of the presumed fact unless and until evidence is introduced which would support

finding of its nonexistence, in which case the trier of fact shall determine the existence or non-existence of the presumed fact from the evidence and without regard to the presumption. . . .” (*Bonzer v. City of Huntington Park* (1993) 20 Cal.App.4th 1474, 1479 [applying the latter provision in the context of Evid. Code, ¶ 641].) As noted in *Him v. City and County of San Francisco* (2005) 133 Cal.App.4th 437, the “law presumes that items mailed are received (Evid. Code, § 641) because the presumed fact ‘is so likely to be true that the law requires it to be assume din the absence of contract evidence.’ [Citation.] If, normally, an item properly mails is received, then evidence of nonreceipt is logically probable of nonmailing, and absent contrary statutory authority, sufficient to raise a triable issue of fact and defeat summary judgment.”

The simple and perfunctory denials made by plaintiffs under the unique circumstances of this case, however, are inadequate to create disputed issues of material fact about receipt of the critical documents at issue. It is undisputed that all written communications offered by defendant (and which satisfied the requirements of the Homeowners Bill of Rights) were properly addressed and mailed to plaintiffs’ residence, as reflected in exhibits attached to Alan Blunt’s declaration. Plaintiffs, in fact, state in their Separate Statement that they have no knowledge about whether the items were properly addressed and mailed. At the same time, plaintiffs admit that on January 25, 2022, defendants properly addressed and mailed to them (and they received) 1) a letter stating that their COVID Forbearance had expired and asked plaintiffs to contact defendants (Issue No. 12); and 2) three letters indicating thee points of contact (Issue No. 13, and ¶ 17 Blunt’s declaration). Further, plaintiffs fail to explain the impact and import of Exhibit 6 attached to Alan Blunt’s declaration, which is a Federal Express receipt (reflecting a standard overnight package delivery that included the loan modification package), which expressly indicates delivery to plaintiff’s residence. Plaintiffs fail to explain or address in any way why the receipt is somehow wrong. In the end, the evidence before the court shows at a minimum that defendants properly addressed and mailed all written communication to plaintiffs, that plaintiffs received some of these communications, but inexplicably (as reflected in perfunctory denials without explanation) did not receive others.

The rebuttable presumption that a letter correctly addressed and properly mailed has been received “disappears” and “has no further effect” **once there is evidence to support a finding that the letter was not mailed.** (Evid. Code, 604; *Coffey v. Shiimoto* (2015) 60 Cal.4th 1198, 1209-1210.) Plaintiffs cursory and perfunctory denials under these circumstances fail to create disputed issues of material fact that undermines the presumption of Evidence Code section 641— and fail to show the written communications were not mailed. Plaintiff has presented no meaningful evidence to show why some communications would be received, while others would not, even though the uncontested evidence shows all communications were mailed and sent to the same address. (See, e.g., *Crocker Nat. Bank. v. Emerald* (1990) 221 Cal.App.3d 852, 858 [party opposing the motion must submit competent evidence in opposition showing sufficient facts to substantiate the allegations]; see also *Jane D. v. Ordinary Mutual* (1995) 32 Cal.App.4th 643, 654 [at best plaintiff in opposition has presented equivocal evidence in an attempt to create

disputed issues of material fact; in opposing a motion, plaintiff must make an independent showing she has sufficient proof to raise a triable issues of fact[.]) Plaintiffs have presented no evidence to indicate that any written communications were returned to defendants, no evidence that there were problems with mail service at any time, and no evidence that other external circumstances would preclude delivery and thus receipt of the critical communications. Plaintiff's admissions that they received some but not all written communications, raised without any explanation as why this would be possible, cloaked exclusively in conclusory denials without additional evidence, fails to create disputed issues of material fact that counters defendants' evidentiary proffer (and otherwise fails to disabuse the impact of Evidence Code section 641). Put another way, it is not enough for plaintiff to claim in a perfunctory and barebones opposition that they did not receive some communications, while admitting they received others, without addressing (let alone acknowledging) the import of Evidence Code section 641, and presenting some evidentiary bases going forward. On the record presented by defendants, plaintiffs have not met their burden to create a disputed issues of material fact following defendants' prima facie showing.

The court therefore grants defendants' summary judgment/adjudication motion. The court will sign the proposed order offered by defendants on October 7, 2025. This conclusion obviates the need for the court to resolve any pending discovery motions.

One further topic remains unsettled, and the court directs the parties' attendance at the hearing to discuss. It appears there is nothing left to litigate following grant of defendants' summary judgment/adjudication motion (other than perhaps costs). If this is true, the court will vacate the November 17, 2025, trial confirmation conference and the December 8, 2025, court trial date and contemplate entering judgment in favor of defendants, necessitating a proposed judgment for signature to be offered by defendants.

The parties are directed to appear at the hearing either by Zoom or in person, and they should come prepared to discuss these topics.