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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

EVANGELINA RODRIGUES COE, Plaintiff and Appellant, v. NATIONSTAR MORTGAGE LLC et al., Defendants and Respondents.	E076981 (Super.Ct.No. CIVDS1620775) OPINION

APPEAL from the Superior Court of San Bernardino. Bryan Foster, Judge. Affirmed.

Evangelina Rodrigues Coe, in pro. per., for Plaintiff and Appellant.

Troutman Pepper Hamilton Sanders, Justin D. Balser, and Katalina Baumann for Defendant and Respondent Nationstar Mortgage LLC.

McCarthy & Holthus and Melissa Robbins Coutts for Defendant and Respondent Reverse Mortgage Funding LLC.

Evangelina Rodrigues Coe took out a reverse mortgage loan on her home. However, she failed to make repairs, to pay property taxes, and to purchase property insurance, as the loan terms required. Based on these defaults, Nationstar Mortgage LLC (Nationstar), as the assignee of the trust deed, accelerated the loan. Coe failed to pay. Nationstar initiated foreclosure proceedings, then further assigned the trust deed to Reverse Mortgage Funding LLC (Reverse), which completed the foreclosure.

Coe filed this action against Nationstar and Reverse (defendants), among others, asserting causes of action against them for wrongful foreclosure, fraud, and cancelation of instruments. The trial court granted judgment on the pleadings in favor of Nationstar on the fraud cause of action. It then granted summary judgment in favor of both defendants on the remaining causes of action.

Coe appeals. We will conclude that many of her contentions have been forfeited; with respect to those that have been preserved, she has not shown error. Hence, we will affirm.

I

STATEMENT OF FACTS

A. *Preface*.

The only evidence that Coe submitted in opposition to summary judgment was a declaration by her then-attorney. After some boilerplate, it set forth only five substantive paragraphs. The trial court sustained objections to four of these. Coe does not contend

that this was error. Her response to defendants' separate statements never cited the sole surviving paragraph.

In other words, Coe submitted virtually *no evidence*.

In her responses to defendants' separate statements, she listed some facts as "[d]isputed," usually (though not always) adding contrary factual assertions. However, she almost never cited any evidence supporting her assertions, as she was required to do. (Code Civ. Proc., § 437c, subd. (b)(3).) And understandably so, as, again, she had submitted no evidence.[1]

For example, in response to defendants' assertion that she failed to pay property taxes, she provided a detailed list of the dates and amounts of payments that she had supposedly made. However, there was no *evidence* of this.

We therefore disregard all assertions in Coe's separate statements that are not cited to supporting evidence in the record. (See *Choi v. Sagemark Consulting* (2017) 18 Cal.App.5th 308, 319 [disputing a fact without citing supporting evidence "essentially leav[es] those facts uncontroverted"].)

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1 She did occasionally cite defendants' own evidence.

B. *The Loan*.

In May 2006, Coe took out a reverse mortgage loan, secured by her house, for up to $544,185. The lender was Seattle Mortgage Company.[2]

According to the complaint, "[t]he [loan] documents were in English although [Coe's] first language is Spanish" and she is "most comfortable" with Spanish. A person acting for the lender explained them to her in Spanish. However, she was not provided with a Spanish translation of the loan documents.[3]

The trust deed required Coe to pay taxes and insurance and to provide evidence of payment to the lender.

A repair rider to the loan agreement required Coe to carry out certain specified repairs[4] by November 16, 2006 (later extended to January 21, 2007). It set aside $12,600

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[2] Coe suggests that there is a triable issue of fact regarding the identity of the lender.

The loan documents generally listed Seattle Mortgage Company as "Lender" and Home Center Mortgage, Inc. as "Originator" or escrow agent. However, several documents listed Home Center Mortgage, Inc. as "Lender."

Seattle Mortgage Company was the payee of the note and the beneficiary of the deed of trust. Thus, it does not matter who actually supplied the funds; on default, Seattle Mortgage Company (or its assignee) was entitled to foreclose.

[3] We may assume these allegations of the complaint are true because defendants did not attempt to disprove them. (See Code Civ. Proc., § 437c, subd. (o)(1).)

[4] These were smoke alarms, water heater repairs, outlet covers, exterior paint, pest control, subterranean termites, termite damage, fungus damage, and dry rot.

out of the loan proceeds to pay for the repairs. It also required Coe to provide documentation of the repairs, on request.

The note and the trust deed both provided that the lender could require immediate payment in full if Coe failed to perform any obligation under the trust deed.

C. *The Chain of Title*.

In July 2006, Seattle Mortgage Company assigned the deed of trust to Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Seattle Savings Bank.

In November 2012, MERS, as nominee for Bank of America, N.A. — i.e., *not* as nominee for Seattle Savings Bank — assigned the deed of trust to Champion Mortgage Company (Champion). Champion is a d/b/a name of Nationstar.

In February 2016, Champion substituted Title Trust Deed Service Company (Title) as trustee.

In March 2016, MERS, this time as nominee for Seattle Savings Bank, assigned the deed of trust to MERS, as nominee for Bank of America, N.A.

In April 2016, Reverse received the original note.

In May 2016, Champion assigned the deed of trust to Reverse.

D. *The Foreclosure*.

Coe never provided proof that she had made the repairs required by the repair rider. She also failed to pay property taxes and insurance.

Starting in 2007, Coe was repeatedly notified that her line of credit had been suspended due to failure to comply with the repair rider. She was also repeatedly notified that she had failed to pay taxes and insurance.

On October 7, 2015, Champion sent Coe a "Mortgage Due & Payable Notification," stating that the loan was in default due to failure to pay taxes and insurance, accelerating the loan, and demanding full payment within 30 days. At that point, Coe owed $278,298.02.

In March 2016, Title recorded a notice of default; in June 2016, it recorded a notice of trustee's sale; and in July 2016, Title sold the property to Reverse at a foreclosure sale.

II

STATEMENT OF THE CASE

In 2016, Coe filed this action against multiple defendants, including Nationstar and Reverse. The operative complaint asserted causes of action against Nationstar and Reverse for fraud, wrongful foreclosure, and cancelation of instruments.[5]

Defendants filed the following motions:

I. Nationstar filed a motion for judgment on the pleadings. It argued:

A. Regarding the fraud cause of action, that:

1. It was barred by the statute of limitations.

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[5] An additional cause of action for wrongful occupation of real property and a constructive trust was asserted solely against other defendants.

2. Coe had not pleaded fraud with sufficient specificity.

B. Regarding both the wrongful foreclosure and cancellation of instruments causes of action, that:

1. Coe had no standing to challenge either the assignment to Nationstar or Nationstar's substitution of Title.

2. Coe failed to allege prejudice.

3. Coe failed to allege tender.

II. Nationstar and Reverse filed separate motions for summary judgment.

A. Nationstar argued:

1. Regarding the fraud cause of action:

a. It was barred by the statute of limitations.

b. Coe ratified the loan.

c. The evidence conclusively disproved fraud.

2. Regarding the wrongful foreclosure cause of action:

a. The evidence conclusively proved that the loan was in default.

b. The evidence conclusively proved that the foreclosure was valid.

3. Regarding the cancelation of instruments cause of action:

a. A trustee can foreclose even if its assignment has not been recorded.

b. Coe failed to tender.

B. Reverse argued:

1. Regarding the fraud cause of action:

a. It was barred by the statute of limitations.

b. Coe ratified the loan.

c. Reverse did not originate the loan and thus did not make any of the alleged misrepresentations.

d. The evidence conclusively proved that there was no fraud.

2. Regarding the wrongful foreclosure cause of action:

a. The foreclosure was not illegal, fraudulent, or willfully oppressive.

b. Coe was not prejudiced.

c. Coe failed to tender.

3. Regarding the cancelation of instruments cause of action:

a. The instruments to be canceled were not void or voidable.

b. A trustee can foreclose even if its assignment has not been recorded.

c. Coe failed to tender.

At the hearing on the motions, Coe's then-counsel failed to appear.

The trial court granted Nationstar's motion for judgment on the pleadings with respect to fraud but denied it with respect to the other causes of action. It ruled that the fraud allegations were not sufficiently specific.

The trial court also granted Nationstar's motion for summary judgment. It ruled that the fraud cause of action was moot, in light of its ruling granting judgment on the pleadings on that cause of action. It also ruled that the foreclosure was not illegal, fraudulent, or willfully oppressive and that the instruments to be canceled were not void or voidable.

Finally, the trial court granted Reverse's motion for summary judgment. It ruled that the deed of trust was "properly transferred . . . , ultimately to Reverse," and that there was no evidence of fraud by Reverse. It also ruled again that the foreclosure was not illegal, fraudulent, or willfully oppressive and that the instruments to be canceled were not void or voidable.

Coe filed a motion for new trial. Nationstar filed an opposition. Reverse also filed an opposition, but it has not been included in the appellate record. The trial court denied the motion. It then entered separate judgments against Coe — one in favor of Nationstar and one in favor of Reverse.

Coe was in pro. per. most of the time. However, she did have counsel for about eight months, which encompassed most of the procedural events at issue in this appeal, from the filing of the operative (sixth amended) complaint through the order granting the motions for summary judgment. Coe filed the new trial motion in propria persona, even

though she still had an attorney of record. About a week later, she filed a substitution of attorney.

III

DISMISSAL OF THE APPEAL REGARDING REVERSE

In connection with her Civil Case Information Statement, Coe indicated that she was appealing only from the judgment in favor of Nationstar. Accordingly, we dismissed the appeal to the extent that it was from the judgment in favor of Reverse.

In her opening brief, Coe argued that our dismissal as to Reverse was erroneous. After that brief was filed, however, we vacated the dismissal, recalled the partial remittitur, and allowed her to file a supplemental opening brief addressing the judgment in favor of Reverse. Accordingly, her complaints regarding the dismissal are moot.

IV

STANDARD OF REVIEW

A. *Judgment on the Pleadings.*

"'"'"The standard for granting a motion for judgment on the pleadings is essentially the same as that applicable to a general demurrer, that is, under the state of the pleadings, together with matters that may be judicially noticed, it appears that a party is entitled to judgment as a matter of law.' [Citation.]"' [Citation.]" (*Department of Fair Employment & Housing v. M&N Financing Corp.* (2021) 69 Cal.App.5th 434, 440.)

"On appeal from a judgment on the pleadings, our review is de novo. [Citation.]" (*Tesoro Logistic Operations, LLC v. City of Rialto* (2019) 40 Cal.App.5th 798, 806.)

B. *Summary Judgment.*

"Summary judgment is appropriate only 'where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law.' [Citation.]" (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 618.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

A moving defendant has the "burden" to "show[] that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) "Once the defendant . . . has met that burden, the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (*Ibid.*)

"Whether the trial court erred by granting [the] motion for summary judgment is a question of law we review de novo. [Citation.]" (*Samara v. Matar* (2018) 5 Cal.5th 322, 338.)

Coe contends that Nationstar's separate statement "omitted . . . necessary . . . facts" relating to the interpretation of the loan documents. She asks us "to consider evidence in the record but not cited in the [separate statement]." Ordinarily, an opposing party's remedy for the moving party's failure to include necessary facts in its separate

statement is to include them in its own separate statement. In this opinion, we may, on occasion, discuss evidence not included in any party's separate statement, but we disclaim any obligation to do so. (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 30-31.)

V

THE REQUIREMENT THAT BRIEFS STATE ARGUMENTS IN HEADINGS

A brief must "[s]tate each point under a separate heading or subheading summarizing the point . . . ." (Cal. Rules of Court, rule 8.204(a)(1)(B).) "'Failure to provide proper headings forfeits issues that may be discussed in the brief but are not clearly identified by a heading.' [Citations.]" (*Herrera v. Doctors Medical Center of Modesto* (2021) 67 Cal.App.5th 538, 547.)

"'Th[is] well settled rule[] of appellate practice [is] not [a] mere technicalit[y]. [It] ensure[s] that opposing parties are fairly apprised of contentions so as to afford a full and fair opportunity to respond.' [Citation.]" (*LGCY Power, LLC v. Superior Court* (2022) 75 Cal.App.5th 844, 866.) "'The purpose of requiring headings . . . in appellate briefs is [also] to "lighten the labors of the appellate [courts] by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass."' [Citations.]" (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 1004.)

Accordingly, we focus on the points raised in the headings of Coe's opening briefs.[6] While we may, on occasion, discuss points not raised in those headings, we do so only as an alternative ground for rejecting them.

Nominally, Coe's briefs are divided, as is customary, into a fact section and an argument section. Nevertheless, the headings in the fact section are plainly argumentative (as, indeed, is the fact section itself). We therefore consider points raised under these headings.

In some instances, the captions in Coe's table of contents do not match the captions in her brief. In these instances, we rely on the captions in the table of contents, because the captions in the brief merely embroider on those captions.

VI

INCOMPETENT EVIDENCE

Coe contends that defendants introduced, and the trial court considered, "incompetent evidence."

She does not explain how the evidence was "incompetent." In context, she appears to mean only that she refuted the evidence. That would not make the evidence either "incompetent" or inadmissible. On a motion for summary judgment, it merely raises a triable issue of fact. Here, however, as discussed in part I.A, *ante*, Coe

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[6] As mentioned in part III, *ante*, Coe filed an opening brief as to Nationstar and a supplemental opening brief as to Reverse.

introduced essentially no evidence at all. Thus, she did not raise a triable issue of fact on any of her legal theories.[7]

VII

FAILURE TO ISSUE A STATEMENT OF DECISION

Coe contends that the trial court erred by failing to issue a statement of decision.

On February 5, 2021, the trial court granted the motions for summary judgment. On April 8, 2021, it denied the motion for new trial.

On April 30, 2021, Coe filed a request for a statement of decision in connection with all three motions. That same day, she also filed her notice of appeal. It does not appear that the trial court took any action in response to the request.

By filing a notice of appeal, Coe herself prevented the trial court from issuing a statement of decision. "A timely notice of appeal suspends the trial court's jurisdiction over the cause and vests jurisdiction in the appellate court. [Citations.] Accordingly, subject to certain exceptions not applicable here, ' . . . the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby . . . .' [Citation.]" (*In re Marriage of Varner* (1998) 68 Cal.App.4th 932, 936; see also Code Civ. Proc., § 916, subd. (a).) Thus, here, the trial court no longer had jurisdiction to issue a statement of decision.

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[7] Coe does not appear to argue that, *even if* defendants' evidence was "competent" and admissible, defendants failed to carry their burden. Rather, regarding the merits (as opposed to procedural issues), she generally claims that she proved her causes of action, or at least that she raised a triable issue of fact.

It was not required to issue a statement of decision anyway, for three reasons.

First, "[g]enerally, a statement of decision is 'neither required nor available upon decision of a motion.' [Citations.]" (Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2022) ¶ 16:109 (Wegner).) While there may be some exceptions, a motion for summary judgment and a motion for new trial are not among them. (See *id*. at ¶¶ 16:110-111.1)

Second, "[a] statement of decision may be requested upon the trial of any question of fact. [Citation.]" (Wegner, *supra*, at ¶ 16:114, italics omitted; see also Code Civ. Proc., § 632.) "Where the only issue tendered to the trial court is one of law, a statement of decision is unnecessary *even if requested* by one of the parties. [Citations.]" (Wegner, *supra*, at ¶ 16:122.) A motion for summary judgment presents only questions of law, not questions of fact. (*Joshi v. Fitness International, LLC* (2022) 80 Cal.App.5th 814, 823.) Accordingly, a litigant is not entitled to a statement of decision in connection with a motion for summary judgment. (See *Dameshghi v. Texaco Refining & Marketing, Inc.* (1992) 3 Cal.App.4th 1262, 1284, disapproved on other grounds in *Trope v. Katz* (1995) 11 Cal.4th 274, 292.) When a motion for new trial challenges the ruling on a motion for summary judgment, it, too, generally raises only questions of law. Admittedly, Coe's motion for new trial raised one arguably factual question, namely whether her attorney had "abandoned" her; nevertheless, this was not so trial-like to come within any of the exceptions to the rule that a statement of decision on a motion is not required. (See Wegner, *supra*, at ¶ 16:110.1.)

Third, when, as here, the "trial" is concluded within one calendar day, a statement of decision must be requested, if at all, before the matter is submitted for decision. (Code Civ. Proc., § 632; Cal. Rules of Court, rule 3.1590(n).) Coe did not request a statement of decision until after the trial court had already denied the motions.

Under the general heading that the trial court erred by failing to issue a statement of decision, Coe also asserts that the trial court was confused about which complaint was at issue. She forfeited this contention by failing to raise it under a separate heading, as required.[8]

She has also forfeited it by failing to cite any support for it in the record. (Cal. Rules of Court, rule 8.204(a)(1)(C).) Indeed, we find no support for it. In its simultaneous ruling on the motion for judgment on the pleadings, the trial court showed that it knew it was dealing with the sixth amended complaint by saying, "This is the Plaintiff's *seventh* attempt at pleading her complaint."

And under the same general heading, Coe also claims that, when her attorney failed to appear at the hearing on the motions for summary judgment, the trial court "should have . . . given [him an] opportunity to appear as he was paid to do." As we understand it, this is a contention that the trial court should have granted a continuance.

She did raise this issue in her motion for new trial. However, she has forfeited it for purposes of appeal by failing to raise it under a separate heading, as required.

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[8] Slapping the letter "A" on a 200-word argument not listed in the table of contents does not make it a heading.

In any event, Coe has not shown that the absence of her attorney was prejudicial. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; see also *Sherman v. Kinetic Concepts, Inc.* (1998) 67 Cal.App.4th 1152, 1161 ["'there is no discretion to grant a new trial for harmless error.'"].) "[A] motion for summary judgment raises only questions of law . . . ." (*Underwriters of Interest Subscribing to Policy Number A15274001 v. ProBuilders Specialty Ins. Co.* (2015) 241 Cal.App.4th 721, 727.) Likewise, "a motion for judgment on the pleadings . . . raises only questions of law . . . . [Citations.]" (*Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1065.) We are affirming the grant of the motions. Coe has not shown that counsel's presence could have made any difference.

VIII

THE EXISTENCE OF A DEFAULT

Coe contends that "[she] was never in default . . . ."

First, she contends that defendants did not prove that she failed to make the required repairs. She asserts: "[Defendants'] entire defense to Ms. Coe's allegations against them is centered upon their insistence that Ms. Coe *failed to complete the repairs required in her repair rider* and that she failed to pay property taxes and insurance on the subject property." (Italics added.)

We need not decide this question. When defendants accelerated the loan, they did so based on failure to pay taxes and insurance. Even assuming Coe did complete the repairs, defendants were entitled to foreclose.[9]

If only out of an excess of caution, however, we note that Coe failed to raise a triable issue of fact on this point. She cites a 2008 HUD inspection report. There is no evidence that the purpose of the HUD inspection was to verify the completion of the repairs listed in the repair rider. In any event, the report merely has a box checked for "No noncompliance observed," with the "[e]xplanation," "No non-compliance *at smoke alarms*." (Italics added.) Thus, it does not show that any of the *other* required repairs had been completed.

Moreover, the loan agreement required Coe to provide documentation of the repairs, on request. Defendants proved that they repeatedly requested the documentation, and Coe failed to provide it. The HUD report was inadequate to satisfy Coe's documentation obligation.

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[9] Coe argues that the fact that she completed the repairs is also relevant because that made her entitled to the $12,600 repair set-aside. Supposedly, defendants failed to pay it to her, yet added it to the principal balance and charged her interest and finance charges on it. Her argument relies on exhibits to her motion for new trial. These were not before the trial court when it ruled on the motion for summary judgment.

More to the point, this argument goes only to the amount owed. It does not support Coe's claims of fraud (there could be no reliance), wrongful foreclosure, or cancelation of instruments.

Coe also cites a "Repair Set-Aside Worksheet,"[10] which, she claims, "includes [her] list of the repairs she completed and proof of payment for each one." The worksheet, however, on its face, is a document created *before* the loan was made, to calculate the amount of the repair set-aside. It lists "Work to be completed," the estimate for each item, who provided the estimate, and whether the set-aside is 150% or 200% of the estimate. It then lists "Total Amount Paid." In each instance, this is either 150% or 200% of the estimate. Thus, the "Total Amount[s] Paid" are amounts the lender *will pay* under the set-aside, not amounts ever *actually paid* by Coe.

Finally, Coe claims the lender's loan notes show that defendants shredded documents that would have shown that she paid for the repairs. The only reference to shredding, dated February 2007, says, "[R]eceived another copy of NOWC from pest co. already received and paid last week. [S]hred box." This apparently means that the "N[otice] O[f] W[ork] C[ompleted]" was a duplicate, so it was placed in the shred box. It would be wrong (or speculative at best) to infer that any other documents were shredded.

Elsewhere, the loan notes show that the pest control company had completed "most" of its work, but other repair items remained to be completed. They also show that, as of April 2007, other required repairs, including exterior paint and water heater repairs, had not yet been completed.

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10 The worksheet says, "Cont[inued] on pg. 2," but page 2 is not in the record.

Throughout her brief, Coe argues that, by suspending her line of credit, Nationstar failed to make available to her $139,000 of the promised credit line and the $12,600 repair set-aside. As we understand this argument, it is that she completed the repairs and thus was not in default. We therefore reject it for the same reasons.

Second, Coe contends that defendants did not prove that she failed to pay taxes and insurance. Actually, they did prove this; they also proved that they made the payments in her stead.

Coe points to tax collector's records showing that the taxes for 2014-2015 and 2015-2016 were fully paid. Well, of course they were; defendants paid them. We note that they *also* show that the payments were made late and included a "delinquent amount" in addition to the "due amount"; this was consistent with Coe's failure to pay them when she should have done.

Moreover, these records do not show that Coe paid insurance — as opposed to taxes — which is a separate and sufficient breach of the loan agreement.

Last but not least, these tax and insurance records were not before the trial court when it ruled on the motions for summary judgment. They were attached to Coe's motion for new trial. "'"[A]n appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration." [Citation.]'" (*California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 442.) And they were not authenticated. (See Evid. Code, § 1401, subd. (a).)

Coe also contends that failure to pay taxes was not a default. She argues that defendants' remedy for her failure to pay taxes was to add the amount of the taxes to the principal amount of the loan.

This was not their *sole* remedy. The trust deed provided: "Borrower shall pay all . . . taxes . . . ." It also provided that, if Coe failed to pay, the lender could make the payment. The lender's payments would become "an additional debt of Borrower." It allowed the lender to accelerate the debt if "an obligation of the Borrower under this [trust deed] is not performed."

Thus, when Coe failed to pay taxes, defendants were entitled *both* (1) to make the payments and add the amount to the loan, *and* (2) to accelerate the debt.

Coe points to a "Tax/Insurance Payment Notice" that she was given in connection with the loan. (Capitalization altered.) It recited that she was required to pay both taxes and insurance, and that, if she failed to pay, the lender would advance the funds and add them to the principal, "per the terms of the Loan Agreement." This did not purport to be a *complete* statement of *all* of the parties' rights and remedies if Coe failed to pay; rather, as it stated, it was subject to the terms of the loan agreement.

IX

THE CHAIN OF TITLE

Coe contends that "[t]he record chain of title is fatally defective."

"A beneficiary or trustee under a deed of trust who conducts an illegal, fraudulent or willfully oppressive sale of property may be liable to the borrower for wrongful

foreclosure. [Citations.] A foreclosure initiated by one with no authority to do so is wrongful for purposes of such an action. [Citations.]" (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 929, fn. omitted (*Yvanova*).)

"[B]orrowers have standing to challenge assignments as void, but not as voidable . . . ." (*Yvanova, supra,* 62 Cal.4th 919, 939; see also *id.* at pp. 929-939.) "A void contract is without legal effect. [Citation.]" (*Id.* at p. 929.) "A voidable transaction, in contrast, 'is one where one or more parties have the power, by a manifestation of election to do so, to avoid the legal relations created by the contract, or by ratification of the contract to extinguish the power of avoidance.' [Citation.] . . . Despite its defects, a voidable transaction, unlike a void one, is subject to ratification by the parties. [Citations.]" (*Id.* at p. 930.)

There is definitely a glitch in the chain of title here. Defendants do not argue otherwise.[11] As of November 2012, MERS held title to the trust deed as nominee for Seattle Savings Bank. However, it was MERS, as nominee for Bank of America — not as nominee for Seattle Savings Bank — that purported to assign the trust deed to Champion. There was no assignment to MERS, as nominee for Bank of America, until

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[11] Coe accuses defendants of trying to mislead the court regarding the sequence of events — and with some justice. In their briefs on appeal, defendants list the various assignments out of order. Conspicuously, they give the dates of the loans and of the last assignment, but they do not give the dates of the intermediate assignments. This makes it *appear* that the assignment *to* MERS, as nominee for Bank of America, was before the assignment *by* MERS, as nominee for Bank of America; in reality, it was after. Defendants did the same thing in their briefs below. Defendants are careful, however, not to deny that there is a problem with the chain of title.

March 2016. Thus, in February 2016, when Champion purported to substitute Title as trustee, Champion did not have title to the trust deed.

Either the trustee *or* an authorized agent of the beneficiary can record a notice of default and a notice of sale. (Civ. Code, §§ 2924, subds. (a)(1), (a)(6), 2924b, subd. (b); *Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 13-14.) However, only the trustee (or its agent) can conduct a trustee's sale (Civ. Code, § 2924a) and execute a trustee's deed. (See Civ. Code, § 2934a, subds. (a)(4), (d)(1).) "[A trustee's] sale is rendered void when the foreclosure sale is conducted by an entity that lacks authority to do so. [Citations.]" (*Ram v. OneWest Bank, FSB*, *supra*, at p. 11, and cases cited.)

The chain of title could be fixed by ratification. "A contract which is voidable solely for want of due consent, may be ratified by a subsequent consent." (Civ. Code, § 1588.) Here, then, MERS, as nominee for Seattle Savings Bank and/or as nominee for Bank of America (and Champion, if necessary), could consent to be bound by the November 2012 assignment. Thus, the November 2012 assignment is voidable, but not void.

The question, then, is whether ratification would be retroactive — that is, whether it would relate back to November 2012, so as to validate the February 2016 substitution of trustee, or whether it would be effective only going forward.

At least in the context of agency, ratification is retroactive. "Generally, the effect of a ratification is that the authority which is given to the purported agent relates back to the time when he performed the act. [Citations.]" (*Rakestraw v. Rodrigues* (1972) 8

Cal.3d 67, 73; accord, *Ram v. OneWest Bank, FSB*, *supra*, 234 Cal.App.4th at p. 14; see also *Ratcliff v. The Roman Catholic Archbishop of Los Angeles* (2022) 79 Cal.App.5th 982, 1002 [principal's ratification of an agent's tort "'relates back to the time the tortious act occurred.'"].) We see no reason why this is not also the rule with respect to the broader meaning of ratification as a subsequent consent.

We recognize that, in general, there is an exception: "'[I]f third persons acquire rights, after the act is done and before it has received the sanction of the principal, the ratification cannot operate retrospectively, so as to overreach and defeat those rights.' [Citation.]" (*Allied Mutual Ins. Co. v. Webb* (2001) 91 Cal.App.4th 1190, 1195.) Nevertheless, given *Yvanova*'s holding that a borrower does not have standing to challenge a voidable (i.e., ratifiable) assignment, it necessarily follows that the borrower also does not have standing to block the retroactive effect of such a ratification.

In sum, because the parties could ratify the assignment of the trust deed to Champion, and thus could ratify the substitution of Title as trustee, Coe does not have standing to challenge Title's trustee's sale and trustee's deed.

Coe also argues that "Bank of America [has n]ever been in possession of the original promissory note . . . , properly endorsed from Seattle [S]avings Bank . . . ." However, "California's statutory nonjudicial foreclosure scheme [citations] does not require that the foreclosing party have a beneficial interest in or physical possession of the note." (*Shuster v. BAC Home Loans Servicing, LP* (2012) 211 Cal.App.4th 505, 511; accord, *Debrunner v. Deutsche Bank National Trust Co.* (2012) 204 Cal.App.4th 433,

440-441.) In any event, Reverse — the party that ultimately foreclosed — *was* in physical possession of the original promissory note.

Finally, under the same general heading, Coe argues that the notice of default was invalid because it did not properly specify the nature of the default.

The default specified in the notice of default was failure to pay "the principal balance which became due 09/28/15 in accordance with the acceleration terms contained in the note and deed of trust." The notice of acceleration, in turn, had specified that it was based on Coe's failure to pay taxes and insurance. Accordingly, Coe has not shown that there was anything wrong with the notice of default.

X

NEGOTIABILITY OF THE NOTE

Coe contends that the note was not negotiable. We need not decide this question. As Coe concedes, it is only relevant to whether defendants were holders in due course and whether, as such, they took free of certain defenses that Coe could have asserted against Seattle Mortgage Bank. (See generally U. Com. Code, § 3305, subds. (a), (b); *Creative Ventures, LLC v. Jim Ward & Associates* (2011) 195 Cal.App.4th 1430, 1445-1446.) Defendants, however, have never claimed to be holders in due course. Throughout this opinion, we assume, without deciding, that they were subject to all defenses that Coe could have asserted against their predecessors in interest.

In the heading of this argument, Coe also contends that the note "violat[ed] R.E.S.P.A. and T.I.L.A."[12] However, she has forfeited this contention by failing to support it with any reasoned argument or citation of legal authority. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Rios v. Singh* (2021) 65 Cal.App.5th 871, 881.)

Under this same heading, Coe argues that the note did not specify how to calculate the mortgage insurance premium. She does not explain why this was necessary.

XI

THE EFFECT OF "UCC 9-213"

Coe contends that "[t]he determination of [t]he [t]rial [c]ourt that the UCC 9-213 is inapplicable . . . was incorrect as a matter of law."

In Coe's view, "UCC 9-213" applies to a nonnegotiable note. (See part X, *ante*.) She explains that, under UCC 9-213, "the entity attempting to enforce [a nonnegotiable] instrument [must] prove ownership of the debt, having paid valuable consideration for its purchase and that the purchase of the debt was from an entity who likewise had paid valuable consideration for purchase of the obligation to repay money. Further, a non-negotiable instrument must be supported by a complete record chain of title and proof of payment for each assignment. [¶] The original note must be in the possession of the entity attempting to enforce its terms and be properly endorsed to the entity declaring a default and attempting to foreclose the security instrument. Each assignment must be

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[12] I.e., the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) (RESPA) and the Truth in Lending Act (15 U.S.C. § 1601 et seq.) (TILA).

proven by a proper endorsement on the original note itself or on an allonge permanently affixed to the note."

Section 9-213 of the Uniform Commercial Code (UCC) does not exist. Neither does section 9213 of the California Uniform Commercial Code. This is not just a typo. There is *no* Commercial Code section that contains anything like these provisions.

We therefore reject this argument as unsupported by any citation of legal authority. (Cal. Rules of Court, rule 8.204(a)(1)(B).)

XII

THE AVAILABILITY OF HUD MORTGAGE INSURANCE

Coe contends that the loan documents were "facially invalid" because the loan did not qualify for federal mortgage insurance. Specifically, she argues that HUD had not authorized Nationstar to use "Champion" as a d/b/a name. She concludes that the loan did not comply with either section 255 of the National Housing Act (12 U.S.C.A. § 1715z-20) (section 255) or Civil Code sections 1923-1923.10.

Section 255 prescribes the requirements for a reverse mortgage loan to an elderly borrower to be eligible for federal mortgage insurance. (12 U.S.C.A. § 1715z-20(d).) It requires the lender to make certain disclosures. (12 U.S.C.A. § 1715z-20(e).) It also requires HUD to provide (or to require the lender to provide) counseling to the borrower on certain specified topics. (12 U.S.C.A. § 1715z-20(e).)

Coe does not explain which of the eligibility requirements were not met, which of the required disclosures were not made, nor which required counseling was not provided.

One requirement is that the mortgage be "originated by a mortgagee approved by [HUD]." (12 U.S.C.A. § 1715z-20(d)(1).) However, section 255 does not require HUD to approve a mortgagee's d/b/a name. And Champion did not originate the loan; it is an assignee.

Most important, Coe cites no authority for the proposition that a loan made in violation of these requirements is invalid — as opposed to simply not eligible for federal mortgage insurance. Actually, this section governs only the relationship between HUD and the lender; a violation of the section is not a defense to foreclosure. (See *Estate of Jones v. Live Well Financial, Inc.* (11th Cir. 2018) 902 F.3d 1337, 1341-1342.)

Coe also argues that the loan documents violated Civil Code sections 1923-1923.10. That citation encompasses some 10 separate statutes. Coe does not explain which particular statute was violated nor how.[13] In any event, Civil Code section 1923.7 provides: "No arrangement, transfer, or lien subject to this chapter shall be invalidated solely because of the failure of a lender to comply with any provision of this chapter."

Finally, it appears that the loan was, in fact, federally insured. The loan documents include a "Direct Endorsement Approval for a HUD/FHA Insured Mortgage." Moreover, Coe paid mortgage insurance premiums at the closing and over the life of the loan. She does not point to any contrary evidence.

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[13] Coe does assert that she was "wrongfully denied . . . access to the promised funds in violation of California Civil Code section 1923.2 subdivision e." However, this would not make the loan documents invalid on their face.

XIII

EXCESSIVE CLOSING COSTS

Coe asserts that she was charged excessive closing costs. However this does not appear to be a separate assignment of error. It is not made under a separate heading, as required. Coe also does not cite any legal authority for her claim that closing costs for a HUD-insured reverse mortgage loan are limited to two percent of the amount funded. Finally, she does not explain how this assertion — even if true — would defeat summary judgment.

XIV

LOAN TERMS IN ENGLISH, COUNSELING IN SPANISH

Coe claims she was not provided with a Spanish translation of the loan documents. She contends that this made the loan documents "facially invalid" under Civil Code sections 1923.2, subdivision (*l*) and 1682, subdivision (k).

Civil Code section 1923.2, subdivision (*l*) provides: "A lender shall not make a reverse mortgage loan without first complying with . . . the requirements of Section 1632, if applicable."[14] Civil Code section 1632, subdivision (b) requires a business that negotiates a contract in certain languages, including Spanish, to provide the other party with a translation of the contract. Civil Code section 1632, subdivision (k) provides that the failure to provide a translation, when required, is grounds for rescission.

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[14] This is somewhat duplicative, as Civil Code section 1632 itself provides that it applies to a reverse mortgage loan. (Civ. Code, § 1632, subd. (b)(5).)

As defendants point out, however, Coe took out the loan in 2006. Civil Code section 1632, as it stood in 2006, did not apply to a loan secured by real property. (Civ. Code, former § 1632, subd. (b)(2), Stats. 2003, ch. 589, § 1.5.) Both Civil Code section 1923.2, subdivision (*l*) and section 1632, subdivision (b)(5) — making Civil Code section 1632 applicable to reverse mortgages — were enacted in 2006 and became effective on January 1, 2007. (Stats. 2006, ch. 202, §§ 1-2.) In short, when Coe took out the loan, these provisions did not exist; hence, they were not violated.

In addition, according to Coe, she attended a mandatory counseling session, conducted in Spanish; however, the loan terms as presented at the counseling session did not match the actual terms of the loan documents. She contends that this constituted fraud.

Coe did not allege this in her complaint. She alleged only that she was not given a Spanish translation.[15] "The pleadings determine the issues to be addressed by a summary judgment motion. [Citations.]" (*Meda v. Autozone, Inc.* (2022) 81 Cal.App.5th 366, 374.) "Moving defendants have 'the burden on summary judgment of negating only those "'theories of liability *as alleged in the complaint*"' and [are] not obliged to """"refute liability on some theoretical possibility not included in the pleadings,""""" simply because such a claim was raised in plaintiff's declaration in opposition to the

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[15] Coe did allege that, because the documents were in English, she "was not aware of the terms and conditions . . . ." However, this was alleged only as part of a cause of action against other defendants, not against Nationstar and Reverse.

motion for summary judgment. [Citation.]' [Citation.]" (*Nativi v. Deutsche Bank National Trust Co.* (2014) 223 Cal.App.4th 261, 290.)

In any event, the only mismatch that Coe identifies is that she was told (in Spanish) that the loan qualified for federal mortgage insurance, even though the actual loan (in English) did not. As we held in part XII, *ante*, it appears that the loan did qualify; Coe has not explained why the loan did not qualify; and Coe has not shown that failure to qualify would have made the loan invalid.

Last but not least, in parts XVII and XVIII, *post*, we reject Coe's fraud claims on other, alternative grounds.

XV

NATIONSTAR'S TRACK RECORD OF CRIMINAL ACTIVITY

Coe contends that "Nationstar has a track record of criminal activity . . . ." She has forfeited this contention by failing to cite any support for it in the record. (Cal. Rules of Court, rule 8.204(a)(1)(C); *WFG National Title Ins. Co. v. Wells Fargo Bank, N.A.* (2020) 51 Cal.App.5th 881, 894.) And we have found no such support. Evidence of it would have been inadmissible; Nationstar would have been entitled to object, and the trial court would have been required to exclude it. (Evid. Code, § 1101, subd. (a).)

XVI

DURESS

Coe contends that Reverse used duress or menace.[16] This appears to reduce to an argument that Reverse demanded payment, and then exercised its legal remedies for nonpayment, even though (according to Coe) she was not in default. We rejected this argument in part VIII, *ante*.

XVII

FRAUD BY REVERSE

Coe contends that she proved "multiple misrepresentations" by Reverse.

The only misrepresentations by Reverse that she specifies under that heading are that (1) she failed to make repairs, and (2) she failed to pay taxes and insurance. As we held in part VIII, *ante*, these were not misrepresentations.

She also argues that Reverse is liable for earlier misrepresentations by Nationstar, because it "continued and ratified" them. However, she does not cite any evidence of continuation or ratification. Moreover, she did not oppose Reverse's motion for summary judgment on the fraud cause of action on this ground.

Next, Coe argues that Nationstar and Reverse "have a close financial unity and the same managing members . . . ." However, she does not cite any support for this in the

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[16] Although she makes the same claim with respect to Nationstar, she does not do so under a separate heading, as required.

record. And again, she did not oppose Reverse's motion for summary judgment on the fraud cause of action on this ground.

In this context, she asserts — apparently as misrepresentations by Nationstar, not by Reverse — that (1) the note was nonnegotiable, (2) "the loan instruments are facially invalid," (3) the loan was not eligible for HUD mortgage insurance, and (4) she was not given a Spanish translation. We have previously rejected each of these assertions. (See parts X, XII, and XIV, *ante*.)

Finally, Coe argues that Reverse made misrepresentations to *Title*, on which *Title* relied, by proceeding to foreclose. Many of these supposed misrepresentations were actually made (if at all) by Nationstar before the trust deed was assigned to Reverse — e.g., a supposed misrepresentation to Title that Nationstar was authorized to substitute Title as trustee. To that extent, this is just Coe's argument that Reverse is liable for misrepresentations by Nationstar, in disguise.

The foreclosure process started in March 2016, when Title (at Nationstar's direction) recorded the notice of default. It was in May 2016 that Champion assigned the trust deed to Reverse. Coe does not list — with citations to the record, as necessary (Cal. Rules of Court, rule 8.204(a)(1)(C)) — any misrepresentations made specifically by Reverse.

Separately and alternatively, Coe does not cite any authority supporting her theory of "[t]hird party reliance" by Title. Ordinarily, in a fraud action, "[i]t must be shown that *the plaintiff* actually relied on the misrepresentation. [Citations.]" (Witkin, Summary of

Cal. Law (11th ed. 2022) Torts, § 928, italics added; e.g., *Schauer v. Mandarin Gems of Cal., Inc.* (2005) 125 Cal.App.4th 949, 960 [where husband bought ring, based on jeweler's allegedly fraudulent appraisal, and gave ring to wife, wife could not sue jeweler for fraud].)

Coe cites *Nunes v. De Faria* (1951) 107 Cal.App.2d 794. That case stands for the principle that "'[f]raud or material misrepresentation by a third person renders a transaction voidable by a party induced thereby to enter into it, if the other party thereto (a) has reason to know of the fraud or misrepresentation before he has given or promised in good faith something of value in the transaction, or changed his position materially by reason of the transaction, or (b) is affected by the fraud or misrepresentations under the law of agency or trusts.'" (*Id.* at p. 797.) That is not what Coe is claiming here. And significantly, this principle still requires reliance by the plaintiff.

For completeness, we note that there is also a theory of indirect misrepresentation that applies when the defendant makes a fraudulent statement to a third person and the defendant knows or should know that the third person will relay it to the plaintiff. (E.g., *Crystal Pier Amusement Co. v. Cannan* (1933) 219 Cal. 184, 188; *Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85, 94.) Again, that is not what Coe is claiming here. And again, this theory still requires reliance by the plaintiff.

If there is any authority supporting Coe's third-party reliance theory, she has not cited it.

XVIII

FAILURE TO PLEAD FRAUD WITH PARTICULARITY

Coe contends that "[t]he [t]rial [c]ourt improperly determined that [she] failed to satisfy the heightened pleading requirement for fraud against Nationstar."

"In California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.] 'Thus "'the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect."' [Citation.] [¶] This particularity requirement necessitates pleading *facts* which "show how, when, where, to whom, and by what means the representations were tendered.'" [Citation.]" (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

"To assert a cause of action for fraud against a corporation, a plaintiff must allege the name of the person who allegedly made the fraudulent representation, his or her authority to speak, to whom he or she spoke, what was said and when it was said. [Citation.]" (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 35.)

Coe forfeited her present argument by failing to raise it below. (See *Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014, 1074.) When Nationstar moved for judgment on the pleadings on the fraud cause of action, it argued, among other things, that Coe had not pleaded fraud with particularity. In her opposition, she did not respond to this argument. The factual statement in her opposition, with trivial exceptions, did not even cite her complaint. Thus, as the trial court noted, "Plaintiff does not point to any

specific allegations in her 48 page, 154 paragraph pleading which satisfy the heightened pleading requirement applicable to fraud claims."

Identically, on appeal, Coe does not cite any allegations of her complaint that she contends were sufficiently specific. For this reason, too, she has forfeited any such contention. (Cal. Rules of Court, rule 8.204(a)(1)(C).)

She does argue that less specificity was required, supposedly because defendants had superior knowledge of the facts, and in particular because the terms of the contract were presented to her in Spanish. We recognize that "'[l]ess particularity [in pleading] is required when it appears that defendant has superior knowledge of the facts, so long as the pleading gives notice of the issues sufficient to enable preparation of a defense.' [Citation.]" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 549-550.) However, it was Seattle Mortgage Company that originated the loan. Defendants would have no knowledge of any misrepresentations made leading up to the loan. Moreover, just because they may know what they themselves said does not mean they know what *Coe claims* they said or what she claims was *false* about what they said.

XIX

THE MARKS DECLARATION

Coe contends that the trial court erred by denying her motion for a new trial against Reverse, supposedly because it had sustained all of her objections to Reverse's declaration supporting its motion for summary judgment.

A. *Additional Procedural Background*.

In support of its motion for summary judgment, Reverse filed the declaration of Rebecca Marks.[17] Coe filed objections to seven portions of the Marks declaration, on grounds including lack of personal knowledge, but Coe's objections failed to specify *which* portions she was objecting to.

In opposition to Reverse's motion, Coe filed the declaration of her then-attorney, Charles T. Marshall. Reverse filed objections to five specified portions of Marshall's declaration, again on grounds including lack of personal knowledge.

The trial court ruled:

"Defendant *Reverse*[*'s*] evidentiary objections to the *Marks* declaration are sustained in part and overruled in part as follows:

"Objection 1 is overruled.

"Objections 2-5 are sustained as lacking personal knowledge." (Italics added.)

B. *Discussion*.

In Coe's view, the trial court said "Reverse" when it meant to say "Coe"; thus, it actually sustained her objections to the Marks declaration.

She did not raise this particular argument in her motion for new trial; thus, she has forfeited it as a basis for a new trial.

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[17] It was captioned as "Declaration of Celink," Marks's employer. (Capitalization altered.) Coe therefore refers to it as the Celink declaration.

It lacks merit in any event. It is clear that, when the trial court said "Marks," it meant to say "Marshall"; thus, it actually sustained Reverse's objections to the Marshall declaration. This is clear from the fact that it ruled on only five objections. Moreover, it could not have sustained Coe's objections, as she had failed to specify which portions of the Marks declaration she was objecting to.

XX

REVERSE'S FAILURE TO RESPOND TO DISCOVERY

Coe contends that Reverse's "willful failure to respond to . . . discovery . . . [is] tantamount to an admission that R[everse] has no meritorious defense . . . ."

She forfeited this contention by failing to raise it in her opposition to Reverse's motion for summary judgment. Although she did raise it in her motion for new trial, that was too little, too late. "It is the rule that even a serious error or impropriety is waived if it could have been cured had it been raised in time; otherwise, a party could remain quiet and speculate on the chance of a favorable verdict while holding the point in reserve in case the verdict goes against him [citations]." (*Sherwood v. Rossini* (1968) 264 Cal.App.2d 926, 930-931.)

She further forfeited this contention by failing to raise it under a separate heading, as required.

Finally, she forfeited it still further by failing to include Reverse's opposition to the motion for new trial in the appellate record. "'[The appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an

issue requires that the issue be resolved against [the appellant].' [Citation.]" (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609.)

XXI

DISPOSITION

The judgment is affirmed. In the interests of justice, we do not award costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

SLOUGH
J.

FIELDS
J.