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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AVALANCHE FUNDING, LLC, a
Colorado limited liability company,

Plaintiff,

v.

SYED M. ARIF, et al.,

Defendant.

No. 2:16-cv-02555-TLN-KJN

ORDER

This matter is before the Court on Plaintiff Avalanche Funding, LLC’s (“Plaintiff”) Motion for Summary Judgment. (ECF No. 123.) None of the Defendants¹ have opposed the

¹ The named Defendants are: Syed M. Arif (“Arif”); Syeda Rehana Begum (“Begum”); Tim Swickard (“Swickard”); Mapes Ranch, Inc.; Five Dot Cattle Company; Norman F. Rice (deceased); the testate and intestate successors of Norman F. Rice, and all persons represented by the personal representative of the estate of Norman F. Rice; Gloria Rice (deceased), in her individual capacity and as trustee of the Rice 1997 Family Trust; the testate and intestate successors of Gloria Rice, and all persons represented by the personal representative of the estate of Gloria Rice; the Rice 1997 Family Trust; Norman Rice Enterprises, Inc.; Matthew G. Huntley; Michon Huntley; Ramona Stonebarger (“Stonebarger”) (deceased); the testate and intestate successors of Stonebarger, and all persons represented by the personal representative of the estate of Stonebarger; Art Koffinke (“Koffinke”) (deceased); the testate and intestate successors of Koffinke, and all persons represented by the personal representative of the estate of Koffinke; Larry Campbell (“Campbell”) (deceased); the testate and intestate successors of Campbell, and all persons represented by the personal representative of the estate of Campbell; Hanson Cattle Company (purported corporation of likely Nevada domicile); Hansen Cattle Company (a Nevada

1 Motion. For the reasons set forth below, Plaintiff’s unopposed Motion for Summary Judgment is
2 GRANTED in part and DENIED in part.

3 **I. FACTUAL AND PROCEDURAL BACKGROUND**

4 Plaintiff, a lender, seeks a foreclosure decree to conduct a judicial foreclosure on a deed of
5 trust that has been in default for several years.

6 A. Allegations

7 On July 23, 2008, Arif and Begum (husband and wife) executed and delivered to Plaintiff
8 a Promissory Note, secured by the “Deed of Trust, Security Agreement, Fixture Filing, Financing
9 Statement and Assignment of Leases and Rents,” Recording Number 2008-04633, Official
10 Records of Lassen County (“Deed of Trust”), for a plot of approximately 3,200 acres of ranch
11 land in a remote area of Lassen County (the “Property”). (*See* ECF Nos. 124-1, 124-2; ECF No.
12 125 at 4, 8–15, 40.) Plaintiff is the beneficiary of the Deed of Trust. (ECF No. 124-2 at 1; ECF
13 No. 125 at 40.) To further secure the Note, Arif and Begum also executed and delivered to
14 Plaintiff a Security Agreement, which secures the Note with Arif and Begum’s personal property
15 collateral. (ECF No. 124-3; ECF No. 125 at 45.) On August 6, 2010, Plaintiff and Arif and
16 Begum entered into a Loan Modification of the Note, which extended the maturity date of the
17 loan from July 22, 2010 to August 1, 2011 and modified the payment schedule of the loan. (ECF
18 No. 124-1 at 15–24.)

19 Thereafter, Arif and Begum defaulted on the Note. (ECF No. 49 at 14–15; ECF No. 125
20 at 39.) They have not made a payment on the Note secured by the Property since October 31,
21 2015. (*See id.*) No one resides on the Property. (ECF No. 125 at 41.) Arif and Begum live in
22 Chicago and have not been on the Property for more than ten years. (*Id.* at 44.)

23 As relevant to the instant Motion, the Deed of Trust, Note, and Security Agreement
24 contain the following provisions: indicating Plaintiff has a priority interest in the Property (ECF
25 _____
26 corporation); North American Technical Trading Co., Inc.; a trustee of an unnamed trust to be
27 established referenced in a Notice recorded on February 11, 1997 in volume 660 at page 559;
28 Chicago Title Company, in its capacity as Trustee under a Deed of Trust recording number 2008-
04633 of Official Records, Lassen County; all persons unknown claiming only legal or equitable
right, title interest or cloud on Plaintiff’s interest in property; and Does 1–50 (collectively,
“Defendants”).

1 No. 124-1 at 5; ECF No. 124-2 at 7) and default on the Note constitutes a default on the related
2 security instruments (ECF No. 124-1 at 3; ECF No. 124-3 at 3–4); providing Plaintiff may
3 recover all costs and expenses incurred in protecting its interest, including attorneys’ fees (ECF
4 No. 124-1 at 7, 16–17; ECF No. 124-2 at 17, 19, 32; ECF No. 124-3 at 5); and identifying several
5 remedies available to Plaintiff in the event of a default, such as accelerating all payments due,
6 taking possession of the Property and related collateral, and foreclosing against the Property and
7 other security interests (ECF No. 124-1 at 2–3; ECF No. 124-2 at 24–27; ECF No. 124-3 at 4–6).

8 Based on Arif and Begum’s default on the Note and pursuant to the terms of the security
9 instruments and relevant agreements, Plaintiff seeks to judicially foreclose on the Property.

10 B. Procedural History

11 Plaintiff initiated this action on October 26, 2016. (ECF No. 1.) The operative First
12 Amended Complaint (“FAC”) asserts the following: (1) Promissory Note Claim against Arif and
13 Begum; (2) Reformation of Deed of Trust and for Quiet Title against all parties with respect to an
14 omitted parcel; (4) Judicial Foreclosure of Reformed Deed of Trust against all Defendants; (5)
15 Replevin and Foreclosure of a Security Interest against all Defendants; and (6) Application for the
16 Appointment of Receiver against all Defendants.² (ECF No. 6.)

17 Between January and March 2017, Notices of Disclaimer were filed with respect to the
18 following Defendants, by which these Defendants have disclaimed any interest in the Property:
19 Matthew Huntley; Michon Huntley; Norman F. Rice, his testate and intestate successors, and all
20 persons represented by the personal representative of his estate; Gloria Rice, her testate and
21 intestate successors, and all persons represented by the personal representative of her estate; the
22 Rice 1997 Family Trust; Chicago Title Company; and North American Technical Trading Co.,
23 Inc. (ECF Nos. 17–18, 27, 30, 48.)

24 Plaintiff additionally requested an order permitting service of the summons by
25 publication, which the Court granted. (ECF Nos. 39, 45.) Pursuant to the publication order, the

26 ² The original Complaint included a third cause of action, titled “(3) Quiet Title against the
27 Swickard Defendants for all of the Property.” (See ECF No. 1 at 40.) However, Claim Three is
28 omitted from the operative FAC entirely. Therefore, the Court only considers Plaintiff’s Claims
One, Two, Four, Five, and Six in its analysis of the instant Motion for Summary Judgment.

1 summons was published in the Lassen County Times on March 14, 21, 28, and April 4, 2017.
2 (ECF No. 51 at 3; ECF No. 51-1.) Following completion of service by publication, Plaintiff
3 submitted its Return of Service with respect to the prior unserved Defendants on April 11, 2017.
4 (ECF No. 51.)

5 On May 11, 2017, default was entered against the following Defendants: Norman Rice
6 Enterprises, Inc.; the testate and intestate successors, and all persons represented by the personal
7 representatives of the estates of decedents Koffinke, Campbell, and Stonebarger, respectively;
8 and Hansen Cattle Company. (ECF Nos. 66, 67, 68, 69, 70, 73.) The Court declined to enter
9 default against Campbell, Koffinke, and Stonebarger because they are deceased. (ECF No. 72.)
10 The Court similarly declined to enter default against “A Trustee Of An Unnamed Trust To Be
11 Established Referenced In A Notice Recorded Of February 11, 1997 In Volume 660 At Page 559
12 [sic]” because it is an unnamed party.³ (ECF No. 71.)

13 Meanwhile, on March 13, 2017, Plaintiff entered into a settlement agreement with Arif
14 and Begum. (ECF No. 49; ECF No. 125 at 24–39.) Pursuant to the settlement agreement, the
15 parties filed a “Notice of Consent to Entry of Judgment in Favor of Avalanche Funding, LLC;
16 Consent to Entry of a Foreclosure Decree; Consent to the Appointment of a Receiver; and
17 Assignment of Redemption Rights and Other Rights by Syed M. Arif and Syeda Rehana Begum”
18 (“Arif/Begum Agreement”), which is executed by Arif and Begum. (ECF No. 49; *see also* ECF
19 No. 125 at 24–39.) Under the Arif/Begum Agreement, Arif and Begum admit all material
20 allegations of the FAC and consent to the entry of a final Judgment and Decree of Foreclosure of
21 the Property in the form submitted by Plaintiff. (ECF No. 49 at 14; ECF No. 125 at 34.) The
22 remaining terms of the Arif/Begum Agreement, as previously filed with the Court, are hereby
23 incorporated by reference in their entirety. (ECF No. 49.)

24 On January 19, 2018, Five Dot Cattle Company, Mapes Ranch, Inc. and Swickard (the
25 “Swickard Parties”) filed an answer to the FAC. (ECF No. 85.) Thereafter, Plaintiff and the
26

27 ³ Nevertheless, as Plaintiff correctly notes, these parties were properly served pursuant to
28 publication, following the Court’s approval of Plaintiff’s Motion for Service by Publication (*see*
ECF Nos. 39, 45, 51), and they have also submitted no opposition to the instant Motion.

1 Swickard Parties reached a settlement agreement by which the Swickard Parties assigned their
2 interest in the Property to Plaintiff and Plaintiff substituted into the action for the Swickard
3 Parties. (ECF Nos. 118, 118-1, 119; *see also* ECF No. 125 at 23–24.)

4 On January 20, 2019, Plaintiff recorded its Notice of Pendency of Actions concerning the
5 Property in the official records of Lassen County, California, and the Notice of Lis Pendens was
6 filed with this Court on February 3, 2017. (ECF No. 125 at 19; *see also* ECF No. 31.)

7 On October 29, 2020, Plaintiff filed a motion to appoint a receiver for the Property, which
8 the Court granted. (ECF Nos. 120, 131.)

9 On October 29, 2020, Plaintiff filed the instant Motion for Summary Judgment on All
10 Claims for Relief and for a Final Judgment and Entry of a Decree of Foreclosure. (ECF No. 123.)
11 The Motion is unopposed, as all non-defaulting Defendants have either disclaimed all rights to the
12 Property, consented to a judgment and the appointment of a receiver, or have settled with Plaintiff
13 and assigned to Plaintiff their interests in the Property. (*See* ECF Nos. 17–18, 27, 30, 48, 49, 66,
14 67, 68, 69, 70, 73, 118, 118-1, 119.)

15 II. STANDARD OF LAW

16 The purpose of summary judgment is to “pierce the pleadings and to assess the proof in
17 order to see whether there is a genuine need for trial.” *Matsushita Elec. Indus. Co. v. Zenith*
18 *Radio Corp. (Matsushita)*, 475 U.S. 574, 587 (1986) (citation omitted). Summary judgment is
19 appropriate when the moving party demonstrates no genuine issue as to any material fact exists
20 and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Adickes v.*
21 *S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). “In cases that involve . . . multiple causes of action,
22 summary judgment may be proper as to some causes of action but not as to others, or as to some
23 issues but not as to others, or as to some parties, but not as to others.” *Conte v. Jakks Pac., Inc.*,
24 981 F. Supp. 2d 895, 901–02 (E.D. Cal. 2013) (quoting *Barker v. Norman*, 651 F.2d 1107, 1123
25 (5th Cir. 1981)); *see also Robi v. Five Platters, Inc.*, 918 F.2d 1439 (9th Cir. 1990); *Cheng v.*
26 *Comm’r Internal Revenue Serv.*, 878 F.2d 306, 309 (9th Cir. 1989). A court may grant summary
27 adjudication as to specific issues if it will narrow the issues for trial. *First Nat’l Ins. Co. v.*
28 *F.D.I.C.*, 977 F. Supp. 1051, 1055 (S.D. Cal. 1977).

1 Under summary judgment practice, the moving party always bears the initial
2 responsibility of informing the district court of the basis of its motion, and “identifying those
3 portions of the pleadings, depositions, answers to interrogatories, and admissions on file together
4 with affidavits, if any, which it believes demonstrate the absence of a genuine issue of material
5 fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (internal quotations omitted). To carry
6 its burden of production on summary judgment, a moving party “must either produce evidence
7 negating an essential element of the nonmoving party’s claim or defense or show that the
8 nonmoving party does not have enough evidence of an essential element to carry its ultimate
9 burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc. (Nissan*
10 *Fire)*, 210 F.3d 1099, 1102 (9th Cir. 2000). “If a moving party fails to carry its initial burden of
11 production, the nonmoving party has no obligation to produce anything, even if the nonmoving
12 party would have the ultimate burden of persuasion at trial.” *Id.* at 1102–03; *see Adickes*, 398
13 U.S. at 160. If, however, a moving party carries its burden of production, the burden then shifts
14 to the nonmoving party to establish that a genuine issue as to any material fact actually does exist.
15 *Matsushita*, 475 U.S. at 585–87.

16 In the endeavor to establish the existence of a factual dispute, the nonmoving party need
17 not establish a material issue of fact conclusively in its favor but need only show the claimed
18 factual dispute “require[s] a jury or judge to resolve the parties’ differing versions of the truth at
19 trial.” *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288–89 (1968). Nevertheless,
20 “[t]he mere existence of a scintilla of evidence in support of the [nonmoving party’s] position will
21 be insufficient.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). Similarly, the
22 nonmoving party may not merely rely upon the mere allegations or denials of its pleadings or
23 “show that there is some metaphysical doubt as to the material facts,” but must instead tender
24 evidence of specific facts in the form of affidavits and/or admissible discovery material, in
25 support of its contention that the dispute exists. *Matsushita*, 475 U.S. at 586; *Estate of Tucker v.*
26 *Interscope Records*, 515 F.3d 1019, 1030 (9th Cir. 2008) (quoting Fed. R. Civ. P. 56(c), (e)).
27 Finally, the nonmoving party must demonstrate the fact in contention is material, i.e., a fact that
28 might affect the outcome of the suit under the governing law, and that the dispute is genuine, i.e.,

1 the evidence is such that a reasonable jury could return a verdict for the nonmoving party.

2 *Anderson*, 477 U.S. at 248, 251–52.

3 In resolving the summary judgment motion, the court examines the pleadings, depositions,
4 answers to interrogatories, and admissions on file, together with any applicable affidavits. Fed.
5 R. Civ. P. 56(c); *SEC v. Seaboard Corp.*, 677 F.2d 1301, 1305–06 (9th Cir. 1982). The evidence
6 of the nonmoving party is to be believed and all reasonable inferences that may be drawn from
7 the facts pleaded before the court must be drawn in favor of the nonmoving party. *Anderson*, 477
8 U.S. at 255. Nevertheless, mere disagreement as to legal implications of the material facts does
9 not bar summary judgment. *See Beard v. Banks*, 548 U.S. 521, 530 (2006). Rather, the inquiry is
10 “whether the evidence presents a sufficient disagreement to require submission to a jury or
11 whether it is so one-sided that one party must prevail as a matter of law.” *Anderson*, 477 U.S. at
12 251–52. “If the nonmoving party fails to produce enough evidence to create a genuine issue of
13 material fact, the moving party wins the motion for summary judgment.” *Nissan Fire*, 210 F.3d
14 at 1103; *see also Celotex Corp.*, 477 U.S. at 322.

15 Even when a summary judgment motion is unopposed, a district court “cannot base the
16 entry of summary judgment on the mere fact that the motion is unopposed, but rather must
17 consider the merits of the motion.” *Leramo v. Premier Anesthesia Med. Grp.*, No. CV F 09-2083
18 LJO JTL, 2011 WL 2680837, at *8 (E.D. Cal. Jul. 8, 2011), *aff’d*, 514 F. App’x 674 (9th Cir.
19 2013) (quoting *United States v. One Piece of Real Property, etc.*, 363 F.3d 1099, 1101 (11th Cir.
20 2004)); *Cristobal v. Siegel*, 26 F.3d 1488, 1494–95 & n. 4 (9th Cir. 1994) (unopposed motion
21 may be granted only after court determines that there are no material issues of fact). That is, a
22 district court must still “determine . . . whether the moving party has shown itself to be entitled to
23 judgment as a matter of law.” *Leramo*, 2011 WL 2680837, at *8 (quoting *Anchorage Assocs. v.*
24 *V.I. Bd. of Tax Review*, 922 F.2d 168, 175 (3rd Cir. 1990)). The court may, however, grant an
25 unopposed motion for summary judgment if the movant’s papers are themselves sufficient to
26 support the motion and do not on their face reveal a genuine issue of material fact. *See Carmen v.*
27 *San Francisco Unified School District*, 237 F.3d 1026, 1029 (9th Cir. 2001) (“a district court is
28 ‘not required to comb the record to find some reason to deny a motion for summary judgment’”)

1 (citation omitted); *see also North American Specialty Insurance Company v. Royal Surplus Lines*
2 *Insurance Company*, 541 F.3d 552, 558 (5th Cir. 2008) (if no factual showing is made in
3 opposition to a motion for summary judgment, the district court is not required to search the
4 record *sua sponte* for a triable issue of fact).

5 **III. ANALYSIS**

6 A. Promissory Note Claim Against Arif and Begum (Claim One)

7 In Claim One, Plaintiff seeks a judgment against Arif and Begum for the unpaid balance
8 of the Note, including interest, fees, taxes, and attorneys' fees and costs, as provided for by the
9 terms of the Deed of Trust and Note. (*See* ECF No. 6 at 7–9; ECF No. 125 at 39–40, 48–49.)
10 Plaintiff has submitted copies of the security instruments for the Property and the Arif/Begum
11 Agreement in support of its claim. (*See* ECF Nos. 49, 124-1, 124-2.)

12 As previously discussed, Arif and Begum executed a Note to Plaintiff in the amount of
13 \$950,000, secured by the Deed of Trust for the Property. (ECF No. 125 at 39; *see also* ECF No.
14 124-1 at 1; ECF No. 124-3 at 1.) Arif and Begum defaulted on the Note and no payments have
15 been made since October 31, 2015. (*See* ECF No. 49 at 14–15; ECF No. 125 at 34, 39.) In the
16 event of default, the Deed of Trust and Note provide that Plaintiff may accelerate all payments
17 due on all principal, interest, and other amounts. (ECF No. 124-1 at 2–3; ECF No. 124-2 at 24–
18 27; *see* ECF No. 125 at 39–40.) This includes attorneys' fees, administrative costs, late payment
19 fees, and other “costs and expenses (together with interest thereon at the Default Rate from the
20 date incurred)” incurred by Plaintiff “to enforce and defend [its] rights under any of the Loan
21 Documents.” (ECF No. 124-1 at 7, 16–17; ECF No. 124-2 at 17, 19, 32; ECF No. 124-3 at 5.)

22 In accordance with the provisions of the Deed of Trust and Note, Plaintiff has calculated
23 the unpaid balance on the Note to be \$4,807,615.58 as of October 31, 2015, as follows:

24	Unpaid Principal:	\$937,900
25	Accrued Interest through 10/31/15:	\$3,561,512.74
26	Late Charges:	\$136,116.07
27	Advance by Lender to pay delinquent real estate taxes:	\$172,086.77
28	Total unpaid balance as of 10/31/15:	\$4,807,615.58

(ECF No. 6 at 8; ECF No. 125 at 39.) This figure is exclusive of interest to be charged from

1 November 1, 2015 onward and Plaintiff's attorneys' fees and costs. (See ECF No. 6 at 8–9; ECF
2 No. 125 at 39.) However, the Note continues to accrue interest on and after November 1, 2015 at
3 the default rate of 33%. (ECF No. 124-1 at 3; ECF No. 125 at 39.)

4 Plaintiff additionally claims the terms of the Deed of Trust and Note provide that it is
5 entitled to a judgment for the deficiency owed under the Note after the completion of the
6 foreclosure of the Property. (ECF No. 6 at 9; see also ECF No. 124-3 at 5.) Nevertheless,
7 pursuant to the Arif/Begum Agreement, in exchange for Plaintiff's consent, assignment of
8 interest, and stipulations, Plaintiff agreed to waive a personal judgment against Arif and Begum
9 for any deficiency owed under the Note after the foreclosure sale of the Property, and it has
10 waived its right to recover attorneys' fees. (ECF No. 49 at 15; ECF No. 125 at 34, 39–40.)

11 Arif and Begum do not oppose Plaintiff's claim. To the contrary, under the Arif/Begum
12 Agreement, they admit all material facts of the FAC and agree they are indebted to Plaintiff for
13 the unpaid balance of the Note in the amount of \$4,807,615.58, plus continuing interest after
14 November 1, 2015. (ECF No. 49 at 14–15; ECF No. 125 at 34.)

15 Based on the record before it, the Court finds Plaintiff has met its burden of demonstrating
16 it is entitled to a judgment against Arif and Begum for the unpaid balance of the Note plus
17 interest thereon on and after November 1, 2015, at the per annum rate of 33%. *Nissan Fire*, 210
18 F.3d at 1102. Further, pursuant to the Arif/Begum Agreement, this Judgment is “on a non-
19 recourse basis to support [Plaintiff's] liens on the Property and the Personal Property Collateral”
20 and Plaintiff has waived “a personal judgment against Syed M. Arif and Syeda Rehana Begum
21 for the deficiency due under the Note after the foreclosure sale of the Property.” (ECF No. 49 at
22 15.) Accordingly, Plaintiff's Motion is GRANTED as to Claim One.

23 B. Reformation of Deed of Trust Against All Parties with Respect to an
24 Omitted Parcel (Claim Two)

25 Plaintiff seeks to reform the Deed of Trust to include a parcel which Plaintiff contends
26 was omitted from the original Deed of Trust due to a scrivener's error (“Omitted Parcel”). (ECF
27 No. 6 at 9–39; ECF No. 125 at 40–41, 49–50.) The legal description for the Omitted Parcel
28 Plaintiff seeks to add to the legal description for the Deed of Trust for the Property is as follows:

1 THE FOLLOWING DESCRIBED PROPERTY LOCATED IN
2 THE COUNTY OF LASSEN STATE OF CALIFORNIA;

3 The North 396 feet of the South 476 feet of the West 550 feet of the
4 S.E. ¼ of the N.E. ¼ of Section 11, T. 23 N., R.17 E. M.D.M.

5 EXCEPTING THEREFROM, ALL THE COAL AND OTHER
6 MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT
7 TO PROSPECT FOR, MINE AND REMOVE THE SAME AS
8 CONTAINED IN THE PATENT FROM THE UNITED STATES
9 OF AMERICA TO CHARLES A. GALEPPI, RECORDED April
10 07,1941, IN BOOK 39 PAGE 472, OF DEEDS.

11 (ECF No. 6 at 17; ECF No. 125 at 40.)

12 Plaintiff claims that at the time Arif and Begum executed and delivered the Deed of Trust
13 to Plaintiff, they owned a small parcel of land that they acquired from the State of California
14 Department of Transportation by a Deed dated September 2, 2005, and recorded on October 17,
15 2005, Recording No. 2005-09942. (ECF No. 6 at 17; ECF No. 125 at 40.) This parcel is entirely
16 landlocked by the Property and was only excluded from the Deed of Trust due to a scrivener's
17 error. (*Id.*) Plaintiff therefore requests the Deed of Trust be reformed to correct the scrivener's
18 error and to reflect the legal description of the entire Property, inclusive of the Omitted Parcel, as
19 follows:

20 THE FOLLOWING DESCRIBED PROPERTY LOCATED IN
21 THE COUNTY OF LASSEN, STATE OF CALIFORNIA:

22 THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN
23 THE UNINCORPORATED AREA, COUNTY OF LASSEN,
24 STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

25 IN TOWNSHIP 24 NORTH, RANGE 17 EAST, MOUNT DIABLO
26 MERIDIAN, ACCORDING TO THE OFFICIAL PLAT
27 THEREOF.

28 SECTION 13: THE E 1/2 OF THE NW 1/4; THE NE 1/4 OF THE
 SW 1/4; AND THE W 1/2 OF THE E 1/2.

 EXCEPTING THEREFROM THE PARCEL DESCRIBED IN THE
 DEED TO THE STATE OF CALIFORNIA, RECORDED MAY 03,
 1968, IN BOOK 221 PAGE 378, OF OFFICIAL RECORDS.

 ALSO EXCEPTING THEREFROM A STRIP OF LAND, 100
 FEET IN WIDTH, AS DESCRIBED IN THE JUDGMENT OF
 CONDEMNATION IN FAVOR OF CHARLES MORAN, ET AL,
 RECORDED FEBRUARY 08, 1888, IN BOOK F PAGE 326, OF
 DEEDS.

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ALSO EXCEPTING THEREFROM ALL THAT PORTION LYING WESTERLY OF THE EASTERLY LINE OF THE WESTERN PACIFIC RAILROAD AND THAT PORTION LYING EASTERLY OF THE WESTERLY LINE OF U.S. HIGHWAY 395, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED SEPTEMBER 22, 1933, IN BOOK 30 PAGE 246, OF DEEDS.

SECTION 24: LOTS 2, 3 AND 4; THE W 1/2 OF THE E 1/2; THE E 1/2 OF NW 1/4; AND THE NE 1/4 OF THE SW 1/4.

EXCEPTING THEREFROM A STRIP OF LAND, 100 FEET IN WIDTH, AS DESCRIBED IN THE JUDGMENT OF CONDEMNATION IN FAVOR OF CHARLES MORAN, ET AL, RECORDED FEBRUARY 08, 1888, IN BOOK F PAGE 326, OF DEEDS.

ALSO EXCEPTING THEREFROM A STRIP OF LAND 100 FEET IN WIDTH AS DESCRIBED IN THE DEED TO WESTERN PACIFIC RAILWAY COMPANY, RECORDED APRIL 10, 1905, IN BOOK P PAGE 214, OF DEEDS.

ALSO EXCEPTING THEREFROM A STRIP OF LAND 200 FEET IN WIDTH AS DESCRIBED IN THE DEED TO WESTERN PACIFIC RAILWAY COMPANY, RECORDED FEBRUARY 08, 1906, IN BOOK P PAGE 632, OF DEEDS.

ALSO EXCEPTING THEREFROM PARCELS 1 AND 2 AS DESCRIBED IN THE DEED TO ERMIN J. HINTZ RECORDED September 13, 1967, IN BOOK 216 PAGE 472, OF OFFICIAL RECORDS.

SECTION 25: LOTS 1, 2, 3 AND 4; AND THE W 1/2 OF THE SW 1/4.

SECTION 26: THE S 1/2 OF THE SE 1/4.

SECTION 34: THE E 1/2 OF THE SE 1/4; AND THE SW 1/4 OF THE SE 1/4.

EXCEPTING FROM THE NE 1/4 OF THE SE 1/4; AND THE SW 1/4 OF THE SE 1/4, ALL THE COAL AND OTHER MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO FRED E. GALEPPI, RECORDED MAY 11, 1982, IN BOOK 401 PAGE 521, OF OFFICIAL RECORDS.

SECTION 35: THE W 1/2 OF THE SW 1/4.

SECTION 36: THE SW 1/4 OF THE NE 1/4; THE SE 1/4 OF THE NW 1/4; THE E 1/2 OF THE SW 1/4; AND THE SW 1/4 OF THE SW 1/4.

EXCEPTING THEREFROM A STRIP OF LAND 150 FEET IN

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WIDTH AS DESCRIBED IN THE DEED TO WESTERN PACIFIC RAILWAY COMPANY, RECORDED MARCH 15, 1905, IN BOOK P PAGE 159, OF DEEDS.

IN TOWNSHIP 23 NORTH, RANGE 17 EAST, MOUNT DIABLO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

SECTION 1: LOTS 1 AND 2; THE S 1/2 OF THE NW 1/4; THE SW 1/4 OF THE NE 1/4; THE W 1/2 OF THE SE 1/4; AND THE S 1/2 OF THE SW 1/4.

EXCEPTING THEREFROM THE PARCEL DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED SEPTEMBER 04, 1926, IN BOOK 18 PAGE 189, OF DEEDS.

ALSO EXCEPTING THEREFROM THE PARCEL DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED AUGUST 10, 1992, IN BOOK 560 PAGE 500, OF OFFICIAL RECORDS.

ALSO EXCEPTING FROM THE S 1/2 OF THE SW 1/4, ALL THE COAL AND OTHER MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO CHARLES A. GALEPPI, RECORDED APRIL 07, 1941, IN BOOK 39 PAGE 472, OF DEEDS.

SECTION 2: LOTS 1, 2, 3 AND 4; THE SE 1/4 OF THE NW 1/4; THE S 1/2 OF THE NE 1/4; THE N 1/2 OF THE SE 1/4; THE SW 1/4 OF THE SE 1/4; THE E 1/2 OF THE SW 1/4; AND THE SW 1/4 OF THE SW 1/4.

EXCEPTING FROM THE SW 1/4 OF THE SW 1/4, ALL THAT PORTION THEREOF LYING SOUTHERLY AND EASTERLY OF THE NORTHWESTERLY LINE OF THE STRIP OF LAND 100 FEET IN WIDTH CONVEYED TO WESTERN PACIFIC RAILWAY COMPANY BY DEED, RECORDED JUNE 06, 1905, IN BOOK P PAGE 341, OF DEEDS.

EXCEPTING FROM THE SW 1/4 OF THE SE 1/4, ALL THE COAL AND OTHER MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO CHARLES A. GALEPPI, RECORDED April 07, 1941, IN BOOK 39 PAGE 472, OF DEEDS.

ALSO EXCEPTING THEREFROM THE PARCEL DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED AUGUST 10, 1992, IN BOOK 560 PAGE 500, OF OFFICIAL RECORDS.

SECTION 3: LOT 1 AND 2; THE S 1/2 OF THE NE 1/4; AND THE SE 1/4.

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EXCEPTING FROM LOT 2: THE SE 1/4 OF THE NE 1/4; AND THE S 1/2 OF THE SE 1/4, ALL THE COAL AND OTHER MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO FRED E. GALEPPI, RECORDED MAY 11, 1982, IN BOOK 401 PAGE 521, OF OFFICIAL RECORDS.

SECTION 10: THE N 1/2 OF THE NE 1/4.

EXCEPTING THEREFROM, ALL THE COAL AND OTHER MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO FRED E. GALEPPI, RECORDED MAY 11, 1982, IN BOOK 401 PAGE 521, OF OFFICIAL RECORDS.

SECTION 11: THE E 1/2 OF THE E 1/2; AND THE NW 1/4 OF THE NE 1/4.

THE NORTH 396 FEET OF THE SOUTH 476 FEET OF THE WEST 550 FEET OF THE S.E. 1/4 OF THE N.E. 1/4 OF SECTION 11, T. 23 N., R.17 E. M.D.M.

EXCEPTING THEREFROM, ALL THE COAL AND OTHER MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO CHARLES A. GALEPPI, RECORDED April 07,1941, IN BOOK 39 PAGE 472, OF DEEDS.

ALSO EXCEPTING THEREFROM THE PARCEL DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED AUGUST 10, 1992, IN BOOK 560 PAGE 500, OF OFFICIAL RECORDS.

SECTION 12: THE NW 1/4 OF THE NW 1/4.

EXCEPTING THEREFROM, ALL THE COAL AND OTHER MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO CHARLES A. GALEPPI, RECORDED APRIL 07, 1941, IN BOOK 39 PAGE 472, OF DEEDS.

SECTION 14: THE N 1/2 OF THE NE 1/4; THE E 1/2 OF THE NW 1/4; THE NE 1/4 OF THE SW 1/4; AND THE W 1/2 OF THE SE 1/4.

EXCEPTING THEREFROM THE PARCEL DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED AUGUST 10, 1992, IN BOOK 560 PAGE 500, OF OFFICIAL RECORDS.

ALSO EXCEPTING FROM THE N 1/2 OF THE NE 1/4 AND THE

1 NE 1/4 OF THE NW 1/4, ALL THE COAL AND OTHER
2 MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT
3 TO PROSPECT FOR, MINE AND REMOVE THE SAME AS
4 CONTAINED IN THE PATENT FROM THE UNITED STATES
5 OF AMERICA TO CHARLES A. GALEPPI, RECORDED APRIL
6 07, 1941, IN BOOK 39 PAGE 472, OF DEEDS.

7 SECTION 15: THE SW 1/4 OF THE NE 1/4; AND THE W 1/2 OF
8 THE SE 1/4.

9 EXCEPTING THEREFROM, ALL THE COAL AND OTHER
10 MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT
11 TO PROSPECT FOR, MINE AND REMOVE THE SAME AS
12 CONTAINED IN THE PATENT FROM THE UNITED STATES
13 OF AMERICA TO THE HEIRS OF ARTHUR PAUL PENZA,
14 RECORDED MAY 11, 1982, IN BOOK 401 PAGE 527, OF
15 OFFICIAL RECORDS.

16 SECTION 22: THE NW 1/4 OF THE NE 1/4.

17 EXCEPTING THEREFROM, ALL THE COAL AND OTHER
18 MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT
19 TO PROSPECT FOR, MINE AND REMOVE THE SAME AS
20 CONTAINED IN THE PATENT FROM THE UNITED STATES
21 OF AMERICA TO THE HEIRS OF ARTHUR PAUL PENZA,
22 RECORDED MAY 11, 1982, IN BOOK 401 PAGE 527, OF
23 OFFICIAL RECORDS.

24 APN: 143-070-07, 143-070-12, 143-070-13, 143-070-15, 143-100-
25 03, 143-100-07, 143-100-20, 143-100-22, 143-100-24, 143-100-26,
26 145-020-05, 145-020-06, 145-030-03, 145-030-04, 145-030-05,
27 145-030-11, 145-030-16, 145-040-12, 145-050-12, 145-050-15,
28 145-050-04

Parcel No.: 143-070-07

Together with all of Trustor's right, title and interest, whether now
owned or hereafter acquired, in and to the following:

(a) All buildings, structures, and improvements now
or hereafter located on such tract or tracts, as well as all
rights-of-way, easements, and other appurtenances thereto
("Improvements");

(b) Any land lying between the boundaries of such
tract or tracts and the center line of any adjacent street, road,
avenue, or alley, whether opened or proposed, if any;

(c) All of the rents, income, receipts, revenues, issues
and profits of and from such tract or tracts and improvements;

(d) All (i) water and water rights (whether decreed or
undecreed, tributary, nontributary or not nontributary,
surface or underground, or appropriated or unappropriated),
including, without limitation, those certain water rights

1 granted in Decree No. 12999, entered August 9, 1976, in
2 Book 26 of Judgments, Page 20, by the Superior Court for
3 Lassen County concerning the Long Valley Creek Stream
4 System within California in Counties of Lassen, Sierra and
5 Plumas; (ii) ditches and ditch rights; (iii) spring and spring
6 rights; (iv) reservoir and reservoir rights; and (v) shares of
7 stock in water, ditch and canal companies and all other
8 evidence of such rights, which are now owned or hereafter
9 acquired by Trustor and which are appurtenant to or which
10 have been used in connection with such tract or tracts or
11 improvements;

12 (e) All minerals, crops, timber, trees, shrubs, flowers,
13 and landscaping features now or hereafter located on, under
14 or above such tract or tracts;

15 (f) All machinery, apparatus, equipment, fittings,
16 fixtures (whether actually or constructively attached, and
17 including all trade, domestic, and ornamental fixtures) now
18 or hereafter located in, upon, or under such tract or tracts or
19 improvements and used or usable in connection with any
20 present or future operation thereof, including but not limited
21 to all heating, air-conditioning, freezing, lighting, laundry,
22 incinerating and power equipment; engines; pipes; pumps;
23 tanks; motors; conduits; switchboards; plumbing, lifting,
24 cleaning, fire prevention, fire extinguishing, refrigerating,
25 ventilating, cooking, and communications apparatus; boilers,
26 water heaters, ranges, furnaces, and burners; appliances;
27 vacuum cleaning systems; elevators; escalators; shades;
28 awnings; screens; storm doors and windows; stoves;
refrigerators; attached cabinets; partitions; ducts and
compressors; rugs and carpets; draperies; and all additions
thereto and replacements therefor;

(g) All rights to the payment of money, accounts,
accounts receivable, reserves, deferred payments, refunds,
cost savings, payments and deposits, whether now or later to
be received from third parties (including all earnest money
sales deposits) or deposited by Trustor with third parties
(including all utility deposits), escrow funds, escrow
accounts, contract rights, management agreements,
construction agreements or contracts, franchise agreements,
development and use rights, governmental permits and
licenses, including, without limitation, that certain Use
Permit (File No. 2002-113) issued by the Lassen County
Planning Commission on February 26, 2003 for the operation
of a Pozzolan mine, applications, architectural and
engineering plans, specifications and drawings, as-built
drawings, chattel paper, instruments, documents, notes,
drafts and letters of credit (other than letters of credit in favor
of Beneficiary), which arise from or relate to construction on
the Land, occupancy, management, operation, or to any
business now or hereafter to be conducted on it, or to the Land
and Improvements generally;

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(h) All proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Property or the other property described above into cash or liquidated claims, including proceeds from the sale or other disposition of the Property or other property described herein, including, but not limited to, all present and future Leases, Sales Contracts (defined below), rights to payment of money as well as proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Property or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact;

(i) All development rights associated with such tract or tracts, whether previously or subsequently transferred to such tract or tracts from other real property or now or hereafter susceptible of transfer from such tract or tracts to other real property;

(j) All awards and payments, including interest thereon, resulting from the exercise of any right of eminent domain or any other public or private taking of, injury to, or decrease in the value of, any of such property;

(k) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory;

(l) All trade names and trademarks;

(m) all of Trustor's interest in and to the Loan funds, whether disbursed or not, and any of Trustor's funds now or later to be held by or on behalf of Beneficiary;

(n) Any and all contracts and agreements for the sale of all or any portion of the Property and all rights to any and all earnest money deposits, sales proceeds and all other payments now or hereafter due thereunder ("Sales Contracts"). Trustor represents and warrants that there are no current Sales Contracts affecting the Property;

(o) All of Trustor's right, title and interest in and to any association or joint ownership association, now or hereafter formed pursuant to a declaration (the "Association") and interest in any common areas or common elements and any limited common areas or limited common elements of the Property owned by the Association; and

1 (p) All other and greater rights and interests of every
2 nature in such tract or tracts and in the possession or use
3 thereof and income therefrom, whether now owned or
subsequently acquired by Trustor.

4 (ECF No. 6 at 17–24; *see also* ECF No. 125 at 25–35, 40–41.) The Court deems Plaintiff’s
5 requested relief is warranted as follows.

6 “To reform an agreement, the aggrieved party must show: 1) the true intent of the parties
7 by clear and convincing evidence and that the error was a ‘mutual mistake’[;] and 2) that
8 reformation will not prejudice the rights acquired by bona fide purchasers.” *In re Pavich*, 191
9 B.R. 838, 845 (Bankr. E.D. Cal. 1996) (citing Cal. Civ. Code § 3399; *Shupe v. Nelson*, 254 Cal.
10 App. 2d 693, 699–700 (1967)). “If the above two-part test is satisfied, the court may reform a
11 deed of trust *nunc pro tunc*.” *Id.* (citing *Western Fed. Sav. & Loan Ass’n v. Heflin Corp.*, 797 F.
12 Supp. 790, 793 (N.D. Cal. 1992)).

13 As to the mutuality of mistake, Plaintiff has submitted evidence that Arif and Begum
14 admit its allegations with respect to the scrivener’s error concerning the Property and Omitted
15 Parcel. (*See* ECF No. 49 at 14; ECF No. 125 at 34–35.) Specifically, in the Arif/Begum
16 Agreement, Arif and Begum stipulate that the Omitted Parcel, which is entirely landlocked by the
17 Property, was inadvertently left out of the legal description in the Deed of Trust due to a
18 scrivener’s error. (ECF No. 49 at 15–16.) The Court finds Plaintiff has satisfied its burden of
19 establishing by clear and convincing evidence that the error was a “mutual mistake” and that the
20 parties intended for the Omitted Parcel to be included in the Deed of Trust description for the
21 Property. *Nissan Fire*, 210 F.3d at 1102; *Pavich*, 191 B.R. at 845.

22 Furthermore, the Court is satisfied that the reformation will not “prejudice the rights
23 acquired by bona fide purchasers” because Plaintiff currently holds all interests in the Property.
24 *Pavich*, 191 B.R. at 845. Plaintiff has demonstrated that it is the current beneficiary of the Deed
25 of Trust. (ECF No. 124-2 at 1; ECF No. 125 at 40.) As previously noted, Plaintiff’s claim is
26 unopposed by any Defendant. Indeed, the majority of Defendants either defaulted or submitted
27 Notices of Disclaimer, disclaiming all interest in the Property. (*See* ECF Nos. 17–18, 27, 30, 48,
28 66, 67, 68, 69, 70, 73.) The Swickard Parties settled with Plaintiff, assigned all interests in the

1 Property to Plaintiff, and Plaintiff substituted into the action for them. (ECF Nos. 118, 118-1,
2 119.) The remaining Defendants (Arif and Begum) have also settled with Plaintiff and assigned
3 their interests in the Property to Plaintiff. (ECF No. 49 at 18; ECF No. 125 at 24, 37–38.)

4 Further, per the Arif/Begum Agreement, Arif and Begum agree that the Deed of Trust should be
5 reformed to include the Omitted Parcel in its description of the Property. (ECF No. 49 at 15–16.)

6 Based on the record before it, the Court finds Plaintiff has met its burden of demonstrating
7 the legal description of the Property in the Deed of Trust must be reformed to include the Omitted
8 Parcel. *Nissan Fire*, 210 F.3d at 1102; *Pavich*, 191 B.R. at 845. Therefore, Plaintiff’s Motion is
9 GRANTED as to Claim Two.

10 The Deed of Trust is hereby reformed as follows: The Omitted Parcel shall be included in
11 the legal description in the Deed of Trust as described above and pledged to Plaintiff under the
12 Deed of Trust. As such, the priority date of Plaintiff’s lien on the Omitted Parcel is the July 30,
13 2008 recording date of the Deed of Trust. Plaintiff shall therefore have a first priority lien on the
14 Omitted Parcel with a priority date of July 30, 2008. The Omitted Parcel shall be foreclosed with
15 the Property as defined herein.

16 C. Judicial Foreclosure of Reformed Deed of Trust Against All Defendants
17 (Claim Four)

18 Plaintiff seeks to judicially foreclose on the Deed of Trust pursuant to California Code of
19 Civil Procedure § 726(a).

20 When a borrower defaults on a loan secured by real property, the lender can seek to
21 recover the debt via judicial or nonjudicial foreclosure. *See* Cal. Civ. Proc. Code § 726(a); *see*
22 *also Black Sky Capital, LLC v. Cobb*, 7 Cal. 5th 156, 159–60 (2019). The lender initiates a
23 judicial foreclosure by filing a lawsuit. *See* Cal. Civ. Proc. Code § 726(a). If the lender proves its
24 case, the court can order the sale of the property to satisfy the borrower’s debt. *See Arabia v.*
25 *BAC Home Loans Servicing, L.P.*, 208 Cal. App. 4th 462, 470–71 (2012). Specifically,
26 California Code of Civil Procedure § 726(a) provides:

27 the court may, by its judgment, direct the sale of the encumbered real
28 property or estate for years therein (or so much of the real property
or estate for years as may be necessary), and the application of the

1 proceeds of the sale to the payment of the costs of court, the expenses
2 of levy and sale, and the amount due plaintiff, including, where the
3 mortgage provides for the payment of attorney's fees, the sum for
4 attorney's fees as the court shall find reasonable, not exceeding the
5 amount named in the mortgage.

6 Cal. Civ. Proc. Code § 726(a).

7 In a judicial foreclosure, the foreclosing party must establish: “(1) an obligation, such as
8 execution of a note; (2) the security: execution of the mortgage or deed of trust and its
9 recordation; (3) default by mortgagor; [4] interests of defendants other than mortgagor; and [5]
10 attorneys’ fees and other expenses.” *ING Bank, FSB v. Ahn*, 758 F. Supp. 2d 936, 943 (N.D. Cal.
11 2010) (citing 5 Witkin, Cal. Proc. § 675).

12 In addition, the foreclosing party is required “to give notice to persons who have a
13 recorded interest in the real property which is junior to that of the foreclosing party.” *Diamond*
14 *Benefits Life Ins. Co. v. Troll (Diamond Benefits)*, 66 Cal. App. 4th 1, 7 (1998). “A judicial sale
15 removes liens from the property junior to the one being foreclosed if the junior lienors are made
16 parties to the action.” *LPP Mortg. Ltd., L.P. v. Gates*, No. CV 15-10008 DSF (PLAx), 2017 WL
17 663352, at *2 (C.D. Cal. Feb. 17, 2017), *aff’d sub nom. LPP Mortg. Ltd., LP v. Gates Tr. of*
18 *David W. Gates Tr. dated Aug. 5, 1996*, 741 F. App’x 428 (9th Cir. 2018) (internal quotations and
19 citations omitted); *cf. Arabia*, 208 Cal. App. 4th at 481 (“A junior lienholder’s interest in a
20 property that is subject to a judicial foreclosure on a senior lien is not affected if the junior
21 lienholder is not included as a defendant in the judicial foreclosure action.”).

22 Under certain circumstances, “a judicial foreclosure allows the plaintiff to seek a
23 deficiency judgment against the borrower, if the property is sold for less than the amount of
24 indebtedness.” *Arabia*, 208 Cal. App. 4th at 471. The amount of the deficiency judgment will be
25 the difference between the fair market value of the property at the time of the foreclosure sale (as
26 determined by the court) and the amount of indebtedness. *Id.* (citing *All. Mortg. Co. v. Rothwell*,
27 10 Cal. 4th 1226, 1236 (1995)); *see also Roseleaf Corp. v. Chierighino*, 59 Cal. 2d 35, 43–44
28 (1963). “However, the debtor has a statutory right of redemption, or an opportunity to regain
ownership of the property by paying the foreclosure sale price, for a period of time after
foreclosure.” *Arabia*, 208 Cal. App. 4th at 471 (quoting *All. Mortg. Co.*, 10 Cal. 4th at 1236). “If

1 the creditor wishes a deficiency judgment, his sale is subject to statutory redemption rights.”
2 *Black Sky Capital, LLC*, 7 Cal. 5th at 161. “If he wishes a sale resulting in nonredeemable title,
3 he must forego the right to a deficiency judgment.” *Id.*; *see also* Cal. Civ. Proc. Code § 726(e)
4 (contemplating waiver of deficiency judgment); *DeBerard Props. v. Lim*, 20 Cal. 4th 659, 669–70
5 (1999) (discussing waiver of § 726 protections).

6 Here, Plaintiff seeks a foreclosure decree that its interest in the Property is senior to the
7 interests of all Defendants in the Property, that Plaintiff is entitled to foreclose its senior interest
8 in the Property, and that no redemption rights under California Code of Civil Procedure § 726(e)
9 exist. (ECF No. 6 at 39–40; ECF No. 125 at 41–45, 50–51.) The Court will evaluate whether
10 Plaintiff has established it is entitled to a judicial foreclosure decree, whether junior interests will
11 be removed upon foreclosure, and whether any statutory redemption rights remain.

12 *i. Plaintiff is Entitled to Judicial Foreclosure*

13 Here, Plaintiff has submitted sufficient evidence to establish it is entitled to judicial
14 foreclosure. As previously discussed in greater detail: (1) Arif and Begum executed a Note in the
15 amount of \$950,000, secured by the Deed of Trust for the Property (ECF No. 124-1 at 1; ECF No.
16 124-2; ECF No. 125 at 39); (2) Plaintiff is the beneficiary of the Deed of Trust (ECF No. 124-2 at
17 1; ECF No. 125 at 40); (3) Arif and Begum defaulted on the Note and have failed to make any
18 payments since October 31, 2015 (ECF No. 49 at 14–15; ECF No. 125 at 39); (4) no other
19 Defendants have interests in the Property that will be affected by the foreclosure (as detailed
20 herein); and (5) Plaintiff has waived its attorneys’ fees and costs pursuant to the Arif/Begum
21 Agreement (ECF No. 49 at 15; ECF No. 125 at 34, 39–40). *ING Bank*, 758 F. Supp. 2d at 943.
22 Further, the Deed of Trust provides that Plaintiff may foreclose on the Property in the event of
23 Arif and Begum’s default. (ECF No. 124-2 at 24–27; ECF No. 125 at 44.) No Defendants
24 oppose Plaintiff’s claim. Moreover, Arif and Begum have stipulated that Plaintiff has a right to
25 foreclose. (ECF No. 49 at 16–18; ECF No. 125 at 44.)

26 *ii. Any Junior Interests in the Property Shall Be Removed*

27 It is undisputed that Plaintiff holds the senior interest to the Property as beneficiary to and
28 possessor of the first lien on the Property. (ECF No. 49 at 14, 16; ECF No. 124-1 at 5; ECF No.

1 124-2 at 1, 7; ECF No. 125 at 40); *see also Friery v. Sutter Buttes Sav. Bank*, 61 Cal. App. 4th
2 869, 878 (1998) (“California follows the ‘first in time, first in right’ system of lien priorities.”)

3 With respect to any potential junior lienholders, the Court is satisfied that Plaintiff has
4 given all required notice such that all junior liens will be removed from the Property upon
5 foreclosure. *Diamond Benefits*, 66 Cal. App. 4th at 7. As previously detailed, Plaintiff effected
6 both personal service and service by publication. (*See* ECF Nos. 8, 14, 16, 32, 33, 34; ECF No.
7 51 at 3; ECF No. 51-1.) Having served (either personally or by publication) all potential junior
8 lienors who have a recorded interest in the Property, Plaintiff has made them all parties to the
9 instant action. *See Diamond Benefits*, 66 Cal. App. 4th at 7. Following service, each and every
10 Defendant either defaulted, filed a Notice of Disclaimer, or settled with Plaintiff and/or assigned
11 all interests in the Property to Plaintiff. (*See* ECF Nos. 17–18, 27, 30, 48, 49, 66, 67, 68, 69, 70,
12 73, 118, 118-1, 119; *see also* ECF No. 125 at 41.) Plaintiff retained the Swickard Parties’ interest
13 in the Property when it substituted into the action for them. (*See* ECF Nos. 118-1, 119.) No
14 Defendant seeks to assert an interest in the Property or oppose Plaintiff’s Motion. Moreover,
15 pursuant to the Arif/Begum Agreement, Arif and Begum have stipulated and agreed that
16 Plaintiff’s Deed of Trust on the Property

17 is a good, valid and binding first priority Deed of Trust and lien on
18 the Property; that [Plaintiff’s] interest in the Property by virtue of the
19 Deed of Trust is senior to the interests of all other parties in this case
20 in the Property; that [Plaintiff] is entitled to foreclose its senior
21 interest in the Property; that upon completion of the foreclosure, and
in the absence of redemption, the interests of all other parties in this
case in the Property shall be forever foreclosed, terminated, and
extinguished.

22 (ECF No. 49 at 16.) Accordingly, all junior liens shall be removed from the Property upon
23 foreclosure. *Diamond Benefits*, 66 Cal. App. 4th at 7; *LPP Mortg. Ltd., L.P.*, 2017 WL 663352,
24 at *2.

25 *iii. Deficiency Judgment/Redemption Rights Are Waived*

26 Here, no deficiency judgment is sought or entered. Pursuant to the Arif/Begum
27 Agreement, Plaintiff agreed to waive any deficiency judgment owed under the Note after the
28 foreclosure sale of the Property. (ECF No. 49 at 15; ECF No. 125 at 34, 40.) In turn, Arif and

1 Begum have waived their redemption rights, and to the extent not waived, those redemption
2 rights have been assigned to Plaintiff. (ECF No. 49 at 16, 18.) Since a deficiency judgment and
3 the owner’s redemption rights have been waived, the Property shall be sold without any owner’s
4 right of redemption pursuant to California Code of Civil Procedure § 726(e). *See Black Sky*
5 *Capital, LLC*, 7 Cal. 5th at 161. Accordingly, at the conclusion of the foreclosure sale, the high
6 bidder is entitled to a Receiver’s Deed without any further right of redemption. *See id.*

7 In sum, the Court finds Plaintiff has met its burden of establishing it is entitled to judicial
8 foreclosure under California Code of Civil Procedure § 726(a). *Nissan Fire*, 210 F.3d at 1102.
9 Further, the Court finds Plaintiff’s interest in the Property is senior to the interests of all
10 Defendants, Plaintiff is entitled to foreclose its senior interest in the Property, and upon
11 completion of the foreclosure and in the absence of redemption, the interests of all Defendants in
12 the Property shall be forever foreclosed, terminated, and extinguished (except for the Swickard
13 Parties’ interest in the Property, which has been assigned to Plaintiff (*see* ECF Nos. 118-1, 119)).
14 *Diamond Benefits*, 66 Cal. App. 4th at 7; *LPP Mortg. Ltd., L.P.*, 2017 WL 663352, at *2; *Black*
15 *Sky Capital, LLC*, 7 Cal. 5th at 161.

16 Plaintiff’s Motion is therefore GRANTED as to Claim Four.

17 D. Replevin and Foreclosure of a Security Interest Against All Defendants
18 (Claim Five)

19 Plaintiff seeks replevin and foreclosure of its security interest in the “Personal Property
20 Collateral” as defined herein and set forth under the Security Agreement executed by Arif and
21 Begum on July 28, 2009. (ECF No. 6 at 40–43; ECF No. 125 at 45–47, 51.)

22 As previously noted, a claim for foreclosure requires Plaintiff to establish “the subject
23 loan is in default and the amount of default.” *Arabia*, 208 Cal. App. 4th at 470. “[T]o sustain a
24 judgment for replevin, ‘it must be shown that possession was in the defendant at the time of the
25 beginning of the action, or that he had the power to make delivery of the personal [property].’”
26 *G&G Prods., LLC v. Rusic*, No. 2:15-CV-02796-RGK-E, 2019 WL 2996498, at *8 (C.D. Cal.
27 Jun. 10, 2019), *appeal dismissed sub nom. G & G Prods. LLC v. Rusic*, No. 20-55291, 2020 WL
28 3250498 (9th Cir. Apr. 23, 2020) (citing *California Packing Corp. v. Stone*, 64 Cal. App. 488,

1 491–92 (1923) (affirming judgment on replevin action where defaulting mortgagors harvested
2 and retained crops on mortgaged property)).

3 Having determined Arif and Begum are in default on the Note, the Court considers
4 Plaintiff’s claim with respect to the security interest. Plaintiff submitted evidence that Arif and
5 Begum executed and delivered to it a Security Agreement on July 28, 2009, to further secure the
6 Note. (ECF No. 124-3; ECF No. 125 at 45.) Pursuant to the terms of the Security Agreement,
7 Plaintiff has a security interest in the following to secure all of Arif and Begum’s obligations to
8 Plaintiff under the Note (the “Personal Property Collateral”):

9 (a) all interests, distribution rights, proceeds, and all other things of
10 value owned directly or indirectly by the Debtor in any corporation,
11 partnership, trust, limited partnership, limited liability company
12 and/or limited liability limited partnership, including, without
13 limitation, all of Debtor’s ownership interest in and to NIM LLC, a
14 Colorado limited liability company; (b) all instruments, including,
15 without limitation, promissory notes and associated security
16 therewith that may be owned by Debtor; (c) all general intangibles
17 of Debtor, including, without limitation, goodwill, trademarks, trade
18 names, option rights, permits, licenses, insurance policies and
19 proceeds therefrom, rights of action, and books and records relating
20 to the same; (d) all investment property of Debtor; (e) all documents,
21 including, without limitation, contracts, sales and purchase contracts,
22 leases (both of real and personal property), subleases (of real and
23 personal property) of Debtor; (f) all software of Debtor; (g) all
24 commodity accounts or commodity contracts, securities (whether
25 certificated or uncertificated), and bonds owned by Debtor; (h) all
26 accounts, deposit accounts (including consumer deposit accounts),
27 accounts receivable, escrow accounts, consignments, chattel paper
28 (including both tangible, intangible and electronic chattel paper),
payment intangibles, letter of credit rights, certificates of title, bonds,
escrow accounts, commercial tort claims, judgments, litigation
claims, bank accounts, and the like of Debtor; (i) all goods, materials,
supplies, chattels, furniture, fixtures, equipment and inventory of
Debtor; (j) all development rights, agricultural lien rights (including
both possessory and nonpossessory agricultural lien rights), farm
products, water taps and tap rights, water rights including, without
limitation, those certain water rights granted in Decree No. 12999,
entered August 9, 1976, in Book 26 of Judgments, Page 20, by the
Superior Court for Lassen County concerning the Long Valley Creek
Stream System within California in Counties of Lassen, Sierra and
Plumas, water stock and permits, plans, drawings, specifications,
permits, including, without limitation, that certain Use Permit (File
No. 2002-113) issued by the Lassen County Planning Commission
on February 26, 2003 for the operation of a Pozzolan mine,
entitlements, studies, surveys, of Debtor; (k) all contracts and
contract rights and all and all ownership interests, distribution rights,
proceeds and all other things of value attributable therewith owned
by Debtor; (l) all ownership interests, distribution rights, proceeds,

1 and all other things of value owned directly or indirectly by the
2 Debtor, in any retirement accounts, including, without limitation,
3 401(k) accounts, individual retirement accounts, Keogh accounts,
4 SEP accounts, spend-thrift trusts, pensions, and all other varieties of
5 trusts and/or retirement savings vehicles (to the extent permitted by
6 law); (m) all trusts, estates, joint ventures and associations, and all
7 other things of value attributable therewith owned by Debtor, or
8 which Debtor, is a beneficiary thereof; (n) all boats, aircraft,
9 antiques, firearms, musical instruments, fine art, life insurance
10 policies (including, without limitation, cash value), automobiles,
11 motorcycles, trucks, tractors; and (o) all accessions, increases,
12 renewals, replacements, proceeds (including both cash and non-cash
13 proceeds), products, related securities (whether certificated or
14 uncertificated), general intangibles, supporting obligations,
15 condemnation proceeds, and insurance claims and proceeds related
16 to any and all of the above enumerated interests. **The interpretation
17 of the foregoing descriptions shall be broadly construed in favor of
18 inclusion, and shall be interpreted in a manner that is most
19 favorable to Secured Party (to extend [sic] permitted by law).**

11 (ECF No. 124-3 at 1–2; ECF No. 125 at 45–46) (emphasis in original). Further, pursuant to the
12 Arif/Begum Agreement, Arif and Begum stipulate that Plaintiff has a first priority security
13 interest in and a right to possess all of the Personal Property Collateral. (ECF No. 49 at 16–17;
14 ECF No. 125 at 47.)

15 Based on this record, the Court finds Plaintiff has established its right to foreclose its
16 security interest in the Personal Property Collateral and to possess the Personal Property
17 Collateral and the proceeds therefrom and the products thereof. *Nissan Fire*, 210 F.3d at 1102;
18 *Arabia*, 208 Cal. App. 4th at 470; *G&G Prods., LLC*, 2019 WL 2996498, at *8. Through the
19 Arif/Begum Agreement and the terms of the Security Agreement, Plaintiff has also established
20 Arif and Begum had the “power to make delivery of the personal [property]” at the
21 commencement of this action. *G&G Prods., LLC*, 2019 WL 2996498, at *8. Further, Plaintiff
22 has established its right is superior to any rights of the Defendants. *Nissan Fire*, 210 F.3d at
23 1102. No Defendant has opposed Plaintiff’s claim. Moreover, Arif and Begum have stipulated in
24 the Arif/Begum Agreement to Plaintiff’s right to possess the Personal Property Collateral and
25 foreclose on its interest in the Personal Property Collateral due to their default under the Note and
26 Security Agreement. (ECF No. 49 at 16–17.)

27 Therefore, Plaintiff’s Motion is GRANTED as to Claim Five.

28 ///

1 E. Application for the Appointment of Receiver Against All Defendants
2 (Claim Six)

3 Plaintiff seeks appointment of a receiver for the Property, based on the same evidence and
4 arguments submitted in its October 29, 2020 motion to appoint receiver (ECF Nos. 120–122).
5 (ECF No. 125 at 47–48, 51–52.) As previously discussed, the Court granted Plaintiff’s motion to
6 appoint a receiver by separate Order. (ECF No. 131.) Accordingly, Claim Six, which seeks
7 identical relief on the same bases (*see* ECF No. 125 at 51–52), is DENIED as moot.

8 **IV. CONCLUSION**

9 For the foregoing reasons, IT IS HEREBY ORDERED THAT Plaintiff’s Motion for
10 Summary Judgment (ECF No. 123) is GRANTED in part and DENIED in part as follows:

11 1. Plaintiff’s Motion is GRANTED as to Claim One. Judgment is hereby entered in favor
12 of Plaintiff against Arif in the amount of \$4,807,615.58. However, pursuant to the Arif/Begum
13 Agreement (ECF No. 49), the Judgment shall be on a non-recourse basis to support Plaintiff’s
14 liens on the Property and the Personal Property Collateral, and Plaintiff has waived a personal
15 judgment against Arif and Begum for a deficiency due under the Note after the foreclosure sale of
16 the Property;

17 2. Plaintiff’s Motion is GRANTED as to Claim Two;

18 3. Plaintiff’s Motion is GRANTED as to Claim Four. Plaintiff’s interest in the Property
19 by virtue of the Deed of Trust is hereby declared to be senior to the interest of all the Defendants.
20 Any interests in the Property held by any of the Defendants, all of which are junior to the
21 Plaintiff’s interest, shall be foreclosed. In the absence of a pre-sale redemption, each Defendant
22 is forever barred and foreclosed of any and all right, title, or interest in the Property. All persons
23 claiming an interest in or to the Property subsequent to the recording of the Lis Pendens have no
24 further interest in the Property by virtue of any deed or instrument recorded prior to the date of
25 this Judgment;

26 4. Plaintiff’s Motion is GRANTED as to Claim Five. As a result of Arif and Begum’s
27 default under the Note, and as confirmed in the Arif/Begum Agreement, Plaintiff is entitled to
28 foreclose its security interest in the Personal Property Collateral; and

1 5. Plaintiff's Motion is DENIED as to Claim Six, which is moot in light of the Court's
2 prior Order granting Plaintiff's motion to appoint Tom Morrow as Receiver for the Property (ECF
3 No. 131).

4 FORECLOSURE DECREE

5 The foregoing findings of fact, conclusions of law, and Orders of the Court are hereby
6 supplemented as set forth below. IT IS FURTHER ORDERED THAT:

7 1. This Foreclosure Decree is a final judgment as to claims made by Avalanche Funding,
8 LLC, a Colorado limited liability company, against Defendants Syed M. Arif, an individual;
9 Syeda Rehana Begum, an individual; Tim Swickard, an individual; Mapes Ranch, Inc., a
10 California corporation; Five Dot Cattle Company, a California corporation; Norman F. Rice,
11 deceased; the testate and intestate successors of Norman F. Rice, deceased, and all Persons
12 Claiming by, through or under such Decedent, as represented by the personal representative of the
13 Estate of Norman F. Rice; Gloria Rice, deceased; the testate and intestate successors of Gloria
14 Rice, deceased, and all persons claiming by, through or under such Decedent, as represented by
15 the personal representative of the Estate of Gloria Rice; the Rice 1997 Family Trust; Gloria M.
16 Rice, Trustee of the Rice 1997 Family Trust; Norman Rice Enterprises, Inc., a Nevada
17 corporation; Matthew G. Huntley a/k/a Matthew Grant Huntley, an individual; Michon Huntley,
18 an individual; Ramona Stonebarger, deceased; the testate and intestate successors of Ramona
19 Stonebarger, deceased, and all persons claiming by, through or under such Decedent, as
20 represented by the personal representative of the Estate of Ramona Stonebarger; Art Koffinke,
21 deceased; the testate and intestate successors of Art Koffinke, deceased, and all persons claiming
22 by, through or under such Decedent, as represented by the personal representative of the Estate of
23 Art Koffinke; Larry Campbell, deceased; the testate and intestate successors of Larry Campbell,
24 deceased, and all persons claiming by, through or under such Decedent, as represented by the
25 personal representative of the Estate of Larry Campbell; Hanson Cattle Company, purported
26 corporation of likely Nevada domicile; Hansen Cattle Company, a Nevada corporation; North
27 American Technical Trading Co., Inc., an Illinois corporation; a trustee of an unnamed trust to be
28 established, referenced in a Notice recorded on February 11, 1997, in volume 660 at page 559;

1 Chicago Title Company in its capacity as Trustee under a Deed of Trust Recording Number 2008-
2 04633 of Official Records, Lassen County; all persons unknown claiming only legal or equitable
3 right, title interest or cloud on Plaintiff's interest in Property; and Does 1–50.

4 2. At the foreclosure sale of the Property:

5 (a) Plaintiff or its successors and assigns shall be entitled to make a
6 credit bid for some of all of the amount owing under the Note; and

7 (b) In the event of a cash bid, all sale proceeds shall be first applied
8 to the amount owing under the Note, and the surplus, if any, shall be
9 paid into the registry of the Court in the same priority as the
Defendants' foreclosed interests in the Property and pending further
order of the Court.

10 3. At the foreclosure sale, the Property shall be sold in one parcel.

11 4. As soon as practicable and as directed by Plaintiff, the Receiver shall sell the Property
12 at public auction in the manner prescribed by law.

13 5. The Receiver is appointed by the Court to execute this Final Judgment and Decree of
14 Foreclosure. The Receiver shall sell the Property, as directed by Plaintiff and in accordance with
15 28 U.S.C. § 2001(a) for good funds, except that Plaintiff or its successors or assigns may bid by
16 offering partial or full credit against this Judgment on the Note. A certified copy of this Final
17 Judgment and Decree of Foreclosure issued by the Clerk of this Court shall constitute the
18 authority of the Receiver for proceeding and acting in this matter. The Receiver or Plaintiff shall
19 forthwith record a certified copy of this Final Judgment and Decree of Foreclosure in the official
20 records of Lassen, California. After the foreclosure sale, the Receiver shall file a return or report
21 of sale with this Court, and Plaintiff or the high bidder at the foreclosure sale shall seek this
22 Court's confirmation of the Receiver's sale.

23 6. This Final Judgment and Decree of Foreclosure shall constitute a Writ of Special
24 Execution and no additional levy need be made.

25 7. The Receiver shall have full power to adjourn, continue, or postpone the sale of the
26 Property without re-advertising, as the Receiver may deem best, and as authorized by law or as
27 may be requested by Plaintiff.

28 8. The Receiver shall give all appropriate notices as required by law. The Court directs

1 that publication of the sale shall be made in a newspaper of general circulation in Lassen County
2 pursuant to California Government Code § 6063, which requires three publications once a week
3 or more often, with at least five days intervening between respective publication dates and not
4 counting such publication dates, and the first publication shall occur at least 20 days prior to the
5 time of sale.

6 9. Notice of Sale shall be served upon Arif and Begum by U.S. Mail and shall be posted
7 in a public place in Lassen County not less than 20 days prior to the date of sale.

8 10. The Property shall be sold at the foreclosure sale “AS IS AND WHERE IS” without
9 any representations or warranties whatsoever by Plaintiff with respect to condition of title or
10 condition of improvements, water, permits, or any other matter.

11 11. The Receiver’s sale shall occur outside and on the courthouse steps of the front door
12 of the Lassen County Courthouse located at 2610 Riverside Drive, Susanville, CA 96130.

13 12. Nothing herein requires Plaintiff to bid at the foreclosure sale, or to bid a minimum
14 amount at the foreclosure sale.

15 13. Any pre-sale redemptions shall be exercised in accordance with California State law.

16 14. Having found that Plaintiff has waived a deficiency judgment on the Note, Arif and
17 Begum have waived their redemption rights and, to the extent not waived, have assigned their
18 redemption rights to Plaintiff pursuant to the Arif/Begum Agreement and Plaintiff has waived any
19 redemption rights it might have received. No Defendant shall have statutory or other right to
20 redeem the Property after the sale.

21 15. After the Receiver’s Sale, the Receiver shall execute and deliver a Receiver’s Deed
22 conveying the Property to the highest bidder at the Receiver’s sale, free and clear of all claims
23 and liens of the parties in this case and of other persons who obtained an interest in the Property
24 after the recordation of the Lis Pendens. Upon issuance of the Receiver’s Deed, the Receiver
25 shall promptly report to this Court the issuance of the Receiver’s Deed.

26 16. After the completion of the foreclosure and issuance of the Deed, the United States
27 Marshal is authorized to evict from the Property any person who remains on the Property in
28 violation of the rights of the grantee under the Receiver’s Deed.

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17. Pursuant to the settlement between Plaintiff and the Swickard Parties, and notwithstanding anything to the contrary in this Foreclosure Decree, the Swickard Parties' interest in the Property has been assigned to Plaintiff and is not foreclosed by this Foreclosure Decree.

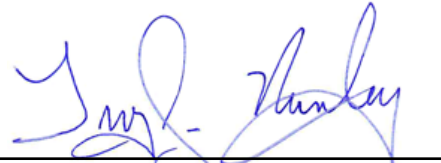
18. The Court issued a separate Order further describing the Receiver's duties with respect to the Property (ECF No. 131), and that Order is incorporated by reference herein.

19. The Court expressly finds and determines that there is no just reason for delay, and this Final Judgment is a Final Order and Final Judgment of the Court. Fed. R. Civ. P. 54(b). Plaintiff may immediately proceed with the foreclosure of the Property, provided that the Notice of Sale shall not issue until 30 days after the entry of this Judgment pursuant to Federal Rule of Civil Procedure 62(a).

The Clerk of the Court shall enter this Final Judgment and Decree of Foreclosure for Plaintiff against all the Defendants.

IT IS SO ORDERED.

DATED: April 30, 2021



Troy L. Nunley
United States District Judge