

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Alexander Group, LLC v. Comerica Bank

Alexander Group · No. 25-cv-00044-WHO · Decided January 7, 2026

OPINION

Alexander Group, LLC v. Comerica Bank

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 ALEXANDER GROUP, LLC, Case No. 25-cv-00044-WHO 8 Plaintiff,

ORDER GRANTING COMERICA'S

9 v. MOTION FOR SUMMARY

JUDGMENT

10 COMERICA BANK,

Re: Dkt. Nos. 36, 37, 39, 40, 42, 43, 45, 46, Defendant. 11 48, 49 12 Defendant Comerica Bank
("Comerica") moves for summary judgment that it is entitled to 13 accelerated payments of a loan
issued to plaintiff Alexander Group, LLC ("Alexander Group") 14 after Alexander Group
allegedly violated various conditions of its loan agreement, including a 15 coterminous provision,
an agreement to provide corporate financial documents, and failure to 16 make timely loan
payments. Comerica also moves for summary judgment on the doctrine of 17 unclean hands,
which it claims bars Alexander Group from seeking equitable relief. In the 18 alternative,
Comerica seeks leave to file a supplemental answer to the complaint, raising an 19 unclean hands
defense. Alexander Group, in turn, asserts that acceleration is not warranted in 20 these
circumstances given the ambiguity in the contract, and that there is no evidence in the record 21
suggesting bad faith on its part. 22 I do not find that Alexander Group acted with unclean hands.
But the loan documents in 23 question are unambiguous. Alexander Group triggered acceleration
of payment by failing to 24 adhere to the loan's requirements. Comerica's motion for summary
judgment is GRANTED. 25

BACKGROUND

26

1. Plaintiffs Enter into Loan Agreements with Defendants.

27 Alexander Group is a "single purpose entity formed to hold title to the real property 1 located
at 25447 Industrial Boulevard, Hayward, California" (the "Property"). Comerica Bank's 2 Motion
for Summary Judgment ("Mot.") [Dkt. No. 36] at 9. Blue River Seafood, Inc. (d/b/a Pucci 3

Foods) (“Blue River”) is a seafood wholesaler that operates in the Property. Id.; Alexander Group, 4 LLC’s Opposition (“Oppo.”) [Dkt. No. 40] at 2. Chris Lam (“Mr. Lam”) is the principal of both 5 Alexander Group and Blue River, having acquired Blue River in 2001. Id. 6 Shortly after acquiring Blue River, Mr. Lam met with Robert Muzio, a Comerica banker 7 who “specialized in serving middle-market companies like Blue River.” Oppo. at 2. Comerica 8 extended a loan to Blue River in August 2001 (the “Blue River Loan”). Mot. at 9–10. This loan 9 was made with “revolving lines of credit secured by the company’s accounts receivables and 10 inventory.” Oppo. at 2. Later, in August 2002, Comerica entered a separate real estate loan with 11 Alexander Group (the “Alexander Loan”), which was secured by a first priority deed of trust in 12 Comerica’s favor on the Property. Mot. at 10. Because Blue River’s rent payments to Alexander 13 Group were the source of Alexander Group’s funds to pay off the Alexander Loan, Blue River was 14 added as a guarantor to the loan (the “Blue River Guaranty”). Mot. at 10. Lam also served as a 15 guarantor to the Alexander Loan. Id. 16

2. The Parties Begin to Modify the Terms of the Loan Agreements. 17 Over the course of the Alexander Loan, Comerica and Alexander Group entered into 18 various agreements increasing the amount of the loan and changing the terms of repayment. Three 19 of these amendments are central to this case. 20

A. The Fourth Agreement 21 On or around October 10, 2016, the parties agreed to increase the amount of the Alexander 22 Loan from \$4,670,000.00 to \$5,900,000.00 (the “Fourth Agreement”). Id. (citing Declaration of 23 Thao Nguyen (“Nguyen Decl.”) [Dkt. No. 36-3] ¶ 10). During negotiations leading up to the 24 execution of the Fourth Agreement, Lam and Comerica agreed that Blue River would be released 25 as a co-guarantor to the Alexander Loan. Id. at 11 n.1; Oppo. at 2. In exchange, however, 26 Alexander Group agreed to furnish “within ninety (90) days after the end of its fiscal year . . . a 27 full and complete financial statement concerning [Alexander Group’s] income, expenses, assets,

1 Ex. 4 (“Fourth Agreement”) ¶ 7.7. Comerica also required Lam to “furnish . . . a personal 2 financial statement, in a form satisfactory to [Comerica], on an annual basis.” Id. (collectively, the 3 “Financial Information Clauses”). In addition, the Fourth Agreement required Alexander Group to 4 “[m]aintain a Debt Service Coverage Ratio of at least 1.20 : 1.00 at all times.” Id. ¶ 7.14.1 Should 5 Alexander Group “default in the performance of any covenant, condition or agreement set forth,” 6 the Fourth Agreement provided Comerica the right to “[d]eclare the Note immediately due and 7 payable.” Id. ¶¶ 8.1, 9.1. 8

B. Amendment No. 1 9 Later, in 2021, several banks began to offer to refinance the Alexander Loan on a 10 competitive basis. Oppo. at 3. Lam told Ms. Thao Nguyen, who worked with Muzio, about the 11 opportunity to compete for the Blue River and Alexander Group loans. Id. Comerica then offered 12 Lam to increase the Alexander Loan to \$9,750,000 for a 7-year or 10-year term, and to increase 13 the Blue River loan to \$4,500,000 for a 12-month period. Id.; Declaration of Christopher Lam 14 (“Lam Decl.”) [Dkt. No. 40-1] ¶ 10. However, much to Lam’s chagrin, this offer was conditioned 15 on each loan being “cross-defaulted,” meaning that default on one loan would trigger a default on 16 the other. Id. These terms were “unacceptable” to Lam because he sought to “separate the 17 obligations of

Alexnader Group from the obligations of Blue River.” Lam Decl. ¶ 11. In 18 response, Comerica decided to delete the cross-default provision from the agreement; Lam, in 19 turn, decided to stay with Comerica. Id. 20 On April 15, 2021, Lam signed and returned the updated agreement, selecting a 10-year 21 “Fixed SWAP Option” for the Alexander Loan. Id. ¶ 12. However, after signing the commitment, 22 Comerica sought new requirements to the loans in Amendment No. 1 to the Fourth Agreement 23 (“Amendment No. 1”). These conditions were allegedly desired because Comerica’s underwriting 24 department determined that an increase in the Alexander Loan, in light of the release of the Blue 25 1 The Debt Service Coverage Ratio (“DSCR”) requires Alexander Group to “have 1.20 times in 26 net income as compared to its debt.” Mot. at 11. While Comerica originally argued that Alexander Group violated this provision, thus triggering the loan’s acceleration clause, Comerica 27 withdrew this argument after discovering that previous computations of the DSCR may have been 1 River guaranty, made the loan too risky. Mot. at 11; Declaration of Cheryl M. Lott (“Lott Decl.”) 2 [Dkt. No. 36-1] Ex. A (“Nguyen Dep.”) at 21:17–23:12, 34:24–35:22. Therefore, Comerica 3 included Section 7.18 to Amendment No. 1, the “Coterminous Provision.” Mot. at 11. This 4 provision provides: 5 7.18 Coterminous Payment: In the event that the Blue River [Loan] is refinanced with another lender or otherwise terminated by 6 Borrower prior to payment in full of the Indebtedness, Borrower shall refinance the Loans with another lender or otherwise pay the Loan 7 and other Indebtedness in full. 8 Nguyen Decl. Ex. 12 (“Amendment No. 1”), Section 7.18. 9 The parties dispute why the provision was added. Alexander Group contends that Nguyen 10 told Lam that “Comerica is not a transactional lender, and that Comerica wanted to keep the 11 banking relationship for Mr. Lam’s entire business enterprise.” Oppo. at 4. The Coterminous 12 Provision was thus “intended to prevent [Lam] from splitting up his business between different 13 banks; if one of the borrowers (Alexander Group or Blue River Seafood) decided to take its 14 banking business elsewhere, the other borrower was required to repay its loan at the same time.” 15 Id. Lam also contends that there was “no discussion” between him and Nguyen about Alexander 16 Group’s obligations to repay the Alexander Loan before the maturity date if Comerica decided not 17 to extend the Blue River line of credit. Id. (citing Lam Decl. ¶ 17). He asserts that he “would not 18 have agreed to the coterminous provision in Amendment No. 1 if that meant that Comerica had the 19 option to make the Alexander Group loan due in 12 months, when the Blue River Seafood line of 20 credit matured.” Id. 21 Comerica paints a different picture. It contends that it required the Coterminous Provision 22 in Amendment No. 1 “because, if Blue River refinanced the Blue River Loan, Comerica would 23 have no visibility into Blue River’s financial performance, which was the sole source of 24 repayment of the Alexander Loan.” Mot. at 12 (citing Nguyen Dep. pp. 39:10–18, 54:21–24). 25 Because the Alexander Loan payments were contingent on Blue River’s lease payments, 26 “visibility into Blue River’s cash flow [was thought to be] critically important to Comerica in 27 determining the Alexander Loan’s risk profile.” Id. 1 Amendment incorporated the Blue River Loan, noting that: 2 Borrower has also requested certain amendments and credit

accommodations for its commonly controlled affiliate in an 3 amendment to the Blue River Credit Agreement and Blue River Line of Credit (“Blue River Facility”). The Bank is relying on the 4 existence of both the amended Blue River [Loan] and the amended Loan Agreement in agreeing to enter into this Amendment, increase 5 the amount of the Loans and amend the Blue River [Loan].” 6 Amendment No. 1, Section 5. 7 On May 3, 2021, the parties executed Amendment No. 1. Oppo. at 5. The agreement 8 specified that the maturity date for the Alexander Loan was March 31, 2031. Id. Two days later, 9 Comerica and Alexander Group signed a SWAP Agreement, which kept Alexander Group’s 10 interest rate constant at 3.95% (a 2.15% SWAP rate plus 1.80% spread). Id.; Lam Decl. Ex. E. 11 C. The Fifth Note

12 In 2023, Comerica notified Lam that the Alexander Loan would need to be 13 “redocument[ed],” as the global banking industry was required to discontinue the use of LIBOR 14 benchmark rate. Mot. at 13; Oppo. at 6. Redocumenting the loan required replacement of “both 15 the promissory note and the SWAP Agreement, because both . . . used LIBOR as the benchmark 16 rate.” Oppo. at 6. On February 23, 2023, the parties entered a fifth amended and restated note 17 (the “Fifth Note”) to convert the rate of the Alexander Loan from LIBOR to Bloomberg Short- 18 Term Bank Yield Index (“BSBY”). Mot. at 13. Section 8.6 of the Fifth Note incorporates the 19 Fourth Agreement, Amendment No. 1, and all previous documents into the Fifth Note. Nguyen 20 Decl. Ex. 7 (“Fifth Note”), Section 8.6. Specifically, the term provides: 21 This Note and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede 22 any and all previous agreements and understandings, oral or written, relating to the subject matter hereof . . . 23 Id. The Fifth Note later defines Loan Documents as: 24 [C]ollectively, this Note and all other documents, instruments, and 25 agreements evidencing, governing, securing, guaranteeing or otherwise relating to or executed pursuant to or in connection with 26 this Note or the Indebtedness evidenced hereby (whether executed or delivered prior to, concurrently with or subsequent to this Note), as 27 such documents, instruments or agreements may have been or may 1 Id. The Fifth Note also clarifies that it is meant to serve as the final agreement between the 2 parties: 3 This Note amends, restates, supersedes and replaces that certain Fourth Amended and Restated Note Secured by Deed of Trust dated 4 as of October 10, 2016, in the principal amount of Five Million Nine Hundred Thousand Dollars (\$5,900,000) executed by Borrower and 5 payable to the order of Bank as amended and subsequently increased to \$9,750,000 (the “Prior Note”); provided, however, (i) the execution 6 and delivery by Borrower of this Note shall not, in any manner or circumstance, be deemed to be a payment of, a novation of or to have 7 terminated, extinguished or discharged any of Borrower’s indebtedness evidenced by the Prior Note, all of which indebtedness 8 shall continue under and shall hereinafter be evidenced and governed by this Note, and (ii) all Collateral and guaranties securing or 9 supporting the Prior Note shall continue to secure and support this Note. 10 Id. Section 10. The Fifth Note states that the “MATURITY DATE” of the loan is March 31, 11 2031, the same date that the parties agreed to in their Fourth Note in 2021. Oppo. at 6. 12

3. Plaintiffs Allegedly Breach the Alexander Loan.

13 A. Coterminous Provision 14 Beginning in September 2023, plaintiffs began engaging in conduct that defendants 15 contend amounts to a breach of the Alexander Loan, thus triggering the acceleration clause. First, 16 in mid-September 2023, the corporate controller for Blue River, Sami Grewal (“Grewal”), 17 notified Comerica of “irregularities in Blue River’s accounting transactions.” Mot. at 15; Nguyen 18 Decl. ¶ 15; Nguyen Dep. pp. 77:24–78:10. Lam was on a business trip in Vietnam at the time, and 19 was not able to speak with Grewal about her concerns due to spotty internet connection. Oppo. at 20

7. Later, on September 18, 2023, Grewal resigned from her position, “citing Blue River’s 21 irregular accounting transactions as the reason for resignation.” Mot. at 5; Nguyen Decl. Ex. 9 22 (“Grewal Resignation”); Oppo. at 7. 23 Comerica subsequently began to conduct a series of audits of Blue River Seafood in 24 September and October 2023. Id. at 8; Mot. at 15. Comerica identified “Various invoices Blue 25 River accounted for as ‘paid’ that lacked supporting documentation and/or any shipment of 26 product,” amounting to \$1,663,000.00. Mot. at 15. Lam declared that he never had such 27 inventory on hand, nor that the products had been shipped to the customers. Id.; Lam Dep. pp. 1 35:15–36:12, 37:14–22, 41:21–46:4, 64:20–65:4. 2 On September 28, 2023, Comerica notified Blue River that it deemed itself “insecure,” and 3 exercised its right under the Blue River Loan to accelerate repayment of the loan. Mot. at 15–16; 4 Declaration of Jim Petroff (“Petroff Decl.”) [Dkt. No. 36-2] Ex. A (“Blue River Default Letter”). 5 In other words, Alexander Group was made aware that Comerica “did not intend to extend the 6 maturity date of the Blue River Seafood line of credit beyond May 1, 2024, which was the 7 maturity date at the time, and that Blue River Seafood must repay the loan.” Oppo. at 8. 8 The parties dispute what happened next. Comerica contends that Blue River “strung 9 Comerica along for over a year under the guise of negotiating a forbearance agreement to buy 10 itself time to explore re-financing options.” Mot. at 16. It also contends that Blue River “made 11 payments on the Blue River Loan to induce Comerica to entertain forbearance negotiations,” as 12 well as continued to draw down on its credit line. Id. Alexander Group, conversely, notes that 13 Blue River was actively searching for replacement financing at the time. Oppo. at 8. Both parties 14 agree that Blue River eventually received long term funding from National Oceanic and 15 Atmospheric Administration (“NOAA”) and Access Business Finance (“ABF”) programs to assist 16 with the re-financing process. Id.; Mot. at 16. 17 Alexander Group maintains that “[r]eplacing the . . . short-term Blue River Seafood line of 18 credit” with the NOAA and ABF loans was a “very positive outcome for Blue River Seafood, in 19 that the company would thereafter have loans that were designed to provide the company with a 20 predictable and well-designed plan of financing as opposed to Comerica’s short-term line of credit 21 financing.” Oppo. at 6. This, in turn, “significantly reduced Alexander Group’s risk of non- 22 repayment because Blue River Seafood was put on sound financial footing.” Id. Nonetheless, on 23 September 25, 2024, Comerica notified Alexander Group that the loan was immediately due

24 because the refinancing triggered the Coterminous Provision in Amendment No. 1. Mot. at 16; 25 Petroff Decl. Ex. B (“Notice of Default”). 26 B. Financial Statements 27 In addition to the Coterminous Provision, defendants maintain that Alexander Group failed 1 fiscal year, in violation of the Financial Information Clauses. Petroff Decl. ¶ 10. Alexander 2 Group also failed to provide Lam’s tax returns within seven business days of filing the returns, 3 also in violation of the Financial Information Clauses. Id. Defendants contend that this 4 independently warrants acceleration of the Blue River Loan under the Fourth Agreement. Mot. at 5 16–17. 6 C. Failure to Make Timely Payments 7 Finally, Alexander Group is alleged to have failed to make timely payments on the 8 Alexander Loan in August, September, and October 2025. Mot. at 18.; Petroff Decl. ¶¶ 12–14; 9 Nguyen Dep. pp. 51:17–53:1, 62:18–63:16. Alexander Group admits that the August and 10 September payments were untimely, but asserts that the October 2025 payment was timely. Oppo. 11 at 19. In August 2025, the automatic payment system for the Alexander Loan was rejected 12 because there were insufficient funds in its commercial checking account. Petroff Decl. ¶ 13. As 13 a result, Lam deposited a personal check to assist with paying the loan on August 4, 2025. Id.;

14 Oppo. at 19. Similarly, in September 2025, an automatic payment was rejected due to insufficient

15 funds; Lam again provided personal funds to pay the loans on September 9, 2025. Id. Because 16 payment was not effectuated “within 24 hours of the notice to Mr. Lam, on or about September 5, 17 2025, Comerica notified Alexander Group and Mr. Lam . . . [that it was] demanding full payment 18 of Alexander Group’s outstanding liabilities on the Alexander Loan. Id. On September 29, 2025, 19 in preparation for the October 2025 payment, Lam deposited funds to bring the Alexander Loan 20 account to a sufficient balance to cover the payment. Mot. at 18–19. However, “because these 21 funds exceeded a certain threshold, the funds were ‘held’ until October 7, 2025,” thus making 22 them untimely. Id. at 19. 23 4. Procedural History 24 On November 5, 2024, Alexander Group filed a complaint for declaratory relief in 25 Alameda County Superior Court, “seeking to resolve the question of whether Alexander Group 26 may repay the Alexander Loan in regular monthly payments, or whether Comerica may accelerate 27 the Alexander Loan.” Mot. at 19; Lott Decl. Ex. C (“State Complaint”) ¶ 7. On January 2, 2025, 1 Comerica moved for summary judgment on October 22, 2025. Mot. On the same day, it 2 filed a motion to leave to file a supplemental answer to Alexander Group’s complaint, claiming 3 that new evidence showed that an affirmative defense of unclean hands should be added to its 4 answer. See Motion for Leave to File Supplemental Answer (“Leave Mot.”) [Dkt. No. 37]. 5 Alexander Group responded to both motions on November 5, 2025. See Oppo.; Alexander Group, 6 LLC’s Opposition to Comerica’s Motion for Leave (“Leave Oppo.”) [Dkt. No. 39]. Comerica 7 replied on November 12, 2025. See Defendant Comerica Bank’s Reply to Opposition (“Repl.”) 8 [Dkt. No. 42]; Defendant Comerica Bank’s Reply in Support of Motion for Leave (“Leave Repl.”) 9 [Dkt. No. 43]. I heard oral argument on November 25, 2025.

10 LEGAL STANDARD

11 Summary judgment on a claim or defense is appropriate “if the movant shows that there is 12 no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of 13 law.” Fed. R. Civ. Proc. 56(a). In order to prevail, a party moving for summary judgment must 14 show the absence of a genuine issue of material fact with respect to an essential element of the 15 non-moving party’s claim, or to a defense on which the non-moving party will bear the burden of 16 persuasion at trial. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has 17 made this showing, the burden then shifts to the party opposing summary judgment to identify 18 “specific facts showing there is a genuine issue for trial.” *Id.* The party opposing summary 19 judgment must then present affirmative evidence from which a jury could return a verdict in that 20 party’s favor. *Anderson v. Liberty Lobby*, 477 U.S. 242, 257 (1986). 21 On summary judgment, the district court must draw all reasonable factual inferences in 22 favor of the non-movant. *Id.* at 255. In deciding a motion for summary judgment, “[c]redibility 23 determinations, the weighing of the evidence, and the drawing of legitimate inferences from the 24 facts are jury functions, not those of a judge.” *Id.* However, conclusory and speculative testimony 25 does not raise genuine issues of fact and is insufficient to defeat summary judgment. See 26 *Thornhill Publ’g Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). 27

1 DISCUSSION

2 I. Acceleration of the Alexander Loan 3 The parties first dispute whether Alexander Group breached the Alexander Loan, thus 4 triggering an acceleration of payments on the loan. Defendants maintain that three independent 5 events triggered an acceleration of the Alexander Loan: (1) the Cotermious Provision of the 6 Fourth Agreement; (2) the failure to make timely loan payments in August, September, and

7 October 2025; and (3) the failure to timely provide corporate financial documents. Mot. at 21. I 8 agree that each independently warrant acceleration. 9 a. Cotermious Provision 10 The Cotermious Provision of the parties’ agreement states: “In the event that the Blue 11 River Credit Line is refinanced with another lender or otherwise terminated by Borrower prior to 12 payment in full, Borrower shall refinance the Loan with another Lender or otherwise pay the Loan 13 and other Indebtedness in full.” While the parties do not dispute the existence of the Cotermious 14 Provision, they disagree over whether it is susceptible to more than one interpretation considering 15 extrinsic evidence. This requires me to consider whether the parol evidence rule is applicable, and 16 if so, to what extent. 17 1. Parol Evidence Rule 18 “The parol evidence rule prohibits the introduction of oral or written evidence to vary or 19 contradict the terms of an integrated written contract.” *Traumann v. Southland Corp.*, 842 F.

20 Supp. 386, 390 (N.D. Cal. 1993) (citing *Masterson v. Sine*, 68 Cal.2d 222 (1968)). It is presumed

21 that the parties’ “written agreement constitutes the final and absolute expression of the result of all 22 negotiations.” *Id.* (citing *Gerdlund v. Electronic Dispensers Int’l*, 190 Cal. App. 3d 263

(1987)). 23 To this end, the parol evidence rule will only “exclude extrinsic evidence if the contract at issue is 24 integrated.” *Id.* Whether the parties intended for a contract to be integrated is a question of law. 25 See *FPI Development, Inc. v. Nakashima*, 231 Cal. App. 3d 367, 392 n.12 (1991). 26 Here, each iteration of the Alexander Loans contains an integration clause. While those 27 clauses are admittedly worded slightly different from one another, the applicability of the 1 Agreement reads: 2 This Agreement, the other Loan Documents and the Environmental Indemnity Agreement constitute the entire understanding between the 3 parties regarding the matters mentioned or incidental to this Agreement. The Loan Documents and the Environmental Indemnity 4 Agreement supersede all oral negotiations and prior writings concerning the subject matter of the Loan Documents and the 5 Environmental Indemnity Agreement, including any inconsistent terms of Bank’s loan commitment to Borrower, if any; provided, 6 however, that all obligations of Borrower under any loan commitment (including, without limitation, the obligation to pay any fees to Bank 7 and any costs and expenses relating to the Loan) shall survive the execution and delivery of this Agreement, the other Loan Documents 8 and the Environmental Indemnity Agreement, and any failure by Borrower to perform any such obligation shall constitute an Event of 9 Default hereunder. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other 10 agreement or instrument, including any of the Loan Documents or the Environmental Indemnity Agreement, the terms, conditions and 11 provisions of this Agreement shall prevail. This Agreement may not be modified, amended or terminated except by a written agreement 12 signed by each of the parties hereto. 13 Declaration of Thao Nguyen (“Nguyen Decl.”) [Dkt. No. 36-3] Ex. 4 (“Fourth Amended 14 Agreement”) § 12.4; see also *id.* Ex. 5 (“First Amendment to Fourth Agreement”) § 8; *id.* Ex. 7 15 (“Fifth Amended Agreement”) § 8.6. These provisions all suggest that the terms of the loan were 16 meant by the parties to be an integrated agreement. 17 While the presence of these clauses is “strong evidence of the parties’ intent . . . it is not 18 dispositive.” *Traumann*, 842 F. Supp. 3d at 390 (citing *Slivinsky v. Watkins-Johnson Co.*, 221 Cal.

19 App. 3d 799 (1990)). Alexander Group argues that there are enough ambiguities in the evidence

20 to suggest extrinsic evidence should be used, regardless of the integration clause. It first argues 21 that the Coterminous Provision says nothing about the Blue River line of credit, and that if it were 22 the intention of the parties to require Alexander Group to pay the Alexander Loan when the Blue 23 River line of credit was repaid, it would have been worded more explicitly. *Oppo.* at 10. Further, 24 the use of “terminated by Borrower” language in the Coterminous Provision suggests that the 25 parties did not contemplate the Provision to cover termination by the Lender, and that reading it 26 otherwise would render the language superfluous. *Id.* Alexander Group also cites to Lam and 27 Nguyen’s conversations regarding the cross-default provisions, wherein Comerica agreed to 1 the maturity date of the Alexander Group loan by 10 years, to March 2023, while at the same time 2 extending the maturity date of the Blue River line of credit by one year,

to May 2022. Oppo. at 3 11. Alexander Group believes this evidence makes the “contractual language . . . susceptible to 4 more than one reasonable interpretation” and concludes that summary judgment is “improper 5 because ‘differing views of the intent of parties will raise genuine issues of material fact.’” Oppo. 6 at 12 (citing *San Diego Gas & Elec. Co. v. Canadian Hunter Mktg. Ltd.*, 132 F.3d 1303, 1307 (9th 7 Cir. 1997)).

8 I disagree. Construing all evidence in the light most favorable to Alexander Group, I do 9 not see how this evidence points to ambiguity. First, the argument about the superfluous 10 “terminated by Borrower” language is unconvincing. The Coterminous Provision reads: “if the 11 Blue River Credit Line is refinanced with another lender or otherwise terminated by Borrower 12 prior to payment in full, Borrower shall repay the Loan in full.” While Alexander Group focuses 13 on the second clause of the Provision—“terminated by Borrower”—it seems to completely ignore 14 that acceleration may occur when the Blue River Credit Line is refinanced. Repl. at 6–7. That is 15 exactly what happened here: in response to Comerica declaring itself insecure, Alexander Group 16 re-financed with funding from NOAA and ABF. Mot. at 16. Because the circumstances in 17 question are squarely covered in the Coterminous Provision, accelerating Alexander Group’s loans 18 was warranted. 19 Additionally, that Alexander Group read the entire loan agreements multiple times before 20 signing, including the Coterminous Provision, lends credence to Comerica’s argument. See 21 *Traumann*, 842 F. Supp. at 390. Even if Lam and Alexander Group had a subjective 22 understanding of what they thought these provisions meant, that belief does not override the clear, 23 unambiguous language of the Coterminous Provision. Each subsequent version of the loan 24 agreement integrated the previous agreements, indicating that Alexander Group had multiple 25 opportunities to clarify the scope and interpretation of these provisions. Instead, the parties 26 entered the Fourth Note, Amendment No. 1, and the Fifth Note with each other, binding 27 themselves to the Coterminous Provision. 1 amendments over a short period. Any subjective confusion does not override the terms of an 2 unambiguous contract. 3 2. Because Blue River Refinanced the Blue River Loan, Acceleration was Warranted. 4 a. Refinancing 5 The parties also disagree whether Blue River “refinanced” its loan such that it was subject 6 to acceleration by Comerica. Comerica maintains that it is “undisputed that Blue River refinanced 7 the Blue River Loan in September 2024.” Mot. at 26 (citing Declaration of Jim Petroff (“Petroff 8 Decl.”) [Dkt. No. 36-2] at ¶ 9 (“In September 2024, Blue River entered into agreements . . . to re- 9 finance its obligations under the Blue River Loan.”)). While Alexander Group did not dispute this 10 point in its opposition, at oral argument, it clarified that the parties purportedly had different 11 definitions of the term “refinance,” and that in its view, its actions did not constitute refinancing 12 the loan. It also filed a supplemental brief on this issue, see Supplemental Brief Request for Leave 13 (“Suppl.”) [Dkt. No. 48], that Comerica opposed. See Objections to Request for Leave (“Suppl. 14 Oppo.”) [Dkt. No. 49].² 15 Alexander Group’s supplemental brief raises a few new arguments regarding the definition 16 of “refinancing.” First,

it points to Section 2924c of the California Civil Code, which it argues states that it may reinstate an accelerated loan by “paying all amounts due, ‘other than the portion of principal as would not then be due had no default occurred.’” Suppl. at 1 (citing Cal. Civ. Code § 2924c(a)(1)). It also objected to Comerica’s reference to Section 2924.7 of the Civil Code, as it believes that section only applies to a “failure to pay insurance premiums, taxes, rents, assessments, or advances as required by the mortgage,” which is not at issue here. Id. Finally, it contends that the California Uniform Commercial Code indicates that the term “refinanced” is “not defined,” and whether the term “encompass[es] a particular transaction depends upon whether, under the particular facts, the purchase-money character of the security interest fairly can be said to survive.” Id. at 1–2; Cal. U. Com. Code § 9103, Comment 7(b). Alexander Group’s arguments are not well-taken. While Alexander Group is correct that under Section 2924c, “the mortgagor [has] a right to cure a default by paying the amount in default, plus ‘reasonable expenses and costs,’ thereby reinstating the loan as if the default had not occurred,” it does not show that it actually paid the amount in default and was thus entitled to reinstatement. *Walker v. Countrywide Home Loans, Inc.*, 98 Cal. App. 4th 1158, 1173 (2002) (quoting Cal. Civ. Code § 2924c(a)(1)). Additionally, Alexander Group cites no authority suggesting that Section 2924.7 only allows acceleration upon the “failure to pay insurance premiums, taxes, rents, assessments, or advances.” Finally, the California Uniform Commercial Code does not apply in this case, as the loan in question is secured by real property, not personal property. See *Nguyen Decl.* ¶¶ 8–10; *Garcia v. Fed. Home Loan Mortg. Corp.*, No. 1:12-cv-1100397-AWI-BAM, 2012 WL 3756307, at *4 (E.D. Cal. Aug. 28, 2012) (“The California Commercial Code does not apply to real property . . .”). Alexander Group’s eleventh-hour argument does not cure its failure to raise this issue earlier, nor is it supported by the law. Even after drawing all inferences in favor of Alexander Group, it is clear that the plain meaning of “refinance” should be used to determine whether the Coterminous Provision was violated. 3. Acceleration was Warranted Turning to the merits of the parties’ arguments, acceleration was warranted. Alexander Group argues that under “controlling case law, a lender can only accelerate a loan if the default impaired the lenders’ security. Otherwise, acceleration is an unenforceable penalty or forfeiture.”

21 Oppo. at 13. To this end, Alexander Group cites two cases it believes control this issue.

22 First, in *Brown v. AVEMCO Investment Company*, 603 F.2d 1367 (9th Cir. 1979), the Ninth Circuit found that acceleration clauses are “not to be used offensively, e.g., for the commercial advantage of the creditor.” Id. at 1376. Rather, acceleration is a “matter of equity and the courts, including those of [the state], have historically been careful to evaluate the fairness of acceleration in the particular facts of a case.” Id. But *Brown* arises out of Texas contract law; 27 Alexander Group even recognizes this in its opposition. See Oppo. at 13 n.4 (“The loan 1 and Texas law.”). This Texas principle has not been extended to any California state contract 2 claims, and there is no reason to do so here. 3 Further, Alexander Group relies on *Freeman v. Lind*, 181 Cal. App. 3d 791 (1986), to 4 argue that California law places significant limits on a “lender’s

right to accelerate a loan notwithstanding an acceleration clause in the loan documents.” *Oppo*. at 14. In *Freeman*, the 6 parties entered into a contract for the sale of a parcel of property, set to be paid in monthly 7 installments. 181 Cal. App. 3d at 794. The note was secured by a deed of trust that contained an 8 acceleration clause. *Id.* at 794–95. During the repayment period, the borrower breached a 9 provision in the loan requiring it to maintain fire insurance on the property. *Id.* at 795. While the 10 parties both acknowledged that the borrower knew of both the fire insurance provision and the 11 acceleration clause, the borrower argued that acceleration was unwarranted because the lack of 12 insurance did not impact the security of the loan. *Id.* at 798. A panel on the California Court of 13 Appeal agreed, finding that a “trustee or beneficiary may not foreclose under an acceleration 14 provision in a deed of trust . . . unless the[ir breach] impairs the security of the deed of trust. It is a 15 question of fact whether the [breach] impairs the security of the deed of trust.” *Id.* at 807. 16 Relying on *Freeman*, Alexander Group argues that the “relevant question here is not only 17 whether Alexander Group is in default,” but also “if, as a result, Comerica’s security is impaired.”

18 *Oppo*. at 15. Because “substantial, admissible evidence [shows] that Comerica’s security was not

19 impaired,” Alexander Group concludes no acceleration is warranted. *Oppo*. at 15. But what 20 Alexander Group fails to mention is that *Freeman* has been abrogated by subsequent statutory 21 authority in California. Under California Civil Code § 2924.7, lenders may “accelerate the 22 maturity date . . . upon the failure . . . to pay, at the times provided for under the terms of the deed 23 of trust or mortgage, any taxes, rents, assessments, or insurance premiums . . . whether or not 24 impairment of the security interest in the property has resulted from the failure.” Cal. Civ. Code § 25 2924.7 (emphasis added). The California Legislature statutory note to Section 2924.7 specifically 26 notes that the statute abrogated the *Freeman* decision: 27 It is the intent of the Legislature to abrogate the holdings in cases such under a deed of trust or mortgage on real property to enforce the 1 express provisions of the deed of trust or mortgage. 2 Accordingly, to accelerate a defaulted loan, California law simply requires showing that 3 the “right to accelerate . . . [is] clear and unequivocal” in the contract, and that there is “[no] 4 reasonable doubt as to the meaning of the terms employed.” *In re Crystal Properties, Ltd., L.P.*, 5 268 F.3d 743, 751 (9th Cir. 2001) (quoting *First Bank Inv’rs Trust v. Tarkio Coll.*, 129 F.3d 471, 6 475 (8th Cir. 1997)). As discussed above, this standard is met here: Section 9.1 of the Fourth 7 Agreement states that in the event of “default in the performance of any covenant, condition or 8 agreement set forth,” Comerica retained the right to “[d]eclare the Note immediately due and 9 payable.” Fourth Agreement, Section 9.1. Both parties recognize that the Coterminous Provision 10 is a clear condition on the Fourth Agreement and subsequent loan agreements. Therefore, because 11 Alexander Group’s refinancing of the Blue River loan triggered the default provision, Comerica 12 was well within its authority to accelerate the loans. No material fact presented by Alexander 13 Group reasonably contradicts this finding, even after viewing all evidence in a light most 14

favorable to its position. 15 b. Untimely Payments 16 Next, Comerica argues that Alexander Group's untimely payments of the Alexander Loan 17 triggered default and acceleration of the loan. I agree.

18 Section 8 of the Fourth Agreement sets out the events that constitute default; they include 19 any "default in the performance of any covenant, condition or agreement set forth" in the 20 agreement, including the timely payment of the Alexander Loan. Fourth Agreement, Section 8.1. 21 Under Section 9, Comerica was entitled to declare a loan "immediately due and payable" upon 22 breach of one of the Section 8 terms, including untimely payments. *Id.*, Section 9. Comerica 23 asserts that Alexander Group's failure to timely its loan obligations in August, September, and 24 October 2025 triggered Section 9 and warranted acceleration.

25 Alexander Group does not contest that the August and September payments were late, and 26 argues that its October payment was timely, despite the "hold" placed on its funds. *Oppo.* at 19. 27 It contends that this was a "minor transgression . . . unrelated to the claim at issue in the 1 Alexander Group presents no evidence that would suggest why the acceleration clause would not 2 be triggered for such a clear violation as its failure to pay. Accordingly, acceleration was 3 independently warranted on the basis of Alexander Group's repeated failure to timely pay off its 4 loans. 5 c. Financials and Tax Returns 6 Finally, Comerica argues that Alexander Group's failure to provide the company's annual 7 financial disclosures, along with Lam's failure to provide his personal tax returns, constituted 8 default under Section 9.1 of the Fourth Agreement, thus triggering acceleration. *Mot.* at 23–24. 9 At the time of filing its motion for summary judgment, Comerica argued that Alexander Group 10 had still not provided them with the financial documents. *Id.* However, in its reply, Comerica 11 noted that Alexander Group ultimately provided these documents to them on October 23, 2025, 12 one day after filing its motion for summary judgment.³ Regardless of this late filing, Comerica 13 contends that there is no genuine dispute of material fact that it was within its right to accelerate 14 the loan after Alexander Group failed to adhere to the Financial Information Clauses. See Fourth 15 Agreement, Section 7.1. 16 Alexander Group admits to filing these documents late; in its opposition, it concedes to 17 "submitt[ing] its 2024 financial statement on September 19, 2025, and its 2024 tax return on 18 October 23, 2025." *Oppo.* at 20. This timing violated the Fourth Agreement's Financial 19 Information Clauses, which indicated all financial information be submitted within ninety days of 20 the close of the fiscal year, or in the case of Lam's tax returns, within seven business days of 21 filing. *Mot.* at 23. Like the Coterminous Provision and untimely payments, this failure to adhere 22 3 Comerica's reply also indicates that these tax returns show "(1) Alexander Group is in fact in 23 violation of the DSCR, and (2) that Alexander Group provided Comerica and the IRS with inaccurate financial information as the rental income reported on each not only conflict with each 24 other, but conflict with the actual rental deposits made into Alexander Group's account." *Repl.* at

9. Because Comerica previously retracted its DSCR argument due to lack of evidence, see FN 1,

25 it now asks that I allow Comerica to reinstate its claim that Alexander Group's violation of the DSCR clause triggered acceleration. Id.; see Fed. R. Civ. P. 56(e) ("If a party fails to properly 26 support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may . . . give an opportunity to properly support or address the fact."). 27 Because Alexander Group's breach of the Coterminous Provision, Financial Information Clauses, 1 to the terms of the Fourth Agreement properly triggered the acceleration clause upon default. 2 || Alexander Group provides no evidence or explanation suggesting otherwise. 3 Alexander Group breached the Coterminous Provision, made untimely payments, and 4 || failed to provide timely financials and tax returns. Each breach entitled Comerica to accelerate the 5 loan agreement. It is entitled to summary judgment as a result. Its alternative request to amend its 6 answer to state an unclean hands defense is DENIED as moot.

7 CONCLUSION

8 Comerica's motion for summary judgment is GRANTED. The Clerk shall enter Judgment 9 in accordance with this Order. 10 IT IS SO ORDERED. 11 Dated: January 6, 2026 q 12 13 iam H. Orrick 5 14 United States District Judge 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28