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8 Attorneys for Defendant
9 ELGB, INC.

FILED
Superior Court of California
County of San Francisco

SEP 17 2021

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

FLEXIBLE FUNDING LTD. LIABILITY)
CO.,)

Plaintiff,)

v.)

ELGB, INC. DBA EL GALLO BAKERY)
and DOES 1 through 20, inclusive,)

Defendants.)

Case No. CGC-19-578772

[Unlimited Jurisdiction – Amount Demanded
Exceeds \$25,000

**[PROPOSED] ORDER GRANTING
DEFENDANT ELGB INC.'S MOTION
FOR SUMMARY JUDGMENT**

Date: September 17, 2021
Time: 9:30 a.m.
Dept: 302

Complaint Filed: August 28, 2019
Trial Date: November 15, 2021

Matter on calendar for Friday, September 17, 2021, Line 6

DEFENDANT ELGB, INC.'S MOTION FOR SUMMARY JUDGMENT Or, In The
Alternative, Summary Adjudication Of Issues.

Defendant ELGB Inc.'s motion for summary judgment is granted.

1 The weight of authority indicates that there is no separate private right of action under
2 Commercial Code sec. 9406 and plaintiff's rights are derived from obtaining an enforceable
3 assignment. (See Forest Capital, LLC v. BlackRock, Inc., 658 Fed. Appx. 675 (4th Cir. 2016); Ta
4 Chong Bank Ltd. v. Hitachi High Technologies America, Inc., 610 F.3d 1063, 1069 (9th Cir.
5 2010) ["Section 9406(a) does not impose liability distinct from the assigned accounts receivable.
6 It merely states, in pertinent part, that a debtor 'may not discharge the obligation by paying the
7 assignor.' Cal. Com. Code Sec. 9406(a)."].)
8

9 On November 17, 2016, plaintiff entered into a financing agreement with Galca Group
10 LLC where Galca agreed to assign its accounts receivable to plaintiff. (UMF 1.) On February 1,
11 2017, Galca became a suspended corporation due to failing to pay its taxes. (UMF 13.) In March
12 and June of 2018, plaintiff issued notices of assignment to defendant. (UMFs 6-7.) When plaintiff
13 served its notices of assignment, it lacked the capacity to prosecute Galca's claims because Galca
14 remained a suspended entity. (Commercial Code sec. 9404(a)(2) [rights of assignee are subject to
15 "[a]ny other defense or claim of the account debtor against the assignor which accrues before the
16 account debtor receives a notification of the assignment authenticated by the assignor or the
17 assignee."]; Cal-Western Business Services, Inc. v. Corning Capital Group (2013) 221
18 Cal.App.4th 304 [assignee of suspended corporation lacked capacity to sue].) The court notes that
19 defendant is not seeking a setoff for its payments to Galca. Rather, it contests Galca/plaintiff's
20 capacity to maintain this action because of the failure to pay taxes. Finding that defendant's lack of
21 capacity defense is viable in these circumstances is consistent with Cal-Western's policy to induce
22 entities to pay their taxes. (See Cal-Western Business Services, Inc., 221 Cal.App.4th at 314.)
23
24

25 Dated: 9/17/21

26 Lu
JUDGE OF THE SUPERIOR COURT

27 Hon. Richard B. Ulmer lu
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