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9 GG, Inc.

FILED
Superior Court of California
County of San Francisco

SEP 17 2021
CLERK OF THE COURT

BY: [Signature] Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 FLEXIBLE FUNDING LTD. LIABILITY)
13 CO.,)

14 Plaintiff,)

15 v.)

16 GG, INC. DBA EL GALLO GRILL and)
17 DOES 1 through 20, inclusive,)

18 Defendants.)

Case No. CGC-19-576659

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

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

Date: September 17, 2021

Time: 9:30 a.m.

Dept: 302

Complaint Filed: June 13, 2019

Trial Date: November 8, 2021

21 Matter on calendar for Friday, September 17, 2021, Line 5

22
23 DEFENDANT GG, INC. DBA EL GALLO GRILL'S MOTION FOR SUMMARY
24 JUDGMENT Or, In The Alternative, Summary Adjudication Of Issues.

25 Defendant GG Inc.'s motion for summary judgment is granted.
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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)."])

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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.)
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25 Dated: 9/17/21

26 wh
JUDGE OF THE SUPERIOR COURT

27 Hon. Richard B. Ulmer *RB*