

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/23/26 TIME: 1:30 P.M. DEPT: L CASE NO: CIV1904035

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: SOFI LENDING CORP.

vs.

DEFENDANT: BYRON MORALES

NATURE OF PROCEEDINGS: MOTION – OTHER: VACAT DISMISAL

RULING

Plaintiff, SoFi Lending Corp. seeks leave to vacate a prior dismissal filed without prejudice, and for leave to amend to file a first amended complaint, and to enter judgment pursuant to the Stipulation for Entry of Judgment Pending Performance. Plaintiff seeks to enforce a settlement pursuant to California Code of Civil Procedure 664.6 on the grounds that the Defendant Byron Morales signed a Stipulation for Entry of Judgment. Plaintiff alleges the Defendant defaulted on the agreement.

Plaintiff alleges that parties agreed that defendant shall pay to plaintiff a total settlement amount of \$49,236.32 by 03/28/2024, with monthly payments of \$1,095.00 paid on or before 07/28/2020, and continuing each month thereafter through 02/28/2024, and a final payment of \$1,056.32 on or before 03/28/2024.

Plaintiff alleges that Defendant defaulted on the agreement, by not making payments beginning 05/28/2023, which is approximately 3 years and 7 months ago.

Plaintiff's request to enforce the settlement is GRANTED.

Plaintiff's request for leave to amend the complaint, which was filed in November 2019, is DENIED.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/23/26 TIME: 1:30 P.M. DEPT: L CASE NO: CIV2202233

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: CHRISTOPHER MARKS

vs.

DEFENDANT: DENALI WATER
SOLUTIONS, LLC

NATURE OF PROCEEDINGS: 1) MOTION – COMPEL - DISCOVERY FACILITATOR PROGRAM
2) MOTION – COMPEL - DISCOVERY FACILITATOR PROGRAM

RULING

There are two motions to compel pending before the court. Plaintiff's Amended Motion to Compel Further Written Responses to Request for Production of Documents and to Compel Production of Documents filed on April 30, 2026, is GRANTED.

Defendant's Motion to Comply with Statements of Compliance in responses to Denali's Requests for Production (Set One) Nos. 3, 4, 16, 17, and 18, filed on 7/28/26 is DENIED.

This matter was last called on August 28, 2026. The Court continued the motions to October 23, 2026, to provide the parties additional time to participate in the Court's Discovery Facilitator Program. Victor Grant Zlinisky, Esq., volunteered his time and was appointed as Discovery Facilitator on September 22.

Marin County Superior Court Local Rule 2.13H(1.) provides: "If a discovery dispute is not resolved with the assistance of the Discovery Facilitator, each party shall file and serve a pleading entitled "Declaration of Non Resolution". The Court reviewed the three declarations filed by the parties on October 16, 2026, but was unable to locate the required update.

The declarations and Defendant's Reply brief, filed on October 16, 2026, indicate that the process did not resolve the matters.

Plaintiff's Motion

The parties advised the Court that they were meeting and conferring regarding the outstanding discovery issues because the case is set for trial on January 20, 2027. The Court did not receive

an updated declaration and therefore proceeds on the understanding that the discovery dispute remains unresolved.

Plaintiff's Requests for Production of Documents Set No. One seeks to compel responses and production of documents responsive to Requests No. 1-36, 44-72, 74-80 and 82-1511, The motion to compel is GRANTED

On December 5, 2025, Defendant served objections to all of Plaintiff's Requests for Production of Documents but produced no documents. Meet-and-confer efforts began in January 2026, and Defendant agreed to supplement its responses in February. Defendant served supplemental written responses on February 16, 2026. Plaintiff considered those responses inadequate and continued the meet-and-confer process through April 2026 before filing the motions.

The dispute did not resolve with the assistance of the discovery facilitator, who was appointed on July 14, 2026.

Code of Civ. Proc. §2031.220 provides that a party responding to a documents request must serve a statement that the responding party will comply with the particular demand and that all documents or things in the demanded category that are in the possession, custody, or control will be made and will be included in the production. Defendant advised the Plaintiff, in response to requests (1-36, 44-72, 74-80 and 82-151), that it would "produce relevant non-privileged responsive documents on a "rolling basis." This response is inadequate. Defendant is ordered to respond within 10 days of entry of this order, as to whether it is in possession of responsive documents for each request.

CCP §2031.280(a) requires identification of documents or category of documents that are produced in response to a demand for inspection, and those documents should identify the request for which they are responsive. Defendant shall provide an index to link the requests with the documents produced in August 2025.

CCP §2031.240(c)(1) provides that if an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log. Defendant has incorporated its privilege objections in the preface into its supplemental written responses to Requests 7-15, 17-18, 24-27, 46-50, 56-71, 74-80, 82 and 86-93. Defendant shall provide further written responses to the Requests and identify the specific ground for objection for any responsive document Defendant is withholding. The Defendant shall provide sufficient factual information regarding any privilege objection and provide a privilege log.

Supplemental responses to document requests 51 and 52 regarding vendors Roger Sissom and Patrick 8, and others who provided consultation services for documents that were "marked up" or "skimmed". The parties met and confirmed on this issue on March 2026, to clear the vagueness of these terms for the Defendant. Plaintiff complains that the issue has not been resolved even after there was agreement during the meet and confer. Defendant shall now supplement the responses based on the definition of these terms reached in March.

Plaintiff's request for fee sanctions is GRANTED pursuant to CCP §2031.31(h). The court has reviewed the declaration of Patricia Kramer and finds the request for fees and costs to be eminently reasonable. The fee award is \$11,500, and Defendant shall pay costs in the amount of \$90.45.

Defendant's Motion

Plaintiff argues that Defendant's motion is brought under CCP § 2031.310, which provides that a "motion to compel further responses" must be brought within 45 days of the service of the verified response. See Code Civ. Proc., § 2031.310(c).

Defendant's motion at 7:25-28 provides that their motion is supported by CCP § 2031.230(a), which provides:

"If a party filing a response to a demand for inspection, copy, testing, or sampling . . . thereafter fails to permit the inspection, copying, testing, or sampling in accordance with that party's **statement of compliance**, the demanding party may move for an order compelling compliance."

Defendant argues that does not move under section 2031.310 because it does not seek further responses. Defendant argues that is seeks merely "compliance" with the discovery in responses to Denali's Requests for Production (Set One) Nos. 3, 4, 16, 17, and 18.

On this record, the date for Defendant to file a motion to compel further responses to Defendants' Request for Production of Documents Set No. 1 was extended by agreement to April 24, 2026. (see, Kramer Decl. ISO of Opposition, Exhibit "B".) There appears to be no addition agreement to extend the motion filing deadline. Defendant's first meet and confer letter regarding the responses was on July 8, 2026, which is over 60 days after expiration of the deadline to file a motion to compel on April 24, 2026.

Defendants filed their motion on July 28, 2026, three months after the deadline to file had expired. The motion is untimely.

The court reserves on this issue of an additional award of sanctions to Plaintiff pursuant to CCP §2031.310(h), which provides that the Court *shall* impose a monetary sanction against any person or party who unsuccessfully makes or opposes a motion to compel further response to a demand.

This matter is set for trial on January 20, 2027.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/23/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0002059

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: STEVEN E.
SALAMANDRA

vs.

DEFENDANT: PETER M. LECHOWICK,
ET AL

NATURE OF PROCEEDINGS: MOTION – GOOD FAITH SETTLEMENT

RULING

This matter was called on October 16, 2026, and continued to October 23, 2026, to allow the parties additional time to reach an agreement with the City of Larkspur. The Court has received no further information regarding a resolution. Appearances are required.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/23/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0005761

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: JPMORGAN CHASE
BANK, N.A.

vs.

DEFENDANT: FRANCIS J. MATRICIANO

NATURE OF PROCEEDINGS: MOTION – ENTRY OF JUDGMENT

RULING

Plaintiff JPMorgan Chase Bank, N.A. filed a motion for judgment on the pleadings on July 30, 2026. Plaintiff argues in the motion that the complaint states facts sufficient to constitute a cause of action against the Defendant and the answer on file in this action does not state facts sufficient to constitute a defense.

Defendant has not filed an opposition to the motion. The failure to oppose is considered consent to the granting of the motion. (Cal. Rules of Court, rule 8.54(c); Local Rule Marin, Civil 2.8G.1.) Plaintiff's motion is therefore GRANTED in its entirety.

Plaintiff to lodge the order.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/23/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0005785

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: JOSE AVIGAIL GRAMAJO
ORDONEZ

vs.

DEFENDANT: GENERAL MOTORS LLC

NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

This matter was last called on October 2, 2026, and has been called and continued several times due to delays with the court's Discovery Facilitator Program. At the last hearing, the court continued the case to October 23, 2026, to assist the parties by holding a settlement discussion to resolve the discovery issues.

The Court reviewed the declaration of Colby Maegle, Esq., filed on Plaintiff's behalf, stating that the parties met and resolved the discovery issues. The motion is dropped from the calendar. The Court appreciates the parties' efforts to resolve the matter.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/23/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0007029

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: WILLIAM SCOTT HOPPE

vs.

DEFENDANT: THE ESTATE OF RICHARD
CALDWELL BREWER, DECEASED ET AL

NATURE OF PROCEEDINGS: MOTION – OTHER: ORDER AUTHORIZING
RECORDATION OF LIS PENDENS

RULING

The motion of plaintiff William Scott Hoppe, opposed by defendants Arne T. Morkemo and Emily G. Morkemo, Trustees of the Emily & Arne Morkemo Family Trust, for order authorizing recordation of notice of pendency of action is denied.

In order to support a lis pendens, the pleading must contain a real property claim and the claimant must establish “by a preponderance of the evidence the probable validity of the real property claim.” (Code Civ. Proc. §§ 405.31 and 405.32.)

I. Judicial Notice

Defendants’ unopposed request for judicial notice is granted.

II. Facts

This is a real property claim. The court repeats the facts as stated in the court’s tentative ruling on Defendants’ demurrer to the First and Second Causes of Action, issued on August 21, 2026.

Plaintiff is the former owner of 85 Eastview Avenue in Tiburon and claims an interest in a parcel adjacent to 85 and 87 Eastview (the “Disputed Parcel”). Plaintiff now resides in Massachusetts. The named defendants, including Defendants Arne T. Morkemo and Emily G. Morkemo (the “Morkemo Defendants”), who own the property at 87 Eastview, claim or may claim some right or interest adverse to Plaintiff’s claimed interest in the Disputed Parcel. The Disputed Parcel is described by metes and bounds in Exhibit A to the Amended Complaint. Plaintiff alleges that he “claims an interest in the Disputed Parcel based on boundary location as recognized by prior owners and as described in Exhibit A.”

In or around 2007, in connection with Plaintiff's purchase and investigation of 85 Eastview Avenue, Plaintiff obtained a field survey and discussed the location of the boundary area between 85 Eastview Avenue and 87 Eastview Avenue with then-owner Richard Caldwell Brewer. After the boundary area was marked in the field, Plaintiff and Mr. Brewer conducted an on-site walk of the line and discussed the deed exception affecting 85 Eastview Avenue. Brewer stated that he was not asserting any claim based on that exception and that, consistent with the marked line and the public record mapping and survey references, each owner owned everything on his respective side of that line.

After the 2015 conveyances of 85 Eastview and 87 Eastview, a dispute arose regarding ownership and adverse claims to the Disputed Parcel. Defendants began asserting claims that overlap the Disputed Parcel, creating an actual and present controversy regarding the parties' respective interests and the boundary location. Defendants' claimed interest is adverse to Plaintiff's claimed interest and inconsistent with the boundary location recognized on the ground during Mr. Brewer's ownership and with the recorded survey/map references incorporated in Exhibit A.

The Morkemo Defendants obtained a judgment quieting title in Marin County Superior Court in Case No. CV0000520 concerning a larger, survey-defined area in the vicinity of 87 Eastview. Plaintiff was not named or served in that action.

III. Real Property Claim

There are two bases for expunging a lis pendens applicable here. Pursuant to section 405.31, "the court shall order the notice expunged if the court finds that the pleading on which the notice is based does not contain a real property claim. ..." Pursuant to section 405.32, "the court shall order that the notice be expunged if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim. ..."

A. Plaintiff's Allegations, Real Property Claim

"... In making this determination, the court must engage in a "demurrer-like analysis," asking whether the claimants have pled facts entitling them to the remedy they seek." (*De Martini v. Superior Court* (2024) 98 Cal.App.5th 1269, 1278, citations omitted.)

Defendants argue that Plaintiff still fails to identify the basis of his claimed title. The Court finds that Plaintiff's allegations in paragraphs 19-33 and 36 of the Second Amended Complaint identify the basis of Plaintiff's claimed title. Contrary to Defendants' argument, Plaintiff is not relying on "a random discussion held nearly twenty (20) years ago with a neighbor."

Defendants additionally argue that "Hoppe has simply failed to plead the adverse claims upon which a determination is sought. ..." In fact, Plaintiff alleges:

54. The adverse claims against which Plaintiff seeks determination include any claim by Defendants that the Exhibit A Parcel is included in property associated with 87 East View

Avenue, Lot 71 1/2, the Morkemo Trust's claimed chain of title, the judgment entered in Case No. CV0000520, or any other asserted title, estate, lien, or interest adverse to Plaintiff

55. Plaintiff alleges that Defendants' adverse claims are without right and that Defendants have no estate, right, title, lien, or interest in the Exhibit A Parcel adverse to Plaintiff's claimed title.

In conclusion, the Court finds that Plaintiff has stated a real property claim.

B. Probable Validity

"'Probable validity,' with respect to a real property claim, means that it is more likely than not that the claimant will obtain a judgment against the defendants on the claim." (§ 405.3.) "... The claimant shall have the burden of proof under Section[] ... 405.32." (§ 405.30.)

Defendants correctly note that Plaintiff's declaration in support of the motion offers no evidence to establish the probable validity of his claim. However, Plaintiff's Second Amended Complaint is verified and "[g]enerally, a properly verified complaint...may be treated as a declaration or affidavit. ..." (*ViaView, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 217.) In *Coppinger v. Superior Court* (1982) 134 Cal.App.3d 883, 889, the Court "conclude[d] that a plaintiff may rely on a verified complaint to oppose a motion to expunge a lis pendens. ..."

As Plaintiff's allegations and exhibit 1 to Defendants' request for judicial notice show, Exhibit A to the 1962 conservator's deed and the 2002 Quitclaim Deed both included "all the right, title and interest of Grantors in and to any property contiguous or adjacent to said parcel. The grant deed from the Quesada Trust to Plaintiff and Christina Hoppe does not mention that "right, title and interest of Grantors." (Ex. 2 to Ds' RJN; see also SAC ¶21.) Defendants argue that this shows that no "right, title and interest...in and to any property contiguous or adjacent to" Lot 72 was transferred to Plaintiff. In his reply, Plaintiff cites Civil Code section 1084 as showing that the "right, title and interest" was transferred even though not specifically mentioned. Section 1084 provides that "[t]he transfer of a thing transfers also all of its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself."

The problem with this argument, even if it is correct, is that Plaintiff's own allegations show that "[o]n April 20, 2015, Plaintiff and Christina Hoppe conveyed the Lot 72 property to David Ford and Tandy R. Ford by grant deed" which "described Lot 72 under the 1924 Plat of Survey and stated the same general exceptions." (SAC ¶22; see also ex. 3 to Ds' RJN.) If the "right, title and interest" was transferred to Plaintiff even though not mentioned, it must have been transferred to the Fords even though not mentioned. Plaintiff argues:

... But the 2015 deed to the Fords conveyed Lot 72 as designated on the 1924 Plan. It did not convey the Exhibit A Parcel or the separate peripheral interest claimed herein, which Plaintiff retained.

The deed to Plaintiff also transferred Lot 72 as designated on the 1924 Plan. Plaintiff has cited no authority showing that section 1084 would transfer "all [of a thing's] incidents" only one time. Therefore the Court finds that Plaintiff has not established the probable validity of his claim.

Defendants' additionally argue that the language Plaintiff relies upon is unenforceable as a matter of law. According to the verified complaint, extrinsic evidence allows for determination of the property "contiguous or adjacent to" Lot 72. (See Miller and Starr, California Real Estate (4th ed. 2026) § 8:61.) The Court finds that this argument lacks merit.

IV. Conclusion

Although the Plaintiff has stated a real property claim, the plaintiff has not established the probable validity of that claim. The motion is denied.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/23/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0009377

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: THE CITY OF SAN
RAFAEL, A CALIFORNIA MUNICIPAL
CORPORATION

vs.

DEFENDANT: WICKMAN
DEVELOPMENT & CONSTRUCTION, A
CALIFORNIA CORPORATION, ET AL

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendant Wickman Development & Construction's demurrer to the First, Fourth, Fifth, and Seventh Cause of Action is sustained with leave to amend.

The demurrer to the Second, Third, Eighth, and Ninth Causes of Action is overruled.

The Court does not rule on the demurrer to the Sixth Cause of Action as that cause of action has been dismissed.

I. Allegations in the First Amended Complaint

The City of San Rafael (the "City") alleges that it entered into a public works contract with Defendant Wickman Development & Construction ("Wickman") pursuant to which Wickman was the general contractor for Fire Station 54 and 55 (the "Contract"). Pursuant to the Contract, the City and Wickman entered into an Escrow Agreement for Security Deposits in Lieu of Retention on November 16, 2021 (the "Escrow Agreement").

After disputes arose regarding Wickman's work, the parties entered into a settlement agreement (the "Settlement Agreement"). Under the Settlement Agreement, Wickman settled its claims for a payment from the City for \$570,000 and agreed to execute an unconditional waiver and release upon final payment, pursuant to Civil Code Section 813.8, which states "Claimant has been paid in full." In June 2025, the City requested return of \$472,799 held in escrow, but Wickman has refused to release those funds to the City.

II. Judicial Notice

Wickman's request for judicial notice of the First Amended Complaint is granted. (Evid. Code §§ 452, 453.)

III. Standard

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law." (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) A complaint "ordinarily is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099 [citation and internal quotations omitted].) Legal conclusions are insufficient. (*Id.* at 1098–1099; *Doe*, 42 Cal.4th at 551, fn. 5.) The court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

IV. Causes of Action

There are the causes of Action Subject to demurrer.

1. First Cause of Action/Breach of Contract

The First Cause of Action alleges that Wickman breached the Escrow Agreement, attached as Exhibit 1 to the First Amended Complaint, by failing to consent to the release of the escrow funds to the City.

Wickman demurs to this cause of action on the ground that the Escrow Agreement does not impose any obligation on Wickman to consent to release of the funds. Instead, the Escrow Agreement states that Wickman is the beneficial owner of the escrowed funds and those funds are to be released to Wickman upon completion of the project. The City argues that the Escrow Agreement was modified by the Settlement Agreement, attached as Exhibit 2 to the First Amended Complaint, pursuant to which Wickman agreed to release all rights to further payment including the escrow funds.

The demurrer is **sustained**. The City does not identify any specific provision of the Escrow Agreement that imposes a duty on Wickman to consent to release of the funds. (See *Francis T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 512-513 ["Plaintiff's allegation that defendants breached the contract by failing to install additional lighting must fail because she does not allege that any provision in any of the writings imposed such an obligation on defendant"]; *Murphy v. Hartford Acc. & Indem. Co.* (1960) 177 Cal.App.2d 539, 543 ["In order for an action to be based on an instrument in writing, the writing must express the obligation sued upon"].)

2. Second Cause of Action/Conversion

The Second Cause of Action alleges that the City has an ownership right to funds held under the Escrow Agreement and that Wickman has interfered with the City's ownership rights by refusing to consent to the City's withdrawal of the principal in the escrow funds.

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages. It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use." (*Oakdale Village Group v. Fong* (1996) 43 Cal.App.4th 539, 543–544.)

Wickman demurs to this cause of action on the ground that the City's allegation that it has an ownership right to the funds is belied by the terms of the Escrow Agreement, which states that Wickman is the beneficial owner of those funds and has the right to withdraw those funds. The demurrer is overruled. While Wickman may have had an ownership interest in the funds at some point as reflected in the Escrow Agreement, the City alleges that the parties' respective ownership interests in those funds changed when the parties subsequently entered into the Settlement Agreement. Therefore, the language in the Escrow Agreement alone is insufficient to support a demurrer to the conversion claim. As Wickman makes no other argument in support of its demurrer to the Second Cause of Action, the demurrer is **overruled**.

3. Third Cause of Action/Breach of the Covenant of Good Faith and Fair Dealing

The Third Cause of Action alleges that Wickman did not act fairly and in good faith with respect to the Escrow Agreement and the Settlement Agreement, causing the City to suffer damages.

"Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." (*Carma Developers, Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371.) Conduct may violate the implied covenant if it is not expressly prohibited by the contract but "is nevertheless contrary to the contract's purposes and the parties' legitimate expectations." (*Id.* at p. 373.)

Wickman argues that the City does not specify how exactly Wickman did not act in good faith or how it violated the implied covenant. Yet, the City does allege this – it alleges that Wickman did not act in good faith when it refused to consent to the City's withdrawal of the principal amount of the escrowed funds. Further, this cause of action is not untethered to a contract as Wickman argues, as it specifically references the Escrow Agreement and the Settlement Agreement. The demurrer to this cause of action is **overruled**.

4. Fourth Cause of Action/Breach of Fiduciary Duty

The Fourth Cause of Action alleges that the City and Wickman owed fiduciary duties to each other to protect each other's interests in the monies paid into the escrow account, and that Wickman breached its duty to the City when it refused to consent to the City's withdrawal of the principal in the escrow funds.

“The elements of a claim for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) its breach, and (3) damage proximately caused by that breach.” (*O’Neal v. Stanislaus County Employees’ Retirement Assn.* (2017) 8 Cal.App.5th 1184, 1215 [citation omitted].) Whether a fiduciary duty exists is generally a question of law. (See *Marzec v. Public Employees’ Retirement System* (2015) 236 Cal.App.4th 889, 915.)

Wickman demurs to this cause of action on the ground that the facts alleged do not support a fiduciary relationship. The demurrer is **sustained** on this basis. “[A] fiduciary relationship is a recognized legal relationship such as guardian and ward, trustee and beneficiary, principal and agent, or attorney and client [citation].” (*Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 631 [citation omitted].) A mere contract does not create a fiduciary relationship. (*Id.* at p. 633.) “Generally, there is no fiduciary owed duty in a purely commercial situation.” (*McCann v. Lucky Money, Inc.* (2005) 129 Cal.App.4th 1382, 1398.) “[N]o fiduciary relationship is established merely because ‘the parties reposed trust and confidence in each other.’” (*Girard v. Delta Towers Joint Venture* (1993) 20 Cal.App.4th 1741, 1749 [citation omitted].) The City here alleges a purely commercial relationship with Wickman. This allegation is insufficient to create a fiduciary relationship.

5. Fifth Cause of Action/Intentional Interference with Prospective Economic Advantage

The Fifth Cause of Action alleges that Wickman was or should have been aware that the City had business and economic relationships regarding the funds paid under the Escrow Agreement, including the City’s relationship with Banner Bank. Wickman knew its conduct in refusing to transfer ownership of those funds to the City would interfere with these relationships, and did in fact interfere with those relationships.

“To prevail on a cause of action for intentional interference with prospective economic advantage in California, a plaintiff must plead and prove (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant’s knowledge of the relationship; (3) the defendant’s intentional acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant’s acts.” (*Reeves v. Hanlon* (2004) 33 Cal.4th 1140 n. 6.)

The demurrer to this cause of action is **sustained**. The City does not allege an economic relationship with Banner Bank with the probability of future economic benefit to the City, or how any relationship with Banner Bank has been harmed as a result of the City’s inability to obtain the escrow funds.

6. Sixth Cause of Action/Business & Professions Code Section 7116

The City filed a Request for Dismissal of the Sixth Cause of Action on October 16, 2026. Accordingly, the Court does not rule on the demurrer to this cause of action.

7. Seventh Cause of Action/Business & Professions Code Section 17200

Wickman demurs to the Seventh Cause of Action on the grounds that it seeks damages, which are not recoverable for violations of Section 17200, and that it is contrary to the terms of the Escrow Agreement. The City concedes that its relief is limited to injunctive relief and restitution and states that it is prepared to amend this cause of action to clarify that it seeks restitution and not damages.

The demurrer is **sustained** on the limited ground that this cause of action seeks an improper remedy. Wickman's argument regarding the terms of the Escrow Agreement is rejected at this stage of the pleadings, as discussed above, as the City alleges that the parties' respective rights to the escrowed funds were changed by the Settlement Agreement.

8. Eighth and Ninth Causes of Action/Declaratory Relief

Wickman demurs to the Eighth and Ninth Causes of Action on the ground that the City is not entitled to the declarations it seeks. Generally, a declaratory judgment cause of action is sufficient if it sets forth facts showing the existence of an actual controversy between the parties. If it does, the court must declare the rights of the parties regardless of whether the facts alleged show that the plaintiff is entitled to a favorable declaration. (See *Jefferson, Inc. v. City of Torrance* (1968) 266 Cal.App.2d 300, 302.) The demurrer is **overruled** as the City alleges the existence of an actual controversy between the parties.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

***IT IS ORDERED* Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.**

***FURTHER ORDERED* Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).**

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/23/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0009516

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: CASSANDRA MARSHALL	
vs.	
DEFENDANT: ALEXANDRA MARSTON, ET AL	

NATURE OF PROCEEDINGS: 1) DEMURRER
2) MOTION -STRIKE

RULING

The Demurrer of defendants Michael Marston and Alexandra Marston, as Trustees of the Marston Family Trust ("Defendants") is **SUSTAINED as to the entire First Amended Complaint** ("FAC").

The Motion to Strike portions of that same FAC is consequently moot.

I. LEGAL STANDARD – DEMURRER

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Childs v. State of California* (1983) 144 Cal.App.3d 155, 159.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The onus is on the plaintiff to articulate the "specifi[c] ways" to

cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend “only if a potentially effective amendment [is] both apparent and consistent with the plaintiff’s theory of the case.” (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145.)

II. DISCUSSION – DEMURRER

Plaintiff Cassandra Marshall’s (“Plaintiff”) FAC contains causes of action for 1) Breach of Implied Warranty of Habitability, 2) Breach of Covenant of Quiet Enjoyment, 3) Relation in Violation of Cal. Civ. Code § 1942.5, 4) Constructive Eviction, 5) Defamation, 6) Intentional Infliction of Emotional Distress, and 7) Negligence. These claims allegedly arise out of a tenancy at 253 Charming Way, Unit 3, in San Rafael, California.

With this Motion, Defendants demur to the entire FAC pursuant to Code of Civil Procedure section 430.10, subdivisions (d) and (f), on the grounds that it is uncertain, ambiguous, and unintelligible as to the identity of defendants. They thereafter demur to the individual causes of action for failure to state facts sufficient to constitute each cause of action.

The Court agrees the entire pleading is uncertain.

Plaintiff names “Defendant Jana”, “Defendant Manuel” and “Defendant Heather” in the FAC (FAC ¶¶7-9), however, these individuals are not named parties to the lawsuit, as listed in the caption, nor does it appear a summons was issued against these individuals.

Most causes of actions are pled against “all Defendants,” but the 5th is pled against Defendants Jana, Heather, Michael Marston, and Alexandra Marston. Because the allegations include collective references to “Defendants” it is unclear which allegations are being made against demurring Defendants specifically. As such, Defendants cannot reasonably determine which claims are directed against them and what issues must be admitted or denied.

For these reasons, the Demurrer to the entire FAC is SUSTAINED with leave to amend, which means it can be amended to cure the defects identified in this order.

III. LEGAL STANDARD – MOTION TO STRIKE

On noticed motion, the Court also may strike out “any irrelevant, false, or improper matter inserted in any pleading,” and “all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (Code Civ. Proc., § 436.) The basis for granting the motion to strike must appear on the face of the challenged pleading or else be judicially noticeable. (*Id.*, § 437, subd. (a).)

The motion must be served and filed within the time allowed for a responsive pleading (*id.*, § 435, subd. (b)(1)), or as otherwise allowed at the Court’s discretion (*id.*, § 436). The notice of motion must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count or defense. (Cal. Rules of Court, rule 3.1322.) When the defect that justifies striking a complaint is capable of cure, the court should allow leave to amend. (*Perlman v. Municipal Court* (1979) 99 Cal.App.3d 568, 575.)

IV. DISCUSSION – MOTION TO STRIKE

As stated above, the Court sustained the Demurrer to the entire FAC. Accordingly, the Motion to Strike portions of that same FAC is moot.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/23/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0009660

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

PLAINTIFF: ZEROMAR, INC.

vs.

DEFENDANT: ANGEL ISLAND-
TIBURON FERRY, INC., ET AL

NATURE OF PROCEEDINGS: 1) MOTION – PRELIMINARY INJUNCTION
2) DEMURRER
3) MOTION – STRIKE
4) DEMURRER
5) DEMURRER
5) MOTION - STRIKE

RULING

Three motions were set for hearing on this case, with the court *sua sponte* continuing the Plaintiff Zeromar’s Motion for Preliminary Injunction, filed on July 31, 2026, to November 13, 2026, at 1:30 pm in Dept. L. Defendants Angel Island-Tiburon Ferry (“AITF”) and Margaret McDonogh’s (“McDonogh”) demurrer to Plaintiff’s First Amended Complaint (“FAC”) and Motion to Strike are addressed here.

Defendant AUTF’s Demurrer is SUSTAINED as to the Third and Ninth through Twelfth Causes of Action only. (Code Civ. Proc., § 430.10, subd. (e).) Leave to amend is denied for the Ninth and Tenth Causes of Action and permitted as to the rest.

Defendant Town of Tiburon’s (“Tiburon”) demurrer is SUSTAINED in full. (Code Civ. Proc., § 430.10, subd. (e).) Leave to amend is permitted for the Eighth Cause of Action only. Tiburon’s motion to strike is DENIED, but the Court exercises its discretion not to consider the sur-reply that is the subject of that motion.

Defendant California Air Resources Board’s (“CARB”) demurrer is OVERRULED.

McDonogh’s motion to strike is DENIED.

I. Demurrer to FAC

A. BACKGROUND

This is a complex breach of contract lawsuit arising out of an attempt to electrify ferry vessels. According to the FAC, Plaintiff is in the zero-emission marine electrification business. (FAC, ¶ 2.) AITF operates ferries in Marin County, and McDonogh is AITF's owner and principal. (*Id.* at ¶¶ 3-4.) Tiburon is a recipient and administrator of grant funding from CARB for the project at issue in this case. (*Id.* at ¶¶ 5-6.)

Plaintiff alleges that in 2021, it began working with AITF to fund and implement the conversion of AITF's diesel ferry vessels to electric power. (FAC, ¶ 10.) According to the FAC, the arrangement was as follows: Plaintiff and AITF executed a written contract entitled the "ZEAT Conversion Agreement" ("ZEAT Agreement") in December 2022. (*Ibid.*) The ZEAT Agreement "bound both parties to pursue the conversion project in good faith" and "establish[ed] a two-phase arrangement: the parties would perform the development-phase work under the ZEAT Agreement, and would then negotiate and enter into a second-phase implementation contract in good faith once project funding was secured and the project's go/no-go criteria were met." (*Ibid.*) The ZEAT Agreement provided that if AITF chose to withdraw from the project " 'despite no no-go criteria ending project viability,' " AITF would owe Plaintiff an exit fee of \$100,000. (*Id.* at ¶ 11.)

The FAC alleges that on September 26, 2024, Tiburon and CARB executed Grant Agreement No. G22-ATDP-13 (the "Grant Agreement"), which funded the ferry electrification project. (FAC, ¶ 13.) The Grant Agreement allegedly mentioned Plaintiff by name as the performer of specified project tasks ("milestones") and the future recipient of four payments totaling over \$1.3 million. (*Id.* at ¶ 14.) Plaintiff alleges that pursuant to yet another contract, a Subrecipient Agreement between Tiburon and AITF, Plaintiff was to be compensated for its work on the electrification project through a disbursement by Tiburon of grant funds from CARB upon AITF's written request for a draw on the CARB grant. (*Id.* at ¶ 16.)

Plaintiff claims that a mere four days after CARB and Tiburon executed the Grant Agreement, McDonogh, acting on behalf of AITF, repudiated AITF's arrangement with Plaintiff by email. (FAC, ¶ 18.) Nevertheless, AITF allegedly "continued to direct [Plaintiff's] performance, imposed project expectations and deadlines, and accepted and used [Plaintiff's] work product." (*Id.* at ¶ 20.) Plaintiff claims that on multiple occasions between October 2024 and July 2025, AITF "represented . . . that it intended to enter into a [second-phase] contract with, and pay, [Plaintiff]." (*Id.* at ¶ 19.) "Through this course of conduct, and through the parties' subsequent communications, an implied-in-fact agreement arose and continued under which [Plaintiff] would perform the defined milestone work and be compensated the amounts set forth in Attachment II [to the Grant Agreement] through the grant-funded payment structure upon completion and documentation of each milestone." (*Id.* at ¶ 21.) However, AITF and Plaintiff never executed a second-phase contract, allegedly because the only contracts AITF offered were "one-sided and commercially unreasonable." (*Id.* at ¶¶ 19, 22.)

Plaintiff claims it was never paid despite completing four of the milestones, work valued at over \$1.3 million. (*Id.* at ¶¶ 19, 23.) The FAC blames this on AITF's failure to submit to Tiburon the written request for a draw on the grant funds necessary to compensate Plaintiff for its work. (*Id.* at ¶¶ 24-28.)

Plaintiff has sued for breach of contract and related causes of action. Before the Court are demurrers from AITF and McDonogh (jointly), Tiburon, and CARB, in addition to motions to strike from Tiburon and McDonogh.

II. DEMURRERS

A. LEGAL STANDARD

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567-568.) This treatment applies only to facts. A court does not assume the truth of contentions, deductions, or conclusions of fact or law. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 147.) The complaint must be liberally construed and all reasonable inferences must be drawn in favor of its allegations. (*Teva Pharmaceuticals USA, Inc. v. Superior Court* (2013) 217 Cal.App.4th 96, 102; see also Code Civ. Proc., § 452.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore, supra*, 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) “The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action.” (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.)

B. AITF & MCDONOGH’S DEMURRER

1. Movants’ Requests for Judicial Notice

Movants request that the Court take judicial notice of the ZEAT Agreement between Plaintiff and AITF, the Grant Agreement between CARB and Tiburon, and the Subrecipient Agreement between Tiburon and AITF. Plaintiff does not oppose this request to the extent Movants merely ask the Court to judicially notice the existence and the language of the contracts. Movants’ requests are granted to that extent. As to the Grant Agreement and the Subrecipient Agreement, which are government contracts, judicial notice is granted under Evidence Code, section 452, subdivision (c) (official acts; see *Citizens’ Committee to Complete the Refuge v. City of Newark* (2021) 74 Cal.App.5th 460, 465, fn. 2 [judicially noticing official act of a municipality].) As to

the ZEAT Agreement, judicial notice is granted under Evidence Code, section 452, subdivision (h).

The Court acknowledges case law stating that “[t]he existence and terms of a private agreement” are not judicially noticeable under that provision. (*The Travelers Indemnity Co. of Connecticut v. Navigators Specialty Ins. Co.* (2021) 70 Cal.App.5th 341, 254-255; *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1145.) However, this rule appears to apply only where the opposing party opposes the request for judicial notice. (*Travelers, supra*, 70 Cal.App.5th 341, 355.)

2. First Cause of Action: Breach of Contract – \$100,000 Exit Fee/ZEAT Agreement

This cause of action alleges that Movants violated the provision of the ZEAT Agreement providing that if AITF chose to withdraw from the ferry electrification project “ ‘despite no no-go criteria¹ ending project viability,’ ” AITF would “ ‘owe [Plaintiff] an exit fee of \$100,000 to cover time and materials invested’ ” in the project by Plaintiff. (FAC, ¶ 49.) The FAC alleges that the ZEAT Agreement specified what constituted “no-go criteria,” that no such condition occurred, that AITF withdrew from the project anyway, and that AITF thereafter refused to pay the \$100,000 exit fee. (*Id.* at ¶¶ 50, 52-53.)

“[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting damages to the plaintiff.” (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) “Where contractual liability depends upon the satisfaction or performance of one or more conditions precedent, the allegation of such satisfaction or performance is an essential part of the cause of action.” (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1389.) “[W]here the condition is an event, as distinguished from an act to be performed by the plaintiff, a specific allegation of the happening of the condition is a necessary part of pleading the defendant’s breach.” (*Ibid.*)

Here, the condition precedent to AITF’s alleged duty to pay the exit fee, as pleaded, was AITF’s withdrawal from the project in the absence of any “ ‘no-go criteria ending project viability.’ ” (FAC, ¶ 49; see also Movants’ RJN, Ex. 1.) The ZEAT Agreement does not define the term “no-go criteria,” but does define the confusing combined term “go/no go criteria” to mean the following:

1. “A minimum of 85% of project funding is committed from outside sources
2. USCG design approval is granted
3. Sufficient electrical supply for charging is approved by local utility provider
4. Any other criteria that arises, which prevents the possible conversion of an Angel Island-Tiburon Ferry vessel to electric propulsion and/or prevents the purchase of a new electric vessel by Angel Island-Tiburon Ferry. This could include . . . any other operational, regulatory, or other impediment that prevents continuance of electrification efforts.”

¹ The FAC appears to use the terms “no-go criteria” and “no-go event” interchangeably, but also distinguishes between the two of them. (See Paragraph 50.) This claim is confusingly pleaded.

(Movants' RJN, Ex. 1, p. 3, under "Duration of Agreement.") Movants argue that the no-go criterion described in Number 4 – an "impediment [] prevent[ing] the continuation of electrification efforts" – was present at the time of its withdrawal in that Plaintiff refused to sign a compliant written agreement governing the second phase of the project.

"When reviewing whether a plaintiff has properly stated a cause of action for breach of contract," a court "must determine whether the alleged agreement is 'reasonably susceptible' to the meaning ascribed to it in the complaint." (*Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1384.) As long as the pleading " " does not place a clearly erroneous construction upon the provisions of the contract, in passing on the sufficiency of the complaint, [the court] must accept as correct plaintiff's allegations as to the meaning of the agreement." ' ' " (*Id.* at p. 1385 [quoting *Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239].)

Movants argue that to "impediment [] prevent[ing] the continuation of electrification efforts" refers to any event or condition impeding *Plaintiff's involvement*, specifically, in the electrification effort. By contrast, Plaintiff appears to interpret the same language to refer to some event or condition that prevents the ferry electrification endeavor from proceeding *at all* – some occurrence requiring that the electrification project be scrapped and not proceed either with Plaintiff or with any other company offering similar services, such that the ferries would continue to be diesel-powered indefinitely. (See FAC, ¶ 52; Opposition, p. 10.) The latter interpretation is a reasonable one and the Court is compelled to accept it at the demurrer stage. (*Klein, supra*, 202 Cal.App.4th 1342, 1384-1385.)

The demurrer is OVERRULED as to this cause of action.

3. Third Cause of Action: Breach of Contract – Town-AITF Subrecipient Agreement.

This third party beneficiary claim for breach of the Subrecipient Agreement alleges that "[u]nder Sections 5.1 and 4 of the Subrecipient Agreement, upon [Plaintiff's] completion and documentation of each milestone, AITF was obligated to submit the written draw request required to release the milestone funds and to facilitate their disbursement to [Plaintiff] – whom [Tiburon] was authorized to pay directly – and not to obstruct that process." (FAC, ¶ 69.) Plaintiff claims it completed and documented Milestones 3.1b, 3.2a, 3.2b, and 4.2, and AITF thereafter breached the Subrecipient Agreement "by declining to submit the request necessary to direct [Tiburon] to release to [Plaintiff] the \$1,360,317.23 designated for [Plaintiff's] four completed milestones[.]" (*Id.* at ¶ 71.)

Movants argue that the Subrecipient Agreement does not impose upon AITF a contractual obligation to submit written draw requests for payment upon a contractor's completion and documentation of a milestone, but merely places certain obligations on *Tiburon* in the event that AITF does submit such a request.

The alleged contractual obligation at issue here, according to the FAC, comes from Sections 4 and 5.1 of the Subrecipient Agreement. (FAC, ¶ 69.) The Court is not persuaded that this contractual language is reasonably susceptible (see *Klein, supra*, 202 Cal.App.4th 1342, 1384) to the interpretation Plaintiff alleges.

Here, these provisions speak of what *Tiburon* must do, not what AITF must do. The only thing Section 4 of the Subrecipient Agreement plainly requires *AITF* to do is to provide grant match funding in the amount of \$8,183,852. (See Movants' RJN, Ex. 3, § 4.) Plaintiff alleges that Section 4 "obligates AITF to comply with the Grant Agreement's disbursement structure" (FAC, ¶ 65), but the Court does not see how. The court does not interpret Section 4's "[t]he Grant shall be disbursed to Subrecipient [AITF] in accordance with Section 7.4 of the Grant Agreement," to impose any obligation on AITF, given that it does not mention AITF except as a passive recipient of a disbursement and it incorporates Section 7.4 of the Grant Agreement. This clause does not appear to impose any obligation on AITF, as opposed to CARB and "Grantee" (which means Tiburon). (See Movants' RJN, Ex. 2, § 7.4.)

Section 5.1 it imposes a contractual obligation on *Tiburon* to "cooperate with Subrecipient" – which is AITF – "in requesting advance payment from CARB to the extent allowed under Section 7.3 of the Grant Agreement." (Movants' RJN, Ex. 3, § 5.1.) It states that within 10 business days of Tiburon's receiving "a written request from Subrecipient [AITF] for a draw on the Grant funds" with appropriate documentation of the expenses for which reimbursement is being requested, Tiburon is to "disburse the applicable approved Grant funds received from CARB to Subrecipient [AITF] or the applicable third party contractor designated" to receive the funds, and such disbursement shall include "full payment of all undisputed portions of the draw approved by Town." (*Ibid.*) Thus, Section 5.1, almost in its entirety, likewise speaks of what *Tiburon*, not AITF, must do.

The Court has considered whether the requirement that "Town [Tiburon] shall cooperate with Subrecipient [AITF] in requesting advance payment" (Movants' RJN, Ex. 3, § 5.1) could be read to impose a contractual obligation to so "cooperate" on AITF. If one interprets Section 5.1 to require AITF to "cooperate" with Tiburon "in requesting advance payment from CARB" and then to mention AITF's submission of written requests for draws on the grant funds as what AITF's contractually required, then neither Section 4 nor Section 5.1 of the Subrecipient Agreement can be reasonably interpreted to define what triggers AITF's contractual obligation to submit the written requests.

The demurrer to this cause of action is SUSTAINED with leave to amend for failure to allege the element of breach.

4. Fourth Cause of Action: Breach of Contract – Milestone Payment

Plaintiff alleges that the parties' course of performance after AITF's alleged early October 2024 repudiation of their initial contract gave rise to an implied-in-fact contract between Plaintiff and AITF under which Plaintiff would perform the milestone work and AITF would ensure that Plaintiff was paid via grant funding as described in Attachment II to the Grant Agreement. (FAC,

¶ 74.) Plaintiff further claims that it performed its end of this implied contract by completing the four milestones, and AITF breached it “by declining to submit the request necessary to direct [Tiburon] to release to [Plaintiff] the \$1,360,317.23” in grant funding earmarked for completion of those milestones. (*Id.* at ¶ 76.)

AITF argues that the damages alleged in connection with this claim were not caused by Movants, but by Plaintiff’s failure to enter into a compliant written contract with AITF, which made Plaintiff ineligible to receive grant funds.

The Grant Agreement provides that all contracts “entered into by and between Grantee [Tiburon] and any Recipient or Recipients [a term including contractors receiving grant funds, see Section 6.2(g)] using or applying Grant Funds (in whole or in part) shall contain” a sweeping range of mandatory provisions. (See Movants’ RJN, Ex. 2, § 13.1.) The Grant Agreement further provides that “the Grantee must have a fully executed agreement with all Recipients before a Recipient can incur any costs for which the Grantee will seek reimbursement.” (*Id.* at § 13.25.)

The FAC concedes that Plaintiff and AITF “never executed . . . the signed written subaward agreement that Section 13.25(a) [of the Grant Agreement] required AITF to put in place.” (FAC, ¶ 35.) AITF argues that this is an admission from Plaintiff that a condition on Plaintiff’s eligibility to receive grant funds was unsatisfied. However, the Grant Agreement does not require Plaintiff or any other contractor to enter into an agreement with AITF to become eligible to receive grant funds. It requires contractors to enter into a qualifying written agreement with “Grantee” – which is *Tiburon*, not AITF. (Movants’ RJN, Ex. 2, §§ 1 [defining “Grantee”], 13.1 [describing terms required of “[a]ll . . . contracts . . . entered into by and between Grantee and any Recipient or Recipients”]; 13.25(a) [“[T]he Grantee must have a fully executed agreement with all Recipients before a Recipient can incur any costs for which the Grantee will seek reimbursement.”].) Under the Grant Agreement, Plaintiff’s executing a qualifying written contract *with AITF* was not a condition of Plaintiff’s eligibility to receive grant funds.

Movants recognize this problem and argue that the Subrecipient Agreement “largely put[] AITF in Tiburon’s shoes as Grantee under the Grant Agreement[.]” (Memorandum, p. 7.); arguing that the “Subrecipient agrees to comply with all provisions of the Grant Agreement and any other agreement executed in connection therewith except for those provisions which are clearly only applicable to [Tiburon], and all ATDPP Program regulations, including, but not limited to, Section 13.1 of the Grant Agreement[.]” (Movants’ RJN, Ex. 3 [Subrecipient Agreement], § 6.) AITF interprets this to mean that “AITF” can be substituted for “Grantee” wherever “Grantee” appears in the Grant Agreement.

AITF also argues that Plaintiff cannot recover for breach of an implied agreement that AITF would cause Plaintiff to be paid for its completion of milestones via grant funding because that alleged obligation of AITF is inconsistent with the terms of a written contract between AITF and Plaintiff.

(See *Retired Employees Assn. of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171, 1181 [“ ‘[T]he law does not recognize implied contract terms that are at variance with the terms of the contract as expressly agreed[.]’ ”] [quoting *Huong Que, Inc. v. Luu* (2007) 150

Cal.App.4th 400, 412].) The supposedly contradictory written contract term is a provision of the ZEAT Agreement providing that AITF “will not incur any charges from [Plaintiff] during the agreement period.” (Movants’ RJN, Ex. 1, p. 4, under “Compensation.”) They argue that under the ZEAT Agreement, Plaintiff was not to receive payment for its work during the second phase of the electrification project. This interpretation is in great tension with the fact that the ZEAT Agreement expressly contemplated execution of a second contract providing for Plaintiff to be paid for its work at the second phase of the collaboration. (See Movants’ RJN, Ex. 1, p. 4, under “Contract”; see also FAC, ¶¶ 10, 12.)

Finally, AITF argues that Plaintiff “fails to allege that it qualified for three of the four milestone payments it seeks[.]” (Memorandum, p. 15.) The Court cannot sustain a demurrer on a ground that would not dispose of the entire cause of action. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.) AITF implicitly concedes that Plaintiff sufficiently alleges that it completed one of the four milestones for which it seeks payment via this breach of contract claim. As such, the claim survives even if the allegations are insufficient as to the other milestones.

The demurrer to this cause of action is **OVERRULED**.

5. Fifth Cause of Action: Breach of the Implied Covenant of Good Faith and Fair Dealing

To prevail on a claim for breach of the implied covenant of good faith and fair dealing, a plaintiff must prove: (1) that he entered into a contract with the defendant; (2) that he did all, or substantially all of the significant things that the contract required him to do; (3) that all conditions required for the defendant’s performance had occurred or were excused; (4) that the defendant engaged in conduct that prevented him from receiving the benefits he was entitled to under the contract; (5) that by doing so, the defendant did not act fairly or in good faith; and (6) that the plaintiff was harmed by defendant’s conduct. (CACI No. 325.)

AITF argues that Plaintiff has not and cannot plead causation because Plaintiff was not paid for its milestone work. This is because Plaintiff was not eligible to receive grant funding due to Plaintiff’s failure to execute a qualifying agreement with AITF. (See Memorandum, p. 9.) This argument has been addressed.

This cause of action alleges a breach of a covenant of good faith in fair dealing contained in “each” of “[t]he agreements alleged above[.]” which would naturally include the ZEAT Agreement. (FAC, ¶ 79.) The Court cannot sustain a demurrer on this basis. (See *Fremont Indemnity*, *supra*, 148 Cal.App.4th 97, 119.)

The demurrer is **OVERRULED** as to this claim.

6. Sixth Cause of Action: Promissory Estoppel

“The elements of a promissory estoppel claim are ‘(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable, and (4) the party asserting the estoppel must be injured by his reliance.’” (*US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 901 [quoting *Laks v. Coast Federal Savings & Loan Assn.* (1976) 60 Cal.App.3d 885, 890].)

This cause of action alleges that AITF promised Plaintiff that it “would be paid from grant proceeds upon completion of milestones, that [Plaintiff’s] invoices would be processed through the reimbursement and draw-request mechanism, and that [Plaintiff] should continue work and meet deadlines because payment would follow the agreed grant distribution process.” (FAC, ¶ 84.) Plaintiff allegedly reasonably relied on this promise, however AITF did not deliver on it. (*Id.* at ¶¶ 85-87.)

AITF argues that claims for breach of contract and for promissory estoppel are mutually exclusive (*Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, 243), and because Plaintiff has pleaded breach of contract, the promissory estoppel claim is impermissible. Plaintiff expressly pleaded the promissory estoppel claim “in the alternative to the contract causes of action.” (FAC, ¶ 83.) Modern pleading practices allow a plaintiff to plead in the alternative and make inconsistent allegations. (*Mendoza v. Continental Sales Co.* (2006) 140 Cal.App.4th 1395, 1402.) A plaintiff “is not precluded by law from alleging in one cause of action the breach of a contract and an inconsistent theory of recovery in another cause of action.” (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 29.)

Finally, AITF argues that this claim fails as to McDonogh because there is no allegation of a clear promise by her personally. This argument rests on the premise that Plaintiff has insufficiently pleaded an alter ego theory as to McDonogh. For reasons discussed below, the Court disagrees and also denies the motion to strike the alter ego allegations.

The demurrer is OVERRULED as to this claim.

7. Seventh Cause of Action: Quantum Meruit

To prevail on a cause of action for quantum meruit, a plaintiff must ultimately prove that it rendered services “pursuant to either an express or implied request for such services from the defendant and that the services rendered were intended to and did benefit the defendant.” (*Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243, 248; *Port Medical Wellness, Inc. v. Connecticut General Life Ins. Co.* (2018) 24 Cal.App.5th 153, 180.) The plaintiff also must “show the circumstances were such that ‘the services were rendered under some understanding or expectation of both parties that compensation therefor was to be made[.]’ ” (*Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453, 458.) A successful quantum meruit claim “permits the recovery of the reasonable value of services rendered.” (*Pacific Bay Recovery, Inc. v. California Physicians’ Services, Inc.* (2017) 12 Cal.App.5th 200, 214.)

Plaintiff alleges that at AITF's request, it performed valuable services for AITF's benefit, including completing certain project milestones, with the expectation of payment. (FAC, ¶¶ 89-90.) AITF allegedly knew that Plaintiff expected to be compensated for this work via grant funding. (*Id.* at ¶ 90.)

AITF argues that a quantum meruit cause of action is inviable "if the parties have an enforceable agreement regarding a particular subject matter." (*Klein, supra*, 202 Cal.App.4th 1342, 1388.) Movants appear to argue that the ZEAT Agreement governed Plaintiff's entitlement to payment for the milestones. (Memorandum, p. 11.) Plaintiff has alleged that the ZEAT Agreement governed Plaintiff's entitlement to compensation for the initial phase of the project and contemplated a subsequent contract that would govern Plaintiff's entitlement to payment for the milestones. (FAC, ¶ 10.)

The ZEAT Agreement itself is not inconsistent with this allegation on its face. (See Movants' RJN, Ex. 1.) AITF argues in the alternative that Plaintiffs never entered into any written contract with AITF governing Plaintiff's receipt of grant funding as compensation for its work on the project.

The demurrer is OVERRULED as to this claim.

8. Eighth Cause of Action: Common Count – Money Had and Received

AITF argument as to this claim is duplicative of arguments the Court has already rejected in connection with other causes of action. The demurrer is OVERRULED.

9. Ninth Cause of Action: Declaratory Relief

The declaratory relief statute provides that where there is an "actual controversy relating to the legal rights and duties of the respective parties[.]" a plaintiff may bring a claim for declaratory relief seeking a binding judicial declaration of the parties' respective rights and duties. (Code Civ. Proc., § 1060.) The plaintiff "must demonstrate: (1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party." (*Brownfield v. Daniel Freeman Marina Hospital* (1989) 208 Cal.App.3d 405, 410.)

"[T]he court may refuse to exercise the power to grant declaratory relief where such relief is not necessary or proper at the time under all of the circumstances." (*General of America Ins. Co. v. Lilly* (1968) 258 Cal.App.2d 465, 471; Code Civ. Proc., 1061.) "The object of the [declaratory relief] statute is to afford a new form of relief where needed and not to furnish a litigant with a second cause of action for the determination of identical issues." (*General of America, supra*, 258 Cal.App.2d 465, 470.) Thus, "[t]he availability of another form of relief that is adequate will usually justify refusal to grant declaratory relief. The refusal to exercise the power is within the court's legal discretion[.]" (*Id.* at p. 471.)

Plaintiff's declaratory relief claim alleges, in brief, that there is an actual controversy regarding the parties' respective rights and obligations under the Grant Agreement and the other contracts discussed in the pleading, specifically as to who is responsible for placing requests for a draw on the grant money, who determines whether a milestone has been completed, the proper disposition of specified project funds, and Plaintiff's entitlement to payment for accomplishing milestones. (FAC, ¶ 105.) The Court agrees with Defendants that these issues will necessarily be resolved via Plaintiff's other claims. It does not see how the declaratory relief claim adds anything new, by way of theory or strategy, to the pleading.

Accordingly, the demurrer is SUSTAINED as to this cause of action. Because the Court does not see a reasonable possibility that the defect could be cured by amendment, leave to amend is denied. (*Blank, supra*, 39 Cal.3d 311, 317.)

10. Tenth Cause of Action: Accounting

"The nature of a cause of action in accounting is unique in that it is a means of discovery." (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 180.) "An action for an accounting has two elements: (1) 'that a relationship exists between the plaintiff and defendant that requires an accounting' and (2) 'that some balance is due the plaintiff that can only be ascertained by an accounting.' " (*Sass v. Cohen* (2020) 10 Cal.5th 861, 869 [quoting *Teselle, supra*, 173 Cal.App.4th 156, 179].)

The action carries with it an inherent limitation; an accounting action 'is not available where the plaintiff alleges the right to recover a sum certain or a sum that can be made certain by calculation.' " (*Ibid.*) Plaintiff is seeking sums that are either certain or capable of being made certain by calculation.

The demurrer to this cause of action is SUSTAINED without leave to amend.

11. Eleventh Cause of Action: Fraud/Promissory Fraud

The elements of fraud are: (1) a misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (or scienter); (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage. (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 990.) Fraud must be specifically pleaded. This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered. (*Lazar v. Superior Ct.* (1996) 12 Cal.4th 631, 645.)

Plaintiff asserts this cause of action against McDonogh and Does only. It alleges that she falsely represented to Plaintiff that Plaintiff "would be paid through the grant-funded reimbursement and draw-request mechanism upon completion of milestones, and that [Plaintiff] should continue performing and submitting milestone invoices because draw requests would be processed in the ordinary course." (FAC, ¶¶ 116-117.) Plaintiff claims that McDonogh had no intention that

Plaintiff would be so compensated, that she represented otherwise to induce Plaintiff to perform work for AITF, and that Plaintiff justifiably relied on McDonogh's promise by continuing to perform. (*Id.* at ¶¶ 117-119.)

AITF argue that Plaintiff has not pleaded this cause of action with the required particularity. The FAC lists three instances of McDonogh allegedly making the misrepresentation at the center of this claim. (FAC, ¶ 116.) For only one of them does the FAC provide the identity of the person "to whom . . . the representations were tendered" (*Lazar, supra*, 12 Cal.4th 631, 645): a July 10, 2025 instance of McDonogh telling Plaintiff's principal, a "Graham," "Graham, you're just going to have to trust me." (FAC, ¶ 116.) The Court agrees with Movants that Plaintiff has not pleaded context necessary to support the allegation that this statement constituted a representation that Plaintiff "would be paid through the grant-funded reimbursement and draw-request mechanism upon completion of milestones, and that [Plaintiff] should continue performing and submitting milestone invoices because draw requests would be processed in the ordinary course." (*Ibid.*) To close that gap, the pleading would need to clarify what McDonogh was telling "Graham" to "trust [her]" about.

Because none of the three instances of McDonogh allegedly making the misrepresentation at issue are sufficiently pleaded, the demurrer to this cause of action is SUSTAINED with leave to amend.

12. Twelfth Cause of Action: Intentional Interference with Contractual Relations

"To prevail on a cause of action for intentional interference with contractual relations, a plaintiff must plead and prove (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148.)

This cause of action alleges that McDonogh intentionally engaged in conduct designed to interfere with Plaintiff's contractual relationships with AITF, including the ZEAT Agreement and the alleged implied-in-fact agreement whereby Plaintiff was to be paid for its milestone work. (FAC, ¶¶ 122-124.) This is not a viable theory of intentional interference. "It is . . . well established that corporate agents and employees acting for and on behalf of a corporation cannot be held liable for inducing a breach of the corporation's contract." (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 24; accord *Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594, 1604.)

Plaintiff responds that this cause of action is expressly pleaded in the alternative to the allegations that McDonogh and AITF are alter egos of each other. (FAC, ¶ 121.) Even if McDonogh is not considered an alter ego of AITF, that does not affect her status as an agent of AITF. (*Id.* at ¶ 4.)

The FAC alleges that McDonogh was "acting for . . . personal, non-corporate purposes," as she "engaged in this conduct to serve personal interests and motives of her own, rather than in the

good-faith pursuit of AITF's legitimate business interests.” (FAC, ¶ 126.) Plaintiff believes this conduct triggers the rule that an agent for a corporation cannot be liable for intentional interference with the corporation's contract. Plaintiff cites the discussion of the agent's privilege, also known as the manager's privilege or the “agent's immunity rule” (see *Mintz, supra*, 172 Cal.App.4th 1594, 1605), in *Hyunh v. Vu* (2003) 111 Cal.App.4th 1183, 1194.) Pursuant to that rule, “ ‘a manager or agent may, with impersonal or disinterested motive, properly endeavor to protect the interests of his principal by counseling the breach of a contract with a third party which he reasonably believes to be harmful to his employer's best interests.’ ” (*Ibid.* [quoting *Olivet v. Frischling* (1980) 104 Cal.App.3d 831, 840-841] (disapproved in unrelated part as stated in *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 521, fn. 10)). “[T]he privilege is most often applied to bar actions against managers of a business entity that charge the managers with inducing the entity to breach a contract.” (*Id.* at p. 1195.)

In *Mintz*, a plaintiff alleged that a defendant accused of intentional interference with its principal's contractual relations had “ ‘act[ed] for its own financial advantage’ . . . and that the ‘agent's immunity rule’ does not apply when the agents are acting ‘as individuals for their individual advantage.’ ” (*Mintz, supra*, 172 Cal.App.4th 1594, 1605.) Plaintiff is doing the same in this case. (See FAC, ¶¶ 124, 126; Opposition, p. 9.) This tactic failed in *Mintz* because “the ‘agent's immunity rule’ has no direct applicability to a claim for interference with contract rights.” (*Mintz, supra*, 172 Cal.App.4th 1594, 1605.) It applies where the agent is accused of *conspiracy* to commit the tort. (*Ibid.*) “[T]he representative of a contracting party” cannot “be held liable for the substantive tort of interfering with the contract.” (*Id.* at p. 1606.)

The demurrer is SUSTAINED as to this cause of action with leave to amend.

C. TOWN OF TIBURON'S DEMURRER²

1. Eighth Cause of Action: Common Count – Money Had and Received

“It is a well-settled rule that ‘[t]here is no common law governmental tort liability in California; and except as otherwise provided by statute, there is no liability on the part of a public entity for any act or omission of itself, a public employee, or any other person.’ ” (*Green Valley Landowners Assn. v. City of Vallejo* (2015) 241 Cal.App.4th 425, 441-442 [quoting *Cowing v. City of Torrance* (1976) 60 Cal.App.3d 757, 761]; see also Gov. Code, § 815, subd. (a) & Leg. Committee Comm. [“This section abolishes all common law or judicially declared forms of liability for public entities, except for such liability as may be required by the state or federal constitution[.]”].) Common count claims like money had and received are rooted in the common law. (See *Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460.)

² As it did in connection with AITF and McDonogh's demurrer, the Court judicially notices the Subrecipient Agreement and the Grant Agreement. (See Tiburon's RJN, Ex. 1 and Ex. A thereto.)

Plaintiff responds that Government Code, section 815 expressly speaks of government *tort* liability and does not “affect[] liability based on contract[.]” (Gov. Code, § 814.) Government Code, section 814 “allows for liability based upon ‘contract or the right to obtain relief other than money or damages against a public entity.’ ” (*Utility Audit Co., Inc. v. City of Los Angeles* (2003) 112 Cal.App.4th 950, 958 [quoting Gov. Code, § 814].) Where a claim for money had and received is rooted in breach of a contractual duty, it may stand against a government defendant. (See *Utility Audit Co., supra*, 112 Cal.App.4th 950, 958.) “ ‘ “Whether an action is based on contract or tort depends upon the nature of the right sued upon, not the form of pleading or relief demanded. If based on breach of promise it is contractual; if based on breach of a noncontractual duty it is tortious. If unclear the action will be considered based on contract rather than tort.” ’ ” (*Ibid.* [quoting *Roe v. State of California* (2001) 94 Cal.App.4th 64, 69].) Plaintiff argues that it is claiming a contract-based right to money had and received against Tiburon and so may maintain this claim.

Although Plaintiff claims that it has contractual rights to this money, those contractual rights, as pleaded, run against AITF, not Tiburon. Plaintiff has not brought *any* contract-based claims against Tiburon, including the third-party beneficiary claim it leans on in its opposition to Tiburon’s demurrer (Plaintiff asserts that cause of action against AITF and McDonogh only, and the claim expressly rests on an alleged breach by AITF only [see FAC, ¶¶ 69, 71]). Plaintiff is not claiming to be owed anything by Tiburon, as opposed to AITF, as a matter of contractual right.

The demurrer to this cause of action is SUSTAINED with leave to amend.

2. Ninth (Declaratory Relief) and Tenth (Accounting) Causes of Action

The Court SUSTAINS Tiburon’s demurrer to these causes of action without leave to amend on the same ground it did AITF and McDonogh’s demurrer to the same.

D. CARB’S DEMURRER

“ ‘The general expression of the doctrine of sovereign immunity is that the state may not be sued without its consent.’ ” (*American Indian Health & Services Corporation v. Kent* (2018) 24 Cal.App.5th 772, 782 [quoting *People v. Superior Court* (1947) 29 Cal.2d 754, 757 (superseded by statute in unrelated part as stated in *Quigley v. Garden Valley Fire Protection Dist.* (2019) 7 Cal.5th 798, 815)].) “In California, ‘[s]uits may be brought against the State in such manner and in such courts as shall be directed by law.’ ” (*Id.* at p. 782 [quoting Cal. Const., art. III, § 5].) For example, California has waived its sovereign immunity for certain tort actions. (*Ibid.*) “Lawsuits against state agencies,” like CARB, “are in effect suits against the state.” (*Colombo v. State of California* (1991) 3 Cal.App.4th 594, 570.) CARB argues that no exception to or waiver of sovereign immunity appears on the face of Plaintiff’s complaint, so both of Plaintiff’s claims against CARB are barred by sovereign immunity.

Plaintiff argues that Government Code, section 814 is effectively a waiver of the state's sovereign immunity for "liabilities arising out of contract." (Opposition, p. 3; see also *Roe, supra*, 94 Cal.App.4th 64, 69.) As is true for Tiburon, Plaintiff has not asserted any contract-based claims against CARB. If, as Plaintiff's authority states, the rule of Section 814 is that "[w]hen the state makes a contract . . . it is liable for a breach of its agreement . . . and the doctrine of governmental immunity does not apply" ' ' (*Roe, supra*, 94 Cal.App.4th 64, 69 [quoting *E.H. Morrill Co. v. State of California* (1967) 65 Cal.2d 787, 794]). Plaintiff does not allege that the public entity breached a contract and does not allege any entitlement based on contractual right as against the public entity.

However, if the courts have interpreted Government Code, section 814 to waive sovereign immunity for "liability based on contract[.]" it would stand to reason that the statute likewise waives sovereign immunity for suits seeking "relief other than money damages against a public entity[.]" (Gov. Code, § 814.) Unlike Tiburon, against which Plaintiff has levied a claim for money had and received, Plaintiff seeks no money damages from CARB. (See FAC, ¶ 107.) The sole claims against CARB are for declaratory relief and an accounting. Accordingly, CARB is not immune in light of Government Code, section 814.

CARB also argues that Plaintiff's two claims against it are equitable in nature and so are improper, as, according to CARB, money damages will make Plaintiff whole. CARB has not offered any case disposing of any cause of action, on demurrer or otherwise, on the theory that the cause of action or the relief sought was equitable in nature and damages would make the plaintiff whole.

1. Ninth³ Cause of Action: Declaratory Relief

CARB argues that a declaratory relief claim is improper here, as a petition for a writ of administrative mandamus is the proper way to seek judicial review of an agency's application of the law to a particular set of circumstances. (See *State of California v. Superior Court* (1974) 12 Cal.3d 237, 251.) But Plaintiff is not seeking judicial review of CARB's application of the law to Plaintiff or the electrification project. Plaintiff is seeking a declaration of CARB's obligations under a contract to which CARB is a party. (FAC, ¶ 107.)

2. Tenth Cause of Action: Accounting

CARB argues that Plaintiff has not alleged the existence of a fiduciary relationship. "[A] fiduciary relationship is not required to state a cause of action for an accounting." (*Teselle, supra*, 173 Cal.App.4th 156, 179-180 [internal citation omitted].)

³ CARB's Demurrer mistakenly states that it is demurring to the Eighth and Tenth Causes of Action. The Eighth Cause of Action is not pleaded against CARB. CARB's other moving papers make clear that CARB is demurring to the Ninth and Tenth Causes of Action, which are the only two claims asserted against CARB.

CARB's demurrer is OVERRULED.

III. MOTIONS TO STRIKE

A. LEGAL STANDARD

The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, (1) strike out any irrelevant, false, or improper matter inserted in any pleading; or (2) strike out all or any part of any pleading not drawn or filed in conformity with the laws of California, a court rule, or an order of the court. (Code Civ. Proc., § 436, subds. (a)-(b).) The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. (Code Civ. Proc., § 437.) "When the defect which justifies striking a complaint is capable of cure, the court should allow leave to amend." (*Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761, 768.)

B. DISCUSSION

1. MCDONOGH'S MOTION

McDonogh moves to strike the allegations that she is an alter ego of AITF. (See FAC, ¶¶ 44-47.) "Ordinarily, a corporation is regarded as a legal entity separate and distinct from its stockholders, officers and directors. Under the alter ego doctrine, however, where a corporation is used by an individual or individuals, or by another corporation, to perpetrate fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court may disregard the corporate entity and treat the corporation's acts as if they were done by the persons actually controlling the corporation." (*Communist Party v. 522 Valencia, Inc.* (1995) 35 Cal.App.4th 980, 993.)

To plead alter ego liability, a plaintiff cannot merely assert that the business entity is the alter ego of the individual defendant. (*Vasey v. California Dance Co.* (1977) 70 Cal.App.3d 742, 749.) The plaintiff must plead "such a unity of interest and ownership that the separate personalities of the corporation and the individuals do not exist, and that an inequity will result if the [business] entity is treated as the sole actor." (*Ibid.*) The first of these requirements "encompasses a series of factors[,] including "one individual's ownership of all stock in a corporation; use of the same office or business location; commingling of funds and other assets of the individual and the corporation; an individual holding out that he is personally liable for the debts of the corporation; identical directors and officers; failure to maintain minutes or adequate corporate records; disregard of corporate formalities; absence of corporate assets and inadequate capitalization; and the use of a corporation as a mere shell, instrumentality or conduit for the business of an individual." (*Misik v. D'Arco* (2011) 197 Cal.App.4th 1065, 1073.) "This list of factors is not exhaustive[,] and " "[n]o single factor is determinative[.] " " (*Ibid.* [quoting *Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811-812].) The pleading need not allege evidentiary facts, but may rest on allegations of ultimate fact. (*Rutherford Holdings, LLC v. Plaza Del Ray* (2014) 223 Cal.App.4th 221, 236.)

The FAC makes the allegation of ultimate fact critical to the alter ego theory: that “there exists such a unity of interest and ownership between AITF and McDonogh . . . that the separate personalities of AITF and McDonogh do not in reality exist with respect to the conduct alleged herein.” (FAC, ¶ 45.)

In support, the FAC alleges that McDonogh “dominated and controlled” AITF; “intermingling and shared use of assets and affairs among McDonogh, AITF, and one more McDonogh family trusts of which McDonogh is trustee”; that McDonogh as trustee, and not AITF, owns AITF’s principal business premises; that McDonogh’s trust shares those business premises and also personnel and legal representation with AITF; that McDonogh’s trust and AITF have presented themselves as a unit in public proceedings and communications to public officials; and that “McDonogh has treated AITF, the trust[s], and herself as a single economic unit, has not observed the separateness of their respective assets and affairs, and has used AITF and the trust[s] interchangeably as instrumentalities to serve her own purposes.” (*Id.* at ¶¶ 45-46.)

This is sufficient to allege the first element of the alter ego doctrine. As to the second element, Plaintiff alleges that “adherence to the fiction of AITF’s separate corporate existence under these circumstances would sanction a fraud and promote injustice, including by permitting McDonogh to accept the benefits of [Plaintiff’s] work and the project funding while insulating from liability the individual who controlled the decisions that caused [Plaintiff’s] nonpayment.” (*Id.* at ¶ 47.) This, too, is sufficient. Plaintiff’s alter ego allegations are less conclusory than those deemed sufficient to survive demurrer in *Rutherford Holdings, supra*, 223 Cal.App.4th 221, 235-236.)

The motion to strike is DENIED.

2. TIBURON’S MOTION

After Tiburon filed its reply in support of its demurrer, Plaintiff filed a document entitled “Objection to Mischaracterization of Grant Agreement in Defendant Town of Tiburon’s Reply.” Tiburon has moved to strike this filing, arguing that it is an unauthorized sur-reply. The Court agrees, but instead of striking this material, merely exercises its discretion not to consider it. (See *Guimei v. General Electric Co.* (2009) 172 Cal.App.4th 689, 703 [whether to consider a sur-reply is within the trial court’s discretion].)

The motion to strike is DENIED.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).