# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 1/7/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV2300645

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

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| PLAINTIFF: DAVID ISHAM<br><br>vs.<br><br>DEFENDANT: THE PASHA GROUP | |

NATURE OF PROCEEDINGS: MOTION – COMPEL ANSWERS TO INTERROGATORIES – DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff's motion to compel further responses to special interrogatories is GRANTED IN PART. Defendant shall provide the contact information of the 11 individuals who applied for religious exemption.

In this employment action, Plaintiff alleges in his complaint that Defendant failed to provide reasonable religious accommodations and wrongfully terminated him when it refused to grant him an exemption from the Covid-19 vaccination requirement.

On October 2, 2025, Plaintiff served an interrogatory asking Defendant to provide the contact information for all 29 employees it had previously identified who applied for religious exemption from the requirement to be vaccinated against Covid-19. Defendant amended its prior interrogatories to state stating that only 11 had applied for religious exemption of which five of them had been denied requests. Defendant further lodged privacy objections and declined to provide Plaintiff with the information.

"Unless otherwise limited by order of the court. . . any party may obtain discovery regarding *any matter, not privileged,* that is *relevant to the subject matter* involved. . . if the matter either is itself admissible in evidence or appears *reasonably calculated to lead to the discovery of admissible evidence. . . .*" (Code Civ. Proc. § 2017.010 [emphasis added].) "Each answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits." (Code Civ. Proc. § 2030.220(a).) And, "[i]f the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." (Code Civ. Proc. § 2030.220(c).)

Defendant has the burden of justifying his objections once a motion to compel is filed, and it has failed to do so with respect to this particular interrogatory. (See *Williams v. Superior Court* (2017) 3 Cal.5th 531, 541.) Defendant has asserted that disclosure of the contact information would violate the privacy rights of these employees, and cites to *County of Los Angeles v. Los Angeles County Employee Relations Commission* (2013) 56 Cal.4th 905. *County of Los Angeles,* however, does not help Defendant because that case held that employee contact information is in fact, discoverable. As the California Supreme Court more recently held in *Williams v. Superior Court* (2017) 3 Cal.5th 531, although disclosure of contact information of other employees to some extent implicates their privacy rights, under a balancing test, plaintiff employee is entitled to discover the identity and contact information of other employees where that information is relevant to plaintiff's case. (*Id.*)

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

***The Zoom appearance information for January, 2026 is as follows:***
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# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 01/07/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV2301648

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

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| PLAINTIFF: STANLEY TWOMEY GRAY, ET AL<br><br>vs.<br><br>DEFENDANT: THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL | |

NATURE OF PROCEEDINGS: 1) MOTION – COMPEL - DISCOVERY FACILITATOR PROGRAM
2) MOTION – ADMISSIONS- DISCOVERY FACILITATOR PROGRAM
3) MOTION – ADMISSIONS- DISCOVERY FACILITATOR PROGRAM
4) MOTION – ADMISSIONS- DISCOVERY FACILITATOR PROGRAM
5) MOTION – ADMISSIONS- DISCOVERY FACILITATOR PROGRAM

RULING

*Discovery Motions Brought by Defendants Prima Medical Foundation and Peng Eng, P.A.*

Defendants Prima Medical Foundation and Winnie Peng Eng, P.A., filed a motion to compel Plaintiffs to provide responses to 1) Prima Medical Foundation and Winnie Peng Engs' Form Interrogatories, Set One to Plaintiff Stanley Twomey Gray; 2) Prima Form Medical Foundation and Winnie Peng Engs' Interrogatories, Set One to Plaintiff Julianne Gray; 3) Defendant Prima Medical Foundation's Special Interrgoatories, Set One to Plaintiff Stanely Gray; 4) Defendant Winnie Peng Eng's Special Interrogatories, Set One, to Plaintiff Stanley Gray; 5) Prima Medical Foundation's Special Interrgoatories, Set One to Plaintiff Julianne Gray; 6) Defendant Winnie Peng Eng's Special Interrgoatories, Set One to Plaintiff Julianne Gray; 7) Defendant Prima Medical Foundation and Winnie Peng Engs' Request for Production of Documents, Set One, to Plaintiff Julianne Gray; 8) Defendant Prima Medical Foundation and Winnie Peng Engs' Request for Production of Documents, Set One, to Plaintiff Stanley Gray; 9) Defendant Prima Medical Foundation and Winnie Peng Engs' Request for Damages to Plaintiff Stanley Gray; and 10); Defendant Prima Medical Foundation and Winnie Peng Engs' Request for Damages, Set One, to Plaintiff Julianne Gray.

Plaintiff's notice of hearing was served on Defendant and no opposition was filed. Additionally, a Declaration of Non-Resolution was filed indicating that the parties did not reach resolution.

A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

In light of the above, this court grants Defendants' motions to compel and orders responses without objection to be served within ten days of service of this order to all sets of discovery requested as part of this motion.

*Discovery Motions Brought by Defendant Oliver Strong Osborn, M.D. and Mary Redfern F.N.P.*

Defendants Oliver Strong Osborn and Mary Redfern filed motions to have Request for Admission, Set One, to Julianne Gray deemed admitted and for sanctions; and Request for Admission, Set One, to Stanley Gray deemed admitted and for sanctions.

Plaintiff's notice of hearing was served on Defendant and no opposition was filed. Additionally, a Declaration of Non-Resolution was filed indicating that the parties did not reach resolution.

A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

In light of the above, this court grants Defendants' motions to deem admitted all requests in Defendants' Request for Admission, Set One to Julianne Gray, and Defendants' Requests for Admissions, Set One to Staley Gray. Additionally, the court orders sanctions in the amount of $1,200 in attorney's fees to be paid to counsel for Defendants within ten days of service of this order.

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

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# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 01/07/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0000673

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

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| PLAINTIFF: ASHLEY SHAH<br>vs.<br>DEFENDANT: NITIN SHAH, ET AL | |

NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

Before the court is Plaintiff Ashley Shah's motion to compel Defendant Nitin Shah's responses to Request for Production of Documents, Set One, and responses to Special Interrogatories, Set One. Plaintiff's notice of hearing was served on Defendant and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

In light of the non-opposition, the court grants Plaintiff's motion to compel. Defendant shall serve responses without objection to Plaintiff's Special Interrogatories, Set One, and Plaintiff's Request for Production of Documents, Set One within ten days of service of this order. Sanctions are also ordered in the amount of $2,310 in attorney's fees to be paid within ten days of service of this order.

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

***The Zoom appearance information for January, 2026 is as follows:***
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1
Meeting ID: 161 548 7764
Passcode: 502070

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# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 01/07/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0002924

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

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| PLAINTIFF: LANDMARK HOME SOLUTIONS, LLC<br><br>vs.<br><br>DEFENDANT: FREDERICK SHEIN | |

NATURE OF PROCEEDINGS: MOTION – ENFORCE

RULING

Plaintiff Landmark Home Solutions, LLC's ("Plaintiff") motion is GRANTED as follows: The January 28, 2025 Settlement Agreement is rescinded pursuant to Civil Code section 1689(b)(1) due to mutual mistake of material fact. The parties are restored to their pre-settlement positions. (Civ. Code, § 1691.) Plaintiff's alternative request to enforce the Settlement Agreement under Code of Civil Procedure section 664.6 is DENIED AS MOOT. Plaintiff is the prevailing party and is entitled to recover reasonable attorneys' fees and costs pursuant to Section 16 of the Settlement Agreement. Plaintiff shall submit a noticed fee motion or application in compliance with applicable rules.

## ***Factual Allegations***

On February 7, 2024, Plaintiff and Defendant Frederick C. Schein ("Defendant") entered into a contract for the sale of real property located at 110 Stadium Avenue in Mill Valley ("property"). Plaintiff agreed to buy, and Defendant agreed to sell, the property for $936,000. On March 30, 2024, the parties entered into an amended contract to reflect a price reduction of $830,000. Plaintiff thereafter assigned its interest in the amended contract to a third-party buyer. Defendant thereafter entered into a subsequent contract to sell the property to a different purchaser.

On May 21, 2024, Plaintiff filed its complaint alleging two (2) causes of action: 1) specific performance; and 2) breach of contract.

On July 10, 2024, Defendant filed a cross-complaint alleging seven (7) causes of action: 1) Financial Elder Abuse; 2) Fraud; 3) Intentional Infliction of Emotional Distress; 4) Negligent Misrepresentation; 5) Quiet Title; 6) Breach of Contract; and 7) Negligence.

On January 28, 2025, the parties executed a written Settlement Agreement resolving all disputes regarding the sale of the property. The Settlement Agreement contemplated that Defendant would transfer vacant possession, marketable title and to cooperate in good faith to complete closing within sixty (60) days. After execution of the agreement, a recorded deed of trust in favor of Ohio Savings Bank, dated 2005, was identified in the property's chain of title. The deed of trust remains recorded, and no reconveyance, release, or court order removing the lien appears in the public record.

Currently before the Court is Plaintiff's motion for rescission of the Settlement Agreement, or in the alternative to enforce the Settlement Agreement. Plaintiff argues

## ***Legal Standard***

Consent is not "real or free" when given through mistake. (Civ. Code, § 1567.) A mistake of fact exists where a party is unconsciously ignorant of a material fact or believes in the existence of a material fact that does not exist. (Civ. Code, § 1577.) A contract is voidable and subject to rescission when consent was given by mistake. (Civ. Code, § 1689(b)(1).)

California courts have long held that a mutual mistake affecting an essential element of a contract renders the agreement voidable and subject to rescission. (*Guthrie v. Times-Mirror Co.* (1975) 51 Cal.App.3d 879, 884.) Where both parties enter into an agreement under a shared but mistaken belief regarding a fact fundamental to the transaction, rescission is the appropriate remedy. (*Williams v. Puccinelli* (1965) 236 Cal.App.2d 512, 515–516; *Wood v. Metzenbaum* (1951) 107 Cal.App.2d 727, 730.)

In the context of real property transactions, marketable title is an essential and material element of the agreement. (*Craig v. White* (1921) 187 Cal. 489, 494; *Dollinger DeAnza Assocs. v. Chicago Title Ins. Co.* (2011) 199 Cal.App.4th 1132, 1148, fn. 6.) A recorded deed of trust constitutes an encumbrance on title. (*Evans v. Faught* (1965) 231 Cal.App.2d 698, 706.) The fact that a title company may be willing to insure over a lien does not extinguish the lien or cure the defect in title. (*Siegel v. Fidelity Nat. Title Ins. Co.* (1996) 46 Cal.App.4th 1181, 1191–1192.)

## ***Analysis***

It is undisputed by the parties that at the time the Settlement Agreement was executed, both parties were unaware of the existence of the 2005 recorded deed of trust on the property. The existence of a recorded lien is a material fact because it directly affects the marketability of title, which is an essential element of a real property transaction. (*Craig, supra*, 187 Cal. at 494.) Because the parties entered into the Settlement Agreement under a shared but mistaken belief that the property was free of such an encumbrance, their consent was not "real or free" within the meaning of Civil Code sections 1567 and 1577. Under Civil Code section 1689(b)(1), the agreement is therefore voidable, and rescission is appropriate. (*Guthrie, supra*, 51 Cal.App.3d at 884; *Williams, supra*, 236 Cal.App.2d at 515–516.)

Defendant asserts that on September 25, 2025, California Best Title confirmed the 2005 lien was "removed from consideration." According to Defendant, this removed any cloud on title and allowed the transaction to proceed without court intervention. The Court rejects the

suggestion that the defect in title was cured by a title company's willingness to insure over the lien. A recorded deed of trust remains an encumbrance unless removed from the public record, and title insurance does not eliminate the legal existence of the lien. (*Evans*, *supra*, 231 Cal.App.2d at 706; *Siegel*, *supra*, 46 Cal.App.4th at 1191–1192.)

Because the Settlement Agreement was formed under a mutual mistake concerning an essential fact, enforcement under Code of Civil Procedure section 664.6 is not appropriate. A court may not summarily enforce a settlement agreement where consent was vitiated at formation.

In sum, the Court grants Plaintiff's request to rescind the Settlement Agreement. The parties are restored to their pre-settlement positions. (Civ. Code, § 1691.) Plaintiff's alternative request to enforce the Settlement Agreement under Code of Civil Procedure section 664.6 is moot.

The final issue is attorney fees. As Plaintiff is the prevailing party in the instant motion to rescind, it is entitled to recover reasonable attorneys' fees and costs pursuant to Section 16 of the Settlement Agreement. Plaintiff shall submit a noticed fee motion or application in compliance with applicable rules.

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

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# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 01/07/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0004847

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

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| PETITIONER: JOHN H. FRANK<br><br>vs.<br><br>DEFENDANT: FORT BAKER CAPITAL MANAGEMENT LP, ET AL | |

NATURE OF PROCEEDINGS: DEMURER

RULING

Defendants Fort Baker Capital Management LP ("FBCM"), Fort Baker Capital Partners LP ("FBCP"), Fort Baker Capital LLC ("FBCLLC"), and Steven Pigott's ("Pigott"; collectively, "Defendants") demurrer to Plaintiff John Frank's ("Plaintiff") Second Amended Complaint ("SAC") is SUSTAINED IN PART as follows: As to the First Cause of Action (breach of oral contract/breach of the implied covenant of good faith and fair dealing), the demurrer is OVERRULED as to Pigott and FBCLLC. It is SUSTAINED as to FBCM and FBCP only, with leave to amend. As to the Second Cause of Action (breach of written contract/breach of the implied covenant of good faith and fair dealing), the demurrer is SUSTAINED without leave to amend. As to the Third Cause of Action (conversion), the demurrer is SUSTAINED with leave to amend. As to the Fourth (fraudulent misrepresentation), Fifth (negligent misrepresentation), and Sixth (quantum meruit) Causes of Action, the demurrer is OVERRULED. (Code Civ. Proc., § 430.10, subd. (e).)

BACKGROUND

This is a dispute between former business partners in an investment venture. In approximately 2015, Pigott and Plaintiff formed an investment enterprise called Fort Baker Capital. (SAC, ¶¶ 17-20.) Plaintiff alleges that to induce Plaintiff to work with him on Fort Baker Capital, Pigott promised him certain valuable benefits, including an ownership interest in the partnership entities comprising the venture, a guaranteed payment when people invested, and periodic distributions of profits. (*Id.* at ¶ 17.) Plaintiff agreed to work for Fort Baker Capital in reliance on those representations. (*Ibid.*) He alleges that he became a limited partner in two of the entities forming Fort Baker Capital, FBCM and FBCP, and ultimately had a 15% interest in each entity. (*Id.* at ¶¶ 19-20.) Plaintiff alleges that he devoted thousands of hours to Fort Baker Capital in exchange for no payment from FBCP and well below market compensation from FBCM. (*Id.* at ¶ 25.)

According to the SAC, in late 2023, Pigott informed Plaintiff that Plaintiff was expelled from Fort Baker Capital. (SAC, ¶ 32.) No notice was provided and no vote was held on Plaintiff's expulsion. (*Ibid.*) Plaintiff alleges that he was never paid his 2023 profit distribution, nor was he paid the fair market value of his partnership interest as required. (*Id.* at ¶¶ 33-34.)

The SAC assets six causes of action against three of the entities involved in the Fort Baker Capital venture and Pigott personally. Defendants now demur to the SAC in full.

## 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.) A 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 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. (*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.)

## DISCUSSION

All Causes of Action as to Pigott

Defendants argue that Plaintiff has not stated any cause of action against Pigott personally. They explain that all of Plaintiff's claims arise from alleged wrongdoing committed by the partnership entities, and "[t]he SAC does not allege . . . that Mr. Pigott is the General Partner of Defendants FBCM or FBCP." (Memorandum, p. 14.) In a limited partnership, the general rule is that only a general partner is personally liable for the partnership's obligations. (Corp. Code, § 15904.04, subd. (a).)

The SAC alleges that the business venture at issue, Fort Baker Capital, is composed of three entities: FBCM, FBCP, and FBCLLC. (SAC, ¶ 7.) FBCM and FBCP are both limited partnerships. (See SAC, ¶¶ 5-6.) Pigott is a limited partner of both FBCM and FBCP. (*Id.* at ¶¶ 19-20.) FBCLLC is a limited liability company. (*Id.* at ¶ 7.) Pigott is the sole member, and the managing member, of FBCLLC. (*Id.* at ¶¶ 19-20.) FBCLLC is the general partner of both FBCM

and FBCP. (*Ibid.*) The result is that Pigott controls both FBCM and FBCP through his status as the sole and managing member of the LLC that serves as those entities' general partner. (*Ibid.*)

The Court need not decide whether Plaintiff has stated any causes of action against Pigott personally based on the conduct of FBCM and FBCP. Every cause of action in the SAC makes its allegations against "Defendants," a term that includes FBCLLC. If a cause of action states a claim against Pigott personally based on the actions of FBCLLC, it does not matter whether it states a claim against him personally based on the actions of FBCM or FBCP. The Court cannot sustain a demurrer to a cause of action only to the extent it is based on certain conduct. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119 ["A demurrer must dispose of an entire cause of action to be sustained."]; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682 [no demurrers as to a portion of a cause of action].) If a cause of action states a claim against Pigott personally under any legal theory, it survives demurrer. (See *Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 998 [demurrer may be sustained "only if the complaint fails to state a cause of action under any possible legal theory"].)

Generally speaking, a member of an LLC cannot be held personally liable for the LLC's obligations. (Corp. Code, § 17703.04, subd. (a); *CB Richard Ellis, Inc. v. Terra Nostra Consultants* (2014) 230 Cal.App.4th 405, 411.) The common law alter ego doctrine provides an exception. (See Corp. Code, § 17703.04, subd. (b).) *Communist Party v. 522 Valencia, Inc.* (1995) 35 Cal.App.4th 980, explained the doctrine in the context of corporations as follows: "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." (35 Cal.App.4th 980, 993; see also *Misik v. D'Arco* (2011) 197 Cal.App.4th 1065, 1073 [setting forth the traditional factors used to determine whether to apply to alter ego doctrine].) The doctrine functions similarly in the LLC context. (See Corp. Code, § 17703.04, subd. (b).)

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.) He 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.*) He need not plead evidentiary facts, but may rest on allegations of ultimate fact. (*Rutherford Holdings, LLC v. Plaza Del Ray* (2014) 223 Cal.App.4th 221, 236.)

Defendants argue that Plaintiff's alter ego allegations are improperly conclusory. The SAC's alter ego allegations appear at paragraphs 10-12. Like the alter ego allegations in *Rutherford Holdings*, they are designed to track the traditional alter ego liability factors described in *Misik, supra*, 197 Cal.App.4th 1065, 1073. (See *Rutherford Holdings, supra*, 223 Cal.App.4th 221, 235-236.) The Court agrees with Plaintiff that these allegations are at least as detailed as the alter ego allegations that were deemed sufficient in *Rutherford Holdings, supra*, 223 Cal.App.4th 221, 235-236. It is not the case that these allegations consist of mere legal conclusions. All of the allegations in paragraph 12 are statements of ultimate fact.

Barring some insufficiency with the way the elements of each cause of action are pleaded, a matter the Court turns to next, each cause of action states a claim against Pigott personally.

First Cause of Action: "Breach of Oral Contract (Partnership Agreement), Including Breach of Duty of Good Faith and Fair Dealing"

The 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.) For purposes of the first of those elements, the required elements of a valid contract are parties with capacity to contract, their consent, a lawful object, and consideration. (Civ. Code, § 1550.)

At the outset, the Court sustains the demurrer to this cause of action with leave to amend[1] as to FBCM and FBCP because Plaintiff has alleged that the parties to the oral contract did not include those entities. (SAC, ¶ 38 ["[I]n 2015, Plaintiff, Pigott, and FBCLLC entered into oral partnership agreements . . ."].)

Defendants argue that Plaintiff "has failed to sufficiently allege the material terms of the oral contract[.]" (Memorandum, p. 8.) They cite authorities establishing that to prevail on a claim for breach of contract, a plaintiff must prove the contents of the contract with a certain level of specificity. (See, e.g., *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811-812 ["If . . . a supposed 'contract' does not provide a basis for determining what obligations the parties have agreed to, and hence does not make possible a determination of whether those agreed obligations have been breached, there is no contract."]; see also *Ersa Grae Corp. v. Fluor Corp.* (1991) 1 Cal.App.4th 613, 623.)

None of Defendants' authorities discuss what a plaintiff in a breach of contract action must *plead* to survive a demurrer, as opposed to what he must ultimately prove to prevail on his claim. Regardless, the Court is persuaded that to state a claim for breach of contract, a complaint must describe the material terms of the contract with some degree of specificity. The bare assertion that a contract existed is a legal conclusion that is disregarded in reviewing a demurrer. (See *Wexler v. California Fair Plan Association* (2021) 63 Cal.App.5th 55, 70.) To sufficiently plead the existence of a contract, a plaintiff needs to allege *facts* that, taken as true, establish that a contract existed. A contract does not exist unless, among other things, the parties agreed on the same thing. (*Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 208.) From this, it follows that a plaintiff alleging breach of contract must describe what it is that the parties allegedly

[1] Defendants argue that Plaintiff should not be given leave to amend. Plaintiff filed his original complaint on December 18, 2024. After the parties met and conferred regarding perceived deficiencies in the complaint, Plaintiff filed a First Amended Complaint with Defendants' consent on April 24, 2025. (See Stipulation and Order, filed Feb. 20, 2025.) Defendants demurred to the FAC. Instead of opposing the demurrer, Plaintiff filed the SAC without leave of court. Rather than striking the SAC, the Court sustained the unopposed demurrer to the FAC with leave to amend and deemed the SAC to be Plaintiff's amended complaint in response to that ruling. (Sep. 4, 2025 Order.) As a result, the SAC is Plaintiff's third attempt to plead his case. However, it is the first time the Court has had the opportunity to weigh in on the sufficiency of his pleading. With the exception of the Second Cause of Action, the Court will permit Plaintiff to amend his pleading with the benefit of the analysis set forth in this ruling.

agreed upon. Also, to successfully plead breach of contract, a plaintiff must assert that a breach occurred. (*Oasis West Realty, supra*, 51 Cal.4th 811, 821.) Again, to do this in a manner that does not simply state a legal conclusion, the plaintiff must describe at least the term of the contract that was allegedly breached, and the conduct allegedly comprising the breach.

Plaintiff's allegations as to the substance of the contract are that in return for his efforts, Plaintiff would have "a percentage ownership in the . . . Fort Baker entities (with immediate vesting), a guaranteed payment when investments in the Funds . . . came in, and an irrevocable distribution of profits for any period in which [he] provided services to the Funds." (SAC, ¶ 17; see also ¶ 38 [similar].) The latter two of these cannot support a claim for breach of contract because they are not pleaded with enough specificity for the court to be able to determine what kind of conduct would breach the purported obligation and what kind would not. For example, Plaintiff claims he was promised a "guaranteed payment when investments . . . came in[.]" (SAC, ¶ 17; see also ¶ 21.) How was the amount of that payment to be calculated? Which entity was obligated to pay it? Elsewhere, Plaintiff alleges that the guaranteed payments were not triggered by investments, but instead were due "monthly." (*Id.* at ¶ 21.) Which is it? Similarly, Plaintiff claims he was promised a "distribution of profits for any period in which [he] provided services to the Funds." (*Id.* at ¶ 17.) How was "period" to be defined? What qualifies as "provid[ing] services"?

The allegation that the parties agreed that Plaintiff would have a partnership interest in the Fort Baker entities is different. Plaintiff has identified the entities he means (FBCP and FBCM, see SAC, ¶¶ 19-20) and alleged that by the terms of the contract, his partnership interests were to be fully vested immediately upon their creation (*id.* at ¶¶ 17, 38). He identifies the value of his partnership interest in those entities (15% in both cases). (*Id.* at ¶¶ 19-20.) He further alleges that upon his expulsion, he was entitled to receive the full fair market value of his partnership interests. (*Id.* at ¶ 34.) Finally, he alleges that he has been paid $0 worth of this obligation. (*Id.* at ¶¶ 34, 41.) These allegations are minimally sufficient to plead a breach of a contractual obligation to pay Plaintiff the value of his partnership interest upon expulsion, so does not matter if Plaintiff has insufficiently pleaded his other theories of breach of contract. (*Fremont Indemnity Co., supra*, 148 Cal.App.4th 97, 119.)

Defendants argue that the terms of the alleged oral contract contradict the terms of two written contracts attached to the complaint, which Defendants describe as "the Funds' governing documents." (Memorandum, p. 9.) As discussed below, those written agreements did not bind Plaintiff because Plaintiff did not sign them. If Defendants are arguing that the alleged oral contract between Plaintiff and Defendants is legally void on its face because it imposed upon Fort Baker Capital obligations inconsistent with the venture's other legal obligations, they have not supported that claim with any legal argument or citation to authority. (See *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 [such arguments are considered waived].) The bare fact that certain contracts to which Plaintiff was not a party prohibit Defendants from fulfilling their obligations under a contract with Plaintiff, if true, does not establish that Plaintiff has failed to state a claim for breach of contract.

Plaintiff has improperly pleaded a claim for breach of the implied covenant of good faith and fair dealing within this cause of action even though that claim and breach of contract are two separate theories of liability. Defendants' attack on the breach of implied covenant claim

depends on the dismissal of the breach of contract claim, so the breach of implied covenant claim survives demurrer.

The demurrer to this cause of action is overruled as to Pigott and FBCLCC.

Second Cause of Action: "Breach of Written Contract (Partnership Agreement), Included Breach of Duty of Good Faith and Fair Dealing"

The Court gathers that during discovery, Defendants produced to Plaintiff certain written agreements Defendants contend govern the partnership. (See SAC, ¶¶ 44 & Exs. A, B.) Each agreement purports to be a Limited Partnership Agreement of FBCM or FBCP. (*Id.* at Exs. A, B.) Plaintiff asserts his Second Cause of Action as an alternative to the First Cause of Action, alleging that even if these written agreements govern, Defendants breached them. (*Id.* at ¶ 44.)

Plaintiff cannot bring a claim for breach of either of these agreements, as he was not a party to either one. Each agreement defines the parties thereto to include FBCLLC, Pigott, and "all the parties who sign copies of this Agreement to become limited partners[.]" (SAC, Exs. A, B.) The signatories on Exhibit A are FBCM (with Pigott signing on behalf of the entity), FBCLLC (same), and Pigott in his capacity as a limited partner. The signatories on Exhibit B are FBCP (with Steve Pigott signing on behalf of the entity), FBCLLC (same), and Steve Pigott in his capacity as a limited partner. The SAC affirmatively states that Plaintiff *did not* sign these agreements. (SAC, ¶ 3.) Outside the context of the third party beneficiary doctrine, which no one has contended applies here, a person generally cannot sue to enforce a contract to which he is not a party. (See *Oasis West Realty, supra*, 51 Cal.4th 811, 821.)

Regarding the claim for breach of the implied covenant of good faith and fair dealing baked into this cause of action, "the existence of a contractual relationship between the parties" is a "prerequisite for any action for breach of the implied covenant of good faith and fair dealing . . . , since the covenant is an implied term in the contract." (*Green Valley Landowners Assn. v. City of Vallejo* (2015) 241 Cal.App.4th 425, 433.) The Court's conclusion that Plaintiff is not a party to these written agreements means Plaintiff has not stated a cause of action for breach of the implied covenant of good faith and fair dealing.

The demurrer to this cause of action is sustained without leave to amend because the Court does not see how Plaintiff could possibly allege facts permitting him to sue to enforce these contracts. (See *Blank, supra,* 39 Cal.3d 311, 317.)

Third Cause of Action: Conversion

"Conversion is generally described as the wrongful exercise of dominion over the personal property of another. The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages." (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.)

This cause of action is based on Defendants' allegedly converting Plaintiff's share of the partnership's 2023 profits and Plaintiff's 15% interest in the partnership. (SAC, ¶¶ 50, 54.) "Money cannot be the subject of a cause of action for conversion unless there is a specific,

identifiable sum involved[.]" (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1491; see also *Haigler v. Donnelly* (1941) 18 Cal.2d 674, 681 [requiring a "specific sum capable of identification"]; *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro LLP* (2007) 150 Cal.App.4th 384, 396 [money must be "readily ascertainable" to be converted].) When the cases speak of "identifiable" or "ascertainable" funds, they do not mean that the allegedly converted funds must be capable of being quantified in the same sense that any monetary damages must be capable of quantification to be recoverable. They mean that the allegedly converted property must consist of a "definite sum" of money, i.e., the defendant allegedly took from the plaintiff a specific "pot" of money with a defined numerical value. (See *PCO, supra*, 150 Cal.App.4th 384, 395-396.) This is why a plaintiff can usually state a claim for conversion where the defendant held a sum of money in trust for the plaintiff and misappropriated those funds. (*Id.* at p. 396.) Those circumstances are not *required* to make out a viable claim for conversion. (*Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 216-217.) However, the fact that the money was being held in trust for the plaintiff makes it easy for the plaintiff to point to exactly what money was taken from him, as opposed to any other funds that may have been in either party's possession, and attach a definite value to it, all of which *is* required for a conversion claim. (*PCO, supra*, 150 Cal.App.4th 384, 395-396.) By contrast, "[a] 'generalized claim for money [is] not actionable as conversion.'" (*PCO, supra*, 150 Cal.App.4th 384, 395; accord *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 284 ["[T]he simple failure to pay money owed does not constitute conversion."]; *Voris v. Lampert* (2019) 7 Cal.5th 1141, 1156 [claims seeking simple satisfaction of a monetary debt allegedly owed sound in contract, not conversion].)

Plaintiff's conversion claim is based on the idea that Defendants did not pay him money he was owed under a contract. Simply "failing to pay [a] person the money he or she is owed" does not constitute conversion. (*Voris, supra*, 7 Cal.5th 1141, 1156, fn. 11; *Kim, supra*, 201 Cal.App.4th 267, 284.) The SAC also does not attach a definite dollar value to the allegedly converted funds, but suggests a minimum value ("in no event less than $3,310,624 plus interest thereon at the legal rate since December 4, 2023") and states that the amount will be proven at trial. (SAC, ¶ 53.) This is a further indication that the SAC does not describe an actionable conversion claim. (*PCO, supra*, 150 Cal.App.4th 384, 395 [rejecting the idea that a sum can be "definite" for purposes of a conversion claim where it is subject to determination by a jury after a trial].) The demurrer to this cause of action is sustained with leave to amend.

Fourth and Fifth Causes of Action: Fraudulent Misrepresentation and Negligent Misrepresentation

To plead a claim for fraudulent misrepresentation, the plaintiff must assert that the defendant represented to the plaintiff that an important fact was true; that the representation was actually false; that the defendant knew the representation was false, or made it recklessly and without regard for its truth; that the defendant intended that the plaintiff rely on the representation; that the plaintiff reasonably did so; that the plaintiff was harmed; and that the plaintiff's reliance on the defendant's statement was a substantial factor in causing that harm. (See *Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 606.)

"The elements of negligent misrepresentation are '(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to

induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage.'" (*National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 50 [quoting *Apollo Capital Fund LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 243].)

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.) While there is some disagreement in the case law regarding the extent to which negligent misrepresentation must be pleaded with particularity (see *National Union Fire*, *supra*, 171 Cal.App.4th 35, 50), the weight of authority applies the same particularity standard to negligent misrepresentation claims as to intentional misrepresentation claims. (See, e.g., *Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1028; *Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 185, fn. 14; *SI 59 LLC v. Variel Warner Ventures, LLC* (2018) 29 Cal.App.5th 146, 155.)

As to both of these claims, Defendants contend that the SAC contains "no specific allegations regarding any specific misstatements made by each Defendant[.]" (Memorandum, p. 12.) The SAC alleges that all Defendants, "through Pigott," made misrepresentations to Plaintiff and describes what those misrepresentations were. (SAC, ¶ 57.) There cannot be any confusion here about which entity defendant made which misrepresentation – Pigott is alleged to have spoken for all of them. (*Ibid.*) Defendants also suggest that Plaintiff cannot plead either form of fraud in light of the language of the contracts attached to the SAC as Exhibits A and B. The SAC asserts that Plaintiff never signed those contracts and, liberally construed, asserts that Plaintiff did not even see these agreements until after this dispute arose. (SAC, ¶ 3 ["Desperate to deflect attention from his and the other Defendants' absconding of funds and interests duly owed to Plaintiff, Pigott has now produced" these agreements].) Under these circumstances, the Court does not see why the terms of these agreements would undermine Plaintiff's fraud claims.

The demurrer is overruled as to these causes of action.

Sixth Cause of Action: Quantum Meruit

To prevail on a cause of action for quantum meruit, a plaintiff must ultimately prove that he 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.) He 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.)

The SAC asserts that in order to induce Plaintiff to create an investment fund with him, Pigott requested that they enter into an arrangement in which Plaintiff would receive an interest in the entities and other benefits in exchange for rendering professional services to the venture. (SAC, ¶ 17; see also *id.* at ¶ 71.) Plaintiff proceeded to work "thousands of hours" to support the

venture's success, foregoing other employment, receiving zero compensation from one entity and well below market rate compensation from another. (*Id.* at ¶ 25, 38.) Plaintiff alleges that he was responsible for securing the fund's first major investor and the venture "performed exceedingly well" due to his work. (*Id.* at ¶¶ 26-27, 71.) Plaintiff claims he has not been compensated for the reasonable value of the services he rendered. (*Id.* at ¶¶ 72-73.) This sufficiently alleges quantum meruit.

Defendants argue that Plaintiff cannot simultaneously pursue his breach of contract claims and a claim to recover in quantum meruit. "A plaintiff may not . . . pursue or recover on a quasi-contract claim if the parties have an enforceable agreement regarding a particular subject matter." (*Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1389.) Some courts have sustained demurrers to quantum meruit claims where the complaint, in addition to alleging quantum meruit, alleged that an enforceable contract governing the same subject matter as the quantum meruit claim existed between the parties. (See, e.g., *California Medical Ass'n, Inc. v. Aetna U.S. Healthcare of California, Inc.* (2001) 94 Cal.App.4th 151, 172-173.)

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.) In *Klein*, *supra*, 202 Cal.App.4th 1342, the Second District refused to allow the plaintiff to pursue a quasi-contract claim regardless of this rule. It reasoned that "[a]lthough a plaintiff may plead inconsistent claims that allege both the existence of an enforceable agreement and the absence of an enforceable agreement, that is not what occurred here. Instead, plaintiffs' breach of contract claim pleaded the existence of an enforceable agreement and their unjust enrichment claim did not deny the existence or enforceability of that agreement." (202 Cal.App.4th 1342, 1389-1390.)

In this case, Plaintiff describes his quantum meruit claim as being brought "as an alternative" to his breach of contract claims "should the Court determine that there was not a partnership agreement" or "if no contract is found." (SAC, ¶¶ 70, 73.) The Court is not convinced that this is meaningfully different from affirmatively pleading that the contract underlying the breach of contract causes of action does not exist or is unenforceable, which is what the *Klein* court said was missing in that case. (See *Klein*, *supra*, 202 Cal.App.4th 1342, 1389-1390.) The Court's impression of *Klein* is that in that case, the pleading failed to acknowledge in any way that there was tension between the breach of contract claim and the quasi-contract claim. That is not the case with Plaintiff's SAC.

Defendant argues that Plaintiff has not adequately alleged what he did for the partnerships. The SAC describes what Plaintiff did for the venture. (SAC, ¶¶ 25, 27 [marketing and financial analysis].) But even if Plaintiff had merely pleaded that he "provided services" to the venture without specifying what they were, that would be sufficient. (See *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 570 [allegations of ultimate fact generally sufficient].) Defendant further contends that "the SAC does not allege that there was understanding with Defendants that [Plaintiff] would be compensated" for his services. (Memorandum, p. 13.) This is not a serious argument. No party to the venture described in the SAC could possibly be under the impression that Plaintiff was doing all of the work described for far less than market rate compensation with

no expectation that he would ultimately be made whole. Plaintiff has alleged circumstances tending to show that everyone understood that he was to be fully compensated eventually.

Defendant contends that the complaint is contradictory because it alleges that Plaintiff was promised a share in the venture's profits. The theory appears to be that because Plaintiff alleges that he was promised *more than* the reasonable value of his services, he cannot recover the reasonable value of his services in quantum meruit. The Court does not understand why that would be the case. Similarly, Defendant claims that Plaintiff cannot recover in quantum meruit because he acknowledges that he was paid *something* for his services. Plaintiff alleges that he was paid below-market compensation – that is, he was paid less than the reasonable value of his services. This allegation does not defeat the quantum meruit claim.

The Court does not address Defendants' statute of limitations argument because Defendant acknowledges that it only covers a portion of the quantum meruit claim. As stated, a demurrer cannot be sustained as to a portion of a cause of action. (*PH II, supra,* 33 Cal.App.4th 1680, 1682.) Finally, Defendants insist that the claim must fail as to Pigott personally because "there are no allegations that Plaintiff rendered services to Mr. Pigott personally." (Memorandum, p. 14.) The SAC alleges that "Defendants" requested that Plaintiff render certain services, that Plaintiff did so, and that Pigott personally benefited from those services to the tune of $20 million. (SAC, ¶¶ 27, 71.) The term "Defendants" is not defined in the SAC, but a natural reading of the word includes Pigott because he is named defendant in this case.

The demurrer is overruled as to this cause of action.

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

***The Zoom appearance information for January, 2026 is as follows:***
***https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1***

Meeting ID: 161 548 7764
Passcode: 502070

***If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov***

# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 01/07/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0007055

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

| | |
|---|---|
| PLAINTIFF: THOREN MANETTA, ET AL<br><br>vs.<br><br>DEFENDANT: TOYOTA MOTOR SALES U.S.A., INC, ET AL | |

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

RULING

Defendant Toyota Motor Sales ("Defendant") demurs to Plaintiff's sixth cause of action for fraud in the inducement, asserting that it fails to state a cause of action. Defendant has also filed a motion to strike punitive damages.

Plaintiff's notice of hearing was served on Defendant and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

In light of Plaintiff's non-opposition, the court sustains Defendant's demurrer with leave to amend within ten days of the order. Defendant's motion to strike punitive damages is also granted.

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

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# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 01/07/26 TIME: 1:30 P.M. DEPT: H CASE NO: CV0007286

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

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|---|---|
| PLAINTIFF: DESTIN BLOCK, ET AL<br>vs.<br>DEFENDANT: SUSAN KLEINMAN, ET AL | |

NATURE OF PROCEEDINGS: DEMURRER

## RULING

Susan Kleinman and Douglas Bunnell's (collectively "Defendants") Demurrer to the third, fourth, and sixth causes of action is OVERRULED. Their Demurrer to the seventh cause of action is SUSTAINED with leave to amend.

## BACKGROUND

This dispute concerns a flea infestation allegedly caused by Defendants' dogs during their short-term rental of Destin Block and Jonathan Block's ("Plaintiffs") residential property located at 46 Park Street, Woodacre, Marin County, California ("Subject Property").

## 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.) 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. (*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.)

DISCUSSION

Defendants' demur to Plaintiff's third, fourth, sixth, and seventh causes of action on the grounds that each cause of action fails to state facts sufficient to constitute a cause of action against them.

*Third Cause of Action – Negligent Infliction of Emotional Distress*

Negligent infliction of emotional distress is a species of negligence, which under California law has three elements: 1) the defendant owed a legal duty to use due care; 2) a breach of that duty; and 3) the breach was the proximate or legal cause of the resulting injury. (*Spates v. Dameron Hosp. Assn.* (2003) 114 Cal.App.4th 208, 213, citing *Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1071-1072 ["[T]he negligent cause of emotional distress is not an independent tort, but the tort of negligence. . . . The traditional elements of duty, breach of duty, causation, and damages apply," internal citations omitted].)

Defendants argue that negligent infliction of emotional distress is not a "stand alone cause of action" because it is not an independent tort. While negligent infliction of emotional distress is not an independent tort (meaning a plaintiff must still plead the elements of negligence), this does not mean that it cannot be pled as a separate cause of action. A plaintiff may state a cause of action for negligent infliction of emotional distress. (*Ochoa v. Superior Ct.* (1985) 39 Cal.3d 159, 172.)

As Defendants have not challenged this cause of action on any other ground, the demurrer to the third cause of action is OVERRULED.

*Fourth Cause of Action – Intentional Infliction of Emotional Distress*

A cause of action for IIED requires proof of: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff suffered severe emotional distress; and (3) the defendant's extreme and outrageous conduct was the actual and proximate cause of the severe emotional distress. (*Crouch v. Trinity Christian Ctr. of Santa Ana, Inc.* (2019) 39 Cal.App.5th 995, 1007.) A defendant's conduct is considered to be outrageous if it is so extreme as to exceed all bounds of that usually tolerated in a civilized community. (*Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 160–61, *citing Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832.)

Moving Defendants argue that the Complaint, as alleged, makes no attempt to factually establish that Defendants' alleged conduct was extreme and outrageous or that Defendants intended to harm Plaintiffs. Moreover, the alleged facts are not sufficient to allege reckless disregard of causing harm.

Plaintiffs counter that where reasonable men can differ, the jury must make the ultimate determination. (*Potnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1614.) Only if the facts alleged cannot amount to outrageous conduct, will the Court sustain the demurrer. (*Bock v. Hansen* (2014) 225 Cal.App.4th 215, 235.)

In this case, Plaintiffs argue that reasonable minds could differ on whether knowingly concealing a flea infestation from a family with severe animal allergies, constitutes outrageous conduct. In particular, the Complaint alleges that Defendants knew that Plaintiffs had severe animal allergies, making them uniquely sensitive to animals and byproducts of animal inhabitation. (Compl., ¶¶ 43, 53.) Despite this knowledge, Defendants concealed that their dogs carried fleas, were not housetrained, and that Defendants failed to professionally clean the Subject Property. (Compl., ¶¶ 89-92.) Defendants then falsely represented to Plaintiffs that the Subject Property "looked great." (Compl., ¶ 71.) The Complaint alleges that Defendants had full knowledge or substantial certainty of the extreme emotional distress their conduct would cause Plaintiffs and acted with intentional disregard for the reasonably foreseeable consequences of their actions. (Compl., ¶ 70.) Plaintiffs conclude that Defendants' knowledge of Plaintiffs' allergies, combined with their deliberate concealment, demonstrates at a minimum reckless disregard.

The Court finds this is sufficient to state a cause of action for intentional infliction of emotional distress at this stage in the proceedings. The demurrer to the fourth cause of action is also OVERRULED.

*Sixth Cause of Action – Fraud*

Fraud must be specifically pleaded. The effect of this rule is twofold: (1) General pleading of the legal conclusion of 'fraud' is insufficient; the facts constituting the fraud must be alleged. (2) Every element of the cause of action for fraud must be alleged in the proper manner (i.e. factually and specifically), and the policy of liberal construction of the pleadings will not ordinarily be invoked to sustain a pleading defective in any material respect. (*Vaughn v. Certified Life Ins. Co. of Cal.* (1965) 238 Cal.App.2d 177, 181–82.)

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.) "There are 'four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts. [Citation.]" ' (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336.)

Defendants demur to the sixth cause of action on the grounds that it fails to state facts sufficient to constitute a cause of action because Plaintiffs' fail to meet the stricter pleading standard for fraud, requiring facts to be pled with particularity.

The Complaint alleges that Defendants knew that Plaintiffs had severe animal allergies (Compl., ¶¶ 43, 53), that Defendants intentionally failed to disclose, and actively misrepresented, the extent of their dogs' shedding (*Id.*, ¶ 89), and that Defendants intentionally failed to disclose that their dogs were not house trained (*Id.*, ¶ 90) and carried fleas (*Id.*, ¶ 91). The Complaint further alleges that Defendants' dogs caused a major flea infestation at the Subject Property (*Id.*, ¶ 91), and that Defendants intentionally failed to disclose that they were not professionally cleaning the Subject Property as required by the terms of the Rental Agreement (*Id.*, ¶ 92), and instead actively concealed the damaged and urine-stained property, as well as the massive flea infestation. (*Id.*, ¶ 43.) The Complaint goes on to state that Defendants further made partial representations by representing that the property "looked great" (*Id.*, ¶ 71) while suppressing the true condition of the property. Lastly, Plaintiffs allege Defendants owed them a duty of honesty arising from their landlord-tenant relationship with Plaintiffs. (*Id.*, ¶ 88.)

These allegations are sufficiently specific to survive demurrer at this stage in the pleadings. The demurrer to the sixth cause of action is therefore also OVERRULED.

*Seventh Cause of Action – Conversion*

"Conversion is the wrongful exercise of dominion over the property of another. (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 451.) The elements of a claim for conversion are (1) the plaintiff's ownership or right to possession of the property at the time of the conversion, (2) the defendant's conversion by a wrongful act or disposition of property rights, and (3) damages. (*Ibid.*) It is not necessary that there be a manual taking of the property, only an assumption of control or ownership over the property, or that the alleged converter has applied the property to his [or her] own use. (*Id.* at pp. 451–452.)" (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1135, as modified on denial of reh'g (Feb. 27, 2014).)

In order to establish a conversion, the plaintiff must show an intention or purpose to convert the goods and to exercise ownership over them, or to prevent the owner from taking possession of his property. (*Collin v. Am. Empire Ins. Co.* (1994) 21 Cal.App.4th 787, 812. Internal citations omitted.) Thus, a necessary element of the tort is an intent to exercise ownership over property which belongs to another. (*Ibid.*)

Defendants demur to the seventh cause of action on the grounds that it fails to state facts sufficient to constitute a cause of action because no facts allege an act of dominion of Plaintiffs' personal belongings by Defendants.

With this, the Court agrees. The demurrer to the seventh cause of action is SUSTAINED with leave to amend.

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in***

***accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

***The Zoom appearance information for January, 2026 is as follows:***
***https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1***

Meeting ID: 161 548 7764
Passcode: 502070

***If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov***