TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, December 10, 2025 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

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1-2. 24CV02480, Schirtzinger v. Steele

Plaintiffs Robert F. Schirtzinger ("Schirtzinger") and Sarah C.E. Thompson ("Thompson," together with Schirtzinger, "Plaintiffs"), has filed the currently operative first amended complaint (the "FAC") against defendants Kaiser Permanente Medical Group, Inc. ("Kaiser"), The Permanente Medical Group ("TPMG"), Allied Universal Security Services Universal Protection Service, LLP ("Allied"), Nicholas Schirtzinger ("Nicholas"), Thomas Steele ("Steele"), Sandy Karren ("Karren", together with all other defendants, "Defendants"), and Does 1-25 with six causes of action.

This matter is on calendar for demurrer to the FAC filed by Allied for failure to state a cause of action as to the Third, Fourth, Fifth, and Sixth causes of action, and the motion to strike particular allegations from the FAC.

I. Governing Law

A. Motions to Strike

A motion to strike lies where a pleading contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." CCP § 436(b). However, "falsity," must be demonstrated by reference to the pleading itself or of judicially noticeable matters, not extraneous facts. *See* CCP § 437. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632.). A motion to strike is properly directed to unauthorized claims for damages, meaning damages which are not allowable as a matter of law. *See, e.g., Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214 (motion to strike lies against request for punitive damages when the claim sued upon would not support an award of punitive damages as a matter of law). Punitive damages may be stricken where the facts alleged do not rise to the level of "malice, fraud or oppression" required to support a punitive damages award. *See, e.g. Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.

Civil Code § 3294 authorizes the recovery of punitive damages in noncontract cases "where the defendant has been guilty of oppression, fraud, or malice…" "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294. A conscious disregard for the safety of others may constitute malice. *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 28 ("*Searle*"). "When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice." *Id.* at 29. "The central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone." *Id.* at 32. "Conscious disregard of safety as an appropriate description of the Animus malus which may justify an exemplary damage award when nondeliberate injury is alleged." *Ibid.* "In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632 (superseded by statute on other grounds).

B. Demurrers Generally

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852. At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and

conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

C. Agency and Ratification

"An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency." Civ. Code, § 2295. An agent may bind a principle under their actual or ostensible authority, and any rights or liabilities derived from the actions of the agent under that authority are also attributable to the principal. Civ. Code, § 2330.
"An agent's authority may be proved by circumstantial evidence." *Tomerlin v. Canadian Indemnity Co.* (1964) 61 Cal.2d 638, 644. The burden of proving agency is upon the party asserting that relationship. *Oswald Machine & Equipment, Inc. v. Yip* (1992) 10 Cal.App.4th 1238, 1247; *Aspen Pictures, Inc. v. Oceanic S.S. Co.* (1957) 148 Cal.App.2d 238, 253; *Hill v. Citizens Nat. Trust & Sav. Bk.* (1937) 9 Cal.2d 172, 177. Although the existence of an agency relationship is usually a question of fact, it "becomes a question of law when the facts can be viewed in only one way." *Metropolitan Life Ins. Co. v. State Bd. of Equalization* (1982) 32 Cal.3d 649, 658; *Angelotti v. The Walt Disney Co.* (2011) 192 Cal.App.4th 1394, 1404. Agency may be either actual or ostensible. Cal. Civ. Code ("CC") § 2298; *Vallely Investments v. BancAmerica Commercial Corp.* (2001) 88 Cal.App.4th 816, 826. Actual agency exists "when the agent is really employed by the principal." CC § 2299.

"[T]he principal test of an employment relationship is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 350. "(T)he right to exercise complete or authoritative control must be shown, rather than mere suggestion as to detail. A worker is an independent contractor when he or she follows the employer's desires only in the result of the work, and not the means by which it is achieved." *Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1179. Additional factors which merit consideration are: "(a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the

services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee." *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 351. Some jurisprudence on the issue elects to "focus upon the principle that a principal may oversee the results, but not the means, of the work in question." *Beaumont-Jacques v. Farmers Group, Inc.* (2013) 217 Cal.App.4th 1138, 1143. To be under respondeat superior, the conduct must be "typical of, or broadly incidental, to their duties." *Juarez v. San Bernardino City Unified School Dist.* (2024) 106 Cal.App.5th 1213, 1226.

> The nexus required for respondeat superior liability—that the tort be engendered by or arise from the work—is to be distinguished from "but for" causation.[4] That the employment brought tortfeasor and victim together in time and place is not enough. We have used varied language to describe the nature of the required additional link (which, in theory, is the same for intentional and negligent torts): the incident leading to injury must be an "outgrowth" of the employment.

Lisa M. v. Henry Mayo Newhall Memorial Hospital (1995) 12 Cal.4th 291, 298.

The respondeat superior doctrine is based on a "deliberate allocation of a risk"; the losses caused by torts of employees "which as a practical matter are sure to occur in the conduct of the employer's enterprise, are placed upon that enterprise itself, as a required cost of doing business." *Jorge v. Culinary Institute of America* (2016) 3 Cal.App.5th 382, 396 (internal citation omitted). Thus, to hold an employer liable there must be a showing that the employee was engaged in duties she was "employed to perform" or acts which "incidentally or indirectly contribute to" the employer's service, and conversely, the employer will not be liable "when the employee is pursuing 'his own ends.'" *Tryer v. Ojai Valley School* (1992) 9 Cal.App.4th 1476, 1481-82. The risk arising out of the employment should not be "so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business." *Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 968 (internal citation omitted).

For an employer to be liable for punitive damages for the actions of an employee, it must be shown that "the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice." Civ. Code § 3294(b). "With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." *Ibid*. An employer's failure to discipline an employee after the employee commits an intentional tort, can be found to be ratification of that tortious conduct. *Iverson v. Atlas Pacific Engineering* (1983) 143 Cal.App.3d 219, 228. Where punitive damages are alleged against an employer under Civ. Code § 3294 (b), the knowledge on the part of the employer stands as their equivalent of oppression, fraud or malice otherwise required under Civ. Code § 3294 (a); no oppression, fraud or malice on the part of the employer need be shown. *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1154.

D. False Imprisonment

"The elements of a tortious claim of false imprisonment are: (1) the nonconsensual, intentional confinement of a person, (2) without lawful privilege, and (3) for an appreciable period of time, however brief." *Easton v. Sutter Coast Hosp.* (2000) 80 Cal.App.4th 485, 496. The statute of limitations for false imprisonment is one year. CCP, § 340 (c).

E. The Bane Act

"(T)o state a cause of action under section 52.1 there must first be violence or intimidation by threat of violence. Second, the violence or threatened violence must be due to plaintiff's membership in one of the specified classifications set forth in Civil Code section 51.7 or a group similarly protected by constitution or statute from hate crimes." *Cabesuela v. Browning-Ferris Industries of California, Inc.* (1998) 68 Cal.App.4th 101, 111. Threats sufficient to constitute a hate crime do not require immediacy. *In re M.S.* (1995) 10 Cal.4th 698, 714.

"Although initially enacted 'to stem a tide of hate crimes' (*Jones v. Kmart Corp*. (1998) 17 Cal.4th 329, 338, 70 Cal.Rptr.2d 844, 949 P.2d 941), 'a plaintiff need not allege the defendant acted with discriminatory animus or intent; a defendant is liable if he or she interfered with the plaintiff's constitutional rights by the requisite threats, intimidation, or coercion' (*Austin B., supra*, 149 Cal.App.4th at p. 882…)" *Simmons v. Superior Court* (2016) 7 Cal.App.5th 1113, 1125. "The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., 'threats, intimidation or coercion'), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law." *Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 883. "A threat is an 'expression of an intent to inflict evil, injury, or damage on another.' " (*Certation*.) When a reasonable person would foresee that the context and import of the words will cause the listener to believe he or she will be subjected to physical violence, the threat falls outside First Amendment protection." *In re M.S.* (1995) 10 Cal.4th 698, 710 (defining a threat for the purposes of Penal Code § 422.6, the criminal counterpart to the Bane Act). "As long as the threat reasonably appears to be a serious expression of intention to inflict bodily harm (*Citation*), and its circumstances are such that there is a reasonable tendency to produce in the victim a fear the threat will be carried out (*Citation*), the fact the threat may be contingent on some future event (e.g., 'If you don't move out of the neighborhood by Sunday, I'll kill you') does not cloak it in constitutional protection." *Id*. at 714.

F. Intentional Infliction of Emotional Distress

Claims of intentional infliction of emotional destress require: "(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's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. Whether treated as an element of the prima facie case or as a matter of defense, it must also appear that the defendants' conduct was unprivileged. Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Davidson v.*

City of Westminster (1982) 32 Cal.3d 197, 209 internal citations and quotations omitted. To constitute a basis for emotional distress, the alleged conduct must extend beyond mere insults, indignities, threats, annoyances, petty oppressions or other trivialities. *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051. The conduct must be such that on hearing of the alleged conduct an average member of the community would resent the defendant and lead the community member to exclaim, "Outrageous!" *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494. "In order to avoid a demurrer, the plaintiff must allege with great specificity the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832 (Internal quotations omitted). "Without such pleading, no cause of action for intentional infliction of emotional distress will stand." *Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 536.

"Severe emotional distress means 'emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.'" *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1004, quoting *Girard v. Ball* (1981) 125 Cal.App.3d 772, 787–788. "(T)he requisite emotional distress may consist of any highly unpleasant mental reaction such as fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worry." *Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 397. "It is for the court to determine whether on the evidence severe emotional distress can be found; it is for the jury to determine whether, on the evidence, it has in fact existed." *Ibid*.

G. Negligence, and Employment

"California follows the rule set forth in the Restatement Second of Agency section 213, which provides in pertinent part: 'A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless: ... [¶] (b) in the employment of improper persons or instrumentalities in work involving risk of harm to others[.]'" *Evan F. v. Hughson United Methodist Church* (1992) 8 Cal.App.4th 828, 836. "Liability for negligent supervision and/or retention of an employee is one of direct liability for negligence, not vicarious liability." *Delfino v. Agilent Technologies, Inc.* (2006) 145 Cal.App.4th 790, 815. "An employer can be held liable for negligent supervision if it knows or has reason to believe the employee is unfit or fails to use reasonable care to discover the employee's unfitness." *Alexander v. Community Hospital of Long Beach* (2020) 46 Cal.App.5th 238, 253. "[T]here can be no liability for negligent supervision 'in the absence of knowledge by the principal that the agent or servant was a person who could not be trusted to act properly without being supervised.'" *Ibid,* quoting *Juarez v. Boy Scouts of America, Inc*. (2000) 81 Cal.App.4th 377, 395.

II. Evidentiary and Procedural Issues

Plaintiffs have filed an opposition, but in so doing only assert that the demurrer and motion to strike will be rendered moot before hearing because Plaintiffs filed a motion for leave to amend which was heard five days before this matter. The motion for leave to amend was denied for

procedural deficiencies, and Plaintiffs have filed no substantive opposition. Analysis proceeds to the merits of Allied's motion.

The Court is compelled to raise substantial concern related to the significant amount of the complaint dedicated to incidents including Plaintiffs' counsel, Violet Grayson ("Grayson"). Many of the allegations seem more aimed to facts experienced by Grayson than those of Plaintiffs. The Court notes the eventual probable issues related to Rule of Professional Conduct 3.7, which are best brought to the parties attention at this early juncture.

III. Demurrer

A. False Imprisonment

Allied contends that the Court should sustain the demurrer to the false imprisonment cause of action because the Court should infer that Schirtzinger was held pursuant to a lawful 5150 hold. False imprisonment requires that the plaintiff be held "without lawful privilege" Defendant asks that the Court infer that a 5150 hold was placed, despite no allegation to this effect, and that such hold was made with lawful privilege. At demurrer, the Court cannot engage in such speculation for Allied's benefit. Those inferences that can be made must be made in favor of the Plaintiffs. Defendant's entire argument in this regard fails as a result. Factually, Plaintiffs adequately allege that Allied employees participated in the incident where Schirtzinger was restrained and subsequently held. FAC ¶ 19. Schirtzinger was tied to a bed and was not released for a period of days. Therefore, the cause of action is sufficiently pled.

The Demurrer to the Third cause of action is OVERRULED.

B. Bane Act

Allied claims that the Bane Act violations are inadequately pled for multiple reasons. Allied argues that the FAC is bereft of any allegations of discriminatory intent. This argument is not persuasive, as that is not a pleading requirement in Bane Act violations. *Simmons v. Superior Court* (2016) 7 Cal.App.5th 1113, 1125.

Allied also argues that Plaintiffs have not averred a violation of constitutional rights independent of the constitutional violation. Allied misstates important details in relation to their proffered authority, *Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947. Despite Allied's averment, it is not a holding by the California Supreme Court, but by the Second District Court of Appeal. This is salient because there is partially countervailing and more recent authority, and our Supreme Court has not elected to resolve any averred inconsistency. The *Shoyoye* court did opine that "(t)he statute requires a showing of coercion independent from the coercion inherent in the wrongful detention itself." *Id*. at 959. However, this was a determination specific to wrongful detention. The *Shoyoye* court offers no express expansion of this rule to other constitutional violations. Plaintiffs here allege infringement on their freedom of association, and accordingly the decision of *Shoyoye* does not necessarily control. Second, as has already been noted, the First District Court of Appeal has come to the opposite conclusion on Bane Act violations for wrongful detentions. In *Cornell v. City & County of San Francisco* (2017) 17

Cal.App.5th 766, 795–796, the court determined that the relevant test associated with unlawful arrest was *not* the threat, intimidation, or coercion independent of the constitutional violation, but instead "a specific intent to violate the arrestee's right to freedom from unreasonable seizure" *Id*. at 801. Specific intent requires that the "right at issue clearly delineated and plainly applicable under the circumstances of the case", and "the defendant commit the act in question with the particular purpose of depriving the citizen victim of his enjoyment of the interests protected by that ... right". *Id*. at 803.

Despite these infirmities, the Court does conclude that the Bane Act violations are inadequately pled. Plaintiffs plead that the constitutional violation at issue is their First Amendment freedom of association. See FAC ¶¶ 52. However, Plaintiffs fail to plead a First Amendment violation. "(T)he First Amendment's right to freedom of speech is not unbounded. (Citations.) That is to say, it does not run against the world, but only against governmental actors as opposed to private parties. (Citation.)" *Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 485–486. None of the Defendants are alleged to be governmental actors. Civ. Code § 52.1 does *not* provide a right of action against private parties alleged violations of constitutional protections which only apply to states' powers. *Jones v. Kmart Corp.* (1998) 17 Cal.4th 329, 337. Given that First Amendment freedom of association has no application to non-governmental actors, any impingement by a private party is not a constitutional violation sufficient to trigger the protections of the Bane Act. Plaintiffs have not pled a cause of action.

The Demurrer to the Fourth cause of action is **SUSTAINED with leave to amend**.

C. Intentional Infliction of Emotional Distress

Allied contends that intentional infliction of emotional distress was not adequately pled because there were no allegations sufficient to be construed as "outrageous" as would be required to plead the cause of action.

Plaintiffs' allegations against Allied are relatively few and far between. As to Schirtzinger, given that Allied is sufficiently alleged to have participated in his false imprisonment, this is sufficiently within the realm of outrageousness that such determination is properly left to determinations of fact.

Turning to the claims of Thompson, the allegations here fall far short. Thompson only alleges that she was "menac(ed)", without any description thereon of what conduct was menacing besides the closeness of the security officer and his proximity to Thompson. This fails to describe something that goes beyond mere insults, indignities, threats, annoyances, petty oppressions or other trivialities. See *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051. Accordingly, Thompson has failed to plead a cause of action for intentional infliction of emotional distress.

For the Fifth cause of action, as to Schirtzinger, the demurrer is OVERRULED. As to Thompson, the demurrer is SUSTAINED with leave to amend.

D. Negligence

Allied demurs to Plaintiffs' cause of action for negligence, opining that Plaintiffs have failed to plead facts sufficient to meet the elements of the cause of action, whether construed as general negligence or negligent hiring, supervision, or retention.

Any contention of general negligence is not adequately expressed. Negligence requires unintentional conduct, and Plaintiffs' allegations are all intentional torts. As Allied points out, no expression of duty is adequately made as a result.

Couched in the concept of negligent hiring, supervision, or retention, Allied is also persuasive. Plaintiffs attempt to plead that the conduct at issue was that the conduct itself was emblematic of what must be negligent hiring practices, *and* reflective of Allied's normal operations. These appear to be contrary contentions, and neither expresses the necessary elements of negligent hiring, retention or supervision. If the conduct was emblematic of Allied's operations, it is not negligent, but intentional. As to the allegation that the conduct was reflective of negligent hiring practices, this is a legal conclusion. It does not aver any of the facts necessary to show knowledge of the unfitness of the particular employees. Accordingly, the FAC fails to allege negligence of either type.

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

IV. Motion to Strike

Allied argues that Plaintiffs have not adequately pled ratification, as they have not identified a corporate officer under CCP § 3294, nor have they pled facts sufficient to support malice, fraud or oppression on the part of a corporate officer.

Allied's construal of despicable conduct is not persuasive. Allied cites to only criminal cases in attempting to slant the interpretation of despicable conduct. The caselaw on despicable conduct related to Civil Code § 3294 is extensive, and the Court finds Allied's attempted use of inapposite authority unhelpful and unpersuasive. This is in part because more applicable authority would make clear that while despicable conduct is "frequently associated" with crimes, the history and interpretation of despicable conduct is clearly and extensively discussed in the caselaw. See *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210–1211. Allied's subsequent prevarication that it "does not mean to suggest" such extreme construal is not reflected in the diligence of their briefing. Second, despicable conduct relates to conduct undertaken with a willful and conscious disregard for safety, not intentional conduct. Under the statute, intentional conduct need only be "intended by the defendant to cause injury to the plaintiff". See Civ. Code §3294 (c)(1) Here, the false imprisonment cause of action clearly alleges sufficient facts to support intentional conduct by Allied employees. Accordingly, Allied's argument targeted to the despicable nature of the conduct is unavailing.

Despite this, Plaintiffs have not adequately pled the bases of punitive damages. As Allied does sufficiently argue, there is no factual allegations of what might be construed as knowledge or ratification by a corporate officer of employee conduct. This is a necessary element of punitive damage claims against entity defendants.

Punitive damages may also be granted for violations of the Bane Act, but as noted above, the demurrer was sustained as to the Bane Act. Accordingly, no basis for punitive damages thereon is properly pled. In a similar vein, the FAC requests that the Court grant attorneys' fees under the Bane Act, or "any other legal authority". Given the lack of opposition, and the failure to adequately plead the Bane Act cause of action, this appears proper to strike. Statutory penalties under the Bane Act are also appropriately stricken under the same logic.

Allied also requests that the Court strike Plaintiffs' request for treble damages under Civil Code § 3345 but provide no authority or briefing on this issue. Accordingly, the Court will not speculate as to probable argument. That request is properly denied.

The motion to strike is **GRANTED with leave to amend as to FAC, Prayer ¶ (c), (d), and (f).** It is **DENIED as to FAC, Prayer ¶ (e).**

V. Conclusion

Based on the foregoing, the Demurrer is **SUSTAINED with leave to amend as to the Fourth, and Sixth causes of action. As to the Fifth cause of action it is OVERRULED as to Schirtzinger and SUSTAINED with leave to amend as to Thompson. As to the Third cause of action, the Demurrer is OVERRULED.**

The motion to strike is **GRANTED as corrected above with leave to amend**.

Allied shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

3. 24CV05843, Sahouria v. Board of Trustees of the California State University

Plaintiffs Jad Sahouria and Julia Sahouria (together "Plaintiffs"), in their capacity as trustees of the Jad S. and Julia J. Sahouria Trust dated 9/01/2005, filed the currently operative first amended complaint (the "FAC") in this action against defendants the Board of Trustees of the California State University ("Defendant") and Does 1-50, for two alleged causes of action arising out of damage following flooding of Plaintiffs' property.

This matter is on calendar for the motion by Plaintiffs pursuant to Cal. Code Civ. Proc. ("CCP") § 473 for leave to amend the Complaint. The Motion is **GRANTED**.

I. Procedural Issues

Defendant's objections are OVERRULED. Defendant asserts repeated hearsay objections without any articulable basis. They also assert that the contended evidence "calls for a legal conclusion" without regard for the content of the evidence at issue. The objections are boilerplate and unfounded.

II. Governing Authorities

The California Code of Civil Procedure provides that a court "may in the furtherance of justice, and on any terms as may be proper" allow a party to amend any pleading to correct a mistake. CCP § 473(a)(1). Likewise, the court may "in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars". CCP § 473(a)(1). "Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order." CCP § 576. The general rule is "liberal allowance of amendments." *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; see *Lincoln Property Co., Inc. v. Travelers Indemnity Co.* (2006) 137 Cal.App.4th 905, 916. The "policy of great liberality" applies to amendments "at any stage of the proceedings, up to and including trial." *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 487. "Absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail." *Board of Trustees v. Superior Court* (2007) 149 Cal. App.4th 1154, 1163.

Absent a showing of prejudice, delay alone is not a basis for denial of leave to amend. *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 563. "(I)t is irrelevant that new legal theories are introduced as long as the proposed amendments relate to the same general set of facts." *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048 [internal citations omitted]. It is within the Court's discretion to deny leave to amend where the amendment has been pursued in a dilatory manner, and that delay has prejudiced other parties. Prejudice exists where the amendment would result in the delay of trial, where there has been a critical loss of evidence, where amendment would add substantially to the costs of preparation, or where it would substantially increase the burdens of discovery. *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488; see *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345; *Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 649.

Great liberality applies to amendment unless the amendment raises new and substantially different issues from those already pleaded. *McMillin v. Eare* (2021) 70 Cal.App.5th 893, 910. In exercising its discretion over amendment, the court will consider whether there is a reasonable excuse for the delay, whether the change relates to facts or legal theories, and whether the opposing party will be prejudiced by the amendment. *Duchrow v. Forrest* (2013) 215 Cal.App.4th 1359, 1378. The underlying merits of the proposed cause of action amendments are not relevant to determining whether amendment is appropriate, as long as they relate to the same general set of facts, as the amended pleadings may be attacked by demurrer, motion for judgment on the pleadings, or other similar proceedings. *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. Denying leave to amend due to failure to sufficiently plead a cause of action would be most appropriate where the defect cannot be cured by further amendment. *California Casualty Gen. Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 280–281; disapproved of on different grounds by *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390. The exception would lie where a plaintiff makes contradictory pleadings. "As a general rule a party will not be allowed to file an amendment contradicting an admission made in his original pleadings. If it be proper in any case, it must be upon very satisfactory evidence that the party has been deceived or misled, or that his pleading was put in under a clear mistake as to the facts." *Brown v. Aguilar* (1927) 202 Cal. 143, 149.

III. Analysis

Plaintiffs move to amend the FAC, and have included modified versions of the proposed second amended complaint (Cortright Declaration, Ex. 2 [the "PSAC"]), along with a "redline" version denoting the specific changes (*Id*. at Ex. 1). Plaintiffs aver that they have "realized the full impact on our land" only as recently as June 2025. Sahouria Declaration ¶ 4. Plaintiffs ask to amend, adding multiple causes of action.

Defendant opposes the motion with a misplaced vociferousness that is worth noting. For example, Defendant erroneously contends that the language in PSAC ¶ 10 is not otherwise present in the FAC. In reviewing the redline complaint, it is clear that ¶ 10 is the former ¶ 6, as the content of ¶¶ 4 and 7-9 are entirely new. Even if this were not obvious based on a review of the "redline", a cursory review of the allegations of the FAC should have revealed the existence of the averred. While Defendant contends that they performed a word search of the FAC, a basic review of that document would have made clear that ¶ 6 contains the carried over language. Defendant's contention that they performed a word search appears problematic as it appears they did not read the two version of the complaint and simply relied on word matching.

Defendant also contends that Plaintiffs' proposed changes are "materially different" and that "(s)uch a material change is not permissible as it is made only to survive an attack on the pleadings". Defendant's Opposition, pg. 5:24-25. This is a misstatement of the law and fails to account for the current status of the case. As to the allowable nature of amendments, absent *express* conflict, allowable amendments are liberally construed. *Board of Trustees v. Superior Court* (2007) 149 Cal. App.4th 1154, 1163. Material changes are allowable. With that said, this does not represent a particularly material change. As the Court found, the FAC did not concede the Defendant's argument regarding riparian property standards, and therefore adding such allegations in an express manner does not particularly affect the pleading. This brings analysis to the second issue. Defendants contend that this change is only to survive an attack on the pleadings, **but the pleadings have already weathered Defendant's contentions in this regard**. The demurrer was overruled. Defendant's argument is specious as a result.

In reviewing Plaintiffs' motion, the Court does find that Plaintiffs *have* delayed unreasonably. Plaintiffs' averment that they were not aware of the necessary facts until the "current conditions of the wall and talked extensively with (their) attorney" conflicts with the statement that they noticed the shift in "October 2023". Sahouria Declaration in Support ¶ 4. This is information that was reasonably available to Plaintiffs. Counsel has been on this matter from the start, and did not introduce these theories of liability in the original complaint in October 2024. This is not some remote site not easily accessible, but Plaintiffs' own property. Plaintiffs have not diligently pursued these facts and theories.

Plaintiffs' new allegations are not particularly substantive in nature, offering clarification and exposition of issues already raised. The scope of the amendments appears constrained to matters within "the same general set of facts". *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. Plaintiffs do not raise some entirely new incident which would force Defendant to pursue different evidence. The introduction of novel legal theories is generally allowable as a result. *Ibid*.

As the Court pointed out on the prior motion, Defendant (again) fails to offer evidence of prejudice if the amendment were to be allowed, instead just concluding that defending against these claims is prejudicial. As the Court previously noted, "The pleadings in this case have barely settled, there is no evidence that discovery would be unduly expanded at this early stage, and Defendant identifies no persuasive form of prejudice." Court's 9/24/2025 Minute Order. Matters have not changed significantly since that observation. This is not sufficient to display prejudice. *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488. Absent prejudice, undue delay alone is not sufficient. *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 563. Defendant's reliance on the inapposite *Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1281 is error. That case dealt with an *oral* motion to amend *at the hearing where summary judgment was granted to defendant*. That bears no relation to what occurred here. Defendant not showing actual prejudice, the Court *cannot* deny leave to amend. Even if the Court had the ability to deny leave to amend, granting leave would nonetheless be within its discretion. Allowing amendment is simply proper here.

Therefore, Plaintiffs' motion to amend is **GRANTED**.

Plaintiffs' counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Plaintiffs will file the Second Amended Complaint within 10 days of notice of that order.

4. 24CV07534, Souch v. Redwood Credit Union

Plaintiffs Charlotte Souch and John H. Souch (together "Plaintiffs") filed the complaint (the "Complaint") in this action against defendants the Redwood Credit Union ("RCU"), Redwood Holdings, LLC ("Redwood Holdings", together with RCU, "Defendants"), and Does 1-10, for multiple alleged causes of action arising out of a foreclosure sale of the property commonly known as 9677 Graton Road, Sebastopol, California (the "Property").

This matter is on calendar for the Defendants' demurrer to causes of action one through seven within the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") § 430.10(e) for failure to state facts sufficient to constitute a cause of action. The Demurrer is **SUSTAINED with leave to amend. The Court issues an ORDER TO SHOW CAUSE re: Sanctions against Plaintiffs.**

I. Legal Standards

A. General Demurrers

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). Furthermore, a demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a).

> "On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. [Citation.] 'A demurrer is simply not the appropriate

> procedure for determining the truth of disputed facts.' [Citation.] The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. [Citation.]"). *Bounds v. Sup. Ct.* (2014) 229 Cal.App.4th 468, 477-478. "(A) court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show."

Fremont Indem. Co. v. Fremont Gen. Corp. (2007) 148 Cal.App.4th 97, 115.

At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. If a demurrer is sustained, leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

B. Res Judicata

The prerequisite elements for applying res judicata to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgement on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. *Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.

The doctrine of res judicata prohibits a second suit between the same parties on the same cause of action. *Id*. at 788. In this context, the term "cause of action" is defined in terms of a primary right and a breach of the corresponding duty; the primary right and the breach together constitute the cause of action. *Ibid*. When two actions involving the same parties address the same harm, they generally involve the same primary right. *Id.* at 798. If two actions involve the same injury to the plaintiff and the same wrong by the defendant then the same primary right is at stake even if in the second suit the plaintiff pleads different theories of recovery, seeks different forms of

relief and/or adds new facts supporting recovery. *Eichman v. Fotomat Corp.* (1983) 147 Cal.App.3d 1170, 1174. If the same primary right is involved in two actions, judgment in the first bars consideration not only of all matters actually raised in the first suit but also all matters which could have been raised. *Ibid*. In other words, "The cause of action is the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced." *See Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co.* (1993) 5 Cal.4th 854, 860. "If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it **could** have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged. The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable." *Sutphin v. Speik* (1940) 15 Cal.2d 195, 202 (original emphasis).

C. Fraud

"The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.

Fraud may be accomplished though suppression of a fact by one who is bound to disclose it. Civ. Code § 1710 (3). "(T)he elements of an action for fraud and deceit based on concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage." *Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 612–613. "A failure to disclose a fact can constitute actionable fraud or deceit in four circumstances: (1) when the defendant is the plaintiff's fiduciary; (2) when the defendant has exclusive knowledge of material facts not known or reasonably accessible to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations that are misleading because some other material fact has not been disclosed." *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 255.

To establish reliance on fraud, reliance upon the truth of the fraudulent misrepresentation does not have to be a predominant factor, but it must be a substantial factor in the plaintiff's subsequent conduct. *OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 864. Plaintiffs in fraud by concealment claims must show that if the information had not been omitted, plaintiff would have been aware of it and therefore would have behaved differently. *Id.* The pleading must be adequately specific to show actual reliance on the omission, and that the damages causally resulted therefrom. *Id*. California law "requires a plaintiff to allege specific facts not only showing he or she actually and justifiably relied on the defendant's misrepresentations, but also how the actions he or she took in reliance on the

defendant's misrepresentations caused the alleged damages." *Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1499. Reasonable reliance may, where the facts are clear, be determined as a matter of law. *Home Ins. Co. v. Zurich Ins. Co.* (2002) 96 Cal.App.4th 17, 22. "Reliance on an alleged misrepresentation is not reasonable when plaintiff could have ascertained the truth through the exercise of reasonable diligence." *Rowland v. PaineWebber Inc.* (1992) 4 Cal.App.4th 279, 286 (disapproved on other grounds by *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 415).

"'[I]n California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.] "Thus 'the policy of liberal construction of the pleadings ... will not ordinarily be invoked to sustain a pleading defective in any material respect.'[Citation.] [¶] This particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.'" *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 993; *see Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166-1167 [" 'the plaintiff must allege the names of the persons who made the representations, ... to whom they spoke, what they said or wrote, and when the representation was made' "]; *see also Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645. "However, the requirement of specificity is relaxed when the allegations indicate that the defendant must necessarily possess full information concerning the facts of the controversy [citations] or when the facts lie more in the knowledge of the defendant." *Daniels*, at p. 1167, internal quotations and citations omitted; *see Tarmann v. State Farm Mut. Auto. Ins.* Co. (1991) 2 Cal.App.4th 153, 158. In pleading fraud claims, "(e)very element of the cause of action must be alleged in full, factually and specifically." *Id.* at 1249. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632; see *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1060 (in pleading promissory fraud, a general allegation that the promise was made without intent to perform was sufficient); see also *Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 608 (pleading that a hospital intentionally withheld that a health practitioner was operating without a medical license was sufficient to meet the pleading requirements for intent).

D. Homeowner's Bill of Rights ("HBOR")

"Following the denial of a first lien loan modification application, the mortgage servicer shall send a written notice to the borrower identifying the reasons for denial, including . . . (t)he amount of time from the date of the denial letter in which the borrower may request an appeal of the denial of the first lien loan modification and instructions regarding how to appeal the denial." Civ. Code, § 2923.6(f)(1).

Civil Code § 2923.7(a) provides that "[w]hen a borrower requests a foreclosure prevention alternative, the mortgage servicer shall promptly establish a single point of contact and provide to the borrower one or more direct means of communication with the single point of contact" and CC § 2923.7(b) provides that the single point of contact "shall be responsible for": "(1) Communicating the process by which a borrower may apply for an available foreclosure prevention alternative and the deadline for any required submissions to be considered for these options. (2) Coordinating receipt of all documents associated with available foreclosure

prevention alternatives and notifying the borrower of any missing documents necessary to complete the application. (3) Having access to current information and personnel sufficient to timely, accurately, and adequately inform the borrower of the current status of the foreclosure prevention alternative. (4) Ensuring that a borrower is considered for all foreclosure prevention alternatives offered by, or through, the mortgage servicer, if any. (5) Having access to individuals with the ability and authority to stop foreclosure proceedings when necessary." CC § 2923.7(c) provides that the single point of contact (which, per CC §2923.7(e) means an individual or team) shall remain assigned to the borrower's account "until the mortgage servicer determines that all loss mitigation options offered by, or through, the mortgage servicer have been exhausted or the borrower's account becomes current."

E. Conspiracy

"To support a conspiracy claim, a plaintiff must allege the following elements: '(1) the formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct.'" *AREI II Cases* (2013) 216 Cal.App.4th 1004, 1022. "'Bare' allegations and 'rank' conjecture do not suffice for a civil conspiracy." *Choate v. County of Orange* (2000) 86 Cal.App.4th 312, 333. "While a complaint must contain more than a bare allegation the defendants conspired, a complaint is sufficient if it apprises the defendant of the 'character and type of facts and circumstances upon which she was relying to establish the conspiracy.'" *AREI II Cases* (2013) 216 Cal.App.4th 1004, 1022. "A (civil) conspiracy cannot be alleged as a tort separate from the underlying wrong it is organized to achieve." *Moran v. Endres* (2006) 135 Cal.App.4th 952, 955.

"(A)ctual knowledge of the planned tort, without more, is insufficient to serve as the basis for a conspiracy claim. Knowledge of the planned tort must be combined with intent to aid in its commission." *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1582. "Mere knowledge, acquiescence, or approval of an act, without cooperation or agreement to cooperate is insufficient to establish liability." *Michael R. v. Jeffrey B.* (1984) 158 Cal.App.3d 1059, 1069.

"Conspiracy is not an independent tort; it cannot create a duty or abrogate an immunity. It allows tort recovery only against a party who already owes the duty and is not immune from liability based on applicable substantive tort law principles." *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 514. "A cause of action for civil conspiracy may not arise, however, if the alleged conspirator, though a participant in the agreement underlying the injury, was not personally bound by the duty violated by the wrongdoing and was acting only as the agent or employee of the party who did have that duty." *Doctors' Co. v. Superior Court* (1989) 49 Cal.3d 39, 44.

F. Agency

"An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency." Civ. Code, § 2295. An agent may bind a principle under their actual or ostensible authority, and any rights or liabilities derived from the actions of the agent under that authority are also attributable to the principal. Civ. Code, § 2330.

"An agent's authority may be proved by circumstantial evidence." *Tomerlin v. Canadian Indemnity Co.* (1964) 61 Cal.2d 638, 644. The burden of proving agency is upon the party asserting that relationship. *Oswald Machine & Equipment, Inc. v. Yip* (1992) 10 Cal.App.4th 1238, 1247; *Aspen Pictures, Inc. v. Oceanic S.S. Co.* (1957) 148 Cal.App.2d 238, 253; *Hill v. Citizens Nat. Trust & Sav. Bk.* (1937) 9 Cal.2d 172, 177. Although the existence of an agency relationship is usually a question of fact, it "becomes a question of law when the facts can be viewed in only one way." *Metropolitan Life Ins. Co. v. State Bd. of Equalization* (1982) 32 Cal.3d 649, 658; *Angelotti v. The Walt Disney Co.* (2011) 192 Cal.App.4th 1394, 1404.

G. Breach of Fiduciary Duty

"Technically, a fiduciary relationship is a recognized legal relationship such as guardian and ward, trustee and beneficiary, principal and agent, or attorney and client [citation], whereas a 'confidential relationship' may be founded on a moral, social, domestic, or merely personal relationship as well as on a legal relationship. [Citations.] The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party." *Hudson v. Foster* (2021) 68 Cal.App.5th 640, 663 (internal quotations omitted). "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." *Mendoza v. Cont'l Sales Co.* (2006) 140 Cal.App.4th 1395, 1405; *Gutierrez v. Girargi* (2011) 194 Cal.App.4th 925, 932.

H. Breach of the Covenant of Good Faith and Fair Dealing

"The implied covenant of good faith and fair dealing is implied by law in every contract to prevent a contracting party from depriving the other party of the benefits of the contract." *See, e.g., Moore v. Wells Fargo Bank, N.A.*, 2019 WL 4051754, at *5; *see also*, *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371; *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 683–684; *Thrifty Payless, Inc. v. The Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1244. The covenant requires each contracting party to refrain from doing "anything which will injure the right of the other to receive the benefits of the agreement." *Kransco v. American Empire Surplus Lines Ins.* Co. (2000) 23 Cal.4th 390, 400; *see also*, *Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 818. The implied covenant rests upon the existence of a specific contractual obligation and "cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." *Agosta v. Astor* (2004) 120 Cal.App.4th 596, 607; *see also*, *Racine & Laramie, Ltd. v. California Dept. of Parks & Rec.* (1992) 11 Cal.App.4th 1026, 1031-32.

I. Negligence

"The elements of a cause of action for negligence are: duty; breach of duty; legal cause; and damages." *Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463. Whether a duty of care is owed is a question for the court and not a jury. *Ballard v. Uribe* (1986) 41 Cal.3d 564, 572. "Legal duties are not discoverable facts of nature, but merely conclusory expressions that, in cases of a particular type, liability should be imposed for damage done." *Tarasoff v. Regents of*

University of California (1976) 17 Cal.3d 425, 434. "A financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money." *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 927 (Internal quotations omitted). Generally, once there is privity of contract between the lender and the consumer, the proper remedy is for breach of contract, and the application of tort law violates the economic loss rule. *Id*. at 937 ("[*Biakanja v. Irving* (1958) 49 Cal.2d 647]) does not displace the contractual economic loss rule when that rule squarely applies."). The central question in whether a duty is owed outside of contract claims in mortgage contexts is whether the lender's conduct has fallen outside the scope of their "role as a lender". *Id.* at 928.

J. Financial Elder Abuse

Financial elder abuse is defined by Welfare and Institutions Code ("W&I") § 15610.30 as where a party "(t)akes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both", or assists in such actions. See W&I § 15610.30 (a)(1-2). "A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult." W&I § 15610.30 (b). "(A) person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult." W&I § 15610.30 (c). "A wrongful use is defined as taking, secreting, appropriating, or retaining property in bad faith. Bad faith occurs where the person or entity knew or should have known that the elder had the right to have the property transferred or made readily available to the elder or to his or her representative." *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 174.

K. Unfair Competition Law

Business & Professions Code section 17200, prohibits "any unlawful, unfair or fraudulent" business practices. Bus. & Prof. Code §17200. "Since section 17200 is [written] in the disjunctive, it establishes three separate types of unfair competition" and "prohibits practices that are either 'unfair' or 'unlawful,' or 'fraudulent.'" *Pastoria v. Nationwide Ins.* (2003) 112 Cal.App.4th 1490, 1496; see also *CelTech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, (1999) 20 Cal.4th163, 180 (1999).

A party may bring a section 17200 claim only if he or she shows that he or she "suffered injury in fact and has lost money or property as a result of the unfair competition." Bus. & Prof. Code § 17204. To have standing, a plaintiff must sufficiently allege that (1) he has "lost 'money or property' sufficient to constitute an 'injury in fact' under Article III of the Constitution" and (2) there is a "causal connection" between the defendant's alleged UCL violation and the plaintiff's injury in fact. See, *Rubio v. Capital One Bank* (9th Cir. 2010) 613 F.3d 1195, 1203-1204. The UCL incorporates other laws and treats violations of those laws as unlawful business practices independently actionable under state law. *Chabner v. United Omaha Life Ins. Co.* (9th Cir. 2000)

225 F.3d 1042, 1048. Violation of almost any federal, state, or local law may serve as the "unlawful" basis for a UCL claim. *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839. In addition, a business practice may be "unfair or fraudulent in violation of the UCL even if the practice does not violate any law." *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 827.

Where plaintiff's UCL claim is entirely derivative of other fatally flawed causes of action, the UCL claim also fails. See, *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 277 [finding plaintiff's "UCL claim is derivative of [his] defamation cause of action, that is, it is based on the same [allegations] and likewise that cause of action stands or falls with that underlying claim."]. "A breach of contract may ... form the predicate for Section 17200 claims, *provided it also constitutes conduct that is 'unlawful, or unfair, or fraudulent.*" *Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 645 (internal quotations omitted, emphasis original).

"With respect to the *unlawful* prong, virtually any state, federal or local law can serve as the predicate for an action under section 17200." *People ex rel. Bill Lockyer v. Fremont Life Ins. Co.* (2002) 104 Cal.App.4th 508, 515 (internal quotations omitted). "Unlike common law fraud, a UCL fraud claim "can be shown even without allegations of actual deception, reasonable reliance and damage"; what is required to be shown is that members of the public are likely to be deceived." *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 258 (internal quotations omitted)("*Collins*"). Fraud claims under the UCL must be stated with "reasonable particularity". *Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1261; *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 619.

II. Procedural and Evidentiary Issues

Redwood Holdings request judicial notice of a wide variety of court filings, public records and documents. Courts may take notice of public records, but not take notice of the truth of their contents. *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375. Additional information which is included in the documentation or contentions as to the truth of the contents is not appropriate for judicial notice. *Ibid.* Factual findings found within a prior judicial opinion are not an appropriate subject of judicial notice. *Kilroy v. State* (2004) 119 Cal.App.4th 140, 148. Since judicial notice is a substitute for proof, it "is always confined to those matters which are relevant to the issue at hand." *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301. Judicial notice is GRANTED as to the existence of the documents and their legal function as to RFJN Exhibits A-I. No conclusion as to the truth of their contents is taken.

This matter was previously stayed under an order of abatement due to pending appeal of another case involving Plaintiff and RCU, also titled *Souch v. Redwood Credit Union*, Sonoma Superior Court Case SCV-266884 ("*Souch I*"). That case was decided on September 22, 2025. Remittitur has issued in that case on December 3, 2025. Redwood Holdings has submitted no timely reply. Therefore, none is considered.

In reviewing Plaintiffs' briefing, the Court could not locate twelve of the cases cited by Plaintiffs in support of their contentions. Parties and attorneys must typically cite only published, existing authority, as use of cases not certified for publication is prohibited under the California Rules of

Court. See Rule of Court, Rule 8.1115(a); see *Rain Bird Sprinkler Mfg. Corp. v. Franchise Tax Bd.* (1991) 229 Cal.App.3d 784, 793 (trial court erred in relying on unpublished opinion, as that violated former rule 977 [now Rule 8.1115]); see also *Farmers Ins. Exchange v. Superior Court* (2013) 218 Cal.App.4th 96, 109. Exceptions to this rule are incredibly limited. See, e.g., Rule 8.1115(b). Fictionalized citations are a violation of Rule 8.1115. *People v. Alvarez* (2025) 114 Cal.App.5th 1115 (pin cite unavailable). Additionally, parties are required to provide citations to cases from the official report volume and page number and year of decision. Rule of Court, Rule 3.1113(c). Use of fabricated citations is "frivolous" conduct and is subject to sanctions under CCP § 128.7. *Noland v. Land of the Free, L.P.* (2025) 114 Cal.App.5th 426. Courts are empowered to sanction parties for violations of the Rules of Court. Rule of Court, Rule 2.30(b). Sanctions may only be imposed after a noticed motion or issuance of an order to show cause, and an opportunity to be heard. Rule 2.30 (c). Sanctions to the Court under Rule 2.30 must comply with the limits under CCP § 177.5. *Caldwell v. Samuels Jewelers* (1990) 222 Cal.App.3d 970, 977.

Of the cases cited by Plaintiffs in their Opposition, over half were fabricated citations. When cites were checked, they led to differently titled cases unrelated to Plaintiffs' legal contentions and propositions. This is sufficient for the Court to find a significant probability that large language models were used in the preparation of the Opposition. Given that the citations are fictional and would otherwise mislead the Court both on the existence of cases and the holding thereon, the Court finds violations of Rules of Court, Rule 3.1113(c) and Rule 8.1115(a). For any sanctions to issue thereon, an order to show cause must issue, and present an opportunity to be heard. The following citations on the left side of the table do not exist, as shown by the citations to existing cases on the right:

Baird v. Baird (1995) 46 Cal.App.4th p.1130	*People v. Liu* (1996) 46 Cal.App.4th 1119, 1130
Doe v. Taylor (5th Cir. 2017) 15 F.4th 735	*Dahl v. Board of Trustees of Western Michigan University* (6th Cir. 2021) 15 F.4th 728, 735.
Pino v. Bank of America, N.A (2014) 226 Cal.App.4th 1037	*People v. Dunckhurst* (2014) 226 Cal.App.4th 1034, 1037
Harris v. Capital Growth Investors XIV (2011) 52 Cal.4th 1112.	*Los Angeles County Metropolitan Transportation Authority v. Alameda Produce Market, LLC* (2011) 52 Cal.4th 1100, 1112
Toscano v. McCoffey (2014) 227 Cal.App.4th p.638	*Maslo v. Ameriprise Auto & Home Ins.* (2014) 227 Cal.App.4th 626, 638
Vasquez v. Franklin Management, LLC (2016) 237 Cal.App.4th p.95	*City and County of San Francisco v. PCF Acquisitionco, LLC* (2015) 237 Cal.App.4th 90, 95
Kahn v. Aro, Inc. (1993) 145 Cal.App.3d p.868	*Snipes v. City of Bakersfield* (1983) 145 Cal.App.3d 861, 868.
Hoffman v. Young (1990) 226 Cal.App.3d p. 1075	*Nickelsberg v. W.C.A.B.* (Cal. Ct. App. 1989) 226 Cal.App.3d 1075, *review granted and opinion superseded sub nom. Nickelsberg v. W.C.A.B. (Los Angeles Unified School Dist.)*

	(Cal. 1990) 266 Cal.Rptr. 309, and *aff'd sub nom. Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288
Redd v. Dillard's Inc (2005) 134 Cal.App.4th 1205	*People v. Viray* (2005) 134 Cal.App.4th 1186, 1205
Lukovsky v. San Francisco (9th Cir. 2021) 535 F.3d 1035	*Center for Biological Diversity v. Marina Point Development Co.* (9th Cir. 2008) 535 F.3d 1026, 1035, *opinion amended and superseded* (9th Cir. 2009) 560 F.3d 903, *opinion amended and superseded* (9th Cir. 2009) 566 F.3d 794
McDonald v. Antelope Valley Community College Dist. (2008) 45 Cal.4th p.880	*People v. Hamilton* (2009) 45 Cal.4th 863, 880
Nool v. Home Score, LLC (2016) 201 Cal.App.4th	No page number provided. No case by this name is a published opinion of the California Courts of Appeal.

Therefore, due to violations of Rules of Court, Rule 3.1113(c) and Rule 8.1115(a), the Court issues an order to show cause against Plaintiffs, why they should not be jointly and severally liable for $4,000 in sanctions to the Court under Rule of Court, Rule 2.30. Plaintiffs will file any response to the OSC by March 5, 2026. The Order to Show Cause will be heard March 26, 2026, at 3:30 pm in Department 19.

III. Analysis

Redwood Holdings' arguments at demurrer fall into essentially three categories. First, they contend that the adjudication of the prior action between Plaintiffs and RCU constituted an adjudication of the same primary rights as are at issue here, and therefore they are precluded by res judicata. Second, they aver that the Complaint is uncertain because the allegations do not give Redwood Holdings notice of the factual allegations which may give rise to liability. Third, Redwood Holdings argues that Plaintiffs have failed to make adequate factual allegations to state a cause of action, for two reasons. Redwood Holdings avers that it cannot be held liable because it is a bona fide purchaser for value. It also argues that Plaintiffs do not allege sufficient facts to show that the causes of action apply to them.

A. Res Judicata

While Redwood Holdings makes multiple arguments to structure this position, the Court need not reach claims of privity, because the principle of res judicata clearly fails to preclude the conduct alleged in the Complaint.

Redwood Holdings opines, without factual basis, that the facts within the Complaint could have been brought when the *Souch I* case was filed. *Souch I* was filed on August 14, 2020. As Redwood Holding's own brief contends, the default was filed on December 29, 2023, after *Souch I* was adjudicated. The Complaint here alleges various violations of Plaintiffs rights *as applied to the foreclosure process*. In contrast, the complaint in *Souch I* only contends issues

related to imposition of a property tax escrow account related to the mortgage. Redwood Holding's position amounts to contending that Plaintiffs were required to allege violations which had not yet occurred at the time *Souch I* was filed, simply because there is partial homogeneity of parties to this action. While res judicata can apply to derivative claims that have not accrued at the time of judgement of the prior case (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 793), Plaintiffs' claims here are not necessarily derivative of the *Souch I* claims. The facts of the Complaint being taken as true, Defendants had not committed the HBOR violations, the fraudulent listing of the property, or any of the other opined facts here until long after the August 14, 2020 filing of *Souch I*. Continuing to liberally construe the Complaint, Defendants were under no compulsion to perform subsequent statutory and tort violations after the filing of *Souch I*, and so the unaccrued cause of action cannot be precluded. See, e.g., *Allied Fire Protection v. Diede Construction, Inc.* (2005) 127 Cal.App.4th 150, 154 (fraud which had occurred before the filing of prior case, but was discovered after, had not accrued and therefore was not precluded by res judicata).

Redwood Holdings makes similar assertions regarding *Souch v. McCormick*, Sonoma County Case number SCV-266109. That case does not even involve the Property, instead relating to 10161 Green Meadow Road and 208 Vista Court, both in Sebastopol. The contention that this case provides res judicata to the Complaint is baseless. The demurrer predicated on res judicata is OVERRULED.

B. Uncertainty

Redwood Holding's averment of uncertainty is not persuasive. Uncertainty only applies in the most extreme of cases, where a defendant cannot reasonably interpret the facts which may give rise to liability against them. Here, the facts are fairly clearly alleged. The vagueness at issue is more the failure to state facts than the statement of facts in such a way that it cannot be deciphered. As the Court determines below, the Complaint simply fails to state a cause of action against Redwood Holdings because there are no factual allegations tying them to the conduct at issue, with the exception of the claim that they purchased the Property at an advantageous price due to their connection to RCU. This is not an "uncertain" claim, as it appears perfectly clear what is alleged, it simply does not amount to actionable conduct. The demurrer for uncertainty is OVERRULED

C. Failure to State Facts Sufficient to State a Cause of Action

First, Redwood Holdings is not factually alleged to be a mortgage servicer, and therefore many of the causes of action appear to have substantial issues related to Plaintiffs' theory of liability. The Complaint does not assert any facts particular as to Redwood Holdings except their "inside trader" status. Indeed, there is no allegation naming Redwood Holdings as a party, despite their inclusion in the case caption. Redwood Holdings is only named in ¶ 16, 24 and 28. Plaintiffs' theory of liability against Redwood Holdings is, as Redwood Holdings points out, is not clearly stated predicated on factual allegations.

The Court does observe Plaintiffs' allegations of agency (Complaint, ¶ 6), simply contending that each of the Defendants is the agent of the others. However, such allegations are "egregious

examples of generic boilerplate", and properly disregarded as conclusory pleading. *Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 134, fn. 12; *cf*. *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1172 (Agency was adequately pled where plaintiffs alleged "BofA 'had authority to represent and bind [U.S. Bank] in regard to a modification of' their loan and U.S. Bank 'directed and authorized [BofA's] conduct in connection with the [loan] modification by directing [BofA] concerning what to tell' appellants."). Agency is inadequately pled. Accordingly, the Court looks to other theories of vicarious liability which may apply based on the facts alleged.

To that end, Plaintiffs have contended some facts which may cause the Court to infer that Plaintiffs allege conspiracy, contending that Redwood Holdings was an "insider", positioned by RCU to purchase the Property at foreclosure for substantially below its market value. This too is not adequately articulated, as the elements of conspiracy are not met. *AREI II Cases* (2013) 216 Cal.App.4th 1004, 1022 ("To support a conspiracy claim, a plaintiff must allege the following elements: '(1) the formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct.'"). However, conspiracy cannot give rise to duties which are not already owed by Redwood Holdings. *Doctors' Co. v. Superior Court* (1989) 49 Cal.3d 39, 44. Accordingly, conspiracy, even if properly pled, cannot make Redwood Holdings liable for conduct unless a duty to avoid that conduct is owed to Plaintiffs. Accordingly, the Court must examine each cause of action to determine whether it is adequately alleged against Redwood Holdings.

Second, to Redwood Holding's contention that they were a bona fide purchaser for value, Redwood Holdings provides no published case where such defense is properly asserted at demurrer. See *Gates Rubber Co. v. Ulman* (1989) 214 Cal.App.3d 356, 364; *Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1251[1]. The Complaint certainly makes no concession in this regard. This is an affirmative defense properly tendered to evidence and facts rather than ill-advised attempts to transmute a demurrer into an evidentiary motion through judicial notice. *Bounds v. Sup. Ct.* (2014) 229 Cal.App.4th 468, 477-478. Furthermore, the facts which are alleged, particularly the allegations of Redwood Holding's "insider" status, constructive notice on the part of Redwood Holdings is not only a reasonable inference, but one almost mandated by the allegations. Redwood Holding's argument that they are a bona fide purchaser for value is not a basis to sustain the demurrer.

1. Fraud

Plaintiff pleads that the Property was listed for substantially below its market value in an attempt to depress the sale price and provide Redwood Holdings the opportunity to purchase the Property for minimal cost. No part of the allegations of fraud aver that Redwood Holdings made a specific misrepresentation. No relationship is pled that would support claims of fraud by concealment. Accordingly, the factual pleadings of fraud are not met.

The Demurrer to the First cause of action is SUSTAINED with leave to amend.

[1] The Court does not review or rely upon Redwood Holding's improper citation of unpublished opinions. See Rule of Court, Rule 8.1115. Given that verified, published authority is also provided, the Court does not follow the same remedy undertaken against Plaintiffs above.

2. Homeowner's Bill of Rights

Homeowners Bill of Rights claims are generally only capable of being asserted against a mortgage servicer. See Civ. Code §§ 2923.55, 2923.7, 2924.9, and 2924.17. Given that there is no allegation that Redwood was the mortgage servicer, they are not properly a party to these claims.

As to the Second, Third, Fourth, and Fifth causes of action, the demurrer is SUSTAINED with leave to amend.

3. Breach of Fiduciary Duty

There are no factual allegations regarding a fiduciary duty owed by Redwood Holdings to Plaintiffs. Accordingly, the cause of action lacks an element, and is insufficiently pled.

The Demurrer to the Sixth cause of action is SUSTAINED with leave to amend.

4. Negligence

Plaintiffs aver negligence but have no pled any factual element thereon related to Redwood Holdings.

The Demurrer to the Seventh cause of action is SUSTAINED with leave to amend.

5. Breach of the Covenant of Good Faith and Fair Dealing

No contract is alleged between Redwood Holdings and Plaintiffs. Accordingly, there cannot be a breach of the covenant of good faith and fair dealing.

The Demurrer to the Eighth cause of action is SUSTAINED with leave to amend.

6. Financial Elder Abuse

Plaintiffs fail to plead elder abuse against Redwood Holdings for a variety of reasons. Initially, there is no allegation in the Complaint that either Plaintiff is an Elder Adult as defined by the statute. Second, and more to the content of the Complaint, Redwood Holdings is not alleged to have undertaken any conduct under the sale except to purchase with "insider" knowledge. That does not appear sufficient to state a claim for participation in financial elder abuse. See *Das v. Bank of America, N.A.* (2010) 186 Cal.App.4th 727, 744.

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

7. Unfair Competition Law

As the Court has opined above, Plaintiffs simply plead no facts related to Redwood Holdings sufficient to support other causes of action, and therefore there cannot be a derivative UCL claim. There are also not sufficient allegations to find any conduct which may be construed as unfair, unlawful or fraudulent.

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

IV. Conclusion

Based on the foregoing, **the Demurrer is SUSTAINED with leave to amend as to each cause of action for failure to state a claim. Plaintiffs shall file an amended complaint within 10 days of notice of this order.**

Redwood Holdings shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5. 25CV03786, Stinson v. Smith

Plaintiff Cera A. Stinson ("Plaintiff") filed the complaint in this action for partition (the "Complaint") against defendant Mary E. Smith ("Defendant"), related to the property commonly known as 5960 Yerba Buena Road, Santa Rosa, California (the "Property").

This matter is on calendar for the motion of Plaintiff to enter interlocutory judgment for partition by sale under Cal. Code Civ. Proc. ("CCP") § 872.720, appoint Marie Clay as the referee, and for the Court to have subsequent hearing on accounting and division of the proceeds of sale. **The motion is GRANTED.**

I. Governing Law

"A co-owner of real or personal property may bring an action for partition." [Citation.] "The primary purpose of a partition suit is…to partition the property, that is, to sever the unity of possession." *LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493; see also *14859 Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1404-1405 ["partition" is "the procedure for segregating and terminating common interests in the same parcel of property."]. "[A]lthough the action of partition is of statutory origin in this state, it is nonetheless an equitable proceeding." *Elbert, Ltd. v. Fed. Income Properties* (1953) 120 Cal.App.2d 194, 200; see also, CCP §872.140; *Cummings v. Dessel* (2017) 13 Cal.App.5th 589, 596–597 [Partition is a statutorily-prescribed equitable proceeding that is favored by the law.]. "The original purpose of partition was to permit cotenants to avoid the inconvenience and dissension arising from sharing joint possession of land" and "[a]n additional reason to favor partition is the policy of facilitating transmission of title, thereby avoiding unreasonable restraints on the use and enjoyment of property." *LEG Investments, supra,* 183 Cal.App.4th at 493.

"If the court finds that the plaintiff is entitled to partition, it shall make an interlocutory judgment that determines the interests of the parties in the property and orders the partition of the property

and, unless it is to be later determined, the manner of partition." CCP §872.720(a); see also, *Summers v. Superior Court* (2018) 24 Cal.App.5th 138, 143. A partition may be in kind, *i.e.*, physical division of the property or, "if the parties agree or the court concludes it 'would be more equitable,' the court may order the property sold and the proceeds divided among the parties." *Cummings, supra*, 13 Cal.App.5th at 597. "If the court determines a sale of the property 'would be more equitable than division of the property,' the court may order the property 'sold at public auction or private sale,' depending on which would be 'more beneficial to the parties.'" CCP §§ 872.820(b) and 873.520.

"As a rule, the law favors…partition in kind, since this does not disturb the existing form of inheritance or compel a person to sell his property against his will." *Cummings, supra*, 13 Cal.App.5th at 597; see also, Code Civ. Proc. §§872.810, 872.820. "The presumption is that land held in common tenancy can be equitably divided between the parties by allowing each a tract in severalty, equal to his interest in the whole, measured by value." *Ibid.* While that presumption continues, "[i]n many modern transactions, sale of the property is preferable to physical division since the value of the divided parcels frequently will not equal the value of the whole parcel before division…Moreover, physical division may be impossible due to zoning restrictions or may be highly impractical…" *Butte Creek Island Ranch v. Crim* (1982) 136 Cal.App.3d 360, 365.

The party who seeks a sale of the property, rather than a physical division, has the burden of proving it would be "more equitable" to sell the property rather than divide it. *Butte Creek, supra*, 136 Cal.App.3d at 365; see also, *Williams v. Wells Fargo Bank & Union Trust Co.* (1943) 56 Cal.App.2d 645, 647; CCP §§872.810, 872.820. To compel a sale, the party must show either: (1) a division into subparcels of equal value cannot be made, or (2) dividing the land would substantially diminish each party's interest, such that each cotenant's portion would be of substantially less value than that received on a sale. *Id*. at 366–367. To satisfy the first test, the party must show the land cannot be divided equally. *Id*. at 366. "This test is not met by evidence that a portion of the property is not equal to the whole, for that is always the case in a partition action." [Citation.] "Nor is this test met by evidence that the land is not 'fungible' or uniform in character." *Ibid*. The second test is a "purely economic test" of "whether a partition in kind would result in a cotenant receiving a portion of the land which would be worth materially less than the share of the money which could be obtained through sale of the land as a whole." *Id*. at 367. No economic prejudice can be shown if the party demanding sale can receive a portion of the land through physical division which could be sold for a sum equal to the amount the party could realize through sale of the entire parcel. *Ibid*.

II. Analysis

Plaintiff's Complaint requests partition by sale. Defendant was personally served on July 2, 2025. Plaintiff obtained Defendant's default August 25, 2025. Plaintiff now brings a motion for interlocutory judgment. Plaintiff served the motion with the hearing date on September 22, 2025.

Plaintiff has presented evidence that both she and Defendant own an interest in the Property (Plaintiff 60%, Defendant 40%). Plaintiff shows that the Property is not divisible due to

economic issues related to the resultant diminution of value to both parties in the event of partition in kind. Therefore, interlocutory judgment of partition by sale appears appropriate.

Based on the foregoing, the Motion is GRANTED.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Thereafter, the Court will sign the interlocutory judgment filed with the motion.

6. SCV-245738, Liebling v. Goodrich

This matter is the subject of an enormous record, containing innumerable plaintiffs and defendants. As is relevant here, plaintiffs prevailed in the action and obtained the August 4, 2021, judgment (the "Judgment") against defendant Robert E. Zuckerman ("Zuckerman"). Among the plaintiffs/judgment creditors is Richard Abel ("Abel").

This matter is on calendar for a motion by Abel for his motion to compel answers to special interrogatories ("SIs") against Zuckerman under Code of Civil Procedure ("CCP") §§ 708.020 & 2030.290, and to compel production of documents ("RPODs") from Zuckerman under CCP §§ 708.030 & 2031.300. The unopposed Motion is **GRANTED**. Zuckerman shall serve verified code-compliant responses free of objections within thirty (30) days of notice of entry of the order on this Motion. Zuckerman shall pay $60 in sanctions to Abel within thirty (30) days of notice of entry of the order on this Motion.

I. Governing Law

A judgment creditor generally has the same rights to propound discovery to the judgment debtor in order to facilitate collection of the judgment. Particularly, a judgment debtor may propound interrogatories as allowed under CCP § 2030.010, et seq. See CCP § 708.020. Judgment creditors may also request production of documents under CCP § 2031.010. See CCP § 708.030.

Regarding the SIs, a party responding to an interrogatory must provide a response that is "as complete and straightforward as the information reasonably available to the responding party permits" and "[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible." Code Civ. Proc. ("CCP") §2030.220(a)-(b). "If 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." CCP §2030.220(c). If a party fails serve a timely response to interrogatories, the court shall impose sanctions unless it finds that the party subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. CCP §2030.290(c). Code of Civil Procedure section 2030.290 provides that if a party to whom interrogatories were directed fails to serve timely responses, the responding party waives all objections, including those based on privilege and work product protection, and the propounding party may move for an order compelling responses. CCP §2030.290(a)-(b); see also, *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404;

CCP § 708.020(c). All that the moving party needs to show in its motion is that a set of interrogatories was properly served, that the time to respond has expired, and that no response has been provided. See, *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.

Similarly, Code of Civil Procedure section 2031.300 provides that if a party fails to serve timely responses to requests for production of documents, the responding party waives all objections, including those based on privilege and work product and "[t]he party making the demand may move for an order compelling [a] response to the demand." CCP §2031.300(a)-(b); CCP §708.030(c). When the motion to compel seeks a response to document requests, as opposed to further responses, no showing of "good cause" is required. CCP §2031.300.

When a party serves response after a motion to compel is filed, the court maintains jurisdiction within its discretion to determine the sufficiency of the response. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 410-411.

CCP § 2030.290(c) (relating to interrogatories), and CCP § 2031.300(c) (relating to requests for production of documents), provide that a monetary sanction "shall" be imposed against the party losing a motion to compel further responses unless the court finds "substantial justification" for that party's position or other circumstances making sanctions "unjust."

II. Analysis

Abel served their SIs and RPODs on August 22, 2025. Zuckerman has served no responses. The motion to compel was served on October 3, 2025.

There is no opposition to the motion, nor is there evidence that there have been responses to the underlying requests. The time to respond has expired. Compelling responses is appropriate. Abel's motion to compel responses to SIs and RPODs GRANTED. Zuckerman will serve code compliant, objection-free responses within 30 days of notice of this order.

III. Sanctions

Sanctions are mandatory under the CCP for discovery abuses, absent substantial justification. Absent substantial justification, the Court must grant compensatory monetary sanctions which represent reasonable and actual costs to Abel.

Abel requests sanctions of his actual costs of filing fees of $60. Filing fees of $60 is appropriate. The Court GRANTS Abel's request for monetary sanctions in the amount of $60. Zuckerman shall pay $60 to Abel within 30 days' notice of this order.

IV. Conclusion

Abel's motion to compel responses to SIs and RPODs is **GRANTED**. Zuckerman will serve code compliant, objection-free responses within 30 days of notice of this order. The request for sanctions is **GRANTED** and Zuckerman shall pay $60 to Abel within 30 days' notice of this order.

Abel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

7. SCV-269230, Fidelity v. National Title Company v. Darling

Plaintiff Fidelity National Title Company ("Fidelity" or "Plaintiff") initiated this action on August 6, 2021 filing the interpleader action for disbursement of escrow funds against defendants Heidi Darling ("Darling"), Debbie Darlene Shimon ("Shimon"), William McCarty, Jr. ("McCarty, Jr." or "Cross-Complainant") and Does 1-10, related to McCarty, Jr.'s objection to the sale of the property located at 6881 Day Road, Windsor, California (the "Property"). McCarty, Jr. has in turn filed the currently operative first amended cross-complaint (the "FAXC") against Fidelity, Anthony Haberthur ("Haberthur"), Shimon, Sherri Cooper Johnston ("Cooper"), Darling (all together "Cross-Defendants") Richard Carnation (now dismissed), and Does 1-20 alleging causes of action arising out of the sale of the Property.

This matter is on calendar for the motion by Cooper pursuant to Cal. Code Civ. Proc. ("CCP") § 877.6 for an order determining that her settlement of claims in the FAXC with McCarty, Jr., in the amount of $30,000, is in good faith. The unopposed Motion is **GRANTED**.

According to the settlement agreement submitted, Cooper and McCarty, Jr. agreed to a payment of $30,000 as settlement in exchange for a release of any and all liability associated with McCarty, Jr.'s claims against her.

The Motion is supported by the declaration of Stephanie Meyer, attorney for Cooper, and the Declaration of Mark Martell, attorney for McCarty, Jr. They present evidence regarding the comparative potential liability in the case, and the standards for settlement under CCP § 877.6 and *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 494-497.

Based on the moving papers and supporting declarations, which set forth the general terms of the settlement agreement and the general basis for a good faith determination, as well as the fact that there is no opposition to the Motion, the Court concludes that this settlement is in "good faith" as defined by the CCP. *See City of Grand Terrace v. Sup. Ct.* (1987) 192 Cal.App.3d 1251, 1261 (finding that if a motion for determination of a good faith settlement is not contested, the court does not have to analyze the factors set forth in *Tech-Bilt* and can summarily grant the motion; "That is to say, when no one objects, the barebones motion which sets forth the ground of good faith, accompanied by a declaration which sets forth a brief background of the case is sufficient.")

Here, Cooper and McCarty, Jr. have settled the claims against her for $30,000, which is the total amount of commission she collected on the sale of the Property. This appears to be a fair settlement amount based on the facts of the case and the relative probabilities of liability.

Based on the foregoing, the Motion is **GRANTED**. Pursuant to CCP § 877.6, any other joint tortfeasor or co-obligor is barred from any further claims under the Complaint against Cooper for

equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault related to the claims in the FAXC.

Cooper's counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

****This is the end of the Tentative Rulings.*****