TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, April 29, 2026 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. 24CV03100, Jooblay, Inc. v. Sanchez

Plaintiff, Jooblay, Inc. ("Plaintiff"), has filed the currently operative first amended complaint ("FAC") against defendants Julianna Alders("Alders"), Christine Baker ("Baker"), Steven D. Skolnik ("Skolnik"), as Trustee of the Steven D. Skolnik Revocable Trust 1997; Tad Ravazzini ("Ravazzini"), Ann Wendell ("Wendell"), as Trustee of the Living Trust of Ellen L. Wendell, dated 04/11/2001, Roberta M. Flinn and Robert H. Flinn (the "Flinns"), as Trustees or their Successors of the Robo Trust dated 11/11/2017; Elise Maxwell Rosenthal ("Rosenthal" together with all preceding defendants, the "Lender Beneficiaries"), as Trustee of the Elise Maxwell Rosenthal Revocable Trust dated 11/07/2003; Pacific Private Money, Inc. ("PPMI"), Pacific Freedom Fund, LLC ("PFF"), Edward Sanchez ("Sanchez"), individually and as Trustee of Pacific Trust, Forge Trust Co., ("Forge"), all other claimants of whatsoever kind and character who may have an interest in real properties commonly known as 9579 Ross Station, Sebastopol, CA 95472 and 1551 Laguna Road, Santa Rosa, CA 95401 (together, the "Properties"), County of Sonoma; and DOES 1 to 20 (all together "Defendants"), with seven causes of action for relating to real property conveyance.

Counsel seeks to be relieved from representation of Lender Beneficiaries, PFF and PPMI on the basis of an irreparable breakdown in the attorney client relationship. The Court notes that the Declaration in Support states that it was served via mail. Since the filing of the motion, the Lender Beneficiaries have all executed substitutions of attorney since the filing of the motion. To that degree, the motion has been rendered moot.

PPMI and PFF have both been served with the motion and they have filed no opposition. There are no apparently pressing matters on calendar, and the matter is not yet set for trial. Relief of counsel as to PFF and PPMI appears proper as a result.

The Court also has concern as Forge was listed as a client of Counsel, but there is no evidence Forge was ever given notice of the motion, though they also have not appeared in the action. No prior paper appears to reflect this representation on behalf of Forge. Their inclusion may be a mere typographical error. It is not clear to the Court whether Counsel may seek such relief against a party who was not served, even one who has not yet appeared. It is also unclear whether such relief is required given their nonappearance. The Court cannot grant the motion as to Forge as a result.

Therefore, Counsel's motion to be relieved as counsel for PFF and PPMI is **GRANTED**, and as to Forge is **DENIED without prejudice**.

2. <u>24CV05590, Navarro v. Frank</u>

Plaintiff Henry Navarro ("Plaintiff" or "Navarro") filed the presently operative complaint (the "Complaint") against defendant Bert Frank, dba, Image Motorsports ("Defendant" or "Frank") and Does 1-50. This matter is on calendar for Plaintiffs' motion for financial discovery as to Defendant.

A stay has been issued by the Bankruptcy Court as to Defendant. This Court will not proceed without either termination of that stay, or explicit orders from the Bankruptcy Court allowing this matter to proceed within the Sonoma Superior Court. The Court also notes that this motion appears to have already been considered and denied by the Court on February 27, 2026, after it was advanced following Plaintiff's ex parte request. The instant date appears to have been an erroneous artifact of the advanced date not resulting in this hearing being vacated. Accordingly, the Court neither can, nor should, have a hearing on the matter. Plaintiff's motion for discovery into financial condition is dropped from calendar.

3. <u>24CV06108, Pacatte Construction, Co, Inc. v. Natasha Properties LLC</u>

Plaintiff Pacatte Construction Co., Inc. ("Plaintiff"), filed the complaint (the "Complaint") against defendants Alisha and Natasha Properties, LLC ("Defendant"), as well as Does 1-50, arising out of alleged breach of contract. Defendant has in turn filed a cross complaint against Plaintiff. There have been numerous other complaints and cross-complaints filed by other parties associated with the construction. Among them is the November 24, 2025, cross-complaint filed by Reese & Associates, Inc. ("Reese") against Defendant NeilMed Pharmaceuticals, Inc.

("NeilMed" together with Defendant, "Moving Cross-Defendants"), Plaintiff, various subcontractors, and Does 1-50 (the "Cross-Complaint") for ten causes of action.

This matter is on calendar for Moving Cross-Defendants' demurrer to the Cross-Complaint pursuant to Cal. Code Civ. Proc. ("CCP") §§ 430.10(e) for failure to state facts sufficient to constitute a cause of action as to causes of action one through seven.

The Demurrer is **OVERRULED in part and SUSTAINED in part**.

I. Governing Law

A. Standards on the Demurrer

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). A demurrer tests whether the complaint sufficiently states a valid cause of action. *Hahn v. Merda* (2007) 147 Cal.App.4th 740, 747. 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. Complaints are read as a whole, in context and are liberally construed. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; see also, *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.

In reviewing the sufficiency of a complaint, courts accept as true all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law, or the construction of instruments pleaded, or facts impossible in law. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; see also, *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732. Matters which may be judicially noticed are also considered. *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. "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. 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.

B. Contractual Interpretation

"A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." Civ. Code, § 1636. "Pursuant to this rule, we will not construe a contract in a manner that will render it unlawful if it reasonably can be construed in a manner which will uphold its validity." *Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 798. "The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." Civ. Code, § 1638. "An interpretation which gives effect is preferred to one which makes void." Civ. Code, § 3541; see also *City of San Diego v. Rider* (1996) 47 Cal.App.4th 1473, 1490 ("Under basic rules of statutory and contract construction, provisions subject to both lawful and unlawful interpretations are to be interpreted in a manner which makes them lawful."). "Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected." Civ. Code, § 1653. "In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." Civ. Code, § 1654; *Southern California Gas Co. v. Ventura Pipe Line Const.Co.* (1957) 150 Cal.App.2d 253, 255 (applying principle to indemnity agreements). " ' "[A]ll applicable laws in existence when an agreement is made, which laws the parties are presumed to know and to have had in mind, necessarily enter into the contract and form a part of it, without any stipulation to that effect, as if they were expressly referred to and incorporated." [Citation.]' " *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 954, quoting *Torrance v. Workers' Comp. Appeals Bd.* (1982) 32 Cal.3d 371, 378. "The purpose of construction is to explain and not add or subtract terms." *Katz v. Haskell* (1961) 196 Cal.App.2d 144, 158.

C. Express Indemnity

"Indemnity" refers to the right of a party to be compensated for loss or damage he has incurred. Civ. Code, § 2772; *Rossmoor Sanitation, Inc. v. Pylon, Inc.* (1975) 13 Cal.3d 622, 628. Civil Code section 2778 sets forth general rules for the interpretation of indemnity contracts, "unless a contrary intention appears." Civ. Code §2778. When a duty to indemnify arises from express contractual language, the extent of that duty must be determined from the contract. *Rossmoor, supra*, 13 Cal.3d at 628; see also, *Markley v. Beagle* (1967) 66 Cal.2d 951, 961. "(An) agreement for indemnification must be strictly construed against the indemnitee…" *Herman Christensen & Sons, Inc. v. Paris Plastering Co.* (1976) 61 Cal.App.3d 237, 246.

"Indemnity agreements covering negligence must be clear and explicit, and must be construed strictly against the indemnitee." *Goldman v. Ecco-Phoenix Elec. Corp.* (1964) 62 Cal.2d 40, 44. "(W)here the plaintiff's complaint alleges facts embraced by the indemnity agreement, the indemnitor has a duty to defend throughout the underlying tort action unless it can conclusively show by undisputed facts that plaintiff's action is not covered by the agreement." *Centex Homes v. R-Help Construction Co., Inc.* (2019) 32 Cal.App.5th 1230, 1237.

Indemnity provisions are also subject to various limitations by statute. "(P)rovisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract and that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable" Civ. Code, § 2782 (a).

There are also notable exceptions to these void provisions. "Nothing contained in Section 2782 shall prevent a party to a construction contract and the owner or other party for whose account the construction contract is being performed from negotiating and expressly agreeing with respect to the allocation, release, liquidation, exclusion, or limitation as between the parties of any liability (a) for design defects, or (b) of the promisee to the promisor arising out of or relating to the construction contract." Cal Civ. Code § 2782.5

D. Breach of Contract

"A contract is an agreement to do or not to do a certain thing." Civ. Code, § 1549. Contracts require capable parties, the consent of those parties, a lawful object, and mutual consideration. Civ. Code § 1550. "The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do." Civ. Code, § 1595. "The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed." Civ. Code, § 1596. "An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *City of Moorpark v. Moorpark Unified School Dist.* (1991) 54 Cal.3d 921, 930, quoting Restatement 2d Contracts § 24. "To be enforceable, a promise must be definite enough that a court can determine the scope of the duty and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages." *Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 770.

The elements of a cause of action for breach of contract are: "'(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.'" *See Coles v. Glaser* (2016) 2 Cal.App.5th 384, 391; quoting *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614, 126 Cal.Rptr.3d 174.

E. Promissory Estoppel

"The elements of promissory estoppel are (1) a promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person, and (4) injustice can be avoided only by enforcement of the promise." *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2016) 6 Cal.App.5th 1207, 1225, aff'd (2018) 4 Cal.5th 637. The reliance on the promise must be reasonable. *Kajima/Ray Wilson v. Los Angeles County Metropolitan Transp. Authority* (2000) 23 Cal.4th 311, "[W]hether the reliance was reasonable is a question of fact unless reasonable minds could reach only one conclusion based on the

evidence, in which case the question is one of law. *Flintco Pacific, Inc. v. TEC Management Consultants, Inc.* (2016) 1 Cal.App.5th 727, 734.

"Promissory estoppel is 'a doctrine which employs equitable principles to satisfy the requirement that consideration must be given in exchange for the promise sought to be enforced.'" *Kajima/Ray Wilson v. Los Angeles County Metropolitan Transp. Authority* (2000) 23 Cal.4th 305, 310. "Cases have characterized promissory estoppel claims as being basically the same as contract actions, but only missing the consideration element, and therefore the damages recoverable logically are, like in a contract case, limited to those caused by the breaching party." *US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 903

F. Violations of the Unfair Competition Law ("UCL")

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.

"'Unfair' simply means any practice whose harm to the victim outweighs its benefits." *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 839. There are two applicable tests resulting from a district split to determine whether conduct is unfair. *Drum v. San Fernando Valley Bar Assn.* (2010) 182 Cal.App.4th 247, 256. For the tether test, "the public policy which is a predicate to a consumer unfair competition action under the 'unfair' prong of the UCL must be tethered to specific constitutional, statutory, or regulatory provisions." *Bardin v. DaimlerChrysler Corp.* (2006) 136 Cal.App.4th 1255, 1260–1261. For the second, the Section 5 test, "the factors that define unfairness under the section 5 test are: (1) the consumer injury must be substantial; (2) the injury must not be outweighed by any countervailing benefits to consumers or competition; and (3) it must be an injury that consumers themselves could not reasonably have avoided." *Davis v. Ford Motor Credit Co. LLC* (2009) 179 Cal.App.4th 581, 597–598.

G. Declaratory Relief

> Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. **The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought**.

Code Civ. Proc., § 1060 (emphasis added).

"Declaratory relief operates prospectively, and not merely for the redress of past wrongs. It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them." *SJJC Aviation Services, LLC v. City of San Jose* (2017) 12 Cal.App.5th 1043, 1062 (internal quotations omitted).

"Strictly speaking, a general demurrer is not an appropriate means of testing the merits of the controversy in a declaratory relief action because plaintiff is entitled to a declaration of his rights even if it be adverse." *Taschner v. City Council* (1973) 31 Cal.App.3d 48, 57 disapproved of on

other grounds by *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582. "However, where the issue is purely one of law, if the reviewing court agreed with the trial court's resolution of the issue it would be an idle act to reverse the judgment of dismissal for a trial on the merits." *Arroyo v. Regents of University of California* (1975) 48 Cal.App.3d 793, 796. Even where it may be decided as an issue of law, sustaining of the demurrer is discretionary. *Moss v. Moss* (1942) 20 Cal.2d 640, 643. "It is not essential to entitle a plaintiff to seek declaratory relief, that he should establish his right to a favorable declaration. The purpose of the declaratory judgment is to 'serve some practical end in quieting or stabilizing an uncertain or disputed jural relation.'" *Columbia Pictures Corp. v. De Toth* (1945) 26 Cal.2d 753, 760.

H. Fraud and Negligent Misrepresentation

"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.

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. *Ibid.* The pleading must be adequately specific to show actual reliance on the omission, and that the damages causally resulted therefrom. *Ibid*. 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). "The specificity requirement serves two purposes. The first is notice to the defendant, to 'furnish the defendant with certain definite charges which can be intelligently met.'" *Committee On Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216 (superseded by statute on other grounds), citing *Lavine v. Jessup* (1958) 161 Cal.App.2d 59, 69. "We observe, however, certain exceptions which mitigate the rigor of the rule requiring specific pleading of fraud. Less specificity is required when 'it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy.'" *Id.* at 217.

"The elements of a negligent misrepresentation are '(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage.'" *Borman v. Brown* (2020) 59 Cal.App.5th 1048, 1060; *Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1252; see also, *Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 127; *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 196. "A negligent misrepresentation claim 'requires a positive assertion,' not merely an omission." *Lopez v. Nissan North America, Inc.* (2011) 201 Cal.App.4th 572, 596.

A cause of action for negligent misrepresentation sounds in fraud and therefore, "each element must be pleaded with specificity." *Daniels v. Select Portfolio Servicing, Inc*. (2016) 246 Cal.App.4th 1150, 1166; see also, *Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 185, fn. 14 [the elements of negligent misrepresentation "must be pled with particularity…"]. This means "a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant…the names of the persons who made the representations [and] their authority to speak on behalf of the corporation..." *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 793; see also, *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645. Thus, "general and conclusory allegations do not suffice," and "the policy of liberal construction of the pleadings...will not ordinarily be invoked to sustain a pleading defective in any material respect." *Lazar, supra,* 12 Cal.4th at 645.

I. Economic Loss Rule

"The (economic loss rule) itself is deceptively easy to state: In general, there is no recovery in tort for negligently inflicted 'purely economic losses,' meaning financial harm unaccompanied by physical or property damage. *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 922. The economic loss rule "functions to bar claims in negligence for pure economic losses in deference to a contract between litigating parties." *Ibid*. "[T]here is no liability in tort for

economic loss caused by negligence in the performance or negotiation of a contract between the parties." *Id.* at 923, quoting Restatement 3d Torts, § 3.

Affirmative intentional representations constituting fraud are not conduct which may be protected by the economic loss doctrine. *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 991-992. "When evaluating whether the parties' expectations and risk allocations bar tort recovery, the court must consider the alleged facts. First, applying standard contract principles, it must ascertain the full scope of the parties' contractual agreement, including the rights created or reserved, the obligations assumed or declined, and the provided remedies for breach. Second, it must determine whether there is an independent tort duty to refrain from the alleged conduct. Third, if an independent duty exists, the court must consider whether the plaintiff can establish all elements of the tort independently of the rights and duties assumed by the parties under the contract." *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 26.

II. Demurrer

To summarize the allegations at issue, the Cross-Complaint alleges that the parties entered into a contract for engineering services provided by Reese to NeilMed. See Cross-Complaint, Exs. A & B (the "Contracts"). Each of the Contracts[1] contained a virtually identical clause, each of which provided the following:

> **Limitation of Liability:** NeilMed Pharmaceuticals, Inc., its successors, heirs, and assigns, agrees to limit Consultant's liability to NeilMed Pharmaceuticals, Inc. and all third parties arising from Consultant's negligence, professional acts, errors or omissions, such that the total aggregate liability of Consultant to all those named shall not exceed Consultant's total fee for all services rendered on this project, or $50,000, whichever is more. If NeilMed Pharmaceuticals, Inc. wishes to discuss higher limits and the charges involved, please call.

Both contracts were in the form of a letter addressed to NeilMed and bearing Reese's letterhead. Reese has filed the Cross-Complaint alleging various causes of action related to Moving Cross-Defendants' alleged failure to

A. The Provisions at Issue are Not Indemnity Provisions

Moving Cross-Defendants argue that the Cross-Complaint relies upon contractual provisions that are not indemnity clauses. Moving Cross-Defendants argue that the contract provisions at issue cannot be construed as indemnity provisions, as they do not contain any agreement to defend, nor the word indemnity. Reese in turn argues that the provisions are not subject to any "magic words" to be effective indemnity provisions.

[1] The second contract's provision at issue only differs from the first in that it acknowledges the first contract. The language is otherwise identical.

Reese is, to their eventual detriment, persuasive that the instant provision is an indemnity provision. As Reese effectively argues, indemnity is not a matter of "magic words", where use or omission of particular terms is exclusively determinative of the nature of the contract provision.

Both parties rely extensively on *Markborough California, Inc. v. Superior Court* (1991) 227 Cal.App.3d 705 ("*Markborough*"). In that case, plaintiff sought to sue defendant for negligent design in a construction contract which contained a limitation of liability clause. *Id*. at 708-709. The limitation of liability clause limited defendant's liability to either $50,000 or the consulting fee, whichever was higher. *Id*. at 709. Plaintiff contended that the limitation of liability clause failed to qualify under Civil Code § 2782.5 because it was not sufficiently negotiated, and because it qualified as a void indemnity clause. The court of appeal concluded that the clause was a limitation of liability clause as covered by § 2782.5. In so doing, it examined the legislative history, noting "it appears that while section 2782 was intended to eliminate indemnity agreements which were being forced upon parties to construction contracts which require the promisor to indemnify a promisee from the promisee's sole negligence, section 2782.5 was intended to permit parties to continue to negotiate and limit their respective liability to each other." *Id*. at 711 (emphasis added). Accordingly it concluded:

> First, the anti-indemnity statute, section 2782, was intended to *change* the law to prohibit one party to a construction contract from avoiding liability to third parties because of its sole negligence by forcing the other party to the contract to provide indemnification. Secondly, we believe section 2782.5 was not intended to change existing law but rather was intended merely to reaffirm and clarify that limitation of liability provisions remain valid notwithstanding section 2782.

Id. at 712 (emphasis added).

In reading the case, what the court in *Markborough* doesn't state is that its finding regarding § 2782.5 extends to third parties. The discussion of the distinction between indemnity and limitation of liability is far from idle, but the parties come to inimical interpretations. Both parties contend that *Markborough* supports their position.

Markborough makes clear inclusion of third parties implicates issues of indemnity, it remains a significantly different case than the one at bar because the defendant there specifically argued that it was *not* a contract for indemnity. Here, like *Markborough*, the provision at issue bears significant markers of a limitation of liability provision rather than one of indemnity. Reese even argues as much by contending that the provision is covered by Civ. Code § 2782.5. The provision is titled, "Limitation of Liability". It contains no mention of indemnity nor duty to defend. The provision limits the "total aggregate liability" Reese may owe exceeding a particular amount, seeming to indicate that payment may be due at the conclusion of any action, as opposed to the duty to affirmatively defend. *Crawford v. Weather Shield Mfg., Inc.* (2008) 44 Cal.4th 541, 557. The lone indicia that Reese avers requires the Court to construe as one of indemnity is that the third line makes reference to "all third parties arising from (Reese's) negligence, professional acts, errors, or omissions, such that the total aggregate liability of (Reese) to all those named shall not exceed" $50,000. However, this is preceded by the averment that NeilMed binds itself

and "its successors, heirs, and assigns". The reasonable interpretation would find, what is in every other form framed as a limitation of liability, that "all third parties" would be in reference to the preceding "successors, heirs, and assigns". In contrast, given the overwhelming weight of the other language contained in the provisions at issue, construing the provision as one for indemnity requires an unreasonable leap in construction. Limitation of liability and indemnity are matters of entirely different scope and intent. *Markborough, supra,* 227 Cal.App.3d at 712. The sum of the other language within the provisions renders the use of the word "all" as antagonistic to the stated intent to make this provision one for limitation of liability, and properly disregarded. Civ. Code, § 1653. Given the substantial rights at issue in indemnity clauses, they are strictly construed against the indemnitee. *Herman Christensen & Sons, Inc. v. Paris Plastering Co.* (1976) 61 Cal.App.3d 237, 246. While the Court agrees with Reese that there are no "magic words", the provision here is woefully insufficient to put Moving-Cross Defendants on notice that the intent of the provision extends to indemnification. If the Contracts are unclear that these provisions are for indemnity, this cuts against construction as an indemnity provision. Improvident inclusion of the word "all" third parties is not sufficient to render the provision so significantly outside of its otherwise express scope.

Moreover, in interpreting the Contracts, the Court is mindful of those other rules which guide the construction. Notably, the contracts themselves make clear that Reese is the party who drafted the Contracts. While the Cross-Complaint makes no express allegation either way, each of the Contracts is in the form of a letter *from* Reese *to* NeilMed. Reese's vague pleading regarding the purported sophistication of the parties is not sufficient to cut against the overriding nature of exhibits to the Cross-Complaint. The Court concludes that absent some pleading of concrete facts to the contrary, Reese had clear control over the language of the provision. This is an additional reason that the ambiguity, which might cause doubt as to whether the instant provision is one for indemnity or one for limitation of liability, must be construed against Reese as a result. Civ. Code, § 1654. Reese's claims based on indemnity fail, because the reasonable construal of the Contracts, based on their four corners and the allegations within the Cross-Complaint, is that the totality of the language is that of limitation of liability. Accordingly, any claims for breach of the agreement cannot otherwise survive, because Reese has not pled a contract for indemnity.

B. Breach of Contract and Promissory Estoppel

Reese's claims for breach of contract and promissory estoppel both fail as a result. Breach of contract requires that Moving Cross-Defendants' conduct be breach of the contract itself, not Reese's interpretation. Similarly, promissory estoppel is a narrow cause of action allowing promises which are not otherwise actionable as contracts due to lack of consideration. It does not stand, because there is no promise to indemnify.

The demurrer to the fourth and fifth causes of action are SUSTAINED with leaver to amend.

C. Reese's Claims Predicated on Misrepresentation Fail

Reese's claims for fraud, negligent misrepresentation and the fraud elements of UCL claims all stem from the allegation that by agreeing to the contracts without the intent to perform, Moving Cross-Defendants have committed fraud. Reese's "unlawful" UCL theories are mere repetitions

of the same principle, relying on statutes forbidding fraudulent conduct. The Court addresses the issue writ large. There are fundamental problems with Reese's position.

First, as noted, the limitation of liability provision does not function to require indemnity of claims. Therefore, Reese cannot reasonably argue that Moving Cross-Defendants' refusal to undertake actions not required by the Contracts forms the basis for fraud liability. There is no misrepresentation, because appropriate construction of the Contracts does not require indemnity.

Second, even assuming the indemnity clause was properly pled, the fraud based claims would still otherwise fail. Moving Cross-Defendants are persuasive that the contract claims are just that, and that the conduct cannot be somehow translated to tort as a result. While the term appears nowhere in Moving Cross-Defendants' brief, their citation to *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979 and *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1 under the above argument is sufficient to indicate the appropriate term and legal framework. The economic loss rule applies, and precludes the tortious claims. Fraud in performance of a contract is generally subject to the economic loss rule. Reese has the burden to allege facts sufficient to show they "can establish all elements of the tort independently of the rights and duties assumed by the parties under the contract." *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 26. This means that conduct which merely breaches the contract, even done with intent, is *not sufficient.* Breach of the contract is just that, regardless of the motivation involved. It is only where the alleged tortious conduct is a tort *independent* of the breach. Reese's allegations of harm are *exclusively* the failure to indemnify. The economic loss rule precludes enforcement of a duty entirely derived from the contract being recast in tort.

Therefore, the demurrer to the second and third causes of action are SUSTAINED with leave to amend.

D. Unfair Conduct

Turning to the remaining basis for UCL violations, the Court fails to find allegations of unfair conduct. Again, Reese fails to express unfair conduct as would create the necessary element for a UCL claim, as the conduct is fully in accord with the reasonable construction of the contract. It meets neither the Section 5 test, nor the tether test. *Bardin v. DaimlerChrysler Corp.* (2006) 136 Cal.App.4th 1255, 1260–1261; *Davis v. Ford Motor Credit Co. LLC* (2009) 179 Cal.App.4th 581, 597–598.

Moving Cross-Defendants also adequately express possible defects in standing. The UCL has particular standing requirements. See, e.g., *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 323. "In these circumstances, where a UCL action is based on contracts not involving either the public in general or individual consumers who are parties to the contract, a corporate plaintiff may not rely on the UCL for the relief it seeks." *Linear Technology Corp. v. Applied Materials, Inc.* (2007) 152 Cal.App.4th 115, 135. Simply put, the breach of a contract between two sophisticated entities is not the parties intended to be protected by the statute. Even if the conduct were sufficient to meet the "unfair" standard, Reese's pleading of conclusory "public harm" is not supported by relevant facts. Vague attempts to correlate this limited dispute to public interests is not reflected by the actual factual nature of the dispute.

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

E. Declaratory Relief

Moving Cross-Defendants are not persuasive that declaratory relief is insufficiently pled. There is an actual controversy between the parties as to whether indemnity is owed. It is not sufficient to show that Reese has not displayed their right to an affirmative declaration, the cause of action is sufficient if a controversy exists. *Columbia Pictures Corp. v. De Toth* (1945) 26 Cal.2d 753, 760.

The demurrer for failure to the first and seventh causes of action is **OVERRULED**.

IV. Conclusion

Based on the foregoing, the Demurrer is **OVERRULED as to the first and seventh causes of action.** The demurrer to the second through sixth causes of action is **SUSTAINED with leave to amend.**

Moving Cross-Defendants 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).

4. 24CV06452, Redwood Credit Union v. Segura

Appearances required.

5. 25CV03139, Alizadeh v. U.S. Bank National Association

Plaintiffs, Kobra Alizadeh ("Kobra") and Azita Alizadeh ("Azita", together "Plaintiffs"), has filed currently operative second amended complaint ("SAC") against defendants U.S. Bank National Association ("US Bank"), Quality Loan Service Corporation ("QLS", together with US Bank, "Defendants"), and Does 1-10 regarding the property commonly known as 103 Seal Rock Reach, Sea Ranch, California, with causes of action for: 1) Violations of the Homeowners Bill of Rights ("HBOR"); and 2) breach of the implied covenant of good faith and fair dealing. This matter is on calendar for US Bank's demurrer to all causes of action within the Complaint pursuant to CCP § 430.10(e) for failure to state facts sufficient to constitute a cause of action.

The Demurrer is **SUSTAINED without leave to amend.**

I. Procedural and Evidentiary Issues

Plaintiffs have filed an opposition that does not substantively address the demurrer, but instead merely requests continuance of the matter so that the parties may finalize a settlement agreement. They request that the Court continue the matter two weeks. US Bank has filed a reply denying the contention that settlement discussions had produced "agreement on material terms" as stated in the continuance request.

The Court finds that a continuance would not remedy the issue, and that Plaintiffs should otherwise have been prepared to file a substantive opposition. This demurrer was filed more than five months ago, and though the pressure of an upcoming hearing is often a prompt for settlement, Plaintiffs' procrastination is contrary to judicial economy. Moreover, Plaintiffs' request for a continuance of two weeks, with briefing schedule extended accordingly, would likely do nothing to solve the problem. Such an extension would give Plaintiffs a single day to file a timely opposition. See CCP § 1005. It also represents a lack of consideration for the realities of the Court's calendar, and disregards other litigants who were otherwise timely in settling matters or responding timely to motions. Plaintiffs' request to jump the line is not supported by sufficient showing for the Court to find granting a continuance proper. Plaintiffs' request to continue this hearing is DENIED.

US Bank has requested judicial notice of numerous documents. Judicial notice of official acts and court records is statutorily appropriate. See Cal. Evid. Code § 452(c) and (d) (judicial notice of official acts). Yet 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. Courts may take judicial notice of the existence and legal effect of legally operative documents. *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 754. 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. The scope of the judicial notice taken is limited to the action of the executive agency. *Herrera* at 1375. It is not appropriate for the Court to take notice of additional information which is included in the documentation or contentions as to the truth of the contents *Id.*

As with the prior demurrer, US Bank has filed a request for judicial notice ("RFJN") which requests the Court take judicial notice of multiple recorded documents (deeds, attachments and real property notices of various types). Judicial notice of the recordation of documents is proper, but judicial notice of factual matters stated therein exceeds the bounds of appropriate judicial notice. *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, 1102, see also *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 924, fn. 1 (A court may "take notice of their existence and contents, though not of disputed or disputable facts stated therein."). Therefore, the Court taking judicial notice of these documents is proper and allowable, as well as their recordation and what they state, **but not the truth of any matters therein**. "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. The request for judicial notice is GRANTED in the scope limited above.

III. Legal Standards

A. 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.

B. Homeowner's Bill of Rights

Homeowners who qualify under Civ. Code § 2924.15 are entitled to additional protections under Civil Code Section 2924(a)(5) and Sections 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.18 in the event of default and foreclosure, otherwise known as the Homeowner's Bill of Rights ("HBOR"). Civ. Code § 2924.15(a). HBOR protections only apply to properties that are "owner occupied", which "means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes." Civ. Code, § 2924.15 (b).

C. Civil Code § 2924f

> With respect to residential real property containing no more than four dwelling units that is subject to a power of sale contained in any deed of trust or mortgage, a sale of the property under the power of sale shall not be conducted until the expiration of an additional 45 days following the scheduled date of sale pursuant to subdivision (a) or (c) of Section 2924g if the trustee receives, at least five business days before the scheduled date of sale, from the mortgagor or trustor, by certified mail with the United States Postal Service or by another overnight mail courier service with tracking information that confirms the recipient's signature and the date and time of receipt and delivery, a listing agreement with a California licensed real estate broker to be placed in a publicly available marketing platform for the sale of the property at least five business

days before the scheduled date of sale. The provisions of this paragraph shall not be used to postpone the scheduled sale date more than once.

Civ. Code § 2924f (e)(1).

D. Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

"A contract is an agreement to do or not to do a certain thing." Civ. Code, § 1549. Contracts require capable parties, the consent of those parties, a lawful object, and mutual consideration. Civ. Code § 1550. "The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do." Civ. Code, § 1595. "The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed." Civ. Code, § 1596. "An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *City of Moorpark v. Moorpark Unified School Dist.* (1991) 54 Cal.3d 921, 930, quoting Restatement 2d Contracts § 24. "To be enforceable, a promise must be definite enough that a court can determine the scope of the duty and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages." *Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 770.

The elements of a cause of action for breach of contract are: "'(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.'" *See Coles v. Glaser* (2016) 2 Cal.App.5th 384, 391; quoting *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614, 126 Cal.Rptr.3d 174. A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect. *Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 401-402. In order to plead a contract by its legal effect, plaintiff must allege the substance of its relevant terms, which requires careful analysis of the contract, comprehensiveness in statement, and avoidance of legal conclusions. *McKell v. Washington Mutual Inc*. (2006) 142 Cal.App.4th 1457, 1489; *Construction Protective Services Inc. v. TIG Specialty Insurance Company* (2002) 19 Cal.4th 189, 198-192. "Where a party relies upon a contract in writing, and it affirmatively appears that all the terms of the contract are not set forth in haec verba, nor stated in their legal effect, but that a portion which may be material has been omitted, the complaint is insufficient." *Gilmore v. Lycoming Fire Ins. Co.* (1880) 55 Cal. 123, 124.

"Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371-372; *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 of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the *benefits of the agreement actually made.*" *Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 349 (emphasis original). 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.

III. Demurrer

The Court notes that US Bank avers that Plaintiffs have omitted previously pled facts detrimental to her case, and therefore the SAC is a sham pleading. This is unpersuasive, not because the facts are not omitted, but because US Bank fails to express how these facts amount to some form of admission fatal to Plaintiffs' causes of action. Omission of material factual allegations may be considered. *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 12. US Bank displays no particular omission which is material to a deficiency in the causes of action. Nothing identified in the FAC concedes the issues on which the prior demurrer was sustained.

A. Homeowners Bill of Rights

In a manner indistinguishable from the prior demurrer, US Bank's requests for judicial notice on which they base their argument that Plaintiffs fail to qualify for the HBOR have been denied.

US Bank avers that due to the property transfers, Plaintiffs do not have standing because Kobra is not the property owner, and Azita is not the borrower. Again, the use of judicial notice of grant deeds for the truth of the matters asserted therein are not appropriately within the scope of judicial notice. US Bank provides no accurate authority to the contrary. Second, this does not comport with the case previously provided by the Court to the parties. "(S)ection 2923.5 does not contain any requirement that a borrower must also be an owner of the property. The same is true for the definition of 'owner-occupied' in section 2924.15." *Adams v. Bank of America, N.A.* (2020) 51 Cal.App.5th 666, 672. The SAC must merely allege facts sufficient to show that Plaintiffs meet the requirements of Civ. Code § 2924.15, which does not in itself require that the borrower be the owner.

Nonetheless, the Court *still* finds that Plaintiff has failed to plead a HBOR violation, because they have failed to plead facts sufficient to concluded that the property is "owner-occupied" as contemplated by the statute. HBOR violations require that the Plaintiff plead sufficient facts to show that the protections of the HBOR apply. *Adams v. Bank of America, N.A.* (2020) 51 Cal.App.5th 666, 673. This includes pleading facts sufficient to show that the property meets the definition of "owner-occupied" under Civil Code § 2924.15. *Ibid.* It is insufficient to rely on extraneous conclusions and unpled facts, such as Plaintiffs' address at the top of the pleading being the address at issue. *Ibid*. Given that Plaintiffs have not pled these predicate facts showing application of the statute is appropriate to their case, their allegation of violation of the HBOR is conclusory and properly disregarded. The cause of action for HBOR violations is inadequately pled.

The Demurrer to the first cause of action for failure to state a claim is **SUSTAINED without leave to amend**.

B. Breach of the Implied Covenant of Good Faith and Fair Dealing.

SAC alleges (like the FAC before it) that Defendants breached the covenant of good faith and fair dealing by offering to consider a loan modification, then revoking the offer after Plaintiff had submitted the requested modification. Plaintiffs' amended pleading has not remedied the defect previously identified in the Court's prior order.

Again, Plaintiff avers that the offer came in the form of a letter (now a letter tendered on October 27, 2025), but little else about the letter is described except this specific provision. If a party moves upon a contract, they must either attach it to the complaint or plead all material provisions. This concept extends to the implied covenant of good faith and dealing, as the covenant cannot contravene express terms of the contract, rendering those terms relevant to pleading the cause of action. Second, Plaintiff fails to express any consideration on the part of Defendants from the alleged offer. Without consideration, there is no contract. Civ. Code § 1550. Plaintiff having not adequately pled a contract, there can be no adequately pled implied covenant accompanying it.

Therefore, as to the second cause of action, the Demurrer is **SUSTAINED without leave to amend**.

C. *Leave to Amend*

Plaintiff has had two amendments to attempt to rectify the deficiencies in their pleadings. No substantive opposition has been filed allowing the Court to assess what matters Plaintiffs may cure. Due to this, there does not appear to be a reasonable possibility that Plaintiffs may cure the deficiencies identified above. Denial of leave to amend is therefore appropriate.

IV. Conclusion

Based on the foregoing, the demurrer is **SUSTAINED as to each cause of action without leave to amend.**

US Bank 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).

6-7. 25CV08145, Philpott v. Moholt-Siebert

Plaintiff Debra Philpott, as trustee of the Lorene Anderson Survivor's Trust dated August 16, 2024 ("Plaintiff") filed the presently operative complaint ("Complaint") against defendants Kenneth Moholt-Siebert (the "Defendant"), all other persons claiming any legal or equitable right, title, estate, or interests in the relevant real property, and Does 1-20. This matter is on calendar for Plaintiff's motion for preliminary injunction under CCP §§ 526 and 527, and for Plaintiff's motion for trial preference under CCP § 36(a).

The parties have informed the Court that they are substantially close to settling the matter, and request that the Court continue these motions two weeks. These matters are **APPEARANCES REQUIRED** so the parties may appear and update the Court on the status of settlement.

8. 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, second amended 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 an amendment of the Court's January 24, 2018, Assignment Order (the "Assignment Order") under CCP § 708.560.

The Court previously continued the motion because Abel had served Zuckerman with the motion, but no other party to the case. The Assignment Order does not exclusively affect Abel and Zuckerman. The Judgment makes awards to thirty-one (31) Plaintiffs. See Abel's Request for Judicial Notice, Exhibit 2. Abel avers that he has received assignments from thirteen other Plaintiffs. See Abel Declaration in Support, ¶ 8-9. While the Assignment Order is particular with the rights granted to Abel, and not other Plaintiffs, that does not obviate the need to provide notice to other parties within the case who are interested in the Judgment. After the continuance, Abel served a Notice of Hearing on various other Plaintiffs. The notice did not purport to include the memorandum, or the attached supporting evidence. Moreover, these Plaintiffs have largely appeared post-judgment through counsel. While Abel has served notice of the hearing, by failing to serve either the substance of the motion and the attorney representing those he has served, he has not provided them with actual notice or an opportunity to truly respond to his request. This is not sufficient. Abel is ordered to comply with all service obligations.

Zuckerman previously filed an opposition to this motion, and Abel has filed a reply. Zuckerman is entitled to no further briefing on the motion. Abel may supplement his reply only if another party files papers in response to this motion. The Court continues to reserve ruling on the lateness of the opposition at such time that it can get to the merits of the motion itself.

Therefore, the motion is CONTINUED to August 5, 2026, at 3:00 pm in Department 19.

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