

July 18, 2025 Civil Tentative Rulings

1. CU0001357 Joel Evan Byers vs. Alta Sierra Country Club Inc.

The hearing for Plaintiff's Motion for Preliminary Approval of Class Action Settlement is continued to August 22, 2025.

2. CU0001683 County of Nevada vs. Michael James Taylor

- Plaintiff/Cross-Defendant's Demurrer regarding Defendant Michael Taylor's Amended Cross Complaint

Plaintiffs/Cross-Defendants' ("Plaintiffs") demurrer to Defendant Taylor's Amended Complaint is sustained without leave to amend.

Standard of Review

"A demurrer tests the sufficiency of the complaint as a matter of law." *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034. "It has been consistently held that a petitioner "is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action" *Doheny Park Terrace Homeowners Assn. Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099, *cited with approval by Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550. All material facts properly pled are generally accepted as true, but "contentions, deductions or conclusions of fact or law" are not. *Evans v. City of Berkeley*, 38 Cal. 4th 1, 6 (2006).

"A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed. Code Civ. Proc., §§ 430.30, 430.70. The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." *Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747. Dismissal without leave to amend is proper unless there is a "reasonable possibility" that the defects in the pleading can be cured by amendment. *Hendy v. Losse* (1991) 54 Cal.3d 723, 742. The burden is on the petitioner to show in what manner he can amend his complaint and how the amendment would change the legal effect of his pleading. *Goodman v. Kennedy* (1976) 18 Cal 3d. 335.

Analysis

Defendant Taylor's ("Taylor") Amended Complaint is legally and factually deficient, and fails for multiple reasons.

Government Claims Act

First, California law requires any plaintiff seeking monetary damages against a public entity to first file a claim with the entity before initiating a court action. Gov. Code § 910. This obligation is a mandatory prerequisite to pursuing a complaint in court, and failure to do so is fatal to the cause of action. *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 454. This requirement

applies both to causes of action against public entities and individual employees. *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1080. Taylor contends that his Cross-Complaint is based on the same transaction as the Complaint brought by Cross-Defendants against him, and as such the Government Claims Act does not apply.

While Taylor is partially correct in stating that a cross-complaint against a public entity plaintiff may be pursued without a previously filed tort claim if it arises out of the same transaction that forms the basis of the public entity's complaint. *People ex rel. Dept of Parks and Recreation v. West-A-Rama, Inc.* (1973) 35 Cal.App.3d 786, 794. Additionally, the exception does not allow for a cross-complaint to seek affirmative relief. *Krainock v. Superior Court* (1990) 216 Cal.App.3d 1473, 1478. Additionally, the exception only applies in instances where it would be manifestly unjust to allow the government to bring a suit for a contract and then use the statute to shield itself from a cross-complaint arising from the same statute. *Id.* Here, Plaintiffs' suit arises from trying to enforce administrative penalties issued for violations of the Nevada County Code. Taylor's Cross-Complaint is based upon his mailing of various materials to Plaintiffs and stating that their failure to respond is a "waiver of tort". The Cross-Complaint is based on a separate action undertaken by Taylor, and Plaintiffs are not attempting to use the Government Claims Act to shield themselves from a cross-complaint arising from violations of the Nevada County Code. Thus, this exception does not apply.

Nor does Taylor's sample amended cross-complaint survive this analysis. Its statement of facts describes actions between 2008 and 2020 regarding Taylor's interactions with the County regarding the approval and issuance of building permits, and inspections of structures on the property. These facts describe a wholly different set of actions than those that County of Nevada's Complaint arose out of. Therefore, the proposed amended cross-complaint is not based on the same transaction as the Complaint, and so his failure to file a claim pursuant to the Government Claims Act precludes his cross-complaint. *City of San Jose v. Superior Court* (1974) 12 Cal.3d. 447, 454. The claims statutes require timely filing of a proper claim as a condition precedent to maintenance of the action. *County of San Luis Obispo v. Ranchita Cattle Co.* (1971) 16 Cal.App.3d 383, 390. Compliance with the claims statutes is mandatory, and failure to file a claim is fatal to the cause of action. *Farrell v. County of Placer* (1944) 23 Cal.2d 624, 630; *Johnson v. City of Oakland* (1961), 188 Cal.App.2d 181, 183. As an aside, the court notes that while Taylor incorrectly contends the State and County hold no jurisdiction over his property because of his alleged land patent, the statement of acts in his sample amended cross-complaint demonstrate he applied for and obtained plans for buildings on the property, an apparent concession to the County of Nevada's authority over the property.

Taylor's Amended Cross-Complaint and proposed amended cross-complaint is directed at the County of Nevada, its employees, and a County contractor for actions taken within the course and scope of their public duties, and therefore, requires the Amended Cross-Complaint to allege compliance with the Government Claims Act. The Amended Cross-Complaint fails to do so, and does not qualify for an exception to the requirement. Therefore, Taylor's failure to present a tort claim as required by the Government Claims Act bars his Cross-Complaint.

Validity of Causes of Action

Taylor's claim for "waiver of tort" is not an independent cause of action. Waiver is an affirmative defense that can be raised by a defendant in tort actions, but it is not a cause of action under which Taylor can bring a claim against Cross-Defendants. Taylor's response to the demurrer only argues cross-complainants have "no immunity for acts outside statutory authority," and that relief based on implied or tacit agreements is enforceable. There is no independent cause of action for "waiver of tort", and thus the demurrer as to this cause of action is sustained.

Taylor then claims a valid amendment is possible and submits a sample amended cross-complaint, which consists of eleven causes of action ranging from violations of the California and United States Constitutions, violations of various codes, conspiracy, malicious prosecution, and declaratory and injunctive relief, and intentional infliction of emotional distress. As discussed above, the asserted facts describe actions between 2008 and 2020 regarding Taylor's interactions with the County regarding the approval and issuance of building permits, and inspections of structures on the property, and an assertion that the subject property is not subject to the enforcement, taxation, or regulatory authority of the County of Nevada. As an initial matter, Taylor has provided no documentation or evidence that the property is held under a land patent. However, even if he had, there is no legal authority for the idea that property held under a land patent is not subject to the laws and regulations of a state or county. A state has power to tax lands as soon as they cease to be the property of the United States. *Stryker v. Goodnow* ((1887) 123 US 527 535-536. Conveyance by patent divests title from the United States, and jurisdiction becomes vested in the state; once the sale is consummated by issuing a patent to the purchaser, title is divested from the United States and vests in the purchaser, upon which it becomes in all respects subject to the local laws of the state. U.S. Const. art IV, § 3, cl. 2.

A complaint may be dismissed if the complainant fails to assert a cognizable legal theory, or if he asserts insufficient facts under a cognizable legal theory. *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699. Taylor's remaining arguments fail to establish any valid causes of action. He cites authorities which purport to discuss general principles of law relating to the various causes of action asserted, but he does not rationally apply the authority he cites to his arguments, or to the facts asserted in the sample amended cross-complaint. A complaint must contain sufficient alleged facts, that when accepted as true, state a claim to relief that is plausible on its face. "A claim has facial plausibility when the [cross-complainant] pleads factual content that allows the court to draw the reasonable inference that the [cross-complainant] is liable for the misconduct alleged." *Ashcroft v. Iqbal* (2009) 556 U.S. 662. Here, the authorities cited cannot be coherently tied to Taylor's arguments, which are obscure and insufficiently developed. Because he has cited only general principles, without applying the principles to the circumstances before the court, he fails to assert any causes of action under a cognizable legal theory.

Taylor's arguments closely resemble those commonly advanced by so-called sovereign citizens and tax protestors, who misapply common law doctrines or provisions of the Uniform Commercial Code to assert fictitious claims. These arguments have consistently been rejected as frivolous and entirely lacking in merit. *United States v. Benabe* (7th Cir. 2011) 654 F.3d 753, 767 (describing sovereign citizen claims as frivolous, lacking any legal validity, and not made in good faith; see, e.g., *United States v. Ward* (9th Cir. 1999) 1999 U.S. App. LEXIS 9255, at 5 (unpublished opinion collecting federal cases standing for the proposition that sovereign citizen arguments are "frivolous" and routinely rejected without extended discussion).

Common Law and Statutory Immunities

Plaintiffs also argue that the Board Members are protected by legislative and discretionary immunity, the County's hearing officer by quasi-judicial and discretionary immunity, and the County's attorneys by prosecutorial immunity. Taylor asserts that governmental immunity does not apply when public entities or their agents act in excess of their jurisdiction or in violation of constitutional, statutory, or regulatory authority. While Taylor alleges that the county issued warrants lacking any affidavit or declaration in 2019, the warrant underlying the original complaint was based on a notarized declaration, and thus proper. Even assuming that all the facts alleged are true, the facts discuss entirely different issues than those alleged by the Complaint against Taylor. Thus, they are improperly raised on cross-complaint and the lack of compliance with the Government Claims Act bars his cross-complaint. Moreover, Taylor fails to assert any facts which provide a reasonable possibility that the defects in the pleading can be cured by amendment.

- Defendant Taylor's Motion for More Definitive Statement

Defendant Michael James Taylor's Motion for a More Definite Statement is denied.

Defendant Taylor ("Taylor") has provided no documentation or evidence that the property is held under a land patent. However, even if he had, there is no legal authority for the idea that property held under a land patent is not subject to the laws and regulations of a state or county. A state has power to tax lands as soon as they cease to be the property of the United States. *Stryker v. Goodnow* ((1887) 123 US 527 535-536. Conveyance by patent divests title from the United States, and jurisdiction becomes vested in the state; once the sale is consummated by issuing a patent to the purchaser, title is divested from the United States and vests in the purchaser, upon which it becomes in all respects subject to the local laws of the state. U.S. Const. art IV, § 3, cl. 2. Once property has passed from the United States to a patentee, "then the property, like all other in the state, is subject to state legislation; so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States." *Wilcox v. Jackson ex dem. McConel* (1839) 38 U.S. 498, 499.

Taylor's argument that Plaintiffs' Complaint is "uncertain" and "ambiguous and unintelligible" making it so incomprehensible that he cannot frame a response is without support. He states that the Complaint fails to specify the legal authority for imposing escalating administrative fines, contains inconsistencies, relies on exhibits, and does not identify his duty to comply with county code. As discussed, Taylor's land patent argument lacks merit. Examining Plaintiffs' Complaint for Delinquent Civil Penalties, the court finds the facts thoroughly and sufficiently describe Defendant's alleged violation of the Code, as well as not only authority for the escalating fines imposed, but repeated notice provided to Taylor of the fines. Therefore, the court finds no basis to require Plaintiff to provide a more definite statement.

3. CU0001942 Grill, James S. v. Foremost Insurance Company

Defendant's motion for judgment on the pleadings is granted, with 20 days leave to amend.

Standard of Review

In considering a motion for judgment on the pleadings, courts consider whether properly pled factual allegations, assumed to be true and liberally construed, are sufficient to constitute a cause of action. *Stone Street Capital, LLC v. Cal. State Lottery Com'n* (2008) 165 Cal.App.4th 109, 116; *Fire Ins. Exchange v. Sup. Ct.* (2004) 116 Cal. App. 4th 446, 452-53. "The grounds for a motion for judgment on the pleadings must appear on the face of the complaint or from a matter of which the court may take judicial notice." *Richardson-Tunnell v. School Ins. Program for Employees* (2007) 157 Cal.App. 4th 1056, 1061. *See also* *Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1202; *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5; Weil & Brown, Civ. Pro. Before Trial (The Rutter Group 2012) ¶7:292.

If the moving party is a defendant, the defendant must show that the complaint does not state facts sufficient to constitute a cause of action against the defendant. Code Civ. Proc. § 438(c)(1). The burden is then on the complainant to show the court that a pleading can be amended successfully, in order to obtain an order allowing leave to amend. *McKenney v. Purepac Pharmaceutical Co.* (2008) 167 Cal.App.4th 72, 78; Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2010), ¶7:130 (citing *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349).

"Where a demurrer is sustained or a motion for judgment on the pleadings is granted as to the original complaint, denial of leave to amend constitutes an abuse of discretion if the pleading does not show on its face that it is incapable of amendment." *Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1852.

First Cause of Action: Promissory Estoppel

To prevail on a cause of action for promissory estoppel, Plaintiff must prove: 1) a promise clear and unambiguous in its terms; 2) reliance by Plaintiff on the promise; 3) the reliance was reasonable and foreseeable; and 4) Plaintiff must be injured by his reliance. *Aceves v. U.S. Bank, N.A.* (2011) 192 Cal.App.4th 218, 225. The doctrine cannot be invoked if there is an absence of showing a promise, clear and unambiguous in its terms, had been made upon which a plaintiff has relied to his prejudice. *Garcia v. World Savings, FSB* (2010) 183 Cal.App.4th 1031, 1044. In order to be enforceable, the promise must be definite enough that a court can determine the scope of the duty. *Id.* Additionally, the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages. *Id.* Promissory estoppel applies when a promise which a promisor should reasonably expect to induce action or forbearance on the part of the promisee does indeed induce such action or forbearance, and there would be injustice if the promise were not enforced. *Advanced choices, Inc. v. State Dept. of Health Services*, (2010) 182 Cal.App.4th 1661, 1671-1672.

Defendant's argument asserts that Foremost did not make a "clear and unambiguous" promise to Plaintiff that it would renew the Policy if Plaintiff replaced the roof, because the letter never

promises to refrain from not renewing the policy if Plaintiff replaced his roof, and never made any promise about future policies. Defendant also asserts that even if the letter could be construed as a promise not to cancel the policy, it did not cancel the policy that was in effect at the time of the roof replacement, and that Plaintiff's reliance on the purported promise was unreasonable because there is no requirement that insurance companies renew a policy after it expires.

The question is whether Plaintiff has sufficiently pled that Defendant made a clear and unambiguous promise not to cancel Plaintiff's policy, and if so, whether Plaintiff's reliance on the policy was reasonable. Plaintiff's complaint asserts that his interpretation of Defendant's letter was that "non-compliance clearly meant cancellation of insurance." (Complaint, ¶ 6.) The letter from Defendant stated, "if you are unable to address the concerns listed...we may need to take Underwriting action in accordance with state guidelines." *Id.* While Plaintiff's interpretation of the letter may be a reasonable one, it does not rise to the standard of "clear and unambiguous"; that is, it does not state that if Plaintiff replaced the roof, his insurance policy would not be canceled. Plaintiff's Opposition, however, adds facts that he contacted Defendant's agent by phone, wherein he was informed that compliance with replacing the roof would continue the policy indefinitely. (Opposition 2:19-21.) Plaintiff asserts that that statement is the promise which he relied on to replace the roof, and under which he was assured his policy would not be canceled. An oral promise that meets the elements of promissory estoppel is enforceable if injustice can be avoided only by enforcement of the promise. *Allied Grape Growers v. Bronco Wine Co.* (1988) 203 Cal.App.3d 432, 444. An inference of a clear and unambiguous promise can give rise to a cause of action for promissory estoppel even if the promise was not specifically communicated. *CalFarm Ins. Co. v. Krusiewicz* (2005) 131 Cal.App.4th 273, 284.

If Plaintiff can indeed establish clear and unambiguous oral promise upon which he relied, the question of the reasonableness of his reliance is one of fact. *Blankenheim v. E.F. Hutton & Co.* (1990) 217 Cal.App.3d 1463, 1475. While the Complaint as it is pled fails to sufficiently plead facts giving rise to a cause of action for promissory estoppel, Plaintiff's Opposition indicates an ability to cure the defect by amendment. Leave to amend should be granted if there is any reasonable possibility that Plaintiff can state a cause of action. *Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1852. Therefore, the court grants leave to amend.

Second Cause of Action: Unconscionable Contract

The unconscionability doctrine has both a procedural and substantive element. The procedural element addresses the circumstances of contract negotiation and formation, which focuses on oppression or surprise due to the unequal bargaining power of the parties, and the substantive element pertains to the fairness of the agreement's actual terms and whether they are overly harsh or one-sided. *Barrera v. Apple American Group LLC* (2023) 95 Cal.App.5th 63, 87. Both elements must be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine. *Fisher v. MoneyGram Intern., Inc.* (2021) 66 Cal.App.5th 1084, 1093.

Defendant's argument asserts that Plaintiff's cause of action fails because Plaintiff does not ask the court to refrain from enforcing the policy, so there is nothing for the court to remedy, and that Defendant's right to decide whether or not to renew the policy does not render it unconscionable. In response, Plaintiff argues that he is not asking the court to set aside the entire policy, but rather

address the imbalance of power Defendant had in giving a third-party authority to declare his property a severe wildfire risk, which thereby caused Defendant to not renew his policy. Plaintiff also asserts in his opposition the recent discovery of a moratorium on non-renewal of policies due to wildfire risk.

Unconscionability refers to an absence of meaningful choice on the part of party, along with contract terms which are unreasonably favorable to the other party. *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1133. While the court agrees that a claim for unconscionability does not lie when a Plaintiff is not asking the court to refrain from enforcing the policy, it appears that Plaintiff is asking the court to refrain from enforcing the policy provision(s) regarding how Defendant determines insurance rates based on Wildfire Risk Score, and Defendant's ability to unilaterally cancel policies based on the risk score. Plaintiff's opposition also discusses a moratorium on non-renewal of policies due to wildfire risk which may be applicable to his policy.

Under Civil Code section 1670.5, a court can refuse to enforce an unconscionable provision in a contract. If a court finds any clause of the contract have been unconscionable at the time it was made, the court, "may so limit the application of any unconscionable clause as to avoid any unconscionable result." Civ. Code § 1670.5, subd. (a). The strong legislative and judicial preference is to sever the offending term and enforce the balance of the agreement. *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 515. Plaintiff's Complaint currently alleges that Defendant's ability to unilaterally cancel the policy is unconscionable, but does not currently allege facts sufficient to state a cause of action for unconscionability. However, the court finds that Plaintiff has sufficiently stated in his Opposition that he is limiting his argument as to the wildfire risk portion(s) of the contract, and thus may be able to cure the defect by amendment. Therefore, the court grants leave to amend.

Third Cause of Action: Breach of the Implied Covenant of Good Faith and Fair Dealing

There is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement." *Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654, 658. To establish an insurer's "bad faith" liability, the insured must show the insurer withheld benefits due under the policy, and that such a withholding was unreasonable or without proper cause. *Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1209. Bad faith can include, "abuse of a power to specify terms." *R. J. Kuhl Corp. v. Sullivan* (1993) 13 Cal.App.4th 1589, 1602.

Defendant's argument asserts that a claim for insurance bad faith cannot be based on an insurer's refusal to renew a policy, and that claims for insurance bad faith can only arise on causes of action for improper claims handling. However, "[t]here may be circumstances in which cancellation of the policy denies the insured the benefits of the policy..." and would allow tort damages for bad faith conduct. *Jonathan Neil & Assoc., Inc. v. Jones* (2004) 33 Cal.4th 917. Plaintiff alleges that Defendant's refusal to physically inspect the property failed to give him the same consideration that Defendant gave its own interest. *Egan v. Mutual of Omaha Insurance Co.* (1979) 24 Cal.3d 809, 818-819. Plaintiff's Opposition also raises the possibility that Defendant wrongfully canceled the policy in spite of a moratorium on non-renewal of policies, which could go towards showing

unreasonableness of withholding the benefits of the policy. Therefore, the court finds Plaintiff may be able to cure the defect by amendment and grants leave to amend.

4. CU0002091 Bender, Clyde v. Tyler, Allen

Pursuant to California Code of Civil Procedure § 527, no preliminary injunction shall be granted without notice to the opposing party. Because the court is lacking both proof of service of the summons on Defendant, as well as proof of service of the Notice of Motion and Motion, the request for preliminary injunction is denied without prejudice.

5. CU0001661 Deborah Wagner vs. George McKnight et al

Defendants' demurrer is overruled in part and sustained with leave to amend in part. Plaintiff is granted leave to amend cause of action nine, and must file her amended complaint within ten (10) days of this Court's order.

Legal Standard on Demurrer

"A demurrer tests the sufficiency of the complaint as a matter of law." *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034. "It has been consistently held that "a plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action.""" *Doheny Park Terrace Homeowners Assn. Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099, *cited with approval by Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550. The pleadings are to be liberally construed with "a view towards substantial justice between the parties[.]" and any specific allegations control the general pleadings. *Gentry v. EBay* (2002) 99 Cal.App.4th 816, 827.

Facts that may be inferred from those alleged are also properly taken as true. *Harvey v. City of Holtville* (1969) 271 Cal.App.2d 816, 819. The complainant's ability to prove the allegations does not concern the court. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App. 3d 593, 604. Rather, the court must construe the complaint liberally by drawing reasonable inferences from the facts pleaded. *Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 958. "Moreover, where a demurrer is made on the ground that "the pleading does not state facts sufficient to constitute a cause of action" pursuant to the Code of Civil Procedure section 430.10 (e), it is not necessary that the cause of action be the one intended by plaintiff. So long as the essential facts of some valid cause of action are alleged, the complaint is good against a general demurrer. *Quelimane Co., Inc. v. Stewart Title Guar. Co.* (1988) 19 Cal.4th 26, 38-39; *Adelman v. Associated Internat. Ins. Co.* (2001) Cal.App.4th 352, 359.

Seventh Cause of Action: Aiding and Abetting Retaliation, and Wrongful Discharge in Violation of Public Policy

The demurrer to the seventh cause of action is overruled.

A claim under Government Code section 12940(h) alleges that an employee has been discharged, expelled, or discriminated against because the person has opposed any practices forbidden under FEHA. Government Code section 12940(i) prohibits any person to aid or abet the discharge, expulsion, or discrimination of an employee because the employee has opposed any practices forbidden under FEHA.

Plaintiff is a registered nurse and former employee of Wellpath Management, Inc. (“Wellpath”) and California Forensic Medical Group, Inc. (“CFMG”) a subsidiary of Wellpath, which is under contract with County of Nevada to provide health services to inmates at the Wayne Brown Correctional Facility (“WBCF”).

Defendants’ demurrer as to the seventh cause of action is focused both on the argument that Government Code § 12940(i) does not permit claims against supervisors, and that Plaintiff fails to state a cause of action under the same. Defendants contend that while Government Code § 12940(i) extends liability to “any person” who aids or abets a violation of § 12940, the section is inapplicable to supervisors. Defendants also argue the Complaint lacks any allegations that Defendants knew Wellpath was violating FEHA against Plaintiff, nor any facts showing Defendants gave substantial assistance to Wellpath.

Plaintiff’s ability to prove allegations is not of concern to the court in ruling on a demurrer. *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496. A complaint will be deemed sufficient when it contains facts that simply “apprise the defendant of the basis upon which the plaintiff is seeking relief.” *Perkins v. Sup. Ct.* (1981) 117 Cal.App.3d 1, 6. If there is any viable theory of recovery under a cause of action, the demurrer must be overruled. *Fremont Indemnity Co. v. Fremont Gen. Corp.* (2007) 148 Cal.App.4th 97, 119. To the extent there are factual issues in dispute, the court must assume the truth not only of all facts properly pled, but also of those facts that may be implied or inferred from those expressly alleged in the complaint. *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459.

Under FEHA, it is an unlawful practice for an employer to discharge or expel against an employee because the employee has opposed any practices forbidden under the act, and for any person to aid and abet an employer for doing so. Gov. Code §§ 12940(h)-(i). Generally, mere knowledge that an act is being committed and failure to prevent it is not aiding and abetting, and a supervisor is not liable for the acts of his subordinates. *Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 879. While Plaintiff does assert Defendant Walsh’s supervisory duties in pleading facts that he oversaw security and monitored security clearances, she does not allege that he was a supervisor of Wellpoint employees or in the context of his actions. Therefore, he can be held liable for the acts alleged in the Complaint.

A claim for aiding and abetting can be sustained by showing a Defendant knows the other’s conduct constitutes a breach of duty, and he gives substantial assistance to the other. *Schulz v. Neovi Data Corp.* (2007) 152 Cal.App.4th 86, 95; *see also Sindell v. Abbott Laboratories* (1980) 26 Cal.3d 588, 604. This can be established by alleging facts that the one accused of aiding and abetting “lend aid or encouragement to the wrongdoer.” *Sindell, infra*, 26 Cal.3d at 604. In order to prove Defendants aided and abetted Plaintiff’s discharge, she must plead facts sufficient to allege that Defendant Walsh was aware of Defendant McKnight’s intent to terminate Plaintiff’s

employment by revoking her security clearance as a pretext to cover up Defendant McKnight's retaliation against Plaintiff, and that his revocation of her security credentials gave substantial assistance to Defendant McKnight in illegally terminating Plaintiff's employment.

The question then is whether Plaintiff has sufficiently pled that Defendants were aware of the FEHA violations, and that Defendant Walsh provided substantial assistance in terminating Plaintiff as retaliation. Affording every inference in favor of Plaintiff, as the Court must on demurrer, the Court concludes for the purposes of the demurrer that Plaintiff's allegations meet the pleading standards set forth in Government Code § 12940(i). Plaintiff's Complaint states that: her employment was contingent on maintaining a security clearance and being able to access WBCF with her security card; Defendant Walsh was responsible for issuing and monitoring security clearances for Wellpoint Staff; Defendant Walsh issued a gate stop at the request of Defendant McKnight; Captain Walsh arbitrarily and improperly revoked Plaintiff's security clearance with the intent to stop Plaintiff from working; and Defendant Walsh's issuance of the Gate Stop was improper because there was no legitimate reason for the issuance; and that Defendant Walsh's issuance of a gate stop was issued at the request of Defendant McKnight. (Complaint, ¶¶ 6, 51, 101).

Because the Court must assume the truth not only of the facts properly pled, but also of the facts that may be implied or inferred from those alleged expressly in Plaintiff's Complaint, it finds sufficient facts to assert a claim for aiding and abetting retaliation pursuant to Government Code section 12940(i).

Eighth Cause of Action: Aiding and Abetting Retaliation, and Wrongful Discharge in Violation of Public Policy

The demurrer to the eighth cause of action is overruled.

The elements of a cause of action for negligence are well established. Plaintiff must show: (a) a legal duty to use due care; (b) a breach of such legal duty; and that (c) the breach was the proximate or legal cause of the resulting injury. *Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917. A breach is the failure to meet the standard of care, and the element of causation requires there be a connection between the defendants' breach and the plaintiff's injury. *Coyle v. Historic Mission Inn Corp.* (2018) 24 Cal.App.5th 627, 643.

Defendants' demurrer as to the eighth cause of action is focused both on the argument that Defendants did not owe a duty to provide Plaintiff access inside WBCF regardless of her employment relationship with Wellpath, so Defendants could not breach that duty by removing her gate access. Defendants rely on the argument that a hirer presumptively delegates to an independent contractor all responsibility for workplace safety, including the means to access the worksite. *Acosta v. MAS Realty, LLC* (2023) 96 Cal.App. 5th 635, 662. Defendant concludes that Defendants contracted to Wellpath the duty to provide access to WBCF, and that there is no negligence for failing to access the inside of a jail.

The question is whether Plaintiff has sufficiently pled facts establishing Defendants owed her a legal duty of care. Affording every inference in favor of Plaintiff, including any facts that may be

implied or inferred, the Court concludes for the purposes of the demurrer that Plaintiff's allegations sufficiently state a cause of action for negligence. Plaintiff's Complaint alleges that Defendants owed a duty to WBCF staff to provide security into the WBCF facility, including a duty to provide access to the WBCF facility to Plaintiff and other staff members, and that her authorization to enter via a gate pass was necessary for her to perform her duties as a registered nurse. (Complaint at ¶¶ 100, 102.) Plaintiff also alleges that she passed a background check as a condition of her employment and was required to obtain and maintain a "full access" security clearance at Nevada County Correctional Facilities. (Complaint at ¶ 13.) While Defendant contends that acting as an independent contractor, Wellpath maintained the duty to provide access to WBCF, Plaintiff's claim alleges facts that Defendants had sole ability to issue and revoke gate passes. Therefore, Plaintiff has established that Defendant owed her a duty to use appropriate discretion in the revocation of gate passes, as a gate pass was a requirement of her ability to enter her workplace.

Because the Court must assume the truth not only of the facts properly pled and of those that may be inferred from the alleged expressly in Plaintiff's Complaint, it finds sufficient facts to assert a claim for negligence against Defendants.

Ninth Cause of Action: Intentional Infliction of Emotional Distress

The demurrer to the ninth cause of action is sustained with leave to amend.

A cause of action for intentional infliction of emotional distress exists when there is: "(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." A defendant's conduct is 'outrageous' when it is so 'extreme as to exceed all bounds of that usually tolerated in a civilized community.' And the defendant's conduct must be 'intended to inflict injury or engaged in with the realization that injury will result.'" *Hughes v. Pair* (2009) 46 Cal.4th 1035,1050-1051 (internal quotations omitted). Claims for intentional infliction of emotional distress are limited to when a defendant proximately causes egregious conduct directed toward a plaintiff, or when a defendant acts with reckless disregard of a plaintiff, in the presence of the plaintiff, and is aware his conduct will cause severe emotional distress to that plaintiff. *Christensen v. Superior Court* (1991) 54 Cal.3d 868,903-904. "Severe emotional distress [is] emotional distress of such substantial quantity or enduring quality that no reasonable man in a civilized society should be expected to endure it." *Fletcher v. Western Life Insurance Co.* (1970) 10Cal.App.3d 376, 397.

Defendants' demurrer as to the ninth cause of action is focused on the argument that Plaintiff has not alleged facts that sufficiently support her claim, and makes conclusory allegations without stating any facts to support this claim. In her Opposition, Plaintiff contends that Defendant Walsh conspired to terminate a whistleblower in violation of law, and so was "extreme and outrageous and committed with the intention of causing or with the reckless disregard of the probability of causing Plaintiff emotional distress," because Defendants were aware the power to revoke gate passes meant Plaintiff could not work if her pass was revoked. (Complaint, at ¶ 51.)

While the court treats a demurrer as admitting all material facts properly pleaded, it does not consider contentions, deductions, or conclusions of fact or law. *Marsh v. Anesthesia Services Medical Group, Inc.* (2011) 200 Cal.App.4th 480.

The question is whether Plaintiff, as an initial threshold, has sufficiently pled facts establishing Defendants conduct was extreme and outrageous with the intention of causing emotional distress. Plaintiff has alleged no facts to indicate she was in the presence of Defendant Marsh when the conduct occurred, so the Court must evaluate if Defendant Marsh's conduct was so outrageous it exceeded the bounds of that usually tolerated and that the behavior was intended to inflict injury or with the realization that injury would result, not if Defendant Walsh acted with reckless disregard. While the court treats a demurrer as admitting all material facts properly pleaded, it does not consider contentions, deductions, or conclusions of fact or law. *Marsh v. Anesthesia Services Medical Group, Inc.* (2011) 200 Cal.App.4th 480. In deciding a demurrer, the court is allowed to imply or infer facts from those expressly alleged. As discussed above, Plaintiff's Complaint has alleged facts that Defendant Walsh arbitrarily and improperly revoked Plaintiff's security clearance with the intent to stop Plaintiff from working. However, Plaintiff's Complaint fails to establish facts rising to the level of outrageous conduct, or that the intent of the conduct was to cause severe emotional distress.

A demurrer can only be utilized where the complaint, on its face, is incomplete or discloses a defense barring recovery. *Guardian North Bay, Inc. v. Sup. Ct.* (2001) 94 Cal.App.4th 963, 971-972. A demurrer should not be sustained without leave to amend if the complaint states a cause of action under any theory or if there is a reasonable probability the defect can be cured by amendment. *See Seidler v. Municipal Court* (1993) 12 Cal.App.4th 1229, 1233. Plaintiff's opposition indicates her ability to amend her Complaint to sufficiently plead a claim for Intentional Infliction of Emotional Distress.

Based on the facts alleged in Plaintiff's first amended complaint and the arguments in her Opposition, the Court finds the possibility that the defect may be cured by amendment. Therefore, Defendants' demurrer is sustained with leave to amend as to the ninth cause of action.

6. CU0001902 Travis Gould vs. PHH MORTGAGE CORPORATION et al

Defendants' demurrer to the Complaint is sustained with leave to amend.

Request for Judicial Notice

Defendants' request for judicial notice of recorded property records (Exhibits 1-5) is granted.

Standard of Review

A demurrer tests the sufficiency of the factual allegations in the complaint and whether facts are pled with sufficient certainty and particularity. *See Banerian v. O'Malley* (1974) 42 Cal.App.3d 604, 610-611; *see also* Code Civ. Proc., § 430.10(e). Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show that the complaint alleges facts sufficient to establish every element of each cause of action. *See Rakestraw v. California Physicians Service* (2000) 81

Cal.App.4th 39, 43. Where a complaint fails to adequately plead all necessary elements of a cause of action, a demurrer is properly sustained. *See Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 884- 85. “Where a demurrer is sustained ... as to the original complaint, denial of leave to amend constitutes an abuse of discretion if the pleading does not show on its face that it is incapable of amendment.” *Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1852. Finally, while all material facts properly pled are generally accepted as true, “contentions, deductions or conclusions of fact or law” are not. *Evans v. City of Berkeley*, 38 Cal. 4th 1, 6 (2006).

First Cause of Action: Wrongful Foreclosure

The demurrer to the first cause of action is sustained with leave to amend.

The basic elements of a tort cause of action for wrongful foreclosure are the same as those to set aside a foreclosure sale: “(1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale...was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering.” *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1184-1185. If the trustor or mortgagor can establish that there was no breach of condition or failure of performance on the mortgagor’s or trustor’s part which would have authorized the foreclosure, an action for the tort of wrongful disclosure is appropriate. *Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 408. “Mere technical violations of the foreclosure process will not give rise to a tort claim; the foreclosure must have been entirely unauthorized on the facts of the case. *Id.* at 409. Damages arising from wrongful foreclosure can include lost equity in the property, as well as other damages such as moving expenses, lost rental income, damage to credit, and emotional distress. *Id.*

Defendants’ demurrer as to the first cause of action is focused on the argument that Plaintiff fails to assert any facts to suggest illegal, fraudulent, or oppressive sale; fails to assert any facts which suggest the foreclosure caused him to suffer any harm; and fails to assert any facts to support Plaintiff tendered the amount of secured indebtedness or was excused from doing so. Defendant argues that Plaintiff was in default under the Loan, and so Defendants were within their rights to foreclose.

Here, Plaintiff’s Complaint merely concludes that Defendants wrongfully foreclosed Plaintiff’s interest in the property, and that he was damaged by the loss. (Complaint ¶¶ 20-22.) Plaintiff has failed to allege any facts which suggest the sale was illegal, fraudulent, or willfully oppressive. Plaintiff does not allege any facts suggesting that he was not in breach of the conditions of the mortgage. Nor has Plaintiff alleged any facts that he had paid the full amount of the debt, or was excused from doing so. Additionally, while, damages such as the loss of rental income and emotional distress are recoverable under a wrongful foreclosure cause of action, Plaintiff’s complaint fails to allege any facts showing that he has lost rental income, or suffered emotional distress beyond a statement that he is losing sleep and being engaged in continuous worry and depression. (Complaint ¶ 22.) While Plaintiff’s ability to prove allegations is not of concern to the court in ruling on a demurrer, and it must construe the complaint liberally including by drawing

reasonable inferences from the facts pleaded, it is not required to accept the truth of his legal conclusions. *Yhudai v. IMPAC Funding Corp.* (2016) 1 Cal.App.5th 1252, 1257. Therefore, because Plaintiff has alleged no facts to support his legal conclusions, he fails to state facts sufficient to state a cause of action for wrongful foreclosure and the First Cause of Action fails.

Plaintiff's opposition argues that Plaintiff demanded Defendants apply the full amount of the insurance proceeds to satisfy the secured debt. While his Complaint states the insurance carrier "issued a check for funds in excess of the amount then due upon the loan", he does not assert the amount of the check, when the check was issued, and whether it was before or after the foreclosure sale. (Complaint ¶ 16.)

A demurrer should not be sustained without leave to amend if the complaint states a cause of action under any theory or if there is a reasonable probability the defect can be cured by amendment. *See Seidler v. Municipal Court* (1993) 12 Cal.App.4th 1229, 1233. Plaintiff's opposition indicates facts which may allow him to amend his Complaint to sufficiently plead a claim. Therefore, Defendants' demurrer as to the first cause of action is sustained with leave to amend.

Second Cause of Action: Breach of Contract

The demurrer to the second cause of action is sustained with leave to amend.

To prevail on a cause for breach of contract, Plaintiff must prove 1) the existence of a contract; 2) Plaintiff's performance of the contract or his excuse for nonperformance; 3) Defendants' breach; and 4) resulting damage to Plaintiff. *Richman v. Hartley* (2014) 224 Cal.App.4th 1182. Implicit in the element of damage, is that a plaintiff must show that a defendant's breach caused his damage. *Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1352. A plaintiff suing for breach of contract must prove it has performed all conditions on its part or was excused from performance of those conditions. *Consolidated World Investments, Inc., v. Lido Preferred Ltd.* (1992) 9Cal.App.4th 373, 380.

Defendants' demurrer as to the second cause of action is focused on the argument that Plaintiff has failed to plead a breach of contract by Defendants, and that Plaintiff has failed to state facts sufficient to support he performed his obligation under the Deed of trust.

Plaintiff's Complaint merely alleges that Defendants breached the terms of the promissory note and Deed of Trust, whereas his Opposition alleges Defendants breached the covenant implied in law by Civ. Code, § 2941. One who violates Civil Code section 2941 may be held civilly liable to the person affected by the violation for a \$500 penalty, plus "all damages which that person may sustain by reason of the violation[.]" Civ. Code, § 2941, subd. (d). In a suit for violation of Civil Code section 2941, the injured person's recovery is measured by "the general rule of tort damages, namely, that all detriment proximately caused by breach of a legal duty is compensable, including damages for emotional distress." *Pintor v. Ong* (1989) 211 Cal.App.3d 837, 841-842. In *Pintor*, for example, a homeowner recovered \$15,000 for emotional distress caused by a two-and-one-half-year delay in recording the reconveyance. Where no emotional distress resulted from a delay in recording the reconveyance, damages

were limited to the statutory penalty. *Penagotacos v. Bank of America* (1998) 60 Cal.App.4th 851, 856-857. The current statutory penalty is \$500. Civ. Code, § 2941, subd. (e).

While Plaintiff fails to allege facts sufficient to sustain a cause of action for breach of contract, his Complaint and Opposition conclude that the proceeds from the insurance payout were sufficient to satisfy the terms of the loan secured by the Deed of Trust, on which Plaintiff had defaulted. Plaintiff fails to assert facts establishing the amount or the timing of the insurance proceeds, whether they would be owed to him under the Deed of Trust, or if that would trigger Defendants' obligations to reconvey the property.

Plaintiff's opposition indicates facts which may allow him to amend his Complaint to sufficiently plead a claim. Therefore, Defendants' demurrer as to the second cause of action is sustained with leave to amend.

Third Cause of Action - Bad Faith Breach of Contract

The demurrer to the third cause of action is sustained with leave to amend.

Every contract contains an implied covenant of good faith and fair dealing ("implied covenant") that neither party will do anything which will injure the right of the other to receive the benefits of the agreement *Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654, 658. The implied covenant exists 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 National, Inc.* (2000) 24 Cal.4th 317, 349-350. The covenant cannot impose substantive duties or limits on the contracting parties beyond those incorporated into the specific terms of their agreement. *Id.*

Defendants' demurrer as to the third cause of action is focused on the argument that it is superfluous of Plaintiff's second cause of action for breach of contract and so no additional claim is actually stated, and that Plaintiff suggests no facts that he was deprived of the benefits of the agreement. In his Opposition, Plaintiff argues that Defendants' refusal to apply the insurance proceeds to pay off Plaintiff's loan was a breach of the implied covenant of good faith and fair dealing, and that this act deprived Plaintiff of his home and the proceeds of the sale of his home.

Here, Plaintiff's Complaint simply states that "the acts and omissions of Defendants...breached the covenants of good faith and fair dealing implied in the promissory note and Deed of Trust." (Complaint ¶ 26.) "If the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated." *Careau & Co. v. Security Pacific Business Credit, Inc.*, (1990) 222 Cal.App.3d 1371, 1395. Plaintiff's ability to prove allegations is not of concern to the court in ruling on a demurrer, the complaint must be construed liberally, including by drawing reasonable inferences from the facts pleaded, but the court is not required to accept the truth of his legal conclusions. *Yhudai, supra*, 1 Cal.App.5th at 1257. Plaintiff's Complaint and Opposition assert that Defendants' refusal to apply the insurance proceeds to pay off Plaintiff's loan breached the implied covenant of good faith and fair dealing; however, Plaintiff fails to allege sufficient facts

to support the legal conclusion sufficient to state a cause of action for wrongful foreclosure and the First Cause of Action fails.

Plaintiff's opposition indicates facts which may allow him to amend his Complaint to sufficiently plead a claim. Therefore, Defendants' demurrer as to the third cause of action is sustained with leave to amend.

Fourth Cause of Action – Conversion

The demurrer to the fourth cause of action is sustained with leave to amend.

Conversion is the wrongful exercise of dominion over the property of another, where: (1) the plaintiff has an ownership right to possession of the property; (2) the defendant's conversion was by a wrongful act or disposition of the property rights; and (3) damages resulted. *Lee v. Hanley* (2015) 61Cal.4th 1225, 1240. Any act of dominion, inconsistent with the owner's rights, exerted over the personal property of another constitutes conversion. *Plummer v. Day/Eisenberg, LLP* (2010) 184 Cal.App.4th 38, 50. "[C]onversion is a strict liability tort. It does not require bad faith, knowledge, or even negligence; it requires only that the defendant have intentionally done the act depriving the plaintiff of his or her rightful possession." *Voris v. Lampert* (2019) 7 Cal.5th 1141, 1158.

Defendants' demurrer as to the fourth cause of action is focused on the argument that the terms of the Deed of Trust state that Plaintiff's rights to any insurance proceeds depend on whether the restoration or repair is not economically feasible or if the lender's security would be lessened. (RJN Exhibit 1). As discussed above, while Plaintiff concludes that the amount of insurance proceeds was sufficient to satisfy the terms of the loan secured by the Deed of Trust, he fails to assert facts supporting this conclusion, nor any to show he had a right to the insurance proceeds under the Deed of Trust. Plaintiff's Opposition alleges that Defendants appropriated the insurance proceeds knowing they had no right to them, but fails to state sufficient facts to support his conclusion.

Based on the facts alleged in Plaintiff's Complaint and the arguments in his Opposition, the Court finds the possibility that the defect may be cured by amendment. Therefore, Defendants' demurrer is sustained with leave to amend as to the fourth cause of action.

Fifth Cause of Action: Embezzlement

Plaintiff's Complaint asserts he is entitled to the remedy in Penal Code § 496(c), which is for persons who buy or receive any property that has been stolen or has been obtained in any manner constituting theft or extortion. The elements that must be proved for theft by embezzlement are: 1) the plaintiff has an ownership interest in the property entrusted to a defendant; 2) the owner did so because he trusted the defendant; 3) the defendant fraudulently converted that property for his own benefit; and 4) when the defendant converted the property, he intended to deprive the owner of its use. *People v. Cannon*, 77 Cal. App. 2d 678, 689.

Defendants demurrer as to the fifth cause of action is focused on the same arguments as for the fourth cause of action. While Plaintiff argues that he demanded the insurance proceeds be used to retire the debt, Defendants instead completed the foreclosure sale, and deposited the insurance drafts for themselves. However, as discussed, Plaintiff's Complaint fails to state sufficient facts to support his conclusion that he was entitled to the insurance proceeds under the Deed of Trust. Additionally, the allegation of embezzlement requires both that Plaintiff show Defendants' fraudulent conversion of the property, but also that Plaintiff show Defendants' intent to deprive him of his property. While Plaintiff argues that the insurance proceeds were delivered to Defendant and thus diverted from Plaintiff's use, he fails, again to state facts sufficient to allege his right to the insurance proceeds, as well as the intent to deprive him of its use after a fraudulent conversion.

A demurrer should not be sustained without leave to amend if the complaint states a cause of action under any theory or if there is a reasonable probability the defect can be cured by amendment. The Court finds a possibility that the defect may be cured by amendment. Therefore, Defendants' demurrer is sustained with leave to amend as to the fifth cause of action.

Sixth Cause of Action: Unfair and Unlawful Business Practices – Violation of Cal. Business & Professionals Code § 17200 and 17500

Plaintiff's sixth cause of action concludes that the acts and omissions of Defendants are in violation of the California Business & Professional Code § 17200, also known as California's Unfair Competition Law ("UCL"), because they are false, deceptive and unfair in violation of § 17500. Because the statute is written in the disjunctive, it prohibits three separate types of unfair competition: 1) unlawful acts or practices, 2) unfair acts or practices, and 3) fraudulent acts or practices. *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180. The UCL is not confined to anticompetitive business practices; it is also directed toward the public's right to protection from fraud, deceit, and unlawful conduct. *Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 519. A business act is unlawful if it violates some other law or regulation. *Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1383. Virtually any law or regulation can serve as the predicate for an unlawful business act claim under the UCL. *Id.* There is a split of authority as to the test for determining whether a business act is unfair. Some courts use a balancing test involving an examination of the practice's impact on the alleged victim, balanced against the reasons, justifications, and motives of the alleged wrongdoer. *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 718. Others examine whether the violation of other laws is tethered to business practices. *Gregory v. Albertson's, Inc.* (2002) 104 Cal.App.4th 845, 850-851. A third approach is to examine whether the injury is substantial, and whether it is outweighed by any countervailing benefits to consumers or competition, and if it is an injury the consumers could not reasonably have been avoided. *Davis v. Ford Motor Credit Co. LLC* (2009) 179 Cal.App.4th 581, 596.

Because a cause of action under the UCL arises from a violation of another law or regulation, Defendants' demurrer Defendants demurrer as to the sixth cause of action is focused on the same arguments – that Plaintiff has not alleged any facts sufficient to state a cause of action. Defendants argue that they were acting within their rights under the Deed of Trust, and Plaintiff fails to allege any facts to show otherwise. As discussed above, Plaintiff's Complaint concludes that the amount of insurance proceeds was sufficient to satisfy the terms of the loan secured by the Deed of Trust,

but he fails to assert facts supporting his conclusion. Moreover, the Complaint draws the legal conclusion that the “acts and omissions of Defendants” are in violation of the UCL, but states no facts to support his conclusion.

As with the other causes of action, the court finds a possibility that the defect may be cured by amendment. Therefore, Defendants’ demurrer is sustained with leave to amend as to the sixth cause of action.

7. CU0001096 Gregory Heil et al vs. Telestream, LLC, a Delaware corporation

Plaintiffs’ *ex parte* application for leave to file a first amended complaint is granted.

“If discovery and investigation develop factual grounds justifying a timely amendment to a pleading, leave to amend must be liberally granted.” *Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 596. Instances justifying the court’s denial of leave to amend are rare. *Armenta ex rel. City of Burbank v. Mueller Co.* (2006) 142 Cal.App.4th 636, 642. Judicial policy favors resolution of all disputed matters in the same lawsuit. *Kittredge Sports Co. v. Sup. Ct.* (1989) 213 Cal. App. 3d 1045, 1047.

While trial courts have discretion to permit or deny the amendment of the complaint, a court may deny leave to amend long, inexcusable delay, where there is cognizable prejudice, such as discovery needed, trial delay, critical evidence lost, or added preparation expense. *Solit v. Tokai Bank* (1999) 68 Cal. App. 4th 1435, 1448; *Atkinson v. Elk Corp.* (2003) 109 Cal. App. 4th 739, 761; *Green v. Rancho Santa Margarita Mortgage Co.* (1994) 28 Cal.App.4th 686, 692; *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 487. In considering whether there was unjustified delay as to a motion for leave to file an amended pleading, the court should consider whether the party, “was not diligent in offering the amendment after knowledge of the facts....” *Solit, supra*, 68 Cal. App. 4th at 1448 (citing *Roemer v. Retail Credit Co.* (1975) 44 Cal. App. 3d 926, 940). If the court finds amendment is appropriate, the trial should be continued if necessary. *Honig v. Financial Corp. of America* (1992) 6 Cal. App. 4th 960, 967.

In the present case, the court finds that Plaintiffs have acted diligently. While Plaintiffs learned that Defendant’s assets were transferred to a new entity, Telestream 2, LLC, three weeks prior to their filing for *ex parte* relief, that does not constitute an unjustified delay, nor does it demonstrate that Plaintiffs were not diligent in offering the amendment. Rather, it establishes that Plaintiffs’ investigation developed factual grounds justifying an amendment to their Complaint. Additionally, Plaintiffs were warranted in utilizing an *ex parte* application to avoid further needless delay in seeking leave to amend their Complaint. Finally, Defendant argues that there is no discovery to support successor liability. Courts generally do not consider the validity of proposed amendments to a pleading. *Kittredge Sports Co. v. Sup. Ct.* (1989) 213 Cal. App. 3d 1045, 1047.

The proposed First Amended Complaint shall be served and filed within ten (10) days of this order.