May 1, 2026, Civil Law & Motion Tentative Rulings

1. CU0002540 John Maxey et al vs. Truckee Sanitary District

Defendant Truckee Sanitary District's ("TSD") demurrer to Plaintiffs' Complaint is sustained without leave to amend. In light of the demurrer being sustained without leave to amend, Plaintiffs' motion for trial preference is moot.

Request for Judicial Notice

The parties' requests for judicial notice are granted. As to court records, judicial notice is limited to the fact that the documents were filed, but not of the truth of their contents. *Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 130, fn. 7 (judicial notice of the truth of matters stated in court records ordinarily limited to orders, statements of decision, and judgments). However, under the sham pleading doctrine, the Court may properly take judicial notice of a party's earlier pleadings and positions as well as established facts from both the same case and other cases. *Larson v UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 343–344. Thus, the operative Complaint in this case "should be read as containing the judicially noticeable facts" from the earlier pleadings. *Id*. at 344.

As to public records, "[c]ourts can take judicial notice of the existence, content and authenticity of public records and other specified documents, but do not take judicial notice of the truth of the factual matters asserted in those documents." *Dominguez v. Bonta* (2022) 87 Cal.App.5th 389, 400.

Legal Standard

On demurrer, a court's function is limited to testing the legal sufficiency of the complaint. *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114. In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. *Miklosy v. Regents of the Univ. of Cal.* (2008) 44 Cal.4th 876, 883. A court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.

Contentions, deductions and conclusions of law, however, are not presumed as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967. A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate facts; the pleading is adequate if it apprises the defendant of the factual basis for the plaintiff's claim. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. A demurrer is not the appropriate procedure for determining the truth of disputed facts. *Fremont Indemnity Co.,* 148 Cal.App.4th at 113-114.

"If a complaint does not state a cause of action, but there is a reasonable possibility that the defect can be cured by amendment, leave to amend must be granted." *Milligan v. Golden Gate Bridge Highway & Transportation Dist.* (2004) 120 Cal.App.4th 1, 6.

Sham Pleading Doctrine

Defendant argues all of Plaintiff's causes of action are barred under the sham pleading doctrine. The Court agrees

Under the sham pleading doctrine, plaintiffs are precluded from amending complaints to omit harmful allegations, without explanation, from previous complaints to avoid attacks raised in demurrers or motions for summary judgment. *Hendy v. Losse* (1991) 54 Cal.3d 723, 742–743 (affirming an order sustaining Defendants' demurrer without leave to amend when the Plaintiff filed an amended complaint omitting harmful allegations from the original unverified complaint); see also *Colapinto v. County of Riverside* (1991) 230 Cal.App.3d 147, 151 ("If a party files an amended complaint and attempts to avoid the defects of the original complaint by either omitting facts which made the previous complaint defective or by adding facts inconsistent with those of previous pleadings, the Court may take judicial notice of prior pleadings and may disregard any inconsistent allegations.").

The sham pleading doctrine cannot be mechanically applied. *Dones v. Life Insurance Company of North America* (2020) 55 Cal.App.5th 665, 688. The doctrine is not intended to prevent honest complainants from correcting erroneous allegations or to prevent the correction of ambiguous facts. *Ibid*. Rather, the doctrine must be taken together with its purpose, which is to prevent an amended pleading which is only a sham, when it is apparent that no cause of action can truthfully be stated. *Ibid*.

The sham pleading doctrine applies not only to an amended pleading that is filed in the same action, but also to the pleadings filed in a separate action. *Larson v UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 343–344 (court may properly take judicial notice of party's earlier pleadings and positions as well as established facts from both the same case and other cases). " "A plaintiff may not avoid a demurrer by pleading facts or positions in an amended complaint that contradict the facts pleaded in the original complaint or by suppressing facts which prove the pleaded facts false. [Citation.] Likewise, the plaintiff *may not plead facts that contradict the facts or positions that the plaintiff pleaded in earlier actions or suppress facts that prove the pleaded facts false.* [Citation.]" *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 877 (emphasis in original, citations omitted). "The principle is that of *truthful pleading.*" ' ... [Citation.] When the plaintiff pleads inconsistently *in separate actions,* the plaintiff's complaint is nothing more than a sham that seeks to avoid the effect of a demurrer. [Citations.] Under such circumstances, the court will disregard the falsely pleaded facts and affirm the demurrer." *Id*. at 877-878 (emphasis in original, citations omitted).

Facts that the plaintiff has pleaded in the original complaint are conclusively deemed true as against the plaintiff, and the plaintiff may not amend the complaint to contradict this judicially admitted matter. *Dang v Smith* (2010) 190 Cal.App.4th 646, 657–658. "The only effect of an earlier allegation in such a context is to prevent the pleader from *amending her pleading* so as to *contradict* the judicially admitted matter." *Ibid*. (emphasis in original). "Because the original allegation is conclusively deemed true, the pleader is not permitted to assert its *logical opposite.*" *Ibid*. (emphasis in original). A plaintiff may contradict a previous judicial admission, however, when the plaintiff's request for leave to amend is supported by a showing of mistake or other excuse for changing the plaintiff's allegations of fact. *Walters v Boosinger* (2016) 2 CA5th 421, 438; *Minish v Hanuman Fellowship* (2013) 214 CA4th 437, 456–457 n12.

Plaintiff's First Amended Verified Complaint from Case No. 2:25-cv-01609-AC allege that TSD placed assessments, enforceable through liens, on their properties despite the facts that the properties were uninhabited and located outside the moratorium area for which LAFCO authorized assessments, and that plaintiffs had never applied for sewer connection permits. Defendant's RJN, Ex. B at 4-5. By Resolution 87-104 dated February 12, 1987, the TSD Board approved the assessment in the Amended Engineer's Report which the Board directed to exclude the Greenbelt Parcels of the G/D Residents Association, because the Board believed "that there was no reasonable prospect of being developed in any way that would utilize the subject sewer system improvements." Defendant's RJN, Ex. B at 5. The Amended Engineer's Report divided the parcels to be assessed between the G/D lots and the "Outside" parcels including plaintiffs' and other large uninhabited lands. The Board of Directors by Resolution 87-104 "confirms and levies the individual assessment as stated in the Amended Engineer's Report." Defendant's RJN, Ex. B at 5. The Amended Engineers Report and a Second Amended Report dated April 2, 1987, designated the lands, including plaintiffs' properties, lying beyond the boundaries of the G/D subdivision as "Outside Parcels" because they were not eligible for any benefit of Federal Grant funds. Defendant's RJN, Ex. B at 5. Even though the terms of the resolutions and the engineers reports excluded plaintiffs' lands, which were uninhabited and therefore expressly excluded from the sewer moratorium, plaintiffs were each charged assessments. Defendant's RJN, Ex. B at 5. Plaintiffs paid these assessments even though the language of the resolution authorizing the assessment specifically did not apply to their uninhabited parcels. Defendant's RJN, Ex. B at 5. In 2023, the lands at issue were rezoned as permanent open space which prohibits any future development, including connection to the TSD system. Defendant's RJN, Ex. B at 5-6. Plaintiffs allege that when the rezoning was formalized in 2024, and they learned that no wastewater collection facilities had been built on or near their properties, Plaintiff Douglass contacted TSD to demand an accounting and refund of the assessments previously levied against his land. Defendant's RJN, Ex. B at 6. The TSD denied plaintiffs' demand stating that the time to file a government claim had expired. RJN, Ex. B at 6. Plaintiffs also claim that Defendants utilized an arbitrary, fraudulent and confiscatory computation of the unauthorized assessment and they increased plaintiffs' respective assessments without justification or notice. RJN, Ex. B at 6.

Facts that the plaintiff has pleaded in the original complaint are conclusively deemed true, and the pleader is not permitted to assert is logical opposite in subsequent pleadings. *Dang, supra,* 190 Cal.App.at 657–658. In the Complaint at issue here, Plaintiffs argue the underlying assessment fees were valid and seek "surplus and refund assessment proceeds" because they never derived the benefit of the fund. However, the language of the Complaint displays Plaintiffs again seek a refund of the original fees paid which is the same underlying argument as in the Federal complaint. Plaintiff simply relabels "assessments" as "surplus funds". However, the "gravamen of all of plaintiffs' claims is simply that at the time the assessments were levied in 1987, they were unlawful on their face because plaintiffs' properties were undeveloped." RJN, Ex. A at 6-7. The Federal First Amended Verified Complaint included several pages of alleged facts which asserted TSD "intentionally violated" orders, "intentionally levied assessments with sewer connection fees that did not have an application for connection for service", "knowingly utilized an assessment formula", "did not give reasonable notice to Plaintiffs" and so on. RJN, Ex. B at 6-10.

Plaintiffs now state they do not challenge the validity or imposition of the 1987 assessments, but rather want a return of any "surplus and unused assessment funds". Complaint, ¶ 20. However, the letter Plaintiffs rely upon to show they made a formal demand for a refund of "$325,938 plus interest paid by Plaintiffs" for the "surplus funds" is the same letter Plaintiffs relied upon in their Federal complaint to demand a refund of assessment funds. RJN, Ex. D. Therefore, under the sham pleading doctrine, Plaintiff cannot assert their letter sought a "refund of $325,938 unused connection fees" which were assessed in the federal case, but now relabel those same funds as "surplus funds" to circumvent the reasons for which the federal complaint was dismissed. RJN, Ex. D. Because Plaintiffs have plead the same fees as illegal assessment fees in one pleading and valid surplus funds in another, it is clear Plaintiffs' "complaint is nothing more than a sham that seeks to avoid the effect of a demurrer." *Cantu, supra,* 4 Cal.App.4th at 877. "Under such circumstances, the court will disregard the falsely pleaded facts and affirm the demurrer." *Ibid.* For this reason, the demurrer as to Plaintiffs' complaint is sustained. There is no reasonable possibility the defect can be cured, so amendment is denied.

Statute of Limitations

As discussed above, the gravamen of each of Plaintiffs causes of action is the refund of fees assessed in approximately 1987. Complaint ¶¶ 9, 32 (First Cause of Action ("COA") "Mandatory Refund of All Assessments"), 41 (Second COA seeks "mandatory return" of "special assessments"), 46-47 (Third COA "TSD owes a balance…for all special assessments" and Plaintiffs seeks "to refund sums"), 50-52 (Fourth COA "Defendants failed to…refund…the special assessments and Plaintiffs seeks to have TSD "refund payors"), and (Fifth COA seeks a declaration that assessment funds "must all be refunded").

Here, as in the Federal case, Plaintiff argued the injury did not occur in 1987 when the Plaintiffs paid the special assessments. In the present Complaint, Plaintiffs assert they are due a refund of any "surplus collected by TSD through its special assessments" which were "placed in a dedicated fund and returned in cash to the property owners who paid the assessment." Complaint, ¶ 12. Pursuant to Streets and Highways Code § 10400, "The validity of an assessment or supplementary assessment levied under this division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the assessment is levied." S&H Code § 10400. Pursuant to Code of Civil Procedure § 329.5, the validity of an assessment against real property for public improvements "shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the assessment is levied, or such longer period as the legislative body may provide. The First Amended Verified Complaint in the federal case states Plaintiffs' lands were deemed "not eligible for any benefit of Federal Grant funds" because they were "Outside Parcels" laying beyond the boundaries of the G/D subdivision in a report dated April 2, 1987. RJN, Ex. B, ¶ 16. Therefore, regardless of how Plaintiffs characterize the funds, the time to contest the validity of the assessment based on Plaintiffs' lots not being eligible for a benefit was at the time the assessment was levied. Thus, because Plaintiffs failed to do so within the statutory timeframe, their claims are untimely. The demurrer is sustained on this basis. Because the defect cannot be cured, no leave to amend is granted.

Defendant also argues Plaintiffs' claims fail under the alternative theory of a tax refund. The Court again agrees.

A claim for a tax refund must be filed within four years after making the payment sought to be refunded. Rev. & Tax Code § 5097(a)(2). If such a claim for refund is rejected, an action must be commenced within six months from the date of rejection. Rev. & Tax Code § 5141(a). At bar, Plaintiffs allege making payments from 1987 and continuing after 1991, and that as of 2001 a certain amount of payments had been made. Complaint, ¶¶ 9-10. Plaintiffs made a demand for a refund on March 19, 2024 which was denied on April 18, 2024 and May 17, 2024. Complaint, ¶¶ 21-24. Plaintiffs did not file any civil suit until it commenced its federal action on June 10, 2025 and the present action on December 22, 2025, far after the expiration of the six-month limit. As such, the demurrer can be sustained.

Government Claims Act

Defendant argues all causes of action are barred by Plaintiffs' failure to comply with the Government Claims Act ("GCA"). The Court agrees.

Pursuant to the GCA, a complaint for money or damages against a public entity must be preceded by a proper administrative claim. Gov. Code § 905. Such a claim must be presented no later than one year after the accrual of the cause of action. Gov. Code § 911.2(a). A claimant may make an application for leave to present a late claim within one year after the accrual of the cause of action. Gov. Code § 911.4(b). If the application to file a late claim is denied, a petition may be made to the court to file a late claim, which must be filed within six months after the application to the board is denied. Gov. Code §§ 911.6; 946.6(a).

In the present Complaint, Plaintiffs assert the Government Claims Act is not applicable because it relates to entitlement to refund of a special assessment. Complaint, ¶ 30. However, the prior federal complaints allege Plaintiffs made a "demand and concomitant Notice of Claim under CA Government Code Sections 910 et seq." and "Leave to File Late Claim", both of which were denied on December 19, 2024. RJN, Ex. B, ¶ 22. As discussed above, Plaintiffs cannot acknowledge in one case their claims are subject to the GCA but attempt to recategorize the basis for its claims in another to avoid the effects of a demurrer by contradicting the prior claim.

At bar, Plaintiffs failed to petition the court to file a late claim as required. Thus, the demurrer is sustained. Because there the defect cannot be cured by amendment, leave to amend is denied.

2. CU0002600 Lost Horizon Ranch, LLC vs. Stephen Brennan

The petition for release of mechanic's lien is denied without prejudice.

Introduction

The case concerns the property located at 14556 Powerline Road, Grass Valley, CA 95946 ("Property"). Petitioners Lost Horizon Ranch, LLC and Ryan Zuccaro are the owners and manager of the Property. On July 18, 2025, Respondent Stephen Brennan recorded a mechanic's lien against the property in the amount of $3,900.00 for labor, services, equipment, or materials furnished by Respondent for removal of old deck and new deck build.

Legal Standard

After a mechanic's lien has been recorded, "[t]he owner of property or the owner of any interest in property subject to a claim of lien may petition the court for an order to release the property from the claim of lien if the claimant has not commenced an action to enforce the lien within the time provided in Section 8460." Civ. Code § 8480(a). A claimant must commence an action to enforce a lien within 90 days of recording the lien. Civ. Code, § 8460(a). Civil Code § 8460 further provides that "[i]f the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable." Civ. Code, § 8460(a). Civil Code § 8460 also provides that the 90-day time limit to commence an action to enforce a lien does not apply if there was an agreement to extend credit and a notice of that fact was recorded within 90 days after recordation of the claim of lien or more than 90 days after recordation of the claim of lien but before a purchaser or encumbrancer for value and in good faith acquires rights in the property. Civ. Code, § 8460(b).

Civil Code § 8484 requires that the petition for release order be verified by the petitioner and allege the following:

> (a) The date of recordation of the claim of lien. A certified copy of the claim of lien shall be attached to the petition.
> (b) The county in which the claim of lien is recorded.
> (c) The book and page or series number of the place in the official records where the claim of lien is recorded.
> (d) The legal description of the property subject to the claim of lien.
> (e) Whether an extension of credit has been granted under Section 8460, if so to what date, and that the time for commencement of an action to enforce the lien has expired.
> (f) That the owner has given the claimant notice under Section 8482 demanding that the claimant execute and record a release of the lien and that the claimant is unable or unwilling to do so or cannot with reasonable diligence be found.
> (g) Whether an action to enforce the lien is pending.
> (h) Whether the owner of the property or interest in the property has filed for relief in bankruptcy or there is another restraint that prevents the claimant from commencing an action to enforce the lien.

A property owner may not petition for a release order until he or she gives the claimant notice demanding that the claimant execute and record a release of lien claim at least ten days before filing the petition. Civ. Code § 8482. The manner of giving notice must comply with the requirements of Civil Code sections 8100, et. seq. *Id.*

"The petitioner shall serve a copy of the petition and a notice of hearing on the claimant at least 15 days before the hearing." Civ. Code, § 8486(b). "Service shall be made in the same manner as service of summons, or by certified or registered mail, postage prepaid, return receipt requested, addressed to the claimant as provided in Section 8108." *Id.*

Civil Code section 8108 provides that notice can be given to Respondent at the address shown on Respondent's claim of lien. Civ. Code § 8108(d). The petitioner bears the burden of proving compliance with the service and notice requirements. Civ. Code § 8488(a).

Analysis

Statutory Requirements

At bar, the petition complies with the statutory requirements. The Petition is verified, alleges the date of recordation of the Claim of Mechanic's Lien, the county in which it was recorded (Nevada County), and attaches and incorporates by reference a certified copy of the Claim of Mechanic's Lien. Pet., ¶ 10(a)-(b); Pet. p. 5 (verification); Exh. B. The Petition states the lien was recorded in the official records of the County Recorder as Document No. 20250011083. Pet., ¶ 10(c). The Petition alleges the legal description of the Subject Property. Pet., ¶ 1, Ex. A.

The Petition alleges that no extension of credit has been granted, that no action to foreclose the Claim of Mechanic's Lien was filed, that the 90-day time period to enforce the Claim of Mechanic's Lien has expired. Pet., ¶¶ 9, 10(e), (f). The Petition also alleges Petitioner has not filed for bankruptcy and that no other restraint exists preventing Respondent from filing an action to enforce the lien. Pet., ¶ 10(h). The Petition alleges that on November 18, 2025, which is at least ten days prior to the filing of the Petition, Petitioner sent Respondent, by certified mail a written demand to remove the Claim of Mechanic's Lien. Pet., ¶ 10, Exh. C. Service of the written demand by "registered or certified mail, express mail, or overnight delivery by an express service carrier" is proper. Civ. Code §§ 8100, 8106(b), 8110.

In sum, Petitioner has met the substantive requirements for relief.

Service Requirements

"The petitioner shall serve a copy of the petition and a notice of hearing on the claimant at least 15 days before the hearing." Civ. Code, § 8486(b). "Service shall be made in the same manner as service of summons, or by certified or registered mail, postage prepaid, return receipt requested, addressed to the claimant as provided in Section 8108." *Id.* If service is made by mail, notice of hearing must be given at least 15 days before the hearing, plus 5 calendar days for service by mail. Code of Civ. Proc. § 1013(a). The petitioner bears the burden of proving compliance with the service and notice requirements. Civ. Code § 8488(a).

At bar, Petitioner's proof of service filed January 28, 2026 indicates service was made by certified US mail with postage prepaid and return receipt on January 21, 2026. There is no indication service was made "in the same manner as service of summons, or by certified or registered mail, postage prepaid, return receipt requested." Civ. Code § 8486(b); Code Civ. Proc. §§ 415.10, 1010.6(a)(2). However, there is no proof service as to the Amended Notice of Hearing filed on January 28, 2026. Additionally, a Declaration of Non-Service was filed on April 2, 2026.

Thus, the Court finds Petitioner fails to sustain his burden of proof with respect to service and notice of hearing.

As such, the Court denies the petition without prejudice to renewal given the defect in service and notice discussed.

3. CU21-085893 TOM AMESBURY et al vs. BARBARA HEGER et al

Defendant Barbara Heger, as Trustee of the Barbara Heger Living Trust, to Plaintiffs' First Amended Complaint is overruled.

Request for Judicial Notice

This request was raised on Defendant Heger's ("Heger") reply and as such is untimely, and there is not good cause shown why this is an exceptional case meriting its consideration. *See, e.g., Plenger v. Alza Corp.* (1992) 11 Cal.App.4th 349, 362, n. 8 ("the inclusion of additional evidentiary matter with the reply should only be allowed in the exceptional case"); *Save the Sunset Strip Coalition v. City of West Hollywood* (2001) 87 Cal.App.4th 1172, 1182, n. 3 ("absent justification for failing to present an argument earlier, we will not consider an issue raised for the first time in a reply brief).

Oversized Brief

Subject to exceptions which do not apply here, under California Rules of Court, rule 3.1113(d), "no opening … memorandum may exceed 15 pages." Cal. Rules of Court, rule 3.1113(d). The memorandum submitted in support of the present motion is 24 pages. The Court's records reflect that plaintiff did not file an appropriate application with the Court requesting permission to file a longer memorandum. *See* Cal. Rules of Court, rule 3.1113(e). That stated, the Court, in the exercise of its discretion, will consider the moving papers in their entirety. Defendant is admonished to comply with the California Code of Civil Procedure and the California Rules of Court.

Legal Standard

On demurrer, a court's function is limited to testing the legal sufficiency of the complaint. *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114. In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. *Miklosy v. Regents of the Univ. of Cal.* (2008) 44 Cal.4th 876, 883. A court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.

Contentions, deductions and conclusions of law, however, are not presumed as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967. A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate facts; the pleading is adequate if it apprises the defendant of the factual basis for the plaintiff's claim. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. A demurrer is not the appropriate procedure for determining the truth of disputed facts. *Fremont Indemnity Co.,* 148 Cal.App.4th at 113-114.

"If a complaint does not state a cause of action, but there is a reasonable possibility that the defect can be cured by amendment, leave to amend must be granted." *Milligan v. Golden Gate Bridge Highway & Transportation Dist.* (2004) 120 Cal.App.4th 1, 6.

Analysis

First Cause of Action – Negligence:

Defendant argues the complaint fails to plead facts sufficient to constitute a negligence claim against Heger as Trustee, because no duty is owed by a Trustee as a seller of trust property and a Trustee does not owe professional or operational duties as alleged, and that the economic loss rule bars the negligence claim. The court disagrees.

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.

When a "seller knows of facts materially affecting the value or desirability of the property" that are "known or accessible only to him" and also knows the facts are not otherwise known or "within the reach of the diligent attention and observation of the buyer, the seller is under a duty to disclose them to the buyer." *Holmes v. Summer* (2010) 188 Cal.App.4th 1510, 1518. The seller's real estate agent or broker is under the same duty of disclosure when they are also aware of such facts. *Ibid*.

At bar, the First Amended Complaint ("FAC") alleges Heger signed disclosure statements stating, "Seller remains obligated to make the disclosures," and "Seller is obligated to disclose known material facts affecting the value and desirability of the Property." FAC, ¶¶ 3-4, Ex. A. Thus, Plaintiffs sufficiently allege a duty for Heger to make certain disclosures, her failure to do so, and resulting injury. FAC, ¶¶ 3-5, 7-9.

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." *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 20 (quotations omitted). Stated another way, "[t]he economic loss rule requires a [contractual party] to recover in contract for purely economic loss due to disappointed expectations, unless [the party] can demonstrate harm above and beyond a broken contractual promise." *Ibid*. (quotations omitted).

> 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.
>
> The guiding and distinguishing principle is this. If the alleged breach is based on a failure to perform as the contract provides, and the parties reasonably anticipated and allocated the risks associated with the breach, the cause of action will generally sound only in contract because a breach deprives an injured party of a benefit it bargained for. However, if the contract reveals the consequences were not reasonably contemplated when the contract was entered and the duty to avoid causing such a harm has an independent statutory or public policy basis, exclusive of the contract, tort liability may lie.

Id. at 26.

At bar, Plaintiffs' cause of action for negligence alleges non-economic damages "including resulting damages to personal and real property" and "loss of use and enjoyment" of the property. FAC, ¶ 10. Therefore, plaintiff has sufficiently alleged Defendant's negligence resulted in injury outside the risks reasonably contemplated by the parties upon entering the contract. As such, the demurrer as to the second cause of action is overruled.

Second Cause of Action – Breach of Written Contract

Heger argues Plaintiffs' FAC fails to allege breach of contract allegations, but rather alleges tortious or negligent conduct of third parties. The Court disagrees.

To state a claim for breach of contract, a plaintiff must allege: (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff. *D'Arrigo Bros. of California v. United Farmworkers of America* (2014) 224 Cal.App.4th 790, 800. Defendant argues the complaint does not state whether the alleged agreement was written, oral, or implied, and does not clearly allege the specific terms of the contract that were breached. The court disagrees.

At bar, the FAC alleges the existence of the Real Estate Purchase Agreement, Plaintiffs' performance, Heger's breach by her failure to inspect or inform Plaintiffs of the defects and deficiencies in the house, and Plaintiffs' resulting damages. FAC, ¶¶ 2-3, 5. Such is sufficient to withstand the challenge on demurrer.

Third Cause of Action – Nuisance

Heger argues defects which only affect an owner's interest in the property do not constitute a nuisance, and no facts show Heger personally created any condition that substantially or unreasonably interfered with Plaintiffs' use or enjoyment of the property. The Court again disagrees.

"[T]he essence of a private nuisance is its interference with the use and enjoyment of land." *Oliver v. AT&T Wireless Services* (1999) 76 Cal.App.4th 521, 534. "So long as the interference is substantial and unreasonable, and such as would be offensive or inconvenient to the normal

person, virtually any disturbance of the enjoyment of the property may amount to a nuisance; . . . ." *Mendez v. Rancho Valencia Resort Partners, LLC* (2016) 3 Cal.App.5th 248, 262.

At bar, the FAC alleges Plaintiffs occupied the property, at which Heger's failure to act created a condition or permitted a condition to exist which was harmful to Plaintiffs' health such as to interfere with their comfortable enjoyment of life or property, and that the condition substantially interfered with Plaintiffs' use or enjoyment of their land. FAC, ¶¶ 10, 18. The Complaint sufficiently asserts Heger's failure to act created the condition which substantially interfered with Plaintiffs' use or enjoyment of their land. Therefore, the demurrer as to this cause of action is overruled.

Fourth and Fifth Causes of Action – Fraud by Intentional Misrepresentation and Concealment

Heger argues Plaintiffs fail to meet the specificity requirement to sustain allegations of fraud, Heger's intent, or justifiable reliance on the part of Plaintiffs. The Court is not persuaded.

"The elements of fraud that will give rise to a 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.' " *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974

Here, Plaintiffs allege Heger informed Plaintiffs the subject property was in good repair and it was habitable, that those representations were false because the property contained significant defects, that Defendants knew such to be false, and that Heger intended Plaintiffs would rely on the false representation so they would purchase the property, and resulting damages. FAC, ¶¶ 23-27, 29. The FAC states "Defendants designed, constructed, applied, manufactured, inspected, failed to inspect, repaired, failed to repair, or otherwise acted or omitted to act regarding the condition of the house" such that the "many defects and deficiencies including, but not limited to: a poorly designed drainage system, an inadequate electrical system, a failed foundation system, defective siding on the garage, and a failed well water system." FAC, ¶ 2. Such is sufficient to allege knowledge of falsity and/or concealment on the part of Defendant for the purposes of demurrer.

Sixth Cause of Action – Negligent Misrepresentation

Finally, Defendant again argues plaintiff fails to allege the specific false statement or misrepresentation, or facts showing the Trustee lacked reasonable grounds for believing any representation was true. Heger also argues Plaintiffs improperly conflate negligent misrepresentation with intentional conduct, and that any alleged latent defects are subject to disclosure obligations. The court again disagrees.

"Negligent misrepresentation requires an assertion of fact, falsity of that assertion, and the tortfeasor's lack of reasonable grounds for believing the assertion to be true. It also requires the tortfeasor's intent to induce reliance, justifiable reliance by the person to whom the false assertion of fact was made, and damages to that person. An implied assertion of fact is 'not

enough' to support liability." *SI 59 LLC v. Variel Warner Ventures, LLC* (2018) 29Cal.App.5th 146, 154 (internal citation omitted).

At bar and as discussed above, the FAC identifies facts sufficient to allege Heger had a duty to Plaintiffs, acts or omissions that constituted misrepresentation, as well as the many defects and deficiencies which Defendant would have had no reasonable grounds for believing the representations to be true given her ownership of the house and experience in the field, and that Plaintiffs justifiably relied on the statements and were damaged as a result. FAC, ¶¶ 2, 43-48. Therefore, the demurrer as to the sixth cause of action is overruled.

Uncertainty

A party may object by special demurrer on the grounds that the subject pleading is uncertain. Code Civ. Proc. § 430.10(f). " '[U]ncertain' includes ambiguous and unintelligible." *Smith v. Kern County Land Co.* (1958) 51 Cal.2d 205, 209. "A special demurrer on the ground that [a pleading] is (a) ambiguous, (b) unintelligible, or (c) uncertain is insufficient unless the demurrer points out specifically wherein the pleading is ambiguous, uncertain or unintelligible." *Coons v. Thompson* (1946) 75 Cal.App.2d 687, 690.

The recitation of essential facts set forth in the FAC and in Heger's demurrer demonstrates that the complaint is not unintelligible or ambiguous and that Defendant understands the issues and the nature of each cause of action alleged by Plaintiff. See *Youngman v. Nevada Irrigation Dist*. (1969) 70 Cal.2d 240, 245 ("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"); *Dumm v. Pacific Valves* (1956) 146 Cal.App.2d 792, 799. For this reason, the complaint is not so incomprehensible that defendant cannot reasonably respond. *Morris v. JPMorgan Chase Bank, N.A.* (2022) 78 Cal.App.5th 279, 292. In addition, to the extent the complaint or any particular cause of action alleged in the complaint is in some respects uncertain, any "ambiguities can be clarified under modern discovery procedures." *Khoury v. Maly's of California, Inc*. (1993) 14 Cal.App.4th 612, 616.

For all reasons discussed above, Defendant has failed to meet her burden to demonstrate that the complaint is uncertain. Therefore, the Court will overrule the demurrer on the grounds of uncertainty.