February 20, 2026, Civil Law & Motion Tentative Rulings

1. CL0002737 Peters' Drilling & Pump Service, Inc. vs. Nathaniel McFarland, et al.

Appearances required by all parties to determine the status of the amount left unpaid on the contract considering the $1,000.00 payments made by Defendants after the filing of the complaint, as well as to discuss any potential double recovery by Plaintiff from foreclosure on the mechanic's lien.

Legal Standard

A plaintiff may move for a judgment on the pleadings on the ground "the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the compliant." Code Civ. Proc. § 438(c)(1)(A). "Motions by a plaintiff for judgment on the pleadings, which are less common, are the equivalent of a demurrer to an answer." *Engine Manufacturers Assn. v. State Air Resources Bd.* (2014) 231 Cal.App.4th 1022, 1034. "Where a plaintiff brings such a motion, [a court assumes] the defendant could have proven all of the factual allegations in its answer." *Alameda County Waste Management Authority v. Waste Connections US, Inc.* (2021) 67 Cal.App.5th 1162, 1173-74. The court will also "disregard the controverted allegations of the complaint." *Engine Manufacturers Assn., supra,* at 1034. "'Where the answer, fairly construed, suggests that the defendant may have a good defense, a motion for judgment on the pleadings should not be granted.'" *Ibid.* (citation omitted). In making its determination, a court is obliged "to indulge all inferences in favor of the party against whom the motion for judgment on the pleadings was made." *Treweek v. City of Napa* (2000) 85 Cal.App.4th 221, 234. Thus, in order to prevail, a plaintiff "must show (1) it has stated a cause of action and (2) the defendant's answer does not suggest a defense to the cause of action." *Anaheim Mobile States, LLC v. State of California* (2025) 113 Cal.App.5th 602, 610.

Breach of Contract

Plaintiff argues the first amended complaint (FAC) states facts sufficient to constitute a breach of contract, and the answers filed by Defendants fail to constitute a defense to the FAC. The Court agrees.

Breach of contract requires the following elements: an enforceable contract, Plaintiff's performance or excused nonperformance, Defendant's breach, and damage to Plaintiff. *Wall Street Network, Ltd. v. N. Y. Times Co.* (2008) 164 Cal.App.4th 1171, 1178. An enforceable contract requires parties to be capable of contracting, their consent, a lawful object, and sufficient cause or consideration. Civ. Code § 1550. Valid consideration requires absolute acceptance which does not include statements of intention or promissory expressions. Civ. Code § 1585; *Am. Aeronautics Corp. v. Grand Cent. Aircraft Co.* (1957) 155 Cal. App. 2d 69, 79.

The FAC alleges Plaintiff entered into a written contract with Defendant Rowland acting as authorized agent of Defendant McFarland to replace a well pump; Plaintiff performed the work and labor required under the contract and agreed to a payment plan; Defendants failed to make payments required by the payment plan; and Defendants still owe $3,655.17, plus interest and attorney's fees. FAC, ¶¶ 5-12. In their answers, each Defendant admits to the existence of the

contract and breach, and request a manageable payment plan. Therefore, Plaintiff has shown it stated a cause of action and Defendants' answers do not suggest a defense to the cause of action. For that reason, judgment on the pleadings is granted as to the first cause of action. Judgment shall be for $2,655.27 ($3,655.27 (original unpaid debt), less $1,000.00 (two post-complaint payments by Defendants).

Enforcement of Mechanic's Lien

While normally preliminary notice is a prerequisite to recording a lien claim, "[a] claimant with a direct contractual relationship with an owner or reputed owner is required to give preliminary notice only to the construction lender or reputed construction lender, if any." Civ. Code § 8200(e)(2). Generally, an action to enforce a mechanic's lien must be filed "within 90 days after recordation of the claim of lien." Civ. Code, § 8460(a). At bar, the FAC shows Plaintiff was under direct contract with the owner of the property, and so it was not required to give notice to the owner. Moreover, Plaintiff filed the action to enforce a mechanic's lien within 90 days after recording the claim of lien.

The purpose of a mechanic's lien is "to prevent unjust enrichment of a property owner at the expense of a laborer or material supplier." *Burton v. Sosinsky* (1988) 203 Cal.App.3d 562, 568. "Since a laborer's work benefits the property subject to a mechanic's lien, the owner of that property is subject to a lien for labor and materials to prevent his unjust enrichment." *Royster Construction Co. v. Urban West Communities* (1995) 40 Cal.App.4th 1158, 1165.

At bar, Plaintiff "proved the elements of a cause of action to foreclose on a mechanic's lien: the fact that its labor, services, and materials were used in a work of improvement, the reasonable value of its contribution, and the date the work was complete." *Vought Construction Inc. v. Stock* (2022) 84 Cal.App.5th 622, 637. Plaintiff "is entitled to a judgment ordering foreclosure on the lien—subject, of course, to Stock's right of redemption (Civ. Code, § 2903) and to [Plaintiff]'s duty to credit against the lien any payment received pursuant to its personal judgment against [Defendants] (*id.*, § 8468, subd. (b))." *Ibid.*

Attorney's Fees/Costs

"Attorney[']s fees are not recoverable in actions to foreclose upon a mechanics' lien." *Korech v. Hornwood* (1997) 58 Cal.App.4th 1412, 1420. " If, however, there is a contract between the claimant and the owner of the property which contains an attorney[']s fees clause, the claimant can recover fees pursuant to the contract, but it is not the lien that creates the right to fees." At bar, there is a contractual fees provision. Plaintiff, is the prevailing party, and is entitled to reasonable attorney's fees in the amount of $4,785.83 with costs of $885.40.

2. CU0001760 In the Matter of County of Nevada

Receiver Richardson Griswold's ("Receiver") motion for authorization to increase receivership funding is granted.

On April 14, 2025, the court appointed the Receiver to take full control and possession of Defendant Craig Hufnagel's property located at 16069 Shannon Way, Nevada City, California

95959 ("Subject Property") and delegated the duty and authority to correct all of the existing violations existing upon the Property and ensure they do not reoccur. ("Appointment Order"). Griswold Decl., ¶ 3. In pertinent part, the Appointment Order grants the Receiver the following powers and duties: (1) "To issue and record Certificates of Indebtedness secured by deeds of trust against the Subject Property to evidence and secure the above debt, which shall become a first lien on the Subject Property superior to all preexisting private liens and encumbrances. The Receiver's Certificates shall be issued for such amounts and for such items as the Court may hereafter expressly authorize, upon notice and after hearing as herein provided…." and (2) "To sell the Subject Property, pursuant to Code of Civil Procedure Section 568.5 or any other manner or sale deemed reasonable by the Court, subject to the Court's confirmation and approval." Appointment Order, ¶¶ 3(H), (N).

Courts have substantial discretion to authorize a receiver to borrow money to fund the preservation and management of property in the receivership estate, particularly where, as here, the estate does not produce income. In that circumstance, the receiver may ask the court to authorize the issuance of a receiver's certificate to the lender as security for money loaned to the estate. Typically, such a receivership certificate will have priority over all other liens – even preexisting liens. *City of Sierra Madre v. SunTrust Mortgage, Inc.* (2019) 32 Cal. App. 5th 648, 657; *see County of Sonoma v. Quail* (2020) 56 Cal. App. 5th 657, 673 (a court has "authority to fund a receivership on a super-priority basis in the appropriate circumstance.")

On April 14, 2025, the Court authorized the Receiver to issue an initial $25,000 Receiver's Certificate to fund the Receiver's efforts to take possession of, secure, stabilize, insure, assess and clean the Subject Property. Appointment Order, ¶ 9. After exploring several approaches to abate the violations at the Subject Property, the Receiver indicates that full rehabilitation through the receivership unfeasible because of prior defective work and unpermitted partially completed work. Griswold Decl., ¶ 6. The Receiver declares that the only other option is an as-is sale of the Subject Property. *Id*. The Receiver notes the initial $25,000 Receiver's Certificate was used to conduct an initial inspection, obtain property insurance, source bids, and prepare a rehabilitation plan to correct the violations, with the initial funding being exhausted. Griswold Decl., ¶ 15. The Receiver now seeks the Court's authorization of a $25,000 increase in the existing Receiver's Certificate funding to pay the Receiver's fees and costs to conduct the sale of the Property. Griswold Decl., ¶ 16.

The Court finds the Receiver has demonstrated good cause to grant the requested relief in its entirety. The Receiver's proposed plan and request for funding are reasonable and within the scope of authority previously granted by the Court.

The Court has carefully considered all of the information provided by Respondent Hufnagel in his written opposition to the Receiver's request. The Court is not persuaded by any of the arguments in opposition. In short, Respondent has failed to present admissible evidence demonstrating that the Subject Property could be fully rehabilitated through a feasible, funded, and permit-ready plan that would eliminate the need for the Receiver's requested relief.

The Court grants the motion and authorizes the Receiver to obtain an additional $25,000.00 in receivership funding to be secured by a super-priority lien against the property for listing the Subject Property for sale and to pay other costs of the receivership. The Receiver must seek

advance approval of the Court for any sale of the Subject Property and demonstrate compliance with all of the requirements set forth in Code of Civil Procedure section 568.5 prior to any sale of the Subject Property.

3. CU0002161 Kathleen Leonard vs. T.M.W. Craftsman, Inc. dba California Craftsman, et al.

Defendant TMW Craftsman Inc.'s ("TMW") motion to set aside entry of default is granted. Plaintiff's request for attorney's fees is granted in the amount of $100.00.

TMW moves to set aside entry of default due to attorney "mistake, inadvertence, surprise or neglect." Code Civ. Proc. § 473(b). That request has merit.

Relief under Code of Civil Procedure section 473(b) is either discretionary or mandatory. A motion for mandatory relief must be made no more than six months after entry of judgment and be accompanied by an attorney's sworn affidavit attesting to the attorney's "mistake, inadvertence, surprise or neglect." Code Civ. Proc. § 473(b). The attorney affidavit of fault must contain a "straight forward admission of fault." *State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610. But it need not contain an explanation of the reasons for the attorney's mistake, inadvertence surprise or neglect. *Martin Potts & Assocs., Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 438-441. Relief must be granted "unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect." *Ibid*. If mandatory relief is granted, the court must "direct the attorney to pay reasonable compensatory legal fees and costs" to the opposing counsel or parties. Code Civ. Proc. § 473(b). A motion for relief under section 473(b) "shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted. . ." Code Civ. Proc. § 473(b).

Defendant has demonstrated it is entitled to mandatory relief under Code of Civil Procedure section 473(b). Plaintiff filed this motion on November 14, 2025, less than two weeks after the November 3, 2025, request for default. Counsel provides an affidavit regarding the surprise and excusable neglect involved. *See* Pritchard Decl. Counsel claims that this case was dismissed as a result of his belief the parties were undergoing settlement negotiations, and the mistake of prioritizing an attempt to settle the case. Pritchard Decl., ¶¶ 2-4. Counsel explains that on October 28, 2025, Plaintiff's counsel emailed him stating he would grant Defendant's counsel "a few extra days" to get something on file, but was surprised when default was entered on November 3, 2025, with no further discussion from Plaintiff's counsel. Pritchard Decl., ¶ 4-5. Counsel states his office immediately prepared a stipulation to set aside default and transmitted it to Plaintiff's counsel, but Plaintiff's counsel declined the same. Pritchard Decl., ¶¶ 6, 7. Thereafter, Counsel filed the underlying motion. Pritchard Decl. ¶ 2.

Plaintiff submitted only a limited opposition to TMW's motion for relief to "correct the record" regarding positions taken by TMW in the moving papers and to request defendant pay "reasonable compensatory legal fees and costs" of $2,483.90. In its limited opposition, Plaintiff's counsel claims fees of $2,483.90 for the entry of default, communications regarding the proposed stipulation, drafting the opposition, and other miscellaneous tasks. Kirkland Decl.,

¶¶ 10-11. The Court finds that the *reasonable* compensatory fees are those associated with entry of default and preparing/filing an "opposition." Reasonable fees are $600.00 (1.5 hours at $400.00/hour); reasonable costs are $33.90.

4. CU0002342 Sierra Winje vs. Mark Matkin

Defendant's motion to strike is denied.

Defendant moves to strike the prayer for exemplary damages in the complaint. The Court is not persuaded.

As a preliminary matter, Defendant's Notice of Motion is defective. "A notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. Specifications in a notice must be numbered consecutively." Cal. Rules of Court, rule 3.1322(a).

At bar, defendant's notice of motion to strike does not comply with this requirement. It does not quote in full the portions sought to be stricken nor are the items to be stricken numbered consecutively. Defendant seeks to strike the "prayer for exemplary damages" but does not move to strike specific references to punitive and exemplary damages or the exemplary damages attachment. Defendant's motion is defective, therefore, on this procedural ground.

Turning to the merits, "[t]he court may, upon a motion … Strike out any irrelevant, false, or improper matter inserted in any pleading." Code Civ. Proc. § 436(a). "The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." Code Civ. Proc. § 437(a). Pleadings are to be construed liberally with a view to substantial justice between the parties. Code Civ. Proc. § 452. "[J]udges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.

Civil Code section 3294, subdivision (a) provides:

> In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

With respect to punitive damage allegations, mere legal conclusions of oppression, fraud or malice are insufficient and therefore may be stricken. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. However, if looking to the complaint as a whole, sufficient facts are alleged to support the allegations, then a motion to strike should be denied. *Id.* Allegations that include conclusions of law or that are considered to be ultimate facts will stand if sufficient facts are alleged to support them. *Id.* Stated another way, if the facts and circumstances are set out clearly, concisely, and with sufficient particularity to apprise the opposite party of what is called on to answer, such is sufficient to support a claim for punitive damages. *Lehto v. Underground Const. Co.* (1977) 69 Cal.App.3d 933, 944.

Punitive damages are awardable only where there is clear and convincing evidence of "malice." Malice means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. Code Civ. Proc. § 3294(c)(1). Under the statute, malice does not require actual intent to harm. *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1299. Therefore, an allegation that a defendant intended to injure a plaintiff or acted in conscious disregard of her safety will suffice. *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 32-33. Conscious disregard for the safety of another may be sufficient where the defendant is aware of the probable dangerous consequences of her conduct and she willfully fails to avoid such consequences. *Pfeifer*, 220 Cal.App.4th at 1299. Malice may be proved either expressly through direct evidence or by implication through indirect evidence from which the jury draws inferences. *Id*.

At bar, the complaint alleges as follows: Defendant consumed alcohol at his residence and drove himself to a nearby store to purchase more alcohol, after which he prepared himself an alcoholic drink and had an open container of alcohol in his vehicle. Defendant consumed alcohol *to the point of impairment* knowing he would drive. Despite a clear and unobstructed view of oncoming traffic, defendant made a negligent left turn into motorcyclist Joshua Winje while driving with the open container. After hitting the motorcyclist, defendant, whose pants were soaked with alcohol, attempted to leave the scene but was prevented by bystanders from doing so. Defendant also tried to remove the alcohol containers from the vehicle and hide them. Defendant's actions were willful and in conscious disregard for the safety of others, including Joshua Winje, spouse of Plaintiff Sierra Winje.

Taking the allegations as a whole and fair inferences therefrom, and assuming their truth as required, the allegations sufficiently allege that defendant engaged in despicable conduct with a willful and conscious disregard of the rights or safety of others. There are adequate allegations to support a claim for exemplary damages.

Defendant's motion is denied.

5. CU0002398 Cheryl A. Zook vs. Monte J. Smith, DDS

Defendant Monte J. Smith D.D.S.' demurrer to plaintiff's first amended complaint (FAC) is sustained with leave to amend. Plaintiff shall file and serve a second amended complaint within ten (10) days of entry of this court's order.

Defendant's motion to strike portions of plaintiff's complaint for damages is granted. The court hereby strikes the following portion of the prayer for judgment in the FAC: "5. For leave to pursue punitive damages." FAC, 12:11. If Plaintiff wishes to include a prayer for punitive damages, she must properly file, notice and serve a motion for leave under Code of Civil Procedure section 425.13.

Demurrer

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. 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 demurrer can be sustained only when it disposes of an entire cause of action. *Poizner v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119; *Kong v. City of Hawaiian Gardens Redev. Agency* (2003) 108 Cal.App.4th 1028, 1046. Leave to amend should be granted when "there is a reasonable possibility that the defect can be cured by amendment." *Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Shaeffer v. Califia Farms* (2020) 44 Cal.App.5th 1125, 1145.

Second Cause of Action: Breach of Contract

Defendant argues Plaintiff's second cause of action alleges a tort claim rather than a breach of contract. The Court agrees.

Generally, the elements of a breach of contract cause of action are the existence of the contract, performance by the plaintiff or excuse for nonperformance, breach by the defendant and resulting damages. *First Commercial Mortgage Co. v. Reece* (2001) 89 Cal.App.4th 731, 745. However, the scope of a patient's recovery for breach of contract against a doctor, or as here, a dentist, is more limited. "[A] doctor may be held liable on a theory of breach of contract where he has clearly and unequivocally warranted that a course of treatment recommended by him will, inevitably, produce a certain result." *Pulvers v. Kaiser Foundation Health Plan, Inc.* (1979) 99 Cal.App.3d 560, 564–565; *accord McKinney v. Nash* (1981) 120 Cal.App.3d 428, 442 ("To recover for breach of warranty or contract in a medical malpractice case, there must be proof of an express contract by which the physician clearly promises a particular result and the patient consents to treatment in reliance on that promise"); *Depenbrok v. Kaiser Foundation Health Plan, Inc.* (1978) 79 Cal.App.3d 167, 171 (where "a surgeon has clearly promised a particular result (as distinguished from a mere generalized statement that the result will be good), and ... the patient consented to an operation or other procedure in reliance on that promise, there can be recovery on the theory of ... breach of contract.")(fn. omitted).

Uniformly, courts have held that "an action against a doctor arising out of his negligent treatment of a patient is an action sounding in tort and not one based upon a contract." *Bellah v. Greenson* (1978) 81 Cal.App.3d 614, 625 (citations omitted); accord, *Stafford v. Shultz* (1954) 42 Cal.2d 767, 775 ("an action by a patient against a physician for injuries sustained by the former, by reason of the negligent or unskilled treatment of the latter, is an action sounding in tort and not upon a contract"); *Huysman v. Kirsch* (1936) 6 Cal.2d 302, 306.

Additionally, to sufficiently allege breach of contract, the complaint must indicate on its face whether the contract is written, oral, or implied by conduct. Code Civ. Proc. § 430.10(g). If the action is based on an alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written instrument must be attached and incorporated by reference. *Wise v. Southern Pacific Co.* (1963) 223 Cal.App.2d 50, 59.

At bar, the FAC merely states, "Plaintiff and Defendants entered into an agreement for cosmetic dental services in exchange for payment. Defendants expressly promised natural, uniform, and consistent cosmetic results based on the digital treatment imagery they presented representing the expected aesthetic outcome." FAC, 7:1-5. The FAC alleges defendants clearly promised a particular result via digital imagery; however, the FAC fails to indicate if the contract was written, oral, or implied. Moreover, the FAC fails to include allegations that plaintiff consented to treatment *in reliance on* an express contract by which the physician clearly promises a particular result.

Therefore, the demurrer to the second cause of action is sustained. In determining whether to sustain a demurrer with or without leave to amend, the court evaluates whether there is any reasonable possibility that the defect can be cured by amendment. *Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636. "If there is any reasonable possibility that the plaintiff can state a good cause of action, it is error to sustain a demurrer without leave to amend." *Youngman v. Nevada Irr. Dist.* (1969) 70 Cal.2d 240, 245. Here, the Court finds Plaintiff may be able to cure the defect. Thus, leave to amend is granted.

Third Cause of Action – Fraud and Misrepresentation

Defendant contends Plaintiff has failed to allege sufficiently specific facts showing how, when, where, by whom, or by what means Plaintiff was fraudulently induced to continue treatment and delay seeking corrective care. The Court agrees.

" 'One who fraudulently makes a misrepresentation of fact ... for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation.' ". *Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85, 92-93. "The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, *i.e.*, to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638. "In California, fraud must be pled specifically; general and conclusory allegations do not suffice. … [¶] This particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.' " *Id.* at 645 (original italics, citations and quotation marks omitted). In addition, "[e]very element of a

fraud cause of action must be specifically pleaded. This pleading requirement of specificity applies not only to the alleged misrepresentation, but also to the elements of causation and damage." *Moncada v. West Coast Quartz Corp.* (2013) 221 Cal. App. 4th 768, 776.

At bar, the FAC alleges Defendants were on notice of defects in the dental work performed on Plaintiff but made false and misleading statements regarding the quality of the work and adequacy of corrective efforts, as well as misrepresented communications with Defendants' liability insurer. FAC, 8:19-23; 9:17-10:14. It further alleges that Defendants concealed the loss of the digital imagery which depicted the promised results. FAC, 10:5-17. Thereafter, it alleges reasonable reliance on the representations and damages resulting therefrom. FAC, 10:16-27.

At bar, Plaintiff has not alleged, with the required specificity, all elements of a cause of action for fraud. As such, the demurrer as to the third cause of action is sustained. The court finds there is possibility the defect can be corrected by amendment; accordingly, leave to amend is granted.

Fourth Cause of Action – Concealment

Defendant argues the fourth cause of action for fraudulent concealment again fails to identify who engaged in what alleged concealment, when, how, and whether plaintiff relied on such concealment to her detriment. The court again agrees in part.

The elements for fraudulent concealment are: (1) the defendant must have concealed or suppressed a material fact; (2) the defendant must have been under a duty to disclose the fact to the plaintiff; (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff; (4) the plaintiff must have been unaware of other fact and would not have acted as he did if he had known of the concealed or suppressed fact; and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage. *Lovejoy, supra,* 119 Cal.App.4th at 157-158.

At bar, the FAC generally alleges, "Defendants intentionally concealed material facts," including a failure to disclose that improper treatment was performed, that the digital design representation had been deleted, contact information for the liability insurer, and that no insurance review had occurred, upon which Plaintiff relied upon to her detriment, resulting in damages. FAC, 11:4-26.

Here again, Plaintiff has not alleged, with the required specificity, all elements of a cause of action for fraud by concealment. As such, the demurrer as to the third cause of action is sustained. The court finds there is possibility the defect can be corrected by amendment; accordingly, leave to amend is granted.

Motion to Strike

Defendant moves to strike the FAC's prayer for leave to seek punitive damages. This motion has merit.

A motion to strike lies where a pleading contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." Code Civ. Proc. § 436(b). Under Code of Civil Procedure section 425.13(a), "In any action for damages arising out of the professional negligence of a health care provider, no claim for punitive damages shall be included in a complaint" without a court order upon a motion by the plaintiff.

This is an action for damages arising out of the professional negligence of Defendant Smith and DSI, both health care providers. Leave was not sought to seek punitive damages. As such, the Court strikes the prayer for punitive damages. If plaintiff chooses to pursue punitive damages, she must file a motion seeking appropriate leave.

6. CU0002292 Arthur K. Chapman vs. Todd A. Chapman, et al.

Defendants Todd A. Chapman and JMA Ventures, LLC's (JMA) demurrer to plaintiff's first amended complaint is overruled.

Legal Standard on Demurrer – Sufficiency

A demurrer tests whether the complaint sufficiently states a valid cause of action. *Hahn v. Merda* (2007) 147 Cal.App.4th 740, 747. A demurrer may only challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. Code Civ. Proc. § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

Complaints are read as a whole, in context, and are liberally construed. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601. In reviewing the sufficiency of a complaint, courts accept as true all material facts properly pleaded and matters that may be judicially noticed, but not contentions, deductions, or conclusions of fact or law, or the construction of instruments pleaded, or facts impossible in law. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; *see also South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732. Opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.

Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Development v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.

Legal Standard on Demurrer – Uncertainty

A special demurrer for uncertainty, Code of Civil Procedure section 430.10(f), is disfavored and will only be sustained where the pleading is so bad that defendant cannot reasonably respond—*i.e.*, cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him/her. *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616. Moreover, even if the pleading is somewhat vague, "ambiguities can be clarified under modern discovery procedures." *Ibid.*

Breach of Contract

Defendants argue Plaintiff fails to state facts sufficient to constitute a cause of action for breach of written contract and fails to establish specific obligations owed by each defendant in accordance with the agreement. The Court disagrees.

"To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." *Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186. "A contract is a voluntary and lawful agreement, by competent parties, for a good consideration, to do or not to do a specified thing." *Robinson v. Magee* (1858) 9 Cal. 81, 83.

At bar, Plaintiff pleads the existence of a written contract between Plaintiff and Defendants, whereby Plaintiff sold his ownership interest in Defendant JMA to Defendant Chapman, FAC, ¶¶ 7-8; Plaintiff performed all obligations under the contract, FAC, ¶ 9; Defendants breached the contract by failing to pay plaintiff amounts when due and failing to co-manage certain projects under the terms of the contract, FAC ¶ 10; and as a result of the breach, Plaintiff was damaged, FAC ¶ 10.

Plaintiff has properly pleaded a breach of contract action. The demurrer to the FAC is overruled. To the extent there exists some uncertainty with respect to these allegations, any "ambiguities can be clarified under modern discovery procedures." *Khoury*, 14 Cal.App.4th at 616.