

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 20 (Calendar will be heard in Department 8)  
Hon. Eric S. Geffon (Covering for Hon. Socrates Manoukian)**

191 North First Street, San Jose, CA 95113

Telephone: 408-882-2210

**DATE: March 26, 2024      TIME: 9:00 A.M.**

**To contest the ruling, call (408) 882-2180 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling,  
in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**NEW INFORMATION – PLEASE READ:** The court is now fully open for in-person hearings. The court **strongly prefers** in-person appearances for all contested law-and-motion matters. If you need to appear remotely for a law-and-motion hearing, please file and serve Form RA-010 at least two court days in advance. (Cal. Rules of Court, rule 3.672(g).) For all other hearings (e.g., case management conferences), Form RA-010 is not required to appear remotely. While parties and attorneys may appear either in person or remotely for CMCs, the court **strongly prefers** either in-person or video appearances rather than audio-only appearances.

**CourtCall is no longer available.** The court uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 8: [https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml). Again, if you are appearing remotely, please log in using a computer or phone with video capability, and please turn your camera on when your case is called. Although MS Teams allows for audio-only appearances, they cause significant disruptions to court proceedings and should be used only as a last resort.

**Recording is prohibited:** As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

**Court reporters:** Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See [https://www.scscourt.org/general\\_info/court\\_reporters.shtml](https://www.scscourt.org/general_info/court_reporters.shtml).

**Troubleshooting Tentative Rulings**

If you do not see this week's tentative rulings, either they have not yet been posted, or your web browser cache (temporary internet files) is pulling up an older version. You may need to "REFRESH" your browser or "QUIT" and reopen it – or adjust your internet settings so you only see the current version of the web page. Otherwise, your browser may continue to show an older version of the web page even after the current tentative rulings have been posted.

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LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1-2</a>	19CV348624	<i>Long Gao v. Bethany Liou, et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>On the court's own motion, this matter is continued to April 30, 2024 at 9:00 a.m. in Department 20.</p>
<a href="#">LINE 3-5</a>	20CV369499	<i>Eric Kutcher, et. al. v. Vahe Tashjian, et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>See tentative decision, below.</p>

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<u><a href="#">LINE 6-7</a></u>	1998-7-CV-365367	<i>Franklin Bank v. Ngo Loi T</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>Before the court are two motions filed by Defendant. First, a motion to set aside a default judgment entered in 1999. Additionally, Defendant has filed a claim of exemption. Plaintiff has filed a notice of non-opposition to both motions, and is requesting the court dismiss the action in its entirety.</p> <p>The motion to set aside the default judgment is GRANTED and the matter is DISMISSED in its entirety. Given these orders, the court need not address the claim of exemption.</p> <p>The court will prepare the final order.</p>
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<a href="#">LINE 8</a>	22CV402498	<i>Jose Lopez Ruiz v. Shark City Builders, Inc., et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>At Defendant's request, their Motion to Compel a Second Independent Medical Examination with Dr. Reader and For an Order to Dilate Plaintiff's Eyes is WITHDRAWN without prejudice.</p> <p>The matter remains set for trial on January 27, 2025 with a trial assignment calendar hearing set for January 23, 2025 at 1:30 in Department 6.</p>
<a href="#">LINE 9</a>	23CV419028	<i>Flavio Pando, et. al., v. Wells Fargo Bank, N.A., et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>On the court's own motion, this matter is continued to May 21, 2024 at 9:00 a.m. in Department 20.</p>

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<a href="#">LINE 10</a>	17CV308093	<i>Lai v. Wang, et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.</p> <p><a href="https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>Counsel is invited to attend the hearing with a proposed judgment for the court to review and consider.</p>
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<u><a href="#">LINE 11</a></u>	18CV333383	<i>South Valley Medical Plaza, LLC v. The Family-Centered Ear, Nose and Throat Group</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>Plaintiff brings this motion to set aside and vacate the Acknowledgment of Satisfaction of Judgment filed with this court on November 11, 2023, thereby reinstating the judgment entered on July 1, 2020.</p> <p>The motion was properly served, and no opposition has been filed. The failure to file an opposition can be considered consent to the granting of the motion. (Cal. Rule of Court, 8.54(c).)</p> <p>The motion to set aside and vacate is GRANTED. Plaintiff is ordered to prepare the order for the court's signature.</p>
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<a href="#">LINE 12-13</a>	22CV404479	<i>Stephen Turner v. Homewood Suites Management, LLC, et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>Defendant's Motion for Leave to File a Cross-Complaint against Deacon Corp. is GRANTED. Defendant is to file the cross-complaint within 10 days of this order.</p>
<a href="#">LINE 14</a>	22CV408499	<i>Dagmar Horvath v. Mandy Brady</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>On the court's own motion, this matter is continued to May 21, 2024 at 9:00 a.m. in Department 20.</p>

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<a href="#">LINE 15</a>	23CV417149	<i>B-Line Construction, Inc. v. Wen</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>Plaintiff's Motion for Service of Summons by Publication is GRANTED. Plaintiff is ordered to prepare the order for court signature.</p>
<a href="#">LINE 16</a>	21CV377473	<i>Alayna Tran v. San Jose Healthcare System, L.P., et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>Petition to Approve Minor's Compromise is GRANTED. The court will sign the proposed order contained in the file.</p> <p>The trial setting date currently set for April 9, 2024 is VACATED.</p>



### **Calendar Lines 3-5**

**Case Name:** *Eric Kutcher et al. v. Vahe Tashjian et al.*

**Case No.:** 20CV369499

## **I. Background**

This action arises from the sale of real property located at 24925 Oneonta Drive, Los Altos. Homebuyers Eric and Lauren Kutcher filed a complaint against Vahe Setrak Tashjian, Ahmad and Safoora Javid, and others.<sup>1</sup> The background facts are set forth in detail in Judge Geffon's order of December 14, 2023, and need not be repeated herein.

On June 27, 2023, Ahmad and Safoora Javid, individually and as trustees of the Javid Family Trust, and their adult daughter Roya Javid, filed the first amended cross-complaint (FACC) against two groups of cross-defendants: the Tashjian Defendants and the OCTC Defendants.<sup>2</sup> Safoora Javid subsequently passed away. Ahmad contends he is Safoora's successor in interest and the sole Trustee of the Javid Family Trust.<sup>3</sup> This is disputed because, on November 30, 2023, Roya filed a petition in the probate division of this court, requesting, among other things, an order ascertaining the trust beneficiaries and determining to whom property shall pass.<sup>4</sup>

The OCTC Defendants (referred to herein as "Orange Coast"), filed a demurrer to the Javids' FACC. Ahmad Javid and Safoora Javid, individually and as Trustees of the Javid Family Trust, filed no opposition. Roya retained separate counsel and filed an opposition to the demurrer to the FACC. Judge Geffon's order of December 14, 2023, sustained Orange Coast's demurrer to the FACC as to all cross-complainants, with leave to amend.

On December 26, 2023, Ahmad, individually and as purported sole Trustee of the Javid Family Trust (collectively, "Ahmad"), filed a second amended cross-complaint (SACC) stating the following causes of action against Orange Coast: 1) Fraud by Misrepresentation; 2) Fraud by Concealment; 3) False Promise; 4) Negligent Misrepresentation; 5) Breach of Fiduciary Duty or Confidential Relationship; 6) Violation of Penal Code section 496; 7) Negligence; 8)

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<sup>1</sup> The complaint sues Ahmad and Safoora Javid individually and as trustees of the Javid Family Trust Dated June 24, 1981.

<sup>2</sup> The "Tashjian Defendants" are defined as Vahe Setrak Tashjian, 24925 Oneonta Drive, LLC, and 1575 Grant Drive, LLC. (FACC, ¶¶ 3-5, 9.) The "OCTC Defendants" are defined as Orange Coast Title Company of Northern California and employee Susan Trujillo. (FACC, ¶¶ 6-7, 12.)

<sup>3</sup> Because individuals involved in this case share the same last name, the court will refer to them by their first names. No disrespect is intended. (See *In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 551, fn. 2; *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

<sup>4</sup> Santa Clara County Case No. 23PR196145.

Breach of Contract (against cross-defendant Orange Coast Title Company only); and 15) Conspiracy (against all cross-defendants).<sup>5</sup>

On December 26, 2023, Roya filed her operative second amended cross-complaint (SACC) stating the following causes of action against Orange Coast: 1) Breach of Fiduciary Duty; 2) Slander of Title; 3) Fraud by Concealment; 4) Negligence; and 9) Conspiracy (against all cross-defendants).<sup>6</sup>

On January 31, 2024, Orange Coast filed separate demurrers to Ahmad and Roya's respective SACCs. On February 21, 2024, Orange Coast filed a motion to bifurcate punitive damages. On February 26, 2024, Vahe Tashjian filed an *ex parte* application for an order staying civil action pending resolution of a criminal proceeding.

This matter is presently scheduled for trial on April 18, 2024, per the court's March 12, 2024 minute order.

## **II. Demurrers in General.**

A complaint must contain substantive factual allegations sufficiently apprising the defendant of the issues to be addressed. (See *Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

A demurrer tests the legal sufficiency of a complaint. It is properly sustained where the complaint or an individual cause of action fails to "state facts sufficient to constitute a cause of action." (Code Civ. Proc., §430.10, subd. (e).) "It is fundamental that a demurrer is an attack against the complaint on its face, it should not be sustained unless the complaint shows that the action may not be pursued." (*Yolo County Dept. of Social Services v. Municipal Court* (1980) 107 Cal.App.3d 842, 846-847.)

"It is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which he describes the defendant's conduct. A demurrer tests only the legal sufficiency of the pleading." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213 (*Committee*).) "It 'admits the truth of all material factual allegations in the complaint . . .; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.' [Citation.]" (*Id.* at pp. 213-214; see *Cook v. De La Guerra* (1864) 24 Cal. 237, 239 ["[I]t is not the office of a demurrer to state facts, but to raise an issue of law upon the facts stated in the pleading demurred to."].)

## **III. Demurrer to Ahmad's SACC**

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<sup>5</sup> Ahmad's SAXC also states the following causes of action, only against the (non-demurring) Tashjian's Defendants: 9) Fraud; 10) False Promise; 11) Negligent Misrepresentation; 12) Breach of Contract; 13) Violation of Penal Code section 496; 14) Aiding and Abetting Breach of Fiduciary Duty.

<sup>6</sup> Roya's SACC also states the following causes of action, only against the non-demurring Tashjian Defendants: 5) Breach of Contract; 6) Aiding and Abetting Breach of Fiduciary Duty; 7) Fraud; and 8) Violation of Penal Code section 496.

Orange Coast demurs to the second, fifth, seventh, and eighth causes of action of Ahmad's SACC on the ground of failure to state a claim (Code Civ. Proc., § 430.10, subd. (e)). (Notice of Demurrer and Demurrer, pp. 2:16-21, 4:9-23; 5:3-5.) With respect to the eighth cause of action only, Orange Coast also demurs on the ground of uncertainty (Code Civ. Proc., § 430.10, subd. (f)) and on the ground that Ahmad may not add an additional cause of action when filing an amended pleading after a successful demurrer without leave of court. (*Id.*, pp. 4:25-5:7.)

#### **A. Standing**

As a preliminary matter, Orange Coast raises an argument in its reply that it did not raise in its demurrer: that Ahmad may not have standing because his claimed status as the sole Trustee of the Javid Family Trust has not been adjudicated. (Reply, p. 3:5-20.) Orange Coast filed a brief addressing the standing issue for the hearing that occurred on March 12, 2024.<sup>7</sup> The court ruled that Orange Coast's demurrers to Ahmad and Roya's respective SACCs are both to remain as set for March 26, 2024. (See the court's March 12, 2024 minute order.)

In conjunction with its reply, Orange Coast requests judicial notice of documents relating to the probate proceedings to support its standing argument. Evidence Code sections 452 and 453 permit the trial court to "take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact." (*People v. Woodell* (1998) 17 Cal.4th 448, 455.) Orange Coast's request for judicial notice is GRANTED, insofar as the court takes judicial notice of the existence of the documents, though not necessarily of the truth of any matters asserted therein.

Orange Coast fails to show that Ahmad's purported lack of standing is evident from the face of the pleading or facts subject to judicial notice. (See *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [a demurrer can be used only to challenge defects that appear on the face of the pleading or from matters subject to judicial notice].) As Orange Coast asserts, Roya's petition in the probate division remains pending. What Orange Coast has shown is that, at some unspecified point in the future, Ahmad *may* lack standing to bring an action on behalf of the trust. This is not sufficient to sustain a demurrer. Reaching the merits of Orange Coast's demurrer causes little prejudice because, as Orange Coast admits, standing may be raised at any time in the proceeding. Therefore, the court declines to sustain Orange Coast's demurrer to Ahmad's SACC based on his purported lack of standing.

#### **B. Eighth Cause of Action – Breach of Contract**

Orange Coast initially contends Ahmad's breach of contract cause of action is subject to demurrer because it does not appear in the FACC. (Dem., pp. 16:24-17:16). Ahmad argues he had the right to amend his pleading before the prior demurrer was heard and that the breach of contract claim is within the scope of the order granting leave to amend. (Opp., pp. 14:16-15:11.)

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<sup>7</sup> See Orange Coast's supplemental brief for *ex parte* hearing, filed on March 11, 2024.

“A party may amend its pleading once without leave of the court at any time before the answer, demurrer, or motion to strike is filed, or after a demurrer or motion to strike is filed and served no later than the date for filing an opposition to the demurrer or motion to strike.” (Code Civ. Proc., § 472, subd. (a).)

“Following an order sustaining a demurrer or a motion for judgment on the pleadings with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court’s order. [Citation.] The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend. [Citation.]” (*Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023; see also *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015 [acknowledging rule but finding it inapplicable where the new cause of action “directly responds” to trial court’s reason for sustaining the demurrer].)

Here, court records show that Ahmad served and at least attempted to file a second amended complaint before the December 14, 2023, hearing on the demurrer to the FACC. But the pleading submitted on November 29, 2023 (containing a breach of contract cause of action) was rejected, and Ahmad’s operative SACC contains further changes that were not present in that pleading and the SACC was not actually filed until December 26, 2023. Nevertheless, the court finds that the breach of contract cause of action is within the scope of the court’s prior order. The court’s order identified a defect in the form of the lack of escrow instructions, and Ahmad’s SACC now describes purported escrow agreements comprised of escrow instructions. (Order on Demurrer, p. 6:18-21; SACC, ¶ 102.)

Orange Coast further contends the breach of contract cause of action fails because it does not specifically identify the terms of the contract. (Dem., pp. 17:18-18:5.) Orange Coast points out that the document attached to the SACC as Exhibit A, and referenced in the eighth cause of action, does not relate to an agreement with Ahmad. Ahmad admits to attaching the wrong document. (Opp., p. 15:12-17.) Orange Coast’s argument, however, lacks merit according to its own authority: “[t]o state a cause of action for breach of contract, it is absolutely essential to plead the terms of the contract either in *haec verba* or according to legal effect.” (*Twaite v. Allstate Ins. Co.* (1989) 216 Cal.App.3d 239, 252, emphasis added.) Here, Ahmad pleaded the legal effect of the purported contracts in the pleading itself. (SACC, ¶¶ 101-108.)

Orange Coast raises a new argument in its reply: that the eighth cause of action is time-barred. (Reply, pp. 5:19-6:9.) This is not a basis for demurrer as it was not raised in the Notice of Demurrer and Demurrer. (Code Civ. Proc., § 430.60 [“A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded.”].) It would be unpersuasive even if it had been properly raised because Orange Coast’s analysis ignores the filing date of the initial cross-complaint (September 11, 2020) and fails to show that the running of the statute appears clearly and affirmatively from the face of the pleading or judicially noticeable facts.

The demurrer to the eighth cause of action of Ahmad’s SACC is OVERRULED.

**C. Fifth Cause of Action – Breach of Fiduciary Duty or Confidential Relationship**

In its prior order on demurrer, the court found that the FACC failed to identify the specific escrow instructions giving rise to the alleged fiduciary duty. (Order on Demurrer, p. 6:18-21.) Ahmad's SACC now includes additional specific allegations relating to the Javids' escrow instructions. (SACC, ¶ 87.)

“The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) the breach of that duty; and (3) damages proximately caused by that breach.” (*Mosier v. Southern California Physicians Insurance Exchange* (1998) 63 Cal.App.4th 1022, 1044; see also *IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 646 [stating same]; *Brown v. Cal. Pension Adm'rs & Consultants* (1996) 45 Cal.App.4th 333, 347-348 [“The absence of any of these elements is fatal to the cause of action”].)

“Fiduciary and confidential have been used synonymously to describe any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party.” (*Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 271— internal punctuation and citations omitted.) “The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party. [Citation.]” (*Ibid.*)

“In order to plead a cause of action for breach of fiduciary duty, there must be shown the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach. The absence of any of these elements is fatal to the cause of action.” (*Brown v. California Pension Administrators & Consultants, Inc.* (1996) 45 Cal.App.4th 333, 347-348; see also CACI, No. 605.) “While breach of fiduciary duty is a question of fact, the existence of legal duty in the first instance and its scope are questions of law.” (*Kirschner Brothers Oil, Inc. v. Natomas Co.* (1986) 185 Cal.App.3d 784, 790.) A claim for breach of fiduciary duty can be based on the failure to use reasonable care, the duty of undivided loyalty, or the duty of confidentiality. (See CACI, Nos. 4101-4103.)

“Our Supreme Court has acknowledged that it is difficult to enunciate the precise elements required to show the existence of a fiduciary relationship.” (*Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 632 (*Oakland Raiders*) quoting and citing *Children's Television, supra*, 35 Cal.3d at p. 221.) “But the high court has noted that ‘before a person can be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf and for the benefit of another, or must enter into a relationship which imposes that undertaking as a matter of law. [Citations.]’” (*Ibid.*)

Here, the fifth cause of action alleges the requisite elements. It asserts the existence of a fiduciary obligation arising from the Javids' instructions regarding multiple escrows Orange Coast undertook for refinancing purposes. (SACC, ¶ 85.) The pleading also alleges damages resulting from Orange Coast's breach of its obligation by, among other things, failing to carry out the escrow instructions and falsely representing facts relating to the Javids' security interests entrusted with Orange Coast. (*Id.* at ¶¶ 87-88.)

In demurring, Orange Coast again points to Exhibit A of SACC, stressing that it contains instructions from Roya rather than Ahmad. (Dem., pp. 18:22-19:22.) As discussed previously, this argument lacks merit because the pleading itself describes the escrow instructions alleged as a basis for fiduciary duty owed to Ahmad and the Javids.

Orange Coast further argues the amended cause of action violates the sham pleading doctrine. (Dem., pp. 19:12-20:23.) Under the sham pleading doctrine, “admissions in an original complaint... remain within the court’s cognizance and the alteration of such statements by amendment designed to conceal fundamental vulnerabilities in a plaintiff’s case will not be accepted.” (*Lockton v. O’Rourke* (2010) 184 Cal.App.4th 1051, 1061.) The purpose of the doctrine is to “enable the courts to prevent an abuse of process.” (*Hanh v. Mirda* (2007) 147 Cal.App.4th 740, 751.) “[W]here a party files an amended complaint and seeks to avoid the defects of a prior complaint either by omitting the facts that rendered the complaint defective or by pleading facts inconsistent with the allegations of prior pleadings,” the court may examine the prior complaint to ascertain whether the amended pleading is merely a sham. (*Owen, supra*, 198 Cal.App.3d at 384.)

The sham pleading doctrine does not apply here. While Orange Coast points to new allegations in the amended pleading, it fails to identify any unexplained omissions that might give rise to application of the sham pleading doctrine.

Lastly, Orange Coast argues that its duties as an escrow holder were limited. (Dem., pp. 20:25-21:15.) While the court previously found merit to this argument as to the allegations asserted in the FACC, Ahmad’s amended pleading clearly alleges that the Javids were not simply indirect payees under escrows relating to sales transactions, but were in fact direct parties to refinancing escrows because they issued escrow instructions. Further, the SACC alleges fraud, and an escrow holder’s obligation are not necessarily limited to compliance with the parties’ instructions when there is clear evidence of fraud. (See *Summit Financial Holdings, Ltd. v. Continental Lawyers Title Co.* (2002) 27 Cal.4th 705, 711 (*Summit*) [“Absent clear evidence of fraud, an escrow holder’s obligations are limited to compliance with the parties’ instructions”].)

For these reasons, the demurrer to the fifth cause of action of Ahmad’s SACC is **OVERRULED**.

#### **D. Second Cause of Action – Fraud by Concealment**

In its prior order on demurrer, the court found this cause of action deficient for failing to adequately allege the existence of a relationship between the Javids and Orange Coast. (Order on Demurrer, p. 9:25-26.) As discussed in the previous section, Ahmad’s SACC contains new allegations relating to such a relationship.

“The general rule for liability for nondisclosure is that even if material facts are known to one party and not the other, failure to disclose those facts is not actionable fraud unless there is some fiduciary or confidential relationship giving rise to a duty to disclose.” (*La Jolla Village Homeowners’ Assn. v. Superior Court* (1989) 212 Cal.App.3d 1131, 1151.) To maintain a cause of action for fraud through nondisclosure or concealment of facts, a plaintiff must demonstrate that the defendant was under a legal duty to disclose those facts. (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835,

845.) “Where ... there is no fiduciary relationship, the duty to disclose generally presupposes a relationship grounded in some sort of transaction between the parties. Thus, a duty to disclose may arise from the relationship between seller and buyer ... or parties entering into any kind of contractual agreement. All of these relationships are created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances.” (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 337, internal citations omitted.)

As a general rule, each element in a fraud cause of action must be pleaded with specificity. (*Lazar v. Super. Ct.* (1996) 12 Cal.4th 631, 645 (*Lazar*); *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.) The court in *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645 stated that “this particularity requirement necessitates pleading facts which ‘show how, when, where, to whom, and by what means the representations were tendered.’ [Citation.]” (*Lazar, supra*, 12 Cal.4th 631, 645.)

Though the particularity requirement generally mandates that a plaintiff plead facts establishing the aforementioned items, it is much more difficult to apply this rule in a case of non-disclosure because, as one court explained, “[h]ow does one show ‘how’ and ‘by what means’ something didn’t happen, or ‘when’ it never happened, or ‘where’ it never happened?” (*Alfaro v. Community Housing Imp. System & Planning Ass’n., Inc.* (2009) 171 Cal.App.4th 1356, 1384 (*Alfaro*).) Where a claim involves fraudulent concealment, courts generally do not require specific allegations, and instead look to whether the allegations provide the defendant with sufficient notice of the claims alleged against them. (*Id.* at pp. 1384-1385; see also *Jones v. ConocoPhillips Co.* (2011) 198 Cal.App.4th 1187, 1200 (*Jones*).)

One of the purposes of the specificity requirement is to provide “notice to the defendant, to furnish the defendant with certain definite charges which can be intelligently met.” (*Children’s Television, supra*, 35 Cal.3d at p. 216, internal quotations omitted.) However, when “it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy, even under strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party ....” (*Id.*, at p. 217.)

Here, the amended pleading alleges a fiduciary relationship as the basis for a duty to disclose and alleges that Orange Coast concealed or suppressed numerous material facts. (SACC, ¶¶ 59-60.) In demurring to the second cause of action for fraud by concealment, Orange Coast again asserts that it was not acting as the Javids’ fiduciary, referencing its arguments regarding the fifth cause of action for breach of fiduciary duty. (Dem., p. 22:8-10.) For the same reasons discussed previously, the court finds the pleadings sufficiently allege a duty to disclose arising from a fiduciary relationship.

Orange Coast raises another new argument in its reply: that recovery is barred under the economic loss rule. (Reply, pp. 6:15-7:11.) This is not a proper basis for the demurrer as it was not raised in the Notice of Demurrer and Demurrer. It would be unpersuasive even if it had been properly raised because Orange Coast misinterprets the Supreme Court’s holding in *Robinson Helicopter Co. v. Dana Corp.* (2004) 34 Cal.4th 979. There, the court expressly did not address whether, in situations other than fraudulent inducement of contract, fraudulent conduct based on concealment would be exempt from the economic loss rule. (*Id.* at p. 991.)

“[C]ases are not authority for propositions not considered.” (*People v. Ault* (2004) 33 Cal.4th 1250, 1268, fn. 10.)

The demurrer to the second cause of action of Ahmad’s SACC is OVERRULED.

#### **E. Seventh Cause of Action – Negligence**

“The elements of a cause of action for negligence are well-established. They are (a) a *legal duty* to use due care; (b) a *breach* of such legal duty; and (c) the breach was the *proximate or legal cause* of the resulting injury. [Citation.]” (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917, italics original, internal punctuation omitted; see also CACI No. 400.) “In short, to recover on a theory of negligence, Plaintiffs must prove duty, breach, causation, and damages. [Citation.]” (*Truong v. Nguyen* (2007) 156 Cal.App.4th 865, 875)

In demurring to the seventh cause of action, Orange Coast asserts that it owed no legal duty to Ahmad or the Javid Family Trust, relying upon its arguments as to the fifth and seventh causes of action. For the same reasons discussed previously, the court finds that Ahmad’s SACC sufficiently alleges the existence of a requisite duty.

The demurrer to the seventh cause of action is OVERRULED.

#### **F. Conclusion – Ahmad’s SACC**

Orange Coast’s demurrer to the second amended cross-complaint of Ahmad Javid and Safoora Javid, individually and as Trustees of the Javid Family Trust Dated June 24, 1981 is OVERRULED in its entirety. Cross-Complainants shall file a corrected SACC with the correct exhibit A attached. No further amendments or changes may be made to the corrected SACC.

### **IV. Demurrer to Roya’s SACC**

The OCTC Defendants demur to first, second, third, and fourth causes of action of Roya’s SACC on the ground of failure to state a claim (Code Civ. Proc., § 430.10, subd. (e)). (Notice of Demurrer and Demurrer, p. 2:14-17.)

#### **A. Second Cause of Action – Slander of Title**

In demurring to the second cause of action, Orange Coast argues that Roya’s SACC does not properly allege direct pecuniary loss. (Dem., p. 15:16-25.) In its prior order, the court sustained the demurrer to this cause of action because the FACC did not allege the requisite elements. (Order on Demurrer, p. 8:14-20.)

To establish slander of title, a plaintiff must show: “(1) a publication, (2) which is without privilege or justification, (3) which is false, and (4) which causes direct and immediate pecuniary loss.” (*Manhattan Loft, LLC v. Mercury Liquors, Inc.* (2009) 173 Cal.App.4th 1040, 1051 (*Manhattan Loft*); see also *Klem v. Access Ins. Co.* (2017) 17 Cal.App.5th 595, 612.) “What makes conduct actionable is not whether a defendant succeeds in casting a legal cloud on plaintiff’s title, but whether the defendant could reasonably foresee the that the false publication might determine the conduct of a third person buyer or lessee. [Citation.] The



thrust of the tort of disparagement or slander of title is protection from injury to the salability of property. [Citation.]” (*Truck Ins. Exchange v. Bennett* (1997) 53 Cal.App.4th 75, 84.)

Here, the SACC addressed the first and third elements by alleging that Orange Coast “communicated and published to third persons the false fact that the Grant Road property was unencumbered by any interest owned by Roya, when in fact she held an equitable mortgage and the Grant Road Deed of Trust was about to be restored.” (SACC, ¶ 57.) The SACC alleges the publication was not privileged. (*Id.* at ¶ 58.) As to the contested element of damages, the SACC alleges: “Roya suffered immediate direct financial harm from the sale of the Grant Road property without repayment of Roya’s \$1.8 million note.” (*Id.* at ¶ 59.)

Orange Coast argues the claimed damages do not relate to the salability of the Grant Road property, but rather to her security interest. (Dem., p. 15:21-27.) Orange Coast made a similar argument in its prior demurrer, contending that only a property owner can bring an action for slander of title. (Order on Demurrer, p. 7:22-23.) The court rejected the argument, noting: “[a]ny legally recognized interest in real estate that can be sold or is otherwise susceptible of profitable disposal is a ‘protected’ interest for purposes of a slander of title action. Thus, interests in reality such as fees, life estates, leaseholds, reversions and remainders (whether vested or contingent), easements, whether express or implied and trusts or other equitable interests, are included.” (4 *Miller & Starr*, Cal. Real Estate (4th ed. 2018) § 10:42, p. 10-175.)” (*Id.* at p. 8:5-8.) Orange Coast appears to completely ignore this line of authority in its demurrer and its reply.

In opposition, Roya cites *Compass Bank v. Petersen* (C.D. Cal 2012) 886 F.Supp.2d 1186 (*Compass Bank*) for the proposition that a cloud on a title qualifies as a protected security interest. (Opp., p. 6:20-22.) That court stated: “Here, the damage caused by the Petersen Parties’ slander of title consists of the loss of Compass Bank’s ability to initiate a foreclosure sale and the cost to Compass Bank of clearing title the Property. See [*Glass v. Gulf Oil Corp.* (1970) 12 Cal.App.3d 412, 424] (stating that ‘impairment of vendibility and cost of clearing title’ constitute pecuniary damages in a slander of title action.)” (*Compass Bank, supra*, 886 F.Supp.2d at pp. 1197-1198.) Similarly, here, the damage claimed by Roya arises from her inability to initiate a foreclosure sale on the Grant Road property after it was sold without repayment to her.

In short, Orange Coast’s argument regarding the damages element misconstrues the nature of Roya’s claimed property interest and is unsupported by legal authority.

The demurrer to the second cause of action of Roya’s SACC is OVERRULED.

## **B. First, Third, and Fourth Causes of Action**

In demurring to the remaining causes of action for breach of fiduciary duty, fraud by concealment, and negligence, Orange Coast effectively restates the same arguments it advanced in support of the demurrer to Ahmad’s SACC. For the same reasons discussed above, the court finds Orange Coast’s arguments also to be without merit.

As to the second cause of action, Orange Coast contends Roya does not allege the existence of a fiduciary relationship. (Dem., p. 17:8-10.) As discussed previously, the court’s prior order sustaining the demurrer found fault with the lack of specific allegations regarding

escrow instructions. (Order on Demurrer, p. 6:18-21.) Here, by contrast, the SACC alleges escrow instructions specific to Roya. While the court notes that written escrow instructions are not attached to Roya's SACC, the pleading nevertheless alleges their legal effect. (See SACC, ¶¶ 48-50.) As with Ahmad, Roya's alleged instructions and communications with Orange Coast sufficiently allege the duty elements of her fraud by concealment and negligence claims.

Orange Coast argues that the SACC fails to allege fraud with the requisite specificity. (Dem., p. 19:21-23.) But, as set forth previously, where a claim of fraud is based on concealment, courts generally do not require specific allegations, and instead look to whether the allegations provide the defendant with sufficient notice of the claims alleged against them. (*Alfaro, supra*, 171 Cal.App.4th at pp. 1384-1385; see also *Jones, supra*, 198 Cal.App.4th at p. 1200.) That standard is met here.

The demurrer to first, third, and fourth causes of action of Roya's SACC is **OVERRULED**.

### **C. Conclusion – Roya's SACC**

As to cross-complainant Roya Javid, the demurrer to the second amended cross-complaint is **OVERRULED** in its entirety.

### **V. Motion to Bifurcate (Line 3)**

Continued to April 18, 2024, (per the court's March 12, 2024 minute order).

### **VI. Order**

As to cross-complainants Ahmad Javid and Safoora Javid, individually and as Trustees of the Javid Family Trust Dated June 24, 1981, the demurrer to the second amended cross-complaint is **OVERRULED** in its entirety. Cross-Complainants shall file a corrected SACC with the correct exhibit A attached. No further amendments or changes may be made to the corrected SACC.

As to cross-complainant Roya Javid, the demurrer to the second amended cross-complaint is **OVERRULED** in its entirety.

The motion to bifurcate punitive damages is continued to April 18, 2024.

The court will prepare the final order.