SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding

Allison Croft, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 3/5/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (3/4/2024) you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to **Department 3**.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: 408-882-2430 When you can call: Monday to Friday, 8:30 am to 12:30 pm

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept. and line number.

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV420883	Blueprint Capital LLC vs Yan Jian et al	Hearing: Demurrer to the Cross-Complaint by Plaintiff/ Cross-Defendant Blueprint Capital LLC and Cross-Defendant Runyu Shi Ctrl click (or scroll down) on Line 1 for tentative ruling. The court will prepare the order.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding

Allison Croft, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 3/5/2024 TIME: 9:00 A.M.

LINE 2	16CV301124	Raksha Batheja vs Nikhil Kumar et al	Motion: Vacate Clerk's Judgment on 10-17-2016 by Non-Party State Labor Commissioner Unopposed and GRANTED. Non-Party State Labor Commissioner to prepare order.
LINE 3	22CV396790	AMERICAN EXPRESS NATIONAL BANK vs Daniel Wilson	Motion: Vacate the Conditional Dismissal and for the Entry of Judgment against defendant Daniel Wilson pursuant. to CCP 664.6 by Plaintiff American Express National Bank (“Plaintiff”) in the sum of $2,387.02 plus costs of $353.00 for a total judgment of $2,740.02. Unopposed and GRANTED. Plaintiff to prepare order and [proposed] judgment.
LINE 4	22CV409047	DENNIS ROE vs DOE 1, a Religious Corporation, Sole et al	Motion: Withdraw as attorney Todd Davis to Plaintiff Dennis Roe. Unopposed and GRANTED. Todd Davis to prepare order.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding

Allison Croft, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 3/5/2024 TIME: 9:00 A.M.

LINE 5	23CV421219	Subodh Banerjee vs Alifeleti K. Vaituulala	Hearing: Motion hearings. Petition to release property from mechanics lien by Petitioner Subodh Banerjee OFF-CALENDAR. The notice of hearing date was blank, the proof of service (POS) does not comply with Civil Code §8486(b), and the respondent's name on the POS was missing his middle initial. The notice of hearing has the hearing date blank. The Petition says 3-5-2024 at 9:00 a.m. in Dept. 10. The POS by mail left out the middle initial of the respondent's name. It says the person served was Alifeleti Vaituulala. The respondent's name on the petition is Alfeleti K. Vaituulala. "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 §8108." (Civil Code §8486(b) [emphasis added]). Petitioner bears the burden of proving he complied with service requirements. (Civil Code § 8488(a).) Here, Petitioner's POS only indicates that he delivered service by "depositing the sealed envelope with the United States Postal Service with the postage fully prepaid." (See POS.) It does *not* say it was by certified or registered mail nor does it say return receipt requested. (See Civil Code §8486(b).)
LINE 6			
LINE 7			
LINE 8			
LINE 9			

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding
Allison Croft, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 3/5/2024 TIME: 9:00 A.M.

LINE 10			
LINE 11			
LINE 12			

- oo0oo -

Calendar Line 1
Case Name: *Blueprint Capital LLC v. The GFL Group, Inc. et al.* (and related cross-actions)
Case No.: 23CV420883

I. Factual and Procedural Background

Cross-complainant The GFL Group, Inc. ("GFL" or "Cross-Complainant") brings its cross-complaint ("XC") against Blueprint Capital LLC ("Blueprint") and individual, Runyu Shi ("Shi")(collectively, "Cross-Defendants").

GFL is the owner of a commercial property ("the Property") in Cupertino, California. (XC, ¶ 8.) GFL is owned by Yan Jian, together with her husband and children, referred to as the "Chen Family." (*Id.* at ¶ 2.) In March 2019, GFL leased the Property to Blueprint, so it could operate a hotpot restaurant called Tian Fu Xiang Hotpot ("TFX"). (*Id.* at ¶¶ 27, 44.) Shi is the owner of Blueprint. (*Id.* at ¶ 4.)

In order to obtain possession of the Property, Shi first interfered with GFL's sale agreement with a potential buyer of the Property so that GFL would lease the Property to Shi so he could operate TFX. (XC, ¶¶ 13-17, 21-22.) Shi estimated the total cost for TFX would be $796,617. (*Id.* at ¶ 52.) He informed GFL that if he invested in the restaurant GFL would recoup its investment within one year and there would be a daily gross profit between $5,000-10,000. (*Id.* at ¶ 102.) As a result of Shi's representations, GFL terminated its sales agreement with the prospective buyer, executed a lease for the Property with Blueprint, and agreed to invest in TFX. (*Id.* at ¶¶ 22-24.)

Blueprint owns a 60% interest in TFX and GFL owns a 40% interest in TFX.[1] (XC, ¶ 46.) GFL made its initial capital contribution in the amount of $120,000. (*Id.* at ¶ 49.) Thereafter, Shi claimed additional capital was needed from GFL in the amount of $700,000. (*Id.* at ¶¶ 49-50.) GFL deposited the additional funds into TFX's bank account. (*Id.* at ¶ 50.)

In 2021, after Blueprint failed to make rent payments under the lease for two months, the parties agreed Blueprint would receive six months of rent abatement provided that all rent owed was paid in full once the restaurant opened. (XC, ¶¶ 56, 58.) Shi told GFL the restaurant would open by the end of 2021, but it did not open until January 2023. (Id. at ¶¶ 59, 62.) After TFX opened, GFL did not receive the rent owed and Blueprint still has not paid the rent. (Id. at ¶ 63.)

In March 2021, GFL requested TFX's financial records but Blueprint rejected the request. (XC, ¶ 54.) In July 2021, Shi told GFL that the parties would audit accounting records and eventually sent GFL a financial report in January 2023. (Id. at ¶¶ 58, 64.) The financial report did not come with any supporting documents and claimed that several million dollars were spent in seven days between December 27, 2022 and January 3, 2023. (Id. at ¶ 64.) To date, Blueprint has failed to provide any of TFX's accounting records. (Id. at ¶ 72.)

On October 25, 2023, GFL filed its XC against Blueprint and Shi, asserting the following causes of action:

1) Breach of Lease [against Blueprint];
2) Breach of Operating Agreement [against Blueprint];
3) Fraud [against Blueprint and Shi];
4) Negligent Misrepresentation [against Blueprint and Shi];
5) Interference of Contractual Relations [against Blueprint and Shi];

[1] The Operating Agreement states that Yan Jian, Yun Chen, Richy Chen, and Betty Chen are each 10% interest owners but these members transferred their interest to GFL. (XC, ¶¶ 45-48.)

6) Breach of Fiduciary Duty [against Blueprint];
7) Aiding and Abetting Breach of Fiduciary Duty [against Shi];
8) Violation of Penal Code section 496 [against Blueprint and Shi];
9) Violation of Cal. Bus. & Prof. Code section 17200 [against Blueprint and Shi];
10) Common Count – Account Stated [against Blueprint]; and
11) Declaratory Relief [against Blueprint].

On January 16, 2024, Cross-Defendants filed a demurrer to the third, fourth, fifth, and eighth causes of action. Cross-Complainant opposes the motion.

II. Demurrer

a. Legal Standard

"A demurrer tests only the legal sufficiency of the pleading. 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." (*Comm. on Children's Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14.)

b. Cross-Defendants' Request for Judicial Notice

In support of their demurrer, Cross-Defendants' request the Court take judicial notice of the following:

1) Underlying Complaint filed by Blueprint on August 14, 2023 (Ex. A); and
2) Cross-Complaint filed by GFL on October 25, 2023 (Ex. B).

GFL opposes the request for judicial notice.

The request for judicial notice of Ex. A is DENIED. While a trial court is permitted 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— [] 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.) Here, as GFL notes in opposition, Cross-Defendants rely on Ex. A to support arguments related to the facts in their underlying complaint. This is an improper use of judicial notice as the Court treats as true only the facts contained in the pleading that is the subject of the demurrer.

The request for judicial notice of Ex. B is DENIED. Judicial notice of a complaint is unnecessary where it is the pleading under review. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn. 1 ["Judicial notice is unnecessary because, in our review of the demurrer ruling, we accept the allegations in the complaint and the facts in the exhibit as true"].)

c. Third Cause of Action – Fraud

Cross-Defendants demur to the third cause of action for fraud on the ground the XC fails to state sufficient facts.

To allege fraud, a party must plead: "(1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages." (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 792 (*West*).)

"Fraud must be pleaded with specificity rather than with general and conclusory allegations. The specificity requirement means a plaintiff must allege facts showing how,

when, where, to whom, and by what means the representations were made[.]" (*West, supra*, 214 Cal.App.4th at p. 793.) "To withstand a demurrer, the *facts* constituting every element of the fraud must be alleged with particularity[.] [T]he plaintiff must, at a minimum, set out a representative selection of the alleged misrepresentations sufficient to permit the trial court to ascertain whether the statements were material and otherwise actionable." (*Goldrich v. Natural Y Surgical Specialties, Inc.* (1994) 25 Cal.App.4th 772, 782-783 [emphasis original].) "[I]n the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." (*West, supra*, 214 Cal.App.4th at p. 793 [internal citations and quotations omitted].)

Cross-Defendants argue 1) GFL does not allege it justifiably relied on alleged misrepresentations; 2) the XC does not allege that Blueprint made any representations to GFL; and 3) GFL does not allege details regarding how, when, where, to whom, and by what means these representations were made.

i. Justifiable Reliance

"Besides actual reliance, [a] plaintiff must also show 'justifiable' reliance, i.e., circumstances were such to make it reasonable for [the] plaintiff to accept [the] defendant's statements without an independent inquiry or investigation. The reasonableness of the plaintiff's reliance is judged by reference to the plaintiff's knowledge and experience. Except in the rare case where the undisputed facts leave no room for a reasonable difference of opinion, the question of whether a plaintiff's reliance is reasonable is a question of fact." (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 864-865 [internal citations and quotations omitted].)

Cross-Defendants first assert that GFL does not allege it was justified in relying on their alleged misrepresentations and that the XC only includes the language "justifiable reliance" in the fourth cause of action, which is not incorporated into the fraud cause of action. (Demurrer, p. 11:6-11.)

In opposition, GFL contends the XC alleges its reliance on Cross-Defendants' representations was justified because of a falsified educational and professional background. (See Opposition, p. 9:13-15, citing XC, ¶ 115.) GFL further argues that the language "justifiable reliance" can be found throughout the XC at Paragraphs 16, 17, 22, 23, 51, 53, 58, 100, 102 and 120; but that whether such reliance is justified is a question of fact not properly decided on demurrer. (*Id.* at p. 9:16-20.)

In this case, GFL incorporated its general allegations into its third cause of action. The Court finds that GFL sufficiently alleges it relied on Shi's representations. Specifically, the XC alleges: 1) in reliance on Shi's promises that GFL would receive a higher return on investment if the Property was leased to Shi rather than sold, GFL terminated the sale agreement with the prospective buyer (XC, ¶¶ 22, 101); 2) in reliance on Shi's financial expertise and representations, GFL agreed to lease to Shi's company, Blueprint (XC, ¶ 23); and 3) in reliance on Shi's representations, GFL agreed to invest in TFX (XC, ¶ 103).

While GFL does not specifically state the language "justifiable reliance" in the XC, the Court finds sufficient facts establishing a basis for justifiable reliance based on Shi's representations.[2] Moreover, as GFL notes in opposition, whether that reliance is reasonable is a question of fact. (See e.g., *Guido v. Koopman* (1991) 1 Cal.App.4th 837, 843 ["the reasonableness of the reliance is ordinarily a question of fact"]; see also *Joslin v. H.A.S. Ins.*

[2] After reviewing these Paragraphs in the XC, none of them contain the language "justifiable reliance." Nevertheless, the allegations of reliance are sufficient.

Brokerage (1986) 184 Cal.App.3d 369, 375 [disputed factual issues cannot be resolved on demurrer].)

Thus, the Court declines to sustain the demurrer for failing to allege justifiable reliance.

ii. *Blueprint's Representations*

Next, Cross-Defendants summarily argue that fraud cannot be maintained against Blueprint because there are no allegations Blueprint made any representations to GFL or the Chen Family. (Demurrer, p. 11:11-13.)

In opposition, GFL asserts that Shi is the owner of Blueprint and that they are alter egos of each other. (Opposition, p. 10:5.) GFL contends this is sufficient to satisfy the fraud pleading standard because it alleges the person who made the representations on behalf of the corporation. (*Id.* at p. 10:6-9, citing *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

In this case, the XC alleges Shi is the owner of Blueprint (XC, ¶ 4) and that Shi and Blueprint were alter egos of each other (XC, ¶ 6).

"To recover on an alter ego theory, a plaintiff need not use the words 'alter ego,' but must allege sufficient facts to show a unity of interest and ownership, and an unjust result if the corporation is treated as the sole actor." (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 696.) "An allegation that a person owns all of the corporate stock and makes all of the management decisions is insufficient to cause the court to disregard the corporate entity." (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 415.)

Here, GFL alleges Blueprint was solely under Shi's control (XC, ¶¶ 23, 104) and the XC contains a general allegation that the parties were alter egos of one another (XC, ¶ 6). The Court does not find these allegations sufficient to allege a theory of alter ego liability. (*Cf. Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 235 [plaintiff sufficiently alleged unity of interest by alleging corporate entity was inadequately capitalized, failed to "abide by the formalities of corporate existence," and was dominated, controlled, and used by defendant as a "mere shell and conduit"].)

Thus, the demurrer may be sustained as to Blueprint on the ground the XC does not allege Blueprint made any representations to GFL and fails to sufficiently allege an alter ego theory of liability.

iii. *How, When, Where, To Whom, and By What Means*

Finally, Cross-Defendants contend that the XC does not identify how Mr. Shi communicated the information, when, where, to whom, or by what means the representations were made. (*Id.* at pp. 11:27-12:1.) GFL does not directly address this argument in opposition.

Here, the third cause of action alleges the following misrepresentations: 1) Shi falsely represented his financial and educational background; 2) Shi falsely represented his expertise as a professional investor and stated GFL would receive a higher return on investment if it leased the Property to Shi/Blueprint; 3) Shi promised GFL would receive revenue from rent payments and the restaurant's operation if GFL leased the Property to Shi; and 4) Shi endorsed projections that the expense of the Property renovations would not be over $1 million and would result in a profit of $5,000-10,000 daily.

The XC further alleges that in or around February 2019, Shi "expressed great enthusiasm" in leasing the Property from GFL and that "[a]pproximately three days later" Shi contacted the Chens to convince them to lease the Property and told them that based on his expertise as a professional investor, "GFL would receive a higher return on their investment of the Property if they retained the Property rather than sold it." (XC, ¶¶ 13-14, 16.) These allegations do not state the date they were made, by what means the representations were made, where the representations were made, to which member of the Chen Family they were

made, or by what means the representations were made. Similarly, it appears that in the same conversation as above, Shi told the Chen Family they would receive revenue from both the rent payments and the restaurant's operation (XC, ¶ 17); however, the XC does not sufficiently allege how, when, where, to whom, and by what means the representations were made. Likewise, the remaining representations do not indicate the "how, when, where, to whom, and by what means" they were made. Based on the foregoing, the demurrer may also be sustained on the ground the third cause of action fails to sufficiently allege fraud with the requisite particularity.

Accordingly, the demurrer to the third cause of action is SUSTAINED with leave to amend.

d. Fourth Cause of Action – Negligent Misrepresentation

Cross-Defendants demur to the fourth cause of action for failing to state facts sufficient to constitute a cause of action for negligent misrepresentation.

"The elements of a negligent misrepresentation are (1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage." (*Borman v. Brown* (2021) 59 Cal.App.5th 1048, 1060 [internal quotations omitted].) Claims for negligent misrepresentation must adhere to the same heightened pleading standards as claims for fraud. (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 184; see also *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166 (*Daniels*) ["[c]auses of action for intentional and negligent misrepresentation sound in fraud and, therefore, each element must be pleaded with specificity"].)

Cross-Defendants have combined their argument regarding fraud and negligent misrepresentation. They contend that the fourth cause of action fails for the same reasons as the third.

"The elements of a claim for negligent misrepresentation are nearly identical [to fraud]. Only the second element is different, requiring the absence of reasonable grounds for believing the misrepresentation to be true instead of knowledge of its falsity." (*Daniels, supra*, 246 Cal.App.4th at p. 1166 [overruled in part on other grounds].) Because causes of action for negligent misrepresentation sound in fraud, plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made. (*Ibid*.)

Here, the fourth cause of action relies on the same allegations as the fraud cause of action. For the same reasons stated above, the demurrer to the fourth cause of action is SUSTAINED with leave to amend.

e. Fifth Cause of Action – Interference of Contractual Relations

Cross-Defendants demur to the fifth cause of action for intentional interference with contractual relations for failure to state sufficient facts.

"The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126 (*Bear Stearns*).)

i. *Claim Against Blueprint*

Cross-Defendants argue GFL's fifth cause of action against Blueprint fails because it does not allege Blueprint: 1) knew of a contract between GFL and a third party; 2)

intentionally induced GFL to breach its contractual relationship with the third party; or 3) an actual breach of contract resulted from Blueprint's actions. (Demurrer, p. 13:17-21.)

In opposition, GFL relies on its alter ego allegations to assert that Shi was acting on behalf of Blueprint. (Opposition, p. 11:6-7.) However, as explained above, GFL does not sufficiently allege a theory of alter ego liability. Thus, GFL's argument is not well taken and the demurrer for interference of contractual relations may be sustained as to Blueprint.

ii. *Claim Against Shi*

Cross-Defendants argue GFL's fifth cause of action against Shi fails because the XC alleges the buyer is the party who disrupted the contractual relationship, not Shi.

In opposition, GFL argues that even if GFL had the right to terminate the sale agreement because of the buyer's extension request, there was still an existing contract that Cross-Defendants induced it to terminate the contract. (Opposition, p. 12:4-10.) GFL relies on *Bear Stearns* to support its argument and notes that the "'actionable wrong lies in the inducement to sever the relationship.'" (Opposition, p. 11:17-18, citing *Bear Stearns, supra,* 50 Cal.3d at p. 1127.)

In *Bear Stearns*, the Supreme Court explained "that it may be actionable to induce a party to a contract to terminate the contract according to its terms." (*Bear Stearns, supra*, 50 Cal.3d at p. 1127.) "'The actionable wrong lies in the inducement to break the contract or to sever the relationship, not in the kind of contract or relationship so disrupted, whether it is written or oral, enforceable or not enforceable." (*Ibid*.) "Nor do express termination provisions create a privilege to interfere. . . . [W]e must also protect contractual relationships that are subject to termination." (*Id*. at p. 1128.)

Here, the XC alleges GFL entered into a sales agreement with a prospective buyer (XC, ¶¶ 14, 118); that Shi and his then-girlfriend told the Chen Family that "there are several ways that a seller can terminate a sales agreement" and Shi asked them to lease the Property to him instead of entering into the transaction with the buyer (*id.* at ¶ 14); Shi again contacted the Chen Family to convince GFL to lease him the Property stating they would receive a higher return on investment if they rented the Property rather than sold it (*id.* at ¶ 16); Shi continued to induce the Chen Family into halting the pending sale of the Property (*id.* at ¶¶ 18, 21); then, when the prospective buyer requested a short extension, GFL terminated the contract in reliance on Shi's representations so that it could rent the Property to Shi (*id.* at ¶¶ 22, 121.) Based on these allegations, the Court finds that GFL sufficiently alleges interference with contractual relationships against Shi and declines to sustain the demurrer as to him.

Accordingly, the demurrer to the fifth cause of action is SUSTAINED with leave to amend as to Blueprint and OVERRULED as to Shi.

f. Eighth Cause of Action – Violation of Penal Code section 496

Cross-Defendants demur to the eighth cause of action for violations of Penal Code section 496 on the ground it fails to state sufficient facts.

Penal Code section 496 states:

> (a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170.

(Pen. Code, § 496, subd. (a).)

Section 496, subdivision (c) . . . provides that any person 'who has been injured by a violation of [section 496, subdivision (a)] . . . may bring an action for three times the amount of actual damages, if any, sustained by plaintiff, costs of suit, and reasonable attorney's fees." (*Bell v. Feibush* (2013) 212 Cal.App.4th 1041, 1043 (*Bell*).)

"A criminal conviction is not a prerequisite to recovery of treble damages. All that is required for civil liability to attach under section 496(c), including entitlement to treble damages, is that a 'violation' of subdivision (a) or (b) of section 496 is found to have occurred. (*Bell v. Feibush*, at pp. 1045–1047.) A violation may be found to have occurred if the person engaged in the conduct described in the statute. (*Lacagnina v. Comprehend Systems, Inc.* (2018) 25 Cal.App.5th 955, 970. . .; *Bell v. Feibush, supra*, 212 Cal.App.4th at p. 1045 [a 'violation' occurs 'when the subject engages in' the conduct described in the statute].)" (*Switzer v. Wood* (2019) 35 Cal.App.5th 116, 126 (*Switzer*).)

"[T]he elements required to show a violation of section 496, subdivision (a), are simply that (i) property was stolen or obtained in a manner constituting theft, (ii) the defendant knew the property was stolen or obtained, and (iii) the defendant received or had possession of the stolen property." (*Switzer, supra,* 35 Cal.App.5th at p. 126.) Statutory causes of action must be pleaded with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.)

In support of the demurrer, Cross-Defendants assert three arguments. First, they argue GFL does not allege Blueprint or Shi had the criminal intent necessary to sustain a Penal Code section 496 claim. (Demurrer, p. 14:14-21, citing *Siry Inv., L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, 361-362 (*Siry*).) Next, Cross-Defendants contend Blueprint and Shi's renovations resulted in a substantial improvement to the Property and "GFL does not explain why Blueprint or Mr. Shi would pocket GFL's money yet spend millions of their own to improve GFL's property." (Demurrer, p. 14:17-27.) However, Cross-Defendants do not cite to authority to support this second argument. (See *Quantum Cooking Concepts, Inc. v. LV Assocs., Inc.* (2011) 197 Cal.App.4th 927, 934 [trial court not required to "comb the record and the law for factual and legal support that a party has failed to identify or provide"].) Finally, Cross-Defendants argue the XC does not allege Blueprint or Shi ever had possession of GFL's property. (Demurrer, p. 5:3-6, citing XC, ¶ 137.)

As to Cross-Defendants' first argument, GFL asserts in opposition that *Siry* is distinguishable because it was not decided at the pleading stage but instead involved a judgment after trial. In *Siry,* the Supreme Court explained that to *prove* theft, "a plaintiff must establish criminal intent of the par of the defendant beyond 'mere proof of nonperformance or actual falsity.'" (*Siry, supra,* 13 Cal.5th at p. 361-362.) GFL correctly states that it is not required to prove anything at the demurrer stage. (See *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496 [court reviewing propriety of ruling on demurrer is not concerned with the "plaintiff's ability to prove . . . allegations, or the possible difficulty in making such proof"].)

As to the third argument, GFL contends the XC does allege Shi and Blueprint possessed the money deposited by GFL (Opposition, p. 14:3-4, citing XC, ¶¶ 137-138), but that in any event, "'possession' is not required because the liability arises from concealment and aiding concealment" (*id.* at p. 14:5-6, citing Penal Code, § 496, subd. (a)). GFL's argument is well-taken. The case law is explicit that each of the acts listed in Penal Code section 496, subdivision (a) "are separate and distinct offenses" and "[i]n particular, 'receiving stolen property and concealing stolen property are separate offenses.'" (*People v. Brown* (2019) 32 Cal.App.5th 726, 732; see also *People v. Bejarano* (1981) 114 Cal.App.3d 693, 702; *People v.*

Boyce (1980) 110 Cal.App.3d 726, 734; *Williams v. Superior Court of Los Angeles County* (1978) 81 Cal.App.3d 330, 343.)

Here, the XC alleges Cross-Defendants used money GFL deposited for the use of TFX for personal gain unrelated to TFX (XC, ¶¶ 69, 137-138) and that Shi falsified financial records and when GFL requested supporting documents, GFL discovered no invoices were uploaded to QuickBooks and the data could not be reconciled with TFX's bank statements or the provided financial report (*id*. at ¶¶ 64, 66). Furthermore, as to Cross-Defendants' argument that the XC contains insufficient allegations to state a Penal Code violation, less specificity is required in pleading where the defendant has superior knowledge of the facts. (*Hawkins v. TACA Internat. Airlines, S.A.* (2014) 223 Cal.App.4th 466, 474 [less specificity required where the defendants necessarily possess full information concerning the facts of the dispute].) Thus, the Court finds the eighth cause of action is sufficiently pled.

As such, the demurrer to the eighth cause of action for violation of Penal Code section 496 is OVERRULED.

III. Conclusion and Order

The demurrer to the third and fourth causes of action is SUSTAINED. The demurrer to the fifth cause of action is SUSTAINED as to Blueprint and OVERRULED as to Shi. The demurrer to the eighth cause of action is OVERRULED. Cross-Complainants have 15 days leave to amend their Cross-Complaint.

The Court shall prepare the final order.

- oo0oo -

Calendar Line 2

- oo0oo -

Calendar Line 3

- oo0oo -

Calendar line 4

- oo0oo –

Calendar Line 5

- oo0oo -

Calendar Line 6

- oo0oo -

Calendar Line 7

- oo0oo -

Calendar Line 8

- oo0oo -

Calendar line 9

- oo0oo -

Calendar line 10

- oo0oo -

Calendar line 11

- oo0oo -

Calendar line 12

- oo0oo -

Calendar line 13

- oo0oo -