1. BUGAISKI v. SONNY'S BARBEQUE SHACK, ET AL., SC20190161

Final Account of Settlement

TENTATIVE RULING # 1: HAVING REVIEWED PLAINTIFFS' STATUS REPORT, THE HEARING ON THE FINAL ACCOUNT OF SETTLEMENT IS CONTINUED TO 1:30 P.M., FRIDAY, JULY 11, 2025, IN DEPARTMENT FOUR.

2. MILLER v. HOME DEPOT USA, INC., ET AL., 23CV1757

Case Management Conference

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, APRIL 25, 2025, IN DEPARTMENT FOUR. REMOTE APPEARANCE MUST BE VIA ZOOM ONLY.

3. JOHN CEFALU v. CHRIS CEFALU, 24CV1380

Motion for Leave to File Amended Complaint

Pursuant to Code of Civil Procedure sections 473, subdivision (a)(1), and 464, subdivision (a), plaintiff moves for leave to file the proposed first amended complaint.

On April 14, 2025, defendant filed a notice of non-opposition.

TENTATIVE RULING # 3: PLAINTIFF'S MOTION IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

4. GOLCHEHREH, ET AL. v. AIRBNB, INC., ET AL., 24CV1787

Defendant Airbnb, Inc.'s Motion to Compel Arbitration and Stay Proceedings

Pursuant to Code of Civil Procedure section 1281.2, Defendant Airbnb, Inc. ("defendant") moves to compel arbitration with both plaintiffs, Mehran Golchehreh ("Golchehreh") and Poopak Dokhanchi ("Dokhanchi"), and stay proceedings.

Plaintiffs oppose the motion.

1. Background

This is a personal injury case arising from plaintiff Golchehreh's alleged slip and fall at defendant Christopher Hamilton's ("Hamilton") property, which Golchehreh reserved using defendant's online platform. Plaintiff Dokhanchi is Golchehreh's wife and is asserting a loss of consortium claim in this action.

Golchehreh made the reservation online on December 3, 2023. At that time, he clicked "consent" to defendant's then-existing Terms of Service.[1] (Chauvet Decl., ¶ 12 & Ex. F.)

Section 23.4 of the Terms of Service provides in bold typeface: **"Agreement to Arbitrate. You and Airbnb mutually agree that any dispute, claim or controversy arising out of or relating to these Terms or the applicability, breach, termination, validity, enforcement or interpretation thereof, or any use of the Airbnb Platform, Host Services, or any Content (collectively,** "Disputes"**) will be settled by binding individual arbitration (the** "Arbitration Agreement"**). If there is a dispute about whether this Arbitration Agreement can be enforced or applies to our Dispute, you**

[1] Golchehreh consented to previous arbitration agreements with defendant beginning in 2015, when Golchehreh created his online account. (Chauvet Decl., ¶¶ 7–12.) However, the 2023 agreement supersedes any and all prior oral or written agreements between the parties. (Chauvet Decl., Ex. F at ¶ 27.2.) Plaintiff Dokhanchi separately consented to an arbitration agreement with defendant in 2016 when she created her own online account. (Chauvet Decl., ¶14.) However, the instant dispute arises from Golchehreh's reservation for Hamilton's property, and therefore, the court focuses solely on Golchehreh's arbitration agreement with defendant entered into on December 3, 2023.

and Airbnb agree that the arbitrator will decide that issue." (Chauvet Decl., Ex. F at ¶ 23.4.)

Section 23.6 of the Terms of Service provides in relevant part: "**Arbitration Rules and Governing Law.** This Arbitration Agreement evidences a transaction in interstate commerce and the Federal Arbitration Act governs all substantive and procedural interpretation and enforcement of this provision. The arbitration will be administered by the arbitrator in accordance with the Consumer Arbitration Rules and/or other AAA arbitration rules determined to be applicable by the AAA (the '**AAA Rules**') then in effect, except as modified here. The AAA Rules are available at **www.adr.org.**" (Chauvet Decl., Ex. F at ¶ 23.6.)

Section 23.10 of the Terms of Service provides: "**Jury Trial Waiver.** You and Airbnb acknowledge and agree that we are each waiving the right to a trial by jury as to all arbitrable Disputes." (Chauvet Decl., Ex. F at ¶ 23.10.)

Plaintiff personally served defendant on August 22, 2024. On March 21, 2025, defendant filed the instant motion to compel as its initial responsive pleading in this action.

2. Discussion

Both state and federal law have statutory schemes for the enforcement of arbitration agreements. The California Arbitration Act ("CAA") (Code Civ. Proc., § 1280, et seq.) sets forth "a comprehensive statutory scheme regulating private arbitration in this state." (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9.) The Federal Arbitration Act ("FAA") (9 U.S.C., § 1, et seq.) governs contractual arbitration in written contracts involving interstate or foreign commerce. (9 U.S.C., §§ 1, 2.)

As a threshold matter, the court must determine which body of law—the FAA or the CAA—applies to the arbitration agreement here. Since arbitration is a matter of contract, the FAA applies if it is so stated in the agreement. (See *Victrola 89, LLC v. Jaman Properties 8 LLC* (2020) 46 Cal.App.5th 337, 355 ["[T]he presence of interstate

commerce is not the only manner under which the FAA may apply…. [T]he parties may also voluntarily elect to have the FAA govern enforcement of the Agreement"].) In this case, the arbitration agreement provides in relevant part, "This Arbitration Agreement evidences a transaction in interstate commerce and the Federal Arbitration Act governs all substantive and procedural interpretation and enforcement of this provision." (Chauvet Decl., Ex. F at ¶ 23.6.) Based on this language, the court finds that the FAA applies here.

But "[i]n determining the rights of parties to enforce an arbitration agreement within the FAA's scope, courts apply state contract law while giving due regard to the federal policy favoring arbitration." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) In California, " '[g]eneral principles of contract law determine whether the parties have entered a binding agreement to arbitrate.' " (*Ibid.*)

The "party seeking arbitration bears the burden of proving the existence of an arbitration agreement." (*Ibid.*) The court's determination involves a three-step burden-shifting process. In the first step of the process, the moving party bears the initial "burden of producing 'prima facie evidence of a written agreement to arbitrate the controversy.' [Citation.] The moving party 'can meet its initial burden by attaching to the [motion or] petition a copy of the arbitration agreement purporting to bear the [opposing party's] signature.' [Citation.] Alternatively, the moving party can meet its burden by setting forth the agreement's provisions in the motion. [Citations.] For this step, 'it is not necessary to follow the normal procedures of document authentication.' [Citation.]" (*Gamboa v. Northeast Cmty. Clinic* (2021) 72 Cal.App.5th 158, 165.)

"If the moving party meets its initial prima facie burden and the opposing party disputes the agreement, then in the second step, the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement. [Citation.] The opposing party can do this in several ways. For example, the opposing party may testify

under oath or declare under penalty of perjury that the party never saw or does not remember seeing the agreement, or that the party never signed or does not remember signing the agreement. [Citations.]

"If the opposing party meets its burden of producing evidence, then in the third step, the moving party must establish with admissible evidence a valid arbitration agreement between the parties. The burden of proving the agreement by a preponderance of the evidence remains with the moving party. [Citation.]" (*Gamboa*, *supra*, 72 Cal.App.5th at pp. 165–166.)

Here, the court finds that defendant has met its initial burden, as it produced a copy of the Terms of Service Golchehreh agreed to on December 3, 2023, when he made the reservation. (Chauvet Decl., ¶ 12 & Ex. F.)

Plaintiffs do not challenge the authenticity of the agreement. However, they claim it is unenforceable because it is procedurally and substantively unconscionable. Additionally, plaintiffs argue the agreement is not enforceable as to plaintiff Dokhanchi and defendant Hamilton, who are non-signatory parties. Therefore, plaintiffs contend, Dokhanchi and Hamilton cannot be compelled to arbitrate the dispute, and, because there is a reasonable likelihood of inconsistent outcomes if plaintiff Golchehreh and defendant arbitrate their dispute, defendant's motion to compel arbitration should be denied in its entirety.

2.1. Unconscionability

Under California law, a contract is unenforceable if it is both procedurally and substantively unconscionable. (*Armendariz v. Found. Health Psychcare Servs., Inc.* (2000) 24 Cal.4th 83, 114.) Unconscionability refers to "an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." (*A&M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473, 486.) "Procedural unconscionability focuses on the elements of oppression and surprise. Oppression arises from an inequality of bargaining power which results in no

real negotiation and an absence of meaningful choice. Surprise involves the extent to which the terms of the bargain are hidden in a prolix printed form drafted by a party in a superior bargaining position." (*Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 177.) "Substantive unconscionability focuses on the actual terms of the agreement and evaluates whether they create 'overly harsh' or 'one-sided' results.' " (*Ibid.* (quoting *Roman v. Superior Court* (2009) 172 Cal.App.4th 1462, 1469.).)

Procedural and substantive unconscionability need not be present to the same degree. A sliding scale is applied so that " ' "the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." ' [Citations.]" (*Lhotka v. Geographic Expeditions, Inc.* (2010) 181 Cal.App.4th 816, 821; *Armendariz*, *supra*, 24 Cal.4th at p. 114.) The burden is on plaintiffs, as the parties challenging the arbitration agreement, to prove both procedural and substantive unconscionability. (*Crippen v. Central Valley RV Outlet, Inc.* (2004) 124 Cal.App.4th 1159, 1164–1165.)

Plaintiffs claim the agreement is procedurally unconscionable because: (1) Golchehreh did not have any actual or constructive notice of the arbitration clause when he clicked "consent" to the 2015 agreement while creating his online account (Opp. at 11:20–23); (2) plaintiffs had no equal bargaining power (Opp. at 11:23–24, 12:6–8); and (3) the agreement is an adhesion contract (Opp. at 13:22–24).

The court agrees with plaintiffs that the agreement is an adhesion contract. It appears on a standardized, preprinted form. However, the court rejects plaintiffs' other claims of procedural unconscionability. First, the arbitration agreement at issue is the one Golchehreh agreed to on December 3, 2023, when making his reservation (not the 2016 agreement when Golchehreh created his online account). The top of the first page of the Terms of Service informed Golchehreh in bold typeface that "Section 23 of these Terms contains an arbitration agreement and class action waiver that apply to all claims brought against Airbnb in the United States. Please read them carefully." (Chauvet Decl.,

Ex. F.) Plaintiffs claim there was no equal bargaining power, but this was a consumer relationship – there was no pressure for plaintiffs to accept the agreement. In sum, the court finds minimal procedural unconscionability based on the adhesion nature of the contract.

Next, plaintiffs claim the agreement is substantively unconscionable because: (1) it unfairly favors defendant "and the terms are not within the reasonable expectation of Plaintiff" (Opp. at 14:3–4); (2) "[b]y limiting the scope of arbitrable claims, the rules of [defendant's] arbitration agreement has the effect of substantively limiting Defendant's liability exposure and rendering the arbitration clause one-sided" (Opp. at 14:16–18); and (3) it specifies that arbitration is to be only administered by the AAA services chosen by defendant (Opp. at 14:22–24).

The court rejects these claims. Plaintiffs first argument that the agreement unfairly favors defendant is conclusory. The second argument refers to limiting the scope of arbitrable claims. If anything, that would favor plaintiffs here, because it would allow them to bring the non-arbitrable claims in court. Lastly, plaintiffs claim that the selection of AAA Rules favors defendant is unsubstantiated. The rules would apply equally to both parties; and further, Golchehreh agreed to this term when he accepted the agreement.

Based on the above, the court finds plaintiffs have not met their burden of proving the arbitration agreement is unenforceable due to procedural and substantive unconscionability.

2.2. Enforcement of Agreement Against Non-signatory Parties

" '[P]arties can only be compelled to arbitrate when they have agreed to do so. [Citation.] "Arbitration … is a matter of consent, not coercion.' " " (*Cohen v. TNP 2008 Participating Notes Program, LLC* (2019) 31 Cal.App.5th 840, 858–859.)

Plaintiffs claim defendant cannot compel Dokhanchi or Hamilton to arbitrate the dispute because they are not signatories to the arbitration agreement; and, because

arbitrating the dispute against plaintiff Golchehreh alone would create a reasonable likelihood of inconsistent results, the motion to compel should be denied all together.

Doctrines under which nonsignatories to an arbitration agreement can be compelled to arbitrate include incorporation by reference, assumption, agency, veil-piercing or alter ego, estoppel, and third-party beneficiary. (*Philadelphia Indem. Ins. Co. v. SMG Holdings, Inc.* (2019) 44 Cal.App.5th 834, 840–841; *Cohen*, *supra*, 31 Cal.App.5th at p. 859.) Whether an arbitration agreement is binding on a third party (e.g., a nonsignatory) is a question of law. (*Cohen* at p. 859; see *Benaroya v. Willis* (2018) 23 Cal.App.5th 462, 468.)

2.2.1. Plaintiff Dokhanchi

Defendant claims plaintiff Dokhanchi must be compelled to arbitrate on the grounds of agency and estoppel.

The court summarily rejects the defendant's agency theory. There is no evidence that Dokhanchi was acting as Golchehreh's agent in this case.

"A nonsignatory plaintiff may be estopped from refusing to arbitrate when he or she asserts claims that are 'dependent upon, or inextricably intertwined with' the underlying contractual obligations of the agreement containing the arbitration clause." (*Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 306; see *JSM Tuscany, LLC v. Superior Court* (20110 193 Cal.App.4th 1222, 1238.) " 'In the arbitration context, a party who has not signed a contract containing an arbitration clause may nonetheless be compelled to arbitrate when he seeks enforcement of other provisions of the same contract that benefit him.' " (*UFCW & Employers Benefit Trust v. Sutter Health* (2015) 241 Cal.App.4th 909, 928.)

Here, Dokhanchi claims loss of consortium. The court finds that Dokhanchi is equitably estopped from refusing to arbitrate the dispute because her claim is dependent upon and inextricably intertwined with Golchehreh's alleged injury, which falls under the arbitration agreement.

2.2.2. Defendant Hamilton

Defendant does not argue that defendant Hamilton must be compelled to arbitrate the dispute. Rather, defendant argues that the court should stay all proceedings pending the arbitration between plaintiffs and defendant.

2.3. Waiver

Plaintiffs claim defendant waived the right to compel arbitration by waiting seven months after the complaint was filed to bring the instant motion.

Waiver of the right to arbitrate does not require a voluntary relinquishment of a known right. For example, a party may waive the right by an untimely demand even without any intent to forgo the procedure. In this circumstance, waiver is similar to "a forfeiture arising from the nonperformance of a required act." (*Burton v. Cruise* (2010) 190 Cal.App.4th 939, 944.) "In the arbitration context, '…"waiver has also been used as a shorthand statement for the conclusion that a contractual right to arbitration has been lost.' " (*St. Agnes Medical Center v. PacifiCare of Cal.* (2003) 31 Cal.4th 1187, 1195, fn. 4; see *Roberts v. El Cajon Motors, Inc.* (2011) 200 Cal.App.4th 832, 840.)

The relevant factors establishing waiver include whether the party's actions are inconsistent with the right to arbitrate; whether the litigation machinery has been substantially invoked and the parties were well into preparation of a lawsuit before the party notified the opposing party of an intent to arbitrate; whether a party delayed for a long period before seeking an order to arbitrate; whether important intervening steps (e.g., taking advantage of judicial discovery procedures not available in arbitration) had taken place; and whether the delay affected, misled, or prejudiced the opposing party. (*St. Agnes*, *supra*, 31 Cal.4th at p. 1196; *Wagner Construction Co. v. Pacific Mechanical Corp.* (2007) 41 Cal.4th 19, 30–31.)

In this case, the court finds no waiver. Defendant has not acted inconsistently with the right to arbitrate. The instant motion to compel is its first and only filing in the lawsuit, and there is no argument that defendant's motion is an untimely responsive

pleading. Further, the litigation machinery has not been substantially invoked. No motions had been filed by any party until the instant motion was filed in March 2025. The only court hearing to date was a Case Management Conference two months ago. No court dates were set and the CMC was continued to July 2025.

2.4. Stay of Proceedings

"If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party … the court (1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding." (Code Civ. Proc., § 1281.2, subd. (d).)

Here, there is pending litigation between plaintiffs and third party Hamilton.

However, as previously noted, the FAA governs the interpretation and enforcement of the arbitration agreement. (Chauvet Decl., Ex. F at ¶ 23.6.) "[T]he parties may limit the trial court's authority to stay or deny arbitration under the CAA by adopting the more restrictive procedural provisions of the FAA." (*Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 157.) Unlike the CAA, the FAA "does not permit a trial court to stay or deny arbitration [to avoid the possibility of conflicting rulings on a common issue of fact or law]. Rather, the FAA requires the arbitration of all claims within the scope of an arbitration provision even if the action includes nonarbitrable claims by or against third parties." (*Valencia*, at p. 157; accord, *Mastick v. TD Ameritrade, Inc.* (2012) 209 Cal.App.4th 1258, 1263.)

Here, arbitration of all claims within the scope of the arbitration agreement is required, even against third party Hamilton. This action is stayed pending completion of arbitration proceedings.

The motion to compel arbitration is granted.

TENTATIVE RULING # 4: THE MOTION TO COMPEL ARBITRATION IS GRANTED. ALL PARTIES, INCLUDING BOTH PLAINTIFFS AND BOTH DEFENDANTS, SHALL ARBITRATE THE DISPUTE. THIS ACTION IS STAYED PENDING COMPLETION OF ARBITRATION. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

5. NAT'L CREDIT ACCEPTANCE v. OWEN, ET AL., SCL20070084

Order of Examination Hearing

This matter was continued from February 28, 2025, because the judgment-debtor did not bring the documents necessary to proceed with the Order of Examination.

TENTATIVE RULING # 5: THE JUDGMENT DEBTOR'S PERSONAL APPEARANCE IS REQUIRED AT 1:30 P.M., FRIDAY, APRIL 25, 2025, IN DEPARTMENT FOUR.

6. JENSEN v. THORNE, ET AL., 24CV1272

(A) Demurrer

(B) Motion to Strike

Demurrer

Defendants demur to each cause of action in plaintiff's second amended complaint ("SAC") on the grounds that plaintiff lacks standing to sue, each cause of action fails to state a claim and is uncertain, and further, the second cause of action for conversion violates the applicable statute of limitations.

Plaintiff, who is representing herself in pro per, did not file an opposition.

1. Background

This is a dispute regarding ownership of real property brought by the daughter of former owners of the property that was sold at foreclosure against subsequent owners of the property.

The court previously sustained defendants' demurrer to plaintiff's first amended complaint ("FAC"), which included causes of action for negligence and fraud, with leave to amend.

Plaintiff's SAC, filed February 3, 2025, alleges causes of action for: (1) quiet title; (2) conversion; (3) identify theft; (4) forgery; and (5) fraud.

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivisions (c) and (d), the court grants defendants' unopposed request for judicial notice of Exhibit 1 (plaintiff's SAC), Exhibit 2 (recorded deed of trust), Exhibit 3 (recorded assignment), Exhibit 4 (recorded substitution of trustees), Exhibit 5 (recorded notice of default), Exhibit 6 (recorded notice of trustee's sale), Exhibit 7 (recorded trustee's deed upon sale), Exhibit 8 (recorded grant deed), and Exhibit 9 (plaintiff's FAC [exhibits omitted]).

3. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however, improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

4. Discussion

4.1. Quiet Title

The elements of a cause of action for quiet title are: (1) a description of the property including both its legal description and its street address or common designation; (2) the plaintiff's title and the basis upon which it is asserted; (3) the adverse claims as against which a determination is sought; (4) the date as of which a determination is sought and, if other than the date the complaint is filed, a statement why the determination is sought as of that date; and (5) a prayer for determination of plaintiff's title against the adverse claims. (Code Civ. Proc., § 761.020, subds. (a)–(e).)

Except as otherwise provided by statute, "[e]very action must be prosecuted in the name of the real party in interest." (Code Civ. Proc., § 367.) "Generally, 'the person possessing the right sued upon by reason of the substantive law is the real party in interest.' [Citations.]" (*Del Mar Beach Club Owners Assn. v. Imperial Contracting Co.* (1981) 123 Cal.App.3d 898, 906.) Here, the plaintiff named in the SAC is Nicole Jensen. Plaintiff purports to sue on her own behalf. However, the allegations show that the persons possessing the right sued upon are Janet Zupetz and Robert Zupetz, who are

both deceased (the SAC alleges Robert Zupetz is deceased and the FAC alleges Janet Zupetz is deceased). (See SAC, ¶ 1 [“The court was provided with a valid chain of title … directing Janet and Robert Zupetz as the rightful owners of 2549 Blitzen Rd, Meyers, California 96150. The transfer of property should of [sic] only been to the Zupetz trust and trustees of the estate of the deceased Robert Zupetz. …[Defendants] knowingly took the property from an elderly vulnerable frail Robert Zupetz.”].)

Even if plaintiff had standing to bring the quiet title cause of action, the allegations do not confer liability upon the named defendants. The recorded documents, which the court has judicially noticed, show that the judicial foreclosure sale occurred before defendants purchased the property.

Therefore, the court sustains the demurrer to the first cause of action for quiet title. Because there is no reasonable possibility that plaintiff can cure the defects by amendment, the court denies leave to amend. (*Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 322.)

4.2. Conversion

“ ‘A cause of action for conversion requires allegations of plaintiff’s ownership or right to possession of property; defendant’s wrongful act toward or disposition of the property, interfering with plaintiff’s possession; and damage to plaintiff. [Citation.]’ ” (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 395.)

The SAC alleges defendants wrongfully exercised control over the home, as well as the contents inside. However, as previously discussed, plaintiff has not shown that she has standing to bring this claim.

Defendants also argue that the conversion claim is barred by the applicable statute of limitations, which is three years. (Code Civ. Proc., § 338, subd. (c).) The statute is typically triggered by the act of wrongfully taking the property. (*AmerUS Life Ins. Co. v. Bank of America, N.A.* (2006) 143 Cal.App.4th 631, 639.) Although the SAC does not

allege any dates when the alleged conduct occurred, the FAC alleges that defendants took the property in April 2019. (RJN, Ex. 9.) However, plaintiff did not file her original complaint until June 18, 2024, well after the statute of limitations had run.

The court sustains the demurrer to the second cause of action for conversion. Because there is no reasonable possibility that plaintiff can cure the defects by amendment, the court denies leave to amend. (*Roman*, *supra*, 85 Cal.App.4th at p. 322.)

4.3. Identity Theft

The elements of the common law tort of appropriation of a person's name or likeness are: "(1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury. [Citations.]" (*Cross v. Facebook*, *Inc.* (2017) 14 Cal.App.5th 190, 208.)

The SAC alleges, "The home title theft involved stealing Robert Zupetz's identity as the homeowner to facilitate the fraudulent transfer." (SAC, ¶ 3.)

Again, based on the allegations, plaintiff does not have standing to bring this claim. Additionally, plaintiff does not allege that *defendants* used Mr. Zupetz's identity. Therefore, the court sustains the demurrer to the third cause of action for identity theft. Based on the judicially noticed documents, there does not appear to be a reasonable possibility that the defects can be cured by amendment. Therefore, the court denies leave to amend. (*Roman*, *supra*, 85 Cal.App.4th at p. 322.)

4.4. Forgery

The SAC alleges, "Legal documents were signed to take ownership of the property by [defendants] who were not in the trust or aire [sic] to the trust at any time." (SAC, ¶ 4.) This claim is defective for multiple reasons. Again, the allegations do not confer standing upon plaintiff. Additionally, the allegations do not allege that defendants forged any documents. The court sustains the demurrer to the fourth cause of action for forgery and, because the judicially noticed documents show there is no reasonable likelihood

that the defects can be cured by amendment, the court denies leave to amend. (*Roman*, *supra*, 85 Cal.App.4th at p. 322.)

4.5. Fraud

" 'The elements of fraud … 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, quoting 5 Witkin, Summary of Cal. Law (9th ed. 1988), § 676, p. 778.)

The SAC alleges defendants "used deception by stating the home was in foreclosure when it was not. Producing and filing documents under false pretenses." (SAC, ¶ 5.) However, plaintiff fails to state a claim for fraud because she does not allege that defendants knew the alleged statement was false, that defendants intended to defraud plaintiff, or that plaintiff justifiably relied upon the alleged misrepresentation.

Additionally, the allegations do not confer standing upon plaintiff.

For these reasons, the court sustains the demurrer to the fifth cause of action for fraud. Because plaintiff previously had an opportunity to amend, and there is no reasonable possibility that the defects can be cured by further amendment, the court denies leave to amend. (*Roman*, *supra*, 85 Cal.App.4th at p. 322.)

Motion to Strike

Having sustained defendants' demurrer to each cause of action in the SAC without leave to amend, the court drops the motion to strike from the calendar as moot.

TENTATIVE RULING # 6: DEFENDANTS' DEMURRER TO THE ENTIRE SECOND AMENDED COMPLAINT IS SUSTAINED WITHOUT LEAVE TO AMEND. THE CASE IS DISMISSED WITH PREJUDICE. THE MOTION TO STRIKE IS DROPPED FROM THE CALENDAR AS MOOT. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL

ARGUMENT IS TRANSMITTED ELECTRONCIALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MSUT BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

7. GABLER v. SOUTH LAKE TAHOE PUBLIC UTILITY DISTRICT, 23CV1396

(A) Demurrer

(B) Motion to Strike

Demurrer

On March 21, 2024, defendant filed the instant demurrer to plaintiff's complaint. The matter was continued multiple times based on agreement of the parties, who were attempting to negotiate a settlement.

Plaintiff did not file an opposition to the demurrer.

1. Background

Plaintiff's complaint asserts causes of action against defendant for (1) negligence; (2) "intentional tort;" and (3) inverse condemnation. The complaint alleges that since at least 2018 (and specifically in September and October 2022), defendant has failed to adequately maintain its water delivery pipes located on or adjacent to plaintiff's property, causing leaks to occur, leading to subsidence and erosion to plaintiff's driveway and retaining wall, damages to landscape, and ongoing maintenance issues.

In Paragraph 9 of the complaint, plaintiff indicates he is required to comply with a claims statute. Plaintiff checked both of the following boxes, (a) that he has complied with applicable claims statutes; and (b) that he is excused from complying because "some or all of Plaintiff's claims are not governed by a claims statute."

2. Request for Judicial Notice

Pursuant to Evidence Code, section 452, subdivision (d), the court grants defendant's request for judicial notice of Exhibit A (plaintiff's complaint).

3. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of

the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

4. Discussion

Defendant argues that (1) plaintiff's complaint fails to allege a statutory basis for liability; (2) plaintiff's allegations of personal injuries in the first and second causes of action are barred where such allegations were omitted from plaintiff's government claim; (3) plaintiff lacks standing to pursue any claims on behalf of his family members; and (4) plaintiff's allegations of intentional tort in the second cause of action are barred where such allegations were omitted from plaintiff's government claim.

4.1. Statutory Basis for Liability

"A public entity is not liable for an injury" "[e]xcept as otherwise provided by statute." (Gov. Code, § 815.) "In other words, direct tort liability of public entities must be based on a specific statute declaring them to be liable, or at least creating some specific duty of care." (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1183.)

Defendant argues that plaintiff's complaint identifies no statutory authority for any of the causes of action. The court agrees. Therefore, the demurer is sustained on this ground as to all causes of action with leave to amend. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.)

4.2. Government Claims Act

The Government Claims Act requires a plaintiff seeking damages against a public entity to present a government claim before filing a lawsuit. (Gov. Code, § 945.4.)

"[F]ailure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity." (*State of Cal. v. Superior Court* (2004) 32 Cal.4th 1234, 1239 [discussing Gov. Code, §§ 911.2, 945.4].) Similarly, failure to allege facts demonstrating or excusing compliance with the requirement subjects a complaint to general demurrer for failure to state a cause of action. (*Neal v. Gatlin* (1973) 35 Cal.App.3d 871, 878.)

Here, plaintiff's complaint fails to allege that plaintiff submitted a government claim. Therefore, the court sustains the demurrer on this ground. As to the first and third causes of action, the demurrer is sustained with leave to amend.

The court notes that defendant attached a copy of plaintiff's government claim form to the declaration of defense counsel. (Nelson Decl., Ex. B.) Having reviewed and considered plaintiff's government claim, the court finds that plaintiff did not allege an intentional tort. Therefore, the demurrer is sustained as to the second cause of action without leave to amend as there is no reasonable possibility the defect can be cured by amendment. (*Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 322.)

4.3. Family Members' Claims

The complaint alleges that defendant caused personal injury to plaintiff and members of plaintiff's family. However, there is only one plaintiff in this case. Defendant argues that plaintiff, who is proceeding in this case in pro per, cannot represent the interests of his family members. (Dem. at 6:4–13 [citing Bus. & Prof. Code, § 6125].) The court agrees but finds that this argument is better suited for a motion to strike.

Motion to Strike

Having sustained defendant's demurrer, the court drops the motion to strike from the calendar as moot.

TENTATIVE RULING # 7: THE DEMURRER IS SUSTAINED. AS TO THE FIRST AND THIRD CAUSES OF ACTION, THE DEMURRER IS SUSTAINED WITH LEAVE TO AMEND.

PLAINTIFF SHALL FILE AND SERVE HIS AMENDED COMPLAINT NO LATER THAN MAY 9, 2025. AS TO THE SECOND CAUSE OF ACTION FOR INTENTIONAL TORT, THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND. HAVING SUSTAINED DEFENDANT'S DEMURRER, THE COURT DROPS THE MOTION TO STRIKE FROM THE CALENDAR AS MOOT. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONCIALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MSUT BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.