

1. CLEANRITE, INC. v. PATEL, ET AL., 25CV2033

Demurrer to Amended Cross-Complaint

The court, on its own motion, continues the matter to July 24, 2026. The court apologizes to the parties for any inconvenience.

TENTATIVE RULING # 1: ON THE COURT'S OWN MOTION, MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JULY 24, 2026, IN DEPARTMENT FOUR.

2. COETZEE v. LOMELLI-DIAZ, ET AL., 24CV2028

Motion for Attorney Withdrawal

TENTATIVE RULING # 2: MOTION IS GRANTED. WITHDRAWAL WILL BE EFFECTIVE AS OF THE DATE OF FILING PROOF OF SERVICE OF THE FORMAL, SIGNED ORDER UPON THE CLIENT. 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.

3. ROBERTS, ET AL. v. McINTYRE, ET AL., 25CV1786**(A) McIntyre Defendants' Demurrer****(B) McIntyre Defendants' Motion to Strike****(C) Tahoe Keys Property Owners' Association's Demurrer****(D) Tahoe Keys Property Owners' Association's Motion to Strike****(A) McIntyre Defendants' Demurrer**

On April 1, 2026, pursuant to Code of Civil Procedure section 430.10, subdivision (e), defendants Robert McIntyre and Bettina McIntyre (collectively, "defendants") filed a general demurrer to each of the five causes of action in plaintiffs James Roberts's and Susan Roberts's (collectively, "plaintiffs")¹ first amended complaint ("FAC") directed to defendants. Defense counsel declares he met and conferred with plaintiffs' counsel via telephone on March 16, 2026, in compliance with Code of Civil Procedure section 430.41, subdivision (a). (Hallissy Decl., ¶ 3.)

On June 1, 2026, plaintiffs filed a timely opposition and request for judicial notice. On June 5, 2026, defendants filed a timely reply.

1. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivisions (b) and (c), the court grants plaintiffs' unopposed request for judicial notice of Exhibit 1 (recorded CC&Rs) and Exhibit 2 (Chapter 37 of the TRPA Code of Ordinances).

2. 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.

¹ Both plaintiffs bring this action in their capacity as trustees of The Roberts Living Trust dated August 8, 1996, and restated November 18, 2008. (FAC at 1:23–26.)

(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.)

3. Discussion

As an initial matter, defendants argue that the nuisance, negligence, fraud, and negligent misrepresentation claims in the FAC are time-barred because the allegations do not “relate back” to the allegations in the original complaint filed July 8, 2025. Defendants also argue that, “[f]or any TRPA-based claims, where the 60-day and 65-day limitations periods under Article VI, Section (j)(4) of the Tahoe Regional Planning Compact expired years before the FAC was filed [sic].” (Dem. at 3:16–18.)

In the original complaint, the nuisance claim alleged defendants’ structure substantially blocked views and disrupted neighborhood aesthetic harmony; the negligence claim alleged harm resulting from blocked views, diminished property value, and loss of enjoyment; the fraud and negligent misrepresentation claims were based on the same view-and-aesthetics theory of damages. (Dem. at 2:26–3:4.)

In general, courts liberally apply the relation-back doctrine. (*Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 715, *aff’d* (2024) 15 Cal.5th 582.) The amended complaint must be based on the same operative facts—those creating the right to recovery—alleged in the original complaint. (*Barrington v. A.H. Robins Co.* (1985) 39 Cal.3d 146, 154.) Relation back “focuses on factual similarity rather than rights or obligations arising from the facts.” (*Dudley v. Dept. of Transp.* (2001) 90 Cal.App.4th 255, 265.) In determining whether an amended complaint alleges facts sufficiently similar to those in the original complaint, the critical issue is whether the original complaint gives defendant adequate notice of plaintiff’s claims. (*Hutcheson v. Superior*

Court (2022) 74 Cal.App.5th 932, 940.) As long as the “operative facts” (i.e., charging allegations) are the same in both pleadings, a change in legal theory or cause of action is permissible. (*Ibid.*)

Here, the court concludes that the operative facts in plaintiffs’ FAC relate back to the original complaint. The allegations of the FAC are sufficiently similar to those in the original complaint, which allege defendants’ construction, as well as defendants’ statements in its application materials, caused harm to plaintiffs.

Turning to the TRPA argument, the Tahoe Regional Planning Compact (“TRPC”) provides, in relevant part, “[a] legal action arising out of the adoption or amendment of the regional plan or of any ordinance or regulation of the agency, or out of the granting or denial of any permit, shall be commenced within 60 days after final action by the agency. All other legal actions shall be commenced within 65 days after discovery of the cause of action.” (TRPC, Art. VI, subd. (j)(4).) This subdivision applies to “(A) Actions arising out of activities directly undertaken by the agency. [¶] (B) Actions arising out of the issuance to a person of a lease, permit, license or other entitlement for use by the agency. [¶] (C) Actions arising out of any other act or failure to act by any person or public agency.” (TRPC, Art. VI, subd. (j)(1)(A)–(C).)

Defendants provide no legal authority showing that the TRPC deadlines are applicable to any cause of action herein. While the TRPA allegedly granted a permit in this case, plaintiffs’ claims do not arise out of the granting of said permit or any activity of the TRPA. The TRPA’s involvement in this case is a collateral matter. Therefore, the court finds that the 60-day deadline provided in the TRPC does not apply to the instant action.

In sum, the court rejects defendants’ challenges to the FAC based on the statute of limitations.

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3.1. First C/A for Private Nuisance

As pertinent here, nuisance is statutorily defined as “[a]nything which is injurious to health, ... or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property....” (Civ. Code, § 3479.)

To state a claim for private nuisance, the plaintiff must allege: (1) an “interference with the plaintiff’s use and enjoyment of that property”; (2) “that the invasion of the plaintiff’s interest in the use and enjoyment of the land was substantial, i.e., that it caused the plaintiff to suffer ‘substantial actual damage’ [Citations]”; and (3) that the interference with the protected interest was unreasonable. (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 937–939.)

The FAC alleges two separate theories of nuisance: (1) defendant’s elevated deck and windows, which are placed impermissibly close to plaintiffs’ property in violation of the setback rules, invade plaintiffs’ privacy because it creates a direct and unobstructed line-of-sight into plaintiffs’ bedroom, bathroom, and shower; and (2) defendants’ flat roof, increased impervious surface, and land coverage violations concentrate and discharge runoff towards plaintiffs’ property, causing recurring flooding.

The court finds that plaintiffs have pleaded a nuisance by the alleged flooding of their property. (See *Paterno v. State of Cal.* (1999) 74 Cal.App.4th 68, 103.) Nuisance claims based even on a single instance of flooding are not unknown. (E.g., *Ambrosini v. Alisal Sanitary Dist.* (1957) 154 Cal.App.2d 720, 727.)

Therefore, the court overrules the demurrer without needing to reach defendants’ challenge to the direct line-of-sight allegations. (*Fire Ins. Exchange v. Superior Court* (2004) 116 Cal.App.4th 446, 452 [“Ordinarily, a general demurrer does not lie as to a portion of a cause of action and if any part of a cause of action is properly pleaded, the demurrer will be overruled.”].)

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3.2. Second C/A for Negligence

Similar to the original complaint, the FAC alleges defendants breached their duty of care by constructing a residence that exceeds the applicable TRPA maximum height of 24 feet, constructing a fully flat roof configured as a rooftop deck covering substantially more than 25 percent of the roof area, and building within required setback distances. (Comp., Compl. at 5:11–15, FAC at 7:10–16.) The FAC, however, adds an allegation that defendants breached their duty of care by increasing impervious surface coverage in a manner that harmfully altered natural drainage patterns. (FAC at 7:13–14.)

The court finds that plaintiffs' FAC sufficiently alleges a cause of action against defendants for negligence based on the alleged flooding. (See, *Keys v. Romley* (1966) 64 Cal.2d 396 (holding that upper property owners could be liable for negligence if they failed to exercise reasonable care in the use of their property so as to avoid injury to the adjacent property through the flow of surface of waters).)

Therefore, the demurrer is overruled.

3.3. Third C/A for 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* (1996) 12 Cal.4th 631, 638, quoting 5 Witkin, Summary of Cal. Law (9th ed. 1988), § 676, p. 778.)

The FAC alleges defendants submitted plans to the City of South Lake Tahoe (the “City”) representing that the applicable maximum building height for their property was 25 feet, when really, the maximum allowable height was 24 feet. (FAC at 8:18–22.) Defendants allegedly knew and intended that adjacent property owners, including plaintiffs, would rely upon “the accuracy and lawfulness of the approved plans in determining whether to object, appeal, or seek injunctive relief.” (FAC at 9:5–7.) “Had Plaintiffs known that the height calculation reflected in Defendants' submitted materials

was inaccurate and that the project did not comply with TRPA's applicable 24-foot limitation under the site conditions shown in the plans, Plaintiffs would have timely pursued administrative and judicial remedies to prevent construction." (FAC at 9:19–22.)

Plaintiffs have still failed to state a claim for fraud because, even accepting the allegations as true, as the court must do in determining a demurrer, there is no intent to induce reliance or resulting damage. Plaintiffs allege defendants intended to induce plaintiffs to rely on their submitted plans in order for plaintiffs to decide whether to object, appeal, or seek injunctive relief. This claim fails as a matter of law. Plaintiffs would have had to decide whether to object, appeal, or seek injunctive relief no matter what defendants included in their application to the City.

Additionally, the alleged harm (i.e., privacy intrusions, damage impacts, etc.) was not proximately caused by the alleged misrepresentation; it was caused by the actual construction of defendant's residence.

The demurrer is sustained without leave to amend, as plaintiffs have had a previous opportunity to cure the defect through amendment.

3.4. Fourth C/A for Negligent Misrepresentation

The elements of negligent misrepresentation are: (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant made the representation without reasonable ground for believing it to be true; (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.)

Similar to the third cause of action for fraud, the FAC alleges plaintiffs negligently misrepresented to the City that the applicable maximum building height for their property was 25 feet, when really, it was 24 feet. (FAC at 10:5–9.)

However, this cause of action fails for the same reason as the claim of fraud. There is no intent to deceive plaintiffs and no harm proximately caused by the alleged misrepresentation. The court sustains the demurrer without further leave to amend.

3.5. Fifth C/A for Breach of Governing Documents

The FAC alleges plaintiffs and defendants are both members of the TKPOA subject to the CC&Rs and Architectural Control Rules; and that defendants breached Section 6.02 of the Architectural Control Rules in effect at the time defendants submitted their construction plans for approval. (FAC at 11:15–22.) Section 6.02 provides, “[n]o more than twenty-five percent (25%) of the roof area may be used as a deck. No flat roofs or roof pitch less than 2/12 is permitted.” (FAC at 11:25–28.)

Defendants argue that plaintiffs’ breach of governing documents claim is not actionable against defendants under Civil Code section 5975 where it is based on an alleged breach of the Architectural Control Rules, not the CC&Rs.

Civil Code section 5975, subdivision (a) expressly authorizes an owner of separate interest in a common interest development to enforce the CC&Rs against another owner as equitable servitudes, unless unreasonable. (Civ. Code, § 5975, subd. (b).) Civil Code section 5975, subdivision (b) provides: “A governing document other than the declaration [of CC&Rs] may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association.” (Civ. Code, § 5975, subd. (b).)

Plaintiffs counter that “the obligations the Plaintiffs seek to enforce are rooted in the recorded Declaration itself. Article VII of the recorded Declaration requires every owner to obtain architectural approval before building and to conform to the Declaration’s minimum construction standards. Section 10 of Article VII independently requires compliance with applicable setback lines and sets the height regime, with height determined ‘in accordance with the Architectural Control Committee Rules.’ (RJN, Exh. 1, Art. VII, §§ 1, 3, 10.) The Architectural Control Rules, including Section 6.02,

are adopted under, and are expressly subordinate to, the Declaration.” (Opp. at 14:24–15:7.)

Despite plaintiffs’ argument, the FAC plainly does not allege a breach of the CC&Rs. It alleges a breach of Section 6.02 of the Architectural Control Rules, which is a governing document other than the CC&Rs. Pursuant to Civil Code section 5975, subdivision (b), breach of the Architectural Control Rules is not actionable against defendants. The court sustains the demurrer with further leave to amend.

(B) McIntyre Defendants’ Motion to Strike

On April 2, 2026, defendants Robert McIntyre and Bettina McIntyre (collectively, “defendants”) filed a motion to strike the claim for punitive damages in plaintiffs’ first amended complaint. Defense counsel declares he met and conferred with plaintiffs’ counsel via telephone conference prior to filing the motion in compliance with Code of Civil Procedure section 435.5, subdivision (a). (Hallissy Decl., ¶¶ 3–4.)

On June 1, 2026, plaintiffs filed a timely opposition. On June 5, 2026, defendants filed a timely reply.

The only cause of action in the FAC that claims punitive damages under Civil Code section 3294 is the third cause of action for fraud. Having sustained defendants’ demurrer to the third cause of action without leave to amend, the court denies the motion to strike as moot.

(C) Tahoe Keys Property Owners’ Association’s Demurrer

On March 25, 2026, defendant Tahoe Keys Property Owners’ Association (“defendant”) filed an amended notice of demurrer to the first, second, fifth, and sixth causes of action in plaintiffs’ first amended complaint (“FAC”). Defense counsel declares he met and conferred with plaintiffs’ counsel via written letter and telephone conference, in compliance with Code of Civil Procedure section 430.41, subdivision (a). (Hansen Decl., filed Mar. 24, 2026, ¶¶ 6, 7 & Ex. A.)

On June 1, 2026, plaintiffs filed a timely opposition and request for judicial notice.

On June 5, 2026, defendant filed a timely reply.

1. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivisions (b) and (c), the court grants plaintiffs' unopposed request for judicial notice of Exhibit 1 (recorded CC&Rs) and Exhibit 2 (Chapter 37 of the TRPA Code of Ordinances).

2. Discussion

2.1. First C/A for Private Nuisance

The FAC alleges defendant caused a nuisance to plaintiffs by approving the design of the McIntyre's home.

Defendant argues the FAC merely pleads potential future activity (e.g., potential use of the roof-top for loud parties), whereas Civil Code section 3479 establishes what constitutes nuisance in the present tense.

Although not specifically argued in defendant's demurrer, the court finds that plaintiffs fail to state a claim of nuisance against defendant where the FAC merely alleges defendant approved the design of the McIntyre's home. Nuisance is the interference "with the comfortable enjoyment of life and property." (Civ. Code, § 3479.) The court finds, as a matter of law, that approval of the McIntyre's construction design, alone, does not constitute nuisance because there is no alleged unreasonable interference with plaintiffs' use and enjoyment of their property. (See, *Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 863, 876–877.)

The court sustains the demurrer to the first cause of action for nuisance. Because there is no reasonable likelihood that plaintiffs can amend the complaint to allege a cause of action against defendant for nuisance, the court denies leave to amend.

2.2. Second C/A for Negligence

"Actionable negligence involves a legal duty to use due care, a breach of such legal duty, and the breach as the proximate or legal cause of the resulting injury." (*United*

States Liab. Ins. Co. v. Haidinger-Hayes, Inc. (1970) 1 Cal.3d 586, 594.) “It is axiomatic that liability for negligence in any scenario must be premised on a duty of care, and ‘[t]he existence and scope of a defendant’s duty is an issue of law to be decided by the court.’ [Citation.]” (*Lynch v. Peter & Associates etc.* (2024) 104 Cal.App.5th 1181, 1189.)

The FAC alleges defendant negligently approved and permitted a structure that violated defendant’s own governing documents and applicable standards. (FAC at 7:17–27.)

Defendant claims plaintiffs “do not identify what specific duty the Association owed to them with respect to window view and drainage.” (Dem. at 4:23–24.) Additionally, defendant claims the cause of action is barred under the Tahoe Regional Planning Compact’s (“TRPC”) 60-day deadline. (Dem. at 5:9–21.) For the same reasons discussed under the McIntyre’s Demurrer, above, the TRPC deadline does not apply to any cause of action herein.

In their opposition, plaintiffs cite *Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 499 for the proposition that homeowner’s associations are subject to ordinary tort duties of care. (Opp. at 7:17–21.) In *Frances T.*, the court found that the defendant homeowner’s association was, for all practical purposes, the landlord of a condominium association, and therefore, the defendant owed “a duty to exercise due care for the residents’ safety in those [common] areas under their control. [Citations.]” (*Ibid.*) However, *Frances T.* does not address the issue of whether a homeowner’s association owes a member a duty of care with respect to approving and permitting a structure to be built by another member. Plaintiffs provide no legal authority showing that defendant owed such a duty of care.

Even if defendant owed plaintiffs a duty of care (the court is not convinced that defendant owed plaintiffs a duty of care, for purposes of negligence liability, in this case), the alleged breach (i.e., approving construction plans that did not meet the

requirements under defendant's governing documents) is not a proximate cause of plaintiff's alleged damage.

The court finds that plaintiffs have failed to state a claim of negligence against defendant. The demurrer to this cause of action is sustained. Because it does not appear reasonably likely that amendment will cure the defect, the court denies leave to amend.

2.3. Fifth C/A for Breach of Governing Documents

The FAC alleges defendant breached its obligations under the governing documents when it approved the McIntyre's construction plans that did not comply with Section 6.02 of the Architectural Control Rules. (FAC at 12:19–22.) Section 6.02 in effect at the time the McIntyre's submitted and obtained approved of their construction plans provided: "No more than twenty-five percent (25%) of the roof area may be used as a deck. No flat roofs or roof pitch less than 2/12/permitted."

Defendant argues the cause of action is defective because: (1) defendant has since amended Section 6.02 to apply retroactively and the McIntyre's roof is no longer in breach of the Architectural Control Rules; and (2) defendant is protected by the business judgment rule (or the "judicial deference rule").²

The FAC alleges that, on August 28, 2024, defendant amended Section 6.02 to remove the flat-roof prohibition while retaining the 25 percent deck limitation. (FAC at 14:1–3.) Even assuming, *arguendo*, that the amendment of Section 6.02 applies

² In *Lamden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249, our Supreme Court adopted the "judicial deference rule," which is an adaptation of the business judgment rule applicable to directors of corporations. The judicial deference rule provides, "where a duly constituted community association board, upon reasonable investigation, in good faith and with regard for the best interests of the community association and its members exercises discretion within the scope of its authority under relevant statutes, covenants and restrictions to select among means for discharging an obligation to maintain and repair a development's common areas, courts should defer to the board's authority and presumed expertise." (*Id.*, at p. 265.)

retroactively, the FAC still alleges that defendant approved the McIntyre's construction plan, which included over 25 percent of the roof area to be used as a deck.

As for the judicial deference rule, plaintiffs argue that (1) it does not extend to decisions by an association that are outside the scope of its authority under its governing documents; and (2) it is an affirmative defense of which defendant carries the burden of proving its required elements, and defendant cannot carry such burden on the face of the FAC.

The court agrees with plaintiffs that the judicial deference rule does not apply here, where the FAC alleges that defendant's decision was objectively outside the scope of its authority. That is because Section 6.02 provides an express, measurable rule prohibiting flat roofs and a 25 percent deck cap.

But, the court disagrees with plaintiffs that the judicial deference rule is an affirmative defense; rather, it creates a presumption: " "[T]he presumption created by the business judgment rule can be rebutted only by affirmative allegations of facts which, if proven, would establish fraud, bad faith, overreaching or an unreasonable failure to investigate material facts." ' ' (Lauckhart v. El Macero Homeowners Assn. (2023) 92 Cal.App.5th 889, 906; Eldridge v. Tymshare, Inc. (1986) 186 Cal.App.3d 767, 776.)

The demurrer is overruled.

2.4. Sixth C/A for Breach of Fiduciary Duty

"The elements of a claim for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) its breach, and (3) damage proximately caused by that breach." (Mendoza v. Continental Sales Co. (2006) 140 Cal.App.4th 1395, 1405.)

The FAC alleges defendant breached its fiduciary duties by selectively not enforcing Section 6.02 (and other applicable height and setback limitations incorporated into and enforceable through the Architectural Control process) against the McIntyres and instead providing the McIntyres preferential treatment. (FAC at 14:11–17.)

Defendant argues it is entitled to the presumption of judicial deference under *Lamden, supra*, 21 Cal.4th 249. However, as previously discussed, the court finds that the judicial deference rule does not protect defendant here where the decision (at least with respect to Section 6.02) was objectively outside defendant's scope of authority.

The demurrer to this cause of action is overruled.

(D) Tahoe Keys Property Owners' Association's Motion to Strike

On March 25, 2026, pursuant to Code of Civil Procedure section 436, defendant Tahoe Keys Property Owners' Association ("defendant") filed an amended motion to strike the allegations related to diminution-in-value damages in plaintiffs' first amended complaint ("FAC"). (FAC at 4:25, 6:22, 8:11, 11:9–10, 13:4–5, 14:20.) Defense counsel declares he met and conferred with plaintiffs' counsel via written letter and telephone conference prior to filing the motion in compliance with Code of Civil Procedure section 435.5, subdivision (a). (Hansen Decl., ¶¶ 6–7 & Ex. A.)

On June 1, 2026, plaintiffs filed a timely opposition. Defendant filed no reply.

1. Legal Principles

A motion to strike is generally used to address defects appearing on the face of a pleading that are not subject to demurrer. (*Pierson v. Sharp Memorial Hospital* (1989) 216 Cal.App.3d 340, 342.) "The court may, upon a motion [to strike] ..., or at any time in its discretion ... [¶] ... [s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 436, subd. (a).) Like a demurrer, the grounds for a motion to strike must appear on the face of the pleading or from any matter which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).) On a motion to strike the trial court must read the complaint as a whole, considering all parts in their context, and must assume the truth of all well-pleaded allegations. (*Courtesy Ambulance, supra*, 8 Cal.App.4th at p. 1519.)

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2. Discussion

Having sustained defendant's demurrer to the first and second causes of action without leave to amend, the only causes of action in plaintiffs' FAC remaining against defendant are the fifth and sixth causes of action for breach of governing documents and breach of fiduciary duty, respectively.

Citing to *Kaye v. Mount La Jolla Homeowners Assn.* (2015) 204 Cal.App.3d 1476, 1486–1487, defendant argues that in governing document enforcement disputes, the proper measure of damages is the cost to cure, not diminution in market value. However, as plaintiffs point out, the *Kaye* opinion addressed an association's duty to repair the common areas of a condominium project and held that, in such cases, an individual homeowner is limited to the cost of repair and cannot also compel the association to reimburse for diminution in value of the homeowner's unit. (*Id.*, at pp. 1487–1488.)

Civil Code section 5975 does not enumerate specific damage remedies (beyond attorney fees and costs) for a breach of governing documents claim.

In the case of breach of fiduciary duty, the plaintiff is entitled to damages for all harm proximately caused by the defendant's breach of fiduciary duty. (*Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1582; see Civ. Code, § 3333.)

Because defendant has not met its burden of showing that the claim for diminution-in-value damages is improper, the motion to strike is denied.

TENTATIVE RULING # 3:

(A) MCINTYRE DEFENDANTS' DEMURRER: AS TO THE FIRST AND SECOND CAUSES OF ACTION, THE DEMURRER IS OVERRULED. AS TO THE THIRD AND FOURTH CAUSES OF ACTION, THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND. AS TO THE FIFTH CAUSE OF ACTION, THE DEMURRER IS SUSTAINED WITH FURTHER LEAVE TO AMEND.

(B) MCINTYRE DEFENDANTS' MOTION TO STRIKE: THE MOTION TO STRIKE IS DENIED AS MOOT.

(C) TAHOE KEYS PROPERTY OWNERS' ASSOCIATION'S DEMURRER: AS TO THE FIRST AND SECOND CAUSES OF ACTION, THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND. AS TO THE FIFTH AND SIXTH CAUSES OF ACTION, THE DEMURRER IS OVERRULED.

(D) TAHOE KEYS PROPERTY OWNERS' ASSOCIATION'S MOTION TO STRIKE: THE MOTION TO STRIKE IS DENIED.

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. TD BANK USA, N.A. v. CORRAL, 25CV0968

OSC Re: Dismissal

On January 22, 2026, plaintiff filed a conditional notice of settlement, indicating that a request for dismissal would be filed no later than May 30, 2026. To date, there is no request for dismissal in the court's file.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, JUNE 12, 2026, IN DEPARTMENT FOUR, UNLESS A REQUEST FOR DISMISSAL IS SUBMITTED PRIOR TO THE HEARING, IN WHICH CASE, NO APPEARANCE WILL BE REQUIRED.

5. WEHBE v. CARDINAL FINANCIAL CO., L.P., ET AL., 25CV0635**OSC Re: Preliminary Injunction**

On May 12, 2026, plaintiff Anthony Wehbe (“plaintiff”) filed a motion for preliminary injunction enjoining defendant Cardinal Financial Company, LP (“defendant”) from proceeding with the foreclosure sale of plaintiff’s real property currently scheduled for June 17, 2026.

On May 26, 2026, defendant Cardinal Financial Company, LP (“defendant”) filed a timely opposition. On June 5, 2026, plaintiff filed a timely reply.

1. Background

Plaintiff owns and resides in the real property located at 2265 Sierra House Trail in South Lake Tahoe, California. He purchased the property in November 2022 by obtaining a loan against the property from defendant in the amount of \$674,500. On February 27, 2024, ServiceMac, LLC (“ServiceMac”), the servicer of the loan on behalf of defendant, sent plaintiff written notice that he was in default on the loan. (Wehbe Decl., Ex. 2.)

On April 4, 2024, ServiceMac sent plaintiff an assistance/modification packet. (Wehbe Decl., ¶ 5(c).) Plaintiff declares he completed the documents in good faith but, without completing the review process, ServiceMac closed plaintiff’s assistance file and demanded payment, while also telling plaintiff he could not pay without completing modification. (Wehbe Decl., ¶ 5(d).) Plaintiff claims he was required to “restart” the entire modification process with defendant. (Wehbe Decl., ¶ 5(e).) Plaintiff provided all required documentation but received a notice dated June 26, 2024, stating his application was considered incomplete. (Wehbe Decl., ¶ 5(e) & Ex. 4.)

On July 3, 2024, defendant sent plaintiff a letter stating the loan was in default for breach of the loan terms. (Nguyen Decl., Ex. E.) Specifically, the letter states plaintiff “gave materially false, misleading, or inaccurate information or statements to the Lender. The Borrower falsified a divorce decree, child support payments, and bank

statements during the loan origination process which constitutes a default under the Note and Security Instrument and entitles [defendant] to declare the entire indebtedness immediately due and payable.” (Nguyen Decl., Ex. E.) As of July 3, 2024, the amount needed to cure the default was \$704,092.20. (Nguyen Decl., Ex. E.)

On July 16, 2024, defendant sent plaintiff an email stating that the package he submitted was deemed complete. (Wehbe Decl., Ex. 5.) Hours later, however, defendant sent plaintiff another email stating defendant had closed review of plaintiff’s request for assistance. (Wehbe Decl., Ex. 6.) In a letter from defendant, also dated July 16, 2024, defendant informed plaintiff he was not eligible for any loss mitigation options to retain his home. (Nguyen Decl., Ex. B.)

On July 30, 2024, plaintiff sent defendant an email stating he would like to make one monthly payment “asap.” (Wehbe Decl., Ex. 8.)

On July 31, 2024, defendant responded that it would only accept the full amount due on the loan. (Wehbe Decl., Ex. 7.) Defendant stated the details as to why it was calling the loan due was explained in its July 3, 2024, letter. (Wehbe Decl., Ex. 7.) Defendant’s email goes on to state, “[W]e want to advise you that this was one of the reasons why your request for mortgage assistance was denied. We apologize that this was not disclosed to you previously and have taken steps to ensure this is better communicated in the future.” (Wehbe Decl., Ex. 7.)

On August 5, 2024, plaintiff submitted an appeal of defendant’s July 16, 2024, denial of plaintiff’s application for loan modification. (Nguyen Decl., Ex. C.) Plaintiff indicated he had a change of circumstances and was now collecting income that would provide him sufficient funds to resume mortgage payments. (Nguyen Decl., Ex. C.)

On August 20, 2024, defendant sent plaintiff a letter denying his appeal, explaining there was no change of circumstance included in the information attached to plaintiff’s appeal. (Nguyen Decl., Ex. D.)

Over a year later, on December 22, 2025, defendant recorded a notice of default. (Nguyen Decl., Ex. F.) A foreclosure sale is currently scheduled for June 17, 2026.

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (c), the court grants defendant's unopposed request for judicial notice of Exhibit A (recorded deed of trust) and Exhibit B (recorded notice of default).

3. Legal Principles

"As its name suggests, a preliminary injunction is an order that is sought by a plaintiff prior to a full adjudication of the merits of its claim. [Citation.]" (*White v. Davis* (2003) 30 Cal.3d 528, 554.) The purpose of such an order is to preserve the status quo pending a determination on the merits of the action. (*Id.*, at p. 553; *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.)

Code of Civil Procedure section 526 provides for an injunction in the following cases:

"(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. [¶] (2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action. [¶] (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual. [¶] (4) When pecuniary compensation would not afford adequate relief. [¶] (5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. [¶] (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings. [¶] (7) Where the obligation arises from a trust." (*Id.*, subd. (a).)

A ruling on an application for a preliminary injunction is not an adjudication of the ultimate rights in the controversy. It merely represents the trial court’s discretionary decision whether the defendant should be restrained from exercising a claimed right pending trial. (*Cohen v. Bd. of Supervisors* (1985) 40 Cal.3d 277, 286.) “In deciding whether to issue a preliminary injunction, a trial court must evaluate two interrelated factors: (i) the likelihood that the party seeking the injunction will ultimately prevail on the merits of [their] claim, and (ii) the balance of the harm presented, i.e., the comparative consequences of the issuance and nonissuance of the injunction.” (*Common Cause v. Bd. of Supervisors* (1989) 49 Cal.3d 432, 441–442 [fn. omitted].) “The trial court’s determination must be guided by a ‘mix’ of the potential-merit and interim-harm factors; the greater the plaintiff’s showing on one, the less must be shown on the other to support an injunction. [Citation.]” (*Butt v. State of Cal.* (1992) 4 Cal.4th 668, 678.) However, “[a] trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim.” (*Ibid.*)

4. Discussion

Plaintiff’s complaint alleges defendant violated Civil Code sections 2923.5 and 2923.7, and Business and Professions Code section 17200.³

4.1.1. Civil Code section 2923.5

Civil Code section 2923.5 requires a mortgage servicer to contact a borrower to assess their financial situation and explore options to avoid foreclosure before recording a notice of default. Defendant recorded its notice of default on December 22, 2025. (Nguyen Decl., ¶ 14 & Ex. F.) The record shows that defendant communicated with plaintiff in 2024 regarding potential loan modification. Plaintiff submitted at least one

³ Plaintiff’s motion for preliminary injunction also claims defendant violated Civil Code sections 2923.6, 2924.11, and 2924.17. (Mtn. at 5:2–3.) However, the complaint does not include any cause of action for violating these sections. Therefore, the court does not consider them in the instant motion.

loan modification application and appealed defendant's July 16, 2024, decision to deny plaintiff's application.

Moreover, the recorded notice of default includes a declaration of compliance dated December 22, 2025, stating in relevant part, "Pursuant to the attached Declaration, the mortgage servicer declares that it has contacted the borrower, tried with due diligence to contact the borrower as required by California Civil Code § 2923.55 or § 2923.5, or is otherwise exempt from the requirements of § 2923.55 and § 2923.5." The declaration attached to the notice of default is signed under penalty of perjury, dated December 9, 2025, and states in relevant part: "The mortgage servicer has tried with due diligence to contact the borrower as required by California Civil Code § 2923.55(f) as in effect at the time of outreach but has not made contact despite such due diligence. The due diligence efforts were satisfied on 03/11/2025."

Based on the above, the court finds that plaintiff is not likely to prevail on this claim.

4.1.2. Civil Code section 2923.7

Plaintiff claims defendant violated the requirement that a mortgage servicer provide a borrower a single point of contact for discussions regarding foreclosure prevention alternatives if the borrower requests one. (Civ. Code, § 2923.7.)

Although plaintiff's complaint alleges he requested a single point of contact, the complaint is unverified. A judge may grant a preliminary injunction at any time before judgment on a verified complaint, verified cross-complaint, or declarations showing satisfactorily that sufficient grounds exist for the injunction. (Code Civ. Proc., § 527, subd. (a); *Gillies v. JP Morgan Chase Bnk, N.A.* (2017) 7 Cal.App.5th 907, 913.) Plaintiff's declaration in support of his motion for preliminary injunction includes no statement that he requested a single point of contact.

Even if plaintiff were to provide evidence that he requested a single point of contact, defendant has submitted evidence that plaintiff was in breach of the loan agreement due to allegedly providing false information to obtain the loan. Therefore, any violation

of the single point of contact requirement under Civil Code section 2923.7 would appear to be immaterial. (Civ. Code, § 2924.12, subd. (a)(1) [“If a trustee’s deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a *material* violation of Section 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17.” (emphasis added)].)

Based upon the information before this court, the court finds that plaintiff is not likely to prevail on this claim.

4.1.3. Business and Professions Code section 17200

Plaintiff’s claim of unfair business practices is premised on the alleged violations of Civil Code sections 2523.5 and 2523.7. Having concluded that plaintiff is not likely to prevail on the underlying claims, the court also concludes plaintiff is not likely to prevail on the unfair business practices claim.

The court recognizes that the potential interim harm to plaintiff is significant. However, because plaintiff has not established a reasonable possibility of prevailing on the merits of any of his claims, the court must deny the request for a preliminary injunction. (*Choice-in-Education League v. Los Angeles Unified School Dist.* (1993) 17 Cal.App.4th 415, 422.)

TENTATIVE RULING # 5: THE MOTION FOR PRELIMINARY INJUNCTION IS DENIED. 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.