

## TENTATIVE RULINGS

**FOR: April 23, 2021**

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

**Remote appearances via Zoom are mandatory to prevent the spread of COVID-19.** Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

### **Dept. A Zoom**

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### **Dept. B Zoom**

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**Court Reporting Services** – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

**PROBATE CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.**

**Conservatorship of Can, Andrea Elizabeth**

**26-45132**

REVIEW HEARING

**TENTATIVE RULING:** After a review of the matter, the Court finds the Conservator is acting in the best interest of the Conservatee. Thus, the case is set for a biennial review hearing in two years, on April 21, 2023 at 8:30 a.m. in Dept. A. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

**CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.**

**Blue Bay Ventures, LLC v. Steven Hennion, et al.**

**19CV001402**

**MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT**

**TENTATIVE RULING:** Plaintiff Blue Bay Ventures, LLC’s motion for leave to file a first amended complaint is DENIED WITHOUT PREJUDICE. The proof of service indicates that notice was sent by email “pursuant to Emergency Rule 12” on “April 30, 2018.” The reference to the 2018 date clearly is incorrect and predates Emergency Rule 12, but in addition, the rule permitting electronic service was repealed effective November 13, 2020. (See <https://www.courts.ca.gov/documents/appendix-i.pdf> at p.14.) Plaintiff fails to direct the Court’s attention to other authority for electronic service in the proof of service. (See Code Civ. Proc. § 1010.6, subd. (a)(2)(A)(ii).)

If plaintiff elects to refile its motion, it shall also provide notice to Steven Hennion’s attorney Matthew Harris. Despite the motion to substitute – which applied only to Steven Hennion in his capacity as trustee with Erik Hennion in his capacity as trustee – the Court questions whether Steven Hennion remains a party in his individual capacity, considering the caption of the complaint names “STEVEN HENNION, an Individual and as Successor Trustee under the Hennion Living Trust.” This may not be correct or plaintiff’s intent, but in an abundance of caution, notice seems appropriate.

The Court encourages counsel for all parties to work toward a stipulation to allow plaintiff to file a first amended complaint without the need for further motion practice.

**PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.**

**Conservatorship of Murat Baspehlivan**

**19PR000197**

**REVIEW HEARING AND PETITION FOR APPROVAL OF TRUST’S FIRST ACCOUNT**

**TENTATIVE RULING:** GRANT petition. After a review of the matter, the Court finds the conservator is acting in the best interest of the conservatee. Thus, the matter is set for a biennial review hearing and an accounting in two years on April 23, 2023, at 8:30 a.m. in Dept. B. All accounting documents must be filed at least 30 days prior to the hearing. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

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[1] DEMURRER

**TENTATIVE RULING:** Defendants' demurrer is SUSTAINED as to the third cause of action for promissory estoppel, fourth cause of action for breach of contract, and fifth cause of action for fraud / promise without intention to perform. The demurrer is OVERRULED in all other respects. Plaintiff is granted 10 days' leave to amend the Complaint.

**A. PROCEDURAL MATTERS**

1. General

Defendants Thomas O'Connor, both individually and in his capacity as Trustee, Benjamin Kerr, and Peck & Hiller Company demur, pursuant to Code of Civil Procedure sections 430.10, *et seq.*, and 337, subdivision (a), both generally and specially to the Complaint filed by Plaintiff Gary Loebner on the following grounds: (a) a party is misjoined, (b) the Complaint fails to state a cause of action, (c) the claims are uncertain, ambiguous and unintelligible, (d) the claims are unripe, (e) the claims are time-barred, and (f) allegations of fraud and/or deceit are pled without the requisite specificity. (See Notice of Demurrer at 2:4-9.) Of these, the grounds of (a) misjoinder, and (e) time-barred are asserted only as to the Complaint as a whole. The Court will address each of these theories in turn. Ground (f) is asserted only as to the fifth cause of action, and the remainder are asserted both as to the Complaint as a whole, and specifically as to the second through sixth causes of action. (See, *generally*, Defendants' Demurrer to the Complaint (Demurrer).) The Court will address each of these grounds as applied to the specific causes of action.

2. Defendant's Request for Judicial Notice

Defendants' request for judicial notice is GRANTED.

**B. LEGAL ANALYSIS**

A complaint must contain "facts constituting the cause of action." (Code Civ. Proc. § 425.10, subd. (a)(1).) A demurrer is treated as "admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The Court must also accept as true facts that may be inferred from those expressly alleged. (*Cundiff v. GTE Cal., Inc.* (2002) 101 Cal.App.4th 1395, 1405.) The Court may also consider as grounds for a demurrer any matter that is judicially noticeable under Evidence Code sections 451 or 452. (Code Civ. Proc., § 430.30, subd. (a).) "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.) In reviewing a demurrer, the court must "construe the allegations of a complaint liberally in favor of the pleader." (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 438.) A general demurrer will also lie "where the complaint has

included allegations that clearly disclose some defense or bar to recovery.” (*Cryolife, Inc. v. Super. Ct.* (2003) 110 Cal.App.4th 1145, 1152.)

### 1. Plaintiff Enjoys Standing to Bring Claims Asserted in and Through the Complaint

Defendants argue that the Complaint is subject to general demurrer on the following grounds.<sup>1</sup> “There is an ambiguity resulting in a potential defect of the parties as to Plaintiff, Peck Trust, because Plaintiff is not a party to the Buy-Sell Agreement which was entered into prior to the creation of the Peck Trust. The Complaint does not allege that Plaintiff, in addition to (or instead of) Peck in his individual capacity, has standing to sue on the Buy-Sell.” (Demurrer at 2:2-5.) Defendants argument is based on Code of Civil Procedure section 367, which provides that, “[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.”<sup>2</sup>

The Court finds that the Complaint contains allegations of fact which, if true, would establish that Plaintiff is the real party in interest as to – at least – the claims stated in the first, third, fourth and fifth causes of action. (See, *e.g.* Complaint at ¶¶ 8, 12, 16, 23, 26, 28, and 31.) Of these, the first cause of action survives the present demurrer. Based on the foregoing, the Court finds that the Complaint as a whole is not subject to demurrer based on misjoinder of Plaintiff. (See *McKenney v. Purepac Pharmaceutical Co.* (2008) 167 Cal.App.4th 72, 77.)

### 2. The Complaint as a Whole is Not Time Barred

Defendants next argue that the claims asserted in and through the Complaint are time-barred. (See Demurrer at 2:14-15.) Defendants’ argument is limited, however, to the consequence of Plaintiff’s allegation that the Promissory Notes “matured in 2012.” (See Demurrer at 2:14-15; Support Memo at II (C).) The Complaint does affirmatively allege that each of the three promissory notes have December 31, 2012 as repayment date. (See Complaint at 3:25, 4:2-5.) However, the Court finds that this fact alone does not establish a defense – based on statute of limitations or other legal theory – as to at least the first, second, third, fifth, and/or sixth causes of action. Of these, the first and sixth survive the present demurrer. As a result, the Court does not find that the Complaint allege facts sufficient to establish that all the claims asserted therein are time-barred. (*Cryolife, Inc. v. Super. Ct., supra*, 110 Cal.App.4th at 1152.)

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<sup>1</sup> Defendants’ categorization and presentation of grounds in support of their demurrer is somewhat confusing to the Court. This theory is asserted under the “General Demurrer” section of Plaintiff’s Demurrer. (See Demurrer at 2:1-5.) “The name ‘general demurrer’ is...universally applied to a demurrer raising the fundamental ground: ‘The pleading does not state facts sufficient to constitute a cause of action.’ [Citations.]” (*McKenney v. Purepac Pharmaceutical Co.* (2008) 167 Cal.App.4th 72, 77.) However, Defendants appear to use the phrase here to refer to a theory that they contend applies to the Complaint in its entirety.

<sup>2</sup> Mis-cited by Defendants as Code of Civil Procedure section 337. (See Support Memo at § II (B). Unfortunately, Defendants’ Support Memorandum is not paginated, in violation of Rules of Court, rule 3.1110, subdivision (c). Consequently, the Court is forced to cite to the document by section.

### 3. The Second Cause of Action

Defendants assert that the second cause of action for declaratory relief fails to state facts sufficient to constitute a cause of action, is not ripe for adjudication, and is uncertain, ambiguous, and unintelligible as pled. (See Demurrer at 2:17-22.)

#### a. *The Complaint Alleges Facts Sufficient to State a Claim for Declaratory Relief*

“The purpose of a declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation. Another purpose is to liquidate doubts with respect to uncertainties or controversies which might otherwise result in subsequent litigation. One test of the right to institute proceedings for declaratory judgment is the necessity of present adjudication as a guide for plaintiff’s future conduct in order to preserve his legal rights. Section 1060 does not require a breach of contract in order to obtain declaratory relief, only an ‘actual controversy.’ Declaratory relief pursuant to this section has frequently been used as a means of settling controversies between parties to a contract regarding the nature of their contractual rights and obligations.” (*Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 364-65 (*Osseous*). Citations omitted.)

“Code of Civil Procedure section 1060 authorizes actions for declaratory relief under a ‘written instrument’ or ‘contract.’ Declaratory relief generally operates prospectively to declare future rights, rather than to redress past wrongs.” (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 909.) “To qualify for declaratory relief, a party would have to demonstrate its action presented two essential elements: ‘(1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to [the party’s] rights or obligations.’” (*Ibid.*)

“Any person interested under a written instrument...or under a contract, or who desires a declaration of his or her rights or duties with respect to another...may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract...The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.” (Code Civ. Proc. §1060.) “The court may refuse to exercise the power granted by this chapter in any case where its declaration or determination is not necessary or proper at the time under all the circumstances.” (Code Civ. Proc. §1061.)

“[T]here are three possible classifications of actions brought solely under the authority of section 1060: (1) actions that must be dismissed by the trial court; (2) actions in which a declaratory adjudication is entirely appropriate, and a trial court would therefore abuse its discretion under section 1061 by dismissing the case; and (3) actions wherein a trial court has discretion to provide declaratory relief under section 1060, but also has discretion to dismiss the action under section 1061.” (*Osseous, supra*, 191 Cal.App.4th at 365.)

Defendants argue that, “Plaintiff has failed to evidence a proper basis for declaratory relief.” (Support Memo at II(E).) The Court disagrees. Plaintiff has adequately alleged that it is a person interested under the subject promissory notes. (See Complaint at ¶ 16.) Plaintiff has adequately alleged that it desires a declaration of its rights with respect to Defendants. (See *Id.* at ¶ 42.) While not as plainly alleged as the foregoing, the Court also finds that the factual allegations of paragraphs 22-25 of the Complaint, and the reasonable factual inferences therefrom, are sufficient factual allegations of the existence of an actual controversy relating to the parties’ legal rights and duties under the subject promissory notes. The elements of Civil Procedure section 1060 are therefore satisfied.

The question becomes whether the Complaint contains allegations from which the Court can conclude that the requested declaration (or determination) “is not necessary or proper.” (Code Civ. Proc. §1061.) Defendants do not, so far as the Court can find, point to any. None appear from the Court’s review of the Complaint.

Based on the foregoing, the Court finds that the Complaint alleges facts sufficient to state a cause of action for Declaratory Relief.

*b. The Second Cause of Action is Ripe*

Defendants generally argue that “based on the alleged oral agreements by the parties to defer payment of the Notes until Mr. Peck has passed and the life insurance proceeds can be utilized to pay the debts, Defendants argue that Plaintiff’s claims are not ripe” because Russell Peck has not yet passed away. (Support Memo at II(C).) The Court can find, in Defendants’ moving papers, no authority supporting this argument.

The Court is unable to conclude, from the foregoing, that the Complaint sets for allegations that establish that the second cause of action is unripe for adjudication. As noted herein above, the Court finds that Plaintiff has alleged facts sufficient to establish an actual (ripe) controversy between the parties.

*c. Plaintiff’s Second Cause of Action is Not Fatally Uncertain, Ambiguous, or Unintelligible*

A demurrer for uncertainty is disfavored and may only be sustained where the allegations render the complaint so incomprehensible that a defendant cannot reasonably respond. (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135.) The Court does not find that the allegations in the Complaint run afoul of this standard.

4. The Demurrer is Sustained as to the Third Cause of Action of Action for Promissory Estoppel

Defendants assert that the third cause of action for promissory estoppel fails to state facts sufficient to constitute a cause of action, is not ripe for adjudication, and is uncertain ambiguous and unintelligible as pled. (See Demurrer at 2:24-3:2.)

The elements of a promissory estoppel claim are (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) the reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance. (*Granadino v. Wells Fargo Bank, N.A.* (2015) 236 Cal.App.4th 411, 416. Citations omitted.)

The promise upon which the third cause of action is founded is, “Defendants promise[] that they would restate all of the Promissory Notes and that the current life insurance policies will first be used to pay off the Promissory Notes after Peck passes away.” (Complaint at ¶ 44; see also Opposition at 10:8-9.) Plaintiff’s further allege that, “[t]he parties agreed that the notes would roll over year after year until they were fully paid, including the interest that accrued for the entire period. O’Connor and Kerr, on behalf of the Company, continually assured Plaintiff that the Promissory Notes would be paid of from the life insurance policy proceeds when Peck passed away.” (Complaint at ¶ 18.) “On November 22, 2019, O’Connor agreed to confirm the longstanding agreement and representations that the Promissory Notes had been restated and that the current life insurance policies will first be used to pay off the Promissory Notes by amending the Buy-Sell Agreement to document the agreement.” (Complaint at ¶ 22.)

While the Court finds that the first three elements of a claim for promissory estoppel are adequately alleged, it does not find specific factual allegations from which a trier of fact could find that this Plaintiff has suffered damage as a result of its reliance on the alleged promise.

Plaintiff alleges that it “has suffered substantial detriment and damages in that Defendants’ apparent intent is to disavow that the Promissory Notes owed to the Peck Trust are enforceable and accruing interest and that the insurance proceeds are to be first used for paying the Promissory Notes (and purchasing back the shares from the Peck Trust).” (Complaint at ¶ 46.) This allegation speaks of an “apparent intent” on behalf of Defendants to engage in a future activity. Plaintiff fails to allege facts which, if true, would permit a finding that it has suffered injury as a result of this “apparent intent” to take future action.

Plaintiff next alleges that it “has also suffered losses in the amount of attorneys’ fees incurred in drafting the updated documents.” (Complaint at ¶ 46.) If the alleged promise was to execute the documents once prepared – that is, if the allegations established that the parties had affirmatively agreed on all material points and the attorneys’ fees were incurred merely in reducing this agreement to writing – then the type of damage alleged might be sufficient to state a cause of action. But the Court does not find allegations consistent with the foregoing in the Complaint. Moreover, the Court finds that no reasonable trier of fact could conclude that the subject attorneys’ fees were damages suffered as a result of Plaintiff’s reasonable reliance on Defendants’ alleged promise “that they would restate all of the Promissory Notes and that the current life insurance policies will first be used to pay off the Promissory Notes after Peck passes away.” (Complaint at ¶ 44; see also Opposition at 10:8-9.)

For the foregoing reason, Defendants’ general demurrer is sustained as to the third cause of action, on the ground that the Complaint fails to allege facts sufficient to state a claim for promissory estoppel.

Generally, it is an abuse of discretion for a court to deny leave to amend where there is any reasonable possibility that a Plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) However, the pleading party bears the burden of showing such reasonable possibility. (*Ibid.*) Here, the burden is on Plaintiff to show in what manner he can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Ibid.*; *Medina v. Safe Guard Products* (2008) 164 Cal.App.4th 105, 112 n.8; see also *Heritage Pac. Fin'l, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 994 [court did not abuse discretion in denying leave to amend where, despite ample opportunity, plaintiff failed to demonstrate it could cure defect].)

While Plaintiff makes no effort, through its opposition, to carry that burden, the Court finds that the allegations of the Complaint are sufficient to establish a reasonable possibility that Plaintiff can amend the Complaint to state a cause of action for Promissory Estoppel. Therefore, the demurrer is sustained with 10 days' leave to amend. (*Goodman v. Kennedy, supra*, 18 Cal.3d at 349.)

#### 5. The Demurrer is Sustained as to the Fourth Cause of Action for Breach of Contract

Defendants argue that the fourth cause of action for breach of contract fails to state a claim because “1) Plaintiff is not a signatory to the Buy Sell and therefore lacks standing and 2) there are no allegations of breach.” (Support Memo at II (G).)

Plaintiff acknowledges that the allegations purportedly supporting the fourth cause of action are of a breach of the Buy-Sell Agreement. (See Opposition at 10:22-28.) The Complaint alleges that “[t]he Buy-Sell Agreement constitutes a valid contract between Plaintiff, P&H, and O'Connor.” (Complaint at ¶48.)

Plaintiff appears to ignore Defendants' argument that Plaintiff is not a signatory to the Buy Sell agreement. Plaintiff is not identified in the Buy Sell as a signatory, interested party, or indeed in any capacity. (See Complaint at Exhibit A.) Plaintiff fails to identify any factual allegations in the Complaint that would permit Plaintiff to assert a claim for breach of the Buy-Sell agreement. The Court finds none in its review thereof.

For the foregoing reason, Defendants' general demurrer is sustained as to the fourth cause of action, on the ground that the Complaint fails to allege facts to state a claim, as to this Plaintiff, for breach of contract. (See *County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1009 [“[w]here, as here, it is alleged that a party lacks standing to sue, the complaint can be challenged by general demurrer for failure to state a cause of action in this plaintiff”].)

The Court finds that the allegations of the Complaint are sufficient to establish a reasonable possibility that Plaintiff can amend the Complaint to state a cause of action for Breach of Contract. Therefore, the demurrer is sustained with 10 days' leave to amend. (*Goodman v. Kennedy, supra*, 18 Cal.3d at 349.)

6. The Demurrer is Sustained as to the Fifth Cause of Action for Fraud / Promise Without Intention to Perform

Claims based in fraud must be specifically pleaded, with facts constituting each element of the cause of action alleged. (*Hall v. Dept. of Adoptions* (1975) 47 Cal.App.3d 898, 904.) “In California, fraud must be pled specifically; general and conclusory allegations do not suffice. Thus, the policy of liberal construction of the pleadings will not ordinarily be invoked to sustain a pleading defective in any material respect. This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered. [Citations omitted.]” (*Lazar v. Super. Ct.* (1996) 12 Cal.4th 631, 645.) However, less specificity in pleading fraud is required “when ‘it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy ....’” (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 217.)

“The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. [Citations.]” (*Lazar v. Super Ct., supra*, 12 Cal.4th at 638.)

The Court finds that the Complaint fails to allege ultimate facts with sufficient specificity to establish damages stemming from the alleged fraud. The Complaint alleges only that, “[a]s a proximate result of Defendants’ promise without an intention to perform it, Plaintiff has been damaged in an amount according to proof.” (Complaint at ¶ 58.) The allegations supporting the element of a promise under this cause of action are the same as those supporting Plaintiff’s cause of action for promissory estoppel. (Compare *Id.* at ¶ 54 with ¶ 44.) As discussed in detail herein above, the Complaint fails to allege facts from which a trier of fact could conclude that Plaintiff suffered damage as a result of the alleged promise[s], whether under a theory of promissory estoppel or fraud.

For the foregoing reason, Defendants’ demurrer is sustained as to the fifth cause of action on the ground that the Complaint fails to state a claim for fraud / promise without intent to perform.

The Court finds that the allegations of the Complaint are sufficient to establish a reasonable probability that Plaintiff can amend the Complaint to state a cause of action for fraud / promise without intent to perform. Therefore, the demurrer is sustained with 10 days’ leave to amend. (*Goodman v. Kennedy, supra*, 18 Cal.3d at 349.)

7. Plaintiff’s Complaint Alleges Sufficient Facts to State a Claim for Elder Abuse

Defendants argue that the cause of action is “uncertain, ambiguous, speculative, and is not ripe. There are no facts – only speculation – that there will not be sufficient life insurance to cover the Notes if, and when, Peck is to pass.” (Support Memo at II (I).) The Court disagrees.

“Financial abuse’ of an elder or dependent adult occurs when a person or entity does any of the following: (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.” (Welf. & Inst. Code §15610.30, subd. (a).) “A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.” (*Id.* at subd. (b).) Finally, “For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.” (*Id.* at subd. (c).)

Construing the Complaint liberally, “with a view to substantial justice between the parties,” the Court finds that the Complaint alleges ultimate facts from which a reasonable trier of fact could conclude that Russell Peck has a right, stemming from the Buy-Sell Agreement, to see that the subject life insurance policy is and remains unencumbered during his lifetime, other than as contemplated by the parties through that Buy-Sell Agreement. (Code Civ. Proc. § 452; see Complaint at ¶¶ 11, 18, Exh. A.) This right appears, to the Court, to be of the kind described in Welfare & Institutions Code section 15610.30. Defendants provide the Court with no discussion or authority suggesting otherwise. The Complaint alleges that Defendants have and are depriving Russell Peck of that property right. (See *Id.* at ¶¶ 26-29.) The Complaint also alleges that Russell Peck is among the class of persons protected by the statute. (See *Id.* at ¶ 61.)

While Defendants do not elaborate through their memorandum on their assertion that the cause of action is unripe, the Court finds, based on the foregoing, that the Complaint alleges facts that describe a controversy ripe for adjudication.

Finally, the Court does not find that the allegations in the Complaint are uncertain or ambiguous, and certainly not so incomprehensible that a defendant cannot reasonably respond. (*Lickiss v. Financial Industry Regulatory Authority, supra*, 208 Cal.App.4th at 1135.)

### **C. CONCLUSION**

For the foregoing reasons, Defendants’ demurrer is GRANTED as to the third cause of action for promissory estoppel, fourth cause of action for breach of contract, and fifth cause of action for fraud / promise without intention to perform. The demurrer is OVERRULED in all other respects. Plaintiff is granted 10 days’ leave to amend the Complaint.

[2] MOTION TO STRIKE PUNITIVE DAMAGES

**TENTATIVE RULING:** The motion is DENIED.

Defendants Thomas O'Connor, both individually and in his capacity as Trustee, Benjamin Kerr, and Peck & Hiller Company move for an order striking Plaintiff's request for punitive damages set forth in the Complaint on the ground that Plaintiff fails to state a *prima facie* claim to support a prayer for punitive damages, and the Complaint does not contain factual allegations, but only conclusory statements, that Defendants engaged in oppression, fraud, or malice.

Upon noticed motion, the Court may strike any "irrelevant, false or improper matter inserted in any pleading. (Code Civ. Proc § 436, subd. (a).) Among these, the Court may strike any language in a cause of action that seeks an improper remedy. (*Caliber Bodyworks, Inc. v. Super. Court* (2005) 134 Cal.App.4th 365, 385.) To adequately state a claim for punitive damages, a complaint must contain allegations that the defendant has been guilty of oppression, fraud or malice. (Civil Code § 3294, subd. (a); *Turman v. Turning Point of Central Cal., Inc.* (2010) 191 Cal.App.4th 53, 63.) "Malice" includes "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civil Code § 3294, subd. (c)(1).) "'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (*Id.* at subd. (c)(2).) Finally, "fraud" is defined as "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (*Id.* at subd. (c)(3).)

Allegations of these elements must be pled with exactitude. (*G.D. Searle & Co. v. Super. Court* (1975) 49 Cal.App.3d 22, 27. "When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice." (*Id.* at 29.) Mere conclusory allegations parroting the language of the statute will not suffice to support a prayer for punitive damages. (*Smith v. Super. Court* (1992) 10 Cal.App.4th 1033, 1042.)

However, in ruling on a motion to strike, the Court is to "read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." (*Turman v. Turning Point of Central Cal., Inc., supra*, 191 Cal.App.4th at 63.) "Pleading in the language of the statute is not objectionable when sufficient facts are alleged to support the allegation." (*Perkins v. Super. Court* (1981) 117 Cal.App.3d 1, 6-7.) An order striking a claim for punitive damages is improper where the complaint provides notice to the defendants of a plaintiff's "precise claims against them." (*Id.* at 7.)

An award of punitive damages is available, under the appropriate showing, in an action for elder abuse. (See Welf. & Inst. Code §15657.5, subd. (d); see also *Sakai v. Merrill Lynch Life Ins. Co.* (N.D. Cal.) 2008 U.S. Dist. LEXIS 69420 at \*25.)

The Court finds that, when assumed true, the specific factual allegations in the Complaint are sufficient to support a claim for punitive damages. (See Complaint at ¶¶ 17-19, 26-29.) Defendants’ motion to strike is, therefore, DENIED.

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**Conservatorship of Diego Cazares**

**26-58499**

REVIEW HEARING

**TENTATIVE RULING:** After a review of the matter, the Court finds the co-conservators are acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on April 25, 2023, at 8:30 a.m. in Dept. B. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

**CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.**

**James Valva, et al. v. 3I Incorporated, et al.**

**19CV000453**

DEFENDANT 3I’S MOTION FOR JUDICIAL DETERMINATION OF GOOD FAITH SETTLEMENT

**TENTATIVE RULING:** The motion is GRANTED.

The notice of motion does not provide notice of the Court’s tentative ruling system as required by Local Rule 2.9. Moving party/counsel is directed to contact all other parties to the action forthwith and advise of Local Rule 2.9 and the Court’s tentative ruling procedure. Notwithstanding the procedures set forth in Local Rule 2.9, the moving party/counsel shall appear at the hearing, by Zoom, unless it is confirmed that no party requests oral argument.

Defendant 3I Incorporated (3I) moves the Court, pursuant to Code of Civil Procedure sections 877 and 877.6, for an order finding that 3I’s settlement with Plaintiffs Sandra Valva and James Valva was made in good faith and that all cross-complaints for equitable indemnity and contribution asserted against 3I are barred on the grounds that 3I’s settlement with plaintiff is “within ‘the ballpark’ and complies with all the factors as set forth in *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488.” (Notice of Motion at 1:8-18.)

“[T]he intent and policies underlying section 877.6 require that a number of factors be taken into account including a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or

tortious conduct aimed to injure the interests of nonsettling defendants.” (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499.)

However, a party objecting that a settlement lacks good faith has the burden of proving the issue. (Code Civ. Proc. §877.6.) Therefore, “when no one objects, the barebones motion which sets forth the ground of good faith, accompanied by a declaration which sets forth a brief background of the case is sufficient.” (*City of Grand Terrace v. Super. Ct.* (1987) 192 Cal.App.3d 1251, 1261.) In such case, the trial court is not required “to consider and weigh the *Tech-Bilt* factors.” (*Ibid.*)

The present motion is unopposed. The Court finds that it sets forth the ground of good faith and is accompanied by declarations sufficient to set forth a brief background of the case. On this basis, the Court finds that the settlement entered into between Plaintiffs and moving Defendant is a settlement in good faith pursuant to Code of Civil Procedure Section 877.6. (*City of Grand Terrace v. Super. Ct., supra*, 192 Cal.App.3d at 1261.)