TENTATIVE RULINGS

DEPT CX102

Judge Layne H. Melzer

Court Reporters: Official court reporters (i.e., court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the court's policy on the use of privately retained court reporters which can be found on the court's website at Court Reporter Services | Superior Court of California | County of Orange.

Tentative rulings: The court endeavors to post tentative rulings on the court's website in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted. The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5302. Please do not call the department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under Cal. R. Ct. 3.1312.

Non-appearances: If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

APPEARANCES: Department CX102 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference pursuant to CCP §367.75, California Rule of Court (CRC) 3.672 and Orange County Local Rule (OCLR) 375. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at Civil Remote Hearings | Superior Court of California | County of Orange prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available on the website. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") contained on the Court's website will be strictly enforced. Parties preferring to appear in-person for law and motion hearings may do so pursuant to CCP §367.75 and OCLR 375.

PUBLIC ACCESS: The courtroom remains open for all evidentiary and non-evidentiary proceedings.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

TENTATIVE RULINGS
July 10th, 2025

#	Case Name	
101	**Martinez vs. Estate of Michael Stewart** **2024-01439256**	**1. Demurrer to Amended Complaint** **2. Demurrer to Amended Complaint** **3. Motion to Strike Portions of the Complaint** ***I. Defendant David Tofolo's Demurrer to the First Amended Complaint is OVERRULED as to the Second Cause of Action, and SUSTAINED WITH LEAVE TO AMEND as to the Fourth, Fifth, and Sixth Causes of Action***. This is a fraud and elder abuse action. On November 8, 2024, Plaintiffs Michael Martinez; Scott McCutcheon; Steven Waldon; Robert Reeve and Elaine Reeve, individually and as Trustees of the Reeve Family Irrevocable Trust dated July 6, 2020, The Revocable Trust of Robert M. Reeve dated November 6, 1998, and The Revocable Trust of Elaine A. Reeve dated November 6, 1998; ZSW, Inc.; 4M 30A Development, LLC; and Incentadvise, Inc. (collectively, "Plaintiffs") filed a Complaint against Defendants Estate of Michael Stewart; Amy Stewart, individually; Amy Stewart as Trustee of The Stewart Family Trust dated December 6, 2020; Capital (360), Inc.; Frank Arlasky; David Tofolo; Enterprise Bank & Trust; Scott McGuire as Trustee of The Amy Stewart Qualified Personal Residence Trust dated October 5, 2023; Donald David Burke, Jr.; Mobile Direct LLC; Mobile Direct 2 LLC; Investor Does 1-20; Joint Venture Does 21-40; Check Kiting Does 41-60; Bank Does 61-80; and Does 81-100, inclusive. The Complaint alleges eight (8) causes of action for: (1) Fraud and Deceit; (2) Unjust Enrichment; (3) Aiding and Abetting Fraud [against the Bank Defendants]; (4) Aiding and Abetting Fraud [against Arlasky, Tofolo, Kiting, and Capital (360)]; (5) Violation of Penal Code §496; (6) Elder Abuse; (7) Breach of Oral Contract; and (8) Breach of Written Contract. On March 12, 2025, pursuant to stipulation and order, Plaintiffs filed the operative First Amended Complaint ("FAC") alleging the same eight causes of action and adding Stewart Homes, Inc. dba 5 Star Homes as a named defendant. On April 11, 2025, Defendants Estate of Michael Stewart; Amy Stewart, individually; Amy Stewart, as Trustee of The Stewart Family Trust dated December 6, 2020; and Scott McGuire as

		Trustee of The Amy Stewart Qualified Personal Residence Trust dated October 5, 2023 filed their Answer to the FAC. (ROA 188.) This lawsuit pertains to claims of fraud, breach of contract, and elder abuse related to an alleged Ponzi scheme and check kiting operation engaged in by the Defendants. Plaintiffs allege that from 2019 until his death by suicide on July 15, 2023, Defendant Michael Stewart conducted a Ponzi scheme and check kiting operation using Defendant Stewart Homes, Inc. dba 5 Star Homes ("5 Star") and other business as fronts for the operation. Plaintiffs allege that Stewart stole nearly $100 million through the Ponzi scheme while making Plaintiffs believe they were making legitimate investments in 5 Star, and that Stewart was aided and abetted by several individuals and entities in carrying out his scheme. In addition, Plaintiffs allege that several financial institutions did nothing to stop Stewart's check kiting operation. On April 15, 2025, Defendant Enterprise Bank & Trust ("Enterprise") filed the current Demurrer to the First Amended Complaint. Concurrently, Enterprise filed the Motion to Strike Portions of the First Amended Complaint. On April 15, 2025, Defendant David Tofolo ("Tofolo") filed the current Demurrer to the First Amended Complaint. 1. *2nd Cause of Action – Unjust Enrichment* Tofolo is alleged to be an investor in Defendant 5 Star. (FAC, ¶ 45.) Tofolo contends that as an investor, he is on equal footing with Plaintiffs since he also lost millions of dollars as a result of Defendant Stewart's alleged Ponzi scheme. Tofolo argues that he has been named a defendant solely based on Plaintiffs' conclusory allegations that he "obtained a net profit from his investments" (FAC, ¶ 45), he "knew of the widespread fraud being perpetrated by Stewart and 5 Star" (FAC, ¶ 54), and he "assisted Stewart in perpetrating the fraud" (FAC, ¶ 55). Tofolo generally contends that these allegations are speculative and based on the faulty premise that he had some duty to inform or protect other investors. According to Tofolo, even if he became aware of the Ponzi scheme at some point, such knowledge, by itself, does not establish any wrongdoing on his part. In opposition, Plaintiffs contend Tofolo's arguments are based on improper attempts to contest the factual allegations in the

		FAC. According to Plaintiffs, they have adequately alleged that Tofolo was an investor in the Ponzi scheme and received a benefit from it. Plaintiffs contend they have also adequately alleged it would be inequitable for Tofolo to retain the proceeds from the scheme. Plaintiffs note that Tofolo has not cited to any case law with respect to this cause of action, and his only argument is that there are no allegations of specific facts as to how he was unjustly enriched or obtained any net profit from the alleged Ponzi scheme. Tofolo's arguments are not well taken. The elements of a cause of action for unjust enrichment are simply stated as 'receipt of a benefit and unjust retention of the benefit at the expense of another.' [Citations.]" (*Professional Tax Appeal v. Kennedy-Wilson Holdings, Inc.* (2018) 29 Cal.App.5th 230, 238.) " ' 'The theory of unjust enrichment requires one who acquires a benefit which may not justly be retained, to return either the thing or its equivalent to the aggrieved party so as not to be unjustly enriched." [Citation.]' [Citation.]" (*Lyles v. Sangadeo-Patel* (2014) 225 Cal.App.4th 759, 769.) While one court recently held "[t]here is no cause of action in California labeled 'unjust enrichment,'" it clarified that " '[c]ommon law principles of restitution require a party to return a benefit when the retention of such benefit would unjustly enrich the recipient….' [Citations.]" (*City of Oakland v. Oakland Raiders* (2022) 83 Cal.App.5th 458, 477.) It further acknowledged the elements of such a claim " ' "are simply stated as "receipt of a benefit and unjust retention of the benefit at the expense of another." ' " (*Ibid*.) Here, in the instant litigation, Plaintiffs have alleged that Tofolo and others "were early investors in the Ponzi scheme alleged herein and obtained a net profit as a result thereof." (FAC, ¶ 45.) Plaintiffs also alleged that it would be inequitable for Tofolo and other Defendants to retain the gains obtained through Stewart's fraud, and that the ill-gotten gains should be returned to Plaintiffs. (FAC, ¶ 46.) This is sufficient to state a claim for unjust enrichment against Tofolo. Whether Plaintiffs can actually prove these allegations is not at issue at the pleading stage—only if they have adequately alleged the elements of their claim, and they have done so. Therefore, the Demurrer to the Second Cause of Action is overruled. *2. <u>4th Cause of Action – Aiding and Abetting Fraud</u>*

		Tofolo contends Plaintiffs have not alleged sufficient facts to constitute this claim. According to Tofolo, Plaintiffs have only generally alleged that he knew of Stewart's fraudulent conduct. Tofolo argues that Plaintiffs have not alleged any specific facts supporting this conclusory allegation, nor have they alleged that he caused or perpetuated the fraud on Plaintiffs, or that Plaintiffs suffered any damages as a result of his alleged aiding and abetting of Stewart's wrongful actions. Tofolo contends Plaintiffs have failed to satisfy the heightened pleading requirements necessary to state this claim. In opposition, Plaintiffs contend they have clearly alleged that Tofolo knew of the Ponzi scheme and engaged in conduct to assist in the scheme. (FAC, ¶¶ 54, 55, 58, 61.) As argued by Plaintiffs, they are not required at the pleading stage to identify when Tofolo learned of the Ponzi scheme or how he came to know of the scheme. Plaintiffs also contend that they only need to allege generally that Tofolo had actual knowledge of the scheme. In addition, Plaintiffs contend that Tofolo is clearly included in the "Kiting Defendants" definition, which applies to all of the paragraphs alleged as to this cause of action. (FAC, ¶¶ 54-58.) Plaintiffs' arguments are unavailing. Liability for aiding and abetting the commission of an intentional tort is established if the person or entity: "(a) knows the other's conduct constitutes a breach of duty and gives substantial assistance of encouragement to the other to so act; or (b) gives substantial assistance to the other in accomplishing a tortious result and the person's own conduct, separately considered, constitutes a breach of duty to the third person." (*Casey v. U.S. Bank Nat. Assn.* (2005) 127 Cal.App.4th 1138, 1144 " 'Aiding and abetting … necessarily requires a defendant to reach *a conscious decision to participate in tortious activity* for the purpose of assisting another in performing a wrongful act.' [Citation.]" (*Id.*, at p. 1146, italics in original.)To adequately allege the claim, a plaintiff must establish that "substantial assistance" was given by defendant and that defendant had "actual knowledge" of the specific primary wrong. (*Id.*, at p. 1145.) "[I]t is sufficient for a pleading to 'allege generally that defendants had actual knowledge of a *specific primary violation*.' [Citation.]" (*Id.*, at p. 1148, italics in original.) Here, in the instant litigation, Plaintiffs' allegations are inadequate. Plaintiffs have only generally alleged that Tofolo "knew of the widespread fraud being perpetrated by Stewart and 5 Star upon Plaintiffs and knew that such conduct was fraudulent." (FAC, ¶ 54.) Plaintiffs then generally allege that

		"Defendants" acted with deliberate intent "to assist in fraudulent activity…" (FAC, ¶ 58.) However, Plaintiffs have not alleged that Tofolo knowingly assisted Stewart and 5 Star in the Ponzi scheme or the check kiting operation. Instead, Plaintiffs have only stated this specific allegation against the Kiting Defendants. (FAC, ¶¶ 55, 56.) Contrary to Plaintiffs' assertion, it is not clear from the allegations of the FAC that Tofolo is included in the definition of "Kiting Defendants". While Plaintiffs may be able to adequately allege this claim against Tofolo, they have not done so here. Therefore, the Demurrer to the Fourth Cause of Action is sustained with leave to amend. 3. *5th Cause of Action – Violation of Penal Code §496* Tofolo contends this claim must fail because Plaintiffs have not adequately alleged any specific facts to support the claim that he knew that funds received from Stewart and 5 Star were stolen or obtained through theft. As argued by Tofolo, Plaintiffs have only generally alleged that "Defendants" received funds that "they knew were stolen from Plaintiffs" as part of the Ponzi scheme and check kiting operation. (FAC, ¶ 61.) Tofolo contends this is not enough to survive demurrer. In opposition, Plaintiffs contend they have adequately alleged that Tofolo received funds that he knew were stolen, and that his acceptance of the funds from Stewart and 5 Star are violations of Section 496 because he knew the funds were stolen from Plaintiffs. (FAC, ¶ 61.) According to Plaintiffs, these allegations are sufficiently specific and track the language of the statute. Plaintiffs' arguments are not well taken. Penal Code section 496, subdivision (a), provides in relevant part: > Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year …. A principal in the actual theft of the property

may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

In *Switzer v. Wood* (2019) 35 Cal.App.5th 116, the appellate court held that "the elements required to show a violation of Section 496 are simply that (i) property was stolen or obtained in a manner constituting theft, (ii) the defendant knew the property was so stolen or obtained, and (iii) the defendant received or had possession of the stolen property." (*Switzer, supra,* 35 Cal.App.5th at p. 126.)

Here, Plaintiffs have not adequately alleged Tofolo had actual knowledge that the funds he may have received from Stewart and 5 Star were stolen or obtained in a manner constituting theft. Plaintiffs also have not adequately set forth allegations from which it can be inferred that Tofolo knew the funds were obtained by the Stewart Defendants through theft or fraud. As with Plaintiffs' aiding and abetting claim, in order for the Section 496 to survive demurrer, Plaintiffs must allege ultimate facts establishing that Tofolo received funds from the Stewart Defendants, and he knew the funds had been stolen from Plaintiffs so the Stewart Defendants could perpetuate a Ponzi scheme.

While Plaintiffs may be able to adequately state this claim, they have not done so. Therefore, the Demurrer to the Fifth Cause of Action is sustained with leave to amend.

4. *6th Cause of Action – Financial Elder Abuse*

Tofolo contends the Sixth Cause of Action fails because Plaintiffs have not adequately alleged that he had actual knowledge or, or intended to assist in, the Ponzi scheme or check kiting operation. In addition, Tofolo contends Plaintiffs have not alleged that he had actual knowledge of Stewart's transactions with clients over the age of 65.

In opposition, Plaintiffs contend they have sufficiently alleged that Tofolo assisted Stewart and 5 Star in taking and retaining funds from two individuals who are over the age of 65, that he did so with the intent to defraud, and that he knew or should have known the wrongful conduct was directed at elders. (FAC, ¶¶ 66-73.)

Plaintiffs' contention is not well taken. Financial elder abuse is established by pleading facts showing: (1) defendants took, hid, appropriated, obtained, or retained the plaintiff's

		property, or assisted in doing so; (2) plaintiff was 65 years or older at the time of the conduct; (3) defendants took, hid, appropriated, obtained, or retained the plaintiff's property for a wrongful use, or with the intent to defraud, or by undue influence; (4) plaintiff was harmed as a result of defendants' conduct; and (5) defendants' conduct was a substantial factor in causing plaintiff's harm. (CACI 3100; Welf & Inst. Code, §§ 15610.30, 15657.) Here, Plaintiffs have essentially alleged that "Defendants" are liable for assisting in financial elder abuse under an aiding and abetting theory. Therefore, to successfully state their claim, Plaintiffs must allege that Tofolo knew the Stewart Defendants' conduct constituted a breach of duty, and Tofolo gave substantial assistance or encouragement to the Stewart Defendants to so act. Here, Plaintiffs have alleged that two of the Stewart Defendants' clients are over the age of 65. (FAC, ¶ 66.) However, Plaintiffs then allege in conclusory fashion that "Defendants" assisted the Stewart Defendants in taking money from those clients, "including retirement savings, for a wrongful use or with intent to defraud or both," and "Defendants knew or should have known that the wrongful conduct was directed to one or more senior citizens …." (FAC, ¶¶ 67, 68.) These allegations are nothing more than unsupported legal conclusions, and do not state ultimate facts establishing Tofolo had actual knowledge of the Stewart Defendants' actions and that some of the funds obtained by the Stewart Defendants were stolen from elderly persons. As a result, the Demurrer to the Sixth Cause of Action is sustained with leave to amend. Accordingly, the Court sustains the Demurrer with leave to amend as to the Fourth, Fifth, and Sixth Causes of Action, and overrules the Demurrer as to the Second Cause of Action. Defendant David Tofolo is ordered to give notice of the Court's ruling. ***II. Defendant Enterprise Bank & Trust's Demurrer to the First Amended Complaint is SUSTAINED in its entirety, WITH LEAVE TO AMEND.*** Defendant Enterprise Bank & Trust's Motion to Strike Portions of the First Amended Complaint is deemed MOOT in light of the ruling on the Demurrer.

		The Court rules as follows on Defendant's objections to the Declaration of Michael J. Sachs filed in support of Plaintiffs' opposition to the Demurrer and Motion to Strike: 1. Sustained, inadmissible hearsay 2. Sustained, inadmissible hearsay 3. Sustained, inadmissible hearsay 4. Sustained, inadmissible hearsay 5. Sustained, inadmissible hearsay 6. Sustained, inadmissible hearsay 7. Sustained, inadmissible hearsay 8. Sustained, inadmissible hearsay 9. Sustained, inadmissible hearsay 10. Sustained, inadmissible hearsay 11. Sustained, inadmissible hearsay The Court also sustains Defendant's general objection to the entirety of the Declaration of Michael J. Sachs. **Demurrer** *A. 3rd Cause of Action – Aiding and Abetting Fraud* Enterprise contends that Plaintiffs have not alleged sufficient facts to state their aiding and abetting claim. According to Enterprise, Plaintiffs have not alleged that Enterprise had actual knowledge that Defendants Stewart and 5 Star ("Stewart Defendants") were engaging in check kiting or misappropriation of funds, or that the Stewart Defendants were defrauding Plaintiffs. Enterprise also contends Plaintiffs' allegations fail to elaborate how Enterprise purportedly "allowed" the opening of accounts for the "suspicious" transfer of funds, and they do not demonstrate that Enterprise gave substantial assistance to the Stewart Defendants' wrongful conduct. In that regard, Enterprise argues that Plaintiffs have not specifically alleged that Enterprise had "actual knowledge of the specific primary wrong" allegedly being committed by the Stewart Defendants, that Enterprise gave substantial assistance to the wrongful conduct, or that Enterprise made a conscious decision to engage in tortious activity. As a result, Enterprise contends this claim must fail. In opposition, Plaintiffs contend it is sufficient to "allege generally" that Enterprise had actual knowledge of the Stewart Defendants' misconduct. According to Plaintiffs, there is no heightened pleading standard with regards to an aiding and abetting claim, and knowledge of the underlying fraud does not need to be alleged with specificity. Plaintiffs argue that when it is alleged that a bank had actual knowledge of

		wrongdoing, it is enough to survive a demurrer to an aiding and abetting cause of action. Plaintiffs' arguments are unavailing. Liability for aiding and abetting the commission of an intentional tort is established if the person or entity: "(a) knows the other's conduct constitutes a breach of duty and gives substantial assistance of encouragement to the other to so act; or (b) gives substantial assistance to the other in accomplishing a tortious result and the person's own conduct, separately considered, constitutes a breach of duty to the third person." (*Casey v. U.S. Bank Nat. Assn.* (2005) 127 Cal.App.4th 1138, 1144 " 'Aiding and abetting … necessarily requires a defendant to reach *a conscious decision to participate in tortious activity* for the purpose of assisting another in performing a wrongful act.' [Citation.]" (*Id.*, at p. 1146, italics in original.)To adequately allege the claim, a plaintiff must establish that "substantial assistance" was given by defendant and that defendant had "actual knowledge" of the specific primary wrong. (*Id.*, at p. 1145.) "[I]t is sufficient for a pleading to 'allege generally that defendants had actual knowledge of a *specific primary violation*.' [Citation.]" (*Id.*, at p. 1148, italics in original.) Here, in the instant litigation, Plaintiffs' allegations fall short. Plaintiffs have only generally alleged that the "Bank Defendants", including Enterprise, knew of the Stewart Defendants "pervasive pattern of misconduct" and knew the funds deposited in their bank accounts were obtained fraudulently. (FAC, ¶ 34.) Plaintiffs then allege that the Stewart Defendants' check kiting scheme would have left records of the fraudulent transactions, and Enterprise knew of this evidence but willfully ignored it. (*Ibid.*) Plaintiffs also generally allege that Enterprise knew Stewart's businesses did not generate the revenue to cover the checks he was writing and that 5 Start could not have been legally obtaining the funds in the bank accounts. (*Id.*, ¶¶ 34-35, 49.) Lastly, Plaintiffs allege that Enterprise overrode its internal policies and allowed the Stewart Defendants to open numerous accounts, "suspiciously" transfer funds between those accounts, and violate federal and state banking laws. (*Id.*, ¶ 49.) However, allegations of Enterprise's alleged knowledge of the Stewart Defendants' suspicious banking activities, without more, does not give rise to tort liability for Enterprise. Plaintiffs have not alleged that Enterprise had actual knowledge that the Stewart Defendants were engaged in a Ponzi scheme wherein he stole Plaintiffs' investment funds to pay off other investors rather than purchase investment

		properties. Nor have Plaintiffs adequately alleged that Enterprise knowingly assisted the Stewart Defendants in engaging in check kiting for the purpose of perpetuating their Ponzi scheme. Although ordinary business transactions a bank performs for a customer can satisfy the "substantial assistance" element of an aiding and abetting claim, they can only do so if it is alleged the bank "actually knew those transactions were assisting the customer in committing a specific tort." (*Casey, supra,* 127 Cal.App.4th at p. 1145.) Simply alleging that a defendant bank knew <u>something</u> unorthodox was going on with a customer's accounts is not enough. As noted in *Casey,* "a bank owes no duty to nondepositors to investigate or disclose suspicious activities on the part of an account holder." (*Id.*, at p. 1149.) In *Chazen v. Centennial Bank* (1998) 61 Cal.App.4th 532, the appellate court upheld the trial court's ruling sustaining a demurrer without leave to amend on claims the bank had actual or constructive notice of conversion of funds because of irregular activities within the accounts. (*Chazen, supra,* at pp. 537-540.) In so ruling, the *Chazen* court concluded that a bank has no duty to "police" accounts and that the contractual nature of the bank-depositor relationship limit's a bank's duties with regards to the depositor's accounts. "[T]his contractual relationship does not involve any implied duty 'to supervise account activity' [citation] or 'to inquire into the purpose for which the funds are being used' …. [Citation.]" (*Id.*, at p. 537; see also, *Casey, supra,* at pp. 1150-1151.) Here, the FAC does not contain allegations that Enterprise knew the Stewart Defendants were misappropriating Plaintiffs' investment funds, or that the money deposited and withdrawn by the Stewart Defendants was being used to operate a Ponzi scheme, which is the primary violation. To reiterate, "aiding and abetting requires participation in a specific primary wrong 'with knowledge of the object to be attained.' [Citation.]" (*Casey, supra,* 127 Cal.App.4th at p. 1152.) Plaintiffs have not adequately alleged any such knowledge on the part of Enterprise. Therefore, the Demurrer on this issue is sustained with leave to amend. *B. <u>5th Cause of Action – Violation of Penal Code §496</u>* Enterprise contends Plaintiffs have failed to allege sufficient facts to state their Penal Code section 496 claim. As argued by Enterprise, Plaintiffs have only alleged that the "Bank Defendants" received funds that "they knew were stolen from Plaintiffs as part of [the Stewart Defendants'] Ponzi scheme and/or check kiting scheme." (FAC, ¶ 61.) However,

		Enterprise contends that Plaintiffs have failed to allege that Enterprise knew of the Ponzi scheme or check kiting operation, or that the funds moving through the Stewart Defendants' accounts were stolen, obtained by theft, or being used to perpetrate a fraud. Enterprises argues that without more, this claim must fail. In opposition, Plaintiffs contend they have sufficiently alleged that Enterprise received funds that it knew were stolen from Plaintiffs, and that Enterprise's acceptance of the funds violated Section 496 because Enterprise knew the funds were stolen. According to Plaintiffs, this is enough to state their claim. Plaintiffs' arguments are not well taken. Penal Code section 496, subdivision (a), provides in relevant part: > Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year …. > A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property. In *Switzer v. Wood* (2019) 35 Cal.App.5th 116, the appellate court held that "the elements required to show a violation of Section 496 are simply that (i) property was stolen or obtained in a manner constituting theft, (ii) the defendant knew the property was so stolen or obtained, and (iii) the defendant received or had possession of the stolen property." (*Switzer, supra,* 35 Cal.App.5th at p. 126.) Here, as discussed above, Plaintiffs have not adequately alleged Enterprise had actual knowledge that the funds in the Stewart Defendants' accounts were stolen or obtained in a manner constituting theft. Plaintiffs also have not adequately set forth allegations from which it can be inferred that Enterprise knew the funds were obtained by the Stewart

		Defendants through theft or fraud. As with Plaintiffs' aiding and abetting claim, in order for the Section 496 to survive demurrer, Plaintiffs must allege ultimate facts establishing that Enterprise knew the funds in the Stewart Defendants' bank accounts had been stolen from Plaintiffs by the Stewart Defendants so they could perpetuate a Ponzi scheme. While Plaintiffs may be able to adequately state this claim, they have not done so. Therefore, the Demurrer to this cause of action is sustained with leave to amend. *C. 6th Cause of Action – Financial Elder Abuse* Enterprise contends the Sixth Cause of Action fails because Plaintiffs have not adequately alleged that Enterprise had any actual knowledge of the Stewart Defendants' business dealings with elderly clients. In opposition, Plaintiffs argue they have sufficiently alleged that Enterprise knew or should have known that the funds retained in the Stewart Defendants' accounts belonged to an elder. Plaintiffs' contention is not well taken. Financial elder abuse is established by pleading facts showing: (1) defendants took, hid, appropriated, obtained, or retained the plaintiff's property, or assisted in doing so; (2) plaintiff was 65 years or older at the time of the conduct; (3) defendants took, hid, appropriated, obtained, or retained the plaintiff's property for a wrongful use, or with the intent to defraud, or by undue influence; (4) plaintiff was harmed as a result of defendants' conduct; and (5) defendants' conduct was a substantial factor in causing plaintiff's harm. (CACI 3100; Welf & Inst. Code, §§ 15610.30, 15657.) In this instance, Plaintiffs are essentially alleging Enterprise is liable for assisting in financial elder abuse under an aiding and abetting theory. Therefore, to successfully state their claim, Plaintiffs must allege that Enterprise knew the Stewart Defendants' conduct constituted a breach of duty, and Enterprise gave substantial assistance or encouragement to the Stewart Defendants to so act. (See, *Gray v. JPMorgan Chase Bank, N.A.* (C.D. Cal. 2023) 661 F.Supp.3d 991, 997.) However, courts have held, " 'When … a bank provides ordinary services that effectuate financial abuse by a third party, the bank may be found to have "assisted" the financial abuse only if it knew of the third party's wrongful conduct.' [Citation.]" (*Ibid.*, quoting *Das v. Bank of America, N.A.* (2010) 186 Cal.App.4th 727, 745.) Here, Plaintiffs have alleged that two of the Stewart Defendants' clients are over the age of 65. (FAC, ¶ 66.) However, Plaintiffs then allege in conclusory fashion that

		Enterprise "assisted" the Stewart Defendants in taking money from those clients, "including retirement savings, for a wrongful use or with intent to defraud or both," and Enterprise "knew or should have known that the wrongful conduct was directed to one or more senior citizens …." (FAC, ¶¶ 67, 68.) These allegations are nothing more than unsupported legal conclusions, and do not state ultimate facts establishing Enterprise had actual knowledge of the Stewart Defendants' actions and that some of the funds deposited by the Stewart Defendants were stolen from elderly persons. (See, *Gray, supra,* 661 F.Supp.3d at p. 998.) As a result, the Demurrer to this cause of action is sustained with leave to amend. **<u>Motion to Strike</u>** Enterprise seeks an order striking Paragraphs 52 and 72, and the Third Prayer for Relief from the FAC. These allegations and the prayer seek an award of punitive damages against Enterprise as to the Third and Sixth Causes of Action. As argued by Enterprise, Plaintiffs have not stated sufficient facts to support any of their causes of action against Enterprise, and the inadequate allegations do not justify punitive damages. In light of the ruling on the Demurrer, the Court deems the Motion to Strike as moot since Plaintiffs have been granted leave to amend, and thus, may successfully allege claims that will support the punitive damages allegations. *The Demurrer to the First Amended Complaint is sustained in its entirety. Plaintiffs are granted 30 days' leave to amend. The Motion to Strike is deemed moot.* Defendant Enterprise Bank & Trust is ordered to give notice of the Court's ruling.
102	**Jahanbani vs. Cosic** **2023-01330363**	**Motion to Dismiss** Plaintiff Ali Jahanbani's Motion for Orders Dismissing Class Allegations, Dismissing Representative PAGA Allegations, and Approving Settlement of Individual Claims is GRANTED. This is a putative wage-and-hour class action and PAGA matter. On June 5, 2023, Plaintiff Ali Jahanbani, an individual ("Plaintiff"), filed a Class Action Complaint against Defendants Drazen Cosic; Cosic Security Services, Inc.; and Kushagram. The Complaint alleges nine (9) causes of action for various violations of the Labor Code's wage-and-hour provisions, and individual and representative claims for PAGA penalties.

		Defendants Drazen Cosic and Cosic Security Services, Inc. filed their Answer on August 21, 2023. Plaintiff filed a Request for Entry of Default against Defendant Kushagram on September 8, 2023, and default was entered the same day. The parties engaged in extensive discovery and discovery motion practice. Eventually, on November 22, 2024, the Court ordered the parties to provide the names of possible discovery referees. Subsequently, on January 22, 2025, the parties represented to the Court that they had reached a settlement in principle. Plaintiff then withdrew the then-pending discovery motions. On April 22, 2025, Plaintiff filed the current Motion to Dismiss. The Motion seeks the dismissal of the class claims and representative PAGA claims from the Complaint, and the approval of the settlement of Plaintiff's individual wage-and-hour and PAGA claims. The parties believe good cause exists to dismiss all class and representative claims alleged in the Complaint because the putative class is not numerous and only includes a handful of individuals, and Defendant Cosic Security has stated it could declare bankruptcy if it is forced to litigate this matter further or if judgment is entered against it. In addition, it is disputed whether class certification could be obtained because Plaintiff's claims are not shared by other putative class members. Plaintiff notes that no *Belaire West* notice has been sent to the putative class members, and there is no evidence suggesting that putative class members or aggrieved employees have learned of this litigation. In addition, Plaintiff asserts that no notice of the pendency of the representative PAGA action has been sent to the aggrieved employees. Plaintiff asserts there is no need to notify employees that they must act or lose their rights due to the running of the applicable statute of limitations if the class or representative PAGA claims are dismissed. As a result, Plaintiff contends the putative class and aggrieved employees will not be harmed or prejudiced by the dismissal of the class and representative claims because individual employees will still be able to separately litigate any alleged violations of their employment rights. On March 27, 2025, Plaintiff and Defendants executed a settlement agreement to fully settle Plaintiff's individual claims for the sum of $70,000.00. Defendants are to pay the settlement amount directly to Plaintiff in eleven (11) monthly installments. Defendants also agreed to pay $2,500.00 in a

		single payment to the Labor and Workforce Development Agency (LWDA) to settle Plaintiff's individual PAGA claims. Plaintiff states that he will not receive any additional monies on behalf of the representative employees. Plaintiff's counsel attests he will not receive full compensation for the hours he incurred in litigating this matter, and that neither he nor Plaintiff were offered any consideration for the dismissal of the class or representative PAGA claims. Plaintiff has met the requirements of CRC 3.770(a). It appears that dismissal of the class and representative claims without notice to the putative class will not be prejudicial given Defendants' representation about the alleged lack of numerosity. Accordingly, the Motion is granted, and this action is dismissed with prejudice as to Plaintiff's individual wage-and-hour and PAGA claims, and dismissed without prejudice as to the class and representative PAGA claims alleged in the Complaint. The parties are not required to give notice of this dismissal to the putative class members or representative employees. Plaintiff is ordered to give notice of this ruling, including to the LWDA, within five (5) court days, and file proof of service.
103	**Hooper vs. Vizio, Inc.** **2020-01144007**	1. **Motion to Compel Production** 2. **Status Conference** **OFF CALENDAR**
104	**Chapman Commons Homeowners Association vs. D.R. Horton Los Angeles Holding Company, Inc.** **2024-01416768**	1. **Motion to Compel Arbitration** 2. **Case Management Conference** Defendants D.R. Horton Los Angeles Holding Company, Inc. and Western Pacific Housing, Inc. move to compel arbitration of plaintiff Chapman Commons Homeowners Association's claims and stay the action pending completion of the arbitration. For the following reasons, the motion is DENIED. The right to arbitration depends upon contract; a petition to compel arbitration is simply a suit in equity seeking specific performance of that contract. Little v. Pullman (2013) 219

		Cal.App.4th 558, 565. The petitioner bears the burden of proving the existence of a valid arbitration agreement that covers the dispute by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. Id. "In California, '[g]eneral principles of contract law determine whether the parties have entered a binding agreement to arbitrate.'" Serafin v. Balco Properties Ltd., LLC (2015) 235 Cal.App.4th 165, 173. "An essential element of any contract is the consent of the parties, or mutual assent." Id. "Further, the consent of the parties to a contract must be communicated by each party to the other." Id. "Mutual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties, i.e., the reasonable meaning of their words and acts, and not their unexpressed intentions or understandings." Id. While the burden of persuasion is always on the moving party, the burden of production may shift in a three-step process. First, the moving party must present "prima facie evidence of a written agreement to arbitrate the controversy", which is satisfied by attaching a copy of the arbitration agreement purporting to bear the opposing party's signature. Gamboa v. Ne. Cmty. Clinic (2021) 72 Cal.App.5th 158, 164–67. Here, defendants contend the "Alternative Dispute Resolution" provision of the "Declaration of Covenants, Conditions and Restrictions of Chapman Commons" (the "CC&Rs") requires arbitration of the parties' present dispute. ROA 41 Ex. A § 17.4. Plaintiff argues the parties' Settlement Agreement and Release of All Claims (the "Settlement"), and not the earlier-executed CC&Rs, governs the present dispute. ROA 41 Exs. F-G. For the reasons below, the court agrees with plaintiff the parties did not intend for the CC&Rs to govern the present dispute. Among other things, the Settlement provides it was "intended to resolve all disputes arising out of CLAIMS of [plaintiff] against [defendants] which have been brought or could have been brought by PLAINTIFFS in or arising out of the development, sale, and/or construction of the…PROJECT." Id. ¶ A. As defined therein, "Claims" broadly includes "any and all claims, actions, causes of action, complaints, damages, demand, liabilities, obligations, debts, liens, fees, costs, and warranties, whether known or unknown, suspected or unsuspected, which arise out of or are in any way related to the construction, sale, management, maintenance or repair of

		the PROJECT, including, but not limited to, any allegation which has been made or could have been made by [plaintiff] against [defendants]…" Id. ¶ B; accord id. ¶ D. The Settlement further provides it "contains the entire agreement and understanding between [the parties] concerning its subject matter and integrates and supersedes all other agreements of any kind relating to the subject matter of this AGREEMENT." Id. ¶ 8. It also provides the "Orange County Superior Court will have jurisdiction to enforce" it pursuant to CCP §§ 664.6 and 664.7. Id. ¶ 10. The Settlement further provides that "[i]n any litigation to enforce [the Settlement] the court shall award the prevailing PARTY their reasonable attorney's fees and expert fees incurred to enforce[ ] [the Settlement]." The Settlement makes no express references to the CC&Rs or its dispute resolution process, any statutory dispute resolution, or arbitration of any kind. As an initial matter, defendants are correct to the extent CCP §§ 664.6 and 664.7 do not provide jurisdiction for the court to entertain a motion to enforce the Settlement because those provisions only provide such jurisdiction in the event parties to pending litigation so stipulate. Here, the parties Settlement was agreed upon before any litigation ensued and those provisions are thus inapplicable. See, e.g., Kirby v. Southern California Edison Co. (2000) 78 Cal.App.4th 840, 844-846 (reversing trial court's grant of a motion to enforce settlement of a settlement entered into prior to the filing of complaint). That does not mean, however, that those provisions are irrelevant to the court's analysis. Instead, the court finds the Settlement language cited above unambiguously reflects the intent and agreement of the parties to provide for the court's jurisdiction over any dispute between them and that any dispute resolution procedure to which the parties previously agreed would be superseded. See Ben-Zvi v. Edmar Co. (1995) 40 Cal.App.4th 468, 473 ("A contract must be interpreted to give effect to the mutual, expressed intention of the parties. Where the parties have reduced their agreement to writing, their mutual intention is to be determined, whenever possible, from the language of the writing alone."); Civ. Code § 1636 ("A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting"). Defendants rely on Cione v. Foresters Equity Services, Inc. (1997) 58 Cal.App.4th 625 to support their argument that the arbitration provision in the CC&Rs was not superseded by the

		Settlement, but that argument lacks merit. In Cione, the parties to the arbitration agreement entered into a subsequent agreement that was silent as to the selected forum for dispute resolution. Accordingly, the Cione court found that the obligation to arbitrate was not superseded even if the subsequent agreement was integrated. Cione, supra, 58 Cal.App.4th at 637-639 ("Absent any showing that his written employment agreement ... was either expressly or implicitly inconsistent with his arbitration obligation under [the prior agreement], [plaintiff] may not rely on the written employment agreement's silence about dispute resolution to establish that such agreement superseded his obligation to arbitrate.") Here, unlike the subsequent agreement in Cione, the Settlement is not silent as to the forum for disputes. The integration clause states it "supersedes all other agreements of any kind relating to the subject matter" (ROA 41 Exs. F-G ¶ 8) and the "subject matter" of the Settlement is defined broadly to include claims that are in "any way related to the construction, sale, management, maintenance or repair of the PROJECT, including, but not limited to, any allegation which has been made or could have been made by [plaintiff] against [defendants]…" Id. ¶ B; accord id. ¶ D. It also expressly provides the "Orange County Superior Court will have jurisdiction to enforce" the Settlement, makes express reference to "litigation to enforce [it]", and further states "the court shall award the prevailing PARTY their reasonable attorney's fees and expert fees incurred to enforce[ ] [the Settlement]." Id. ¶¶ 10, 3. Accordingly, since the Settlement contains various provisions providing for judicial resolution of all disputes, including the forum for such disputes, which conflict with the arbitration provision of the CC&Rs, the Settlement is not silent, as in Cione, and instead reflects the parties' intent to supersede the arbitration provision in the CC&Rs. In sum, the court finds no agreement to arbitrate the present dispute exists between the parties as the Settlement contains no agreement to arbitrate and there is no evidence the parties intended to parse out the resolution of the present dispute from the Settlement. See, e.g., Duncan v. McCaffrey Group, Inc. (2011) 200 Cal.App.4th 346, 363 (A merger clause is designed to avoid the confusion created when parties may have several agreements or contracts between them prior to completing a written agreement.); cf. Boys Club of San Fernando Valley, Inc. v. Fidelity & Deposit Co. (1992) 6 Cal.App.4th 1266, 1271–72 ("An agreement need not

		expressly provide for arbitration, but may do so in a secondary document which is incorporated by reference."). Plaintiff to give notice.
105	**Rabbani vs. Spectraforce Technologies Inc.** **2025-01455741**	**1. Joinder** **2. Petition to Compel Arbitration** **3. Case Management Conference** **OFF CALENDAR**
106	**MCCLENDON vs. BERNEL, INC.** **2022-1277447**	**Motion for Approval of Class Settlement** The Court has reviewed the supplemental papers filed in support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, and finds that they adequately address the previously identified concerns. Accordingly, Plaintiff Gregory McClendon's Motion for Preliminary Approval of Class Action and PAGA Settlement is GRANTED. This is a putative wage-and-hour class action and PAGA matter. On August 25, 2022, Plaintiff Gregory McClendon, individually and on behalf of the putative class ("Plaintiff"), filed a Class Action Complaint against Defendants Bernel, Inc. dba VFS Fire & Security Services; Richard Ennis; Joseph Buvel; and Christopher Harris (collectively, "Defendants"). The Complaint asserted eight causes of action for: 1. Failure to Pay Overtime Wages; 2. Failure to Timely Pay Wages During Employment; 3. Failure to Pay All Wages Due to Discharged and Quitting Employees; 4. Failure to Provide Reimbursement for Work-Related Expenses; 5. Failure to Pay Minimum Wage; 6. Failure to Maintain Required Records;

		7. Failure to Furnish Accurate Itemized Wage Statements; and 8. Unfair and Unlawful Business Practices On August 7, 2024, pursuant to stipulation and order, Plaintiff filed the First Amended Complaint ("FAC") adding two causes of action: (a) Failure to Properly Accrue, Compensate, and Notify Employees of Sick Days; and (b) PAGA penalties. On September 13, 2024, Plaintiff filed the original Motion for Preliminary Approval of Class Action and PAGA Settlement. At the hearing on January 10, 2025, the Court continued the matter so Class Counsel could address several issues. On May 15, 2025, pursuant to stipulation and order, Plaintiff filed the operative Second Amended Complaint ("SAC") adding two more causes of action for Failure to Provide Meal Periods and Failure to Provide Rest Periods. On May 8, 2025, Plaintiff filed the current Amended Motion for Preliminary Approval of Class Action and PAGA Settlement, and submitted the Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement"), as well as the Class Notice, for the Court's review. The Moton seeks preliminary approval of the parties' proposed settlement for the non-reversionary Gross Settlement Amount of $625,000.00. After the Court expressed certain concerns about the Settlement, the parties prepared supplemental papers, including a revised Class Notice. Based on a review of the Settlement Agreement, the Court finds the Settlement falls within the range of what is considered fair and reasonable, subject to a final determination at the Final Approval hearing. Within five (5) court days, Class Counsel must submit a revised Proposed Order stating that the Court's continuing jurisdiction is pursuant to CRC 3.769(h) as well as CCP § 664.6. **The Motion for Final Approval is set for November 13, 2025, at 2:00 p.m., in Department CX102**. All papers for the Motion for Final Approval are due no later than sixteen (16) court days prior to the hearing date. If Class Counsel cannot meet this deadline, then counsel must request a continuance of the hearing. Failure to do so may result in the issuance of an OSC re Monetary Sanctions. At the Final Approval hearing, evidence supporting the request for an award of attorneys' fees should be presented in the

		form of time records, or a summary of time spent on the substantive tasks, to enable the Court to evaluate the lodestar and costs claimed. Class Counsel should state by declaration whether time records were kept and created contemporaneously or otherwise. The Court also reminds Plaintiff's counsel that although a determination regarding the amount of the attorneys' fees award will not be made until final approval, the Court is unlikely to approve attorneys' fees in excess of thirty percent (30%) of the Gross Settlement Amount absent unique circumstances. As a result, in the supplemental filing, Class Counsel should address whether any such unique circumstances exist in this litigation. Class Counsel must also attest as to whether there is a fee-splitting arrangement with any other counsel or attest that there is none. At the Final Approval hearing, Plaintiff and Class Counsel must provide detailed declarations describing circumstances to justify the requested enhancement award, and addressing factors set forth in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272, and *Clark v. Am. Residential Servs., LLC* (209) 175 Cal.App.4th 785, 804. Plaintiff must provide an estimate of the hours spent on this litigation. Plaintiff to give notice of this Court's ruling, including to the LWDA, within five (5) calendar days, and file proof of service.
107	**Walter vs. Capo Beach Healthcare, LLC** **2024-01409294**	**Motion - Other** **CONTINUED**
108	**Villarreal vs. Complete Office Cleaning, LLC** **2023-01369587**	**Motion - Other** Plaintiff Margie Villareal's Motion for Approval of PAGA Settlement is **CONTINUED to August 21, 2025, at 2:00 p.m., in Department CX102** in order to give Plaintiff's Counsel an opportunity to address the issues identified below. This is a PAGA-only matter. On December 22, 2023, Plaintiff Margie Villareal, an individual ("Plaintiff"), filed a Complaint against Defendant Complete Office Cleaning, LLC dba Smart

		Janitorial ("Defendant"). The Complaint alleges nine (9) causes of action for various violations of the Labor Code's wage-and-hour provisions. On February 2, 2024, as a matter of right, Plaintiff filed the operative First Amended Complaint ("FAC") alleging the same nine (9) causes of action and adding a claim for PAGA violations. On April 10, 2025, Plaintiff filed the current Motion for Approval of PAGA Settlement. The Motion seeks approval of the PAGA Settlement Agreement ("Settlement Agreement") wherein the parties agree to settle the alleged claims for the non-reversionary Gross Settlement Amount of $600,000.00. The Settlement pertains to the claims of approximately 140 Aggrieved Employees consisting of persons "who worked for Defendant in California during the PAGA Period as a janitor or porter and was classified as an independent contractor or a non-exempt employee." The PAGA Period is the period from December 1, 2022, through February 12, 2025. The Court is concerned about several issues with the moving papers, Settlement Agreement, Notice Letter, and Proposed Order. Plaintiff's Counsel must address the following issues before the Court can approve the Settlement: 1. The Settlement Agreement must include a provision stating that Defendant has agreed to reclassify its workers from 1099 independent contractors to W-2 employees. 2. The Settlement Agreement should state that the settlement administrator will post the operative Complaint, Settlement Agreement, Notice Letter, approval motion, and Final Order and Judgment on its website for at least thirty (30) days after entry of Judgment. 3. The Settlement Agreement must state that the Court's continuing jurisdiction is pursuant to CCP § 664.6 and CRC 3.769(h). 4. The Notice of PAGA Settlement should state the Gross Settlement Amount and amounts for attorneys' fees, litigations costs, and administration costs. It should also explain that a portion of the GSA goes to the LWDA. 5. Counsel must attest as to whether there are any concurrent pending cases that may affect this Settlement or confirm there are none. 6. Counsel must attest as to whether there is a fee-splitting arrangement with any other counsel or confirm there is none. 7. The attorney information must be removed from caption

		page of Proposed Order. 8. In the Proposed Order, the Settlement Agreement must be identified by the ROA number of the declaration to which it is attached. The Settlement Agreement does not need to be attached to the Proposed Order. 10. The Proposed Order should state that the Gross Settlement Amount will be funded in 18 monthly installments. 11. The Proposed Order should explain the distribution schedule for the LWDA PAGA payment, Individual PAGA Payments, attorneys' fees, litigation costs, and administration costs. 12. The Proposed Order should state that the release provisions will not be effective until GSA is fully funded. 13. Paragraph 10 of the Proposed Order must be revised to state actual litigation costs. 14. Amounts for the PAGA payments in Paragraph 8 of the Proposed Order must be revised to reflect the revision of the amount of litigation costs in Paragraph 10. 15. Paragraph 14 of the Proposed Order must state that the Court's continuing jurisdiction is pursuant to CCP § 664.6 and CRC 3.769(h). 16. The Proposed Order must provide the date and location of the Final Accounting hearing, and the deadline for the submission of the administrator's final report. Plaintiff's counsel must file supplemental papers addressing the Court's concerns no later than fourteen (14) calendar days prior to the continued hearing date. Counsel must also provide red-lined versions of all revised papers, as well as an explanation of how the pending issues were resolved, with precise citation to any corrections or revisions. A supplemental declaration or brief that simply asserts the issues have been resolved or does not clearly state a specific concern has been resolved, is insufficient and will result in a continuance. Plaintiff to give notice, including to the LWDA, of this ruling, and file proof of service within five (5) calendar days.

109	**Aristondo vs. Prospera Management Inc.** **2023-01334274**	**Motion - Other** Plaintiff Gloria Aristondo's Motion to Approve Settlement Agreement Pursuant to the Private Attorneys General Act is CONDITIONALLY GRANTED, pending the resolution of the issues identified below. This is a PAGA-only matter. On June 30, 2023, Plaintiff Gloria Aristondo, an individual and on behalf of all others similarly situated ("Plaintiff"), filed a Class Action Complaint against Defendant Prospera Management, Inc. The Complaint alleges seven (7) causes of action for various violations of the Labor Code's wage-and-hour provisions and unfair business practices. On September 7, 2023, pursuant to stipulation and order, Plaintiff filed the First Amended Representative Action Complaint alleging a single cause of action for PAGA violations. The stipulation provided for the dismissal of Plaintiff's individual and putative class claims without prejudice due to the existence of an enforceable arbitration agreement containing a class action waiver. The PAGA claim arises from Defendant's alleged wage-and-hour violations, including failure to provide meal and rest breaks, failure to pay overtime wages, failure to pay sick pay, failure to provide accurate wage statements, and failure to reimburse business expenses. Defendant answered on October 6, 2023. On January 29, 2024, Defendant Prospera moved to compel the arbitration of Plaintiff's individual claims. At the hearing on April 5, 2024, the Court granted the motion, ordered Plaintiff's individual PAGA claims to arbitration, and stayed the proceedings on Plaintiff's non-individual PAGA claims. (ROA 57.) Subsequently, the parties opted to forego arbitration and proceed directly to mediation. On May 22, 2025, pursuant to stipulation and order, Plaintiff filed the operative Second Amended Representative Action Complaint ("SAC") alleging a single cause of action for PAGA violations. Pursuant to the stipulation, the SAC adds HP Anaheim, LP; NPL Anaheim Investments, LLC; HI Anaheim, LLC; HH Corner, LLC; Prospera Properties II, LP; and Bayside 765, LLC as Defendants. On June 11, 2025, Plaintiff filed the current Motion to Approval PAGA Settlement. The Motion seeks approval of the PAGA Settlement Agreement ("Settlement Agreement"), wherein the parties agree to settle the claims for the non-reversionary

		Gross Settlement Amount of $245,000.00. The settlement group includes 609 Aggrieved Employees defined as, "Non-exempt employees of Defendants who worked in California during the PAGA Period." The PAGA Periods is the period from June 5, 2022, through April 19, 2025. Based on the representations of Plaintiff's counsel and a review of the Settlement Agreement, the Court concludes that the $245,000.00 PAGA Settlement is fair and reasonable. However, the Court has some concerns about minor issues with the Settlement Agreement, Notice Letter, and moving papers. Accordingly, within ten (10) court days, Plaintiff's counsel must address the following issues: 1. The Releases of Claims provision in the Settlement Agreement improperly includes the release of claims under Labor Code § 210, even though the statute is not alleged in either the Second Amended Complaint or the LWDA PAGA Notice Letters. This statute reference must also be deleted in the Notice Letter to Aggrieved Employees. 2. The Settlement Agreement must state that the Court's continuing jurisdiction is pursuant to CCP § 664.6 and CRC 3.769(h). 3. The Notice Letter should state the Gross Settlement Amount and amounts for attorneys' fees and administration costs. It must also explain that a portion of the settlement goes to the LWDA. 4. Plaintiff's counsel must attest as to the fee-splitting arrangement with co-counsel. 5. The invoice for litigation costs improperly includes non-reimbursable costs totaling $10.66 for copies and postage. The Notice Letter and Proposed Order must reflect this reduction to $13,947.16 for litigation costs and the resulting change in the total amount of PAGA Penalties. 6. The attorney information must be removed from the caption page of Proposed Order. 7. In the Proposed Order, the Settlement Agreement must be identified by the ROA number of the declaration to which it is attached. 8. In Paragraph 2 of the Proposed Order, the reference to Labor Code section 210 must be deleted. 9. The Proposed Order must state that the Court has found the Settlement to be fair and reasonable. 10. The Proposed Order must identify Plaintiff's

		counsel and the Named Plaintiff. 11. The Proposed Order must identify the Settlement Administrator, state that the Court approves the Notice Letter and manner of notice to the Aggrieved Employees, provide an explanation of how and when the Gross Settlement Amount will be deposited and Individual Settlement Payments will be issued, state the check cashing deadline, and explain the disposition of unclaimed funds from any uncashed checks. 12. The Proposed Order must state that the Notice Letter will be sent in English and Spanish, and that the settlement administrator will post the Second Amended Complaint, Settlement Agreement, Notice Letter, approval motion, and Final Order and Judgment on its website for at least 30 days after the entry of final judgment. 12. The Proposed Order must provide the date, time, and location of the Final Accounting hearing, and the deadline for submission of the administrator's final report. 13. The Proposed Order must state that the Court has continuing jurisdiction pursuant to CCP § 664.6 and CRC 3.769(h). Upon the resolution of these issues, the Court will grant the Motion and approve the following awards and disbursements from the Gross Settlement Amount: • Attorneys' fees totaling $81,666.67, with $40,833.34 awarded to Diversity Law Group, P.C., and $40,833.33 awarded to LegalAxxis, Inc.; • Litigation costs of $13,947.16 awarded to Diversity Law Group, P.C.; • Settlement administration costs of $7,500.00 awarded to Phoenix Class Action Administration Solutions; PAGA Penalties in the amount of $141,886.17 shall be allocated as follows: seventy-five percent (75%), or $106,414.63, payable to the Labor and Workforce Development Agency (LWDA), and twenty-five percent (25%), or $35,471.54, payable to the Aggrieved Employees, in accordance with the terms of the Settlement Agreement. **The Final Accounting hearing is set for February 5, 2026, at 2:00 p.m. in Department CX102**. Plaintiff's counsel must submit the settlement administrator's final report regarding distribution of the settlement funds at least fourteen (14) calendar days prior to the hearing regarding the status of the settlement administration. The final report must

		include all information necessary for the Court to determine the total amount actually paid to Aggrieved Employees and any unclaimed funds remitted to the State Controller's Office. If the unclaimed funds are not fully disbursed by the report deadline, counsel must request a continuance of the Final Accounting hearing. Plaintiff to give notice, including to the LWDA, of this ruling, and file proof of service within five (5) calendar days of the date the Order and Judgment is entered.
110	**Salvation Investment, LLC vs. MO Murrayfield, LLC** **2019-01050162**	**Motion for Judgment on the Pleadings** The Motion for Judgment on the Pleadings brought by Defendants TwinRock Partners, LLC; TwinRock Holdings, LLC; TRP Management Murrayfield, LLC; TRP Management VIII, LLC; TRP Management Azzurri, LLC; and TRP Management Shamrocks, LLC is DENIED. This is a securities fraud action filed by Plaintiff Salvation Investment, LLC on February 8, 2019. (ROA 2.) After various demurrers and motions to strike, Plaintiff Salvation Investment filed the operative Third Amended Complaint on August 14, 2020. (ROA 902.) Plaintiff brought the suit individually and derivatively on behalf of nominal defendant, MO Murrayfield, LLC ("MO Murrayfield") against the following defendants: • Murrayfield • TRP Management Murrayfield, LLC (MO Murrayfield Managing Member) • TwinRock Holdings, LLC • TwinRock Partners, LLC; • TRP Fund VIII, LLC; • TRP Management VIII, LLC; • MO Azzurri, LLC (Doe 2) • TRP Management Azzurri, LLC (Azzurri Managing Member) • Marcus & Millichap Real Estate Investment Services, Inc. ("M&M") • Weiland Golden Goodrich LLP (previously identified as Weiland Golden Friedman LLP) • Southside Ventures LLC; Log Hill Properties and Consulting LLC (collectively, "Sellers") • William Lobel (partner at Weiland Golden Goodrich) • Alexander Philips (executive officer and manager of MO Murrayfield, Managing Member, and the TwinRock Entities) • Michael Meyer (officer and manager of each of the

		TwinRock Entities) • Greg Logsdon (officer and manager of Sellers) • Robert Hill (officer and manager of Sellers) • Scott Harris (executive officer and manager of M&M) • Patrick Stang (executive officer and manager of M&M) • Bret Chetek (executive officer and manager of M&M) • Adele Flechsig (executive officer and manager of M&M) • Pachulski Stang Ziehl & Jones LLP (Doe 1) • TwinRock Management, Inc. (Doe 3) Plaintiffs Salvation alleged that Defendants were involved in a conspiracy to mislead and defraud 25 investors into becoming members of three different companies: MO Murrayfield, MO Azzurri, LLC; and TRP Fund VIII, LLC—each of which was formed to acquire commercial real estate as investments. MO Murrayfield acquired an 82-unit student housing complex, and MO Azzurri acquired a 138-unit student housing complex, both of which were near the University of Missouri, and TRP Fund acquired a one-to-four unit single family homes obtained through foreclosures (collectively, the "Investments"). Plaintiff Salvation alleges Defendants fraudulently represented material facts regarding the Investments in order to get it to invest in the properties. In addition, Salvation alleges Defendants mismanaged the Investments, and then defaulted on the loans used to acquire the properties and had the Investments foreclosed upon or sold, thus resulting in significant losses to Salvation. It is alleged the TwinRock Entities dissipated, stole, and hid the money through fraudulent transfers, and then provided Salvation with fraudulent accountings of the funds and assets. Specifically, Salvation alleges Defendants misappropriated more than $3.2 million dollars. Salvation alleges Defendants Philips and Meyer spearheaded these investments and marketed and searched for the investors and products. Philips and Meyers are principals, owners, and/or managers of Defendants MO Murrayfield; TRP Management Murrayfield, LLC ("Managing Member"); TwinRock Holdings, LLC; TwinRock Partners, LLC; TRP Fund; TRP Fund Management VIII, LLC; MO Azzurri; and TRP Management Azzurri (collectively, "TwinRock Entities"), and that they are all alter egos of each other. Defendant Marcus & Millichap Real Estate Investment Services, Inc. ("M&M") was the real estate broker that assisted the TwinRock Entities in purchasing the Investments and marketed them to investors. Defendants Southside Ventures LLC and Log Hill Properties and Consulting LLC

		(collectively, "Sellers") were the sellers of the student housing complexes. Defendants Greg Logsdon and Robert Hill are principal officers and managers of each of the Sellers. Defendant Attorney William Lobel was brought in by the TwinRock Entities to restructure the loans on the Investments. However, the lender did not agree to the restructuring. Lobel was a partner at Defendant Weiland Golden Goodrich LLP, who then became a partner at Defendant Pachulski Stang Ziehl & Jones LLP. Plaintiff Salvation Investment alleges Lobel knew of the fraud and mismanagement by the Defendants but concealed it from MO Murrayfield's members. Salvation also alleges it had an attorney-client relationship with Lobel and the Weiland firm, but was never advised of any potential conflicts with the TwinRock Entities. The Weiland firm was also tasked with seeking to recover claims on behalf of MO Murrayfield in a lawsuit filed in February 2018 in the Circuit Court of Boone County, Missouri by TwinRock Holdings and TwinRock Partners against Sellers (the "Missouri Action"). In April 2018, the Property was foreclosed upon for less than half the total consideration paid, resulting in losses of over $4 million. Plaintiff Salvation Investment lost more than $600,000. In the Third Amended Complaint, Salvation asserts 38 causes of action, including fraud and deceit, various violations of the Corporations Code, breach of contract, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and violation of Penal Code section 496. **<u>West Coast Action:</u>** On April 3, 2019, Plaintiff Salvation Investment filed a Notice of Related Case as to *West Coast Lending, Inc., et al. v. TwinRock Partners, LLC, et al.*, Case No. 2019-01056031 ("West Coast Action"). (ROA 95.) On June 19, 2020, Plaintiff Salvation moved to consolidate its action with the West Coast Action for discovery, pre-trial proceedings, and trial. The motion was granted on August 13, 2020. On March 7, 2019, the West Coast Plaintiffs (West Coast Lending, Inc., Trenton Rhodes, and California Anchor Consulting, Inc.) brought their action, individually and derivatively, on behalf of MO Murrayfield, LLC. The West Coast Plaintiffs allege they were investors in MO Murrayfield, Azzurri, TwinRock Fund, and AR Shamrocks, LLC ("Shamrocks") who participated in the private offering to purchase the Property,

		and they contributed $350,000.00 to the funding. West Coast Lending also alleged that Defendants engaged in fraud, made various misrepresentations about the investment, mismanaged the investment, and incurred a loan in the amount of $11,250,000.00 from Greystone Service Corporation in violation of its operating agreement and without notice to the investors. Defendants in the West Coast Action include TwinRock Partners; TwinRock Holdings; TRP Management Murrayfield; MO Murrayfield; TRP Management Azzurri; MO Azzurri; TRP Management Shamrocks; AR Shamrocks; TRP Fund VIII; TRP Management VIII; Alexander Philips; and Michael L. Meyer. On March 20, 2019, the West Coast Defendants attempted to effect an involuntary withdrawal of the West Coast Plaintiffs from four of the entities. After demurrers and motions to strike, West Coast filed the operative Second Amended Complaint ("SAC") on November 3, 2020, alleging 52 causes of action. The first 19 causes of action pertain to MO Murrayfield, and the remaining causes of action involve the other investments. (ROA 1479.) The 52 causes of action are: • 1st cause of action for Theft by False Pretense against Philips, Meyer, TwinRock Holdings, TwinRock Partners, Mo Murrayfield, and MO Murrayfield Managing Member; • 2nd cause of action for Theft by False Pretense, derivatively on behalf of MO Murrayfield, against Philips, Meyer, TwinRock Holdings, TwinRock Partners, and MO Murrayfield Managing Member; • 3rd cause of action for Breach of Contract against MO Murrayfield and MO Murrayfield Managing Member; • 4th cause of action for Breach of Implied Covenant of Good Faith and Fair Dealing against MO Murrayfield and MO Murrayfield Managing Member; • 5th cause of action for Constructive Fraud against Philips, Meyer, TwinRock Holdings, TwinRock Partners, MO Murrayfield, and MO Murrayfield Managing Member; • 6th cause of action for Fraud – False Promise against Philips, Meyer, TwinRock Holdings, TwinRock Partners, MO Murrayfield, and MO Murrayfield Managing Member; • 7th cause of action for Fraud – Concealment against Philips, Meyer, TwinRock Holdings, TwinRock Partners, MO Murrayfield, and MO Murrayfield Managing Member; • 8th cause of action for Fraud – Intentional Misrepresentation against Philips, Meyer, TwinRock Holdings, TwinRock Partners, MO Murrayfield, and MO Murrayfield Managing Member;

		• 9th cause of action for Constructive Fraud, derivatively on behalf of MO Murrayfield, against Philips, Meyer, MO Murrayfield Managing Member, TwinRock Holdings, and TwinRock Partners; • 10th cause of action for Fraud – False Promise, derivatively on behalf of MO Murrayfield, against Philips, Meyer, TwinRock Holdings, TwinRock Partners, and MO Murrayfield Managing Member; • 11th cause of action for Fraud – Concealment, derivatively on behalf of MO Murrayfield, against Philips, Meyer, TwinRock Holdings, TwinRock Partners, and MO Murrayfield Managing Member; • 12th cause of action for Fraud – Misrepresentation, derivatively on behalf of MO Murrayfield, against Philips, Meyer, TwinRock Holdings, TwinRock Partners, and MO Murrayfield Managing Member; • 13th cause of action Negligent Misrepresentation, derivatively on behalf of MO Murrayfield, against Philips, Meyer, TwinRock Holdings, TwinRock Partners, and MO Murrayfield Managing Member; • 14th cause of action for Breach of Fiduciary Duty against Philips, Meyer, TwinRock Holdings, TwinRock Partners, and MO Murrayfield Managing Member; • 15th cause of action for Breach of Fiduciary Duty, derivatively on behalf of MO Murrayfield, against Philips, Member, TwinRock Holdings, TwinRock Partners, and MO Murrayfield Managing Member; • 16th cause of action for Violation of Corporations Code §§ 25401 and 25501 as to MO Murrayfield; • 17th cause of action for Violation of Corporations Code § 25504 against Philips, Meyer, TwinRock Holdings, TwinRock Partners, and MO Murrayfield Managing Member; • 18th cause of action for Violation of Corporations Code § 17704.41 against MO Murrayfield and MO Murrayfield Managing Member; • 19th cause of action for Negligence against Philips, Meyer, TwinRock Holdings, TwinRock Partners, and MO Murrayfield Managing Member; • 20th cause of action for Violation of Corporations Code §§ 25401 and 25501 against MO Azzurri; • 21st cause of action for Violation of Corporations Code §§ 25401 and 25501 against Fund VIII; • 22nd cause of action for Violation of Corporations Code §§ 25401 and 25501 as to AR Shamrocks; • 23rd cause of action for Violation of Corporations Code § 25504 against Philips, Meyer, TwinRock Holdings, TwinRock Partners, and TRP Management Azzurri; • 24th cause of action for Violation of Corporations Code §

		25504 against Philips, Meyer, TwinRock Holdings, TwinRock Partners, and TRP Management VIII; • 25th cause of action for Violation of Corporations Code § 25504 against Philips, Meyer, TwinRock Holdings, TwinRock Partners, and TRP Management Shamrocks; • 26th cause of action for Breach of Contract by California Anchor and Trenton against MO Azzurri and TRP Management Azzurri; • 27th cause of action for Breach of Contract by Trenton against Fund VIII and TRP Management VIII; • 28th cause of action for Breach of Contract by Trenton against AR Shamrocks and TRP Management Shamrocks; • 29th cause of action for Breach of the Implied Covenant of Good Faith and Fair Dealing by California Anchor and Trenton against MO Azzurri and TRP Management Azzurri; • 30th cause of action for Breach of the Implied Covenant of Good Faith and Fair Dealing by Trenton against Fund VIII and TRP Management VIII; • 31st cause of action for Breach of the Implied Covenant of Good Faith and Fair Dealing by Trenton against AR Shamrocks and TRP Management Shamrocks; • 32nd cause of action for Fraud and Deceit by California Anchor and Trenton against Philips, Meyer, TwinRock Holdings, TwinRock Partners, MO Azzurri, and TRP Management Azzurri; • 33rd cause of action for Fraud and Deceit by Trenton as to Philips, Meyer, TwinRock Holdings, TwinRock Partners, Fund VIII, and TRP Management VIII; • 34th cause of action for Fraud and Deceit by Trenton as to Philips, Meyer, TwinRock Holdings, TwinRock Partners, AR Shamrocks, and TRP Management Shamrocks; • 35th cause of action for Fraud—Concealment by California Anchor and Trenton against Philips, Meyer, TwinRock Holdings, TwinRock Partners, MO Azzurri, and TRP Management Azzurri; • 36th cause of action for Fraud—Concealment by Trenton as to Philips, Meyer, TwinRock Holdings, TwinRock Partners, Fund VIII, and TRP Management VIII; • 37th cause of action for Fraud—Concealment by Trenton as to Philips, Meyer, TwinRock Holdings, TwinRock Partners, AR Shamrocks, and TRP Management Shamrocks; • 38th cause of action for Fraud—Misrepresentation by California Anchor and Trenton against Philips, Meyer, TwinRock Holdings, TwinRock Partners, MO Azzurri, and TRP Management Azzurri;

		• 39th cause of action for Fraud—Misrepresentation by Trenton against Philips, Meyer, TwinRock Holdings, TwinRock Partners, Fund VII, and TRP Management VIII; • 40th cause of action for Fraud—Misrepresentation by Trenton against Philips, Meyer, TwinRock Holdings, TwinRock Partners, AR Shamrocks, and TRP Management Shamrocks; • 41st cause of action - Negligent Misrepresentation by California Anchor and Trenton against Philips, Meyer, TwinRock Holdings, TwinRock Partners, MO Azzurri; and TRP Management Azzurri; • 42nd cause of action - Negligent Misrepresentation by Trenton against Philips, Meyer, TwinRock Holdings, TwinRock Partners, Fund VIII, and TRP Management VIII; • 43rd cause of action - Negligent Misrepresentation by Trenton against Philips, Meyer, TwinRock Holdings, TwinRock Partners, AR Shamrocks, and TRP Management Shamrocks; • 44th cause of action for Breach of Fiduciary Duty by California Anchor and Trenton against Philips, Meyer, TwinRock Holdings, TwinRock Partners, MO Azzurri, and TRP Management Azzurri; • 45th cause of action for Breach of Fiduciary Duty by Trenton against Philips, Meyer, TwinRock Holdings, TwinRock Partners, Fund VIII, and TRP Management VIII; • 46th cause of action for Breach of Fiduciary Duty by Trenton against Philips, Meyer, TwinRock Holdings, TwinRock Partners, AR Shamrocks, and TRP Management Shamrocks; • 47th cause of action for Theft by False Pretense – Penal Code § 496(c) by California Anchor and Trenton as to Philips, Meyer, TwinRock Holdings, TwinRock Partners, MO Azzurri, and TRP Management Azzurri; • 48th cause of action for Theft by False Pretense – Penal Code § 496(c) by Trenton as to Philips, Meyer, TwinRock Holdings, TwinRock Partners, Fund VIII, and TRP Management VIII; • 49th cause of action for Theft by False Pretense – Penal Code § 496(c) by Trenton as to Philips, Meyer, TwinRock Holdings, TwinRock Partners, AR Shamrocks, and TRP Management Shamrocks; • 50th cause of action for Negligent by California Anchor and Trenton against Philips, Meyer, TwinRock Holdings, TwinRock Partners, MO Azzurri, and TRP Management Azzurri; • 51st cause of action for Negligence by Trenton against

Philips, Meyer, TwinRock Holdings, TwinRock Partners, Fund VIII, and TRP Management VIII; and
- 52nd cause of action for Negligence by Trenton against Philips, Meyer, TwinRock Holdings, TwinRock Partners, AR Shamrocks, and TRP Management Shamrocks.

After the West Coast Defendants attempted to involuntarily withdraw the West Coast Plaintiffs as members of four of the entities, the parties agreed to bifurcate the Salvation and West Coast Actions. In Phase One, the Court was tasked with making two determinations:

1. Whether the Managing Members of MO Murrayfield, MO Azzurri, TRP Fund VIII, and AR Shamrock had the authority under their Operating Agreements to involuntarily withdraw Plaintiffs Salvation, West Coast Lending, Trenton Rhodes, and/or California Anchor from the aforementioned LLCs; and
2. Whether the Court's determination of the first issue deprived Plaintiffs of standing to pursue the derivative claims raised by Plaintiff.

(*See,* ROA 2523, Stipulation and Order.)

On January 29, 2025, the Court issued its Statement of Decision wherein it found that the authority of the Defendants under the various Operating Agreements "was not triggered by the necessary prerequisites to the creation of such authority and, as such, the Defendants did not have the authority to involuntarily withdraw the Plaintiffs as members of the subject LLCs. The Plaintiffs are, therefore, still members of the LLCs and have the standing to pursue their derivative claims. (ROA 2633.)

On April 14, 2025, Defendants TwinRock Partners, LLC; TwinRock Holdings, LLC; TRP Management Murrayfield, LLC; TRP Management VIII, LLC; TRP Management Azzurri, LLC; and TRP Management Shamrocks, LLC ("TwinRock Movants") filed the current Motion for Judgment on the Pleadings as to the Second Amended Complaint ("SAC") filed by the West Coast Plaintiffs. (ROA 2696.) Specifically, Individual Movants seek judgment on the pleadings in their favor as to the 1st, 2nd, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 17th, 19th, 23rd, 24th, 25th, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, and 52nd causes of action on the grounds the SAC fails to state facts sufficient to support these claims.

1. *1st, 2nd, 47th, 48th, and 49th Causes of Action*

		TwinRock Movants contend that Plaintiffs' claims under Penal Code section 496, as alleged in the First, Second, Forty-Seventh, Forty-Eighth, and Forty-Ninth Causes of Action for Theft by False Pretense, fail to state sufficient facts to support the claims. As argued by TwinRock Movants, these causes of action fail because: • Defendants Philips and Meyer are alleged to have stolen, not received, money, and Plaintiffs do not allege that the funds received by MO Murrayfield, MO Azzurri, and TRP Fund were personally received by Philips and Meyers; • Plaintiffs have not alleged the requisite criminal intent sufficient to convert this business dispute into a criminal case; • Plaintiffs do not distinguish between individual damages and damages suffered by the LLC; • Plaintiffs have had nothing stolen because the Court found that Plaintiffs are still members of the LLCs; • Damages alleged under Penal Code section 496 should be limited to those incurred one (1) year before the filing of the initial complaint; and • Since the alleged theft occurred out of state, Penal Code section 496 is presumptively inapplicable. In this regard, as a preliminary matter, TwinRock Movants contend that since the Court found that Plaintiffs are still members of MO Murrayfield LLC, then Plaintiffs did not have anything stolen from them. They retained their membership interests, and therefore, they could not have been individually damaged by the loss of membership. More substantively, TwinRock Movants contend that Plaintiffs' allegations pertain only to financial dealings with the LLCs—allegations that should be addressed through breach of contract or fiduciary duty claims rather than a Section 496 claim. Moreover, TwinRock Movants argue that Section 496(c) is not applicable to these claims because it applies only to the knowing receipt of stolen property, and does not apply to both the thief and the recipient of the stolen property. According to TwinRock Movants, the SAC only alleges that Defendants Philips and Meyer are the principal thieves who defrauded Plaintiffs by inducing them to invest money in the LLCs. TwinRock Movants contends that under Section 496, Philips and Meyer cannot be held civilly liable for both stealing and receiving the same allegedly stolen property. TwinRock Movants also contend that Section 496(c) claims require a showing of criminal intent. In citing to *Siry*

		Investment, L.P. v. Farkhondehpour (2022) 13 Cal.5th 333, TwinRock Movants argue that Plaintiffs have not sufficiently alleged that Philips and Meyer knowingly received stolen property and that they did so with criminal intent. TwinRock Movants also contend that since Plaintiffs' allegations lack the requisite specificity required to state a cause of action for fraud, it then follows that the allegations also cannot support a showing of criminal intent sufficient to state a claim under Section 496(c). As a result, TwinRock Movants contend the Section 496(c) claims should be dismissed. In addition, TwinRock Movants contend these claims fail because Plaintiffs do not distinguish between damages they suffered individually from those allegedly suffered by MO Murrayfield. According to TwinRock Movants, Plaintiffs assert claims in an individual capacity in the Twenty-Eighth Cause of Action and derivatively in the Twenty-Ninth Cause of Action, but fail to distinguish between individual damages and those allegedly sustained by MO Murrayfield. TwinRock Movants argue that under California law, an individual member of an LLC cannot recover damages personally for injuries sustained by the LLC. TwinRock Movants contend that as a result, the Section 496(c) claims should be dismissed because Plaintiffs failed to distinguish the alleged harms. TwinRock Movants also argue that Section 496(c) is inapplicable here because it applies to claims where the receipt, concealment, or withholding of stolen property occurred in California. According to TwinRock Movants, all of the TRP Entities exist outside of California and the real estate investments held by the TRP Entities also existed outside of California. TwinRock Movants argue that since Plaintiffs purchased interests in out-of-state LLCs for the purpose of investing in out-of-state properties, then Section 496(c) does not apply and the claims fail. Lastly, TwinRock Movants contend that any treble damages alleged under Section 496(c) should be limited only to damage incurred no more than one year prior to the filing of the initial Complaint. In opposition, the West Coast Plaintiffs contend that they have adequately alleged their Section 496(c) claims and that California courts have rejected all of TwinRock Movants' arguments. According to Plaintiffs, they only need to allege that property was obtained in a manner constituting theft, Philips and Meyer knew the property was obtained in that manner, and Philips and Meyer received or had possession of the stolen property. In citing to *Bell v. Feibush* (2013) 212 Cal.App.4th 1041, Plaintiffs contend that courts have held that theft by false pretense satisfies the first prong of Section 496

		claims—i.e., the "manner constituting theft." Plaintiffs note that they have alleged Philips and Meyer, and thus the TwinRock Movants, obtained hundreds of thousands of dollars from Plaintiffs under false pretense, made misrepresentations to Plaintiffs, and intended Plaintiffs to rely on the misrepresentations so Philips, Meyer, and the TwinRock Movants could obtain investment funding from Plaintiffs in an act of theft, and Philips and Meyer fraudulently took away Plaintiffs' membership interests in MO Murrayfield. (SAC, ¶¶ 197-208, 533-550.) In addition, Plaintiffs assert that across their Section 496 claims, they set forth several allegations against various Defendants, including Philips and Meyer and the TwinRock Movants. (*Ibid.*) As a result, Plaintiffs contend the SAC states sufficient facts in pleading theft by false pretense against Philips and Meyer, and thus the TwinRock Movants. Plaintiffs further contend that they have sufficiently alleged that Philips and Meyer knowingly made misrepresentations about Plaintiffs' recovering their investment, even though Philips and Meyer allegedly knew that was not feasible. In that regard, Plaintiffs argue that Philips and Meyer, and thus the TwinRock Movants, knowingly committed fraud and were aware that Plaintiffs' investment funds were obtained through fraudulent means constituting theft by false pretense. Lastly, Plaintiffs contend that they have satisfied the third prong of Section 496 claims by alleging that Philips and Meyer successfully received the investment funds that were obtained through theft by false pretense. (SAC, ¶¶ 198-200, 534-536, 540-542, 546-548.) Plaintiffs also challenge TwinRock Movants' assertions that the SAC does not sufficiently allege that Philips and Meyer personally received any of Plaintiffs' funds, and that Section 496 cannot apply to both the thief and the recipient of the stolen property. First, Plaintiffs assert that all of their Section 496 claims are specifically and expressly brought against Philips, Meyer, and the TwinRock Defendants. (*See,* SAC, ¶¶ 198-201.) In addition, Plaintiffs contend that several paragraphs in the SAC specifically allege fraudulent actions taken by the Philips and Meyer with regards to the investment funds. (SAC, ¶¶ 66, 70, 77.) Nevertheless, Plaintiffs argue that even if the Section 496 claims had not been specifically brought against the TwinRock Movants, the claims would still be adequate because the SAC sets forth detailed alter ego allegations. (SAC, ¶¶ 190-191.) In citing to *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, Plaintiffs contend that alleging only ultimate facts instead of evidentiary facts in support of an alter ego theory of liability is

		sufficient to overcome a demurrer. Second, Plaintiffs contend that although Section 496 prevents principals in the theft of property from being convicted of both theft of that property and receipt of the same stolen property, that does not mean the statute is inapplicable to someone who has stolen property. In also citing to *Siry Investments,* Plaintiffs argue that the California Supreme Court has found that convictions under Section 496 for receiving, concealing, or withholding stolen property are allowed as long as the defendant is not also convicted of the theft of the same property. (*Siry, supra,* 13 Cal.5th at p. 353, fn. 15.) Plaintiffs also contend that there is no support for TwinRock Movants' assertion that Philips and Meyer cannot be held civilly liable for both stealing and receiving stolen property. In citing to *Bell v. Feibush,* Plaintiffs note the court declined to use the word "conviction" as a synonym for "violation" in the statute, and affirmed a judgment awarding damages for fraud, breach of contract, and treble damages under Section 496(a). According to Plaintiffs, other courts have also found that it is the job of the Legislature, not the courts, to determine if and how Section 496's prohibition on dual convictions applies to civil liability. Plaintiffs also contend they have adequately alleged that Philips and Meyer acted with criminal intent in knowingly receiving stolen property. As argued by Plaintiffs, the SAC sets forth alter ego allegations stating that Philips and Meyer created the TwinRock Movants pursuant to a fraudulent scheme in order to divert revenue from the shell corporations to Defendant Philips, and that Philips organized the TwinRock Movants to defraud Plaintiffs of their investment funds. (SAC, ¶ 190.) In addition, Plaintiffs contend the SAC alleges that all of the Defendants acted in furtherance of a conspiracy to commit wrongful conduct through a shared plan. (SAC, ¶¶ 194-196.) Plaintiffs argue these allegations are sufficient to allege Philips's and Meyer's criminal intent, and thus support the Section 496 claims. Furthermore, Plaintiffs contend they have adequately differentiated between the amount of damages claimed under the direct causes of action and the derivative causes of action. Plaintiffs note they have alleged $350,000.00 in damages under the individual First Cause of Action, but as to the derivative Second Cause of Action, they allege an "amount to be proven at trial believed to be greater than four million dollars." (SAC, ¶¶ 202, 207.) In addition, Plaintiffs note their individual claims are for direct personal losses of funding obtained through theft by false pretense.

		Regarding their membership interests in the LLC, Plaintiffs contend TwinRock Movant's argument is without merit. Plaintiffs argue that between March 20, 2019, (when Defendants attempted to involuntarily withdraw Plaintiffs from the LLCs with no consideration) and December 3, 2024 (when this Court issued its decision stating that Defendants did not have the right to engage in such an action), they were wrongfully deprived of their membership interest in the LLCs and treated as non-members of the LLCs. In that regard, Plaintiffs contend they were deprived of the benefits the membership interest would have provided. (SAC, ¶¶ 80-81.) Moreover, Plaintiffs note that on September 16, 2021, in an Order denying Plaintiff Salvation's summary adjudication motion, Judge Peter Wilson stated the Court would not decide whether Section 496 applied in this action since there were triable issues of material fact as to whether Defendants' actions constituted theft. (ROA 1278.) Plaintiffs contend that it then follows from Judge Wilson's ruling that the actions of Defendants as alleged, including TwinRock Movants, constituted a theft. Plaintiffs argue TwinRock Movants cannot now seek a judgment on the pleadings on this issue. As for TwinRock Movants' assertion that Section 496 does not provide for its extraterritorial application, Plaintiffs disagree and also contend the issue is premature at the pleading stage. Plaintiffs contend the parties here are all California residents, and as such, the alleged acts took place in California. (SAC, ¶¶ 3-13.) Nevertheless, Plaintiff contend that where the parties are California residents, courts routinely defer deciding issues regarding the extraterritorial scope of California statutes at the pleading stage. TwinRock Movants' arguments are unavailing. Penal Code section 496, subdivision (a), provides in relevant part: Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year …. A principal in the actual theft of the property

> may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

Subdivision (c) of Section 496 then provides in relevant part: "Any person who has been injured by a violation of subdivision (a) … may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff …."

In *Bell v. Feibush, supra,* the appellate court interpreted the phrase in Section 496(a) regarding property "that has been obtained in any manner constituting theft." The court turned to Penal Code section 484, which describes acts constituting theft, and noted that the first sentence in subdivision (a) states:

> Every person who shall feloniously steal … or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property … is guilty of theft.

(*Bell, supra,* 212 Cal.App.4th at p. 1048, quoting Penal Code § 484, subd. (a).)

The *Bell* court then rejected the same argument presented here by TwinRock Movants—i.e., that under Section 496(a), a defendant cannot be liable for both theft and receiving stolen property. The *Bell* court stated that were that principle applied to defendant's civil liability under Section 496(c), the defendant would not be liable for damages under fraud and breach of contract causes of action and treble damages under Section 496. However, the *Bell* court found that the evidence established that the defendant violated Section 496(a) not only by receiving property from the plaintiff by false pretense, but also by withholding that property when plaintiff sought to get it back. As a result, the court not only awarded monetary damages on the breach of contract and fraud claims, but also treble damages under Section 496(c). (*Id.*, at p. 1049.)

In *Switzer v. Wood* (2019) 35 Cal.App.5th 116, the appellate court followed the reasoning in *Bell.* The *Switzer* court held: "All that is required for civil liability to attach under section 496(c), including entitlement to treble damages, is that a 'violation' of … section 496 is found to have occurred. [Citation.] A violation may be found to have occurred if the

		person engaged in the conduct described in the statute." (*Switzer, supra,* 35 Cal.App.5th at p.126.) Notably, the *Switzer* court then held that although Section 496(a) "covers a spectrum of impermissible activity relating to stolen property, the elements required to show a violation of [that section] are simply that (i) property was stolen or obtained in a manner constituting theft, (ii) the defendant knew the property was so stolen or obtained, and (iii) the defendant received or had possession of the stolen property." (*Switzer, supra,* 35 Cal.App.5th at p. 126.) As it pertains to the instant litigation, the *Switzer* court also observed that "[a] violation of section 496(a) may, by its own terms, relate to property that has been 'stolen' or 'that has been obtained *in any manner constituting theft* ….' (*Ibid.*) Similar to *Bell*, the *Switzer* court concluded that straightforward statutory interpretation of Section 496(a) establishes that the "theft [of funds] by false pretenses" is a violation of Section 496(a) that can trigger treble damages under section 496(c). (*Id.*, ¶ 127.) Here, in the instant litigation, Plaintiffs have adequately alleged the elements of their Section 496 claims as defined in *Switzer*. Regarding the claims alleged in the First and Second Causes of Action, Plaintiffs have alleged that Defendants, including the TwinRock Movants, obtained $350,000.00 in investment funds and property belonging to MO Murrayfield by false pretense. Plaintiffs have also alleged that Philips and Meyer, and thus the TwinRock Movants, knew the investments funds and LLC property had been obtained fraudulently, and they knowingly withheld the property from the LLC and knew they would not be able to pay back the monies owed to Plaintiffs. (SAC, ¶¶ 198-207.) Thus, Plaintiffs have alleged: (a) that their investment funds and MO Murrayfield property was obtained in a manner constituting theft; (b) that Philips and Meyer knew the funds and LLC property had been obtained in such a manner; and (c) Philips and Meyer had possession of the "stolen" investment funds and LLC property. Under *Switzer*, this is all that is necessary to adequately allege these claims. Similarly, regarding the Forty-Seventh, Forty-Eighth, and Forty-Ninth Causes of Action, Plaintiffs have alleged that Philips and Meyers, and thus the TwinRock Movants, obtained investment funds by false pretense to invest in MO Azzurri, TwinRock Fund, and AR Shamrocks. In addition, Plaintiffs allege that Philips and Meyer knew they had obtained these investment funds through fraudulent representations made to Plaintiffs, and Philips and Meyer knew they would not be able to pay back the monies owed to Plaintiffs—thus withholding

		the funds when Plaintiffs sought to get back the returns on their investments. (SAC, ¶¶ 533-550.) These allegations are sufficient to state Section 496 claims. Regarding TwinRock Movants' contention that the requisite criminal intent has not been adequately alleged, their argument is also unavailing. In *Siry Investment,* the Supreme Court first observed that "not all commercial or consumer disputes alleging that a defendant obtained money or property through fraud, misrepresentation, or breach of a contractual promise will amount to theft." (*Siry Inv., supra,* 13 Cal.5th at p. 361.) The Court then held, "To prove theft, a plaintiff must establish criminal intent on the part of the defendant beyond 'mere proof of nonperformance or actual falsity.' [Citation.]" (*Id.,* at pp. 361-362.) In the case cited by TwinRock Movants, *Freeney v. Bank of America Corporation* (C.D. Cal. 2016) 2016 WL 5897773, the court found that a necessary element of alleging a violation of Section 496(a) is an allegation that the defendant had actual knowledge that the property received was stolen. (*Freeney*, at *12.) However, in *Freeney*, the plaintiffs had only set forth allegations that the defendant was negligent in its business dealings. (*Ibid.*) In the instant action, however, Plaintiffs have alleged that Philips and Meyer set up MO Azzurri, TwinRock Fund, and AR Shamrocks as "shell companies" that were being "used as instrumentalities and conduits for a single venture" controlled by Philips and Meyer, and thus the TwinRock Movants. (SAC, ¶ 190.) Plaintiffs go on to allege that these entities "were created and continued pursuant to a fraudulent plan, scheme, and device conceived and operated by an associate-in-fact enterprise formed by Philips and Meyer, whereby income, revenue and profits of [the TwinRock Movants] were diverted to Philips through his position as Manager or Managing Member of such entities. (SAC, ¶ 190.d.) Plaintiffs then allege that the TwinRock Movants were organized "as a device to defraud" Plaintiffs of their investments in MO Azzurri, MO Murrayfield, TwinRock Fund, and AR Shamrocks. (SAC, ¶ 190.e.) Unlike *Freeney*, these allegations do not sound in negligence, but rather in a deliberate—i.e., criminal—attempt to obtain Plaintiffs' investment funds through false pretense—i.e., theft. Whether Plaintiffs can prove Philips and Meyer actually had such criminal intent is not at issue at the pleading stage. It is only necessary that Plaintiffs adequately allege Philips and Meyer had criminal intent, and Plaintiffs have done so.

		Plaintiffs have also adequately distinguished between damages to MO Murrayfield and damages they suffered individually. As a preliminary matter, it is noted that TwinRock Movants have incorrectly referred to the Twenty-Eighth and Twenty-Ninth Causes of Action in their moving brief with regards to this argument. Those causes of action pertain to breach of contract and breach of the implied covenant of good faith and fair dealing claims against AR Shamrocks and MO Azzurri, and therefore, are not relevant to this issue. (*See,* SAC, ¶¶ 409-419.) As for TwinRock Movants' substantive argument on this issue, it is misplaced. In the First Cause of Action, Plaintiffs have alleged they suffered $350,000.00 in damages due to the taking of their investment funds by false pretense by Philips and Meyer. (SAC, ¶¶ 198, 202.) Alternatively, in the derivative Second Cause of Action, Plaintiffs allege that Philips and Meyer obtained property belonging to MO Murrayfield by false pretense, and that the damages suffered by MO Murrayfield are in excess of four million dollars ($4,000,000.00.) (SAC, ¶¶ 205, 207.) Nowhere does it state that Plaintiffs are seeking to personally recover damages suffered by MO Murrayfield. Therefore, Plaintiffs have adequately distinguished between their individual damages and damages suffered by the LLC. Regarding TwinRock Movants' assertion that Plaintiffs were never deprived of their membership interest in MO Murrayfield, that assertion is demonstrably false. As noted by Plaintiffs, on March 20, 2019, Philips, Meyer, and the TwinRock Movants attempted to involuntarily withdraw Plaintiffs' membership in MO Murrayfield without consideration. It was not until January 2025 that this Court issued its final Statement of Decision finding that Philips, Meyer, and the TwinRock Movants did not have the authority to involuntarily withdraw Plaintiffs from the LLC. (ROA 2633.) Plaintiffs allege that in the interim, Philips, Meyer, and the TwinRock Movants deprived them of their membership interests in the LLC, including locking them out of the investor database. (SAC, ¶¶ 80-81.) Although this Court found that Plaintiffs are still members of the LLC, that does not mean that TwinRock Movants did not effectively rob Plaintiffs of their membership interest in March 2019, and continually deprive Plaintiffs of their membership interest in the more than six years until the issue was adjudicated. As for TwinRock Movants' contentions that Section 496 is inapplicable to out-of-state acts and treble damages alleged under the statute should be limited to damages incurred one

		year before the filing of the initial complaint, these arguments are premature. Although the LLCs are Delaware limited liability companies, it is alleged their members are California residents and citizens. It is also alleged that Plaintiffs conduct business in California and have their principal place of business in California, while the members and managers of the TwinRock Movants are residents of California who conduct business in the state. Under Penal Code section 27, "[a]ll persons who commit, in whole or in part, any crime within this state" are liable to punishment under the laws of California. (Penal C., § 27, subd. (a)(1).) It is well settled that California's jurisdiction over a theft offense is established where some act is committed in the state that is an element of the crime. (*People v. Betts* (2002) 126 Cal.Rptr.2d 64, 69, citing to *People v. Harden* (1936) 14 Cal.App.2d 489, 492.) Here, it is alleged that at least some of TwinRock Movants' actions in taking Plaintiffs' investment funds were committed in the State of California; therefore, Section 496 is applicable. Regarding the one-year limitations period, it does not appear on the face of the initial Complaint that the Section 496 claims are time-barred. (*SLPR, L.L.C. v. San Diego Unified Port Dist.* (2020) 49 Cal.App.5th 284, 316 [a demurrer based on a statute of limitations defense will be sustained only when the face of the complaint disclosed the action is barred].) Therefore, TwinRock Movants' argument in this regard must fail. The Motion as to the First, Second, Forty-Seventh, Forty-Eighth, and Forty-Ninth Causes of Action is denied. 2. *5th, 6th, 7th, 8th, 8th, 9th, 10th, 11th, 12th, 13th, 19th, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 50th, 51st, and 52nd Causes of Action* TwinRock Movants contend that Plaintiffs' causes of action for Constructive Fraud, Fraud-False Promise, Fraud-Concealment, Negligent Misrepresentation, Fraud-Intentional Misrepresentation, and Fraud and Deceit must fail because they are not adequately pled. According to TwinRock Movants, Plaintiffs' fraud-based claims fall into two categories: (1) the value of MO Murrayfield, MO Azzurri, TwinRock Fund, and Shamrock investment opportunities; and (2) the credentials and abilities of Defendants Philips and Meyer. TwinRock Movants argue that Plaintiffs have not alleged specific fraudulent conduct by TwinRock Movants with respect to the value of the LLCs. In addition, TwinRock Movants contend that Plaintiffs' have only alleged that Philips and Meyer made statements about their education and experience, which do

		not constitute material facts, but rather statements of opinion. As a result, TwinRock Movants contend that Plaintiffs have not alleged these causes of action with the requisite specificity required to survive at the pleading stage. In opposition, Plaintiffs contend they have sufficiently alleged these causes of action. As noted by Plaintiffs, they have adequately set forth alter ego allegations establishing that TwinRock Movants and Defendants Philips and Meyer are alter egos of each another, and thus share in the liabilities of each other. In that regard, Plaintiffs argue that all of the fraudulent actions alleged against Philips and Meyer are also alleged against TwinRock Movants. Plaintiffs contend they have alleged that Defendants Philips and Meyer either made specific misrepresentations about their past experience and the nature of the investments or they concealed certain information about the investments. Once again, TwinRock Movants' arguments are not well taken. The following elements must be alleged to state a fraud-based cause of action: (1) misrepresentation (false representation or concealment); (2) knowledge of falsity; (3) intent to deceive; (4) justifiable reliance; and (5) resulting damage. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638; *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951.) For fraud-based causes of action, each element must be pled with specificity. (*Lazar, supra,* 12 Cal.4th at p. 645.) The particularity requirement necessitates pleading facts that show how, when, where, to whom, and by what means the representations were tendered. (*Ibid*.) A plaintiff must also specially plead the detriment that is proximately caused by defendant's tortious conduct. This requires factual allegations of both the injury or damage suffered and its causal connection with plaintiff's reliance on defendant's misrepresentations. (*Service by Medallion, Inc. v. Clorox Co*. (1996) 44 Cal.App.4th 1807, 1818.) Furthermore, in the case of a corporate defendant, "a plaintiff must allege the names of the persons who made the misrepresentations, their authority to speak for the corporation, to whom they spoke, what they said or wrote, and when it was said or written." (*Perlas v. GMAC Mortgage, LLC* (2010) 187 Cal.App.4th 429, 434; *Lazar, supra,* 12 Cal.4th at p. 645.) Thus, a general pleading of the legal conclusion of "fraud" is insufficient to survive demurrer. It is also noted that Plaintiffs have set forth sufficient alter ego allegations in the SAC as to the TwinRock Movants and Defendants Philips and Meyer. (SAC, ¶¶ 190-191.)

		Constructive Fraud: The elements of a constructive fraud claim are: "(1) fiduciary relationship; (2) nondisclosure (breach of fiduciary duty); (3) intent to deceive; and (4) reliance and resulting injury (causation)." (*Stokes v. Henson* (1990) 217 Cal.App.3d 187, 197.) "[T]he elements of representation and falsity are absent from constructive fraud." (*Youman v. Equifax, Inc.* (1980) 111 Cal.App.3d 498, 517.) TwinRock Movants contend the Fifth and Ninth causes of action fail because corporate entities do not owe fiduciary duties, but rather act through officers and directors who owe fiduciary duties to shareholders. In opposition, Plaintiffs note they have set forth detailed alter ego allegations in the SAC, and TwinRock Movants have not disputed these allegations. As argued by Plaintiffs, as alter egos of Philips and Meyer, TwinRock Movants share a unity of interest and ownership, and the entities were allegedly created and continued pursuant to a fraudulent scheme to divert profits to Philips. As a result, Plaintiff contend TwinRock Movants are also liable for breach of fiduciary duty. In addition, Plaintiffs contend TwinRock Movants are also liable for breach of fiduciary duty under an agency theory. Plaintiffs note that within the alter ego allegations, they have also alleged that TwinRock Movants and Philips and Meyer breached their fiduciary duties as agents of each other. (SAC, ¶ 191.) As with the alter ego allegations, Plaintiffs note the agency allegations are also undisputed by TwinRock Movants. TwinRock Movants have not demonstrated that these causes of action are deficient. Generally, for LLCs formed in Delaware, their operating agreements may limit or eliminate the fiduciary duties of members and managers pursuant to the Delaware Limited Liability Company Act, provided that the agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing. (*See,* 6 Del. Code Ann. § 18-1101(c), (e).) However, the Delaware LLC Act has been interpreted to imply default fiduciary duties to managers of an LLC unless such duties are clearly disclaimed or modified. (6 Del. Code Ann. § 18-1104; see also, *Feeley v. NHAOCG, LLC* (Del. Ch. 2012) 62 A.3d 649, 661.) The Delaware LLC Act also permits an LLC to indemnify members and managers for breaches of fiduciary duty. (6 Del. Code Ann. § 18-108.) Here, all of the TwinRock Movants are Delaware LLCs. Plaintiffs have alleged that one of the TwinRock Movants, TRP

		Management Murrayfield, is the managing member of, and entirely controls, MO Murrayfield. (SAC, ¶¶ 24, 84.) Plaintiffs also allege that MO Murrayfield's operating agreement states that nothing contained in the agreement "shall protect any Person against any liability, …, to which such Person would otherwise be subject by reason of (a) any omission of such Person that involves actual fraud or willful misconduct, or (b) any transaction not permissible under this Agreement, from which such Person derives any improper benefit." (SAC, ¶ 84.) Similarly, the indemnity provision in the operating agreement does not apply to any action or inaction by an indemnitee that constitutes actual fraud or willful misconduct, or a transaction from which the indemnitee derived an improper benefit. (*Id.*, ¶ 85.) Plaintiffs do not allege, and TwinRock Movants do not assert, that the MO Murrayfield operating agreement disclaims or modifies the default duties ascribed to managing members. Moreover, as noted by Plaintiffs, the SAC contains alter ego allegations as to the TwinRock Movants and alleges they are agents of each other along with Philips and Meyers. (SAC, ¶¶ 190, 191.) Therefore, on the face of the SAC, the allegations are sufficient to state these claims. (See, *Beach to Bay Real Estate Center, LLC v. Beach to Bay Realtors, Inc.* (Del. Ch. 2017) 2017 WL 2928033, * 5.) <u>*Fraud – Deceit and Fraud – False Promise*</u>: "The elements of fraud that will give rise to a 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.'" (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974.) The elements of a claim for fraud premised on a false promise are similar except that such a cause of action requires an allegation that "the defendant made a representation of intent to perform some future action, i.e., the defendant made a promise, and the defendant did not really have that intent at the time that the promise was made, i.e., the promise was false." (*Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1060.) TwinRock Movants contend Plaintiffs never identified what TwinRock Movants allegedly promised to perform. However, regarding the Sixth Cause of Action, Plaintiffs did allege that Defendants, including the TwinRock Movants, "promised that Plaintiffs would receive back their Initial Contribution and Additional Contribution, and to the extent any were not returned, Plaintiffs would accrue Preferred Returns on any unreturned Contributions beginning after the Closing." (SAC, ¶

		230.) Plaintiffs allege they relied on these promises, Defendants—including the TwinRock Movants—intended for them to rely on these promises in order to obtain investment funds from Plaintiffs, but that Defendants –including the TwinRock Movants—did not perform the promised acts and thus, Plaintiffs suffered damages. (SAC, ¶¶ 231-234.) Similarly, as to the Tenth Cause of Action, Plaintiffs allege that Defendants—including the TwinRock Movants—"promised MO Murrayfield would receive back its contributions, and to the extent any were not returned, MO Murrayfield would accrue Preferred Returns on any unreturned Contributions beginning after the Closing." (SAC, ¶ 264.) Plaintiffs allege the LLC reasonably relied on these promises, Defendants—including the TwinRock Movants—intended for the LLC to rely on these promises in order to obtain funding from the LLC, but that Defendants—including the TwinRock Movants—did not perform the promised acts, and therefore Plaintiffs were harmed. (SAC, ¶¶ 265-269.) These allegations are sufficient to state Plaintiffs' deceit and false promise claims. <u>*Fraud – Concealment*</u>: A fraudulent concealment claim requires a plaintiff to plead: (a) defendant concealed or suppressed a material fact; (b) defendant was under a duty to disclose the fact to the plaintiff; (c) defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff; (d) plaintiff was unaware of the fact and would not have acted in the same manner knowing of the concealed fact; (e) causation; and (f) damages. (*Kaldenbach v. Mutual of Omaha Life Ins. Co.* (2009) 178 Cal.App.4th 830, 850.) Courts have held: " 'There are "four circumstances in which nondisclosure or concealment may constitute actional fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts."'" (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 311.) The Supreme Court has described the necessary relationship giving rise to a duty to disclose as a "transaction" between the plaintiff and defendant: "In transactions which do not involve fiduciary or confidential relations, a cause of action for non-disclosure of material facts may arise in at least three instances: (1) the defendant makes representations but does not disclose facts which materially qualify the facts disclosed, or which render his disclosure likely to mislead; (2) the facts are known or accessible only to defendant, and defendant knows they are not known to or reasonably discoverable by the plaintiff; (3) the defendant actively conceals discovery from the plaintiff."

		(*Warner Construction Corp. v. City of Los Angeles* (1970) 2 Cal.3d 285, 294, quoted in *Bigler-Engler, supra,* at p. 311.) Here, TwinRock Movants contend Plaintiffs never identify what the TwinRock Movants actually concealed, and thus the Seventh, Eleventh, Thirty-Fifth, Thirty-Sixth, and Thirty-Seventh Causes of Action fails. However, it is noted that in the SAC, Plaintiffs alleged that in inducing Plaintiffs to invest in the offerings, TwinRock Movants failed to disclose that they did not conduct due diligence prior to the closing on the transactions and that they would not be able to pay back Plaintiffs' contributions. (SAC, ¶¶ 239, 273, 443, 451, 459.) Plaintiffs allege they did not know of the concealed facts, TwinRock Movants intended to deceive them by concealing such facts, Plaintiffs reasonably relied on TwinRock Movants' deceptions, and Plaintiffs never would have made the investments had the facts been disclosed. (SAC, ¶¶ 240-243, 274-277, 444-447, 452-455, 460-463.) In addition, Plaintiffs have alleged the predicate facts establishing that Philips and Meyer, and thus their alter egos, the TwinRock Movants had a duty to disclose this information. (*See generally*, SAC.) These allegations are sufficient to state Plaintiffs' claims. *Negligent Misrepresentation:* "The elements of negligent misrepresentation are similar to intentional fraud except for the requirement of scienter; in a claim for negligent misrepresentation, the plaintiff need not allege the defendant made an intentionally false statement, but simply one as to which he or she lacked any reasonable ground for believing the statement to be true. [Citations.]." (*Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 184-185.) Therefore, negligent misrepresentation is a form of actual fraud, consisting of a positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, although he believes it to be true. (*Furla v. Jon Douglas Co.* (1998) 65 Cal.App.4th 1069, 1077.) In the instant Motion, TwinRock Movants argue that Plaintiffs' Thirteenth, Forty-First, Forty-Second, and Forty-Third Causes of Action must fail because Plaintiffs did not allege that TwinRock Movants made any representations "honestly believing" that they were true, "but without reasonable ground for such belief." But it is noted that in the SAC, Plaintiffs did expressly allege that Philips and Meyers—and thus their alter egos, the TwinRock Movants—represented that Plaintiffs would receive back their contributions or accrue Preferred Returns on any unreturned contributions, and at the time Philips and Meyer—

		and thus, their alter egos—made these representations, "to the extent that they honestly believed such representation[s] [were] true, Defendants [including the TwinRock Movants] had no reasonable grounds for such belief …." (*See,* SAC, ¶¶ 289-290, 492-493, 500-501, 508-509.) Therefore, Plaintiffs have adequately alleged these claims. *Intentional Misrepresentation and Fraud and Deceit:* To plead intentional misrepresentation or fraud and deceit, a plaintiff must allege the following elements:(1) misrepresentation; (2) knowledge of falsity; (3) intent to deceive; (4) justifiable reliance; and (5) resulting damage. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638; *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951.) Here, TwinRock Movants contend Plaintiffs have not identified what TwinRock Movants specifically misrepresented, who made the misrepresentations, and when they were made. As a result, TwinRock Movants contend Plaintiffs' Eighth, Twelfth, Thirty-Second, Thirty-Third, Thirty-Fourth, Thirty-Eighth, Thirty-Ninth, and Fortieth Causes of Action must fail. Again, TwinRock Movants have ignored the express allegations set forth in the SAC. As to each of these causes of action, Plaintiff has alleged that Defendants—including the TwinRock Movants—represented that Plaintiffs would receive back their Initial and Additional Contributions, if any, or they would accrue Preferred Returns on any unreturned contributions. Plaintiffs then allege that Defendants—including the TwinRock Movants—knew these representations were false, they intended for Plaintiffs to rely on these representations in order to obtain investment funds from Plaintiffs, Plaintiffs reasonably relied on these representations, and as a result, they suffered damages. (SAC, ¶¶ 247-252, 281-286, 431-433, 435-437, 439-441, 467-472, 475-481, 484-489.) These allegations are sufficient to state these claims. Accordingly, the Motion as to the Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Nineteenth, Thirty-Second, Thirty-Third, Thirty-Fourth, Thirty-Fifth, Thirty-Sixth, Thirty-Seventh, Thirty-Eighth, Thirty-Nineth, Fortieth, Forty-First, Forty-Second, Forty-Third, Fiftieth, Fifty-First, and Fifty-Second Causes of Action is denied. *3. 19th, 50th, 51st, and 52nd Causes of Action* TwinRock Movants contend that Plaintiffs' Nineteenth, Fiftieth, Fifty-First, and Fifty-Second Causes of Action are deficient because Plaintiffs have only alleged that "[b]ased on their

		relationship with Plaintiffs, Defendants owed a duty of care to Plaintiffs." As argued by the TwinRock Movants, Plaintiffs' negligence claims merely seek to recover tort damages on breach of contract claims. TwinRock Movants contend Plaintiffs must allege facts showing the existence of the claimed duty. In addition, TwinRock Movants argue the "contractual economic loss rule" bars recovery in tort for purely economic losses unless a duty is owed independently from—i.e., does not arise from—the contract. In support, TwinRock Movants cite to *Robinson Helicopter Co. v. Dana Corp.* (2004) 34 Cal.4th 979. TwinRock Movants' argument is not well taken. The economic loss rule precludes recovery in tort where plaintiff's damages are solely economic losses. (*Jimenez v. Sup.Ct. (T.M. Cobb Co.)* (2002) 29 Cal.4th 473, 481-484.) The rule "prevent[s] the law of contract and the law of tort from dissolving one into the other.'" (*Robinson Helicopter, Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 988 (citations omitted); *Food Safety Net Services v. Eco Safe Systems USA, Inc.* (2012) 209 Cal.App.4th 1118, 1130.) "[T]he economic loss rule is not a defense to a cause of action. Rather, the existence of damages other than purely economic loss is an element of a plaintiff's common law cause of action." (*Greystone Homes, Inc. v. Midtec, Inc*. (2008) 168 Cal.App.4th 1194, 1215; accord *Rosen v. State Farm General Ins. Co*. (2003) 30 Cal.4th 1070, 1079 ["Under the economic loss rule, 'appreciable, nonspeculative, present injury is an essential element of a tort cause of action.'"].) In *Robinson Helicopter*, the Court of Appeal held that "the economic loss rule does not bar [a plaintiff's] fraud and intentional misrepresentation claims [where they are] independent of breach of contract." (*Robinson Helicopter, supra,* 34 Cal.4th at p. 991.) The appellate court noted, however, that its holding was "narrow in scope and limited to a defendant's affirmative misrepresentations on which a plaintiff relies and which expose a plaintiff to liability for personal damages independent of the plaintiff's economic loss." (*Id*. at p. 993.) Recently, the California Supreme Court examined the conditions under which the economic loss rule applies. The Court held that under the rule, "tort recovery for breach of a contract duty is generally barred (…) unless two conditions are satisfied. A plaintiff must first demonstrate the defendant's injury-causing conduct violated a duty that is independent of the duties and rights assumed by the parties when they entered the contract. Second, the defendant's conduct must have caused injury to persons or property that was not

		reasonably contemplated by the parties when the contract was formed. (*Rattagan v. Uber Technologies* (2024) 17 Cal.5th 1, 20.) Relevant to the issue here at the pleading stage, the Supreme Court held that in "evaluating whether the partes' expectations and risk allocations bar tort recovery, the court must consider the alleged facts." (*Rattagan, supra,* at p. 26.) The Court then held that a trial court must: (1) first ascertain the full scope of the parties' contract, including rights created and obligations assumed; (2) then "determine whether there is an independent tort duty to refrain from the alleged conduct"; and (3) if such an independent duty exists, then consider if plaintiff can establish all of the elements of the tort independently of the rights and duties assumed under the contract. (*Ibid.*) "The guiding principle is this. If the alleged breach is based on a failure to perform as the contract provides, and the parties reasonably anticipated and allocated the risks associated with the breach, the cause of action will generally sound only in contract because a breach deprives an injured party of a benefit it bargained for. However, if the contract reveals the consequences were not reasonably contemplated when the contract was entered and the duty to avoid causing such harm has an independent statutory or public policy basis, exclusive of the contract, tort liability may lie." (*Id.*, at p. 27.) The *Rattagan* Court cited positively to the holding in *Robinson Helicopter,* noting that in that case, it was concluded that the plaintiff established all the required elements for a fraudulent misrepresentation, and that the deceptive conduct was independent of the contractual breach. (*Rattagan, supra,* 17 Cal.5th at p. 32; citing to *Robinson Helicopter, supra,* 34 Cal.4th at pp. 990-991.) The *Rattagan* Court noted that the *Robinson Helicopter* Court found that the fraud claims were not simply part of the alleged breach of contract because " '[n]o rational party would enter into a contract anticipating that they are or will be lied to.'" (*Id.*, at p. 33, citing to *Robinson*, *supra,* at pp. 992-993.) The *Rattagan* Court held, "California public policy support the [*Robinson Helicopter*] holding because fraud is considered such a ' "deviation from socially useful business practices that the effect of enforcing such tort duties will be … to aid rather than discourage commerce."' [Citation.]" (*Id.*, at p. 33.) Here, in the instant litigation, the economic loss rule does not apply. As discussed above, Plaintiffs have adequately alleged the elements of their fraud-based claims, including their claims for fraud and deceit, intentional misrepresentation, and

		false promise. Contrary to TwinRock Movants' contention, the instant action is distinguishable from *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, where a borrower plaintiff alleged the bank was liable in tort for its failure to process his loan modification application before foreclosing on his property under the original loan. (*Sheen, supra,* at p. 920.) In *Sheen*, the Supreme court concluded the economic loss rule was fatal to plaintiff's negligence cause of action because the claim was "based on an asserted duty that is contrary to the rights and obligations clearly expressed in the loan contract." (*Id.*, at p. 925.) This is not the case in the instant litigation. Therefore, the Motion is denied as to the Nineteenth, Fiftieth, Fifty-First, and Fifty-Second Causes of Action on this ground. *4. 14th, 15th, 44th, 45th, and 46th Causes of Action* TwinRock Movants contend the Fourteenth, Fifteenth, Forty-Fourth, Forty-Fifth, and Forty-Sixth Causes of Action must fail because corporate entities do not owe fiduciary duties, but instead act through officers and directors who owe fiduciary duties to shareholders. However, as a preliminary matter, all of the TwinRock Movants are Delaware LLCs, not corporations, and thus the Delaware LLC Act applies. As discussed above regarding Plaintiffs' fraud-based claims, the Delaware LLC Action has been interpreted to imply default fiduciary duties to managers of an LLC unless such duties are clearly disclaimed or modified. (6 Del. Code Ann. § 18-1104.) Here, it is alleged that Defendant TRP Management Murrayfield is the managing member of MO Murrayfield, and Plaintiffs have not alleged, nor have the TwinRock Movants argued, that the relevant operating agreement disclaims or modifies the default fiduciary duties. In addition, Plaintiffs have sufficiently stated alter ego allegations as to the TwinRock Movants and Philips and Meyers. Therefore, on the face of the SAC, the Fourteenth and Fifteenth Causes of Action are adequately pled. Similarly, as to the Forty-Fourth Cause of Action, one of the TwinRock Movants, TRP Management Azzurri, is alleged to be the managing member of MO Azzurri, and another TwinRock Movant, TwinRock Partners, is alleged to be the manager of MO Azzurri. (SAC, ¶ 100.) It is also alleged that the MO Azzurri operating agreement contains provisions substantially identical to the MO Murrayfield operating agreement, and does not disclaim or modify the fiduciary duties of the manager or

		managing member. (*Id.*, ¶¶ 121-122.) This, along with the alter ego allegations, is sufficient to state these claims. The same is true as to the Forty-Fifth and Forty-Sixth Causes of action. One of the TwinRock Movants, TRP Management VIII, is alleged to be the managing member of Fund VIII (SAC, ¶ 153), and another TwinRock Movant, TRP Management Shamrocks, is alleged to be the managing member of AR Shamrocks (*Id*., ¶ 178). As with the other operating agreements, Plaintiffs have not alleged, nor have the TwinRock Movants asserted, that the relevant operating agreements disclaim or modify the fiduciary duties of the managing member. In conjunction with the alter ego allegations, Plaintiffs have sufficiently alleged these claims. Therefore, the Motion is denied as to the Fourteenth, Fifteenth, Forty-Fourth, Forty-Fifth, and Forty-Sixth Causes of action. *5. 17th, 23rd, 24th, and 25th Causes of Action* TwinRock Movants contend these causes of action fail because Corporations Code section 25504 does not apply to corporate entities. Without citation to any case law, TwinRock Movants argue that Section 25504 was designed to impose joint and several liability for fraud on the "control persons" of an entity, not on the entity itself. In opposition, Plaintiffs again point to their undisputed and unopposed alter ego and agency allegations in the SAC to argue that the TwinRock Movants share in liability for the Section 25504 violations of Defendants Philips and Meyers. TwinRock Movants' arguments are unavailing. Section 25504 provides in relevant part: > Every person who directly or indirectly controls a person liable under Section 25501 or 25503, …, every principal executive officer or director of a corporation so liable, every person occupying a similar status or performing similar functions, …, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless the other person who is so liable had no knowledge of or reasonable grounds

		to believe in the existence of the facts by reason of which the liability is alleged to exist. (Corps. Code, § 25504.) It is noted that the definition of "person" under the Corporations Code includes limited liability companies. (Corps. Code, § 25013.) Contrary to the assertion of the TwinRock Movants, reading Section 25504 to include entities does not misread the plain language of the statute. All that is required is some type of control person, employee, or agency relationship with the primary violator. Indeed, in *Apollo Capital Fund, LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, the court found Section 25504 could apply to entities. Although the *Apollo Capital* court found that the broker-dealer in that case could not be liable to the investors under Section 25501 because the broker-dealer did not actually sell the security to the investors, the court did find that since the complaint sufficiently alleged a fraud claim against the entity defendant, it was necessarily sufficient to allege a claim against that entity defendant within the ambit of Section 25504. (See, *Apollo Capital Fund, supra,* at pp. 255-256.) Therefore, Section 25504 does not summarily preclude its application to entities, including LLCs. Here, as discussed repeatedly above, Plaintiffs have adequately alleged an alter ego and agency relationship between TwinRock Movants and Philips and Meyer, and they have adequately alleged their fraud-based claims. Moreover, Plaintiffs have alleged that the TwinRock Movants are managing members of the various LLC investment entities. Whether Plaintiffs can prove Section 25504 liability is not at issue at the pleading stage. The only question is whether Plaintiffs have adequately alleged their claims, and they have done so. Therefore, as to the Seventeenth, Twenty-Third, Twenty-Fourth, and Twenty-Fifth Causes of Action, the Motion is denied. Accordingly, based on the discussion above, the Court denies the TwinRock Movant's Motion for Judgment on the Pleadings in its entirety. TwinRock Movants are ordered to give notice of this ruling.