

Tentative Rulings for December 12, 2024
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

23CECG03598 *Natasha Smith v. California Department of Transportation* is continued to Wednesday, February 5, 2025, at 3:30 p.m. in Department 501.

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Tentative Rulings for Department 501

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Tentative Ruling

Re: **Morteza Javaherie v. Henry Nunez**
Superior Court Case No. 21CECG00398

Hearing Date: December 12, 2024 (Dept. 501)

Motion: by Defendants for Summary Judgment or, Alternatively,
Summary Adjudication

Tentative Ruling:

To overrule defendants' objections and to deny the alternative motions for summary judgment and summary adjudication.

Explanation:

"A trial court may only grant a motion for summary judgment if no triable issues of material fact appear and the moving party is entitled to judgment as a matter of law." (*Schacter v. Citigroup* (2009) 47 Cal.4th 610, 618, emphasis added; Code Civ. Proc., §437c, subd. (c).) The moving party bears the initial burden of production to make a prima facie showing of the "nonexistence of any triable issue of material fact[.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) Once a moving defendant meets this burden, the burden shifts to the opposing party present evidence that triable issues exist. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 780-781.) The opposing party's evidence is liberally construed and the moving party's evidence strictly scrutinized, "in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.)

Defendants base their alternative motion largely on what they estimate are "similar" facts present in the Fourth District case *Fox v. Pollack* (1985) 181 Cal.App.3d 954 (*Fox*). In *Fox*, the plaintiffs sued an attorney for legal malpractice and negligent misrepresentation after a written land exchange agreement with another couple failed to comply with the original oral agreement. Prior to executing the written agreement, the other couple had advised, to which the plaintiffs agreed, that the other couple's attorney would prepare the necessary documents and the other couple would pay all attorney fees. The plaintiffs knew the attorney was the other couple's attorney, "they had no prior contact with him; they had not furnished him any information concerning the exchange; [he] did not tell them he was acting as their attorney; they did not request any legal advice from [him] and [he] did not render any." (*Id.* at p. 958.) The absence of "evidentiary" facts, found the trial and appellate courts, were insufficient to raise a reasonable inference of an attorney-client relationship. (*Id.* at p. 959.)

The First District acknowledged that an attorney client relationship can be created impliedly and informally (*Fox, supra*, 181 Cal.App.3d at p. 959), but it nevertheless rejected the plaintiffs' allegations they "thought the attorney represented their interests because he was an attorney." (*Ibid.*) In essence, the plaintiffs' "states of mind, unless reasonably induced by representations or conduct of [the attorney], are not sufficient to

create the attorney-client relationship; they cannot establish it unilaterally.” (*Ibid*, emphasis added.)

Defendants here primarily assert the retainer agreement executed with the sellers and the documents prepared for their transaction with plaintiff (Points & Auth. at p. 7:26 – 8:5), and conclude that “plaintiff cannot establish with any evidence that an attorney-client relationship existed.” (*Id.* at p. 8:6-7.) However, under the admittedly “similar” facts of *Fox*, the analysis includes more than the retainer agreement and document preparation and extends to any “reasonab[le] induce[ments] by representations or conduct of [the attorney].” (*Fox, supra*, 181 Cal.App.3d at p. 959.) In particular, in affirming summary judgment, the Fourth District expressly emphasized the absence of “any facts permitting any reasonable inference” of an attorney-client relationship between the defendant and the plaintiffs. (*Ibid*, emphasis added.)

In distinguishable and, at least for purposes of this motion, dispositive contrast to *Fox*, plaintiff asserts more than a unilateral “thought” that defendant Henry Nunez (“Nunez”) was representing his interests simply because Nunez is an attorney. Rather, plaintiff asserts that Nunez informed plaintiff that he would act as a “mutual attorney and escrow agent.” (See Opp. ¶ 28.) Plaintiff also points to his issuance and delivery of a \$3,000 check - with “attorney fees” plainly visible in the memo line - to Nunez in consideration toward a retainer fee. (See Opp. ¶ 7; Opp. Ex. 1.) In addition, plaintiff notes at least one instance where he acted on strategic explanations dispensed by Nunez. (Opp. ¶ 32.) This evidence distinguishes this matter from the absence of evidence held dispositive in *Fox* (see *Fox, supra*, 181 Cal.App.3d at p. 959), and is sufficient to raise a reasonable inference of an attorney-client relationship precluding summary judgment. (*Aguilar, supra*, 25 Cal.4th at p. 851 [“No more is called for.”].)

Defendants reply papers contain objections to the evidence contained in plaintiff’s opposition declaration. However, plaintiff’s declaration is made under penalty of perjury and demonstrates specific facts, i.e. personal presence and personal knowledge of the alleged events. (*Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 761 [“Declarations [opposing summary judgment] must show the declarant’s personal knowledge and competency to testify, state facts and not just conclusions, and not include inadmissible hearsay or opinion.”].) Therefore, defendants’ reply objections are overruled.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DTT on 12/5/2024.
(Judge’s initials) (Date)

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Tentative Ruling

Re: **Perez v. Zepeda**
Superior Court Case No. 23CECG03947

Hearing Date: December 12, 2024 (Dept. 501)

Motion: by Plaintiff for Sanctions and an Order Compelling Initial Responses to Form Interrogatories Set One, Special Interrogatories Set One, Request for Production of Documents Set One, and for a Deemed Admissions Order re Requests for Adimssion Set One

Tentative Rulings:

The motions to compel are moot to the extent that they seek responses or deemed admissions, as responses were served on 11/27/2024, and verifications served on 12/4/2024.

To grant monetary sanctions in the amount of \$3,040 on all four motions in favor of plaintiff Marisela Perez and against defendant Elian Zepeda and defendant's attorneys of record Carlo Brooks and/or Ford, Walker, Haggerty & Behar. (Code Civ. Proc., § 2033.280, subd. (c).) Sanctions are due and payable to plaintiff's counsel within 30 days of service of this court's order.

Explanation:

Plaintiff propounded the above-referenced discovery on defendant Elian Zepeda on 6/14/2024. Despite months of requests for responses and numerous extensions of time to respond, no responses were provided by 10/23/2024 when the motions were filed. However, on 11/27/2024 defendant did serve objection-free responses to each set of discovery at issue.

The court has various options when ruling on a motion to compel initial discovery responses, where responses are served after the motion to compel is filed.

In many cases involving untimely responses, the propounding party will take the motion off calendar or narrow its scope to the issue of sanctions. If the propounding party proceeds with the motion, however, the trial court has the discretion to rule on the motion. The trial court might compel responses without objection if it finds no legally valid responses have been provided to one or more interrogatories; it might deny the motion to compel responses as essentially unnecessary, in whole or in part, and just impose sanctions; it might treat the motion as one under section 2030.300 and either determine that further answers are required, or order the propounding party to "meet and confer" (§ 2030.300, subd. (b)) and file a separate statement (Cal. Rules of Court, rule 3.1020(a)(2), (c)); or it might

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Tentative Ruling

Re: **Hernandez v. Forever 21 Retail, Inc.**
Superior Court Case No. 24CECG02980

Hearing Date: December 12, 2024 (Dept. 501)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To deny without prejudice. In the event that oral argument is requested the minor is excused from appearing.

Explanation:

The Petition is incomplete in several respects, as follows:

- Medical records were not attached to show the treatment the minor received for her injuries (see directions at Item 8 of the petition).
- The letter from the Director of Health Care Services showing its final lien was not attached to the petition (see directions at Item 12(b)(4)(c) of petition).
- The required declaration from the attorney explaining the basis for the attorney fees requested is not attached (see directions at Item 12a of petition).
- The attorney fee agreement is not attached (see directions at Item 17a(2) of the petition).
- The petitioner did not sign the verification to the petition.¹
- No proposed orders were lodged.

Also, the Petition proposes that the net settlement proceeds to be deposited "in an FDIC savings bank account in the name of Liduvina Hernandez, Guardian ad Litem, for minor Dalilah Hernandez." This is unacceptable. First, it is unclear if there is actually a guardianship in place for the minor, as petitioner indicated when she applied to be appointed as guardian ad litem in July 2024. The petition checks the box at Item 18b to state that there is no guardianship of the estate. In short, the court needs more clarification as to the status of the petitioner. Second, if there is no guardianship of the estate, the only acceptable disposition of the net settlement amount the court is willing to grant is to order the funds deposited in a blocked account, in which case Item 18b(2) should be checked.

¹ While the minor signed the petition at Item 21, this is not required, since this provision is only required for an adult with a disability who has capacity to consent to the proposed judgment. But the petitioner must verify the Petition.

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Tentative Ruling

Re: ***Fresno Community Hospital and Medical Center v. Santé Health Foundation***

Superior Court Case No. 22CECG03148

Hearing Date: December 12, 2024 (Dept. 501)

Motion: 1) by Defendants for Summary Judgment or, in the Alternative, Summary Adjudication
2) by Plaintiff for Summary Adjudication

Tentative Ruling:

To deny defendants' motion for summary judgment. To deny summary adjudication as to the issue of duty. To deny summary adjudication as to the breach of charitable trust and aiding and abetting breach of fiduciary trust causes of action. To grant summary adjudication as to the breach of fiduciary duty, intentional interference with contractual relations, and inducing breach of contract causes of action as to defendants Santé Health Systems and Community Foundation Medical Group d/b/a Santé Foundation Medical Group.

To deny plaintiff's motion for summary adjudication as to the breach of contract and breach of implied covenant of good faith and fair dealing causes of action alleged in plaintiff's Second Amended Complaint. To deny summary adjudication of the affirmative defenses in defendants' Answer. To deny summary adjudication of the causes of action for breach of contract and breach of the implied covenant of good faith and fair dealing in the Cross-Complaint. To grant summary adjudication of the cause of action for declaratory relief in the Cross-Complaint.

Additionally, Santé Health Foundation is granted leave to amend its Cross-Complaint to allege failure to engage in the conflict resolution process as a basis for its breach allegations.

Explanation:

These motions arise out of a Complaint originally filed October 5, 2022, and secondarily amended September 13, 2024, alleging 1) breach of contract, 2) breach of implied covenant of good faith and fair dealing, 3) breach of charitable trust, 4) breach of fiduciary duty, 5) aiding and abetting a breach of fiduciary duty, 6) intentional interference with contractual relations, and 7) inducing breach of contract. Plaintiff Fresno Community Hospital and Medical Center (hereinafter "CHS"), a not-for-profit healthcare system, entered into agreements for grant funding to defendant Santé Health Foundation (hereinafter "SHF"), a nonprofit public benefit corporation organized for charitable purposes. Defendant Santé Health System (hereinafter "SHS") managed SHF's finances. Defendant Community Foundation Medical Group d/b/a Santé Foundation Medical Group (hereinafter "SFMG") is a medical group. On July 7, 2020, CHS notified

SHF that it would cease awarding it grants. Following this, SHF was independently audited. CHS alleges that defendants misappropriated over \$10 million in grant monies.

On November 28, 2022, SHF filed a cross-complaint against CHS alleging 1) breach of contract, 2) breach of the implied covenant of good faith and fair dealing, and 3) declaratory relief. In August 2016, CHS became the sole member of SHF pursuant to a Membership Restructuring Agreement (hereinafter "MRA".) CHS terminated its membership on July 7, 2020, and incorporated a new foundation on July 10, 2020. SHF alleges that CHS breached the MRA's exclusivity clause in doing so.

On September 4, 2024, the court granted CHS's motion to amend its Complaint. The parties had both previously filed their respective motions for summary judgment/adjudication and agreed that the court should consider their respective motions with the amended complaint. The amendments to the Complaint added SFMG, alleged additional misappropriated grant funds, and removed a cause of action for declaratory relief. SFMG had not been identified in defendants' motion for summary judgment or, in the alternative, summary adjudication. However, for the causes of action for which adjudication is granted, the court has contemplated whether the arguments would also apply to SFMG. This is particularly appropriate where CHS's motion to amend was based on discovery that indicated SFMG was used to disburse grant funds and acted as a holder and facilitator of the grant funds at issue. (See Minute Order, September 4, 2024.) The court has thus treated this as plaintiff's position regarding SFMG's involvement in considering the causes of action alleged against SFMG for which adjudication was sought by either all defendants or by SHS.

Summary Judgment/Adjudication Generally

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., §437c, subd. (c).) In determining a motion for summary judgment, "'we view the evidence in the light most favorable to plaintiffs'" and "'liberally construe plaintiffs' evidentiary submissions and strictly scrutinize defendant[s] own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiffs' favor.'" (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 96-97, citations omitted.) The court does not weigh evidence or inferences (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 856), nevertheless, "'[w]hen opposition to a motion for summary judgment is based on inferences, those inferences must be reasonably deducible from the evidence, and not such as are derived from speculation, conjecture, imagination, or guesswork.'" (*Waschek v. Department of Motor Vehicles* (1997) 59 Cal.App.4th 640, 647, citation omitted; Code Civ. Proc., § 437c, subd. (c).)

Summary adjudication is the proper mechanism for challenging a particular, "cause of action, an affirmative defense, a claim for punitive damages, or an issue of duty." (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 242.) However, "[a] motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f)(1); see also *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97 [piecemeal adjudication prohibited].)

Judicial Notice

The court takes judicial notice of CHS's Complaint, CHS's First Amended Complaint, CHS's Second Amended Complaint, Santé Health Foundation's signed Articles of Incorporation filed July 21, 2003, and Santé Health Foundation's Restated Articles of Incorporation filed May 19, 2021.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT/ADJUDICATION

Duty

Defendants seek adjudication that they do not have a duty under the grant agreements to return grant funds to CHS that were properly disbursed by SHF and subsequently used by the grant funded medical providers in accordance with the grant terms. The parties generally agree that there were two primary categories of grant agreements: the Master Grant Agreements/Program Support Agreements and the Standard Grant Agreements. (UMF No. 1.) The parties also agree that under the Master Grant Agreements, SHF was to repay grant funds disbursed in violation of proscribed uses. (UMF No. 2.) A dispute exists as to whether certain grant funds were used as proscribed. (UMF. No. 7.)

Defendants assert that after discussing the issue with CHS's internal audit department, Wes Qualls believed it was allowable to authorize distribution of grant funds to authorized medical providers consistent with approved budgets, in anticipation of discontinued funding. (Qualls Decl., ¶ 9.) As such, defendants believe there has been no violation of the proscribed uses. Plaintiff argues that four types of violations occurred: 1) grant funds were disbursed to pay for expenses incurred after the grant period had terminated, 2) grant funds were disbursed in excess of permitted expenditures, 3) grant funds were disbursed or retained after the expiration of the grant period, and 4) grant funds were disbursed for expenditures outside the scope of the grant awards. (CHS SSUMF Nos. 33-34.)

Plaintiff has demonstrated that a triable issue of material fact exists as to whether certain of the grant funds were used contrary to their proscribed purposes and outside of their grant period. As such, the court denies defendants' request for summary adjudication of whether defendants had an obligation to return certain grant funds at issue. As defendants acknowledge that adjudication of this issue would have impacted each cause of action, denial of adjudication here also results in a denial of summary judgment.

Breach of Charitable Trust

Plaintiff has alleged a breach of charitable trust against all defendants. SHS seeks summary adjudication as to this cause of action. Defendants argue that plaintiff does not have a reversionary interest for the subject grant funds. Defendants argue that any reversionary interest is limited to grant funds that were not used for authorized purposes. As noted above, the court has identified there is a dispute as to whether grant funds were used for their authorized purposes. So, this argument fails.

Defendants further argue that, even if a reversionary interest does exist, then CHS would not have a claim against SHS. A charitable trust is "...a fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose." (*Hardman v. Feinstein* (1987) 195 Cal.App.3d 157, 161.) By their nature, charitable trusts have indefinite beneficiaries, such that "only certain parties who have a special and definite interest in a charitable trust, such as a trustee, have standing" in actions regarding the trust assets. (*Id.* at p. 161-162.) Defendants focus on language used in this court's ruling on demurrer regarding holding funds and assert that SHS never held funds on behalf of SHF. As such, defendants assert that SHS did not have equitable duties giving rise to a breach of a charitable trust. Plaintiff argues that not holding the funds is not dispositive here, where SHS controlled the funds. (UMF No. 11.) Here, there is a triable issue regarding the question of control exercised by SHS and SFMG. The court denies summary adjudication as to this cause of action.

Breach of Fiduciary Duty

Plaintiff has alleged a breach of fiduciary duty against all defendants. SHS seeks summary adjudication as to this cause of action against it, arguing there is no fiduciary duty. A breach of fiduciary duty requires the existence of a fiduciary relationship, breach, and damages proximately caused by the breach. (*Pierce v. Lyman* (1991) 1 Cal.App.4th 1093, 1101.) Defendants argue that plaintiff has not amended the complaint to sufficiently allege a fiduciary duty. Plaintiff relies on the same arguments which failed at demurrer regarding the existence of a fiduciary duty between CHS and SHS. (See Minute Order, April 13, 2023.) While this is a motion for summary adjudication and not a demurrer, the issue remains that plaintiff has not shown any fiduciary duty owed to CHS by SHS or SFMG. As such, the court grants summary adjudication as to this cause of action for both SHS and SFMG.

Aiding and Abetting Breach of Fiduciary Duty

Plaintiff has alleged, in the alternative to the breach of fiduciary cause of action, that SHS and SFMG have aided and abetted a breach of fiduciary duty. Defendants seek summary adjudication of this cause of action as to SHS. Defendants assert that agent immunity doctrine bars this claim and that CHS cannot assert the financial benefit exception. The agent immunity doctrine provides that agents are "not liable for conspiring with the principal when the agent is acting in an official capacity on behalf of the principal." (*Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 817.) Plaintiff's own separate statement appears to concede SHS's status as an agent for SHF. (CHS SSUMF, Nos. 55-57.)

However, where the agent immunity doctrine applies, there may be a financial benefit exception when a personal advantage or gain over and above ordinary fees occurs. (*Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594, 1606.) Defendants argue that SHS did not receive any increased management fees. (UMF No. 21.) Plaintiff argues that, in his declaration, Qualls admits to disbursing grant funds, at least in part, because SHS would no longer be compensated for administration of the grant program. (UMF No. 21; Qualls Decl., ¶ 9.) Here, a triable issue exists. Qualls' statement regarding the disbursement being motivated by a loss in compensation is vague and open to

interpretation on the question of financial gain. As such, the court denies summary adjudication to this cause of action.

Intentional Interference with Contractual Relations

Plaintiff has alleged intentional interference with contractual relations against SHS and SFMG. Defendants seek summary adjudication of this cause of action. Defendants assert that plaintiff's original Complaint alleged that SHS was the exclusive manager for SHF and that these pleading admissions cannot be cleansed by revisions in the Amended Complaint. Defendants also argue that SHS was not a stranger to the contract.

"The elements necessary to state a cause of action for intentional interference with contractual relations are "(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594, 1603, citation omitted.) Additionally, only "a stranger to the contract" may be liable for interfering with it. (See *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 513, [a contracting party cannot be held liable in tort for conspiracy to interfere with its own contract; "[t]he tort duty not to interfere with the contract falls only on strangers—interlopers who have no legitimate interest in the scope or course of the contract's performance"].)

Plaintiff and defendants agree that SHS is not a party to the contract. (UMF Nos. 9, 18.) This would also be true for SFMG. Plaintiff asserts that there is a triable issue as to whether SHS was a stranger to the contract, asserting that SHS is indeed a stranger. Plaintiff hinges its argument on claims that SHS acted outside of its authority, improperly disbursing grant funds. (UMF No. 23.) However, an assertion that a defendant acted outside of its authority does not by necessity make one a stranger to a contract. As such, plaintiff has not presented a basis for the court to consider SHS a stranger to the contract. Nor has it presented a triable fact on this issue. The same is true of SFMG. Where SHS and SFMG are not strangers to the contract, they cannot be liable for intentional interference with a contract. The court grants summary adjudication as to this cause of action as to SHS and SFMG.

Inducing Breach of Contract

Plaintiff has alleged inducing breach of contract against SHS and SFMG. Defendants seek summary adjudication of this cause of action. Defendants assert the same argument that SHS was not a stranger to the contract. For the same reasons stated above, the court grants summary adjudication as to this cause of action as to SHS and SFMG.

PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION

Evidentiary Objections

CHS has filed evidentiary objections to SHF's evidence. The court sustains evidentiary objections to numbers 10, 14-17, 21-23 and 31. The court overrules evidentiary

objections to numbers 5-9, 11-13, 18-20, 24, 32-33 and 55-57. Evidentiary objections numbers 1-4, 25-30, 34-54 and 58-61 were not necessary for the court to consider in this motion.

Partial Adjudication of Plaintiff's Complaint and Defendants' Affirmative Defenses

Plaintiff seeks summary adjudication with regards to its own Complaint for the first and second causes of action as to the \$3,156,911 in grant funds for which SHF has admitted is owed to CHS. Plaintiff also seeks summary adjudication as to several affirmative defenses raised by defendants insofar as they involve the same \$3,156,911. Code of Civil Procedure section 437c, subdivision (f), provides for summary adjudication for one or more causes of action, affirmative defenses, claims for damages, or issues of duty. However, such a motion shall only be granted "if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f)(1).) Courts have recognized an exception to this where "two or more separate and distinct wrongful acts are combined in the same cause of action in a complaint." (*Blue Mountain Enterprises, LLC v. Owen* (2022) 74 Cal.App.5th 537, 549.)

Here, plaintiff argues that the court can adjudicate with regards to the \$3,156,911 in grant funds. However, these funds are just a part of the alleged misused grant funds and they are interwoven within the Second Amended Complaint. Plaintiff has not framed its allegations in such a way that the court can readily parse out these grant funds from the remaining funds at issue. As such, they are not pled as separate and distinct acts. The court denies summary adjudication as to the first and second causes of action in plaintiff's Complaint and the affirmative defenses in defendants' Answer.

Adjudication of Cross-Complaint

CHS seeks adjudication as to each of the three causes of action alleged in SHF's Cross-Complaint: 1) breach of contract, 2) breach of the implied covenant of good faith and fair dealing, and 3) declaratory relief. For the declaratory relief, CHS asserts that this is improperly alleged in the Cross-Complaint in light of CHS's own Complaint. SHF has not asserted any argument regarding this issue. The court grants summary adjudication as to the cause of action for declaratory relief.

SHF has alleged that CHS breached the parties' Membership Restructuring Agreement (MRA). Both CHS and SHF agree that the MRA is valid. CHS asserts that it has not breached the MRA because it terminated its membership on July 7, 2020, and did not incorporate a new medical foundation until July 10, 2020, which did not become operational until November 1, 2020. (UMF Nos. 146-158.) SHF argues that efforts made by CHS prior to termination of its members on July 7, 2020, amount to a breach of the MRA's exclusivity clause. (Compendium of Evidence, Exh. 15, Section 5.) Notably, CHS does not challenge that it readied itself for a potential termination and prepared to create a new foundation. However, CHS argues that these efforts fall short of a breach because they did not amount to actual operation of a competing medical foundation.

Section 5 of the MRA provides for exclusivity between the parties and consequences for breach of such exclusivity. In relevant part, CHS agrees "that it will not donate or provide material (i.e., over \$1 million of annual donations) financial support,

contract with, or operate a competing medical foundation ..." (Ibid.) If CHS violates these, it is to relinquish its sole membership and pay \$5 million in liquidated damages. (Ibid.) Here, there is a triable issue of material fact whether CHS's admitted conduct prior to termination of its membership constituted operation of a competing medical foundation. The court denies summary adjudication as to the first and second causes of action in SHF's Cross-Complaint.

SHF has additionally argued that CHS was obligated to engage in conflict resolution efforts prior to termination. This argument does not provide a basis for breach in SHF's Cross-Complaint. SHF is granted leave to amend the Cross-Complaint to allege failure to engage in conflict resolution as a basis for its allegations of breach.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DTT **on** 12/11/2024.
(Judge's initials) (Date)