

**Tentative Rulings for June 9, 2022**  
**Department 502**

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**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).)**

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

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**(Tentative Rulings begin at the next page)**

# **Tentative Rulings for Department 502**

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(20)

**Tentative Ruling**

Re: **Orozco v. Nchinda et al.**  
Superior Court Case No. 21CECG02034

Hearing Date: June 9, 2022 (Dept. 502)  
**If oral argument is timely requested, it will be heard  
Wednesday June 15, 2022 at 3:30 p.m.**

Motion: Motion to Declare Plaintiff a Vexatious Litigant;  
Demurrer to Complaint

**Tentative Ruling:**

To grant defendants' motion to declare plaintiff Hernan Orozco a vexatious litigant, and to order plaintiff to post security of \$2,585, within 30 days of the date of service of this order, in order to continue litigating the present action. (Code Civ. Proc., § 391.1.) The 30-day time limit will run from the service of the minute order by the clerk. (Code Civ. Proc., § 1013, subd. (a).) This action is stayed pending proof that such security has been furnished, and if no security is posted within the time allowed, the case shall be dismissed by the court upon ex parte application therefor by defendants. (Code Civ. Proc., § 391.4; *Singh v. Lipworth* (2005) 132 Cal.App.4th 40, 44.)

To order plaintiff to obtain a prefiling order from the presiding judge before filing any new litigation in this state. (Code Civ. Proc., § 391.7.) Defendants are ordered to prepare a Judicial Council Form of Order VL-100 (Prefiling Order—Vexatious Litigant) for this court's signature, and, once it is signed and filed, the clerk of this court is ordered to serve it on the parties and on the Judicial Council of California pursuant to Code of Civil Procedure section 391.7, subdivision (f).

To continue the hearing on the demurrer, in light of the stay, to July 28, 2022 at 3:30 p.m. in Department 502. Opposition and reply briefs shall be filed per Code of Civil Procedure

**Explanation:**

"The vexatious litigant statutes were created to curb misuse of the court system by those acting in propria persona who repeatedly file groundless lawsuits or attempt to relitigate issues previously determined against them." (*Goodrich v. Sierra Vista Regional Medical Center* (2016) 246 Cal.App.4th 1260, 1265.) The statutes were intended to "address the problem created by the persistent and obsessive litigant who constantly has pending a number of groundless actions and whose conduct causes serious financial results to the unfortunate objects of his or her attacks and places an unreasonable burden on the courts." (*Ibid.*)

If the court finds a plaintiff to be a vexatious litigant and finds that there is no reasonable probability the plaintiff will prevail against the moving defendant, the court can require him or her to furnish security to cover the reasonable costs, including attorneys' fees, incurred in defending against the vexatious litigation. (Code Civ. Proc.,

§§ 391, subd. (c), 391.1, 391.3.) If the security is not furnished as ordered, the action will be dismissed as to the moving defendant. (Code of Civ. Proc., § 391.4.) The court may also, on its own motion or at the moving party's request, enter a prefiling order prohibiting the vexatious litigant from filing any new litigation in this state in propria persona without first obtaining leave of court where the litigation is proposed to be filed. (Code Civ. Proc., § 391.7.) The instant motion seeks all three forms of relief: (1) that plaintiff be found to be a vexatious litigant; (2) that plaintiff be made to furnish security to be allowed to continue prosecuting this action or face dismissal of it; and (3) that a prefiling order be entered.

#### Finding Plaintiff a Vexatious Litigant

There are four separate bases given in Code of Civil Procedure section 391, subdivision (b) for designating a self-represented plaintiff to be a vexatious litigant. Plaintiff's litigation conduct must fall within at least one of these four definitions, and the court may not "mix and match" portions of each definition. (*Holcomb v. U.S. Bank Nat. Assn.*, 129 Cal. App. 4th 1494, 1501.) Defendants have established on this motion that plaintiff is vexatious under Code of Civil Procedure section 391, subdivision (b).

"'Vexatious litigant' means a person who does any of the following: [¶] (1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing." (Code Civ. Proc., § 391, subd. (b).) This includes any civil action or proceeding commenced, maintained or pending in any state or federal court, and includes an appeal or civil writ proceeding filed in an appellate court. (Code Civ. Proc., § 391, subd. (a); *Fink v. Shemtov* (2010) 180 Cal.App.4th 1160, 1173-1174; *McColm v. Westwood Park Ass'n* (1998) 62 Cal.App.4th 1211, 1216.) Denial of a writ is considered a final determination of litigation if the court must judge the petition on its procedural and substantive merits, including where review can only be obtained by a writ petition. (*Fink, supra*, at pp. 1172-1173.) A litigation is finally determined adversely to a plaintiff if he does not win, including voluntarily dismissals. (*Tokerud v. Capitolbank Sacramento* (1995) 38 Cal.App.4th 775, 779.)

Defendants presented evidence that 11 "litigations," as defined above, have been determined against plaintiff:

1. *Orozco v. Barabe*, Eastern District of California Case No. 1: 13-cv-00706; voluntarily dismissal entered on May 30, 2015.
2. *Orozco v. Reznichenko*, Fifth District Court of Appeal Case No. F068032; judgment affirmed on August 26, 2015.
3. *Orozco v. Reznichenko*, California Supreme Court Case No. S229638; petition for review denied on November 10, 2015.
4. *Orozco v. Reznichenko*, United States Supreme Court Case No. 15-7203; petition for certiorari denied on January 19, 2015.
5. *Orozco v. Brown*, Eastern District of California Case No. 2:14-cv-01404; judgment entered on August 15, 2016.
6. *Orozco v. Superior Court of Fresno County*, Fifth District Court of Appeal Case No. F074371; mandamus petition denied on October 27, 2016.

7. *Orozco v. Department of State Hospitals - Coalinga*, Fresno County Superior Court Case No. 15CECL03023; dismissed on January 26, 2017.
8. *Orozco v. King*, Fresno County Superior Court Case No. 15CECL04818; dismissed on May 19, 2017.
9. *Orozco v. Superior Court (Hodanu)*, Fifth District Court of Appeal Case No. F078860; petition denied on April 17, 2019.
10. *Orozco v. Superior Court (Hodanu)*, California Supreme Court Case No. S255443; petition denied on June 12, 2019.
11. *Orozco v. Hodanu, et al.*, Fresno County Superior Court Case No. 18CECG00965, judgment entered on January 10, 2020.

(RJN, Exs. 1-11.)

Plaintiff must be found to be a vexatious litigant on this basis.

#### Furnishing Security

One purpose of the vexatious litigant statute is to address the "serious financial results to the unfortunate objects of [the vexatious litigant's] attacks". (*Goodrich, supra*, 246 Cal.App.4th at p. 1265.) The statute empowers the court to require a vexatious litigant to furnish a security to cover the reasonable costs, including attorney's fees, incurred in defending against vexatious litigation. (§ 391.3, subd. (a).) If a plaintiff is declared vexatious, and the Court finds there is no reasonable probability she will prevail, the plaintiff must furnish security. (*Ibid.*) When determining whether plaintiff's action has no reasonable probability of success, the court is permitted to weigh the evidence and does not need to assume the truthfulness of plaintiff's complaint. (*Moran v. Murtaugh Miller Meyer & Nelson, LLP* (2007) 40 Cal.4th 780, 782.)

The court finds that there is no probability that plaintiff will prevail in this action for the simple reason that plaintiff failed to comply with the claim presentation requirements prior to filing suit.

"[A] plaintiff must allege facts demonstrating or excusing compliance with the claim presentation requirement." (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1243.) "Otherwise, his complaint is subject to a general demurrer for failure to state facts sufficient to constitute a cause of action." (*Ibid.*) Under Government Code section 945.4, "no suit for money or damages may be brought against a public entity ... until a written claim therefore has been presented to the public entity and has been acted upon ..." The claim filing requirement applies to any lawsuit for damages against the State or its employees. (Gov. Code, §§ 911.2, 950.2, 945.4.)

Plaintiff failed to plead compliance with the Government Claims Act, which requires a plaintiff to file a timely claim for money damages with the public entity before filing a lawsuit. (Gov. Code, § 911.2.) The failure to do so bars the plaintiff from bringing a suit against that entity and its employees. (*Id.*, §§ 945.4 and 950.2; *State v. Superior Court* (2004) 32 Cal.4th 1234, 1237.) Compliance with the claims presentation requirement is an element of plaintiff's cause of action. (*Id.* at p. 1240.)

In support of the motion defendants submit a declaration from a Senior Legal Analyst with the Government Claims Unit within the Office of the Attorney General,

Department of Justice. She searched the records maintained by the Government Claims Program and found no claim filed with or presented to the GCP by plaintiff from October 11, 2019 to the present. (See Lucas Decl.)

Because plaintiff failed to plead compliance with the claim presentation requirements, and in fact has not submitted a claim, the demurrer to the complaint will likely be sustained without leave to amend.

Defendants submit evidence that they have incurred \$2,585 in attorneys' fees in this action (Rhoan Decl., ¶ 4), and request security in that amount. The court therefore fixes the security in this amount.

Prefiling Order

The vexatious litigant statutes also authorize the court to enter a prefiling order which prohibits a vexatious litigant from filing new actions in propria persona without first obtaining leave of the presiding judge or justice. (Code Civ. Proc., § 391.7, subd. (a).) The court finds that a prefiling order is sensible and necessary in order to prevent plaintiff from filing further frivolous actions in propria persona.

Demurrer

Concurrently with the motion to declare plaintiff a vexatious litigant, defendants filed and calendared a demurrer to the complaint. Code of Civil Procedure section 391.6 provides that when a motion pursuant to section 391.1 is filed prior to trial, the litigation is stayed, and the moving defendant need not plead until, if the motion is granted, 10 days after the required security has been furnished and the moving defendant given written notice thereof. In light of the stay, the demurrer will be continued, and any opposition and reply papers shall be filed per Code of Civil Procedure section 1005.

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:** RTM **on** 6/7/22.  
(Judge's initials) (Date)

(35)

**Tentative Ruling**

Re: **Arballo v. Aminian et al.**  
Superior Court Case No. 21CECG00873

Hearing Date: June 9, 2022 (Dept. 502)  
**If oral argument is timely requested, it will be heard  
Wednesday June 15, 2022 at 3:30 p.m.**

Motion: by defendant Karen Aminian on demurrer  
  
by defendant Vantage Point Finance, LLC on demurrer

**Tentative Ruling:**

To sustain defendant Karen Aminian's demurrer to the first and eighth causes of action, with leave to amend. To overrule on all other grounds.

To sustain defendant Vantage Point Finance, LLC's demurrer to the second, seventh and eighth causes of action, with leave to amend. To overrule on all other grounds.

Plaintiff shall serve and file his amended complaint within ten (10) days of the date of service of this order. All new allegations shall be in **boldface**.

**Explanation:**

Plaintiff filed the operative verified First Amended Complaint ("FAC") against defendant Karen Aminian for eight causes of action: (1) breach of contract and specific performance; (2) quiet title; (3) declaratory relief; (4) fraud; (5) negligent misrepresentation; (6) promissory estoppel; (7) unjust enrichment; and (8) good faith improver of real property under Civil Code section 871.3. The FAC brings the second cause of action, for quiet title; third cause of action, for declaratory relief; sixth cause of action, for promissory estoppel; seventh cause of action, for unjust enrichment, and eighth cause of action, for good faith improver against defendant Vantage Point Finance, LLC. Defendants Aminian and Vantage Point separately demur to the FAC.

On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114.) It is error to sustain a demurrer where plaintiff "has stated a cause of action under any possible legal theory. In assessing the sufficiency of a demurrer, all material facts pleaded in the complaint and those which arise by reasonable implication are deemed true." (*Bush v. California Conservation Corps* (1982) 136 Cal.App.3d 194, 200.)

In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy*

v. *Regents of University of California* (2008) 44 Cal.4th 876, 883.) On demurrer, the court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.)

A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) When the complaint is defective, great liberality should be exercised in permitting a plaintiff to amend the complaint if there is a reasonable possibility that the defect can be cured by amendment. (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549.)

### Aminian Demurrer

Aminian demurs to the FAC, but does not clearly state grounds upon which she does so. Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, or to specified causes of actions or defenses. (Cal. Rules of Ct., Rule 3.1320(a).) However, the court addresses those grounds upon which plaintiff responded, for which the court finds plaintiff had clear notice, or otherwise waived notice. Therefore, the court addresses Aminian's demurrer as follows:

1. As to the first cause of action for breach of contract, failure to state facts sufficient to support a cause of action;
2. As to the first cause of action for breach of contract, a defense barring the claim under applicable statutes of limitation;
3. As to the first cause of action for breach of contract, uncertainty;
4. As to the fourth cause of action for fraud, a defense barring the claim under the economic loss rule;
5. As to the fifth cause of action for negligent misrepresentation, failure to state facts sufficient to support a cause of action; and
6. As to the eighth cause of action for good faith improver, failure to state facts sufficient to support a cause of action.<sup>1</sup>

#### *First Cause of Action – Breach of Contract*

To prevail on a cause of action for breach of contract, a plaintiff must prove (1) the contract; (2) the plaintiff's performance or excuse for nonperformance; (3) the defendant's breach; and (4) the resulting damages to the plaintiff. (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.

Here, the FAC sufficiently states facts to support the cause of action. The FAC alleges that in or around May 2010, plaintiff and Don Smith entered into an agreement (FAC, ¶¶ 11, 25, 26), to which plaintiff performed all conditions of the agreement (*id.*, ¶¶ 14, 17, 28), and which Aminian, who acknowledged and continued the agreement,

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<sup>1</sup> Plaintiff further addressed Aminian's demurrer to the second cause of action for quiet title. However, plaintiff did so by agreeing to dismiss the second cause of action as to Aminian. The demurrer to the second cause of action for quiet title is overruled.



thereon breached by selling the Property (*id.*, ¶¶ 18-23, 30), which has damaged plaintiff (*id.*, ¶ 31). Thus, the FAC sufficiently states a cause of action for breach of contract.

Aminian argues that there was no contract. Specifically, Aminian argues that the pleadings do not demonstrate mutual consent, consideration, or provide material terms. However, the FAC alleges that Don Smith offered to sell the Property, to which plaintiff agreed. (FAC, ¶¶ 11-12.) The basis upon which Don Smith did so, his consideration, was to relieve himself of the burden of the mortgage obligations attached to the Property. (*id.*, ¶¶ 12, 26.) Plaintiff agreed to do so for the benefit of full possession of the Property. (*id.*, ¶¶ 12, 14, 15, 17, 26.) The FAC further alleges that plaintiff assumed the mortgages at the same payment schedule as Don Smith, indicating a time period in which to perform. (*id.*, ¶ 16.) All other arguments by Aminian on this, such as Aminian's argument on reply, that there was apparently a provision in the agreement that time was of the essence and therefore ten years of performance demonstrates a lack of mutual consent or material terms, merely serve to contest the allegations that there was an agreement, which is inappropriate on demurrer. (*Fremont Indemnity Co.*, *supra*, 148 Cal.App.4th at pp. 113-114.)<sup>2</sup> The demurrer to the first cause of action for breach of contract for failure to state sufficient facts to support a cause of action is overruled.

Aminian further argues that the first cause of action is barred by applicable statutes of limitation. On a breach of contract, a cause of action must be brought within two years if the contract was not founded upon an instrument of writing (Code Civ. Proc. § 339, subd. (1)), or within four years if the contract is in writing (*id.*, § 337, subd. (c).) In either event, the FAC alleges that Aminian's act that breached the agreement was the sale of the Property, which occurred in 2021. (FAC, ¶¶ 21-23, 30.) As the original complaint was filed on March 29, 2021, such a breach would be timely under either condition. Though Aminian argues that the date of breach should be April 25, 2012, at the transfer of interest in the Property from Don Smith to the Children, such argument only raises a challenge to the factual allegations of the FAC as to when a material breach occurred. The demurrer to the first cause of action for breach of contract as to applicable statutes of limitation is overruled.

Finally, Aminian argues that the first cause of action fails to identify the nature of the contract. Where an action is founded upon a contract, the complaint is subject to demurrer if it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct. (Code Civ. Proc. § 430.10, subd. (g).) Where the allegations contained within a claim for breach of contract do not state the nature of the contract, the complaint may also be viewed as a whole, with its parts in their context. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Here, the breach of contract action does not clearly state the nature of the contract as written, oral, or implied in fact as required. Neither does a reading of the FAC as a whole reveal any further insights as to the nature of the contract. At best, plaintiff alleges that the terms of the agreement were once attempted to be modified in writing. (FAC, ¶ 19.) This alone is insufficient to ascertain whether the contract is written, oral, or

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<sup>2</sup> Though Aminian's request for judicial notice of the court's docket is granted, it is granted only to the extent that it demonstrates that such documents were filed. (*Steed v. Dept. of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120-121.)

implied by conduct. The demurrer to the first cause of action for breach of contract as to the nature of the contract is sustained, with leave to amend.

*Fourth Cause of Action – Fraud; and Fifth Cause of Action – Negligent Misrepresentation*

Aminian argues only that the economic loss rule bars recovery on both the fraud and misrepresentation causes of action because the claims of the FAC lie in contracts law, and fraud is a tort cause of action. The economic loss rule provides that where a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only economic losses. (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 988.) The economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise. (*Ibid.*)

As plaintiff correctly argues, the economic loss rule does not bar fraud or misrepresentation causes of action in this matter. As the California Supreme Court found, tort damages are permitted in contracts cases where the formation or performance of a contract was fraudulently induced. (*Id.* at pp. 989-990, citing *Erlich v. Menezes* (1999) 21 Cal.4th 543, 551-552.) The California Supreme Court further held that, outside of the insurance context, a tortious breach of contract may be found when, among other situations, the means used to breach the contract are tortious, involving deceit or undue coercion. (*Robinson, supra*, 34 Cal.4th at p. 990-991.) Such is the case as alleged in the FAC, which alleges fraudulent and negligent inducement to continue performance of the agreement. (FAC, ¶¶ 44-46, 48.) The demurrer to the fourth cause of action for fraud for failure to state facts sufficient to support a cause of action due to the economic loss rule is overruled. (*Robinson, supra*, 34 Cal.4th at p. 991.) The demurrer to the fifth cause of action for negligent misrepresentation for failure to state facts sufficient to support a cause of action due to the economic loss rule is overruled. (*Ibid.* [holding that the economic loss rule does not bar fraud or misrepresentation claims because they are independent from a breach of contract].)

*Eighth Cause of Action – Good Faith Improver*

Aminian argues that there are insufficient facts stated to support the cause of action for good faith improver. A good faith improver cause of action is statutorily defined, at Code of Civil Procedure section 871.1 et seq. Code of Civil Procedure section 871.1 provides that a good faith improver means “[a] person who makes an improvement to land in good faith and under the erroneous belief, because of a mistake in law or fact, that he is the owner of the land.” Aminian argues that any alleged improvements made to the Property were done so as an equitable interest holder in the Property and therefore has not placed any improvements on an erroneous belief that plaintiff is the owner of the land.

Here, while the FAC alleges that plaintiff made improvements to the Property (FAC, ¶ 67), the FAC merely alleges that plaintiff took full ownership subject to the agreement (e.g., *id.*, ¶ 12). The FAC however does not clearly state that plaintiff did so in good faith and on erroneous belief that he was the owner of the land. The demurrer to

the eighth cause of action for good faith improver for failure to state sufficient facts to support a cause of action is sustained, with leave to amend.

### Vantage Point Finance, LLC Demurrer

Vantage Point demurs on the grounds of failure to state facts sufficient to support a cause of action as to the: second cause of action, for quiet title; third cause of action, for declaratory relief; seventh cause of action for unjust enrichment; and eighth cause of action for good faith improver.<sup>3</sup>

#### *Second Cause of Action – Quiet Title*

An action to quiet title is statutorily defined at Code of Civil Procedure section 760.010 et seq. Code of Civil Procedure section 761.020 states the pleading requirements of such an action, which provides that the verified complaint include all of the following: (1) a description of the property that is the subject of this action, including both legal description and common designation; (2) the title of the plaintiff as to which a determination is sought and the basis of the title; (3) the adverse claims to the title of the plaintiff against which a determination is sought; (4) the date as of which the determination is sought; and (5) a prayer for the determination of the title of the plaintiff against adverse claims.

Here, the verified FAC provides both the legal description and common designation of the Property in question. (FAC, ¶ 10 and Ex. A [incorporated by reference].) The FAC states the title and basis for that title that plaintiff seeks, which is the true owner based on exclusive possession of the Property for more than 10 years, and the agreement. (*Id.*, ¶¶ 34-35.) The FAC states the adverse claims against which this action is sought, namely from the sale of the Property to Sergio G. Franco and the current title holder, Vantage Point. (*Id.*, ¶¶ 23, 37.)<sup>4</sup> The FAC seeks a prayer for the determination of the title of the plaintiff against those adverse claims. (FAC, Prayer for Relief, ¶¶ 3-4.) However, the FAC, even read in its entirety, fails to identify, as required by statute, the date as of which the determination is sought. The demurrer to the second cause of action for quiet title for failure to state facts sufficient to support a cause of action is sustained, with leave to amend.<sup>5</sup>

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<sup>3</sup> Vantage Point further demurred to the sixth cause of action. However, in opposition, plaintiff agreed to dismiss the sixth cause of action for promissory estoppel against Vantage Point. The demurrer to the sixth cause of action for promissory estoppel against Vantage Point is overruled.

<sup>4</sup> Though Vantage Point argues that the FAC fails to support the allegation that any defendant had notice of actual, open, notorious and visible possession and occupancy to seek the title of owner, this legal allegation is supported by factual allegations, namely that plaintiff took possession of the property in May 2010 and has continuously held it since taking possession. (E.g., FAC, ¶¶ 17, 29.)

<sup>5</sup> Vantage Point further alleges that it is a bona fide purchaser, immunizing it from a quiet title action. Though Vantage Point cites to *Bone v. Dwyer*, (1928) 89 Cal.App. 535 for the proposition that an action to quiet title cannot be maintained by the holder of an equitable title against one holding legal title (*id.* at p. 542), that conclusion was based on review of a judgment entered after trial. (*Ibid.*) The present matter is a demurrer, meant merely to test the sufficiency of the pleadings. (*Fremont, supra*, 148 Cal.App.4th at pp. 113-114.) Vantage Point makes no argument as to why it must be considered a bona fide purchaser, either via pleadings in the FAC, or as a general matter

### *Third Cause of Action – Declaratory Relief*

An action for declaratory relief is statutorily defined at Code of Civil Procedure section 1060, which provides, in pertinent part, that

Any person interested... under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action... for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract.

Here, though Vantage Point argues to the contrary, the FAC seeks a declaration of rights, duties, and liabilities of the parties with regard to the agreement based on concerns of respective rights, duties and claims of ownership of the Property. (FAC, ¶¶ 40-41.) The FAC alleges that such rights, duties and claims of ownership constitute an actual controversy. (*Id.*, ¶ 40.) Such allegations are supported by other factual allegations regarding behavior and title. (*Id.*, ¶¶ 1-23.) As demonstrated by Vantage Point above, an actual controversy exists as to whether plaintiff owns the Property via the agreement, or whether Vantage Point, as the owner of record, holds the same interest, for example, as a bona fide purchaser. Therefore, the FAC sufficiently states a cause of action for declaratory relief. The demurrer to the third cause of action for declaratory relief for failure to state facts sufficient to support a cause of action is overruled.

### *Seventh Cause of Action – Unjust Enrichment*

In general, a person who has been unjustly enriched at the expense of another is required to make restitution to the other. (*Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 627-628.) While plaintiff notes that by incorporating the factual allegations of the FAC at paragraphs 1 through 23, the contents of which support the cause of action, those allegations do not clearly state what the nature of the unjust enrichment was. Though plaintiff argues in opposition that Vantage Point was unjustly enriched by plaintiff's improvements to the Property and payments on mortgages, such an allegation is absent from the FAC. Even had such an allegation been present, plaintiff alleges that Vantage Point purchased the Property. Purchasing the Property, even at a price well below market value, absent a mistake, does not necessarily require Vantage Point to give up the benefit received. (See *Ghirardo v. Antonioli* (1996) 14 Cal.4th 39, 51-52.) Restitution is required only if the circumstances of the receipt or retention are such that, as between the two persons, it is unjust for one to retain it. (*Id.* at p. 51.) The demurrer

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of law. Rather, as Vantage Point concedes, to find a bona fide purchaser, there must be evidence of a payment of value; in good faith; and without actual or constructive notice of another's rights. (*Deutsche Bank Nat'l Trust Co. v. Pyle* (2017) 13 Cal.App.5th 513, 521.) While the FAC alleges that the purchase of the property was for \$215,000, a payment of disputed value, no allegations state that Vantage Point's purchase was made in good faith, and without actual or constructive notice of another's rights. (FAC, ¶ 23.)

