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7 *Attorneys for Defendant*
NORTHWOOD INVESTORS, LLC
8 *Specially Appearing for Defendants*
NORTHWOOD EMPLOYEES, LP;
9 NORTHWOOD REAL ESTATE PARTNERS, LP; and
NORTHWOOD REAL ESTATE PARTNERS TE, LP
10

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**
13

14 RICHARD CARLSON as beneficiary of
GREIT LIQUIDATING TRUST, a Maryland
15 trust on behalf of himself and all others
similarly situated,

16 Plaintiffs,

17 v.

18 GARY H. HUNT, an individual, et al.,

19 Defendants.
20

CASE NO. 30-2018-00982195-CU-MC-CXC

**NOTICE OF RULING REGARDING
NORTHWOOD DEFENDANTS'
DEMURRER TO FOURTH AMENDED
COMPLAINT**

ASSIGNED FOR ALL PURPOSES TO:
HON. RANDALL J. SHERMAN
DEPARTMENT CX-105

Action Filed: March 23, 2018
FAC Filed: August 24, 2018
SAC Filed: June 3, 2019
TAC Filed: April 12, 2021
4AC Filed: August 2, 2021
Trial Date: None set

21
22 AND RELATED CASES
30-2021-01186203-CU-FR-CJC
23 30-2021-01180402-CU-FR-CXC
24 30-2018-01015717-CU-BC-CJC

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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Northwood Investors, LLC, Specially Appearing Defendants Northwood Employees, LP, Northwood Real Estate Partners TE, LP, and Northwood Real Estate Partners, LP’s (collectively, “Northwood Defendants”) demurrer to Plaintiffs’ Fourth Amended Complaint (“Demurrer”) came on for hearing before this Court on October 8, 2021. Counsel for Northwood Defendants, Michael D. Kibler and Sheila Nagaraj, were present. There were no appearances made on behalf of Plaintiffs or the other Defendants, all of whom submitted on the Court’s tentative ruling.

At the hearing, the Court ruled as follows:

1. Northwood Defendants’ Demurrer is sustained in its entirety without leave to amend;
2. The Court modifies the tentative ruling so as to include Specially Appearing Defendants Northwood Employees, LP, Northwood Real Estate Partners TE, LP, and Northwood Real Estate Partners, LP, as well as previously named Northwood Investors, LLC, in sustaining the Northwood Defendants’ Demurrer without leave to amend. The Court further adopts the modified tentative ruling as the final ruling. A copy of the Court’s tentative ruling is attached hereto as **Exhibit A**;
3. Specially Appearing Defendants Northwood Employees, LP, Northwood Real Estate Partners TE, LP, and Northwood Real Estate Partners, LP’s Motions to Quash Service of Summons for Lack of Personal Jurisdiction, which hearings are scheduled for October 15, 2021, are moot and taken off calendar; and
4. Northwood Defendants are to give notice.

1 Dated: October 11, 2021

KIBLER FOWLER & CAVE LLP

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By: 
MICHAEL D. KIBLER
SHEILA NAGARAJ
SHIQI W. BORJIGIN
Attorneys for Defendant
NORTHWOOD INVESTORS, LLC
Specially Appearing Defendants
NORTHWOOD EMPLOYEES, LP;
NORTHWOOD REAL ESTATE PARTNERS, LP; and
NORTHWOOD REAL ESTATE PARTNERS TE, LP

EXHIBIT A

TENTATIVE RULINGS**JUDGE RANDALL J. SHERMAN****DEPARTMENT CX105****OCTOBER 8, 2021**

PLEASE NOTE THAT THE PRESIDING JUDGE HAS MANDATED THAT ALL CIVIL UNLIMITED AND COMPLEX NON-EVIDENTIARY HEARINGS BE CONDUCTED REMOTELY UNTIL FURTHER NOTICE. IF A PARTY IS UNABLE TO APPEAR BY WAY OF COURTCALL, PLEASE CONTACT THE COURT CLERK. REQUESTS FOR FEE WAIVERS MAY BE SUBMITTED TO CIVILSRL@OCCOURTS.ORG OR THE DROP BOX OUTSIDE THE CENTRAL JUSTICE CENTER COURTHOUSE. THE PUBLIC MAY LISTEN TO REMOTE COURT HEARINGS AT NO COST BY CALLING THE PUBLIC ACCESS NUMBER (657-231-1414) AND ENTERING THE ACCESS CODE FOR THIS DEPARTMENT (12129802#) AND PIN FOR THIS DEPARTMENT (12129802#). THE PUBLIC WILL BE ABLE TO LISTEN BUT NOT PARTICIPATE IN THE PROCEEDINGS.

Court reporters will not be provided for trials or any other hearings. If a party desires a court reporter for a motion, it will be the responsibility of that party to provide its own court reporter. Parties must comply with the court's policy on the use of pro tempore court reporters, which can be found on the court's website at:

www.occourts.org/media/pdf/Privatey_Retained_Court_Reporter_Policy.pdf

If you intend to submit on the tentative ruling, please advise the opposing parties and the court by calling (657) 622-5305 by 9:00 a.m. on the hearing date. Make sure the opposing parties submit as well before you forgo appearing, because the court may change the ruling based on oral argument.

Do not call the clerk about a tentative ruling with questions you want relayed to the court. This may be an improper ex parte communication. You may tell the clerk you submit on the tentative, you will be on court call, or you are taking a motion off calendar and have notified the other parties. Other questions about the tentative ruling are improper.

#	Case Name & No.	Tentative Ruling
1	Perez vs. Summit Interconnect, Inc. 2018-00995403	The tentative ruling is to continue the Final Report Hearing to June 17, 2022 at 10:00 a.m., for confirmation that the amount of the uncashed checks has been delivered to the State Controller's Office Unclaimed Property Fund in the names of the applicable payees. A new declaration must be filed at least 16 days before the next hearing date. Plaintiff is ordered to give notice to defense counsel unless notice is waived.
2	Rodriguez vs. Venus Group, Inc. 2019-01053376	Plaintiff has shown that the Administrator's work is complete, and that the court's file may now be closed. Plaintiff is ordered to give notice to defense counsel unless notice is waived.
3	Perkins vs.	The tentative ruling is to continue the Final Report

	<p>Chamberlain Home Services, Inc. 2019-01064549</p>	<p>Hearing to December 3, 2021 at 10:00 a.m., for confirmation that the amount of the uncashed checks has been delivered to the State Controller’s Office Unclaimed Property Fund in the names of the applicable payees, following the August 23, 2021 check-cashing deadline. Although the Administrator’s declaration says that Simpluris will issue a check for \$1,202.06 to the State Controller’s Office Unclaimed Property Fund upon court approval, the court already gave such approval by approving the settlement with that provision. A new declaration must be filed at least 16 days before the next hearing date.</p> <p>Plaintiff is ordered to give notice to defense counsel unless notice is waived.</p>
<p>4</p>	<p>Contreras vs. Continental Exchange Solutions, Inc. 2020-01127988</p>	<p>The tentative ruling is to continue the hearing on plaintiff’s Motion for Approval of Labor Code Private Attorneys General Act Settlement to December 3, 2021 at 10:00 a.m. Counsel must file supplemental papers addressing the court’s concerns (not fully revised papers that would have to be re-read) at least 16 days before the next hearing date. Counsel must submit an amendment to the settlement agreement rather than any amended settlement agreement. Counsel also must provide a red-lined version of any revised papers, including the proposed letter to the aggrieved employees. Counsel also should provide the court with an explanation of how the pending issues were resolved, with references to any corrections to the settlement agreement and the proposed cover letter to the aggrieved employees, rather than with just a supplemental declaration simply asserting that the issues have been resolved.</p> <p>The release language used in the settlement agreement on p. 8, in ¶30(a), and in the Cover Letter in its next-to-last paragraph, is too broad. The release must be limited to PAGA claims that are asserted in the operative pleading or that could be asserted based on the facts alleged in the operative pleading, rather than <u>all</u> PAGA penalty claims for the PAGA period. See <u>Amaro vs. Anaheim Arena Management, LLC</u> (Sept. 28, 2021) 2021 DJDAR 10263.</p> <p>The settlement agreement provides in ¶37: “Defendant expressly reserves the right to object to payment to any Aggrieved Employee who has separately settled or waived any Covered Claims.” However, this court considers PAGA claims to be “owned” by the Attorney General, not any employee, and as a result, an employee may not waive the Attorney General’s right to bring a PAGA action on that employee’s behalf. Paragraph 37 must be deleted.</p> <p>The settlement agreement provides in ¶40 that uncashed funds will be sent to the State of California Department of Industrial Relations Unclaimed Wages Fund in the name of the Aggrieved Employee. However, the State of California Department of Industrial Relations’ Unpaid</p>

Wage Fund no longer accepts uncashed checks. Instead, the parties may use the State Controller's Office Unclaimed Property Fund, which in fact is what the Cover Letter to the aggrieved employees provides in its last paragraph.

Plaintiff does not provide any information as to how attorneys' fees will be split between the two firms representing plaintiff and the aggrieved employees. Plaintiff must explain the proposed split so that the court can approve separate attorneys' fees awards.

The court must award an exact amount for plaintiff's attorneys' costs and will not award any "up to" figure. The evidence reflects costs of \$6,225.83 incurred by the Harris firm and \$4,007.71 incurred by Smith & Benowitz, for a total of \$10,233.54. Plaintiff should confirm the separate and total amounts of attorney costs sought.

The motion fails to provide the aggrieved employees' estimated individual recovery under the proposed settlement, including maximum, minimum and average workweeks, and estimated high, low and average payments to be paid to the aggrieved employees based on their workweeks, information that would enable the court to better evaluate the reasonableness of the settlement.

The moving papers do not include a copy of the PAGA letter that was alleged to have been sent to the LWDA on October 7, 2019. The court needs a copy of the letter to verify that the settlement terms are consistent with the notice provided to the LWDA.

The Cover Letter explains the purpose of the checks, but fails to explain that no claims for any unpaid or underpaid wages have settled, and that this settlement is without prejudice to any pursuit of such claims. The Cover Letter must be revised accordingly.

The top of the Cover Letter identifies the case name as Fuentes v. Ria Financial Services, but the court's records show the case name as Contreras vs. Continental Exchange Solutions, Inc. Also, in the "Background" paragraph the defendant is identified parenthetically as "Tawa". The Cover Letter must be amended in both respects.

In the last paragraph of the first page of the Cover Letter, a dollar sign needs to be added to "36,041.67".

The Cover Letter, p. 2, second paragraph, on lines 2-3, repeats previous language and contains sentence fragments. Revision is required.

In the Cover Letter, p. 2, third paragraph, change "are, ("Aggrieved Employees")_are" to "("Aggrieved Employees") are".

		<p>The pages of the Cover Letter must be numbered.</p> <p>The Proposed Order and Judgment states at 2:10:“this order and judgment bars further litigation of the claims on behalf of the aggrieved employees, and the Plaintiff’s claims”. However, the court will not issue an injunction against aggrieved employees. Res judicata and collateral estoppel arguments should provide defendant with sufficient protection against facing these same claims again. Warning aggrieved employees in the Cover Letter that certain future claims are barred as a matter of law is acceptable, but a court order is not.</p> <p>Plaintiff must submit an amended proposed Order and Judgment consistent with this ruling.</p> <p>Plaintiff has not shown that she served the LWDA with her moving papers. Plaintiff is ordered to give notice of the ruling to the LWDA and to defendant, to serve the LWDA with her original moving papers as well as any new papers filed for future hearings, and to file a proof of service showing such compliance.</p>
5	<p>Trujillo vs. C & C North America, Inc. 2019-01050427</p>	<p>The tentative ruling is to continue the hearing on plaintiff’s Motion for Preliminary Approval of Class Settlement to December 3, 2021 at 10:00 a.m. Counsel must file supplemental papers addressing the court’s concerns as set forth in the Minute Order dated August 12, 2021 (not fully revised papers that would have to be re-read) at least 16 days before the next hearing date. Counsel must submit an amendment to the settlement agreement rather than any amended settlement agreement. Counsel also must provide a red-lined version of any revised papers, including the class notice. Counsel also must provide the court with an explanation of how the pending issues were resolved, with references to any corrections to the settlement agreement and the class notice, rather than just a supplemental declaration asserting that the issues have been resolved.</p> <p>The court sets an Order to Show Cause why the court should not impose monetary sanctions against plaintiff’s attorneys of record, Mahoney Law Group, APC, for failing to comply with the court’s Minute Order dated August 12, 2021, which was served on plaintiff’s counsel on August 13, 2021, and which ordered: “Supplemental declarations or other supplemental materials shall be filed at least 14 days before the continued hearing”, which was then set for October 7, 2021, thereby requiring the supplemental papers by September 23, 2021. The clerk gave notice on September 8, 2021 that the hearing was continued for one day to October 8, 2021. The OSC hearing is also set for December 3, 2021 at 10:00 a.m. Any written response to the OSC must be filed at least a week before the hearing.</p> <p>The clerk is directed to give notice to all parties.</p>

**6 Lugo vs. Michael
Nicholas Designs,
Inc.
2020-01150039**

The tentative ruling is to continue the hearing on plaintiff's Motion for Preliminary Approval of Class Action Settlement to December 3, 2021 at 10:00 a.m. Counsel must file supplemental papers addressing the court's concerns (not fully revised papers that would have to be re-read) at least 16 days before the next hearing date. Counsel should submit an amendment to the settlement agreement rather than any amended settlement agreement. Counsel also should provide a red-lined version of any revised papers, including the class notice. Counsel also should provide the court with an explanation of how the pending issues were resolved, with references to any corrections to the settlement agreement and the class notice, rather than with just a supplemental declaration simply asserting that the issues have been resolved.

The settlement agreement (in §4.3) and the class notice (in §VI) require written objections and do not allow class members to speak at the Final Approval Hearing unless they file and serve a written objection, but that requirement is overly restrictive and arguably inconsistent with CRC Rule 3.769(f). The settlement agreement and class notice must be modified to reflect that either an objection may be in writing, or a class member may orally object or otherwise offer comments at the Final Approval Hearing. In addition, any written objections need only be mailed to the Administrator, who can forward any objections to all counsel. Similarly, an attorney who intends to represent an individual objecting to the settlement need not file a notice of appearance.

The settlement agreement and class notice (on p. 4) provide that the Administrator will resolve any workweek disputes. The documents should reflect instead that the Administrator and the parties will attempt to resolve any such dispute, but the court ultimately will decide any unresolved dispute.

This court does not approve injunctions against or covenants not to sue by class members, since res judicata and collateral estoppel arguments should provide defendant with sufficient protection against facing these same claims again. Accordingly, the parties must delete or rephrase Section 6.3 of the settlement agreement on p. 16.

The requested amount for administration fees must be inserted in the class notice, and the figure given to the class will be a cap on any award.

Sections IV and V of the class notice should make it clear to class members that if the court approves the settlement, then even if they request exclusion from the settlement, they still will receive an individual settlement share for the PAGA claims and will be deemed to have released the PAGA claims. A request for exclusion will preserve their right to individually pursue only the remaining class claims.

		<p>Rather than having class members prepare their own opt-out requests, the class notice must include an exclusion form that class members can complete and submit. The form should be referenced in the class notice. Attaching an opt-out form to the settlement agreement is insufficient.</p> <p>All references to a Final Fairness Hearing in the class notice and the proposed Order must be changed to the Final Approval Hearing, the term this court uses.</p> <p>Plaintiff does not provide any information as to how attorneys' fees will be split between the three firms representing plaintiff and the class. For final approval, plaintiff must explain the proposed split so that the court can approve separate attorneys' fees awards.</p> <p>Plaintiff is ordered to give notice of the ruling to defense counsel unless notice is waived.</p>
7	Carlson vs. Hunt 2018-00982195	<p>The Demurrer to the First Cause of Action for Breach of Fiduciary Duty by defendants Sovereign Capital Management Group, Inc. and Infinity Urban Century, LLC is OVERRULED, since the Fourth Amended Complaint alleges these defendants are alter egos of NNNRI and DPR. 4AC, ¶72. As the court noted in <u>Rutherford Holdings, LLC v. Plaza Del Rey</u> (2014) 223 Cal. App. 4th 221, 236, a plaintiff need only plead ultimate rather than evidentiary facts to support alter ego liability. Additionally, plaintiff alleges that NNNRI was the formal advisor to G-Trust, and therefore owed fiduciary duties to the tenant in common owners of the properties. 4AC, ¶25. The demurrer by these defendants does not challenge the sufficiency of the allegations of breach against NNNRI.</p> <p>The Demurrer to the First Cause of Action by defendant Northwood Investors, LLC is SUSTAINED WITHOUT LEAVE TO AMEND, since plaintiff has failed to allege sufficient facts to show that Northwood substantially assisted or encouraged a breach of fiduciary duty. Plaintiff does not allege Northwood owed fiduciary duties directly to him. Instead, plaintiff is relying on the theory that Northwood aided and abetted breaches by other defendants. However, plaintiff identifies only allegations that establish potential fiduciary duties by NNNRI and DPR. But plaintiff does not allege sufficient facts to establish such aiding or abetting, or conduct in connection with the Congress Center Property in which NNNRI or DPR engaged that breached fiduciary duties. Moreover, the allegation that Northwood, either directly or through a related entity, purchased the property for less than fair market value is insufficient to establish substantial assistance or encouragement of any breach. Mere knowledge that a tort is being committed and the failure to prevent it do not constitute aiding and abetting. <u>Austin B. v. Escondido Union School Dist.</u> (2007) 149 Cal. App. 4th 860, 879.</p>

The Demurrers to the Second Cause of Action for Securities Fraud – Violation Cal. Corp. Code §25401 by defendants Mikles and SSMF are OVERRULED. Plaintiff now pleads facts alleging that SSMF, through Mikles, misrepresented to Defendant Wescombe that GREIT should sell its ARPT stock to SSMF in exchange for the \$12 million Note because it could not obtain \$12 million for its ARPT shares when it knew that this was not true. Plaintiff also alleges Mikles' misrepresentations were made in a representative capacity on behalf of SSMF. The SSMF Note and its Amendments identify SSMF as the issuer with Mikles signing on SSMF's behalf. (4AC, Ex. B, pp. 27, 30, 33, 36 and 39.) Defendants have not shown that the SSMF Note fails to qualify as a security.

Defendants even concede that application of the Howey test establishes the existence of a security, because the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others. Defendants' assertion that the Trust did not invest cash for the Note is unpersuasive, since plaintiff alleges SSMF invested monies into ARPT.

The Demurrers to the Third Cause of Action for Sale of Unregistered Securities – Violation of Cal. Corp. Code §25110 by defendants Mikles and SSMF, the Fourth Cause of Action for Operating as an Unlicensed Broker – Violation of Cal. Corp. Code §25210 by defendant Mikles, the Fifth Cause of Action for Joint and Several Liability Under Cal. Corp. Code §§25504, 25504.1 by defendants Mikles and SSMF, the Sixth Cause of Action for Violation of Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. §78a et seq.) ("Exchange Act") and Rule 10b-5 by defendants Mikles and SSMF, and the Seventh Cause of Action for Violation of Section 20(a) of the Exchange Act (15 U.S.C. §78t) by defendants Mikles and SSMF are OVERRULED. Defendants have not shown that the SSMF Note fails to qualify as a security. Mikles has not shown that privity is a requirement of this claim. The Viterbi case applied only to rescission claims. The court in In re Disonics Sec. Lit. (1984) 599 F. Supp. 447, did not hold that strict privity is a requirement under Corporations Code §25504.1. Additionally, plaintiff alleges misrepresentations made by Mikles, and that they were made in a representative capacity on behalf of SSMF.

The Demurrers to the Ninth Cause of Action for Intentional Interference with Prospective Economic Advantage are SUSTAINED WITHOUT LEAVE TO AMEND as to defendants Mikles, Locoh, SCMG, IUC and Northwood Investors, LLC. Plaintiff fails to allege facts that would establish the elements of the tort, including an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff, intentional acts on the part of the defendant designed to disrupt the relationship, and an independently wrongful act by a defendant that interfered with the alleged economic relationship. San Jose Constr.

Inc. v. S.B.C.C., Inc. (2007) 155 Cal. App. 4th 1528, 1545.

The Demurrers to the Tenth Cause of Action for Negligence are SUSTAINED WITHOUT LEAVE TO AMEND as to defendants Mikles, Locoh, SCMG, IUC and Northwood Investors, LLC. Plaintiff has not set forth any allegations that support the imposition of a duty, and the allegations that certain defendants are control persons of certain entity defendants does not establish the existence of a duty owed to plaintiff. Moreover, a defendant owes no duty to prevent purely economic loss to third parties under any negligence theory. Southern California Gas Leak Cases (2017) 18 Cal. App. 5th 581, 587. Where the alleged negligence has caused economic loss, but no personal injury or property damage, duty is not presumed. Rather, courts examine the Biakanja factors to determine whether to impose on the defendant an exceptional duty to third parties. Id. at 588. Plaintiff's allegations of defendants' alleged false market value and the Moffat buyout recommendation that the trust sell the subject property below value for defendants' own personal gain are not enough to support a finding that plaintiff suffered injury to person or property.

The Demurrers to the Eleventh Cause of Action for Negligent Misrepresentation, and the Twelfth Cause of Action for Fraud and Deceit in Violation of Civil Code §§1572, 1709 and 1710, are SUSTAINED WITHOUT LEAVE TO AMEND as to defendants Mikles, Locoh, SCMG, IUC and Northwood Investors, LLC. The alleged misrepresentation that \$95,000,000 was the fair market price for the Congress Center Property is not actionable. Plaintiff also fails to satisfy the higher pleading standard for fraud against a corporation.

The Demurrer to the Fourteenth Cause of Action for Conversion by defendant Mikles is SUSTAINED WITHOUT LEAVE TO AMEND. Plaintiff relies on allegations of transfers of funds owed to the beneficiaries to Sovereign Capital Management Holdings, LLC, but not to defendant Mikles. Consequently, the claim does not allege defendant Mikles interfered with plaintiff's possession of the identified funds. Plaintiff's newly-added allegations do not resolve the insufficiencies of this cause of action.

The court rejects defendants' statute of limitations arguments. Defendants argue that plaintiff's allegations of delayed discovery fail, but absent a detailed analysis of the factual allegations supporting each claim and the timing surrounding such facts, using only the pleading and matter that may be judicially noticed, the court cannot conclude that any particular claim is conclusively barred.

Plaintiff has reached the three-amendment limit in CCP §430.41(e)(1) but has not offered specific additional facts which may be alleged to save his claims.

		<p>Plaintiff’s Request for Judicial Notice is granted as to #1, 3 and 6, denied as to #2 and 4, and as to #5 granted as to page 1 and denied as to pages 2-3. Northwood’s Request for Judicial Notice is granted as to #1 and 2, and denied as to #3. However, while courts may take judicial notice of public records and their dates, parties and legally operative language, they do not accept the truth of matters stated in those documents. <u>Fontenot v. Wells Fargo Bank, N.A.</u> (2011) 198 Cal. App. 4th 256, 264-65; <u>Herrera v. Deutsche Bank National Trust Co.</u> (2011) 196 Cal. App. 4th 1366, 1375.</p> <p>The hearings on the Motions to Quash set for October 15, 2021 are continued on the court’s own motion to November 5, 2021 at 10:00 a.m.</p> <p>Defendants are ordered to give notice of the ruling for their own motions unless notice is waived.</p>
<p>8</p>	<p>NNN Congress Center, LLC vs. Locoh 2018-01015717</p>	<p>The Demurrer to the Third Amended Complaint by defendants Todd Mikles and Etienne Locoh is SUSTAINED WITHOUT LEAVE TO AMEND as to the Third and Seventh Causes of Action, and OVERRULED as to the First Cause of Action. The Demurrer to the Third Amended Complaint by defendants Sovereign Capital Management Group, Inc. and Infinity Urban Century, LLC is SUSTAINED WITHOUT LEAVE TO AMEND as to the Third and Seventh Causes of Action, and OVERRULED as to the First Cause of Action. The Demurrer to the Third Amended Complaint by defendants Northwood Investors, LLC, Northwood Employees, LP, Northwood Real Estate Partners, LP, and Northwood Real Estate Partners TE, LP, is SUSTAINED WITHOUT LEAVE TO AMEND.</p> <p>The First Cause of Action is for Breach of Fiduciary Duty. Plaintiff adequately alleges that defendants Mikles, Locoh, Sovereign Capital Management Group, Inc. (SCMG) and Infinity Urban Century, LLC (IUC) are alter egos of NNNRI and DPR, who were financial advisors to plaintiff, and who therefore owed plaintiff a fiduciary duty, and who allegedly breached that duty by duping plaintiff into selling the Congress Center Property at less fair market value. 3AC, ¶53. Plaintiff has not alleged sufficient facts to support aider and abettor liability on the part of the Northwood defendants. Mere knowledge that a tort is being committed and the failure to prevent it do not constitute aiding and abetting. <u>Austin B. v. Escondido Union School Dist.</u> (2007) 149 Cal. App. 4th 860, 879. Additionally, plaintiff does not allege sufficient facts to show that the Northwood defendants owe plaintiff any fiduciary duties, or that they aided or abetted any other defendants. Nor does the Third Amended Complaint show that Northwood’s purchase of the property substantially assisted in any breach of fiduciary duty.</p> <p>The Third Cause of Action is for Interference with Prospective Economic Advantage. Plaintiff fails to allege facts that would establish the elements of the tort, including an economic relationship between the plaintiff</p>

		<p>and some third party, with the probability of future economic benefit to the plaintiff, intentional acts on the part of the defendant designed to disrupt the relationship, and an independently wrongful act by a defendant that interfered with the alleged economic relationship. <u>San Jose Constr. Inc. v. S.B.C.C., Inc.</u> (2007) 155 Cal. App. 4th 1528, 1545.</p> <p>The Seventh Cause of Action is for Conversion, but plaintiff fails to properly allege all the elements of a conversion. A conversion may not be based on an alleged misappropriation of real property. Civil Code §3336; CACI 2100. Nor does conversion lie for an alleged misappropriation of money derived from the sale of an interest in land. <u>Shahood v. Cavin</u> (1957) 154 Cal. App. 2d 745, 747-48. While plaintiff disputes the application of that authority, citing instead to <u>Gherman v. Colburn</u> (1977) 72 Cal. App. 3d 544, plaintiff has not alleged analogous facts, or any facts suggesting that defendants were required to keep the property for the benefit of plaintiff, or that plaintiff has a continuing equitable interest in the property. At best, plaintiff's opposition relies on the alleged breach of fiduciary duties, but that argument fails. To the extent plaintiff relies on allegations of transfers of funds owed to plaintiff to Sovereign Capital Management Holdings, LLC, plaintiff's allegations are still legally insufficient. The claim does not allege defendants interfered with plaintiff's possession of any identified funds.</p> <p>Plaintiff dismissed his Fourth and Eighth Causes of Action on the day he filed his Third Amended Complaint.</p> <p>Plaintiff has reached the three-amendment limit in CCP §430.41(e)(1) but has not offered specific additional facts which may be alleged to save his claims.</p> <p>Plaintiff's Request for Judicial Notice is granted. The Northwood Defendants' Request for Judicial Notice is denied. Tentative rulings are not court records.</p> <p>The hearings on the Motions to Quash set for October 15, 2021 are continued on the court's own motion to November 5, 2021 at 10:00 a.m.</p> <p>Defendants are ordered to give notice of the ruling for their own motions unless notice is waived.</p>
<p>9</p>	<p>Henkin vs. Mikles 2021-01186203</p>	<p>The Demurrer to the First Amended Complaint by defendants Todd Mikles, Etienne Locoh, Sovereign Capital Management Group, Inc., and Infinity Urban Century, LLC, is OVERRULED as to the First Cause of Action and SUSTAINED WITHOUT LEAVE TO AMEND as to the Third, Fourth, Fifth, Seventh, Eighth and Ninth Causes of Action. The Demurrer to the First Amended Complaint by defendants Northwood Investors, LLC, Northwood Employees, LP, Northwood Real Estate Partners, LP, and Northwood Real Estate Partners TE, LP, is SUSTAINED WITHOUT LEAVE TO AMEND in full.</p>

In the First Cause of Action for Breach of Fiduciary Duty, plaintiffs adequately allege that defendants Mikles, Locoh, Sovereign Capital Management Group, Inc. (SCMG) and Infinity Urban Century, LLC (IUC) are alter egos of NNNRI and DPR, who were financial advisors to plaintiffs, and who therefore owed plaintiffs a fiduciary duty, and who allegedly breached that duty by duping plaintiffs into selling the Congress Center Property at less fair market value. Plaintiffs have not alleged sufficient facts to support aider and abettor liability on the part of the Northwood defendants. Mere knowledge that a tort is being committed and the failure to prevent it do not constitute aiding and abetting. Austin B. v. Escondido Union School Dist. (2007) 149 Cal. App. 4th 860, 879.

Additionally, plaintiffs do not allege sufficient facts to show that the Northwood defendants owe plaintiffs any fiduciary duties, or that they aided or abetted any other defendants. Nor does the First Amended Complaint show that Northwood's purchase of the property substantially assisted in any breach of fiduciary duty.

In the Third Cause of Action for Interference with Prospective Economic Advantage, plaintiffs fail to allege facts that would establish the elements of the tort, including an economic relationship between plaintiffs and some third party, with the probability of future economic benefit to the plaintiffs, intentional acts on the part of the defendant designed to disrupt the relationship, and an independently wrongful act by a defendant that interfered with the alleged economic relationship. San Jose Constr. Inc. v. S.B.C.C., Inc. (2007) 155 Cal. App. 4th 1528, 1545.

In the Fourth and Eighth Causes of Action for Negligent Misrepresentation, and the Fifth and Ninth Cause of Action for Fraud and Deceit in Violation of Civil Code §§1572, 1709 and 1710, the alleged misrepresentation that \$95,000,000 was the fair market price for the Congress Center Property is not actionable. Plaintiffs also fail to satisfy the higher pleading standard for fraud against a corporation.

In the Seventh Cause of Action for Negligence, plaintiffs have not set forth any allegations that support the imposition of a duty, and the allegations that certain defendants are control persons of certain entity defendants does not establish the existence of a duty owed to plaintiffs. Moreover, a defendant owes no duty to prevent purely economic loss to third parties under any negligence theory. Southern California Gas Leak Cases (2017) 18 Cal. App. 5th 581, 587. Where the alleged negligence has caused economic loss, but no personal injury or property damage, duty is not presumed. Rather, courts examine the Biakanja factors to determine whether to impose on the defendant an exceptional duty to third parties. Id. at 588. Plaintiffs' allegations of defendants' alleged false market value and the Moffat buyout recommendation that the trust sell the

		<p>subject property below value for defendants' own personal gain are not enough to support a finding that plaintiffs suffered injury to person or property.</p> <p>The court rejects defendants' challenge to plaintiffs' standing. Defendants rely on facts outside those that may be considered on demurrer.</p> <p>The court also rejects defendants' statute of limitations argument. Defendants argue that plaintiff's allegations of delayed discovery fail, but absent a detailed analysis of the factual allegations supporting each claim and the timing surrounding such facts, the court cannot conclude that any particular claim is conclusively barred.</p> <p>Defendants also argue a misjoinder of parties, but cite no law in support of their position.</p> <p>Both sets of defendants' Requests for Judicial Notice are denied.</p> <p>The hearings on the Motions to Quash set for October 15, 2021 are continued on the court's own motion to November 5, 2021 at 10:00 a.m.</p> <p>Defendants are ordered to give notice of the ruling for their own motions unless notice is waived.</p>
10	Wells Fargo Bank N.A. vs. Alcantar 2015-00814538	<p>Plaintiff's Motion to Amend Judgment is denied.</p> <p>Plaintiff provides no explanation or justification whatsoever, let alone with evidence, for its contention that the principal amount of its Default Judgment should be increased from \$99,406.82 to \$184,459.45, and that plaintiff is entitled to a total Judgment of \$326,124.96. Plaintiff also hasn't even filed a Memorandum of Costs, yet it now seeks costs for the first time in this case. Plaintiff is also seeking to have a default judgment entered in excess of the demand of its Complaint, in violation of CCP §580(a) and case law such as <u>Dhawan v. Biring</u> (2015) 241 Cal. App. 4th 963, 969, and <u>Rodriguez v. Cho</u> (2015) 236 Cal. App. 4th 742, 755. Plaintiff therefore needs to justify its requested judgment amount, but it may also need to file a First Amended Complaint and state an updated amount of damages sought, which would undo the default and require plaintiff to serve defendants again.</p>

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1 **PROOF OF SERVICE**

2 **Carlson, et at. v. Hunt, et al.**
3 **Case No. 30-2018-00982195-CU-MC-CXC**

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

5 At the time of service, I was over 18 years of age and not a party to this action. I am
6 employed in the County of Los Angeles, State of California. My business address is 11100 Santa
7 Monica Blvd., Suite 360, Los Angeles, CA 90025.

8 On October 11, 2021, I served true copies of the following document(s) described as **NOTICE
9 OF RULING REGARDING NORTHWOOD DEFENDANTS' DEMURRER TO FOURTH
10 AMENDED COMPLAINT** on the interested parties in this action as follows:
11 **SEE ATTACHED SERVICE LIST**

12 **BY ELECTRONIC SERVICE:** I electronically filed the document(s) with the Clerk of
13 the Court by using the One Legal system. Participants in the case who are registered users will be
14 served by the One Legal system. Participants in the case who are not registered users will be
15 served by mail or by other means permitted by the court rules.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed on October 11, 2021, at Los Angeles, California.

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21 Praveeta Garcia

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SERVICE LIST
Carlson, et at. v. Hunt, et al.
Case No. 30-2018-00982195-CU-MC-CXC

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