PROPOSED TENTATIVE

On July 14, 2025, plaintiffs David Minor and Juanita Minor (plaintiffs) filed a complaint against defendants Superior Senior Home Care, Inc. (Superior), and John Kilpatrick, advancing four causes of action:1) financial elder abuse (Welf. & Inst. Code, § 15600, et seq.) (does not indicate the named defendants); 2) negligent hiring, retention, and/or supervision (Superior only); 3) breach of fiduciary duty (both defendants); 4) conversion (both defendants ; and 5) breach of contract (Superior only). According to the operative pleading, defendant Superior is engaged in the business of "providing home care and home health services," while defendant John Kilpatrick was an employee of Superior. On September 18, 2023, plaintiffs entered into a written agreement with Superior to provide health care services, for the benefit of plaintiff David Minor, due "to his diabetes, previous stroke and partial analysis. These disabling conditions require Plaintiff David Minor to have total care, assistance, and supervision in all aspects of his daily living, including eating, bathing, showering, cleansing, dressing, leisure time, transporting to health care providers. These services were attempted to be provided by Defendants to Plaintiffs." Plaintiffs alleged, however, that Mr. Kilpatrick, assigned to care for plaintiffs, was not qualified – Superior failed to properly investigate his background, which reveals substantial criminal history for felony and misdemeanor theft, fraud, credit card abuse, and forgery (among other crimes). According to plaintiffs, not only did Superior fail to properly inquire into Mr. Kilpatrick's background and criminal history, it knew or should have known about his criminal history. Plaintiffs also allege that Mr. Kilpatrick did not know how to take a patient's blood pressure, to use a gait belt, and/or to transfer patients out of wheelchair in a safe manner. Mr. Kilpatrick left David Minor "in the shower sitting on the shower chair with no supervision or care." On November 29, 2023, plaintiffs discovered that Mr. Kilpatrick "stole" jewelry from them, and further "discovery is continuing on other items of personal property that Defendants took [from] Plaintiffs." Attached to the operative pleading is a copy of the "Clients Services Agreement," signed by Juanita Minor, on September 18, 2023, which contemplated services for David Minor.

Defendant Superior (but not Mr. Kilpatrick) has filed a demurrer to all five causes of action. Plaintiffs have filed opposition. Defendant filed a reply on December 29, 2025. All briefing has been examined. Each argument advanced by defendant will be discussed separately below, in seriatim.

1) *Third Cause of Action for Breach of Fiduciary Duty/California Rules of Court, Rule 2,112*

At the outset, plaintiff in opposition offers to withdraw the third cause of action for breach of fiduciary duty. Accordingly, the court sustains the demurrer to the third cause of action, and directs plaintiff to file a first amended pleading removing this cause of action. The court will examine all remaining arguments advanced by defendant with this in mind, including plaintiff's corresponding arguments in opposition.

Notably, defendant Superior contends plaintiffs failed to comply with California Rules of Court, rule 2.112 which requires that each "separately stated cause of action" must be numbered, must describe "its nature (e.g., 'for fraud')," and (as relevant for our purposes) "state the party asserting the claim and against whom the cause of action is asserted." (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 696; see *Davis v. Fresno Unified School Dist*. (2020) 57 Cal.App.5th 911, 921, fn. 5 [Calif. Rules of Court, rule 2.112 provides that each separately stated cause of action must specifically state (1) its number, (2) its nature, (3) the party asserting it if there are multiple plaintiffs, and (4) the party or parties to whom it is directed. An example of appropriate labeling is "first cause of action for fraud by plaintiff Jones against defendant Smith"]; see also *Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1014 [failure to comply with this requirement renders a complaint subject to a special demurrer for uncertainty].) Specifically, defendant contends plaintiffs failed to "identify which plaintiff is making which claim against which defendant." Plaintiffs seem to acknowledge that they did not technically comply with this requirement, but argue there is no uncertainty or ambiguity because the allegations clearly reveal that both plaintiffs are suing the named defendants in each cause of action.

The court is generally not fond of claims that raise technical violations when they involve no prejudicial impact. That being said, it is of course better practice to identify which plaintiffs (or both of them) are advancing a particular cause of action, in line with the Rules of Court. As plaintiffs have already agreed to withdraw the third cause of action (necessitating a first amended complaint as discussed above), it is not particularly onerous for them to remedy this deficiency and to comply with California Rules of Court, rule 2.112. Accordingly, the court will sustain defendant's demurrer with leave to amend on this ground, and directs plaintiff to comply with this rule when filing the first amended complaint.

2) First Cause of Action for Financial Elder Abuse

Defendant Superior challenges the first cause of action for financial elder abuse, claiming plaintiffs have failed to allege it with the needed factual specificity. In fact, according to defendant Superior, plaintiffs must plead particular facts indicating that an officer, director, or managing agent engaged in, approved, or ratified the alleged wrongful conduct, in order to secure the heightened remedies under Welfare and Institutions Code section 15657, subdivision (c).

The substantive law of elder abuse provides that financial abuse of an elder occurs when any person or entity takes, secretes, appropriates, or retains real or personal property of an elder adult to a wrongful use or with an intent to defraud, or both. A wrongful use is defined as taking, secreting, appropriating, or retaining property in bad faith. Bad faith occurs where the person or entity knew or should have known that the elder had the right to have the property transferred or

made readily available to the elder or to his or her representative. (Welf. & Inst. Code,[1] § 15610.30; *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 174.)[2]

The statutory scheme for financial elder abuse is contained in section 15657.5. Where plaintiff proves financial elder abuse by a preponderance of evidence, compensatory damages, attorney's fees, and costs are available. (§ 15657(a); *Royals v. Lu.* (2022) 81 Cal.App.5th 328, 347; see *Arace v. Medico Investments, LLC* (2020) 48 Cal.App.5th 977, 983 [attorney's fees and costs are mandatory in financial elder abuse if proven by a preponderance of evidence]; *Cameron v. Las Orchidias Properties, LLC* (2022) 82 Cal.App.5th 481, 507 [when a plaintiff proves by a preponderance of evidence that a defendant is liable for financial abuse, in additional to compensatory damages, the court shall award reasonable attorney's fees and costs].) Enhanced remedies are available if plaintiff proves by clear and convincing evidence that defendant acted with recklessness, oppression, fraud or malice in the commission of the financial abuse (in addition to reasonable attorney's fees and costs and compensatory damages, the limits contained in Code of Civil procedure section 377.34 do not apply. (§15657.5(b).) The "standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any punitive damages may be imposed against an employer found liable for financial abuse as defined in Section 15610.30. ***This subdivision shall not apply to the recovery of compensatory damages or attorney's fees and costs***." (§ 15657.5(c), emphasis added.) Theses provisions contemplate theories of direct and vicarious liability for an employer except when the abusive acts are egregious, contemplating punitive damages within the meaning of Civil Code section 3294(b). (See, e.g., CACI 3100 [discussing elements of Financial Elder Abuse and Directions for Use].) With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." (Civ. Code, § 3294(b).) And where, as here, the challenged claims are statutory, the material facts supporting the claims must be alleged with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790; *Frankland v. Etehad* (2025) 113 Cal.App.5th 503, 512; *Intrieri v. Superior Court* (2004) 117 Cal.App.4th 72, 82.)

With this background in mind, the court makes some preliminary observations about the plaintiffs' pleading and the parties' ultimate arguments. Plaintiffs in paragraph 26 of the operative complaint seem to be of the view that they are only entitled to attorney's fees and costs against defendants if they show that defendants' conduct was reckless, oppressive, fraudulent or malicious. That is not the case. As noted above, section 15657.5(a) provides that when a case of

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] The elements of a cause of action for financial elder abuse are (1) the defendant took, hid, appropriated, obtained or retained plaintiff's property; (2) plaintiff is at least 65 years of age or a dependent adult; (3) the defendant took, hid, appropriated, obtained or retained plaintiff's property for a wrongful use, with the intent to defraud, or by undue influence; (4) the plaintiff was harmed; and (5) the defendant's conduct was a substantial factor in causing plaintiff's harm. (See CACI No. 3100.)

financial elder abuse pursuant to section 15610.30 has been proven, "[i]n addition to compensatory damages and all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney's fees and costs." (*Conservatorship v. McQueen* (2014) 59 Cal.4th 46, 58.) The attorney fee provision is not discretionary in nature, and is a form of mandatory relief. (*Arace, supra,* 48 Cal.App.4th at p. 983.) Put another way, attorney's fees, costs, and compensatory damages are no longer enhanced remedies under section 15967.5, subdivision (a). Enhanced remedies include the removal of limits contained in Code of Civil Procedure section 377.34, and punitive damages, when the plaintiff shows by clear and convincing evidence that defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse. (§ 15657.5(b).) Plaintiffs with regard to these enhanced remedies is required to plead with particularity that an officer, director, or managing agent of the corporate defendant had advance knowledge of the unfitness of the employee and employed him or her with conscious disregard of the rights and safety of others or authorized or ratified the wrongful conduct of which the damages are awarded. Section 15657.5(c) incorporates the heightened pleading standards only if the elder abuse claim seeks enhanced statutory remedies.

With this background, the allegations concerning elder abuse damages as made are confusing, and thus require clarification. It remains unclear whether plaintiff is actually asking for punitive damages against defendant Superior, Mr. Kilpatrick's corporate employer. Specifically, plaintiffs suggest in paragraph 26 that corporate defendant Superior acted recklessly, oppressively, fraudulently or malicious, suggesting they want punitive damages (although they could be advancing this claim only because of their mistaken belief that attorney's fees require such a showing). If punitive damages are requested, the allegations do not survive demurrer, because there is no indication that a director, officer or managing agent ratified Mr. Kilpatrick's conduct. If this language is only included as result of the mistaken belief that attorney's fees are permitted only if this allegation is proven, plaintiff should rethink the allegations. For these reasons, as to this cause of action, the court sustains the demurrer with leave to amend as to the first cause of action for financial elder abuse.

The court concludes with one last observation. In addition to the defects noted above, the court finds that plaintiffs have failed to allege financial elder abuse with factual particularity. Plaintiff alleges that defendant John Kilpatrick began employment after September 18, 2023, and defendant "assigned" Kilpatrick to go to the home of Plaintiffs to provide home health care . . . ." Thereafter, on November 29, 2023, plaintiffs indicate they "discovered that Kilpatrick, while performing home health care services on behalf of Defendant Superior Home Care, stole some of Plaintiffs; jewelry." Plaintiffs do not allege, however, how often Mr. Kilpatrick came to the home, whether Mr. Kilpatrick had access to the jewelry while he was there, whether other people had access to the jewelry, and whether there is a reasonable possibility others stole the property (or perhaps the jewelry was lost). This is a statutory cause of action, necessitating particularity, and particularity in turn requires plaintiffs to plead sufficient facts to demonstrate defendants

engaged in financial elder abuse – vague allegations are insufficient. The court sustains the demurrer with leave to amend for this reason as well.

3) Second Cause of Action for Negligent Hiring, Retention and/or Supervision

Plaintiffs contend that defendant Superior negligently hired, retained and/or supervised its employee Mr. Kilpatrick, as the latter was allegedly unfit to perform the duties for which he was employed. Plaintiffs allege that Superior knew or should have known that Mr. Kilpatrick posed a risk of harm when he was employed, due to lack of training, compounded by Mr. Kilpatrick's extensive criminality, meaning plaintiffs were put at risk of physical and emotional harm. Defendant Superior contends that these allegations are insufficient to establish the second cause of action because, in defendant's view, the complaint fails to show that Mr. Kilpatrick had "inadequate experience, training or supervision" that caused "actual harm to David Minor"; that defendant was aware "of Kilpatrick's alleged unfitness to perform [] services for Plaintiffs"; and there are "no facts indicating that Mr. Minor was harmed by such conduct."

The elements of a cause action for negligence are (1) a legal duty to use reasonable care, (2) breach of that duty, (3) proximate cause between the breach and (4) the plaintiffs' injury. An employer under this scheme may be liable to a third person for the employer's negligence in hiring or retaining an employee who is incompetent or unfit. Liability for negligent hiring is based upon the reasoning that if an enterprise hires individuals with characteristics which might pose a danger to customers or other employees, the enterprise should bear the loss caused by the wrongdoing of its incompetent or unfit employees. Negligence liability will be imposed on an employer if it knew or should have known that hiring the employee created a particular risk or hazard that particular harm materializes. (*Phillips v. TLC Plumbing, Inc.* (2009) 172 Cal.App.4th 1133, 1139.) Liability for negligent retention of an employee is one of direct liability for negligence, not vicarious liability. (*Ibid.*)

Elements of negligent hiring/retention/supervision are (1) hiring and supervision of an employee; (2) the employee is incompetent or unfit; (3) the employer has reason to believe undue risk harm would exist because of the employment; and (4) harm occurs. (*Federico v. Superior Court* (1997) 59 Cal.App.4th 1207, 1213-1214.) Liability does not exist merely because the one employed is incompetent, vicious, or careless. It exists because the employer has not taken the care which a prudent person would take in selecting the person for the business at hand. Liability results because the employer antecedently had reason to believe that an undue risk of harm would exist because the employment. (*Id.* at p. 1214.)

The operative pleading is not a model of clarity. A close examination of the operative pleading, however, reveals two potential bases for the negligent hiring/retention/supervision cause of action. Both rest on allegations that Superior made "implied and direct representations" that Mr. Kilpatrick was vetted, and that he was "trustworthy to provide qualified and experienced home health care to Plaintiffs, including David Minor." Notably, Superior claims it "is engaged in the business of offering and providing home care, home health and hospice [care]" in the form

of health care contracts, and alleges that Superior tells clients (such as plaintiffs) that it provides "Compassionate and Trustworthy Care That Feels Like Family."

The first theory of liability nevertheless rests on a claim that defendant Superior "failed to property vet and investigate" Mr. Kilpatrick's extensive criminal background and criminal history, which involves numerous crimes of theft, fraud, credit card abuse, and forgery, crimes that are of great concern for and to vulnerable elderly patients (as the employee is entering into the home, requiring trust); The harm was that Kilpatrick stole jewelry (larceny and likely grand theft).

The second theory (also detailed in the string pleading portion of the complaint) involves claims that Mr. Kilpatrick "had insufficient knowledge and experience in caring for a disabled person such a Plaintiff David Minor." For example, according to plaintiffs, Mr. Kilpatrick did not know how to take a patient's blood pressure, did not know how to use a gait belt, and had no idea how to transfer David in an out of his wheelchair in a safe manner," despite the fact that that plaintiffs were told he was "trustworthy to provide home health care . . .." and Mr. Kilpatrick "was assigned in all aspects and manner of providing home health care to a disabled person. . . ." As an example, plaintiffs alleged that "Kilpatrick would get David started in a shower, but would just leave David in the shower chair with no supervision or care."

The court does not need to determine whether both theories survive demurrer. If either basis survives, the demurrer should be overruled, as a demurrer is not appropriate to challenge only a part of the cause of action. (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 CA4th 1150, 1167, 201 CR3d 390, 407 (disapproved on other grounds by *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 C5th 905, 948, 290 CR3d 834, 864 & fn. 12).) The court finds that there are sufficient allegations offered by plaintiff to show that Mr. Kilpatrick was not adequately trained to provide the care required for David Minor, who required extensive home care services, meaning Superior knew or should have known harm would occur due to insufficient training. Plaintiffs expressly informed defendant in the contract of services that David Minor suffered from Type 2-diabetes and hemiplegia on the left side of his stroke. Plaintiffs allege that these conditions required "total care, assistance and supervision in all aspects of [David Minor's] daily living, including eating, bathing, showering, cleaning, dressing, leisure time, transportation to health care providers," and these services were required to be provided by defendants. Mr. Kilpatrick provided "unsupervised" home health care, including the deficiencies listed above. The events (or in this case the nonevents) occurred between September 18, 2023, and November 29, 2023, meaning Mr. Kilpatrick likely did not return thereafter. The allegations sufficiently demonstrate that defendant Superior arguably did not take care in selecting (or training) Mr. Kilpatrick for the necessary requirements mandated by plaintiffs. One can hardly doubt, for example, that these deficiencies at a minimum caused plaintiffs emotional distress, as defendant would have some duty of care to protect the emotional welfare of plaintiffs by hiring competent caregivers.

Defendant's reliance on *Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038 is misplaced. In *Doe,* an aspiring actor was drugged and then gang-raped by a casting director and four other men. The actor sued the director's employer ABC for (inter alia) negligent hiring. The appellate court concluded the allegations for negligent hiring were insufficient as matter of law. Plaintiff pleaded as follows: ABC knew or should have known that the director engaged in or used serious, mind-altering illegal drugs, that defendant used his position at ABC to gain sexual favors, and that use of a "casting couch" is common within the entertainment industry. "Given the harm that plaintiff suffered – a brutal sexual assault after having been surreptitiously drugged – the pleading allegations are insufficient to allege a cause of action. ABC's knowledge that [the director] personally used 'serious mind-altering drugs' does not equate with knowledge that he would surreptitiously use drugs to place a prospective employee into a situation of helplessness before violating assaulting him. Nor does ABC's knowledge that [the director] used his position 'to gain sexual favors' have material relevance to this matter. Use of the word 'gain' is consistent with the quid pro quo form of sexual harassment[9] but that is not the basis of plaintiff's claim. The 'casting couch' allegation suffers from a similar infirmity. That is, knowledge that [the director] used his position of authority to extract or to coerce sexual favors is not knowledge that he would first drug and then attack a potential employee. In the context of negligent hiring, those are qualitatively different situations**. *In sum, the cornerstone of a negligent hiring theory is the risk that the employee will act in a certain way and the employee does act in that way. Plaintiff has failed to allege those necessary facts***." (*Id*. at p. 1054-1055, emphasis added.)

The allegations involving the quality of care exhibited by Mr. Kilpatrick here (the theory at issue for our purposes) are not nearly as attenuated at the allegations advanced in *Doe.* The cornerstone of the negligent hiring theory here is the risk that Mr. Kilpatrick would not act in a certain way, the fact he failed to act in that way when he should have, with this failure causing harm to plaintiffs.[3] Plaintiffs have alleged sufficient facts to support this theory -- to the effect that plaintiffs failed to train or ensure that Mr. Kilpatrick would do all that was required of him as a caregiver, creating a risk that he would act in that way and not in the way he should have, with attendant harm. Simply put, plaintiffs have pleaded that defendant Superior knew or should have known that Mr. Kilpatrick was not trained as an adequate caregiver, creating the risk of harm that actually materialized.

The court overrules defendant's demurrer to the second cause of action for these reasons.

4) Defendant's Challenge to the Fourth Cause of Action for Conversion

It is uncontested that plaintiffs have adequately alleged a cause of action for conversion against Mr. Kilpatrick. Conversion, of course, is an intentional tort (and as alleged, a crime - based on possible grand theft). (*Multani v. Knight* (2018) 23 Cal.App.5th 837, 853.)

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[3] Defendant's argument might be more compelling if the court were required to assess the criminality theory of liability (more akin to the theory of liability at issue in *Doe*). But for reasons previously noted, that is unnecessary.

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages. It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use." (*Spates v. Dameron Hospital Assn.* (2003) 114 Cal.App.4th 208, 221.) Generally, when intentional torts (and particularly those involving criminal acts) are involved, for an employer to be liable under a respondeat superior theory, the employee's actions must have a "causal nexus to the employee's work." (*Montague v. AMN Healthcare, Inc.* (2014) 223 Cal.App.4th 1515, 1521.) Courts have used various terms to describe this causal nexus: the incident leading to the injury must be an 'outgrowth" of the employment; the risk of tortious injury must be "inherent in the working environment"; the risk must be "typical" or "broadly incidental" to the employer's business; the tort was a "generally foreseeable consequence" of the employer's business. (*Id.* at p. 1521.)

Plaintiffs have not established a basis for conversion liability against Superior. Plaintiffs contend they "have not limited their conversion claim against Defendant Superior to a vicarious claim." That may be, but they have not stated a basis for vicarious liability, because there are no allegations to show that Mr. Kilpatrick was acting withing the scope of his employment when he allegedly took the jewelry (i.e., there is no causal nexus between the incident (stealing jewelry) and the work).

Plaintiff argues in opposition that "for all Plaintiffs' know at this stage, Defendant Superior conspired with Defendant Kilpatrick to steal from Plaintiffs and share their plunder. Is it more likely Defendant Superior failed to check Defendant Kilpatrick's background before turning him loose on Plaintiffs, or is more likely Superior was aware of Kilpatrick's criminal history and put to use for the benefit of both Defendants to the detriment of both Plaintiffs?" If plaintiffs are alleging the defendant is ***directly*** liable because it was working with Mr. Kilpatrick, there are no allegations of civil conspiracy and/or direct aiding and abetting. Civil conspiracy, for example, must be pleaded with specificity, and plaintiff must show that defendant has knowledge of and agreed to both the objective and the course that result in the taking. (*Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 823.) Direct liability may also be imposed on one who aids and abets the commission of an intentional tort if the person (1) knows the other's conduct constitutes a tort and gives substantial assistance or encouragement to the other to so act; or (2) gives substantial assistance to the other in accomplishing a tortious result and the person's own conduct, separately considered, constitutes a breach of duty to the third person. (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 846.) Knowledge that a tort is being committed and failing to take action to prevent it are insufficient to establishing aiding and abetting. Aiding and abetting requires a defendant to reach a conscious decision to participate in tortious activity for the purpose of assisting another in

performing a wrongful act. (*Howard v. Superior Court* (1992) 2 Cal.App.4th 745, 748-749.) The allegations in the operation pleading do not come close to satisfying these standards.

Plaintiffs insist that the allegations in paragraph 6 to 15 and 17 to 27 "are more than sufficient allegations to put Defendants on notice of the framework of allegations of conversion . . . ." Not so. These allegations rest exclusively on negligence – failing to properly vet Mr. Kilpatrick because of his extensive criminal history, and negligently assigning Mr. Kilpatrick to provide home health care services – or claims that defendant knew or "should have known" that Mr. Kilpatrick would have stolen the jewelry. Conversion cannot be predicated on negligence principles. (See, e.g., *Voris v. Lampert* (2019) 7 Cal.5th 1141, 1158 [conversion requires that defendant have intentionally done the act depriving the plaintiff of his or her rightful possession]; *Multani, supra,* 23 Cal.App.5th at p. 854 [neither negligence, active of passive, nor a breach of contract, even though it results in injury to or loss of property, constitutes a conversion].) Nor can conspiracy or aiding and abetting principles be predicated on negligence. (*Navarrete v. Mayer* (2015) 237 Cal.App.4th 1276, 1291-1292 [the basis of a civil conspiracy is the formation of a group of two or more persons who have agreed to a common scheme or plan, actual knowledge that is tort is planned, and concur in the scheme with intent to that it occur]; *Casella v. SouthWest Dealer Services, Inc.* (2007) 157 Cal.App.4th 1127, 1140-1141 [to state a cause of action for aiding and abetting an intentional tort, plaintiff must allege actual knowledge that tort is being or will be committed, that the defendant provided substantial assistance or encouragement to the actor, and that defendant's conduct was a substantial factor in causing plaintiff harm]; see generally *Schlutz v. Neovi Data Corp*. (2007) 152 Cal.App.4th 86, 95 [plaintiff made sufficient allegations when by pleading that defendants acted with specific intent of aiding and abetting].)

The court sustains defendant Superior's demurrer to the fourth cause of action for conversion, with leave to amend.

5) Defendant's Challenge to the Fifth Cause of Action for Breach of Contract

Defendant raises two challenges to the breach of contract cause of action. First, it claims that the court should sustain the demurrer because plaintiffs have failed to attach the entirety of the signed contract between the parties – namely by failing to attach the "Client Service Plan," which is incorporated into and forms part of the agreement. Second, defendant contends that the allegations of breach are inadequate because plaintiffs rely on defendant's failure to meet its "advertised slogan to provide 'compassionate and trustworthy care that fells like family.'" According to defendant, the complaint "does not allege that this slogan was part of the contract, and thus cannot be part of the breach of contract cause of action.

The statement of a cause of action for breach of contract requires a pleading of the following: (a) the contract; (b) plaintiff's performance or excuse for nonperformance; (c) defendant's breach; and (d) damage to plaintiff. (4 Witkin, California Procedure (6th ed, 2025), Pleading, § 525 .) A written contract is usually pleaded by alleging its making and then setting it

out verbatim in the body of the complaint or as a copy attached and incorporated by reference. (*Id.* at § 526.) Plaintiff has attached a copy of the contract to the complaint as Exhibit A. The problem is that the attached contract expressly incorporates into it the following: "2. Services. We will provide the services ('Services') designated in the Client Services Plan (the 'Plan') which in incorporated in ***and forms a part of this agreement***. . . ." To the extent plaintiffs claim as the basis for their breach of contract that the services contemplated by the written agreement "were not provided as contracted by Plaintiffs[,]" the *entire* agreement – including the Client Services Plan – must be attached, as it is critical part of the contract and a thus a crucial aspect of the cause of action. This is a well-noted requirement. (See, e.g., *Gilmore v. Lycoming Fire Ins. Co.* (1880) 55 Cal.123, 124 [where a party relies upon a contract, and all the terms of the contract are not set fort *haec verba*, nor stated in their legal effect, but that a portion which may be material has been omitted, the complaint is insufficient].) If plaintiffs do not have a copy of the Client Services Plan, they can plead its substance or in legal effect, something they have not done. The court sustains the demurrer with leave to amend on this ground.

The court rejects defendant's second argument - that an "advertised slogan" is offered to support the breach of contract cause of action, which is not part of the contract. While plaintiffs allege in paragraph 44 that one of defendant's market slogans is that it provides "Compassionate and Trustworthy Care That Feels Like Family," and contends that this slogan was one of the reasons it entered into the written contract, plaintiffs do not indicate generally that defendant breached the contract because it violated this slogan. Paragraph 45 makes it clear that the services contemplated by the written agreement were not provided as contracted. No doubt in paragraph 48 plaintiffs do allege that defendant "failed to provide services" compatible with their slogan, and "upon information and belief," defendants have breached the agreement. While paragraph 48 is perhaps ambiguous, the proper vehicle to challenge this ambiguity is a motion to strike, not a demurrer – because paragraph 45 makes it clear that the breach is based on the terms of the written contract and nothing more. A demurer is inappropriate to challenge a part of a cause of action when the cause of action on its whole survives, as is the case here. Accordingly, the court overrules the demurrer on this ground.

Summary:

- Plaintiff has voluntarily withdrawn the third cause of action for breach of fiduciary duty. The court directs plaintiff to submit a first amended complaint without this cause of action. In light of this, the court sustains the demurrer and directs plaintiff to comply with California Rules of Court, rule 2.112.
- The court sustains the demurrer to the first cause of action for financial elder abuse, with leave to amend.
- The court overrules the demurer to the second cause of action for negligent hiring, retention, supervision.

- The court sustains the demurrer to the fourth cause of action for conversion, with leave to amend.
- The court sustains the demurrer to the fifth cause of action because plaintiff has failed to include or plead the entirety of the contraction, with leave to amend. The court rejects defendant's second contention (at least for purposes of demurrer) that plaintiff is relying on any breach of slogan as part of the breach of contract cause of action.
- Plaintiff has 30 days from today's hearing to submit a first amended pleading.
- The parties are directed to appear in person or by Zoom at the hearing.