Tentative Ruling:

For all the reasons discussed below, standing fails as the contract causes of action and those derivative of the contract causes of action (2nd, 3rd, 4th, 7th and 8th). The demurrer is sustained as to those causes of action with leave to amend. The demurrer is sustained as to the 1st cause of action for the reasons stated below, with leave to amend. The demurrer is overruled as to the 5th and 6th causes of action for the reasons stated below. Any amended pleading must be filed by July 6, 2026.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

Background:

According to the complaint, defendant Frankie Trutanic was the joint owner of property with his father, Mario, located in Pacific Palisades, and he was the joint owner as tenants in common with his mother, Fany, of property located in Woodland Hills. On February 15, 2021, Frankie, Mario, and Fany executed a written agreement in which Mario gifted his interest in the Palisades property to Frankie and in return, Frankie agreed to pay off the entire loan balance on the Woodland Hills property. The agreement also gave Frankie shall have the right to sell the Palisades property, and from the proceeds, place $100,000 in a bank account controlled by the Trutanic Revocable Living Trust. The beneficiaries of the trust were Charli Bacena, Stevie Trutanic, Brooklyn Trutanic, and Jordan Trutanic. Finally, the agreement provided that the Woodland Hills property would be transferred to the Trust.[1] Frankie was the designated trustee.

Frankie sold the Palisades Property on August 17, 2021, for $3,725,000. Mario died on May 1, 2023. On or around August 29, 2023, Frankie sold the Woodland Hills Property for $1,450,000. Fany died on December 2, 2025.

On March 5, 2026, minors Brooklyn Trutanic and Jordan Trutanic by their guardian ad litem Mario Trutanic, Jr., filed a complaint alleging that the Trust was never formed and based thereon, asserts the following causes of action: (1) conversion; (2) breach of contract; (3) implied in fact contract; (4) breach of implied covenant of good faith and fair dealing; (5) breach of fiduciary duties; (6) financial elder abuse; (7) imposition of constructive trust; and (8) promissory estoppel.

Frankie demurs on the basis that the trust created by the 2021 document was a revocable trust and that as settlor and trustee of the Trust, he had the right to revoke it without regard to the interests of the beneficiaries of the Trust. Plaintiffs argue that they are not pursuing any theories as trust beneficiaries but instead pursuing contract claims as third party beneficiaries of the Agreement. They argue that as such, they have standing to bring the alleged causes of action.

1. Standing re Contract Theories (Third Party Beneficiary Theory)

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[1] It is unclear from this pleading whether the Agreement attached as Exhibit 1 is itself the Trutanic Revocable Living Trust, or whether there is a separate document memorializing the Trust.

The 2nd, 3rd, 4th, 7th and 8th causes of action all implicate contract theories and claims that are derivative of contract theories. The court will thus examine the issue of standing as to these causes of action together.

Civil Code section 1559 provides the statutory basis for third party beneficiary enforcement, stating: "A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it." (Civ. Code § 1559.) The word "expressly" in this statute has been interpreted to mean merely the negative of "incidentally," distinguishing intended beneficiaries from incidental beneficiaries. (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1022.) To assert a third party status, a third party must allege: (1) that it is likely to benefit from the contract, (2) that a motivating purpose of the contracting parties was to provide a benefit to the third party, and (3) that permitting the third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties. “All three elements must be satisfied to permit the third party action to go forward.” (*Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817, 830.)

Pursuant to the three-part test, plaintiffs must allege facts that suggest the motivating purpose of the contracting parties was to provide a benefit to them. The fact that a literal contract interpretation would result in a benefit to the third party is not enough to entitle that party to demand enforcement. The contracting parties must have intended to confer a benefit on the third party. (*Neverkovec v. Fredericks* (1999) 74 Cal.App.4th 337, 348.) For example, in *Goonewardene,* the court held that while the payroll company hired by the employer provides a benefit to employees with regard to the wages they receive, that was not the motivating purpose of the transaction. Instead, the relevant motivating purpose was to provide a benefit *to the employer*, with regard to the cost and efficiency of the tasks performed and the avoidance of potential penalties. In short, the relevant motivating purpose of the contract was to assist the employer in the performance of its required tasks, not to provide a benefit to its employees with regard to the amount of wages they receive. (*Goonewardene, supra,* at 835.)

Here, the sole identified factual allegation of motivating purpose is that the plaintiffs are named as beneficiaries of the Trust. (Complaint, ¶ 19.) But as noted, the fact that a literal contract interpretation would result in a benefit to the third party is not enough to entitle that party to demand enforcement. The recitals to the Agreement do not identify the creation of the trust or preservation of the assets for the beneficiaries’ benefit as the motivating purpose of the Agreement. Instead, they specify an intent to adjust the loans and ownership interests of the two properties among the three owners, identify the ownership status of each property, and ultimately conclude: “[U]pon the agreement of the parties, certain loans and/or debts shall be paid off and the property interests adjusted. The tax implications for each party should be discussed with the CPAs representing each individual party.” (Exhibit A, initial recitals.) The Trust is not mentioned until the ownership rights have been settled (and it’s first mention is simply a reference to the “Trust”). This is not an Agreement that appears to have the motivating purpose of providing a benefit to the plaintiffs. It appears to be a contract to allocate ownership and management rights among Mario, Fany, and Frankie. Any benefit to future Trust beneficiaries appears to be incidental to the arrangement.

Thus, under plaintiffs' third-party beneficiary theory, standing fails as the contract causes of action and (2nd, 3rd, 4th, 7th and 8th). The demurrer is sustained as to those causes of action, with leave to amend.

2. Conversion (1st Cause of Action)

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. (*Spates v. Dameron Hospital Assn.* (2003) 114 Cal.App.4th 208, 221.) A party need only allege that she or he was entitled to immediate possession at the time of conversion. (*Spates, supra,* at 222.) Here, the allegations do not allege an entitlement to immediate possession at the time of conversion, as it appears that the claim is derivative of Mario and Fany's claim. More must be alleged. The demurrer is sustained.

3. Breach of Fiduciary Duty (5th Cause of Action)

"The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach." (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086; *Gutierrez v. Girardi* (2011) 194 Cal.App.4th 925, 932.) Here, the complaint alleges that Frankie owed fiduciary duties to the beneficiaries of the Trust and that he breached those duties because he "never made the Trust and instead kept the proceeds from the sale of the Woodland Hills Property, in addition to keeping the proceeds from the Palisades Property." (Complaint, ¶65.) The court interprets the allegation that he "never made" the Trust to mean that Frankie never funded the Trust.

The court first notes that the complaint does not allege any derivative claims belonging to Mario and Fany. (See *Estate of Giraldin* (2012) 55 Cal.4th 1058--beneficiaries may, under appropriate circumstances, assert claims that are derivative of rights belonging to the settlor.)

Frankie points out that neither a settlor nor a trustee of a revocable trust owes any fiduciary duties to the beneficiary as long as the settlor is alive. During the time a trust is revocable, Probate Code section 15800 limits a trustee's obligations to the trust's beneficiaries. In particular, section 15800 provides that trustees of revocable trusts owe their duties not to the beneficiaries but to the settlors of the trust. (See *Giraldin, supra,* at 1066 [§ 15800 makes clear that, "so long as the settlor is alive, the trustee owes a duty solely to the settlor"].) This is because assets held in a revocable trust essentially belong to the settlor, the settlor may dispose of the trust's assets and effectively eliminate the beneficiaries' interest altogether with no need to justify or explain his or her actions. (*Babbit v. Superior Court* (2016) 246 Cal.App.4th 1135, 1145.)

Frankie then asserts that since he is not dead or incompetent, he holds or held the power to revoke, and therefore does not owe any duties the beneficiaries. Probate Code section 15400 establishes a fundamental presumption that "the trust is revocable by the settlor "unless "a trust is expressly made irrevocable by the trust instrument." (Prob. Code § 15400.) But if a trust is created by more than one settlor, each settlor may revoke the trust *as to the portion of the trust contributed by that settlor*. (Prob. Code, § 15401, subd. (b)(1).) This is where Frankie's theory falters. It is unclear how he could revoke the Trust as to asserts that were not contributed by him.

To the extent the Trust was formed, it thus appears that Frankie did owe fiduciary duties to the beneficiaries (which is defined by Probate Code section 24 subdivision (c) as " a person who has any present or future interest, vested or contingent.") Standing is satisfied.

For pleading purposes, the demurrer is overruled.

4. Financial Elder Abuse (6th Cause of Action)

In this cause of action, plaintiffs allege that Frankie used his position of trust with Mario and Fany to convince them to transfer ownership of the Palisades and Woodland Hills properties to him without pecuniary benefit to Mario or Fany.

Financial elder abuse 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, § 15610.30.)

After the death of an elder, the right to commence an action passes to the personal representative, and if there is no personal representative, to an intestate heir whose interest is affected, the decedent's successor in interest, or an interested person. (Welf. & Inst. Code, § 15657.3.)

Frankie asserts that minor plaintiffs have not alleged that they are Mario or Fany's personal representatives, that they are intestate heirs of Mario or Fany, that they are successors in interest as defined by Code of Civil Procedure section 377.11, or that they are interested persons under Probate Code section 48. An interested person includes a beneficiary and any other person having a property right in or claim against a trust estate or the estate of a decedent that may be affected by the proceeding. (Prob. Code, § 48, subd. (a)(1).)

Here, plaintiffs assert that the Complaint sufficiently alleges that Plaintiffs were the beneficiaries of the Trust that was to be set up pursuant to the contract and that was to contain property that came from the decedents.

Interested person standing under Probate Code section 48 was recently examined by the court in *Hamlin v. Jendayi* (2024) 105 Cal.App.5th 1064. It stated:

> "We begin with the general observation that standing for purposes of the Probate Code is a fluid concept dependent on the nature of the proceeding before the trial court and the parties' relationship to the proceeding, as well as to the trust (or estate). In general, to have standing, a party must be beneficially interested in the controversy, and have "some special interest to be served or some particular right to be preserved or protected. This interest must be concrete and actual, and must not be conjectural or hypothetical. Interested persons have legal standing to contest the provisions of a trust. The Probate Code defines " 'interested person' " broadly as including an "[a]n heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding" (§ 48, subd. (a)), and its meaning "may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding" (*id.*, subd. (b)). In turn, an "heir" includes "any person ... who is entitled to take property of the decedent by intestate succession under this code." (§ 44.) Consequently, the probate court "has flexibility in determining whether to permit a party to participate as an interested party" and may give standing to " 'anyone having an interest in an estate which may be affected by a probate proceeding."
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> (*Hamlin v. Jendayi*, *supra,* at 1074 [cleaned up].)

The court ultimately held that respondents were beneficially interested in the controversy before the court. As potential intestate heirs of decedent, respondents had an actual and concrete interest in decedent's estate and in invalidating the Trust that purported to disinherit them. Thus, the probate court had broad flexibility to permit respondents to maintain this trust contest in light of their relationship to decedent and the trust estate. (*Hamlin v. Jendayi*, *supra,* at 1075.)

The court finds that plaintiffs have satisfactorily alleged their standing under Probate Code section 48 as interested persons.

The demurrer to this cause of action is overruled.