PROPOSED TENTATIVE

The court detailed the parties, the factual and legal background of this lawsuit, and explained its analyses in its earlier order from July 3, 2024, in which the court sustained both defendants' demurrers, with leave to amend, and granted both motions to strike, also with leave to amend, except the court directed plaintiff to amalgamate the negligence and negligent infliction of emotion distress causes of action, as they were duplicative.

Plaintiffs filed a first amended complaint on July 25, 2024, advancing four causes of action – breach of contract (the first), negligence (the second), intentional infliction of emotional distress (the third), and breach of the implied covenant of good faith and fair dealing (the fourth). The second cause of action for negligence (which names both defendants as parties) is not at issue in the present matter and, thus, will not be discussed further. Defendant Magner Maloney Funeral Home (defendant Magner) demurs to the first (breach of contract), third (intentional infliction of emotional distress cause of action), and fourth (breach of the implied covenant of good faith and fair dealing) causes of action in its newest incantation. Under separate cover defendant Magner has filed a motion to strike, asking the court to strike all references to attorney's fees associated with the first cause of action and in the prayer for relief, all requests for punitive damages associated with the third cause of action (the only cause of action in which punitive damages are requested), and prejudgment interest associated with the first and fourth causes of action. Defendant T.L.C. Mortuary (defendant T.L.C.), in a separately filed demurrer, challenges the third cause of action for intentional infliction of emotional distress (defendant T.L.C. is not a named defendant in the first and fourth causes of action). Defendant T.L.C. has also filed under separate cover a motion to strike all requests for punitive damages associated with the third cause of action. Plaintiffs filed opposition to both sets of motions. Defendant T.L.C. filed replies to both the demurrer and motion to strike, while it appears defendant Magner has only filed a reply to the motion to strike. All submitted briefing has been reviewed.

The court will address defendant Magner's request for judicial notice, including a discussion of plaintiff's objection filed on September 24, 2024; it will then address the claims raised in both demurrers as to the first, third, and fourth causes of action, and then address defendants' claims advanced in both motions to strike. The court will conclude with a summary of its conclusions.

A) Judicial Notice Request by Defendant Magner and Plaintiff's Objection

Plaintiff filed an objection on September 24, 2024, to defendant Magner's "Reply Request for Judicial Notice." It appears, however, that defendant Magner only filed a reply to the motion to strike; it did not file a reply to the demurrer (at least there is no reply to the opposition demurrer in the court's electronic filing system), and there is no indication that defendant Magner filed judicial notice request with these documents. Defendant Magner did file a request for judicial notice on September 3, 2024, which was filed approximately a week after it filed its motion to strike and demurrer, and six days before the plaintiffs' opposition was filed on September 9, 2024. It is far better practice for a party to avoid such piecemeal filings; the judicial notice request should have been filed ***contemporaneously*** with the motion to strike and demurrer. Nevertheless, as the judicial notice request can be considered more appropriately

filed with the original motions, rather than any reply, and as plaintiff was afforded an opportunity to address the request in association with its opposition, the request does not offend traditional law and motion principles or practices.

As for the merits of defendant Magner's judicial notice request, defendant Magner asks the court to take judicial notice of the tentative order issued on July 3, 2024, the original complaint filed in this matter, and the first amended complaint at issue in this demurrer and motion to strike. The court does not need to take judicial notice of its ***own court records in order to review them for pretrial motion work***, although as plaintiff generally references the same documents in opposition, and does not actually object to their review by the court, the court grants the request.

B) Demurrers

1) Breach of Contract Cause of Action (Defendant Magner Only)

With regard to the original complaint, it was alleged that plaintiff Joseph Raventos signed the contract with defendant Magner, meaning Mr. Raventos was the only plaintiff signatory to the funeral contract. Nevertheless, all other named plaintiffs, who were ***nonsignatories*** to the contract, were also advancing the breach of contract cause of action. The court sustained the demurrer with leave to amend because plaintiffs had failed to allege any bases upon which a nonsignatory could sue for breach of contract, such as a third party beneficiary, a theory that necessitates a pleaded factual basis in the operative complaint.

Plaintiffs make new allegations in the first amended complaint in an attempt to remedy the pleading deficiencies. They claim that while Joseph Raventos entered into a contract with defendant, "the remaining Plaintiffs were third party beneficiaries of the contract for services, and were and are now within the class of persons for whom the contract was expressly made. The contract was made for the benefit of all Plaintiffs as the surviving family of the decedent. All the relevant circumstances under which the contract was made indicate there an intent to confer a benefit on the non-contracting family members. A single bereaved family member such as Joseph Raventos, contracted for mortuary and funeral services on behalf of the family, and not just himself." (¶ 24.) Plaintiffs then allege that the motivating purpose and reasonable expectation of the contracting parties was to benefit the family, all Plaintiffs herein, and not just the signatory, Joseph Raventos.

In *Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817 our high court set forth three pleading prerequisites that apply when advancing a third party beneficiary theory: (1) the third party would in fact benefit from the contract; (2) a motivating purpose of the contracting parties was to provide a benefit to the third party; and (3) permitting a 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. (*Id.* at p. 830.) As to the second element, "the contracting parties must have a motivating purpose to benefit the third party, and not simply knowledge that a benefit to the third party may follow from the contract." (*Ibid.*) The third element "calls for a judgment regarding the potential effect that permitting third party enforcement would have on the parties' contracting goals, rather than a determination whether

the parties actually anticipated third party enforcement at the time the contract was entered into." (*Id.* at p. 831; *Rivera v. Superior Court of Ventura County* (B334522, Sept. 23, 2024) ___Cal.App.5th ___ [typ. opn. at p. 6 (reciting rules in *Goonewardene*)]; see also *Levy v. Only Cremations for Pets, Inc.* (2020) 57 Cal.App.5th 203, 211–212.) "Because third party beneficiary status is a matter of contract interpretation, a person seeking to enforce a contract as a third party beneficiary ' "must plead a contract which was made expressly for his [or her] benefit and one in which it clearly appears that he [or she] was a beneficiary." ' [Citation.] [¶] ' " '[E]xpressly[,]' [as used in [Civil Code section 1559] and case law,] means 'in an express manner; in direct or unmistakable terms; explicitly; definitely; directly.' " [Citations.] "[A]n intent to make the obligation inure to the benefit of the third party must have been clearly manifested by the contracting parties." ' [Citation.] Although this means persons only incidentally or remotely benefited by the contract are not entitled to enforce it, it does not mean both of the contracting parties must intend to benefit the third party: Rather, it means the promisor . . . 'must have understood that the promisee . . . had such intent. [Citations.] No specific manifestation by the promisor of an intent to benefit the third person is required.' " (*Schauer v. Mandarin Gems of Cal., Inc.* (2005) 125 Cal.App.4th 949, 957-958.)

Defendant Magner in its demurrer acknowledges these rules, but contends plaintiffs have not and cannot plead the second element – that the parties had a motivating purpose to benefit the nonsignatory parties, because "the contract does not manifest an intent to benefit the nonsignatories . . . ." (Demurrer, p. 8.) Our high court in *Goonewardene* concluded that in making this determination a court must carefully examine "the express provisions of the contract at issue, as well as all of the relevant circumstances under which the contract was agreed to, in order to determine not only (1) whether the third part would in fact benefit from the contract, but also (2) whether a motivating purpose of the contracting parties was to provide a benefit to the third party, and (3) whether permitting a 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." (6 Cal.5th at p. 830; see also *City of Oakland v. Oakland Raiders* (2022) 83 Cal.App.5th 458, 472 [in applying the test for third party beneficiary, the court may look to "the express provisions of the contract at issue, as well as all of the relevant circumstances under which the contract was agreed to"].) In *Goonewardene,* the complaint did not quote from or even attach the contract at issue. (*Goonewardene, supra,* 6 Cal.5th at p. 832.) The Supreme Court further held in *Goonewardene* that the complaint's "general allegation . . . that the contract was for the benefit of [the plaintiffs] as well as" the contracting parties was 'too vague and conclusory to support the proposition that the parties to the [relevant] contract expressly ***or impliedly authorized*** [the plaintiffs] to maintain a breach of contract action" as third party beneficiaries. (*Id.* at p. 833, emphasis added.)

Plaintiffs here do not quote the relevant language from the contract in the first amended pleading. Thus, as was true in *Goonewardene*, the unadorned, vague, and conclusory allegations contained in paragraph 24 of the operative pleading, as detailed above, are by themselves insufficient to establish a motivating purpose. In order for these conclusory allegations to

withstand demurrer, therefore, the court must be able to determine whether the terms of the contract can support plaintiffs' contentions, at least impliedly, also taking into account the general circumstances in which the contract was made. "Ascertaining whether there was intent to confer a benefit on plaintiff as a third party beneficiary is a question of ordinary contract interpretation." (*The H.N. & Frances C. Berger Foundation v. Perez* (2013) 218 Cal.App.4th 37, 44.) "In reviewing the trial court's ruling on defendants' demurrers, this court is limited to evaluating whether the [contracts] are susceptible to plaintiff's interpretation [as to whether plaintiff was a third party beneficiary], based on the pleaded facts and the documents attached to the operative complaint." (*Id.* at p. 45.)

Here, unlike in *Goonewardene*, the court ***can*** examine the contract, as it is attached to the operative pleading. Taking into account all reasonable circumstances in which the contract was made; following the rule that the pleading must be "liberally construed, with a view to substantial justice between the parties" as the demurrer stage (*J.M. v. Illuminate Education, Inc.* (2024) 103 Cal.App.5th 1125, ___ [323 Cal.Rptr.3d 605, 609]; and given the general rule on demurrer that ambiguous provisions of a contract are to be interpreted in favor of plaintiff; the court concludes that plaintiff has adequately pleaded that the contracting parties had a motivating purpose to benefit plaintiffs as third party, allowing them to sue as third party beneficiaries, for the following reasons.

First, the nature of the contract in *Goonewardene* is distinguishable from the nature of the contract here. In *Goonewardene*, our high court observed that employers, when hiring payroll companies, do not have a motivating purpose to provide a benefit to employees. "[T]he relevant motivating purpose is to *provide a benefit to the employer*, with regard to the cost and efficiency of the tasks performed and the avoidance of potential penalties. Although the employer intends that the payroll company will accurately calculate the wages owed to its employees under the applicable labor statutes and wage orders. . . , the employer would *reasonably expect* the payroll company to proceed with the employer's interest in mind. In short, the relevant motivating purpose of the contract is simply 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*, 6 Cal.5th 817 at p. 835, italics added; see *Mahram v. Kroger Co.* (2024) 104 Cal.App.5th 303.)

The funeral contract at issue here is different. It is not unreasonable to conclude that under the circumstances members of decedent's family are similarly situated to the signatory Joseph Raventos (decedent's children and grandchildren, say), as they clearly and obviously have the same central concerns arising from the contractual relationship as does the signatory, even though they, as nonsignatories, were not expressly mentioned therein. (*Garcia v. Truck Ins. Exchange* (1984) 36 Cal.3d 426, 437 [considering evidence of the circumstances and negotiations of the parties to a contract to determine whether the parties intended the plaintiff to benefit from the contract]; *Neverkovec v. Fredericks* (1999) 74 Cal.App.4th 337, 349; [same]; see also C*ity of Oakland v. Oakland Raiders* (2022) 83 Cal.App.5th 458, 472.) In fact, case law

clearly recognizes that contracts involving funeral and burial services do not only involve just the signatory; such contracts are intended to benefit at least nonsignatory nuclear family members. (*Wilson v. Houston Funeral Home* (1996) 42 Cal.4th 1124, 1133 [there is implied in every contract for funeral services a covenant the services will be conducted with dignity and respect towards the family members].) Our high court's observations are particularly apt in the current setting: "It is apparent that the identity of the individual who actually contracts for mortuary or crematory services or holds the statutory right to dispose of the remains of a decedent is ***incidental, and is not a reliable indicator of the family members who may suffer the greatest emotional distress if the decedent's remains are mishandled***." (*Christenson v. Superior Court* (1991) 54 Cal.3d 868, 867, emphasis added.) Indeed, "one of several children of the decedent may arrange for services on behalf of all siblings, as well as surviving spouse or parent decedent. . . ." (*Ibid.*) Defendant's myopic focus on the signatory stands in stark contrast to these more panoramic judicial observations.

Further, *Goonewardene* does not require a plaintiff to demonstrate the "overriding motivation" of a contract was to benefit the plaintiff; instead, the plaintiff need only show (or for our purposes allege) "**a** motivating purpose" was to provide a benefit to the plaintiff. (*City of Oakland, supra*, 83 Cal.App.5th at p. 474.) Here, the contractual terms (detailing the services provided), as contained in the contract attached to the operative pleading, arguably support plaintiffs' claim that the contractual parties had "***a*** motivating purpose" in benefitting the nonsignatory, close family members of decedent. The contract expressly contemplates certain services that were to be provided by defendant Magner to family members -- a "visitation," a "funeral or memorial service," an "evening funeral service," and most notably a "graveside service/witnessed burial." These services seemingly were expressly intended to benefit all family members, not just Joseph Raventos as the signatory, even though the nonsignatory plaintiffs were not mentioned. Again, if a contract is ambiguous -- and arguably it is here -- plaintiff's interpretation must be accepted as correct at least when testing the sufficiency of the complaint. (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 229.)

Finally, defendant's reliance on *Cohen v. Groman* (1964) 231 Cal.App.2d 1, disapproved on other grounds in *Christenson v. Superior Court, supra*, 54 Cal.3d at p. 889, is misplaced. In *Cohen*, the court observed as follows: "Damages may be assessed against a mortician for physical suffering and illness caused to a contracting party by mental anguish and shock resulting from breach of a contract to preserve and prepare a body for burial—on the theory that the contract relates to his comfort in the manner in which the body of the deceased is prepared and laid to rest. [Citation.] However, if the gravamen of the within action is based on a contractual duty to properly conduct the funeral service of Sylvia Herman, that duty does not extend to these appellants. ***There is no allegation in the complaint that either appellant had any contract with defendants for the preparation for burial and burial of the remains of their sister, nor does the pleading allege any facts from which such contractual relation with defendants could be inferred. Thus, on the basis of contract there appears to have been no***

duty owed by defendants to these appellants. That a contractual duty to another plaintiff was recognized under the complaint is apparent from the ruling of the trial court which permitted the action of Israel Cohen (a brother of Sylvia Herman), who contracted with defendants to pay her funeral expenses, to stand; defendants' motion for judgment on the pleadings as to him was denied." (*Id.* at pp. 3-4, emphasis added.) *Cohen* was not confronted with and thus did not address the allegations that would be necessary to articulate a breach of contract under a third party beneficiary theory.[1] A case is not authority for a proposition not considered therein or an issue not presented by its own particular facts. (*McConnell v. Advantest America, Inc.* (2023) 92 Cal.App.5th 596, 611.)

In the end, the allegations in the first amended complaint by themselves may be conclusory. However, when the court takes into consideration the circumstances of the contract generally, accounts for its nature and purpose (and notably the case law discussions of funeral contracts in general), and given the ambiguous nature of the terms of the contract at issue, all underscored by a heavy dose of liberality in favor plaintiffs, it concludes that plaintiffs have stated a third party beneficiary theory to support a breach of contract cause of action (at least sufficient to withstand demurrer). Nothing here, of course, suggests that defendant cannot raise the issue at summary judgment/adjudication. But for pleading purposes, the complaint is sufficient.

The court overrules defendant Magner's demurrer to the first cause of action for breach of contract.

2) *Third Cause of Action - Intentional Infliction of Emotional Distress (Both Defendants Magner and T.L.C.)*

The court sustained both demurrers to this cause of action in the initial complaint for two reasons – plaintiff initially failed to allege severe emotional distress and, additionally, failed to allege facts to suggest the activity at issue was outrageous – that is, so extreme as to exceed all bounds of that tolerated in a civilized society. Plaintiffs in the first amended complaint allege sufficient facts to support extreme emotional distress suffered by each named plaintiff, and defendants do not claim otherwise. Both defendants, however, contend that the plaintiff has again failed to allege conduct that was sufficiently "outrageous" – beyond that tolerated by a civilized society.

It is important to give context to defendants' challenges. The court spent some time in its original order explaining why it sustained the demurrer as to this cause of action. It observed

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[1] Defendant Magner compounds the problem by contending that *Cohen* stands for some talismanic, almost Procrustean proposition "that non-parties did not have a right to sue a mortuary for breach of contract. [Fn. Omitted.]" Based on the highlighted language in the body of this order, however, that was ***not*** *Cohen*'s holding (and it certainly did not have a bright-line application to all situations). Plaintiff in *Cohen*, unlike the plaintiffs here, simply failed to allege a theory upon which a third party, nonsignatory could sue – nothing more and nothing less.

that the only "outrageous" conduct plaintiffs alleged was defendants' delay in failing to deliver decedent's remains to Santa Maria on the day of the services, necessitating the cancellation and continuation of the services for a week. The court noted that this behavior was not similar to that alleged in *Christenson, supra*, 54 Cal.3d at page 879. It observed that the alleged transgressions in *Christenson* involved commingling of human remains, removal and harvesting of organs and body parts, cremations in a "pottery kiln" and in a disrespectful manner (i.e., combining 10 to 15 bodies together), taking and selling gold and other metals from relatives' remains, along with similar transgressions. This court, with this background, concluded that delay alone as pleaded was insufficient to constitute outrageous misconduct, for to allow such conduct by itself to act as a predicate for intentional infliction of emotional distress would in the end conflate this cause of action with a cause of action for negligent infliction of emotional distress, something our high court in *Christenson* has expressly condemned. The court views plaintiffs' new allegations through this same prism.

Plaintiffs again plead delay. This time, however, they supplement the delay allegations with the following. The burial service was scheduled for Saturday, October 7, 2023, at 1:00 p.m.; after Joseph Raventos arrived at the cemetery on this date, he realized that decedent's remains were not at the gravesite or at the crematory. Mr. Raventos called defendant Magner "multiple times from approximately 12 noon to 1:00 p.m. to inquire about the whereabouts of his deceased mother. At that time, he was completely unaware that his mother had not been picked up for transport and was still at Magner Maloney Funeral Home." It is alleged that during the first call, the mortuary representative "had no information and could not provide a response as to the whereabouts of the decedent." Mr. Raventos wished to speak with the managing funeral director, Mr. Benjamin Pirkl, but he "was in a meeting or on a call and would call him back." During a second phone call Mr. Raventos was told that "Mr. Pirkl was still busy." Mr. Raventos called a third time, informing the person who answered that the matter was urgent, and that he "needed Mr. Pirkl to call him back immediately." Mr. Pirkl "finally" did call back "and admitted the decedent was still at Magner Maloney" (in Santa Maria, not Culver City, meaning the remains had been transported from Southern California but not to the gravesite). According to the complaint, Mr. Pirkl "did not apologize," and then "causally stated the service should be rescheduled in 3-4 hours and said it's no big deal, suggesting the family go to a restaurant and then come back. Mr. Raventos did not agree, particularly since the cemetery did not allow burial services after 1:30 p.m. on Saturdays. . . . Mr. Pirkl said he would talk to the cemetery and call Mr. Raventos back but he never did." The cemetery representative "came to the gravesite [at] approximately 2 p.m.,[,] indicating they had spoken to the mortuary and let them know the service would be rescheduled. There are no burial services allowed after 1:30 p.m., and no burial services at all on Sunday. The cemetery agreed to have someone stay after closing time to accept decedent when she arrived. Joseph Raventos received a text from the cemetery indicating his mother was received sometime after 5:15 p.m., along with a photo of her casket as confirmation. The claim by Defendant Magner that a later service was arranged or confirmed for the same day

is false. . . ." The burial service occurred the following Saturday. (¶¶ 50 to 52 of First Amended Pleading.)

"A cause of action for intentional infliction of emotional distress exists when there is (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1609 [cleaned up]; *Moncada v. West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768, 780.)

In the court's view, plaintiff's allegations are insufficient as a matter of law to establish outrageous conduct sufficient to support an intentional infliction of emotional distress cause of action. In order for conduct to be considered outrageous for purpose of tort liability, it "must be so extreme as to exceed all bounds of that usually tolerated in a civilized society." (*Trerice v. Blue Cross of California* (1989) 209 Cal.App.3d 878, 883.) "Generally, conduct will be found to be actionable where the 'recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!" ' " (*KOVR–TV, Inc. v. Superior Court* (1995) 31 Cal.App.4th 1023, 1028.) The fact that conduct might be termed outrageous is not itself sufficient. "The tort calls for intentional, or at least reckless conduct—conduct intended to inflict injury or engaged in with the realization that injury will result." (*Davidson, supra,* 32 Cal.3d at p. 210.) The conduct must be of a nature that is especially calculated to cause mental distress of a very serious kind. (*Ochoa v. Superior Court* (1985) 39 Cal.3d 159, 165, fn. 5.) While these issues are generally ones for the trier of fact to decide, the court must determine in the first instance whether defendants' conduct is so extreme and outrageous to result in recovery. (*Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1265 [it is for the court to determine in the first instance whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery].)

Here, plaintiff relies on the exact same conduct that supports ***negligent*** infliction of emotional distress emotional distress damages, such as delay in transporting decedent's remains, failure to conduct the services with due care and respect, and failure to perform funeral services in a professional manner. As indicated in the previous order, this was not enough. Further, it is unsurprising that under the circumstances defendants were initially unaware of the location of the remains at the time of Mr. Raventos' telephone calls. Negligence? Potentially. Outrageous conduct? No. In the end, if this tort cause of action is to survive demurrer, it must be based on the specific actions and comments allegedly made by Mr. Pirkl, to which a trier could find were beyond the pale of a civilized society. It is alleged that Mr. Pirkl admitted that Magner made a mistake about the decedent's remains, and that decedent was still at the Santa Maria mortuary. Yet he "did not apologize," "casually stated the service could be rescheduled in 3-4 hours," stated "it's no big deal," and "suggested the family go to a restaurant and then come back";

finally, he "never " called Mr. Raventos back. Mr. Pirkl apparently did speak to the cemetery, and the cemetery only agreed to have some stay after hours to accept decedent's remains, but the gravesite memorial service would have to cancelled and continued. Mr. Raventos received a text indicating that cemetery received the remains sometime after 5:15. Contrary to defendants' claims, the burial service was not scheduled for later that Saturday; it was continued to held the following Saturday.

Is this troubling conduct? No doubt. But it is not outrageous misconduct, and no reasonable person could find it to be under the relevant standards articulated by California courts. Our high court has expressly indicated that intentional infliction of emotional distress "does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities," citing Restatement Second of Torts. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051.) The court has no doubt that the situation presented was distressing to plaintiffs; further, Mr. Pirkl's alleged misconduct was insensitive, rude, disrespectful, and most definitely unprofessional. Yet even when viewed in the context of a highly emotional situation, Mr. Pirkl's comments and actions fall short of the conduct that must be so "outrageous" to exceed all that is tolerated in a civilized community. Unprofessional and insensitive behavior with accompanying words constitutes a very bad business model – but are insufficient to constitute outrageousness. "[O]rdinary rude or insulting behavior is not enough . . . . ' [Citation.]" (*McCoy v. Pacific Maritime Assn.* (2013) 216 Cal.App.4th 283, 295.) " '[T]he requirements [for establishing actionable conduct] are rigorous, and difficult to satisfy . . . . " [Citations.] [¶] On the spectrum of offensive conduct, outrageous conduct is that which is the most extremely offensive.' " (*Okorie v. Los Angeles Unified School Dist.* (2017) 14 Cal.App.5th 574, 597; see *Yurick v. Superior Court* (1989) 209 Cal.App.3d 1116, 1129.) Plaintiffs allegations fall short of this standard,

A number of additional factors support this conclusion. First, as observed in the court's first ruling, these allegations are a far cry from those alleged in *Christenson*. Plaintiffs counter that they do not have to allege the same conduct at issue in *Christenson*. That may be true, but plaintiffs still have to allege outrageous conduct, and they have not. Second, plaintiffs claim that no reasonable person should be expected to endure the situation where the body of their loved one is not delivered to the burial service, and initially where no one knows where the body actually is located. (Opp. at p. 9.) Again, this may be true, and the allegations are sufficient to support a claim for negligent infliction of emotional distress – which was clearly pleaded. But plaintiffs argument (as before) conflates intentional infliction of emotional distress with negligent infliction of emotional distress – yet the two torts are "entirely different." (*Christenson, supra*, 54 Cal.3d at p. 904.)

Third, plaintiffs' opposition offers little case law to support their claim that the conduct here is sufficient to constitute outrageous conduct sufficient to overcome demurrer. Plaintiffs cite to *Allen v. Jones* (1980) 104 Cal.App.3d 208, but a close review of that case supports, rather than undermines, the court's conclusions here. In *Allen*, plaintiff sued defendants (a mortuary)

after defendants lost the cremated remains of plaintiff's brother in transit to Illinois. Plaintiff sued on theories of negligence, intentional infliction of emotional distress, and deceit. The trial court sustained the demurrer without leave to amend. The appellate court reversed as to the first cause of action for negligent performance of the contract, but affirmed as to the intentional infliction of emotional distress cause of action. As relevant for our purposes, the *Allen* court concluded with regard to the intentional infliction of emotional distress cause of action: ". . . We have carefully examined plaintiff's allegations of deceit and outrageous conduct and find them to be too vague and conclusory; it is evident that the true basis of plaintiff's action is negligent breach of an agreement. Although the court below did not allude to this problem in sustaining the demurrer, the ruling must be affirmed on appeal if any of the grounds stated in the demurrer is well taken." (*Id.* at p. 215.) The observations in *Allen* appear particularly apt in the present context – for the true basis of plaintiffs' actions in this matter rest on negligence, as was true in *Allen*, and the naked allegations associated with outrageous misconduct (as was true in *Allen*) are insufficient to support an intentional infliction of emotional distress cause of action, and thus cannot survive demurrer.

Fourth, the Restatement Second of Torts, section 46, subdivision (f), provides that the "extreme and outrageous character of the conduct may arise from the actor's knowledge that the other is peculiarly susceptible to emotional distress, by reason of some physical or mental condition or peculiarity. The conduct may become heartless, flagrant, and outrageous when the actor proceeds in the face of such knowledge, where it would not be so if he did not know. ***It must be emphasized again, however, that major outrage is essential to the tort; and the mere fact that the actor knows that the other will regard the conduct as insulting, or will have his feelings hurt, is not enough***." The conduct alleged here seems no more than that implicated by the highlighted language—it is insulting and gives rise to hurt feelings, nothing more.

Finally, and not insignificantly, the allegations here are similarly situated to the allegations offered in *Hughes v. Pair, supra*, 47 Cal.4th 1035. In *Hughes,* plaintiff sued a trustee, alleging that he made sexually explicit, offensive, and threatening comments, in effect, demanding sex if she wanted her request for funds from the trust to be granted. During conversations with plaintiff, defendant called plaintiff "sweetie," "honey," said he thought of "her in a special way," said "call me when you are ready to give me what I want," said "I'll get you on your knees eventually, I'm going to fuck you one way or another." Our high court concluded that these allegations were insufficient to support a claim of outrageous misconduct. "Viewed in the context of plaintiff's legal battles, over a five-year span, with defendant and two other trustees regarding their allocation of the trust funds, defendant's inappropriate comments fall far short of the conduct that is so 'outrageous' that it ' ' ' exceeds all bounds of that usually tolerated in a civilized society.' ' " (*Id.* at p. 1051.) The inappropriate words allegedly used by

Mr. Pirkl, taken in context, seem akin to the words at issue in *Hughes*. The same result therefore should follow.[2]

For these reasons, the court sustains both demurrers without leave to amend, as there is no reasonable possibility the defect can be cured by amendment; plaintiffs have not shown in opposition that they can allege outrageous conduct.

3) Fourth Cause of Action – Breach of the Implied Covenant o Good Faith and Fair Dealing (Defendant Magner Only)

As relevant for our purposes, the court sustained defendant Magner's demurrer to this cause of action in the original complaint because plaintiffs had failed to establish a breach of contract cause of action. A claim for breach of the implied covenant of good faith and fair dealing requires the existence of a contract, whether express or implied. (See *Racine & Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1031-1032 ["The implied covenant of good faith and fair dealing rests upon the existence of some specific contractual obligation. [¶] ... [¶] [T]here is no obligation to deal fairly or in good faith absent an existing contract"]; see also A*lameda Health System v. Alameda County Employees' Retirement Assn.* (2024) 100 Cal.App.5th 1159, 1190 [same].)

Plaintiffs allege in the first amended complaint that this cause of action is predicated on the September 4, 2023, contract, in which defendants were required to perform "certain services including "funeral arrangements, embalming, burial services . . . and timely transport of decedent to the cemetery." Plaintiffs are informed and believe "that there is implied in every contract for funeral services a covenant that the services will be conducted with dignity and respect . . . . Those services are not limited to conduct of the funeral, but extent through arranging the commitment of the remains through burial. . . ." Defendants breached the implied covenant by failing to transport decedents remains to the cemetery at the designated time and place.

The rules for pleading a breach of the implied covenant of good faith and fair dealing are settled. "Every contract imposes on each party a duty of good faith and fair dealing in each performance and in its enforcement.' [Citations.] Simply stated, the burden imposed is ' "that neither party will do anything which will injure the right of the other to receive the benefits of the agreement." ' [Citation.] Or, to put it another way, the 'implied covenant imposes upon each party the obligation to do everything that the contract presupposes they will do to accomplish its purpose.' [Citation.] This rule was developed 'in the contract arena and is aimed at making effective the agreement's promises.' [Citation.] The 'precise nature and extent of the duty imposed ... will depend on the contractual purposes.' [Citation.]" (*Careau & Co. v. Security*

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[2] The allegations at issue, by contrast, seem different from those at issue in *Crouch v. Trinity Christian Center of Santa Ana, Inc*., (2019) 39 Cal.App.5th 995, in which defendants flew "into a tirade at a 13-year old girl who had been drugged and raped and yelling at her that she was stupid and it was her fault is extreme and outrageous conduct that exceeds the bounds of decency tolerated in civilized community." (*Id.* at p. 1008.)

Pacific Business Credit, Inc. (1990) 222 Cal.App.3d 1371, 1393; *Carson v. Mercury Ins. Co.* (2012) 210 Cal.App.4th 409, 429; see CACI No. 325 [elements of claim].) The plaintiff must allege "a reasonable relationship between the defendant's allegedly wrongful conduct and the express terms or underlying purposes of the contract." (*Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 528, disapproved on another ground in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 939, fn. 13.) "The implied covenant cannot, however, 'impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement.' " (*Hewlett-Packard Co. v. Oracle Corp.* (2021) 65 Cal.App.5th 506, 554.) An implied covenant claim that "seeks simply to invoke" the express terms of the parties' contract "is superfluous." (*Guz v. Bechtel National, Inc.*(2000) 24 Cal.4th 317, 352.)

The court initially rejects defendant Magner's claim that the nonsignatory plaintiffs cannot state a cause of action for contractual breach of the implied covenant of good faith and fair dealing. As discussed above, plaintiffs have properly pleaded a third party beneficiary theory as to the breach of contract cause of action. Allegations of third party beneficiary standing also allow nonsignatory plaintiffs to advance a breach of the implied covenant of good faith and fair dealing cause of action, where such covenants are for their benefit. (See generally *Levy, supra,* 57 Cal.App.5th at p. 215 [assuming plaintiffs can adequately plead third party beneficiary status, causes of action for breach of contract, breach of bailment, and breach of the implied covenant of good faith and fair dealing can be stated, assuming the latter is not superfluous].)

The real issue is whether this cause of action is duplicative of the breach of contract cause of action ***as pleaded*** – and thus subject to a demurrer for being superfluous. "If the allegations do not go beyond the statement of a mere contract breach and, ***relying on the same alleged acts***, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as *no additional claim is actually stated.*" (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, emphasis added; see also *Levy, supra,* 57 Cal.App.5th at p. 215.) The breach of contract cause of action is predicated on defendant's contractual obligation to provide a casket, and to perform certain services, including funeral arrangements, embalming, burial services to be held at Holy Cross Cemetery in Culver City (LA County), California, and timely transport of decedent to the cemetery," as detailed in Exhibit A to the first amended complaint. Plaintiff alleges that defendant Magner did not perform because it failed to transport and deliver decedent in a timely manner to the cemetery for a burial service. As alleged in the breach of contract cause of action: "***Said breach prevented plaintiff[s] from having a dignified and proper burial service for the decedent*** on the date and time scheduled." (¶ 26, emphasis added.) The fourth cause of action for breach of the implied covenant of good faith and fair dealing as pleaded is predicated on the "covenant that services will be conducted ***with dignity and respect toward family members*** for whose benefit the services are performed. These services are not limited to the conduct of the

funeral rites, but extend through arranging the committing of the remans through burial." (¶ 61, emphasis added.) Plaintiffs allege that defendant breached of the implied covenant of dignity and respect toward plaintiffs as family members.

It seems that these causes of action are duplicative of one another, at least as pleaded. The breach of contract cause of action is predicated on the fact the breach "prevented" plaintiffs from "having a dignified and proper burial service for the decedent." That is, they (plaintiffs) suffered breach of contract damages stemming from defendants' failure to provide a dignified and proper burial service for the decedent. The breach of the implied covenant of good faith and fair dealing cause of action is predicated on the failure to provide a proper service with dignity and respect towards the family members (i.e., the same third party beneficiary family members who are suing for breach of the contract for failing to give a dignified and proper burial to decedent). While the language utilized in the two causes of action seems slightly different, the essence of both is the same – ***breach of the dignity and respect*** toward the named plaintiffs (whether beneficiaries of the contract or family members). In this regard, therefore, the theories are not alternatives, but duplicative, a point underscored by the fact plaintiffs ask for the same types of damages in both causes of action.

The court is not persuaded by plaintiffs' reliance on language from *Christensen v. Superior Court, supra,* 54 Cal.3d 868 and *Wilson, supra,* 42 Cal.App.4th 1124. True, *Christensen* and *Wilson* concluded that "implied in every contract for funeral services [is] a covenant the services will be conducted with dignity and respect toward family members for whose benefit the services are performed." But the two courts made these statements in the context of establishing a tort duty of care to family members for purposes of a negligence cause of action (or more appropriately termed as a negligent infliction of emotional distress cause of action). At no point in either opinion did the court address the relationship between breach of contract and breach of the implied covenant of good faith and fair dealing, and whether a breach of the implied covenant of good faith can or did coexist with a breach of contract theory. In fact, in *Wilson,* the appellate court expressly observed that while the bereaved family members reasonably expect dignity, tranquility and personal consolation in the handling of funeral services "they rarely, if ever, express these expectations in a written contract. As a rule, those contracting for a mortuary's services lack the time and the frame of mind to enter into negotiations over a written contract." (*Wilson, supra,* 42 Cal.App.4th at p. 1133.) Here, as pleaded, plaintiff predicates the breach of contract cause of action on the very same dignity and respect interest that is at issue in the breach of the implied covenant of good faith and fair dealing cause of action. As pleaded, therefore, the two causes of action are duplicative, and thus, superfluous; the court will therefore sustain the demurrer to the fourth cause of action.

The court will nevertheless allow plaintiff one further opportunity to correct the duplicative nature of these causes of action as pleaded.

C) Motions to Strike

Both defendants have filed motions to strike, filed under separate cover. Defendant Magner's motion is more comprehensive, asking the court 1) to strike attorney's fees associated with the first cause of action – claiming claimed attorney fees pursuant to Health and Safety Code section 7100, 7103, and 7109 are inappropriate; 2) to strike punitive damages associated with the third cause of action as they are inadequately pleaded; and 3) to strike plaintiff's request for prejudgment interest associated with the first and fourth causes of action. Defendant T.L.C.'s motion to strike raises one issue –the court should strike punitive damages from the third cause of action because it is inadequately pleaded as to it.

1) Challenges to Prejudgment Interest (Defendant Magner) and to Punitive Damages (Defendants Magner and T.L.C.)

The court originally granted defendant Magner's motion to strike all requests for prejudgment interest associated with the three tort causes of action then pleaded, but overruled the motion to strike prejudgment interest associated with the two contract cause of action (breach of contract and breach of implied covenant of good faith and fair dealing). Plaintiff in the first amended complaint asks for prejudgment interest only as to the latter two causes of action. In its earlier order, the court took a global approach to plaintiffs' request, observing that the statute governing prejudgment interest (Civ. Code, § 3287, subd. (a)) allows prejudgment interest where the amount due to plaintiff is fixed by the terms of the contract. (*State of California v. Continental Ins. Co*. (2018) 15 Cal.App.5th 1017, 1038.) Defendant Magner renews its challenges, claiming that some of the damages requested as to the two contract causes of action are uncertain (e.g., such as those involving emotional distress), although it acknowledges that plaintiffs also request compensatory damages as detailed in the contract, which could fall within the ambit of Civil Code section 3287, subdivision (a). Defendant Magner cites *Wisper Corp. v. California Commerce Bank* (1996) 49 Cal.4th 948, and *Cassinos v. Union Oil Co.* (1993) 14 Cal.App.4th 1770 in support if its challenge, and argues that "as discussed in [these two cases], under the allegations in the Complaint, it is impossible for Defendant 'to actually know the amount owed or from reasonably available information could the defendant have computed the amount . . . .' " According to defendant Magner, the requests for prejudgment interest should be stricken because plaintiffs have failed to allege sufficient facts in support.

Neither *Wisper* nor *Cassinos* involved a motion to strike at the pleading stage, or even discussed what pleading requirements (if any) exist for prejudgment interest. *Wisper* involved an appeal following a final judgment, with the appellate court ultimately concluding that the trial court correctly denied the request for prejudgment interest because the damages were not capable or certain of being ascertained. (*Wisper, supra*, 49 Cal.App.4th at p. 962.) *Cassinos* was also an appeal from a final judgment, and on appeal, the appellate court simply ordered the trial court to

calculate prejudgment interest pursuant to Civil Code section 3287, subdivision (a), as the amounts could be calculated at time of filing of the complaint. (*Cassinos, supra,* 14 Cal.App.4th at p. 1770.) *Wisper* and *Cassinos* are silent about the pleading requirements for purposes of seeking prejudgment interest. But such case law exists, although overlooked by defendant Magner. No special procedure for securing an award of prejudgment interest is mandated at the pleading stage. That is, no "specific request for prejudgment interest need be included in the complaint; a prayer seeking 'such other and further relief as may be proper' is sufficient for the court to invoke its power to award prejudgment interest." (*North Oakland Medical Clinic v. Rogers* (1998) 65 Cal.App.4th 824, 829 (*North Oakland*); see *Glassman v. Safeco Ins. Co. of America* (2023) 90 Cal.App.5th 1281, 1303, fn. 11 [citing *North Oakland* favorably for the same proposition].)

The court interprets plaintiffs' requests for prejudgment interest in both the first and fourth causes of action, as well as in the prayer for relief, not with the code pleading precision urged by defendant, but in line with standards enunciated in *North Oakland* and progeny – the requests need only be sufficient to invoke the equitable power of the court to award prejudgment interest ***if the plaintiff can meet the requirements of Civil Code section 3287, subdivision (a) at trial or thereafter.*** The allegations are sufficient to meet this standard. As it is possible that some aspects of the contractual damages may be ascertainable from the time the complaint is filed, implicating Code of Civil Procedure section 3287, subdivision (a), while other damages are not so amenable, the court sees no reason to strike the request under the authority of *North Oakland*.

Nothing offered in defendant Magner's reply alters this conclusion. It insists that plaintiffs must plead a factual basis in order to secure prejudgment interest per Civil Code section 3287, subdivision (a) at trial. (See Reply at p. 3 [the "FAC is completely devoid of allegations regarding to the loss of economic damages"].) But that is not the standard, as made evident under *North Oakland* and progeny. Defendant Magner's continued reliance on *Wisper* continues to be misplaced (at least for pleading purposes). This should put an end to the matter.

The court denies Magner's motion to strike the requests for prejudgment interest as to the first and fourth cause of action under the authority of *North Oakland* and progeny.

The court also finds it unnecessary to rule on either defendants' request to strike plaintiffs' requests for punitive damages, in light of the court's decision to sustain the demurrer without leave to amend as to the intentional infliction of emotional distress cause of action, which is the only cause of action involving punitive damages.

i) Attorney's Fees As Part of First Cause of Action/Prayer for Relief

This leaves defendant Magner's request to strike all requests for attorney's fees associated with the first cause of action for breach of contract, including the prayer for relief. In their first cause of action, starting with paragraph 27 and concluding with paragraph 30, plaintiffs claim that in association with the breach of contract, plaintiffs violated Health and Safety Code sections 7100(e) – by failing to perform funeral services in a responsible manner; 7103 – by failing to faithfully and promptly perform internment; and (notably) 7109 – thereby allowing plaintiffs to recover costs and reasonable attorney fees against defendants in conjunction with their breach of contract. Item 5 of the prayer for relief asks for "attorney fees and costs as allowed by law and according to proof." Plaintiffs thus are asking as costs (not as damages) statutory attorney's fees (and costs) as associated with the breach of contract cause of action. According to defendant Magner, none of these statutory provisions is applicable under the circumstances, and therefore all references to attorney's fees should be stricken.

It is important at the outset to describe what the court concluded – and what it did not determine – in its initial order addressing these issues. The court observed in its first order that plaintiff offered "no support for the proposition that these statutory provisions provide them a statutory basis for attorney's fees against a mortuary or its agent for negligence . . . based on allegations in the operative pleading." This point was reinforced in defendants' replies, as noted in the order. But the court nevertheless allowed leave to amend because no one raised (let alone addressed) the ***possibility*** that Health and Safety Code section 7109 attorney fees (and emotional distress damages) were recoverable as a result of the breach of contract under the authority of *Saari v. Jongordon Corp*. (1992) 5 Cal.App.4th 797, 803-804, which had not been cited by any party. The court made it ***crystal clear*** in the order that all it was doing was allowing plaintiff to plead the theory under *Saari* as a possibility – it was not ruling on its actual applicability.[3]

In order to address the issue, it is important to explore the statutory language in each of the three cited statutory provisions. Health and Safety Code section 7100, subdivision (a), details an order of priority concerning the right to control the disposition of the remains of a deceased person, including the location and conditions of interment, and arrangements for funeral goods and services provided, and vests in (as relevant for our purposes) the agent that makes a specific agreement to pay the costs of disposition. Plaintiffs expressly rely on Health and Safety Code section 7100, subdivision (e), which provides that "this section shall be administered and construed to the end that the expressed instructions of the decedent or the person entitled to control the disposition shall be faithfully and promptly performed."

Health and Safety Code section 7102, subdivision (a) provides that every person, upon whom the duty of interment is imposed by law, who omits to perform that duty within a reasonable time, is guilty of misdemeanor.

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[3] In this regard defendant Manger's argument on page 6 of its motion is perplexing, for it asserts as follows: "With all due respect to this Court, [Magner] respectfully disagrees that *Saari* allows recovery of attorney fees pursuant to Health and Safety Code [section] 7109." The court made no such conclusion. The court simply invited the parties to brief the issue without making any ruling on *Saari*'s applicability.

And Health and Safety Code section 7109 provides that a "court shall allow costs and reasonable attorney's fees to a prevailing plaintiff against all defendants, other than the coroner."

Do these provisions allow plaintiffs to recover reasonable attorney's fees in association with the breach of contract cause of action, the only issue before the court? In *Saari, supra,* 5 Cal.App.4th 797, a jury found in favor of plaintiffs on their action for damages against defendants for breach of contract in failing to cremate the remains of one Robert Saari; the complaint also advanced a cause of action for negligence and intentional infliction of emotional distress. As relevant for our purposes, the appellate court rejected defendants' claim that plaintiff was not entitled to recover damages for emotional distress because he was not closely related to the decedent. It noted that the right to recover was not based on tort, but on the contractual relationship between plaintiff and defendant, which created a duty of care to plaintiff, and thus acted as the basis for the request for emotional distress damages. This was true even in light of *Christenson v. Superior Court, supra*, which addressed whether "persons other than statutory right holders or contracting parties could recover for emotional distress." (*Id*. at p. 803.) The *Saari* court found that *Christensen* did not preclude ***contracting parties*** from recovering for emotional distress (even when those contracting parties were not close family members). As it noted, "some contracts – including mortuary and crematorium contracts – so affect the vital concerns of the contracting parties that severe emotional distress is a foreseeable result of the breach," and the "right to recover damages for emotional distress for breach of the mortuary and crematorium contracts has been well established in California for many years. [Citations.]" (*Ibid.*)

The court agrees, after ***full briefing,*** that *Saari* offers no basis for attorney's fees under Health and Safety Code section 7109, in association with the breach of contract cause of action alleged here. *Saari* stands for the proposition that emotional distress damages are available to signatories of a mortuary contract, even if the signatory is not a close family member, should a breach occur. It stands for nothing more. There are no allegations in the first amended complaint that defendants violated Health and Safety Code section 7100(a) or otherwise violated Health and Safety Code section 7103, meaning there is no factual predicate offered for fees and costs pursuant to Health and Safety Code section 7109.

Plaintiffs offer little in opposition to suggest otherwise. They insist that attorneys' fees are appropriate under Health and Safety Code section 7109 because defendant Magner "most definitely interfered with Joseph Raventos' right to control the disposition of decedent's remains," based on a breach of contract, for it delegated the "transport of decedent to another party without his knowledge or permission, did not know where decedent was when he called on the day of the burial service, failed to deliver the remains to the cemetery for burial . . . Such acts and omissions *arguably* give rise to violation of Chapter 3, Division 7 of the Health and Safety Code[,] which creates the right to recover attorney fees pursuant to section 7109."

The court is not persuaded. Plaintiff provides ***no*** authority for the proposition that a breach of a mortuary contract, which is what has been alleged, automatically gives rise to attorney fees under Health and Safety Code section 7109. Health and Safety Code section 7100, subdivision (a) is violated when a mortuary disregards the right to control the decision making

priority of those persons enumerated in the statute, and subdivision (e) makes it clear that the "expressed instructions of the decedent or the persona entitled to control the disposition shall be faithfully and promptly performed." This language is simply not commodious enough to permit attorney's fees for a breach of contract as pleaded here, when those properly charged with the right and responsibility to control the disposition of decedent's remains were recognized and their plans ultimately effectuated, although allegedly badly. (See, e.g., *Walker v. Knoitzer* (1963) 217 Cal.App.2d 654, 660 [Section 7100 applies to the initial custody and duty of interment of remains, including arrangements for funeral goods and services].) Notably, and not inconsequentially, plaintiffs' interpretation of these statutory provisions is undermined by Health and Safety Code section 7100, subdivision (f), which provides a statutory safe harbor for funeral directors and cemetery authorities when carrying out the instructions of authorized individuals: "A funeral director or cemetery authority shall not be liable to any person or persons for carrying out the instructions of the decedent or the person entitled to control the disposition." Plaintiffs' efforts to create statutory liability, even when the funeral director follows the instructions of those entitled to control the remains of a decedent, seems anathema to import of this safe harbor protection.

The court therefore grants defendant Magner's motion to strike all references to attorney fees and costs claimed pursuant to Health and Safety Code section 7100, 7103, and 7109, as relevant to the first cause of action and the prayer for relief, without leave to amend.

Plaintiff has 30 days from today's date to file an amended pleading as to the fourth cause of action.

Summary:

- The court overrules defendant Magner's demurrer to the first cause of action for breach of contract, as plaintiffs have properly alleged a third party beneficiary theory.
- The court sustains both defendants' demurrers to the third cause of action for intentional infliction of emotional distress, *without leave to amend*, for plaintiffs have not and cannot allege outrageous misconduct.
- The court sustains defendant Magner's demurrer to the fourth cause of action for breach of the implied covenant of good faith and fair dealing, *with leave to amend*. As pleaded, plaintiff's fourth cause of action is duplicative of the first cause of action.
- The court denies defendant Magner's motion to strike plaintiff's request for prejudgment interest as to the first and fourth causes of action, under the authority of(*North Oakland Medical Clinic v. Rogers* (1998) 65 Cal.App.4th 824, 829, and progeny.

- The court grants defendant Magner's motion to strike all requests for attorney fees associated with Health and Safety Code section 7100, 7103, 7109, in the first cause of action and in the prayer for relief, without leave to amend.
- In light of the court's decision as to the demurrer to the third cause of action for intentional infliction of emotional distress, it is unnecessary to address defendants' motions to strike plaintiffs' request for punitive damages (as the third cause of action is the only cause of action in which punitive damages are sought).
- Defendants are directed to provide a new proposed order for signature.
- Plaintiff has 30 days to file an amended pleaded with regard to the fourth cause of action for breach of the implied covenant of good faith and fair dealing.