Plaintiff	Zaca Preserve LLC	Todd A. Amspoker
Defendants	Pacific Pipeline Company Plains All American Pipeline LP Plains Pipeline LP Sable Offshore Corporation	Jessica Stebbins Bina Eric Berg Eric Berg Jessica Stebbins Bina Victoria Diffenderfer Trevor Large

PROPOSED TENTATIVE

Plaintiff Zaca Preserve Inc. owns real property subject to an easement for crude oil pipelines (known collectively as the Las Flores Pipeline Systems, including lines 901 and 903 for our immediate purposes, hereafter, pipelines), which are allegedly currently owned by defendants Sable Offshore Corporation (Sable) and Pacific Pipeline Company (Pacific) and previously owned by Plains All American Pipeline L.P. and Plains Pipeline, LP (collectively, Plains). The existing "easement contract" is a pipeline easement for line 903 located across property owned by plaintiff near Buellton.

The pipelines were constructed 35 years ago by defendants' predecessor-in-interest, Celeron Pipeline Co (Celeron). The easement across plaintiff's property was recorded in 1985, in favor of Celeron, with a 1986 amendment, and the pipelines were constructed in 1988. In 1998, Plains acquired the pipelines. Sable (and Pacific) are allegedly the current owners of pipelines 901 and 903. In 2015, while Plains owned the pipelines, there was a catastrophic failure of the Pipeline, amounting to a spill of more than 140,000 gallons of crude oil, "with more than 100,000 gallons . . . leaking into the Pacific Ocean . . . " (known as the Refugio Oil Spill).[1] Plaintiff alleges this spill was the result of Celeron's failure "to properly maintain the Pipelines, together with Plains' failure "to properly maintain the Pipeline since its construction in the late 1980s." After the 2015 blowout, the pipelines were shut down. After an investigation, it was determined that external corrosion, compounded by ineffective corrosion protection and failure by Plains "to detect and respond to the pipeline rupture," was the direct of cause of the Refugio Oil Spill. Plains was also charged and convicted of nine counts of criminal wrongdoing related to the operation of the pipelines and the resulting oil spill.

There was also a "comprehensive class-action lawsuit" filed in the United States District Court, Central District of California, in 2016, styled as follows -- *Grey Fox, LLC v. Plains All American Pipeline, L.P.* (C.D. Cal., Apr. 8, 2019, No. CV 16-3157 PSG (JEMX)). The class action settled in 2024, and according to the FAC, Sable agreed that it would not install a second, new pipeline by replacing the existing one; Sable agreed that it would make reasonable efforts to obtain governmental approval of automatic shutoff valves; agreed that each property included in the class would receive $50,000; further, members of the class agreed that any easements would permit the repair and operation of the pipeline; and class members agreed that Sable and Pacific

[1] To be clear, plaintiff does not allege that the "2015 blowout" leaked oil onto its property. The rupture occurred "on a parcel of property near the Pacific Ocean."

could record easements stating the easements remain in effect and permit repair and operation of the Pipelines.

Plaintiff opted out of this settlement in 2024. (¶¶ 35-36.)[23] Plaintiff alleges ownership of a 138-acre parcel of land, for which Santa Barbara County has approved an exclusive and extremely valuable 7-lot residential subdivision, consisting of 20-acre estate lots. Pipeline 903 traverses this property. Plaintiff alleges: "The reason [plaintiff] opted out is because the relief provided in the class-action settlement is not remotely adequate to satisfy [its] loses. Because of the publicly known negative stigma that necessarily is attached to the Pipeline, [plaintiff] would need to disclose all of the above-referenced facts in connection with any sale of the seven lots on the [plaintiff's property] in connection with any sale of the seven lots . . . . [Plaintiff] estimates that absent the negative stigma caused by the Pipeline, the subject seven lots would be worth at least $4 to $5 million each, for total property value of $40 million. But as a result of the negative stigma caused by the Pipeline, [plaintiff] estimates that the property values for its 7 20-acre lots have been drastically reduced. It is certainly possible, if not probable, that several of the 7 lots through which the Pipeline physically passes would be virtually unsalable. [Plaintiff] is not willing to finalize its Final Map for the Zaca Property under the current circumstances. The only way in which the negative stigma from the Pipeline could be remedied is for Sable to acquire Zaca's Property from [plaintiff] at its expected market value absent negative stigma, and/or for Sable to either reconstruct a new pipeline with all required modern safety features on the edge of Zaca's property, or relocate the Pipeline off of Zaca's property entirely." (¶ 35, 36.)

In a first amended complaint (FAC) filed on December 12, 2024, plaintiff advances 10 causes of action against defendants Sable and Pacific (Pacific), and 8 causes of action against defendants Plains All American Pipeline L.P. and Plains Pipeline, LP (collectively, Plains). The differences are as follows: the second, third and eleventh causes of action (for declaratory relief, injunctive relief, and "threatened nuisance," respectively,) are advanced only against Sable and Pacific, while the seventh cause of action for willful misconduct is advanced only against Plains.

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[2] In paragraph 91, plaintiff also indicates a separate "March 2020" action filed by the federal government and the State of California against Plains, in order to "enforce a consent decree . . . that had been previously negotiated between" the parties and approved by the federal court. Plains agreed to pay more than $60 million in penalties, cleanup costs and natural resource assessment costs and damages to multiple governmental departments and agencies. "Specifically, with respect to the potential restart of Lines 901 and 903, the Consent Decree required that Plains apply for a waiver from the State of California for the limited effectiveness of cathodic protection on Lines 901 and 903 with non-insulated pipe if Plaints was able to obtain economically viable agreements from shippers to transport sufficient quantities of product, obtain the federal[,] state[,] and local permits that may be required, and in addition obtain whatever additional rights are needed, including rights-of-way that may be needed when as an alternative to replacement of Line 901 and segments of Line 903. Plains was allowed to restart the existing Pipeline only in accordance with the Consent Decree . . . ." (Underscore in original.)

[3] The court observes that in this federal litigation (i.e., the one opted-out by plaintiff), United States Federal District Court Judge Phillip Gutierrez issued seven (7) orders, two of which have particular relevance to issues raised in this matter, and which are referenced in this order. The first is dated April 8, 2019, involving a motion to dismiss. (*Grey Fox, LLC v. Plains All American Pipeline, L.P.* (C.D. Cal., Apr. 8, 2019, No. CV 16-3157 PSG (JEMX)) 2019 WL 4196066, at pp. 1-17). The second is dated January 9, 2024, involving a partial summary judgment motion. (*Grey Fox v. Plains All American Pipeline* (C.D. Cal., Jan. 9, 2024, No. CV1603157PSGJEM) 2024 WL 306222, at pp.1-14.) These orders are relevant because the causes of action raised by plaintiff here track the causes of action raised in the federal litigation, with all causes of action advanced under California law. Judge Gutierrez's analysis, while not binding on this court, has nevertheless been helpful in addressing and resolving some of the issues raised in the present context.

The first 101 paragraphs of the FAC constitute the chain-pleading portion of the FAC, outlining the general facts as relevant to all causes of action.

At the heart of plaintiff's lawsuit are claims that 1) the 2015 blowout resulted in "significant negative stigma that will forever be attached to the Pipeline, no matter who operates it." (¶¶ 39 to 51)); 2) the 2015 blowout and rupture "exposed the dangerous conditions of the entire Pipeline," including pipeline 903 and the easement that traverses plaintiff's property, based on external corrosion, as well as "Plains' systemic failure to properly monitor and maintain the Pipeline," accentuated by Plains' "long history of recklessly avoiding safety, which continues to cause a substantial negative stigma to any property on which the Pipeline is located" (¶¶ 52 to 70)[4]; 3) the fact Plains (and ultimately Sable) acquired the "Pipeline knowing that it was in a High Consequence Area," meaning an area in which a rupture would have "the most significant adverse consequences," and also meaning that "operators are required to devote additional focus, efforts, and analysis . . . to ensure the integrity of pipelines . . . ." (¶ 71 to 86); 4) on August 15, 2017, Plains submitted an application to the County of Santa Barbara to abandon the existing pipeline (which includes pipelines 901 and 903) (¶¶ 87 to 91); and 5) after Plains sold the pipeline to Pacific, who then sold it to Sable, the plans for the pipeline "changed substantially," and Pacific "began to work closely with County staff to evaluate the best course forward for the Pipeline project," moving in a "completely different direction than Plains had been proceeding with its replacement project for the Pipeline . . . ." According to plaintiff, after Sable acquired the pipelines in early 2024, "Sable has made a complete change in Plains' prior plans. Rather than abandon the Pipeline and build an entirely new pipeline system, as Plains previously proposed . . . , Sable has concluded that it will instead restart the Pipeline system without any repairs, except for placement of underground shut-off valves at various locations throughout the Pipeline. As a result of the settlement of the case between Sable and the County regarding installation of automatic shut-off valves, all permitting authority for the Pipeline is now vested in the State of California, completely separate and apart from the local careful control which the County of Santa Barbara was formerly asserting over the Pipeline. This exposes [plaintiff] to substantial risk in the completion of its 7-lot subdivision in the marketing of those lots." (¶¶ 92 to 101.)

Plaintiff concludes with the following attestations: ". . . Due to the extreme neglect of Plains, which caused the rupture, and further due to the fact that the Pipeline has been sitting unused for 10 years with unknown additional corrosion occurring to it, and with unknown liquids sitting in the Pipeline causing additional corrosion, and also considering the obvious attempts by Sable and State authorities to not be forthcoming about the true condition of the Pipeline,[[5]] no

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[4] Plaintiff details in its operative pleading the numbers of rupture incidents reported on the pipelines at issue up to 2014.

[5] Plaintiff alleges in this regard as follows: "[Plaintiff] has no idea when, if ever, Plains or its predecessor in interest Celeron ever actually inspected the pipeline as it traverses [plaintiff's] property. [Plaintiff[has no technical reports that have been made available to it regarding such historical investigations. [Plaintiff] is aware, as a result of the substantial investigation of Plains and the Pipeline after the disastrous blowout in 2015, that the Pipeline, including Line 903 as it passes through [plaintiff's property], is filled with the same anomalies as existed when the 2015 blowout occurred." Plains was planning to abandon the easement, and now, "Sable is impermissibly attempting" to restart it, and the County of Santa Barbara has surrendered oversight to the placement of automatic shut-off vales. "According to recent local press reports in the Santa Barbara Independent, officials at the State of California have refused to provide any substantive information to the public regarding Sable's attempts to restart the

reasonable purchaser would pay true market value for Zaca's property. Because of the unlawful actions of Plains, and Sable's unreasonable and unjustified attempt to restart the Pipeline without disclosing any information about its current condition, the Pipeline is, and will continue to be a substantial negative stigma which substantially decreases the value of Zaca's Property." (¶ 101.)

There are two demurrers and a motion to strike on calendar. The first demurrer was filed by Plains, challenging the first cause of action for quiet title, the fourth cause of action for breach of the easement agreement, the fifth cause of action for negligent misrepresentation, the sixth cause of action for negligence, the seventh cause of action for "willful misconduct," the eighth cause of action for a UCL violation, the ninth cause of action for breach of the implied covenant of good faith and fair dealing, and the tenth cause of action for permanent nuisance. Plaintiff has filed opposition, and Plains has filed a reply.

The second demurer is jointly filed by Sable and Pacific, challenging 10 causes of action to which both are named (this includes in addition to the above the second cause of action for declaratory relief, the third cause of action for injunctive relief, and the eleventh cause of action for "threatened nuisance", with the seventh cause of action for willful misconduct only advanced against Plains.) Plains has filed a joinder of Sable's and Pacific's joint demurrer. Sable alone has filed a motion to strike, challenging a plethora of paragraphs in the FAC, all which allegedly contain factual misstatements, and thus (according to Sable) should be stricken. Plaintiff filed opposition to each motion, and defendants have filed a reply to each. All briefing has been reviewed.

The court will address each motion separately in sections (A), (B), and (C), below. In Section (D), below, the court concludes with a summary of its conclusions.

*A) **Demurrer by Plains***

1) Two Requests for Judicial Notice

Plains asks the court to take judicial notice of certain court documents – specifically, civil minutes from *Grey Fox, LLC v. Plains All American Pipeline, L.P., et al,* Case No. CV 16-3157 PSG (JFMx) (Cen. Cal.), EFC No. 185, in which Federal District Court Judge Philip Gutierrez granted in part and denied in part plaintiffs' motion for class certification (consisting of a 14-page order). As there is no opposition, the court grants the request.

Plaintiff for its part also asks the court to take judicial of documents from *Grey Fox, LLC, et al, v. Plains All Am. Pipeline, L.P., et al,* Case No. CV 16-3157, *supra,* including the complaint filed on May 6, 2016 (Exhibit A), the second amended complaint for class action damages, filed on March 30, 2020 (Exhibit B), the plaintiff's motion for class certification, filed on November

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Pipeline, and the conditions that are attached to that." Based on "information and belief," "Sable is also seeking a special waiver not to include a protection system that is a basic safety feature on nearly all underground oil and gas pipelines . . . ." In addition, based on a September 28, 2024, notice given by Center for Biological Diversity and the Wishtoyo Chumash Foundation, they were intending to sue the federal Bureau of Ocean Energy Management over the latter's failure to require updated plans by Sable , which are relying on "development plans written in the 1970s and 1980s . . . ."

4, 2019, (Exhibit C), and an order granting final approval of proposed Settlement filed September 17, 2024. As there is no opposition, the court also grants the request.

2) Time-Barred By Statute of Limitations/Tolling (All Causes of Action But Quiet Title)

Plains contends initially that except for the quiet title cause of action, "all causes of action against Plains are time barred." Specifically, Plains contends that because plaintiff alleges that the pipeline ruptured in 2015 (i.e., when the oil spill occurred), the applicable statute of limitations for each cause of action (whether 2 years, or 3 years, or 4 years) would bar all 10 causes of action.

Plaintiff seems to acknowledge from the face of the pleading that the second through the tenth (and including the eleventh) causes of action are barred by their respective statutes of limitations. It claims, however, that each cause of action has been tolled under the authority of *American Pipe & Construction Co. v. Utah* (1974) 414 U.S. 538 (*American Pipe*), and more specifically *China Agritech, Inc. v. Resh* (2018) 584 U.S. 732, as adopted by our own high court in *Jolly v. Eli Lilly & Co*. (1988) 44 Cal.3d 1103. Plaintiff, relying on the judicially noticed documents from the *Grey Fox* matter, as noted above, claims it was a putative class member between May 6, 2016, and July 10, 2024, when it timely opted-out of the settlement, and thus all individual causes of action were tolled during this time frame, making this lawsuit and all causes of action timely.

As noted by our high court, in "*American Pipe*, the United States Supreme Court held that, under limited circumstances, if class certification is denied, the statute of limitations is tolled from the time of the commencement of the suit, to the time of denial of certification for all purported members of the class who either make timely motions to intervene in the surviving individual action or who timely filed individual actions." (*Jolly, supra*, 44 Cal.3d at p. 1119.) During the pendency of a putative class action, *American Pipe* tolls the applicable limitations only for unnamed class members' ***individual claims***. (*Fierro v. Landry's Restaurant, Inc*. (2019) 32 Cal.App.5th 276, 292.)

That is the precise situation we have here. It is undisputed that plaintiff was part of the *Grey Fox* litigation. It is also undisputed that the same individual claims as advanced here were advanced in *Grey Fox*. According to the class certification ruling, however, only the first two causes of action for declaratory relief and injunctive relief were part of the ***class certification*** process. The individual claims were not part of the class decision, although breach of contract, negligence, negligent misrepresentation, breach of the implied covenant of good faith and fair dealing, permanent and threatened nuisance, and trespass, were pursued on an individual basis as part of the class litigation. It is also undisputed that approval of all class claims in *Grey Fox* was finalized on September 17, 2024; and that plaintiff opted out of the class settlement. Although defendant seems to suggest that the critical time for the statute of limitations period should be the time individual clams were not considered part of the certification period, that is not the case. The individual claims -- similar in scope to the claims advanced here -- remained tolled during the pendency of the class action. Under *America Pipe*, "[o]nce [putative class members] cease to

be members of the class—for instance, when they opt out or when the certification decision excludes them—the limitation period begins to run again on their claims." (*In re WorldCom Sec. Litig.*, 496 F.3d 245, 255 (2d Cir. 2007); *see also Choquette v. City of New York*, 839 F. Supp. 2d 692, 699 (S.D.N.Y. 2012) ["*American Pipe* tolling ends when a plaintiff opts out of the class, or a class certification decision of the court definitively excludes that plaintiff."].) Here, the certification decision did not purposely exclude them from the class – they were excluded from the class settlement on their individual claims only when they opted out on September 17, 2024. (*Galvez v. Ford Motor Company* (E.D. Cal., Sept. 30, 2018, No. 217CV02250KJMKJN) 2018 WL 4700001, at *6.) There is absolutely no reason to conclude the individual claims were not tolled, as they are the same ones at issue here. (See, e.g., *Falk, supra,* at p. 237 Cal.App.4th at p. 1465 ["where certification was not denied based on a reason that would be applicable to a subsequent action or, as here, not addressed at all," *American Pipe* tolling should apply].) It was reasonable for plaintiff to rely on the class action mechanism before filing its own lawsuit under the circumstances presented. This is commensurate with *Jolly*, in which tolling under *American Pipe* "applies only to individual claims," not class claims, the very situation presented here, as noted. (*Fiero, supra*, 32 Cal.App.5th at p. 291.)[6]

The case defendant relies on – *Becker v. McMillin Construction Co*. (1991) 226 Cal.App.3d 1493 – actually supports application of *American Pipe* tolling under the circumstances. In *Becker,* in 1980, plaintiff purchased a four-year old single-family residence, built by defendant. Plaintiff noticed defects in January 1984; on September 7, 1984, a fellow homeowner filed a class action lawsuit against defendant based on the same types of construction defects. Becker filed his individual lawsuit on January 30, 1987. Eventually Becker was brought into the class action, although the trial court ultimately denied class certification, finding lack of commonality. Becker's class claims were severed and consolidated with the individual Becker action in July 1988. Defendant raised a 10-year statute of limitations defense (expiring on December 14, 1986), arguing that Becker's individual action was barred. The appellate court found *American Pipe* tolled Becker's *individual claims* raised in the class action matter. "Here, we agree with the trial court the equities demand that tolling be permitted. Even though there was clearly a lack of commonality for class certification purposes, the substantive class and individual claims were sufficiently similar to give [defendant] notice of the litigation for purposes of applying the tolling rule." Further, with respect to the issue of the nature of the

[6] It simply makes no sense in the court's view to preclude plaintiff from filing the present lawsuit based on any statute of limitations bar when those same causes of action were part of an ongoing litigation in federal court between 2016 and 2024, a settlement was reached with other class members, and plaintiff simply chose not to settle, wishing to pursue its claims individually in state court. Plaintiff should not be whipsawed between a statute of limitations sword and the anvil of an unwanted settlement. It makes sense as a practical matter to apply *American Pipe* to those who opt-out of a settlement, at least, per *Jolly*, when the twin rationales of *American Pipe* are satisfied - -- protection of the class action device (thus precluding a multiplicity of pending lawsuits); and fundamental fairness to defendants, as reflected in the similarity of the class claims and plaintiff's individual claims. It was reasonable for plaintiff to wait to file any individual actions pending resolution of any individual claims in the federal class action suit.

substantive claims, the class action gave defendant "notice that construction defects were claimed by some homeowners at the site. It was then 'aware of the need to preserve evidence and witnesses respecting the claims of all members of the class.'" (*Id.* at p. 1501.) "Here, . . . both the [class action] and Becker's individual action were based on the same type of claim and the same subject matter; the class of potential plaintiffs was finite and could be located through their residences in the development. Consistent with the Supreme Court's approach in *Jolly* [], the applicability of *American Pipe* can only be determined by individualized attention to the identity of the claimants and the nature of the claims involved, and by a careful weighing of the important policy considerations in this area. We conclude the trial court's resolution of these facts was correct." (*Id.* at 1502.) The same equitable factors identified in *Becker* support application of the tolling doctrine per *American Pipe* here. (See, e.g., *Hildebrandt v. Staples the Office Superstore, LLC* (2020) 58 Cal.App.5th 128, 145 [application of tolling rule is fair where defendant has adequate notice of claims and generic identities of claimants, thus "equitable principles" underlying tolling rule prevailed over statute of limitations].)

The court overrules Plains' demurrer based on any claimed statute of limitations bar under *American Pipe*.

3) Quiet Title (First Cause of Action)

Plains contends that plaintiff cannot maintain a quiet title cause of action because plaintiff "does not and cannot allege that Plains has an adverse claim to plaintiff's title." According to Plains: "Here, Plaintiff does not and cannot allege that Plains has an adverse claim to its title. Paragraphs 108 through 112 of the Complaint assert that Defendant Sable asserts claims concerning the Easement that are adverse to Plaintiff. Paragraph 113 states that Plaintiff is seeking to quiet title as to Defendant's Sable's allegedly adverse claims. No adverse claim by Plains is alleged. To the contrary, Plaintiff acknowledges in Paragraph 92 of its Complaint that Plains divested its prior interest in the pipeline easement in October 2022. Plains owns no interest in the pipeline easement and possess no claim to title that is adverse to Plaintiff's." Plaintiff, in opposition, claims that defendant has "mischaracterized" its quiet title cause of action. Plaintiff "does not claim that Plains holds an adverse interest in the property. Rather, [plaintiff] asserts that Plains abandoned its easement, and [plaintiff] is seeking a judicial determination confirming that abandonment."

Plaintiff has the better argument. (See, e.g., *Visitacion Investment, LLC v. 424 Jessie Historic Properties, LLC* (2023) 92 Cal.App.5th 1081 [quiet title can be used to challenge easement on the grounds of abandonment].) Abandonment of an easement created by grant, as was allegedly done here, requires proof of (1) the cessation of use of the easement by the owner of the dominant tenement and (2) unequivocal and decisive acts on the part of the dominant tenant, clearly showing an intention to abandon. (*Id*. at p. 1090.) Plaintiff alleges all necessary facts for this purpose – it claims Plains has abandoned the easement pipeline for 10 years following the 2015 "blowout" and in 2017 Plains formally and publicly announced its intent to

'abandon' the Pipeline in place and reconstruct a new pipeline," necessitating a new pipeline (and a new easement). This cause of action can go forward as alleged.[7]

The court overrules Plains' demurrer to the first cause of action for quiet title.

4) Breach of Written Easement Contract (Fourth Cause of Action)

In the fourth cause of action, plaintiff contends that the easement contract imposed certain duties on defendants (including Plains) to "install, repair, monitor, maintain, operate, remove, or replace the Pipeline so as not to unreasonably interfere with [plaintiff's] right to fully use and enjoy [its] property. . . . " Defendant contends this claim is not supported by the contract itself, which is attached as Exhibit A to the complaint. According to defendant, while the contract granted "Plains' predecessor the right to operate and maintain a Pipeline but not place an affirmative obligation on them to do so." "No where in Exhibit A is there language that places an affirmative obligation upon the grantee to operate and maintain the Pipeline. If Plaintiff believes that such language exists, it should quote it verbatim in the body of its complaint . . . ."

The disputed language of the easement contract reads as follows: Grantor (plaintiff) gives to grantee (Plains' predecessor) "a right of way easement, with the right of ingress and egress, [¶], to survey, lay, ***maintain***, operate, ***repair***, ***replace***, alter, change the size of, and remove one pipeline and appurtenances thereto for the transportation of oil, gas, water, and other substances, including but not limited to devices for controlling electrolysis for use in connection with said pipeline , and to lay, construct, maintain, operate, repair, replace, alter and remove telephone and power lines . . . ." The highlighted language, which utilizes the words "maintain," "repair," and/or "replace" the pipeline, arguably creates a duty on the dominant easement holder (i.e., Plains.) At a minimum, if a contract set out in the complaint is ambiguous, plaintiff's interpretation must be accepted as correct in testing the sufficiency of the cause of action. "[A] general demurrer to the complaint admits not only the contents of the instrument but also any pleaded meaning to which the instrument is reasonably susceptible." (*Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239.) While plaintiff's interpretation may prove unsupportable, it is improper to resolve the issue on the pleading. (*Ibid*.)

The court observes that in the federal litigation, from which plaintiff ultimately opted out, Federal District Court Judge Philip Gutierrez rejected a similar claim made by Plains, following a motion to dismiss (the equivalent of California's demurrer), on the same ground as alleged here. Even if the court adopted Plains' interpretation of the easement contract, according to the federal district court, " '[u]nder California law, 'courts may not dismiss on the pleadings when one party claims that extrinsic evidence renders the contract ambiguous.' Citations.] Therefore, a trial court may not 'refuse to consider . . . extrinsic evidence on the basic of the trial court's own conclusion that the language of the contract appears to be clear and unambiguous on its face." (*Wolf v. Superior Court*, 114 Cal. App. 4th 1343, 1350 (2004). Plaintiffs argue that a proper reading of the contract language requires consideration of extrinsic evidence, such as whether a

[7] Nothing offered in reply counters these conclusions. Plains contends that plaintiff "cannot avoid demurrer by mischaracterizing its Quiet Title action as an action seeking a 'judicial determination' that Plains abandoned the pipeline easement." This statement is undermined by *Visitacion Investment, LLC*, which expressly concludes otherwise.

reasonable owner would have agreed to defendant's interpretation of the easement terms or how the parties interpreted the contract at the time they entered into it. As such, the Court concludes that it would be inappropriate for the Court to rule on the meaning of the contract provision at the motion to dismiss stage without giving plaintiffs an opportunity to present extrinsic evidence to demonstrate ambiguity in the contract." (*Grey Fox, LLC v. Plains All American Pipeline, L.P.* (C.D. Cal., Apr. 8, 2019, No. CV 16-3157 PSG (JEMX)) 2019 WL 4196066, at *9.) The same appears true here,[8] and plaintiff should be afforded the same opportunity.

The court overrules Plains' demurrer to the fourth cause of action.

5) Negligent Misrepresentation (Fifth Cause of Action)

Plaintiff alleges that defendants, and their predecessor-in-interest, "mispresented to Zaca and its predecessors-in-interest that once installed, the Pipeline would be properly monitored and maintained, and could be repaired, maintained, operated, removed, and replaced within the parameters of the rights-of-way provided in the Easement. . . ." Further, when the 1985 Easement contract was recorded, "Defendants and their predecessor-in-interest [] mispresented to Zaca and its predecessors-in-interest that an 'as-built' diagram for the Pipeline through Zaca's Property would be timely prepared and recorded after completion of construction." Defendants are "responsible for these misrepresentations," and when they were made, defendants "had no reasonable ground for believing them to be true." Defendants and their predecessor-in-interest "made these representations with the intention of inducing Zaca and its predecessors-in-interest to act in reliance on these representations and grant Defendants and their predecessors-in-interest [] the Easement over the Zaca property."[9] Further, the representations made were in fact false (i.e., defendants and their predecessors-in-interest were not going to properly maintain "the Pipeline," and "could not maintain, repair, remove, or replace the Pipeline within the parameters of the Easement." Further, according to plaintiff, at the time the misrepresentations were made plaintiff was ignorant of the falsity of the misrepresentations, and in fact believed the misrepresentations were true. In reliance on these misrepresentations, plaintiff "[was] induced to and did grant the Easement over the Zaca property," and had the true facts been known, that permission would not have been given. Finally, in paragraph 152 of the operative pleading, plaintiff alleges that defendants made statements to plaintiff in 2017 "that it would abandon the Pipeline and construct a new pipeline with proper corrosion protection systems," assuring plaintiff that it could safely proceed with a subdivision of Zaca's Property," expending a large sum of money towards completion of the final map for the subdivision. Plaintiff contends that it is entitled to recover for property and economic damage, under the authority of *J'Aire Corp. v. Gregory* (1979) 24 Cal.3d 799, which includes "stigma damages." "The adverse stigma described herein, as a result of the 2015 blowout and Sable's current plans to restart the Pipeline, and Zaca's loss of property value caused thereby, is the result of bad acts (including criminal behavior) of Defendants."

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[8] Plains (nor any other defendant for that matter) claims that this earlier federal court decision has any issue preclusive impact on the court's determination on this issue. (See, e.g., *DKN Holdings, LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) The court will not address issues not raised by the parties.

[9] Plaintiff makes it clear in the operative pleading that while it did not negotiate the easement, it "purchased the Zaca Property as a bona fide purchaser in 2004, and was entitled to and did rely on Defendants' representations, and the representations of Defendants' predecessors-in-interest, that they would safely operate and maintain the Pipeline in good repair, and that a proper 'as built' diagram had been prepared and recorded." (¶ 149.)

Plains demurs. First, it claims that plaintiff is impermissibly seeking "stigma damages," which are allowed only in association with a permanent, unabatable nuisance to plaintiff's property, citing *Santa Fe Partnership v. Arco Products Co*. (1996) 46 Cal.App.4th 967, 984 [courts have uniformly rejected claims of stigma damages absent evidence the plaintiff's suffered physical injury from the contamination].) Defendant supplements this argument by claiming that the damages are barred by the economic loss rule,[10] arguing that plaintiff's attempts to claim a special relationship as an exception to the economic loss rule under *J'Aire* is precluded by *Southern California Gas Leak Cases* (2019) 7 Cal.5th 391, 403. Finally, defendant contends the demurrer should be sustained because plaintiff has essentially failed to provide specific factual allegations showing who made the misrepresentations and by what authority they were made as to make defendant liable. (See, e.g., *Small v. Fritz companies, Inc.* (2003) 30 Cal.4th 167, 184 [we hold that a complaint for negligent misrepresentation should be pleaded with the specificity required in holder's action for fraud]; *Daniels v. Select Portfolio Servicing, Inc*. (2016) 246 Cal.App.4th 1150, 1166, disapproved on other grounds in in *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905 [cause of action for intentional and negligent misrepresentation sound in fraud and, therefore, each element must be pleaded with specificity].) "The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 793.) The requirement of specificity is relaxed when the allegations indicate the defendant must necessarily possess full information concerning the facts of the controversy or when the facts lie more in the knowledge of the defendant. (*Tarmann v. State Farm Mut. Auto. Ins. Co*. ((1991) 2 Cal.App.4th 153, 158.)

Plaintiff in opposition claims that defendant has mischaracterized its damages claims. Plaintiff argues: "Zaca has alleged far more than speculative, stigma-based diminution in property value. It has plead a legally cognizable negligent misrepresentation claim grounding ***in ongoing operational negligence, foreseeable reliance, and resulting harm***." (Emphasis added.) Plaintiff points to paragraph 73, 76, 77, and 97 of the FAC in support, in which plaintiff alleges, respectively, that defendants continue to operate the pipeline "without proper monitoring, maintenance, and without proper safety equipment," and continue to allow the pipeline to become "severely corroded," without taking "the necessary steps to properly or adequately repair the corroded section of the Pipeline where the pressurized oil" breached the pipeline wall, all

[10] The "economic loss rule" provides that in general there is no recovery in tort for negligently inflicted "purely economic loses," meaning economic losses, meaning financial harm unaccompanied by physical or property damage. (*Dhital v. Nissan North America, Inc.* (2022) 85 Cal.App.5th 828, 837.)

with the threat to restart the pipeline, potentially causing future damage should there be another breach.

The elements of a cause of action for intentional misrepresentation are (1) a misrepresentation, (2) with knowledge of its falsity, (3) with the intent to induce another's reliance on the misrepresentation, (4) actual and justifiable reliance, and (5) resulting damage. (*Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230–231.) The elements of a claim for negligent misrepresentation are nearly identical. Only the second element is different, requiring the absence of reasonable grounds for believing the misrepresentation to be true instead of knowledge of its falsity. (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166 disapproved on other grounds in *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905.) A cause of action for intentional and negligent misrepresentation sound in fraud, and, therefore, each element must be pleaded with factual specificity.

The court sustains Plains' demurrer to this cause of action for a number of reasons. First, plaintiff has failed to allege with specificity the appropriate identity of those who made the negligent misrepresentations, the form of the communication, when they were said, and the persons' authority to speak, under the standards enunciated above. True, "the requirement of specificity is relaxed when the allegations indicate that 'the defendant must necessarily possess full information concerning the facts of the controversy' [citations] or 'when the facts lie more in the knowledge of the' " defendant. (*Tarmann, supra,* 2 Cal.App.4th at pp. 158; see *Daniels, supra,* 246 Cal.App.4th at pp. 1166–1167.) This is not a case. Given the time frames at issue, there is nothing in the FAC to suggest Plains would necessarily possess full information (including the identity) of the persons who made the representations at issue; accordingly, factual specificity is required.

Second, the FAC predicates the entirety of the negligent misrepresentation cause of action on statements made by others long before the pipeline ruptured. (¶ 142.) There is no claim that defendants are currently or presently misrepresenting the status of the pipeline in any way. Plaintiff fails to show how those past alleged misrepresentations (over 10 years old if not older) have anything *to with the ongoing threat today*. The problem is compounded because plaintiff completely fails to plead the alleged misrepresentations with any specificity, as noted above. The defect is causation – what is the relationship between the prior negligent misrepresentations by the predecessor-in-interest and the current claim for damages claimed by plaintiff? Plaintiff has not adequately addressed this facial attenuation. The cases cited by plaintiff underscore this pleading deficiency. Not one case involved a request for damages associated with negligent misrepresentations. *Santa Fe Partnership v. ARCO Products, Co, supra*, 46 Cal.App.4th 967, involved damages based on a continuing nuisance theory of liability. (*Id.* at p. 968.) *San Diego Gas & Electric Co. v. Superior Court*, supra, 13 Cal.4th 893 involved a cause of action under Public Utilities Code section 1759 and inverse condemnation. (*Id*. at p. 903). *Oliver v. AT&T*

Wireless Services (1999) 76 Cal.App.4th 521, discussed the issues of damages (a direct, substantial and peculiar injury to the property) through the prism of inverse condemnation and nuisance. Nothing in *Pacific Gas & Electric Co. v. City of San Mateo* (1965) 233 Cal.App.2d 268 involved a claim for damages based on negligent misrepresentation. And the issues in *Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th 954, 962, involved eminent domain. The fear caused by any past negligent misrepresentation as alleged here, amounting to a reduced property value, is too attenuated to a present harm to constitute a cognizable harm.

If these were the only pleading deficiencies, the court would likely give leave to amend. But there is a third problem, involving the impact of the economic loss rule and our high court's express limitations placed on its "special relationship" exception as advanced by plaintiff, which seems fatal. Neither plaintiff's assertion of a "special relationship" between itself and defendants (see ¶ 150), nor any potential invocation of the factors articulated in *Biak Anja v. Irving* (1958) 49 Cal.2d 647, 650, provides a basis to allow pecuniary losses for negligent misrepresentation *unaccompanied by property damage or personal injury*. (*Sheen, supra*, 12 Cal.5th at p. 915.) The central thrust of this lawsuit rests on breach of the written easement contract as outlined in the fourth cause of action; there is therefore good reason to adhere to the economic loss rule, given the nature of the parties' contractual relationship and how that relationship might be disrupted by recognition of the duty plaintiff advances. (*Ibid.*) Indeed, plaintiff's argument cannot reasonably be cabined to this specific context, and there are real costs associated with a duty the plaintiff proposes. (*Southern California Gas Leak Cases, supra*, 7 Cal.5th at p. 400 ["the special relationship" is a limited exception to the economic loss rule].) While it is certainly foreseeable that a prior pipeline spill may dilute or diminish future property values, the limitations acknowledged by our high court in *Southern California Gas Leaks* – involving industrial accidents caused by a defendant – seem applicable here. (*Id*. at p. 403.) For example, the high court in that case found that a business operating within a five-mile radius of the defendant's plant (and thus the leak) provided no meaningful basis to establish a special relationship – for "others beyond that boundary were also affected," and there is "no compelling reason to let a business operating 4.9 miles away recover pecuniary losses but not allowing those who operate 5.1 miles away" to not. (*Id.* at p. 408.) The same concerns there are present here. As observed by our high court in applying the economic loss rule, plaintiffs were "in effect. seeking pro rata recovery for the past, present, and future economic toll the leak allegedly had, has, and will have on Porter Ranch. These claims are without end." (*Id.* at p. 411.) The same is true here.

Further, these limitations are reinforced by *Aas v. Superior Court* (2000) 24 Cal.4th 627, superseded by statute on other grounds as stated in *Rosen v. State Farm General Ins. Co.* (2003) 30 Cal.4th 1070, 1079-1080) *Aas* concluded that the "economic loss rule [barred] homeowners suing in negligence for construction defects where there is ***no showing or actual property damage or personal injury***." *Aas* rejected plaintiff's reliance on the "special relationship"

exception to the economic loss rule, noting, specifically, that in applying the multifactored test set in *J'Aire,* there is a problem --"construction defects that have not ripened into property damage" do not comfortably fit the definition of "appreciable harm" – an essential element to a claim under *J'Aire*. (*Id.* at p. 646.) "In conclusion, applying the *J'Aire* factors, we do not find they justify a broad rule permitting recovery of [] costs [or lost value] unaccompanied by property damages or personal injury." (*Id*. at p. 647.)

The court finds observations by our own appellate court in *State Lands. Com. v. Plains Pipeline, L.P* (2020) 57 Cal.App.5th 582 helpful in explaining why plaintiff's cause of action as alleged *cannot* go forward. The case arose from the same oil spill at issue in this matter. There, plaintiff (States Land Commission, along with others), leased offshore lands to Venoco, Inc., to operate an oil platform, and oil and gas produced on the platform was pumped to an onshore facility. The oil and gas ultimately was pumped into pipelines owned and operated by Plains. Defendant failed to reasonably monitor the relevant pipeline, as alleged here, as the walls were corroded, rupturing on May 19, 2015, at Refugio State Beach, spilling 140,000 gallons of crude oil onto the beach and into the ocean. The pipeline was shutdown, eliminating the only feasible method to transport oil and gas from the Venoco's offshore facilities to refineries, ending Plains' obligation to pay royalties to plaintiff. The shutdown of the pipeline caused property damage to plaintiff's land and facilities, requiring plaintiff's remediation efforts, including capping wells to prevent future leaks. Plains and Venoco had an agreement (although plaintiff was not a party to it) to pay royalites to plaintiff for oil and gas pumped through the pipeline. Plaintiff sued Plains (as relevant for our purposes) in order to recoup future economic losses from the missed royalty payments. The trial court sustained Plain's demurrer to the first amended complaint on the basis that plaintiff could not recover economic damages (lost royalty payments) without a physical injury to a person or property under the economic loss rule.

The appellate court reversed, concluding (as relevant for our purposes) that plaintiff States Land Commission had adequately alleged a special relationship exception to the economic rule, as contemplated by *J'Aire Corp. v. Gregory, supra*, 24 Cal.3d 799 (the exact case relied upon by plaintiff here). According to the appellate court, the relevant tie between plaintiff and Plains was more than the fact plaintiff happened to own a business in a vicinity of an oil spill, as contemplated by *Southern California Gas Leaks, supra,* 7 Cal.5th at p. 408. The purpose of Plains' pipeline was to transport oil taken from plaintiff's land so that plaintiff, as well as others, would make a profit. Plaintiff was therefore an intended beneficiary of the pipeline transaction. Further, for purposes of the special exemption rule, the lost royalty payments were entirely foreseeable, with a high degree of certainty that plaintiff would have to spend money to repair and maintain the facilities to prevent further harm, with an immediate and direct connection between Plain's conduct, with high moral blame. According to the appellate court, allowing recovery of purely economic damages furthered a policy of preventing future harm, as the

damage could have been easily avoided, with economic damages encouraging Plains to avoid such future harm in the future. (*Id*. at pp. 590-591.)

While plaintiff here may have some similarities with plaintiff in *State Lands Commission,* there is one significant difference that makes this case far closer to *Southern Gas Leak Cases* than the case in *State Lands Commission* – the "relevant tie" between plaintiff and Plains. That "tie" is no more than the fact plaintiff owns property in the vicinity of the pipeline where the oil spill occurred or may occur. Nothing else is present, as was true in *State Lands Commission*. Simply put, plaintiff is not similarly situated to plaintiff State Lands Commission (where the oil was taken from its property, transferred over lands it was responsible for, and was therefore a third-party beneficiary for royalty payments). This factor places the present case more within the purview of *Southern California Gas Leaks* rather than ambit of *State Lands Commission*.

Finally, and not insignificantly, the court finds the analysis in *Grey Fox v. Plains All American Pipeline* (C.D. Cal., Jan. 9, 2024, No. CV1603157PSGJEM) 2024 WL 306222 to be persuasive on this very issue. There, plaintiffs Grey Fox and Bean Blossom filed a suit against Plains (the same defendant here) arising from the rupture of pipeline 901 mentioned in the FAC. Both plaintiffs owned and built parcels on a residential estate subdivision (as has plaintiff), and the pipeline "runs through Plaintiffs' properties pursuant to written easement contracts," as is true here. The oil spill occurred on Grey Fox's lot, "but the oil did not reach any other parcel of property," including the lot owned by Blossom. At issue were the easements of pipelines 901 and 903 (the latter of which at issue here). As relevant for our purposes, Plains filed a summary judgment motion to Blossom's claim for negligence. The court granted Plains' summary judgment motion, making the following relevant observations:

> "[Blossom's] property 'has not been physically impacted by the oil spill." Although plaintiffs contend they "are not claiming future damages, or diminution in value damages," but rather loss or use damages in the form of "past rental value damages," they are essentially seeking damages "for the time it takes to sell its property at what [] Blossom would consider fair market value based on physical damage that occurred on nearby lot. . . . The Court agrees with Plains and considers [] Blossom's damages . . . more akin to the plaintiffs in *Southern California Gas* [*Leaks*], who suffered economic losses by being adjacent to an accident . . . . In actions bottomed in negligence, there is no recovery for economic loss alone. Accordingly, the Court finds that Bean Bottom's negligence claims are barred by the economic loss rule."
>
> "An exception to the economic loss rule may apply where there exists a 'special relationship' between the parties. . . Because [] Blossom was in contractual privity with Plains . . ., the special exception does not apply in this case." In footnote 5, the court made the following relevant observations: "Plaintiff asks the court to compare the

allegations in its complaint to the *State Lands Commission v. Plains Pipeline* [the opinion discussed above] to find a special relationship exists despite the contractual privity between [] Blossum and Plains. But Plaintiffs' argument fails for two reasons First, Plaintiffs submit no evidence to establish a special relationship between [] Blossum and Plains, and instead rely on allegations in the pleadings. Second, in *State Lands Commission* the [plaintiff] was a clear intended beneficiary of the pipeline transaction as one purpose of the pipeline was to transport oil from the Commission's land so it could make a profit . . . [] Blossom, on the other hand, was not entitled to any payment under the easements based on whether oil was transported through the pipeline." (*Id.* at p. 14, fn. 5.)

Plaintiff here and Blossom in *Grey Fox* are similarly situated. *Grey Fox* supports this court's conclusions that the economic loss rule prevents recovery for economic losses without physical harm to property or person, and that there is no special relationship between plaintiff and Plains.

There are at least three defects in this cause of action as pleaded, two of which arguably can be overcome. The last (involving the economic loss rule), however, cannot. As it appears plaintiff cannot claim any physical injuries to property from the negligent misrepresentations, which would then give rise to a claim for pure economic losses (including stigma damages), and as there is no reasonable basis to conclude a special relationship under the authority of *Southern California Gas Leaks*, the court will sustain the demurrer without leave to amend as to the fifth cause of action for negligent misrepresentation.

6) Negligence (Sixth Cause of Action)

Plaintiff relies on the same allegations and requests the same stigma damages in this cause of action for negligence as it does in the fifth cause of action for negligent misrepresentation. In its opposition, plaintiff argues simply and cursorily that the same reasons it advanced to support negligent misrepresentation support the negligence cause of action. However, for the same reasons discussed above in association with the economic loss rule and the inapplicability of the "special relationship exception," the court sustains the demurrer as to the sixth cause of action without leave to amend.

7) Willful Misconduct (Seventh Cause of Action (Advanced Against Plains only)

Plaintiff contends that defendant Plains engaged in "willful misconduct" because 1) defendant had actual or constructive knowledge of the peril to be apprehended by a rupture of the Pipeline; 2) Plains also learned of extensive external corrosion in the walls of the pipeline prior to the 2015 rupture or blowout and refused to take corrective action; 3) on the day of the 2015 blowout, Plains intentionally turned off the alarm that would have signaled a leak in the pipeline; and 4) following the leak in the pipeline, Plains restarted the pipeline. According to plaintiff, Plains consciously failed to act to avoid the peril of rupture and the blowout, consciously failed

to take the needed action to restart the pipeline, and plaintiff "has been, and will continue to sustain, injury, harm, and economic and property damage in an amount to be proven at trial."

The court agrees with Plains that the cause of action as pleaded cannot survive demurrer, for two reasons. First, cases treat the concept of willful misconduct in substantially the same way – actual or constructive knowledge of the peril to be apprehended; actual or constructive knowledge that the injury is a probable, as opposed to a possible, result of the danger; and conscious failure to act to avoid the peril. (*Simmons v. Southern Pac. Transportation Co*. (1976) 62 Cal.App.3d 341, 360.) That is, to establish willful misconduct, a plaintiff must prove not only the elements of a negligence cause of action (duty, breach, causation, and injury), but also actual or constructive knowledge of the peril to be apprehended; the probability of the result of the danger; and conscious failure to act to avoid the peril. (*Doe v. United States Youth Soccer Assn., Inc.* (2017) 8 Cal.App.5th 1118, 1140; *Bains v. Western R.R. Co*. (1976) 56 Cal.App.3d 902, 905 [willful misconduct means something different from and more than negligence, however, gross].) "To constitute willful misconduct, . . . [plaintiff] must show more than the bare possibility of injury. Otherwise, there would be little distinction between willful misconduct and negligence." (*Ibid*.) Additionally, the act or omission must be specifically described in order to raise it to the level of willful misconduct. (*Berkley v. Dowds, supra,* 152 Cal.App.4th at p. 528.) It is not enough to allege "in the passive voice various things that were done to [plaintiff] by an unnamed person or entity . . . ." (*Id*. at pp. 528-529.) "Facts" must be "alleged to show that [defendant] knew" the lack of action would probably lead to the injury alleged. (*Id.* at p. 529.)

Plaintiff has failed to allege ***specific facts*** to show that defendant had or actually has actual knowledge of the pipeline's corrosion. Plaintiff's allegations are conclusory and without factual substance – claiming only in the body of the cause of action that "Plains had actual or constructive knowledge of the peril to be apprehended by a rupture of the Pipeline." Nothing in the chain pleading portion of the complaint fills this pleading gap. It may be true that Plains was convicted of criminal wrongdoing—but that does not obviate the need for plaintiff to plead the factual allegations specifically. Without greater specificity, the cause of action fails. Nor is there any indication that Plains is consciously (subjectively) aware that the pipeline in its current state is defective and cannot withstand reasonable operational use. More facts must be pleaded.

Second, the thrust of plaintiff's willful misconduct claim (at least as advanced in the body of the seventh cause of action itself) seems predicated on plaintiff's fear of future damage (i.e., a blowout), with the attendant impact on current property values.[11] Case law is clear – for

[11] Plaintiff does not claim, for example, that if the pipeline were in sound operational order, well maintained and appropriately operational, there could be a claim for damages under this cause of action. Of course, it may well be true that the mere presence of an operational pipeline (as an easement over plaintiff's property) may diminish the property's value to a prospective buyer – but that clearly cannot be the basis for the lawsuit. The basis for a cognizable economic harm damages based on willful misconduct (assuming the economic loss rule does not apply) has to be predicated on the probable threat of a second blowout of any pipeline, not the mere possibility of one.

willful misconduct, the serious injury at issue, must be "probable, as distinguished from a possible," result. (*Ewing v. Cloverleaf Bowl* (1978) 20 Cal.3d 389, 402.) There are no facts in the present record to show that any injury is probable, as opposed to merely possible. This is certainly true in the body of the seventh cause of action, and it remains true in the chain pleading portion of the operative pleading. It has been approximately 10 years since the blowout. Plaintiff acknowledges there have been changes to the pipeline since this time (See ¶¶ 29- 36.) Further, while plaintiff contends that defendants' (Sable in particular) plans to "restart" the pipeline, plaintiff admits it "has no idea when, if ever," Plains or its predecessor "ever actually inspected the pipeline as it traverses through Zaca's property." (¶ 99.) Further, plaintiff acknowledges that defendants "just recently mailed a pamphlet to all property owners along the Pipeline, including Zaca, which in great detail describes the dangers posed by restarting the Pipeline, acknowledging the "***possibility***" of a leak. (¶ 100.) The facts fail to show a ***probable*** injury. More must be pleaded to advance this cause of action.

The court sustains the demurrer to the seventh cause of action for willful misconduct with leave to amend.

8) UCL (Eighth Cause of Action)

Plaintiff advances an unfair competition law claim pursuant to Business and Professions Code, section 17200, et seq. It argues that defendants' acts were "fraudulent" within the meaning of this provision in violation of the Natural Gas Pipe Safety Act of 1968, the Federal Pipeline Safety Act of 1979, the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006, and the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, "and all related regulations that set minimum standards for the design, installation, inspection, emergency plans and procedures, testing, extension, construction, operation, replacement and maintenance of pipeline facilities." Plaintiff claims it has been "harmed" (¶ 185), and claims additionally that as a "proximate result of Defendant's unfair, fraudulent, and unlawful methods of competition, [plaintiff] has suffered a loss of value. Defendants should be required to make appropriate restitution payments to [plaintiff]."

The court sustains the demurrer *without leave to amend*. The unfair competition law (UCL) limits the remedies available to restitution and injunctive relief (and civil penalties, which are not at issue here). (*Madrid v. Perot System Corp.* (2005) 130 Cal.App.4th 440, 452.) It is not an all-purpose substitute for a tort of contract action. (*Ibid*.) In the context of UCL, "restitution" is limited to the *return* of property or funds in which the plaintiff has an ownership interest. (*Id*. at p. 453 see *De La Torre v. CashCall, Inc*. (2018) 5 Cal.5th 966, 993 ["Private individuals like plaintiffs may win restitution or injunctive relief, but they cannot obtain damages or attorney fees," citing *Madrid* favorably].) Plaintiff in its pleading asks for "loss of value" of the property – but makes no claim for restitution or injunctive relief as defined under existing law.

Plaintiff argues that its claims for loss of value damages are justified under the UCL per *Iphone Application Litg*. (N.D. Cal. 2012) 844 F.Supp.2d 1040. Plaintiff's reliance on *Iphone Application Litg*. is misplaced. There, the federal district court determined plaintiff adequately stated a cause of action when they alleged "they overpaid for her iDevices as a result of Apple's failure to disclose its practices. Thus, Plaintiffs have sufficiently alleged a loss of money or property as result of a UCL violation." (*Id.* at p. 1072.) Nothing similar has been alleged here. Indeed, as noted in *Grey Fox*, "a restitution award requires that Plaintiffs 'prove that the money or property in which they had vested interest is now in Defendants' possession.'" (*Grey Fox v. Plains All American Pipeline, supra,* 2024 WL 306222 at p. 13; see *Cheverez v. Plains All Am. Pipeline*, LP, No. CV15-4113 PSG (JEMX), 2016 WL 4771883, at *2 (C.D. Cal. Mar. 4, 2016).) More forcefully, even if plaintiffs had a vested interest in their real property, they have not and cannot allege they had a vested interest in property or funds ***in defendant's possession.*** Because plaintiff cannot show their properties were ever in defendant's possession, they cannot state a claim for restitution. (*Korea Supply Co. v. Lockheed Martin Corp*. (2003) 29 Cal.4th 1134, 1129 [restitution is one compelling a UCL defendant to return money obtained through an unfair business practice].)

The court sustains the demurrer to the eighth cause of action without leave to amend.

9) Breach of the Implied Covenant of Good Faith and Fair Dealing (Ninth Cause of Action)

Plaintiff contends that implied in the "Easement Agreement" at issue (as outlined in the breach of contract cause of action) is a covenant of good faith and fair dealing. According to plaintiff, defendants agreed they would act in good faith and fair dealing and do nothing to "impair, interfere with, hinder, or potentially injure" plaintiff's rights. Plaintiff lists in serial fashion 14 alleged breaches of the implied covenant of good faith and fair dealing, from disregarding their duty to adequately monitor, repair, maintain, operate, remove, and replace the pipeline, operating an unsafe pipeline, to restart the pipeline that is unsafe, to "failing to do everything the Easement presupposed the Defendants would do to accomplish their purpose." (¶ 190.)

Defendant argues that the claim has not been adequately pleaded because "in the absence of an express condition on which to base the implied duty, there can be no claim for its breach." (*Pasadena Live, LLC v. City of Pasadena* (2004) 114 Cal.App.4th 1089, 1094 [the implied covenant of good faith and fair dealing is limited to assuring compliance with the express terms of the contract, and cannot be extended to create obligations not contemplated by the contract].) According to defendant, the easement contract "grants Plains the right to operate and maintain the Pipeline, and it does not place an affirmative obligation on them to do so, [so] there is no

express duty for Plaintiff to base the implied duty. Accordingly, Plains' demurrer to the Ninth Cause of Action should be sustained without leave to amend." Plaintiff opposes the claim , asserting it has adequately pleaded just such an express duty from the face of the easement – "to construct and maintain a pressurized pipeline across private party" in a sage and competent manner, which must be done in good faith.

As was true with regard to the breach of contract cause of action, Judge Gutierrez in the federal litigation overruled the motion to dismiss as to the breach of the implied covenant of good faith and fair dealing cause of action, making the following observations that have relevance here: With regard to the implied covenant of good faith and fair dealing cause of action, the Court recognized at the motion to dismiss state (i.e., the federal equivalent of California's demurrer), the import of the highlighted language from *Pasadena Live.* "Because the court determined that it would be premature to rule on the meaning of the easement contract provisions at the motion to dismiss stage, it denied dismissing Plaintiff's claim for breach of the implied covenant of good faith and fair dealing. . . . ." The reason for that was explained in detail. Under California law, courts may not dismiss on the pleadings when one party claims extrinsic evidence renders the contract ambiguous (i.e., despite a clear and facial reading of the contract. (*Grey Fox, supr*a, at p. 10.) In the federal court's view, plaintiff should be afforded the opportunity to support its interpretation of the easement contract, meaning it overcomes pretrial attacks at the pleading stage. (See, e.g., *Rutherford Holdings, LLC v. Plaza Del Ray* (2014) 223 Cal.App.4th 221, 229 [so long as plaintiff's pleaded interpretation of the contract, a court must accept as correct plaintiff's interpretation as to the meaning of the agreement].) This rationale has application here. While plaintiff's interpretation of the contract may ultimately prove invalid (and certainly on summary judgment the *Grey Fox* court rejected plaintiff's interpretation), "it [is] improper to resolve the issue against [plaintiff] solely on the pleading." [12] (*Aragon-Haas v. Family Security Ins. Services, Inc*. (1991) 231 Cal.App.3d 232, 239.) That was true then; it remains true now.

For these reasons, the court overrules the demurrer to the ninth cause of action.

10) Permanent Nuisance (Tenth Cause of Action)

Plaintiff contends that defendants have created a "permanent nuisance." Specifically, plaintiff contends that the pipeline, because of the hazards it has created, is a nuisance. At all times "defendants have failed to properly install, maintain, repair and/or restore the Pipeline, creating an unsafe, ultrahazardous Pipeline that is extremely dangerous to the reasonable use of

[12] While *Grey Fox* granted Plains' summary judgment motion, it did so only after plaintiffs were afforded an opportunity to provide extrinsic evidence to show its claimed meaning. While the *Grey Fox* court found that plaintiffs in that case failed to show objectively that Plains had a duty to maintain the pipeline, this court is reluctant at this time to preclude plaintiff from the opportunity to make its case. The court will briefly revisit this issue when it discusses the second demurrer on calendar.

Zaca's property, and interferes with the comfortable enjoyment" of plaintiff's property. Specifically, defendants have caused the pipeline to "corrode, rupture, damage the environment, and threaten the people and properties near it," and the "hazardous conditions are not limited to the area immediately surrounding the May 2015 rupture," for the entirety of the pipeline is "riddled with corrosion, other known anomalies, leaks and potential rupture points, all of which are harmful to both human health and the environment and interfere with Zaca's comfortable use and enjoyment of Zaca's property." (¶¶ 193 to 199.) As a direct and proximate cause, "Defendants' acts and omissions have caused substantial actual damage and immediate and ongoing diminution of the value of Zaca's property, as well as the loss of use and enjoyment of Zaca's property, in amounts to be determined at trial." Plaintiff emphasizes: The nuisance caused by Defendants' conduct is permanent, and the comfortable enjoyment of the Zaca Property and the surrounding community have suffered irreparable damage." (¶ 201.)

Defendant claims the demurrer should be sustained because1) plaintiff is attempting to recover "unrecoverable stigma damages"; 2) California law distinguishes between continuing and permanent nuisances, and holds that if a nuisance can be abated, it is a continuing, not a permanent, nuisance, and because the basis of the plaintiff's claim is the failure to maintain the pipeline, it can be abated, making it a continuing, not a permanent, nuisance. According to defendant, the "allegations" do not support a permanent nuisance cause of action. Plaintiff in opposition contends it has adequately pleaded the factual basis for a permanent nuisance, pointing to allegations in paragraphs 195, 196, and 201 of the FAC, and arguing it has adequately alleged that complete abatement "would require ceasing pipeline operations, major alterations to the land, or reforming the easement itself – squarely meeting the permanent nuisance standard."

"Where a nuisance is of such character that it will presumably continue indefinitely it is considered permanent, and the limitations period runs from the time the nuisance is created. [Citations.] On the other hand, if the nuisance may be discontinued at any time, it is considered continuing in character. [Citations.]" (*Phillips v. City of Pasadena* (1945) 27 Cal.2d 104, 107, 108 [where it appeared from the complaint's allegations that the locked gate could be removed at any time, the appellate court could not say, as a matter of law, that the locked gate constituted permanent nuisance"]; *Kahn v. Price* (2021) 69 Cal.App.5th 223, 238; see *Madani v. Rabinowitz* (2020) 45 Cal.App.5th 602, 608-609 ["the ' "crucial test of the permanency of a . . . nuisance is whether the ... nuisance can be discontinued or abated" ' "; "[u]nder this test, sometimes referred to as the 'abatability test' [citation], a ... nuisance is continuing if it 'can be remedied at a reasonable cost by reasonable means' "].) Under California law, damages for diminution of value (of which plaintiff clearly requests) may only be recovered for a permanent, not a continuing, nuisance (at least when no physical damage to property is alleged). (*Gehr v. Baker Hughes Oil Field Operations, Inc.* (2008) 165 Cal.App.4th 660, 663.) "Although clear cut distinctions between permanent and temporary nuisances are elusive at best" (*Spar v. Pacific Bell* (1991) 235 Cal.App.3d 1480, 1483), courts have explained the difference by distinguishing "between

encroachments of a permanent nature erected upon one's land, and complaint made, not of the location of the offending structing, but of the continuing use of such structures." (*Gehr, supra,* at p. 667.)

Under this authority, if plaintiff had adequately pleaded a permanent nuisance cause of action, it could properly seek the stigma damages it desires. This distinction determines the nature of remedies available to plaintiff. (*Baker v. Burbank-Glendale-Pasadena Airport Auth.* (1985) 39 Cal.3d 862, 868.) But the court is not convinced that plaintiff has adequately pleaded a permanent nuisance. What plaintiff in opposition claims it has pleaded in paragraphs 195, 196, and 201 of the FAC – "complete abatement would require ceasing pipeline operations, major alterations to the land, or reforming the easement itself – squarely meeting the permanent nuisance standards" – these statements are not supported by the three identified paragraphs. The basis of plaintiff's permanent nuisance claim is the allegedly negligent maintenance of the pipeline, which is "riddled with corrosion, other known anomalies, leaks, and potential rupture points, all of which are harmful to both human health and the environment . . . ." Plaintiff's allegations at their core do not rest on the fact the pipeline itself is the source of the alleged nuisance, but only its potential, future use. Under *Gehr's* formulation, plaintiff must object to the location of the pipeline in order to constitute a permanent nuisance, which cannot be abated, as opposed to its impermissible use, which can. (*Gehr, supra,* at p. 667.) Here, plaintiff's claim is premised on the continued use of the pipeline, and its potential breach; this suggests the nuisance rests on the continued use of the pipeline, not its placement. (See, e.g., *Grey Fox, LLC v. Plains All American Pipeline, L.P,* Apr. 8, 2019WL 4196066, at p. 15 [making this same distinction in the federal litigation].) Plaintiff has alleged a continuing nuisance, not a permanent one.

The court sustains the demurrer. Leave to amend will only be granted if plaintiff can convince the court that it is possible to allege a permanent nuisance under the standards enunciated in *Gehr, supra.* If plaintiff cannot convince the court this is possible, the demurrer will be sustained without leave to amend.

B) Sable's and Pacific's Demurrer (to All Eleven Causes of Action Except Willful Misconduct)

As noted above, Sable and Pacific (joined by Plains) challenge all causes of action but the seventh for willful misconduct (as Sable and Pacific are not named parties to it). For the same reasons articulated above as to Plains' demurrer, the court rejects defendants' claims that all causes of action are barred by the relevant statute of limitations, as the claims were tolled per *American Pipe,* and overrules the demurrer on that ground. The court also overrules the demurrer to the fourth cause of action for breach of written easement and the ninth cause of action for breach of the implied covenant of good faith and fair dealing, for the same reasons articulated

above.[13] The court sustains defendants' demurrer without leave to amend as to the fifth, sixth, and eighth causes of action (negligent misrepresentation, negligence,[14] and UCL respectively), for the same reasons articulated above.

This leaves four causes of action that should be addressed – the first for quiet title, the second for declaratory relief, the third for injunctive relief, and the eleventh for "threatened nuisance." Each challenge will be addressed below.

Defendants contend that quiet title and declaratory relief are remedies, not causes of action, and therefore cannot stand as their own causes of action. Quiet title is clearly a cause of action. (*Weeden v. Hoffman* (2021) 70 Cal.App.5th 269, 278 ["A cause of action to quiet title is clearly not a tort claim, and it does not seek to hold a defendant liable for damages. Rather, "actions to quiet title, like true declaratory relief actions, are generally equitable in nature"; "A quiet title action is a statutory action that seeks to declare the rights of the parties in realty"; the "purpose of a quiet title action is to determine any adverse claim to the property that the defendant may assert, and to declare and define any interest held by the defendant, ' "so that the plaintiff may have a decree finally adjudicating the extent of his own interest in the property in controversy"].) Further, our high court seems to treat declaratory relief as a cause of action – or at the very least as a cognizable claim if the complaint identifies a proper subject of declaratory relief per Code of Civil Procedure section 1060 and pleads an actual future controversy relating to the rights of the parties. (*Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 807 ["In her complaint, plaintiff adequately pled a claim for declaratory relief even though she did not separately identify it as a cause of action, because there are no forms of action, a declaration of rights will be upheld even though the pleader did not think he was proceeding under the declaratory relief statute and did not appropriately label his complaint]; but cf. *Strozier v. Williams* (1960) 187 Cal.ap.2d 528, 531 ["While plaintiff's third and fourth amended complaints may not be considered as model pleadings, they do sufficiently allege the existence of an actual

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[13] Defendants note that plaintiff alleges two duties they breached: 1) to install, maintain operate and remove or replace the Pipeline, so as not to unreasonably interfere with plaintiff's rights; and 2) there is an obligation to record an "as-built" diagram of the Pipeline. The court need not address both theories, for if one survives, the demurrer is without merit. As was true with regard to Plains' demurrer, the first theory survives challenge. It is true, as noted by Sable and Pacific, that in *Grey Fox* Judge Gutierrez ultimately granted summary judgment as to the breach of contract and implied covenant of good faith and fair dealing causes of action because plaintiffs there failed to submit any evidence that the easement contract language was ambiguous, meaning (in Judge Gutierrez's view), the contract unambiguously granted defendants the right to operate and maintain the Pipeline," but "does not place an affirmative obligation on them to do so," and thus, plaintiff could not state a breach of contract and breach of the implied covenant of good faith and faith dealing. As noted earlier in this order, the court is not inclined to preclude plaintiff at the pretrial stage from an opportunity of making its case in this regard. And as Sable and Pacific make no argument concerning the impact of issue preclusion based on the federal court's determinations (see, e.g., *DKN Holdings, LLC, supra,* 61 Cal.5th at p. 825), the issue will not be addressed.

[14] This determination obviates the need for the court to address defendants' claims that the negligent misrepresentation cause of action is barred because plaintiff relies on statements in Plains' permit application to Santa Barbara County, pursuant to the absolute privilege contained in Civil Code section 47, subdivision (b) and the *Noerr-Pennington* doctrine, per *People ex rel. Gallegos v. Pacific Lumber Co*.(2008) 158 Cal.App.4th 950, 964.

controversy so as to state a cause of action in declaratory relief"]; *Guessous v. Chrome Hearts, LLC* (2009) 179 Cal.App.4th 1177, 1186 ["A cause of action for declaratory relief, like any cause of action, must be based on an actual, present controversy"].) In any event, as both the quiet title and declaratory relief causes of action are based on defendants' alleged abandonment/termination of the easement, thus involving realty (quiet title) and contract (a proper subject of declaratory relief), they are related and can be pleaded at least as alternatives.

The court overrules defendants' demurrer to the first and second causes of action.

Defendants are correct, however, that the third "cause of action" for injunctive relief is in reality a remedy and not a cause of action, and thus subject to demurrer. "Injunctive relief is a remedy, not a cause of action. [Citations.]" (*Ivanoff v. Bank of Am., N.A.* (2017) 9 Cal. App. 5th 719, 734.) Injunctive relief should be alleged in association with a proper cause of action, such as quiet title and/or declaratory relief, and not as a freestanding cause of action. The court sustains the demurrer with leave to amend (with directions to allege the remedy as to a viable cause of action).

This leaves the last cause of action – the eleventh – for "threatened nuisance." Plaintiff alleges that while defendants do not intend, and cannot, operate the existing "Pipeline in its current condition, Sable plans to restart the Pipeline" (subject to new safety maintenance requirements and associated requirements). Yet any repair and/or replacement will itself "burden [plaintiff's] property unreasonably," beyond the Easement, and create an "additional nuisance and trespass," causing noise, vibration, dust, release of noxious and malodorous gases, fumes, and other contaminants. The "unsupported plan" to restart the Pipeline would exacerbate the "extreme negative reputation of the Pipeline" and the threat of "another disastrous blowout," and ruin plaintiff's property" based on the "high probability" of danger.

Plaintiff's claim is based on Civil Code section 3479, which seemingly allows a threatened nuisance cause of action, as follows: "Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance." It is nevertheless clear, under both state and federal case authority, that plaintiff must allege sufficient facts to show that the danger of the threatened nuisance is "real and immediate" or (put another way) is ripe for resolution. (*California Tahoe Regional Planning Agency v. Jennings* (9th Cir. 1979) 594 F.2d 181, 193 ["the danger of a nuisance" must alleged to be "real and immediate"; there must be a "direct and immediate connection" between the acts alleged and the harm that will be suffered]; *Pacific Legal Foundation v. California Coastal Commission* (1982) 33 Cal.3d 158, 170-171 [a controversy is

ripe when it has reached, but has not passed, the point that the facts have been sufficiently congealed to permit an intelligent and useful decision to be made].)

The allegations in the operative pleading do not satisfy these requirements. Plaintiff assumes that the pipeline will rupture if used, and this assumption acts as the predicate for the cause of action. For example, plaintiff alleges that defendants' plans to restart the pipeline will be subject "to new safety and maintenance requirements as imposed by the [2020] Consent Degree and associated requirements, after installing automatic shutoff valves . . . ." Yet plaintiff also acknowledges (within this conclusory statement) that "necessary work" for repair and replacement will be required," but fails to inform of its nature, character, scope, and duration. (See, e.g., *Wilson v. Interlake Steel Co*. (1982) 32 Cal.3d 229, 233 [intangible intrusions, such as noise, odor or light alone, are dealt with as nuisance cases].) More significantly, until the government authorities have actually determined and/or weighed in on the viability of the pipeline and the circumstances in which it can go forward or not (e.g., and according to the operative pleading, that would be the State of California), it is speculative to assume a nuisance is actually threatened – and what it would look like. The nuisance, in other words, is not "real and immediate," and thus is not ripe for determination (i.e., where the facts have sufficiently congealed to permit an intelligent and useful decision to be made). There are too many speculative future events to make the dispute sufficiently concrete for judicial resolution.

Santa Teresa Citizen Action Group v. City of San Jose (2003) 114 Cal.App.4th 689, a case not cited by either party, is illustrative of these points. There, petitioner argued that the City of San Jose's approval of the extension of an existing water recycling program, created a "threatened nuisance." (*Id*. at p. 695.) "Petitioners have assumed as they have all along that expanding the use of recycled water to new users in North Coyote Valley will inevitably contaminate the aquifer. Respondents argue the issue is not ripe for review. We agree with respondents." (*Id*. at p. 708.) The appellate court explained that a controversy must be ripe for determination – definite and concrete, real and substantial, admitting of specific relief through a degree of a conclusive character; "courts will not be drawn into disputes that depend for the immediacy on speculative future events." (*Id.* at p. 708.) As relevant here, the appellate court framed the issue as follows: "The instant case is similar to a case seeking review of administrative regulations prior to their application. In those cases, it has been stated: '[The] basic rationale [of the ripeness doctrine] is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties. The problem is best seen in a twofold aspect, requiring us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.' (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148–149 []." (*Id.* at p. 708.)

The *Santa Teresa Citizen Action Group* appellate court applied these principles to the facts before it, concluding that petitioner's nuisance claim lacked the urgency and definiteness necessary to make it ripe for adjudication. It is true that petitioner sought to entirely prevent the use of recycled water in North Coyote Valley and that respondents had an interest in finding new recycled water users in that location. To that extent, the parties' interests are adverse. However, the real issue was whether the use of the water would threaten the groundwater supply. "The record does not support petitioners' suggestion that *any* use of the water will inevitably contaminate the aquifer. And no use other than MEC's has yet been approved. ***Absent approval of some specific use, we have no facts upon which to evaluate whether a particular use might constitute a nuisance***." (*Id.* at p. 708, emphasis added.) The court added that the "[t]he hardship to the parties" of withholding court consideration does not demand the matter be resolved now. "Any hardship inherent in delaying adjudication may never arise. Petitioners' alleged injury depends upon the assumption that City will approve uses for recycled water that pose a significant risk to the aquifer from which petitioners obtain their drinking water. Although it is fairly certain that new recycled water users will eventually be brough online, the likelihood that City will permit new users without regard to the risks is speculative at best." (*Id.* at pp. 708-709.)

The same concerns identified in *Santa Teresa Citizen Action Group* are present here. Plaintiff here, as did plaintiff Santa Teresa Citizen Action Group, assumed the worst (here, that the pipeline will rupture again), and is seeking to "entirely prevent" oil from being transported through the pipeline (as did the plaintiffs in Santa Teresa Citizen Action Group with regard to recycled water). While the parties' actions are adverse (as was the case in *Santa Teresa Citizen Action Group*), the issue is whether pumping will threaten defendant's property. And as was true in *Santa Teresa Citizen Action Group*, absent final approval of the pipeline's use by the relevant governmental authorities (here, the State of California), there are no concrete facts upon which to evaluate whether the particular use might constitute a nuisance. Further, any hardship on the parties (as was true in *Santa Teresa Action Group*) does not demand immediate resolution. As was true in *Santa Teresa Citizen Action Group*, the likelihood that the government agencies will permit the pipeline's use without regard to the risks is far too speculative to warrant judicial intervention at this time.

This is not to say that petitioners must permit the oil to pump through the pipeline before the issue is justiciable. The court concludes only that the allegations as advanced here must be more definite in scope, time, and substance, before there can be a "threatened nuisance" subject to judicial resolution. (*Santa Teresa Citizen Action Group, supra,* at p. 709 []; see also *Brown v. Rea* (1907) 150 Cal. 171, 174 [plaintiff undoubtedly sought to allege such an obstruction of this easement as would constitute a peculiar injury to him. But the complaint makes allegations "of his conclusions and opinions, and cannot be considered as stating a cause of action"].)

The court sustains defendants' demurrer to the eleventh cause of action. Unless the plaintiff can convince the court that it can amend the pleading to cure the ripeness problems identified above, the court will sustain the demurrer without leave to amend.

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C) Sable's Motion to Strike

Defendant Sable alone (without Pacific) asks the court to strike certain sentences from the following paragraphs contained in the FAC: 4,11, 12, 13, 18, 19, 31, 35, n. 2, 96, 98,99, 105, 106, 107, 115, 118, 129 to 146, 147, 149, 150, 151, 154, 155, 156, 157, 158, 159, 160, , 162, 174, 175, 179, 180, 181, 182, 184, 185, 186, 189, 190, 191, 192, 194, 195, 197, 198, 199, and 200. According to Sable, the thrust of its argument as to each of these challenged paragraphs is that judicially noticed facts reveal each contains a factual misstatements (to the effect that Sable owns the pipeline at issue, and that Sable is the successor in interest to Celeron), supporting a motion to strike.

Plaintiffs asks the court to take judicial notice of Exhibits A to J, which consist of the following documents: A) a copy of the class action complaint filed May 6, 2016, in *Grey Fox, LLC et al., v. Plains All-American Pipeline, L.P*., Case No. CV-16-3157 (PSG)(JEMx) (C.D. Cal.) (*Grey Fox*); B) plaintiffs' amended class action and individual complaint in *Grey Fox*, filed December 17, 2018; C) the court order in *Grey Fox* setting deadlines for the class certification briefing; D) Plaintiff's "Motion for Class Certification" in *Grey Fox*, filed November 4, 2019; E) the federal court's May 27, 2024 *Grey Fox* "Order Granting Stipulation of Parties to Vacate All Pending Dates With Respect to Claims Against Defendant Pacific Pipeline Company Pursuant to Settlement"; F) excerpts of Flame Acquisition Corp's Schedule 14 A Proxy Statement Under the Securities Exchange Act of 1934, filed with the United State Securities and Exchange Commission on January 31, 2024; G) excerpts from Annex H to Flame Acquisition Corp's Schedule 14A Proxy Statement filed with SEC on January 31, 2024; H) a copy of Sable's February 14, 2024 Form 8-K filed with the SEC; I) a copy of the excerpts of EX-10.27 attached to Sable's February 14, 2024 Form 8-K filed with the SEC; and J) a true and correct copy of the November 4, 2024 letter from the Santa Barbara Planning Commission regarding the Change of Owner, Operator, and Guarantor for the Santa Ynez Unit, POPCO, Gas Plan, and Los Flores Pipeline System Final Development Plan Permits. Defendants have filed a declaration from Jessica Stebbins. As the request for judicial notice is unopposed by plaintiff, it is granted.

Pursuant to Code of Civil Procedure sections 436 and 437, subdivision (a), a motion to strike is appropriate when, from the face of the pleading or from judicially noted facts, the operative pleading contains material erroneous factual statements that are "irrelevant, false, or improper . . . ." By false, a court may strike allegations that are untrue. But the use of a motion to strike must be "cautious and sparing," for there is "no intention of creating a procedural 'line-item veto' for the civil defendant." (*Ph II v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683.)

Underscoring the rules indicating a limited use of a motion to strike are rules associated with judicial notice. While a court may take judicial notice of government documents, it cannot take judicial notice of the truth of their contents, unless the document is a court order, finding of fact, a conclusion of law, and/or a judgment. (See, e.g., *Garcia v. Sterling* (1983) 176 Cal.App.3d 17, 21- 22 [a court may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in court orders, findings of fact, and conclusions of law, and judgments]; see also *Water Audit California v. Merced Irrigation Dist.* (2025) 111 Cal.App.5th 1147, 1168 [when judicial notice is taken of a document, the court takes judicial notice of its existence; its truthfulness and proper interpretation of the document are disputable; this includes letters authored by and exchanged with government agency officials]; *Ragland v. U.S. Bank National Assn*. (2012) 209 Cal.App.4th 182, 193 [a court may take judicial notice of the existence of government reports, Web sites, and blogs, but courts may not accept their contends as true]; *Dominguez v. Bonta* (2022) 87 Cal.App.5th 389, 400 [courts take judicial notice of the existence, content, and authenticity of public records and other specified documents, but do not take judicial notice of the truth of the factual matters asserted in those documents].)

These two sets of rules frame the issue before the court and govern resolution. The court has taken judicial notice of the existence of the documents contained in defendants' request for judicial notice, but it cannot take judicial notice of the truth of their contents, for the relevant parts do not involve findings of fact, conclusions of law, or a judgment. Yet central to defendant's motion to strike (and its argument that the identified paragraphs are false) is their unspoken belief that the court can take judicial notice of the truth of the contents of the submitted documents. The court cannot do that. This point is reinforced because claims of ownership appear to be disputed issues central to this lawsuit. Because the court cannot take judicial notice of the truth of the contents of the documents offered through judicial notice, it cannot grant the motion to strike on the ground that statements in the FAC are false. As defendant at no time claims that the mere existence of these documents is dispositive, judicial notice does not aid defendant's arguments. Nothing offered in defendant's reply changes this conclusion.

Accordingly, the court denies defendant's motion to strike.

The court makes one final observation in light of plaintiff's claim in opposition to the motion to strike that it has properly pleaded an "alter ego" theory of liability between Sable and Pacific. (See p. 4 of Opp.) A complaint "must set forth the facts with sufficient precision to put the defendant on notice about what the plaintiff is complaining and what remedies are being sought. "To recover on an alter ego theory, plaintiff need not use the words 'alter ego,' [and plaintiff has not in the FAC], but must allege sufficient facts to show a unity of interest and ownership, ***and*** an unjust result if the corporation is treated as the sole actor. (*Leek v. Cooper*

(2011) 194 Cal.App.4th 399, 415, emphasis added; 417 [to impute alter ego liability, a plaintiff must show a unity of interest and ownership between the corporation and its equitable owner that no separation actually exists and that an inequitable result occurs if the acts in question are treated as those of the original corporation alone].) Although plaintiff in opposition points to paragraphs 96 to 98, 99, and 107, as ones that support an alter ego theory of liability, there are no allegations or facts showing a unity of interest and inequitable result from treating either Sable or Pacific as the sole actor. This issue was not raised by demurrer or motion to strike (although it was challenged in defendant's reply), although plaintiff will be afforded an opportunity to remedy the pleading defect in the future amended pleading.

D) Summary of Court's Conclusions:

- The court overrules both demurrers on the ground that the relevant statutes of limitation bar all eleven causes of action in the FAC. The court finds the individual causes of action have been tolled under the rules articulated in *American Pipe* and progeny.
- As to Plains' Demurrer:
    - The court grants both requests for judicial notice.
    - The court overrules the demurrer to the first, fourth, and ninth causes of action (for quiet title, breach of contract, and breach of the covenant of good faith and fair dealing, respectively).
    - The court sustains the demurrer *without* leave to amend as to the fifth, sixth, and eighth causes of action (negligent misrepresentation, negligence and UCL, respectively).
    - The court sustains the demurrer to the seventh cause of action (willful misconduct) *with* leave to amend.
    - The court sustains the demurrer to the tenth cause of action (for permanent nuisance). Leave to amend will be granted only if plaintiff convinces the court at the hearing of the possibility that it can plead a permanent nuisance based on the location of the pipeline, rather than problems with its use, under the framework established in *Gehr v. Baker Hughes Oil Field Operations, Inc.* (2008) 165 Cal.App.4th 660, 663-667. If plaintiff cannot convince the court that the amendment is possible, the court will sustain the demurrer without leave to amend to the tenth cause of action.
- As to Sable's and Pacific's Demurrer:
    - The court overrules the demurrer to the first, second, fourth, and ninth causes of action (for quiet title, declaratory relief, breach of contract, and breach of the implied covenant of good faith and fair dealing, respectively).
    - The court sustains the demurrer to the third cause of action for injunctive relief, as injunctive relief is a remedy, not a cause of action, *without* leave to amend, although the court will allow plaintiff to allege the remedy in association with a valid cause of action.
    - The court sustains the demurrer to the fifth, sixth, and eighth causes of action (for negligent misrepresentation, negligence, and UCL violation, respectively), *without* leave to amend, for the reasons discussed with regard to Plains' demurrer.

    - The court sustains the demurrer to the tenth cause of action (for permanent nuisance), for the reasons discussed with regard to Plains' demurrer. As above, leave to amend will be allowed only if plaintiff can convince the court it can possibly amend to allege a permanent nuisance under the standards enunciated in *Gehr, supra,* as also noted above. And as above, if plaintiff cannot do this, the court will sustain the demurrer without leave to amend.
    - The court sustains the demurrer to the eleventh cause of action (for "threatened nuisance"); leave to amend will be granted only plaintiff can convince the court it can address the ripeness concerns by alleging a probable injury when the relevant government agencies have not yet weighed in on the feasibility of the pipeline's functionality, under the authority of *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689. If plaintiff cannot convince the court it can possibly amend to solve the ripeness issue, the court will sustain the demurrer to the eleventh cause of action without leave to amend.
- Sable's Motion to Strike
    - The court grants defendant's request for judicial notice.
    - However, the court cannot take judicial notice of the truth of the contents of the documents as submitted. Because the truth of the contents of these documents is crucial to Sable's claim that the challenged paragraphs contain false statements, and because the court cannot take judicial of the truth of those facts, there is no basis to grant the motion to strike. Accordingly, the motion to strike is denied.
    - One final point. Plaintiff claims in reply to the motion to strike that it has adequately pleaded "alter ego". It has not. Notably, plaintiff has not alleged an inequitable result would occur if either Sable or Pacific are treated as the sole actor. This requirement must be pleaded. Plaintiff will be given an opportunity to do this in the amended pleading.
- Plaintiff has 30 days from today hearing to submit an amended pleading.
- The parties are directed to appear at the hearing in person or by Zoom.