

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Smith v. Wells Fargo Bank, N.A.

No. 25-cv-00719-HSG (N.D. Cal. Sept. 30, 2025) · No. 25-cv-00719-HSG · Decided September 30, 2025

OPINION

Smith v. Wells Fargo Bank, N.A.

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 FAYE SMITH, Case No. 25-cv-00719-HSG 8 Plaintiff, ORDER GRANTING
DEFENDANTS’

MOTIONS TO DISMISS

9 v. Re: Dkt. Nos. 20, 22 10 WELLS FARGO BANK, N.A., et al., 11 Defendants. 12 13 Pending
before the Court are Defendants Wells Fargo Bank’s (“Wells Fargo”) and 14 JPMorgan Chase
Bank’s (“Chase”) motions to dismiss. See Dkt. Nos. 20, 22. The Court 15 GRANTS the motions.

16 I. REQUEST FOR JUDICIAL NOTICE

17 Along with its motion to dismiss, Wells Fargo filed a request for judicial notice. See Dkt.

18 No. 19. Plaintiff did not respond to Wells Fargo’s request. The Court grants in part and denies
in

19 part the request. 20 A. Legal Standard 21 As a general matter, district courts may not consider
material outside the pleadings when 22 assessing the sufficiency of a complaint under Rule 12(b)
(6). *Lee v. City of Los Angeles*, 250 F.3d 23 668, 688 (9th Cir. 2001). However, there are two
exceptions to this rule: the incorporation-by- 24 reference doctrine and judicial notice under
Federal Rule of Evidence 201. See *Khoja v. Orexigen 25 Therapeutics, Inc.*, 899 F.3d 988, 998
(9th Cir. 2018). Both procedures permit district courts to 26 consider materials outside a complaint
without converting a motion to dismiss into a summary 27 judgment. *Id.*; see *Lee*, 250 F.3d at
688–89. 1 to consider certain documents as though they were part of the complaint itself. *Khoja*,
899 F.3d at 2 1002. This is to prevent a plaintiff from cherry-picking certain portions of
documents that support 3 her claims, while omitting portions that weaken her claims. *Id.*
Incorporation by reference is 4 appropriate “if the plaintiff refers extensively to the document or
the document forms the basis of 5 plaintiff’s claim.” *Id.* However, “the mere mention of the
existence of a document is insufficient 6 to incorporate the contents” of a document. *Id.* Under the
incorporation-by-reference doctrine, a 7 court may consider evidence on which the complaint
“necessarily relies” if: (1) the complaint 8 refers to the document; (2) the document is central to

the plaintiff's claim; and (3) no party 9 questions the authenticity of the copy attached to the 12(b) (6) motion. *Marder v. Lopez*, 450 F.3d 10 445, 448 (9th Cir. 2006). If these conditions are met, the court may treat such a document as part 11 of the complaint and may assume the truth of the document's contents for purposes of a motion to 12 dismiss under Rule 12(b)(6). *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 13 2010). However, while a court "may assume [an incorporated document's] contents are true for 14 purposes of a motion to dismiss . . . it is improper to assume the truth of an incorporated document 15 if such assumptions only serve to dispute facts stated in a well-pleaded complaint." *Khoja*, 899 16 F.3d at 1002. 17 Federal Rule of Evidence 201(b) permits a court to notice an adjudicative fact if it is "not 18 subject to reasonable dispute because it: (1) is generally known within the trial court's territorial 19 jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot 20 reasonably be questioned." Fed. R. Evid. 201(b). In *Khoja*, the Ninth Circuit discussed the 21 judicial notice rule and incorporation by reference doctrine, noting that a court may take "judicial 22 notice of matters of public record," but "cannot take judicial notice of disputed facts contained in 23 such public records." 899 F.3d at 999 (citation and quotations omitted). The Ninth Circuit has 24 held that if a court takes judicial notice of a document, it must specify what facts it judicially 25 notices from the document. *Id.* Further, "[j]ust because the document itself is susceptible to 26 judicial notice does not mean that every assertion of fact within that document is judicially 27 noticeable for its truth." *Id.* As an example, the Ninth Circuit held that for a transcript of a 1 the specified date, but may not take judicial notice of a fact mentioned in the transcript, because 2 the substance "is subject to varying interpretations, and there is a reasonable dispute as to what the 3 [document] establishes." *Id.* at 999–1000. 4 B. Analysis 5 Wells Fargo asks the Court to take judicial notice of five exhibits. See Dkt. No. 19. 6 Plaintiff does not oppose this request. 7 Exhibit A is a notice of errata filed by Plaintiff in this matter before the case was removed 8 to federal court. See Dkt. No. 19-1. Plaintiff's notice of errata contained a version of her 9 complaint that reattached and corrected her exhibits. While Exhibits A and B to the complaint 10 remain unchanged, Plaintiff corrected the remaining three exhibits, specifically: (1) Exhibit C to 11 the complaint, a forged power of attorney; (2) Exhibit D to the complaint, a forged resignation of 12 trustee; and (3) Exhibit E to the complaint, two police reports filed by Plaintiff.¹ It appears that 13 when she originally filed her complaint, Plaintiff erroneously attached the power of attorney twice 14 and did not attach the resignation of trustee or police reports at all. The notice of errata therefore 15 corrected her complaint to properly attach a resignation of trustee and police report. The only 16 change that the Court observes in the revised version of the forged power of attorney, meanwhile, 17 is that the cover page of Plaintiff's family trust has been removed between pages six and seven of 18 the nine-page power of attorney. Compare Dkt. No. 1-1 70–79, with Dkt. No. 19-1 at 63–71. 2 19 This request for judicial notice strikes the Court as somewhat odd. On the one hand, 20 generally courts may not consider matters outside the pleadings when assessing the sufficiency of 21 Plaintiff's complaint. *Khoja*, 899 F.3d 988, 998 (9th Cir. 2018). Here, however, it was Plaintiff

22 who originally referenced these exhibits throughout her complaint and incorporated them by 23 reference into it. She sought to remedy errors in attaching those exhibits by filing a notice of 24 errata. Under the incorporation-by-reference doctrine, courts “treat[] certain documents as though 25 1 Plaintiff’s notice of errata did not include exhibit cover sheets for the corrected exhibits. To the 26 extent that Plaintiff amends her complaint, and that amended complaint includes any exhibits, the Court DIRECTS her to include such cover sheets to allow the Court to easily identify each 27 exhibit. 1 they are part of the complaint itself.” *Khoja*, 899 F.3d at 1002. Here, there can be no question 2 that it was Plaintiff, not defendant Wells Fargo, who sought to bring these documents to the 3 Contra Costa court’s attention in the first place. This is therefore not a situation where Defendants 4 have sought to create “a defense to the well-pled allegations in the complaint” to defeat otherwise 5 cognizable claims. *Id.* Because, in her original complaint, Plaintiff incorporated by reference the 6 exhibits attached in Exhibit A to the request for judicial notice, the Court incorporates by reference 7 those exhibits only. The Court thus incorporates by reference the following pages and exhibits 8 found within Exhibit A to Wells Fargo’s request: 9 Dkt. No. 19-1 at 27–61: This is Exhibit A to Plaintiff’s complaint, i.e., the Robert and Faye 10 Smith Family Trust. 11 Dkt. No. 19-1 at 62: This is Exhibit B to Plaintiff’s complaint, i.e., a copy of a check 12 representing a \$200,000.00 life insurance proceed that was made payable to Plaintiff. 13 Dkt. No. 19-1 at 63–71: This is Exhibit C to Plaintiff’s complaint, i.e., a copy of the power 14 of attorney forged by her stepson. 15 Dkt. No. 19-1 at 72: This is Exhibit D to Plaintiff’s complaint, i.e., a copy of the 16 Certification of Resignation of Trustee forged by her stepson. 17 Dkt. No. 19-1 at 73–81: This is Exhibit E to Plaintiff’s complaint, i.e., a copy of two police 18 reports that Plaintiff filed after discovering her stepson’s fraud. 19 Exhibits B through E to the request for judicial notice, meanwhile, are all documents filed 20 in state court proceedings in Plaintiff’s action against her stepson. See Dkt. Nos. 19-2, 19-3, 19-4, 21 19-5. A court “may take judicial notice of court filings” in other cases “[t]o determine what issues 22 were actually litigated.” *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th 23 Cir. 2006). However, “a court may not take judicial notice of proceedings or records in another 24 case so as to supply, without formal introduction of evidence, facts essential to support a 25 contention in a cause before them.” *M/V Am. Queen v. San Diego Marine Const. Corp.*, 708 F.2d 26 1483, 1491 (9th Cir. 1983). The Court therefore finds that Exhibits B through E are judicially 27 noticeable for the existence of the allegations and issues litigated in these other suits.

1 II. BACKGROUND

2 Plaintiff Faye Smith was a victim of a fraudulent scheme in which her own stepson and his 3 wife stole hundreds of thousands of dollars of Plaintiff’s and her late husband’s savings. See 4 generally Dkt. No. 1-1 (“*Compl.*”). Plaintiff and her husband, Robert Smith Sr., held various 5 checking and savings accounts with Defendants. See *id.* at ¶ 16. Plaintiff and Robert Sr. created a 6 family trust (the “*Trust*”), naming themselves as Settlers and Co-Trustees, and after Robert Sr. 7 passed away on October 20, 2019, Plaintiff became the Trust’s sole Trustee and beneficiary. See 8

id. at ¶¶ 14, 17. Shortly after Plaintiff fell gravely ill and required extensive medical care, her 9 stepson Robert Jr. and his wife Camille moved in with her, “purportedly to provide care” during 10 her time of need. See id. at ¶¶ 18, 20. Robert Jr. and Camille “instead embarked on an endeavor 11 to take control of all Faye’s finances in order to enrich themselves.” See id. at ¶ 21. 12 To achieve this aim, Robert Jr. and Camille forged a power of attorney and certification of 13 resignation as trustee, “purporting to appoint Robert Jr. as both Plaintiff’s attorney in fact and as 14 Trustee of the Trust.” See id. at ¶ 24. On its face, the power of attorney bore the signatures of 15 Plaintiff and a notary, along with the notary’s certification and stamp. See Dkt. No. 19-1 at 63–71. 16 In relevant part, the power of attorney authorized Robert Jr. to: 17 1. Open, maintain, or close bank accounts (including, but not limited to, checking accounts, savings accounts, and certificates of deposit), brokerage accounts, retirement 18 plan accounts, and other similar accounts with financial institutions. 19 a. Conduct any business with any banking or financial institution with respect to any of my accounts, including but not limited to, making deposits and withdrawals, 20 negotiating or endorsing any checks or other instruments with respect to any such accounts, obtaining bank statements . . . money orders . . . and certificates or 21 vouchers payable to me by any person, firm, corporation or political entity . . . 22 c. Perform any necessary act to deposit, negotiate, sell or transfer any note, security or draft of the United States of America, including U.S. Treasury Securities . . . 23

10. To transfer any of my assets to the trustee of any revocable trust created by me, if such 24 trust is in existence at the time of such transfer. 25 11. To utilize my assets . . . to fund a trust created by my Agent for my benefit or the benefit of my dependents, heirs or devisee . . . 26 27 Id. at 64, 66.

1 and granted Robert Jr. and Camille access to Plaintiff’s accounts. See Compl. at ¶¶ 24, 26. Robert 2 Jr. and Camille “proceeded to transfer funds out of Faye’s accounts to pay for their own expenses, 3 including vacations, credit card payments, transfers to their own investment accounts, and various 4 other expenditures.” Id. at ¶ 27; see also id. at ¶¶ 28, 31. To keep their actions secret, Robert Jr. 5 and Camille had the banks forward any statements or correspondence to their home in Texas. See 6 id. at ¶ 30. It was not until December 2021 that Plaintiff discovered Robert Jr.’s and Camille’s 7 fraud. See id. at ¶ 34. After filing a police report, Plaintiff “began contacting Defendants through 8 in person visits to the Defendants’ branch locations and via phone calls to the hotline identified by 9 representatives of Defendants.” See id. at ¶¶ 34, 35. Defendants “refused to investigate the fraud, 10 return the funds wrongfully transferred . . . or even remove Robert Jr. and Camille from having 11 authority to make withdrawals” from Plaintiff’s accounts. Id. at ¶ 36. “As of late 2023,” Chase 12 and Wells Fargo “still had not revoked” Robert Jr.’s and Camille’s access to Plaintiff’s accounts. 13 Id. at ¶ 37. Robert Jr.’s and Camille’s “final unlawful withdrawal” took place on January 26, 14 2023, when they closed out the account at Wells Fargo. See id. at ¶ 37. 15 Plaintiff separately filed suit against Robert Jr. and Camille in Contra Costa Superior 16 Court, Case No. C23-02240, where she was awarded a judgment of \$908,194.37. See

id. at ¶ 40; 17 see also Dkt. Nos. 19-2, 19-3. Plaintiff brings ten claims against Defendants: (1) aiding and 18 abetting breach of fiduciary duty; (2) constructive fraud; (3) financial abuse of an elder under the 19 California Elder Abuse and Dependent Adult Civil Protection Act (“EADACPA”), Cal. Welf. & 20 Inst. Code §§ 15600 et seq; (4) violations of the California Unfair Competition Law (“UCL”), Cal. 21 Bus. & Prof. Code §§ 17200, et seq.; (5) breach of contract; (6) breach of the implied covenant of 22 good faith and fair dealing; (7) conversion; (8) aiding and abetting conversion; (9) negligence; and 23 (10) violations of California’s Commercial Code § 11204.

24 III. LEGAL STANDARD

25 C. Rule 12(b)(7) 26 A party may move to dismiss a complaint for “failure to join a party under Rule 19.” Fed. 27 R. Civ. P. 12(b)(7). This rule is designed “to protect the interests of absent parties, as well as 1 impairment of interests or rights.” *CP Nat’l Corp. v. Bonneville Power Admin.*, 928 F.2d 905, 911 2 (9th Cir. 1991). Rule 19 requires a three-step inquiry: (1) determining whether the absent party is 3 a “required party” and “must be joined” if feasible; (2) determining whether the “required party” 4 can feasibly be joined; and (3) if the party “who is required to be joined if feasible cannot be 5 joined, the court must determine whether, in equity and good conscience, the action should 6 proceed among the existing parties or should be dismissed.” *Dine Citizens Against Ruining Our 7 Env’t v. Bureau of Indian Affs.*, 932 F.3d 843, 851 (9th Cir. 2019) (quotations omitted); see 8 also *Salt River Project Agr. Imp. & Power Dist. v. Lee*, 672 F.3d 1176, 1179 (9th Cir. 2012). 9 D. Rule 12(b)(6) 10 Federal Rule of Civil Procedure 8(a) requires that a complaint contain “a short and plain 11 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A 12 defendant may move to dismiss a complaint for failing to state a claim upon which relief can be 13 granted under Rule 12(b)(6). “Dismissal under Rule 12(b)(6) is appropriate only where the 14 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” 15 *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule 16 12(b)(6) motion, a plaintiff need only plead “enough facts to state a claim to relief that is plausible 17 on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible 18 when a plaintiff pleads “factual content that allows the court to draw the reasonable inference that 19 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

20 Rule 9(b) imposes a heightened pleading standard where fraud is an essential element of a 21 claim. See Fed. R. Civ. P. 9(b) (“In alleging fraud or mistake, a party must state with particularity 22 the circumstances constituting fraud or mistake.”); see also *Vess v. Ciba-Geigy Corp. USA*, 317 23 F.3d 1097, 1107 (9th Cir. 2003). A plaintiff must identify “the who, what, when, where, and how” 24 of the alleged conduct, so as to provide defendants with sufficient information to defend against 25 the charge. *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997). However, “[m]alice, intent, 26 knowledge, and other conditions of a person’s mind may be alleged generally.” Fed. R. Civ. P.

27 Rule 9(b).

1 complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” 2 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Nevertheless, 3 courts do not “accept as true allegations that are merely conclusory, unwarranted deductions of 4 fact, or unreasonable inferences.” *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 5 2008) (quoting *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)).

6 IV. DISCUSSION

7 A. Rule 12(b)(7) Motion 8 Wells Fargo argues that the case should be dismissed under Federal Rule of Civil

9 Procedure 12(b)(7) because Robert Jr. and Camille are necessary parties whose joinder to this 10 action is impossible.³ See Dkt. No. 20 at 20–23. 11 Under Rule 19, a party is required to be joined if feasible under two conditions. First, a 12 party must be joined if “in that person’s absence, the court cannot accord complete relief among 13 the existing parties.” Fed. R. Civ. P. 19(a)(1)(A). Second, a party must be joined if “that person 14 claims an interest relating to the subject of the action and is so situated that disposing of the action 15 in the person’s absence may: (i) as a practical matter impair or impede the person’s ability to 16 protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, 17 multiple, or otherwise inconsistent obligations because of the interest.” Fed. R. Civ. P. 18 19(a)(1)(B). 19 Wells Fargo argues that, under the first condition in Rule 19(a)(1)(A), the Court is not able 20 to afford complete relief among the parties. At bottom, Wells Fargo’s position is that Robert Jr. 21 and Camille were already found “fully liable for all Plaintiff’s losses,” and the Contra Costa 22 Superior Court did not have the opportunity to consider potential joint and several liability or to 23 apportion relief among all potential defendants. See Dkt. No. 20 at 20. Complete relief cannot be 24 granted, in Wells Fargo’s view, because Wells Fargo’s liability, if any, may be borne by absent 25 parties, i.e., Robert Jr. and Camille. Plaintiff counters that the absent parties are not necessary, 26 erroneously relying on California procedural law and irrelevant cases. See Dkt. No. 21 at 15–17. 27 1 Nonetheless, the Court is not persuaded by Wells Fargo’s arguments. Rule 19(a)(1)(A) “is 2 concerned only with relief as between the persons already parties, not as between a party and the 3 absent person whose joinder is sought.” *Eldredge v. Carpenters 46 N. California Cty. Joint 4 Apprenticeship & Training Comm.*, 662 F.2d 534, 537 (9th Cir. 1981) (emphasis added) 5 (quotation omitted). Wells Fargo makes no attempt to explain why the Court cannot accord 6 complete relief between it and Plaintiff—instead focusing on whether any portion of liability it 7 could face should be shared by Robert Jr. and Camille. 8 Wells Fargo’s arguments for necessary joinder under the second prong of Rule 19(a)(1) are 9 equally unconvincing. Joinder under Rule 19(a)(1)(B) “is ‘contingent . . . upon an initial 10 requirement that the absent party claim a legally protected interest relating to the subject matter of 11 the action.’” *United States v. Bowen*, 172 F.3d 682, 689 (9th Cir. 1999). Wells Fargo does not 12 assert that Robert Jr. or

Camille have claimed an interest in this litigation, and there is no indication that they have. Because neither absent party has claimed any interest in this case, it is not necessary for the Court to consider whether their absence would leave Wells Fargo subject to incurring double, multiple or otherwise inconsistent obligations. For these reasons, Wells Fargo's motion to dismiss under Rule 12(b)(7) is DENIED. B. Rule 12(b)(6) Motion i. California Probate Code Section 4303 Defendants argue that California Probate Code § 4303 immunizes them from each of Plaintiff's claims. Probate Code § 4303 provides, in relevant part: (a) A third person who acts in good faith reliance on a power of attorney is not liable to the principal . . . for so acting if all of the following requirements are satisfied: 23

(1) The power of attorney is presented to the third person by the attorney-in-fact

24 designated in the power of attorney. 25 (2) The power of attorney appears on its face to be valid. 26 (3) The power of attorney includes a notary public's certificate of acknowledgment or is signed by two witnesses. 27 1 requirements of § 4121. See *Kaneko v. Yager*, 120 Cal. App. 4th 970, 982 (Cal. Ct. App. 2004). 2 Specifically, the power of attorney must (a) contain the date of its execution, (b) be signed by the 3 principal, or in the principal's name by another adult in the principal's presence and at the 4 principal's direction and (c) be acknowledged before a notary public. See Cal. Prob. Code § 4121. 5 Plaintiff argues that § 4303 does not apply because, as a threshold matter, she has alleged 6 sufficient facts supporting an inference that Defendants acted in bad faith. Plaintiff alleges that 7 Defendants "operated in bad faith, knowing that it was in their financial interest to allow for the 8 fraudulent actions to occur," or "knowing that" their "actions/inactions would cause substantial 9 harm to Plaintiff." See Compl. at ¶¶ 67, 86. These barebones assertions are insufficient to plead 10 bad faith. And Plaintiff does not allege any facts plausibly explaining how Defendants knew when 11 the power of attorney was presented Robert Jr. and Camille were committing fraud, as required for 12 the heightened pleading standard for claims sounding in fraud. See *Cooper v. Pickett*, 137 F.3d 13 616, 627 (9th Cir. 1997). 14 In addition, Plaintiff's own allegations, coupled with the attachment of the power of 15 attorney to her complaint, show that even as pled, § 4303's safe harbor applies. First, Plaintiff 16 alleges that Robert Jr. and Camille submitted the power of attorney to Defendants, satisfying 17 § 4303(a)(1). See Compl. at ¶ 24. Plaintiff also alleges that the power of attorney was "facially 18 and obviously fraudulently prepared" and that the "fraudulent nature was apparent for numerous 19 reasons." See *id.* at ¶ 25. These conclusory allegations are not sufficient to support her claims, 20 and even if they were, the power of attorney attached to the complaint as Plaintiff's own exhibit 21 contradicts her allegations. See Dkt No. 19-1 at 63–71; see *Khoja*, 899 F.3d at 1002; see also 22 *Sprewell*, *supra*, 266 F.3d at 988 (courts "need not . . . accept as true allegations that contradict 23 matters properly subject to judicial notice or by exhibit."). 24 On its face, the exhibit bears all the hallmarks of a facially valid power of attorney. It 25 contains a signature purporting to be Plaintiff's and the date of execution. See Dkt No. 19-1 at 68. 26 The contents of the document make clear that it is a legal instrument authorizing the attorney-in- 27 fact to take various actions,

including the ability to transfer funds, set up a trust account, make 1 includes a forged certification by a notary public that appears valid on the face of the document. 2 See *id.* at 68. That certification includes the notary public's stamp with the seal of the State of 3 California. See *id.* The document thus satisfies the requirements of § 4303(a)(2)–(3). 4 Plaintiff nonetheless alleges that several inconsistencies existed in the power of attorney, 5 pointing out that the signature differed from her standard signature, and that no “wet copy” of the 6 power of attorney was presented.⁴ See Compl. at ¶ 25. Plaintiff argues that the certification by a 7 notary public must be an actual (i.e., non-forged) certification to satisfy § 4303(a)(3). And she 8 also seems to argue that the banks should have investigated the purported inconsistencies in the 9 certification of notary public. See Dkt. No. 21 at 18–19; Dkt. No. 24 at 9–10. The logical result 10 of Plaintiff's argument is that third parties would have to verify independently that certifications 11 of a notary public were not forged. But Plaintiff presents no California authority establishing 12 these claimed requirements and duties, or anything suggesting that this was the legislature's intent. 13 The Court finds that Plaintiff's position is untenable and would impose a duty on Defendants that 14 is unsupported by California law. See *Kurtz-Ahlers v. Bank of America*, 48 Cal. App. 5th 952, 690 15 (Cal. Ct. App. 2020) (“monitoring individual banking transactions to detect fraudulent activity 16 would imperil both customer privacy and the expedited processing of banking transactions so 17 crucial to a modern economy.”). Once presented with the power of attorney, therefore, 18 Defendants were entitled to rely in good faith on its validity. 19 The Court is likewise unpersuaded by Plaintiff's argument that Defendants are not immune 20 under § 4303 because they also relied on a forged Certification of Resignation of Trustee. The 21 power of attorney expressly authorized Robert Jr. not only to open a trust account for his own 22 benefit, but also to fund that account and “perform any act necessary to deposit . . . any note,” such 23 as the check representing the life insurance proceeds issued to Plaintiff. See Dkt. No. 19-1 at 63– 24 67. 25 4 As a nonoriginal copy, Plaintiff argues, Defendants could not rely on the power of attorney 26 because it did not meet the requirements of Probate Code § 4307 for certified copies of powers of attorney. But § 4307 itself provides a carveout for good faith reliance on a non-certified copy of a 27 power of attorney. See Cal. Probate Code § 4307(d) (“Nothing in this section is intended to create 1 The Court notes that Plaintiff also alleges harm based on Defendants' actions after she 2 reported the fraud. Plaintiff alleges that upon discovering her stepson's fraud in December 2021, 3 she notified both Chase and Wells Fargo of the fraudulent power of attorney and transfers that had 4 taken place under that document's guise of authority. See Compl. at ¶ 34–35. As alleged, she 5 explained to Defendants, on multiple occasions, that she had not signed the power of attorney, and 6 that she had “not authorized any of the transfers, payments taken from the accounts” by Robert Jr. 7 and Camille. See *id.* ¶ 35. Defendants “refused to investigate the fraud” or remove Robert Jr.'s or 8 Camille's access to Plaintiff's accounts. See *id.* at ¶ 36. Plaintiff alleges that “Robert Jr. and 9 Camille were able to continue withdrawing funds from said accounts,” and that the “final unlawful 10 withdrawal” took place from Plaintiff's Wells Fargo account on January 26, 2023. See *id.* 11

Relying on *Bullis v. Security Pacific National Bank*, 21 Cal. 3d 801, 808 (Cal. 1978), Plaintiff 12 contends that Defendants “owed a duty to act with reasonable care in its transactions with Plaintiff 13 as a depositor at [their] respective institutions.” See Compl. at ¶ 104. Taken together and making 14 all reasonable inferences in favor of Plaintiff, as the Court must at this stage, these allegations 15 suggest that Plaintiff’s position is that based on her report, Defendants had a duty to independently 16 investigate the validity of the power of attorney and secure her accounts to prevent any additional 17 unauthorized withdrawals or other transfers. 18 Ultimately, however, the Court finds that no California authority cited by Plaintiff 19 establishes the duty she asserts, which would conflict with § 4303’s safe harbor. The Probate 20 Code clearly delineates banks’ duty in this situation: once presented with a qualifying power of 21 attorney, they were bound to follow it, and cannot be sued for doing so. While the facts here are 22 certainly sympathetic, Plaintiff’s suggestion that Defendants should be liable for post-notice 23 conduct is inconsistent with the statute’s bright line rule. The premise of a power of attorney is 24 that the principal is legally no longer able to speak for themselves. Here, the power of attorney 25 was a durable power of attorney, which continues even after the principal’s incapacity. See Cal. 26 Prob. Code § 4124. It would be strange, therefore, for the Probate Code’s safe harbor to be 27 overcome by the (presumptively incompetent) principal saying that a bank should not follow the 1 durable, she must do so in accordance with the requirements of the Probate Code. See Prob. Code 2 § 4153(a).

3 Plaintiff does not allege that she revoked the power of attorney, or that she gave notice to 4 the banks that she did so. To the extent Plaintiff could amend her complaint to plead that she did 5 revoke the power of attorney and notified defendants of that revocation, the Court would have to 6 consider what that would mean for her claims. Because the Court cannot say that amendment 7 would necessarily be futile, it GRANTS leave to amend on this basis.⁵ And because the Court 8 grants leave to amend with respect to facts that might be relevant to the application of section 9 4303, it also considers each of Plaintiff’s claims individually to give guidance and provide limits 10 for any amended complaint. 11

ii. Aiding and Abetting Breach of Fiduciary Duty (Claim One)

12 Under California law, “[t]he elements of a claim for aiding and abetting a breach of 13 fiduciary duty are: (1) a third party’s breach of fiduciary duties owed to plaintiff; (2) defendant’s 14 actual knowledge of that breach of fiduciary duties; (3) substantial assistance or encouragement by 15 defendant to the third party’s breach; and (4) defendant’s conduct was a substantial factor in 16 causing harm to plaintiff.” *Nasrawi v. Buck Consultants LLC*, 231 Cal. App. 4th 328, 343 (Cal. 17 Ct. App. 2014). Here, the parties dispute whether Plaintiff has adequately pled the second and 18 third elements. 19

a. Actual Knowledge. 20 “California courts have long held that liability for aiding and abetting depends on proof the 21 defendant had actual knowledge of the specific primary wrong the defendant substantially 22 assisted.” *Casey v. U.S. Bank Nat’l Ass’n*, 127 Cal. App. 4th 1138, 1145 (Cal. Ct. App. 2005). “A 23 24 5 The Court also finds that Plaintiff’s allegations with respect to each Defendant lack the required specificity with respect to transactions that took place after she notified them of fraud. *Swartz v. 25 KPMG LLP*,

476 F.3d 756, 764–65 (9th Cir. 2007) (when suing multiple defendants, Rule 9(b) “requires plaintiffs to differentiate their allegations . . . and inform each defendant separately of 26 the allegations surrounding his alleged participation in the fraud). Although she alleges that Robert Jr. and Camille were able to continue withdrawing money, apart from one alleged 27 withdrawal on January 26, 2023, from a Wells Fargo account, Plaintiff does not identify any other 1 defendant can be held liable as a co-tortfeasor on the basis of acting in concert only if he or she 2 knew that a tort had been, or was to be, committed, and acted with the intent of facilitating the 3 commission of that tort.” Id. at 1146 (citing *Gerard v. Ross*, 204 Cal. App. 3d 968, 983 (Cal. Ct. 4 App. 1988)). To adequately plead this prong, Plaintiff must allege facts that Defendants had 5 actual knowledge of the underlying wrong for which she seeks recovery. Id. at 1147. In other 6 words, Plaintiff must plead sufficient facts that Defendants had actual knowledge that Robert Jr. 7 had fraudulently stolen the money she seeks to recover here and intended to facilitate that conduct. 8 California courts have cautioned that “on demurrer, a court must carefully scrutinize 9 whether the plaintiff has alleged the bank had actual knowledge of the underlying wrong it 10 purportedly aided and abetted.” Id. at 1152. And although the *Twombly/Iqbal* standard controls 11 the sufficiency of Plaintiff’s allegations, “the California courts’ recognition of the need to 12 carefully vet this type of claim is illuminating as this Court does its best to predict how the 13 California Supreme Court would assess Plaintiffs’ state law aiding and abetting claims.” *Chang v. 14 Wells Fargo Bank, N.A.*, No. 19-CV-01973-HSG, 2020 WL 1694360, at *3 (N.D. Cal. Apr. 7, 15 2020); see also *Evans v. ZB, N.A.*, 779 Fed. Appx. 443, 449 (9th Cir. 2019) (noting that 16 “California courts find ‘actual knowledge’ present only in ‘extreme circumstances,’ and have 17 refused to hold banks liable in far more egregious cases” than *Evans*) (Bea, J., dissenting) 18 (citing *Chazen v. Centennial Bank*, 61 Cal. App. 4th 532, 537 (Cal. Ct. App. 1998) and *Casey*, 127 19 Cal. App. 4th at 1145); *Vestar Dev. II, LLC v. Gen. Dynamics Corp.*, 249 F.3d 958, 960 (9th Cir. 20 2001) (instructing that “[w]hen interpreting state law . . . a federal court must predict how the 21 highest state court would decide the issue” and that “where there is no convincing evidence that 22 the state supreme court would decide differently, a federal court is obligated to follow the 23 decisions of the state’s intermediate appellate courts”). 24 In support of the actual knowledge prong, Plaintiff alleges that, when “presented with the 25 forged documents, Defendants knew, or should have known that these documents were submitted 26 in order to commit fraud.” See Compl. at ¶ 26. And “Defendants knew that Robert Jr. and 27 Camille’s conduct constituted a breach of fiduciary duty based on the patently forged documents.” 1 in immediately transferring funds, ordering debit cards, and changing the account mailing address 2 is “more than sufficient” to plead that the banks knew of the breach of fiduciary duty. See Dkt.

3 No. 21 at 22; Dkt. No. 24 at 12; see also Compl. at ¶¶ 27–28, 30–31. In any event, Plaintiff 4 argues, she alleges that she “directly inform[ed] Defendants of the fraud after discovering the true 5 facts of Robert Jr. and Camille’s conduct.” See Compl. at ¶ 45. Plaintiff alleges she notified 6 Defendants that she “did not sign the forged [power of attorney] or give Robert Jr. and Camille 7

authority over her accounts” and “did not authorize the transfers, withdrawals and other 8 payments.” See Compl. at ¶ 36. 9 Plaintiff’s allegations fall short of the required pleading standard. As an initial matter, her 10 allegations are circular. They rely on an assumption that the banks had knowledge that the power 11 of attorney was forged. As discussed supra, even as pled there was no plausible reason for the 12 banks to suspect that anything was amiss given the document’s facial validity. Additionally, the 13 contractual relationship between bank and depositor “does not involve any implied duty to 14 supervise account activity or “to inquire into the purpose for which the funds are being used.” 15 Chazen, 61 Cal. App. 4th at 538. Even Plaintiff’s alleged notice to Defendants of the fraud is not 16 enough—all it establishes is that Plaintiff reported what she characterized as fraud to the banks. 17 This notice may have put Defendants on alert that “something fishy was going on,” but it does not 18 establish that Defendants had actual knowledge that Robert Jr. had breached his fiduciary duty by 19 stealing Plaintiff’s money. See Casey, 127 Cal. App. 4th at 1149. The Court therefore finds that 20 the complaint fails to adequately plead actual knowledge. 21 The Court also finds that Plaintiff’s reliance on Chang v. Wells Fargo Bank is misplaced. 22 In Chang, this Court found that plaintiffs adequately pled defendant Wells Fargo had actual 23 knowledge of Ponzi scheme that defrauded non-depositor plaintiffs. Chang, 2020 WL 1694360, 24 at *3–4 (N.D. Cal. Apr. 7, 2020). Plaintiffs alleged that Wells Fargo had a fiduciary relationship 25 with third-party bad actors who orchestrated the scheme. See id. at *4. Due to its obligations 26 under the Bank Secrecy Act, plaintiffs alleged that Wells Fargo reviewed the bad actors’ accounts, 27 thereby learning they had misused investor funds, commingled the funds, and misused the funds 1 knowledge of the Ponzi scheme, the Court’s task was to determine whether those claims were 2 plausible. See id. In finding that they were, the Court relied on a host of allegations to support 3 their claim that “Wells Fargo actually knew that [the bad actors] was commingling money from 4 investors.” Id. at *5. Namely, among other things, plaintiffs alleged that Wells Fargo was the 5 only banking institution used by the bad actors, the bank processed all the transactions and 6 reviewed the accounts as part of its due diligence, and it manually processed a “massive number of 7 wires” that “on their face indicated” that they would commingle assets of investors. See id. 8 Additionally, plaintiffs plausibly supported their allegations of actual knowledge by alleging that 9 “Wells Fargo deviated from the standard course of business . . . and made available and accepted 10 for use a modified version of its Direct Deposit Authorization Forms to apply to the payment of 11 investment distributions to [the bad actors’] investors.” Id. 12 The Court finds that Plaintiff’s allegations here fall short of the plausibility standard for 13 actual knowledge. As discussed above, Plaintiff’s only allegations that could possibly support 14 knowledge concern her notice to defendants of the alleged fraud. She identifies no obligation of 15 the banks to assist in investigation of the fraud and confirm the alleged theft of her money. 16 Additionally, it is far from self-evident that the alleged post-notice banking transactions could 17 establish intent here, where the banks were not only legally obligated under the facially valid 18 power of attorney to process such transactions,

but also had no duty to investigate that document's 19 validity. Thus, Plaintiff's claim for aiding and abetting breach of fiduciary duty is DISMISSED 20 WITH LEAVE TO AMEND. 21 iii. Constructive Fraud (Claim Two) 22 A claim for constructive fraud requires a "fiduciary or confidential relationship." 23 *Assilzadeh v. California Federal Bank*, 82 Cal. App. 4th 399, 417 (2000). Plaintiff alleges that by 24 placing most of her life savings into accounts with Chase and Wells Fargo, she "entered into a 25 confidential relationship" with Defendants. Compl. at ¶ 52. California courts find a "confidential 26 relationship" may exist "between two persons when one has gained the confidence of the other 27 and purports to act or advise with the other's interest in mind." *Vai v. Bank of America Nat'l Trust* 1 relationships are particularly likely to exist between family members, such as the relationship 2 between husband and wife. *Id.* at 337–338. 3 The Court finds that Defendants' relationship with Plaintiff was straightforwardly that of a 4 bank and its depositor. Plaintiff has not pled facts to suggest that her relationship with Chase or 5 Wells Fargo was anything more than that, and she pleads nothing plausibly supporting her 6 allegation that this was a "confidential relationship." See Compl. at ¶¶ 16, 60, 78, 104. Under 7 California law, banks "are not fiduciaries for their depositors." *Copesky v. Superior Ct.*, 229 Cal. 8 App. 3d 678, 694 (Cal. Ct. App. 1991). Nor is the "bank-depositor relationship" a "special 9 relationship . . . such as to give rise to tort damages when an implied contractual covenant of good 10 faith is broken." *Id.* Because as a matter of law no fiduciary or other "special relationship" exists 11 between a bank and its depositor, Plaintiff's claim for constructive fraud is DISMISSED 12 WITHOUT LEAVE TO AMEND. 13 iv. Financial Abuse of an Elder (Claim Three) 14 Plaintiff alleges that Defendants "assisted" Robert Jr. and Camille in taking funds that 15 rightfully belonged to Plaintiff, in violation of the EADACPA. As relevant here, § 15610.30(a) 16 states that "financial abuse of an elder" occurs when a person or entity "[a]ssists in taking, 17 secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent 18 adult for a wrongful use or with intent to defraud, or both." Cal. Welf. & Inst. Code 19 § 15610.30(a)(2). Courts have interpreted the term "assist" in this context to require that the 20 defendant had "actual knowledge of the underlying wrong it purportedly aided and abetted." See, 21 e.g., *Das v. Bank of Am., N.A.*, 186 Cal. App. 4th 727, 744–45 (Cal. Ct. App. 2010) (quotation 22 omitted). 23 Plaintiff argues that *Das* interpreted an earlier version of the statute and that actual 24 knowledge is no longer required to state a claim. See Dkt. No. 21 at 24; Dkt. No. 24 at 15–16. 25 The Court disagrees. *Das* remains good law, and numerous courts in this circuit have followed 26 that case to hold that actual knowledge is required to state a claim against an entity that allegedly 27 assisted in financial abuse of an elder. See *Bortz v. JP Morgan Chase Bank, N.A.*, No. 22-CV- 1 evidence" that, as the plaintiffs there argued, the California Supreme Court would read subsection 2 (a)(2) to impose "strict liability")⁶; see also *Lin v. JPMorgan Chase*, No. 2:24-CV- 01837-JLS-E, 3 2024 WL 5182199, at *3 (C.D. Cal. Aug 15, 2024) (collecting cases). Nonetheless, as discussed 4 supra, Plaintiff has not pleaded sufficient facts to show that Defendants had actual knowledge of 5 the primary wrong. Thus, like her claim for aiding and

abetting a breach of fiduciary duty, 6 Plaintiff's claim under the EADACPA is DISMISSED WITH LEAVE TO AMEND. 7 v. Violations of California's Unfair Competition Law (Claim Four) 8 Plaintiff also alleges that Defendants' conduct violated the UCL. See Compl. at ¶¶ 71–76. 9 Chase and Wells Fargo argue that Plaintiff is not entitled to equitable relief under the UCL. See 10 Dkt. No. 20 at 28–29; Dkt. No. 22 at 15–16. 11 “The UCL limits the remedies available for UCL violations to restitution and injunctive 12 relief” *Madrid v. Perot Sys. Corp.*, 130 Cal. App. 4th 440, 452 (Cal. Ct. App. 2005). 13 Plaintiff's prayer for relief seeks restitution. See Compl. at 28. Restitution requires Plaintiff to 14 show: (1) “that she had at one time an ownership interest in the money . . . lost” and (2) that 15 money or property must have been acquired” by the defendants. *Kanji v. Bank of America*, No. 16 20-CV-03820-RSWL, 2020 WL 8175548 *7 (N.D. Cal. 2020). Plaintiff attempts to distinguish 17 *Kanji* as inapposite because it dealt with online fraud. See Dkt. No. 24 at 17–18. This distinction 18 makes no difference, and *Kanji* is not binding on this Court in any event. Plaintiff has not alleged 19 that either bank “acquired” the money deposited in the banks. Instead, as Plaintiff alleges, it was 20 her stepson Robert Jr. and his wife Camille who took “hundreds of thousands of dollars from” her. 21 See Compl. at ¶ 38. Plaintiff's claim for violations of the UCL is DISMISSED WITH LEAVE 22 TO AMEND. 23 vi. Breach of Contract (Claim Five) 24 Under California law, a claim for breach of contract consists of four elements: (1) a 25 contract, (2) the plaintiff's performance or excuse for non-performance, (3) defendant's breach, 26 27 6 As an unpublished Ninth Circuit decision, *Bortz* and any other nonpublished Ninth Circuit cases 1 and (4) damages to the plaintiff from defendant's breach. See *Walsh v. W. Valley Mission Cmty. 2 Coll. Dist.*, 66 Cal. App. 4th 1532, 1545 (Cal. Ct. App. 1998). Under California law, a contract 3 requires both offer and acceptance: “[a]n offer must clearly articulate the terms of the agreement 4 and the acceptance must be absolute, unqualified and a mirror image of the offer.” *Chaganti v. I2 5 Phone Int'l, Inc.*, 635 F. Supp. 2d 1065, 1071 (N.D. Cal. 2007) (citing *Panagotacos v. Bank of 6 America*, 60 Cal.App.4th 851, 855 (Cal. Ct. App. 1998)). 7 Plaintiff's form pleadings allege only the bare bones of these elements. According to 8 Plaintiff, she “entered into a written contract” with Chase and Wells Fargo when she originally 9 opened accounts and deposited money with each of them, that she performed her allegations under 10 the contract, Defendants breached, and she has suffered damages. Compl. at ¶¶ 78–81. Plaintiff 11 does not allege specific contractual terms with any particularity, and she has not attached the 12 alleged contract as an exhibit to the complaint. Her fifth cause of action for breach of contract is 13 therefore DISMISSED WITH LEAVE TO AMEND. 14 vii. Breach of the Implied Covenant of Good Faith and Fair Dealing (Claim Six) 15 In a similar vein, a claim for breach of the implied covenant of good faith and fair dealing 16 requires Plaintiff to “first plead that there was a contract between it and the defendant.” 17 *Mewawalla v. Middleman*, 601 F. Supp. 3d 574, 606 (N.D. Cal. 2022). “Second, the plaintiff must 18 allege that the defendant acted in a way that deprived the plaintiff of benefits conferred by that 19 contract.” *Id.* at 607. As already noted, Plaintiff has not made anything other than cursory 20 allegations that she entered a contract when she opened

accounts with Defendants. Without 21 alleging specific contractual terms, or attaching the contract itself to the complaint, Plaintiff's 22 claim fails. Even if Plaintiff could allege such terms, however, her claim is not viable because is 23 the "bank-depositor relationship" is not a "special relationship . . . such as to give rise to tort 24 damages when an implied contractual covenant of good faith is broken." Copesky, 229 Cal. App. 25 3d at 694. Plaintiff's sixth cause of action for breach of the implied covenant of good faith and 26 fair dealing is therefore DISMISSED WITHOUT LEAVE TO AMEND. 27 viii. Conversion (Claim Seven) 1 exercise of dominion over the property of another." Lee v. Hanley, 61 Cal. 4th 1225, 1240 (Cal. 2 2015). "The elements of a conversion claim are: (1) the plaintiff's ownership or right to 3 possession of the property; (2) the defendant's conversion by a wrongful act or disposition of 4 property rights; and (3) damages." Id. 5 "California law is well-settled in this area that a claim against the bank for conversion will 6 not lie. Because title to a deposit passes immediately to the bank upon deposit, a depositor has no 7 conversion claim against a bank under California law." Chavez v. Bank of America Corp., No. C-8 10-0653-JCS, 2012 WL 1594272, at *11 (N.D. Cal. May 4, 2012); see also Gutierrez v. Wells 9 Fargo Bank N.A., 622 F. Supp. 2d 946, 956 (N.D. Cal. 2009) ("A bank may not be sued for 10 conversion of funds deposited with the bank."). Title to Plaintiff's money passed immediately to 11 Chase and Wells Fargo once she had made deposits with them. As in Chavez, Plaintiff no longer 12 held title to the money; rather, she held a contractual right to demand those funds from the bank. 13 Chavez, 2012 WL 1594272, at *11. Plaintiff's conversion claim is DISMISSED WITHOUT 14 LEAVE TO AMEND. 15 ix. Aiding and Abetting Conversion (Claim Eight) 16 To state a claim for aiding and abetting conversion, Plaintiff must allege that Defendants 17 "had actual knowledge of the specific primary wrong; and substantially assisted." S&S 18 Worldwide, Inc. v. Wells Fargo Bank, 509 F. Supp. 3d 1154, 1165 (N.D. Cal. 2020) (citations 19 omitted). To support her claim for aiding and abetting conversion, Plaintiff states that: "[w]hen 20 Defendants were presented with the forged documents, Defendants knew, or should have known, 21 that Defendants [sic] intended to commit wrongful acts and convert the property rightfully 22 belonging to Plaintiff." See Compl. at ¶ 97. Plaintiff further alleges that "by failing to respond 23 and take corrective action once Plaintiff had notified Defendants directly of the ongoing fraud, 24 Defendants provided further assistance to Robert Jr. and Camille in achieving the fraud against 25 Plaintiff." See id. at ¶ 99. 26 For the reasons stated above, Plaintiff's allegations fall short of the actual knowledge 27 requirement. Her claim for aiding and abetting conversion is therefore DISMISSED WITH 1 x. Negligence (Claim Nine) 2 "The elements of a negligence cause of action are the existence of a legal duty of care, 3 breach of that duty, and proximate cause resulting in injury." Castellon v. U.S. Bancorp, 220 Cal.

4 App. 4th 994, 998 (Cal. Ct. App. 2013). "[A]s a general rule, a financial institution owes no duty 5 of care to a borrower when the institution's involvement in the loan transaction does not exceed 6 the scope of its conventional role as a mere lender of money." Nymark v. Heart Fed. Sav. & Loan 7 Assn., 231 Cal. App. 3d 1089, 1096 (Cal. Ct. App. 1991). Rather, "banks are not

fiduciaries for 8 their depositors,” and instead their relationship is “founded on contract.” See Chazen 61 Cal.

9 App. 4th at 537 (quotation omitted).

10 Defendants argue that Plaintiff’s claim for negligence is barred by (1) the doctrine of 11 economic loss and (2) the statute of limitations. See Dkt. No. 20 at 31; Dkt. No. 22 at 18–19. 12 Plaintiff’s opposition concedes that her relationship with the banks was grounded in contract and 13 that breaches are generally resolved through contract law. Dkt. No. 24 at 21. Nonetheless, relying 14 on *Erlich v. Menezes*, 21 Cal. 4th 543 (Cal. 1999), she argues that the Court should impose tort 15 remedies because the breach “violate[s] a social policy that merits the imposition of tort 16 remedies.” Dkt. No. 24 at 27. She asserts that “California has long recognized a duty on the part 17 of banks to its depositors, and allowed actions in negligence to proceed under such theories.” Id. 18 Plaintiff cites only two cases that could possibly support her position: *Bullis v. v. Security Pac.* 19 Nat. Bank, 21 Cal. 3d 801 (Cal. 1978) and *Sun ‘n Sand v. United California Bank*, 21 Cal. 3d 671 20 (Cal. 1978). But neither case supports Plaintiff’s proposed rule. 21 As an initial matter, both *Bullis* and *Sun ‘n Sand* narrowly focused on a bank’s obligations 22 in honoring checks. In *Bullis* a decedent’s daughter and long-time financial advisor were named 23 co-executors of the decedent’s estate. *Bullis*, 21 Cal. 801 at 805–06. The financial advisor opened 24 the account after he presented a certified copy of letters appointing both him and decedent’s 25 daughter as co-executors. See id. at 806. The bank’s actions ran counter to its own operations 26 manual, which specifically required that if there were two executors for an estate, both executors’ 27 signatures were ordinarily required for withdrawal. See id. The bank’s operating procedures 1 require two signatures for withdrawals, the bank’s legal team would be consulted. Id. Despite 2 these protocols, the decedent’s estate was not properly marked and the financial advisor was able 3 to withdraw hundreds of thousands of dollars from the estate with checks he alone had signed. Id. 4 at 807. The California Supreme Court found that the bank’s duty to exercise reasonable care in 5 these circumstances—that is, in requirements for authorizing and honoring checks signed solely 6 by a co-executor—had been established by the banking industry’s custom and practice. Id. at 811. 7 The decision did not establish general duty of care owed by banks to customers outside that 8 context. 9 *Sun ‘n Sand*, meanwhile, involved the duty of a bank to a non-depositor. In *Sun ‘n Sand*, 10 plaintiff’s employee manipulated company checks to embezzle funds. See *Sun ‘n Sand*, 21 Cal. 3d 11 at 678–79. After obtaining authorized signatures from a company officer for several checks in 12 nominal amounts payable to the defendant bank, the employee altered the checks by increasing 13 their amounts. Id. He presented the checks to the defendant bank to deposit them in his personal 14 account, which the bank did, even though the defendant bank was listed as the payee. Id. The 15 plaintiff company brought a claim for negligence, arguing the bank breached its duty of care in 16 depositing the checks. 17 The California Supreme Court found that such a duty existed, although the duty was 18 “narrowly circumscribed.” *Sun ‘n Sand, Inc.*, 21 Cal. 3d at 695. “[I]t is activated only when 19 checks, not insignificant in amount, are drawn

payable to the order of a bank and are presented to 20 the payee bank by a third party seeking to negotiate the checks for his own benefit.” Id. 21 California courts have preserved this narrow holding. See *Chazen*, supra, 61 Cal. App. 4th at 545 22 (*Sun ‘n Sand* and its progeny each involved “the bank’s liability for allowing a person to deposit a 23 check, payable to someone else, into a personal account, under circumstances that should have 24 alerted the bank to the possibility of fraud. It is not clear whether [these cases] can be applied to 25 other factual circumstances.”). 26 Absent controlling precedent that Defendants owed a duty of care to Plaintiff beyond their 27 contractual relationship, Plaintiff’s negligence claim is barred by the economic loss rule. 1 primarily the domain of contract and warranty law or the law of fraud, rather than of negligence.” 2 *S. Cal. Gas Leak Cases*, 7 Cal.5th 391, 402 (Cal. 2019). Plaintiff’s negligence claim is therefore 3 DISMISSED WITHOUT LEAVE TO AMEND. 4 xi. Unauthorized Payment Order (Claim Ten). 5 Finally, Plaintiff brings a tenth claim under California Commercial Code § 1104 for an 6 unauthorized payment order. Section 11204 states, in relevant part: 7 “If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the 8 order of the customer under Section 11202, or (ii) not enforceable, in whole or in part, against the customer under Section 11203, the bank 9 shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and 10 shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund.” 11 12 “‘Payment order’ means an instruction of a sender to a receiving bank, transmitted orally or in a 13 record, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a 14 beneficiary Cal. Com. Code § 11103(a)(1). In other words, § 1102 applies to transactions 15 commonly understood as wire transfers. 16 Bank customers are responsible for payment orders that they authorize. Cal. Com. Code 17 § 11202(a). But payment orders are “effective as an order of the customer, whether or not 18 authorized,” under two conditions: (1) “the security procedure is a commercially reasonable 19 method of providing security against unauthorized payment orders, and (ii) the bank proves that it 20 accepted the payment order in good faith and in compliance with the bank’s obligations under the 21 security procedure and any agreement or instruction of the customer” Cal. Com. Code 22 § 11202(b). 23 The parties disagree about whether the complaint sufficiently alleges that Defendants 24 processed wire transfers made from her accounts as part of Robert Jr.’s fraudulent scheme. See 25 Dkt No. 25 at 12. Even if Plaintiff did sufficiently allege the wire transfers at issue, the Court 26 finds that complaint does not include sufficient allegations, let alone any allegations, concerning 27 whether the security measures employed at Wells Fargo or Chase were commercially

1 Supp. 3d 1025, 1032-33 (C.D. Cal. 2024) (“Simply stating that the “payment orders received by 2 || Defendants were not authorized by Plaintiffs” is not sufficient to show that Defendants failed to 3 || employ commercially reasonable security measures vis-a-vis these transactions). For these 4 reasons, Plaintiffs tenth cause of action is dismissed with leave to amend.

5 Vv. CONCLUSION

6 For the reasons set forth above, the Court GRANTS WITH LEAVE TO AMEND 7 Defendants'
motions to dismiss, Dkt. Nos. 20, 22. Plaintiff may file an amended complaint within 8 || 21 days
of the date of this Order. 9 IT IS SO ORDERED. 10 || Dated: 9/30/2025 HAYWOOD S.
GILLIAM, JR. 12 United States District Judge 15 16 it Z 18 19 20 21 22 23 24 25 26 27 28