

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

John Madsen, et al. v. Heather D’Andrea Fish, et al.

Madsen v. Fish · No. 3:25-cv-00091-SLG · Decided January 14, 2026

SUMMARY

The United States District Court for the District of Alaska addresses three motions in a dispute arising from the sale of Stephan Lake Lodge: a motion to amend the caption, a motion to dismiss counterclaims, and a motion for partial summary judgment. The court dismisses two defendants from the action and grants the caption amendment, but holds that the agreement’s non-reliance clause does not categorically bar fraud, fraudulent nondisclosure, and misrepresentation counterclaims at the pleading stage. The excerpt ends during the court’s analysis of whether the counterclaims satisfy Federal Rule of Civil Procedure 9(b).

CASE DETAILS

COURT	United States District Court for the District of Alaska
WRITING FOR THE COURT	Sharon L. Gleason
JURISDICTION	United States District Court for the District of Alaska
DECIDED	January 14, 2026
DOCKET	3:25-cv-00091-SLG
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs sued for specific performance, breach of contract, damages on promissory notes, and conversion. Defendants asserted five counterclaims based on alleged precontractual misrepresentations and sought rescission, restitution, relief under Alaska’s Unfair Trade Practices and Consumer Protection Act, and punitive damages. The court ruled on plaintiffs’ motion to amend the caption, plaintiff John Madsen’s Rule 12(b)(6) motion to dismiss the counterclaims, and defendants’ motion for partial summary judgment.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and construes them in the nonmovant’s favor, while determining whether the pleading states a plausible claim. Fraud claims are subject to Rule 9(b)’s particularity requirement. On summary judgment, judgment is appropriate only if there is no genuine dispute of material fact and the movant is entitled to judgment

	as a matter of law; the court views the evidence and draws reasonable inferences in favor of the nonmovant.
PRECEDENTIAL VALUE	unpublished
PARTIES	John Madsen, Stephan Lake Holding, LLC v. Heather D’Andrea Fish, David Fish

TOPICS

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QUESTIONS PRESENTED

1. Whether the caption should be amended to terminate William Espiricueta and Ivan Chikigak Steadman after plaintiffs reported settling all claims against them.
2. Whether the contractual non-reliance clause barred the buyers’ fraud, fraudulent nondisclosure, misrepresentation, breach-of-contract, covenant-of-good-faith, and rescission counterclaims at the pleading stage.
3. Whether the buyers pleaded fraud and misrepresentation with the particularity required by Federal Rule of Civil Procedure 9(b).
4. Whether the buyers adequately pleaded a duty to disclose under Alaska law.
5. Whether the economic loss rule required dismissal of the fraud and misrepresentation counterclaims.
6. Whether the Alaska Uniform Commercial Code could apply to the mixed transaction involving real property, goods, services, and intangible assets.
7. Whether the buyers adequately pleaded an Alaska Unfair Trade Practices and Consumer Protection Act claim and an ascertainable loss.
8. Whether punitive damages could be pleaded as a separate counterclaim.
9. Whether the buyers were entitled to partial summary judgment on rescission, restitution, or equitable estoppel despite a factual dispute concerning justifiable reliance.

HOLDINGS

1. The contractual non-reliance clause did not categorically preclude the buyers from asserting fraud, fraudulent nondisclosure, and misrepresentation counterclaims based on alleged precontractual statements and omissions.
2. The buyers adequately pleaded fraud and misrepresentation under Rule 9(b).
3. The buyers adequately pleaded facts supporting a duty to disclose under Alaska law.

4. The economic loss rule did not warrant dismissal of the fraud and misrepresentation claims at the pleading stage.
5. The buyers adequately pleaded a UCC-based claim because the transaction included goods, including equipment, vehicles, fuel, and other personal property, even though it also included real property, services, and intangible assets.
6. The buyers adequately stated a claim for breach of Alaska's implied covenant of good faith and fair dealing, and the non-reliance clause did not require dismissal.
7. The buyers adequately pleaded a UTPCPA claim because the transaction involved trade or commerce, goods and services, and an alleged ascertainable loss; the statute may apply in a business-to-business transaction.
8. Punitive damages are a form of relief rather than an independent cause of action and therefore should not be pleaded as a separate counterclaim.
9. The buyers were not entitled to partial summary judgment because a genuine dispute of material fact existed concerning whether they justifiably relied on Madsen's alleged misrepresentations.

KEY QUOTATIONS

"The Court acknowledges that the non-reliance clause in the Agreement in this case contains express language stating that the Fishes have not relied on any alleged misrepresentations made by Mr. Madsen. But for the same reason that the Alaska Supreme Court, consistent with other courts throughout the country, has declined to categorically enforce such a clause, the Court finds that the non-reliance clause does not preclude the Fishes from asserting Counterclaims based on allegations of fraud, fraudulent non-disclosure, and misrepresentation."

"The counterclaims expressly identify Mr. Madsen as the person who made the misrepresentations and what those allegedly fraudulent or misleading representations were."

"The sale was of membership interests in the LLCs (SLH and SLA), which included both services and goods."

"Mr. Madsen's motion to dismiss Counterclaim V is GRANTED."

FACTUAL BACKGROUND

The parties entered into an agreement under which the buyers acquired membership interests in Stephan Lake Holdings, LLC and Stephan Lake Adventures, LLC, together with the Stephan Lake Lodge business and related assets, for an amended purchase price exceeding \$2.6 million. Before the transaction, John Madsen allegedly represented that the lodge would generate substantial profits, retain staff, possess sufficient fuel and propane, have existing bookings, and enjoy exclusive rights to certain land and runway facilities. After taking possession, the buyers allegedly encountered operational failures, staffing departures, inadequate fuel, and competing use of facilities; they later closed the lodge and asserted that Madsen's representations and omissions induced the transaction.

PROCEDURAL HISTORY

Plaintiffs originally filed the action in the Eastern District of Virginia, and the case was transferred to the District of Alaska under 28 U.S.C. § 1404(a). Defendants filed an amended answer and counterclaims. The court granted the motion to amend the caption to terminate William Espiricueta and Ivan Chikigak Steadman, denied the motion to dismiss Counterclaims I through IV, granted it as to Counterclaim V, and denied defendants' motion for partial summary judgment.

DISPOSITION

other

CASES CITED

- Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Daniels-Hall v. National Education Association, 629 F.3d 992, 998 (9th Cir. 2010)
- In re Tracht Gut, LLC, 836 F.3d 1146, 1150 (9th Cir. 2016)
- Gordon v. City of Oakland, 627 F.3d 1092, 1094 (9th Cir. 2010)
- Albrecht v. Lund, 845 F.2d 193, 195 (9th Cir. 1988)
- Schreiber Distributing Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986)
- Semegen v. Weidner, 780 F.2d 727, 731 (9th Cir. 1986)
- Salameh v. Tarsadia Hotel, 726 F.3d 1124, 1133 (9th Cir. 2013)
- Cafasso v. General Dynamics C4 Systems, Inc., 637 F.3d 1047, 1055 (9th Cir. 2011)
- Wood v. Tandem Computers, Inc., 818 F.2d 1433, 1439 (9th Cir. 1987)
- Mitford v. de Lasala, 666 P.2d 1000, 1005 (Alaska 1983)
- Froines v. Valdez Fisheries Development Association, Inc., 75 P.3d 83, 86 (Alaska 2003)
- Inman v. Clyde Hall Drilling Co., 369 P.2d 498, 500, 502 (Alaska 1962)
- Cousineau v. Walker, 613 P.2d 608, 614-16 (Alaska 1980)
- Industrial Commercial Electric, Inc. v. McLees, 101 P.3d 593, 597-601 (Alaska 2004)
- Old Harbor Native Corp. v. Afognak Joint Venture, 30 P.3d 104, 105 (Alaska 2001)
- Zeilinger v. SOHIO Alaska Petroleum Co., 823 P.2d 653, 657-58 (Alaska 1992)
- Ameriprise Financial, Inc. v. Vallandingham, 918 S.E.2d 572 (W. Va. Ct. App. 2025)
- Hayes v. Bering Sea Reindeer Products, 983 P.2d 1280, 1284-86 (Alaska 1999)
- Hagans, Brown & Gibbs v. First National Bank of Anchorage, 810 P.2d 1015, 1019 (Alaska 1991)
- Arctic Tug & Barge, Inc. v. Raleigh, Schwarz & Powell, 956 P.2d 1199, 1202 (Alaska 1998)
- Turnbull v. LaRose, 702 P.2d 1331, 1334 (Alaska 1985)
- Metabolife International, Inc. v. Wornick, 264 F.3d 832, 846 (9th Cir. 2001)
- Alaska Fur Gallery, Inc. v. Tok Hwang, 394 P.3d 511, 516 (Alaska 2017)
- Merdes & Merdes, P.C. v. Leisnoi, Inc., 410 P.3d 398, 410, 413 (Alaska 2017)

- Kenai Chrysler Center, Inc. v. Denison, 167 P.3d 1240, 1255 (Alaska 2007)
- Alaska Trust, LLC v. Bachmeier, 332 P.3d 1, 9-10 (Alaska 2014)
- Western Star Trucks, Inc. v. Big Iron Equipment Service, Inc., 101 P.3d 1047, 1052 (Alaska 2004)
- ASRC Energy Services Power & Communications, LLC v. Golden Valley Electric Association, Inc., 267 P.3d 1151, 1163 (Alaska 2011)
- Wasser & Winters Co. v. Ritchie Bros. Auctioneers (America), Inc., 185 P.3d 73, 81 (Alaska 2008)
- Anchorage Chrysler Center, Inc. v. DaimlerChrysler Corp., 129 P.3d 905, 914-15 (Alaska 2006)
- Wright v. State, 824 P.2d 718, 721 (Alaska 1992)
- Jamison v. Consolidated Utilities, Inc., 576 P.2d 97, 102 (Alaska 1978)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA JOHN MADSEN, et al., Plaintiffs, v. HEATHER D’ANDREA FISH, et al., Case No. 3:25-cv-00091-SLG Defendants. HEATHER D’ANDREA FISH, et al., Counter-Claimants, v. JOHN MADSEN, Counter-Defendant. ORDER ON THREE PENDING MOTIONS This order addresses three motions currently pending before the Court: 1. At Docket 33 is Defendants/Counter-Claimants Heather D’ Andrea Fish and David Fish’s (the “Fishes”) First Motion for Partial Summary Judgment.¹ Plaintiff/Counter-Defendant John Madsen responded in opposition at Docket 44,² to which the Fishes replied at Docket 34.

1 At Docket 34 is the Fishes’ accompanying Memorandum in Support of Motion for Partial Summary Judgment and at Docket 35 is the Fishes’ accompanying Declaration of Heather D’Andrea Fish. 2 At Docket 45 is Mr. Madsen’s accompanying “Memorandum of Points and Authorities in Support of Opposition.” 2. At Docket 43 is Plaintiff John Madsen’s Motion to Dismiss Counterclaims.

The Fishes responded in opposition at Docket 55, to which Plaintiff Madsen replied at Docket 57. 3. At Docket 65 is Plaintiffs John Madsen and Stephan Lake Holding, LLC’s Motion to Amend Caption. No opposition was filed. Oral argument was not requested on any of these motions and was not necessary to the Court’s determinations.

The Court first addresses Plaintiffs’ Motion to Amend at Docket 65, then Plaintiff John Madsen’s Motion to Dismiss at Docket 43, and then the Fishes’ Motion for Partial Summary Judgment at Docket 33. FACTUAL BACKGROUND This dispute arises out of a purchase of Stephan Lake Lodge (the “Lodge”), a hunting and fishing lodge located at Stephan Lake, near Talkeetna, Alaska.

In July 2022, the Fishes met with Mr. Madsen at the Lodge to discuss and negotiate the sale of the Lodge and its associated guide service from Mr. Madsen to the Fishes.³ During the negotiation process prior to the purchase, Mr. Madsen made several promises, representations, and assurances

to the Fishes, many of which are not disputed.⁴ Mr. Madsen's undisputed representations include: the ability for 3 Docket 18-1 at 2.

4 See generally Docket 45 at 6-11. the Fishes to "easily realize \$100,000 per month in profits"; "how much more the Lodge could make with minimal additional effort"; "the fact that there would be plenty of existing bookings at the time of [the Fishes] take-over to sustain revenue flow"; "the fact that guides, pilots, packers, and Lodge personnel such as manager, housekeeper, chef and grounds guy, would be staying on"; "a promise that [the Fishes would] have enough propane and fuel to operate for the first year"; "the fact that the Lodge had exclusive leasing rights to the Native Land Lease lands and the 3/4-mile runway near the Lodge, which would mean Madsen would not be using them"; and "the fact that Mr. Madsen would not be competing with [the Fishes]."⁵ The Fishes, Ivan Chikigak Steadman, and William Espiricueta, (collectively the "Buyers" or "Defendants"), and Mr. Madsen, individually and in his capacity as the sole member and manager of Stephan Lake Adventures, LLC ("SLA") and Stephan Lake Holdings, LLC, ("SLH") entered into an Agreement for Purchase, Sale and Assignment of Membership Interests (the "Agreement"), effective July 29, 2022.⁶ The Agreement provided that the Buyers would acquire 90% of Mr. Madsen's membership interest in SLH and 100% of Mr. Madsen's membership interest in SLA, for a total purchase price of \$2.25 million.⁷ The purchase price was 5 Docket 45 at 6; Docket 35 at 2; see also Docket 45 at 6-8.

6 See Docket 1-2 at 1-12. The sale included real and personal property, as well as Lodge equipment and inventory that was owned by SLH and deposits for hunts scheduled for 2022 and 2023. Docket 1-2 at 23-25, 56-59. 7 Docket 1-2 at 1-11. to be paid over time in periodic balloon payments and pursuant to two promissory notes.⁸ The transaction included a variety of tangible and intangible assets.

SLH's property included the Lodge property, two cabins, vehicles, machinery, fuel, generators, maintenance equipment, vessels, and other miscellaneous tools and equipment.⁹ SLA is in the business of providing hunting and fishing excursions and outfitting services.¹⁰ As part of the Agreement, the Buyers were "entitled to collect and retain the first \$150,000.00 of revenues from all post-closing new SLA hunting bookings" and would "not be obligated to pay over to Sellers any portion of the \$150,000.00 that may be received by SLA."¹¹ The Agreement also stated that SLA had booked hunts that were "scheduled to be serviced by SLA in 2022 and 2023, and that those hunters have paid deposits for the 2022 and 2023 hunts."¹² As to these existing SLA hunting bookings, under the Agreement, the Buyers were to "service and honor the 2022 and 2023 booked hunts."¹³ The import of one particular clause of the Agreement is in dispute in this 8 Docket 1-2 at 2-3.

9 Docket 1-2 at 23-25. 10 Docket 1-2 at 1-2. 11 Docket 1-2 at 2. 12 Docket 1-2 at 6; see also Docket 1-2 at 56-58 (2022 hunting schedule); Docket 1-2 at 59 (2023 hunting schedule). 13

Docket 1-2 at 6. case. Section VI.d of the Agreement, is titled “Entire Agreement and Counterparts” (“non-reliance clause”), and provides in relevant part: The Agreement and Schedules attached hereto evidence the entire agreement between Sellers and Buyers relating to the purchase and sale of the Membership Interests and supersede in all respects any and all prior oral or written agreements or understandings.

Buyers warrant and represent that they have had a full and fair opportunity to undertake all due diligence as they deem necessary in order to enter into this Agreement, and further warrant and represent that they have not relied on any representations or oral statements made by Sellers or anyone on Sellers’ behalf in entering into this Agreement.¹⁴ The Agreement was subsequently amended three times.

On August 4, 2022, the parties amended the Agreement with respect to the allocation of local, state and federal taxes, and the allocation of fees and costs associated with the Native Land Lease.¹⁵ Then, on October 5, 2022, the parties executed a Second Amendment.¹⁶ The Second Amendment made the following changes: (1) “the parties agreed that the ‘Carla Cabin’ parcel, which comprises five acres and the D- LOG structure thereon but excludes the Carla Cabin, would be included as an asset of SLH to be sold pursuant to the Agreement as amended”; and (2) the transaction included the sale of 100% of SLH membership interests to the Buyers, 14 Docket 1-2 at 9-10.

¹⁵ Docket 1-4 at 1-3. ¹⁶ Docket 1-5 at 1-5. instead of the previous 90% SLH interest in the original Agreement.¹⁷ “The inclusion of the Carla Cabin [parcel] resulted in an upward adjustment of the sales price by \$350,000.00” to a total purchase price of \$2,600,000.¹⁸ Then, on March 30, 2023, the parties entered into a Third Amendment.¹⁹ “The Third Amendment included the Carla Cabin and increased the purchase price by \$107,000.”²⁰ On August 1, 2022, the Fishes took possession of the Lodge, which is when their operational problems began.²¹ According to Ms. Fish, the expected \$100,000 per month revenue stream was not reality; funds for pre-existing hunting and fishing bookings were not provided; almost all the staff had left the Lodge by August 1, 2022; the Lodge lacked sufficient fuel and propane; and the Lodge did not have exclusive leasing rights to the Native lands and the runway near the Lodge.²² On July 1, 2024, the Fishes closed down operations at the Lodge.²³ According to Mr. Madsen, during the summer of 2024, the Fishes “abandoned the 17 Docket 1 at 4, ¶ 24; Docket 1-5 at 1-5.

¹⁸ Docket 1 at 4, ¶ 25. ¹⁹ Docket 1 at 4, ¶ 26; Docket 1-6 at 1-4. ²⁰ Docket 1 at 4, ¶ 27. ²¹ Docket 18-1 at 3. ²² Docket 35 at 2-3. ²³ Docket 35 at 4. Lodge [a]nd ceased operations under SLA”;²⁴ left “the Lodge with[out] any sort of fuel including diesel, gasoline or propane”;²⁵ and left “almost all of the equipment used to support the [L]odge either damaged or destroyed.”²⁶ On July 30, 2024, Mr. Madsen served a notice of default on the Fishes.²⁷ The notice informed the Buyers that they were in default under the Agreement and promissory notes and had abandoned the property, and that if the defaults were not promptly cured, the Buyers’ interests in SLH would

revert back to Mr. Madsen, in addition to their liability for damages and the acceleration of the three promissory notes.²⁸ PROCEDURAL BACKGROUND On December 19, 2024, Plaintiffs filed a Complaint against Defendants alleging that Defendants had defaulted on their obligations under the Agreement as amended:²⁹ Count I seeks specific performance by Defendants “of all monetary and non-monetary obligations under the Agreement as amended”; Count II seeks specific performance requiring Defendants “to convey to Madsen any and all pro- 24 Docket 1 at 6, ¶ 36.

25 Docket 1 at 6, ¶ 36. 26 Docket 1-7 at 2. During the summer of 2024, Mr. Madsen flew to the Lodge and confirmed that the Fishes had abandoned the property. Docket 1-7 at 2. 27 Docket 1-7. 28 Docket 1-7 at 1-3. 29 Docket 1 at 5-6, ¶¶ 32-39. rata membership interests they have in SLH up to and through their default and failure to cure alleged herein”; Count III seeks damages for breach of contract of the promissory notes; and Count IV alleges conversion of the hunting deposits.³⁰ For relief, Plaintiffs seek an order “[c]ompelling Defendants to reassume control of the Lodge, and pay to John E. Madsen all past due and future payments due under the Agreement and Promissory Notes”; “abide by all monetary and non-monetary obligations under the Agreement as amended”; the entry of judgment against Defendants, jointly and severally, in the sum of at least \$1,929,325.³⁵; and interest and attorneys’ fees.³¹ On April 28, 2025, the Fishes filed an Amended Answer.³² The Amended Answer also brings five counterclaims against Mr. Madsen only for the alleged misrepresentations that he made during the sale of the Lodge.³³ Counterclaim I alleges fraud, fraudulent non-disclosure, and misrepresentation (both negligent and intentional); Counterclaim II alleges a breach of contract under the UCC and a breach of the covenant of good faith and fair dealing; Counterclaim III seeks to rescind the Agreement and refund to the Fishes all sums they have paid; 30 Docket 1 at 6-8, ¶¶ 40-62.

31 Docket 1 at 8-9. The Court calculated the total of \$1,929,325.35 by summing the remaining balances alleged due under Promissory Notes #1, #2, and #3 of the Agreement, and \$150,000 for the amount of hunting deposits “wrongfully retained by Defendants.” Docket 1 at 8-9. 32 Docket 27. 33 Docket 27 at 12-20, ¶¶ 1-31. Counterclaim IV alleges a violation of Alaska’s Unfair Trade Practices Act (“UTPCPA”); and Counterclaim V seeks punitive damages.³⁴ On June 25, 2025, the Fishes filed their motion for partial summary judgment seeking “an avoidance (disaffirmance) and rescission” of the Agreement as amended and the promissory notes and “a refund of the sums paid by the Fishes in pursuance of the now avoided transaction, i.e., minimally, the sum of \$430,287.87.”³⁵ On July 16, 2025, Mr. Madsen filed a motion to dismiss all five of the Fishes’ counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6).³⁶ On December 5, 2025, Plaintiffs filed a motion to amend the case caption to remove Defendants Espiricueta and Steadman.³⁷ JURISDICTION AND VENUE Plaintiffs originally filed their Complaint in the Eastern District of Virginia.³⁸ The matter was then transferred to the District of Alaska pursuant to

28 U.S.C. § 1404(a).³⁹ This Court has diversity jurisdiction over this case pursuant to 28 U.S.C. 34 Docket 27 at 12-20, ¶¶ 1-31.

35 Docket 33 at 1. 36 Docket 43. 37 Docket 65. Also filed on that date is Mr. Madsen's Motion to Amend/Correct Responses to Requests for Admission at Docket 64, which this Court will address by separate order. 38 Docket 1 at 1. 39 Docket 29 at 3. § 1332.

Because this is a diversity action, state substantive law applies to interpretation of the Agreement and federal law applies to procedural issues.⁴⁰ The parties' Agreement provides that it "shall in all respects be governed by, and enforced and interpreted in accordance with the laws of the State of Alaska."⁴¹ LEGAL STANDARDS I. Motion to Dismiss Counterclaims A. Rule 12(b)(6) A party may seek dismissal under Federal Rule of Civil Procedure 12(b)(6) if a pleading "fail[s] to state a claim for which relief can be granted." "To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"⁴² A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."⁴³ A court must accept all well-pled allegations in a pleading as true and construe them in the light most favorable to the non-moving party.⁴⁴ Nonetheless, "the trial court does not have to accept as true conclusory allegations ⁴⁰ See *Erie R.R.*

Co. v. Tompkins, 304 U.S. 64, 78 (1938). ⁴¹ Docket 1-2 at 8. ⁴² *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). ⁴³ *Id.* (citation omitted). ⁴⁴ See *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). in a complaint or legal claims asserted in the form of factual allegations."⁴⁵ When a motion to dismiss for failure to state a claim is granted, a court "should freely give leave when justice so requires."⁴⁶ However, "leave may be denied if amendment of the complaint would be futile."⁴⁷ Futility exists when "the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency."⁴⁸ B. Rule 9(b) Rule 9(b) requires that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."⁴⁹ But the rule also provides that "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally."⁵⁰ "Rule 9(b) ensures that allegations of fraud are specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that ⁴⁵ *In re Tracht Gut, LLC*, 836 F.3d 1146, 1150 (9th Cir.

2016). ⁴⁶ Fed. R. Civ. P. 15(a)(2). ⁴⁷ *Gordon v. City of Oakland*, 627 F.3d 1092, 1094 (9th Cir. 2010) (citing *Albrecht v. Lund*, 845 F.2d 193, 195 (9th Cir. 1988)). ⁴⁸ *Schreiber Distributing Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986) (citation omitted). ⁴⁹ Fed. R. Civ. P. 9(b). ⁵⁰ *Id.* they have done anything wrong."⁵¹ "To meet this standard, [a plaintiff's] complaint must 'identify the who, what, when, where, and how of the misconduct charged, as well as what is

false or misleading about the purportedly fraudulent statement, and why it is false.”⁵² Allegations of fraud based on information and belief may suffice as to matters peculiarly within the opposing party's knowledge, so long as the allegations are accompanied by a statement of the facts upon which the belief is founded.⁵³ II.

Motion for Partial Summary Judgment Federal Rule of Civil Procedure 56(a) directs a court to “grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” The burden of showing the absence of a genuine dispute of material fact lies with the movant.⁵⁴ If the movant meets this burden, the non-moving party must demonstrate “specific facts showing that there is a genuine issue for trial.”⁵⁵ The non-moving party may not rely on “mere allegations or denials”; rather, to reach the level of a genuine dispute, the evidence must be such “that a reasonable jury could return a verdict

51 *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir.

1985). 52 *Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013) (quoting *Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011)). 53 See *Wood v. Tandem Comput. Inc.*, 818 F.2d 1433, 1439 (9th Cir. 1987). 54 *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). 55 *Id.* at 324 (quoting Fed. R. Civ. P. 56(e)); see also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). for the non-moving party.”⁵⁶ When considering a motion for summary judgment, a court views the facts in the light most favorable to the non-moving party and draws “all justifiable inferences” in the non-moving party’s favor.⁵⁷ DISCUSSION I. Motion to Amend Caption In Plaintiffs’ Motion to Amend Caption, Plaintiffs state “that they have settled all claims against Defendants William Espiricueta and Ivan Chikigak Steadman.”⁵⁸ Accordingly, Plaintiffs seek to (1) amend their complaint to withdraw all claims against Mr. Espiricueta and Mr. Steadman; and (2) remove Mr. Espiricueta and Mr. Steadman from the case caption.⁵⁹ Although Plaintiffs cite to Rule 15(a)(1)(B), Plaintiffs are effectively seeking the dismissal of these two Defendants pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).⁶⁰ The Fishes, the remaining Defendants in this action, have not opposed.

Therefore, Defendants William Espiricueta and Ivan Chikigak Steadman 56 *Anderson*, 477 U.S. at 248-49 (quoting *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253 (1968)). 57 *Id.* at 255 (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59 (1970)). 58 Docket 65 at 2. 59 Docket 65 at 2. 60 Fed. R. Civ. P. 41(a)(1)(A)(i) (“[a] plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment”); see also *Hamilton v. Shearson-Lehman Amer.*

Exp., Inc., 813 F.2d 1532, 1535 (9th Cir. 1987) (“Courts have consistently upheld notice dismissals following a wide variety of other substantive motions filed by defendants before answering.”). are DISMISSED from this case.

The Clerk of Court is directed to amend the case caption to only include Heather D'Andrea Fish and David Fish as Defendants. For the foregoing reasons, Plaintiffs' motion at Docket 65 is GRANTED. II. John Madsen's Motion to Dismiss Counterclaims Mr. Madsen moves to dismiss all five counterclaims brought by the Fishes.⁶¹ A. Counterclaim I (Fraud, Fraudulent Non-Disclosure, and Misrepresentation) Mr. Madsen asserts that Counterclaim I (and Counterclaims II and III) should be dismissed because the non-reliance clause in the Agreement "makes clear that all of the representations that form the basis of the Agreement are contained therein, and that any other representations are extinguished."⁶² Mr. Madsen also asserts that Counterclaim I fails to state a claim for fraud because (1) the Fishes failed to plead the allegations of fraud with particularity; (2) Mr. Madsen had no duty to disclose the alleged omissions; and (3) the fraud claim is barred by the economic loss rule.⁶³ In their opposition, the Fishes assert that (1) Counterclaims I, II, and III are not barred by the non-reliance clause of the Agreement because such clauses are invalid and unenforceable as a matter of public policy;⁶⁴ (2) the fraud claim is

pled 61 Docket 43.

62 Docket 43 at 3. 63 Docket 43 at 5-9. 64 Docket 55 at 4-6. with sufficient particularity and Mr. Madsen's misrepresentations were not mere opinion or puffery;⁶⁵ (3) sellers, such as Mr. Madsen, have "an affirmative duty to disclose the full truth when their partial truths are misleading, or where they know the buyer is operating under a mistake";⁶⁶ and (4) the economic loss rule does not apply to fraud and misrepresentation claims.⁶⁷ In his reply, Mr. Madsen asserts that (1) the non-reliance clause in the Agreement is enforceable;⁶⁸ (2) the Fishes "positively represented they had conducted sufficient due diligence";⁶⁹ (3) certain alleged misrepresentations or omissions were waived when the parties entered into the third amendment in March 2023;⁷⁰ (4) Mr. Madsen's alleged "misrepresentations" are not actionable because they "are non-specific or future predictions dependent on the skills and 65 Docket 55 at 6-9.

66 Docket 55 at 10-11. 67 Docket 55 at 12-14. The Fishes makes similar arguments in their reply to Mr. Madsen's opposition to the motion for partial summary judgment. See generally Docket 53 at 4-7. See also Docket 53-1 at 1 (citing state court and federal diversity cases from 18 different state and federal courts as examples of courts "Refusing to Enforce 'Anti-Reliance' or 'Non-Reliance' Clauses As a Way of Precluding Fraud or Misrepresentation Claims").

68 Docket 57 at 3-4. 69 Docket 57 at 7 ("They could (and may have) spoken with the staff as to continued employment; they could (and may have) read the lease; they could (and may have) reviewed the pending reservations; they could (and may have) reviewed the financial documents."). 70 Docket 57 at 8.

The waiver issue is raised for the first time in Mr. Madsen's reply, where he states that "[t]he third amendment in March of 2023 serves as a waiver of any prior misunderstandings." Docket 57 at 8. But the Court will not consider an argument raised for the first time in a reply. See, e.g., *Walsh v.*

Nev. Dep't of Human Res., 471 F.3d 1033, 1037 (9th Cir. 2006). actions of the purchaser";⁷¹ and (5) fraud was not plead with the requisite particularity because the Fishes do not allege any documentary fraud, only verbal assertions.⁷² 1.

Non-Reliance Clause Mr. Madsen contends that the non-reliance clause of the Agreement forecloses the Fishes' Counterclaims I through III based on Mr. Madsen's alleged misrepresentations prior to the parties entering into the Agreement.⁷³ However, under Alaska law, the parol evidence rule is not an absolute bar so as to warrant the dismissal of these claims at the pleadings stage.

Under Alaska law, a court is to interpret a contract to "give effect to the reasonable expectations of the parties."⁷⁴ "When a written statement sets out the terms of an agreement between contracting parties, the parol evidence rule generally precludes the parties from using evidence of prior agreements to contradict the written terms."⁷⁵ In *Inman v. Clyde Hall Drilling Company*, the Alaska Supreme Court upheld a provision in an employment contract that required the employee to give 30 days' written notice of any claim arising out of his employment ⁷¹ Docket 57 at 9-10.

⁷² Docket 57 at 11. ⁷³ Docket 43 at 3-5; see also Docket 1-2 at 9-10. ⁷⁴ *Mitford v. de Lasala*, 666 P.2d 1000, 1005 (Alaska 1983). ⁷⁵ *Froines v. Valdez Fisheries Dev. Ass'n, Inc.*, 75 P.3d 83, 86 (Alaska 2003). before instituting a lawsuit.⁷⁶ The employee argued that the provision was void as against public policy, but the Supreme Court concluded that "the contractual provision in question is [not] unfair or unreasonable."⁷⁷ And yet in its opinion, the Court stated: In determining whether certain contractual provisions should be enforced, the court must look realistically at the relative bargaining positions of the parties in the framework of contemporary business practices and commercial life.

If we find those positions are such that one party has unscrupulously taken advantage of the economic necessities of the other, then in the interest of justice—as a matter of public policy—we would refuse to enforce the transaction. But the grounds for judicial interference must be clear. Whether the court should refuse to recognize and uphold that which the parties have agreed upon is a question of fact upon which evidence is required.⁷⁸ The Alaska Supreme Court explained that although "[a]s a matter of judicial policy the court should maintain and enforce contracts, rather than enable parties to escape from the obligations they have chosen to incur[.]" the "'freedom of contract' is a qualified and not an absolute right, and cannot be applied on a strict, doctrinal basis."⁷⁹ In their reply to Plaintiffs' opposition to the partial summary judgment motion, the Fishes cite to several Alaska cases that the Fishes maintain support their view ⁷⁶ 369 P.2d 498, 502 (Alaska 1962).

⁷⁷ *Id.* at 500. ⁷⁸ *Id.* (emphasis added) (citations omitted). ⁷⁹ *Id.* (citations omitted). that the non-reliance clause is unenforceable.⁸⁰ First, they cite to *Cousineau v. Walker*.⁸¹ There, the Supreme Court reversed the trial court's denial of a purchaser's request to rescind a sale based on fraudulent

misrepresentations.⁸² In so doing, the Supreme Court quoted with approval the Florida Court of Appeals, which had held that “[a] person guilty of fraudulent misrepresentation should not be permitted to hide behind the doctrine of caveat emptor.”⁸³ Although *Cousineau* did not appear to involve a non-reliance clause, it is instructive in that it adopts the view of many other courts that recognizes “the doctrine that negligence in trusting in a misrepresentation will not excuse positive willful fraud or deprive the defrauded person of his remedy.”⁸⁴ The Fishes also cite to *Industrial Commercial Electric, Inc. v. McLees*.⁸⁵ There, the Alaska Supreme Court reversed the trial court’s grant of summary judgment to a former employee against his employer.⁸⁶ The trial court had held that the employer’s claim against the former employee was barred by the mutual 80 Docket 53 at 4-5.

81 Docket 53 at 4-5 (citing *Cousineau v. Walker*, 613 P.2d 608 (Alaska 1980)). 82 *Cousineau*, 613 P.2d at 614-16. 83 *Id.* at 614 (citing *Upledger v. Vilanor, Inc.*, 369 So. 2d 427, 430 (Fla. Dist. Ct. App. 1979)). 84 *Id.* (quoting W. Jaeger, *Williston on Contracts* § 1515B at 487 (3d ed. 1970)). 85 Docket 53 at 5 (citing *Indus. Com. Elec., Inc. v. McLees*, 101 P.3d 593 (Alaska 2004)).

86 *Id.* at 601. releases the parties had signed before filing suit.⁸⁷ In reversing, the Supreme Court held the validity of the releases raised genuine issues of material fact whether the employer had been induced to enter into the releases “by fraud, misrepresentation, or duress,” notwithstanding the integration clause in the releases.⁸⁸ Rather, the Supreme Court held “that settlement agreements and releases, like any other contracts, are susceptible to attack for mistake, fraud, misrepresentation, and duress.”⁸⁹ The Fishes also cite extensively to other courts that have declined to enforce non-reliance clauses so as to categorically preclude fraud or misrepresentation claims.⁹⁰ Mr. Madsen asserts this case is “parallel” to *Ameriprise Financial, Inc. v. Vallandingham*.⁹¹ There, the West Virginia Court of Appeals upheld a consent and release agreement in which the franchisee released his claims against the franchisor in connection with the franchisee’s purchase of another Ameriprise 87 *Id.* at 594.

88 *Id.* at 598. 89 *Id.* at 597 (first citing *Old Harbor Native Corp. v. Afognak Joint Venture*, 30 P.3d 104, 105 (Alaska 2001); and then citing *Zeilinger v. SOHIO Alaska Petroleum Co.*, 823 P.2d 653, 657-58 (Alaska 1992)). 90 See Docket 53-1 at 1-8; see also Docket 53-1 at 8-9 (“Treatise- and Non-Case Authority”). 91 Docket 57 at 3-4 (citing *Ameriprise Fin., Inc. v. Vallandingham*, 918 S.E.2d 572 (W.

Va. Ct. App. 2025); see also Docket 57-1. advisor’s franchise.⁹² But given that the case involved a claim against a third party, the West Virginia Court of Appeals in *Vallandingham* expressly did not “decide whether a non-reliance clause in a contract would be enforceable as a waiver of a fraudulent inducement claim by one party to that contract against another.”⁹³ Indeed, in response to the dissenting judge’s conclusion that if “a non-reliance clause mirroring the Due Diligence clause had been included in a [hypothetical] sale contract between [the franchisee and Ameriprise],

it... would have been unenforceable against a fraudulent inducement claim[.]" the majority opinion states that "[p]erhaps the dissent is correct; because it interprets a contract not before the Court and answers an academic question, to say whether it is right or wrong would be to issue an advisory opinion, which this Court is without authority to do."⁹⁴ Mr. Madsen's reply also asserts, without explanation, that "[t]he disclaimers in this case are substantively identical to the disclaimer of warranties upheld by the Alaska Supreme [C]ourt in *Hayes v. Bering Sea Reindeer Products*, 983 P.2d 1280, 1284-85 (Alaska 1999)."⁹⁵ But that case is likewise inapposite; it affirmed a trial court's decision after a bench trial that any warranties made by the seller of an aircraft were disclaimed not only by the disclaimer in the sales contract, but by the 92 Vallandingham, 918 S.E.2d at 585.

93 *Id.* at 582 n.9; Docket 57-1 at 20 n.9. 94 Vallandingham, 918 S.E.2d at 582 n.9; Docket 57-1 at 20 n.9. 95 Docket 57 at 3. buyer's own thorough inspection of the aircraft.⁹⁶ Thus, "[t]he numerous discrepancies the [buyer's inspector's] mechanic observed and the clear language of the disclaimer would not have left [the buyer] with any illusions that [the seller] was warranting the aircraft's condition."⁹⁷ The Court acknowledges that the non-reliance clause in the Agreement in this case contains express language stating that the Fishes have not relied on any alleged misrepresentations made by Mr. Madsen.

But for the same reason that the Alaska Supreme Court, consistent with other courts throughout the country, has declined to categorically enforce such a clause, the Court finds that the non-reliance clause does not preclude the Fishes from asserting Counterclaims based on allegations of fraud, fraudulent non-disclosure, and misrepresentation. 2. Rule 9(b) To adequately plead fraud or misrepresentation, the Fishes must satisfy the heightened Rule 9(b) pleading standard in which a party must "state with particularity the circumstances constituting fraud."⁹⁸ Mr. Madsen contends that the Fishes' Counterclaims merely allege general statements that he allegedly made concerning the Lodge and maintains that "[t]here is no allegation about who Madsen allegedly made the misrepresentation to, nor are the exact words 96 *Hayes v. Bering Sea Reindeer Prods.*, 983 P.2d 1280, 1285 (Alaska 1999) 97 *Id.* at 1286.

98 *Ebeid ex rel. U.S. v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010); see also Fed. R. Civ. P. 9(b). alleged."⁹⁹ The Fishes' Counterclaims adequately identify multiple examples of false representations of fact that satisfy Rule 9(b)'s heightened particularity requirement.¹⁰⁰ The Counterclaims expressly identify Mr. Madsen as the person who made the misrepresentations and what those allegedly fraudulent or misleading representations were.¹⁰¹ For example, Paragraph 5(b) of the Counterclaims states the when ("during the negotiation-phase of the purported transaction in mid-July 2022"), the where ("at the Lodge"), and the who ("counter- defendant Madsen").¹⁰² Some examples of the misrepresentations include the allegedly inflated revenue expectations; that Mr. Madsen was "operating the business at a minimum with little to no help"; and the reassurances about the staffing support the Fishes would receive at the Lodge.¹⁰³

Although Paragraphs 5 and 6 contain phrases such as "or words to this effect," the paragraphs are "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged."104 99 Docket 43 at 6.

100 See Docket 27 at 12-17, ¶¶ 3-14. 101 See Docket 27 at 12-17, ¶¶ 5-7. 102 Docket 27 at 12, ¶ 5(b). 103 Docket 27 at 12-15, ¶¶ 5-6. 104 *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985). 3. Fraudulent Non-Disclosure and the Duty to Disclose The Counterclaims also allege that Mr. Madsen "omitted certain material facts which amounted to fraud and/or misrepresentation by silence."105 Examples of the alleged omitted facts include "lavish and unreasonable promises and assurances to already-booked hunting parties"; "all critical support staff... were intent on leaving the Lodge and its associated services once counter-complainants took over"; "what little help remained on-site at the time of transfer was not competent or adequate for the tasks and services necessary to sustain operations"; "[Mr.

Madsen] was retaining rights to the runway in question and that he would be using the runway in competition with the Lodge and its associated services"; "[Mr. Madsen] intended to compete with the Lodge"; Mr. Madsen "had so trashed his own reputation in the area through prior dealings"; and "property taxes on the subject property were in arrears at the time of the transfer, as were payments on the Native Land Lease."106 Mr. Madsen argues he was under no duty to disclose and therefore cannot be liable for any alleged omissions.107 Under a fraudulent non-disclosure theory, an omission can constitute a false statement when there is a duty to disclose.108 The Alaska Supreme Court has 105 Docket 27 at 15, ¶ 7.

106 Docket 27 at 15-17, ¶ 7(a)-(h). 107 Docket 43 at 7-9. 108 See *Hagans, Brown & Gibbs v. First Nat. Bank of Anchorage*, 810 P.2d 1015, 1019 (Alaska adopted the Restatement's rule for fraudulent non-disclosure (or misrepresentation by omission):109 One who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting in a business transaction is subject to the same liability [as for an affirmative misrepresentation] if, but only if, he is under a duty to the other to exercise reasonable care to disclose the matter in question.110 Under Section 551(2) of the Restatement, "[o]ne party to a business transaction is under a duty to exercise reasonable care to disclose to the other before the transaction is consummated" in several scenarios.111 In their opposition, the Fishes assert that three of those scenarios are applicable here—Sections 551(2)(b), (d), and (e).112 The Court agrees that the duties listed in those three sections of the Restatement are adequately pled by the Fishes in Paragraph 7 of the Counterclaims, which describes different instances 1991).

109 See *Arctic Tug & Barge, Inc. v. Raleigh, Schwarz & Powell*, 956 P.2d 1199, 1202 (Alaska 1998). 110 *Turnbull v. LaRose*, 702 P.2d 1331, 1334 (Alaska 1985) (quoting Restatement (Second) of Torts § 551(2) (1977)). 111 Restatement (Second) of Torts § 551(2). 112 Docket 55 at 10-11 (citing Restatement (Second) of Torts § 551(2)(b) ("matters known to him that he knows to be

necessary to prevent his partial or ambiguous statement of the facts from being misleading”); id. § 551(2)(d) (“the falsity of a representation not made with the expectation that it would be acted upon, if he subsequently learns that the other is about to act in reliance upon it in a transaction with him”); id. § 551(2)(e) (“facts basic to the transaction, if he knows that the other is about to enter into it under a mistake as to them, and that the other, because of the relationship between them, the customs of the trade or other objective circumstances, would reasonably expect a disclosure of those facts”)). of material omissions that they allege imposed a duty of disclosure.¹¹³ 4.

The Economic Loss Rule Mr. Madsen asserts that the Fishes’ fraud and misrepresentation claims are barred by the economic loss rule. “The economic loss doctrine provides that certain economic losses are properly remediable only in contract.”¹¹⁴ In a footnote, Mr. Madsen acknowledges that applications of the economic loss rule in the present context “are sparse,” but he maintains that other “courts in the Ninth Circuit routinely apply it to bar tort claims that arise from contractual duties.”¹¹⁵ The Fishes oppose and identify three reasons why the Court should not apply the economic loss rule to dismiss their fraud and misrepresentation claims at the pleadings stage.

First, agreeing with Mr. Madsen’s acknowledgement that Alaska law on the application of the economic loss rule is sparse, they maintain the Court should not apply the doctrine to dismiss these claims under Rule 12(b)(6).¹¹⁶ Second, the Fishes maintain that the broad application of the doctrine would eviscerate fraud and misrepresentation claims, and hence these claims should be excepted from the doctrine.¹¹⁷ And third, they maintain that the majority ¹¹³ Docket 27 at 15-17, ¶ 7(a)-(h).

¹¹⁴ Docket 43 at 8 (citing *Cont’l Airlines, Inc. v. Mundo Travel Corp.*, 412 F. Supp. 2d 1059, 1069 (E.D. Cal. 2006)). ¹¹⁵ Docket 43 at 8 n.2 (citing *Terpin v. AT And T Mobility LLC*, 118 F.4th 1102, 1116 (9th Cir. 2024)). ¹¹⁶ Docket 55 at 13 (first citing *Haberman v. Washington Public Power Supply System*, 744 P.2d 1032, 1046 (Wash. 1987); and then citing *L.D.G., Inc. v. Robinson*, 290 P.3d 215, 222 n.63-64 (Alaska 2012)).

¹¹⁷ Docket 55 at 13 (quoting R. Joseph Barton, *Drowning in a Sea of Contract: Application of the of courts that have considered the issue have held the doctrine does not apply to fraud and misrepresentation claims*).¹¹⁸ Mr. Madsen’s reply does not address these arguments or reference the economic loss doctrine.

For the reasons articulated by the Fishes in their opposition, the Court declines to apply the economic loss doctrine to dismiss the Fishes’ fraud and misrepresentation claims at the pleadings stage. For the foregoing reasons, Mr. Madsen’s motion to dismiss Counterclaim I is DENIED. B. Counterclaim II (Breach of Contract) 1. UCC Mr. Madsen asserts that Counterclaim II must be dismissed because the Alaska Uniform Commercial Code (“”) only “applies to transactions in goods.”¹¹⁹ He maintains that “[n]either a membership interest in a limited liability company nor a

piece of real property fall within the definition of ‘good’ since the former is an intangible and the latter is real property.”¹²⁰ The Fishes oppose and cite to the long Economic Loss Rule to Fraud and Negligent Misrepresentation Claims, 41 Wm. & Mary L. Rev. 1789, 1794 n.2 and accompanying text (2000)).

118 Docket 55 at 13-14 (collecting cases) 119 Docket 43 at 11; see also Alaska Stat. § 45.02.102 (“Unless the context otherwise requires, this chapter applies to transactions in goods; it does not apply to a transaction that, although in the form of an unconditional contract to sell or present sale, is intended to operate only as a security transaction, nor does this chapter impair or repeal any statute regulating sales to consumers, farmers, or other specified class of buyers.”).

120 Docket 43 at 10-11. list of goods included in the Agreement.¹²¹ And the Fishes maintain that given that this was a mixed transaction, involving both the sale of goods and real property, the Court should apply the predominant purpose test, which should not be done at the motion to dismiss stage.¹²² In his reply, Mr. Madsen maintains that the UCC does not apply because “[t]his is a case of a sale of a business, not real estate or ‘goods.’”¹²³ “The counterclaims are only in reference to the business itself, a dynamic entity, not ‘goods’ or land[.]”¹²⁴ Mr. Madsen too narrowly constrains the transaction at issue.

The sale at issue here includes multiple types of assets such as real property (several parcels of land and the Lodge itself), various goods such as equipment, vehicles, fuel, and other gear commonly used at a hunting and fishing lodge, and intangible assets.¹²⁵ In Paragraph 2 of their Counterclaims, the Fishes explicitly refer to Dockets 1-2 through 1-6, which includes a list of multiple items of personal property.¹²⁶ Thus, the Fishes’ Countercomplaint adequately references “goods” under the UCC.

Further, the Countercomplaint adequately alleges deficiencies in the goods ¹²¹ Docket 55 at 15 (citing Docket 1-2 at 23-25). ¹²² Docket 55 at 15 (citing *Hudson v. Town and Country Value Hardware, Inc.*, 666 S.W.2d 51, 53 (Tenn. 1984)). ¹²³ Docket 57 at 2. ¹²⁴ Docket 57 at 5. ¹²⁵ Docket 27 at 12-17, ¶¶ 5-7; Docket 1-2 at 2. ¹²⁶ Docket 27 at 12, ¶ 2. sold.

For example, Paragraph 5(j) alleges that Mr. Madsen represented to the Fishes that when they took possession, they would "have enough fuel and propane to operate for a season."¹²⁷ For the foregoing reasons, Mr. Madsen's motion to dismiss the UCC component of Counterclaim II at the pleadings stage of this case is DENIED. 2. Covenant of Good Faith and Fair Dealing Counterclaim II also includes a claim for the breach of the covenant of good faith and fair dealing.¹²⁸ Mr. Madsen asserts that the Fishes cannot plausibly plead the claim because of the non-reliance clause in the Agreement.¹²⁹ A “covenant of good faith and fair dealing is implied in all contracts in Alaska,” and it “prevents each party from doing anything that will injure the right of the other to receive the benefits of the agreement.”¹³⁰ The covenant's purpose “is to effectuate the reasonable expectations of the parties, not to alter or add terms to the contract”; it “will not

create a duty where one does not exist.”¹³¹ For the same reason that the Court denied Mr. Madsen’s motion to dismiss Counterclaim I based on the non-reliance clause, the motion to dismiss Counterclaim II’s alleged breach of the 127 Docket 27 at 14, ¶ 5(j).

128 Docket 27 at 18, ¶¶ 21-22. 129 Docket 43 at 5. 130 Alaska Fur Gallery, Inc. v. Tok Hwang, 394 P.3d 511, 516 (Alaska 2017) (citations omitted). 131 Id. covenant of good faith and fair dealing is likewise denied. Thus, Mr. Madsen’s motion to dismiss Counterclaim II is DENIED. C. Counterclaim III (Rescission, Declaratory Relief, and Refund) In Counterclaim III, the Fishes seek “rescission of the purported purchase- and-sale transaction in question, a declaration to that effect, a refund (return) of all sums they paid in pursuance thereof, and a rescission of the [Transaction and subsequent Amendments].”¹³² Mr. Masden asserts that “the Fishes cannot state a claim for [rescission] because they could not have relied on the alleged misrepresentations made by Madsen.”¹³³ Like Counterclaims I and II, Mr. Madsen relies on the non-reliance clause as the basis of his motion to dismiss this Counterclaim, stating that “the Fishes expressly agreed in § VI(d) of the Agreement that they had not relied on any representations made by Madsen at the time of sale, and therefore, any reliance by them would not have been justifiable.”¹³⁴ For the same reason that the Court has denied Mr. Madsen’s motion to dismiss on the basis of the non-reliance clause as to Counterclaims I and II, the motion to dismiss Counterclaim III is likewise DENIED.

D. Counterclaim IV (Alaska Unfair Trade Practices Act) Counterclaim IV alleges several violations of Alaska’s Unfair Trade Practices 132 Docket 27 at 19, ¶24. 133 Docket 43 at 4. 134 Docket 43 at 4. and Consumer Protection Act, Alaska Stat. § 45.50.471 et seq. (“UTPCPA”).¹³⁵ Mr. Masden asserts that the UTPCPA does not apply to the Agreement because (1) “neither the sale of Madsen’s membership interest in SLH nor the sale of SLA were provided in connection with a consumer transaction because the Fishes are not ‘consumers’ because they were not buying ‘goods or services’” within the meaning of the statute; and (2) the Fishes have not alleged “an ascertainable loss of money” from Mr. Masden’s alleged violation of the UTPCPA¹³⁶ In their opposition, the Fishes contend that the transaction (1) falls within the definition of “goods or services” under Alaska Stat. § 45.50.561(a)(9) because the Agreement included a “multiplicity of significant and tangible high-value goods”; and (2) satisfies Alaska Stat. § 45.50.571(b) because “goods or services” need not be purchased in connection with a consumer credit transaction or secured by a residence for the UTPCPA to apply.¹³⁷ Alaska’s UTPCPA prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce.”¹³⁸ To state a prima facie claim under the UTPCPA, a plaintiff must plausibly allege facts to support the following two elements: “(1) that the defendant is engaged in trade or 135 Docket 27 at 19-20.

136 Docket 43 at 11-13. 137 Docket 55 at 17. 138 Alaska Stat. § 45.50.471. commerce; and (2) that in the conduct of trade or commerce, an unfair act or practice has occurred.”¹³⁹ Alaska Stat. § 45.50.531(a) grants a private right of action to “[a] person who suffers an ascertainable loss of

money or property as a result of another person's act or practice declared unlawful by the UTPCPA.”¹⁴⁰ Because the UTPCPA “is a remedial statute, its language should be liberally construed.”¹⁴¹ In *Western Star Trucks, Inc. v. Big Iron Equipment Service, Inc.*, the Alaska Supreme Court held that the UTPCPA was not limited solely to goods and services offered to the public at large, but also extended to commercial transactions.¹⁴² Thus, the Court agrees with the Fishes that the UTPCPA applies to this transaction.

And the fact that Ms. Fish is a real estate professional, and not solely a traditional “consumer,” does not foreclose the Fishes’ UTPCPA claim, as the “[UTPCPA] may apply in the business-to-business context.”¹⁴³ Further, although the Alaska Supreme Court has “consistently held that real

139 *Merdes & Merdes, P.C. v. Leisnoi, Inc.*, 410 P.3d 398, 410 (Alaska 2017) (quoting *Kenai Chrysler Ctr., Inc. v. Denison*, 167 P.3d 1240, 1255 (Alaska 2007)).

The parties do not appear to dispute the first element, that Mr. Madsen, the owner of multiple LLCs, was a “defendant engaged in trade and commerce.” Alaska Stat. § 45.50.471. Thus, the Court focuses on the second element. ¹⁴⁰ *Id.* at 413. ¹⁴¹ *Id.* at 410 (quoting *Alaska Tr., LLC v. Bachmeier*, 332 P.3d 1, 10 (Alaska 2014)). ¹⁴² 101 P.3d 1047, 1052 (Alaska 2004).

¹⁴³ *ASRC Energy Servs. Power & Commc'ns, LLC v. Golden Valley Elec. Ass'n, Inc.*, 267 P.3d 1151, 1163 (Alaska 2011). property transactions are neither a good nor a service,”¹⁴⁴ this transaction was not limited to solely real property.

The sale was of membership interests in the LLCs (SLH and SLA), which included both services and goods. SLA predominantly offers services such as hunting and guiding trips; SLH’s assets include not only real property, but also significant personal property—i.e. goods—related to the Lodge’s operations, such as fuel and propane, and sufficient equipment and vehicles to support the staff of “guides, packers, pilot, managerial oversight at the Lodge housekeeping, and grounds-keeper.”¹⁴⁵ The Court also finds that the Fishes have adequately pled that they suffered an “ascertainable loss” as a result of Mr. Madsen’s alleged UTPCPA violations.

Although the Fishes seek “an amount to be proved at trial,” the fact that the precise monetary amount is not yet determined does not mean there is no ascertainable loss.¹⁴⁶ Moreover, in their prayer for relief, the Fishes do identify an ascertainable loss of at least \$3,000,000.¹⁴⁷ Thus, Counterclaim IV adequately pleads the elements of a UTPCPA claim and Mr. Madsen’s motion to dismiss Counterclaim IV is DENIED.

E. Counterclaim V (Punitive Damages) ¹⁴⁴ *Bachmeier*, 332 P.3d at 9. ¹⁴⁵ Docket 27 at 12-17, ¶¶ 5-7; see also Docket 1-3 at 1. ¹⁴⁶ Docket 27 at 20, ¶ 28. ¹⁴⁷ Docket 27 at 21, ¶ 4; see also Docket 55 at 19 (“here, an exact dollar amount -- \$430,287.87 -- is already being litigated by the parties”). Count V of the Countercomplaint seeks punitive damages.¹⁴⁸ Mr. Madsen asserts that Counterclaim V must be dismissed because punitive damages are a form of relief, not an

independent cause of action.¹⁴⁹ On this point, the Court agrees with Mr. Madsen; a request for punitive damages need not and should not be stated as a separate cause of action.

Accordingly, Mr. Madsen's motion to dismiss Counterclaim V is GRANTED.¹⁵⁰ III. The Fishes' Motion for Partial Summary Judgment The Fishes seek partial summary judgment as follows: (1) rescission of the Agreement; and (2) an order directing Mr. Madsen to refund to them the amount of \$430,287.87 as restitution.¹⁵¹ The Fishes assert two grounds for this relief: (1) Mr. Madsen's "fraud and misrepresentation... induced the Fishes to execute" the Agreement and associated Amendments; and (2) Mr. Madsen is "equitably estopped from attempting enforcement thereof."¹⁵² Although not clearly articulated in their motion, it appears the Fishes are seeking partial summary judgment on Counterclaim III of their Countercomplaint.

In his opposition to the Fishes' motion, Mr. Madsen contends that the Fishes ¹⁴⁸ Docket 27 at 20-21, ¶¶ 29-31. ¹⁴⁹ Docket 43 at 9-10. ¹⁵⁰ The Court notes that the dismissal of Counterclaim V is of no consequence, as punitive damages are included sought in both Counterclaim IV and in the prayer for relief. See Docket 27 at 20, ¶ 28 (Counterclaim IV); Docket 27 at 21, ¶¶ 5-6 (Prayer for Relief).

¹⁵¹ Docket 33 at 1-2. ¹⁵² Docket 33 at 1-2. are not entitled to partial summary judgment because (1) their motion is premature; and (2) there is a genuine issue of material fact regarding the Fishes' reliance on Mr. Madsen's alleged misrepresentations.¹⁵³ A. Timing of Summary Judgment Rule 56(b) of the Federal Rules of Civil Procedure permits a party to move for summary judgment "at any time until 30 days after the close of all discovery."¹⁵⁴ However, federal courts routinely deny such motions as premature if the opposing party has not had a fair opportunity to conduct discovery.¹⁵⁵ Under Rule 56(b), the Fishes may file the motion for summary judgment unless Rule 56(d) applies or a local rule provides otherwise.

Here, Rule 56(d) does not apply as Mr. Madsen has not "show[n] by affidavit or declaration that, for specified reasons, [he] cannot present facts essential to justify [his] opposition"¹⁵⁶ and no local rule applies. Thus, the Court will consider the Fishes' motion for partial summary judgment on its merits. B. There is a Genuine Dispute of Material Fact as to Justifiable Reliance The Fishes appear to seek summary judgment on their Counterclaim III ¹⁵³ Docket 44 at 1-2.

In their motion, the Fishes rely on their unanswered requests for admissions sent to Mr. Madsen that are the subject of a pending motion to amend at Docket 64. See *supra* note 37. ¹⁵⁴ Fed. R. Civ. P. 56(b). ¹⁵⁵ See *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001). ¹⁵⁶ Fed. R. Civ. P. 56(d). (Rescission, Declaratory Relief, and Refund) and assert summary judgment in their favor is warranted because the non-reliance clause at issue is void as a matter of fairness and public policy.¹⁵⁷ In his opposition, Mr. Madsen does not dispute that he made many of the misrepresentations to the Fishes.¹⁵⁸ But he maintains that there is a genuine issue of material fact as to whether the Fishes justifiably relied on those misrepresentations.

Mr. Madsen cites to *Wasser & Winters Co. v. Ritchie Bros. Auctioneers (America), Inc.*, in which the Alaska Supreme Court held that “whether reliance is justified is ordinarily a question of fact.”¹⁵⁹ Even if Mr. Madsen did make all the misrepresentations the Fishes have alleged, Mr. Madsen has demonstrated a genuine issue of fact remains as to whether the Fishes justifiably relied on those alleged misrepresentations.

Mr. Madsen should be permitted to pursue discovery on whether the Fishes justifiably relied on Mr. Madsen’s alleged statements such as “[the Lodge] would easily realize \$100,000 a month.” And likely, the determination of justifiable reliance may need to be made by the trier of fact.¹⁶⁰ Indeed, the Fishes seem to (perhaps ¹⁵⁷ Docket 34. ¹⁵⁸ See Docket 45 at 6-11.

¹⁵⁹ Docket 45 at 13 (citing *Wasser & Winters Co. v. Ritchie Bros. Auctioneers (America), Inc.*, 185 P.3d 73, 81 (Alaska 2008)). ¹⁶⁰ See *Wasser & Winters Co.*, 185 P.3d at 81 (“Wasser is correct that whether reliance is justified is ordinarily a question of fact material to a misrepresentation claim.”); see also *id.* at 81 n.29 (citing *Anchorage Chrysler Ctr., Inc. v. DaimlerChrysler Corp.*, 129 P.3d 905, 914-15 (Alaska 2006) (“Although some courts appear to hold that determinations as to whether reliance was justified can be a question of law reviewed *de novo*, our own precedents suggest that it is a question of fact, and it seems that most jurisdictions that have addressed the issue say it is either a purely factual issue or a mixed question of law and fact, to be reviewed for clear error in either unintentionally) acknowledge this disputed material fact where they state in their motion: “One might argue the Fishes had no right to rely on Madsen’s assurances.”¹⁶¹ While, as discussed above, the Court disagrees with Mr. Madsen’s assertion that the non-reliance clause conclusively establishes that the Fishes are not entitled to judgment as a matter of law because they were not justified in relying on any representations made by Madsen, the Court does find that whether the Fishes were justified in relying on Mr. Madsen’s misrepresentations cannot be determined on the present record.

Therefore, the Fishes’ motion for partial summary judgment as to Counterclaim III is DENIED. C. Equitable Estoppel The Fishes also assert they are entitled to partial summary judgment because Mr. Madsen should be equitably estopped from enforcing the parties’ Agreement.¹⁶² Under Alaska state law, “[t]he elements of equitable estoppel are ‘the assertion of a position by conduct or word, reasonable reliance thereon by another party, and resulting prejudice.’”¹⁶³ Like the rescission claim discussed in the preceding section, there is a event.”).

¹⁶¹ Docket 34 at 16. ¹⁶² Docket 34 at 18. ¹⁶³ *Wright v. State*, 824 P.2d 718, 721 (Alaska 1992) (citing *Jamison v. Consolidated Utilities, Inc.*, 576 P.2d 97, 102 (Alaska 1978)). genuine dispute of material fact as to the Fishes’ reasonable reliance on Mr. Madsen’s alleged misrepresentations.

Thus, the Fishes’ motion for summary judgment based on equitable estoppel is DENIED. CONCLUSION Based on the foregoing, IT IS ORDERED: 1. Plaintiffs’ Motion to Amend Case Caption at Docket 65 is GRANTED. Defendants William Espiricueta and Ivan Steadman are

DISMISSED from this action and the case caption shall be amended to terminate William Espiricueta and Ivan Chikigak Steadman as Defendants; 2.

Plaintiff/Counter-Defendant John Madsen's Motion to Dismiss Counterclaims at Docket 43 is GRANTED as to Counterclaim V only and DENIED as to Counterclaims I through IV; and 3. The Fishes' Motion for Partial Summary Judgment at Docket 33 is DENIED. DATED this 14th day of January, 2026, at Anchorage, Alaska. /s/ Sharon L. Gleason UNITED STATES DISTRICT JUDGE