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6 California, Inc.

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Superior Court of California,
County of Los Angeles
10/19/2026 10:20 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Romero, Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 MATT BARKOHANAI, an individual; BARK
TAX SERVICE INC. dba MARINA POINTE
11 REALTY, a California corporation,

12 Plaintiffs,

13 v.

14 BOBBY SAADIAN aka BOBBY BABAK
SAADIAN, an individual; NEWMARK OF
15 SOUTHERN CALIFORNIA, INC., a
California corporation; ROB HANNAN, an
16 individual; 660 FIG LLC, a Delaware limited
liability company; FIG ASSET CAPITAL
17 (DE), LLC, a Delaware limited liability
company; and DOES 1 through 100, inclusive,

18 Defendants.

CASE NO. 26STCV23348

[Assigned for all purposes to the Hon. Maureen
Duffy-Lewis, Dept. 412]

**DEFENDANT NEWMARK OF
SOUTHERN CALIFORNIA, INC.'S
NOTICE OF DEMURRER AND
DEMURRER TO FIRST AMENDED
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Filed concurrently with Notice of Motion and
Motion to Strike; Declaration of Gaurav
Reddy; and [Proposed] Order]

Hearing

Date: January 27, 2027

Time: 9:30 a.m.

Dept.: 412

Reservation ID: 513457177411

Action Filed: July 23, 2026

FAC Filed: August 14, 2026

Trial Date: None set

1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

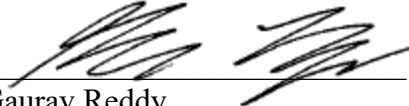
2 **PLEASE TAKE NOTICE** that on January 27, 2027, at 9:30 a.m., or as soon thereafter as
3 the matter may be heard, in Department 412 of the above-entitled Court, located at the Stanley Mosk
4 Courthouse, 111 North Hill Street, Los Angeles, California 90012, Defendant Newmark of Southern
5 California, Inc. ("Newmark") will and hereby does demur generally to the Fourth, Fifth, Sixth,
6 Seventh, Eighth, and Ninth Causes of Action of the First Amended Complaint ("FAC") filed by
7 Plaintiffs Matt Barkohanai ("Barkohanai") and Bark Tax Service Inc. dba Marina Pointe Realty
8 ("Marina Pointe") (together, "Plaintiffs"). The hearing was reserved through the Court's online
9 reservation system (Reservation ID 513457177411).

10 The demurrer is made under Code of Civil Procedure section 430.10, subdivision (e), on the
11 ground that each challenged cause of action fails to state facts sufficient to constitute a cause of action
12 against Newmark, as set forth in the Demurrer below.

13 This demurrer is made following the meet and confer required by Code of Civil Procedure
14 section 430.41, as set forth in the concurrently filed Declaration of Gaurav K. Reddy. It is based on
15 this Notice, the Demurrer, the Memorandum of Points and Authorities, the Reddy Declaration, the
16 pleadings and records on file in this action, and such further argument and matters as the Court may
17 consider at or before the hearing.

18
19 Dated: October 19, 2026

CANTOR FITZGERALD SECURITIES

20
21 By: 

22 Gaurav Reddy
23 Andrew J. Raunau
24 Attorneys for Defendant Newmark of Southern
25 California, Inc.
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DEMURRER

Newmark demurs to the FAC on each of the following grounds (Code Civ. Proc., § 430.10, subd. (e); Cal. Rules of Court, rule 3.1320(a)):

DEMURRER TO FOURTH CAUSE OF ACTION (Breach of Contract)

1. The Fourth Cause of Action fails to state facts sufficient to constitute a cause of action against Newmark because the FAC and its exhibits do not allege the formation of an enforceable contract, including an offer, acceptance, or ascertainable compensation term.

DEMURRER TO FIFTH CAUSE OF ACTION (Intentional Interference with Prospective Economic Advantage)

2. The Fifth Cause of Action fails to state facts sufficient to constitute a cause of action against Newmark because the FAC does not allege an existing economic relationship with a reasonable probability of future benefit, independently wrongful conduct by Newmark directed at that relationship, or disruption caused by Newmark.

DEMURRER TO SIXTH CAUSE OF ACTION (Negligent Misrepresentation)

3. The Sixth Cause of Action fails to state facts sufficient to constitute a cause of action against Newmark because the FAC does not allege a positive assertion of past or existing fact, justifiable reliance, or resulting damage.

DEMURRER TO SEVENTH CAUSE OF ACTION (Breach of the Implied Covenant of Good Faith and Fair Dealing)

4. The Seventh Cause of Action fails to state facts sufficient to constitute a cause of action against Newmark because the FAC does not allege an underlying contract, because the claim duplicates the Fourth Cause of Action.

DEMURRER TO EIGHTH CAUSE OF ACTION (Fraud: Promise Without Intent to Perform and Concealment)

5. The Eighth Cause of Action fails to state facts sufficient to constitute a cause of action against Newmark because the FAC does not allege, with the required particularity, an actionable

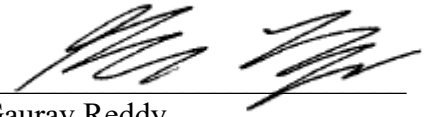
1 promise or misrepresentation, an intent not to perform, a duty to disclose, justifiable reliance,
2 or resulting damage.

3 **DEMURRER TO NINTH CAUSE OF ACTION (Promissory Estoppel)**

4 6. The Ninth Cause of Action fails to state facts sufficient to constitute a cause of action against
5 Newmark because the FAC does not allege a clear and unambiguous promise or reasonable
6 reliance.

7
8 Dated: October 19, 2026

CANTOR FITZGERALD SECURITIES

9
10 By: 

Gaurav Reddy
Andrew J. Raunau
Attorneys for Defendant Newmark of Southern
California, Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This action seeks to convert a single, noncommittal email into an \$880,000 commission
4 obligation. When Barkohanai asked the listing broker, Newmark, what compensation the seller
5 offered for bringing a buyer, Newmark's Rob Hannan answered: "There is no formal arrangement."
6 (FAC ¶ 17, Ex. 1.) Hannan added that Barkohanai "should request what you think you deserve and
7 it wil[l] be netted out of your price." (*Ibid.*) A week later, Barkohanai "respectfully request[ed]" 2%
8 and asked that "the sellers factor this into their selling price." (FAC Ex. 2.) No one agreed. The buyer
9 Barkohanai introduced, his cousin Bobby Saadian ("Saadian"), refused to sign any representation
10 agreement and declared he was "not looking for an agent." (FAC ¶ 32.)

11 The FAC arises from the December 2024 sale of a downtown Los Angeles office building.
12 Plaintiffs, an alleged cooperating broker and its broker-officer, claim that they introduced the
13 eventual buyer, Saadian, to the Property and are owed at least a 2% commission (\$880,000) on the
14 \$44,000,000 sale. (FAC ¶¶ 1–2, 78.) The FAC pleads nine causes of action. The First through Third
15 are asserted only against Saadian and his acquisition entity, and they rest on Saadian's alleged
16 promises to pay a buyer-side fee. (FAC ¶¶ 47–68.) The Fourth through Ninth are asserted against
17 Newmark, the Seller's listing broker. They rest on two short emails from Newmark's Hannan, sent
18 July 30 and August 8, 2024, which Plaintiffs recast as a binding "Cooperation Agreement," an
19 enforceable promise to pay, and a set of actionable misrepresentations. (FAC ¶¶ 18, 70, 85, 95–96,
20 105.)

21 On these facts, which come from the FAC and its own exhibits, Plaintiffs plead six claims
22 against Newmark. Each fails. There was no contract or clear promise (Fourth, Seventh, and Ninth
23 Causes of Action); no reasonably probable buyer-side expectancy that Newmark disrupted (Fifth);
24 no actionable statement of existing fact (Sixth); and no particularized promissory fraud or duty to
25 disclose (Eighth). Because the exhibits will not change, the demurrer should be sustained without
26 leave to amend.

II. FACTUAL AND PROCEDURAL BACKGROUND

Overview. The FAC alleges that Barkohanai, acting for Marina Pointe, identified the Property in July 2024, asked Newmark about cooperating-broker compensation, and introduced Saadian to the opportunity. (FAC ¶¶ 1, 16–19, 22–26.) According to the FAC, Saadian then refused to sign a buyer representation agreement, dealt with the Seller directly, and closed through 660 Fig LLC without paying Plaintiffs. (FAC ¶¶ 29–32, 37, 44–45.) Plaintiffs blame Saadian for promising and then withholding a buyer-side fee, and blame Newmark for not building their requested fee into the deal. (FAC ¶¶ 50–51, 77, 82.) The allegations below, all drawn from the FAC and its exhibits, are the ones relevant to the claims against Newmark.

Newmark was the listing broker for 660 South Figueroa Street (the “Property”). (FAC ¶ 7.) On July 29, 2024, Barkohanai asked Newmark, “What % compensation is the seller offering for bringing a buyer?” (FAC ¶ 16, Ex. 1.) Hannan replied on July 30: “There is no formal arrangement. You should request what you think you deserve and it wil [sic] be netted out of your price,” and asked “Who is your client?” and “Where are you ballpark on price?” (FAC ¶ 17, Ex. 1.) Plaintiffs label their understanding of this email the “Cooperation Agreement.” (FAC ¶ 18.) On August 2, in a subsequent exchange, Hannan wrote that a \$40 million price “does not come close to covering the transaction costs (transfer tax, lawyer fees, broker fees, etc).” (FAC ¶ 96.)

Saadian refused to sign 1% and 0.5% buyer representation agreements and, on August 4, 2024, formally declined both, stating “I am not looking for an agent.” (FAC ¶¶ 29–32.) On August 6, Barkohanai told Newmark that Saadian was “attempting to work directly with David [Taban] to cut us out of our commissions.” (FAC ¶ 81, Ex. 2.) On August 7, 2024, Barkohanai asked Newmark to “pass my emails along to David Taban and the rest of the sellers,” “respectfully request[ed] to be compensated no less than 2% of the sales price,” and “kindly ask[ed] that the sellers factor this into their selling price.” (FAC Ex. 2.) On August 8, 2024, Hannan replied: “Kevin Shannon who runs our team is handling this with Taban. Taban will be aware.” (FAC ¶ 21, Ex. 2.) The seller conveyed the Property to Saadian’s entity on December 17, 2024 for \$44,000,000. (FAC ¶ 44.)

Causes of Action Against Newmark. The FAC asserts six causes of action against Newmark:

(1) the Fourth, for breach of an alleged interbroker “Cooperation Agreement” (FAC ¶¶ 69–78); (2) the Fifth, for intentional interference with Marina Pointe’s alleged buyer-side compensation expectancy from Saadian (FAC ¶¶ 79–83); (3) the Sixth, for negligent misrepresentation (FAC ¶¶ 84–88); (4) the Seventh, for breach of the implied covenant of good faith and fair dealing (FAC ¶¶ 89–93); (5) the Eighth, for promissory fraud and concealment (FAC ¶¶ 94–103); and (6) the Ninth, for promissory estoppel (FAC ¶¶ 104–112). The Fourth, Fifth, Seventh, and Ninth are brought by Marina Pointe alone; the Sixth and Eighth are brought by both Plaintiffs.

Procedural History. Plaintiffs filed this action on July 23, 2026, and filed the FAC on August 14, 2026. On October 9, 2026, Newmark’s counsel sent Plaintiffs’ counsel a letter identifying each cause of action subject to demurrer and the legal authority supporting each ground. (Declaration of Gaurav K. Reddy (“Reddy Decl.”), Ex. 1.) Counsel then met and conferred by telephone on October 14, 2026, but could not resolve the objections raised in this demurrer. (Reddy Decl.) Newmark has therefore satisfied Code of Civil Procedure section 430.41, subdivision (a).

III. LEGAL STANDARD

A demurrer tests the legal sufficiency of the complaint. The court treats the demurrer “as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The well-pleaded allegations “necessarily include the contents of any exhibits attached to the complaint,” and “the contents of an incorporated document . . . will take precedence over and supersede any inconsistent or contrary allegations set out in the pleading.” (*Westamerica Bank v. City of Berkeley* (2011) 201 Cal.App.4th 598, 607, quoting *Building Permit Consultants, Inc. v. Mazur* (2004) 122 Cal.App.4th 1400, 1409; see also *Holland v. Morse Diesel Internat., Inc.* (2001) 86 Cal.App.4th 1443, 1447 [“We may also take notice of exhibits attached to the complaints. If facts appearing in the exhibits contradict those alleged, the facts in the exhibits will take precedence.”].) Leave to amend is properly denied where the plaintiff cannot show “a reasonable possibility that the defect can be cured by amendment[.]” (*Blank*, 39 Cal.3d at 318.) “The burden of proving such reasonable possibility is squarely on the plaintiff.” (*Ibid.*)

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1 contract is so uncertain and indefinite that the intention of the parties in material particulars cannot
2 be ascertained, the contract is void and unenforceable.” (*Cheema v. L.S. Trucking, Inc.* (2019) 39
3 Cal.App.5th 1142, 1149, *as modified on reh'g* (Oct. 7, 2019); *see* Civ. Code, § 1598 [“Where a
4 contract has but a single object, and such object is unlawful, whether in whole or in part, . . . or so
5 vaguely expressed as to be wholly unascertainable, the entire contract is void.”]; *see also Bustamante*,
6 *supra*, 141 Cal.App.4th at pp. 208–215 [“[T]he failure to reach a meeting of the minds on all material
7 points prevents the formation of a contract *even though the parties have orally agreed upon some of*
8 *the terms, or have taken some action related to the contract.*”] [finding alleged agreement was
9 unenforceable where the parties never agreed on material terms].)

10 **Third**, Plaintiffs’ own August 7, 2024 email shows there was no acceptance of an existing
11 deal. Barkohanai asked Newmark to forward his emails to the sellers, “respectfully request[ed]” 2%,
12 asked that “the sellers factor this into their selling price,” and invited a discussion should there be any
13 reasons why he “should not be compensated.” (FAC Ex. 2.) That is a request awaiting the seller’s
14 decision, not acceptance of a contract formed on July 30. Hannan’s reply, “Taban will be aware,”
15 accepted nothing. (*Ibid.*) Because the exhibits control over Plaintiffs’ characterization of them
16 (*Building Permit Consultants, supra*, 122 Cal.App.4th at p. 1409), even the most favorable reading
17 of the FAC cannot plead mutual consent to definite terms. (*Farmers Ins. Exchange v. Superior Court*
18 (2026) 122 Cal.App.5th 333, 338 [“A contract is formed when the parties mutually consent to lawful
19 terms. [Citation.] “Mutual assent usually is manifested by an offer communicated to the offeree and
20 an acceptance communicated to the offeror.” [Citation.] “If there is no evidence establishing a
21 manifestation of assent to the ‘same thing’ by both parties, then there is no mutual consent to contract
22 and no contract formation.” [Citation.]”].)

23 **Fourth**, FAC paragraph 71’s “custom and practice” allegation—that a listing broker’s
24 “silence coupled with continued use of the buyer constitutes assent”—is a conclusion the Court
25 should not accept on demurrer. (*See Varni Bros. Corp. v. Wine World, Inc.* (1995) 35 Cal.App.4th
26 880, 889-890 [“Usage can be invoked only to interpret, not create contractual terms.”] [*citing to* 1
27 Witkin, Summary of Cal.Law (9th ed. 1990) Contracts § 696, p. 630].) Here, the FAC identifies no

1 source, no prior dealings between the parties, and no factual basis showing a custom so established
2 that the parties contracted with reference to it. Even if the FAC pleaded sufficient facts for this
3 allegation, which it does not, it still cannot supply assent where the operative writing disclaims any
4 arrangement.

5 These defects dispose of the Fourth Cause of Action and of the Seventh, which depends on
6 an underlying contract. They also dispose of the Ninth. Promissory estoppel requires a promise that
7 is clear and unambiguous and reliance that is reasonable and foreseeable. (*Murphy v. Twitter, Inc.*
8 (2021) 60 Cal.App.5th 12, 38 [“A claim for promissory estoppel requires (1) a promise clear and
9 unambiguous in its terms, (2) reliance by the party to whom the promise is made, (3) the reliance
10 must be reasonable and foreseeable, and (4) the party asserting the estoppel must be injured by his or
11 her reliance.”].) An email stating “[t]here is no formal arrangement” is neither, and a licensed
12 broker’s reliance on it is unreasonable as a matter of law, particularly where Barkohanai’s August 7
13 email shows his understanding that seller approval was required. (*See Westside Estate Agency, Inc.*
14 *v. Randall* (2016) 6 Cal.App.5th 317, 328 [licensed broker could not reasonably rely on an unwritten
15 contract unless its principal committed actual fraud].)

16 **B. The Seventh Cause of Action Independently Fails Because It Duplicates**
17 **the Fourth.**

18 The Seventh Cause of Action alleges the same conduct—closing the sale without paying
19 Plaintiffs—and seeks the same \$880,000 as the Fourth, while disclaiming “double recovery” between
20 the two. (FAC ¶¶ 92–93.) An implied covenant claim that relies on the same acts and seeks the same
21 damages as a contract claim is superfluous and may be disregarded. (*Careau & Co. v. Security Pacific*
22 *Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395 [“If the allegations do not go beyond the
23 statement of a mere contract breach and, relying on the same alleged acts, simply seek the same
24 damages or other relief already claimed in a companion contract cause of action, they may be
25 disregarded as superfluous as no additional claim is actually stated.”].)

1 **C. The Fifth Cause of Action Fails Because Saadian Ended Any Expectancy**
2 **Before Newmark’s Alleged Conduct.**

3 Intentional interference with prospective economic advantage requires an economic
4 relationship with a probability of future benefit, independently wrongful conduct by the defendant,
5 and resulting disruption. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153–
6 1159; *Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 521–524.)
7 A plaintiff that pleads “at most a hope for an economic relationship and a desire for future benefit”
8 states no claim. (*Blank, supra*, 39 Cal.3d at 330-331.)

9 The relationship alleged is between Marina Pointe and Saadian for a buyer-side fee. (FAC ¶
10 80.) The FAC pleads that Saadian refused to sign either representation agreement and, on August 4,
11 2024, formally declined both, stating “I am not looking for an agent.” (FAC ¶¶ 30–32.)

12 The conduct attributed to Newmark begins with the August 8, 2024 email. (FAC ¶ 82.) Any
13 expectancy had already ended before that date, and Saadian’s later statements about “some money”
14 or a \$70,000 “courtesy” depended entirely on his own discretion. (FAC ¶¶ 57, 80.) Moreover, the
15 alleged wrongful act is a statement made to Plaintiffs, not conduct directed at Saadian, and the FAC
16 does not allege how anything Newmark did caused Saadian to withhold a fee he had already refused
17 to pay. The FAC elsewhere attributes the disruption to Saadian himself. (FAC ¶¶ 50–51, 67.)

18 **D. The Eighth Cause of Action Does Not Plead Fraud With the Required**
19 **Particularity.**

20 “In California, fraud must be pled specifically; general and conclusory allegations do not
21 suffice.” (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) “The elements of fraud, which give
22 rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or
23 nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance;
24 (d) justifiable reliance; and (e) resulting damage.” (*Id.* at p. 638.) Promissory fraud is a subspecies of
25 fraud: a promise made without any intention of performing it carries an implied misrepresentation of
26 fact. (*Ibid.*; Civ. Code, § 1710, subd. 4.) The Eighth Cause of Action fails on several elements.

27 **No actionable promise.** As discussed above in Section IV-A, “There is no formal
28

1 arrangement” (FAC ¶¶ 17, 95, Ex. 1) negates a promise, and “Taban will be aware” (FAC ¶¶ 21, 35,
2 96, Ex. 2) is not a promise to pay anything.

3 ***No facts showing intent not to perform.*** The facts alleged in paragraphs 97 and 102 consist
4 of later nonperformance—Newmark’s continued dealings with the buyer and the closing without
5 payment. An unkept promise or a later failure of performance does not plead fraudulent intent at the
6 time the promise was made. (*See Reeder, supra*, 52 Cal.App.5th at 803-804; *Tarmann v. State Farm*
7 *Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 159.) The alternative theory that Newmark intended
8 to deal around Plaintiffs “if the opportunity arose” (FAC ¶ 97) is speculation. Conclusory allegations
9 of this kind do not survive demurrer: “[i]t is insufficient to show an unkept but honest promise, or
10 mere subsequent failure of performance” (*Reeder, supra*, 52 Cal.App.5th at 804, quoting *Riverisland*
11 *Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.* (2013) 55 Cal.4th 1169, 1183
12 [affirming order sustaining demurrer to promissory fraud claim]), and “something more than
13 nonperformance is required to prove the defendant’s intent not to perform his promise” (*Tenzer v.*
14 *Superscope, Inc.* (1985) 39 Cal.3d 18, 30–31).

15 ***No duty to disclose.*** The concealment theory requires a duty to disclose. The FAC alleges no
16 fiduciary or transactional relationship between a listing broker and an unaffiliated cooperating broker
17 that would create such a duty. (*See LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336–337.)

18 ***No justifiable reliance or causation.*** By August 6, 2024, Plaintiffs already believed Saadian
19 was trying to “cut us out” (FAC ¶ 81, Ex. 2), and he had already declined representation (FAC ¶ 32).
20 The alleged forbearance from contacting the seller (FAC ¶ 100) is contradicted by Plaintiffs’ own
21 August 7, 2024 request that Newmark forward their emails to the seller. (FAC ¶ 34, Ex. 2.) And
22 damages measured by “protective steps” Plaintiffs did not take (FAC ¶¶ 100, 103) are speculative,
23 because the FAC does not allege that any such step would have produced payment from a buyer who
24 refused to pay.

25 **E. The Sixth Cause of Action Fails Because It Rests on a Prediction, Not a**
26 **Statement of Existing Fact.**

27 Negligent misrepresentation requires a positive assertion of past or existing fact; it does not

1 lie for a promise to perform in the future. (*Tarmann, supra*, 2 Cal.App.4th 153, 158.) The Sixth Cause
2 of Action rests solely on the August 8, 2024 email: “Kevin Shannon who runs our team is handling
3 this with Taban. Taban will be aware.” (FAC ¶ 85, Ex. 2.) That “Taban will be aware” is a prediction,
4 and neither sentence represents that Plaintiffs would be paid.

5 Justifiable reliance is an essential element of negligent misrepresentation, which requires “(1)
6 the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing
7 it to be true, (3) with intent to induce another’s reliance on the fact misrepresented, (4) justifiable
8 reliance on the misrepresentation, and (5) resulting damage.” (*Apollo Capital Fund LLC v. Roth*
9 *Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 243.) Courts agree that “the causal elements,
10 particularly the allegations of reliance, must be specifically pleaded.” (*National Union Fire Ins. Co.*
11 *of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 50 citing
12 *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 184.)

13 Here, the FAC does not plead justifiable reliance caused by the August 8, 2024 email.
14 Plaintiffs’ principal acts—introducing Saadian and transmitting his interest on August 2, 2024—
15 preceded the email and could not have been induced by it. The only remaining reliance is purported
16 forbearance from contacting the seller or escrow (FAC ¶ 87), which is inconsistent with Plaintiffs’
17 August 7, 2024 request that Newmark forward their emails to the seller.

18 The FAC also alleges only generalized “reliance and consequential damages” (FAC ¶ 88),
19 without identifying any loss allegedly caused by the August 8, 2024 email. That is not enough.
20 “Deception without resulting loss is not actionable,” and “[w]hatever form it takes, the injury or
21 damage must not only be distinctly alleged but its causal connection with the reliance on the
22 representations must be shown.” (*Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th
23 1807, 1818 [internal quotation marks omitted]; see *National Union, supra*, 171 Cal.App.4th at 50
24 [negligent misrepresentation claim failed where causal connection between reliance and injury “was
25 left entirely unclear”].)

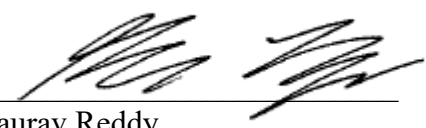
26 V. CONCLUSION

27 The Court should sustain Newmark’s demurrer to the Fourth through Ninth Causes of Action.

1 Because the defects arise from Plaintiffs' own exhibits, which cannot be amended, and Plaintiffs have
2 already amended once, the demurrer should be sustained without leave to amend.

3
4 Dated: October 19, 2026

CANTOR FITZGERALD SECURITIES

5
6 By: 

Gaurav Reddy
Andrew J. Raunau
Attorneys for Defendant Newmark of Southern
California, Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 18401 Von Karman Ave., Unit 150, Irvine, CA 92612. My email address is gaurav.reddy@cantor.com.

On **October 19, 2026**, I served the following document described as:

- **DEFENDANT NEWMARK OF SOUTHERN CALIFORNIA, INC.'S NOTICE OF DEMURRER AND DEMURRER TO FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES**

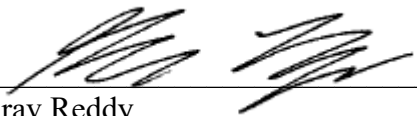
on the interested parties in this action by sending a true copy thereof addressed as follows:

Lurie & Associates Barak Lurie (barak@lurie-law.com) Dane Taylor (dane@lurie-law.com) Valerie Shaffer (admin@lurie-law.com) Shannon King (shannon@lurie-law.com) Lorena Barrera (fileclerk@lurie-law.com) 12121 Wilshire Boulevard, Suite 300 Los Angeles, CA 90025 Telephone: 310-478-7788	Attorneys for Plaintiffs Matt Barkohanai and Bark Tax Service Inc. dba Marina Pointe Realty
Wilshire Law Firm Thiago M. Coelho (thiago.coelho@wilshirelawfirm.com) 660 S. Figueroa Street, Sky Lobby Los Angeles, CA 90017 Telephone: 213-381-9988 Golding + Lamothe Jonathan F. Golding (jonathan@goldinglamothe.com) 323 Pershing Drive Playa del Ray, CA 90293 Telephone: 310-591-0776	Attorneys for Defendants Bobby Saadian aka Bobby Babak Saadian and 660 Fig LLC

☒ **BY EMAIL:** Pursuant to Code of Civil Procedure section 1010.6, I transmitted the foregoing documents by electronic mail to the parties identified above by using electronic mail as indicated. Saidd electronic mail was verified as complete and without error and equivalent to personal service. My electronic service address is gaurav.reddy@cantor.com.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct.

3 Executed on **October 19, 2026**, at Irvine, California.

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Gaurav Reddy

1 CANTOR FITZGERALD SECURITIES
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5 Attorneys for Defendant Newmark of Southern
6 California, Inc.

Electronically FILED by
Superior Court of California,
County of Los Angeles
10/19/2026 10:20 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Romero, Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 MATT BARKOHANAI, an individual; BARK
TAX SERVICE INC. dba MARINA POINTE
11 REALTY, a California corporation,

12 Plaintiffs,

13 v.

14 BOBBY SAADIAN aka BOBBY BABAK
SAADIAN, an individual; NEWMARK OF
15 SOUTHERN CALIFORNIA, INC., a
California corporation; ROB HANNAN, an
16 individual; 660 FIG LLC, a Delaware limited
liability company; FIG ASSET CAPITAL
17 (DE), LLC, a Delaware limited liability
company; and DOES 1 through 100, inclusive,

18 Defendants.
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CASE NO. 26STCV23348

[Assigned for all purposes to the Hon. Maureen
Duffy-Lewis, Dept. 412]

**DECLARATION OF GAURAV REDDY IN
SUPPORT OF DEFENDANT NEWMARK
OF SOUTHERN CALIFORNIA, INC.'S
DEMURRER TO FIRST AMENDED
COMPLAINT**

[Filed concurrently with Notice of Demurrer
and Demurrer; and [Proposed] Order]

Hearing

Date: January 27, 2027

Time: 9:30 a.m.

Dept.: 412

Reservation ID: 513457177411

Action Filed: July 23, 2026

FAC Filed: August 14, 2026

Trial Date: None set

1 I, Gaurav Reddy, declare as follows:

2 1. I am an attorney at law duly licensed to practice before all courts of the State of
3 California and am counsel of record for Defendant Newmark of Southern California, Inc.
4 ("Newmark") in this action. I have personal knowledge of the facts stated in this declaration and, if
5 called as a witness, could and would testify competently to them. I submit this declaration under
6 Code of Civil Procedure section 430.41 in support of Newmark's Demurrer to the First Amended
7 Complaint ("FAC").

8 2. Barak Lurie and Dane H. Taylor of Lurie & Associates are counsel of record for
9 Plaintiffs Matt Barkoahani and Bark Tax Service Inc. dba Marina Pointe Realty (together,
10 "Plaintiffs"). By agreement of counsel, Newmark's deadline to respond to the FAC was extended to
11 October 19, 2026.

12 3. On October 9, 2026, I sent Plaintiffs' counsel, by email to Mr. Lurie and Mr. Taylor,
13 a meet and confer letter under Code of Civil Procedure sections 430.41 and 435.5. The letter
14 identified each cause of action and allegation Newmark contends is subject to demurrer or to a motion
15 to strike, explained the legal bases for Newmark's positions with supporting authority, asked whether
16 Plaintiffs would dismiss or amend the challenged causes of action and allegations, and proposed dates
17 of October 12, 13, or 14, 2026, for a conference. A true and correct copy of the October 9, 2026 letter
18 is attached as **Exhibit 1**.

19 4. On October 14, 2026, I met and conferred with Plaintiffs' counsel, Mr. Taylor, by
20 telephone regarding the matters set forth in my October 9, 2026 letter, including the grounds for the
21 demurrer. The parties discussed each of the issues identified in the letter, but did not reach an
22 agreement resolving the objections Newmark raises in its demurrer. Plaintiffs did not agree to dismiss
23 or amend the challenged causes of action, and counsel reached an impasse.

24 5. During the October 14, 2026 telephone conference, I informed Plaintiffs' counsel that,
25 because the parties had not resolved the issues, Newmark would file its demurrer and motion to strike
26 on October 19, 2026.

6. The telephonic meet and confer took place at least five days before the date Newmark's responsive pleading was due.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 19, 2026, at Irvine, California.


Gaurav Reddy

EXHIBIT 1

CANTOR FITZGERALD SECURITIES

18401 Von Karman Ave., Suite 150 | Irvine, CA 92612

Tel: (310) 282-6512 | gaurav.reddy@cantor.com

Gaurav Reddy, Esq.
Direct: (310) 282-6512
Email: gaurav.reddy@cantor.com

October 9, 2026

VIA EMAIL

Barak Lurie, Esq. (barak@lurie-law.com)
Dane H. Taylor, Esq. (dane@lurie-law.com)
LURIE & ASSOCIATES
12121 Wilshire Boulevard, Suite 300
Los Angeles, California 90025
Telephone: (310) 478-7788

**Re: *Barkohanai v. Saadian, et al.*, LA Superior Court Case No. 26STCV23348
Meet and Confer Regarding Newmark of Southern California's Demurrer and
Motion to Strike (Code Civ. Proc. §§ 430.41, 435.5)**

Counsel:

I write on behalf of Defendant Newmark of Southern California, Inc. ("Newmark") under Code of Civil Procedure sections 430.41 and 435.5 regarding the First Amended Complaint ("FAC") filed August 14, 2026 by Plaintiffs Matt Barkohanai and Bark Tax Service Inc. d/b/a Marina Pointe Realty ("Marina Pointe") (together, "Plaintiffs"). Under our agreement, Newmark's response to the FAC is due October 19, 2026. Newmark intends to demur to the Fourth through Ninth Causes of Action and to move to strike portions of the FAC. This letter identifies the grounds for both motions so that the parties may try to resolve or narrow the issues before filing. Paragraph and exhibit references are to the FAC.

I. GROUNDS FOR DEMURRER (Code Civ. Proc. § 430.10)

A. Fourth, Seventh, and Ninth Causes of Action: The FAC Does Not Allege a Contract or a Clear and Unambiguous Promise.

Each of these causes of action depends on the alleged "Cooperation Agreement" or on a purported promise by Newmark to pay Plaintiffs a commission. The FAC's allegations on this point are conclusory, and its own exhibits contradict them. Where a complaint's exhibits contradict its allegations, the exhibits control. (*Holland v. Morse Diesel Internat., Inc.* (2001) 86 Cal.App.4th 1443, 1447.)

- The July 30, 2024 email from Rob Hannan on which Plaintiffs rely states: "There is no formal arrangement." (¶ 17; Ex. 1.) A writing that disclaims any arrangement is not an offer capable of acceptance. (*See Laks v. Coast Fed. Sav. & Loan Assn.* (1976) 60

Cal.App.3d 885, 890–891 [recipient of conditional commitment lacking essential terms could not reasonably regard it as a binding offer]; *Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 213 [preliminary negotiations and “agreements to agree” are not enforceable contracts].)

- Mr. Hannan’s instruction to “request what you think you deserve and it wil[l] be netted out of your price” describes how a proposed buyer-side fee would be submitted and evaluated with an offer. (Ex. 1.) It is not a commitment by Newmark to pay whatever amount Plaintiffs might later choose. An agreement with no ascertainable price term is too indefinite to enforce. (*Bustamante, supra*, 141 Cal.App.4th at 208–209, 213 [no contract where compensation terms remained unsettled]; *Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 770–771 [promise to pay commissions at “parity” too vague and indefinite to create contractual duty]; *see* Civ. Code § 1598.)
- Mr. Barkohanai’s own August 7, 2024 email asked Newmark to “pass my emails along to David Taban and the rest of the sellers,” “respectfully request[ed]” 2%, and asked “that the sellers factor this into their selling price.” (Ex. 2.) That is a request for the seller’s consideration, not acceptance of an agreement already formed. Mr. Hannan’s August 8, 2024 reply (“Taban will be aware”) does not accept the request.
- The “custom and practice” allegation in paragraph 71, under which silence and continued dealing purportedly constitute assent, is an unsupported legal conclusion. It identifies no source, no prior dealings between the parties, and no facts showing a custom so established that the parties contracted with reference to it. It cannot create mutual assent where the operative writings disclaim any arrangement.

These defects defeat the Fourth Cause of Action (breach of contract) and the Seventh Cause of Action (implied covenant), both of which require an underlying contract. They also defeat the Ninth Cause of Action (promissory estoppel), which requires a promise that is “clear and unambiguous in its terms” (*Laks, supra*, 60 Cal.App.3d at 890) and reasonable reliance. A broker’s reliance on an email stating “[t]here is no formal arrangement” is unreasonable as a matter of law, particularly where Mr. Barkohanai’s August 7 email reflects Plaintiffs’ understanding that seller approval was required. (*See Westside Estate Agency, Inc. v. Randall* (2016) 6 Cal.App.5th 317 [licensed broker’s status foreclosed reasonable reliance].)

B. Fifth Cause of Action (Intentional Interference with Prospective Economic Advantage): No Reasonably Probable Expectancy and No Causation.

The Fifth Cause of Action alleges interference with a buyer-side compensation relationship between Marina Pointe and Mr. Saadian. (¶ 80.) The tort requires an existing economic relationship with a reasonable probability of future benefit, independently wrongful conduct by the defendant, and resulting disruption. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153–1159; *Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 521–524.) The FAC pleads that Mr. Saadian refused to sign and, on August 4, 2024, formally declined both buyer representation agreements, stating “I am not looking for an agent.” (¶¶ 30–32.)

The conduct attributed to Newmark begins with the August 8, 2024 email. (¶ 82.) Any expectancy had ended before that date, and later statements by Mr. Saadian (¶¶ 57, 80) depended entirely on his discretion. The alleged wrongful act is also a statement made to Plaintiffs, not conduct directed at Mr. Saadian, and the FAC does not allege how any act by Newmark caused Mr. Saadian to withhold a fee he had already refused to pay. Elsewhere, the FAC attributes the disruption to Mr. Saadian. (¶¶ 50–51, 67.)

C. Seventh Cause of Action (Breach of the Implied Covenant): Duplicative of the Fourth Cause of Action.

The Seventh Cause of Action relies on the same alleged conduct and seeks the same \$880,000 as the Fourth Cause of Action (¶¶ 92–93), and expressly disclaims double recovery between the two. An implied covenant claim that merely duplicates a contract claim is superfluous and may be disregarded. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395.)

D. Eighth Cause of Action (Promissory Fraud and Concealment): No Actionable Promise, Intent, Duty, or Justifiable Reliance.

Fraud must be pleaded with particularity as to each element. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) The Eighth Cause of Action fails for several reasons:

- **No actionable promise.** As discussed above, "There is no formal arrangement" (Ex. 1; ¶¶ 17, 95) negates a promise, and "Taban will be aware" (Ex. 2; ¶¶ 21, 35, 96) is not a promise to pay.
- **No facts showing intent not to perform.** The facts alleged in paragraphs 97 and 102 consist largely of later nonperformance, which is insufficient to plead fraudulent intent at the time a promise was made. The alternative intent theory in paragraph 97 is speculative.
- **No duty to disclose.** The FAC alleges no fiduciary or transactional relationship between a listing broker and an unaffiliated allegedly cooperating "broker" that would support a concealment claim. (*See LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336–337.)
- **No justifiable reliance or causation.** By August 6, 2024, Plaintiffs already believed Mr. Saadian was attempting to "cut us out" (Ex. 2; ¶ 81), and he had already declined representation (¶ 32). Plaintiffs' alleged forbearance from contacting the seller is inconsistent with their own August 7 request that Newmark forward their emails to the seller (Ex. 2; ¶ 34). The claimed damages, measured by "protective steps" Plaintiffs did not take (¶¶ 100, 103), are speculative because the FAC does not allege that any such step would have resulted in payment.

E. Sixth Cause of Action (Negligent Misrepresentation): No Actionable Statement of Existing Fact and No Justifiable Reliance.

Negligent misrepresentation requires a positive assertion of a past or existing fact; it does not lie for promises or predictions. The Sixth Cause of Action rests solely on the August 8, 2024 email stating that “Kevin Shannon who runs our team is handling this with Taban” and that “Taban will be aware.” (§ 85; Ex. 2.) The statement that the seller’s principal “will be aware” is a prediction, and it does not say what Mr. Taban would be aware. Neither statement represents that Plaintiffs would be paid. Nor does the FAC plead justifiable reliance caused by that email. Plaintiffs’ principal acts (identifying and introducing Mr. Saadian and transmitting his pricing interest on August 2, 2024) preceded it and could not have been induced by it. The remaining alleged reliance is forbearance from contacting the seller or escrow (§ 87), which is inconsistent with Plaintiffs’ own August 7 request that Newmark forward their emails to the seller. The FAC also alleges only generalized “reliance and consequential damages” (§ 88) without identifying any loss caused by the August 8 email.

F. Sixth and Eighth Causes of Action (as Asserted by Mr. Barkohanai Individually): No Allegation of Individual Broker Licensure.

No person may bring or maintain an action for the collection of compensation for an act requiring a real estate license without alleging and proving that he or she was a duly licensed broker or salesperson when the cause of action arose. (Bus. & Prof. Code § 10136.) The FAC does not allege that Mr. Barkohanai held an individual broker license during July through December 2024. It alleges only that he holds an officer license as the designated broker-officer of Bark Tax Service Inc. and that “[a]ll brokerage services alleged in this Complaint were performed by Marina Pointe through Barkohanai in that capacity.” (§§ 3–4.) An officer license authorizes licensed acts on behalf of the corporation; it does not authorize the officer to perform licensed acts, or to collect compensation for them, in his own name.

Mr. Barkohanai is a plaintiff against Newmark only on the Sixth and Eighth Causes of Action, which are styled as torts. The licensing requirement, however, turns on the nature of the recovery sought, not the label attached to the claim. In substance, Mr. Barkohanai seeks compensation for brokerage services: the value of his “time, expenses, and work product” in procuring a buyer (§§ 88, 103), and the lost opportunity to secure the commission the FAC elsewhere values at \$880,000 (§§ 87, 100). The California Supreme Court has refused to let an unlicensed party to evade a licensing statute by recasting a claim for compensation as fraud. (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 997–1002 [unlicensed contractor could not avoid Bus. & Prof. Code § 7031 by pleading fraud]; cf. *Phillippe v. Shapell Industries, Inc.* (1987) 43 Cal.3d 1247 [broker may not avoid statute of frauds through estoppel absent actual fraud].) The same principle applies to Business & Professions Code section 10136.

If the court declines to sustain a demurrer on this ground on the basis that the Sixth and Eighth Causes of Action seek tort damages distinct from a commission, Newmark will seek the same relief through its motion to strike Mr. Barkohanai’s individual damages allegations, as set forth in Section II below.

G. Fourth Through Ninth Causes of Action: The Confidentiality Agreement Undermines the Alleged Cooperating-Broker Relationship.

The FAC alleges that Newmark provided the confidential offering materials only after Marina Pointe, through Mr. Barkohanai, executed a written Confidentiality Agreement with the seller effective July 25, 2024. (§§ 4, 14.) Because the FAC relies on that agreement, Newmark will submit it with the demurrer, and ask the court to consider it as incorporated by reference. (*See City of Pomona v. Superior Court* (2001) 89 Cal.App.4th 793, 800; *McBride v. Smith* (2018) 18 Cal.App.5th 1160.) The agreement identifies the counterparty as “Marina Pointe Realty, a Corporation” and defines it as the “Prospective Purchaser.” Mr. Barkohanai signed it as that entity’s President, not as an individual broker or on behalf of any identified buyer. The agreement nowhere refers to a broker, a buyer’s representative, or compensation.

This document is inconsistent with the FAC’s central premise that Newmark dealt with Marina Pointe as a cooperating broker from the outset. (§§ 64, 70.) It reinforces the absence of any contract or clear promise discussed in Section I.A, because the only written instrument governing Plaintiffs’ access to the Property identifies Marina Pointe as a prospective purchaser, rather than a broker. It is also consistent with Section I.F above: the one document Mr. Barkohanai signed in the transaction was signed in a corporate capacity, as a prospective purchaser, not as a licensed individual broker.

H. Alternative Ground: Statute of Frauds (Civ. Code § 1624, subd. (a)(4)).

In the alternative, Newmark will contend that the Fourth, Seventh, and Ninth Causes of Action are barred by the statute of frauds. An agreement to compensate a broker for procuring a purchaser of real estate must be in a writing subscribed by the party to be charged that shows the fact of the broker’s employment. (Civ. Code § 1624, subd. (a)(4); *Westside Estate Agency, Inc.*, *supra*, 6 Cal.App.5th 317.) We recognize that the FAC characterizes the alleged arrangement as an agreement between cooperating brokers (§§ 64, 70, 73, 106). But the FAC itself describes compensation to be “netted out of the purchase price” and asks that “the sellers factor this into their selling price”. (§§ 18, 20; Ex. 2) That is compensation from the principal’s transaction economics, not a division of Newmark’s commission. The only writing identified states that there is “no formal arrangement.” (Ex. 1.) And a broker may not avoid the statute through estoppel absent actual fraud. (*Phillippe*, *supra*, 43 Cal.3d 1247.)

II. GROUNDS FOR MOTION TO STRIKE (Code Civ. Proc. §§ 435–436)

- **Attorneys’ fees (Prayer, ¶ 4).** Fees are recoverable only where authorized by contract or statute. (Code Civ. Proc. § 1021.) The FAC identifies no fee provision and no fee-shifting statute.
- **Punitive damages against Newmark: corporate employer requirements (§§ 83, 103; Prayer, ¶ 3, as to the Fifth and Eighth Causes of Action).** Against a corporate employer, Civil Code section 3294, subdivision (b) requires facts showing that an officer, director, or managing agent authorized, ratified, or committed the oppressive, fraudulent, or malicious conduct. A managing agent is one who exercises substantial discretionary

authority over decisions that ultimately determine corporate policy. (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 566–567, 577.) Allegations of job titles and authority over a single listing do not meet that standard, and completing a sale does not constitute ratification of fraud.

- **Punitive damages against Newmark: no facts showing oppression, fraud, or malice (same allegations).** Independently, the FAC does not plead facts showing that Newmark acted with “oppression, fraud, or malice.” (Civ. Code, § 3294, subd. (a).) Malice requires conduct intended to injure the plaintiff or “despicable conduct” carried on in willful and conscious disregard of the plaintiff’s rights; oppression likewise requires “despicable conduct.” (*Id.*, subd. (c)(1), (2).) Paragraphs 83 and 103 simply recite that Newmark’s conduct was “malicious, oppressive, and fraudulent within the meaning of Civil Code section 3294.” The facts actually alleged are a two-sentence email stating that the request was being handled with the seller (§ 85), a telephone call in which Mr. Shannon described Mr. Saadian’s offer as unlikely to proceed (§ 36), and Newmark’s later closing of a sale its client wanted to make (§§ 44, 82). At most, those facts describe a commercial dispute over whether a fee was owed; they do not describe despicable conduct or an intent to injure. Conclusory characterizations of this kind are insufficient and are properly stricken. (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872; *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166.) And because the fraud claim itself is deficient for the reasons in Section I.D, it cannot supply the “fraud” predicate.
- **Mr. Barkohanai’s individual damages (§§ 88, 103).** The FAC alleges that all brokerage services were performed by Marina Pointe through Mr. Barkohanai as its broker-officer. (§ 4.) Any alleged loss is therefore only potentially Marina Pointe’s (subject to Marina Pointe demonstrating it was validly licensed). To the extent Mr. Barkohanai seeks, in his individual capacity, the value of his “time, expenses, and work product” for brokerage services, he may not recover compensation for acts requiring a real estate license in his own name absent an individual license at the relevant time. (Bus. & Prof. Code § 10136.)

III. REQUEST TO MEET AND CONFER

Please advise whether Plaintiffs are willing to dismiss or amend the causes of action and allegations identified above. Code of Civil Procedure Sections 430.41 and 435.5 require the parties to meet and confer, and our deadline to complete that process is October 14, 2026. I am available on October 12 (morning only), October 13 (flexible), or October 14 (except between 10-11 a.m.). Please contact me at gaurav.reddy@cantor.com to confirm a date and time.

If the parties are unable to resolve these issues through the meet and confer process, Newmark intends to file its demurrer and motion to strike on or before October 19, 2026. Nothing in this letter is intended as a complete statement of Newmark’s positions, defenses, or arguments, all of which are expressly reserved.

Finally, even if some of Plaintiffs’ claims survive the pleading stage, Newmark does not believe Plaintiffs have fully considered the risks of continuing this litigation. There are serious questions about whether Plaintiffs’ purported brokerage activities complied with California law

and real estate regulations. Plaintiffs may also face independent exposure under the Confidentiality Agreement, which limited disclosure of confidential information about the Property to Marina Pointe's defined "Representatives." The FAC itself alleges that Plaintiffs sent the offering materials, underwriting, and related deal information to Mr. Saadian and his agent (§§ 28, 58, 60), neither of whom is a Representative. Newmark respectfully urges Plaintiffs to reconsider pursuing these claims.

Best regards,

A handwritten signature in black ink, appearing to read 'Gaurav Reddy', with a stylized flourish at the end.

Gaurav Reddy, Esq.

Cantor Fitzgerald Securities
Counsel for Defendant Newmark of Southern California, Inc.

cc: Andrew Raunau, Esq. (andrew.raunau@cantor.com)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 18401 Von Karman Ave., Unit 150, Irvine, CA 92612. My email address is gaurav.reddy@cantor.com.

On **October 19, 2026**, I served the following document described as:

- **DECLARATION OF GAURAV REDDY IN SUPPORT OF DEFENDANT NEWMARK OF SOUTHERN CALIFORNIA, INC.'S DEMURRER TO FIRST AMENDED COMPLAINT**

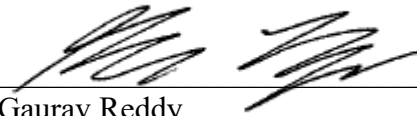
on the interested parties in this action by sending a true copy thereof addressed as follows:

Lurie & Associates Barak Lurie (barak@lurie-law.com) Dane Taylor (dane@lurie-law.com) Valerie Shaffer (admin@lurie-law.com) Shannon King (shannon@lurie-law.com) Lorena Barrera (fileclerk@lurie-law.com) 12121 Wilshire Boulevard, Suite 300 Los Angeles, CA 90025 Telephone: 310-478-7788	Attorneys for Plaintiffs Matt Barkohanai and Bark Tax Service Inc. dba Marina Pointe Realty
Wilshire Law Firm Thiago M. Coelho (thiago.coelho@wilshirelawfirm.com) 660 S. Figueroa Street, Sky Lobby Los Angeles, CA 90017 Telephone: 213-381-9988 Golding + Lamothe Jonathan F. Golding (jonathan@goldinglamothe.com) 323 Pershing Drive Playa del Ray, CA 90293 Telephone: 310-591-0776	Attorneys for Defendants Bobby Saadian aka Bobby Babak Saadian and 660 Fig LLC

☒ **BY EMAIL:** Pursuant to Code of Civil Procedure section 1010.6, I transmitted the foregoing documents by electronic mail to the parties identified above by using electronic mail as indicated. Saidd electronic mail was verified as complete and without error and equivalent to personal service. My electronic service address is gaurav.reddy@cantor.com.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct.

3 Executed on **October 19, 2026**, at Irvine, California.

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6 _____
7 Gaurav Reddy
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1 CANTOR FITZGERALD SECURITIES
2 Gaurav Reddy, Bar No. 259496
3 gaurav.reddy@cantor.com
4 Andrew J. Raunau, Bar No. 336168
5 andrew.raunau@cantor.com
6 18401 Von Karman Ave., Suite 150
7 Irvine, CA 92612
8 Tel.: (310) 282-6512

9 Attorneys for Defendant Newmark of Southern
10 California, Inc.

Electronically FILED by
Superior Court of California,
County of Los Angeles
10/19/2026 10:29 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Romero, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MATT BARKOHANAI, an individual; BARK
TAX SERVICE INC. dba MARINA POINTE
REALTY, a California corporation,

Plaintiffs,

v.

BOBBY SAADIAN aka BOBBY BABAK
SAADIAN, an individual; NEWMARK OF
SOUTHERN CALIFORNIA, INC., a
California corporation; ROB HANNAN, an
individual; 660 FIG LLC, a Delaware limited
liability company; FIG ASSET CAPITAL
(DE), LLC, a Delaware limited liability
company; and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 26STCV23348

[Assigned for all purposes to the Hon. Maureen
Duffy-Lewis, Dept. 412]

**DEFENDANT NEWMARK OF
SOUTHERN CALIFORNIA, INC.'S
NOTICE OF MOTION AND MOTION TO
STRIKE PORTIONS OF FIRST
AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Filed concurrently with Notice of Demurrer
and Demurrer; Declaration of Gaurav Reddy;
Request for Judicial Notice; and [Proposed]
Order]

Hearing

Date: January 27, 2027

Time: 9:30 a.m.

Dept.: 412

Reservation ID: 513457177411

Action Filed: July 23, 2026

FAC Filed: August 14, 2026

Trial Date: None set

1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 27, 2027, at 9:30 a.m., or as soon thereafter as
3 the matter may be heard, in Department 412 of the above-entitled Court, located at the Stanley Mosk
4 Courthouse, 111 North Hill Street, Los Angeles, California 90012, concurrently with its Demurrer
5 (Reservation ID 513457177411), Defendant Newmark of Southern California, Inc. (“Newmark”)
6 will and hereby does move under Code of Civil Procedure sections 435 and 436 to strike the following
7 portions of the First Amended Complaint (“FAC”) filed by Plaintiffs Matt Barkohanai
8 (“Barkohanai”) and Bark Tax Service Inc. dba Marina Pointe Realty (“Marina Pointe”) (Cal. Rules
9 of Court, rule 3.1322(a)):

10 1. Prayer for Relief, paragraph 4 (FAC p. 33), the words:
11 “attorney’s fees and”

12 2. Paragraph 83 (FAC pp. 23–24), the following language as it pertains to Newmark:
13 “The conduct of Newmark, Hannan, and the Seller was malicious,
14 oppressive, and fraudulent within the meaning of Civil Code section 3294,
15 and was performed, authorized, or ratified by officers or managing agents
16 of Newmark. Kevin Shannon, who “runs” Newmark’s team for the listing,
17 exercised actual and substantial discretionary authority over the conduct
18 of the listing, the handling of the transaction, and the handling of
cooperating-broker compensation on it. Hannan, a Vice Chairman of
Newmark and a designated Investment Contact for the Property, exercised
actual authority over the listing and over the handling and communication
of Plaintiffs’ compensation request. Newmark ratified their conduct by
closing the sale and retaining its benefits with knowledge of Plaintiffs’
claim.”

19 3. Paragraph 83 (FAC p. 24), the following sentence as it pertains to Newmark:
20 “Plaintiffs are entitled to punitive and exemplary damages.”

21 4. Paragraph 103 (FAC p. 30), the following language:
22 “The conduct was malicious, oppressive, and fraudulent within the
23 meaning of Civil Code section 3294, entitling Plaintiffs to punitive and
24 exemplary damages. Newmark authorized, ratified, and had advance
25 knowledge of the conduct alleged. Kevin Shannon, identified in
26 Newmark’s offering memorandum as Co-Head of Newmark’s U.S.
27 Capital Markets group, exercised actual and substantial discretionary
authority over the handling of this transaction and of cooperating-broker
compensation on it. Hannan, as a Vice Chairman of Newmark and a
designated Investment Contact for the Property, exercised actual authority
over the listing and over the handling and communication of Plaintiffs’
compensation request. Newmark ratified their conduct by closing the sale

and retaining its benefits with knowledge of Plaintiffs' claim."

5. Prayer for Relief, paragraph 3 (FAC p. 33), the words "Fifth, and Eighth" in the following language, as against Newmark:

"For punitive and exemplary damages on the First, Second, Third, Fifth, and Eighth Causes of Action in an amount appropriate to punish and deter;"

6. Paragraph 88 (FAC p. 25), the following sentence:

"Barkohanai also incurred additional damages for the time, expenses, and work product he generated in connection with his efforts."

7. Paragraph 103 (FAC p. 30), the following sentence:

"Barkohanai also incurred additional damages for the time, expenses, and work product he generated in connection with his efforts."

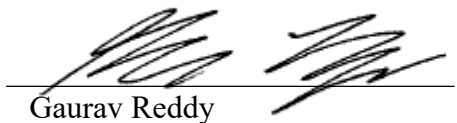
The motion is made on the grounds that the challenged portions are irrelevant, false, or improper and are not drawn in conformity with the laws of this State (Code Civ. Proc., § 436, subds. (a), (b)), because: (1) the FAC identifies no contractual or statutory basis for attorney's fees; (2) the FAC pleads no facts showing that an officer, director, or managing agent of Newmark authorized, ratified, or committed oppressive, fraudulent, or malicious conduct (Civ. Code, § 3294, subd. (b)); (3) the FAC pleads no facts showing that Newmark acted with oppression, fraud, or malice (Civ. Code, § 3294, subds. (a), (c)); and (4) Barkohanai may not recover, in his individual capacity, compensation for brokerage services absent an individual broker's license (Bus. & Prof. Code, § 10136).

This motion is made following the meet and confer required by Code of Civil Procedure section 435.5, as set forth in the concurrently filed Declaration of Gaurav Reddy. It is based on this Notice, the Memorandum of Points and Authorities, the Reddy Declaration, the Request for Judicial Notice, the pleadings and records on file, and such further argument and matters as the Court may consider.

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Dated: October 19, 2026

CANTOR FITZGERALD SECURITIES

By: 
Gaurav Reddy
Andrew J. Raunau
Attorneys for Defendant Newmark of Southern
California, Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs seek a commission for the December 2024 sale of a downtown Los Angeles office
4 building that they did not broker. Despite clear evidence on the face of the FAC showing that there
5 was no agreement and the buyer was uninterested in working with Plaintiffs (expressly stating “I am
6 not looking for an agent”), they purport to claim a 2% commission (\$880,000) on the \$44,000,000
7 sale. (FAC ¶¶ 1–2, 78.)

8 Even if any claim survives Newmark’s concurrently filed demurrer, the FAC contains three
9 categories of allegations that should be stricken: (1) a prayer for attorney’s fees with no contractual
10 or statutory basis; (2) punitive damages allegations against Newmark that recite the language of Civil
11 Code section 3294 without pleading the facts it requires; and (3) Barkohanai’s individual claim to
12 the value of his “time, expenses, and work product” for brokerage services, which he may not recover
13 in his own name without an individual broker’s license.

14 **II. FACTUAL AND PROCEDURAL BACKGROUND**

15 **Overview.** The FAC alleges that Barkohanai, acting for Marina Pointe, identified the
16 Property in July 2024, asked Newmark about cooperating-broker compensation, and introduced
17 Saadian to the opportunity. (FAC ¶¶ 1, 16–19, 22–26.) According to the FAC, Saadian then refused
18 to sign a buyer representation agreement, dealt with the Seller directly, and closed through 660 Fig
19 LLC without paying Plaintiffs. (FAC ¶¶ 29–32, 37, 44–45.) Plaintiffs blame Saadian for promising
20 and then withholding a buyer-side fee, and blame Newmark for not building their requested fee into
21 the deal. (FAC ¶¶ 50–51, 77, 82.)

22 **Causes of Action Against Newmark.** The FAC asserts six causes of action against Newmark:
23 (1) the Fourth, for breach of an alleged interbroker “Cooperation Agreement” (FAC ¶¶ 69–78); (2)
24 the Fifth, for intentional interference with Marina Pointe’s alleged buyer-side compensation
25 expectancy from Saadian (FAC ¶¶ 79–83); (3) the Sixth, for negligent misrepresentation (FAC ¶¶
26 84–88); (4) the Seventh, for breach of the implied covenant of good faith and fair dealing (FAC ¶¶
27 89–93); (5) the Eighth, for promissory fraud and concealment (FAC ¶¶ 94–103); and (6) the Ninth,

1 for promissory estoppel (FAC ¶¶ 104–112). The Fourth, Fifth, Seventh, and Ninth are brought by
2 Marina Pointe alone; the Sixth and Eighth are brought by both Plaintiffs.

3 ***Procedural History.*** Plaintiffs filed this action on July 23, 2026, and filed the FAC on August
4 14, 2026. On October 9, 2026, Newmark’s counsel sent Plaintiffs’ counsel a letter identifying the
5 specific grounds for its anticipated motion to strike and the legal authority supporting each ground.
6 (Declaration of Gaurav Reddy (“Reddy Decl.”), Ex. 1.) Counsel then met and conferred by telephone
7 on October 14, 2026, but could not resolve the objections raised in this motion to strike. (Reddy
8 Decl.) Newmark has therefore satisfied Code of Civil Procedure section 435.5.

9 III. LEGAL STANDARD

10 Upon a motion to strike, the court may “[s]trike out any irrelevant, false, or improper matter
11 inserted in any pleading” and “[s]trike out all or any part of any pleading not drawn or filed in
12 conformity with the laws of this state[.]” (Code Civ. Proc., § 436, subs. (a), (b).) The grounds must
13 appear on the face of the pleading or from matters of which the court is required to take judicial
14 notice. (Code Civ. Proc., § 437, subd. (a).) In ruling, the court reads the challenged allegations “as a
15 whole, all parts in their context, and assume[s] their truth.” (*Clauson v. Superior Court* (1998) 67
16 Cal.App.4th 1253, 1255.) A motion to strike is the proper vehicle to challenge punitive damages
17 allegations that do not plead “the ultimate facts showing an entitlement to such relief[.]” (*Ibid.*)

18 IV. ARGUMENT

19 A. The Prayer for Attorney’s Fees Should be Stricken.

20 “Except as attorney’s fees are specifically provided for by statute, the measure and mode of
21 compensation of attorneys . . . is left to the agreement . . . of the parties[.]” (Code Civ. Proc., § 1021.)
22 The FAC prays “[f]or attorney’s fees and costs of suit” (Prayer ¶ 4) but identifies no fee provision in
23 any contract and no fee-shifting statute. The alleged “Cooperation Agreement” consists of emails
24 that say nothing about fees. (FAC Exs. 1–2.) The words “attorney’s fees and” should be stricken.

25 B. The Punitive Damage Allegations Against Newmark Should Be Stricken.

26 “In order to state a prima facie claim for punitive damages, a complaint must set forth the
27 elements as stated in the general punitive damage statute, Civil Code section 3294.” (*Turman v.*

1 *Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63; *see also Today's IV v. Los*
2 *Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193 [quoting
3 *Turman*].) The FAC seeks punitive damages against Newmark on the Fifth and Eighth Causes of
4 Action. (FAC ¶¶ 83, 103; Prayer ¶ 3.) It fails both of the statute's requirements.

5 **1. The FAC Does Not Plead Facts Satisfying Section 3294, Subdivision (b).**

6 Civil Code Section 3294, subdivision (b) provides that, “[w]ith respect to a corporate
7 employer, the advance knowledge and conscious disregard, authorization, ratification or act of
8 oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the
9 corporation.” A managing agent is one who exercises substantial discretionary authority over
10 decisions that ultimately determine corporate policy. (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563,
11 566–567, 577 “[T]he Legislature intended that principal liability for punitive damages not depend
12 on employees’ managerial level, but on the extent to which they exercise substantial discretionary
13 authority over decisions that ultimately determine corporate policy.”).)

14 The FAC relies on titles and on authority over a single listing. It alleges that Kevin Shannon
15 “runs” Newmark’s team for the listing and is “Co-Head of Newmark’s U.S. Capital Markets group,”
16 and that Hannan is “a Vice Chairman of Newmark and a designated Investment Contact for the
17 Property.” (FAC ¶¶ 83, 103.) Authority over one listing, one transaction, and “cooperating-broker
18 compensation on it” (*ibid.*) is transaction-level authority, not authority over decisions that determine
19 corporate policy. The FAC’s ratification theory—that Newmark “ratified their conduct by closing
20 the sale and retaining its benefits” (*ibid.*)—fares no better. Completing a sale the seller wanted to
21 make is not ratification of fraud, and the FAC does not identify any officer, director, or managing
22 agent who knew of and approved any alleged misconduct.

23 **2. The FAC Does Not Plead Facts Showing Oppression, Fraud, or Malice.**

24 Independently, punitive damages require “oppression, fraud, or malice.” (Civ. Code, § 3294,
25 subd. (a).) “Malice” means “conduct which is intended by the defendant to cause injury to the plaintiff
26 or despicable conduct which is carried on by the defendant with a willful and conscious disregard of
27 the rights or safety of others.” (*Id.*, subd. (c)(1).) “[D]espicable’ is a powerful term that refers to

1 circumstances that are ‘base,’ ‘vile,’ or ‘contemptible.’” (*College Hospital Inc. v. Superior Court*
2 (1994) 8 Cal.4th 704, 725, *as modified* (Nov. 23, 1994) [“As amended to include this word, the statute
3 plainly indicates that absent an intent to injure the plaintiff, ‘malice’ requires more than a ‘willful
4 and conscious’ disregard of the plaintiffs’ interests. The additional component of ‘despicable conduct’
5 must be found.”].) “Oppression” means “despicable conduct that subjects a person to cruel and unjust
6 hardship in conscious disregard of that person’s rights.” (*Id.*, subd. (c)(2).) “Fraud” means “an
7 intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with
8 the intention on the part of the defendant of thereby depriving a person of property or legal rights or
9 otherwise causing injury.” (*Id.*, subd. (c)(3).)

10 Paragraphs 83 and 103 simply recite that Newmark’s conduct was “malicious, oppressive,
11 and fraudulent within the meaning of Civil Code section 3294.” The only facts actually alleged
12 against Newmark are a two-sentence email stating that Plaintiffs’ request was being handled with the
13 seller (FAC ¶ 85), a telephone call in which Mr. Shannon described Saadian’s offer as unlikely to
14 proceed (FAC ¶ 36), and Newmark’s later closing of a sale its client wanted to make (FAC ¶¶ 44,
15 82). At most, those facts describe a commercial dispute over whether a fee was owed. They do not
16 describe despicable conduct or an intent to injure. Conclusory characterizations of this kind do not
17 support punitive damages and are properly stricken. (*See Brousseau v. Jarrett* (1977) 73 Cal.App.3d
18 864, 872 [“[T]he second count’s conclusory characterization of defendant’s conduct as intentional,
19 willful and fraudulent is a patently insufficient statement of ‘oppression, fraud, or malice, express or
20 implied,’ within the meaning of section 3294.”]; *Grieves v. Superior Court* (1984) 157 Cal.App.3d
21 159, 166 [“The mere allegation an intentional tort was committed is not sufficient to warrant an award
22 of punitive damages. [Citation.] Not only must there be circumstances of oppression, fraud or malice,
23 but facts must be alleged in the pleading to support such a claim.”] [citation omitted].) And because
24 the Eighth Cause of Action does not plead fraud with particularity (see *Demurrer*, § IV.D), it cannot
25 supply the “fraud” predicate.

1 **C. Barkohanai’s Individual Claim for the Value of His Brokerage Services**
2 **Should be Stricken.**

3 “No person engaged in the business or acting in the capacity of a real estate broker . . . shall
4 bring or maintain any action in the courts of this state for the collection of compensation for the
5 performance of any of the acts mentioned in this article without alleging and proving that he or she
6 was a duly licensed real estate broker or real estate salesperson at the time the alleged cause of action
7 arose.” (Bus. & Prof. Code, § 10136.) A corporate broker acts only through a licensed officer, and
8 the officer’s license authorizes acts only on behalf of the corporation. (See Bus. & Prof. Code, §§
9 10159, 10211.)

10 The FAC alleges that Barkohanai holds an *officer* license as the designated broker-officer of
11 Bark Tax Service Inc., and that “[a]ll brokerage services alleged in this Complaint were performed
12 by Marina Pointe through Barkohanai in that capacity.” (FAC ¶¶ 3–4.) It does not allege that
13 Barkohanai held an individual broker’s license when the claims arose. Records of the Department of
14 Real Estate confirm that his individual broker license (No. 01847508) expired on July 13, 2016, and
15 that he is currently licensed only as an officer of Bark Tax Service Inc. (Request for Judicial Notice
16 (“RJN”), Exs. A–B.) Any loss from the alleged brokerage services is therefore, at most, Bark Tax
17 Service Inc.’s.

18 Yet in the Sixth and Eighth Causes of Action, Barkohanai seeks in his own name “additional
19 damages for the time, expenses, and work product he generated in connection with his efforts.” (FAC
20 ¶¶ 88, 103.) That is a claim for compensation for brokerage services, whatever its label. The
21 California Supreme Court has refused to allow an unlicensed party to evade a licensing statute by
22 recasting a claim for compensation as fraud. (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52
23 Cal.3d 988, 997–1002 [unlicensed contractor could not avoid statute barring actions seeking
24 “compensation” for illegal unlicensed contract work by pleading fraud]; cf. *Phillippe v. Shapell*
25 *Industries, Inc.* (1987) 43 Cal.3d 1247, 1264 [licensed broker may not assert estoppel against statute
26 of frauds defense to oral commission agreement absent actual fraud].) Likewise, Barkohanai cannot
27 use artful pleading to avoid Business and Professions Code section 10136 and recover a commission

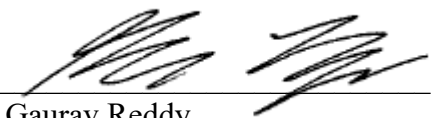
1 in his individual capacity. As such, the two sentences referenced above in FAC paragraphs 88 and
2 103 should be stricken.

3 **V. CONCLUSION**

4 Newmark respectfully requests that the Court strike the portions of the FAC identified in the
5 Notice of Motion, without leave to amend.

6
7 Dated: October 19, 2026

CANTOR FITZGERALD SECURITIES

8
9 By: 

10 Gaurav Reddy
11 Andrew J. Raunau
12 Attorneys for Defendant Newmark of Southern
13 California, Inc.
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 18401 Von Karman Ave., Unit 150, Irvine, CA 92612. My email address is gaurav.reddy@cantor.com.

On **October 19, 2026**, I served the following document described as:

- **DEFENDANT NEWMARK OF SOUTHERN CALIFORNIA, INC.'S NOTICE OF MOTION AND MOTION TO STRIKE PORTIONS OF FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES**

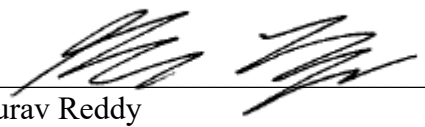
on the interested parties in this action by sending a true copy thereof addressed as follows:

Lurie & Associates Barak Lurie (barak@lurie-law.com) Dane Taylor (dane@lurie-law.com) Valerie Shaffer (admin@lurie-law.com) Shannon King (shannon@lurie-law.com) Lorena Barrera (fileclerk@lurie-law.com) 12121 Wilshire Boulevard, Suite 300 Los Angeles, CA 90025 Telephone: 310-478-7788	Attorneys for Plaintiffs Matt Barkohanai and Bark Tax Service Inc. dba Marina Pointe Realty
Wilshire Law Firm Thiago M. Coelho (thiago.coelho@wilshirelawfirm.com) 660 S. Figueroa Street, Sky Lobby Los Angeles, CA 90017 Telephone: 213-381-9988 Golding + Lamothe Jonathan F. Golding (jonathan@goldinglamothe.com) 323 Pershing Drive Playa del Ray, CA 90293 Telephone: 310-591-0776	Attorneys for Defendants Bobby Saadian aka Bobby Babak Saadian and 660 Fig LLC

☒ **BY EMAIL:** Pursuant to Code of Civil Procedure section 1010.6, I transmitted the foregoing documents by electronic mail to the parties identified above by using electronic mail as indicated. Saidd electronic mail was verified as complete and without error and equivalent to personal service. My electronic service address is gaurav.reddy@cantor.com.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct.

3 Executed on **October 19, 2026**, at Irvine, California.

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6 _____
7 Gaurav Reddy
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1 CANTOR FITZGERALD SECURITIES
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2 gaurav.reddy@cantor.com
Andrew J. Raunau, Bar No. 336168
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18401 Von Karman Ave., Suite 150
4 Irvine, CA 92612
Tel.: (310) 282-6512

5 Attorneys for Defendant Newmark of Southern
6 California, Inc.

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Superior Court of California,
County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By J. Romero, Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 MATT BARKOHANAI, an individual; BARK
TAX SERVICE INC. dba MARINA POINTE
11 REALTY, a California corporation,

12 Plaintiffs,

13 v.

14 BOBBY SAADIAN aka BOBBY BABAK
SAADIAN, an individual; NEWMARK OF
15 SOUTHERN CALIFORNIA, INC., a
California corporation; ROB HANNAN, an
16 individual; 660 FIG LLC, a Delaware limited
liability company; FIG ASSET CAPITAL
17 (DE), LLC, a Delaware limited liability
company; and DOES 1 through 100, inclusive,

18 Defendants.
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CASE NO. 26STCV23348

[Assigned for all purposes to the Hon. Maureen
Duffy-Lewis, Dept. 412]

**DEFENDANT NEWMARK OF
SOUTHERN CALIFORNIA, INC.'S
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION TO STRIKE**

[Filed concurrently with Notice of Motion and
Motion to Strike; Declaration of Gaurav
Reddy; and [Proposed] Order]

Hearing

Date: January 27, 2027

Time: 9:30 a.m.

Dept.: 412

Reservation ID: 513457177411

Action Filed: July 23, 2026

FAC Filed: August 14, 2026

Trial Date: None set

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 Under Evidence Code sections 452 and 453 and Code of Civil Procedure section 437,
3 Defendant Newmark of Southern California, Inc. ("Newmark") requests that the Court take judicial
4 notice of the following records of the California Department of Real Estate ("DRE") in support of its
5 Motion to Strike:

6 **Exhibit A:** DRE Public License Lookup record for Matthew Barkohanai, License ID
7 01847508, taken from DRE records on September 29, 2026, reflecting License Type "BROKER,"
8 Expiration Date "07/13/16," License Status "EXPIRED," and "*Currently a licensed officer" of Bark
9 Tax Service Inc. (Corporation License No. 02010915).

10 **Exhibit B:** DRE Public License Lookup record for Bark Tax Service Inc., License ID
11 02010915, taken from DRE records on September 29, 2026, reflecting License Type
12 "CORPORATION," License Status "LICENSED," and Matthew Barkohanai (No. 01847508) as
13 "DESIGNATED OFFICER."

14 **I. THE COURT MAY TAKE JUDICIAL NOTICE OF THE DRE RECORDS.**

15 A court may take judicial notice of "[o]fficial acts of the legislative, executive, and judicial
16 departments of . . . any state of the United States" and of "[f]acts and propositions that are not
17 reasonably subject to dispute and are capable of immediate and accurate determination by resort to
18 sources of reasonably indisputable accuracy." (Evid. Code, § 452, subds. (c), (h).) Judicial notice is
19 mandatory where the requesting party gives each adverse party sufficient notice and furnishes the
20 court sufficient information to enable it to take notice. (Evid. Code, § 453.) On a motion to strike, the
21 grounds may appear from matters of which the court may take judicial notice. (Code Civ. Proc., §
22 437, subd. (a).)

23 Exhibits A and B are licensing records maintained by the DRE, an agency of the State of
24 California, and obtained from the DRE's public license lookup. Newmark requests notice of the
25 existence and contents of these records, namely the type, status, and expiration of the licenses they
26 reflect, and not of the truth of any disputed factual matter. The records are relevant because the FAC
27 alleges that Barkohanai acts under an officer license (FAC ¶¶ 3–4), and the Motion to Strike contends

1 that Barkohanai may not recover compensation for brokerage services in his individual capacity
2 absent an individual broker's license (Bus. & Prof. Code, § 10136).

3
4 Dated: October 19, 2026

CANTOR FITZGERALD SECURITIES

5
6 By: _____

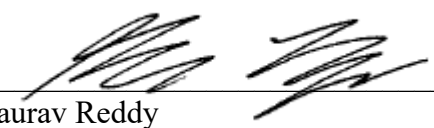

7 Gaurav Reddy
8 Andrew J. Raunau
9 Attorneys for Defendant
10 NEWMARK OF SOUTHERN CALIFORNIA,
11 INC.
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EXHIBIT A

STATE OF CALIFORNIA DEPARTMENT OF REAL ESTATE

In reviewing a licensee's information, please be aware that license discipline information may have been removed from a licensee's record pursuant to Business & Professions Code Section 10083.2 (c). However, discipline information may be available from the California Department of Real Estate upon submittal of a request, or by calling the Department's public information line at 1-877-373-4542. The license information shown below represents public information. It will not reflect pending licensing changes which are being reviewed for subsequent updating. Although the business and mailing addresses of real estate licensees are included, this information is not intended for mass mailing purposes.

Some historical disciplinary action documents may not be in compliance with certain accessibility functions. For assistance with these documents, please contact the Department's Licensing Flag Section.

License information taken from records of the Department of Real Estate on 9/29/2026 3:17:18 PM

License Type:	BROKER
Name:	Barkohanai, Matthew
Mailing Address:	20116 SATICOY ST CANOGA PARK, CA 91306
License ID:	01847508
Expiration Date:	07/13/16
<u>License Status:</u>	EXPIRED *Currently a licensed officer
<u>Broker License Issued:</u>	07/14/08
Former Name(s):	NO FORMER NAMES
Main Office:	NO CURRENT MAIN OFFICE ADDRESS ON FILE
DBA	Marina Pointe Realty ACTIVE FROM 08/30/2010 TO 07/14/2016 NO CURRENT DBAS
Branches:	NO CURRENT BRANCHES
Affiliated Licensed Corporation(s):	02010915 - Officer Expiration Date: 06/27/28 Bark Tax Service Inc
<u>Comment:</u>	NO DISCIPLINARY ACTION NO OTHER PUBLIC COMMENTS >>>> Public information request complete <<<<

EXHIBIT B

STATE OF CALIFORNIA DEPARTMENT OF REAL ESTATE

In reviewing a licensee's information, please be aware that license discipline information may have been removed from a licensee's record pursuant to Business & Professions Code Section 10083.2 (c). However, discipline information may be available from the California Department of Real Estate upon submittal of a request, or by calling the Department's public information line at 1-877-373-4542.

The license information shown below represents public information. It will not reflect pending licensing changes which are being reviewed for subsequent updating. Although the business and mailing addresses of real estate licensees are included, this information is not intended for mass mailing purposes.

Some historical disciplinary action documents may not be in compliance with certain accessibility functions. For assistance with these documents, please contact the Department's Licensing Flag Section.

License information taken from records of the Department of Real Estate on 9/29/2026 3:18:38 PM

License Type:	CORPORATION
Name:	Bark Tax Service Inc
Mailing Address:	20116 SATICOY ST WINNETKA, CA 91306
License ID:	02010915
Expiration Date:	06/27/28
<u>License Status:</u>	LICENSED
Corporation License Issued:	06/28/16
Former Name(s):	NO FORMER NAMES
Main Office:	20116 SATICOY ST WINNETKA, CA 91306
Licensed Officer(s):	DESIGNATED OFFICER 01847508 - Expiration Date: 06/27/28 Barkohanai, Matthew
DBA	MARINA POINTE REALTY ACTIVE AS OF 05/22/2025
Branches:	[address redacted]
<u>Comment:</u>	NO DISCIPLINARY ACTION NO OTHER PUBLIC COMMENTS >>>> Public information request complete <<<<

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 18401 Von Karman Ave., Unit 150, Irvine, CA 92612. My email address is gaurav.reddy@cantor.com.

On **October 19, 2026**, I served the following document described as:

- **DEFENDANT NEWMARK OF SOUTHERN CALIFORNIA, INC.'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO STRIKE**

on the interested parties in this action by sending a true copy thereof addressed as follows:

Lurie & Associates Barak Lurie (barak@lurie-law.com) Dane Taylor (dane@lurie-law.com) Valerie Shaffer (admin@lurie-law.com) Shannon King (shannon@lurie-law.com) Lorena Barrera (fileclerk@lurie-law.com) 12121 Wilshire Boulevard, Suite 300 Los Angeles, CA 90025 Telephone: 310-478-7788	Attorneys for Plaintiffs Matt Barkohanai and Bark Tax Service Inc. dba Marina Pointe Realty
Wilshire Law Firm Thiago M. Coelho (thiago.coelho@wilshirelawfirm.com) 660 S. Figueroa Street, Sky Lobby Los Angeles, CA 90017 Telephone: 213-381-9988 Golding + Lamothe Jonathan F. Golding (jonathan@goldinglamothe.com) 323 Pershing Drive Playa del Ray, CA 90293 Telephone: 310-591-0776	Attorneys for Defendants Bobby Saadian aka Bobby Babak Saadian and 660 Fig LLC

- ☒ **BY EMAIL:** Pursuant to Code of Civil Procedure section 1010.6, I transmitted the foregoing documents by electronic mail to the parties identified above by using electronic mail as indicated. Saidd electronic mail was verified as complete and without error and equivalent to personal service. My electronic service address is gaurav.reddy@cantor.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing

1 is true and correct.

2 Executed on **October 19, 2026**, at Irvine, California.

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Gaurav Reddy

1 CANTOR FITZGERALD SECURITIES
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2 gaurav.reddy@cantor.com
Andrew J. Raunau, Bar No. 336168
3 andrew.raunau@cantor.com
18401 Von Karman Ave., Suite 150
4 Irvine, CA 92612
Tel.: (310) 282-6512

5 Attorneys for Defendant Newmark of Southern
6 California, Inc.

Electronically FILED by
Superior Court of California,
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David W. Slayton,
Executive Officer/Clerk of Court,
By J. Romero, Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 MATT BARKOHANAI, an individual; BARK
TAX SERVICE INC. dba MARINA POINTE
11 REALTY, a California corporation,

12 Plaintiffs,

13 v.

14 BOBBY SAADIAN aka BOBBY BABAK
SAADIAN, an individual; NEWMARK OF
15 SOUTHERN CALIFORNIA, INC., a
California corporation; ROB HANNAN, an
16 individual; 660 FIG LLC, a Delaware limited
liability company; FIG ASSET CAPITAL
17 (DE), LLC, a Delaware limited liability
company; and DOES 1 through 100, inclusive,

18 Defendants.
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CASE NO. 26STCV23348

[Assigned for all purposes to the Hon. Maureen
Duffy-Lewis, Dept. 412]

**DECLARATION OF GAURAV REDDY IN
SUPPORT OF DEFENDANT NEWMARK
OF SOUTHERN CALIFORNIA, INC.'S
MOTION TO STRIKE PORTIONS OF
FIRST AMENDED COMPLAINT**

[Filed concurrently with Notice of Motion and
Motion to Strike; Request for Judicial Notice;
and [Proposed] Order]

Hearing

Date: January 27, 2027

Time: 9:30 a.m.

Dept.: 412

Reservation ID: 513457177411

Action Filed: July 23, 2026

FAC Filed: August 14, 2026

Trial Date: None set

1 I, Gaurav Reddy, declare as follows:

2 1. I am an attorney at law duly licensed to practice before all courts of the State of
3 California and am counsel of record for Defendant Newmark of Southern California, Inc.
4 ("Newmark") in this action. I have personal knowledge of the facts stated in this declaration and, if
5 called as a witness, could and would testify competently to them. I submit this declaration under
6 Code of Civil Procedure section 435.5 in support of Newmark's Motion to Strike Portions of the First
7 Amended Complaint ("FAC").

8 2. Barak Lurie and Dane H. Taylor of Lurie & Associates are counsel of record for
9 Plaintiffs Matt Barkoahani and Bark Tax Service Inc. dba Marina Pointe Realty (together,
10 "Plaintiffs"). By agreement of counsel, Newmark's deadline to respond to the FAC was extended to
11 October 19, 2026.

12 3. On October 9, 2026, I sent Plaintiffs' counsel, by email to Mr. Lurie and Mr. Taylor,
13 a meet and confer letter under Code of Civil Procedure sections 430.41 and 435.5. The letter
14 identified each cause of action and allegation Newmark contends is subject to demurrer or to a motion
15 to strike, explained the legal bases for Newmark's positions with supporting authority, asked whether
16 Plaintiffs would dismiss or amend the challenged causes of action and allegations, and proposed dates
17 of October 12, 13, or 14, 2026, for a conference. A true and correct copy of the October 9, 2026 letter
18 is attached as **Exhibit 1**.

19 4. On October 14, 2026, I met and conferred with Plaintiffs' counsel, Mr. Taylor, by
20 telephone regarding the matters set forth in my October 9, 2026 letter, including the grounds for the
21 motion to strike. The parties discussed each of the issues identified in the letter, but did not reach an
22 agreement resolving the objections Newmark raises in its motion to strike. Plaintiffs did not agree to
23 dismiss or amend the challenged allegations, and counsel reached an impasse.

24 5. During the October 14, 2026 telephone conference, I informed Plaintiffs' counsel that,
25 because the parties had not resolved the issues, Newmark would file its demurrer and motion to strike
26 on October 19, 2026.

6. The telephonic meet and confer took place at least five days before the date Newmark's responsive pleading was due.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 19, 2026, at Irvine, California.


Gaurav Reddy

EXHIBIT 1

CANTOR FITZGERALD SECURITIES

18401 Von Karman Ave., Suite 150 | Irvine, CA 92612

Tel: (310) 282-6512 | gaurav.reddy@cantor.com

Gaurav Reddy, Esq.
Direct: (310) 282-6512
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October 9, 2026

VIA EMAIL

Barak Lurie, Esq. (barak@lurie-law.com)
Dane H. Taylor, Esq. (dane@lurie-law.com)
LURIE & ASSOCIATES
12121 Wilshire Boulevard, Suite 300
Los Angeles, California 90025
Telephone: (310) 478-7788

**Re: *Barkohanai v. Saadian, et al.*, LA Superior Court Case No. 26STCV23348
Meet and Confer Regarding Newmark of Southern California's Demurrer and
Motion to Strike (Code Civ. Proc. §§ 430.41, 435.5)**

Counsel:

I write on behalf of Defendant Newmark of Southern California, Inc. ("Newmark") under Code of Civil Procedure sections 430.41 and 435.5 regarding the First Amended Complaint ("FAC") filed August 14, 2026 by Plaintiffs Matt Barkohanai and Bark Tax Service Inc. d/b/a Marina Pointe Realty ("Marina Pointe") (together, "Plaintiffs"). Under our agreement, Newmark's response to the FAC is due October 19, 2026. Newmark intends to demur to the Fourth through Ninth Causes of Action and to move to strike portions of the FAC. This letter identifies the grounds for both motions so that the parties may try to resolve or narrow the issues before filing. Paragraph and exhibit references are to the FAC.

I. GROUNDS FOR DEMURRER (Code Civ. Proc. § 430.10)

A. Fourth, Seventh, and Ninth Causes of Action: The FAC Does Not Allege a Contract or a Clear and Unambiguous Promise.

Each of these causes of action depends on the alleged "Cooperation Agreement" or on a purported promise by Newmark to pay Plaintiffs a commission. The FAC's allegations on this point are conclusory, and its own exhibits contradict them. Where a complaint's exhibits contradict its allegations, the exhibits control. (*Holland v. Morse Diesel Internat., Inc.* (2001) 86 Cal.App.4th 1443, 1447.)

- The July 30, 2024 email from Rob Hannan on which Plaintiffs rely states: "There is no formal arrangement." (¶ 17; Ex. 1.) A writing that disclaims any arrangement is not an offer capable of acceptance. (*See Laks v. Coast Fed. Sav. & Loan Assn.* (1976) 60

Cal.App.3d 885, 890–891 [recipient of conditional commitment lacking essential terms could not reasonably regard it as a binding offer]; *Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 213 [preliminary negotiations and “agreements to agree” are not enforceable contracts].)

- Mr. Hannan’s instruction to “request what you think you deserve and it wil[l] be netted out of your price” describes how a proposed buyer-side fee would be submitted and evaluated with an offer. (Ex. 1.) It is not a commitment by Newmark to pay whatever amount Plaintiffs might later choose. An agreement with no ascertainable price term is too indefinite to enforce. (*Bustamante, supra*, 141 Cal.App.4th at 208–209, 213 [no contract where compensation terms remained unsettled]; *Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 770–771 [promise to pay commissions at “parity” too vague and indefinite to create contractual duty]; *see* Civ. Code § 1598.)
- Mr. Barkohanai’s own August 7, 2024 email asked Newmark to “pass my emails along to David Taban and the rest of the sellers,” “respectfully request[ed]” 2%, and asked “that the sellers factor this into their selling price.” (Ex. 2.) That is a request for the seller’s consideration, not acceptance of an agreement already formed. Mr. Hannan’s August 8, 2024 reply (“Taban will be aware”) does not accept the request.
- The “custom and practice” allegation in paragraph 71, under which silence and continued dealing purportedly constitute assent, is an unsupported legal conclusion. It identifies no source, no prior dealings between the parties, and no facts showing a custom so established that the parties contracted with reference to it. It cannot create mutual assent where the operative writings disclaim any arrangement.

These defects defeat the Fourth Cause of Action (breach of contract) and the Seventh Cause of Action (implied covenant), both of which require an underlying contract. They also defeat the Ninth Cause of Action (promissory estoppel), which requires a promise that is “clear and unambiguous in its terms” (*Laks, supra*, 60 Cal.App.3d at 890) and reasonable reliance. A broker’s reliance on an email stating “[t]here is no formal arrangement” is unreasonable as a matter of law, particularly where Mr. Barkohanai’s August 7 email reflects Plaintiffs’ understanding that seller approval was required. (*See Westside Estate Agency, Inc. v. Randall* (2016) 6 Cal.App.5th 317 [licensed broker’s status foreclosed reasonable reliance].)

B. Fifth Cause of Action (Intentional Interference with Prospective Economic Advantage): No Reasonably Probable Expectancy and No Causation.

The Fifth Cause of Action alleges interference with a buyer-side compensation relationship between Marina Pointe and Mr. Saadian. (¶ 80.) The tort requires an existing economic relationship with a reasonable probability of future benefit, independently wrongful conduct by the defendant, and resulting disruption. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153–1159; *Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 521–524.) The FAC pleads that Mr. Saadian refused to sign and, on August 4, 2024, formally declined both buyer representation agreements, stating “I am not looking for an agent.” (¶¶ 30–32.)

The conduct attributed to Newmark begins with the August 8, 2024 email. (¶ 82.) Any expectancy had ended before that date, and later statements by Mr. Saadian (¶¶ 57, 80) depended entirely on his discretion. The alleged wrongful act is also a statement made to Plaintiffs, not conduct directed at Mr. Saadian, and the FAC does not allege how any act by Newmark caused Mr. Saadian to withhold a fee he had already refused to pay. Elsewhere, the FAC attributes the disruption to Mr. Saadian. (¶¶ 50–51, 67.)

C. Seventh Cause of Action (Breach of the Implied Covenant): Duplicative of the Fourth Cause of Action.

The Seventh Cause of Action relies on the same alleged conduct and seeks the same \$880,000 as the Fourth Cause of Action (¶¶ 92–93), and expressly disclaims double recovery between the two. An implied covenant claim that merely duplicates a contract claim is superfluous and may be disregarded. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395.)

D. Eighth Cause of Action (Promissory Fraud and Concealment): No Actionable Promise, Intent, Duty, or Justifiable Reliance.

Fraud must be pleaded with particularity as to each element. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) The Eighth Cause of Action fails for several reasons:

- **No actionable promise.** As discussed above, "There is no formal arrangement" (Ex. 1; ¶¶ 17, 95) negates a promise, and "Taban will be aware" (Ex. 2; ¶¶ 21, 35, 96) is not a promise to pay.
- **No facts showing intent not to perform.** The facts alleged in paragraphs 97 and 102 consist largely of later nonperformance, which is insufficient to plead fraudulent intent at the time a promise was made. The alternative intent theory in paragraph 97 is speculative.
- **No duty to disclose.** The FAC alleges no fiduciary or transactional relationship between a listing broker and an unaffiliated allegedly cooperating "broker" that would support a concealment claim. (*See LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336–337.)
- **No justifiable reliance or causation.** By August 6, 2024, Plaintiffs already believed Mr. Saadian was attempting to "cut us out" (Ex. 2; ¶ 81), and he had already declined representation (¶ 32). Plaintiffs' alleged forbearance from contacting the seller is inconsistent with their own August 7 request that Newmark forward their emails to the seller (Ex. 2; ¶ 34). The claimed damages, measured by "protective steps" Plaintiffs did not take (¶¶ 100, 103), are speculative because the FAC does not allege that any such step would have resulted in payment.

E. Sixth Cause of Action (Negligent Misrepresentation): No Actionable Statement of Existing Fact and No Justifiable Reliance.

Negligent misrepresentation requires a positive assertion of a past or existing fact; it does not lie for promises or predictions. The Sixth Cause of Action rests solely on the August 8, 2024 email stating that “Kevin Shannon who runs our team is handling this with Taban” and that “Taban will be aware.” (§ 85; Ex. 2.) The statement that the seller’s principal “will be aware” is a prediction, and it does not say what Mr. Taban would be aware. Neither statement represents that Plaintiffs would be paid. Nor does the FAC plead justifiable reliance caused by that email. Plaintiffs’ principal acts (identifying and introducing Mr. Saadian and transmitting his pricing interest on August 2, 2024) preceded it and could not have been induced by it. The remaining alleged reliance is forbearance from contacting the seller or escrow (§ 87), which is inconsistent with Plaintiffs’ own August 7 request that Newmark forward their emails to the seller. The FAC also alleges only generalized “reliance and consequential damages” (§ 88) without identifying any loss caused by the August 8 email.

F. Sixth and Eighth Causes of Action (as Asserted by Mr. Barkohanai Individually): No Allegation of Individual Broker Licensure.

No person may bring or maintain an action for the collection of compensation for an act requiring a real estate license without alleging and proving that he or she was a duly licensed broker or salesperson when the cause of action arose. (Bus. & Prof. Code § 10136.) The FAC does not allege that Mr. Barkohanai held an individual broker license during July through December 2024. It alleges only that he holds an officer license as the designated broker-officer of Bark Tax Service Inc. and that “[a]ll brokerage services alleged in this Complaint were performed by Marina Pointe through Barkohanai in that capacity.” (§§ 3–4.) An officer license authorizes licensed acts on behalf of the corporation; it does not authorize the officer to perform licensed acts, or to collect compensation for them, in his own name.

Mr. Barkohanai is a plaintiff against Newmark only on the Sixth and Eighth Causes of Action, which are styled as torts. The licensing requirement, however, turns on the nature of the recovery sought, not the label attached to the claim. In substance, Mr. Barkohanai seeks compensation for brokerage services: the value of his “time, expenses, and work product” in procuring a buyer (§§ 88, 103), and the lost opportunity to secure the commission the FAC elsewhere values at \$880,000 (§§ 87, 100). The California Supreme Court has refused to let an unlicensed party to evade a licensing statute by recasting a claim for compensation as fraud. (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 997–1002 [unlicensed contractor could not avoid Bus. & Prof. Code § 7031 by pleading fraud]; cf. *Phillippe v. Shapell Industries, Inc.* (1987) 43 Cal.3d 1247 [broker may not avoid statute of frauds through estoppel absent actual fraud].) The same principle applies to Business & Professions Code section 10136.

If the court declines to sustain a demurrer on this ground on the basis that the Sixth and Eighth Causes of Action seek tort damages distinct from a commission, Newmark will seek the same relief through its motion to strike Mr. Barkohanai’s individual damages allegations, as set forth in Section II below.

G. Fourth Through Ninth Causes of Action: The Confidentiality Agreement Undermines the Alleged Cooperating-Broker Relationship.

The FAC alleges that Newmark provided the confidential offering materials only after Marina Pointe, through Mr. Barkohanai, executed a written Confidentiality Agreement with the seller effective July 25, 2024. (§§ 4, 14.) Because the FAC relies on that agreement, Newmark will submit it with the demurrer, and ask the court to consider it as incorporated by reference. (*See City of Pomona v. Superior Court* (2001) 89 Cal.App.4th 793, 800; *McBride v. Smith* (2018) 18 Cal.App.5th 1160.) The agreement identifies the counterparty as “Marina Pointe Realty, a Corporation” and defines it as the “Prospective Purchaser.” Mr. Barkohanai signed it as that entity’s President, not as an individual broker or on behalf of any identified buyer. The agreement nowhere refers to a broker, a buyer’s representative, or compensation.

This document is inconsistent with the FAC’s central premise that Newmark dealt with Marina Pointe as a cooperating broker from the outset. (§§ 64, 70.) It reinforces the absence of any contract or clear promise discussed in Section I.A, because the only written instrument governing Plaintiffs’ access to the Property identifies Marina Pointe as a prospective purchaser, rather than a broker. It is also consistent with Section I.F above: the one document Mr. Barkohanai signed in the transaction was signed in a corporate capacity, as a prospective purchaser, not as a licensed individual broker.

H. Alternative Ground: Statute of Frauds (Civ. Code § 1624, subd. (a)(4)).

In the alternative, Newmark will contend that the Fourth, Seventh, and Ninth Causes of Action are barred by the statute of frauds. An agreement to compensate a broker for procuring a purchaser of real estate must be in a writing subscribed by the party to be charged that shows the fact of the broker’s employment. (Civ. Code § 1624, subd. (a)(4); *Westside Estate Agency, Inc., supra*, 6 Cal.App.5th 317.) We recognize that the FAC characterizes the alleged arrangement as an agreement between cooperating brokers (§§ 64, 70, 73, 106). But the FAC itself describes compensation to be “netted out of the purchase price” and asks that “the sellers factor this into their selling price”. (§§ 18, 20; Ex. 2) That is compensation from the principal’s transaction economics, not a division of Newmark’s commission. The only writing identified states that there is “no formal arrangement.” (Ex. 1.) And a broker may not avoid the statute through estoppel absent actual fraud. (*Phillippe, supra*, 43 Cal.3d 1247.)

II. GROUNDS FOR MOTION TO STRIKE (Code Civ. Proc. §§ 435–436)

- **Attorneys’ fees (Prayer, ¶ 4).** Fees are recoverable only where authorized by contract or statute. (Code Civ. Proc. § 1021.) The FAC identifies no fee provision and no fee-shifting statute.
- **Punitive damages against Newmark: corporate employer requirements (§§ 83, 103; Prayer, ¶ 3, as to the Fifth and Eighth Causes of Action).** Against a corporate employer, Civil Code section 3294, subdivision (b) requires facts showing that an officer, director, or managing agent authorized, ratified, or committed the oppressive, fraudulent, or malicious conduct. A managing agent is one who exercises substantial discretionary

authority over decisions that ultimately determine corporate policy. (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 566–567, 577.) Allegations of job titles and authority over a single listing do not meet that standard, and completing a sale does not constitute ratification of fraud.

- **Punitive damages against Newmark: no facts showing oppression, fraud, or malice (same allegations).** Independently, the FAC does not plead facts showing that Newmark acted with “oppression, fraud, or malice.” (Civ. Code, § 3294, subd. (a).) Malice requires conduct intended to injure the plaintiff or “despicable conduct” carried on in willful and conscious disregard of the plaintiff’s rights; oppression likewise requires “despicable conduct.” (*Id.*, subd. (c)(1), (2).) Paragraphs 83 and 103 simply recite that Newmark’s conduct was “malicious, oppressive, and fraudulent within the meaning of Civil Code section 3294.” The facts actually alleged are a two-sentence email stating that the request was being handled with the seller (§ 85), a telephone call in which Mr. Shannon described Mr. Saadian’s offer as unlikely to proceed (§ 36), and Newmark’s later closing of a sale its client wanted to make (§§ 44, 82). At most, those facts describe a commercial dispute over whether a fee was owed; they do not describe despicable conduct or an intent to injure. Conclusory characterizations of this kind are insufficient and are properly stricken. (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872; *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166.) And because the fraud claim itself is deficient for the reasons in Section I.D, it cannot supply the “fraud” predicate.
- **Mr. Barkohanai’s individual damages (§§ 88, 103).** The FAC alleges that all brokerage services were performed by Marina Pointe through Mr. Barkohanai as its broker-officer. (§ 4.) Any alleged loss is therefore only potentially Marina Pointe’s (subject to Marina Pointe demonstrating it was validly licensed). To the extent Mr. Barkohanai seeks, in his individual capacity, the value of his “time, expenses, and work product” for brokerage services, he may not recover compensation for acts requiring a real estate license in his own name absent an individual license at the relevant time. (Bus. & Prof. Code § 10136.)

III. REQUEST TO MEET AND CONFER

Please advise whether Plaintiffs are willing to dismiss or amend the causes of action and allegations identified above. Code of Civil Procedure Sections 430.41 and 435.5 require the parties to meet and confer, and our deadline to complete that process is October 14, 2026. I am available on October 12 (morning only), October 13 (flexible), or October 14 (except between 10-11 a.m.). Please contact me at gaurav.reddy@cantor.com to confirm a date and time.

If the parties are unable to resolve these issues through the meet and confer process, Newmark intends to file its demurrer and motion to strike on or before October 19, 2026. Nothing in this letter is intended as a complete statement of Newmark’s positions, defenses, or arguments, all of which are expressly reserved.

Finally, even if some of Plaintiffs’ claims survive the pleading stage, Newmark does not believe Plaintiffs have fully considered the risks of continuing this litigation. There are serious questions about whether Plaintiffs’ purported brokerage activities complied with California law

and real estate regulations. Plaintiffs may also face independent exposure under the Confidentiality Agreement, which limited disclosure of confidential information about the Property to Marina Pointe's defined "Representatives." The FAC itself alleges that Plaintiffs sent the offering materials, underwriting, and related deal information to Mr. Saadian and his agent (§§ 28, 58, 60), neither of whom is a Representative. Newmark respectfully urges Plaintiffs to reconsider pursuing these claims.

Best regards,

A handwritten signature in black ink, appearing to read 'Gaurav Reddy', with a stylized flourish at the end.

Gaurav Reddy, Esq.

Cantor Fitzgerald Securities
Counsel for Defendant Newmark of Southern California, Inc.

cc: Andrew Raunau, Esq. (andrew.raunau@cantor.com)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 18401 Von Karman Ave., Unit 150, Irvine, CA 92612. My email address is gaurav.reddy@cantor.com.

On **October 19, 2026**, I served the following document described as:

- **DECLARATION OF GAURAV REDDY IN SUPPORT OF DEFENDANT NEWMARK OF SOUTHERN CALIFORNIA, INC.'S MOTION TO STRIKE PORTIONS OF FIRST AMENDED COMPLAINT**

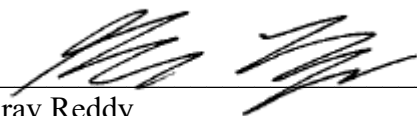
on the interested parties in this action by sending a true copy thereof addressed as follows:

Lurie & Associates Barak Lurie (barak@lurie-law.com) Dane Taylor (dane@lurie-law.com) Valerie Shaffer (admin@lurie-law.com) Shannon King (shannon@lurie-law.com) Lorena Barrera (fileclerk@lurie-law.com) 12121 Wilshire Boulevard, Suite 300 Los Angeles, CA 90025 Telephone: 310-478-7788	Attorneys for Plaintiffs Matt Barkohanai and Bark Tax Service Inc. dba Marina Pointe Realty
Wilshire Law Firm Thiago M. Coelho (thiago.coelho@wilshirelawfirm.com) 660 S. Figueroa Street, Sky Lobby Los Angeles, CA 90017 Telephone: 213-381-9988 Golding + Lamothe Jonathan F. Golding (jonathan@goldinglamothe.com) 323 Pershing Drive Playa del Ray, CA 90293 Telephone: 310-591-0776	Attorneys for Defendants Bobby Saadian aka Bobby Babak Saadian and 660 Fig LLC

☒ **BY EMAIL:** Pursuant to Code of Civil Procedure section 1010.6, I transmitted the foregoing documents by electronic mail to the parties identified above by using electronic mail as indicated. Saidd electronic mail was verified as complete and without error and equivalent to personal service. My electronic service address is gaurav.reddy@cantor.com.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct.

3 Executed on **October 19, 2026**, at Irvine, California.

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Gaurav Reddy