

1 **I. INTRODUCTION**

2 Plaintiffs respectfully submit the following Reply Memorandum of Points and  
3 Authorities in further support of their demurrer to the Defendant’s Cross-Complaint. As set forth  
4 herein, Defendant’s opposition to the demurrer is an exercise in shadow boxing, that does not  
5 address, much less refute, the arguments in support of Plaintiffs’ demurrer. In fact, Defendant’s  
6 opposition further confirms that Defendant has not alleged, and cannot allege, cognizable causes  
7 of action in the Cross-Complaint.

8 **A. THE COURT SHOULD SUSTAIN THE DEMURRER WITHOUT LEAVE**  
9 **TO AMEND BECAUSE THE CONDUCT FROM WHICH ALL OF**  
10 **DEFENDANT’S ALLEGED DAMAGES ARISE, IS PRIVILEGED**

11 Defendant asks the Court to overrule the demurrer on the ground that Plaintiffs’  
12 purported fraud and interference with Defendants’ sale of his house are “actionable conduct.”  
13 *See* Cross-Complainant’s Opposition to Cross-Defendants’ Demurrer to Cross-Complaint, pp.3-4  
14 (hereinafter “Opp., pp. \_\_”). This argument utterly fails to address the defect in Defendant’s  
15 pleading raised by the demurrer, which is that Defendant in this case has not alleged that this  
16 “actionable conduct” caused him damages. Memorandum of Points and Authorities in Support of  
17 Demurrer to Cross-Complaint, pp.4-6, 7:16-20, 9:3-7.

18 In fact, the Defendant’s opposition brief reiterates and confirms that all of his claimed  
19 damages are based on Plaintiffs’ pursuit of this lawsuit, which is absolutely privileged, and,  
20 moreover, that his damages are dependant on plaintiff *prevailing* in this lawsuit. *See* Opp.,  
21 p.4:26-28 (“*If plaintiffs were to prevail on the Complaint, then defendant . . . would be damaged*  
22 *. . .*”); p.5:2-5 (claiming plaintiff’s conduct, “*should plaintiffs’ prevail on their Complaint would*  
23 *result in cross-complainant suffering damages.*”) (emphasis added). It is a matter of well-  
24 established law that there is no cause of action for damages caused by a party prevailing in a  
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1 lawsuit. *Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.* (1986) 42  
2 Cal.3d 1157, 1169.<sup>1</sup>

3 **B. THE COURT SHOULD SUSTAIN THE DEMURRER TO THE FIRST CAUSE**  
4 **OF ACTION FOR ELDER FINANCIAL ABUSE**

5 Defendant asks the Court to overrule Plaintiffs’ demurrer to his Elder Financial Abuse  
6 claim, on the ground that “Cross-Complainant has the right to seek affirmative relief in this  
7 action.” *Id.*, pp.4-7. Plaintiffs, however, do not dispute that Elder Financial Abuse defendant can  
8 properly serve as a basis for a Cross-Complaint. Plaintiff have demurred to the Cross-Complaint  
9 on the ground that the Defendant in this case has not alleged that Plaintiffs took his real property,  
10 as required to establish a violation of the statute. Indeed, Defendant cannot allege that Plaintiff  
11 took his property because he admits in his brief, that Plaintiffs did not do so, asserting that  
12 “plaintiffs through their instant Complaint are *attempting* to . . . take such real property from him  
13 at considerably below market value.” Defendants argument, that the Court should nevertheless,  
14 overrule the demurrer to this cause of action because Defendant should not be required to “sit  
15 back and allow himself to be stripped of his only asset” and “allow plaintiffs herein to actually  
16 succeed in their scheme to deprive him of his property before bringing this action,” is specious.  
17 *Opp.*, pp.6:4-8, 6:12-13, 6:22-24.

18 First, contrary to Defendant’s assertion (*Opp.*, p.6:4), there is “authority directly on  
19 point” on this issue – the Elder Financial Abuse statute, itself, which defines the conduct that  
20 constitutes Elder Financial Abuse, and which, most significantly, does not provide a cause of  
21 action either for “attempted” financial abuse of an elder or for the *purchase* of an elder’s  
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23 <sup>1</sup> Defendant also argues that he “is entitled to seek rescision [sic] of the contract based upon plaintiffs/cross-  
24 defendants’ fraudulent misrepresentations.” *Opp.*, p.8:9-12. Whether Defendant is “entitled” to seek rescission is  
25 irrelevant. Defendant does not seek an order rescinding the contract in the Cross-Complaint. Indeed, a request for an  
order of rescission would be inconsistent with Defendant’s vigorous contention that “the Cross-Complaint herein  
does not allege: 1) that the parties had a binding contract; 2) that Cross-Complaint [sic] repudiated any binding  
contract . . . “ *Opp.*, p.8:21-23.

1 property. Nor does the case of *Estate of Lowrie* (2004) 118 Cal.App.4<sup>th</sup> 220, 230, upon which  
2 Defendant relies, support overruling Plaintiffs’ demurrer. In that case, the Court rejected a  
3 circuitous argument that a party must prevail on a claim of Elder Financial Abuse in order to  
4 have standing to pursue a claim of Elder Financial Abuse.<sup>2</sup> The Court did **not** hold that it would  
5 be inappropriate to sustain a demurrer to a cause of action for Elder Financial Abuse where, as  
6 here, the allegations of the cross-complaint showed that the defendant did not take, secrete,  
7 appropriate or retain the property of an elder within the meaning of the statute, as Defendant  
8 suggests. To the contrary, in that case, the plaintiff alleged that her uncle took her grandmother’s  
9 real and personal property, and the Court concluded that “there is substantial evidence to support  
10 the findings of elder abuse.” *Id.*, at 222, 224.

11 Second, sustaining Plaintiffs’ demurrer would not require Defendant to “sit back and  
12 allow himself to be stripped of his only asset,” as he claims. *Opp.*, p.6:12-13. Defendant, with  
13 the assistance of presumably competent counsel, is actively defending against Plaintiffs’ claims  
14 in this lawsuit, including by pursuing the affirmative defense of fraud in the inducement, and  
15 sustaining Plaintiffs’ demurrer to the Cross-Complaint would not prevent Defendant from  
16 continuing to so defend himself. Third, Defendant’s assertion that Plaintiffs, by seeking the  
17 Court’s intervention, are “attempting to complete their scheme to defraud” Defendant, and that  
18 Plaintiffs, with the Court’s involvement and acquiescence, may “actually succeed in their scheme  
19 to defraud an elderly gentleman” is an insult to the integrity of the judicial system and to the  
20 intelligence of this Court. If Plaintiffs prevail, it will be because the evidence presented in an

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21 <sup>2</sup> In *Estate of Lowrie* a granddaughter claimed that her uncle, Sheldon, the trustee of her grandmother’s estate, was  
22 guilty of Elder Financial Abuse of her grandmother. Under Welfare and Institutions Code section 15657.3(d),  
23 Sheldon, as trustee, would have been the only person with standing to bring an action for Elder Abuse. However,  
24 under Probate Code section 259, if Sheldon were guilty of Elder Abuse, Sheldon would be deemed to have  
25 predeceased the grandmother, and the granddaughter would succeed to the estate, and thus have standing to sue  
Sheldon for Elder Abuse under the Welfare and Institutions Code. Sheldon argued that the granddaughter could not  
rely on Probate Code § 259 to establish her standing because, “disinheritance under the statute [Probate Code § 259]  
occurs only *after* a person is found to have been guilty of elder abuse, but standing must exist *at the time* the action  
is filed.” The Court rejected this argument.

1 adversarial hearing establishes under the applicable legal standards that the parties' contract is  
2 binding, and was not the result of a fraudulent scheme. Moreover, if Plaintiffs' prevail on their  
3 claim for specific performance, Defendant will not be "stripped" of his "only asset" – he will  
4 receive the agreed upon price of \$350,000 for the purchase of that property. If, on the other  
5 hand, Plaintiffs' do not prevail in this action, they will not have succeeded in their alleged  
6 fraudulent scheme, and Defendant will retain both his property, and the right to pursue his claim  
7 that Plaintiffs, through the lawsuit, were pursuing a fraudulent scheme, in a lawsuit for malicious  
8 prosecution. *Oren Royal Oaks Venture*, 42 Cal.2d at 1169.

9 **C. THE COURT SHOULD SUSTAIN THE DEMURRER TO THE SECOND**  
10 **CAUSE OF ACTION FOR FRAUD**

11 The Court should also sustain Plaintiff's demurrer to the second cause of action for fraud  
12 because defendant has failed to identify any allegation showing that it was reasonable for him to  
13 rely on Plaintiffs to establish the value of his property.<sup>3</sup> The Court should deny Defendant leave  
14 to amend because, any reliance on Plaintiffs' alleged opinion regarding the value of the  
15 Defendant's own property was not reasonable as a matter of law, particularly given Defendants'  
16 admission in the Cross-Complaint that he was able to, and did, contact a realtor shortly after he  
17 executed the Agreement, who allegedly informed him of the value of the property. *Kahn v.*  
18 *Lischner* (1954) 128 Cal.App.2d 480; Cross-Complaint, ¶ 8. As the Court in *Kahn, supra*,  
19 explained when it rejected a similar claim by a property owner, that a buyer had defrauded him  
20 regarding the value of his property:

21 the law generally assumes one will have some knowledge of the value of that which he  
22 owns . . . if the conduct of the complaining party in the light of his own intelligence and  
23 information, or ready availability of information, was manifestly unreasonable, he will be  
24 denied a recovery . . . As a professional man appellant possessed a standard of  
25 intelligence suggesting that **some investigation before selling his property would not**

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<sup>3</sup> Defendant responds to this defect by simply stating "cross-complainant denies that any such deficiencies exist in the Cross-Complaint." Opp., p.9:7-10.

1        **be an unreasonable requirement . . . That appellant was able to ascertain the value**  
2        **upon perfunctory inquiry after this transaction was negotiated only serves to**  
3        **emphasize the ease with which the information could have been acquired previously**  
4        **. . . ‘It was never intended to establish a rule that where parties have an equal**  
5        **opportunity to determine value, that one might neglect the opportunity and, if**  
6        **subsequently to his interest, avoid a contract merely because an inflated value was**  
7        **fixed by the other party to the exchange.** To apply such rules generally in the ordinary  
8        affairs of life, when opportunity exists to ascertain the truth, would be to encourage rather  
9        than to prevent or punish fraud’ . . . one ‘should not be permitted to blindly rely upon  
10       statements of interested parties when means of correct information was at hand.’ The trial  
11       court was justified in finding that appellant terminated his contract with respondent  
12       because he had made a bad bargain and saw an opportunity to make a better deal. The  
13       law is also clear that a transaction will not be deemed fraudulent because the party  
14       complaining made a bad bargain nor is mere inadequacy of price, however gross, in itself  
15       sufficient ground for avoiding contractual obligations.

16       *Id.*, at 489-490 (emphasis added) (citations omitted).

17       **D. THE COURT SHOULD SUSTAIN THE DEMURRER TO THE THIRD**  
18       **CAUSE OF ACTION FOR INTENTIONAL INTERFERENCE WITH**  
19       **PROSPECTIVE ECONOMIC ADVANTAGE**

20       Defendant asks the Court to overrule the demurrer to the interference claim on the ground  
21       that he has alleged that Plaintiffs failed to enter, and perform under, a “formal contract,” or to  
22       prove that they could qualify for financing under such a contract Opp., p.8:25-9:1, p.10:3-6. The  
23       Cross-Complaint does not allege that this purported conduct was intended to, or did, interfere  
24       with Defendants’ economic advantage. *See* Cross-Complaint, ¶ 24. This conduct could not  
25       support a claim of intentional interference, in any event, because (i) a party cannot be liable for  
interfering with his own contract, and (ii) Defendant has not alleged, nor could he, that it was  
unlawful for Plaintiffs to refuse to execute or perform a contract to purchase the property at a  
higher price than the parties had previously agreed. *Korean Supply Co. v. Lockheed Martin Corp.* (2004) 29 Cal.4<sup>th</sup> 1134, 1158-1159 (explaining that the tort is not intended to punish  
individuals for their commercial choices and that, to be actionable, the act must be unlawful,  
meaning that it is proscribed by some constitutional, statutory, regulatory, common law, or other  
determinable legal standard.”)



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