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SUPERIOR COURT
OF GUAM

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IN THE SUPERIOR COURT OF GUAM

By: 

JP CAPITAL GUAM, LLC,
and CHING-JU WU,

Plaintiffs,

vs.

CHIEH-YU PAI
and SCOTT A. CLARK,

Defendants.

CIVIL CASE NO. CV0188-25

**DECISION AND ORDER RE MOTION
TO STRIKE, MOTION TO DISMISS,
AND PLAINTIFFS' REQUEST FOR
LEAVE TO AMEND**

This matter came before the Court on the Motion to Strike and to Dismiss Plaintiffs' Amended Complaint ("Motion") by Defendants Chieh-Yu Pai and Scott A. Clark (collectively, "Defendants"). On November 24, 2025, the Court held a hearing on the Motion. Present at the hearing were Attorney Edwin Torres for Plaintiffs JP Capital Guam, LLC ("JP") and Ching-Ju Wu (collectively, "Plaintiffs") and Attorneys Louie Yanza and Peter Perez for Defendant Clark and Defendant Pai, respectively. After hearing arguments from the parties, the Court took the matter under advisement. Having reviewed the record of the case and applicable law, the Court hereby issues the following Decision and Order.

BACKGROUND

Plaintiffs filed a Complaint on March 14, 2025. Compl. at 1 (Mar. 14, 2025). On April 29, 2025, Defendant Clark filed a Motion and Memorandum in Support of Motion to Dismiss. Def. Scott A. Clark's Mot. and Mem. in Supp. of Mot. to Dismiss at 1 (Apr. 29, 2025). In response, Plaintiffs filed an Amended Complaint on May 27, 2025 pursuant to Guam Rules of Civil

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Procedure (“GRCP”) 15(a) and *Core Tech Intern. Corp. v. Hanil Engineering & Const. Co., Ltd.*, 2010 Guam 3 ¶ 53 n.6. *See* Opp’n to Mot. to Dismiss Filed by Def. Scott A. Clark at 1 (May 27, 2025).¹

This matter arises from a series of transactions involving the ownership and control of JP and related real estate assets in Guam. Plaintiff Ching-Ju Wu is the owner, manager, and sole member of JP. Amended Compl. ¶¶ 1–2, 6 (May 27, 2025) (“Amended Compl.”). Defendant Chieh-Yu Pai is alleged to be a citizen of Taiwan residing in Guam, and Defendant Scott A. Clark is alleged to reside in Guam as well. *Id.* ¶¶ 3–4.

On February 22, 2023, in Taiwan, Plaintiff Wu and Defendant Pai entered into a Share Purchase Agreement (“Agreement”), pursuant to which Defendant Pai agreed to sell 100% of the membership interest in JP to Plaintiff Wu for \$4,000,000. *Id.* ¶¶ 8–9. The Agreement also included provisions allowing Defendant Pai to repurchase the membership interest within two years for a specified price and permitting the sale of JP’s condominium units under certain conditions. *Id.* ¶¶ 10–11. At the time of the transaction, JP owned multiple condominium units in Ladera Towers in Mangilao, Guam. *Id.* ¶ 7.

Two days later, on February 24, 2023, Plaintiff Wu traveled to Guam, where she signed several documents, including a Second Amendment to Operating Agreement and an Assignment and Assumption of Membership Interest (“Assignment”). *Id.* ¶¶ 13–14, 20. According to the

¹ GRCP Rule 15(a) provides that “A party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served” In *Core Tech*, the Supreme Court of Guam found that “a motion to dismiss is not a responsive pleading within the meaning of [GRCP] Rule 15(a),” and therefore, the plaintiff there “had a right, as a matter of law, to amend its complaint by attaching its lien claim to it.” 2010 Guam 3 ¶ 53 n.6. The Court further notes that Defendants have not raised any objection as to Plaintiffs’ filing of the Amended Complaint as a matter of course pursuant to GRCP Rule 15(a).

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Amended Complaint, Defendant Clark represented to Plaintiff Wu that she was required to sign all presented documents to effectuate the Agreement and comply with Guam law. *Id.* ¶¶ 15–17. Plaintiff Wu alleges that these representations were false and were made to induce her to execute the documents. *Id.* ¶¶ 18–19. On the same day, Plaintiff Wu also signed a Written Consent of the members and managers of JP, which she retained, allegedly with the understanding that it would not be used unless certain contractual conditions were satisfied. *Id.* ¶¶ 21–24, 26.

On March 1, 2023, Plaintiff Wu transferred approximately 120,000,000 New Taiwan Dollars (about \$4,000,000) to Defendant Pai. *Id.* ¶ 29. Thereafter, on March 30, 2023, JP entered into a Residential Purchase Agreement to acquire additional condominium units in Ladera Towers for \$7,715,000 from LGI Pacific Guam, Inc. (“LGI”), an entity alleged to be owned or controlled by Defendant Pai and managed by Defendant Clark. *Id.* ¶¶ 31–32. On or about April 6, 2023, Plaintiff Wu and Defendant Pai executed a Supplemental Agreement, which, among other things, removed certain provisions from the original Agreement, including those relating to repurchase rights. *Id.* ¶¶ 33–35.

The Amended Complaint further alleges that, beginning in 2023, rental income associated with JP’s properties was diverted away from JP. *Id.* ¶¶ 109–111, 123–24. Plaintiff Wu contends that she was informed by Defendant Clark that rental payments had ceased due to issues with JP’s business license and unpaid taxes, but later learned that rental income was allegedly being collected through another entity. *Id.* ¶¶ 115–118, 123–24.

In February 2025, disputes between the parties escalated. Plaintiff Wu alleges that Defendants used a copy of the Written Consent to assert control over JP and to attempt unauthorized withdrawals from JP’s bank account at Bank of Hawaii totaling approximately \$2.22

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million. *Id.* ¶¶ 38–46. Although the bank reportedly prevented the transfers, the account was subsequently frozen, restricting Plaintiffs' access to funds. *Id.* ¶¶ 47–49. Plaintiff Wu also alleges that a check provided by Defendant Pai in connection with repayment obligations was dishonored for insufficient funds. *Id.* ¶¶ 63–65.

On May 27, 2025, Plaintiffs filed an Amended Complaint asserting claims for breach of contract, fraud, and constructive trust, among others. *See* Amended Compl. at 1, 8–15. Defendants thereafter moved to strike the Amended Complaint and dismiss all claims. Defs.' Mot. at 1 (June 27, 2025). Plaintiffs filed an opposition to Defendants' Motion with a request for leave to amend ("Request for Leave to Amend") on August 1, 2025, and Defendants submitted a reply on August 15, 2025. Pls.' Opp'n to Mot. to Strike and to Dismiss at 1 (Aug. 1, 2025) ("Pls.' Opp'n"); Defs.' Reply Mem. in Supp. of Mot. to Strike and Dismiss at 1 (Aug. 15, 2025) ("Defs.' Reply").

DISCUSSION

I. Motion to Strike

Defendants argue the Amended Complaint should be stricken in its entirety because it is a prohibited "shotgun pleading" under GRCP 8(a)(2) and 10(b): each count expressly reincorporates all prior allegations, causing later counts to carry every preceding allegation and leaving Defendants and the Court to sift through immaterial and redundant material to determine what facts support which claim. *See* Defs.' Mot. at 2–3, 9.

In response, Plaintiffs argue that the Motion to Strike fails because the Amended Complaint does not constitute an impermissible "shotgun pleading," but rather provides adequate notice of each claim and the grounds upon which it rests. Although each cause of action incorporates prior allegations, Plaintiffs also plead additional, claim specific facts supporting each legal theory,

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thereby curing any concern of commingling or vagueness. *See* Pls.' Opp'n at 2–3. Plaintiffs further contend that under Guam's notice pleading standard, the relevant inquiry is whether Defendants are fairly apprised of the claims against them, and the detailed factual allegations in the Amended Complaint plainly satisfy that standard. *Id.*

A complaint constitutes a shotgun pleading when “each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint.” *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1321 (11th Cir. 2015). Distaste for a shotgun complaint stems from such complaint's inability to “provide the defendants with ‘adequate notice of the claims against them and the grounds upon which each claim rests.’” *Byrdsong v. A&E Television Networks, LLC*, 2021 WL 6050687, at *2 (N.D. Ala. Dec. 21, 2021) (citing *Weiland*, 792 F.3d at 1321); *see also Edwards v. Wal-Mart Stores E., LP*, 2021 WL 10519455, at *2 (N.D. Fla. Sept. 15, 2021) (“[F]air notice of the claims against it and the grounds upon which each claim rests . . . is the touchstone of the shotgun pleading case law.”) (citing *Weiland*, 792 F.3d at 1323).

“But the mere fact that a complaint's counts incorporate by reference each of the preceding factual allegations does not make the complaint an impermissible shotgun pleading, so long as the complaint adequately puts the defendants on notice of the claims against them.” *United States Sec. & Exch. Comm'n v. Winemaster*, 529 F. Supp. 3d 880, 907 (N.D. Ill. 2021); *B.M. v. Wyndham Hotels & Resorts, Inc.*, 2020 WL 4368214, at *7 (N.D. Cal. July 30, 2020) (“[A] complaint does not employ impermissible shotgun pleading just because it re-alleges by reference all of the factual paragraphs preceding the claims for relief.”) (citation omitted); *Prestige Ins. Grp. v. Allstate Ins. Co.*, 2022 WL 1091825, at *2 (S.D. Fla. Apr. 12, 2022) (“Incorporating all factual allegations does

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not make a complaint a shotgun pleading.”). Finally, “[s]triking a complaint is considered an ‘extreme measure . . . viewed with disfavor and infrequently granted.’” *Huntington v. Smoke City for Less LLC*, 2023 WL 2031423, at *2 (E.D. Wash. Jan. 11, 2023) (omission in original); *Gaydos v. Gully Transportation, Inc.*, 2021 WL 4963523, at *1 (E.D. Mo. Oct. 26, 2021) (“Striking a party’s pleading, however, is an extreme and disfavored measure.”) (citing *BJC Health Sys. v. Columbia Cas. Co.*, 478 F.3d 908, 917 (8th Cir. 2007)).

Applying these principles, the Court finds that the Amended Complaint does not rise to the level of a prohibited shotgun pleading warranting the extraordinary remedy of striking the entire pleading. Although Plaintiffs incorporate prior allegations into each cause of action, the Amended Complaint provides detailed factual allegations describing the parties, agreements, transactions, and alleged misconduct, followed by separately enumerated causes of action that identify the legal theory asserted against specific Defendants. *See* Amended Compl. ¶¶ 58–132. Each claim is accompanied by additional allegations relevant to that cause of action, including identification of the relevant conduct, contractual provisions, or alleged misrepresentations forming the basis of liability. *See id.*

Importantly, the incorporation of prior allegations does not, by itself, render the pleading deficient where the structure and content still provide fair notice of the claims. Here, Defendants’ own motion demonstrates their ability to identify, understand, and challenge each asserted claim on its merits, including breach of contract, fraud, and constructive trust. This undermines any contention that the pleading is so vague or confusing as to impede a meaningful response. *See Weiland*, 792 F.3d at 1323 (The focus is on whether a complaint “give[s] the defendants adequate notice of the claims against them and the grounds upon which each claim rests.”).

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Moreover, Guam is a notice pleading jurisdiction, and the rules do not require technical precision or rigid separation of facts so long as the complaint sets forth sufficient information to apprise defendants of the nature of the claims. *See Ukau v. Wang*, 2016 Guam 26 ¶ 33 (Guam adopted “only a liberal, notice pleading requirement” as opposed to the “heightened plausibility standard” in federal courts.). To the extent any lack of clarity exists, such concerns are more appropriately addressed through a motion for a more definite statement under GRCP Rule 12(e),² rather than the drastic remedy of striking the entire pleading.

Accordingly, because the Amended Complaint provides sufficient factual detail and adequately informs Defendants of the claims and grounds upon which they rest, the Motion to Strike is **DENIED**.

II. Motion to Dismiss and Motion for Leave to Amend

A. Legal Standard for Motion to Dismiss and for Motion for Leave to Amend

“[B]ecause the Guam Rules of Civil Procedure are generally derived from, although not identical to, the Federal Rules of Civil Procedure . . . , federal decisions that construe the federal counterparts to the [GRCP] are persuasive authority.” *Portis Int’l, LLC v. Marquardt*, 2018 Guam 22 ¶ 7 n.1 (citing *Gov’t of Guam v. O’Keefe*, 2018 Guam 4 ¶ 9) (alteration in original).

² GRCP Rule 12(e) addresses the “Motion for More Definite Statement,” which a party may file when “a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading.” A motion for more definite statement under GRCP Rule 12(e) is “[t]he preferred response to a shotgun pleading.” *Dibbs v. Hillsborough Cnty., FL*, 2013 WL 12367008, at *2 (M.D. Fla. Oct. 30, 2013) (citation omitted); *see also Fennell v. Valenza*, 2025 WL 1800202, at *2 (M.D. Ala. June 30, 2025) (“Courts should grant, however, a Rule 12(e) motion when a complaint is a ‘shotgun pleading.’”) (citation omitted); *Downing v. Midland Funding, LLC*, 2016 WL 125861, at *1 (N.D. Ala. Jan. 12, 2016) (“A Rule 12(e) motion is an appropriate response to a ‘shotgun pleading.’”) (citation omitted).

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Under GRCP 12(b)(6), dismissal is proper only when “it is beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Ukau*, 2016 Guam 26 ¶ 26 (quoting *Core Tech Int'l Corp.*, 2010 Guam 13 ¶ 52). The Court must accept all well-pleaded factual allegations as true and construe them in the light most favorable to the plaintiff. *Cruz v. Cruz*, 2023 Guam 20 ¶ 10. “[C]onclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim.” *Taitano v. Calvo Fin. Corp.*, 2009 Guam 9 ¶ 6.

“[L]eave to amend should always be liberally granted.” *Arashi & Co. v. Nakashima Enters., Inc.*, 2005 Guam 21 ¶ 16 (citing *Foman v. Davis*, 371 U.S. 178 (1962)). Nevertheless, a court must “review whether certain factors are present which may mitigate against leave to amend.” *Id.* Such factors include “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment.” *Id.* (alteration in original). A plaintiff’s previous amendment of the complaint as a matter of course pursuant to GRCP Rule 15(a) “does not nullify the plaintiff’s right to amend and invoke the court’s authority to deny leave.” *Bancoult v. McNamara*, 214 F.R.D. 5, 8 n.4 (D.D.C. 2003); *see also Weiland Sliding Doors & Windows, Inc. v. Panda Windows & Doors, LLC*, 2011 WL 182005, at *3 (S.D. Cal. Jan. 18, 2011) (“Plaintiff’s previous amendment, made as a matter of right under Rule 15(a), is not grounds to deny leave to amend now.”).

B. Breach of Contract Claims (First and Second Causes of Action)

Defendants argue both breach of contract claims fail because Plaintiffs have not plausibly alleged the required element of resulting damages and because Plaintiffs’ theory rests on a “faulty

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reading” of the Agreement and Supplemental Agreement. Defs.’ Mot. at 2. Defendants contend the pleaded \$2,220,000 “damage” is facially impossible because the Amended Complaint alleges the Bank of Hawaii stopped the attempted withdrawals and thus “[Plaintiff] Wu could not have been damaged in that amount.” Defs.’ Mot. at 10. Defendants also argue Plaintiffs’ “lost opportunity costs” are special damages that must be pleaded with specificity under GRCP Rule 9(g), including allegations that such damages were foreseeable and within the parties’ contemplation at contracting; Plaintiffs allegedly plead neither the special circumstances nor notice. *Id.*; Defs.’ Reply at 3–4. On contract interpretation, Defendants assert Plaintiffs’ claim that the Supplemental Agreement eliminated Defendant Pai’s repurchase rights “in toto” contradicts the text, which, according to Defendants, limits the repurchase right deletion to real estate acquired by JP after February 22, 2023. Defs.’ Mot. at 11.

Plaintiffs respond that dismissal is improper because Guam is a notice pleading jurisdiction and Defendants’ attack improperly asks the Court to resolve contested interpretations and factual inferences at the motion to dismiss stage. Pls.’ Opp’n at 4. As to special damages, Plaintiffs argue GRCP Rule 9(g) is satisfied so long as the pleading gives notice of the nature of claimed special damages (here, “lost opportunity costs”), leaving details for discovery. *Id.* at 3. Plaintiffs further contend the Court must take their allegations as true and deny dismissal, reserving Defendants’ contract interpretation arguments for summary judgment. *Id.* at 4–5.

“To establish a breach of contract, a plaintiff must prove (1) the existence of the contract, (2) the plaintiff’s performance or excuse for nonperformance, (3) the defendant’s breach, and (4) resulting damages to the plaintiff.” *Hemlani v. Hemlani*, 2015 Guam 16 ¶ 19 (citation omitted). Consequential damages constitute the “special damage” such that they must be “specifically stated”

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under GRCP Rule 9(g). *See, e.g., Kingshill Hosp., Inc. v. Am. Econ. Ins. Co.*, 2018 WL 6427681, at *2 (M.D. Fla. Dec. 5, 2018) (In a breach of contract case, “[b]ecause consequential damages are special damages, [the plaintiff] was required to plead them specifically in the Complaint.”) (citing Fed. R. Civ. P. 9(g)); *Vexos, Inc. v. Ravin Elecs., LLC*, 2021 WL 4813277, at *3 (N.D. Ohio Mar. 17, 2021) (“Rule 9(g), which states, ‘[i]f an item of special damage is claimed, it must be specifically stated,’ governs the pleading requirements for consequential damages, which are a form of special damages.”) (same); *Dahlinger v. First Am. Specialty Ins. Co.*, 2020 WL 1511261, at *3 (N.D.N.Y. Mar. 30, 2020) (“[U]nder Federal Rule of Civil Procedure 9(g), a plaintiff must plead consequential damages with particularity.”).

In this case, Plaintiffs seek \$2,220,000 in damages based on alleged unauthorized withdrawals; however, the Amended Complaint expressly alleges that the Bank of Hawaii stopped those transactions. *See* Amended Compl. ¶¶ 45–47. As such, Plaintiffs have not plausibly alleged that they suffered that amount in direct damages. The Court therefore finds that this portion of Plaintiffs’ damages theory is inadequately pleaded.

The Court further agrees that Plaintiffs’ purported “lost opportunity costs” constitute consequential damages, such that these costs must be pleaded with specificity pursuant to GRCP Rule 9(g). “Contractual damages are of two types—general damages (sometimes called direct damages) and special damages (sometimes called consequential damages).” *Schellinger Bros. v. Cotter*, 207 Cal. Rptr. 3d 82, 104 (Cal. Ct. App. 2016) (citation omitted) (parentheses in original).³

³ “As the Guam Code provisions relating to contracts were adopted from the California Civil Code, the court also draws from California contract law.” *Yang v. Majestic Blue Fisheries, LLC*, 2015 WL 5003606, at *5 n.2 (D. Guam Aug. 24, 2015); *United States for use & benefit of Porges Elec. Grp., Inc. v. Travelers Cas. & Sur. Co. of Am.*, 2021 WL 1395767, at *2 (D. Guam Apr. 13, 2021) (same).

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Direct damages “compensate for the value of promised performance” whereas consequential damages “are indirect and compensate for additional losses incurred as a result of the breach.” *Speirs v. BlueFire Ethanol Fuels, Inc.*, 197 Cal. Rptr. 3d 25, 42 (Cal. Ct. App. 2015) (citation omitted). “[C]onsequential damages allegedly resulting from a breach of contract are not recoverable unless they were reasonably foreseeable at the time the parties entered into the contract.” *Behnke v. State Farm Gen. Ins. Co.*, 127 Cal. Rptr. 3d 372, 392 (Cal. Ct. App. 2011).

Here, lost opportunity costs constitute consequential damages because they do not flow directly from the alleged breach itself but instead arise from Plaintiffs’ claimed inability to use funds or pursue other investments. As such, Plaintiffs were required to plead with specificity the special circumstances giving rise to those damages, including facts showing that such losses were reasonably foreseeable and within the contemplation of the parties at the time of contracting. *See* GRCP 9(g). The Amended Complaint, however, contains only a conclusory reference to “lost opportunity costs” without alleging any facts regarding foreseeability, notice, or the nature of the opportunities allegedly lost. *See* Amended Compl. ¶¶ 70, 76. Accordingly, Plaintiffs have not adequately pleaded consequential damages.

The Court, however, disagrees with Defendants’ arguments concerning the proper interpretation of the Supplemental Agreement at least at this juncture. *See, e.g., Miranda v. Xavier Univ.*, 594 F. Supp. 3d 961, 971 (S.D. Ohio 2022) (“Generally, interpretation of contracts—especially ambiguous ones—is a question of fact inappropriate for resolution on a motion to dismiss.”) (collecting cases); *Anderson v. Branch Banking & Tr. Co.*, 56 F. Supp. 3d 1345, 1354 (S.D. Fla. 2014) (“[A]n issue of contract interpretation is not appropriately engaged under a motion to dismiss.”); *Managed Care Sols., Inc. v. Cmty. Health Sys., Inc.*, 2011 WL 6024572, at *8 (S.D.

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Fla. Dec. 2, 2011) (“A determination of the proper interpretation of the contract should be decided at the summary judgment stage, not in a ruling on a motion to dismiss.”).

In this case, Plaintiffs allege that the Supplemental Agreement removed Defendant Pai’s repurchase rights and that Defendant Pai nevertheless acted as though he retained authority to control JP. *See* Amended Compl. ¶¶ 60–61, 73–75. Although Defendants offer a competing interpretation of the Supplemental Agreement—namely, that any limitation on repurchase rights applied only to certain properties—resolution of that dispute depends on interpretation of contractual language and the surrounding circumstances. At the pleading stage, the Court must construe the allegations in the light most favorable to Plaintiffs and may not resolve competing interpretations of the contract at issue. *Guam Police Dep’t v. Guam Civ. Serv. Comm’n*, 2020 Guam 12 ¶ 8 (“In ruling on a motion to dismiss under Rule 12(b)(6), a court must accept all the well-pleaded facts as true, ‘construe the pleading in the light most favorable to the non-moving party, and resolve all doubts in the non-moving party’s favor.’”) (citation omitted).

Accordingly, the Court finds that Plaintiffs insufficiently pled their first and second causes of action for breach of contract. However, because Plaintiffs might be able to plead damages for the alleged breach of contract, the Court **GRANTS** leave to amend and **DENIES** Defendants’ Motion as to the first and the second causes of action.

C. Fraud Claims (Third, Fourth, and Fifth Causes of Action)

“To successfully plead actual fraud, a plaintiff must plead facts with sufficient particularity to demonstrate the elements of fraud: (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) justifiable reliance, and (5) resulting damages.” *Ukau v. Wang*, 2016 Guam 26 ¶ 36 (citation omitted); *see also* GRCP 9(b) (requiring that “the circumstances constituting

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fraud or mistake shall be stated with particularity”). This requires a plaintiff to allege the “who, what, when, where, and how” of the alleged misconduct. *Taitano v. Calvo Fin. Corp.*, 2008 Guam 12 ¶ 12. The Court will now consider each fraud cause of action.

1. Third Cause of Action

Defendants argue that the third cause of action fails under GRCP Rule 9(b) because Plaintiffs do not plead fraud with particularity and cannot establish causation or damages. They contend the only alleged misrepresentation occurred on February 24, 2023, yet the \$7,715,000 transaction occurred weeks later with no additional misrepresentation tying it to the alleged fraud. Defs.’ Mot. at 13; Reply at 8–9. Defendants further argue that the third cause of action is internally inconsistent and contradicted by attached documents—particularly by the Assignment, which shows Plaintiff Wu transferred her interests—undermining any claim that she was misled. Defs.’ Mot. at 14. As to damages, Defendants assert Plaintiffs improperly seek amounts not caused by the alleged misrepresentation and rely on inconsistent characterizations of the \$7,715,000. Defs.’ Mot. at 13.

Plaintiffs respond that they adequately allege a fraudulent scheme in which Defendants misrepresented their intent regarding the Written Consent and related documents to induce Plaintiff Wu to enter the transaction and transfer funds Opp’n at 5–6. They argue the fraud encompasses the entire course of conduct, including the \$7,715,000 transaction, because they relied on Defendants’ assurances that the documents would not be used to usurp control. Opp’n at 6. Plaintiffs further contend GRCP Rule 9(b) is satisfied because the complaint identifies the who, what, when, where, and how of the fraud, and that Defendants’ arguments improperly seek factual determinations at the motion to dismiss stage. Opp’n at 5–7.

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In this case, Plaintiffs have adequately alleged the circumstances constituting fraud with the particularity required by GRCP Rule 9(b). The Amended Complaint identifies the who (Defendants Pai and Clark), the what (misrepresentations that the Written Consent and related documents would not be used unless repurchase conditions were satisfied), the when and where (February 24, 2023, in Guam), and the how (inducing Plaintiff Wu to execute documents and transfer funds as part of a broader scheme to obtain control of JP). *See* Amended Compl. ¶¶ 78–81, 84–87. Plaintiffs further allege knowledge of falsity and intent to induce reliance by asserting Defendants never intended to honor these representations and instead planned to use the documents to usurp control of JP. *Id.* ¶¶ 79–83.

In addition, the Court is unpersuaded by Defendants' argument that the \$7,715,000 transaction cannot support a fraud claim because it occurred weeks after the alleged misrepresentation and is not tied to any separate misrepresentation. This argument improperly isolates a single event from the broader factual context of Plaintiffs' allegations. Plaintiffs assert a continuing fraudulent scheme in which Defendants purportedly misrepresented their intent regarding control of JP and the use of executed documents, thereby inducing Plaintiff Wu to continue transferring funds and entering into agreements. *See* Amended Compl. ¶¶ 80 (“Mr. Pai and Mr. Clark concocted a scheme to obtain money from Ms. Wu, use that money to purchase more units at Ladera Tower, and then use the Written Consent to transfer all interest in JP to Mr. Pai and Mr. Clark.”). Whether that reliance was justified and whether the transaction was in fact caused by the alleged misrepresentations are factual questions not suitable for resolution on a motion to dismiss. *See, e.g., Bayerische Landesbank, New York Branch v. Barclays Cap., Inc.*, 902 F. Supp. 2d 471, 474 (S.D.N.Y. 2012) (“Whether or not reliance on alleged misrepresentations is

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reasonable in the context of a particular case is intensely fact specific and generally considered inappropriate for determination on a motion to dismiss.”); *Jewelry Repair Enters., Inc. v. E & S Assocs., Inc.*, 1996 WL 335363, at *3 (E.D. Pa. June 17, 1996) (“In this case, whether the reliance was justified or reasonable involves a determination of factual matters that may not be properly resolved in this motion to dismiss.”).

Defendants also urge this Court to disregard Plaintiffs’ allegations “[w]ith regard to the \$7,715,000” on the ground that they are “conflicting.” Defs.’ Mot. at 13 (citing Amended Compl. ¶¶ 31, 37). Specifically, Defendants contend the allegations are inconsistent as to whether the \$7,715,000 constituted a loan to Defendant Pai or purchase money for JP to acquire additional units in Ladera Tower. *Id.* These purported inconsistencies concern the characterization of the transaction, not its existence or the alleged fraudulent conduct surrounding it. The Amended Complaint alleges that the transfer—however characterized—was induced by Defendants’ misrepresentations. *See* Amended Compl. ¶ 87 (“Mr. Pai and Mr. Clark’s actions induced Ms. Wu to transfer \$4,000,000.00 and \$7,715,000.00 to Mr. Pai.”). Plaintiffs consistently allege that Defendants “concocted a scheme” to obtain funds from Plaintiff Wu and used those funds for their own benefit, and that Plaintiff Wu was induced to transfer \$7,715,000 in reliance on those representations. *See id.* ¶ 80. At most, the alleged inconsistency raises a factual question regarding the precise nature of the transaction—whether it was structured as a loan or a purchase—which is not appropriate for resolution at the motion to dismiss stage. *See, e.g., Norman v. Missouri Pac. R. R.*, 414 F.2d 73, 78 (8th Cir. 1969) (“A motion to dismiss is not a substitute for trial on the merits and disputed issues of fact are not to be resolved in considering the motion.”) (citation omitted);

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Mountain Highlands, LLC v. Hendricks, 2008 WL 6020730, at *1 (D.N.M. Aug. 29, 2008) (“The Court is not, however, free, on a motion to dismiss, to resolve factual issues.”).

Defendants further contend that the Assignment, which “transferred [Plaintiff Wu’s] membership interests in JP to [Defendants],” “contradicts the Plaintiffs’ allegations that Plaintiff Wu did not intend to transfer her membership interests in JP at the time she was supposedly induced to sign the Written Consent by the Defendants.” Defs.’ Mot. at 14. Defendants’ argument is unpersuasive. The existence of the Assignment does not “contradict[]” Plaintiffs’ allegations, but rather is consistent with Plaintiffs’ theory that Defendants induced Plaintiff Wu to execute transaction documents—including the Assignment and the Written Consent—through misrepresentations regarding their intended use. *See* Amended Compl. ¶ 80 (“[Defendants] concocted a scheme to obtain money from Ms. Wu, use that money to purchase more units at Ladera Tower, and then use the Written Consent to transfer all interest in JP to [Defendants].”); *id.* ¶ 81 (“[Defendants’] declarations to Ms. Wu were misrepresentations of what they actually wanted to do with Ms. Wu’s money and the interests in JP.”). At most, Defendants’ argument raises a factual dispute regarding Plaintiff Wu’s intent and the circumstances under which the documents were executed—issues that are not appropriate for resolution on a motion to dismiss.

Accordingly, the Court finds Plaintiffs have sufficiently pleaded the third cause of action and **DENIES** Defendants’ Motion to Dismiss as to this cause of action.

2. Fourth Cause of Action

Defendants argue that the Fourth Cause of Action for fraud fails because Plaintiffs have not plausibly alleged the required element of damages and instead attempt to rely on facts that contradict their own pleading. Specifically, Defendants contend that Plaintiffs’ theory rests on the

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allegation that Defendants “use[d] the Written Consent to unlawfully withdraw \$2,205,000.00 and \$15,000.00” from JP’s bank account, but Plaintiffs simultaneously admit that the bank “did not permit the withdrawals,” thereby negating any actual loss. Defs.’ Mot. at 12–13. Defendants further assert that Plaintiffs improperly attempt, in their opposition, to shift their damages theory to “lost opportunity costs,” which were neither pleaded in the Fourth Cause of Action nor recoverable as duplicative of contract damages. Defs.’ Reply at 7–8. In addition, Defendants argue that Plaintiffs’ fraud allegations are internally inconsistent—particularly as to whether the alleged misrepresentation regarding the Written Consent occurred before or after Plaintiff Wu signed it—thereby defeating any claim of inducement.⁴ Defs.’ Mot. at 14–15.

Plaintiffs respond that the fourth cause of action is sufficiently pleaded because they have alleged concrete damages flowing from Defendants’ fraudulent conduct, even if the attempted withdrawals were ultimately blocked. Plaintiffs argue that Defendants’ actions caused JP’s bank account to be frozen, thereby depriving Plaintiffs of access to their funds and resulting in ongoing financial harm, which constitutes actionable damages under fraud. Pls.’ Opp’n at 5–6. Plaintiffs further contend that Defendants’ focus on whether the funds were successfully withdrawn ignores the broader harm caused by Defendants’ scheme to usurp control of JP and interfere with its finances. *Id.* Plaintiffs also argue that any perceived inconsistencies or factual disputes are

⁴ Defendants assert that “it is impossible that the Defendants could have induced Ms. Wu to sign the Written Consent by the making of a false promise that the Plaintiffs admit did not occur until *after* Ms. Wu had already signed the Written Consent.” Defs.’ Mot. at 15 (emphasis in original). Plaintiffs made no such admission in the Amended Complaint. Nowhere do Plaintiffs allege that the purported promise regarding the use of the Written Consent was made *after* Plaintiff Wu signed that document. Defendants rely on Paragraphs 21 through 23 of the Amended Complaint, but those paragraphs merely describe what Plaintiff Wu and Defendants allegedly agreed to regarding the Written Consent; they do not establish the timing of those representations relative to the execution of the document. In fact, the Amended Complaint alleges that “When Ms. Wu signed the Written Consent, she had no intention of transferring the shares back to Mr. Pai until the repurchase provisions of the Agreement were satisfied.” Amended Compl. ¶ 25.

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inappropriate for resolution at the motion to dismiss stage, where the Court must accept their allegations as true and construe them in the light most favorable to *Id.* at 6–7.

Defendants have the better of the argument. Here, Plaintiffs have insufficiently pleaded the “resulting damages” element of their fourth cause of action for fraud. Specifically, Plaintiffs allege—twice—that “JP has suffered damages in the amount of \$2,220,000.00 plus punitive damages.” *See* Am. Compl. ¶¶ 105, 107. Yet Plaintiffs’ own allegations indicate that this sum was never actually withdrawn and instead remains in the account, albeit frozen. *See id.* ¶ 100 (alleging Defendants “used the Written Consent to unlawfully withdraw \$2,205,000.00 and \$15,000.00 from JP’s bank accounts”); *id.* ¶ 101 (alleging Plaintiffs are “unable to access the Bank of Hawaii account”). Read together, these allegations establish that the funds were not successfully transferred out of JP’s account. Accordingly, it is not plausible, as currently pleaded, that JP suffered damages in the amount of \$2,220,000.00 where the money remains in the account, even if access to it is restricted at the moment.

Plaintiffs contend that their damages consist of “lost opportunity costs” arising from their inability to access the funds. However, a party may not amend its complaint through arguments raised in opposition to a motion to dismiss. *See, e.g., Hudgens v. Pratha Ent., Inc.*, 2017 WL 977009, at *5 (N.D. Ill. Mar. 14, 2017) (“A party opposing a motion to dismiss may not, however, amend the complaint through arguments made in a brief.”); *Bolus v. Nationwide Prop. & Cas. Co.*, 2017 WL 11680452, at *6 (M.D. Pa. Feb. 17, 2017) (“It is hornbook law that a party may not amend a complaint through briefs in opposition to a motion to dismiss.”); *Unbeatable.com, Inc. v. LJM Supplies Corp.*, 2026 WL 242085, at *3 (D.N.J. Jan. 29, 2026) (“It is well settled that a plaintiff may not amend its Complaint through arguments raised in opposition to a motion to

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dismiss.”). Here, Plaintiffs have not clearly or specifically alleged such damages within the fourth cause of action itself, and therefore, Plaintiffs have insufficiently pleaded the fourth cause of action with regard to damages. Accordingly, the Court finds that Plaintiffs have failed to adequately plead resulting damages, and the fourth cause of action is therefore insufficient. Because an amendment may sufficiently allege Plaintiffs' damages, Plaintiffs are **GRANTED** leave to amend and Defendants' Motion to Dismiss is **DENIED** as to the fourth cause of action.

3. Fifth Cause of Action

Defendants argue the fifth cause of action—based on alleged misrepresentations concerning JP's rental income—fails to satisfy GRCP Rule 9(b) and does not plausibly allege fraud. Defs.' Mot. at 15–16; Defs.' Reply at 9–10. Specifically, Defendants contend Plaintiffs do not plead facts showing knowledge of falsity or intent to defraud, and fail to explain how the alleged statements caused the claimed damages. Defs.' Mot. at 16. Defendants further argue that the alleged “diversion” of rental income is not fraud and that Plaintiffs do not allege JP was entitled to the rental income in the first place—such as by alleging assignment of leases to JP. Defs.' Mot. at 16; Defs.' Reply at 9–10.

Plaintiffs respond that they sufficiently allege Defendants misrepresented the status of JP's rentals, including statements that JP could not legally receive rental payments due to licensing and tax issues, while in reality Defendants were diverting rental income to another entity for their own benefit. Pls.' Opp'n at 7–9. Plaintiffs argue they pleaded reliance and damages by alleging that these misrepresentations enabled Defendants to divert rental income away from JP. *Id.* Plaintiffs further contend that Defendants' arguments improperly dispute facts that must be accepted as true at the pleading stage. *Id.*

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Defendants again have the stronger argument. As noted, fraud must be pleaded with particularity, including facts supporting each element—misrepresentation, scienter, intent, reliance, and resulting damages. *Taitano*, 2008 Guam 12 ¶ 12. Here, it is unclear if there were any legally recognizable damages because Plaintiffs' allegations do not establish that JP was entitled to the rental income allegedly diverted. Plaintiffs do not allege that existing leases were assigned to JP or otherwise explain the legal basis for JP's right to receive those rents. Without adequately pleading entitlement to the funds at issue, Plaintiffs fail to allege damages resulting from any alleged fraud. Because Plaintiffs may be able to plead their legal entitlement to the diverted rents by amendment, the Court **GRANTS** Plaintiffs' Motion for Leave to Amend and **DENIES** Defendants' Motion to Dismiss as to the fifth cause of action.

D. Constructive Trust (Sixth Cause of Action)

Defendants argue the constructive trust count should be dismissed because it depends on the same fraud allegations Defendants argue are insufficiently pleaded, and because constructive trust is a remedy, and not an independent cause of action. Defs.' Mot. at 17–18. Defendants maintain that where fraud is the predicate for constructive trust, the fraud must be pleaded with GRCP Rule 9(b) particularity; because Plaintiffs' fraud counts fail, the constructive trust request necessarily fails. *Id.*; Defs.' Reply at 10.

Plaintiffs respond that their constructive trust allegations sufficiently identify wrongful transfers or use of JP property and request equitable relief to prevent unjust enrichment, which is appropriate where Plaintiffs allege Defendants wrongfully acquired or transferred JP units and other benefits. Pls.' Opp'n at 9–10. Plaintiffs reiterate that because they contend their fraud claims are adequately pleaded, the constructive trust request is likewise adequately supported. *Id.*

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A constructive trust is a remedy, not a standalone cause of action. *See, e.g., Wall v. HSBC Bank, USA*, 2012 WL 12894755, at *7 (C.D. Cal. Dec. 27, 2012) (“A constructive trust ‘is not an independent cause of action.’”) (citation omitted); *Alemayehu v. Abere*, 199 F. Supp. 3d 74, 87 (D.D.C. 2016) (“‘[A] constructive trust,’ however, ‘is not an independent cause of action.’”) (citation omitted). While Plaintiffs may ultimately be entitled to seek such relief, it must be tethered to a viable underlying claim. *See, e.g., Okada v. Whitehead*, 2016 WL 9448483, at *6 (C.D. Cal. June 8, 2016) (“Under Ninth Circuit law, a constructive trust is a remedy that must be supported by a separate substantive claim.”); *United States v. Couch*, 2017 WL 4105769, at *4 (S.D. Ala. Sept. 15, 2017) (“A constructive trust is not a cause of action itself, but ‘a remedy imposed to prevent the enjoyment of a fraud or of a breach of fiduciary duty.’”).

In this case, Plaintiffs’ constructive trust allegations rely on their fraud causes of action. *See* Amended Compl. ¶ 132 (“A constructive trust should be imposed against Defendants for the properties unlawfully taken through fraudulent means in favor of Plaintiffs.”). While the Court has found the fourth and fifth cause of action to be insufficiently pleaded, the Court has found the third cause of action for fraud adequately alleged at this stage. Accordingly, although constructive trust is not an independent cause of action, Plaintiffs may seek the relief of constructive trust if supported by a viable underlying claim. To the extent Plaintiffs intend to rely, in part, on the currently deficient fourth and fifth causes of action, amendment is appropriate. Therefore, the Court **GRANTS** Plaintiffs leave to amend the constructive trust claim and **DENIES** Defendants’ Motion as to this cause of action.

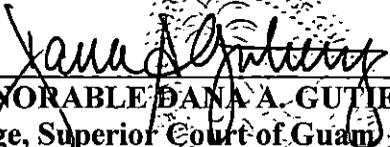
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CONCLUSION

For the foregoing reasons:

1. Defendants' Motion to Strike and Motion to Dismiss are **DENIED**.
2. Plaintiffs' Request for Leave to Amend is **GRANTED** for the first, second, fourth, fifth, and sixth causes of action.
3. Plaintiffs shall file any Second Amended Complaint within thirty (30) days of this Decision and Order.

SO ORDERED this 24th day of February, 2025.



HONORABLE DANA A. GUTIERREZ
Judge, Superior Court of Guam
