

1 [REDACTED]  
2 California State Bar No. [REDACTED]  
3 Attorneys at Law  
4 [REDACTED]  
5 [REDACTED], California [REDACTED]  
6 Telephone: [REDACTED]  
7 Telefax: [REDACTED]  
8 E-Mail: [REDACTED]

9 [REDACTED]  
10 California State Bar No. [REDACTED]  
11 LAW OFFICES OF [REDACTED]  
12 Attorney at Law  
13 [REDACTED]  
14 [REDACTED], California [REDACTED]  
15 Telephone: [REDACTED]  
16 Telefax: [REDACTED]  
17 Attorneys for Plaintiffs [REDACTED]  
18 and [REDACTED]

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**  
**CENTRAL JUSTICE CENTER (CJC)**

20 [REDACTED] an individual; )  
21 and [REDACTED] an individual, )  
22 Plaintiffs, )  
23 vs. )  
24 [REDACTED] an individual; )  
25 and DOES 1 through 50, inclusive, )  
26 Defendants. )  
27 \_\_\_\_\_ )  
28

Case No. 07CC03175

**RESPONSE OF PLAINTIFFS TO DEMURRER  
OF DEFENDANT [REDACTED]**

Date: [REDACTED], 2007 Time: 10:00 A.M.  
Dept: [REDACTED]  
Honorable [REDACTED]  
Date Action Filed: [REDACTED]  
Trial Date: None Set

[Unlimited Civil Case; Amount in Controversy Exceeds \$25,000]

1 Plaintiffs [REDACTED] and [REDACTED] hereby submit their response to the  
2 Demurrer of Defendant [REDACTED]

3 This response is based on the pleadings, records, and files herein; the Memorandum of Points  
4 and Authorities that follow *infra*; and upon such other and further oral and documentary evidence as  
5 may be adduced at the time of the hearing on the Demurrer.

6  
7 Dated: [REDACTED], 2007

8  
9 Respectfully submitted,

10 

11  
12 [REDACTED] Attorney for  
13 Plaintiffs [REDACTED] and  
14 [REDACTED]

15 [REDACTED]  
16 California State Bar No. [REDACTED]

17 [REDACTED]  
18 Attorneys at Law

19 [REDACTED], California [REDACTED]

20 Telephone: [REDACTED]

21 Telefax: [REDACTED]

22 E-Mail: [REDACTED]

**TABLE OF CONTENTS**

<u>Title</u>	<u>Page</u>
TABLE OF CONTENTS.....	3
TABLE OF AUTHORITIES.....	4
MEMORANDUM OF POINTS AND AUTHORITIES.....	6
1. The Lack of a <i>Civil Code</i> § 1369.560 Certificate.....	6
2. The Legislative Preemption Argument.....	8
3. Whether the Complaint’s Third Cause of Action for Specific Performance States Facts Sufficient to Constitute a Cause of Action as Against Defendant [REDACTED].....	12
4. Defendant’s Argument That ‘Plaintiffs Fail to Plead Any Logical, Factual Connection Between the ‘Contract’ They Allege Has Been Violated and Their Claimed Damages.....	13
5. Defendant’s Demurrers for Uncertainty and Unintelligibility.....	14
6. Conclusion.....	14
DECLARATION OF [REDACTED].....	16
EXHIBIT “A” – COMPARATIVE NOISE DECIBEL SCALE.....	
PROOF OF SERVICE BY MAIL.....	

**TABLE OF AUTHORITIES**

**California Cases**

*Ambrosini v. Alisal Sanitary Dist.* (1957) 154 Cal.App.2d 720, 727..... 11

*Biber Electric Co. v. City of San Carlos* (1960) 181 Cal.App.2d 342..... 10

*Bright v. East Side Mosquito etc. Dist.* (1959) 168 Cal.App.2d 7..... 11

*Cavagnaro v. Dolan Construction Co., Inc.*, C051004 (Cal. App. 5/10/2007)  
(Cal. App., 2007)..... 13

*Greater Westchester Homeowners Assn. v. City of Los Angeles* (1979) 26 Cal.3d 86..... 10

*Hassell v. San Francisco* (1938) 11 Cal.2d 168..... 11

*Jones v. Union Pacific Railroad Co.* (2000) 79 Cal.App.4<sup>th</sup> 1053..... 10

*Lombardy v. Peter Kiewit Sons’ Co.* (1968) 266 Cal.App.2d 599..... 10

*Miles v. A. Arena & Co.* (1941) 23 Cal.App.2d 680, 684..... 11

*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 938, fn. 16..... 11

*Snow v. Marian Realty Co.* (1971) 212 Cal. 622, 625..... 11

*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 291..... 11

*Venuto v. Owens-Corning Fiberglass Corp.* (1971) 22 Cal.App.3d 116, 129..... 11

**California Statutes**

*Civil Code* § 1369.560..... 6, 7, 8

*Civil Code* § 1369.560(a)(3)..... 6

*Civil Code* § 1369.560(b)..... 6

*Civil Code* § 3479..... 10

*Civil Code* § 3482..... 8, 10

*Code of Civil Procedure* § 475..... 7, 8

1 *Vehicle Code* § 27200..... 8, 9, 11

2 *Vehicle Code* § 27206..... 8, 9, 11

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2  
3 The Demurrer of Defendant [REDACTED] (“Defendant”) sets forth a total of six  
4 separate grounds upon which it is claimed that the Demurrer should be sustained.<sup>1</sup> Each of these  
5 grounds is without merit.

6  
7 **1. The Lack of a Civil Code § 1369.560 Certificate.**

8 Defendant observes, correctly, that Plaintiffs failed to file a certificate under *Civil Code* §  
9 1369.560 at the time this action was commenced.<sup>2</sup> She argues that this renders the complaint  
10 demurrable; that the defect is incurable; and that therefore no leave to amend should be granted.

11 First, *Civil Code* § 1369.560(b) specifically provides that “Failure to file a certificate pursuant to  
12 subdivision (a) is grounds for a demurrer or a motion to strike *unless the court finds that dismissal of the*  
13 *action for failure to comply with this article would result in substantial prejudice to one of the parties.*”  
14 [Emphasis added] In this regard, it is important to note what the Certificate would have said had it been  
15 timely filed. Under *Civil Code* § 1369.560(a)(3), it would only have needed to recite that “Preliminary  
16 or temporary injunctive relief is necessary,” since both were requested in the Complaint. Defendant has  
17 thus not been prejudiced in the least by the failure to timely file the Certificate.<sup>3</sup> Plaintiffs, on the other  
18 hand, would suffer “substantial prejudice” within the meaning of *Civil Code* § 1369.560(b) were their  
19 action to now be dismissed. They have through great cost and expense managed to personally serve  
20 each of the named Defendants with all of the relevant pleadings in this action, despite Defendants’  
21 consistent efforts to evade service.<sup>4</sup> They have, also at substantial cost and defense, been forced to hire

22  
23 <sup>1</sup> The total of twenty-one grounds set forth at pp. 1-3 of the Demurrer overlap one another and, together, are predicated on a  
24 total of only six separate theories.

25 <sup>2</sup> Albeit not at the original inception of the action, the Certificate has now been prepared and filed concurrently herewith.

26 <sup>3</sup> Defendant disingenuously argues that “The requirement that a plaintiff first seek ‘ADR’ before filing an action to enforce  
27 CC&Rs is the equivalent of a notice of claim against a governmental entity under the various claims statutes or private  
28 contractual notice requirements.” Demurrer, at pp. 2-3. On the contrary, *Civil Code* § 1369.560(a) does not even *purport* to  
require ADR in cases where preliminary or temporary injunctive relief is being sought, as is the case in the action at bar. See  
*Civil Code* § 1369.560(a)(3).

<sup>4</sup> See the Declaration of [REDACTED] submitted concurrently herewith.

1 a private detective agency to discover the true name of the Defendant (who was initially named as a Doe  
2 Defendant), after prior counsel played “hide-the-ball” by refusing to disclose the name of his client.<sup>5</sup>  
3 They have been forced, again at their expense, to hire an expert witness qualified to testify regarding the  
4 area of noise and acoustics.<sup>6</sup> They have applied for and received both an Order to Show Cause in re  
5 Preliminary Injunction at the first hearing in this action, and the actual Preliminary Injunction itself at  
6 the second hearing. These results were the result of extensive preparation on Plaintiffs’ part including,  
7 besides preparing all of their moving papers, the procurement of enlarged aerial photographs depicting  
8 the condominium complex that is the subject of this action and the relative positions of all areas of  
9 importance that ultimately led to the granting of the Preliminary Injunction.<sup>7</sup> They have extended an  
10 extensive written settlement offer to both of the named Defendants, who have failed to reply in any  
11 fashion despite explicit offers to negotiate and discuss possible settlement terms.<sup>8</sup> When these efforts  
12 are weighed against the mere technical requirement that the Certificate should have been filed to recite  
13 only that preliminary and temporary injunctive relief were being sought – facts evident on the face of the  
14 Complaint itself – Defendant has suffered absolutely no prejudice, while Plaintiffs would suffer  
15 substantial prejudice were they to be forced to file a second, identical action following the dismissal of  
16 the action at bar.

17 Second, *Code of Civil Procedure* § 475 provides, in part, that: “The court *must*, in every stage of  
18 an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings  
19 which, in the opinion of said court, does not affect the substantial rights of the parties.” [Emphasis  
20 added] The same section later goes on to provide that: “There shall be no presumption that error is  
21 prejudicial, or that injury was done if error is shown.” The scenario with which the Court is now faced  
22 falls *exactly* into the types of error that Section 475 addresses. Clearly, Plaintiffs’ failure to file the *Civil*  
23 *Code* § 1369.560 Certificate at the inception of this action has not “...affect[ed] the substantial rights...”

---

24  
25 <sup>5</sup> See the Declaration of ██████████ submitted concurrently herewith.

26 <sup>6</sup> See the Declaration of ██████████ submitted concurrently herewith.

27 <sup>7</sup> See the Declaration of ██████████ submitted concurrently herewith.

28 <sup>8</sup> See the Declaration of ██████████ submitted concurrently herewith.

1 of Defendant. This is particularly true taking into account the fact that the Certificate would only have  
2 need recited what is obvious from the face of the Complaint itself – that preliminary or temporary  
3 injunctive relief was being sought.

4 Third, the Complaint contains a total of seven separate causes of action, each of which supports  
5 its own weight and can stand independently on its own grounds. The *Civil Code* § 1369.560  
6 requirement relates only to “enforcement actions” brought under the *Davis-Stirling Common Interest*  
7 *Development Act*. Of Plaintiffs’ seven separate causes of action, only the claim for enforcement of the  
8 Declaration of Covenants, Conditions & Restrictions (“CC&Rs”) falls within this category. Thus, even  
9 if the Court were to conclude that the failure to file the Certificate with the original complaint amounts  
10 to an incurable fatal defect, the Demurrer should at best be sustained solely with respect to the single  
11 cause of action for enforcement of the CC&Rs. None of Plaintiffs’ other claims fall under the *Davis-*  
12 *Stirling Common Interest Development Act* and, accordingly, the Demurrer should not extend to them.

13 Plaintiffs’ inadvertent failure to timely file the Civil Code § 1369.560 Certificate relating to one  
14 of their seven causes of action should and, under *Code of Civil Procedure* § 475, must be disregarded by  
15 the Court.

16  
17 **2. The Legislative Preemption Argument.**

18 Defendant next argues that “Due to the fact that the Legislature has preempted the field of noise  
19 emissions from licensed motor vehicles, under *Civil Code* § 3482 no nuisance can exist in regard to the  
20 within subject motor vehicle.” The cited statute provides that: “Nothing which is done or maintained  
21 under the express authority of a statute can be deemed a nuisance.” The gravamen of Defendant’s  
22 argument here is that because the Legislature has specified *allowable* noise levels for motor vehicles  
23 under *Vehicle Code* § 27206 (which specifically references *Vehicle Code* § 27200), the operation of  
24 Defendant’s automobile cannot constitute either a nuisance or a cognizable violation of Fountain  
25 Valley’s local noise ordinance because the noise levels it generates are not in violation of *Vehicle Code*  
26 § 27200. This argument is untenable for several reasons.

1 First, Section 27200 on its face is applicable only to new vehicles. Defendant's 1997 Mustang  
2 GT was purchased by her as a used vehicle.<sup>9</sup> Section 27200 at no point purports to regulate anything  
3 having to do with used vehicles.

4 Second, Section 27200 does not represent a Legislative incursion into the control of vehicles or  
5 their operation *after* they are sold. The statute merely regulates dealers and other sellers of new motor  
6 vehicles by providing that in order to lawfully make a sale, the subject vehicle must comply with the  
7 noise standards previously referenced as contained within Section 27206. Nothing in Section 27200,  
8 either expressly or by implication, grants the owners of vehicles carte blanche to, for example, rev up  
9 their engines at 3:00 o'clock in the morning two feet away from a neighbor's bedroom window. Yet  
10 Defendant in essence argues that as long as the vehicle was manufactured after 1974, this carte blanche  
11 is guaranteed as long as not more than 80 dbA (decibels) are produced. As the Court will recall from the  
12 expert witness' declaration submitted in connection with Plaintiff's application for a Preliminary  
13 Injunction, "...a level of 70 dB is approximately what one would expect to hear in a noisy restaurant, or  
14 listening to heavy traffic."<sup>10</sup> And the 80 dbA standard for which Defendant argues would be akin to  
15 standing next to a heavy, commercial-sized delivery truck with its engine running,<sup>11</sup> or a master  
16 generator revving its Honda engine,<sup>12</sup> or two arguing construction workers screaming at each other,<sup>13</sup> or  
17 an operating air compressor.<sup>14</sup> To argue that the Legislature intended to grant this sort of carte blanche  
18 when it enacted the dealer/seller requirements of *Vehicle Code* § 27200 is simply preposterous.  
19  
20

---

21 <sup>9</sup> See the Declaration of [REDACTED] submitted concurrently herewith.

22 <sup>10</sup> See the Declaration of [REDACTED], P.E., at p. 3, as heretofore filed in support of Plaintiffs' application for a  
23 Preliminary Injunction.

24 <sup>11</sup> See Exhibit "A" to the Declaration of [REDACTED], P.E., as heretofore filed in support of Plaintiffs' application for a  
25 Preliminary Injunction.

26 <sup>12</sup> See Exhibit "B" to the Declaration of [REDACTED], P.E., as heretofore filed in support of Plaintiffs' application for a  
27 Preliminary Injunction.

28 <sup>13</sup> See Exhibit "C" to the Declaration of [REDACTED], P.E., as heretofore filed in support of Plaintiffs' application for a  
Preliminary Injunction.

<sup>14</sup> See Exhibit "A" attached hereto.

1 Third, Defendant argues that under *Biber Electric Co. v. City of San Carlos* (1960) 181  
2 Cal.App.2d 342, "...unless express authority is granted, a local government has no authority to regulate  
3 or control any matter covered by the Vehicle Code."<sup>15</sup> Demurrer, at p. 5. The further argument, which  
4 Defendant contends is supported by *Lombardy v. Peter Kiewit Sons' Co.* (1968) 266 Cal.App.2d 599, is  
5 made that "...the decibel levels which plaintiffs contend in Paragraph 10 of their verified Complaint are  
6 generated by the subject automobile, are permitted by statute and, under Civil Code § 3482, as a matter  
7 of law, cannot be a nuisance."<sup>16</sup> This is emphatically **not** the correct interpretation of the law.

8 What **is** the correct interpretation and application was explained in *Jones v. Union Pacific*  
9 *Railroad Co.* (2000) 79 Cal.App.4<sup>th</sup> 1053, in which the court stated:

10 "Civil Code section 3482 provides: 'Nothing which is done or maintained  
11 under the express authority of a statute can be deemed a nuisance.'  
12 Section 3482 bars an action for nuisance 'where the alleged wrongful acts  
13 are expressly authorized by statute. The Supreme Court has 'consistently  
14 applied a narrow construction to section 3482 and to the principle therein  
15 embodied.' [Citation.] 'A statutory sanction cannot be pleaded in  
16 justification of acts which by the general rules of law constitute a  
17 nuisance, *unless the acts complained of are authorized by the express*  
18 *terms of the statute under which the justification is made, or by the*  
19 *plainest and most necessary implication from the powers expressly*  
20 *conferred, so that it can be fairly stated that the legislature contemplated*

---

21  
22  
23 <sup>15</sup> As observed by Plaintiffs' counsel during oral argument on the application for Preliminary Injunction, whether or not  
24 Fountain Valley's local noise ordinance is violated when Defendant operates her vehicle is nothing more than a side issue of  
25 passing interest. The fact that the City has selected 50 dbA as the permissible noise level before 7:00 a.m. points to the  
26 conclusion that, at least in the City's opinion, anything above 50 dbA is excessive. But Plaintiffs' claims in no way depend  
27 on the City's assessment. An act in contravention of a City ordinance might not, depending on the facts, constitute an  
28 actionable nuisance under *Civil Code* § 3479; likewise, an action not in contravention of a City ordinance might nevertheless,  
depending again on the facts, constitute an actionable nuisance. Defendant's focus on this issue is totally misplaced.

<sup>16</sup> This reasoning in *Lombardy* was expressly distinguished in *Greater Westchester Homeowners Assn. v. City of Los Angeles*  
(1979) 26 Cal.3d 86, in which the court stated that "...the Lombardy analysis of the laws therein presented does not persuade  
us that the Legislature intended that immunity from traditional nuisance liability is statutorily conferred. To the contrary, we  
hold that no such immunity derives from section 3482 or any other related federal or state statute."

1           *the doing of the very act which occasions the injury.*’ [Citations.]<sup>17</sup>  
2           (*Friends of H Street v. City of Sacramento* (1993) 20 Cal.App.4th 152,  
3           160.) Even though acts authorized by statute cannot give rise to nuisance  
4           liability, ‘the manner in which those acts are performed may constitute a  
5           nuisance.’ (*Ibid.*)” [Emphasis added]

6           Numerous cases have held that “A requirement of ‘express’ authorization embodied in the statute  
7           itself insures that an *unequivocal legislative intent to sanction a nuisance* will be effectuated...”  
8           [Emphasis added] *Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 291. See also, *Nestle v. City of*  
9           *Santa Monica* (1972) 6 Cal.3d 920, 938, fn. 16. Additionally, “...although an activity authorized by  
10          statute cannot be a nuisance, the manner in which the activity is performed may constitute a nuisance.”  
11          *Venuto v. Owens-Corning Fiberglass Corp.* (1971) 22 Cal.App.3d 116, 129. *Accord*, see *Bright v. East*  
12          *Side Mosquito etc. Dist.* (1959) 168 Cal.App.2d 7; *Snow v. Marian Realty Co.* (1971) 212 Cal. 622, 625;  
13          and *Ambrosini v. Alisal Sanitary Dist.* (1957) 154 Cal.App.2d 720, 727.

14          The question is thus: Does *Vehicle Code* § 27200, which in essence provides that dealers and  
15          sellers of new vehicles must make certain that their vehicles comply with the noise standards of *Vehicle*  
16          *Code* § 27206, totally preempt the entire long-established law regarding nuisances, such that the kind of  
17          *carte blanche* referred to earlier is immune from attack in the courts under all circumstances? Hardly.  
18          The actual rule is clearly that “...it is a well-settled principle of nuisance law that the adoption of the  
19          most approved appliances and methods of production does not justify the continuance of that which, in  
20          spite of them, remains a nuisance.” *Venuto, supra*, quoting *Miles v. A. Arena & Co.* (1941) 23  
21          Cal.App.2d 680, 684. Defendant’s vehicle and, moreover, the manner in which she has operated it, as  
22          has already been established by a preponderance of the evidence adduced at the hearing on Plaintiffs’  
23          application for a Preliminary Injunction, clearly fits within this rule.

---

28          <sup>17</sup> This not a new or novel concept. The italicized language quoted originally came from the holding in *Hassell v. San Francisco* (1938) 11 Cal.2d 168, quoting 46 C.J. at p. 674.

1 **3. Whether the Complaint’s Third Cause of Action for Specific Performance States Facts**  
2 **Sufficient to Constitute a Cause of Action as Against Defendant** [REDACTED]

3 Because Plaintiffs attached only one page of the CC&Rs to their Complaint as an exhibit rather  
4 than the entire voluminous document, which consists of dozens of pages, Defendant argues that “The  
5 plaintiffs’ Complaint fails to allege with anywhere enough clarity what exactly in the CC&Rs they  
6 wish to have ‘specifically enforced’ and what ‘precise act’ they contend this Court should order this  
7 defendant to do.” Once again, Defendant is off on the wrong track.

8 First, and certainly dispositive of Defendant’s claim, is the fact that the Third Cause of Action is  
9 not even directed toward the demurring Defendant, and on its face seeks absolutely no relief from her.  
10 The Third Cause of Action is unambiguously preceded by the phrase: “For Specific Performance of  
11 Covenants Running With the Land – As Against Defendant [REDACTED] Defendant Doe 2, and Defendant  
12 Does 3 through 15, inclusive.” Complaint, at p. 7. The demurring Defendant was originally named as  
13 “Doe 1,” and subsequently, once she was identified by name, added and served as [REDACTED]  
14 [REDACTED]. Since the cause of action in question seeks no remedy whatsoever against her, it is difficult  
15 to understand how Defendant believes that she has any standing or grounds upon which to demur.

16 Second, the page of the CC&Rs that is attached to the Complaint is the only portion of the  
17 document that references noise regulation. And the Complaint’s prayer for relief is plain and  
18 unambiguous. It asks “For a temporary restraining order, preliminary injunction, and permanent  
19 mandatory injunction as against Defendant [REDACTED] as well as against Defendants DOES 2 and DOES 3  
20 through 15, inclusive, providing for the enforcement of those provisions of the CC&Rs which relate to  
21 noise levels and which, under the circumstances, also relate directly to the continuing operation of the  
22 Automobile, as against Defendant [REDACTED] and further requiring Defendants DOE 2 and DOES 3  
23 through 15, inclusive, to enforce such provisions of the CC&Rs.” Complaint, at p. 13. It seems to be  
24 the gist of Defendant’s argument that the noise-related provisions of the CC&Rs are unclear or  
25 ambiguous. That may or may not be the case, but they are what they are – neither Plaintiffs nor  
26 Defendant had any hand in authoring them. Discerning the scope and intent of such documents is why  
27 we have Courts.

28 Third, if despite the fact that the Third Cause of Action has nothing to do with the demurring  
Defendant in the first place, the Court were to conclude that Defendant’s argument has any merit, a

1 simple remedy will be to grant leave to amend the Complaint by attaching the entire, voluminous, and  
2 irrelevant portions that comprise all of the CC&Rs as an exhibit thereto rather than the single page that  
3 has already been attached.  
4

5 **4. Defendant’s Argument That “Plaintiffs Fail to Plead Any Logical, Factual Connection**  
6 **Between the ‘Contract’ They Allege Has Been Violated and Their Claimed Damages.”**

7 Defendant once again seems to be confused about the nature of the claim being asserted against  
8 her. This portion of her argument refers only to paragraphs 30 and 31 of the Complaint (part of the  
9 Fourth Cause of Action), and alleges that the claim asserted by this portion of the Complaint is defective  
10 because it does not meet the standards for establishing a cause of action for breach of contract. All of  
11 the Demurrer’s argument regarding this issue references cases, secondary sources, and arguments that  
12 deal specifically with breach of contract claims. Demurrer, at pp. 9-10.

13 The problem is that the Fourth Cause of Action is for *negligence*, and has nothing whatsoever to  
14 do with any alleged *breach of contract*. Thus, this entire portion of the Demurrer is completely  
15 irrelevant to what Plaintiffs have pleaded (similar to the problem Defendant has encountered with the  
16 Third Cause of Action, in which the claim asserted therein with which Defendant takes issue is not even  
17 directed toward her).

18 That obvious *faux pas* aside, a brief word is in order regarding the sufficiency of Plaintiffs’ claim  
19 for negligence. “The elements of negligence are a defendant's legal duty to the plaintiff as a result of a  
20 standard of care, breach of the duty, and damages proximately caused by the breach. (*Merrill v.*  
21 *Navegar, Inc.* (2001) 26 Cal.4th 465, 477.)” *Cavagnaro v. Dolan Construction Co., Inc.*, C051004 (Cal.  
22 App. 5/10/2007) (Cal. App., 2007). The Complaint explicitly pleads each of these elements (existence  
23 of the legal duty and standard of care, ¶30 at p. 9; breach of the duty, ¶29 at p. 9; damages caused by the  
24 breach, ¶31 at p. 9).

25 Defendant’s irrelevant argument about a breach of contract claim that the Complaint does not  
26 even make is both without merit and – quite simply, totally unintelligible.  
27  
28

1 **5. Defendant’s Demurrers for Uncertainty and Unintelligibility.**

2 Defendant’s Demurrer does not even bother to argue how the Complaint is allegedly defective in  
3 the section dealing with its demurrers for uncertainty and unintelligibility. It merely recites that:

4 “A defendant may demur to the complaint when it appears on the face of  
5 the complaint or from any matter which the court is required to or may take  
6 judicial notice that the complaint is uncertain. Code of Civil Procedure §  
7 430.10(f), provides that a demurrer may be taken where, ‘the pleading is  
8 uncertain. As used in this subdivision, ‘uncertain’ includes ambiguous  
9 and unintelligible.”

10 True enough. *But that is where Defendant’s argument stops.* No reasoning or rationale arguing  
11 that this conclusory summary of the law even applies to the Complaint in any manner is offered.  
12 Demurrer, at p. 11. And Defendant’s earlier averments promising arguments to come that never came  
13 are likewise of no help. See, e.g., ¶5 of the Demurrer at p. 1 (“The Second Cause of Action of the  
14 plaintiffs’ Complaint is uncertain and unintelligible in each and all of the particulars delineated in the  
15 Memorandum of Points and Authorities filed and served herewith and incorporated herein by this  
16 reference.”). The problem is that the promised argument never gets subsequently made. This is true of  
17 all twenty-one of Defendant’s worthless “shotgun” statements (see Demurrer at pp. 1-3) that amount to  
18 nothing more than throwing proverbial sand in the air and, simultaneously, wasting this Court’s precious  
19 time and judicial resources for no good reason.

20  
21 **6. Conclusion.**

22 The Demurrer barely even rises above the level of a “sham pleading” and is completely  
23 unmeritorious. It should be overruled and Defendant instructed to file her verified Answer to the  
24 Complaint forthwith.

1 Dated: [REDACTED], 2007

2  
3 Respectfully submitted,

4 [REDACTED]

5  
6 [REDACTED] Attorney for  
7 Plaintiffs [REDACTED] and  
8 [REDACTED]

9 [REDACTED]  
10 California State Bar No. [REDACTED]

11 [REDACTED]  
12 [REDACTED]  
13 Attorneys at Law

14 [REDACTED], California [REDACTED]

15 Telephone: [REDACTED]

16 Telefax: [REDACTED]

17 E-Mail: [REDACTED]