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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RONALD C. EVANS, an individual; JOAN M. EVANS, an individual; DENNIS TREADAWAY, an individual; and all others similarly situated,

Plaintiffs,

v.

ZB, N.A., a national banking association, dba California Bank & Trust,

Defendant.

NO. 2:17-cv-01123 WBS DB

MEMORANDUM AND ORDER RE: MOTION TO DISMISS

Ronald C. Evans, Joan M. Evans, and Dennis Treadaway (collectively "plaintiffs") initiated this action on behalf of over fifty people against defendant ZB, N.A., a national banking association, doing business as California Bank & Trust ("CB&T"), for allegedly knowingly providing substantial assistance to a fraudulent scheme initiated by International Manufacturing Group, Inc. ("IMG"). Presently before the court is defendant's Motion to Dismiss plaintiffs' First Amended Complaint. (Docket No. 44).

I. Relevant Allegations and Procedural Background

1           IMG is a California corporation allegedly created to  
2 import latex surgical gloves and related medical products  
3 manufactured in Asia for resale in the United States. (Compl. ¶  
4 1 (Docket No. 42).) As has since been determined, IMG was  
5 operating a Ponzi scheme directed by its Chief Executive Officer,  
6 Deepal Wannakuwatte ("Wannakuwatte"), who has pled guilty to  
7 federal fraud charges and is serving twenty years in prison.  
8 (Compl. ¶¶ 78, 85.) IMG solicited investors by telling them  
9 their money would be used to purchase latex gloves from Asian  
10 manufacturers that would then be sold to IMG's purported  
11 customers. (Compl. ¶ 1.) In exchange for the money, IMG issued  
12 promissory notes. (Compl. ¶ 91.) The investors' funds were not,  
13 however, used for the intended purpose. (Compl. ¶ 6.) Instead,  
14 the funds were deposited at CB&T and used to pay back prior  
15 investors. (Compl. ¶ 24.)

16           Before October 2009, CB&T made nine loans to IMG.  
17 (Compl. ¶ 95.) CB&T monitored, on a daily basis, the deposits of  
18 investor money into IMG's accounts. (Compl. ¶ 24.) At the  
19 inception of the loans, the monthly interest was to be paid out  
20 of the IMG General Account #7631 with automatic debits. (Compl.  
21 ¶ 25.) However, the automatic debit process did not work because  
22 there were insufficient funds. (Id.) IMG accrued millions of  
23 dollars in overdraft fees at CB&T. (Id.)

24           Despite being aware of IMG's insufficient cashflow,  
25 over the course of their lending relationship, CB&T ignored IMG's  
26 defaults and waived late charges and interest penalties, granted  
27 20 maturity date extensions and 21 collateral swaps, adjusted  
28 loan rates of interest over 20 times, and accepted personal

1 guarantees from Wannakuwatte at least 7 times. (Compl. ¶¶ 58, 62,  
2 100.)

3 IMG had both cash investors as well as investors who  
4 provided Standby Letters of Credit ("SLOC's") in favor of CB&T.  
5 (Compl. ¶ 16). The purpose of each SLOC was for CB&T to finance  
6 and thereby monitor the manufacturing of medical gloves in Asia  
7 being purchased by IMG as part of IMG's business. (Compl. ¶ 19.)  
8 SLOCs were not intended to be direct loan payments to IMG. (Id.)  
9 After continued defaults by IMG, CB&T foreclosed on the SLOC  
10 pledged by a non-local investor. (Id.) CB&T, however, refused  
11 to foreclose on the security pledged by eight local Sacramento  
12 area SLOC investors. (Id.)

13 Sometime in 2009, but prior to October 2009, CB&T  
14 submitted "bogus" sales invoices to draw upon a \$9 million SLOC  
15 obtained by applicant Jamestown Health & Medical Supply, LLC from  
16 Bank of America for CB&T. (Compl. ¶¶ 63, 121.) In October 2009,  
17 CB&T gave notice to IMG that it was terminating further secured  
18 lending but would still allow IMG to deposit new investors' money  
19 into IMG's Wholesale Account #4841. (Compl. ¶ 29.) CB&T was  
20 repaid in full by February 2011. (Compl. ¶ 30.)

21 On January 21, 2014, one day after IMG filed for  
22 bankruptcy protection, Ronald Evans and his wife, Joan Evans,  
23 each invested \$50,000 with IMG. (Compl. ¶¶ 40, 48.) Between  
24 2007 and 2014, and presumably before IMG filed for bankruptcy on  
25 May 30, 2014, Dennis Treadaway invested more than \$2 million with  
26 IMG. (Compl. ¶ 49.) On May 8, 2014, Wannakuwatte pled guilty to  
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1 federal fraud charges.<sup>1</sup> On May 30, 2014, IMG and Wannakuwatte  
2 both declared bankruptcy. (Compl. ¶ 78.) On May 6, 2016, IMG's  
3 bankruptcy trustee filed a fraudulent conveyance action in the  
4 IMG Bankruptcy Proceeding against CB&T seeking to avoid and  
5 recover IMG's loan repayments on the loans. (Compl. ¶ 77, 84.)  
6 The trustee's complaint revealed facts about CB&T's confidential  
7 relationship with IMG. (Compl. ¶ 84.)

8 On May 26, 2017, plaintiffs filed this action against  
9 CB&T for allegedly aiding and abetting the torts of IMG. This  
10 court dismissed plaintiffs' complaint because it found that CB&T  
11 did not owe a duty to plaintiffs that would give rise to tort  
12 liability. (Mem. & Order at 2-3 (Docket No. 28).) Further, this  
13 court found that plaintiffs did not plead sufficient facts to  
14 give rise to a plausible inference that defendant knew IMG was  
15 misappropriating funds. (Id. at 3-4.)

16 The Ninth Circuit reversed. The court first found  
17 that, under California law, if a bank knowingly takes part in a  
18 fraud, it has a duty to "make good the loss that results from the  
19 misappropriation." (Mem., No. 18-15094, at 3 (Docket No. 37).)  
20 The court then found plausible plaintiffs' allegations that CB&T

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22 <sup>1</sup> The court takes judicial notice of Wannakuwatte's Plea  
23 Agreement. (Def.'s Req. for Judicial Notice in Supp. of Mot. to  
24 Dismiss, Ex. 1 (Docket No. 44-2).) District courts may take  
25 judicial notice of their own records, and documents that are  
26 public records and capable of accurate and ready confirmation by  
27 sources that cannot be reasonably questioned. United States v.  
28 Wilson, 631 F.2d 118, 119 (9th Cir. 1980). Wannakuwatte's Plea  
Agreement was entered in United States v. Deepal Wannakuwatte,  
Case No. 14-CR-00067 TLN (E.D.C.A.). Accordingly, because the  
Plea Agreement is part of a court record, this court may take  
judicial notice of it.

1 knew IMG's business "was a sham" because through its monitoring  
2 of the account, CB&T knew that IMG had "virtually no income from  
3 its latex glove import business." (Id. at 4.) It is also  
4 plausible, the court continued, that CB&T knew it IMG was  
5 misappropriating funds because CB&T knew it was being repaid with  
6 investor funds and not revenue. (Id. at 5.) Plaintiffs'  
7 allegations of CB&T's "atypical banking procedures" while IMG was  
8 in default were sufficient to allege that CB&T helped facilitate  
9 IMG's solicitation of cash. (Id. at 6.) The court thus found  
10 that plaintiffs plausibly stated three claims for relief: (1)  
11 aiding and abetting fraud; (2) breach of fiduciary duty; (3)  
12 conspiracy to commit fraud. (Id. at 8-9.) Because the question  
13 of whether the statute of limitations bars these claims  
14 "involve[s] factual determinations," the Ninth Circuit left it  
15 for this court to consider on remand. (Id. at 11.)

16 Plaintiffs filed a First Amended Complaint alleging six  
17 claims: (1) Aiding and Abetting Fraud; (2) Securities Fraud  
18 pursuant to California Corporations Code §§ 25110, 25401,  
19 25504.1; (3) Conspiracy to Commit Fraud; (4) Aiding and Abetting  
20 Breach of Fiduciary Duty; (5) Intentional Interference with  
21 Contract; and (6) violation of California Penal Code § 496.  
22 (Docket No. 42.) Defendant moves to dismiss all claims. (Docket  
23 No. 44.)

## 24 II. Request to Seal

25 As a preliminary matter, the court considers  
26 defendant's Request to Seal Ronald Evans and Treadaway's Victim  
27 Impact Statements (Ex. H), submitted on November 15, 2019.  
28 Pursuant to Local Rule 141(a), "[d]ocuments may be sealed only by

1 written order of the Court, upon the showing required by  
2 applicable law.” E.D. Cal. L.R. 141(a).

3 The documents at issue here appear to contain  
4 information which is sensitive and confidential. (See Declaration  
5 of Jarrett Osborne-Revis, Req. to Seal, Ex. H, at ¶ 8.) This  
6 information was designated “Confidential” in the accompanying  
7 criminal action. (Id. ¶ 6.) The information is not publicly  
8 available. (Id. ¶ 7.) Further, his information would invade the  
9 privacy of the individuals if this request to seal were not  
10 granted. (Req. to Seal at 4.) Accordingly, the court concludes  
11 that CB&T has presented “good cause” to rebut the presumption in  
12 favor of public access. See Kamakana v. City & Cty. of Honolulu,  
13 447 F.3d 1172, 1189 (9th Cir. 2006).

14 III. Legal Standard

15 On a Rule 12(b)(6) motion, the inquiry before the court  
16 is whether, accepting the well-pleaded allegations in the  
17 complaint as true and drawing all reasonable inferences in the  
18 plaintiff’s favor, the plaintiff has stated a claim to relief  
19 that is plausible on its face. See Ashcroft v. Iqbal, 556 U.S.  
20 662, 678 (2009). The court, however, is “not required to accept  
21 as true allegations . . . that are merely conclusory, unwarranted  
22 deductions of fact, or unreasonable inferences.” Seven Arts  
23 Filmed Entm't, Ltd. v. Content Media Corp. PLC, 733 F.3d 1251,  
24 1254 (9th Cir. 2013). “The plausibility standard is not akin to  
25 a ‘probability requirement,’ but it asks for more than a sheer  
26 possibility that a defendant has acted unlawfully.” Id.

27 IV. Statute of Limitations

28 A. Fraud Claims

1           The statute of limitations for actions “for relief on  
2 the ground of fraud” is three years. Cal Code. Civ. Proc. §§  
3 338(c)(1), (d); Hatch v. Collins, 225 Cal. 3d 1104, 1100 (1990).  
4 Thus, a plaintiff must bring a cause of action for aiding and  
5 abetting fraud, conspiracy to commit fraud, and aiding and  
6 abetting breach of fiduciary duty rooted in fraud, within three  
7 years after the cause of action accrues. Courts generally  
8 determine that accrual occurs when the cause of action is  
9 complete with all of its elements. Norgart v. Upjohn Co., 21  
10 Cal. 4th 383, 384 (1999). However, under the “discovery rule,”  
11 courts will postpone a cause of action’s accrual date until the  
12 plaintiff discovers, or has reason to discover, the cause of  
13 action. Id. In other words, the limitations period does not  
14 begin until “the plaintiff has notice or information of  
15 circumstances to put a reasonable person on inquiry” that the  
16 cause of action exists. Alexander v. Exxon Mobil, 219 Cal. App.  
17 4th 1236, 1251 (2d Dist. 2013).

18           Here, defendant argues that the statute of limitations  
19 began when Wannakuwatte pled guilty to wire fraud on May 8, 2014,  
20 or, at the latest, when Ronald Evans and Treadaway submitted  
21 their Victim Impact Statements on May 24, 2014. (Defs.’ Mot. to  
22 Dismiss at 22-23.) Because plaintiffs did not file their  
23 Complaint until May 26, 2017, defendant argues their claim for  
24 aiding and abetting fraud, as well as all other claims related to  
25 fraud, is time-barred. Plaintiffs contend that the plea  
26 agreement did not impute knowledge of the facts contained in it  
27 to plaintiffs on the date it was filed, and that even if  
28 plaintiffs had been aware of the plea agreement on May 8, 2014,

1 the plea agreement did not put plaintiffs on reasonable notice  
2 that they had in fact been injured by CB&T.

3           Claims against different defendants may accrue at  
4 different times. E-Fab, Inc. v. Accountants, Inc. Servs., 153  
5 Cal. App. 4th 1308, 1322 (6th Dist. 2007). "If a plaintiff's  
6 reasonable and diligent investigation discloses only one kind of  
7 wrongdoing when the injury was actually caused by tortious  
8 conduct of a wholly different sort, the discovery rule postpones  
9 accrual of the statute of limitations on the newly discovered  
10 claim." Fox v. Ethicon Endo-Surgery, Inc., 35 Cal. 4th 797, 813  
11 (2005). In this case, the question is whether "a reasonable  
12 investigation at the time would . . . have revealed a factual  
13 basis for that particular cause of action" against CB&T. Id. at  
14 803. The court therefore evaluates when plaintiff was first put  
15 on notice "of [CB&T's] independent wrongdoing." E-Fab, 153 Cal.  
16 App. 4th at 1323.

17           It is clear that plaintiffs knew of IMG's alleged  
18 fraudulent scheme by May 8, 2014, when Wannakuwatte pled guilty  
19 to committing wire fraud. In his guilty plea, Wannakuwatte  
20 admitted that he lied to his investors, and that he used  
21 investment money to pay himself, to make lulling payments, and to  
22 pay outstanding debts. (Osborne-Revis. Decl. ¶ 6, Ex. B, at 19-  
23 20.) Thus, by this date, at the latest, plaintiffs had at least  
24 inquiry notice of IMG's fraudulent conduct with respect to them,  
25 and therefore discovered, or at least had reason to discover,  
26 that a cause of action for fraud against IMG existed.

27           Wannakuwatte's admissions, however, describe only his  
28 and IMG's fraud, not CB&T's involvement in the fraud. The court



1 finds that plaintiffs were not on notice of CB&T's alleged  
2 involvement in the fraud until May 6, 2016, when the bankruptcy  
3 trustee disclosed previously unknown confidential information  
4 about IMG and CB&T's lending relationship in her fraudulent  
5 transfer complaint against CB&T. (See Compl. ¶ 84.) Indeed,  
6 even if plaintiffs wanted to inquire into IMG's relationship with  
7 CB&T, they could not because IMG and Wannakuwatte were subject to  
8 bankruptcy proceedings starting May 30, 2014. Further, upon  
9 review of the Victims' Impact Statements filed under seal, the  
10 court finds no suggestion in those statements that CB&T could be  
11 a willful participant in IMG's fraudulent scheme.

12 Defendants contend, however, that in a separate action  
13 between Bank of America (BoFA) and Jamestown Health & Medical  
14 Supply (JHMS) in Washington State court, a publicly filed  
15 pleading put plaintiffs on notice of CB&T's role in the fraud.  
16 (See Supp. of Mot. to Dismiss, Ex. J (Docket No. 47-3).)<sup>2</sup> On May  
17 12, 2011, JHMS filed a third-party complaint against IMG and  
18 Wannakuwatte. (See id., Ex. K.) Defendants argue that the  
19 pleading noted (1) that CB&T was IMG's lender, (2) that CB&T  
20 extended credit to IMG, (3) that BoFA informed JHMS that it would  
21 not renew the SLOC, and (4) that CB&T drew upon the \$9 million  
22 SLOC after BoFA accepted the JHMS purchase orders to IMG that  
23 CB&T submitted to BoFA. Notably, BoFA did not allege fraud.  
24 (See Defs.' Reply in Supp. of Mot. to Dismiss at 7-8 (Docket No.

25  
26 <sup>2</sup> The court takes judicial notice of Complaint, Bank of  
27 America v. Jamestown Health and Medical Supply Company, LLC, No.  
28 10-2-37091-9 SEA (Super. Ct. Wash. Oct. 10, 2011). Because the  
pleading is part of a court record, this court may take judicial  
notice of it. See supra at 3-4 n.1.

1 47).) Defendants argue that these facts give plaintiffs a reason  
2 to know CB&T was involved in IMG's fraud.

3 Those allegations did not put plaintiffs on notice that  
4 CB&T could be involved in IMG's multimillion-dollar Ponzi scheme.  
5 Those allegations involve ordinary business transactions and  
6 would not have been sufficient to plead a plausible cause of  
7 action for fraud with particularity against CB&T back in 2014.  
8 See Fed. R. Civ. P. 9(b). Further, the Ninth Circuit found that  
9 plaintiffs pled actual knowledge of fraudulent activity because  
10 CB&T allegedly monitored deposits, ignored IMG's multiple  
11 defaults, and conducted "atypical banking procedures." (Mem.,  
12 No. 18-15094, at 3-6). The information required for plaintiffs  
13 to make these allegations did not come to light until May 6,  
14 2016. (Compl. at ¶ 84.) Accordingly, plaintiffs had until May  
15 6, 2019, three years after plaintiff was first put on notice "of  
16 [CB&T's] independent wrongdoing," to file suit. See E-Fab, 153  
17 Cal. App. 4th at 1323. The fraud claims therefore are not time-  
18 barred.

19 B. Securities Fraud

20 Plaintiffs allege that defendant violated California  
21 Corporations Code § 25504.1. Section 25504.1 states that any  
22 person who materially assists in any violation of Corporations  
23 Code section 25401 or 25110, with the intent to deceive or  
24 defraud, is jointly and severally liable with any other person  
25 liable for a violation of those sections. Cal. Corp. Code. §  
26 25504.1. Plaintiffs concede that their claim under Section 25110  
27 is not timely. (Pls.' Opp. to Mot. to Dismiss at 18 (Docket No.  
28 46).) The court therefore evaluates only the claim under Section

1 25401.

2 Section 25401 makes it unlawful for any person, in  
3 connection with the offer or sale of a security, to directly or  
4 indirectly employ a scheme to defraud by making untrue statements  
5 of material fact or to omit a material fact necessary to make the  
6 statements made not misleading. Cal. Corp. Code. § 25401.  
7 Plaintiffs claim that CB&T materially assisted IMG in its  
8 violation of section 25401. (Compl. ¶ 146.) This claim must  
9 have been initiated “before the expiration of five years after  
10 the act or transaction constituting the violation or the  
11 expiration of two years after the discovery by the plaintiff of  
12 the facts constituting the violation, whichever shall first  
13 expire.” Cal. Corp. Code §§ 25501, 25506(b).

14 The Complaint was filed on May 26, 2017. Any of the  
15 claims stemming from acts that occurred before May 26, 2012 are  
16 time-barred based upon section 25506(b)'s five-year limitation  
17 period.<sup>3</sup> Plaintiffs specifically allege five ways in which CB&T  
18 assisted IMG's violation of Section 25401. (Compl. ¶ 146(a)-  
19 (e).) Some of those actions clearly occurred before May 26,  
20 2012 and some did not. For example, Ronald and Joan Evans  
21 invested in IMG in 2014, while Treadaway invested in IMG in a  
22 series of transactions from 2007 to 2014. (Compl. ¶ 40, 48, 49.)

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24 <sup>3</sup> The May 26, 2012 cutoff governs. As discussed above,  
25 plaintiff was unaware of CB&T's role in the scheme until May 6,  
26 2016, which would render an expiration date of May 6, 2018 under  
27 the statute's two-year limit. However, Section 25506(b) requires  
28 the court to observe the earliest date. Because the complaint  
was filed before May 6, 2018, any act within the five years prior  
to the filing of the complaint may sustain this action.

1 The court does not dismiss this claim insofar as it relies on  
2 deposits, check clearings, and investor referrals that occurred  
3 after May 26, 2012.

4 C. Intentional Interference with Contract

5 "California recognizes a cause of action against  
6 noncontracting parties who interfere with the performance of a  
7 contract." Redfearn v. Trader Joe's Co., 20 Cal. App. 5th 989,  
8 997 (2d Dist. 2018). Here, plaintiffs allege CB&T intentionally  
9 interfered with plaintiff's contracts with IMG by assisting IMG's  
10 use of the investors' money to pay other investors. (Compl. ¶  
11 160.) "The elements of a cause of action for intentional  
12 interference with contractual relations are '(1) the existence of  
13 a valid contract between the plaintiff and a third party; (2) the  
14 defendant's knowledge of that contract; (3) the defendant's  
15 intentional acts designed to induce a breach or disruption of the  
16 contractual relationship; (4) actual breach or disruption of the  
17 contractual relationship; and (5) resulting damage.'" Id.  
18 (quoting Reeves v. Hanlon, 33 Cal. 4th 1140, 1148 (2004)). The  
19 statute of limitations for intentional interference with  
20 contractual relations is two years. See Cal. Code Civ. P. §  
21 339(1); Trembath v. Digardi, 43 Cal. App. 3d 834, 836 (1st Dist.  
22 1974).

23 Plaintiff could not have pled this claim in 2014  
24 because information about CB&T's alleged "intentional acts" to  
25 disrupt IMG and plaintiffs' contractual relationship was not  
26 available to plaintiffs then. As discussed above, facts and  
27 allegations about CB&T's close monitoring of IMG's deposits and  
28 CB&T's atypical banking behavior to accommodate IMG's lack of

1 cash flow did not come to light until 2016. Even the Washington  
2 State Court pleading does not include allegations that CB&T did  
3 anything other than extend credit to IMG. Plaintiffs could not  
4 infer from the fact that CB&T, a bank, lent money to IMG that  
5 CB&T intended to disrupt the contracts between IMG and the  
6 investors. Because plaintiffs filed their complaint before May  
7 6, 2018, the claim is not time-barred.

8 D. Penal Code Violation

9 California Penal Code Section 496 prohibits the  
10 receiving of stolen property or any property "that has been  
11 obtained in any manner constituting theft." Cal. Penal Code §  
12 496(a). The fraudulent appropriation of property constitutes  
13 theft. Cal. Penal Code § 484. Any person who has been injured  
14 by a violation of the statute may bring an action for treble  
15 damages, costs of suit, and attorney's fees. Cal. Penal Code §  
16 496(c). To establish a claim for receipt of stolen property  
17 under Penal Code § 496(a), plaintiff must allege "(1) that the  
18 particular property was stolen, (2) that the accused received,  
19 concealed or withheld it from the owner thereof, and (3) that the  
20 accused knew that the property was stolen." Finton Constr., Inc.  
21 v. Bidna & Keys, APLC, 238 Cal. App. 4th 200, 213 (4th Dist.  
22 2015). The statute of limitations applicable to a Section 496  
23 claim is three years. Cal. Code Civ. Proc. §§ 338(c), (d); see  
24 Von Saher v. Norton Simon Museum of Art at Pasadena, 578 F.3d  
25 1016, 1029-30 (9th Cir. 2009).

26 Plaintiffs could not have filed a claim before May 6,  
27 2016 because plaintiffs did not have enough information to  
28 suspect that CB&T knew the money IMG deposited was stolen. The

1 Ninth Circuit found that plaintiffs' allegations that CB&T was  
2 aware of IMG's fraudulent scheme by 2009 were sufficient.  
3 However, the information that led plaintiffs to infer CB&T's  
4 awareness of the fraud, namely CB&T's close monitoring of  
5 deposits, ignorance of IMG's multiple defaults, and "atypical  
6 banking procedures" (Mem., No. 18-15094, at 3-6), did not come to  
7 light until the bankruptcy trustee filed the complaint against  
8 CB&T in 2016. Absent this information, plaintiffs had no  
9 information available that would lead them to conclude that, when  
10 IMG was depositing money into CB&T, CB&T knew that money had been  
11 fraudulently misappropriated. Plaintiffs needed further details  
12 on IMG's banking relationship with CB&T and CB&T's banking  
13 behavior. Accordingly, because plaintiffs filed their complaint  
14 within three years of May 6, 2016, this claim is timely.

15 In conclusion, all six of plaintiffs' claims are  
16 timely.

17 V. Sufficiency of the Pleadings

18 In addition to the statute-of-limitations challenges  
19 discussed above, defendants contest the sufficiency of the  
20 pleadings for plaintiffs' claims for aiding and abetting breach  
21 of fiduciary duty and intentional interference with contract.

22 A. Aiding and Abetting Breach of Fiduciary Duty

23 Plaintiffs allege defendant aided and abetted the  
24 breach of the fiduciary duty that Wannakuwatte owed to  
25 plaintiffs.<sup>4</sup> (Compl. ¶¶ 154-157.) Defendant argues that  
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27 <sup>4</sup> The Ninth Circuit concluded that CB&T owed plaintiffs a  
28 fiduciary duty but did not evaluate the relationship between IMG  
and plaintiffs.

1 Wannakuwatte owed plaintiffs no such duty.

2 A fiduciary duty is either "imposed by law" or  
3 "undertaken by agreement." Maglica v. Maglica, 66 Cal. App. 4th  
4 442, 447 (4th Dist. 1998). Plaintiffs do not allege that  
5 Wannakuwatte owed plaintiffs a fiduciary duty by law. Instead,  
6 plaintiffs rely on Wannakuwatte's closeness to the community from  
7 which he solicited funds to establish a fiduciary duty undertaken  
8 by agreement. (Compl. ¶ 156.)

9 "A fiduciary duty is undertaken by agreement, when one  
10 party enters into a 'confidential relationship' with another."  
11 Maglica, 66 Cal. App. 4th at 447. "A 'confidential relationship'  
12 imposing fiduciary duties does not arise every time two parties  
13 share confidences with one another." City Sols., Inc. v. Clear  
14 Channel Commc'ns, Inc., 201 F. Supp. 2d 1048, 1050 (N.D. Cal.  
15 2002). "The mere fact that in the course of their business  
16 relationships the parties reposed trust and confidence in each  
17 other does not impose any corresponding fiduciary duty." Id.  
18 (quoting Worldvision Enter., Inc. v. Am. Broad. Cos., Inc., 142  
19 Cal. App. 3d 589, 595 (2d Dist. 1983)). A "confidential  
20 relationship" arises only "where a confidence is reposed by one  
21 person in the integrity of another, and . . . the party in whom  
22 the confidence is reposed . . . voluntarily accepts or assumes to  
23 accept the confidence." Id. (quoting GAB Bus. Servs., Inc. v.  
24 Lindsey & Newsom Claim Servs., Inc., 83 Cal. App. 4th 409, 417  
25 (4th Dist. 2000)).

26 Plaintiffs allegations are insufficient to establish  
27 that Wannakuwatte undertook a fiduciary duty to IMG investors by  
28 agreement. Plaintiffs allegations about Wannakuwatte's

1 relationship with IMG investors describe only what the community  
2 in general thought of Wannakuwatte. (E.g., Compl. ¶ 156 (noting  
3 “the community’s clear substantive belief that Deepal” is  
4 trustworthy); id. (alleging that “people . . . looked up to  
5 Deepal as a respected ‘elder’”).) The complaint does not  
6 describe the relationship between Wannakuwatte and the IMG  
7 investors as one of “trust and confidence.” See Worldvision, 142  
8 Cal. App. 3d at 595. There are no allegations, for example, of  
9 plaintiffs entrusting Wannakuwatte with confidential information.  
10 Indeed, the complaint does not describe the specific  
11 relationships between actual investors and Wannakuwatte at all.  
12 Accordingly, the court finds that the complaint does not  
13 sufficiently allege a fiduciary duty and dismisses this claim  
14 with leave to amend.

15 B. Intentional Interference with Contract

16 As discussed above, to plead a claim for intentional  
17 interference with contract, plaintiff must plead facts plausibly  
18 showing that defendant CB&T actually knew about the contractual  
19 relationships between IMG and plaintiffs. Redfearn, 20 Cal. App.  
20 5th at 997.

21 The court finds that plaintiffs fails to plead  
22 sufficient facts to sustain this claim. Plaintiffs allegations  
23 do not satisfy the pleading standard because they are conclusory.  
24 See Seven Arts, 733 F.3d at 1254. Although the complaint asserts  
25 that “CB&T knew the specific terms, conditions and obligations  
26 articulated in each contract,” plaintiff alleges no fact that  
27 supports such a conclusion. (See Compl. ¶ 159.) The complaint  
28 does not establish how, when, or why CB&T acquired this



1 information. While plaintiffs do allege that plaintiffs  
2 deposited their investment money at CB&T (Compl. ¶¶ 33, 34, 50),  
3 such allegations do not give rise to the inference that CB&T knew  
4 the details of the contracts or that CB&T knew that a contract  
5 existed at all. The court will therefore dismiss this claim with  
6 leave to amend.

7 IT IS THEREFORE ORDERED that CB&T's Request to Seal Victim  
8 Impact Statements (Ex. H) be, and the same hereby is, GRANTED.

9 IT IS FURTHER ORDERED that defendant's Motion to Dismiss  
10 (Docket No. 44) be, and the same hereby is, GRANTED IN PART as to  
11 the following claims: (1) intentional interference with contract;  
12 and (2) aiding and abetting breach of fiduciary duty.

13 IT IS FURTHER ORDERED that defendant's Motion to Dismiss be,  
14 and the same hereby is, DENIED IN PART as to the following  
15 claims: (1) aiding and abetting fraud; (2) conspiracy to commit  
16 fraud; (3) securities fraud based on transactions or acts after  
17 May 26, 2012; and (4) violation of Penal Code § 496.

18 Plaintiff is given 14 days from the date this Order is filed  
19 to file a Second Amended Complaint if it can do so consistent  
20 with this Order, and the court can go through the tedious process  
21 of hearing another motion to dismiss that complaint.

22 Dated: December 18, 2019



23 **WILLIAM B. SHUBB**  
24 **UNITED STATES DISTRICT JUDGE**