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6  
7 Attorneys for Plaintiffs,  
8 JAMES WONG AND IRENE WONG,  
9 AS PERSONAL REPRESENTATIVES  
10 OF THE ESTATE OF ALAN CHUNG  
11 CHEUNG WONG; MAGGIE CHAN,  
12 MONA WONG, JAMES WONG, AND  
13 IRENE WONG AS SUCCESSOR  
14 TRUSTEES OF THE ALAN CHUNG  
15 CHEUNG WONG REVOCABLE TRUST

13 SUPERIOR COURT OF CALIFORNIA  
14 COUNTY OF SAN MATEO

16 JAMES WONG AND IRENE WONG, AS  
17 PERSONAL REPRESENTATIVES OF  
18 THE ESTATE OF ALAN CHUNG  
19 CHEUNG WONG; MAGGIE CHAN,  
20 MONA WONG, JAMES WONG, AND  
21 IRENE WONG AS SUCCESSOR  
22 TRUSTEES OF THE ALAN CHUNG  
23 CHEUNG WONG REVOCABLE TRUST,

21 Plaintiffs,

22 v.

24 AARON WONG AND TIANQI LIU, AS  
25 PERSONAL REPRESENTATIVES OF  
26 THE ESTATE OF SYLVIA TANG AND  
27 AS CO-TRUSTEES OF THE SYLVIA  
28 TANG TRUST; and DOES 1-20,

27 Defendants.

Case No. 17CIV05074

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' DEMURRER TO  
PLAINTIFFS' FIRST AMENDED  
COMPLAINT**

Date: October 3, 2022

Time: 2:00 p.m.

Dept.: 23

Judge: The Hon. V. Raymond Swope

Date Action Filed: Nov. 3, 2017

Trial Date: February 23, 2023

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1 **INTRODUCTION**

2 During the meet and confer process regarding Defendants’ instant demurrer to the  
3 operative pleading in this case, the First Amended Complaint (“1AC,”) Plaintiffs proposed an  
4 amended pleading, the Proposed Second Amended Complaint (“P2AC<sup>1</sup>,”) which contains  
5 nontrivial modifications and which Plaintiffs believe therefore address the deficiencies of the  
6 1AC identified by Defendants during the meet and confer process. Despite this, and knowing  
7 that Plaintiffs prepared an amended pleading addressing the deficiencies raised, the instant  
8 demurrer focuses solely on the 1AC and ignores the changes made in the P2AC. Because the  
9 P2AC addresses the deficiencies raised by Defendants with respect to the issues raised in this  
10 demurrer, and because Plaintiffs contend that they can state facts sufficient to constitute a cause  
11 of action, Plaintiffs respectfully request that they be granted leave to file the P2AC.

12 **STATEMENT OF FACTS**

13 A. The Order on the Motion for Judgment on the Pleadings.

14 Although Defendants’ demurrer does not inaccurately quote the Court’s order on the  
15 Motion for Judgment on the Pleadings (“MJOP,”) the demurrer fails to mention a key portion of  
16 the order—the section granting Plaintiff leave to amend. Specifically, the order reads “[t]o the  
17 extent that Plaintiffs might contend that “hold harmless” means “defend” against the Asian  
18 Square Action, Plaintiffs are granted leave to amend their complaint to add facts supporting that  
19 interpretation, because the Complaint as presently pleaded does not make that allegation.”  
20 (Cite.) Thus, despite what Defendants argue in the demurrer, there is no dispute that this Court  
21 specifically contemplated a situation where Plaintiff may be able to properly amend by “stat[ing]  
22 facts sufficient to constitute a cause of action” in this matter. And indeed, Plaintiffs’ P2AC adds  
23 facts supporting the interpretation, in essence following the order.

24 B. Asian Square, Inc.

25 Asian Square, Inc. (“Asian Square”) was formed in November 5, 1997. As its founder,  
26 Alan Wong owned 48.5% of its shares, and this was his sole and separate property. Sylvia Tang  
27

28 <sup>1</sup> The P2AC is attached as Exhibit A to the Declaration of Eric J. Sidebotham. The facts asserted  
in this opposition are allegations made in the P2AC.

1 owned, as her sole and separate property, 11% of the stock in Asian Square and Lap Tang, Sylvia  
2 Tang’s father, owned 27.5% of Asian Square. Given this, Alan Wong was clearly the largest  
3 shareholder—and thus in control—of Asian Square. Indeed, Alan Wong controlled more stock  
4 of Asian Square than both Sylvia Tang and Lap Tang combined.

5 Asian Square owned and operated a large commercial building located in San Jose,  
6 California, and received substantial cash flow in the form of rent. According to Asian Square’s  
7 2009 Form 1120S, Asian Square’s total assets (i.e., the real property) was valued at \$25 million.  
8 In 2013, Asian Square as an entity was conservatively valued at \$45 million.

9 C. The Equalizing Payment.

10 Alan Wong and Sylvia Tang were married on December 30, 1999. On December 14,  
11 2011, both Alan Wong and Sylvia Tang signed a Marital Settlement Agreement (“MSA”), in  
12 effect ending their marriage. The MSA was drafted by Sylvia Tang, and Sylvia Tang was  
13 represented by counsel during the negotiation, drafting and execution of the MSA; Alan Wong  
14 was *pro se* during the negotiation, drafting and execution of the MSA.

15 The MSA, among other things, divides property by and between Alan Wong and Sylvia  
16 Tang given the end of their marriage. The first section of the MSA is entitled “Property  
17 Statement and Equalizing Payment,” and includes only one “equalizing payment,” that “[b]ased  
18 on the division of assets and debts, the parties agree that Alan shall transfer to Sylvia, as and for  
19 an equalizing payment ... 100% of his 48.5% interest in Asian Square, Inc.” (Emphasis added.)  
20 Given the valuations of the company, Alan Wong’s interest in Asian Square was worth anywhere  
21 between \$12 million to \$21 million, and possibly even more. Typically speaking, an equalizing  
22 payment is made when one spouse receives something else of a similar value in exchange for  
23 something given up. Importantly, however, there is nothing on the face of the MSA which  
24 otherwise indicates what Alan Wong received, as part of his divorce, when he agreed to give  
25 Sylvia Tang an asset worth between \$12 million and \$21 million as an “equalizing payment.”  
26 For example, the only community asset identified in the MSA is the couple’s joint  
27 checking account with Wells Fargo Bank, which had a balance of \$54,721. Pursuant to Section  
28 1.4 of the MSA, however, the joint checking account “shall be divided equally between them...,”

1 meaning that Alan Wong did not receive anything additional relative to the only community  
2 asset. Further, under Section 3.1 of the MSA, both parties waived spousal support. According to  
3 Asian Square’s tax returns, in 2009 Sylvia Tang’s compensation as an officer was \$200,000;  
4 Alan Wong’s officer compensation for that same year was only \$75,000. In 2010, according to  
5 Asian Square’s tax returns, Sylvia Tang’s officer compensation was \$250,000, and Alan Wong’s  
6 was only \$120,000. In 2011, according to Asian Square’s tax returns, Alan Wong’s officer  
7 compensation was \$75,000, and Sylvia Tang’s was \$350,000. Thus, the waiver of spousal  
8 support did not benefit Alan Wong. Indeed, in waiving spousal support, it was Sylvia Tang who  
9 benefitted given that her income was substantially higher than Alan Wong’s.

10 Pursuant to Section 4.1 of the MSA, the parties were to “share jointly in the parenting  
11 rights and responsibilities relating to their minor child, Andrew.” Although the MSA does  
12 provide that the minor child is to reside “primarily” with Sylvia Tang, given the fact that she had  
13 substantially more income from Asian Square than did Alan Wong, child support (if any) would  
14 not have been substantial. But there are several things which would negate that benefit to Alan  
15 Wong. For example, Alan Wong was also required under the MSA to continue to provide health  
16 insurance for Andrew, (MSA § 5.3) Sylvia Tang was permitted to claim Andrew as a dependent  
17 for purposes of income taxes, and Alan Wong was obligated to pay for Andrew’s college. (MSA  
18 §§ 5.4 & 5.5.) As such, there was little to no benefit to Alan Wong in this area of the MSA.

19 Thus, it would appear on the face of the MSA that Alan Wong gave up nearly a 50%  
20 interest (which would have been a controlling interest) in a company was worth as much \$45  
21 million to Sylvia Tang, as an equalizing payment, and received nothing in exchange.

22 D. The “Other” Benefits to Alan Wong Under the MSA.

23 As set forth above, in exchange for the “equalizing payment” Alan Wong made to Sylvia  
24 Tang, which was worth as much as \$20 million, Alan Wong did not receive any asset or cash  
25 from Sylvia Tang of any material value. However, there are other non-economic benefits to  
26 Alan Wong in the MSA. Indeed, there is more to Section 1.7(a) of the MSA regarding the  
27 “equalizing payment.” In addition to Alan Wong transferring his entire interest in Asian Square  
28 to Sylvia Tang, Sylvia Tang agreed to receive his interest in Asian Square for which she is to

1 “assume sole and separate responsibility,” and, importantly, that Sylvia Tang is to “indemnify  
2 and hold Alan [Wong] harmless from any liabilities attendant thereto.” (Emphasis added.) In  
3 simple terms, Sylvia Tang received an asset worth about \$20 million and in exchange, she agreed  
4 assume any liabilities associated with that asset. Indeed, there are other provisions in the MSA  
5 that support and expand this obligation of Sylvia Tang.

6 For example, Section 1.6 states, “...the party owning the [separate] property will  
7 indemnify the other for any liability, attorney fees and related costs.” (Emphasis added.) Under  
8 the MSA, Sylvia Tang was to receive Alan Wong’s stock in Asian Square as her separate  
9 property. Additionally, Section 10.4 of the MSA states “[t]he property assigned as a result of  
10 [the MSA] is assigned subject to all existing encumbrances and liens on it. The assignee agrees  
11 to indemnify and hold the other party free and harmless from any claim or liability that the other  
12 party may suffer or may be required to pay because of these encumbrances or liens.” (Emphasis  
13 added.) Again, this would mean that Sylvia Tang took the Asian Square stock and in exchange  
14 was obligated to indemnify, hold Alan Wong harmless “from any claim or liability that the [he]  
15 may have suffer or may be required to pay because of these encumbrances or liens.”

16 Next, pursuant to the Section 6.1 of the MSA, “[i]f either party fails to perform or his or  
17 her respective obligations under this [MSA,] and the other is thereby required to incur legal fees  
18 and accounting fees, or other fees and costs, then either party shall be entitled to apply for a court  
19 of competent jurisdiction for recovery of such fees or costs against the other party.”

20 Finally, there are some important things that are not in the MSA. There is nothing in the  
21 MSA which expressly excludes or narrowly defines the duty to defend. Instead, as the above  
22 quoted language makes clear (language that Sylvia Tang drafted with the assistance of a lawyer),  
23 this obligation was intended to be broad. If it was the intention of the parties that this language  
24 be construed narrowly, Sylvia Tang was in a position to make that happen.

25 What is clear from the MSA is that Alan Wong gave to Sylvia Tang, as an equalizing  
26 payment, stock in Asian Square that was worth as much as \$20 million. There is nothing in the  
27 MSA which would constitute any direct economic benefit to Alan Wong in exchange. However,  
28 it is clear from the substantial language in the MSA (which was drafted by Sylvia Tang in a



1 setting in which only Sylvia Tang was represented by counsel) that there was an intention by and  
2 between the parties that Sylvia Tang was to cover any liabilities associated with Alan Wong,  
3 including loans of Asian Square to which Alan Wong may have been responsible.

4 E. The Context Supports the Notion that the Parties Intended Sylvia Tang's Obligations  
5 Under the MSA to Include the UCB Loan Debt.

6 Alan Wong passed away on June 15, 2013, and Sylvia Tang passed away on August 5,  
7 2013. Sylvia Tang's interest in Asian Square fell under the control of her successor trustees or  
8 personal representative, Aaron Wong (no relation) and Tianqi Liu (no relation). On March 12,  
9 2014, Asian Square filed suit against Alan Wong's trust and estate related to a substantial  
10 liability of Asian Square to United Commercial Bank ("UCB.") According to the original  
11 complaint, Asian Square asserted that on February 29, 2009, Alan Wong, who was the president  
12 and a member of the board of Asian Square at the time, borrowed under Asian Square's name  
13 and secured by Asian Square's real property, \$5,000,000 from UCB. The original complaint  
14 alleges that Alan Wong used the proceeds of the UCB loan for his personal benefit, and thus he  
15 was responsible for the loan. There was an issue, though. Given the timing of when the UCB  
16 loan had been taking out and the funds were spent, all of the claims of the lawsuit in 2014 were  
17 time barred. In a subsequent complaint, Asian Square admits that it (and thus Sylvia Tang)  
18 learned of the UCB loan in 2009. Indeed, discovery in that case revealed that Sylvia Tang  
19 learned of the UCB loan in March 2009.

20 Thus, there is no dispute that Sylvia Tang knew of the \$5 million UCB loan obligation of  
21 Asian Square and Alan Wong's role in that when she negotiated, drafted and signed the MSA  
22 and furthermore there is no dispute that, with this knowledge, Sylvia Tang as an equalizing  
23 payment was to receive Alan Wong's interest in Asian Square which was worth approximately  
24 \$20 million.<sup>2</sup> It is in this context that a court must consider the obligations of Sylvia Tang with  
25 \_\_\_\_\_

26 <sup>2</sup> In both this case and the Asian Square case, it is asserted that Alan Wong took out the UCB  
27 loan in Asian Square's name, appearing to suggest that the UCB loan was Alan Wong's personal  
28 liability. However, there is no evidence upon which this assertion is made. The UCB loan was  
taken out in Asian Square's name, and neither Asian Square nor Sylvia Tang (or her estate/trust,  
which now effectively controls Asian Square) have ever challenged this as a proper exercise of  
corporate authority, thus effectively conceding the point. Indeed, if this assertion had merit, then

1 respect to the “equalizing payment” made by Alan Wong. It is thereupon alleged that the parties  
2 broadly intended that Sylvia Tang would cover the UCB loan obligation as her sole and separate  
3 responsibility under the MSA in exchange for her receipt of Alan Wong’s Asian Square stock. It  
4 is thus asserted that, as a result, Sylvia Tang and/or her estate/trust, has not only a duty to  
5 indemnify Alan Wong’s trust and estate with respect to the claims asserted by Asian Square, but  
6 that Sylvia Tang and/or her estate/trust also has a duty to defend Alan Wong’s trust and estate  
7 with respect to the claims asserted by Asian Square.

8 F. Miscellaneous Issues Included in the P2AC.

9 In preparing the P2AC, Plaintiffs have identified a number of additional facts which  
10 support Plaintiffs claims. First, Defendants filed a civil lawsuit against Plaintiffs in 2014,  
11 seeking to force Plaintiffs to transfer the Asian Square stock to Defendants. In that lawsuit  
12 Defendants asserted that the transfer of the Asian Square stock under the MSA implicated both  
13 Sections 1.6 and 10.4 of the MSA. Plaintiffs also appear to allege that the obligations of Section  
14 1.7 of the MSA are broader than as asserted by Plaintiffs in the 1AC. Based on these prior  
15 allegations, Plaintiffs will contend that Defendants should be estopped from denying that both  
16 Sections 1.6 and 10.4 of the MSA, which include additional and broader obligations to  
17 indemnify and defend, apply to the equaling payment and the Asian Square stock. This is  
18 important because the P2AC asserts additional obligations of Defendants under the MSA than  
19 what is alleged in the 1AC.

20 Additionally, in the original Asian Square action, Asian Square asserted not only the  
21 UCB loan debt against Alan Wong (and his trust and estate), but also something called  
22 “additional unrepaid loans” of Alan Wong to Asian Square, in an amount of approximately  
23 \$900,000. Plaintiffs here defended that claim and judgment was issued upon it, and Asian  
24 Square never challenged that issue on appeal. Thus, Plaintiffs have indeed obtained a judgment  
25 in the Asian Square Action.

26 G. The Parties are Working on Consolidating This Action with the Asian Square Action.

27  
28 \_\_\_\_\_  
Asian Square would have disputed the debt with UCB directly. The UCB loan is, therefore, an  
obligation of Asian Square.

1 At the joint Case Management Conference held on August 8, 2022, the court ordered  
2 counsel for the parties to this action and the Asian Square Action to meet and confer regarding  
3 consolidation of the cases. Plaintiffs thereupon expect this case and the Asian Square Action to  
4 be consolidated, at which time some or all of the issues identified by Defendants in the instant  
5 demurrer could be handled via case management orders or a bifurcation motion.

6 **LEGAL ARGUMENT**

7 A. Standard for a Demurrer.

8 “It is not the ordinary function of a demurrer to test the truth of the plaintiff’s allegations  
9 or the accuracy with which he describes the defendant’s conduct. A demurrer tests only the legal  
10 sufficiency of the pleading.’ Thus, as noted, ‘the facts alleged in the pleading are deemed to be  
11 true, however improbable they may be.’” *Align Technology, Inc. v. Tran* (2009) 179  
12 Cal.App.4th 949, 958. “On demurrer, all reasonable inferences are drawn in favor of the  
13 plaintiff.” *Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th 935, 952. “Where  
14 an ambiguous contract is the basis of an action, it is proper, if not essential, for a plaintiff to  
15 allege its own construction of the agreement. So long as the pleading does not place a clearly  
16 erroneous construction upon the provisions of the contract, in passing upon the sufficiency of the  
17 complaint, we must accept as correct plaintiff’s allegations as to the meaning of the agreement.”  
18 *Marina Tenants Assn. v. Deauville Marina Development Co.* (1986) 181 Cal.App.3d 122, 128.  
19 “Courts may not turn a demurrer into a contested evidentiary matter by determining what the  
20 ‘proper interpretation’ of the evidence” is.” *Panterra GP, Inc. v. Superior Court* (2022) 74  
21 Cal.App.5th 697, 711.

22 In ruling on a demurrer or a motion for judgment on the pleadings, leave to amend should  
23 be granted if there is any reasonable possibility that the plaintiff can state a good cause of action.  
24 *Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1852. Indeed, under the  
25 code, a demurrer should be granted only if the complaint does not state sufficient facts for any  
26 cause of action, regardless if it’s the one specified in the pleading. *See Cellular Plus, Inc. v.*  
27 *Superior Court* (1993) 14 Cal.App.4th 1224, 1231 (“it is error for a court to sustain a demurrer  
28 where the allegations adequately state a cause of action under any legal theory.”) If the

1 complaint states a cause of action under any theory, regardless of the title under which the  
2 factual basis for relief is stated, that aspect of the complaint is good against a demurrer.” *San*  
3 *Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 425.

4 B. Plaintiffs’ Construction of the MSA Is Not Clearly Erroneous.

5 Under California law, in order to plead a cause of action for breach of contract, a plaintiff  
6 must allege: (1) a contract, (2) the plaintiff’s performance or excuse for non-performance, (3)  
7 the defendant’s breach, and (4) damages to the plaintiff from the defendant’s breach. *Walsh v.*  
8 *W. Valley Mission Cmty. Coll. Dist.* (1998) 66 Cal. App. 4th 1532, 1545. In *Queen Villas*  
9 *Homeowners Assn. v. TCB Property Management* (2007) 149 Cal. App. 4th 1, the court held that  
10 a contractual obligation to “hold harmless” was distinct from an obligation to “indemnify.”  
11 Specifically, it found that an obligation to “hold harmless” was a defensive right—“the right not  
12 to be bothered.” *Queen Villas Homeowners Assn.*, 149 Cal. App. 4th at 9. Finally, pursuant to  
13 *United States Elevator Corp. v. Pacific Investment Co.* (1994) 30 Cal.App.4th 122, 128 (which  
14 addresses the obligations under Civ. Code § 2778, subdivision 4) an indemnitor has the duty to  
15 defend until “the question of liability [is] adjudicated.” (Internal citations omitted.)

16 The MSA, undisputedly a written contract, puts three obligations on Defendants. First,  
17 which Defendants have acknowledged, Section 1.7(a) includes an obligation to indemnify.  
18 (FAC, ¶ 8.) However, this same provision also includes an obligation by Sylvia Tang to “hold  
19 [Alan Wong] harmless.” This is the right “not to be bothered.” *Queen Villas Homeowners Assn.*,  
20 149 Cal. App. 4th at 9. Section 1.7 of the MSA also provides that Sylvia Tang’s receipt of  
21 Alan’s interest in Asian Square is “subject to all liabilities attendant thereto,” and that Sylvia  
22 Tang “shall assume sole and separate responsibility” for said liabilities. (Id.) The P2AC alleges  
23 that Defendants have breached the MSA by failing to “assume sole and separate responsibility”  
24 for said liabilities, namely the UCB obligation and thus the claims asserted in the Asian Square  
25 Action.

26 Unlike the 1AC, the P2AC then asserts that other provisions of the MSA obligate  
27 Defendants to not only indemnify Plaintiffs relative to the Asian Square Action, but also to  
28 defend Plaintiffs relative to the Asian Square Action. This is based on Sections 1.6, 1.7 and 10.4

1 of the MSA. This also triggers the attorneys’ fees obligation under Section 6.1 of the MSA.  
2 Additionally, the P2AC provides the context under which the intentions of the parties with  
3 respect to the obligations set forth in the MSA, and that these intentions support the notion that  
4 the obligation to indemnify was not to be narrowly construed as set forth under Civ. Code §  
5 2778.1 as only upon “becoming liable,” but instead broadly to cover any claims that might be  
6 asserted against Alan Wong relative to Asian Square. Next, it is appropriate to note that  
7 Plaintiffs did indeed obtain a favorable judgment with respect to “other liabilities” as asserted in  
8 the Asian Square Action, and that judgment was never challenged on appeal and thus still stands.  
9 Finally, given the MSA’s juxtaposition of the terms “indemnify” with “hold harmless,” and  
10 based on the contextual facts asserted in the P2AC, it is more than reasonable to infer that the  
11 parties intended that Sylvia Wong would incur two separate and distinct obligations with her  
12 receipt of the Asian Square interest. In the absence of a clear definition of what the obligation to  
13 “hold harmless” entails, especially given that Sylvia Tang was the only one represented by  
14 counsel and given that she is the drafter of the MSA, Plaintiffs’ construction that this obligation  
15 includes the obligation to defend Plaintiffs or pay for the cost of their defense is reasonable and  
16 not clearly erroneous.

17 Plaintiffs easily satisfy the low bar for pleading Breach of Contract in the P2AC. The  
18 First Cause of Action, asserting breach of contract by Defendants, alleges that Alan Wong and  
19 Sylvia Tang entered into an agreement, the MSA. It is alleged that Plaintiffs have fully  
20 performed under the MSA except for those obligations which have been excused. Next,  
21 Plaintiffs allege that Defendants have breached the MSA by failing to indemnify and hold  
22 harmless, including defend, Plaintiffs. Finally, Plaintiffs’ First Cause of Action alleges that  
23 Plaintiffs’ have been damaged as a result of the breach.

24 At this stage of litigation where the court is obligated to treat the facts and the  
25 construction of the terms of the MSA as pled by Plaintiffs as true, if the demurrer to the First  
26 Causes of Action is sustained, Plaintiffs should be granted leave to file the P2AC.

27 C. The Second Cause of Action of the P2AC States Facts Sufficient to Constitute a  
28 Cause of Action Against Defendants.

1 For the reasons set forth above, the obligations of Defendants with respect to the MSA in  
2 the P2AC are broader than as asserted under the 1AC and include, for instance the obligation of  
3 Defendants to defend Plaintiffs relative to the Asian Square Action. Thus, for the same reasons  
4 that the First Cause of Action of the P2AC states facts sufficient to constitute a cause of action  
5 against Defendants, so too does the Second Cause of action in the P2AC.

6 D. Defendants’ Active Negligence & Intentional Conduct Argument is *Still Without*  
7 Merit.

8 In its motion for judgment on the pleading, Defendants asserted that indemnity is  
9 inapplicable in this case on the factual assertion that Alan Wong engage in “active negligence or  
10 intentional conduct.” Although this court did grant the motion for judgment on the pleading, the  
11 court did not rule favorably on this argument. The fundamental problem with the argument is  
12 that there is no basis upon which Defendants can assert that Alan Wong engaged in “active  
13 negligence or intentional misconduct.” For example, Asian Square never asserted that Alan  
14 Wong act of taking out the UCB loan was not an authorized action by Alan Wong as president of  
15 Asian Square. But even if it did, according to the operative pleading in the Asian Square action,  
16 in order to avoid statute of limitations problems in that case, Asian Square has had to assert that  
17 in 2009, Alan Wong and Asian Square entered into an “implied-in-fact agreement that Alan  
18 would pay back the loan” and that “as a result, Alan would not face civil or other legal  
19 consequences to his action.” (Asian Square Action, Sixth Amended Complaint, ¶ 10.) Thus,  
20 according to Asian Square, there was an agreement between Alan Wong and Asian Square  
21 (which Sylvia Tang would have necessarily been involved with) regarding the UCB loan at the  
22 time that Alan Wong and Sylvia Tang entered into the MSA. The obligation to indemnify and  
23 defend under the MSA occurred *after* Alan Wong’s conduct was amicably resolved between  
24 Asian Square and Alan Wong.

25 Additionally, as Plaintiffs successfully argued in the motion for judgment on the  
26 pleading, the Civil Code makes a sharp distinction between indemnification, generally, and  
27 indemnification in construction or manufacturing contexts. *Compare* Civ. Code §§ 2772-2779  
28 *with* Civ. Code §§ 2782-2784.5. Generally speaking, the California legislature differentiates

1 indemnity in these contexts from indemnity, generally, on public policy grounds. Where  
2 Defendants go astray is that their analysis regarding indemnity against active negligence and  
3 intentional acts is focused on cases that deal with construction and manufacturing contracts.  
4 Such cases are inapplicable to the present lawsuit, and given that the Code specifically allows for  
5 indemnity for intentional acts, Defendants' argument here misses the point.

6 E. Plaintiffs Have Stated a Claim for Implied Indemnity.

7 As an initial matter, Plaintiffs' claim for implied indemnity does not fail solely because  
8 the complaint also asserts a claim for express indemnity based on the MSA. "[T]he modern  
9 practice allows [a] party to plead in the alternative and make inconsistent allegations... The  
10 plaintiff remains free to allege any and all 'inconsistent counts' that a reasonable attorney would  
11 find legally tenable on the basis of the facts known to the plaintiff at the time." *Newport Harbor*  
12 *Ventures, LLC v. Morris Cerullo World Evangelism* (2016) 6 Cal.App.5th 1207, 1222-1223.  
13 Although Plaintiffs contend that the MSA does in fact cover the conduct sought to be  
14 indemnified against, Plaintiffs recognize that the court may find otherwise. To protect itself,  
15 Plaintiffs included the implied indemnity claim as an alternative claim for the same relief sought.  
16 The Third Cause of Action should not be excluded on the basis that it contradicts the other  
17 claims.

18 Moreover, Plaintiffs have pled more than sufficient facts to constitute a cause of action  
19 for implied indemnity. Implied contractual indemnity is a form of equitable indemnity, "the  
20 rationale ... being that a contract under which the indemnitor undertook to do work or perform  
21 services necessarily implied an obligation to do the work involved in a proper manner and to  
22 discharge foreseeable damages resulting from improper performance." *West v. Superior Court*  
23 (1994) 27 Cal.App.4th 1625, 1633. "Implied contractual indemnity is based on the premise that  
24 a contractual obligation to perform carries with it an implied agreement to indemnify and to  
25 discharge foreseeable damages resulting from negligent performance." *Bear Creek Planning*  
26 *Comm. v. Title Ins. & Trust Co.* (1985) 164 Cal. App. 3d 1227, 1237.

27 The basis for implied indemnity would be based on the additional facts pled in the P2AC:  
28 that Alan Wong agreed, as part of an equalizing payment in his dissolution proceedings with

1 Sylvia Tang, to give Sylvia Tang his entire interest in Asian Square, which was at the time worth  
2 significantly more than \$5 million, in exchange for Sylvia Tang agreeing to take any and all  
3 liabilities of Alan Wong’s related to Asian Square, including without limitation having Sylvia  
4 Tang assuming as her sole and separate obligation, the UCB debt. Alan Wong received nothing  
5 else listed under the MSA for an equalizing payment, as everything else in the MSA benefitted  
6 Sylvia Tang.

7 The parties expressly agreed to a very broad indemnity, duty to defend and hold harmless  
8 provision relative to any asset transferred under the MSA. It is undisputed that both parties  
9 would have known of the UCB obligation at the time of entering into the MSA, and thus it is  
10 reasonable to assume that parties specifically contemplated any such obligation as being  
11 something that Sylvia Tang alone would assume. Within the context of the language of the MSA  
12 regarding the interest transfer, this implies that the parties intended for any liability for the UCB  
13 obligation to pass along with the interest itself. Given the apparently heavily one-sided  
14 redistribution of assets in favor of Sylvia Tang, it is reasonable to infer that an inherent term of  
15 their agreement was that Sylvia (or her estate) would not turn around and use the controlling  
16 interest in Asian Square to cause the company to sue Alan (or his estate) over a liability for  
17 which Sylvia had expressly assumed sole responsibility. The P2AC’s facts as pled would  
18 support this inference, which at the demurrer stage suffices to require the court to agree with the  
19 inference for purposes of determining whether a claim has been properly stated. Leave to amend  
20 as to this claim is also warranted.

21 *i. Prematurity*

22 Defendants briefly argue that this claim too is premature because Plaintiffs have not yet  
23 paid anything to Asian Square because of that lawsuit and thus there is nothing to indemnify.  
24 This misses two points. First, under the P2AC, it is alleged that Plaintiffs obtained a judgment in  
25 the Asian Square case as to the “other liabilities.” This judgment is sufficient to impose a current  
26 obligation on Defendant to indemnify, and therefore a basis for Plaintiffs to assert their claim of  
27 attorney’s fees against Defendants in this cation. Second, in the P2AC, the obligations of Sylvia  
28 Tang (and thus Defendants) is alleged to be broader than just indemnity, and is to include things



1 such as a duty to defend.

2 F. Plaintiffs Should Be Given Leave to Amend.

3 Plaintiffs recognize the deficiencies in the 1AC, and thus, via the meet and confer  
4 process, have not only determined a basis to challenge the demurrer, but have gone so far as  
5 having prepared an amended pleading which demonstrates its ability to state facts sufficient to  
6 constitute a cause of action against Defendants. Thus, Plaintiffs respectfully request leave.

7 “If the complaint, as liberally construed, can state a cause of action under any legal  
8 theory, it survives demurrer.” *Centex Homes v. St. Paul Fire & Marine Ins. Co.* (2015) 237  
9 Cal.App.4th 23, 28. Plaintiffs clearly have a meritorious claim against Defendants that should be  
10 allowed to move forward on the merits.

11 **CONCLUSION**

12 As the P2AC makes clear, in the MSA, Sylvia Tang received an asset worth as much as  
13 \$20 million, as an equalizing payment. The only reasonable explanation for this—the only  
14 exchanged benefit that Alan Wong received, was Sylvia Tang’s broad agreement to also cover  
15 any liabilities that exist with respect to Alan Wong’s interest in Asian Square. There is no  
16 dispute that both parties were well aware of what that meant when they signed the MSA—it was  
17 the \$5 million UCB loan.

18 Now that Alan Wong and Sylvia Tang have passed away, Defendants are trying to have  
19 their cake and eat it too. It is alleged in the P2AC that this is not what the parties agreed to when  
20 they signed the MSA.

21 For the reasons set forth above, Plaintiffs respectfully request leave to file the P2AC.

22  
23 Dated: September 19, 2022

PARR LAW GROUP

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27 ERIC J. SIDEBOTHAM  
28 Attorney for Plaintiffs,  
JAMES WONG AND IRENE WONG,  
AS PERSONAL REPRESENTATIVES

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OF THE ESTATE OF ALAN CHUNG  
CHEUNG WONG; MAGGIE CHAN,  
MONA WONG, JAMES WONG, AND  
IRENE WONG AS SUCCESSOR  
TRUSTEES OF THE ALAN CHUNG  
CHEUNG WONG REVOCABLE TRUST