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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES
13

14 JENNIFER MCBRIDE,

15 Plaintiff,

16 v.

17 STEFANI J. GERMANOTTA and DOES 1 to
18 100, inclusive,

19 Defendants.

CASE NO. 23STCV04105

**DEFENDANT STEFANI J.
GERMANOTTA'S NOTICE OF
DEMURRER AND DEMURRER TO
PLAINTIFF'S COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

ASSIGNED FOR ALL PURPOSES TO:
HON. HOLLY J. FUJIE
DEPARTMENT 56

*[Declaration of Greta Williams; Request for
Judicial Notice; and Proposed Orders filed
concurrently]*

HEARING:

Date: July 10, 2023
Time: 8:30 a.m.
Dept: 36

RES ID: 662348765238

Action Filed: February 24, 2023
Trial Date: None Set

1 **TO PLAINTIFF JENNIFER MCBRIDE AND HER ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 10, 2023, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Department 57 of the above-captioned Court, located at 111 North Hill Street
4 in Los Angeles, California, Defendant Stefani J. Germanotta will, and hereby does demur, pursuant to
5 section 430.10(e) of the Code of Civil Procedure, to the Complaint filed by Plaintiff Jennifer McBride
6 on each of the following grounds:

7 Defendant generally demurs to the Complaint on the ground that it fails to state facts sufficient
8 to satisfy the elements of any cause of action because judicially noticeable records of this Court prove
9 that Plaintiff knowingly received Defendant’s stolen dogs before purporting to “return” those same
10 dogs, all while expressly disclaiming any intent to collect a reward she now alleges she is owed.
11 (Request for Judicial Notice (“RJN”), Exs. 1–4.) Defendant generally demurs to the first Cause of
12 Action for Breach of Contract because no contract was ever formed and, in the alternative, any such
13 contract would be void and unenforceable. (See Pen. Code, § 496.) Defendant generally demurs to
14 the second and third Causes of Action for Fraud by False Promise and Fraud by Misrepresentation,
15 respectively, because Plaintiff’s prior statements to this Court foreclose the possibility that she relied
16 on any alleged promises or misrepresentations by Defendant and because she cannot allege that she
17 suffered damages by returning the stolen dogs to their rightful owner. Accordingly, the Complaint fails
18 to state any viable causes of action, and the Court should sustain Defendant’s Demurrer. (See Code
19 Civ. Proc., § 430.10, subd. (e).)

20 Pursuant to Code of Civil Procedure Section 430.41, subdivision (a)(3), on May 19, 2023,
21 counsel for both parties met and conferred to discuss the grounds for Defendant’s Demurrer, but were
22 unable to resolve the matter. (See Declaration of Greta B. Williams, ¶¶ 2–3.)

23 This Demurrer is based upon this Notice of Demurrer and Demurrer, and the accompanying
24 Memorandum of Points and Authorities, Request for Judicial Notice, Declaration of Greta B. Williams,
25 all pleadings, papers, and records in these actions, all other matters of which judicial notice may be
26 taken, and all other evidence and oral argument as may be presented at the hearing on this Demurrer.
27
28

1 DATED: June 8, 2023

2 GIBSON, DUNN & CRUTCHER LLP

3
4 By: /s/ Greta B. Williams
Greta B. Williams

5
6 Attorneys for Defendant Stefani J. Germanotta

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jennifer McBride seeks to profit from her participation in a crime. The law does not
4 allow a person to commit a crime and then profit from it. California law and public policy are clear:
5 “[n]o one can take advantage of [her] own wrong.” (Civ. Code, § 3517.) Since this policy became law
6 in 1872, courts have consistently refused to “lend their assistance to a party who seeks compensation
7 for an illegal act.” (*Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, 150.) This is a textbook
8 case for application of this fundamental pillar of California law. The Court should sustain the
9 Demurrer.

10 On the evening of February 24, 2021, Ryan Fischer was walking Defendant’s three French
11 Bulldogs when he was attacked by three armed assailants. Mr. Fischer was beaten, strangled, and shot
12 in the chest with a semi-automatic weapon. The attackers then fled the scene with two of the dogs,
13 leaving Mr. Fischer to die bleeding out on the sidewalk. Mr. Fischer fortunately survived this brutal
14 attack. Two of Mr. Fischer’s assailants were later convicted of robbery, and the gunman was convicted
15 of attempted murder.

16 Two days after her dogs were stolen, Defendant tweeted that she would pay \$500,000 for the
17 safe return of her stolen dogs. That same day, February 26, 2021, Plaintiff brought the dogs to the Los
18 Angeles Police Department (“LAPD”), and they were later returned to Defendant. At the time, Plaintiff
19 said that she was a Good Samaritan who happened upon the dogs on the street by chance and “had no
20 idea” that they belonged to Defendant. In truth, Plaintiff had been a direct and knowing participant in
21 the criminal enterprise. After her story collapsed under scrutiny from the Los Angeles Police
22 Department, she was promptly arrested and ultimately convicted of a felony for knowingly receiving
23 stolen property. (RJN, Exs. 2, 4.)

24 Plaintiff now demands to be rewarded for her role in the conspiracy—to the tune of at least
25 \$1,500,000. Fundamentally, each of Plaintiff’s claims fail as a matter of law because judicially
26 noticeable Court records confirm that Plaintiff knew that Defendant’s dogs were stolen before she
27 purported to “find” and “return” them. Plaintiff’s breach of contract claim fails because she previously
28 disclaimed the existence of any contract between her and Defendant for the payment of the reward

1 money and, even if she had not, any such contract would be void and unenforceable for multiple
2 reasons. Likewise, Plaintiff's fraud claims fail because she does not (and cannot) allege that she relied
3 on any promises or misrepresentations, or that she suffered any damages, when she returned
4 Defendant's dogs—which did not belong to her and which she knew to be stolen. Finally, even if
5 Plaintiff's claims were actionable, the California legislature has already ensured that she will never see
6 a penny from this lawsuit. In fact, Plaintiff would owe Defendant at least three times the value of any
7 recovery here pursuant to the same stolen property statute under which she was convicted just six
8 months ago. (See Pen. Code, § 496(c).)

9 For these reasons, and as discussed further below, the Demurrer must be sustained.

10 II. STATEMENT OF FACTS

11 A. Plaintiff's Accomplices Commit A Robbery And Attempted Murder

12 Defendant owns three French Bulldogs. (RJN, Ex. 1 at pp. 16–17.) On February 24, 2021, Mr.
13 Fischer was pet-sitting for Defendant while she was out of town. (*Id.*) At approximately 9:00 p.m.,
14 Mr. Fischer took the dogs for their evening walk. (*Id.* at p. 18.) On their way home, a white Nissan
15 Sentra screeched to a halt beside them and two men jumped out. (*Id.* at pp. 20, 49.) One of the men
16 pulled a semi-automatic handgun on Mr. Fischer and demanded that he give them the dogs. (Compl.
17 ¶ 10; RJN, Ex. 1 at p. 21.) When Mr. Fischer refused, the second man threw him into a concrete
18 embankment and began choking him. (RJN, Ex. 1 at p. 21.) When Mr. Fischer tried to fight back, the
19 man with the gun shot him in the chest. (*Id.*) The men threw two of the dogs into the car and fled,
20 leaving Mr. Fischer and the third dog behind. (Compl. ¶ 10; RJN, Ex. 1 at p. 21.) When the police
21 arrived at the crime scene, Mr. Fischer was lying in a pool of blood. (RJN, Ex. 1 at p. 31.) He was
22 rushed to the hospital and received emergency treatment for his gunshot wounds, broken ribs, and a
23 collapsed lung. (*Id.* at pp. 23–24.) He remained in the hospital for three weeks. (*Id.*)

24 B. Plaintiff Joins The Conspiracy—Which Quickly Falls Apart

25 Mr. Fischer's attackers were later identified as Jaylin White, James Howard Jackson, and
26 Lafayette Whaley. (*Ibid.*) Approximately two hours after the shooting, they brought the two dogs to
27 the home of Jaylin White's father—Harold White. (*Id.* at p. 137.) Plaintiff and Harold White are long-
28 time friends. (*Id.* at pp. 83, 90–93, 95–97.)

1 Two days later, Defendant posted on social media that she would pay \$500,000 for the safe
2 return of her stolen dogs. (Compl. ¶ 13.) Within hours, Plaintiff came forward and brought the dogs
3 to the LAPD, claiming that she had “found” them on the street. (*Id.* ¶ 14; RJN, Ex. 1 at p. 55.) When
4 questioned by LAPD Detective Chris Marsden, Plaintiff explained that she was sitting in her car near
5 her home when she noticed the dogs, which had been tied to a street pole and abandoned. (RJN, Ex. 1
6 at p. 56.) She also said she had no idea the dogs belonged to Defendant at the time. (*Id.*) None of this
7 was true.

8 When Detective Marsden reviewed video footage from surveillance cameras in the area where
9 Plaintiff purportedly “found” the dogs, he discovered that Plaintiff had *not* been sitting in her car. (*Id.*
10 at pp. 58–59.) Instead, Plaintiff could be seen pacing up and down both sides of the street, looking
11 around for something (or someone), and consulting a pair of cell phones that she held in each hand.
12 (*Id.*) This went on for approximately 30 minutes. (*Id.*) Eventually, a Jeep pulled up and parked next
13 to the curb. (*Id.* at p. 60.) The driver got out of the vehicle with the two dogs, tied them to a pole, and
14 drove away. (*Id.*) As this was happening, Plaintiff made a beeline for the Jeep and collected the dogs.
15 (*Id.*) Detectives later discovered that the Jeep had been rented by Kimberly Sutton, another friend of
16 Harold White. (*Id.* at pp. 62–63, 89–90.) Mr. White’s phone records showed multiple outgoing calls
17 to Ms. Sutton between the morning after the robbery and shortly before Ms. Sutton’s Jeep was used to
18 leave Defendant’s dogs for Plaintiff to “find.” (*Id.* at pp. 111–112.)

19 Detectives quickly pieced together this scheme and arrested all of the implicated individuals—
20 including Plaintiff. (*Id.* at p. 118.) In addition to the aforementioned evidence tying Plaintiff to the
21 crime, jailhouse recordings of Plaintiff’s accomplices placed her squarely within the inner circle of the
22 conspiracy. After they were arrested, Jaylin White (the man who choked Mr. Fischer) and James
23 Howard Jackson (the man who shot Mr. Fischer) were placed in adjacent cells. During a legally
24 recorded conversation, Mr. White lamented that detectives had arrested “everybody” and even
25 identified Plaintiff by name. (*Id.* at p. 187–188.)

26 **C. Plaintiff Is Prosecuted And Convicted For Her Role In The Conspiracy**

27 Following her arrest, Plaintiff was indicted with two felonies: Accessory After the Fact (Pen.
28 Code, § 32) and Receiving Stolen Property Exceeding \$950 in Value (Pen. Code, § 496(a).) (RJN,

1 Ex. 2.) On January 17, 2022, Plaintiff filed an unsuccessful motion to set aside her indictments. (RJN,
2 Ex. 3.) In her accompanying memorandum of points and authorities—which was filed on the record
3 of this Court—Plaintiff insisted that she had “innocent intent” when she returned the dogs to Defendant
4 because she “never sought or requested a reward.” (*Id.* at p. 6.)

5 Ultimately, Plaintiff pleaded Nolo Contendere to Receiving Stolen Property. (RJN, Ex. 4.)¹
6 On December 21, 2022, she was convicted and sentenced to two years of probation. (*Id.*)

7 **D. Plaintiff Seeks To Profit From Her Crime By Filing This Lawsuit**

8 On February 24, 2023—barely two months after her felony conviction—Plaintiff filed this
9 lawsuit. (*See Compl.*) The thrust of Plaintiff’s Complaint is that, even though she actively participated
10 in the theft of Defendant’s dogs, she is entitled to recover the \$500,000 reward (plus treble damages)
11 for giving them back. She asserts one cause of action for Breach of Contract and two nearly identical
12 causes of action for Fraud by False Promise and Fraud by Misrepresentation. For the reasons discussed
13 below, Defendant demurs to each cause of action.

14 **III. LEGAL STANDARD**

15 A demurrer “test[s] the sufficiency of a complaint by raising questions of law,” including
16 “whether the complaint states facts sufficient to constitute a cause of action.” (*Award Metals, Inc. v.*
17 *Super. Ct.* (1991) 228 Cal.App.3d 1128, 1131.) To survive a demurrer, “a pleading must contain factual
18 allegations supporting the existence of all the essential elements” of the causes of action asserted
19 therein. (*Mobley v. L.A. Unified School District* (2001) 90 Cal.App.4th 1221, 1239.) While courts
20 “assume the truth of all facts properly pleaded,” they disregard “contentions, deductions or conclusions
21 of fact or law.” (*Cansino v. Bank of Am.* (2014) 224 Cal.App.4th 1462, 1468; accord *WA Sw. 2, LLC*
22 *v. First Am. Title Ins. Co.* (2015) 240 Cal.App.4th 148, 151.)

23 Courts are not required to assume the truth of allegations that are “contradicted by judicially
24 noticed facts.” (*Cansino, supra*, 224 Cal.App.4th at p. 1468; accord *Hoffman v. Smithwoods RV Park,*
25 *LLC* (2009) 179 Cal.App.4th 390, 400 [“Under the doctrine of truthful pleading, the courts will not
26 close their eyes to situations where a complaint contains allegations . . . contrary to facts which are
27 judicially noticed.”].) This rule reflects the principle that “the pleader should not be allowed to bypass
28

¹ Prosecutors dismissed the Accessory-After-the-Fact-charge pursuant to a plea agreement. (*Id.*)

1 a demurrer by suppressing facts which the court will judicially notice.” (*Legg v. Mutual Benefit Health*
2 & *Accident Assn.* (1960) 184 Cal.App.2d 482, 488.)

3 Courts sustain demurrers without leave to amend where, as here, there is no “reasonable
4 possibility that the defect can be cured by amendment.” (*Lin v. Coronado* (2014) 232 Cal.App.4th 696,
5 701; *City of Pomona v. Super. Ct.* (2001) 89 Cal.App.4th 793, 800; accord *Blank v. Kirwan* (1985) 39
6 Cal.3d 311, 318.) The party opposing the demurrer bears the burden of showing that amendment would
7 cure the defect. (*Heritage Pacific Finance, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 994; *Hervey*
8 *v. Mercury Casualty Co.* (2010) 185 Cal.App.4th 954, 960–961; *Goodman v. Kennedy* (1976) 18 Cal.3d
9 335, 349.)

10 IV. ARGUMENT

11 Plaintiff’s Complaint omits her participation in the theft of Defendant’s dogs. The Complaint
12 also alleges facts that are flatly contradicted by Plaintiff’s previous judicial admissions.

13 A. Plaintiff’s Claim For Breach Of Contract Fails As A Matter of Law

14 The “essential elements” of a claim of breach of contract are: (1) the existence of a valid and
15 enforceable contract, (2) the plaintiff’s performance, (3) the defendant’s breach, and (4) resulting
16 damages. (*San Mateo Union High School District v. County of San Mateo* (2013) 213 Cal.App.4th
17 418, 439.) Plaintiff’s claim fails at the very first element.

18 1. Plaintiff Disclaimed The Existence Of A Unilateral Contract

19 It is hornbook law that all contracts—both bilateral and unilateral—require mutual assent of the
20 parties to be enforceable. (See Civ. Code, § 1550.) In other words, both parties must actually intend
21 to accept an alleged contract. (See *Village Northridge Homeowners Assn. v. State Farm Fire &*
22 *Casualty Co.* (2010) 50 Cal.4th 913, 921 [a contract that lacks mutual assent is void].)

23 Plaintiff claims that Defendant made a “unilateral offer to pay [a] reward of \$500,000.00” for
24 the safe return of her stolen dogs. But by Plaintiff’s own admission, she did not intend to accept that
25 offer when she returned the dogs. In filings before this Court, Plaintiff declared that she “never sought”
26 to collect a reward. (RJN, Ex. 3 at p. 6.) This repudiation is fatal to her contract claim. For over a
27 century, California courts have recognized that: “If [a party] did not do the acts upon which he now
28 bases his right to recover, with the intention of claiming the reward in the event of his accomplishing

1 what would entitle him to it, he cannot recover it.” (*Hewitt v. Anderson*, (1880) 56 Cal. 476, 477 [“We
2 are not aware of any case in which it has been held that a party, after disclaiming any intention to claim
3 a reward, could recover it.”].)² This longstanding rule is “supported by the great weight of authority.”
4 (1 Williston on Contracts (rev. ed. 1936) § 33 [“If one person expects to buy, and the other to give,
5 there can hardly be found mutual assent.”]; see also *Glover v. Jewish War Veterans of U.S., Post No.*
6 *58* (D.C. 1949) 68 A.2d 233, 234 [“[T]here can be no contract unless the claimant . . . knew of the offer
7 of the reward and acted with the intention of accepting such offer.”].)

8 Plaintiff’s previous representations to this Court foreclose her breach of contract claim.
9 Because she unequivocally disclaimed any intention to accept Defendant’s alleged offer (RJN, Ex. 3
10 at p. 6), there was no mutual assent necessary to form a valid contract. The Court should take Plaintiff
11 at her word. (See *Merced County Sheriff’s Employee’s Assn. v. County of Merced* (1987) 188
12 Cal.App.3d 662, 671 [manifestations of assent (or lack thereof) are determined by a party’s “written or
13 spoken words”] [quoting Rest.2d Contracts, § 19].)

14 2. The Alleged Contract Is Void And Unenforceable

15 Even if Plaintiff had accepted Defendant’s alleged offer, the resulting contract would be invalid
16 as a matter of law. It is well-settled that “No one can take advantage of [her] own wrong.” (Civ. Code,
17 § 3517.) “Under this maxim[,] it has been uniformly held that a person who is connected with an
18 alleged theft, either as a participator in the felonious taking, or in the concealing of the stolen goods,
19 cannot recover a reward offered for their return.” (*Board of Commissioners of Clinton County v. Davis*
20 (Ind. 1904) 69 N.E. 680, 683; see also *Commonwealth v. Geagan* (Mass. 1959) 159 N.E.2d 870, 887
21 [explaining that “a participant in the crime [cannot] become a participant in the reward”].)

22 In this case, Plaintiff was convicted as a participant in the conspiracy to steal Defendant’s dogs.
23 (RJN, Ex. 4.) She cannot now enforce a “contract” binding Defendant to pay a ransom for their safe
24 return. (See Civ. Code, § 1608 [“If any part of a [contract’s] consideration is unlawful, the entire
25

26 ² The California Supreme Court’s holding in *Hewitt* remains good law. (See 55 Cal.Jur.3d Rewards,
27 § 13 [May 2023 Update] [“There can be no recovery for acts done without any intention of claiming
28 the reward even where the person doing the act had knowledge of the offer.”]; see also *Altamirano*
v. Matsu, LLC (C.D. Cal. Sept. 26, 2012) 2012 WL 13164153, at *6 [citing *Hewitt* for similar
proposition that “if an offeree has no knowledge of an offer, no act by the offeree can constitute
acceptance”].)

1 contract is void.”]; see also *id.*, § 1670.5 [courts may refuse to enforce a contract that was
2 “unconscionable at the time it was made”].) Indeed, such a contract would directly violate California’s
3 express public interest in “eliminating markets for stolen property.” (*Bell v. Feibush* (2013) 212
4 Cal.App.4th 1041, 1047; see also Civ. Code, § 1689(b)(6) [courts may refuse to enforce a contract if
5 “the public interest will be prejudiced by permitting the contract to stand”].) This principle applies
6 with extra force in this case because the theft of Defendant’s dogs was facilitated by a violent gun crime
7 that left one man nearly dead.³

8 Put simply, if a plaintiff “cannot open [her] case without showing that [she] has broken the law,
9 the court will not assist [her].” (*Lee On v. Long* (1951) 37 Cal.2d 499, 502.) It is beyond dispute that
10 Plaintiff broke the law when she knowingly took possession of Defendant’s stolen dogs. (RJN, Ex. 4.)
11 Because this crime laid the “groundwork” for Plaintiff’s claims arising from the return of the same
12 stolen dogs, those claims must be dismissed. (*Lee On, supra*, 37 Cal.2d at 502.)

13 **B. Plaintiff’s Fraud Claims Are Equally Meritless**

14 The Complaint’s second and third causes of action assert claims for fraud by false promise and
15 fraud by misrepresentation, respectively. The elements of both claims are virtually identical, such that
16 Plaintiff must allege: (1) a promise or representation; (2) made without intent to perform or with
17 knowledge of its falsity; (3) intent to defraud; (4) reasonable and justifiable reliance; and (5) resulting
18 damages. (See *Behnke v. State Farm General Ins. Co.* (2011) 196 Cal.App.4th 1443, 1453 [false
19 promise]; *Lazar v. Super. Ct.* (1996) 12 Cal.4th 631, 638 [misrepresentation].) “Each element must be
20 alleged with particularity.” (*Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1060.)

21 As an initial matter, Plaintiff’s fraud claims fail for the same reasons as her contract claim—
22 California courts refuse to “lend their assistance to a party who seeks compensation for an illegal act.”
23 (*Lewis & Queen, supra*, 48 Cal.2d at 150; see also RJN, Ex. 4.) And, as discussed above, Plaintiff has
24 already acknowledged that she “never sought or requested a reward” when she returned the stolen dogs.
25 (RJN, Ex. 3 at p. 6.) Therefore, she cannot now claim that she acted in reliance upon any alleged

26 ³ California’s public policy against allowing people to profit from their participation in a crime is
27 also reflected in the statute Plaintiff violated when she knowingly received Defendant’s stolen dogs,
28 California Penal Code § 496(a). “Any person who has been injured by a violation” of that statute
“may bring an action for three times the amount of actual damages, if any, sustained by the [injured
party, including] costs of suit, and reasonable attorney’s fees.” (Pen. Code, § 496(c).)

1 promises or representations from Defendant. (See *Engalla v. Permanente Medical Group, Inc.* (1997)
2 15 Cal.4th 951, 976 [“Actual reliance occurs when a misrepresentation is an immediate cause of [the
3 plaintiff’s] conduct.”].)

4 Plaintiff’s fraud claims fail for the additional reason that she has not suffered any damages. “It
5 is axiomatic that fraud without damage is not actionable, and a complaint charging fraud without
6 damage fails to state a cause of action.” (*Billings v. Farm Development Co.* (1925) 74 Cal.App. 254,
7 259 [rejecting fraud claim where there was “no specific allegation of injury . . . and nothing from which
8 injury might be inferred”]; see also *Nagy v. Nagy* (1989) 210 Cal.App.3d 1262, 1268 [“Fraudulent
9 representations which work no damage cannot give rise to an action at law.”].)

10 Plaintiff’s conclusory allegation that she suffered “compensatory damages” in the amount of
11 \$500,000—that is, the full value of Defendant’s alleged promise—rests on a fundamental
12 misunderstanding of the law. “The proper measure of damages in fraud actions under California law
13 . . . is ‘out-of-pocket’ damages.” (*In re First Alliance Mortgage Co.* (9th Cir. 2006) 471 F.3d 977,
14 1001 [citing *Fragale v. Faulkner* (2003) 110 Cal.App.4th 229, 236]; see also Civ. Code, § 3343.) Out-
15 of-pocket damages “restore[] a plaintiff to the financial position [she] enjoyed prior to the fraudulent
16 transaction, awarding the difference in actual value between what the plaintiff gave and what [she]
17 received.” (*Fragale, supra*, 11 Cal.4th at p. 236.) In this case, Plaintiff lost nothing financially by
18 returning the stolen dogs to their rightful owner. (See *Barstow v. Savage Mining Co.* (1883) 64 Cal.
19 388, 391 [“It is well known . . . that a thief acquires no title to the stolen property, and that he can pass
20 none.”]; see also *Regent Alliance Ltd. v. Rabizadeh* (2014) 231 Cal.App.4th 1177, 1182 [“[I]t is
21 universally held that [one who receives stolen property] acquires no title to such property as against
22 the owner.”] [quoting *Swim v. Wilson* (1891) 90 Cal. 126, 129]; Civ. Code, § 2224 [“One who gains a
23 thing by [a] wrongful act [is] an involuntary trustee of the thing gained, for the benefit of the person
24 who would otherwise have had it.”].) Because Plaintiff had nothing to give, she cannot complain that
25 she received nothing in return. Therefore, she has not alleged any out-of-pocket damages as a result
26 of the supposed fraud.

27 Nor has Plaintiff alleged any other actionable damages. Instead, Plaintiff claims that *she*
28 experienced “pain and suffering,” “mental anguish,” and “loss of enjoyment of life” as a result of her

1 involvement in the robbery. (Compl. ¶¶ 25, 34.) Even if that were true, “mental distress is not an
2 element of damages for fraud.” (*O’Neil v. Spillane* (1975) 45 Cal.App.3d 147, 159.) “[S]uch damages
3 have been allowed only as an aggravation of other damages.” (*Nagy, supra*, 210 Cal.App.3d at p.
4 1269.) Where, as here, a plaintiff fails to plead “any legally recognizable damages, damages for
5 emotional distress alone are not recoverable.” (*Id.*)⁴

6 Thus, because Plaintiff comes to Court with unclean hands, makes allegations that are directly
7 contradicted by her own representations to this Court, and cannot allege that she was injured by
8 returning property that she knew to be stolen, the law requires her claims for fraud be dismissed.

9 **C. Any Recovery By Plaintiff Would Be Negated By Restitution**

10 As discussed above, Plaintiff has already been convicted of receiving stolen property in
11 violation of California Penal Code § 496(a) and cannot profit from her crime. (RJN, Ex. 4.) Consistent
12 with the prohibitions against a perpetrator of a crime benefitting from the crime, the California
13 legislature has also empowered prosecutors to claw back moneys earned by a person through
14 commission of a crime. (See Cal. Const., art. I, § 28(c)(1).)

15 In fact, District Attorney Michele Hanisee, who prosecuted McBride, has already stated
16 publicly that any recovery Plaintiff obtained in this action would be seized as restitution for Defendant:

17 “It was clear from the evidence presented to the grand jury that Ms. McBride knew the
18 dogs have been stolen in a violent robbery in which Ryan Fischer had been grievously
19 injured. It was also clear from the evidence that McBride had known at least two of her
20 co-conspirators for years . . . **If [Defendant] suffers a financial loss by paying that
21 reward, she will qualify as a victim of crime under California law, and the people
22 will be obligated by law to seek restitution in court for that loss from each and
23 every defendant in the case.**”⁵

24 Therefore, even if Plaintiff were to recover damages in this action, she could be ordered to pay
25 restitution to Defendant. (See Cal. Const., art. I, § 28(c)(1) [“Restitution shall be ordered from the
26 convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime
27 victim suffers a loss.”]; Pen. Code, § 1202.4(a)(1) [“It is the intent of the Legislature that a victim of

28 _____
⁴ And, of course, Plaintiff’s claim for treble damages fails for the same reason.

⁵ (See Davis et al., Woman charged in connection with dognapping Lady Gaga’s pets sues her for \$500,000 reward, NBC News (Feb. 26, 2023) <<https://www.nbcnews.com/news/us-news/woman-charged-connection-dognapping-lady-gagas-pets-sues-musician-5000-rcna72381>> [as of June 8, 2023] [emphasis added].)

1 crime who incurs an economic loss as a result of the commission of a crime shall receive restitution
2 directly from a defendant convicted of that crime.”]; *id.*, § 1202.4(f) [“The court shall order full
3 restitution.”].)

4 When the California legislature authorized courts to order restitution in these circumstances,
5 they guaranteed that people who commit crimes could never profit from those crimes. This additional
6 statutory mechanism only confirms that this Court should dismiss Plaintiff’s claims with prejudice.

7 **V. CONCLUSION**

8 For the foregoing reasons, Defendant respectfully requests that the Court sustain her Demurrer
9 and dismiss Plaintiff’s Complaint without leave to amend.

10 DATED: June 8, 2023

11 GIBSON, DUNN & CRUTCHER LLP

12
13 By: /s/ Greta B. Williams
14 Greta B. Williams

15 Attorneys for Defendant Stefani J. Germanotta
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Court Reservation Receipt

Reservation	
Reservation ID: 662348765238	Status: RESERVED
Reservation Type: Demurrer - without Motion to Strike	Number of Motions: 1
Case Number: 23STCV04105	Case Title: JENNIFER MCBRIDE vs STEFANI J. GERMANOTTA
Filing Party: Stefani J. Germanotta (Defendant)	Location: Stanley Mosk Courthouse - Department 56
Date/Time: July 10th 2023, 8:30AM	Confirmation Code: CR-7ANJRFRZNAKIFJCCR

Fees			
Description	Fee	Qty	Amount
Reschedule Fee	20.00	1	20.00
Credit Card Percentage Fee (2.75%)	0.55	1	0.55
TOTAL			\$20.55

Payment	
Amount: \$20.55	Type: Visa
Account Number: XXXX0086	Authorization: 00341D
Payment Date: 2023-06-07	

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Filing Party: Stefani J. Germanotta (Defendant)	Location: Stanley Mosk Courthouse - Department 56
Date/Time: June 27th 2023, 8:30AM	Confirmation Code: CR-YMNUAWUTK7FZ4Z2SR

Fees			
Description	Fee	Qty	Amount
First Paper Fees (Unlimited Civil)	435.00	1	435.00
Credit Card Percentage Fee (2.75%)	11.96	1	11.96
TOTAL			\$446.96

Payment	
Amount: \$446.96	Type: Visa
Account Number: XXXX0086	Authorization: 00670D
Payment Date: 2023-05-23	

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