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15 *Nouvel, LLC*

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

18 WILLIAM B. PITT, an individual, and  
19 MONDO BONGO, LLC, a California  
limited liability company,

20 Plaintiffs,

21 vs.

22 ANGELINA JOLIE, an individual, and  
23 NOUVEL, LLC, a California limited  
liability company, YURI SHEFLER, an  
24 individual, ALEXEY OLIYNIK, an  
individual, SPI GROUP HOLDING  
25 LIMITED, a Cyprus private limited  
company, and TENUTE DEL MONDO  
26 B.V., a Netherlands private limited  
company,

27 Defendants.  
28

Case No. 22STCV06081

**DEFENDANT NOUVEL, LLC'S  
NOTICE OF DEMURRER TO  
PLAINTIFFS WILLIAM B. PITT AND  
MONDO BONGO, LLC'S SECOND  
AMENDED COMPLAINT,  
DEMURRER, AND MEMORANDUM  
OF POINTS AND AUTHORITIES**

**Filed concurrently with Declaration of  
Jean-Claude Wiwinius; Declaration of  
Prashanth Chennakesavan; Request for  
Judicial Notice; and (Proposed) Order**

Judge: Hon. Lia Martin  
Dept.: 16  
Date: December 1, 2023  
Time: 9:00 A.M.

Electronically FILED by  
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County of Los Angeles  
8/28/2023 11:23 PM  
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Executive Officer/Clerk of Court,  
By V. Sino-Cruz, Deputy Clerk

1 NOUVEL, LLC, a California limited  
liability company,

2 Cross-Complainant,

3 vs.

4 WILLIAM B. PITT, an individual,  
5 MONDO BONGO, LLC, a California  
limited liability company, MARC-  
6 OLIVIER PERRIN, an individual, SAS  
MIRAVAL PROVENCE, a French limited  
7 liability company, SAS FAMILLES  
PERRIN, a French limited liability  
8 company, ROLAND VENTURINI, an  
individual, GARY BRADBURY, an  
9 individual, WARREN GRANT, an  
individual, SAS PETRICHOR, a French  
10 limited liability company, VINS ET  
11 DOMAINES PERRIN SC, a French  
company, SAS MIRAVAL STUDIOS, a  
12 French limited liability company, SASU  
LE DOMAINE, a French limited liability  
13 company, SAS DISTILLERIES DE LA  
14 RIVIERA, a French limited liability  
company, and ROES 1-10.

15 Cross-Defendants.  
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Reservation No.: **574490087613**

Action Filed: February 17, 2022

Trial Date: None set.

1 **NOTICE OF DEMURRER**

2 TO PLAINTIFF AND ITS COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on December 1, 2023, or as soon thereafter as the matter  
4 may be heard, in Department 16 of the above-entitled court located at Stanley Mosk Courthouse,  
5 111 N Hill Street, Los Angeles, CA 90012, Defendant Nouvel, LLC will and hereby does  
6 generally demur under Code of Civil Procedure section 430.10, subdivision (e) to the Fourth,  
7 Fifth, Eighth, and Ninth Claims for Relief asserted in the Second Amended Complaint filed on  
8 June 21, 2023, of Plaintiffs William B. Pitt and Mondo Bongo, LLC, against Nouvel, LLC on the  
9 grounds that Plaintiffs have failed to state facts sufficient to constitute any cause of action.  
10 Nouvel, LLC requests an order sustaining its demurrer without leave to amend and dismissing  
11 Plaintiffs' Second Amended Complaint with prejudice. This demurrer is based on this Notice of  
12 Demurrer and Demurrer, the Memorandum of Points and Authorities attached hereto, any further  
13 submissions in support of the Demurrer, the Declaration of Jean-Claude Wiwinius, and arguments  
14 of counsel.

15 Prior to filing this Demurrer, the parties engaged in a telephonic meet and confer  
16 discussion and were unable to reach an agreement regarding the objections raised in Defendants'  
17 Demurrer. (Declaration of Prashanth Chennakesavan dated August 28, 2023.)

18  
19 Dated: August 28, 2023

**CRAVATH, SWAINE & MOORE LLP**  
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26 By:           /s/ Prashanth Chennakesavan            
27 PRASHANTH CHENNAKESAVAN  
28 *Attorneys for Defendant and Cross-Complainant*  
NOUVEL, LLC

1 **DEMURRER**

2 Pursuant to Code of Civil Procedure section 430.10, subdivision (e), Defendant Nouvel,  
3 LLC (“Nouvel”) hereby demurs to the claims asserted against it in the Second Amended  
4 Complaint filed June 21, 2023, by Plaintiffs William B. Pitt (“Pitt”) and Mondo Bongo, LLC  
5 (“Mondo Bongo”) (collectively, “Plaintiffs”) as follows:

6 **FOURTH CLAIM FOR RELIEF**

7 **[Breach of the Implied Covenant of Good Faith and Fair Dealing]**

8 1. Plaintiff Mondo Bongo’s Fourth Claim for Relief for Breach of the Implied  
9 Covenant of Good Faith and Fair Dealing is subject to demurrer because the pleading fails to state  
10 facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

11 **FIFTH CLAIM FOR RELIEF**

12 **[Abuse of Rights under Article 6-1 of the Luxembourg Civil Code]**

13 2. Plaintiff Mondo Bongo’s Fifth Claim for Relief for Abuse of Rights under  
14 Article 6-1 of the Luxembourg Civil Code is subject to demurrer because the pleading fails to state  
15 facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

16 **EIGHTH CLAIM FOR RELIEF**

17 **[Tortious Interference with Prospective Business Relations]**

18 3. Plaintiffs’ Eighth Claim for Relief for Tortious Interference with Prospective  
19 Business Relations is subject to demurrer because the pleading fails to state facts sufficient to  
20 constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

21 **NINTH CLAIM FOR RELIEF**

22 **[Constructive Trust]**

23 4. Plaintiffs’ Ninth Claim for Relief for Constructive Trust is subject to demurrer  
24 because the pleading fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc.,  
25 § 430.10, subd. (e).)

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Dated: August 28, 2023

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By:                   /s/ Prashanth Chennakesavan                    
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*Attorneys for Defendant and Cross-Complainant*  
NOUVEL, LLC

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs’ claims against Nouvel all suffer from the same fatal flaw: they fail to allege any  
4 facts showing that *Nouvel* took any action—much less wrongful action—giving rise to their  
5 claims. Plaintiffs’ Second Amended Complaint (“SAC”) challenges a change in control over  
6 Nouvel and certain actions by Nouvel’s new owner, Defendant Tenute Del Mondo (“Tenute”), as  
7 it sought to restore proper governance over Chateau Miraval, the French wine business in which  
8 Nouvel owns an indirect 50% interest. The allegations of the SAC establish that Defendant  
9 *Angelina Jolie* caused Nouvel’s change in control by selling her shares of Nouvel to Tenute.  
10 Nouvel was merely the asset that was transferred in that transaction and was not even a party to  
11 the purchase agreement that effected its change in control. Whatever cause of action Plaintiffs  
12 think may flow from this change in control (and there is none), it could not, as a matter of law, be  
13 a cause of action against Nouvel.

14 *First*, Mondo Bongo claims a breach of an implied covenant of good faith and fair dealing  
15 on the grounds that Nouvel’s change in ownership violated Mondo Bongo’s contractual right to  
16 consent to any sale by *Nouvel* of shares that *Nouvel* owned in Quimicum—the legal entity that  
17 owns the French Chateau Miraval and its wine business. But there can be no breach of any  
18 implied covenant (if one even applies) because Nouvel is not alleged to have sold its shares in  
19 *Quimicum*, and Mondo Bongo was not deprived of its right to consent to any such sale. In truth,  
20 Mondo Bongo seeks to convert its contractual consent right over *Nouvel’s* sale of *Quimicum*  
21 shares into a completely separate right to block *Jolie’s* sale of *Nouvel’s* shares. But a court may  
22 not add a new term to a contract under the guise of the obligation of good faith where the parties  
23 have already expressly addressed the subject matter of the proposed new term in the contract; here,  
24 the relevant contract—Quimicum’s Articles of Association—specifically addresses restrictions on  
25 transfers of Quimicum’s shares but does not restrict the sale of Nouvel’s own shares. In addition,  
26 none of the actions that Plaintiffs allege *Nouvel* took caused its change in control. (Section IV.A.)

27 *Second*, Mondo Bongo claims a breach of Article 6-1 of the Luxembourg Civil Code,  
28 relating to “abuse of right”. But Article 6-1 requires a malicious, bad faith exercise of a right or

1 the exercise of a right that has no utility for its holder and is made without regard for third parties.  
2 Plaintiffs' allegations fail to establish that Nouvel caused its change of control, let alone that it did  
3 so with the requisite malicious, bad faith intent. (Section IV.B.)

4 *Third*, Plaintiffs claim tortious interference with prospective business relations with their  
5 French business partners. But Plaintiffs do not plead facts showing a single lost sale or impaired  
6 customer relationship. Nor do they plead facts showing the probability of any economic benefit or  
7 compensable economic harm. Such failures are fatal to this claim. (Section IV.C.)

8 *Fourth*, Plaintiffs seek the imposition of a constructive trust. But Plaintiffs cannot  
9 establish any wrongful act or a property interest in Nouvel's Quimicum shares that would justify  
10 the imposition of such a trust. (Section IV.D.)

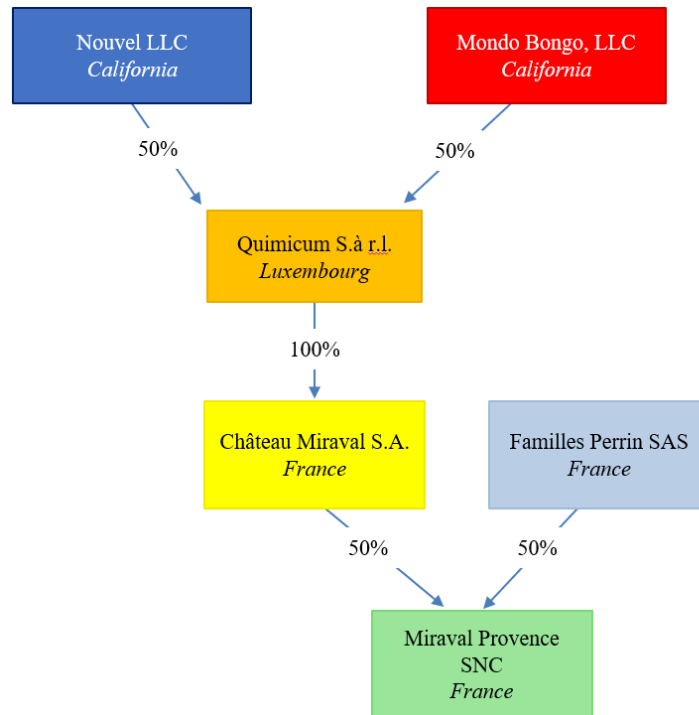
## 11 **II. FACTUAL BACKGROUND**

12 In 2008, Plaintiff Brad Pitt and Defendant Angelina Jolie purchased Chateau Miraval S.A.,  
13 a French company that owns residential property and vineyards in France. (SAC ¶ 35.) At the  
14 time, Chateau Miraval was wholly owned by the Luxembourg company Quimicum S.A. (*Id.*  
15 ¶ 32.) Pitt and Jolie purchased all of the shares of Quimicum through investment companies,  
16 Plaintiff Mondo Bongo and Defendant Nouvel, respectively, thereby also acquiring Chateau  
17 Miraval. (*Id.* ¶¶ 33-34.)

18 In March 2013, Nouvel and Mondo Bongo converted Quimicum into a private limited  
19 liability company, Quimicum S.à r.l., and in doing so agreed to a new governing document for the  
20 company, the Quimicum Articles of Association (the "Quimicum Articles"). (*Id.* ¶¶ 43-44.)  
21 Article 5.4.3 of the Quimicum Articles provides that shares of *Quimicum* "may not be transferred  
22 *inter vivos* to non-shareholders unless shareholders representing at least three-quarters of the  
23 corporate share capital shall have agreed thereto". (SAC Ex. 1.) The Quimicum Articles do not  
24 impose any restriction on the sales of the shares of, or any change of control over, Quimicum's  
25 *shareholders*, Nouvel and Mondo Bongo. (*See generally id.* Ex. 1.) Around the same time,  
26 Chateau Miraval entered into a winemaking joint venture with Familles Perrin called Miraval  
27 Provence. (*Id.* ¶ 54.)

28

1 The structure and relationship between the various entities as of the beginning of 2021 is  
2 shown in the flow chart below:



14 (See SAC ¶¶ 32-34, 43, 44, 48, 54.)

15 In 2016, Jolie filed for divorce from Pitt. (*Id.* ¶ 62.) Jolie later informed Pitt that she  
16 wished to sell her interest in Chateau Miraval. (*Id.* ¶¶ 79, 80.) When the parties failed to reach an  
17 agreement, Jolie sold Nouvel to Tenute del Mondo B.V. (“Tenute”). (*Id.* ¶ 109.) During  
18 negotiations, Nouvel executed confidentiality agreements with Tenute, which allowed Nouvel to  
19 furnish due diligence while protecting its confidential information from disclosure to third parties.  
20 (*Id.* ¶¶ 98, 101.) Nouvel was not a party to the purchase agreement. (*Id.* ¶ 30(f), 109.) All of the  
21 Quimicum shares Nouvel owned when it was owned by Jolie are still held by Nouvel. (*Id.* ¶ 99.)

22 Following Tenute’s purchase of Nouvel, Chateau Miraval continues to sell wine through a  
23 joint venture with Familles Perrin, Miraval Provence. (*Id.* ¶¶ 73-74, 212.) That joint venture is  
24 “highly successful” and “is now worth hundreds of millions of dollars”. (*Id.* ¶ 74.)

### 25 **III. LEGAL STANDARD**

26 “A demurrer tests the legal sufficiency of the complaint.” *Hamilton v. Greenwich Inv.*  
27 *XXVI, LLC*, 195 Cal. App. 4th 1602, 1608 (2011). “Allegations must be factual and specific, not  
28 vague or conclusionary”, and a court need only “treat[] the demurrer as admitting all material facts

1 properly pleaded, but not contentions, deductions, or conclusions of fact or law”. *Rakestraw v.*  
2 *Cal. Physicians’ Serv.*, 81 Cal. App. 4th 39, 43-44 (2000). “Because a demurrer tests the legal  
3 sufficiency of a complaint, the plaintiff must show the complaint alleges facts sufficient to  
4 establish every element of each cause of action. If the complaint fails to plead, or if the defendant  
5 negates, any essential element of a particular cause of action,” the demurrer must be sustained. *Id.*

6 Determination of the law of a foreign nation is a question of law to be addressed via  
7 judicial notice. *Mireskandari v. Gallagher*, 59 Cal. App. 5th 346, 358 (2020); Cal. Evid. Code  
8 §§ 310(b), 452(f). “[A] court may consider matters subject to judicial notice when ruling on a  
9 demurrer, and foreign law is subject to [permissive] judicial notice. . . . In taking judicial notice, a  
10 court may rely on ‘the advice of persons learned in the subject matter . . . whether or not furnished  
11 by a party.’” *Mireskandari*, 59 Cal. App. 5th at 358 (quoting Cal. Evid. Code § 454(a)(1) and  
12 later considering declarations from foreign law experts).

13 A court may take judicial notice of documents referenced in and attached to a complaint.  
14 *Ingram v. Flippo*, 74 Cal. App. 4th 1280, 1285 n.3 (1999); Cal. Evid. Code § 452(h).

15 **IV. ARGUMENT**

16 **A. Mondo Bongo Fails To State a Claim Against Nouvel for Breach of the**  
17 **Implied Covenant of Good Faith and Fair Dealing (Fourth Claim).**

18 Mondo Bongo alleges that “Nouvel has interfered with Mondo Bongo’s right to obtain the  
19 benefits of the Quimicum Articles by purporting to undergo a change in control that circumvented  
20 the Quimicum Transfer Restrictions.” (SAC ¶ 179.) For the reasons set forth below, this claim  
21 fails as a matter of law.

22 Plaintiffs’ implied covenant claim is governed by the law of Luxembourg.<sup>1</sup> Nouvel has  
23 retained the former President of the Luxembourg Supreme Court, Jean-Claude Wiwinius, to

24 \_\_\_\_\_  
25 <sup>1</sup> Although Plaintiffs have declined to take a position on which law governs their implied covenant  
26 claim (Chennakesavan Decl. 4), it is governed under Luxembourg law. The contract at issue is the  
27 Articles of Association of Quimicum S.a.r.l., which “is incorporated under and governed by the  
28 laws of the Grand Duchy of Luxembourg, in particular the law dated 10 August 1915, on  
commercial companies, as amended”. (SAC Ex. 1, Art. 1.) The Quimicum Articles state that  
Luxembourg corporate law applies to any matter for which there are no specific provisions in the  
Articles. (*Id.* Art. 13.) Where, as here, the claims involve “matters peculiar to the relationships

1 provide the Court with information that may be relevant to its assessment of Plaintiffs’ claims that  
2 are governed by Luxembourg law.

3 Under Article 1134 of the Luxembourg Civil Code, parties to a contract must perform it in  
4 good faith. (Chennakesavan Decl. Ex. 1, Art. 1134 ¶ 3.) Judge Wiwinius declares that under  
5 Luxembourg law, a claim for breach of the implied covenant of good faith and fair dealing would  
6 be analyzed as a breach of this obligation to perform a contract in good faith. (Wiwinius Decl.  
7 ¶ 7.) However, the obligation of good faith is limited to requiring contracting parties to provide  
8 accurate information to each other, to refrain from behavior that would deprive the other party of  
9 the normal benefits of the contract, to refrain from demanding excessively scrupulous performance  
10 of the contract, and to cooperate in the performance of the contract. (*Id.* ¶ 8; Ex. 2, O. Poelmans,  
11 *Droit des Obligations au Luxembourg* § 147 (Larcier, 2012).) Under Luxembourg law, a judge is  
12 not permitted to modify the scope of a contract or to add or to remove a clause from it. (Ex. 2,  
13 Poelmans § 145.) There is no room for a Luxembourg court to interpret a contract unless it is  
14 vague, ambiguous, or includes incoherencies, contradictions, or obvious gaps. (Ex. 3, Cour  
15 d’appel, No. CAL-2020-00566 at 2 (Nov 18, 2020).) The court may not, under the guise of  
16 interpreting a contract, distort it by ignoring its clear and precise meaning. (Ex. 2, § 178.)

17 Here, Section 5.4.3 of the Quimicum Articles provides that *Quimicum* shares “may not be  
18 transferred *inter vivos* to non-shareholders unless shareholders representing at least three-quarters  
19 of the corporate share capital shall have agreed thereto”. (SAC Ex. 1.) Plaintiffs refer to this  
20 provision as the “Quimicum Transfer Restrictions”. Judge Wiwinius declares that Section 5.4.3 of  
21 the Quimicum Articles “merely restates background law, Article 710-12 of the law dated 10  
22 August 1915”, which imposes the same transfer restrictions upon Luxembourg corporations.

23  
24 \_\_\_\_\_  
25 among or between the corporation and its current officers, directors, and shareholders”, the law of  
26 the place of incorporation applies. *State Farm Mut. Auto. Ins. Co. v. Superior Ct.*, 114 Cal. App.  
27 4th 434, 446 (2003); *see also Nedlloyd Lines B.V. v. Superior Ct.*, 3 Cal. 4th 459, 464, 471 (1992)  
28 (applying Hong Kong law to a claim for breach of the implied covenant when the contract was  
governed by Hong Kong law); *Ury v. Jewelers Acceptance Corp.*, 227 Cal. App. 2d 11, 17-19  
(1964) (applying foreign law to contract formed and performed abroad). This Court can take  
judicial notice of the law of Luxembourg, including through declarations of experts in  
Luxembourgish law. *See Mireskandari*, 59 Cal. App. 5th at 358.

1 (Wiwinus Decl. ¶ 10.) He declares that that “background law does not impose any restriction on  
2 a change of control over *shareholders* of a Luxembourg corporation” and the Quimicum Transfer  
3 Restrictions would not be interpreted to impose such a restriction either. (*Id.*)

4 Prior to 2021, Nouvel held a 50% interest in Quimicum, and Angelina Jolie held 100% of  
5 the membership interest in Nouvel. (*Id.* ¶¶ 6, 16.) Jolie sold her interest in *Nouvel* to Defendant  
6 Tenute on October 4, 2021. (*Id.* ¶ 115.) Although Nouvel is *not* alleged to have sold its shares in  
7 *Quimicum*, Mondo Bongo nevertheless alleges that Nouvel breached the obligation of good faith  
8 by “by purporting to undergo a change in control that circumvented the Quimicum Transfer  
9 Restrictions”. (*Id.* ¶ 179.)

10 Mondo Bongo’s claim that Nouvel breached a covenant of good faith and fair dealing  
11 allegedly implied in the Quimicum Articles (*id.* ¶¶ 174-182) fails because (1) Plaintiffs have not  
12 alleged that Nouvel caused the change of control that purportedly circumvented the Quimicum  
13 Transfer Restrictions; and (2) both Luxembourg and California law prohibit a court from  
14 modifying a contract to add obligations not contemplated by its express terms.

15 **1. Nouvel Is Not Alleged to Have Caused Its Change in Control.**

16 Even if the Luxembourg contractual obligation of good faith restricted a sale of Nouvel,  
17 Mondo Bongo fails to allege any conduct by Nouvel that could be considered a breach.

18 *First*, Nouvel was the asset that was sold—not the entity that *caused* the sale. Indeed,  
19 Nouvel was only a passive bystander to the sale of its membership interest. Nouvel is not even a  
20 party to the Membership Interest Purchase Agreement that caused its change in control. (*Id.*  
21 ¶¶ 30(f), 109.) Instead, the SAC acknowledges that *Jolie* caused its change in control by selling  
22 her shares in Nouvel. (*Id.* ¶¶ 171-73.) Because Nouvel did not take this action and was not even a  
23 party to the relevant contract, Nouvel could not have acted in a manner that violated the obligation  
24 of good faith under Luxembourg law. (Wiwinus Decl. ¶ 22.) Nor can Jolie’s actions be imputed  
25 to Nouvel under Luxembourg law, which “strongly respects the principle of separate corporate  
26 identities between corporation and shareholder”. (*Id.* ¶ 22; *see also* Ex. 4 Art. 100-2.)

27 And the only actions actually alleged to have been taken by Nouvel—its execution of  
28 confidentiality agreements and furnishing of due diligence to Tenute (SAC ¶ 179)—“are routine

1 first steps in negotiating a *potential* sale and do not necessarily lead to the consummation of a  
2 sale”. (Wiwinus Decl. ¶ 23.) *See also Martin Marietta Materials, Inc. v. Vulcan Materials Co.*,  
3 56 A.3d 1072, 1132-33 (Del. Ch. 2012) (“Confidentiality agreements . . . are common” and  
4 typically “provid[e] for non-disclosure of Transaction Information”). Judge Wiwinus explains  
5 that under Luxembourg law “compliance with the Quimicum Transfer Restrictions must be  
6 evaluated at the time of an actual sale of shares leading to a change of control—not before”.  
7 (Wiwinus Decl. ¶ 24.) He notes that a recent case held that “actions leading up to—but short  
8 of—an actual sale of shares cannot violate Article 710-12”, which the Quimicum Transfer  
9 Restrictions merely restates. (*Id.*; *see also* Ex. 6, Tribunal d’arrondissement de et à Luxembourg,  
10 No. TALCH02/00862 at 26-28 (May 17, 2019).) Thus, “even if the Quimicum Articles imposed  
11 any restrictions on the sale of Nouvel itself, Nouvel’s execution of confidentiality agreements and  
12 furnishing of due diligence to Tenute, which took place *before* the time of the sale when  
13 compliance with the Quimicum Transfer Restrictions is tested, cannot amount to a breach of the  
14 obligation to act in good faith in contractual performance”. (Wiwinus Decl. ¶ 24.)

15 For this very reason, Mondo Bongo’s claim also fails because it does not allege “a direct  
16 causal link” between Nouvel’s conduct and the alleged injury, as is required by Luxembourg law.  
17 (*Id.* ¶ 25.) The injury alleged by Mondo Bongo is the deprivation of its purported right to  
18 withhold consent to the sale of Nouvel. “This alleged injury would at best be caused by the  
19 *consummation* of the sale of Nouvel”, not by any of Nouvel’s alleged prior conduct. (*Id.*)

20 **2. The Obligation of Good Faith Does Not Permit a Court To Add Terms**  
21 **to an Unambiguous Contract.**

22 The express terms of the Quimicum Transfer Restrictions impose a restriction on the  
23 transfer of Quimicum shares only. (SAC Ex. 1.) They do not purport to impose any restriction on  
24 the transfer of shares in a shareholder entity such as Nouvel. Judge Wiwinus explains that the  
25 Quimicum Transfer Restrictions have “no independent legal significance” because they impose  
26 “substantively the same restrictions on share transfers” as Article 710-12 of the law of 10 August  
27 1915—*i.e.*, “a restriction on a shareholder’s transfer of his shares in a Luxembourg corporation”.  
28 (*Id.* ¶¶ 12-13.) That restriction is *already* imposed by law on all Luxembourg companies,



1 including Quimicum. (*Id.*) Judge Wiwinius further declares that he “examined the caselaw on  
2 Article 710-12” and found that “[n]o Luxembourg court has interpreted Article 710-12 to apply to  
3 changes in control over the shareholders in Luxembourg corporations *themselves*”. (*Id.* ¶ 15.)

4 Judge Wiwinius declares that a Luxembourg court would not be permitted to add into the  
5 Quimicum Articles a separate limitation on changes of control over Quimicum’s shareholders.  
6 The Quimicum Articles “do not restrict the transfer of shares of Nouvel or prohibit a change of  
7 control over Nouvel, even though the notion of a change in control is known in Luxembourg law”.  
8 (*Id.* ¶ 18; *see also* Ex. 5, Denis Philippe, *Annales du Droit Luxembourgeois* at 153-55 (Éditions  
9 Larcier 2021).) “Because the parties expressly addressed the topic of restrictions on the transfer of  
10 shares without imposing any restriction on the transfer of shares of Nouvel, a Luxembourg judge  
11 would not be permitted to add such a restriction to the Quimicum Articles, including through the  
12 general obligation of good faith in contractual performance”. (*Id.* ¶ 18.) “This is particularly the  
13 case . . . here” because the Quimicum Transfer Restrictions merely parrot the statutory language of  
14 Article 710-12 “that is already understood by Luxembourg courts to have a clear and precise  
15 meaning and to be limited to the transfer of shares in a Luxembourg corporation”. (*Id.*)

16 Judge Wiwinius notes that “the obligation of good faith requires parties to refrain from  
17 behavior that would deprive a counterparty of the normal benefits of the contract”. (*Id.* ¶ 16.) But  
18 the normal benefits provided to Mondo Bongo by the Quimicum Transfer Restrictions are limited  
19 to “a right to consent to any transfer of Nouvel’s *Quimicum shares* to a third party”. (*Id.*)

20 Although the SAC alleges the Quimicum Transfer Restrictions reflect Pitt’s and Jolie’s  
21 broader intent to “ensure[] that each party would be protected in the event of a sale” (SAC ¶¶ 47,  
22 67), Judge Wiwinius explains that “[a] Luxembourg judge would not consider Plaintiffs’  
23 unsupported assertions” because “the clause the parties *actually drafted* simply restates already  
24 applicable law and has no independent legal effect”. (Wiwinius Decl. ¶ 19 (emphasis added).)

25 Plaintiffs’ claim fails even if the Court were to apply California law. “The implied  
26 covenant of good faith and fair dealing is limited to assuring compliance with the *express terms* of  
27 the contract, and cannot be extended to create obligations not contemplated by the contract.”  
28 *Pasadena Live, LLC v. City of Pasadena*, 114 Cal. App. 4th 1089, 1093 (2004) (citations omitted).

1 Had Mondo Bongo intended for a change in control over Nouvel to trigger its purported right of  
2 first refusal, it could have included that restriction in the agreement. The implied covenant cannot  
3 correct a failure to include that restriction because the covenant “exists merely to prevent one  
4 contracting party from unfairly frustrating the other party’s right to receive the *benefits of the*  
5 *agreement actually made*”. *Guz v. Bechtel Nat’l Inc.*, 24 Cal. 4th 317, 349 (2000) (citations  
6 omitted) (emphasis added). Courts in other jurisdictions have repeatedly recognized that a change  
7 in control of a corporation’s *shareholder* does not violate a restriction on the transfer of a  
8 corporation’s *shares*. See *Sixth St. Partners Mgmt. Co., L.P. v. Dyal Cap. Partners III (A) LP*, No.  
9 2021-0127-MTZ, 2021 WL 1553944, at \*3-4, \*7-8 (Del. Ch. Apr. 20, 2021) (provision stating that  
10 “no Subscriber may Transfer its Interests in any . . . Issuer without the prior written consent of the  
11 Manager” did not provide a consent right with respect to a change of control over the Subscriber’s  
12 “upstairs entities”); *Tenneco Inc. v. Enter. Prod. Co.*, 925 S.W.2d 640, 646 (Tex. 1996) (no breach  
13 where “the plain language of the [Agreement] provides that only a transfer of an ownership  
14 interest triggers the preferential right to purchase” and the parties “could have included a change-  
15 of-control provision in the agreements that would trigger the preferential right to purchase”).<sup>2</sup>

16 **B. Mondo Bongo Fails To State a Claim Against Nouvel Under Article 6-1 of the**  
17 **Luxembourg Civil Code (Fifth Claim).**

18 Article 6-1 of the Luxembourg Civil Code provides: “Any act which manifestly exceeds,  
19 by the intention of its author, by its object or by the circumstances in which it occurred, the normal  
20 exercise of a right, is not protected by law, engages the liability of its author, and may give rise to  
21 an action for an injunction to prevent the continuation of the abuse.” Article 6-1 therefore  
22 sanctions the malicious, bad faith exercise of a right or the exercise of a right that does not have  
23 utility for its holder and without regard for the rights of third parties. (Ex. 7, Cour d’appel,  
24

25 <sup>2</sup> Plaintiffs’ counsel has successfully relied on this principle, see *Sixth St. Partners*, 2021 WL  
26 1553944, at \*7, arguing that “[g]iven the prevalence of common contractual models of creating a  
27 change of control right, a court should be chary about reading a provision . . . that, on its face, has  
28 nothing to do with a change of corporate control as one that embodies hidden meanings burdening  
stockholders[]” and that a share transfer restriction is “not on its face a change of control  
provision”. (Ex. 16, Dyal Defs.’ Answering Br. in Opp. to Pls.’ Mot. for Preliminary Injunction at  
43, 2021 WL 1195767, (Del. Ch. Mar. 18, 2021) (citations omitted).)

1 Pasicrisie 29, 241 at 244 (May 5, 1993); Wiwinius Decl. ¶ 28.) Only the abnormal exercise of a  
2 right, under conditions different than those by which prudent and diligent individuals conduct  
3 themselves, constitutes an abuse of right. (*See* Wiwinius Decl. ¶ 28; Ex. 8 Matthieu Poumarède &  
4 Philippe le Tourneau, *Droit de la responsabilité et des contrats* § 2213.15 (Daloz action,  
5 2023/24).) For an abuse of right to be found when a property right is exercised, it must be shown  
6 that the holder of the property right acted solely with malice under an intention to harm another.  
7 (*See* Ex. 8, § 2213.41; Wiwinius Decl. ¶ 30.) In discussing an abuse of right, Luxembourg courts  
8 and commentators frequently point to the example of a famous 1915 case in which the defendant  
9 constructed a tall wooden framework on his property topped with iron spikes with the sole  
10 intention of harming a neighbor’s balloon. (*See* Wiwinius Decl. ¶ 29; Ex. 9, Cour de cassation,  
11 chambre des requêtes, No. 00-02.378 (August 3, 1915).)

12 Mondo Bongo alleges that Nouvel abused its right under Article 6-1 by “purporting to  
13 undergo a change in control that circumvented the Quimicum Transfer Restrictions”. (SAC  
14 ¶ 179.) But the SAC fails to allege that any conduct taken by Nouvel that could be considered an  
15 abuse of right or that Nouvel took any action with the requisite intent.

16 *First*, Judge Wiwinius explains that “the plain text of Article 6-1 requires an ‘act’  
17 committed by an ‘author’”. (Wiwinius Decl. ¶ 32.) The SAC alleges that Nouvel abused its right  
18 by “undergo[ing] a change in control”. (SAC ¶ 186.) But the change of control was something  
19 that happened *to* Nouvel, not an act committed *by* it. Nouvel was a passive bystander to the sale.  
20 As explained, *see supra* Section IV.A.1, Plaintiffs allege that *Jolie*, not Nouvel, caused the change  
21 in control by selling Nouvel to Tenute. (*See also* SAC ¶171-73.) Moreover, a change of control  
22 occurs at the time of an actual sale of shares, not before. *See supra* Section IV.A.1. Nouvel’s  
23 execution of confidentiality agreements and furnishing due diligence to Tenute all occurred *before*  
24 the change of control. Because the SAC does not allege an “act” by Nouvel that caused its change  
25 in control, Mondo Bongo fails to state a claim for abuse of right. (Wiwinius Decl. ¶ 32.)

26 *Second*, the SAC contains no allegations demonstrating that Nouvel acted with the  
27 requisite intent. The SAC does not allege that Nouvel harbored any malicious, bad faith purpose,  
28 or that its change of control had no commercial purpose. (*See* Ex. 7, Cour d’appel, Pasicrisie 29,

1 241 at 244 (May 5, 1993); Wiwinius Decl. ¶ 34.) Nor can Nouvel’s change of control constitute a  
2 bad faith *performance* of the Quimicum Articles. (Wiwinius Decl. ¶ 34.) Moreover, because  
3 under Luxembourg law the purchase and sale of Nouvel was the exercise of a property right  
4 (*abusus*)—specifically Jolie’s right to transfer her membership interest in Nouvel (Ex. 12, Terré &  
5 Simler, Droit civil Les Biens §§ 107, 113 (Daloz, 5<sup>e</sup> ed.); Wiwinius Decl. ¶ 37)—Mondo Bongo  
6 must show that Nouvel acted *solely* with malice under the intention to harm to plead abuse of  
7 right. (See Ex. 8, § 2213.41; Wiwinius Decl. ¶ 30.) The SAC does not do so. Accordingly,  
8 Mondo Bongo’s abuse of right claim fails for this independent reason.

9 *Third*, the SAC fails to allege, as required to make out a claim for abuse of right, that  
10 Nouvel acted in a manner different from how prudent and diligent individuals conduct themselves.  
11 (See Ex. 8, § 2213.15; Wiwinius Decl. ¶ 28.) The only action Nouvel is alleged to have taken—its  
12 execution of confidentiality agreements pursuant to which it provided due diligence to its potential  
13 buyer—show prudent steps to protect its sensitive information. Plaintiffs’ conclusory allegation  
14 that “by entering into the Confidentiality Agreements, Nouvel purposefully ensured that Pitt and  
15 Mondo Bongo would be kept in the dark as Defendants knowingly violated Mondo Bongo’s  
16 contractual rights” shows no abuse of right. (SAC ¶ 186.) Keeping business negotiations  
17 confidential *is the norm*. Moreover, Mondo Bongo did not *have* any contractual rights at issue.  
18 The Quimicum Articles restrict the transfer of shares of Quimicum *only* and do not apply to the  
19 sale of Nouvel itself. (*Id.* Exhibit 1 § 5.4.3; *see also* Section IV.A.1, *supra*.)

20 Entering into confidentiality agreements to protect its confidential information and  
21 permitting diligence to be undertaken to maximize the value of its shares is exactly how a prudent  
22 and diligent company subject to a potential sale would conduct itself. As Plaintiffs’ litigation  
23 counsel has explained in its treatise “Takeover Law and Practice”, “[o]ften, the first legally  
24 binding undertaking in an M&A transaction negotiation is the execution of a ‘confidentiality  
25 agreement’”; and “[i]t is entirely understandable that a company providing its proprietary or non-  
26 public information to another company would want to protect such information’s confidentiality  
27 and ensure that it is only used for its intended purpose.” (Chennakesavan Decl. Ex. 15; *see also*  
28 Wiwinius Decl. ¶ 35.) *See also Martin Marietta Materials*, 56 A.3d at 1132-33. Judge Wiwinius

1 explains that “[s]uch conduct is not analogous to conduct taken ‘with the sole intention of  
2 harming’ another that forms the basis for the doctrine of abuse of right.” (Wiwinius Decl. ¶ 35;  
3 Ex. 9, Cour de cassation, chambre des requêtes, No. 00-02.378 (August 3, 1915).)

4 **C. Plaintiffs Fail to State a Claim for Tortious Interference with Prospective**  
5 **Business Relations (Eighth Claim).**

6 Plaintiffs allege that Nouvel tortiously interfered with an alleged economic relationship  
7 between Plaintiffs and Château Miraval, Miraval Provence, Familles Perrin and Perrin by  
8 purportedly “caus[ing], participat[ing] in, encourag[ing], and facilitat[ing its own] undergoing of a  
9 change of control in circumvention of the Quimicum Articles”. (SAC ¶ 215.) To state a claim for  
10 tortious interference with prospective business relations, a plaintiff must show: “(1) an economic  
11 relationship between the plaintiff and some third party, with the probability of future economic  
12 benefit to the plaintiff; (2) the defendant’s knowledge of the relationship; (3) intentional acts on  
13 the part of the defendant designed to disrupt the relationship; (4) actual disruption of the  
14 relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the  
15 defendant.” *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1153 (2003) (citations  
16 and quotations omitted). In addition, the act of interference must itself be “independently  
17 wrongful”, meaning that it is “proscribed by some constitutional, statutory, regulatory, common  
18 law, or other determinable legal standard”. *Id.* at 1158-59. Plaintiffs fail to satisfy this standard  
19 because they fail to allege the first, fourth and fifth elements of the cause of action.

20 **1. Plaintiffs Fail To Plead Actual Disruption of a Business Relationship.**

21 A claim for tortious interference with prospective economic relations cannot lie “in the  
22 absence of some actual disruption”. *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d  
23 1118, 1129 n.8 (1990). Plaintiffs allege that Nouvel disrupted Plaintiffs’ business relations with  
24 French entities by undergoing a change in control. (SAC ¶¶ 212, 215.) But notwithstanding  
25 Nouvel’s change of control, Plaintiffs *remain* in the same economic relationships with each of  
26 their French business partners. Both Chateau Miraval and Miraval Provence remain indirect  
27 subsidiaries of Plaintiffs that continue to sell wine (*id.* ¶¶ 32, 54-55, 68-74, 212); Familles Perrin  
28 remains a business partner of Chateau Miraval in their joint venture, Miraval Provence (*id.* ¶¶ 54-

1 55, 68-74, 212); and Perrin continues to operate Miraval Provence (*id.* ¶ 68-74, 212). *See*  
2 *Stardock Sys., Inc. v. Reiche*, No. C 17-07025 SBA, 2019 WL 8333514, at \*7 (N.D. Cal. May 14,  
3 2019) (failure to plead actual disruption because “[p]laintiff’s relationships with GOG/Valve  
4 remain intact and both platforms have continued to distribute [p]laintiff’s content”).

5 Plaintiffs’ other allegations against Nouvel fail to plead an actual disruption of Plaintiffs’  
6 business relationships. Specifically, Plaintiffs allege that Nouvel (1) “attempted . . . to install  
7 [Stoli’s] own executives as Nouvel’s representatives on the Quimicum board” (SAC ¶ 123);  
8 (2) “demanded . . . a ‘provisional administrator’” to run Quimicum (*id.* ¶ 124); and (3) “sought a  
9 corporate restructuring” of Chateau Miraval and Miraval Provence (*id.* ¶ 125)).<sup>3</sup> But Plaintiffs do  
10 not identify any specific disruption that occurred as a result of these actions and fail to allege *any*  
11 facts showing that their economic relationships with the French entities were thereby affected. *See*  
12 *Standard Furniture Mfg. Co. v. LF Prods. Pte. Ltd.*, No. SACV 16-02097-CJC(KESx), 2017 WL  
13 3082221, at \*6 (C.D. Cal. June 13, 2017) (“Although Plaintiffs point out that the Complaint  
14 alleges that Defendants sent damaging letters to Chinese vendors, that satisfies only the intentional  
15 conduct element of this tort. . . . It does not explain what the result of these letters was.”).  
16 Disputes between business partners over how to run their business happen every day. Adding the  
17 moniker “disruptive” does not transform everyday business dealings into a tort.

18 Plaintiffs’ vague assertion that Nouvel purportedly disrupted Plaintiffs’ plan to “develop  
19 and operate a family-owned, family-operated French wine brand that is connected to Pitt’s  
20 personal image and celebrity” (SAC ¶ 215) fares no better because Plaintiffs fail to identify any  
21 “additional costs or burdens. . . or any reduction in sales” that they suffered as a result. *Upper*  
22 *Deck Co. v. Panini Am., Inc.*, 469 F. Supp. 3d 963, 982-3 (S.D. Cal. 2020). Plaintiffs allege “an  
23 endorsement agreement between Pitt and Miraval Provence”, but do not allege that this agreement  
24 was canceled or that Pitt’s performance was rendered more costly or burdensome by Nouvel’s  
25 change in control. (SAC ¶ 215.) To the contrary, the SAC alleges that “Pitt [still] endorses  
26

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27 <sup>3</sup> Plaintiffs also allege that Nouvel filed legal actions. (SAC ¶¶ 126-27.) But filing legal actions is  
28 “absolutely privileged” and “c[an] not give rise to liability for intentional interference with  
prospective economic advantage”. *Salma v. Capon*, 161 Cal. App. 4th 1275, 1290 (2008).

1 Miraval”. (*Id.*) Plaintiffs also allege that association with a “Russia-affiliated spirits  
2 conglomerate is contrary and harmful to the Miraval brand” (*id.*), but allegations of “diverted sales  
3 and loss of goodwill . . . are conclusory [when plaintiff] provides no facts in support of its  
4 contention that it lost potential customers or sales”. *Upper Deck Co.*, 469 F. Supp. 3d at 983. Nor  
5 do Plaintiffs identify a single customer or distributor who has been lost. *Asia Inv. Co. v.*  
6 *Borowski*, 133 Cal. App. 3d 832, 841 (1982) (dismissing claim where “Asia’s relationship to a  
7 class of as yet unknown purchasers . . . was the prospective business relationship”). And even if  
8 they had, alleged disruption of relations with *customers* cannot ground a claim for tortious  
9 interference with their relationships with *business partners*. *Stardock Sys., Inc.*, 2019 WL  
10 8333514, at \*7 (holding “lost sales and customer refunds” alleged by TAC “show, *at most*,  
11 disruption to relationships with *customers*, not with *GOG/Valve*”).

12 In short, because “Plaintiff[s] do[] not identify a specific economic opportunity or  
13 advantage that [they] lost as a result of” Nouvel’s conduct, they have failed to plead actual  
14 disruption. *Martin v. Walt Disney Internet Grp.*, No. 09CV1601-MMA (POR), 2010 WL  
15 2634695, at \*10 (S.D. Cal. June 30, 2010).

## 16 2. Plaintiffs Cannot Plead Compensable Economic Harm.

17 Plaintiffs also fail to allege compensable “economic harm to the plaintiff proximately  
18 caused by the acts of the defendant”. See *Korea Supply Co.*, 29 Cal. 4th at 1153. Plaintiffs allege  
19 in conclusory fashion that “[a]s a direct and proximate result of Defendants’ wrongful conduct,  
20 Pitt and Mondo Bongo have suffered damages in an amount to be proven at trial”. (SAC ¶ 217.)  
21 But merely “parroting the legal elements of the cause of action” is insufficient as a matter of law.  
22 *Rincon Band of Luiseño Mission Indians of the Rincon Res. Cal. v. Flynt*, 70 Cal. App. 5th 1059,  
23 1112 (2021).

24 Plaintiffs point to only two potentially relevant allegations of harm. *First*, Plaintiffs allege  
25 that Chateau Miraval has had to “expend energy on preserving and safeguarding the business,  
26 diverting attention and resources from the ordinary affairs of Miraval”. (SAC ¶ 137.) Plaintiffs  
27 plead no facts showing how they have “expend[ed] energy” or what “attention and resources”  
28 have been diverted, and thus fail to adequately plead “proof of probable [economic] loss”. *Youst*

1 v. *Longo*, 43 Cal. 3d 64, 74 (1987) (“[T]o allow recovery without proof of probable loss would  
2 essentially eliminate the tort’s element of causation.”). They do not, as required, allege legally  
3 cognizable harm such as, for example, “that [Plaintiffs] lost a contract [or] that a negotiation with  
4 a Customer failed”. *Sybersound Records, Inc. v. UAV Corp.*, 517 F.3d 1137, 1151 (9th Cir. 2007).  
5 And to the extent Plaintiffs allege that they must “expend energy” on litigation with Nouvel—  
6 most of which was initiated by Plaintiffs—such claim fails under the litigation privilege. *Salma*,  
7 161 Cal. App. 4th at 1290 (litigations activity is “absolutely privileged” and “c[an] not give rise to  
8 liability for intentional interference with prospective economic advantage”).

9       *Second*, Plaintiffs allege that Nouvel’s change of control “is contrary and harmful to the  
10 Miraval brand . . . as well as to the Miraval business”. (SAC ¶ 215.) But again, simply parroting  
11 the elements of the cause of action is insufficient to state a claim. Plaintiffs are required, and fail,  
12 to allege specific loss of sales, profits, contracts, or customers. *Rincon Band*, 70 Cal. App. 5th  
13 at 1112; *see also Standard Furniture Mfg. Co.*, 2017 WL 3082221, at \*6 (holding that “conclusory  
14 allegations regarding disruption and reputational harm are insufficient”); *Sybersound*, 517 F.3d  
15 at 1151 (holding that plaintiff failed to allege economic harm because plaintiff “merely states in a  
16 conclusory manner” that it has been harmed without “alleging, for example, that it lost a contract  
17 [or] that a negotiation with a Customer failed”). And although Plaintiffs allege Chateau Miraval’s  
18 insurer and distributors expressed concern about Shefler’s reputation (SAC ¶ 145), they identify  
19 no business relationship actually lost or otherwise disrupted as a result of that concern.

20       Moreover, Plaintiffs’ claim fails because “the gravamen of the complaint is injury to the  
21 corporation, or to the whole body of its stock and property”. *Sole Energy Co. v. Petrominerals*  
22 *Corp.*, 128 Cal. App. 4th 212, 228 (2005). All of the harms alleged by Plaintiffs are “injur[ies] to  
23 the corporation” (*i.e.*, Chateau Miraval or Miraval Provence), and thus are “derivative in nature.”  
24 *Id.* at 232. Plaintiffs “neither own the corporate property nor the corporate earnings” in those  
25 entities. *Miller v. McColgan*, 17 Cal. 2d 432, 436 (1941). Because claims for harm to the  
26 corporations in which they are shareholders do not belong to Plaintiffs, they must be dismissed.

27               **3. Plaintiffs Plead No Non-Speculative Probability of Economic Benefit.**

28       “[A] cause of action for tortious interference has been found lacking when either the



1 economic relationship with a third party is too attenuated or the probability of economic benefit  
2 too speculative.” *Roy Allan Slurry Seal, Inc. v. Am. Asphalt S., Inc.*, 2 Cal. 5th 505, 515 (2017).  
3 Here, the probability of economic benefit is too speculative. Plaintiffs merely allege that “Pitt and  
4 Mondo Bongo have had business relations with Château Miraval S.A., Miraval Provence, Familles  
5 Perrin, and Marc Perrin that are likely to yield future and continued benefits to Pitt and Mondo  
6 Bongo”. (SAC ¶ 212.) But they fail to allege the amount of profits, if any, attributable to family  
7 business branding as opposed to, for example, “[t]he Perrin family’s expertise, experience, and  
8 connections in the French winemaking world, along with its investment in the business  
9 operations”. (*Id.* ¶¶ 72-73, 137, 215.) That is, the pleadings are devoid of any facts from which  
10 “it is possible to estimate with some fair amount of success both the value of what has been lost  
11 and the likelihood that the plaintiff would have received it if the defendant had not interfered”.  
12 *Roy Allan Slurry Seal*, 2 Cal. 5th at 515 (citations and quotations omitted); *see also Vascular*  
13 *Imaging Pros., Inc. v. Digirad Corp.*, 401 F. Supp. 3d 1005, 1013 (S.D. Cal. 2019) (“[G]eneral  
14 conclusory allegations regarding lost sales, absent well-pleaded facts in support of these  
15 contentions, do not satisfy the pleading requirements [for interference with economic relations].”).

#### 16 4. Plaintiffs Fail to Adequately Plead an Independently Wrongful Act.

17 Plaintiffs do not plead that the act of interference was “independently wrongful”, *i.e.*,  
18 “proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal  
19 standard”. *Korea Supply Co.*, 29 Cal. 4th at 1159. Plaintiffs allege that “Defendants engaged in  
20 independently wrongful conduct by violating Article 6-1 of the Luxembourg Civil Code”. (SAC  
21 ¶ 216.) But, as discussed in Section IV.A., *supra*, Plaintiffs fail to adequately plead a claim for  
22 abuse of right under Article 6-1. Thus, their claim for tortious interference with prospective  
23 economic advantage fails, because the violation of Article 6-1 is the only “independently  
24 wrongful” conduct that Plaintiffs assert. *Korea Supply Co.*, 29 Cal. 4th at 1159; *see also*  
25 *name.space, Inc. v. Internet Corp. for Assigned Names & Nos.*, No. CV 12-8676 PA (PLAx), 2013  
26 WL 2151478, at \*9 (C.D. Cal. Mar. 4, 2013) (“[B]ecause Plaintiff’s antitrust and trademark  
27 infringement claims are insufficient to state viable claims, Plaintiff has not alleged the independent  
28 wrongfulness required to state a claim for interference with prospective economic advantage.”).

1           **D. Plaintiffs Fail to State a Claim for Constructive Trust (Ninth Claim).**

2           To impose a constructive trust, three elements must be met: “(1) a specific, identifiable  
3 property interest, (2) the plaintiff’s right to the property interest, and (3) the defendant’s  
4 acquisition or detention of the property interest by some wrongful act.” *Higgins v. Higgins*, 11  
5 Cal. App. 5th 648, 659 (2017). The SAC does not adequately plead facts indicating entitlement to  
6 a constructive trust. Although Plaintiffs point to the shares Nouvel owns in Quimicum to satisfy  
7 the first element, they cannot satisfy the remaining elements.

8           With respect to element two, Plaintiffs allege that they “possess a right to Nouvel’s shares  
9 of Quimicum”. (SAC ¶ 221.) Plaintiffs apparently rely on Article 710-12 of the Luxembourg  
10 Law of August 10, 1915, which they allege provides that “if a Quimicum shareholder rejects the  
11 proposed transfer of shares to a third party, the shareholder may either purchase the shares on the  
12 same terms offered to the third party or cause Quimicum to buy back the shares. The statute thus  
13 supplies Quimicum’s shareholders an enhanced right of first refusal”. (*Id.* ¶ 45.) Plaintiffs allege  
14 that “[h]ad Nouvel sought Mondo Bongo’s consent to the purported ownership change, Mondo  
15 Bongo would not have granted it and would have exercised its right of first refusal”. (*Id.* ¶ 121.)<sup>4</sup>

16           The Quimicum Articles refer to the Law of August 10, 1915 for all matters for which there  
17 are no specific provisions in its articles (*id.* Ex. 1 Art. 13), but that law does not afford them a  
18 right to Nouvel’s shares in Quimicum. Article 710-12 is *not* triggered by a change in control over  
19 a *shareholder* (here, Nouvel) in a Luxembourg corporation (here, Quimicum). Judge Wiwinius  
20 declares that Article 710-12 “provides shareholders certain rights only in the event that a  
21 shareholder proposes to transfer shares in a Luxembourg corporation”. (Wiwinius Decl. ¶ 48.) He  
22 is “aware of no scholarly work that has interpreted Article 710-12” as restricting shareholder  
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24 <sup>4</sup> Article 710-12 provides that shares in a Luxembourg corporation may not be transferred *inter*  
25 *vivos* without the consent of shareholders representing at least three-quarters of the shares. (SAC  
26 Ex. 1.) It further provides that “[i]f the company refuses to consent to the transfer, the  
27 shareholders may, within three months of such refusal, acquire the shares or cause them to be  
28 acquired” at a certain price, “unless the transferor abandons the proposed transfer of his shares”.  
(*Id.*) Thus, even if Mondo Bongo had refused consent to the sale of Nouvel’s Quimicum shares,  
Jolie could have simply abandoned the transaction, in which case Mondo Bongo would have no  
right to the shares. Mondo Bongo’s consent right is simply not a possessory right to the shares.

1 changes in control. (*Id.* ¶ 15) The SAC does not identify any such authority and Plaintiffs were  
2 unable to identify any during the parties’ meet and confer. (Chennakesavan Decl. ¶ 5.)

3 Plaintiffs do not, and cannot, assert any other right to Nouvel’s shares in Quimicum. Even  
4 accepting Plaintiffs’ flawed view of Luxembourg law, Mondo Bongo would at best have only a  
5 contractual right concerning the Quimicum shares. But that does not establish that Mondo Bongo  
6 had any possessory right in the shares that would justify the Court awarding them to Pitt or Mondo  
7 Bongo via a constructive trust. A constructive trust is proper only “where there is a wrongful  
8 acquisition or detention of property *to which another is entitled*”. *Martin v. Kehl*, 145 Cal. App.  
9 3d 228, 238 (1983) (citations and quotations omitted) (emphasis added). Although Plaintiffs  
10 purport to plead an implied-in-fact contract and a quasi-contract between Pitt and *Jolie* that  
11 allegedly provided Pitt certain rights, they do not allege any facts showing that any such contract  
12 or quasi-contract binds *Nouvel*. (*See* SAC ¶¶ 151-52, 160-61.) Nor do they allege any facts  
13 showing that Pitt (as opposed to Mongo Bongo) has the right to acquire Nouvel’s Quimicum  
14 shares, as opposed to the right merely to consent to the disposition of certain interests. (*See id.*)  
15 They have therefore failed to sufficiently plead an entitlement to the Quimicum shares that Nouvel  
16 owns. *See Reay v. Reay*, 97 Cal. App. 264, 277 (1929) (“The fundamental theory on which equity  
17 acts is that of restoration—of restoring [the parties] to the positions which they occupied before  
18 the fraud was committed. Assuming that the transaction should not have taken place the court  
19 proceeds as though it had not taken place, and returns the parties to that situation[.]”).

20 With respect to element three, Plaintiffs do not allege any facts showing that Nouvel  
21 acquired or detained its Quimicum shares by a wrongful act. Instead, Plaintiffs plead that the sale  
22 of Nouvel had the effect of “unjustly enriching *Jolie*”. (SAC ¶ 222.) Because Plaintiffs fail to  
23 allege any wrongful act on the part of Nouvel in connection with its acquisition of its Quimicum  
24 shares, they cannot establish entitlement to a constructive trust.

## 25 **V. CONCLUSION**

26 Claims Four, Five, Eight and Nine of the SAC fail to state a claim upon which relief can be  
27 granted. (Code Civ. Proc. § 430.10(e).) Plaintiffs have already amended twice. Defendant  
28 Nouvel’s demurrer should be sustained and the case against it dismissed without leave to amend.

1 Dated: August 28, 2023

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Respectfully submitted,

By: /s/ Prashanth Chennakesavan

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## Court Reservation Receipt

### Reservation

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Number of Motions:  
1

Case Number:  
22STCV06081

Case Title:  
WILLIAM B. PITT, et al. vs ANGELINA JOLIE, et al.

Filing Party:  
Nouvel, LLC (Defendant)

Location:  
Stanley Mosk Courthouse - Department 16

Date/Time:  
December 1st 2023, 9:00AM

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CR-KVAWDXXTWIKLLG354

### Fees

Description	Fee	Qty	Amount
Reschedule Fee	20.00	1	20.00
Credit Card Percentage Fee (2.75%)	0.55	1	0.55
<b>TOTAL</b>			<b>\$20.55</b>

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