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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MATTHEW JOHN VASSEL,

Plaintiff,

v.

CARSON HELICOPTERS, INC., et al.,

Defendants.

No. 2:13-cv-02520-KJM-CMK

ORDER

The separate motions to dismiss filed by defendants Levi Phillips and Carson Helicopters, Inc. (collectively “defendants”) are currently pending before the court. The motions were submitted without argument and the court now DENIES the motions.

I. BACKGROUND

On December 5, 2013, plaintiff Matthew John Vassel (“plaintiff”) initiated this action alleging fraud against defendants Carson Helicopters, Inc. (“Carson”), Carson Helicopter Services, Inc., Steve Metheny and Levi Phillips (“Phillips”). ECF No. 1.

Carson was served on January 17, 2014. ECF No. 5. Phillips was served on March 5, 2014. ECF No. 9. On March 26, 2014, the court granted plaintiff an extension of time

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1 to serve process on defendant Steve Metheny.¹ ECF Nos. 11 & 15. Defendant Steve Metheny
2 was served on April 9, 2014. ECF No. 16. Metheny's answer was due on April 30, 2014. *Id.*

3 On March 25, 2014, Phillips filed a motion to dismiss. ECF No. 12. Plaintiff
4 opposed the motion on April 10, 2014 (ECF Nos. 22-24); and Phillips responded thereto on April
5 18, 2014 (ECF No. 26).

6 On March 26, 2014, Carson filed a motion to dismiss. ECF No. 13. Plaintiff
7 opposed the motion on April 10, 2014 (ECF Nos. 18-20); and Carson responded thereto on
8 April 18, 2014 (ECF No. 27).

9 II. ALLEGATIONS OF THE COMPLAINT

10 Plaintiff is a resident of Weaverville, California and was employed by the United
11 States Forest Service ("USFS") for twenty years. Compl. ¶ 3, ECF No. 1. At the time the event
12 giving rise to this action occurred, plaintiff was employed with USFS as a Forestry Technician
13 GS-5. *Id.* Carson is a Pennsylvania corporation in the business of providing customers with
14 helicopters, including those used to transport firefighting personnel within California. *Id.* ¶ 4.
15 Defendant Phillips was employed by Carson as the director of maintenance. *Id.* ¶ 7.

16 Prior to August 2008, defendants bid for and were awarded a contract with USFS
17 for the sale of helicopters to be used for the transportation of firefighters and their equipment. *Id.*
18 ¶¶ 10 & 15. "The terms and conditions of the contract entered into between the defendants and
19 the USFS contained precise specifications set forth by the USFS." *Id.* ¶ 16. Defendants
20 provided, *inter alia*, "altered/forged specifications" that included the helicopters' empty weight.
21 *Id.* ¶ 17. Defendants "knowingly and intentionally" submitted the data falsified by defendants so
22 the helicopters would have the appearance of meeting USFS's required specifications. *Id.* ¶ 18.
23 "[I]t was foreseeable to the defendants that the USFS and its employees would justifiably rely
24 upon" the false specifications "to calculate critical load and lift capacities of the helicopters"
25 "rendering the defendants liable for the subject helicopter crash and the resultant injuries and
26 damages suffered by plaintiff." *Id.*

27 ¹ Defendant Carson Helicopters Services, Inc. was served on January 17, 2014, but has not
28 appeared in the action. ECF No. 5. According to Carson, this entity no longer exists because it
merged into Carson. ECF No. 13-1 at 2.

1 On August 5, 2008, a helicopter purchased by USFS from defendants was
2 involved in a crash resulting in the death of nine firefighters and injuring several others. *Id.* ¶ 11.
3 Plaintiff’s duties at the time of the accident required him to manage the site where the helicopter
4 took off, “to perform preflight safety briefings with the helicopter’s passengers[,] . . . oversee the
5 security of [the site,] . . . [and] oversee the manifesting[.]” *Id.* ¶ 23. “[T]he helicopter’s flight
6 crew and the USFS ground crew personnel, including plaintiff, responsible for calculating the
7 safe payload weight of the helicopter did not know that the helicopter’s written data provided by
8 the defendants were false” and therefore relied on the specifications during the helicopter loading
9 process. *Id.* ¶¶ 17 & 20. As a result of the false specifications, the crews miscalculated the
10 carrying weight of the helicopter, and it exceeded its maximum weight capacity, causing it to
11 crash after lifting off. *Id.* ¶¶ 17 & 21.

12 Plaintiff was within 150 yards of the crash and witnessed the “resultant deaths of
13 the firefighters who were killed in the crash.” *Id.* ¶ 13(a).² Witnessing the crash “caused plaintiff
14 to sustain severe injuries and damages, including, but not limited to, extreme physical and
15 emotional distress and pain and mental anxiety, including, but not limited to, post-traumatic stress
16 syndrome; loss of working capacity; and the loss of his twenty-year career with the USFS and
17 corresponding wages.” *Id.* ¶ 13(b).

18 On December 7, 2010, the National Transportation Safety Board announced the
19 helicopter crash “occurred as a result of fraud and deceit that had been perpetrated by the
20 defendants in order to obtain a contract with the USFS.” *Id.* ¶ 12. Prior to this determination,
21 however, plaintiff “fell under scrutiny and was made to feel that his job performance had fallen
22 below acceptable levels and may have contributed to the cause of the accident.” *Id.* ¶ 23. As a
23 result of the “fraudulent and deceitful conduct” of defendants, plaintiff sustained “severe
24 emotional distress,” “was forced to undergo medical treatment and expenses,” “suffered loss of
25 employment and corresponding loss of wages and loss of working capacity,” “has been held up to
26 ridicule and disdain . . . which has caused him to suffer damage to his personal and professional

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28 ² Plaintiff’s complaint contains two paragraphs identified with the number “13.” The
court designates the first paragraph “13(a)” and the second paragraph “13(b).”

1 reputations and diminished his social standing in his community and in his professional
2 standing.” *Id.* ¶¶ 24-27. Finally, defendants’ “fraudulent and deceitful conduct” “subjected
3 plaintiff to cruel and extreme emotional distress upon witnessing the crash of the helicopter and
4 the deaths of the firefighters who were aboard.” *Id.* ¶ 28.

5 III. LEGAL STANDARDS FOR A MOTION TO DISMISS

6 “[F]ederal courts sitting in diversity jurisdiction apply state substantive law and
7 federal procedural law.” *Zamani v. Carnes*, 491 F.3d 990, 995 (9th Cir. 2007) (quoting *Freund v.*
8 *Nycomed Amersham*, 347 F.3d 752, 761 (9th Cir. 2003) (quoting *Gasperini v. Ctr. for*
9 *Humanities, Inc.*, 518 U.S. 415, 427 (1996))). Because jurisdiction in this case is based on
10 diversity of citizenship, California substantive law applies to plaintiff’s state-law claim and
11 federal procedural law governs the procedural aspects of defendants’ motions to dismiss. *Freund*,
12 347 F.3d at 761.

13 Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a party may move to
14 dismiss a complaint for “failure to state a claim upon which relief can be granted.” A court may
15 dismiss “based on the lack of cognizable legal theory or the absence of sufficient facts alleged
16 under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.
17 1990).

18 Although a complaint need contain only “a short and plain statement of the claim
19 showing that the pleader is entitled to relief,” FED. R. CIV. P. 8(a)(2), in order to survive a motion
20 to dismiss this short and plain statement “must contain sufficient factual matter . . . to ‘state a
21 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
22 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint must include something
23 more than “an unadorned, the-defendant-unlawfully-harmed-me accusation” or “‘labels and
24 conclusions’ or ‘a formulaic recitation of the elements of a cause of action.’” *Id.* (quoting
25 *Twombly*, 550 U.S. at 555). Determining whether a complaint will survive a motion to dismiss
26 for failure to state a claim is a “context-specific task that requires the reviewing court to draw on
27 its judicial experience and common sense.” *Id.* at 679. Ultimately, the inquiry focuses on the

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1 interplay between the factual allegations of the complaint and the dispositive issues of law in the
2 action. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

3 In making this context-specific evaluation, this court must construe the complaint
4 in the light most favorable to the plaintiff and accept as true the factual allegations of the
5 complaint. *Erickson v. Pardus*, 551 U.S. 89, 93–94 (2007). This rule does not apply to “‘a legal
6 conclusion couched as a factual allegation,’” *Papasan v. Allain*, 478 U.S. 265, 286 (1986) *quoted*
7 *in Twombly*, 550 U.S. at 555, nor to “allegations that contradict matters properly subject to
8 judicial notice” or to material attached to or incorporated by reference into the complaint.
9 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988–89 (9th Cir. 2001). A court’s
10 consideration of documents attached to a complaint or incorporated by reference or matter of
11 judicial notice will not convert a motion to dismiss into a motion for summary judgment. *United*
12 *States v. Ritchie*, 342 F.3d 903, 907–08 (9th Cir. 2003); *Parks Sch. of Bus. v. Symington*, 51 F.3d
13 1480, 1484 (9th Cir. 1995); *compare Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977,
14 980 (9th Cir. 2002) (noting that even though court may look beyond pleadings on motion to
15 dismiss, generally court is limited to face of the complaint on 12(b)(6) motion).

16 IV. ANALYSIS

17 A. Consideration of Matters Outside the Complaint

18 As an initial matter the court must address whether it may properly consider facts
19 surrounding criminal proceedings against defendants Phillips and Metheny, related to the
20 helicopter crash. In support of plaintiff’s oppositions to Phillips’ and Carson’s motions to
21 dismiss, plaintiff includes the declaration of one of his attorneys, Troy Douglas Mudford, and
22 attaches thereto the following exhibits: (1) plaintiff’s complaint; (2) a press release regarding the
23 indictment of defendants Phillips and Metheny; (3) excerpts from the Federal Grand Jury
24 Indictment of defendants Phillips and Metheny; and (4) excerpts from defendant Phillips’ petition
25 to enter a plea of guilty in the criminal matter of defendant Phillips in the District of Oregon.
26 ECF Nos. 21 & 24. Plaintiff also includes his own declaration summarizing his responsibilities
27 with regard to the helicopter involved in the crash. ECF Nos. 19 & 23. Plaintiff did not file a

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1 request for judicial notice, nor did he set forth any legal argument supporting the court’s ability to
2 consider these matters.

3 Phillips opposes consideration of the declarations and exhibits, arguing it is
4 improper to review extrinsic evidence in deciding a 12(b)(6) motion and the documents
5 “contribute nothing to the analysis of the subject of duty or to the propriety of Plaintiff’s
6 emotional distress claims.” ECF No. 26 at 5-6. Carson does not address the extrinsic evidence
7 question.

8 Under Rule 201 of the Federal Rules of Evidence, a court may, *sua sponte*, take
9 judicial notice of an adjudicative fact, which “must be one not subject to reasonable dispute in
10 that it is either (1) generally known . . . (2) or capable of accurate and ready determination by
11 resort to sources whose accuracy cannot reasonably be questioned.” FED. R. EVID. 201 (b), (c)(1).
12 While matters of public record are generally subject to judicial notice, *Akhtar v. Mesa*, 698 F.3d
13 1202, 1212 (9th Cir. 2012); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001), it
14 ultimately is a proponent’s burden to show facts contained in documents are proper subjects of
15 judicial notice. *Hurd v. Garcia*, 454 F. Supp. 2d 1032, 1054–55 (S.D. Cal. 2006).

16 Here, plaintiff provides no argument or legal authority to show the facts contained
17 in a press release and mere excerpts of public records are proper subjects of judicial notice. The
18 court declines to consider the declarations of Mudford and plaintiff.

19 B. Construction of Plaintiff’s Complaint

20 Defendants argue the emotional distress damages plaintiff seeks support a claim
21 for negligent infliction of emotional distress and the court should therefore construe plaintiff’s
22 complaint as asserting a claim under this theory rather than fraud and deceit.

23 Phillips argues, “California law does not authorize recovery of the types of
24 damages plaintiff seeks under the circumstances described in his complaint.” ECF No. 12-1 at 2.
25 He says plaintiff fails to identify the specific legal duty owed to him by Phillips, instead relying
26 on plaintiff’s “status as an eyewitness to the crash as the basis upon which he claims the right to
27 sue,” which is not supported by California law. *Id.* at 4-5. Phillips argues he “had no duty under
28 California law to avoid causing emotional distress to witnesses” of the helicopter crash. *Id.* at 5

1 (citing *Lawson v. Management Activities*, 69 Cal. App. 4th 652 (1999) (analyzing under what
2 circumstances a plaintiff can recover for emotional distress as part of a claim of negligence)).

3 Similarly, Carson argues, “California law holds that the nature of a cause of action
4 is governed by the kinds of damages allegedly sustained and the relief sought in the complaint,
5 not a plaintiff’s characterization of the claimed cause of action.” ECF No. 13-1 at 5. Carson goes
6 on to argue plaintiff’s “complaint includes a single cause of action for fraud and deceit but seeks
7 damages not based on fraud, but rather for severe emotional distress.” ECF No. 13-1 at 6
8 (citation omitted). In that regard, Carson posits that negligent infliction of emotional distress
9 cases are generally divided into two categories: “direct victim” claims and “bystander” claims;
10 and concludes plaintiff’s complaint fails to state a claim under either category. *Id.* at 6-10.

11 Plaintiff counters, “[t]his is an action for fraud” and plaintiff “has pled, with
12 particularity, a valid action for the tort of deceit.” ECF Nos. 18 & 22 at 1. Plaintiff further argues
13 “[f]raud is the central issue in this case,” and refutes any suggestion he is misleading the court by
14 stating a claim for fraud. ECF No. 18 at 5.

15 Defendants provide no compelling reason for the court to alter the nature of
16 plaintiff’s complaint and substitute a claim different from the one plaintiff says he intends to
17 bring. In particular, defendants offer no authority, and the court is unaware of any, providing for
18 the recharacterization of a complaint based on the damages alleged. Rather, the cases on which
19 Carson relies provide at best that a complaint fails under California law if it does not properly
20 allege a causal connection between the alleged misrepresentations and the resulting damages. *See*
21 *Small v. Fritz Companies, Inc.*, 30 Cal. 4th 167, 202 (2003); *Goehring v. Chapman University*,
22 121 Cal. App. 4th 353, 365 (2004); *Gagne v. Bertran*, 43 Cal. 2d 481, 491-492 (1954). *Cf.*
23 *Bogovich v. Sandoval*, 189 F.3d 999, 1001–02 (9th Cir. 1999) (reciting well-established principle
24 that “party who brings a suit is master to decide what law he will rely upon.”) (alterations and
25 internal quotations omitted) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 n.7 (1987)).
26 The court reads plaintiff’s complaint as plainly alleging a claim under California’s law for fraud
27 and deceit.

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1 The question thus becomes whether plaintiff can sustain a claim under California
2 law for fraud and deceit considering the allegations set forth in his complaint. After first
3 reviewing the applicable law, the court finds he can, as explained below.

4 C. California Law for Fraud and Deceit

5 In California, “[o]ne who practices a deceit with intent to defraud the public, or a
6 particular class of persons, is deemed to have intended to defraud every individual in that class,
7 who is actually misled by the deceit.” CAL. CIV. CODE § 1711; *see also* CAL. CIV. CODE § 1709
8 (“One who willfully deceives another with intent to induce him to alter his position to his injury
9 or risk, is liable for any damage which he thereby suffers.”). “The elements of fraud, which give
10 rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or
11 nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce
12 reliance; (d) justifiable reliance; and (e) resulting damage.” *Lazar v. Superior Court*, 12 Cal. 4th
13 631, 638 (1996).

14 While a fraud claim may typically involve the public or a class of persons, *see*,
15 *e.g.*, *Cohen v. Citizens Nat. Trust & Sav. Bank*, 143 Cal. App. 2d 480, 486 (1956), it may also
16 apply to cases involving fraudulent misrepresentations made to individuals, *see Geernaert v.*
17 *Mitchell*, 31 Cal. App. 4th 601, 605 (1995); *Mega Life & Health Ins. Co. v. Superior Court*,
18 172 Cal. App. 4th 1522, 1530 (2009). In *Geernaert*, the court explained, “[i]t has traditionally
19 been the law in this state that to be liable for actionable fraud the defendant must intend his
20 representation (or concealment) be relied upon by a particular person or persons”; but the same
21 court clarified, “it is also recognized that the defendant will not escape liability if he makes a
22 misrepresentation to one person intending that it be repeated and acted upon by the plaintiff.”
23 *Geernaert*, 31 Cal. App. 4th at 605; *see also Mirkin v. Wasserman*, 5 Cal. 4th 1082, 1098 (1993)
24 (citing *Varwig v. Anderson-Behel Porsche/Audi, Inc.*, 74 Cal. App. 3d 578, 581 (1977)); *Shapiro*
25 *v. Sutherland*, 64 Cal. App. 4th 1534, 1548 (1998). Thus, under *Geernaert*, plaintiff must plead
26 facts demonstrating defendants, as the “maker[s] of the misrepresentation,” had “information that
27 would lead a reasonable man to conclude that there is an especial likelihood that it will reach

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1 [plaintiff] and will influence [his] conduct.” *Geernaert*, 31 Cal. App. 4th at 607 (quotations and
2 emphasis omitted).

3 With regard to damages, California law provides: “[f]or the breach of an obligation
4 not arising from contract, the measure of damages, except where otherwise expressly provided by
5 this code, is the amount which will compensate for all the detriment proximately caused thereby,
6 whether it could have been anticipated or not.” CAL. CIV. CODE § 3333. In a claim for fraudulent
7 misrepresentation, damages must result from reliance on the misrepresentation. *Small*, 30 Cal.
8 4th at 202. In other words, “[i]t must be shown in the pleading that the damage claimed was
9 sustained by reason of the fraud and should show the relation between the fraud and the damage
10 alleged.” *Woodson v. Winchester*, 16 Cal. App. 472, 476–77 (1911).

11 Finally, when an entire complaint is grounded in fraud, its allegations must state
12 “with particularity the circumstances constituting fraud.” FED. R. CIV. P. 9(b); *see also Vess v.*
13 *Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1107 (9th Cir. 2003) (citing *Bly–Magee v. California*,
14 236 F.3d 1014, 1019 (9th Cir. 2001)). Circumstances that must be stated with particularity
15 pursuant to Rule 9(b) include the “time, place, and specific content of the false representations as
16 well as the identities of the parties to the misrepresentations.” *Sanford v. MemberWorks, Inc.*,
17 625 F.3d 550, 558 (9th Cir. 2010) (quoting *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066
18 (9th Cir. 2004)). In other words, the pleading must be ““specific enough to give defendants notice
19 of the particular misconduct . . . so that they can defend against the charge and not just deny they
20 have done anything wrong.”” *Id.* (quoting *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th
21 Cir. 2009)) (alteration original).

22 D. Defendant Levi Phillips’ Motion to Dismiss

23 Phillips’ argument, that plaintiff’s allegations fail to establish a duty he owed,
24 assumes plaintiff’s claim is construed as one for negligent infliction of emotional distress claim.
25 ECF No. 12-1 at 4-6 (citing *Lawson*, 69 Cal. App. 4th 652). As explained above, the court rejects
26 this argument.

27 Phillips also argues plaintiff fails to state a claim upon which relief can be granted
28 because plaintiff’s emotional distress damages as alleged are insufficient to support a claim for

1 fraud in that they do not qualify under either the “bystander” or “direct victim” theories of
2 recovery. ECF No. 12-1 at 7-8. Phillips’ arguments here as well assume a claim for negligence.
3 Phillips cites no authority finding a claim for fraud fails because the damages claimed are for
4 emotional distress, or holding the “bystander” or “direct victim” theories of recovery apply to
5 fraud and deceit claims. While damages in many fraud cases relate to property loss they may also
6 be pecuniary, *Mirkin*, 5 Cal. 4th at 1095 (quoting Restatement (Second) of Torts § 533 (1977)),
7 which is a more general form of damage “that can be estimated and monetarily compensated,”
8 BLACK’S LAW DICTIONARY (9th ed. 2009). The court is unaware of any bar to claiming
9 emotional distress damages in an action for fraud in California. *Cf. Serv. by Medallion, Inc. v.*
10 *Clorox Co.*, 44 Cal. App. 4th 1807, 1818 (1996) (“Whatever form it takes, the injury or damage
11 must not only be distinctly alleged but its causal connection with the reliance on the
12 representations must be shown.”) (internal quotations and citation omitted)). Plaintiff’s claim
13 does not fail because he alleges emotional distress damages.

14 To the extent Phillips challenges the causal connection between plaintiff’s alleged
15 reliance on Phillips’ misrepresentation and plaintiff’s claimed damages, this argument fails. In a
16 fraud and deceit claim, as noted, California law requires a plaintiff to plead a sufficient
17 connection between the fraud and the damages alleged. *Woodson*, 16 Cal. App. at 476–77. Here,
18 plaintiff alleges he relied on Phillips’ fraudulent specifications and miscalculated the weight of
19 the helicopter, Compl. ¶ 21; as a result he witnessed the helicopter crash and suffered “extreme
20 physical and emotional distress and pain and mental anxiety, including, but not limited to, post-
21 traumatic stress syndrome; loss of working capacity; and the loss of his twenty-year career with
22 the USFS and corresponding wages,” *id.* ¶ 13(b). Viewed in the light most favorable to plaintiff,
23 as required, the court finds these allegations sufficiently plead the resulting damage element of a
24 fraud and deceit claim, and therefore survive a motion to dismiss. Whether Phillips’ alleged
25 fraudulent specifications in fact caused plaintiff’s damages is more appropriately examined
26 through discovery and addressed on summary judgment or at trial.

27 Accordingly, Phillips’ motion to dismiss is DENIED.

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1 E. Defendant Carson Helicopters, Inc.’s Motion to Dismiss

2 To the extent Carson also construes plaintiff’s claims as one for negligent
3 infliction of emotional distress, ECF No. 13-1 at 6-10, the court declines to consider the
4 argument.

5 Carson does contend plaintiff fails to “plead that any of the defendants made a
6 misrepresentation directly to him and he has failed to plead that the defendants had the requisite
7 intent to defraud him personally.” *Id.* at 11. Carson argues that, while plaintiff alleges
8 defendants intentionally made false statements to USFS that were relied on by ground crew
9 personnel, he fails to allege Carson provided the false information to plaintiff. *Id.* Carson relies
10 on *Walters v. Marler*, 83 Cal. App. 3d 1 (1978), a negligent misrepresentation case, for the
11 proposition that “the requisite ‘representation must be made with the intent to induce action by
12 some particular person,’” and there is no liability if others become aware of the statements and act
13 upon them. *Id.* (quoting *Walters*, 83 Cal. App. 3d at 19).

14 In reply, plaintiff argues Carson knew USFS employees would rely on its
15 fraudulent specifications and cannot escape liability on the ground plaintiff did not sign the
16 contract for purchase of the helicopter himself. ECF No. 18 at 9. Plaintiff cites to several
17 sections of the complaint in support of his argument that he sufficiently states a claim for fraud.
18 *Id.* at 4 (citing Compl. ¶¶ 17-27).

19 As noted above, “to be liable for actionable fraud the defendant must intend his
20 representation (or concealment) be relied upon by a particular person or persons.” *Geernaert*,
21 31 Cal. App. 4th at 605. However, a defendant cannot “escape liability if he makes a
22 misrepresentation to one person intending that it be repeated and acted upon by the plaintiff.” *Id.*
23 If a defendant makes a fraudulent misrepresentation and “‘has reason to expect that its terms will
24 be repeated or its substance communicated to’” another who acts in justifiable reliance upon the
25 misrepresentation, the defendant is subject to liability for pecuniary loss to that person. *Id.* at
26 605-06 (quoting Restatement (Second) of Torts § 533 (1977)).

27 Here, plaintiff alleges defendants provided false specifications to USFS, Compl.
28 ¶ 17, and “it was foreseeable to the defendants that the USFS and its employees would justifiably

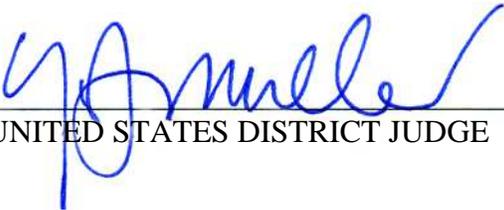
1 rely upon the aforementioned fraudulent and deceitful specifications to calculate critical load and
2 lift capacities of the helicopter,” *id.* ¶ 18. Plaintiff alleges the fraudulent misrepresentation was
3 intentionally made by defendants. *Id.* ¶ 28. These allegations are sufficient to plead the intent to
4 defraud element of a fraud and deceit claim.

5 Carson’s motion to dismiss is therefore DENIED.

6 V. CONCLUSION

7 For the foregoing reasons, defendants’ motions to dismiss (ECF Nos. 12 & 13) are
8 DENIED.

9 DATED: May 13, 2014.

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13 UNITED STATES DISTRICT JUDGE
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