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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 HOUSE OF LEBANON  
12 ORGANIZATION, INC.,

13 Plaintiff,

14 v.

15 HOUSE OF PACIFIC RELATIONS  
16 INTERNATIONAL COTTAGES. INC.,  
17 et al.,

18 Defendants.

Case No.: 3:17-cv-00232-L-BGS

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION [Doc. 7] TO DISMISS**

19 Pending before the Court is Defendants'<sup>1</sup> motion to dismiss Plaintiff House of  
20 Lebanon's ("Plaintiff") first amended complaint. The Court decides the matter on the  
21 papers submitted and without oral argument. See Civ. L. R. 7.1(d.1). For the reasons  
22 stated below, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants'  
23 motion.

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27 <sup>1</sup> The defendants in this action are House of Pacific Relations International Cottages, Inc.; New  
28 International Cottages, Inc.; the City of San Diego; The House of Mexico; House of India, Inc.; House  
of Turkey; House of Palestine; House of Peru; House of Panama; The House of the Philippines, Inc.;  
and House of Korea, Inc.

1 **I. BACKGROUND**

2 This case arises out of a dispute involving a project to construct new cottages in  
3 Balboa Park. The cottages at issue are run by non-profit organizations with an aim  
4 toward educating the public about the culture of various foreign countries. Each cottage,  
5 it seems, is to be operated by a member of Defendant House of Pacific Relations  
6 International Cottages (“HPR”). Plaintiff is a member of HPR. Along with eight other  
7 HPR members, all of whom are defendants<sup>2</sup> in this action, Plaintiff sought to occupy one  
8 of nine cottages to be constructed in a proposed HPR expansion project (the “Project”) in  
9 Balboa Park.

10 In its effort to gain inclusion into the Project, Plaintiff (1) organized as a non-profit  
11 entity; (2) became a member of HPR; (3) paid HPR over \$34,000; and (4) prepared  
12 paperwork for presentation to the City of San Diego, the San Diego Planning  
13 Commission, and the Balboa Park Committee. Furthermore, some or all of the  
14 defendants in this case represented to Plaintiff that they would permit Plaintiff to  
15 participate in the Project. In reliance upon these representations made by unspecified  
16 defendants, Plaintiff communicated its support of the project to the San Diego City  
17 Council. Subsequently, City Council approved the project, but Defendants excluded  
18 Plaintiff from participating in the Project.

19 Accordingly, Plaintiff filed an amended complaint in the Superior Court of  
20 California, County of San Diego, alleging (1) discrimination in violation of 42 U.S.C. §  
21 1981; (2) a right to declaratory relief; (3) breach of contract; (4) breach of the implied  
22 covenant of good faith and fair dealing; (5) ultra vires action; (6) fraud; (7) negligent  
23 misrepresentation; (8) a right to an inspection and accounting; and (9) violation of  
24 California Business and Professions Code § 17200. (See FAC [Doc. 1-2].) Defendants  
25 removed to this Court and now move to dismiss under Fed. R. Civ. P. 12(b)(6). (See  
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28 <sup>2</sup> These defendants are House of Mexico; House of India; House of Turkey; House of Palestine; House  
of Peru; House of Panama; House of the Philippines; and House of Korea.

1 Rem. Not. [Doc. 1]; MTD [Doc. 7]; Joinder [Doc. 8].) Plaintiff opposes. (See Opp'n  
2 [Doc. 11].)  
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## 4 **II. LEGAL STANDARD**

5 The court must dismiss a cause of action for failure to state a claim upon which  
6 relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6)  
7 tests the complaint's sufficiency. *See N. Star Int'l v. Ariz. Corp. Comm'n.*, 720 F.2d 578,  
8 581 (9th Cir. 1983). The court must assume the truth of all factual allegations and  
9 "construe them in the light most favorable to [the nonmoving party]." *Gompper v. VISX,*  
10 *Inc.*, 298 F.3d 893, 895 (9th Cir. 2002); *see also Walleri v. Fed. Home Loan Bank of*  
11 *Seattle*, 83 F.2d 1575, 1580 (9th Cir. 1996).

12 As the Supreme Court explained, "[w]hile a complaint attacked by a Rule 12(b)(6)  
13 motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to  
14 provide the 'grounds' of his 'entitlement to relief' requires more than labels and  
15 conclusions, and a formulaic recitation of the elements of a cause of action will not do."  
16 *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007) (internal citations and  
17 quotation marks omitted). Instead, the allegation in the complaint "must be enough to  
18 raise a right to relief above the speculative level." *Id.* at 1965. A complaint may be  
19 dismissed as a matter of law either for lack of a cognizable legal theory or for insufficient  
20 facts under a cognizable theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530,  
21 534 (9th Cir. 1984).  
22

## 23 **III. COUNT 1**

24 Count 1 of Plaintiff's Amended Complaint alleges a violation of 42 U.S.C. § 1981.  
25 § 1981 provides that

26 All persons within the jurisdiction of the United States shall have the same  
27 right in every State and Territory to make and enforce contracts, to sue, be  
28 parties, give evidence, and to the full and equal benefit of all laws and  
proceedings for the security of persons and property as is enjoyed by white

1 citizens, and shall be subject to like punishment, pains, penalties, taxes,  
2 licenses, and exactions of every kind, and to no other.

3 42 U.S.C. § 1981(a). The Supreme Court has articulated that § 1981 forbids only *racial*  
4 discrimination in the making of contracts. *Saint Francis College v. Al-Khazraji*, 481 U.S.  
5 604, 609 (1987). § 1981 does not prohibit discrimination on the basis of *national origin*  
6 in the making of contracts. *Id.* at 613. Here, Plaintiff explicitly bases its § 1981 claim on  
7 national origin discrimination. (FAC ¶ 29). Indeed, the Amended Complaint does not  
8 even state the racial ancestry of Plaintiff’s members. Nor does it allege how any  
9 discrimination it suffered was based on the race of its members. Accordingly, the Court  
10 **GRANTS WITHOUT PREJUDICE** Defendants’ motion as to the § 1981 claim.

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12 **IV. COUNTS 2, 3, & 4**

13 Defendants argue that Plaintiff has failed to state a claim for breach of contract.  
14 Specifically, Defendants argue Plaintiff has not alleged the exact terms of any alleged  
15 contract; the names of the parties who executed the contract; when and how the parties  
16 executed the contract; or any precise facts about how Defendants breached the contract.  
17 For these reasons, Defendants contend Plaintiff’s allegations do not raise the breach of  
18 contract claim to the level of plausibility.

19 The Court disagrees. Federal Rule of Civil Procedure 8(a) requires only that  
20 Plaintiff provide “a short and plain statement of the claim showing that the [Plaintiff] is  
21 entitled to relief.” Fed. R. Civ. P. 8(a)(2). A Plaintiff meets this standard so long as its  
22 allegations “raise the right to relief above the speculative level.” *Twombly*, 127 S.Ct. at  
23 1964–65. Here, Plaintiff alleges that it entered into an agreement with Defendants such  
24 that, in return for Plaintiff’s support of the effort to obtain City Council’s approval of the  
25 Project, Defendant would allow Plaintiff to occupy one of the Project’s cottages.<sup>3</sup> (FAC  
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28 <sup>3</sup> The Court notes that Plaintiff’s use of the word “interest” in reference to the project clearly refers to  
occupying one of the new cottages. (See FAC ¶¶ 1–4.)

1 ¶¶ 3–5, 8, 9, 35.) Further, Plaintiff alleges that, notwithstanding its support of the  
2 Project, Defendants wrongfully denied Plaintiff from participating. (Id. ¶ 10.)  
3 Construing these allegations as true, the Court finds them sufficient to plausibly allege a  
4 breach of contract. To the extent Defendants desire more specificity regarding the details  
5 of the contract’s terms and execution, they may seek them in discovery.

6 Defendants’ arguments for dismissal of the breach of the implied covenant of good  
7 faith and fair dealing claim and the declaratory relief claim are unpersuasive for similar  
8 reasons. Specifically, Defendants only argument for dismissal of the breach of the  
9 implied covenant of good faith and fair dealing claim is that, to sustain such a claim, a  
10 plaintiff must properly allege the existence of a contract. Thus, Defendants argue,  
11 because Plaintiff has not properly alleged the existence of a contract, the Court must  
12 dismiss the implied covenant claim. Having concluded Plaintiff has in fact properly  
13 alleged the existence of a contract, Defendant’s implied covenant argument necessarily  
14 fails.

15 Plaintiff’s claim for declaratory relief seeks a declaration from this Court regarding  
16 the nature of Plaintiff’s interest in the Project. Defendants argue for dismissal of this  
17 claim on the grounds that Plaintiff fails to identify any “interest” to which it might  
18 plausibly be entitled. This argument fails because, as discussed above in connection with  
19 the breach of contract claim, Plaintiff has plausibly alleged that it might be entitled to  
20 occupy one of the cottages that the Project will produce. For these reasons, the Court  
21 **DENIES** Defendants’ motion as to Counts 2, 3, and 4.

## 22 23 **V. COUNT 5**

24 Plaintiff’s fifth cause of action alleges that Defendants other than the City of San  
25 Diego took actions against Plaintiff that are invalid as ultra vires. (FAC ¶¶ 46–49.) Ultra  
26 vires conduct is conduct that is “beyond the purpose or power of the corporation.”  
27 *McDermott v. Bear Film Co.*, 219 Cal. App. 2d 607, 610–11 (1963). Here, Plaintiff has  
28 failed to allege either (1) the scope of activity permitted by any of the Defendants’

1 articles, bylaws, or other corporate documents or (2) what actions Defendants’ took that  
2 allegedly exceeded this corporate authority. Accordingly, the Court finds Plaintiff has  
3 failed to plausibly allege that Defendants’ engaged in ultra vires conduct and **GRANTS**  
4 **WITHOUT PREJUDICE** Defendants’ motion as to Count 5.

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6 **VI. COUNTS 6 & 7**

7 Plaintiff’s sixth and seventh causes of action allege fraud and negligent  
8 misrepresentation. The heightened pleading standards of Federal Rule of Civil Procedure  
9 9(b) apply to both claims. Fed. R. Civ. P. 9(b); *Puri v. Khalsa*, 2017 WL 66621 \*6–7  
10 (9th Cir. 2017). Rule 9(b) provides that, “[i]n alleging fraud or mistake, a party must  
11 state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P.  
12 9(b). To satisfy Rule 9(b), “a plaintiff must set forth *more* than the neutral facts  
13 necessary to identify the transaction.” *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1548  
14 (9th Cir. 1994). A plaintiff must state the who, what, when, where, and how of the  
15 alleged misrepresentation. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir.  
16 2003).

17 Here, Plaintiff alleges that on November 14, 2016, Defendants misrepresented to  
18 Camil Saab and Sam Abed (representatives of Plaintiff) that “Defendants would fully  
19 recognize and allow House of Lebanon’s interest in the Project and its membership  
20 interest.” (FAC ¶ 8.) While this allegation identifies the misrepresentation, when it was  
21 made, and which of Plaintiffs representatives it was made to, it does not identify which  
22 Defendants made it. Where, as here, a plaintiff alleges fraud against multiple defendants,  
23 Rule 9(b) requires a plaintiff to “differentiate their allegations” so as to “inform each  
24 defendant separately of the allegations surrounding his alleged participation in the fraud.”  
25 *Swartz v. KPMG LLP*, 476 F.3d 756, 764–65 (9th Cir. 2007). Plaintiff’s failure to do so  
26 is fatal to its sixth and seventh causes of action. Accordingly, the Court **GRANTS**  
27 **WITHOUT PREJUDICE** Defendants’ motion as to these causes of action.

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1 **VII. COUNT 8**

2 Plaintiff's eighth cause of action seeks an inspection and accounting. Plaintiff  
3 alleges that "[b]y reason of its membership interest and the over \$34,000 it has paid to  
4 Defendants, Plaintiff is entitled to inspect the records of Defendants, and Plaintiff is  
5 entitled to an accounting." (FAC ¶ 65.) Defendants seek dismissal of the inspection and  
6 accounting claim on the grounds that (1) Plaintiff has not alleged it is owed any money  
7 by Defendant and (2) if Plaintiff is owed money, the sum is certain at \$34,000 and  
8 therefore no accounting is necessary.

9 Defendants' arguments are unpersuasive. Plaintiff has properly alleged a breach of  
10 contract claim and explicitly seeks damages according to proof. (FAC 10:23.)  
11 Furthermore, Defendants claim that any damage sum is certain at \$34,000 ignores the  
12 fact that Plaintiff alleges it has paid Defendants an unknown some of money that is  
13 greater than \$34,000. (Id. ¶ 5.) Accordingly, the Court **DENIES** Defendants' motion to  
14 dismiss the eighth cause of action. As to the extent and nature of discovery Plaintiff may  
15 take via inspection and accounting, the parties may seek guidance from Magistrate Judge  
16 Bernard G. Skomal.

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18 **VIII. COUNT 9**

19 Plaintiff's ninth cause of action alleges unlawful business activity in violation of  
20 California Business and Professions Code § 17200 (the "UCL"). The UCL prohibits  
21 unfair competition. "Unfair competition" includes any business act or practice that is  
22 "unlawful, unfair or fraudulent..." Cal. Bus. & Prof. Code § 17200. To sustain a claim  
23 under the unlawful prong of the UCL, a Plaintiff need only allege that a defendant  
24 violated any law, whether state or federal, civil or criminal, or whether based in statute,  
25 regulation, or common law. *Saunders v. Superior Court*, 27 Cal. App. 4th 832, 838–39  
26 (1994). Here, the Court has already held that Plaintiff has adequately alleged that  
27 Defendants violated the California common law prohibiting breach of contract. Because  
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1 Plaintiff has thus properly alleged unlawful activity, the Court **DENIES** Defendants'  
2 motion to dismiss the ninth cause of action.


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4 **IX. CONCLUSION & ORDER**

5 For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART**  
6 Defendants' motion as follows:

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- Counts 1, 5, 6, 7 are dismissed without prejudice.
  - Counts 2, 3, 4, 8, and 9 may proceed.
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10 **IT IS SO ORDERED.**

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12 Dated: June 1, 2017

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15 Hon. M. James Lorenz  
16 United States District Judge  
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