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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

EDWARD TREMPER,	)	3:16-cv-00707-HDM-VPC
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	
	)	
CYNTHIA ANN VINING and JOHN	)	
VINING,	)	
	)	
Defendants.	)	
	)	
	)	

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18 Before the court is the defendants' motion to dismiss  
19 plaintiff's first amended complaint (ECF No. 20). Defendants move  
20 for dismissal on the grounds that the complaint does not satisfy  
21 the pleading standards under Federal Rules of Civil Procedure  
22 12(b)(6) and 9(b). Plaintiff has opposed (ECF No. 22), and  
23 defendants have replied (ECF No. 27).

24 Plaintiff Edward Tremper ("plaintiff") filed his first amended  
25 complaint on January 18, 2017, asserting seven causes of action  
26 against his daughter, Cynthia Ann Vining, and one cause of action  
27 against Cynthia's husband, John Vining. Plaintiff alleges that  
28 Cynthia improperly transferred \$454,000.00 from an account owned by

1 plaintiff to which Cynthia had been added for estate planning,  
2 convenience and emergency purposes, only. Plaintiff asserts that  
3 he and Cynthia orally agreed that absent authorization from  
4 plaintiff, Cynthia was not to withdraw any funds from the account  
5 until plaintiff's death. Generally, the defendants argue that  
6 because Cynthia was a co-owner of the account, she had the legal  
7 right to withdraw the funds and that the parol evidence rule bars  
8 any claim of a contrary oral agreement because the account  
9 agreement entered into between plaintiff, Cynthia, and the bank is  
10 a written agreement between plaintiff and Cynthia. Defendants  
11 argue that they therefore cannot be liable under any of plaintiff's  
12 causes of action. Defendants also argue that plaintiff's complaint  
13 fails to plead sufficient facts to state plausible claims for  
14 relief and that plaintiff's fraud claim fails to satisfy the  
15 heightened pleading standard of Rule 9(b).

16 In considering a motion to dismiss under Rule 12(b)(6), the  
17 court must accept as true all material allegations in the complaint  
18 as well as all reasonable inferences that may be drawn from such  
19 allegations. *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1150 n.2 (9th Cir.  
20 2000). The allegations of the complaint also must be construed in  
21 the light most favorable to the nonmoving party. *Shwarz v. United*  
22 *States*, 234 F.3d 428, 435 (9th Cir. 2000). However, legal  
23 conclusions are not entitled to the presumption of truth. *Ashcroft*  
24 *v. Iqbal*, 556 U.S. 662, 679 (2009).

25 "Under the notice pleading standard of the Federal Rules,  
26 plaintiffs are only required to give a 'short and plain statement'  
27 of their claims in the complaint." *Paulsen v. CNF, Inc.*, 559 F.3d  
28 1061, 1071 (9th Cir. 2009) (quoting *Diaz v. Int'l Longshore &*

1 *Warehouse Union, Local 13*, 474 F.3d 1202, 1205 (9th Cir. 2007)).  
2 While this rule "does not require 'detailed factual allegations,'"   
3 it "must contain sufficient factual matter . . . to state a claim  
4 to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678  
5 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).  
6 "A claim has facial plausibility when the plaintiff pleads factual  
7 content that allows the court to draw the reasonable inference that  
8 the defendant is liable for the misconduct alleged." *Id.* A  
9 pleading is insufficient if it offers only labels and conclusions,  
10 a formulaic recitation of the elements of a cause of action, or  
11 "naked assertions devoid of further factual enhancement." *Id.*  
12 (internal punctuation omitted).

13 Under Rule 9(b), "a party must state with particularity the  
14 circumstances constituting fraud . . . . Malice, intent, knowledge,  
15 and other conditions of a person's mind may be alleged generally."  
16 Fed. R. Civ. P. 9(b). To comply with the rule, the complaint must  
17 state with particularity the circumstances constituting the fraud,  
18 including an account of the "time, place, and specific content of  
19 the false representations as well as the identities of the parties  
20 to the misrepresentation." *Edwards v. Marin Park, Inc.*, 356 F.3d  
21 1058, 1066 (9th Cir. 2004). "[A]llegations of fraud must be  
22 'specific enough to give defendants notice of the particular  
23 misconduct which is alleged to constitute the fraud charged so that  
24 they can defend against the charge and not just deny that they have  
25 done anything wrong.'" *Bly-Magee v. California*, 236 F.3d 1014,  
26 1019 (9th Cir. 2001) (internal punctuation omitted).

27 The court concludes that the plaintiff's first amended  
28 complaint states claims for relief that are plausible on their

1 face, thus satisfying the Rule 12(b)(6) standard, and alleges  
2 sufficient facts to satisfy the heightened pleading standard of  
3 Rule 9(b). Accordingly, the defendants' motion to dismiss (ECF No.  
4 20) is DENIED without prejudice to renew at the close of discovery  
5 as a motion for summary judgment.

6 IT IS SO ORDERED.

7 DATED: This 27th day of February, 2017.

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UNITED STATES DISTRICT JUDGE