SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

October 8, 2024
9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

ORAL ARGUMENT

Before 4:00 PM today you must notify the:

(1) Court by calling (408) 808-6856 and

(2) Other side by phone or email that you will appear at the hearing to contest the tentative

If you fail to so notify the court or opposing side, the Court will not hear argument, and the tentative ruling will be adopted.

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

APPEARANCES

The Court strongly prefers in-person appearances.

If you must appear virtually, you must use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

COURT REPORTERS

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https://www.scscourt.org/general_info/court_reporters.shtml

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1-2	24CV434129	WEAPON X SECURITY, INC vs LUCRUM ENTERPRISES, INC. et al	Defendant's demurrer to the first cause of action is OVERRULED and the second cause of action is SUSTAINED with 20 days leave to amend. Defendant's motion to strike is DENIED. Scroll to lines 1-2 for complete ruling. Court to prepare formal order.
3	23CV426066	1060 EMD, LLC vs BOCO SILICON VALLEY, INC.	BOCO's motion to quash service of summons is DENIED. Scroll to line 3 for complete ruling. Court to prepare formal order.
4, 10-11	23CV427316	CAN CAPITAL, INC. et al vs SCOTT HELF et al	Plaintiff's motion to compel Defendant Scott Helf's responses to form and special interrogatories and requests for production and motion to deem matters in request for admissions admitted are GRANTED. Notices of these motions was served on Defendant by U.S. mail on July 3, 2024. Defendant Helf did not oppose the motions. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant these motions. Plaintiff served these discovery requests electronically on Defendant Helf on April 10, 2024, making responses due May 12, 2024. Plaintiff then sent a meet and confer letter on May 28, 2024 and granted an extension of time to respond to June 7, 2024. When no responses were served by that date, Plaintiff sent another letter on June 11, 2024 and granted another extension to respond to June 18, 2024. As of July 3, 2024 when Plaintiff filed this motion to compel, Defendant Helf had still failed to respond. There have now been case management and other hearings, and Defendant Helf still has not responded. Defendant Helf is therefore ordered to (1) serve verified, code compliant written responses without objections to the form and special interrogatories and requests for production and (2) pay Plaintiff $840 in sanctions within 20 days of service of the formal order. The Court further orders that the matters set forth in Plaintiff's requests for admission served on Defendant Helf are deemed admitted and Defendant Helf pay Plaintiff an additional $840 in sanctions within 20 days of service of the formal order. Court will prepare formal order.
5	24CV443182	Sijin Kim vs Omar Tenaza Mora et al	Plaintiff's motion for protective order is DENIED; (1) Plaintiff is ordered to produce verified, code compliant responses without objections to the special interrogatories and requests for production and produce all documents sought, and (2) Plaintiff's counsel (not Plaintiff) is ordered to pay $2,050 in sanctions to Defendant for abusive discovery behavior within 20 days of service of the formal order, which the Court will prepare. Scroll to line 5 for complete ruling.
6	23CV412789	Kwame Fields vs Bryan Shisler	Defendant's second motion to set aside default and default judgment is DENIED. First, this motion is virtually identical to Defendant's first motion to set aside. Defendant cites no authority, and the Court is aware of none, that would permit Defendant to file a virtually identical motion that the Court already denied. Even if Defendant had filed this as a motion for reconsideration, the motion still fails; it was not timely brought and it contains no new facts or change in law. (See Code Civ. Pro. §1008.) The Court agrees with Plaintiff that Defendant should be sanctioned for filing this motion. Plaintiff should not be saddled with responding to unsupported, repetitive motions. Accordingly, Defendant and Defendant's counsel are jointly and severally ordered to pay $1022.31 representing Plaintiff's reasonable attorney's fees and costs incurred to oppose this motion. Court to prepare formal order.

7	24CV432506	Leonard Orlean vs MONIQUE CORDEN et al	Defendant Monique Corden's motion for attorney's fees pursuant to Code of Civil Procedure section 425.16(c) is GRANTED. By Order dated August 6, 2024, the Court mostly granted Defendant's special motion to strike, striking the Plaintiff's fifth cause of action for slander of title in its entirety, paragraphs 53(e) and 111(b), and portions of paragraphs 126, 131, and 132, and denying the motion with respect to paragraphs 20, 64, and 65. California Code of Civil Procedure section 425.16(c) states: "a prevailing defendant[or cross-defendant] on a special motion to strike **shall** be entitled to recover his or her attorneys' fees and costs." (Code Civ. Pro. §425.16(c) (emphasis added).) The parties dispute whether this mandatory award is applicable here because Defendant's motion eliminated only one cause of action. However, Defendant's motion only sought to eliminate one cause of action, thus *Moran v. Endres* (2006) 135 Cal.App.4th 952 is inapposite here. Defendant prevailed on its motion, which motion could have been avoided by Plaintiff voluntarily agreeing to amend the complaint. Anti-SLAPP fee awards should include expenses incurred for all proceedings "directly related" to the special motion to strike and fees "addressing matters with factual or legal issues that are 'inextricably intertwined' with those issues raised in an anti-SLAPP motion." (*Henry v. Bank of Am. Corp.* (N.D.Cal. Aug. 23, 2010) 2010 WL3324890 *4.) To determine the correct award, the Court applies the lodestar method which is calculated by multiplying "the number of hours reasonably expended. . . by the reasonable hourly rate" of counsel. (*PLCM Group, Inc. v. Drexler* (2000) 17 Cal.4th 1084, 1095.) To determine reasonableness, the Court considers "the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure." (*Id.* at 1096.) The Court finds the number of hours spent on this motion practice and the amounts charged per hour appropriate for this motion type and Santa Clara County. Defendant's real estate expert billed a modest number of hours to assist primary counsel of record who also spent an appropriate number of hours on the anti-SLAPP and this motion. Accordingly, Defendant's motion for $33,262.85 in attorney's fees is GRANTED. Court to prepare formal order.
8	24CV432566	Francesca Salari-Salcido vs David Weisenberg et al	Nathan Kingery and Wilshire Law Firm's motion to withdraw as counsel for Plaintiff Francesca Nicloe Salari-Sacido is GRANTED. Court will use form of order on file. Withdrawal will be effective upon filing of the proof of service of the order.
9	23CV423808	ARCHON DESIGN SOLUTIONS, INC. vs GLOBAL SEMICONDUCTOR ALLIANCE	Defendants' demurrer is OVERRULED AND SUSTAINED, IN PART. Scroll to line 9 for complete ruling. Court to prepare formal order.

10	24CV438798	Robert Simpson vs Bornstein Law, P.C. et al	Defendants' joint motion to compel arbitration and stay is GRANTED. A notice of motion with this hearing date and time was served by electronic mail on August 20, 2024 and August 29, 2024. The notice has this date and time in the caption but September 24, 2024 in the body of the notice. However, Plaintiff failed to oppose the motion as to either date. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion. Plaintiff asserts claims for professional negligence, breach of the implied covenant of good faith and fair dealing, and breach of fiduciary duty, all stemming from the parties' previous attorney-client relationship. (See Complaint.) Defendant submits the Declaration of Daniel Bornstein ("Bornstein Decl."), which attaches the parties' retention agreement. (Bornstein Decl., Ex. 1, ¶3.) Paragraph 16 of the retention agreement states: "attorney and Client agreed to settle any controversy, claim, or dispute arising out of or relating to this contract or services provided thereto, any breach thereof, or the professional services provided by Attorney including, without limitation, any dispute concerning the scope of this arbitration clause, claims of negligence or malpractice arising out of or relating to the services provided by Attorney to Client, by binding arbitration and not civil litigation. . . ." (Bornstein Decl., Ex. 1, ¶5.) This is prima facie evidence of the existence of an arbitration agreement, which evidence Plaintiff fails to refute. (*Condee v. Longwood Management Corp.* (2001) 88 Cal. App. 4th 215, 218; *Gamboa v. Northeast Community Clinic* (2021) 72 Cal. App. 5th 158, 165 (once moving party produces prima facie evidence of a written arbitration agreement by attaching the agreement or summarizing the terms in a motion to compel, the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement.); California Rules of Court, Rule 371.) On this record, the Court is required to send this matter to arbitration. (Code Civ. Pro. § 1281.2 ("the court shall order a matter to arbitration if it determines that there is an agreement to arbitrate and (1) the agreement has not been waived or (2) the agreement has not been revoked."); *Cinel v. Barna* (2012) 206 Cal.App.4th 1383, 1389.) Accordingly, Defendants' joint motion is granted, the matter is ordered to arbitration, the case is stayed pending the arbitration, and the November 5, 2024 case management conference is VACATED AND RESET to March 13, 2025 at 10 a.m. in Department 6. Court to prepare formal order.
11	24CV445091	Xinwu Cheng vs Pro Appliance Installation	The parties are ordered to appear to address service. Civil Code section 8486(b) provides: "The petitioner shall serve a copy of the petition and a notice of hearing on the claimant at least 15 days before the hearing. Service shall be made in the same manner as service of summons, or by certified or registered mail, postage prepaid, return receipt requested, addressed to the claimant as provided in Section 8108."(Civ. Code § 8486.) The proof of service here indicates service by regular U.S. Mail, which does not appear to be compliant. The petition otherwise meets the requirements of Civil Code section 8460. Accordingly, if proper service can be demonstrated, the petition can be granted.

Calendar Lines 1-2

Weapon X Security, Inc. v. Lucrum Enterprises, Inc., et al., Case No. 24CV438778

Before the Court is defendant Lucrum Enterprises, Inc.'s ("Defendant") demurrer to plaintiff Weapon X Security's ("Plaintiff") complaint and motion to strike portions contained therein. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

According to the Complaint, Plaintiff provided security services, and on June 12, 2023, Defendant failed to pay fees for those services and failed to give the required 6 months' notice before cancelling the services. (Complaint, p. 3, BC-2; Ex. A (the "Agreement").)

Plaintiff filed the complaint on May 10, 2024 asserting (1) breach of contract and (2) common counts for open book account. On July 17, 2024, Defendant filed the instant motions. Plaintiff only opposes the demurrer.

II. Procedural Compliance

Code of Civil Procedure section 430.60, provides, "[a] demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded." (Code Civ. Proc., § 430.60.) The rules of court also require that the demurrer itself (distinct from a supporting memorandum) specify the target of any objections and the grounds. (Cal. Rules of Court, rules 3.1103(c), 3.1112(a), and 3.1320(a) ["Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."].)

Plaintiff argues the motion should be denied in its entirety because Defendant fails to cite to the proper statute. Although the opening paragraph of the notice cites to Code of Civil Procedure section 430.10, the specific causes of action repeatedly cite to Code of Civil Procedure 420.10, which does not exist. However, the grounds identified for the demurrer correspond to the proper grounds under Section 430.10. Defendant also cites to the proper statutes in the memorandum of points and authorities ("MPA"). Moreover, Plaintiff offers substantive responses to the arguments. Thus, there is no prejudice to Plaintiff and in deference to the

policy that matters should be decided on their merits, the Court exercises its discretion to consider the motion, despite the defect. (See *Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 696 [policy of the law is to have every case litigated tried upon its merits].) Counsel is admonished, however, that a future violation may not be met with the same result.

III. Request for Judicial Notice

Defendant requests judicial notice of the following:

(1) Plaintiff's Complaint and accompanying exhibit, filed on May 10, 2024,

(2) Defendant's Demand for Bill of Particulars, served on June 3, 2024, and

(3) Plaintiff's Response to Defendant's Demand for Bill of Particulars, served on June 14, 2024.

Judicial notice of Plaintiff's complaint is not necessary as it is the operative pleading subject to the instant motion. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn. 1 [Sixth Appellate District denies request for judicial notice as unnecessary as the court must consider allegations in the complaint and attached exhibits in ruling on demurrer].)

"The bill of particulars furnished by the plaintiff is treated as an 'amplification' of the pleadings. As such, it has the effect of a pleading." (*Baroni v. Musick* (1934) 3 Cal.App.2d 419, 421.) As a result, Plaintiff's bill of particulars is treated like it is incorporated into its Complaint. Thus, the Court may take judicial notice of it. (See Evid. Code, § 452, subd. (d).) However, "with respect to any and all court records, the law is settled that "the court will not consider the truth of the documents contents unless it is an order, statement of decision, or judgment. [Citation.]" (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374-375.) Defendant's demand is not incorporated into the Complaint, thus, the Court declines to take judicial notice of it.

Accordingly, Defendant's request for judicial notice is GRANTED as to item 3 and DENIED as to items 1 and 2.

IV. Demurrer

A. Legal Standard

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on

any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain." (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children's Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

Defendant demurs to the first and second causes of action on the grounds they fail to allege sufficient facts to state a claim, are uncertain, and cannot be ascertained whether the contract is written, oral, or implied by conduct. (See Code Civ. Proc., § 430.10, subds. (e), (f), and (g).)

B. Analysis

1. **First Cause of Action-Breach of Contract**

A breach of contract cause of action requires the Plaintiff allege (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) resulting damages to plaintiff. (*Bushell v. JPMorgan Chase Bank, N.A.* (2013) 220 Cal.App.4th 915, 921 (*Bushell*).)

a. Uncertainty

Uncertainty is a disfavored ground for demurrer; it is typically sustained only where the pleading is so unintelligible and uncertain that the responding party cannot reasonably respond to or recognize the claims alleged against it. (*Khoury v. Maly's of Cal, Inc.* (1993) 14 Cal.App.4th 612, 616 (*Khoury*).) "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Ibid*.)

"[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

Defendant contends the breach of contract claim is uncertain because Plaintiff fails to allege another agreement to support its claim that Defendant owes the entire balance for the services. However, Plaintiff does not allege any other agreement and it is clear Plaintiff only relies on the Agreement to support its theory. (See Complaint, Exh. A.) The pleading is not so unintelligible or uncertain that Defendant cannot reasonably respond to it. (*Khoury, supra,* 14 Cal.App.4th at p. 616.) Thus, Defendant's demurrer on the basis of uncertainty is OVERRULED.[1]

b. Failure to Allege the Form of a Contract

In any action based on a contract, the pleading must allege whether the contract is written, oral, or implied by contract. (Code Civ. Proc., § 430.10, subd. (g).) Defendant argues it cannot ascertain the form of the additional agreement that it purports Plaintiff fails to allege. However, as the Court stated above, Plaintiff does not allege an additional agreement. Plaintiff only alleges the Agreement, which is written. This is sufficient to apprise Defendant of the form of the contract. Thus, Defendant's demurrer on this basis is OVERRULED.[2]

c. Failure to Allege Sufficient Facts

[1] In the notice of demurrer, Defendant identified uncertainty as a basis for demurrer to the second cause of action but it only offers argument as to the first cause of action. To the extent Defendant also argues the second cause of action is uncertain, the demurrer is OVERRULED for the same reasons.

[2] In the notice of demurrer, Defendant identified this as a basis for demurrer to the second cause of action but it only offers argument as to the first cause of action. For the same reasons, the demurrer is OVERRULED as to the second cause of action.

Plaintiff attaches the Agreement, which includes the following requirement: "Contract termination/cancellation please notify us with 6 months' notice." (Complaint, Exh. A, p. 7.) Plaintiff alleges Defendant breached the Agreement when it failed to pay for fees for the security services provided and failed to give the required 6 months' notice before cancelling services. (Complaint, p. 3, Exh. A, p. 7.) Defendant does not dispute that it failed to give 6 months' notice, but argues that part of the Agreement does not entitle Plaintiff to the demanded $140,800.00 in damages.

"While the 'allegations [of a complaint] must be accepted as true for purposes of demurrer,' the 'facts appearing in exhibits attached to the complaint will also be accepted as true, and if contrary to the allegations in the pleading, will be given precedence.'" (*Brakke v. Economic Concepts, Inc.* (2013) 213 Cal.App.4th 761, 767 (*Bakke*); see also *SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 83 (*SC Manufactured Homes*) ["[i]f the allegations in the complaint conflict with the exhibits, we rely on and accept as true the contents of the exhibits"].)

> Under California law, a contract will be enforced if it is sufficiently definite (and this is a question of law) for the court to ascertain the parties' obligations and to determine whether those obligations have been performed or breached. To be enforceable, a promise must be definite enough that a court can determine the scope of the duty, and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages. Where a contract is so uncertain and indefinite that the intention of the parties in material particulars cannot be ascertained, the contract is void and unenforceable. The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy. But if a supposed contract does not provide a basis for determining what obligations the parties have agreed to, and hence does not make possible a determination of whether those agreed obligations have been breached, there is no contract.

(*Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 209 [internal citations and quotations omitted].)

That being said, "The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy… 'In considering expressions of agreement, the court must not hold the parties to some impossible, or ideal, or unusual standard. It must take language as it is and people as they are. All agreements have some degree of indefiniteness and some degree of uncertainty.' Moreover, 'the law leans against the destruction of contracts because of uncertainty and favors an interpretation which will carry into effect the reasonable intent of the parties if it can be ascertained.'" (*Moncada v. West Cost Quartz Corp.* (2013) 221 Cal.App.4th 768, 777 (*Moncada*).)

The Court finds the plain language of the Agreement sufficiently certain to establish a requirement of 6 months' notice prior to cancellation or termination of the Agreement. (See *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 473 [courts must interpret contractual language in a manner which gives force and effect to every provision, and not in a way which renders some clauses nugatory, inoperative or meaningless].) Moreover, it provides a basis for determining the existence of a breach and for giving an appropriate remedy. (*Moncada, supra,* 221 Cal.App.4th at p. 777.)

Accordingly, Defendant's demurrer to the first cause of action is OVERRULED.

C. Second Cause of Action-Common Count (Open Book Account)

The elements of an open book account cause of action are: (1) plaintiff and defendant had a financial transaction, (2) plaintiff kept an account of debits and credits involved in the transaction, (3) defendant owes plaintiff money on the account, and (4) a statement of the amount of money that defendant owes plaintiff. (*State Comp. Ins. Fund v. ReadyLink Healthcare, Inc.* (2020) 50 Cal.App.5th 422, 449.)

> A 'book account' is 'a detailed statement which constitutes the principal record of one or more transactions between a debtor and a creditor arising out of a contract or some fiduciary relation, and shows the debits and credit in connection therewith, and against whom and in favor of whom entries are made, is entered in

> the regular course of business as conducted by such creditor or fiduciary, and is kept in a reasonably permanent form and manner and is (1) in a bound book, or (2) on a sheet or sheets fastened in a book or to backing but detachable therefrom, or (3) on a card or cards of a permanent character, or is kept in any other reasonably permanent form and manner.' (§337a.) Examples of statements held to be book accounts include a law firm's billing statements reflecting work performed on an hourly basis [Citation] and a ledger sheet recording amounts due for hay deliveries [Citation]. A book account is 'open' where a balance remains due on the account. [Citations.] 'An express contract, which defines the duties and liabilities of the parties, whether it be oral or written, is not, as a rule, an open account.' [Citation.] However, the parties may agree to treat money due under an express contract, such as a lease, as items under an open book account. [Citation.] '[I]n such a case the cause of action is upon the account, not under the [express contract].' [Citation.]

(*Professional Collection Consultants v. Lauron* (2017) 8 Cal.App.5th 958, 969 (*PCC v. Lauron*); see also *Paredes v. Credit Consulting Services, Inc.* (2022) 82 Cal.App.5th 410, 436-437.)

Plaintiff fails to respond to the demurrer to this claim. Moreover, the Agreement does not constitute an open account and the Complaint is devoid of any allegations regarding an agreement between the parties to treat the money allegedly owed under an open book account. (See *PCC v. Lauron, supra,* 8 Cal.App.5th at p. 969.) Therefore, Plaintiff fails to allege sufficient facts to state this claim.

Defendant's demurrer to the second cause of action is SUSTAINED with 20 days leave to amend from the service date of the final order.

V. Motion to Strike

A. Legal Standard

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ.

Proc., § 436.) The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63 (*Turman*), citing *Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.) "Thus, for example, defendant cannot base a motion to strike the complaint on affidavits or declarations containing extrinsic evidence showing that the allegations are 'false' or 'sham.'" (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2020) 7.169.)

A motion to strike portions of a complaint or petition may be brought on the ground that the allegations at issue are "irrelevant" or "improper." (Code Civ. Proc., § 436, subd. (a).) Irrelevant matter includes (1) an allegation that is not essential to the statement of a claim or defense, (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense, and (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. (See Code Civ. Proc., § 431.10, subds. (b), (c).) Generally speaking, motions to strike are disfavored and cannot be used as a vehicle to accomplish a "line item veto" of allegations in a pleading. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683 (*PH II, Inc.*).) However, where irrelevant allegations are "scandalous, abusive, disrespectful and contemptuous," they should be stricken from the pleading. (*In re Estate of Randall* (1924) 194 Cal. 725, 731.)

"While under Code of Civil Procedure section 436, a court at any time may, in its discretion, strike portions of a complaint that are irrelevant, improper, or not drawn in conformity with the law, matter that is essential to a cause of action should not be struck and it is error to do so. Where a whole cause of action is the proper subject of a pleading challenge, the court should sustain a demurrer to the cause of action rather than grant a motion to strike." (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1281, internal citations omitted.)

Defendant seeks to strike allegations regarding the amount of damages alleged, the failure to give 6 months' notice, allegations regarding the second cause of action, and portions of the bill of particulars.

B. Analysis

1. Allegations Regarding the First Cause of Action and Amount of Damages

Defendant seeks to strike allegations regarding the amount of damages and the failure to give 6 months' notice. Defendant asserts the same arguments that it asserted in support of its demurrer, which the Court addressed above. For the same reasons, the Court is not persuaded that the allegations are irrelevant. Thus, Defendant's motion to strike those allegations is DENIED.

2. Allegations Regarding the Second Cause of Action and Portions of the Bill of Particulars

The demurrer has been sustained as to the second cause of action, thus Defendant's motion to strike portions of the claim and portions of the bill of particulars is MOOT. (See *Dobbis v. Hardister* (1996) 242 Cal.App.2d 787, 794 [a bill of particulars is used when a common count for an account is brought]; see also *Pike v. Zadig* (1915) 171 Cal. 273, 276-277.)

Calendar line 3
1060 EMD, LLC. V. BOCO Silicon Valley Inc., Case No. 23CV426066

Before the Court is specially appearing Defendant, BOCO Silicon Valley Inc.'s ("BOCO") motion to quash service of summons. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises from alleged breach of a commercial lease agreement. According to the Complaint, Plaintiff is the owner of a commercial property located at 1060 East Meadow Circle, Palo Alto, in Santa Clara County ("Premises"). On May 26, 2017, the parties entered an agreement for the lease of the Premises to BOCO. The lease was for a term of eighty-six months, terminating on August 31, 2024. On August 31, 2022, BOCO surrendered the premises to Plaintiff. However, beginning June 2022 and continuing until March 31, 2023, BOCO failed to pay rent when due. Plaintiff relet the premises, thereby mitigating future damages. (Complaint ¶¶ 7-9, 12-14.) Plaintiff filed the complaint on November 14, 2023, alleging a single cause of action for breach of contract.

II. Legal Standard

"A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow" may move "to quash service of summons on the ground of lack of jurisdiction of the court over him or her" that results from lack of proper service. (Code. Civ. Proc. § 418.10(a)(1). A defendant has 30 days after the service of the summons to file a responsive pleading. (Code. Civ. Proc. § 412.20(a)(3).) "Service of process, under longstanding tradition in our system of justice, is fundamental to any procedural imposition on a named defendant." (*AO Alfa-Bank v. Yakovlev* (2018) 21Cal.App.5th 189, 202 [internal quotations marks and citation omitted].) "To establish personal jurisdiction, compliance with statutory procedures for service of process is essential." (*Kremerman v. White* (2021) 71 Cal.App.5th 358, 371.) Defendant's knowledge of the action does not dispense with statutory requirements for service of summons. (*Kappel v. Bartlett* (1988) 200 Cal.App.3d 1457, 1466.)

"When a defendant challenges [] jurisdiction by bringing a motion to quash, the burden is on the plaintiff to prove the existence of jurisdiction by proving, inter alia, the facts requisite to an effective service." (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439-1440; accord *Lebel v. Mai* (2012) 210 Cal.App.4th 1154, 1160 ["It was incumbent upon plaintiff, after the filing of defendant's motion to quash, to present evidence discharging her burden to establish the requisites of valid service on defendant"]; *Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413.) A declaration of service by a registered process server establishes a presumption that the facts stated in the declaration are true. (Evid. Code, § 647; *Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 750.)

III. Judicial Notice

A. BOCO seeks judicial notice of the following documents:

- Exhibit A – Copy of Plaintiff's filed summons and complaint dated November 14, 2023. REQUEST GRANTED.
- Exhibit C – Copy of Plaintiff's Proof of Service filed July 9, 2024. REQUEST GRANTED.
- Exhibit D – Copy of the California Secretary of State's website regarding Service of Process of Business Entities, accessed on October 1, 2024. REQUEST GRANTED, IN PART; the Court accepts this informational web page exists but not the truth of its contents.

B. Plaintiff asks the Court to notice the following documents:

- Exhibit A – Copy of the complaint filed in this action on November 14, 2023. REQUEST GRANTED.
- Exhibit B – Copy of a complaint for unlawful detainer filed on July 20, 2022, by 1060 EMD, LLC against BOCO Silicon Valley, Inc. in Santa Clara County Superior Court Case No. 22CV401188. REQUEST GRANTED IN PART
- Exhibit C – Declaration of Non-Service filed in this action on September 23, 2024. REQUEST GRANTED
- Exhibit D – Copy of the Proof of Service filed in this action on July 9, 2024. REQUEST GRANTED

- Exhibit E – Declaration of Kim G. Descamps filed on July 26, 2024, in this action in support of response to Order to Show Cause re failure to serve. REQUEST GRANTED IN PART
- Exhibit F – Copy of the Statement of Information filed by BOCO with the California Secretary of State on August 7, 2023. REQUEST GRANTED IN PART.
- Exhibit G - Copy of the Statement of Information filed by BOCO with the California Secretary of State on February 13, 2024. REQUEST GRANTED IN PART.

In taking judicial notice of Exhibits B and E-G, the Court accepts the fact of their existence but not the truth of their contents. Materials prepared by private parties and merely on file with state agencies may not be judicially noticed as an official act of a legislative, executive, or judicial department. (See, *Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 836)

IV. Analysis

BOCO contends it was improperly served because (1) Plaintiff was not diligent in locating and personally serving Ms. Zhou, its authorized agent, (2) process documents were instead handed to Ms. Zhou's daughter, Michelle, at Ms. Zhou's residence instead of the corporate address, (3) Ms. Zhou's daughter is not associated with BOCO nor is she BOCO's authorized agent, and (5) no court has permitted Plaintiff to effectuate service on BOCO via substituted service.

Effecting service on a corporation requires delivery of summons and complaint to some person on behalf of the corporation. (Code. Civ. Proc. § 416.10; *Dill v. Berquist Const. Co., Inc.* (1994) 24 Cal.App.4th 1426, 1437.) By its terms, Code of Civil Procedure section 416.10 permits service on a corporation that is not a bank by way of service on an individual or entity designated as an agent for service of process on "the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, [or] a general manager" as specified in section 416.10, subdivision (b); service on a person authorized by the corporation to receive service (§ 416.10, subd. (c)); or service in a manner authorized by the Corporations Code (§ 416.10, subd. (d)).

In lieu of delivery to one of the people listed in section 416.10(a), (b), Code of Civil Procedure section 415.20 permits substituted service by leaving the summons and complaint, during usual office hours, "in his or her office or, if no physical address is known, at his or her usual mailing address … with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail … to the person to be served at the place where a copy of the summons and complaint were left. When service is effected by leaving a copy of the summons and complaint at a mailing address, it shall be left with a person at least 18 years of age, who shall be informed of the contents thereof. Service of summons in this manner is deemed complete on the 10th day after the mailing." (Code Civ. Proc. § 415.20(a).) Substitute service is authorized both for individual defendants, and for entity defendants. (Code. Civ. Proc., § 415.20(a), (b).) A difference in using substitute service for individual, as opposed to entity defendants is that a good faith effort at personal service must first be attempted for individuals. However, no such showing is necessary for substitute service on entity defendants. (Code Civ. Proc. § 415.20(a).)

Here, Plaintiff, through a registered process server, made five unsuccessful attempts in five days to personally serve Defendant's authorized agent, Shirly Zhou, at its listed office address of 2077 Gold Street, Suite 167, Alviso, California 95002. However, the sign on the office door listed "TR Care Inc." and was locked every time service was attempted. On the fifth occasion, the process server also attempted service at suite 183, in the same building, and was told that BOCO was its previous tenant. (Plaintiff's Ex. C, Declaration of Non-Service filed on September 23, 2024.)

Having no success at locating and serving BOCO's agent at its listed office address, Plaintiff attempted to serve Ms. Zhou at her mailing address/residence located at 508 Fern Ridge Ct., Sunnyvale, California. Three unsuccessful attempts were made in three days to serve Ms. Zhou at her residence. Eventually, on June 30, 2024, an individual named Michelle was substitute served at the residence when she informed the process server that Ms. Zhou was not home. Michelle, refusing to provide her full name, appeared to be in her twenties and was informed of the general nature of the papers she had received. The next day, a copy of the documents were

mailed first-class to Ms. Zhou's residential address addressed to her. (Plaintiff's Ex. D, Proof of Service of Summons & Declaration of Due Diligence, Declaration of Mailing, filed July 9, 2024.)

BOCO contends service on Michelle was improper since she is not associated with the company nor is she authorized to accept service on its behalf. However, this argument is immaterial to the validity of her substituted service. Plaintiff did not serve Michelle on a false notion that she was BOCO's officer, director, employee, or agent; Michelle was substitute served when attempts to personally serve Ms. Zhou failed.

Despite declarations of due diligence, BOCO alternatively argues the substitute service on Michelle was premature since Plaintiff did not diligently seek to locate and personally serve its authorized agent first. The Declarations notwithstanding, reasonable diligence prior to attempted substituted service is not required for entities. BOCO further argues that Michelle was not "apparently in charge" of Ms. Zhou's residence and the process server neglected to ascertain if she was an owner, lessor, or financially obligated to the property. The Court is not persuaded.

Code of Civil Procedure section 415.20(a) permits substitute service of Ms. Zhou at her mailing address by leaving the process documents with a person who appears to be in charge and who is at least 18 years of age and subsequently mailing copies of the documents to her mailing address. The Declaration of Due Diligence establishes that on June 30, 2024, at approximately 10:00 a.m., Michelle was a co-occupant of Ms. Zhou's residence, who met and informed the process server that Ms. Zhou was not home. At that point, the process documents were handed to Michelle, and she was informed of their nature. Thus, it appears that Ms. Zhou left Michelle in charge of her residence for the duration of her absence. The proof of service on file creates a rebuttable presumption that facts stated in the declaration are true and the substitute service on Michelle was proper. (See Evid. Code §647; *Floveyor International Ltd. V. Superior Court* (1997) 59 Cal.App.4th 789, 795; *Rodriguez v. Nam Min Cho* (2015) 236 Cal.App.4th 742, 750 [a registered process server's declaration of service establishes a presumption that the facts stated in the declaration are true].) BOCO admits the service occurred at the residence of its authorized agent and does not dispute that Michelle was over the age 18.

And BOCO provides no evidence to refute that Michelle was not apparently in charge of the residence at the time of the service.

Furthermore, it is well settled that strict compliance with statutes governing service of process is not required. Rather, "in deciding whether the service was valid, the statutory provisions regarding service should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by Defendant." (*Gibble v. Car-Lene Research Inc.,* (1998) 67 Cal.App.4th 295, 313.) In essence, substantial compliance with the Code's requirements for service of process is sufficient. (*Id*.) The Court finds that substitute service made on an adult of over 18 years in the household of a registered agent for service of process substantially complies with the service requirements of Code of Civil Procedure section 415.20(a) under the circumstances presented here.

Accordingly, BOCO's motion to quash service of summons is DENIED.

Calendar Line 5
Sijin Kim vs Omar Tenaza Mora et al, Case No. 24CV443182

Before the Court is Plaintiff's motion for protective order. Plaintiff seeks relief from responding to 77 specially prepared interrogatories and 59 requests for production of documents. The Court has carefully reviewed the parties' correspondence and is extremely disappointed with Plaintiff's counsel's behavior. The following are direct quotes from Plaintiff's counsel's "meet and confer" letter:

- You have propounded discovery out of ignorance or out of malice and ill-intent, but not out of good faith. Please withdraw your special interrogatories and hand this file to a senior attorney who truly wants to figure this case out and settle it accordingly.
- If Defendant wants to know how the accident happened because he honestly doesn't know and can't think of a way besides the propounded special interrogatories to figure it out, then he should seek medical help, because there is something very wrong with his brain. If defense counsel wants to hear the elements of negligence eleven times, then Counsel should do the same.
- Other than those two scenarios - wanting to see us write out the elements of negligence 11 times or having brain damage necessitating medical intervention - there is no reason, given the rules that we don't have to prepare your case for you, to ask us to respond those interrogatories.
- WHAT?!! WHAT PREVIOUS DISCOVERY>????. . . Did you even look at these interrogatories? Are they some leftover in some computer at your firm you found and just decided, "yeah, 72 questions, this'll learn em!" and spit out a regurgitated cut and paste job>?
- Please list for me the specific issues – (that you are familiar with, right?) – that make this case so complex, or withdraw your entire set of discovery and do it over before you resend to us a set of discovery that asks for precise information relating to this particular case that you currently do not have and decide you NEED and that Plaintiff is likely to have before continuing to resolve this case.
- If you do not withdraw your entire set of requests, including form interrogatories and requests for production, by Monday, September 2, 2024 at 4pm, we will file a motion to protect plaintiff from this hack attempt at real lawyering, get your discovery thrown out, request maximum sanctions from your firm, and recommend that your attorney be investigated by the state bar and the district attorney office for perjuring herself in her accompanying declaration.

Defendants are correct that this belligerent, demeaning, abusive letter warranted no response. Nevertheless, Defendant did respond by offering to remove some text and interrogatories and move other text. It also appears the parties had conversations and did not reach agreement. This is not surprising, since Plaintiff's counsel "feel[s] this motion hearing is necessary for defense counsel's growth." It is Plaintiff's counsel that needs growth.

It is reasonable for parties to disagree about the appropriateness of propounded discovery. What is not reasonable is the way Plaintiff's counsel expressed disagreement here. The entire approach smacks of rude condescension. It is, in short, uncivil.

> Since 2014, the oath new attorneys of this state must take requires them to "vow to treat opposing counsel with 'dignity, courtesy, and integrity.'" (*Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134 [248 Cal. Rptr. 3d 263] (*Lasalle*).) Although Smith asserts he took the attorney oath before it was so revised, as an officer of the court he owed the court and opposing counsel "'professional courtesy.'" (*Id.* at p. 132, quoting *Lossing v. Superior Court* (1989) 207 Cal.App.3d 635, 641 [255 Cal. Rptr. 18] [attorneys' "responsibilities as officers of the court include professional courtesy to the court and to opposing counsel"].) Rather than a *new* requirement, the "'civility oath'" added by the rules in 2014 "serves as an important *reminder* to lawyers of their general ethical responsibilities in the pursuit of all their professional affairs, including litigation." (*People v. Shazier* (2014) 60 Cal.4th 109, 147, fn. 17 [175 Cal. Rptr. 3d 774, 331 P.3d 147], italics added.) As the court stated in *Karton*, civility "is an ethical component of professionalism," *and* it "is socially advantageous [as] it lowers the costs of dispute resolution." (*Karton, supra*, 61 Cal.App.5th at p. 747.)

(*Snoeck v. ExakTime Innovations, Inc.* (2023) 96 Cal. App. 5th 908, 922.)

Plaintiff's counsel violated this oath in the August 28, 2024 letter and the tone of this motion.

Accordingly, Plaintiff's motion for protective order is DENIED. Within 20 days of service of the formal order:

(1) Plaintiff is ordered to produce verified, code compliant responses <u>without objections</u> to the special interrogatories and requests for production and produce all documents sought; and

(2) Plaintiff's counsel (not Plaintiff) is ordered to pay $2,050 in sanctions to Defendant for abusive discovery behavior.

Hopefully, Plaintiff's counsel will grow from this experience.

Calendar Line 9

Archon Design Solutions, Inc. v. Global Semiconductor Alliance, Case No. 23CV423808

Before the Court is defendants Global Semiconductor Alliance's ("GSA"), Shelton Associates Inc.'s ("TSG"), and Jodi Shelton's ("Shelton") (collectively, "Defendants") demurrer to plaintiff Archon Design Solutions, Inc.'s first amended complaint ("FAC"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

According to the FAC, Plaintiff's Chief Executive Officer ("CEO"), Athanassios Katsioulas, has been involved with the GSA since 2019. (FAC, ¶ 6.) He was initially a board member and chair of the GSA-sponsored Internet of Things ("IoT") Security Working Group, which was relaunched as the Trusted IoT Ecosystem Security ("TIES"). (*Ibid*.) Katsioulas later became an independent consultant to the GSA and remained the Chair of the TIES group. (*Ibid*.)

For years, Defendant Shelton utilized TSG, which she owns, to provide services for GSA members. (FAC, ¶ 6.) Plaintiff alleges Shelton was motivated by personal gain and the desire to advance her own wealth and status and to create a legacy in the semiconductor industry. (*Ibid*.) Scott Strittmatter ("Strittmatter") was TSG's Chief Financial Officer ("CFO") and a member of GSA's finance committee. (FAC, ¶ 9.)

In 2020, TIES was announced with Katsioulas as the chair, and he came to an agreement with Strittmatter that he would continue to chair TIES as an independent consultant to GSA through Archon. (FAC, ¶ 11.) By 2021, Katsioulas had grown TIES to 26 members and over 40 contributors, but he could not support leading and administering TIES without resources and investment. (FAC, ¶ 12.) Strittmatter agreed to pay Archon a stipend of $200/hour for up to 40 hours per month and asked Katsioulas to supply monthly logs for the time he spent on TIES. (*Ibid.*) They agreed that any excess hours would be rolled forward and any accumulated payments to Archon would be deferred until TIES showed sufficient proof of value to the GSA, provided that Katsioulas continued to lead the group and did not voluntarily leave. (*Ibid*.)

In October 2022, GSA lauded Katsioulas' performance for TIES accomplishments and promised GSA would start paying a portion of the excess hours based on the results achieved by

the end of 2022 and would make more payments based on cash flow and revenue growth in 2023. (FAC, ¶ 17.) In November 2022, Strittmatter, resigned from TSG and GSA. (FAC, ¶ 18.) On December 27, 2022, Katsioulas had a conference with Shelton and the GSA service staff, in which they informed him that GSA did not have the budget for his agreed stipend and could not afford an external consultant for TIES even though services had already been provided at that time and were unpaid. (FAC, ¶ 21.) In January 2023, Shelton avoided Katsioulas' several attempts to discuss the issues with her and she refused to promote TIES to the GSA board or review its progress. (FAC, ¶ 23.) Shelton subsequently took actions that were contrary to GSA's interest. (FAC, ¶ 24.)

On October 4, 2023, Plaintiff filed the complaint and on June 27, 2024, it filed an FAC, asserting (1) breach of oral contract, (2) breach of implied contract, (3) promissory estoppel, (4) quantum meruit, (5) tortious interference with contract, and (6) intentional interference with prospective economic relations.[3] On August 16, 2024, Defendants filed the instant motion, which Plaintiff opposes.

II. Legal Standard

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain." (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A

[3] The first four causes of action are asserted against GSA, while the fifth and sixth causes of action are asserted against TSG and Shelton.

demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children's Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

Defendants demur to the first, second, fifth, and sixth causes of action on the ground they fail to allege sufficient facts to state a claim. (See Code Civ. Proc., § 430.10, subd. (e).)

III. Analysis

A. First and Second Causes of Action-Breach of Oral and Implied Contract

To prevail on an action for breach of contract, the plaintiff must allege and prove: (1) the contract, (2) the plaintiff's performance of the contract and excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff. (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.) The elements of a breach of oral contract claim are the same as those for a breach of written contract. (*Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453.) "An implied contract is one, the existence and terms of which are manifested by conduct." (Civ. Code, § 1621.)

> Under California law, a contract will be enforced if it is sufficiently definite (and this is a question of law) for the court to ascertain the parties' obligations and to determine whether those obligations have been performed or breached. To be enforceable, a promise must be definite enough that a court can determine the scope of the duty, and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages. Where a contract is so uncertain and indefinite that the intention of the parties in material particulars cannot be ascertained, the contract is void and unenforceable. The terms of a contract are reasonably certain if they provide a basis for determining the

> existence of a breach and for giving an appropriate remedy. But if a supposed contract does not provide a basis for determining what obligations the parties have agreed to, and hence does not make possible a determination of whether those agreed obligations have been breached, there is no contract.

(*Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 209 [internal citations and quotations omitted].)

"The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy… 'In considering expressions of agreement, the court must not hold the parties to some impossible, or ideal, or unusual standard. It must take language as it is and people as they are. All agreements have some degree of indefiniteness and some degree of uncertainty.' Moreover, 'the law leans against the destruction of contracts because of uncertainty and favors an interpretation which will carry into effect the reasonable intent of the parties if it can be ascertained.'" (*Moncada v. West Cost Quartz Corp.* (2013) 221 Cal.App.4th 768, 777 (*Moncada*).)

Plaintiff alleges Strittmatter agreed to pay Plaintiff a stipend of $200 per hour for up to 40 hours a month and Katsioulas was to supply monthly logs for the time he spent on TIES. (FAC, ¶ 12.) Katsioulas and GSA agreed that any hours in excess of 40 hours would be rolled forward and accumulated payments to Plaintiff for the extra hours would be deferred until TIES showed sufficient proof of value to the GSA, provided that Katsioulas continued to lead the group and did not voluntarily leave. (*Ibid*.) At the time, one such measure of success was the growth of TIES group and when additional success metrics were later agreed to, the parties amended their contract accordingly. (*Ibid*.) From June 2021, Katsioulas emailed Strittmatter the monthly logs and in September 2021, Strittmatter assured him that the hours were "logged accordingly" and that GSA would keep an "estimated reserve" for payment. (*Ibid*.) In October 2022, Strittmatter promised GSA would start paying a portion of the excess hours based on the results achieved by the end of 2022 and would make the payments based on cash flow and revenue growth in 2023. (FAC, ¶ 17.)

Based on his efforts in 2021, the TIES Board and GSA agreed to support Katsioulas in the execution of the TIES plan for 2022, including marketing the TIES group, growing the number of participating companies and contributors, increasing collaboration, and increasing proof of value. (FAC, ¶ 13.) Katsioulas accordingly developed the plan for 2022, which was approved by the TIES Board and the goal was to create sufficient proof of value and empower Shelton to promote the TIES group to the GSA Board and attract sponsorship such as the Women's Leadership Initiative ("WLI"). (*Ibid*.)

Strittmatter and Katsioulas agreed to accelerate delivery of the proof of TIES' value by increasing efforts and strengthening the TIES plan for 2023. (FAC, ¶ 16.) They aimed to promote the group and grow revenues, which included new subscriptions based on the renewal of the Joint Stakeholder Agreement, converting TIES trials to GSA members, minimizing membership discounts, raising member prices, promoting TIES to the GSA Board for sponsorship, and ultimately pursuing fundraising in relation to the US CHIPS Act and the European Union Chips Act to expand GSA membership across the IoT value chain. (*Ibid*.)

> The plan for renewing TIES with a paid membership and deliver proof of value required a pricing analysis and description of TIES related services and benefits by the GSA Service Staff based on the research of other consortia. Katsioulas had previously conducted this research and on April 20, 2022, provided his results to the GSA Service Staff. However, despite TSG's agreement to deliver pricing analysis, the description of TIES services, and the revised JSA, and despite repeated reminders stated in TIES Board minutes and requests by Katsioulas, the GSA Service Staff, did not deliver such items which were critical to start member renewals and sponsorships. The additional proof of value was in Plaintiff's control and included delivering the improved governance and operating models, providing a description of TIES liaison organizations, documenting and promoting the results from TIES activities, and positioning the TIES group as a strategic driver for Public-Private partnership across the IoT value chain starting from chip design and manufacturing all the way to IoT edge applications—Plaintiff delivered

all of the items. The delivery of the plan required Katsioulas to increase the hours worked for GSA.

(*Ibid*.)

The parties explicitly identified the "growth of TIES group" as a measure of success. (See FAC, ¶ 12.) The Court finds the term, "any hours in excess of 40 hours per month logged in by Katsioulas would be rolled forward and that any accumulated payments to [Plaintiff] for these 'extra hours' would be deferred until TIES showed sufficient proof of value to the GSA, provided that Katsioulas continued leading the group and did not voluntarily leave" sufficiently definite. Moreover, it provides a basis for determining the existence of a breach and for giving an appropriate remedy. (*Moncada, supra,* 221 Cal.App.4th at p. 777.) Therefore, Plaintiff alleges the existence of a contract, its performance, Defendants' breach, and the resulting damages. (See FAC, ¶¶ 12, 17, 20-21, 39-43, 44-50.)

Thus, Defendants' demurrer to the first and second causes of action is OVERRULED.

B. Fifth Cause of Action-Tortious Interference with Contract

The elements of a claim for intentional interference with contractual relations are "(1) a valid contract between plaintiff and a third party, (2) defendant's knowledge of this contract, (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship, (4) actual breach or disruption of the contractual relationship, and (5) resulting damage." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.)

1. Whether Shelton and TSG are Immune from Liability as Agents

California recognizes a cause of action against *noncontracting parties* who interfere with the performance of a contract. It has long been held that a *stranger to a contract* may be liable in tort for intentionally interfering with the performance of a contract.

However, consistent with its underlying policy of protecting the expectations of contradicting parties against frustration by outsiders who have no legitimate social or economic interest in the contractual relationship, the tort cause of action for interference with contract does not lie against a party to the contract.

(*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 513-514 (*Applied*) [italics original].)

" '[A] stranger,' as used in *Applied Equipment*, means one who is not a party to the contract or an agent of a party to the contract." (*Asahi Kasei Pharma Corp. v. Actelion Ltd.* (2013) 222 Cal.App.4th 945, 963-964 (*Asahi*) [citations omitted].) "It is settled that 'corporate agents and employees *acting for and behalf of a corporation* cannot be held liable for inducing a breach of the corporation's contract." (*Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594, 1604 [emphasis added].)

Plaintiff alleges TSG and Shelton purposefully interfered with Archon's agreement with GSA to promote the TIES concept, its accomplishments and value. (FAC, ¶ 63.) It further alleges it was damaged as a result. (FAC, ¶ 64.) Shelton is the founder and CEO of GSA and TSG. (FAC, ¶¶ 2-3.)

While Defendants contend Shelton and TSG were acting on behalf of GSA, Plaintiff alleges, "[f]or many years, Shelton utilized [TSG] which she owns, to provide services for GSA members motivated by personal gain and to advance her own wealth, stature, and to create a legacy in the semiconductor industry." (FAC, ¶ 6.) Plaintiff further alleges Shelton acted contrary to GSA's interest by downplaying TIES' and Katsioulas' accomplishments, avoiding his requests to discuss the 2023 TIES plan, ignoring his offers to pursue fundraising, refusing to promote TIES to the GSA Board for sponsorship as she had done with WLI, and attempting to take control of TIES IP and TIES board without paying Plaintiff. (FAC, ¶ 24.) As a result, Katsioulas was forced to announce to the group that he planned to pause his services to the GSA until certain conditions were met. (*Ibid*.) He emphasized, "to succeed, TIES needs the support of the GSA board, including fundraising, proper governance, financial oversight, success metrics, and recognition of contributors' efforts" and he emailed Shelton summarizing the key facts and exposing the GSA Service Staff's action in the hopes of reached a mutually beneficial solution with GSA. (*Ibid*.) Shelton forwarded the email to Kole Giles, a member of GSA's Service Staff, stating she did not want their actions to haunt them and that she "did not want Katsioulas to take TIES to SEMI." (*Ibid*.) Plaintiff contends Shelton's statement revealed her true motivations to serve her own

financial interests and TSG's, at the expense of and without regard to GSA members' interest. (*Ibid*.) For the purposes of demurrer, the Court accepts the allegations as true. (See *Olson v. Toy* (1996) 46 Cal.App.4th 818, 823.) As a result, the Court cannot conclude that Shelton was acting for and behalf of GSA such that that she cannot be liable for inducing breach of GSA's contract with Plaintiff. (See *Mintz, supra,* 172 Cal.App.4th at p. 1604.)

2. Whether Plaintiff alleges Facts Sufficient to State a Claim

"To state a claim for interference with an at-will contract by a third party, the plaintiff must allege that the defendant engaged in an independently wrongful act." (*Ixchel Pharma, LLC. V. Biogen, Inc.* (2020) 9 Cal.5th 1130, 1148 (*Ixchel*).) "An act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Ibid*.)

While Plaintiff identifies various acts by Shelton and TSG, Plaintiff fails to identify conduct that is unlawful by some "constitutional, statutory, regulatory, common law, or other determinable legal standard," as opposed to in violation of the agreement with GSA. (See *Ixchel, supra,* 9 Cal.5th at p. 1148.) Therefore, Plaintiff fails to allege sufficient facts to state this claim. Thus, Defendants' demurrer to the fifth cause of action is SUSTAINED with 20 days leave to amend from the service date of the final order.

C. Sixth Causes of Action- Intentional Interference with Prospective Economic Advantage

"Intentional interference with prospective economic advantage has five elements: (1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff, (2) the defendant's knowledge of the relationship, (3) intentionally wrongful acts designed to disrupt the relationship, (4) actual disruption of the relationship, and (5) economic harm proximately caused by the defendant's action." (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.) To state this claim, a plaintiff must allege "the defendant's conduct was wrongful by some measure beyond the fact of the interference itself." (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153 (*Korea Supply*).) "An act is independently wrongful if it is unlawful, that is, if

it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Ibid*.)

Plaintiff alleges TSG's and Shelton's conduct to defame and prevent Plaintiff from any future relations with the individual GSA members and to control the TIES board and the TIES IP for TSG's benefit, interfered with Plaintiff's ability to pursue a business outside of GSA. (FAC, ¶ 67.)

Defendants argue Plaintiff fails to specifically identify any of the individual GSA members, however, they fail to provide any authority that Plaintiff is required to do so. (See *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 [points asserted without supporting authority are waived].) Moreover, Plaintiff alleges some of the core TIES members signed non-disclosure agreements with it to help develop its TIES plan toward funded pilot projects and supported Katsioulas in the work for IoTAB as originally planned. (FAC, ¶ 25.)

Plaintiff alleges Defendants engaged in wrongful conduct by attempting to seize control of TIES IP without paying Plaintiff, removing Katsioulas' access from the GSA database, removing Plaintiff as a member of GSA, and disparaging Katsioulas to disrupt Plaintiff's business relationships outside of GSA. (See FAC, ¶¶ 23-24, 30, 37(c).) Plaintiff further alleges Katsioulas was informed by one GSA member (Synopsys) that it would pause the signing of an NDA that was in progress, "until a proper resolution has been reached with the GSA." (See FAC, ¶ 26.) Defendant argues that the alleged wrongful acts cannot support this claim because none of them took place after Plaintiff entered the NDAs. This is the case for the conduct to seize control of TIES. But it appears the Katsioulas' access for the database and the allegedly disparaging comments were made after. Nonetheless, Plaintiff fails to allege how those acts constitute independent wrongful conduct. (See *Korea Supply, supra,* 29 Cal.4th at p. 1153.) As a result, Plaintiff fails to allege sufficient facts to state this claim. Thus, Defendants' demurrer to the sixth cause of action is SUSTAINED with 20 days leave to amend from the service date of the final order.

D. Punitive Damages

Defendants demur to Plaintiff's prayer for punitive damages. "A demurrer must dispose of an entire cause of action to be sustained." (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.) A demurrer is not the proper means to attack punitive damages because they are not a separate cause of action but rather a remedy and thus, they are not subject to demurrer. Instead, an improper claim for punitive damages should be attacked through a motion to strike. (See *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 163-164; see also *Kong v. City of Hawaiian Garden Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1047 ["A demurrer cannot rightfully be sustained to part of a cause of action or to a particular type of damage or remedy"].) Even if Defendant has utilized the proper procedural vehicle, it would be moot because the punitive damages are associated with the fifth and sixth causes of action and the demurrer has been sustained as to those claims.