SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: November 16, 2023 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

***New information* (please read)**: To set future motion hearings, you no longer need to file your motion before receiving a hearing date. Phone lines are now open for you to call and reserve a hearing date *before filing and serving* your motion. Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve your date. This will obviate the need to file and serve a separate amended notice at a later time. Please note: if your motion papers are not filed within five business days of reserving the hearing date, the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	2015-1-CV-285674	Angie Elconin v. Thanh Ha Bui	Order of examination (continued): parties to appear.
LINE 2	22CV408300	Germana Camarena et al. v. Dae-Wook Kang et al.	Click on LINE 2 or scroll down for ruling.
LINE 3	23CV413954	Jabil Inc. v. Human Bees, Inc.	Click on LINE 3 or scroll down for ruling.
LINE 4	23CV416530	CA, Inc. v. General Motors Holdings LLC et al.	Case management conference: parties to appear.
LINE 5	23CV416530	CA, Inc. v. General Motors Holdings LLC et al.	Click on LINE 5 or scroll down for ruling.
LINE 6	19CV342114	Chang Long Realty Development LLC v. Xi Hua Sun et al.	Click on LINE 6 or scroll down for ruling.
LINE 7	21CV385243	Yisrael 26 LLC v. Terri Le	Click on LINE 7 or scroll down for ruling.
LINE 8	16CV301399	Robert Ramirez v. Paul Ramirez et al.	Motion to enforce settlement agreement: this hearing is continued to **February 15, 2024 at 9:00 a.m.**, as stipulated by the parties.
LINE 9	20CV375104	Empire Investments, LLC et al. v. Art Mar et al.	Click on LINE 9 or scroll down for ruling.
LINE 10	22CV395416	TBF Financial I, LLC v. George K. Marinakis	Motion for entry of judgment pursuant to stipulation: notice is proper, and the motion is unopposed. Good cause appearing, the court GRANTS the motion, except that instead of $3,500 in attorney's fees, the court awards $2,075 in attorney's fees. The moving party will prepare the formal order for the court's signature.

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LINE 11	22CV398087	Ford Motor Credit Company LLC v. Clayton Anderson	Motion to set aside dismissal: the court finds that plaintiff has shown good cause to set aside the dismissal under Code of Civil Procedure section 473, subdivision (b). Plaintiff must move promptly to serve the summons and complaint upon defendant. The court sets this matter for a case management conference on **January 9, 2024** at 10:00 a.m. in Department 10.
LINE 12	2013-1-CV-239108	American Express Bank FSB v. Edward Adamian	Motion to vacate renewal of default judgment: it appears that defendant attempted to file this motion within 60 days of renewal, as required by Code of Civil Procedure section 683.170, subdivision (b), even though the motion was initially rejected for failure to pay the filing fee. It also appears that notice is proper, even though the court has received no opposition from the plaintiff. Defendant claims he was never served with the summons and complaint, and he has presented prima facie evidence showing a defect in service. Good cause appearing, the court GRANTS the motion and vacates renewal of the default judgment.
LINE 13	23CV423013	Milpitas-District 2 Owner, LLC v. Terry Zheng et al.	Click on LINE 13 or scroll down for ruling.

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Calendar Line 2
Case Name: *Germana Camarena et al. v. Dae-Wook Kang et al.*
Case No.: 22CV408300

I. BACKGROUND

This is an action for general negligence and willful misconduct by Plaintiffs Germana Camarena and Lynette Camarena ("Plaintiffs"), "on behalf of" decedent Phil Camarena ("Phil"), against Defendant Dae-Wook Kang, M.D. ("Kang").

Plaintiffs initiated this action by filing a complaint on December 13, 2022 against Kang, O'Connor Hospital, and Santa Clara County Medical Center. Plaintiffs' operative first amended complaint ("FAC"), filed June 23, 2023, names Kang as the sole defendant. Based on irregularities in the pleadings and the lack of an actual dismissal on file, it is somewhat unclear to the court whether O'Connor Hospital and Santa Clara County Medical Center are still parties to this case. Plaintiffs are representing themselves in this case.

II. ALLEGATIONS IN THE FIRST AMENDED COMPLAINT

The FAC alleges that Kang was Phil's primary care physician for approximately 10 years. (FAC, ¶ 6.) Plaintiffs brought Phil to O'Connor Hospital, where he was admitted from November 2 to November 6, 2020. (*Ibid.*) During a follow-up appointment on November 11, 2020, Kang replaced Phil's prescription of Metformin with a once-a-week injection of Trulicity. (*Id*. at ¶ 10.) Kang changed Phil's medication again from Trulicity to Jardiance, but he allegedly failed to place an order for the new medication, resulting in a week's delay. (*Ibid*.) Kang did not conduct blood tests prior to changing the prescriptions. (*Ibid*.)

On November 13, 2020, Phil went to O'Connor Hospital because of an allergic reaction. (FAC at ¶ 11.) Plaintiffs asked Kang to place Phil back on Metformin, but Kang refused. (*Ibid*.) Plaintiffs again asked Kang to place Phil back on Metformin, after Phil's hospitalization from November 24 to November 30, 2020. (*Id*. at ¶ 12.) Plaintiffs suspected that Jardiance was not helping Phil, but Kang still refused to place Phil back on Metformin. (*Ibid*.) Plaintiffs brought Phil to O'Connor Hospital again on December 3, 2020 after he experienced several allergic reactions to Trulicity and Jardiance. (*Id*. at ¶ 13.)

The FAC contains two causes of action against Kang: (1) general negligence, and (2) willful misconduct.

III. LEGAL STANDARDS

In ruling on a demurrer, the court treats it "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.)

The court considers only the pleading under attack, and any facts or documents for which the court may grant judicial notice. (Evid. Code, § 450.) The court has not considered the exhibits attached to Plaintiffs' opposition brief, because they are extrinsic evidence, which is not "necessary, helpful, or relevant" to the court's adjudication of the demurrer. (See *Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 569.)

"When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney." (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267 [internal citations omitted].)

IV. ANALYSIS

A. Standing

Kang demurs to both causes of action on the ground that Plaintiffs lack standing to sue. Kang's argument is persuasive: the FAC does not allege Plaintiffs' relationship to Phil and does not allege that they properly commenced this action as successors in interest.[1]

"Under the common law … 'all causes of action for personal torts abated on the death of either the injured party or the tortfeasor.' [Citation omitted.] This was the law in California until 1949, when our Legislature enacted this state's first statute allowing for the survival of personal tort actions." (*County of Los Angeles v. Superior Court* (1999) 21 Cal.4th 292, 295.) "A cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent's successor in interest, subject to Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Probate Code, and an action may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest." (Code Civ. Proc., § 377.30.)

With Phil's death, his claims "survive" to his estate, and a duly appointed executor or administrator of the estate may prosecute the claim. Where no executor or administrator exists, the successor in interest may prosecute the action. (See Code Civ. Proc., §§ 377.11 & 377.30; see also *Parsons v Tickner* (1995) 31 Cal.App.4th 1513, 1521-1524.) A successor in interest must file a declaration pursuant to Code of Civil Procedure section 377.32. Contrary to Plaintiffs' assertion in their opposition brief, the FAC's failure to allege Plaintiffs' relationship—and therefore to allege standing—is a material defect in the pleading.

Based on the foregoing, the court SUSTAINS the demurrer to the FAC but also grants Plaintiffs 20 days' leave to amend, given that this is the first substantive challenge to the pleadings. (Code Civ. Proc., § 430.10, subd. (e).)

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[1] While the opposition brief does explain that Germana Camarena was Phil's wife and Lynette Camarena was his daughter, a demurrer assesses the sufficiency of the facts in the pleadings, not in the motion papers. (See *Committee on Children's Television, Inc. v. General Foods Corp., supra,* 35 Cal.3d at pp. 213-214.) Moreover, the original complaint named Germana Camarena as the spouse and Lynette Camarena as the personal representative of the estate of Phil Camarena, but it is well settled that an amended complaint "supersedes the original and furnishes the sole basis for the cause of action. [Citations.] The original complaint is dropped out of the case and ceases to have any effect as a pleading, or as a basis for a judgment. [Citation.]" (*Anmaco, Inc. v. Bohlken* (1993) 13 Cal.App.4th 891, 901.)

B. Sufficiency of the Pleadings

Kang also argues that the two causes of action in the FAC allege but a single claim for professional negligence, because the right to competent medical care underlies each cause of action. In addition, he argues that the FAC insufficiently pleads facts for a willful misconduct cause of action.

1. Professional Negligence / Medical Malpractice

"'[T]he nature of a cause of action does not depend on the label the plaintiff gives it or the relief the plaintiff seeks but on the primary right involved.'" (*Khodayari v. Mashburn* (2011) 200 Cal.App.4th 1184, 1190 [quoting *Bird, Marella, Boxer & Wolpert v. Superior Court* (2003) 106 Cal.App.4th 419, 427].) Here, it is clear that the primary right involved in Plaintiffs' claim is the right to competent medical care of Phil by a medical professional. The FAC alleges that Kang owed Phil a duty to act with reasonable and due care and that he breached that duty by negligently evaluating, examining, diagnosing, and treating Phil. (FAC, ¶¶ 15-16, 20-22.) Moreover, the FAC alleges that Kang failed to comply with the proper standard of care that "a reasonably prudent Internal Medical doctor and Hospital doctor" would use or apply in administering care to a patient. (*Id*. at ¶ 20, 22.)

Notably, Kang does not appear to contend that medical malpractice is insufficiently pled, only that the claim is labeled incorrectly as "general negligence" or "willful misconduct" in an effort to avoid the one-year statute of limitations for medical malpractice (discussed below). The court agrees with Kang that the first cause of action states a claim for medical malpractice rather than general negligence.

2. Willful Misconduct

"Willful misconduct is an aggravated form of negligence." (*Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 895.) Willful misconduct requires a similar—but stricter—pleading requirement to negligence. (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 526.) "'Three essential elements must be present to raise a negligent act to the level of willful misconduct: (1) actual or constructive knowledge of the peril to be apprehended, (2) actual or constructive knowledge that injury is a probable, as opposed to a possible, result of the danger, and (3) conscious failure to act to avoid the peril. [Citations.]' [Citation.]" (*New v. Consolidated Rock Products Co.* (1985) 171 Cal.App.3d 681, 689-690 (*New*).)

Although the FAC alleges that Kang failed to provide the proper standard of care, it is somewhat short of specific facts to support the notion that Kang acted with the requisite intent to harm Phil or with "conscious" disregard of the risk of harm to Phil. At most, it focuses on Kang's repeated "refusals" to provide Phil with Plaintiffs' requested medication. Although this is a thin basis upon which to find "willful" misconduct, the court nevertheless finds that it is sufficient at the pleading stage. As part of his argument under section 430.10, subdivision (e), Kang further argues that the willful misconduct cause of action is duplicative of the professional negligence cause of action; however, this is not a customary basis for sustaining a demurrer. (See *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 890 [redundancy is the sort of defect that, if it justifies any judicial intervention at all, is ordinarily dealt with most economically at trial, or on a dispositive motion

such as summary judgment]; see also Code Civ. Proc., § 430.10 [setting forth the grounds for demurrer].)

Accordingly, the court OVERRULES Defendants' demurrer to the second cause of action on the basis that it fails to state a cause of action. (Code Civ. Proc. § 430.10, subd. (e).)

C. Statute of Limitations

At the same time, the court agrees with Kang that the allegations in the second cause of action, like the first cause of action, are based on allegations of *medical malpractice* rather than garden-variety "aggravated" negligence. Therefore the statute of limitations for medical malpractice applies to both causes of action.

"The nature of the cause of action and the primary right involved, not the form or label of the cause of action or the relief demanded, determine which statute of limitations applies." (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 412.) "Any distinction between 'ordinary' and 'professional' negligence has relevance primarily when the Legislature has statutorily modified, restricted, or otherwise conditioned some aspect of an action for malpractice not directly related to the elements of negligence itself." (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 998.)

Because the court finds that Plaintiffs' two causes of action are for medical malpractice, the statute of limitations set forth in Code of Civil Procedure section 340.5 applies: *i.e.*, "three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first." (Code Civ. Proc., § 340.5.)

Kang argues that on the face of the FAC, Plaintiffs' claim accrued on December 3, 2020, because that is the last event (Phil's final hospitalization) set forth in the allegations, and the FAC does not specifically allege the date of Phil's death. (FAC, ¶ 13.) Thus, the claim was time-barred by December 3, 2021.[2]

Plaintiffs assert in their opposition that the delayed discovery rule tolls the statute of limitations here:

> Under the delayed discovery rule, a cause of action accrues and the statute of limitations begins to run when the plaintiff has reason to suspect an injury or some wrongful cause, unless the plaintiff pleads and proves that a reasonable investigation at the time would not have revealed a factual basis for that particular cause of action. In that case, the statute of limitations for that cause of action will be tolled until such time as reasonable investigation would have revealed its factual basis.

(*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 803.) "'In order to rely on the discovery rule for delayed accrual of a cause of action, "[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule

[2] Plaintiffs argue in their opposition brief that the date of Phil's passing was actually December 13, 2020, but this assertion is extrinsic to the FAC. In addition, the interval between December 3 and December 13 does not change the statute of limitations analysis.

must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence." ' [Citations.]" (*NBC Universal Media, LLC v. Superior Court* (2014) 225 Cal.App.4th 1222, 1232; see also *April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 832 ["plaintiff must plead facts sufficient to convince the trial judge that delayed discovery was justified"].)

Plaintiffs' assertion of the delayed discovery rule is defective in two respects: (1) delayed discovery is not pleaded within the FAC, and (2) neither are specific facts that show an "inability to have made earlier discovery despite reasonable diligence."

Because the FAC appears on its face to be time-barred, based on the two-year interval between Phil's passing and the filing of the original complaint, the court SUSTAINS the demurrer, but it again grants 20 days' leave to amend.

D. Uncertainty

Kang appears to demur to the FAC on the ground of uncertainty, as well. (See Demurrer, pp. 2:8, 3: 14.) Nevertheless, Kang's arguments make clear he understands the nature of the causes of action. Demurrers for uncertainty are disfavored and typically sustained only if the pleading is so unclear that a defendant cannot reasonably respond. (See *Lickiss v. Financial Industry* Regulatory Authority (2012) 208 Cal.App.4th 1125, 1135.) That is not the case here. Accordingly, the court OVERRULES Defendants' demurrer to the first and second cause of action on the ground of uncertainty. (Code Civ. Proc., § 430.10, subd. (f).)

V. CONCLUSION

The court SUSTAINS Kang's demurrer to the first and second causes of action on the grounds of standing and the statute of limitations, and it grants Plaintiffs 20 days' leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

The court OVERRULES Kang's demurrer to the first and second causes of action on the ground of uncertainty. (Code Civ. Proc., § 430.10, subd. (f).)

Plaintiffs may only amend to remedy the deficiencies identified by the demurrer, not add entirely new causes of action. (*Patrick v. Alacer Corp*. (2008) 167 Cal.App.4th 995, 1015.) To raise claims entirely unrelated to those originally alleged requires either a new lawsuit or a noticed motion for leave to amend. Absent prior leave of court, an amended complaint raising entirely new and different causes of action may be subject to a motion to strike. (See *Harris v. Wachovia Mortg., FSB* (2010) 185 Cal.App.4th 1018, 1023.)

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Calendar Line 3
Case Name: *Jabil Inc., v. Human Bees, Inc.*
Case No.: 23CV413954

I. BACKGROUND

This is a commercial dispute between Plaintiff Jabil Inc. ("Jabil") and Defendant Human Bees, Inc. ("Human Bees") regarding the provision of temporary workers by Human Bees. Human Bees has filed a demurrer to the original complaint.

According to the complaint, Jabil is a global corporation that provides electronic manufacturing services and solutions, with manufacturing facilities throughout California. (Complaint, ¶ 6.) In 2019 or 2020, a representative from Human Bees, Nick Clark, contacted Jabil to offer its services as an agency with additional staffing capabilities. (*Id*. at ¶ 9.) Clark "promised that Human Bees would be able to provide more workers to Jabil faster than any other agency because it actively recruited in the local communities and churches." (*Id.* at ¶ 12.) At an in-person meeting, Clark assured Jabil that "it would be solely the responsibility of Human Bees to perform all criminal checks, background checks, and I-9 verifications on any temporary workers provided," in accordance with standard industry requirements. (*Id*. at ¶¶ 13-14.)

On November 7, 2020, Jabil engaged Human Bees to provide authorized temporary workers to supplement Jabil's work force. (Complaint, ¶ 19.) Human Bees immediately began providing workers as requested. (*Id*. at ¶ 20.)

In April 2021, Jabil alleges that it intended to convert some temporary workers from Human Bees into full-time employees with Jabil. (*Id.* at ¶ 25.) While interviewing the candidates, Jabil heard concerns from various workers that they did not have the "proper documentation" to work at Jabil. (*Ibid*.) Upon Jabil's demand for an audit, Human Bees ultimately revealed that 76 out of 159 workers provided by Human Bees to Jabil were not authorized to work in the United States. (*Id*. at ¶ 27.) Jabil directed Human Bees to cease assignment of the 76 ineligible workers to any Jabil facility, resulting in a 50% reduction in plant capacity, significant resource costs to mitigate the labor shortage, and the loss of business with clients. (*Id*. at ¶¶ 29, 32-38.)

The complaint alleges the following causes of action:

1. Fraud – California Civil Code Section 1710;
2. Fraud – California Civil Code Section 1572;
3. Intentional Interference with Contractual Relations;
4. Intentional Interference with Prospective Economic Relations; and
5. Unfair, Unlawful, and Fraudulent Business Practices

Human Bees demurs to each individual cause of action, contending that each fails to allege sufficient facts to state a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) Human Bees also demurs to the first and second causes of action on the ground of uncertainty. (Code Civ. Proc., § 430.10, subd. (f).)

II. LEGAL STANDARD

In ruling on a demurrer, the court treats it "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.) In liberally construing the allegations within a pleading, the court draws inferences favorable to the pleader. (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1239.)

III. ANALYSIS

A. The Fraud Causes of Action

In its demurrer, Human Bees addresses the first and second causes of action together, both of which allege a species of fraud. (See Civ. Code, §§ 1572, 1710.)

1. Pleading Standards

> The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages.
>
> * * *
>
> Fraud must be pleaded with specificity rather than with general and conclusory allegations. The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made.

(*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 792-793 (*West*) [citation and quotation marks omitted]; see also *Lazar v. Super. Ct.* (1996) 12 Cal.4th 631, 645 (*Lazar*).)

2. Duplicate Claims and Uncertainty

While Human Bees contends that California courts routinely sustain demurrers to duplicate causes of action, the Sixth District Court of Appeal has stated that duplicative pleading "is the sort of defect that, if it justifies any judicial intervention at all, is ordinarily dealt with most economically at trial, or on a dispositive motion such as summary judgment." (See *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 890; see also Code Civ. Proc., § 430.10 [setting forth the grounds for demurrer].) The court follows the Court of Appeal's guidance and declines to sustain the demurrer on this basis. (See

McCallum v. McCallum (1987) 190 Cal.App.3d 308, 315 [as a practical matter, a superior court will ordinarily follow an appellate opinion emanating from its own district].)

Human Bees also demurs to the fraud claims on the ground of uncertainty. Nevertheless, it is clear from the arguments in its papers that Human Bees understands the nature of the fraud allegations and has misapplied Code of Civil Procedure section 430.10, subdivision (f). Indeed, Human Bees' "uncertainty" arguments under subdivision (f) are more in the nature of "sufficiency" arguments under subdivision (e), and the court will generally avoid blurring the two analyses: "A special demurrer for uncertainty is not intended to reach the failure to incorporate sufficient facts in the pleading but is directed at the uncertainty existing in the allegations already made." (*Butler v. Sequiera* (1950) 100 Cal.App.2d 143, 145-146.)

Accordingly, the court OVERRULES Human Bees' demurrer to the first and second causes of action on the ground of uncertainty. (Code Civ. Proc. § 430.10, subd. (f).)

3. Sufficiency of the Allegations

Human Bees asserts that the fraud claims are deficient because the complaint fails to plead misrepresentation and knowledge of falsity with requisite specificity.

The court finds that the complaint pleads specific facts regarding how, where, to whom, and by what means alleged misrepresentations were tendered by Human Bees to Jabil. The complaint alleges that Human Bees falsely promised or misrepresented that its workers would be eligible to work in California and pass a "Comprehensive Screening Process," including drug tests and background tests. (See Complaint, ¶¶ 40-41, 54-55.) The complaint alleges an in-person meeting at which Clark, on behalf of Human Bees, assured Patrick Diaz (Jabil's Talent Acquisition Manager) and Kristin Strait (Jabil's Human Resources Manager) that he understood Jabil's expectation that "it would be solely the responsibility of Human Bees to perform all criminal checks, background checks, and I-9 verifications on any temporary workers provided." (*Id*. at ¶¶ 9, 13-14.) Clark acknowledged the "standard responsibility to perform comprehensive background checks and verify each worker's employment eligibility" and "offered to provide Jabil with an on-site dedicated recruiter." (*Id*. at ¶ 16-17.) While the complaint alleges that Jabil engaged Human Bees' services on February 7, 2020, it does not allege exactly when the foregoing alleged misrepresentations were made before that date. Thus, the complaint alleges the how, where, to whom, and by what means, but it is missing the "when." (See *West, supra,* 214 Cal.App.4th at p. 793 [holding a higher pleading standard for corporate defendants].)

Human Bees also contends that even if its representations were false, Jabil's failure to allege that Human Bees actually knew the representations were false is a fatal defect of the pleadings. Human Bees' citation to *Anderson v. Deloitte & Touche* (1997) 56 Cal.App.4th 1468, 1476 is inapposite because the Court of Appeal there evaluated the claim on a heightened evidentiary standard for a motion for summary judgment, not a demurrer. Human Bees' citation to *Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 74 is more appropriate. There, the Court noted that allegations for fraud were inadequate because the pleading failed to allege the representations were false when made. (*Stansfield, supra,* 220 Cal.App.3d at p. 74; see also *West, supra,* 214 Cal.App.4th at p. 793 [requiring "the defendant knew the representation was false at the time it was made"].) In this case, however, the court finds that

the complaint contains enough information by which it could be inferrred that Human Bees knew its promise that all of its workers were authorized to work in the United States and had passed "comprehensive" screening was false when made. As noted by Jabil, "this was not an isolated incident": given that 76 out of 159 workers provided by Human Bees were allegedly ineligible, it would not be reasonable to make the contrary inference that this was the product of a mere inadvertence or mistake by Human Bees. (Opposition at p. 13:7-9.)

In addition, because the information regarding Human Bees' knowledge is uniquely within Human Bees' possession, it is more reasonable for Jabil to have pleaded this element in a more conclusory manner. (See *State ex rel. Edelweiss Fund, LLC* (2023) 90 Cal.App.5th 1119, 1137 ["Allegations of the defendant's knowledge, however, may use 'conclusive language.'"].) Courts have repeatedly recognized exceptions that mitigate the rigor of the rule requiring specific pleading of fraud when it comes to pleading a defendant's knowledge. (*Committee on Children's Television, Inc., supra,* 35 Cal.3d at p. 217.) "Less specificity in pleading fraud is required 'when "it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy . . . ."'" (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469 [quoting *Committee on Children's Television, Inc., supra,* 35 Cal.3d at p. 217].) Here, the complaint alleges: "Jabil could not have discovered the concealed facts through the exercise of ordinary diligence, including because the information is not publicly available and was not otherwise readily available. The information could only be obtained from Human Bees." (Complaint, ¶¶ 48, 61.) This allegation, repeated in each of the first and second causes of action, is sufficient to withstand a demurrer.

In reply, Human Bees also contends that the complaint does not sufficiently plead that Human Bees misrepresented the verification process. The court rejects this late contention, as the complaint clearly states that Human Bees represented that its workers would be eligible to work and pass a "Comprehensive Screening Process" as described on Human Bees' website (Complaint, ¶¶ 15, 40-41, 54-55.)

In short, the court determines that the complaint contains enough specificity and detail to allege fraud on nearly all fronts, but it falls just short on one: alleging *when* representations were made (or information was concealed) by Human Bees. Accordingly, the court SUSTAINS Human Bees' demurrer to the first and second causes of action on the ground of insufficiency of pleading, with 10 days' leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

4. Economic Loss Rule

In general, there is no recovery in tort for negligently inflicted "economic losses." (*Southern California Gas Leak Cases* (2019) 7 Cal.5th 391, 400.) "Quite simply, the economic loss rule prevents the law of contract and the law of tort from dissolving one into the other." (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 988 (*Robinson Helicopter*).) "Not all tort claims for monetary losses between contractual parties are barred by the economic loss rule. But such claims are barred when they arise from—or are not independent of—the parties' underlying contracts." (*Sheen v. Wells Fargo Bank, N.A.,* (2022) 12 Cal.5th 905, 923.)

In *Robinson Helicopter*, the California Supreme Court explicitly carved out an exception to this rule, holding that the rule does not bar claims for fraud and intentional misrepresentations, which are independent of the allegedly breached contract. (*Robinson, supra,* 34 Cal.4th at p. 991.) Fraudulent inducement claims also fall within an exception to the economic loss rule recognized by our Supreme Court. (*Id*. at pp. 989–990.)[3] Here, Jabil alleges deceit and fraudulent inducement of contract in its first and second causes of action.

Accordingly, the court OVERRULES Human Bees' demurrer based on application of the economic loss rule.

B. Intentional Interference with Contractual Relations

Human Bees demurs to the third cause of action, maintaining that Jabil fails to allege each required element. An interference with contractual relations cause of action requires: "'(1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the 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.'" (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130, 1141 (*Ixchel*) [quoting *Reeves v Hanlon* (2004) 33 Cal.4th 1140, 1148]; see *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.)

First, Human Bees contends that Jabil fails to allege the existence of a valid contract because the complaint does not allege the identity of the contracting party or the terms of the contract. (Demurrer, p. 15:4-5.) As pointed out by Jabil, however, "'[t]he rule does not require . . . that the person who loses the performance of the contract as a result of the conduct of the actor should be specifically mentioned by name. It is sufficient that he is identified in some manner . . . ." (*Ramona Manor Convalescent Hosp. v. Care Enters.* (1986) 177 Cal.App.3d 1120, 1133 (*Ramona*) [quoting Rest.2d Torts, § 766 com. p. pp. 15]; see also *Altera Corp. v. Clear Logic, Inc.* (9th Cir. 2005) 424 F.3d 1079, 1092 ["When the defendant performs the act that causes the interference, the defendant need not know exactly who is a party to the contract, so long as he knows he is interfering with a contractual relationship."]) In *Ramona*, the court upheld an interference with contract claim even though the defendant did not know who plaintiff had contracted with, only that plaintiff entered a contract with a third party who could be frustrated by defendant's actions. (*Id.* at pp. 1132-133.)

Similarly, Human Bees' argument regarding the lack of allegations pertaining to its own knowledge of Jabil's contract is equally unpersuasive. Paragraph 66 of the complaint alleges: "Jabil informed Human Bees of the work it was providing its customer and the critical importance of the labor provided. Thus, Human Bees knew there was a relationship between Jabil and this specific customer and knew that the employees being provided to Jabil in these facilities were being used to manufacture this customer's products and that continued service would have resulted in an economic benefit to Jabil." This is more than enough to allege Human Bees' knowledge of the existence of a contractual relationship between Jabil and the unnamed customer, which is the only reasonable inference arising out of these allegations. Again, contrary to Human Bees' argument, Jabil is not required to plead "the terms of the

[3] While Human Bees cites various federal cases for the proposition that the foregoing exception to the economic loss rule should be limited to products liability cases, the California Supreme Court has not so limited its application. (*E.g., Sheen, supra,* 12 Cal.5th at p. 933 [acknowledging "the recognized exception to the economic loss rule for consumers who contract for certain kinds of professional services"].)

contract" or "the time period in question." (See also Complaint, ¶ 68 ["contractual relationship was negatively impacted and irreparably damaged"]; ¶ 69 ["Human Bees' conduct made Jabil's performance of its contract with its customer more expensive and more difficult"].)

The court OVERRULES Human Bees' demurrer to the third cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

C. Intentional Interference with Prospective Economic Relations

Human Bees also contends that Jabil fails to plead facts supporting each element of an intentional interference with prospective economic relations claim.

> 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 [citing *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1164-1165 (*Korea Supply Co.*)].)

To establish intentionally wrongful conduct, a claimant must plead "(1) that the defendant engaged in an independently wrongful act, and (2) that the defendant acted either with the desire to interfere or the knowledge that interference was certain or substantially certain to occur as a result of its action." (*Korea Supply Co., supra,* 29 Cal.4th at pp. 1164-1165.) In other words, "the alleged interference must have been wrongful by some measure beyond the fact of the interference itself." (*Crown Imports, LLC v. Superior Court* (2014) 223 Cal.App.4th 1395, 1402.) The act must be unlawful, under some constitutional, statutory, regulatory, common law, or other determinable legal standard. (*Ibid*.)

Human Bees does not argue the deficiencies of this cause of action in great detail, and it generally relies on arguments made with respect to the intentional interference with contractual relations cause of action.[4] Nevertheless, the court will attempt to address the argument in detail:

First, Human Bees incorrectly asserts that the complaint does not allege an economic relationship between Jabil and a third party. The complaint clearly alleges that Jabil had an ongoing economic relationship providing manufacturing services to a main customer, which required three dedicated facilities in Fremont, Great Oaks, and Livermore to meet its needs. (Complaint, ¶¶ 6-7.) Second, the complaint also alleges that Human Bees was aware of the ongoing business relationship because Jabil discussed the challenges of staffing for a specific customer and retained Human Bees to meet the specific customer's growing demands. (*Id*. at ¶¶ 11-13.)

[4] Although Human Bees also argues that it does not staff temporary workers outside of the country (*i.e.*, Taiwan), this argument is irrelevant, as Jabil has not alleged that Human Bees' interference arose out of a failure to staff workers in Taiwan, but rather with its alleged failures in California. (Opposition, p. 20:4-5.)

Third, contrary to Human Bees' assertion, facts alleged elsewhere within the complaint support the allegations of intentional wrongful acts in Paragraph 77.[5] Although Human Bees argues that the complaint fails to allege facts that Human Bees knew it provided a "critical number" of employees to the specific customer, the complaint alleges that Human Bees knew of Jabil's challenge "with finding sufficient numbers of temporary workers to work on the production lines manufacturing for Jabil's main customer in Fremont, Great Oaks[,] and Livermore." (*Id*. at ¶ 11.) Moreover, Human Bees allegedly assured Jabil that it would find "enough workers to support [Jabil's] customer's growing business and promised that Human Bees would be able to provide more workers to Jabil faster than any other agency." (*Id.* at ¶ 12.) The complaint also alleges that it provided an on-site coordinator that would "help Jabil provide the best service possible for its customer" and provide payroll services for Human Bees' workers. (*Id.* at ¶¶ 17, 21.) A majority of Human Bees' temporary workers "were placed in the Fremont facility which was comprised of three buildings dedicated to manufacturing for a single Jabil Customer. As [of] 2021, more than 80% of the total number of workers in Building #1 were temporary workers supplied by Human Bees." (*Id*. at ¶ 24.)

Fourth, the complaint also clearly alleges an actual disruption in Jabil's relationship with its customer arising out of Jabil's loss of a substantial portion of its workforce, leading to "a sudden, unexpected, and drastic impact on its production for its customer." (*Id*. at ¶ 75.) Finally, the complaint alleges actual economic harm because the loss of its production resulted in a new business hold for four months and a terminated expansion opportunity that would have produced additional revenue of approximately $54.375 million. (*Id*. at ¶¶ 76-77.)

Accordingly, the complaint sufficiently alleges each element of an intentional interference with economic relations claim. While Human Bees may object to the veracity of these allegations, it is well founded that "[t]o survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872 [citing *Golceff v. Sugarman* (1950) 36 Cal.2d 152, 154]; see also *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.)

The court OVERRULES Human Bees' demurrer to the fourth cause of action for intentional interference with prospective economic relations. (Code Civ. Proc., § 430.10, subd. (e).)

D. Unfair, Unlawful, and Fraudulent Business Practices

Human Bees demurs to the fifth cause of action on the ground that it is predicated on the two fraud claims and the complaint fails to allege any fraudulent activity.

"Business and Professions Code section 17200 et seq. prohibits unfair competition, including unlawful, unfair, and fraudulent business acts. The [Unfair Competition Law] UCL

[5] In its reply brief, Human Bees impermissibly argues for the first time that the complaint fails to allege a wrongful act "beyond the fact of the interference itself." While the court may decline to consider this argument, the court notes that it should be summarily rejected on the merits: the complaint clearly alleges that Human Bees violated federal law by failing to provide workers authorized to work within the United States. (*Korea Supply Co., supra,* 29 Cal.4th at p. 1159 ["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."])

covers a wide range of conduct. It embraces anything that can properly be called a business practice and that at the same time is forbidden by law." (*Korea Supply Co., supra,* Cal.4th at p. 1143.) "Section 17200 'borrows' violations from other laws by making them independently actionable as unfair competitive practices. In addition, under section 17200, a practice may be deemed unfair even if not specifically proscribed by some other law." (*Ibid.* [citing *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180].) The UCL "prohibits 'unfair competition,' which it defines as 'any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [Section 17500]." (*Hansen v. Newegg.com Americas, Inc.* (2018) 25 Cal.App.5th 714, 722 (*Hansen*) [quoting Bus. & Prof. Code, § 17200].) "'The UCL's purpose is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services.'" (*Hansen, supra,* 25 Cal.App.5th at p. 722 [quoting *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949].)

While the court is sustaining Human Bees' demurrer to the first and second causes of action on a technical basis, the court is also overruling the demurrer to the fourth cause of action. A UCL claim can rely on an interference with prospective economic advantage claim. (See *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1196 [citing *Korea Supply Co., supra,* Cal.4th at p. 1152].) Moreover, as Jabil points out in its opposition, the complaint alleges a violation of the Immigration Reform and Control Act of 1986 by Jabil. Accordingly, Jabil sufficiently alleges the ultimate facts for a UCL claim under at least one of the three prongs of Business and Professions Code section 17200.

The court OVERRULES Human Bees' demurrer to the fifth cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

IV. CONCLUSION

The court OVERRULES Human Bees' demurrer to the first and second causes of action on the ground of uncertainty. The court SUSTAINS Human Bees' demurrer to the first and second causes of action, based on insufficient specificity of the timing of key events, with 10 days' leave to amend. The court OVERRULES Human Bees' demurrer to the first and second causes of action based on an application of the economic loss rule. Finally, the court OVERRULES the demurrer to the third, fourth, and fifth causes of action.

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Calendar Line 5
Case Name: *CA, Inc. v. General Motors Holdings LLC et al.*
Case No.: 23CV416530

I. BACKGROUND

This is a contract dispute between three Delaware corporations: plaintiff CA, Inc. ("CA"), whose principal place of business is in San Jose, California, defendant General Motors Holdings, LLC ("GM Holdings"), whose principal place of business is in Detroit, Michigan, and defendant General Motors, LLC ("GM LLC"), whose principal place of business is in Detroit, Michigan. Defendants are sometimes collectively referred to herein as "GM."

The original and still-operative complaint, filed on May 18, 2023, states two causes of action: (1) Breach of Contract (based on an "Amended and Restated Enterprise Software Licensing Agreement" entered into on September 28, 2015, as well as an associated order form and purchase order); and (2) Declaratory Judgment (seeking an interpretation of certain portions of the 2015 License Agreement). The complaint alleges that the court has personal jurisdiction over GM "because this dispute arises out of a contract with a plaintiff headquartered in California such that they should reasonably anticipate being subject to suit in this Court. In addition, GM LLC is registered to conduct business in California." (Complaint, ¶ 11.)

Currently before the court is a motion to quash service of summons brought by both GM defendants on July 18, 2023. Plaintiff filed its opposition on November 2, 2023, the last day any timely opposition could have been filed under the Code of Civil Procedure.[6] GM filed a reply on November 8, 2023.

II. GM'S MOTION TO QUASH SERVICE

A. Legal Standards

California courts "may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) "The primary focus of the personal jurisdiction inquiry is the relationship of the defendant to the forum state. The 'constitutional touchstone' of this inquiry is whether the defendant 'purposefully established "minimum contacts" in the forum State.'" (*Rivelli v. Hemm* (2021) 67 Cal.App.5th 380, 391 ("*Rivelli*"), internal citations omitted [citing, among others, *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.* (2017) 582 U.S. 255 ("*Bristol-Myers*") and *Burger King Corp. v. Rudzewicz* (1985) 417 U.S. 462, 474 ("*Burger King*")].)

"To comport with the constitutional requirements of due process, a California court may assert jurisdiction over a nonresident defendant (who has not consented to suit in the forum) *only* if the defendant's minimum contacts with the forum state are 'such that the maintenance of the suit 'does not offend the traditional notions of fair play and substantial justice.'' The minimum contacts test ensures that 'a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts' but only 'where the contacts proximately result from actions by the defendant *himself* that create a

[6] Therefore, the court has not considered any of the additional, apparently duplicative, opposition documents filed by CA a day late, on November 3, 2023.

‘substantial connection’ with the forum State.’ Personal jurisdiction under the minimum contacts framework may be either all-purpose (also called ‘‘general’’) or case-linked (also called ‘‘specific’’).” (*Rivelli, supra*, at 391-392, internal citations omitted, emphasis in original.)

There is no allegation in the complaint, nor is there any argument in CA’s opposition brief, that GM is subject to general, all-purpose jurisdiction in California. The inquiry to determine general or all-purpose jurisdiction “is not whether a foreign corporation’s in-forum contacts can be said to be in some sense ‘continuous and systematic,’ it is whether that corporation’s ‘affiliations with the State are so ‘continuous and systematic’ as to render [it] essentially at home in the forum State.” (*Daimler AG v. Bauman* (2014) 571 U.S. 117, 137-138, internal citations omitted (“*Daimler AG*”).) Here, GM argues that it is “at home” in Delaware or in Michigan, not in California.

Rather than argue general jurisdiction, the parties focus on specific, case-linked jurisdiction. “Case-linked jurisdiction hinges on the ‘‘relationship among the defendant, the forum, and the litigation.’’ It requires ‘‘an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.’” Consistent with the constraints of due process, “the defendant’s suit-related conduct must create a substantial connection with the forum State.” As expressed by the California Supreme Court, a court may exercise case-linked jurisdiction over a nonresident defendant if three requirements are met. First, the defendant must have purposefully availed [it]self of the privilege of conducting activities in this state, thereby invoking the benefits and protections of California's laws. Second, the claim or controversy must relate to or arise out of the defendant’s forum-related contacts. Third, the exercise of jurisdiction must be fair and reasonable and should not offend notions of fair play and substantial justice. The case-linked jurisdictional analysis is intensely fact-specific.” (*Rivelli, supra*, 67 Cal.App.5th at 392-393, internal citations omitted [citing, among others, *Daimler AG* and *Bristol-Myers, supra*].)

A defendant may move to quash service of summons on the ground that the court lacks personal jurisdiction over it. (See Code Civ. Proc., § 418.10(a).) “When a nonresident defendant challenges a trial court's exercise of personal jurisdiction, the plaintiff bears the initial burden to demonstrate facts justifying the exercise of jurisdiction. To meet this burden, a plaintiff must do more than make allegations. A plaintiff must support its allegations with ‘competent evidence of jurisdictional facts. Allegations in an unverified complaint are insufficient to satisfy this burden of proof.’ If the plaintiff makes this showing by a preponderance of the evidence on the first two requirements (i.e., that the defendant has purposefully availed itself of the forum and the plaintiff's claims relate to or arise out of the defendant's forum-related contacts), the burden shifts to the defendant to demonstrate that the exercise of jurisdiction would be unreasonable.” (*Rivelli, supra*, 67 Cal.App.5th at 393, internal citations omitted.)

“Where there is a conflict in the declarations, resolution of the conflict by the trial court will not be disturbed on appeal if the determination is supported by substantial evidence. [Citations.] However, where the evidence of jurisdictional fact is *not* conflicting, the question of whether a defendant is subject to personal jurisdiction is one of law. [Citation.]” (*Elkman v. National States Ins. Co.* (2009) 173 Cal.App.4th 1305, 1313, emphasis in original.)

B. Analysis

The court GRANTS GM's motion to quash for the reasons that follow. The court finds that CA has failed to prove specific, case-linked jurisdiction over GM.

GM's motion is supported by a declaration from Kelly Masters, GM LLC's "Global Director & Chief Contracting Officer, Software and Technology." Attached to this declaration are Exhibits A, B and C, which are copies of the 2015 License Agreement between the parties, the order form, and the purchase order upon which CA's claims are based. Exhibit A establishes that at the time the parties entered into the license agreement, CA was a Delaware corporation with a principal place of business in New York, and that none of the parties to the agreement were California residents. The agreement contains a choice-of-law provision in Section 6.19 ("Governing Law"), which states that the rights and obligations of the parties to the agreement "shall be governed by the laws, other than choice of law rules, of the State of Michigan." Section 6.21 of the Agreement ("Entire Agreement") states that it constitutes the complete agreement of the parties with respect to its subject matter and that it shall not be amended except by a written agreement signed by both parties.

Exhibit C to the Masters declaration, a copy of the September 25, 2020 purchase order referenced in the complaint, also states, in Section 29 of the General Terms and Conditions ("Governing Law; Jurisdiction"), that it is to be construed "according to the laws of the country (and state/province if applicable) from which this contract is issued, as shown by the address of Buyer," which is listed as Detroit, Michigan on the order/contract. Attached to the Masters declaration as Exhibits D and E are copies of the termination notice and certification of deletion of the licensed software sent to CA.

As CA was not a California resident when the license agreement was signed, the fact that GM first entered into the license agreement with it cannot be viewed as supporting a finding that the GM defendants purposefully availed themselves of the privilege of conducting activities in California. Further, even if CA had been a California resident at the time the license agreement was signed, the execution of an agreement with a resident of the forum does not, standing alone, establish that a defendant has sufficient minimum contacts with the forum to support the exercise of personal jurisdiction. (See *Burger King*, *supra*, 471 U.S. at 475-476.) For this reason, CA's repeated emphasis in its opposition on the fact that it subsequently moved its headquarters to California before GM signed the order form in 2020 is insufficient to show minimum contacts on its own. "Rather, a court must evaluate the contract terms and the surrounding circumstances to determine whether the defendant purposefully established minimum contacts within the forum." (*Stone v. Texas* (1999) 76 Cal.App.4th 1043, 1048, internal citations and quotation marks omitted.) "Relevant factors include prior negotiations, contemplated future consequences, the parties' course of dealings, and the contract's choice-of-law provision." (*Ibid*.)

A contract's choice-of-law provision is an important consideration in the purposeful availment analysis because it shows that a party intended to avail itself of the benefits and protections of the designated forum's laws. (See *Burger King*, *supra*, 471 U.S. at p. 482; see also *Aquila, Inc. v. Super. Ct.* (2007) 148 Cal.App.4th 556, 572 ["The contract includes clauses for New York choice of law and forum selection, which tends to weigh against a conclusion from this document that [Plaintiff] itself or its predecessor sought to do significant business in California."].) Here the parties' agreement that their business transactions would be controlled

by Michigan law clearly weighs against any finding that, by entering into an agreement with a Delaware corporation headquartered in New York, GM was somehow purposefully availing itself of the privilege of conducting activities in California.

The Masters declaration also states that neither defendant consents to this lawsuit being brought in California; that CA was bought by non-party Broadcom, Inc. (a Delaware corporation headquartered in California) in 2018; that GM Holdings is not registered to do business in California; that the licensed software was delivered and invoiced to GM in Michigan; that it was "hosted and used" by GM in "data centers in Michigan and Texas," and that no representatives of GM traveled to California in connection with the licensing agreement. (See Masters Decl. at ¶¶ 6-11.) Finally, the Masters declaration states (at ¶ 13) that it would be "extremely burdensome, time-consuming and unfair" to require GM to defend this action in California, as none of defendants' witnesses or relevant documents are located in California.

In response to GM's motion, CA has failed to meet its initial burden of demonstrating facts that justify the exercise of jurisdiction over Defendants. It fails to show *through evidence* that either of the GM Defendants' "suit-related conduct" shows a "substantial connection" with California. The only evidence submitted by CA with its opposition is a declaration from counsel Alison Plessman.[7] This declaration presents two isolated pieces of information, based on two online searches by Plessman.

First: "Using the Westlaw search engine I ran a search of cases in California state and federal courts in which General Motors Holdings LLC and/or General Motors, LLC are parties. That search returned more results than the Westlaw platform can display (i.e., more than 10,000 results). Limiting the search to the last ten years, General Motors Holdings LLC and/or General Motors, LLC have served as either plaintiffs or defendants in 9,135 cases in California state or federal courts. A true and correct printout of the first 1,000 of these cases is attached as Exhibit 1." (Plessman Decl. at ¶ 2.) CA's opposition does not contain any review or discussion of these "first 1,000" cases, and therefore, the court does not accord them any weight. (See *United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 153 [court may disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by which the appellant reached the conclusions he or she wants us to adopt]; see also *Quantum Cooking Concepts, Inc. v. LV Assocs., Inc*. (2011) 197 Cal.App.4th 927, 934 [trial court not required to "comb the record and the law for factual and legal support that a party has failed to identify or provide"]; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106 [court is not required to examine undeveloped claims, nor to make arguments for the parties].) Indeed, the fact that GM may have been subject to specific personal jurisdiction in numerous other cases in California (based on its purposeful availment of the privilege of conducting certain activities in California, the relationship between those California activities and the controversies at hand, as well as notions of fair play and substantial justice) says nothing about whether it is subject to specific jurisdiction in this case. Again, the specific jurisdiction analysis is supposed to be "intensely fact-specific," (*Rivelli, supra*, 67 Cal.App.5th at p. 393), and GM's sales of automobiles in California that may have subjected it to various lawsuits in California (for example) have absolutely nothing to do with

[7] As CA's complaint is unverified, it does not count as competent evidence of jurisdictional facts. (*Swenberg v. Dmarcian, Inc.* (2021) 68 Cal.App.5th 280, 299.)

GM's purchase of business software from a Delaware corporation formerly headquartered in New York and now headquartered in California.

Second: "I also conducted a search on the California Secretary of State website and determined that General Motors LLC has registered to do business in the State of California." (Plessman Decl. at ¶ 3.) A copy of GM LLC's application is attached as Exhibit 2. While the fact that GM LLC is registered to do business in California has some relevance, it does not meet CA's burden to demonstrate facts justifying the exercise of jurisdiction over GM LLC or GM Holdings. It does not demonstrate "suit-related conduct" by either defendant that would show a "substantial connection" with California, particularly if the purpose of that registration to do business by GM LLC had everything to do with the sales of products (cars) and nothing to do with the purchase of business software from CA. CA has failed to show that GM LLC's registration to do business in California is connected in any way with GM LLC's licensing and purchasing of CA's software.

As CA has failed to meet its burden of establishing through a preponderance of the evidence that the GM defendants purposefully availed themselves of the privilege of conducting activities in California, or that GM's contacts in this state have any relationship to the claim or controversy here, it is not necessary for the court to address the third prong of the specific jurisdiction analysis.

CA's opposition includes a brief request to continue the hearing on this motion to allow CA to conduct limited jurisdictional discovery. (CA's Opp. at p. 11:3-15.) The court would have expected such a request to be accompanied by a description of the type of discovery contemplated, an explanation of how the discovery might allow CA to meet its burden of showing case-linked jurisdiction, and a time estimate for the length of the stay required to allow for completion of such discovery. CA's opposition does not include any of this basic information. Its only evidence, the Plessman declaration, makes no mention of any need for jurisdictional discovery or a continuance to pursue such discovery. Moreover, there is no indication that CA has previously made any effort to conduct such discovery in this case, including meeting and conferring with GM about it. Based on this plainly inadequate showing, the court denies the request for a stay to conduct jurisdictional discovery. (See *Beckman v. Thompson* (1992) 4 Cal.App.4th 481, 487 [trial court did not abuse its discretion in denying request for jurisdictional discovery where court "could reasonably conclude further discovery would not likely lead to production of evidence establishing jurisdiction"].)

In light of the court's ruling on the motion to quash, the court declines to address GM's alternative request to stay or dismiss this action based on the doctrine of *forum non conveniens*, as it is moot.

The motion to quash is granted.

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Calendar Line 6
Case Name: *Chang Long Realty Development LLC v. Xi Hua Sun et al.*
Case No.: 19CV342114

Plaintiff and cross-defendant Chang Long Realty Development LLC and cross-defendant Xi Jun Sun (collectively, "CLRD") bring this motion to quash a subpoena by defendants Xi Hua Sun and Shan Zhu (collectively, "Sun and Zhu") on third-party JP Morgan Chase Bank, N.A. ("Chase"). The court finds that the subpoena is directed to relevant documents and that CLRD has failed to identify any personal privacy interests that cannot adequately be protected by a protective order. The court DENIES the motion.

This is a dispute over the ownership and development of real property, where payments and transactions related to that real property are apparently relevant to the disputed allegations in the case—in particular, to the causes of action for quiet title, partition, accounting, breach of fiduciary duty, conversion, trespass, and constructive trust. Defendants Sun and Zhu have demonstrated, and CLRD concedes, that at least some of the payments related to the real property at issue involved Xi Jun Sun's personal bank accounts at Chase. Ordinarily, information about these bank accounts would be obtained via discovery directly from the party and account holder (Xi Jun Sun), but because he has been detained in China for an indefinite period of time, Sun and Zhu have sought to obtain this information from Chase itself. The court finds that Sun and Zhu have good cause to do so.

The fact that Xi Jun Sun chose to commingle these funds with personal funds for the use of his daughter, Yu Chen Sun, does not shield these accounts from discovery. Indeed, defendants allege that "part of the buyout deal" between the parties involved Sun and Zhu "support[ing] [Yu Chen Sun's] lifestyle and education in the United States while Xijun returned to China," which further negates any privacy interest in this information and bolsters the discoverability of this information. (Defendants' Opposition at p.6:2-7.) Nevertheless, to the extent that private third-party information might be included in the discovery from Chase—something that CLRD has not sufficiently identified in its moving or reply papers—the court finds that it would be adequately protected with a standard confidentiality designation in a stipulated protective order.

The motion to quash is denied.

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Calendar Line 7
Case Name: *Yisrael 26 LLC v. Terri Le*
Case No.: 21CV385243

Defendant Terri Le ("Le") filed this motion to compel further responses to interrogatories and document requests on July 18, 2023. On July 25, 2023, plaintiff Yisrael 26, LLC ("Yisrael") served its further responses. Le has indicated that the responses are no longer at issue, but she still seeks a decision regarding her request for monetary sanctions against Yisrael. The request contained in Le's opening papers was for $2,722.50, but that included the anticipated tasks of responding to Yisrael's opposition and addressing the court's tentative ruling regarding the discovery requests at issue. Yisrael has not filed any opposition.

Based on the foregoing, the court hereby grants in part and denies in part Le's sanctions request, awarding a total of **$1,485** (representing three hours of attorney time). Yisrael shall pay Le this amount within 30 days of notice of entry of this order.[8]

IT IS SO ORDERED.

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[8] The court notes that on August 17, 2022, this court (Judge Rosen) granted a request for discovery sanctions against Le and in favor of Yisrael in the amount of $1,460, based on somewhat similar circumstances.

Calendar Line 9
Case Name: *Empire Investments, LLC et al. v. Art Mar et al.*
Case No.: 20CV375104

This is the third reasonable motion in a row that has been unreasonably opposed by one or more parties. First, Sunrun brought a motion to consolidate Empire's case against Mar with the cases brought by CSAA and PG&E. Empire opposed the motion with specious arguments, which the court rejected. The court granted the motion on July 27, 2023. Second, CSAA moved for leave to amend its complaint to add a cause of action for inverse condemnation against PG&E. PG&E's only colorable argument in opposition was a demurrer-style or summary judgment-style argument that was not appropriate for consideration on a motion for leave. The court granted the motion on September 28, 2023.

Now, Empire brings this motion for leave to file a first amended complaint to add Sunrun and PG&E as defendants, as well as to add more specificity to the original complaint. Both Sunrun and PG&E oppose, but given the outcome of the two earlier motions, could Sunrun and PG&E have had any remotely reasonable expectation of a contrary result? The answer is no. Any other outcome would have been directly inconsistent with the court's stated reasoning in its July 27 and September 28 orders.

Although the court agrees with Sunrun and PG&E that Empire dragged its feet in seeking this amendment, the court also finds that Sunrun and PG&E have failed to show any prejudice arising from the proposed amendment. They are already deeply involved in these consolidated cases, and the arguments that Empire seeks to make against them are the same arguments that the other parties have already made against them. Sunrun claims that it will "have to incur additional costs to conduct further discovery and investigation as to Plaintiff's claims," but it fails to identify what any of this discovery or investigation would be. (Sunrun's Opposition at p. 4:23-28.) Sunrun also claims that it "will likely need to request a continuance [of trial] to complete discovery related to Plaintiff's claims." (*Ibid.*) The court rejects this latter contention out of hand. Trial is set for August 12, 2024, which is nine months away. That is more than enough time for the parties to complete discovery in this nearly three-year-old case, so long as they do not drag their feet any further. Sunrun's or any other party's failure to complete discovery between now and next summer, absent some unforeseen calamity, will not be accepted as good cause for a continuance of the trial date.

The motion is GRANTED. Empire shall separately file its first amended complaint by no later than November 22, 2023.

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Calendar Line 13
Case Name: *Milpitas-District 2 Owner, LLC v. Terry Zheng et al.*
Case No.: 23CV423013

On November 2, 2023, this court (Judge Kuhnle) granted defendants' motion to quash service of summons in this unlawful detainer action, based on service that purportedly occurred on September 26, 2023. On November 9, 2023, defendants filed this second motion to quash (which was apparently signed the day before, on November 8, 2023), but this second motion admits that defendants are unaware of any follow-up service attempts by plaintiff. Accordingly, this motion is not ripe and must be denied.

On November 13, 2023, plaintiff filed an opposition to this motion with supporting declarations, indicating that numerous service attempts on defendants were in fact made between November 4 and November 9, 2023, and that on November 9, 2023, after the filing of the present motion, plaintiff's process servers did serve defendant Guihong Ni personally and defendant Terry Zheng by substitute service. To the extent that defendants now claim that this service was also invalid, they must file a motion that is directed to it, with specific facts about it. They may not preemptively file a motion to quash based on service that had not yet occurred and that was merely hypothetical at the time of filing.

The motion is denied.

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