SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

(Dept 16 is now hearing cases that were formerly in Dept 2)

Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 01-25-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: 408-882-2430 When you can call: Monday to Friday, 8:30 am to 12:30 pm

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	19CV347867 Hearing: Demurrer	Gurinderpal Singh vs Davis Reed Construction, Inc. et al	See Tentative Ruling. Court will prepare the final order.
LINE 2	20CV371155 Hearing: Demurrer	Golden State Concessions LLC vs Mission San Jose Airport, LLC et al	See Tentative Ruling. Court will prepare the final order.
LINE 3	23CV423824 Hearing: Demurrer	Portfolio Recovery Associates, Llc vs Mario Estevez	No amended notice was filed, such that notice is not proper. If Defendant appears at the hearing, the motion will be continued to allow for notice. Otherwise, the motion will go off calendar.
LINE 4	21CV377584 Motion: Summary Judgment/Adjudication	Selvin Ortiz vs Northwall Builders Inc et al	The court does not a have tentative decision for the parties and requires all parties to appear at the hearing.
LINE 5	21CV377584 Motion: Summary Judgment/Adjudication	Selvin Ortiz vs Northwall Builders Inc et al	The court does not a have tentative decision for the parties and requires all parties to appear at the hearing.
LINE 6	21CV377584 Motion: Summary Judgment/Adjudication	Selvin Ortiz vs Northwall Builders Inc et al	The court does not a have tentative decision for the parties and requires all parties to appear at the hearing.

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LINE 7	23CV415067 Motion: Compel	Nicole Mendoza vs BMW of North America, LLC	Notice appearing proper, the unopposed motion to compel is granted. Sanctions for this motion in the amount of $535 is GRANTED. Defendant must provide code-compliant verified further responses and pay the sanctions within 20 days of the final order. Plaintiff shall submit the final order.
LINE 8	23CV415067 Motion: Compel	Nicole Mendoza vs BMW of North America, LLC	Notice appearing proper, the unopposed motion to compel is GRANTED. Sanctions for this motion in the amount of $535 is granted. Defendant must provide code-compliant verified further responses and pay the sanctions within 20 days of the final order. Plaintiff shall submit the final order.
LINE 9	23CV415067 Motion: Compel	Nicole Mendoza vs BMW of North America, LLC	Notice appearing proper, the unopposed motion to compel is granted. Sanctions for this motion in the amount of $535 is granted. Defendant must provide code-compliant verified further responses and pay the sanctions within 20 days of the final order. Plaintiff shall submit the final order.
LINE 10	23CV415067 Motion: Compel	Nicole Mendoza vs BMW of North America, LLC	Notice appearing proper, the unopposed motion to compel is granted. Sanctions for this motion in the amount of $535 is granted. Defendant must provide code-compliant verified further responses and pay the sanctions within 20 days of the final order. Plaintiff shall submit the final order.
LINE 11	21CV381983 Motion: Withdraw as attorney	MARY BENITEZ vs Marshalls of MA, Inc. et al	The Court is inclined to grant the motion, but Counsel for Benitez is required to appear. If Counsel fails to appear, the matter will go off calendar. .

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LINE 12	22CV407607 Motion for Determination of Good faith	Petra Macias et al vs Augustina Duran Armendariz et al	It does not appear that notice was proper, as the proof of service on the amended notice of 11/8/23 is not signed. If moving party appears, the motion may be continued to allow for proper notice. If moving party fails to appear, the motion will go off calendar.

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Calendar Line 1
Case Name: *Gurinderpal Singh and SB Trucking Inc. v. Davis Reed Construction, Inc., et al.*
Case No.: 19CV347867

This action arises from a contract dispute. Swan Engineering Inc. ("Swan") and Davis Reed Construction, Inc. ("Davis") (collectively, "Defendants"), demur to the operative Second Amended Complaint ("SAC") filed by Gurinderpal Singh ("Singh") and SB Trucking Inc. ("SB") (collectively, "Plaintiffs").

I. Background

A. Factual

According to the allegations of the operative SAC, in 2018, Plaintiff SB entered into a written agreement ("The Contract") with Northstar Truck Lines, Inc. ("Northstar")[1] pursuant to which the former agreed to provide "truck hauling" services to the latter. (SAC, ¶¶ 8-9, 23; Ex. 1.) In June 2018, while providing services to Northstar at a site in Mountain View, California, SB's truck damaged a building. (SAC, ¶¶ 10-11.) On September 21, 2018, Plaintiffs obtained a bid from a company named Chana Construction to repair the damaged building for an estimated $6,500. (SAC, ¶ 12; Ex. 2.)

Plaintiffs allege that, at the time the repairs were made, they were still owed "certain amounts" for services provided to Northstar per The Contract. (SAC, ¶ 13.) Davis caused the damaged building to be repaired and sent a repair bill of $19,008 to Swan, who, in turn, presumably sent the repair bill to Northstar. (SAC, ¶ 14.) Northstar then deducted the $19,008 from the amount it was to pay Plaintiffs under The Contract.

Plaintiffs contend the bill provided by Davis "was and is excessive and improperly exceeds the reasonable cost to repair the building which was $6,500." (SAC, ¶ 14.) Thus, Plaintiffs allege that they are owed $12,508, the difference between the amount actually paid to repair the damaged building and the estimate Plaintiffs obtained.

B. Procedural

On May 22, 2019, Plaintiffs filed the initial complaint as "Gurinderpal Singh dba SB Trucking Inc.", in pro per, against Defendants. On October 15, 2021, Plaintiffs filed the FAC, in pro per with the same name in the caption. On August 24, 2023, Plaintiffs filed the operative Second Amended Complaint ("SAC"), changing the name in the caption to reflect both Singh and SB Trucking, Inc. Plaintiffs allege the following causes of action: (1) breach of contract (against Northstar only); (2) intentional interference with contractual

[1] A named defendant and cross-complainant in Plaintiffs' initial Complaint, First Amended Complaint ("FAC"), and SAC.

relations ("IICR") (against Defendants); and (3) conversion (against Defendants).

On October 2, 2023, Defendants filed the instant demurrer to the SAC's second and third causes of action. Specifically, Defendants demur on the grounds that: 1) the SAC fails to state sufficient facts to constitute a cause of action as to both the IICR and conversion claims, 2) both claims are barred by the statute of limitations, and 3) Plaintiff Singh lacks standing to sue because he is not the real party in interest. On January 11, 2024, Plaintiffs filed an opposition to the demurrer. On January 17, 2024, Defendants filed a reply.

II. Defendants' Demurrer

A. Plaintiffs' Request for Judicial Notice

Plaintiffs request judicial notice of the Original Complaint, their FAC, and the SAC. Defendants do not oppose this request and the complaints are subject to judicial notice under Evidence Code section 452, subdivision (d) (court records). Accordingly, Plaintiffs' request for judicial notice is granted.

B. Legal Standard

The court in ruling on a demurrer 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 (*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.)

C. Merits of the Demurrer

Defendant challenges the second cause of action for intentional interference with contractual relations and the third cause of action for conversion in reverse order. For the sake of consistency, the Court will follow suit.

i. Third Cause of Action – Conversion

1. Standing (as to Plaintiff Singh)

Defendants contend, persuasively, that Singh is not the real party in interest in the third cause of action for conversion and therefore does not have

standing to sue. (Demurrer, p. 4: 8-18.) As such, Defendants argue that Plaintiffs fail to state facts sufficient to constitution a cause of action for conversion. (*Ibid.*) Specifically, Defendants argue that Plaintiff Singh lacks an ownership interest, which is a required element of conversion. (*Regents All Ltd v. Rabizadeh* (2014) 231 Cal.App.4th 1177, 1181 [the elements of a conversion claim are: (1) plaintiff's ownership or right to possession of property; (2) defendant's conversion by a wrongful act or disposition of property rights; and (3) damages].)

As a general matter, where it is alleged that a party lacks standing to sue, the complaint can be challenged by general demurrer for failure to state that cause of action in that plaintiff. (See *County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1009.) "Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute." (Code Civ. Proc, § 367.) "Generally, the real party in interest is the person who has the right to sue under the substantive law. It is the person who owns or holds title to the claim or property involved, as opposed to others who may be interest or benefited by the litigation." (*O'Flaherty v. Belgum* (2004) 115 Cal.App.4th 1044, 1094 [internal citations and quotations omitted].) The purpose of this requirement is to "assure any judgment rendered will bar the owner of the claim sued upon from relitigating." (*Id.*) Where the plaintiff lacks standing to sue, the complaint is subject to a general demurrer for failure to state facts sufficient to state a cause of action. (*Cloud v. Northrup Grumman Corp.* (1998) 67 Cal.App.4th 995, 1002.)

The claims asserted by Plaintiffs are predicated on The Contract between SB Trucking Inc. and Northstar. (SAC, Ex. 1.) When it comes to asserting claims relative to an agreement, only contracting parties and third-party beneficiaries have standing to enforce that agreement or recover extra-contract damages. (See *Gantman v. United Pacific Ins. Co.* (1991) 232 Cal.App.3d 1560, 1566 ["someone who is not a party to [a] contract has no standing to enforce the contract or to recover extra-contract damages for wrongful withholding of benefits to the contracting party"]; Civ. Code, § 1559 [a third-person can enforce a contract made expressly for his or her benefit]; see also *Loduca v. Polyzos* (2007) 153 Cal.App.4th 334, 341.) The agreement at issue is between SB Trucking Inc. and Northstar, and *not* Singh and Northstar. There is no mention of Plaintiff Singh in The Contract at issue in this case. As Defendants point out in their demurrer, The Contract specifically identifies only "SB Trucking Inc. hereinafter referred to as SUBHAULER" as a contracting party. (Ex. 1.) Thus, Singh would appear to lack standing to assert a claim for conversion.

In opposition, Plaintiffs do not assert that Singh personally has any interest in the property at issue such that he could state a claim for conversion. Consequently, the Court finds that they have conceded this argument. (*Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 529; see also *Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc./Obayashi Corp.*

(2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is "equivalent to a concession"].)

As currently pleaded, the SAC does not state sufficient facts showing that Plaintiff Singh has standing to assert the second cause of action. Therefore, Defendants' demurrer as to Plaintiff Singh on the ground of failure to state facts sufficient to constitute a cause of action for conversion must be sustained.

" 'Generally it is an abuse of discretion to sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment. [Citation.] . . . Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading. [Citations.]' " (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) "Plaintiffs have the burden to show how they could further amend their pleadings to cure the defects. [Citation.]" (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 411.) Here, Plaintiffs do not explain how they could amend their SAC to cure the defect discussed above. Accordingly, the demurrer as to the conversion cause of action is SUSTAINED, WITHOUT LEAVE TO AMEND as to Plaintiff Singh.

2. Fictitious Business Name (as to Plaintiff Singh)

Defendant next contends that Plaintiff Singh cannot maintain a conversion cause of action because Singh has not provided evidence that he has obtained a "fictitious name statement" to do business as "SB Trucking, Inc." (Demurrer, p. 5.) In light of the Court's conclusion that Singh lacks standing to assert a cause of action for conversion, the Court need not reach this additional contention.

3. Statute of Limitations and the Relation Back Doctrine (as to Plaintiff SB Trucking Inc.)

A statute of limitations prescribes the period "beyond which a plaintiff may not bring a cause of action. [Citations.]" (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806. "A plaintiff must bring a claim within the limitations period after accrual of the cause of action. In other words, statutes of limitation do not begin to run until a cause of action accrues. Generally speaking, a cause of action accrues at the time when the cause of action is complete with all its elements." (*V.C. v. Los Angeles Unified School Dist.* (2006) 139 Cal.App.4th 499, 509-510, internal citations and quotation marks omitted.)

A court may sustain a demurrer on the ground of failure to state sufficient facts if "the complaint shows on its face the statute [of limitations] bars the action." (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315 (*E-Fab, Inc.*).) A demurrer is not sustainable *if there is only a possibility* the cause of action is time-barred; the statute of limitations defense must be clearly and affirmatively apparent from the allegations in the pleading. (*Id.* at pp. 1315-1316, Emphasis added.)

When evaluating whether a claim is time-barred, a court must determine (1) which statute of limitations applies and (2) when the claim accrued. (*E-Fab, Inc., supra,* 153 Cal.App.4th at p. 1316.)

Defendants argue that the third cause of action for conversion is barred by the statute of limitations. (Demurrer, p. 9: 7-16.) Plaintiffs do not dispute that the statute of limitations for a claim of conversion is three years. (See § 338, subd. (c).) "[T]he statute of limitations for conversion is triggered by the act of wrongfully taking property." (*Bono v. Clark* (2002) 103 Cal.App.4th 1409, 1433.) The SAC alleges "Plaintiff and Singh suffered damages legally and proximately caused by Defendant…from *at least* December 31, 2018 to present" (SAC, ¶ 34), potentially bringing the deadline to file a conversion claim to December 31, 2021. As Defendants contend, it is not clear when the actual "taking" of property is alleged to have occurred. (Demurrer, p. 9:12-13.) Here, the SAC was not filed until August 24, 2023.

However, Plaintiffs argue, persuasively, in their Opposition, that the SAC relates back to the original complaint and the FAC, on May 22, 2019, because as Plaintiffs contend "the operative facts in this case have always remained the same from the filing of the complaint." (Opposition, pp. 4-5.)

"The relation-back doctrine has been used to determine the time of commencement of an action for the purpose of the statute of limitations." (*Barrington v. A. H. Robins Co.* (1985) 39 Cal.3d 146, 150.) Under the relation back doctrine, an amended complaint relates back to the filing of the original complaint and thus avoids the bar of the statute of limitation if it: "(1) rests on the same general set of facts as the original complaint; and (2) refers to the same accident and same injuries as the original complaint." (*Id.* at p. 151.) In contrast, "when a complaint is amended to allege a new cause of action based on different operative facts, the new cause of action is different in nature from any cause of action contained in the earlier complaint, and hence does not relate back." (*Id.* at p. 154.)

Here, Plaintiffs' SAC mirrors the facts, allegations, and prayer for relief in the Original Complaint and the FAC, both of which were filed within the three-year statute of limitations period. In the Original Complaint, it was alleged that Singh is "from" SB, that Northstar withheld a portion of Plaintiffs' earnings, and that Plaintiffs provided a $6,500 estimate but that repairs were completed at the cost of $19,008.[2] The FAC, similarly, mentions the $6,500 estimate for repairs and explains that the complaint is seeking $12,508 in damages because Northstar deducted money from a previously owed payment to SB due to Davis' overcharging.[3] Consequently, the conversion claim is not barred by the statute of limitations.

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[2] The Original Complaint is not separated into causes of action and its paragraphs are not numbered.

Nonetheless, Defendants argue that the statute of limitations has run as to Plaintiff SB because it was not added as a plaintiff until the SAC was filed. Plaintiffs counter that SB was always meant to be a plaintiff in this action. They note that SB is mentioned in both the Original Complaint and the FAC and that Plaintiff states in those filings that he is "from" SB. Plaintiffs assert that Singh signed the Original Complaint with no indication as to whether he signed on behalf of himself as an individual or on behalf of SB. The court finds that even if SB has been added in as a plaintiff for the first time in the SAC, such an amendment was proper and it relates back to the filing of the Original Complaint.

As a general matter, "[a] new plaintiff's claims relate back to claims asserted in a previously and timely filed complaint if the new plaintiff is seeking to enforce the same right as a previously named plaintiff (because, in that case, the amendment relies on the same general set of facts, involves the same injury, and refers to the same instrumentality of the defendant's conduct). [Citation.]" (*Engel v. Pech* (2023) 95 Cal.App.5th 1227, 1236.) "[C]ourts have permitted plaintiffs who have been determined to lack standing, or who have lost standing after the complaint was filed, to substitute as plaintiffs the true real parties in interest. [Citations.] Amendments for this purpose are liberally allowed. [Citations.]" (*Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, 243.) "The important limitation on the rule just mentioned is that the plaintiff proposed to be substituted may not 'state facts which give rise to a wholly distinct and different legal obligation against the defendant.' [Citation.]" (*Ibid.*)

Moreover, "amendments that do no more than swap in a new plaintiff for an existing cause of action—when the new plaintiff is the real party in interest and the original plaintiff was not—typically relate back. (*Cox v. San Joaquin Light etc. Co.* (1917) 33 Cal.App. 522, 523-524 [amendment swapping in decedent's personal representative as plaintiff instead of decedent's heir relates back]; *Cal. Gas. Retailers v. Regal Petroleum Corp.* (1958) 50 Cal.2d 844, 850-851 [amendment swapping in individual as plaintiff instead of business association relates back]; *California Air Resources Bd. v. Hart* (1993) 21 Cal.App.4th 289, 301 [] [amendment swapping in State of California as plaintiff instead of state agency relates back]; *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 1000, 1005 [amendment swapping in bankruptcy trustee as plaintiff relates back]; see generally *Garrison v. Board of Directors* (1995) 36 Cal.App.4th 1670, 1678 [amended complaint ' "by the right party" ' relates back when it ' "restates the identical cause of action" '].)" (*Engel v. Pech*, *supra*, 95 Cal.App.5th at p. 1237.)

Here, the claims raised in the SAC are based on the same facts as those alleged in the Original Complaint and the FAC. The SAC alleges the same right

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[3] The FAC, like the Original Complaint, is not separated into causes of action and its paragraphs are not numbered.

to payment of earnings previously owed and the same allegation that the cost of the repairs, which was deducted from those earnings, was inflated. The Court finds that SB's conversion claim relates back to the filing of the Original Complaint and, therefore, is not barred by the statute of limitations.

4. Plaintiff SB Trucking Inc.'s Conversion Claim Fails Because It Is Based Solely on a Contractual Right to Payment

Defendants assert that Plaintiff SB cannot maintain a cause of action for conversion because its right to the funds at issue is merely a contractual right to payment and there is no specific, identifiable sum of money at issue.

As discussed *supra,* Plaintiff SB alleges in the conversion cause of action that "Plaintiff and Singh [were] entitled to receive $19,008.00 in connection with their work under the Contract. The $19,008.00 that was due and payable to Plaintiff and Singh was unlawfully taken and converted by Davis Reed for its own use." (SAC, ¶ 30.)

Defendants rely on *Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 451 (*Farmers*) for the proposition that:

> Money can be the subject of an action for conversion if a specific sum is capable of identification is involved…A party need only allege it is 'entitled to immediate possession at the time of conversion.' *However, a mere contractual right of payment, without more will not suffice*.

(*Farmers*, *supra*, 53 Cal.App.4th at pp. 451-452, emphasis added, see also *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 395.)

"[T]he simple failure to pay money owed does not constitute conversion. A cause of action for conversion of money can be stated only where a defendant interferes with the plaintiff's possessory interest in a specific, identifiable sum, such as when a trustee or agent misappropriates the money entrusted to him." (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 284.)

Plaintiffs do not address this deficiency, and instead generally contend that "plaintiffs have alleged sufficient facts" for their causes of action and that Defendants had knowledge of The Contract between Plaintiff and Northstar. (Opposition, pp. 5-6.) These allegations have no bearing on the issue at hand, namely, whether the SAC alleges sufficient facts to show that SB possessed more than a mere contractual right of payment such that a conversion claim is adequately pled.

Accordingly, the demurrer is SUSTAINED, WITHOUT LEAVE TO AMEND as to the third cause of action (conversion). Plaintiff's conversion claim solely hinges on a contractual right to repayment, which is insufficient as a matter of law. Additionally, Plaintiffs have not stated how they might amend

their Complaints to address this deficiency. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) "Plaintiffs have the burden to show how they could further amend their pleadings to cure the defects. [Citation.]" (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 411.)

ii. Second Cause of Action – Intentional Interference with Contractual Relations ("IICR")

1. Standing, Statute of Limitations, and the Relation Back Doctrine

As with the conversion cause of action, the Court finds that SB is appropriately named as a plaintiff in the SAC because the SAC relates back to the filing of the Original Complaint for the reasons discussed above.

The Court finds that the statute of limitations does not bar the assertion of the IIRC claim by SB. Defendants assert, and Plaintiffs do not dispute, that the statute of limitations for a claim of IIRC is two years. (See § 339.) Defendants contend that the claim must have been pled by December 31, 2020. However, the Court finds that the SAC relates back to the filing of the Original Complaint for the reasons discussed above in connection with the conversion claim. The Original Complaint asserts that Northstar withheld $19,008 from the plaintiff's earnings. It explains that damages occurred to a building and that the plaintiff obtained a bid for repairs in the amount of $6,500. When the plaintiff asked Northstar why the $19,008 had been withheld, it explained that Davis is holding the money and that is why SB did not receive it. It states that Davis, Swan, and Northstar ignored the bid the plaintiff provided. The IIRC claim arises from these same facts. Accordingly, the statute of limitations does not bar the assertion of the IIRC claim and Defendants' argument on this point is rejected.

2. The IIRC Allegations Are Sufficient to Constitute a Cause of Action

The elements which a plaintiff must plead to state a cause of action for IICR 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. (*Pac. Gas & Elec. Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.)

One who is not a party to a contract may still have a duty not to intentionally interfere with it and the tort of IICR lies where a defendant has actually and substantially interfered with the plaintiff's ownership or other right in property, including intangible property. (See *Farmers, supra,* 53 Cal.App.4th at pp. 451-453.)

One element of an interference of a contract claim is the occurrence of intentional acts designed to induce a breach of contract or interference with the economic relationship. (*Pacific Gas*, *supra*, 50 Cal.3d at p. 1126.)

Defendants contend that there is no allegation in the SAC that they knew of The Contract between SB and Northstar, that they intended to interfere with the contract, or that they committed any acts that allegedly interfered with the contract. Plaintiffs allege in the SAC, however, that there was a valid contract, Defendants had knowledge of The Contract, they intended to disrupt Plaintiff SB's performance thereof, and they succeeded in preventing performance, resulting in damages. (SAC, ¶¶ 22-28.)

The SAC alleges that SB entered into a contract with Northstar for truck hauling services. (SAC, ¶ 8.)[4] During the course of performing those services, one of SB's trucks damaged a building. (SAC, ¶¶ 10-11.) Northstar did not pay the total amount SB alleges it was owed, paying $19,008 less than anticipated. (SAC, ¶¶ 13, 20.) The SAC states that Davis interfered with the contract by repairing the building at a cost of $19,008 despite the fact that Plaintiffs had secured an estimate for the significantly lower sum of $6,500. (SAC, ¶ 14.) Further, the SAC alleges that Defendants knew of the contract between SB and Northstar and intended to disrupt it. (SAC, ¶¶ 24-26.) Generally, allegations of ultimate fact are sufficient at the demurrer stage. (See, e.g., *Esparza v. Kaweah Delta Dist. Hospital* (2016) 3 Cal. App. 5th 547, 553.) Moreover, the court must accept as true those facts that may be implied or inferred from those expressly alleged. (*Schmid v. City and County of San Francisco* (2021) 60 Cal. App. 5th 470, 481.)

Defendants also contend that the exhibits to the SAC contradict the facts alleged in the SAC. Specifically, they argue that the contract between SB and Northstar, which is attached to the SAC as Exhibit 1, contains an indemnity clause stating that SB would indemnify Northstar for any damages caused by SB. This argument ignores the nature of the IIRC claim. The theory underlying the IIRC claim is that Northstar owed SB some amount of money. Because SB damaged property in the course of performing under the contract, SB was required to cause the damage to be fixed. SB solicited a bid for repair and a company agreed to perform the repair for $6,500. However, the building was not repaired for $6,500. Instead, according to the allegations in the SAC, Davis repaired the building and charged $19,008. If the building had been repaired for $6,500, SB contends that it would have received an additional $12,508 from Northstar. Thus, Plaintiffs' IIRC theory is that Davis interfered with SB's obligation to repair the building and perform under The Contract by repairing the building itself at a greater cost.

The indemnity provision does not contradict the allegations in the SAC. The thrust of the IIRC claim is that Davis caused SB to receive less under The Contract than it would have otherwise received if SB had used its contractor to

[4] Some of these allegations are not contained in the IIRC cause of action but they are incorporated by reference. (SAC, ¶ 22.)

repair the building. In other words, the amount that SB was required to pay to repair the building under the indemnity clause was allegedly higher than it should have been, causing SB to receive less than the full amount it was owed under The Contract.

Although the SAC is not a model of clarity, the Court finds that Plaintiffs have stated sufficient facts for a cause of action of IICR at this stage of litigation.

Accordingly, the demurrer is OVERRULED as to Plaintiff SB Trucking, Inc.'s second cause of action.

III. Conclusion

The demurrer is OVERRULED IN PART and SUSTAINED IN PART. The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND as to Count Three as to both Plaintiff Singh and Plaintiff SB because Plaintiffs have not stated how they might amend their complaint to address the deficiencies discussed above. (See *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.) The demurrer is OVERRULED as to Count Two.

The Court will prepare the final Order.

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Calendar Line 2
Case Name: *Golden State Concessions LLC v. Mission San Jose Airport, LLC et al.*
Case No.: 20CV371155

I. Factual and Procedural Background

Plaintiff Golden State Concessions, LLC ("Plaintiff" or "GSC") brings this First Amended Complaint ("FAC") against defendants Mission San Jose Airport, LLC ("MSJA"); Mission Yogurt, Inc. ("MYI"); and City of San Jose ("City")[5] (collectively, "Defendants").

At all relevant times, GSC leased an airport concession space ("the Premises") located in the Airport. (FAC, ¶ 7.) GSC leased the Premises as the result of the assignment of a Food and Beverage Concession Agreement to GSC between City and Areas USA SJC, LLC ("Areas"). (*Ibid*.) With City's consent, Areas assigned its interest in the contract to GSC. (*Ibid*.)

Pursuant to the assignment, GSC acquired Areas' rights as Concessionaire under a Concession Subcontract between Areas and MSJA. (FAC, ¶ 8.) Under this subcontract, MSJA subleased the Premises as the sub-concessionaire and operated a restaurant ("Restaurant") at the Premises. (*Ibid*.) On May 31, 2019, GSC assigned its interest in the contract and subcontract but retained all rights to amounts due from MSJA under the subcontract prior to that date. (*Ibid*.)

MYI guaranteed MSJA's performance of its obligations under the contract and subcontract. (FAC, ¶ 9.)

In 2017, Airport maintenance personnel responded to a water leak from a clogged sink in a retail storage room near the Premises. (FAC, ¶ 10.) City determined that clogs in the Restaurant's drain line caused backups to the sink in the storage room. (*Ibid*.) As a result of MSJA's failure to properly maintain its drain line and allowing it to become clogged, City undertook clean-up and repairs and thereafter billed GSC for a total of $146,772.42 for the cost of repairs. (*Id*. at ¶¶ 11, 12.) GSC paid City as required by contract. (*Id*. at ¶ 12.)

Under the subcontract, MSJA is liable to GSC for the amount it paid to City because of the clogged drain, as MSJA expressly agreed to indemnify GSC for liability for claims, demands, or damages. (FAC, ¶ 13; Ex. A.) GSC billed MSJA for the amount it paid to City and additionally included amounts due for rent, marketing, interest, and late fees. (*Id*. at ¶ 14.) Neither MSJA nor MYI have paid the amounts due to GSC. (*Ibid*.)

GSC brought an action against MSJA and MYI and thereafter filed a motion for summary adjudication. (FAC, ¶ 15.) On September 28, 2022, the Court (Hon. Kulkarni) issued an order denying GSC's motion concluding that "'GSC must show, without any material factual dispute, that the damage was caused, arose from, or was connected to something MSJA did or did not do.'" (*Ibid*., quoting Court's September 28 Order.)

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[5] City owns and operates the Norman Y. Mineta San Jose International Airport ("Airport"). (FAC, ¶ 4.)

On May 4, 2023, GSC filed its FAC, adding City as a defendant, asserting the following causes of action:

1) Breach of Contract [against MSJA];
2) Breach of Guaranty [against MYI]; and
3) Declaratory Relief [against City].

On September 26, 2023, City filed a demurrer to the FAC. GSC opposes the motion.

II. Demurrer

A. City's Request for Judicial Notice

In support of its demurrer, City requests the Court take judicial notice of the following:

1) GSC's Government Claim filed with City on November 28, 2022 (Ex. 1); and
2) GSC's FAC (Ex. 2).

The request for judicial notice of Ex. 1 is GRANTED. (See *Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 376 (*Gong*) [court may take judicial notice of government claim to show noncompliance where plaintiff alleges compliance with the claims presentation requirement].)

The request for judicial notice of Ex. 2 is DENIED. Judicial notice of a complaint is unnecessary where it is the pleading under review. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn. 1 ["Judicial notice is unnecessary because, in our review of the demurrer ruling, we accept the allegations in the complaint and the facts in the exhibit as true"].)

B. GSC's Request for Judicial Notice

In support of its option, GSC requests judicial notice of the following:

1) Court's (Hon. Kulkarni) September 28, 2022 Order (Ex. A); and
2) GSC's Government Claim and City's Return of Claim Not Timely Filed (Ex. B).

The request for judicial notice of Ex. A and Ex. B is GRANTED. (See Evid. Code, § 452, subd. (d); see also *Gong, supra,* 226 Cal.App.4th at p. 376.)

C. Analysis

City demurs to the third cause of action, arguing: 1) GSC's filed claim is untimely; and 2) GSC was required to file a claim because the claims presentations statutes apply broadly to all forms of monetary demands against a government entity.

Timely Compliance with Government Claims Act

"Before suing a public entity, the plaintiff must present a timely written claim for damages to the entity. (Gov. Code, § 911.2; *State of California v. Superior Ct.* (2004) 32 Cal.4th 1234, 1239 (*Bodde*), but see Gov. Code, § 905 [itemized exceptions].)" (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 208 (*Shirk*) [overruled by statute on other

grounds].) The purpose of the Government Claims Act (Gov. Code § 900 et seq.) is to apprise the governmental body of an imminent legal action so that the entity may investigate and evaluate the claim and, where appropriate, avoid litigation by settling meritorious claims. (*Krainock v. Superior Ct.* (1990) 216 Cal.App.3d 1473, 1477; see also *Gehman v. Superior Ct.* (1979) 96 Cal.App.3d 257, 262.)

"Timely claim presentation is not merely a procedural requirement, but is, as this court long ago concluded, a condition precedent to plaintiff's maintaining an action against defendant, and thus an element of the plaintiff's cause of action. Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action." (*Shirk*, *supra*, 42 Cal.4th at p. 209 [internal citations and quotations omitted], citing *Bodde, supra,* 32 Cal.4th at pp. 1240, 1245.)

i. Timeliness

Here, the FAC alleges GSC is not required to submit a government claim for money or damages under Government Code section 905 but that in abundance of caution, "GSC is submitting a government claim to the City pursuant to Government Code §905 and will amend this pleading to allege the City's response." (FAC, ¶ 27.) According to RJN, Ex. 1, GSC filed its claim on November 28, 2022. (RJN, Ex. 1 [Taber Decl., Ex. A].)

Plaintiff alleges City improperly issued the July 16, 2018 billing request and thus, City argues, this is the date GSC's claims accrued. (Demurrer, p. 10:7-9, citing FAC, ¶ 25.) City further asserts GSC did not file its claim within one year of that date as required by Government Code section 911.2, subdivision (a) and so the claim is untimely. (*Id.* at p. 10:12.)

"Claims for personal injury must be presented not later than six months after the accrual of the cause of action, and claims relating to any other cause of action must be filed within one year of the accrual of the cause of action. Accrual for purposes of the [Government Claims] Act is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants." (*Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104, 1118 [internal citations and quotations omitted].) "Only after the public entity's board has acted upon or is deemed to have rejected the claim may the injured person bring a lawsuit alleging a cause of action . . . against the public entity." (*Ibid*. [quotations omitted].) "If a claim is not timely presented, a written application may be made to the public entity for leave to present such claim." (*Id.* at p. 1119.)

In this case, it appears GSC filed a claim with City in November 2022, received notice that the claim was returned as untimely on December 6, 2022, and filed its FAC on May 4, 2023. (GSC's RJN, Ex. B.) City contends it did not receive any request from GSC to present a late claim. (Demurrer, p. 11:23-25.) Here, the FAC does not allege it timely filed a claim, requested to file a late claim, or that it received a rejection from City.

In opposition, however, GSC argues the claim is timely because the deadline began to run after the Court issued the summary adjudication ruling which created the need for declaratory relief. (Opposition, p. 15:13-15, citing FAC, ¶ 27; RJN, Ex. B.)

GSC appears to misconstrue the Court's prior order. The Court previously determined GSC failed to meet its burden on a motion for summary judgment/adjudication because it did not present sufficient evidence of MSJA's liability under the indemnity provision of their subcontract. (GSC's RJN, Ex. A, p. 7:18-27 [stating "the only evidence of MSJA's role in the Airport damage is one statement in the City's Special Billing Request. There has been no final determination of MSJA's role by anyone, whether a court or the City. Without such a determination, it is premature to hold that MSJA had a duty to indemnify GSC."].)

The Court did not, and could not have, indicated that another party was in the wrong, or potentially liable, as GSC suggests, as that issue was not before the Court.[6] Moreover, the Court finds GSC's argument that it did not have reason to suspect "it might have to prove that MSJA clogged the drain in order to be indemnified" until the Court issued its order to be concerning. (See Opposition, pp. 16:28-17:2.) The plain language of the indemnity provision states that MSJA will indemnify GSC "for any accident, injury, loss or damage whatsoever . . . ***caused by*** . . . [MSJA's] performance, non-observance or nonperformance of any of the terms and conditions of this Subcontract . . ." (See GSC's RJN, Ex. A, Court's September 28 Order, pp. 6-7 [quoting indemnity provision; emphasis added].) Thus, to be indemnified, GSC would need to establish that MSJA caused the clogged drain. The Court determined GSC failed to meet this burden. (See GSC's RJN, Ex. A, p. 7:20-23.) Accordingly, the argument that the deadline to file a government claim did not begin to run until September 28, 2022, when the Court issued the order, is not well taken.

For similar reasons, the Court declines to apply the delayed discovery rule. (See *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1111 ["plaintiff need not be aware of the specific 'facts' necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that *plaintiff must go find the facts; she cannot wait for the facts to find her*"][emphasis added]; see also *Doe v. Roman Catholic Bishop of Sacramento* (2010) 189 Cal.App.4th 1423, 1431 ["plaintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation"]; *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 80 ["Simply put, in order to employ the discovery rule to delay accrual of a cause of action, a potential plaintiff who suspects that an injury has been wrongfully caused must conduct a reasonable investigation of all potential causes of that injury."].)

Thus, unless there is an applicable exception, the FAC does not sufficiently allege facts demonstrating that a claim was timely presented to City. (See e.g., *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 990 [failure to timely present claim to public entity bars plaintiff from filing lawsuit against the entity].)

ii. Claims Requirement

GSC next argues there is no claim requirement for non-monetary causes of action such as declaratory relief. (Opposition, p. 13:10-12, citing *Minsky v. L.A.* (1974) 11 Cal.3d 113, 121 (*Minsky*).)

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[6] The Court also did not rule on whether any statements in City's billing request were accurate.

In *Minsky*, the California Supreme Court determined that the claims statutes do not impose any requirement for nonpecuniary actions, such as those seeking declaratory relief. (*Minsky*, *supra*, 11 Cal.3d at p. 121.) "The *Minsky* rationale is that a claim for specific property effectively held by the government as 'bailee' for the claimant is not one for 'money or damages' under the Government Claims Act. The *Minsky* court's reference to 'general constructive trust principles' must be understood in that context. Subsequent cases have limited the *Minsky* exception to situations in which the defendant had a duty to return seized property[.] . . . When a claim for 'money or damages' is not based on a governmental obligation to return specific property, it is subject to the claim requirements." (*City of Stockton v. Superior Ct.* (2007) 42 Cal.4th 730, 743.)

Moreover, "where the claims for money and damages pursued . . . were more than 'incidental' to the extraordinary relief sought" the plaintiff is "required to present a claim to the public entity . . . pursuant to the 'Government Claims Act[.]'" (*Lozada v. City and County of San Francisco* (2006) 145 Cal.App.4th 1139, 1146-1147; see also *Hart v. County of Alameda* (1999) 76 Cal.App.4th 766, 782 [claims exception "does not apply, however, where the demand for nonmonetary relief is merely incidental or ancillary to a prayer for damages"]; *Byrd v. Teater* (E.D. Cal. Feb. 19, 2008), 2008 U.S. Dist. LEXIS 12922 [plaintiff must comply with claim requirements where prayer for declaratory relief is merely incidental or ancillary to the prayer for damages].)

City argues GSC's claim for declaratory relief is actually a request for monetary damages because GSC specifically requests restitution. (Demurrer, p. 6:2-6, citing FAC, ¶ 25.) Here, the third cause of action for declaratory relief alleges that if City wrongly determined MSJA caused the clogged drain, then City wrongfully issued the billing request to GSC, and GSC is entitled to restitution of the amount paid to City. (FAC, ¶ 25.) It further alleges "GSC seeks declaratory relief whether City correctly determined MSJA caused the clogged drain" and that either way, "GSC should not bear the cost of repairing the damage caused by the clogged drain." (*Id*. at ¶ 26.) Further, GSC's untimely filed claim with City states that if MSJA did not cause the clogged drain, it is entitled to the $146,772.42 it paid to City, plus any prejudgment interest, legal costs, or other appropriate relief. (See GSC's RJN, Ex. B.) Thus, GSC's declaratory relief cause of action is aimed at recovering monetary damages for acts and omissions allegedly committed by City and therefore GSC was required to timely file a claim with City as a prerequisite to filing its FAC. (*Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1080.)

Based on the foregoing, the demurrer to the third cause of action for failure to allege compliance with the Government Claims Act is SUSTAINED. Because City has indicated GSC may request to file a late claim, there is still a possibility GSC can amend its pleading. Accordingly, the demurrer is sustained with 20 days leave to amend. (See *Eghtesad v. State Farm General Ins. Co.* (2020) 51 Cal.App.5th 406, 412 [leave to amend is liberally allowed unless complaint shows on its face it is incapable of amendment].)

III. Conclusion and Order

The demurrer is SUSTAINED in its entirety with 20 days leave to amend.
The Court shall prepare the final Order.

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