

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 3

Honorable William J. Monahan, Presiding

Allison Croft, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 2/15/2024 TIME: 9:00 A.M.

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 3**.

https://www.sccscourt.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.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet).

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.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV420090	Why Systems LLC vs Emodo, Inc.	Motion: Strike Plaintiff Why Systems LLC's Complaint by Defendant Emodo Inc. Ctrl click (or scroll down) on Line 1 for tentative ruling. The court will prepare the order.

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LINE 2	22CV403623	Daimler Trust vs Ying Lee et al	<p>Motion: Compel form interrogs set one and for sanctions for \$2,810 against plaintiff and counsel by DEF</p> <p>Note: Opposition says reached settlement and wants to continue both motions to compel 60 days.</p> <p>Continued to April 16, 2024, at 9:00 am in Dept. 3.</p>
LINE 3	22CV403623	Daimler Trust vs Ying Lee et al	<p>Motion: Compel request for production of docs set one and for sanctions for \$2,810 against plt and counsel by DEF</p> <p>Note: Opposition says reached settlement and wants to continue both motions to compel 60 days.</p> <p>Continued to April 16, 2024, at 9:00 am in Dept. 3.</p>
LINE 4	23CV412504	Robert Beveridge et al vs Alireza Moheghi et al	<p>Motion: Protective Order Re: Discovery Requests by Defendants and cross-complainants Alireza Moheghi and Seyedeh Afghah and request for sanctions</p> <p>Ctrl click (or scroll down) on Line 4 for tentative ruling. The court will prepare the order.</p>
LINE 5	19CV354098	Jane Doe vs Russell Holcomb et al	<p>Motion: Enforce Settlement agreement pursuant to CCP 664.6 or in alternative order to dismiss or set aside by special appearing defendant Farmers Insurance Exchange</p> <p>Good cause appearing, specially appearing defendant Farmer's Insurance Exchange's motion to enforce settlement agreement by plaintiff Jane Doe pursuant to Code of Civil Procedure (CCP) section 664.6 is GRANTED and this action is dismissed with prejudice.</p> <p>Moving party to submit order.</p>

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DATE: 2/15/2024 TIME: 9:00 A.M.

LINE 6	22CV405280	Pigeon Loft Condominium Association vs Lorenzo Rios et al	<p>Hearing: Other Motion for appointment of a receiver by Plaintiff Pigeon Loft Condominium</p> <p>APPEAR.</p> <p>The names on Plaintiff's proof of service (POS) for this motion do NOT match the defendants' names on the complaint.</p> <p>For example, the complaint lists Cliff Tran, but the POS is for Clifford Tran.</p> <p>The complaint lists Lorenzo A. Rios, but the POS is for Lorenzo Rios.</p> <p>The complaint lists Sam Tran, but the POS is for Sang Tran.</p> <p>The complaint lists Magdalena A. Ramirez, but the POS lists Maggie Ramirez.</p> <p>The complaint lists John P. Kennedy, but the POS is for Patrick Kennedy.</p> <p>The complaint lists Maria R. Campos, but the POS is for Maria Campos</p> <p>The complaint lists Ivan V. Romo, but the POS is for Ivan Valenzuela Romo.</p> <p>A similar problem exists with the POS for the summons and complaint. The names on the POS for the summons and complaint must match the names on the complaint. It does not appear that all the defendants' names listed on the complaint were served with the summons and complaint because the names on the POS for the summons and complaint do NOT match the names on the complaint.</p> <p>The motion is DENIED WITHOUT PREJUDICE.</p> <p>Moving party to submit order.</p>
LINE 7	23CV415319	Lucile Salter Packard Children's Hospital at Stanford vs Health Payer Consortium, LLC	<p>Hearing: Pro Hac Vice Counsel of R.Taylor Matthews,III for defendant Health Payer Consortium</p> <p>Good cause appearing, GRANTED.</p> <p>Moving party to submit order.</p>
LINE 8	23CV415319	Lucile Salter Packard Children's Hospital at Stanford vs Health Payer Consortium, LLC	<p>Hearing: Pro Hac Vice Counsel of Winthrop B. Reed,III for defendant Health Payer Consortium</p> <p>Good cause appearing, GRANTED.</p> <p>Moving party to submit order.</p>

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Calendar Line 1

Case Name: *Why Systems LLC v. Emodo Inc.* (and related cross-actions)

Case No.: 23CV420090

I. Factual and Procedural Background

Plaintiff Why Systems LLC (“Why Systems” or “Plaintiff”) brings this action against defendant Emodo Inc. (“Emodo” or “Defendant”) and Does 1-100.

According to the allegations of the Complaint, on or around August 25, 2021, Plaintiff and Defendant entered into a written Equipment Lease Agreement (“August Lease”). (Compl., ¶ 6.) The August Lease provided that Why Systems would provide equipment and services to Emodo at a monthly rate of \$271,068 and with a 5% charge for late payments and award of attorneys’ fees incurred in connection with the collection of amounts due. (Compl., ¶ 6, subds. (a)-(c).) Defendant breached the August Lease by failing to make the payments due and owing of at least \$5,028,492, excluding interest and fees. (Compl., ¶ 8.)

On July 31, 2023, Plaintiff filed its Complaint, asserting the following causes of action against Defendant:

- 1) Breach of Contract;
- 2) Common Counts; and
- 3) Conversion.

On October 6, 2023, Defendant filed a motion to strike portions of the Complaint. Plaintiff opposes the motion.

II. Motion to Strike

a. Legal Standard

A court may strike out any irrelevant, false, or improper matter asserted in a pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436, subd. (a).) The grounds for a motion to strike must appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).)¹ In ruling on a motion to strike, a court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.)

b. Analysis

Defendant moves to strike the following from the Complaint:

“The monthly rate of \$271,068 that Emodo would pay to Why Systems for the leased equipment and other services, which could be reduced in Why Systems’ discretion based upon equipment no longer in use[.]” (Compl., ¶ 6, subd. (b).)

“Defendants breached the Lease by failing to make payments due and owing in the amount of at least \$5,028,492, excluding interest and fees.” (Compl., ¶ 8.)

¹ Defendant requests the Court ignore new factual allegations contained in Plaintiff’s opposition. (Reply, pp. 4-5.) The Court did not rely on any allegations outside of the pleading and the attached exhibits in making its determination.

“As a direct and proximate result of the breaches mentioned above, Plaintiff has incurred, and will continue to incur, damages, losses, costs and expenses, including but not limited to interest and attorneys’ fees, in an amount to be proven at trial that is not less than the Unpaid Amount.” (Compl., ¶ 9.)

“The amount of at least \$5,247,492 has not been paid, notwithstanding a demand for payment. The funds are now due and owing from Defendants, plus interest at the rate alleged herein.” (Compl., ¶12.)

“As a direct and proximate result, Plaintiff has incurred, and will continue to incur, damages, losses, costs and expenses, including but not limited to interest and attorneys’ fees, in an amount to be proven at trial that is not less than \$5,247,492.” (Compl., ¶ 16.)

Defendant contends the above allegations must be stricken because Plaintiff does not allege how it calculated its damages or which of the 36 payments under the August Lease have already been paid by Emodo. (Motion, p. 7:23-25.) Defendant however cites no authority to support its assertion that Plaintiff must allege how it calculated its damages or which damages have been paid, if any. (See *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 [a point asserted without citation to authority will be disregarded].)

Defendant next asserts that because the August Lease is unambiguous, the Complaint seeks damages expressly contradicted by the terms of the August Lease (Motion, p. 9:7-8) and requests the Court strike all damages in excess of the maximum August Lease amount (*id.* at p. 11:2-3).

As Defendant notes, under the California Civil Code, the measure of damages for a breach of contract “is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.” (Civ. Code, § 3300; Motion, p. 10:19-22.) That said, “[w]here an ambiguous contract is the basis of an action, it is proper, if not essential, for a plaintiff to allege its own construction of the agreement. So long as the pleading does not place a clearly erroneous construction upon the provisions of the contract, in passing upon the sufficiency of the complaint, we must accept as correct plaintiff’s allegations as to the meaning of the agreement.” (*Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239 (*Aragon*).) “Whether a contract is ambiguous is a question of law.” (*Ibid.*)

In Opposition, Plaintiff argues that the parties’ differing interpretations of the rent owed does not form the basis of a motion to strike. (Opposition, p. 6:3-5.) After reviewing portions of the August Lease currently at issue, the Court finds that the payment portion of the August Lease is ambiguous. No portion of the lease indicates the amount due each month. Rather, the August Lease states that the initial payment will be for \$7,370 and the last payment will be for \$7,370. (See Compl., Ex. A.) The lease term is for 36 months and the total for all leases is \$271,068. It is unclear what the parties intended “all leases” to mean. Furthermore, the Payments portion of the August Lease states that the rent listed above is based on a “Total Cost” and the actual rent will be calculated and applicable taxes will be added to the rent. Here, Plaintiff alleges the following interpretation of the August Lease: that the monthly rate Emodo would pay was \$271,068. (Compl., ¶ 6, subd. (b).) Therefore, while Plaintiff’s “interpretation of the contract ultimately may prove invalid, it [is] improper to resolve the issue against [it] on [its] own pleading,” as the Court is not concerned with Plaintiff’s ability to prove its allegations at this stage. (See *Aragon, supra*, 231 Cal.App.3d at p. 239.)

Even if the Court found the contract to be unambiguous, the Court is persuaded by Plaintiff's assertion that it would be improper to strike the above-stated allegations in their entirety as they also contain factual allegations essential to Plaintiff's causes of action. (See *Clements v. T. R. Bechtel Co.* (1954) 43 Cal.2d 227, 242 ["While a motion to strike is addressed to the sound discretion of the trial court, a matter which is essential to a cause of action should not be stricken."][internal citations omitted]; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683 ["We emphasize that such use of the motion to strike should be cautious and sparing. We have no intention of creating a procedural 'line item veto' for the civil defendant."].)

Based on the foregoing, the motion to strike is DENIED.

III. Conclusion and Order

The motion to strike is DENIED.

The Court shall prepare the final Order.

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Case Name: Robert Beveridge et al. vs. Alireza Moheghi et al.

Case No.: 23CV412504

Defendants/Cross-complainants Alireza Moheghi (“Moheghi”) and Seyedeh Sevedj Afghah (“Afghah”) (collectively “Cross-Complainants”) motion for a protective order as to the Plaintiff/Cross-defendant Robert J. Beveridge (“Plaintiff”) Special Interrogatories (“SI”) to Moheghi (Set One); Plaintiff’s Form Interrogatories—General (“FI”) to Moheghi (Set One); Plaintiff’s Request for Production of Documents (“RPD”) to Moheghi (Set One); Plaintiff’s SI to Afghah (Set One); Plaintiff’s FI to Afghah (Set One) and Plaintiff’s RPD to Afghah (Set One) (collectively the Discovery Requests) is DENIED.

Cross-complainants’ request for monetary sanctions in the sum of \$2,940.00 is DENIED. The court finds that the individual(s) who are subject to the sanctions acted with substantial justification or other circumstances make imposing sanctions unjust.

Plaintiff’s request for monetary sanctions in the sum of \$3,375 is DENIED. The court finds that the individual(s) who are subject to the sanctions acted with substantial justification or other circumstances make imposing sanctions unjust.

Cross-Complaints shall respond to the Discovery Requests within 30 days of notice of this order.

The court will prepare the order.

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