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: July 16, 2024 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.

Scheduling motion hearings: Please go to https://reservations.scscourt.org or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else 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	21CV389607	County of Santa Clara v. Kelly Ranger	Click on LINE 1 or scroll down for ruling.
LINE 2	22CV405021	De Mattei Construction, Inc. v. Stephen A. Finn	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 3	22CV405021	De Mattei Construction, Inc. v. Stephen A. Finn	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 4	19CV360439	Mesfin Regassa Ayle et al. v. Keith Laverne Booth et al.	Motion for summary judgment: this motion will be heard on August 8, 2024, in accordance with the court's July 2, 2024 order on plaintiffs' ex parte application.
LINE 5	22CV402550	Stephanie Nakano v. Coda Project, Inc.	OFF CALENDAR, in light of the parties' notice of a tentative settlement. The August 5, 2024 trial date is also vacated.
LINE 6	22CV402550	Stephanie Nakano v. Coda Project, Inc.	OFF CALENDAR, in light of the parties' notice of a tentative settlement. The August 5, 2024 trial date is also vacated.
LINE 7	22CV398446	NTL Precision Machining, Inc. v. BodyCote Thermal Processing, Inc.	Click on LINE 7 or scroll down for ruling.
LINE 8	22CV403017	Applied Materials, Inc. v. Huu T. Vu et al.	Click on LINE 8 or scroll down for ruling in lines 8-9.
LINE 9	22CV403017	Applied Materials, Inc. v. Huu T. Vu et al.	Click on LINE 8 or scroll down for ruling in lines 8-9

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LINE #	CASE #	CASE TITLE	RULING
LINE 10	21CV381647	Anand Gupta v. Santosh Kumar et al.	Motion for leave to amend: parties to appear. Notice is proper, and the motion is unopposed. The court is inclined to find good cause to grant the motion, but the court would like to hear from the parties regarding the impact this amendment will have, if any, on the current trial date of September 23, 2024.
LINE 11	22CV399300	State Farm Mutual Automobile Insurance Company v. Jose Guadalupe Herrera Macias	Motion to be relieved as counsel: parties to appear.
LINE 12	21CV387503	Gary J. Johnson v. Rattan Dev S. Dhaliwal et al.	Motion to be relieved as counsel: parties to appear.

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Calendar Line 1
Case Name: *County of Santa Clara v. Kelly Ranger*
Case No.: 21CV389607

I. BACKGROUND

This is an action by the County of Santa Clara against defendant Kelly Ranger to collect administrative fines for alleged violations of its COVID-19 public health orders in 2020. The County filed its complaint against Ranger on October 8, 2021.

Ranger is a Chiropractic Assistant who, after an initial period of sheltering in place during the COVID-19 pandemic, began seeing clients again at her chiropractic office in May 2020. (Ranger's Opposition to Demurrer, p. 22:5-11.) Ranger did not require her clients to mask and she did not wear a mask while working. (*Ibid.*) At some point, the County learned of Ranger's mask policy, leading to issuance of a Notice of Violation on October 8, 2020 by Jean Nguyen, a County enforcement officer. The fines on the Notice of Violation totaled $12,000. (*Id.* at pp. 23:7-24:3.) Ranger suspects that an individual named Ryan Greenstreet was her client who reported her to the County following an appointment on September 26, 2020. (*Id.* at p. 23:4-6.)

On February 14, 2024, Ranger filed a cross-complaint against three individuals affiliated with the County: Sara Cody, S. Joseph Simitian, and Jean Nguyen (collectively, "Cross-Defendants"). In addition, Ranger has named Greenstreet as a cross-defendant. The cross-complaint does not enumerate any distinct causes of action.

Cody is the County Public Health Officer. (Cross-Complaint, p. 6:1.) Simitian is a Santa Clara County Supervisor. (*Id.* at p. 2:3-5.)[1] As noted above, Nguyen is a County enforcement officer.

On April 5, 2024, Cross-Defendants filed the present demurrer to the cross-complaint. Ranger filed an opposition, and Cross-Defendants filed a reply. On July 12, 2024, just two court days before the hearing, Ranger filed a surreply brief, entitled "Response to County Cross-Defendant Sa[r]a Cody, Sar[e]n Joseph Simitian and Jean Nguyen's Reply to Defendant Cross Complai[]nant's Opposition to Demurrer and Affidavit." Because Ranger did not receive authorization to file this surreply, the court disregards it.

II. PROCEDURAL ISSUES

As a preliminary matter, the Court will address the two material procedural defects in Ranger's cross-complaint and opposition to the demurrer.

A. California Rules of Court, Rule 2.112

California Rules of Court, Rule 2.112 requires pleadings to state each cause of action separately, to ensure that the causes of action are numbered, to include the nature of the claim, and to identify to whom each claim is directed. Here, the cross-complaint lacks this basic information: it does not have any labeled causes of action, it does not specify the nature of any

[1] The cross-complaint lacks paragraph numbers, and so any citations to this pleading are by page and line number.

claim, and it does not state to which cross-defendant each cause of action is directed. As will be discussed in more detail below, "failure to comply with rule 2.112 presumably renders a complaint subject to a motion to strike (§ 436), or a special demurrer for uncertainty." (*Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1014.)

B. California Rules of Court, Rule 3.1113, Subdivision (d)

Additionally, Ranger's opposition brief vastly exceeds the 15-page limit set forth in rule 3.1113(d) of the California Rules of Court: it is 26 pages long. While the court has exercised its discretion to review and consider the entire opposition, the court admonishes Ranger that the court may disregard future briefing that exceeds the page limits in the rules. Moreover, Ranger has attached exhibits to her opposition without filing any request for judicial notice of these exhibits. Because these exhibits are extrinsic evidence, which may not be considered on a demurrer, the court declines to consider them. (See *Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1133-1134 ["in ruling on a demurrer the trial court may take into account in addition to the complaint itself any matter that may be properly considered under the doctrine of judicial notice"].)[2]

Ranger contends that as a self-represented litigant, she must be held to "less stringent standards." (Opposition, p. 4:14-15, citing the U.S. Supreme Court's decision in *Haines v. Kerner* (1972) 404 U.S. 519, 520 [observing that allegations in a pro se litigant's complaint are held to less stringent standards than formal pleadings drafted by lawyers].) In California, self-represented litigants are held to the same standards as attorneys and must comply with the California Rules of Court and Rules of Civil Procedure. (See *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation."].) "[I]n propria persona litigants are not entitled to any special treatment from the courts. [Citation.]" (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1285.) "[W]e cannot disregard the applicable principles or law and accord defendant any special treatment because he instead elected to proceed in propria persona. [Citations.]" (*Stein v. Hassen* (1973) 34 Cal.App.3d 294, 303; see also *Lombardi v. Citizens Nat'l Trust & Sav. Bank* (1955) 137 Cal.App.2d 206, 208-209.)

III. DEMURRER TO THE CROSS-COMPLAINT

Cross-Defendants specially demur to the entire cross-complaint on the ground that it is vague, ambiguous, uncertain, and unintelligible, and they generally demur to the entire cross-complaint on the ground that it fails to state facts sufficient to constitute a cause of action.

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[2] Ranger has also separately filed requests for judicial notice in support of her "answer," which the court will construe as requests in support of the demurrer opposition. These requests attach Public Records Act-related correspondence involving Ranger and as well as a dissenting opinion from Justice Elena Kagan in the 2024 U.S. Supreme Court case of *Loper Bright Enterprises v. Raimondo*. The court denies these requests for judicial notice as irrelevant to the present demurrer.

A. Cross-Defendants' Request for Judicial Notice

In support of their demurrer, Cross-Defendants request judicial notice of the County of Santa Clara Ordinance No. NS-9.291 ("County Urgency Ordinance") (Ex. A). The court grants this request. (See Evid. Code, § 452, subd. (b).)

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.)

C. Discussion

1. Uncertainty

In support of their special demurrer on the basis of uncertainty, Cross-Defendants contend: 1) the cross-complaint does not clearly identify separate causes of action or essential facts of any cause of action with reasonable precision; and 2) the cross-complaint fails to specify how each individually named cross-defendants' conduct relates to any elements of any cause of action.

As a general matter, "demurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that defendant cannot reasonably respond.' 'A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.'" (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 [internal citations omitted].) "The label given a petition, action or other pleading is not determinative; rather, the true nature of a petition or cause of action is based on the facts alleged and remedy sought in that pleading. [Citations.]" (*Escamilla v. Department of Corrections & Rehabilitation* (2006) 1241 Cal.App.4th 498, 511.)

In this case, Cross-Defendants are correct that the cross-complaint does not state separate causes of action and instead refers to "a litany of different federal and [s]tate constitutional provisions and laws in general . . . ." (Demurrer, p. 12:10-18.) The cross-complaint does not explain how alleged violations of (or deviations from) these federal and state laws give rise to causes of action against one or more of the individual Cross-Defendants.

Ranger fails to address this argument in her opposition, which creates the inference that the argument is meritorious. (*Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410 [failure to oppose creates inference that motion or demurrer is meritorious].) Indeed, it is not clear at all what causes of action Ranger is asserting in her cross-complaint, nor is it clear what facts she would identify to support any cause of action. Rather, Ranger includes headings stating that individual County employees exceeded their authority or were "negligently derelict in their duty." (Cross-Complaint, p. 5.) In addition, the cross-complaint appears to blame the

Governor of California (who is not a named cross-defendant) for exceeding his authority and argues that "Government Officials and employees" "failed to uphold and defend the U.S. Constitution, without explaining who violated which provisions of the Constitution. (*Id.* at pp. 4 & 7-8.) The cross-complaint does not specify how any of the individually named Cross-Defendants' conduct relates to any element of a cause of action. (Demurrer, p. 12:19-23, citing *Craig v. Los Angeles* (1941) 44 Cal.App.2d 71, 73 [stating cause of action was "subject to demurrer on the grounds of uncertainty and unintelligibility, as it attempts to state numerous causes of action in a very loose and rambling manner without any attempt at separately stating them."].)

Similarly, Cross-Defendants point to the cross-complaint's fifth heading, which alleges that County health officials "manipulated numbers of avail[a]ble hospital beds" and made fraudulent claims to extend lockdowns, but the pleading fails to identify who made those claims, what exactly those claims are, and how this gives rise to any cognizable cause of action. (Demurrer, p. 12:24-27.) Indeed, it is not clear whether one or more of Ranger's claims are being brought against all named Cross-Defendants or only a subset of them.

In sum, the court concludes that the causes of action in the cross-complaint are so unclear and indecipherable as to be subject to a demurrer under section 430.10, subdivision (f). The court SUSTAINS Cross-Defendants' demurrer to the cross-complaint on the ground of uncertainty, with 20 days' leave to amend.

2. Failure to State Sufficient Facts

Cross-Defendants further contend that the cross-complaint does not state sufficient facts under section 430.10, subdivision (e). (Demurrer, p. 13:17-19.) While the court has already found that the FAC is subject to a demurrer on the ground of uncertainty, the court will briefly address this additional ground.

To withstand a demurrer, the pleader must allege sufficient facts to support the elements of the cause of action in question. Cross-Defendants contend, for example, that the first heading in the cross-complaint appears to assert a violation of the California Emergency Services Act ("CESA") but does not allege which section of the CESA gives rise to Ranger's claims, nor does it allege any specific conduct by any of the County employees that would give rise to liability under CESA. (Demurrer, p. 13:24-25.)

Similarly, any allegations related to the elements of a fraud cause of action[3] are not specifically pled and do not identify "how, when, where, to whom, and by what means the representations were tendered." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645 [internal citations omitted] [also stating that fraud must be pled with sufficient particularity].)

The third heading in the cross-complaint appears to assert that Cody was negligent for failing to verify that "Wuhan virus produces COVID-19 disease." (Cross-Complaint, p. 5:9-11 [capitalization omitted]). "An action in negligence requires a showing that the defendant owed

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[3] "The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." (*Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 837 [internal quotations omitted].)

the plaintiff a legal duty, that the defendant breached the duty, and that the breach was a proximate or legal cause of injuries suffered by the plaintiff." (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 66, 673.) As Cross-Defendants note, Ranger does not allege what duty Cody owed or how she breached that duty of care. (See Demurrer, p. 16:22-25.) Thus, the FAC "does not state sufficient facts to constitute a cause of action" for negligence. (Code Civ. Proc., § 430.10, subd. (e).)

In opposition, Ranger asserts the following: 1) she has a poor understanding of the art of pleading; 2) essential facts will be revealed in the discovery process; and 3) specificity in pleading is not required. (Opposition, pp. 6:18-7:5.) These generic arguments are unavailing. Ranger does not directly address any of the Cross-Defendants' specific contentions in support of their demurrer, and the bulk of Ranger's opposition brief instead focuses on arguments about the severity (or non-severity) of the COVID-19 pandemic generally, the efficacy (or non-efficacy) of vaccines, and the efficacy (or non-efficacy) of masks. These arguments are not responsive to the demurrer and do little to support the sufficiency of the cross-complaint itself.

Cross-Defendants also argue that the cross-complaint is subject to demurrer because Ranger cannot state a cause of action against Simitian, as a public official, for vicarious liability. (Demurrer, p. 17:15-17.) Again, Ranger does not address this argument in her opposition.

Government Code section 820.9 states, in part:

> Members of city councils, . . . members of boards of supervisors, . . . members of locally appointed boards and commissions, . . . are not vicariously liable for injuries caused by the act or omission of the public entity or advisory body. Nothing in this section exonerates an official from liability for injury caused by that individual's own wrongful conduct.

(Gov. Code, § 820.9.)

Cross-Defendants concede that Simitian is a member of the Board of Supervisors, and on this basis, they note that section 820.9 bars vicarious liability for allegedly "permitting" the enforcement of the Governor's COVID-19 executive orders and for allegedly being "aware of the unconstitutional nature of the Governor's overreach." (Cross-Complaint, pp. 2-5.) The court is persuaded that section 820.9 does apply to bar these allegations. Moreover, the cross-complaint contains no allegations of individual wrongful conduct by Simitian.

In short, the court finds that the cross-complaint is defective under both subdivisions (e) and (f) of Code of Civil Procedure section 430.10.

Normally, the pleading party bears the burden of proving that an amendment would cure the defects identified on a demurrer. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; see also *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145 ["The onus is on the plaintiff to articulate the 'specifi[c] ways' to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend 'only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case. [Citation.]'"].) Here, Ranger has not carried this burden, and the court is unable to envision any particular cure for the defects identified by Cross-Defendants. Nevertheless,

because this is the first challenge to the cross-complaint, the court will grant 20 days' leave to amend.

The court SUSTAINS the demurrer to the FAC with 20 days' leave to amend.

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Calendar Lines 2-3
Case Name: *De Mattei Construction, Inc. v. Stephen A. Finn*
Case No.: 22CV405021

Plaintiff De Mattei Construction, Inc. ("De Mattei") initiated this action against defendant Stephen A. Finn ("Finn") and various Doe defendants, based on Finn's alleged breach of a contract involving a construction project on his property. De Mattei amended the complaint to substitute Finn Capital II, LLC ("Finn Capital") for Doe 1 on February 13, 2024. Defendants now demur to all six causes of action in De Mattei's complaint to the extent that they are alleged against Finn Capital. They also move to strike De Mattei's amendment substituting Finn Capital for Doe 1.

I. BACKGROUND

According to the complaint, Finn owns real property located at 12000 Finn Lane, Los Altos Hills, California 94022 (the "Property"). (Complaint, ¶ 9.) On or about July 24, 2020, De Mattei and Finn entered into a miscellaneous work agreement (the "Contract") for the completion of certain "miscellaneous work and investigation under the Owner's direction on a Time and Materials basis." (*Id*. at ¶ 10.) From January 6, 2021 through August 26, 2022, De Mattei alleges that it performed various construction services on the Property under the Contract and provided Finn with labor, materials, and equipment worth $668,321.42. (*Id*. at ¶ 11.) Finn has refused to pay De Mattei for these services, labor, materials, and equipment. (*Ibid*.)

De Mattei's complaint, filed on October 3, 2022, asserts the following causes of action: (1) breach of contract; (2) quantum merit; (3) account stated; (4) open book account; (5) foreclosure of a mechanical lien; and (6) claim against mechanic's lien release bond.

II. DEMURRER

A. General Legal Standards

As relevant to the instant case, "[t]he party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: . . . [t]he pleading does not state facts sufficient to constitute a cause of action." (Code Civ. Proc., § 430.10, subd. (e).) A demurrer may be brought by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court, in ruling on a demurrer, treats it "as admitting all properly pleaded material facts, 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. [Citation.] 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.' [Citation.]" (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214, superseded by statute on other grounds as stated in *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39

Cal.4th 223, 227.) Evidentiary facts found in exhibits attached to a complaint may be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) In ruling on a demurrer, courts may also consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.)

B. Discussion

1. First Cause of Action: Breach of Contract

Finn and Finn Capital argue that the first cause of action for breach of contract fails against Finn Capital because the parties to the Contract were Finn and De Mattei only, not Finn Capital, and a party cannot bring a cause of action for breach of contract against a non-party. (Memorandum of Points and Authorities in Support of Demurrer ("Memorandum"), p. 5:1-8.) As a general matter, defendants are correct that a non-party to a contract cannot be sued for breach of that contract. (See *Gold v. Gibbons* (1960) 178 Cal.App.2d 517, 519 ["Breach of contract cannot be made the basis of an action for damages against defendants who did not execute it and who did nothing to assume its obligations."].)

As currently pled, the complaint contains no facts supporting De Mattei's contention that De Mattei entered into a contract with Finn Capital. In fact, the complaint contains no facts regarding Finn Capital at all. De Mattei argues in its opposition that "De Mattei's allegations are sufficient to state a cause of action for breach of contract against Finn Capital," because paragraph 13 of the complaint "expressly states that 'on or about July 24, 2020, Plaintiff and Finn [sic] entered into a written contract with Finn and DOES 1 through 15, and each of them – the Contract." (Opposition to Stephen A. Finn's and Finn Capital II, LLC's Demurrer ("Opposition"), p. 3:26-4:1.) But this generic allegation is contradicted by the Contract itself, which is attached as Exhibit A to the complaint: the Contract does not include Finn Capital as a signatory or mention Finn Capital anywhere. (See *Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505 ["[T]o the extent the factual allegations conflict with the content of the exhibits to the complaint, we rely on and accept as true the contents of the exhibits and treat as surplusage the pleader's allegations as to the legal effect of the exhibits. [Citations]"].)

De Mattei also argues that Jeff Moline—who it claims is Finn Capital's former Chief Financial Officer—signed the Contract on behalf the "Owner," thereby making Finn Capital a potential party to the Contract. (Opposition, p. 4:4-6.) The court finds this argument to be specious. First, "Owner" is expressly defined in the Contract as "Steve Finn," not "Finn Capital II, LLC." (See Complaint, Ex. A, p. 1.) Second, there is nothing in the Contract that indicates or suggests that Moline signed it on behalf of Finn Capital—indeed, there is nothing on the face of the document to indicate where Moline worked. The fact that Moline may have signed on behalf of Finn himself says nothing about whether he was also signing on behalf of a separate corporate entity such as Finn Capital.

Moreover, De Mattei's claims regarding Moline's employment are improper because they rely on extrinsic evidence. As defendants correctly note, the court cannot consider extrinsic evidence in ruling on a demurrer or motion to strike. "A demurrer tests the pleadings alone and not the evidence or other extrinsic matters." (*SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 905; see also *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881; *Hibernia Savings & Loan Soc. v. Thornton* (1897) 117 Cal. 481, 482.)

De Mattei argues that "to the extent there is an ambiguity as to who is the 'owner,' such ambiguity is not for the court to resolve at the pleadings stage." (Opposition, p. 4:7-10.) The court finds that there is no such "ambiguity" here. The Contract clearly defines Steve Finn, not his company, as the "Owner."

The court SUSTAINS the demurrer to the first cause of action. Although the court cannot envision any reasonable possibility that De Mattei will be able to amend the first cause of action to cure the defect noted above, the court will grant 10 days' leave to amend, given that this is the first pleading challenge in the case.

2. Second Cause of Action: Quantum Meruit

To recover in quantum meruit, a party need not prove the existence of a contract, but it must show the circumstances were such that the services were rendered under some understanding or expectation of both parties that compensation therefor was to be made. (*Advanced Choices, Inc. v. Departments of Health Services* (2010) 182 Cal.App.4th 1661, 1673.)

Finn and Finn Capital demur to the second cause of action on the ground that the complaint contains no allegations that Finn Capital understood that it would be compensating De Mattei for any services. On the contrary, the complaint alleges that only Finn himself agreed to pay De Mattei for those services. (Memorandum, pp. 5:22-6:2.) "There are no allegations that De Mattei performed any work under an express or implied request for services from Finn Capital II, LLC." (*Id*. at p. 6:24-25.)

The court agrees that De Mattei has failed to state a cause of action against Finn Capital for quantum meruit, for the same reason that De Mattei has failed to allege a breach of contract cause of action against Finn Capital: De Mattei expressly contracted with Finn for payment of those services. No circumstances or allegations in the complaint show Finn Capital's awareness that De Mattei would perform services requiring Finn Capital to compensate De Mattei.

De Mattei argues that paragraphs 22 through 26 of the complaint make quantum meruit allegations against both Finn and "Does 1 through 15." (Opposition, pp. 4:22-5:10.) For example, "Does 1 through 15" failed to pay De Mattei for the value of work performed and "Does 1 through 15" owe De Mattei for the fair and reasonable value of services, labor, materials and equipment provided under the Contract. (*Id*. at pp. 4:25-5:5.) This is insufficient. "Where a pleading includes a general allegation, such as an allegation of an ultimate fact, as well as specific allegations that add details or explanatory facts, it is possible that a conflict or inconsistency will exist between the more general allegation and the specific allegations." (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1235 (*Perez*).) "To handle these contradictions, California courts have adopted the principle that specific allegations in a complaint control over an inconsistent general allegation." (*Id.* at pp. 1235-1236.) "Under this principle, it is possible that specific allegations will render a complaint defective when the general allegations, standing alone, might have been sufficient." (*Id.* at p. 1236.) Here, the specific allegations regarding Finn's obligations under the Contract control over the generic allegations cited above with respect to "Does 1 through 15." Similarly, the express terms of the Contract attached as Exhibit A to the complaint also control over De Mattei's generic allegations.

The court SUSTAINS the demurrer as to the second cause of action with 10 days' leave to amend.

3. Third Cause of Action: Account Stated

"'The essential elements of an account stated are: (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; (3) a promise by the debtor, express or implied, to pay the amount due.'" (*Leighton v. Forster* (2017) 8 Cal.App.5th 467, 491, citations omitted.)

Finn and Finn Capital demur to the third cause of action for an account stated because De Mattei does not state sufficient facts. (Memorandum, p. 6:9-14.) Specifically, they assert De Mattei does not allege an agreement between Finn Capital and De Mattei or a previous transaction between Finn Capital and De Mattei. (*Ibid*.) In response, De Mattei argues that it has alleged that "Finn and DOES 1 through 15 became indebted to Plaintiff in the sum of $688,321.42, because an account was stated between Plaintiff on one side, and Defendants Finn and DOES 1 through 15 on another . . . ." (Opposition, p. 5:16-19 [citing Complaint, ¶ 28].)

De Mattei pleads no facts showing a previous transaction between Finn Capital and De Mattei, an agreement between those parties, or the existence of any relationship between those parties. On the contrary, in paragraph 10, the complaint alleges that only Finn and De Mattei have such an agreement. This specific allegation controls over any general allegations regarding "Does 1-15." (See *Perez, supra*, 209 Cal.App.4th at pp. 1235-1236.)

The court SUSTAINS the demurrer as to the third cause of action with 10 days' leave to amend.

4. Fourth Cause of Action: Open Book Account

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

Finn and Finn Capital demur to the fourth cause of action for an open book account because the allegations in paragraph 31 are "contradicted by the more specific allegations in the complaint." (Memorandum, p. 6:23-25.) Furthermore, they contend that no "open book account is adequately alleged against Finn Capital II, LLC." (*Id*. at 6:25-26.) De Mattei responds that "the allegations in paragraph 31 are in fact the specific allegations referring to an open book account[] [a]nd as discussed above with respect to the other causes of action, there are sufficient allegations in the complaint and exhibits to implicate Finn Capital and support the allegation in paragraph 31." (Opposition, p. 6:1-4.)

Paragraph 31 of the complaint contains the same type of generic allegations that the court has found are controlled by more specific allegations elsewhere in the complaint: in this instance, in paragraphs nine, ten, and eleven of the complaint. Beyond the generic allegations

in paragraph 31 regarding "Does 1 through 15," De Mattei pleads no facts showing a previous transaction between Finn Capital and De Mattei.

The court SUSTAINS the demurrer as to the fourth cause of action with 10 days' leave to amend.

5. Fifth Cause of Action: Foreclosure of Mechanic's Lien and Sixth Cause of Action: Claim Against Mechanic's Lien Release Bond

Finn and Finn Capital demur to the fifth and sixth causes of action on the grounds that: (1) De Mattei failed to provide proper notice of the mechanic's lien, and (2) a party can assert a mechanic's lien against only a property owner. (Memorandum, p. 7:1-24.)

First, according to defendants, De Mattei did not provide proper notice of the mechanic's lien to Finn Capital. De Mattei sent the lien to "Stephen Finn only, and not Finn Capital II, LLC." (Memorandum, p. 7:18-19.) Under "Civil Code section 8416(e), failure to provide notice to the owner in accordance with the strict notice requirements invalidates the lien." (*Id.* at p. 7:19-20.) De Mattei responds that Finn Capital misinterprets Civil Code section 8416. (Opposition, p. 6:10-11.) "This provision does not stand for the proposition that a mechanics lien is invalid if not all the parties holding some title, right, or interest in the property, are listed on the proof of service attached to the recorded lien." (*Id*. at p. 7:9-12.) "Civil Code section 8416 requires notice to 'the owner or reputed owner' listed on the lien, which was in fact provided." (*Id*. at p.7:12-13.) In reply, Finn Capital does not respond to this argument, effectively conceding this point. (See *DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 566 [failure to address a point operates as a concession].)

Second, Finn Capital argues that De Mattei "cannot seek to foreclose on its mechanic's lien against any party other than the party it alleges owns the property at issue." (Memorandum, p. 7:8-9.) The mechanic's lien, attached to the complaint as Exhibit B, lists the property owner as "Steve Finn." (*Id.* at p. 7:11-12.) "As with the other causes of action, De Mattei is bound by the allegations in the complaint; it cannot allege that only Stephen Finn owns the property and then foreclose on the property against other parties." (*Id.* at p. 7:12-15.)

De Mattei responds that the complaint alleges "Defendants Finn and DOES 1 through 15, inclusive, have or claim to have some right, title or interest in the Property, the exact nature of which claims is unknown to Plaintiff, but which claims are subject and subordinate to Plaintiff's Mechanics Lien." (Opposition, p. 6:18-20.) The mechanic's lien "simply lists the 'reputed owner.'" (*Id*. at p. 6:21.) Not "only is De Mattei permitted to bring the mechanic's lien foreclosure action against parties other than Finn, it must do so to the extent it believes such parties may have or claim to have some right." (*Id.* at p. 7:3-5.) "Since the complaint states that Doe 1 is believed to have some right, title, or interest in the Property, Doe 1, and consequently, Finn Capital, is a proper party to the foreclosure of mechanics lien action, unless or until it is proven that it does not in fact have such right, title, or interest." (*Id.* at p. 7:5-8.)

Once again, the specific allegations in the complaint—including the exhibits attached to the complaint—control over these generic Doe allegations. Although the court agrees with De Mattei that the relevant case law establishes that an "owner," for the purposes of a mechanic's lien, includes "anyone interested, whether as owner, mortgagee, lien claimant, or otherwise,

anyone who may defendant against the lien" (*Barr Lumber Co. v. Old Ivy Homebuilders, Inc.* (1995) 34 Cal.App.4th Supp. 1, 6, citing *Paramount Securities Co. v. Daze* (1933) 128 Cal.App.515, 518), De Mattei has failed to make any specific allegation that Finn Capital has an interest in the Property. Instead, it makes only the conclusory allegation that "DOES 1 through 15" have or claim some right, title or interest to the Property. (Complaint, ¶ 41.) By contrast paragraph 9 of the complaint specifically alleges that Finn (and only Finn) "owns" the Property, which controls over the complaint's general, conclusory allegations. (*Id*., ¶ 9.)

The court SUSTAINS the demurrer as to the fifth and sixth causes of action with 10 days' leave to amend.

III. MOTION TO STRIKE

In light of the court's ruling sustaining defendants' demurrer, the court declines to address the motion to strike, as it is moot.

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Calendar Line 7
Case Name: *NTL Precision Machining, Inc. v. BodyCote Thermal Processing, Inc.*
Case No.: 22CV398446

Defendant BodyCote Thermal Processing, Inc. ("BodyCote") moves to compel further responses to special interrogatories (Nos. 37-42) from plaintiff NTL Precision Machining, Inc. ("NTL"). The court denies the motion, for two separate reasons.

First, the court finds that BodyCote's meet-and-confer efforts were inadequate. BodyCote did not inform NTL of the reasons for its motion before filing the motion. Instead, the only issue it raised with NTL's responses beforehand was that they were not signed by counsel. In reply, BodyCote now argues that in light of NTL's communication with its amended responses, "there was no reason to believe that NTL was willing to meet and confer regarding further amended responses." (Reply, p. 3:3-4.) This court finds this excuse to be woefully deficient: BodyCote failed to articulate the basis for its motion before filing, and so it could not reasonably have predicted what response, if any, NTL would have given. That is the whole reason why the law requires a good faith meet-and-confer effort. Similarly, BodyCote's claim that NTL could have met and conferred *after* BodyCote filed the motion also ignores the law and the purpose of the law: the Code of Civil Procedure requires meeting and conferring *before* a motion is filed.

Second, BodyCote complains that NTL's answers were insufficient, because they essentially consisted of "one sentence of substantive information contained in six nearly identical responses to these interrogatories." (Reply, p. 3:13-15.) Although the court agrees with BodyCote that the answers were somewhat short, generic, and repetitive, the court also finds that BodyCote's phrasing of its interrogatories was generic. Rather than asking for specific facts about the case—*e.g.*, all facts in NTL's possession that support NTL's claim that a contaminated furnace *did cause* various alleged defects in the side cavities—these interrogatories broadly and generically ask for facts that support the contention that a contaminated furnace "can cause" such defects. NTL's answers are responsive to these requests, and the scope of the answers is commensurate with the generic nature of the requests themselves.

For each of these reasons, the motion is DENIED.

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Calendar Lines 8-9
Case Name: *Applied Materials, Inc. v. Huu T. Vu et al.*
Case No.: 22CV403017

Defendant Capital Asset Exchange and Trading, LLC ("CAE") brings two discovery motions against plaintiff Applied Materials, Inc. ("Applied"): (1) a motion to retain the attorneys' eyes only designations of certain documents under the stipulated protective order; and (2) a motion to compel further responses to special interrogatories (Nos. 84 and 85), along with a request for monetary sanctions. For the reasons that follow, the court DENIES the first motion and GRANTS IN PART the second motion.

1. Motion to Retain Confidentiality Designations

Under the parties' stipulated protective order, a party that seeks to maintain its confidentiality designations must apply to the court for an order designating the material as confidential, and that party "has the burden of establishing that the document is entitled to protection." (December 14, 2023 Amended Stipulated Protective Order, ¶ 9.) The court finds that CAE has failed to discharge its burden with respect to the eight documents at issue, which are email and text communications with customers or suppliers (or prospective customers or suppliers).[4]

First, CAE's motion indiscriminately blurs the concept of "confidential" information with the concept of "trade secret" information, in a manner that indicates it is not applying the correct standard in its motion. A "trade secret" is information that "[d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use" and "is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." (Civ. Code, § 3426.1, subd. (d).) Although CAE repeatedly refers to alleged "trade secrets," it fails to demonstrate that the information in the eight documents at issue—even if confidential—meet this statutory standard. For example, CAE states that CAET0009586-90 must remain "highly confidential" rather than merely "confidential" because it "discloses the identity of and contact information for a buyer." (Declaration of Margaret Crawford, ¶ 2.b.) CAE fails to demonstrate that the identity of a single buyer or that buyer's contact information is information that derives independent economic value from not being generally known. Although the law is clear that customer lists may sometimes be deemed trade secrets—depending on the level of detail in such a list and the efforts that were made to compile the list (see, e.g., *Morlife, Inc. v. Perry* (1997) 56 Cal.App.4th 1514, 1521-1527 [distinguishing detailed customer lists that may be trade secrets from "mere identities and locations of customers"])—the information in these CAE emails and texts do not contain any detailed customer lists. They are each individual communications with a single potential customer or supplier. Similarly, the allegedly secret "pricing information" contained in these communications does not include a confidential price list—rather, it consists of single price

[4] The court denies CAE's request for judicial notice of a declaration that it previously filed in November 2023. As Applied correctly notes, the court can only take judicial notice of the fact that this declaration was filed, not its disputed contents, under Evidence Code section 452, subdivision (d). The mere fact that this declaration was filed has no evidentiary value for the purposes of this motion, and on that basis the request must be denied. CAE's contention that the court should consider the substance of the declaration misapprehends the function of judicial notice, which is to declare a fact as true *without* the need for formal proof.

quotations for single pieces of equipment for a single prospective customer. Again, there is no showing by CAE that a single price quote to a single prospective customer (or from a single prospective supplier) constitutes information that derives independent economic value from not being generally known. Moreover, CAE fails to show that any of these eight email and text communications were the subject of efforts by CAE to maintain their secrecy. Were any of these parties under an NDA with CAE? CAE does not show anywhere that they were. Did CAE tell any of these parties not to share anything in these communications with anyone else? CAE does not show anywhere that it did.

Second, CAE's motion indiscriminately blurs the concept of its own confidential information with the concept of other third parties' confidential information. For example, CAE argues that "[m]any market participants strongly prefer to conceal their identities from other market participants." (Memorandum, p. 3:3-4.) Even if this strong preference of third parties is true, that does not make the identity of a specific potential customer a sensitive or valuable trade secret of CAE. More critically, now that CAE has submitted the documents at issue with its reply brief—heavily redacted—the court sees that these communications frequently quote prices *set by the supplier, not by CAE itself*, with CAE merely acting as a go-between. (See, e.g., CAET0010406 ["I know my seller is firm on the price here, so let me know if you still want the certificate."].) This completely undercuts CAE's claim that the documents disclose CAET's own trade secrets or its own proprietary pricing information—*i.e.*, that they contain "CAET's pricing information for the equipment at issue" (Declaration of Margaret Crawford, ¶¶ 2.b-2.h.). What it also makes clear is that it was facially insufficient for CAE to rely solely on the Crawford Declaration to support its motion in its opening papers, because that declaration either incompletely characterizes or mischaracterizes the documents that were finally submitted only in reply.

In the end, CAE fails to show that it will be prejudiced if the documents at issue are designated "confidential" instead of "highly confidential" under the protective order, as long as Applied's outside counsel shares the documents only with those employees whose review is necessary to verify Applied's discovery responses. Therefore, the court orders that these documents be designated "confidential," that Applied's counsel disclose these documents only to those Applied employees who are needed to respond to discovery requests, and that those employees each execute the certification that appears at page 11 of the protective order.

2. Motion to Compel Further Interrogatory Responses

CAE seeks to compel answers to interrogatories that request information about Applied's damages contentions. Interrogatory No. 84 asks, "State the amount of your claim for damages against Capital Asset Exchange and Trading[, LLC]." Interrogatory No. 85 asks, "Describe in detail how you calculated your claim for damages against Capital Asset Exchange and Trading, LLC." (Separate Statement in Support of Motion to Compel, pp. 1:21 & 6:27-7:1.) In response, Applied has interposed objections only, without any substantive answers. Applied argues in its opposition that these interrogatories are premature, because it is still in the process of seeking discovery from CAE that would allow it to respond substantively; in addition, Applied argues that the answers are the subject of expert testimony.

The court finds that Applied's responses are insufficient and must be supplemented with substantive answers. Even if it is the case that Applied has yet to obtain necessary discovery from CAE on this subject, and even if Applied expects to have more precise

damages calculations once its expert witnesses are able to review that discovery, that does not relieve Applied from the obligation of providing answers based on the information presently available to it. Those answers can always be amended or supplemented once Applied obtains the additional discovery from CAE and once expert disclosures become due. The court is not persuaded by Applied's reliance on *Greenup v. Rodman* (1986) 42 Cal.3d 822, 829, as that case focused on the sufficiency of a party's pleadings, not the sufficiency of its discovery responses.

At the same time, Applied points out that CAE did not adequately meet and confer before filing this motion, and the court tends to agree. Code of Civil Procedure section 2030.300, subdivision (b)(1), requires the filing of a meet-and-confer declaration to support a motion to compel, and none was filed here. It also appears that the parties were still in the early stages of discussing these interrogatory responses when CAE suddenly filed its motion. CAE argues that the parties were already at an impasse and that any further negotiations would likely have been futile. Even if this is true—and it may well be true—that does not excuse CAE from making a good-faith effort to *try* to resolve or at least narrow the issues. That is the bare minimum of what the Civil Discovery Act requires.

Because of the inadequate meet-and-confer efforts on this motion, the court denies CAE's request for monetary sanctions. At the same time, because it does not appear that Applied was willing to provide any substantive answers before first obtaining further discovery from CAE, the court grants the motion on the merits. Applied shall serve supplemental responses within 15 days of notice of entry of this order.

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