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 2, 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	22CV396170	Christian Humanitarian Aid v. AM Star Construction, Inc. et al.	Click on LINE 1 or scroll down for ruling in lines 1-2.
LINE 2	22CV396170	Christian Humanitarian Aid v. AM Star Construction, Inc. et al.	Click on LINE 1 or scroll down for ruling in lines 1-2.
LINE 3	22CV409237	Dana Lyn Banks v. A Tool Shed, Inc. et al.	Click on LINE 3 or scroll down for ruling.
LINE 4	24CV431808	Edward Charles Jenkins v. Kristina Litovchenko et al.	Click on LINE 4 or scroll down for ruling in lines 4-5.
LINE 5	24CV431808	Edward Charles Jenkins v. Kristina Litovchenko et al.	Click on LINE 4 or scroll down for ruling in lines 4-5.
LINE 6	21CV381437	William Butler v. Ninoska Ortega et al.	Motion to compel responses to defendants' form interrogatories: notice is proper, and the motion is unopposed. Given plaintiff's failure to serve timely responses to the discovery requests, the court GRANTS the motion. Moving party to prepare proposed order.
LINE 7	23CV426511	Wells Fargo Bank, N.A. v. Phil H. Nguyen	Motion for plaintiff's RFAs to be deemed admitted by defendant: notice is apparently proper, and the motion is unopposed. Good cause appearing, the court GRANTS the motion and will sign the proposed order submitted by the moving party.
LINE 8	20CV368695	Thunder Token Inc. v. Zachary Amsden	Motion to be relieved as counsel: parties to appear.
LINE 9	21CV376991	California Plus Engineering, Inc. v. County of Santa Clara	Click on LINE 9 or scroll down for ruling.

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LINE #	CASE #	CASE TITLE	RULING
LINE 10	21CV380866	Debt Management Partners, LLC v. Angela Santiago	Claim of exemption: the claim is DENIED, as the judgment debtor has not shown the application of any statutory exemption, and her proposed amount to be withheld per monthly pay period of $50 is unreasonable, given her income and expenses. At that rate, it will take nearly 10 years to pay off the judgment. Although it appears that the judgment debtor has substantial loans from a number of other banks, the debt at issue here has priority over those other debts.
LINE 11	21CV389929	Tianqing Li v. Phillip Mummah	Motion for leave to file a second amended complaint: notice is not proper, as the moving papers listed the wrong hearing date—July 22 instead of July 2—and the court has received no response to the motion. July 22 is not even a correct law-and-motion calendar date. The court takes this matter OFF CALENDAR, as the motion must be renoticed.
LINE 12	23CV417806	Alberto L. Correa et al. v. Ford Motor Company et al.	OFF CALENDAR

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Calendar Lines 1-2
Case Name: *Christian Humanitarian Aid, Inc. v. AM Star Construction, Inc. et al.*
Case No.: 22CV396170

I. BACKGROUND

This case involves a dispute over an architectural services contract and related agreements entered into by plaintiff Christian Humanitarian Aid ("CHA") and defendants AM Star Construction, Inc. ("AMS"), Michael Achkar ("Achkar," the owner of AMS), and Shultz & Associates (the architect for the project). CHA filed the original complaint in this matter on March 23, 2022. It filed the operative First Amended Complaint ("FAC"), adding defendant Link Corporation ("Link"), on March 15, 2023. The FAC states claims for: (1) Fraud in the Inducement (against AMS, Achkar, and various Does); (2) Fraud and Deceit (against AMS, Achkar, and various Does; (3) Breach of Contract (against AMS and various Does); (4) Breach of the Implied Covenant of Good Faith and Fair Dealing (against AMS and various Does); (5) Professional Negligence (against Shultz & Associates); (6) Breach of Contract (against Shultz & Associates); (7) Breach of Contract (against Link); (8) Negligence (against Link); and (9) Declaratory Relief (against AMS and various Does, seeking a declaration as to the validity of a mechanic's lien).

Shultz & Associates filed a cross-complaint on May 25, 2023, a first amended cross-complaint on September 27, 2023, and a second amended cross-complaint on April 8, 2024.

AMS and Achkar filed a verified cross-complaint on July 25, 2023. This cross-complaint stated eleven causes of action for: (1) Breach of Contract (against CHA and cross-defendants Archangel Michael and Saint Mercurius Coptic Orthodox Church (the "Church"), St. Michael Preschool and Infant Care (the "Preschool"), and various Roes); (2) Breach of the Implied Covenant of Good Faith and Fair Dealing (against the same parties); (3) Foreclosure of Mechanic's Lien (against CHA and various Roes); (4) Fraud and Deceit (false promise without intent to perform) (against CHA, the Church, the Preschool, and various Roes); (5) Fraud and Deceit (intentional misrepresentation) (against CHA, the Church, the Preschool, cross-defendant Bishoy William, and various Roes); (6) Equitable Indemnity (against Shultz & Associates and various Roes); (7) Contribution (against Shultz & Associates and various Roes); (8) Assault and Battery (against CHA, the Church, the Preschool, Bishoy William, and various Roes); (9) Assault and Battery (against CHA, the Church, the Preschool, Bishoy William, cross-defendant Mary William, and various Roes); (10) Intentional Infliction of Emotional Distress (against CHA, the Church, the Preschool, Bishoy William, and various Roes, based on the eighth cause of action); and (11) Intentional Infliction of Emotional Distress (against CHA, the Church, the Preschool, Bishoy William, Mary William, and various Roes, based on the ninth cause of action). The last four causes of action (Nos. 8-11) were alleged on behalf of plaintiff Achkar alone. Attached to the cross-complaint as Exhibit A was a copy of the mechanics lien asserted by AMS.

CHA, the Church, the Preschool, Bishoy William, and Mary William brought a demurrer to the first, second, fourth, fifth, eighth, ninth, tenth, and eleventh causes of action in the AMS/Achkar cross-complaint, as well as a motion to strike portions of that pleading. On December 7, 2023, the court sustained the Church and the Preschool's demurrer to the first, second, fourth, fifth, eighth, ninth, tenth, and eleventh causes of action; sustained CHA's demurrer to the second, fourth, fifth, tenth, and eleventh causes of action; sustained Bishoy

William's demurrer to the fifth cause of action; overruled Bishoy William's demurrer to the tenth cause of action; and overruled Bishoy William and Mary William's demurrer to the eleventh cause of action. The court granted AMS and Achkar leave to amend by January 2, 2024. The court denied the motion to strike.[1]

On January 2, 2024, AMS and Achkar filed the operative first amended cross-complaint ("FACC"). The FACC states the same eleven causes of action. There are four documents attached to the FACC as Exhibits A-D: Exhibits A and B purport to be English translations of Arabic-language documents, but no copies of the original documents are included; Exhibit C is a copy of the contract between CHA and AMS; Exhibit D is a copy of the mechanics lien that was previously attached to the original cross-complaint as Exhibit A.

Currently before the court is a demurrer and motion to strike portions of the FACC, filed by cross-defendants CHA, the Church, the Preschool, and Bishoy William (hereinafter, "Cross-Defendants") on March 6, 2024. AMS and Achkar filed oppositions on June 18, 2024.

II. REQUESTS FOR JUDICIAL NOTICE

Both sides have submitted requests for judicial notice. "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed must be relevant to the material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, citing *People v. Shamrock Foods Co*. (2000) 24 Cal.4th 415, 422, fn. 2.) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

A. Cross-Defendants' Requests

Cross-Defendants have submitted two redundant requests for judicial notice, one in support of the demurrer and one in support of the motion to strike. Both seek judicial notice of the same three attached documents. (For future reference, parties can submit a single request for judicial notice in support of concurrently filed motions.)

Exhibits 1 and 2 are copies of two licenses issued to CHA by the California Department of Social Services in 2013 to operate an infant center (St. Michael Infant Care Center) and a daycare center (St. Michael Preschool Center), respectively. Cross-Defendants assert that these two documents can be noticed as official acts of the state under Evidence Code section 452, subdivision (c). While this may be true, the documents have limited relevance here, as they do not establish anything beyond the issuance of licenses in 2013. They do not, contrary to Cross-Defendants' contention, establish that the Preschool was a separate entity from the Church in November 2019, when CHA and AMS entered into the architectural services contract attached as Exhibit C to the FACC.

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[1] The court takes judicial notice of its December 7, 2023 order on its own motion, under Evidence Code section 452, subdivision (d).

Exhibit 3 is a copy of the court's December 7, 2023 order, of which the court has already taken judicial notice.

Despite their limited relevance, the court grants judicial notice of Exhibits 1 and 2, under Evidence Code section 452, subdivision (d). As noted in footnote 1 above, the court also takes judicial notice of Exhibit 3.

B. AMS/Achkar Request

AMS and Achkar request judicial notice of two documents, attached as Exhibits 1 and 2. Exhibit 1 consists of copies of articles of incorporation and statements of information filed by the Church. Exhibit 2 consists of copies of communications (emails) between the parties. AMS/Achkar assert that both exhibits can be judicially noticed under Evidence Code section 452, subdivision (h).

The court denies the request. Evidence Code section 452, subdivision (h), does not apply to either exhibit. (See *Gould v. Md. Sound Indus*. (1995) 31 Cal.App.4th 1137, 1145 ["Judicial notice under Evidence Code section 452, subdivision (h), is intended to cover facts which are not reasonably subject to dispute and are easily verified. These include, for example, facts which are widely accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs and the like or by persons learned in the subject matter."].) Correspondence between private parties (Exhibit 2) does not qualify as establishing facts that are widely accepted and easily verified. Similarly, copies of corporate filings do not fall under subdivision (h)—nor do they fall under subdivision (c). (See *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 607-608 [applications and supporting documents filed by private parties with Department of Insurance were not official acts of department subject to judicial notice]; *Hughes v. Blue Cross of N. Cal.* (1989) 215 Cal.App.3d 832, 856, fn. 2 [Statement of Information, although on file with a government agency, is not subject to judicial notice as an official act under subdivision (c) because it was prepared by private parties, not the Secretary of State]; *People v. Thacker* (1985) 175 Cal.App.3d 594, 598-599 [copies of articles of incorporation, statement by domestic corporation, and notice of issuance of shares were materials prepared by a private person, merely on file with state agencies, and not official acts].)

III. DEMURRER TO THE AMS/ACHKAR FACC

A. General Standards

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*).) A plaintiff is not ordinarily required to allege "'each evidentiary fact that might eventually form part of the plaintiff's proof . . . .' [Citation.]" (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1341.)

"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.) "It is well established that in the context of a demurrer, specific allegations control over more general ones." (*Chen v. PayPal, Inc*. (2021) 61 Cal.App.5th 559, 571-572 [citing *Perez*, among others].)

The court considers only the pleading under attack, any attached exhibits (which are considered part of the "face of the pleading"), and any facts or documents as to which judicial notice is granted. The court cannot consider extrinsic evidence in ruling on a demurrer or motion to strike. This includes declarations. The court has only considered the declarations from Cross-Defendants' counsel to the extent that they describe compliance with the procedural meet-and-confer requirements. The court has not considered the attached exhibits. The court notes that Code of Civil Procedure sections 430.41(a) and 435.5(a) both require the parties to meet and confer "in person, by telephone, or by video conference" before a party may file a demurrer or motion to strike. That does not appear to have been done here. Simply sending an email, as described in the declarations, does not comply with the plain terms of these statutes. Nevertheless, as both statutes state that a determination by the court that the meet-and-confer process was inadequate "shall not" be grounds for overruling a demurrer or denying a motion to strike, the court will still consider the merits.

Where, as here, a demurrer is to an amended complaint, the court "may consider the factual allegations of prior complaints, which a plaintiff may not discard or avoid by making contradictory averments, in a superseding, amended pleading." (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034, internal quotations omitted; see also *Larson v. UHS of Rancho Springs, Inc*. (2014) 230 Cal.App.4th 336, 343 [noting "well-established precedent" allowing "courts to consider omitted and inconsistent allegations from earlier pleadings when ruling on a demurrer"]; *Doe v. United States Youth Soccer Assoc.* (2017) 8 Cal.App.5th 1118, 1122 [citing *Berg & Berg*].) This means the court can and still does consider the verified allegation in paragraph 14 of the original cross-complaint that the only parties to the contract at issue here—a written agreement entered into "[o]n or about November 18, 2019"—were AMS and CHA. This allegation controls over the allegation in paragraph 15 of the FACC asserting that the Preschool was an additional party to the contract.

B. Pleading Based on "Information and Belief"

As noted in the court's December 7, 2023 order, a party cannot, "by placing the incantation 'information and belief' in a pleading, [ ] insulate herself or himself" from the requirements of Code of Civil Procedure section 128.7, irrespective of whether the pleading is verified or unverified. (*Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 596, fn. 9.) Additionally, even when it is permissible to allege an ultimate fact on the basis of information and belief, a party cannot simply include the phrase "information and belief" without more. (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1158-59.) To plead an allegation on the basis of information and belief properly, a plaintiff must allege the facts or

information that led him or her to infer or believe the truth of the ultimate factual allegation. (*Gomes, supra,* 192 Cal.App.4th at pp. 1158-59; see also *Brown v. USA Taekwondo* (2019) 40 Cal.App.5th 1077, 1106 ["where factual allegations are based on information and belief, the plaintiff must allege 'information that "lead[s] [the plaintiff] to believe that the allegations are true."'"].) Allegations made only on "information and belief" that lack supporting information are not accepted as true on demurrer.

The "information and belief" allegations in paragraphs 3, 5, 28, 38, 39, 92, and 106 of the FACC lack supporting information and are not accepted as true on demurrer. These allegations do not control over the prior verified allegation in paragraph 14 of the original cross-complaint—or the plain language on the face of the contract attached as Exhibit C to the FACC—establishing that AMS and CHA are the only parties to that contract. (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."].)

C. The Legal Basis for Cross-Defendants' Demurrer

Code of Civil Procedure section 430.60 states: "A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded." The rules of court also require that that the demurrer itself (distinct from a supporting memorandum) specify the target of any objection and the grounds. (See Cal. Rules of Court, rules 3.1103(c), 3.1112(a), 3.1320(a) ["Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."]; see also 5 Witkin, *Cal. Procedure* (5th ed., 2019) Pleading, § 953 ["Each ground of demurrer must be in a separate paragraph and must state whether the demurrer applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."].)

Additionally, "points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before." (*Proctor v. Vishay Intertechnology, Inc*. (2013) 213 Cal.App.4th 1258, 1273; see also *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 500 ["This court will not consider points raised for the first time in a reply brief for the obvious reason that opposing counsel has not been given the opportunity to address those points."].)

Cross-Defendants demur to the FACC's first, second, fourth, and fifth causes of action on the ground that they fail to state sufficient facts. (See Notice of Demurrer and Demurrer, p. 3:1-27.)

D. Discussion

1. First Cause of Action

The court SUSTAINS the demurrer to the first cause of action (breach of contract) on the ground that it fails to state sufficient facts against the Church and the Preschool.

"To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the

defendant's breach, and (4) the resulting damage to the plaintiff." (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.) 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."]; see also *Clemens v. American Warranty Corp*. (1987) 193 Cal.App.3d 444, 452 ["Under California law, only a signatory to a contract may be liable for any breach."].)

As noted above (and in the court's prior order) specific allegations control over general ones, and AMS and Achkar remain bound by the specific allegation in paragraph 14 of the cross-complaint that the only parties to the contract at issue, signed on November 18, 2019, were AMS and CHA. This is consistent with the contract now attached as Exhibit C to the FACC, whose terms control over any contrary allegations. "The interpretation of a contract is a question of law unless the interpretation turns on the credibility of extrinsic evidence." (*Sierra Vista Regional Medical Center v. Bonta* (2003) 107 Cal.App.4th 237, 245.) The court concludes that the contract attached to the FACC as Exhibit C cannot be reasonably interpreted as involving any signatories other than AMS and CHA.

Notably, Article I.D. of the contract (drafted by AMS) states, "This Contract and the Contract Documents contain the entire agreement between the parties, and supersede all prior or contemporaneous written or oral communications. This Contact may not be changed or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of such change or termination is sought."

Contrary to the opposition's arguments, the general allegations in paragraphs 4, 7, 8, 17, 23, 24, and 28 of the FACC do not support any finding that the Church or the Preschool are parties to the written contract between CHA and AMS. (See Opposition, pp. 3:10-6:24.) The contract itself shows that the only parties are CHA and AMS, and there is no support for the notion that any communications *prior to* or *contemporaneous with* the signing of the contract would somehow make the Church or the Preschool a party to the contract, or that any *post-signing* communications other than "an instrument in writing signed by" the Church or Preschool could alter the contract to make them parties. As the court explained in its prior order, allegations that changes were made or extra work performed at the "special" insistence or request of the Church or Preschool after the contract was signed are insufficient to make either entity a party to the contract. (See FACC, ¶¶ 20-23, 25; December 7, 2023 Order, p. 8:15-20.)

In short, AMS and Achkar have failed to amend the pleading to overcome the reasons for sustaining the prior demurrer to the first cause of action.

AMS and Achkar also fail (again) to explain how the first cause of action could be amended to state a breach of contract claim against the Church or the Preschool. (See *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; *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.]'"].)

AMS and Achkar suggest in their opposition that the first cause of action for breach of *express* contract could be deemed abandoned as against the Church and Preschool, and that a new cause of action for breach of an *implied* contract could be alleged, but this does not present a viable amendment given the existing verified allegations and exhibits. (See Opposition at p. 6:27-7:13.) "An implied contract is one, the existence and terms of which are manifested by conduct." (Civ. Code, § 1621.) An implied contract is by definition not based on oral or written statements. (See *California Emergency Physicians Medical Group v. PacifiCare of California* (2003) 111 Cal.App.4th 1127, 1134 [an implied contract ". . . consists of obligations arising from a mutual agreement and intent to promise where the agreement and promise have not been expressed in words. In order to plead a cause of action for implied contract, the facts from which the promise is implied must be alleged."].) A written contract supersedes all suggestions or evidence of an implied contract. (See *Tollefson v. Roman Catholic Bishop* (1990) 219 Cal.App.3d 843, 855, disapproved on other grounds in *Scott v. Pacific Gas & Electric Co*. (1995) 11 Cal.4th 454, 474, fn. 5 ["California law presumes a written contract supersedes all prior or contemporaneous oral agreements. Parol evidence is admissible to establish the terms of the complete agreement of the parties only if the written agreement is not the complete and final embodiment of that agreement. Indeed, there simply cannot exist a valid express contract on one hand and an implied contract on the other, each embracing the identical subject but requiring different results and treatment."] [internal quotations and citations omitted].)

Here, the written contract between CHA and AMS was the complete agreement and governed AMS's work on the project; therefore, as a matter of law, there cannot be a different, *implied* contract involving the Church and the Preschool that also somehow embraced AMS's work on the project.

The court DENIES further leave to amend the first cause of action as against the Church and the Preschool.

2. Second Cause of Action

The court SUSTAINS the demurrer to the second cause of action (breach of the implied covenant of good faith and fair dealing) on the ground that it fails to state sufficient facts as against the Church or the Preschool.

"The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made. The covenant thus cannot 'be endowed with an existence independent of its contractual underpinnings.' It cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." *Guz v. Bechtel National, Inc*. (2000) 24 Cal.4th 317, 349-350 [emphasis added].) "'[T]he covenant is implied as a supplement to the express contractual covenants, to prevent a contracting party from engaging in conduct which (while not technically transgressing the express covenants) frustrates the other party's rights to the benefits of the contract.'" (*Racine & Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1031-1032 [emphasis added].)

Because neither the Church nor the Preschool are, or could reasonably be believed to be, a "contracting party" with AMS/Achkar, neither is subject to the implied covenant of good faith and fair dealing, which arises solely out of the written contract between CHA and AMS.

Given AMS/Achkar's failure to cure the defect in the second cause of action, notwithstanding an extended opportunity to do so, the court DENIES further leave to amend.

3. Fourth and Fifth Causes of Action

As in the original cross-complaint, the fourth and fifth causes of action in the FACC are fraud claims—for false promise and intentional misrepresentation, respectively. The fourth cause of action is now alleged only against CHA and the Preschool, while the fifth cause of action is now alleged only against CHA, the Preschool, and Bishoy William. (See FACC, ¶¶ 42-62.) These two causes of action are no longer alleged against the Church.

"The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages." (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 792 [citation omitted].) "Fraud must be pleaded with specificity rather than with general and conclusory allegations. The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." (*Id.* at p. 793 [citation and quotation marks omitted].) Courts enforce the specificity requirement in consideration of its two purposes. The first purpose is to give notice to the defendant with sufficiently definite charges. (*Ibid.*) The second is to permit a court to weed out meritless fraud claims on the basis of the pleadings; thus, the pleading should be sufficient to enable the court to determine whether, on the facts pleaded, there is any prima facie foundation for the charge of fraud. (*Ibid.*)

The court SUSTAINS the Preschool's demurrer to the fourth and fifth causes of action. AMS remains bound by the prior verified allegation in paragraph 14 of the original cross-complaint and the express terms of the contract now attached as Exhibit C to the FACC, establishing that AMS and CHA are the only parties to that contract. The contents of Exhibit C control over any allegation in the FACC that the Preschool "entered" into the agreement "executed in November 2019." Exhibit C establishes that the Preschool is not a party to the agreement. Having drafted Exhibit C, AMS could not have any reasonable belief that the Preschool was a party to the contract. AMS also could not have reasonably or justifiably relied on any alleged statement by the Preschool that would somehow make it responsible for performing any act under the contract. Determining whether reliance was reasonable is a question of fact "[e]xcept in the rare case where the undisputed facts leave no room for a reasonable difference of opinion." (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1239.) This is one of those cases.

The opposition fails to demonstrate how the fourth or fifth causes of action could be amended to state sufficient facts against the Preschool. No effective amendment is apparent to

the court. The court therefore DENIES further leave to amend the fourth and fifth causes of action as alleged against the Preschool.

For the same reasons, the court SUSTAINS the demurrer to the fifth cause of action as against Bishoy William WITHOUT leave to amend. Like the Preschool, Bishoy William is not a party to Exhibit C, the contract that AMS drafted. AMS/Achkar could not have reasonably believed that he was a party to the contract nor could they have reasonably relied on any statement from any Cross-Defendant that he was somehow a party to the contract or would be responsible for performing under the contract. In addition, having alleged that their damages were caused by their reliance on CHA's false statements and failures to perform (FACC, ¶¶ 42-47 and 52-58), AMS and Achkar cannot simultaneously allege that their damages were caused by reliance on a statement made by Bishoy William that he was an ordained priest in good standing. Indeed, as previously addressed in the court's order sustaining the demurrer to the original cross-complaint, this cause of action fails to allege any causal connection between Bishoy William's alleged misrepresentation and any resulting damages. (December 7, 2023 Order, p. 13:11-22.)

As for CHA, the court OVERRULES the demurrer to the fourth and fifth causes of action as against this sole cross-defendant. While the allegations in both causes of action fail to state sufficient facts to the extent that they suggest that Cross-Defendants made false statements or promises about either the Preschool or Bishoy William's nonexistent obligations under the contract, the court finds that the fourth and fifth causes of action sufficiently allege—albeit redundantly—that CHA made false promises about its own performance under the contract. (See FACC, ¶¶ 42-47 and 53-58.)

CHA's argument that the fourth and fifth causes of action are "subsumed" by the breach of contract allegations is not persuasive. "[I]t has long been the rule that where a contract is secured by fraudulent representations, the injured party may elect to affirm the contract and sue for the fraud." (*Lazar v. Sup. Ct*. (1996) 12 Cal.4th 631, 645.) "It is a truism that contract remedies alone do not address the full range of policy objectives underlying the action for fraudulent inducement of contract. In pursuing a valid fraud action, a plaintiff advances the public interest in punishing intentional misrepresentations and in deterring such misrepresentations in the future. Because of the extra measure of blameworthiness inhering in fraud, and because in fraud cases we are not concerned about the need for 'predictability about the cost of contractual relationships', fraud plaintiffs may recover 'out-of-pocket' damages in addition to benefit-of the-bargain damages." (*Id*. at p. 646 [internal citation omitted].) Whether AMS's reliance on CHA's alleged promises about CHA's own performance was reasonable presents a question of fact.

CHA's argument that both causes of action are not alleged against it with sufficient specificity is also not persuasive.[2] The allegations are no longer made on information and belief, and more detail is provided in the FACC as to CHA. The allegations incorporated by reference (those not made on information and belief) also provide more details, as does the CHA-AMS contract now attached as Exhibit C to the FACC. Collectively, the court finds that

[2] The decision in *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 481, cited by CHA, does not support its argument. That decision involved a review of a motion for nonsuit granted during trial. It has nothing to say about pleading requirements. The question of whether AMS/Achkar can ultimately prove their allegations is irrelevant on a demurrer.

this new factual detail in the FACC is sufficient to support these causes of action against CHA. Less specificity is required where "defendant must necessarily possess full information concerning the facts of the controversy." (See *Committee*, *supra*, 35 Cal.3d at p. 216.) CHA possesses full information regarding its own statements and performance relating to the CHA-AMS contract.

IV. MOTION TO STRIKE PORTIONS OF THE AMS/ACHKAR FACC

A. General Standards

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437(a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc*. (2010) 191 Cal.App.4th 53, 63, citing *Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.)

A motion to strike may be brought against a portion of a cause of action that is purportedly defective—*e.g.*, because it seeks an improper remedy. (See *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680.) At the same time, as courts have observed, "we have no intention of creating a procedural 'line item veto' for the civil defendant." (*Id*. at p. 1683.)

Cross-Defendants move to strike all or portions of paragraphs 17, 28, 49, and 60 of the FACC, as well as portions of the FACC's prayer. (See March 6, 2024 Notice of Motion and Motion, pp. 2:13-6:8.)

B. Outcome

The motion to strike portions of paragraph 17, part of the general allegations, is DENIED. Cross-Defendants have failed to show that the allegations that CHA was a party to the CHA-AMS contract are irrelevant, false, or improper.

The motion to strike portions of paragraph 28, part of the first cause of action, is DENIED as MOOT, in light of the court's ruling on the demurrer as to the Church.

The motion to strike paragraph 49, part of the fourth cause of action, is DENIED as MOOT, in light of the court's ruling on the demurrer as to the Preschool.

The motion to strike paragraph 60, part of the fifth cause of action, is DENIED as MOOT, in light of the court's ruling on the demurrer as to the Preschool.

The motion to strike paragraph 8 of the FACC's prayer is DENIED as MOOT, in light of the court's ruling on the demurrer to the fourth cause of action as to the Preschool.

The motion to strike paragraph 11 of the FACC's prayer is DENIED as MOOT, in light of the court's ruling on the demurrer as to Bishoy William and the Preschool. Additionally,

Cross-Defendants have not established that there is no basis for seeking exemplary damages against Roes 1 through 10.

The court DENIES the motion to strike paragraph 30 of the FACC's prayer. (See Code Civ. Proc., § 435.5(a)(4)(b).) Having chosen not to move to strike this language when it appeared in the original cross-complaint, Cross-Defendants may not do so now.

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Calendar Line 3
Case Name: *Dana Lyn Banks v. A Tool Shed, Inc. et al.*
Case No.: 22CV409237

I. BACKGROUND

This is a dispute over the rental of landscaping and construction equipment. Plaintiff Dana Banks, who is self-represented, rented equipment from defendant A Tool Shed, Inc. ("ATS") and now sues for breach of contract and related causes of action. Banks filed her complaint on December 29, 2022, naming three defendants: ATS, Robert H. Pedersen, and Rob W. Pedersen. The complaint states five causes of action: (1) Breach of Contract; (2) "Unauthorized charges to credit card on file with A Tool Shed"; (3) Breach of the Implied Covenant of Good Faith and Fair Dealing; (4) "Unfair Debt Collection Action"; and (5) "Disparagement and Emotional Distress." Although the complaint named three defendants, all five causes of action were asserted only against ATS.

Previously, the court heard two matters in this case: (1) a combined demurrer and motion to strike portions of the complaint, filed by the individual defendants, and (2) a "Motion for Judgment and Sanctions," filed by Banks. The court sustained the demurrer to all five causes of action with 10 days' leave to amend, agreeing with defendants that the causes of action "fail[ed] to state sufficient facts against the individual defendants, Robert H. Pedersen and Rob W. Pedersen." (March 5, 2024 Order, p. 4:18-23.) The court also denied defendants' motion to strike and denied Banks' "Motion for Judgment and Sanctions." On March 7, 2024, defendants served a notice of entry of the court's March 5, 2024 order on Banks.

No amended complaint has been filed by Banks. Currently before the court are two matters: (1) Defendants' ex parte application for an order dismissing the individual defendants, and (2) Banks's noticed motion for leave to file an amended complaint and "to reconsider" the court's March 5, 2024 ruling on the demurrer. The application and motion were both filed on March 27, 2024. Banks submitted an opposition to the ex parte application on March 27, 2024. On March 28, the court informed the parties that the court would consider the ex parte application and the motion together on the noticed hearing date of July 2, 2024, given the overlapping issues.

II. REQUEST FOR JUDICIAL NOTICE

Defendants have submitted a request for judicial notice with their opposition to Banks's motion. "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307 [citing *People v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2].) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

Defendants request that the court take judicial notice of five documents pursuant to Evidence Code section 452, subdivision (d): Exhibits A-E. Exhibit A is the court's March 5, 2024 order. Exhibit B is a copy of defendants' March 27 ex parte application. Exhibit C is the

court's March 28 order deferring consideration of the ex parte application. Exhibit D is a copy of defendants' March 7 notice of entry of order. Exhibit E is a copy of a memorandum in support of a motion to compel filed by defendants on May 29, 2024.

The court GRANTS judicial notice of Exhibits A-D under Evidence Code section 452, subdivision (d). The court DENIES the request for judicial notice of Exhibit E, as it is irrelevant to the material issues before the court.

III. MOTION FOR RECONSIDERATION

A. General Standards

Code of Civil Procedure section 1008 represents the Legislature's attempt to regulate what the Supreme Court has referred to as "repetitive motions." (See *Standard Microsystems Corp. v. Winbond Electronics Corp.* (2009) 179 Cal.App.4th 868, 885 [disapproved on other grounds, *Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830].) Motions for reconsideration are regulated by Code of Civil Procedure section 1008, subdivision (a), which states that such a motion may be brought by "any party affected by" a prior order. The statute requires that any such motion be: (1) filed within 10 days after service upon the party of written notice of the entry of the order of which reconsideration is sought, (2) supported by new or different facts, circumstances or law, and (3) accompanied by an affidavit detailing the circumstances of the first motion, and the respects in which the new motion differs from it. Reconsideration cannot be granted based on an argument that the court misinterpreted the law in the prior ruling; that is not a "new" or "different" matter. (See *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500 (*Gilberd*).)

A motion for reconsideration must be accompanied by a declaration from the moving party, stating: 1) what application was made before; 2) when and before what judge the application was made; 3) what order or decision was made; and 4) what new or different facts, circumstances or law are claimed to be shown. (Code Civ. Proc. § 1008(a); *Branner v. Regents of Univ. of Calif.* (2009) 175 Cal.App.4th 1043, 1048 [motion filed without supporting affidavit invalid].)

Reconsideration is properly restricted to circumstances where a party offers the court some fact or circumstance not previously considered, and some valid reason for not offering it earlier. The burden under section 1008 "is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial." (*New York Times Co. v. Sup. Ct. (Wall St. Network, Ltd.)* (2005) 135 Cal.App.4th 206, 212-213.) A party seeking reconsideration of a prior order based on "new or different facts, circumstances or law" must provide a satisfactory explanation for failing to present the information at the first hearing—*i.e.*, they must make a showing of reasonable diligence. (See *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 689-690; *California Correctional Peace Officers Ass'n v. Virga* (2010) 181 Cal.App.4th 30, 47, fn. 15 [collecting cases].)

B. Analysis

The court DENIES Banks' motion for reconsideration, for the reasons that follow.

First, defendants' filing of a notice of entry of order on March 7, 2024 started the 10-day period in which a motion for reconsideration could be filed. Banks' motion, filed on March 27, is clearly untimely under section 1008. On its own, this is a sufficient basis to deny the motion for reconsideration. (See *Wiz Technology, Inc. v. Coopers & Lybrand LLP* (2003) 106 Cal.App.4th 1, 16-17 [affirming denial of motion for reconsideration filed one day late].)

Second, the declaration submitted by Banks does not satisfy the requirements of Code of Civil Procedure section 1008, subdivisions (a) and (b). It does not describe the prior application or order and does not clearly describe what new facts or law the court is meant to consider. Even more fundamentally, it does not describe what aspects of the court's ruling Banks wishes to change. It does not set forth any actual reasons for reconsideration. Finally, because the motion is untimely, the supporting declaration also fails to show reasonable diligence, as it does not explain why Banks's arguments—such as they are—were not contained in the briefing on the original demurrer.

Code of Civil Procedure section 1008, subdivision (d), provides that a motion that fails to comply with the requirements of the statute "may" be treated as a contempt and the moving party *may* be sanctioned under Code of Civil Procedure section 128.7. The court declines to treat Banks' motion as a contempt and DENIES defendants' request for monetary sanctions for having had to oppose the reconsideration motion.[3]

IV. MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

A. General Standards

Motions for leave to amend are directed to the discretion of the court. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading . . ." (Code Civ. Proc. § 473, subd. (a)(1).) The law generally favors amendments on the basis that cases should include all disputed matters between parties and be decided on their merits. Nevertheless, if the party seeking amendment has been dilatory and the delay has prejudiced the opposing party, the judge has discretion to deny leave to amend. (See *Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 490.) Absent other prejudice, delay alone is not considered grounds for denial. Prejudice exists where the amendment would require delaying the trial, result in the loss of critical evidence, add costs of preparation, or increase the burden of discovery, etc. (See *Magpali v. Farmers Group, Inc*. (1996) 48 Cal.App.4th 471, 486-488; See also *Melican v. Regents of the Univ. of Calif.* (2007) 151 Cal.App.4th 168, 176.) Where some prejudice is shown, the court may still allow the amendment but can impose conditions. These can include continuing the trial date (if requested by the opposing party), limiting discovery, and ordering the party seeking the amendment to pay the costs and fees incurred by the opposing party in conducting discovery and preparing for trial on a newly added claim.

While this case was filed at the end of 2022, no trial date has been set and it is still in a relatively early stage. Therefore, a request for leave to amend in and of itself would not appear to be prejudicial to defendants.

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[3] Moreover, it does not appear that defendants gave Banks at least 21 days' notice before making their request for sanctions, as required by section 128.7, subdivision (c)(1), making sanctions "as allowed by section 128.7" inappropriate.

Nevertheless, as defendants point out in their opposition, rule 3.1324 of the California Rules of Court states that a motion to amend "must," among other things, include a copy of the proposed amendment or amended pleading and be accompanied by a declaration specifying: (1) the effect of the amendment; (2) why the amendment is "necessary and proper"; (3) when the facts giving rise to the amendment were discovered; and (4) the reasons why the request for amendment was not made earlier. (See Cal. Rules of Court, rule 3.1324(a) and (b).)

Here, Banks's motion has done none of this. She does not include a copy of any proposed amendment; instead, she asks, in light of her "current health status," for the court to grant "leave of three months to continue treatment" and "time to explore the option of finding counsel." (Motion, pp. 1:25-2:5.) As defendants note, she has not provided a doctor's note or other evidence to describe or corroborate her health status—in fact, she does not explain her medical situation at all, stating only: (1) that she was on "physician-ordered, sedated bed rest during the [10 days'] leave following the Court's ruling on Defendant's [sic] demurrer," (2) that she is no longer on bed rest, and (3) that she "needs more time to recover." (Motion, p. 1:25-28.) This is simply not enough, and it does not comply with rule 3.1324.[4]

To the extent that Banks describes the nature of the amendments that she is contemplating for the complaint, she does not set forth any basis for individual liability by Robert Pedersen and Rob Pedersen. Instead, the allegations in her motion (but not in any proposed pleading) that the CEO and VP of ATS "were aware" of contracts being entered into by ATS's employees, that ATS's employees' actions were "requested and authorized by the CEO and/or VP," and that discovery "will reveal" the "culpability" of ATS's CEO and VP are all insufficient on their face. (Motion, pp. 2:15-16, 2:22-23, 3:20-21, 4:8-10.) None of these suppositions provide a basis for amending the complaint. The possibility that discovery may potentially reveal further bases for individual liability in the future does not provide a basis for amending the complaint at this time.

Finally, the fact that Banks is self-represented does not excuse her from complying with rule 3.1324. Self-represented litigants are entitled to the same, but no greater, consideration than other litigants and attorneys. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) Self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543

The court DENIES the motion for leave to file an amended complaint.

V. DEFENDANTS' EX PARTE APPLICATION

In light of the court's denial of the motions to reconsider and for leave to amend, and in light of the absence of any timely and adequate amendment to the complaint by Banks, the court GRANTS the ex parte application to dismiss the individual defendants from this case, pursuant to Code of Civil Procedure section 581, subdivision (f)(2).

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[4] In addition, Banks has had more than enough "time to explore the option of finding counsel": she filed this action more than a year and a half ago, and even if we focus solely on the demurrer proceedings of the last several months, it is awfully late for her to argue that she now needs more time than the court granted in its March 5, 2024 order. The time to have made that request would have been in her February 26, 2024 opposition to the original demurrer.

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Calendar Lines 4-5
Case Name: *Edward Charles Jenkins v. Kristina Litovchenko et al.*
Case No.: 24CV431808

This is a personal injury action in which plaintiff Edward Charles Jenkins alleges that defendant Kristina Litovchenko was driving her car while distracted and then collided with his parked car. Jenkins also alleges that Litovchenko's passenger, defendant Artem Morozov, "provided false and misleading statements to (AAA) [sic] auto claims specialist" regarding the accident "in order to escape liability." Jenkins, who is self-represented, has filed a handwritten form complaint (Judicial Council Form PLD-PI-001), but instead of using either the typical "Motor Vehicle" or "General Negligence" attachments with the form complaint, he has used "Intentional Tort" attachments to allege only "Intentional Torts" against each of the defendants.

Defendants have filed a demurrer and motion to strike the complaint. Notice is proper, but Jenkins has not filed any opposition to the demurrer and motion.

Defendants' demurrer argues that the complaint fails to state a cause of action under Code of Civil Procedure section 430.10, subdivision (e), although their supporting memorandum inexplicably describes the causes of action in the complaint as *punitive damages* causes of action rather than *intentional tort* causes of action. Their motion to strike repeats the same argument without material variation: that Jenkins has failed to support any prayer for punitive damages. Despite the odd way in which defendants have presented these issues—they should have filed a demurrer that focuses solely on the sufficiency of the intentional tort causes of action, and a motion to strike that focuses solely on the propriety of punitive damages—the court ultimately concludes that the demurrer should be sustained because the complaint fails to set forth any cognizable causes of action for "intentional tort." The allegations against Litovchenko consist solely of non-intentional torts: her distracted driving ("while texting . . . [p]laying music and taking her eyes off the road") and "reckless" driving ("ignoring the speed limit"); they do not allege any intentional tort on her part. The allegations against Morozov focus solely on his "false and misleading" statements to an insurance claims specialist after the accident had already occurred—this, too, does not sufficiently set forth a cause of action for an intentional tort against Jenkins.

Accordingly, the court SUSTAINS the demurrer to both causes of action, with 20 days' leave to amend. If Jenkins chooses to amend, he must present sufficient factual allegations regarding a cognizable intentional tort, or alternatively, he must set forth sufficient factual allegations using one of the other potentially applicable attachments (e.g., "Motor Vehicle").

Because the court finds that Jenkins has not adequately alleged any intentional tort, the court agrees with defendants that the complaint does not set forth an adequate basis for punitive damages. Nevertheless, because the court is already sustaining the demurrer to the causes of action, the court DENIES the motion to strike as moot.

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Calendar Line 9
Case Name: *California Plus Engineering, Inc. v. County of Santa Clara*
Case No.: 21CV376991

This is the earliest of five pending cases in this court involving the same construction project. Plaintiff California Plus Engineering, Inc. ("CPE") was the general contractor on the project and has sued the owner, defendant County of Santa Clara (the "County"), for payment of a portion of the $25 million contract price. After this case was filed in 2021, four subcontractors sued CPE and/or the County in four separate actions for payments on the project. (Case Nos. 22CV393704, 22CV396635, 22CV403492, and 23CV412765.)[5] CPE now moves to consolidate the five cases for all purposes, including trial. According to CPE, the four subcontractors have also stipulated to consolidation. The County, by contrast, states that it is willing to consolidate the cases "for the limited purposes of discovery and mediation," but it opposes a consolidation for trial. (Opposition, p. 2:6-8.)[6]

The court grants the motion to consolidate for all purposes, including trial. First, these cases indisputably involve common questions of law and fact, given that they arise out of the same construction project, raise overlapping issues of liability, and involve many of the same parties and witnesses. Consolidation for all purposes would serve judicial economy and would allow the parties to adjudicate their claims and defenses in a single case rather than multiple cases. Second, the cases are still in the midst of discovery, with no depositions having yet been taken, and no trial date having been set in any of the cases.

Third, the court finds the County's arguments against consolidation to be singularly weak:

- The County argues without citing any comparative evidence that the present lawsuit (No. 21CV376991) is "more complex" than the subcontractor lawsuits. Even if this were true, the County fails to explain how it would be adversely affected by combining the cases—if anything, the subcontractors should be the parties who take issue with the additional complexity caused by consolidation, but they have all stipulated to consolidation.

- The County also identifies other issues (e.g., the government claim presentation requirement) that are unique to this case. Again, the County fails to articulate how the need to adjudicate those issues would have any adverse impact on the County, as opposed to the subcontractors.

- The County argues that the resolution of its disputes with CPE will have no bearing on the subcontractors' claims against CPE and the County in their cases (Opposition, p. 5:4-7 & p. 5:15-17), but the County once again fails to cite any evidence whatsoever to support this proposition. How does the County even know that there is no overlap between the cases? The argument is entirely conclusory and appears to be lacking in foundation.

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[5] The County is a named defendant in two out of four of these subcontractor suits.
[6] The court has no idea what it means to consolidate a case "for mediation." Parties are always free to mediate multiple cases regardless of whether they are consolidated, and so this appears to be a meaningless concession.

- Finally, the County argues—again, conclusorily—that there is a "serious risk" of confusion for the trier of fact if the cases are consolidated: "the jury could easily confuse the claims and arrive at inconsistent findings." (Opposition, pp. 6:17-7:2.) This argument is unexplained and appears to sell short the abilities of both trial counsel and Santa Clara County jurors. The court is confident that competent counsel should be able to explain the relationship between the parties and the basis for each of their claims in a straightforward and comprehensible manner. Contrary to the County's counterintuitive claim, the court finds that the risk of "inconsistent findings" is vastly greater if the cases are tried separately rather than together.

For the foregoing reasons, the court GRANTS the motion and orders Case Nos. 21CV376991, 22CV393704, 22CV396635, 22CV403492, and 23CV412765 consolidated for all purposes.

Case No. 21CV376991 will be the lead case.

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