

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

Department 3

Honorable William J. Monahan, Presiding

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

DATE: 2/20/2024 TIME: 9:00 A.M.

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

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

TO APPEAR AT THE HEARING: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to **Department 3**.

https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml

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

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet).

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

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV420446	BXP West El Camino LP, a Delaware limited partnership vs Flex Logix Technologies, Inc., a Delaware corporation	Hearing: Demurrer to the Complaint by defendant Flex Logic Technologies Ctrl Click (or scroll down) on Line 1 for tentative ruling. The court will prepare the order.

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LINE 2	23CV409651	ROIC California, LLC vs Larry Nguyen et al	<p>Motion: Compel Defendant Larry Nguyen Response to Request for Production of Documents, Set Two and for Sanctions by Plaintiff RIOC California, LLC</p> <p>Ctrl Click (or scroll down) on Line 2 for tentative ruling. The court will prepare the order.</p>
LINE 3	20CV370699	Velocity Investments, LLC vs Rosalia Martinez	<p>Motion: Change of Venue by Plaintiff Velocity Investments LLC</p> <p>Good cause appearing, plaintiff Velocity Investments, LLC (“Plaintiff”)’s motion to transfer venue of this action from the Superior Court of the State of California, County of Santa Clara, San Jose Court to the Superior Court of the State of California, County of Stanislaus, City Towers Courthouse pursuant to Code of Civil Procedure section 397(a) and (c) is GRANTED. Plaintiff shall promptly pay any costs requested by the court clerk to transfer venue.</p> <p>Moving party to prepare order.</p>

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LINE 4	22CV398495	Futu Clearing Inc. et al vs YiQun Lu	<p>Hearing: Petition. Motion to Confirm Arbitration Award by Petitioners Futu Clearing Inc and Wing Kei Chan</p> <p>APPEAR.</p> <p>The proof of service ("POS") filed 7/27/2022 of the summons and petition were served by substituted service on the respondent YIQUN LU at 45280 S. Grimmer Blvd., Fremont, CA 94539.</p> <p>But the POS of the Amended Notice of this hearing was served by mail and overnight courier (Federal Express) to a different (first name) and different address: Yiquan Lu 5805 W Harmon Avenue, #256 Las Vegas, NV 89013</p> <p>The Motion to Confirm Arbitration Award is ordered OFF-CALENDAR.</p>
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LINE 5	22CV399644	PATRICIA KLUSENDORF vs PETER BOVENBERG et al	<p>Hearing: Petition to Compel Binding Arbitration by Defendants/Petitioners Peter Bovenberg and MBO Performance with Plaintiff/Respondent Patricia Mae Klusendorf, individually and as Trustee of the Patricia Mae Klusendorf Living Trust pursuant to the "Morgan Hill Ranch Joint Venture Agreement" dated October 1, 2017, which contained an arbitration clause in ARTICLE XII, "Resolution of Disputes," paragraph 12.1, pursuant to the provisions of Code of Civil Procedure ("CCP") sections 1281 and 1281.2 and to stay proceedings in this action pending the outcome of the arbitration..</p> <p>Unopposed and GRANTED. Moving parties to prepare order.</p>
LINE 6	23CV416910	ANGELA TEIGEN vs THOR TEIGEN	<p>Hearing: Other.</p> <p>Good cause appearing, this motion for attorney's fees by defendant Thor B. Tiegan ("Defendant") for the court to order plaintiff Angela A. Teigen ("Plaintiff") to pay \$3,400 in attorney's fees incurred in connection with the anti-SLAPP motion that was filed on July 14, 2023, pursuant to Code of Procedure ("CCP") section 425.16(c) on the grounds that Defendant's anti-SLAPP motion was granted [by order filed] on October 19, 2023 is unopposed and GRANTED.</p> <p>Moving party to prepare order.</p>
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			

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LINE 12			
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Calendar Line 1

Case Name: *BXP West El Camino LP v. Flex Logix Technologies, Inc.*

Case No.: 23-CV-420446

Demurrer to the Complaint by Defendant Flex Logix Technologies, Inc.

Factual and Procedural Background

This is an action for breach of an office lease by plaintiff BXP West El Camino LP (“BXP”) against defendant Flex Logix Technologies, Inc. (“Flex Logix”).

According to the complaint, on May 8, 2021, BXP and Flex Logix entered into an office lease (“Lease”) where Flex Logix leased premises commonly known as Suite 700 (“Premises”) of the building located at 2440 West El Camino Real in Mountain View, California. (Complaint at ¶ 5.) The Lease required Flex Logix, among other things, to pay rent and other charges (collectively, “Rent”) when due. (Id. at ¶ 6.) Despite this requirement, Flex Logix failed to pay Rent when due under the terms of the Lease. (Id. at ¶ 7.)

On June 8, 2023, BXP served Flex Logix with a 5-day Notice of Default (“First 5-Day Notice”) under the terms of the Lease for failing to pay Rent for June 2023. (Complaint at ¶ 9.) The First 5-Day Notice informed Flex Logix that it was in breach of the Lease and demanded past-due Rent in the amount of \$143,478.96. (Ibid.) Flex Logix however failed to pay the outstanding Rent. (Id. at ¶ 10.)

On June 23, 2023, BXP drew upon Flex Logix’s Letter of Credit in the amount of \$143,478.96 to offset the past-due Rent. (Complaint at ¶ 10.) BXP concurrently served Flex Logix with written notice of the security draw and informed Flex Logix that it had five days to replenish its Letter of Credit under the terms of the Lease. (Ibid.) Flex Logix did not meet its contractual obligation to replenish its Letter of Credit within five days. (Id. at ¶ 11.)

On June 29, 2023, BXP served Flex Logix with written notice of its failure to replenish the Letter of Credit and demanded that it replenish the amount of \$143,478.96 within three business days, or be in default of the Lease. (Complaint at ¶ 11.) Flex Logix however did not replenish its Letter of Credit and thus defaulted under the Lease. (Id. at ¶ 12.)

On July 7, 2023, BXP served Flex Logix with a written Notice of Default and demanded the default be cured immediately. (Complaint at ¶ 12.) On the same day, BXP served Flex Logix with another 5-Day Notice (“Second 5-Day Notice”) under the terms of the Lease for failing to pay Rent in July 2023. (Id. at ¶ 13.) The Second 5-Day Notice informed Flex Logix that it was in breach of the Lease and demanded past-due Rent in the amount of \$156,263.84. (Ibid.)

On July 19, 2023, BXP served Flex Logix with a Request for Financial Statements under the terms of the Lease. (Complaint at ¶ 14.) To date, Flex Logix has not replenished its Letter of Credit, paid the past-due amount of Rent for the month of July, or provided Financial Statements as required by the terms of the Lease. (Id. at ¶ 15.)

On August 2, 2023, BXP filed a complaint against Flex Logix for breach of the Lease.

On November 13, 2023, Flex Logix filed the motion presently before the court, a demurrer to the complaint. BXP filed written opposition. Flex Logix filed reply papers.

Demurrer to the Complaint

Flex Logix argues the complaint is subject to demurrer for failure to state a claim and uncertainty. (See Code Civ. Proc., § 430.10, subds. (e), (f).)

Legal Standard

“In reviewing the sufficiency of a complaint against a general demurer, we are guided by long settled rules. ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed.’ ” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213–214.)

“The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. The court does not, however, assume the truth of contentions, deductions or conclusions of law. ... [I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment.” (*Gregory v. Albertson’s, Inc.* (2002) 104 Cal.App.4th 845, 850.)

Analysis

Failure to State a Claim

“ ‘The absence of any allegation essential to a cause of action renders it vulnerable to a general demurrer. A ruling on a general demurrer is thus a method of deciding the merits of the cause of action on assumed facts without a trial.’ [Citation.] ‘Conversely, a general demurrer will be overruled if the complaint contains allegations of every fact essential to the statement of a cause of action, regardless of mistaken theory or imperfections of form that make it subject to special demurrer.’ [Citation.]” (*Morris v. JPMorgan Chase Bank, N.A.* (2022) 78 Cal.App.5th 279, 291-292 (*Morris*).)

“A complaint, with certain exceptions, need only contain a ‘statement of the facts constituting the cause of action, in ordinary and concise language’ [citation] and will be upheld ‘ “so long as [it] gives notice of the issues sufficient to enable preparation of a defense.” ’ [Citation.] ‘[T]o withstand a demurrer, a complaint must allege ultimate facts, not evidentiary facts or conclusions of law.’ [Citation.]” (*Morris, supra*, 78 Cal.App.5th at p. 292.)

As this is a complaint for breach of a lease, the court construes this action as one for breach of contract. (See *Stone v. Los Angeles* (1931) 114 Cal.App. 192, 200 [“a lease is a contract for the possession and profits of land on one side, and a recompense of rent, or other income, on the other”].)

“To establish a cause of action for breach of contract, the plaintiff must plead and prove (1) the existence of the contract, (2) the plaintiff’s performance or excuse for nonperformance, (3) the defendant’s breach, and (4) resulting damages to the plaintiff.” (*Maxwell v. Dolezal* (2014) 231 Cal.App.4th 93, 97-98.)

Flex Logix argues the complaint fails to state a valid claim as BXP fails to allege any terms of the parties’ Lease in the operative pleading. (See Demurrer at pp. 4:26-5:28.)

“A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect. [Citation.] In order to plead a contract by its legal effect, plaintiff must ‘allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions.’ [Citation.]” (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489.)

Here, the parties entered into a written contract in the form of the Lease which, as conceded by the moving papers (see Demurrer at p. 5:11), is attached to the complaint. (See Complaint at Ex. A.) Thus, as the Lease is attached to the operative pleading, BXP is not required to specifically plead the contract terms in the complaint. Therefore, this argument is not sustainable on demurrer.

In addition, Flex Logix contends there is no breach of contract claim with respect to the Letter of Credit, Notice, and Financial Statements. (See Demurrer at pp. 6:4-7:10.) But, even if the court were to accept this contention, there remains, at a minimum, the allegation that Flex Logix breached the Lease by failing to pay Rent for July 2023. (See Complaint at ¶¶ 13, 15, 18; Ex. A [Articles 3-4].) Such allegations are sufficient to state a claim for breach of contract and overcome a pleading challenge on general demurrer. (See *First Interstate Bank v. Cal.* (1987) 197 Cal.App.3d 627, 631 [“A complaint will withstand a general demurrer if, liberally construed, it states a cause of action on any theory.”]; see also *Wittenberg v. Bornstein* (2020) 51 Cal.App.5th 556, 566 [“The rationale for liberally construing pleadings is thus rooted in the policy allowing a plaintiff to maintain a lawsuit if the plaintiff has, on any theory, properly pleaded facts indicating a valid cause of action.”].)

Finally, Flex Logix asserts there are no allegations showing what amounts are currently due and owing. (See Demurrer at pp. 5:28-6:1.) This assertion however is not persuasive as the complaint alleges, at least in part, that Flex Logix breached the Lease in July 2023 by failing to pay past-due Rent in the amount of \$156,263.84. (See Complaint at ¶¶ 13, 18.)

Accordingly, the demurrer to the complaint on the ground that it fails to state a claim is **OVERRULED**.

Uncertainty

“ “[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is incomprehensible that a defendant cannot reasonably respond.” ’ [Citations.] ‘ “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.” ’ [Citations.]” (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695.)

“[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

Here, the special demurrer for uncertainty essentially restates arguments the court has considered and rejected on general demurrer for reasons stated above. Nor does the court find the complaint to be so uncertain or ambiguous to support a demurrer for uncertainty. And, to the extent there is any such uncertainty, the parties can clarify those ambiguities utilizing civil discovery procedures.

Consequently, the demurrer to the complaint on the ground of uncertainty is **OVERRULED**.

Disposition

The demurrer to the complaint is **OVERRULED** in its entirety.

The court will prepare the Order.

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Calendar Line 2

Case Name: ROIC California, LLC vs Larry Nguyen et al

Case No.: 23CV409651

Good cause appearing, plaintiff RIOC California, LLC (“Plaintiff”)’s motion for an order compelling defendant Larry Nguyen (“Defendant”) to provide responses to Plaintiff’s Request for Production of Documents (“RPD”) set two, is GRANTED. Defendant shall provide code-compliant verified responses, without objections, to Plaintiff’s RPD, set two, within 20 days of this order.

Plaintiff’s request for monetary sanctions is GRANTED IN PART. It is granted against Defendant and his counsel Alex Park (jointly and severally) in the reasonable amount of \$2,400. (This includes 3.5 hours at the rate of \$650 per hour, plus \$60 filing fee, for total of \$2,400.) They shall pay this amount in full to Plaintiff’s counsel within 20 days of this order.

I. Request for Production of Documents

Legal Standard

A party served with inspection demands must serve a response within 30 days of service. (CCP § 2031.260.) Failure to serve a response waives all objections to the inspection demands and entitles the demanding party to obtain an order compelling responses. (CCP § 2031.300(a)-(b).)

A motion to compel a response under CCP § 2031.300(b) -- unlike a motion to compel *further* response -- does not require a declaration that the parties or their attorneys have met and conferred to attempt to resolve the issue informally. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.)

Discussion

Here, Defendant does not dispute Plaintiff’s claim that it completely failed to produce a response to Plaintiff’s November 9, 2023, RPD, set two, instead arguing that a “meet and confer” requirement was not met. (Nguyen Opp. at ¶ 6.) As the *Sinaiko* court emphasized, there is no such requirement for the motion here. Furthermore, as set forth in Plaintiff’s reply papers, Plaintiff has tried to meet and confer, but Defendant has still not provided any response to RPD, set two. As such, Plaintiff’s motion to compel responses to RPD set two is GRANTED.

II. Sanctions

Legal Standard

A party or attorney may be sanctioned for misusing the discovery process. (§ 2023.030.) Misuse of the discovery process includes using a discovery method “in a manner that does not comply with its specified procedures.” (CCP § 2023.010(b).)

To avoid sanctions, an unsuccessful opponent to a motion to compel must show that there was a substantial justification for their failure to comply with the discovery process. (*Foothill Properties v. Lyon/Copley Corona Associates* (1996) 46 Cal.App.4th 1542, 1557.) Substantial justification is a justification that is “clearly reasonable” because it is “well grounded in both law and fact.” (*Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1434.)

Discussion

Here, Defendant plainly did not comply with the relevant Code procedures regarding inspection demands, which constitutes a misuse of the discovery process. Defendant (and his counsel) have not put forth a “clearly reasonable” substantial justification for that misuse. Thus, Plaintiff’s request for sanctions is GRANTED IN PART. It is granted against Defendant

and his counsel Alex Park (jointly and severally) in the reasonable amount of \$2,400. (This includes 3.5 hours at the rate of \$650 per hour, plus \$60 filing fee, for total of \$2,400.) They shall pay this amount in full to Plaintiff's counsel within 20 days of this order.

The court will prepare the order.

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