SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 1, Honorable Theodore C. Zayner Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2310

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department19@scscourt.org. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

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LAW AND MOTION TENTATIVE RULINGS
DATE: FEBRUARY 14, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV399660	Cisneros v. Therma LLC (Class Action/PAGA)	See Line 1 for tentative ruling.
LINE 2	19CV355879	Guzik Technical Enterprises v. Keysight Technologies, Inc.	See Line 2 for tentative ruling.
LINE 3	20CV368978	Acosta v. Larson Steel, Inc.	See Line 3 for tentative ruling.
LINE 4	21CV388049	Magat v. HRB Resources LLC, et al.	Continued per Stipulation and Order.
LINE 5	20CV373306	Pacheco v. Goodwill of Silicon Valley, et al. (Class Action)	See Line 5 for tentative ruling.
LINE 6			
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			

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LAW AND MOTION TENTATIVE RULINGS

LINE 12			
LINE 13			

Calendar Line 1

Case Name: Cisneros v. Therma LLC (Class Action/PAGA)
Case No.: 22CV399660

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 14, 2024, at 9:00 a.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This is a putative class and representative action arising out of various alleged wage and hour violations. The operative First Amended Class and PAGA Representative Action Complaint ("FAC"), filed on May 4, 2023, sets forth causes of action for: (1) Failure to Pay All Minimum Wages; (2) Failure to Pay All Overtime Wages; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Violations; (6) Failure to Timely Pay Wages During Employment and Upon Termination; (7) Unfair Competition; and (8) PAGA Penalties.

The parties have reached a settlement. Plaintiff Anicia Cisneros ("Plaintiff") moved for preliminary approval of the settlement.

On August 9, 2023, the court granted preliminary approval of the settlement subject to approval of the amended class notice. Plaintiff submitted a revised class notice to the court on August 10, 2023. The court approved the amended class notice on August 28, 2023.

Plaintiff now moves for final approval of the settlement. The motion is unopposed.

II. LEGAL STANDARD

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement."

(*Wershba*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

III. DISCUSSION

> The case has been settled on behalf of the following class:
> [A]ll current and former non-exempt employees who worked for any Defendant within the State of California at any time during the Class Period.

The defendants in this action, and as defined in the settlement agreement, are Therma LLC and Legence Payroll Solutions LLC (dba Therma Solutions LLC) (collectively, "Defendants"). The Class Period is defined as June 28, 2018 through the May 1, 2023. The class also contains a subset of PAGA Members that are defined as "all current and former non-exempt employees who worked for any Defendant within the State of California at any time during the PAGA Period." The PAGA Period is defined as June 2, 2021 through May 1, 2023.

As discussed in connection with preliminary approval, Defendants will pay a gross, non-reversionary amount of $2,980,000. Under the terms of the settlement agreement, the gross settlement amount includes attorney fees of $993,333.33 (1/3 of the gross settlement

amount), litigation costs not to exceed $15,000, a service award for the class representative not to exceed $10,000, settlement administration costs not to exceed $25,000, and a PAGA allocation of $50,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Members).

The net settlement amount will be distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. Similarly, PAGA Members will receive a pro rata share of the 25 percent portion of the PAGA payment allocated to them based on the number of workweeks worked during the PAGA Period.

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to Legal Aid at Work.

In exchange for the settlement, class members agree to release all claims, actions, or causes of action alleged, or that reasonably could have been alleged, against Defendants arising out of the facts, circumstances, and primary rights at issue in the FAC during the Class Period. PAGA Members agree to release all claims, actions, or causes of action for PAGA Penalties that were alleged, or reasonably could have been alleged, against Defendants during the PAGA Period arising out of the facts, circumstances, and primary rights at issue in the FAC and the LWDA notices. Plaintiff further agrees to a general release.

On September 25, 2023, the settlement administrator mailed notice packets to 2,675 class members. (Declaration of Laura Singh (On Behalf of CPT Group, Inc.) With Respect to Settlement Notification and Administration ("Singh Dec."), ¶¶ 5-7.) Ultimately, 21 notice packets were deemed undeliverable. (*Id*. at ¶ 9.) As of January 12, 2024, there were no objections and eight requests for exclusion. (*Id*. at ¶¶ 10-11.) Plaintiff is directed to provide the court with the names of the class members who have requested exclusion from the settlement for inclusion in the final order.

The highest individual settlement share to be paid is approximately $2,001.03 and the average individual settlement share to be paid is approximately $704.72. (Singh Dec., ¶ 14.) The court previously found the proposed settlement is fair and the court continues to make that finding for purposes of final approval.

Plaintiff requests an incentive award of $10,000 for the class representative. The court approved the incentive award in connection with preliminary approval of the settlement and continues to do so for purposes of final approval.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel requests attorney fees of $993,333.33 (1/3 of the gross settlement fund). Plaintiff's counsel provides evidence demonstrating a total lodestar of $324,387.50 (based on fees actually incurred).[1] (Declaration of Mehrdad Bokhour in Support of Plaintiff's Motion for Final Approval of Class Action Settlement ("Bokhour Dec."), ¶¶ 21-22.)

This results in a multiplier of 3.06. While this multiplier is on the high side, the attorney fees requested are reasonable as a percentage of the common fund. Thus, the attorney fees are approved.

Plaintiff's counsel requests litigation costs in the amount of $22,803.25 and provides evidence of incurred costs in that amount. (Bokhour Dec., ¶¶ 20, 26.) However, the settlement agreement only authorizes payment of litigation costs up to the amount of $15,000. Therefore, the court awards litigation costs in the lesser amount of $15,000.

The settlement administration costs of $18,750 are also approved. (Singh Dec., ¶ 15.)

Accordingly, the motion for final approval of the class action settlement is GRANTED. Plaintiff shall provide the court with the names of the class members who have requested exclusion from the settlement for inclusion in the final order.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

The court will set a compliance hearing for October16, 2024, at 2:30 p.m. in Department 19. At least 10 court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying

[1] Plaintiff's counsel also provides an estimate of fees that may be incurred in connection with future work on the case. However, the court does not base its lodestar calculation on anticipated fees.

distributions made as ordered herein, the numbers and value of any uncashed checks, amounts remitted to Defendant, the status of any unresolved issues, and any other matters appropriate to bring to the court's attention. Counsel may appear at the compliance hearing remotely.

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Calendar Line 2

Case Name: Guzik Technical Enterprises v. Keysight Technologies, Inc.
Case No.: 19CV355879

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 14, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This case arises out of defendant Keysight Technologies' ("Defendant") alleged tortious scheme to defraud and steal valuable business opportunities from plaintiff Guzik Technical Enterprises ("Plaintiff"). Plaintiff's original Complaint, filed on September 30, 2019, set forth the following causes of action: (1) Breach of Contract; (2) Breach of the Implied Covenant of Good Faith and Fair Dealing; (3) Intentional Misrepresentation; (4) Promise Without Intent to Perform; (5) Fraudulent Omission; (6) Breach of Fiduciary Duty; (7) Quasi-Contract Based on Unjust Enrichment; (8) Violation of California Bus. & Prof. Code § 17200; (9) Intentional Interference with Prospective Economic Advantage; (10) Trade Secret Misappropriation – Cal Civ. Code, § 3426, et seq.; (11) Violation of the Cartwright Act – Cal. Bus. & Prof. Code, § 16700, et seq.; and (12) Promissory Estoppel.

On August 3, 2020, Plaintiff served Defendant with its original Trade Secret Disclosure, which identified nine trade secrets.

Defendant demurred to the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, eleventh, and twelfth causes of action on the grounds that they did not state facts sufficient to constitute a cause of action. On September 24, 2020, the court overruled the demurrer as to the first cause of action and sustained the demurrer with leave to amend as to all other causes of action.

The First Amended Complaint ("FAC"), filed on October 14, 2020, set forth the following causes of action: (1) Breach of Contract; (2) Breach of the Implied Covenant of Good Faith and Fair Dealing; (3) Fraud – Intentional Misrepresentation; (4) Fraud – Promise Without Intent to Perform; (5) Breach of Fiduciary Duty; (6) Fraud – Fraudulent Omission; (7) Trade Secret Misappropriation – Cal Civ. Code, § 3426, et seq.; (8) Violation of the

Cartwright Act – Cal. Bus. & Prof. Code, § 16700, et seq.; (9) Promissory Estoppel; (10) Violation of California Bus. & Prof. Code, § 17200, et seq.; (11) Intentional Interference with Prospective Economic Advantage; and (12) Quasi-Contract Based on Unjust Enrichment.

On January 31, 2021, Plaintiff served Defendant with its First Amended Trade Secret Disclosure, which identified eighth trade secrets (some of which have numerous sub-parts).

Defendant demurred to the first, second, third, fourth, fifth, sixth, eighth, ninth, tenth, eleventh, and twelfth causes of action in the FAC on the grounds that they did not state facts sufficient to constitute a cause of action. On February 19, 2021, the court overruled the demurrer as to the first, second, third, fourth, fifth, sixth, ninth, tenth, and twelfth causes of action, and sustained the demurrer with leave to amend as to the eighth, and eleventh causes of action.

The Second Amended Complaint ("SAC"), filed on March 11, 2021, set forth the following causes of action: (1) Breach of Contract; (2) Breach of the Implied Covenant of Good Faith and Fair Dealing; (3) Fraud – Intentional Misrepresentation; (4) Fraud – Promise Without Intent to Perform; (5) Breach of Fiduciary Duty; (6) Fraud – Fraudulent Omission; (7) Trade Secret Misappropriation – Cal Civ. Code, § 3426, et seq.; (8) Violation of the Cartwright Act – Cal. Bus. & Prof. Code, § 16700, et seq.; (9) Promissory Estoppel; (10) Violation of California Bus. & Prof. Code, § 17200, et seq.; (11) Intentional Interference with Prospective Economic Advantage; and (12) Quasi-Contract Based on Unjust Enrichment.

On June 17, 2021, the court entered the Order Re: Statement of Decision Granting Guzik Technical Enterprises' Motion to Compel Trade Secret Discovery, overruling Defendant's objections to Plaintiff's First Amended Trade Secret Disclosure.

Defendant demurred to the eighth and eleventh causes of action in the SAC on the grounds that they did not state facts sufficient to constitute a cause of action. On June 24, 2021, the court overruled the demurrer as to the eighth cause of action and sustained the demurrer without leave to amend as to the eleventh cause of action.

On June 13, 2023, the court entered the Stipulation and Order Regarding Amended Pleadings, granting the parties leave to amend their pleadings.

On June 14, 2023, Plaintiff filed the operative Third Amended Complaint ("TAC"), which sets forth the following causes of action: (1) Breach of Contract; (2) Breach of the Implied Covenant of Good Faith and Fair Dealing; (3) Fraud – Intentional Misrepresentation; (4) Fraud – Promise Without Intent to Perform; (5) Breach of Fiduciary Duty; (6) Fraud – Fraudulent Omission; (7) Trade Secret Misappropriation – Cal Civ. Code, § 3426, et seq.; (8) Violation of the Cartwright Act – Cal. Bus. & Prof. Code, § 16700, et seq.; (9) Promissory Estoppel; (10) Violation of California Bus. & Prof. Code, § 17200, et seq.; (11) Intentional Interference with Prospective Economic Advantage; and (12) Quasi-Contract Based on Unjust Enrichment.

On June 15, 2023, Plaintiff served Defendant with a Second Amended Trade Secret Disclosure, which purported to add three new trade secrets (Nos. 9-11) and twelve exhibits (Nos. 28-40).

The parties participated in an Informal Discovery Conference on July 17, 2023, in an attempt to resolve their disagreement regarding whether Plaintiff can unilaterally amend the First Amended Trade Secret Disclosure. The parties were unable to resolve their dispute.

On October 10, 2023, the court granted Plaintiff's motion for an order granting Plaintiff leave to amend its trade secret disclosure so that the Second Amended Trade Secret Disclosure can become operative.

On December 21, 2023, Plaintiff dismissed the seventh cause of action of the TAC with prejudice.

Now before the court are: (1) Defendant's motion to seal documents filed in connection with its motion for summary adjudication; (2) Plaintiff's motion to seal documents filed in connection with Defendant's motion for summary adjudication; and (3) Defendant's motion for summary adjudication. Plaintiff opposes the motion for summary adjudication. The court notes that as of 8:00 a.m. on February 13, 2024, its online case management system did not reflect that any reply papers had been filed in support of the motion for summary adjudication.

Filings in reply as well as plaintiff's objections to same or to portions or the contents thereof have now been processed into the electronic case management system, with filing dates of February 9 and February 13, respectively. As plaintiff has clearly received and had an

opportunity to review the reply filings, per the supplemental filings today by the plaintiff, the court has now reviewed and considered all of these filings. These filings have not changed the court's preliminary conclusions and tentative rulings, and the comments and conclusions of the court as to these filings are summarized and inserted below at the beginning of part III.C. "Discussion" to preserve the formatting of the tentative ruling the court had already prepared before it had the opportunity to review the filings and post its tentative rulings.

II. MOTIONS TO SEAL

A. Legal Standard

"Unless confidentiality is required by law, court records are presumed to be open." (Cal. Rules of Court, rule 2.550(c).) "A record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties." (Cal. Rules of Court, rule 2.551(a).) The court may order that a record be filed under seal only if it expressly finds facts that establish:

1. There exists an overriding interest that overcomes the right of public access to the record;
2. The overriding interest supports sealing the record;
3. A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
4. The proposed sealing is narrowly tailored; and
5. No less restrictive means exist to achieve the overriding interest.

(Cal. Rules of Court, rule 2.550(d).)

A party moving to seal a record must file a memorandum and a declaration containing facts sufficient to justify the sealing. (Cal. Rules of Court, rule 2.551(b)(1).) A declaration supporting a motion to seal should be specific, not conclusory, as to the facts supporting the overriding interest. If the court finds that the supporting declarations are conclusory or otherwise unpersuasive, it may conclude that the moving party has failed to demonstrate an overriding interest that overcomes the right of public access. (See *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 305.)

Further, where some material within a document warrants sealing but other material does not, the document should be edited or redacted if possible, to accommodate the moving

party's overriding interest and the strong presumption in favor of public access. (See Cal. Rules of Court, rule 2.550(e)(1)(B); see also *In re Providian Credit Card Cases*, *supra,* 96 Cal.App.4th at p. 309.) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*In re Providian Credit Card Cases*, *supra,* 96 Cal.App.4th at p. 309.)

B. Defendant's Motion to Seal Portions of Motion for Summary Adjudication

Defendant moves to seal portions of its motion for summary adjudication. Specifically, Defendant seeks an order sealing Exhibit 30 to its Evidence in Support of Motion for Summary Adjudication. Defendant asserts that sealing is warranted because the document is an internal presentation that includes confidential business information, such as company strategy, product roadmaps, technical information, financial information, and target customers. Defendant contends that disclosure of the document would be likely to harm its competitive standing by providing its competitors with sensitive business information.

In support of its motion, Defendant provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Nancy Trethewey in Support of Defendant Keysight Technologies, Inc.'s Motion to Seal Portion of its Motion for Summary Adjudication, ¶¶ 3-5.)

Information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party. (*Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1286 (*Universal*).) Thus, as a general matter, the document appears to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential and private information disclosed in the document.

Accordingly, the motion to seal is GRANTED.

C. Plaintiff's Motion to Seal Portions of Motion for Summary Adjudication

Plaintiff moves to seal portions of Defendant's motion for summary adjudication. Specifically, Plaintiff seeks an order sealing Exhibit A to the Declaration of Phil Lorch

("Lorch") and Exhibit 14 to Defendant's Evidence in Support of Motion for Summary Adjudication. Plaintiff asserts that sealing is warranted because the documents contain its confidential and competitively sensitive business information. Exhibit A contains Plaintiff's information that Lorch learned pursuant to a non-disclosure agreement between the parties regarding Plaintiff's confidential bill of material costs for Plaintiff's 6000 and 7000-series digitizer products. Exhibit 14 contains Plaintiff's estimated and actual product cost estimates and bill of materials costing information for Plaintiff's 6000 and 7000-series digitizers.

In support of its motion, Plaintiff provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Edmond Yip in Support of Plaintiff Guzik Technical Enterprises' Motion to Seal Evidence Lodged in Support of Defendant Keysight Technologies, Inc.'s Motion for Summary Adjudication, ¶¶ 3-7.)

Information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party. (*Universal, supra,* 110 Cal.App.4th at p. 1286.) Thus, as a general matter, the documents appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential and private information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

III. MOTION FOR SUMMARY AJDUDICATION

Defendant moves for summary adjudication of the first through sixth, eighth, ninth, and twelfth causes of action of the TAC pursuant to Code of Civil Procedure section 437c, subdivision (f).

A. Evidentiary Objections

The court declines to rule on Plaintiff's objections to evidence submitted in support of Defendant's motion for summary adjudication as the objections are not material to the disposition of the motion. (See Code Civ. Proc., § 437c, subd. (q) ["In granting or denying a

motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion."].)

B. Legal Standard

"A motion for summary adjudication … shall proceed in all procedural respects as a motion for summary judgment." (Code Civ. Proc., § 437c, subd. (f)(2).) The pleadings limit the issues presented for summary adjudication and such a motion cannot be granted or denied on issues not raised by the pleadings. (*Nieto v. Blue Shield of Calif. Life & Health Ins.* (2010) 181 Cal.App.4th 60, 73; *Bostrom v. County of San Bernardino* (1995) 35 Cal.App.4th 1654, 1663-1664.) "A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs." (Code Civ. Proc., § 437c, subd. (f)(1).) "A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f)(1).)

A defendant seeking summary adjudication "must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action. … The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co*. (2002) 98 Cal.App.4th 66, 72; see Code Civ. Proc., § 437c, subd. (p)(2).)

"A triable issue of material fact exists ' 'if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.' [Citation.] Thus, a party 'cannot avoid summary [adjudication] by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact. [Citation.]' [Citation.]' " (*California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th 625, 631.)

For purposes of establishing their respective burdens, the parties involved in a motion for summary adjudication must present admissible evidence. (See *Saporta v. Barbagelata* (1963) 220 Cal.App.2d 463, 468.) The motion may not be granted by the court based on inferences reasonably deducible from the papers submitted, if such inferences are contradicted by other inferences which raise a triable issue of fact. (*Hepp v. Lockheed-California Co.* (1978) 86 Cal.App.3d 714, 717-718 (*Hepp*).) Additionally, in ruling on the motion, a court cannot weigh said evidence or deny summary adjudication on the ground that any particular evidence lacks credibility. (See *Melorich Builders v. Superior Court* (1984) 160 Cal.App.3d 931, 935; see also *Lerner v. Superior Court* (1977) 70 Cal.App.3d 656, 660.) As summary adjudication "is a drastic remedy eliminating trial," the court must liberally construe evidence in support of the party opposing summary adjudication and resolve all doubts concerning the evidence in favor of that party. (See *Dore v. Arnold Worldwide, Inc*. (2006) 39 Cal.4th 384, 389; see also *Hepp, supra*, 86 Cal.App.3d at p. 717.)

C. Discussion

As indicated above, the court first notes its thoughts and tentative conclusions following its review of the additional filings that had not been available in the court's electronic system when the court initially prepared its tentative ruling on the pending motions. The court regrets the unexpected delay in processing these filings, which is not the fault of the parties.

First, Defendant has filed a motion to seal portions of its reply papers—specifically, Exhibit 120 to its Evidence in Support of Reply and portions of its Response to Plaintiff's Separate Statement of Additional Material Facts. The motion generally appears to comply with the requirements for sealing, as have been discussed more fully regarding the other motions to seal. The court will also grant this motion to seal.

Second, as Plaintiff persuasively argues, Defendant's evidentiary objections do not comply with California Rules of Court, rule 3.1354. Rather than submit two separate documents as required by the rule—one setting forth the objections and another setting forth a

proposed order—Defendant submitted a single packet of objections signed by counsel, with blanks apparently for the court to indicate its rulings, but with no place for the court to sign. (See Cal. Rules of Ct., rule 3.1354(b) [a party must provide written objections that comply with one of the formats described in the rule] (c) [a party must provide a proposed order that complies with one of the formats described in the rule].) This hybrid document does not comply with California Rule of Court, rule 3.1354.

Because Defendant's evidentiary objections do not comply with the California Rules of Court, the court is not required to rule on the objections. (See *Vineyard Spring Estates v. Superior Court* (2004) 120 Cal.App.4th 633, 642 [trial courts only have duty to rule on evidentiary objections presented in proper format]; see also *Hodjat v. State Farm Mut. Auto. Ins. Co*. (2012) 211 Cal.App.4th 1, 8 [trial court is not required to rule on objections that do not comply with California Rules of Court, rule 3.1354 and is not required to give objecting party a second chance at filing properly formatted papers].) Consequently, the court declines to rule on Defendant's objections.

Third, Defendant filed an Errata Regarding Evidence in Support of Motion for Summary Adjudication, which includes evidence that was missing from, or not addressed in, its moving papers. In addition, Defendant submits 11 new exhibits in connection with its reply, including deposition testimony from four new witnesses. In its reply, Defendant does not provide any explanation for why it did not include this evidence with its moving papers. As Defendant does not present a good reason for its failure to offer this evidence with its moving papers, the court declines to consider this new evidence offered for the first time in reply. (See *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal. App. 4th 308, 316 [consideration of evidence offered for the first time in a reply violates the non-moving party's right to know "what issues it was to meet in order to oppose the motion. … [D]ue process requires a party be fully advised of the issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail."].)

Fourth, defendant's reply addresses arguments pertaining to the statute of limitations defense. Defendant contends that the defense is not waived because it raised the statute of limitations in its demurrers to the FAC and the SAC. But in the demurrer to the SAC, the defense was raised only with respect to the eighth cause of action for violation of the Cartwright Act. In the demurrer to the FAC, the defense was raised only with respect to the eighth cause of action for violation of the Cartwright Act and the ninth cause of action for promissory estoppel. Plaintiff argues, the court's tentative ruling concludes, that the court found the defense waived as to the first and ninth causes of action. Thus, Plaintiff's waiver argument is still well-taken with respect to the first cause of action. With respect to the ninth cause of action, it appears that Defendant has not waived the defense. However, as the court's tentative ruling notes, Defendant has not met its initial burden as to the defense because it is not clear from the copies of the 2014 OEM Purchase Agreement and written extensions that those agreements are replacements of the 2007 OEM Purchase Agreement, rather than renewed versions.

1. First Cause of Action

Defendant moves for summary adjudication of the first cause of action to the extent the claim is predicated on (1) its alleged breach of the 2016 Manufacturing Agreement to market and sell Plaintiff's ADC6000 digitizer (code-named Torpedo) and (2) its allege breach of an oral or implied-in-fact agreement to market and sell Plaintiff's ADC7000 digitizer (code-named Hero).[2]

a. 2016 Manufacturing Agreement

Defendant argues that it is entitled to summary adjudication of the first cause of action to the extent the claim is predicated on its alleged breach of the 2016 Manufacturing Agreement because the undisputed material facts demonstrate that it complied with its obligations under the contract. Defendant notes that it allegedly breached the 2016 Manufacturing Agreement by "failing to use reasonable efforts to market and sell" Torpedo.

[2] Defendant does not move for summary adjudication of the first cause of action to the extent it is predicated on its alleged breach of confidentiality agreements. Defendant's decision not to challenge the first cause of action to the extent it is predicated on its alleged breach of confidentiality agreements does not preclude summary adjudication of the other bases for the claim as the court previously determined in connection with Defendant's demurrer to the FAC that each basis for the claim constitutes a separate cause of action.

(TAC, ¶ 109.) Specifically, the TAC alleges that Defendant "took, and has taken no action to actually market or sell Guzik's 6000 series products"; Defendant "does not feature Guzik's series digitizers *anywhere* on its website"; "[t]he product can only be found through knowing the exact hyperlink for the webpage showing the 6000 series digitizers"; "most of Keysight's salespersons were not even aware that Guzik's series digitizer is still on the market"; and "Keysight's utter lack of effort to market Guzik's 6000 series digitizer contravenes the intentions of the parties." (TAC, ¶¶ 104-105.) Defendant highlights that the 2016 Manufacturing Agreement provides that "Keysight will have the authority and will use reasonable commercial efforts to market the Products to the extent it deems appropriate, in its sole discretion." (Issue 1 UMF No. 1.) Defendant asserts that given the broad discretion given to it under the terms of the contract its decision to private launch Torpedo (which involved creating marketing materials for Torpedo, creating a webpage regarding Torpedo to provide to potential customers, and training its salesforce regarding Torpedo) was sufficient to meet its obligations. (Issue 1 UMF Nos. 2-4.) Defendant further contends that Plaintiff agreed to the private launch approach and, consequently, acquiesced to the decision. (Issue 1 UMF No. 5.)

In opposition, Plaintiff argues that Defendant was obligated under the 2016 Manufacturing Agreement to use reasonable commercial efforts to market and sell Torpedo and it cannot be decided as a matter of law whether Defendant used reasonable commercial efforts. Plaintiff further asserts that it did not agree with Defendant's decision to private launch Torpedo.

However, contrary to Plaintiff's argument otherwise, the contract does not simply provide that Defendant shall use reasonable commercial efforts to market Torpedo. Instead, as Defendant persuasively argues, the 2016 Manufacturing Agreement provides that Defendant shall "use reasonable commercial efforts to market the Products *to the extent it deems appropriate, in its sole discretion*." (Issue 1 UMF No. 1, italics added.) Thus, Defendant is given complete discretion to determine what reasonable commercial efforts are appropriate to market Torpedo. (See *Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1121-1123 [if the express purpose of the contract is to grant unfettered discretion, and

the contract is otherwise supported by adequate consideration, then the conduct is, by definition, within the reasonable expectation of the parties].)

Here, Defendant presents undisputed evidence that it "believed that the best way to introduce the product would be through a 'private launch' to certain known potential customers." (Declaration of Phil Lorch in Support of Defendant Keysight Technologies, Inc.'s Motion for Summary Adjudication, ¶ 2.) Plaintiff does not present any evidence in opposition showing that Defendant did not deem a private launch appropriate. Furthermore, as Defendant has sole discretion to determine what reasonable commercial efforts are appropriate to market Torpedo, it is irrelevant that Plaintiff arguably did not agree with Defendant's decision to private launch Torpedo. Similarly, Defendant what not required to undertake additional or further efforts to market Torpedo because Defendant, alone, was given the authority to determine what reasonable commercial efforts were appropriate.

Accordingly, Defendant's motion for summary adjudication is GRANTED as to the first cause of action to the extent it is predicated on Defendant's alleged breach of the 2016 Manufacturing Agreement.

b. Oral or Implied-In-Fact Agreement

Defendant initially argues that it is entitled to summary adjudication of the first cause of action to the extent the claim is predicated on its alleged breach of an oral or implied-in-fact agreement to market and sell Hero because an oral or implied-in-fact contract was never formed. Defendant contends that the parties discussed potentially OEMing both Torpedo and Hero, but Defendant's principals testified at deposition that they knew the discussions were conditioned on a formal written contract being signed by the parties. (Issue 2 & 3 UMF Nos. 2-3.) Defendant concludes that under the circumstances, only a formal written contract could bind it to market and sell Hero.

" 'Whether a writing constitutes a final agreement or merely an agreement to make an agreement depends primarily upon the intention of the parties.' " (*Beck v. American Health*

Group Internat., Inc. (1989) 211 Cal.App.3d 1555, 1562, superseded on another ground by Business and Professions Code, § 650, subdivision (b) as stated in *Epic Medical Management, LLC v. Paquette* (2015) 244 Cal.App.4th 504, 516.)

> When it is clear, both from a provision that the proposed written contract would become operative only when signed by the parties as well as from any other evidence presented by the parties that both parties contemplated that acceptance of the contract's terms would be signified by signing it, the failure to sign the agreement means no binding contract was created. (*Beck v. American Health Group Intern., Inc.* (1989) 211 Cal.App.3d 1555, 1562 […], and cases cited there; *Forgeron, Inc. v. Hansen* (1957) 149 Cal.App.2d 352, 360 […]; *Roth v. Garcia Marquez* (9th Cir. 1991) 942 F.2d 617, 626-627.) This is so even though the party later sought to be bound by the agreement indicated a willingness to sign the agreement. (*Forgeron, Inc. v. Hansen, supra*, 149 Cal.App.2d at p. 360.) On the other hand, if the respective parties orally agreed upon all of the terms and conditions of a proposed written agreement with the mutual intention that the oral agreement should thereupon become binding, the mere fact that a formal written agreement to the same effect has not yet been signed does not alter the binding validity of the oral agreement. (*Columbia Pictures Corp. v. DeToth* (1948) 87 Cal.App.2d 620, 629 […].)
>
> Whether it was the parties' mutual intention that their oral agreement to the terms contained in a proposed written agreement should be binding immediately is to be determined from the surrounding facts and circumstances of a particular case and is a question of fact for the trial court. (*Schwartz v. Shapiro* (1964) 229 Cal.App.2d 238, 248 […]; *Columbia Pictures Corp. v. DeToth, supra*, 87 Cal.App.2d at p. 629.) Evidence as to the parties' understanding and intent in taking what actions they did take is admissible to ascertain when or whether a binding agreement was ever reached. (Code Civ. Proc., § 1856, subds. (f), (g); *Thomson v. Internat. Alliance of Stage Employees* (1965) 232 Cal.App.2d 446, 453 […]; *Mitchell v. Leslie* (1995) 39 Cal.App.4th Supp. 7, 12 […].)

(*Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th 348, 358.)

Here, there is a triable issue of material fact as to whether Plaintiff intended the alleged oral or implied-in-fact agreement to be binding without the execution of a formal written contract. Plaintiff's principals have submitted declarations in opposition to the motion for summary adjudication explaining the deposition testimony relied upon by Defendant and clarifying that they believed and understood that the agreement was binding absent a formal written contract (i.e., they understood the agreement was not conditioned on the parties entering into a written contract). (Plaintiff Guzik Technical Enterprises' Evidence in Support of its Opposition to Defendant Keysight Technologies, Inc.'s Motion for Summary Adjudication, Ex. 65, ¶¶ 24-54 & Ex. 66, ¶¶ 22-25; see *Techsavies, LLC v. WDFA Mktg. Inc*. (N.D.Cal. Feb. 10, 2011, No. C10-1213 BZ) 2011 U.S.Dist.LEXIS 13259, at *6 ["WDFA's argument against Techsavies' breach of contract claim exemplifies how WDFA misapplies the summary judgment standard. Under California Civil Code § 1622, oral contracts are just as

valid as written contracts. Nonetheless, WDFA contends that Techsavies 'has no evidence of a final agreement' because 'the only evidence that Techsavies has is the self-serving testimony of its own principals regarding a single oral discussion in October 2006.' ... As discussed above, Techsavies' own testimony is enough to raise a triable issue regarding whether an oral contract existed and was breached."].)

Next, Defendant further argues that the alleged oral or implied-in-fact contract is vague and uncertain because it is missing essential terms, such as price, duration, and means of terminating the contract. (Issue 2 & 3 UMF No. 4.)

However, viewing the evidence in a light most favorable to Plaintiff, at this juncture, the court cannot say that a reasonable jury could not conclude that the terms of the alleged contract were clear enough for the parties to understand what each was required to do. Plaintiff's principals have submitted declarations in opposition to the motion for summary adjudication stating that Plaintiff's obligations were to develop Hero with Defendant's proprietary 10-bit ADC chips, and Defendant was responsible for marketing and selling the product once it was developed. (Plaintiff Guzik Technical Enterprises' Evidence in Support of its Opposition to Defendant Keysight Technologies, Inc.'s Motion for Summary Adjudication, Ex. 65, ¶¶ 24-53 & Ex. 66, ¶¶ 22-25.) This evidence is sufficient to raise a triable issue of material fact. (See *Techsavies, LLC v. WDFA Mktg. Inc*. (N.D.Cal. Feb. 10, 2011, No. C10-1213 BZ) 2011 U.S.Dist.LEXIS 13259, at *6-8 ["WDFA contends that the details of the alleged agreement are too vague to constitute all the essential terms of a finalized contract. ... Hajjoubi's testimony, however, explains that the terms of the agreement were final and 'very simple.' ... Although Hajjoubi does not explain the contract terms articulately, viewing the evidence in a light most favorable to Techsavies, at this juncture, the Court cannot say that a reasonable jury could not conclude that the profits gained from the software's use would be split 60/40, and that the contract terms were clear enough for the parties to understand what each was required to do. ... Techsavies' obligations were to develop and maintain the software under WDFA's directions, and WDFA was responsible for then selling and managing the use of the software. ... While the parties did not address more specific details regarding the

agreement, 'it is not necessary that each term of an oral contract be spelled out in minute detail.' [Citation.]"].)

Finally, Defendant argues that the claim is time-barred by the applicable two-year statute of limitations because Defendant informed Plaintiff that it would not OEM or otherwise actively market and sell Hero as of January 30, 2017 (Issue 5 UMF No. 6), and Plaintiff did not file its initial complaint until September 30, 2019.

There are two ways to properly plead a statute of limitations defense. The first is to "allege facts showing that the action is barred, and indicating that the lateness of the action is being urged as a defense" and the second is to "plead the specific section and subdivision" of the applicable statute of limitations statute as provided for in Code of Civil Procedure section 458. (*Martin v. Van Bergen* (2012) 209 Cal.App.4th 84, 91, citing to *Brown v. World Church* (1969) 272 Cal.App.2d 684, 691.)

As Plaintiff persuasively argues, Defendant failed, in its answer to the TAC, to satisfy either of these two methods. Thus, the statute of limitations defense is waived.

Additionally, Defendant's evidence is not sufficient to meet its initial burden with respect to its statute of limitations defense. The evidence shows that Defendant informed Plaintiff on January 30, 2017, that Defendant would not OEM Hero (i.e., Defendant would not sell Hero as a Defendant-branded digitizer). (Issue 5 UMF No. 6.) However, the first cause of action is based on Defendant's alleged oral or implied-in-fact agreement to market and sell Hero as a Plaintiff-branded product, regardless of whether Defendant agreed to OEM Hero. Defendant's evidence shows that on January 30, 2017, Defendant represented to Plaintiff that it would continue to reference sell Hero for customers who wanted to buy it. (Issue 5 UMF No. 6.) Consequently, a reasonable trier of fact could find that Plaintiff reasonably believed as of January 30, 2017, that Defendant would still honor its alleged agreement to market and sell Hero only as a Plaintiff-labeled digitizer (not a Defendant-labeled digitizer).

Moreover, Plaintiff presents evidence in opposition to the motion for summary adjudication that Defendant represented on January 30, 2017, and thereafter, that it would continue to market and sell Hero. (Plaintiff Guzik Technical Enterprises' Evidence in Support of its Opposition to Defendant Keysight Technologies, Inc.'s Motion for Summary

Adjudication, Ex. 65, ¶¶ 47-52.) This evidence is sufficient to raise a triable issue of material fact.

Accordingly, Defendant's motion for summary adjudication is DENIED as to the first cause of action to the extent it is predicated on Defendant's alleged breach of the oral or implied-in-fact contract.

2. Second Cause of Action

Defendant initially argues that it is entitled to summary adjudication of the second cause of action to the extent the claim is predicated on its alleged breach of the implied covenant of good faith and fair dealing in the 2016 Manufacturing Agreement because the undisputed material facts demonstrate that it complied with its obligations under the contract. Defendant contends that it could not have breached the implied covenant of good faith and fair dealing by not making the Torpedo webpage "public" or engaging in additional efforts to market Torpedo because the 2016 Manufacturing Agreement gave it the sole discretion to decide how to market Torpedo.

Defendant's argument fails to dispose of the second cause of action in its entirety. (See Code Civ. Proc., § 437c, subd. (f)(1) ["A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty."]; see also *McCaskey v. California State Automobile Assn.* (2010) 189 Cal.App.4th 947, 975 ["[T]here can be no summary adjudication of less than an entire cause of action. [Citation.] […] If a cause of action is not shown to be barred in its entirety, no order for summary judgment—or adjudication—can be entered."].) Defendant is correct that the second cause of action is predicated, in part, on allegations that Defendant breached the implied covenant of good faith and fair dealing by not engaging in additional efforts to market Torpedo. (TAC, ¶ 130.) As explained above, Defendant what not required to undertake additional or further efforts to market Torpedo because Defendant, alone, was given the authority to determine what reasonable commercial efforts were appropriate.

However, the second cause of action is also predicated on the allegation that Defendant affirmatively encouraged its employees to not sell Torpedo. (TAC, ¶ 130.) Under the 2016 Manufacturing Agreement, Defendant was obligated to "use reasonable commercial efforts to

market the Products to the extent it deems appropriate, in its sole discretion." (Issue 1 UMF No. 1.) A reasonable trier of fact could determine that Defendant's alleged instruction to its employees to not sell Torpedo at all frustrates the purpose of the contract. Defendant's does not address this independent allegation in its motion for summary adjudication and, therefore, fails to dispose of the second cause of action in its entirety.

Next, Defendant argues that it is entitled to summary adjudication of the second cause of action to the extent the claim is predicated on its alleged breach of the implied covenant of good faith and fair dealing in the oral or implied-in-fact agreement to market and sell Hero because no such agreement existed. However, for the reasons already explained above, there is a triable issue of material fact regarding whether the alleged agreement was formed.

Defendant also contends that it did not breach the implied covenant of good faith and fair dealing in the oral or implied-in-fact agreement by developing and selling Impala because the 2016 Manufacturing Agreement provides that Defendant could develop, market, and sell its own competing digitizer product. Defendant's contention is not well-taken. The second cause of action, as currently drafted is not merely predicated on the fact of Defendant's development of Impala. Instead, it is based on Defendant's alleged concealment of the development of Impala, which Plaintiff contends Defendant had a duty to disclose. Thus, Defendant's argument does not dispose of the second cause of action as a whole.

Accordingly, Defendant's motion for summary adjudication is DENIED as to the second cause of action.

3. Fifth Cause of Action

Defendant argues that it is entitled to summary adjudication of the fifth cause of action because the parties were not in a fiduciary relationship. Defendant highlights that the 2016 Manufacturing Agreement, the Solutions Partner Agreement, the 2007 OEM Purchase Agreement, and the 2014 OEM Purchase Agreement expressly provide that they do not establish a joint venture or partnership between the parties. (Issue 7 UMF Nos. 1-4.) Defendant contends that passing references to a partnership between the parties in various documents are not sufficient to establish that the parties considered each other "partners" in the legal sense of the word. Defendant also asserts that no reasonable jury could find that any

purported or agreement regarding Hero created any fiduciary duties because the was no such oral agreement or evidence that the parties agreed to share costs or revenue.

"As with contracts, in California a partnership or joint venture agreement does not need to be in writing to be binding. [Citation.] The question of whether 'a partnership or joint venture exists is primarily a factual question to be determined by the trier of fact from the evidence and inferences to be drawn therefrom.' [Citation.]" (*Techsavies, LLC v. WDFA Mktg. Inc.* (N.D.Cal. Feb. 10, 2011, No. C10-1213 BZ) 2011 U.S.Dist.LEXIS 13259, at *9.)

Here, there is a triable issue of material fact regarding whether the parties entered into a joint enterprise to develop, market, and sell high-bandwidth digitizers. Plaintiff's submits declarations from its principals, stating that the parties entered into an oral partnership agreement to jointly develop, market, and, sell high-bandwidth digitizers. (Plaintiff Guzik Technical Enterprises' Evidence in Support of its Opposition to Defendant Keysight Technologies, Inc.'s Motion for Summary Adjudication, Ex. 65, ¶¶ 6, 24-46 & Ex. 66, ¶¶ 24-25.) That evidence also provides that the parties agreement on their respective rights of joint control: Defendant was responsible for selling, marketing, and distributing the digitizers and Plaintiff was responsible for designing and developing the digitizers and providing customer and technical support. (*Ibid.*) Plaintiff's principals further declare that the parties agreed that each would bear the costs and losses associated with their area of control of the partnership, and also agreed to share the profits on sales between them. (*Ibid.*) Plaintiff contends that this agreement is memorialized in (1) a Memorandum of Understanding dated July 29, 2023, which states that the parties "will enter into a partnership to work together in the high-bandwidth digitizer market" and (2) and 2015 Memorandum of Understanding that provides the parties "are in a cooperative relationship" to develop, market, and sell digitizers and explains "the next step in growing that partnership for the benefit of both companies." (*Ibid.*) This evidence is sufficient to raise a triable issue of material fact. (See *Techsavies, LLC v. WDFA Mktg. Inc*. (N.D.Cal. Feb. 10, 2011, No. C10-1213 BZ) 2011 U.S.Dist.LEXIS 13259, at *9-11.)

Accordingly, Defendant's motion for summary adjudication is DENIED as to the fifth cause of action.

4. Third, Fourth, and Sixth Causes of Action

Defendant initially argues that it is entitled to summary adjudication of the third, fourth, and sixth cause of action because Plaintiff did not justifiably rely on any promise or representation by Defendant. Defendant asserts that Plaintiff cannot establish justifiable reliance because it developed Hero when the parties had no oral or implied-in-fact agreement to market and sell Hero. Defendant also contends that Plaintiff cannot establish justifiable reliance because it told Plaintiff that it was considering developing its own digitizer on October 27, 2016, and it confirmed that it was proceeding with its own digitizer and would not OEM Hero on January 30, 2017.

Defendant's arguments are not well-taken. First, for the reasons already set forth above, there is a triable issue of material fact as to whether the alleged oral or implied-in-fact agreement existed. Second, Plaintiff alleges that Defendant fraudulently misrepresented and promised that it would market and sell Hero; Defendant's statements that it was considering, and eventually decided to, develop its own digitizer and not OEM Hero do not contradict or undermine its alleged representation that it would continue to market and sell Hero as a Plaintiff-branded product.

Next, Defendant argues that it is entitled to summary adjudication of the third, fourth, and sixth cause of action because there is no evidence that it fraudulently concealed Impala or Kenai. Defendant contends that it did not conceal Impala or Kenai because Section 1.1 of the 2016 Manufacturing Agreement states that Defendant has the right to develop and market its own digitizer product, Defendant informed Plaintiff that it was considering developing its own digitizer on October 27, 2016, and Defendant confirmed that it was proceeding with its own digitizer and would not OEM Hero on January 30, 2017.

Defendant's argument is not persuasive. In its moving papers, Defendant states that it began considering its own digitizer between April and July 2016, but waited until October 2016 to inform Plaintiff. As explained above, there is a triable issue of material fact regarding whether the parties were in a fiduciary relationship and Plaintiff contends Defendant had a duty to disclose the fact that it was considering its own digitizer. A reasonable trier of fact could arguably find that the delay in disclosure constituted concealment of the development of Impala.

Lastly, Defendant argues that it is entitled to summary adjudication of the third, fourth, and sixth cause of action because it was not obligated to disclose that Impala incorporates Kenai. Defendant asserts it was not obligated to disclose that Impala uses Kenai because the parties were not fiduciaries. But this assertion is not well-taken as there is a triable issue of material fact regarding whether the parties were in a fiduciary relationship.

Accordingly, Defendant's motion for summary adjudication is DENIED as to the third, fourth, and sixth causes of action.

5. Eighth Cause of Action

As is relevant here, the eighth cause of action alleges that Defendant restrained trade in violation of the Cartwright Act by demanding, in Section 1.1 of the 2016 Manufacturing Agreement, that Plaintiff not sell any products containing Defendant's ADC chipsets outside the hard disk drive industry, unless those products were sold exclusively through Defendant. Defendant initially argues that it is entitled to summary adjudication of the eighth cause of action because it did not coerce Plaintiff into accepting Section 1.1 of the 2016 Manufacturing Agreement. In support of its argument, Defendant points out that Plaintiff was represented by outside counsel during the negotiations of the 2016 Manufacturing Agreement, the parties exchanged numerous drafts of the agreement, and Plaintiff made changes to the agreement. (Issue 9 UMF Nos. 1-2.) Defendant also contends that Plaintiff never objected to the subject provision. (Issue 9 UMF No. 3.) Defendant further argues that the restriction was not unreasonable because it is reasonable as a matter of law for Defendant to control the sales of Torpedo units containing its proprietary chipsets outside of Plaintiffs industry so that the technology is not sold to Defendant's competitiors.

"[T]he 'conspiracy' or 'combination' necessary to support an antitrust action can be found where a supplier or producer, by coercive conduct, imposes restraints to which distributors involuntarily adhere. [Citations.] If a 'single trader' pressures customers or dealers into adhering to resale price maintenance, territorial restrictions, exclusive dealing arrangements or illegal 'tie-ins,' an unlawful combination is established, irrespective of any monopoly or conspiracy, and despite the recognized right of a producer to determine with

whom it will deal. [Citations.]" (*Kolling v. Dow Jones & Co*. (1982) 137 Cal.App.3d 709, 720 (*Kolling*).)

> Territorial restrictions on distributors and exclusive dealing arrangements -- whereby dealers are precluded from distributing products other than those furnished by the supplier -- are not governed by the "per se" rule. Rather, such trade restraints are tested by the "rule of reason," and are thus unlawful only if found unreasonable. [Citations.] To prove an exclusive dealing arrangement unlawful, the distributor must show that it was intended to, or actually did, unreasonably restrain trade. [Citations.]
>
> The "rule of reason" permits certain restraints upon trade to be found reasonable. [Citations.] In order to determine whether the restrictions are reasonable, "the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint, and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts." [Citations.] "Whether a restraint of trade is reasonable is a question of fact to be determined at trial."

(*Kolling, supra*, 137 Cal.App.3d at pp. 726-727.)

Here, Plaintiff contends it was coerced into accepting Section 1.1 of the 2016 Manufacturing Agreement because it previously negotiated and entered into the 2007 OEM Purchase Agreement, under which it agreed to pay $1,600,000 for long-term access to Defendant's chips. Plaintiff asserts that it was dependent on Defendant for its chips under the 2007 OEM and, therefore, it was forced to agree to Section 1.1 of the 2016 Manufacturing Agreement. Plaintiff's contention lacks merit. Plaintiff's voluntary decision to enter into the 2007 OEM Purchase Agreement does not constitute affirmative action by Defendant to bring about Plaintiff's involuntary acquiescence.

Accordingly, Defendant's motion for summary adjudication is GRANTED as to the eighth cause of action.

6. Ninth Cause of Action

Defendant initially argues that it is entitled to summary adjudication of the ninth cause of action because David Churchill ("Churchill"), Vice President and General Manager of Agilent Technologies (Defendant's predecessor), did not promise that the 2007 OEM Purchase Agreement would be automatically renewed upon expiration. (Issue 10 UMF No. 3.)

Here, there is a triable issue of material fact regarding whether Churchill made the alleged promises. In opposition to the motion, Plaintiff submits a declaration from one of its principals, stating that Churchill provided oral assurances that, notwithstanding the language in

the 2007 OEM Purchase Agreement, Defendant's predecessor would continue to sell Plaintiff ADCs so long as Agilent made of sold them itself and Plaintiff was not in breach of the agreement. (Plaintiff Guzik Technical Enterprises' Evidence in Support of its Opposition to Defendant Keysight Technologies, Inc.'s Motion for Summary Adjudication, Ex. 66, ¶¶ 2-15.)

Next, Defendant argues that the ninth cause of action is time-barred by the applicable two-year statute of limitations because the alleged representations were made in 2007, and on numerous occasions prior to September 2017 the OEM Purchase Agreement did not automatically renew upon expiration.

However, for the reasons already set forth above, Defendant's statute of limitations defense is waived. In addition, it is not clear from the copies of the 2014 OEM Purchase Agreement and written extensions that those agreements are replacements of the 2007 OEM Purchase Agreement, rather than renewed versions.

Accordingly, Defendant's motion for summary adjudication is DENIED as to the ninth cause of action.

7. Twelfth Cause of Action

Defendant initially argues that it is entitled to summary adjudication of the twelfth cause of action because it is predicated on Defendant's alleged fraudulent representations regarding Hero and the alleged restraint on trade created by the 2016 Manufacturing Agreement.

However, Plaintiff's fraud claims survive the instant motion and therefore may serve as a basis for the twelfth cause of action.

Defendant also argues that the twelfth cause of action should be dismissed as duplicative of Plaintiff's other claims.

But as Plaintiff points out, the twelfth cause of action is not wholly duplicative of Plaintiff's fraud claims as Plaintiff does not allege Defendant's market research exploitation misconduct as a basis for liability in those claims.

Accordingly, Defendant's motion for summary adjudication is DENIED as to the twelfth cause of action.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 3

Case Name: Acosta v. Larson Steel, Inc.
Case No.: 20CV368978

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 14, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

IV. INTRODUCTION

This is a putative class and representative action arising out of various alleged wage and hour violations. The operative First Amended Complaint ("FAC"), filed on September 21, 2020, sets forth causes of action for: (1) Failure to Provide Meal Periods or Compensation in Lieu Thereof; (2) Failure to Provide Rest Periods or Compensation in Lieu Thereof; (3) Failure to Pay Minimum Wages; (4) Failure to Pay Overtime Wages; (5) Failure to Reimburse Work Related Expenses; (6) Failure to Comply with Itemized Employee Wage Statement Provisions; (7) Failure to Pay All Wages Upon Termination; (8) Unfair Business Practices; and (9) California Labor Code Private Attorneys General Act.

The parties have reached a settlement. Plaintiff Luis Manuel Arriola Acosta ("Plaintiff") now moved for preliminary approval of the settlement.

On October 4, 2023, the court granted preliminary approval of the settlement subject to approval of the amended class notice.

On October 11, 2023, the court approved the amended class notice.

Plaintiff now moves for final approval of the settlement. The motion is unopposed.

V. LEGAL STANDARD

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings,

> the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement."

(*Wershba, supra,* 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra,* 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba, supra,* 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid*., quoting *Dunk, supra,* 48 Cal.App.4th at p. 1801 and *Officers, supra,* 688 F.2d at p. 625, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba, supra,* 91 Cal.App.4th at p. 245, citing *Dunk, supra,* 48 Cal.App.4th at p. 1802.)

VI. DISCUSSION

> The case has been settled on behalf of the following class:
> [A]ll non-exempt current and former individuals who worked for [defendant] Larson Steel, Inc. [("Larson Steel")] in California as a field installer at any time between August 6, 2016, through preliminary approval of class settlement.

The class also contains a subset of PAGA members that are defined as "all non-exempt current and former individuals who worked for [Larson Steel] in California as a field installer at any time between July 15, 2019, through preliminary approval of the Class Settlement."

According to the terms of settlement, Larson Steel will pay a gross, non-reversionary amount of $850,000. The gross settlement amount includes attorney fees of $283,333.33 (1/3 of the gross settlement amount), litigation costs not to exceed $40,000, a service award for the class representative not to exceed $10,000, settlement administration costs not to exceed

$6,250, and a PAGA allocation of $42,500 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA members).

The net settlement amount will be distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. Similarly, PAGA members will receive a pro rata share of the 25 percent portion of the PAGA payment allocated to them based on the number of workweeks worked during the PAGA Period.

Checks remaining uncashed more than 90 days after mailing will be void and the funds from those checks will be re-distributed on a pro rata basis to the class participants who cashed their checks. Checks remaining uncashed 90 days after the second distribution will be voided and the funds will be distributed to Child Advocates of Silicon Valley. The *cy pres* recipient is approved.

In exchange for the settlement, class members agree to release Larson Steel, defendant Peter Larson, defendant Heidi Larson, and defendant John Larson (collectively, "Defendants"), and related persons and entities, from all claims alleged in, or arising out of facts asserted in, the Complaint from August 6, 2016 through the date of preliminary approval. PAGA members agree to release Defendants, and related persons and entities, from all PAGA claims alleged in, or arising out of facts asserted in, the Complaint from July 15, 2019, through the date of preliminary approval. Plaintiff further agrees to a general release.

On November 1, 2023, the settlement administrator mailed notice packets to 60 class members. (Declaration of Yami Burns With Respect to Notice and Settlement Administration ("Burns Dec."), ¶¶ 3-5.) Ultimately, four notice packets were deemed undeliverable. (*Id*. at ¶ 7.) As of January 16, 2024, there were no objections and no requests for exclusion. (*Id*. at ¶¶ 8-9.)

The highest individual settlement share to be paid is approximately $21,078.8.1, the lowest individual settlement share to be paid is approximately $542.03, and the average individual settlement share to be paid is approximately $7,862.14. (Burns Dec., ¶ 13.) The court previously found the proposed settlement is fair and the court continues to make that finding for purposes of final approval.

Plaintiff requests an incentive award of $10,000 for the class representative.

> The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Plaintiff submits a declaration detailing his participation in the action. Plaintiff declares that he spent approximately 61 hours in connection with this action, including discussing the case with class counsel, responding to 4 sets of written discovery, reviewing discovery, reviewing settlement documents, and taking 4 days off work to attend his deposition, 2 depositions for Defendant's persons most knowledge, and 2 mediations. (Declaration of Plaintiff Luis Manuel Arriola Acosta in Support of Plaintiff's Motion for Final Approval of Class Action Settlement, ¶¶ 4-5.)

Moreover, Plaintiff undertook risk by putting his name on the case because it might impact his future employment. (See *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].) Therefore, the requested incentive award in the total amount of $10,000 is reasonable and approved.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel requests attorney fees of $283,333.33 (1/3 of the gross settlement fund). Plaintiff's counsel provides evidence demonstrating a lodestar of $318,773.50. (Declaration of Gladys Rodriguez-Morales in Support of Plaintiff's Motion for Attorneys' Fees and Costs

("Rodriguez-Morales Dec."), ¶¶ 7-8 & Ex. A.) This results in a negative multiplier. The court finds the attorney fees are reasonable as a percentage of the common fund and are approved.

Plaintiff's counsel requests litigation costs in the amount of $36,188 and provides evidence of incurred costs in the amount of $36,047.24. (Rodriguez-Morales Dec., ¶ 10 & Ex. C.) Thus, the litigation costs in the amount of $36,047.24 are reasonable and approved. The settlement administration costs in the amount of $6,250 are also approved. (Burns Dec., ¶ 16.)

Accordingly, the motion for final approval of the class action settlement is GRANTED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

The court will set a compliance hearing for October 16, 2024, at 2:30 p.m. in Department 19. At least 10 court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein, the numbers and value of any uncashed checks, amounts remitted to Defendant, the status of any unresolved issues, and any other matters appropriate to bring to the court's attention. Counsel may appear at the compliance hearing remotely.

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Calendar Line 4

Case Name: Magat v. HRB Resources LLC, et al.
Case No.: 21CV388049

Continued per Stipulation and Order to May 15, 2024.

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Calendar Line 5

Case Name: Pacheco v. Goodwill of Silicon Valley, et al. (Class Action)
Case No.: 20CV373306

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 14, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

VII. INTRODUCTION

This is a putative class action brought by plaintiff Kristalinna Pacheco ("Plaintiff") alleging violations of the Fair Credit Reporting Act ("FCRA"). The Complaint, filed on November 17, 2020, set forth causes of action for: (1) Violation of 15 U.S.C. §§ 1681b(b)(2)(A) (FCRA); and (2) Violation of 15 U.S.C. §§ 1681d(a)(1) and 1681g(c) (FCRA).

On November 18, 2020, the court issued its Order Deeming Case Complex and Staying Discovery and Responsive Pleading Deadline, which stayed all discovery in this case.

On June 4, 2021, Plaintiff filed the operative First Amended Complaint ("FAC"), which sets forth causes of action for: (1) Violation of 15 U.S.C. §§ 1681b(b)(2)(A) (FCRA); and (2) Violation of 15 U.S.C. §§ 1681d(a)(1) and 1681g(c) (FCRA).

In a joint case management conference statement filed in this case on October 25, 2021, the parties stated that defendants Goodwill of Silicon Valley ("GSV") and Goodwill Industries International, Inc. ("GII") (collectively, "Defendants") raised concerns regarding the adequacy of Plaintiff as a class representative because she was incarcerated, and Plaintiff's counsel intended to name a different class representative.

The minute order from the case management conference on October 27, 2021, states that Plaintiff was to set a motion for discovery with the complex coordinator and the parties were to meet and confer on a briefing schedule.

On May 12, 2022, the court entered a Joint Stipulation to Establish Briefing Schedule and Order ("Stipulation"). The Stipulation provides that Plaintiff's counsel notified the court and Defendants that Plaintiff "intends to seek leave from the court to conduct discovery to locate an alternate class representative, as the result of Plaintiff Pacheco's unavailability to

serve as a class representative …." (Stipulation, p. 1:5-8.) The court then approved a briefing schedule for "Plaintiff's Motion for Leave to Conduct Discovery to Locate an Alternate Class Representative …." (Stipulation, p. 2:10-11.)

Subsequently, Plaintiff moved for "leave to find a new class representative" and "an order requiring Defendant to provide the contact information of all the putative class members ('the class list') to a third-party administrator, who will then send a notice to the putative class and provide the class list—minus those employees who opted out—to Plaintiff's counsel." Defendants opposed the motion.

On July 13, 2022, the court entered an order granting Plaintiff's motion to the extent Plaintiff requested leave to conduct discovery to locate an alternate class representative. The discovery stay was lifted as to discovery to locate a new class representative. The motion was denied in all other respects.

On July 12, 2022, Plaintiff served Defendants with special interrogatories, set one ("SI"). Defendants served Plaintiff with objection-only responses to the SI on August 15, 2022.

On September 13, 2022, the parties attended an Informal Discovery Conference regarding Defendants' responses to the SI, but were unable to resolve their dispute.

On December 9, 2022, the court granted in part and denied in part Plaintiff's motion to compel Goodwill of Silicon Valley to provide further responses to the SI and Plaintiff's motion to compel Goodwill Industries International, Inc. to provide further responses to the SI. The motions were granted only to the extent that the discovery requests sought production of the full names and contact information for putative class members to the third party administrator.

Subsequently, Setareh Law Group moved to be relieved as counsel of record for Plaintiff.

On July 12, 2023, the court denied the motion without prejudice. The court explained that there was no proof of service accompanying the motion demonstrating service of the moving papers on Plaintiff. Furthermore, the declaration submitted by Plaintiff's counsel in support of the motion was incomplete as section 3(a), which addressed whether counsel served the moving papers on the client personally or by mail, was left blank. The court ordered

Plaintiff's counsel to promptly re-notice, timely and properly serve Plaintiff, and file fully compliant proofs of service, in accordance with the Code of Civil Procedure and California Rules of Court. The court further directed Plaintiff's counsel to submit a fully completed proposed order, which included all upcoming hearing dates.

Thereafter, Setareh Law Group renewed its motion to be relieved as counsel of record for Plaintiff. The renewed motion was granted on August 17, 2023.

Now before the court is GSV's motion for judgment on the pleadings or, in the alternative, motion to dismiss. The motion is unopposed.

II. REQUEST FOR JUDICIAL NOTICE

In connection with its moving papers, GSV asks the court to take judicial notice of: the Complaint; the FAC; the court order entered July 13, 2022; the motion to be relieved as counsel filed June 5, 2023; and the court order entered August 17, 2023.

The items are generally proper subjects of judicial notice as they are court records relevant to arguments raised in the pending motion. (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records]; see also *People v. Woodell* (1998) 17 Cal.4th 448, 455 [courts may "take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact."].)

Accordingly, GSV's request for judicial notice is GRANTED.

III. LEGAL STANDARD

A motion for judgment on the pleadings "is equivalent to a belated general demurrer." (*Sprague v. County of San Diego* (2003) 106 Cal.App.4th 119, 127.) Code of Civil Procedure section 438, subdivision (c)(1)(B) states that a defendant may bring a motion for judgment on

the pleadings on the ground that "the complaint does not state facts sufficient to constitute a cause of action against that defendant."

For purposes of ruling on a motion for judgment on the pleadings testing the sufficiency of a complaint, all facts well pled in the complaint are assumed to be true and courts may not consider extrinsic evidence. (See *Cloud v. Northrop Grumman Corp*. (1998) 67 Cal.App.4th 995, 999 ["A motion for judgment on the pleadings performs the same function as a general demurrer, and hence attacks only defects disclosed on the face of the pleadings or by matters that can be judicially noticed. [Citations.] Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings. [Citation.]"]; see also *County of Orange v. Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 32 ["In reviewing the trial court's grant of the motions for judgment on the pleadings under Code of Civil Procedure section 438, subdivision (b)(1), we apply the same rules governing the review of an order sustaining a general demurrer. [Citation.]"]; *Southern California Edison Company v. City of Victorville* (2013) 217 Cal.App.4th 218, 227 [" 'The standard for granting a motion for judgment on the pleadings is essentially the same as that applicable to a general demurrer, that is, under the state of the pleadings, together with matters that may be judicially noticed, it appears that a party is entitled to judgment as a matter of law.' [Citation.] '[J]udgment on the pleadings must be denied where there are material factual issues that require evidentiary resolution.' [Citation.]"].)

IV. DISCUSSION

GSV moves for judgment on the pleadings with respect to the first and second causes of action of the FAC on the ground that Plaintiff lacks standing. GSV argues that Plaintiff lacks standing to bring her claims because she does not allege that she suffered a concrete injury. In the alternative, GSV contends the court should dismiss the case of lack of prosecution.

> FCRA was enacted in 1969 because Congress found a "need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy." (15 U.S.C. § 1681(a)(4).) Its stated purpose was "to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter." (15 U.S.C. § 1681(b).)

(*Cisneros v. U.D. Registry, Inc*. (1995) 39 Cal.App.4th 548, 559.)

More recently, the statue was amended to address the use of consumer reports in the employment context:

> In amending the FCRA in 1996, "Congress was specifically concerned that prospective employers were obtaining and using consumer reports in a manner that violated job applicants' privacy rights. S. Rep. No. 104-185 at 35 (1995). The disclosure and authorization provision codified at … [section] 1681b(b)(2)(A) was intended to address this concern by requiring the prospective employer to disclose that it may obtain the applicant's consumer report for employment purposes and providing the means by which the prospective employee might prevent the prospective employer from doing so—withholding of authorization. S. Rep. No. 104-185 at 35. This provision furthers Congress's overarching purposes of ensuring accurate credit reporting, promoting efficient error correction, and protecting privacy. [Citation.] … [T]he provision promotes error correction by providing applicants with an opportunity to warn a prospective employer of errors" before an adverse hiring decision is made based on incorrect information.

(*Limon v. Circle K Stores Inc*. (2022) 84 Cal.App.5th 671, 689 (*Limon*), quoting *Syed v. M-I, LLC* (9th Cir. 2017) 853 F.3d 492, 496–497 (*Syed*).)

Key to Plaintiff's theory of recovery here, the employment disclosure and authorization provision requires "a clear and conspicuous disclosure … in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes." (15 U.S.C. § 1681b(b)(2)(A)(i), italics added.) As explained in *Syed* and *Gilberg v. Cal. Check Cashing Stores, LLC* (9th Cir. 2019) 913 F.3d 1169 (*Gilberg*), the "FCRA contains 'clear statutory language that the disclosure document must consist "solely" of the disclosure.' " (*Gilberg, supra,* 913 F.3d at p. 1171, quoting *Syed, supra,* 853 F.3d at p. 496.) This requirement is violated by the inclusion of any "extraneous and irrelevant information beyond what FCRA itself requires" on the disclosure document. (*Gilberg, supra*, 913 F.3d at p. 1176.) "Thus, Ninth Circuit precedent reads the FCRA as mandating that a disclosure form contain nothing more than the disclosure itself. Simply put, 'the [disclosure] form should not contain any extraneous information.' [Citation.]." (*Walker v. Fred Meyer, Inc*. (9th Cir. 2020) 953 F.3d 1082, 1087 (*Walker*).)

In *Limon,* the Fifth District Court of Appeal addressed the standing required to sue under FCRA. The court was tasked with deciding whether a plaintiff must suffer an injury in order to have standing to sue under the FCRA in California courts, and, if so, whether the

plaintiff had adequately alleged a sufficient injury to confer standing upon him. (*Limon, supra*, 84 Cal.App.5th at p. 690.) The court began by discussing the differences between the requirements for standing in federal and California courts. (*Ibid*.) The court explained that "although courts have routinely noted that California is not constrained by the case or controversy provisions of article III of the U.S. Constitution [citations], they have also equated the 'beneficially interested' test for standing in California to the injury-in-fact prong of the article III test for standing in the federal courts [citations]." (*Id.* at pp. 697-698.) The court concluded a plaintiff must be beneficially interested in the claims he is pursuing (i.e., suffer an injury in fact) to have standing to pursue a FCRA claim for damages in the courts of California. (*Id.* at pp. 700, 703.)

With this test in mind, the court in *Limon* outlined a number of ways that a plaintiff might establish an injury sufficient to prove FCRA standing—none of which were shown in that case:

> Here, Limon does not allege he did not receive a copy of the consumer report that Circle K obtained. Limon does not allege the consumer report obtained by Circle K contains any defamatory content or other per se injurious content. He does not allege the consumer report contained false or inaccurate information. Similarly, there are no allegations of any exposure to a material risk of future harm, imminent or substantial. [Citation.] Thus, there was no injury to Limon's protected interest in ensuring fair and accurate credit (or background) reporting. Similarly, there was no injury associated with any adverse employment decision based on false or inaccurate reporting. With regard to the release of liability contained in Circle K's consent form, we note there are no allegations to suggest that any harm has resulted from the release. …
>
> We also note that, while there was some extraneous language in Circle K's consent form, that extraneous language was not extensive, and the disclosure notices therein otherwise appear to comply with the FCRA. … At deposition, Limon confirmed he authorized Circle K to run a background check on him—i.e., he checked "yes" for the question: "Would you be willing to submit to a background check prior to being hired?" By doing so, Limon undoubtedly understood he was advising Circle K he was willing to have it conduct a background check on him prior to being hired. There are no allegations to the contrary. Thus, Limon's protected interest in being advised that Circle K would be running a background check on him prior to deciding whether to hire him was fully satisfied and he knew he could withhold his authorization by refusing to check the box by which he gave such authorization.

(*Limon, supra*, 84 Cal.App.5th at pp. 705–706.)

In sum, "under California law, … an informational injury that causes no adverse effect is insufficient to confer standing upon a private litigant to sue under the FCRA." (*Limon, supra*, 84 Cal.App.5th at p. 707.)

Here, it is undisputed that Plaintiff has not alleged that she suffered any concrete injury. In the FAC, Plaintiff alleges that the disclosure form contained extraneous language, the disclosure was not in all capital letters or boldface type, and the disclosure was not a standalone document. Plaintiff also alleges the disclosures did not provide an accurate summary of rights and the law under the FCRA. Plaintiff contends that as a result of these violations, she had her privacy and statutory rights invaded in violation of the FCRA. Plaintiff does not allege that she did not receive a copy of the background report, that the report contained false or inaccurate information, or that she was prevented from taking any action due to GSV's actions. Thus, Plaintiff is only alleging an informational injury and, under *Limon*, Plaintiff lacks standing to bring a claim under the FCRA.

Accordingly, GSV's motion for judgment on the pleadings is GRANTED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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