

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

**Department 20, Judge Sunil R. Kulkarni, Presiding  
(covering for Judge Manoukian)**

**Courtroom Clerk: Hien-Trang Tran-Thien**

191 North First Street, San Jose, CA 95113

Telephone: 408.882.2320

Department20@scscourt.org

**"Every case is important" . . . . "No case is more important than any other." —  
United States District Judge Edward Weinfeld (<https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html>)**

**"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the  
Biggest Case of Your Life." — Common Wisdom.**

**As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and  
drink as friends." (Shakespeare, *The Taming of the Shrew*, act I, scene ii.)" (*Gregori v. Bank of  
America* (1989) 207 Cal.App.3d 291, 309.)**

**Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.*  
(1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented  
by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)**

**By Standing Order of this Court, all parties appearing in this Court are expected to comply with the  
Code of Professionalism adopted by the Santa Clara County Bar Association:  
<https://www.sccba.com/code-of-professional-conduct/>**

**DATE: Tuesday, December 5, 2023**

**TIME: 9:00 A.M.**

**If you are appearing remotely, please use the Zoom link below.**

**"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie.** All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try [www.pronouncenames.com](http://www.pronouncenames.com) but that site mispronounces my name.

**You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.**

Join Zoom Meeting  
<https://scu.zoom.us/j/96144427712?pwd=cW1jYmg5dDdsc3NKNFBpSjlEam5xUT09>  
Meeting ID: 961 4442 7712  
Password: 017350

Join by phone:  
+1 (669) 900-6833  
Meeting ID: 961 4442 7712

One tap mobile  
+16699006833,,961 4442 7712#

## APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in court appearances as well.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See ***Jensen v. Superior Court (San Diego)*** (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwidth. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California **Rules of Court**, rule 3.672.

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and **California Rules of Court**, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

Please notify this Court immediately if the matter will not be heard on the scheduled date. **California Rules of Court**, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. **California Rules of Court**, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. California Rules of Court, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

**All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.**

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will be helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: **Line #/name/party**. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

## CIVILITY.

In the 48 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

## COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); **California Rules of Court**, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if

any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

#### PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with **California Rules of Court**, rule 3.1312.

#### TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the “Control” key and click. If you see last week’s tentative rulings, you have checked prior to the posting of the current week’s tentative rulings. You will need to either “REFRESH” or “QUIT” your browser and reopen it. Another suggestion is to “clean the cache” of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

**This Court’s tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court’s final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.**

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	22cv394951	Slade v. Warriach	OEX can proceed, per the parties’ stipulation and Court-signed order.
LINE 2	21cv392871	Quinn v. Novak	See tentative ruling. The Court will prepare the final order.
LINE 3	23cv416611	Blue Arc Electric v. Ferhat Atas et al.	See tentative ruling. The Court will prepare the final order.
LINE 4	23cv416611	Blue Arc Electric v. Ferhat Atas et al.	See line 3.
LINE 5	22cv400385	Sanchez et al. v Petri et al.	OFF CALENDAR, as underlying case has been dismissed.
LINE 6	22cv400385	Sanchez et al. v Petri et al.	See line 5.
LINE 7	22cv400385	Sanchez et al. v Petri et al.	See line 5.
LINE 8	22cv400385	Sanchez et al. v Petri et al.	See line 5.
LINE 9	23cv411285	Cane v Hoover et al.	<p>The Court GRANTS the motion to compel arbitration. There was no undue delay in seeking arbitration by Defendant, and the scope of the arbitration agreement covers Plaintiff’s claims. The Court sees little procedural unconscionability (the form agreement at most) and no substantive unconscionability, and overall finds the arbitration agreement not to be unconscionable. Finally, at this time, the Court cannot take into account a possible new defendant when that party has not been named in the complaint as a defendant.</p> <p>The Court will prepare a more detailed order as its final order.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 10	23cv422749	County of Santa Clara v. Corey Syverson	No tentative ruling. The Court orders the parties to appear (in person or remotely) for the hearing.
LINE 11	1998-7-cv-365367	Franklin Bank v. Ngo Loii T	The Court DENIES WITHOUT PREJUDICE the claim of exemption. The judgment debtor seems to be attacking the proof of service of the original judgment, but to do so at this time, a motion to vacate is necessary. That has not occurred.
LINE 12	2013-1-cv-252654	Cavalry SPV I, LLC v . H. Huynh	No tentative ruling. The Court orders the parties to appear (in person or remotely) for the hearing.
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Calendar Line 1

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## Calendar Line 2

### Quinn v. Novak, 21CV392871

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 4 December 2023. Please specify the issue to be contested when calling the Court and Counsel.

#### ORDER ON DEFENDANT’S DEMURRER TO PLAINTIFF’S FIRST AMENDED COMPLAINT

##### I. Statement of Facts.

On or about 2 April 2007, plaintiff Brian Quinn (“Quinn”) and his former spouse, Lisa Quinn (“Lisa”)<sup>1</sup>, signed a promissory note with defendant Patricia Novak (“Novak”) in the amount of \$200,000, to be paid in installments, without interest. (First Amended Complaint (“FAC”), ¶4.) Plaintiff Quinn and Lisa made payments on the promissory note during their marriage totaling \$237,443.00 and plaintiff Quinn paid an additional \$5,500 to defendant Novak after his separation from Lisa, for a total overpayment of \$42,943.00. (FAC, ¶5.)

Plaintiff Quinn reasonably relied on defendant Novak to notify him when the promissory note had been paid in full. (FAC, ¶6.) Defendant Novak did not notify plaintiff Quinn the promissory note had been paid in full and continued to accept payments from plaintiff Quinn and his former spouse. (*Id.*)

In or about May 2020, defendant Novak sent plaintiff Quinn an accounting of the payments made on the promissory note and plaintiff Quinn then discovered that the promissory note had been overpaid. (FAC, ¶7.) Plaintiff Quinn has repeatedly demanded payment from defendant Novak for his overpayment. (FAC, ¶8.) Most recently, plaintiff Quinn demanded repayment from defendant Novak on 18 November 2021. (*Id.*)

No payment has been made by defendant Novak, and there is now owing the sum of \$42,943.00. (FAC, ¶9.) Plaintiff Quinn seeks only to be paid one half of the payments made prior to his separation from his former spouse, or \$18,722.00, and his payments thereafter totaling \$5,500, for a total of \$24,222.00. (*Id.*)

On 30 December 2021, plaintiff Quinn filed a “complaint to recover money paid by mistake” against defendant Novak.

On 16 March 2022, defendant Novak filed a demurrer to plaintiff Quinn’s complaint.

On 5 July 2022, the court issued an order overruling defendant Novak’s demurrer.

On 18 July 2022, defendant Novak filed an answer to plaintiff Quinn’s complaint.

On 21 March 2023, plaintiff Quinn filed a motion for leave to file a FAC.

On 13 July 2023, the court issued an order granting plaintiff Quinn’s motion for leave to file a FAC.

On 11 September 2023, plaintiff Quinn filed the operative FAC which now asserts causes of action for: (1) Money Had and Received – Paid by Mistake; and (2) Breach of Written Contract.

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<sup>1</sup> “For the sake of clarity, we refer to the [Lisa Quinn] by [her] first name[.]. We mean no disrespect in doing so.” (*In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 551, fn. 2.)

On 26 September 2023, defendant Novak filed the motion now before the court, a demurrer to the second cause of action of plaintiff Quinn's FAC.

On 15 November 2023, plaintiff Quinn filed a notice of errata attaching a copy of the promissory note referenced, but not included, in the FAC.

## **II. Analysis.**

### **A. Defendant Novak's demurrer to the second cause of action [breach of contract] of plaintiff Quinn's FAC is OVERRULED.**

"To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186; see also CACI, No. 303.)

In demurring to the second cause of action, defendant Novak apparently takes aim at the first element, i.e., the existence of a contract. More specifically, defendant Novak contends the alleged contract at issue in plaintiff's FAC, the promissory note, is lacking consideration. Defendant Novak cites Civil Code section 1550 which states:

It is essential to the existence of a contract that there should be:

1. Parties capable of contracting;
2. Their consent;
3. A lawful object; and,
4. A sufficient cause or consideration.

According to defendant Novak, "[n]o valid consideration for the loan is alleged in either the FAC or in the promissory note." What defendant Novak overlooks, however, is Civil Code section 1614 which states, "A written instrument is presumptive evidence of a consideration." The court reasonably infers from the allegation at paragraph 4 of the FAC that the promissory note at issue is written. (See FAC, ¶4—"On or about April 2, 2007, Plaintiff and his former spouse, Lisa Quinn, signed a promissory note....") The promissory note, omitted from the FAC, but attached to plaintiff Quinn's 15 November 2023 notice of errata further affirms the alleged contract is written.

Consequently, consideration is presumed. "The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it." (Civ. Code, §1615.) As defendant Novak's counsel should be well aware, a demurrer lies only for defects appearing on the face of the pleading or from judicially noticed facts. "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.) Here, lack of consideration does not appear on the face of the FAC or from any judicially noticed fact.

Accordingly, defendant Novak's demurrer to the second cause of action of plaintiff Quinn's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §§92 and 430.10, subd. (e)] for breach of contract is OVERRULED.

## **III. Order.**

Defendant Novak's demurrer to the second cause of action of plaintiff Quinn's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §§92 and 430.10, subd. (e)] for breach of contract is OVERRULED.

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### Calendar Line 3

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 4 December 2023. Please specify the issue to be contested when calling the Court and Counsel.

#### **ORDER ON (1) DEMURRER TO COMPLAINT BY DEFENDANTS ATASH ENERGY LLC AND FERHAT ATAS; AND (2) MOTION BY DEFENDANTS ATASH ENERGY LLC AND FERHAT ATAS TO STRIKE CLAIM FOR PUNITIVE DAMAGES**

##### **I. Statement of Facts.**

Plaintiff Blue Arc Electric, Inc. ("BAE") provides consultation, design, and engineering services related to the installation of electrical systems. (Complaint, ¶13.) In April 2022, defendant Ferhat Atas ("Atas"), on behalf of defendant Atash Energy, LLC ("Atash Energy"), hired plaintiff BAE to install can lighting on the campus of Cisco Systems, Inc. in San Jose pursuant to a Master Subcontract Agreement dated 26 April 2022 ("April 2022 Contract") and a Master Subcontract Agreement dated 19 August 2022 ("August 2022 Contract"). (Complaint, ¶¶1 and 14.) The scope of the work for the project consisted of two phases. (Complaint, ¶16.) The proposed price of work under phase I totaled \$29,450. (*Id.*) A number of change orders were made to phase I so that the total owed to plaintiff BAE for phase I was \$49,961.30. (Complaint, ¶¶17 – 18.) The total amount owed for phase II was \$61,707.08. (Complaint, ¶19.)

Plaintiff BAE began work on phase I on 5 July 2022 and completed by 7 November 2022. (Complaint, ¶20.) Phase II was performed concurrently with phase I, after terms were agreed to, and plaintiff BAE was urged to start work on that phase via email by defendant Atas. (Complaint, ¶21.) By November 2022, work on phase II had been substantially completed, but defendants Atas and Atash Energy refused to pay the amounts owed. (*Id.*)

Under the April 2022 Contract, payment was to be made "net 30 days from invoice billed to contractor to Subcontractor." (Complaint, ¶22.) The total owed and invoiced for phases I and II was \$111,668.38. (Complaint, ¶24.) To date, defendant Atash Energy has paid plaintiff BAE just \$40,990.00. (*Id.*) The remaining amount owed by defendant Atash Energy to plaintiff BAE is \$70,678.38. (*Id.*)

On 19 May 2023, plaintiff BAE filed a complaint against defendants Atas and Atash Energy asserting causes of action for: (1) Breach of Contract; (2) Fraud – Intentional Misrepresentation; (3) Breach of the Implied Covenant of Good Faith and Fair Dealing; (4) Unfair Business Practices pursuant to California Business and Professions Code §17200; and (5) Quantum Meruit.

On 15 September 2023, defendants Atas and Atash Energy filed the motions now before the court, a demurrer to the second cause of action of plaintiff BAE's complaint and a motion to strike plaintiff BAE's claim for punitive damages.

##### **II. Analysis.**

###### **B. Defendants Atas and Atash Energy's demurrer to the second cause of action [fraud] of plaintiff BAE's complaint is OVERRULED.**

"The elements of fraud that will give rise to a tort action for deceit are: (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974; punctuation and citations omitted.) "All of these elements must be present if actionable fraud is to be found; one element absent is fatal to recovery." (*Okun v. Morton* (1988) 203 Cal.App.3d 805, 828.)

“Fraud actions are subject to strict requirements of particularity in pleading. ... Accordingly, the rule is everywhere followed that fraud must be specifically pleaded.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216 (*Committee*).) “The pleading should be sufficient to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.” (*Commonwealth Mortgage Assurance Co. v. Superior Court* (1989) 211 Cal.App.3d 508, 518.) The court in *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645 did not comment on how these particular allegations met the requirement of pleading with specificity in a fraud action, but the court did say that “this particularity requirement necessitates pleading facts which ‘show how, when, where, to whom, and by what means the representations were tendered.’ A plaintiff’s burden in asserting a claim against a corporate employer is even greater. In such a case, the plaintiff must ‘allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.’”

Defendants Atas and Atash Energy demur to plaintiff BAE’s second cause of action for fraud by arguing, initially, that plaintiff BAE has simply alleged nonperformance of an agreement to pay. “Fraud is an intentional tort; it is the element of fraudulent intent, or intent to deceive, that distinguishes it from actionable negligent misrepresentation and from nonactionable innocent misrepresentation. It is the element of intent which makes fraud actionable, irrespective of any contractual or fiduciary duty one party might owe to the other.” (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 482.) “A promise of future conduct is actionable as fraud only if made without a present intent to perform. (Civ. Code, §1710, subd. 4; [Citation omitted].) “ ‘A declaration of intention, although in the nature of a promise, made in good faith, without intention to deceive, and in the honest expectation that it will be fulfilled, even though it is not carried out, does not constitute a fraud. [Citation.]’ ” [Citation omitted.] Moreover, “ ‘something more than nonperformance is required to prove the defendant’s intent not to perform his promise.’ [Citations.] ... [I]f plaintiff adduces no further evidence of fraudulent intent than proof of nonperformance of an oral promise, he will never reach a jury.” (*Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 481.)

In the second cause of action, plaintiff BAE alleges defendant Atas, individually and as agent for defendant Atash Energy, represented “Atash Energy would pay [BAE].” (Complaint, ¶¶31 – 32.) In the very next paragraph, plaintiff BAE alleges, in relevant part, “Defendants knew [their representations] to be false at the time that such representations were made ... Defendants had no intention of paying [BAE] the full amount it was owed under Phase I and Phase II of the contracts.” (See 5 Witkin, California Procedure (4th ed. 1997) Pleading, §684, p. 143—“Intent, like knowledge, is a fact. Hence, the averment that the representation was made with the intent to deceive the plaintiff, or any other general allegation with similar purport, is sufficient.”)

Insofar as defendants contend plaintiff BAE must provide some evidence of fraudulent intent beyond just nonperformance of the promise, that is a burden of proof upon the plaintiff, not a burden of pleading. (See *Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 575—plaintiff failed to carry burden of proof at trial.) “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, supra*, 35 Cal.3d at pp. 213–214.)

Defendants also contend the complaint does not specifically allege what was said, whether the misrepresentations were oral or in writing, nor the dates on which the alleged misrepresentations were made. The court found such specifics in paragraphs 31 – 32 of the complaint. As to whether the misrepresentations were oral or in writing, it is reasonably inferred that the misrepresentations were in writing since the contracts are specifically referenced.

Accordingly, defendants Atas and Atash Energy’s demurrer to the second cause of action of plaintiff BAE’s complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §§92 and 430.10, subd. (e)] for fraud is OVERRULED.

**C. Defendants Atas and Atash Energy’s motion to strike plaintiff BAE’s claim for punitive damages is DENIED.**

Defendants Atas and Atash Energy move to strike plaintiff BAE’s claim for punitive damages by essentially relying on their demurrer and arguing that since plaintiff BAE has not adequately alleged fraud, it has no

basis for requesting punitive damages. In light of the court's ruling above, defendants Atas and Atash Energy's motion to strike plaintiff BAE's claim for punitive damages is DENIED.

### **III. Order.**

Defendants Atas and Atash Energy's demurrer to the second cause of action of plaintiff BAE's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §§92 and 430.10, subd. (e)] for fraud is OVERRULED.

Defendants Atas and Atash Energy's motion to strike plaintiff BAE's claim for punitive damages is DENIED.

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