SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: November 30, 2023 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

***New information* (please read)**: To set future motion hearings, you no longer need to file your motion before receiving a hearing date. Phone lines are now open for you to call and reserve a hearing date *before filing and serving* your motion. Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve your date. This will obviate the need to file and serve a separate amended notice at a later time. Please note: if your motion papers are not filed within five business days of reserving the hearing date, the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV395989	Sisi Xu et al. v. Bethany Liou et al.	Order of examination: parties to appear.
LINE 2	22CV395989	Sisi Xu et al. v. Bethany Liou et al.	Order of examination: parties to appear.
LINE 3	22CV395989	Sisi Xu et al. v. Bethany Liou et al.	Order of examination: parties to appear.
LINE 4	22CV400111	Bank of America N.A. v. Quynhphuong B. Nguyen	Order of examination: parties to appear.
LINE 5	23CV424958	Daniel Burrell, Sr. v. Jerry Dorton	Order of examination: parties to appear.
LINE 6	2014-1-CV-271941	Carol Tran v. Mobile Tummy, Inc. et al.	Order of examination: parties to appear.
LINE 7	23CV411969	Christine A. Wilkes et al. v. Surgicare of Los Gatos, Inc.	Click on LINE 7 or scroll down for ruling.
LINE 8	23CV415836	Jin Zhang v. Zhichao Lu et al.	Click on LINE 8 or scroll down for ruling in lines 8-9.
LINE 9	23CV415836	Jin Zhang v. Zhichao Lu et al.	Click on LINE 8 or scroll down for ruling in lines 8-9.
LINE 10	20CV372475	QTV Enterprise, LLC v. Hieu Minh Nguyen et al.	In accordance with the parties' stipulation, this hearing is continued to February 15, 2024 at 9:00 a.m. in Department 10.
LINE 11	23CV419928	Ronny Yang et al. v. Toll CA XX, LP	OFF CALENDAR
LINE 12	20CV372768	American Express National Bank v. Christophe Haverick	Motion to vacate dismissal and for entry of judgment: notice is proper, and the motion is unopposed. Good cause appearing, the court GRANTS the motion and will sign the proposed judgment submitted by plaintiff.

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Calendar Line 7
Case Name: *Christine Wilkes et al v. Surgicare of Los Gatos, Inc.*
Case No.: 23CV411969

I. BACKGROUND

This is an employment case brought by plaintiffs Christine Wilkes and Bradley Morgan ("Plaintiffs") alleging various California Labor Code violations and unfair business practices against defendant Surgicare of Los Gatos, Inc. ("Surgicare").

Plaintiffs initiated this action on February 17, 2023. On May 1, 2023, Plaintiffs filed the operative first amended complaint ("FAC"), alleging the following causes of action:

1. Failure to Pay Minimum Wages (Lab. Code, §§ 1182.12, 1194, 1194.2, 1197, and 1198);
2. Failure to Pay Overtime Wages (Lab. Code, §§ 1194 and 1198);
3. Failure to Provide Compliant Meal Periods (Lab. Code, § 226.7);
4. Failure to Provide Compliant Rest Periods (Lab. Code, § 226.7);
5. Failure to Pay All Wages Due at Separation (Lab. Code, §§ 201, 202, and 203);
6. Failure to Reimburse Necessary Business Expenses (Lab. Code, § 2802); and
7. Unfair Competition (Bus. & Prof. Code, §§ 17200 et seq.).

On June 2, 2023, Surgicare filed and served an answer to the FAC, which contained a general denial and 33 affirmative defenses. On June 12, 2023, Plaintiffs' counsel filed a Declaration of Demurring or Moving Party in Support of Automatic Extension, seeking a 30-day extension to file a responsive pleading to Surgicare's answer.

Currently before the court is Plaintiffs' timely filed demurrer to and motion to strike Surgicare's answer, dated July 14, 2023. Surgicare filed its opposition on November 15, 2023.

II. DEMURRER TO THE ANSWER

A. Legal Standards

"The answer to a complaint shall contain: [¶] (1) The general or specific denial of the material allegations of the complaint controverted by the defendant. [¶] (2) A statement of any new matter constituting a defense." (Code Civ. Proc., § 431.30, subd. (b).) A party against whom an answer has been filed may demur to that answer upon any of the following grounds: "(a) The answer does not state facts sufficient to constitute a defense. [¶] (b) The answer is uncertain . . . [¶] (c) Where the answer pleads a contract, it cannot be ascertained from the answer whether the contract is written or oral." (Code Civ. Proc., § 430.20.)

"The effect of a general denial is to 'put in issue the material allegations of the complaint.'" (*Advantec Group, Inc. v. Edwin's Plumbing Co., Inc.* (2007) 153 Cal.App.4th 621, 627 [quoting *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 383 (*FPI Development*)].) "A material allegation in a pleading is one essential to the claim or defense and which could not be stricken from the pleading without leaving it insufficient as to that claim or defense." (Code Civ. Proc., § 431.10, subd. (a).)

In contrast to a general denial, affirmative defenses are "new matters" not in issue under a general denial. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 239 (*Harris*) ["if the onus of proof is thrown upon the defendant, the matter to be proved by him is [a] new matter"].) "New matter" must be specifically pled in the answer. (*Ibid*.) Thus, "affirmative defenses cannot be pled as mere legal conclusions but must instead be alleged with as much factual detail as the allegations of a complaint." (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 813 (*Quantification Settlement*).)

A demurrer to an answer may be filed on only three grounds: failure to state facts sufficient to constitute a defense, uncertainty, or failure to state whether an alleged contract is written or oral. (Code Civ. Proc., § 430.20.)

B. Discussion

Plaintiffs contend that 29 out of the 33 asserted affirmative defenses are subject to demurrer because each fails to state facts sufficient to constitute a defense.[1]

Surgicare rebuts these contentions by asserting that Plaintiffs can obtain further "factual information" through already propounded discovery. This is not exactly the appropriate pleading standard, however. Rather, the question is whether Plaintiffs have sufficient information to investigate and prepare against the defenses. (See *Harris, supra,* 56 Cal.4th at p. 240 ["The primary function of a pleading is to give the other party notice so that it may prepare its case."]; see also *FPI Development, supra,* 231 Cal.App.3d at p. 384.)[2]

Surgicare also broadly argues that pleading some of its affirmative defenses is necessary "to preserve this argument for subsequent stages in litigation." (See, e.g., Opposition at p. 8.) But that is also not the correct standard, because the general rule is that affirmative defenses are only waived "where the matter is *not responsive* to essential allegations of the complaint." (*Bevill v. Zoura* (1994) 27 Cal.App.4th 694, 698 [emphasis added]; see also *Carranza v. Noroian* (1966) 240 Cal.App.2d 481, 488.) If the defense is directly responsive to an essential allegation in the complaint, then there is no need to have pled it as a defense. (See *Advantec Group, Inc. v. Edwin's Plumbing Co., Inc.* (2007) 153 Cal.App.4th 621, 627 [defendant's failure to raise nonlicensure as a defense in the answer was not fatal because nonlicensure was "responsive to an essential allegation of the complaint"].) Additionally, as Plaintiffs point out, if a basis for asserting a new affirmative defense emerges through discovery, the court "ordinarily" grants leave to amend "liberally" unless the opposing party would be prejudiced. (*Singh v. Southland Stone, U.S.A., Inc.* (2010) 186 Cal.App.4th 338, 354.)

Nevertheless, the court also finds that many of Plaintiffs' contentions are based on an misapplication of the general principle that a party is only required to plead ultimate, not

[1] Plaintiffs also demur on the ground of uncertainty, but the court declines to consider this argument because Plaintiffs raise it for the first time in their reply brief. (*Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, 720, fn. 10 ["'Points raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument.'"].)

[2] While Surgicare also contends that *FPI Development* is inapposite because the Court of Appeal addressed the fraud allegations on a motion for summary judgment, the discussion and reiteration of general rules concerning affirmative defenses arose in the context of a plaintiff's failure to demur to affirmative defenses within an answer. (*FPI Development, supra,* 231 Cal.App.3d at pp. 384-385.)

evidentiary, facts. (*C.W. Johnson & Sons, Inc. v. Carpenter* (2020) 53 Cal.App.5th 165, 169; *C.A. v. William S. Hart Union High School District* (2012) 53 Cal.4th 861, 872.) Further, less specificity in pleading the facts is permitted when the opposing party is assumed to have knowledge of the facts that is at least equal, if not superior, to that possessed by the plaintiff. (*Randall v. Ditech Financial, LLC* (2018) 23 Cal.App.5th 804, 810-811.)

1. Improper Grounds for Demurrer

First, in response to the second, third, and fifth affirmative defenses (failure to exhaust administrative remedies, primary jurisdiction doctrine, and failure to exhaust contractual remedies),[3] Plaintiffs argue that they are not required to file a claim with the California Division of Labor Standards Enforcement or to exhaust contractual remedies before filing this lawsuit. These arguments go to the merits of these defenses, which is not a proper ground for a demurrer. (Code Civ. Proc., § 430.20.) At best, these arguments are premature and unsupported. The court OVERRULES the demurrer to these causes of action on this basis.

2. Defenses Challenging the Sufficiency of the Allegations in the FAC

Second, the court OVERRULES Plaintiffs' demurrer to the first (failure to state sufficient facts), sixteenth (all meal periods provided or waived), seventeenth (rest periods authorized and permitted), twenty-second (no willful failure to pay), twenty-third (good faith defense), twenty-sixth (lack of specificity), twenty-seventh (safe-harbor), and twenty-eighth (justification and privilege) affirmative defenses.

These defenses essentially contend that the FAC does not state sufficient facts to set forth various causes of action—as such, these defenses are not "affirmative" defenses because they are merely denials of Plaintiffs' claims rather than "new matter." (See Code Civ. Proc., § 430.20; *Harris, supra*, 56 Cal.4th at p. 239.) Where the answer "sets forth facts showing some essential allegation of the complaint is not true, such facts are not 'new matter,' but only a traverse." (*State Farm Mut. Auto. Ins. Co. v. Superior Court* (1991) 228 Cal.App.3d 721, 725 [citing *Goddard v. Fulton* (1863) 21 Cal. 430, 436]; see also *Walsh v. West Valley Mission Community College District* (1998) 66 Cal.App.4th 1532, 1546 (*Walsh*).) While pleading such defenses as "affirmative" defenses may be somewhat duplicative and unnecessary, it is also incorrect for Plaintiffs to claim that the defenses do not set forth sufficient facts, which is the only recognized basis upon which their demurrer may be sustained. (Code Civ. Proc., § 430.20, subd. (a).)[4] No additional fact pleading is required to support these general denials.

3. Defenses Challenging Jurisdiction

For similar reasons, the court OVERRULES Plaintiffs' demurrer to the third and fourth affirmative defenses asserting the primary jurisdiction doctrine and lack of standing. Jurisdictional defects are never waived and may be raised at any time in a proceeding. (*Cummings v. Stanley* (2009) 177 Cal.App.4th 493, 501; *Common Cause of Calif. v. Board of Supervisors* (1989) 49 Cal.3d 432, 438.) No additional facts are required to plead them.

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[3] Surgicare alleges that Plaintiffs failed to exhaust administrative and contractual remedies, and that the California Division of Labor Standards Enforcement has primary jurisdiction over the claims.

[4] Again, the court does not consider Plaintiffs' demurrer under subdivision (b) (uncertainty), which was raised for the first time in reply and which is, on its very face, of dubious merit.

4. Affirmative Defenses Raising New Matter

The court SUSTAINS Plaintiffs' demurrer to the seventh (laches), eighth (unclean hands), ninth (waiver), tenth (release/accord and satisfaction), eleventh (estoppel), twelfth (performance of duties), thirteenth (acquiescence/consent), fourteenth (authorization of law), fifteenth (justification), nineteenth (set-off/offset/recoupment), twentieth (de minimis activities), twenty-first (failure to comply with employer instructions), twenty-fifth (excessive fines), twenty-ninth (res judicata), thirtieth (collateral estoppel), thirty-second (failure to inform employer of alleged violations/avoidable consequence), and thirty-third (comparative fault/bad faith) affirmative defenses, with 20 days' leave to amend.

Although Surgicare is correct that the pleading standard for a claim or defense subject to demurrer is to give notice of the "nature, source and extent of his cause of action," the *Harris* and *Quantification Settlement* decisions make it clear that a properly asserted affirmative defense requires at least *some* non-conclusory facts to be alleged. (See *Harris, supra,* 56 Cal.4th at p. 239; see also *Quantification Settlement, supra,* 201 Cal.App.4th at p. 813.) Indeed, in *Roger v. County of Riverside* (2020) 44 Cal.App.5th 510, 533, which Surgicare relies on, the Court of Appeal reaffirmed that a proper pleading must set forth the "'essential facts of his case with *reasonable precision and with particularity* sufficient to acquaint [the opponent] with the nature, source and extent of his cause of action.'" (Emphasis added, citations omitted.) Surgicare's affirmative defenses lack the reasonable precision and particularity required to withstand demurrer.

For example, Surgicare's seventh and eighth affirmative defenses (laches and unclean hands) are pure boilerplate. They recite the concepts of laches and unclean hands without any elaboration as to what these defenses are directed to in this case. The twenty-ninth and thirtieth affirmative defenses are also pure boilerplate. Similarly, the ninth affirmative defense alleges: "Defendant is informed and believes, and based upon such information and belief alleges, that Plaintiffs have waived *some or all* of the purported causes of action alleged in the Complaint by virtue of *their prior representations, actions and inaction*." (Answer, p. 4 [emphasis added].) This defense is ambiguous and lacking in particularity.

As a further example, Surgicare's thirteenth affirmative defense insufficiently alleges: "Defendant is informed and believes, and based upon such information and belief alleges, that Plaintiffs' claims are barred because Plaintiffs acquiesced or consented to the conduct about which they now complain." (Answer, p. 5.) Surgicare does not allege what conduct Plaintiffs' consented to or how they consented. Although "no one can maintain an action for a wrong where he has consented to the act which has occasioned his loss," Surgicare's affirmative defense requires additional elaboration.

III. MOTION TO STRIKE

Plaintiffs move to strike Surgicare's first, twelfth, fourteenth, eighteenth, nineteenth, twenty-first, twenty-second, twenty-fourth, twenty-fifth, twenty-eighth, thirty-first, thirty-second, and thirty-third affirmative defenses. Plaintiffs assert that the allegations in these defenses are "irrelevant" to Plaintiffs' asserted causes of action or improperly characterized as affirmative defenses.

A. Legal Standard

Code of Civil Procedure section 436 permits a court to strike out any irrelevant, false, or improper matter inserted into any pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.) "The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (Code Civ. Proc., § 437.)

B. Analysis

In light of the court's ruling on Plaintiffs' demurrer, the motion to strike the twelfth, fourteenth, nineteenth, twenty-first, twenty-fifth, thirty-second, and thirty-third affirmative defenses is DENIED as moot.

The court DENIES the motion with respect to the remaining affirmative defenses, as well.

As noted above, an answer to a complaint may contain a general or specific denial of the material allegations of the complaint, or an affirmative defense. (Code Civ. Proc., § 431.30, subd. (b).) Contrary to Plaintiffs' objection, a defense that "merely denies that Plaintiff has stated a cause of action" is appropriate within Surgicare's answer. Plaintiffs' motion essentially boils down to an objection regarding the manner in which Surgicare has categorized its defenses, rather than on any substantive grounds. As Surgicare notes, Plaintiffs cite no legal authority that provides a basis for striking a pleading on such grounds. (See Code Civ. Proc., § 436 [permitting a court to strike "upon terms it deems proper"].) Moreover, Plaintiffs fail to indicate how they would be prejudiced by Surgicare's labeling of its defenses. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683 [holding that a motion to strike should be applied cautiously and sparingly, because it is generally used to strike substantive defects.].)

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Calendar Lines 8-9
Case Name: *Jin Zhang v. Zhichao Lu et al.*
Case No.: 23CV415836

This matter was originally scheduled to be heard on November 14, 2023. On the afternoon of November 13, 2023, the court posted the following tentative ruling:

I. BACKGROUND

This is an employment dispute between plaintiff Jin Zhang ("Zhang" or "Plaintiff") and defendants Hefei Reliance Memory LTD ("Hefei Reliance"), Reliance Memory, Inc. ("Reliance Memory"), Hefei Ruibo Enterprise Consulting Management LLP ("Hefei Ruibo") and Zhichao Lu ("Lu") (collectively, "Defendants").

The complaint, filed on May 2, 2023, states 11 causes of action: (1) Breach of Contract (against all defendants); (2) Breach of the Covenant of Good Faith and Fair Dealing (against all defendants); (3) Promissory Estoppel (against all defendants); (4) Unjust Enrichment (against all defendants); (5) Nonpayment of Wages (Labor Code, § 201(a)), (alleged against the three corporate entities); (6) Unfair Competition (against all defendants); (7) Fraudulent Inducement (against all defendants); (8) Intentional Misrepresentation (against all defendants); (9) Negligent Misrepresentation (against all defendants); (10) Concealment (against all defendants); and (11) Intentional Interference with Contractual Relations (against all defendants). There are no exhibits attached to the complaint. The complaint alleges in paragraph 1 that Zhang was employed as General Counsel for "the Company" from May 3, 2018 to May 30, 2021.

The Proof of Service of Summons ("POSS") on Hefei Reliance, filed June 8, 2023, lists the person served as "Person Authorized to Accept Service of Process" at "1430 Koll Cir, Suite 101, San Jose, CA 95112." The method of service on May 23, 2023 was by substitute service on "Glen Rosendale, Principal Design Engineer – Person In Charge of Office." The POSS on Reliance Memory, also filed June 8, states identical information. The POSS on Hefei Ruibo, filed June 27, 2023, lists the person served as "Zhichao Lu – Person Authorized to Accept Service of Process" at "1410 Helmond Ln, San Jose, CA 95118." The method of service on June 23, 2023 was by substitute service on "'Jane Doe' (Asian/F/80/5'2/120) – Co-Occupant."

Currently before the court are two motions to quash service of summons, one brought jointly by Hefei Reliance and Reliance Memory (filed on July 18, 2023) and the other brought by Hefei Ruibo (filed on August 2, 2023). Plaintiff has filed a joint opposition to all three motions.

II. MOTION TO QUASH SERVICE OF SUMMONS

A. General Authority

"[I]n California, '. . . the original service of process, which confers jurisdiction, must conform to statutory requirements or all that follows is void.'" (*Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 809 [quoting *Honda Motor Co. v. Superior Court* (1992) 10 Cal. App. 4th 1043, 1048].) "Until statutory requirements are satisfied, the court lacks jurisdiction over a defendant." (*Ruttenberg*, at p. 808.) "When a defendant challenges the court's personal jurisdiction on the ground of improper service of summons the burden is on the plaintiff to prove . . . the facts requisite to an effective service." (*Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413; see also *Lebel v. Mai* (2012) 210 Cal.App.4th 1154, 1163.) In meeting this burden, the filing of a proof of service creates a rebuttable presumption that service was proper, so long as the proof of service complies with applicable statutory requirements. (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1442 ("*Dill*"); *Floveyor International, Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 795; *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1205.)

B. The Basis for Defendants' Motions

The notice of motion by Hefei Reliance and Reliance Memory states that "Plaintiff failed to comply with the provisions of Code Civ Proc. §§ 415.20, 416.10 when she mailed the summons and complaint to the defendant entities generally, rather than to an individual authorized to accept service of process specified in Code Civ. Proc § 416.10." (Notice of Motion at p. 2:5-7.) The notice of motion by Hefei Ruibo states essentially the same thing, substituting Code of Civil Procedure section 416.40 (service on unincorporated association or partnership) for section 416.10. (See Hefei Ruibo Notice of Motion at p. 2:5-9.)

The motions argue that the instances of substitute service on Glen Rosendale and "Jane Doe" were invalid, and both motions rely heavily on the Court of Appeal's decision in *Ramos v. Homeward Residential, Inc.* (2014) 223 Cal.App.4th 1434, 1441-1442 (*Ramos*), which relies in part on the decision in *Dill*, *supra*. (See Hefei Reliance/Reliance Memory Memorandum of Points and Authorities ("MPA") at pp. 7:17-8:28; Hefei Ruibo MPA at pp. 10:12-12:3.) The *Ramos* Court stated:

> By its terms, section 416.10 permits service on a corporation that is not a bank by way of service on an individual or entity designated as an agent for service of process (§ 416.10, subd. (a)); service on one of the 11 officers or managers of the corporation specified in section 416.10, subdivision (b); service on a person authorized by the corporation to receive service (§ 416.10, subd. (c)); or service in a manner authorized by the Corporations Code (§ 416.10, subd. (d)). In turn, section 415.20 permits substituted service on a person specified in section 416.10 by leaving the summons and complaint "in his or her office . . . with the

person who is apparently in charge thereof." (§ 415.20, subd. (a), italics added.)

> While section 415.20, subdivision (a) permits substituted service on "the person to be served as specified in Section 416.10," where the proof of service fails to identify any such person, the proof of service is defective. As the court in *Dill v. Berquist Construction Co*., *supra,* 24 Cal.App.4th at pages 1435–1436 stated with respect to analogous provisions of section 415.40: "[T]he distinction between a 'party' and a 'person to be served' on behalf of that party . . . is central to the statutory scheme governing service of process. 'The words "person to be served" are words of precision, used throughout the act, intended to refer to the "individual" to be served, and not to the "party." For example, reference is to the vice president of defendant corporation who is being served on behalf of the corporate defendant, and not to the corporate defendant.' [Citation.] *Since a corporate defendant can only be served through service on some individual person, the person to be served is always different from the corporation*."

(*Ramos, supra* 223 Cal.App.4th at pp. 1441-1442, italics added and footnote omitted.) *Ramos* held that where the proofs of service were addressed solely to a corporation, rather than to any of the individuals required to be served, the corporation is not required to present any evidence in order to establish the invalidity of the service and the resulting lack of personal jurisdiction. The burden instead falls on the plaintiff to show that, notwithstanding the facial defect in service, service nonetheless *substantially complied* with the requirements of the Code of Civil Procedure. Strict compliance with the Code's provisions for service of process is not required.

As to substantial compliance, the *Ramos* court further explained:

> In general, substantial compliance with the code occurs when, although not properly identified in a proof of service, the person to be served in fact actually received the summons. (*Dill v. Berquist Construction Co*., *supra*, 24 Cal.App.4th at p. 1437; see *Olvera v. Olvera* (1991) 232 Cal.App.3d 32, 39–41 [283 Cal. Rptr. 271].) "[W]hen the defendant is a corporation, the 'person to be served' is one of the individuals specified in section 416.10. Therefore, [plaintiff] could be held to have substantially complied with the statute if, despite his failure to address the mail to one of the persons to be served on behalf of the defendants, the summons was actually received by one of the persons to be served." (*Dill v. Berquist Construction Co*., *supra,* at p. 1437.) However, mere receipt of the summons by an unknown employee of the corporation who is not a person specified in section 416.10 does not necessarily establish substantial compliance. (*Dill,* at pp. 1438–1439.) Evidence that shows the name of the person who received the summons and complaint as well as the person's title or capacity is required by statute (§ 417.10) and, without it, a trial court need not infer that a person specified in section 416.10 actually received the summons and complaint.

(*Id.* at p. 1443.)

Here, the proofs of service of summons on Hefei Reliance and Reliance Memory fail to identify any persons authorized to accept service. While the POSS on Hefei Ruibo purports to list Defendant Lu, the proof admits that the actual service relied upon for service on Hefei Ruibo was substitute service on "Jane Doe."

The motion by Hefei Reliance and Reliance Memory is accompanied by a declaration from Glen Rosendale stating (at ¶ 2) that on May 23, 2023, he was alone in the office when "[a] man entered the office and handed me two stapled bundles of paper, about 35 pages each. The man who entered the office and handed me the papers asked me for my name and title, and I told him I was Glen Rosendale and that I worked as a Principal Engineer." Rosendale goes on to state that he is not authorized to accept service of process for Hefei Reliance or Reliance Memory, has never been designated an agent for service of process for either entity, and is not a president, vice president, chief executive officer, general manager or any other type of officer or employee for Hefei Reliance or Reliance Memory, on whom service could be made pursuant to Code of Civil Procedure section 416.10(a) or (b). Attached as Exhibits 1 and 2 to his declaration are copies of the envelopes in which the summons and complaint were later mailed to Hefei Reliance and Reliance Memory. Both envelopes are addressed only to the business entity and not to any specific person authorized to accept service on either entity's behalf.

The motion by Hefei Ruibo is accompanied by a declaration from Mei Zhao, who is apparently the "Jane Doe" who was served by Plaintiff. She states that she resides at 1410 Helmond Lane and that it is a residence and not used as a place of business. She states that on June 23, 2023 "a person came to my home . . . and left some papers." (Zhao Declaration at ¶ 2.) She further states that she has never been authorized to accept service for Hefei Ruibo and has never held any position with Hefei Ruibo that would allow service through her under Code of Civil Procedure section 416.40. Attached to her declaration as Exhibit A is a copy of the envelope in which copies of the summons and complaint were later mailed to her residence. It is addressed only to Hefei Ruibo and not to "Zhichao Lu" (as claimed in the POSS) or to any specific person authorized to accept service for Hefei Ruibo.

The evidence submitted with both motions is sufficient to show that the May 23, 2023 service on Hefei Reliance and Reliance Memory and the June 23, 2023 service on Hefei Ruibo were invalid. The burden therefore shifts to Plaintiff to show either valid service or substantial compliance.

C. Plaintiff's Opposition

Plaintiff's opposition asserts that she properly served Lu (who has not moved to quash) and that all defendants have actual knowledge of this lawsuit. Neither of these facts, even if assumed to be true, is a sufficient basis for denying

the current motions. The opposition also asserts that Plaintiff re-served Reliance Memory on September 18 and that all three motions should be considered moot because Plaintiff filed a First Amended Complaint on October 30. While an amended complaint appears to have been submitted to the court, this does not render these two motions to quash—directed at service of the original summons and complaint on May 23, 2023 and June 23, 2023—moot. Neither does a subsequent service on September 18. The validity of September and October proofs is not at issue in these motions.

Plaintiff's opposition further asserts that both motions should be denied because there was "substantial compliance" with Code of Civil Procedure section 415.20 and because it was only necessary for Plaintiff to serve Reliance Memory to effectuate service on Hefei Reliance. The opposition admits that the envelopes containing the summons and complaint sent to Hefei Reliance and Reliance Memory were not addressed to any specific person authorized to accept service on their behalf, but it deems this a "mere technical defect." Regarding service on Hefei Ruibo, the opposition argues that the substitute service on "Jane Doe" was sufficient.

A critical problem for the opposition is that it repeatedly relies upon documents referenced as "Exhibit A" to "Exhibit M" to support its arguments. None of these exhibits were actually submitted with the opposition. Instead, Plaintiff separately filed her exhibits several days late, without leave of court, on November 3, 2023. In addition to being untimely, these documents are not authenticated. (See Evid. Code, § 1401, subd. (a) ["Authentication of a writing is required before it may be received into evidence."]; *O'Laskey v. Sortino* (1990) 224 Cal.App.3d 241, 273 [a writing must be authenticated by evidence establishing that the writing is what it purports to be]; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 523 [explaining that ordinarily in law and motion matters, a writing is authenticated by declarations establishing how the documents were obtained, who identified them, and their status as "true and correct" copies of the original].) These are not mere "technicalities"; if Plaintiff wishes to proceed in this court, she must comply with the rules and statutes that control in this court. The court has not considered the unauthenticated documents.

Plaintiff's opposition also cites two declarations. The first is from counsel Qiaojing Zheng, which discusses communications and disagreements with defense counsel. The declaration has little relevance to these motions and does not support Plaintiff's substantial compliance argument. The declaration refers to Exhibits A-D, which were separately filed, late, and without leave of court.

The second declaration is from Richard Lee. Lee states that he is a private investigator retained by Plaintiff "to investigate Zhichao Lu ('Defendant Lu') and Reliance Memory, Inc." (Lee Decl., ¶ 1.) Again, tthe declaration discusses Exhibits A-D, which were separately filed, late, and without leave of court, on November 3, 2023.

D. Conclusion

The court GRANTS both motions to quash. Hefei Reliance, Reliance Memory, and Hefei Ruibo have submitted sufficient evidence to establish that the instances of alleged service on May 23, 2023 and on June 23, 2023 were invalid. Zhang has failed to rebut this showing with timely, authenticated evidence that establishes the facts of valid service by a preponderance of the evidence. (See *Lebel v. Mai* (2012) 210 Cal.App.4th 1154, 1160.)

On November 14, 2023, Zhang's counsel's colleague, Amruta Trivedi, appeared and informed the court that Zhang's counsel (Qiaojing Zheng) wished to contest the court's tentative ruling but was feeling ill. Based on Ms. Zheng's illness, Ms. Trivedi requested a continuance of the hearing on her behalf, and the court granted it, continuing the hearing to November 30, 2023.

The court did not expect to receive any new evidence or briefing in connection with these motions to quash, but on November 21, 2023, Zhang apparently filed a "motion to expand the record on plaintiff's opposition to motions to quash service of summons." Submitted with this new motion and memorandum of points and authorities was a 64-page declaration and exhibits of Ms. Zheng, attempting to resubmit and re-authenticate the unauthenticated documents identified in the court's tentative ruling. In addition, Ms. Zheng's declaration blamed the court clerk's office for her late filing ("The exhibits were rejected on a technical formality—namely, the lack of caption pages—and then disregarded as untimely when Plaintiff refiled them to cure this deficiency"), but did not give any explanation for the failure to authenticate the exhibits.

Then, on November 28, 2023, the court received an "emergency ex parte motion and motion to expand the record in opposition to motions to quash service of summons," containing the same substance as Zhang's November 21, 2023 motion but submitted as an ex parte application.

The court finds these eleventh-hour filings to be improper and denies both of them. First, at the hearing on November 14, 2023, Ms. Trivedi never requested leave to submit additional documents on behalf of Zhang, and the court never granted such leave. The only basis for a continuance was Ms. Zheng's purported illness. Second, the court is unaware of any authority for a "motion to expand the record," and these filings do not cite any. Third, even if the clerk's office were to blame for Zhang's own failure to comply with "technical formalit[ies]"—a claim that the court finds to be in bad form—it still does not explain Zheng's (and counsel's) failure to authenticate the exhibits in the first instance.

The court finds no basis to depart from its prior tentative ruling. The motions to quash are GRANTED.

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