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: February 29, 2024 TIME: 9:00 A.M.

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

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

Scheduling motion hearings: Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

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

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

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

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: February 29, 2024 TIME: 9:00 A.M.

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

LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV373013	Manoutchehr Movassate et al. v. Mary Ly et al.	Order of examination: parties to appear.
LINE 2	20CV373013	Manoutchehr Movassate et al. v. Mary Ly et al.	Order of examination: parties to appear.
LINE 3	20CV373013	Manoutchehr Movassate et al. v. Mary Ly et al.	Order of examination: parties to appear.
LINE 4	21CV390730	Patricia Yau v. Joe Eustice et al.	Click on LINE 4 or scroll down for ruling.
LINE 5	23CV415923	Sanmina Corporation v. Cue Health Inc.	Click on LINE 5 or scroll down for ruling.
LINE 6	20CV367690	David Hsieh et al. v. Erin Miller et al.	Click on LINE 6 or scroll down for ruling.
LINE 7	21CV386912	Yeo Bai Lee v. Christy Jihee Ryoo et al.	Motion to compel plaintiff to verify written discovery responses: parties to appear. It seems that this motion was mistakenly left on calendar, even though it has now been heard by the discovery referee in this case. If the parties do not appear, the court will take this motion off calendar.
LINE 8	22CV395808	Karla Ruiz v. Surinder Singh	Click on LINE 8 or scroll down for ruling in lines 8-9.
LINE 9	22CV395808	Karla Ruiz v. Surinder Singh	Click on LINE 8 or scroll down for ruling in lines 8-9.
LINE 10	23CV411879	Jorge Zermeno Ochoa v. Pankaj Verma	Motion to be relieved as counsel: counsel and client to appear. At the December 21, 2023 OSC hearing, the court instructed plaintiff's counsel to fix the erroneous hearing date on his papers. It does not appear that this has been done, and so the court finds that notice is not proper.

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: February 29, 2024 TIME: 9:00 A.M.

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

LINE 11	23CV421626	Duong Nguyen et al. v. Peter Chang	OFF CALENDAR, based on withdrawal by moving party's counsel.

- oo0oo -

Calendar Line 4
Case Name: *Patricia Yau v. Joe Eustice et al.*
Case No.: 21CV390730

I. BACKGROUND

Plaintiff Patricia Yau brings suit against several defendants to recover damages for injuries stemming from her alleged exposure to bedbugs while staying at the Hilton Santa Clara hotel in Santa Clara, California on November 5, 2019.

Yau's complaint, filed on November 4, 2021, states seven causes of action: (1) Battery; (2) Negligence; (3) Intentional Infliction of Emotional Distress; (4) Fraudulent Concealment; (5) Private Nuisance; (6) Public Nuisance; and (7) Breach of Contract. All seven causes of action are alleged against all defendants.

Two of the defendants, Hilton Worldwide Holdings, Inc. ("Hilton Worldwide") and Park Hotels and Resorts ("Park Hotels"), brought a joint motion to quash service of summons based on lack of personal jurisdiction on August 17, 2022. Yau did not file any opposition to the motion, and this court (Judge Kirwan) granted it in a minute order issued on December 1, 2022. This court (the undersigned) also signed a formal order granting the motion on February 22, 2023. The case against Hilton Worldwide and Park Hotels was dismissed.

Yau then brought a motion to vacate the dismissal or, alternatively, for reconsideration as to the motion to quash, which Hilton Worldwide and Park Hotels opposed. This court (the undersigned) granted the motion to vacate the dismissal on January 11, 2024, based on Code of Civil Procedure section 473(b), and reset the motion to quash for a hearing on February 29, 2024. The moving defendants filed an amended notice of motion on January 30, 2024. Yau filed an opposition to the motion on February 15, 2024.

II. DEFENDANTS' MOTION TO QUASH

A. General Standards

California courts "may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) "The primary focus of the personal jurisdiction inquiry is the relationship of the defendant to the forum state. The 'constitutional touchstone' of this inquiry is whether the defendant 'purposefully established 'minimum contacts' in the forum State.'" (*Rivelli v. Hemm* (2021) 67 Cal.App.5th 380, 391 ("*Rivelli*"), internal citations omitted [citing, among others, *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.* (2017) 582 U.S. 255 ("*Bristol-Myers*") and *Burger King Corp. v. Rudzewicz* (1985) 417 U.S. 462, 474 ("*Burger King*")].)

"To comport with the constitutional requirements of due process, a California court may assert jurisdiction over a nonresident defendant (who has not consented to suit in the forum) *only* if the defendant's minimum contacts with the forum state are 'such that the maintenance of the suit "does not offend the traditional notions of fair play and substantial justice."' The minimum contacts test ensures that 'a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts' but only 'where the contacts proximately result from actions by the defendant *himself* that create a

'substantial connection' with the forum State.' Personal jurisdiction under the minimum contacts framework may be either all-purpose (also called 'general') or case-linked (also called 'specific')." (*Rivelli, supra,* at pp. 391-392, internal citations omitted, emphasis in original.)

The inquiry to determine general or all-purpose jurisdiction "is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,' it is whether that corporation's 'affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." (*Daimler AG v. Bauman* (2014) 571 U.S. 117, 137-138, internal citations omitted ("*Daimler AG*").)

"Case-linked jurisdiction hinges on the 'relationship among the defendant, the forum, and the litigation.' It requires 'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.' Consistent with the constraints of due process, 'the defendant's suit-related conduct must create a substantial connection with the forum State.' [¶] As expressed by the California Supreme Court, a court may exercise case-linked jurisdiction over a nonresident defendant if three requirements are met. First, the defendant must have purposefully availed himself of the privilege of conducting activities in this state, thereby invoking the benefits and protections of California's laws. Second, the claim or controversy must relate to or arise out of the defendant's forum-related contacts. Third, the exercise of jurisdiction must be fair and reasonable and should not offend notions of fair play and substantial justice. [¶] The case-linked jurisdictional analysis is intensely fact-specific." (*Rivelli, supra,* 67 Cal.App.5th at pp. 392-393, internal citations and quotation marks omitted [citing, among others, *Daimler AG* and *Bristol-Myers, supra*].)

A defendant may move to quash service of summons on the ground that the court lacks personal jurisdiction. (See Code Civ. Proc., § 418.10(a).) "When a nonresident defendant challenges a trial court's exercise of personal jurisdiction, the plaintiff bears the initial burden to demonstrate facts justifying the exercise of jurisdiction. To meet this burden, a plaintiff must do more than make allegations. A plaintiff must support its allegations with 'competent evidence of jurisdictional facts. Allegations in an unverified complaint are insufficient to satisfy this burden of proof.' If the plaintiff makes this showing by a preponderance of the evidence on the first two requirements (i.e., that the defendant has purposefully availed itself of the forum and the plaintiff's claims relate to or arise out of the defendant's forum-related contacts), the burden shifts to the defendant to demonstrate that the exercise of jurisdiction would be unreasonable." (*Rivelli, supra,* 67 Cal.App.5th at p. 393, internal citations omitted.)

B. Discussion

The court grants the joint motion to quash by Hilton Worldwide and Park Hotels, for the reasons that follow.

First, there are no allegations in the complaint that the moving defendants are subject to general, all-purpose jurisdiction in California. The complaint alleges on information and belief that both Hilton Worldwide and Park Hotels are Virginia corporations with their principal offices in McLean, Virginia. (See Complaint at ¶¶ 4-5.) Hilton Worldwide and Park Hotels respond that they are actually Delaware corporations with principal places of business in Virginia. (Declaration of James O. Smith, ¶ 4; Declaration of Sean Dell'Orto, ¶ 4.) This

difference is immaterial—under either side's view of the facts, there is no basis for finding that either Hilton Worldwide or Park Hotels is "at home" in California.

Second, the two declarations submitted by the moving parties (from James O. Smith, Vice President for Hilton Domestic Operating Company, Inc., a wholly owned subsidiary of Hilton Worldwide, and Sean Dell'Orto, the Executive Vice President, Chief Financial Officer, and Treasurer of Park Hotels) state under penalty of perjury that neither Hilton Worldwide nor Park Hotels owns, leases, occupies, manages, controls, or maintains (either directly or indirectly) the Hilton Santa Clara, the property where the Yau alleges she was injured. Both declarations also state that neither Hilton Worldwide nor Park Hotels employs any staff at the property or is a franchisor for the property. As a consequence, there is no basis for finding that either defendant is subject to specific jurisdiction in California.[1]

Once this motion was filed, Yau bore the initial burden to demonstrate facts justifying the exercise of jurisdiction over Hilton Worldwide and Park Hotels. Again, this required competent evidence of jurisdictional facts. (See *Rivelli, supra*, 67 Cal.App.5th at p. 393.) Yau's opposition claims that she "was of the understanding" that Hilton Worldwide and Park Hotels "had at the time of the incident at least minimum contacts and/or systematic and continuous contacts" with California. No evidence is provided to support this statement. The opposition also repeats the claim from the complaint that the Hilton Santa Clara "is alleged to be owned, operated and maintained by" Hilton Worldwide and Park Hotels. No evidence has been submitted to support this statement, either.[2] The court therefore does not give any weight to these conclusory allegations. (See *United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 153 [court may disregard conclusory arguments that are not supported by pertinent legal authority or that fail to disclose the reasoning by which the claimant reached the conclusions she wants the court to adopt]; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106 [court is not required to examine undeveloped claims or to make arguments for the parties].)

Despite being in possession of this motion for approximately *a year and a half*, and despite having been given a second chance to respond to it, Yau's opposition fails to make a prima facie showing that either Hilton Worldwide or Park Hotels has purposefully availed itself of the forum state (California) and that her claims arise out of either defendant's California-related contacts. Accordingly, there is no basis to shift the burden to defendants to show that the exercise of jurisdiction over them would be unreasonable.

The opposition makes a request that "more time be given to Plaintiff to dismiss any improper entities." (Opposition at p. 3:5-6.) To the extent that this request—which appears to concede that the moving defendants are likely not the proper defendants in this case—is a request for a continuance of the motion, the court denies it. The court would have expected a continuance request to be in the form of a specific declaration from counsel describing *in detail* what steps still needed to be taken (*e.g.*, some form of jurisdictional discovery, as well as a

---

[1] The court has not considered the declaration of Natalie Lagunas submitted with defendants' reply. (See *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 774 [new evidence is not permitted in reply papers unless it is "strictly responsive" to arguments made for the first time in the opposition].)

[2] As Yau's complaint is unverified, it does not count as competent evidence of jurisdictional facts. (*Swenberg v. Dmarcian, Inc.* (2021) 68 Cal.App.5th 280, 299.)

time estimate for such discovery). Yau's request is insufficient to show good cause for any continuance, particularly given how long this motion has been pending. (See *Beckman v. Thompson* (1992) 4 Cal.App.4th 481, 487 [affirming trial court's denial of request for jurisdictional discovery where the court "could reasonably conclude further discovery would not likely lead to production of evidence establishing jurisdiction"].)

The motion to quash is GRANTED.

- oo0oo -

Calendar Line 5
Case Name: *Sanmina Corporation v. Cue Health Inc.*
Case No.: 23CV415923

I. BACKGROUND

This is a contract dispute between two Delaware corporations: plaintiff Sanmina Corporation ("Sanmina"), whose principal place of business is in San Jose, and defendant Cue Health, Inc. ("Cue"), whose principal place of business is in San Diego.

Sanmina filed its original complaint on May 5, 2023. That complaint described a written contract between the parties, a Letter of Agreement ("LOA"), that was allegedly entered into on April 21, 2020. The complaint stated three causes of action: (1) Breach of Contract (alleging a failure to pay for materials and finished goods under the LOA); (2) Breach of the Implied Covenant of Good Faith and Fair Dealing (again alleging a failure to pay for materials ordered under the LOA); and (3) Promissory Estoppel (alleging reasonable reliance on the LOA and requests from Cue in incurring costs).

Cue brought a demurrer to the second and third causes of action in the original complaint, which this court heard on December 19, 2023. The court sustained the demurrer to the second cause of action with leave to amend and overruled the demurrer to the third cause of action.

Sanmina filed the operative first amended complaint ("FAC") on January 8, 2024. The FAC states only two causes of action: (1) Breach of Contract (again alleging a failure to pay in breach of the LOA); and (2) Promissory Estoppel (again alleging reasonable reliance on the LOA). The FAC abandoned the breach of the implied covenant claim.

The present motion relates to the cross-action. On July 25, 2023, Cue filed a cross-complaint against Sanmina stating four causes of action: (1) Breach of Contract (alleging a breach of the LOA); (2) Breach of the Implied Covenant of Good Faith and Fair Dealing (also alleging a breach of the LOA through the retention of money, demand for additional payments not owed, failure to pay suppliers, failure to provide Cue with paid-for components, and failure to return equipment); (3) Restitution; and (4) Accounting (under Code of Civil Procedure section 872.140). The cross-complaint refers to two "attached" exhibits—the LOA and the Material Ordering Policies ("MOP") incorporated into the LOA—although these exhibits have been redacted in their entirety in the filed version of the cross-complaint. Sanmina subsequently filed a motion to seal Exhibit A to the cross-complaint, attaching a redacted copy of the LOA, which the court granted on January 19, 2024. To the court's knowledge, however, a copy of the MOP (Exhibit B) has never been submitted or filed.

Currently before the court is Sanmina's demurrer to the cross-complaint, filed on September 25, 2023. Cue filed an opposition on February 15, 2024.

II. DEMURRER TO THE CROSS-COMPLAINT

A. General Standards

As noted in the December 19, 2023 order on Cue's demurrer to the complaint, the court treats a demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 213-214.)

The court considers only the pleading under attack, any attached exhibits, and any facts or documents for which judicial notice is properly requested. The court cannot consider extrinsic evidence in ruling on a demurrer or motion to strike. The court has considered the declaration of Sanmina's counsel Zoe Vallier only to the extent that it describes the required meet-and-confer efforts.

Sanmina demurs to the cross-complaint's second, third, and fourth causes of action. It asserts that the second cause of action for breach of the implied covenant fails to state sufficient facts "in that it is impermissibly duplicative of" the first cause of action, that the third cause of action fails to state sufficient facts "because there is no such thing as a cause of action for restitution," and that the fourth cause of action fails to state sufficient facts because "it does not plead that a relationship exists between the parties that requires an accounting, and that some balance is due to Cue by Sanmina that can only be ascertained by an accounting." (Demurrer at p. 2:10-22.)[3]

B. Discussion

1. Second Cause of Action

As this court has previously noted, "[t]he covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made. The covenant thus cannot 'be endowed with an existence independent of its contractual underpinnings.' It cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." (*Guz v. Bechtel National, Inc*. (2000) 24 Cal.4th 317, 349-350.) "[W]here breach of an actual term is alleged, a separate implied covenant claim, based on the same breach, is superfluous." (*Id*. at p. 327.)

The court SUSTAINS Sanmina's demurrer to the second cause of action for the following reasons.

---

[3] Sanmina's notice of demurrer, demurrer, supporting memorandum, and supporting declaration were filed as one continuously paginated document, cited herein as "Demurrer."

Cue's first cause of action for breach of contract alleges that Sanmina breached the LOA by requesting and accepting money from Cue for "improperly ordered" components, by improperly drawing $12 million from Cue's Letter of Credit, by failing to deliver components already paid for, and by "failing to return manufacturing equipment funded and/or supplied to it by Cue, including uninstalled equipment that Cue has requested be returned." (Cross-Complaint at ¶¶ 82-85.)

Meanwhile, Cue's second cause of action for breach of the implied covenant alleges that Sanmina "retains Cue's money," and "has demanded additional payments"; that Sanmina "refuses to pay Cue's suppliers for excess components it ordered," has "failed to provide to Cue the components properly ordered and paid for," and has "failed to return manufacturing equipment funded and/or supplied to it by Cue, including uninstalled equipment that Cue has requested be returned." (Cross-Complaint at ¶¶ 90-92.)

As Sanmina points out—and as was also the case with Sanmina's own now-abandoned breach of the implied covenant cause of action—the allegations in Cue's second cause of action duplicate, with minor semantic differences, the allegations in the first cause of action for breach of the LOA. Contrary to what Cue argues in its opposition, there is no difference between the "gravamen" of these two causes of action: the second cause repeats the material allegations of the first and asserts that the *same conduct* that breached the LOA also breached the implied covenant. The additional allegation in Paragraph 93 of the cross-complaint that Sanmina's conduct frustrated "Cue's relationship with component suppliers" and "Cue's attempts to determine what is owed" does not alter this conclusion. (Cross-Complaint at ¶ 93.) Rather than form a basis for a separate cause of action, Cue's allegations regarding "Sanmina's repeated refusal to provide documentation to Cue supporting its payment demands" (Opposition at p. 6:8-9) flow directly from the express terms of the LOA. (See, e.g., LOA at ¶ 10 ["Sanmina shall maintain records reasonably detailing the services performed pursuant to this Agreement, information related to the manufacture of the Products, manufacturing traceability records, a Product master record, a Product history record, distribution/shipment records, and a quality system record (each, in English) (collectively, with any other reports and information that may be normally required by Customer, 'Records')."].)

A plaintiff or cross-complainant bears the burden of proving an amendment would cure the defect identified by a demurrer. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) Cue's opposition does not meet this burden, as it does not request leave to amend but rather argues that the demurrer to the second and fourth causes of action should be overruled. "The onus is on the plaintiff to articulate the 'specifi[c] ways' to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend 'only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case. [Citation.]'" (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145.) Nevertheless, even though it is not apparent to the court how the second cause of action could be amended without contradicting the existing factual allegations, the court grants 10 days' leave to amend, given that this is the first challenge to the cross-complaint, and given that the court granted Sanmina the same opportunity as to the complaint.

2. Third Cause of Action

As noted above, Sanmina argues that "there is no such thing as a cause of action for restitution." (Demurrer at p. 2:15.) Cue's opposition states that "Cue withdraws this claim.

As Sanmina admits, Cue may seek restitution as a remedy for Sanmina's breaches of contract." (Opposition at p. 3:28, fn. 1.) As no formal withdrawal has yet been filed, the court will SUSTAIN the demurrer to the third cause of action without leave to amend.

3. Fourth Cause of Action

"A cause of action for an accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting." (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179 (*Teselle*).) "An action for accounting is not available where the plaintiff alleges the right to recover a sum certain or a sum that can be made certain by calculation. [Citation.] A plaintiff need not state facts that are peculiarly within the knowledge of the opposing party. [Citation.]" (*Ibid*.) "[A] fiduciary relationship between the parties is not required to state a cause of action for accounting. All that is required is that some relationship exists that requires an accounting. [Citation.] The right to an accounting can arise from the possession by the defendant of money or property which, because of the defendant's relationship with the plaintiff, the defendant is obliged to surrender. [Citation.]" (*Teselle, supra*, 173 Cal.App.4th at pp. 179-180.)

As noted above, the basis for Sanmina's demurrer to the fourth cause of action is that "it does not plead that a relationship exists between the parties that requires an accounting, and that some balance is due to Cue by Sanmina that can only be ascertained by an accounting." (Demurrer at p. 2:10-22.) The first part of this argument, which Sanmina does not develop in its supporting memorandum, is unpersuasive. The former contractual relationship between the parties is plainly alleged and provides the necessary relationship between the parties for an accounting claim.

As for the second part of the argument, Sanmina claims that "[t]he disputed issues revolve around the propriety of Sanmina's orders, Cue's forecasts, and identifying who is liable for left over components after Cue's orders dried up. In fact, Cue specifically alleges that it would like an accounting to determine how much (if any) of the $20 million Cue deposited in the Reserve Account and the $12 million Cue posted in the LOC 'is attributable to Sanmina's over-ordering of components in breach of its own MOP . . . .' Cross-Complaint, ¶ 106. An accountant will not be of any assistance in resolving that issue because it requires an adjudication of factual and legal disputes about whether Sanmina properly ordered the components for which it is claiming Cue is required to pay." (Demurrer at p. 8:4-12.)

In opposition, Cue contends that it "is in no position to know" whether an accounting is unnecessary because "Sanmina has repeatedly refused to provide evidence supporting its demands for payment" and that Cue does not need to prove any of this at the pleading stage. (See Opposition at p. 7:8-15.) As it is correct that factual disputes cannot be resolved on a demurrer and the cross-complaint's factual allegations must be accepted as true, the court agrees with Cue. "An action for an accounting has been characterized as 'a means of discovery.' This characterization is consistent with the idea that a plaintiff seeking an accounting cannot 'allege[] the right to recover a sum certain' because he or she lacks the information necessary to determine the precise amount that may be due. The plaintiff's lack of knowledge drives the need for discovery; and the fact that the gap can be filled via discovery implies the information is within the control of the defendant. In other words, the defendant in

an accounting action possesses information unknown to the plaintiff that is relevant for the computation of money owed." (*Sass v. Cohen* (2020) 10 Cal.5th 861, 869, internal citations omitted but citing *Teselle.*)

The court OVERRULES Sanmina's demurrer to the fourth cause of action, as it not apparent from the face of the cross-complaint that there is no balance due to Cue from Sanmina that may be ascertained by an accounting.

- oo0oo -

Calendar Line 6
Case Name: *David Hsieh et al. v. Erin Miller et al.*
Case No.: 20CV367690

Defendant Erin Miller moves for a protective order against discovery requests propounded by plaintiff Gayathri Duraipandian in this personal injury action arising out of an automobile accident. For the reasons set forth below, the court GRANTS the motion.

1. Background

The discovery at issue was originally propounded by both Duraipandian and plaintiff David Hsieh, but Hsieh has now settled his claim against Miller. What remains are 92 requests for admissions (originally 123 requests), a form interrogatory (No. 17.1, which is based on the RFAs), and a request for production of documents that is also based on the RFAs. This is in addition to 35 RFAs for which Miller previously already provided responses. Although this case has been pending since June 29, 2020—*i.e.*, for three years and eight months—Duraipandan served this latest set of discovery requests on January 8, 2024, three months before the current trial date of March 11, 2024 and more than eight months after the original trial date of April 24, 2023.

2. Discussion

Miller argues that the RFAs at issue are excessive, unduly burdensome, and cumulative of other discovery, particularly for what she describes as a "routine personal injury case without any unusual or complex issues." (Memorandum at p. 13:13-14.) Duraipandian responds that "[t]he scope of discovery is broad," and that "Defendant Miller has created an unusually complex situation from what should be a straightforward case," given that both sides have retained a large number of expert witnesses. (Opposition at pp. 6:10, 9:9-13.) Duraipandian also argues that responses to these RFAs will narrow the scope of issues to be tried.

The court has reviewed all of the RFAs at issue and finds that they are indeed excessive, unduly burdensome, cumulative, and unnecessary. Thirty of these RFAs (Nos. 36-65) ask Miller to confirm the words that she allegedly wrote in text messages to her mother regarding the car accident. These texts speak for themselves, and it is not the function of RFAs to make a party or a witness acknowledge the words—or the import of those words—on the printed page (or on a screen). Presumably, Miller was asked about these texts in her deposition—that is an appropriate use of deposition discovery; it is not an appropriate use of requests for admissions. Similarly, the vast majority of the remaining RFAs (Nos. 66-157) are directed to Duraipandian's injuries, the reasonableness of the treatment for those injuries, and the damages in this case. Trying to obtain an opposing party's views regarding the reasonableness of *one's own* damages claim is not a proper use of RFAs. For example, asking a lay party such as Miller to admit that Duraipandian "suffered a torn cubital tunnel retinaculum as a result of the incident" (RFA No. 105) is patently unreasonable, calling for expert testimony, and lacks foundation on its face. The court finds that all of these RFAs are improper.

The court also agrees with Miller that this is a straightforward personal injury case. The only alleged complexities here arise from the nature of Duraipandian's alleged injuries.

Again, regardless of how complicated those damages issues may be, they are not the proper subject of RFAs directed to the individual defendant.

Under Code of Civil Procedure section 2033.030, each side is generally limited to 35 requests for admissions, unless the propounding party can justify the additional requests. On a motion for protective order, the burden of justifying the requests is on the propounding party. (Code Civ. Proc., § 2033.040, subd. (b).) Duraipandian does not come close to satisfying this burden.

For the same reasons, the court disallows Form Interrogatory No. 17.1 and the related request for production. The court grants the protective order as to all of the discovery at issue in this motion.

3. Sanctions

Duraipandan requests monetary sanctions of $900 for having had to oppose this motion. That request is denied, as the court finds that the motion was well taken. Miller also refers to a request for monetary sanctions in her motion (e.g., Memorandum at p. 5:14-15), but then she does not back this up with any specifics, either in her brief or supporting declarations. Accordingly, the court denies monetary sanctions to both sides.

- oo0oo -

Calendar Lines 8-9
Case Name: *Karla Ruiz v. Surinder Singh*
Case No.: 22CV395808

Defendant Surinder Singh has filed two motions: a motion for leave to amend his answer, and a motion to withdraw discovery admissions.

The motion for leave to amend was originally supposed to be heard on January 11, 2024, but notice was not proper, and so the court continued the hearing to February 29, 2024. Notice is now proper, and the court still has not received any response from plaintiff Karla Ruiz. The court finds good cause to GRANT the motion, given that Singh's original answer was filed when he was self-represented, and his proposed amended answer has now been prepared with the assistance of counsel. In addition, there is no discernible prejudice to Ruiz arising from the amendment. Singh shall file his pleading within 10 days of this order—*i.e.*, by no later than Monday, March 11, 2024.

As for the motion to withdraw the admissions, Ruiz opposes the motion, arguing that Singh deliberately chose to represent himself in this case, as he had counsel in a prior unlawful detainer action that he initiated against Ruiz. According to Ruiz, "The law does not entitle a party to proceed experimentally without counsel and then turn back the clock if the experiment yields an adverse result." (Opposition at p. 2:11-12.) Ruiz also takes issue with Singh's claimed inability to understand English, noting that he has never requested the assistance of a Punjabi interpreter in any prior court proceedings.

Having reviewed all of the papers, including the exhibits attached to Ruiz's opposition, the court finds that Singh does have some facility in English, but it is quite obvious that English is not his first language. In addition, although Singh was represented by a landlord's attorney in his unlawful detainer case, it is not clear that he affirmatively decided to represent himself in this case. The court has no reason to doubt the sworn statement in his declaration that he did not realize that he could obtain counsel through his insurance company until he was already well into this case. (Singh Declaration at ¶¶ 5-6.) The court also has no reason to doubt his claim that he did not understand the Requests for Admissions or how to respond appropriately, either to the requests or the motion for them to be deemed admitted. (*Id.* at ¶¶ 3-4.) Most important of all, the court does not see anything in Ruiz's opposition to support the notion that she would be prejudiced if the motion were granted. No trial date has yet been set, and the court is already permitting Singh to amend his answer without any apparent objection from Ruiz.

Based on the foregoing, the court finds that Singh's previous failure to respond to the requests for admissions was the product of "mistake, inadvertence, surprise, or excusable neglect" under Code of Civil Procedure section 473(b), rather than a deliberate strategy "to proceed experimentally without counsel." The court GRANTS the motion to withdraw the admissions. Now that he has counsel designated by his insurance carrier, Singh shall serve written responses to the RFAs within 20 days of this order—*i.e.*, by no later than Wednesday, March 20, 2024.

- oo0oo -