SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: September 12, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

FOR ORAL ARGUMENT: Before 4:00 PM today you must notify the:

(1) Court by calling (408) 808-6856 and

(2) Other side by phone or email that you plan to appear at the hearing to contest the ruling

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in-person appearances. If you must appear virtually, you must use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:
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FOR YOUR NEXT HEARING DATE: Use Court Schedule to reserve a hearing date for your next motion. Court Schedule is an online scheduling tool that can be found on the court's website here:
https://reservations.scscourt.org/

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	19CV348023	Phillip Erkenbrack vs Teresa Trinh	Parties are ordered to appear for debtor's examination.
2-4	19CV348400	Black Sails Technology, Inc. et al vs Ruoxi Zhao	Plaintiff's motion for protective order is DENIED. Defendant's motion for terminating sanctions is GRANTED. Scroll to lines 2-4 for complete ruling. Court to prepare formal order.
5	20CV367561	ZACHARY KOWITZ et al vs MICHAEL KOWITZ et al	Michael Kowitz's motions for reconsideration of Judge Alloggiamento' s July 26, 2024 orders denying (1) his motion to stay enforcement of judgment and related relief and (2) granting plaintiff's motion for attorneys' fees are RESET for October 18, 2024 at 9 a.m. in Department 9, so that those motions can be heard by the judge who entered the subject orders.
7-8	23CV422882	Estate of DANIEL BUGARIN-HERNANDEZ et al vs KEVIN ALVAREZ et al	Off calendar.
9	24CV429947	KENT TAYLOR vs JOHN POIRIER et al	Defendants' Jason Poirier and City of Mountain View's motion for prefiling order declaring Plaintiff a vexatious litigant and prohibiting the filing of new litigation is GRANTED. Scroll to line 9 for complete ruling. Except as stated in the opinion, Court will prepare formal order with these rulings.
10	24CV432269	Kinco Mercado Real, LLC, a California limited liability company vs Great Home Tek, Inc., a California corporation et al	Plaintiff's motion for attorneys' fees and costs is GRANTED but its motion to otherwise amend the judgment is DENIED. Judgment was entered after the Court granted summary judgment in favor of Plaintiff and against Defendant. Plaintiff's motion sought possession; it did not seek back or holdover rent. While the complaint does seek these damages, the notice of motion for summary judgment, the memorandum, and even the proposed order and proposed judgment—all of which Plaintiff prepared for the Court's review—sought only possession and make no mention of back or holdover rent. And the order granting summary judgment permitted only a motion for attorneys' fees after judgment, nothing more. The billable rates and hours spent are reasonable for the work performed, this case type, and this county. The Court accordingly awards Plaintiff $26,082.13 in fees and costs. Moving party to prepare formal order and amended judgment.
11-14	24CV436421	Jeffery Doughty et al vs Tammy Lonardo	Petitions to approve minor compromise for Alexandar Gabriel Doughty, Joshua Anthony Doughty, Emmaleigh Rose Doughty, and Hailey Marie Doughty are GRANTED. Court to use orders on file.
15-16	24CV438017	Jiaboa Huang vs Xiaotian Zhou et al	Scroll to lines 15-16 for complete ruling. Court to prepare formal order.
17	2006-1-CV-063500	Unifund CCR Partners vs J. Cornell	Parties are ordered to appear for debtor's examination.

Calendar Line 2-4
Case Name: *Black Sails Technology, Inc. et al vs Ruoxi Zhao*
Case No.: 19CV348400

Before the Court is Plaintiff's motion for protective order regarding the deposition of YoungHui Chen and Defendant's motion for terminating sanctions. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

Plaintiffs Black Sails Technology, Inc. ("Black Sails") and Zhuo Wang filed this complaint against Defendant Ruoxi Zhao for breach of contract, declaratory relief, computer tampering, misappropriation of trade secrets, conversion and unfair competition on May 15, 2019. Plaintiffs' complaint begins: "The purpose of this action is to rectify the bilking of a software company and its principal by one of the company's former computer engineers." (Complaint, ¶1.) Plaintiff's case is summarized at paragraph 2:

> In summary, Defendant Ruoxi Zhao ("Defendant") (1) violated her employment agreement by copying company data to her personal cloud accounts, resulting in the unauthorized duplication of the company's cutting-edge virtual reality research and software code, and also unlawfully took and retained company property after her departure; (2) fraudulently settled a wage claim with Plaintiffs Black Sails Technology, Inc. and Zhuo "Mona" Wang ("Plaintiffs") without disclosing that Defendant had unlawfully taken company property; (3) unlawfully hacked/tampered with the company computer systems and data platforms; (4) misappropriated the company's valuable software code and other intellectual property, and also unlawfully disclosed it; (5) stole company property in connection with her departure. At this time, it is unknown whether Defendant's new employer, Palo Alto Networks, has or has used any of the stolen code, and therefore that entity is not named herein at this time.

Plaintiffs seek "money damages (compensatory and punitive), declaratory relief, return of property, injunctive relief, and attorney fees." (Complaint, ¶3.)

Defendant filed a cross-complaint on August 1, 2019, asserting breach of contract, civil harassment, malicious prosecution, and intentional infliction of emotional distress. Defendant alleges in her cross-complaint that she settled a failure to pay wages claim for $2,600, and cross-defendants' check bounced. She further alleges that it is this complaint that she made to the labor relations board that prompted Plaintiffs to sue her in this case and file a meritless civil harassment claim against her.

The parties have engaged in significant discovery motion practice resulting in the Court ordering Plaintiffs to produce additional discovery in orders dated March 9, 2023 and August 19, 2024. The Court has previously imposed monetary sanctions, and therefore ended its most recent order with this unambiguous warning:

> Since Plaintiffs failed to comply with the Court's previous discovery order, please note: Code of Civil Procedure section 2031.310(i) provides that when "a party fails to obey an order compelling further [discovery] responses, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction." (See also *Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154.) Plaintiffs filed this lawsuit, and Plaintiffs must comply with the Code of Civil Procedure and this Court's discovery orders or face terminating sanctions, including dismissal.

II. Legal Standard

Discovery management plainly lies "within the sound discretion of the trial court." *People v. Sup. Ct.* (2001) 94 Cal.App.4th 980, 987; *see also Orange County Water Dist. v. The Arnold Eng'g Co.* (2018) 31 Cal.App.5th 96, 119 (judge's discretionary functions include managing discovery and trial proceedings before them). In fact, case law teaches that it is up to judges to make sure that the discovery process is not abused. *See Calcor Space Facility, Inc.* v. *Superior Court* (1997) 53 Cal. App. 4th 216, 221 (discovery abuse is a spreading cancer; judges must be aggressive in curbing abuse; discovery statutes are prone to misuse absent judicial consideration for burden; courts must insist that

discovery be used to facilitate litigation rather than as a weapon); *accord Obregon v. Superior Court* (1998) 67 Cal. App. 4th 424, 43.

Code of Civil Procedure section 2031.310(i) provides: "if a party fails to obey an order compelling further [discovery] responses, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction." (See also *Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154.) There are four types of terminating sanctions: (1) striking pleadings in whole or in part; (2) staying further proceedings by a party until it obeys a discovery order; (3) dismissing the action or part of it; and (4) rendering a default judgment. (Code of Civ. Pro. §2023.030(d).) An issue sanction either orders that designated facts be taken as established or prohibits a party from supporting or opposing designated claims or defenses. (Code of Civ. Pro. §2023.030(b); *Kuhns v. State* (1992) 8 Cal.App.4th 982, 989; *Marriage of Chakko* (2004) 115 Cal.App.4th 104, 109-110.

The trial court has broad discretion to impose discovery sanctions; a judge's sanction order will not be reversed absent "a manifest abuse of discretion that exceeds the bounds of reason." (*Rutledge v. Hewlett-Packard Co.* (2015) 238 Cal.App.4th 1164, 1191.) However, a sanction should not provide a windfall to the other party by putting that party in a better position than it would have been in if the party had obtained the discovery. (*Kwan Software Eng'g, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 74-75.) The basic purpose of a discovery sanction is to compel disclosure of discoverable information. (*Rutledge*, 238 Cal.App.4th at 1193.) Sanctions may not be imposed solely to punish the offending party. (*Id.*; *Kwan*, 58 Cal.App.5th at 74-75.)

III. Analysis

The Court read the parties' extensive briefing on this and several other pending motions, including the Chen deposition transcript portions and correspondence submitted as exhibits. The Court has also presided over an informal discovery conference and several hearings with these parties and is very familiar with the allegations in and counsel handling of this case. The fact is that Plaintiffs have not complied with the Court's discovery orders in form or in substance. Plaintiffs' counsel's argument that Shi is not a necessary witness because he and others have no knowledge, and Plaintiffs' creation of a document purportedly signed under penalty of perjury stating certain witnesses have no

personal knowledge not only do not absolve Plaintiffs from comply with the Code of Civil Procedure, but actually demonstrate Plaintiffs' open defiance of Court orders and calculated attempts to avoid compliance. This behavior cannot be condoned, and Plaintiffs have run out of chances to change course.

The Court agrees that the extent of Plaintiffs' failure to comply is such that the only reasonable sanction that remains is dismissal of their case with prejudice. Defendants have been deprived of discovery that touches on every aspect of this case, including whether the information alleged to have been stolen can qualify as trade secret and the value of the business—which is directly relevant to damages. Also relevant to the Court's analysis, however, is the egregiousness of Plaintiffs' defiance of the code and Court orders. Plaintiffs appeared to feign illness at the last minute to avoid deposition, file motions and assert objections in an effort to obfuscate their own failure to properly engage in discovery, and create a document signed under penalty of perjury after the Court ordered certain depositions specifically to avoid those depositions. Plaintiffs' opposition to these allegations contains no evidence to the contrary.

Accordingly, Plaintiffs' complaint is dismissed with prejudice. The Court finds this to be an adequate sanction and declines to award additional monetary sanctions.

To the extent still relevant, Plaintiffs' motion for protective order is DENIED.

Calendar Line 9
Case Name: *KENT TAYLOR vs JOHN POIRIER et al*
Case No.: 24CV429947

Before the Court is Defendants' Jason Poirier and City of Mountain View's motion for prefiling order declaring Plaintiff a vexatious litigant and prohibiting the filing of new litigation. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

According to the Plaintiff Kent Taylor's First Amended Complaint ("FAC"), on November 7, 2020, Defendant Jason Poirier arrived at 2030 West El Camino Real in Mountain View and observed Plaintiff for five minutes. (FAC, p. 4, ¶¶ 1-3.) Plaintiff alleges Poirier observed him move personal belongings from one vehicle to another, then approached Plaintiff and asked him self-incriminating questions without reading him his Miranda rights. (FAC, ¶¶ 3-4.) Thereafter, Plaintiff was arrested and booked. (*Ibid*.)

Plaintiff commenced this action on January 29, 2024, and on April 29, 2024, he filed his FAC, asserting claims for (1) negligence, and (2) negligent infliction of emotional distress. On August 27, 2024, this Court sustained Defendants' demurrer to Plaintiff's FAC without leave to amend, finding Plaintiff's claims barred by the statute of limitations and failure to comply with the Government Claims Act. Plaintiff did not seek leave to amend, nor did the Court believe any amendment could save Plaintiff's claims.

Defendants now seek an order declaring Plaintiff a vexatious litigant and related relief. Plaintiff did not oppose the motion. Instead, Plaintiff filed a request for a continuance to file an opposition, which request he set to be heard on September 12, 2024, the same date as the hearing for this motion. Plaintiff's request for an extension to file a late opposition is DENIED. Plaintiff's request is late, does not request a continuance of the hearing date, and does not include a justification for why (a) he did not file a timely opposition or (b) he could not appear for this hearing but could appear for one seeking to file a late opposition. While Plaintiff is self-represented, self-represented litigants are entitled to the same, but no greater, consideration than other litigants and attorneys. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) Self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure. (*Kobayashi v. Superior*

Court (2009) 175 Cal.App.4th 536, 543; see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) "[W]e cannot disregard the applicable principles of law and accord defendant any special treatment because he instead elected to proceed in propria persona. [Citations.]" (*Stein v. Hassen* (1973) 34 Cal. App. 3d 294, 303.) "A litigant has a right to act as his own attorney [citation] 'but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts.'" (*Lombardi v. Citizens Nat'l Trust & Sav. Bank* (1955) 137 Cal.App.2d 206, 208-209.) Plaintiff's "request" fails to apply with the rules of civil procedure, rules of court, or civil local rules and is therefore DENIED.

II. Legal Standard

Code of Civil Procedure sections 391 to 391.8 are "designed … to protect opposing parties harassed by meritless lawsuits, [and] to conserve court time and resources and protect the interests of other litigants who are waiting for their legal cases to be processed through the courts." (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 1005.) A vexatious litigant is "a person who has, while acting in propria persona, initiated or prosecuted numerous meritless litigations, relitigated or attempted to relitigate matters previously determined against him or her, repeatedly pursued unmeritorious or frivolous tactics in litigation, or who has previously been declared a vexatious litigant in a related action." (*Shalant v. Girardi* (2011) 51 Cal.4th 1164, 1169-70 (*Shalant*); Code. Civ. Proc. § 391(b).)

Code of Civil Procedure section 391.1 provides that in any litigation pending in a California court, the defendant may move for an order requiring the plaintiff to furnish a security on the ground the plaintiff is a vexatious litigant and has no reasonable probability of prevailing against the moving defendant. (Code. Civ. Proc. § 391.6.) If, after a hearing, the court finds for the defendant on these points, it must order the plaintiff to furnish security "in such amount and within such time as the court shall fix." (Code. Civ. Proc. § 391.3.) The plaintiff's failure to furnish that security is grounds for dismissal. (Code. Civ. Proc. § 391.4.)

Code of Civil Procedure section 391.7 "operates beyond the pending case" and authorizes a court to enter a "prefiling order" that prohibits a vexatious litigant from filing any new litigation in propria persona without first obtaining permission from the presiding judge. The presiding judge may

also condition the filing of the litigation upon furnishing security as provided in Code of Civil Procedure section 391.3. (Code. Civ. Proc. § 391.7(b); *Shalant, supra*, at 1170.)

Under Code of Civil Procedure section 391(b)

"Vexatious litigant" means a person who does any of the following:

(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

(5) After being restrained pursuant to a restraining order issued after a hearing pursuant to Chapter 1 (commencing with Section 6300) of Part 4 of Division 10 of the Family Code, and while the restraining order is still in place, they commenced, prosecuted, or maintained one or more litigations against a person protected by the restraining order in this or any other court or jurisdiction that are determined to be meritless and caused the person protected by the order to be harassed or intimidated.

III. Analysis

The judicially noticeable materials attached to the Declaration of Jeffrey F. Oneal demonstrate

that Plaintiff filed the matters below, all of which were dismissed either by him or the Court, without Plaintiff receiving any relief:

(1) Santa Clara County Case No. 24CV429798, *Taylor v. Su*, dismissed with prejudice on April 16, 2024;

(2) Santa Clara County Case No. 22CV406236, *Taylor v. Mountain View Police Department, et. al.*, dismissed with prejudice on August 1, 2023;

(3) Santa Clara County Case No. 22CV397684, *Taylor v. Su*, dismissed without prejducie on July 25, 2023;

(4) Santa Clara County Case No. 22CV393000, *Taylor v. City of Mountain View*, judgment entered after demurrer sustained without leave to amend on May 15, 2024;

(5) Santa Clara County Case No. 21CV386613, *Taylor v. City of Sunnyvale*, judgment entered after demurrer sustained with prejudice on July 24, 2023;

(6) Santa Clara County Case No. 21CV381744, *Taylor v. Su*, dismissed on November 8, 2021;

(7) Santa Clara County Case No. 21CV384344, *Taylor v. County of Santa Clara*, dismissed on February 18, 2022; and

(8) Santa Clara County Case No. 21CV377770, *Taylor v. City of Mountain View*, dismissed on March 4, 2022.

Plaintiff also filed four lawsuits in Sacramento County, all of which were dismissed.

These materials, which Plaintiff failed to explain, demonstrate that Plaintiff meets the definition of a vexatious litigant and appropriate orders should therefore issue.

Defendants' motion to is GRANTED. Defendants shall prepare (1) a formal pre-filing order that complies with the Code of Civil Procedure and includes a requirement that Plaintiff post an undertaking before making any further filings in this case and (2) Judicial Council form VL-100.

Calendar Lines 13-14
Case Name: *Jiabao Huang v. DIDREW Technology, Inc., et al.*
Case No.: 24CV438017

Before the Court is defendants DIDREW Technology, Inc.'s ("DTI CA"), Xiaotian Zhou's ("Zhou"), and Minghao Shen's ("Shen") demurrer to plaintiff Jiabao Huang's complaint. Defendant DIDREW Technology (BVI) Limited ("DTI BVI") joins the motion.[1] Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

According to the Complaint, Zhou and Shen are co-founders, officers, directors, and controlling shareholders of DTI CA. (Complaint, ¶ 2.) Plaintiff alleges, on information and belief, DTI BVI is closely related to and an affiliate of DTI CA with Zhou and Shen holding the same roles at DTI CA. (Complaint, ¶ 3.) In June 2017, by Zhou and Shen's solicitation, Plaintiff agreed to invest $25,000 into DTI CA, which he paid on July 5, 2017 and September 20, 2017, in exchange for 75,000 shares of DTI CA common stock ("Initial Investment"). (Complaint, ¶ 4.) Plaintiff also provided consulting and engineering services for DTI CA ("Consulting Services"). (*Ibid*.) On January 8, 2018, Plaintiff and DTI CA executed a stock purchase agreement in which Plaintiff agreed to purchase 75,000 additional shares of common stock for cash totaling $22,500 ("Additional Investment").[2] (Complaint, ¶ 5.) In total, Plaintiff invested $47,000 in cash in DTI CA and held 150,000 shares of DTI CA common stock. (*Ibid*.) Around 2019, Plaintiff stopped rendering the Consulting Services. (Complaint, ¶ 6.)

Plaintiff alleges, on information and belief, that starting at least in July 2017 and on an ongoing basis, DTI CA, Zhou, and Shen caused all or substantially all of DTI CA's assets to be transferred to DTI BVI. (Complaint, ¶ 7.) In the second half of 2023, DTI BVI sold all or substantially all the assets to Chengdu ECHINT Technologies Co. Ltd. for cash and stock (the "Transaction). (Complaint, ¶ 8.) Plaintiff only became aware of the Transaction n December 2023. (Complaint, ¶ 9.)

In early 2024, Plaintiff reached out to Zhou about the Transaction and the value of DTI CA's and DTI BVI's shares and assets. (Complaint, ¶ 10.) Zhou informed Plaintiff that DTI CA had

[1] The court will refer to Zhou, Shen, DTI CA, and DTI BVI collectively as "Defendants."
[2] Plaintiff refers to the Initial Investment, Consulting Services, and Additional Investment collectively as the "Agreement."

discontinued operations and was inactive, the value of his shares was expected to be substantially lower than his investments, and Plaintiff did not have any ownership or interest in DTI BVI or the Transaction. (*Ibid.*) Despite Plaintiff's request, Zhou refused and continues to refuse to provide Plaintiff information about the Transaction or to pay him his portion of the proceeds from it. (Complaint, ¶ 11.)

Plaintiff filed this action on May 3, 2024, asserting claims for (1) unjust enrichment, (2) conversion, (3) violation of Business and Professions Code section 17200, et seq., (4) conspiracy, (5) breach of fiduciary duty, (6) fraud (constructive), (7) fraud (concealment), (8) breach of Corporations Code section 1600, and (9) accounting. On July 16, 2024, DTI CA, Zhou, and Shen filed the instant motion and on August 15, 2024, DTI BVI filed its notice of joiner.[3] Plaintiff opposes the motion.

II. Legal Standard for a Demurrer

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain." (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

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 (*Committee on Children's Television*).) In ruling on a demurrer, courts may consider matters subject to judicial

[3] DTI BVI filed and served its notice of joinder at least 16 court days prior to the hearing, thus, it is timely. (Code Civ. Proc., § 1005, subd. (b).)

notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

Defendants demur to the first, second, third, fourth, eighth, and ninth causes of action on the ground they fail to allege sufficient facts to state a claim.[4] (See Code Civ. Proc., § 430.10, subd. (e).)

III. Analysis

A. First Cause of Action-Unjust Enrichment

There appears to be a split of authority as to whether California recognizes an independent cause of action for unjust enrichment. (See *Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793 ("There is no cause of action in California for unjust enrichment[;]" it "is a general principle, underlying various legal doctrines and remedies, rather than a remedy itself.") (internal quotations omitted); *Levine v. Blue Shield of California* (2010) 189 Cal.App.4th 1117 (same); *Elder v. Pacific Bell Telephone Co*. (2012) 205 Cal. App. 4th 841 ("This allegation satisfies the elements for a claim of unjust enrichment: receipt of a benefit and unjust retention of the benefit at the expense of another." (internal citations and quotations omitted); *Lectrodryer v. Seoulbank* (2000) 77 Cal. App. 4th 723 (affirming judgment for plaintiff on unjust enrichment claim).

However, this Court falls under the Sixth Appellate District, and that court of appeal unequivocally held in a 2020 decision:

> [Plaintiff's] complaint includes a cause of action entitled unjust enrichment. Summary adjudication of that claim was proper because California does not recognize a cause of action for unjust enrichment. (*Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793 [131 Cal. Rptr. 2d 347] [the phrase "unjust enrichment" does not describe a theory of recovery; it is a general principle underlying various legal doctrines and remedies].)

[4] The headings in the notice of demurrer state Defendants demur to the seventh and eighth causes of action, but the contents of each section correspond with the eighth and ninth causes of action. Moreover, the parties address those claims in their papers and not the seventh cause of action for fraud. Thus, the Court will address the motion accordingly.

Hooked Media Group, Inc. v. Apple Inc. (2020) 55 Cal. App. 5th 323, 336. Accordingly, Defendants' demurrer to the cause of action is SUSTAINED WITHOUT LEAVE TO AMEND.

B. Second Cause of Action-Conversion

Conversion is the wrongful exercise of dominion over the property of another. (*Plummer v. Day/Eisenberg, LLP* (2010) 184 Cal.App.4th 38, 45.) The elements of a conversion are (1) the plaintiff's ownership or right to possession of the property at the time of the conversion; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. (*Ibid*.) "Conversion requires affirmative action to deprive another of property, not a lack of action." (*Spates v. Dameron Hospital Assn* (2003) 114, Cal.App.4th 208, 222.) It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use. (*Oakdale Village Group v. Fong* (1996) 43 Cal.App.4th 539, 544.) "Money can be the subject of an action for conversion if a specific sum capable of identification is involved." (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 452 (*Farmers Ins. Exchange*).) A generalized claim for money is not actionable as conversion. (*Vu v. California Commerce Club, Inc.* (1997) 58 Cal.App.4th 229, 235 (*Vu)*.) A mere contractual right to money does not constitute conversion. (*Farmers Ins. Exchange*, *supra*, 53 Cal. App. 4th at p. 452.) Nor does the defendant's simple failure to pay money owed to Plaintiff. (*Voris v. Lampert* (2019) 7 Cal. 5th 1141, 1151 (*Voris*).)

Defendants argue Plaintiff fails to identify a sum of money or any facts that show he was entitled to proceeds from the Transaction since he is not a DTI BVI shareholder. Defendants also argue this claim fails because it is uncertain, however, Defendants did not identify uncertainty as a basis for their demurrer, therefore the motion cannot be sustained on this ground as it was not properly noticed. (Code Civ. Proc., § 430.10, subd. (f).)

Plaintiff alleges Defendants received the proceeds from the Transaction in 2023 and they refused to pay Plaintiff his share of the proceeds, that he demanded payment of his percentage of cash and stock from Defendants, and Defendants failed to make such payment and have converted the same to their own use. (Complaint, ¶¶ 26-28.) As a result, Plaintiff alleges he suffered *damages* totaling *at least $750,000, plus interest.* (Complaint, ¶ 29 [emphasis added].) This is not sufficient to state a

claim for conversion. "[C]ases recognize claims for the conversion of money typically involve those who have misappropriated, commingled, or misapplied *specific funds* held for the benefit of others." (*Voris v. Lampert* (2019) 7 Cal.5th 1141, 1150.) Plaintiff fails to state a specific sum that he is owed. (*Farmers Ins. Exchange, supra*, 53 Cal.App.4th at p. 452; see also *Vu, supra*, 58 Cal.App.4th at p. 235 [a generalized claim for money is not actionable conversion].) Thus, Defendants' demurrer to the second cause of action is SUSTAINED with 20 days leave to amend.

C. Third Cause of Action-Unfair Business Practices

"The UCL defines 'unfair competition' to 'mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising' and any act prohibited by [Business and Professions Code] section 17500." (*Searle v. Wyndham Int'l* (2002) 102 Cal.App.4th 1327, 1332-1333 (*Searle*).) "Section 17200 'is not confined to anticompetitive business practices, but is also directed towards the public's right to protection from fraud, deceit, and unlawful conduct. Thus, California courts have consistently interpreted the language of section 17200 broadly." (*South Bay Chevrolet v. General Motor Acceptance Corp.* (1999) 72 Cal.App.4th 861, 877-878 [internal citations omitted].) "The statute prohibits 'wrongful business conduct in whatever context such activity might occur.'" (*Searle, supra*, 102 Cal.App.4th at p. 1333.) Defendants argue Plaintiff does not have standing because he fails to show any entitlement to proceeds from the Transaction.

To have standing to sue under the UCL, a party must allege he or she "has suffered injury in fact and has lost money or property." (Bus. & Prof. Code, § 17204.) A plaintiff must "(1) establish loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., *economic injury*, and (2) show that that economic injury was the result of, i.e., *caused by*, the unfair business practice or false advertising that is the gravamen of the claim." (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 322 (*Kwikset*).)

Plaintiff alleges, on information and belief, that Defendants engaged in activities that are unlawful, unfair, and fraudulent, including refusing to pay Plaintiff his share of the proceeds from the Transaction. (Complaint, ¶ 32.) As the Court stated above, Plaintiff fails to allege sufficient facts to show he is entitled to proceeds of the Transaction. Therefore, Plaintiff fails to allege a loss or deprivation of money that resulted from Defendants' unfair business practices. (See *Kwikset, supra*,

51 Cal.4th at p. 322.) To the extent Plaintiff bases this claim on the first and second causes of action, the demurrer to those claims has been sustained and, Plaintiff cannot rely up them to state a claim under the UCL. (*Becerra v. McClatchy Co.* (2021) 69 Cal.App.5th 913, 951 [where an unfair business practices claim "is derivative of an underlying violation of law, it must stand or fall with the underlying claim"].)[5] Thus, Defendants' demurrer to the third cause of action is SUSTAINED with 20 days leave to amend.

D. Fourth Cause of Action-Conspiracy[6]

Civil conspiracy is a legal doctrine that imposes liability on persons who did not actually commit a tort but acted in concert with another tortfeasor. In addition to alleging the elements of the underlying tort, "a plaintiff must allege the following elements: '(1) the formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct.' [Citations.]" (*AREI II Cases* (2013) 216 Cal.App.4th 1004, 1022 (*AREI II*).) "Civil conspiracy is not an independent tort." (*Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 823 (*Berg*) [internal quotations and citations omitted].) A conspiracy to commit fraud must be alleged with specificity similar to a cause of action for fraud. (*Prakashpalan v. Engstrom, Lipscomb, and Lack* (2014) 223 Cal.App.4th 1105, 1136; *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 211 (*Favila*).) The particularity requirement necessitates pleadings facts which "show how, when, where, to whom, and by what means the representations were tendered." (*Favila, supra,* 188 Cal.App.4th at p. 211.) The specificity requirement has two purposes: to "furnish the defendant with certain definite charges which can be intelligently met," and to "weed out nonmeritorious actions on the basis of the pleadings." (*Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 838.)

"By its nature, tort liability arising from conspiracy presupposes that the coconspirator is legally capable of committing the tort, i.e., that he or she owes a duty to plaintiff recognized by law and is potentially subject to liability for breach of that duty." (*Applied Equip. Corp., supra*, 7 Cal.4th

[5] Plaintiff's fifth, sixth, and seventh causes of action are not subject to demurrer, but the allegations in those claims are not incorporated into the UCL claim.

[6] To the extent Defendants argue conspiracy is not an independent cause of action, Plaintiff alleges a fraud claim against all defendants, which claim Defendants do not challenge. (See *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510-511 (*Applied Equip. Corp.*).)

at p. 511.) Defendants argue Plaintiff fails to allege facts to support that DTI CA—as opposed to Zhou and Shen—owed Plaintiff a legal duty and that Plaintiff fails to identify "any alleged action independently undertaken by the corporation to conspire with the individual defendants." (Demurrer, p.8:13-15.) Plaintiff incorrectly contends that no legal duty need be owed to him. (Opp., p.1-2.) Plaintiff fails to cite authority for this position and this argument is therefore waived. (*People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 [points asserted without supporting authority are waived].) Plaintiff's reliance on his breach of fiduciary duty claim also cannot save this claim, since he only asserts that claim against Zhou and Shen, not DTI CA. (See Complaint, p. 5:15-16.)

Plaintiff fails to allege any duty owed to him by DTI CA or DTI BVI.[7] Thus, Defendants demurrer is SUSTAINED with 20 days leave to amend as to DTI CA and DTI BVI only.[8]

E. Eighth Cause of Action-Breach of Corporations Code section 1600

Corporations Code section 1600, provides,

> (a) A shareholder or shareholders holding at least 5 percent in the aggregate of the outstanding voting shares of a corporation or who hold at least 1 percent of those voting shares and have filed a Schedule 14A with the United States Securities and Exchange Commission shall have an absolute right to do either or both of the following: (1) inspect and copy the record of shareholders' names and addresses and shareholding during usual business hours upon five business days' prior written demand upon the corporation…The list shall be made available on or before the later of five business days after the demand is received or the date specified therein as the date as of which the list is to be compiled. A corporation shall have the responsibility to cause its transfer agent to comply with this subdivision.

(Corp. Code, § 1600, subd. (a).) Further, under Corporations Code section 1601, "upon the written demand on the corporation of any shareholder," documents including "accounting books, records, and

[7] Although Plaintiff attempts to distinguish *Applied Equip. Corp., supra,* on other grounds (agency immunity rule, which applies involves holding agents and employees personally liable when they act for or on behalf of the corporation), he does not address the requirement of duty articulated in it.

[8] The notice of demurrer states Plaintiff fails to allege sufficient facts as to Zhou, Shen, and DTI CA, however, the argument is directed to and applies only to DTI CA and DTI BVI.

minutes of proceedings of the shareholders and the board" must be made available. (Corp. Code, § 1601, subd. (a)(1).)

Defendants argue this claim fails as to Zhou and Shen because a corporation's responsibility does not extend personal liability to the directors. But Defendants fail to cite any authority which states this claim cannot be alleged against Zhou and Shen. (*People v. Dougherty, supra,* 138 Cal.App.3d at p. 282.) Thus, Defendants' demurrer to the eighth cause of action is OVERRULED.

F. Ninth Cause of Action-Accounting

An action for an accounting is equitable in nature. It may be brought to compel the defendant to account to the plaintiff for money or property (1) where a fiduciary relationship exists between the parties or (2) where, even though no fiduciary relationship exists, the accounts are so complicated that an ordinary legal action demanding a fixed sum is impracticable. (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 401 (*Los Defensores*).) "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 accounting is an equitable proceeding which is proper where there is an unliquidated and unascertained amount owing that cannot be determined without an examination of the debits and credits on the books to determine what is due and owing. Equitable principles govern, and the plaintiff must show the legal remedy is inadequate… some underlying misconduct on the part of the defendant must be showing to invoke the right to this equitable remedy." (*Prakashpalan v. Engstrome, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1136-1137 (*Prakashpalan*).)

Plaintiff alleges Defendants refused to provide Plaintiff with his portion of the proceeds from the Transaction and they refuse to provide an accounting of the sum due. (Complaint, ¶¶ 67-68.) He further alleges a relationship between himself, Zhou, Shen, and DTI CA; that the amount of money due to Plaintiff is unknown and cannot be ascertained without an accounting of Defendants' business and operations; and underlying misconduct by Defendants to justify an accounting. (Complaint, ¶ 69; *Teselle, supra,* 173 Cal.App.4th at p. 179; *Prakashpalan, supra,* 223 Cal.App.4th at pp. 1136-1137.)

These allegations are sufficient to state this claim. Thus, Defendants demurrer to the ninth cause of action is OVERRULED.