

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

**Department 16**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 06-20-24    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.**

**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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

**TO CONTEST THE RULING: Before 4:00 p.m. 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 and contest the ruling  
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

**TO APPEAR AT THE HEARING:** The Court will call the cases of those who appear in person first. If you appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.

[https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml). You must use the current link.

**TO SET YOUR NEXT HEARING DATE:** You no longer need to file a blank notice of motion to obtain a hearing date. **You may make an online reservation to reserve a date** before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Go to the Court's website at [www.scscourt.org](http://www.scscourt.org) to make the reservation.

**FINAL ORDERS:** The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

**COURT REPORTERS:** The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	23CV427570 Hearing: Demurrer	DataStax, Inc. vs PacketFabric, Inc. et al	See Tentative. The Court will prepare the final order.
<a href="#">LINE 2</a>	20CV366170 Case Status Review	Gina Orta et al vs Louis Chetaud	Parties shall come to the hearing.
<a href="#">LINE 3</a>	20CV374468 Motion: Quash	Natalia Vikhliantseva vs Miseon Song et al	Motion withdrawn and off calendar.
<a href="#">LINE 4</a>	20CV374468 Motion: Compel	Natalia Vikhliantseva vs Miseon Song et al	See Tentative Ruling. Defendant shall submit the final order within 10 days.
<a href="#">LINE 5</a>	20CV374468 Motion: Compel	Natalia Vikhliantseva vs Miseon Song et al	See Tentative Ruling. Defendant shall submit the final order within 10 days.
<a href="#">LINE 6</a>	20CV374468 Motion: Compel	Natalia Vikhliantseva vs Miseon Song et al	See Tentative Ruling. Defendant shall submit the final order within 10 days.
<a href="#">LINE 7</a>	22CV404055 Motion: Approve Good Faith Settlement	JOSEPH CORNAGGIA et al vs GLOBAL LEISURE INVESTMENT HOLDINGS, INC. et al	Off Calendar

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<a href="#">LINE 8</a>	22CV408330 Motion: Reconsider	Armando Cortes et al vs General Motors LLC	<p>Plaintiff demonstrates that notice of the motion for attorney's fees was sent multiple times to Defendant's law firm. Notice was sent not just to the lawyer in charge of the case but also to another individual. It was also sent to a firm-wide email address. Plaintiff also demonstrates that it communicated with Defendant several times after the date the case was apparently inadvertently closed out. Defendant does not address any of this in its reply. Moreover, Plaintiff points out that Defendant did not include with its filing for reconsideration its opposition to the attorney's fees motion, which is required. Even with this being brought to its attention, Defendant failed to include it with its reply. The requirement to include the proposed filing to be reconsidered is mandatory. <i>County of San Bernardino v. Mancini</i>, 83 Cal. App. 5th 1095, 1103.</p> <p>Given all of this, the Court finds that the failure to file an opposition to the motion for fees or to appear at the hearing was not excusable neglect. Moreover, the Court finds that Defendant has not complied with the requirements of CCP 473(b). The motion for reconsideration is therefore DENIED. Plaintiff's request for attorney's fees is DENIED. Plaintiff shall submit the final order within 10 days.</p>
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<a href="#">LINE 9</a>	22CV409028 Motion: Withdraw as attorney	WeCall Media, Inc. vs HI.Q, Inc.	The unopposed motion is GRANTED. The Court will sign the proposed order.
<a href="#">LINE 10</a>	23CV414738 Motion: Withdraw as attorney	Six Eleven Global Services And Solutions Inc. vs HI. Q, Inc. et al	The unopposed motion is GRANTED. The Court will sign the proposed order.
<a href="#">LINE 11</a>	24CV431376 Motion: Withdraw as attorney	Abel Medina vs Henry Mendoza et al	The unopposed motion is GRANTED. The Court will sign the proposed order.
<a href="#">LINE 12</a>			
<a href="#">LINE 13</a>			
<a href="#">LINE 14</a>			
<a href="#">LINE 15</a>			
<a href="#">LINE 16</a>			
<a href="#">LINE 17</a>			

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## **Calendar Line 1**

**Case Name:** *Datastax, Inc. v. R-STOR Inc., et al.*

**Case No.:** 23CV427570

### **I. Factual and Procedural Background**

Plaintiff Datastax, Inc. (“Plaintiff”) brings this action against defendants PacketFabric Inc. (“PacketFabric”) and R-Stor, Inc. (“R-Stor”) (collectively, “Defendants”).

On or about March 30, 2022, Plaintiff entered into a Master Subscription Agreement (“the Agreement”) with PacketFabric. (Complaint, ¶ 6.) Plaintiff agreed to sell software and services to PacketFabric at an agreed upon price. (*Ibid.*)

On or about April 14, 2023, PacketFabric informed Plaintiff that R-Stor became the wholly owned subsidiary of PacketFabric and that R-Stor became the legal owner of the Agreement. (Complaint, ¶ 7.)

On or about April 4, 2023, Defendants submitted an order to Plaintiff for software and services in the amount of \$1,961,695.42 to be paid by May 22, 2023. (Complaint, ¶ 9.) Thereafter, Plaintiff provided the software and services and Plaintiff then received partial payments from Defendants. (*Id.* at ¶¶ 9, 10.) The amount of \$1,631,695.42 remains unpaid. (*Id.* at ¶ 9.)

On December 7, 2023, Plaintiff filed its complaint, asserting the following causes of action against Defendants:

- 1) Breach of Written Contract;
- 2) Account Stated; and
- 3) Money Due and Owing.

On February 15, 2024, PacketFabric filed a demurrer to the Complaint. The Court overruled the demurrer in its entirety.

On March 11, 2024, R-Stor filed a demurrer to the third cause of action on the ground it is uncertain. Plaintiff opposes the demurrer.

### **II. Demurrer**

R-Stor specially demurs to the third cause of action on the ground it is uncertain, pursuant to Code of Civil Procedure section 430.10, subdivision (f).

#### **a. Legal Standard**

In ruling on a demurrer, the court treats it “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.)

**b. Uncertainty: Third Cause of Action – Money Due and Owing**

R-Stor argues Plaintiff’s third cause of action is uncertain because: 1) the complaint does not cite to a single legal authority; 2) money due and owing “does not appear to exist under California law;” and 3) the allegations fail to indicate what the elements of the claim are.

As an initial matter, uncertainty is a disfavored ground for demurrer; it is typically sustained only where the pleading is so unintelligible and uncertain that the responding party cannot reasonably respond to or recognize the claims alleged against it. (*See Khoury v. Maly’s of Cal., Inc.* (1993) 14 Cal.App.4th 612, 616.) “A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.” (*Ibid.*) “[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend.” (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

As to R-Stor’s first argument that the complaint does not cite to legal authority, the Court is not persuaded that this renders the third cause of action uncertain. (Demurrer, p. 4:8-10.) The Court is aware of no authority that requires a plaintiff to cite to legal authority in its pleading. (*See Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6, quoting Code Civ. Proc., § 425.10, subd. (a) [“In order to plead a cause of action, the complaint must contain a ‘statement of the facts constituting the cause of action, in ordinary and concise language.’”].)

As to the second argument that money due and owing does not appear to exist under California law rendering the third cause of action uncertain, the Court is also not persuaded. (Demurrer, pp. 4:9-10, 28-5:1.)<sup>1</sup> While the common count is generally phrased as “money had and received” the Court is less concerned with how a cause of action is labeled and more concerned with its contents. (*See O’Grady v. Merchant Exchange Productions, Inc.* (2019) 41 Cal.App.5th 771, 792 [courts “are more concerned with the substance of the underlying allegations than how the plaintiff labels the cause of action”].) Further, as to the third argument that the allegations fail to indicate what the elements of the claim are, again, the Court is aware of no authority that requires the Plaintiff to state the elements of the cause of action. Rather, Plaintiff must allege facts that constitute the cause of action. The Court finds that Plaintiff has done so here.

As Plaintiff notes in opposition, “[i]n California it has long been settled the allegation of claims using common counts is good against special or general demurrers. The only essential allegations of a common count are (1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work done, etc., and (3) nonpayment. A cause of action for money had and received is stated if it is alleged the defendant is indebted to the plaintiff in a certain sum for money had and received by the defendant for the use of the plaintiff.” (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460 [internal citations and quotations omitted].)

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<sup>1</sup> As Plaintiff points out in its opposition, there are over 200 published California cases addressing common counts of money due and owing. (Opposition, p. 4:1-3.)

In this case, the third cause of action incorporates the prior allegations and additionally alleges Defendants are indebted to Plaintiff in the sum of \$1,631,695.42 for software and services provided by Plaintiff and that Defendants have not paid that sum. (Complaint, ¶¶ 9, 10, 19, 20.) Thus, there is no uncertainty as to the third cause of action in this respect.

For the foregoing reasons, the demurrer on the ground the third cause of action is uncertain is OVERRULED.

### **III. Conclusion and Order**

The demurrer is OVERRULED in its entirety. The Court shall prepare the final order.

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#### **Calendar Lines 4-6**

**Case Name:** *Vikhliantsev v. Song et al.*

**Case No.:** 20CV374468 (consolidated with 21CV387703)

This is an action arising from a motor vehicle collision that occurred on September 11, 2019 in San Jose, California. Plaintiff Natalia Vkhliantsev (“Plaintiff”) filed her complaint against defendants Siyum Ge and Feng Yang (collectively, “Defendants”) on September 2, 2021.

Currently before the Court are Plaintiff’s opposed motion to compel further responses to requests for supplemental admissions (“RFA”), motion to compel further responses to special interrogatories (“SI”), and motion to compel further responses to form interrogatories (“FI”). Specifically, Plaintiff moves to compel: further responses to SI Nos. 28 and 32; further responses to RFAs, set one, Nos. 1-7 and 9-16; and further responses to FIs, set one, Nos. 16.2-16.5 and 17.1.

In opposition to each motion, Defendants argue that Plaintiff failed to meet and confer with Defendants regarding their amended responses to each of the above requests, in violation of Code of Civil Procedure section 2016.040. The Court finds Defendants’ argument persuasive.

As to RFAs, Section 2033.290, subdivision (b)(1) requires that any motion brought under subdivision (a)<sup>2</sup> “shall be accompanied by a meet and confer declaration under Section 2016.040.” (Code Civ. Proc., § 2033.290, subd. (b)(1). Similarly, as to interrogatories, Section 2030.300, subdivision (b)(1) requires that any motion brought under subdivision (a)<sup>3</sup> “shall be accompanied by a meet and confer declaration under Section 2016.040.”

Section 2016.040 states: “A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.”

In this case, in support of her three motions, Plaintiff’s Counsel indicates a meet and confer letter was sent to Defendants on January 9, 2024 and Plaintiff’s Counsel informed Defense Counsel that Plaintiff had not received adequate responses to the requests. (See e.g., Plaintiff’s RFA Motion, p. 8, citing Ex. 4.) Thereafter, on February 2, 2024, Defendants

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<sup>2</sup> CCP 2033.290: (a) On receipt of a response to requests for admissions, the party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply:

(1) An answer to a particular request is evasive or incomplete.

(2) An objection to a particular request is without merit or too general.

<sup>3</sup> CCP 2030.300: (a) On receipt of a response to interrogatories, the propounding party may move for an order compelling a further response if the propounding party deems that any of the following apply:

(1) An answer to a particular interrogatory is evasive or incomplete.

(2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate.

(3) An objection to an interrogatory is without merit or too general.



submitted amended responses. There is nothing in Plaintiff's declarations indicating that Plaintiff's Counsel attempted to meet and confer with Defense Counsel regarding the amended responses prior to filing the three motions to compel with the Court. Failing to confer with an opposing party in a reasonable and good faith attempt at informally resolving discovery disputes is a misuse of the discovery process. (Code Civ. Proc., § 2023.010, subd. (i).) Here, Defendants attempted to amend their responses to the discovery request after receiving Plaintiff's initial meet and confer letter. Plaintiff made no further attempt to informally resolve the discovery disputes.

In reply, Plaintiff appears to argue that any efforts to meet and confer would be unhelpful. Nevertheless, "some effort is required in all instances." (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 432.) Moreover, even if it would have been futile to meet and confer, there is "no exception based upon one's speculation that the prospect of informal resolution may be bleak." (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1438.)

Accordingly, the motions to compel are DENIED. Plaintiff's requests for sanctions are DENIED. The Court encourages the parties to attempt an informal resolution of their discovery disputes. Defendant shall submit the final order within 10 days.

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