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: June 25, 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 go to https://reservations.scscourt.org or 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.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV420698	Christopher Sinnott v. Infinite Assets, Inc. et al.	Click on LINE 1 or scroll down for ruling.
LINE 2	23CV425000	Jack Hansen v. Armando Sanchez et al.	Click on LINE 2 or scroll down for ruling.
LINE 3	21CV389548	Fataneh Kashaninejad v. Fariba Alikhani, D.D.S. et al.	Motion for summary judgment of defendant Hanfu Lee: notice is proper, and the motion is unopposed. Upon review of the moving papers, the court concludes that Lee has met his initial burden of showing, with expert testimony, that there is no triable issue of material fact regarding any alleged breach of the standard of care. The motion is GRANTED. Moving party shall prepare the formal order for the court's signature.
LINE 4	23CV415304	Wells Fargo Bank, N.A. v. Elaine G. Uribe	Motion for summary judgment: notice is proper, and the motion is unopposed. The court concludes that plaintiff has met its initial burden of showing that there is no triable issue of material fact regarding the causes of action, and that there is no defense to these causes of action. (Code Civ. Proc. § 437c, subd. (p).) The motion is GRANTED. Moving party shall prepare the formal order for the court's signature.
LINE 5	21CV378052	Alfred P. Pisani et al. v. Kia Motors America, Inc.	Click on LINE 5 or scroll down for ruling.
LINE 6	19CV359455	Hayden Abene v. DL Bar LLC et al.	Click on LINE 6 or scroll down for ruling.

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LINE #	CASE #	CASE TITLE	RULING
LINE 7	21CV377858	Cavalry SPV I, LLC v. Elizabeth M. Agoo	Motion to set aside dismissal and enter judgment pursuant to stipulation: notice is proper, and the motion is unopposed. The court finds good cause to GRANT the motion. Moving party shall submit the proposed order and judgment for the court's signature.
LINE 8	22CV393460	Henry Lippincott v. Arash Hassibi et al.	Click on LINE 8 or scroll down for ruling.
LINE 9	22CV403017	Applied Materials, Inc. v. Huu T. Vu et al.	Click on LINE 9 or scroll down for ruling.
LINE 10	23CV424507	Chek Tan and Company, LLP v. University of Eastern and Western Medicine	Motion to be relieved as counsel for defendant: parties to appear.
LINE 11	22CV400959	Abraham Calderon Gomez et al v. Cesar Fernandez et al.	Petition for approval of compromise of minor's claim: parties to appear, in accordance with CRC 7.952.

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Calendar Line 1
Case Name: *Christopher Sinnott v. Infinite Assets, Inc. et al.*
Case No.: 23CV420698

I. BACKGROUND

This is an employment dispute between plaintiff Christopher Sinnott and Infinite Assets, Inc. ("IA"), his former employer. Sinnott's original complaint, naming IA as a defendant—as well as Citizens Reserve, Inc. ("Citizens Reserve"), Addison McKenzie, and Yonathan Lapchik—was filed on August 9, 2023. Sinnott filed the operative first amended complaint ("FAC") on February 20, 2024. The FAC states four causes of action: (1) Breach of Contract; (2) Failure to Pay Wages (in violation of Labor Code section 204); (3) Waiting Time Penalties (in violation of Labor Code sections 202 and 203); and (4) Failure to Provide Accurate Wage Statements (in violation of Labor Code section 226).

The FAC attaches as Exhibit 1 the employment offer letter from IA to Sinnott, which is signed by both IA and Sinnott and which also attaches a confidentiality agreement that is signed by both IA and Sinnott. (Lapchick is the signatory for IA in his capacity as the company's CEO.) The FAC alleges that Citizens Reserve, McKenzie, and Lapchik are all alter egos of IA. (FAC, ¶¶ 9-11.)

Currently before the court is a demurrer to the FAC by IA, Citizens Reserve, McKenzie, and Lapchik (collectively, "Defendants"), filed on March 27, 2024. Sinnott filed his opposition on June 11, 2024.

II. DEMURRER TO THE FAC

A. General Standards

The court, in ruling on a demurrer, 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.) A plaintiff is not ordinarily required to allege "'each evidentiary fact that might eventually form part of the plaintiff's proof . . . .' [Citation.]" (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1341 (*Ferrick*).)

The court considers only the pleading under attack, any attached exhibits (part of the "face of the pleading"), and any facts or documents for which judicial notice is properly requested and may be granted. The court cannot consider extrinsic evidence in ruling on a demurrer or motion to strike. This includes declarations. The court has only considered the declaration of Jared Smith, submitted in support of the demurrer, to the extent it addresses the meet-and-confer efforts required by statute.

Code of Civil Procedure section 430.60 states: "A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded." The rules of court also require that that the

demurrer itself (distinct from a supporting memorandum) specify the target of any objection and the grounds. (See Cal. Rules of Court, rules 3.1103(c), 3.1112(a), 3.1320(a) ["Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."]; see also 5 Witkin, *Cal. Procedure* (5th ed., 2019) Pleading, § 953 ["Each ground of demurrer must be in a separate paragraph and must state whether the demurrer applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."].)

Finally, "points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before." (*Proctor v. Vishay Intertechnology, Inc*. (2013) 213 Cal.App.4th 1258, 1273; See also *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 500 ["This court will not consider points raised for the first time in a reply brief for the obvious reason that opposing counsel has not been given the opportunity to address those points."].)

B. Basis for the Demurrer

Defendants demur to all four causes of action on the grounds that they are uncertain and that they fail to state sufficient facts. The notice of demurrer does not identify any specific arguments. (See Notice of Demurrer and Demurrer, p. 2:7-28.)

1. Uncertainty

The court OVERRULES Defendants' demurrer to all four causes of action on the ground that they are uncertain.

"[D]emurrers for uncertainty are disfavored and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135; see also *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."].)

The court finds that the allegations of the FAC are not so incomprehensible that Defendants' are unable to respond. Indeed, it is readily apparent from Defendants' substantive arguments that they understand perfectly well what each of the four causes of action has attempted to allege. For example, arguments that the FAC "is uncertain as to what wages were allegedly unpaid, when such alleged wages were due, whether the wages were a bonus due for the previous year or upon termination, and what severance compensation is allegedly due" (Memorandum, p. 8:17-19) are simply arguments seeking more details concerning *evidentiary* facts, which are not required by the pleading rules. (See *Ferrick, supra*, 231 Cal.App.4th at p. 1341; see also *Centex Homes v. Superior Court* (2013) 214 Cal.App.4th 1090, 1102 [complaint must set forth *ultimate* facts, not evidentiary facts].)

While it is apparent that Defendants understand the allegations of the FAC, it is also apparent from this demurrer that they do not understand the legal standard for uncertainty under Code of Civil Procedure section 430.10, subdivision (f).

2. Failure to State Sufficient Facts

a) Against Infinite Assets

Defendants' argument that the first cause of action fails to state sufficient facts against IA because it does not allege execution of a separate release is completely unpersuasive and misapprehends the legal standard under Code of Civil Procedure section 430.10, subdivision (e). A breach of contract cause of action is not required to be pled with particularity. "To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186; see also CACI, No. 303.)

The allegations in the FAC: (1) that Sinnott has performed all of his obligations under the contract except those "that were waived, released and/or discharged as a result of Defendants' breaches," and (2) that Defendants "have prevented Plaintiff from signing an agreement with a general release of all claims (the 'Release') as described in the employment agreement because Defendants have not provided a Release agreement to Plaintiff to sign," are accepted as true on demurrer and sufficiently allege an excuse for nonperformance of the requirement to sign the release agreement. (FAC, ¶¶ 22-23.)

Contrary to Defendants' facile claim that Sinnott has merely alleged breach of an "agreement to agree," the terms of Sinnott's employment were not based on an agreement to agree—they were based on the signed employment offer letter and confidentiality agreement that is attached as Exhibit 1 to the FAC. Sinnott has sufficiently alleged a breach of this contract, and the fact that Defendants made Sinnott's final severance payment(s) contingent on the execution of a separate release and post-termination agreement does not make the original employment agreement an unenforceable agreement to agree.

Defendants' related argument that Sinnott has not alleged satisfaction or waiver of a condition precedent is also unpersuasive.

"A conditional obligation is one in which 'the rights or duties of any party thereto depend upon the occurrence of an uncertain event.'" (*JMR Construction Corp. v. Environmental Assessment and Remediation Management, Inc.* (2015) 243 Cal.App.4th 571, 593 ("*JMR Construction*"), citing Civ. Code § 1434.) "[P]arties may expressly agree that a right or duty is conditional upon the occurrence or nonoccurrence of an act or event." (*Ibid*., citations omitted.) "[A] condition precedent is either an act of a party that must be performed or an uncertain event that must happen before the contractual right accrues or the contractual duty arises." (*Ibid*. citations omitted; see also Civ. Code, § 1436.) Whether a condition precedent exists generally depends on the intent of the parties as determined from the words used in the contract. (*Id*. at pp. 593-594.) Conditions precedent are disfavored by the law and are to be strictly construed against the party seeking to avail itself of one. (*Id*. at p. 594.) A term of an agreement should not be construed as a condition precedent unless it is evident from clear, unambiguous language in the contract. (*Ibid*.) "In pleading the performance of conditions precedent in a contract, it is not necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part, and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing such performance." (Code Civ. Proc., § 457; see also *Gordon Bldg. Corp. v.*

Gibraltar Sav. & Loan Ass'n (1966) 247 Cal.App.2d 1, 6 [providing the performance of conditions precedent may be alleged generally].)

In this case, assuming for purposes of argument that the employment agreement can be interpreted as including a condition precedent, the court finds that the allegations in the FAC already quoted above (¶¶ 22-23) are sufficient to allege satisfaction or waiver of a condition precedent.

For similar reasons, Defendants' contention that the second, third, and fourth causes of action do not state sufficient facts against IA because the FAC fails to allege a "triggering event" for any payment due—*i.e.*, the signing of a release—is unpersuasive. The specific allegations in the FAC regarding IA's failure to pay are not clearly contradicted by the employment contract attached as Exhibit 1, and so they must be accepted as true on demurrer. (FAC ¶¶ 14-19.) They are incorporated by reference into the second, third, and fourth causes of action, and they are sufficient to overcome the demurrer under Code of Civil Procedure section 430.10, subdivision (e).

In sum, the court OVERRULES IA's demurrer to all four causes of action on the ground that they do not state sufficient facts against it.

b) Against Citizens Reserve, McKenzie, and Lapchik

As for the sufficiency of the allegations against Citizens Reserve, McKenzie, and Lapchik, on the other hand, the court is persuaded that all four causes of action are subject to demurrer because these three latter defendants are not parties to any employment agreement with Sinnott. In addition, the allegation that they are each alter egos of IA is entirely perfunctory and insufficient.

(1) Alter Ego Liability

To support an alter ego theory of liability, a plaintiff must plead: (1) such a unity of interest and ownership that the separate personalities of the corporation and the individuals do not exist, and (2) that an inequity will result if the corporate entity is treated as the sole actor. (See *Stodd v. Goldberger* (1977) 73 Cal.App.3d 827, 832.) In applying the alter ego doctrine, courts consider whether an individual or organization dominated and controlled the entity, the controlling party used the entity's assets as his or her own, the entity served as a mere shell and conduit for the controlling party, the entity was undercapitalized, and the entity failed to abide by the formalities of corporate existence. (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 235 (*Rutherford Holdings*).) "Courts have followed a liberal policy of applying the alter ego doctrine where the equities and justice of the situation appear to call for it rather than restricting it to the technical niceties depending upon pleading and procedure." (*First Western Bank & Trust Co. v. Bookasta* (1968) 267 Cal.App.2d 910, 915.) Therefore, a party is only required to allege ultimate rather than evidentiary facts in support of an alter ego theory. (*Rutherford Holdings*, *supra*, 223 Cal.App.4th at p. 236.)

Nevertheless, the conclusory allegations in paragraphs 9-11 of the FAC do nothing but simply parrot the elements of alter ego liability and fail to allege how any of the three non-IA defendants—Citizens Reserve, McKenzie, or Lapchik, *much less all three of them simultaneously*—could possibly be considered alter egos of IA. Indeed, all of these allegations are repeatedly made solely on information and belief in the FAC, which renders them

completely inadequate. In general, a party cannot, "by placing the incantation 'information and belief' in a pleading, [ ] insulate herself or himself from" the requirements of Code of Civil Procedure section 128.7, irrespective of whether the pleading is verified or unverified. (*Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 596, fn. 9.) Additionally, even when it is permissible to allege an ultimate fact on the basis of information and belief, a party cannot simply include the phrase "information and belief" without more. (*Gomes v. Countrywide Home Loans, Inc*. (2011) 192 Cal.App.4th 1149, 1158-59.) To plead an allegation on the basis of information and belief properly, a plaintiff must allege the facts or information that led him or her to infer or believe the truth of the ultimate factual allegation. (*Gomes, supra,* 192 Cal.App.4th at pp. 1158-59; see also *Brown v. USA Taekwondo* (2019) 40 Cal.App.5th 100, 1106 ["where factual allegations are based on information and belief, the plaintiff must allege 'information that "lead[s] [the plaintiff] to believe that the allegations are true."'"].) Allegations made on "information and belief" that lack supporting information are not accepted as true on demurrer. While less particularity is required where the defendants may be assumed to possess knowledge of the facts equal to that possessed by plaintiff (see *Rutherford Holdings, supra,* 223 Cal.App.4th at p. 236), here, the FAC fails to describe any facts supporting Sinnott's belief that Citizens Reserve, McKenzie, or Lapchik are each alter egos of IA.

(2) Labor Code Section 558.1

The second, third, and fourth causes of action also fail to state sufficient facts against individual defendants McKenzie and Lapchik under Labor Code section 558.1. Labor Code section 558.1 states:

> (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
>
> (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.
>
> (c) Nothing in this section shall be construed to limit the definition of employer under existing law.

Paragraph 8 of the FAC alleges that "McKenzie and Lapchik are 'person[s] acting on behalf of an employer' as defined in § 558.1(b). Both McKenzie and Lapchik were personally involved in the violations of the Labor Code alleged herein and/or had sufficient participation in the activities of the employer and [therefore] have caused the violations of the Labor Code alleged herein. Accordingly, McKenzie and Lapchik may be held individually liable for their actions in violating and causing the Company to violate its obligations under the California Labor Code and Wage Orders." Paragraphs 4-5 of the FAC allege (on information and belief only) that McKenzie was an officer and director at IA and Citizens Reserve, and that Lapchik was director and CEO at IA and Citizens Reserve.

These conclusory allegations are not enough to make either McKenzie or Lapchik liable under the second, third, or fourth causes of action. To begin with, as Defendants point out, section 558.1 expressly does not apply to an alleged violation of Labor Code section 204, the sole basis for the second cause of action, and so it cannot be a basis for bringing the second cause of action against McKenzie or Lapchik. (Properly stated alter ego allegations could potentially provide a basis, but Labor Code section 558.1 does not.) Sinnott's opposition does not respond to this point.

As for the third and fourth causes of action, the court in *Espinoza v. Hepta Run, Inc*. (2022) 74 Cal.App.5th 44, 59 ("*Espinoza*") explained that "in order to 'cause' a violation of the Labor Code, an individual must have engaged in some affirmative action beyond his or her status as an owner, officer or director of the corporation." At the same time, involvement in the day-to-day operations is not required. (*Ibid*.) Thus, for an individual "to be held personally liable he or she must have had *some* oversight of the company's operations or *some* influence on corporate policy that resulted in Labor Code violations." (*Ibid*. [emphasis added].) The court in *Usher v. White* (2021) 64 Cal.App.5th 883 ("*Usher*") similarly stated (in language quoted in *Espinoza*) that, in order to be liable under section 558.1, an "owner" must "either have been personally involved in the purported violation of one or more of the enumerated provisions; or, absent such personal involvement, had sufficient participation in the activities of the employer, including, for example, over those responsible for the alleged wage and hour violations, such that the 'owner' may be deemed to have contributed to, and thus for purposes of this statute, 'cause[d]' a violation." (*Usher, supra,* 64 Cal.App.5th at pp. 896-897.) The *Usher* court further stated that this "cannot be determined by any bright-line rule, as this inquiry requires an examination of the particular facts in light of the conduct, or lack thereof, attributable to the 'owner.'" (*Id*. at p. 897.)

While *Espinoza* and *Usher* dealt with a summary adjudication and a summary judgment, respectively, and while they do not specifically address pleading standards for liability under Labor Code section 558.1, Courts of Appeal have consistently applied the general rule that statutory causes of action must be pleaded with particularity. (See, e.g., *Covenant Care, Inc. v. Superior Court (Inclan)* (2004) 32 Cal.4th 771, 790.) Thus, "the plaintiff must set forth facts in his complaint sufficiently detailed and specific to support an inference that *each of the statutory elements* of liability is satisfied." (*Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 5, [emphasis added].) This standard of "reasonable particularity" is more lenient than the pleading standard that applies to fraud claims, but it stil requires sufficient detail. (*Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1261, discussing *Khoury v. Maly's of California, Inc*. (1993) 14 Cal.App.4th 612, 619.)

As there are no substantive allegations in the FAC describing how McKenzie or Lapchik took any affirmative action beyond their status as officers or directors—by personally committing or participating in employment activities that may have contributed to or caused a violation of section 558.1—the second, third, and fourth causes of action fail to state sufficient facts against McKenzie and Lapchik.

The court SUSTAINS Defendants' demurrer to all four causes of action on the ground that they fail to state sufficient facts against Citizens Reserve, McKenzie, and Lipchik.

A plaintiff bears the burden of proving that an amendment would cure the defect in cause of action identified on demurrer. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) Sinnott does not meet this burden, as the opposition simply makes a generic request for leave to amend "in the event the court decides to sustain any part of this demurrer." (See Opposition at p. 8:26-27.) (See *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145 ["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.]'"].)

Nevertheless, given that this is the initial pleading challenge in this case, the court grants 10 days' leave to amend as to Citizens Reserve, McKenzie, and Lipchik.

When a demurrer is sustained with leave to amend, the leave must be construed as permission to the pleader to amend the causes of action to which the demurrer has been sustained, not to add entirely new causes of action. (*Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015.) To raise claims entirely unrelated to those originally alleged requires either a new lawsuit or a noticed motion for leave to amend. "Following an order sustaining a demurrer or a motion for judgment on the pleadings with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court's order. The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend." (*Zakk v. Diesel* (2019) 33 Cal.App.5th 431, 456 [citing *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023].) Here, the court does not grant leave to add new causes of action or parties.

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Calendar Line 2
Case Name: *Jack Hansen v. Armando Sanchez et al.*
Case No.: 23CV425000

I. BACKGROUND

This is the second action filed by self-represented plaintiff Jack Hansen against defendants Rogelio Sanchez, Carlos Sanchez, and Armando Sanchez (collectively "Defendants"), based on Defendants' allegedly tortious conduct against Hansen during and after Hansen's rental of part of a warehouse building from them. The first action (Case No. 22CV393105) is also pending in this court, with a trial date of January 6, 2025.

In this second action, Hansen filed his initial complaint on October 31, 2023. He filed a first amended complaint ("FAC") on November 6, 2023, alleging three causes of action: (1) assault and battery, (2) grand theft, and (3) intentional infliction of emotional distress.

According to the first cause of action in the FAC, defendant Carlos Sanchez "broke into Plaintiff's property" and "attacked Hansen with a wood pallet." (FAC, Attachment, p. 1.) The "wood pallet bounced off many other pieces of wood" and Hansen suffered "injury to his right leg from the many wood splinters." (*Ibid*.) The "injury required medical attention and Plaintiff was eventually admitted to a hospital." (*Ibid*.)

In his second cause of action, Hansen alleges that he attempted to remove his personal property and vehicles from the warehouse three times after Defendants evicted him. (FAC, Attachment, p. 2.) Each time, Defendants prevented Hansen from removing his property. (*Ibid*.) On September 13, 2022, Hansen met with defendant Armando Sanchez, who informed him that Defendants had disposed of all of his property on the advice of Defendants' attorney. (*Ibid*.) Hansen valued his personal property at $400,000. (*Ibid*.)

Finally, Hansen alleges that Defendants subjected him to "outrageous conduct." (FAC, Attachment, p. 3.) Defendants "failed to maintain the roof, roll-up doors, front doors, and electrical wiring" of the rental property occupied by Hansen; Carlos Sanchez chased Hansen's cats with a shovel to kill the cats; Defendants turned off the electricity in the rental property and blocked Hansen's access to the rental property; rain poured through a roof on the rental property, destroying Hansen's property while Hansen occupied the property; Defendants refused to repair the roof; Defendants stole Hansen's property and the property of Hansen's customers; Hansen "eventually lost his entire moving and storage business." (*Ibid*.)

On May 20, 2024, Defendants filed a demurrer to the FAC in its entirety; in the same notice of demurrer, Defendants also included a motion to strike the FAC in its entirety.[1] Hansen filed an opposition to the demurrer and motion on June 12, 2024.[2]

[1] Defendants originally filed this demurrer and motion on February 27, 2024, when the case was assigned to a different department; they re-filed and re-noticed the demurrer and motion after the court in Department 6 reassigned the matter to Department 10, where the parties' earlier case (No. 22CV393105) was already assigned.
[2] Hansen filed a slightly different opposition to the earlier demurrer and motion on March 27, 2024.

II. REQUEST FOR JUDICIAL NOTICE

With their demurrer and motion, Defendants request that the court take judicial notice of six documents, five of which are court documents. "Evidence Code sections 452 and 453 permit the trial court to take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact. [Citations.]" (*People v. Woodell* (1998) 17 Cal.4th 448, 455, internal citations omitted.) Evidence Code section 452, subdivision (d), states that a court may take judicial notice of "[r]ecords of any court of this state."

The court GRANTS judicial notice of Exhibits B, C, and D, which are copies of complaints filed in Case No. 22CV393105 in this court, under Evidence Code section 452, subdivision (d). The court also GRANTS judicial notice of Exhibit E, which is a copy of an unlawful detainer ("UD") complaint filed in this court in Case No. 21CV389760, under Evidence Code section 452, subdivision (d).

The court DENIES judicial notice of Exhibit F, which is a Notice of Restoration issued by the Santa Clara County Sheriff's Office for warehouse units previously rented by Hansen (2747 Aiello Drive Units B, C, D, and E, San Jose, CA 95111). This is not a court document, and Defendants have cited no legal basis for the court to take judicial notice of it.

The court DENIES judicial notice of Exhibit A—the FAC itself—as unnecessary because the court must necessarily consider the pleading under review. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn.1 [denying as unnecessary a request for judicial notice of pleading under review on demurrer].)

III. DEMURRER

A. General Standards

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: . . . [t]here is another action pending between the same parties on the same cause of action." (Code Civ. Proc., § 430.10, subd. (c).) A demurrer may be used 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, in ruling on a demurrer, treats it "as admitting all properly pleaded material facts, 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. [Citation.] 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.' [Citation.]" (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214, superseded by statute on other grounds as stated in *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39

Cal.4th 223, 227.) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.)

B. Discussion

Defendants argue that the court should sustain their demurrer because this latter-filed case involves the same parties, facts, and issues as in Case No. 22CV393105. (See Memorandum, p. 2:1-4.) As noted above, a party may demur on the ground that "[t]here is another action pending between the same parties on the same cause of action." (Code Civ. Proc., § 430.10, subd. (c).) Courts will often refer to a demurrer on this ground as a "plea in abatement." (E.g., *Conservatorship of Pacheco* (1990) 224 Cal.App.3d 171, 176 (*Pacheco*).) A plea in abatement requests that a court suspend or stay a lawsuit based on the pendency of another lawsuit. (See *Childs v. Eltinge* (1973) 29 Cal.App.3d 843, 855–856.) With this context in mind, a court will sustain a demurrer when the demurring party shows: "(1) [t]hat both suits are predicated upon the same cause of action; (2) that both suits are pending in the same jurisdiction; and (3) that both suits are contested by the same parties." (*Pacheco, supra,* 224 Cal.App.3d at p. 176, internal quotation marks omitted, quoting *Colvig v. RKO General, Inc*. (1965) 232 Cal.App.2d 56, 70.)

The court has taken judicial notice of the complaint, first amended complaint, and second amended complaint filed in Case No. 22CV393105. That earlier case involves exactly the same parties. The factual allegations are also nearly identical. The only material difference between the earlier action and the present action is that Hansen did not assert "grand theft" as a cause of action in the earlier case, whereas he does so here. But that is enough of a basis upon which to overrule the demurrer. A plea in abatement under Code of Civil Procedure section 430.10, subdivision (c), requires the same causes of action between the two matters under consideration. (See *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 787 ["A plea in abatement pursuant to section 430.10, subdivision (c), may be made by demurrer or answer when there is another action pending between the same parties on the same cause of action."].)

The court OVERRULES Defendants' demurrer under Code of Civil Procedure section 430.10, subdivision (c).

IV. MOTION TO STRIKE

A. General Standards

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading, or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. The grounds for a motion to strike must appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) A motion to strike should not be a procedural "line item veto" for the civil defendant. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683.)

In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63, citing *Clauson v. Super. Ct.*

(1998) 67 Cal.App.4th 1253, 1255.) The court's decision to strike pursuant to section 436 is discretionary. (See Code Civ. Proc., § 436 ["The court may . . . strike"]; see also *Colden v. Broadway State Bank* (1936) 11 Cal.App.2d 428, 429 [motion to strike is addressed to the sound discretion of the court].)

B. Discussion

While the precise, technical language of Code of Civil Procedure section 430.10, subdivision (c), requires the court overrule Defendants' demurrer, the court cannot ignore the fact that Hansen has filed a nearly identical series of pleadings in the present matter to those in Case No. 22CV393105.

The Courts of Appeal have upheld motions to strike on facts analogous to those here. In *Ricard v. Grobstein, Goldman, Stevenson, Siegel, LeVine & Mangel* (1992) 6 Cal.App.4th 157, 159 (*Ricard*), the plaintiffs sought damages against defendants for malpractice, negligent misrepresentation, fraud, negligent infliction of emotional distress, and intentional infliction of emotional distress in the Western District of the Los Angeles County Superior Court. The trial court denied plaintiffs' attempt to amend their complaint to add a claim for conspiracy to commit fraud, which included a prayer for punitive damages. (*Ibid*.) The plaintiffs then filed another action in the Central District of the Los Angeles County Superior Court. This "new suit was limited to the identical claim they had unsuccessfully sought to join in their malpractice action." (*Ibid*.) Defendants "demurred on the ground, among others, that this was but another patent attempt to circumvent the prior ruling." (*Ibid*.) After "taking judicial notice of the pending related first action the Central District Court transferred this second proceeding to the Western District." (*Id*. at pp. 159-160.) The court "there sustained the demurrer without leave to amend and entered a judgment of dismissal." (*Id*. at 160.) Plaintiffs appealed. (*Ibid*.)

The Court of Appeal affirmed the trial court's judgment of dismissal. (*Ricard, supra*, 6 Cal.App.4th at p. 162.) With "almost frightening candor appellants acknowledge that the present suit was filed solely to circumvent the court's prior adverse ruling." (*Ibid*.) The Court of Appeal concluded that even "if a plaintiff may present different legal theories for relief, there exists only one cause of action if the facts indicate that only one primary right of the plaintiff has been violated." (*Ibid*.) "Here, the allegations of the conspiracy claim are the same as those originally sought to be included in the first action, and include the allegations of accountant malpractice and fraud alleged therein. [Citation.]" (*Ibid*.) "Appellants' second suit would merely have split their cause of action in violation of the policy against misuse of court time. [Citation.]" (*Ibid*.) Thus, Code of Civil Procedure section 436 provided a basis to strike the pleading filed in the second action.

Taking its cue from *Ricard*, this court GRANTS Defendants' motion to strike Hansen's FAC in its entirety. A "trial court has authority to strike sham pleadings, or those not filed in conformity with its prior ruling. [Citations.]" (*Ricard, supra*, 6 Cal.App.4th at p. 162.) The intentional infliction of emotional distress cause of action in this case is identical to the IIED cause of action in Case No. 22CV393105. The assault and battery cause of action in this case is identical to the "assault" cause of action that this court struck in Case No. 22CV393105 on January 18, 2024.[3] (*Ibid*.) Finally, although Hansen did not explicitly allege "grand theft" in

[3] On its own motion, the court takes judicial notice of its January 18, 2024 order granting Defendants' motion to strike in Case No. 22CV393105. (Evid. Code, § 452, subd. (d).)

the earlier case, he bases his new grand theft cause of action on exactly the same facts and circumstances already alleged in his intentional infliction of emotional distress causes of action in both cases. (See RJN, Ex. D ["The defendants on the advice of their attorney illegally stole all of my property including moving vehicles and all of my storage customer's furniture."].) The court already admonished Hansen in the earlier case that he may not add new causes of action to his pleadings without leave of court. (See January 18, 2024 Order at p. 4:1-15.) Thus, Hansen's FAC in this matter is nothing more than an attempt to "circumvent the court's prior adverse ruling" in the earlier case. (*Ricard, supra*, 6 Cal.App.4th at p. 162.)

Hansen's opposition brief does not address Defendants' legal arguments regarding the similarities between Case No. 22CV393105 and the present matter. Instead, Hansen expands on the factual allegations underlying his grand theft cause of action. For instance, Hansen claims that: he "has learned that there was never an auction and that all of [his] property was stolen," Defendants denied Hansen access to his property three times, and "Defendants and their attorney forced open several storage vaults and discovered that all of the contents were destroyed by mold." (See Plaintiff's Opposition, pp. 2-3.)

Given the transparently duplicative nature of this case, the court grants the motion to strike WITHOUT leave to amend.

V. CONCLUSION

The demurrer is OVERRULED. The motion to strike is GRANTED without leave to amend.

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Calendar Line 5
Case Name: *Alfred P. Pisani et al. v. Kia Motors America, Inc.*
Case No.: 21CV378052

This is a motion to compel a vehicle inspection by defendant Kia Motors America, Inc., also known as Kia America, Inc. ("Kia"). The court agrees with plaintiffs Alfred and Maria Pisani (the "Pisanis") that this motion was filed prematurely and is the product of an inadequate effort by Kia to meet and confer to arrive at a mutually agreeable date for the inspection. At the same time, the court also agrees with Kia that it is primarily the Pisanis' fault that the inspection had to be cancelled at the last minute; the court finds that the Pisanis' were insufficiently responsive to efforts to reschedule the inspection.

The court understands that the parties have now agreed to an inspection on September 12, 2024 at 10:00 a.m. in Burlingame, and so this motion is now moot. The court declines Kia's request to issue an order that the inspection occur at that date and time. Nevertheless, if this inspection is cancelled yet again at the last minute by the Pisanis, the court may take that fact into consideration in any future discovery motion in this case.

The motion is DENIED as moot.

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Calendar Line 6
Case Name: *Hayden Abene v. DL Bar LLC et al.*
Case No.: 19CV359455

On May 18, 2023, this court ruled that cross-defendants DL Bar LLC, Dimitrios Louvis, and Olga Louvis (collectively, "Cross-Defendants") owed defendant and cross-complainant La Senda, 52-78 LLC ("La Senda") a duty to defend it against the personal injury claims of plaintiff Hayden Abene in this case. Now, La Senda's insurer, Western World Insurance Company ("Western World"), seeks to intervene in this case to pursue the defense costs that it contends Cross-Defendants have not fully paid. According to Western World, it "has had to pay to defend La Senda against the claims made by Plaintiff in the Underlying Action" (Memorandum, p. 5:16-17), and so as a partial subrogated insurer, it has the right to intervene under *Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540, 555-556 (*Hodge*).

On the one hand, the court does not understand why the parties are still fighting over the amount of defense costs that are owed, and it seems like a drastic and costly move for La Senda's insurer to intervene. On the other hand, it does appear that Western World has a right to intervene as a partial subrogated insurer under *Hodge, supra*, and Cross-Defendants have failed to articulate any valid basis for opposing. Indeed, Cross-Defendants have not submitted an opposition brief; instead, their counsel, Robert S. Rucci, submits a *declaration* "in opposition to motion for leave to intervene." This is not a proper opposition. In his declaration, Rucci characterizes the instant motion as "a waste of time," "a billing exercise," "a fee producing enterprise," "unnecessary," "uncalled for," and "unreasonable," but he does not articulate any grounds for distinguishing the case law cited by Western World. (Declaration, ¶¶ 5, 10.)

Accordingly, the court GRANTS the motion.

Finally, the court does not decide the issue of whether Cross-Defendants are entitled to *unredacted* copies of La Senda's defense bills—as the issue has not been presented here—but the court is highly skeptical that Cross-Defendants can ignore La Senda's claims of attorney-client privilege. The court strongly suggests that La Senda send its defense bills to Cross-Defendants—lightly redacted *only to the extent absolutely necessary* to protect privileged material—as soon as possible, if this has not already been done. This information should be more than sufficient for Cross-Defendants to take their final steps to discharge their duty to defend.

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Calendar Line 8
Case Name: *Henry Lippincott v. Arash Hassibi et al.*
Case No.: 22CV393460

This is the third motion relating to sanctions between the parties. In the first, the court granted in part and denied in part plaintiff Henry Lippincott's request for monetary sanctions against defendants Arash Hassibi and Joinedapp, Inc. (collectively, "Defendants") under Code of Civil Procedure sections 1281.98 and 1281.99. The court awarded $244,095.73 for the fees and costs associated with the parties' abandoned arbitration, as well as $12,000 in fees for having had to bring the sanctions motion. (See November 28, 2023 Order.) In the second, the court denied Defendants' motion to "vacate" the court's November 28, 2023 ruling under Code of Civil Procedure section 663, which the court construed as a motion for reconsideration under Code of Procedure section 1008, given the inapplicability of section 663. (See February 1, 2024 Order.) In the course of denying that second motion by Defendants, the court also declined to rule on Lippincott's suggestion that the court award additional sanctions against Defendants, "given the lack of specificity in, and factual support for, this suggestion." (*Id.* at p. 4, fn. 2.)

Lippincott now brings this third motion, requesting the fees and costs incurred in having to oppose the motion to vacate/motion for reconsideration. Lippincott argues that these fees and costs are awardable either: (1) under sections 1281.98 and 1281.99 (as "reasonable expenses . . . incurred by the employee or consumer as a result of the material breach" of the arbitration agreement), or (2) under section 1008, subdivision (d) (which provides for sanctions of "contempt" or "as allowed by section 128.7"). In response, Defendants rehash some of the same unpersuasive arguments they made in opposition to the first motion, as well as the same incorrect argument they made in support of their second motion—that it was "not a disguised Motion for Reconsideration." (Opposition, pp. 2:14-3:14, 3:15-19.)

The court finds that Defendants' conduct in bringing the motion to vacate/motion for reconsideration did not rise to the level of "contempt." In addition, the court finds that even though Defendants' arguments in favor of their motion to vacate were weak and unpersuasive, they were not legally or factually *frivolous*, nor were they clearly brought for an improper purpose, such as to cause unnecessary delay or to harass the plaintiff. As a result, sanctions under section 1008, subdivision (d), are not warranted. (Moreover, it does not appear that Lippincott served his sanctions motion on Defendants at least 21 days before filing it, as required by section 128.7, subdivision (c)(1), making sanctions "as allowed by section 128.7" singularly inappropriate.)

Nevertheless, because the court did award $12,000 to Lippincott for the fees incurred in having had to bring the first sanctions motion, and because the court finds that the fees incurred in opposing Defendants' meritless motion to vacate/motion for reconsideration were a part and parcel of upholding that first sanctions award, the court concludes that the reasonable fees and costs incurred in opposing the motion to vacate/motion for reconsideration are awardable under sections 1281.98 and 1281.99. To hold otherwise would be inconsistent with the court's first November 28, 2023 order. At the same time, the court agrees with Defendants that the amount requested here by Lippincott ($15,765.06) is excessive. Because the motion to vacate/motion for reconsideration presented a straightforward issue, opposing it was also (or should also have been) straightforward, and so the court will order that Defendants pay monetary sanctions in the amount of **$3,200**, which represents four hours at lead counsel's billing rate of $800/hour.

Defendants shall pay this amount to Lippincott within 60 days of notice of entry of this order.

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Calendar Line 9
Case Name: *Applied Materials, Inc. v. Huu T. Vu et al.*
Case No.: 22CV403017

This is a motion for various sanctions (terminating sanctions, a reprimand, and a monetary payment of $333,157.05) under Code of Civil Procedure section 128.7 by defendant Capital Asset Exchange and Trading, LLC ("CAE") against plaintiff Applied Materials, Inc. ("Applied") and Applied's attorneys.[4] The court finds that the motion is not well founded and therefore denies it.

1. Legal Standards

As a general matter, a trial court may impose sanctions under section 128.7 when a "paper": (1) is "presented primarily for an improper purpose" (such as to harass a litigant, drive up the costs of litigation, or cause undue delay), (2) contains a claim, defense, or other legal contention that is not warranted by existing law "or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law," (3) contains allegations and factual contentions that do not have any evidentiary support or are not "likely to have evidentiary support after a reasonable opportunity for further investigation or discovery," or (4) contains denials of factual contentions that are not "warranted on the evidence or . . . are [not] reasonably based on a lack of information or belief." (Code Civ. Proc., § 128.7, subd. (b)(1)-(b)(4).) In other words, in order to prevail on a sanctions motion under § 128.7, a party must show that the other side's papers were filed for a dilatory or obstructive purpose, or are legally or factually "frivolous." (*Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 167 (*Guillemin*); *Peake v. Underwood* (2014) 227 Cal.App.4th 428, 440-441 (*Peake*).)

The Courts of Appeal have repeatedly cautioned that sanctions should be "used sparingly in the clearest cases to deter the most egregious conduct." (*Wallis v. PHL Associates, Inc.* (2008) 168 Cal.App.4th 882, 893 [discussing sanctions under Code of Civil Procedure section 128.5].) As the Court noted in *Peake*, *supra*, section 128.7 "'must not be construed so as to conflict with the primary duty of an attorney to represent his or her client zealously. Forceful representation often requires that an attorney attempt to read a case or an agreement in an innovative though sensible way. Our law is constantly evolving, and effective representation sometimes compels attorneys to take the lead in that evolution.'" (227 Cal.App.4th at p. 441 [quoting *Guillemin*, *supra*, 104 Cal.App.4th at pp. 167–168].) *Peake* also emphasized that section 128.7, subdivision (d), expressly provides that any sanction imposed "'shall be limited to what is sufficient to deter repetition of [the improper] conduct or comparable conduct by others similarly situation.'" (*Peake*, 227 Cal.App.4th at p. 441 [quoting Code Civ. Proc., § 128.7, subd. (d)].)

[4] In its order on one of CAE's motions to compel last month, the court noted that CAE consistently referred to itself as "CAET" in its briefs, and so the court said that it would use "CAET" going forward. (See May 28, 2024 Order at p. 1, fn. 1.) But the court now sees from the various emails and texts submitted with this motion that CAE's own employees consistently refer to their company as "CAE." Only outside counsel appears to favor "CAET." Therefore, the court now reverts to its pre-May 28, 2024 usage of "CAE."

2. Discussion

CAE's motion does not come anywhere close to satisfying these legal standards. The motion focuses on the "factually frivolous" prong of the section 128.7 inquiry,[5] arguing that the original basis for Applied's complaint—that CAE sold a stolen electrostatic chuck heater supplied by defendant James Nguyen—was shown in the course of discovery to have been incorrect, because the heater identified in the complaint was provided by a different supplier (Bao Hong Semi Technology Co.) rather than by Nguyen, and arguing that even after Applied learned this fact, they continued to pursue their allegations against CAE. (Memorandum, p. 5:7-6:21.)

In response, Applied points to documents produced in discovery showing either: (1) transactions between CAE personnel and Nguyen about Applied products, or (2) efforts to engage in such transactions by CAE personnel. (Declaration of Quyen Ta, Exhibits 16-19.) In addition, Applied emphasizes other facts that it says support its allegations: that CAE continued to deal with Nguyen even after "law enforcement notified CAET in February 2021 of the risk that Nguyen was using CAET's platform to offload his inventory of stolen Applied parts," that CAE personnel "deliberately moved conversations" with Nguyen to WhatsApp and telephone calls instead of email, and that one of CAE's employees deleted some of those text messages with Nguyen. (Opposition, p. 5:12-23.)

The court concludes that the emails between CAE personnel and potential customers from October 2021 are enough to defeat this motion on their own. On October 11, 2021, Nick Borris of CAE wrote to a customer (or potential customer), saying that "[w]e sold one of each last week," referring to parts supplied by Nguyen. (Ta Declaration, Exhibit 17.) On October 13, 2021, Jess Min of CAE wrote to a different potential customer in connection with Nguyen's parts: "Please note that we have sold (1) 27983 and (1) 27430 already, so there are only 1 of each remaining." (*Id.*, Exhibit 18.) On October 18, 2021, Jess Min wrote to a third customer or potential customer about Nguyen's parts that "we have sold (1) 56201 and (1) 27430 already." (*Id.*, Exhibit 19.) In its reply brief, CAE attempts to explain away these documents, citing its own discovery responses to argue that "*[w]e sold*" and "*we have sold*" Nguyen's parts really means "*someone else sold*" those parts, thereby reducing Nguyen's available inventory without CAE's participation. (Reply, pp. 8:22-10:23.) This is not a factual dispute that the court can resolve as a matter of law, particularly on a motion for sanctions. CAE argues that it "never purchased any goods from Mr. Nguyen or sold any goods being offered by him," and that it "never transacted with James Nguyen." (*Id.*, p. 9:5-18 [quoting Response to Request for Production No. 43, attached as Exhibit F to the Reply Declaration of Margaret Crawford].) But the court cannot simply take CAE's word for it, particularly while discovery is ongoing, and particularly while other evidence exists to indicate either: (1) that "we" (*i.e.*, CAE) sold his parts "already," or (2) that CAE at least *tried* to purchase and sell

[5] The motion also attempts to argue that this case has been filed for an improper purpose, but CAE fails to offer a scintilla of evidence to support this argument. Instead, it offers only conjecture, based on the notion that CAE is a "leading competitor" of Applied in the secondary market for semiconductor equipment parts (Memorandum, p. 2:4), and based on the suspicion that Applied is trying to obtain CAE's "incredibly valuable trade secrets." (*Id.* at p. 2:4-5.) The mere fact that CAE may be a competitor of Applied is not evidence of an improper purpose. Moreover, no trade secrets have been identified by CAE anywhere in its motion papers—only vague corporate jargon ("data acquired through millions of emails, thousands of transactions, and market research" (*Id.* at p. 10:1-2))—and so the court accords this conclusory argument zero weight.

goods being offered by Nguyen. (E.g., Ta Decl., Exhibits 12-14 [emails from Veronica Chen and Vivian Chen of CAE with Nguyen, attempting to broker a sale of parts being offered by Nguyen].) CAE misapprehends the legal standard for a motion under section 128.7, because rather than demonstrating that Applied's allegations are factually *frivolous*, it has merely demonstrated, at best, that Applied's allegations are factually *debatable*.[6]

Indeed, even if the court did not find that CAE's motion were unpersuasive on its face, the court would find that it is plainly premature, given section 128.7's express requirement that the moving party show that its opponent's factual allegations do not have any evidentiary support and are not "likely to have evidentiary support *after a reasonable opportunity for further investigation or discovery*." (Code Civ. Proc., § 128.7, subd. (b)(3).) Here, fact discovery is still proceeding, and Applied argues that it has been delayed in its efforts to obtain discovery from CAE, including multiple depositions.

Because CAE has failed to show that Applied's allegations, to date, are factually frivolous, there is no basis upon which the court could possibly grant CAE's motion for sanctions.[7]

Finally, the court notes that for having been required to oppose this motion, Applied requests an even sum of $100,000, which it says "is less than the actual fees and costs Applied incurred in opposing this Motion." (Opposition, p. 17:3-5.) While it is true that section 128.7, subdivision (c)(1), provides for the possibility that the court "may" award reasonable expenses and fees for successfully opposing a sanctions motion, and while section 128.7, subdivision (h), further provides that a motion for sanctions that is brought for an improper purpose, "such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions," the court concludes that the present motion does not quite rise to that level of misconduct. In contrast to motions under the Civil Discovery Act, where monetary sanctions "shall" or "must" be imposed unless the court finds that a party acted with substantial justification, monetary sanctions are not necessarily the default outcome under section 128.7. Indeed, sanctions of $1,000 or more must be reported to the California State Bar, unless they are purely for discovery violations, and so sanctions against attorneys under section 128.7 are a much more serious matter.[8] The court will therefore give CAE the benefit of the doubt here, given its clear misapprehension of the legal standard for a motion under section 128.7. The court denies Applied's request for monetary sanctions.

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[6] Similarly, the court is mystified by CAE's apparent assumption that the court can find, as a matter of law, that missing text messages between CAE and Nguyen were "innocuously deleted" by one CAE trader. (Reply, pp. 2:18-3:3.) These deleted text messages appear in the middle of a series of ongoing conversations on January 18, 19, 20, 21, and 22, 2022 between CAE and Nguyen about various possible transactions for parts from Applied and KLA-Tencor, and these conversations also apparently occurred after "law enforcement" in Santa Clara County had alerted CAE to the possibility that Nguyen was trading in stolen parts. (Ta Declaration, Exhibit 10.) The question of whether these deletions were "innocuous" or otherwise is not a factual dispute that the court can resolve at this stage of the proceedings, and most certainly not on a motion under section 128.7.

[7] The court grants CAE's request for judicial notice of Exhibits A and C (the complaint in this case and the court's December 5, 2023 discovery order). The court denies CAE's request for judicial notice of Exhibits B, D, and E, which the court finds immaterial to the resolution of this motion. The court similarly finds CAE's objections to the Declaration of Quyen Ta to be immaterial, as the court has relied on the exhibits attached to that declaration rather than counsel's characterization of those exhibits; the objections are overruled.

[8] It is not entirely clear to the court whether Applied is requesting sanctions against both CAE and its outside counsel or only against CAE.

The motion is DENIED. Sanctions are DENIED to both sides.

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