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 18, 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	21CV375892	Space Designs, Inc. v. Studley & Associates	Order of examination: parties to appear.
LINE 2	22CV394614	Good Samaritan Hospital, L.P. v. MultiPlan, Inc. et al.	Click on LINE 2 or scroll down for ruling in lines 2-4.
LINE 3	22CV394614	Good Samaritan Hospital, L.P. v. MultiPlan, Inc. et al.	Click on LINE 2 or scroll down for ruling in lines 2-4.
LINE 4	22CV394614	Good Samaritan Hospital, L.P. v. MultiPlan, Inc. et al.	Click on LINE 2 or scroll down for ruling in lines 2-4.
LINE 5	22CV407300	JPMorgan Chase Bank, N.A. v. Juan Porras	Motion for judgment on the pleadings: notice is proper, and the motion is unopposed. At the same time, the motion is deficient because the only document attached to plaintiff's request for judicial notice is the court's minute order, which does not contain sufficient information for the court to determine *as a matter of law* that defendant cannot state facts sufficient to constitute a defense. Accordingly, the motion is DENIED.
LINE 6	22CV393105	Jack Hansen v. Rogelio Sanchez et al.	Click on LINE 6 or scroll down for ruling.
LINE 7	23CV420372	Terry Sholin v. Pathion, Inc. et al.	OFF CALENDAR
LINE 8	2004-1-CV-017343	American Contractors Indemnity Company v. Contractors Bond Brokerage, Inc. et al.	Motion to garnish wages of judgment debtor's spouse: there is no proof of service of the notice of motion and motion in the court file. Parties to appear to address the apparent notice defect.

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LINE #	CASE #	CASE TITLE	RULING
LINE 9	17CV318263	Curron Michael-Edward Clark v. Santa Clara County et al.	Motion to set aside dismissal: plaintiff has failed to show good cause for the relief sought. He filed this case over six and a half years ago, he still has not served the summons and complaint on any defendant, and this case was dismissed by the court over five years ago, on March 1, 2019. Although plaintiff states that he was "unjustly confined to jail" at some point, he does not explain when this occurred or for how long. He also does not explain why it took so long to bring this motion. The motion is therefore DENIED.
LINE 10	18CV323923	Corrie Johnson v. Nordstrom, Inc.	Click on LINE 10 or scroll down for ruling.
LINE 11	19CV349252	Sumi Lim v. Gerald Bittner, Jr. DDS et al.	Motion for terminating sanctions: the motion is DENIED AS MOOT, as the court already granted a motion for judgment of nonsuit and dismissal in favor of the non-moving party on April 4, 2024.
LINE 12	23CV427045	Daniel Spampinato v. Ford Motor Company et al.	Motion to compel arbitration: the moving party has now been dismissed from the case, and so the court takes this matter OFF CALENDAR.

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Calendar Lines 2-4
Case Name: *Good Samaritan Hospital, L.P. v. MultiPlan, Inc. et al.*
Case No.: 22CV394614

I. BACKGROUND

This is a dispute over payment for medical services between plaintiff Good Samaritan Hospital L.P. (the "Hospital") and defendants Multiplan, Inc. ("Multiplan"), Trustmark Health Benefits ("Trustmark"), and Altimetrik Corp. ("Altimetrik").[1]

The Hospital filed its original complaint in this court on February 8, 2022. Defendants removed the case to federal court, and then the U.S. District Court remanded the case back to this court on September 25, 2023.[2]

The Hospital filed the operative first amended complaint ("FAC") on January 31, 2024. The FAC states ten causes of action: (1) Breach of Written Contract (against Multiplan); (2) Breach of Written Contract (against Trustmark); (3) Breach of Written Contract (against Altimetrik); (4) Breach of the Implied Covenant of Good Faith and Fair Dealing (against Multiplan); (5) "Breach of Client Agreement" (against Trustmark, with the Hospital claiming to be a third-party beneficiary); (6) "Breach of User Agreement" (against Altimetrik, with the Hospital claiming to be a third-party beneficiary); (7) Intentional Interference with Contractual Relations "and/or" Prospective Economic Advantage (against Multiplan); (8) Intentional Interference with Contractual Relations "and/or" Prospective Economic Advantage (against Trustmark); (9) Intentional Interference with Contractual Relations "and/or" Prospective Economic Advantage (against Altimetrik); and (10) Relief from Forfeiture – Civil Code section 3275 (against all defendants). Notably, none of the alleged agreements are attached as exhibits to the FAC.

Currently before the court are demurrers to the FAC by Multiplan, Trustmark, and Altimetrik, all filed on April 2, 2024. The Hospital filed oppositions on June 5, 2024.

II. REQUEST FOR JUDICIAL NOTICE

Altimetrik has submitted a request for judicial notice. "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, citing *People v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking judicial notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

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[1] Trustmark used to be called "CoreSource" and now calls itself "Luminare Health," but the court will stay with "Trustmark" to minimize confusion.

[2] The court, on its own motion, takes judicial notice of the U.S. District Court's September 15, 2023 remand order under Evidence Code section 452, subdivision (d). The federal court concluded that there was no federal subject matter jurisdiction because, among other findings, ERISA does not preempt the Hospital's state law claims.

Altimetrik requests that the court take judicial notice of an opposition to a motion to dismiss filed by the Hospital in federal court. (Request, Exhibit 1.) This request is denied as irrelevant to the material issues before the court, particularly given that Altimetrik appears to wish to rely on alleged admissions in this document, rather than on the fact of its existence. (See *Oh v. Teachers Ins. & Annuity Assn. of America* (2020) 53 Cal.App.5th 71, 79-81 [truth of contents of court records cannot be judicially noticed].) The contents of an opposition brief, without more, are not judicial admissions. Altimetrik fails to show that any of the FAC's allegations are subject to judicial estoppel based on this document.

III. DEMURRERS 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.)

The FAC is replete with allegations made solely on information and belief. (See FAC, ¶¶ 2, 5, 6, 7, 10, 16, 17, 22, 23, 38, 49, 51, 55, 57-59, 61-64, 69, 71, 72, 75, 76, 78, 84, 85, 92, 98, 100, 108, 109, 113, 115, 116, 119, 126, and 129.) 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.

The court considers only the pleading under attack, any attached exhibits, 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 declarations from counsel for the demurring defendants to the extent those declarations discuss the meet-and-confer efforts required by statute. The court has not considered any attached exhibits.

Code of Civil Procedure section 430.60 states that "[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 California 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. Altimetrik's Demurrer to the FAC

Altimetrik demurs to FAC's third, sixth, ninth, and tenth causes of action on the ground that they fail to state sufficient facts. (See Notice of Demurrer and Demurrer, pp. 2:14-3:4.) In its supporting memorandum, Altimetrik also attempts to assert two additional grounds that are not raised in its notice of demurrer: that the entire FAC is preempted by ERISA and that the entire FAC fails because the Hospital lacks standing. As these grounds are not properly raised, the court disregards them. Had preemption been properly raised, the court would have overruled the demurrer on that ground in any event, as the federal court's analysis in its order granting remand controls here: that court concluded that none of the Hospital's state law claims were preempted by ERISA. Indeed, Altimetrik's argument appears to be nothing more than an improper attempt to reargue the remand issue, even as it purports to rely on a different part of ERISA (§ 514(a) instead of § 502(a)) than was addressed by the federal court.

1. Third Cause of Action (Breach of Written Contract)

"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.) A non-party to a contract cannot be sued for breach of that contract. (See *Gold v. Gibbons* (1960) 178 Cal.App.2d 517, 519 (*Gold*) ["Breach of contract cannot be made the basis of an action for damages against defendants who did not execute it and who did nothing to assume its obligations."]; see also *Clemens v. American Warranty Corp*. (1987) 193 Cal.App.3d 444, 452 (*Clemens*) ["Under California law, only a signatory to a contract may be liable for any breach."].)

As a general matter, "[i]t is . . . solely a judicial function to interpret a written instrument unless the interpretation turns on the credibility of extrinsic evidence." (*Consolidated Theatres, Inc. v. Theatrical Stage Employees Union* (1968) 69 Cal.2d 713, 724; see also *Sierra Vista Regional Medical Center v. Bonta* (2003) 107 Cal.App.4th 237, 245

["The interpretation of a contract is a question of law unless the interpretation turns on the credibility of extrinsic evidence."].)

Altimetrik contends that the third cause of action fails to state sufficient facts because Altimetrik is not itself a party to the "Network Agreement" upon which the cause of action is based. Altimetrik also contends that to the extent the third cause of action is intended to allege promissory estoppel, it fails to do so.

In opposition, the Hospital first argues that privity is not necessary for breach of contract. This is incorrect. (See *Gold* and *Clemens, supra*.) It then denies that it has brought, or intends to bring, a promissory estoppel claim against Altimetrik; nevertheless, it asserts conclusorily that Altimetrik is "estopped" from arguing that it is not bound by a written agreement entered into by other parties. The Hospital also argues that Altimetrik agreed to be bound by the Network Agreement by entering into a different written agreement—the "User Agreement"—to which the Hospital is not a party.

Because the third cause of action expressly admits that Altimetrik is not a party to the Network Agreement (see FAC, ¶¶ 68-81), the court SUSTAINS the demurrer to the third cause of action on the ground that it fails to state sufficient facts. (Code Civ. Proc., § 430.10, subd. (e).) The Hospital alleges that Altimetrik is somehow liable for a breach of the Network Agreement as a result of having signed the User Agreement with a different party (Trustmark), but these allegations are made solely on information and belief and without sufficient supporting allegations, which means they cannot be accepted as true on a demurrer. For example, the boilerplate allegations in paragraphs 10, 57, and 71 of the FAC that Altimetrik and other defendants were acting as "agents" of one another are conclusory statements asserted entirely on information and belief, with no supporting information or explanation whatsoever. As such, they are completely inadequate to demonstrate a breach of the Network Agreement by a nonsignatory to that agreement.

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.) The Hospital fails to meet this burden, as it simply and vaguely requests leave to amend if the court "grants any part of the demurrer." (Opposition, p. 18:13.) (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.]'"].)

While it is not apparent to the court how the cause of action for breach of the Network Agreement can be amended to state a cause of action against a nonsignatory to that agreement, the court will grant 10 days' leave to amend, given that this is the initial pleading challenge in this case.

The court reminds the Hospital that 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.

2. Sixth Cause of Action (Breach of Contract—Third-Party Beneficiary)

The sixth cause of action alleges, based almost entirely on assertions made on information and belief, that Altimetrik is a party to a written contract (the User Agreement) that was intended to benefit the Hospital, and that Altimetrik breached this User Agreement by breaching *another* agreement to which it was not a party (the "Client Agreement" between Multiplan and Trustmark). (FAC, ¶¶ 97-104.) The Hospital thereby alleges that it was a third-party beneficiary of the User Agreement.

In its demurrer to the sixth cause of action, Altimetrik argues that the allegations regarding the Hospital's status as a third-party beneficiary of the User Agreement are insufficient. The court agrees and therefore SUSTAINS Altimetrik's demurrer.

First, any alleged *breach* of the User Agreement is inadequately pled. The FAC fails to identify exactly what provisions of that agreement have been breached by Altimetrik. Indeed, the entirety of the allegations regarding the purported terms of the User Agreement are made on information and belief, and the FAC fails to attach a copy of the User Agreement. This is woefully insufficient.

Second, the FAC fails to state sufficient facts to support the allegation that the Hospital is a third-party beneficiary of the User Agreement:

> [U]nder California's third party beneficiary doctrine, a third party—that is, an individual or entity that is not a party to a contract—may bring a breach of contract action against a party to a contract only if the third party establishes not only (1) that it is likely to benefit from the contract, but also (2) that a motivating purpose of the contracting parties is to provide a benefit to the third party, and further (3) that permitting the third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties.

(*Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817, 821 (*Goonewardene*).)

> [The court must] carefully examine[] the express provisions of the contract at issue, as well as all of the relevant circumstances under which the contract was agreed to, in order to determine not only (1) whether the third party would in fact benefit from the contract, but also (2) whether a motivating purpose of the contracting parties was to provide a benefit to the third party, and (3) whether permitting a third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties. *All three elements must be satisfied to permit the third party action to go forward*.

(*Id.*, 6 Cal.5th at p. 830 [emphasis added].) In *Goonewardene*, the California Supreme Court reversed the Court of Appeal and remanded the matter with instructions to affirm the trial court's order sustaining a demurrer without further leave to amend, holding that the third-party beneficiary doctrine was inapplicable under the standard set forth above. Here, the conclusory allegations in the sixth cause of action likewise do not meet the *Goonewardene* standard. The Hospital fails to identify any language in the User Agreement that demonstrates that the

Hospital was likely to benefit from the User Agreement, that a "motivating purpose" of the User Agreement was to provide a benefit to the Hospital, *and* that permitting a breach of contract action by the Hospital would be consistent with the objectives of the User Agreement and the reasonable expectations of the contracting parties (Altimetrik and Trustmark). The Hospital fails to identify *any* language from the User Agreement at all. "In general, courts resolve doubts against the existence of a third party beneficiary." (*City of Oakland v. Oakland Raiders* (2022) 83 Cal.App.5th 458, 472-473 [citing *Goonewardene*].)

While the Hospital's opposition fails to meet its burden of showing how the sixth cause of action could be amended to cure this defect, the court again grants 10 days' leave to amend.

3. Ninth Cause of Action (Interference with Contract "and/or" Economic Advantage)

In its ninth cause of action, the Hospital attempts to combine two distinct causes of action—with materially different elements—into one. (FAC, ¶¶ 118-123.)

"The elements of a cause of action for intentional interference with contractual relations are '(1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage.'" (*Redfearn v. Trader Joe's Co*. (2018) 20 Cal.App.5th 989, 997.) The defendant's conduct need not be wrongful apart from the interference with the contract. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 55.)

The elements of a cause of action for intentional interference with prospective economic relations are: "(1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff, (2) the defendant's knowledge of the relationship, (3) intentionally wrongful acts designed to disrupt the relationship, (4) actual disruption of the relationship, and (5) economic harm proximately caused by the defendant's action." (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc*. (2017) 2 Cal.5th 505, 512.) "Intentionally interfering with prospective economic advantage requires pleading that the defendant committed an independently wrongful act . . . [a]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Ixchel Pharma, LLC v. Biogen, Inc*. (2020) 9 Cal.5th 1130, 1142; see also *Della Penna v. Toyota Motor Sales, U.S.A., Inc*. (1995) 11 Cal.4th 376, 392-393 [stating that "a plaintiff seeking to recover for alleged interference with prospective economic relations has the burden of pleading and proving that the defendant's interference was wrongful 'by some measure beyond the fact of the interference itself'"].)

Altimetrik argues that the Hospital fails to allege adequately how it either interfered with the Hospital's contract with Multiplan or interfered with prospective economic relationships with Multiplan or Trustmark. In opposition, the Hospital argues that a demurrer before it has had an opportunity to conduct discovery is somehow improper. This is incorrect and reflects a basic misunderstanding of the function of a demurrer, which focuses on the adequacy of the pleadings *on their face*. In addition, the Hospital argues that the allegations in paragraph 122 of the FAC adequately identify the alleged interference. This is also incorrect.

The court SUSTAINS Altimetrik's demurrer to the ninth cause of action with 10 days' leave to amend.

As an initial matter, it is improper for the Hospital to allege a single cause of action for intentional interference with contract and intentional interference with prospective economic advantage. These are distinct causes of action with different elements and must be set forth separately.

More critically, the conclusory allegations of paragraph 122 (and surrounding paragraphs 118-121 and 123) fail to identify the alleged acts of interference and fail to state how any acts were independently wrongful. Indeed, the allegations in paragraph 122 are entirely conditional, with the Hospital admitting that it "cannot know with certainty which Defendant or Defendants" committed which acts or "played any role." And to the extent that these allegations are based on any "breach" upon which the third and sixth causes of action are also based, the court has already noted (above) that they are insufficient.

Again, the Hospital's opposition fails to meet its burden to show how the ninth cause of action could be amended, but the court grants 10 days' leave to amend, given that this is the first pleading challenge.

4. Tenth Cause of Action (Relief from Forfeiture)

The tenth cause of action is expressly based on Civil Code section 3275. (See FAC, ¶ 127.) This statute, "unchanged since 1872, provides: 'Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in the case of a grossly negligent, willful, or fraudulent breach of duty.' The breaching party may raise section 3275 as an equitable defense to enforcement of the contractual provision or as grounds for relief in an action for restitution of the property forfeited." (*Ridgley v. Topa Thrift & Loan Association* (1998) 17 Cal.4th 970, 976 [contractual penalty for lateness held invalid as illegal forfeiture provision].) "In the law, 'forfeiture' is defined as 'A deprivation or destruction of a right in consequence of the nonperformance of some obligation or condition.'" (*Chase v. Blue Cross of California* (1996) 42 Cal.App.4th 1142, 1149 [citing Black's Law Dictionary (6th ed. 1990), p. 650].)

Altimetrik argues that the tenth cause of action fails to state sufficient facts because Altimetrik is not a party to a contract with the Hospital, and no specific contract term has been identified. The opposition briefly asserts that the cause of action is "well-pled" and is brought "in the alternative." This is completely conclusory and unpersuasive. Altimetrik correctly notes that, as currently alleged, the tenth cause of action does not identify any particular contractual provisions with which the Hospital failed to comply, or any particular forfeitures supposedly incurred by the Hospital. (FAC, ¶¶ 124-129.) The entire cause of action is framed as a vague hypothetical. The general rule is that statutory causes of action must be pleaded with particularity. (See *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780, 795; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.) This includes a cause of action relying upon Civil Code section 3275 as affirmative grounds for relief, rather than as an equitable defense raised in an answer.

The court SUSTAINS the demurrer to the tenth cause of action on the ground that it fails to state sufficient facts. While the Hospital's opposition fails to meet its burden to show how the tenth cause of action could be amended, leave to amend at least once is appropriate. Therefore, the court grants 10 days' leave to amend.

C. Multiplan's Demurrer to the FAC

Multiplan demurs to the FAC's first, fourth, seventh, and tenth causes of action on the ground that they fail to state sufficient facts. (See Notice of Demurrer and Demurrer, p. 2:4-20.)

1. First Cause of Action (Breach of Written Contract)

The first cause of action (FAC, ¶¶ 42-53) alleges that Multiplan is a party to the "Network Agreement" with the Hospital and breached it by failing to ensure payment for health care services provided by the Hospital to an infant patient. Multiplan is sometimes referred to as a "PPO" in the FAC. (See FAC, ¶ 1.) While Multiplan does not deny being a signatory to the Network Agreement, it argues that the Hospital's breach allegations are contradicted by the FAC's allegation at paragraph 18, which appears to state that Multiplan is not liable for non-payment of services:

> Section 4.1 of the Network Agreement, titled "Limitations," provides that, "[PPO]'s duties are limited to those specifically set forth herein. [PPO] does not determine benefits eligibility or availability for Participants and does not exercise any discretion or control as to Program assets, with respect to policy, payment interpretation, practices, or procedures. [PPO] is not the administrator insurer underwriter, or guarantor of Programs, and [PPO] *is not liable for the payment of services under Programs*."

(FAC, ¶ 18 [underscoring and brackets in original; italics added].)

In response, the Hospital argues that there is no contradiction when Section 4.1 is viewed in the context of the Network Agreement as a whole, and that there are additional provisions of the Network Agreement identified in the FAC that support its allegations of a breach:

> Section 4.3 of the Network Agreement, titled "Client Agreements," states that "[PPO] agrees that it has entered into written agreements with Clients for the use of the Network. Each agreement between [PPO] and a Client ***will obligate the Client to comply with the terms of this Agreement***, including but not limited to the ***obligation to pay, or require User to pay, for Covered Services rendered to Participants*** in accordance with the provisions of Article V of this Agreement."
>
> * * *
>
> Section 5.2 of the Network Agreement, titled "Payment for Covered Services," states that "***Client will***, within thirty (30) business days of receipt of a Clean Claim, ***pay or require User to pay Facility*** for Covered Services, as full compensation, the Contract Rate in accordance with the terms of this

> Agreement … ***in order to obtain the benefit of the Contract Rate***. In the event that a Clean Claim is not paid within thirty (30) business days from the date of receipt of such Clean Claim, Client will pay, or require User to pay, Facility and Facility's Billed Charges."
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> * * *
>
> Section 4.13 of the Network Agreement provides, "[PPO] as Liaison. In the event of a dispute between [Hospital] and Client, or any authorized agent acting on behalf of Client relating to compliance with the term of this Agreement, [PPO] will act as a liaison and work in cooperation with [Hospital] and Client to resolve the matter of controversy. [PPO]'s obligations as a liaison under this Section 4.12 [sic] include but are not limited to: (a) response to [Hospital], complaints or issues within five (5) business days of [Hospital's] notice to [PPO] of the same; and (b) facilitate communication between [Hospital], Client, User and/or agent within fifteen (15) days of request by [Hospital]. ***[PPO]'s repeated and consistent failure to comply with this Section 4.13 shall constitute a breach of this Agreement***."

(FAC, ¶¶ 14, 15 & 20 [brackets, underscoring, bolding, and italics in original].)

It may well be the case that there is a contradiction between the provisions of Section 4.1 of the Network Agreement and Sections 4.3, 4.13, and 5.2 of that same agreement, but it is impossible for the court to evaluate this adequately, because the Network Agreement is not attached to the FAC, nor is it attached to any of the papers presently before the court. Accordingly, it is singularly inappropriate for the court to determine this issue on a demurrer, as it would require the consideration of extrinsic evidence (the Network Agreement itself, as well as any evidence that might be necessary to interpret the Network Agreement). The court therefore OVERRULES Multiplan's demurrer to the first cause of action for breach of contract. The court finds that the allegations of the FAC, particularly the extensive but out-of-context quotations from the Network Agreement, are sufficient to state a cause of action for breach of contract.

2. Fourth Cause of Action (Breach of Implied Covenant of Good Faith and Fair Dealing)

Multiplan argues that the fourth cause of action (FAC, ¶¶ 82-89) fails to state sufficient facts because the alleged breach is the same as that alleged in the first cause of action. That breach is Multiplan's alleged "failure to ensure that Clients pay for claims in accordance with the terms of the Network Agreement." (FAC, ¶ 83.) The court agrees with Multiplan that these are exactly the same allegations as in the breach of contract cause of action, and so they are superfluous. "[W]here breach of an actual term is alleged, a separate implied covenant claim, based on the same breach, is superfluous." (*Guz v. Bechtel National, Inc*. (2000) 24 Cal.4th 317, 327 (*Guz*); see also *Levy v. Only Cremations for Pets, Inc.* (2020) 57 Cal.App.5th 203, 215.) "The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made. The covenant thus cannot 'be endowed with an existence independent of its contractual underpinnings.' It cannot impose substantive

duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." (*Guz, supra*, 24 Cal.4th at pp. 349-350.)

The Hospital's argument that a breach of the implied covenant can be alleged as an "alternative" to a breach of contract cause of action, based on the same conduct, is incorrect. An implied covenant claim is not a common count. There can be no implied covenant of good faith and fair dealing without a valid, enforceable underlying contract being alleged to exist. "The implied covenant of good faith and fair dealing rests upon the existence of some specific contractual obligation. [Citation.] 'The covenant of good faith is read into contracts in order to protect the express covenants or promises of the contract, not to protect some general public policy interest not directly tied to the contract's purpose.' [Citation] . . . 'In essence, the covenant is implied *as a supplement to the express contractual covenants*, to prevent a contracting party from engaging in conduct which (while not technically transgressing the express covenants) frustrates the other party's rights to the benefits of the contract.'" (*Racine & Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1031-1032 [emphasis added].) Even where there is no separate cause of action for breach of contract, an alleged breach of an express contract term cannot be the basis for a breach of the implied covenant. Therefore, it is not an "alternative."

The allegations of the fourth cause of action fail to state sufficient facts regarding a breach of the implied covenant. The court SUSTAINS the demurrer to the fourth cause of action with 10 days' leave to amend.

3. Seventh Cause of Action (Interference with Contract "and/or" Economic Advantage)

The seventh cause of action (FAC, ¶¶ 105-111) suffers from the same defects as the ninth cause of action alleged against Altimetrik (discussed above). In addition, it suffers from the additional material defect that it alleges "interference" by Multiplan with the very same contract—the Network Agreement—as to which it alleges a breach by Multiplan. A party to a contract with the plaintiff cannot be liable under any of the four theories of interference: intentional or negligent interference with existing contract and intentional or negligent interference with prospective economic advantage. If the defendant is a party to the contract, the plaintiff is relegated to a cause of action for breach of that contract. (See *Woods v. Fox Broadcasting Sub., Inc.* (2005) 129 Cal.App.4th 344, 350.)]

The court SUSTAINS the demurrer to the seventh cause of action with 10 days' leave to amend, even though the court cannot envision any possible amendment that would actually cure this defect.

4. Tenth Cause of Action (Relief from Forfeiture)

Multiplan's demurrer to the tenth cause of action on the ground that it fails to state sufficient fact is SUSTAINED with 10 days' leave to amend. This cause of action fails to state sufficient facts against Multiplan for the same reasons discussed above with respect to Altimetrik's demurrer to the same cause of action. As a statutory cause of action (brought under Civil Code section 3275), it is not alleged with particularity. While Multiplan does not dispute being a party to a contract with the Hospital, the tenth cause of action does not identify any particular contractual provisions with which the Hospital failed to comply, nor does it

identify any forfeitures incurred by the Hospital. The entire cause of action is framed as a vague hypothetical and fails to state sufficient facts.

D. Trustmark's Demurrer to the FAC

Trustmark challenges the FAC's second and fifth causes of action on the ground that they fail to state sufficient facts. (See Trustmark's Notice of Demurrer, p. 2:10-28.)[3]

1. Second Cause of Action (Breach of Contract)

Like the third cause of action against Altimetrik discussed above, the second cause of action against Trustmark (FAC, ¶¶ 54-67) expressly alleges a breach of the Network Agreement but also admits that Trustmark is not a party to the Network Agreement. Contrary to the Hospital's arguments in opposition, a breach of written contract claim cannot be brought against a nonsignatory, without more, and Trustmark is not estopped from pointing this out on a demurrer. The bare allegation, stated solely on information and belief, that Trustmark is required to comply with the Network Agreement as a result of having signed "Client Agreement" with Multiplan is insufficient to alter this conclusion. As with the Network Agreement and User Agreement, the Client Agreement has also not been attached to the FAC, and the Hospital fails to identify anything in this agreement that would give rise to liability under the first agreement (the Network Agreement), other than vague allegations made on information and belief.

While it is not apparent to the court how this cause of action can be amended to state a claim, the court SUSTAINS the demurrer with 10 days' leave to amend.

2. Fifth Cause of Action (Breach of Contract—Express Third Party Beneficiary)

The fifth cause of action, which alleges a breach of the "Client Agreement" by Trustmark, fails to state sufficient facts for the same reasons that the sixth cause of action alleged against Altimetrik also fails. (FAC, ¶¶ 90-96.) The conclusory allegations that the Hospital is an express third-party beneficiary are patently insufficient under *Goonewardene*, *supra*, 6 Cal.5th at pp 821, 830. The FAC contains nothing concrete about the Client Agreement other than these vague allegations made on information and belief.

The court SUSTAINS Trustmark's demurrer to the fifth cause of action with 10 days' leave to amend. Once again, the court's grant of leave does not include leave to add new causes of action or parties.

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[3] Trustmark's supporting memorandum also contends (at p. 4:14-17) that the eighth and tenth causes of action "fail to state a plausible claim for relief." As Trustmark has not demurred to those causes of action, the court disregards that contention.

Calendar Line 6
Case Name: *Jack Hansen v. Rogelio Sanchez et al.*
Case No.: 22CV393105

This is a motion to compel compliance with a discovery order that this court entered on February 16, 2023. Defendants Rogelio Sanchez, Carlos Sanchez, and Armando Sanchez filed this motion on March 27, 2024, arguing that plaintiff Jack Hansen failed to provide responses to form interrogatories and requests for production of documents that the court compelled well over a year ago. With his opposition brief, Hansen has now attached his responses to the interrogatories and requests for production and argues that "this unnecessary motion is now moot." (Opposition, p. 1:17.) In reply, defendants do not appear to take issue with the substance of Hansen's responses, only their timing, and defendants reiterate their request for $3,960.00 in monetary sanctions for the costs of having to bring this motion (20 hours at $195/hour plus a $60 filing fee).

Although the court agrees with Hansen, at least in part, that the motion is now "moot," the court does not agree that the motion was clearly "unnecessary," given that his responses were only finally provided as part of his opposition to the motion. The court does not understand why it took so long to provide responses to discovery requests that were originally propounded in 2022. Accordingly, the court will award defendants a portion of the costs of having had to bring this motion. Rather than $3,960.00, the court orders Hansen to pay defendants **$840.00** (four hours at $195/hour plus the $60 filing fee) within 30 days of notice of entry of this order. Again, the court emphasizes that the purpose of discovery sanctions is compensatory, not punitive.

GRANTED IN PART and DENIED IN PART.

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Calendar Line 10
Case Name: *Corrie Johnson v. Nordstrom, Inc.*
Case No.: 18CV323923

Plaintiff Corrie Johnson has filed a motion to set aside a judgment entered by this court in 2020, over four years ago. This is either the *sixth* or *seventh* such motion, depending on how one counts them. As noted in the court's order of July 13, 2023, Johnson filed her fifth motion to set aside on March 20, 2023 and then filed it again on June 14, 2023, and so the latter filing could reasonably be interpreted as her sixth motion to set aside. (See July 13, 2023 Order, pp. 2:1-9 & 3:3-5) The court denied these motions on July 13, 2023. Johnson then filed a "motion for judgment on the pleadings," reiterating many of the same arguments as in the motions to set aside, which was denied by the court on February 13, 2024. As the court noted in that latter motion, "There is simply no legal basis for the court to accept these serial, untimely motions to undo a judgment that was entered in 2020, approximately four years ago." (February 13, 2024 Order, p. 2:18-20.)[4] Thus, even though this is the sixth or seventh motion to set aside, it is at least the *seventh* or *eighth* untimely attack on the court's March 6, 2020 judgment.

It appears that Johnson is determined to continue filing these motions to set aside, no matter how many times the court denies them. She admits as much, claiming that "the plaintiff has limitless attacks on this motion until the court chooses to acknowledge its own law." (Memorandum, p. 2:2-3.) This constitutes an unwarranted abuse of the court system.

In the present motion, Johnson rehashes the same arguments that she has presented in the past: that the court's prior orders are "void," and that the court erroneously granted summary judgment in 2020 by taking judicial notice of a prior Georgia action and judgment, and by determining that the principles of issue preclusion (collateral estoppel) apply to this California action. Just as the court found Johnson's arguments to be without merit on July 13, 2023 (and before), the court again finds them to be meritless. In addition, just as the court previously found Johnson's efforts to set aside the judgment to be untimely (in September 2020, November 2022, and July 2023), so the court again finds this motion to be untimely.

The motion is DENIED.

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[4] Rather than recount the full procedural history of this apparently neverending case, the court takes judicial notice of its prior orders under Evidence Code section 452, subdivision (d), and incorporates them by reference. This includes the July 13, 2023 and February 13, 2024 orders mentioned above, as well as the court's orders of January 7, 2020 (Judge Pierce), March 6, 2020 (Judge Pierce), September 24, 2020 (Judge Barrett), and November 8, 2022 (Judge Kirwan).