SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

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

November 19, 2024
9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

ORAL ARGUMENT

Before 4:00 PM today you must notify the:

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

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

If you fail to so notify the court or opposing side, the Court will not hear argument, and the tentative ruling will be adopted.

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

APPEARANCES

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COURT REPORTERS

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LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	23CV421250	Carina Cano Martinez et al vs Jaspal Singh et al	Defendant Santa Clara Valley Transportation Authority's ("VTA") motion to compel Plaintiffs responses to written discovery and for sanctions is GRANTED. A notice of motion with this hearing date and time was served on Plaintiffs by electronic mail on October 1, 2024. Plaintiffs failed to oppose the motion. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion. VTA served each Plaintiff with form interrogatories (set one), special interrogatories (set one), and requests for production on June 4, 2024. After Plaintiffs failed to serve responses, VTA sent Plaintiffs a letter on July 30, 2024. Plaintiffs still failed to respond. VTA contacted Plaintiffs by phone on September 6, 2024 and provided Plaintiffs with an extension to September 9, 2024 to respond to the discovery without objections. After receiving no responses by that date, VTA emailed Plaintiffs on September 13, 2024, and Plaintiffs advised that they "hope[d] to send them by Wednesday the 18th at the latest." As of the date of this tentative ruling, VTA received no responses. The Court agrees with VTA that having filed this lawsuit then repeatedly ignored basic discovery requests even after being reminded and given an extension, Plaintiffs and their counsel should be sanctioned. Accordingly, Plaintiffs are ordered to (1) serve verified, code compliant written responses to VTA's discovery demands <u>without objections</u>, (2) produce all requested documents sought in VTA's requests for production of documents without limitations, and (3) pay VTA $678 in monetary sanctions with 20 days of the service date of the formal order, which formal order the Court will prepare. The sanctions shall be paid jointly and severally by Plaintiffs and their counsel.
2	21CV388667	Lisa Authement vs MiraDry, Inc. et al	Withdrawn by moving party.
3	23CV412126	MITTHAN MEENA vs SRINIVAS AKELLA et al	Defendants' summary judgment motion was directed to a superseded pleading and is therefore moot. Scroll to line 3 for complete ruling. Court will prepare formal order.
4	23CV420338	Michael De Wilde vs Mary Tillman et al	This matter is off calendar without prejudice. The parties are meeting and conferring regarding the complaint and engaged in settlement discussions. If settlement discussions do not resolve the case, and Plaintiff files an amended complaint, this demurrer will be moot. If settlement discussions do not resolve the case, and Plaintiff does not file an amended complaint, Defendants may reserve a new date through Court Schedule and renotice the demurrer for that new date.
5	24CV428862	GREGG COLLIE vs County of Alameda	The County of Alameda's demurrer is SUSTAINED WITH 20 DAYS LEAVE TO AMEND. Scroll to line 5 for complete ruling. Court will prepare formal order.
6-7	24CV442629	ZL Technologies, Inc. vs Creative Artist Agency, LLC	Defendants' demurrer is OVERRULED and motion to strike is DENIED. Scroll to lines 6-7 for complete ruling. Court to prepare formal order.

8	22CV406672	Glenn Steiner vs Maria Norins	Plaintiff's motion to deem facts as admitted and request for $480 in sanctions is GRANTED. A notice of motion was served on Defendant by electronic mail on July 25, 2024. Due to Court scheduling errors, the motion was then continued to November 19, 2024. Defendant failed to oppose the motion at any point. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion. Plaintiff served requests for admissions of facts (set three) on Defendant by email on June 12, 2024. In response to Plaintiff's reminder email, Defendant stated they would provide responses by Monday, July 22, 2024. To date, no responses have been served. A party served with Requests for Admission must serve a response within 30 days. (Code of Civ. Pro. §2033.250.) When a party fails to respond—even in the face of a motion to have the matters in the requests for admission deemed admitted—as Defendant has done here, the Court must order the requests for admission deemed admitted. (Code of Civ. Pro. §2033.280(c); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775-776.) Such a "deemed admitted" order establishes that the nonresponding party has responded to the requests for admission by admitting the truth of the matters contained in the requests. (*Id.*) Accordingly, Plaintiff's motion is granted, and the matters set forth in Plaintiff's requests for admission (set three) are deemed admitted. Defendant is further ordered to pay Plaintiff $480 in sanctions within 20 days of the service date of the formal order, which formal order the Court will prepare.

Calendar Line 3
Mitthan Meena v. Srinivas Akella, et al., Case No. 23CV412126

Before the Court is defendants WootCloud, Inc.'s ("WootCloud") and Srinivas Akella's ("Akella") (collectively, "Defendants") motion for summary judgement or in the alternative, summary adjudication against plaintiff Mitthan Meena. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

I. Alleged Facts

According to the first amended complaint ("FAC"), in 2016, Meena and Akella co-founded WootCloud, which was later acquired by Netskope, Inc. ("Netskope"). (FAC, ¶¶ 1, 30.) They each contributed $5,000 and Meena had a 49% stake in corporate stock, while Akella has a 51% stake. (FAC, ¶¶ 5, 34.) From 2016 to 2017, Meena contributed an additional $17,000 to the company treasury. (FAC, ¶¶ 6, 36.) In mid-2017, Akella told Meena his equity stake was too large and was deterring investors. (FAC, ¶ 38.) He informed Meena that he found an entrepreneur, Natarajan Mandalam ("Mandalam") to join as a major stockholder and suggested providing him a 25% stake in the company via the dilution of existing shares—specifically Meena's. (*Ibid*.) While Meena did not want to reduce his stake, Akella assured him there was no better option if the company was to attract funding for its survival. (FAC, ¶ 39.)

Subsequently, Akella and Mandalam informed Meena the first reduction of his shares was insufficient and urged Meena to lower his equity from 25% to 7%. (FAC, ¶ 42.) While he was distraught that such measures were necessary, he believed Akella's representations that the future of the company was on the line. (*Ibid*.) Akella also presented Meena with a boilerplate agreement purporting to restrict his stocks according to a vesting schedule. (FAC, ¶ 43.) After the company attracted several million dollars in its first round of investor seeding, Akella did not inform Meena of the imminent funding and led him to believe that his reduction played a role in the success of the first round. (FAC, ¶ 44.) In March 2018, Akella also presented Meena with a boilerplate employment agreement to confirm his employment by WootCloud. (FAC, ¶ 45.) Meena was not advised to nor did he seek consult independent counsel before signing the agreements and he relied on Akella's representations when he agreed to dilute his equity. (FAC,

¶¶ 39-43.) In October 2018, the company purported to "terminate" Meena but the termination notice did not state what would happen to his vested shares. (FAC, ¶¶ 46-48.) In 2019, the company had a successful second round of seed funding. (FAC, ¶ 49.) In June 2022, WootCloud was acquired by Netskope and Meena was informed two months before the transaction went public. (FAC, ¶ 51.) The press release erased Meena from WootCloud's history and described Akella as a singular founder. (FAC, ¶ 52.) Akella realized a large, undisclosed financial sum as compensation for his large portion of the WootCloud shares acquired by Netskope. (*Ibid*.) As the acquiring entity, Netskope is believed to have significant influence over WootCloud's operations and on that basis, Meena contends it may have assumed WootCloud's liabilities and obligations, including those owed to him. (FAC, ¶¶ 53-55.)

Meena filed his complaint on February 23, 2023 and on September 30, 2024, he filed his FAC, asserting claims for (1) intentional misrepresentation, (2) negligent misrepresentation, (3) constructive fraud, (4) unjust enrichment, and (5) declaratory relief. On August 16, 2024, Defendants filed the instant motion, which Meena opposes.

II. Procedural Matters

"[A]n amendatory pleading supersedes the original one, which ceases to perform any function as a pleading." (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884.) "The amended complaint furnishes the sole basis for the cause of action, and the original complaint ceases to have any effect either as a pleading or as a basis for judgment. [Citation.] Because there is but one complaint in a civil action [citation], the filing of an amended complaint moots a motion directed to a prior complaint. [Citation.]" (*State Compensation Ins. Fund. v. Superior Court* (2010) 184 Cal.App.4th 1124, 1131 (*State Compensation Ins. Fund*).) "Thus, once an amended complaint is filed, *it is error to grant summary adjudication on a cause of action contained in a previous complaint.*" (*Ibid*.)

Defendants filed their motion on August 16, 2024. On September 25, 2024, the Court issued its order granting Meena leave to file an amended complaint and on September 30, 2024, Meena filed his FAC. The FAC supersedes the complaint and renders the instant motion moot. (See *State Compensation Ins. Fund, supra,* 184 Cal.App.4th at p. 1131.) The parties do not provide

any authorities nor is the Court aware of any that permit the Court to consider this motion on its merits when it was originally directed towards a superseded pleading. Thus, the instant motion for summary judgment or in the alternative, summary adjudication is MOOT.

Calendar Line 5
Gregg Collie v. Child Support Division Case No. 24CV428862

Before the Court is the County of Alameda's ("Alameda") demurrer to Plaintiff's complaint. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Alleged Facts

Mr. Collie initiated his complaint on January 10, 2024. On the form Complaint's first page, under "Type" Mr. Collie has checked the boxes for "personal injury" and for "other damages," next to which is written "fraud." (PLD-PI-001) On the second page, Mr. Collie checked the box indicating the defendant is a "public entity" and wrote, "child support." Lower down this page, Mr. Collie wrote, "Child Support Division Rebecca Carroll." (*Ibid*.) None of the "cause of action" boxes on the third page are checked. (*Ibid*.) The Complaint's fourth and final, handwritten page states: "Did not know what this was it caused me jail time and trouble in my life when I check the numbers on everything was off. Judge did not fit bank levys on poor people scenario [sic] on last court date major error. Signed, Gregg Collie 1/10/24."(*Ibid*.)

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

II. Legal Standard

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

Children's Television, Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 213-214 (*Committee on Children's Television*).) In ruling on demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A*. (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

III. Request for Judicial Notice

Alameda's request for judicial notice of the complaint and the proof of service of summons Plaintiff filed in this action is GRANTED.

Alameda also seeks judicial notice of the court documents, orders, and judgments filed in *County of Santa Clara, State of California v. Collie,* Case No. HF03125495; *Carroll v. Collie,* Case No. FL033442; and *State of California v. Gregg J. Collie*, Case No. DA033400. Evidence Code section 452(d) permits judicial notice of the records in the pending action, or in any other action pending in the same court or any other court of record in the U.S.

However, "although the existence of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable." (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113; see also *Arce v. Kaiser Found. Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482-484.) The Court can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgment. (*Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 879.)

Accordingly, Alameda's request for judicial notice of documents from these other court proceedings is GRANTED, IN PART.

IV. Analysis

Plaintiff names "Child Support Division" as the defendant in his complaint. However, judicially noticed documents suggest that Plaintiff intends to sue Alameda's Department of Child Support Services. Plaintiff's proof of service of summons lists the address of the "Child Support Division" as "Alameda County Family Support Division; 5669 Gibraltar Dr., Pleasanton, CA 94588." (RJN, Ex. B.) Therefore, Alameda, acting as Defendant, demurrers to the entirety of the

complaint on the grounds that the complaint (1) fails to state a statutory cause of action with particularity, (2) is barred by the statute of limitations, (3) is barred by res judicata, and (4) is preclude by immunity under Government Code section 818.8.

Plaintiff does not properly respond to Alameda's demurrer. California Rules of Court, Rule 3.1113(a) requires a memorandum that "contain[s] a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced." (California Rules of Court, Rule 3.1113(b).) Rule 3.1113 rests on a policy-based allocation of resources, preventing the trial court from being cast as a tacit advocate for the opposing party's theories by freeing it from any obligation to comb the record and the law for factual and legal support that a party has failed to identify or provide. (*Quantum Cooking Concepts, Inc. v. LV Associates, Inc.* (2011) 197 Cal.App.4th 927, 934, [trial court was justified in denying post-trial motions for failure to provide adequate memorandum].) "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct*. (1997) 58 Cal.App.4th 1403, 1410.)

Plaintiff's complaint also fails to plead sufficient facts and proper statutory causes of action. Plaintiff's scant allegations also fail to distinguish this current claims or issues from the claims and issues adjudicated in the judicially noticed prior actions.

Accordingly, Defendant's demurrer is SUSTAINED WITH 20 DAYS LEAVE TO AMEND from the service date of the formal order.

Plaintiff is cautioned that self-represented litigants are entitled to the same, but no greater, consideration than other litigants and attorneys. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) Self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985. This means Plaintiff must follow the Code of Civil Procedure, California Rules of Court, and the Civil Local Rules. If Plaintiff has access to a computer, the Court encourages Plaintiff to consult https://selfhelp.courts.ca.gov/, which has plain language explanations for may court processes.

Calendar Lines 6-7
ZL Technologies, Inc. v. Creative Artists Agency, LLC Case No. 24CV442629

Before the Court is Defendant, Creative Artists Agency LLC's ("CAA") motion to strike and demurrer to the Plaintiff's complaint. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Alleged Facts

Plaintiff, ZL Technologies, Inc. ("ZL") provides software and services for data management, data analysis, and legal compliance. (Complaint, ¶ 1.) On July 12, 2013, CAA entered into an agreement with ZL to purchase 1300 User Subscription licenses ("Agreement"). (Complaint, ¶¶ 4, 8.) The Agreement specified that User Subscriptions were for designated users, could not be shared or used by more than one user, and could not be accessed by more than the specified number of users. The Agreement further held CAA responsible for user's compliance with the Agreement, preventing unauthorized access to or use of the Subscription Services, and promptly notifying ZL of any unauthorized use or access. (Complaint, ¶¶ 9-10.)

In March 2024, ZL learned that CAA had been using its software in excess of the 1300 purchased subscription licenses without notification and authorization. ZL demanded CAA pay for its past overuse. CAA has refused.

ZL initiated this action on July 8, 2024 alleging (1) breach of contract and (2) reasonable value of goods.

II. Legal Standard

A. Demurrer

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

The court treats demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children's Television*).) In ruling on demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A*. (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

B. Motion to Strike

Under Code of Civil Procedure § 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. (Code Civ. Proc., § 436.) Irrelevant matter includes (1) an allegation that is not essential to the statement of a claim or defense, (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense, and (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. (Code Civ. Proc., § 431.10, subds. (b), (c).)

The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may 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.) 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 (*Turman*), citing *Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.)

Generally, motions to strike are disfavored and cannot be used as a vehicle to accomplish a "line item veto" of allegations in a pleading. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th

1680, 1683 (*PH II, Inc.*).) However, where irrelevant allegations are "scandalous, abusive, disrespectful and contemptuous," they should be stricken from the pleading. (*In re Estate of Randall* (1924) 194 Cal. 725, 731.)

III. Request for Judicial Notice

In support of its motion to strike, CAA asks the Court to take judicial notice of a copy of an invoice attached to a May 17, 2024, email from ZL to show ZL sought payment for software dating back to August 20, 2013. ZL objects. Neither case CAA relies on supports this request.

In *Sepanossian v. National Ready Mixed Concrete Co.* (2023) 97 Cal. App. 5th 192, 197, the parties agreed the court could take judicial notice of invoices: "The trial court took judicial notice of four exemplar quotes and invoices reflecting those fees. The parties agreed such judicial notice was proper so Sepanossian did not have to file an amended complaint attaching these documents." And in *Ingram v. Flippo* (1997) 74 Cal. App. 4th 1280, 1285 (overruled on other grounds), the parties not only agreed to the court taking judicial notice of a letter and press release, but the parties both extensively referred to those materials throughout the demurrer proceedings:

> Although the March 28, 1997, letter and media release (which were substantially the same) were not attached to the complaint, the complaint excerpted quotes from the letter and summarized parts of it in some detail. The letter and media release were included in the papers supporting the demurrer, and at the hearing on the demurrer both sides referred to the letter and quoted from it. Since the contents of the letter and media release form the basis of the allegations in the complaint, it is essential that we evaluate the complaint by reference to these documents. Respondents have requested that we take judicial notice of the letter and media release under Evidence Code section 452, subdivision (h), and appellant has not opposed this. We therefore take judicial notice of the District Attorney's March 28, 1997, letter and press release and we attach them as appendices A and B to this opinion.

Neither situation is present here. CAA's request for judicial notice is therefore DENIED.

IV. Analysis

A. Demurrer

1. Breach of Contract

To state a cause of action for breach of contract, Plaintiff must allege "(1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) If a breach of contract claim "is based on alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written agreement must be attached and incorporated by reference." (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 307.) In some circumstances, a plaintiff may also "plead the legal effect of the contract rather than its precise language." (*Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 198-199.)

Here, the complaint alleges:

- On July 12, 2023, ZL and CAA entered into a written Agreement to purchase 1300 User subscription licenses. The contract is marked confidential and thus is not attached to the complaint. (Complaint, ¶¶ 4, 8.)
- The Agreement provided that the User subscriptions may not be accessed by more than the specified number of Users and cannot be shared or used by more than one User. ZL licensed software to CAA on a per-user basis. (Complaint, ¶¶ 9, 18.)
- The Agreement held CAA responsible for Users' compliance with its terms and for preventing unauthorized access to or use of the Subscription services. CAA was required to promptly notify ZL of any such unauthorized access or use. (Complaint, ¶ 10.)
- In March 2024, ZL learned that CAA had been using its software far more than the 1300 user subscription licenses paid for under their Agreement. CAA did not notify ZL of this exceeding use. (Complaint, ¶ 11.)

- CAA breached the Agreement by using the software in excess of the purchased 1300 user subscription licenses; failing to ensure its Users complied with the Agreement; failing to purchase license for each of its Users. (Complaint, ¶ 14.)
- As a result of CAA's breach, ZL has been damaged for the past overuse of its software in an amount of at least $6,302,051.90 (Complaint, ¶¶ 13, 16.)

These allegations are sufficient to state a cause of action for breach of contract. Accordingly, CAA's demurrer to ZL's first cause of action is OVERRULED.

2. Reasonable Value of Goods

A cause of action for reasonable value of material furnished is a type of common count. (See *Utility Audit Co. v. City of L. A.* (2003) 112 Cal.App.4th 950, 958, [A common count is proper whenever plaintiff claims a sum of money due, either as an indebtedness in a sum certain, or for the reasonable value of services, goods, etc., furnished. It makes no difference that the proof shows the original transaction to be an express contract, a contract implied in fact, or a quasi-contract.].)

To assert a cause of action for common counts, a party must allege: (1) the defendant requested, by words or conduct, that the plaintiff perform services or deliver goods for defendant's benefit; (2) the plaintiff did perform services or deliver goods, as requested; (3) the defendant has not paid the plaintiff for the goods or services; and (4) the reasonable value of the good or services. (CACI 371.) When a common count is used as an alternative way of seeking the same recovery demanded in a specific cause of action and is based on the same facts, the common count is subject to a demurrer if the cause of action is subject to a demurrer. (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 394-395.)

CAA contends this claim is impermissible, as a matter of law since it is premised on a valid written contract. It is well settled that there is no equitable basis for an implied-in-law promise to pay reasonable value when the parties have an actual agreement covering compensation. (See, e.g., *Klein v. Chevron U.S.A., Inc.*, (2012) 202 Cal. App. 4th 1342, 1388; *Hedging Concepts, Inc. v. First Alliance Mortgage Co.*, (1996) 41 Cal. App. 4th 1410, 1419.) "When parties have an actual contract covering a subject, a court cannot—not even under the guise of

equity jurisprudence—substitute the court's own concepts of fairness regarding that subject in place of the parties' own contract." (*Hedging Concepts, supra,* 41 Cal. App. 4th at 1420.) However, it is proper to plead a claim for reasonable value in the alternative to a contract claim in the event the contract is found to be unenforceable, or if goods or services were provided outside of the contractual agreement. (See, e.g., *Leoni v. Delany* (1948) 83 Cal. App. 2d 303, 307, 308 (the pleading of two causes of action is proper where Plaintiff was in doubt as to whether he was entitled to recover on common count for the reasonable value of services rendered or whether rights were fixed by express contract). The Court thus finds it would be error to sustain Defendants' demurrer to this claim on this basis.

CAA's contention that the complaint fails to allege its express or implied request for the unlicensed use or the benefit it received from that use is also unpersuasive. The Court agrees with ZL that the allegations regarding the excessive use itself is sufficient to allege CAA's implied request for that use and the benefit CAA received from that use.

Accordingly, CAA's demurrer to this claim is OVERRULED.

3. Uncertainty

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

CAA contends the complaint is uncertain because it fails to allege (1) the definition of "User," (2) what a "User subscription license" permits, and (3) how ZL discovered CAA's purported breach or when it occurred. As a result, CAA claims it cannot ascertain whether it breached the Agreement. CAA's argument is unpersuasive.

ZL's complaint sufficiently alleges the terms or the legal effect of the parties' Agreement and how CAA has allegedly breached the Agreement. Accordingly, CAA's demurrer on the grounds of uncertainty is OVERRULED.

B. Motion to Strike

CAA contends (1) ZL's damages allegedly incurred prior to July 8, 2020, are time-barred under the four-year statute of limitation for claims arising from a written contract; (2) ZL's damages allegedly incurred prior to July 8, 2022, are time-barred under the two-year statute of limitations for quantum meruit actions upon a contract. CAA further argues the discovery rule exception for delayed accrual of a cause of action is inapplicable and insufficiently pled.

"Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806.) The delayed discovery rule is an exception to the general rule that an action accrues when the harm occurs, and a cause of action does not accrue until the plaintiff discovers or has reason to discover the cause of action. (*Fox, supra*, 35 Cal.4th at 804.) To rely on the discovery rule for delayed accrual of a cause of action, "[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence." (*McKelvey v. Boeing North American, Inc.* (1999) 74 Cal.App.4th 151, 160.)

ZL alleges it discovered CAA breached the Agreement in March of 2024. (Complaint, ¶ 11.) However, the complaint does not allege when CAA breached the Agreement or otherwise implicate the statute of limitation. And the continuing violation doctrine may apply. (See, *Komarova v. National Credit Acceptance, Inc*. (2009) 175 Cal.App.4th 324, 343.) In sum, the face of the complaint does not raise a statute of limitations issue and the Court thus cannot consider this here.

Accordingly, CAA's motion to strike time-barred damages is DENIED.