

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

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

Honorable Amber Rosen, Presiding

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

DATE: 07-06-23 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

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

TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

IN PERSON HEARINGS: Courtrooms are again open and all litigants may appear in person at the Downtown Superior Courthouse located at 191 N. First Street, San Jose.

VIRTUAL HEARINGS: You should **appear by video**, unless it is not possible.

To Join Teams Meeting -Click on the below link or copy and paste into your internet browser and scroll down to Department 16.

https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml

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

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

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3.1312.)**

LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV397744 Hearing: Motion hearings	577 Campbell LLC vs Yin Min Li et al	See Tentative Ruling. Court will prepare the final order.
LINE 2	22CV397744 Hearing: Motion to Strike	577 Campbell LLC vs Yin Min Li et al	See Tentative Ruling. Court will prepare the final order.
LINE 3	22CV397744 Hearing: Demurrer	577 Campbell LLC vs Yin Min Li et al	See Tentative Ruling. Court will prepare the final order.
LINE 4	22CV397744 Hearing: Demurrer	577 Campbell LLC vs Yin Min Li et al	See Tentative Ruling. Court will prepare the final order.
LINE 5	21CV383743 Motion: Summary Judgment	Pavel Zheltov vs Alexander Hartigan et al	This matter needs to be continued to July 13, 2023 at 9 a.m. The Court apologizes for any inconvenience to the parties.

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

LINE 6	22CV394183 Motion: Compel	Donald Ottavis et al vs Silvio Borello et al	Notice appearing proper and good cause appearing, Plaintiffs' unopposed motion to compel is GRANTED. Defendants shall pay Plaintiffs sanctions of \$1070, as no time for a reply was required. Code compliant discovery responses and sanctions shall be due within 10 days of the final order. Plaintiffs shall submit the final order.
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			

- 00000 -

Calendar Lines 1-4**Case Name:** 577 Campbell, LLC v. Ying Min Li, et al.**Case No.:** 22CV397744**Cross-Complainant Ying-Min Li's First Amended Cross-Complaint****Factual and Procedural Background**

Cross-complainant Ying-Min Li ("Li" or "Cross-complainant") brings his first amended cross-complaint ("Li FAXC") for invasion of privacy against 577 Campbell, LLC ("577 Campbell"), California South Bay University, Inc. ("CSBU"), and Roes 1 to 20 (collectively, "Cross-defendants").

577 Campbell is the owner of real property located at 577 Salmar Ave., Campbell, CA ("the Property"). (Li FAXC, ¶ 8.) The Property consists of a two-floor commercial building with office spaces. (Li FAXC, ¶ 10.) Jialin Niu ("Niu"), the owner of 577 Campbell, also owns CSBU, occupying the lower floor of the Property.

Li, who owns and works for GSI Homes and GSI Properties ("GSI Entities") executed a written lease ("2018 Lease") with CSBU for Room 107 in the Property. (Li FAXC, ¶¶ 11, 12.) Since the execution of the 2018 Lease, GSI Entities and CSBU executed three additional leases including the 2019 Lease, 2020 Lease, and 2021 Lease. (Li FAXC, ¶ 13.) The 2021 Lease covered October 2021 through October 15, 2022. (*Id.* at ¶¶ 13-14.) Room 107 was occupied exclusively by Li while working for GSI Entities and Li kept records and documents in Room 107. (*Id.* at ¶¶ 16, 19.) He always locked the door before leaving and no one else had access to Room 107. (*Ibid.*)

On or about April 3, 2022, Cross-defendants changed all exterior door locks without notice or providing keys to GSI Entities. (Li FAXC, ¶ 20.) On or about April 7, 2022, Niu demanded GSI Entities vacate the Property immediately, despite the remaining term of the 2021 Lease. (Li FAXC, ¶ 21.)

GSI Entities refused Niu's demand to vacate, noting the six-month term remaining in the 2021 Lease, and demanded restoring access to Room 107. (Li FAXC, ¶ 22.) Despite these repeated requests by GSI Entities, Cross-defendants have refused to provide a key to any exterior door on the Property. (Li FAXC, ¶ 23.) Cross-defendants only allow GSI Entities to access the Property between 9 AM and 5 PM, Monday through Friday by asking permission of a security guard at the Property. (Li FAXC, ¶ 24.) As a result of this conduct by Cross-defendants, GSI Entities vacated the Property on May 24, 2022, giving its keys to a security guard employed by CSBU, 577 Campbell, and Niu. (Li FAXC, ¶ 17.)

On April 20, 2022, 577 Campbell filed a verified complaint against GSI Entities, Goldsilverisland Realty, LLC ("GSI Realty"), and Li.

On January 12, 2023, this Court sustained with leave to amend Cross-defendants' demurrer to Li's initial cross-complaint's single cause of action for invasion of privacy.

Subsequently, on February 14, 2023, Li filed his FAXC again asserting a single cause of action against all Cross-defendants for Invasion of Privacy.

Cross-defendants demur to the FAXC on the grounds that: GSI Homes fails to state facts sufficient to constitute a cause of action for invasion of privacy as GSI Homes was not a tenant under the lease agreement; Li individually fails to state facts sufficient to constitute a cause of action for invasion of privacy because Li did not have a reasonable expectation of privacy in a commercial space and any intrusion was not sufficiently serious; and the FAXC is not sufficiently certain as to whether the alleged violations of privacy were in regard to Li's personal matters or the business entities'.

Demurrer

Uncertainty

Cross-defendants argue that the cause of action for Invasion of Privacy is uncertain as to cross-complainant Li because it is unclear as to whether the basis for the cause of action is Li's personal belongings or the GSI entities'.

"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." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616; see also *Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135 ["demurrers for uncertainty are disfavored and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond"].)

Here, the FAXC alleges that "[d]ocuments in Li's office were intentionally left disheveled and scattered . . . many documents were taken, including architecture plans and designs, as well as a computer and printer which cost around \$5,000." (FAXC, ¶ 29.) Further, the FAXC alleges that "on or about April 7, 2022, Li observed apparent evidence in the Premises that Cross-Defendants had rummaged through GSI Entities' office for an unspecified period of time and for unknown reasons, including closed cabinets where Li stored personal belongings . . . [and] Li had a right to keep personal belongings in the cabinets and had an expectation of privacy that the contents of the cabinets in his own locked office would not be seen without Li's permission." (FAXC, ¶¶ 27, 30.) The FAXC also alleges that "the Building owner is a developer who took Li and GSI Entities' confidential business information for her own benefit." (FAXC, ¶ 33.)

While Li cannot maintain a cause of action for invasion of privacy based on the rummaging through GSI Entities' documents or GSI Properties' office, Li alleges that Cross-defendants also rummaged through Li's "stored personal belongings." This allegation is not uncertain and is specific to Li's individual privacy rights concerning his personal belongings.

Accordingly, the demurrer to the FAXC on the ground that it is uncertain is
OVERRULED.

The Demurrer is not Sustained Based on Li's Failure to Sign the Agreement on Behalf of GSI Homes

Cross-defendants argue that GSI Homes is not a tenant under the lease agreement, attached as Exhibit 1 to the FAXC, and thus, to the extent that the cause of action is premised on any violation of privacy of GSI Homes, the first cause of action fails to state facts sufficient to constitute a cause of action because GSI Homes is not a tenant. (Cross-Defendant's Memo of Points and Authorities in Support of Demurrer ("Demurrer-Li Memo"), p. 6:16-21.) In opposition, Li argues that: although he only signed the lease agreement as President of GSI Properties, the lease agreement nevertheless defines "Tenant" as both GSI Properties and GSI Homes; a lease does not have to be in writing, but may be created by consent and acceptance of rent; and, the FAXC's allegations are not contrary to the lease, and thus, Li can adequately allege a violation of privacy premised on the rights of GSI Homes. (See Li's Opposition to Demurrer to FAXC ("Li's Opp."), p. 2:15-27.) Li also states that "if necessary, Cross-Complainants can amend the [first amended cross-]complaint to allege . . . that Li signed the leases on behalf of both GSIH and GSIP, that GSIH wrote several checks to pay rent due under the 2020 and 2021 leases, and that those checks were posted." (*Id.* at pp. 2:28, 3:1-3.)

Here, Li cannot amend the FAXC to allege that he signed the leases on behalf of both GSI Entities because the leases clearly indicate that he has signed only on behalf of GSI Properties. (See FAXC, Ex. 1, pp. 26, 34, 42.) Moreover, Li cannot allege a lease implied by conduct because the FAXC expressly alleges that there is a written lease agreement. (See FAXC, ¶¶ 12-13; see also *Garrison v. Edward Brown & Sons* (1944) 25 Cal.2d 473, 480

[“written contracts cannot be set aside and implied agreements substituted therefor if the conduct of the parties was not clearly contrary to the terms of the written contract”].)

However, as Li argues, the lease agreement defines “Tenants” as both GSI Homes and GSI Properties. Whether Li has signed on behalf of GSI Homes is immaterial because “[t]he party to be charged is the only one who must sign.” (*Steel v. Duntley* (1931) 115 Cal.App. 451, 452 [stating also “[t]he statute of frauds does not require the signature of any party other than the one to be charged”]; see also *Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Village Square Venture Partners* (1997) 52 Cal.App.4th 867, 874 [stating “Civil Code section 1624, subdivision (d) requires that an agreement to lease property for a term longer than one year be in writing and signed by the ‘party to be charged’”].) The demurrer to the FAXC on the ground that Li cannot state facts sufficient to constitute a cause of action for invasion of privacy because he did not sign the lease on behalf of GSI Homes cannot be sustained on this basis.

Invasion of Privacy

“[I]nvasion of privacy takes several forms,” including “the tort of intrusion into private places,” which “encompasses unconsented-to physical intrusion into . . . a place the privacy of which is legally recognized.” (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1043-1044.) The cause of action for intrusion has two elements: “(1) intrusion into a private place, conversation or matter, (2) in a manner highly offensive to a reasonable person.” (*Id.* at p. 1044.)

FAXC Fails to Allege Intrusion into a Place the Privacy of which is Legally Recognized

Cross-defendants argue, “[a]s a matter of law, LI individually had no objective right to privacy . . . in a commercial setting in which he admits he was not occupying in his individual capacity but as an owner of GSI Entities.” (Demurrer-Li Memo, p. 8:1-3.) Cross-defendants contend that Li has not alleged an invasion into a private place because “577 Campbell as the owner of the building had a right to keep its premises secure, including but not limited to installing cameras, changing locks and hiring security guards. 577 Campbell further had the right to inspect the activities of unauthorized occupiers especially where the GSI Entities cannot even establish a right to lease under the premises from CSBU or anyone else.” (Demurrer-Li Memo, p. 7:18-22.) In opposition, Li requests the Court treat the argument as waived because Cross-defendants have not cited to case authority. Notably, Li does not assert in his opposition that the FAXC sufficiently alleges an objective right to privacy, or any cognizable privacy interest.

As a preliminary matter, Li may not maintain a cause of action for violation of privacy rights premised on any purported privacy rights of GSI Homes or GSI Properties because “[i]t is generally agreed that the right to privacy is one pertaining only to individuals, and that a corporation cannot claim it as such.” (*Roberts v. Gulf Oil Corp.* (1983) 147 Cal.App.3d 770, 793, fn. 16, quoting *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 878, superseded on other grounds as stated in *Hart v. TWC Prod. & Tech. LLC* (N.D.Cal. 2021) 526 F. Supp. 3d 592, 599; see also *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1260 [“[a]s a business entity, however, HLS lacks standing to pursue these torts . . . [including] invasion of privacy”].)

As Li’s cause of action for invasion of privacy cannot be premised on any rights of GSI Homes or GSI Properties, it is necessarily based on the alleged rummaging through Li’s “personal belongings.” (See FAXC, ¶¶ 19 [alleging that “Li kept records and documents, including some of personal nature, at the Premises”], 27 [“Li observed apparent evidence in the Premises that Cross-Defendants had rummaged through GSI Entities’ office for an unspecific period of time and for unknown reasons, including closed cabinets where Li stored personal belongings”], 30 [“Li had a right to keep personal belongings in the cabinets and had an

expectation of privacy that the contents of the cabinets in his own locked office would not be seen without Li's permission"].) As Cross-defendants argue, the lease agreement specifically provides that "Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same. . . ." (2021 Lease Agreement, § 10 ("Entry").) Li is required to "show that the defendant penetrated some zone of physical or sensory privacy surrounding, or obtained unwanted access to data about, [him . . . and that he] had an objectively reasonable expectation of seclusion or solitude in the place, conversation or data source." (*Sanchez-Scott v. Alza Pharms.* (2001) 86 Cal.App.4th 365, 372, quoting *Shulman v. Group W Productions, Inc.* (1998) 18 Cal.4th 200, 231.) Here, there are no allegations of facts demonstrating a reasonable expectation of seclusion or solitude in a commercial setting of the employee of a corporate tenant, and Li neither argues nor cites to any case authority suggesting the existence of an individual employee's reasonable expectation of seclusion or solitude in such an environment where the landlord has the right to enter the premises, and there are also no allegations regarding the existence of a legally cognizable privacy interest in Li's personal belongings. (See *Sanchez-Scott, supra*, 86 Cal.App.4th at pp. 372-373 ["[w]hether a legally recognized privacy interest exists is a question of law to be decided by the court."].)

The FAXC Fails to Allege Facts that Any Intrusion Was of a Highly Offensive Manner

Cross-defendants next argue that none of the "conduct alleged was 'sufficiently serious or an 'egregious breach of the social norms' in a landlord tenant context" because the 2021 Lease agreement contains the language that the "Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same[.]" (See Demurrer Memo, p. 8:13-16.) In opposition, Li acknowledges that "[t]he Court sustained a demurrer to this cause of action in the original [cross-]complaint, in part because the allegations that Cross-Defendants rummaged through the office was not an allegation of conduct highly offensive to a reasonable person." (Li's Opp., p.3:17-19.) Li nevertheless contends that Cross-defendants fail to acknowledge that he has amended his pleading to include several new allegations that indicate Cross-defendants' conduct was highly offensive to a reasonable person and sufficiently serious "as to constitute an egregious breach of the social norms." (*Id.*, p. 3:19-22, citing FAXC, ¶¶ 15, 16, 28, 29, 32, 33.)

Paragraphs 15 concerns the term of the lease agreement that provides that the landlord will provide the tenant with quiet enjoyment of the subject property. As Li is not the tenant, this paragraph is immaterial. Paragraph 16 alleges that the premises were occupied by Li and that Li locked the door before leaving the premises. Paragraph 28 alleges that a security guard followed Li to his office and that security cameras were installed pointed at Li's office; however, these allegations do not relate to any rummaging through personal belongings and is thus immaterial to any alleged intrusion into a private place. Paragraph 29 alleges that "documents in Li's office" were disturbed; however, it is not clear that they were Li's personal documents, why there was a legally recognized privacy interest in those documents, and it is unclear whether these alleged documents were the documents in the closed cabinets. Paragraph 32 alleges that Cross-defendants' entry into the premises was "part of Cross-Defendants' larger to scheme to intimidate Li into leaving the Premises"; however, it still appears that the FAXC is premised on the alleged rummaging through the office, which the Court has sustained on demurrer because alleged rummaging is not highly offensive to a reasonable person. Moreover, while the paragraph alleges that the purported scheme was "to intimidate *Li* into leaving the Premises despite the valid written lease between GSI Entities and CSBU," the allegations suggest that any scheme was directed to the tenants, GSI Entities, rather than Li personally. (See FAXC, ¶ 32 [alleging that Li/GSI Entities vacate the premises despite the lease, changing the locks to the premises, refusing to provide a new key, restricting the hours of access, having security guards at the premises and setting up a camera at the

premises].) Lastly, paragraph 33 alleges that Cross-defendants took confidential business information for her own benefit; however, this would appear to concern the tenant GSI Entities' confidential business information—which cannot be a basis for a cause of action for invasion of privacy by Li in his individual capacity. As with the initial cross-complaint, the FAXC fails to allege facts demonstrating that Cross-defendants' conduct was highly offensive to a reasonable person and sufficiently serious “as to constitute an egregious breach of the social norms” as to cross-complainant Li, individually. argues

Accordingly, the demurrer to the first cause of action on the ground it fails to state sufficient facts is SUSTAINED with 10 days' leave to amend.

Conclusion and Order

Li's demurrer is SUSTAINED with 10 days' leave to amend.

Cross-Complainant Goldsilverisland Homes, LLC and Goldsilverisland Properties, LLC's First Amended Cross-Complaint

Factual and Procedural Background

GSI Entities have also filed a FAXC (“GSI FAXC”). While they are the Cross-Complainants in this action, the Court will refer to them as “GSI Entities” for clarity. The GSI Entities allege similar facts as cross-complainant Li, but include the following additional allegations:

Prior to October 10, 2018, Niu, on behalf of 577 Campbell, verbally authorized CSBU staff to perform property management, lease, maintenance of the Property, including identifying prospective tenants to sublease from CSBU the office space that it was no longer using, including Room 107. (GSI FAXC, ¶ 12.) On or around November 8, 2018 this authorization was reduced to written authorization.

From October 2018 through May 2022, GSI Entities made payments to CSBU for rental of Room 107. (GSI FAXC, ¶ 18.) Since 2018, they have had 24/7 access to the office through use of their key. (GSI FAXC, ¶ 19.) On or about April 3, 2022, after a change of personnel, Cross-defendants changed all exterior door locks without notice and on or around April 7, 2022, Niu demanded GSI Entities vacate the Property despite being aware that the 2021 Lease still had several months left on its term. (GSI FAXC, ¶¶ 20-22.) Niu refused to provide GSI Entities with a key but made promises and representations that someone would be there to open the door for them. (GSI FAXC, ¶ 22.)

The guard and other personnel constantly peered into Room 107 from the hallway, intimidating, taunting, and harassing GSI Entities' personnel and visitors. (GSI FAXC, ¶ 23.) Cross-defendants installed a video camera directly facing Room 107 to record activities of GSI Entities' personnel and guests. (GSI FAXC, ¶ 24.) As a result, GSI Entities were forced to vacate the premises on May 24, 2022. (GSI FAXC, ¶ 25.)

On February 14, 2023, GSI Entities filed their FAXC, alleging causes of action for:

- 1) Breach of Contract (Quiet Possession) [against CSBU];
- 2) Breach of Contract (Internet) [against CSBU];
- 3) Trespass [against all Cross-defendants];
- 4) Conversion [against all Cross-defendants];
- 5) Wrongful Eviction [against all Cross-defendants]; and
- 6) Intentional Interference with Contractual Relations [against 577 Campbell].

On April 24, 2023, 577 Campbell and CSBU filed a demurrer and motion to strike GSI Entities' FAXC.

Motion to Strike

Cross-defendants move to strike the sixth cause of action in its entirety on the ground that it is beyond the scope of the Court's grant of leave to amend. (See Motion to Strike Memo of Points and Authorities ("MTS Memo"), p. 6:5-8.) Here, GSI Entities added a sixth cause of action for intentional interference with contractual relations without leave of court and is therefore subject to a motion strike.

A party may not add a new cause of action following a demurrer without leave of court. (See *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023 ["[f]ollowing an order sustaining a demurrer . . . with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court's order"].) However, this rule is inapplicable when a "new cause of action directly responds to the court's reason for sustaining the earlier demurrer." (*Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015.)

GSI Entities argue the motion to strike should be denied because the new cause of action alleged responds to the Court's reasons for sustaining the prior demurrers to the first, second, and fifth causes of action. (GSI Entities' Opposition to Motion to Strike ("MTS Opp."), p. 3:14-15.) GSI Entities asserts that because the Court sustained the demurrer to the first and second causes of action because they did not allege a contractual relationship with CSBU after 2021, and did not allege any contractual relationship with 577 Campbell. (*Id.* at p. 4:9-12.) Additionally, the fifth cause of action was sustained for failing to allege a landlord-tenant relationship between GSI Entities and Cross-defendants. (*Id.* at p. 4:13-14.)

As to the first and second causes of action for breach of contract (quiet possession and internet), the Court held that GSI Entities failed to attach the relevant lease or set out the agreement terms and that there were no allegations or attachments demonstrating 577 Campbell was a party to the 2021 Lease. (See January 23, 2023 Court Order, pp. 8:22-23, 25-27, 9:7-8.) As to the fifth cause of action, the Court held there are "no allegations or attached exhibits establishing a landlord-tenant relationship between the GSI Entities and Cross-Defendants during the court of the 2021 Lease." (*Id.* at p. 13:18-19.)

GSI Entities argue the sixth cause of action for Intentional Interference with Contractual Relations responds to these pleading deficiencies noted by the Court. However, it is apparent that GSI Entities were unable to amend the first and second causes of action to allege that 577 Campbell was a party to the 2021 Lease. The first and second causes of action are now brought only against CSBU, while the sixth cause of action is against 577 Campbell, alleging an interference with the 2021 Lease rather than a breach of that lease. Additionally, the sixth cause of action does not address the deficiencies noted by the Court in the fifth cause of action. To address the lack of allegations establishing a landlord-tenant relationship, GSI Entities have amended their pleading to attach the 2021 Lease. Thus, the sixth cause of action does not directly respond to the reasons the Court sustained the prior demurrer. That being said, "[i]t is well established that California courts have a policy of great liberality in allowing amendments at any stage of the proceeding so as to dispose of cases upon their substantial merits where the authorization does not prejudice the substantial rights of others" and GSI Entities would not be precluded from filing an appropriate motion for leave to amend. (*Board of Trustees v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163.) Therefore, in the interest of judicial economy, the Court declines to grant the motion to strike.

Accordingly, the motion to strike the sixth cause of action is DENIED.

Demurrer

Request for Judicial Notice

In support of their demurrer, GSI Entities request the Court take judicial notice of the following:

- 1) The Verified Complaint, filed on April 20, 2022 [Ex. 1];
- 2) The Cross-Complaint filed by GSI Entities [Ex. 2];
- 3) The January 23, 2023 Court Order on Cross-defendants' prior demurrer [Ex. 3]; and
- 4) Proofs of Services on Defendants [Cross-complainants] on May 16, 2022 [Ex. 4].

As to Exhibits 1, 2, and 4, the request for judicial notice ("RJN") is GRANTED. (See Evid. Code § 452, subd. (d); see also *Stepan v. Garcia* (1974) 43 Cal.App.3d 497, 500 [the court may take judicial notice of its own files].) With respect to Exhibits 1, 2, and 3, the request for judicial notice is granted only as to their existence. (See *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 375.)

Breach of Contract (Quiet Possession) – 1st Cause of Action

Attachments: Written Lease Agreements

Cross-defendants first assert that GSI Homes is not a named tenant of the attached leases and so there is no binding contract that could be breached. (See Demurrer-GSI Memo, p. 4:16-17.) As the Court has already stated above, the 2021 Lease indicates that GSI Homes was a tenant of the lease and this argument is without merit.

Authorized Representative or Attorney-in-Fact Signed CSBU Lease

Cross-defendants contend that CSBU is a corporation and in order to "bind a corporation, the written lease must be signed by two corporate officers designating their representative capacity – one of whom is part of the 'operation group' . . . and a 'financial group[.]'" (Demurrer Memo, p. 6:18-21 citing Corp. Code § 313 and *Snukal v. Flightways Mfg., Inc.* (2000) Cal.4th 757, 778-785 (*Snukal*).) Cross-defendants assert that because of this "the alleged verbal authorization is of no legal effect and is no authorization at all to bind CSBU. (*Id.* at p. 7:2-3.) Cross-defendants fail to acknowledge the allegations in Paragraph 13 of the FAXC, which state that the "verbal authorization was reduced to a written authorization" in November 2018. (GSI FAXC, ¶ 13; see also GSI FAXC, Ex. 1.)

Moreover, in *Snukal*, the Supreme Court explained that Corporations Code 313 requires a signature from two separate series – "in the first series—the chairman of the board, president, or any vice-president—as well as an office listed in the second series—the secretary, assistant secretary, chief financial officer, or assistant treasurer" and these parties must execute "the instrument on behalf of the corporation, regardless whether the individual specifies on the instrument itself all of the designated corporate offices he or she holds." (*Snukal, supra*, 23 Cal.4th at p. 778 [emphasis original].) However, "although Corporations Code section 313 applies only where corporate officers in each of the two designated series or categories execute the instrument, that statute . . . is satisfied when one individual who in fact holds two of the specified corporate offices executes the instrument." (*Id.* at p. 786.) The Supreme Court further stated that Corporation Code section 313 specifies "that an instrument entered into by a corporation is not invalidated by any lack of authority on the part of the officers executing the instrument if (1) it has been executed by the designated officers, and (2) the other party does not have actual knowledge that the signing officers lacked authority to execute the instrument." (*Id.* at p. 782.) "[T]he purpose of the statute is 'to allow third parties to rely upon the assertive authority of various senior executive officers of the corporation concerning the execution of any instrument on behalf of the corporation.'" (*Ibid.*) "[I]f its criteria are met, Corporations Code section 313 precludes invalidation of an instrument entered into by a corporation, despite

the presentation of evidence demonstrating that the signing officers lacked authority to execute the instrument on its behalf.” (*Ibid.*) Notably, the Supreme Court held that “Corporations Code section 313 leaves intact the other party’s ability to assert the validity of an instrument under existing common law doctrines when the signatory or signatories do not hold the corporate offices specified in that statute.” (*Id.* at p. 783.)

Here, GSI Entities allege they entered into the 2021 Lease with “authorized CSBU staff” (see GSI FAXC, ¶¶ 14-15) after Niu, owner of both 577 Campbell and CSBU, authorized CSBU staff to perform the leasing of the Property on behalf of 577 Campbell (see GSI FAXC, ¶¶ 10, 12; see also GSI FAXC, Ex. 1 [“I, Jialin Niu . . . hereby grant a limited power of attorney to Ms. Ling Li and Ms. Sunny Zhang . . . To act as my attorney to perform the property management, lease, maintenance, and repairs” of the Property].) Thus, even if the signatories on the 2021 Lease do not fall into the two series identified by the *Snukal* Court, GSI Entities are not precluded from asserting the validity of the 2021 Lease. In that case, they have the “burden of establishing the contracting officer’s authority to bind the corporation.” (See *Saks v. Charity Mission Baptist Church* (2001) 90 Cal.App.4th 1116, 1140.) GSI Entities have established this by attaching the authorization as Exhibit 1 to their FAXC.

Accordingly, the Court will not sustain the demurrer on this basis.

Lease Signature

Cross-defendants next argue that the lease between 577 Campbell as Lessor and CSBU as Lessee requires “prior written consent of 577 Campbell . . . for CSBU . . . to ‘sublet...any part of the Lessee’s interest...in the Premises’” and that the FAXC fails to allege 577 Campbell consented to CSBU’s sublease to GSI Entities. (Demurrer-GSI Memo, p. 7:11-16 citing GSI Entities’ FAXC, Ex. 6.)

Cross-defendants do not elaborate on this argument or cite to any supportive authority. In any event, as explained above, the FAXC alleges “Niu, on behalf of 577 Campbell, verbally authorized certain CSBU staff to perform the property management, lease, maintenance of the Property on behalf of 577 Campbell, including identifying prospective tenants to sublease from CSBU” (GSI FAXC, ¶ 12) and that the “verbal authorization was reduced to a written authorization on or about November 8, 2018 and is attached hereto as Exhibit 1” (GSI FAXC, ¶ 13; see also GSI FAXC, Ex. 1). Thus, GSI Entities have alleged 577 Campbell gave CSBU prior written consent to sublet Room 107.

Based on the foregoing reasons, the demurrer to the first cause of action is **OVERRULED.**

Breach of Contract (Internet) – 2nd Cause of Action

Cross-defendants argue the demurrer to the second cause of action should be sustained for the same reasons stated above: 1) that GSI Homes is not a party to the lease; 2) that no authorized representative of CSBU signed on behalf of CSBU; and 3) that no prior written consent to the lease by 577 Campbell is alleged. (See Demurrer-GSI Memo, pp. 7:24-8:3.)

For the same reasons explained above, the demurrer to the second cause of action is **OVERRULED.**

Trespass – 3rd Cause of Action

“The elements of trespass are: (1) the plaintiff’s ownership or control of the property; (2) the defendant’s intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) the defendant’s conduct was a substantial factor in causing the harm.” (*Ralphs Grocery Co. v. Victory Consultants, Inc.* (2017) 17 Cal.App.5th 245, 262.)

Cross-defendants argue 1) 577 Campbell “had a right at all times to enter [Room 107] as the owner of [the Building];” 2) GSI Homes was not a party to the lease;¹ and 3) the attached leases indicate “as a matter of law that GSI Properties have failed to establish a right of possession in the Premises.” (See Demurrer-GSI Memo, p. 8, subd. (E)(1)-(3).)

577 Campbell’s Right to Enter Office

Cross-defendants contend that because 577 Campbell is the owner of the Property, it has a right to enter Room 107 at all times and that the FAXC “admit[s] that 577 Campbell was not the Landlord in the leases it now attaches to the [FAXC].” (See Demurrer-GSI Memo, p. 8:6-9.) In opposition, GSI Entities argue that Cross-defendants fail to explain how it is relevant that “there is no allegation of a lease between 577 and Cross-Complainants” and that the Court sustained the demurrer as to 577 Campbell “on the basis- that Cross-Complainants did not properly allege a 2021 . . . [which] was rectified in the [FAXC] by attaching a copy of a 2021 [L]ease[.]” (See GSI Entities’ Opp., p. 6:4-7.)

In its prior order on Cross-defendants’ demurrer, the Court sustained with leave to amend the demurrer to the third cause of action as to 577 Campbell because GSI Entities failed to allege facts “demonstrating a leasehold interest or landlord-tenant relationship between GSI Entities and Cross-Defendants under the 2021 Lease. Thus, the demurrer is sustainable on this ground as to cross-defendant 577 Campbell.” (See Jan. 23 Order, p. 10:3-5.) GSI Entities have still not established a landlord-tenant relationship between themselves and 577 Campbell. The language of the 2021 Lease attached to the FAXC indicates that “California South Bay University” is the “Landlord” and that GSI Entities are the “Tenant[s].” (See GSI FAXC, Ex. 5.) Thus, the demurrer may be sustained as to 577 Campbell on this ground.

GSI Entities’ Right of Possession

Cross-defendants argue that the attached Leases, including the 2021 Lease, to the FAXC “that must be given ‘precedence’ over their pleadings demonstrate as a matter of law that GSI Properties have failed to establish a right of possession in the Premises.” (Demurrer-GSI Memo, p. 8:19-21.) As previously explained, this argument has no merit. GSI Entities are listed as tenants on the 2021 Lease. (See GSI FAXC, Ex. 5.)

Cross-defendants next assert that the lease allows for them to enter Room 107 to inspect it. (Demurrer-GSI Memo, p. 8:23-24.) However, the language of the lease states that the “Landlord shall have the right to enter upon the Leased premises at reasonable hours to inspect the same, provided Landlord *shall not thereby unreasonably interfere with Tenant’s business* on the Leased Premises.” (See GSI FAXC, Ex. 5 [emphasis added].) The FAXC alleges Cross-defendants “rummaged through GSI Entities’ office for an unspecific period of time and for unknown reasons” (GSI FAXC, ¶ 46) and that because of this entry, “GSI Entities’ work products and documents . . . have been shuffled around, disorganized, or taken away from GSI Entities’ Premises” (GSI FAXC, ¶ 47.) While the FAXC does not allege that this conduct interfered with GSI Entities’ business, the reasonable inference of this allegation is that the disorganization of and taking of the GSI Entities’ documents interfered with its business and thus was not authorized by the 2021 Lease. Accordingly, GSI Entities have sufficiently alleged they had a right of possession in Room 107.

The demurrer to the third cause of action is SUSTAINED with 10 days’ leave to amend as to 577 Campbell and OVERRULED as to CSBU.

Conversion – 4th Cause of Action

Cross-defendants argue GSI Entities had no right of possession in Room 107, or alternatively, the “right of CSBU to enter the leased premises under Paragraphs 10 and 12 [of

¹ As the Court has addressed this argument above, it declines to address it again.

the 2021 Lease]” means it cannot be liable for conversion. (See Demurrer-GSI Memo, p. 9:10-13.)

As already established, GSI Entities had a right of possession in their leased office. Moreover, GSI Entities is not alleging a conversion of an entire office but rather their documents, designs, cost data, signed construction contracts, and other working documents were removed from their file cabinets “and thereby depriv[ed] GSI Entities of its property rights.” (GSI FAXC, ¶ 51.) Furthermore, Cross-defendants cite to no authority to support their argument that because the lease agreement allowed them to reasonably enter the office to inspect it, that also means they cannot be liable for conversion of their tenants’ property within that office. (*United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 153 [court may disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by which the appellant reached the conclusions he or she wants us to adopt].)

Accordingly, the demurrer to the fourth cause of action is OVERRULED.

Wrongful Eviction – 5th Cause of Action

Cross-defendants argue the FAXC admits 577 Campbell was not the landlord and that GSI Entities “cannot establish that a landlord tenant relationship existed with CSBU.” (Demurrer-GSI Memo, p. 9:22-25.)

In the Court’s Order on Cross-defendants’ prior demurrer, it held that a “wrongful eviction requires the existence of a landlord-tenant relationship. But . . . there are no allegations or attached exhibits establishing a landlord-tenant relationship between the GSI Entities and Cross-Defendants during the course of the 2021 Lease.” (Jan. 23 Order, p. 9:16-19.)

As explained above, GSI Entities have established a landlord-tenant relationship between them and CSBU. However, there is no landlord-tenant relationship alleged as to 577 Campbell and GSI Entities do not address this argument in opposition.

Therefore, the demurrer is SUSTAINED with 10 days’ leave to amend as to 577 Campbell and OVERRULED as to CSBU.

Conclusion and Order

The motion to strike the sixth cause of action is DENIED. The demurrer to the first, second, and fourth causes of action are OVERRULED as to all Cross-defendants. The demurrer to the third and fifth causes of action is SUSTAINED with 10 days’ leave to amend as to 577 Cambell and OVERRULED as to CSBU.