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: November 19, 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	23CV423605	Creditors Adjustment Bureau, Inc. v. TheBurritoLabs, Inc.	Order of examination: continued to March 20, 2025 at 9:00 a.m. at plaintiff's request.
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	22CV395733	Jelissa Blanco v. Stanford Health Care et al.	Click on LINE 5 or scroll down for ruling.
LINE 6	22CV408643	Janet Kim v. Francis Lee et al.	Click on LINE 6 or scroll down for ruling.
LINE 7	23CV411137	Ana Gabriela Torres Anguiano et al. v. Young Van Vo et al.	Motion to compel discovery responses from plaintiff Carolina Villegas Ramos: notice is proper, and the motion is unopposed. The court finds good cause to GRANT the motion, given that responses are long overdue. In addition, the court finds defendant Vo's request for $810 in monetary sanctions to be reasonable and GRANTS that request as to Villegas Ramos, as well. Vo shall prepare the order for signature.
LINE 8	24CV428774	Steven Robles v. General Motors, LLC	Click on LINE 8 or scroll down for ruling.

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LINE #	CASE #	CASE TITLE	RULING
LINE 9	16CV291341	Portfolio Recovery Associates, LLC v. Crisanta Gallego	Claim of exemption: the claim is DENIED. The court finds that Gallego's financial statement appears to show sufficient funds to satisfy judgment creditor's request to withhold $115 per pay period. Although Gallego appears to have substantial debts, this judgment takes priority over those other debts, and her proposed amount to be withheld from earnings of $0 is unreasonable (CCP § 706.123).
LINE 10	21CV386912	Yeo Bai Lee v. Christy Jihee Ryoo et al.	Motion to appoint guardian ad litem: this motion is MOOT, in light of the judgment dated November 8, 2024.
LINE 11	22CV408364	Jane Doe v. Giorgio Raul Garcia et al.	Motion to set aside default: it appears that the motion was served on other parties on November 7, 2024, which is insufficient notice for a November 19, 2024 hearing. In addition, the court has received no response to the motion. Parties to appear to address the apparent notice defect.
LINE 12	23CV412478	OneMain Financial Group, LLC v. Bao M. Nguyen	Motion to vacate judgment and dismiss the case without prejudice: good cause appearing (including defendant's bankruptcy filing shortly before the entry of judgment), the court GRANTS the motion. Plaintiff shall submit the proposed order for signature.

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LINE #	CASE #	CASE TITLE	RULING
LINE 13	23CV426895	Victor Rodriguez Vargas v. Pablo Valenzuela Garcia	Motion to serve summons and complaint by publication: good cause appearing, the court GRANTS the motion. Plaintiff shall submit a proposed order that indicates that, in addition to publication in the San Jose Mercury News, the summons, complaint, and this court's order will be mailed to defendant's last-known mailing address.

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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 15, 2023, when it granted the Hospital's motion to remand.[2]

The Hospital filed a first amended complaint ("FAC") on January 31, 2024. The FAC stated 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 were attached as exhibits to the FAC.

All three defendants brought demurrers to the FAC that were heard by the court on June 18, 2024. In a formal order issued that day, the court sustained Altimetrik's demurrer to all of the challenged causes of action with leave to amend, sustained MultiPlan's demurrer in part with leave to amend, and sustained Trustmark's demurrer in its entirety with leave to amend.[3]

On June 28, 2024, the Hospital filed the operative second amended complaint ("SAC"), which also states ten causes of action: (1) Breach of Written Contract (against MultiPlan, based on a "Network Agreement"); (2) Breach of Written Contract (against Trustmark, also based on the "Network Agreement"); (3) Breach of Written Contract (against Altimetrik, also based on the "Network Agreement"); (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 (against Trustmark); (8) Intentional Interference with

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[1] Trustmark used to be called 'CoreSource" and now calls itself "Luminare Health," but the court will continue to refer to it as "Trustmark" in an effort to be consistent with the court's prior order and 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 there was no federal jurisdiction because, among other findings, ERISA does not preempt the Hospital's state law claims.
[3] The court takes judicial notice of the June 18, 2024 order under Evidence Code section 452, subdivision (d).

Prospective Economic Advantage (against Trustmark); (9) Intentional Interference with Contractual Relations (against Altimetrik); and (10) Intentional Interference with Prospective Economic Advantage (against Altimetrik).

Attached to the SAC as Exhibit A is a copy of the "Network Agreement," submitted under seal. The only signatories to this December 1, 2011 Agreement are the Hospital, Regional Medical Center of San Jose, Los Gatos Surgical Center, and MultiPlan. This agreement makes clear that there is no agency relationship between the signatories and that no party has the ability to assume or create an obligation on behalf of any other party. Attached to the SAC as Exhibit B is a document that appears to be a quick reference guide produced by MultiPlan. Attached to the SAC as Exhibit C is a document described as a copy of the "User Agreement" between Trustmark and Altimetrik. (See SAC, ¶ 52.) The document is actually a January 1, 2006 "Administrative Services Agreement" between NGS American, Inc. and Synova, Inc.

Currently before the court are three demurrers to the SAC. The first was filed by MultiPlan on July 30, 2024. The second and third, by Altimetrik and Trustmark respectively, were both filed on August 6, 2024. The Hospital filed separate oppositions to all three demurrers on November 5, 2024.

II. DEMURRERS TO THE SAC

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 court considers only the pleading under attack, any attached exhibits (which are considered part of the "face of the pleading"), and any facts or documents of which judicial notice may be taken. (See *Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505 (*Barnett*) ["[T]o the extent the factual allegations conflict with the content of the exhibits to the complaint, we rely on and accept as true the contents of the exhibits and treat as surplusage the pleader's allegations as to the legal effect of the exhibits."].) 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 portion of the declaration of William Mavity, submitted with the oppositions, the attached exhibit, or any arguments based upon the attached exhibit.

Where a demurrer is to an amended complaint, the court "may consider the factual allegations of prior complaints, which a plaintiff may not discard or avoid by making

contradictory averments, in a superseding, amended pleading." (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034, internal quotations omitted; see also *Larson v. UHS of Rancho Springs, Inc*. (2014) 230 Cal.App.4th 336, 343 [noting the "well-established precedent" allowing "courts to consider omitted and inconsistent allegations from earlier pleadings when ruling on a demurrer"]; *Doe v. United States Youth Soccer Assoc.* (2017) 8 Cal.App.5th 1118, 1122 [citing *Berg & Berg*].)

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 the demurrer 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. MultiPlan's Demurrer

MultiPlan brings a repeat demurrer to the first cause of action for breach of contract on a ground previously overruled—that it fails to state sufficient facts. It also demurs to the fourth cause of action (breach of the implied covenant of good faith and fair dealing) on the ground of failure to state sufficient facts, a ground previously sustained. (See July 30, 2024 Notice of Demurrer and Demurrer, p. 2:5-12.)

1. First 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; see also CACI, No. 303.) 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 ["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."].)

The allegations in the SAC's first cause of action are nearly identical to those in the FAC's first cause of action, although they do incorporate more general allegations by reference. (Compare FAC, ¶¶ 42-53 with SAC, ¶¶ 103-113.) As the opposition points out, this court has already ruled that the FAC adequately stated a cause of action for breach of written contract against MultiPlan: "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." (June 18, 2024 order at p. 15:4-7.)

As a general matter, it is improper to bring a repeat demurrer to a cause of action on a ground that was previously overruled. MultiPlan insists that because the Hospital has now attached the Network Agreement as an exhibit to the SAC, the court may revisit the issue of whether Section 4.1 of the Network Agreement fully immunizes MultiPlan from any liability for non-payment of medical services. The court disagrees. Based on a review of the Network Agreement, the court finds that there continues to appear to be a potential internal conflict between various provisions of the Network Agreement *on their face* (compare Section 4.1 with Sections 4.3, 4.13, and 5.2), such that consideration of extrinsic evidence may ultimately be necessary to resolve the conflict. The court continues to find that this issue is inappropriate for resolution on demurrer and that the Hospital has stated sufficient facts to allege a breach of certain provisions of the Network Agreement.

MultiPlan's demurrer to the first cause of action is again OVERRULED.

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

"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 v. Bechtel National, Inc*. (2000) 24 Cal.4th 317, 349-350 (*Guz*).) "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.) "[W]here breach of an actual term is alleged, a separate implied covenant claim, based on the same breach, is superfluous." (*Guz, supra,* 24 Cal.4th at 327; see also *Levy v. Only Cremations for Pets, Inc.* (2020) 57 Cal.App.5th 203, 215.)

The court previously sustained MultiPlan's demurrer to the fourth cause of action with leave to amend. Just as before, the SAC's fourth cause of action alleges that the *same conduct*

alleged to be a breach of *express* contract is also a breach of the implied covenant. (See SAC, ¶¶ 142-150.) As it did in its demurrer to the FAC, MultiPlan correctly points out that a cause of action for breach of the implied covenant cannot be based on exactly the same alleged acts or inaction as a claim for breach of written contract. Contrary to what the Hospital argues in its opposition, the fourth cause of action cannot be reasonably interpreted as alleging anything other than breaches of the express contractual obligations in the Network Agreement. As the court explained in the order on the prior demurrer, a breach of the implied covenant claim is not an alternative theory to a breach of contract cause of action, in the manner of a common count. The Hospital's attempt to plead it as an alternative theory in paragraph 143 of the SAC does not circumvent this problem. The Hospital's suggestion in its opposition brief that it is somehow improper to bring a pleading challenge before a plaintiff has time to conduct discovery continues to be flatly incorrect.

MultiPlan's demurrer to the fourth cause of action on the ground that it fails to state sufficient facts is SUSTAINED.

The Hospital requests further leave to amend the fourth cause of action if the demurrer is sustained but fails to indicate how it could be amended to state sufficient facts to support a cause of action for breach of the implied covenant, as opposed to a breach of written contract. A plaintiff bears the burden of proving 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 requests leave to amend if the court "grants any part of the demurrer." (Opposition at p. 18:13.) (See *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145 (*Shaeffer*) ["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.]'"].) Moreover, the Hospital has already been given an opportunity to cure the pleading defect and has failed. Further leave to amend the fourth cause of action is therefore DENIED.

C. Trustmark's Demurrer

Trustmark demurs to the SAC's second cause of action for breach of written contract and fifth cause of action for breach of "User Agreement" on a third-party beneficiary theory on the ground that they fail to state sufficient facts, as it did previously to these causes of action as alleged in the FAC. It also attempts to demur to the SAC's seventh and eighth causes of action, the equivalent of the FAC's eighth cause of action. (See August 6, 2024 Notice of Demurrer, pp. 2:7-3:8.)

1. Seventh and Eighth Causes of Action (Intentional Interference with Contractual Relations and Intentional Interference with Prospective Economic Advantage)

As an initial matter, the court OVERRULES the demurrer to the seventh and eighth causes of action for intentional interference with contractual relations and with prospective economic advantage. Code of Civil Procedure section 430.41, subdivision (b), makes the following very clear: "A party demurring to a pleading that has been amended after a demurrer to an earlier version of the pleading was sustained *shall not* demur to any portion of the amended complaint, cross-complaint, or answer *on grounds that could have been raised by*

demurrer to the earlier version of the complaint, cross-complaint, or answer." (Emphasis added.) Having failed to challenge the FAC's eighth cause of action (which combined the causes of action for intentional interference), Trustmark cannot now challenge the SAC's seventh and eighth causes of action (which properly separates them out).

2. Second Cause of Action (Breach of Written Contract)

The SAC, like the FAC, admits that Trustmark is not a party to any contract with the Hospital. (See SAC, ¶ 14.) The only signatories to the Network Agreement are the Hospital, the Regional Medical Center of San Jose, the Los Gatos Surgical Center, and MultiPlan. The second cause of action alleges that Trustmark is bound by the Network Agreement as a "client" of MultiPlan (see *id.* at ¶ 115), but contrary to this bare allegation, Section 4.3 of the Network Agreement does not incorporate a "Client Agreement" or any other agreement by reference. While Sections 4.3 and 4.11 of the Network Agreement state that MultiPlan has entered into agreements with "clients" and "users," there are no references to Trustmark or Altimetrik (or their predecessor companies) anywhere in the Network Agreement.

The SAC alleges that Trustmark entered into a "Client Agreement" with MultiPlan to which the Hospital is not a party. The SAC also alleges that unless MultiPlan breached the Network Agreement (and the SAC plainly alleges that MultiPlan did breach the Network Agreement), Trustmark must be obligated to comply with the Network Agreement pursuant to a Client Agreement. (See SAC, ¶¶ 46-51.) Yet no copy of a Client Agreement between MultiPlan and Trustmark is attached to the SAC, and the allegations that such an agreement exists and what its terms might be still depend upon allegations made on information and belief. The second cause of action expressly depends upon allegations that Trustmark breached specific sections of the Network Agreement, not the terms of any Client Agreement, yet the SAC fails to sufficiently allege that Trustmark as a non-signatory can be bound by the Network Agreement itself. (See SAC, ¶¶ 121-125.)

As noted above and in the court's previous order, factual and legal conclusions are not accepted as true on demurrer. The SAC's boilerplate allegations that MultiPlan acted as the actual or ostensible "agent" of Trustmark and/or Altimetrik and that Trustmark was the actual and/or ostensible "agent" of Altimetrik are legal conclusions and are not accepted as true. (See SAC, ¶¶ 10-12, 60-66.)

Agency exists when a principal engages an agent to act on the principal's behalf and subject to its control. The essential elements necessary to establish an agency relationship are manifestation of consent by one person to another that the other shall act on his or her behalf and subject to his or her control, and consent by the other so to act. The principal must in some manner indicate that the agent is to act for the principal, and the agent must act or agree to act on the principal's behalf and subject to the principal's control. Typically, an agency is created by an express contract or authorization. (See Civ. Code, § 2307.) Less typically, an agency relationship may also be created informally, based on the circumstances and the parties' conduct. No particular words are necessary, nor need there be consideration. All that is required is conduct by each party manifesting acceptance of a relationship whereby one of them is to perform work for the other under the latter's direction. That said, an agency cannot be created by the conduct of the agent alone; rather, conduct by the principal is essential to create the agency. (See *Hoffman v. Young* (2022) 13 Cal.5th 1257, 1274.) Representations or

conduct by the principal, rather than the purported agent, are also necessary to plead ostensible agency. (See *J.L. v. Children's Institute, Inc*. (2009) 177 Cal.App.4th 388, 404.)

Because the Network Agreement makes no references to Trustmark or Altimetrik (or their predecessors), that agreement cannot reasonably be interpreted as establishing that MultiPlan was acting as an actual or ostensible agent of Trustmark or Altimetrik when entering into that Agreement, contrary to the conclusory allegations of the SAC. (See SAC, ¶¶ 118 and 135; see also *Barnett*, *supra*, 90 Cal.App.4th at 505 ["[T]o the extent the factual allegations conflict with the content of the exhibits to the complaint, we rely on and accept as true the contents of the exhibits and treat as surplusage the pleader's allegations as to the legal effect of the exhibits."].) Because it makes no mention of Trustmark or Altimetrik, the Network Agreement also cannot be reasonably interpreted as binding either of them on a "direct benefits estoppel" theory (which is typically limited to arbitration agreements). (See *Pillar Project AG v. Payward Ventures, Inc.* (2021) 64 Cal.App.5th 671, 677-678; *Boucher v. Alliance Title Co., Inc.* (2006) 127 Cal.App.4th 262, 268-272.) Trustmark's demurrer to the SAC's second cause of action is therefore SUSTAINED.

Again, "'the burden is on the plaintiff to show in what manner he or she can amend the complaint, and how that amendment will change the legal effect of the pleading.'" (*Medina v. Safe-Guard Products* (2008) 164 Cal.App.4th 105, 112 fn. 8; see also *Shaeffer*, *supra*, 44 Cal.App.5th at 1145.) The Hospital's opposition argues it should be granted leave to amend to allege the terms of a recently acquired Client Agreement, *submitted as extrinsic evidence* with the opposition brief. Because this Client Agreement may possibly cure the continuing defects in the breach of contract cause of action alleged against Trustmark—again, the court has not reviewed this extrinsic evidence in detail and so makes no determination one way or the other—the court GRANTS 10 days' leave to amend the second cause of action.

The court reminds the Hospital that the leave to amend here must be construed as permission 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. Absent prior leave of court, an amended complaint raising entirely new and different causes of action may be subject to a motion to strike. (*Zakk v. Diesel* (2019) 33 Cal.App.5th 431, 456 [citing *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023].)

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

The SAC's fifth cause of action alleges that under Section 4.3 of the Network Agreement, MultiPlan "agrees" it has entered into agreements with unidentified "Clients" that will obligate them to comply with portions of the Network Agreement. It further alleges that Trustmark is one of the "Clients," and that "if" MultiPlan complied with the Section 4.3 of the Network Agreement, then Trustmark is a party to a "Client Agreement" that would require Trustmark either to pay the Hospital for services rendered, or to ensure that "users" like Altimetrik paid the Hospital for services rendered. Because the Hospital was not paid, it alleges a breach of a Client Agreement that was "intended, at least in part, to benefit the Hospital." (See SAC, ¶¶ 152-157.)

Under Civil Code section 1559, a contract "made expressly for the benefit of a third person" may be enforced by that third party. As noted by the court in its previous demurrer order:

> . . . under 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.* at p. 830; emphasis added.) In *Goonewardene*, the California Supreme Court reversed the Court of Appeal and remanded the matter with instruction 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 standards set forth above. "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*].)

Trustmark argues that the fifth cause of action fails to state sufficient facts because the SAC does not sufficiently allege that Trustmark and MultiPlan entered into an agreement whose motivating purpose was to provide a benefit to the Hospital. The court agrees, as the SAC largely fails to address the deficiencies identified in the prior order, and the demurrer is SUSTAINED.

The Network Agreement attached to the SAC as Exhibit A controls over any inconsistent allegations in the SAC. (See *Barnett, supra*, 90 Cal.App.4th at 505.) Again, the Network Agreement makes no mention of Trustmark or Altimetrik and does not identify them as "clients." No copy of any client agreement between MultiPlan and Trustmark has been provided, and the document referred to as Exhibit C in the SAC does not involve Trustmark or Altimetrik. (See SAC, ¶ 52.) The allegations describing a "Client Agreement" in paragraphs 46-51 of the SAC admit that they do not describe a contract to which Trustmark is a party. Once again, they largely rely on allegations made on information and belief that are not accepted as true on demurrer.

Nevertheless, the court will again GRANT the Hospital 10 days' leave to amend, based on its representation that the third amended complaint may finally attach a Client Agreement to which Trustmark is a party.

D. Altimetrik's Demurrer

Altimetrik demurs to the SAC's third, sixth, ninth, and tenth causes of action on the ground that they fail to state sufficient facts. (See August 6, 2024 Notice of Demurrer and Demurrer.)

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

For the same reasons that it articulated on June 18, 2024, the court SUSTAINS Altimetrik's demurrer to the SAC's third cause of action on the ground that it fails to state sufficient facts. Like the second cause of action against Trustmark, the third cause of action is based on the notion that Altimetrik is somehow bound by the Network Agreement and breached its provisions. (See SAC, ¶¶ 128-141.) The copy of the Network Agreement attached to the SAC as Exhibit A (which controls over all inconsistent allegations) establishes that Altimetrik is not a party to the Network Agreement. The Network Agreement makes no reference to Altimetrik (or its predecessors) and does not directly impose any obligations on Altimetrik. As noted above in the discussion of the second cause of action, the SAC fails to allege properly that MultiPlan acted as an actual or ostensible "agent" of Trustmark or Altimetrik, and so it fails to allege that either of them were bound by the Network Agreement on an agency theory. The Network Agreement also cannot reasonably be interpreted as binding Altimetrik on a "direct benefits estoppel" theory.

While the SAC does attach what appears to be a "user agreement" as Exhibit C, that document is actually an "Administrative Services Agreement" between NGS American, Inc. and Synova, Inc.[4] This agreement predates the Network Agreement by nearly six years and makes no reference to the Network Agreement. The court therefore agrees with Altimetrik that the terms of the Administrative Services Agreement cannot reasonably be interpreted as requiring Altimetrik to be bound by the 2011 Network Agreement between MultiPlan and the Hospital, an agreement that did not exist at the time the Administrative Services Agreement was signed. (See SAC, ¶¶ 52-61 and 128-141.) Section 7.01 of the Administrative Services Agreement also makes explicit that there is *no agency relationship* between the signatories. (See *id.*, Exhibit C, p. 10.) This express provision controls over the Hospital's unsupported allegation in the SAC that Trustmark was an actual or ostensible agent of Altimetrik.

The Hospital's opposition to Altimetrik's demurrer fails to demonstrate how any amendment could cure the defect in this cause of action: the Network Agreement and Administrative Services Agreement cannot reasonably be interpreted as making Altimetrik a party to the Network Agreement or otherwise requiring Altimetrik to abide by any of the provisions in the Network Agreement cited in the third cause of action. (See *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; *Shaeffer, supra*, 44 Cal.App.5th at 1145.) Because no potentially effective amendment is apparent to the court, further leave to amend the third cause of action is DENIED.

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[4] In its supporting memorandum, Altimetrik explains that these are predecessor entities to Trustmark and Altimetrik.

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

The sixth cause of action alleges that a "User Agreement" obligated Altimetrik to pay the Hospital pursuant to the terms of the Network Agreement and that the User Agreement "contemplates" benefiting third parties like the Hospital. (See SAC, ¶¶ 158-166.)

The court SUSTAINS Altimetrik's demurrer to the sixth cause of action on the ground that it fails to state sufficient facts.

The Administrative Services Agreement attached to the SAC as Exhibit C, whose terms control over the SAC's allegations, does not refer to the Network Agreement (which did not exist when it was signed) and cannot reasonably be interpreted as intended to benefit the Hospital under *Goonewardene* or as imposing any obligation on Altimetrik to comply with the Network Agreement. The opposition fails to meet the Hospital's burden to demonstrate how the significant defects could be cured. Again, because no potentially effective amendment is apparent to the court further leave to amend the sixth cause of action is DENIED.

3. Ninth Cause of Action (Intentional Interference with Contractual Relations)

As the court explained in the prior order, "[t]he 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 does not need to be wrongful apart from the interference with the contract. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 55.)

The court SUSTAINS Altimetrik's demurrer to the ninth cause of action on the ground that it fails to state sufficient facts.

The Hospital appears to have made little effort to cure the defect identified in the court's prior order, as this cause of action is still alleged in an entirely conditional fashion. (See SAC, ¶¶ 177-182.) The ninth cause of action is brought "to the extent" Altimetrik is not a "party" to the Network Agreement. It alleges that if ("to the extent") Altimetrik "played any role" in the Hospital not receiving the payment it believes it is entitled to, "then Altimetrik intentionally interfered with the contractual relation between the Hospital and MultiPlan and/or Trustmark." (SAC, ¶ 178.) The ninth cause of action further alleges that if ("to the extent") Altimetrik "played a role" in the "underpayment or denial" of the medical bill that gave rise to this lawsuit, this hypothetical action or inaction "was a substantial factor" in MultiPlan and/or Trustmark's "failure to pay." (SAC, ¶ 181.) Notably, as Exhibit A to the SAC establishes that Altimetrik and Trustmark are not parties to the Network Agreement, any alleged breach of that agreement by MultiPlan cannot reasonably be construed as an action by Altimetrik.

This vaguely described hypothetical scenario fails to state sufficient facts, as it does not properly allege or identify any specific intentional acts actually taken by Altimetrik that were intended to breach or disrupt a contractual relationship to which the Hospital was a party; nor

does it properly allege or identify how any such intentional acts actually taken by Altimetrik did in fact breach or disrupt a contractual relationship.

Contrary to the Hospital's arguments, any alleged breaches of the Network Agreement by MultiPlan do not support this cause of action. The ninth cause of action is not a proper "alternative" theory of recovery; rather, it is an attempt to allege alternative versions of the facts, which are not adequately described. "While inconsistent theories of recovery are permitted, a pleader cannot blow hot and cold as to the facts positively stated." (*Manti v. Gunari* (1970) 5 Cal.App.3d 442, 449, internal citation omitted.) As the Hospital fails to identify how the defects in this cause of action could be cured further leave to amend the ninth cause of action is DENIED.

4. Tenth Cause of Action (Intentional Interference with Prospective Economic Advantage)

To state a cause of action for intentional interference with prospective economic relations, a plaintiff must show "(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 . . . . An 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'"].)

The tenth cause of action is pled in the same manner as the ninth—as a vague hypothetical. (See SAC, ¶¶ 183-187.) Again, the Network Agreement attached to the SAC as Exhibit A establishes that Altimetrik is not a party to that agreement. The tenth cause of action also fails to allege any intentional and independently wrongful act by Altimetrik. The court agrees with Altimetrik that the tenth cause of action fails to state sufficient facts for the same reasons as the ninth. The demurrer is SUSTAINED, and because the Hospital's opposition fails to establish how the continuing defects in this cause of action could be cured through amendment, the court DENIES further leave to amend. [5]

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[5] Of course, if, through discovery, the Hospital obtains agreements or other documents that support a breach of contract or third-party beneficiary theory, or any other cause of action, as to Altimetrik, it can always seek leave to amend its complaint at that time. But the Hospital's repeatedly articulated argument that it should be able to obtain complete discovery before it is required to remedy any defects on the face of its pleading continues to place the cart before the horse.

Calendar Line 5
Case Name: *Jelissa Blanco v. Stanford Health Care et al.*
Case No.: 22CV395733

After scores of disagreements and multiple IDCs between the parties, it appears that the final remaining dispute is over a single document request—No. 37—which seeks the production of the insurance policy at Stanford Health Care that potentially applies to the claims asserted in this case. Plaintiff Jelissa Blanco seeks to compel a further response to Request No. 37, as well as to compel compliance with Stanford Health Care's prior representation that it would produce the policy. Stanford Health Care argues that it has substantially complied with its discovery obligations, as it has provided a version of the policy to Blanco that redacts only those portions that are "irrelevant."

The court concludes—as it previously did at an IDC earlier this year—that Blanco is entitled to a copy of the insurance policy. In addition, the court concludes that Stanford Health Care is not entitled to redact portions of the policy on the ground of "relevance." The issue would be different if Stanford had some basis for asserting that the redacted portions of the policy are so confidential or privileged that the risk of disclosure cannot be ameliorated by a stipulated protective order. But it has not made that assertion on this motion, and the court does not see how the insurance policy could possibly be so sensitive as to require production of a redacted version.

Stanford Health Care shall produce an unredacted copy of the policy at issue **within 10 days** of notice of entry of this order.

The court has also reviewed the supplemental written response to Request No. 37, dated November 4, 2024 (Christie Declaration, Exhibit B), and finds that there is no need for a further written response.

Finally, the court finds that Stanford Health Care did not act with substantial justification in redacting its insurance policy on the ground of "relevance." At the same time, the court finds that Blanco's request for $20,850 in monetary sanctions is grossly excessive, given that all of the parties' discovery disputes have now boiled down to this single, simple issue. The court orders Stanford Health Care to pay **$1,410** (1.5 hours at $900/hour plus the $60 filing fee) to Blanco within 30 days of notice of entry of this order.

In short, the motion is GRANTED in part and DENIED in part.

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Calendar Line 6
Case Name: *Janet Kim v. Francis Lee et al.*
Case No.: 22CV408643

This is the 13th discovery motion filed by the parties in this case. The last time, on September 17, 2024, the court ruled largely in favor of defendant Francis Lee. This time, the court rules largely in favor of plaintiff Janet Kim.

Lee seeks to quash document subpoenas served by Kim on three third parties: Bank of America, Indigo Auto Group California LLC, and 260 Michelle Court Partners, LP. These subpoenas broadly seek the financial documents of Lee and defendants Virus Geeks, Inc. ("Virus Geeks") and Matrix Diagnostics, Inc. ("Matrix Diagnostics"), as well as automobile sales and leasing information of the defendants and real property information of the corporate defendants. Though broad, the court finds that these subpoenas seek information that is directly related to the implied contract, constructive trust, equitable lien, partition, conversion, false promise, and quantum meruit causes of action in the second amended complaint.[6] The court also finds that the high relevance and materiality of the discovery at issue vastly outweighs any alleged privacy interest that Lee may have in protecting these documents from disclosure.

The court further agrees with Kim that Lee has no standing to object to these subpoenas on behalf of Virus Geeks and Matrix Diagnostics; nor does Lee have any standing to object to the subpoenas on behalf of other corporate third parties (e.g., XGENX, Inc. and Castle Road LLC, which are apparently companies founded by Lee). Lee argues that he "has standing to object to [s]ubpoenas directed to corporate entities in his individual capacity because the [s]ubpoenas seek his personal and financial records." (Reply, p. 10:9-10.) But the court has already found that Lee's individual privacy interest is vastly outweighed by the relevance and materiality of the documents at issue. To the extent that the corporate entities may have their own separate interest in preventing disclosure of these documents, Lee has zero standing to assert that separate interest.

As for Kim's request for monetary sanctions, the court finds that Lee did not act with substantial justification in resisting these subpoenas, delaying the production of documents, and bringing this motion. In addition, the court agrees with Kim that Lee's meet-and-confer communications reflect an effort to "stall" and delay discovery rather than to facilitate a resolution. At the same time, the court finds Kim's accusation that Lee's counsel made "sexist and misogynistic comments" to be baseless. It appears that both sides have continued to engage in unnecessary and unseemly bickering throughout this case, as well as unnecessary motion practice. The court orders Lee to pay a monetary sanction of **$2,500** (five hours at plaintiff's counsel's rate of $500/hour) to Kim within 30 days of notice of entry of this order. As a reminder, the purpose of such discovery sanctions is compensatory, not punitive.

The motion is DENIED. The non-moving party's request for sanctions is GRANTED IN PART.

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[6] In an effort to highlight how broad these subpoenas are, Lee repeatedly italicizes the word "*all*" in his opening memorandum, at least 30 times, as if this is somehow supposed to be persuasive rather than irritating. (E.g., Memorandum, pp. 5:22-6:12 [italicizing "*all*" 11 times in a single paragraph].)

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Calendar Line 8
Case Name: *Steven Robles v. General Motors, LLC*
Case No.: 24CV428774

This is a motion to compel a "person most knowledgeable" (or "PMK") deposition of defendant General Motors, LLC ("GM"). The court finds that GM has unduly dragged its feet in providing a witness, but the court also finds that plaintiff Steven Robles's deposition categories are overbroad. GM has said that it will produce a PMK witness for topics 1-4 and 8-9 of Robles's deposition notice, and the court agrees that those are the topics that are relevant to the causes of action in this case. The court therefore grants the motion as to topics 1-4 and 8-9 and denies the motion as to topics 5-7 and 10. GM shall designate and produce its witness within **30 days** of notice of entry of this order.

Robles's boilerplate memorandum of points and authorities says nothing about the document requests attached to its deposition notice. The court has reviewed these requests and finds that Requests Nos. 1-3 and 9 are pertinent to this case; Requests Nos. 4-8 and 10 are not. The court orders GM to produce documents that are responsive to Requests Nos. 1-3 and 9 before the deposition of its witness.

The court denies Robles's request for monetary sanctions, but if GM fails to produce a witness within 30 days of notice of entry of this order, the court may reconsider this denial in the future.

GRANTED in part and DENIED in part.

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