SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 20
Honorable William J. Monahan, Presiding
Courtroom Clerk, Felicia Samoy
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2320

DATE: 1/29/2025 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (1/28/2025) 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.)

TO APPEAR AT THE HEARING: The Court prefers in-person appearances or by Teams. If you must appear virtually, please use video.

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

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.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV374088	Michael Prozan et al vs Acuity Management Company, LLC et al	Motion: Summary Judgment/Adjudication By Plaintiffs Michael Prozan and My General Counsel, PC (In Pro Per and Counsel to My General Counsel PC) Ctrl Click (or scroll down) on Line 1 for tentative ruling. The court will prepare the order.

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LINE 2	23CV416938	BHARAT PATEL vs DILIP PATEL et al.	Motion: Compel Answers Cross-Complainant DILIP PATE's Verified Responses, Without Objections, to Request for Production of Documents, Set One; Form and Special Interrogatories, Sets One; Deeming the Genuineness of any Documents and the Truth of any Matters Specified in the X-Def Patel's Requests For Admission, be Admitted, Set One; and for Sanctions by X-Def Jaya Patel Unopposed and GRANTED: 1. Compelling Dilip Patel ("DLIP") to provide responses, without objections to cross-defendant Jaya Patel ("JAYA")'s Form Interrogatories-Set 1. 2. Compelling DLIP to provide responses, without objections, to JAYA's Special Interrogatories-Set 1. 3. Compelling DLIP to provide responses, without objections, to JAYA's Document Demands-Set 1, and produce responsive documents thereto. 4. That the genuineness of any documents and the truth of any matters specified in JAYA's Requests for Admission – Truth of Facts & Genuineness of Documents-Set 1 be deemed admitted by DLIP. 5. Imposing a monetary sanction against DLIP in favor of JAYA in the amount of $2,460, payable in full to JAYA within twenty (20) days of this court's order. [Note: The request for monetary sanctions jointly and severally against DILIP's counsel is DENIED for failure to identify the name of "his counsel" in the notice of motion and motion. (See Code Civ. Proc. § 2023.040.)] 6. Should DLIP not provide the aforementioned responses within twenty (20) days of this court's order, issue sanctions and evidentiary sanctions may be imposed against DLIP precluding him from introducing into evidence at trial any testimony, witnesses, or documents regarding matters involved in these discovery requests. [Note: This would require another motion for sanctions after non-compliance with this order.] Moving party to prepare the order for signature by the court.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 20
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DATE: 1/29/2025 TIME: 9:00 A.M.

LINE 3	23CV421818	Greenberg Development & Construction, Inc. vs Fernando Pio-Molinero et al	Motion: Withdraw as attorney By Yvonne Jorgensen as attorney of Record for Defendants Pio M. Construction and Fernando Pio-Molinero & Ken Chatham APPEAR. The proof of service in the court file (which is attached to this motion) shows electronic service on counsel for Plaintiff Greenberg Development & Construction, Inc. However, there does *not* appear to be any proof of service on the client(s) in the court's file (although the declaration by counsel claims the client was served by mail at the client's last known address.) Moving party must e-file the proof of service of the moving papers on the client(s) *before* or at the hearing. If there is no appearance by the moving party or no proof of service of the moving papers on the client(s) in the court file, the motion may be taken OFF CALENDAR at the hearing.
LINE 4	24CV441688	Ariane Lipana vs San Jose Care Hospice et al	Hearing: Petition Compel Arbitration And Stay or Dismiss the Proceeding Pending Arbitration by Defendant San Jose Care Hospice Unopposed and GRANTED. Defendant San Jose Care Hospice dba Redwood Hospice ("Defendant")'s petition/motion to compel plaintiff (Ariane Lipana ("Plaintiff") to submit her individual claims to binding arbitration is GRANTED and this action is stayed pending the outcome of the arbitration. Moving party to prepare order for signature by court.
LINE 5	2015-1-CV-288491	Tri Pointe Homes, Inc. vs Arun Ramakumar et al	Hearing: Motion For Attorneys' Fees against Plaintiff TRI-POINT HOMES, INC. by Defendants Arun Ramakumar and Suman Ramakumar Ctrl Click (or scroll down) on Line 5 for tentative ruling. Plaintiff to prepare order for signature by the court.
LINE 6			
LINE 7			
LINE 8			

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COUNTY OF SANTA CLARA

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DATE: 1/29/2025 TIME: 9:00 A.M.

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LINE 12			

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Calendar Line 1
Case Name: *Prozan, et al. v. Acuity Management Co., LLC, et al.*
Case No.: 20CV374088

This is an action for breach of a contract. According to the allegations of the complaint, since 2002, plaintiffs Michael Prozan ("Prozan") dba My General Counsel Group and My General Counsel PC (collectively, "Plaintiffs") represented defendants Acuity Management Company, LLC, Acuity Ventures III, LP, Acuity Ventures II, LLC (collectively, "Defendants") in nine cases. (See complaint, ¶¶ 11-13.) Defendants asked Plaintiffs to defer collection of their billings, and Plaintiffs initially obliged; however, as their legal needs expanded, Plaintiffs began requiring progress payments as a condition of both continued representation and continued delay of legal action on the accrued balance. (See complaint, ¶¶ 16-17.) In addition to legal service invoices, Plaintiffs sent accountings to Defendants periodically. (See complaint, ¶ 18.) Defendants did not question the accountings and repeatedly assured Plaintiffs that they would be paid in full. (See complaint, ¶ 19.)

In February 2020, Defendants began balking at making the necessary progress payments, first refusing to pay the full monthly amount and then refusing to make any payment at all. (See complaint, ¶¶ 20-22.) In July 2020, Defendants secured funds and made a partial payment to Plaintiffs, mostly applied to a note and related interest charges. (See complaint, ¶ 24.) Defendants then insisted on conducting their own accounting prior to payment. (See complaint, ¶ 25.) Plaintiffs then served Defendants with a Notice of Client's Right to Arbitrate which was later amended to claim an amount omitted from the initial Notice, for a total claim of $522,850.45 as of September 21, 2020. (See complaint, ¶¶ 27-28.) After Defendants conducted a lengthy accounting, Defendants then asserted that they only owed $244,201.06, with a discrepancy of over $250,000 from the Plaintiffs' accounting, failing to identify a single deficiency of Plaintiffs' accounting, ignoring any related interest accruals and carrying charge accruals, omitting over $200,000 in invoices and subtracting certain entries without reason. (See complaint, ¶¶ 30-38.) Defendants' own accounting demonstrated that Plaintiffs owe Defendants $624,685.75. (See complaint, ¶ 39.)

On November 30, 2020, Plaintiffs filed a complaint against Defendants, asserting causes of action for:

1) Breach of contract;
2) Account stated; and,
3) Book account.

Plaintiffs move for summary judgment, or, in the alternative, for summary adjudication.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION

Plaintiffs fail to properly move for summary adjudication

Plaintiffs' notice of motion indicates that they intend to move for summary adjudication. Pursuant to Code of Civil Procedure section 437c, subdivision (f)(1), "[a] party may move for summary adjudication as to one or more causes of action within an action, one

or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs." (Code Civ. Proc. § 437c, subd. (f)(1).) California Rule of Court 3.1350, subdivision (b) states that "[i]f summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts." (Rule of Court 3.1350, subd. (b).) Neither Plaintiffs' notice of motion nor their separate statement specifically states of what they intend to move for summary adjudication. This deficiency was previously pointed out to Plaintiffs as to their prior motion for summary adjudication. (See June 2, 2023 order re: Pls.' motion for summary adjudication, p.4:18-20 (stating "[h]ere, neither the notice of motion nor the supporting memorandum of points and authorities indicate that Plaintiffs are moving for summary adjudication of a cause of action, a claim for punitive damages, or an issue of duty").) Accordingly, Plaintiffs fail to properly move for summary adjudication, and their alternative motion for summary adjudication is DENIED.

Plaintiffs' burden on summary judgment

The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact—one sufficient to support the position of the party in question that no more is called for. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850-851.) Plaintiffs moving for summary judgment bear the burden of persuasion that each element of the cause of action in question has been proved, entitling the party to judgment. (Code Civ. Proc. § 437c, subd.(p)(1).) Plaintiffs, who bear the burden of proof at trial by preponderance of evidence, therefore "must present evidence that would require a reasonable trier of fact to find the underlying material fact more likely than not—otherwise he would not be entitled to judgment as a matter of law, but would have to present his evidence to a trier of fact." (*Aguilar*, *supra*, 25 Cal.4th at p.851.) "'Once the plaintiff... has met that burden, the burden shifts to the defendant... to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto.'" (*Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1195 (Sixth District case), quoting Code Civ. Proc. § 437c, subd. (p)(1).)

Plaintiffs' request for judicial notice in support of their motion

In support of their motion, Plaintiffs request judicial notice of the following documents:

1) Notice of motion and motion to be relieved as counsel in *Ishikawa v. Irdeto USA Inc*. (Super. Ct. Santa Clara County, 2013, No. 113CV241384);
2) Memorandum of points and authorities filed in support of notice and motion for an order to enforce the March 20, 2019 interim mediation agreement, as amended in *Karakozoff v. Acuity Ventures III, L.P*. (Super. Ct. Santa Clara County, 2018, No. 18CV331407);
3) Complaint *Robbins, et al. v. Acuity Ventures, III, LP, et al.* (Super. Ct. Santa Clara County, 2016, No. 16CV293917);

4) Complaint in *Robbins v. Acuity Management Company, LLC* (Super. Ct. Santa Clara County, 2017, No. 17CV310857); and,
5) Declaration of Eric Hardgrave in support of notice and motion for an order to enforce the March 20, 2019 interim mediation agreement, as amended, in *Karakozoff v. Acuity Ventures III, L.P.* (Super. Ct. Santa Clara County, 2018, No. 18CV331407).

The request for judicial notice is GRANTED as to the *existence* of the documents. (See Evid. Code § 452, subd. (d); see also *Richtek USA, Inc. v. uPI Semiconductor Corp*. (2015) 242 Cal.App.4th 651, 658 (Sixth District stating that "while courts are free to take judicial notice of the existence of each document in a court file, including the truth of results reached, they may not take judicial notice of the truth of hearsay statements in decisions and court files"); see also *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882 (stating same); see also *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914 (stating that "a court *cannot* take judicial notice of *hearsay* allegations as being true, just because they are part of a court record or file… [a] court may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments") (emphasis original).)

Plaintiffs meet their initial burden to demonstrate that they are entitled to judgment on their complaint.

In support of their motion, Plaintiffs present Prozan's declaration, emails, invoices, accounting reports, spreadsheets showing the balance due, a 2013 agreement, a December 2, 2013 promissory note for accrued carrying charges ("carrying charge note"), a December 2, 2013 promissory note ("fee note"), a January 2018 engagement agreement establishing the amount due at that time. (See Prozan decl. in support of Pls.' motion for summary judgment, ¶¶ 1-9, 11-112, exhs. A-III; see also Pls.' separate statement of undisputed material facts, nos. ("UMFs") 1-94.) Defendant's objections 1-118 are OVERRULED. Plaintiffs demonstrate the existence of an agreement, Defendants' nonpayment of the amount owed, and Plaintiffs' damages resulting of Defendants' breach. Plaintiffs meet their initial burden to demonstrate that they are entitled to judgment on their complaint. (See *Law Offices of Dixon R. Howell v. Valley* (2005) 129 Cal.App.4th 1076, 1092 (stating that "[f]irm was entitled to summary judgment… [because a] plaintiff [is] entitled to summary judgment where he established by competent evidence the existence of contract, defendants' breach, and damages, and defendants did not controvert such facts").)

In opposition, Defendants demonstrate a triable issue of material fact as to the amount of damages.

In opposition, Defendants present a declaration from Acuity Management Company, LLC and Acuity Ventures II, LLC Managing Partner Eric Hardgrave, and a declaration from licensed CPA Robert Sweeney who provide Defendants' own accounting records, that they believe establishes that Plaintiffs actually owe Defendants $194,530.20. (See Hardgrave decl. in opposition to motion for summary judgment, ¶¶ 1-14; see also Sweeney decl. in opposition to motion for summary judgment, ¶¶ 1-13; see also Defs.' compendium of evidence, exhs. B, D-L, N, O.)

In reply, Plaintiffs argue that the "Court cannot use [Defendants' accounting records] as evidence in this proceeding in determining whether an amount claimed by the Plaintiff conflicts with their account… [because] Defendants fail to address material conflicts in their accounting records…." (Pls.' reply brief, pp.2:2-25, 3:1-11.) Plaintiffs also assert the claim that Defendants' claims in the Hardgrave declaration that they were never provided the invoices or that the invoices were fabricated "is inconsistent with the evidence and oblivious to the poor record keep[ing] practices of the Defendants… [and] are also unsubstantiated fiction." (*Id*. at pp.3:12-24, 4:1-25, 5:1-25.) Plaintiffs also complain that "Hardgrave claims to have maintained contemporaneous books and records yet fails to offer them into evidence… [and] makes no attempt to explain why he has not provided such contemporaneous records or why after the fact recreations were needed if such contemporaneous records existed… [n]or does he attempt to explain why the contemporaneous books of the Defendants that do exist (the balance sheets) conflict with the after the fact recreation." (*Id*. at p.8:14-21)

Plaintiffs' complaints about the credibility of the Defendants' evidence does not, as Plaintiffs argue, require the Court to disregard its existence. On the contrary, where "[t]he evidence is in conflict, [] it is not up to the court to weigh conflicting evidence or to assess the credibility of witnesses. Rather, the court's duty is to determine only whether the evidence could, as a matter of law, support a judgment in favor of the nonmoving party." (*Sandell v. Taylor-Listug, Inc*. (2010) 188 Cal.App.4th 297, 319; see also *Truong v. Glasser* (2009) 181 Cal.App.4th 102, 109 (stating that "[t]he trial court does not weigh the evidence and inferences, but instead merely determines whether a reasonable trier of fact could find in favor of the party opposing the motion, and must deny the motion when there is some evidence that, if believed, would support judgment in favor of the nonmoving party"; also stating that "[t]he evidence of the moving party is strictly construed and that of the opponent liberally construed, and any doubts as to the propriety of granting the motion are to be resolved in favor of the party opposing the motion"); see also *Schmidt v. Super. Ct.* (2020) 44 Cal.App.5th 570, 583 (stating that "[a] judge's function at summary judgment is only to decide if disputed issues of material fact make trial necessary; the judge neither weighs evidence nor assesses credibility").) Defendants' conflicting accounting records demonstrate the existence of a triable issue of material fact as to the amount of damages. Accordingly, Plaintiffs' motion for summary judgment is DENIED.

The court will prepare the order.

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Calendar Line 5
Case Name: Tri Pointe Homes, Inc. vs Arun Ramakumar et al
Case No.: 2015-1-CV-288491

Defendants Arun Ramakumar and Suman Ramakumar ("Defendants")' motion for attorney's fees against plaintiff Tri-Point Homes ("Plaintiff") is DENIED.

Timeliness

Plaintiff is correct that the motion is filed more than 60 days after the Notice of Entry of the dismissal with prejudice was served by Plaintiff. A Notice of Entry of the dismissal was served on August 28, 2024. Sixty days from August 28, 2024, is October 27, 2024. Allowing an extra day because October 27, 2024, was a Sunday is October 28, 2024.[1] Defendants filed their motion three days later on October 31, 2024, which ordinarily would be untimely.

"A notice of motion to claim attorney's fees for services up to and including the rendition of judgment in the trial court – including attorney's fees on an appeal before the rendition of judgment in the trial court – must be served and filed within the time for filing a notice of appeal under rules 8.104 and 8.108 in an unlimited civil case or under rules 8.822 and 8.823 in a limited civil case." (Cal. Rules of Ct., rule ("CRC") 3.1702(b)(1).) Under CRC 8.104(a), a notice of appeal must be filed on or before the earliest of: (i) 60 days after the court clerk serves on the party filing the notice of appeal a document called "Notice of Entry"; (ii) 60 days after the party filing the notice of appeal serves or is served by a party with a document called "Notice of Entry"; or (iii) 180 Days after entry of judgment.

While CRC 3.1702(b)(2) provides that the parties may enter into a stipulation for extension of the time to file the fee motion, no such stipulation was entered into in the present case. Notably, CRC 3.1702(d) provides that the "[f]or good cause, the trial judge may extend the time for filing a motion for attorney's fees in the absence of a stipulation or for a longer period than allowed by stipulation." (See also *Robinson v. U-Haul Co. of California* (2016) 4 Cal.App.5th 304, 326 ["A court may grant a request for extension of time to file a motion for attorney's fees even if the motion is not filed until after the deadline for filing an attorney's fee under rule 3.1702"].

Here, Defendants' reply shows good cause for the late filing of its motion for attorney's fees. On October 28, 2024, the motion and supporting papers were timely served on Plaintiff's counsel. (See Reply Decl. Dawn C. Sweatt, ¶ 2, Ex. A.) On October 28, 2024, Defendants' counsel's office timely submitted the motion for filing with the court. Three days later (on October 31, 2024) Defendant's counsel's office learned that the filing had been rejected because the address on a substitution of attorney form did not match, and thus the substitution was rejected, which ultimately caused a rejection of the motion filing. (*Id*., ¶ 4.) Defendants' counsel's office immediately re-submitted the motion for filing and the motion was ultimately filed on October 31, 2024. (*Id*., ¶ 5.) "Defendants through counsel, utilized all reasonable efforts to timely file this Motion at the first available opportunity upon learning of the

[1] When the 60th day is a Saturday, Sunday, or legal holiday, the time for filing the motion is extended to and including the next day that is not a holiday as provided by CRC rule 1.10(b). (*Maldonado v. Epstein Plastics, Inc*. (2018) 22 Cal.App.5th 1038, 1338.)

rejection." (*Id*., ¶ 6.) Accordingly, the court finds good cause to extend the time for filing to October 31, 2024, and Plaintiff's timeliness objection is OVERRULLED.

Timeliness Notwithstanding

Defendants' motion for fees is based on Plaintiff's dismissal without prejudice.[2] Defendant argues they are the prevailing party on the contract under Civil Code section 1717 and Code of Civil Procedure ("CCP") section 1032. However, when an action is voluntarily dismissed or dismissed as part of a settlement, there is no prevailing party for the purposes of awarding attorney's fees on the contract. (Civ. Code § 1717(b)(2) ["Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section."]; *Statisas v. Goodin* (1998) 17 Cal.4th 599, 615, 619; *Gogri v Jack in the Box, Inc*. (2008) 166 Cal.App.4th 255, 274. The defendant in the dismissed action is not deemed a prevailing party. (Civ. Code § 1717(b)(2); *Bank of America, N.A. v. Mitchell* (2012) 204 Cal.App.4th 1199, 1209, disapproved on other grounds in *Black Sky Capital, LLC v. Cobb* (2019) 7 Cal.5th 156, 165.) Accordingly, Defendants' motion for attorney's fees is DENIED.

Requests for Judicial Notice

Defendants' request for judicial notice is GRANTED.

Plaintiff's request for judicial notice in opposition is GRANTED IN PART. It's GRANTED as to Exhibits A to F and H to I. It's DENIED as to Exhibit G [a page of a Berliner Cohen LLP billing dated 09/24/24] (which is only a portion of Exhibit G to the Declaration of Arun Ramakumar in Support of Motion for Attorney's Fees).

Plaintiff's request for sanctions

Plaintiff's request for the court to exercise its inherent authority to sanction Defendant's counsel (or issue an order to Defendant's counsel to show cause why sanctions should not be assessed) is DENIED.

Plaintiff to prepare the order for signature by the court.

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[2] Defendants' notice claims that it is based on the dismissal without prejudice after the 5-year bar. However, Defendants' motion acknowledges that they never brought any motion to dismiss under the 5-year bar. (See Defendant's MPA fled 10/31/2024, p. 5.) Accordingly, their entitlement to attorneys' fees is based on the dismissal without prejudice filed by Plaintiff.

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