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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

13 ROUTINE ANOMALY LLC, a Nevada
14 Limited Liability Company;

15 Plaintiff,

16 v.

17 SATINE PHOENIX CENSOPLANO, an
18 individual, BURNING QUILL
19 ENTERPRISES, INC., a California
20 Corporation, and DOES 1 – 10,

21 Defendants.

CASE NO. 21STCV25863

*Assigned for all purposes to Dept. 45 and
the Hon. Mel Red Recana*

**NOTICE OF DEMURRER AND
DEMURRER TO COMPLAINT OF
ROUTINE ANOMALY, LLC;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[Filed Concurrently with Declaration of
Michele A. Seltzer in Support Thereof and
Proposed Order]

Date: November 22, 2022
Time: 8:30 a.m.
Dept.: 45

Trial Date: N/A

Date Complaint Filed: December 22, 2021

Reservation ID: 594987245234

NOTICE OF DEMURRER

1
2 TO THE COURT, ALL PARTIES HEREIN AND THEIR RESPECTIVE ATTORNEYS
3 OF RECORD:

4 PLEASE TAKE NOTICE that on November 22, 2022 at 8:30 a.m., or as soon thereafter
5 as this matter may be heard in Department 45 of the above-entitled court located at 111 North Hill
6 Street, Los Angeles, CA 90012, Defendant SATINE PHOENIX CENSOPLANO (“Phoenix” or
7 “Defendant”) will, and hereby does, demur (“Demurrer”) to Plaintiff’s Complaint (“Complaint”) on file by Plaintiff ROUTINE ANOMALY, LLC (“Routine Anomaly” or “Plaintiff”).
8 Defendant’s Demurrer is made pursuant to California *Code of Civil Procedure* §§ 430.10 *et seq*
9 and other relevant sections therein.
10

11 The Demurrer is based on this Notice of Demurrer, the attached Demurrer, the
12 Memorandum of Points and Authorities, the Declaration of Michele A. Seltzer that details the
13 good-faith meet and confer attempts with counsel for Plaintiff, all pleadings in this matter, papers
14 and records on file with the Court, and such argument and evidence as Defendant may present at
15 the time of hearing on this matter.

16
17 DATED: February 25, 2022

SELTZER LEGAL GROUP, P.C.


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19 Michele A. Seltzer
20 Attorneys for Plaintiff
21 SATINE PHOENIX CENSOPLANO
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1 **DEMURRER**

2 Defendant demurs to the Complaint in its entirety and as to each of the following causes
3 of action within the Complaint, jointly and severally, on the following grounds:

4
5 **DEMURRER TO THE ENTIRE COMPLAINT:**

6 1. The Complaint is uncertain as it fails to state whether the relationship between Plaintiff
7 and Defendants at issue arises under California or Nevada State law. (Code of Civil Procedure
8 Section 430.10(f).

9 **DEMURRER TO THE SECOND CAUSE OF ACTION (INTENTIONAL**
10 **MISREPRESENTATION)**

11 1. The second cause of action for intentional misrepresentation fails to state a claim for relief
12 (Code of Civil Procedure Section 430.10(e).

13 **DEMURRER TO THE THIRD CAUSE OF ACTION (FALSE PROMISE)**

14 1. The third cause of action for false promise fails to state a claim for relief (Code of Civil
15 Procedure Section 430.10(e).

16 **DEMURRER TO THE FOURTH CAUSE OF ACTION (BREACH OF CONTRACT)**

- 17 1. The fourth cause of action for breach of contract is time-barred.
- 18 2. The fourth cause of action for breach of contract fails to state a claim for relief (Code of
19 Civil Procedure Section 430.10(e).
- 20 3. The fourth cause of action for breach of contract is uncertain as it fails to allege the terms
21 of the Agreement (Code of Civil Procedure Section 430.10(f).
- 22 4. The fourth cause of action for breach of contract fails to identify whether the contract at
23 issue is written, oral, or implied (Code of Civil Procedure Section 430.10(g).

24 **DEMURRER TO THE FIFTH CAUSE OF ACTION (BREACH OF FIDUCIARY DUTY.)**

- 25 1. The fifth cause of action for breach of fiduciary duty is time-barred.
- 26 2. The fifth cause of action for breach of fiduciary duty fails to state a claim for relief (Code
27 of Civil Procedure Section 430.10(e).
- 28 3. The fifth cause of action for breach of fiduciary duty is uncertain as to the nature of the
relationship that gives rise to the purported fiduciary duty.

1 4. The fifth cause of action for breach of fiduciary duty fails to identify whether the contract
2 upon which the alleged duty is based is written, oral, or implied (Code of Civil Procedure
3 Section 430.10(g).

4 **DEMURRER TO THE SIXTH CAUSE OF ACTION (BREACH OF IMPLIED**
5 **COVENANT OF GOOD FAITH AND FAIR DEALING)**

- 6 1. The sixth cause of action for breach of implied covenant of good faith and fair dealing is
7 time-barred.
8 2. The sixth cause of action for breach of implied covenant of good faith and fair dealing
9 fails to state a claim for relief (Code of Civil Procedure Section 430.10(e).
10 3. The sixth cause of action for breach of implied covenant of good faith and fair dealing
11 fails to identify whether the contract upon which the alleged covenant is based is written,
12 oral, or implied (Code of Civil Procedure Section 430.10(g).

13 **DEMURRER TO THE SEVENTH CAUSE OF ACTION (UNFAIR BUSINESS**
14 **PRACTICES (Bus. & Prof. Code § 17200 et seq.)**

- 15 1. The seventh cause of action for unfair business practices fails to state a claim for relief
16 (Code of Civil Procedure Section 430.10(e).

17 **DEMURRER TO THE EIGHTH CAUSE OF ACTION (UNJUST ENRICHMENT)**

- 18 1. The eighth cause of action for unjust enrichment fails to state a claim for relief (Code of
19 Civil Procedure Section 430.10(e).

20 **DEMURRER TO THE NINTH CAUSE OF ACTION (VIOLATION OF PENAL CODE**
21 **SECTION 496(a))**

- 22 1. The ninth cause of action for violation of penal code section 496(a) fails to state a claim
23 for relief (Code of Civil Procedure Section 430.10(e)).¹

24 ¹ NOTE: The California Supreme Court has granted certiorari to *Siry Investment v.*
25 *Farkhondehpour*, which notes that the case is fully briefed (Case No. S262081), but there is no
26 decision yet rendered as of the date of this Demurrer. See CRC 8.1115(e)(1). To the extent that
27 the Supreme Court does not publish a Decision by the hearing of Defendants' Demurrer and
28 Motion to Strike, Defendant shall not seek a determination as to this cause of action and the
briefing on Penal Code 496(a) in these motions is withdrawn. Notice is hereby given as to this
claim only to the extent that the Supreme Court determines that claim is not proper before the
hearing date on this Motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION**

4 Plaintiff Routine Anomaly, LLC (“Plaintiff” or “the LLC”), a **Nevada entity** that has not
5 posted any bond in this matter, filed this *Verified* Complaint against Defendant Satine Phoenix
6 Censoplano (“Defendant” or “Phoenix”) and Burning Quill Enterprises, Inc. a California
7 Corporation. The Complaint presents glaring statute of limitations and fatal pleading issues that
8 cannot be rehabilitated on a further draft given the verification.

9 Just as importantly, the pleading leaves more questions than answers. Why is a Nevada
10 limited liability company suing in California? Does California law even apply? If so, as to which
11 claims—the contract? Tort? Both?

12 Plaintiff claims both defendants are fiduciaries without alleging any special relationship
13 or even a contractual one (the Complaint identifies acting “officer,” David Rutenberg, and the
14 Nevada SOS identifies the only Manager as his company, Full Mithril Jacket, LLC, a *Florida*
15 entity). Indeed, Phoenix is not identified on any public record as an accountant, attorney, or other
16 licensed professional of any kind. Further, the Complaint—seemingly purposely—concludes that
17 a “contract” exists, but does not specify between (or among?) whom the contract existed, if it is
18 in writing, oral, or implied, the terms of the agreement, or even consideration for the agreement
19 existed.

20 Phoenix has also, for the Court’s record and consideration, filed a complaint against Mr.
21 Rutenberg, bearing LASC Case Number 22STCV05974, which Phoenix will request be deemed
22 Related to this matter.

23 **II. RELEVANT FACTS**

24 The Complaint alleges that in 2018, Plaintiff entered into an agreement with Defendants,
25 where Defendant Phoenix would (sic) Defendant Burning Quill’s bank accounts to hold Routine
26 Anomaly’s incoming funds until Routine Anomaly’s business accounts could be created. Further
27 Defendants agreed to pay Routine Anomaly’s payroll and expenses using Routine Anomaly’s
28 funds they had access to. Defendant Phoenix also agreed to hold an officer position with Routine
Anomaly. (Comp. ¶10). Nothing is alleged as to whether consideration existed for this agreement,

1 what Burning Quill was to do in connection with this agreement, or whether Phoenix acted an
2 officer of Nevada entity, Routine Anomaly upon creation of this agreement.

3 Once Plaintiff's accounts were created, Phoenix stalled on moving incoming monies to
4 Routine Anomaly's accounting and conducted payroll through Burning Quill's accounts.
5 However, the Complaint then concedes that Plaintiff agreed to this arrangement. (Comp. ¶11).
6 As the year progressed, David Rutenberg, an officer for Routine Anomaly, noticed that
7 Defendant Phoenix was making transfers from Routine Anomaly's accounts to her various
8 separate accounts, including but not limited to, her personal accounts and Defendant Burning
9 Quill's business account without proper explanations for these transfers. Mr. Rutenberg became
10 suspicious that the funds were not being used for Routine Anomaly's payroll and expenses, but
11 rather for some other purpose. (Comp. ¶12).

12 As the year 2018 went on, Defendant Phoenix stated that she was too busy to continue
13 payroll and expense administration for Routine Anomaly. Mr. Rutenberg took over the
14 responsibility. Defendant Phoenix was asked to transfer all remaining monies to Routine
15 Anomaly's accounts, and she replied "what money? There isn't any." (Comp. ¶13).

16 After reviewing numbers available from Routine Anomaly's income against know
17 expenses and payroll, it was discovered that a five-figure sum of money was missing and entirely
18 unaccounted for. (Comp. ¶15). Despite discovering the existence of the missing monies in 2018,
19 Rutenberg determined the outstanding amount to be 43,315.05. (Comp ¶17-18).

20 The Nevada Secretary of State website reflects that Plaintiff's Manager is Full Mithril
21 Jacket, LLC, a Florida entity.

22 **III. STANDARD OF REVIEW**

23 Code of Civil Procedure Section 430.10(e) and (f), respectively, provide that a party may
24 file a demurrer to a complaint when the pleading "does not state facts sufficient to constitute a
25 cause of action" or is "uncertain." Concerning the legal sufficiency of a pleading, the sole issue
26 on demurrer if the facts pled, taken as true, state a valid cause of action. *Limandri v. Judkins*
27 (1997) 52 Cal.App.4th 326, 335. The Complaint must show an actionable claim rather than factual
28 conclusions of law. *Careau & Company v. Security Pacific Business Credit, Inc.* (1990) 222
Cal.App.3d 1371, 1390. The complaint must set forth these facts clearly and with precision so

1 that there is nothing left to surmise. *Ankeny v. Lockheed Missiles & Space Co.* (1979) 88
2 Cal.App.3d 531, 537.

3 Code of Civil Procedure Section 430.10(g) provides that a Demurrer is proper where the
4 complaint fails to state whether the alleged pleading is written, oral, or implied.

5 A general demurrer does not admit contentions, deductions or conclusions of fact or law
6 alleged in the complaint, facts impossible in law, or allegations contradicted by the exhibits to the
7 complaint or by matters of which judicial notice may be taken. *Vance v. Villa Park Mobilehome*
8 *Estates* (1995) 36 Cal.App.4th 698, 709. Further, “where from the nature of the defects in the
9 complaint it is probable that plaintiff cannot state a cause of action, a general demurrer may be
10 sustained without leave to amend.” *La Vista Cemetery Assn v. American Savings & Loan Assn*
11 (1970) 12 Cal.App.3d 365, 369 (*Emphasis added*).

12 **IV. THE ENTIRE COMPLAINT IS UNCERTAIN AS IT FAILS TO STATE WHAT**
13 **STATE’S LAW APPLIES TO THE CASE AND EACH CAUSE OF ACTION**
14 **THEREIN**

15 The Complaint identifies Plaintiff as a Nevada entity. It identifies both defendants as
16 California domiciles for purposes of jurisdiction and venue. However, the *applicable law* is
17 unclear in this case and as to which potential claims and even which potential defendants.

18 Specifically, Plaintiff alleges in Paragraph 10 of the Complaint that “Defendant Phoenix
19 also agreed to hold an officer position with Routine Anomaly.” It never alleges that she acted as
20 an “officer” for the LLC at the time of any of the acts alleged in the Complaint. However, to the
21 extent that the claims and duties are alleged to have arisen from Phoenix holding an officer
22 position in a Nevada entity, one would presume that Nevada state law would govern those
23 interests. Stated otherwise: Phoenix would then be an officer acting as such on behalf of a Nevada
24 entity and her duties and obligations, both in existence and in scope, would arise and be governed
25 under the laws of Nevada, notwithstanding where venue may be proper.

26 Indeed, the California Supreme Court encountered a similar question on demurrer in the
27 en banc decision in *Nedlloyd Lines B.V. v. Superior Ct.*, (1992) 3 Cal. 4th 459. The demurrer at
28 issue therein was not brought on failure to state a claim, but rather uncertainty as to the choice of
law on the contract and contract-related claims. While *Nedlloyd* is far more complicated than

1 what is presented here, it does support that the Demurrer here as to the uncertainty of which law
2 applies to which claims is appropriate.

3 The bottom line is that without clarification of the nature of the duties and terms of the
4 “contract” in this case, it is wholly impossible to discern the applicable law that governs the
5 Complaint. Indeed, there may even be *different* states’ laws applied in this instance. Without
6 clarity on the relationships and contract, it is not only impossible to say, but impossible to know
7 that the below analyses of the causes of action under California law is correct or not.

8 **V. PLAINTIFF’S COMPLAINT FAILS TO STATE A CLAIM FOR RELIEF FOR**
9 **NUMEROUS CAUSES OF ACTION THEREIN OR, ALTERNATIVELY, IS**
10 **TIME-BARRED**

11 **A. Plaintiff’s Claim for Intentional Misrepresentation and False Promise Fail to**
12 **State a Claim for Relief**

13 Plaintiff’s Complaint does not state sufficient facts to supports its claims for relief for its
14 second and third causes of action.

15 The elements of a cause of action for Intentional Misrepresentation are “(1) a
16 misrepresentation, (2) with knowledge of its falsity, (3) with the intent to induce another's reliance
17 on the misrepresentation, (4) actual and justifiable reliance, and (5) resulting damage. (*Daniels v.*
18 *Select Portfolio Servicing, Inc.* (2016) 246 Cal. App. 4th 1150, 1166; *Chapman v. Skype Inc.*
19 (2013) 220 Cal.App.4th 217, 230–231)

20 Similarly, a cause of action for Deceit by False Promise pursuant to Civil Code § 1709
21 requires that a Plaintiff sufficiently plead fraud, i.e. “(a) misrepresentation (false representation,
22 concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e.,
23 to induce reliance; (d) justifiable reliance; and (e) resulting damage.” (*Lazar v. Superior Court*
24 (1996) 12 Cal.4th 631, 638 (Lazar).)

25 Intentional Misrepresentation and False Promise, as subspecies of the Fraud cause of
26 action, “must be pleaded with specificity.” (*Chapman, supra*, 220 Cal.App.4th at p. 231) “The
27 specificity requirement means a plaintiff must allege facts showing **how, when, where, to whom,**
28 **and by what means** the representations were made, and, in the case of a corporate defendant, the
plaintiff must allege the **names of the persons who made the representations, their authority**

1 to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and
2 when the representation was made.” (emphasis added; *Daniels, supra*, 246 Cal. App. at 1166–
3 67; *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 793)

4 Plaintiff’s Complaint utterly fails to meet the requisite specificity requirement for each
5 cause of action herein. Nowhere within the four corners of the Complaint does Plaintiff allege
6 how, when, where, to whom, or by what means the alleged misrepresentations were made. Nor
7 does Plaintiff allege the names of the persons who made such alleged misrepresentations, their
8 authority to make any representations, to whom they spoke, what they said or wrote, nor when
9 the representation was made.

10 Plaintiff merely alleges that “Routine Anomaly entered into an agreement with
11 Defendants,” with *no* representations alleged as to what each Defendant made, that reliance was
12 reasonable or any other elements of this claim. Further, all that the Complaint alleges is that there
13 was a shortfall in the returned monies—but alleges absolutely no scienter. This is insufficient to
14 meet the high pleading standards required for Intentional Misrepresentation and False Promise.

15 Accordingly, Plaintiff has failed to sufficiently plead its Second and Third Causes of
16 Action.

17 **B. Plaintiff’s Claim for Breach of Contract is Time-Barred, Fails to State a**
18 **Claim for Relief, and Fails to Identify Whether the Contract was Written,**
19 **Oral, or Implied; and Fails to State the Terms of the Contract**

20 Pursuant to *C.C.P.* § 430.10(g), a party may object by demurrer to a Complaint on the
21 grounds that the pleading, “[i]n an action founded upon a contract, it cannot be ascertained from
22 the pleading whether the contract is written, is oral, or is implied by conduct.”

23 Plaintiff’s Complaint only states that “Routine Anomaly entered into an agreement with
24 Defendants,” and that “Further Defendants [*sic*] agreed to pay Routine Anomaly’s payroll and
25 expenses using Routine Anomaly’s funds they had access to. Defendant Phoenix also agreed to
26 hold an officer position with Routine Anomaly.” (Complaint, Page 3, Lines 9-13)

27 The face of the Complaint fails to allege whether the contract was written, oral, or was
28 implied by conduct, and is subject to demurrer pursuant to *C.C.P.* §430.10(g). In fact, the
Complaint states none of the terms of this purported contract, including whether any consideration

1 exists for the contract, and therefore fails to plead that any contract exists. (*Kumaraperu v.*
2 *Feldsted* (2015) 237 Cal.App.4th 60). A written contract may be pleaded either by its terms—set
3 out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated
4 therein by reference—or by its legal effect. (*Heritage Pacific Financial, LLC v. Monroy* (2013)
5 215 Cal.App.4th 972.).

6 As a result, this pleading fails in three essential ways to state a claim for breach of contract
7 under 430.10: (1) it fails to specify the manner of the agreement (subsection (g)); (2) it fails to
8 set out the terms of the agreement (subsections (e, f)); and (3) it fails to even establish that an
9 actual contract exists since no consideration is alleged (subsections (e, f)).

10 The failure to properly allege the nature of the contract gives rise to a presumption that
11 the contract was oral. Pursuant to C.C.P. § 339, a two-year statute of limitations applies to oral
12 contracts. Plaintiff’s Complaint alleges that the agreement between Routine Anomaly and
13 Defendants was entered into “[i]n 2018.” (Complaint, Page 3, Line 8). Therefore, since Plaintiff
14 filed its Complaint on July 14, 2021, Plaintiff’s cause of action for breach of oral contract was
15 filed at least seven (7) months after the statute of limitations expired.

16 Accordingly, Plaintiff has insufficiently plead its Cause of Action for Breach of Contract.

17 **C. Plaintiff’s Claims for Breach of Fiduciary Duty and Breach of the Implied**
18 **Covenant of Good Faith and Fair Dealing are Time-Barred**

19 Plaintiff’s allegations that Defendant breached the implied covenant of good faith and fair
20 dealing and Defendant’s alleged breach of a fiduciary duty to Plaintiff appear to arise out of the
21 alleged “agreement whereby Defendants would keep Plaintiff’s incoming funds in Defendant
22 Burning Quill’s account, and use Plaintiff’s funds to pay their payroll and expenses.” (Comp.
23 ¶10).

24 The Complaint also alleges that Phoenix “agreed to hold an officer position,” but never
25 claims that she did so or that any actions described in the Complaint arise from her being an
26 officer. However, to the extent that Phoenix is an officer of a Nevada limited liability company,
27 her fiduciary duties to the LLC would arise under Nevada, not California law, regardless of venue.
28

1 Pursuant to *C.C.P.* § 430.10(g), a party may object by demurrer to a Complaint on the
2 grounds that the pleading, “[i]n an action *founded upon a contract*, it cannot be ascertained from
3 the pleading whether the contract is written, is oral, or is implied by conduct.” (emphasis added)

4 The statute of limitations period for claims based on a written instrument is four years
5 (*C.C.P.* § 337(1)) and two years for claims based on an oral agreement (*C.C.P.* § 339(1)).

6 Here, Plaintiff has failed to make clear whether the alleged contract which purportedly
7 gives rise to the covenant of good faith and fair dealing was written, oral, or implied by conduct.
8 Since Plaintiff has not attached nor referred to any written agreement and has insufficiently plead
9 the causes of action based on the allegations of an agreement’s existence, Defendant assumes the
10 purported agreement was oral. Pursuant to *C.C.P.* § 339 there is a two-year statute of limitations
11 applicable to oral contracts. Plaintiff’s Complaint alleges that the agreement between Routine
12 Anomaly and Defendants was entered into “[i]n 2018.” (Complaint, Page 3, Line 8). Therefore,
13 since Plaintiff filed its Complaint on July 14, 2021, Plaintiff’s causes of action which arise out of
14 the alleged existence of an oral contract was filed at least seven (7) months after the statute of
15 limitations expired.

16 Notwithstanding the foregoing, the Complaint is fatally uncertain that California law even
17 applies to this tort claim since it is unclear where the fiduciary duty alleged arises—an agreement
18 to hold funds or an agreement to act as an officer of a Nevada company.

19 **D. Plaintiff’s Claim for Breach of Business and Professions Code § 17200 *et seq***
20 **Fails to State a Claim for Relief**

21 *B&P* § 17200 (“UCL”) only applies to *businesses* conducting business, and not
22 individuals.

23 The UCL is designed to target business practices that create an unfair competition over
24 competitors and/or dupe the consumer public. The cases and CACI instructions (3300 *et seq.*)
25 make clear that the UCL is aimed at things like price fixing and false advertising. It simply does
26 not apply between breach of contract claims between two individuals, neither of whom are in the
27 business of the type of transaction for which they were engaged, and neither of whom stand to
28 gain a competitive advantage over a competitor (since none exists).

1 The California Court of Appeals has affirmed a ruling sustaining a demurrer without leave
2 to amend on facts that potentially implicated public considerations (therefore, must more
3 potentially applicable facts than present here). Note the below language from *Marsh v. Anesthesia*
4 *Services Medical Group, Inc.* (2011) 200 Cal. App. 4th 480, 500-501, 132 Cal. Rptr. 3d 660:

5 In sustaining the demurrers to this claim in the TAC without leave to amend, the trial court
6 first clarified that Appellant was not alleging any unlawful or fraudulent business acts, but
7 instead “unfair” business practices. The court relied on the definitions in *Cel-Tech, supra*,
8 20 Cal.4th 163, 83 Cal.Rptr.2d 548, 973 P.2d 527, for determining when such a claim of
9 unfairness to competitors under section 17200 is actionable: When it is “conduct that
10 threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of
11 those laws because its effects are comparable to or the same as a violation of the law, or
[it] otherwise significantly threatens or harms competition.” (*Cel-Tech, supra*, at pp. 186–
187, 83 Cal.Rptr.2d 548, 973 P.2d 527.)

12 The trial court then concluded the TAC did not successfully allege unfairness, in the form
13 of “facts which violate antitrust law, are tethered to some legislatively declared policy, or
14 establish proof of some actual or threatened impact on competition. (*Cel-Tech, supra*, 20
15 Cal.4th at pp. 186–187, 83 Cal.Rptr.2d 548, 973 P.2d 527.) Instead, Plaintiff alleges only
16 individualized harm which does not support a claim for violation of the UCL. [Citation.]
While Plaintiff concludes Defendants' conduct is anticompetitive activity which harms
consumers, she fails to assert sufficient facts to support an ‘unfair’ business act.”

17 . . .
18 The individualized relief she seeks, injunctions against the ongoing use of the hospital
19 rules and policies of which she complains, or restitution of lost income, are not appropriate
20 recovery or civil penalties under the UCL. (§ 17206.) Such relief could undermine
21 legitimate public policy concerns and would be inconsistent with judicial recognition of
special expertise in the field of hospital administration. (*Redding, supra*, 208 Cal.App.3d
at p. 107, 255 Cal.Rptr. 806.). *Id.* at 502.

22 The instant case presents even less implication to the public than *Marsh*. Plaintiff has
23 alleged that Defendant Phoenix, as an individual, agreed to hold and move funds on Plaintiff's
24 behalf. It has failed to allege any “business” *at all*.

25 Accordingly, Plaintiff has failed to state a cause of action for Unfair Business Practices
26 pursuant to § 17200 because it is inapplicable to Defendant Phoenix.

27 **E. Plaintiff's Claim for Unjust Enrichment is Time-Barred and Fails to State a**
28 **Claim for Relief**

1 It is well-settled under California law that there is no cause of action for unjust enrichment.
2 (*Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793; *McKell v. Washington*
3 *Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1490; *Durell v. Sharp Healthcare* (2010) 183
4 Cal.App.4th 1350, 1370. “Unjust enrichment is a ‘general principal, underlying various legal
5 doctrines and remedies,’ rather than a remedy itself.” (*Melchior*, supra, 106 Cal.App.4th at 793).

6 The proper cause of action to plead when seeking a claim for unjust enrichment is a
7 “Quasi-Contract claim seeking restitution.” (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014)
8 223 Cal.App.4th 221, 231). The court in *Rutherford* stated that it would “construe the [unjust
9 enrichment] cause of action as a quasi-contract claim seeking restitution.” (*Id.*) In fact, multiple
10 courts have graciously bailed out plaintiffs who erroneously pled a cause of action for unjust
11 enrichment in place of a claim for restitution under quasi contract, stating that “[u]njust
12 enrichment is synonymous with restitution.” (*Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th
13 1350, 1370); *See also Dinosaur Development, Inc. v. White* (1989) 216 Cal.App.3d 1310, 1314).
14 It is equally well-established that “[a]s a matter of law, an unjust enrichment claim does not lie
15 where the parties have an enforceable express contract.” (*Durell*, supra, 183 Cal.App.4th at 1370).
16 “However, ‘restitution may be awarded in lieu of breach of contract damages when the parties
17 had an express contract, but it was procured by fraud or is unenforceable or ineffective for some
18 reason.’” *Rutherford Holdings*, supra, 223 Cal.App.4th at 231 (quoting *McBride v. Boughton*
19 (2004) 123 Cal.App.4th 379, 387 [20 Cal.Rptr.3d 115]. “Thus, a party to an express contract can
20 assert a claim for restitution based on unjust enrichment by ‘alleg[ing in that cause of action] that
21 the express contract is void or was rescinded.’” (*Rutherford Holdings*, supra, 223 Cal.App.4th at
22 231 (quoting *Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44
23 Cal.App.4th 194, 203).

24 Here, Plaintiff’s claim cannot be rescued even by gracious intervention by the Court, as
25 Plaintiff has alleged the existence of an express contract but has failed to allege that it is void or
26 was rescinded. Accordingly, Plaintiff has failed to state a claim for relief.

27 **F. Plaintiff’s Claim for Violation of Penal Code § 496(a) is Not Currently a Valid**
28 **Cause of Action**

1 There is also no cause of action at this time in the Second District based on Penal Code
2 496(a) given the facts of Plaintiff's verified Complaint. The California Supreme Court has
3 granted certiorari to *Siry Investment v. Farkhondehpour*, which notes that the case is fully briefed
4 (Case No. S262081), but there is no decision yet rendered. See *CRC 8.1115(e)(1)*.

5 **VI. CONCLUSION**

6 Plaintiff has failed to allege facts sufficient to constitute the causes of action contained in
7 its Complaint as alleged herein, and its causes of action are uncertain, fail to state a claim, or are
8 time-barred. Based on the foregoing, Defendant respectfully requests that this Court sustain the
9 Demurrer herein against each cause of action contained in Plaintiff's Complaint.²

10
11 DATED: February 25, 2022

SELTZER LEGAL GROUP, P.C.



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13 _____
14 Michele A. Seltzer
15 *Attorneys for Plaintiff*
16 SATINE PHOENIX CENSOPLANO

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27 _____
28 ² To the extent that a decision is favorably rendered by the hearing date, Defendant respectfully requests the ability to provide supplemental briefing in light of the final ruling and that this claim be ruled on in that event.

PROOF OF SERVICE

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I am employed in Los Angeles County, State of California. I am over the age of 18 years and not a party to this action. My business address is 12121 Wilshire Boulevard, Suite 300, Los Angeles, CA 90025.

On February 25, 2022, I served the foregoing document(s), bearing the name(s): **NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT OF ROUTINE ANOMALY, LLC; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on each interested party in this action as follows:

Steven Roeser, Esq.
Stimmel, Stimmel, and Roeser
48 Gold Street, 2nd Floor
San Francisco, CA 94133
sroeser@stimmel-law.com

BY ELECTRONIC SERVICE [CCP 1010.6(a)(1) & (2)]. On February 25, 2022, at the time indicated on the receipt from the approved electronic service provider (EFSP), I arranged for the EFSP to provide electronic notification of the service of foregoing document(s) by sending an electronic message to one or more of the recipients at each firm or entity using the electronic notification address indicated on this Proof of Service, and such message provides a hyperlink at which the served document may be viewed and downloaded.

BY PERSONAL DELIVERY: I personally served the above-named party(ies) by delivering such envelope(s) on this date as indicated above.

BY MAIL: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY FEDERAL EXPRESS: I delivered such envelope on this date to a Federal Express pick-up station with postage pre-paid for overnight delivery to the above-mentioned individuals.

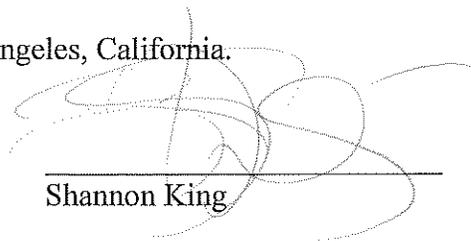
BY E-MAIL: I transmitted said document(s) via e-mail on this date to the above-named party(ies).

BY FACSIMILE: I transmitted said document(s) via facsimile on this date to the above-named party(ies).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

///

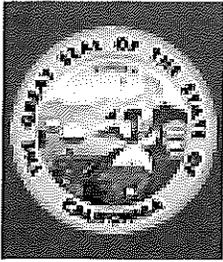
Executed on February 25, 2022, at Los Angeles, California.



A handwritten signature in blue ink, appearing to read 'Shannon King', is written over a horizontal line. The signature is stylized and somewhat illegible.

Shannon King

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Journal Technologies Court Portal

Court Reservation Receipt

Reservation

Reservation ID:
594987245234

Status:
RESERVED

Reservation Type:
Demurrer - with Motion to
Strike (CCP 430.10)

Number of Motions:
1

Case Number:
21STCV25863

Case Title:
ROUTINE ANOMALY LLC, A
NEVADA LIMITED LIABILITY
COMPANY vs BURNING
QUILL ENTERPRISES, INC., A
CALIFORNIA
CORPORATION, et al.

Filing Party:
Satine Phoenix Censoplano
(Defendant)

Location:
Stanley Mosk Courthouse -
Department 45

Date/Time:
November 22nd 2022,
8:30AM

Confirmation Code:
CR-XY5RVGJYMMVNDPEPJ

Fees

Description	Fee	Qty	Amount
Demurrer - with Motion to Strike (CCP 430.10)	120.00	1	120.00
Credit Card Percentage Fee (2.75%)	3.30	1	3.30
TOTAL			\$123.30

Payment

Amount:
\$123.30

Type:
Visa

Account Number:
XXXX3796

Authorization:
09777G

[!\[\]\(378038420973c474427b09381a3aac1a_img.jpg\) Back to Main](#)

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