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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1440 SPORTS MANAGEMENT LIMITED,
Plaintiff,
v.
PGA TOUR, INC., et al.,
Defendants.

Case No. 22-cv-02774-TLT

ORDER REGARDING MOTIONS TO DISMISS

Re: ECF Nos. 54, 55

Pending before the Court is Defendants PGA Tour, Inc. and Jay Voelker’s and Defendant Fortinet, Inc.’s motions to dismiss Plaintiff’s amended complaint. ECF Nos. 54, 55. For the reasons below, the Court **GRANTS IN PART** and **DENIES IN PART** PGA Tour’s motion and **GRANTS** Fortinet’s motion. Plaintiff may file an amended complaint within 14 days of this order.

I. BACKGROUND

Plaintiff 1440 Sports Management Limited’s business is “identifying mutually beneficial partnership opportunities for sports organizations like PGA Tour and sponsors like Fortinet.” First Amended Complaint (“FAC”) ¶ 6, ECF No. 39. Plaintiff generally charges a commission of 10-20% of the overall sponsorship fee for making introductions between sports organizations and sponsors, with 12.5% as the standard introducer’s fee. *Id.* ¶¶ 7, 22. Ricky Paugh was acting as an agent of 1440 Sports during the underlying events. *Id.* ¶ 9.

This suit relates to Fortinet’s sponsorship of a golf tournament organized by PGA Tour in Napa, California. On January 12, 2021, Paugh, on behalf of Plaintiff, had a call with Defendant Jay Voelker, Vice President of Business Development at PGA Tour, and another executive of PGA Tour, Phil Kennard. *Id.* ¶¶ 31, 32. The parties discussed PGA Tour’s requirements for sponsorship of the upcoming golf tournament and Plaintiff’s compensation. *Id.* ¶ 33. Voelker and

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1 Kennard informed Paugh that PGA Tour has a policy against paying agencies a commission
2 consisting of a percentage of the gross sponsorship fee. *Id.* Instead, they suggested that PGA
3 Tour would allow Plaintiff “to add a margin on top of the sponsorship fee that PGA Tour was
4 seeking, to cover his commission.” *Id.* An alternative method was adding a margin “on top of the
5 fee paid to the tournament operator.” *Id.* Paugh agreed during the call to proceed with the two
6 ways for compensation. *Id.* The parties on the call did not memorialize their agreement on paper.
7 *Id.* ¶ 34.

8 On January 14, 2021, Paugh had a separate call with representatives of Defendant Fortinet.
9 *Id.* ¶ 38. Paugh relayed to Fortinet the total sponsorship fee that included a margin added for
10 Plaintiff’s compensation. *Id.* ¶ 39.

11 Subsequently, on January 21, 2021, Plaintiff, PGA Tour, and Fortinet attended a call
12 wherein the parties discussed the sponsorship. *Id.* ¶ 42. The following day, Voelker and Kennard
13 from PGA Tour informed Paugh that PGA Tour would not permit either of the compensation
14 schemes previously discussed. *Id.* ¶ 45. Paugh then sought compensation directly from Fortinet
15 and was also refused. *Id.* ¶¶ 48, 50, 51.

16 Defendants PGA Tour and Fortinet entered into a sponsorship agreement in March 2021.
17 *Id.* ¶ 54. The agreement did not compensate Plaintiff for the introduction. *Id.* ¶ 68. As such,
18 Plaintiff brought the instant action, alleging (1) breach of contract against PGA Tour; (2) quantum
19 meruit against PGA Tour and Fortinet; (3) intentional misrepresentation against PGA Tour and
20 Voelker; (4) negligent misrepresentation against PGA Tour and Voelker; (5) false promise against
21 PGA Tour and Voelker; and (6) violation of the Unfair Competition Law (“UCL”) against PGA
22 Tour and Fortinet. ECF No. 39. In response, Defendants PGA Tour and Voelker filed a motion to
23 dismiss. ECF No. 54. Fortinet also filed a motion to dismiss. ECF No. 55.

24 **II. JUDICIAL NOTICE**

25 Fortinet requests judicial notice of a Scope of Work (“SOW”) agreement between Fortinet
26 and Plaintiff and an invoice dated October 8, 2021. ECF No. 56. The exhibit lists services that
27 Plaintiff agreed to perform for a set fee. Plaintiff opposes this request. During oral argument,
28 Fortinet averred that only the unsigned agreement exists, and that Plaintiff does not challenge the

1 authenticity of the agreement. Plaintiff, however, challenges whether this agreement covers the
2 introduction service it allegedly provided Fortinet for which it seeks compensation in this suit.
3 The Court is also unclear when the parties agreed to the terms of this agreement. Accordingly, the
4 Court take judicial notice of the existence of this agreement and invoice but not of the facts within.

5 Fortinet also requests judicial notice of a Master Services Agreement between Fortinet and
6 Plaintiff. ECF No. 63. Plaintiff also opposes this request. ECF No. 64. Fortinet argues that
7 statements from a deposition make clear the applicability of this exhibit to the instant action.
8 During oral argument, Fortinet stated that the Master Services Agreement and the SOW are part of
9 the same agreement. However, this relationship is established by a deposition transcript. The
10 Court is not aware of, and Fortinet does not cite to, caselaw that supports the proposition that a
11 deposition can support the judicial notice of an exhibit at the pleading stage. Thus, while the
12 Master Services Agreement and the SOW may be related, the Court does not consider it at this
13 time, as its relevance is dependent on evidence not in the FAC, a deposition transcript.
14 Accordingly, the Court declines to take judicial notice of this exhibit.

15 **III. LEGAL STANDARD**

16 A party may move to dismiss for “failure to state a claim upon which relief can be
17 granted.” Fed. R. Civ. P. 12(b)(6). To overcome a motion to dismiss, a plaintiff’s “factual
18 allegations [in the complaint] ‘must . . . suggest that the claim has at least a plausible chance of
19 success.’” *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556
20 U.S. 662 (2009) and *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007)). The court
21 “accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light
22 most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d
23 1025, 1031 (9th Cir. 2008). “A claim has facial plausibility when the Plaintiff pleads factual
24 content that allows the court to draw the reasonable inference that the Defendant is liable for the
25 misconduct alleged.” *Iqbal*, 556 U.S. at 678. “The plausibility standard is not akin to a
26 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted
27 unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556). “Although for the purposes of a motion to
28 dismiss [the Court] must take all of the factual allegations in the complaint as true,” the Court is

1 “not bound to accept as true a legal conclusion couched as a factual allegation.” *Id.* at 678.

2 **IV. DISCUSSION**

3 **A. Breach of Contract**

4 The breach of contract claim is brought against PGA Tour. “To prevail on a cause of
5 action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff’s
6 performance of the contract or excuse for nonperformance, (3) the defendant’s breach, and (4) the
7 resulting damage to the plaintiff.” *Richman v. Hartley*, 224 Cal. App. 4th 1182, 1186 (2014).

8 PGA Tour argues that Plaintiff’s breach of contract claim fails because no valid contract
9 existed. Specifically, PGA Tour argues that the terms of the contract were not definite and thus
10 there was no meeting of the minds. PGA Tour’s Mot. at 8:14–9:27, ECF No. 54. PGA Tour also
11 argues that a third-party sponsor is needed to complete the three-way agreement, as the
12 commission fees to Plaintiff were to be paid by the sponsor. *Id.* at 8:3–13. In addition, PGA Tour
13 argues that there was “no agreement to the amount of fee Plaintiff would receive from the PGA
14 Tour and what conditions would have to be satisfied in order for it to receive any such fees.” PGA
15 Tour’s Reply at 3:13–15, ECF No. 59.

16 Plaintiff argues instead that it alleged a valid contract:

17 PGA Tour contracted with 1440 Sports to have 1440 Sports attempt
18 to locate a buyer that would be willing to pay a large annual sponsor
19 fee. And PGA Tour agreed that if 1440 Sports did so, 1440 Sports
would be compensated by being allowed to add a margin on top of
the fee that PGA would receive.

20 Opp’n to PGA Tour at 3:25–27, ECF No. 58. Plaintiff argues that PGA Tour offered to
21 compensate Plaintiff by allowing it to add a margin on top of the sponsorship fee PGA Tour was
22 seeking or add a margin on top of the fee paid to the tournament operator.

23 The Court finds that Plaintiff plausibly pled a claim for breach of contract. Accepting
24 Plaintiff’s allegations as true, Plaintiff alleged both parties agreed to the service that each would
25 perform—Plaintiff would locate a sponsor and PGA Tour would allow a margin to be added. This
26 is sufficient for the Court to find that Plaintiff plausibly alleged an oral contract.

27 PGA Tour argues that no contract existed because a material term, Plaintiff’s
28 compensation, was uncertain. As alleged, however, Plaintiff’s fees would be whatever Plaintiff

1 can negotiate with the sponsor. Thus, as Plaintiff’s fees come from the sponsor, and not PGA
2 Tour, the Court accepts at this stage Plaintiff’s averment that the amount of Plaintiff’s
3 compensation is not a material term—the addition of a margin is.

4 PGA Tour also argues that it “would not compensate Plaintiff for any introduction out of
5 its own pocket.” Reply at 8:20–21. However, as alleged, PGA Tour offered to compensate
6 Plaintiff by allowing it to add a margin on top of the sponsorship fee. Thus, on its face, PGA Tour
7 is not paying “out of its own pocket”—it is transferring to Plaintiff the margin that it allowed
8 Plaintiff to add on top of the sponsorship fee. The juxtaposition of the allegation that PGA Tour
9 has a policy against paying a commission consisting of a percentage of the gross sponsorship fee
10 and the alternative of adding a margin is sufficient for the Court to draw the inference that a
11 percentage commission is a different form of compensation from a margin. *See* FAC ¶ 33. Thus,
12 the Court is not convinced by PGA Tour’s argument that its policy against commissions precludes
13 the addition of a margin at this stage.

14 PGA Tour’s reliance on *Bustamante v. Intuit, Inc.*, 141 Cal. App. 4th 199 (2006) is
15 inapposite for the proposition that the oral agreement did not exist because it relied on a third
16 party. There, the court found that the terms of an oral contract were uncertain, because a series of
17 material terms were unsettled before and after the alleged commitment: “the form and amount of
18 [plaintiff’s] compensation; the extent, duration, and nature of his management role, if any; the
19 amount of [defendant’s] royalty; the equity percentage held by him, ‘the management team,’
20 [defendant], and outside investors; and the liquidity path for both [plaintiff] and investors.”
21 *Bustamante*, 141 Cal. App. 4th at 211. The court there also found that “[c]learly there was no
22 expression of mutual consent to create a company without investor financing, which in turn could
23 not be obtained without first ironing out the details of the contemplated network of relationships.”
24 *Id.* at 213. Thus, the court there did not find that an oral agreement failed to exist because it was a
25 three-way agreement; the agreement did not exist because the terms were uncertain. Here, as
26 alleged by Plaintiff, the terms are that Plaintiff would find a sponsor, and PGA Tour would
27 facilitate in Plaintiff being compensated by the amount of margin that Plaintiff can secure with the
28 sponsor. As such, the Court finds that the oral agreement as alleged is not a three-way agreement.

1 At this stage, taking into consideration counsel’s arguments, the Court finds that Plaintiff’s
2 allegations allow the Court to draw the reasonable inference that an oral agreement existed and
3 was subsequently breached. The Court does not speculate as to the compensation schemes in
4 other sponsored sports events. Accordingly, PGA Tour’s motion to dismiss Plaintiff’s breach of
5 contract claim is denied.

6 **B. Quantum Meruit**

7 The quantum meruit claim is brought against PGA Tour and Fortinet. “The elements of a
8 claim based on quantum meruit are: ‘(1) that the plaintiff performed certain services for the
9 defendant, (2) their reasonable value, (3) that they were rendered at defendant’s request, and (4)
10 that they are unpaid.’” *Tenet Healthsystem Desert, Inc. v. Fortis Ins. Co.*, 520 F. Supp. 2d 1184,
11 1196 (C.D. Cal. 2007) (citation omitted).

12 **1. Existence of an Oral Agreement**

13 Fortinet argues that the existence of an oral argument with PGA Tour precludes Plaintiff’s
14 claims of quantum meruit against Fortinet. *See* Fortinet’s Reply at 4:1–15 (collecting cases), ECF
15 No. 60.

16 Plaintiff argues that its quantum meruit claim is pled in the alternative. Specifically,
17 Plaintiff argues that its quantum meruit claim does not incorporate its allegations regarding an
18 enforceable oral argument.

19 “A plaintiff may not . . . pursue or recover on a quasi-contract claim if the parties have an
20 enforceable agreement regarding a particular subject matter.” *Klein v. Chevron U.S.A., Inc.*, 202
21 Cal. App. 4th 1342, 1388 (2012). “A quantum meruit or quasi-contractual recovery rests upon the
22 equitable theory that a contract to pay for services rendered is implied by law for reasons of
23 justice. However, it is well settled that there is no equitable basis for an implied-in-law promise to
24 pay reasonable value when the parties have an actual agreement covering compensation.” Thus,
25 Plaintiff cannot plausibly allege a claim for quantum meruit if it also alleges that an oral
26 agreement exists.

27 Here, Plaintiff incorporates its allegations regarding the existence of an oral agreement into
28 Plaintiff’s quantum meruit claim. *See, e.g.*, FAC ¶ 15 (“Defendants PGA Tour and Voelker . . .

1 entered an agreement with 1440 Sports regarding compensation for 1440 Sports for connecting
2 PGA Tour with a potential sponsor.”); *id.* ¶ 35 (“Mr. Paugh was comfortable proceeding on the basis
3 of an oral agreement.”). While Plaintiff may plead in the alternative, as pled, Plaintiff’s quantum
4 meruit claim is internally inconsistent, as it incorporates the allegations that an oral agreement exists
5 between Plaintiff and PGA Tour. While Plaintiff need not explicitly state the words “in the
6 alternative,” it must allege facts that support its claim.

7 In addition, while Plaintiff argues that it “does not allege that Fortinet and 1440 Sports had an
8 express contract governing the terms of 1440 Sports’ compensation for making an introduction
9 between Fortinet and PGA Tour,” Plaintiff alleged that Plaintiff “approached Fortinet, rather than PGA
10 Tour, for compensation for making the introduction.” FAC ¶ 47. Thus, the FAC did not distinguish
11 between compensation from PGA Tour and compensation from Fortinet, as Plaintiff now argues.

12 Accordingly, for these reasons, Plaintiff’s claim of quantum meruit against Fortinet and
13 PGA Tour is dismissed, with leave to amend.

14 2. Services Rendered at Fortinet’s Request

15 Fortinet argues that it did not request Plaintiff’s introduction services before they were
16 performed. Specifically, Fortinet argues that, prior to informing Fortinet about the sponsorship
17 opportunity, Plaintiff performed its introductory service during the call with PGA Tour.

18 Plaintiff, instead, argues that it sufficiently alleged Fortinet’s request. Plaintiff argues that
19 Fortinet requested a sponsorship opportunity prior to Plaintiff fulfilling the requested service by
20 revealing Fortinet’s name to PGA Tour.

21 The Court finds that Plaintiff did not sufficiently allege facts that plausibly show Plaintiff’s
22 services were rendered at Fortinet’s request. First, the FAC did not include allegations that
23 Fortinet requested Plaintiff’s services to secure a sponsorship opportunity. Instead, the FAC
24 alleged that “Fortinet wanted to explore using a sports sponsorship to expand its reach in the US
25 market too.” FAC ¶ 26. In addition, the FAC alleged that “[w]hen 1440 Sports reached out to
26 Fortinet and stated that it had identified a potential sponsorship opportunity, Fortinet expressed
27 interest in the sponsorship opportunity and requested that 1440 Sports make the connection.” *Id.* ¶
28 79. These allegations are insufficient to support Plaintiff’s argument that Fortinet requested

1 Plaintiff's service, as they do not establish the exact service requested or the timing of the request.
2 Moreover, the FAC did not distinguish between the service requested by Fortinet and PGA Tour.
3 This cuts into Plaintiff's arguments that distinguish between the two. Accordingly, Plaintiff's
4 claim of quantum meruit against Fortinet is also dismissed because Plaintiff did not plausibly
5 plead that services were rendered at Fortinet's request, with leave to amend.

6 3. Services Rendered at PGA Tour's Request

7 PGA Tour argues that Plaintiff's claim fails "because Plaintiff cannot show that it rendered
8 any services to the PGA Tour under an expectation that the PGA TOUR would compensate
9 Plaintiff." PGA Tour's Reply at 10:16–18, ECF No. 59.

10 As Plaintiff argues, however, this is contrary to law. As the Ninth Circuit stated, "the law
11 does 'not require that a plaintiff expect compensation from the defendant himself in order to prove
12 a quantum meruit claim.'" *Taylor v. Google LLC*, No. 20-CV-07956-VKD, 2022 WL 4635969, at
13 *5 (N.D. Cal. Sept. 30, 2022) (citing *In re De Laurentiis Entm't Group, Inc.*, 963 F.2d 1269, 1273
14 (9th Cir. 1992)). "To require a plaintiff seeking quantum meruit recovery to prove that the parties
15 intended that the defendant compensate her directly for her services would conflate quantum
16 meruit with implied-in-fact contracts by requiring the plaintiff to prove an implicit agreement to
17 pay for services." *In re De Laurentiis Entm't Group*, 963 F.2d at 1273. "The whole point of
18 quantum meruit recovery is to compensate plaintiffs who have provided a benefit to defendants
19 but who do not have a contract—express or implied—with those defendants." *Id.*

20 Here, an agreement between PGA Tour and Plaintiff is not required. Moreover, Plaintiff's
21 expectation that it would be compensated by the third-party sponsor is not fatal to the claim.
22 Rather, on its face, Plaintiff performed the service of securing a sponsor for the tournament at
23 PGA Tour's request and expected to be compensated. Even if there was no agreement between
24 PGA Tour and Plaintiff, Plaintiff has sufficiently alleged that it performed a service for PGA Tour
25 by at least setting up calls that resulted in a sponsorship. These allegations are sufficient at this
26 stage. As such, the Court does not dismiss Plaintiff's quantum meruit claim based on the theory
27 that Plaintiff did not plausibly plead that it performed services at PGA Tour's request.

28 //

1 **4. Existence of the SOW**

2 Fortinet argues that the SOW covers the same subject matter as Plaintiff’s claims,
3 foreclosing Plaintiff’s quantum meruit claim. As one court explained:

4 Quantum meruit is an equitable theory which supplies, by implication
5 and in furtherance of equity, implicitly missing contractual terms.
6 Contractual terms regarding a subject are not implicitly missing when
7 the parties have agreed on express terms regarding that subject. A
8 quantum meruit analysis cannot supply ‘missing’ terms that are not
 missing. ‘The reason for the rule is simply that where the parties have
 freely, fairly and voluntarily bargained for certain benefits in
 exchange for undertaking certain obligations, it would be inequitable
 to imply a different liability.’

9 *Hedging Concepts, Inc. v. First All. Mortg. Co.*, 41 Cal. App. 4th 1410, 1419, (1996) (citation
10 omitted).

11 Here, the inquiry is whether the contract terms covered the service that Plaintiff argues it
12 provided, such that Plaintiff has already been compensated. Whether the SOW and Plaintiff’s
13 claim are the same subject matter requires resolution of questions of fact that the Court does not
14 engage in at this time.

15 Accordingly, the Court does not dismiss Plaintiff’s quantum meruit claim against Fortinet
16 based on the theory that the SOW forecloses the claim.

17 **C. Intentional and Negligent Misrepresentation**

18 Plaintiff brings intentional and negligent misrepresentation claims against PGA Tour and
19 Voelker.

20 **1. Voelker**

21 PGA Tour argues that Voelker is not personally liable because Voelker is not a fiduciary to
22 Plaintiff and the alleged harm is pecuniary harm, not physical injury. The Court disagrees. “It is
23 well-settled that an agent or employee is always liable for his or her own torts, whether the
24 principal is liable or not, and in spite of the fact that the agent acts in accordance with the
25 principal’s directions. An agent making an intentional misrepresentation is personally liable for
26 fraud.” *Intelligent SCM, LLC v. Qannu PTY Ltd.*, No. 14-CV-06417, 2015 WL 13916820, at *7
27 (C.D. Cal. July 2, 2015). Moreover, California Civil Code § 2343 states that “[o]ne who assumes
28 to act as an agent is responsible to third persons as a principal for his acts in the course of his

1 agency . . . when his acts are wrongful in their nature.” Here, Plaintiff alleged that Voelker made
2 either an intentional or negligent misrepresentation when he suggested the margin compensation
3 schemes that were against PGA Tour policy.

4 PGA Tour relies on *Haidinger-Hayes* for the proposition that liability on agents is
5 restricted when only pecuniary damages is sought. However, as another court found, “recent
6 California law demonstrates a shift away from *Haidinger-Hayes* and that an employee, working
7 within the scope of their employment, could be held liable in tort for pecuniary losses.” *In re*
8 *JUUL Labs, Inc., Mktg., Sales Pracs., & Prod. Liab. Litig.*, 533 F. Supp. 3d 858, 878 (N.D. Cal.
9 2021) (citation omitted). As that court explained, “the *Haidinger-Hayes* Court did not hold that a
10 plaintiff had to suffer personal injury or property damage to sue the officer in tort; rather it held
11 that liability imposed upon agents for active participation in tortious acts of the principal has been
12 *mostly* restricted to cases involving physical injury, not pecuniary harm, to third persons.” *Id.*
13 (citations and internal quotations omitted). Thus, the Court finds that *Haidinger-Hayes* does not
14 bar liability to Voelker.

15 Moreover, the inquiry evident from *Haidinger-Hayes* and its progeny is whether Voelker
16 personally participated in the tort. While PGA Tour directed the Court to *Nasrawi v. Buck*
17 *Consultants*, the court there found the individual employee not personally liable because of such
18 facts as the employee was not an officer, the employee never personally negotiated with the
19 plaintiff, and the employee never took any action directed at the plaintiff. 713 F. Supp. 2d 1080,
20 1088 (E.D. Cal. 2010). Here, Plaintiff alleged that Voelker is an officer, personally negotiated
21 with Plaintiff, and personally refused to allow Plaintiff to add a margin. FAC ¶¶ 31, 33, 45. The
22 Court finds these allegations sufficient at this stage.

23 Accordingly, PGA Tour’s motion to dismiss Plaintiff’s intentional and negligent
24 misrepresentation claims against Voelker is denied.

25 2. PGA Tour

26 In its reply, PGA Tour argues that the intentional and negligent misrepresentation claims
27 against it fail because (1) the FAC lacks allegations to show that “PGA Tour Defendants knew the
28 alleged misrepresentations about fee structures were false at the time they were made”; (2) “the

1 Amended Complaint does not allege that the PGA Tour Defendants made the supposed
2 misrepresentations with an intent to defraud Plaintiff”; and (3) “Plaintiff fails to allege that it
3 justifiably relied on the alleged misrepresentations, that such reliance was reasonable, and that
4 Plaintiff suffered damages as a result.” PGA Tour’s Reply at 6:26–7:25.

5 “The essential elements of a count for intentional misrepresentation are (1) a
6 misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable
7 reliance, and (5) resulting damage.” *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 230–31
8 (2013). “The essential elements of a count for negligent misrepresentation are the same except
9 that it does not require knowledge of falsity but instead requires a misrepresentation of fact by a
10 person who has no reasonable grounds for believing it to be true.” *Id.*

11 Here, PGA Tour’s arguments appear to contest Plaintiff’s factual allegations, which the
12 Court assumes as true at this stage. The FAC alleges that “Defendant PGA Tour knew that its
13 representations were false when made, or made its representations recklessly and without regard
14 for their truth.” FAC ¶ 92. This, along with the allegations regarding PGA Tour’s policy, is
15 sufficient at this stage to establish knowledge and intent. *See* Fed. R. Civ. P. 9(b) (“Malice, intent,
16 knowledge, and other conditions of a person's mind may be alleged generally.”).

17 Regarding whether Plaintiff reasonably relied on the alleged misrepresentation, the Court
18 does not have facts before it at this stage to resolve this inquiry. Regardless, Plaintiff plausibly
19 alleged that it relied on the statement that Plaintiff would be compensated by the addition of a
20 margin on top of the sponsorship fee. Under the alleged facts, the Court finds that Plaintiff
21 plausibly alleged that it reasonably relied on the alleged misrepresentation.

22 Accordingly, PGA Tour’s motion to dismiss Plaintiff’s intentional and negligent
23 misrepresentation claims is denied.

24 **D. False Promise**

25 Plaintiff’s false promise claim is brought against PGA Tour and Voelker. A claim for false
26 promise requires the following elements:

- 27 (1) a promise made regarding a material fact without any intention of
28 performing it; (2) the existence of the intent not to perform at the time
the promise was made; (3) intent to deceive or induce the promisee to
enter into a transaction; (4) reasonable reliance by the promisee; (5)

1 nonperformance by the party making the promise; and (6) resulting
2 damage to the promisee.

3 *Rossberg v. Bank of Am., N.A.*, 219 Cal. App. 4th 1481, 1498 (2013).

4 PGA Tour argues that a factual consistency causes this claim to fail:

5 The PGA TOUR Defendants were clear that it was up to Plaintiff to
6 negotiate compensation for itself with any potential sponsor. Thus, it
7 is nonsensical for Plaintiff to now claim that it relied on those express
8 disclaimers to its detriment or that those disclaimers somehow
9 induced Plaintiff to act in way that robbed itself of any compensation
10 from a potential sponsor.

11 PGA Tour’s Reply at 9:14–18. As alleged, however, Plaintiff relied on PGA Tour’s promise that
12 it would facilitate Plaintiff’s compensation. FAC ¶ 112. Relying on that promise, Plaintiff
13 revealed that Fortinet was the sponsor and connected PGA Tour with Fortinet. *Id.* Plaintiff
14 further alleged that it was not compensated for its services due to PGA Tour’s nonperformance of
15 the promise. *Id.* ¶¶ 113–14. These allegations are sufficient at this stage.

16 Accordingly, PGA Tour’s motion to dismiss Plaintiff’s false promise claim is denied.

17 **E. Violation of the Unfair Competition Law**

18 Plaintiff’s claim under the Unfair Competition Law (“UCL”) is brought against PGA Tour
19 and Fortinet. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.”
20 Cal. Bus. and Prof. Code § 17200 (West 2022).

21 Plaintiff withdraws its claim under the UCL against Fortinet. *See* Opp’n to Fortinet at 15,
22 ECF No. 57. Accordingly, Plaintiff’s claim under the UCL against Fortinet is dismissed, with no
23 leave to amend.

24 PGA Tour argues that Plaintiff’s UCL claim fails because it seeks equitable relief even
25 though Plaintiff’s other claims all “seek to redress the same alleged harm.” PGA Tour’s Mot. at
26 11:2–3. “Because the UCL is equitable in nature, a plaintiff alleging a violation of the UCL may
27 obtain only restitution and/or injunctive relief.” *Nevada DeAnza Fam. Ltd. P’ship v. Tesoro Ref.
28 & Mktg. LLC*, 474 F. Supp. 3d 1087, 1096 (N.D. Cal. 2020). However, at this stage, it is not clear
whether Plaintiff’s remedies at law are adequate. As such, the Court will allow Plaintiff to plead
equitable restitution in the alternative.

PGA Tour also argues that the UCL claim fails because the business practice alleged is
based on only one alleged breach of contract. However, “[a] complaint based on an unfair

1 business practice may be predicated on a single act; the statute does not require a pattern of
2 unlawful conduct.” *Susilo v. Wells Fargo Bank, N.A.*, 796 F. Supp. 2d 1177, 1195 (C.D. Cal.
3 2011) (citation omitted). Thus, the Court is not persuaded by this argument.

4 PGA Tour next argues that Plaintiff’s claims fail under both the “unfair” and “fraudulent”
5 prongs of the UCL.

6 For the unfair prong, PGA Tour argues that Plaintiff is neither a consumer nor a competitor
7 of PGA Tour. PGA Tour relies on *Linear Tech. Corp. v. Applied Materials, Inc.*, 152 Cal. App.
8 4th 115 (2007). The Court, however, finds that *Linear Tech* was concerned with “the plaintiff’s
9 effort to act as the self-appointed representative of [] alleged corporate victims.” *In re Yahoo!*
10 *Litig.*, 251 F.R.D. 459, 475 (C.D. Cal. 2008). As Plaintiff argues, it has standing under the UCL,
11 as it “*had had* business dealings with a defendant and had lost money or property as a result of the
12 defendant’s unfair business practices.” *Clayworth v. Pfizer, Inc.*, 49 Cal. 4th 758, 788, 233 P.3d
13 1066, 1087 (2010). The Court finds that Plaintiff’s allegations are sufficient at this stage.

14 For the fraudulent prong, PGA Tour argues that Plaintiff has not alleged that PGA Tour’s
15 conduct was likely to deceive members of the public. “[A] plaintiff may satisfy the UCL’s
16 fraudulent prong by showing ‘deception to some members of the public, or harm to the public
17 interest,’ or that members of the public are ‘likely to be deceived’ by defendants’ conduct.”
18 *Copart, Inc. v. Sparta Consulting, Inc.*, 339 F. Supp. 3d 959, 989 (E.D. Cal. 2018). Here, Plaintiff
19 does not include sufficient factual allegations directed towards how “members of the public” or
20 the “public interest” may be harmed by PGA Tour’s conduct. Accordingly, Plaintiff’s UCL claim
21 is dismissed to the extent it is alleged under the fraudulent prong, with leave to amend.

22 V. CONCLUSION

23 For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART** PGA
24 Tour’s motion to dismiss and **GRANTS** Fortinet’s motion to dismiss.

25 PGA Tour’s motion to dismiss Plaintiff’s breach of contract claim is denied. Plaintiff’s
26 quantum meruit claim against PGA Tour and Fortinet is dismissed, with leave to amend. PGA
27 Tour’s motion to dismiss Plaintiff’s intentional and negligent misrepresentation claims is denied.
28 PGA Tour’s motion to dismiss Plaintiff’s false promise claim is denied. Plaintiff’s claim under

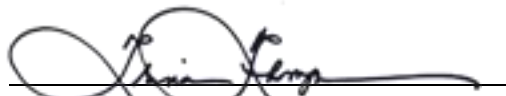
1 the UCL against Fortinet is dismissed, with no leave to amend. PGA Tour’s motion to dismiss
2 Plaintiff’s claim under the unfair prong of the Unfair Competition Law is denied. Plaintiff’s claim
3 under the fraudulent prong of the UCL against PGA Tour is dismissed, with leave to amend.

4 Plaintiff may file an amended complaint within 14 days of this Order.

5 This Order terminates ECF Nos. 54, 55.

6 **IT IS SO ORDERED.**

7 Dated: March 10, 2023

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10 TRINA L. THOMPSON
11 United States District Judge

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United States District Court
Northern District of California