IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

J.M. AQUINO, P.C., Plaintiff, vs. IMPERIAL PACIFIC INTERNATIONAL (CNMI), LLC, Defendant.	Civil Case No. 1:20-cv-00009 **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO STRIKE AND MOTION FOR MORE DEFINITE STATEMENT**

In this diversity jurisdiction action, Plaintiff J.M. Aquino, P.C. ("Aquino") asserts two state-law breach of contract claims against Defendant Imperial Pacific International (CNMI), LLC ("IPI"). On May 17, 2021, the Court dismissed without prejudice Aquino's Seconded Amended Complaint ("SAC") granting Aquino leave to amend because the SAC was originally "deficient in establishing its claims for breach of contract." (Order of Dismissal without Prejudice 2, ECF No. 45) ("Dismissal Order").

Aquino filed its Third Amended Complaint ("TAC") ten days later. (ECF No. 46.) In its tAC, Aquino includes references to other contracts. IPI filed a Motion to Strike Under FRCP 12(f) to strike all allegations and/or claims brought under any agreement other than the two contracts specified by the Dismissal Order, and for a More Definite Statement Under FRCP 12(e). (ECF Nos. 49, 49-1.) The matter was heard on August 16, 2021 at which time the Court GRANTED IN PART and DENIED IN PART IPI's motions. The Court now issues this order memorializing its reasoning.

I. FACTUAL BACKGROUND

On June 23, 2016, Aquino and IPI entered into a written agreement for superstructural inspection and observation services ("Inspection Agreement") at IPI's hotel-casino complex in Garapan, Saipan. (Inspection Agreement, ECF No. 46-1.) Aquino would inspect various structures of IPI's hotel-casino complex to ensure compliance with building codes and other regulations. (TAC 2 ¶ 16.)

A supplemental agreement to the Inspection Agreement ("Supplemental Inspection Agreement") was signed by the parties that went into effect on October 24, 2017. (ECF No. 46-2.) In that Supplemental Inspection Agreement, the parties agreed to modify the clause concerning compensation and payment as it relates to Aquino as a consultant. It further stated: "Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is a conflict between this amendment and the Agreement or any earlier amendment, the terms of this amendment will prevail." (*Id*. at 2.) According to Aquino, a total of $140,500.00 is owed under the Inspection and Supplemental Inspection Agreements. (TAC 4 ¶ 25.)

Later in November 2016, Aquino entered into a separate consulting agreement with IPI for the purpose of developing traffic signals, roadways, and water quality ("Traffic & Water Agreement"). (ECF No. 46-3.) Aquino would provide a consultant to inspect and report on projects and project issues with the CNMI Department of Public Works and the Bureau of Environmental and Coastal Quality, as well as schedule and conduct meetings with IPI and its contractors. (TAC 4 ¶ 30.)

A supplemental agreement to the Traffic and Water Agreement ("Supplemental Traffic Agreement") was entered and made effective on December 5, 2017. Part of its amendments concerned

the fee schedule for the consultant. It further stated: "Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is [a] conflict between this amendment and the Agreement or any earlier amendment, the terms of this amendment will prevail." (*Id*. at 1.)

Another consulting agreement for the purpose of developing design services for civil works was entered into in May 2017 ("Engineering Consulting Agreement"). (ECF No. 46-4.) The scope of work would be to provide engineering design, plans, and calculations for IPI. (*Id*. at 5.) In Aquino's TAC, Aquino characterizes it as a change order to address the insufficient water flow from the resort hotel. (TAC 5 ¶ 34.) As a result, this Engineering Consulting Agreement was based on design services for adequate waterflow. (*Id*.) Lumping together these three agreements, Aquino alleges that a total of $76,648 is owed, with $26,500 specifically owed under the Engineering Consulting Agreement. (TAC 5-6 ¶ 40.)

II. PROCEDURAL BACKGROUND

Aquino commenced this lawsuit by filing its original complaint in June 2020. (Compl., ECF No. 1.) An answer was filed by IPI (ECF No. 6), but the parties consented to amending the complaint approximately two months later. (First Amend. Compl., ECF No. 11.) Aquino filed its Second Amended Complaint to remedy jurisdictional defects identified by the Court in similar complaints in other suits involving the same counsel. *See* Min., *Tang's Corp. v. IPI*, Civ. Case No. 1:20-cv-00006 (D. N. Mar. I. Dec. 17, 2020), ECF No. 16. In its SAC, Aquino identified two state-law breach of contract causes of action in the Inspection Agreement and the Traffic & Water Agreement. (ECF No. 16.) IPI promptly filed its answer to the SAC. (ECF No. 17.)

Thereafter, IPI filed a motion for judgment on the pleadings in April 2021 arguing that Aquino's SAC was deficient in establishing claims for breach of contract. (ECF No. 37.) Aquino responded by requesting leave to amend his SAC so as to "flesh out some details regarding the two contracts already pled" as well as asserting the "existence and breaches of two additional contracts." (Aquino's Response 3 ¶ 6, ECF No. 39.) A motion hearing was held at which time the Court agreed that Aquino's SAC was deficient in its pleading and granted IPI's motion. (Min., ECF No. 44.) While the Court dismissed Aquino's SAC *without* prejudice, it noted that "while leave to amend is appropriate for the original two breach of contract causes of action, it would not be proper to allow Aquino to assert two additional breach of contract claims to go forward in this case." (Order of Dismissal 2-3, ECF No. 45.)

A Third Amended Complaint was filed (ECF No. 46), where Aquino included discussions regarding a Supplemental Inspection Agreement (ECF No. 46-2), a Supplemental Traffic Agreement (ECF No. 46-4), and the Engineering Consulting Agreement (ECF No. 46-4). In response, IPI filed this instant motion (ECF No. 49) to which Aquino opposed (ECF No. 52).

III. LEGAL STANDARD

A. Motion to Strike

Under Federal Rule of Civil Procedure 12(f), a court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." In defining these terms, "an 'immaterial' matter" is one with "no essential or important relationship to the claim for relief or defenses pleaded." *Cortina v. Goya Foods, Inc.*, 94 F. Supp. 3d 1174, 1182 (S.D. Cal. 2015) (quoting *Cal. Dept. of Toxic Substances Control v. Alco Pac., Inc.*, 217 F.Supp.2d 1028, 1032

(C.D. Cal. 2002). "[A]n 'impertinent' allegation is neither necessary nor relevant to the issues involved in the action." *Id. (*quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds*, 510 U.S. 517 (1994)).

"Motions to strike are generally regarded with disfavor because of the limited importance of pleading in federal practice, and because they are often used as a delaying tactic." *Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp.2d 1101, 1152 (C.D. Cal. 2003). "Given their disfavored status, courts often require 'a showing of prejudice by the moving party' before granting the requested relief." *Id*. (quoting *Sec. & Exch. Comm'n v. Sands*, 902 F. Supp. 1149, 1166 (C.D. Cal. 1995)). "[T]he function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." *Sidney-Vinstein v. A.H. Robins Co*., 697 F.2d 880, 885 (9th Cir. 1983).

Consequently, the Court may not "strike a pleading unless the matters sought to be omitted have *no possible* relationship to the controversy, may confuse the issues, or otherwise prejudice a party." *Cortina v. Goya Foods, Inc.*, 94 F. Supp. 3d at 1182. Courts will view the pleadings "*in the light most favorable to the non-moving party*, and "resolves any doubt as to the … sufficiency of a defense in defendant's favor." *State of Cal. Dep't of Toxic Substances Control v. Alco Pac., Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002) (emphasis added). "Whether to grant a motion to strike is within the sound discretion of the district court." *Mag Instrument, Inc. v. JS Prod., Inc.*, 595 F. Supp. 2d 1102, 1106 (C.D. Cal. 2008).

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B. Motion for a More Definite Statement

When a party moves for a more definite statement, they "must point out the defects complained of and the details desired." Fed. R. Civ. P. 12(e). "If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definitive statement under Rule 12(e) before responding." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002). Defendants are required to "point out defects complained of and the details desired." Fed. R. Civ. P. 12(e).

IV. DISCUSSION

IPI seeks to exclude the two supplemental agreements and the additional May 2017 Engineering Consulting Agreement (identified by Aquino as a "change order") because "the TAC names five different agreements—three of which were never mentioned previously in this matter—in violation of the Court's Dismissal Order." (Mot. to Strike 8, ECF No. 49-1.) IPI argues that: "[a]t no point prior to the filing of the TAC did Aquino ever mention or suggest that the June 2016 [Inspection A]greement had been modified or supplemented; not in the SAC, not in any of the predecessor complaints, not in Aquino's response to IPI's Rule 12(c) Motion, and not at the May 13, 2021 hearing." (*Id.* at 7.) IPI argues the same for the Supplemental Traffic & Water Agreement. As for the May 2017 Engineering Design Agreement, IPI contends that that contract is "entirely distinct" from the other agreements with an "independent fee schedule." (*Id.* at 10.) Ultimately, IPI concludes that Aquino's failure to include these in the three complaints prior to the TAC did not put "IPI on fair notice of the claims being pursued against it" and would be unfairly prejudicial to have IPI "expend time and resources in responding to extraneous matters[.]" (*Id.* at 13.)

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A. Engineering Consulting Agreement

The Federal Arbitration Act ("FAA") provides that a written provision in "a contract evidencing a transaction involving commerce to settle by arbitration . . . or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. In other words, arbitration clauses are valid, enforceable, and irrevocable unless an exception applies.

"Arbitration is undeniably a matter of contract[.]" *Fortune, Alsweet and Eldridge, Inc. v. Daniel*, 724 F.2d 1355, 1356 (9th Cir. 1983). "Under established law, '[t]he question whether the parties have submitted a particular dispute to arbitration, i.e., the question of arbitrability, is an issue for judicial determination [u]nless the parties clearly and unmistakably provide otherwise.'" *In re Van Dusen*, 654 F.3d 838, 843 (9th Cir. 2011) (quoting *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002)).

A district court's authority to compel arbitration arises under Section 4 of the FAA. *Dusen*, 654 F.3d 838, 843. "Although the arbitrability of a dispute is ordinarily a question of contract interpretation for the courts, even this issue may be submitted to binding arbitration of there has been 'a clear demonstration of that purpose.'" *Int'l Bd. of Teamsters et al. v. Washington Emp., Inc.*, 557 F2.d 1345, 1349 (9th Cir. 1977) (citation omitted). The FAA does require arbitration agreements to be in writing. *Nghiem v. NEC Elec., Inc.*, 25 F.3d 1437, 1439 (9th Cir. 1994). "[E]ven if these writings are insufficient, [a]n agreement to arbitrate an issue need not be express; … it may be implied from the conduct of the parties." *Id*. (citation and internal quotation marks omitted).

Here, the Engineering Consulting Agreement contains an arbitration clause that states "[a]ny dispute or disagreement between parties under this Agreement . . . shall be settled by arbitration in Saipan, MP, under the Commercial Arbitration Rules then in effect of the American Arbitration Association." (ECF No. 46-4 at 3.) Nothing suggests that this arbitration clause was waived by either party and arbitration has not yet commenced. This clearly contrasts with the express waiver of arbitration in the other contracts. (*See* Written Consent to Amendment, ECF No. 10.) Consequently, the Court finds that absent any waiver of this arbitration clause, the Court will grant IPI's motion to strike any claims based on the Engineering Consulting Agreement on this basis.

B. Inspection and Water & Traffic Agreements

Motions to strike are to be applied sparingly and are generally disfavored. *Sapiro v. Encompass Ins.*, 221 F.R.D. 513, 518 (N.D. Cal. 2004). The standard for striking based on Rule 12(f) is ascertaining whether the included information is "redundant, impertinent, or scandalous." Fed. R. Civ. P. 12(f). Thus, courts will evaluate the utility of including information based on the materiality or pertinence of given information in a pleading. *See O'Connor v. Roman Catholic Church*, 2005 WL 8160695, at *3 (D. Ariz. July 8, 2005) (finding that where allegations bear "no essential or important relationship" to the plaintiff's claims, the court will strike such allegations (internal quotation marks omitted)); *see also United States v. Wang*, 404 F. Supp. 2d 1155, 1157 (N.D. Cal. 2005) ("Motions to strike should not be granted, however, unless it is clear that the matter to be stricken could have *no possible bearing* on the subject matter of litigation." (emphasis added)).

Courts have also ruled on motions to strike in the context of amended complaints exceeding a court's granting of leave to amend. In *Tehranchi v. Plan River Investment, LLC*, the court discussed

the prejudice in permitting new claims to be included in an amended complaint. 2012 WL 13008387 (C.D. Cal. July 30, 2012). There, the court addressed the plaintiff's second amended complaint which asserted one new federal claim and one new state-law claim which exceeded the court's leave to amend order. It acknowledged that motions to strike "are *rarely granted* . . . when the moving party can show *no* prejudice as a result" of the matter included in a pleading. *Id*. at *4 (internal quotation marks omitted) (emphases added). Even the inclusion of new claims will not necessarily be grounds for striking. Nevertheless, the court agreed with the defendants that striking the plaintiff's new claims were warranted based on prejudice to the defendants. It maintained that:

> While discovery was ongoing, the [plaintiffs] were given multiple opportunities to amend their complaint, as well as extension of their filing deadlines. Not once did the [plaintiffs] raise additional causes of action they wished to plead. *Fact discovery is now closed*, and the motion hearing cut-off date is only a month away. Trial is set for a little more than two months from now. Allowing plaintiffs to add wholly new theories of liability at this stage would prejudice defendants[.]

Id. at *5 (emphasis added). In this context, the prejudice could mean extending the case management schedule, subjecting defendants to additional expenses, or requiring defendants to defend against new claims with limited discovery and/or time to get discovery. The court therefore struck the new claims pursuant to Rule 12(f).

While Aquino's TAC appears to have exceeded the scope of the Court's leave to amend by including the Engineering Consulting Agreement (ECF No. 46-4), the additional agreements that amend the two original agreements are not wholly "specious" and will not prejudice IPI. First, their inclusion explains how Aquino's original claimed damages are derived, and therefore the supplemental contracts are clearly both material and pertinent to the original contracts. Their relevance

to the original contracts are further bolstered by their explicit reference to the original contracts: "Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force." (*See* Supplemental Traffic Agreement 1, ECF No. 46-3.) Secondly, IPI will not suffer prejudice in having these additional supplemental agreements included. While there has been some discovery conducted in this case, it is unlike *Tehranchi*; the trial has been vacated and is far enough away that IPI may now engage in meaningful dialogue and litigation with Aquino. IPI's arguments to the contrary are unavailing.

The standard for this motion is determining whether the amendments to the TAC are ones that "have no possible relationship to the controversy" or "may confuse the issues." *Sidney-Vinstein*, 697 F.2d at 885. Nothing suggests that these supplemental agreements have "no possible relationship" to their origins and therefore do not warrant being struck on the basis of scandal, immateriality, or impertinence under Rule 12(f). Finally, nothing suggests IPI will be prejudiced in keeping this supplemental agreements in this case.

C. Motion for a More Definite Statement

Aquino asserts two amounts of damages. First, it claims it is owed $140,500 for the Inspection Agreement and Supplemental Inspection Agreement. (*See* TAC, ECF No. 46 at 4 ¶ 28.) It further claims an additional $76,648 for the Traffic & Water Agreement, the Supplemental Traffic Agreement, and the Engineering Consulting Agreement. (*See* ECF No. 46 at 6 ¶ 45.) Importantly, the $76,748 amount includes a $26,500 debt resulting from the alleged non-payment of the balance due under the Engineering Consulting Agreement. In response, IPI requests a more definitive statement as to how much is owed for each separate contract—either an original contract or a supplemental contract.

IPI asserts that it is "entitled to understand the scope of the charges it faces in order to efficiently and effectively answer or otherwise move with respect to such charges." (ECF No. 49-1 at 18.)

If a pleading is so vague or ambiguous that a defendant "cannot reasonably be required to frame a responsive pleading, the party may move for a more definitive statement." Fed. R. Civ. P. 12(e). Put differently, if the allegations do not put a defendant on "sufficient notice, a defendant can move for a more definitive statement under Rule 21(e) before responding." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002). Defendants are required to "point out defects complained of and the details desired." Fed. R. Civ. P. 12(e).

Here, the Court grants IPI's motion for a more definite statement. First, having struck the Engineering Consulting Agreement, IPI must be informed as to how much is owed under the Traffic & Water Agreement and its supplement. Additionally, IPI is entitled to the identification of the precise amounts for each claim for damages. Thus, insofar as the Inspection Agreement, the Traffic & Water Agreement, and its supplements are concerned—IPI's motion for a more definite statement is granted.

V. CONCLUSION

Based on the foregoing, the Court GRANTS IPI's motion to strike pursuant to Rule 12(f) of the Federal Rules of Civil Procedure as to any allegations and claims that pertain to the May 2017 Engineering Consulting Agreement (ECF No. 46-4) but DENIES IPI's motion to strike as to the remaining agreements, including any oral agreement acted upon by the parties (ECF Nos. 46-1, 46-2, 46-3, 46-5). The Court further GRANTS IPI's motion for a more definite statement on Aquino's claim for damages pursuant to Rule 12(e).

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Plaintiff Aquino is ORDERED to submit by Monday, August 30, 2021 a Fourth Amended Complaint consistent with the Court's rulings herein.

IT IS SO ORDERED this 18th day of August, 2021.

RAMONA V. MANGLONA
Chief Judge