**PROPOSED TENTATIVE**

On June 20, 2024, plaintiff Rodriquez AG Enterprises, Inc., (plaintiff) filed a complaint against defendants Green Plant Production (hereafter, Green Plant), Martha A. Mendez (Martha Mendez), Manuel Mendez (Manuel Mendez), and Supreme Berry Farms, LLC (hereafter, Supreme Berry), advancing 12 causes of action, as follows: 1) breach of a written agreement; 2) negligent misrepresentation; 3) intentional misrepresentation; 4) unfair business practices, pursuant to Business and Professions Code, section 17200, et seq.; 5) "equitable lien"; 6) "resulting trust"; 7) declaratory relief; 8) common count in quantum meruit; 9) common count based on open book account; 10) breach of oral contracts; 11) breach of contracts implied in fact; and 12) common count based on services received. It appears that all defendants are named in each cause of action. Briefly, plaintiff, on one hand, and Green Plant, Martha Mendez, and Manuel Mendez, entered into a written contract in which plaintiff agreed to perform agricultural work and provide harvesting labor to defendants (¶ 10); services were rendered; defendants have not been paid. The causes of action in the complaint arise from these allegations. On August 15, 2024, entry of default was made against defendants Green Plant, Martha Mendez, and Manuel Mendez.

Supreme Berry has filed a demurrer to the eighth and twelfth causes of action. The eighth cause of action, pleaded as "Common Count [in] *Quantum Meruit*," alleges that plaintiff provided services, materials, and "other miscellaneous" expenditures, all of which were accepted by defendants, including the strawberries harvested by plaintiff's employees; that defendants "at all relevant times knew that the Plaintiff expended funds to harvest said product"; and that defendants refused to pay for such services, materials, labor, etc. The twelfth cause of action seems to advance a cause of action based on Common Count for Services Had or Received, by incorporating all earlier allegations, and alleging that defendants "each of them knew that the Plaintiff was expending funds and labor to harvest strawberries," and defendants "used the strawberries harvested by the Plaintiff and sold the same and kept the proceeds," without payment to plaintiffs.

Supreme Berry claims 1) plaintiff has failed to plead sufficient facts to support the eighth cause of action for common count in *quantum meruit*; 2) plaintiff has failed to plead sufficient facts to support the twelfth cause of action for common count based for services rendered; and 3) the twelfth cause of action is merely duplicative of the eighth cause of action, and should thus be dismissed. In opposition, plaintiff claims it has adequately pleaded facts for the eight and twelfth causes of action, and contends the two causes of action are not duplicative, but alternative to one another. A reply was filed on October 8, 2024. All briefing has been reviewed.

The court in this order will detail the legal background relevant to frame the issues raised. It will then apply those principles to the merits of defendant's challenges. The court finish with a summary of its conclusions.

*A) Legal Background*

*Quantum meruit* refers to the well-established principle that "the law implies a promise to pay for services performed under circumstances disclosing that they were not gratuitously

rendered." [Citation.] To recover in *quantum meruit*[1], a party need not prove the existence of a contract [citations], but it must show the circumstances were such that "the services were rendered under some understanding or expectation of both parties that compensation therefor was to be made." ' (*Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453, 458.) The doctrine manifests ' " 'a general principle, underlying various legal doctrines and remedies, that one person should not be permitted unjustly to enrich himself at the expense of another, but should be required to make restitution of or for property or benefits received, retained, or appropriated, where it is just and equitable that such restitution be made, where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly.' " ' " (*County of Santa Clara v. Superior Court* (2023) 14 Cal.5th 1024, 1049–1050.) The measure of recovery in *quantum meruit* is the reasonable value of the services rendered, provided they were of direct benefit to the defendant. In other words, *quantum meruit* is an equitable payment for services already rendered. (*E.J. Franks Construction, Inc. v. Sahota* (2014) 226 Cal.App.4th 1123, 1127-1128.)

"To recover in *quantum meruit*, the 'plaintiff must establish both that he or she was acting pursuant to either an express or implied request for such services from the defendant and that the services rendered were intended to and did benefit the defendant'; further, the defendant must have ' "retained [the] benefit with full appreciation of the facts. . . . ." ' (*Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243, 248; *Pacific Bay Recovery, Inc. v. California Physicians' Services, Inc.* (2017) 12 Cal.App.5th 200, 214–215; see also *Advanced Choices, Inc. v. State Dept. of Health Services* (2010) 182 Cal.App.4th 1661, 1673 [same].) The receipt of a benefit thus is an essential element of a cause of action for *quantum meruit*: " 'The idea that one must be *benefited* by the goods and services bestowed is thus integral to recovery in quantum meruit; hence courts have always required that the plaintiff have bestowed some benefit on the defendant as a prerequisite to recovery. [Citation.]' " (*Day, supra,* 98 Cal.App.4th at pp. 248–249, italics in original.) Breach of contract and *quantum meruit* causes of action are inconsistent because "there is no equitable basis for an implied-in-law promise to pay reasonable vale when the parties have an actual agreement covering the compensation." (*Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2016) 6 Cal.App.5th 1207, 1222–1223.) Nevertheless, while a plaintiff cannot *recover* for both breach of contract and quantum meruit, it is permitted to *plead* inconsistent causes of action for breach of contract quantum meruit. (*Ibid.*)

"A common count alleges in substance that the defendant became indebted to the plaintiff in a certain stated sum, for some consideration such as 'money had and received by the defendant for the use of the plaintiff,' or 'for goods, wares and merchandise sold and delivered by plaintiff to defendant,' or 'for work and labor performed by plaintiff'; and that no part of the

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[1] *Quantum valebant* is similar to *quantum meruit*, except that it seeks recovery of the reasonable value of goods sold. (*Weitzenkorn v. Lesser* (1953) 40 Cal.2d 778, 792.) As the issues in this action appear to be the value of services rendered, not the value goods provided, *quantum meruit* is the appropriate theory to be pursued.

sum has been paid. . . . [¶] Although other matters are often included, the cases make it clear that the only essential allegations are (1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work done, etc., and (3) nonpayment. [Citation.]" (4 Witkin, Cal. Procedure (6th ed. 2024 Supp.) Pleading § 565, p. 654.) Although other matters are often included, the cases make it clear that the only essential allegations are (1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work done, etc., and (3) nonpayment. (See *Farmers Ins. Exchange v. Zerin* (1997) 53 C.A.4th 445, 460 [complaint was insufficient]; 4 Witkin, *supra*, § 566 et seq.) The general categories of common count in use in California are as follows:" money had and received by the defendant for the use of the plaintiff"; r "good, wares and merchandise sold and delivered to defendant, or "work and labor performed" or "services performed" at defendant's request; goods sold and delivered by plaintiff to defendant; money lent by plaintiff to defendant or "money paid" or "expended" to or for defendant; and an account stated. (4 Witkin, *supra*, §§ 567–571.) Plaintiff in this action relies on the "services rendered" category when advancing its common count(s).

A common count is not a specific cause of action; rather, it is a simplified form of pleading developed under the common law and normally used to aver the existence of various forms of monetary indebtedness. (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 394.) Therefore, common count is a unique construction under California law that is not generally subject to dismissal on the grounds of uncertainty or insufficient pleading. (*Moya v. Northrup* (1970) 10 Cal.App.3d 276, 279.) However, "[w]hen a common count is used as an alternative way of seeking the same recovery demanded in a specific cause of action, and is based on the same facts, the common count is demurrable, if the cause of action is demurrable." (*Berryman v. Merit Prop. Mgmt., Inc.* (2007) 152 Cal.App.4th 1544, 1559–60, citing *McBride v. Boughton*, *supra*, 123 Cal.App.4th at pp. 394–95; see, e.g., *Laub v. Horbaczewski* (C.D. Cal., Mar. 16, 2018, No. LA CV17-6210 JAK (KS)) 2018 WL 5880950, at *11 [under California law, when a complaint fails to allege a plausible claim for breach of written, oral and implied contract, it necessarily fails to allege a plausible claim for common counts].)

What is the relationship between quantum meruit and common count based on services rendered, as outlined above? *Both* in fact are forms of common count (See 4 Witkin, California Procedure (6th ed. 2024 Supp.), § 568 [discussing common count for fixed amounts involving work and labor services provided]; with § 572 [discussing common count in *quantum meruit* for services provided, used when no fixed sum is sought but only the value of reasonable services is at issue], as both are subspecies of the law of general assumpsit. (*Jogani v. Superior Court* (2008) 165 Cal.App.4th 901, 906 [*quantum meruit*, while an equitable remedy, is a species of assumpsit, which is a legal remedy].) Thus, courts routinely see common count on *quantum meruit* pleaded as a cause of action, as advanced in the eighth cause of action in this action. (See, e.g., *Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990, 996 ["'[W]when services have been rendered under contract which is unenforceable because not in writing, an action generally will lie upon a common count for quantum meruit"]; see 5 Witkin,

*supra*, § 572.) It is clear, however, that common count for services rendered can be based on either a theory in *quantum meruit, focusing on the reasonable value of service,* or based on its close cousin a theory in *indebitatus assumpsit*, imbued with a similar but distinct legal character and focusing, inter alia, not on the reasonable value of services, but on an agreed fixed sum per an agreement.[2]

California therefore permits both forms of common count to be pleaded alternatively in the same action, *as long as the complaint is reasonably clear on their differences.* For example, in *Haggerty v. Warner* (1953) 115 Cal.App.2d 468, plaintiff pleaded four counts in common count, one of which was based on services rendered and performed at the request of defendants, with defendants promising to pay a certain fixed amount but failed to do. The court found this was an appropriate "common count cause in the form of *indebitatus assumpsit*." (*Id*. at p. 474.) The second common count was based in *quantum meruit*. The *Haggerty* court stated that "plaintiff performed certain services for defendants, allege[d] their reasonable value, that they were rendered at the special instance and request of defendants, and are unpaid. This meets the requirements of a common count case in the form of quantum meruit." (*Id*. at p. 475.) Neither cause of action was vulnerable to general demurrer – meaning they were alternative causes of action that could go forward. (See, e.g., *Brown v. Mason* (1909) 155 Cal. 155, 156 [recognizing different causes of action for *quantum meruit* and common count in *indebitatus assumpsit*]; see also *Higgins v. Desert Braemar, Inc.* (1963) 219 Cal.App.2d 744, 751 [allowing recovery in common count based on *indebitatus assumpsit,* although recovery also permitted when there are allegations of common count in *quantum meruit*]; *Clark v. Dulien Steel Products* (1942) 54 Cal.App.2d 92, 96 [same].)[3]

*B) Merits*

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[2] Generally, the writ of *indebitatus assumpsit* was available for the collection of debt, whether for reasonable value (*quantum meruit* for services, quantum valebant for goods) or for a sum certain (*indebitatus assumpsit*) (1 Corbin on Contracts (1993) § 1.18, p. 53.) Common count based on *indebitatus assumpsit* is used for the enforcement of express promises if they were such as to create a fixed money debt, as well as for the enforcement of implied promises and quasi-contracts."(*Id.* at pp. 53-54, fn. omitted; see also 4 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 514, pp. 603-604.) Common count in *quantum meruit* is used if the defendant is not liable in a fixed sum, as plaintiff has the election of suing for the reasonable value of services. (4 Witkin, *supra,* Pleading, § 527, p. 615.) The latter involves allegations that the performance of services for work and labor was made at the defendant's request, benefited defendant, and usually adds an allegation that defendant promised to pay the reasonable value. (*Ibid.*) That is, in *quantum meruit*, the issue is not the value of the benefit, but the value of the services rendered, and the absence of a contract does not preclude recovery. (*Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 449.) A claim in *indebitatus assumpsit* can be substantially the same as the claim in *quantum meruit*, but plaintiff seeks recovery for services performed in a fixed sum, rather than for reasonable value.

[3] Form Judicial Council for PLD-C-001(2), used for optional use when a party advances a common count cause of action, notes these differences. Under each of the enumerated categories in common count utilized on the form, there are separate lines for a fixed sum, and for reasonable value. This at least implicitly acknowledges the difference between common count in *indebitatus assumpsit* and common count in *quantum meruit.*

With this background, the court overrules defendant's demurrer to the eighth cause of action, labelled common count in *quantum meruit*. To advance recovery in *quantum meruit*, as noted, a party need not prove the existence of a contract (*Maglica, supra,* 66 Cal.App.4th at p. 449), but plaintiff must show the circumstances were such that the services were rendered under some understanding or expectation of both parties that compensation therefor was to be made. (*Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453, 458; see *Chodos v. Borman* (2014) 227 Cal.App.4th 76, 96.*)* The requisite elements of *quantum meruit* are (1) the plaintiff acted pursuant to "an explicit or implicit request for the services" by the defendant, and (2) the services conferred a benefit on the defendant. (*Day, supra,* 98 Cal.App.4th at p. 249; see *Port Medical Wellness, Inc. v. Connecticut General Life Insurance Company* (2018) 24 Cal.App.5th 153, 180' see also *Advanced Choices, Inc. v. State Dept. of Health Services* (2010) 182 Cal.App.4th 1661, 1673 [the pertinent question with respect to *quantum meruit* is whether plaintiff establishes that he or she was acting pursuant to either an express or implied request for such services from the defendant and that the services rendered were intended to and did benefit the defendant].) All critical elements have been pleaded here. Irrespective of contract, plaintiff alleges that defendants requested the services performed by plaintiff (¶ 10), and, further, alleges that plaintiffs conferred a benefit on all defendants, including Supreme Farm (¶¶ 46-50.)

Defendant nevertheless insists its demurrer is appropriate because 1) plaintiff has failed to identify any request by Supreme Berry for services to be performed by plaintiff; 2) plaintiff fails to identify any services it performed specifically for Supreme Berry; and 3) as all services were performed pursuant to contract made by Green Plant and other defendants, the services were nor performed for the benefit of Supreme Berry.

These claims are unpersuasive, although not for the reasons articulated by plaintiff in opposition. Preliminarily (and as noted), it is entirely permissible under California law to plead common count on *quantum meruit* in the alternative to a breach of contract cause of action (as an alternative remedy). (4 Witkin, *supra,* § 574 [plaintiff make seek redress based on alternative legal theories, pleading a cause of action in contract, and then set forth a common count seeking the same recovery, either as a precaution when there is doubt as to the property court to seek different legal remedies, and this is proper practice].) Further, while it may be true that plaintiff has not specifically pleaded that defendant Supreme Berry expressly or implicitly requested plaintiff's services; and does not seem to expressly indicate in the operative pleading that the services conferred a direct benefit on defendant Supreme Berry, these omissions are not fatal under the circumstances. Plaintiff alleges in paragraph 7 of the pleading that Green Plant and the other named defendants were the *agents* of defendant Supreme Berry, meaning, for pleading purposes, that they were speaking on behalf of and receiving the benefit for Supreme Berry when the other defendants requested the services and plaintiff's performed those services for their benefit, meaning also that plaintiff conferred the benefits of its services on all defendants.[4] And

[4] "An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency." (Civ. Code, § 2295.) "An undisclosed principal is liable for the contractual

it is settled that agency is an ultimate fact for pleading purposes and is properly alleged simply by stating one defendant is the agent of a codefendant, as was done here. (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 437-438; see also *City of Industry v. City of Fillmore* (2011) 198 Cal.App.4th 191, 212, 129; *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 886.) A generic allegation of agency may be disregarded only if specific allegations in the complaint otherwise contradict it. (*Garton v. Title Ins. & Trust Co.* (1980) 106 Cal.App.3d 365, 376.) There are no specific allegations in pleading that contradict the general agency allegations. Nothing offered in defendant's reply counters this conclusion. Of course, if the evidence shows no agency existed, defendant can challenge the agency allegations on summary judgment/summary adjudication. For pretrial challenges, on demurrer, the agency allegations survive; the court overrules the demurrer to the eighth cause of action.

As for the twelfth cause of action, the court rejects defendant Supreme Berry's claim that plaintiff has failed to state a cause of action, as the same facts that justify the eighth cause of action also justify the twelfth cause of action. But this conclusion begs a deeper problem, for if plaintiff has adequately pleaded a common count theory based on *quantum meruit* involving the same theory and facts at issue in the eighth cause of action, the twelfth cause of action is not separate from but entirely duplicative of the eighth cause of action, and thus superfluous. As discussed in detail above, California permits plaintiff to advance a common count for services rendered in *quantum meruit*, in conjunction with a common count for services rendered in *indebitatus assumpsit*, with the difference predicated on the reasonable value of services in the former and a request for a fixed sum per agreement in the latter. *If properly pleaded*, both can be advanced in the alternative to each other and then alternatively to a breach of contract cause of action. But plaintiff has not done this, predicating the eighth and twelfth causes of action on same theory in common count -- *quantum meruit.* Simply put, there are no differences between the pleaded allegations advanced in the two causes of action; both are based on the same theory, involving the same facts, jot for jot, with plaintiff simply utilizing different terminology or phrasing. For example, with regard to the twelfth cause of action, plaintiff incorporates all allegations from the eighth cause of action, and then alleges in paragraph 70 that it is asking for the "fair and reasonable value of the" services as a remedy. This is the *same* theory of common count in *quantum meruit* advanced in the eighth cause of action; the two causes of action are thus duplicative, not alternatives.

In opposition, defendant claims it is advancing alternative theories, relying on *State Compensation Insurance Fund v. Readylink Healthcare, Inc*. (2020) 50 Cal.App.5th 422 and *Riverside County Transportation Commission v. Southern California Gas Company* (2020) 54 Cal.App.5th 823. Neither case aids plaintiff, however. In the former, the appellate court simply

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obligations incurred by his agent in the course of the agency." (*Nichols v. Arthur Murray, Inc.* (1967) 248 Cal.App.2d 610, 612, cited in *Patterson v. Domino's Pizza,, LLC* (2014) 60 Cal.4th 474, 492.) It follows that defendant Supreme Berry as the alleged principal would also be liable per common count in *quantum meruit*, as alleged in the eighth cause of action, based on the same acts committed by the agents. .

detailed the elements of a common count based on services rendered, which was based on a *quantum meruit* theory. (*State Compensation Insurance Fund, supra,* 50 Cal.App.5th at p. 449.) The court did not address the issue presented here – whether plaintiff can plead common count in *quantum meruit* and a second common count based on services provided predicated on the same or identical *quantum meruit* principles. The same is true for *Riverside County Transportation Commission*. There, the appellate court acknowledged the general rule that a plaintiff may set forth alternative remedies in separate counts in his complaint, and may dismiss one without doing prejudice to the other. (54 Cal.App.5th at p. 840.) The causes of action at issue in *Riverside County Transportation Commission*, however, involved breach of contract and common counts reimbursement (amongst other claims), which were alternatives to one another. (*Id.* at pp. 835, 838.) The appellate court did not address the situation here – two common counts based essentially on the same *quantum meruit* principles. The twelfth cause of action as pleaded, from the face of the pleading, is duplicative of the eighth cause of action, and is therefore superfluous. The court sustains defendant's demurrer to the twelfth cause of action as a result.

The court will sustain the demurrer to the twelfth cause of action with leave to amend, however, contrary to defendant's request. It is possible, as was true in *Haggerty, supra*, for plaintiff to articulate different theories of common count – one in *indebtitatus assumpsit* and one in *quantum meruit* (with the difference being a fixed sum in the former and a request for the reasonable value of services in the latter), which if done, can be advanced as alternatives to each other and both as alternatives to a breach of contract cause of action. (See 4 Witkin, *supra,* §§ 568, 572.) The court offers a word of caution here. Just because plaintiff *can* does not mean it *should add this version of common count;* it may be wise to remove the twelfth cause of action, given the potential confusion to the trier of fact. In any event, whatever plaintiff decides to do, he has 30 days from today's hearing to submit a first amended pleading.

*Summary*:

- The court overrules Supreme Berry's demurrer to the eighth cause of action.
- The court sustains defendant Supreme Berry's demurrer to the twelfth cause of action, *with leave to amend*.
- Plaintiff has 30 days from today's hearing to submit an amended pleading.
- The parties are directed to appear at the hearing, personally in court or by Zoom.