

TENTATIVE Order Regarding Motion to Dismiss

Defendant Global Benefits Group, Inc. (“GBG”), Defendant Douglas Trussler (“Trussler”), Defendant David A. Gibson (“Gibson”), Nominal Defendant GBG Services (India) Private Limited (“GBG India”), and Nominal Defendant World Medical Network, Inc. (“World Medical”) (together– “Defendants”) filed a motion to dismiss the complaint of Plaintiff Amit K. Pandey (“Pandey”). Mot., Dkt. No. 50. Pandey filed an opposition to the motion. Opp’n, Dkt. No. 53. Defendants filed a response. Dkt. No. 59.

For the following reasons, the Court **GRANTS in part and DENIES in part** the motion. Pandey has 30 days to amend his Complaint as to the dismissed causes of action.

I. BACKGROUND

The following facts are alleged in Pandey’s complaint.

GBG began as a small financial planning business for expatriates, but in 2005 it started expanding into the international benefits insurance business. Compl. ¶ 19. Specifically, GBG began expanding into international markets for health, life, disability, and travel insurance, catering to multinational corporations, executive travelers, expatriates, and international students. Id. Thorburn became the controlling shareholder and President of GBG in 2005. Id. ¶ 18.

In 2007, Thorburn approached Pandey and invited him to embark on a joint venture that would set up an outsourced operations center in India to serve as the administrative support and IT hub for GBG’s rapidly growing global operations. Id. ¶ 17. The joint venture would also attempt to sell its claims and support services to third party insurance providers. Id.

At the time, GBG operated out of its home office in Foothill Ranch, California, with all claims processing, data entry, enrollment, and administrative tasks being performed by the roughly 15-20 employees at that location. Id. ¶ 20. GBG could not keep up with the claims processing workload that came with

growth, and it was beset by high labor costs that precluded adding additional employees in California. Id. ¶ 21. GBG was using limited, off-the-shelf software systems for its claims processing and enrollment operations, and its website was rudimentary and outdated. Id. ¶ 22.

Pandey, a citizen of both India and the United States, had experience establishing operations and technology centers for American companies in India and a network of local connections. Id. ¶ 23. Thus, Pandey was in a position to greatly contribute to GBG and make it much more profitable. Id. Pandey partnered with Thorburn to create GBG's India operations and support center. Id. ¶ 24.

The India office was to provide the back office and specialized administrative work for all of GBG's worldwide operations, including IT development and support, policy fulfilment and administration, group and individual client on-boarding and account set-up, claims processing, management, and adjudication. Id. ¶ 25. With regard to its IT role, the venture would develop an internal software system and IT platform to support GBG's worldwide operations as well as a customer-facing e-commerce portal. Id. ¶ 26. It would also serve as GBG's IT support and service group going forward. Id. The venture would also build a global direct-bill provider network for GBG, which was central to the services it offered to its clients, which would recruit medical providers and facilities so sign up with World Medical (discussed further below). Id. ¶ 27.

GBG India initially operated through Pandey's existing entity, Coretree Corporation, which was the parent of Indian company Coretree Solutions Private Limited (together, "Coretree"). Id. ¶ 28. In 2007, Thorburn and Pandey's venture was structured such that GBG's wholly-owned subsidiary, World Medical, acquired Coretree and its India operations. Id. ¶ 29. In exchange, Pandey was granted a 26% ownership interest in World Medical, and the other 74% was owned by Thorburn. Id.

At the time, even at its nascent stages, the parties agreed that Pandey's stake in the venture was valued, at a bare minimum, at approximately \$1,200,000. Id. ¶ 30. Thorburn was prohibited from selling, merging, or conducting an initial public offering of the venture unless the transaction would result in a payment to Pandey of at least \$1,200,000. Id.

The governing agreements between the parties contained detailed "drag-

along and tagalong rights” provisions. Id. ¶ 31. Under these provisions, if the majority shareholder (Thorburn) wanted to sell his shares to a third party, he could require the minority shareholder (Pandey) to sell his shares on the same terms (“drag-along”). Id. Similarly, if any shareholder proposed to sell his shares in the company, the shareholder was required to first notify the other shareholder, and the other shareholder must be given the right to sell his shares on the same terms (“tag-along”). Id. ¶ 32. These provisions were especially important to Pandey because Thorburn aspired to exit the company and sell his majority stake once he had built up its value, and Pandey had no desire to commit to being the minority shareholder in a joint venture with some future unknown third party. Id. ¶ 33. Further, the parties recognized that, given the India venture’s interdependence with GBG, the venture could not be valued independently or on an asset basis. Id. ¶ 34. Rather, any valuation would have to look at the venture’s contributions as a going concern and not include “any minority interest or lack of marketability discount.” Id.

Thorburn assured Pandey that despite the Indian arm of GBG—the portion in which Pandey held a 26% equity interest—being separate on paper, everyone was partnering together to build the company’s success and would profit in the end. Id. ¶ 37. Thus, Thorburn told Pandey, things like inter-company accounting and pricing policies, including how much profit was booked under the India venture, were not important. Id.

The second piece of Thorburn and Pandey’s venture was developing a worldwide network of direct-bill medical providers, a central service to GBG’s international travelers and multinational corporations. Id. ¶ 38. The network would be built under the World Medical entity, with Thorburn owning 74% and Pandey owning 26%. Id. ¶ 39. Pandey and the team in India built this international network of providers, contracting with over 1,100 hospitals and healthcare facilities in 50 countries and every major city around the world. Id. ¶ 40.

At some point prior to 2010, Thorburn began searching for a buyer for GBG, and unbeknownst to Pandey, began positioning the companies to deprive Pandey of the value of his interest and eventually push him out so that Thorburn could get a bigger payday by selling 100% of the company unencumbered by a minority shareholder in India. Id. ¶¶ 40–42. World Medical was supposed to be an independent network provider, and the entity was owned by Thorburn and Pandey in their individual capacities. Id. ¶ 43. GBG told its customers that it partnered with World Medical to serve as its direct-bill network outside of North America. Id. ¶

44. GBG's membership ID cards listed Aetna as the direct-bill network within the United States and World Medical as the direct-bill network outside the country. Id. GBG provided a contract that required Pandey and his team to use when signing up medical providers for World Medical, which made the direct-bill agreement between the medical provider and GBG, not World Medical. Id. ¶¶ 46–47. Accordingly, while Pandey and the World Medical staff in India built and owned the direct-bill network, GBG robbed them of the benefits of the network by taking over the actual contracts. Id. ¶ 48.

In or about 2010 and 2011, Thornburn and Pandey began discussions around restructuring the various United States and India entities involved in the Indian venture. Id. ¶ 49. The entities were streamlined, and the (small) portion of the India office's work that involved third-party administration for companies other than GBG was split off into its own entity. Id. ¶ 50. Thorburn wanted to make a deal that would give him 100% ownership of World Medical and the direct-bill network it owned, but the parties did not reach an agreement and World Medical remained unchanged. Id. ¶ 51. Instead, the entities were restructured such that the administrative and back-office services performed for GBG were split off in a new entity, GBG India. GBG India was a direct subsidiary of GBG, which held the controlling 74% interest, with Pandey continuing to hold his 26% interest. Id. ¶ 52. Thorburn insisted that the parties incorporate the original governing documents from 2007 instead of drawing up new documents per Pandey's request. Id. ¶ 53. The original documents were extensive and represented much effort and time by Thorburn's attorneys. Id. Pandey did, however, specifically highlight the need to keep the drag-long/tag-along rights. Id.

From 2007 to 2014, GBG experienced rapid growth, and GBG India was the core driver of the company's operations. Id. ¶ 54. From 2010 to 2014, the GBG India office's 125+ employees accounted for approximately 50-80% of all GBG's employees, and the cost-competitive workforce provided by GBG India allowed GBG to rapidly expand and grow into the dominant player in the international benefits market. Id. ¶ 55–46. A conservative estimate shows that each employee fielded by GBG India saved GBG roughly \$37,000 per year compared to filling the role with a California employee just in salary alone (not accounting for benefits or the myriad other costs of U.S. labor). Id. ¶ 57. With an average of 120 employees provided by GBG India, GBG saved over \$4.43 million each year just in employee salaries, such that by 2014, GBG India had saved GBG over \$35.44 million in salary costs alone. Id. ¶ 58. GBG India also transformed GBG's technology

capabilities and built the IT systems essential for its expansion, as before GBG India, GBG had an outdated, static website with no IT functionality to support its operations. Id. ¶¶ 59–60. GBG India built a scalable e-commerce portal with online claims submission and developed a proprietary in-house technology platform for enrollment and claims processing. Id. ¶ 61. One key competitive driver was GBG India’s unique centralized claims processing capabilities, given that GBG’s business model required the labor-intensive and complex task of processing all the claims it received on its worldwide portfolio of international health, travel, disability, life, and student insurance products—claims involving numerous countries, nationalities, currencies, and languages. Id. ¶ 62.

GBG also took advantage of the pool of experienced managers and personnel at GBG India—who had been recruited and trained by Pandey or other members of the India team—and ordered the transfer of these valuable personnel from India to GBG offices around the world. Id. ¶ 63. In 2014, for instance, GBG moved the head manager of GBG India to build GBG’s operations in the Philippines. Id. By 2014, GBG had—in the seven-year period since Pandey launched GBG India in 2007—gone from a small niche agency to a market-leading, A.M. Best Rated global insurance carrier, with a total premium growing from approximately \$18 million shortly before partnering with Pandey, to over \$131 million in 2014. Id. ¶ 64.

Thorburn remained the majority controlling shareholder of GBG, but two private equity investment firms purchased minority stakes in the company. Id. ¶ 65. Bison Capital Equity Partners, led by Trussler, and Molokai Partners, LLC, led by Gibson, obtained significant minority interests in GBG. Id.

GBG’s website boasted that World Medical was “one of the most comprehensive direct-bill provider networks in the world and serves as a core benefit to GBG products and services,” but while Pandey built the India venture and served as the director of GBG India, he did not receive an annual salary, instead working to build value and generate revenue for GBG because, as Thorburn always reassured him, “when we make money, you’ll make money.” Id. ¶¶ 66–67.

Despite the India venture’s vital role in driving GBG’s enterprise, on paper the accounting was structured such that very little profit was booked under the venture: the only profit allocated to GBG India came from a marginal 15% markup

on its labor costs, which was lower even than prevailing rates for independent outsourcing companies, which charged a minimum markup of approximately 25% to 30%. Id. ¶ 68. Nonetheless, Pandey trusted Thorburn’s assurances that they would share in the profits at the end, either when GBG was bought out or when Pandey sold his stake. Id. In 2014, there were further talks of selling GBG or making it public, so Pandey sought to have his 26% interest in GBG India and World Medical bought out. Id. ¶ 69. In early 2014, Thorburn and Eric Dickelman (“Dickelman”), GBG’s CFO, requested that Pandey submit a valuation of the subsidiaries to discuss a buyout, and Pandey submitted a detailed valuation using a pricing model from PwC. Id. ¶¶ 70–71. Pandey’s pricing model used prevailing transfer pricing rates for captive technology and back office operations of multinational companies in India, the prevailing discount rate, estimated tax rate, and all other necessary parameters. Id. GBG India was growing at a rate of approximately 26% at the time. Id. ¶ 71.

Thorburn and Dickelman strung out the discussions for many months, requesting additional information and time to review, until Thorburn ultimately asserted that he and GBG had “no obligation of any kind to [Pandey],” who was just a “minority holder of a second tier subsidiary of [GBG],” despite the fact that GBG India and World Medical housed approximately 50% of GBG’s employees, performed the company’s core claims and enrollment services, and built the company’s worldwide provider network. Id. ¶¶ 72–74. Thorburn represented to Pandey that because GBG India “has no outside revenue, the subsidiary cannot be sold on a standalone basis,” that Pandey’s ownership interest has no “inherent value,” and that because he and GBG were the majority 74% shareholder of GBG India and World Medical, they could do whatever they wanted with these entities, including transferring their services to other GBG offices or contracting them out to an external vendor. Id. ¶¶ 74–75. Nonetheless, throughout the rest of 2014, 2015, and 2016, Thorburn and Dickelman continued to entertain negotiations and made Pandey believe a good faith buy-out was on the table. Id. ¶ 77.

After 2014, Thorburn and GBG rejected Pandey’s request for a buyout and instead accelerated efforts to squeeze him out, stopped providing Pandey with copies of GBG India’s financial statements, and never provided copies of World Medical’s statements. Id. ¶ 78. In 2015, Pandey made specific requests to review the books and records of GBG India and World Medical, including financial statements, board minutes, tax documents, and any and all agreements between GBG India or World Medical and other entities within GBG, including IP licenses

and transfer agreements. Id. ¶ 79.

Despite having been formed eight years prior (and restructured into GBG India five years prior), neither GBG India nor World Medical had ever held a board of directors meeting, but after Pandey asserted his corporate rights Thorburn convened the first meeting of GBG India's Board of Directors in October 2015. Id. ¶¶ 80–81. Pandey requested that the company audit be performed by a reputable and well-known accounting firm, as Thorburn and GBG were using a local “mom-and-pop” accounting firm in Hyderabad, India, called Prasad & Prasad, which would overlook corporate irregularities and rubber stamp their requests. Id. ¶¶ 82–83. Pandey was outvoted by Thorburn and his directors who controlled the Board. Id. ¶ 83.

Pandey requested a review of the inter-company transfer policies that resulted in very little profit being booked to GBG India, but his request was ignored, and in December 2016, Thorburn convened GBG India's second board meeting, and “annual shareholder meeting,” without Pandey present. Id. ¶¶ 84–85. At this meeting, Thorburn and his directors decided that: (1) GBG India would no longer charge GBG interest on late payments; (2) if a GBG India employee embarked on a “long-term assignment” with another GBG office, that employee would be considered terminated as an employee of GBG India (*i.e.*, GBG could take GBG India's employees and the revenue attributable to that employee would no longer be booked under GBG India); (3) the 15% margin GBG India charged Global Benefits Group was “correct,” and that “an increase was not necessary”; and (4) GBG India was “not entitled to” any additional compensation for the development of GBG's IT and e-commerce platform. Id. ¶ 86.

Contrary to Pandey and Thorburn's written agreements establishing World Medical, Pandey was not given a seat on World Medical's Board of Directors, and instead the directors of GBG, led by Thorburn, were also installed as the directors of World Medical. Id. ¶ 87. From the end of 2015 through 2017, Pandey escalated his demands for World Medical's financial statements and documentation of GBG's payments to World Medical for licensing its IP and using its direct-bill provider network, and called for a meeting of World Medical, but GBG and Thorburn continued their tactics of delay and obfuscation, telling Pandey that GBG had no responsibility or involvement with World Medical because the 74% ownership interest was held by Thorburn individually (despite the fact that World Medical was a direct subsidiary of GBG and the network's logo

still featured prominently on GBG’s member benefits card and promotional materials). Id. ¶¶ 88–89.

After Pandey asserted his rightful stake in World Medical and GBG India, GBG established a new primary corporate entity, GBG Assist, Inc. (“GBG Assist”), under its holding parent company, and GBG moved the operations of GBG India and World Medical into GBG Assist, which became the company’s in-house international customer support service and direct-bill network. Id. ¶¶ 90–91. GBG also removed the World Medical logo from its member IDs and promotional materials and replaced it with the new GBG Assist logo. Id. GBG’s website boasts that “claims reimbursement in other countries is often a time consuming and frustrating process,” but under its GBG Assist service, “GBG has developed a global network of providers who direct bill to minimize the effort in obtaining health care and reimbursements.” Id. ¶¶ 92–93. GBG also appropriated GBG India’s claims, IT, and operational support services into its in-house GBG Assist division, and GBG boasts: “the essence of health insurance is the payment of claims, and in this area, Global Benefits Group prides itself on timely and responsive customer service,” and “GBG Assist is staffed with experienced claims processing professionals, fully conversant with the needs of international clients.” Id. ¶¶ 94–96. GBG further asserts that to provide its GBG Assist service “GBG has developed proprietary claims software, specifically developed to manage the complexities of international claims.” Id. ¶ 96.

In or about 2017, World Medical’s board of directors consisted of Thorburn, Trussler, Gibson, and three other individuals who were high-ranking employees of GBG (Thorburn, Trussler, and Gibson were also members of GBG’s board). Id. ¶ 97. The board members, including, specifically, Thorburn, Trussler, and Gibson, were repeatedly notified of GBG’s past and ongoing violations of its fiduciary duties to World Medical and GBG India through direct communications from Pandey, but in response to Pandey’s communications, which were strictly professional and polite, Gibson and Trussler replied with crude and dismissive comments. Id. ¶¶ 97–98. For example, in response to Pandey’s genuine concerns, Gibson sent a fake auto-reply email: “Automatic Reply ‘You are receiving this automatic reply back because your email address has triggered the moron indicator. You are an actual moron,’” and Trussler told Pandey he could take his GBG India share certificate “to McDonald’s and see if [he] can trade it for a Big Mac.” Id. ¶ 99.

Unbeknownst to Pandey, in November 2017, an amendment was filed with the California Secretary of State changing World Medical's listed directors and officers to remove all of the GBG directors except for Thorburn, whose name was listed under all officer positions, and Pandey, whose name was added for the first time as an additional director. Id. ¶ 100. On December 15, 2017, Thorburn filed a Certificate of Dissolution with the California Secretary of State dissolving World Medical, which Thorburn signed under penalty of perjury, stating that the "dissolution was made by a vote of **ALL** of the shareholders of the California corporation." Id. ¶¶ 101–102 (emphasis in original). Pandey, who was the only shareholder other than Thorburn, was never notified of the dissolution or given any opportunity to vote, and the direct bill provider network developed and owned by World Medical was appropriated by GBG and incorporated into the company as its own, 100% owned network. Id. ¶¶ 103–104. Where GBG's member ID cards and promotional materials used to list World Medical as its international direct-bill network, they now identify the network as GBG's "proprietary Preferred Provider Organization." Id. ¶ 105. Nevertheless, despite GBG and Thorburn's actions to extract all value from GBG India and book only a slim profit margin under the entity, GBG India still operated at a profit through its over ten-year history, but GBG India never paid a single dividend or distribution to its shareholders. Id. ¶¶ 106–107.

In 2017, Defendants conducted an initial public offering of GBG's stock on the London AIM Market, and GBG and its subsidiaries (through their holding company, GBGI Limited) went public with a market cap of \$165 million. Id. ¶¶ 111–112. The majority shareholders never notified Pandey or gave him the opportunity to participate in the IPO with his 26% share in GBG India and World Medical. Id. ¶ 113. The majority shareholders in GBG all received big paydays: Trussler's private equity group received \$13.4 million, Gibson's group received \$8.7 million, and Thorburn received, among other things, approximately \$1.5 million by way of a forgiven note. Id. ¶ 114. After the IPO, Thorburn remained the largest shareholder and continued in a leadership role, though he was still looking to cash out his interest in GBG. Id. ¶¶ 115–116.

GBG and Thorburn continued to string Pandey along, and in 2018 GBG's CFO expressed renewed interest in buying out Pandey's share of GBG India, asking for copies of the valuation Pandey had provided in 2014. Id. ¶ 117. This turned out to be another stalling tactic, and after not responding for several months, the CFO told Pandey that the discounted cash flow valuation no longer applied

because in the intervening years the company had been “pursuing a strategy of decentralized operations” that had and would continue to reduce or eliminate the work performed in India and transfer those operations to other GBG offices and that accordingly, GBG India—and Pandey’s 26% interest—now had little value. Id. ¶ 118.

By that point, Thorburn and GBG’s board had reached a deal to sell the entire company to a private buyer, and on November 5, 2018, GBG announced that its board had approved an agreement of a cash offer for the entire share capital of the company to the private equity group Further Global Capital Management, L.P. (“Further Global”). Id. ¶¶ 119–120. In February 2019, the buy-out was complete, and Thorburn, Trussler, Gibson, Dickelman, and all other shareholders and board members exited the company; Pandey was never notified of the sale or given the opportunity to sell his 26% interest in GBG India and World Medical. Id. ¶¶ 121–122.

Pandey refused to be forced out of the enterprise he spent seven years building for a “nominal, goodwill payment,” and after additional stalling tactics drawing the correspondence into the beginning of 2020, including repeated requests for information that had been provided many times previously, it became clear that GBG and Thorburn were never interested in compensating Pandey for his investment in the company; rather, they had pursued a strategy to extract all value from the entities in which Pandey held a 26% ownership interest. Id. ¶¶ 124–125.

Pandey brings both derivative and direct causes of action. With respect to the derivative causes of action, Pandey alleges that any demand made to Defendants with regard to GBG India or World Medical was, and would be, futile because Defendants are responsible for a long history of violations of their fiduciary duties and have been the beneficiaries of the profits, intellectual property, resources, personnel, network, and assets wrongfully misappropriated from GBG India and World Medical. Id. ¶ 131. Accordingly, Defendants’ interests are directly adverse to GBG India and World Medical’s interests, and they are thus incapable of making impartial, unbiased decisions regarding the merits of Pandey’s request Id. ¶ 132.

Pandey brings the following thirteen causes of action: (1) Breach of Fiduciary Duties (direct); (2) Breach of Fiduciary Duties (derivative); (3) Usurpation of Corporate Opportunity (derivative); (4) Breach of Contract (direct);

(5) Breach of Contract (derivative); (6) Breach of the Implied Covenant of Good Faith and Fair Dealing (direct); (7) Breach of the implied covenant of Good Faith and Fair Dealing (derivative); (8) Intentional Interference with Prospective Economic Advantage (derivative, on behalf of World Medical against GBG, GBGI Limited, and Thorburn); (9) Intentional Interference with Prospective Economic Advantage (derivative, on behalf of GBG India, against Thorburn); (10) Accounting (direct); (11) Accounting (derivative); (12) Quantum Meruit (direct); and (13) Quantum Meruit (derivative). See generally, Compl. Pandey filed these causes of action against Defendants, as well as against GBG, GBG Services (India), Trussler, and Gibson. Id. Defendants filed a motion to dismiss all claims on August 20, 2020. See Mot., Dkt. No. 50. Separately, Thorburn filed a motion to dismiss on August 20, 2020. See Mot, Dkt. No. 49. The Court will only address Defendants’ motion to dismiss in this order, and will address Thorburn’s motion to dismiss separately.

II. LEGAL STANDARD

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has “facial plausibility” if the plaintiff pleads facts that “allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

To resolve a Rule 12(b)(6) motion under Twombly, a court must follow a two-pronged approach. First, a court must accept all well-pleaded factual allegations as true, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678. As such, a pleading must allege facts that permit “the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. Courts “are not bound to accept as true a legal conclusion couched as a factual allegation.” Id. (quoting Twombly, 550 U.S. at 555). A court considering a motion to dismiss may “begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” Iqbal, 556 U.S. at 679.

Second, assuming the veracity of well-pleaded factual allegations, the Court must “determine whether they plausibly give rise to an entitlement to relief.” Id. at 679. This determination is context-specific; the Court must draw on its experience

and common sense, but there is no plausibility where the court cannot “infer more than the mere possibility of misconduct.” Id.

III. DISCUSSION

A. International Comity

Defendants begin by arguing that all of Pandey’s claims on behalf of GBG India as well as his derivative claims based on Pandey’s status as a shareholder of GBG India should be dismissed based on principles of International Comity. See Mot., Dkt. No. 50, at 6. Defendants point to Pandey’s allegation that GBG India is incorporated in India to argue that these claims should be dismissed “out of deference to the sovereign laws of India governing the affairs of India corporations.” Id.

“International comity is a doctrine of prudential abstention, one that ‘counsels voluntary forbearance when a sovereign which has a legitimate claim to jurisdiction concludes that a second sovereign also has a legitimate claim to jurisdiction under principles of international law.’” Mujica v. AirScan Inc., 771 F.3d 580, 598 (9th Cir. 2014.) (quoting United States v. Nippon Paper Indus. Co., 109 F.3d 1, 8 (1st Cir.1997)). When deciding whether to decline to hear a case based on comity, a court should evaluate, among other things, “(1) the strength of the United States’ interest in using a foreign forum, (2) the strength of the foreign governments’ interests, and (3) the adequacy of the alternative forum.” Mujica, 771 F.3d 580, at 603 (9th Cir. 2014) (quoting Ungaro–Benages v. Dresdner Bank AG, 379 F.3d 1227, 1238 (11th Cir. 2004)). However, the Ninth Circuit makes clear that “the Ungaro–Benages framework is a useful starting point for analyzing comity claims, but the case offers no substantive standards for assessing its three factors.” See Mujica, 771 F.3d, at 603.

The Court will not dismiss Pandey’s derivative claims for reasons of

international comity. Critical to this decision is the fact that Pandey’s case involves primarily U.S. parties, U.S. agreements, and U.S. conduct, notwithstanding the fact that GBG India is incorporated in India. Moreover, unlike past cases in which courts have dismissed complaints for reasons of comity, Defendants do not assert an important foreign interest at issue that counsels against exercising jurisdiction. See, e.g., Cooper v. Tokyo Electric Power Company Holdings, Inc., 960 F.3d 549 (9th Cir. 2020) (District Court did not abuse its discretion in dismissing claims of U.S. service members who alleged they had been exposed to radiation from the Japanese Fukushima Daiichi Nuclear Power Plant while providing relief to victims of an earthquake and tsunami on grounds of international comity after considering an amicus brief submitted by the Japanese Government that “strongly objected to [the] case being litigated in the United States” as “Japan has committed a significant sum of money and resources to ensure fair and consistent compensation for accident victims.”); Hwang Geum Joo v. Japan, 413 F.3d 45, 52 (D.C. Cir. 2005) (dismissing claims of Korean women in light of U.S. government’s argument that “adjudication by a domestic court not only would undo a settled foreign policy of state-to-state negotiation with Japan, but also could disrupt Japan's delicate relations with China and Korea, thereby creating serious implications for stability in the region” (internal quotation marks omitted); Ungaro–Benages, 379 F.3d at 1239 (abstaining in light of strong foreign policy interest in promoting settlement of Nazi-era claims through government-backed forum); O.N.E. Shipping Ltd. v. Flota Mercante Grancolombiana, S.A., 830 F.2d 449, 451 (2d Cir.1987) (affirming dismissal where district court concluded that U.S.-Colombian relations would likely suffer if U.S. litigation proceeded in light of foreign state's “strong interest” in relevant protectionist legislation and ownership interest).

Although Defendants allege that India has a strong interest in adjudicating this claim because “litigating Indian law claims in the United States would undermine India’s interest in the development of its own corporate governance law,” the Court does not find this to be a sufficiently weighty reason to refrain from ruling on this matter. See Mot., Dkt. No. 50, at 9.

Accordingly the court **DENIES** the motion to dismiss on the grounds of international comity.

B. Burden of Pleading Derivative Allegations

Defendants next assert that Pandey's derivative claims must fail because Pandey has failed to meet the Rule 23.1 pleading standard required in the context of derivative claims. See Mot., Dkt. No. 50, at 11. Defendants argue that Pandey raises only derivative claims, as his derivative claims are actually direct. Id. at 11. Defendants also argue that Pandey has failed to sufficiently allege demand futility. Id. at 12. The Court will discuss each of these arguments in turn.

i. Direct Claims

Defendants assert that Pandey's direct claims are all, in fact, derivative. See Mot., Dkt. No. 50 at 11. The appropriate inquiry under California law to determine whether a claim is direct or derivative is what the "core" or "essence" of the action is. See Avikian v. WTC Financial Corp, 98 Cal.App.4th 1108, 1115, 120 (2002); PacLink Communications Intern., Inc. v. Superior Court, 90 Cal.App.4th 958, 964 (2001). "An action is derivative if 'the gravamen of the complaint is injury to the corporation, or to the whole body of its stock or property without any severance of distribution among individual holders, or if it seeks to recover assets for the corporation or to prevent the dissipation of its assets.'" Schuster v. Gardner, 127 Cal. App. 4th 305, 313 (2005) (quoting Jones v. H.F. Ahmanson & Co., 1 Cal. 3d 93, 106-107 (1969)). "An individual cause of action exists only if damages to the shareholders were not incidental to damages to the corporation." Id. Accordingly, a "stockholder's claimed direct injury must be independent of any alleged injury to the corporation. The stockholder must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation." Id. at 316.

The core, essence, and gravamen of Pandey’s complaint is that Defendants, “set up Pandey with a minority interest in two subsidiaries, made those subsidiaries captive providers to Global Benefits Group with no other clients, and rendered Pandey’s shares unmarketable to third parties” and that they then “manipulated inter-office accounting so that very little profit was booked with Pandey’s entities, took the assets of the entities, including their intellectual property and valuable medical network, took the entities’ experienced managers and staff for themselves, and then transferred a large chunk of the services being performed by Pandey’s operations to their own in-house entities, cutting Pandey out of any revenue.” Compl. ¶ 2. Pandey does not plead facts to allege that he suffered harm different in kind from that suffered by GBG India and World Medical. Allegations of corporate mismanagement are classic derivative claims that belong to the a company. See, e.g., Avikian, 98 Cal. App. 4th, at 1116 (2002).

The Court finds that the core and essence of Pandey’s complaint (and alleged harm) are in reference to harm suffered by World Medical itself, which Pandey sets forth in the same paragraph in which he sites his alleged direct harm. See Compl. ¶ 134 (b)–(d) (“Manipulating GBG India and [World Medical’s] accounting such that the entities were treated as cost centers with the corresponding profit and benefit booked under Global Benefits Group for the benefit of Defendants; Instituting artificially low transfer pricing margins Global Benefits Group paid to GBG India, which were a fraction of prevailing margins and not reflective of any arms’ length considerations; Raiding experienced managers and personnel from GBG India and transferring them to Global Benefits Group offices in other locations, for Defendants’ sole benefit.”)

Accordingly, the Court finds that Pandey has insufficiently pled facts to support his direct claims, and **GRANTS** Defendant’s motion to dismiss Pandey’s direct claims (Claim 1, Claim 4, Claim 6, Claim 10, and Claim 12) with leave to amend.

ii. Demand futility

Defendants next assert that Pandey has failed to plead facts sufficient to show that he was excused from making a demand on the GBG's Board of Directors on the basis of demand futility. See Mot., Dkt. No. 50, at 13. Defendants argue that the relevant standard to determine whether demand futility was sufficiently alleged is that of Indian derivative actions, which Defendants suggest is informed by English Common Law. See id. According to Defendants, English Common Law allows for demand to be excused where there is "an allegation of ultra vires or illegal action," or in the case of fraud on a minority shareholder, "only if 'the wrongdoers are themselves in control of the company,' the theory being that a complainant should exhaust his internal corporate remedies unless such an effort would be idle or futile." Id. at 13–14 (citing Messinger v. United Canso Oil & Gas Ltd., 486 F. Supp. 788, 793 (D. Conn. 1980)).

Pandey asserts that California law, rather than Indian law, controls the standard for demand futility pleading because the parties agreed when they set up World Medical (from which GBG India split off) that California law would govern. See Opp'n., Dkt. No. 53, at 12. Defendants disagree, arguing that the agreement to which Pandey refers is a contribution agreement that does not speak to GBG's internal governance at all. See Reply, Dkt. No. 59, at 2.

Under California Law, which follows Delaware law on demand futility, the court looks at whether the plaintiff has established, by means of particularized factual allegations, that a majority of the board is interested or lacking in independence. Aronson v. Lewis, 473 A.2d 805, 814 (Del. 1984), overruled on other grounds by Brehm v. Eisner, 746 A.2d 244 (Del. 2000); Rales v. Blasband, 634 A.2d 927, 934 (Del. 1993). Under Delaware law, a director is "interested" if he or she has a personal interest not shared by the corporation or faces a "substantial likelihood" of personal liability regarding the subject of the complaint. Rales, 634 A.2d at 936. In order to determine whether a majority of directors have participated in the wrongdoing or are interested, then, "the court, in reviewing the allegations to support demand futility, must be able to determine on a director-by-director basis whether or not each possesses independence or disinterest such that he or she may

fairly evaluate the challenged transaction.” Bader at 101 (citing Oakland Raiders v. National Football League, 93 Cal.App.4th 572, 587 (2001)).

Although “courts in California apply the law of the state of incorporation in considering claims relating to internal corporate affairs,” the Court is not convinced that Indian law provides usable metrics for the demand futility analysis given that Defendants only cite to “relevant” English Common Law and no actual Indian law to back up their assertions that Pandey is required to meet a heightened pleading standard. See In re Sagent Tech., Inc., Derivative Litig., 278 F. Supp. 2d 1079, 1087 (N.D. Cal. 2003); See also Mot, Dkt. No. 50, at 13. Moreover, Defendants do not explain why it should not be relevant that while GBG India is incorporated in India, World Medical is incorporated in California, and GBG Group is incorporated in Delaware with its principal place of business in California. See Compl. ¶¶ 7, 12, 13. The Court will therefore apply the law of California to determine the applicable pleading standard for demand futility

Pandey alleges that “any demand made. . . with regard to GBG India or World Medical Network was, and would be futile,” because “Defendants are responsible for a long history of violations of their fiduciary duties to Plaintiff and Defendants have been the beneficiaries of the profits, intellectual property, resources, personnel, network, and assets wrongfully misappropriated from GBG India and World Medical Network. Accordingly, Defendants’ interests are directly adverse to GBG India and World Medical Network’s interests, and they are thus incapable of making impartial, unbiased decisions regarding the merits of Plaintiff’s request.” Compl. ¶ 131.

The Court is satisfied that Pandey has alleged sufficient claims to show that demand would be futile on Thorburn. See generally, Compl. Pandey also alleges that Trussler and Gibson were directors, along with “three other individuals who were high-ranking employees” of GBG. Id. ¶ 97. Pandey claims that Trussler and Gibson were crude and dismissive towards him, which the Court finds sufficient to satisfy the requirement that Pandey plead with particularity the facts that would

make demand futile with respect to Trussler and Gibson. See id. ¶ 99. However, Pandey includes no allegations with respect to the three other individuals on the board except that they were high ranking employees of GBG. Compl. ¶ 97. Nonetheless, Pandey alleges that in November 2017, an amendment was filed with the California Secretary of State changing World Medical’s directors to just Thorburn and Pandey. Compl. ¶ 100. The Complaint, therefore, alleges that at the time Pandey filed this lawsuit, World Medical had only two directors—Thorburn and Pandey. Id. Because Pandey has sufficiently alleged facts to show that Thorburn was not disinterested, he has met the requirements of alleging demand futility.

Accordingly, the Court **DENIES** the motion to dismiss Pandey’s derivative claims on the ground that he has failed to allege demand futility.

D. World Medical’s Subsidiary Status and Trussler and Gibson as Directors

Defendants next argue that Pandey’s derivative claims must fail because they are premised on the allegation that World Medical was a subsidiary of GBG, which is in tension with Pandey’s allegation that he had a 26% interest in World Medical and Thorburn had a 74% interest. See Mot., Dkt. No. 50, at 16. If Pandey and Thorburn together owned 100% of World Medical, GBG could not have been its parent company because one cannot be the parent company of a subsidiary in which one owns a 0% ownership interest. Id. Moreover, Defendants assert that Trussler and Gibson were not, in fact, directors of GBG. Id.

Pandey alleges that “at all relevant times hereto, each of the Defendants was the agent, alter-ego, employee, principal, partner, joint venturer, employer, or in some other capacity derivatively responsible for each of the acts of the other Defendants,” rendering it plausible that GBG did have an ownership interest in World Medical. See Compl. ¶ 14. However, more to the point, Pandey’s allegations regarding World Medical’s subsidiary status and Trussler and Gibson’s

status as directors must be accepted as true at the pleading stage. Defendants' argument requires a factual analysis of extrinsic evidence that is more appropriate in a motion for summary judgment.

Accordingly, the Court **DENIES** the motion to dismiss Pandey's derivative claims on the factually disputed grounds of World Medical's subsidiary status or Trussler and Gibson's director status.

E. Breach of Fiduciary Duty

Having dismissed Pandey's direct claim for breach of fiduciary duty with leave to amend, the Court will consider Defendants' motion with respect to Pandey's derivative claim for breach of fiduciary duty. See Mot., Dkt. No. 50, at 17.

Under California law, the elements of a claim for breach of fiduciary duty are: (1) the existence of a fiduciary duty, (2) a breach of the duty, and (3) resulting damage. Pellegrini v. Weiss, 165 Cal. App. 4th 515, 524 (2008). California courts also apply a common law version of the business judgment rule to fiduciary-duty claims asserted against corporate directors. Scouler & Co., LLC v. Schwartz, 2012 U.S. Dist. LEXIS 62252, at *10 (N.D. Cal. Apr. 23, 2012). The business judgment rule "immunizes directors from personal liability if they act in accordance with its requirements," creating "a presumption that directors' decisions are based on sound business judgment." Berg & Berg Enters., LLC v. Boyle, 178 Cal. App. 4th 1020, 1045 (2009). The presumption "can be rebutted only by affirmative allegations of facts which, if proven, would establish fraud, bad faith, overreaching or an unreasonable failure to investigate material facts." Id. at 1046. Moreover, "[a]n exception to the presumption afforded by the business judgment rule accordingly exists in circumstances which inherently raise an inference of conflict of interest and the rule does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest." Id. at 1045 (citation and internal quotation marks omitted).

Defendants argue that Pandey has not alleged facts sufficient to overcome the business judgment rule. See Mot., Dkt. No. 49, at 23. The Court disagrees.

Pandey has made multiple factual allegations with respect to Thorburn's conflict of interest in his dealings with GBG India. See, e.g., Compl. ¶ 42 [“Thorburn, unbeknownst to Pandey, began positioning the companies in order to deprive Pandey of the value of his equity interest and eventually push him out so that Thorburn could get a bigger payday by selling 100% of the company unencumbered by a minority shareholder in India”]; ¶¶ 45, 48 [Thorburn and GBG took World Medical for themselves]; ¶ 63 [“The benefits Global Benefits Group squeezed from the India venture were not confined to back office support and IT development. Global Benefits Group took advantage of the pool of experienced managers and personnel at the India venture . . . and ordered the transfer of these valuable personnel from India to Global Benefits Group offices around the world . . .”]; ¶¶ 68, 73, 75 [Thorburn asserted that “he and Global Benefits Group had ‘no obligation of any kind to [Pandey],’ who was just a ‘minority holder of a second tier subsidiary of [Global Benefits Group]’ and “they could do whatever they wanted with these entities”]; ¶¶ 76; 90, 91; 93 [“Global Benefits Group also appropriated GBG India’s claims, IT, and operational support services into its in-house GBG Assist division”]; ¶¶ 102–103 [Thorburn signed a certificate dissolving World Medical and falsely claiming, under penalty of perjury, that all shareholders approved the action]; and ¶¶ 113–14 [Pandey was never allowed to participate in the initial public offering or buy out and “[t]he majority shareholders in Global Benefits Group all received a big payday. . . . Thorburn received, among other things, approximately \$1.5 million by way of a forgiven note”].)

Defendants also argue that Pandey's breach of fiduciary duty claims are untimely under the applicable three-year statute of limitations. See Mot., Dkt. No. 50, at 19. However, the Court finds that although Pandey had reason to be suspicious of wrongdoing during the years between 2007 and 2019, his cause of action did not formally accrue until he incurred damages in the form of the sale of GBG in 2019 from which he was excluded. See Compl. ¶ 121–122. Statutes of

limitations begin to toll upon the occurrence of the last element essential to the cause of action. When one of the elements of a cause of action is damages, then damages must accrue before the statute begins to toll. See Thomson v. Canyon, 198 Cal. App. 4th 594, 604 (2011) (“the cause of action does not accrue until the damages have been sustained.”) Pandey alleges that he was under the belief that he would be entitled to sell his 26% interest in GBG India and World Medical as part of any sale of GBG that would occur in the future. Compl. ¶¶ 31–37. Pandey did not, therefore, incur damages until it was clear that he would be unable to sell his interest.

Pandey’s allegations are sufficient to state a claim for relief on the basis of breach of fiduciary duty given that he adequately alleges that the Board of directors had various conflicts of interest that would overcome the presumptive protection afforded by application of the business judgment rule, and his claim is not barred by the applicable statute of limitations. Accordingly, the Court **DENIES** the motion to dismiss Pandey’s derivative claim for breach of fiduciary duty.

F. Contract Claims

Having dismissed Pandey’s direct claims for breach of contract and breach of the implied covenant of good faith and fair dealing with leave to amend, the Court will consider Defendants’ motion with respect to Pandey’s derivative breach of contract and breach of good faith and fair dealing claims. Defendants argue that Pandey’s allegations fail to state claims for which relief may be granted with respect to either a breach of contract claim or a breach of the implied covenant of good faith and fair dealing claim. See Mot., Dkt. No. 50, at 20.

i. Breach of Contract

In California, the elements of a breach of contract claim are (1) existence of a contract, (2) performance by the plaintiff or excuse for nonperformance, (3) the defendant’s breach, and (4) damages. Evans Tire & Serv. Ctrs. v. Bank of Am.,

2012 U.S. Dist. LEXIS 35295, *13-14 (S.D. Cal. Mar. 14, 2012) (citing First Commercial Mortg. Co. v. Reece, 89 Cal. App. 4th 731, 745.)

Pandey alleges that Defendants breached various agreements including “the 2007 Term Sheet and Stock Purchase Agreement [“SPA”] and the 2010 restructuring agreements.” Compl. ¶ 164. The Complaint alleges that Defendants breached provisions of the SPA by failing to allot Pandey his two seats on the board of directors, failing to distribute the net income of World Medical, denying Pandey his right to participate in the initial public offering, denying Pandey his tag-along rights in the ultimate sale of the GBG, and failing to provide Pandey a right of first refusal in the sale of World Medical shares. Compl. ¶¶ 87, 113, 122, 161, 165. The Complaint also alleges that Defendants “fail[ed] to distribute the net income of [World Medical] or GBG India as required (20% of the net income up to \$200,000 and 10% from \$200,001 to \$500,000),” and describes instances where Pandey requested and was denied access to World Medical’s books and records. Compl. ¶¶ 79, 88, 161.

While Defendants posit a different version of the facts, consideration of factual allegations outside of those in the plaintiff’s complaint is inappropriate at the motion to dismiss stage. Accordingly, the court **DENIES** Defendants’ motion to dismiss Pandey’s derivative breach of contract claim.

ii. Breach of Implied Covenant of Good Faith and Fair Dealing

Every contract includes an implied covenant of good faith and fair dealing. Foley v. Interactive Data Corp., 47 Cal. 3d 654, 683–84 (1988). The precise nature and extent of the covenant depends on the contract. Id. A breach of the implied covenant must be “a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence but rather by a conscious and deliberate act,” which “frustrate[s] the agreement’s common purpose and deprive[s] the other party of the contract’s benefits.” Careau & Co. v. Sec. Pac. Bus. Credit, Inc., 222 Cal. App. 3d 1371, 1395 (1990). However, a claim

for breach of the implied covenant is superfluous if it merely restates the claim for breach of contract. Zepeda v. PayPal, Inc., 777 F. Supp. 2d 1215, 1221 (N.D. Cal. 2011). “If the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated.” Careau, 222 Cal. App. at 1395.

The Court finds that Pandey’s breach of good faith and fair dealing claim relies on the same alleged facts as his breach of contract claim and that it should thus be disregarded as superfluous. See Compl. ¶ 170.

Accordingly, the Court **GRANTS** the motion to dismiss Pandey’s derivative claim for a breach of the implied covenant of good faith and fair dealing with leave to amend.

G. Accounting Claim

Having dismissed Pandey’s direct claim for accounting with leave to amend, the Court will consider Defendants’ motion with respect to Pandey’s derivative claim for accounting. See Mot., Dkt. No. 50, at 22. Defendants argue that Pandey’s accounting claim must fail because accounting is a remedy, not a claim, and that it is unavailable where a plaintiff is entitled to a remedy at law. Id. Moreover, Defendants argue that Pandey’s accounting claim should be dismissed as he has failed to establish a viable claim for relief on other grounds. Id.

In California, “[a] cause of action for an accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due to the plaintiff that can only be ascertained by an accounting.” Tesele v. McLoughlin, 173 Cal. App. 4th 156, 179 (2009).

Pandey has alleged throughout his complaint that he is owed money based on his 26% interest in GBG India and World Medical, but while he is aware “that GBG engaged in an IPO and was later sold, he is not privy to the internal calculations used, such that his share of GBG India and World Medical can be properly valued.” See Opp’n., Dkt. No. 53, at 24. Moreover, as explained throughout this order, the Court disagrees with Defendants’ assertion that all of Pandey’s claims fail.

Accordingly, the Court **DENIES** the motion to dismiss Pandey’s derivative accounting claim.

H. Quantum Meruit Claim

Having dismissed Pandey’s direct claim for quantum meruit with leave to amend, the Court will consider Defendants’ motion with respect to Pandey’s derivative claim for quantum meruit. See Mot., Dkt. No. 50, at 23.

A plaintiff is “entitled to recover in quantum meruit for the value of services performed [for a defendant] to the extent [the plaintiff’s] work conferred some benefit” on the defendant. Reich v. Cavalry Inv., LLC, 2010 WL 2509905, at *6 (E.D. Cal. June 17, 2010). The 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. Port Med. Wellness, Inc. v. Connecticut Gen. Life Ins. Co., 24 Cal. App. 5th 153, 180, 233 Cal. Rptr. 3d 830, 852 (Ct. App. 2018), reh’g denied (June 6, 2018), review denied (Sept. 12, 2018).

Defendants argue that Pandey cannot maintain a quantum meruit claim because a quantum meruit claim fails as a matter of law where there is a governing contract. Mot., Dkt. No. 49, at 23. Specifically, Defendants argue that “Plaintiff acknowledges there are ‘various agreements’ that govern the dispute. (Compl. ¶ 160.) [and that] [t]here was even an employment agreement with GBG, which

set out in detail the “compensation” owed for his services.” Id.

The Court disagrees with Defendants’ assertion that Pandey cannot allege a quantum meruit claim where he is also seeking recovery according to a governing agreement. Pandey is entitled to plead his quantum meruit claim as an alternative theory of recovery to his breach of contracts claims.

Accordingly, the Court **DENIES** Defendants’ motion to dismiss Pandey’s derivative quantum meruit claim.

I. Claims against Trussler and Gibson

Finally, Defendants allege that Pandey’s complaints should be dismissed with respect to Trussler and Gibson because “[a]side from boilerplate recitals and baseless allegations of supposed directorships ‘[o]n information and belief’ (Compl. ¶ 97), Trussler and Gibson are not alleged (let alone with particularity) to have done anything except respond with “dismissive comments” to Plaintiff’s theories.” Mot., Dkt. No. 49, at 23.

However, the Court finds that Defendants once again engage in factual disputes with Pandey’s allegations that are more appropriate on summary judgment. Regardless of whether Defendants believe it is “baseless,” Pandey has alleged that Trussler and Gibson were directors of World Medical and members of the GBG board. Compl. ¶ 97. Pandey has further alleged that Trussler and Gibson ignored their responsibilities as directors of both World Medical and GBG, including by failing to act when apprised of GBG’s past and ongoing violations. Id. ¶ 98. These allegations are sufficient to sustain Pandey’s various claims for relief against Trussler and Gibson at the motion to dismiss stage.

Accordingly, the court **DENIES** the motion to dismiss Pandey’s claims against Trussler and Gibson.

J. Leave to Amend

A party may amend its pleading with the court's leave, which should be "freely give[n] . . . when justice so requires." Fed. R. Civ. P. 15(a)(2); see Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990) (requiring that policy favoring amendment be applied with "extreme liberality"). In the absence of an "apparent or declared reason," such as undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by prior amendments, prejudice to the opposing party, or futility of amendment, it is an abuse of discretion for a district court to refuse to grant leave to amend a complaint. Foman v. Davis, 371 U.S. 178, 182 (1962); Moore v. Kayport Package Express, Inc., 885 F.2d 531, 538 (9th Cir. 1989). "Although there is a general rule that parties are allowed to amend their pleadings, it does not extend to cases in which any amendment would be an exercise in futility, or where the amended complaint would also be subject to dismissal." Steckman v. Hart Brewing, 143 F.3d 1293, 1298 (9th Cir. 1998) (internal citations omitted).

The Court here finds that there is no reason to deny Pandey's request for leave to amend. See Opp'n., Dkt. No. 53, at 25. Accordingly, the Court grants Pandey leave to amend his Complaint with respect to the dismissed claims.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS in part and DENIES in part** the motion.

Specifically, the Court **GRANTS** the motion to dismiss Pandey's direct claims for: Breach of Fiduciary Duty (Claim 1); Breach of Contract (Claim 4) Breach of the Implied Covenant of Good Faith and Fair Dealing (Claim 6); Intentional Interference with Prospective Economic Advantage (Claim 8); Accounting (Claim 10); and Quantum Meruit (Claim 12). The Court also

GRANTS the motion to dismiss Pandey's derivative claim for Breach of the Implied Covenant of Good Faith and Fair Dealing (Claim 7).

The Court **DENIES** the motion to dismiss with respect to the following derivative claims: Breach of Fiduciary Duty (Claim 2); Usurpation of Corporate Opportunity (Claim 3); Breach of Contract (Claim 5); Intentional Interference with Prospective Economic Advantage (Claims 8 and 9); Accounting (Claim 11); and Quantum Meruit (Claim 13).

Pandey has 30 days to his Complaint as to the dismissed causes of action.

IT IS SO ORDERED.

Effective immediately all oral arguments are VACATED. The Court will continue to post tentatives in the afternoon of the Court day prior to the scheduled hearing (e.g., Friday afternoon for Monday hearings). Any party may file a request for hearing of no more than five pages no later than 5:00 p.m. the day following the scheduled hearing (e.g., Tuesday 5:00 p.m. for a Monday hearing) stating why oral argument is necessary. If no request is submitted, the matter will be deemed submitted on the papers and the tentative will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted. The Court asks for the parties' understanding and patience in these difficult times.