TENTATIVE RULING

For all the reasons discussed below, the demurrer is sustained. Out of an abundance of caution, the court will allow leave to amend, should plaintiff have any other theory to allege against District. To be clear, however, the court finds no basis for amendment under the common count of goods and services rendered or restitution.

ANALYSIS

According to the second amended complaint (SAC), Santa Maria Valley Water Conservation District (District) entered into a contract with Mitigation Solutions LLC[1] on January 19, 2023 for restoration and mitigation services with respect to the Twitchell Dam and Reservoir ("Project"). (SAC, ¶ 16.) Mitigation Services entered into a subcontract with Barnett Southern Corporation (Barnett) to provide certain services. (*Id.*) Barnett and plaintiff, War Eagle Consulting and Contracting Inc., entered into a subcontract agreement on February 9, 2023 for War Eagle to provide emergency water pumping and related mitigation services and materials. (*Id.*) War Eagle now asserts it is still owed $623,083.00. It alleges the following causes of action in its SAC: (1) goods and services rendered against District; (2) unjust enrichment/restitution against District; (3) breach of written contract against Mitigation Services and its parent companies, Western Sierra Resource Corporation[2]; (4) breach of contract against Barnett; and (5) declaratory relief against Barnett.

District demurs to the first and second causes of action. Opposition and reply have been filed.

Objection to Evidence

District submits a declaration of attorney Michael Linden reporting that he sent an email to plaintiff's counsel, Michael Battin, outlining the District's position and legal authority regarding the two causes of action in the SAC against the District. Attached to this email is a copy of the "Mitigation Contract" between the District and defendant Mitigation Solutions, LLC that is referenced in the SAC. (Linden Decl., Exh. A.) According this contract, Mitigation Solutions had developed a remediation plan for the dredging of the Dam; the services were to be performed

[1] Mitigation Services maintains LLCs in NY and WY. The SAC alleges on information and belief that the contract was entered into with one or the other. Both will be referred to as Mitigation Services.

[2] Western Sierra Resource Corporation maintains corporate entities in both Colorado and Utah. Both are named defendants. The court will refer to both as Western Sierra.

at no cost to the District and would be funded by Mitigation Solutions and/or applicable federal and state funding agencies; and that District would have no obligation to fund or pay for any services or actions of Mitigation Services. (*Id.*)

Plaintiff objects to this evidence on several bases, notably, that it contains extrinsic evidence which does not appear on the face of the pleading. (Code Civ. Proc., § 430.30, subd. (a).) District argues the court may take judicial notice of it under Evidence Code section 452, subdivision (h) [facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy]. District argues that since plaintiff did not deny the exhibit attached to the email is the Mitigation Contract referred to in the SAC, it is not reasonably subject to dispute.

The court agrees. Plaintiff raised no dispute as to the accuracy of the exhibit.[3] Moreover, the contract was obtained from a signatory, which is a source of reasonably indisputable accuracy. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 753—judicial notice was properly taken under Evidence Code § 452 subdivision (h) of a purchase and assumption agreement between the FDIC and defendant, a solvent bank, and that its legal effect was for the FDIC to transfer to defendant an insolvent lender's assets, but not its liabilities for borrowers' claims; agreement was posted on the FDIC website; and plaintiff borrower did not question with specificity the genuineness, completeness or legal effect of the agreement; but see *Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 887-890—finding same agreement incapable of judicial notice under facts of that case.) The court overrules the evidentiary objections.

Merits

1. 1st (Goods and Services Rendered) Cause of Action

District argues that plaintiff cannot sue the District on the common count of goods and services rendered. To establish the common count of goods and services rendered, plaintiff must prove: (1) That [name of defendant] requested, by words or conduct, that [name of plaintiff] [perform services/deliver goods] for the benefit of [name of defendant]; (2) That [name of plaintiff] [performed the services/delivered the goods] as requested; (3) That [name of defendant] has not paid [name of plaintiff] for the [services/goods]; and (4) The reasonable value of the [goods/services] that were provided. (CACI 371.) This is also known as quantum meruit. (*E. J. Franks Construction, Inc. v. Sahota* (2014) 226 Cal.App.4th 1123, 1127–1128—" In other words, quantum meruit is equitable payment for services already rendered.")

[3] The court notes that the exhibit carries the same date of execution as identified in SAC, ¶ 16.

Case law holds that "generally [,] a private party cannot sue a public entity on an implied-in-law or quasi-contract theory, because such a theory is based on quantum meruit or restitution considerations which are outweighed by the need to protect and limit a public entity's contractual obligations." (*Janis v. California State Lottery Com.* (1998) 68 Cal.App.4th 824, 830.) Plaintiff relies on *County of Santa Clara v. Superior Court* (2023) 14 Cal.5th 1034, 1049, arguing that the California Supreme Court has significantly narrowed the precedential impact of *Janis*, and the cases it relies on. In *County of Santa Clara*, two hospitals that provided emergency medical care to individuals enrolled in a health plan operated by the County submitted reimbursement claims to the County, but the County paid only a portion of the claimed amounts. (*Id.* at 1038.) The Hospitals sued the County for the remaining amounts based on the Knox-Keene Act, which allowed for private actions under a quantum meruit theory. (*Id.* at 1038, 1044.) The issue presented was whether a claim "for reimbursement of emergency medical services may be maintained against a health care service plan when the plan is operated by a public entity, or whether the Government Claims Act (Gov. Code, § 810 et seq.) immunizes a public entity from such a claim." (*Id.* at 1038.) The Supreme Court found that governmental immunity was not applicable because the matter did not sound in tort, but instead was based on statute. (*Id.* at 1045-1051.). Furthermore, there was nothing in the Knox-Keene Act suggesting that public health plans should be treated differently than private plans with respect to the reimbursement provision. (*Id.* at 1051-1052.)

The Cal. Supreme Court specifically considered three cases that discuss availability of quantum meruit claims against government entities: *Miller v. McKinnon* (1942) 20 Cal.2d 83, 124 P.2d 34 (*Miller*), *Los Angeles Dredging Co. v. Long Beach* (1930) 210 Cal. 348, 291 P. 839 (*Los Angeles Dredging Co.*), and *Zottman v. San Francisco* (1862) 20 Cal. 96 (*Zottman*). The Court observed that "[e]ach of these decisions involved express contracts entered into by public entities that were found to be void and unenforceable because they were made in violation of a statute or municipal charter." It concluded: " Read together and as relevant here, *Miller*, *Los Angeles Dredging Co.*, and *Zottman* stand for the narrow principle that if a contractor enters into an express contract with a public entity, and the contract is later found to be in violation of an applicable statute or charter and therefore deemed void, the contractor has no right to recover the reasonable value of services in quantum meruit." (*Id.* at 1054.)

With that background in mind, the Cal. Supreme Court observed:

> "Although other Court of Appeal decisions have broadly held that quantum meruit claims may not proceed against public entities, those decisions contain thin analyses and are distinguishable on their facts. It has been said, for example, that "[a]s a general rule, a public entity cannot be sued on an implied-in-law or quasi-contract theory, because such a theory is based on

> quantum meruit or restitution considerations which are outweighed by the need to protect and limit a public entity's contractual obligations." (*Lundeen Coatings Corp. v. Department of Water & Power* (1991) 232 Cal.App.3d 816, 831, fn. 9, 283 Cal.Rptr. 551; see also *Janis v. California State Lottery Com*. (1998) 68 Cal.App.4th 824, 830, 80 Cal.Rptr.2d 549; *Los Angeles Equestrian Center, Inc. v. City of Los Angeles* (1993) 17 Cal.App.4th 432, 448–449, 21 Cal.Rptr.2d 313.) But these cases either directly or indirectly rely on *Miller*, *supra,* 20 Cal.2d 83, 124 P.2d 34 for this principle, and as has been explained, *Miller* does not stand for such a broad proposition. And even this principle is explicitly premised on "the need to protect and limit a public entity's contractual obligations" (*Lundeen*, at p. 831, fn. 9, 283 Cal.Rptr. 551), which is not a consideration for all quantum meruit claims — the instant claim against the County being just one example, since it is based on the County's statutory duty, not its contractual obligation."
>
> (*Id.* at 1054-1055.)

It is this latter statement upon which plaintiff relies to argue that *County of Santa Clara* significantly narrowed the precedential impact of *Janis*.

The court disagrees. The Cal. Supreme Court's observation specifically rejects the impact of these cases *on its decision.* It observes they are "*distinguishable on their facts.*" It also tacitly acknowledges the potential applicability of a rule limiting quantum meruit claims against a public entity based on the rationale that such a rule may be necessary to "protect and limit a public entity's ***contractual*** obligations." (Emphasis added.) Finally, it held that even under such a construction, the rule would not apply to the instant situation because the claim against the County was based on a statutory duty, not a contractual obligation. If the high court in *County of Santa Clara* had wanted to overrule *Miller*, *Los Angeles Dredging Co.*, and *Zottman* outright, it could have, but it did not. Those cases remain viable in the present context.

Thus, even though the instant case does not involve an express contract that has been deemed void, the court nevertheless finds that the rule limiting quantum meruit claims against a public entity remains viable and is applicable in this matter. There is no clear reason why the court should allow a contractor who has no contract with the public entity to proceed against a public entity when one who had an express contract that was void cannot. Indeed, plaintiff's interpretation of *Janis* would elevate pleading form over meaningful substance, for all that would be required is pleading quantum meruit (irrespective of any contract at all). That is not what *Janis* permits.

The demurrer to this cause of action is sustained, with leave to amend.

2. 2nd (Unjust Enrichment/Restitution)[4] Cause of Action

Defendant demurs to this cause of action, arguing that unjust enrichment does not lie as a matter of law when there are "express binding agreements exist and define the parties' rights." (*California Medical Assn v. Aetna U.S. Healthcare of California, Inc.* (2001) 94 Cal.App.4th 151, 172.) "When parties have an actual contract covering a subject, a court cannot -- not even under the guise of equity jurisprudence -- substitute the court's own concepts of fairness regarding that subject in place of the parties' own contract." (*Id*., quoting *Hedging Concepts, Inc. v. First Alliance Mortgage Co.* (1996) 41 Cal. App. 4th 1410, 1420.) Plaintiff argues this the critical inquiry is whether there is an "express, binding agreement" *between the parties* defining the parties' rights with respect to the claim at issue.

The case law is not so narrow. In *California Medical Assn v. Aetna U.S. Healthcare of California, Inc.* (2001) 94 Cal.App.4th 151, plaintiff, California Medical Association, Inc. (CMA), was the assignee of claims owned by physicians and medical groups. CMA sued two health care insurers for payments allegedly owed to physicians for services provided to enrollees in health care service plans operated by defendants.

The defendant insurers entered into Defendant Enrollee Agreements with their insureds that imposed obligations upon defendants to pay for services rendered by physicians to insureds. They also entered into Defendant–Intermediary Agreements with various contracting entities including large medical groups, independent practice associations and limited Knox–Keene license plans. Under those agreements, defendants paid their agent intermediaries to perform specific tasks on behalf of defendants, including processing claims and making payments to physicians. The intermediaries then entered into agreements with physicians to provide health services to defendants' insureds. Once care was provided to an insured, the physician submitted a claim to defendants through the intermediaries. According to the CMA, the Intermediary–Physician Agreements required the providers to 'look solely' to intermediaries for payment for the services provided to insureds by the physicians. (*Aetna*, *supra*, 94 Cal.App.4th at pp. 156–157.)

But due to insolvency, many intermediaries failed to pay physicians for these services. Defendants maintained their contractual relationship with these insolvent intermediaries, despite knowledge of their financial instability and continued to make payments to them. Defendants denied repeated demands for direct payment

[4] "Although some California courts have suggested the existence of a separate cause of action for unjust enrichment, this court has recently held that there is no cause of action in California for unjust enrichment." [Citations.] Unjust enrichment is synonymous with restitution." (*Levine v. Blue Shield of California* (2010) 189 Cal.App.4th 1117, 1138.)

by the physicians, while still collecting premiums from their insureds. (*Aetna, supra*, 94 Cal.App.4th at p. 157.)

Under this factual scenario, the court found that CMA may not proceed on its quasi-contract claim because the subject matter of such claim, e.g., whether Physicians were entitled to compensation from defendants, was governed by express contracts including the Defendant–Intermediary Agreements and Defendant–Enrollee Agreements (as specifically alleged in CMA's second amended complaint) as well as the Intermediary–Physician Agreements (as argued in CMA's opening brief). (*Id.*)

Here, similarly, plaintiff has alleged a contract between itself and Barnett (4th cause of action for breach of contract) in which plaintiff was to provide emergency water pumping and related mitigation services and materials at the Project, and Barnett was to pay plaintiff for said services and materials. It alleges that Barnett failed to make the full payment owed to plaintiff for those services and materials. (SAC, ¶ 37.) Further, in its third cause of action, it alleges, as a third party beneficiary, breach of contract between Mitigation Solutions and Barnett, under which it alleges that Mitigation Solutions "failure to make the full payment owed to BSC was and continues to be a substantial cause of Plaintiff's harm." (SAC, ¶ 33.)

Plaintiff may not proceed on its quasi-contract claim because the subject matter of the claim, whether plaintiff was entitled to compensation from District, is governed by express contracts, which are alleged in the SAC.

Out of an abundance of caution, the court will allow leave to amend, should plaintiff have any other theory to allege against District. To be clear, however, the court finds no basis for amendment under the common count of goods and services rendered or restitution.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)