

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Robert Poage,

10 Plaintiff,

11 v.

12 Computer Sciences Corporation,

13 Defendant.
14

No. CV-14-02602-PHX-DLR

ORDER

15
16 Before the Court are Plaintiff's Motion for Partial Summary Judgment, (Doc. 47),
17 and Defendant's Motion for Summary Judgment, (Doc. 50). The motions are fully
18 briefed.¹ For the reasons stated below, Plaintiff's motion is granted and Defendant's
19 motion is denied.²

20 **BACKGROUND**

21 Plaintiff Robert Poage began working for Defendant Computer Sciences
22 Corporation ("CSC") as an Account Executive in November 2004. (Doc. 63 at 4.) He
23 eventually became an Account General Manager, responsible for client relations with a
24 large automotive company, and served in this role until the end of his employment. (*Id.*)

25
26 ¹ Plaintiff's request for oral argument is denied. The issues are fully briefed, and
27 the Court finds that oral argument will not aid in the resolution of this matter. *See* LR
28 Civ. 7.2(f); Fed. R. Civ. P. 78(b).

² Citations to pages in the Court's docket are to the page numbers stamped at the
top of the page by the Court's CM/ECF system, not the page numbers at the bottom of
each page.

1 As a salesperson, Poage's compensation was governed by CSC's Sales Incentive
2 Compensation Plan ("SICP"), which "establishe[d] the performance expectations and
3 associated incentive compensation terms for Sales, Pre-Sales and Coverage professionals
4 who have been selected to participate . . . in the CSC Sales Incentive Compensation Plan .
5 . . ." (Doc. 66 at 3.) If the employee met his quota for the fiscal year, he received an
6 incentive payment based on a fixed scale. (*Id.* at 7.) Under the SICP, employees are only
7 eligible to receive their bonus if they "remain a CSC employee until payments are
8 made[.]" (Doc. 63 at 4.)

9 On August 22, 2013, CSC sent an email to all of its employees detailing a new
10 compensation incentive opportunity: the Million Dollar Challenge ("MDC"). (Doc. 48, ¶
11 6.) The MDC provided that employees "who achieve \$1M in FY14 revenue above the
12 full-year forecast" would receive \$15,000 for the first \$1 million of incremental revenue
13 and an additional 1.5% of every additional \$1 of revenue above the initial \$1 million.
14 (Doc. 48-1 at 13.) The MDC further stated that the "[i]ncentive will be calculated and
15 paid at end of FY14." (*Id.*) The end of CSC's fiscal year 2014 was March 28, 2014.
16 (Doc. 48, ¶ 12.)

17 Poage participated in the MDC and allegedly "performed additional sales tasks
18 beyond his normal duties and achieved \$17 million worth of new incremental revenue for
19 the fiscal year 2014." (*Id.*, ¶ 19.) Under the terms of the MDC, he was to receive
20 approximately \$250,000 for his efforts, payable on March 28, 2014. (*Id.*, ¶¶ 20, 22.)
21 However, on April 4, 2014, CSC informed Poage that he had two options: either
22 voluntarily resign or be terminated. (*Id.*, ¶ 2.) That same day, Poage submitted his
23 resignation, effective April 18, 2014. (*Id.*, ¶ 3.) Poage did not receive his MDC incentive
24 in his last paycheck. (*Id.*, ¶ 5.) On May 30, 2014, Poage received his separate SICP
25 bonus even though he had not been with CSC for over a month. (Doc. 52-1 at 24.) For
26 several months, Poage emailed CSC inquiring when he would receive his MDC payment.
27 (Doc. 48, ¶ 23.)

28 In September 2014, Poage contacted CSC Executive Vice President and General

1 Counsel William Deckelman, who notified Poage that he would not receive the MDC
2 payment because he was not employed on the payment date, a condition required under
3 the SICP. (*Id.*, ¶¶ 26-27.) CSC made MDC payments to employees that same month,
4 including a payment to one employee, Mike Hardesty, who retired from CSC before the
5 payments were made. (*Id.*, ¶¶ 37-38; Doc. 63 at 22.)

6 On November 26, 2014, Poage filed suit against CSC alleging four counts: (1)
7 breach of contract, (2) breach of the covenant of good faith and fair dealing, (3) violation
8 of A.R.S. § 23-350, and (4) promissory estoppel. (Doc. 1.) On April 15, 2015, Poage
9 voluntarily dismissed count two. (Doc. 23.) Poage now moves for summary judgment
10 on count one, (Doc. 47), and CSC moves for summary judgment on all three remaining
11 counts, (Doc. 50).

12 **LEGAL STANDARD**

13 Summary judgment is appropriate when, viewing the facts in a light most
14 favorable to the nonmoving party, “there is no genuine dispute as to any material fact and
15 the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Summary
16 judgment may also be entered “against a party who fails to make a showing sufficient to
17 establish the existence of an element essential to that party’s case, and on which that
18 party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322
19 (1986). The party seeking summary judgment “bears the initial responsibility of
20 informing the district court of the basis for its motion, and identifying those portions of
21 [the record] which it believes demonstrate the absence of a genuine issue of material
22 fact.” *Id.* at 323. The burden then shifts to the non-movant to establish the existence of a
23 material fact. *Id.* at 324. The non-movant “must do more than simply show that there is
24 some metaphysical doubt as to the material facts,” and instead must “come forward with
25 ‘specific facts showing that there is a genuine issue for trial.’” *Matsushita Elec. Indus.*
26 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (quoting Fed. R. Civ. P. 56(e)
27 (1963)). A dispute about a fact is “genuine” if the evidence is such that a reasonable jury
28 could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477

1 U.S. 242, 248 (1986). When presented with cross-motions for summary judgment, “the
2 court must consider each party’s evidence, regardless under which motion the evidence is
3 offered.” *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 532 (9th Cir. 2011).

4 ANALYSIS

5 **I. Count One – Breach of Contract**

6 Under Arizona law, “in an action based on breach of contract, the plaintiff has the
7 burden of proving the existence of a contract, breach of the contract, and resulting
8 damages.” *Chartone, Inc. v. Bernini*, 83 P.3d 1103, 1111 (Ariz. Ct. App. 2004). Poage
9 argues that the MDC is a valid contract and that CSC breached it by failing to pay him his
10 incentive payment. CSC argues this claim fails because: (1) under the SICP, Poage is
11 ineligible to receive the payment because he was not a CSC employee at the time the
12 MDC payments were made; and (2) the MDC is not a separate contract. Both parties
13 move for summary judgment on this count.

14 **A. Is the MDC a Valid Contract?**

15 CSC argues the MDC is not a valid contract because it did not include the required
16 contract terms and it lacks consideration. (Doc. 50 at 10-12.) The Court disagrees.

17 In its entirety, the MDC email provides:

18 Effective August 22, coverage professional in all industries and regions are
19 eligible for the following incentives (SPIFFs),

20 Million Dollar Challenge

21 Coverage professional in all industries and regions who achieve \$1M in
22 FY14 revenue above the full-year forecast submitted this month for their
23 account(s) are eligible for the Million Dollar Challenge Incentive
24 (“SPIFF”).

25 Details:

- 26 • \$15,000 paid to coverage professional for first \$1M incremental revenue.
 - 27 • Additional payment of 1.5% for every additional \$1 above initial \$1M.
- 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Incremental revenue is defined as FY14 revenue above the 4+8 forecast, which includes actuals through fiscal period 4 and forecast from fiscal period 5 to fiscal period 12.
- Budgeted Currency Exchange Rate (BDL) is used to calculate incremental revenue achievement.
- Incentive will be calculated and paid at end of FY14.
- CSC will fund an offsite for manager of the team with the highest incremental revenue results.
- Managers of sales teams are not eligible for this incentive.
- AGMs, AMs & CRPs are eligible for accounts where a forecast is currently in place.
- For questions, contact global.sales.compensation@csc.com

(Doc. 48-1 at 12-13.)

By its terms, the MDC email constitutes an offer for a unilateral contract. *See* Restatement (First) of Contracts § 12 (“A unilateral contract is one in which no promisor receives a promise as consideration for his promise.”). “For an enforceable contract to exist, there must be an offer, an acceptance, consideration, and sufficient specification of terms so that the obligations involved can be ascertained.” *Rogus v. Lords*, 804 P.2d 133, 135 (Ariz. Ct. App. 1991). “The requirement of certainty is relevant to the ultimate element of contract formation, i.e., whether the parties manifested assent or intent to be bound.” *Id.*

“An offer is a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” *K-Line Builders, Inc. v. First Fed. Sav. & Loan Ass’n*, 677 P.2d 1317, 1320 (Ariz. Ct. App. 1983). CSC does not dispute that the MDC email sent out to employees is an offer. It clearly manifested a willingness to enter into a bargain by sending out the email and inviting employees to participate.

Acceptance is “a manifestation of assent to the terms thereof made by the offeree

1 in a manner invited or required by the offer.” *Id.* Here, it is undisputed that Poage
2 accepted the offer by generating approximately \$17 million in additional revenue above
3 his normal forecast.³

4 “Consideration is a benefit to the promisor or a loss or detriment to the promisee,
5 and there is no consideration for a promise where no benefit is conferred on the promisor
6 or a detriment suffered by the promisee.” *Id.* CSC appears to argue that no consideration
7 exists because Poage simply performed the same work he performed on a day-to-day
8 basis. In other words, he had a pre-existing duty to generate sales revenue. (Doc. 62 at
9 11.) But the MDC was an incentive to go above the normal full-year sales forecast, and
10 there is no dispute that Poage did just that. The MDC requires no more. CSC received
11 the benefit of this additional \$17 million in revenue, and this is adequate consideration to
12 support a contract.⁴

13 CSC argues that several terms of the MDC are not sufficiently specific to form a
14 contract, including: (1) administrative matters, definitional terms, corporate policies, how
15 payments are calculated, timing of payments, and taxes. (*Id.* at 10.)⁵ Indeed, “[a]n offer
16 cannot be accepted so as to form a contract unless there is sufficient specification of
17 terms so that the obligations involved can be ascertained.” *K-Line*, 677 P.2d at 1320.
18 Although the MDC is not exhaustive, it contains all of the *necessary* terms. *See Pyeatte*
19 *v. Pyeatte*, 661 P.2d 196, 200 (Ariz. Ct. App. 1982) (“Terms necessary for the required
20 definiteness frequently include time of performance, place of performance, price or
21

22 ³ CSC does not dispute the dollar amount or that Poage generated excess sales
23 above his full-year forecast. Instead, it argues that Poage must have performed
24 “additional sales tasks above and beyond his traditional job responsibilities.” (Doc. 63 at
25 17.) This argument is disingenuous and would require adding a term to the MDC. The
26 MDC required employees to earn additional revenue above the employee’s standard
27 forecast, nothing more. How the employee achieved this was up to them.

28 ⁴ CSC argues that Poage admitted that driving revenue was “part of his job,” and
29 thus he had a pre-existing duty to generate additional revenue for CSC. (Doc. 62 at 11.)
30 This misses the point. The MDC rewarded employees who excelled at their jobs, i.e.,
31 those who drove revenue up at a higher rate. Absent the MDC, Poage only had a duty to
32 meet his standard full-year forecast.

⁵ CSC merely lists generic terms and fails to explain why such terms would be
33 necessary in order to determine the rights and obligations of the parties.

1 compensation, penalty provisions, and other material requirements of the agreement.”).
2 The MDC (1) specifies what an employee must do in order to earn the incentive payment,
3 (2) indicates how compensation will be calculated, (3) defines the term “incremental
4 revenue” so employees understand what additional sales they will receive credit for, (4)
5 defines who is eligible to participate, (5) states when the MDC incentive is effective, and
6 (6) states that the incentive payment will be paid at the end of FY14. (Doc. 47 at 3.) The
7 terms of the MDC are sufficiently certain because “they provide a basis for determining
8 the existence of a breach and for giving an appropriate remedy.” *AROK Const. Co. v.*
9 *Indian Const. Servs.*, 848 P.2d 870, 877 (Ariz. Ct. App. 1993) (internal quotation marks
10 omitted).⁶ From the terms of the MDC, it can readily be determined whether Poage was
11 eligible, what amount he is entitled to, and when the payment will be made. In addition,
12 the MDC leaves no discretion to CSC as to whether it will make incentive payments, and
13 thus Poage had no reason to believe he would not be compensated if he participated.
14 *Contra* Restatement (Second) of Contracts § 45 cmt. b (“A, an insurance company, issues
15 a bulletin to its agents, entitled ‘Extra Earnings Agreement,’ providing for annual bonus
16 payments to the agents varying according to ‘monthly premiums in force’ and ‘lapse
17 ratio,’ but reserving the right to change or discontinue the bonus, individually or
18 collectively, with or without notice, at any time before payment. There is no offer or
19 promise.”).

20 CSC also argues Poage was not eligible for payment under the MDC because he
21 was not employed on the date of payment. CSC asserts the language of the SICP should
22 be incorporated into the MDC because the SICP applies to all incentive programs. CSC
23 essentially seeks to add a condition precedent to payment under the MDC. But the MDC
24 contains no such term. There is no reference to the SICP, nor does the MDC incorporate
25 any other corporate policies or provisions, and the Court will not look outside the four

26
27 ⁶ CSC argues the time of payment term is vague and ambiguous. The Court
28 disagrees. The MDC states payments will be made at the end of fiscal year 2014.
Although an exact date is not provided, the term is specific enough to for CSC to
understand its obligations under the MDC.

1 corners of the MDC.⁷ Under its plain terms, Poage was eligible to participate in the
2 MDC, and nothing in the MDC precludes payment for employees who earn their bonus
3 but leave the company after the bonus is payable.⁸

4 In sum, the MDC is a valid separate contract between Poage and MDC. CSC
5 manifested a clear intent to offer additional compensation for employees who generated
6 revenue beyond their normal forecasts. Poage accepted the contract by earning \$17
7 million in additional sales revenue for CSC, and the MDC contained all of the necessary
8 terms in order to establish the rights and obligations of the parties. *Pyeatte*, 661 P.2d at
9 200. Poage is entitled to compensation for his performance.

10 **B. Remaining Elements**

11 CSC does not dispute that it failed to pay Poage his MDC incentive payment. Nor
12 does CSC dispute that Poage has suffered damages in the amount of approximately
13 \$250,000. These elements are satisfied. Accordingly, Poage is entitled to summary
14 judgment on count one, breach of contract.

15 **II. Remaining Counts**

16 Because Poage has prevailed on his breach of contract claim, his promissory
17 estoppel claim is moot. With respect to Poage's claim under the Arizona Wage Law,
18 A.R.S. § 23-355, CSC argues that Poage cannot establish that CSC had a policy or
19 practice of paying ex-employees their MDC bonuses after termination from CSC. There
20 is evidence that Poage received his SIPC bonus after he left CSC and that at least one
21 other ex-employee received his MDC incentive after leaving CSC. (Doc. 48, ¶¶ 37-38;

22
23 ⁷ The Court notes the conflicting testimony from CSC employees Maguire and
24 Deckelman regarding whether the MDC was considered a separate program from the
25 SIPC. (Doc. 57-3 at 7; Doc. 62 at 7). This is not material to the Court's inquiry,
26 however, because the MDC is a separate contract that does not incorporate the SIPC in its
27 terms. CSC does not argue that the parol evidence rule applies, and even if it did, the
28 Court doubts the language of the MDC is "reasonably susceptible" to CSC's
interpretation. See *Taylor v. State Farm Mut. Auto. Ins. Co.*, 854 P.2d 1134, 1144-45
(Ariz. 1993).

⁸ CSC's conduct also undermines its argument. Despite not being employed,
Poage received his SIPC bonus in May 2013, which is in direct conflict with the terms of
the SIPC. (Doc. 48-5 at 26.) In addition, CSC paid an employee who retired before the
payments were made. (Doc. 48, ¶¶ 37-38; Doc. 63 at 22.)

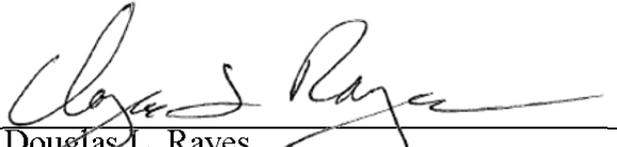
1 Doc. 63 at 22.) Consequently, evidence exists which creates a question of fact about
2 CSC's practices of paying monies under both the MDC and SICP after termination. CSC
3 has not met its burden under Fed. R. Civ. P. 56(a), and the claim survives.

4 **IT IS ORDERED** that Plaintiff's motion for summary judgment, (Doc. 47), is
5 **GRANTED** and Defendant's motion for summary judgment, (Doc. 50), is **DENIED**.

6 **IT IS FURTHER ORDERED** that the parties shall appear at a status conference
7 on **January 12, 2016 at 4:30 PM** to discuss the issue of damages and whether Plaintiff
8 intends to pursue his Arizona Wage Law claim.

9 Dated this 14th day of December, 2015.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Douglas L. Rayes
United States District Judge