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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Nirmala Arimilli,

10 Plaintiff,

11 v.

12 Keith Rezendes, et al.,

13 Defendants.
14

No. CV-21-00345-PHX-GMS

ORDER

15 Four motions are pending before the Court: (1) Defendant Keith Rezendes’s Motion
16 to Dismiss Plaintiff’s Sixth Amended Complaint (Doc. 62), which Defendants Raechel
17 Rosen, Avidbrain, Inc., and Tutor Node, Inc. join in full (Doc. 64) and which Defendant
18 David Glaeseman joins for all claims alleged against him (Doc. 77); (2) Defendant
19 Glaeseman’s Motion to Dismiss (Doc. 76); (3) Defendant Dustin Holdiman’s Motion to
20 Dismiss (Doc. 82); and (4) Plaintiff Nirmala Arimilli’s Motion for Sanctions (Doc. 93).
21 The Court addresses the Motions below.

22 **BACKGROUND**

23 Plaintiff Nirmala Arimilli (“Arimilli”) met Defendant Kieth Rezendes (“Rezendes”) in
24 2000. (Doc. 59 at 4). In February 2017, Rezendes asked Arimilli to invest in Rezendes’s
25 tutoring company, Defendant AvidBrain Inc., doing business as MindSpree, Inc.
26 (“AvidBrain”). (*Id.* at 5). In March 2017, Arimilli visited Rezendes in Arizona and was
27 introduced to Rezendes’s purported wife, Defendant Raechel Rosen (“Rosen”). (*Id.*)
28 During the visit, Rezendes provided Arimilli with an investment contract and claimed that

1 Arimilli was eligible to invest in his company due to a change in investment laws. (*Id.* at
2 6). Rezendes also told Arimilli that the company was approved to begin obtaining funding
3 from investors via a start-up funding and investing platform that requires approved
4 government documents regarding investments, finances, and operations. (*Id.*). By April
5 2017, Plaintiff had allegedly invested \$125,000 in Rezendes’s company and accepted a job
6 with Rezendes. (*Id.* at 7).

7 While employed by Rezendes, Arimilli noticed “discrepancies in relation to [the]
8 overall success of the company and general operations.” (Doc. 59 at 7). Plaintiff alleges
9 that, due to her “years long trust in [] Rezendes,” she believed Rezendes when he denied
10 any wrongdoing. (*Id.* at 8). After receiving further information that “affirmed [her] doubts
11 and concerns about the company,” Arimilli confronted Rezendes and was “subjected to a
12 torrent of vitriol and verbal abuse.” (*Id.* at 9-10). Plaintiff’s last communication with
13 Rezendes was in November 2017. (*Id.* at 10).

14 Arimilli initially filed suit against Rezendes in Maricopa County Superior Court in
15 October 2020. She amended her complaint twice in state court. Rezendes then removed
16 the case to this Court in February 2021, (Doc. 1 at 1-3), and subsequently moved to dismiss
17 the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. 5). The Court
18 granted in part and denied in part Rezendes’s motion, giving Arimilli leave to amend her
19 complaint. (Doc. 14). Arimilli amended her complaint twice more, and Defendant
20 Rezendes moved to dismiss both the Third Amended Complaint (Doc. 22) and the Fourth
21 Amended Complaint (Doc. 40), which the Court granted in part and denied in part, both
22 times giving Arimilli leave to amend. Arimilli then filed her Sixth Amended Complaint,
23 which is the operative complaint in this case. (Doc. 59). Arimilli added several
24 defendants: Rosen, Rezendes’s purported wife; Dustin Holdiman (“Holdiman”), an alleged
25 co-conspirator; David Glaeseman (“Glaeseman”), Rezendes’s alleged business partner;
26 AvidBrain, Rezendes’s company that Arimilli invested in; TutorNode, Inc. (“TutorNode”),
27 another one of Rezendes’s companies; Chawl Tran (“Tran”), the attorney who allegedly
28 helped incorporate and advise AvidBrain; and Acceleron Law Group (“Acceleron”), the

1 law firm Tran worked for. This Court terminated Defendants Tran and Acceleron for
2 Arimilli's failure to prosecute and failure to comply with this Court's Orders. (Doc. 84).
3 The remaining Defendants now move to dismiss the complaint. (Docs. 62, 76, 82).

4 DISCUSSION

5 I. Glaeseman's Motion to Dismiss (Doc. 76)

6 a. Legal Standard

7 Federal Rule of Civil Procedure 12(b)(6) requires the Court to dismiss an action if
8 the Plaintiff fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).
9 To survive dismissal for failure to state a claim pursuant to 12(b)(6), a complaint must
10 contain more than a "formulaic recitation of the elements of a cause of action"; it must
11 contain factual allegations sufficient to "raise a right to relief above the speculative level."
12 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). When analyzing a complaint for
13 failure to state a claim, "allegations of material fact are taken as true and construed in the
14 light most favorable to the nonmoving party." *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th
15 Cir. 1996). However, legal conclusions couched as factual allegations do not receive a
16 presumption of truthfulness, and "conclusory allegations of law and unwarranted
17 inferences are not sufficient to defeat a motion to dismiss." *Pareto v. F.D.I.C.*, 139 F.3d
18 696, 699 (9th Cir. 1998).

19 "Determining whether a complaint states a plausible claim for relief will . . . be a
20 context-specific task that requires the reviewing court to draw on its judicial experience
21 and common sense." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Even if the complaint
22 has a cognizable legal claim, the factual content must "allow[] the court to draw the
23 reasonable inference that the defendant is liable for the misconduct alleged." *Id.*; *see also*
24 *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984) ("A complaint
25 may be dismissed as a matter of law for one of two reasons: (1) lack of a cognizable legal
26 theory or (2) insufficient facts under a cognizable legal claim."). Courts consider both
27 allegations made in the complaint and exhibits attached to the complaint. *Courthouse News*
28 *Serv. v. Planet*, 750 F.3d 776, 780 n.4 (9th Cir. 2014). Allegations in a pro se complaint

1 are held to “less stringent standards than formal pleadings drafted by lawyers.” *Erickson*
2 *v. Pardus*, 551 U.S. 89, 94 (2007). Pro se complaints must be liberally construed and
3 afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

4 **b. Application**

5 Plaintiff Arimilli asserts the following claims against Defendant Glaeseman:
6 fraudulent misrepresentations, fraudulent inducement, fraudulent concealment, breach of
7 fiduciary duty, constructive fraud, alter ego, securities and stock fraud, quantum meruit,
8 unjust enrichment, intentional infliction of emotional distress, aiding and abetting, and civil
9 racketeering. (Doc. 59). Glaeseman moved to dismiss for failure to state a claim. (Doc.
10 76 at 7).

11 As to her to fraud claims (First, Second, Fourth, and Sixth Causes of Action),
12 Arimilli makes no specific allegations and pleads no facts sufficient to support her claims.
13 Arimilli admits that she has never directly interacted with Glaeseman but alleges that,
14 because Glaeseman was listed as an officer of AvidBrain at the time the incidents occurred,
15 “he holds a responsibility to all matters in relation to AvidBrain.” (Doc. 59 at 21, 29, 42,
16 56). Arimilli also alleges that when she began investigating AvidBrain, Glaeseman
17 removed himself as an officer and directed witnesses to cease communication with her.
18 (*Id.* at 56). Finally, she asserts that Glaeseman never filed the required documents in
19 accordance with Securities and Exchange Commission (“SEC”) regulations to solicit and
20 accept investments and issue stock. (*Id.* at 34). Even taking these assertions as true,
21 Arimilli does not meet the Federal Rule of Civil Procedure 9(b)’s heightened pleading
22 requirements for fraud claims. *See Medrano v. Carrington Foreclosure Servs. LLC*, No.
23 CV-19-04988, 2019 WL 6219337, at *5 (D. Ariz. Nov. 21, 2019). “Averments of fraud
24 must be accompanied by ‘the who, what, when, where, and how’ of the misconduct
25 charged.” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003), (quoting
26 *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)). Here, Arimilli failed to make any
27 specific allegations against Glaeseman, let alone allege he was employed by or involved
28 with AvidBrain at the time of the events at issue.

1 As to Arimilli's Fifth Cause of Action for breach of fiduciary duty, Arimilli does
2 not plead sufficient facts to show that a fiduciary duty existed. Although a fiduciary duty
3 may continue even upon termination of the fiduciary relationship, *see Sports Imaging of*
4 *Ariz., L.L.C. v. 1993 CKC Trust*, No. 1 CA-CV 05-0205, 2008 WL 4448063, at *23 (Ariz.
5 Ct. App. Sept. 30, 2008), Arimilli does not establish that such a legal relationship existed.
6 "In Arizona a director of a corporation owes a fiduciary duty to the corporation and its
7 stockholders." *Atkinson v. Marquart*, 541 P.2d 556, 558 (Ariz. 1975). But Arimilli alleges
8 that she believed she was not a qualified investor when she gave Defendant Rezendes the
9 money. (Doc. 59 at 6). The nature of the relationship between Arimilli and Glaeseman
10 thus remains unclear, and Arimilli has not pleaded sufficient facts to show that any
11 fiduciary duty existed.

12 As to Arimilli's Seventh Cause of Action for alter ego, Eighth Cause of Action for
13 security and stock fraud, Eleventh Cause of Action for quantum meruit, Twelfth Cause of
14 Action for unjust enrichment, Thirteenth Cause of Action for intentional infliction of
15 emotional distress, and Nineteenth Cause of Action for civil racketeering, Arimilli repeats
16 the same general assertions – none of which are sufficient to support a claim. Arimilli
17 added Glaeseman to the causes of action because Glaeseman was allegedly a co-owner and
18 officer of AvidBrain, was allegedly in a position to benefit from the violative activity, and
19 therefore holds responsibility for all matters related to AvidBrain. (*Id.* at 58, 67-68, 71-72,
20 88). Arimilli also asserts that Glaeseman did nothing to assist her, did not stop the
21 fraudulent activity, and instead removed himself from company filings and advised
22 witnesses to cease communication with her when she began investigating AvidBrain. (*Id.*
23 at 57, 67, 71, 74, 88). "A complaint 'does not require detailed factual allegations but it
24 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.'" *Doe v. Fed. Dist. Ct.*, 467 F.App'x 725, 727 (9th Cir. 2012) (quoting *Iqbal*, 556 U.S. at
25 678). As to the claims listed above, Arimilli fails to provide more than a bare assertion
26 that Glaeseman unlawfully harmed her.
27

28 Finally, as to Arimilli's Seventeenth Cause of Action for aiding and abetting,

1 Arimilli similarly fails to state a cognizable legal claim. *See Robertson*, 749 F.2d at 534.
2 “Claims of aiding and abetting tortious conduct require proof of three elements: (1) the
3 primary tortfeasor must commit a tort that causes injury to the plaintiff; (2) the defendant
4 must know that the primary tortfeasor's conduct constitutes a breach of duty; and (3) the
5 defendant must substantially assist or encourage the primary tortfeasor in the achievement
6 of the breach.” *Wells Fargo Bank v. Ariz. Laborers, Teamsters and Cement Masons Loc.*
7 *No. 395 Pension Tr. Fund*, 38 P.3d 12, 23 (Ariz. 2002). Arimilli asserts only that
8 Glaeseman was “aware of the fraud carried out in AvidBrain Inc by Defendant Rezendes
9 and by their actions substantially assisted in carrying out the frauds outlines in the causes
10 of actions cited.” (Doc. 59 at 80). These assertions comprise only “a formulaic recitation
11 of the elements.” *See Twombly*, 550 U.S. at 555. Arimilli thus fails to provide factual
12 allegations sufficient to “raise a right to relief above the speculative level.” *See id.*

13 Thus, Glaeseman’s Motion to Dismiss is granted as to all claims brought against
14 him.¹

15 **II. Holdiman’s Motion to Dismiss (Doc. 82)**

16 **a. Legal Standard**

17 Federal Rule of Civil Procedure 12(b)(5) allows a party to move to dismiss claims
18 against it for insufficient services of process. Fed. R. Civ. P. 12(b)(5). Plaintiffs bear the
19 burden of establishing that service was valid under Federal Rule of Civil Procedure 4.
20 *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004). Rule 4(m) requires courts to extend
21 the prescribed time period for the service of a complaint “upon a showing of good cause
22 for the defective service” and gives courts “discretion to dismiss without prejudice or to
23 extend the time period” if no good cause is shown. *In re Sheehan*, 253 F.3d 507, 512 (9th
24 Cir. 2001). However, district courts have “the inherent power sua sponte to dismiss a case
25 for lack of prosecution.” *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986). As

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27 ¹ Although Glaeseman asserts Arimilli violated Federal Rule of Civil Procedure 11(b) and requests
28 attorney’s fees, Arimilli’s claims were not so frivolous that such a sanction is warranted. *See*
Erickson v. Pardus, 551 U.S. 89, 94 (2007) (“A document filed *pro se* is to be liberally construed
and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than
formal pleadings drafted by lawyers.”) (cleaned up) (internal quotations omitted).

1 dismissal is a “harsh penalty and is to be imposed only in extreme circumstances,” courts
2 are required to weigh several factors: “(1) the public's interest in expeditious resolution of
3 litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
4 defendants; (4) the public policy favoring disposition of cases on their merits and (5) the
5 availability of less drastic sanctions.” *Id.*

6 **b. Application**

7 Here, Arimilli did not properly serve her Sixth Amended Complaint (Doc. 59) upon
8 Holdiman. The process server served Holdiman’s mother at her residence. (Doc. 86 at 1).
9 Arimilli admits that Holdiman’s mother told the process server that Holdiman did not
10 currently reside at the residence. (*Id.*). The process server still left the complaint at
11 Holdiman’s mother’s house. (*Id.*). Holdiman contacted Arimilli the following day to
12 inform her that he was currently living in Columbia. (*Id.*). Arimilli has provided no
13 evidence to suggest she served or attempted to serve Holdiman at his residence in
14 Columbia. *See Brockmeyer*, 383 F.3d 798 (“Once service is challenged, plaintiffs bear the
15 burden of establishing that service was valid under Rule 4.”).

16 Arimilli is not permitted to file further amendments. (Doc. 40 at 15). Arimilli has
17 had several opportunities to add Holdiman as a defendant to this lawsuit and has chosen
18 not to do so. In her complaint, Arimilli admits that she has known of Holdiman since at
19 least November 2017. (Doc. 59 at 10). She alleges that, after she accepted the job at
20 AvidBrain, “Defendant Holdiman would send [h]undreds, and on some days thousands, of
21 texts at all hours of the day and night.” (*Id.* at 72). Arimilli also asserts that, after she
22 began investigating AvidBrain, Holdiman “interfered with her ability to refill a medically
23 required prescription.” (*Id.* at 73). Public policy favors disposition of cases on their merits,
24 and Arimilli has benefited from three orders on motions to dismiss three different versions
25 of her complaint in which the Court reviewed her claims on the merits. (Docs. 14, 22, 40).
26 In the interest of expeditiously resolving Arimilli’s claims that are proceeding to discovery,
27 and in the interest of managing this Court’s docket, Arimilli’s claims against Holdiman are
28 dismissed with prejudice for insufficient service of process.

1 **III. Rezendes’s Motion to Dismiss (Doc. 62)**

2 Rezendes moves to dismiss Plaintiff Arimilli’s Sixth Amended Complaint.
3 Defendants AvidBrain, Rosen, and TutorNode moved to join Rezendes’s Motion to
4 Dismiss. (Doc. 63). The Court will rule on the fully briefed Motion to Dismiss (Doc. 62).

5 **a. Legal Standard**

6 **i. Notice Pleading Requirements**

7 Federal Rule of Civil Procedure 8(a) requires a complaint to contain “a short and
8 plain statement of the claim showing that the pleader is entitled to relief,” Fed. R. Civ. P.
9 8(a), so that the defendant receives “fair notice of what the . . . claim is and the grounds
10 upon which it rests.” *Twombly*, 550 U.S. at 555. To survive dismissal for failure to state
11 a claim, a plaintiff’s factual allegations in the complaint “must . . . suggest that the claim
12 has at least a plausible chance of success.” *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th
13 Cir. 2014). Factual allegations in the complaint are accepted as true, and the pleading is
14 construed “in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire*
15 *& Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Legal conclusions couched as
16 factual allegations are not given a presumption of truthfulness, and “conclusory allegations
17 of law and unwarranted inferences are not sufficient to defeat a motion to dismiss.” *Pareto*,
18 139 F.3d at 699.

19 **ii. Fraud Pleading Requirements**

20 Federal Rule of Civil Procedure 9(b) requires that “[i]n alleging fraud or mistake, a
21 party must state with particularity the circumstances constituting fraud or mistake.” Fed.
22 R. Civ. P. 9(b). “To satisfy the particularity of circumstances, statements of the time, place,
23 and nature of the alleged fraudulent activities are sufficient, while mere conclusory
24 allegations of fraud are not.” *Arnold & Assocs., Inc. v. Misys Healthcare Sys.*, 275 F. Supp.
25 2d 1013, 1028 (D. Ariz. 2003). In addition to setting out the “who, what, when, where,
26 and how” of the misconduct, *Cooper*, 137 F.3d at 627, a plaintiff must “set forth what is
27 false or misleading” about a particular statement, “and why it is false.” *Vess*, 317 F.3d at
28 1106 (quoting *Decker v. GlenFed, Inc. (In re GlenFed, Inc. Sec Litig.)*, 42 F.3d 1541, 1548

1 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Avakian v. Wells*
2 *Fargo Bank, N.A.*, 827 F. App'x 765, 766 (9th Cir. 2020)).

3 **b. Previously Dismissed Claims**

4 **i. Breach of Fiduciary Duty (Fifth Cause)**

5 Arimilli's breach of fiduciary duty claim remains as pled. Defendants Rezendes
6 and AvidBrain assert Arimilli's claim must be dismissed because the statute of limitations
7 has run. (Doc. 62-1 at 7). "The affirmative defense of statute of limitations may be raised
8 by motion in Arizona if it appears from the face of the complaint that the claim is barred."
9 *Dicenso v. Bryant Air Conditioning Co., a Div. of Carrier Corp.*, 643 P.2d 701, 702 (Ariz.
10 1982). Pursuant to the discovery rule, "a cause of action does not accrue until the plaintiff
11 knows or with reasonable diligence should know the facts underlying the cause." *Doe v.*
12 *Roe*, 955 P.2d 951, 960 (Ariz. 1998). An injured person need not know all the facts
13 underlying their cause of action for the statute of limitations to begin to run, but "the
14 plaintiff must at least possess a minimum requisite of knowledge sufficient to identify that
15 a wrong occurred and caused injury." *Walk v. Ring*, 44 P.3d 990, 996 (Ariz. 2002) (internal
16 quotations and citation omitted).

17 Arimilli's claim for breach of fiduciary duty has a two-year statute of limitation.
18 *Rindlisbacher v. Steinway & Sons Inc.*, 497 F.Supp.3d 479, 492 (D. Ariz. 2020) (citing
19 *Coulter v. Grant Thornton, LLP*, 388 P.3d 834, 838 (Ariz. Ct. App. 2017)). "A timely-
20 filed claim is not rendered untimely when included in an amended complaint filed after the
21 statute of limitations has passed." *Barnes v. Sea Haw. Rafting, LLC*, 889 F.3d 517, 531
22 (9th Cir. 2018). Here, Arimilli filed suit on October 26, 2020 and alleged breach of
23 fiduciary duty in that initial complaint. Plaintiff's interactions with Rezendes stopped in
24 2017, (Doc. 59 at 10), indicating that Arimilli was aware of some of the alleged
25 misrepresentations at that point. The Complaint does not make clear, however, when
26 Arimilli uncovered the alleged utilization of funds for personal expenses, omissions, and
27 additional misrepresentations. (*Id.* at 43-44). In fact, Arimilli continued to discover
28 relevant information into 2021, when she received documentation to support her allegation

1 that Rezendes paid a personal loan out of funds Arimilli invested into AvidBrain. (Doc.
2 43-12 at 1).² Accordingly, Arimilli’s breach of fiduciary duty claim is not time barred and
3 remains as pled.

4 **ii. Constructive Fraud (Sixth Cause)**

5 Arimilli’s claim for constructive fraud is dismissed as to all remaining defendants:
6 Rezendes, Rosen, AvidBrain, and TutorNode. “Under Arizona law, the elements of
7 constructive fraud are (1) ‘a fiduciary or confidential relationship,’ (2) ‘a breach of duty by
8 the person in the confidential or fiduciary relationship,’ and (3) ‘that the person in breach
9 induced justifiable reliance by the other to his detriment.’” *Rindlisbacher*, 497 F.Supp.3d
10 at 493 (quoting *Green v. Lisa Frank, Inc.*, 211 P.3d 16, 34 (Ariz. Ct. App. 2009)).

11 Arimilli’s constructive fraud claims against Defendants Rosen, AvidBrain, and
12 TutorNode fail, as Arimilli neither alleges she had a fiduciary nor confidential relationship
13 with the defendants. (Doc. 59 at 56). As to Defendant Rezendes, Arimilli similarly fails
14 to plead sufficient facts to show that a fiduciary or confidential relationship existed.
15 Arimilli makes the same assertions about her alleged fiduciary and confidential relationship
16 with Rezendes in her Sixth Amended Complaint as in her Fourth Amended Complaint.
17 (Doc. 23 at 23; Doc. 59 at 45) (“Rezendes, as the director . . . established a fiduciary duty
18 to the Plaintiff upon the acceptance of the Plaintiff’s investment into Avidbrain Inc in
19 exchange for stock . . . Mr. Rezendes agreed to act as Plaintiff’s agent for purposes of
20 protecting and utilizing investment funds appropriately. As such, a confidential
21 relationship existed at all relevant times herein between Plaintiff and Mr. Rezendes”). For
22 the same reasons this Court held that Arimilli failed to allege the existence of a fiduciary
23 relationship in her Fourth Amended Complaint, Arimilli failed to allege a confidential or
24 fiduciary relationship with Rezendes in the operative complaint. As such, Arimilli’s
25 constructive fraud claim is dismissed.

26 **iii. Alter Ego (Seventh Cause)**

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² This exhibit is not from the operative complaint (Doc. 59). However, the Court is considering it,
as Plaintiff Arimilli forgot to attach the exhibits to her Sixth Amended Complaint, despite
continuing to cite them.

1 Arimilli’s alter ego claim against Defendants Rezendes and AvidBrain is dismissed
2 for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).
3 Under Arizona law, an alter ego claim “is not itself a cause of action,” but rather a tool by
4 which to ascribe liability to an individual or entity for the actions of a separate corporate
5 entity. *Specialty Cos. Grp., LLC v. Meritage Homes of Ariz., Inc.*, 492 P.3d 308, 310 (Ariz.
6 2021); *see also Airbus DS Optronics GmbH v. Nivisys LLC*, 183 F. Supp. 3d 986, 990 (D.
7 Ariz. 2016) (“Arizona does not recognize piercing the corporate veil or alter ego as an
8 independent cause of action.”). “To prevail on an alter-ego theory, Plaintiffs must show
9 (1) unity of control (the formalities prong) and (2) that maintaining the corporate form
10 would promote injustice (the fairness prong). *Farmers Ins. Co. of Ariz. v. DNS Auto Glass*
11 *Shop LLC*, No. CV-21-01390, 2022 WL 845191, at *3 (D. Ariz. March. 22, 2022) (citing
12 *Specialty Cos. Grp., LLC*, 492 P.3d at 310).

13 Here, Arimilli fails to state a claim upon which relief can be granted. She asserts
14 that, “[s]ometime in mid 2017, based on information and belief, Defendant Rezendes
15 became the alter ego of AvidBrain Inc dba MindSpree Inc.” (Doc. 59 at 57). However,
16 Arimilli pleads no facts that allow the Court to reasonably infer that Arimilli can
17 demonstrate the formalities or fairness prong. *See Twombly*, 550 U.S. at 570. As such,
18 Arimilli’s alter ego claim is dismissed with prejudice.³

19 **iv. Securities and Stock Fraud (Eighth Cause)**

20 Arimilli’s securities and stock fraud claims against Defendants Rezendes and
21 AvidBrain are dismissed as to AvidBrain and remain as to Rezendes. Arimilli asserts her
22 claim under the Securities Act of 1933. The Act imposes civil liability in two
23 circumstances. First, § 12(a)(1) imposes liability on any person who offers or sells a non-
24 exempt security without registering it. 15 U.S.C. § 771; 15 U.S.C. § 77e. Second, §
25 12(a)(2) imposes liability on a person who offers or sells a security “by means of a
26 prospectus or oral communication, which includes an untrue statement of a material fact or
27 omits to state a material fact necessary.” 15 U.S.C. § 771(a)(2). To determine whether a

28 ³ In Response to Rezendes’s Motion to Dismiss, Arimilli rescinded her alter ego claim.
(Doc. 68 at 9).

1 transaction is an investment contract, and therefore a security, courts apply the three-
2 element *Howey* test. *McCool v. Wilson*, No. EDCV 19-2499, 2020 WL 5044194, at *4-5
3 (C.D. Cal. July 9, 2020) (citing *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946); *see*
4 *also Kingsley Cap. Mgmt., LLC v. Sly*, No. CV-10-02243, 2013 WL 3967615, at *5 (D.
5 Ariz. Aug. 2, 2013). Under *Howey*, a transaction is an investment contract when there was
6 “(1) an investment of money, (2) in a common enterprise, (3) with an expectation of profits
7 produced by the efforts of others.” *Hocking v. Dubois*, 885 F.2d 1449, 1455 (9th Cir.
8 1989).

9 Arimilli’s claim fails as to Defendant AvidBrain. Arimilli asserts she added
10 AvidBrain as a defendant to this claim because AvidBrain’s company filings were in
11 question and AvidBrain “was the conduit for fraud to occur.” (Doc. 59 at 67). This is not
12 sufficient grounds to state a claim for relief against AvidBrain.

13 As to Defendant Rezendes, Arimilli’s securities and stock fraud claim may continue,
14 in part. As was the case in her Fourth Amended Complaint, Arimilli fails to plead facts
15 that allege there was no registration statement in effect as to the security. *See* 15 U.S.C. §
16 77e(a)(1); (*see also* Doc. 40 at 8). Instead, she states only that “Defendant Rezendes did
17 not qualify for an exemption, per the fact Defendant Rezendes did not file for an exemption
18 through the Securities and Exchange Commission.” (Doc. 59 at 59). This assertion does
19 not sufficiently plead the requisite elements for a § 12(a)(1) claim.

20 Arimilli does, however, sufficiently plead the elements of her claim under § 12(a)(2)
21 and meet the heightened pleading standard for fraud. First, Arimilli sufficiently pleads that
22 her transaction with Rezendes was an investment contract, and therefore a security, under
23 the *Howey* test. *See Hocking*, 885 F.2d at 1455. Arimilli alleged that she invested \$125,000
24 between March and April of 2017, (Doc. 59 at 7, 68), that the investment was in AvidBrain
25 (*Id.*), and that it was made with the expectation of profits produced by the efforts and
26 expertise of Rezendes (*Id.* at 66). Taking these assertions in the light most favorable to
27 Arimilli, *see Smith*, 84 F.3d at 1217, Arimilli sufficiently alleges Rezendes offered her a
28 security under § 12(a)(2).

1 *a Div. Of Garrett Corp.*, 673 P.2d 984, 987 (Ariz. Ct. App. 1983); *see also Carey v.*
2 *Maricopa Cnty.*, No. CV-05-2500, 2009 WL 750220, at *6-7 (D. Ariz. Mar. 10, 2009)
3 (noting that remarks made in a clandestine manner among co-workers are not the sort of
4 defamation that comes under the scope of the discovery rule).

5 Here, Arimilli makes three allegations of defamation: (1) in July 2017, Rezendes
6 stated to Holdiman that Arimilli was actively and intentionally wasting company funds,
7 time, and resources; (2) in July and August 2017, Rezendes stated to Holdiman that
8 Arimilli was mentally unstable; and (3) in August 2017, Rezendes stated to Holdiman that
9 Arimilli lacked competency to perform her job. (Doc. 59 at 76); *see Ultimate Creations,*
10 *Inc. v. McMahon*, No. CV-06-0535, 2007 WL 9735048, at *2 (D. Ariz. Feb. 5, 2007)
11 (internal quotations omitted) (holding that defamatory statements need not be set forth
12 verbatim in the complaint but must be “specifically identified, such that the defendant may
13 adequately defend itself”). Arimilli filed her original complaint in October 2020, three
14 years after the alleged defamatory statements. (Doc. 1-1 at 5).

15 Arimilli asserts, generally, that the statute of limitations should be tolled because
16 “Defendant Rezendes statements were calculated and executed in a fashion to prevent [her]
17 from becoming aware of what was said until a much later date.” (Doc. 59 at 76-77).
18 Arimilli, however, does not specify which of Rezendes’s statements were made with an
19 intent to conceal, failing to distinguish between Rezendes’s statements to Holdiman and
20 his many other statements, such as Rezendes’s alleged 2018 statements to Witness D about
21 Arimilli’s friendship with Rezendes or his 2017 statements to potential investors about
22 Arimilli’s satisfaction with her investment in AvidBrain. (Doc. 59 at 76). Nor does
23 Arimilli proffer why the statements Rezendes made to Holdiman were particularly likely
24 to be concealed from her, or that they were concealed. Although the remarks may have
25 been clandestine, Arimilli does not allege they were made in an inherently confidential
26 manner. *See Breeser v. Menta Group, Inc., NFP*, 934 F.Supp.2d 1150, 1162 (D. Ariz.
27 2013) (holding the discovery rule does not apply to toll the statute of limitations where
28 plaintiff alleges defamation based on a comment between former co-workers that plaintiff

1 “never could handle the job anyway” because, although it “may have been clandestine, []
2 they were not made in an inherently confidential manner”). As such, Arimilli’s defamation
3 claim is dismissed as time barred.

4 **vi. Intrusion Upon Seclusion (Sixteenth Cause)**

5 Arimilli’s intrusion upon seclusion claim against Defendant Rezendes is dismissed
6 because the statute of limitations has run. Intrusion upon seclusion has a two-year statute
7 of limitation. A.R.S. § 12-542; *see also Hansen v. Stoll*, 636 P.2d 1236, 1242 (Ariz. Ct.
8 App. 1981) (“Since invasion of privacy involves personal injury (mental distress), and
9 sounds mainly in tort, we hold that it is governed by the two-year limitation of A.R.S. §
10 12-542.”).

11 Arimilli does not present a plausible basis for inferring that she did not know about
12 the facts underlying her intrusion upon seclusion claim in 2017, when she noticed the “the
13 loss and then reappearance of emails, password reset emails, read notices on emails the
14 Plaintiff had not opened and odd exchanges with individuals she was in communication
15 with via email that resembled interference[] in her email accounts.” (Doc. 59 at 78).
16 Arimilli asserts that she was aware of and made Rezendes aware of these oddities in June
17 2017. (*Id.*). Arimilli further asserts that, in November 2017, Rezendes and Holdiman
18 impersonated her in email correspondence and utilized access to her personal emails to
19 “impede her ability to gather evidence, acquire legal counsel, monitor private conversation
20 with witnesses and authorities.” (*Id.* at 79). Arimilli did not bring her original complaint
21 until three years later in October 2020, (Doc. 1-1), and she did not first assert her intrusion
22 upon seclusion claim until four years later when she filed her Third Amended Complaint
23 in September 2021, (Doc. 15 at 27). As such, Arimilli’s intrusion upon seclusion claim is
24 dismissed as time barred.

25 **vii. Civil Conspiracy (Eighteenth Cause)**

26 Arimilli’s civil conspiracy claim is dismissed as to all remaining defendants:
27 Rezendes, Rosen, AvidBrain, and TutorNode. To state a claim for civil conspiracy in
28 Arizona, a plaintiff must allege that (1) two or more persons, (2) agreed to accomplish

1 either (3) an unlawful purpose, or (4) a lawful objective by unlawful means. *Rowland v.*
2 *Union Hills Country Club*, 757 P.2d 105, 110 (Ariz. Ct. App. 1998). Civil conspiracy is a
3 derivative tort that requires underlying tortious conduct for liability to attach. *Id.*; *see also*
4 *Tovrea Land & Cattle Co. v. Linsenmeyer*, 412 P.2d 47, 63 (Ariz. 1966). However, “not
5 all members of a conspiracy need [to] be named defendants for one member to be found
6 liable.” *Rowland*, 757 P.2d at 110.

7 Arimilli’s conspiracy claim seems to be based on the Defendants’ alleged
8 conspiracy to commit fraud. (Doc. 59 at 86) (“Defendant[s] . . . knowingly acted in concert
9 with each other to orchestrate a complex fraud and to fraudulently conceal their fraudulent
10 activities.”). When a plaintiff alleges a conspiracy to commit fraud, Rule 9(b) requires
11 more than conclusory allegations of the conspiracy and instead that the conspiracy to
12 commit fraud be plead with the same particularity as the fraud itself. *S. Union Co. v. Sw.*
13 *Gas Corp.*, 165 F.Supp.2d 1010, 1020 (D. Ariz. 2001) (citing *Semegen v. Weidner*, 780
14 F.2d 727, 731 (9th Cir. 1985)). “To satisfy this requirement, a ‘plaintiff must allege with
15 sufficient factual particularity that defendants reached some explicit or tacit understanding
16 or agreement.’” *Id.*; *see also Roberts v. Heim*, 670 F.Supp. 1466, 1484 (N.D. Cal. 1987)
17 (“To survive a motion to dismiss, plaintiffs must allege with sufficient factual particularity
18 that defendants reached some explicit or tacit understanding or agreement . . . It is not
19 enough to show that defendants might have had a common goal unless there is a factually
20 specific allegation that they directed themselves towards this wrongful goal by virtue of a
21 mutual understanding or agreement.”) (cleaned up) (internal quotations omitted).

22 As to Defendants AvidBrain and TutorNode, Arimilli fails to state a claim upon
23 which relief can be granted. Arimilli added AvidBrain and TutorNode as defendants to
24 this action because the “corporations were utilized as conduits to conceal fraudulent
25 activity and the filings surrounding their filings are vehicles of concealment.” (Doc. 59 at
26 86). “A complaint ‘does not require detailed factual allegations but it demands more than
27 an unadorned, the-defendant-unlawfully-harmed-me accusation.’” *Doe v. Fed. Dist. Ct.*,
28 467 F.App’x 725, 727 (9th Cir. 2012) (quoting *Iqbal*, 556 U.S. at 678). Arimilli does no

1 more than assert, without a factual basis, that Defendants AvidBrain and TutorNode
2 unlawfully harmed her by engaging in a civil conspiracy.

3 As to Defendant Rosen, Arimilli fails to assert with the requisite particularity that
4 she agreed to participate in a conspiracy. *See S. Union Co.*, 165 F.Supp.2d at 1020.
5 Arimilli alleges that Rezendes and Rosen worked “in concert, collusion, and
6 correspondence with each other” to make numerous fraudulent misrepresentations. (Doc.
7 59 at 81). She further alleges that Rosen connected Rezendes with investors and assisted
8 in acquiring and concealing funds by accepting payments on Rezendes’s behalf. (*Id.* at
9 83). Although these allegations may suggest Rezendes and Rosen reached some agreement
10 to work together, they do not suggest they agreed to conspire to defraud Arimilli. *See*
11 *Roberts*, 670 F.Supp. at 1485 (finding defendants reached an agreement, not conducted an
12 illegal scheme, where defendants agreed to provide professional services and thereafter
13 performed a wrongful act).

14 Finally, as to Defendant Rezendes, Arimilli asserts Rezendes and Holdiman
15 “intentionally conspired together.” (Doc. 59 at 84). Specifically, she asserts that they
16 conspired to hack into her email and cloud accounts starting June 2017, to interfere with
17 her ability to refill a prescription, and to give Arimilli modified text message exchanges
18 and evidence in place of unedited files and other evidence. (*Id.*). As noted above,
19 Arimilli’s fraud claims provide the basis from which she makes her conspiracy claim.
20 (Doc. 59 at 86). The allegations of hacking, interfering with prescriptions, and tampering
21 with evidence, however, are immaterial to Arimilli’s fraud claims. Thus, to the extent that
22 Arimilli bases her conspiracy claim on these allegations, they are insufficient to state a
23 claim for civil conspiracy. *See AGA S’holders, LLC v. CSK Auto, Inc.*, 589 F.Supp.2d
24 1175, 1191-92 (D. Ariz. 2008) (holding civil conspiracy is a derivative tort “for which a
25 plaintiff may recover only if it has adequately pled an independent primary tort”) (citing
26 *Rowland*, 757 P.2d at 110). And to the extent Arimilli asserts that hacking, interfering, and
27 tampering are the independent, primary torts, Arimilli has failed to do more than assert
28 legal conclusions couched as factual allegations, which do not receive a presumption of

1 truthfulness. *See Pareto*, 139 F.3d at 699.

2 As such, Arimilli's civil conspiracy claim is dismissed with prejudice.

3 **c. Previously Limited Fraud Claims**

4 The Court previously preserved Arimilli's claims for fraudulent misrepresentation
5 (First Cause), fraudulent inducement (Second Cause), and fraudulent concealment (Fourth
6 Cause) to the extent the claims were based on Rezendes's representation that "all company
7 filings were accurate." (*See Doc. 40* at 3-4). In the operative complaint, Arimilli reiterates
8 her fraud claims against Rezendes and adds Rosen, AvidBrain, and TutorNode as
9 defendants. (*Doc. 59* at 13).

10 The fraud claims are governed by Federal Rule of Civil Procedure 9, requiring a
11 heightened pleading standard. Fed. R. Civ. P. 9(b). To prevail on a common law fraud
12 claim, Arimilli must show:

13 (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's
14 knowledge of its falsity or ignorance of its truth; (5) his intent that it should
15 be acted upon by and in the manner reasonably contemplated; (6) the hearer's
16 ignorance of its falsity; (7) his reliance on the truth; (8) his right to rely
17 thereon; and (9) his consequent and proximate injury.

18 *Peery v. Hansen*, 585 P.2d 574, 577 (Ariz. Ct. App. 1978).

19 Arimilli's fraud claims fail as to Defendants AvidBrain and TutorNode. Arimilli
20 asserts she added the companies as defendants because AvidBrain is the "conduit company
21 utilized for the fraudulent activity" and because TutorNode "may be acting to assist the
22 concealment of fraud." (*Doc. 59* at 21). These are not sufficient grounds to state a claim
23 for relief against either Defendant.

24 Arimilli's fraud claims also fail as to Defendant Rosen. Arimilli asserts that Rosen
25 made three representations in mid-March 2017: (1) Rosen affirmed that Rosen's brother
26 graduated from Stanford, (*Doc. 59* at 13), (2) Rosen stated she was married to Rezendes,
27 (*Id.*), and (3) Rosen affirmed the couple was financially secure, (*Id.* at 14). Arimilli,
28 however, fails to allege Rosen's intent that Arimilli rely on these representations to invest

1 in AvidBrain and to allege Arimilli had a right to rely on Rosen's representations. *See*
2 *Peery*, 585 P.2d at 577; *see also Lininger v. Sonenblick*, 532 P.2d 538, 540 (Ariz. Ct. App.
3 1975) ("Before one can have relief from a claimed fraud, he must show not only that he
4 relied on the misrepresentation, but also that he had the right to rely on it.").

5 Arimilli's fraud claims against Rezendes may remain to the extent allowed by the
6 Court's prior orders, (*see* Doc. 14 at 7; Doc. 22 at 9-10; Doc. 40 at 3-4), with the addition
7 of claims related to Rezendes's Investor Opportunity sheet. (Doc. 59 at 17-18). As to the
8 claim remaining from previous complaints, Arimilli pleads that Rezendes's representation
9 to her on March 24, 2017 that all company filings were accurate was false because
10 Rezendes did not disclose his prior bankruptcy in the company filings. (*Id.* at 15). Arimilli
11 further alleges that Rezendes knew this representation was false, made this representation
12 to induce Arimilli to invest with Rezendes because of it, Arimilli relied on the
13 representation because of Rezendes's knowledge and expertise, and Arimilli suffered
14 damages because of her reliance, including loss of total investment. (*Id.* at 15, 19-21).
15 Taken together, the Court held these allegations satisfy Rule 9(b)'s requirements and the
16 nine required elements of fraud. *See Peery*, 585 P.2d at 577.

17 Arimilli is similarly able to satisfy Rule 9(b)'s requirements and the nine required
18 elements of fraud as to her allegations regarding Rezendes's Investor Opportunity sheet.
19 Specifically, Arimilli pleads with sufficient particularity that Rezendes's representation to
20 her in the Investor Opportunity information sheet in a March 24, 2017 email was false
21 because the success of the company was exaggerated. (*Id.* at 17). Arimilli further alleges
22 that Rezendes knew the information sheet had false information, made the representation
23 to induce Arimilli to invest in AvidBrain because of it, Arimilli relied on the representation
24 because of Rezendes's knowledge and expertise in the educational and start up field, and
25 Arimilli suffered damages because of her reliance, including loss of total investment. (*Id.*
26 at 17-21).

27 Arimilli lays out many other representations made by Rezendes, which she alleges
28 are false; however, as was the case in previous complaint, Arimilli failed to plead that she

1 relied on the representations to her detriment and how the reliance on each statement was
2 justified. Instead, she alleges she “justifiably relied on . . . every representation outlined
3 [in her complaint]” because she has basic intelligence, no completed education, little to no
4 startup experience, and is not financially skilled or versed. (Doc. 59 at 19-20). This general
5 assertion does not meet the level of particularity required by Rule 9(b) when asserting
6 fraud.

7 As such, Arimilli’s fraud claims are preserved only as to Rezendes and to the extent
8 outlined above. Arimilli’s fraud claims against Defendants Rosen, AvidBrain, and
9 TutorNode are dismissed.

10 **d. New Claim: Aiding and Abetting (Seventeenth Claim)**

11 Arimilli asserts her aiding and abetting claim against only Defendant Glaeseman.
12 As discussed earlier in this Order, Arimilli failed to state a cognizable legal claim against
13 Glaeseman. Arimilli’s aiding and abetting claim is dismissed with prejudice.

14 **e. Complaint Does Not Violate Notice Pleading Requirements**

15 Rezendes asserts Arimilli’s Sixth Amended Complaint should be dismissed in its
16 entirety for violating Rule 8. (Doc. 62-1 at 4). Federal Rule of Procedure 8 states that a
17 complaint must contain “a short and plain statement of the claim showing that the pleader
18 is entitled to relief” and “[e]ach allegation must be simple, concise, and direct.” Fed. R.
19 Civ. P. 8(a)(2), 8(d)(1). Rezendes asserts that Arimilli’s 94-page complaint, which repeats
20 factual issues, makes conclusory statements, and alleges various causes of action against
21 multiple defendants without specifying how each defendant is liable prevents Rezendes
22 from adequately responding to any of the alleged claims. (*Id.*). Indeed, as pled, it is
23 difficult to determine which factual allegations support each of the nineteen causes of
24 action. However, allegations in a pro se complaint are held to “less stringent standards
25 than formal pleadings drafted by lawyers.” *Erickson*, 551 U.S. at 94. Pro se complaints
26 must be liberally construed and afforded the benefit of any doubt. *Hebbe v. Pliler*, 627
27 F.3d 338, 342 (9th Cir. 2010). Given Arimilli has no further opportunities to amend, (Doc.
28 40 at 13), the Court will not dismiss her Complaint for failure to comply with Rule 8.

1 Rezendes did not otherwise challenge Plaintiff's third, ninth, tenth, eleventh,
2 twelfth, thirteenth, fourteenth, or nineteenth causes of action. As such, the claims remain
3 as pled.

4 **IV. Arimilli's Motion for Sanctions (Doc. 93)**

5 Defendants Rezendes, Rosen, AvidBrain, and TutorNode failed to comply with the
6 Court's October 1, 2024 Order (Doc. 89) to retain counsel or file a Notice of Appearance
7 on their own behalf. (Doc. 92). The Court did not preclude Arimilli from seeking
8 appropriate remedies. Consistent with the Court's Order, Arimilli filed a Motion for
9 Sanctions for Failure to Appear (Doc. 93). She requests the court impose sanctions that it
10 deems appropriate. (Doc. 93 at 1). Arimilli has not established that she incurred any out-
11 of-pocket costs or fees due to the Defendants' failure to respond to the Court's orders,
12 therefore, no such fees shall be awarded to the Plaintiff.

13 Nevertheless, Defendants Rezendes, Rosen, AvidBrain, and TutorNode have failed
14 to comply with the Court's order of October 1, 2024. Rezendes and Rosen may appear
15 before this Court pro per, and in absence of lawyers representing them are now deemed to
16 be representing themselves. The entity defendants, however, may not be represented by
17 individuals who are not authorized to practice before this Court. *See D-Beam Ltd. P'ship*
18 *v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th Cir. 2004) ("It is a longstanding
19 rule that 'corporations and other unincorporated associations must appear in court through
20 an attorney.'"). After having received a great deal of time to obtain an attorney without
21 doing so, Defendants AvidBrain and TutorNode will be defaulted on any remaining claims
22 against them. Because, however, AvidBrain and TutorNode still maintained counsel when
23 the briefing on this matter was complete, the Court affords them the benefit of the
24 arguments raised on their behalf while they were still represented. Thus, Plaintiff's claims
25 against the AvidBrain and TutorNode in Counts One, Two, Four, Five, Six, Seven, Eight
26 and Eighteen are dismissed. Nevertheless, on the counts remaining against those entities,
27 the Court strikes the answers of AvidBrain and TutorNode and directs the Clerk to enter
28

1 default against those.⁴

2 Accordingly,

3 **IT IS THEREFORE ORDERED** that Defendant Glaeseman's Motion to Dismiss
4 (Doc. 76) is **GRANTED** with prejudice. The Clerk of Court is directed to enter a judgment
5 of dismissal as to Defendant Glaeseman.

6 **IT IS FURTHER ORDERED** that Defendant Holdiman's Motion to Dismiss
7 (Doc. 82) is **GRANTED** with prejudice. The Clerk of Court is directed to enter a judgment
8 of dismissal as to Defendant Holdiman.

9 **IT IS FURTHER ORDERED** that Defendant Rezendes's Motion to Dismiss (Doc.
10 62), joined by Defendant Rosen, Defendant AvidBrain, and Defendant TutorNode, is
11 **GRANTED** in part and **DENIED** in part, as follows:

- 12 ○ Count One remains as limited by this Order as to Defendant Rezendes. Count
13 One is dismissed with prejudice as to Defendants Rosen, AvidBrain, and
14 TutorNode.
- 15 ○ Count Two remains as limited by this Order as to Defendant Rezendes.
16 Count Two is dismissed with prejudice as to Defendants Rosen, AvidBrain,
17 and TutorNode.
- 18 ○ Count Three remains as pled.
- 19 ○ Count Four remains as limited by this Order as to Defendant Rezendes.
20 Count Four is dismissed with prejudice as to Defendants Rosen, AvidBrain,
21 and TutorNode.
- 22 ○ Count Five remains as pled.
- 23 ○ Count Six is dismissed with prejudice.
- 24 ○ Count Seven is dismissed with prejudice.
- 25 ○ Count Eight remains as pled as to Defendant Rezendes. Count Eight is
26 dismissed with prejudice as to Defendant AvidBrain.

27 ⁴ Arimilli asks the Court not to grant default judgment, as she fears Defendants will use
28 such a judgment to avoid an adverse ruling. However, a default judgment is no more easily
avoided in bankruptcy proceedings than any other judgment. There being no other
practical remedy available, the Court grants default.

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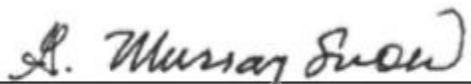
- Count Nine remains as pled.
- Count Ten remains as pled.
- Count Eleven remains as pled.
- Count Twelve remains as pled.
- Count Thirteen remains as pled.
- Count Fourteen remains as pled.
- Court Fifteen is dismissed with prejudice.
- Count Sixteen is dismissed with prejudice.
- Count Seventeen dismissed with prejudice.
- Count Eighteen is dismissed with prejudice.
- Count Nineteen remains as pled.

IT IS FURTHER ORDERED that Plaintiff Arimilli’s Motion for Sanctions (Doc. 93) is **DENIED**.

IT IS FURTHER ORDERED that default be entered against Defendant AvidBrain, LLC as to Count Five, Count Eleven, Count Twelve, Count Thirteen, and Count Nineteen.

IT IS FURTHER ORDERED that default be entered against Defendant TutorNode, Inc. as to Count Thirteen and Count Nineteen.

Dated this 10th day of March, 2025.



G. Murray Snow
Senior United States District Judge