

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EFORCE GLOBAL, INC.,	)	Case No. 09-1984 SC
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANT'S
	)	<u>MOTION FOR SUMMARY JUDGMENT</u>
v.	)	
	)	
BANK OF AMERICA, N.A.,	)	
	)	
Defendant.	)	
	)	
	)	

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**I. INTRODUCTION**

Now before the Court is a Motion for Summary Judgment, or Alternative Partial Summary Judgment, filed by Bank of America, N.A. ("Defendant" or "Bank of America"). Docket No. 31 ("Motion"). Plaintiff eForce Global, Inc. ("Plaintiff" or "eForce") filed an Opposition, and Bank of America filed a Reply. Docket Nos. 36, 41. Pursuant to Local Civil Rule 7-1(b), the Court finds the Motion is suitable for determination without oral argument. For the reasons stated below, Defendant's Motion is GRANTED.

**II. BACKGROUND**

On May 6, 2009, Plaintiff filed a Complaint against Bank of America. Docket No. 1 ("Compl."). Plaintiff is an information technology services company that provides enterprise solutions to

1 its clients. Id. ¶ 1. eForce developed the Integrated Treasury  
2 Operations System ("ITOPS"), a Web-based automated and integrated  
3 cash-management system. Id. ¶ 7. In 2007, eForce entered into  
4 negotiations with the Regents of the University of California ("the  
5 University") to implement and support ITOPS at the University. Id.  
6 ¶ 8. On January 7, 2008, eForce and the University signed a  
7 written contract whereby eForce agreed to furnish ITOPS and, in  
8 exchange, the University agreed to pay eForce \$100,000 for the  
9 software, a fee not to exceed \$600,000 for the deployment of the  
10 system, and a monthly subscription fee. See Reidy Decl. Ex. B  
11 ("Ravindra Pande Dep.") Ex. 4 ("UC Banking Services Agreement") at  
12 EFO 42894-42903.<sup>1</sup>

13         Around July 2007, the University told eForce that ITOPS would  
14 have to be integrated with Bank of America's system so that the  
15 University and Bank of America could conduct banking operations  
16 through ITOPS. Compl. ¶ 9; Ravindra Pande Dep. at 44:7-13. On  
17 July 27, 2007, representatives of eForce, the University, and Bank  
18 of America participated in a telephone call. Compl. ¶ 12; Ravindra  
19 Pande Dep. at 78:12-79:23. Participants on the conference call  
20 included Ravindra Pande and Sujith Nair ("Nair") of eForce, Richard  
21 Powell ("Powell") of the University, and Joseph Simas ("Simas"),  
22 Cynthia Weinthaler ("Weinthaler"), and Susan Colles ("Colles") of  
23 Bank of America. Ravindra Pande Dep. at 79:4-9; Ravindra Pande

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27 <sup>1</sup> David Reidy ("Reidy"), an associate at Reed Smith LLP, attorneys  
28 for Defendant Bank of America, filed a Declaration in Support of  
the Motion. Docket No. 32.

1 Decl. ¶¶ 9-10; Nair Decl. ¶¶ 15-16.<sup>2</sup>

2 Ravindra Pande is a Project Manager and Enterprise Architect  
3 at eForce, and he held that position in 2007. Ravindra Pande Decl.  
4 ¶ 2. According to Ravindra Pande, "the purpose of the call was  
5 largely for Bank of America to describe their capabilities with  
6 respect to bulk payment interfaces." Ravindra Pande Dep. at 79:18-  
7 20. Bank of America's representations to eForce during the  
8 telephone call form the basis for eForce's three causes of action  
9 for (1) Intentional Interference with Contractual Relations; (2)  
10 Breach of Oral Contract; and (3) Breach of the Covenant of Good  
11 Faith and Fair Dealing. See Compl. ¶¶ 20-41.

12  
13 **III. LEGAL STANDARD**

14 Entry of summary judgment is proper "if the pleadings, the  
15 discovery and disclosure materials on file, and any affidavits  
16 show that there is no genuine issue as to any material fact and  
17 that the movant is entitled to judgment as a matter of law." Fed.  
18 R. Civ. P. 56(c). If the party moving for summary judgment does  
19 not have the ultimate burden of persuasion, then that party must  
20 produce evidence negating an essential element of the non-moving  
21 party's claims or showing that the non-moving party does not have  
22 enough evidence of an essential element to carry its ultimate  
23 burden of persuasion at trial. Nissan Fire & Marine Ins. Co. v.  
24 Fritz Cos., 210 F.3d 1099, 1102 (9th Cir. 2000). Summary judgment  
25 should be granted where the evidence is such that it would require  
26 a directed verdict for the moving party. Anderson v. Liberty

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28 <sup>2</sup> Ravindra Pande and Sujith Nair ("Nair"), employees of eForce,  
submitted declarations in support of eForce's Opposition. Docket  
Nos. 36-4, 36-7.

1 Lobby, Inc., 477 U.S. 242, 251 (1986). Thus, "Rule 56(c) mandates  
2 the entry of summary judgment . . . against a party who fails to  
3 make a showing sufficient to establish the existence of an element  
4 essential to that party's case, and on which that party will bear  
5 the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S.  
6 317, 322 (1986). "The evidence of the non-movant is to be  
7 believed, and all justifiable inferences are to be drawn in his  
8 favor." Anderson, 477 U.S. at 255.

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10 **IV. DISCUSSION**

11 **A. Evidentiary Objections**

12 **1. eForce Objections**

13 eForce filed objections to the evidence Bank of America  
14 submitted in support of its Motion. Docket No. 35 ("eForce  
15 Objections"). Bank of America responded to the objections. Docket  
16 No. 44 ("Resp. to eForce Objections").

17 eForce contends that Bank of America may not use the  
18 deposition testimony of its own employees unless they are outside  
19 the state or otherwise unavailable to testify. eForce Objections  
20 at 2. This contention is simply incorrect, and the cases cited by  
21 eForce do not support it. In Garcia-Martinez v. City and County of  
22 Denver, the Tenth Circuit addressed the admissibility at trial of  
23 the deposition testimony of a party who had voluntarily left the  
24 country. 392 F.3d 1187, 1190-91 (10th Cir. 2004). In Paz v.  
25 Wauconda Healthcare and Rehabilitation Centre, LLC, the Seventh  
26 Circuit noted that a plaintiff may defeat summary judgment with his  
27 or her own deposition testimony. 464 F.3d 659, 664-65 (7th Cir.  
28 2006). Neither case supports the novel evidentiary rule proposed

1 by eForce. It is elementary that a party moving for summary  
2 judgment may rely on deposition testimony. Celotex, 477 U.S. at  
3 323. The Court OVERRULES eForce's objections to the deposition  
4 testimony of Bank of America employees Simas, Heidi Hawthorne  
5 ("Hawthorne"), Doris Chu ("Chu"), and Sharon Midkiff ("Midkiff").

6 Although Plaintiff initially objected to the authenticity of  
7 documents Bank of America submitted in support of its Motion,  
8 Plaintiff subsequently withdrew its authenticity objections. See  
9 Overend Decl. ¶ 2, Ex. A ("May 25, 2010 Email").<sup>3</sup> Hence, the Court  
10 does not need to rule on these objections. Plaintiff has also  
11 withdrawn its request for a Rule 56(f) continuance, and therefore  
12 the Court does not respond to that request. See Opp'n at 3-6;  
13 Docket No. 46 ("June 4, 2010 Letter").

14 eForce objects on the basis that Bank of America often "mis-  
15 cites" deposition testimony. eForce Objections at 4-5. These  
16 objections do not call into question the admissibility of Bank of  
17 America's evidence, but instead question Bank of America's  
18 description or characterization of the evidence. The Court bases  
19 its decisions on what the evidence shows, not on how a party has  
20 characterized the evidence. As such, the Court OVERRULES eForce's  
21 objections based on alleged inaccurate citations. Having reviewed  
22 the deposition testimony referred to in Attachment A to eForce's  
23 Objections, the Court also OVERRULES the objections based on a  
24 purported lack of personal knowledge, the hearsay rule,  
25 inadmissible opinion testimony, and a lack of foundation.

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27 <sup>3</sup> William R. Overend ("Overend"), partner at Reed Smith LLP,  
28 attorneys for Defendant Bank of America, filed a Declaration in  
Support of Bank of America's Responses to Plaintiff's Evidentiary  
Objections. Docket No. 45.

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**2. Bank of America Objections**

Bank of America objects to eForce's Opposition on the basis that there is no evidence to support many of the assertions in the Opposition brief. Docket No. 43 ("Def.'s Objections") at 2-8. As stated above, the Court relies on what the evidence shows, not on how a party describes or characterizes the evidence. Hence, the Court OVERRULES Bank of America's objections to statements in eForce's Opposition brief, but the Court makes clear that it always bases its determinations on what the evidence shows, not on how a party has characterized that evidence in its pleadings.

Bank of America objects to references to an agreement between eForce and the Bank in the P.K. Pande Declaration. Id. at 9-10. The declarant states he was not part of the discussions that created this agreement; instead he obtained his information regarding an agreement from Nair and Ravindra Pande, other eForce employees. See P.K. Pande Decl. ¶ 14.<sup>4</sup> Hence, statements in his declaration concerning an agreement between eForce and Bank of America are hearsay. The Court SUSTAINS Bank of America's objections to those statements, and GRANTS Defendant's Motion to Strike those statements. The Court OVERRULES Bank of America's other objections to statements in the P.K. Pande Declaration.

The Court OVERRULES Bank of America's objections to statements in the Ravindra Pande Declaration and the Nair Declaration. The Court also OVERRULES Bank of America's objections to statements in

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<sup>4</sup> P.K. Pande, Chief Operating Officer ("CEO") of eForce, filed a Declaration in Support of eForce's Opposition. Docket No. 36-8.

1 the Martin Kresse Declaration,<sup>5</sup> but finds that the statements have  
2 no impact upon Bank of America's Motion because eForce has  
3 withdrawn its request for a Rule 56(f) continuance. See June 4,  
4 2010 Letter.

5 **B. Breach of Oral Contract**

6 "A cause of action for breach of contract is comprised of the  
7 following elements: (1) the contract, (2) plaintiff's performance  
8 or excuse for nonperformance, (3) defendant's breach, and (4) the  
9 resulting damages to plaintiff." Careau & Co. v. Sec. Pac. Bus.  
10 Credit, Inc., 272 Cal. Rptr. 387, 395 (Ct. App. 1990). A contract  
11 requires consenting parties, and their consent must be free,  
12 mutual, and communicated by each to the other. Cal. Civ. Code §§  
13 1550, 1565. Consent is not mutual unless the parties all agree  
14 upon the same thing in the same sense. Id. § 1580. "If there is  
15 no evidence establishing a manifestation of assent to the 'same  
16 thing' by both parties, then there is no mutual consent to contract  
17 and no contract formation." Bustamante v. Intuit, Inc., 141 Cal.  
18 App. 4th 199, 208 (Ct. App. 2006) (quoting Weddington Prods., Inc.  
19 v. Flick, 60 Cal. App. 4th 793, 811 (Ct. App. 1998). To form a  
20 contract, the parties must reach mutual assent or consent on  
21 definite or complete terms. Merced County Sheriff's Employees'  
22 Ass'n v. Merced County, 188 Cal. App. 3d 662, 670 (Ct. App. 1987);  
23 McClintock v. Robinson, 18 Cal. App. 2d 577, 582 (Ct. App. 1937).

24 Here, Plaintiff's Complaint alleges that Bank of America  
25 breached an oral contract entered into on or about July 27, 2007.  
26 Compl. ¶¶ 30-31. Plaintiff alleges that "Bank of America agreed to

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28 <sup>5</sup> Martin H. Kresse, attorney of record for eForce since February 2,  
2010, filed a Declaration in Support of eForce's Opposition.  
Docket No. 36-1.

1 provide support for UCOP Payment Types via its MX Message  
2 Interface." Id. ¶ 30.<sup>6</sup> Plaintiff alleges that:

3 Bank of America further agreed to the following  
4 timeline for the implementation and testing of  
5 ITOPS's integration into the MX Message  
6 Interface: (1) eForce would complete the  
7 integration of ITOPS with Bank of America's MX  
8 Message Interface in Fourth Quarter 2007; (2)  
9 eForce would begin testing ITOPS's integration  
10 with Bank of America's MX Message Interface in  
11 or about September 2007; (3) Bank of America  
12 would provide a test environment for ITOPS  
13 during Fourth Quarter 2007; (4) Bank of America  
14 would begin providing support for the UCOP  
15 Payment Types via its MX Message Interface  
16 during Fourth Quarter 2007.

17 Compl. ¶ 31.

18 Bank of America presents evidence showing that mutual consent  
19 regarding the MX Message Interface was not reached during the July  
20 27, 2007 telephone call, and eForce has failed to show otherwise.  
21 eForce did not commit to using the XML format during the July 27,  
22 2007 conference call. Instead, on that date, the parties merely  
23 discussed options for how ITOPS could be integrated with Bank of  
24 America's system.

25 On July 27, 2007, the parties discussed different types of  
26 file formats that Bank of America used to send payment origination  
27 instructions. Reidy Decl. Ex. A ("Simas Dep.") at 15:1-24, 62:6-  
28 24, 64:14-18. The file formats discussed included the Bank of  
29 America flat file ("BAFF") and the XML format. Ravindra Pande Dep.  
30 at 79:21-80:11; Ravindra Pande Decl. ¶ 13; Simas Dep. at 15:1-7,  
31 15-24. While BAFF is a proprietary Bank of America format, the  
32 parties also discussed ISO 20022, an XML-based standard. Simas

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<sup>6</sup> eForce refers to the University as "UCOP," which is an  
abbreviation for the University of California Office of the  
President.

1 Dep. at 22:2-4; Ravindra Pande Dep. at 81:25-82:6; Ravindra Pande  
2 Decl. ¶ 13. These were file formats that the University could use  
3 to send bulk payments through Bank of America's system using the  
4 new ITOPS software. Ravindra Pande Dep. at 80:20-82:6.

5 During this call, a Bank of America representative "talked  
6 about how [the XML standard] was going into production and how they  
7 were using pilot customers right now, and it would be in production  
8 in October." Id. at 82:10-21. Ravindra Pande's understanding was  
9 that the XML format "was in testing with . . . [Bank of America's]  
10 pilot customers, and it was scheduled for production in October."  
11 Id. at 82:24-83:1. Indeed, this case hinges on Bank of America's  
12 representation during the call that the XML payment interface would  
13 be in production in October 2007. Ravindra Pande Decl. ¶¶ 15-17;  
14 Nair Decl. ¶ 17. eForce alleges that it relied on that  
15 representation, and that Bank of America's failure to meet that  
16 deadline forced eForce to maintain employees on the ITOPS project  
17 for longer than anticipated. P.K. Pande Decl. ¶ 20.

18 On this motion for summary judgment, the evidence of the non-  
19 movant must be believed and all justifiable inferences must be  
20 drawn in eForce's favor. Anderson, 477 U.S. at 255. The Court  
21 therefore assumes the truth of eForce's claim that Bank of America  
22 represented during the July 27 call that the XML format would be in  
23 production in October 2007. Assuming the truth of this assertion,  
24 the evidence does not show that an oral contract was formed between  
25 eForce and Bank of America on that date.

26 Ravindra Pande testified that, during the July 27, 2007 call,  
27 Bank of America provided eForce with information concerning file  
28 formats for a bulk payment interface, Ravindra Pande Dep. at 81:16-

1 83:1, and eForce requested follow-up information and documentation  
2 on the XML format, id. at 86:2-23. eForce did not decide during  
3 the call to go with the XML format. Id. at 86:24-87:8. Instead,  
4 eForce requested documentation from Bank of America so that eForce  
5 could understand the XML format. Id. Hence, eForce did not commit  
6 to the XML format on July 27, 2007.

7 In his declaration, Ravindra Pande does not dispute that  
8 eForce did not commit to the XML format during the call. He  
9 declares that he "told the Bank on the July 27th conference call  
10 that we would likely utilize the Bank's XML interface rather than  
11 their BAFF interface." Ravindra Pande Decl. ¶ 19 (emphasis added).  
12 On July 28, 2007, he told other eForce employees that eForce would  
13 be utilizing the XML payment interface. Id. ¶ 22. However, eForce  
14 first notified Bank of America that it intended to use the XML  
15 format in an email dated August 10, 2007. See Ravindra Pande Dep.  
16 Ex. 6 ("Aug. 10, 2007 Email"). The email states "[w]e are planning  
17 implement [sic] the XML interface based on ISO 20022." Id. at EFO  
18 08882. eForce admits this email is the first time eForce notified  
19 Bank of America that it intended to use the XML file format.  
20 Ravindra Pande Dep. at 99:24-100:2.

21 If eForce did not commit to using the XML format during the  
22 conference call, then it is impossible for eForce and Bank of  
23 America to have entered into an oral contract regarding the XML  
24 format at that time. eForce alleges that "Bank of America agreed  
25 to provide support for UCOP Payment Types via its MX Message  
26 Interface," and that Bank of America and eForce agreed to a  
27 "timeline for the implementation and testing of ITOPS's integration  
28 into the MX Message Interface." Compl. ¶¶ 30-31. In its

1 Opposition, eForce asserts that "[d]uring the call an agreement was  
2 reached between the Bank and eForce that if the Bank's XML  
3 interface was used for the UCOP payment types that eForce could use  
4 the Bank's October 2007 XML product release for the UCOP project so  
5 that eForce could complete its testing and integration during Q4  
6 2007 with this release." Opp'n at 11.

7       There is no evidence to support these allegations of an  
8 agreement. A contract concerning the XML format could not have  
9 been formed during the conference call because eForce did not  
10 commit to using the XML format at that time, and eForce first  
11 notified Bank of America of its intention to use that format on  
12 August 10, 2007. Ravindra Pande Dep. at 86:24-87:8, 99:24-100:2;  
13 Aug. 10, 2007 Email at EFO 08882. Contract formation requires a  
14 manifestation of assent to the same thing by both parties.  
15 Bustamante, 141 Cal. App. 4th at 208. Therefore, even if Bank of  
16 America misrepresented that the XML format would be in production  
17 in October 2007, this statement could not have given rise to a  
18 contract. The evidence indicates that, during the call, the  
19 parties to this lawsuit were merely discussing options for how  
20 ITOPS could be integrated into Bank of America system. See  
21 Ravindra Pande Dep. at 81:16-87:8; Simas Dep. at 62:6-24, 64:14-18;  
22 Ravindra Pande Decl. ¶¶ 11-19. There is simply no evidence of  
23 mutual consent during the July 27, 2007 conference call.

24       Nor do the emails subsequent to the July 27 call give rise to  
25 a contract between eForce and Bank of America. On August 1, 2007,  
26 Weinthaler, Vice President of Treasury Management Services at Bank  
27 of America, sent an email to Powell, Senior Banking Manager at the  
28 University of California, containing hyperlinks and information

1 regarding the XML format. Ravindra Pande Dep. Ex. 6 ("Emails") at  
2 EFO 08884-86. Powell forwarded the information to Ravindra Pande  
3 on August 2, 2007. Id. at 08884.

4 On August 10, 2007, Ravindra Pande responded in an email sent  
5 to representatives of both the University and Bank of America.  
6 Aug. 10, 2007 Email at 08882-84. The email states "[w]e are  
7 planning implement [sic] the XML interface based on ISO 20022. . .  
8 . We are planning to have our integration completed during calendar  
9 Q4 of this year and expect to enter testing in the September time  
10 frame contingent on the lead time required for establishing UCOP in  
11 a test environment." Id. at 08882. The email continues:

12 Our understanding of the BofA support for ISO  
13 20022 is  
14 1. Support for domestic and international  
15 Wires, ACHs and Drafts will be available using  
16 the new MX Message Interface . . . .  
17 2. B Of A will begin production support for  
18 these MX Messages/ISO 20022 with their initial  
19 set of customer [sic] in the October 2007  
20 timeframe.

21 Id. The email also asks Bank of America to provide eForce "with  
22 any documentation relating to the implementation, testing and  
23 connectivity to the new ISO 20022 when it is available," and it  
24 also seeks advice on the process for accessing the Bank of America  
25 test environment. Id. at 08883.

26 Simas, from Bank of America, responded on August 29, 2007.  
27 Ravindra Pande Dep. Ex. 7 ("Aug. 29, 2007 Email") at EFO 08598-  
28 08605. He notes that Bank of America's "documentation for the XML  
process is still being established." Id. at EFO 08599. In  
response to eForce's request regarding access to Bank of America's  
test environment, the email states that Bank of America is "[s]till  
determining when and how our test environment will be made

1 available to you for the XML process." Id. On November 16, 2007,  
2 Ravindra Pande sent Weinthaler an email expressing his surprise  
3 regarding "delays which have apparently occurred at BofA with  
4 respect to their previously communicated timelines." Ravindra  
5 Pande Dep. Ex. 9 ("Nov. 16, 2007 Email") at EFO 08887-88.

6 The problem for eForce is that there is no evidence showing  
7 that Bank of America's failure to begin production support for XML  
8 messages in the October 2007 timeframe constituted the breach of a  
9 contract with eForce. The Court struggles to understand how these  
10 emails can be construed as giving rise to a contract. Where is the  
11 offer or an acceptance of that offer? eForce attempts to portray  
12 its August 10, 2007 email as an acceptance of Bank of America's  
13 offer made during the July 27, 2007 conference call. Opp'n at 6-7,  
14 13-14. This contention is without merit. "[T]erms proposed in an  
15 offer must be met exactly, precisely and unequivocally for its  
16 acceptance to result in the formation of a binding contract."  
17 Panagotacos v. Bank of America, 60 Cal. App. 4th 851, 855 (Ct. App.  
18 1998) (quoting Apablaza v. Merritt & Co., 176 Cal. App. 2d 719, 726  
19 (Ct. App. 1959). Having carefully reviewed the August 10, 2007  
20 email, it cannot be construed as an acceptance of a Bank of America  
21 offer. The email states eForce's understanding that Bank of  
22 America would begin production support for the XML format "in the  
23 October 2007 timeframe." Aug. 10, 2007 Email at EFO 08882. While  
24 this may have been eForce's understanding, Bank of America  
25 responded at the end of August that they were "[s]till determining  
26 when and how our test environment will be made available to you for  
27 the XML process." Aug. 29, 2007 Email at EFO 08599. There is  
28 nothing to show that eForce and Bank of America mutually consented

1 to definite contract terms either during the July 27, 2010  
2 conference call or in the emails exchanged subsequent to that call.  
3 Accordingly, the Court GRANTS summary judgment in favor of Bank of  
4 America with regard to eForce's claim for breach of contract.

5 **C. Breach of Covenant of Good Faith and Fair Dealing**

6 The prerequisite for any action for breach of the implied  
7 covenant of good faith and fair dealing is the existence of a  
8 contractual relationship between the parties, because the covenant  
9 is an implied term in the contract. Foley v. Interactive Data  
10 Corp., 47 Cal. 3d 654, 683-84 (1988); Gruenberg v. Aetna Ins. Co.  
11 (1973) 9 Cal. 3d 566, 577 (1973). Here, and as explained above,  
12 there was no contract between eForce and Bank of America. See Part  
13 IV.B, supra. Therefore, the Court GRANTS summary judgment in favor  
14 of Bank of America with regard to eForce's cause of action for  
15 breach of the implied covenant of good faith and fair dealing.

16 **D. Intentional Interference with Contract**

17 Under California law, "[t]he elements of a cause of action for  
18 intentional interference with contract are: (1) a valid contract  
19 between plaintiff and a third party; (2) defendants' knowledge of  
20 the contract; (3) defendants' intentional acts designed to induce a  
21 breach or disruption of the contractual relationship; (4) actual  
22 breach or disruption of the contractual relationship; and (5)  
23 resulting damage." Tuchscher Dev. Enters., Inc. v. San Diego  
24 Unified Port Dist., 106 Cal. App. 4th 1219, 1239 (Ct. App. 2003);  
25 see also Pacific Gas & Electric Co. v. Bear Stearns & Co., 50 Cal.  
26 3d 1118, 1126 (1990).

27 In the Complaint, eForce alleges that:

28 Bank of America knew that eForce had an

1 agreement with UCOP to provide and deploy ITOPS  
2 with rules and functionality designed to UCOP's  
3 needs and specifications. Bank of America  
4 further knew that eForce could not provide UCOP  
5 with the ITOPS system required by UCOP unless  
and until ITOPS adopted and integrated a  
messaging interface that was supported by Bank  
of America.

6 Compl. ¶ 22. eForce alleges that Bank of America's failure "to  
7 provide eForce with a full test environment at anytime during  
8 Fourth Quarter 2007" interfered with the contract between eForce  
9 and the University. Id. ¶¶ 26-28.

10 There is no evidence to support eForce's claim that Bank of  
11 America intentionally interfered with eForce's contract with the  
12 University. On September 26, 2007, there was a meeting between  
13 Bank of America and the University "to discuss the University of  
14 California's desire to become an XML pilot client." Simas Dep. Ex.  
15 21 ("Sept. 26, 2007 Email") at BOA 05753. "Piloting" means the XML  
16 format was being developed and tested with a particular client.  
17 Simas Dep. at 50:6-53:2. The email states "[w]e have not locked  
18 down payment types, countries, telecom, target start and end dates  
19 yet for UC." Sept. 26, 2007 Email at BOA 05753.

20 On September 28, 2007, Bank of America emailed Nair of eForce  
21 "regarding when we'd be ready to start testing with you for the XML  
22 implementation," and stating that Bank of America "would like to  
23 lock down some specifics." Ravindra Pande Dep. Ex. 8 ("Emails") at  
24 EFO 42812. eForce responded that early First Quarter 2008 was the  
25 goal for full production status. Id. at EFO 42814.<sup>7</sup>

26  
27 <sup>7</sup> The email states "Early First Quarter 07" but the context makes  
28 it clear that this was a typographical error and that Nair meant  
Early First Quarter 2008. See also Mot. at 9 n.5.

1 By mid-November, eForce was concerned about the lack of  
2 progress on the XML project and therefore the parties arranged a  
3 November 16, 2007 conference call. Ravindra Pande Dep. at 120:4-  
4 121:25. During the call, eForce was still hoping to get into  
5 parallel production by the end of 2007. Id. at 122:1-17. After  
6 the call, Ravindra Pande sent Bank of America an email recapping  
7 "eForce's understanding of the major points we discussed on the  
8 call Friday regarding both the current status and the approach BofA  
9 and eForce agreed to adopt in order to attempt to provide UCOP an  
10 Integrated Treasury Operations (ITOPS) product release in  
11 December." Id. Ex. 11 ("Nov. 19, 2007 Email") at EFO 07568.  
12 eForce's understanding was that "BofA will have a test environment  
13 ready by December 15, 2007 in which UCOP can test domestic wire and  
14 ACH transactions. BofA will have a test environment ready by  
15 January 15, 2008 in which UCOP can test international wire and  
16 international ACH transactions." Id. at EFO 07569.

17 On November 27, 2007, Doug Carlson ("Carlson"), a Senior Vice  
18 President at Bank of America, sent the Bank of America XML project  
19 team an email stating:

20 I need to get us together to confirm the bank's  
21 commitment to piloting XML payments with the  
22 University of California and make sure that we  
23 have appropriate resources to meet their  
24 aggressive timeline. The UC needs to have the  
25 wires and ACH payments tested and operational  
26 by December 31, 2007 when the majority of their  
27 vendor (eFORCE) resources will roll off the  
28 project. After, 12/31/2007, they will maintain  
minimal resources for follow-up issues and to  
complete the FX payments when that  
functionality is available. With our one XML  
implementation resource (Heidi) out all this  
week for training and Christmas looming, I'm  
concerned that the project is already in  
danger. We either need to insure that we can  
meet their timeline, or we need to consider

1 canceling the XML pilot (which will be  
2 embarrassing and possibly damaging to our  
relationship with the UC).

3 Simas Dep. Ex. 28 ("Carlson Email") at BOA 00426. By December 20,  
4 2007, it was clear to Bank of America employees that they were not  
5 going to have the XML project completed by the end of the year.  
6 Docket No. 39 ("Pl.'s Errata and Clarification of Exhibits") Ex. 30  
7 ("Dec. 20, 2007 Email") at BOA 83746. On January 4, 2008, Midkiff,  
8 a Client Fulfillment Manager at Bank of America, emailed a timeline  
9 anticipating that the XML project would be in production in March  
10 2008. Reidy Decl. Ex. E ("Midkiff Dep.") Ex. 67 ("Jan. 4, 2008  
11 Email"). On March 4, 2008, Chu, a Bank of America project manager,  
12 told Midkiff that the March 4, 2008 production target date had been  
13 met, although it was also anticipated that the University and  
14 eForce would continue testing through July. Id. at 112:8-113:12.

15 On January 7, 2008, eForce and the University signed a  
16 contract. See UC Banking Services Agreement at EFO 42894-42903.  
17 While representatives of eForce may have been "discussing with UCOP  
18 representatives the parameters of the final agreement" since June  
19 2007, the contract was signed on January 7, 2008. P.K. Pande Decl.  
20 ¶ 9. Under the terms of the contract, the University agreed to pay  
21 eForce \$100,000 for the ITOPS software. UC Banking Services  
22 Agreement Part I § 1. Concerning deployment, the contract  
23 provides:

24 The University and eForceglobal have agreed  
25 that deployment of the system will be completed  
26 for an amount not to exceed \$600,000.  
27 Eforceglobal has submitted invoices for its  
28 incurred deployment expenses of \$600,000. The  
University will pay eForceglobal 90% of the  
\$600,000. The University agrees to pay  
eForceglobal for the deployment as it has been  
delivered and is being tested.

1 Id. Part I § 2. The contract also provides for a monthly  
2 subscription fee:

3           The University agrees to pay eForceglobal  
4           \$75,000 starting December 1, 2007, and at the  
5           beginning of each month that the system is  
6           placed in parallel production testing. Upon  
7           mutual agreement, when both the University and  
8           eForceglobal concur that the software and the  
9           operations are in such condition as to warrant  
10           the end to parallel production, the 60 month  
11           subscription agreement will commence.

12 Id. Part I § 3. The subscription agreement provides that the  
13 University will pay eForce \$75,000 per month for the first two  
14 years, \$80,000 per month for the third year, and \$85,000 per month  
15 for the fourth, fifth, and sixth year. Id. Part I § 5.

16           There is no evidence to support eForce's claim that Bank of  
17 America intentionally interfered with this contract. There is  
18 nothing to show that Bank of America's delays associated with the  
19 XML format and integrating ITOPS into their system were an  
20 intentional effort to interfere with eForce's contract with the  
21 University. Indeed, Ravindra Pande testified that eForce has no  
22 evidence that anyone at Bank of America was out to get eForce or  
23 had some motive to intentionally delay the project. Ravindra Pande  
24 Dep. at 132:17-133:11. As noted by this deponent, it is hard to  
25 see how intentionally delaying the XML project would have served  
26 Bank of America's interests because the University was Bank of  
27 America's customer. Id. at 133:5-7.

28           Furthermore, there was no interference or disruption of the  
contract. As required by the contract, Bank of America paid eForce  
\$100,000 for the ITOPS software, id. at 53:8-17, \$540,000 for  
deployment expenses, id. at 64:22-65:3, 66:1-3, and Bank of America  
began paying the monthly subscription fee of \$75,000 in December

1 2007, id. at 67:22-68:4. The University is currently in the midst  
2 of the sixty-month subscription agreement with eForce, and the  
3 University is current on its payments. Id. at 69:1-9. The  
4 contract provides that Bank of America would pay eForce for the  
5 deployment of the software "as it has been delivered and is being  
6 tested." UC Banking Services Agreement Part 1 § 2. Ravindra Pande  
7 confirmed that the University was using and testing the software  
8 when the contract was signed on January 7, 2008. Ravindra Pande  
9 Dep. at 66:3-19. P.K. Pande testified that "[b]y December 1st of  
10 2007, which is within Q4 -- around December 1st, beginning of  
11 December - we were live in a production environment." Reidy Decl.  
12 Ex. F ("P.K. Pande Dep.") at 75:5-7. He testified that, before the  
13 end of the Fourth Quarter 2007, eForce had completed all of the  
14 material steps outlined in a Statement of Work agreed to by the  
15 University and eForce. Id. at 72:18-77:24.

16 Assuming the truth of eForce's allegations that Bank of  
17 America misrepresented that it would provide a full test  
18 environment for eForce before the end of 2007, or that ITOPS would  
19 be integrated with Bank of America's system by then, these  
20 misrepresentations did not result in a breach or disruption of  
21 eForce's contract with the University. The contract, signed on  
22 January 7, 2008, explicitly acknowledges that the software was  
23 being tested at that time. See UC Banking Services Agreement Part  
24 1 § 2 ("The University agrees to pay eForceglobal for the  
25 deployment as it has been delivered and is being tested."). eForce  
26 has received and is receiving the benefit of its bargain with the  
27 University: eForce delivered the software, eForce has received all  
28 payments due from Bank of America, and eForce continues to receive

1 subscription payments. Ravindra Pande Dep. at 53:8-17, 64:22-65:3,  
2 66:1-3, 67:22-68:4, 69:1-9. There is no genuine issue of material  
3 fact that the contract has not been breached or disrupted.

4 Therefore, eForce cannot prevail on its claim that Bank of America  
5 intentionally interfered with this contract.

6 In its Opposition, eForce contends that Bank of America's  
7 delays associated with the XML interface "forced eForce to delay  
8 the launch of ITOPS and [resulted in] millions of dollars in extra  
9 development costs for ITOPS." Opp'n at 19. eForce asserts that a  
10 contract existed between eForce and the University that "predated  
11 the July 27, 2007 phone call," id. at 18, but eForce cites to no  
12 evidence in support of this contention. In support of its  
13 intentional interference claim, eForce relies on the statement in  
14 Pacific Gas and Electric Co., 50 Cal. 3d at 1129, that  
15 "interference with the plaintiff's performance may give rise to a  
16 claim for interference with contractual relations if plaintiff's  
17 performance is made more costly or more burdensome." Opp'n at 19.

18 However, when eForce and the University signed their contract  
19 on January 7, 2008, both eForce and the University were aware that  
20 it was taking longer than anticipated for ITOPS to be integrated  
21 with Bank of America's system. P.K. Pande declares that in  
22 November or December 2007, eForce decided to maintain additional  
23 employees on the XML project at no cost to the University. P.K.  
24 Pande Decl. ¶ 20. Despite its awareness of these delays and extra  
25 costs, eForce decided to sign an agreement on January 7, 2008,  
26 according to which it would be paid \$100,000 for the software,  
27 \$540,000 for deployment of the software, and a monthly subscription  
28 fee starting at \$75,000 for December 2007. To date, the University

1 has made its required payments. Hence, there has been no breach or  
2 disruption of the terms of this agreement, and the Court GRANTS  
3 summary judgment in favor of Bank of America and against eForce on  
4 its claim for intentional interference with contractual relations.

5

6 **V. CONCLUSION**

7 For the reasons stated above, the Court GRANTS the Motion for  
8 Summary Judgment filed by DEFENDANT Bank of America, N.A.

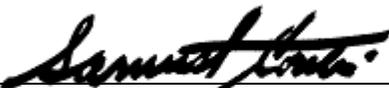
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10 IT IS SO ORDERED.

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12 Dated: June 24, 2010

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UNITED STATES DISTRICT JUDGE

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