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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

CC LIT HOLDING, LLC,  
Plaintiff,  
v.  
INFOSYS LIMITED,  
Defendant.

Case No. 18-cv-00807-BLF

**ORDER DENYING PLAINTIFF’S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT; GRANTING IN PART  
AND DENYING IN PART  
DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT**

[Re: ECF Nos. 42, 43]

This case concerns the business relationship between Plaintiff CC Lit Holding, LLC (“Caiman”) and Defendant Infosys Limited (“Infosys”). In 2006, Caiman presented Infosys with an opportunity to work with Cavium, a third party, which was in the process of integrating a company it had just acquired. Caiman alleges that it disclosed the opportunity to Infosys with the reasonable expectation of receiving a finder’s fee for the referral. After Cavium selected Infosys to assist with the integration, Caiman sought payment of a finder’s fee, but Infosys refused. This suit followed.

Before the Court are the Parties’ cross-motions for summary judgment: Caiman’s Motion for Partial Summary Judgment, ECF No. 42 (“PMSJ”); and Infosys’s Motion for Summary Judgment or, in the Alternative, Summary Adjudication, ECF No. 43 (“DMSJ”). Each party opposes the other’s motion. *See* ECF Nos. 44 (“PMSJ Opp.”), 45 (“DMSJ Opp.”). The Court held a hearing on these motions on October 19, 2021. For the reasons stated on the record and outlined below, the Court (1) DENIES Caiman’s Motion for Partial Summary Judgment, (2) GRANTS Infosys’s Motion for Summary Judgment on the oral contract claim, and (3) DENIES Infosys’s Motion in all other respects.

1       **I. BACKGROUND**

2           Caiman<sup>1</sup> was a privately owned consulting company primarily located in Seattle and  
3 California, cofounded in 2004 by its CEO and Managing Partner Ahmad “Raazi” Imam. ECF No.  
4 43-1, Exs. 3-4 (“Imam Dep.”), at 5:13-14. In 2016, Cavium approached Caiman to set up an  
5 integration management office that would supervise the integration of QLogic, a company that  
6 Cavium had recently acquired, into Cavium. *Id.* at 35:14-25, 88:11-89:3. Cavium paid Caiman  
7 just over \$680,000 for managing the integration. *Id.* at 186:15-20.

8           Because Caiman itself was not capable of handling every aspect of the integration—such  
9 as issues related to any international offices—Caiman offered to introduce Cavium to other  
10 companies who could meet those remaining needs. *See* Imam Dep. at 36:1-18. When several  
11 large consulting companies could not meet Cavium’s integration timeline, Caiman sought other  
12 smaller integration companies who could jump in immediately. *See id.* at 38:18-39:10, 72:5-8.  
13 Caiman identified Infosys as a company that could provide global systems integration. *See id.* at  
14 76:24-78:7. Infosys is a global consulting and IT services company with an international  
15 presence. *See* DMSJ at 9. Caiman (and Imam specifically) was familiar with Infosys from prior  
16 projects and information technology advisory boards. *See* Imam at Dep. 94:10-19.

17           On June 24, 2016, Imam reached out to a previous contact at Infosys, and was put in touch  
18 with Nishad Somalwar, a Senior Sales Manager. *See* Imam Dep. at 100:8-20; ECF No. 42-1, Ex.  
19 A (“Somalwar Dep.”) at 45:4-6. Imam and Somalwar spoke twice that day. On the first phone  
20 call, Imam explained the services that Cavium needed, but did not disclose Cavium by name.  
21 Imam Dep. at 99:3-16. Imam stated that he could disclose more, but also “want to know if Infosys  
22 pays finder’s fee.” Somalwar Dep. at 45:25-46:2. Somalwar says that he responded, “I don’t  
23 know,” and that Imam asked him to check. *Id.* at 46:6-25. Imam says:

24                               [Somalwar’s] response was, absolutely. This is a new client to us.  
25                               We’re super excited about the opportunity, and if we win work, we’ll,  
26                               obviously, compensate you for it.

27           \_\_\_\_\_  
28           <sup>1</sup> Caiman was acquired by Sia Partners in October 2019, and the claims in this lawsuit were  
assigned to CC Lit Holding, the named plaintiff here. ECF No. 42-2 ¶¶ 2, 4. The Court uses  
“Caiman” throughout.

1 Imam Dep. at 103:15-18.

2 Somalwar contacted his manager and asked about a finder's fee, but she also did not know  
3 if Infosys paid a finder's fee. Somalwar Dep. at 46:25-47:1, 47:10-15. Somalwar and Imam then  
4 held a follow-up phone call. *Id.* at 60:22-25. Imam again asked if Somalwar had found out if  
5 Infosys paid a finder's fee. *Id.* at 49:4-6. Somalwar said that "we do not know if Infosys pays  
6 finder's fee." *Id.* at 50:6-7. Somalwar states that he told Imam that he would "make sure that we  
7 will work in a collaborative manner to win the particular opportunity in whatever prospect you  
8 have," and to "let me know if you are [finally] comfortable." *Id.* at 50:11-14. The Parties dispute  
9 the circumstances that caused Imam to disclose Cavium's identity to Somalwar on that call.  
10 Somalwar claims that Imam disclosed Cavium's identity to him after Somalwar said that if he did  
11 not learn the client's identity, "we are not going to go ahead" because he wouldn't know if  
12 Cavium fit within the "industrial verticals and . . . classifications" that Infosys could effectively  
13 service. *Id.* at 50:15-21. Imam, in contrast, claims that he disclosed Cavium's identity to  
14 Somalwar only after Somalwar told him that "[Infosys] would compensate Caiman for . . . the  
15 introduction and helping them win the work." Imam Dep. at 106:22-25.<sup>2</sup>

16 Imam did ultimately disclose to Somalwar that the client was Cavium, gave him more  
17 details about the opportunity, and requested a slide deck from Infosys describing its capabilities.  
18 Somalwar Dep. at 51:7-16. In neither call did Somalwar expressly say that Infosys would pay a  
19 finder's fee. Imam Dep. at 106:19-23. Somalwar's notes from the call with Imam do not contain  
20 any reference to an agreement to pay a finder's fee to Caiman. *See* ECF No. 43-1, Ex. 5.

21 Imam then set up a meeting connecting Cavium and Infosys. Somalwar Dep. at 99:9-14.  
22 Caiman continued to facilitate discussions between Cavium and Infosys until Infosys was awarded  
23 an initial services contract with Cavium. *Id.* at 79:8-22. The limited scope of the first two  
24 statements of work allowed Cavium to assess the quality of work performed by Infosys. *Id.*  
25 Cavium and Infosys thereafter executed a third statement of work in November 2016. *Id.*  
26 Collectively, the statements of work were valued at over \$5.2 million. *Id.*

27

28 <sup>2</sup> Plaintiff misquotes Somalwar as making an ultimatum to "tell [him] the prospect or this deal is dead." DMSJ Opp. at 1-2. No such quote appears in the cited deposition testimony.

1           Approximately one month before the third statement of work was executed, Iman met with  
2 Somalwar, a director at Infosys, and a principal at Caiman for a lunch meeting to discuss the  
3 Cavium project. Iman told them that for some engagements Caiman facilitated, it received a 10 to  
4 15 percent finder’s fee. Somalwar Dep. at 99:15-100:10. Iman again asked Somalwar if Infosys  
5 would pay a finder’s fee. Iman Dep. at 141:21-23. Iman confirmed in his deposition that  
6 Somalwar did not confirm that Infosys would do so. *Id.* at 142:3-5. The conversation did not  
7 proceed to the specifics of any potential finder’s fee, including how much and when the fee would  
8 be paid. *Id.* at 143:25-144:8.

9           A few months later, on March 30, 2017, Iman sent an email to Somalwar and others at  
10 Infosys stating that he would “like to close the loop on [the] finders’ fee for Cavium ASAP.  
11 Would like to know when we get paid and whether it is 10% or 15% of revenue as we discussed  
12 previously.” ECF No. 43-1, Ex. 7. Somalwar called Iman and said that Infosys had never agreed  
13 to pay a finder’s fee. Somalwar Dep. at 110:13-111:13. Caiman never received a finder’s fee  
14 from Infosys.

15           Caiman filed this lawsuit in February 2017. The operative complaint alleges claims for  
16 breach of oral contract, quantum meruit, negligent misrepresentation, and fraud. ECF No. 1 ¶¶ 29-  
17 62. Infosys answered in March 2018, *see* ECF No. 17, and these motions followed in September  
18 2021.

19           **II. LEGAL STANDARD**

20           “A party is entitled to summary judgment if the ‘movant shows that there is no genuine  
21 dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *City of*  
22 *Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049 (9th Cir. 2014) (quoting Fed. R. Civ. P.  
23 56(a)). A fact is “material” if it “might affect the outcome of the suit under the governing law,”  
24 and a dispute as to a material fact is “genuine” if there is sufficient evidence for a reasonable trier  
25 of fact to decide in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
26 248 (1986).

27           The party moving for summary judgment bears the initial burden of informing the Court of  
28 the basis for the motion and identifying portions of the pleadings, depositions, answers to

1 interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material  
2 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To meet its burden, “the moving party  
3 must either produce evidence negating an essential element of the nonmoving party’s claim or  
4 defense or show that the nonmoving party does not have enough evidence of an essential element  
5 to carry its ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Cos.,*  
6 *Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000). In judging evidence at the summary judgment stage,  
7 the Court “does not assess credibility or weigh the evidence, but simply determines whether there  
8 is a genuine factual issue for trial.” *House v. Bell*, 547 U.S. 518, 559-60 (2006). Where the  
9 moving party will have the burden of proof on an issue at trial, it must affirmatively demonstrate  
10 that no reasonable trier of fact could find other than for the moving party. *Celotex*, 477 U.S. at  
11 325; *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007).

12 If the moving party meets its initial burden, the burden shifts to the nonmoving party to  
13 produce evidence supporting its claims or defenses. *Nissan Fire*, 210 F.3d at 1103. If the  
14 nonmoving party does not produce evidence to show a genuine issue of material fact, the moving  
15 party is entitled to summary judgment. *Celotex*, 477 U.S. at 323. “The court must view the  
16 evidence in the light most favorable to the nonmovant and draw all reasonable inferences in the  
17 nonmovant’s favor.” *City of Pomona*, 750 F.3d at 1049. “[T]he ‘mere existence of a scintilla of  
18 evidence in support of the [nonmovant’s] position’” is insufficient to defeat a motion for summary  
19 judgment. *First Pac. Networks, Inc. v. Atl. Mut. Ins. Co.*, 891 F. Supp. 510, 513–14 (N.D. Cal.  
20 1995) (quoting *Liberty Lobby*, 477 U.S. at 252). “‘Where the record taken as a whole could not  
21 lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.’”  
22 *First Pac. Networks*, 891 F. Supp. at 514 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*  
23 *Corp.*, 475 U.S. 574, 587 (1986)).

24 Where the Parties file cross-motions for summary judgment, the court must consider each  
25 motion “on its own merits.” *Riverside Two*, 249 F.3d at 1136. The court has an independent duty  
26 to examine the record to determine if disputed issues of material fact exist, regardless of the  
27 parties’ assertions to the contrary. *Id.* This involves looking at evidence submitted in support of  
28 all cross-motions in ruling on each cross-motion. *Id.* at 1137.

1 **III. INFOSYS’S MOTION FOR SUMMARY JUDGMENT OR ADJUDICATION**

2 Infosys moves for summary judgment on all four claims in Caiman’s Complaint. The  
3 Court considers each claim in turn.

4 **A. Breach of Oral Contract**

5 Infosys argues that it is entitled to summary judgment on the breach of oral contract claim  
6 because Somalwar, as a sale manager at Infosys, lacked authority to negotiate or enter into  
7 agreements on behalf of Infosys, and because Imam admits that Somalwar never expressly agreed  
8 to pay a finder’s fee. DMSJ at 16-18. Caiman disputes Somalwar’s purported lack of authority  
9 and points to Somalwar’s testimony that Infosys would “compensate” Caiman if Infosys received  
10 the Cavium work. DMSJ Opp. at 11-12.

11 “The elements of a breach of oral contract claim are the same as those for a breach of a  
12 written contract.” *Rhub Commc’ns, Inc. v. Karon*, 2018 WL 707596, at \*2 (N.D. Cal. Feb. 5,  
13 2018); Cal. Civ. Code §§ 1622, 1644. Thus, plaintiff must show (1) the existence of a contract,  
14 (2) plaintiff’s performance or excuse for nonperformance; (3) defendant’s breach; and (4) resulting  
15 damages to the plaintiff. *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011). Element  
16 1 is dispositive.

17 There is no material dispute of fact that an oral contract did not exist between Caiman and  
18 Infosys. “Where the parties have not agreed to all the essential terms, no binding contract exists.”  
19 *Rachford v. Air Line Pilots Ass’n Int’l*, 375 F. Supp. 2d 908, 937 (N.D. Cal. June 15, 2005) (citing  
20 *Roth v. Garcia Marquez*, 942 F.2d 617, 627-28 (9th Cir. 1991)). Here, it is undisputed that  
21 Caiman and Infosys never agreed on the essential terms of a contract. The most explicit evidence  
22 in favor of finding an enforceable agreement is Somalwar’s alleged statement that Infosys would  
23 “compensate” Caiman if it received the Cavium work. Imam Dep. at 103:10-18, 106:23-25. But  
24 there is no evidence that the parties had a meeting of the minds on any terms of a contract to  
25 “compensate” Caiman in the form of a finder’s fee, which Imam himself admits. *Id.* at 51:13-  
26 52:15 (agreeing that a finder’s fee is “something that you would negotiate” and “solidify and  
27 formalize,” but that Caiman never did so) Most notably, the parties never agreed on the price of  
28 the contract. Imam told Somalwar that Caiman had received finder’s fees of 10 to 15 percent on

1 other projects, Somalwar Dep. at 99:15-100:10, but never discussed the specific percentage that  
2 Infosys would pay as a finder’s fee, *id.* at 143:25-144:8. And while a contract may be formed with  
3 an open price term, the parties must have “otherwise manifested their mutual assent to the  
4 agreement and the terms of that agreement [must be] sufficiently definite.” *San Joaquin Gen.*  
5 *Hosp. v. United Healthcare Ins. Co.*, 2017 WL 1093835, at \*2 (E.D. Cal. Mar. 22, 2017) (citing  
6 *Goichman v. Rheuban Motors, Inc.*, 682 F.2d 1320, 1325 (9th Cir. 1982)). There was no such  
7 agreement here. An agreement on a specific percentage of Infosys’ eventual contract (still  
8 hypothetical, at that point) may have been sufficient for a price term, but the parties never agreed  
9 on a percentage, nor any other terms (such as the base “price” of which to take the percentage or  
10 which statements of work should be subject to a finder’s fee).

11 There is no dispute of material fact regarding whether an oral contract existed between the  
12 parties. The Court thus GRANTS Infosys’s motion as to the breach of oral contract claim.

13 **B. Quantum Meruit**

14 Infosys argues that it is entitled to summary judgment on Caiman’s quantum meruit claim  
15 because Caiman was the one that requested services from Infosys to fill a void in its integration  
16 job for Cavium, and that any services performed were for Cavium’s benefit. DMSJ at 18-19.  
17 Caiman argues that because Caiman referred Cavium to Infosys at Infosys’ request, Caiman did  
18 not intend to act gratuitously, and Caiman’s services conferred a benefit on Infosys in the form of  
19 the statements of work. DMSJ Opp. at 8-10.

20 Quantum meruit “refers to the well-established principle that the law implies a promise to  
21 pay for services performed under circumstances disclosing that they were not gratuitously  
22 rendered.” *Huskinson & Brown v. Wolf*, 32 Cal. 4th 453, 458 (2004). A contract need not actually  
23 exist, but there must be circumstances indicating that “the services were rendered under some  
24 understanding or expectation of both parties that compensation therefor was to be made.” *Port*  
25 *Medical Wellness, Inc. v. Conn. Gen. Life Ins. Co.*, 24 Cal. App. 5th 153, 180 (2018) (citing  
26 *Huskinson & Brown*, 32 Cal. 4th at 458). The elements of a quantum meruit claim are “(1) that  
27 the plaintiff performed certain services for the defendant, (2) their reasonable value, (3) that they  
28 were rendered at defendant’s request, and (4) that they are unpaid.” *Fudy Printing Co. v.*

1 *Aliphcom, Inc.*, 2019 WL 2180221, at \*4 (N.D. Cal. Mar. 7, 2019).<sup>3</sup>

2 The Court finds that disputed issues of material fact preclude summary judgment on this  
3 claim. There is no dispute that Infosys has never paid Caiman a finder's fee, but fact issues  
4 remain as to the other elements of this claim. On elements 1 and 3, the Parties dispute on whose  
5 behalf Caiman performed services. Caiman says it performed a service on behalf of Infosys when  
6 it presented the Cavium opportunity to Infosys, while Infosys says that Caiman was performing  
7 services for Cavium by finding another company to help with Cavium's integration of QLogic.  
8 PMSJ at 8; PMSJ Opp. at 6-10. There is evidence to support both of these theories. Infosys was  
9 unfamiliar with Cavium before Caiman connected the two companies, and Caiman served as a  
10 point of contact between the two companies until the statements of work were executed.  
11 Somalwar Dep. at 72:11-18; 75:5-8. But Cavium also compensated Caiman nearly \$700,000 for  
12 its management of the QLogic integration, including for finding other companies like Infosys to  
13 assist with the integration. Imam Dep. at 186:15-20.<sup>4</sup>

14 More fundamentally, there is also a dispute over whether there was an "understanding" by  
15 both parties that Caiman would be compensated. *Port Medical Wellness*, 24 Cal. App. 5th at 180.  
16 It is undisputed that neither Somalwar nor anyone else at Infosys ever explicitly told Imam that  
17 Infosys would pay a finder's fee. But Imam says that Somalwar told him that if Infosys received  
18 the Cavium job, that Infosys would "compensate" Caiman for it. Imam Dep. at 103:10-18,  
19 106:23-25. Somalwar also told Imam that they would work "in a collaborative manner" together  
20 as Infosys sought the Cavium work and that he wanted to make Imam "comfortable" that he was  
21 "going to work with [him]." Somalwar Dep. at 51:1-2, 52:14-19. This testimony is sufficient for  
22 a reasonable trier of fact to find that the parties had an "understanding" that Caiman would be  
23

24 \_\_\_\_\_  
25 <sup>3</sup> A plaintiff cannot recover on a quasi-contract claim, such as quantum meruit, if the parties "have  
26 an enforceable agreement regarding a particular subject matter." *Klein v. Chevron U.S.A., Inc.*,  
202 Cal. App. 4th 1342, 1388 (2012). Because the Court grants summary judgment to Infosys on  
the breach of oral contract claim, the quantum meruit claim is not foreclosed.

27 <sup>4</sup> For this reason, *Day v. Alta Bates Medical Center*, 98 Cal. App. 4th 243 (2002), does not help  
28 Defendant win summary judgment. In *Day*, there was no evidence to support the theory that  
plaintiff performed services for defendant. *Id.* at 248. Here, there is evidence that could lead a  
reasonable trier of fact to accept the theory that Caiman performed services on behalf of Infosys.



1 compensated—in some form—for connecting Infosys with Cavium.

2 Infosys does not confront this testimony, except obliquely in its reply in support of its  
3 motion. There, Infosys argues that Imam’s testimony is “uncorroborated and self-serving”  
4 testimony that cannot alone allow Caiman to survive summary judgment on any of its claims.  
5 DMSJ Reply at 12 (quoting *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996)). But  
6 *Kennedy* and that line of cases do not go as far as Infosys suggests. In *Kennedy*, the Ninth Circuit  
7 affirmed a district court’s grant of summary judgment in an ADA case. Plaintiff had signed state  
8 disability benefit and Social Security claims forms that stated that she was “completely disabled  
9 for all work-related purposes,” and submitted medical evidence supporting the same. *Kennedy*, 90  
10 F.3d at 1481. She then testified in deposition that she was “not totally disabled.” *Id.* The Ninth  
11 Circuit agreed with the district court that the deposition testimony did not raise a *genuine* dispute  
12 because the testimony “flatly contradicts both her prior sworn statements and the medical  
13 evidence.” *Id.*; see also *Lansmont Corp. v. SPX Corp.*, 2012 WL 6096674, at \*4 (N.D. Cal. Dec.  
14 7, 2012) (no genuine dispute of material fact created by testimony that responsive records were not  
15 with company when later testimony and all other evidence showed that some responsive  
16 documents were housed at company). Here, however, Imam’s testimony that Somalwar said that  
17 he would be “compensated” is not necessarily “inconsistent” and “flatly contradict[ed]” by other  
18 evidence. *Kennedy*, 90 F.3d at 1481. The parties may have never explicitly agreed to the terms of  
19 a “finder’s fee” while also reaching an “understanding” that Caiman would be “compensated” in  
20 some way. *Port Medical Wellness*, 24 Cal. App. 5th at 180. To be sure, Infosys disputes Imam’s  
21 testimony and points to Somalwar’s repeated statements that he told Imam that he didn’t know  
22 whether Infosys would pay a finder’s fee. But whether Imam’s testimony about “compensation”  
23 is credible given other evidence (or to what weight it is entitled) is a matter for the trier of fact to  
24 determine at trial.<sup>5</sup>

25 Finally, Infosys argues that the Ninth Circuit’s decision in *In re De Laurentiis*

26  
27 \_\_\_\_\_  
28 <sup>5</sup> Because quantum meruit is an equitable claim, the finder of fact need not be bound by the  
suggestion implicit in Imam’s testimony that the “reasonable value” of Caiman’s work for Infosys  
was ten or fifteen percent of the contracts Cavium awarded Infosys.

1 *Entertainment Group, Inc.*, 963 F.2d 1269 (9th Cir. 1992), makes the quantum meruit claim fail as  
2 a matter of law. Not so. In that case, an advertising agency purchased \$1.6 million in advertising  
3 from NBC on behalf of a third-party client. NBC billed the agency pursuant to a contract to which  
4 the client was not a party. When the client entered bankruptcy, NBC sought to collect on a  
5 quantum meruit theory the \$1.6 million from CTI, the entity who purchased the assets of the client  
6 in bankruptcy. CTI argued that NBC could not recover because it expected payment from the  
7 agency, not the client who was not a party to the contract. The Ninth Circuit rejected that  
8 argument, allowing NBC to assert a quantum meruit claim because the client received services  
9 from NBC (advertising) for which NBC had not been paid and there was “no chance that [CTI]  
10 will be forced to pay twice.” *Id.* at 1272-74. Infosys argues that this case is different because  
11 Caiman received payment from Cavium and thus is not entitled to any additional payment from  
12 Infosys. DMSJ Reply at 9-10. But the relationship in *De Laurentiis* was governed by a contract  
13 which expressly stated the value of the services provided—\$1.6 million. Here, there was no oral  
14 contract between the parties, and thus no exact value assigned to the services. And unlike the risk  
15 of double recovery under the contract in *De Laurentiis*, recovery by Caiman from Infosys would  
16 not be “double” here. At this point, the Court cannot say that a reasonable trier of fact could not  
17 find that Infosys would not be entitled to payment from both Cavium (for managing the entire  
18 integration operation) and Infosys (for presenting them with the opportunity to be a part of the  
19 operation) under a quantum meruit theory, if the trier of fact found that Caiman was performing a  
20 service on behalf of Infosys for which it was not paid.

21 Because disputes of material fact remain on this claim, summary judgment is  
22 inappropriate.

### 23 **C. Negligent Misrepresentation**

24 Infosys argues that Caiman’s claim for negligent misrepresentation fails because there was  
25 never a misrepresentation that Infosys would pay a finder’s fee to Caiman. DMSJ at 13-15. At  
26 the hearing, Caiman responded that summary judgment is inappropriate on this claim because,  
27 among other reasons, Somalwar misrepresented that Infosys would “compensate” Caiman if  
28 Infosys won the Cavium project. DMSJ Opp. at 13-14.

1           The elements of a negligent misrepresentation claim are (1) the misrepresentation of a past  
2 or existing material fact; (2) without reasonable ground for believing it to be true; (3) with intent  
3 to induce another’s reliance on the fact misrepresented; (4) justifiable reliance on the  
4 misrepresentation; and (5) resulting damage. *Najarian Holdings LLC v. Corevest Am. Fin. Lender*  
5 *LLC*, 2020 WL 5993225, at \*5 (N.D. Cal. Oct. 9, 2020) (citing *Apollo Cap. Fund, LLC v. Roth*  
6 *Cap. Partners, LLC*, 158 Cal. App 4th 226, 243 (2007)). Unlike in a fraud claim, defendant need  
7 not have knowledge of falsity. *Apollo Cap. Fund*, 158 Cal. App. 4th at 243.

8           The Court finds that summary judgment is not appropriate on this claim. As with the  
9 quantum meruit claim, there remains a dispute of material fact regarding how Somalwar  
10 responded to Imam’s question regarding a finder’s fee. While Somalwar claims that he responded,  
11 “I don’t know,” Imam says that Somalwar told him that if Cavium selected Infosys to assist with  
12 the integration, that Infosys would “compensate” Caiman for it, even if there was no express  
13 agreement to pay a “finder’s fee.” Imam Dep. at 103:10-18, 106:23-25. At summary judgment,  
14 this raises a dispute of material fact about whether Somalwar made a misrepresentation that  
15 Infosys would compensate Caiman. Defendant has not identified grounds for granting summary  
16 judgment for lack of disputes of material fact regarding the other elements of a negligent  
17 misrepresentation claim, so the Court does not analyze those elements. This claim will proceed.

18           **D. Fraud**

19           Infosys argues it is entitled to summary judgment on Caiman’s fraud claim for the same  
20 reasons as it is on Caiman’s negligent misrepresentation claim. The elements of fraud are the  
21 same as for negligent misrepresentation, but knowledge of the falsity of the misrepresentation is  
22 required instead of only negligent disregard for their truth. *Kearns v. Ford Motor Co.*, 567 F.3d  
23 1120, 1126 (9th Cir. 2009); *Apollo Cap. Fund*, 158 Cal. App. 4th at 243. For the same reasons as  
24 explained in the analysis of the negligent misrepresentation claim, there are disputes of material  
25 fact that preclude summary judgment on this claim.

26           **IV. CAIMAN’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

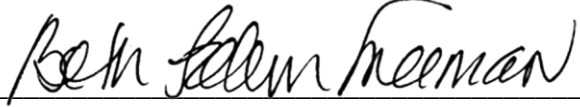
27           Caiman moves for summary judgment on only its quantum meruit claim. The Court  
28 analyzed this claim in connection with Caiman’s motion for partial summary judgment. *See supra*

1 Section III. As required, the Court has evaluated Caiman’s motion for summary judgment on this  
2 claim “on its own merits” and based on the evidence submitted in support of both motions.  
3 *Riverside Two*, 249 F.3d at 1136. For the same reasons as before, the Court finds that disputed  
4 issues of material fact foreclose summary judgment on the quantum meruit claim. There is a  
5 dispute over whether the parties had an “understanding” that Caiman would be compensated in  
6 some form for connecting Infosys with Cavium. The Court accordingly DENIES Caiman’s  
7 motion.

8 **V. ORDER**

9 For the foregoing reasons, IT IS HEREBY ORDERED that Caiman’s Motion for Partial  
10 Summary Judgment is DENIED. Infosys’s Motion for Summary Judgment or Summary  
11 Adjudication is GRANTED as to breach of oral contract claim and DENIED in all other respects.  
12 This order resolves ECF Nos. 42 and 43.

13  
14 Dated: October 29, 2021

  
BETH LABSON FREEMAN  
United States District Judge