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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

FREDERICK STOCCO, an individual;  
KATHLEEN STOCCO, an individual;  
and GIA FLORENCE SRL, an Italian  
company.  
  
Plaintiffs,  
  
vs.  
  
GEMOLOGICAL INSTITUTE OF  
AMERICA, INC., a California  
Corporation; and Does 1 through 100,  
  
Defendant.

CASE NO. 12-CV-1291 WQH  
(DHB)  
**ORDER**

HAYES, Judge:

The matter before the Court is the Motion to Dismiss filed by Defendant Gemological Institute of America, Inc (“GIA”). (ECF No. 33).

**PROCEDURAL BACKGROUND**

On April 19, 2012, Plaintiffs Frederick Stocco and Kathleen Stocco filed a Complaint against GIA in the Superior Court of California for the County of San Diego. (ECF No. 1). On May 29, 2012, GIA removed the Complaint to this Court. (ECF No. 1-3).

On July 10, 2012, Plaintiffs Frederick and Kathleen Stocco filed a First Amended Complaint, alleging the following claims for relief against GIA: (1) fraudulent misrepresentation; (2) negligence; (3) breach of written contract; (4) fraud in the

1 inducement; (5) failure to provide franchise offering circular in violation of California  
2 Corporation Code § 31119; and (6) unfair business practices in violation of California  
3 Business & Professions Code § 17203. *Id.*

4 On July 20, 2012, GIA filed a motion to dismiss claims three, four, five, and six  
5 of the Complaint. (ECF No. 10). On January 3, 2013, the Court granted GIA’s motion  
6 to dismiss in its entirety. (ECF No. 14). The Court concluded that Plaintiffs Frederick  
7 and Kathleen Stocco lacked standing to assert claim three, for breach of contract,  
8 because “there are no facts alleged in the Complaint to support [the] claim that they are  
9 direct beneficiaries to any agreement between the founding members of the Firgem  
10 Foundation after acquiring GIA Italy.” *Id.* at 10. The Court concluded that claim five,  
11 for failure to provide franchise offering circular, was barred by the applicable statute  
12 of limitations because “the signing of the License Agreement[] occurred on December  
13 20, 2007, over four years and five months before [Plaintiffs Frederick and Kathleen  
14 Stocco] filed this action....” *Id.* at 13.

15 On May 28, 2013, Plaintiffs Frederick Stocco, Kathleen Stocco, and GIA  
16 Florence SRL (“GIA Italy”) (collectively, “Plaintiffs”) filed the Second Amended  
17 Complaint (“Complaint”) against GIA. The Complaint contains the following claims  
18 for relief: (1) fraudulent misrepresentation, brought by Plaintiffs Frederick and Kathleen  
19 Stocco; (2) negligence, brought by Plaintiffs Frederick and Kathleen Stocco; (3) breach  
20 of written contract, brought by GIA Italy; and (4) failure to provide franchise offering  
21 circular in violation of California Corporation’s Code § 31119, brought by all Plaintiffs.  
22 (ECF No. 29).

23 On June 7, 2013, GIA filed the Motion to Dismiss claims three and four of the  
24 Complaint. (ECF No. 33). On July 1, 2013, Plaintiffs filed an opposition. (ECF No.  
25 34). On July 8, 2013, GIA filed a reply. (ECF No. 36).

### 26 **ALLEGATIONS OF THE COMPLAINT**

27 Plaintiffs Frederick and Kathleen Stocco are United States Citizens. GIA, “the  
28 global leader in gem grading,” is a California corporation with its “principal place of

1 business/headquarters in the City of Carlsbad, ... California.” (Complaint ¶¶ 1, 9, ECF  
2 No. 29). “[GIA Italy] is an Italy company, wholly owned by the Stoccos.” *Id.* ¶ 3.

3 “GIA represent[s] itself ... as a nonprofit institute, whose mission is to ‘ensure the  
4 public trust in gems and jewelry by upholding the highest standard of integrity,  
5 academics, science, and professionalism through education, research, laboratory  
6 services, and instrument development.’” *Id.* “A GIA gem grading certificate  
7 significantly increases the value of a gem across the world. The GIA gem grading  
8 certificates can only be issued by gem grading labs authorized by GIA to issue GIA  
9 gem grading certificates. GIA’s gem grading certificates are therefore highly valuable,  
10 and the gem grading labs and/or GIA gem drop-off locations that are authorized to issue  
11 such certificates have a huge advantage over and are much more highly regarded than  
12 those that lack GIA affiliation.” *Id.*

13 “Beginning in 1991, and during relevant times, the Stoccos were employees of  
14 GIA. [O]n December 1, 1991, the Stoccos entered into an employment agreement, with  
15 GIA-GEM Instruments Corporation, a wholly owned subsidiary of GIA.” *Id.* ¶ 10.  
16 “The employment agreements were entered into by the Stoccos, and required the  
17 Stoccos to open GIA’s first European GIA location and to relocate to Vicenza, Italy to  
18 do so.” *Id.* “The employment agreements provided: ‘Point of Origin/Country of  
19 Origin: Santa Monica, CA U.S.A.’” *Id.* (quoting Pl. Exh. 1, ECF No. 29-2 (copies of  
20 employment agreements)).

21 “GIA-GEM Instruments Corporation’s principal place of business was located  
22 in Santa Monica, California and the employment agreements were entered into in  
23 California. GIA-GEM Instruments is no longer a viable entity, having merged back  
24 into Defendant GIA. GIA is the principal and successor to GIA-GEM Instruments, and  
25 GIA’s principal place of business is located in Carlsbad, California.” *Id.* ¶ 11.

26 “In 1992, the Stoccos relocated from the United States to Italy for the sole  
27 purpose of establishing the first European GIA location for GIA. Pursuant to their  
28 employment agreement obligations, the Stoccos organized, opened and directed the first

1 GIA European location in Vicenza, Italy, (GIA Italy), to establish a gem grading school  
2 on behalf of GIA. GIA Italy was created by GIA, and GIA Italy was a foreign affiliate  
3 and subsidiary wholly owned by GIA (as of 1992).” *Id.* ¶ 12.

4 “In early 1992, GIA Italy opened under the leadership of the Stoccos.” *Id.* ¶ 13.  
5 “By 2003, GIA Italy had approximately 60 graduate gemologists per year. GIA Italy  
6 had about 200 students enrolled in extension and design classes, and another  
7 approximately 400 in the distance education classes. GIA Italy enrollment included  
8 students from the United States. Similarly, Italian students worked in and visited  
9 California, U.S., while earning GIA gemologist degrees.” *Id.*

10 From 1993 to 2007, “the Stoccos continued to work and live in Italy, drawing  
11 salaries from GIA Italy, which was wholly owned by Defendant GIA...” *Id.* ¶ 15. “At  
12 all times, the Stoccos’ employee reviews were exemplary. In 1992, Bill Boyajean,  
13 GIA’s President, wrote the Stoccos a letter indicating that the Stoccos were doing a  
14 great job for GIA.” *Id.* ¶ 16. “Thereafter, GIA executives continued to visit Italy and  
15 issue reports on the progress being made there. GIA had control and oversight of all  
16 operations at GIA in Italy.” *Id.* ¶17.

17 “In 2005, GIA and the [Florence] Chamber of Commerce negotiated an  
18 agreement whereby the Chamber of Commerce would provide financial support to GIA  
19 Italy so long as GIA Italy agreed to allow the construction of a gem grading lab or GIA  
20 gem drop-off location that would be authorized to issue GIA gem grading certificates.”  
21 *Id.* ¶ 17.

22 On March 17, 2005, “GIA, by and through its attorney, indicated that it may  
23 establish a GIA lab but only with GIA’s written consent, and would agree to conduct  
24 a feasibility study regarding establishing a GIA gem drop-off location that would be  
25 used for GIA gem grading. GIA further indicated in this letter that the decision to  
26 establish a GIA gem drop-off location in Florence would be at the sole discretion of  
27 GIA Italy.” *Id.* ¶ 18.

28 “In 2005, Donna Baker, GIA’s President, on behalf of GIA, entered into a written

1 agreement with the Florence Chamber of Commerce to move GIA Italy to Florence, and  
2 open a GIA school and a GIA gem drop-off location authorized to issue GIA gem  
3 grading certificates.” *Id.* ¶ 19; *see also* Pl. Exhs. 3-4, ECF No. 29-2 (copies of the  
4 Italian original and English translation of the 2005 “agreement,” entitled the “Articles  
5 of Incorporation” of the “Firenze Scienze Gemmologiche Foundation,” referred to by  
6 Plaintiffs as “the Firgem Agreement”).

7           This agreement (‘Firgem Agreement’) was made and signed by  
8 Baker on behalf of GIA and GIA Italy. In exchange for GIA agreeing to  
9 open a GIA school and GIA gem drop-off location authorized to issue  
10 GIA gem grading certificates, the Florence Chamber of Commerce (a  
11 quasi-governmental entity) agreed to provide GIA Italy with substantial  
financial support for a twenty (20) year period. Without agreeing to move  
forward with at least a GIA gem drop-off location authorized to issue GIA  
gem grading certificates, the Florence Chamber of Commerce would not  
have entered into the Firgem Agreement.

12 (Complaint ¶ 19, ECF No. 29).

13           GIA Italy was an intended third-party beneficiary to the Firgem  
14 Agreement.... The Firgem Agreement provided that GIA would ‘Manage  
15 the analysis of precious stones and metals by issuing GIA Carlsbad  
16 certificates (reports) recognized worldwide.’ This clause in the Firgem  
17 Agreement means that GIA agreed to allow the issuance of GIA gem  
grading certificates. The Firgem Agreement further provided that it had a  
‘duration of twenty years.’ The Firgem Agreement provided support for  
both the local Ital[ian] community and GIA Italy.

18 *Id.* ¶ 43.

19           “A bank loan of approximately \$350,000 Euros was taken out by GIA Italy with  
20 GIA’s express and written permission to build out a space required for the new school  
21 and gem grading lab. This bank loan was obtained while the Stoccos, personally and  
22 as directors of GIA Italy, relied upon GIA’s promise to authorize access to GIA gem  
grading certificates.” *Id.* ¶ 20.

23           On October 31, 2007, “Tawfic Farah, GIA’s Vice-President for International  
24 Operations, sent a letter to the Florence Chamber of Commerce thanking it for its  
25 support of GIA and its Italy operations.” *Id.* ¶ 21.

26           “In or before 2007, GIA developed a scheme whereby it would attempt to convert  
27 GIA Italy to a franchise, and convert the Stoccos from employees to franchisees, and  
28 then withdraw support of GIA Italy.” On August 20, 2007, “Tawfic Farah informed the

1 Stoccos ... that he was authorized to negotiate and conclude an agreement with the  
2 Stoccos to take over GIA Italy. Tawfic Farah pitched the idea as recognition for the  
3 Stoccos' 16 years of hard work and dedication for GIA. Unbeknownst to the Stoccos,  
4 this was actually part of GIA's plan to vacate its Italy operation (and concurrently  
5 vacate its support for the Firgem Agreement)." *Id.* ¶ 22.

6 In late 2007, GIA approached the Stoccos and offered them  
7 ownership of GIA Italy under a franchise agreement. Concurrent with  
8 discussions regarding making the Stoccos franchisee owners, GIA sent the  
9 Stoccos a letter dated November 12, 2007, entitled 'Resignation from  
10 Personnel Employment Agreement' seeking to have the Stoccos state that  
they had been paid all salary accrued vacation and reimbursable expenses  
to which they were entitled under their employment agreements. GIA  
further sought to force the Stoccos to agree that they had no claims against  
GIA....

11 *Id.* ¶ 23; Pl. Exh. 5, ECF No. 29-3 (copy of November 12, 2007 letter); Pl. Exhs. 6-7,  
12 ECF Nos. 29-3, 29-4 (copies of the 2007 and 2009 "franchise agreements"). "GIA  
13 offered the Stoccos ownership of GIA Italy under [the] franchise agreement, and  
14 Frederick Stocco, as President of GIA Florence SRL, ultimately entered into [the]  
15 franchise agreement with GIA." *Id.* ¶ 50. "GIA ... transferred full ownership of GIA's  
16 Italy operations to the Stoccos via [the] franchise agreement." *Id.* ¶ 44.

17 On April 10, 2008, "Donna Baker resigned from the Firgem Agreement council  
18 personally, and delegated all of GIA's authority within the Firgem Agreement to GIA  
19 Italy. GIA Italy's authority to open a GIA gem drop-off location was confirmed in  
20 correspondence from Baker dated April 10, 2008, which stated that GIA, as a member  
21 of the Firgem Agreement, delegates [to] GIA Italy all powers to make any and all  
22 decisions and enter into any agreements related to the Firgem Agreement." *Id.* ¶ 26; Pl.  
23 Exh. 8, ECF No. 29-4 (copy of April 10, 2008 letter). "The Stoccos relied on the grants  
24 of authority and the Firgem Agreement in continuing to work with the Florence  
25 Chamber of Commerce towards a construction of a gem lab." *Id.*; *see also id.* ¶ 44  
26 ("The Stoccos relied on the 2008 grant of authority in pursuing the gem lab and/or drop-  
27 off window location with the Florence Chamber of Commerce and pursuant to the  
28 Firgem Agreement.").

1 On January 1, 2009, “[the 2007] franchise agreement was replaced and  
2 superseded by a 2009 agreement. Concurrently, the stock of GIA Italy was transferred  
3 to the Stoccos personally. GIA did not provide the Stoccos a copy of the franchise offer  
4 circular...” *Id.* ¶ 25; *see also id.* ¶ 50. Under the 2009 franchise agreement, which was  
5 entered into between GIA and GIA Florence SRL, “GIA authorized a license in  
6 exchange for royalty payments.” *Id.*

7 In September 2010, “construction on an actual lab for the purpose of issuing GIA  
8 gem certificates began in Florence, Italy. The Florence Chamber of Commerce issued  
9 all funds for the construction of the lab to GIA specifications for it to have the ability  
10 to issue GIA gem grading certificates. A director was also pursued to support operation  
11 of the new lab.” *Id.* ¶ 27. “A lab and/or drop-off window was subsequently built, and  
12 a director was retained to assist with running the new gem lab.” *Id.* ¶ 44.

13 On March 22, 2011, “GIA sent the Florence Chamber of Commerce a letter  
14 indicating that GIA would no longer allow a GIA drop-off service at the lab location  
15 in Florence, Italy.” *Id.* ¶ 28; Pl. Exh. 9, ECF No. 29-4 (copy of March 22, 2011 letter).  
16 “Later in 2011, the Stoccos were informed that the Florence Chamber of Commerce  
17 would not continue its support of GIA Italy because an authorized gem grading lab had  
18 still not been opened, GIA was no longer going to authorize GIA gem grading  
19 certificates, and GIA had seemingly withdrawn its support of GIA Italy.” *Id.* ¶ 29. “As  
20 a result of the loss of this expected source of significant revenue, the Stoccos are losing  
21 the revenue opportunity afforded other GIA locations, and GIA Italy is now going out  
22 of business. GIA Italy has lost all of the enrollments in its school, and has lost Florence  
23 Chamber of Commerce support.” *Id.*

24 “GIA breached the Firgem Agreement by resigning from and withdrawing  
25 support for the Firgem Agreement and then declining to provide any support to GIA  
26 Italy for the purpose of opening a gem drop-off window in Florence that was authorized  
27 to issue GIA gem grading certificates.” *Id.* ¶ 45. “GIA breached, and continues to  
28 breach, this written agreement by failing to comply with the terms of the agreement and

1 by failing to provide any support to GIA Italy for the purpose of opening a gem grading  
2 drop-off window authorized to issue GIA grading certificates.” *Id.* ¶ 46. “GIA Italy  
3 has performed all of the conditions, covenants and promises required by it to be  
4 performed in accordance with the terms and conditions of the contract.” *Id.* ¶ 47. “As  
5 a direct and proximate result of GIA’s breach in its contractual obligations, GIA Italy  
6 has been damaged thereby in a sum in accordance with proof at trial.” *Id.* ¶ 48.

7 “GIA’s principal place of business and domicile is Carlsbad, California. As such,  
8 GIA had a duty to provide the Plaintiffs a copy of the franchise offering circular  
9 pursuant to California Corporations Code § 31119 and other applicable law. GIA  
10 breached this duty and failed to disclose and provide the Plaintiffs a copy of the  
11 franchise offering circular required by law. GIA also had a duty to register the  
12 franchise, but failed to do so.” *Id.* ¶ 51. “GIA’s breach of duties and failure to disclose  
13 and provide the Plaintiffs a copy of the franchise offering circular has directly and  
14 proximately caused the Plaintiffs to suffer damages in an amount not less than  
15 \$850,000, according to proof.” *Id.* ¶ 52. “GIA’s breach of duties and failure to disclose  
16 and provide the Plaintiffs a copy of the franchise offering circular was willful, and in  
17 addition to monetary damages is grounds for the Plaintiffs’ rescission of the franchise  
18 agreement pursuant to California Corporations Code § 31300 and other applicable law.”  
19 *Id.* ¶ 53.

#### 20 **APPLICABLE STANDARD**

21 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state  
22 a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule of  
23 Civil Procedure 8(a) provides: “A pleading that states a claim for relief must contain ...  
24 a short and plain statement of the claim showing that the pleader is entitled to relief.”

25 Fed. R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where the  
26 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable  
27 legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

28 To sufficiently state a claim for relief and survive a Rule 12(b)(6) motion, a

1 complaint “does not need detailed factual allegations” but the “[f]actual allegations  
2 must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v.*  
3 *Twombly*, 550 U.S. 544, 555 (2007). “[A] plaintiff’s obligation to provide the  
4 ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and  
5 a formulaic recitation of the elements of a cause of action will not do.” *Id.* (quoting  
6 Fed. R. Civ. P. 8(a)(2)). When considering a motion to dismiss, a court must accept as  
7 true all “well-pleaded factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). “In  
8 sum, for a complaint to survive a motion to dismiss, the non-conclusory factual content,  
9 and reasonable inferences from that content, must be plausibly suggestive of a claim  
10 entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.  
11 2009) (quotations omitted).

## 12 DISCUSSION

### 13 I. Claim Three: Breach of Written Contract

14 In claim three, for breach of written contract, GIA Italy alleges that GIA breached  
15 the “Firgem Agreement,” i.e., the Articles of Incorporation to the Firgem Foundation,  
16 by (1) “resigning from and withdrawing support for the Firgem Agreement and then  
17 declining to provide any support to GIA Italy for the purpose of opening a gem drop-off  
18 window in Florence that was authorized to issue GIA gem grading certificates;” and (2)  
19 “failing to comply with the terms of the Firgem Agreement and by failing to provide  
20 any support to GIA Italy for the purpose of opening a gem grading drop-off window  
21 authorized to issue GIA grading certificates.” (Complaint ¶¶ 45-46, ECF No. 29).

#### 22 A. Articles of Incorporation of the Firgem Foundation

23 Documents attached to the Complaint show that representatives of GIA, the  
24 Florence Chamber of Commerce and the University of Florence signed the Articles of  
25 Incorporation on May 23, 2005, forming the “Firenze Scienze Gemmologiche  
26 Foundation.” (Pl. Exh. 4 at 98, ECF No. 29-2 at 98). The Articles of Incorporation  
27 state: “The purpose of the Foundation, which is not for profit and is apolitical, shall be  
28 to exclusively pursue goals that encourage and support the creation of a multi-purpose

1 center to promote study and research in the field of gemology, in particular with regard  
2 to certification and study of diamonds, gemstones, and precious metals; to promote  
3 training, study and research in the field of gold jewelery design and production.” *Id.*  
4 at 104. The Articles of Incorporation further state, in pertinent part:

5 The Foundation will provide economic and financial support of the  
6 Foundation’s initiatives, delegating to [GIA Italy] the operational part of  
7 the activities and providing the premises of the Foundation to the above  
8 as a ‘free of charge loan for use.’

9 The activity that [GIA Italy] will carry out independently will be aimed at:  
10 1. Performing the analysis of precious stones and metals, issuing globally  
11 recognized GIA Carlsbad certificates;  
12 2. Performing Gemological training according to GIA Carlsbad study  
13 plans issuing worldwide recognized diplomas;  
14 3. Managing training and study of goldsmith design according to GIA  
15 Carlsbad study plans to be reconciled and harmonized with the culture and  
16 history of Florence and issuing diplomas that are customized for this  
17 purpose to be made globally recognized;  
18 4. Managing the training of goldsmith worker training in the fields of  
19 production, sales and marketing according to GIA Carlsbad study plans to  
20 be customized and connected to the history and tradition of Florence;  
21 5. Encouraging the emergence and growth of interest and international  
22 businesses to be located in Florence.

23 ...  
24 The Foundation shall not engage in activities other than those listed above  
25 except those that are instrumental and directly related to it and in any case  
26 not prevalent.

27 To achieve its institutional goals, the Foundation may perform any  
28 operation involving securities, real estate, financial or property related,  
that the deliberative bodies deem appropriate and in accordance with the  
organization’s goals, and carry out any activity that, taking into account  
the specific and contingent needs, is complementary and helpful, and that  
is therefore directly related to the activity of the organization.

The Foundation, therefore, among other things, as examples, may:

- grant awards and scholarships;
- purchase and take possession of assets and real estate, facilities, equipment, and material that are useful, necessary to carry out their activity and provide for their administration and management;
- stipulate agreements to outsource parts of the activities;
- perform, incidentally and instrumentally to the pursuit of the institutional goals, marketing activities, also with reference to the publishing and audiovisual fields in general and that of advertising accessory items (gadgets and the like).

The Foundation may be a member and participate in other organizations, having a legal entity or not, Italian or foreign, which share common goals or goals related to its own or that, working in fields related to their own, can specifically contribute to the Foundation in terms of human organizational, property or financial resources.

1 *Id.* at 105-06.

2 **B. Contentions of the Parties**

3 GIA contends claim three should be dismissed with prejudice pursuant to Federal  
4 Rule of Civil Procedure 12(b)(6). GIA contends:

5 Plaintiffs' third claim for relief suffers from the same fatal defects  
6 as its predecessor. First, the 'Firgem Agreement' is not an agreement at  
7 all. Rather, it is the Articles of Incorporation for the Foundation, and it  
8 does not memorialize any bargained for exchange between the Florence  
9 Chamber of Commerce and GIA, nor does it impose the obligations  
10 alleged by Plaintiffs. Second, GIA Italy is not a party to this document  
and has no standing to assert its breach. Lastly, GIA Italy never had any  
authority to open a gem grading laboratory or other identification services,  
even after the Stoccos acquired GIA Italy in 2007, as the 2007 License  
Agreement and the subsequent 2009 License Agreement expressly  
prohibited GIA Italy from doing so.

11 (ECF No. 33-1 at 12).

12 GIA Italy contends that the Complaint states a claim for breach of contract. GIA  
13 Italy contends the Complaint adequately alleges (1) that the Articles of Incorporation  
14 is an agreement, and that GIA breached that agreement; (2) that GIA Italy is a third-  
15 party beneficiary to the Articles of Incorporation; and (3) that "Plaintiffs had authority  
16 to open a gem drop-off location and issue GIA certificates." (ECF No. 34-1 at 2).

17 **C. Analysis**

18 In order to state a claim for breach of contract, a plaintiff must allege: (1) the  
19 existence of a contract; (2) performance by the plaintiff or excuse for nonperformance;  
20 (3) breach by the defendant; and (4) damages. *First Commercial Mortg. Co. v. Reece*,  
21 89 Cal. App. 4th 731, 745 (2001). "In an action based on a written contract, a plaintiff  
22 may plead the legal effect of the contract rather than its precise language." *Constr.*  
23 *Protective Servs., Inc., v. TIG Specialty Ins. Co.*, 29 Cal. 4th 189, 198-99 (2002).

24 A contract must be interpreted in a manner that gives effect to the mutual intent  
25 of the parties if that intent can be ascertained. Cal. Civ. Code § 1636. "Ambiguities in  
26 contractual language are construed against the drafter." *Consul Ltd. v. Solide*  
27 *Enterprises, Inc.*, 802 F.2d 1143, 1149 (9th Cir. 1986). "Resolution of contractual  
28 claims on a motion to dismiss is proper if the terms of the contract are unambiguous."

1 *Bedrosian v. Tenet Healthcare Corp.*, 208 F.3d 220 (9th Cir. 2000); *see also Westlands*  
2 *Water Dist. v. U.S. Dep’t of Interior*, 850 F. Supp. 1388, 1408 (E.D. Cal. 1994) (“A  
3 motion to dismiss cannot be granted against a complaint to enforce an ambiguous  
4 contract.”). A contract provision will be considered ambiguous when it is capable of  
5 two or more reasonable interpretations. *Bay Cities Paving & Grading, Inc. v. Lawyers’*  
6 *Mut. Ins. Co.*, 5 Cal. 4th 854, 855 (1993). Language in a contract must be interpreted  
7 as a whole and in the circumstances of the case. *Bank of W. v. Superior Court*, 2 Cal.  
8 4th 1254 (1992). A motion to dismiss a claim for breach of contract should not be  
9 granted where the contract “leaves doubt as to the parties’ intent.” *Consul Ltd.*, 802  
10 F.2d 1149; *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049, 1069 (C.D. Cal.  
11 2008); *Robinson v. Bank of Am.*, 12-CV-00494-RMW, 2012 WL 1932842 (N.D. Cal.  
12 May 29, 2012) (same).

13 Under California law, a third party may enforce a contract if the contract is  
14 “made expressly for the benefit of a third person....” Cal. Civ. Code § 1559. “A third  
15 party qualifies as a beneficiary under a contract if the parties intended to benefit the  
16 third party and the terms of the contract make that intent evident.” *Karo v. San Diego*  
17 *Symphony Orchestra Ass’n*, 762 F.2d 819, 821-22 (9th Cir. 1985) (citing *Strauss v.*  
18 *Summerhays*, 157 Cal. App. 3d 806, 816 (1984)). Although a third party need not be  
19 expressly named or identified in a contract, a party must demonstrate “that [it] is a  
20 member of a class of persons for whose benefit it was made.” *Spinks v. Equity*  
21 *Residential Briarwood Apartments*, 171 Cal. App. 4th 1004, 1023 (2009). “If the terms  
22 of the contract necessarily require the promisor to confer a benefit on a third person,  
23 then the contract, and hence the parties thereto, contemplate a benefit to the third  
24 person.” *Id.* at 1022 (quoting *Johnson v. Holmes Tuttle Lincoln–Merc.*, 160 Cal. App.  
25 2d 290, 297 (1958)). “Whether a third party is an intended beneficiary or merely an  
26 incidental beneficiary to the contract involves construction of the parties’ intent,  
27 gleaned from reading the contract as a whole in light of the circumstances under which  
28 it was entered.” *Landale–Cameron Court, Inc. v. Ahonen*, 155 Cal. App. 4th 1401,

1 1411 (2007) (quotation and citation omitted).

2 The Complaint alleges that, “[f]rom 1993-2007, the Stoccos continued to work  
3 and live in Italy, drawing salaries from GIA Italy, which was wholly owned by  
4 Defendant GIA.” (Complaint ¶ 15, ECF No. 29). The Complaint alleges that the  
5 parties to the May 23, 2005 Articles of Incorporation agreed that “the Chamber of  
6 Commerce would provide financial support to GIA Italy so long as GIA Italy agreed  
7 to allow the construction of a gem grading lab or GIA gem drop-off location that would  
8 be authorized to issue GIA gem grading certificates.” (Complaint ¶ 17, ECF No. 29).  
9 The Complaint alleges that GIA Italy “expressly ... benefit[ted]” from and was a third-  
10 party to the Articles of Incorporation. The Articles of Incorporation state, in pertinent  
11 part: “The Foundation will provide economic and financial support of the Foundation’s  
12 initiatives, delegating to [GIA Italy] the operational part of the activities and providing  
13 the premises of the Foundation to the above as a ‘free of charge loan for use.’” (Pl.  
14 Exh. 4 at 105, ECF No. 29-2 at 105). Immediately following the provision regarding  
15 “the Foundation’s initiatives,” the Articles of Incorporation state: “The activit[ies] that  
16 [GIA Italy] will carry out independently will be aimed at,” *inter alia*, “[p]erforming the  
17 analysis of precious stones and metals, issuing globally recognized GIA Carlsbad  
18 certificates....” *Id.* (emphasis added). Reading the two provisions together and in the  
19 context of the entire document, and drawing all reasonable inferences from the non-  
20 conclusory factual content of the Complaint, the Court finds it plausible that the parties  
21 to the Articles of Incorporation intended for “the Foundation [to] provide economic and  
22 financial support” to GIA Italy (at that time the “wholly owned subsidiary” of GIA) in  
23 exchange for the issuance of GIA-authorized certificates at a gem lab or drop-off  
24 location. (Pl. Exh. 4 at 105, ECF No. 29-2 at 105; Complaint ¶ 15, ECF No. 29); *see*  
25 *also* Cal. Civ. Code § 1641 (“The whole of a contract is to be taken together, so as to  
26 give effect to every part, if reasonably practicable, each clause helping to interpret the  
27 other.”).

28 Assuming, without deciding, that the parties to the Articles of Incorporation did

1 intend to confer rights or benefits on GIA Italy (the “wholly owned subsidiary” of  
2 GIA), the Court finds that the factual allegations of the Complaint plausibly suggest that  
3 such rights or benefits have been transferred to, and can be enforced by, Plaintiff GIA  
4 Italy (the entity currently owned by Plaintiffs Frederick and Kathleen Stocco). *See*  
5 Complaint ¶ 15, ECF No. 29 (“In 2007, GIA ... transferred full ownership of GIA’s  
6 Italy operation to the Stoccos via a franchise agreement.... A January 1, 2009, franchise  
7 agreement replaced and superseded the 2007 franchise agreement.”); *id.* ¶ 26 (“Donna  
8 Baker resigned from the Firgem Agreement council personally, and delegated all of  
9 GIA’s authority within the Firgem Agreement to GIA Italy. GIA Italy’s authority to  
10 open a GIA gem drop-off location was confirmed in correspondence from Baker dated  
11 April 10, 2008, which stated that GIA, as a member of the Firgem Agreement, delegates  
12 [to] GIA Italy all powers to make any and all decisions and enter into any agreements  
13 related to the Firgem Agreement.”); Pl. Exh. 8, ECF No. 29-4 (April 10, 2008 letter  
14 from Baker to the Foundation).

15 At this stage of the proceedings, the Court concludes that Plaintiff GIA Italy has  
16 alleged “sufficient facts to support a cognizable legal theory” as to the breach of  
17 contract claim. *Balistreri*, 901 F.2d at 699. The Motion to Dismiss claim three is  
18 denied. *See id.*; *see also Consul Ltd.*, 802 F.2d at 1149 (a motion to dismiss a claim for  
19 breach of contract should not be granted where the contract “leaves doubt as to the  
20 parties’ intent.”).

## 21 **II. Claim Four: Failure to Provide a Franchise Offering Circular**

22 In claim four, Plaintiffs allege that GIA failed to “disclose,” failed to “register,”  
23 and failed to “provide the Plaintiffs [with] a copy of the franchise offering circular  
24 pursuant to California Corporations Code [§] 31119 and other applicable law.”  
25 (Complaint ¶ 51, ECF No. 29). Plaintiffs allege that, as a result of GIA’s “willful”  
26 “breach of duties and failure to disclose and provide the Plaintiffs a copy of the  
27 franchise offering circular,” they have been damaged “in an amount not less than  
28 \$850,000” and are entitled to rescind the franchise agreement pursuant to California

1 Corporations Code § 31119. *Id.* ¶¶ 52-53.

2 **A. Contentions of the Parties**

3 GIA contends claim four should be dismissed with prejudice pursuant to Federal  
4 Rule of Civil Procedure 12(b)(6) on the following grounds: (1) GIA Italy operated  
5 exclusively outside the State of California and, thus, the 2009 License Agreement is  
6 exempted from California’s Franchise Investment Law; (2) Plaintiffs have failed to  
7 allege that any “offer or sale of a franchise actually occurred in 2009,” as would be  
8 required to state a claim for violation of California’s Franchise Investment Law; and (3)  
9 the claim is barred by the four-year statute of limitations of California’s Franchise  
10 Investment Law. (ECF No. 33-1 at 20).

11 Plaintiffs contend that claim four is “based upon the 2009 license agreement,”  
12 which was entered into less than four years prior to the filing of this action on May 29,  
13 2012. (ECF No. 34-2 at 13). Plaintiffs contend they have stated a claim for failure to  
14 provide a franchise offering circular because (1) the Complaint adequately alleges that  
15 “[GIA] was required to issue a franchise offering circular, and ... failed to do so;” and  
16 (2) the Complaint adequately alleges that “the franchise’s services included services to  
17 California residents.” (ECF No. 34-1 at 2). Plaintiffs contend that “the franchise’s  
18 business and services were provided to customers located inside California.” (ECF No.  
19 34-2 at 13). Plaintiffs assert:

20 As specified in the SAC, [GIA Italy] had about 200 students  
21 enrolled in extension and design classes, and another approximately 400  
22 in the distance education classes.... [GIA Italy] enrollment included  
23 students from the United States and California.... Similarly, Italian  
24 citizens worked in and visited California while earning GIA gemologist  
25 degrees....

26 *Id.* (citations omitted).

27 **B. Analysis**

28 **1. 2007 GIA Authorized Education Agreement**

California Corporations Code § 31110, a provision of California’s Franchise  
Investment Law, provides: “On and after April 15, 1971, it shall be unlawful for any  
person to offer or sell any franchise in this state unless the offer of the franchise has

1 been registered under this part or exempted under Chapter 1 (commencing with Section  
2 31100) of this part.” Cal. Corp. Code § 31110.

3 California Corporations Code § 31119 provides, in part:

4 It is unlawful to sell any franchise in this state that is subject to  
5 registration under this law without first providing to the prospective  
6 franchisee, at least 14 days prior to the execution by the prospective  
7 franchisee of any binding franchise or other agreement, or at least 14 days  
8 prior to the receipt of any consideration, whichever occurs first, a copy of  
9 the offering circular, together with a copy of all proposed agreements  
10 relating to the sale of the franchise.

11 Cal. Corp. Code § 31119(a).

12 California Corporations Code § 31300 provides, in part:

13 Any person who offers or sells a franchise in violation of Section  
14 31101, 31110, 31119, 31200, or 31202, or in violation of any provision of  
15 this division that provides an exemption from the provisions of Chapter 2  
16 (commencing with Section 31110) of Part 2 or any portions of Part 2, shall  
17 be liable to the franchisee or subfranchisor, who may sue for damages  
18 caused thereby, and if the violation is willful, the franchisee may also sue  
19 for rescission....

20 Cal. Corp. Code § 31300.

21 California Corporations Code § 31303 provides, in part:

22 No action shall be maintained to enforce any liability created under  
23 Section 31300 **unless brought before the expiration of four years after**  
24 **the act or transaction** constituting the violation, [or] the expiration of one  
25 year after the discovery by the plaintiff of the fact constituting the  
26 violation ... **whichever shall first expire.**

27 Cal. Corp. Code § 31303 (emphasis added).

28 The Complaint alleges: “In late 2007, GIA approached the Stoccos and offered  
them ownership of GIA Italy under a franchise agreement.” (Complaint ¶ 23, ECF No.  
29). Documents attached to the Complaint show that a GIA Authorized Education  
30 Agreement was entered into on December 20, 2007 (“2007 Agreement”), roughly four  
31 years and five months before Plaintiffs initiated this action on May 19, 2012. (Pl. Exh.  
32 6, ECF No. 29-3 (copy of the 2007 Agreement)). Accordingly, to the extent claim four  
33 alleges that the 2007 Agreement failed to comply with California’s Franchise  
34 Investment Law, the Court concludes that claim four is barred by the statute of  
35 limitations. *See* Cal. Corp. Code § 31303; ECF No. 14 (same conclusion in Order

1 granting GIA’s motion to dismiss First Amended Complaint); *see also People ex rel.*  
2 *Dep’t of Corps. v. Speedee Oil Change Systems, Inc.*, 95 Cal. App. 4th 709, 727 (2002)  
3 (“Once the four-year ... period expires, a plaintiff’s belated discovery of the fact  
4 constituting the violation cannot serve to extend the statute of limitations. In other  
5 words, the four-year ban in section 31303 ... [is] absolute.”).

## 6                   2.     **2009 GIA Authorized Education Agreement**

7           California Corporations Code § 31105 provides:

8                   Any offer, sale, or other transfer of a franchise, or any interest in a  
9                   franchise, to a resident of another state or any territory or foreign country,  
10                   shall be exempted from the provisions of Chapter 2 (commencing with  
11                   Section 31110) of this part, **if all locations from which** sales, leases or  
                 other transactions between the franchised business and its customers are  
                 made, or goods or services are distributed, are physically located outside  
                 this state.

12 Cal. Corp. Code § 31105 (emphasis added).

13           The Complaint alleges that the 2007 Agreement “was replaced and superseded  
14 by a 2009 agreement” between GIA and GIA Italy, in which “GIA authorized a license  
15 in exchange for royalty payments.” (Complaint ¶¶ 25, 50, ECF No. 29). The  
16 Complaint alleges: “Concurrently, the stock of GIA Italy was transferred to the Stoccos  
17 personally. GIA did not provide the Stoccos a copy of the franchise offer circular....”  
18 *Id.* ¶ 25.

19           Documents attached to the Complaint show that GIA and GIA Italy entered into  
20 a GIA Authorized Education Agreement on January 1, 2009 (“2009 Agreement”). (Pl.  
21 Exh. 7, ECF No. 29-4 (copy of the 2009 Agreement)). The 2009 Agreement states that  
22 GIA Italy is “a company existing under the laws of Italy, with a registered office in  
23 Piazza Santa Trinita, I 50123 Firenze, Italy.” *Id.* at 2. In opposition to the Motion to  
24 Dismiss, Plaintiffs Frederick and Kathleen Stocco acknowledge that they resided in  
25 Italy, not California, at the time the 2009 Agreement was formed. *See* ECF No. 34-2  
26 at 13. Accordingly, any “offer, sale, or other transfer of a franchise” to Plaintiffs that  
27 occurred pursuant to the 2009 Agreement is exempt from California Corporations Code  
28 § 31119, so long as “all locations from which sales, leases or other transactions between

1 [GIA Italy] and its customers are made, or goods or services are distributed, are  
2 physically located outside [California].” Cal. Corp. Code § 31105.

3 The Complaint alleges, in pertinent part:

4 In early 1992, GIA Italy opened under the leadership of the Stoccos.  
5 By 2003, GIA Italy had approximately 60 graduate gemologists per year.  
6 GIA Italy had about 200 students enrolled in extension and design classes,  
7 and another approximately 400 in the distance education classes. GIA Italy  
8 enrollment included students from the United States. Similarly, Italian  
9 students worked in and visited California, U.S., while earning GIA  
10 gemologist degrees.

11 (Complaint ¶ 13, ECF No. 29).

12 The “Recitals” section of the 2009 Agreement states: “[GIA Italy] desires a  
13 license from GIA to conduct and deliver GIA’s education program in [Italy], and GIA  
14 desires to grant such a license to [GIA Italy], subject to the terms and conditions in this  
15 Agreement.” (Pl. Exh. 7 at 2, ECF No. 29-4 at 2). The 2009 Agreement further states,  
16 in pertinent part:

17 GIA grants to [GIA Italy] a non-transferable, non-assignable,  
18 royalty-bearing license, in [Italy], without the right to sublicense, (i) to  
19 solicit enrollments in the GIA Education Programs at the Facility, (ii) to  
20 provide registration, instruction, administration, and other support  
21 services for the students who enroll in the GIA Education Program offered  
22 by [GIA Italy] at the Facility. [GIA Italy] may only conduct the GIA  
23 Education Program at the Facility....

24 *Id.* at 4. The 2009 Agreement defines “Facility” as “the facility located at the address  
25 set forth in the preamble of this Agreement,” i.e., GIA Italy’s address in Firenze, Italy.

26 *Id.* at 3.

27 While the Complaint alleges that “Italian students worked in and visited  
28 California ... while earning GIA gemologist degrees,” Complaint ¶ 13, ECF No. 29, the  
29 Complaint contains no allegations suggesting that GIA Italy conducts any transactions  
30 or distributes any goods or services from a location physically within California.  
31 Moreover, the 2009 Agreement appears to explicitly prohibit any otherwise authorized  
32 business activities from occurring outside of GIA Italy’s “Facility” located in Firenze,  
33 Italy. *See* Pl. Exh. 7 at 4, ECF No. 29-4 at 4 (2009 Agreement stating that “[GIA Italy]  
34 may only conduct the GIA Education Program at the Facility”). The Court finds that

1 Plaintiffs have failed to allege that any “sales leases or other transactions between” GIA  
2 Italy and its customers are made **from** a location physically within California, or that  
3 GIA Italy distributes any “goods or services” **from** a location physically within  
4 California. Cal. Corp. Code § 31105. Absent any such allegations, the Court concludes  
5 that any transfer of a franchise or interest in a franchise that resulted from the 2009  
6 Agreement is “exempted from the provisions of” California Corporations Code §  
7 31110, *et seq.* Cal. Corp. Code § 31105. The Motion to Dismiss claim four is granted.

8 **CONCLUSION**

9 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 33) filed by  
10 Defendant Gemological Institute of America, Inc. is **GRANTED** as to claim four, and  
11 otherwise **DENIED**. Claim four of the Second Amended Complaint is **DISMISSED**.

12 DATED: September 24, 2013

13   
14 **WILLIAM Q. HAYES**  
United States District Judge

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