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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

NEW EARTH, a non-profit,

Plaintiff,

v.

CULVER CITY UNIFIED SCHOOL
DISTRICT and DOES 1-20.

Defendants.

Case No. 24STCV13243

Assigned to The Honorable Stephen P. Pfahler
Department 68

**DEFENDANT CULVER CITY UNIFIED
SCHOOL DISTRICT'S MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT OR ADJUDICATION**

Hearing Date: February 24, 2026

Time: 8:30 AM

Dept.: 68

Reservation ID: 922078913403

Action Filed: May 28, 2024

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1 **I. INTRODUCTION**

2 This case presents a straightforward legal issue ripe for summary judgment: whether a
3 bare-bones proposal submitted by a vendor to a school district should be interpreted to be the
4 entire contract between the parties, or whether the proposal was supplemented by later terms and
5 conditions incorporated into purchase orders the vendor requested, and school district issued. The
6 undisputed facts support the latter, under Civil Code section 1642..

7 It is undisputed Defendant Culver City Unified School District (“District”) paid Plaintiff
8 New Earth (“New Earth” or “Plaintiff”) the agreed-upon \$225 hourly rate for all hours of student
9 support services New Earth actually provided to District students. Over the parties’ two-year
10 relationship, the District paid New Earth \$600,000 during Year 1 for 2,666 hours of services, and
11 an additional \$600,000 during Year 2 for another 2,666 hours of services. In Year 2, the District
12 informed New Earth it would not continue with New Earth’s services. New Earth, however,
13 seeks an additional \$900,000 windfall from the District for services it agrees, it never performed.
14 According to New Earth, the bare-bones proposal initially submitted to the District estimated
15 New Earth would work 6,666 hours during Year 2, for a total \$1.5 million payment. New Earth’s
16 Complaint seeks payment for the \$900,000 difference between the \$600,000 payment it received
17 for hours actually worked, and this \$1.5 million initial estimate. In other words, New Earth seeks
18 \$225 an hour for 6,666 hours of work, even though it agrees it only worked 2,666 of those hours.

19 Public entities, of course, do not spend taxpayer money on services the public never
20 receives. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 745–746 [expenditures of public
21 funds must serve a public purpose and be supported by adequate consideration]; *City of Oakland*
22 *v. Garrison* (1924) 194 Cal. 298, 301 [public funds cannot be expended where there is no
23 enforceable obligation or benefit to the public; such expenditures are unconstitutional gifts].)
24 That is why the District issued purchase orders, to be read along with New Earth’s bare-bones
25 proposal, which incorporated terms and conditions allowing the District to terminate New Earth
26 without cause and pay only for services actually rendered before the date of termination. New
27 Earth’s proposal, along with the District’s purchase orders linking to the District’s standard terms
28 and conditions, are together the parties’ contract. (Civ. Code, § 1642 [“several contracts relating

1 to the same matters, between the same parties, and made as parts of substantially one transaction,
2 are to be taken together.”].)

3 New Earth testified at deposition that the termination for convenience clause in the
4 purchase order terms and conditions allowed the District to do what it did here—stop services,
5 and pay only for services New Earth actually provided. (Separate Statement of Undisputed
6 Material Facts (“UMF”) No. 29; Deposition transcript of Yana Grammer (“Grammer Dep.”)
7 112:3–14.) The parties’ only relevant dispute is whether the purchase order terms and conditions
8 are part of the contract, or whether New Earth’s bare-bones proposal constitutes the entire
9 agreement between the parties standing alone. The undisputed facts overwhelmingly support that
10 the bare-bones proposal was not the entire agreement and was supplemented by the later terms.

11 Among other admissions, New Earth testified at deposition:

- 12 • The proposal was incomplete and did not include a number of requirements of the
13 parties’ relationship, such as that New Earth must submit monthly invoices, must
14 arrange for its staff to be fingerprinted before interacting with students, and must
15 obtain insurance. (UMF No. 11; Grammer Dep. 59:22–61:7, 63:4–22, 68:12–69:4,
16 125:4–9.)
- 17 • New Earth expected a more formal contract would be issued, following its bare-
18 bones proposal. (UMF No. 10; Grammer Dep. 58:19–59:9.)
- 19 • The later purchase orders were a “piece” of the contract between the parties. (UMF
20 No. 30; Grammer Dep. 108:9–14.)
- 21 • New Earth requested and agreed to the purchase orders. (UMF No. 22, 24;
22 Grammer Dep. 66:2–4, 79:20–82:23, 82:18–83:4, 84:7–17, 100:12–22, 107:10–17;
23 Grammer Dep. Ex. 9 (email from Y. Grammer dated August 16, 2023: “Will you
24 please ensure that the P.O. it is on the board consent agenda”); Grammer Dep. Ex.
25 10 [email from Y. Grammer dated Aug. 17, 2023: “Each year there is a new PO
26 that gets generated”].)
- 27 • New Earth never objected to or said it did not agree with the purchase orders.
28 (UMF No. 28; Grammer Dep. 114:6–17, 122:11–16.)

1 These undisputed facts more than demonstrate that the purchase order terms and
2 conditions were a “piece” of the contract between the parties, as New Earth testified, under Civil
3 Code section 1642. And, with these terms a piece of the contract, the District properly terminated
4 New Earth for convenience, and New Earth cannot recover \$900,000 for work it never performed.

5 **II. FACTUAL BACKGROUND**

6 **A. New Earth Submitted a Bare-Bones Proposal to the District Based on**
7 **Estimated Hours to Be Worked Over the Following Three Years.**

8 Plaintiff New Earth had several informal discussions with District leadership about
9 “social-emotional supportive curriculum” services it could provide to District students, in early
10 2022. In these discussions, Plaintiff was represented by CEO and co-founder Yana Simone
11 Grammer (“Grammer”) and her husband Harry Grammer, the former CEO/President and
12 signatory of the Proposal. (UMF No. 3; Deposition transcript of Yana Grammer “Grammer Dep.”
13 24:09-19, 29:12-13).¹ Following these discussions, Plaintiff sent the District a letter on its
14 letterhead dated June 2, 2022. Ms. Grammer prepared this “written proposal.” (UMF Nos. 4, 5;
15 Grammer Dep. 30:1-5).

16 This letter is referenced as an “offer” (Plaintiff’s Complaint, Ex. 1, p. 1 ¶1), and as a
17 “proposal” (UMF Nos. 8, 9; Plaintiff’s Complaint, Ex. 1, p. 10 ¶ 4; see also Grammer Dep. 29:14-
18 16). The bulk of the letter consisted of Plaintiff’s description of the student and teacher programs
19 and services it proposed to provide in partnership with the District. It also proposed a rate of \$225
20 per hour, with a proposed commencement date and three years of “total costs” based upon
21 “estimated” hours of services per week for the first two years. Year 1 stated “2,666 hours =
22 Estimated 60 hours of services per week. Total Year 1 Cost = \$600,000[.]” (UMF No. 6;
23 Plaintiff’s Complaint, Ex. 1, p. 10 ¶1.) Year 2 stated “6,666 hours = Estimated 128 hours of
24 services per week. Total Year 2 Cost = \$1,500,000[.]” (UMF No. 6; Plaintiff’s Complaint, Ex. 1,
25 p. 10 ¶1.) The third year included no specific estimates and instead used “to be determined”
26

27 ¹ Mr. Grammer testified that he was not involved in the contracting or payment issues with the
28 District relevant here, beyond initial introductions, and that his wife was the lead on the District
project. (Deposition of Harry Grammer, 19:06-20:02.)

1 language (“Proposal”).²

2 Plaintiff calculated these “estimated” hours based on discussions with the District and its
3 view of “what was needed.” The “total costs” were calculated by multiplying estimated weekly
4 hours by the \$225 hourly rate.³ (Grammer Dep. 28:8–12, 29:14–23, 54:19–55:4, 55:18–56:1.)
5 Plaintiff later acknowledged that these figures reflected the District’s predetermined “budget” for
6 Plaintiff’s services. (Grammer Dep. 37:2–5, 40:4–13.)

7 On June 27, 2022, the District signed Plaintiff’s Proposal. The Proposal did not include
8 standard public contracting terms typically found in school district contracts, such as a term
9 requiring fingerprinting of Plaintiff staff who would interact with minor students required by law
10 under Education Code section 45125.1, insurance requirements, invoicing processes, or payment
11 terms. (See UMF No. 10; Grammer Dep. 59:22–61:7, 63:4–22, 68:12–69:4, 125:4–9.) The
12 parties never discussed nor agreed upon such terms at the Proposal stage. (Grammer Dep. 68:22–
13 23.) However, New Earth testified at deposition that its Proposal did not look like its other
14 contracts with public entities, and New Earth expected that the District would issue a more formal
15 contract later on in the relationship. (UMF No. 10; Grammer Dep. 58:19–59:8.) Accordingly,
16 the Proposal did not contain any integration clause stating it was the complete agreement between
17 the parties (because it was not). (UMF No. 12; Plaintiff’s Complaint, Ex. 1).

18 **B. The District Paid New Earth \$600,000 for All Hours It Worked in Year 1.**

19 In accordance with Education Code section 17604 and Board Policy/Administrative
20 Regulation 3314 (Declaration of Dr. Alfonso Jiménez (“Jiménez Decl.”), Exs. A, B), the District’s
21 Governing Board subsequently approved a Purchase Order dated September 7, 2022 in the
22 amount of \$600,000 for Year 1, the full amount of New Earth’s Year 1 estimate in its Proposal.
23 (UMF No. 13; Grammer Dep., Ex. 11.) The Purchase Order for Year 1 (as well as the Purchase
24

25 ² Plaintiff had sent the District an earlier draft proposal, estimating costs of \$1,500,000 for Year
26 3. After further discussions, Plaintiff revised the draft and sent a new proposal, which the District
27 signed. The executed proposal does not include the \$1,500,000 estimate for Year 3 and instead
states that costs will be “determined by number of students and hours of work necessary[.]”
(Grammer Dep. 43:08-47-09; Ex. 2 and 4.)

28 ³ Although the Proposal does not specify the number of weeks, the figures correspond to
approximately 44.4 weeks for Year 1 and 52 weeks for Year 2.

1 Order for Year 2) states that the Terms and Conditions posted on the District’s website are
2 incorporated into the Purchase Order, that the Vendor or Contractor accepts them, and that the
3 Purchase Order, along with the website’s Terms and Conditions “constitute[] a legally binding
4 contract between the District and Vendor/Contractor.” (UMF No. 14, 27; Grammer Dep., Exs. 11,
5 15; see also Ex. 12 to Grammer Dep.; Jiménez Decl., Ex. C.)

6 These Terms and Conditions included provisions Plaintiff expected to see in the
7 “contract” following Board approval of the Proposal (UMF No. 10; Grammer Dep. 58:19–59:8),
8 such as fingerprinting of employees and insurance requirements. (UMF No. 16; Grammer Dep.
9 Ex. 12, ¶¶ 11 and 18.) They also included a termination without cause clause. (UMF No. 17;
10 Grammer Dep., Ex. 12, ¶13.1.) The Terms and Conditions further provided that the Purchase
11 Order Agreement supersedes all prior writings or contrary provisions submitted by the
12 Contractor, and that conflicts would be resolved by giving precedence first to the District’s
13 standard Terms and Conditions, then to the Contractor’s Proposal. (UMF No. 15; Grammer Dep.,
14 Ex. 12, p. 6.)

15 Ms. Grammer oversaw the District project and was responsible for execution of it.
16 (Grammer 13:10-21). Ms. Grammer also testified that Plaintiff New Earth was familiar with
17 “government” contracts. (UMF No. 2; Grammer Decl. 59:01-05 [“we contract with the County,
18 we contract with the City, we contract with the State.”])

19 Ms. Grammer acknowledged, and agreed, that the District’s Board had to approve a new
20 Purchase Order each year in order to authorize payment:

21 Q. So this was the agreement that you would start with a \$600,000 purchase
22 order?

23 A. Correct.

24 (UMF Nos. 19-25; Grammer Dep. 100:17-19; see also Grammer Dep. 66:2–4, 79:20-82:23,
25 82:18–83:4, 84:7–17, 100:12–22, 107:10–17; Grammer Dep. Ex. 9 (email from Y. Grammer
26 dated August 16, 2023: “Will you please ensure that the P.O. it is on the board consent agenda”);
27 Grammer Dep. Ex. 10 [email from Y. Grammer dated Aug. 17, 2023: “Each year there is a new
28 PO that gets generated”].)

///

C. The District Paid New Earth \$600,000 for all Hours It Worked in Year 2.

On August 21, 2023, Plaintiff acknowledged that Year 2 would begin with a Purchase Order for \$600,000—a “smaller figure” than the Proposal’s \$1.5 million estimate. (UMF No. 20; Grammer Dep. 100:12–22; Grammer Dep. Ex. 11.) The District issued a Purchase Order for this amount, which, as discussed, contained language substantively identical to the earlier Purchase Order for Year 1. (Grammer Dep. 122:11-25.)

Plaintiff admitted that the Purchase Orders were a “piece” of the parties’ contract. (UMF No. 30; Grammer Dep. 108:9–14.) Plaintiff also acknowledged that the termination without cause language in the Terms and Conditions allowed the District to terminate the relationship between the parties at any time without cause upon written notice, per the standard Terms and Conditions. (UMF No. 29; Grammer Dep. 112:3–14.) Plaintiff further admitted it never informed the District that it objected to the Purchase Order or its Terms and Conditions. (UMF No. 28; Grammer Dep. 114:6–17, 122:11–16.) To the contrary, New Earth agreed to and requested the Purchase Orders as detailed above, because it acknowledged they were necessary in order for New Earth to be paid. (UMF No. 22; Grammer Dep. 100:12–22.)

Sometime between January 24 and March 20, 2024, Plaintiff received a certified letter from the District providing notice of non-renewal. (UMF No. 31; Grammer Dep., Exs. 17, 18, p. 1.) Plaintiff testified that the District notified her that Year 3 was cancelled and that in Year 2, the District was only authorized to pay Plaintiff \$600,000, not the \$1.5 million estimated in the Proposal, so New Earth should limit its hours worked to no more than \$600,000. (UMF No. 33; Grammer Dep. 126:23–127:12.) Shortly thereafter, Ms. Grammer spoke with the District’s superintendent, who explained the District was out of funding and was in a dire financial situation. Ms. Grammer indicated agreement with early termination, responding “Okay. Got it.” (UMF No. 32; Grammer Dep. 132:16–133:12.) She also emailed the superintendent on May 31, 2024: “we are aware and have not exceeded the amount” of the \$600,000 Purchase Order. (UMF No. 33; Grammer Dep. 136:19–22; Grammer Dep., Ex. 18, p. 1.)

Plaintiff acknowledged that the District paid New Earth for all hours actually worked in Year 2, 2,666 hours. New Earth did not work the additional hours it had estimated two years

earlier in its Proposal, which form the basis of its \$900,000 claim. (UMF No. 34; Grammer Dep. 140:15–20, 147:2–16.)

Plaintiff now seeks an additional \$900,000 windfall for Year 2, based on the estimated hours in the original Proposal—hours that were never worked and for which no invoice was submitted or approved. (See UMF Nos. 33, 34; Grammer Dep. 144:1-3, 144:22-25, 147:2-14.)

III. STANDARD ON SUMMARY JUDGMENT AND CIVIL CODE SECTION 1642

Under Code of Civil Procedure section 437c, subdivision (p)(2), the burden is on the moving party to show no triable issue as to any material fact. “A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to that cause of action.” (Code Civ. Proc., § 437c, subd. (p)(2).)

Once the defendant meets this burden, the burden shifts to the plaintiff to show that a triable issue of material fact exists. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A plaintiff may not rely on mere allegations but must set forth specific, admissible facts. (See *Santa Ana Unified School Dist. v. Orange County Dev. Agency* (2001) 90 Cal.App.4th 404, 411; *Rochlis v. Walt Disney Co.* (1993) 19 Cal.App.4th 201, 219, disapproved on another ground by *Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238.)

Contract interpretation is a question of law unless it depends on conflicting extrinsic evidence, which is not the case here. (*DeSilva Gates Construction, LP v. Department of Transportation* (2015) 242 Cal.App.4th 1409, 1420; *Fifth Day, LLC v. Bolotin* (2009) 172 Cal.App.4th 939, 946, citing *Parsons v. Bristol Dev. Co.* (1965) 62 Cal.2d 861, 865–866.) More specifically relevant to this motion, courts routinely rule on summary judgment that multiple writings constitute one contract under Civil Code section 1642.⁴

⁴ See, e.g., *Blue Mountain Enterprises, LLC v. Owen* (2022) 74 Cal.App.5th 537, 554 (“As the trial court noted below, ‘[r]ules of contract interpretation require that when several contracts relating to the same matters are made between the same parties and as parts of substantially one transaction, the contracts are to be construed together. (Civ. Code, § 1642.)’”); *Avidity Partners, LLC v. State of California* (2013) 221 Cal.App.4th 1180, 1194 (“We conclude the HCP was incorporated into the Implementation Agreement. As indicated, part of the HCP was expressly incorporated.”); *Brown v. California Pension Administrators & Consultants, Inc.* (1996) 45 Cal.App.4th 333, 344 (“Once again, we follow basic contract law, as set out in Civ. Code, §

1 The purpose of summary judgment is to provide courts with a mechanism to cut through
2 the pleadings in order to determine whether trial is in fact necessary to resolve the dispute.
3 (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 843.) Summary judgment should be
4 granted if the defendant shows that the plaintiff cannot establish at least one element of the cause
5 of action, or that there is a complete defense. (*Id.* at p. 850; *Sambrano v. City of San Diego* (2001)
6 94 Cal.App.4th 225, 233.)

7 Here, the facts are undisputed. The parties agree the District paid New Earth for all hours
8 New Earth actually worked. The parties' dispute is one of law and contract interpretation—
9 whether the District was permitted under the parties' agreement to terminate New Earth without
10 cause, under the Purchase Order Terms and Conditions—that is ripe for summary adjudication.

11 **IV. THE PROPOSAL WAS NOT THE ENTIRE CONTRACT AND MUST BE READ**
12 **TOGETHER WITH THE PURCHASE ORDER TERMS AND CONDITIONS**

13 California law recognizes that multiple writings may collectively form a single contract.
14 Civil Code section 1642 provides that “several contracts relating to the same matters, between the
15 same parties, and made as parts of substantially one transaction, are to be taken together.” Courts
16 routinely apply this rule in the public-agency context, including in construction and procurement
17 disputes. In *Pacific Employers Ins. Co. v. City of Berkeley* (1984) 158 Cal.App.3d 145, 150–151,
18 the Court of Appeal held that a public works contract and related surety bond had to be read
19 together under section 1642, and on that basis affirmed summary judgment for the City.

20 Likewise, in *Shaw v. Regents of Univ. of California* (1997) 58 Cal.App.4th 44, 54–55, the
21

22 1642”); *Coca Cola Bottling Co. v. Columbia Casualty Ins. Co.* (1992) 11 Cal.App.4th 1176, 1183
23 (“Because the Columbia policy does not itself fully define the lower limits of its coverage,
24 reference to the terms of the Mission policy is necessary. (Civ. Code, §§ 1641, 1642.)”); *Peterson*
25 *Development Co. v. Torrey Pines Bank* (1991) 233 Cal.App.3d 103, 114 (“Thus, the dispositive
26 issue presented is whether the letter of commitment represents a complete and fully enforceable
27 contract. In making this determination, the letter of commitment and the construction loan
28 agreement must be read together, consistent with the rule of Civ. Code § 1642.”); *Pacific*
Employers Ins. Co. v. City of Berkeley (1984) 158 Cal.App.3d 145, 152 (“the bond given by
Pacific, which expressly referred to the contract between Emerald and the city, incorporated that
contract by reference”); *Chern v. Bank of America* (1976) 15 Cal.3d 866, 874 (“It follows that the
parol evidence rule does not bar consideration of this document in ascertaining the terms of the
parties' agreement. Taken together, the documents clearly indicate that plaintiff was well aware
of the basis on which interest was computed on her loan.”).

1 court reaffirmed that the interpretation of multiple written agreements is a question of law when
2 the writings are unambiguous and relate to the same transaction. The court held that a patent
3 agreement and a related policy executed with a public agency must be construed together because
4 they were executed contemporaneously, concerned the same subject matter, and collectively
5 defined the parties' rights and obligations. The court emphasized that where the documents'
6 language is clear, a court may determine their integrated effect on summary judgment without
7 resorting to extrinsic evidence. Similarly, here, the signed Proposal and approved Purchase Order
8 were issued as part of the same procurement transaction and address the same subject, the
9 provision of services to District students. As in *Shaw*, the documents must be read together, in
10 which case the Purchase Order's incorporation of the District's standard terms and conditions,
11 including its right to terminate early, control as a matter of law.

12 When the material facts and extrinsic evidence are undisputed, contract interpretation is a
13 question of law that can be resolved on summary judgment or summary adjudication. (See *Boyd*
14 *v. Oscar Fisher Co.* (1989) 210 Cal.App.3d 368, 378.) In *Boyd*, the California Court of Appeal
15 applied Civil Code section 1642 to hold that multiple writings formed a single integrated contract.
16 (*Ibid.*) The dispute involved a dealership agreement and subsequent invoices sent for individual
17 transactions. The court concluded that, because the invoices and the original agreement concerned
18 the same subject matter and were executed as part of one continuous business relationship, they
19 had to be construed together. Importantly, the court treated this as a question of law based on the
20 writings themselves, not on extrinsic evidence of the parties' conduct. By reading the documents
21 together, the court enforced the attorney-fee provision appearing only on the invoices, confirming
22 that terms in later documents can control when they are part of the same overall transaction.
23 (*Ibid.*)

24 Similarly, in the dispute between Plaintiff and the District, the signed proposal and the
25 District's subsequent purchase order should be construed together under Section 1642. Like the
26 invoices and dealership agreement in *Boyd*, both writings here address the same subject—the
27 provision of services under the District's procurement—and were issued as part of the same
28 transaction approved by the governing board. Crucially, the District's purchase order expressly

1 incorporates its standard website terms and conditions, including the District’s right to terminate
2 early without cause. Under *Boyd*, these documents operate together as one integrated agreement
3 as a matter of law. When read as a whole, the controlling terms include the District’s termination
4 rights, defeating Plaintiff’s claim that the proposal alone created a standalone, non-terminable
5 contract allowing it to be paid for services it never performed.

6 Here, the undisputed material facts and parties’ writings establish that the Proposal,
7 standing alone, was not the parties’ contractual agreement as a matter of law. Thus, this matter
8 can and should be resolved on summary adjudication.

9 **A. New Earth Agrees its Proposal Was Incomplete and Did Not Contain all the**
10 **Parties’ Rights and Obligations**

11 New Earth’s signed Proposal cannot be viewed in isolation and was not the entire contract
12 between the parties. The Proposal did not contain an integration clause. (UMF No. 12; See
13 Plaintiff’s Complaint, Ex. 1.) Material terms of the parties’ relationship such as the amount New
14 Earth would be paid for Year 3, and the number of hours it would work that year, were left to be
15 “determined” later on in the parties’ relationship. (Plaintiff’s Complaint, Ex. 1, p. 10, ¶3.) A
16 signed writing is not an enforceable contract when material terms are missing or no meeting of
17 the minds occurred. (*Cheema v. L.S. Trucking, Inc.* (2019) 39 Cal.App.5th 1142, 1149 [contract
18 must evidence agreement “upon the essential features ...” and provide “a rational basis for the
19 assessment of damages”]; *Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th
20 348, 359 [“failure to reach a meeting of the minds on all material points prevents the formation of
21 a contract”]; *Robinson & Wilson, Inc. v. Stone* (1973) 35 Cal.App.3d 396, 407, [“failure to reach a
22 meeting of the minds on all material points prevents the formation of a contract even though the
23 parties have orally agreed upon some of the terms, or have taken some action related to the
24 contract”].)

25 Indeed, Plaintiff confirmed that it expected a further formal contract would be issued, after
26 the Proposal was signed. (UMF No. 10; Grammer Dep. 58:19–59:8.) Proposals are generally
27 treated as preliminary documents that outline contemplated services, not binding contracts absent
28 incorporation into later writings. (See, e.g., *Boyd v. Oscar Fisher Co.* (1989) 210 Cal.App.3d 368,

378 [invoice terms incorporated into overall agreement under section 1642].)

The Proposal was merely the starting point of the parties' dealings. A proposal is a preliminary, nonbinding document intended to secure an agreement, not to formalize one. It becomes a contract only if it contains all essential terms and is intended to be the final, binding expression of the parties' obligations. Where a proposal leaves essential terms for future agreement and indicates that further formal writing is required, it does not constitute a binding contract. (*Louis Lesser Enterprises, Ltd. v. Roeder* (1962) 209 Cal.App.2d 401, 407-408.) The District's understanding of a Proposal, as documented in its Purchase Order Terms and Conditions, is that it is an offer from a contractor or vendor made in response to the District's solicitation to perform a contract to supply goods or services at a specified price. (Grammer Dep., Ex. 12, p. 1, ¶ 1.5.) Further, the plain language of the Proposal versus the Purchase Orders shows a clear distinction in legal effect. The Proposal primarily described the services and hourly rate Plaintiff was proposing to deliver to the District, with estimated hours for Years 1 and 2 but none for Year 3. (Compl., Ex. 1.) It was referred to as a "proposal" at the time and continues to be referred to as such by New Earth. (UMF Nos. 8, 9; Compl., Ex. 1, p. 1, ¶¶ 1, 4; Grammer Dep. 29:14–16.) In contrast, the Purchase Orders specified due dates, total amounts, party contact information, and, most importantly, incorporated Terms and Conditions. Each Purchase Order also stated that it was a "legally binding contract." (UMF Nos. 14, 27; Grammer Dep., Exs. 11, 15.) No such language appears in the Proposal. Indeed, New Earth agreed at deposition that the Proposal was incomplete and lacked terms regarding invoicing, fingerprinting of employees, and insurance, all of which were part of the parties' rights and obligations but were absent from the Proposal. (UMF No. 10; Grammer Dep. 59:22–61:7, 63:4–22, 68:12–69:4, 125:4–9.)

B. New Earth Agrees the Purchase Orders Were a "Piece" of the Parties' Contract

After the Proposal, the District issued and approved Purchase Orders in Year 1 and Year 2. (UMF No. 13; Grammer Decl., Exs. 11, 15.) The Purchase Orders expressly incorporated the District's standard Terms and Conditions, including the right to early termination. Under section 1642, the Proposal and Purchase Order—relating to the same subject, between the same parties,

1 and part of a single transaction—must be construed together. Read as one contract, the agreement
2 was subject to those termination provisions, which New Earth affirmed at deposition allowed the
3 District to terminate it and pay only for services rendered up to the date of termination as
4 occurred. (UMF No. 29; Grammer Dep. 112:3–14.)

5 “For the terms of another document to be incorporated into the document executed by the
6 parties [1] the reference must be clear and unequivocal, [2] the reference must be called to the
7 attention of the other party and he must consent thereto, and [3] the terms of the incorporated
8 document must be known or easily available to the contracting parties.” (*Shaw v. Regents of*
9 *University of California* (1997) 58 Cal.App.4th 44, 54.) In measuring these elements, courts
10 should look to parties’ intent *as stated in the contract documents*. “Although the intent of the
11 parties determines the meaning of the contract (Civ. Code, §§ 1636, 1638), the relevant intent is
12 ‘objective’—that is, the objective intent as evidenced by the words of the instrument, not a party’s
13 subjective intent. . . . The true intent of a contracting party is irrelevant if it remains unexpressed.”
14 (*Id.* at 55.)

15 Furthermore, even where documents do not expressly incorporate one another, California
16 law allows enforcement of terms when the reference is clear, and the documents are known or
17 available to both parties. (*Shaw v. Regents of Univ. of California, supra*, 58 Cal.App.4th 54–55;
18 *Avidity Partners, LLC v. State of California* (2013) 221 Cal.App.4th 1180, 1194.)

19 Here, there is no triable issue of fact because Plaintiff admitted that the Purchase Orders
20 were a “piece” of the parties’ contract. (UMF No. 30; Grammer Dep. 108:9–14.) The agreement
21 included the Purchase Orders, which incorporated the District’s Terms and Conditions.
22 References to the Purchase Orders were clear and unequivocal—Plaintiff was aware of the
23 Purchase Orders and expressly consented to them by requesting them repeatedly: “[Regarding]
24 our initial P.O. for \$600,000 Will you please ensure that the P.O. it is on the board consent
25 agenda....” (UMF No. 21; Grammer Dep. Ex. 9 [email from Y. Grammer dated August 16,
26 2023]). The terms of the Purchase Order were known to Plaintiff, as Ms. Grammer was the one
27 that requested it and testified that New Earth received the documents. (*Id.*; Grammer Dep. 81:06-
28 09, 109:11-19) That New Earth may not have read the online terms and conditions and now

1 argues it did not agree to them is immaterial, since the reference was clear, and “[t]he true intent
2 of a contracting party is irrelevant if it remains unexpressed.” (*Shaw*. at 55.) New Earth agrees it
3 never objected to the terms and conditions or stated any disagreement with them.

4 Q. And whenever you received this, similar to purchase order from Year 1, you --
5 you or nobody at New Earth that you are aware of ever said we don't agree to this,
6 we don't agree to the terms and conditions language?

7 A. Correct.

8 (UMF No. 28; Grammer Dep. 122:11–16.)

9 Under *Shaw*, the parties’ intent as evidenced by the wording in the contract documents,
10 was to treat the Proposal and the Purchase Order, combined, as a contract. As in *City of Berkeley*
11 and *Shaw*, summary judgment is appropriate because the undisputed writings, taken together
12 under section 1642, establish the parties’ contractual agreement.

13 **C. New Earth Agrees the Termination Language Allowed the District to Stop**
14 **Services and Payment Obligations**

15 With the Purchase Order Terms and Conditions, a “piece” of the contract, the District
16 properly terminated New Earth for convenience, and New Earth cannot recover \$900,000 for
17 work it never performed. New Earth can establish neither any breach nor damages to support its
18 breach of contract claim.

19 To prevail on a breach of contract claim, Plaintiff must establish: (1) the existence of a
20 contract, (2) performance or excuse, (3) breach, and (4) resulting damages. (*Careau & Co. v.*
21 *Security Pacific Business Credit, Inc.*, (1990) 222 Cal.App.3d at p. 1389; *Acoustics, Inc. v. Trepte*
22 *Constr. Co.* (1971) 14 Cal.App.3d 887, 913.) Further, contractual terms must be interpreted
23 according to their ordinary meaning. (Civ. Code, § 1644; *City of Bell v. Rizzo* (2013) 220
24 Cal.App.4th 236, 248, review den. [city’s indemnity agreement did not require defending a city
25 official in a criminal action].)

26 Here, New Earth agreed at deposition that the termination for convenience language in the
27 Terms and Conditions (Grammer Dep. Ex. 12, ¶13.1) allowed the District’s to do what it did here:

28 Q. And that paragraph reads, “District may, at any time, with or without reason,
terminate this agreement and compensate contractor only for services
satisfactorily rendered to the date of termination.” Do you see that?

A. I do.

Q. Okay. What do you understand that sentence to mean?

1 A. That means that under this PO, because this is connected to the PO for
2 600,000, that the District can cancel at any time without cause with written notice.

3 (UMF No. 29; Grammer Dep. 112:03-14.)

4 Further, Plaintiff indicated agreement with the District's early termination by telling the
5 superintendent, "Okay. Got it." (UMF No. 32; Grammer Dep. 132:16–133:12.) Plaintiff's conduct
6 likewise reflected acceptance of early termination, as it ceased work beyond the pre-approved
7 Year 2 hours so that it would bill no more than \$600,000 as allowed by the Purchase Order.
8 (UMF No. 33; Grammer Dep. 136:19–22; Ex. 18 to Grammer Dep., p. 1 [email dated May 31,
9 2024: "we are aware and have not exceeded the amount" of the \$600,000 Purchase Order].)

10 Although Plaintiff contends that the District breached the Proposal by terminating services
11 earlier than expected, the plain language shows it was a proposal for services, not the entire
12 contract between the parties. The Proposal expressly stated that the "total cost" for Years 1 and 2
13 was based on "estimated ... hours of services per week," not a guaranteed amount. (UMF No. 6;
14 Compl., Ex. 1, p. 10.) Plaintiff's Proposal was merely an offer to perform services at a fixed
15 hourly rate, with hours loosely estimated from a couple of discussions with District leadership
16 about anticipated services and the District's budget. (See *Menefee v. Fresno* (1985) 163
17 Cal.App.3d 1175, 1178 [bids or proposals are offers or options given to the public agency], citing
18 *M.F. Kemper Constr. Co. v. City of L.A.* (1951) 37 Cal.2d 696, 700, 704.)

19 The District performed all obligations under the entire agreement. All invoices for
20 services rendered were approved and paid. (UMF Nos. 18, 34, 35; Grammer Dep. 140:15–20,
21 147:2–16.) As Ms. Grammer testified, Plaintiff worked only the hours it was authorized and paid
22 to perform in Year 2, then stopped. (Grammer Dep. 126:23–127:12.) Plaintiff testified that she
23 understood that the contract had ended early. (Grammer Dep. 134:13–21 ["we hadn't even
24 finished the [Purchase Order] yet and ... we no longer have a contract at all"].) Plaintiff
25 acknowledged that the District paid New Earth for all hours actually worked in Year 2. New
26 Earth did not work the additional hours it had estimated two years earlier in its Proposal, which
27 form the basis of its \$900,000 claim. (UMF Nos. 18, 34, 35; Grammer Dep. 140:15–20, 147:2–
28 16.) The District properly exercised its right to terminate under the incorporated Terms and

Conditions, and was not liable to pay for services the District never received as a result. No breach occurred. (See *Otworth v. Southern Pac. Transp. Co.* (1985) 166 Cal.App.3d 452, 459 [upholding costs and fees for frivolous appeal where plaintiff failed to allege essential elements of breach of contract].)

V. NEW EARTH CANNOT RECOVER PAYMENT FOR WORK IT NEVER PERFORMED

Even if the District did not have a clear contractual right to terminate New Earth for convenience and pay only for services up to the date of termination, New Earth would still not be able to recover payment for services it never performed under the contract under California law.

When a party stops performance, it cannot still claim payment under the contract. (*Jay Bharat Developers, Inc. v. Minidis* (2008) 167 Cal.App.4th 437, 443–444.) In *Jay Bharat*, the appellants breached a franchise agreement by failing to make royalty and advertising payments. Despite their breaches, they sought to continue using the franchise and trademarks. The court held that the franchisors could terminate the agreement and prevent further use of the franchise, stating:

Under basic contract principles, when one party to a contract feels that the other contracting party has breached its agreement, the non-breaching party may either stop performance and assume the contract is avoided or continue its performance and sue for damages. Under no circumstances may the non-breaching party stop performance *and* continue to take advantage of the contract's benefits. (*Id.* at pp. 443–444 (citations omitted).)

Here, if Plaintiff believed the District breached the agreement by early termination, it had two options: stop performance and treat the contract as avoided, or continue performance and sue for damages. (*Id.* at p. 443.) Plaintiff chose to stop performance. Under *Jay Bharat*, Plaintiff could not cease performance *and* continue to claim the benefits of the contract by demanding payment for hours it merely estimated two years earlier but never worked.

VI. NEW EARTH'S BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING CLAIM FAILS WITH ITS BREACH OF CONTRACT CLAIM

Because the District acted within its express contractual rights, Plaintiff's claim for breach

1 of the implied covenant of good faith and fair dealing fails as a matter of law. California law is
2 clear that a plaintiff cannot maintain a claim for breach of the implied covenant of good faith and
3 fair dealing absent a breach of the contract's express terms. In *Horn v. Cushman & Wakefield*
4 *Western, Inc.* (1999) 72 Cal.App.4th 798, 819, the court affirmed summary judgment in an
5 employment discrimination case, holding that "[w]here there is no underlying contract there can
6 be no duty of good faith arising from the implied covenant." Similarly, in *Foley v. Interactive*
7 *Data Corp.* (1988) 47 Cal.3d 654, the California Supreme Court held that there is no tort cause of
8 action for breach of the implied covenant of good faith and fair dealing in an employment
9 contract to employees who alleged they had been discharged in violation of the covenant. The
10 Supreme Court has explained that the implied covenant is read into every contract but "cannot
11 impose substantive duties or limits beyond those incorporated in the specific terms of the
12 agreement." (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 350 [citing *Foley*].) Thus, where
13 there is no breach of the parties' express obligations, a claim for breach of the implied covenant
14 necessarily fails as a matter of law.

15 Here, Plaintiff's claim for breach of the implied covenant of good faith and fair dealing
16 fails because the District did not breach any express term of the parties' agreement. As shown, the
17 signed proposal and the District's purchase orders must be read together, and the purchase orders
18 expressly incorporated the District's standard terms and conditions, including its right to
19 terminate early without cause. The District exercised that right in accordance with the
20 incorporated terms. Because there was no breach of any express provision, Plaintiff cannot
21 establish a breach of the implied covenant. Under *Horn*, *Guz*, and *Foley*, its implied covenant
22 claim fails as a matter of law, and summary judgment on this cause of action is proper.

23 **VII. CONCLUSION**

24 New Earth's Proposal was not the parties' entire contract, as the Complaint alleges, but
25 only one piece of it—as Plaintiff admitted in deposition. The annual Purchase Orders, once
26 accepted, defined and governed the parties' contractual relationship, and the parties' conduct
27 consistently treated the Purchase Orders as the operative contracts. New Earth admitted the
28 Purchase Orders were a "piece" of the contract. Under those Purchase Orders, the District

1 lawfully terminated the agreement without cause, as expressly permitted by the terms and
2 conditions. Plaintiff therefore cannot establish that the District breached the agreement or that it is
3 entitled to payment for work it never performed.

4 For these reasons, Defendant Culver City Unified School District respectfully requests
5 that the Court grant its motion for summary judgment in its entirety.

6 DATED: September 9, 2025

DANNIS WOLIVER KELLEY

7
8 By: 

LUKE L. PUNNAKANTA

9 Attorneys for Defendant
10 CULVER CITY UNIFIED SCHOOL
11 DISTRICT
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: 200 California Street, Suite 400, San Francisco, California.

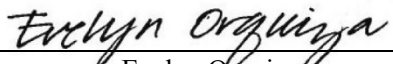
On the date set forth below I served the foregoing document described as **DEFENDANT CULVER CITY UNIFIED SCHOOL DISTRICT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR ADJUDICATION** on interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ (VIA ELECTRONIC SERVICE) [Code Civ. Proc. Sec. 1010.6; CRC 2.251] by electronic mailing a true and correct copy through DANNIS WOLIVER KELLEY's electronic mail system from eorquiza@DWKesq.com to the email address(es) set forth above, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6 and CRC Rule 2.251. The transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 9, 2025 at San Francisco, California.


Evelyn Orquiza

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NEW EARTH



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NEW EARTH, A NON-PROFIT vs CULVER CITY UNIFIED SCHOOL DISTRICT, et al.

Filing Party:
CULVER CITY UNIFIED SCHOOL DISTRICT (Defendant)

Location:
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