

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SALINE ELECTRONICS, INC.,)
Plaintiff,) Case No. 2024-207996-CB
v.) Hon. Victoria Valentine
AUTOMATED PET CARE)
PRODUCTS, LLC, D/B/A WHISKER)
Defendant.

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**OPINION AND ORDER REGARDING DEFENDANT'S MOTION FOR SUMMARY
DISPOSITION UNDER MCR 2.116(C)(8)**

At a session of said Court held on the
11th day of October 2024 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendant's Motion for Summary Disposition under MCR 2.116(C)(8). Defendant asks the Court to dismiss Plaintiff's 3-count Complaint, which alleges breach of contract, promissory estoppel (in the alternative), and quantum meruit/unjust enrichment (in the alternative). The Court has reviewed the pleadings and the briefs and heard oral argument. For the reasons set forth below, Defendant's Motion is DENIED.

OVERVIEW

Plaintiff Saline Lectronics, Inc ("Saline") is a Michigan corporation, which manufactures

and supplies electronic components and printed circuit boards to customers in various industries.¹

Defendant Automated Pet Care Products, LLC d/b/a Whisker (“Whisker”) is a Michigan-based company that manufactures "pet tech" and accessories, including automated cat litter boxes.² Whisker requires four printed circuit board assemblies ("PCBAs").³

The Complaint alleges that at Whisker's request, and to partner with another Michigan business during the pandemic, Saline issued a series of detailed “Quote Letters” to Whisker for PCBAs.⁴ Saline alleges that its “Quote Letters” contain a sufficient number of offer details, including a description of the product, price, quantity, payment terms, shipping methods, a warranty, and other incorporated detailed terms.⁵ An example of Saline's issued “Quote Letter” provides as follows:

¹ Complaint, ¶7.

² Complaint, ¶8.

³ Complaint, ¶13.

⁴ Complaint, ¶¶14-17 and Exhibit 1 attached thereto.

⁵ Complaint ¶18 and Exhibit 1 attached thereto.



QUOTE # 21-0221

Saline Electronics, Inc.
Let's Generate Solutions Together

DATE: April 6, 2021
DATE EXPIRES: May 4, 2021

Customer Name	Buyer/Contact	Contact Information	Assembly, Revision
Autopets	Adam Freeman	1080 W Entrance Dr. Auburn Hills, MI 48326 afreeman@autopets.com	LR4-2901 REV 0104(01)

The following proposal is based on the documentation provided by **AUTOPETS**.

Saline Electronics is not responsible for circuit system/reliability, and will only warranty assembly and workmanship.

Saline Lectronics, Inc. reserves the right to order components packaged in ways that best meet our requirements for quantity, availability and manufacturing processes

Addendum(s)	Exceptions	Buy to Quote	Terms
Lead Times			
NRE Breakdown			
	If addendums are listed in this Quote, they require approval prior to order.	Please Update Purchase Order	Payment Terms: NET30 Ship Via: Fed Ex/UPS Ship Account #: Customer IPC-610 Class 2

ECN Change Fee:
If engineering changes/revisions are made to this quoted product, each ECN may be subject to a

Exceptions

Buy to Quote

Terms	
Payment Terms:	NET30
Ship Via:	Fed Ex/UPS
Ship Account #:	Customer
IPC-610 Class	2

ECN Change Fee:
If engineering changes/revisions are made to this quoted product, each ECN may be subject to a minimum \$250 change fee.

Terms & Conditions available on website

Excess Material:
Customer accepts full responsibility for any remaining balances from components that require a minimum or multiple purchase that are handled or received by Saline Lectronics.

By submitting a purchase order to Saline Electronics, Inc. you are accepting the terms and conditions of Saline Electronics including lead time, substitution requests and pricing.

Warranty:
One year warranty on workmanship and components purchased by Saline Electronics. All customer supplied material, including PCBs shall be the responsibility of the customer. Customer is responsible for the complete assembly in the event of failure due to any customer supplied parts.

² See also the discussion of the meaning of *reliability* in the section on the reliability of the data.



Quoted By:
Saline Electronics
Bob Jacobs

Email:
1-734-944-2120
jacobs@electronics.net

Phone: www.lectronics.net

This “Quote Letter:”

- identifies itself as a “proposal.”
- expressly references and indicates that Saline’s “Terms & Conditions available on website.”⁶
- contains a hyperlink to Saline’s website: www.lectronics.net.⁷
- expressly provides that “[b]y submitting a purchase order to Saline Lectronics, Inc., you are accepting the terms and conditions of Saline Lectronics, including lead time, substitution requests and pricing.”⁸
- contains a disclaimer that: “Please note, NCNR/Excess, Tariff Charges, Lead-time and product availability is subject to change based on manufacturing capacity and global supply.”⁹
- provides: “Excess Material: Customer accepts full responsibility for any remaining balances from components that require a minimum or multiple purchase that are handled or received by Saline Lectronics.”¹⁰
- provides that “If addendums are listed in this Quote, they require approval prior to order.”¹¹

Pertinent “Terms & Conditions available on website,” include:

- “Fulfillment of Purchaser's order is contingent upon the availability of materials. **Seller shall not be liable for any delay or non-delivery caused by the occurrence of any contingency beyond the control of either the Seller or suppliers to the Seller.** If any contingency occurs, Seller may allocate production and deliveries among Seller's customers...”¹²
- “Purchaser agrees to accept either overage or shortage of material for purchaser.”¹³
- “Seller's promised delivery date is the best estimate possible based upon current and anticipated engineering and manufacturing capabilities of when the goods will be engineered and/or shipped. **Seller assumes no liability for loss, damage or consequential damages due to delays.**”¹⁴
- “If there are any significant lead time changes due to market volatility, allocation or other circumstances beyond the reasonable control of Seller, Seller reserves the right to adjust the delivery schedule if deemed necessary.”¹⁵

⁶ Complaint, ¶ 19.

⁷ Complaint, ¶ 20.

⁸ Complaint, ¶ 23 and Exhibit 1 attached thereto.

⁹ Complaint, ¶ 33 and Exhibit 1, p 1.

¹⁰ Complaint, ¶ 32 and Exhibit 1, p 1.

¹¹ Exhibit 1, attached to Complaint.

¹² Complaint, ¶ 33 and Exhibit 2, §6. (Emphasis added).

¹³ Complaint, ¶ 33 and Exhibit 2, §11.

¹⁴ Complaint, ¶ 33 and Exhibit 2, §17. (Emphasis added).

¹⁵ Complaint, ¶ 33 and Exhibit 2, §18.

Saline alleges that “Whisker accepted Saline’s Quote Letters by issuing Purchase Orders in response to Quote Letters.”¹⁶ Saline further alleges that Whisker followed these initial Purchase Orders with a Letter of Intent (“LOI”), reflecting that Whisker would be issuing additional Purchase orders.¹⁷ Allegedly “[a]fter Whisker issued its initial Purchase Orders and LOI, accepting Saline’s Quote Letters, Saline started placing orders for raw materials and components.”¹⁸

Because Whisker specified that Saline must use various Microchip brand chips in the PCBAs Whisker designed, Saline alleges it was constrained to that manufacturer, and ultimately ordered through Avent.¹⁹ Saline further alleges that while it “”was able to work through some of the issues to start manufacturing,” “two part numbers had a longer delay due to the raw components to be supplied by Avnet/Microchip.”²⁰ Originally, Avent quoted a delivery date of December 1, 2021, for one chip component, but proceeded to move out this delivery date at least ten times until May 2023.²¹ Saline claims it attempted to expedite chips, but both the distributor, Avnet, and the chip manufacturer, Microchip, indicated they did not have capacity to expedite, even for a fee.²² Whisker rejected Saline’s offer of broker options and alternate arrangements.²³ Further, Saline issued Whisker “Can Build” reports,²⁴ using their weekly calls to review and adjust timelines based on the availability of components.²⁵

Saline claims that Whisker asked for Saline to deliver more of certain types of PCBAs to accommodate another supplier to which Whisker was to supply boards.²⁶ Whisker eventually

¹⁶ Complaint, ¶ 24 and Exhibit 3 attached thereto. See also Complaint, ¶¶ 26-29.

¹⁷ Complaint, ¶ 25 and Exhibit 4 attached thereto.

¹⁸ Complaint, ¶ 34.

¹⁹ Complaint, ¶ 35.

²⁰ Complaint, ¶ 36.

²¹ Complaint, ¶ 36.

²² Complaint, ¶ 37.

²³ Complaint, ¶ 37.

²⁴ Complaint, ¶ 39.

²⁵ Complaint, ¶ 39.

²⁶ Complaint, ¶ 40.

instructed Saline to stop shipping boards—even those that Saline had in stock—until after chips arrived for all boards.²⁷

In January 2023, Whisker provided approval for Saline to build an alternate board for LR4-2901 part number, for which Saline ordered components and started to build in March 2023.²⁸ During the 18 months of the parties' contract, Whisker never notified Saline of any purported breach when the raw component delays were happening.²⁹

In the spring of 2023, Saline received a large delivery of the raw components for which it had been waiting, and had, on hand, a large number of components, raw materials, works in progress, and finished goods.³⁰ Shortly thereafter, however, on July 5, 2023, Whisker emailed Saline purporting to terminate all open purchase orders effective immediately, due to Saline's inability to deliver.³¹ In that same email, Whisker offered to purchase the exact same parts, but only under new contract terms.³²

When Saline learned of the cancellation, it immediately attempted to cancel all orders of raw materials and sub-supplier components.³³ Saline alleges that while it was successful in cancelling a large number of raw materials, it was not able to cancel other raw materials.³⁴ Saline immediately informed Whisker about the millions of dollars of raw materials, and about the works in progress, and finished goods it had on hand, and demanded mitigation or reimbursement of same under the cancellation reimbursement provisions in the parties' Supply Agreement.³⁵ Because the PCBAs were unique and custom-made only for Whisker's automated litter boxes, they could not

²⁷ Complaint, ¶ 41.

²⁸ Complaint, ¶ 42.

²⁹ Complaint, ¶ 46.

³⁰ Complaint, ¶ 43.

³¹ Complaint, ¶ 44.

³² Complaint, ¶ 48.

³³ Complaint, ¶ 49.

³⁴ Complaint, ¶ 49.

³⁵ Complaint, ¶ 50.

be re-sold or re-used.³⁶ Whisker refused to reimburse Saline and refused to accept any PCBAs under the parties' original Supply Agreement despite many attempts to resolve this matter.³⁷

Saline then filed this 3-count Complaint alleging breach of contract; and alternatively alleging promissory estoppel and quantum meruit/unjust enrichment. Whisker now files this Motion for Summary Disposition under MCR 2.116(C)(8). It argues that Saline's "Quote Letters" are invitations for an offer, which are not part of any agreement between the parties; that even if the price quotes are part of an agreement, an ambiguous reference to "terms and conditions available on website" are insufficient to incorporate the terms into the parties' agreement absent Whisker's affirmative consent; that Saline cannot enforce a contract it admittedly did not perform; and that the equitable claims should be dismissed because a valid contract exists and because the equitable claims are not sufficiently pled.

Saline responds by arguing that, Whisker, rather than accepting the allegations as true under a (C)(8) motion, disputes Saline's allegations that the "Quote Letters" constitute offers that Whisker accepted. Saline also argues that Michigan law recognizes that a price quotation may constitute an offer if it is sufficiently detailed and if it reasonably appears from the price quotation that assent to the quotation is all that is needed to ripen the offer into a contract; that Saline has sufficiently alleged that its Terms and Conditions were incorporated; that Saline's complaint alleges performance; and that the equitable claims are pled in the alternative, and are based on duties outside of the contract.

³⁶ Complaint, ¶ 52.

³⁷ Complaint, ¶¶ 53-56.

STANDARD OF REVIEW

Summary disposition under MCR 2.116(C)(8) may be granted where “[t]he opposing party has failed to state a claim on which relief can be granted.” “A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the factual allegations in the complaint.’ *El-Khalil*, 504 Mich at 159 (emphasis omitted).³⁸ A court must accept all factual allegations as true and review the matter on the pleadings alone. *Id.* at 160. The grant of a motion under MCR 2.116(C)(8) is only appropriate when a claim is so clearly unenforceable that no factual development could possibly justify recovery. *Id.*” *Glorycrest Carpenter Road, Inc, v Adams Outdoor Advertising Limited Partnership*, ___ Mich App ___ (rel’d 10/2/2024) (Docket No. 366261), slip op at 5.

When deciding a motion on this ground, a court may consider only the parties’ pleadings. MCR 2.116(G)(5). “[A]ll well-pleaded allegations are accepted as true, and construed most favorably to the non-moving party.” *Wade v Dep’t of Corrections*, 439 Mich 158, 162-163 (1992). “A mere statement of a pleader’s conclusions and statements of law, unsupported by allegations of fact, will not suffice to state a cause of action.” *Varela v Spanski*, 329 Mich App 58, 79 (2019) (plaintiff failed to plead facts in support of his claim but instead made conclusory statements and conclusions of law). “[P]leadings need only contain factual allegations sufficient to reasonably inform the adverse party of the nature of the claims the adverse party is called on to defend.” *City of Wayne v Miller*, ___ Mich App ___, ___ (2024). (cleaned up).

Did Saline sufficiently allege that its “Quote Letter” is an “Offer” and not an “Invitation for an Offer”?

It is axiomatic that a valid contract requires an offer and acceptance, and "unless an acceptance is unambiguous and in strict conformance with the offer, no contract is formed." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452 (2006) (citations omitted); *Eerdmans v AJaki*, 226

³⁸*El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159 (2019).

Mich App 360, 364 (1997) (an enforceable contract is not created unless there is mutual assent, i.e., an offer and acceptance, on all essential terms). “Thus, to determine whether a contract has been formed, it is necessary to determine which of the forms constituted the ‘offer’ and which form constituted the ‘acceptance.’ …Courts must often look beyond the words employed in favor of a test which examines the totality of the circumstances.” *Challenge Mach Co v Mattison Mach Works*, 138 Mich App 15, 20–21 (1984). (Citations omitted). As to whether a price quotation constitutes an offer, it has been held that:

Typically, a price quotation is considered an invitation for an offer, rather than an offer to form a binding contract. Instead, a buyer's purchase agreement submitted in response to a price quotation is usually deemed the offer. However, a price quotation may suffice for an offer if it is sufficiently detailed and it reasonably appear[s] from the price quotation that assent to that quotation is all that is needed to ripen the offer into a contract. While the inclusion of a description of the product, price, quantity, and terms of payment may indicate that the price quotation is an offer rather than a mere invitation to negotiate, the determination of the issue depends primarily upon the intention of the person communicating the quotation as demonstrated by all of the surrounding facts and circumstances. Thus, to constitute an offer, a price quotation must be made under circumstances evidencing the express or implied intent of the offeror that its acceptance shall constitute a binding contract. *Dyno Const. Co. v McWane, Inc.*, 198 F3d 567, 572 (6th Cir. 1999).³⁹ (Citations omitted)

³⁹ The Court recognizes that *Dyno* is a federal case that applied Ohio law. However, the unpublished Michigan federal district court opinion of *Synergen Inc VFCA US LLC*, 2020 WL 1333425 (ED Mich 2020), cited to and quoted from *Dyno*. Further, both parties cite to *Dyno*, recognizing the above law cited therein. Lastly, both federal cases involved motions for *summary judgment* that are governed by FR Civ P 56, which provides that “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Accordingly, *summary judgment* is the federal equivalent of summary disposition under MCR 2.116(C)(10).

The instant motion, however, is brought under MCR 2.116(C)(8), which is based solely on the pleadings. MCR 2.116(G)(5). It is FR Civ P 12(b)(6) that authorizes dismissal of a complaint for failure to state a claim upon which relief can be granted, which would be the federal equivalent of MCR 2.116(C)(8). Further, both *Dyno* and *Synergen* provide that “the determination of the issue depends primarily upon the *intention of the person* communicating the quotation as demonstrated by all of the *surrounding facts and circumstances*.” *Synergen*, *Id* at -23, quoting *Dyno Constr*, 198 Fed at 572. Again, this is a (C)(8) motion that is determined solely from the pleadings.

In the unpublished federal case of *Synergen Inc v FCA US LLC*, 2020 WL 1333425 (ED Mich 2020), to which Saline cites, the Court cited to *Dyno*, upon which Whisker relies, and denied the motion for summary judgment, finding that it was for the *jury* to decide whether the quotation was sufficiently detailed to constitute an offer. *Synergen* involved a breach of contract dispute between an automotive supplier and a vehicle manufacturer concerning nonpayment and cancellation of a supply agreement. The parties disputed whether the supplier's quotes or the buyer's Purchase Orders constituted the offer. The Court held that a "reasonable jury could find that [the supplier's] quote was sufficiently detailed to constitute an offer" because it "included a description of the product, price, quantity, and terms of payment." *Id.* at *9. "That is sufficient to support a finding that the Quote manifested [the supplier's] willingness to enter into a bargain and that [the manufacturer's] assent to the bargain was invited and would conclude it." *Id.* at * 9.

Moreover, as Saline points out, in *Synergen*, while the supplier's quote had language that it was subject to change based on a final approved specification, the court found that a reasonable jury could conclude that the "subject to change" language did not reserve the supplier with unfettered discretion to change or back out of the deal. *Id.* at *9. In addition, the defendant also argued that the supplier issued revised quotations, and that the quotes contained only "estimates" that did not include the word "offer," and included no warranty. *Id.* at * 9. The Court, nevertheless, stated that this was not enough to persuade it to hold as a matter of law that the Quote was not an offer. *Id.* at * 9.

For purposes of this (C)(8) motion, this Court is tasked with determining whether the pleadings alone sufficiently allege a breach of contract claim, which in turn requires allegations relating to an offer. Unlike *Dyno*, upon which Whisker relies, or *Synergen* upon which Saline relies, the Court is *not* tasked with determining whether a genuine issue of material facts exists as

to whether Saline's "Quote Letters" constitute offers or invitations to bid.⁴⁰ Rather, the Court is tasked with determining whether Saline sufficiently alleges a breach of contract claim. The Court agrees with Saline that the Complaint's allegations, along with Saline's "Quote Letters," which are attached to⁴¹ and referenced in the Complaint,⁴² sufficiently detail enough facts to *allege* that Saline's Quote Letters were offers. Specifically, Saline's "Quote Letters" include a host of essential terms, including a part number; pricing; quantities; payment terms; shipping methods; lead times; a warranty; a minimum change fee cost; an excess material term; and a hyperlink to Saline's Terms & Conditions, located on its website. In addition, it specifically indicates in bold that:

By submitting a purchase order to Saline Electronics, Inc. you are accepting the terms and conditions of Saline Electronics including lead time, substitution requests and pricing.

The "Quote Letters" in turn incorporate Saline's Terms & Conditions,⁴³ the latter of which contain *twenty paragraphs* of additional terms, including those relating to terms and conditions; warranty; choice-of-law; order of precedence; waiver; limiting liability for availability of materials and delays and certain damages; indemnity; anti-discrimination; confidentiality; overage and

⁴⁰ (C)(8) motions are distinct from (C)(10) motions: (C)(8) motions denounce a claim's legal sufficiency and require the court to consider evidence only from the pleadings, while (C)(10) motions denounce a claim's factual sufficiency and allow the court to consider evidence beyond the pleadings. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160 (2019).

⁴¹ Exhibit 1 (a)–(e) attached to the Complaint.

⁴² Complaint, ¶¶ 14-19, 23, 32-33 and 60.

⁴³ See *Whittlesey v Herbrand C.*, 217 Mich 625, 628 (1922) (quoting *Short v Van Dyke*, 50 Minn. 286, (1892), where the Michigan Supreme Court stated that "[i]n a written contract a reference to another writing, if the reference be such as to show that it is made for the purpose of making such writing a part of the contract, is to be taken as a part of it just as though its contents had been repeated in the contract." See also *Forge v Smith*, 458 Mich 198, 207 (1998) ("Where one writing references another instrument for additional contract terms, the two writings should be read together. The Court must look for the party's intent within the contract where the words of a written contract are not ambiguous or uncertain."))

shortages of materials; cancellation; non-conformities; prices; the financial condition of purchaser (Whisker); shipment/delivery; freight, and pricing and excess material.⁴⁴

In fact, the first Term and Condition expressly provides that:

1. These terms and conditions (the “Terms”) govern all sales of goods to Purchaser from Saline Lectronics, Inc. (the selling entity herein after referred to as “Seller”). **No terms and conditions other than these Terms and those included on Seller’s quotation or order acknowledgement shall be binding on Seller unless expressly approved in writing by an authorized officer of Saline Lectronics, Inc. having corporate offices located at 710 N. Maple Rd. Saline, MI 48176.** [emphasis added].

Further, as previously noted “[w]hile the inclusion of a description of the product, price, quantity, and terms of payment may indicate that the price quotation is an offer rather than a mere invitation to negotiate, *the determination of the issue depends primarily upon the intention of the person communicating the quotation as demonstrated by all of the surrounding facts and circumstances.*” *Dyno*, supra (emphasis added). Such a determination, however, cannot be made here, where the Court is tasked with ruling on a (C)(8) motion.

Based on the above, the Court agrees with Saline that the allegations sufficiently allege that the “Quote Letters” were offers, not mere invitations to negotiate. Accordingly, the Court DENIES Whisker’s motion for Summary Disposition under MCR 2.116(C)(8) with regard to Saline’s Breach of Contract count.⁴⁵

⁴⁴ Exhibit 2 attached to the Complaint.

⁴⁵ Whisker also argues that the breach of contract count should be dismissed because Saline admits in paragraph 47 of the Complaint that it did not perform. Paragraph 47 alleges:

In addition, *and alternatively*, Saline’s full performance was made impracticable due to the supply chain crisis and shortage of chip allocations that Saline fought hard to receive. It was not foreseeable that the distributor and manufacture would push out the delivery dates so many times or not have capacity for expedites as long as they did; nor could anyone foresee the magnitude and duration of the supply chain crisis and other world events exacerbating same. (Emphasis added).

Equitable Claims

“The elements of a claim for unjust enrichment are (1) receipt of a benefit by the defendant from the plaintiff, and (2) an inequity resulting to plaintiff from defendant's retention of the benefit.” *Bellevue Ventures, Inc v Morang-Kelly Investment, Inc*, 302 Mich App 59, 64 (2013). “If this is established, the law will imply a contract in order to prevent unjust enrichment.” *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478 (2003) (citation omitted). However, “an implied contract may not be found if there is an express contract between the same parties on the same subject matter.” *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 194 (2006) quoting 42 CJS, Implied and Constructive Contracts, § 34, p. 33.” See also *AFT Mich v Michigan*, 303 Mich App 651, 661 (2014); *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478 (2003).

“The doctrine of promissory estoppel is cautiously applied.” *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 442 (1993). [T]he elements of equitable or promissory estoppel are (1) a promise; (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee; (3) which in fact produced reliance or forbearance of that nature; and (4) in circumstances such that the promise must be enforced if injustice is to be avoided. *Id.*

“In general, parties are permitted to plead inconsistent claims and facts in the alternative.” *AFSCME Council 25 v Faust Pub Library*, 311 Mich App 449, 459 (2015). See also MCR 2.111(A)(2). “Therefore, a breach-of-contract claim and an unjust-enrichment claim may be brought in the **alternative** when there is some question of whether an express contract actually existed.” *Elia Cos, LLC v Univ of Mich Regents*, 335 Mich App 439, 452 (2021), *reversed*

Whisker's argument ignores that paragraph 47 of the Complaint was pled in the alternative, that other paragraphs of the Complaint allege performance by Saline, and that Whisker ratified delays and new dates and asked Saline to hold parts. (Complaint ¶¶ 3, 4, 5, 32, 40-42, 46 and 59). And again, this is a (C)(8) motion

on other grounds, 511 Mich 66 (2023), citing *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 327-328 (2002). (emphasis added). See also *Llewellyn-Jones v Metro Prop. Grp., LLC*, 22 F Supp 3d 760, 793-94 (ED Mich 2014) (citing *Cascade Elec. Co. v Rice*, 70 Mich App 420, 426-27(1976)). “The plaintiff also may bring a breach of contract claim and an unjust enrichment claim in cases where the defendant has ‘kept its options open and may deny the existence of a contract.’” *Id.* (quoting *Terry Barr Sales Agency, Inc. v All-Lock Co., Inc.*, 96 F3d 174, 182 (6th Cir. 1996)).

Whisker asserts that Saline’s Counts II and III should be dismissed because there is a valid contract between the parties and/or because Saline has not sufficiently alleged unjust enrichment or promissory estoppel. Again, this is a (C)(8) motion in lieu of an Answer and the Court is limited to consider only the pleadings. MCR 2.116(G)(5). See MCR 2.110(A) (defining a pleading as either a complaint, a cross-claim, a counterclaim, a third-party complaint, an answer to one of those pleadings, or a reply to an answer.) A motion for summary disposition is not a responsive pleading under MCR 2.110(A). *Huntington Woods v Ajax Paving Industries, Inc. (On Rehearing)*, 179 Mich App 600, 601 (1989); *Village of Dimondale v Grable*, 240 Mich App 553, 565 (2000).

Whisker’s *motion* disputes Saline’s allegations in the Complaint that the “Quote Letters” constitute a contract. Whisker’s *motion* argues that valid contracts exist based on Whisker’s Purchase Orders, which govern the parties’ rights and obligations.⁴⁶ Again, the Court is limited to only consider the pleadings, which consist of only the Complaint that alleges alternative claims. Further, Whisker’s argument establishes a dispute as to what, if any, contract governs the parties’ relationship. Accordingly, because there has been no finding of a clear and definite contract

⁴⁶ Whisker’s MSD Brief, p 17.

between the parties, Defendant's promissory estoppel claim and unjust enrichment/quantum meruit claims need not be dismissed at this time.

The Court further finds that Saline has adequately alleged an unjust enrichment claim. As Saline points out, and contrary to Whisker's arguments, Saline has alleged benefits that were conferred to Whisker: Saline warehoused and held parts for Whisker until all types of boards could be shipped together;⁴⁷ Saline deferred Whisker's payments of tariffs and paid some tariffs for Whisker;⁴⁸ Saline used only Whisker's chip distributor with whom Whisker had registered pricing and was placed on their preferred supplier program so that Whisker would receive expedited allocation;⁴⁹ and Saline also covered a price variance for a variant PCBA it built so Whisker could obtain PCBAs sooner.⁵⁰

The Court further finds that Saline has adequately alleged a promissory estoppel count. Saline alleges that Whisker promised to purchase PCBAs from Saline,⁵¹ including agreeing to new delivery dates for the PCBAs and agreeing to delay dates until chips became available.⁵² The Complaint also alleges that Whisker "urged Saline to continue pushing for raw material as well as holding inventory, continuing to purchase raw materials and components, dedicating resources, production lines, machines, and expediting plans and shipments, as well as other items to accommodate Whisker's PCBAs."⁵³ In addition, the Complaint alleges that Whisker represented that the manufacturer's preferred supplier program would expedite the delivery of chips and approved Saline's recommended alternative, which triggered Whisker to engineer and develop a

⁴⁷ Complaint, ¶¶ 41 and 72.

⁴⁸ Complaint, ¶ 51.

⁴⁹ Complaint, ¶¶ 4, 38.

⁵⁰ Complaint, ¶ 4.

⁵¹ Complaint, ¶ 66.

⁵² Complaint, ¶¶ 41 and 66.

⁵³ Complaint, ¶ 66.

variant board to be used for one of the PCBA part numbers affected by the chip crisis.⁵⁴ “Further, upon the representation that Whisker would continue to require PCBAs, Saline agreed to roll tariff costs into the piece prices for the boards.”⁵⁵

The Complaint further alleges that these promises induced Saline to wait for deliveries, to continue purchasing PCBAs, and to hold inventory.⁵⁶

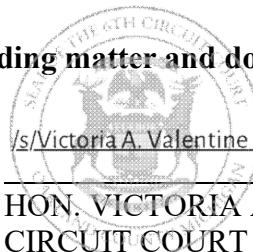
Based on the above, the Court DENIES Whisker’s Motion for Summary Disposition under MCR 2.116(C)(8) as to Counts II and III. The Court finds that the pleadings contain enough factual allegations sufficient to reasonably inform Whisker of the nature of the claims it is called on to defend.” *City of Wayne v Miller*, ___ Mich App ___, ___ (2024). (cleaned up).

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that Whisker’s Motion for Summary Disposition under MCR 2.116(C)(8) is DENIED.

This Order does NOT resolve the last pending matter and does NOT close the case.



HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 10/11/24

⁵⁴ Complaint, ¶ 66.

⁵⁵ Complaint, ¶¶ 51 and 66.

⁵⁶ Complaint, ¶¶ 66-70.