

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Pinnacle Bank v. Alacrity Solutions Group, LLC

Pinnacle Bank · No. 2:25-cv-00774-CKD · Decided November 18, 2025

SUMMARY

The United States District Court for the Eastern District of California granted Alacrity Solutions Group, LLC’s motion to dismiss Pinnacle Bank’s first amended complaint. The court dismissed claims for breach of contract, open book account, and account stated without leave to amend, concluding that Pinnacle Bank had not adequately alleged that Alacrity was obligated to pay the invoices or that Alacrity breached the Member Agreement. The court declined to address the forum-selection clause and directed the Clerk to close the case.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 PINNACLE BANK, No. 2:25-cv-00774-CKD 12 Plaintiff, ORDER
GRANTING DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S FIRST 13 v. AMENDED
COMPLAINT 14 ALACRITY SOLUTIONS GROUP, LLC, (ECF Nos. 23, 25) 15 Defendant. 16
17 18 This matter is before the Court on defendant Alacrity Solutions Group’s motion to dismiss
19 plaintiff Pinnacle Bank’s first amended complaint (“FAC”) for failure to state a claim and 20
improper venue.

(ECF Nos. 23, 25.) The parties have consented to Magistrate Judge jurisdiction 21 to conduct all
proceedings in the case, including the entry of final judgment. (ECF Nos. 7, 14, 22 15.) On
September 17, 2025, the Court held a hearing via Zoom. Attorney Alexandra Rhim 23 attended for
plaintiff and attorneys Christian Wick and Christian Picone attended for defendant.

24 For the reasons set forth below, the Court will grant defendant’s motion to dismiss without
leave 25 to amend. 26 I. Procedural Background 27 Plaintiff initiated this action by filing a
complaint on March 7, 2025. (ECF No. 1.)

On 28 April 2, 2025, the Court granted defendant’s motion for an extension of time to file an
answer. 1 (See ECF Nos. 5, 6.) Defendant filed a motion to dismiss the complaint on May 2, 2025.
(ECF 2 No. 8; see ECF Nos. 18, 19.)

On June 27, 2025, the Court granted defendant’s motion to dismiss 3 with leave to amend. (ECF
No. 21.) On July 28, 2025, plaintiff filed a FAC. On August 11, 2025, 4 defendant filed a motion
to dismiss, which is fully briefed. (ECF Nos. 23, 26, 28; see ECF 5 No. 25.)

The Court held a hearing on defendant's motion to dismiss on September 17, 2025. (ECF 6 No. 30.) The Court ordered supplemental briefing from both parties, ordering plaintiff to address 7 defendant's breach of contract claim and why plaintiff would be entitled to money from 8 defendant based on work third-party Zebra Cleaning Services, Inc. ("Zebra") completed, and 9 ordering defendant to explain the business model between defendant and Zebra.

(ECF No. 31.) 10 Both parties submitted supplemental briefs. (ECF Nos. 32, 33.) 11 II. Allegations in the First Amended Complaint 12 Plaintiff and third-party Zebra entered into a Loan and Security Agreement ("Loan 13 Agreement"), under which plaintiff made revolving loans to Zebra pursuant to the Loan 14 Agreement. (ECF No. 22 ¶¶ 9, 10.) Plaintiff alleges it made these revolving loans on or about 15 February 8, 2023.

(Id.) Zebra granted plaintiff a security interest in "substantially all of its assets" 16 (collateral) to secure obligations due under the Loan Agreement. (Id. ¶ 11.) This collateral 17 includes accounts receivable. (Id.) Plaintiff alleges it perfected its security interest by filing a 18 UCC-1 financing statement with the California Secretary of State. (Id.; see id. at 49.)

19 Plaintiff alleges that defendant owes plaintiff unpaid amounts that are due to "accounts 20 receivable belonging to" Zebra. (Id. ¶ 12.) These accounts are "evidenced by, among other things, 21 invoices issued throughout 2024 (and possibly 2023) by [Zebra] for services and/or product 22 provided to [d]efendant." (Id.) Plaintiff attached the alleged unpaid invoices to the FAC.

(See 23 ECF No. 22 at 55-1492.) The invoices set forth "the parties for whom [Zebra] performed service, 24 the services to be performed, the contract price for work performed, and payment terms." (Id. 25 ¶ 13.) The alleged unpaid invoices equal no less than \$478,061.88. (Id.) 26 Under the Loan Agreement, Zebra assigned the accounts to plaintiff and authorized 27 plaintiff to collect them and notify defendant to remit payments directly to plaintiff.

(Id. ¶ 15.) On 28 July 31, 2024, plaintiff notified defendant that the accounts were assigned to plaintiff pursuant to 1 California Commercial Code section 9607(a)(1), and instructed defendant to make payments to 2 plaintiff directly. (Id.) Plaintiff alleges that pursuant the Loan Agreement documents and section 3 9607, it is entitled to enforce and recover the obligations defendant owes Zebra under the 4 invoices.

(Id. ¶16.) Plaintiff alleges that defendant owes \$805,752.92 plus additional recoverable 5 amounts. (Id.) Plaintiff issued a demand letter to defendant for payment, and defendant has not 6 complied. (Id. ¶ 17.) Plaintiff states that defendant claims it has rights to setoff or credit against 7 the amount owed. (Id.) 8 Plaintiff alleges that Zebra entered into an agreement with defendant, titled the Alacrity 9 Network Membership Agreement ("Member Agreement").

(Id. ¶ 18.) Under this agreement, 10 Zebra performed remediation and contractor services to members of defendant's network. (Id.) 11 The Member Agreement specifies terms relating to

payment to Zebra for its services. (Id.) A copy 12 of this agreement is attached to the FAC. (Id. at 1494-1521.) Plaintiff alleges that “[a]t issue are 13 the unpaid amounts owed under the Invoices by Defendant under the Member Agreement, which 14 amounts were assigned to [plaintiff].” (Id. ¶ 19.)

Plaintiff alleges that Zebra “would issue 15 Invoices for work performed and Defendant was obligated to pay for such work pursuant to the 16 Member Agreement.” (Id. (emphasis omitted).) 17 Plaintiff brings the following claims against defendant: “breach of written agreements 18 (invoices and Member Agreement) enforceable by secured creditor”; “open book account”; and 19 “account stated.”¹ (Id. at 5-6.)

20 III. Legal Standards 21 Dismissal under Rule 12(b)(6) may be warranted for “the lack of a cognizable legal theory 22 or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica* 23 Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

In evaluating whether a complaint states a claim 24 on which relief may be granted, the court accepts as true the allegations in the complaint and 25 construes the allegations in the light most favorable to the plaintiff. *Hishon v. King & Spalding*, 26 467 U.S. 69, 73 (1984); *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). 27 1 Plaintiff states that certain of the claims are brought against “all defendants” and/or “Does 1- 28 20.” (See ECF No. 22 at 5-6.)

However, plaintiff only names one defendant in the complaint. 1 “[R]ecitals of the elements of a cause of action, supported by mere conclusory statements, 2 do not suffice” to state a valid claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A 3 complaint must do more than allege mere “labels and conclusions” or “a formulaic recitation of 4 the elements of a cause of action.” *Bell Atl.*

Corp. v. Twombly, 550 U.S. 544, 555 (2007). To 5 state a valid claim for relief, a plaintiff must allege “enough facts to state a claim to relief that is 6 plausible on its face.” Id. at 570. A claim that is plausible on its face has sufficient factual content 7 to allow a reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 556 8 U.S. at 678.

This plausibility standard “asks for more than a sheer possibility that a defendant has 9 acted unlawfully.” Id. 10 IV. Discussion 11 A. Open Book Account and Account Stated Claims 12 Plaintiff brings claims against defendant for “open book account” and “account stated.” 13 (ECF No. 22 at 6.) Defendant moves to dismiss both claims. (ECF No. 23 at 4-6.)

In opposition, 14 plaintiff states that it is “agreeable to further amending the FAC to dismiss the second and third 15 claims as requested” in defendant’s motion. (ECF No. 26 at 3.) Because plaintiff agrees to 16 dismiss these claims and offers no other argument in support, the Court GRANTS defendant’s 17 motion to dismiss plaintiff’s open book account and account stated claims.

18 B. Breach of Contract Claim 19 Plaintiff brings a breach of contract claim against defendant. (ECF No. 22 at 5.) In 20 opposition to defendant's motion to dismiss the FAC, plaintiff states that the "first claim for 21 breach of contract will remain intact." (ECF No. 26 at 2.)

As defendant notes, plaintiff did not 22 appear to oppose defendant's motion to dismiss the breach of contract claim. (ECF No. 28 at 7.) 23 While defendant's motion is slightly unclear about whether defendant intends to dismiss the 24 breach of contract claim, the conclusion states "[p]laintiff sets forth little more than conclusory 25 allegations which fail to state a cognizable claim upon which relief can be granted in relation to 26 its breach of contract cause of action." (ECF No. 23-1 at 8.)

At the hearing, defendant made clear 27 that it intended to move to dismiss plaintiff's breach of contract claim. Also at the hearing, 28 plaintiff requested leave to file supplemental briefing to oppose defendant's motion to dismiss the 1 breach of contract claim.

The Court granted plaintiff's request. Accordingly, the Court addresses 2 whether plaintiff's breach of contract claim should be dismissed. 3 In plaintiff's supplemental brief, plaintiff argues that it has adequately pled breach of 4 contract. (ECF No. 32 at 4.) Plaintiff states it alleges the existence of the contract based on the 5 Member Agreement and invoices.

(Id.) Plaintiff argues that the Loan Agreement grants plaintiff a 6 security interest in Zebra's accounts, which includes the right to payments from defendant. (Id.) 7 Plaintiff alleges it performed its obligations by making the loan to Zebra, defendant failed to 8 make payments in breach of the Member Agreement, and plaintiff was damaged based on the 9 unpaid amounts.

(Id. at 5.) Plaintiff also argues Zebra performed the work as evidenced by the 10 invoices. (Id.) Plaintiff states that defense counsel acknowledged that amounts were owed but 11 disputed the amount. (Id.) 12 In response, defendant argues that plaintiff fails to state a claim for breach of contract. 13 (ECF No. 33 at 3-4.)

As an initial matter, defendant does not argue that plaintiff cannot enforce 14 the agreements on behalf of Zebra. (See id. at 5.) Therefore, the Court will assume that plaintiff 15 can properly enforce the alleged contracts between Zebra and defendant on behalf of Zebra, and 16 will not address this issue. Defendant argues that a review of the Member Agreement and PAS 17 Addendum established that Zebra did not enter into a contract with defendant for construction 18 services, but that Zebra contracted with the individual policyholders and payment for Zebra's 19 services was the responsibility of Zebra's clients or the insurance carriers.

(Id.) Defense counsel 20 also states that he did not acknowledge that amounts were owed to plaintiff at the hearing. (Id. at 21 6.) 22 1. Legal Standards 23 Under California law, "the elements of a cause of action for breach of contract are (1) the 24 existence of the contract, (2) plaintiff's

performance or excuse for nonperformance, 25 (3) defendant's breach, and (4) the resulting damages to the plaintiff." *Oasis W. Realty, LLC v. 26 Goldman*, 51 Cal. 4th 811, 821 (2011).

The essential elements for a contract are: (1) parties 27 capable of contracting; (2) the parties' consent; (3) a lawful object; and (4) sufficient cause or 28 consideration. *U.S. ex rel. Oliver v. Parsons Co.*, 195 F.3d 457, 462 (9th Cir. 1999) (citing Cal. 1 Civ. Code § 1550). Existence of a contract "may be pleaded either by its terms-set out verbatim in 2 the complaint or a copy of the contract attached to the complaint and incorporated therein by 3 reference-or by its legal effect.

In order to plead a contract by its legal effect, plaintiff must allege 4 the substance of its relevant terms." *Frontier Contracting, Inc. v. Allen Eng'g Contractor, Inc.*, 5 2012 WL 1601659, at *4 (E.D. Cal. May 7, 2012) (quoting *McKell v. Washington Mut., Inc.*, 142 6 Cal. App. 4th 1457, 1489 (2006)). 7 2. Analysis 8 Plaintiff has failed to state a breach of contract claim against defendant.

In the FAC, 9 plaintiff alleges that there is a contract between the parties via the invoices attached to the 10 complaint and the Member Agreement. (ECF No. 22 at ¶ 23.) Plaintiff also alleges that it is 11 entitled to receive payment from defendant on behalf of Zebra based on these contracts pursuant 12 to the Loan Agreement between plaintiff and Zebra. (See *id.* at ¶¶ 15, 16.)

In defendant's 13 supplemental brief, it does not argue that plaintiff does not step into the shoes of Zebra for 14 purposes of the contracts. (See ECF No. 33 at 5.) However, defendant argues that Zebra is unable 15 to obtain payment from defendant, and therefore plaintiff is also unable to obtain payment from 16 defendant. (See *id.*) 17 First, the Court addresses whether plaintiff has pled that a contract exists between the 18 parties.

Plaintiff alleges that Zebra entered into a Member Agreement with defendant where 19 Zebra "performed remediation and contractor services to members of [d]efendant's network." 20 (ECF No. 22 at ¶ 18.) The Member Agreement "specifies terms relating to payment to [Zebra] for 21 its services." (*Id.*) Plaintiff alleges that under the Member Agreement, Zebra would issue invoices 22 for work performed "and [d]efendant was obligated to pay for such work pursuant to the Member 23 Agreement." (*Id.* ¶ 19.)

Plaintiff further alleges that the invoices "constitute valid and binding 24 agreements that inure to [p]laintiff and are enforceable by [p]laintiff." (*Id.* ¶ 23.) 25 Plaintiff has attached the Member Agreement and invoices to the FAC. (ECF No. 22 at 26 55-1521.) Plaintiff has sufficiently alleged that a contract exists between the Zebra and defendant, 27 and because plaintiff steps into the shoes of Zebra, a contract exists between the parties in the 28 form of the Member Agreement.

The Member Agreement is between Zebra and the defendant 1 and was signed by Zebra's president. (*Id.* at 1494, 1506.) Defendant does not contest that the 2 Member Agreement is between Zebra and defendant. 3 However, plaintiff has not sufficiently pled that the invoices alone form a basis for a 4 contract between plaintiff or Zebra and defendant. Plaintiff states in the FAC

that the invoices 5 “constitute valid and binding agreements that inure to Plaintiff and are enforceable by Plaintiff.” 6 (ECF No. 22 at ¶ 23.)

However, the invoices attached to the FAC are between Zebra and third 7 parties. Defendant is not named as a party in any of the documents. Further, plaintiff has not 8 sufficiently pled that defendant is responsible for payment of these invoices based on the Member 9 Agreement. Plaintiff points to no provision in the Member Agreement showing defendant is 10 responsible for paying Zebra, and therefore plaintiff.

11 While plaintiff has alleged that the Member Agreement forms a contract, plaintiff has not 12 sufficiently pled that defendant breached the contract. Plaintiff has not alleged in the FAC that 13 defendant violated a specific provision of the Member Agreement by not paying the invoices. See 14 *Gibralter, LLC v. DMS Flowers, LLC*, 2025 WL 1927525, at *6 (E.D.

Cal. July 14, 2025). 15 Plaintiff states in a conclusory manner that defendant is obligated to pay for work performed 16 pursuant to the Member Agreement. (ECF No. 22 at ¶ 19.) But plaintiff does not describe which 17 provision of the Member Agreement obligates defendant to pay Zebra directly. Plaintiff also 18 alleges that defendant was required to pay Zebra via the invoices issued, however, none of the 19 invoices attached are between Zebra and defendant.

All invoices are between Zebra and third 20 parties. Plaintiff has not sufficiently pled which provision of the Member Agreement entitles 21 Zebra to collect from defendant via the invoices. 22 A review of the Member Agreement reveals that defendant is a platform that connects 23 contractors like Zebra with third parties for work. (See Member Agreement at 1 (ECF No. 22 at 24 1494-1521).)

Further, the Member Agreement appears to state that payment is done directly 25 between the third parties and contractor. (Member Agreement ¶ 18.A (“Contractor [Zebra] 26 understands and agrees that Work Orders do not originate from Network Administrator 27 [defendant] and that Network Administrator is in no way responsible to Contractor for payment 28 for any amounts due for work performed pursuant to a Work Order.

Contractor understands and 1 agrees that the end-customer, typically a Policyholder but sometimes a Client, is the sole party 2 obligated to make payment to Contractor for work performed pursuant to a Work Order.”) 3 Plaintiff has not identified where in the Member Agreement it states that defendant is responsible 4 to pay the contractor directly. Further, plaintiff does not cite to the Member Agreement showing 5 that the invoices are between Zebra and defendant, when the invoices have third parties named.

6 Accordingly, plaintiff has failed to state a claim for breach of contract against defendant, 7 C. Forum Selection Clause 8 In the Court’s June 27, 2025, order granting defendants motion to dismiss the complaint 9 with leave to amend, the Court noted that the Member Agreement, which

was attached to 10 plaintiff's opposition, contained a forum selection clause and choice of law provision titled 11 "Govern Law and Dispute Resolution." (ECF No. 21 at 5 n.2.)

The Court noted that this provision 12 stated that the Member Agreement is governed by the laws of the State of Oregon and a lawsuit 13 would be brought in the State of Oregon, the City of Eugene, or in the United States District 14 Court for the District of Oregon. (Id.) 15 The parties' briefing addressed the forum selection clause provision, but at the hearing 16 both parties agreed that the Rule 12(b)(6) issues should be resolved before determining the 17 validity of the forum selection clause.

Because the Court finds that plaintiff has failed to state a 18 breach of contract claim against defendant, the Court declines to address whether the Member 19 Agreement contains a valid forum selection clause. 20 D. Leave to Amend 21 If the court finds that a complaint or claim should be dismissed for failure to state a claim, 22 the court has discretion to dismiss with or without leave to amend.

See *Davis v. Miranda*, 2020 23 WL 1904784, at *2 (E.D. Cal. Apr. 17, 2020). Leave to amend should be freely granted when 24 justice so requires, Fed. R. Civ. P. 15(a), and if it appears possible that the defects in the 25 complaint could be corrected, see *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en 26 banc; *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.

1995). However, if, after careful 27 consideration, it is clear that a claim cannot be cured by amendment, the court may dismiss 28 without leave to amend. *Cato*, 70 F.3d at 1105-06 (9th Cir. 1995); *Cal. Architectural Bldg. Prod. J || v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1472 (9th Cir. 1987) ("Valid reasons for denying 2 || leave to amend include undue delay, bad faith, prejudice, and futility.").

3 Here, the Court already granted plaintiff leave to amend its complaint. Even upon 4 | amendment, plaintiff was unable to cure the defects in the original complaint. Accordingly, the 5 || Court finds that further amendment would be futile.

The Court grants defendant's motion to 6 || dismiss, and plaintiff's complaint is dismissed without leave to amend. 7 V. Conclusion 8 For the reasons set forth above, IT IS HEREBY ORDERED as follows: 9 1. Defendant Alacrity Solutions Group, LLC's motion to dismiss (ECF Nos. 23, 10 25) is GRANTED; 11 a. Plaintiff's breach of contract open book account, and account stated 12 claims are dismissed without leave to amend; and 13 2.

The Clerk of the Court is directed to close this case. Dated: November 18, 2025 /: ual } /t 4 by lo
ops 15 AMS IC) fle A. * 16 CAROLYN K.DELANEY UNITED STATES MAGISTRATE
JUDGE 17 18 19 || S:pinn.0774.25 20 21 22 23 24 25 26 27 28

