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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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The Armored Group, LLC, a Nevada)
Limited Liability Company,

No. CV 09-414-PHX-NVW

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Plaintiff,

ORDER

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vs.

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Supreme Corporation, a Texas)
Corporation; and Supreme Corporation of
Texas, a Texas Corporation,

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Defendants.

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Defendants Supreme Corporation and Supreme Corporation of Texas (collectively
“Supreme”) move for judgment on the pleadings against Plaintiff The Armored Group,
LLC (“Armored Group”) on Counts One, Two, and Three of Armored Group’s Third
Amended Complaint under Fed. R. Civ. P. 12(c). (Doc. # 103.) For the reasons stated
below, the Court denies Supreme’s motion.

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I. Background

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Armored Group markets and sells armored trucks, armored SUVs, armored vans,
cash in transit vehicles, mobile check cashing and mobile ATM vehicles. Armored Group
alleges that from 2004 to 2006 it contracted with Robert Wilson, President of Supreme
Corporation, to be the exclusive sales representative for all armored vehicle products sold
by it or its sister company, Supreme Corporation of Texas. The written contract (“2004
Written Agreement”) also provided that Armored Group, “shall be entitled to a

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1 Commission on all purchase orders received and accepted by Supreme prior to the
2 termination of the Agreement, regardless of the place of delivery of the products and
3 regardless of whether or not [Armored Group] is directly or indirectly responsible for the
4 sale.” Armored Group alleges that upon expiration of the 2004 Written Agreement on
5 December 31, 2006, it entered into an oral agreement with both companies to continue
6 performing their sales and marketing on a nonexclusive basis. Supreme orally agreed to
7 pay Armored group a 10% commission on (1) the gross sales price of all armored vehicle
8 sales brought to Supreme, and (2) the gross sales price of all armored vehicle products
9 sold to customers under any vendor contract that resulted from Armored Group’s past and
10 future work efforts. Robert Wilson and James Bandy, Vice President of Supreme
11 Corporation of Texas, agreed to these terms in telephone conversations with Armored
12 Group’s CEO, Robert Pazderka, on or about December 31, 2006.

13 Thereafter, Armored Group alleges that it continued to maintain office space and
14 business cards at Supreme Corporation of Texas’s facility and that Supreme in fact paid
15 the agreed upon 10% commissions on new sales. Armored Group also continued working
16 to secure a lucrative vendor contract with the U.S. State Department for Supreme, which
17 it had begun pursuing while the original written agreement was in effect. On or about
18 June 2007, Supreme learned that it was going to be awarded the vendor contract. Before
19 the contract was officially awarded, Robert Wilson allegedly terminated the oral
20 agreement with Armored Group to avoid paying it commissions for securing the vendor
21 contract. Supreme Corporation of Texas has since sold at least \$500,000 worth of
22 armored vehicle products under the vendor contract. Armored Group alleges that
23 Supreme never intended to pay the agreed upon commission for the vendor contract, but
24 orally agreed to do so to induce Armored Group to continue working to close the deal.
25 Based upon these allegations, the Third Amended Complaint asserts in Counts One, Two,
26 and Three that Supreme breached the oral agreement, committed fraud, and has been
27 unjustly enriched.

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1 **III. Motion For Judgment on the Pleadings**

2 **A. Legal Standard**

3 Judgment on the pleadings is properly granted when, taking all allegations in the
4 pleading as true, the moving party is entitled to judgment as a matter of law.
5 *Knappenberger v. City of Phoenix*, 566 F.3d 936, 939 (9th Cir. 2009).

6 **B. Consideration of Material Referenced by the Parties**

7 As a general rule, a district court may not consider materials not originally
8 included in the pleadings in deciding a Rule 12 motion. *See U.S. v. 14.02 Acres of Land*
9 *More or Less in Fresno County*, 547 F.3d 943, 955 (9th Cir. 2008). However, a
10 document not attached to the complaint may be considered if it is referred to in the
11 complaint and the authenticity of the document is not questioned. *Branch v. Tunnell*, 14
12 F.3d 449, 453 (9th Cir. 1994). The Court will consider the email Armored Group
13 attached to its response and the 2004 Written Agreement included in Supreme's Motion
14 for Judgment on the Pleadings because Armored Group refers to the email and to the
15 2004 Written Agreement in the Third Amended Complaint, and there is no dispute over
16 the authenticity of these documents. However, the Court will disregard Armored Group's
17 eight references to deposition testimony because the testimony is extraneous to the
18 complaint and can only be considered if the Court treats Supreme's motion as a motion
19 for summary judgment, which the Court will not do.

20 **C. A.R.S. § 44-1798.01**

21 Supreme argues that Armored Group cannot maintain Counts One and Three of the
22 Third Amended Complaint because A.R.S. § 44-1798.01, which is part of Arizona's sales
23 representative contracts statute, operates as a statute of frauds and renders the oral
24 agreement between Armored Group and Supreme unenforceable. Arizona's sales
25 representative contracts statute applies to "principals" and "sales representatives." A.R.S.
26 § 44-1798. A principal is a person who is in the business of manufacturing or selling
27 products or services, uses a sales representative to solicit orders for the product or service,
28 and compensates the sales representative, at least in part, by commission. *Id.* A sales

1 representative is a person who establishes a business relationship with a principal to
2 solicit orders for products or services and is compensated, at least in part, by commission.
3 *Id.*

4 The statute contains a number of protections for sales representatives. When the
5 agreement between a principal and a sales representative is terminated, the principal must
6 pay all of the commissions due to the sales representative at the time of termination
7 within thirty days after termination, and all of the commissions that become due after the
8 effective date of the termination within fourteen days after they become due. A.R.S. §
9 44-1798.02. A principal who fails to comply with these requirements is liable for three
10 times the amount of the commission owed. *Id.* The prevailing party in an action brought
11 under the statute is entitled to costs and attorneys' fees. *Id.*

12 The statute provides additional protections in that it enables a sales representative
13 to recover his commission if (1) the principal makes a revocable offer and revokes the
14 offer in order to avoid paying the commission, (2) the revocation occurs after the
15 principal has obtained an order for his products through the efforts of the sales
16 representative, and (3) the product is provided to and paid for by the customer. A.R.S. §
17 44-1798.03. A principal who establishes a business relationship with a sales
18 representative to solicit orders in Arizona is considered to be doing business in Arizona
19 for purposes of jurisdiction. *Id.* § 44-1798.04. Any provision in a contract purporting to
20 waive a provision of the statute is considered void. *Id.*

21 When first enacted in 1990, the statute provided that, "at the request of either
22 party," the sales representative and the principal "shall enter into a written contract."
23 A.R.S. § 44-1798.01(A) (1990). It also stated that the principal "shall provide each sales
24 representative with a signed copy of the contract" and "shall obtain a signed receipt for
25 the contract from each sales representative." *Id.* § 44-1798.01(B). Thus, the original
26 statute did not require a written contract. However, in 2006 the statute was amended and
27 now provides: "The sales representative and the principal shall enter into a written
28 contract. The contract shall set forth the method by which the sales representative's

1 commission is to be computed and paid.” A.R.S. § 44-1798.01(A) (2006). The
2 requirement that the principal provide each sales representative with a signed copy of the
3 contract was kept in its original form. *Id.* § 44-1798.01(B). Supreme contends that the
4 amendment created a statute of frauds.

5 “When analyzing statutes, [Arizona courts] apply fundamental principles of
6 statutory construction, the cornerstone of which is the rule that the best and most reliable
7 index of a statute’s meaning is its language and, when the language is clear and
8 unequivocal, it is determinative of the statute’s construction.” *Backus v. State*, 220 Ariz.
9 101, 104, 203 P.3d 499, 502 (2009). However, when a statute is ambiguous, courts may
10 look to principles of statutory construction to interpret the statute. *See State v. Sweet*, 143
11 Ariz. 266, 269, 693 P.2d 921, 924 (1985). “An ambiguity in a statute is not simply that
12 arising from the meaning of particular words, but includes such as may arise in respect to
13 the general scope and meaning of a statute when all its provisions are examined.” *Id.*
14 (internal quotation and citation omitted). An ambiguity may also be present where there
15 is uncertainty as to the meaning of the terms of a statute. *Id.* In some cases, the
16 ambiguity may arise not because certain words or groups of words have more than one
17 meaning, but because the statute does not include necessary words, which causes
18 confusion as to the scope of the statute. *Id.* at 270, 693 P.2d at 925.

19 The language of A.R.S. § 44-1798.01 is not clear and unequivocal. While it is
20 clear that a writing is required, the statute does not specify the consequence of not having
21 a written contract. A statute can sometimes be reasonably construed in more than one
22 way due to an omission. *Sweet*, 143 Ariz. at 270, 693 P.2d at 925. There are a number of
23 possible readings of the writing requirement of A.R.S. § 44-1798.01. One is that either
24 party can sue to require the other to reduce an agreement to writing. Another is that,
25 without a writing, a sales representative cannot invoke the protections and benefits, such
26 as damages in the amount of three times the commission due, of the statute. A third is
27 Supreme’s construction that A.R.S. § 44-1798.01 operates as a statute of frauds. Finally,
28 because A.R.S. § 44-1798.01(B) provides that the principal shall furnish a copy of the

1 agreement to the sales representative, the failure to have a writing may suggest that the
2 principal failed to fulfill a duty created by the statute.

3 “When there is confusion in statutory interpretation, it is necessary . . . to
4 determine the legislative intent for the statute.” *Sweet*, 143 Ariz. at 270, 693 P.2d at 925.
5 When determining the intent of the legislature, it is helpful and proper to turn to the
6 overall purposes and aims of the legislature in enacting the statute in order to glean the
7 legislative intent. *Id.* As Armored Group contends, it is apparent from reading the statute
8 that the legislature enacted A.R.S. § 44-1798 in order to protect sales representatives. The
9 statute requires principals to pay commissions due to sales representatives promptly upon
10 termination of their business relationship. It allows a sales representative who
11 successfully sues under the statute to collect three times the commission due. It also
12 sharply limits the ability of a principal to object to personal jurisdiction. These provisions
13 illustrate that the purpose of the statute is to protect sales representatives.

14 This understanding is confirmed by the legislative history surrounding the passage
15 of S.B. 1501, 39th Leg., 2d Reg. Sess. (Ariz. 1990), the first bill that was later codified as
16 A.R.S. §§ 44-1798–44-1798.05. Courts may look to legislative history to ascertain the
17 intent of the legislature. *See Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz.
18 293, 299, 152 P.3d 490, 496 (2007) (examining committee minutes and senate fact sheet
19 in order to determine legislative intent). The legislature appears to have adopted the
20 statements concerning the bill’s purpose of Tom Taradash, past president of the Arizona
21 Apparel Association. According to the minutes of the Senate Committee on Commerce,
22 Labor, Insurance, and Banking, Tom Taradash testified that the purpose of the bill “was
23 to provide a method for which a commissioned sales representative may receive prompt
24 payments of commissions due him/her upon termination.” Minutes of the Committee on
25 Commerce, Labor, Insurance, and Banking for S.B. 1501, 39th Leg., 2d Reg. Sess. (Ariz.
26 1990). The bill would allow the sales representative to pursue compensation due in
27 Arizona rather than the state in which the company that hired the sales representative was
28 located. *Id.* The concern was that many companies put off paying commissions knowing

1 that it would be too expensive and time consuming for the sales representative to sue in
2 another state. *Id.* The committee ultimately recommended the passage of the bill. *Id.*

3 It also appears that the writing requirement of A.R.S. § 44-1798.01 was intended
4 to protect sales representatives. A.R.S. § 44-1798.01(B) places the onus of providing a
5 writing on the principal: “The principal shall provide each sales representative with a
6 copy of the contract.” If the burden is on the principal, penalizing the sales
7 representative by rendering the agreement unenforceable when the parties do not reduce
8 their agreement to writing would appear to run contrary to the legislature’s intent.

9 The legislative history generated during the passage of the original bill also
10 suggests that the writing requirement protects sales representatives. The bill summary
11 from the Arizona House of Representatives explains that the bill allows either party to the
12 sales representative agreement to request that the contract be in writing. House Summary
13 for S.B. 1501, 39th Leg., 2d Reg. Sess. (Ariz. 1990). And, “[i]f there is a written
14 contract, the principal is required to provide the sales representative with a signed copy of
15 the contract” *Id.* The minutes from the meeting of the House’s Commerce
16 Committee also contain a short discussion in which Representative Goudinoff asked “if a
17 written contract is mandated or an option in the bill” or “if they could foresee any
18 problems where the [principals] would stop using written contracts” in response to the
19 bill. Minutes of the Commerce Committee for S.B. 1501, 39th Leg, 2d Reg. Sess. (Ariz.
20 1990). Mr. Taradash, testifying in support of the bill, responded that a written contract
21 would be an option and that he did not “foresee any problems.” Ms. McCarl, from the
22 Electronic Industries Association, the organization that sponsored the bill, stated that her
23 organization was not “opposed to written contracts” but was opposed to legislation that
24 would mandate contractual terms. *Id.* This exchange suggests that the concern of the
25 committee members who passed the original bill was that principals would resist reducing
26 agreements to writing.

27 There is very little legislative history that touches upon the passage of S.B. 1402,
28 47th Leg. Sec. Reg. Sess. (Ariz. 2006), the bill that amended the statute in 2006. The

1 House Summary only states that the bill “requires the principal and the sales
2 representative to enter into a written contract, rather than at the request of either party.”
3 House Summary for S.B. 1402, 47th Leg. Sec. Reg. Sess. (Ariz. 2006). The Senate Fact
4 Sheet simply states that the amendment “requires the sales representative and the
5 principal to enter into a written contract.” Senate Fact Sheet for S.B. 1402, 47th Leg. Sec.
6 Reg. Sess. (Ariz. 2006). However, in light of the fact that the overall goal of the
7 legislation is to protect sales representatives, and that the option of a writing, at least
8 when the first bill was passed, was probably included to protect sales representatives, it
9 seems highly unlikely that the legislature intended, by adding the writing requirement in
10 2006, to fashion a statute of frauds, which, in effect, would prevent sales representatives
11 from recovering unless there is a writing. In fact, it is clear that the legislature, at least
12 initially, did not intend to create a statute of frauds, since having a writing was optional in
13 the original statute. At a minimum, such a significant change would likely have
14 generated some discussion. However, there is nothing to suggest that the legislature
15 contemplated that A.R.S. § 44-1798.01 would operate as a statute of frauds.

16 If the legislature intended A.R.S. § 44-1798.01 to be a statute of frauds, it could
17 have explicitly said so. *See Lee v. State*, 218 Ariz. 235, 236-38, 182 P.3d 1169, 1170-72
18 (2008) (declining to abrogate long-held understanding of mail delivery rule in light that
19 statute requiring that claimant “file” a notice of claim did not speak to the proof required
20 to show delivery and the legislature could have, but did not, specify what sort of delivery
21 constituted a filing). A.R.S. § 44-101, which is Arizona’s general statute of frauds, is
22 titled “Statute of Frauds” and explicitly states that, “no action shall be brought in any
23 court in the following [nine] cases unless the promise or agreement upon which the action
24 is brought, or some memorandum thereof, is in writing and signed by the party to be
25 charged” In contrast, there is no language whatsoever in A.R.S. § 44-1798.01 that
26 even suggests that the consequence of not having a written contract is that “no action”
27 may be brought in court.
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1 In addition, a written contract is not necessarily required to satisfy a statute of
2 frauds. As A.R.S. § 44-101 explains, even “some memorandum” of the agreement
3 between the parties may suffice to take the agreement out of the statute. *See Custis v.*
4 *Valley Nat’l Bank*, 92 Ariz. 202, 205, 375 P.2d 558, 561 (1962) (“A memorandum
5 sufficient to satisfy the requirements of the Statute of Frauds need not be a writing
6 intended by the parties to be the integration of their agreement. It may be an informal
7 writing, such as a letter, and may be addressed to a third party”) (internal quotations
8 and citations omitted). The agreement or memorandum must also be signed by the party
9 to be charged. A.R.S. § 44-101; RESTATEMENT (SECOND) OF CONTRACTS § 131 (1981).
10 Had the legislature intended A.R.S. § 44-1798.01 to be a statute of frauds, it is reasonable
11 to expect that it would have specified that “some memorandum” of the agreement
12 sufficed, and that the writing had to be signed by the party to be charged. However, there
13 is no language to that effect in A.R.S. § 44-1798.01.

14 The sales representative contracts statute gives sales representatives a number of
15 generous benefits and protections. If Supreme’s construction were adopted, sales
16 representatives laboring under oral agreements would be deprived of not only the
17 additional benefits created by the statute, but also of a run-of-the-mill action in contract,
18 even though the provision at issue contains none of the terminology that is typically
19 associated with statutes of frauds, does not specify any consequences for failing to have a
20 writing, was not initially intended as a statute of frauds, and even though the purpose of
21 the statute is to protect sales representatives. This cannot be what the legislature intended
22 in amending A.R.S. § 44-1798.01 to require a writing.

23 For these reasons, the Court finds that A.R.S. § 44-1798.01 does not operate as a
24 statute of frauds. Therefore, Supreme’s contention that Counts One and Three must be
25 dismissed for failure to comply with the writing requirement of A.R.S. § 44-1798.01 fails.

26 **D. Unjust Enrichment**

27 Supreme contends that Armored Group may not pursue its unjust enrichment claim
28 because unjust enrichment is not a remedy that is legally available to a contracting party.

1 It argues that under the 2004 Written Agreement, Armored Group was not entitled to
2 commissions on any orders received by Supreme after December 31, 2006. According to
3 Supreme, it therefore follows that Armored Group is entitled to commissions after
4 December 31, 2006, only if required by a subsequent contract between the parties, such as
5 the alleged oral agreement. But if the parties entered into a contract, as Armored Group
6 alleges, then the terms of that contract, and not an unjust enrichment theory, control
7 Armored Group's right to recovery.

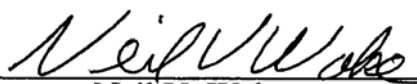
8 Supreme's contention misses the mark. The 2004 Written Agreement states,
9 "After the termination of this Agreement for any reason whatsoever, [Armored Group]
10 shall be entitled to a Commission on all purchase orders received and accepted by
11 Supreme prior to the termination of the Agreement, regardless of the place of delivery of
12 the Products and regardless of whether or not [Armored Group] is directly or indirectly
13 responsible for the sale." That provision, Supreme contends, disallows Armored Group's
14 claimed commissions on purchase orders not "received and accepted by Supreme prior to
15 the termination of the Agreement." However, that provision does not state that Armored
16 Group will not receive commissions on sales procured by Armored Group after the
17 termination of the 2004 Written Agreement. Without deciding the issue, the contract
18 appears to be silent as to what would happen in those circumstances, perhaps because the
19 parties assumed that if Supreme terminated the contract, Armored Group would no longer
20 continue to procure sales on Supreme's behalf. Armored Group's Third Amended
21 Complaint, while not crystal clear, fairly alleges that Supreme's contract with the State
22 Department was the result, at least in part, of efforts undertaken by Armored Group after
23 the expiration of the 2004 Written Agreement. The Third Amended Complaint therefore
24 can be fairly read to state that either the oral agreement governs; or, if the oral agreement
25 is unenforceable, as Supreme contends, then Armored Group is entitled to restitution
26 under an unjust enrichment theory.

27 *Trustmark Insurance Co. v. Bank One, Arizona, NA*, 202 Ariz. 535, 541, 48 P.3d
28 485, 491 (Ct. App. 2002), is inapposite because Armored Group is not trying to "avoid

1 possible contractual limitations on its recovery by resorting to an unjust enrichment cause
2 of action.” Instead, Armored Group seeks to recover either under the oral agreement or
3 pursuant to an unjust enrichment theory. A person is unjustly enriched if he has received
4 a benefit and retention of the benefit would be unjust. RESTATEMENT OF RESTITUTION §
5 1 cmt. a (1937). If a person performs work, renders services, or expends money under an
6 agreement which is unenforceable, but not illegal, he may recover in quantum meruit for
7 the value of the services and expenses reasonably incurred in good faith. *Ruck Corp. v.*
8 *Woudenberg*, 125 Ariz. 519, 522, 611 P.2d 106, 109 (Ct. App. 1980). In fact, where an
9 express contract is pleaded, it has been held unnecessary to plead a claim in quantum
10 meruit or in quasi-contract, even though the latter is the only available basis of recovery.¹
11 *Trollope v. Koerner*, 106 Ariz. 10, 19, 470 P.2d 91, 100 (1970). Rule 8(d) of the Federal
12 Rules of Civil Procedure provides that a party may state as many separate claims or
13 defenses as it has, regardless of consistency. Fed. R. Civ. P. 8(d). Armored Group may
14 therefore plead breach of contract and unjust enrichment as alternate theories.

15 IT IS THEREFORE ORDERED that Supreme’s Motion for Judgment on the
16 Pleadings (doc. # 103) is denied.

17 DATED this 23rd day of June, 2010.

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20 _____
Neil V. Wake
United States District Judge

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22 ¹ Restitution began as a remedy to enforce contractual rights which could not be
23 enforced in common law courts due to lack of formality of the contract. *Murdock-Bryant*
24 *Constr. v. Pearson*, 146 Ariz. 48, 52, 703 P.2d 1197, 1201 (1985). *Quantum meruit* was a
25 common law action which allowed recovery where the plaintiff had performed services for
26 the defendant, whether the services were provided at the defendant’s request, or under a
27 theory of implied-in-fact contract, or without the defendant’s request but benefitting him in
28 some way. *Id.* at 52-23, 703 P.2d at 1201-02. This concept had as its central core the
principle against unjust enrichment, and it has been adopted by the American Law Institute,
which has stated: “A person who has been unjustly enriched at the expense of another is
required to make restitution to the other.” *Id.* at 53, 703 P.2d at 1202 (quoting RESTATEMENT
OF RESTITUTION § 1). These concepts are also a part of Arizona jurisprudence. *Id.*