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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF ALAMEDA**

10 KIMBERLY BRYANT, an individual,

11 Plaintiff,

12 v.

13 BLACK GIRLS CODE, a California Non-  
14 Profit Public Benefit Corporation; HEATHER  
HILES, an individual; STACY BROWN-  
15 PHILPOT, an individual; SHERMAN  
WHITES, an individual; and DOES 1-50,  
16 Inclusive,

17 Defendants.

Case No. 22CV005512

**DECLARATION OF DR. SYLVIA WILSON-  
THOMAS IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANTS' SPECIAL  
MOTIONS TO STRIKE PURSUANT TO  
CAL. CIV. PROC. CODE § 425.16**

Date: October 21, 2022  
Time: 2:00 p.m.  
Dept.: 514  
Judge: Hon. Noël Wise

Complaint Filed: June 7, 2021  
Trial Date: None Set

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1                                  DECLARATION OF DR. SYLVIA WILSON THOMAS

2                                  I, DR. SYLVIA WILSON THOMAS, hereby declare and state:

3                                  1.        I am an engineering professional with over 30 years of experience within industry,  
4 academia, and non-profit organizations. I have a Bachelor of Engineering degree from Vanderbilt  
5 University in Electrical Engineering. I also have a master's degree in Electrical Engineering from  
6 Vanderbilt University, and a Ph.D. in Electrical Engineering from Howard University. I have been  
7 engaged with and active as a member of the Board of Directors of the nonprofit organization, Black  
8 Girls CODE ("BGC"), since 2016 when I joined the *ad hoc* Board before the formal Board was  
9 elected. Both myself and Stacy Brown-Philpot served as *ad hoc* Board members along with Founder  
10 and CEO Kimberly Bryant. This ad hoc Board served at the pleasure of Ms. Bryant until 2018 when  
11 we collectively recruited, vetted, and elected the initial formal Board for Black Girls CODE, of  
12 which I was elected to serve as the Secretary, Ms. Bryant was elected as Board President, and Stacy  
13 Brown-Philpot was elected as the inaugural Board Chair.

14                                 2.        I provide this declaration in support of Plaintiff Kimberly Bryant's four discrete anti-  
15 SLAPP motions filed by Defendants BGC, Inc. ("BGC"), Heather Hiles, Stacy Brown Philpot, and  
16 Sherman Whites in (a) the action entitled *Kimberly Bryant v. Black Girls Code, et al.*, Case No.  
17 22CV005512; and (b) the action entitled *Kimberly Bryant v. Black Girls Code, et al.*, Case No.  
18 22CV005517. For purposes of judicial economy, I intend to file this declaration in support of Ms.  
19 Bryant's opposition to each discrete anti-SLAPP motion rather than preparing four separate  
20 declarations specific to each motion.

22                                 3.        This declaration is not intended to be, and should not be construed to be, a waiver of  
23 any attorney-client privilege or attorney work product doctrine. I do not intend to waive my attorney  
24 client privilege by providing this declaration.

25                                  PROCEDURAL HISTORY

26                                 4.        Since joining the Board, I have been actively involved in the organization as Board  
27 Officer, executive committee member, finance and audit committee member, and as an advisor on  
28 various committees, for example; executive staff recruitment initiatives, strategic plan core team,

1 etc. My understanding (and that of the other elected Board members) is that the Board of Directors  
2 for BGC is to act as an advisory Board and governing Board, not an operational Board. The Board  
3 worked closely with several external Board consultants in 2018 and 2019 to facilitate this alignment  
4 on the Board's mission and to drive alignment on Board responsibilities versus those of the  
5 organization and CEO. Specifically, the Board Member Agreement that I signed in 2018 along with  
6 my fellow elected Board members described my role as follows: "As a Board member of Black Girls  
7 CODE, I will serve a two-year term wherein I will have the opportunity and the obligation to help  
8 establish strategic direction, monitor organizational impact, approve material business decisions,  
9 evaluate the Executive Director, and serve as a brand ambassador in support of the organization's  
10 stated mission. I commit to fulfilling these obligations with my time, talent, financial resources, and  
11 relationships."

12 5. All of the Members of the Board of Directors are non-paid volunteers, and we were  
13 to provide guidance, advice, and direction to the CEO of BGC, who until her improper dismissal was  
14 Kimberly Bryant. Our Board of Directors is not an operational Board. We are not responsible for  
15 running the organization although members of the ad hoc "special committee" and interim Board  
16 Chair Heather Hiles have been deeply involved in organizational operating decisions since Ms.  
17 Bryant was suspended on December 21, 2021. Since 2018 we have typically held no more than four  
18 (4) Board meetings in a year. Two standing Board meetings (one in spring and one in the fall), and  
19 two *ad hoc* Board meetings to approve annual budgets, review organizational strategy, etc.

20 6. As noted above, prior to our first Board election in 2018 I, myself, and my other ad  
21 hoc Board member Stacy Brown-Philpot, worked with CEO Kimberly Bryant to recruit and add  
22 additional members to the Board of Directors: (1) Heather Hiles, (2) Sherman Whites, (3) Sebastian  
23 Taveau, and (4) Robert Simmons. In 2020, Dr. Stephanie Adams was recruited and elected as a  
24 Board Member serving as the Board Chair from about September 2020 until September 2021. Dr.  
25 Stephanie Adams resigned from the Board on September 22, 2021 due to work commitments via a  
26 memo directed to the entire Board. (see attached exhibit)

27 7. When the pandemic escalated in March 2020, the BGC staff moved their teams to  
28 remote work as did many other companies and organizations in the U.S. and abroad. During this

1 time period the CEO Kimberly Bryant developed work processes to support her then small team's  
2 operations in this new working environment and transitioned program operations to a virtual format  
3 to allow the organization to continue to serve the students and families which it had supported with  
4 a variety of technical coursework for the previous eight years. After a racially charged summer in  
5 2020, BGC experienced a large influx of donations, and their staff increased from just 8 FTEs at the  
6 beginning of the pandemic in March 2020 to approximately 20 FTEs by the end of that same  
7 calendar year.

8       8.     Additionally, by the end of 2020, BGC saw its net revenues grow \$2M in donated  
9 funds to slightly over \$35M by December 2020. By the middle of 2021, BGC had approximately  
10 \$40M in net revenues and was experiencing a 150% increase in gross revenues to their 2021 budget  
11 projections.

12       9.     Prior to the middle of 2021, current Interim Board Chair, Heather Hiles was a  
13 disengaged and disinterested general Board member. Ms. Hiles was not an active a Board officer,  
14 nor did they serve or participate in any standing Board or organizational committees. In the late  
15 spring of 2021, they volunteered to assume the role of Board treasurer which had been left open  
16 after the transition from this Board position by another member who resigned from the Board in  
17 early 2020. When Ms. Hiles was elected to this position during our Board meeting on June 29-30,  
18 2021, it was understood that this would be a temporary role until the Board could recruit additional  
19 qualified members to fill this and other open positions since Ms. Hiles had for the previous 3 years  
20 of their Board tenure been inactive and disinterested in actively engaging at this level. I was  
21 surprised at her sudden interest in an executive role. Their newfound interest appeared to be driven  
22 most acutely by an increase in BGC revenues which had grown from \$3M-\$4M annually to \$40M  
23 by the end of 2021. Once Ms. Hiles assumed this new responsibility as a Board officer, their conflicts  
24 with Ms. Bryant became more vocal and aggressive.

25       10.    The first conflict between Ms. Bryant and Ms. Hiles in June, 2021 during an  
26 emergency Board meeting called by Ms. Bryant to discuss personnel issues which had emerged  
27 within the organization. Two (2) BGC employees resigned effective July 9, 2021 per their  
28 correspondence, from the organization and subsequently sent copies of their resignation letters to

1 all members of the Board of Directors along with members of BGC's senior staff. Some of the  
2 content of these letters included a negative indictment of Ms. Bryant's management style amongst  
3 other concerns regarding organizational culture. I am unsure how these staff members received the  
4 direct email addresses of myself and other Board members as it had not been our practice over the  
5 past four (4) years to engage directly with any staff other than the CEO, Ms. Bryant. A few of the  
6 staff who forwarded these resignations letters were unknown to me personally as I had not interfaced  
7 with them previously in my role as a Board member. Heather Hiles took it upon herself, without  
8 notifying the rest of the Board, to speak directly with the resigning employees prior to the emergency  
9 Board meeting convened by Ms. Bryant. Ms. Hiles admitted to speaking with these staff members  
10 without authority or approval from the June 29-30, 2021 Board Meeting to the surprise of myself  
11 and the other Board members who reprimanded Ms. Hiles for acting out of order. It was during this  
12 June 29-30, 2021, Board meeting that Ms. Bryant discussed culture work was urgent in CEO  
13 remarks. As Ms. Hiles shared very vague details about their conversations with these employees,  
14 they also berated Ms. Bryant and was asked by then Board Chair, Dr. Stephanie Adams, to refrain  
15 from the personal attacks of Board members and to let Ms. Bryant speak. There was no contact  
16 with this staff, who appeared to be disgruntled, at this time by any Board member other than Heather  
17 Hiles. Ms. Hiles indicated during this meeting that these staff members had "lots to say", but Ms.  
18 Hiles did not share the nature or content of those unauthorized conversations with any of the other  
19 members of the Board at that time. I am still unaware of the nature of those conversations. Ms.  
20 Bryant addressed the concerns brought forward by the staff and shared a plan to address the  
21 organizational issues by bringing in a cultural strategist to work with staff and complete a culture  
22 survey, hiring a Chief Growth Officer to compensate for the executive leadership gaps on the team,  
23 and continuing to engage an organizational development consultant to coach and mentor senior  
24 management staff.

25       11. Initially, the Board discussed sending a letter to all BGC employees about the work  
26 environment. After consulting with then Board Chair, Dr. Stephanie Adams, Ms. Bryant decided to  
27 move forward with her plans to address the workplace issues by extending the senior staff work  
28 with the organizational development consultant and hiring cultural consultant, Karla Monterroso, in

1 September, 2021, to complete a scope of work including a culture survey for the entire organization.  
2 Despite the protests of some Board members such as Ms. Hiles, Mr. Whites, and Ms. Brown-Philpot,  
3 Ms. Bryant believed that the organizational leadership team should address the internal cultural  
4 challenges and that this approach, which also included conducting a compensation study and  
5 collaborating with the organizational development consultants, would help resolve the issues  
6 expressed by the employees who had left the organization, and help address some of the issues BGC  
7 was experiencing as a result of dealing with a large multi-generational staff while trying to navigate  
8 operating in a new, novel fully-remote, work environment. In the December 20, 2021, board meeting  
9 Ms. Bryant attempted to review the interim results of the cultural survey work completed by Karla  
10 Monterosso with the board of directors yet several members seemed disinterested or disengaged  
11 with this organizational work. In fact Ms. Brown-Philpot asked Ms. Bryant if we could skip this  
12 review or hurry through it since it “was not on the agenda”.

13       12. We did discuss as a Board some of the job performance of some of the resigning  
14 employees when trying to figure out how to handle the complaints. The organization experienced  
15 hypergrowth over the past two (2) years since 2020, and that growth was a challenge to manage  
16 during the ongoing pandemic. BGC went from having eight (8) employees who physically worked  
17 at the BGC offices in Oakland, California and in New York City at the beginning of 2020, to the  
18 organization having about twenty (20) employees who worked remotely. Then, there was the  
19 additional challenge of switching to a hybrid remote work model in 2021. Ms. Bryant advocated for  
20 employees to physically work in the office some days during the week and work from home on  
21 other days.

22       13. When Dr. Adams resigned as the Chair of the Board of Directors because the  
23 volunteer work as a Board Director of BGC was becoming too time-consuming, and she needed to  
24 focus her time on her new job , the role of Board Chair remained vacant untilSeptember 28-29, ,  
25 2021 when a memo was sent to Ms. Bryant from Board Member, Sherman Whites, demanding  
26 information regarding our Board liability insurance and nominating then Interim Board Treasurer,  
27 Heather Hiles, to also fill the vacant role of Board Chair. Board Member Stacy Brown-Philpot  
28 nominated Heather Hiles to the Board Chair role via a series of email messages which traveled

1 between members of the Board. The nomination was subsequently seconded by Board member,  
2 Sherman Whites, and several other Board members, excluding me, until Ms. Bryant objected to  
3 holding a Board vote via email, pointing to the procedures outlined in BGC organizational By-Laws  
4 which requires a unanimous consent to Board actions in absentia/via email. Ms. Bryant also  
5 reemphasized her concern about the culture and her desire to address this issue in this email chain.  
6 As a result of Ms. Bryant's objection to electing Ms. Hiles to the role of Board Chair via email, an  
7 emergency Board meeting was scheduled on (October 5, 2021 and was recorded) to hold this Board  
8 election. During this meeting, Ms. Bryant objected to Heather Hiles' nomination to Board Chair for  
9 a number of reasons, including possible conflicts-of-interest based upon Ms. Hiles' involvement  
10 with a venture capital firm, and her then potential dual-role as Treasurer and Interim Board Chair,  
11 which is in violation of our BGC By-Laws. Ms. Bryant sent a memo to the members of the Board  
12 of Directors memorializing the reasons for her objections to Heather Hiles' becoming the Chair of  
13 the Board; however, when the vote came, only Ms. Bryant and myself declined to vote for Ms. Hiles  
14 as the Interim Chair.

15       14.     As a result of this Board action, Ms. Hiles began to hold simultaneous dual roles of  
16 both Interim Board Chair and Board Treasurer in blatant violation of our BGC By-Laws. Ms. Bryant  
17 also requested that the Board bring in a Board consultant to help us resolve our issues which all  
18 Board members voted against with the exception of myself and Ms. Bryant, which was also  
19 surprisingly disappointing to me given our obvious difficulties following proper Board protocol and  
20 the practices outlined in our own BGC By-Laws.

21       15.     Immediately, during the September, 2021 Board Meeting, Heather Hiles suggested  
22 that an investigation be conducted on the workplace concerns and directed Ms. Bryant to approve a  
23 payment of \$10,000 to retain DLA Piper to assist the board in a subsequent email.

24       16.     On October 11, 2021, the Board of Directors had another general Board meeting.  
25 Ms. Bryant was not present, and I do not believe that she was invited at all. To my knowledge this  
26 board meeting was not categorized as an executive session so I was unsure why Ms. Bryant as an  
27 acting board member had not been asked to attend as required by BGC board bylaws. In addition to  
28 Ms. Hiles, Ms. Brown-Philpot, Mr. Whites, Mr. Taveau, and Dr. Simmons were present. Attorney

1 Holly Lake was also present at that general Board meeting. The meeting was recorded by Heather  
2 Hiles.

3       17. Throughout that October 11<sup>th</sup> meeting, Ms. Hiles referred to Ms. Bryant as the  
4 “Interested Party”. Immediately at the top of the meeting, Heather expressed that it came to her  
5 attention that information was shared with the Interested Party from the last Board meeting. I am  
6 not exactly sure what Ms. Hiles was talking about as she was very vague as much of the  
7 communication from the Board has been with me since Ms. Hiles took office.

8       18. Ms. Hiles said that she wanted to “remind folks” that *any video, audio, or even*  
9 *written recordings, required the consent of all parties, and if anyone is recording the meeting via*  
10 *audio or video, and it is shared publicly, then they may be subject to “monetary and civil liability,*  
11 *and/or criminal penalty including fines and imprisonment”!* I was very shocked by this statement,  
12 but everyone else seemed unbothered by what Ms. Hiles was saying as if they knew what she was  
13 going to say before she said it. From the way the meeting was going, it seemed like everyone had  
14 knowledge about the details of this meeting before the meeting started; everyone, but me.

15       19. Ms. Hiles went on to say that a Special Committee of three (3) people was going to  
16 be selected at that October 11<sup>th</sup> meeting. She literally said, “to handle the day-to-day matters” of  
17 BGC and to report back to the Board *on a regular basis*. Ms. Hiles said that the Special Committee  
18 would be looking into the employment matters and HR matters that have come to Board’s attention.  
19 Ms. Hiles also said that the Special Committee will develop an attorney-client relationship with  
20 whatever attorney gets engaged (even though Attorney Lake was at the meeting), and that it would  
21 be pivotal for this Special Committee to respect the nature of this attorney-client relationship. Ms.  
22 Hiles then reiterated the threat that she made at the beginning of the hearing by saying that breach  
23 of the attorney-client privilege could result in “civil liability by the organization against the party  
24 that reaches the relationship.”

25       20. At this point, I felt threatened by Ms. Hiles at this meeting, and I became afraid to  
26 talk to Ms. Bryant directly about anything. I volunteered to serve on the Board of BGC to advise  
27 Ms. Bryant as CEO of BGC, and to help the organization grow, not to become Ms. Bryant’s  
28 adversary.

1           21. Then, at this October 11<sup>th</sup> meeting, Ms. Hiles went on to accept nominations for the  
2 three (3) people that should be on the Special Committee. Sherman Whites nominated Ms. Brown-  
3 Philpot. Mr. Whites seemed to be laughing, and Ms. Hiles was chuckling, too. Ms. Philpot-Brown  
4 was laughing, too. It was like a big joke to them, but I did not think anything was funny.

5           22. Mr. Simmons seconded Mr. Whites' nomination of Ms. Brown-Philpot. Then, Ms.  
6 Hiles called for a vote for Ms. Brown-Philpot as the Chair of the Special Committee. I abstained  
7 from voting.

8           23. Then, Ms. Brown-Philpot nominated Mr. Whites to be a member of the Special  
9 Committee, and she was laughing while doing so. Even though Mr. Whites' nomination was not  
10 seconded, Ms. Hiles called for a vote. I abstained from voting again. Then, Ms. Brown-Philpot  
11 nominated Ms. Hiles to be on the Special Committee. I abstained from voting to add Ms. Hiles on  
12 the Special Committee.

13           24. Ms. Hiles then said that the Special Committee would look into issues articulated by  
14 former employees who resigned from BGC. The Special Committee would hire an attorney and  
15 could hire an investigator. There was no discussion about any of this. Ms. Hiles just made these  
16 announcements like proclamations. Ms. Hiles then said that the Special Committee will keep the  
17 full executive committee *absent the Interested Party* apprised of their activities. Ms. Brown-Philpot  
18 then said that they could also engage a mediator. Then, Ms. Hiles said the next step would be for  
19 the Special Committee to meet to determine which attorney to hire, but they ended up hiring  
20 Attorney Lake, who was at our meeting. At this point, this selection process and entire meeting  
21 seemed rehearsed to me. There was no discussion about how the Special Committee would work,  
22 when they would work, what would they do, or anything. Just announcements from Ms. Hiles and  
23 Ms. Brown-Philpot, and I seemed to be the only one in the dark about all of it. As a Board Member  
24 of BGC, I was disheartened by this process at this October 11<sup>th</sup> meeting because it seemed out of  
25 order.

26           25. We had a regularly scheduled Board Meeting on December 20, 2021. The full Board  
27 was present at that meeting and we discussed the results of a recently completed audit as well as  
28 plans for January. Nothing was mentioned at all at the Board Meeting about the Special Committee,

1 or about having another Executive Session Meeting *without the Interested Party*. The Special  
2 Committee never reported back to the Board as Ms. Hiles said during October 11<sup>th</sup>, and everything  
3 seemed normal.

4       26.     In the early evening of December 21, 2021, I learned from a phone call around 7:00  
5 p.m. that Ms. Bryant had been suspended from acting as the CEO of BGC. *As a Member of the*  
6 *Board of Directors of BGC, I was shocked!* We just had a meeting the day before and no one said  
7 anything. As a Board Member of BGC, to this day, I still have no idea why this decision was made,  
8 and specifically why on December 21, 2021, who made the decision, why the Special Committee  
9 did not make a report to the full Board of Directors as Ms. Hiles Stated at the October 11<sup>th</sup> meeting,  
10 what were the results of any investigator, what happened, etc. I was outraged by this decision which  
11 seemed extremely reckless, improper, and ill-advised.

12       27.     On October 11, 2021, when we had our meeting without Ms. Bryant about forming  
13 the Special Committee to start, what I thought was going to be an independent investigation, two  
14 (2) things were said. First, no action would be taken without bringing the matter to the entire board,  
15 and second, Ms. Brown-Philpot mentioned that we could engage a mediator. Neither of these actions  
16 were utilized in this case. As a governing Board, it seemed to me that the Special Committee was  
17 overstepping the role as a Board to advise the Executive Director and CEO. Instead, the Special  
18 Committee was acting as if the Board was charged with the obligation of running BGC, and that  
19 was not our role at all. Then, why did we not seek to utilize a mediator before the face of BGC was  
20 suspended? I do not want to be personally held accountable for the actions of the Special Committee  
21 where they seem to be abusing their power.

22       28.     Following Ms. Bryant's public announcement of this outlandish action by the Special  
23 Committee on Twitter, I also learned from an associate that two public statements were made to  
24 media outlets by Stacy Brown-Philpot and Heather Hiles also without informing or receiving  
25 approval from other Board members. Someone from the Special Committee gave a comment to  
26 *Business Insider* that Ms. Bryant was under investigation for "serious allegations of workplace  
27 impropriety." This statement was a shock to me not only because the Special Committee had acted  
28 without *conferring* with the rest of the Board and without approval or permission to speak on behalf

1 of the Board or organization publicly, but also most importantly because to my knowledge and  
2 understanding, there has never been any indication of ANY serious misconduct of workplace  
3 impropriety on behalf of then CEO Ms. Bryant. As mentioned above, during the October 11, 2021  
4 special Board meeting Ms. Hiles stated an intent to bring on board a special and impartial  
5 investigator to explore the organizational personnel issues. There was not then, nor had there ever  
6 been any indication or inference of any serious impropriety or misconduct against Ms. Bryant during  
7 my time as a Board member.

8       29.     Because I had been at work all day, I decided to check my personal e-mail. There  
9 was an e-mail from Ms. Hiles which was sent to my e-mail at 4:50 p.m. PST (7:50 p.m. EST) with  
10 the subject line, "FYI". The e-mail read as follows: "Fellow Board Members, This email is to advise  
11 you that as of today, December 21, 2021, Sofia Mohammed has been named Interim Executive  
12 Director/CEO of Black Girls Code. Should you have any questions, please do not hesitate to reach  
13 out. Thank you, Heather". That e-mail from Ms. Hiles was all the notice that I received as a Board  
14 member of BGC, and it was *after* the decision to suspend Ms. Bryant was made. I further wondered  
15 how was it that Sofia Mohammed, who had been an employee with BGC *less than ninety (90) days*,  
16 was selected as the interim Executive Director/CEO of BGC when there were other employees on  
17 the BGC Executive Team that had much more experience than Ms. Mohammed, who has a  
18 background in education.

19       30.     In response to this e-mail from Ms. Hiles and these outrageous revelations, I sent an  
20 e-mail to the entire Board of Directors letting them know that this decision, which I did not know  
21 about, was absurd and as a Board Member, not only did I not vote for this action, but I was not even  
22 informed before this decision was made. I further stated that I did not provide permission to conduct  
23 this action on my behalf, and I demanded an explanation. Specifically, I asked how was this decision  
24 reached, when was the vote taken and was there a majority vote? I also asked if there a written  
25 resolution that I can have a copy of for my records because I believed that this action reflected badly  
26 on the entire BGC Board of Directors.

27       31.     The other two (2) Board members who were not on the Special Committee, Dr.  
28 Simmons, and Mr. Taveau, again, just like at the October 11<sup>th</sup> meeting, seemed unsurprised by the

1 suspension of Ms. Bryant, and pointed to a Glassdoor review by a former employee who resigned  
2 from BGC. Simply because Ms. Bryant was an extraordinarily strong leader, that did not rise to the  
3 level of suspending her, days before Christmas, without an explanation. I replied to their e-mails  
4 telling them not to mention my name in their accusations because I was not a part of their decision  
5 to treat Ms. Bryant so unfairly.

6       32. Because of my outrage, Ms. Brown-Philpot telephoned me in an effort to explain  
7 how we could give BGC employees a statement so that the decision to suspend the CEO and Founder  
8 of BGC, without notice, days before Christmas, would not reflect poorly on *us* individually.

9       33. After our phone call, Ms. Brown-Philpot sent me an e-mail with the statement that  
10 we could use if questions about why the Board of Directors took such a drastic action at such an ill-  
11 advised time.

12       34. The statement was almost like a script. Ms. Brown-Philpot's e-mail read as follows:  
13 "Hi Sylvia, Thank you for taking my call today. As discussed, below is a written statement that you  
14 are free to share with your employer. 'We are deeply grateful for the contributions of Kimberly  
15 Bryant to Black Girls Code. Ms. Bryant remains on staff and the Board of Directors is committed  
16 to the long-term health, stability, and viability of this organization. On behalf of the young women  
17 we are honored to serve, we look forward to building on the foundation established by Ms. Bryant  
18 and creating a brighter future for millions of Black girls.' If you would like to talk further tomorrow,  
19 I am available. Stacy."

20       35. Ms. Brown-Philpot's "script" that she proposed for us Board Members to give  
21 employers sounded that Ms. Bryant was terminated and never coming back to BGC. That's when I  
22 contacted a lawyer for myself because if the Board of Directors is going to act without cause, or  
23 without legal justification for the actions that the Special Committee takes and Dr. Simmons and  
24 Mr. Taveau simply acquiesce, then it needs to be clear that I am not involved in any of their dealings,  
25 and I am on the BGC Board of Directors to support the vision established by the Founder and CEO,  
26 Ms. Bryant, and mission of the organization.

27       36. I responded to Ms. Brown-Philpot's e-mail stating that her e-mail still did not answer  
28 the questions that I posed earlier in the evening. I asked for my questions to be addressed in writing.

1 In our conversation, I inquired if the Special Committee had reported back to the Board as  
2 documented in the Special Board meeting, and Ms. Brown-Philpot's answer was "No." I never  
3 received a report from the Special Committee to this date, and again never sanctioned any action on  
4 my behalf by this Special Committee. It was extremely irresponsible not to inform the entire Board  
5 of Directors about how the Special Committee came to this decision, and right before Christmas. I  
6 demanded answers.  
7

8       37. I then reviewed my e-mails, and I sent Ms. Brown-Philpot another e-mail reminding  
9 her that per an email of November 1, 2021, the Board of Directors was informed of the hiring of  
10 DLA attorneys and that the Board would have additional communication. This failed to happen as  
11 absolutely no communication regarding this issue was sent to me. I asked Ms. Brown- Philpot  
12 directly if the attorneys of DLA informed the "Special Committee" to take the action of removing  
13 Kimberly Bryant from her role as CEO. I also asked Ms. Brown-Philpot if Ms. Bryant was afforded  
14 an opportunity to respond to any allegations by former employees who resigned from BGC?  
15

16       38. Instead of giving me any answers, I received an evite to an Executive Session  
17 meeting that would take place the next day, December 22, 2021. The meeting was held, but none of  
18 my questions were answered.

19       39. At the start of the Executive Session Meeting on December 22, 2021, I asked Ms.  
20 Hiles if we could record the meeting like we normally do. Ms. Brown-Philpot immediately objected  
21 to the meeting being recorded. When I asked why, she said "the last 24 hours is enough of a reason".  
22 This struck me as odd because if the "Special Committee" was operating in a proper manner, one  
23 would think that the Chair of the Special Committee **would** want the meeting recorded to keep a  
24 record of the Committee's actions.

25       40. Ms. Brown-Philpot then presided over the meeting. She started off admitting that the  
26 Special Committee had not updated the full Board of Directors before making the decision to  
27 suspend Ms. Bryant. Then she said that ***an investigator had not even been hired yet***. Ms. Brown-  
28 Philpot informed us that BGC documents were requested from Ms. Bryant around on December 8,

1 2021 (I believe), and because Ms. Bryant did not give the documents to the Special Committee, she  
2 was suspended to facilitate the investigation. I found out from reading the Complaint filed in this  
3 lawsuit that documents regarding prior employees was requested directly by Ms. Hiles, and that Ms.  
4 Bryant wanted to meet with an attorney before providing employee information to Ms. Hiles. I could  
5 not understand how Ms. Hiles directly asking Ms. Bryant for personnel information was an  
6 “independent investigation” because Ms. Hiles admitted at the beginning of the meeting that an  
7 investigator had not been hired yet.

8       41.     I read the questions from my e-mails sent on December 21<sup>st</sup> about how decisions  
9 were made, why the entire Board was not informed prior to actions being taken, etc. The response  
10 from Ms. Hiles was, “I am sorry that you have hard feelings about this,” and Ms. Brown-Philpot  
11 responded the next steps were to hire an independent investigator to review the personnel  
12 information. In short, I never received any responses to any of my questions.

13       42.     Since December 22, 2021, the Special Committee has been focused more on taking  
14 over BGC and making changes in secret than conducting their investigation or properly running the  
15 organization. As one of the original Board Members, by now we would have discussed  
16 programming for the young girls of color that BGC serves. We have not had a single discussion  
17 about programming, and the Special Committee seems to be attempting to run BGC instead of  
18 fulfilling its purpose of completing the investigation and fulfilling the duties of a board.

19       43.     As a Board Member, I continue to be left in the dark about anything that is going on  
20 with the investigation. On January 6, 2022, I sent an e-mail to Ms. Hiles and the rest of the Board  
21 of Directors asking the following questions:

22              Has the investigation started yet?

23              Who is conducting the investigation, and how have they been paid? How much  
24 has the investigator been paid?

25              How long is this investigation process going to take?

26              Exactly what issues are we reviewing as it relates to Kimberly because I am still  
27 unclear?

28              How could Kimberly impede an investigation that has not started yet?

1           When is the next official Board meeting?

2           If not an official Board meeting, when will there be another special session to get  
3           any updates on this process?

4           What type of communication has been made to BGC staff about the situation and  
5           Kimberly's status?

6           Have any changes been made with BGC staff?

7           Have we responded yet to the letter that we received from Kimberly's lawyer?  
8           Will the Board members have any input on that response, if a response has not  
9           been done yet?

10          Will decisions continue to be made by the special committee that are not discussed  
11          with the entire Board of Directors?

12          44.       I have not received any direct response to most of these questions as of the date of  
my signing of this Declaration.

13          45.       On January 7, 2022, I received an e-mail from Ms. Hiles suggesting dates for a  
14          January 2022 Board of Directors Meeting. This was a regular meeting, and I noticed that Ms. Bryant  
15          was not included on the e-mail. She remains a Member of the Board of Directors, and because I  
16          wondered if the calling of this meeting was proper, on January 10, 2022, I sent an e-mail to the BGC  
17          attorney at the time, Daria Holmes of Loeb and Loeb, asking if the failure to provide Ms. Bryant  
18          with notice of a regular Board meeting was appropriate. As a Board Member who genuinely cares  
19          about BGC as an organization, I continue to be truly concerned that the actions of the Board of  
20          Directors are not proper. On January 18, 2022, Attorney Holmes directed me to contact the attorney  
21          for the Special Committee, Holly Lake.

22          46.       I asked my attorney to contact Attorney Lake about the calling of a regular Board  
Meeting without notifying Ms. Bryant. My attorney sent an e-mail to Ms. Holly Lake on January 19  
23          2022 about whether the failure to give Ms. Bryant notice of a regular Board Meeting was proper.  
24          Instead of responding to my attorney, Ms. Hiles then sent a notice of the January Board Meeting to  
25          all Board members, including Ms. Bryant on the same date, January 19, 2022, for the Board Meeting  
26          set for two (2) days later, on January 21, 2022.

27          47.       At the Board Meeting held on January 21, 2022, which was recorded, not a single

1 program for the girls of color that BGC services was discussed. There was no Agenda circulated.  
2 LaShonda Polite, who had been taking minutes at the Board Meetings, was not invited to this  
3 January Board Meeting. Instead, without having an opportunity to read anything, I believe about  
4 three (3) Resolutions were read outload by Mr. Whites, and we were required to vote on these  
5 Resolutions immediately. These Resolutions were to be effectively retroactively, backdating several  
6 actions taken by the Special Committee such as the Resolution to create of the Special Committee,  
7 *removing* Ms. Bryant as a signatory of the BGC bank account even though the investigation has not  
8 been completed, and another Resolution to give Sophia Mohammed a raise retroactively to  
9 *December 16, 2021*, in an amount higher than the salary that Ms. Bryant earned as the Founder and  
10 CEO of BGC. If the investigation is ongoing, why remove Ms. Bryant as a signatory on the BGC  
11 bank account, especially when an outside accounting firm has been conducting the fiscal affairs?  
12 Are the current signatories, who now have access to millions of dollars in donated funds bonded? Is  
13 there any oversight of how donated funds are now being spent at BGC?

14       48.     Further, what is interesting about giving Ms. Mohammed a raise retroactively to  
15 *December 16, 2021*, is that Ms. Bryant was not suspended at that time, and Ms. Mohammed was  
16 not purportedly selected to be the interim Executive Director of BGC until December 21, 2021. Why  
17 was she being paid retroactively to December 16, 2021? Further, why was Ms. Mohammed, who  
18 has been employed at BGC for about six (6) months now, going to earn more than the CEO who  
19 founded BGC eleven (11) years ago? Then, who made those decisions since it was not brought  
20 before the full Board of Directors before these resolutions were read at the meeting? Was Ms.  
21 Mohammed's loyalty to the Special Committee purchased with this new retroactive salary?

22       49.     This January 21, 2022 BGC Board of Directors meeting left me with more questions  
23 than answers. Later that evening, I sent Ms. Hiles an e-mail asking her for four (4) items, and  
24 reminding Ms. Hiles that according to Article 6 of the By-Laws, every Board member is entitled to  
25 copies of documentation: (1) A written copy of all resolutions brought to the Board for vote today;  
26 (2) A copy of the Board meeting recording from the January 21, 2022 meeting today; (3) A copy of  
27 the minutes from the December 20, 2021 Board meeting; and (4) A copy of the meeting recording  
28 from the December 20, 2021 Board meeting.

1       50. In addition, because my questions during the January 21, 2022, Board Meeting were  
2 not addressed because Ms. Hiles kept muting me during the meeting, I also asked that the following  
3 additional questions be answered:

4              Who drafted the resolutions that were brought to the Board today?

5              How long ago were the resolutions drafted?

6              How many other Board members reviewed the resolutions prior to the Board meeting  
7 today and who are they?

8              Why are the resolutions taking actions retroactively?

9              Why are we making so many changes in the organization before the investigation is  
10 completed?

11              Why was LaShonda not present today in the Board meeting?

12              Why are we doing a forensic audit in addition to the audit? Is it that this request is to  
13 simply allude to the fact that the Special Committee wants to state that it is doing an audit,  
14 but why when the BGC audit came back clean with no findings of misappropriations?

15              Why was my microphone continuously muted during the meeting today, in light of the  
16 fact that I was informed that my questions emailed on January 6, 2022, would be  
17 answered at the January 21, 2022 Board meeting?

18       51. In my same e-mail to Ms. Hiles on January 21, 2022, I informed her that I was putting  
19 my questions in writing again because I was not given the opportunity to ask my questions at the  
20 Board Meeting before Ms. Hiles terminated the meeting. I asked again, very respectfully, if she  
21 could reply to my questions that I posed on January 6, 2022. At the conclusion of the January 21,  
22 2022 Board Meeting, I still did not know if the investigation started yet, who is conducting the  
23 investigation, and how have they been paid, How much has the investigator been paid, how long is  
24 this investigation process going to take, exactly what issues are we reviewing as it relates to Ms.  
25 Bryant because I am still unclear, how could Ms. Bryant impede an investigation that had not started  
26 as of December 21, 2021, what type of communication has been made to BGC staff and volunteers  
27 about the situation and Ms. Bryant's status, have any changes been made with BGC staff, and will  
28 decisions continue to be made by the Special Committee that are not discussed with the entire Board  
of Directors?

1           52. Ms. Hiles never responded to my questions, which remain unanswered. Instead, Ms.  
2 Hiles sent an e-mail response that , “we [will] hold monthly Board meetings for the rest of the year  
3 2022 for as long as we need them.”

4           53. I awaited answers to my many questions about BGC and the Special Committee’s  
5 investigation all month, which proved to be a wait in vain. I received no responses. Consequently,  
6 as a Board Member, I asked a BGC staff member to let me know what is being communicated to  
7 BGC sponsors about the status of Ms. Bryant’s relationship with the organization since I, as a BGC  
8 Board Member was not provided with any information from the Special Committee, and my  
9 questions went unanswered at the January 21, 2022 Board Meeting.

10          54. Much to my surprise, I was provided with what appears to be a “script” of dictated  
11 responses to provide to questions asked by external entities. I have attached that “script” entitled  
12 “BGC Leadership Change Communication Guidance” to this Declaration as Exhibit “1”. This  
13 document was never shared with the Board of Directors. This document was never discussed with  
14 the Board. Yet, the current staff at BGC has been advised that the “Board” made the decision to  
15 suspend Ms. Bryant. I am a member of the Board, and I never made such a decision. This script is  
16 intentionally misleading and provides false information to external entities, which can do nothing  
17 but harm the organization.

18          55. During the first week of February, 2022, I discovered that someone at BGC or the  
19 Special Committee appointed me as the registered agent for service of process for the organization.  
20 No one asked my permission, and no one took a moment to even inform me of the appointment. I  
21 found out when I was served with this lawsuit by Ms. Bryant’s lawyers. Whomever is in charge at  
22 BGC and running the organization, whether that is Ms. Mohammed, the Special Committee or both,  
23 has demonstrated a complete lack of professionalism by making the decision to appoint me as the  
24 registered agent for service of process without my knowledge or consent. Such a decision is  
25 indicative of the lack of knowledge, blatant improper actions, and professionalism currently at the  
26 helm of BGC at this time.

27          56. By the time the Board Meeting was held on February 25, 2022, my questions to Ms.  
28 Hiles remained unanswered. The February 25th Board Meeting was *not recorded*, and there was no

1 agenda again. Interestingly, Attorney Melanie Walker of DLA Piper was present taking minutes at  
2 the rate of \$1,000/hour. Who at BGC approved such an expenditure? Why was this tolerated? Whose  
3 idea was this? How would donors feel about their donated funds paying lawyers to take minutes at  
4 a Board of Director's Meeting? I asked that the Board be able to see all BGC expenditures since  
5 December 22, 2021 at the next Board Meeting coming up in March, 2022. I also asked to see the  
6 year-to-date donations to BGC compared to last year (2021) at the next Board Meeting. Finally, I  
7 asked to see the BGC program schedule for 2022, which we would have normally had the date of  
8 this meeting.

9       57. Instead of discussing anything that the Board of Directors usually discusses such as  
10 programming for the girls of color that the organization serves, there was discussion about changing  
11 the name of the Black Girls CODE to "BGC", which to me, at first blush, seemed like an effort to  
12 take over the organization and rename it. BGC owns the trademark, "Black Girls CODE", and  
13 instead of sending a cease-and-desist letter to the infringing person, the Special Committee decided  
14 to just change the name of the organization?

15       58. There was no Treasurer's Report at this February 25<sup>th</sup> Board Meeting. It is really  
16 hard to see an organization that Ms. Bryant conceived and built from the ground up so poorly  
17 mismanaged by the Special Committee, which again under the By Laws is not the directive of the  
18 Board.

19       59. The next Board Meeting was set for March 25, 2022. However, on March 16, 2022,  
20 Ms. Hiles sent an e-mail to the Board of Directors stating, "Hello Directors, In light of all of the  
21 work faced by the staff at BGC, we are going to revert back to our normal quarterly Board meeting  
22 schedule. This means there will be no Board meeting next Friday, but the next Board meeting will  
23 be held April 29th, 1pm PT/4pm ET. I will send a Zoom link and invite out in the near future. Thank  
24 you, Heather."

25       60. From the tone of this e-mail, Ms. Hiles sounds like she is now employed by BGC.  
26 Our role as the Board is governance of the organization, not management. Why would we decline  
27 to have a Board Meeting because the staff at BGC may be busy? The lines have been blurred  
28 between governing BGC and *managing* BGC, which is supposed to be the responsibility of the paid

1 Executive Director and CEO.

2       61. Additionally, declining to hold a Board Meeting at this time with so many  
3 unanswered questions about the status of the investigation of the Founder, and so little information  
4 the status of BGC programming for the year, seems to me like a stall tactic so that the Special  
5 Committee and Sophia Mohammed can continue running the organization, and can continue paying  
6 themselves or paying others and other entities whatever they want because there is no oversight as  
7 to the spending of the millions of dollars in donated finds right now. As of July, 2022, **I still did not**  
8 **know the scope of the investigation of Ms. Bryant, what exactly she has been accused of, or**  
9 **who the specific individuals are lodging the complaints other than some former employees**  
10 **who resigned.**

11       62. We are supposed to be an advisory Board of Directors, who are volunteers. We are  
12 not supposed to be entangled in the day-to-day operations of BGC. As a Board, we would have  
13 discussed the Summer Programs by now. We should have had a Treasurer's Report by now. How  
14 has money been spent by the organization since December 21, 2021? What are the organization's  
15 donations looking like now compared to this time last year, or in 2020? The finances of BGC have  
16 not been discussed at all by the Board since Ms. Bryant was suspended, and I am really wondering  
17 why not, particularly when there is no oversight over spending right now.

18       63. On or about, August 12, 2022, the BGC Board of Directors met, and as in previous  
19 meetings since Ms. Bryant's suspension, there was no agenda provided for the board meeting of  
20 August 12, 2022, prior to the meeting, nor was roll call performed to confirm presence of board  
21 members and evidence of quorum, nor acceptance of any prior board meeting minutes. This is not  
22 proper functioning of a Board. An agenda was verbally articulated as we 1) will hear a legal update,  
23 2) report out about the investigation, and 3) receive an update of the more current year to date  
24 finances per the request of the directors.

25       64. Prior to the start of the meeting a resolution was read, and as in every meeting since  
26 Ms. Bryant's suspension, resolutions that the Board had never seen or had any prior knowledge of,  
27 were presented and an immediate vote was expected. I expressed my concern and need to have time  
28 to review and understand the resolution(s), but my request(s) were not supported. This happened

1 on several occasions and resolutions that had been previously prepared were presented to the Board  
2 for vote without any supporting documentation and prior review. Ms. Stacy Brown-Philpot read  
3 the resolution as follows "*Whereas the board has determined that it is in the best interest of the*  
4 *company to remove Kimberly Bryant as a member of the board and whereas pursuant Article 2*  
5 *section 14 of the restated bylaws of the company any or all directors may be removed without*  
6 *cause if the removal is approved by a majority of the directors and in office; now therefore be it*  
7 *resolved that effective immediately Ms. Bryant be and hereby is removed as a member of the board*  
8 *including all committees and subcommittees of the board.*" Again, I was blindsided by this  
9 resolution having never seen it before, and I was highly concerned that this action was being taken  
10 prior to 1) a performance review of Ms. Bryant as CEO and 2) the official results of the investigation  
11 into workplace culture.

12       65.     I expressed my concern as follows: "*I know that we can move as a board of directors*  
13 *without cause, but I would caution us in terms of the actions that we are about to take and I would*  
14 *like to go on record as, of course, not being privy to bringing this motion to the board or not being*  
15 *involved in any preliminary discussions to bring this motion to the board. And again I would*  
16 *highly, highly caution the board on the action that it is about to take and with that being said, we*  
17 *also need to consider of course our, as I've been saying this entire time, commitment to the*  
18 *organization and to the community that we are trying to serve and that personal feelings should*  
19 *not enter into the decisions that we make to support the organization and the goal of the*  
20 *organization. So, again it says in the bylaws that we can do this without cause, but I would*  
21 *definitely caution those who are voting to take this action to seriously thinking about the*  
22 *ramifications for what this may mean for the organization.*"

23       66.     Ms. Bryant requested that the meeting be recorded due to the nature of the action  
24 being proposed to remove the founder of an nonprofit organization from its board of directors. Ms.  
25 Stacy Brown-Philpot did not consent to having the meeting recorded as she had done on several  
26 board meetings before, since Ms. Bryant's suspension. I am not sure why recording the meeting  
27 would be an issue as this would provide accountability and accuracy of the board meeting  
28 transactions.

1       67. Ms. Bryant further expressed her concerns with the resolution and pending vote to  
2 remove her from the board, as follows: "*I would just like to say that when I created this*  
3 *organization back in 2011, it wasn't for me, it wasn't for me to create a platform for myself; ...*  
4 *and I poured everything into that organization to support girls over the last ten years, well eleven,*  
5 *now since I have been disconnected from the organization this year forcefully for suspicious*  
6 *claims that the Board hasn't even heard any evidence to support yet..., to Sebastian Robert and*  
7 *Sylvia, when you hear these investigative results, if you ever, there were no gross items of*  
8 *misconduct or misdoings; there are things like folks didn't have access to Salesforce or we didn't*  
9 *pay a person's friends on time; there were no gross misdealings or misconduct or harming of*  
10 *folks on my part in any of the investigation, and when it is eventually revealed to you, there's not*  
11 *that; so the reason for your fellow board members to try to remove me from our board is because*  
12 *I have continued to raise issues about Heather Hiles and herself doing, her conflict of interest;*  
13 *the unwillingness to show the board that the organization is running at a negative (-) \$2.2M;*  
14 *we're negative (-) 2.2 million donor dollars this year in the red, ....I would really ask that you*  
15 *give pause to the reason this organization was created; why I (Kimberly Bryant) created it (BGC)*  
16 *for black girls like me, and what that says to our community for factions within this board, ....*  
17 *to remove the founder without cause from an organization like Black Girls CODE will have*  
18 *serious repercussions not only for me and Black Girls CODE and the students and the girls that*  
19 *we serve, but for black and brown founders of philanthropic organizations for decades to come,*  
20 *..."* In addition, Ms. Bryant has never received a performance evaluation from the Board; therefore,  
21 pursuing a suspension of Ms. Bryant prior to a review, performance improvement plan, or even a  
22 timeframe to address any concerns, was premature and inappropriate action taken by the Special  
23 Committee and approved by the Board. I did not support the suspension. I did not support the  
24 removal of Ms. Bryant from the board.

25       68. These statements raised even more alarming concerns for me regarding hiring  
26 practices for BGC and fiscal accountability. I note that the Board, or should I say "I", had not been  
27 apprised of any interviews or slate of candidates for COO of BGC and Ms. Bryant informed the  
28 board that a COO had been hired. Prior to Ms. Bryant's suspension, the BGC board was made

1 aware of candidates for executive positions.

2       69. To my surprise, Mr. Sebastien Taveau recommended to remove Ms. Bryant from the  
3 meeting while the rest of the Board discussed the “report”. This “report” was the investigation  
4 report for workplace culture allegations that the Board had not had the opportunity to see or hear  
5 the results of, but yet and still Ms. Brown-Philpot wanted to remove Ms. Bryant from the Board.  
6 Dr. Robert Simmons and myself also wanted to hear or see the report and expressed concerns that  
7 we had not seen what was in the report. Ms. Brown-Philpot amended her original motion to read  
8 *“that Kimberly leave while we do the legal update, we have the investigation report from Aisha*  
9 *and then we bring her (Kimberly) back and we as a board have a discussion about the motion*  
10 *that I put on the table”*. I posed this question to the board, *“Tell me what the legal protocol is for*  
11 *this. Even in a court of law, a person has a right to know what they have been accused of and to*  
12 *hear the evidence that is against them in a court of law..”* My question was addressed by the  
13 lawyer from DLA Piper law firm (Melanie) who informed the board that *“as a director she*  
14 *(Kimberly) has the right to participate in the entire board meeting. Most people recognize that*  
15 *they have a conflict and recuse themselves”*. The lawyer from DLA Piper had been attending  
16 board meetings to take minutes and it was my understanding that the cost of this service was  
17 \$1000/hour, which seemed excessive to me, which later in the board meeting was reflected in the  
18 escalation of legal fees that BGC is continuing to incur in excess of \$2M.

19       70. Stacy Brown-Philpot restated the amended motion and said, *“My original motion*  
20 *was that we'd remove Kimberly as a director and that we will delay making a vote on that motion*  
21 *until we hear the legal update and the results of the investigation, and that Kimberly step out of*  
22 *the meeting while those updates are given. Then we bring her (Kimberly) back after we've had a*  
23 *discussion about it (report) so that then we could make that, decide what we wanted to do as a*  
24 *board”*. I would like to emphasize the fact that Ms. Bryant was never brought back into the meeting,  
25 even after the discussion, and very little attempt was made to follow through with the motion that  
26 was approved to “bring her (Kimberly) back”.

27       71. Ms. Bryant did not agree to be removed from the meeting while the report was being  
28 delivered, but, in spite of legal advice that Ms. Bryant has the right to remain in the board meeting

1 for all discussions, the Board (excluding me and Ms. Bryant) voted to remove Ms. Bryant from the  
2 meeting and bring in the investigative reporter to discuss the workplace culture allegations and  
3 employee complaints.

4       72. Prior to hearing the investigative report, the DLA Piper representative gave a high  
5 level report, of which included the statement “*when Kimberly created the organization, she*  
6 *obviously did a lot to set up bank accounts, domain names, and the like, not uncommon for people*  
7 *starting out as a matter of convenience to use their own personal e-mail address for a domain,*  
8 *but given the size of the organization the sophistication of the organization, the number of donors*  
9 *- it is not best practice for things to be in an individual's name and not be under the control of*  
10 *administrators of the organization for lots of reasons*”. This documented that Ms. Bryant, much  
11 like other entrepreneurs, set up accounts as a sole proprietor, and as BGC grew, so would the  
12 business practices. Therefore, there needs to be further details of the timeline for the establishment  
13 of BGC as a not for profit organization.

14       73. Ms. Aisha Adams and team presented results of a workplace investigation, after  
15 interviewing Ms. Bryant for several days/hours, 14 current employees, 11 former employees and  
16 one consultant (total of 26 people). The investigator, Ms. Adams, reported in summary “*I wanna*  
17 *say a few things about Kimberly Bryant. I think we received feedback about her that ranged from*  
18 *neutral to very critical but by most accounts people saw her as a visionary someone who built this*  
19 *organization inspired by her daughter using her own 401K and her acumen and her vision so her*  
20 *story and of itself is compelling. Over the years, Black Girls Code has developed a reputation for*  
21 *introducing black girls who might otherwise be overlooked to tech, but the reason we're here is*  
22 *because a number of current and former employees have described an environment that is toxic*  
23 *or oppressive or hostile and that is according to witnesses we interviewed statements that have*  
24 *been made by former employees to the media and feedback that was left on websites such as next*  
25 *Glassdoor and so the Special Committee ultimately commissioned this investigation after it*  
26 *received three complaints against Kimberly Bryant. And we are gonna talk about the scope of the*  
27 *investigation and what those complaints are involved.*” Ms. Adams spent a lot of time talking  
28 about the time it took to conduct the investigation, which I thought was odd, because an investigation

1 takes as long as it takes to get the evidence you need. One particular comment by Ms. Adams was  
2 not objective and condescending in my opinion, which was her comment regarding Ms. Bryant's  
3 responses to probing questions, "There was a lot of explaining what was going on and one of the  
4 things I tell my team, I tell my children that if you are doing the explaining, you're already losing,  
5 and so there's no excuse but a reason. Some of the themes that we identified during this investigation  
6 and her (Kimberly's) leadership style specifically what it's like to work with her why people are  
7 afraid of working with her because there is this perception that if you cross her, she will go after  
8 you." It was then that I sensed prejudice from the lead investigator in this situation, who was  
9 alluding to "losing" and relying on "perception". Ms. Adams went on to say that based on her  
10 interviews, that the BGC culture was "toxic", and I asked if all of the data from every interview  
11 would be in the report and the exchange was as follows:

12 Ms. Adams: No, I did not go through all the feedback I received; in part because I wanted to  
13 give a general overview of just some of the feedback I received from people on the senior leadership  
14 team and executive leadership team and that was, ... you know, I synthesized, that was a very short  
15 synopsis, just giving you the jist, if we were to go through all 26 interviews and give you the  
16 feedback I received we would need hours.

17 Me: So, will we receive a full written report?

18 Ms. Adams: I will prepare a report.

19 Me: And that will include all of the data?

20 Ms. Adams: It will include the information that is relevant and Kimberly's response to the  
21 extent that we have it, and any analysis that we undertake of those issues. (My thoughts  
22 were, who decides what is relevant?)

23 Me: So, it will include all of the interviews that you had?

24 Ms. Adams: It will include relevant information; everything, that I speak, every time I spend  
25 two (2) hours with a witness. Not all evidence I obtained may be relevant, but we prepared  
26 witness interview summaries; so, we attach those as exhibits and so should anyone desire to  
27 read in total what any particular witness has said, then you'll have an opportunity to  
28 understand fully that information." (NOTE: the Board has not received the official written

1                   investigative report as of October 10, 2022)

2                  74. Ms. Adams went on to iterate the most important statement of the report, which was  
3 *"The organization is not able to make the determinations or figure out the best next steps to deal*  
4 *with that environment to give those employees any assurances or reassurances about what's going*  
5 *to happen in the future or whether, in fact, Kimberly is going to be coming back; the employees*  
6 *that have filed complaints, no longer work there, and their claims have not been resolved. They*  
7 *were not informed of findings even though I do not believe that there is a sufficient basis based*  
8 *on the evidence to substantiate those claims."* Of the three (3) formal complaints, only one (1) of  
9 the complainants agreed to speak with Ms. Adams, and after interviewing 26 people, Ms. Adams  
10 concluded that there was NO EVIDENCE TO SUBSTANTIATE THOSE CLAIMS!

11                 75. Despite this result of the investigative report, Ms. Stacy Brown-Philpot still  
12 proceeded to amend her earlier resolution/motion to state, "Whereas the board has determined that  
13 it is in the best interest of the company to remove Kimberly Bryant as a member of the board whereas  
14 pursuant to Article 2 section 14 of the restated bylaws of the company any or all directors may be  
15 removed without cause if the removal is approved by a majority of the directors then in office;  
16 whereas the board has determined that it is in the best interest of company to terminate Ms. Bryant's  
17 position as the Chief Executive Officer of the company and any other office she may hold and  
18 pursuant to Article 3 section three of the restated bylaws of the company any officer elected by the  
19 board may be removed at anytime with or without cause by the board, whenever in its judgment the  
20 best interest of the company can be served; hereby and whereas the board has determined that it is  
21 in the best interest of the company to terminates Ms. Bryant's employment with the company; now  
22 therefore be it resolved that effective immediately Ms. Bryant be and hereby is removed as a member  
23 of the board or including all committees and subcommittees of the board, resolve further that  
24 effective immediately Ms. Bryant's position as the Chief Executive Officer of the company and any  
25 other office which she may hold, be in hereby are terminated in all respects; resolve further that  
26 effective immediately Ms. Bryant's employment with the company be and is hereby terminated in  
27 all respects; resolve further that the officers of the company be and they hereby are authorized,  
28 empowered, and directed to execute any applications, certificates, agreements or any other

1 instruments or documents or amendments or supplements to such documents or to do or to pause to  
2 be done any and all other acts and things pass such officers in their discretion may deem necessary  
3 or advisable inappropriate to carry out the purposes of the foregoing resolutions.” Mr. Sherman  
4 White proceeded to second the motion. It is my opinion that this action was premeditated because  
5 Ms. Brown-Philpot moved to remove Ms. Bryant from the Board prior to hearing the investigator’s  
6 report and the conclusion of “**NO EVIDENCE TO SUBSTANTIATE THOSE CLAIMS.**” The  
7 justification of “in the best interest of the organization” has NOT proven to be factual or supported  
8 by any data that the Board has acted in the best interest of the organization. Also, it can be assumed  
9 that the motion was written prior to the board meeting and the investigator’s findings of “NO  
10 EVIDENCE TO SUBSTANTIATE THOSE CLAIMS”, leading to again, ill-advised and ill-  
11 informed actions by the Board. There was minimal attempt to get Ms. Bryant back into the board  
12 meeting as was stated in the motion that passed to “get her back”. The board was informed that an  
13 email was sent to Ms. Bryant, but no one called her or sent a text to her to my knowledge.

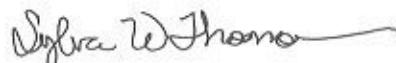
14       76.      Mr. Sebastien Taveau was not sure if he wanted to remove Ms. Bryant from the  
15 Board and as CEO, both. Ms. Hiles took it upon herself to offer her opinion of Ms. Bryant, which  
16 I thought was to influence Mr. Taveau’s vote, because he initially abstained, and if Kimberly had  
17 been in the meeting the vote would have been 3 for, 3 against, and 1 abstention – and the  
18 resolution/motion would have failed. The Board (excluding Dr. Robert Simmons and myself)  
19 proceeded to vote to remove Ms. Bryant from the BGC Board of Directors and as BGC CEO, despite  
20 there being “NO EVIDENCE TO SUBSTANTIATE THOSE CLAIMS.”

21       77.      It is indeed unfortunate to witness the decline in an organization that has meant so  
22 much to so many. Instead of building a pathway to technology for girls of color, the Special  
23 Committee is trying to takeover BGC. As a Board Member, for several months I had no information  
24 about the status of the investigation involving Ms. Bryant, and no one has articulated any specific  
25 allegations against her that have risen to the level that would warrant her removal. While Ms. Hiles  
26 and Ms. Brown-Philpot insisted that Ms. Bryant was initially suspended pending an investigation,  
27 current BGC staff was given a script to not discuss Ms. Bryant, and even though she was a Member  
28 of the Board of Directors like the rest of us, her photograph was inconspicuously missing under the

1 "Our Board" section of the BGC website *before her removal*. In addition, while this so-called  
2 investigation was underway, BGC staff were continuing to leave the organization. All of the actions  
3 and comments from the Special Committee, Mr. Taveau and Dr. Simmons are in direct conflict with  
4 the initial reasoning (fiduciary responsibility to protect BGC) for initiating an investigation of Ms.  
5 Bryant in the first place. The question then becomes, "What was the ultimate goal of these actions  
6 and what was the Board trying to accomplish?" All of the actions seem like a hostile takeover of the  
7 organization to me.

8       78. I provide this Declaration as a very concerned Member of the BGC Board of  
9 Directors. Urgent change is needed before the viability and validity of BGC is destroyed, and the  
10 donated funds are exhausted on frivolous expenses like paying a lawyer to take minutes at a Board  
11 of Directors Meeting for \$1,000/hour.

12           I declare under penalty of perjury under the laws of the State of California that the foregoing  
13 is true and correct to my recollection, and that this Declaration was executed in the County of  
14 Orange, State of Florida, on October 10, 2022.  
15

16 

17 SYLVIA WILSON THOMAS, PHD

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28

ELECTRONICALLY FILED

Superior Court of California,

County of Alameda

10/11/2022 at 12:11:19 AM

By: Curiyah Ganter,  
Deputy Clerk

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5

6

7

8

SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

FOR THE COUNTY OF ALAMEDA

10

KIMBERLY BRYANT, an individual,

11

Plaintiff,

12

v.

13

BLACK GIRLS CODE, a California Non-Profit Public Benefit Corporation; HEATHER HILES, an individual; STACY BROWN-PHILPOT, an individual; SHERMAN WHITES, an individual; and DOES 1-50, Inclusive,

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Defendants.

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Case No. 22CV005512

**DECLARATION OF PLAINTIFF  
KIMBERLY BRYANT IN SUPPORT OF  
OPPOSITION TO DEFENDANTS' SPECIAL  
MOTION TO STRIKE PURSUANT TO CAL.  
CIV. PROC. CODE § 425.16**

Date: October 21, 2022

Time: 2:00 p.m.

Dept.: 514

Judge: Hon. Noël Wise

Complaint Filed: June 7, 2021

Trial Date: None Set

1  
2   DECLARATION OF KIMBERLY BRYANT  
3  
4

5   I, KIMBERLY BRYANT, hereby declare the following:  
6  
7

8   1. My name is Kimberly Bryant. I am the plaintiff in two actions pending before this  
9 Court: (a) the action entitled *Kimberly Bryant v. Black Girls Code, et al.*, Case No. 22CV005512 (the  
10 "Derivative Action"); and (b) the action entitled *Kimberly Bryant v. Black Girls Code, et al.*, Case No.  
11 22CV005517 (the "Direct Action"). I provide this declaration as part of my opposition to the four  
12 discrete anti-SLAPP motions filed by Defendants BGC, Inc. ("BGC"), Heather Hiles, Stacy Brown  
13 Philpot, and Sherman Whites in the Derivative Action and the Direct Action. For purposes of judicial  
14 economy, I intend to file this declaration in response to each discrete anti-SLAPP motion rather than  
15 preparing four separate declarations specific to each motion.

16   2. I am the founder of BGC. I founded BGC in 2011 with a stated mission to "change the  
17 face of technology" by introducing computer science and technology to girls from underserved  
18 communities. I became interested in doing this work in 2010 after discovering my middle school-  
19 aged daughter's growing interest in computer programing. I wanted to create a supportive community  
20 for my daughter and other girls like her. BGC was formally incorporated as a California non-profit  
21 public benefit corporation in March 2012 after a successful pilot program the previous year.

22   3. I have a degree in electrical engineering from Vanderbilt University. Prior to founding  
23 BGC, I enjoyed a 20+ year career as an engineering professional within the biotech, pharmaceutical,  
24 and chemical industries and worked for companies like Merck and Genentech.

25   4. I originally funded BGC by borrowing from my personal 401K. Over the past decade  
26 plus, BGC has grown from a small, grassroots organization in San Francisco with only six students  
27 to an international organization with fifteen chapters across the United States and in Johannesburg,  
28 South Africa serving an estimated 30,000 students.

1   5. Over the last decade of my leadership of BGC, I have received numerous awards and  
2 accolades for my leadership of the organization and the impact we have made within the tech industry.  
3 I am a nationally recognized thought leader for my work to increase opportunities for women and  
4 girls in the technology industry. Among others, I was awarded the Jefferson Award for Community  
5 Service for my work to support communities in the Bay Area; I was named by Business Insider as  
6  
7  
8

1 one of "The 25 Most Influential African-Americans in Technology"; I have been included in The Root  
2 100 and the Ebony Power 100 lists; and I was named one of Fact Company's Most Creative People.  
3 In 2015, President Barack Obama honored me as a Champion of Change for my work towards tech  
4 inclusion, and I received an Ingenuity Award in Social Progress from the Smithsonian Institute. I  
5 speak and nationally and internationally on diversity, equity, and inclusion issues in today's  
6 technology world (although, as discussed below, my speaking engagements have been seriously  
7 curtailed because of the defamation and retaliation I have experienced at the hands of BGC and its  
8 current directors).

9       6.      In 2018, as BGC's non-profit operations continued to expand nationwide, I decided to  
10 recruit an inaugural board. Prior to this time, BGC had three *ad hoc* board members: me, Stacy  
11 Brown-Philpot, and Dr. Sylvia Wilson-Thomas. Under the guidance of an external business  
12 consultant BGC hired, BGC and its *ad hoc* board began recruiting potential members for a more  
13 formal board of directors. Ultimately, BGC formed an inaugural board in August 2018 consisting of,  
14 among others, the following members: (a) Stacey Brown-Philpot (elected chair); (b) Dr. Sylvia  
15 Wilson Thomas (elected secretary); (c) Julia Collins (elected board treasurer); (d) Sherman Waites  
16 (general board member); (e) Sebastien Taveau (general board member); (f) Robert Simmons (general  
17 board member); and (g) Heather Hiles (general board member). I also served as a director and was  
18 elected president of the board. I retained my role as BGC's CEO after the inaugural board was  
19 formalized.

20       7.      By 2020, the members of BGC's board had shifted somewhat. I remained board  
21 president, Dr. Sylvia Wilson Thomas served as board secretary, Stacy Brown-Philpot served as board  
22 chair. Board President Stacy Brown-Philpot decided to step down from her role as board president  
23 and after a brief recruitment search, Dr. Stephanie Adams was elected unanimously to succeed her as  
24 board chair. The board treasurer role was vacant for most of 2020 after the transition of the previous  
25 board treasurer.

26       8.      Throughout the 2020 programmatic year, BGC faced tremendous impacts from the  
27 COVID-19 pandemic. Like many companies, we were unexpectedly forced to transition our entire  
28 workforce to remote work by the second week of March and were forced to cancel all planned in-

1 person programmatic workshops and events. I spent much of my time as CEO from March to June  
2 navigating the unfamiliar waters of a fully remote workforce, navigating the global pandemic and its  
3 impacts on our community and work, and struggling to support the mental, physical, and spiritual  
4 needs of my team. I spent a significant amount of time worrying that our program driven partnerships  
5 and sponsorships would be insufficient to meet BGC's budgetary needs and that BGC would be forced  
6 to lay off staff members. As a result through the early months of the pandemic a majority of my time  
7 was spent working to secure government support for our organization in the form of a PPP loan. This  
8 process proved to be extremely challenging and the board provided little to no support to the  
9 organization in this endeavor. However, because of numerous factors—including my decade of  
10 leadership and continued engagement with the tech and social justice community, as well as the global  
11 upheaval in the wake of George Floyd's murder—BGC became increasingly lauded as a social justice  
12 organization and experienced a tremendous influx of support (and donations) from individuals and  
13 organizations worldwide from June to December of 2020. As a result, BGC was able to refocus its  
14 energies and pivot to a remote learning model where we could teach our students virtually using  
15 digital tools. We reinitiated our recruitment goals to increase staff capacity to support our growing  
16 customer demand. We were able to grow from 8 full time employees at the beginning of 2020 to over  
17 20 full time employees by the end of the year. And we initiated a facilitated strategic planning process  
18 with the support of consultative partners The Bridgespan Group.

19       9.     As a result of this influx of support, we refocused on energies on a pivot to a remote  
20 learning model and began to teach our students virtually utilizing digital tools and reinitiated our  
21 recruitment goals to build staff capacity to support our growing customer demand and to build from  
22 a small team of only 8 FTE at the beginning of 2020 to over 20 FTE by December 2020.

23       10.    By 2020, BGC had hired a Director of Human Resources, Trenae Forman, who was  
24 responsible for conducting employee exit interviews and other employee transition tasks as  
25 appropriate. The organization had been conducting exit interviews routinely since 2019 and findings  
26 from those interviews were shared with the board.

27       11.    BGC entered 2021 battered but resilient and ready for new challenges. BGC's  
28 operational revenues grew from \$3,000,000 in net income to almost \$30,000,000 in net income by

1 the end of 2020. More importantly, our organizational impact increased to over 10,000 students—  
2 more students than we reached in the previous nine years—because of our new virtual learning format  
3 and the cohesiveness of our organizational team.

4       12. During our Spring 2021 board meeting, all board members expressed satisfaction at  
5 what we had accomplished during the COVID-19 pandemic. During this board meeting, acting board  
6 chair Dr. Stephanie Adams requested that a board member volunteer to become the interim board  
7 treasurer until another permanent treasurer could be recruited. Heather Hiles volunteered for this  
8 position to the surprise of many of the fellow board members. I was personally surprised by Ms.  
9 Hiles's decision to volunteer for this position because she was generally not engaged in board  
10 activities during the prior three years of her board term. While Ms. Hiles attended most board  
11 meetings, she was not an active member of any board committees, nor was she actively involved in  
12 any organizational initiatives such as recruitment efforts or the strategic planning initiative. While  
13 most board members (including myself) actively supported BGC financially (with either their  
14 "talents" or "treasure"), Ms. Hiles's did not contribute a penny to the organization for the four years  
15 of their involvement as a board member. However, given the intended "interim" nature of Ms. Hiles's  
16 treasurer position, I hoped there was limited harm she could do to BGC until a more suitable board  
17 treasurer could be recruited.

18       13. Beginning in June 2021, three BGC staff members—Christine Capicillio, Ashley (Isis)  
19 Miller, and Anesha Grant—tendered their letters of resignation.

20       14. I became aware of Isis Miller's resignation when her then-supervisor, Anesha Grant,  
21 forwarded Isis Miller's resignation letter to BGC's board of directors, all members of BGC's senior  
22 leadership team, and to me personally. After receiving Isis Miller's resignation letter, I scheduled an  
23 emergency board meeting to discuss the letter—and the many false accusations therein—and the  
24 improper way the resignation letter was shared with BGC's entire leadership team and board. It was  
25 not the practice of BGC management to circulate employee letters of resignation or similar employee-  
26 related documents to board members or fellow senior leadership.

27       15. Isis Miller was hired as a community and events manager in April 2020, just as BGC  
28 shifted its focus to a "shelter in place" virtual practicum. Isis Miller reported to me directly for only

1 two months before they were assigned to Amanda De'Nucci Kean as part of the fundraising and  
2 development team. Their scope of work as a community lead was unfortunately limited due to the  
3 remote nature of BGC's work during the pandemic. Isis Miller was a solid contributor to the team but  
4 reacted strongly when I questioned her about inappropriate conduct and actions in their role as  
5 Community Lead.

6       16. Specifically, in June 2020, Isis Miller convened a "virtual speaker event" for the BGC  
7 community in celebration of the Juneteenth Holiday. I discovered that Isis Miller hired three of her  
8 personal friends to speak at the event and promised to pay them fees significantly higher than those  
9 BGC paid its speakers in the past or to date. I also discovered that Isis Miller failed to document the  
10 payment arrangement they made with their friends with formal contracts, written scopes of work, or  
11 invoices, and failed to seek approval of their direct supervisor (Amanda De'Nucci Keen) or any other  
12 member of BGC leadership before committing BGC resources towards the payment of their friends.  
13 I interrogated Isis Miller about their failure to follow protocol by hiring their personal friends for  
14 well-above normal rates without any formal documentation and directed them to complete the proper  
15 paperwork and documentation such as invoices and W9s before approving the release of payment.

16       17. The following year in the summer of 2021, Isis Miller attempted to host another  
17 Juneteenth panel discussion featuring another of their personal acquaintances who would receive  
18 payment again far in excess of BGC's customary speaker rates. Isis Miller's proposed panel discussion  
19 was brought to my attention by Anesha Grant, their then direct supervisor, who supported and  
20 approved the proposal. I declined to approve Isis Miller's proposed panel discussion because: (a) of  
21 the excessive speaking fee proposed to her friend; and (b) the fact that her friend was a "positive sex  
22 expert" and I was concerned that the friend would raise issues of sexuality and sex education into a  
23 panel discussion ostensibly about coding and technology. I asked Ms. Grant to have Isis Miller curate  
24 a more appropriate, technology-focused event that did not involve paying a friend an exorbitant  
25 amount of money. Ms. Grant responded forcefully and belligerently, accusing me of refusing to  
26 support Isis Miller's work.

27       18. Soon after this encounter, Isis Miller, Anesha Grant, and Christine Capicillo tendered  
28 their resignations. Isis Miller's and Anesha Grant's original letters of resignation are attached as

1     **Exhibits 3 and 4** to the Declaration of Heather Hiles. It is also noteworthy that in the Declaration of  
2     Heather Hiles supporting the BGC Defendants' various anti-SLAPP motions a different more  
3     descriptive and derogatory resignation from Anesha Grant was apparently distributed to members of  
4     the BGC board of directors. This resignation was not sent to me directly and was apparently tendered  
5     a day after Ms. Grant met privately with Heather Hiles. Those resignation letters accuse me of  
6     engaging in harassment and other conduct which, up to that point, no one had ever accused me of  
7     before. I specifically and vehemently deny the conduct alleged in those resignation letters.

8                 19. Moreover, it is important to note that Isis Miller was not my direct report during the  
9     majority of their tenure with BGC and I had limited engagement with them outside of the events noted  
10    above. Similarly, while Ms. Grant and Ms. Capicillo were technically my direct reports, my  
11    interactions with them were limited to a few one-on-one monthly coaching sessions and weekly senior  
12    leadership meetings with a larger staff team. I did not engage with Ms. Grant or Ms. Capicillo in any  
13    other capacity and was not directly engaged in any weekly program planning or execution meetings  
14    with them. The accusations in Isis Miller's and Ms. Grant's resignation letters regarding my level of  
15    individual interactions with them are exaggerated and false.

16                 20. Nevertheless, I convened a meeting of BGC's board to discuss the concerns of the  
17    employees who had resigned. I also met privately with the board, including former chair Dr. Stephanie  
18    Adams and board secretary Dr. Sylvia Wilson-Thomas, to discuss the personnel issues presented by  
19    the employee resignations. During these meetings, Dr. Adams agreed with me that the issues  
20    presented did not present issues that required involvement of outside legal counsel. Moreover, at  
21    another board meeting held on July 28, 2021, Dr. Adams announced to the board that she had not  
22    found evidence that any of the issues referenced in the resignation letters warranted further  
23    investigation or action by BGC's board or by outside legal counsel. Board members Stacy Brown-  
24    Philpot and Heather Hiles responded in vigorous opposition to Dr. Adams decision in this meeting  
25    and began a pattern of strenuous bullying to convince Dr. Adams to change her position via calls,  
26    texts, and emails.

27                 21. It is true that BGC experienced internal cultural challenges as we navigated the  
28    pandemic, the resulting transition to remote work and "virtual programs," as well as the fast growth

1 BGC experienced during this time with limited staff in person interaction, as discussed above. To  
2 address these challenges, I engaged an external cultural strategist, Karla Monterroso with Brava  
3 Leaders, in September 2021 to conduct a work environment survey to address these challenges and  
4 create a better working environment for BGC's staff members. BGC also continued to work with an  
5 organizational strategist, Tracey E. Webb, to provide training and support for BGC's senior leadership  
6 team. I spearheaded these efforts, but Heather Hiles and members of the special committee did not  
7 support them.

8       22. In September 2021, other members of BGC's board nominated Heather Hiles to serve  
9 as BGC's board chair after the resignation of Dr. Stephanie Adams, the previous chair. I did not  
10 support Ms. Hiles's nomination as board chair for multiple reasons. One of the primary reasons I did  
11 not support her nomination was my belief that Ms. Hiles was spending most of her time working on  
12 the launch of her personal venture capital fund, BlackOps Ventures, as well as the IPO of another  
13 company, Udemy, where she served as a board member. Indeed, I harbored serious concerns that Ms.  
14 Hiles would attempt to divert BGC's charitable donated funds to BlackOps Ventures or otherwise  
15 engage in self-dealing transactions. Indeed, Ms. Hiles repeatedly requested that I allow BGC to form  
16 a partnership with Udemy whereby Udemy would "create, produce, and distribute BGC courses." Ms.  
17 Hiles repeatedly gave me the "hard sell" about what Udemy could do for BGC. A true and correct  
18 copy of a February 16, 2021 e-mail from Heather Hiles attempting to pressure me to create a self-  
19 dealing partnership with Udemy is attached as **Exhibit A**.

20       23. My concerns about Ms. Hiles's attempt to create a self-dealing business relationship  
21 between BGC and BlackOps Ventures were soon proven accurate. During an October 2021 meeting  
22 between Ms. Hiles and investment firm West Fuller personnel in New York, Ms. Hiles attempted to  
23 "pitch" her VC fund to those employees. True and correct copies of text messages between me and  
24 West Fuller's New York staff regarding Ms. Hiles behavior during the meeting and her effort to pitch  
25 her VC fund are attached as **Exhibit B**.

26       24. I openly voiced my opposition to the nomination of Ms. Hiles as BGC's board chair.  
27 True and correct copies of e-mails in which I stated my opposition are attached as **Exhibit C**. I also  
28 prepared an October 5, 2021 memorandum to the board in which I voiced my opposition to Ms.

1 Hiles's nomination because of her conflict of interest issues, among others. A true and correct copy  
2 of this memorandum is attached as **Exhibit D**.

3       25. I also expressed concern with the way Ms. Hiles was nominated and how the other  
4 members of the board intended to "vote" on her nomination. During discussions about Ms. Hiles'  
5 nomination, Ms. Hiles suggested that the Board could simply "vote" on her nomination over e-mail.  
6 This is a direct violation of BGC's bylaws, which require either: (a) an actual meeting between board  
7 members; or (b) a "virtual" meeting "through the use of conference telephone or electronic video  
8 screen communications, as long as all members participating in the meeting are able to hear one  
9 another. *See Bylaws, § 10, ¶ 2.* A true and correct copy of BGC's bylaws is attached as **Exhibit E**. I  
10 objected to any "vote" over e-mail. *See Exhibit C*, September 29, 2021 e-mail to board. My objection  
11 was ignored, and the board purported to "vote" to confirm Heather Hiles as BGC's board chair over  
12 e-mail. *See Exhibit C*.

13       26. BGC contends that, on October 11, 2021, BGC's board of directors held an "executive  
14 session" and a "Special Committee" was formed for the purpose of facilitating the investigation into  
15 the workplace misconduct" set forth in the resignation letters. *See Hiles Dec. at ¶ 18.* Again, this  
16 process—if it happened, which I doubt—violated BGC's bylaws. Under the bylaws, written notices  
17 of regular or special meetings must be prepared and delivered to board members. *See Bylaws, Exhibit*  
18 **E**, §§ 6-8. I never received written notice of any meeting of BGC's board—regular, special, or  
19 "executive session"—at which the board would vote to empanel a "special committee." I never  
20 received any notice of a meeting at which the board would vote to create a "special committee" to  
21 investigate any complaints about me, nor did I ever receive any written minutes from such a meeting.

22       27. BGC has steadfastly refused to produce any records or documents memorializing the  
23 alleged October 11, 2021 "executive session" or any other documents demonstrating that: (a) such an  
24 "executive session" actually took place; or (b) the board followed the formalities of BGC's bylaws in  
25 voting to form the purported "special committee."

26       28. BGC states that it retained DLA Piper to "hire an investigator and oversee an  
27 investigation plan," suggesting that I was the subject of the investigation. *See Hiles Dec., ¶ 19.* This  
28 is untrue. To the extent DLA Piper was hired to "investigate" anything, it was hired to investigate the

1 conduct of Darnell Burtin, a former BGC staff member accused of making inappropriate comments  
2 to female employees during staff meetings. BGC terminated Mr. Burtin for his conduct, and Mr.  
3 Burtin threatened to take legal action against BGC arising from his termination. Indeed, e-mails  
4 between board members during this time reflect that the "investigation" relates to Mr. Burtin. True  
5 and correct copies of e-mails between BGC's board members on this point are attached as **Exhibit F**.

6       29. Moreover, I am in possession of DLA Piper's October 14, 2021 engagement letter with  
7 BGC. The scope of DLA Piper's representation of BGC as stated in the engagement letter is  
8 "[representing BGC] in connection with analyzing the board structure and providing advice and legal  
9 counsel regarding employment related issues (the "Matter")." The engagement letter does not  
10 reference me, any investigation, or the retention of an investigator. A true and correct copy of the first  
11 page of DLA Piper's October 14, 2021 engagement letter detailing the scope of DLA Piper's  
12 representation (but with all other information redacted for privacy purposes) is attached as **Exhibit**  
13 **G**. DLA Piper was retained by agreement of the "special committee" without a noticed meeting and  
14 vote as required by BGC's bylaws.

15       30. On the morning of Tuesday, December 21, 2021, I was unable to log in to my BGC e-  
16 mail and other organizational systems. Later that day, my chief of staff, LaShonda Polite, advised me  
17 that Heather Hiles contacted her and informed her that I had been suspended and that Ms. Polite  
18 would be fired if she communicated with me directly.

19       31. At approximately 4:00 p.m. that afternoon, I received a letter from Heather Hiles in  
20 my personal e-mail account stating that I was being suspended because "[t]he Board of Directors have  
21 been made aware of serious allegations that involve you and we are attempting to conduct a thorough  
22 and robust investigation into those allegations. You have conducted yourself in a manner so as to  
23 disrupt and impede the ongoing investigation." The letter further notified me that Sofia Mohammed  
24 was named the interim executive director of BGC, and that "[c]ounsel will reach out to you regarding  
25 the ongoing investigation, which you are required to cooperate with as an employee of BGC." A true  
26 and correct copy of BGC's December 21, 2021 suspension letter is attached as **Exhibit H**.

27       32. I was shocked that Heather Hiles and the other BGC board members would take me  
28 away from the organization I created and built from the ground up. I expressed my shock and dismay

1 over Twitter account. Initially, I received requests for comment from the mainstream media, and I  
2 declined to give a statement given the sensitivity of my situation. However, I ultimately gave a  
3 statement to Business Insider, a prominent business media organization, on or around Thursday,  
4 December 23, 2021, after being informed that the Heather Hiles and Stacy Brown-Philpot had already  
5 released statements to the media, without approval of the full board of directors. In my statement I  
6 noted—as indicated in an article released that same day on Business Insider’s website—that I had  
7 “never gotten notification that a formal investigation of complaints against [me] was taking place.” A  
8 true and correct copy of Business Insider’s Thursday, December 23, 2021 article entitled “Black Girls  
9 Code’s Founder Says She Was Unaware of an Investigation at the Nonprofit and Her Removal Was  
10 ‘Unconscionable’” is attached as **Exhibit I**.

11       33. In its December 23 article, Business Insider also reported that “[BGC’s] board  
12 previously said in a statement to Insider that it was investigating ‘serious allegations of workplace  
13 impropriety’ but did not provide further details.”

14       34. In a separate article dated December 23, 2021 entitled “The Founder of Black Girls  
15 Code has Been Ousted as Head of the Nonprofit After Allegations of ‘Workplace Inappropriety’”  
16 authored by Business Insider but posted on Yahoo.com, Business Insider similarly reported that “In  
17 an emailed statement to Insider on Tuesday, [BGC’s] board said it was investigating ‘serious  
18 allegations of workplace impropriety’ but did not provide further details. A true and correct copy of  
19 this December 23, 2022 article is attached as **Exhibit J**.

20       35. Similarly, in a December 28, 2022 article published by Sis2Sis.com entitled “Founder  
21 of Black Girls Code Removed, Citing Allegations of ‘Workplace Impropriety,’” Sis2Sis.com reported  
22 “In an e-mail statement acquired from the Insider on Tuesday, [BGC’s] board cited “serious  
23 allegations of workplace impropriety,” and an investigation into the matter is reportedly underway.”  
24 The way this sentence is written suggests that Sis2Sis.com obtained a copy of the e-mail statement  
25 that BGC’s board sent to Business Insider containing the allegation that BGC was investigating  
26 “serious allegations of workplace impropriety.” A true and correct copy of the December 28, 2022  
27 Sis2Sis.com article is attached as **Exhibit K**.

1       36. At no point prior to BGC's on or about December 23, 2022 had I ever been informed  
2 by anyone at BGC that: (i) I had been accused of any workplace impropriety, let alone "serious"  
3 impropriety; or (ii) that BGC was actively investigating such allegations against me.

4       37. I immediately retained counsel after being suspended by BGC. One of the main  
5 reasons I obtained counsel was to obtain corporate documents and records (to which I was entitled as  
6 a BGC board member) substantiating BGC's statements that it was "investigating" "serious allegations  
7 of workplace impropriety" against me. On December 28, 2021, my counsel made a demand for  
8 records under Cal. Corp. Code § 6334 given that I was a board member statutorily entitled to inspect  
9 relevant BGC corporate records. Among other relevant records, my counsel sought access to: (a) all  
10 documents referencing the "serious allegations" made against me; (b) all document referencing any  
11 BGC investigation of my alleged wrongful or improper conduct; (c) all documents relating to the  
12 purported creation of the "special committee"; and (d) all documents containing any findings of the  
13 "special committee" relating to my alleged wrongful or improper conduct. A true and correct copy of  
14 my counsel's December 28, 2021 records request is attached as **Exhibit L**.

15       38. BGC refused to give me access to any corporate records, including documents relating  
16 to any "investigation" of my alleged wrongful or improper conduct, even though I had a clear statutory  
17 right to inspect them under Cal. Corp. Code § 6334 because I was a sitting BGC board member. To  
18 date, BGC continues to refuse to produce any documents supporting its contention that it (or its  
19 outside counsel, or its "special committee") were conducting an "investigation" of me any time prior  
20 to spring 2022 relating to alleged wrongful or improper conduct. I believe BGC cannot produce these  
21 documents because they do not exist. Indeed, it is notable that, in the context of their various anti-  
22 SLAPP motions, neither BGC nor the defendant board members provide a single document  
23 supporting their contention that I was being investigated for misconduct at the time BGC made its  
24 defamatory statements. During discovery, I intend to prove that, at the time BGC published its  
25 statement that it was investigating me for "serious workplace misconduct," it was not actually  
26 investigating me and it knew that I had not engaged in such misconduct.

27       39. Despite Heather Hiles's attempt to block my staff from contacting me, I subsequently  
28 learned from BGC staff members that Ms. Hiles asked BGC's vice president of talent, Karla Tai, to

1 give Sofia Mohammed a pay raise to "whatever Kimberly was making." Ms. Tai refused to give Ms.  
2 Mohammed a pay raise without proper board approval. Subsequently, at BGC's January 2022 board  
3 meeting (a meeting I attended despite my suspended status) Stacy Brown Philpot brought a motion  
4 to increase Ms. Mohammed's salary to \$235,000—a salary far higher than I ever earned—and to make  
5 that salary increase retroactive to December 15, 2021. At this time, Ms. Mohammed had only been  
6 employed by BGC for three months, had no prior non-profit management experience, and lived in  
7 Mississippi (making it extremely difficult for her to manage BGC's day-to-day affairs). I find it  
8 extremely troubling that Ms. Mohammed was awarded a retroactive salary increase given these facts  
9 and, to me, this reeks of malfeasance and mismanagement. I also believe that this promotion and  
10 exorbitant salary increase shows that Heather Hiles and the other defendant directors intended to  
11 terminate my employment and board position irrespective of the results of BGC's purported  
12 "investigation."

13       40. I filed the Direct Action and the Derivative Action in this Court on January 12, 2022.

14       41. On February 15, 2022, my counsel received an e-mail from Aisha Shelton Adam, an  
15 outside attorney, requesting that I sit for a "witness interview." A true and correct copy of Ms. Adam's  
16 February 15, 2022 e-mail is attached as **Exhibit M**.

17       42. I agreed to be interviewed by Ms. Adam, and I met with her over four individual,  
18 hours-long sessions occurring throughout July 2022. During my conversations with Ms. Adam, I  
19 learned that she interviewed over 25 current and former BGC employees regarding BGC workplace  
20 and culture issues from approximately March 2022 to July 2022. Ms. Adam gave no indication that  
21 her investigation began earlier than this date range, and she definitely did not indicate she was  
22 investigating me or BGC workplace issues on or before December 23, 2021, the date BGC reported  
23 it was "investigating serious allegations of workplace impropriety."

24       43. During my conversations with Ms. Adam, we discussed: (a) the circumstances of  
25 behind the resignations of Isis Miller, and Anesha Grant; (b) the conduct of Darnell Burtin and the  
26 circumstances of his termination; and (c) BGC's general workplace culture. Ms. Adam spent an  
27 abnormally long amount of time asking me about my post-suspension social media posts, which was  
28 surprising given that those posts occurred after my suspension and, therefore, would not have been a

1 basis for my suspension of December 21, 2021. Importantly, at no point during my conversations  
2 with Ms. Adam did she—directly or by implication—accuse me of any form of workplace  
3 impropriety. I do not recall her accusing me of bullying or harassing employees. I did not recall her  
4 accusing me of misusing funds or otherwise committing corporate malfeasance. I do not recall  
5 discussing these issues with Ms. Adam at all.

6       44. Moreover, during my four conversations with Ms. Adam it became very clear to me  
7 that she did not receive or review any pertinent documents or e-mails from BGC. For instance, she  
8 did not have any of the e-mails (including those attached as **Exhibit C**) where I expressed my  
9 opposition to Heather Hiles's nomination as BGC's board chair; she did not have copies of other  
10 relevant text messages and e-mails between me, Heather Hiles, and other board members regarding  
11 BGC operational issues; and she did not have a copy of my October 5, 2021 memorandum (attached  
12 as **Exhibit D**) expressing my concerns about Heather Hiles's potential conflicts of interest. Given  
13 BGC's public statements that it was investigating me for "serious workplace impropriety," I fully  
14 expected Ms. Adams to grill me about my e-mails and other documents that were in BGC's  
15 possession. Instead, my counsel had to forward many of these documents to Ms. Adam for review.

16       45. Throughout the spring and summer of 2022, I repeatedly asked BGC—through its  
17 counsel—to provide me with information relating to BGC's financial performance and its use of  
18 charitable donations. BGC refused to provide me with this information.

19       46. On August 12, 2022, the Board held a special meeting over Zoom to: (a) hear Aisha  
20 Adam present the findings of her investigation; and (b) review BGC's financial performance. I  
21 attended this meeting virtually.

22       47. At the beginning of the meeting, Stacy Brown-Philpot made a motion for a board vote  
23 to remove me as a board member and to terminate my employment as BGC's CEO. Ms. Brown-  
24 Philpot then began to read from a pre-written, formal resolution moving to remove me as a board  
25 member and terminate my employment. I objected to Ms. Brown-Philpot's motion and asked for  
26 clarification as to why she was moving to remove me. She responded that it was for "the good of the  
27 organization." I insisted that the results of Aisha Adam's investigation be shared with the board before  
28 moving forward with Ms. Brown-Philpot's motion. The board subsequently voted to allow Ms.

1 Adams to present her findings. During this vote, Heather Hiles, Sherman Whites, and Ms. Brown-  
2 Philpot all commented that none of them had previously seen or heard the results of Ms. Adam's  
3 investigation. This was extremely concerning to me, as Ms. Brown-Philpot was moving to terminate  
4 my board position and my employment without first knowing whether Ms. Adam's investigation  
5 supported BGC's assertion that I engaged in "serious workplace impropriety."

6 48. Before Ms. Adam began her presentation, Heather Hiles and BGC's counsel from DLA  
7 Piper demanded that I be temporarily excluded from the Zoom session and not allowed to hear the  
8 results of Aisha Adam's investigation. Although I protested, I was removed from the main Zoom  
9 session by Heather Hiles.

10 49. During my absence from the board meeting Ms. Adam discussed the results of her  
11 investigation. Given that the other board members were allowed to attend the full meeting, I was able  
12 to chat with Dr. Sylvia Wilson-Thomas about Ms. Adam's findings contemporaneously with her  
13 delivery of those findings to the board. Dr. Thomas informed me that Ms. Adam told BGC's board  
14 that her investigation concluded that the allegations against me, including the allegations pertaining  
15 to mismanagement and/or mistreatment of employees, were unsubstantiated.

16 50. During Ms. Adam's presentation, my counsel e-mailed BGC's counsel in attendance  
17 at the meeting and demanded that BGC preserve all communications between BGC board members  
18 over Zoom's chat function.

19 51. At the end of Aisha Adam's presentation, the board nevertheless moved forward with  
20 a vote to terminate my board seat and my employment. I was entitled to participate in this vote as a  
21 BGC board member. Although Heather Hiles and BGC's counsel knew that I no longer on the call  
22 but waiting to be notified to return, and even though BGC's counsel knew (from my counsel's e-mail)  
23 that we were monitoring the events taking place in the main Zoom session, Heather Hiles and her  
24 counsel refused to bring me back into the main Zoom session before holding the vote to terminate my  
25 board seat and my employment. The final vote was 3-2 in favor of termination. Had I been allowed  
26 to vote—as I was clearly entitled to do under the Bylaws—I would not have been terminated, as the  
27 vote would have resulted in a tie.

1           52.     BGC's defamation and wrongful termination have caused me serious financial harm  
2 and reputational damage. I lost multiple speaking engagements after BGC accused me of engaging in  
3 "serious workplace impropriety." My typical honorarium for speaking engagements is \$15,000 so, as  
4 a result of BGC's misconduct, I have lost tens—if not hundreds—of thousands of dollars. I have been  
5 removed from consideration from paid board positions and suffered serious and irreparable emotional  
6 harm and distress.

7           I declare under penalty of perjury under the laws of the State of California that the foregoing  
8 is true and correct, and that this declaration was executed on October 10, 2022 in Oakland, California.

9                       *Kimberly Bryant*

10                                        Kimberly Bryant  
11    Signature ID: d876c32338...  
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ELECTRONICALLY FILED  
Superior Court of California,  
County of Alameda  
**10/11/2022 at 02:41:12 PM**  
By: Anita Dhir,  
Deputy Clerk

10 KIMBERLY BRYANT, an individual,

11 Plaintiff,

12 v.

13 BLACK GIRLS CODE, a California Non-  
14 Profit Public Benefit Corporation; HEATHER  
HILES, an individual; STACY BROWN-  
15 PHILPOT, an individual; SHERMAN  
WHITES, an individual; and DOES 1-50,  
16 Inclusive,

17 Defendants.

18 Case No. 22CV005512

19 **PLAINTIFF KIMBERLY BRYANT'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
DEFENDANT BLACK GIRLS CODE'S  
SPECIAL MOTION TO STRIKE  
PURSUANT TO CAL. CIV. PROC. CODE §  
425.16**

20 [Filed concurrently with Declarations of Kimberly  
Bryant and Dr. Sylvia Wilson Thomas]

21 Date: October 21, 2022  
Time: 2:00 p.m.  
Dept.: 514  
Judge: Hon. Noël Wise

22 Complaint Filed: June 7, 2021  
23 Trial Date: None Set

1                   **PLAINTIFF KIMBERLY BRYANT'S MEMORANDUM OF POINTS AND**  
2                   **AUTHORITIES IN OPPOSITION TO BGC, INC.'S**  
3                   **ANTI-SLAPP SPECIAL MOTION TO STRIKE**

4           **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

5           This is a derivative action in which Plaintiff Kimberly Bryant, the founder and long-time  
6 director and CEO of Defendant BGC, Inc. (“BCG”), asserts claims on BGC’s behalf against  
7 Defendants Heather Hiles, Stacy Brown-Philpot, and Sherman Whites (the “Director Defendants”).  
8 Well-established California law requires the plaintiff in a derivative action to name the injured  
9 corporation as a party defendant, and Ms. Bryant has properly done so here. *It is obvious from the*  
10 *face of her complaint that Ms. Bryant does not accuse BGC of wrongdoing in this action but,*  
11 *instead, alleges that BGC was injured by the Director Defendants' breaches of fiduciary duty and*  
12 *negligence and seeks equitable and other relief on BGC's behalf.* But BGC—which is controlled  
13 entirely by the Director Defendants and their hand-picked (and retroactively overpaid) board  
14 chair—willfully ignores this critical point and forces Ms. Bryant to respond to yet another meritless  
15 anti-SLAPP motion. In a gross mischaracterization of Ms. Bryant’s allegations, BGC argues that:  
16 (a) Ms. Bryant accuses BGC (and not just the Director Defendants) of breaching fiduciary duties  
17 and negligence owed to her; (b) Ms. Bryant seeks damages from BGC; (c) Ms. Bryant’s breach of  
18 fiduciary duty and negligence causes of action arise *solely* from a single instance of allegedly  
19 protected speech (specifically, Defendants Hiles’s and Brown-Philpot’s publication of a false and  
20 defamatory statement to Business Insider); and, therefore (d) the entirety of these causes of action  
21 (even the allegations based on non-protected activity) should be stricken under California’s anti-  
SLAPP statute.

22           BGC is wrong on all counts, and its anti-SLAPP motion is an exercise in frivolous, fee-  
23 driven motion practice. For starters, Defendants lack standing to assert an anti-SLAPP motion in  
24 this derivative action. Ms. Bryant brings this action on behalf of the public (and BGC’s charitable  
25 donors and the more than 30,000 students who benefit from its worthwhile endeavors) and does not  
26 pursue her own individual recovery against BGC or the Director Defendants. As a result, BGC is  
27 barred from moving to strike Ms. Bryant’s derivative complaint by operation of Cal. Civ. Proc.  
28 Code § 425.17’s public interest exemption, which insulates public-oriented lawsuits from anti-

1 SLAPP scrutiny. Similarly, BGC is barred from filing an anti-SLAPP motion under the facts of this  
2 case because doing so benefits the Director Defendants—the individuals accused of misconduct  
3 *against BGC*. Moreover, as detailed below, BGC cannot pass step one of the familiar two-step anti-  
4 SLAPP analysis because: (i) Ms. Bryant does not accuse BGC of any wrongful conduct, protected  
5 or otherwise; and (ii) her breach of fiduciary duty and negligence causes of action do not arise from  
6 protected speech. BGC’s anti-SLAPP motion should be denied, and Ms. Bryant should be awarded  
7 attorneys’ fees for having to incur further intimidation from BGC’s baseless motion.

8 **II. FACTUAL BACKGROUND AND SUMMARY OF ALLEGATIONS AND**  
**SUPPORTING EVIDENCE<sup>1</sup>**

9           **A. Ms. Bryant forms BGC and leads it to great financial success despite the**  
10           **challenges from the COVID-19 pandemic**

11           Ms. Bryant founded BGC in 2011 with a stated mission to “change the face of technology”  
12 by introducing computer science and technology to girls from underserved communities. [Compl., ¶  
13 15; Declaration of Kimberly Bryant (“Bryant Dec.”), ¶ 2.] Over the past decade, BGC grew from a  
14 small, grassroots organization in San Francisco with only six students to an international  
15 organization with 15 U.S. chapters and an international chapter serving an estimated 30,000  
16 students. [Compl., ¶ 15; Bryant Dec., ¶ 4.]

17           Throughout the 2020 programmatic year, BGC faced tremendous impacts from the COVID-  
18 19 pandemic. Ms. Bryant spent a significant amount of time and energy securing support for BGC  
so that BGC could meet its budget, retain its workforce, and continue its charitable mission. [*Id.*, ¶¶  
20 8-10.] As a result of Ms. Bryant’s efforts, BGC overcame the challenges of the COVID-19  
21 pandemic; she grew its operational revenues (derived from charitable donations) from \$3,000,000 to  
22 almost \$30,000,000 by the end of 2020 and added 12 full-time employees during that year. [Compl.,  
23 ¶ 16; Bryant Dec., ¶¶ 9, 11.]

24  
25  
26           <sup>1</sup> Suffice it to say that this is an especially fact-intensive dispute and, if Ms. Bryant set forth in this  
27 brief every specific allegation in her complaint and every specific piece of declaration evidence  
28 supporting her allegations, she would exceed Cal. R. Ct. 3.1113’s page limitation many times over.  
Ms. Bryant summarizes the allegations and evidence relevant to Defendants’ anti-SLAPP motion,  
but reserves the right to argue more extensively from her complaint and supporting declarations  
below and at the upcoming hearing on Defendants’ anti-SLAPP motion.

1           **B.      BGC employees resign in 2021 but BGC's board concludes that employee**  
2           **comments do not warrant further investigation**

3           Beginning in June 2021, three BGC staff members tendered their letters of resignation.  
4 [Compl., ¶ 20; Bryant Dec., ¶ 13.] Ms. Bryant met with BGC's board (which, by this time, included  
5 Defendants) both formally and privately to discuss the contents of the resignation letters. [Compl.,  
6 ¶¶ 22-23; Bryant Dec., ¶ 20; Declaration of Dr. Sylvia Wilson-Thomas ("Wilson-Thomas Dec."), ¶¶  
7 10.] BGC's board chair, Dr. Stephanie Adams, concluded that none of the issues referenced in the  
8 resignation letters warranted further investigation by BGC or outside counsel. [Compl., ¶ 23-24;  
9 Bryant Dec., ¶ 20.] While BGC ultimately retained DLA Piper to provide employment-related legal  
10 advice, the firm was not hired to investigate Ms. Bryant. [Bryant Dec., ¶¶ 28-29, Ex. G.]

11           **C.      Ms. Bryant accuses Hiles of conflicts of interest and refuses to support her**  
12           **nomination for BGC's board chair, but Defendants appoint her anyway in**  
13           **violation of BGC's bylaws**

14           In September 2021, Dr. Adams retired as BGC's board chair, and Defendants nominated  
15 Hiles to replace Dr. Adams in that position. [Compl., ¶¶ 25; Bryant Dec., ¶¶ 22-25; Wilson-Thomas  
16 Dec., ¶ 13.] Ms. Bryant vigorously opposed Hiles nomination on the ground that Hiles had conflicts  
17 of interest and intended to pursue self-dealing transactions with companies in which she had a  
18 financial interest. [Bryant Dec., ¶¶ 23-24, Exs. C-D; Wilson-Thomas Dec., ¶ 13.] Ms. Bryant also  
19 opposed Defendants' intent to elect Hiles via an e-mail "vote" in violation of BGC's bylaws.  
20 [Bryant Dec., ¶ 25; Exs. C-E.] Despite Ms. Bryant's opposition, Defendants violated BGC's bylaws  
21 by electing Hiles as board chair via an improper e-mail "vote." [Id., ¶¶ 25.]

22           **D.      Defendants allegedly create a "special committee" in violation of BGC's bylaws**  
23           **but refuse to provide any evidence that the "special committee" was actually**  
24           **created**

25           Defendants contend that, on October 11, 2021, BGC's board held an "executive session"  
26 and a "Special Committee was formed for the purpose of facilitating the investigation into the  
27 workplace misconduct" set forth in the employee resignation letters. [Declaration of Heather Hiles  
28 ("Hiles Dec."), ¶ 18.] Ms. Bryant contends that this never actually occurred. Defendants refuse to  
produce any minutes, resolutions, or other materials confirming the creation of a "special

1 committee” despite Ms. Bryant’s statutory right to such documents. [Bryant Dec., ¶¶ 26-27, 37-38.]  
2 Even if a “special committee” was created, it was created in violation of BGC’s bylaws because Ms.  
3 Bryant never received notice of a regular or special meeting during which the Board created the  
4 committee. [Bryant Dec., ¶ 26; Wilson-Thomas Dec., ¶ 16.]

5           **E. Defendants wrongfully suspend Ms. Bryant as BGC’s director and CEO**

6           On December 21, 2021, Ms. Bryant was informed that Defendants were suspending her as  
7 BGC’s director and CEO because “[the board has] been made aware of serious allegations that  
8 involve you and we are attempting to conduct a thorough and robust investigation into those  
9 allegations.” [*Id.*, ¶¶ 30-31, Ex. H.] Again, Defendants refuse to produce any documents that BGC’s  
10 board held a properly-noticed meeting at which Ms. Bryant’s suspension was put to a vote. [*Id.*, ¶¶  
11 37-38; Ex. L.]

12           **F. Hiles and Brown-Philpot Issue False and Defamatory Press Statements**

13           Ms. Bryant was shocked that Defendants would take her away from the organization she  
14 created and built from the ground up, and she initially expressed her shock and dismay over Twitter.  
15 [*Id.*, ¶ 32.] Although she initially declined to give comments to the press, she gave a statement to  
16 Business Insider only after that publication told her that Hiles and Brown Philpot already gave a  
17 statement regarding her purported suspension. [*Id.*.]

18           In apparent response to Ms. Bryant’s Twitter posts, Hiles and Brown-Philpot released  
19 statements to Business Insider on behalf of BGC. Those statements say BGC “was investigating  
20 serious allegations of workplace impropriety” against Ms. Bryant. [Bryant Dec., ¶¶ 33-35, Exs. I, J,  
21 K.] Business Insider noted that BGC “did not provide further details” about the alleged  
22 investigation. [*Id.*] The specific evidence demonstrating the false and defamatory nature of Hiles’s  
23 and Brown-Philpot’s statements is detailed in Section III(D)(3) below. Defendants refuse to produce  
24 any documents evidencing that they engaged in an “investigation” of Ms. Bryant prior to the  
25 publication of these press statements. [Bryant Dec., ¶¶ 37-38; Ex. L; Wilson-Thomas Dec., ¶¶ 37-  
26 44.]

27  
28

1           **G. Defendants wrongfully terminate Ms. Bryant's director and CEO positions and**  
2           **engage in other wrongful misconduct**

3           BGC did not pursue an "investigation" of Ms. Bryant until after Hiles and Brown-Philpot  
4           issued the defamatory press statements. [*Id.*, ¶¶ 41.] Indeed, an investigator had not been formally  
5           retained by BGC until after January 2022. [Wilson-Thomas Dec., ¶ 53.] Ms. Bryant fully  
6           participated in the "investigation" and, notably, was not asked about or accused of alleged  
7           "workplace improprieties." Instead, she was asked questions about storage keys, access to SAP, and  
8           other non-consequential matters of business operations. [*Id.*, ¶¶ 42-44.]

9           On August 12, 2022, BGC's board held a special meeting over Zoom to: (a) hear the results  
10          of BGC's purported "investigation" of Ms. Bryant; and (b) review BGC's financial performance.  
11          Ms. Bryant attended the meeting. [*Id.*, ¶¶ 46-51.] At the start of the meeting, Brown-Philpot made a  
12          motion to terminate Ms. Bryant's director and CEO positions "for the good of the organization."  
13          [*Id.*] Defendants removed Ms. Bryant from the Zoom session. Thereafter, BGC's investigator,  
14          Aisha Adam, told Defendants that allegations against Ms. Bryant were unsubstantiated. [Bryant  
15          Dec., ¶¶ 46-51; Wilson-Thomas Dec., ¶¶ 64-76.] Dr. Wilson-Thomas also heard Adam's findings  
16          and communicated those to Ms. Bryant contemporaneously via chat. [*Id.*] Despite that finding,  
17          Defendants moved forward with a board vote to terminate Ms. Bryant. Although Ms. Bryant was  
18          entitled to vote on her termination pursuant to BGC's bylaws, Defendants intentionally refused to  
19          re-admit Ms. Bryant to the Zoom session so that she could vote. [*Id.*] BGC's board voted 3-2 in  
20          favor of termination; had Ms. Bryant been allowed to vote, she would not have been terminated.  
21          [*Id.*]

22           **H. Ms. Bryant's lawsuits**

23          Ms. Bryant filed two separate lawsuits against BGC and Defendants in this Court. In this  
24          action ("Case 5512"), she asserts claims derivative claims on BGC's behalf to recover damages  
25          and/or other equitable relief arising from Defendants' wrongful conduct. In a companion case  
26          ("Case 5517"), Ms. Bryant individually asserts claims for damages she personally suffered because  
27          of Defendants' wrongful conduct. Defendants filed anti-SLAPP motions to strike in both Case 5512  
28          and 5517.

1      **III. ARGUMENT AND CITATION TO AUTHORITY**

2      **A. Standard of review on anti-SLAPP special motion to strike**

3      “Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish  
4      that the challenged claim arises from activity protected by section 425.16. If the defendant makes  
5      the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by  
6      establishing a probability of success.” *Baral v. Schnitt*, 1 Cal.5th 376, 384 (2016).

7      To satisfy this second prong, “a plaintiff responding to an anti-SLAPP motion must state and  
8      substantiate a legally sufficient claim.” *Wilson v. Parker, Covert & Chidester*, 28 Cal.4th 811, 821  
9      (2002). The Court considers “the pleadings, and supporting and opposing affidavits [] upon which  
10     the liability or the defense is based.” Cal. Civ. Proc. § 425.16(b)(2). However, the trial court does  
11     not “weigh credibility nor compare the weight of the evidence. Rather, [it] accepts as true the  
12     evidence favorable to the plaintiff and evaluate the defendant’s evidence only to determine if it has  
13     defeated that submitted by the plaintiff as a matter of law.” *Oasis West Realty, LLC v. Goldman*, 51  
14     Cal.4th 811, 820 (2011); *see also Hawran v. Hixson*, 209 Cal.App.4th 256, 274 (2012) (“it is the  
15     court’s responsibility to accept as true the evidence favorable to the plaintiff”) (internal quotations  
16     and ellipses omitted). Because a trial court does not weigh evidence on an anti-SLAPP motion,  
17     California’s appellate courts repeatedly remind us that “the [anti-SLAPP] statute *poses no obstacle*  
18     *to suits that possess minimum merit.*” *Navellier v. Sletten*, 29 Cal.4th 82, 93 (2002) (emphasis  
19     added); *see also Soukup v. Law Offices of Herbert Hafif*, 39 Cal.4th 260, 291 (2006) (“[t]he plaintiff  
20     need only establish that his or her claim has ‘minimal merit’ to avoid being stricken as a SLAPP”)  
21     (internal quotations omitted); *Jarrow Formulas, Inc. v. LaMarche*, 31 Cal.4th 728, 738 (2003) (“the  
22     anti-SLAPP statute requires only a minimum level of legal sufficiency and triability”) (internal  
23     quotations omitted). “Only a cause of action that satisfies both prongs of the anti-SLAPP statute—  
24     i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP,  
25     subject to being stricken under the statute.” *Goldman*, 51 Cal.4th at 819-20.

26

27

28

1           B.     **BGC lacks standing to assert an anti-SLAPP motion in Ms. Bryant's derivative**  
2           **lawsuit**

3           1.       Ms. Bryant's complaint in this action is derivative in nature

4           Unlike Ms. Bryant's claims in companion Case 5517, her claims in this action are derivative  
5           in nature: that is, Ms. Bryant asserts claims on BGC's behalf for damages BGC suffered because of  
6           Defendants' wrongful conduct. "An action is deemed derivative if the gravamen of the complaint is  
7           injury to the corporation . . . or it seeks to recover assets for the corporation or to prevent the  
8           dissipation of its assets." *Schrage v. Schrage*, 69 Cal.App.5th 126, 150 (2021) (*citing Grosset v.*  
9           *Wenaas*, 42 Cal.4th 1100, 1108 (2008)). "When a derivative action is successful, the corporation is  
10          the only party that benefits from any recovery[.]" *Id.* Ms. Bryant has standing to assert these  
11          derivative claims on BGC's behalf pursuant to Cal. Corp. Code §§ 5142, 5233, and/or 5710.<sup>2</sup>

12          While BGC is named as a party defendant in this action<sup>3</sup>—and while it is specifically named  
13          as a defendant in Ms. Bryant's enumerated causes of action—even a cursory reading of Ms.  
14          Bryant's complaint in this action reveals *she is not suing to obtain a personal benefit from BGC; she*  
15          *is suing to recover on behalf of BGC*. Consider the following allegations in her breach of fiduciary  
16          duty and negligence causes of action—the exact causes of action BGC seeks to strike under Cal.  
17          Civ. Code § 425.16 here:

- 18           •     "*Defendants breached their duties of care and loyalty to BGC by engaging in, participating*  
19           *in, aiding and abetting, and facilitating the unlawful action, or omissions, detailed here.*"  
20           *[Complaint, First Cause of Action for Breach of Fiduciary Duty, ¶ 50]* (emphasis added).
- 21           •     *Defendants specifically owe fiduciary duties of care, loyalty, and good faith to BGC*. Said  
22           fiduciary duties include obligations to exercise good business judgment, to act prudently in

23          <sup>2</sup> Ms. Bryant was terminated as director and CEO on August 12, 2022, during the pendency of  
24          BGC's anti-SLAPP motion. Whether Ms. Bryant continues to have standing to assert claims on  
25          BGC's behalf may well be an unresolved legal issue. *See, e.g., Summers v. Colette*, 34 Cal.App.5th  
26          361, 364 (2019) (director terminated after filing derivative action on behalf of non-profit  
27          corporation did not lose standing to assert derivative claims); *but see Turner v. Victoria*, 67  
28          Cal.App.5th 1099, 1108 (2021) (director terminated after filing of complaint loses standing to  
29          pursue derivative claims). Standing, however, is an issue for another day.

30          <sup>3</sup> Ms. Bryant properly identified BGC as a defendant in this action notwithstanding her derivative  
31          claims on BGC's behalf. *See, e.g., Schrage*, 69 Cal.App.5th at 149 ("When a derivative suit is  
32          brought to litigate the rights of the corporation, the corporation is an indispensable party and must  
33          be joined as a nominal defendant"); *Patrick v. Alacer Corp.*, 167 Cal.App.4th 995, 1004 (2008)  
34          (corporation must be joined as a defendant even though it "is essentially the plaintiff in a derivative  
35          action[.]")

1                   the operation of BGC's business, to discharge their actions in good faith, to act in the best  
2                   interests of BGC, and to put the interests of BGC before their own." [Id., ¶ 51] (emphasis  
3                   added).

- 4                   • "Defendants breached their duty of care by, among other things, failing to act in accordance  
5                   with BGC's Bylaws and applicable corporate law. *Defendants failed to act in good faith,*  
6                   *failed to act in BGC's best interests*, and failed to use due care as required under  
7                   Corporations Code Section 5231." [Id., ¶ 52] (emphasis added).
- 8                   • "The acts as alleged in this cause of action were willful, wanton, malicious, and oppressive  
9                   and were undertaken with the intent to injure BGC's charitable beneficiaries and donors . . .  
10                  ." [Id., ¶ 54] (emphasis added).
- 11                  • "The Officer/Director Defendants, including HILES, BROWN-PHILPOT, WHITES, and  
12                  Does 1-50 breached the duty of care they owed to BGC by committing the actions and  
13                  omissions set forth above, and committing other actions and omissions of which BRYANT  
14                  is currently unaware." [Complaint, Third Cause of Action for Negligence, ¶ 60] (emphasis  
15                  added).
- 16                  • BRYANT is informed and believes and thereon alleges that, as a proximate result of the  
17                  breach of the duty of care which the Officer/Director Defendants, including HILES,  
18                  BROWN-PHILPOT, WHITES, and Does 1-50 owed to BGC in the manner required by law,  
19                  including but not limited to the unauthorized increase(s) in salary to employees and other  
20                  payroll modifications, *charitable assets have been improperly diverted from BGC. BGC and*  
21                  *the public beneficiaries of the charity have been damaged in [amount] presently unknown to*  
22                  *BRYANT and which cannot be ascertained without an accounting by Defendants. The facts*  
23                  *necessary to ascertain the exact amount of damages to BGC and the public beneficiaries of*  
24                  *charity are within the specifical knowledge of these defendants.* [Id., ¶ 61] (emphasis  
25                  added).

16                  2. Defendants' anti-SLAPP motion is barred by Cal. Civ. Proc. Code § 425.17's  
17                  public interest exemption

18                  Ms. Bryant seeks to benefit BGC—and the tens of thousands of black girls benefitting from  
19                  BGC's programming—by derivatively addressing Defendants' tortious conduct. This is precisely  
20                  the type of remedial litigation the Legislature carved out from California's anti-SLAPP statute. In  
21                  2004, after declaring that "there has been a disturbing abuse of Section 425.16 . . . contrary to [its]  
22                  purpose and intent," the Legislature enacted Cal. Civ. Proc. Code § 425.17(b), which restricts the  
23                  scope of § 425.16 as follows:

- 24                  (b) Section 425.16 does not apply to any action brought solely in the public interest or  
25                  on behalf of the general public if all of the following conditions exist:  
26                  (1) The plaintiff does not seek any relief greater than or different from the relief  
27                  sought for the general public or a class of which the plaintiff is a member. A  
28                  claim for attorneys' fees, costs, or penalties does not constitute a greater or  
                        different relief for purposes of this subdivision.  
                        (2) The action, if successful, would enforce an important right affecting the  
                        public interest, and would confer a significant benefit, whether pecuniary or  
                        non-pecuniary, on the general public or a large class of persons.

1                         (3) Private enforcement is necessary and places a disproportionate financial  
2 burden on the plaintiff in relation to the plaintiff's stake in the matter.

3 "[T]he applicability of § 425.17's public interest exemption (including the financial burden  
4 element) is determined by examining the allegations of the complaint and does not require the  
5 plaintiff to proffer affirmative evidence." *San Diegans for Open Government v. Har Constr., Inc.*,  
6 240 Cal.App.4th 611, 628-29 (2015) (suit brought by public interest entity seeking return of public  
7 money paid to contractor insulated from anti-SLAPP scrutiny).

8                         Ms. Bryant's derivative lawsuit meets all three of these elements. First, Ms. Bryant does not  
9 seek any personal relief from BGC or the Director Defendants (other than an award of attorneys'  
10 fees against the Director Defendants, which is not "different relief" under § 425.17(b)(1)). Rather,  
11 she seeks to stop Defendants' waste and mismanagement which, as she alleges, threatens to harm  
12 BGC's charitable beneficiaries. *See* Compl., ¶¶ 50, 52-54, 56-57, 60-61. Second, if her derivative  
13 lawsuit is successful, then the public (and, more specifically, the tens of thousands of black girls  
14 benefitting from BGC's programming) will benefit because BGC charitable funds and other assets  
15 will be put to better (and more appropriate) uses. Finally, Ms. Bryant faces an extremely  
16 disproportionate financial burden in this action; she is incurring attorneys' fees to prosecute claims  
17 on BGC's behalf (and to defend against BGC's and the Defendants' meritless anti-SLAPP motions)  
18 even though she will not receive any personal financial benefit from this derivative action. As a  
19 result, BGC's anti-SLAPP motion is barred by Cal. Civ. Proc. Code § 425.17(b) and should be  
20 denied on this basis alone.

21                         3. BGC's anti-SLAPP motion is barred by California law preventing BGC from  
22 challenging the merits of Ms. Bryant's derivative suit brought on its behalf

23                         In addition to Cal. Civ. Proc. Code § 425.17(b), BGC is also barred from bringing its anti-  
24 SLAPP motion because, under longstanding California law, companies that are the subject of a  
25 plaintiff's derivative action generally cannot challenge the factual and legal merits of the plaintiff's  
26 claims:

27                         The conclusion follows that a nominal defendant corporation generally may not  
28 defend a derivative action filed on its behalf. The corporation may assert defenses  
contesting the plaintiff's right or decision to bring suit, such as asserting the  
shareholder plaintiff's lack of standing or the [special litigation committee] defense .

1        . . . it suffices to hold that the corporation has no ground to challenge the merits of a  
2        derivative claim filed on its behalf and from which it stands to benefit.

3        *Patrick*, 167 Cal.App.4th at 1005 (overruling trial court's order sustaining demurrer in derivative  
4        action) (emphasis added); *see also Apple Inc. v. Superior Court*, 18 Cal.App.5th 222, 239 (2017) (a  
5        corporation cannot "challenge the merits of a derivative claim filed on its behalf and from which it  
6        stands to benefit") (quoting Patrick at 1005). This principle arises from two specific policy grounds  
7        applicable here: (1) a corporation benefits if the plaintiff prevails on her derivative claims; and (2)  
8        allowing a corporation to defend a derivative action arising out of the alleged wrongful conduct of  
9        director defendants "would allow the director defendants to shift the cost of their defense of the  
10      derivative suit to the corporation against which they have alleged committed tortious conduct."  
11      *Patrick*, 167 Cal.App.4th at 1008 (internal brackets omitted). "Defendant directors lack any right to  
12      use the corporation . . . to impose on the corporation the burden of fighting their battle." *Id.* (quoting  
13      *Meyers v. Smith*, 190 Minn. 157, 159 (Minn. 1933).

14        BGC's anti-SLAPP motion attacks the factual and legal merits of Ms. Bryant's causes of  
15      action. *See Navellier* 29 Cal.4th at 93 (describing the "minimal merit" needed to survive anti-  
16      SLAPP scrutiny). But BGC cannot assert this merits-based motion under California law; after all,  
17      BGC wins if Ms. Bryant prevails against the Director Defendants, and it is a violation of public  
18      policy to allow the Director Defendants to be shielded from liability by the same corporation they  
19      are accused of harming. *Patrick*, 167 Cal.App.4th at 1008. As a result, BGC is barred from asserting  
20      its anti-SLAPP motion under California law.

21            **C. Ms. Bryant's complaint does not assert *any* causes of action against BGC, let  
22            alone causes of action arising from protected activity**

23        Before BGC can show a *prima facie* right to anti-SLAPP relief, it must establish that Ms.  
24        Bryant's derivative complaint contains "cause[s] of action against [BGC] *arising from* any act of  
25        [BGC] in furtherance of [BGC's] right of petition or free speech." Cal. Civ. Proc. Code § 425.16(b)  
26        (emphasis added). But, as described above, this is a derivative action in which Ms. Bryant seeks to  
27        recover from the Director Defendants on BGC's behalf; Ms. Bryant does not assert any causes of  
28

1 action against BGC *at all*, let alone any causes of action arising from BGC's exercise of free speech  
2 rights.

3 While BGC is a named defendant in this action, this is a function of procedure—a  
4 corporation in a derivative action must be legally joined as a defendant. *Patrick*, 167 Cal.App.4th at  
5 1004. And while BGC is identified as a separate defendant in each of Ms. Bryant's causes of action,  
6 even a cursory reading of her complaint—including the passages highlighted above—reveal that  
7 each cause of action: (a) identifies conduct by the Director Defendants that harmed BGC; and (b)  
8 seeks to recover from the Director Defendants *for* BGC, not to recover *from* BGC for Ms. Bryant's  
9 personal benefit.<sup>4</sup> Because Ms. Bryant does not assert any causes of action or claims for relief  
10 against BGC, her complaint is not subject to anti-SLAPP scrutiny by BGC.

11

12 **D. Even if Ms. Bryant's breach of fiduciary duty and negligence causes of action can  
13 be read to attack and seek damages from BGC, they do not arise solely from  
14 protected activity by BGC**

15 Even if the Court construes Ms. Bryant's complaint in the same manner as BGC (i.e., that  
16 Ms. Bryant asserts breach of fiduciary duty and negligence causes of action against BGC and seeks  
17 relief from BGC simply because her cause of action headings use the plural word “Defendants”),  
18 BGC must still establish that those causes of action arise from BGC's protected free speech rights.

19

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20 <sup>4</sup> BGC complains that Ms. Bryant's pleading “confusingly purports to seek money damages from  
21 BGC on each of her three causes of action.” [Motion at 1.] It most certainly does not. Nowhere in  
22 her complaint does Ms. Bryant come anywhere close to saying “BGC should pay me money.” And  
23 BGC purported “confusion” is nothing but rhetorical hyperbole; it correctly identifies the complaint  
24 as asserting derivative claims against the Defendant Directors on BGC's behalf. *Id.* at 1, 8.  
Similarly, BGC also contends that Ms. Bryant's prayer for relief asks for damages of no less than  
\$100,000 “from BGC.” *Id.* at 9. The words “from BGC” are not in Ms. Bryant's complaint,  
however. *See Compl. at Prayer ¶ 1*.

25 At best, BGC's argument can be fairly characterized as “Ms. Bryant must be asserting claims  
26 against BGC because BGC is identified as a defendant in each cause of action.” But this greatly  
elevates form over substance. Even a disinterested reader of the complaint will conclude that Ms.  
27 Bryant seeks to recover from the Director Defendants *for* BGC, not for herself. To the extent that  
28 Ms. Bryant's section headings are “confusing”—and they are not—this is a matter for resolution at  
the demurrer stage (and likely not even there—this sort of issue is routinely resolved in a three-  
minute phone call between counsel pursuant to Cal. Civ. Proc. Code § 430.41(a)) and not in the  
context of an expensive anti-SLAPP motion.

1 Cal. Civ. Proc. Code § 425.16(b). Like the Director Defendants, BGC attempts to shoehorn the  
2 round peg of Ms. Bryant's derivative complaint into the anti-SLAPP framework's square hole by  
3 making two gross (but fundamentally incorrect) overgeneralizations: (1) Ms. Bryant's breach of  
4 fiduciary duty and negligence causes of action should be stricken *in their entirety* because she  
5 identifies "misrepresentations of fact to the public" as only one discrete example of Defendants'  
6 many fiduciary breaches; and, failing that (2) *all* of Defendants' wrongful conduct somehow  
7 constitutes "protected activity." BGC is wrong on both fronts, as detailed below.

8           1.       Ms. Bryant's breach of fiduciary and negligence causes of actions do not  
9                   arise solely from Hiles's and Brown-Philpot's defamatory statements

10           BGC argues that Ms. Bryant's breach of fiduciary duty and negligence claims are premised  
11           solely on her accusations relating to Hiles's and Brown-Philpot's statements to Business Insider.  
12           Motion at 9-11. Not so. Here's what she alleges in her breach of fiduciary duty cause of action:

- 13           • "*Defendants breached their duty of care by, among other things, failing to act in accordance*  
14           *with BGC's Bylaws and applicable corporate law. Defendants failed to act in good faith,*  
15           *failed to act in BGC's best interests, and failed to use due care as required under*  
16           *Corporations Code Section 5231.*" [Compl., ¶ 52] (emphasis added). This allegation does  
17           not mention protected activity at all.
- 18           • She then alleges "*Defendants HILES and BROWN-PHILPOT<sup>5</sup> further breached their duty*  
19           *of loyalty and good faith by, among other things, intentionally causing misrepresentations of*  
20           *fact to the public to entrench themselves in roles as BGC's Board of Directors to the*  
21           *detriment of BGC.*" [Id., ¶ 53.]

22           And Ms. Bryant's negligence cause of action is completely devoid of any reference to  
23           defamatory statements:

- 24           • BRYANT is informed and believes and thereon alleges that, as a proximate result of the  
25           breach of the duty of care which the [Defendants] owed to BGC in the manner required by  
26           law, including but not limited to the unauthorized increase(s) in salary to employees and  
27           other payroll modifications, charitable assets have been improperly diverted from BGC.  
28           BGC and the public beneficiaries have been damaged in an [amount] presently unknown to  
BRYANT and which cannot be ascertained without an accounting by Defendants. [Id., ¶ 61.] Ms. Bryant's negligence cause of action is not premised on defamation at all; the  
defamation did not cause "charitable assets [to be] improperly diverted from BGC. [Id.]

At best, Ms. Bryant's breach of fiduciary duty cause of action (but not her negligence cause  
of action) is a "mixed" cause of action because it consists of non-protected activity (failure to act in

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<sup>5</sup> This allegation is specific only to Hiles and Brown-Philpot, as Whites is not alleged to have said or contributed to the defamatory statements. Thus, Whites lacks standing to seek anti-SLAPP relief based on this allegation.

1 accordance with BGC’s bylaws and applicable corporate law) and ostensibly protected activity (the  
2 statements by Hiles and Brown-Philpot). In *Baral v. Schnitt*, 1 Cal. 5th 376 (2016), the California  
3 Supreme Court synthesized conflicting appellate decisions and clarified how trial courts are to  
4 address anti-SLAPP motions under these situations:

5 For the benefit of litigants and courts involved in this sometimes difficult area of  
6 pretrial procedure, we provide a brief summary of the showings and findings  
7 required by section 425.16. At the first step, the moving defendant bears the burden  
8 of identifying all allegations of protected activity, and the claims for relief supported  
9 by them. When relief is sought based on allegations of both protected and  
10 unprotected activity, *the unprotected activity is disregarded at this stage.*

11       *Baral*, 1 Cal.5th at 396 (emphasis added). In a “mixed” cause of action, anti-SLAPP scrutiny  
12 is not applied to allegations within a cause of action that do not invoking protected activity. Even if  
13 allegations of protected activity supporting a cause of action are stricken under the second anti-  
14 SLAPP step, the other allegations are allowed to proceed. Put more simply—and contrary to  
15 Defendants’ argument here—the baby is not thrown out with the bathwater. *Id.*; see also *Sheley v.*  
16 *Harrop*, 9 Cal.App.5th 1147, 1172-73 (2017) (where plaintiff alleged that defendant breached  
17 fiduciary duties by, among other things, “filing and maintaining a frivolous lawsuit,” and where  
18 plaintiff failed to establish minimal merit of that particular allegation under second step of anti-  
19 SLAPP analysis, the allegation was stricken but “the remainder of the cause of action shall remain  
20 undisturbed”); *Bonni v. St. Joseph Health Sys.*, 11 Cal.5th 995, 1026 (2021) (concluding that  
21 some—but not all—of the discrete allegations supporting plaintiff’s discrimination and retaliation  
22 claims were protected activity that required further scrutiny under the second prong of anti-SLAPP  
23 analysis).

24       Here, the only allegation of protected activity in Ms. Bryant’s breach of fiduciary and  
25 negligence causes of action is the alleged defamation by Hiles and Brown Philpot. [Compl., ¶ 53.]  
26 The other activities referenced in these causes of action—failing to act in accordance with bylaws  
27 and applicable law and acting to divert charitable assets from BGC—are not protected speech  
28 activity. *Sheley*, 9 Cal.App.4th at 1171 (allegations that defendants breached fiduciary duties by  
“paying themselves excessive salaries,” “wrongfully converting corporate assets,” and “failing to  
make pro-rata distributions” did not constitute protected speech and were not subject to anti-SLAPP

1 scrutiny). As a result, the Court must “disregard” this unprotected activity and move on to the  
2 second stage of anti-SLAPP analysis *only* as to Ms. Bryant’s defamation allegations. *Baral*, 1  
3 Cal.5th at 396; *Sheley*, 9 Cal.App.4th at 1171.

4       2. BGC does not contend that Ms. Bryant’s negligence cause of action alleges  
5 any instances of “protected activity” under § 425.16, and BGC’s suggestion  
that “the baby gets thrown out with the bathwater” is without merit

6       Unlike the Director Defendants—who specifically argue that Ms. Bryant’s negligent cause  
7 of action arises from protected activity because their alleged wrongdoing is the result of deliberative  
8 processes that took place in the public domain (*see* Director Defendants’ Motion at 16-17)—BGC  
9 does not specifically contend that the negligence cause of action relies on instances of protected  
10 speech. Rather, BGC insinuates that the negligence cause of action is “dependent upon the [breach  
11 of fiduciary duty cause of action]” containing allegations of protected speech and, therefore, that the  
12 negligence claim must be scrutinized under the second anti-SLAPP step. Motion at 10. This is  
13 wrong. As noted above, *Baral* makes clear that allegations that do not involve protected activity are  
14 not subject to anti-SLAPP scrutiny even if others are (or even if certain allegations are ultimately  
15 stricken after the second step); the baby is not thrown out with the bathwater. *Baral*, 1 Cal.5th at  
16 396; *Sheley*, 9 Cal.App.4th at 1171. BGC’s insinuation to the contrary is wrong and relies almost  
17 entirely on inapposite, non anti-SLAPP cases (predating *Baral*) where: (i) all of the plaintiff’s  
18 claims arise from an allegedly false statement by the defendants; and (ii) where that statement was  
19 found to be substantively true. *See, e.g., Francis v. Dun & Bradstreet, Inc.*, 3 Cal.App.4th 535, 540  
20 (1992) (in case where “the facts, literally, are not in dispute,” all of plaintiff’s allegations arose from  
21 publication of factually true credit report); *Franklin v. Dynamic Details, Inc.*, 116 Cal.App.4th 375,  
22 394 (2004) (affirming defense judgment on ground that allegedly defamatory e-mails contained true  
23 statements).<sup>6</sup>

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28       <sup>6</sup> Neither of these cases involves an anti-SLAPP analysis, and neither addresses “mixed” causes of  
action where a portion of a cause of action relies on protected activity but other portions do not.  
Both cases are appeals from grants of summary judgment to the defendants.

1           E.     **Ms. Bryant's breach of fiduciary duty and negligence causes of action has more**  
2           **than minimal merit**

3           As described above, only one specific allegation in Ms. Bryant's breach of fiduciary duty  
4           cause of action (that Hiles and Brown-Philpot made misrepresentations of fact to the public  
5           [Compl., ¶ 53]) arises from protected activity. As such, the remaining portions of this cause of  
6           action do not reach the second stage of anti-SLAPP analysis. *See Cal. Civ. Proc. Code § 425.16;*  
7           *Baral*, 1 Cal.5th at 382; *Sheley*, 9 Cal.App.4th at 1171; *Bonni*, 11 Cal.5th at 1026. But even if all  
8           Ms. Bryant's causes of action are predicated exclusively on protected conduct, BGC's factual  
9           attacks on these causes of action are meritless and do nothing to show that Ms. Bryant has not  
10          established the "minimal merit" necessary to survive the second anti-SLAPP step.

11          1.     **BGC's criticism that Ms. Bryant's breach of fiduciary duty and negligence**  
12          **causes of action fail to allege a duty owed to Ms. Bryant is frivolous given its**  
13          **admission that this is a derivative action**

14          BGC offers only a single merits-based criticism of Ms. Bryant's breach of fiduciary duty  
15          and negligence causes of action: namely, that Ms. Bryant cannot allege that BGC owed her any  
16          duties, fiduciary or otherwise. Motion at 13. But this criticism is frivolous given BGC's accurate  
17          acknowledgements that: (i) this is a derivative action (Motion at 1) ("This lawsuit appears to be  
18          Bryant's attempt to sue members of BGC's Board derivatively *on BGC's behalf*") (emphasis in  
19          original); (ii) "directors and officers owe fiduciary duties *to* the corporation" (Motion at 13)  
20          (emphasis in original); and (iii) "Bryant's cause of action for negligence is premised on a breach of  
21          'the duty of care owed *to* BGC'" (*Id.*) (emphasis in original). Again, Ms. Bryant is not alleging in  
22          this action that BGC breached duties to her or that she was individually damaged by Ms. Bryant's  
23          conduct. BGC's criticism does nothing to weaken the merits of her derivative claims against the  
24          Director Defendants brought on BGC's behalf.

25          2.     **BGC's breach of fiduciary duty and negligence causes of action are**  
26          **supported by substantial record evidence**

27          As described in Section III(D)(2) and (E) of Ms. Bryant's opposition to the Director  
28          Defendants' anti-SLAPP motion, Ms. Bryant's breach of fiduciary duty and negligence causes of  
action are supported by substantial record evidence set forth in her declaration and Dr. Thomas's  
declaration. Ms. Bryant incorporates the legal and factual arguments in her other opposition brief—

1 and her citations to the ample evidentiary record—by reference here. Again, while BGC may have  
2 other factual arguments as to why it could ultimately prevail at trial on Ms. Bryant's breach of  
3 fiduciary duty and negligence claim (which it does not raise in its brief), the court cannot weigh the  
4 parties' respective evidence at this stage of the proceedings. *Hawran v. Hixson*, 209 Cal.App.4th  
5 256, 293 (2012) (court does not weigh evidence or assess the credibility of the declarations in  
6 support of Defendants' anti-SLAPP motion); *Citizens of Humanity, LLC v. Hass* 46 Cal.App.5th  
7 589, 598 (2020) (if there is a conflict in the evidence, the anti-SLAPP motion must be denied).

8 **IV. CONCLUSION**

9 For the foregoing reasons, BGC's anti-SLAPP motion should be denied, and Ms. Bryant  
10 should be awarded the attorneys' fees and expenses of litigation she incurred in responding to the  
11 motion.

12 Dated: October 10, 2022

JOHNSON TRIAL LAW, LLC



13  
14 James M. Johnson  
15 Attorneys for Plaintiff Kimberly Bryant

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9  
FOR THE COUNTY OF ALAMEDA

10 KIMBERLY BRYANT, an individual,

Case No. 22CV005512

11 Plaintiff,

PLAINTIFF KIMBERLY BRYANT'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
DEFENDANTS HEATHER HILES'S, STACY  
BROWN-PHILPOT'S, AND SHERMAN  
WHITES'S SPECIAL MOTION TO STRIKE  
PURSUANT TO CAL. CIV. PROC. CODE §  
425.16

12 v.

13 BLACK GIRLS CODE, a California Non-  
14 Profit Public Benefit Corporation; HEATHER  
HILES, an individual; STACY BROWN-  
15 PHILPOT, an individual; SHERMAN  
WHITES, an individual; and DOES 1-50,  
16 Inclusive,

[Filed concurrently with Declarations of Kimberly  
Bryant and Dr. Sylvia Wilson Thomas]

17 Defendants.

Date: October 21, 2022  
Time: 2:00 p.m.  
Dept.: 514  
Judge: Hon. Noël Wise

20 Complaint Filed: June 7, 2021  
Trial Date: None Set  
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1                   **PLAINTIFF KIMBERLY BRYANT'S MEMORANDUM OF POINTS AND**  
2                   **AUTHORITIES IN OPPOSITION TO DIRECTOR DEFENDANTS'**  
3                   **ANTI-SLAPP SPECIAL MOTION TO STRIKE**

4           **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

5           This is a derivative action in which Plaintiff Kimberly Bryant, the founder and long-time  
6 director and CEO of Defendant BGC, Inc. ("BCG"), asserts claims on BGC's behalf against  
7 Defendants Heather Hiles, Stacy Brown-Philpot, and Sherman Whites (for the purposes of this  
8 response, the "Defendants"). As is all too common in this type of heavily-contested, high-profile  
9 litigation, Defendants highlight a single allegation in Ms. Bryant's complaint (namely, that  
10 Defendants Hiles and Brown-Philpot issued a false and defamatory press release to Business Insider  
11 in December 2021), argue that this allegation is the singular lynchpin for Ms. Bryant's derivative  
12 breach of fiduciary duty and negligence claims, and move to strike those entire causes of action  
13 under California's anti-SLAPP statute (and, Defendants hope, recover an overstated attorneys' fees  
award).

14           Defendants' anti-SLAPP motion is meritless. For starters, Defendants lack standing to assert  
15 an anti-SLAPP motion in this derivative action. Ms. Bryant brings this action on behalf of the  
16 public (and BGC's charitable donors and the more than 30,000 students who benefit from its  
17 worthwhile endeavors) and does not pursue her own individual recovery against Defendants. As a  
18 result, Defendants are barred from moving to strike Ms. Bryant's derivative complaint by operation  
19 of Cal. Civ. Proc. Code § 425.17's public interest exemption, which insulates public-oriented  
20 lawsuits from anti-SLAPP scrutiny. Moreover, as detailed below, Defendants do not pass step one  
21 of the familiar two-step anti-SLAPP analysis because Ms. Bryant's breach of fiduciary duty and  
22 negligence causes of action do not arise from protected speech. And even if Defendants could  
23 establish that Ms. Bryant's causes of action involve protected speech, Ms. Bryant survives the  
24 second anti-SLAPP step because her allegations and evidence supply far more than the "minimal  
25 merit" required to escape anti-SLAPP scrutiny. Defendants' anti-SLAPP motion should be denied  
26 and Ms. Bryant should be awarded her attorneys' fees incurred in responding to the motion.

1      **II. FACTUAL BACKGROUND AND SUMMARY OF ALLEGATIONS AND**  
2      **SUPPORTING EVIDENCE<sup>1</sup>**

3      **A. Ms. Bryant forms BGC and leads it to great financial success despite the**  
4      **challenges from the COVID-19 pandemic**

5      Ms. Bryant founded BGC in 2011 with a stated mission to “change the face of technology”  
6      by introducing computer science and technology to girls from underserved communities. [Compl., ¶  
7      15; Declaration of Kimberly Bryant (“Bryant Dec.”), ¶ 2.] Over the past decade, BGC grew from a  
8      small, grassroots organization in San Francisco with only six students to an international  
9      organization with 15 U.S. chapters and an international chapter serving an estimated 30,000  
10     students. [Compl., ¶ 15; Bryant Dec., ¶ 4.]

11     Throughout the 2020 programmatic year, BGC faced tremendous impacts from the COVID-  
12     19 pandemic. Ms. Bryant spent a significant amount of time and energy securing support for BGC  
13     so that BGC could meet its budget, retain its workforce, and continue its charitable mission. [*Id.*, ¶¶  
14     8-10.] As a result of Ms. Bryant’s efforts, BGC overcame the challenges of the COVID-19  
15     pandemic; she grew its operational revenues (derived from charitable donations) from \$3,000,000 to  
16     almost \$30,000,000 by the end of 2020 and added 12 full-time employees during that year. [Compl.,  
17     ¶ 16; Bryant Dec., ¶¶ 9, 11.]

18      **B. BGC employees resign in 2021 but BGC’s board concludes that employee**  
19      **comments do not warrant further investigation**

20     Beginning in June 2021, three BGC staff members tendered their letters of resignation.  
21     [Compl., ¶ 20; Bryant Dec., ¶ 13.] Ms. Bryant met with BGC’s board (which, by this time, included  
22     Defendants) both formally and privately to discuss the contents of the resignation letters. [Compl.,  
23     ¶¶ 22-23; Bryant Dec., ¶ 20; Declaration of Dr. Sylvia Wilson-Thomas (“Wilson-Thomas Dec.”), ¶¶  
24     10.] BGC’s board chair, Dr. Stephanie Adams, concluded that none of the issues referenced in the  
25     resignation letters warranted further investigation by BGC or outside counsel. [Compl., ¶ 23-24;

26     \_\_\_\_\_  
27     <sup>1</sup> Suffice it to say that this is an especially fact-intensive dispute and, if Ms. Bryant set forth in this  
28     brief every specific allegation in her complaint and every specific piece of declaration evidence  
   supporting her allegations, she would exceed Cal. R. Ct. 3.1113’s page limitation many times over.  
   Ms. Bryant summarizes the allegations and evidence relevant to Defendants’ anti-SLAPP motion,  
   but reserves the right to argue more extensively from her complaint and supporting declarations  
   below and at the upcoming hearing on Defendants’ anti-SLAPP motion.

1 Bryant Dec., ¶ 20.] While BGC ultimately retained DLA Piper to provide employment-related legal  
2 advice, the firm was not hired to investigate Ms. Bryant. [Bryant Dec., ¶¶ 28-29, Ex. G.]

3       **C. Ms. Bryant accuses Hiles of conflicts of interest and refuses to support her  
4 nomination for BGC's board chair, but Defendants appoint her anyway in  
violation of BGC's bylaws**

5       In September 2021, Dr. Adams retired as BGC's board chair, and Defendants nominated  
6 Hiles to replace Dr. Adams in that position. [Compl., ¶¶ 25; Bryant Dec., ¶¶ 22-25; Wilson-Thomas  
7 Dec., ¶ 13.] Ms. Bryant vigorously opposed Hiles nomination on the ground that Hiles had conflicts  
8 of interest and intended to pursue self-dealing transactions with companies in which she had a  
9 financial interest. [Bryant Dec., ¶¶ 23-24, Exs. C-D; Wilson-Thomas Dec., ¶ 13.] Ms. Bryant also  
10 opposed Defendants' intent to elect Hiles via an e-mail "vote" in violation of BGC's bylaws.  
11 [Bryant Dec., ¶ 25; Exs. C-E.] Despite Ms. Bryant's opposition, Defendants violated BGC's bylaws  
12 by electing Hiles as board chair via an improper e-mail "vote." [*Id.*, ¶¶ 25.]

13       **D. Defendants allegedly create a "special committee" in violation of BGC's bylaws  
14 but refuse to provide any evidence that the "special committee" was actually  
created**

15       Defendants contend that, on October 11, 2021, BGC's board held an "executive session"  
16 and a "Special Committee" was formed for the purpose of facilitating the investigation into the  
17 workplace misconduct" set forth in the employee resignation letters. [Declaration of Heather Hiles  
18 ("Hiles Dec."), ¶ 18.] Ms. Bryant contends that this never actually occurred. Defendants refuse to  
19 produce any minutes, resolutions, or other materials confirming the creation of a "special  
20 committee" despite Ms. Bryant's statutory right to such documents. [Bryant Dec., ¶¶ 26-27, 37-38.]  
21 Even if a "special committee" was created, it was created in violation of BGC's bylaws because Ms.  
22 Bryant never received notice of a regular or special meeting during which the Board created the  
23 committee. [Bryant Dec., ¶ 26; Wilson-Thomas Dec., ¶ 16.]

24       **E. Defendants wrongfully suspend Ms. Bryant as BGC's director and CEO**

25       On December 21, 2021, Ms. Bryant was informed that Defendants were suspending her as  
26 BGC's director and CEO because "[the board has] been made aware of serious allegations that  
27

1 involve you and we are attempting to conduct a thorough and robust investigation into those  
2 allegations.” [*Id.*, ¶¶ 30-31, Ex. H.] Again, Defendants refuse to produce any documents that BGC’s  
3 board held a properly-noticed meeting at which Ms. Bryant’s suspension was put to a vote. [*Id.*, ¶¶  
4 37-38; Ex. L.]

5 **F. Hiles and Brown-Philpot Issue False and Defamatory Press Statements**

6 Ms. Bryant was shocked that Defendants would take her away from the organization she  
7 created and built from the ground up, and she initially expressed her shock and dismay over Twitter.  
8 [*Id.*, ¶¶ 32.] Although she initially declined to give comments to the press, she gave a statement to  
9 Business Insider only after that publication told her that Hiles and Brown Philpot already gave a  
10 statement regarding her purported suspension. [*Id.*.]

11 In apparent response to Ms. Bryant’s Twitter posts, Hiles and Brown-Philpot released  
12 statements to Business Insider on behalf of BGC. Those statements say BGC “was investigating  
13 serious allegations of workplace impropriety” against Ms. Bryant. [Bryant Dec., ¶¶ 33-35, Exs. I, J,  
14 K.] Business Insider noted that BGC “did not provide further details” about the alleged  
15 investigation. [*Id.*] The specific evidence demonstrating the false and defamatory nature of Hiles’s  
16 and Brown-Philpot’s statements is detailed in Section III(D)(3) below. Defendants refuse to produce  
17 any documents evidencing that they engaged in an “investigation” of Ms. Bryant prior to the  
18 publication of these press statements. [Bryant Dec., ¶¶ 37-38; Ex. L; Wilson-Thomas Dec., ¶¶ 37-  
19 44.]

20 **G. Defendants wrongfully terminate Ms. Bryant’s director and CEO positions and  
21 engage in other wrongful misconduct**

22 BGC did not pursue an “investigation” of Ms. Bryant until after Hiles and Brown-Philpot  
23 issued the defamatory press statements. [*Id.*, ¶¶ 41.] Indeed, an investigator had not been formally  
24 retained by BGC until after January 2022. [Wilson-Thomas Dec., ¶ 53.] Ms. Bryant fully  
25 participated in the “investigation” and, notably, was not asked about or accused of alleged  
26 “workplace improprieties.” Instead, she was asked questions about storage keys, access to SAP, and  
27 other non-consequential matters of business operations. [*Id.*, ¶¶ 42-44.]

28

1       On August 12, 2022, BGC’s board held a special meeting over Zoom to: (a) hear the results  
2 of BGC’s purported “investigation” of Ms. Bryant; and (b) review BGC’s financial performance.  
3 Ms. Bryant attended the meeting. [*Id.*, ¶¶ 46-51.] At the start of the meeting, Brown-Philpot made a  
4 motion to terminate Ms. Bryant’s director and CEO positions “for the good of the organization.”  
5 [*Id.*] Defendants removed Ms. Bryant from the Zoom session. Thereafter, BGC’s investigator,  
6 Aisha Adam, told Defendants that allegations against Ms. Bryant were unsubstantiated. [Bryant  
7 Dec., ¶¶ 46-51; Wilson-Thomas Dec., ¶¶ 64-76.] Dr. Wilson-Thomas also heard Adam’s findings  
8 and communicated those to Ms. Bryant contemporaneously via chat. [*Id.*] Despite that finding,  
9 Defendants moved forward with a board vote to terminate Ms. Bryant. Although Ms. Bryant was  
10 entitled to vote on her termination pursuant to BGC’s bylaws, Defendants intentionally refused to  
11 re-admit Ms. Bryant to the Zoom session so that she could vote. [*Id.*] BGC’s board voted 3-2 in  
12 favor of termination; had Ms. Bryant been allowed to vote, she would not have been terminated.  
13 [*Id.*]

14           **H. Ms. Bryant’s lawsuits**

15       Ms. Bryant filed two separate lawsuits against BGC and Defendants in this Court. In this  
16 action (“Case 5512”), she asserts claims derivative claims on BGC’s behalf to recover damages  
17 and/or other equitable relief arising from Defendants’ wrongful conduct. In a companion case  
18 (“Case 5517”), Ms. Bryant individually asserts claims for damages she personally suffered because  
19 of Defendants’ wrongful conduct. Defendants filed anti-SLAPP motions to strike in both Case 5512  
20 and 5517.

21           **III. ARGUMENT AND CITATION TO AUTHORITY**

22           **A. Standard of review on anti-SLAPP special motion to strike**

23       “Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish  
24 that the challenged claim arises from activity protected by section 425.16. If the defendant makes  
25 the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by  
26 establishing a probability of success.” *Baral v. Schnitt*, 1 Cal.5th 376, 384 (2016).

27       To satisfy this second prong, “a plaintiff responding to an anti-SLAPP motion must state and  
28 substantiate a legally sufficient claim.” *Wilson v. Parker, Covert & Chidester*, 28 Cal.4th 811, 821

1 (2002). The Court considers “the pleadings, and supporting and opposing affidavits [] upon which  
2 the liability or the defense is based.” Cal. Civ. Proc. § 425.16(b)(2). However, the trial court does  
3 not “weigh credibility nor compare the weight of the evidence. Rather, [it] accepts as true the  
4 evidence favorable to the plaintiff and evaluate the defendant’s evidence only to determine if it has  
5 defeated that submitted by the plaintiff as a matter of law.” *Oasis West Realty, LLC v. Goldman*, 51  
6 Cal.4th 811, 820 (2011); *see also Hawran v. Hixson*, 209 Cal.App.4th 256, 274 (2012) (“it is the  
7 court’s responsibility to accept as true the evidence favorable to the plaintiff”) (internal quotations  
8 and ellipses omitted). Because a trial court does not weigh evidence on an anti-SLAPP motion,  
9 California’s appellate courts repeatedly remind us that “the [anti-SLAPP] statute *poses no obstacle*  
10 *to suits that possess minimum merit.*” *Navellier v. Sletten*, 29 Cal.4th 82, 93 (2002) (emphasis  
11 added); *see also Soukup v. Law Offices of Herbert Hafif*, 39 Cal.4th 260, 291 (2006) (“[t]he plaintiff  
12 need only establish that his or her claim has ‘minimal merit’ to avoid being stricken as a SLAPP”)  
13 (internal quotations omitted); *Jarrow Formulas, Inc. v. LaMarche*, 31 Cal.4th 728, 738 (2003) (“the  
14 anti-SLAPP statute requires only a minimum level of legal sufficiency and triability”) (internal  
15 quotations omitted). “Only a cause of action that satisfies both prongs of the anti-SLAPP statute—  
16 i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP,  
17 subject to being stricken under the statute.” *Goldman*, 51 Cal.4th at 819-20.

18           **B. Defendants lack standing to assert an anti-SLAPP motion in Ms. Bryant’s  
19 derivative lawsuit**

20           1. Ms. Bryant’s complaint in this action is derivative in nature

21           Unlike Ms. Bryant’s claims in companion Case 5517, her claims in this action are derivative  
22 in nature: that is, Ms. Bryant asserts claims on BGC’s behalf for damages BGC suffered because of  
23 Defendants’ wrongful conduct. “An action is deemed derivative if the gravamen of the complaint is  
24 injury to the corporation . . . or it seeks to recover assets for the corporation or to prevent the  
25 dissipation of its assets.” *Schrage v. Schrage*, 69 Cal.App.5th 126, 150 (2021) (*citing Grosset v.*  
26 *Wenaas*, 42 Cal.4th 1100, 1108 (2008)). “When a derivative action is successful, the corporation is  
27 the only party that benefits from any recovery[.]” *Id.* Ms. Bryant has standing to assert these  
28 derivative claims on BGC’s behalf pursuant to Cal. Corp. Code §§ 5142, 5233, and/or 5710.

1       Even a cursory reading of Ms. Bryant's complaint in this action reveals she is not suing to  
2 obtain a personal benefit from Defendants; *she is suing to recover on behalf of BGC*. Consider the  
3 following allegations in her breach of fiduciary duty and negligence causes of action—the exact  
4 causes of action the Defendants seek to strike under Cal. Civ. Code § 425.16 here:

- 5       • “*Defendants breached their duties of care and loyalty to BGC by engaging in, participating* in, aiding and abetting, and facilitating the unlawful action, or omissions, detailed here.” [Complaint, First Cause of Action for Breach of Fiduciary Duty, ¶ 50] (emphasis added).
- 6
- 7       • *Defendants specifically owe fiduciary duties of care, loyalty, and good faith to BGC*. Said fiduciary duties include obligations to exercise good business judgment, to act prudently in the operation of BGC’s business, to discharge their actions in good faith, to act in the best interests of BGC, and to put the interests of BGC before their own.” [Id., ¶ 51] (emphasis added).
- 8
- 9
- 10      • “*Defendants breached their duty of care by, among other things, failing to act in accordance with BGC’s Bylaws and applicable corporate law. Defendants failed to act in good faith, failed to act in BGC’s best interests, and failed to use due care as required under Corporations Code Section 5231.*” [Id., ¶ 52] (emphasis added).
- 11
- 12      • “*The acts as alleged in this cause of action were willful, wanton, malicious, and oppressive and were undertaken with the intent to injure BGC’s charitable beneficiaries and donors . . .*” [Id., ¶ 54] (emphasis added).
- 13
- 14      • “*The Officer/Director Defendants, including HILES, BROWN-PHILPOT, WHITES, and Does 1-50 breached the duty of care they owed to BGC by committing the actions and omissions set forth above*, and committing other actions and omissions of which BRYANT is currently unaware.” [Complaint, Third Cause of Action for Negligence, ¶ 60] (emphasis added).
- 15
- 16
- 17      • BRYANT is informed and believes and thereon alleges that, as a proximate result of the breach of the duty of care which the Officer/Director Defendants, including HILES, BROWN-PHILPOT, WHITES, and Does 1-50 owed to BGC in the manner required by law, including but not limited to the unauthorized increase(s) in salary to employees and other payroll modifications, *charitable assets have been improperly diverted from BGC. BGC and the public beneficiaries of the charity have been damaged in [amount] presently unknown to BRYANT and which cannot be ascertained without an accounting by Defendants. The facts necessary to ascertain the exact amount of damages to BGC and the public beneficiaries of charity are within the specifical knowledge of these defendants.* [Id., ¶ 61] (emphasis added).
- 18
- 19
- 20
- 21
- 22

23           2.       Defendants’ anti-SLAPP motion is barred by Cal. Civ. Proc. Code § 425.17’s  
24           public interest exemption

25       Ms. Bryant seeks to benefit BGC—and the tens of thousands of black girls benefitting from  
26 BGC’s programming—by derivatively addressing Defendants’ tortious conduct. This is precisely  
27 the type of remedial litigation the Legislature carved out from California’s anti-SLAPP statute. In  
28 2004, after declaring that “there has been a disturbing abuse of Section 425.16 . . . contrary to [its]

1 purpose and intent," the Legislature enacted Cal. Civ. Proc. Code § 425.17(b), which restricts the  
2 scope of § 425.16 as follows:

3 (b) Section 425.16 does not apply to any action brought solely in the public interest or  
4 on behalf of the general public if all of the following conditions exist:

5 (1) The plaintiff does not seek any relief greater than or different from the relief  
6 sought for the general public or a class of which the plaintiff is a member. A  
7 claim for attorneys' fees, costs, or penalties does not constitute a greater or  
8 different relief for purposes of this subdivision.

9 (2) The action, if successful, would enforce an important right affecting the  
10 public interest, and would confer a significant benefit, whether pecuniary or  
11 non-pecuniary, on the general public or a large class of persons.

12 (3) Private enforcement is necessary and places a disproportionate financial  
13 burden on the plaintiff in relation to the plaintiff's stake in the matter.

14 "[T]he applicability of § 425.17's public interest exemption (including the financial burden  
15 element) is determined by examining the allegations of the complaint and does not require the  
16 plaintiff to proffer affirmative evidence." *San Diegans for Open Government v. Har Constr., Inc.*,  
17 240 Cal.App.4th 611, 628-29 (2015) (suit brought by public interest entity seeking return of public  
18 money paid to contractor insulated from anti-SLAPP scrutiny).

19 Ms. Bryant's derivative lawsuit meets all three of these elements. First, Ms. Bryant does not  
20 seek any personal relief from the Defendants (other than an award of attorneys' fees, which is not  
21 "different relief" under § 425.17(b)(1)). Rather, she seeks to stop Defendants' waste and  
22 mismanagement which, as she alleges, threatens to harm BGC's charitable beneficiaries. *See*  
23 Compl., ¶¶ 50, 52-54, 56-57, 60-61. Second, if her derivative lawsuit is successful, then the public  
24 (and, more specifically, the tens of thousands of black girls benefitting from BGC's programming)  
25 will benefit because BGC charitable funds and other assets will be put to better (and more  
26 appropriate) uses. Finally, Ms. Bryant faces an extremely disproportionate financial burden in this  
27 action; she is incurring attorneys' fees to prosecute claims on BGC's behalf (and to defend against  
28 BGC's and the Defendants' meritless anti-SLAPP motions) even though she will not receive any  
personal financial benefit from this derivative action. As a result, the Defendants' anti-SLAPP  
motion is barred by Cal. Civ. Proc. Code § 425.17(b) and should be denied on this basis alone.

1           **C. Ms. Bryant's complaint does not assert any causes of action against Defendants**  
2           **arising from protected activity**

3           Before Defendants can show a *prima facie* right to anti-SLAPP relief, they must establish  
4           that Ms. Bryant's derivative complaint contains "cause[s] of action against [Defendants] arising  
5           from any act of [Defendants] in furtherance of [Defendants'] right of petition or free speech." Cal.  
6           Civ. Proc. Code § 425.16(b). To shoehorn the round peg of Ms. Bryant's derivative complaint into  
7           the anti-SLAPP framework's square hole, Defendants make two overarching (but fundamentally  
8           incorrect) assertions: (1) Ms. Bryant's breach of fiduciary duty and negligence causes of action  
9           should be stricken *in their entirety* because she identifies "misrepresentations of fact to the public"  
10          as one discrete example Defendants Hiles and Brown-Philpot's many fiduciary breaches; and,  
11          failing that (2) *all* of Defendants' wrongful conduct somehow constitutes "protected activity."  
12          Defendants are wrong on both fronts, as detailed below.

13           1. Ms. Bryant's breach of fiduciary and negligence causes of actions do not  
14           arise solely from Defendants' defamatory statements

15          Defendants say "Bryant bases her claims for breach of fiduciary duty on [Hiles's and  
16          Brown-Philpot's statements to Business Insider.]" Motion at 14. Not so. Here's what she alleges in  
17          her breach of fiduciary duty cause of action:

- 18           • "*Defendants breached their duty of care by, among other things, failing to act in accordance*  
19           *with BGC's Bylaws and applicable corporate law. Defendants failed to act in good faith,*  
20           *failed to act in BGC's best interests, and failed to use due care as required under*  
21           *Corporations Code Section 5231.*" [Compl., ¶ 52] (emphasis added). This allegation does  
22           not mention protected activity at all.
- 23           • She then alleges "Defendants HILES and BROWN-PHILPOT<sup>2</sup> further breached their duty  
24           of loyalty and good faith by, among other things, intentionally causing misrepresentations of  
25           fact to the public to entrench themselves in roles as BGC's Board of Directors to the  
26           detriment of BGC." [Id., ¶ 53.]

27          And Ms. Bryant's negligence cause of action is completely devoid of any reference to  
28          defamatory statements:

- 29           • BRYANT is informed and believes and thereon alleges that, as a proximate result of the  
30           breach of the duty of care which the [Defendants] owed to BGC in the manner required by  
31           law, including but not limited to the unauthorized increase(s) in salary to employees and  
32           other payroll modifications, charitable assets have been improperly diverted from BGC.

27          <sup>2</sup> This allegation is specific only to Hiles and Brown-Philpot, as Whites is not alleged to have said  
28          or contributed to the defamatory statements. Thus, Whites lacks standing to seek anti-SLAPP relief  
          based on this allegation.

1 BGC and the public beneficiaries have been damaged in an [amount] presently unknown to  
2 BRYANT and which cannot be ascertained without an accounting by Defendants. [*Id.*, ¶  
3 61.] Ms. Bryant's negligence cause of action is not premised on defamation at all; the  
4 defamation did not cause "charitable assets [to be] improperly diverted from BGC. [*Id.*]

5 At best, Ms. Bryant's breach of fiduciary duty cause of action (but not her negligence cause  
6 of action) is a "mixed" cause of action because it consists of non-protected activity (failure to act in  
7 accordance with BGC's bylaws and applicable corporate law) and ostensibly protected activity (the  
8 statements by Hiles and Brown-Philpot). In *Baral v. Schnitt*, 1 Cal. 5th 376 (2016), the California  
9 Supreme Court synthesized conflicting appellate decisions and clarified how trial courts are to  
address anti-SLAPP motions under these situations:

10 For the benefit of litigants and courts involved in this sometimes difficult area of  
11 pretrial procedure, we provide a brief summary of the showings and findings  
12 required by section 425.16. At the first step, the moving defendant bears the burden  
13 of identifying all allegations of protected activity, and the claims for relief supported  
14 by them. When relief is sought based on allegations of both protected and  
15 unprotected activity, *the unprotected activity is disregarded at this stage*.

16 *Baral*, 1 Cal.5th at 396 (emphasis added). In a "mixed" cause of action, anti-SLAPP scrutiny  
17 is not applied to allegations within a cause of action that do not invoking protected activity. Even if  
18 allegations of protected activity supporting a cause of action are stricken under the second anti-  
19 SLAPP step, the other allegations are allowed to proceed. Put more simply—and contrary to  
20 Defendants' argument here—the baby is not thrown out with the bathwater. *Id.*; see also *Sheley v.*  
21 *Harrop*, 9 Cal.App.5th 1147, 1172-73 (2017) (where plaintiff alleged that defendant breached  
22 fiduciary duties by, among other things, "filing and maintaining a frivolous lawsuit," and where  
23 plaintiff failed to establish minimal merit of that particular allegation under second step of anti-  
24 SLAPP analysis, the allegation was stricken but "the remainder of the cause of action shall remain  
25 undisturbed"); *Bonni v. St. Joseph Health Sys.*, 11 Cal.5th 995, 1026 (2021) (concluding that  
some—but not all—of the discrete allegations supporting plaintiff's discrimination and retaliation  
claims were protected activity that required further scrutiny under the second prong of anti-SLAPP  
analysis).

26 Here, the only allegation of protected activity in Ms. Bryant's breach of fiduciary and  
27 negligence causes of action is the alleged defamation by Hiles and Brown Philpot. [Compl., ¶ 53.]  
28 The other activities referenced in these causes of action—failing to act in accordance with bylaws

1 and applicable law and acting to divert charitable assets from BGC—are not protected speech  
2 activity. *Sheley*, 9 Cal.App.4th at 1171 (allegations that defendants breached fiduciary duties by  
3 “paying themselves excessive salaries,” “wrongfully converting corporate assets,” and “failing to  
4 make pro-rata distributions” did not constitute protected speech and were not subject to anti-SLAPP  
5 scrutiny). As a result, the Court must “disregard” this unprotected activity and move on to the  
6 second stage of anti-SLAPP analysis *only* as to Ms. Bryant’s defamation allegations. *Baral*, 1  
7 Cal.5th at 396; *Sheley*, 9 Cal.App.4th at 1171.

8           2.     The alleged conduct underpinning Ms. Bryant’s negligence cause of action is  
9               not “protected activity” under § 425.16

10           Realizing that Ms. Bryant only invokes a single instance of protected activity in of her  
11 breach of fiduciary duty cause of action, Defendants take an even larger rhetorical leap: they argue  
12 that *all* the conduct underpinning Ms. Bryant’s negligence cause of action is protected speech.  
13 Specifically, Defendants reason that: (a) they made improper payroll and other decisions (that Ms.  
14 Bryant contends caused “charitable assets [to be] improperly diverted from BGC,” Compl., ¶ 61)  
15 based on their alleged “investigation” of Ms. Bryant; (b) the “investigation” was in the public  
16 domain and related to matters of public concern; and, therefore (c) their specific board decisions are  
17 also protected for anti-SLAPP purposes. Motion at 16-17. But this is an example of the illogical  
18 “synecdoche theory of public issue in the anti-SLAPP statute” that is routinely rejected by  
19 California appellate courts. *See Commonwealth Energy Corp. v. Investor Data Exchange, Inc.*, 110  
20 Cal.App.4th 26, 34 (2003):

21           The part is not synonymous with the greater whole. Selling an herbal breast  
22 enlargement product is not a disquisition on alternative medicine.<sup>3</sup> Lying about the  
23 supervisor of eight union workers is not singing one of those old Pete Seeger union  
24 songs (e.g., “There Once Was a Union Maid”).<sup>4</sup> And, in the case before us, hawking

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25           <sup>3</sup> Referring to *Consumer Justice Ctr. V. Trimedica Int'l, Inc.*, 107 Cal.App.4th 595, 601 (2003),  
26 where a defendant sued for advertising bogus breast enlargement pills argued that its false  
27 advertisements were protected statements on matters of public interest.

28           <sup>4</sup> Referring to *Rivero v. Am. Fed. of State, County, and Municipal Employees, AFL-CIO*, 105  
29 Cal.App.4th 913, 924 (2003), where a union argued its slander of a former supervisor was protected  
30 speech because “any time a person criticizes an unlawful workplace activity the statements concern  
31 a public issue because public policy favors such criticism.” The Court of Appeals rejected this logic,  
32 noting—importantly, for our purposes—that “if the Union were correct, discussion of nearly every  
33 workplace dispute would qualify as a matter of public interest.” *Id.*

1           an investigatory service is not an economics lecture on the importance of information  
2           for efficient markets.

3           Defendants cannot argue generically that specific wrongful acts about which Ms. Bryant complains  
4           relate to or tangentially involve protected speech; “the defendant’s act underlying the plaintiff’s  
5           cause of action must *itself* have been an act in furtherance of the right of petition or free speech.”  
6           *City of Cotati v. Cashman*, 29 Cal.4th 69, 78 (2002) (emphasis in original). In other words,  
7           Defendants must show that Ms. Mohammed’s retroactive pay increase—as well as their violations  
8           of BGC’s bylaws and other applicable corporate law—“falls within one of the four categories  
9           described in [§ 425.16(e)].” *Park v. Bd. of Trustees of Cal. St. Univ.*, 2 Cal.5th 1057, 1063 (2017):

10           [A] claim is not subject to a motion to strike simply because it contests an action or  
11           decision that was arrived at following speech or petitioning activity, or that was  
12           thereafter communicated by means of speech or petitioning activity. Rather, a claim  
13           may be struck only if the speech or petitioning activity *itself* is the wrong complained  
14           of, and not just evidence of liability or a step leading to some different act for which  
15           liability is asserted.

16           (emphasis in original) (rejecting board of trustees’ argument that plaintiff’s discrimination claims  
17           arose from protected speech because the decision to deny plaintiff tenure was the result of  
18           deliberative and protected board discussions, and noting that courts are “attuned to” “the distinction  
19           between activities that form the basis for a claim and those that merely lead to the liability-creating  
20           activity.”)

21           Defendants cannot show that Ms. Bryant’s negligence cause of action is subject to anti-  
22           SLAPP scrutiny just because the specific acts forming the basis of that cause of action took place  
23           after a deliberative board process.<sup>5</sup> This is precisely the argument that the California Supreme Court  
24           rejected in *Park*. And, indeed, the argument is frivolous on its face: if Defendants said “after we met

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25           <sup>5</sup> Defendants cite to *Stewart v. Rolling Stone LLC*, 181 Cal.App.4th 664, 677 (2010) for the  
26           proposition that the salary increases and other alleged negligent conduct were “made in connection  
27           with a public issue or an issue of public interest because they concerned a topic of widespread  
28           public interest and contributed in some manner to a public discussion of the topic.” Motion at 17. *Stewart* is completely irrelevant to Ms. Bryant’s negligence claims. In *Stewart*, various musicians  
         sued when Rolling Stone sandwiched an article referencing them between cigarette ads. *Id.* at 674. The Court of Appeals reversed the trial court’s denial of Rolling Stone’s anti-SLAPP motion, noting  
         that: (a) there was a public interest in professional musicians; and (b) Rolling Stone’s editorial  
         decision to place its article near a cigarette ad was protected First Amendment speech. *Id.* at 678-79. It does not address the issue here: whether Defendants’ negligent acts are subject to anti-SLAPP  
         scrutiny because they were made in some sort of deliberative process.

1 and discussed our investigation of Ms. Bryant, we decided to wire BGC's money into our individual  
2 bank accounts," no one would credibly argue that the inevitable causes of action for theft, fraud, and  
3 other misconduct would be barred by § 425.16.<sup>6</sup>

4           **D. Ms. Bryant's breach of fiduciary duty cause of action has more than minimal  
5           merit**

6           As described above, only one specific allegation in Ms. Bryant's breach of fiduciary duty  
7 cause of action (that Hiles and Brown-Philpot made misrepresentations of fact to the public  
8 [Compl., ¶ 53]) arises from protected activity. As such, the remaining portions of this cause of  
9 action do not reach the second stage of anti-SLAPP analysis. *See Cal. Civ. Proc. Code § 425.16;*  
10 *Baral*, 1 Cal.5th at 382; *Sheley*, 9 Cal.App.4th at 1171; *Bonni*, 11 Cal.5th at 1026. But even if the  
11 entirety of this cause of action arises from protected conduct, Ms. Bryant presents substantial  
12 evidence supporting this cause of action, far more than the "minimal merit" required at this stage.

13           1. This is a derivative action, and Ms. Bryant properly alleges that Defendants  
14           owe fiduciary duties to BGC

15           Defendants state haughtily that "Defendants do not owe any duty of care or loyalty to  
16 *Plaintiff*, nor does Plaintiff even attempt to allege any fiduciary relationship between the parties  
17 existed." Motion at 17-18 (emphasis in original). But Defendants forget this is a derivative action:  
18 Ms. Bryant alleges that Defendants breached their fiduciary duties *to BGC*, not to her. Compl., ¶ 51  
19 ("Defendants specifically owe fiduciary duties of care, loyalty, and good faith *to BGC*" (emphasis  
20 added); *see also* Cal. Corp. Code § 7231(a) ("A director [of a nonprofit corporation] shall perform  
21 the duties of a director [] in good faith, in a manner such director believes to be in the interests of  
22 the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in  
23 a like position would use under similar circumstances.") That Defendants may not owe duties *to her*  
24 is not a defense here.

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27           <sup>6</sup> *See Martin v. Inland Empire Util. Agency*, 198 Cal.App.4th 611, 625 (2011) (noting with approval  
28 trial court's comment that "I just feel like to rule for the defendant in this case would be to say that  
section 425.16 provides a safe harbor for discriminatory conduct and I don't think that's what it's  
intended to do" in case where utilities agency argued its alleged discrimination against plaintiff  
arose from protected debate at board meeting).

1  
2. Ms. Bryant alleges an extensive array of fiduciary breaches by Defendants,  
3 and the business judgment rule does not shield them from liability

4 Ms. Bryant alleges (and provides evidentiary proof via declaration for) extensive fiduciary  
5 breaches by Defendants. Among other things, Defendants: (a) purported to create a “special  
6 committee” to investigate alleged workplace misconduct without noticed meetings and votes as  
7 required by BGC’s bylaws and California law; (b) they similarly ignored BGC’s bylaws and  
8 California law in purporting to suspend Ms. Bryant as BGC’s CEO and director; (c) they removed  
9 Ms. Bryant without actually performing any investigation into her alleged conduct and without any  
10 evidence that she engaged in wrongdoing; (d) they removed Ms. Bryant even after the board  
11 concluded that allegations referenced in employee resignation letters did not warrant further  
12 investigation; (e) Hiles specifically removed Ms. Bryant so that Hiles could continue to engage in  
13 self-dealing transactions; (f) they gave Sophia Mohammad a retroactive pay increase, despite her  
14 lack of experience and the fact she lives in Mississippi, in order to garner support for their breaches  
15 of bylaws and California law; and (g) they are committing waste and malfeasance by spending  
16 substantial sums on lawyers to defend their wrongful conduct and pursue frivolous litigation against  
17 Ms. Bryant.

18 Directors assert a single defense to these allegations—that Ms. Bryant has not pierced the  
19 application of business judgment rule (the “BJR”). Motion at 18. But they are wrong for at least two  
20 reasons. First, the BJR does not protect directors who breach the express terms of applicable  
21 bylaws, like Defendants did here; there is no acceptable “judgment” that excuses such behavior.  
22 See, e.g., *Coley v. Eskaton*, 51 Cal.App.5th 943, 960 (2020) (“[A]n unlawful failure to abide by an  
23 association’s governing documents is mismanagement” to which the BJR does not apply);  
24 *Scheenstra v. Cal. Dairies, Inc.*, 213 Cal.App.4th 370, 389 (2013) (BJR does not allow a board of  
25 directors to deviate from actions authorized by bylaws). Second, the BJR “does not shield actions  
26 taken without reasonable inquiry, *with improper motives, or as a result of a conflict of interest.*”  
27 *Kruss v. Booth*, 185 Cal.App.4th 699, 728 (2010) (reversing grant of demurrer where complaint  
28 alleged “circumstances aplenty” raising inferences of improper motive and conflict of interest)

1 (emphasis in original). Here, Ms. Bryant has shown substantial evidence that Defendants' breaches  
2 of bylaws and California law were done for a singular improper motive—to eliminate Ms. Bryant's  
3 leadership of BGC so they could run it for their own ends.

4       3.     Ms. Bryant's defamation allegations have more than minimum merit and  
5     support her breach of fiduciary duty cause of action

6       Ms. Bryant alleges that Hiles and Brown-Philpot breached their fiduciary duties to BGC  
7 when they told Business Insider that BGC was "investigating serious allegations of workplace  
8 impropriety" against her. As detailed above, this allegation of defamation is not the lynchpin of Ms.  
9 Bryant's breach of fiduciary duty and negligence causes of action (despite Defendants'  
10 mischaracterization of the complaint to the contrary), but it is nevertheless an actionable allegation  
11 that survives the second step of the anti-SLAPP analysis.<sup>7</sup>

12                  a.     *The statement is false and defamatory*

13       A claim for defamation requires proof of a false and unprivileged publication that exposes  
14 the plaintiff "to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or  
15 avoided, or which has a tendency to injure him in his occupation." Cal. Civ. Code § 45. A statement  
16 is defamatory when it tends "directly to injure [a person] in respect to his office, profession, trade or  
17 business, either by imputing to him general disqualification in those respects which the office or  
18 other occupation peculiarly requires, or by imputing something with reference to his office, trade,  
19 profession, or business that has a natural tendency to lessen its profits. *Id.*, § 46(3). Statements that  
20 contain such a charge directly, and without the need for explanatory matter, are libelous *per se* and  
21 do not require evidence of special damages. *Balla v. Hall*, 59 Cal.App.5th 652, 675-76 (2021). A  
22 statement can also be libelous *per se* if a listener could understand the defamatory meaning without  
23 the necessity of knowing extrinsic explanatory matter. *Id.* (*citing McGarry v. Univ. of San Diego*,  
24 154 Cal.App.4th 97, 112 (2007)).

25  
26  
27       7 Ms. Bryant gives a more expanded analysis of her defamation cause of action and the reasons it  
28 survives anti-SLAPP scrutiny in her responses to BGC's and the Director Defendants' anti-SLAPP  
motions in Case 5517. She is precluded by page limitations from duplicating that lengthy analysis  
here, but she incorporates that analysis by reference.

1       Here, Defendants Hiles and Brown-Philpot published a press statement that BGC suspended  
2 Ms. Bryant because it was “investigating serious allegations of workplace impropriety.” “To an  
3 average person reading the entirety of the press release, the damaging implication is apparent:  
4 [someone accused Ms. Bryant of engaging in ‘serious workplace impropriety,’ and BGC suspended  
5 Ms. Bryant because BGC was investigating those allegations].” *Hawran v. Hixson*, 209 Cal.App.4th  
6 256, 293 (2012) (finding press release stating that “the special committee’s investigation [of  
7 corporate officers] has raised serious concerns” presented *prima facie* defamation claim that  
8 survived second step of anti-SLAPP analysis.) Ms. Bryant provides substantial evidence that the  
9 published statements were false and defamatory:

10                   i.       *There were no credible accusations that Ms. Bryant engaged in*  
11 *serious workplace impropriety.* Defendants’ contention that Ms. Bryant was accused of “serious  
12 workplace impropriety” is supported, at best, by the resignation letters of Christine Capicillio,  
13 Ashley (Isis) Miller, and Anesha Grant. Hiles Dec., Ex. 3, 4. But nothing in those letters contains  
14 express accusations that Ms. Bryant acted wrongfully or with serious impropriety. The letters  
15 simply attest to employees being dissatisfied with working at an organization dealing with the  
16 COVID-19 pandemic and attempting to transition to “virtual” working and teaching environments.  
17 Moreover, even after BGC commenced a formal investigation of Ms. Bryant after her suspension  
18 and after the issuance of the press release, the investigation concluded that any allegations against  
19 Ms. Bryant could not be substantiated. Bryant Dec., ¶¶ 46-51; Wilson-Thomas Dec., ¶¶ 64-76.

20                   ii.      *BGC did not believe that Ms. Bryant engaged in serious workplace*  
21 *impropriety, and concluded that no further investigation of the complaints in the resignation letters*  
22 *was necessary.* Ms. Bryant convened a formal board meeting to discuss the concerns of the  
23 employees who resigned and met privately with board members, and that the upshot of those  
24 conversations was that the resignation letters did not present issues that required further  
25 investigation. Bryant Dec., ¶ 20; Moreover, Dr. Adams, BGC’s board chair, announced to the board  
26 on July 28, 2021 that the issues referenced in the resignation letters did not warrant further  
27 investigation. *Id.*

28

1                         iii.     *BGC did not actually commence an “investigation” of Ms. Bryant’s*  
2 *alleged conduct until after the press releases were issued.* Both Ms. Bryant and Dr. Thomas present  
3 evidence that BGC did not commence an “investigation” until after the press release was issued.  
4 Bryant Dec., ¶ 41; Wilson-Thomas Dec., ¶ 43. Indeed, Dr. Thomas repeatedly asked whether Ms.  
5 Bryant was being investigated but received no reply. Wilson-Thomas Dec., ¶¶ 37-44. While BGC  
6 claims it retained counsel to investigate Ms. Bryant, its engagement letter with DLA Piper does not  
7 reference any such investigation. Bryant Dec., ¶¶ 28-29, Ex. G. And BGC failed to produce any  
8 evidence of its “investigation” even though: (a) Ms. Bryant, as a sitting board member, had a right  
9 to such evidence under Cal. Cal. Corp. Code § 6334; and (b) she demanded such proof through  
10 counsel prior to filing this suit. *Id.*, ¶¶ 37-38, Ex. L.

11                         Ms. Bryant need not prove that she will obtain an overwhelming victory on this defamation  
12 allegation to survive the second anti-SLAPP step; she must only establish “*a prima facie* showing of  
13 facts to sustain a favorable judgment if [her] evidence is credited.” *Hawran*, 209 Cal.App.4th at  
14 293. She has done so here. And while Defendants may present conflicting evidence they believe  
15 establishes the truth of the press statements, this Court cannot resolve factual disputes in the  
16 evidence at this stage. *Id.* (court does not weigh evidence or assess the credibility of the declarations  
17 in support of Defendants’ anti-SLAPP motion).

18                         **E.     Ms. Bryant’s negligence cause of action has more than minimal merit**

19                         Defendants’ attacks on Ms. Bryant’s negligence cause of action largely mirror its attacks on  
20 her breach of fiduciary duty cause of action. Defendants again claim that the cause of action fails  
21 because “[Ms. Bryant] does not even *allege* that they owed her a duty of care.” Motion at 19. But  
22 Ms. Bryant accuses Defendants of breaching their duties to BGC—an accusation which Defendants  
23 acknowledge in their motion. *Id.* Similarly, Defendants’ remaining attacks on Ms. Bryant’s  
24 negligence cause of action all relate to Ms. Bryant’s alleged lack of damages arising from  
25 Defendants’ negligence. *Id.* Again, however, this is a derivative action, and Ms. Bryant does not  
26 claim she suffered damages; she claims that *BGC was injured* by Defendants’ negligence.  
27 Defendants do not address the issue BGC’s damages arising from their conduct in their motion.  
28

1     **IV. CONCLUSION**

2       For the foregoing reasons, Defendants' anti-SLAPP motion should be denied, and Ms.  
3 Bryant should be awarded the attorneys' fees and expenses of litigation she incurred in responding  
4 to the motion.

5              Dated: October 10, 2022

JOHNSON TRIAL LAW, LLC

James M. Johnson  
*Attorneys for Plaintiff Kimberly Bryant*

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County of Alameda

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6

7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

FOR THE COUNTY OF ALAMEDA

10

KIMBERLY BRYANT, an individual,

11 Plaintiff,

12 v.

13 BLACK GIRLS CODE, a California Non-  
14 Profit Public Benefit Corporation; HEATHER  
HILES, an individual; STACY BROWN-  
15 PHILPOT, an individual; SHERMAN  
WHITES, an individual; and DOES 1-50,  
16 Inclusive,

17 Defendants.

18 Case No. 22CV005512

19

20 CORRECTED<sup>1</sup> DECLARATION OF  
21 PLAINTIFF KIMBERLY BRYANT IN  
22 SUPPORT OF OPPOSITION TO  
23 DEFENDANTS' SPECIAL MOTION TO  
24 STRIKE PURSUANT TO CAL. CIV. PROC.  
25 CODE § 425.16

26 Date: October 21, 2022

Time: 2:00 p.m.

Dept.: 514

Judge: Hon. Noël Wise

Complaint Filed: June 7, 2021

Trial Date: None Set

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<sup>1</sup> This declaration is re-submitted to include exhibits that were inadvertently omitted when it was originally filed and served. The contents of the declaration have not changed.

1    **DECLARATION OF KIMBERLY BRYANT**  
2

I, KIMBERLY BRYANT, hereby declare the following:

1    1. My name is Kimberly Bryant. I am the plaintiff in two actions pending before this  
2 Court: (a) the action entitled *Kimberly Bryant v. Black Girls Code, et al.*, Case No. 22CV005512 (the  
3 "Derivative Action"); and (b) the action entitled *Kimberly Bryant v. Black Girls Code, et al.*, Case No.  
4 22CV005517 (the "Direct Action"). I provide this declaration as part of my opposition to the four  
5 discrete anti-SLAPP motions filed by Defendants BGC, Inc. ("BGC"), Heather Hiles, Stacy Brown  
6 Philpot, and Sherman Whites in the Derivative Action and the Direct Action. For purposes of judicial  
7 economy, I intend to file this declaration in response to each discrete anti-SLAPP motions rather than  
8 preparing four separate declarations specific to each motion.

9    2. I am the founder of BGC. I founded BGC in 2011 with a stated mission to "change the  
10 face of technology" by introducing computer science and technology to girls from underserved  
11 communities. I became interested in doing this work in 2010 after discovering my middle school-  
12 aged daughter's growing interest in computer programing. I wanted to create a supportive community  
13 for my daughter and other girls like her. BGC was formally incorporated as a California non-profit  
14 public benefit corporation in March 2012 after a successful pilot program the previous year.

15    3. I have a degree in electrical engineering from Vanderbilt University. Prior to founding  
16 BGC, I enjoyed a 20+ year career as an engineering professional within the biotech, pharmaceutical,  
17 and chemical industries and worked for companies like Merck and Genentech.

18    4. I originally funded BGC by borrowing from my personal 401K. Over the past decade  
19 plus, BGC has grown from a small, grassroots organization in San Francisco with only six students  
20 to an international organization with fifteen chapters across the United States and in Johannesburg,  
21 South Africa serving an estimated 30,000 students.

22    5. Over the last decade of my leadership of BGC, I have received numerous awards and  
23 accolades for my leadership of the organization and the impact we have made within the tech industry.  
24 I am a nationally recognized thought leader for my work to increase opportunities for women and  
25 girls in the technology industry. Among others, I was awarded the Jefferson Award for Community  
26 Service for my work to support communities in the Bay Area; I was named by Business Insider as  
27 28

1 one of "The 25 Most Influential African-Americans in Technology"; I have been included in The Root  
2 100 and the Ebony Power 100 lists; and I was named one of Fact Company's Most Creative People.  
3 In 2015, President Barack Obama honored me as a Champion of Change for my work towards tech  
4 inclusion, and I received an Ingenuity Award in Social Progress from the Smithsonian Institute. I  
5 speak and nationally and internationally on diversity, equity, and inclusion issues in today's  
6 technology world (although, as discussed below, my speaking engagements have been seriously  
7 curtailed because of the defamation and retaliation I have experienced at the hands of BGC and its  
8 current directors).

9       6.      In 2018, as BGC's non-profit operations continued to expand nationwide, I decided to  
10 recruit an inaugural board. Prior to this time, BGC had three *ad hoc* board members: me, Stacy  
11 Brown-Philpot, and Dr. Sylvia Wilson-Thomas. Under the guidance of an external business  
12 consultant BGC hired, BGC and its *ad hoc* board began recruiting potential members for a more  
13 formal board of directors. Ultimately, BGC formed an inaugural board in August 2018 consisting of,  
14 among others, the following members: (a) Stacey Brown-Philpot (elected chair); (b) Dr. Sylvia  
15 Wilson Thomas (elected secretary); (c) Julia Collins (elected board treasurer); (d) Sherman Waites  
16 (general board member); (e) Sebastien Taveau (general board member); (f) Robert Simmons (general  
17 board member); and (g) Heather Hiles (general board member). I also served as a director and was  
18 elected president of the board. I retained my role as BGC's CEO after the inaugural board was  
19 formalized.

20       7.      By 2020, the members of BGC's board had shifted somewhat. I remained board  
21 president, Dr. Sylvia Wilson Thomas served as board secretary, Stacy Brown-Philpot served as board  
22 chair. Board President Stacy Brown-Philpot decided to step down from her role as board president  
23 and after a brief recruitment search, Dr. Stephanie Adams was elected unanimously to succeed her as  
24 board chair. The board treasurer role was vacant for most of 2020 after the transition of the previous  
25 board treasurer.

26       8.      Throughout the 2020 programmatic year, BGC faced tremendous impacts from the  
27 COVID-19 pandemic. Like many companies, we were unexpectedly forced to transition our entire  
28 workforce to remote work by the second week of March and were forced to cancel all planned in-

1 person programmatic workshops and events. I spent much of my time as CEO from March to June  
2 navigating the unfamiliar waters of a fully remote workforce, navigating the global pandemic and its  
3 impacts on our community and work, and struggling to support the mental, physical, and spiritual  
4 needs of my team. I spent a significant amount of time worrying that our program driven partnerships  
5 and sponsorships would be insufficient to meet BGC's budgetary needs and that BGC would be forced  
6 to lay off staff members. As a result through the early months of the pandemic a majority of my time  
7 was spent working to secure government support for our organization in the form of a PPP loan. This  
8 process proved to be extremely challenging and the board provided little to no support to the  
9 organization in this endeavor. However, because of numerous factors—including my decade of  
10 leadership and continued engagement with the tech and social justice community, as well as the global  
11 upheaval in the wake of George Floyd's murder—BGC became increasingly lauded as a social justice  
12 organization and experienced a tremendous influx of support (and donations) from individuals and  
13 organizations worldwide from June to December of 2020. As a result, BGC was able to refocus its  
14 energies and pivot to a remote learning model where we could teach our students virtually using  
15 digital tools. We reinitiated our recruitment goals to increase staff capacity to support our growing  
16 customer demand. We were able to grow from 8 full time employees at the beginning of 2020 to over  
17 20 full time employees by the end of the year. And we initiated a facilitated strategic planning process  
18 with the support of consultative partners The Bridgespan Group.

19       9.     As a result of this influx of support, we refocused on energies on a pivot to a remote  
20 learning model and began to teach our students virtually utilizing digital tools and reinitiated our  
21 recruitment goals to build staff capacity to support our growing customer demand and to build from  
22 a small team of only 8 FTE at the beginning of 2020 to over 20 FTE by December 2020.

23       10.    By 2020, BGC had hired a Director of Human Resources, Trenae Forman, who was  
24 responsible for conducting employee exit interviews and other employee transition tasks as  
25 appropriate. The organization had been conducting exit interviews routinely since 2019 and findings  
26 from those interviews were shared with the board.

27       11.    BGC entered 2021 battered but resilient and ready for new challenges. BGC's  
28 operational revenues grew from \$3,000,000 in net income to almost \$30,000,000 in net income by

1 the end of 2020. More importantly, our organizational impact increased to over 10,000 students—  
2 more students than we reached in the previous nine years—because of our new virtual learning format  
3 and the cohesiveness of our organizational team.

4       12. During our Spring 2021 board meeting, all board members expressed satisfaction at  
5 what we had accomplished during the COVID-19 pandemic. During this board meeting, acting board  
6 chair Dr. Stephanie Adams requested that a board member volunteer to become the interim board  
7 treasurer until another permanent treasurer could be recruited. Heather Hiles volunteered for this  
8 position to the surprise of many of the fellow board members. I was personally surprised by Ms.  
9 Hiles's decision to volunteer for this position because she was generally not engaged in board  
10 activities during the prior three years of her board term. While Ms. Hiles attended most board  
11 meetings, she was not an active member of any board committees, nor was she actively involved in  
12 any organizational initiatives such as recruitment efforts or the strategic planning initiative. While  
13 most board members (including myself) actively supported BGC financially (with either their  
14 "talents" or "treasure"), Ms. Hiles's did not contribute a penny to the organization for the four years  
15 of their involvement as a board member. However, given the intended "interim" nature of Ms. Hiles's  
16 treasurer position, I hoped there was limited harm she could do to BGC until a more suitable board  
17 treasurer could be recruited.

18       13. Beginning in June 2021, three BGC staff members—Christine Capicillio, Ashley (Isis)  
19 Miller, and Anesha Grant—tendered their letters of resignation.

20       14. I became aware of Isis Miller's resignation when her then-supervisor, Anesha Grant,  
21 forwarded Isis Miller's resignation letter to BGC's board of directors, all members of BGC's senior  
22 leadership team, and to me personally. After receiving Isis Miller's resignation letter, I scheduled an  
23 emergency board meeting to discuss the letter—and the many false accusations therein—and the  
24 improper way the resignation letter was shared with BGC's entire leadership team and board. It was  
25 not the practice of BGC management to circulate employee letters of resignation or similar employee-  
26 related documents to board members or fellow senior leadership.

27       15. Isis Miller was hired as a community and events manager in April 2020, just as BGC  
28 shifted its focus to a "shelter in place" virtual practicum. Isis Miller reported to me directly for only

1 two months before they were assigned to Amanda De'Nucci Kean as part of the fundraising and  
2 development team. Their scope of work as a community lead was unfortunately limited due to the  
3 remote nature of BGC's work during the pandemic. Isis Miller was a solid contributor to the team but  
4 reacted strongly when I questioned her about inappropriate conduct and actions in their role as  
5 Community Lead.

6       16. Specifically, in June 2020, Isis Miller convened a "virtual speaker event" for the BGC  
7 community in celebration of the Juneteenth Holiday. I discovered that Isis Miller hired three of her  
8 personal friends to speak at the event and promised to pay them fees significantly higher than those  
9 BGC paid its speakers in the past or to date. I also discovered that Isis Miller failed to document the  
10 payment arrangement they made with their friends with formal contracts, written scopes of work, or  
11 invoices, and failed to seek approval of their direct supervisor (Amanda De'Nucci Keen) or any other  
12 member of BGC leadership before committing BGC resources towards the payment of their friends.  
13 I interrogated Isis Miller about their failure to follow protocol by hiring their personal friends for  
14 well-above normal rates without any formal documentation and directed them to complete the proper  
15 paperwork and documentation such as invoices and W9s before approving the release of payment.

16       17. The following year in the summer of 2021, Isis Miller attempted to host another  
17 Juneteenth panel discussion featuring another of their personal acquaintances who would receive  
18 payment again far in excess of BGC's customary speaker rates. Isis Miller's proposed panel discussion  
19 was brought to my attention by Anesha Grant, their then direct supervisor, who supported and  
20 approved the proposal. I declined to approve Isis Miller's proposed panel discussion because: (a) of  
21 the excessive speaking fee proposed to her friend; and (b) the fact that her friend was a "positive sex  
22 expert" and I was concerned that the friend would raise issues of sexuality and sex education into a  
23 panel discussion ostensibly about coding and technology. I asked Ms. Grant to have Isis Miller curate  
24 a more appropriate, technology-focused event that did not involve paying a friend an exorbitant  
25 amount of money. Ms. Grant responded forcefully and belligerently, accusing me of refusing to  
26 support Isis Miller's work.

27       18. Soon after this encounter, Isis Miller, Anesha Grant, and Christine Capicillo tendered  
28 their resignations. Isis Miller's and Anesha Grant's original letters of resignation are attached as

1     **Exhibits 3 and 4** to the Declaration of Heather Hiles. It is also noteworthy that in the Declaration of  
2     Heather Hiles supporting the BGC Defendants' various anti-SLAPP motions a different more  
3     descriptive and derogatory resignation from Anesha Grant was apparently distributed to members of  
4     the BGC board of directors. This resignation was not sent to me directly and was apparently tendered  
5     a day after Ms. Grant met privately with Heather Hiles. Those resignation letters accuse me of  
6     engaging in harassment and other conduct which, up to that point, no one had ever accused me of  
7     before. I specifically and vehemently deny the conduct alleged in those resignation letters.

8                 19. Moreover, it is important to note that Isis Miller was not my direct report during the  
9     majority of their tenure with BGC and I had limited engagement with them outside of the events noted  
10    above. Similarly, while Ms. Grant and Ms. Capicillo were technically my direct reports, my  
11    interactions with them were limited to a few one-on-one monthly coaching sessions and weekly senior  
12    leadership meetings with a larger staff team. I did not engage with Ms. Grant or Ms. Capicillo in any  
13    other capacity and was not directly engaged in any weekly program planning or execution meetings  
14    with them. The accusations in Isis Miller's and Ms. Grant's resignation letters regarding my level of  
15    individual interactions with them are exaggerated and false.

16                 20. Nevertheless, I convened a meeting of BGC's board to discuss the concerns of the  
17    employees who had resigned. I also met privately with the board, including former chair Dr. Stephanie  
18    Adams and board secretary Dr. Sylvia Wilson-Thomas, to discuss the personnel issues presented by  
19    the employee resignations. During these meetings, Dr. Adams agreed with me that the issues  
20    presented did not present issues that required involvement of outside legal counsel. Moreover, at  
21    another board meeting held on July 28, 2021, Dr. Adams announced to the board that she had not  
22    found evidence that any of the issues referenced in the resignation letters warranted further  
23    investigation or action by BGC's board or by outside legal counsel. Board members Stacy Brown-  
24    Philpot and Heather Hiles responded in vigorous opposition to Dr. Adams decision in this meeting  
25    and began a pattern of strenuous bullying to convince Dr. Adams to change her position via calls,  
26    texts, and emails.

27                 21. It is true that BGC experienced internal cultural challenges as we navigated the  
28    pandemic, the resulting transition to remote work and "virtual programs," as well as the fast growth

1 BGC experienced during this time with limited staff in person interaction, as discussed above. To  
2 address these challenges, I engaged an external cultural strategist, Karla Monterroso with Brava  
3 Leaders, in September 2021 to conduct a work environment survey to address these challenges and  
4 create a better working environment for BGC's staff members. BGC also continued to work with an  
5 organizational strategist, Tracey E. Webb, to provide training and support for BGC's senior leadership  
6 team. I spearheaded these efforts, but Heather Hiles and members of the special committee did not  
7 support them.

8       22. In September 2021, other members of BGC's board nominated Heather Hiles to serve  
9 as BGC's board chair after the resignation of Dr. Stephanie Adams, the previous chair. I did not  
10 support Ms. Hiles's nomination as board chair for multiple reasons. One of the primary reasons I did  
11 not support her nomination was my belief that Ms. Hiles was spending most of her time working on  
12 the launch of her personal venture capital fund, BlackOps Ventures, as well as the IPO of another  
13 company, Udemy, where she served as a board member. Indeed, I harbored serious concerns that Ms.  
14 Hiles would attempt to divert BGC's charitable donated funds to BlackOps Ventures or otherwise  
15 engage in self-dealing transactions. Indeed, Ms. Hiles repeatedly requested that I allow BGC to form  
16 a partnership with Udemy whereby Udemy would "create, produce, and distribute BGC courses." Ms.  
17 Hiles repeatedly gave me the "hard sell" about what Udemy could do for BGC. A true and correct  
18 copy of a February 16, 2021 e-mail from Heather Hiles attempting to pressure me to create a self-  
19 dealing partnership with Udemy is attached as **Exhibit A**.

20       23. My concerns about Ms. Hiles's attempt to create a self-dealing business relationship  
21 between BGC and BlackOps Ventures were soon proven accurate. During an October 2021 meeting  
22 between Ms. Hiles and investment firm West Fuller personnel in New York, Ms. Hiles attempted to  
23 "pitch" her VC fund to those employees. True and correct copies of text messages between me and  
24 West Fuller's New York staff regarding Ms. Hiles behavior during the meeting and her effort to pitch  
25 her VC fund are attached as **Exhibit B**.

26       24. I openly voiced my opposition to the nomination of Ms. Hiles as BGC's board chair.  
27 True and correct copies of e-mails in which I stated my opposition are attached as **Exhibit C**. I also  
28 prepared an October 5, 2021 memorandum to the board in which I voiced my opposition to Ms.

1 Hiles's nomination because of her conflict of interest issues, among others. A true and correct copy  
2 of this memorandum is attached as **Exhibit D**.

3       25. I also expressed concern with the way Ms. Hiles was nominated and how the other  
4 members of the board intended to "vote" on her nomination. During discussions about Ms. Hiles'  
5 nomination, Ms. Hiles suggested that the Board could simply "vote" on her nomination over e-mail.  
6 This is a direct violation of BGC's bylaws, which require either: (a) an actual meeting between board  
7 members; or (b) a "virtual" meeting "through the use of conference telephone or electronic video  
8 screen communications, as long as all members participating in the meeting are able to hear one  
9 another. *See Bylaws, § 10, ¶ 2.* A true and correct copy of BGC's bylaws is attached as **Exhibit E**. I  
10 objected to any "vote" over e-mail. *See Exhibit C*, September 29, 2021 e-mail to board. My objection  
11 was ignored, and the board purported to "vote" to confirm Heather Hiles as BGC's board chair over  
12 e-mail. *See Exhibit C*.

13       26. BGC contends that, on October 11, 2021, BGC's board of directors held an "executive  
14 session" and a "Special Committee" was formed for the purpose of facilitating the investigation into  
15 the workplace misconduct" set forth in the resignation letters. *See Hiles Dec. at ¶ 18.* Again, this  
16 process—if it happened, which I doubt—violated BGC's bylaws. Under the bylaws, written notices  
17 of regular or special meetings must be prepared and delivered to board members. *See Bylaws, Exhibit*  
18 **E**, §§ 6-8. I never received written notice of any meeting of BGC's board—regular, special, or  
19 "executive session"—at which the board would vote to empanel a "special committee." I never  
20 received any notice of a meeting at which the board would vote to create a "special committee" to  
21 investigate any complaints about me, nor did I ever receive any written minutes from such a meeting.

22       27. BGC has steadfastly refused to produce any records or documents memorializing the  
23 alleged October 11, 2021 "executive session" or any other documents demonstrating that: (a) such an  
24 "executive session" actually took place; or (b) the board followed the formalities of BGC's bylaws in  
25 voting to form the purported "special committee."

26       28. BGC states that it retained DLA Piper to "hire an investigator and oversee an  
27 investigation plan," suggesting that I was the subject of the investigation. *See Hiles Dec., ¶ 19.* This  
28 is untrue. To the extent DLA Piper was hired to "investigate" anything, it was hired to investigate the

1 conduct of Darnell Burtin, a former BGC staff member accused of making inappropriate comments  
2 to female employees during staff meetings. BGC terminated Mr. Burtin for his conduct, and Mr.  
3 Burtin threatened to take legal action against BGC arising from his termination. Indeed, e-mails  
4 between board members during this time reflect that the "investigation" relates to Mr. Burtin. True  
5 and correct copies of e-mails between BGC's board members on this point are attached as **Exhibit F**.

6       29. Moreover, I am in possession of DLA Piper's October 14, 2021 engagement letter with  
7 BGC. The scope of DLA Piper's representation of BGC as stated in the engagement letter is  
8 "[representing BGC] in connection with analyzing the board structure and providing advice and legal  
9 counsel regarding employment related issues (the "Matter")." The engagement letter does not  
10 reference me, any investigation, or the retention of an investigator. A true and correct copy of the first  
11 page of DLA Piper's October 14, 2021 engagement letter detailing the scope of DLA Piper's  
12 representation (but with all other information redacted for privacy purposes) is attached as **Exhibit**  
13 **G**. DLA Piper was retained by agreement of the "special committee" without a noticed meeting and  
14 vote as required by BGC's bylaws.

15       30. On the morning of Tuesday, December 21, 2021, I was unable to log in to my BGC e-  
16 mail and other organizational systems. Later that day, my chief of staff, LaShonda Polite, advised me  
17 that Heather Hiles contacted her and informed her that I had been suspended and that Ms. Polite  
18 would be fired if she communicated with me directly.

19       31. At approximately 4:00 p.m. that afternoon, I received a letter from Heather Hiles in  
20 my personal e-mail account stating that I was being suspended because "[t]he Board of Directors have  
21 been made aware of serious allegations that involve you and we are attempting to conduct a thorough  
22 and robust investigation into those allegations. You have conducted yourself in a manner so as to  
23 disrupt and impede the ongoing investigation." The letter further notified me that Sofia Mohammed  
24 was named the interim executive director of BGC, and that "[c]ounsel will reach out to you regarding  
25 the ongoing investigation, which you are required to cooperate with as an employee of BGC." A true  
26 and correct copy of BGC's December 21, 2021 suspension letter is attached as **Exhibit H**.

27       32. I was shocked that Heather Hiles and the other BGC board members would take me  
28 away from the organization I created and built from the ground up. I expressed my shock and dismay

1 over Twitter account. Initially, I received requests for comment from the mainstream media, and I  
2 declined to give a statement given the sensitivity of my situation. However, I ultimately gave a  
3 statement to Business Insider, a prominent business media organization, on or around Thursday,  
4 December 23, 2021, after being informed that the Heather Hiles and Stacy Brown-Philpot had already  
5 released statements to the media, without approval of the full board of directors. In my statement I  
6 noted—as indicated in an article released that same day on Business Insider’s website—that I had  
7 “never gotten notification that a formal investigation of complaints against [me] was taking place.” A  
8 true and correct copy of Business Insider’s Thursday, December 23, 2021 article entitled “Black Girls  
9 Code’s Founder Says She Was Unaware of an Investigation at the Nonprofit and Her Removal Was  
10 ‘Unconscionable’” is attached as **Exhibit I**.

11       33. In its December 23 article, Business Insider also reported that “[BGC’s] board  
12 previously said in a statement to Insider that it was investigating ‘serious allegations of workplace  
13 impropriety’ but did not provide further details.”

14       34. In a separate article dated December 23, 2021 entitled “The Founder of Black Girls  
15 Code has Been Ousted as Head of the Nonprofit After Allegations of ‘Workplace Inappropriety’”  
16 authored by Business Insider but posted on Yahoo.com, Business Insider similarly reported that “In  
17 an emailed statement to Insider on Tuesday, [BGC’s] board said it was investigating ‘serious  
18 allegations of workplace impropriety’ but did not provide further details. A true and correct copy of  
19 this December 23, 2022 article is attached as **Exhibit J**.

20       35. Similarly, in a December 28, 2022 article published by Sis2Sis.com entitled “Founder  
21 of Black Girls Code Removed, Citing Allegations of ‘Workplace Impropriety,’” Sis2Sis.com reported  
22 “In an e-mail statement acquired from the Insider on Tuesday, [BGC’s] board cited “serious  
23 allegations of workplace impropriety,” and an investigation into the matter is reportedly underway.”  
24 The way this sentence is written suggests that Sis2Sis.com obtained a copy of the e-mail statement  
25 that BGC’s board sent to Business Insider containing the allegation that BGC was investigating  
26 “serious allegations of workplace impropriety.” A true and correct copy of the December 28, 2022  
27 Sis2Sis.com article is attached as **Exhibit K**.

1       36. At no point prior to BGC's on or about December 23, 2022 had I ever been informed  
2 by anyone at BGC that: (i) I had been accused of any workplace impropriety, let alone "serious"  
3 impropriety; or (ii) that BGC was actively investigating such allegations against me.

4       37. I immediately retained counsel after being suspended by BGC. One of the main  
5 reasons I obtained counsel was to obtain corporate documents and records (to which I was entitled as  
6 a BGC board member) substantiating BGC's statements that it was "investigating" "serious allegations  
7 of workplace impropriety" against me. On December 28, 2021, my counsel made a demand for  
8 records under Cal. Corp. Code § 6334 given that I was a board member statutorily entitled to inspect  
9 relevant BGC corporate records. Among other relevant records, my counsel sought access to: (a) all  
10 documents referencing the "serious allegations" made against me; (b) all document referencing any  
11 BGC investigation of my alleged wrongful or improper conduct; (c) all documents relating to the  
12 purported creation of the "special committee"; and (d) all documents containing any findings of the  
13 "special committee" relating to my alleged wrongful or improper conduct. A true and correct copy of  
14 my counsel's December 28, 2021 records request is attached as **Exhibit L**.

15       38. BGC refused to give me access to any corporate records, including documents relating  
16 to any "investigation" of my alleged wrongful or improper conduct, even though I had a clear statutory  
17 right to inspect them under Cal. Corp. Code § 6334 because I was a sitting BGC board member. To  
18 date, BGC continues to refuse to produce any documents supporting its contention that it (or its  
19 outside counsel, or its "special committee") were conducting an "investigation" of me any time prior  
20 to spring 2022 relating to alleged wrongful or improper conduct. I believe BGC cannot produce these  
21 documents because they do not exist. Indeed, it is notable that, in the context of their various anti-  
22 SLAPP motions, neither BGC nor the defendant board members provide a single document  
23 supporting their contention that I was being investigated for misconduct at the time BGC made its  
24 defamatory statements. During discovery, I intend to prove that, at the time BGC published its  
25 statement that it was investigating me for "serious workplace misconduct," it was not actually  
26 investigating me and it knew that I had not engaged in such misconduct.

27       39. Despite Heather Hiles's attempt to block my staff from contacting me, I subsequently  
28 learned from BGC staff members that Ms. Hiles asked BGC's vice president of talent, Karla Tai, to

1 give Sofia Mohammed a pay raise to "whatever Kimberly was making." Ms. Tai refused to give Ms.  
2 Mohammed a pay raise without proper board approval. Subsequently, at BGC's January 2022 board  
3 meeting (a meeting I attended despite my suspended status) Stacy Brown Philpot brought a motion  
4 to increase Ms. Mohammed's salary to \$235,000—a salary far higher than I ever earned—and to make  
5 that salary increase retroactive to December 15, 2021. At this time, Ms. Mohammed had only been  
6 employed by BGC for three months, had no prior non-profit management experience, and lived in  
7 Mississippi (making it extremely difficult for her to manage BGC's day-to-day affairs). I find it  
8 extremely troubling that Ms. Mohammed was awarded a retroactive salary increase given these facts  
9 and, to me, this reeks of malfeasance and mismanagement. I also believe that this promotion and  
10 exorbitant salary increase shows that Heather Hiles and the other defendant directors intended to  
11 terminate my employment and board position irrespective of the results of BGC's purported  
12 "investigation."

13       40. I filed the Direct Action and the Derivative Action in this Court on January 12, 2022.

14       41. On February 15, 2022, my counsel received an e-mail from Aisha Shelton Adam, an  
15 outside attorney, requesting that I sit for a "witness interview." A true and correct copy of Ms. Adam's  
16 February 15, 2022 e-mail is attached as **Exhibit M**.

17       42. I agreed to be interviewed by Ms. Adam, and I met with her over four individual,  
18 hours-long sessions occurring throughout July 2022. During my conversations with Ms. Adam, I  
19 learned that she interviewed over 25 current and former BGC employees regarding BGC workplace  
20 and culture issues from approximately March 2022 to July 2022. Ms. Adam gave no indication that  
21 her investigation began earlier than this date range, and she definitely did not indicate she was  
22 investigating me or BGC workplace issues on or before December 23, 2021, the date BGC reported  
23 it was "investigating serious allegations of workplace impropriety."

24       43. During my conversations with Ms. Adam, we discussed: (a) the circumstances of  
25 behind the resignations of Isis Miller, and Anesha Grant; (b) the conduct of Darnell Burtin and the  
26 circumstances of his termination; and (c) BGC's general workplace culture. Ms. Adam spent an  
27 abnormally long amount of time asking me about my post-suspension social media posts, which was  
28 surprising given that those posts occurred after my suspension and, therefore, would not have been a