SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

November 21, 2024
9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

ORAL ARGUMENT

Before 4:00 PM today you must notify the:

(1) Court by calling (408) 808-6856 and

(2) Other side by phone or email that you will appear at the hearing to contest the tentative

If you fail to so notify the court or opposing side, the Court will not hear argument, and the tentative ruling will be adopted.

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

APPEARANCES

The Court strongly prefers in-person appearances.

If you must appear virtually, you must use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

COURT REPORTERS

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https://www.scscourt.org/general_info/court_reporters.shtml

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	2000-7-CV-389807	National Credit Acceptance Inc Vs Masik Richard	Withdrawn by moving party.
2	20CV373361	ROIC PINOLE VISTA, LLC vs Oscar Munoz et al	Off calendar per stipulation.
3	21CV385527	Michael Darden vs The Board of Trustees of the Leland Stanford University et al	Defendants' summary judgment motion is GRANTED. Scroll to line 3 for complete ruling. Court to prepare formal order.
4	21CV386530	Velocity Investments, LLC vs Benalyn Copon	Plaintiff's motion to vacate settlement and reinstate lawsuit is GRANTED. Plaintiff is ordered to submit a form of judgment for $8,491.47 within 5 court days of the date of the hearing date. These orders will be reflected in the minutes.
5	21CV390572	Christina Muzzy vs John Vidovich et al	The parties' joint motion to continue trial and trial related dates is GRANTED. The Court understands counsel could not have predicted counsel's children would give the gift of travel, which is obviously not in counsel's control and a wonderful, unplanned occurrence. Thus, while failing to timely complete discovery is not good cause for a continuance, unexpectedly generous children is. Trial is continued to May 12, 2025, the mandatory settlement conference is RESET to May 12, 2025, and trial assignment is RESET to May 8, 2025. All fact and expert discovery deadlines are to be calculated from the new trial date. No further continuances. These orders will be reflected in the minutes.
6-7	22CV398742	Richard Gardner et al vs Linming Jin	Before the Court are Defendants' motions to compel Richard Gardner and Cameron Gardner to serve verified amended written responses to requests for production and to produce Richard Gardner's phone for inspection. Cameron Gardner's amended responses are adequate; however, Defendants are entitled to verification of those amended responses. And if Richard Gardner still has his phone that no longer turns on, Defendants are entitled to inspect the phone solely to obtain the metadata associated with the four photographs, nothing more. Richard Gardner's privacy rights to the rest of the information on the phone is not implicated by a focused search solely for the data associated with the four photographs. Accordingly, Defendants' motions to compel are GRANTED. Plaintiff Cameron Gardner is ordered to serve a verification for his amended discovery responses and Richard Gardner is ordered to make the phone with which he took the four photos available for inspection at a mutually agreeable time and location within 20 days of the service date of the formal order, which formal order the Court will prepare.
8	23CV416550	William Brooks et al vs Cheryl Boomgaarden	Defendants' demurrer is OVERRULED AND SUSTAINED, IN PART. Scroll to line 8 for complete ruling. Court to prepare formal order.
9-10	24CV433345	MANTHAN CHAUHAN et al vs H&T EXPRESS INC et al	In this straightforward car collision lawsuit, there are eight motions to compel set to be heard between November 21, 2024 and December 5, 2024. This number of motions in this case type signals to the Court that the meet and confer process has broken down. The parties are ordered to meet and confer in person or by virtual platform—phone or email is NOT sufficient, identify any remaining disputes, and file, serve and email to Department6@scscourt.org a joint statement succinctly outlining those remaining disputes by noon on December 5, 2024. The Court will conduct a hearing regarding the remaining issues on December 6, 2024 at 9 a.m. in Department 6. The November 21, November 26, December 3, and December 5 hearing dates are VACATED.

11	24CV436415	Citibank N.a. vs Jesus Salazar	Plaintiff's motion for an order that matters in requests for admission of truth of facts be deemed admitted is GRANTED. A notice of motion was served on Defendant by U.S. mail on September 25, 2024. Defendant failed to oppose the motion. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion. Plaintiff served requests for admissions on Defendant by U.S. mail on July 10, 2024. On August 30, 2024 Plaintiff sought to resolve the matter informally, requesting responses be served no later than 5:00 pm on September 10, 2024. To date, no responses have been served. A party served with requests for admission must serve a response within 30 days. (Code of Civ. Pro. §2033.250.) When a party fails to respond—even in the face of a motion to have the matters in the requests for admission deemed admitted—as Defendant has done here, the Court must order the requests for admission deemed admitted. (Code of Civ. Pro. §2033.280(c); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775-776.) Such a "deemed admitted" order establishes that the nonresponding party has responded to the requests for admission by admitting the truth of the matters contained in the requests. (*Id.*) Accordingly, Plaintiff's motion is granted, and the matters set forth in Plaintiff's requests for admission are deemed admitted. Court will prepare formal order.
12	24CV444671	XH INDUSTRIAL CO., LTD. vs CAPITAL ASSET EXCHANGE AND TRADING, LLC	Defendant's motion to set aside default is GRANTED. The motion to set aside was timely made after Defendant received actual notice of the lawsuit, and Plaintiff fails to meet its burden that it will be prejudiced given the timeline—Plaintiff sought and obtained default two days after a responsive pleading was due without notice to the Defendant and Defendant immediately reached out for a stipulation to set the default aside. (Code Civ. Pro. §473(b); *Brochtrup v. INTEP* (1987) 190 Cal.App.3d 323, 329; *Carrasco v. Craft* (1985) 164 Cal.App.3d 796, 803; *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.) Plaintiff's request for fees is DENIED. Plaintiff fails to provide any evidence in support of the amount of fees requested. Court will prepare formal order.
13	24CV449727	Juan Martinez vs Progressive Insurance	Claimant's unopposed motion to compel arbitration is GRANTED. The December 17, 2024 motion to compel hearing is VACATED. The parties are ordered to appear for a status review regarding arbitration on June 12, 2025 at 10:00 in Department 6.
14	21CV383740	Eric Figueroa et al vs City of Palo Alto et al	Plaintiffs' motion for new trial is DENIED. First, a tentative ruling is just that: tentative and not final. After consideration of oral argument and revisiting the record and relevant case law in light of that argument, the Court did reverse its tentative ruling. Next, Plaintiffs misconstrue the Court's July 7, 2024 order granting summary judgment. The Court did not grant summary judgment because only a single incident of harassment was alleged or because it was requiring an "extremely severe" incident. Nor did the Court weigh evidence—it is not necessary to weigh evidence when there is no material dispute as is the case here. The parties agree to the contents of the mural, its location, and what it depicted. Even how Plaintiffs felt about the mural is not in dispute. Thus, the only question in this case is whether "a reasonable person subjected to the [alleged] discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to 'make it more difficult to do the job.'" (*Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865, 878.) *Beltran* did not, as Plaintiffs argue, change that analysis. Indeed, the standards set forth in *Beltran* are cited verbatim in the Court's July 7, 2020 order. And while "Harassment cases are rarely appropriate for disposition on summary judgment", rarely is not never. (*Beltran v. Hard Rock Hotel Licensing, Inc.*, 97 Cal. App. 5th 865, 878.) And here, for the reasons set forth in the Court's July 7, 2024 order, summary judgment in favor of Defendants is appropriate.

Calendar Line 3
Michael Darden vs The Board of Trustees of the Leland Stanford University, Case No. 21CV385527

Before the Court is The Board of Trustees of The Leland Stanford Junior University ("Stanford"), Jane Duperrault, Dr. Larry Chu, Norma Leavitt, Susan Hoerger, Marc Tessier-Lavigne, and Ronald Pearl's, motion for summary judgment against Plaintiff's third amended complaint ("TAC"). Pursuant to the California Rule of Court, Rule 3.1308, the Court issues its tentative ruling.

I. Background

Stanford hired Plaintiff on or around May 24, 2019, for the position of Program Manager at the Stanford School of Medicine's Anesthesia Informatics and Media ("AIM") Lab. (Defendants' Undisputed Material Facts ("UMF") 1.) Plaintiff's offer letter indicated that his employment with Stanford was subject to a twelve-month trial period, during which Plaintiff's employment was "at-will." (UMF ¶2.) Plaintiff understood not only that his employment at Stanford was subject to a trial period, but also that his employment during this period was at-will. (UMF ¶3.)

Plaintiff's offer letter identified June 10, 2019, as the effective date of his employment with Stanford. (UMF ¶4.) Norma Leavitt had previously informed Plaintiff that it was "urgent" or "very important" for him to start working on June 10, 2019 because the first session of the Stanford Anesthesiology Summer Institute ("SASI") would commence two weeks later. (UMF 5, 6.) Plaintiff did, in fact, start work as the AIM Lab Program Manager on June 10, 2019, and the SASI program launched two weeks after June 10, 2019. (UMF ¶¶8, 9.)

On July 22, 2019, Plaintiff met with Ms. Leavitt to complain about a supervisee's allegedly unprofessional conduct. Ms. Leavitt stated, in response to his complaint, that she would "handle" Plaintiff's concerns. Plaintiff does not know whether Ms. Leavitt spoke to Plaintiff's supervisee about his concerns. (UMF ¶¶10, 11, 12.)

On July 29, 2019, Dr. Chu and Ms. Leavitt met with Plaintiff and informed him that he was being terminated because he lacked the necessary technical knowledge and skills to lead the AIM Lab. Stanford terminated Plaintiff's employment effective September 3, 2019. (UMF ¶¶13, 14, 15.) On August 2, 2019, Plaintiff emailed Dr. Marc Tessier-Lavigne along with 13 other Stanford

employees, asserting that his termination was due to his race, sexuality, and age. (UMF ¶¶16, 17.)

On August 14, 2019, Megan Pierson responded to Plaintiff's email, writing: "we have closely reviewed your August 2 letter and we take these concerns very seriously" informing Plaintiff that Susan Hoerger would investigate his claims. (UMF ¶¶18, 19.) In a letter Plaintiff received on or around November 26, 2019, Ms. Hoerger summarized her the findings from her investigation, ultimately concluding that Plaintiff's termination "was in compliance with university policy." (UMF ¶¶20, 21.) Ms. Hoerger also noted that "the job information form (JIF) for the AIM Lab Program Manager position had not yet been updated to reflect the ways in which the job had changed during the tenure of its past incumbent." (UMF ¶22.)

Plaintiff initiated this action on July 8, 2021, and subsequently amended his complaint on September 27, 2021, and December 2, 2022, alleging a single cause of action for negligent misrepresentation.

II. Legal Standard

Motions for summary judgment are governed by Code Civ. Proc. § 437c, which allows a party to "move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Pro. § 437c(a)(1).) The function of a motion for summary judgment or adjudication is to allow a determination as to whether an opposing party cannot show evidentiary support for a pleading or claim and to enable an order of summary dismissal without the need for trial. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 843.) Code of Civil Procedure section 437c(c) requires "the trial judge to grant summary judgment if all the evidence submitted, and 'all inferences reasonably deducible from the evidence' and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal.App.4th 1110, 1119.)

"The function of the pleadings in a motion for summary judgment is to delimit the scope of the issues; the function of the affidavits or declarations is to disclose whether there is any

triable issue of fact within the issues delimited by the pleadings." (*Juge v. County of Sacramento* (1993) 12 Cal.App.4th 59, 67, citing *FPI Development, Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 381-382.) As to each claim framed by the complaint, the defendant moving for summary judgment must satisfy the initial burden of proof by presenting facts to negate an essential element, or to establish a defense. (Code Civ. Pro. § 437c(p)(2); *Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1520.) Defendant may satisfy this burden by showing that the claim "cannot be established" because of the lack of evidence on some essential element of the claim. (*Union Bank v. Superior Court* (1995) 31 Cal.App.4th 574, 590.)

Defendant must present evidence and not simply point out that plaintiff does not possess and cannot reasonably obtain needed evidence. (*Aguilar, supra*, 25 Cal.4th at 865-66.) Thus, a moving defendant has two means by which to shift the burden of proof under the summary judgment statute: "The defendant may rely upon factually insufficient discovery responses by the plaintiff to show that the plaintiff cannot establish an essential element of the cause of action sued upon. [Citation.] [Or a]lternatively, the defendant may utilize the tried and true technique of negating ('disproving') an essential element of the plaintiff's cause of action." (*Leyva v. Garcia* (2018) 20 Cal.App.5th 1095, 1103.)

Until the moving defendant has discharged its burden of proof, the opposing plaintiff has no burden to come forward with any evidence. Once the moving defendant has discharged its burden as to a particular cause of action, however, the plaintiff may defeat the motion by producing evidence showing that a triable issue of one or more material facts exists as to that cause of action. (Code Civ. Proc. §437c(p)(2).) Courts "liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party." (*Dore v. Arnold Worldwide, Inc*. (2006) 39 Cal.4th 384, 389.)

III. Evidentiary Objections

Plaintiff submits 66 exhibits with his opposition. Defendants object to the admissibility of 65 exhibits predominantly for lack of authentication. However, Defendants' evidentiary objections do not comply with Rule of Court 3.1354 ("Rule 3.1354"). Rule 3.1354 requires two documents to be submitted when evidentiary objections are made: the objections and a separate

proposed order on the objections, both of which must be in one of the two approved formats set forth in the rule. (See *Vineyard Spring Estates v. Super. Ct.* (2004) 120 Cal.App.4th 633, 642 [trial courts only have duty to rule on evidentiary objections presented in the proper format]; *Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1 [trial court not required to rule on objections that do not comply with Rule of Court 3.1354 and not required to give objecting party a second chance at filing properly formatted papers].) Thus, the Court declines to rule on the evidentiary objections. Objections that are not ruled on are preserved for appellate review. (Code of Civ. Proc., § 437c, subd. (q).)

Defendants also object to Plaintiff's RSUMF on the grounds that it was filed one day late on November 8, 2024 after Plaintiff filed his opposition. The failure to file an opposition including a separate statement of disputed material facts by not less than 14 days prior to the motion may constitute a sufficient ground, in the Court's discretion for granting the motion. (See, Civ. Proc. Code, § 437c, subd. (b).) However, in the interest of justice, the Court exercises its discretion to address the merits of Plaintiff's opposition.

IV. Analysis

A. Worker's Compensation Exclusivity Rule

The Workers' Compensation Act provides the exclusive remedy for an injury sustained by an employee in the course and scope of employment. (Lab. Code, §§ 3600, subd. (a), 3602, subd. (a); *Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 813 (*Vacanti*).) The workers' compensation exclusivity rule is based on the "presumed 'compensation bargain'" in which, in exchange for limitations on the amount of liability, the employer assumes liability regardless of fault for injury arising out of and in the course of employment. (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 16.) The compensation bargain encompasses both psychological and physical injury arising out of and in the course of the employment. (Lab. Code, §§ 3600, subd. (a), 3208.3; see also, *Shirvanyan v. Los Angeles Community College Dist.* (2020) 59 Cal.App.5th 82, 105.)

Worker's Compensation Exclusivity "also encompasses injury 'collateral to or derivative of a compensable workplace injury' (*Vacanti, supra*, 24 Cal.4th at p. 814), such as emotional

distress stemming from the experience of a physical injury at work. (See *Vacanti*, at pp. 814–815; *Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 902 [80 Cal. Rptr. 3d 690, 188 P.3d 629]; *Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148, 160 [233 Cal. Rptr. 308, 729 P.2d 743].) This serves the goal of providing a "single recovery of benefits on account of a single injury or disability." (*Sea-Land Service, Inc. v. Workers' Comp. Appeals Bd*. (1996) 14 Cal.4th 76, 82 [58 Cal. Rptr. 2d 190, 925 P.2d 1309].)" (*Shirvanyan v. Los Angeles Community College Dist.* (2020) 59 Cal. App. 5th 82, 105.)

Consequently, an injured worker's remedies against his employer or a co-employee are (absent narrow exceptions) solely under the workers' compensation law-i.e., there is no "common law" action against the employer or a co-employee because, as a general rule, workers' comp is the exclusive remedy for injury or death of an employee occurring in the course and scope of employment. (Lab. Code §§ 3600, 3601; *Jones v. Kaiser Industries Corp.* (1987) 43 Cal.3d 552, 556.)

There are some situations in which the injured employee may maintain a civil action against his or her employer. These include statutory exceptions such as: 1) physical assault by the employer; 2) aggravation of injury by the employer's fraudulent concealment; 3) products liability; 4) power press guards; and 5) the employer is uninsured. (See Lab. Code §§ 3602, 3706, 4553.) There is no exception to the exclusive remedy rule simply because an injury suffered on the job is not compensable under workers' compensation law. (See *Livitsanos v. Superior Court* (1992) 2 Cal. 4th 744, 754-756; *Williams v. State Compensation Ins. Fund* (1975) 50 Cal. App. 3d 116, 121-123.)

In addition, tort recovery for intentional misconduct is permitted where conduct of an employer may not relate to the employment, an injury which did not occur while the employee was performing service incidental to the employment and which would not be viewed as a risk of the employment or conduct where the employer stepped out of its proper role. (See, *Lenk v. Total-Western, Inc.*, (2001) 89 Cal. App. 4th 959, 962; *Shoemaker v. Myers* (1990) 52 Cal. 3d [exclusive remedy provisions not applicable to risks not "reasonably encompassed within the compensation bargain"]; *Usher v. American Airlines, Inc.* (1993) 20 Cal. App. 4th 1520

[exceptions to exclusive remedy rule include conduct outside proper role of employer and where employee's injury not viewed as risk of employment, such as injuries to one's reputation].)

Plaintiff's TAC alleges Defendants are liable for the following five alleged negligent misrepresentations:

- Outdated job posting, for the position of AIM Lab Program Manager position, misrepresenting the job description – published on December 5, 2018, and reviewed by Plaintiff in March 2019.
- The written job offer emailed to Plaintiff on May 24, 2019, allegedly misrepresenting the job description and the employment start date of June 10, 2019.
- Ms. Leavitt's alleged verbal misrepresentations to Plaintiff on July 22, 2019, that she would handle his complaint about Ms. Wilkerson
- Verbal assertions of Ms. Leavitt and Dr. Chu, made on July 29, 2019, terminating Plaintiff's employment due to his lack of necessary technical skills.
- Ms. Pierson's email to Plaintiff in August 2019, stating she would take Plaintiff's wrongful termination allegations seriously.

The TAC further alleges that because of Defendants' misrepresentations he has suffered and continues to suffer:

- Considerable psychological damage
- Dramatic drop in high self confidence
- Increased difficulty to focus on and perform job search and interviews
- Increased irritability and frustration
- Frequent experiences of related depression, panic attacks, and insomnia
- Increased migraine spells
- Diminished capacity to handle stress

(TAC p. 60.)

Defendants contend Plaintiff's negligent misrepresentation claim is preempted by the Worker's Compensation Exclusivity Rule because (1) Plaintiff's alleged injuries arises out of and

in the course of his employment, (2) negligence claims remain within the ambit of the exclusivity rule, (3) the alleged misrepresentations were communication in the course of their employment and concerned the conditions of Plaintiff's work, (4) the purported statements were not false or misleading, and (5) the alleged misrepresentations neither contravene any public policy nor exceed the risks inherent in any employment relationship.

In support of their position, Defendants submit evidence demonstrating:

- Stanford's job information form for the position of AIM Lab Project Manager listed description, duties, and the required qualifications for the position. [Michael Darden Deposition 74:4-12, 77:8-12, Exhibit 2.]
- Plaintiff's May 24, 2019 offer letter for the position of the Program Manager at the Stanford School of Medicine's Anesthesia Informatics and Media Lab provided June 10, 2019, as the effective date of employment. Plaintiff accepted the offer on May 24, 2019. [Michael Darden Deposition Vol I. pp. 66-67, Exhibits 1; Darden Deposition Vol II, Exhibit 8; declaration of Sara Moore, Exhibit C.]
- On August 30, 2019, Stanford sent a letter terminating Plaintiff's employment with the effective date of September 3, 2019. [Michael Darden Deposition 137:12-14, Exhibit 5; declaration of Sara Moore attached Exhibit F.]
- Plaintiff's claim against the Defendant is limited to five separate misrepresentations: (a) Stanford's job posting for the position, (b) importance of the starting date of June 10, 2019, as stated in the offer letter, (c) Ms. Leavitt's statement to Plaintiff that she would handle his complaint about his supervisee, (d) Ms. Leavitt's and Dr. Chu's explanation to Plaintiff about reasons for his termination, and (e) Ms. Pierson's statement in her email to Plaintiff that his wrongful termination allegations would be taken seriously. [Michael Darden Deposition 123:23-124:24, 139:21-140:22, 199:22-200:1, 206:1-7, 211:2-16, 221:222:6, 224:11-20, 266:16-21, 296:11-20, Exhibits 7, 11; Declaration of Sara Moore Exhibit I.]

The Court finds Defendants' presented facts and proof satisfy their initial burden of establishing Workers' Compensation exclusion. The submitted evidence show that Plaintiff's alleged psychological, emotional, and physical injuries were caused by alleged misrepresentations that were incidental to Plaintiff's employment and were made in the course of Plaintiff's employment with Stanford. Particularly, statements made by Ms. Leavitt, Dr. Chu, and Ms. Pierson regarding Plaintiff's grievances and criticism of his work skills are an expected part of an employment relationship. Therefore, the Workers' Compensation Act provides the exclusive remedy for Plaintiff's alleged injuries.

Citing *Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876 (Miklosy), Plaintiff attempts to avoid preemption by arguing (1) Defendants' misrepresentations contravene a fundamental public policy and/or exceed the risks inherent in the employment relationship, and (2) his injuries began from the outdated job description prior to his employment and not during the course of his employment with Stanford.

First, Plaintiff's reliance on *Miklosy* is misplaced. In *Miklosy*, a whistleblower retaliation case, the California Supreme Court held the exception to workers' compensation preemption for employer "conduct that 'contravenes fundamental public policy' is aimed at permitting a *Tameny* action [for wrongful discharge in violation of public policy] to proceed despite the workers' compensation exclusive remedy rule." (*Id.* at pp. 902–903. Internal citation omitted).) This exception does not, however, allow a " 'distinct cause of action, not dependent upon the violation of an express statute or violation of fundamental public policy.'" (*Id*. at p. 902.) *Miklosy* held that even "'severe emotional distress'" arising from "'outrageous conduct'" that occurred "at the worksite, in the normal course of the employer-employee relationship" is the type of injury that falls within the exclusive province of workers' compensation. (*Ibid*) "An employer's intentional misconduct in connection with actions that are a normal part of the employment relationship … resulting in emotional injury is considered to be encompassed within the compensation bargain, even if the misconduct could be characterized as "manifestly unfair, outrageous, harassment, or intended to cause emotional disturbance." (*Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832.)

Second, for an injury to arise out of the employment it must occur by reason of a condition or incident of the employment. That is, the employment and the injury must be linked in some causal fashion. (See, *LaTourette v. WCAB* (1998) 17 Cal.4th 644, 651-652.) "The requirements that an injury arise out of employment or be proximately caused by employment are sometimes referred to together as the requirement of industrial causation. [Citation.] It is a looser concept of causation than the concept of proximate cause employed in tort law. In general, the industrial causation requirement is satisfied 'if the connection between work and the injury [is] a contributing cause of the injury … .' [Citation.]'" (*Lee v. West Kern Water Dist*. (2016) 5 Cal.App.5th 606, 624-625.) "Whether an employee's injury arose out of and in the course of [his] employment is generally a question of fact to be determined in light of the circumstances of the particular case. [Citation.] However, where the facts are undisputed, resolution of the question becomes a matter of law. [Citations.]"(*Wright v. Beverly Fabrics, Inc*. (2002) 95 Cal.App.4th 346, 353.)

In his TAC, Plaintiff alleges:

- The job listing was published on December 5, 2018, and was outdated by the time Plaintiff had applied; which inherently becomes a misrepresentation of the current job requirements.
- The offer letter of May 24, 2019, was the second misrepresentation because it included the outdated job posting and falsely stated that the start date of June 10, 2029, was important for training purposes while Defendant was too unorganized to provide the training.
- Ms. Leavitt's remarks that she would handle Plaintiff's complaint about a supervisee was a misrepresentation because she did not promptly follow up on the complaint and did not update Plaintiff of her efforts.
- The termination remark that Plaintiff lacked the necessary technical skills was a misrepresentation because it was based on outdated job listing's description.

- Stanford's remarks that it took allegations of discrimination seriously and would handle Plaintiff's wrongful termination concerns were misrepresentations made to induce Plaintiff to delay his legal actions.

These alleged misrepresentations fall squarely within the employment relationship. Plaintiff submits no authority to the contrary. Nor does Plaintiff submit any substantive fact, legal authority or admissible evidence negating that the alleged outdated job posting was not incidental to his employment with Stanford or negating the causal link between the job posting, his employment, and subsequent injury. Argument is insufficient. (See Opp. 13:22-28 ("[b]ut for Stanford's Defendants' admittedly outdated job description … Plaintiff Darden never would have applied for or accepted Defendants' AIM Manager job offer, become a Stanford employee and subsequently suffered the mentioned, devastatingly 'toxic' experience Darden endured there.") Plaintiff's RSUMF also fails to submit evidence to create an issue of fact on this issue:

> "Disputed. No Job Existed. Defendants did not follow Defendant Stanford's Trial Period Policies. AIM Manager, Offer Letter: False. Job Information Form (JIF): False. Defendants' claims that Plaintiff did not have Technical Skills which the AIM Manager job requires: False. Start date, June 10, 2019, is "urgent" or "very important": False. Leavitt failed to "handle" Plaintiff's complaint about his Insubordinate Supervisee, who was also a Trial Period employee. Defendants did not take Plaintiff's "Wrongful Termination" claims "very seriously." "

Based on the foregoing, the Court finds that Plaintiff has not carried his burden of demonstrating a triable issue of fact negating preemption of his claim by the Workers' Compensation Exclusivity Rule.

B. Negligent Misrepresentation

Considering the Court's finding regarding application of the workers' compensation exclusivity rule, the Court finds no reason to further analyze and address Defendant's argument that Plaintiff's negligent misrepresentation claim fails as a matter of law.

Defendant's motion for summary judgment is GRANTED.

Calendar Line 8
William Brooks, et al. v. Cheryl Boomgaarden, Case No. 23CV416550

Before the Court is defendant and respondent Cheryl Boomgaarden's, Trustee of the Boomgarden Family Trust ("Defendant") demurrer to plaintiffs and petitioners Jan Hochhauser's ("Hochhauser") and Matthew Huerta's ("Huerta") (collectively, "Plaintiffs") the second amended petition and complaint ("SAC").[1] Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

I. Alleged Facts

According to the SAC, on January 26, 2022, William Brooks ("Brooks"), Plaintiffs' Predecessor-in-Interest, entered a written agreement with Defendant (the "Purchase Agreement") to buy commercial properties located at 7747 Monterey Street and 7740 Eigleberry Street in Gilroy (the "Properties").[2] (SAC, ¶¶ 4-5.) Defendant was informed that Hochhauser and Huerta were designated as additional buyers for the Properties—she acknowledged and agreed with such a designation for them, in addition to communicating directly with Plaintiffs during the transaction. (SAC, ¶ 7.) Brooks passed away on September 6, 2023. (*Ibid*.) Plaintiffs performed all conditions, covenants, and promises required of them under the Purchase Agreement, including depositing the necessary funds for escrow with First American Title Company, the escrow holder. (SAC, ¶¶ 9-10.)

According to the Addendum to the Purchase Agreement, if the transaction was not completed within one year, there was a six-month option to extend the close of escrow available with an additional non-refundable deposit of $100,000. (SAC, ¶ 11.) Plaintiffs exercised the option but while the escrow was pending, defendant wrongfully instructed the escrow holder not to proceed and claimed she was entitled to cancel escrow and the Purchase Agreement. (SAC, ¶ 12.) Despite multiple requests, Defendant refused to proceed with the transaction or perform according to the Purchase Agreement, which breached the Purchase Agreement and caused Plaintiffs to suffer damage. (SAC, ¶¶ 13-17.)

[1] Plaintiffs bring this action individually and as Successors-in-Interest to William Brooks and Jack Schneider.
[2] Dale E. Boomgaarden was involved in the agreement and a trustee of the Boomgaarden Family Trust but he passed away after the agreement was made and Defendant is now the sole Trustee. (SAC, ¶ 6.)

On May 24, 2023, Plaintiffs filed the petition and complaint, which they amended on December 19, 2023, and on May 14, 2024, they filed their SAC, which asserts claims for (1) petition to compel arbitration, (2) breach of contract, (3) declaratory relief, (4) breach of implied covenant of good faith and fair dealing, (5) fraud, and (6) promises without intent to perform. On October 15, 2024, Defendant filed the instant motion, which Plaintiffs oppose.

II. Legal Standard for a Demurrer

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain." (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children's Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

Defendant demurs to the first, third, fourth, fifth, and sixth causes of action on the ground they fail to allege sufficient facts to state a claim. (See Code Civ. Proc., § 430.10, subd. (e).)

III. Analysis

A. First Cause of Action-Petition to Compel Arbitration

Plaintiffs allege paragraph 38 of the Purchase Agreement contains a provision to arbitrate all disputes arising out of the agreement and they demand Defendant be ordered to arbitrate all matters. Defendant demurs to claim on the grounds that Plaintiffs have waived arbitration.

While Plaintiffs include this cause of action in their pleading, they have not taken any measures to set a hearing nor is there a *motion* to compel arbitration before the Court at this time. Before the Court is Defendant's demurrer, which only tests the sufficiency of the allegations. (See *Committee on Children's Television, supra,* 35 Cal.3d at pp. 213-214.)

In resolving a motion to compel arbitration, a "trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination." (*Mendonza v. Trans Valley Transport* (2022) 75 Cal.App.5th 748, 763.) "The party seeking arbitration bears the burden of proving the existence of an arbitration agreement, and the party opposing arbitration bears the burden of proving any defense, such as unconscionability." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.)

Here, Defendant's arguments challenging the petition to compel arbitration claim, and Plaintiffs' response requires consideration of facts and evidence beyond the allegations in the SAC, therefore, the Court cannot resolve this issue on demurrer. It appears this issue would be more appropriately addressed in an evidentiary motion such as a motion to compel arbitration or a motion for summary adjudication. Thus, Defendant's demurrer to the first cause of action is OVERRULED.

B. Third Cause of Action-Declaratory Relief

"To qualify for declaratory relief, a party would have to demonstrate its action presented two essential elements: (1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the party's rights or obligations." (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 909.) A cause of action for declaratory relief should not be used as a duplicate cause of action for the determination of identical issues raised in another cause of action. (*General of America Insurance Co. v. Lilly* (1968) 258 Cal.App.2d 465,

470 (*General of America Insurance Co*.) Further, "there is no basis for declaratory relief where only past wrongs are involved." (*Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 366 (*Osseous Technologies of America, Inc.*).)

Plaintiffs allege there is an actual controversy between the parties regarding their respective rights and duties related to the terms of the Purchase Agreement and to Plaintiff's escrow payments. (SAC, ¶ 34.) They seek a judicial declaration that: Defendant had no right to cancel escrow or instruct the escrow holder to cancel the escrow or the Purchase Agreement or to demand or require Plaintiffs to cancel escrow or execute cancellation instructions. (SAC, ¶ 36.) They further seek a declaration that Seller was required to proceed with the escrow and must execute the escrow instructions from the date of delivery of the escrow instructions to the escrow holder. (*Ibid*.) They additionally seek a declaration that Defendant be required to arbitrate this matter pursuant to the terms of the Purchase Agreement. (*Ibid*.)

Plaintiffs' declaratory relief claim is largely based on past wrongs, which cannot itself support a claim for declaratory relief. (See *Osseous Technologies of America, Inc., supra,* 191 Cal.App.4th at p. 366.) Moreover, the relief based on that conduct and the issue of whether Defendant should be required to arbitrate can be addressed in the claims for breach of contract and petition to compel arbitration, respectively—therefore, a cause of action for declaratory relief is duplicative. (See *General of America Insurance, Co., supra,* 258 Cal.App.2d at p. 470; see also *California Ins. Guarantee Assn. v. Superior Court* (1991) 231 Cal.App.3d 1617, 1623-1624 ["The declaratory relief statute should not be used for the purpose of anticipating and determining an issue which can be determined in the main action. The object of the statute is to afford a new form of relief where needed and not furnish a litigant with a second cause of action for the determination of identical issues"].) Thus, Defendant's demurrer to the third cause of action is SUSTAINED WITHOUT LEAVE TO AMEND.

C. Fourth Cause of Action-Breach of Implied Covenant of Good Faith and Fair Dealing

"The prerequisite for any action for breach of the implied covenant of good faith and fair dealing is the existence of a contractual relationship between the parties." (*Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 49.) "The covenant of good faith and fair

dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made. [Citation]. The covenant thus cannot be 'be endowed with an existence independent of its contractual underpinnings.' [Citation] It cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement." (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 349-350 ("*Guz*").)

"The scope of conduct prohibited by the covenant of good faith is circumscribed by the purposes and express terms of the contract…[it] rests upon the existence of some specific contractual obligation." (*Avidity Partners, LLC v. State of California* (2013) 221 Cal.App.4th 1180, 1204.) "In essence, the covenant is implied as a supplement to the express contractual covenants, to prevent a contracting party from engaging in conduct which frustrates the other party's rights to the benefits of the contract." (*Love v. Fire Insurance Exchange* (1990) 221 Cal.App.3d 1136, 1153 (*Love*).) A breach of implied covenant good faith and fair dealing involves something beyond breach of the contractual duty itself. (See *Howard v. American National Fire Insurance Company* (2010) 187 Cal.App.4th 498, 528; see also *California Shoppers, Inc. v. Royal Globe Insurance Company* (1985) 175 Cal.App.3d 1, 54.) "Where breach of an actual term is alleged, a separate implied covenant claim, based on the same breach, is superfluous." (*Guz, supra*, 24 Cal.4th at p. 327; see also *Smith v. International Brotherhood of Electrical Workers* (2003) 109 Cal.App.4th 1637, 1644 fn.3.)

Plaintiffs allege Defendant breached the covenant of good faith and fair dealing by refusing to comply with the terms of the Purchase Agreement, refusing to sell Plaintiffs the Properties, refusing to cooperate in the escrow, wrongfully purported to cancel escrow without any legal basis, and wrongfully attempted to deny that Defendant had to honor Defendant's obligations under the Purchase Agreement. (SAC, ¶ 41.) However, Plaintiffs' claim rests on the same conduct as alleged for their breach of contract claim, which Defendant has not challenged, and therefore, this claim is superfluous. (See SAC, ¶ 27; see also *Guz, supra*, 24 Cal.4th at p. 327.) Thus, Defendant's demurrer to the fourth cause of action is SUSTAINED with 20 days' leave to amend from the service date of the final order.

D. Fifth Cause of Action-Fraud (Concealment)

"The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages." (*West v. JPMorgan Chase Bank, N.A*. (2013) 214 Cal.App.4th 780, 792 [citation omitted] (*West*).) "Fraud must be pleaded with specificity rather than with general and conclusory allegations. The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." (*Id*. at p. 793 [citation and quotation marks omitted].) Courts enforce the specificity requirement in consideration of its two purposes. (*Id*. at 793.) The first purpose is to give notice to the defendant with sufficiently definite charges that the defendant can meet them. (*Ibid*.) The second is to permit a court to weed out meritless fraud claims on the basis of the pleadings; thus, the pleading should be sufficient to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud. (*Ibid*.)

The elements of fraud based on concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiffs, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiffs, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damages. (*Jones v. ConocoPhillips* (2011) 198 Cal.App.4th 1187, 1198 (*Jones*).)

"To maintain a cause of action for fraud through nondisclosure or concealment of facts, there must be allegations demonstrating that the defendant was under a legal duty to disclose those facts. (*Los Angeles Memorial Coliseum Commission, et al. v. Insomniac, Inc. et al.* (2015) 233

Cal.App.4th 803, 831.) "There are four circumstances in which nondisclosures or concealment may constitute actionable fraud: (1) where the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts. (*LiMandri v. Judkins* (1997) 52 CalApp.4th 326, 336, quoting *Heliotis v. Schuman* (1986) 181 Cal.App.3d 646, 651.)

As with fraudulent misrepresentation, the elements of concealment must be pleaded with specificity, but significantly less particularity is required in the case of fraudulent concealment because it is difficult to plead a negative, such as "how and by what means something didn't happen, or when it never happened, or where it never happened." (*Alfaro v. Community Housing Improvement System and Planning Assn*. (2009) 171 Cal.App.4th 1356, 1384.) Thus, when courts refer to the requirement of specificity with respect to allegations of fraudulent concealment, they are generally concerned that allegations regarding the facts giving rise to a duty to disclose material facts are pleaded with particularity. (See *Linear Technology Corp. v. Applied Materials, Inc.* (2007) 152 Cal.App.4th 115, 132-133 (*Linear Technology*).)

Plaintiffs assert this claim against Defendant and DOES 1-100. They allege Defendants, each of them, made misrepresentation including statements that they were going to sell Plaintiffs the Properties pursuant to the terms of the Purchase Agreement and then actively concealed the fact that Defendant was proceeding to sell the Properties to other parties. (SAC, ¶ 45.) Plaintiffs allege Defendants, each of them, acted with the intent to deceive and mislead Plaintiffs. (*Ibid*.) Plaintiffs incorporate the previous allegations which include specific facts about Defendant's conduct. But while Plaintiffs allege they were unaware of the concealed material facts, they fail to allege they would not have acted as they did if they had knowledge of the concealed facts. Therefore, Plaintiffs fail to allege sufficient facts to state this claim. (See *Jones, supra,* 198 Cal.App.4th at p. 1198.) Thus, Defendant's demurrer to the fifth cause of action is SUSTAINED with 20 days leave to amend from the service date of the final order.

E. Sixth Cause of Action-Promise Without Intent to Perform

"Promissory fraud or false promise 'is a subspecies of [the action for] fraud and deceit. A promise to do something necessarily implies the intent to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud." (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1498.) In *Tarmann v. State Farm Mutual Automobile Ins. Co.* (1991) 2 Cal.App.4th 153, 159 (*Tarmann*), the court explained, "To maintain an action for deceit based on a false promise, one must specifically allege and prove, among other things, that the promisor did not intend to perform at the time he or she made the promise and that it was intended to deceive or induce the promisee to do or not do a particular thing."

> [T[he facts essential to the statement of a cause of action in fraud or deceit based on a promise made without any intention of performing it are: (1) a promise made regarding a material fact without any intention of performing it; (2) the existence of the intent at the time of making the promise; (3) the promise was made with intent to deceive or with intent to induce the party to whom it was made to enter into the transaction; (4) the promise was relied on by the party to whom it was made; (5) the party making the promise did not perform; (6) the party to whom the promise was made was injured.

(*Muraoka v. Budget Rent-A-Car* (1984) 160 Cal.App.3d 107, 119 (*Muraoka*).)

Plaintiffs allege Defendant (along with DOES 1-100) made promises including the promise that they would sell Plaintiffs the Properties and would perform their obligations under the Purchase Agreement. (SAC, ¶ 51.) However, Plaintiffs' allegations that Defendants had no intent to perform at the time the promises were made and that the promises were made to attempt to induce Plaintiffs to act in reliance upon the alleged promises are made *on information and belief.* (See SAC, ¶¶ 53-54.) In the case of fraud, the law is settled that "it is not sufficient to allege fraud or its elements upon information and belief, unless the facts upon which the belief is founded are stated in the pleading." (*Dowling v. Spring Valley Water Co.* (1917) 174 Cal.218, 221; see also *Findley v. Garrett* (1952) 109 Cal.App.2d 166, 176-177; *Woodring v. Basso* (1961) 195 Cal.App.2d 459, 464-465.) The facts on which the belief is founded refers to the sources of

information that the plaintiff relied upon to support its claim of fraud, not the facts identifying the *elements* of the fraud.

Here, Plaintiffs fail to provide facts to support their allegation that when the promises were made in January 2022, when the Purchase Agreement was entered, Defendant had the intent to not perform pursuant to it or intended to induce Plaintiffs into entering into the transaction. Moreover, they fail allege, with specificity, when any other alleged promise was made. As a result, Plaintiffs fail to allege sufficient facts to state this claim. (See *Muraoka, supra,* 160 Cal.App.3d at p. 119.) Thus, Defendant's demurrer to the sixth cause of action is SUSTAINED with 20 days leave to amend from the service date of the final order.