SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 18b
Honorable Shella Deen, Presiding
Hien-Trang Tran-Thien, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: July 25, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

FOR APPEARANCES: Department 18 is fully open for in-person hearings. The Court strongly prefers **in-person** appearances for all contested law and motion matters. For all other hearings, the Court strongly prefers either **in-person or video** appearances. If you must appear virtually, you must use video. Audio-only appearances are permitted, but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 18:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	21CV391881	Amir Weiner et al vs Matthew Carpenter et al	**Demurrer**. Scroll down to Line 1 for Tentative Ruling.
LINE 2	23CV421023	Lee Vien et al vs Chung-Che Charles Wang, M.D. et al	**Motion to Strike**. Scroll down to Line 2 for Tentative Ruling.
LINE 3	22CV401535	Andres Echeverri vs Scott Lee et al	**Motion for Summary Judgment.** Scroll down to Line 3 for Tentative Ruling.
LINE 4	23CV415947	James Fok et al vs Peter Wong et al	**Motion to Compel (Discovery).** OFF CALENDAR.

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LAW AND MOTION TENTATIVE RULINGS

LINE 5	17CV320282	Barbara Holdings, Inc vs Tracy Smith et al	**Petition for Hearing on Third-Party Ownership Claim.** Third-party claimant Global Quest, Inc. ("Global") brings an ownership claim and opposes judgment creditor assignee Paul Kalra's ("Kalra") petition for hearing on third-party ownership claim. Global argues that Tracey Emery Smith ("Smith") and Downkicker Investments, Inc. never held any interest in 5318 Messing Road, Valley Springs, California (the "Property") and submits various other arguments to claim that Global owns the Property and that it is not subject to any lien by Kalra. Kalra in a previous motion for order for sale of the Property (which Global also opposed for the same reasons) provided competent evidence to support the sale of the Property which resulted in the court issuing an order for the sale of the Property (June 4, 2024 Order). In the moving papers for that motion, as is relevant here, Kalra relied on various filings and recorded documents, including an April 8, 2022 writ of execution reflecting judgment debtor's corporate aliases, Debtor Smith's claim of exemption (denied by the court on December 1, 2022), a March 13, 2024 writ of execution also reflecting judgment debtor's corporate aliases. On June 4, 2024, after considering the record, including Global's ownership claims, the court issued an order for sale of the Property. By this motion, Global raises the same arguments that were already rejected by the Court. Global's ownership claim is DENIED; the Property is subject to Kalra's senior lien and this court's June 4, 2024 order for sale of real property remains in full force and effect. Kalra to prepare formal order.

SUPERIOR COURT, STATE OF CALIFORNIA
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LAW AND MOTION TENTATIVE RULINGS

LINE 6	23CV415836	Jin Zhang vs Zhichao Lu et al	**Motion for Stay (Forum Non Conveniens).** Scroll down to Lines 6 and 8 for Tentative Ruling.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

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DATE: July 25, 2024 TIME: 9:00 A.M.

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LAW AND MOTION TENTATIVE RULINGS

LINE 7	20CV366456	Lei Wang et al v. Yin Chan et al	**Motion to Continue Trial.** Defendants Ronsdale Management LLC, Nuvera Construction, Inc., Carlson/Yin Chan and Mary Mo (collectively, "Defendants") move to continue the August 26, 2024 trial date, arguing that the lead counsel, Aimee G. Hamoy, unexpectedly departed the firm and the replacement attorney, Katherine S. Catlos, is expected to be in trial on August 12, 2024. In opposition, Plaintiffs argue that this complaint was filed over 4 years ago, Attorney Wallace Tice has been lead defense counsel in this case up until this motion to continue trial, defense counsel, William Washauer, filed the answer, propounded and answered discovery, participated in mediation, sat through most of the depositions, and opposed the motion for summary judgment in this matter. Plaintiffs further argue that this matter was previously set to be tried on December 4, 2023 and due to the unavailability of a courtroom the matter was continued to the current trial date, August 26, 2024 and Plaintiffs, who reside part time in China, arranged their schedule to accommodate the new August 26 trial date. Good cause has not been shown. The motion to continue the trial date is DENIED. The August 26, 2024 trial date shall remain as set. Plaintiffs to prepare formal order.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

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LAW AND MOTION TENTATIVE RULINGS

LINE 8	23CV415836	Jin Zhang vs Zhichao Lu et al	**Motion for Stay (Forum Non Conveniens).** Scroll down to Lines 6 and 8 for Tentative Ruling.

Calendar Line 1
Case Name: *Amir Weiner, et al. v. Leland Stanford Junior University, et al.*
Case No.: 21CV391881

Before the court is William Corbitt Mitchell's demurrer to plaintiffs' second amended complaint. Pursuant to California Rule of Court 3.1308, the court issues its tentative ruling as follows.

I. Background.

In the early morning hours of January 17, 2020, Eitan Michael Weiner ("Decedent") died alone in a bathroom stall at the Theta Delta Chi ("TDX") fraternity house on the campus of defendant Leland Stanford Junior University ("University"). (Second Amended Complaint ("SAC"), ¶1.)

On or about January 15, 2020, Decedent received a package addressed to him at the TDX fraternity house on defendant University's campus. (SAC, ¶38.) The package contained a bottle of counterfeit Percocet that Decedent and defendants Cole Dill-De Sa ("De Sa"), William Mitchell ("Mitchell"), and Muhammad Khattak ("Khattak") purchased from defendant Matthew Ming Carpenter ("Carpenter"). (SAC, ¶¶17 – 20 and 38.) Defendant Carpenter was a lifelong friend of Decedent growing up in the same neighborhood and attending some of the same schools. (SAC, ¶17.) Defendant Carpenter held himself out to his customers, some of whom were his close personal friends, as an expert in using the dark web to (i) procure exactly what his customers and friends wanted; and (ii) obtain the requested substances or products from sources he called reputable. (*Id.*)

In the early evening hours of January 15, 2020, TDX's Resident Assistant ("RA"), Tim Michael ("Michael"), a student and member of the TDX fraternity who is employed by defendant University, learned that Decedent had lost both speaking and motor functions, symptoms of a Fentanyl overdose. (SAC, ¶39.) RA Michael contacted defendant University's Residence Dean ("RD") assigned to the TDX fraternity house to report the situation. (SAC, ¶40.) The RD directed RA Michael to dial 9-1-1, but did not take any immediate action, instead suggesting the RA contact the "on-call" RD, in violation of defendant University's Residential Education policies. (*Id.*)

When first responders arrived, Decedent declined further medical care. (SAC, ¶41.) Defendants De Sa, Mitchell, and Khattak actively concealed evidence and misled first responders and others regarding the presence of controlled substances within the TDX house, distribution of controlled substances from the TDX house, and their and Decedent's use of controlled substances. (*Id.*)

Defendant University took no further action even though the distribution, dispensation, possession, or use of a controlled substance violates campus policy. (SAC, ¶42.) Similarly, contrary to its own policies and procedures, TDX took no further action in response to Decedent's drug overdose on 15 January 2020. (SAC, ¶¶43 – 47.)

In the early morning hours of January 17, 2020, Decedent died of Fentanyl toxicity and blunt force trauma to his head. (SAC, ¶48.) In the bathroom where Decedent was found, on top of a paper towel dispenser, a responding officer observed an unknown blue powder. (SAC, ¶50.) One of the responding police officers discovered a pill bottle in Decedent's room containing several different types of pills, including a blue pill with an "M" outlined by a square on one side and a score mark with "30" above the line on the other side. (SAC, ¶51.) The color of the blue pill was similar to the powder observed on the paper towel dispenser in the bathroom where Decedent was found. (*Id.*) These pills match the description of pills that have been tied to several deaths involving Percocet laced with Fentanyl. (SAC, ¶52.)

Even after discovering a controlled substance inside the TDX fraternity house, neither defendant University nor TDX took any meaningful action. (SAC, ¶53.)

On December 1, 2020, defendant Carpenter provided law enforcement officers with a voluntary statement detailing his role in procuring controlled substances and facilitating their entry into and onto the defendant University campus. (SAC, ¶60.) Defendant Carpenter admitted to selling controlled substances such as Oxycontin and Percocet to various students, including Decedent and his TDX roommates, defendants De Sa, Mitchell, and Khattak. (SAC, ¶62.) Defendant Carpenter obtained controlled substances through the "dark web," part of the internet not indexed by search engines and a hotbed of criminal activity. (SAC, ¶¶62 – 63.)

Defendant Carpenter routinely made transactions on the dark web on behalf of his customers and friends, priding himself on being an expert experienced in dealing with vendors

on the dark web which allowed him to ensure he dealt with reputable sellers and obtained what was ordered and not something different. (SAC, ¶66.) Decedent and defendant Carpenter grew up together and were lifelong friends. (SAC, ¶67.) Decedent trusted and confided in defendant Carpenter. (*Id.*) Based on defendant Carpenter's professed expertise, Decedent reasonably believed defendant Carpenter would go the extra mile to make sure they purchased from a safe, trustworthy vendor on the dark web who would sell them substances that were in fact what they purported to be. (*Id.*) In early January 2020, Decedent and his TDX roommates, defendants De Sa, Mitchell, and Khattak, sought out defendant Carpenter's expertise and assistance in obtaining Percocet. (SAC, ¶68.) Defendant Carpenter agreed to obtain the specific substances sought on behalf of Decedent and his TDX roommates. (*Id.*)

Defendant Carpenter admitted he was concerned about counterfeit or fake Percocet coming into "other schools all over the place;" and about the trustworthiness of sources on the dark web. (SAC, ¶70.) Despite such knowledge and concerns, defendant Carpenter purchased the Percocet after purporting to research various vendors to make sure the purchase came from a safe and trusted source. (*Id.*) At no point did defendant Carpenter warn Decedent of his concerns regarding the spread of fake Percocet on university campuses, share his personal concerns regarding the dark web, or take any action to confirm the Percocet he acquired for Decedent was unadulterated. (SAC, n¶71.)

Defendant Carpenter arranged to have the pills mailed to Decedent and his TDX roommates at their fraternity house on defendant University campus. (SAC, ¶72.) In reliance on defendant Carpenter's experience and expertise in obtaining substance through the dark web, Decedent reasonably believed the substances received in the mail were as represented, just Percocet. (SAC, ¶73.) Believing the Percocet obtained from defendant Carpenter was safe, Decedent ingested the substance, suffered an overdose and died. (SAC, ¶¶74 – 75.)

Defendant Carpenter agreed the pills he sold likely caused Decedent's death. (SAC, ¶¶17 and 77.) After Decedent's death, defendant Carpenter initially destroyed evidence linking him to Decedent's death, but ultimately admitted his guilt. (SAC, ¶¶17 and 79 - 80.)

On December 1, 2021, plaintiffs Amir Weiner (Decedent's father), Julia Erwin-Weiner (Decedent's mother), and Ya'el Weiner (Decedent's sister) filed a complaint against

defendants University, Theta Delta Chi Founders' Corporation ("TDX Corp"), Carpenter, De Sa, Khattak, and Mitchell asserting causes of action for:

(1) Wrongful Death (Plaintiffs Amir Weiner and Julia Erwin-Weiner against defendant University)

(2) Wrongful Death (Plaintiffs Amir Weiner and Julia Erwin-Weiner against defendant TDX Corp)

(3) Wrongful Death (Plaintiffs Amir Weiner and Julia Erwin-Weiner against defendants Carpenter, De Sa, Khattak, and Mitchell)

(4) California Drug Dealer Liability Act (All plaintiffs against defendants Carpenter, De Sa, Khattak, and Mitchell)

On April 20, 2022, defendant TDX Corp filed an answer to the plaintiffs' complaint and also filed a cross-complaint against Doe cross-defendants for (1) declaratory relief; (2) comparative indemnity and apportionment of fault; (3) total equitable indemnity; and (4) contribution.

On June 3, 2022, defendant Carpenter filed a demurrer to plaintiffs' complaint.

On June 3, 2022, defendant University filed an answer to the plaintiffs' complaint.

On November 23, 2022, the court issued an order sustaining defendant Carpenter's demurrer to the third cause of action, but overruling defendant Carpenter's demurrer to the fourth cause of action.

On January 10, 2023, defendant TDX Corp filed its answer to the plaintiff's FAC.

On January 17, 2023, defendant Carpenter filed a demurrer to the plaintiffs' FAC.

On February 8, 2023[1], plaintiffs filled the operative FAC which continued to assert the same four causes of action found in the original complaint.

On May 15, 2023, the court issued an order (after hearing on April 27, 2023) sustaining, without leave to amend, defendant Carpenter's demurrer to the third cause of action of the plaintiffs' FAC.

On May 8, 2023, defendant Carpenter filed an answer to the plaintiff's FAC.

[1] The answer to the FAC by defendant TDX Corp. and demurrer to FAC by defendant Carpenter both predate the filing of the FAC. It appears from the record that the court clerk rejected plaintiffs' attempt to file the FAC on December 8, 2022.

On September 29, 2023, defendant De Sa filed a demurrer to the fourth cause of action of the plaintiffs' FAC.

On October 2, 2023, defendant TDX Corp. filed a motion for summary judgment/ adjudication of the plaintiffs' FAC.

On October 3, 2023, defendant Mitchell filed a demurrer to the plaintiffs' FAC.

On December 15, 2023, defendant Khattak filed a demurrer and motion to strike portions of the plaintiffs' FAC.

In an order dated April 4, 2024, the court overruled defendant De Sa's demurrer to plaintiffs' FAC; sustained, in part, and overruled, in part, defendant Mitchell's demurrer to plaintiffs' FAC; overruled defendant Khattak's demurrer to plaintiffs' FAC; and denied defendant Khattak's motion to strike portions of plaintiffs' FAC. Although the ruling denied defendant TDX Corp.'s motion for summary judgment/ adjudication, the court subsequently vacated that part of the ruling and affirmed a minute order dated February 8, 2024 in which the court allowed defendant TDX Corp. to withdraw its motion for summary judgment/ adjudication without prejudice.

On April 12, 2024, plaintiffs filed the operative SAC which continues to assert the same four causes of action asserted in the original complaint and FAC.

On May 3, 2024, plaintiffs and defendant Carpenter entered into a stipulation removing defendant Carpenter from the third cause of action of the SAC. Thereafter, on May 10, 2024, defendant Carpenter filed an answer to plaintiffs' SAC.

On May 13, 2024, defendant TDX Corp. filed an answer to plaintiffs' SAC.

On May 13, 2024, defendant De Sa filed an answer to plaintiffs' SAC.

On May 13, 2024, defendant Mitchell filed the motion now before the court, a demurrer to the fourth cause of action of plaintiffs' SAC.

On May 28, 2024, defendant Khattak filed an answer to plaintiffs' SAC and also filed a cross-complaint against defendant Carpenter asserting causes of action for: (1) equitable indemnity; (2) apportionment; and (3) declaratory relief.

II. Defendant Mitchell's demurrer to the fourth cause of action [California Drug Dealer Liability Act ("DDLA")] of plaintiffs' complaint is OVERRULED.

Plaintiffs' fourth cause of action asserts a claim under the Drug Dealer Liability Act ("DDLA") found at Health & Safety Code sections 11700, et seq.

> The purpose of this division is to provide a civil remedy for damages to persons in a community injured as a result of the use of an illegal controlled substance. These persons include parents, employers, insurers, governmental entities, and others who pay for drug treatment or employee assistance programs, as well as infants injured as a result of exposure to controlled substances in utero ("drug babies"). This division will enable them to recover damages from those persons in the community who have joined the marketing of illegal controlled substances. A further purpose of this division is to shift, to the extent possible, the cost of the damage caused by the existence of the market for illegal controlled substances in a community to those who illegally profit from that market. The further purpose of this division is to establish the prospect of substantial monetary loss as a deterrent to those who have not yet entered into the distribution market for illegal controlled substances. The further purpose is to establish an incentive for users of illegal controlled substances to identify and seek payment for their own treatment from those dealers who have sold illegal controlled substances to the user in the past.

(Health & Saf. Code, §11701.)

> The Legislature finds and declares all of the following:
>
> (a) Although the criminal justice system is an important weapon against the marketing of illegal controlled substances, the civil justice system can and must also be used. The civil justice system can provide an avenue of compensation for those who have suffered harm as a result of the marketing and distribution of illegal controlled substances. The persons who have joined the marketing of illegal controlled substances should bear the cost of the harm caused by that market in the community.

(b) The threat of liability under this division serves as an additional deterrent to a recognizable segment of the network for illegal controlled substances. A person who has assets unrelated to the sale of illegal controlled substances, who markets illegal controlled substances at the workplace, who encourages friends to become users, among others, is likely to decide that the added cost of entering the market is not worth the benefit. This is particularly true for a first–time, casual dealer who has not yet made substantial profits. This division provides a mechanism for the cost of the injury caused by illegal drug use to be borne by those who benefit from illegal drug dealing.

(c) This division imposes liability against all participants in the marketing of illegal controlled substances, including small dealers, particularly those in the workplace, who are not usually the focus of criminal investigations. The small dealers increase the number of users and are the people who become large dealers. These small dealers are most likely to be deterred by the threat of liability.

(Health & Saf. Code, §11702.)

"A person who knowingly participates in the marketing of illegal controlled substances within this state is liable for civil damages as provided in this division. A person may recover damages under this division for injury resulting from an individual's use of an illegal controlled substance." (Health & Saf. Code, §11704, subd. (a).)

"A person entitled to bring an action under this section may seek damages from one or more of the following: (1) A person who sold, administered, or furnished an illegal controlled substance to the individual user of the illegal controlled substance." (Health & Saf. Code, §11705, subd. (b)(1).)

Enacted in 1996, the DDLA created a "civil remedy for damages to persons in a community injured as a result of the use of an illegal controlled substance." (Health & Saf. Code, § 11701.) The statute was intended to serve several purposes: to enable plaintiffs "to recover damages from those persons in the community who have joined the marketing of illegal controlled substances"; "to

shift, to the extent possible, the cost of the damage caused by the existence of the market for illegal controlled substances"; "to establish the prospect of substantial monetary loss as a deterrent to those who have not yet entered into the distribution market for illegal controlled substances"; and "to establish an incentive for users of illegal controlled substances to identify and seek payment for their own treatment from those dealers who have sold illegal controlled substances to the user in the past." (*Ibid.*; see Health & Saf. Code, § 11702.) The statute created a cause of action against a "person who knowingly participates in the marketing of illegal controlled substances" (§ 11704), and it confers standing on a broad array of plaintiffs, including "[a] parent, legal guardian, child, spouse, or sibling of the individual controlled substance user," "[a]n individual who was exposed to an illegal controlled substance in utero," and employers and other entities (§ 11705), as well as individual users under certain conditions (§ 11706).

As broad as the potential class of plaintiffs is under the DDLA, the window of time within which they can sue is narrow. The DDLA imposes a one-year statute of limitations on all claims following accrual and provides for tolling in only one circumstance: "(a) Except as otherwise provided in this section, a claim under this division shall not be brought more than one year after the defendant furnishes the specified illegal controlled substance. A cause of action accrues under this division when a person who may recover has reason to know of the harm from use of an illegal controlled substance that is the basis for the cause of action and has reason to know that the use of an illegal controlled substance is the cause of the harm. [¶] (b) For a defendant, the statute of limitations under this section does not expire until one year after the individual potential defendant is convicted of a criminal offense involving an illegal controlled substance or as otherwise provided by law." (Health & Saf. Code, § 11714.)

(*Barker v. Garza* (2013) 218 Cal.App.4th 1449, 1454-1455.)

In demurring to plaintiffs' fourth cause of action, defendant Mitchell contends plaintiffs' claim is barred as untimely by Health & Safety Code section 11714 which states,

> (a) Except as otherwise provided in this section, a claim under this division shall not be brought more than one year after the defendant furnishes the specified illegal controlled substance. A cause of action accrues under this division when a person who may recover has reason to know of the harm from use of an illegal controlled substance that is the basis for the cause of action and has reason to know that the use of an illegal controlled substance is the cause of the harm.
>
> (b) For a defendant, the statute of limitations under this section does not expire until one year after the individual potential defendant is convicted of a criminal offense involving an illegal controlled substance or as otherwise provided by law.

As is apparent from the plain language, subdivision (b) operates as an exception to subdivision (a). Since there is no allegation that defendant Mitchell was convicted of a criminal offense involving an illegal controlled substance, defendant Mitchell contends only subdivision (a) can apply. The SAC alleges defendant Mitchell "furnished" the controlled substance to Decedent no later than 17 January 2020 and since plaintiffs did not commence this action until more than one year later on 1 December 2021, defendant Mitchell contends the fourth cause of action is barred.

A court may sustain a demurrer on the ground of failure to state sufficient facts if "the complaint shows on its face the statute [of limitations] bars the action." (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315.) A demurrer is not sustainable on statute of limitations grounds if there is only a possibility that the cause of action is time-barred; the defense must be clearly and affirmatively apparent from the allegations of the pleading [and matters of which the court may properly take judicial notice]. (*Id.*, at pp. 1315-1316.)

As this court previously explained, Health and Safety Code section 11714 does not state that the cause of action accrues when a person who may recover has reason to know of

the identity of the defendant. Instead, it states only that the cause of action accrues "when a [plaintiff] has reason to know of the harm from use of an illegal controlled substance that is the basis for the cause of action and has reason to know that the use of an illegal controlled substance is the cause of the harm."

At paragraph 83 of the SAC, plaintiffs allege at some time "following [Decedent's] overdose on January 15, 2020," plaintiff Julia Weiner questioned the individual defendants (including defendant Mitchell) as to what they knew about Decedent's overdose. While this allegation is an acknowledgement by plaintiffs that Decedent suffered some harm, it does not necessarily establish that plaintiffs had "reason to know that the use of an illegal controlled substance is the cause of the harm."

Instead, at paragraph 87 of the SAC, plaintiffs here allege, "On or about December 1, 2020, Plaintiffs finally learned … that [Decedent's] overdose and ultimate death was caused by drugs … [and] it was not until December 4, 2020, once the Medical Examiner released his report, that the [plaintiffs'] family finally learned that [Decedent's] death was caused by a fentanyl overdose."

Defendant Mitchell argues such allegations are belied by facts from which this court can take judicial notice. Namely, plaintiffs requested a copy of [Decedent's] autopsy report on April 2, 2020 and the report showed the cause of death as ***fentanyl*** toxicity. [Even if the plaintiffs' cause of action began accruing on April 2, 2020, plaintiffs' action is untimely since filed more than one year later on December 1, 2021.] In their opposition, plaintiffs do not challenge whether such fact(s) can be derived from judicial notice.

Instead, plaintiffs argue defendant Mitchell ought to be equitably estopped from asserting a statute of limitations defense based on his active concealment of drug use, his own and the Decedent's on or about 15 January 2020, as well as the circumstances surrounding his involvement with Decedent's death. "A defendant will be estopped to invoke the statute of limitations where there has been 'some conduct by the defendant, relied on by the plaintiff, which induces the belated filing of the action.' It is not necessary that the defendant acted in bad faith or intended to mislead the plaintiff. It is sufficient that the defendant's conduct in fact induced the plaintiff to refrain from instituting legal proceedings. 'Whether an estoppel

exists—whether the acts, representations or conduct lulled a party into a sense of security preventing him from instituting proceedings before the running of the statute, and whether the party relied thereon to his prejudice—is a question of fact and not of law.'" (*Shaffer v. Debbas* (1993) 17 Cal.App.4th 33, 43.)

Plaintiffs' SAC now includes allegations that defendant Mitchell, when questioned about Decedent's death/ overdose by Decedent's mother and sister, concealed the fact that he, the other individual defendants, and Decedent collectively purchased the counterfeit Percocet from defendant Carpenter and that it was still hidden in their room. (SAC, ¶¶83 – 85.) As a result of this deception, plaintiffs had no idea of defendant Mitchell's role in Decedent's death/ overdose between January 15, 2020 and December 4, 2020. (SAC, ¶86.)

As already noted above and as the court previously ruled, Health and Safety Code section 11714 does not state that the cause of action accrues when a person who may recover has reason to know of the identity of the defendant.[2] Plaintiff's awareness of the harm and that the cause of that harm is from the use of illegal controlled substances is what triggers the statute of limitations.

Nevertheless, the California Supreme Court in *Bernson v. Browning-Ferris Industries* (1994) 7 Cal.4th 926, 936 (*Bernson*) held that a "defendant may be equitably estopped from asserting the statute of limitations when, as the result of intentional concealment, the plaintiff is unable to discover the defendant's actual identity," even though the cause of action might otherwise begin to accrue. Thus, even though plaintiffs knew or had reason to know the cause of Decedent's death was due to the use of illegal controlled substances, it is the concealment of the defendant's identity which warrants relief here.

> It is beside the point to contend … that the plaintiff could file an action against a fictitious defendant. An injured person does not go to the expense of legal representation and litigation merely because he knows he has been wronged. If he knows something of the identity of the wrongdoer he will sue though

[2] Plaintiffs appear to acknowledge this point in opposition – "While the DDLA may not toll the statute of limitations pending discovery of the defendant's identity…" (See page 4, lines 3 – 4 of the Memorandum of Points and Authorities in Support of Plaintiffs' Opposition to Defendant William Corbitt Mitchell's Demurrer to Second Amended Complaint.)

> ignorant of his true name, and this is of course the use for which the pleading rule was designed. [Citation.] But if he has no knowledge of the wrongdoer's identity . . . it is scarcely expectable that he will file an action and hope that something turns up to make it worthwhile. . . . . In short, if the necessary showing of fraud is made, it would seem that the wrongdoer's concealment of his identity should toll the statute.

(*Bernson, supra*, 7 Cal.4th at p. 936.)

Accordingly, defendant Mitchell's demurrer to the fourth cause of action in plaintiffs' SAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for a violation of the Drug Dealer Liability Act (i.e., barred by the applicable statute of limitations) is OVERRULED.

The Court will prepare the formal order.

- oo0oo –

Calendar Line 2
Case Name: *Vien, et al. v. Wang, et al.*
Case No.: 23CV421023

I. Background

A. Factual

According to the allegations of the operative first amended complaint ("FAC"), plaintiffs Lee Vien ("Lee" or "Plaintiff Lee") [1] and Hoang-Anh Tran (collectively, "Plaintiffs") are a married couple. (FAC at ¶ 137.) On Saturday April 19, 2023, Plaintiff Lee was riding his eBike near his home when he was struck by Defendant Chung-Che Charles Wang, M.D. ("Charles" or "Defendant Charles"), who was driving a Tesla. (FAC at ¶¶ 1, 9.)

Charles was driving southbound on Ramona Street, approaching the intersection with East Meadow Drive, near a popular park. (FAC at ¶¶ 5-7.) Lee was riding his eBike eastbound on East Meadow Drive approaching the same intersection. (FAC at ¶ 9.) Charles ran a stop sign and accelerated through an intersection, through the bicycle lane, where he struck Lee, causing serious injuries. (FAC at ¶¶ 22, 62, 63-65.) Thereafter, Charles approached Lee, who was lying on the ground, felt his pulse, and left without rendering aid. (FAC at ¶¶ 74, 78-79.)

B. Procedural

As a result of the above allegations, Plaintiffs filed the initial complaint on August 9, 2023. On April 15, 2024, they filed the FAC, alleging causes of action for: (1) motor vehicle negligence, (2) general negligence, (3) negligence – battery, (4) breach of duty to render assistance (Veh. Code, § 20003), (5) intentional infliction of emotional distress, (6) reckless driving (Veh. Code, § 23103, subd. (a)), (7) negligent infliction of emotional distress, and (8) loss of consortium.

Currently before the court is Defendants' motion to strike certain portions of the FAC. Plaintiffs opposed the motion to strike and Defendants have filed a reply.

II. Legal Background

A court may strike out any irrelevant, false, or improper matter asserted in a pleading. (Code Civ. Proc. § 436, subd. (a).)[2] A court may also strike out all or any part of a pleading not drawn or filed in conformity with the laws of the State of California. (§ 436, subd. (b).) The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (§ 437, subd. (a).)

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[1] The parties' briefs refer to the parties by their first names. The court will follow suit. No disrespect is intended. (See, e.g., *In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 551, fn. 2; *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

[2] All further undesignated statutory references are to the Code of Civil Procedure.

III. Merit of the Motion to Strike

Defendants move to strike the punitive damages allegations in the FAC on the ground that the facts alleged are insufficient to establish "oppression, fraud, or malice" within the meaning of Civil Code section 3294. Defendants also seek to strike paragraph 3 of the prayer for relief, a request for pre-trial discovery of Defendants' financial condition, contending that such a request requires a noticed motion under Civil Code section 3295, subdivision (c). The court will address the latter argument first.

A. Prayer Paragraph 3

Defendants assert that paragraph 3 of the prayer for relief, a request for pre-trial discovery of Defendants' financial condition, is subject to a motion to strike because such a request requires a noticed motion under Civil Code section 3295, subdivision (c). Plaintiffs do not address this argument in their opposition, thereby impliedly conceding it is meritorious. (See *DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 566 ["By failing to argue the contrary, plaintiffs concede this issue."].) This concession is well taken.

Civil Code section 3295, subdivision (c) provides

> No pretrial discovery by the plaintiff shall be permitted with respect to the evidence referred to in paragraphs (1) and (2) of subdivision (a) unless the court enters an order permitting such discovery pursuant to this subdivision. However, the plaintiff may subpoena documents or witnesses to be available at the trial for the purpose of establishing the profits or financial condition referred to in subdivision (a), and the defendant may be required to identify documents in the defendant's possession which are relevant and admissible for that purpose and the witnesses employed by or related to the defendant who would be most competent to testify to those facts. *Upon motion by the plaintiff supported by appropriate affidavits and after a hearing, if the court deems a hearing to be necessary, the court may at any time enter an order permitting the discovery otherwise prohibited by this subdivision if the court finds, on the basis of the supporting and opposing affidavits presented, that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294*. Such order shall not be considered to be a determination on the merits of the claim or any defense thereto and shall not be given in evidence or referred to at the trial.

(Italics added.) Accordingly, the motion to strike is GRANTED as to prayer paragraph 3.

B. Punitive Damages Allegations

Defendants also move to strike the punitive damages allegations on the ground that the facts alleged in the FAC are insufficient to establish "oppression, fraud, or malice" within the meaning of Civil Code section 3294. Specifically, they seek to strike paragraphs 43, 114, 124, 125, 126, 131, and prayer paragraph 2 on this ground. Plaintiffs counter that the FAC pleads

that Defendant Charles drove his "performance" Tesla, running through a stop sign, the wrong direction on a street, through stopped traffic, ultimately colliding with Plaintiff Lee on his eBike, and despite the fact that Charles was a physician, he only checked Plaintiff Lee's pulse before leaving the scene and he did not render aid.

Under the punitive damages statute, Civil Code section 3294, " 'Malice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. (Civ. Code, § 3294, subd. (c)(1).) " 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) "Despicable conduct," has been described as conduct that is "so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people." (*Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 331.) "Such conduct has been described as '[having] the character of outrage frequently associated with crime.' [Citation.]" (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1287.) "Consequently, to establish malice, 'it is not sufficient to show only that the defendant's conduct was negligent, grossly negligent or even reckless.' [Citation.]" (*Bell v. Sharp Cabrillo Hosp.* (1989) 212 Cal.App.3d 1034, 1044.)

Plaintiffs point to *Taylor v. Superior Court of Los Angeles County* (1979) 24 Cal.3d 890 (*Taylor*) and *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82 (*Dawes*) as examples of poor driving sufficient to support punitive damages allegations. In *Taylor,* an intoxicated driver caused an accident, injuring another driver. (*Taylor, supra,* 24 Cal.3d at p. 893.) The allegations included defendant's other drunk driving accidents, arrests, and incidents, including the allegation that the defendant had recently completed a term of probation for a drunk driving conviction. (*Ibid.*) The court held the allegations sufficient to support a claim for punitive damages, stating,

> Examining the pleadings before us, we have no difficulty concluding that they contain sufficient allegations upon which it may reasonably be concluded that defendant consciously disregarded the safety of others. There is a very commonly understood risk which attends every motor vehicle driver who is intoxicated. [Citation.] One who wilfully consumes alcoholic beverages to the point of intoxication, knowing that he thereafter must operate a motor vehicle, thereby combining sharply impaired physical and mental faculties with a vehicle capable of great force and speed, reasonably may be held to exhibit a conscious disregard of the safety of others.

(*Id.* at pp. 896-897.)

In *Dawes*, the intoxicated defendant drove at a high speed and ran a stop sign, while zigzagging through traffic, in the middle of the afternoon, and in locations of high pedestrian and vehicle traffic, resulting in a crash injuring the plaintiff. (*Dawes, supra*, 111 Cal.App.3d at p. 88.) The appellate court concluded that, from these allegations, "the factfinder could reasonably find that [the intoxicated driver] acted with 'malice' -- with a conscious disregard of safety and the probable injury of others as a result of his conduct." (*Id.* at pp. 88-89.)

Notably, after both *Taylor* and *Dawes* were decided, the punitive damages statute was amended. (See *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.) "As

amended . . . the statute plainly indicates that absent an intent to injure the plaintiff, 'malice' requires more than a 'willful and conscious' disregard of the plaintiffs' interests. The additional component of 'despicable conduct' must be found. [Citations.]" (*Ibid*.)

Here, unlike in *Taylor* and *Dawes*, there are no allegations in the FAC that Defendant Charles was intoxicated at the time of the accident. However, the FAC contains allegations that Defendant Charles committed multiple Vehicle Code violations. (FAC at ¶ 62.) Allegations that Defendant Charles violated the Vehicle Code are, by themselves, insufficient to support punitive damages. "Although the circumstances in a particular case may disclose similar wilful or wanton behavior in other forms, ordinarily, routine negligent or even reckless disobedience of traffic laws would not justify an award of punitive damages." (*Taylor, supra*, 24 Cal.3d at pp. 899-900.)

Instead, "To establish conscious disregard, the plaintiff must show 'that the defendant was aware of the probable consequences of his conduct and that he wilfully and deliberately failed to avoid the consequences.' [Citation.]" (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1055; see also *Peterson v. Sup. Ct.* (1982) 31 Cal.3d 147, 158 [stating that "[n]onintentional conduct comes within the definition of malicious acts punishable by the assessment of punitive damages when a party intentionally performs an act from which he knows, or should know, it is highly probable that harm will result"].) The court finds that the allegations in the FAC are sufficient to establish conscious disregard and despicable conduct.

The FAC alleges that Charles ran a stop sign and accelerated through an intersection without the right of way in the vicinity of a busy park on a Saturday. (FAC at ¶¶ 1, 15(E), 43, 49, 61-63.) Charles knew that there was a frequently used bicycle lane in his path. (FAC at ¶ 121.) He also knew, as he accelerated through the intersection, that it was probable traffic would be approaching from the right. (FAC at ¶ 120(E).) Despite this knowledge, Charles accelerated through the intersection without the right of way. (FAC at ¶ 15(E).) Charles's car collided with Lee on his eBike, causing severe injury. (FAC at ¶¶ 22 [describing Lee's injuries], 63-65.) "LEE was tossed into the air like a ragdoll and he fell back onto his bike and the ground with great force." (FAC at ¶ 65.) After the accident, Charles approached Lee, who was lying on the ground "broken, helpless, and vulnerable", and took his pulse. (FAC at ¶¶ 67, 74, 114.) Instead of rendering aid, Charles left the scene, removing his car, which had previously been blocking traffic, and leaving Lee in a position where he could be struck by another motorist, resulting in emotional distress on Lee's part. (FAC at ¶¶ 78-80, 112-116.)

Notably, Charles's alleged conduct in leaving the scene and failing to render aid violates Vehicle Code section 20003, as asserted in the FAC. (FAC ¶¶ 103-110.) Vehicle Code section 20003, subdivision (a) provides

> The driver of any vehicle involved in an accident resulting in injury to or death of any person shall also give his or her name, current residence address, the names and current residence addresses of any occupant of the driver's vehicle injured in the accident, the registration number of the vehicle he or she is driving, and the name and current residence address of the owner to the person struck or the driver or occupants of any vehicle collided with, and shall give the information to any traffic or police officer at the scene of the accident. *The driver also shall render to any person injured in the accident reasonable*

> *assistance, including transporting, or making arrangements for transporting, any injured person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary* or if that transportation is requested by any injured person.

A reasonable person would be aware that a person on an eBike who had flown into the air and was lying on the ground after being struck by a car would likely be injured. As a doctor, Charles would be more attuned to the potential for injury. Yet, he allegedly fled the scene without rendering aid, leaving Lee lying in the street, resulting in emotional distress.

The court finds the allegations sufficient to support a claim for punitive damages. The motion to strike is DENIED as to the punitive damages allegations.

IV. Conclusion and Order

The motion to strike is GRANTED IN PART AND DENIED IN PART. The motion to strike is GRANTED as to prayer paragraph 3. The motion to strike is DENIED as to the punitive damages allegations.

The Court will prepare the formal order.

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Calendar Line 3
Case Name: *Andres Echeverri v. Scott Randall Lee, et al.*
Case No.: 22CV401535

Before the court is defendant County of Santa Clara's motion for summary judgment/ summary adjudication. Pursuant to California Rule of Court 3.1308, the court issues its tentative ruling as follows.

I. Background.

On approximately December 6, 2021, plaintiff Andres Echeverri ("Plaintiff"), while riding a bicycle, was injured and suffered damages when struck by a motor vehicle operated by defendant Scott Randall Lee ("Lee") at the approximate intersection of Lawrence Expressway and Lillick Drive in Santa Clara. (Complaint, ¶¶14 – 17.) The area where the incident occurred was owned, designed, planned, constructed, installed, inspected, operated, repaired, controlled, placed, and/or maintained by defendant County of Santa Clara ("County"), among others.

On July 19, 2022, Plaintiff filed a complaint against defendants Lee and County, among others, asserting causes of action for:

(1) Motor Vehicle Negligence [against defendant Lee]

(2) Dangerous Condition of Public Property [against defendant County and others]

On September 7, 2022, defendant County filed its answer to Plaintiff's complaint and also filed a cross-complaint against co-defendant Lee for (1) implied indemnity; (2) comparative indemnity; (3) equitable indemnity; and (4) contribution.

On October 24, 2022, defendant Lee filed an answer to Plaintiff's complaint.

On November 29, 2022, cross-defendant Lee filed an answer to cross-complainant County's cross-complaint.

On May 2, 2024, defendant County filed the motion now before the court, a motion for summary judgment/ adjudication of Plaintiff's complaint.

II. Defendant County's motion for summary judgment/ adjudication is DENIED.

The only cause of action directed against defendant County is Plaintiff's second cause of action for dangerous condition of public property. Government Code section 835 provides the basis for liability in an action against a public entity for an injury caused by the dangerous condition of public property. To establish liability under Government Code section 835, the following essential elements must be proved:

1. The public property was in a dangerous condition at the time of the injury;
2. The injury to the plaintiff was proximately caused by the dangerous condition;
3. The kind of injury that occurred was reasonably foreseeable as a consequence of the dangerous condition; and
4. Either:
    a. The dangerous condition was created by a public employee's negligent or wrongful act or omission within the scope of his or her employment, or
    b. The entity had actual or constructive notice of the condition a sufficient time before the injury occurred to have taken reasonable measures to protect against the injury.

(Gov. Code, §835; see also *Thimon v. City of Newark* (2020) 44 Cal.App.5th 745, 753 (*Thimon*); see also *Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099, 1105; see also 2 VanAlstyne, California Government Tort Liability Practice (4th ed. 2006) §12.5, pp. 795 – 796; see also CACI, No. 1100.)

A. Dangerous condition.

In seeking summary judgment/ adjudication, defendant County begins by challenging Plaintiff's assertion that the condition of the location where the subject incident occurred constituted a dangerous condition. Government Code section 830, subdivision (a) defines the term "dangerous condition" to mean "a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used."

"In general, 'whether a given set of facts and circumstances creates a dangerous condition is usually a question of fact and may only be resolved as a question of law if reasonable minds can come to but one conclusion.'" (*Peterson v. San Francisco Community College District* (1984) 36 Cal.3d 799, 810.) "[A]lthough the question of whether a dangerous condition exists is often one of fact, the issue may be resolved as a question of law when reasonable minds can only draw one conclusion from the facts." (*Dina v. People ex rel. Dept. of Transportation* (2007) 151 Cal.App.4th 1029, 1054; see also *Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347.)

Government Code section 830.2 permits the court to decide the existence of a "dangerous condition" as a matter of law. That section states, "A condition is not a dangerous condition within the meaning of this chapter if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used." (See also CACI, No. 1102.)

Plaintiff alleges in his complaint that the subject property was in a dangerous condition in that it "lacked proper traffic control devices, including but not limited to lacking a stop sign, traffic light, speed bumps, warning signs, or other forms of proper speed reduction and traffic control devices." (Complaint, ¶29.) "Proper traffic control and speed reduction devices were required here because the existing condition constitutes a trap. The subject public property was in a dangerous condition also because of the design or location of the property, the lack of proper traffic control, sight lines and sight distance as well as inadequate stopping distance given the lack of sight coupled with the fast turn and posted speed limit, the interrelationship of its structural or natural features, and/or the presence of latent hazards associated with its normal use." (Complaint, ¶31.) The dangerous condition of public property "also exists … because the roadway constituted a confusing route, the medians and foliage nearby caused shadows and/or otherwise made it unreasonably difficult to see oncoming traffic, the area for

vehicles to wait when crossing through the approximate intersection was undersized and not in a safe location, and the routes for travel were unreasonably confusing." (Complaint, ¶38.)

Defendant County begins by challenging individual aspects of Plaintiff's theory for dangerous condition of public property such as whether there were any obstructions and whether signage and markings were appropriate. However, as set forth above, Plaintiff's theory of recovery is premised upon a multitude of factors.

> " 'But public property has also been considered to be in a dangerous condition "because of the design or location of the improvement, the interrelationship of its structural or natural features, or the presence of latent hazards associated with its normal use." ' (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 149, 132 Cal.Rptr.2d 341, 65 P.3d 807 (*Bonanno*).) 'A dangerous condition of public property can come in several forms and may be based on an "amalgam" of factors.' (*Salas v. Dept. of Transportation* (2011) 198 Cal.App.4th 1058, 1069, 129 Cal.Rptr.3d 690 (*Salas*).)"

(*Thimon, supra,* 44 Cal.App.5th at p. 754.)

Whether Plaintiff's theory for dangerous condition is based upon the lack of traffic control devices, the design or location of the property, lack of sight lines, confusing routes of travel, or an amalgamation thereof, the court understands defendant County to argue that there is no dangerous condition by relying on the principle enunciated in *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 438 (*Brenner*): "Property is not 'dangerous' within the meaning of the statutory scheme if the property is safe when used with due care and the risk of harm is created only when foreseeable users fail to exercise due care."

> As one court has observed, any property can be dangerous if used in a sufficiently improper manner. For this reason, a public entity is only required to provide roads that are safe for reasonably foreseeable careful use. (*Fuller v. State of California* (1975) 51 Cal.App.3d 926, 940, 125 Cal.Rptr. 586.) "If [ ] it can be shown that the property is safe when used with due care and that a risk of harm is created only when foreseeable users fail to exercise due care, then such property is not 'dangerous' within the meaning of section 830, subdivision (a)."

(*Swaner v. City of Santa Monica* (1984) 150 Cal.App.3d 789, 799, 198 Cal.Rptr. 208.)

(*Chowdhury v. City of Los Angeles* (1995) 38 Cal.App.4th 1187, 1196 (*Chowdhury*).)

Defendant County attempts to make such a showing (i.e., property is safe when used with due care and that a risk of harm is created only when foreseeable users fail to exercise due care) by proffering evidence that the harm here occurred only because foreseeable users (Plaintiff and defendant Lee) failed to exercise due care. Plaintiff was riding his bike home from the City Sport gym in Sunnyvale.[1] Plaintiff's route home from the gym took him along southbound Lawrence Expressway, over the El Camino [Real] overpass.[2] Upon descending the overpass, the right-hand shoulder on Lawrence Expressway terminates in a triangular gore point immediately adjacent and to the left of the onramp from El Camino Real to southbound Lawrence Expressway.[3] It was Plaintiff's practice to stop in the triangular area (gore point) adjacent to the onramp and wait for traffic on the onramp to clear before attempting to cross.[4] On prior occasions when Plaintiff made this crossing, some motorists on the onramp had decreased their speed and/or turned their lights on and off to signal to Plaintiff that it was safe for him to cross in front of them.[5] The subject accident occurred between 8pm and 9pm on the evening of December 6, 2021 on the onramp from El Camino [Real] to southbound Lawrence Expressway.[6] It was dark at the time of the collision.[7]

After descending the El Camino [Real] overpass, Plaintiff came to a stop in the gore point adjacent to the onramp from El Camino [Real] to southbound Lawrence Expressway.[8] While stopped in the triangle area (gore point) adjacent to the onramp, Plaintiff waited for more than a minute as several cars passed him.[9] While waiting in the triangle area to cross the onramp, Plaintiff understood that vehicles coming up the onramp had the right-of-way.[10] At no

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[1] See County of Santa Clara's Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment/ Summary Adjudication ("County's UMF"), Fact No. 7.
[2] See County's UMF, Fact No. 13.
[3] See County's UMF, Fact No. 14.
[4] See County's UMF, Fact No. 15.
[5] See County's UMF, Fact No. 16.
[6] See County's UMF, Fact No. 17.
[7] See County's UMF, Fact No. 18.
[8] See County's UMF, Fact No. 22.
[9] See County's UMF, Fact No. 23.
[10] See County's UMF, Fact No. 25.

time prior to the subject collision did defendant Lee flash his lights at Plaintiff as a signal that it was safe to cross in front of him.[11] After waiting more than a minute in the gore point and allowing several cars to pass, Plaintiff observed defendant Lee's car approaching.[12] Believing that defendant Lee's vehicle was slowing, Plaintiff concluded that defendant Lee was signaling to him that it was safe for Plaintiff to cross in front of defendant Lee's vehicle.[13] Plaintiff started out across the onramp and was subsequently struck on the onramp by the vehicle driven by defendant Lee.[14] Defendant Lee testified he did not see Plaintiff until just before the collision.[15] It was dark, Plaintiff was wearing a dark hoodie and Plaintiff did not have a forward-facing light on his bicycle or any reflective material on his person.[16]

The source of the County's information concerning accidents is the Statewide Integrated Traffic Records System ("SWITRS").[17] A search of SWITRS revealed no known accidents involving collisions between bicyclists and motorists in the location where the accident giving rise to this matter occurred.[18] Likewise, there is no record of any complaints to the County regarding collisions involving bicyclists and motorists at the accident location at any time.[19]

Thus, according to defendant County, the risk of harm here resulted only because foreseeable users such as Plaintiff failed to exercise due care and since there are no prior bicycle-vehicle accidents at that particular location, the property is safe when used with due care. (See *Chowdhury, supra*, 38 Cal.App.4th at pp. 1195–1196—"The City cannot be charged with foreseeing that a motorist will recklessly disobey traffic laws and speed through an intersection without heed to its inoperative traffic lights any more than it can be charged with foreseeing that irresponsible drivers will race at 100 miles per hour down a highway or drive the wrong way down a one-way street, in violation of the traffic laws.")

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[11] See County's UMF, Fact No. 27.
[12] See County's UMF, Fact No. 28.
[13] See County's UMF, Fact No. 29.
[14] See County's UMF, Fact Nos. 30 – 31.
[15] See County's UMF, Fact No. 32.
[16] See County's UMF, Fact No. 33.
[17] See County's UMF, Fact No. 45.
[18] See County's UMF, Fact No. 45.
[19] See County's UMF, Fact No. 46.

However, in opposition, Plaintiff proffers evidence which would create a triable issue of material fact with regard to defendant County's assertion that the subject property is otherwise safe when used with due care. Plaintiff does so by challenging defendant County's assertion that there are no prior bicycle-vehicle accidents at the subject location and also by presenting evidence that there are other similar accidents at the location of the subject accident.[20] Thus, a triable issue of material fact exists with regard to whether public property was in a dangerous condition at the time of the injury.

B. Failure to warn.

In anticipation that Plaintiff will assert defendant County is liable based upon a failure to warn of a high-speed merge or crossing involving vehicles and bicycles, defendant County devotes some argument to addressing the "concealed trap" or "hidden trap" exception to the limited immunity provided by Government Code section 830.8.

> [Government Code] Section 830.8 provides a limited immunity for public entities exercising their discretion in the placement of warning signs described in the Vehicle Code. (*Black v. County of Los Angeles* (1976) 55 Cal.App.3d 920, 932 [127 Cal.Rptr. 916].) "The broad discretion allowed a public entity in the placement of road control signs is limited, however, by the requirement that there be adequate warning of dangerous conditions not reasonably apparent to motorists." (*Anderson v. City of Thousand Oaks* (1976) 65 Cal.App.3d 82, 93 [135 Cal.Rptr. 127];accord Cameron v. State of California (1972) 7 Cal.3d 318, 327 [102 Cal.Rptr. 305, 497 P.2d 777].) Thus, where the failure to post a warning sign results in a concealed trap for those exercising due care, section 830.8 immunity does not apply. (*Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 7 [190 Cal.Rptr. 694]; *Bakity v. County of Riverside* (1970) 12 Cal.App.3d 24, 31 [90 Cal.Rptr. 541].)

(*Kessler v. Cal.* (1988) 206 Cal.App.3d 317, 321-322.)

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[20] See Plaintiff's Response to Defendant County of Santa Clara's Separate Statement of Undisputed Material Facts ("Plaintiff's Response UMF"), Fact No. 45 – Mr. Pascoal (County) did not search for any evidence of crashes at this interchange prior to December 2020; Mr. Pascoal only looked at one year of accident data. See also Plaintiff's Response UMF, Fact No. 46 – County has received complaints of prior crashes. See also Plaintiff's Additional Undisputed Material Facts in Opposition to Defendant's Motion for Summary Judgment ("Plaintiff's AUMF"), Fact No. 106.

However, the court need not decide whether defendant County is or is not liable under this concealed trap exception since it would not completely dispose of Plaintiff's second cause of action. Code of Civil Procedure section 437c, subdivision (f) does not authorize partial summary adjudication.[21] "A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., §437c, subd. (f)(1).)

[Likewise, defendant County's request for summary adjudication of issues, numbers 1 and 2, improperly seek partial summary adjudication of issues other than duty. Defendant County's request for summary adjudication of issues, number 4 (design immunity), is actually a request for summary judgment and discussed, *infra*.]

C. Design immunity.

As a further and/or alternative argument in support of summary judgment, defendant County contends it is entitled to design immunity. Design immunity under Government Code section 830.6 is an affirmative defense that the public entity must plead and prove. (*Cameron v. State* (1972) 7 Cal.3d 318, 325.)

Government Code section 830.6 states, in relevant part:

> Neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved, if the trial or appellate court determines that there is any substantial evidence upon the basis of which (a) a reasonable public employee could have adopted the plan or design or the standards therefor or (b)

[21] The Code of Civil Procedure does authorize partial summary adjudication. "Notwithstanding subdivision (f), a party may move for summary adjudication of a legal issue or a claim for damages other than punitive damages that does not completely dispose of a cause of action, affirmative defense, or issue of duty pursuant to this subdivision." (Code Civ. Proc., §437c, subd. (t).) However, a motion for partial summary adjudication pursuant to subdivision (t) must be pursuant to joint stipulation and order of the court (see Code Civ. Proc., §437c, subd. (t)(1)-(2)), which did not occur here.

a reasonable legislative body or other body or employee could have approved the plan or design or the standards therefor.

"[A] public entity may avoid such liability [for a "dangerous condition" on its property] by raising the affirmative defense of design immunity.... A public entity claiming design immunity must establish three elements: (1) a causal relationship between the plan or design and the accident; (2) discretionary approval of the plan or design prior to construction; and (3) substantial evidence supporting the reasonableness of the plan or design." (*Cornette v. Dept. of Transp.* (2001) 26 Cal.4th 63, 66.) "The rationale for design immunity is to prevent a jury from second-guessing the decision of a public entity by reviewing the identical questions of risk that had previously been considered by the government officers who adopted or approved the plan or design. 'To permit reexamination in tort litigation of particular discretionary decisions where reasonable men may differ as to how the discretion should be exercised would create too great a danger of impolitic interference with the freedom of decision-making by those public officials in whom the function of making such decisions has been vested.'" (*Id.* at p. 69 [citations omitted].)

To establish the first element of design immunity (causal relationship between the plan or design and the accident), defendant County cites *Fuller v. Department of Transportation* (2001) 89 Cal.App.4th 1109, 1114 for the proposition that a public entity may rely on plaintiffs' pleadings to establish the element of causation. Defendant County goes on to assert that the "entire thrust of Plaintiff's contentions against the County is that the conditions of the accident location, to wit, allowing vehicles with bicyclists without proper signage, inadequate lane markings or other speed reduction devices caused this accident."[22] Even so, it is the court's opinion that defendant has not met its initial burden of establishing this first element of design immunity. More specifically, defendant County has not adequately tied the plan/design to the accident.

Defendant County proffers additionally that in 2003, plans were drafted for roadway improvements on Lawrence Expressway.[23] The area where the subject accident occurred was

[22] See page 18, lines 18 – 22 of Defendant County of Santa Clara's Memorandum of Points and Authorities in Support of Motion for Summary Judgment/ Summary Adjudication.
[23] See County's UMF, Fact No. 38.

included in those plans.[24] Those plans did not include lane markings for a dedicated bicycle lane on southbound Lawrence Expressway or the subject onramp.[25] Instead, the plans provided for a narrowing of the lanes of traffic on Lawrence Expressway in order to (1) add a carpool lane; and (2) provide enough space for a marked shoulder area measuring 6' in width to the right of the dedicated traffic lanes.[26]

However, the absence of a dedicated bike lane is not the theory (or at least not the only theory) advanced by Plaintiff in his complaint as the reason why the property was dangerous and/or the cause of his accident. "Causal relationship is proved by evidence the injury-producing feature was actually a part of the plan approved by the governmental entity: Design immunity is intended to immunize only those design choices which have been made." (*Higgins v. Cal.* (1997) 54 Cal.App.4th 177, 185.)

For all the reasons discussed, defendant County's motion for summary judgment/ summary adjudication is DENIED.

The Court will prepare the formal order.

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[24] *Id.*
[25] *Id.*
[26] See County's UMF, Fact No. 39.

Calendar Lines 6 and 8
Case Name: *Jin Zhang v. Zhichao Lu, et al.*
Case No.: 23CV415836

I. Background

A. Plaintiff's Initial Complaint

Plaintiff Jin Zhang ("Plaintiff") filed her initial complaint on May 2, 2023 asserting causes of action for: (1) breach of contract, (2) breach of the covenant of good faith and fair dealing, (3) promissory estoppel, (4) unjust enrichment/quantum meruit, (5) nonpayment of wages (Lab. Code, § 201, subd. (a)), (6) unfair competition, (7) fraudulent inducement, (8) intentional misrepresentation, (9) negligent misrepresentation, (10) concealment, and (11) intentional interference with contractual relations.

Plaintiff alleged that she was employed as an attorney by Defendants Hefei Reliance Memory Ltd. ("Reliance Memory PRC"), Defendant Reliance Memory, Inc. ("Reliance Memory US"), and Hefei Ruibo Enterprise Consulting Management LLP ("Hefei Ruibo") (collectively, "the Company"). (Complaint, ¶ 1.) She served as general counsel to these entities from May 3, 2018 to May 30, 2021. (*Ibid*.) Pursuant to an employment agreement between Plaintiff and Reliance Memory PRC, Plaintiff was granted a 10% interest in Hefei Ruibo. (*Id*., ¶ 3.) On November 8, 2018, Plaintiff and Defendant Zhichao Lu ("Lu"), Chief Executive Officer of the Company, executed an equity incentive agreement. (*Id*., ¶¶ 4, 20.) Although Plaintiff performed her duties admirably, Lu refused to transfer the promised equity. (*Id*., ¶¶ 5-6.)

B. Plaintiff's First Amended Complaint

On April 19, 2024, Plaintiff filed her first amended complaint ("FAC") adding additional causes of action for (1) retaliation in violation of Gov. Code § 12940, subd. (h); (2) retaliation in violation Lab. Code § 1102.5, subd. (b); (3) retaliation in violation Lab. Code § 98.6, subd. (a); and (4) wrongful termination in violation of public policy. These new claims are based on allegations that Plaintiff complained about the Company's violations of the law and attempts to force her to forfeit her equity and that Lu had sexually harassed Plaintiff and other women working at the Company. (FAC, ¶ 6.) Reliance Memory US, Reliance Memory PRC, and Lu retaliated by cutting off Plaintiff's health insurance and benefits, attempting to terminate her employment, and reducing her job responsibilities. (*Ibid*.)

C. Defendant Reliance Memory, Inc.'s Motion

Currently before the court is Reliance Memory US's motion to stay the claims Plaintiff raised in her original complaint. Plaintiff opposed the motion and Reliance Memory US filed a reply. Defendants Reliance Memory PRC and Lu joined in the motion on July 19, 2024.[1]

[1] The notice of joinder was filed with the reply to Plaintiff's opposition, thereby providing inadequate notice to Plaintiff. The notice of joinder provides that Reliance Memory PRC and Lu also agree to submit to jurisdiction of the Chinese courts and will waive any statute of limitations arguments. However, Plaintiff explicitly argued in her opposition to the motion that these other defendants had not waived their statute of limitations defenses and, therefore, China does not constitute a suitable forum. By, filing the notice of joinder with the reply, Reliance

II. Preliminary Matters

A. Plaintiff's Request for Judicial Notice

Plaintiff requests judicial notice of the California Secretary of State's Statement of Information Corporation for Reliance Memory US filed June 1, 2024 under Evidence Code section 452, subdivision (c).[2] The unopposed request for judicial notice is GRANTED. (See *Belen v. Ryan Seacrest Productions, LLC* (2021) 65 Cal.App.5th 1145, 1160, fn. 2 [taking judicial notice of statement of information filed with Secretary of State].)

B. Plaintiff's Evidentiary Objections

Plaintiff objects to a portion of Lu's declaration in support of the motion at page 4, lines 12 through 18 on the grounds of lack of personal knowledge, lack of foundation, lack of authentication, and hearsay. That portion of the declaration indicates, generally, that, to the best of Lu's knowledge the Reliance Memory PRC employees with relevant knowledge reside in China and not in California, those employees may require the assistance of interpreters if proceedings were held in California, and that they may not be willing or able to travel to California if called as witnesses. The court overrules these objections.

III. Legal Background

"A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion … [t]o stay or dismiss the action on the ground of inconvenient forum." (Code Civ. Proc., § 418.10, subd. (a)(2).)[3] "When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." (Code Civ. Proc., §410.30, subd. (a).)

III. Merits of the Motion

Reliance Memory US seeks to stay the 11 causes of action alleged in the original complaint on the ground of inconvenient forum. Because Reliance Memory US relies on both a

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Memory PRC and Lu deprived Plaintiff of the opportunity to respond. Accordingly, the court will not consider the arguments made in the notice of joinder. (See *Frazee v. Seely* (2002) 95 Cal.App.4th 627, 637 [motion for joinder to summary judgment motion was untimely and should have been denied where it was made after time for filing the motion itself].)

[2] That section provides, "Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States" are subject to judicial notice. (Evid. Code, § 452, subd. (c).)

[3] Notably, here, Reliance Memory US only seeks to stay the causes of action asserted in Plaintiff's original complaint. It does not seek dismissal.

forum selection clause in the equity incentive agreement and traditional inconvenient forum analysis, the court will discuss both.

A. Forum Selection Clause

Reliance Memory US contends that the equity incentive agreement contains a forum selection clause indicating that the People's Court of Hefei High-tech Industrial Development Zone, Anhui Province, China is the required venue and a choice of law provision indicating that Chinese law applies. It asserts that the causes of action in the original complaint are based on Plaintiff's claims that she is entitled to equity and, therefore, they stem from the equity incentive agreement.

"Although not even a 'mandatory' forum selection clause can completely eliminate a court's discretion to make appropriate rulings regarding choice of forum, the modern trend is to enforce mandatory forum selection clauses unless they are unfair or unreasonable. [Citations.] In California, the procedure for enforcing a forum selection clause is a motion to stay or dismiss for forum non conveniens pursuant to Code of Civil Procedure sections 410.30 and 418.10 [citation], but a motion based on a forum selection clause is a special type of forum non conveniens motion. The factors that apply generally to a forum non conveniens motion do not control in a case involving a mandatory forum selection clause. [Citations.]" (*Berg v. MTC Electronics Technologies* (1998) 61 Cal.App.4th 349, 358 (*Berg*).)

"If there is no mandatory forum selection clause, a forum non conveniens motion 'requires the weighing of a gamut of factors of public and private convenience ....' [Citation.] [¶] However if there *is* a mandatory forum selection clause, the test is simply whether application of the clause is unfair or unreasonable, and the clause is usually given effect. Claims that the previously chosen forum is unfair or inconvenient are generally rejected. [Citation.] A court will usually honor a mandatory forum selection clause without extensive analysis of factors relating to convenience. [Citation.]" (*Berg, supra*, 61 Cal.App.4th at pp. 358-359, italics in original.)

Further, " 'a valid choice-of-law clause, which provides that a specified body of law 'governs' the 'agreement' between the parties, encompasses all causes of action arising from or relating to that agreement, regardless of how they are characterized, including tortious breaches of duties emanating from the agreement of the legal relationships it creates.' [Citation.]" (*Cal-State Business Products & Services, Inc. v. Ricoh* (1993) 12 Cal.App.4th 1666, 1677 (*Ricoh*).)

However, " 'California courts will refuse to defer to the selected forum if to do so would substantially diminish the rights of California residents in a way that violates our state's public policy.' [Citations.] [¶] The party opposing enforcement of a forum selection clause ordinarily 'bears the "substantial" burden of proving why it should not be enforced.' [Citations.] That burden, however, is reversed when the claims at issue are based on unwaivable rights created by California statutes. In that situation, the party seeking to enforce the forum selection clause bears the burden to show litigating the claims in the contractually designated forum 'will not diminish in any way the substantive rights afforded … under California law.' [Citations.]" (*Verdugo v. Alliantgroup, L.P.* (2015) 237 Cal.App.4th 141, 147-148.)

Plaintiff contends that the forum selection clause is unenforceable. Specifically, she argues that the forum selection clause will deprive her of her right to a jury trial and to certain Labor Code remedies. She also asserts that the clause contravenes anti-retaliation provisions of the Labor Code and the Fair Employment and Housing Act ("FEHA"). Finally, she argues that the forum selection clause does not apply to some of her claims because the events forming the basis of those claims occurred before the equity incentive agreement was signed.

i. Jury Trial Right

Plaintiff argues that enforcing the forum selection clause will deprive her of her right to a jury trial because she would not be entitled to a jury trial in China. She relies on the declaration of Chinese lawyer Yangang Tian ("Tian Decl,"), filed on January 2, 2024, in support of Plaintiff's opposition to Lu's motion to dismiss. (See Tian Decl., ¶ 10 [indicating that there is no right to a jury trial in Chinese courts].)

In *EpicentRx, Inc. v. Superior Court* (2023) 95 Cal.App.5th 890 (*EpicentRx*), review granted December 13, 2023, S282521, on which Plaintiff relies, the Court of Appeal held that the trial court properly denied a motion to dismiss on forum nonconveniens grounds because enforcing the mandatory forum selection clause in that case would deprive the California plaintiff of its jury trial right. (*Id.* at p. 895.) As Reliance Memory US points out, the California Supreme Court has granted review in *EpicentRx*. However, the Supreme Court has ordered that it "may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow trial courts to exercise discretion under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456, to choose between sides of any such conflict."

Reliance Memory US contends that *EpicentRx* conflicts with *Investors Equity Life Holding Co. v. Schmidt* (2011) 195 Cal.App.4th 1519, 1530 (*Investors Equity*), in which the Court of Appeal rejected the argument that a forum was unsuitable because the jury trial right would not be available in the proposed forum. Notably, *Investors Equity* did not involve a forum selection clause. Even more importantly, the plaintiff in *Investors Equity* was not a California resident as Plaintiff is here. (*Id.* at pp. 1534-1535.) As discussed above, the *EpicentRx* court affirmed the denial of a forum non conveniens motion where the California plaintiff would be deprived of its right to a jury trial. (*EpicentRx*, *supra*, 95 Cal.App.5th at p. 895.) The court finds *EpicentRx* persuasive.

ii. Rights Under the California Labor Code and the FEHA

Plaintiff also asserts that enforcing the forum selection clause would deprive her of rights and protections she enjoys under the California Labor Code and the FEHA.[4] First, she contends that she is pursuing claims under Labor Code sections 201, 203, 218.6, and 218.5 and that the rights associated with these statute are unwaivable pursuant to Labor Code section 219, subdivision (a), which provides that "no provision of this article can in any way be contravened or set aside by a private agreement, whether written, oral, or implied." (See also, *Schachter v.*

[4] Plaintiff's argument that enforcing the forum selection clause would deprive her of anti-retaliation provisions in the Labor Code and the FEHA is without merit as Reliance Memory US is only seeking to stay the causes of action raised in the original complaint, which contains no claims of retaliation.

Citigroup, Inc. (2009) 47 Cal.4th 610, 619 [Labor Code "section 219 prohibits an employer and employee from agreeing, even voluntarily, to circumvent provisions division 2, part 1, chapter 1, of article 1 (consisting of §§ 200–243) of the Labor Code"]; *Verdugo v. Alliantgroup, L.P.* (2015) 237 Cal.App.4th 141, 154 [defendant failed to show that forum selection clause would not impair California plaintiff's Labor Code rights].)

Relying on *Grove v. Juul Labs, Inc.* (2022) 77 Cal.App.5th 1081, Reliance Memory US counters that Plaintiff has not shown that her claims arise out of the Labor Code provisions she relies on. That case is readily distinguishable. There, the plaintiff argued that enforcing a forum selection clause would violate Labor Code section 925, which provides that a forum selection clause is voidable at the option of the employee where enforcement of such clause would deprive the plaintiff of the benefit of California law for a controversy that arose in California. (*Id.* at pp. 1093-1094.) The Court of Appeal rejected this argument because the plaintiff raised his claims in the capacity as a shareholder of Juul, not as an employee. (*Id.* at p. 1094.) Here, Plaintiff's claims are raised in her capacity as an employee.

Nonetheless, Reliance Memory US claims that the sole cause of action arising from the Labor Code contained in Plaintiff's original complaint is her Labor Code section 201 (unpaid wages at time of discharge) cause of action, which, it asserts, is entirely derivative of Plaintiff's claim that she did not receive her promised equity. Citing *IBM v. Bajorek* (9th Cir. 1999) 191 F.3d 1033, 1039, Reliance Memory US contends that incentive compensation does not constitute a wage under California law. But, the court is not bound by the decisions of lower federal courts. (*Hargrove v. Legacy Healthcare, Inc.* (2022) 80 Cal.App.5th 782, 789, fn. 4.) Further, *Schachter v. Citigroup, Inc.*, *supra*, 47 Cal.4th at p. 619, the California Supreme Court held that shares of stock constituted a wage within the meaning of Labor Code section 200, subdivision (a). Accordingly, Reliance Memory US's argument must be rejected.

iii. Whether the Forum Selection Clause Covers Plaintiffs' Claims

The parties dispute whether the forum selection clause applies to all of Plaintiff's claims. However, in light of the above discussion, the court finds that, even if the clause applies to all of Plaintiff's claims, it is unenforceable as it deprives Plaintiff of her right to a jury trial and causes her to waive unwaivable rights under the Labor Code.

B. Inconvenient Forum Factors

Reliance Memory US also contends that the traditional inconvenient forum analysis favors staying the claims raised in Plaintiff's original complaint.

"Forum non conveniens is an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere. [Citation.]" (*Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751 (*Stangvik*).) "In determining whether to grant a motion based on forum non conveniens, a court must first determine whether the alternate forum is a 'suitable' place for trial. If it is, the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in

California. The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation. [Citations.]" (*Ibid*.) "On a motion for forum non conveniens, the defendant, as the moving party, bears the burden of proof. The granting or denial of such a motion is within the trial court's discretion, and substantial deference is accorded its determination in this regard. [Citations.]" (*Id.* at p. 752.)

Reliance Memory US contends that Hefei Ruibo and Reliance Memory PRC were incorporated in China and that these Chinese entities do not do business in California. It further asserts the employment agreement and equity agreement were both drafted in Chinese and that the relevant witnesses to the events forming the basis of the allegations in the original complaint are located in China and that the documentary evidence is stored on servers located in China. Notably, Reliance Memory US explains that Plaintiff has already commenced a breach of contract suit in China and that that trial in that case has been completed and the court is currently entertaining post-trial briefing.

i. Suitability of the Forum

Reliance Memory US asserts that China is a suitable forum as it is amenable to service of process there and it has agreed not to assert a statute of limitations bar to Plaintiffs' claims. A forum is suitable where the defendant is subject to the court's jurisdiction and the statute of limitations will not bar the suit. (*Stangvik, supra,* 54 Cal.3d at p. 752.) Where the defendant stipulates to jurisdiction and that they will not invoke a statute of limitations defense, the suitability factor is met. (*Ibid*.)

As noted above, Reliance Memory PRC and Lu have attempted to join in the motion and they indicated that they agreed to submit to the court's jurisdiction in China and to waive any statute of limitations arguments. However, the court has found the notice of joinder untimely and refused to consider the arguments raised therein. Further, none of the defendants have provided the court with actual executed stipulations and only Lu has provided a declaration indicating his willingness to submit to jurisdiction of the Chinese court and he expressly limits this consent to a statement that he will not challenge the jurisdiction of a Chinese court *in this pending lawsuit*. (Declaration of Zhichao Lu in Support of Defendant Reliance Memory Inc.'s Motion to Stay for Forum Nonconveniens, ¶ 15, italics added.) Notably, the pending lawsuit only includes Plaintiff's breach of contract claim and the declaration makes no mention of the statute of limitations. Thus, the court finds that Reliance Memory US has not met its burden of showing suitability because it has not shown that all defendants will waive any statute of limitations argument or that the statute of limitations would not bar Plaintiff from raising her claims in China.

ii. Private Interest Factors

Even assuming suitability is met, the private interest factors do not clearly favor China as a forum. As mentioned above, "[t]he private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses." (*Stangvik, supra,* 54 Cal.3d at p. 751.)

Plaintiff contends that she resides in California. Ordinarily, if the plaintiff is a resident of the jurisdiction in which the suit is filed, her choice of forum is presumed to be convenient. (*Stangvik, supra*, 54 Cal.3d at p. 754; see also *Ricoh, supra*, 12 Cal.App.4th at p. 1675 ["a resident plaintiff's choice of the forum is given substantial weight"].) Further, a state has a strong interest in assuring its own residents an appropriate forum for the redress of their grievances. (*Stangvik, supra,* 54 Cal.3d at pp. 754-755.)

Nonetheless, here, Reliance Memory US correctly points out that Plaintiff has already agreed to litigate in China by filing her breach of contract claim there. That said, Plaintiff has provided evidence, in the form of the Tian Declaration, that some of her causes of action, specifically, the quantum meruit and negligent misrepresentation claims, do not exist in China. (Tian Decl., ¶ 11.) However, the court may not give substantial weight to the fact that the law in California may be more favorable that the law of the foreign jurisdiction. (*Stangvik, supra,* 54 Cal.3d at p. 764.) Thus, the court accords little, if any, weight to this consideration. (See *Shiley Inc. v. Superior Court* (1992) 4 Cal.App.4th 126, 133 ["in determining the issue of a suitable place for trial, a court may not even consider the fact that an alternative forum does not recognize a cause of action which would be available to the plaintiff under California law"].)

Reliance Memory US also contends that three of the four defendants are Chinese residents. It further contends that the witnesses to the events forming the basis of the causes of action in Plaintiff's original complaint are Chinese residents and that they will require interpreters if the action were to proceed in California and they may not be willing or able to travel to California to participate in this litigation.[5] It also argues that the employment contract was drafted in both English and Mandarin Chinese and the contract provides that, it is governed by Chinese law and, in the event of a discrepancy, the Chinese version shall prevail. The equity incentive agreement was drafted only in Chinese. Further, relevant documents are stored in China.

However, Plaintiff persuasively argues that the witnesses to the causes of action raised in the original complaint will likely also be needed for the causes of action raised in the FAC. Thus, those witnesses would still need to travel to California or alternate means for securing their testimony in California would be required even if the court were to stay the claims in the original complaint pending the outcome of the Chinese litigation. While it may be costly and difficult to secure the testimony of such witnesses, staying the claims in the original complaint

[5] The court notes that Plaintiff has objected to the evidence, Lu's declaration, provided by Reliance Memory US in support of its assertion that the relevant witnesses are located in China and would require translators if proceedings were conducted in English and that they may not be willing or able to travel to the United States. The court has overruled Plaintiff's objections to Lu's declaration. Nonetheless, Lu's declaration is conclusory on this point and, thus, is entitled to limited weight.

will not result in substantial savings where the new claims in the FAC will proceed. Notably, Reliance Memory US does not seek to stay the new claims raised in the FAC. Plaintiff also persuasively contends that modern methods of communications render the fact that relevant documents may be stored in China of minimal importance. Plaintiff also correctly contends that "California courts are able to and do routinely apply non-California law—federal law, the law of foreign countries, and the law of other states—when required by a choice-of-law provision." (*Animal Film, LLC v. D.E.J. Productions, Inc.* (2011) 193 Cal.App.4th 466, 475.)

Thus, the court finds that the private interest factors do not strongly support jurisdiction in China because there will be little savings in the costs of suit by staying only the claims raised in the original complaint.

iii. Public Interest Factors

"The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation." (*Stangvik, supra,* 54 Cal.3d at p. 751.)

The court finds that the public interest factors do not favor litigation in China. As mentioned above, the California courts have a strong interest in assuring its own residents an appropriate forum for the redress of their grievances. (*Stangvik, supra,* 54 Cal.3d at p. 754-755.) Here, Plaintiff is a California resident and she performed much of her employment duties in California. (See Declaration of Jin Zhang in Support of Opposition, ¶¶ 4, 5.) Thus, this is not a case where the local community has little concern for the outcome.

IV. Conclusion and Order

The motion to stay is DENIED without prejudice to any party making an appropriate motion regarding any preclusive effect the Chinese action may have on this action.

The Court will prepare the formal order.

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