SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 05-14-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

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.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court will call the cases of those who appear in person first. If you appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. You must use the current link.

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. You may make an online reservation to reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Go to the Court's website at www.scscourt.org to make the reservation.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	19CV343306 OEX	GRANITE STATE INSURANCE COMPANY vs RAUL DELGADO RIVERA	All parties are to appear in Department 16 at 9:00 AM, either in person or via TEAMS. If all parties appear, the Court will administer the oath and the examination will take place off line. If service was not proper, the matter may be continued to allow proper notice. If there is no appearance by the moving party, the matter will be ordered off calendar.
LINE 2	22CV407607 Hearing: Demurrer	Petra Macias et al vs Augustina Duran Armendariz et al	See Tentative Ruling. Court will prepare the final order.
LINE 3	22CV407607 Motion: Strike	Petra Macias et al vs Augustina Duran Armendariz et al	See Tentative Ruling. Court will prepare the final order.
LINE 4	23CV425618 Hearing: Demurrer	Adam Diaz vs Goodwill of Silicon Valley	Good cause appearing and notice appearing proper, the unopposed demurrer is GRANTED with 20 days leave to amend. Failure to file an amended complaint within the given time may result in dismissal of the complaint.
LINE 5	22CV399032 Motion: Summary Judgment/Adjudication	MARY SCHUTTEN vs CALIFORNIA STATE UNIVERSITY et al	See Tentative Ruling. Court will prepare the final order.

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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 6	21CV385112 Motion: Discovery	Quintara Biosciences, Inc. vs Gangyou Wang et al	See Tentative Ruling. Plaintiff shall submit the final order within 10 days.
LINE 7	21CV385112 Motion: Admissions Deemed Admitted	Quintara Biosciences, Inc. vs Gangyou Wang et al	See Tentative Ruling. Plaintiff shall submit the final order within 10 days.
LINE 8	21CV385112 Motion: Admissions Deemed Admitted	Quintara Biosciences, Inc. vs Gangyou Wang et al	See Tentative Ruling. Plaintiff shall submit the final order within 10 days.
LINE 9	21CV385112 Motion: Admissions Deemed Admitted	Quintara Biosciences, Inc. vs Gangyou Wang et al	See Tentative Ruling. Plaintiff shall submit the final order within 10 days.
LINE 10	22CV394810 Hearing: Atty Fees after Mtn Compel	Stan Habr et al vs Avalon Transportation, LLC et al	Motion Withdrawn
LINE 11	22CV406777 Motion: Stay	Abhinav Bezgam et al vs 18771 Homestead Road, LLC et al	See Tentative Ruling. Plaintiffs shall submit the final order within 10 days of the hearing.
LINE 12			
LINE 13			
LINE 14			
LINE 15			
LINE 16			
LINE 17			

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Calendar Lines 2-3
Case Name: *Petra Macias et al. v. City of Gilroy et al.*
Case No.: 22CV407607

I. Factual and Procedural Background

a. The Parties

Plaintiffs Petra Macias ("Petra")[1] and Jeremiah Macias ("Jeremiah")(collectively, "Plaintiffs") bring this wrongful death action against multiple defendants, including: the City of Gilroy ("the City"), Rebecca Armendariz ("Rebecca"), Augustina Duran Armendariz ("Augustina"), Tes Investments, LLC ("Tes"), Ameriland Real Estate Inc, Ameriland Real Estate Services (collectively, "Ameriland"), Jose Adame ("Adame"), Silvia Ibarra ("Ibarra"), Benjamin Calderon, Domingo Armendariz, and Does 1 through 125 (collectively, "Defendants").

Petra is the mother of decedent Michael Daniel Zuniga-Macias ("Decedent"). (FAC, ¶ 21.) Jeremiah is Decedent's brother. (*Id.* at ¶ 22.)

Augustina owns the property at 490 Las Animas Ave., Gilroy ("490 Property"). (FAC, ¶ 6.) Rebecca lived at the 490 Property. (*Id.* at ¶ 23.)

Tes owns the property at 405 Las Animas Ave., Gilroy ("405 Property"). (FAC, ¶ 7.) Ameriland, Adame, and Ibarra were the property managers of the real property located at the 405 Property. (*Id.* at ¶ 12.)

b. General Allegations

On the evening of October 29, 2021 and into the early morning hours of October 30, 2021, a party was held at the 490 Property, the 405 Property, and at an adjacent lot. (FAC, ¶ 27.) The City's assets were used to facilitate this party, including barricades and the City street. (*Id.* at ¶ 28.)

Defendants were involved with the planning and hosting of the party and actively or passively allowed the unruly party with amplified music, excessive numbers of people, alcoholic beverages served to minors, and cannabis served to minors. (FAC, ¶ 29.) Defendants promised that there would be security at the party but there was none or it was inadequate and weapons were allowed to be brought onto the premises. (*Id.* at ¶¶ 29, 31.) Decedent was an invitee of the party. (*Id.* at ¶ 29.) Thereafter, Decedent sustained severe injuries from a gunshot wound, ultimately resulting in his death. (*Id.* at ¶ 40.)

On June 12, 2023, Plaintiffs filed their FAC, asserting the following causes of action:

1) Wrongful Death; and

[1] At times, the court refers to some parties by their first names for purposes of clarity. No disrespect is intended. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

2) Negligent Infliction of Emotional Distress as a Bystander ("NIED").

On July 14, 2023, Tes, Ameriland, Adame, and Ibarra (collectively, "Moving Defendants") filed a demurrer and motion to strike portions of the FAC. The parties stipulated to a continuance of the hearing on these motions. On May 1, 2024, Plaintiffs filed oppositions to both motions. On May 7, 2024, Moving Defendants filed replies.

II. Demurrer

a. Legal Standard

In ruling on a demurrer, the court treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.)

b. Uncertain and Defective

Moving Defendants first assert that the pleading is fatally uncertain and defective because it groups all of the defendants together and fails to specify which defendants committed which wrongful acts. (Demurrer, p. 7:21-23.)

Demurrers for uncertainty are disfavored and sustained "only if the pleading is so incomprehensible that a defendant cannot reasonably respond." (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135; see also *Khoury v. Maly's of Cal., Inc.* (1993) 14 Cal.App.4th 612, 616 ["A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures."].)

In this case, the Court is not persuaded that the pleading is so uncertain that Moving Defendants are unable to respond. Here, Plaintiffs are alleging that all Defendants are responsible for the wrongful acts alleged. Any ambiguities in the pleading can be clarified further during discovery.

The demurrer to the FAC on the ground it is uncertain is OVERRULED.

Moving Defendants next argue Plaintiffs cannot allege causes of action for wrongful death or NEID against them because 1) the FAC fails to allege they committed a wrongful act against Decedent; 2) the FAC fails to allege their conduct was the proximate cause of Decedent's shooting; and 3) Gilroy City Code Chapter 19C does not create a private cause of action or support a presumption of negligence under the negligence per se doctrine.

c. Sufficient Facts

i. Wrongful Acts Against Decedent

Defendants contend 1) Plaintiffs "have failed to plead any facts which establish the presence of a relationship between Decedent and [Moving Defendants], let alone a special relationship which would have given rise to a non-delegable duty to protect Decedent from unforeseeable harm" and 2) Plaintiffs fail to allege foreseeability.

In opposition, Plaintiffs argue they allege: 1) TES was the owner of the 405 Property; 2) Ameriland, Adame, and Ibarra were the property managers of the 405 Property; and 3) Defendants in some way had control of the real property constituting the premises of the party. Plaintiffs contend that as owners or those in control of the 405 Property, Moving Defendants owed a duty of care to the invitees of the party. (Opposition, p. 4:7-22, citing FAC, ¶¶ 7, 12, 30.)[2]

"A cause of action for wrongful death is . . . a statutory claim." (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1263, citing Code Civ. Proc., §§ 377.60-377.62.) "'The elements of the cause of action for wrongful death are the tort (negligence or other wrongful act), the resulting death, and the damages, consisting of pecuniary loss suffered by the heirs. [Citations.]'" (*Ibid.* [emphasis omitted].)

Additionally, "the negligent causing of emotional distress is not an independent tort, but the tort of negligence. The traditional elements of duty, breach of duty, causation, and damages apply. Whether a defendant owes a duty of care is a question of law. Its existence depends upon the foreseeability of the risk and a weighing of policy considerations for and against imposition of liability." (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1072 (*Burgess*) [internal citations and quotations omitted].) The distinction between NIED bystander and direct victim cases "is found in the source of the duty owed by the defendant to the plaintiff." (*Burgess*, *supra*, 2 Cal.4th at p. 1072.) "The 'bystander' cases . . . address 'the question of duty in circumstances in which a plaintiff seeks to recover damages as a percipient witness to the injury of another.'" (*Ibid*.) "These cases 'all arise in the context of physical injury or emotional distress caused by the negligent conduct of a defendant with whom the plaintiff had no preexisting relationship, and to whom the defendant had not previously assumed a duty of care beyond that owed to the public in general.' In other words, bystander liability is premised upon a defendant's violation of a duty not to negligently cause emotional distress to people who observe conduct which causes harm to others." (*Id.* at pp. 1072-1073 [emphasis omitted].)

"Turning to the question of the scope of a landlord's duty to provide protection from foreseeable third party crime, . . . we have recognized that the scope of the duty is determined in part by balancing the foreseeability of the harm against the burden of the duty imposed. . . . In cases where the burden of preventing future harm is great, a high degree of foreseeability

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[2] On demurrer, a court is confined to the pleadings and any matters subject to judicial notice. In this case, Plaintiffs have not requested judicial notice of any documents; however, they cite to exhibits contained in their declaration and assert facts not found in the FAC. Any arguments contained in the opposition that fall outside of the scope of the pleading will not be addressed by the Court.

may be required. On the other hand, in cases where there are strong policy reasons for preventing the harm, or the harm can be prevented by simple means, a lesser degree of foreseeability may be required." (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 678-679 (*Ann M.*) [overruled in part, on other grounds][internal citations and quotations omitted].) In other words, "duty in such circumstances is determined by a balancing of 'foreseeability' of the criminal acts against the 'burdensomeness, vagueness, and efficacy' of the proposed security measures." (*Id.* at p. 679.)

The Court finds that Plaintiffs have not sufficiently alleged the injury suffered by Decedent was foreseeable such that Moving Defendants owed the invitees a duty to provide security guards at the party. While the FAC does contain allegations about the foreseeability of Decedent's injuries, they all pertain to the City, and not Moving Defendants. Further, as Moving Defendants note, foreseeability may rarely be shown in the absence of prior similar incidents of violent crime on the landowner's premises and Plaintiffs have not alleged prior violent crimes at the 405 Property. (Demurrer, p. 10:18-20, 26-27, citing *Ann M.*, *supra*, 6 Cal.4th at p. 679.) In *Ann M.*, the Supreme Court explained that the hiring of security guards will rarely, if ever, be found to be a "minimal burden" and concluded that "a high degree of foreseeability is required in order to find that the scope of a landlord's duty of care includes the hiring of security . . . [and] that the requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents of violent crime on the landowner's premises." (*Ann M.*, *supra*, at p. 679 [fn. omitted].)

Moreover, given that a cause of action for wrongful death is statutory, the cause of action must be pled with sufficient particularity. (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795 [there is a general rule that statutory causes of action must be pled with particularity].) Given this requirement, the Court also finds Moving Defendants' arguments regarding Gilroy City Code Chapter 19C to be persuasive.[3] As such, Plaintiffs have failed to sufficiently allege Moving Defendants owed a duty to Decedent and the demurrer to the first cause of action may be sustained on this basis.

ii. Proximate Cause

Additionally, as to the second cause of action for NIED of a Bystander, Moving Defendants contend that Plaintiffs fail to allege their conduct was the proximate cause of the shooting. (Demurrer, p. 11:19-20.) Rather, the FAC alleges that Decedent was fatally shot by a third party. (*Id.* at p. 12:1.)

As noted above, NIED is not an independent tort and the traditional elements of duty, breach of duty, causation, and damages apply. "In the absence of physical injury or impact to the plaintiff himself, damages for emotional distress should be recoverable only if the plaintiff: (1) is closely related to the injury victim, (2) is present at the scene of the injury-producing event at the time it occurs and is then aware that it is causing injury to the victim and, (3) as a result suffers emotional distress beyond that which would be anticipated in a disinterested witness." (*Thing v. La Chusa* (1989) 48 Cal.3d 644, 647.)

[3] Moving Defendants assert that Plaintiffs' only theory of an increased risk of criminal violence is that the party violated Gilroy City Code Chapter 19C and that their allegations in this respect are conclusory and insufficient to establish foreseeability. (Demurrer, p. 11:6-11.)

Where there is no relationship between the defendant and the plaintiff and the plaintiff was not the object of the defendant's conduct, to recover as a bystander, the plaintiff must "personally witness a negligently caused physical injury to a closely related primary victim." (*Holliday v. Jones* (1989) 215 Cal.App.3d 102, 111.) Specifically, there must be some type of "contemporaneous sensory awareness of the causal connection between the defendant's infliction of harm and the injuries suffered by the close relative. (*Fortman v. Forvaltningsbolaget Insulan AB* (2013) 212 Cal.App.4th 830, 836.)

Plaintiffs allege that due to Moving Defendants' negligence, Jeremiah suffered serious emotional distress after witnessing the shooting of his brother. (FAC, ¶ 45.) Aside from owning or managing the 405 Property where the party was held, it is not clear what conduct of Moving Defendants was negligent such that it caused Decedent to be fatally shot. Moreover, there are no allegations Jeremiah had any awareness that Moving Defendants' alleged conduct was connected to the shooting that resulted in the Decedent's death. (See *Downey v. City of Riverside* (2023) 90 Cal.App.5th 1033, 1039-1040 [plaintiff must be aware of the connection between the injury-producing event and the victim's injuries].) Thus, Plaintiffs have not sufficiently alleged that Moving Defendants' were the proximate cause of Decedent's injuries. Accordingly, the demurrer to the second cause of action may be sustained on this basis.

Based on the foregoing, the demurrer is SUSTAINED as to both causes of action on the ground of failure to state a claim with 10 days leave to amend. The demurrer is OVERRULED on the ground of uncertainty. Given this ruling, the Court need not addressing Moving Defendants' remaining arguments.

III. Motion to Strike

Moving Defendants move to strike Paragraphs 16, 17, 29, 30, 31, 32, 33, 40-43, 45, and portions of Plaintiffs' Prayer for Relief. As explained in detail above, the demurrer is sustained and therefore, the motion to strike is moot.

With that said, the Court notes for future reference that a motion to strike is to be used sparingly and the Court will not create a "line item veto" procedure by which defendants can strike numerous allegations in the pleading. (See *PH II, Inc. v. Superior Court* (1995) 33 Cal. App. 4th 1680, 1683.)

Accordingly, the motion to strike is MOOT.

IV. Conclusion and Order

The demurrer for uncertainty is OVERRULED. The demurrer for failure to allege sufficient facts is SUSTAINED with 10 days leave to amend. The motion to strike is MOOT. The Court shall prepare the final order.

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Calendar Line 5
Case Name: *Schutten v. California State University, et al.*
Case No.: 22CV399032

After full consideration of the evidence, the separate statements submitted by the parties, and the authorities submitted by each party, the court makes the following rulings:

This is an action for wrongful termination and retaliation. Plaintiff Mary Schutten ("Plaintiff") began working for defendant Board of Trustees of the California State University, erroneously sued as California State University and San Jose State University ("Defendant") in 2014. (See complaint, ¶ 20.) Thereafter, Defendant discriminated against employees based on age and gender, harassed employees based on age and gender, fraudulently concealed wage and hour violations, misclassified workers, and failed and refused to pay overtime wages. (See complaint, ¶ 21.) In January 2019, Plaintiff began experiencing serious, severe and pervasive harassment and discrimination based on her age and gender. (See complaint, ¶ 22.) In May 2019, upon discovering the nature and extent of Defendant's misconduct, Plaintiff complained to Defendant concerning its racially discriminatory misconduct and repeatedly requested that Defendant cease and desist in such misconduct. (See complaint, ¶ 23.) Defendant ignored Plaintiff's requests and further sought to enlist Plaintiff's aid in furthering its misconduct. (See complaint, ¶¶ 24-25.) Plaintiff refused to assist Defendant and notified it that he could no longer tolerate its violations and advised it that he would be required to file complaints with appropriate governmental agencies concerning its misconduct. (See complaint, ¶ 26.) Between May 2019 and June 2019, Defendant began further harassing Plaintiff, taking adverse employment actions against her and otherwise abusing Plaintiff at the workplace in retaliation for Plaintiff's complaints of discrimination and harassment, refusal to participate in Defendant's unlawful misconduct, and for her intent to report of Defendant's misconduct to appropriate government agencies. (See complaint, ¶ 27.) On June 30, 2019, Plaintiff was wrongfully terminated as the ultimate retaliation by Defendant. (See complaint, ¶ 28.)

On April 26, 2022, Plaintiff filed a complaint against Defendants, asserting causes of action for:

1) Discrimination in violation of Government Code § 12941 (against all defendants);
2) Retaliation in violation of Government Code § 12940 (against all defendants);
3) Harassment and failure to take all reasonable steps necessary to prevent discrimination and harassment from occurring in violation of Government Code § 12940, subd. (k) (against all defendants);
4) Wrongful termination in violation of FEHA (against all defendants); and,
5) Unpaid overtime wages and related penalties in violation of Labor Code § 512 (against all defendants).

Defendant moves for summary judgment, or, in the alternative, moves for summary adjudication of each cause of action.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION

Defendant's burden on summary judgment

"A defendant seeking summary judgment must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action. … The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98 Cal.App.4th 66, 72; internal citations omitted; emphasis added.)

"The 'tried and true' way for defendants to meet their burden of proof on summary judgment motions is to present affirmative evidence (declarations, etc.) negating, as a matter of law, an essential element of plaintiff's claim." (Weil et al., Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2007) ¶ 10:241, p.10-91, *citing Guz v. Bechtel National Inc.* (2000) 24 Cal.4th 317, 334; emphasis original.) "The moving party's declarations and evidence will be strictly construed in determining whether they negate (disprove) an essential element of plaintiff's claim 'in order to avoid unjustly depriving the plaintiff of a trial.'" (*Id*. at § 10:241.20, p.10-91, *citing Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1107.)

"Another way for a defendant to obtain summary judgment is to 'show' that an essential element of plaintiff's claim cannot be established. Defendant does so by presenting evidence that plaintiff 'does not possess and cannot reasonably obtain, needed evidence' (because plaintiff must be allowed a reasonable opportunity to oppose the motion.) Such evidence usually consists of admissions by plaintiff following extensive discovery to the effect that he or she has discovered nothing to support an essential element of the cause of action." (*Id*. at ¶ 10:242, p.10-92, *citing Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855.)

Defendant's arguments

Defendant moves for summary judgment, or, in the alternative for summary adjudication of each cause of action on the grounds that: the first cause of action for race and age discrimination lacks merit because Plaintiff cannot demonstrate that either race or age was a substantiating factor for any adverse employment action and Plaintiff's employment ended because of the legitimate, nondiscriminatory reason that she had accepted a job from Central Michigan University (CMU) and could not both be a fully benefited faculty member while not working at San Jose State University and working full time as the Provost/Executive Vice President at CMU; the second cause of action for retaliation lacks merit because Plaintiff testified that she could not identify any protected activity that was the reason to terminate her and Plaintiff's employment ended because of the legitimate, nondiscriminatory reason that she had accepted a job from CMU; the third cause of action lacks merit because there is no evidence that Plaintiff experienced harassing conduct or that Defendant failed to take steps necessary to prevent harassment; the third cause of action lacks merit because her claims for discrimination and harassment fail and Plaintiff also fails to identify any violation of any public policy that as a substantial motivating reason for her nonretention as dean or termination of employment; and, she was paid her accrued vacation and final wages.

First cause of action for discrimination in violation of FEHA

"Under *McDonnell Douglas*, courts use a burden-shifting framework to assess claims alleging employment discrimination or retaliation." (*Choochagi v. Barracuda Networks, Inc*. (2020) 60 Cal.App.5th 444, 457 (Sixth District case); see also *Hodges v. Cedars-Sinai Medical*

Center (2023) 91 Cal.App.5th 894, 904 (stating that "[f]or purposes of evaluating FEHA discrimination claims, California courts have adopted the burden-shifting framework enunciated by the United States Supreme Court in *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792"); see also *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 860 (Sixth District, stating that "[i]n cases alleging employment discrimination, we analyze the trial court's decision on a motion for summary judgment using a three-step process that is based on the burden-shifting test that was established by the United States Supreme Court for trials of employment discrimination claims in *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792").) "In the summary judgment context, 'the employer, as the moving party, has the initial burden to present admissible evidence showing either that one or more elements of plaintiff's prima facie case is lacking or that the adverse employment action was based upon legitimate, nondiscriminatory [or retaliatory] factors.'" (*Choochagi*, *supra*, 60 Cal.App. 5th at p. 457; see also *Serri*, *supra*, 226 Cal.App.4th at p.861 (stating same).) "To state a prima facie case for discrimination in violation of the FEHA, a plaintiff must establish that (1) she was a member of a protected class, (2) she was performing competently in the position she held, (3) she suffered an adverse employment action, and (4) some other circumstance suggests discriminatory motive." (*Galvan v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 549, 558.) "If nondiscriminatory, [the employer's] true reasons need not necessarily have been wise or correct." (*Serri*, *supra*, 226 Cal.App.4th at p.861, quoting *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 358.) "[T]he ultimate issue is simply whether the employer acted with *a motive to discriminate illegally*." (*Serri*, *supra*, 226 Cal.App.4th at p.861 (emphasis original), quoting *Guz*, *supra*, 24 Cal.4th at p.358.) "Thus, 'legitimate' reasons… in this context are reasons that are *facially unrelated to prohibited bias*, and which, if true, would thus preclude a finding of *discrimination*.'" (*Serri*, *supra*, 226 Cal.App.4th at p.861 (emphasis original), quoting *Guz*, *supra*, 24 Cal.4th at p.358.) "If the employer meets this initial burden, the plaintiff must 'demonstrate a triable issue by producing substantial evidence that the employer's stated reasons were untrue or pretextual, or that the employer acted with discriminatory [or retaliatory] animus, such that a reasonable trier of fact could conclude that the employer engaged in intentional discrimination [or retaliation] or other unlawful action.'" (*Choochagi*, *supra*, 60 Cal. App.5th at p. 457; see also *Serri*, *supra*, 226 Cal.App.4th at p.861 (stating same).)

The complaint alleges that Plaintiff was "discriminated by defendants based upon Plaintiff's age... [and] gender … [and] discriminated against and harassed … on the basis of Plaintiff's race and/or race related characteristics." (Complaint, ¶¶ 30, 32.) Defendant presents Plaintiff's deposition testimony in which she states that her nonretention as dean was not based on gender discrimination, she did not experience discrimination by SJSU because of racial characteristics, and that she had concerns about her age affecting her finances and career prospects after receiving the nonretention letter. (See evidence cited by Pl.'s separate statement of undisputed material facts in opposition to motion for summary judgment, nos. ("UMFs") 23-24.) Further demonstrating that Plaintiff cannot establish that her nonretention as dean was due a circumstance suggesting a discriminatory motive, Plaintiff testified that she believes that she was sent the nonretention letter by interim Provost Ficke in response to Plaintiff talking to someone about the policy to designate a tenured faculty member with Emeritus status. (See UMFs 4-8, 25.)

Defendant also presents evidence that, after Plaintiff was non-retained as Dean, she sought and, on May 1, 2019, obtained employment at CMU to be its Provost/ Executive Vice President, effective July 1, 2019. (See UMFs 11-13.) SJSU learned that Plaintiff had accepted the offer from CMU in the first week of May 2019. (See UMF 15.) On May 13, 2019,

President Papazian congratulated Plaintiff on her appointment at CMU and notified her decision to accept a full-time position at CMU extinguished her right to retreat to SJSU faculty starting in August 2019. (See UMF 16.) Plaintiff requested that she remain on the payroll for no salary but receive benefits through July 2020; however, the request was denied. (See UMFs 14, 16.) Plaintiff also confirmed that other SJSU faculty who also held positions outside SJSU all continued to fulfill their teaching responsibilities at SJSU and as of June 2019, Plaintiff had moved and was living in Michigan. (See UMFs 17-18.) Thus, Plaintiff's termination from SJSU was due to her taking the Provost position in Michigan at CMU which extinguished her right to retreat to SJSU faculty.

Defendant meets its initial burden to demonstrate that Plaintiff cannot establish a prima facie case of discrimination based on either race, age or gender as she cannot establish a circumstance suggesting a discriminatory motive with regards to any adverse employment action. Defendant also meets its initial burden to demonstrate that she was terminated due to the legitimate, nondiscriminatory reason that she took another full-time position at CMU that extinguished her right to retreat to SJSU faculty.

In opposition, Plaintiff presents her deposition testimony that the former Provost, Andy Feinstein, would engage in banter with her about him being physically active and boogie boarding and that Plaintiff wouldn't be able to do that, to which Plaintiff retorted that she used to be a college swim coach and was a certified lifeguard so she'd be the one out there rescuing him. (See Pl.'s depo, p.52:8-25.) Plaintiff also testified that, in her view, she experienced age harassment at SJSU because: she was encouraged by the provost to mentor less younger deans; she heard that a dean in her age category was asked by the provost to take the blame for mishandling a Title IX situation to protect the executive office and she refused; the provost had directed faculty affairs to move out two faculty members because they were too old and ineffective; she heard the story that a former President told the dean that he was too old to be dean; three younger deans were hired and Plaintiff wanted a raise to make her the third highest most paid but was denied the raise; younger deans were not performing as well and were rewarded with an associate dean; there would be informal conversations that would lead to talking about individual's ages and how they should leave; she spoke about the disadvantage that her age presented with regards to retirement; she spoke with others about her concerns that if she transitioned to a tenured track position, it was very difficult to be able to live in the area at that pay level; and, she talked with a person about a policy regarding the granting of Emeritus status, and Ficke was unhappy about Plaintiff's inquiries and sent her the nonretention letter as a result. (See UMF 24.) Plaintiff also presents both her offer letter from SJSU and the May 13, 2019 letter noting that Plaintiff's appointment as Provost at CMU extinguishes her retreat rights to a tenured, full professor position, she was not entitled to a five-year commitment, but rather served at the pleasure of the President, her request to stay on the payroll for benefits through July 2020 was denied, and that CALPERS grants service credit only for active employment and thus would not assist with vesting. (See Pl.'s evidence, exhs. I, L.)

Here, Plaintiff fails to present evidence that suggests a discriminatory animus with regards to either her non-retention or her termination. While she presents evidence of hearsay statements she heard were made about other employees, the lone evidence with regards to comments about her age are either from Plaintiff or the banter with Andy Feinstein. There is no evidence, however, connecting Feinstein to any adverse employment action. Andy Feinstein was neither the Provost nor the President when Plaintiff was non-retained or

terminated and there is no evidence that he was in a position to influence any adverse employment action. In fact, there is no evidence suggesting that Feinstein was employed by Defendant at the time of any adverse employment action. The request to mentor other deans is not evidence of age discrimination; Plaintiff fails to present any evidence that suggests that the request was motivated by a discriminatory animus. In opposition, Plaintiff cites to *Reeves v. Sanderson Plumbing Prods.* (2000) 530 U.S. 133, arguing that the Court must consider her evidence as evidence of discrimination because, in Reeves, the Court of Appeals mistakenly "confined its review of evidence favoring petitioner to that evidence showing that Chesnut had directed derogatory, age-based comments at petitioner, and that Chesnut had singled out petitioner for harsher treatment than younger employees… ignor[ing] the evidence supporting petitioner's prima facie case and challenging respondent's explanation for its decision." (*Id*. at p.146.) However, the evidence in *Reeves* was testimony by both parties acknowledging or supporting the plaintiff's argument that the stated reason for the termination was untrue. (*Id*. at pp.144-146 (stating "Petitioner, however, made a substantial showing that respondent's explanation was false").) Plaintiff has not presented any evidence contradicting Plaintiff's own testimony that she was non-retained because Provost Ficke was upset that she perceived that Plaintiff went behind Ficke's back in talking to someone about the policy to designate a tenured faculty member with Emeritus status. Nor has Plaintiff presented evidence that her acceptance of a full-time Provost position at CMU did not result in the extinguishment of her right to retreat as SJSU faculty or was an untrue basis for such extinguishment. *Reeves* is inapposite.

Plaintiff's belief that she was being discriminated against because of certain disadvantages or difficulty in being able to live in a particular area likewise do not create a triable issue of material fact as to discrimination. "An employee's 'subjective beliefs in an employment discrimination case do not create a genuine issue of fact; nor do uncorroborated and self-serving declarations.'" (*Choochagi v. Barracuda Networks, Inc.* (2020) 60 Cal.App.5th 444, 456 (Sixth District case), quoting *King v. United Parcel Service, Inc*. (2007) 152 Cal.App.4th 426, 433.)

Plaintiff fails to demonstrate the existence of a triable issue of material fact as to her first cause of action for discrimination in violation of FEHA.

Second cause of action for retaliation in violation of FEHA

The second cause of action alleges that Defendant retaliated against Plaintiff when "Plaintiff disclosed information to defendants that plaintiff had reasonable cause to believe defendants were engaging in unlawful misconduct that sonstituted a violation of State or Federal law and that defendants were required to report to agovernmental agency…." (Complaint, ¶ 42.) "[I]n order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) he or she engaged in a 'protected activity,' (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action." (*Yanowitz v. L'Oreal USA, Inc*. (2005) 36 Cal.4th 1028, 1042.)

Here, Defendant presents Plaintiff's deposition testimony that she did not know why she was being retaliated against. (See UMF 49.) This is sufficient to establish Defendant's initial burden. Defendant also presents the evidence from the first cause of action that

demonstrate legitimate, nonretaliatory reasons for Plaintiff's nonretention and termination. Defendant meets its initial burden.

In opposition, Plaintiff argues that she "was challenging discriminatory actions against an older faculty member." (Opposition, p.17:13-15.) However, Plaintiff's presented evidence includes the deposition testimony of Joanne Wright who indicates that Ficke was upset with Plaintiff because she "did not like the fact that Mary was questioning her authority… [that she] did not want to grant this individual Emeritus status because the person was a Lecturer." (Pl.'s evidence, exh. B ("Wright depo"), pp. 19:14-25, 20:1-25, 21:1-25, 22:7, 24:10-25 ("I think she perceived it as Mary going behin her back to speak with me about the policy"), 25:1-25 (with regards to what Plaintiff asked, stating "I believe this had to do with a Lecturer… [i]t's usually a tenured track faculty member who retires"), 26:1-25 ("I think she… didn't think it was appropriate for Lecturers to have that status"), 27:1-11, 29:6-24, 39:21-25, 40:1-14, 107:11-23, 117:23-25, 118:1-22.) Plaintiff's deposition testimony likewise does not demonstrate a triable issue of material fact that Defendant's legitimate, nonretaliatory reasons for Plaintiff's nonretention and termination were false. While the faculty member who was not given Emeritus status may have been older, Plaintiff does not present evidence that Defendant considered the faculty member's age in refusing the Emeritus status, and does not otherwise present evidence that Plaintiff was retaliated against due to her age.

Plaintiff fails to demonstrate the existence of a triable issue of material fact as to her second cause of action for retaliation in violation of FEHA.

Third cause of action for harassment in violation of FEHA

"To establish a prima facie case of unlawful harassment under FEHA, a plaintiff must show "(1) [s]he was a member of a protected class; (2) [s]he was subjected to unwelcome … harassment; (3) the harassment was based on [the plaintiff's membership in an enumerated class]; (4) the harassment unreasonably interfered with h[er] work performance by creating an intimidating, hostile, or offensive work environment; and (5) [CSU] is liable for the harassment." (M*artin v. Board of Trustees of California State University* (2023) 97 Cal.App.5th 149, 170.) Defendant argues that Plaintiff cannot demonstrate that Plaintiff experienced conduct constituting harassment.

The alleged conduct is identical to that of the first cause of action. As previously stated, some of the purported harassment occurred prior to Plaintiff's arrival at SJSU. (See UMFs 56, 73-76.) The assertion that she was a "senior member" of the administration does not constitute age harassment. Senior has different definitions and there is no indication that the term was used in reference to age other than Plaintiff's subjective belief. The other evidence likewise does not demonstrate harassment in violation of FEHA. (See UMFs 72-78.)

In opposition, Plaintiff does not point to any particular evidence except to say that "[t]he preponderance of evidence establishes that Plaintiff was subject to harassment based upon her age." (Opposition, p.18:23-25.) However, as with her prior causes of action, she fails to demonstrate the existence of a triable issue of material fact as to her third cause of action for harassment in violation of FEHA.

Fourth cause of action for wrongful termination in violation of FEHA

The complaint alleges that "Plaintiff's employment was wrongfully terminated in retaliation for Plaintiff engaging in lawful protest of discrimination and harassment directed at her and others in violation of the Government Code." (Complaint, ¶ 56.) Here, the arguments regarding wrongful termination are dependent on the prior causes of action. (See *Featherstone v. Southern California Permanente Medical Group* (2017) 10 Cal.App.5th 1150, 1169 (stating that "[u]nder California law, if an employer did not violate FEHA, the employee's claim for wrongful termination in violation of public policy necessarily fails").) Accordingly, for reasons stated above, Defendant meets its initial burden and Plaintiff fails to demonstrate the existence of a triable issue of material fact as to the fourth cause of action for wrongful termination in violation of FEHA.

Fifth cause of action for unpaid wages

Defendant moves for summary adjudication of the fifth cause of action for unpaid wages, asserting that it has paid all of Plaintiff's wages. In support of this cause of action, it notes that it paid her, but due to administrative error, it paid her for weeks after she was no longer with SJSU and then credited those payments as accrued vacation hours owed and repaid the balance. (See UMFs 103-110.) Defendant meets its initial burden with respect to the fifth cause of action.

Plaintiff does not oppose the motion as to the fifth cause of action. Accordingly, Plaintiff fails to demonstrate the existence of a triable issue of material fact.

Accordingly, Defendant's motion for summary judgment is GRANTED.

Defendant's objection number 1 to Exhibit N is SUSTAINED. Defendant's objection number 2 is OVERRULED.

CONCLUSION

Defendant's motion for summary judgment is GRANTED.

Defendant's objection number 1 to Exhibit N is SUSTAINED. Defendant's objection number 2 is OVERRULED.

The Court shall prepare the Order.

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Calendar Lines 6-9

MOTION TO COMPEL DEPOSITIONS OF DEFENDANTS

Plaintiff Quintara moves to compel the depositions of Defendants Alan Li, Gangyou Wang, and Ruifeng Biztech. The deposition requests were made in November 2023. Defendants oppose the motion claiming: (1) they offered alternative dates in April, four months after the motion to compel was filed; (2) notice to Jordan Pugeda was not proper as notice was provided by email and the parties did not agree to email service; and (3) the deposition for the PMQ for Biztech should have addressed a natural person and is overbroad.

Whether Defendants offered alternative dates for the depositions at least five months after the request is of no moment. Plaintiffs claim that the offer was too late and came while Plaintiffs' counsel was out of town and unable to respond. The fact is that no alternative dates were provided within the time for timely responding or prior to the filing of the motion, and no depositions have since been taken. Defendants also claim that service by electronic means was improper. Plaintiff has provided proof that email service was agreed to by the relevant counsel. See Decl. of Li, para. 5 and Ex. A. Moreover, successive counsel Disston was aware of the request and failed to provide alternative dates between December 2023 and March 2024, when he substituted out of the case. While Counsel Kamath suggested some dates in April, Plaintiff's counsel was not available and the depositions have not taken place. Neither of these claims suggest that the motion to compel should not be granted.

Finally, as to Ruifeng Biztech, Defense counsel raises objections. But the time for objections has long since passed and are therefore waived.

The motion to compel depositions of all 3 defendants is GRANTED. Depositions shall take place within 30 days, unless agreed to extend by Plaintiff. Defendants must pay sanctions to Plaintiff's counsel of $1,350 within 20 days of notice of the final order. Plaintiff shall submit the final order within 10 days.

MOTION TO DEEM ADMITTED REQUESTS FOR ADMISSIONS OF LI SET ONE, WANG SET TWO AND BIZTECH SET ONE

Li Admissions

As Plaintiff acknowledges, a "court shall make this order [deem admissions admitted], unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220 [scope and requirements of response]." Cal. Code Civ. Proc. § 2033.280(c). In this case, Defendant Li has responded to requests 13-81. Plaintiff insists the responses are not in substantial compliance because the verification is not made on his own behalf. The Court finds that Defendant Li has substantially complied with requests 13-81, even if the verification is out of compliance. Defendant Li failed to respond to requests 1-12 and lodged objections instead. As mentioned above, the time for objections has passed and Defendant has not shown that service was improper. Accordingly, the motion is GRANTED as to requests 1-12. Because Defendant failed to comply with requests 1-12, the court grants sanctions to plaintiff's counsel in the amount of $450 (for one hour). Defendant must provide a proper verification to 13-

81 within 10 days of the final order. Plaintiff shall submit the final order within 10 days of the hearing.

Wang Admissions

While Defendant contends that requests for admission for Defendant Wang have been provided, the Motion to Compel relates to requests for admissions, set two, requests 34-102, and the responses attached to Wang's opposition are responses to set one, requests 1-33. As such, Wang has not shown that he has responded prior to the hearing on the motion. Accordingly, the motion to deem admitted requests for admissions set two, requests 34-102, is GRANTED. *Demyer v. Costa Mesa Mobile Home Estates*, (1995) 36 Cal. App. 4th 393, 395-96. As stated above, the Court does not find defendant's other claims availing. Defendant Wang must pay sanctions to plaintiff's counsel in the amount of $900 (two hours). Plaintiff shall submit the final order within 10 days of the hearing.

Ruifeng Biztech Admissions

With respect to this request, the filings of Defendant Ruifeng Biz appear confused. Defendant Ruifeng Biz claims to have responded prior to the hearing on the motion to compel. Yet, the opposition suggests that it is Wang who has responded (perhaps on behalf of the corporation). The propounded requests are numbered 1-98. The answers provided are 1-33. While some of the questions are the same, the questions are not similarly numbered in the request and the response (i.e. request #3 matches what defendant has as request #2). It appears that Defendant has not responded to the requests as propounded by Plaintiff. Accordingly, the motion to compel is GRANTED. Defendant Wang must pay sanctions to plaintiff's counsel in the amount of $900 (two hours). Plaintiff shall submit the final order within 10 days of the hearing.

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Calendar line 11
Case Name: Bezgam et al v. 18771 Homestead Road, et al.
Case No.: 22CV406777

Factual Background

Plaintiffs ABHINAV BEZGAM, ALEKHYA GAMPA, SUJITH PERLA, and SUPRIYA MOHAN (collectively, "Plaintiffs") filed a civil complaint on November 1, 2022, against 18771 Homestead Road, LLC, Vahe Tashjian and Aline Whitman (as Homestead's alter egos), Compass California II, Inc., and Vahe Baronian for eight causes of action including, among others, Breach of Contract, Intentional Misrepresentation, False Promise, and Concealment. In the complaint, Defendant Tashjian (hereinafter "Defendant") is accused of conducting a fraudulent real estate transaction in which Plaintiffs were induced to pay and release a total of $1,744,000.00 to Defendant Tashjian with no secured interest. The property was later lost to foreclosure before construction and sale could be completed. Plaintiffs filed a First Amended Complaint on January 1, 2024, against the same defendants and for basically the same causes of action.

On March 23, 2023, a felony criminal complaint was filed against Tashjian in Santa Clara Superior Court (Case No. 230305294). (Declaration of Brooke Brewer in support of Tashjian's Motion ("Brewer Decl."), ¶2, Ex. 1.) The criminal case includes 24 counts of grand theft by Tashjian. (*Id.*) Tashjian's theft of Plaintiffs' funds is not one of the crimes addressed in the Criminal Case. (*Id.*) The criminal case charges Defendant with taking personal property from varying individuals between March 2019 and December 2020. Defendant presents complaints in two civil cases against Tashjian involving allegations by various individuals not involved in this case which allege Tashjian's taking of money in real estate transactions. Many of the Plaintiffs in these two other civil actions are mentioned in the criminal complaint. From this Defendant asks this court to find that the criminal complaint is based on the conduct outlined in the two other civil cases.

Issue

Defendant Vahe Tashjian now moves to stay the civil case, pending the resolution of his criminal case. He argues that he should not be forced to choose between asserting his Fifth Amendment rights at the risk of losing the civil case or waiving his Fifth Amendment rights to defend against the civil case at the risk of incriminating himself in the criminal case. Plaintiffs oppose the motion, claiming that the criminal case is not based on the same conduct as that in this case, is not related to this case, and that Defendant has failed to show how his Fifth Amendment rights would be implicated by this case.

Requests for Judicial Notice

Plaintiffs ask for Judicial Notice of Declarations (A-C) and court orders (D-I). Requests for judicial notice of A-C is GRANTED, as to the fact that they are court filed declarations, but not as to the truth of the matters asserted in the declarations. Judicial Notice is GRANTED for Exhibits D-I, under Evid. Code § 452(c) and (d). Defendant asks this Court to take judicial

notice of the two civil complaints, Exhibits 1 and 2. The request is GRANTED as to the documents' existence, but not for their truth. Evid. Code § 452(d).

Legal Standard

A civil defendant "has no absolute right not to be forced to choose between testifying in a civil matter and asserting his Fifth Amendment privilege." (*Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 885.). However, courts have held that when both civil and criminal proceedings arise out of the same or related transaction, an objecting party may be granted a stay of discovery in the civil action until disposition of the criminal matter at the court's discretion. (*Pacers, Inc. v. Superior Court* (1984) 162 Cal.App.3d 686, 690.). It is a matter of serving the interests of justice. (*Avant! Corp.,* 79 Cal.App.4th at 887.).

To determine whether a stay should be granted, the Court conducts a balancing test of the following factors: (1) the plaintiff's interest in proceeding expeditiously with the litigation and the potential prejudice to the plaintiff of a delay, (2) the burden which any particular aspect of the proceedings may impose on the defendant, (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources, (4) the interests of persons not parties to the civil litigation, and (5) the interest of the public in the pending civil matter and criminal litigation. (*Avant! Corp.,* 79 Cal.App.4th at 887.).

Analysis

Plaintiffs' Interest in Moving Expeditiously with Litigation and Prejudice of Delay

In this case, Plaintiffs Bezgam and Perla have already obtained writs of attachment against the property of Tashjian, Whitman and Homestead. (RJN, Exs. D-I.) Plaintiffs assert they have a strong interest in being able to pursue recovery of their funds under the writs of attachment not only as to Tashjian, but also as to his co-defendants. They claim they would be prejudiced in the event of a stay of this action, as they would be unable to pursue their civil claims against Homestead (the Seller in the subject transaction), Whitman (the director of Homestead, who signed the RPAs and Addenda on behalf of Homestead in the subject transaction), and/or Baronian and Compass (the dual agent and broker, respectively, for Plaintiffs and Sellers in the subject transaction) until after Tashjian's criminal proceedings were concluded.

Plaintiffs correctly point out that a stay of the entire case would prejudice them from being able to move forward against the other defendants who do not have criminal cases. Even if a stay were appropriate to protect the Fifth Amendment rights of Tashjian, Defendant does not present any argument as to why the entire case needs to be stayed. Moreover, Defendant does not address this factor at all, even with respect to a more narrow stay. The failure to provide any argument addressing this first element weighs against his request for a stay. See *Heglin v. F. C. B. A. Market, Inc.* (1945) 70 Cal. App. 2d 803, 806 (failure to address argument may be deemed a waiver). This favor weighs in favor of Plaintiffs.

Burden on Defendant

Defendant claims that because the criminal case is based on virtually the same underlying facts and underlying theories as those in this case, his Fifth Amendment rights are strongly implicated. However, Defendant has not shown that the criminal case is based on

similar conduct. While he cites to other civil complaints and demonstrates that some of the Plaintiffs in those civil cases are named in the criminal complaint, he has not in fact made any showing as to the specifics of the criminal case. The criminal case has no details other than the dates of the offenses and the claim that Defendant took personal property in excess of $950 from a particular individual. There is nothing in the criminal complaint to suggest that the alleged crimes relate to any of the civil complaints, relate to real estate transactions, or are based on theories of fraud or theories similar to those in the civil cases. In short, Defendant presents no evidence demonstrating that the criminal complaint relates in any way to the present case. Defendant asks the Court to make huge inferences when asserting that the criminal case is related to the present case. While it is possible that there is some relationship, Defendant has not made such a showing.

Nor has Defendant made any showing that criminal charges may be brought based on the conduct alleged in this case. He presents no facts suggesting that he is under investigation or has been contacted by or even referred to law enforcement in relation to the causes of action asserted in Plaintiffs' complaint. Finally, as Plaintiffs point out, Defendant did not make any objection to the discovery already propounded on him based on his Fifth Amendment right, suggesting that the burden on him is not as strong as he now claims.

Efficient Use of Judicial Resources

In general, denial of a stay promotes the convenience of the court in the management of its cases. See *Avant! Corp*., 79 Cal.App.4th at 888. This factor weighs in favor of Plaintiffs.

Non-Parties Interest

Tashjian has failed to present any argument regarding this factor, nor has he identified any third parties to this action who may have their Fifth Amendment rights implicated should his Motion be denied. This factor does not weigh in Defendant's favor.

Public Interest

Defendant argues that this factor weighs in his favor because the public has an interest in ensuring that the criminal process is not subverted by ongoing civil cases. Plaintiffs argue that this factor weighs in their favor because the public has a significant interest in a system that encourages individuals to come to court for the expeditious settlement of their disputes. Because Defendant has not shown how the criminal case relates to this case or how his Fifth Amendment rights would be implicated, the public interest does not favor a stay.

Conclusion

If Defendant had made a showing of how the pending criminal case implicates his Fifth Amendment rights in this case, the Court might have been inclined to grant a limited stay on discovery that implicates his right. But here, Defendant has failed to meet his burden. Moreover, Defendant has failed to make any showing to suggest that the entire case need be stayed or why discovery or any other part of the case that does not relate to his Fifth Amendment right need to be stayed. The motion for stay is DENIED.

Plaintiffs shall submit the final order within 10 days of the hearing.