SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding
David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: October 17, 2023 TIME: 9:00 A.M.

TO REQUEST ORAL ARGUMENT: Before 4:00 PM today you must notify the:

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

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

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

TO APPEAR AT THE HEARING: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO HAVE THE HEARING REPORTED: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:
https://www.scscourt.org/general_info/court_reporters.shtml

TO SET YOUR NEXT hearing date: You no longer need to file a blank notice of motion to obtain a hearing date. **Phone lines are now open for you to call and 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. Civil Local Rule 8C is in the amendment process and will be officially changed by January 2024.

Where to call for your hearing date:	408-882-2430
When you can call:	Monday to Friday, 8:30 am to 12:30 pm

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	20CV365194	Amed 21, Inc. et al vs Ismail Unlu	Off calendar.
2	21CV375332	Chris Wilson vs SoundHound Inc. et al	SoundHound, Inc.'s Demurrer to the Fourth and Tenth Causes of Action is SUSTAINED WITHOUT LEAVE TO AMEND; its demurrer to the Eleventh Cause of Action is OVERRULED. Please scroll down to Line 2 for full tentative ruling. The parties are ordered to appear for trial setting. Court to prepare formal order.
3	21CV378212	Rachelle Fraga Quinonez et al vs Ford Motor Company et al	Plaintiffs' Motion to Reconsider Order Compelling Arbitration is DENIED. Please scroll down to Line 3 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
4	22CV393684	Anthony Santos, III vs MOLLY TWILLEAGER	Defendant's demurrer to the fifth cause of action is SUSTAINED WITHOUT LEAVE TO AMEND but otherwise OVERRULED. Please scroll down to Line 4 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
5	20CV370807	Shadi Figuli et al vs Ali Milaninia et al	Off calendar.
6	19CV343869	Luis Sanchez et al vs Ali Nowaid et al	While there appears to be good cause to grant Plaintiffs' Motion to Enforce Settlement, the Court was unable to locate a proof of service demonstrating service of an amended notice of motion with the October 17, 2023 hearing date, and Code of Civil Procedure 664.4 requires entry of judgment "upon motion." The California Code of Civil Procedure, Rules of Court and Civil Local Rules require that the moving party serve a written notice of motion with the hearing date and time. (See Code Civ. Proc. §§1005(a), 1010.) A court lacks jurisdiction to hear a motion that has not been properly served, even if there is a claim that the non-moving party had some type of advanced notice. (See *Diaz v. Professional Community Mgmt.* (2017) 16 Cal.App.5th 1190, 1204-1205; *Five-O-Drill Co. v. Superior Court of Los Angeles County* (1930) 105 Cal. App. 232.) Under Civil Local Rule 8(C), the moving party must file and serve an amended notice of motion with the hearing date once the clerk assigns a date. Accordingly, the Court CONTINUES Plaintiff's motion to enforce settlement to November 14, 2023 at 9 a.m. in Department 6. Plaintiff is ordered to file a proof of service of the amended notice of motion with the November 14, 2023 at 9 a.m. hearing date and time. If such proof of service is not filed with the court, Plaintiff's motion will be denied without prejudice at the next court date. Court to prepare formal order.
7	19CV356261	Sherry Chuang vs Shiuh Chuang et al	Defendant Mei Haw Chuang's Motion for Stay is GRANTED, conditioned on posting of an undertaking in the amount of $316,242.00 and other conditions outlined in the opinion. Please scroll down to Line 7 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.

8	21CV378850	Bobbi Rodriquez vs Diane Rodriguez	The parties are ordered to appear for oral argument.
9	21CV381630	Phillip Manithep vs Porntiwa Tantiyavarong	The parties are ordered to appear for oral argument.
10	21CV389961	Hailing Yu et al vs Caixing Xie	Welkin International Industrial, Inc.'s Motion for Leave to File Cross-Complaint is GRANTED. An amended notice of motion with this hearing date was served. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) Moreover, Welkin's proposed cross-complaint is compulsory. Accordingly, there is good cause to grant this motion. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
11	22CV397918	Devinder Shoker et al vs Venkatapathi Rayapati et al	System Architecture Information Technology ("SAI"), Venkatapathi N Rayapati and Vijayasri Rayapati's Motion for Leave to File a Cross-Complaint is GRANTED. This cross complaint is compulsory. Cross-Defendant's objections to the cross-complaint are substantive and can be addressed through demurrer and/or motion for summary judgment/adjudication. The Court further notes numerous motions to compel set on different dates throughout December (12/12, 12/14, 12/19 and 12/21). The Court VACATES the 12/12, 12/14 and 12/21 dates and RESETS those motions to compel for December 19, 2023 at 9 a.m. in Department 6 to join with the other motions to compel already set on that date. Briefing schedule per code. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
12	20CV367561	ZACHARY KOWITZ et al vs MICHAEL KOWITZ et al	The parties are ordered to appear for oral argument.
13	20CV367561	ZACHARY KOWITZ et al vs MICHAEL KOWITZ et al	The parties are ordered to appear for oral argument.
14	20CV367561	ZACHARY KOWITZ et al vs MICHAEL KOWITZ et al	The parties are ordered to appear for oral argument.
15	20CV367561	ZACHARY KOWITZ et al vs MICHAEL KOWITZ et al	The parties are ordered to appear for oral argument.

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Calendar Line: 2
Case Name: *Chris Wilson v. Soundhound, Inc., et al.*
Case No.: 21CV375332

Before the Court is Defendants SoundHound, Inc., SoundHound AI, Inc. ("SoundHound AI"), and Keyvan Mohajer's (collectively, "SoundHound" or "Defendants") demurrer to Plaintiff Chris Wilson's third amended complaint ("TAC"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises from Wilson's alleged wrongful termination. According to the TAC, Wilson was employed by SoundHound from November 29, 2011 to August 30, 2019. (TAC, ¶ 12.) SoundHound is a digital voice application company that enables humans to speak naturally to their smartphones and other devices. (TAC, ¶ 13.) Wilson was initially hired as a Principal Engineer and later he was promoted to Architect. (TAC, ¶ 14.) He created a significant amount of SoundHound's intellectual property, and he was an integral employee. (TAC, ¶ 14.)

Over the course of his seven-and-a-half-year employment, Wilson received 170,000 shares in stock option grants, in addition to his annual base salary and cash bonuses. (TAC, ¶¶ 15-17.) As of September 2019, 147,500 shares of stock had vested, totaling approximately $4.8 million to $5.9 million in equity. (TAC, ¶ 17.)

On May 10, 2019, without advanced notice or good cause, SoundHound placed Wilson on a leave of absence, and in September 2019, terminated his employment. (TAC, ¶ 18.) The termination was the culmination of an unlawful retaliation campaign against Wilson for exercising his privacy rights under the California Constitution by refusing to sign an intrusive digital data agreement with SoundHound, whereby the company sought to monitor all professional and personal communications of all employees on any device at any time. (*Ibid*.) After the termination, SoundHound refused to permit Wilson to exercise the equity on the terms agreed to in his written and oral employment contracts. (TAC, ¶ 19.)

Wilson initiated this action on January 24, 2021, and on February 6, 2023, he filed his amended complaint for: (1) wrongful termination in violation of public policy; (2) retaliation; (3) detrimental reliance; (4) violation of the covenant of good faith and fair dealing; (5) fraud and deceit; (6) declaratory

relief and specific performance; (7) reformation and partial recission; (8) injunctive relief; (9) breach of fiduciary duty; (10) violation of penal code sections 484 & 496; and (11) failure to maintain wage statements. SoundHound filed a demurrer to the fourth, tenth, and eleventh causes of action. On June 9, 2023, the Court issued its order sustaining the demurrer to the amended complaint.

On June 20, 2023, Wilson filed his TAC, asserting the same causes of action.[1] On July 19, 2023, SoundHound filed the instant demurrer to the fourth, tenth, and eleventh causes of action on the ground they fail to allege sufficient facts to state a claim (Code Civ. Proc., § 430.10, subd. (e)), which Wilson opposes.

II. Legal Standard

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

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

[1] While the caption states the fraud and deceit claim is the fifth cause of action, the TAC alleges it as the fourth cause of action.

A. Fourth Cause of Action: Fraud and Deceit

To state a claim for fraud, a plaintiff must plead the following elements: (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 792 (*West*.) "Fraud must be pleaded with specificity rather than with general and conclusory allegations. The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." (*Id*. at 793 [citation and quotation marks omitted].)

SoundHound identifies the following allegations upon which this claim is based:

(1) SoundHound's payment of stock options to Wilson;

(2) SoundHound's purported promise that Wilson would be "very wealthy";

(3) Wilson's claim that he was not told about the possibility of losing stock options;

(4) SoundHound would be "very generous" in the event of his separation; and

(5) SoundHound misrepresented the "risk" of losing stock options.

The Court addressed the second statement in the prior demurrer and found it to be nonactionable as it constitutes an opinion.[2] (See June 9, 2023, Order Sustaining Demurrer (the "Order") ["Statements regarding the *future* value of Wilson's stock options and that he would be wealthy because of them are essentially predictions and thus nonactionable opinions."]; see also *Padgett v. Phariss* (1997) 54 Cal.App.4th 1270, 1284 [real estate broker's opinion as to fair market value of property].) Thus, the Court will focus on the remaining representations.

1. Payment of Stock Options to Wilson

[2] Additionally, Wilson states he does not predicate his fraud claim upon Mohajer's representations that SoundHound "intends to be generous". (TAC, ¶ 33; Opp., p. 6:3-4.)

Wilson alleges prior to his employment, he reached an agreement with Mohajer that he would be paid below market rate but that he would be compensated for the difference through stock options that *he would be able to exercise*. (TAC, ¶ 24, [emphasis added].) He further alleges that to exercise his stock options, it was necessary for the stock to become liquid through an IPO, a sale of the company, or another liquidity event. (TAC, ¶ 27.) Each time the stock grants were issued to Wilson, Mohajer made representations to him that he would be able to liquidate his stocks during the occurrence of a liquidity event. (TAC, ¶ 28.)

The Court examined this issue on the prior demurrer and stated, "[a]s for the statement that Wilson would be given an opportunity to liquidate those options, as currently pleaded this allegation is far too general to meet the heightened pleading standard for fraud." (Order, pp. 4:28-5:2.)

Defendants argue to the extent this claim is based on this representation, it is time-barred. (See Cod Civ. Proc., § 338, subd. (d) [three year statute of limitations for a fraud claim].) However, the statute states the claim "is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." (*Ibid*.) Here, Wilson alleges he discovered the alleged fraudulent scheme after he was terminated. (TAC, ¶ 112.) He commenced this action within three years of discovery. Thus, it is not time-barred.

Next, Defendants argue there was no misrepresentation because Wilson was paid partially in stock options, and he was able to exercise those stock options at a liquidity event. Wilson contends he was promised the right to exercise stock options at a liquidity event but was not informed that his ability to exercise the stock options was available only *as long as he was employed by the company*. (Opp., p. 5:10-11.)

Wilson received stock option grants on the following dates:

(1) December 12, 2011: 40,000 shares at $2.43 per share;

(2) July 10, 2014: 40,000 shares at $5.18 per share;

(3) July 28, 2015: 40,000 shares at $7.72 per share;

(4) September 3, 2016: 20,000 shares at $12.01 per share;

(5) September 6, 2017: 20,000 shares at $12.10 per share; and

(6) September 3, 2018: 10,000 shares at $14.47 per share. (TAC, ¶ 25.)

On October 17, 2018, Wilson exercised his stock options and sold 10% of his shares, a total of 17,000 shares, to investors. (TAC, ¶¶ 29-30.) Thus, Wilson was able to exercise his stock options at a liquidity event. Another liquidity event did not occur before his termination. (TAC, ¶ 32.) On September 7, 2019, after his termination, SoundHound approached Wilson with a "Separation and Consulting Agreement" (the "Advisory Agreement"), which gave him an opportunity to exercise his stock options upon the occurrence of a liquidity event. (TAC, ¶ 63.) Wilson declined to agree to the Advisory Agreement for reasons including, but not limited to, the fact that it would require him to put up $1,224,399.56 in cash to exercise his vested options. (TAC, ¶¶ 33, 67, 71.)

Wilson essentially argues he was entitled to retain the stock options and exercise them at the next occurrence of a liquidity event, even after his termination. First, a liquidity event was not guaranteed, as Wilson notes. (See TAC, ¶ 27 ["In order for Mr. Wilson to exercise his stock options, it was necessary for the stock to become liquid through an IPO, a sale of the company, or another liquidity event"]; see also TAC, ¶ 43 ["Mr. Wilson was aware of the risk that the company might fail before reaching a liquidity event or could be financially unsuccessful enough that a liquidity event would provide little to no value."].) Therefore, the alleged misrepresentations pertained to future events and are not actionable. (See C*ansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469 (*Cansino*) ["Statements or predictions regarding future events are deemed to be mere opinions which are not actionable"].)

Further, Wilson alleges he was told he would be able to exercise his stock options during the occurrence of a liquidity event, and Wilson was given that opportunity and successfully did so in October 2018. (TAC, ¶¶ 29-30.) The last issuance of stock options grants occurred before the liquidity event where he sold stock. (*Ibid*.) In fact, Wilson alleges he and Mohajer discussed the fact that "they were both able to exercise their stock option grants because there was a liquidity event; and as a result, they were able to cash out stock without having to come up with cash they did not otherwise have". (TAC, ¶ 31.) Wilson was also presented the opportunity to exercise his options after his termination. (See TAC, ¶ 63.) Wilson does not allege Mohajer made further representations after the liquidity event that he would be able to exercise the option upon the occurrence of *another* liquidity event or that the agreement was for Wilson to be able to exercise the options at *any* or *every* liquidity event, even post-termination. Thus, the representation was not false and does not support Wilson's fraud claim.

a. Wilson's Claim That He Was Not Told About the Possibility of Losing Stock Options

Wilson also alleges he was not informed, at any time, of the possibility of losing stock options if he left the company or he would need to provide significant cash outlay to exercise his options. (TAC, ¶ 26.)

Defendants argue the misrepresentations cannot support the fraud claim because they pertain to future events and Mohajer did not have a duty to disclose such information to him. Wilson fails to address these arguments in opposition.

The essential elements of a fraud cause of action based on concealment, nondisclosure or omission are: (1) the defendant had a duty to disclose the concealed or suppressed fact to the plaintiff; (2) the defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, and (3) the plaintiff was damaged as a result. (*Jones v. ConocoPhillips* (2011) 198 Cal.App.4th 1187, 1198.)

Wilson fails to allege SoundHound had a duty to disclose any facts to him, and the occurrence of a liquidity event was not guaranteed. (See TAC, ¶ 43.) Wilson was also aware that exercising his options outside of a liquidity event would cost money. (See TAC, ¶ 31.) And Wilson's departure from the company, although a possibility, was a future event. Therefore, it is unclear how SoundHound could have suppressed the possibility of losing the stock options or having to exercise his stock options before a liquidity event with intent to defraud Wilson if the possibilities were uncertain to occur.

b. SoundHound Misrepresented the "Risk" of Losing Stock Options

Wilson alleges Mohajer engaged in a long-term campaign of disinformation, in which he withheld information about the risk that SoundHound would choose to take away Wilson's ability to exercise his shares before a liquidity event, even if the company was successful. (TAC, ¶ 43.) He further alleges Mohajer was aware of such a risk and actively represented to Wilson that there was no such risk. (*Ibid*.)

Defendants argue this misrepresentation lacks the specificity required to meet the heightened pleading standard. Wilson fails to oppose this argument.

As discussed above, Wilson's allegation is contradicted by the fact that he was given the opportunity to exercise his shares at a liquidity event. Moreover, the alleged misrepresentations that "SoundHound would choose to take away Mr. Wilson's ability to exercise his shares before a liquidity event even if the company was successful" (TAC, ¶ 43) clearly pertains to future events, which are not actionable. (See *Cansino, supra,* 224 Cal.App.4th at p. 1469.) Furthermore, Wilson's assertion that Mohajer was aware of the alleged risk is contradicted by the fact that Wilson was given the opportunity to exercise his shares during the occurrence of a liquidity event. (See TAC, ¶¶ 29-30.) Therefore, the alleged misrepresentation does not constitute a false misrepresentation. As a result, this does not support Wilson's fraud claim. Consequently, Wilson fails to allege any actionable false misrepresentation of past or existing material fact. (See *West, supra,* 214 Cal.App.4th at p. 792.)

Wilson must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 (*Goodman*) [citations omitted].) "Plaintiffs have the burden to show how they could further amend their pleadings to cure the defects. (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 411 (*Carter*) [citations omitted].) Here, Wilson does not request leave to amend. Thus, the demurrer to the fourth cause of action is SUSTAINED without leave to amend.

2. Tenth Cause of Action-Violation of Penal Code Sections 484 and 496

Penal Code section 484 defines theft, i.e., the taking of money, labor, or real or personal property of another, to include theft by false pretense. (Pen. Code, § 484, subd. (a); *People v. Gomez* (2008) 43 Cal.4th 249, 255, fn. 4.) "Penal Code section 496, subdivision (a) … makes receiving or buying property 'that has been obtained in any manner constituting theft' a criminal offense punishable by imprisonment. Section 496, subdivision (c) ... provides that any person 'who has been injured by a violation of [section 496, subdivision (a)] … may bring an action for three times the amount of actual damages, if any, sustained by plaintiff, costs of suit, and reasonable attorney's fees." (*Bell v. Feibush* (2013) 212 Cal.App.4th 1041, 1043.) "[T]he elements required to show a violation of section 496, subdivision (a), are simply that (i) property was stolen or obtained in a manner constituting theft, (ii) the defendant knew the property was stolen or obtained, and (iii) the defendant received or had possession of the stolen property." (*Switzer v. Wood* (2019) 35 Cal.App.5th 116, 126 (*Switzer*).) Statutory causes of action must

be pleaded with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790 (*Covenant Care*).)

SoundHound argues this claim fails because it relies on the same facts as the fraud claim which fails as well. The demurrer to the fraud claim has been sustained. Therefore, to the extent this claim is predicated on same allegations as the fraud claim, those allegations are insufficient to support this claim. However, Wilson also alleges theft based on representations regarding requirement of a release of claims.

On April 26, 2022, SoundHound, Inc. merged with Archimedes Tech SPAC Partners Co. and created SoundHound AI. (TAC, ¶ 74.) As a result, all outstanding shares of SoundHound, Inc., including Wilson's exercised shares were cancelled in exchange for the right to receive shares of SoundHound AI. (*Ibid*.) As part of the merger, on May 1, 2022, SoundHound AI's transfer agent, sent Wilson a release agreement (the "Release Agreement"), which it claims was necessary to receive the new shares to replace the cancelled SoundHound, Inc. shares. (TAC, ¶ 75.) The Release Agreement would have required Wilson to release all claims against SoundHound, Inc., which would have released claims asserted in this matter. (*Ibid*.) Wilson provided a modified agreement, which did not release his claims and SoundHound AI refused to accept it, as the price paid for the new stock dropped from $18.14 to $2.77. (TAC, ¶ 76.) On May 16, 2022, SoundHound AI provided an acceptable modified Release Agreement, which caused a 15-day delay in Wilson's ability to sell his stock at prices ranging from $5.41 to $5.45 and resulted in a loss of $212,015. (TAC, ¶ 77.)

Wilson fails to identify the alleged fraudulent representations in the Release Agreement that constitute theft. (See *Covenant Care, supra,* 32 Cal.4th at p. 790.) Moreover, it appears the parties agreed on an acceptable modified Release Agreement. (See TAC, ¶ 77.) Furthermore, SoundHound AI obtained the stock through a merger, therefore, Wilson fails to allege how the stocks were obtained under false pretenses or how SoundHound AI knew the property was obtained through false pretenses at the time it allegedly withheld the property from Wilson. (See TAC, ¶ 74; see also *Switzer, supra,* 35 Cal.App.5th at p. 126.) Therefore, Wilson fails to allege sufficient facts to state this claim. Wilson does not request leave to amend. Thus, the demurrer to the tenth cause of action is SUSTAINED without leave to amend.

3. Eleventh Cause of Action-Failure to Maintain Payroll Records (Labor Code sections 226, 1174, 1174.5)

Labor Code section 226 imposes a penalty on employers for failing to provide accurate wage statements to its employee semimonthly or at the time of each payment. Actions upon a statute for a penalty have a one-year statute of limitations pursuant to Code of Civil Procedure section 340, subdivision (a). Labor Code section 1174, subdivision (d), requires employers to "keep, at a central location, in the state… payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by… employees employed at the respective plants or establishments." (Lab. Code, § 1174, subd. (d).) Labor Code section 1174.5, states any employer in violation of Section 1174, subdivision (d), "shall be subject to a civil penalty of five hundred dollars ($500)." (Lab. Code, § 1174.5.)

Wilson's last day of employment was August 30, 2019. (TAC, ¶ 12.) The initial complaint was filed on January 24, 2021, which is more than one year later. Thus, the claim appears time-barred. However, Wilson argues delayed discovery applies here.

"'In order to rely on the discovery rule for delayed accrual of a cause of action, "[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence." ' [Citations.]" (*NBC Universal Media, LLC v. Superior Court* (2014) 225 Cal.App.4th 1222, 1232 (*NBC*); see also *April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 832 ["plaintiff must plead facts sufficient to convince the trial judge that delayed discovery was justified"].) "When a plaintiff relies on a theory of fraudulent concealment, delayed accrual, equitable tolling, or estoppel to save a cause of action that otherwise appears on its face to be time-barred, he or she must specifically plead facts which, if proved, would support the theory." (*Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 641 (*Mills*).)

As the Court noted in the Order, "SoundHound paid Wilson during his employment and Section 226 pertains to statements that should have been provided *directly to Wilson* at the time." (See Order, p. 7:2-3.) Wilson fails to allege any facts regarding delayed discovery of a violation of Section 226.

However, "a demurrer does not lie to a portion of a cause of action." (See *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682.) Therefore, the demurrer cannot be sustained on this basis.

As to Section 1174, subdivision (d), Wilson alleges he did not discover SoundHound's failure to maintain his payroll records until written discovery in this matter, and after August 23, 2023, when his requests for production of his payroll records were not produced. (TAC, ¶ 151.) He further alleges he had no reason, prior to discovery in this matter, to request his payroll records and discover that SoundHound did not maintain them. (TAC, ¶ 152.) Therefore, it appears that Wilson could not have discovered SoundHound's failure to maintain payroll records until he requested them and did not receive them. SoundHound fails to provide any authority nor is the Court aware of any authorities, which state that employees have an obligation to ensure their employer's maintenance of payroll records. Accordingly, Wilson states sufficient facts to allege delayed discovery and this claim is not time-barred. Thus, the demurrer to the eleventh cause of action is OVERRULED.

Calendar Line: 3
Case Name: *Rachelle Fraga Quinonez et al vs Ford Motor Company et al*
Case No.: 21CV378212

Before the Court is Plaintiffs Rachelle A. Fraga Quinonez and Paul Pena Quinonez's Motion for Reconsideration of the Court's October 5, 2021 Order Compelling Arbitration. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This is a lemon law case. Plaintiffs allege they purchased a 2015 Ford Fusion (the "Vehicle") on or about January 24, 2015 and that in connection with that purchase they received various warranties from Ford Motor Company ("FMC"). (Complaint, ¶¶9-10.) Plaintiffs further allege that the Vehicle experienced transmission and engine defects during the warranty period. (Complaint, ¶11.)

Plaintiffs filed this lawsuit on February 22, 2021 alleging (1) Violation of Civil Code Section 1793.2(D) (against FMC); (2) Violation of Civil Code Section 1793.2(B) (against FMC); Violation of Civil Code Section 1793.2(A)(3) (against FMC); (4) Violation of Civil Code Sections 1791.2(a), 1794 (against FMC); (5) breach of the implied warranty of merchantability (against Visalia Ford (where Plaintiffs purchased the Vehicle)); and (6) fraudulent inducement-concealment (against FMC). After FMC filed a motion to compel arbitration, Plaintiffs dismissed Visalia Ford without prejudice on September 15, 2021.

At the time of purchase, Plaintiffs entered a Retail Installment Contract—Simple Finance Charge (With Arbitration Provision) ("RISC"). Based on the language in that agreement, the Court (Hon. Christopher Rudy) compelled this matter to arbitration, stating: "The court believes that the holding of *Felisilda* is binding under the facts of this case." (Oct. 5, 2021 Order, p. 5.) In light of recent case law, Plaintiffs now seek reconsideration of that order.

II. Legal Standard and Analysis

Code of Civil Procedure section 1008 (c) provides that if the court "at any time determines that there has been a change of law that warrants it to reconsider a prior order it entered, it may do so on its own motion." (*Farmers Ins. Exch. v. Sup. Ct.* (2001) 218 Cal.App.4th 96, 106-07.) There is no time limitation on this inherent power; the court may change interim orders based on a change of law at any time before final judgment is entered. (*Blake v. Ecker* (2001) 93 Cal.App.4th 728, 739.) In considering

whether to reconsider a prior order, the court should examine the extent of preparation in the case, the proximity of a trial date, and "the materiality of the change in the law and the potential for prejudice to any of the parties." (*Phillips v. Sprint PCS* (2012) 209 Cal. App. 4th 758, 769.)

The undersigned Court did not compel this case to arbitration. "Generally, one trial court judge may not reconsider and overrule an interim ruling of another trial judge. . . This principle is founded on the inherent difference between a judge and a court and is designed to ensure the orderly administration of justice. 'If the rule were otherwise, it would be only a matter of days until we would have a rule of man rather than a rule of law. . .defendants would try another and another judge until finally they found one who would grant what they were seeking. Such a procedure would instantly breed lack of confidence in the integrity of the courts.'" (*In re Marriage of Oliverez* (2015) 238 Cal. App. 4th 1242, 1249-1250; see also *Morite of California v. Superior Court* (1993) 19 Cal.App.4th 485, 493; *Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1232.)

"However, there are narrow exceptions to this general rule. . . Another exception is when the facts have changed or when the judge has considered further evidence and law." (*In re Marriage of Oliverez* (2015) 238 Cal. App. 4th 1242, 1249-1250, citing *People v. Riva* (2003) 112 Cal.App.4th 981, 992–993 ("Factors to consider include . . . *whether there has been a change in circumstances since the previous order was made*") (emphasis added); *Tilem v. City of Los Angeles* (1983) 142 Cal.App.3d 694, 706.) Here, the legal landscape regarding motions to compel arbitration brought by manufacturers under RISC agreements has substantially changed since Judge Rudy sent this case to arbitration.

As explained above, Judge Rudy's prior order rested on the reasoning in *Felisilda*, then the only controlling case with facts remotely analogous to those here. Since that ruling, numerous cases — *Ford Motor Warranty Cases* (2023) 89 Cal. App. 5th 1324, *Montemayor v. Ford Motor Company* (June 26, 2023) 92 Cal.App.5th 958, *Kielar v. Superior Court of Placer County* (Aug. 16, 2023) C096773 and *Morgan v. Sundance* (2022) 142 S.Ct. 1708) — have held that a manufacturer, like FMC here, cannot enforce an arbitration agreement contained in the RISC entered by the dealership and the purchaser.

Further, at least one trial court under the Third District has determined that *Felisilda* does not apply to manufacturers' motions to compel arbitration. And while trial court decisions are not binding on this Court, they are informative. More recently, the Third District, which authored *Felisilda* has

declined to follow its own decision: "we join those recent decisions that have disagreed with *Felisilda* and conclude the court erred in ordering arbitration. (*Montemayor v. Ford Motor Co.* (2023) 92 Cal.App.5th 958, 968–971 [310 Cal.Rptr.3d 82] (*Montemayor*); *Ford Motor Warranty Cases* (2023) 89 Cal.App.5th 1324, 1333–1336 [306 Cal. Rptr. 3d 611], review granted July 19, 2023, S279969 (*Ford Motor*).)" (*Kielar v. Superior Court* (2023) 94 Cal. App. 5th 614, 617.) Judge Rudy did not have this law in front of him when he first considered FMC's motion to compel arbitration.

The Court also does not find persuasive FMC's argument that the Court lacks jurisdiction to do anything in this case once the case is sent to arbitration, as no judgment has been entered, thus the case remains pending before it. A trial court has discretion to stay cases on its own or a party's motion. (See California Rule of Court 3.515, *Freidberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, *Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367.) As noted above, trial courts also have the inherent authority to modify prior orders when there is a change of law, so long as judgment has not yet been entered. It thus follows that a trial court may lift an arbitration stay and reconsider an arbitration order, in whole or in part, at any time before judgment is entered.

However, in this case, arbitration is scheduled for November 6, 2023—just a few weeks from the hearing on Plaintiffs' motion for reconsideration. This case has been stayed for over two years, and Plaintiffs' decisions to (1) dismiss Visalia only after FMC filed its petition to compel arbitration, which is similar to the plaintiff in *Felisilda* and (2) delay by 7 months moving forward with even starting arbitration once the Court's October 5, 2021 order issued have plainly prejudiced FMC. As noted, the court is to examine the extent of preparation in the case, the proximity of a trial date, and "the materiality of the change in the law and the potential for prejudice to any of the parties" when deciding whether to reconsider a prior order. (*Phillips v. Sprint PCS* (2012) 209 Cal. App. 4th 758, 769.) Here, these factors dictate Plaintiffs' motion for reconsideration be denied. The parties have prepared for arbitration, which is imminent, and Plaintiffs here engaged in similar litigation steps engaged in by the *Felisilda* plaintiffs.

Accordingly, Plaintiffs' motion for reconsideration is DENIED.

Calendar Line: 4
Case Name: *Anthony Santos III v. Molly "Theodore" Twilleager*
Case No.: 22CV393684

Before the Court is Defendant Molly Theodore Twilleager's Demurrer to Plaintiff Anthony Santos III's First Amended Complaint ("FAC"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This is a defamation and interference action arising out of alleged false accusations of sexual misconduct made on social media. As alleged in the FAC, Plaintiff is an untenured teacher and coach who was and is employed by the Campbell Union School District ("CUHSD") and the Foothill-De Anza Community College School District ("FHDA"). (FAC, ¶ 8.) In early December 2021, Plaintiff began interviewing for promotion to a full-time tenured coach with FHDA and was told that he would likely be accepted for the position. Plaintiff had worked at FHDA for 14 years (6 years as the part-time head football coach). (FAC, ¶ 9.)

Prior to Defendant's alleged defamatory publishing, a student ("Student Accuser") privately complained to the school administrator that Plaintiff intentionally made improper contact with her in a public area of the school. An investigation by Plaintiff's employers and the police concluded the accusation was untrue. The matter was investigated privately to protect both the privacy of the Student Accuser and Plaintiff. (FAC, ¶ 11.) There was no publicly available information or discussion about this incident until Defendant's acts.

Plaintiff discovered Defendant published false and defamatory statements on the Internet to various sites, including Change.org, Instagram, Facebook, and Next Door on or about December 6, 2021. (FAC ¶ 12.) Defendant's posted statements included: (1) "Anthony Santos was temporarily removed from the Westmont high school campus in Campbell California due to accusations of sexual misconduct with his students"; (2) "there were 16 accounts of sexual misconduct with [other] students (minors)"; (3) Plaintiff was a "predator disgustingly close to students"; and (4) "[Plaintiff] got arrested not even that long ago for sexual misconduct with 10th grader." (FAC, ¶¶ 10, 13, 14.)

Defendant had no knowledge of any allegations made by other students against the Plaintiff and simply "made them up". (FAC ¶ 12.) In fact, after the Student Accuser's allegations were investigated and no wrongdoing was found, Plaintiff was allowed to return to school and his job. (FAC ¶ 10.)

Defendant also posted a petition on www.change.org titled "Remove Anthony Santos from Westmont High School Staff" to encourage the school to remove the Plaintiff. Defendant succeeded in obtaining 960 signatures along with disparaging remarks. (FAC ¶ 15.) Shortly after, the school administrator met with Defendant and asked her to "name the 16 accounts of sexual misconduct" and she could not. Defendant continued to republish the defamatory posts after this meeting, even though she was told that her accusations were false. (FAC ¶ 17.)

On December 10, 2021, Plaintiff notified the Defendant, in writing, that her statements were defamatory. Plaintiff demanded Defendant remove these posts from all social media and post a public apology. Defendant took down the posts, but she refused to admit that they were defamatory and refused to correct the damage she had done to Plaintiff's reputation. (FAC, ¶ 18)

Consequently, Plaintiff filed this suit on January 24, 2022, and subsequently amended it on May 3, 2023, to state causes of action for: (1) Defamation, (2) False Light, (3) Public Disclosure of private Facts, (4) Intentional Infliction of Emotional Distress, (5) Negligent Infliction of Emotional Distress, (6) Intentional Interference With Contract Relations, (7) Intentional Interference With Prospective Economic Advantage, and (8) Negligence.

II. Legal Standard

A demurrer tests the sufficiency of a complaint and raises only questions of law. (*Schmidt v. Foundation Health* (1995) 35 Cal.App.4th 1702, 1706.) On a demurrer, the court must assume the truth of (1) the properly pleaded factual allegations; (2) facts that can be reasonably inferred from those expressly pleaded; and (3) judicially noticed matters. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

The court may not consider contentions, deductions, or conclusions of fact or law. (*Moore v. Conliffe* (1994) 7 Cal.App.4th 634, 638.) Because a demurrer tests the legal sufficiency of a complaint, a plaintiff must demonstrate that the complaint alleges facts sufficient to establish every element of each cause of action. (*Rakestraw v. California Physicians Service* (2000) 81 Cal.App.4th 39, 43.) Where the complaint fails to state facts sufficient to constitute a cause of action, courts should

sustain the demurrer. (Code of Civ. Proc. §430.10(e); *Zelig v. County of Los Angeles* (2002) 27 Cal.App.4th 1112, 1126.)

Sufficient facts are the essential facts of the case "with reasonable precision and with particularity sufficiently specific to acquaint the defendant with the nature, source, and extent of his cause of action." (*Gressley v. Williams* (1961) 193 Cal.App.2d 636, 643-644.) Whether the plaintiff will be able to prove the pleaded facts is irrelevant. (*Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 609-610.) A pleading is required to assert general allegations of ultimate fact. Evidentiary facts are not required. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47; *Lim v. The.TV Corp. Internat.* (2002) 99 Cal. App. 4th 684, 690.)

III. Analysis

Pursuant to Cal. Code Civ. Proc. Section 430.10(e), Defendant demurrers to the third, fifth, sixth, seventh, and eighth causes of action on the ground that each challenged claim fails to state facts sufficient to constitute a cause of action.

A. Third Cause of Action: Public Disclosure of Private Facts

"To state a claim for violation of the constitutional right of privacy, a party must establish (1) a legally protected privacy interest; (2) a reasonable expectation of privacy under the circumstances; and (3) a serious invasion of the privacy interest." (*Moreno v. Hanford Sentinel, Inc.* (2009) 172 Cal.App.4th 1125, 1129.) Four kinds of activities have been found to violate the constitutional right to privacy and give rise to tort liability: (1) intrusion into private matters, (2) public disclosure of private facts, (3) publicly placing a person in a false light, and (4) misappropriation of a person's name or likeness. Thus, the elements of a public disclosure of private facts are (1) a public disclosure, (2) of a private fact, (3) which would be offensive and objectionable to the reasonable person, and (4) which is not of legitimate public concern. (*Id.* at 1129-30.) Here, Defendant asserts the allegations of sexual misconduct between Plaintiff and co-students of Defendant are a legitimate matter of public interest.

Courts have broadly construed "public interest" to include private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity. (*Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479 (*Damon*); accord, *Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456, 1468 (*Ruiz*); *Wilbanks v. Wolk* (2004)

121 Cal.App.4th 883, 893.) Defendant relies on two cases, *Morrow v. Los Angeles Unified School Dist*., (2007) 149 Cal.App.4th 1424, (*Morrow*) and *Terry v. Davis Community Church*, (2005) 131 Cal.App.4th 1534 (*Terry*), to support her position that her postings were a matter of public interest.

In *Morrow v. Los Angeles Unified School Dist*., (2007) 149 Cal.App.4th 1424, a school superintendent sued a newspaper that published information about his retirement in relation to a then current spate of school violence. The court found the publications to be a matter of public interest because "the incidents of student violence on the Jefferson campus were of public interest" and the newspaper only mentioned the superintendent's private retirement plans in connection with that issue of public interest without adding any "gratuitous" details.

In *Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, a church pastor disseminated a confidential report by a church investigative committee to about 100 people. In the report, the committee substantiated complaints by a girl's parents that two adult youth group leaders had developed and pursued an inappropriate relationship with the girl. The committee found that the two adults were grossly negligent and insubordinate, concluded that their termination was warranted, and recommended various measures to prevent a recurrence of such misconduct. (*Id.* at pp. 1540–1543.) The court found: "the communications clearly involved issues of public interest, because they involved the societal interest in protecting a substantial number of children from predators … ." (*Id.* at p. 1547.) "The issue as to whether or not an adult who interacts with minors in a church youth program has engaged in an inappropriate relationship with any of the minors is clearly a matter of public interest. The public interest is society's interest in protecting minors from predators, particularly in places such as church programs that are supposed to be safe." (*Ibid.*)

In both of Defendant's cited cases, there was an investigation that confirmed wrongdoing before the information was made public. Here, the investigation concluded there was no wrongdoing. Thus, the Court finds *M.G. v. Time Warner, Inc*. (2001) 89 Cal.App.4th 623 (*Time Warner*) instructive.

There, to illustrate stories about adult coaches who sexually molest young athletes, the defendants used in their 1999 magazine article and television show a 1997 photograph of a Little League team in which the team's manager had pleaded guilty to molesting five children he coached in that league. (*Time Warner*, 89 Cal.App.4th at 626.) The molested players, non-molested players, and two

adult assistant coaches depicted in the photograph sued, and the defendants sought anti-SLAPP protection. The court did conclude that use of the photograph was protected conduct because "child molestation in youth sports" was an issue like domestic violence that "is significant and of public interest." (*Id.* at 629, fn. omitted.) However, the court went on to deny anti-SLAPP protection, finding that the plaintiffs' claims for disclosing private facts was viable. The court reasoned that while playing on or coaching for a little league team is not "secret", lack of secrecy is not the same as lack of privacy and "disclosure of information connecting a person with sexual molestation potentially may offend a reasonable person." (*Id.* at 631.)

Here, taking the FAC allegations as true as the Court must on demurrer, the investigation was conducted privately to protect both Plaintiff's and Student Accuser's identities. (*Time Warner*, 89 Cal.App.4th at 635 ("State law contains many statutes prohibiting the disclosure of the identity of both minors and victims of sex crimes. Public policy favors such protection. . ..") Contrary to Defendant's cited authorities, the FAC alleges the investigation concluded by finding Plaintiff engaged in no wrongful conduct. Defendant nevertheless published statements indicating Plaintiff had engaged in sexual contact with a student—even after Defendant was told her statements were false—revealing the existence of an accusation that was otherwise alleged to be private.

The Court finds the analysis in *M.G. v. Time Warner, Inc*. persuasive, and OVERRULES Defendant's demurrer to the third cause of action for public disclosure of private facts.

B. Fifth Cause of Action: Negligent Infliction of Emotional Distress

"The negligent causing of emotional distress is not an independent tort but the tort of negligence." (*Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.* (1989) 48 Cal.3d 583, 588.)

Plaintiff alleges general negligence as his eighth cause of action, to which Defendant has also demurred. To the extent that Defendant's negligence has caused severe emotional distress to the Plaintiff, that emotional distress is recoverable under, and subsumed by, the eighth cause of action for negligence. Plaintiff is not entitled to a double recovery i.e., emotional distress damages under negligence and emotional distress damages under negligent infliction of emotional distress.

Accordingly, the Court SUSTAINS Defendant's demurrer to the fifth cause of action for negligent infliction of emotional distress WITHOUT LEAVE TO AMEND.

C. Sixth Cause of Action: Intentional Interference with Contractual Relations

It has long been held that a stranger to a contract may be liable in tort for intentionally interfering with the performance of the contract. (*Imperial Ice* v. *Rossier* (1941) 18 Cal.2d 33.) To properly state this claim, Plaintiff must plead: (1) a valid contract between plaintiff and a third party; (2) Defendant's knowledge of this contract; (3) Defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (See *Seaman's Direct Buying Service, Inc.* v. *Standard Oil Co.* (1984) 36 Cal. 3d 752, 765-766; *Ramona Manor Convalescent Hospital* v. *Care Enterprises* (1986) 177 Cal. App. 3d 1120, 1130; *Farmers Ins. Exchange* v. *State of California* (1985) 175 Cal. App. 3d 494, 506; *Pacific Gas & Electric Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126; *Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148.)

Defendant contends:

- Plaintiff fails to allege facts showing the existence of a valid contract or a contractual term by which he was entitled to tenure. FAC contains allegations that Plaintiff was "well qualified", "given strong indications", "was likely going to be granted tenure", and was "interviewing" for the tenured position; none of which equates to a valid contract. As such, Defendant could not have interfered with a non-existing contract.
- Plaintiff pleads only conclusory allegations, not facts, that Defendant's conduct was a cause, much less a substantial factor, for Plaintiff's failure to win the tenured position.
- Plaintiff inadequately alleges, on information and belief, that Defendant knew about the tenure possibility. Plaintiff fails to provide facts about how Defendant would have known about the tenure possibility or who would have told her about it.
- Plaintiff does not allege any actual breach or disruption of his contract with Westmont; Plaintiff remains employed by Westmont.

Plaintiff points out that his claim involves two existing employment agreements: one with CUHSD and another with FHDA. Contrary to Defendant's assertion, the tenure position was promotional and not an independent position requiring an independent contract. Plaintiff argues that the cause of action for interference with contractual relationship requires only proof of interference and not

termination of the relationship. Therefore, the argument that he is still employed with CUHSD and FHDA is meritless. Plaintiff further argues that his FAC contains sufficient factual allegations showing that Defendant intentionally published defamatory statements to disrupt and interfere with his promotion to a tenured status.

The Court agrees that Plaintiff need not allege an actual or inevitable breach of contract to state a claim for disruption of contractual relations. Courts have recognized that interference with the Plaintiff's performance may give rise to a claim for interference with contractual relations when Plaintiff's performance is made more costly or more burdensome. (See *Seaman's Direct Buying Service, Inc.* v. *Standard Oil Co., supra,* 36 Cal. 3d 752, 766; *Lipman* v. *Brisbane Elementary Sch. Dist.* (1961) 55 Cal.2d 224, 232; *Ramona Manor Convalescent Hospital* v. *Care Enterprises, supra,* 177 Cal. App. 3d at pp. 1130-1131.)

Other cases teach that while the tort of inducing breach of contract requires proof of a breach, the cause of action for interference with contractual relations is distinct and requires only proof of interference. (*Shamblin* v. *Berge* (1985) 166 Cal. App. 3d 118; *Manor Investment Co.* v. *F.W. Woolworth Co.* (1984) 159 Cal. App. 3d 586, 593, fn. 3; *Pacific Gas & Electric Co. v. Bear Stearns & Co.*, *supra*, 50 Cal. 3d 1118 at 1129.)

Here the FAC alleges:

- Plaintiff was and is employed by CUHSD and FHDA. (FAC ¶ 8.)
- In early December 2021, while interviewing for a promotion to a full-time tenured coach with FHDA, Plaintiff was told he was likely going to be granted tenure in and to be accepted in that position. (FAC ¶ 9.)
- Plaintiff was well qualified and given strong indication he would be given tenure. (FAC ¶ 77.)
- On or about December 6, 2021, Plaintiff discovered that Defendant published certain provably false defamatory statements on the Internet to various places, including Change.org, Instagram, Facebook, and Next Door. (FAC ¶ 10.)
- Defendant published statements falsely stating, "Anthony Santos was temporarily removed from the Westmont high school campus in Campbell California due to accusations of sexual misconduct with his student", "there were 16 accounts of sexual misconduct with students

(minors)", Plaintiff was a "predator disgustingly close to student", and "[Plaintiff] got arrested not even that long ago for sexual misconduct with 10th grader." (FAC ¶ ¶ 10, 11, 13, 14.)

- Defendant intended that these statements be understood to mean that Plaintiff was a sexual offender or predator who had committed acts of sexual misconduct that disqualified him from being a teacher or a coach at school. (FAC ¶ 25.)
- Defendant generated a petition on Change.org, "remove Anthony Santos from Westmont High School Staff" and succeeded in obtaining 960 signatures to bully the school into terminating Plaintiff by falsehood. (FAC ¶ 15.)
- The publications of or concerning plaintiff caused damage to students, other teachers, and parents trust and respect as they had a natural tendency of disabling Plaintiff from an ability to do his job and his chosen life-commitment to his profession as a teacher. (FAC ¶ 16.)
- On or about December 8, 2021, the principal of Westmont High School, Jason Miller, brought Defendant into his office and asked her to name the 16 accounts of sexual misconduct; Defendant could not name one. (FAC ¶ 17.)
- A meeting was held between Plaintiff, CUHSD district superintendent and FHDA principal to address the hostile work environment Plaintiff was working in. Plaintiff was told "let us figure something out" but nothing transpired. (FAC ¶ 20.)
- Plaintiff was told after December 13, 2021, that he would not be given the job and no satisfactory explanation was given. Plaintiff is informed and believes, and thereon alleges that the reason he did not receive the offer was because of Defendant's false and wrongful statements. (FAC ¶ 22.)
- Plaintiff's contractual relationships have been disrupted because his performance has been made more costly or more burdensome and difficult. He is faced with uncertainty by students, teachers, and administrators who he must interact with in his employment. (FAC ¶ 77.)

The court concludes Plaintiff has stated sufficient facts showing: (1) Plaintiff had two valid contracts with third parties, (2) Defendant intentionally published alleged defamatory statements on various social media cites and incited people to sign a petition for Plaintiff's termination, (3) Defendant's statements caused a hostile work environment for Plaintiff; (4) Defendant's statements

interfered with the trust students and fellow co-workers had in the Plaintiff to the extent that the school principal asked Defendant about the sixteen counts of abuse; (5) Defendant's conduct has not only subjected Plaintiff to ridicule and mistrust, it has also led to loss of employment promotion.

Further, allegations may be made on information and belief as to "any matters that are not within [Plaintiffs] personal knowledge" if Plaintiff has "information leading [him] to believe that the allegations are true." (*Pridonoffv. Balokovich* (1951) 36 Cal.2d 788, 792.) Thus, Defendant's argument that Plaintiff's allegations about Defendant's knowledge of the tenure possibility are insufficient because alleged on information and belief is not well taken. The sixth cause of action also does not rely on Defendant's knowledge of the tenure possibility; it relies on her knowledge of the existing contracts with the school districts and her subsequent attempts to get those contracts terminated.

Accordingly, the Court OVERRULES Defendant's demurrer to the sixth cause of action for intentional interference with contractual relations.

D. Seventh Cause of Action: Intentional Interference with Prospective Economic Advantage

The necessary elements for intentional interference with economic advantage are: (1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant's action. (*Roy Allan Slurry Seal, Inc. v. Am. Asphalt S. Inc.* (2017) 2 Cal. 5th 505, 512); *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal4th 1134, 1153); *Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1290.)

"[T]he alleged interference must have been wrong by some measure beyond the fact of the interference itself. [Citation.] For an act to be independently wrongful, it must be 'unlawful, that is, …it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.' [Citation.] The independently wrongful act must be the act of interference itself, but such act must itself be independently wrongful. That is, '[a] plaintiff need not allege the interference and a second act independent of the interference. Instead, the plaintiff must plead and prove that the conduct alleged to constitute interference was independently wrongful, i.e., unlawful for reasons other than that it

interfered with a prospective economic advantage." (*Crown Imports, LLC v. Superior Court* (2014) 223 Cal.App.4th 1395, 1404.)

Here, the parties mainly dispute the sufficiency of allegations regarding Defendant's knowledge of Plaintiff's economic relationship with the school districts and probability of future economic benefits to the Plaintiff. Regarding Defendant's knowledge, the allegation that Defendant obtained 960 signatures on a petition to get Plaintiff terminated by itself permits a reasonable inference that Defendant was aware of Plaintiff's economic relationship with an employer—this is sufficient on demurrer.

As to probability of future economic benefits, the issue is whether Plaintiff's allegations are too speculative. (See *Roy Allan,* supra*,* 2 Cal. 5th 505; *Korea Supply,* supra*,* 29 Cal. 4th 1134; *Youst v. Longo* (1987) 43 Cal.3d 64.) Defendant argues that Plaintiff being "well qualified", "given strong indications" and being told "he was likely going to be granted tenure" are hopes and speculations that fail to rise to a level of probability. Citing *Roy Allen* and *Korea Supply*, Plaintiff contends that at this stage, he is not required to prove the probability of tenure since the difference between hope and "high probability" of tenure is a matter of proof at trial and for which discovery is required.

In *Roy Allen*, Plaintiffs sued the defendant for interference with prospective economic advantage when defendant won a series of contracts with a public entity by submitting unlawful bids. The trial court sustained defendant's demurrer without leave to amend and the Supreme Court affirmed reasoning (1) plaintiffs, as bidding entities, could not plead an existing economic relationship with the public entity and (2) plaintiffs could not plead protectable expectancy. Here, unlike *Roy Allen*, Plaintiff has an existing economic relationship with the school districts.

In *Korea Supply*, another contract bidding case, the court found the business relationship and corresponding expectancy was sufficiently alleged where there was an existing relationship between the broker and the plaintiff who lost the bid allegedly due to defendant's bribes and other unlawful conduct with the party selecting who would fulfill the contract. The court reasoned that the bribes and other unlawful conduct interfered with the plaintiff's relationship with its broker and probable expectation of receiving the $30 million contract based on plaintiff's work with that broker—not the relationship with the entity who put out the bid, with whom the plaintiff did not have a relationship.

The Court has already explained that Plaintiff pleads an existing relationship with the districts and that a reasonable inference can be drawn that Defendant was aware of that relationship. Defendant's continued positive employment, including the possibility of promotions, which Plaintiff alleges Defendant interfered with is sufficiently plead. Accordingly, the Court OVERRULES Defendant's demurrer to the seventh cause of action for intentional interference with prospective economic advantage.

E. Eighth Cause of Action: Negligence

To establish a cause of action for negligence, Plaintiff must show that the "defendant had a duty to use due care, that he breached that duty, and that the breach was the proximate or legal cause of the resulting injury." (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 292.) Recovery for negligence depends as a threshold matter on the existence of a legal duty of care. Duty is not universal; not every defendant owes every plaintiff a duty of care. A duty exists only if "'the plaintiff's interests are entitled to legal protection against the defendant's conduct.'" (*Dillon v. Legg* (1968) 68 Cal.2d 728, 734, quoting Prosser, Torts (3d ed. 1964) § 53, p. 332.) Whether a duty exists is a question of law to be resolved by the court. (*Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 397; *Brown v. USA Taekwondo*, (2021) 11 Cal. 5th 204, 213-214.)

The "general rule" governing duty is set forth in Civil Code section 1714 (section 1714). (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 771 (*Cabral*).) Section 1714 provides: "Everyone is responsible … for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person … ." (*Id.*, subd. (a).) This statute establishes the default rule that each person has a duty "to exercise, in his or her activities, reasonable care for the safety of others." (*Cabral*, at p. 768.) Section 1714 states a broad rule imposing a general duty of care on a defendant only when it is the defendant who has "'created a risk'" of harm to the plaintiff, including when "'the defendant is responsible for making the plaintiff's position worse.'" (*Lugtu v. California Highway Patrol* (2001) 26 Cal.4th 703, 716, quoting *Weirum v. RKO General, Inc.* (1975) 15 Cal.3d 40, 49 ("Under general negligence principles, … a person ordinarily is obligated to exercise due care in his or her own actions so as not to create an unreasonable risk of injury to others …".)

Under these authorities, Defendant has a duty to use ordinary care and is liable for injuries caused by her failure to exercise reasonable care in the circumstances. (*Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456.)

Plaintiff pleads the element of duty both generally and specifically. (FAC ¶¶ 88-91.) Accordingly, the Court OVERRULES Defendant's demurrer to eighth cause of action for general negligence.

Calendar Line: 7
Case Name: *Sherry Chuang vs Shiuh Chuang et al*
Case No.: 19CV356261

Defendant seeks to stay implementation of the Court's (Hon. Christopher Rudy's) January 13, 2023 order granting Plaintiff's request for summary adjudication of the partition by sale cause of action and finding Sherry "possesses a 44.5% interest in the Sheridan Property based on the Sheridan Agreement executed between her and Ying." On March 8, 2023, the undersigned Court entered Interlocutory Judgment of Partition by Sale of Real Property and Appointment of Referee based on the January 13, 2023 order. Defendant is appealing that interlocutory judgment and seeks to stay the ordered sale pending that appeal.

Code of Civil Procedure section 917.4, which Defendant does not appear to cite anywhere in her opening motion to stay provides:

> The perfecting of an appeal ***shall not stay*** enforcement of the judgment or order in the trial court if the judgment or order appealed from directs the sale, conveyance or delivery of possession of real property which is in the possession or control of the appellant or the party ordered to sell, convey or deliver possession of the property, ***unless an undertaking in a sum fixed by the trial court*** is given that the appellant or party ordered to sell, convey or deliver possession of the property will not commit or suffer to be committed any waste thereon and that if the judgment or order appealed from is affirmed, or the appeal is withdrawn or dismissed, the appellant shall pay the damage suffered by the waste and the value of the use and occupancy of the property, or the part of it as to which the judgment or order is affirmed, from the time of the taking of the appeal until the delivery of the possession of the property. If the judgment or order directs the sale of mortgaged real property and the payment of any deficiency, the undertaking shall also provide for the payment of any deficiency. (Code Civ. Proc. § 917.4.)

The Court agrees with Plaintiff that Defendant failed to comply with a single requirement of this provision. The Court also finds unpersuasive Defendant's argument that this section is vague regarding the necessity of an undertaking under this code section. A simple review of the annotated code makes

clear that an undertaking is required; in fact, there is no stay without such an undertaking. (See, e.g., *Spence v. Scott* (1892) 95 Cal. 152 (unless the undertaking upon foreclosure covers the liability for a deficiency it is not effective as a stay); *Clemens v. Gregg* (1917) 34 Cal. App. 245 (an order for sale on foreclosure is not stayed by appeal without a bond); *Wagner v. Shapona* (1954) 123 Cal. App. 2d 451, overruled on other grounds, *Neff v. Ernst* (1957), 48 Cal. 2d 628 (filing of appeal does not stay judgment for delivery of possession of realty in absence of a stay bond); *Barnes v. Chamberlain* (1983), 147 Cal. App. 3d 762 (CCP § 917.4, providing that an appeal does not stay enforcement of a judgment directing the sale and conveyance of real property unless the appealing seller posts an undertaking, did not operate to preclude a buyer of real property from enforcing a judgment of specific performance against the seller, who had appealed without posting an undertaking); *In re Marriage of Falcone & Fyke* (2012) 203 Cal. App. 4th 964 (because a wife filed no undertaking, her former husband could enforce, pursuant to CCP §§ 917.4, 917.1(a)(1), a judgment distributing the parties' property).

However, it is also apparent from these authorities that, if the party in possession of property appeals an order directing sale of that property does post an undertaking, that party is entitled to a stay. The only analysis in the record on this motion for the amount of undertaking is provided by Plaintiff, who seeks $316,242, which Plaintiff avers are the potential damages on appeal.

Accordingly, the Court orders that this case is stayed only upon satisfaction of the following three conditions:

(1) Defendant's posting an undertaking of $316,242.00;

(2) Defendant's stipulation not to commit or suffer to be committed any waste on the Sheridan Property; and

(3) Defendant's stipulation that if the judgment or order appealed from is affirmed, or the appeal is withdrawn or dismissed, the Defendant shall pay the damage suffered by the waste and the value of the use and occupancy of the property, or the part of it as to which the judgment or order is affirmed, from the time of the taking of the appeal until the delivery of the possession of the property.

If Defendant does not satisfy all three of these conditions within 30 days of service of this formal order, the judgment will automatically be deemed in effect and not stayed, and the referee shall commence with sale of the Sheridan Property.