SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: October 22, 2024 TIME: 9:00 A.M.

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

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

Scheduling motion hearings: Please go to https://reservations.scscourt.org or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	24CV431647	Curt Crackel v. County of Santa Clara et al.	Click on LINE 1 or scroll down for ruling.
LINE 2	24CV439196	Dominik Schmidt v. Grand Junction Semiconductor Pte. Ltd. et al.	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 3	24CV439196	Dominik Schmidt v. Grand Junction Semiconductor Pte. Ltd. et al.	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 4	24CV440131	Jose Manuel Flores Ruelas v. Alikssa Adilene Barragan Flores et al.	Click on LINE 4 or scroll down for ruling.
LINE 5	22CV403017	Applied Materials, Inc. v. Huu T. Vu et al.	Click on LINE 5 or scroll down for ruling.
LINE 6	24CV435170	In re: Kabir Tax LLC	Petition to enforce third-party subpoena for documents from Kabir Tax LLC: notice is proper, and the petition is unopposed. The court finds that petitioner Malik Pirani has shown good cause to GRANT the petition. Kabir Tax LLC is ordered to produce responsive documents, without objections, within 10 days of notice of entry of this order.
LINE 7	20CV363967	Jacob Saidian v. Accel Construction Corporation et al.	Motion to be relieved as counsel: parties to appear.
LINE 8	24CV434945	Kaustav Mitra v. Neuron Fuel, Inc. et al.	Motion to be relieved as counsel (Neuron Fuel, Inc.): parties to appear. The court does not understand why there are two motions to be relieved as counsel for Neuron Fuel, from two different law firms: Littler Mendelson (filed 7/16/24) and Hogan Lovells (filed 9/25/24).

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LINE #	CASE #	CASE TITLE	RULING
LINE 9	24CV434945	Kaustav Mitra v. Neuron Fuel, Inc. et al.	Motion to be relieved as counsel (Inspilearn, LLC): parties to appear. This hearing was advanced from 12/10/24 to 10/22/24 by the judge pro tem (Laurie Mikkelsen) at the initial CMC.
LINE 10	24CV442319	Best Alarm Company, Inc. v. Crime Alert Monitoring Center, Inc.	Petition to confirm arbitration award: it appears that petitioner has not yet been able to serve the respondent with this petition. Accordingly, the court continues this hearing until after the court decides petitioner's motion to serve respondent via the California Secretary of State (scheduled to be heard 12/12/24), after petitioner has had an opportunity to re-serve respondent, and after respondent has a reasonable opportunity to respond. The hearing is CONTINUED to **February 20, 2025 at 9:00 a.m.**
LINE 11	23CV425896	R. Irving v. Carlos Manuel Alfonso Lazaro Padilla	Petition for approval of compromise of minor's claim. Parties to appear in accordance with CRC 7.952.

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Calendar Line 1
Case Name: *Curt Crackel v. County of Santa Clara et al.*
Case No.: 24CV431647

Plaintiff Curt Crackel filed this action against defendants Marta Olvera and the County of Santa Clara (together, "Defendants"), based on Defendants' allegedly discriminatory, retaliatory, and harassing behavior against Crackel. Defendants now demur to the fourth and fifth causes of action in the first amended complaint ("FAC"), and they move to strike portions of the second, third, and sixth causes of action in the FAC.

I. THE ALLEGATIONS OF THE FAC

According to the FAC, Defendants operate St. Louise Regional Hospital in Santa Clara County and hired Crackel, a male over 60 years old, to work as a nurse on January 21, 2015. (FAC, ¶¶ 16-19.) Olvera was Crackel's direct supervisor. (*Id.* at ¶ 8.) Olvera made hostile and offensive comments to other employees who were over the age of 40, such as: "hey old man," "are you still able to work?" and "we think it's time for you to retire given your age." (*Id.* at ¶ 32.) Olvera inappropriately scolded Crackel in front of his peers and told Crackel that he should retire already, should move to an easier job, and should move to a less stressful department. (*Id.* at ¶¶ 26, 29.) Other employees under the direction of Olvera would tell Crackel that he was being watched, to intimidate him. (*Id.* at ¶ 30.) Olvera also told a new nurse, Jocelyn Serrano, that she and other nurses did not like Crackel because he reported employees for not following the rules. (*Id.* at ¶ 31.) Olvera made her belief known to other employees that the County's older nurses should no longer be on the floor taking care of emergency patients. (*Id.* at ¶ 34.)

On March 27, 2023, Olvera denied Crackel's request for approval of overtime shifts while approving requests made by other nurses, including nurses who were under the age of 40 and traveling nurses. (FAC, ¶ 36.) Olvera instructed other supervisors not to schedule Crackel for double-time and double-shift hours without her approval, a rule that applied only to Crackel. (*Id.* at ¶ 38.) On June 17, June 19, June 20, and July 16, 2023, Crackel claimed a 16-hour shift, but Olvera refused to grant it to him. (*Id.* at ¶ 39.) On May 16, 2023, Crackel was approved for a double shift beginning at 9:00 a.m., but Olvera went into his schedule at the last minute and remove the overtime. (*Id.* at ¶ 40.) On May 17, 2023, Crackel informed supervisors that he was interested in signing up for the ultrasound-guided IV class, a course that had a two-year waiting period. (*Id.* at ¶ 40.) On June 9, 2023, Olvera arbitrarily refused Crackel's enrollment request, which in turn impeded Crackel's opportunity for advancement. (*Id.* at ¶ 41.)

Throughout 2023, Olvera rotated the entire nursing staff through different work zone assignments yet purposely kept Crackel in heavy patient care areas for prolonged periods without relief. (FAC, ¶ 43.) On July 15 and July 16, 2023, Olvera kept Crackel in the heavy "red and green zones" while other employees were placed into less heavy triage. (*Id.* at ¶ 44.) Defendants wrongfully denied Crackel access to union representation multiple times, including on February 25, 2022 and July 19, 2022. (*Id.* at ¶ 46.)

In early 2023, Olvera became aware of another employee—one with whom she was friends—stealing narcotics from the hospital. Olvera decided to "frame" Crackel for the stolen narcotics. (FAC, ¶ 47.) On June 5, 2023, Olvera issued a false written warning accusing

Crackel of a discrepancy in medications. (*Id.* at ¶ 48.) Olvera backdated the formal write-up to June 2, 2023, intentionally excluded union representation, and asked that Tara Tyler, the nurse supervisor, go to Crackel and say, "Marta says you have to sign this." (*Id.* at ¶ 48.) When Crackel resisted and reported these actions to the Registered Nurses Professional Association ("RNPA"), the union confronted Olvera about the falsified warning. (*Id.* at ¶ 50.) Olvera told the union representative that she would immediately rescind the warning, but she never actually removed the write-up from Crackel's records. (*Ibid*.) On June 15, 2023, Crackel requested access to his employee file, and Olvera denied access. (*Id.* at ¶ 51.)

On June 15, 2023, the union ordered Olvera to cease all harassing, discriminatory, and retaliatory conduct. (FAC, ¶ 53.) On June 20, 2023, Crackel relayed to Olvera that HR had told him to get the personnel file from her. (*Ibid*.) Olvera yelled "Nope!" in response to his request but later admitted to Crackel that she did in fact have his employee file in her office. (*Ibid*.)

On or about January 20, January 31, March 11, and April 4, 2023, Crackel reported to Olvera's superior that he was being harassed and discriminated against by her. (*Id.* at ¶ 61.) On March 28 and June 16, 2023, Crackel made an additional report to the union of all of the unlawful conduct he was having to endure at work. (*Id.* at ¶ 63.)

II. PROCEDURAL HISTORY

Crackel filed his original complaint on February 22, 2024 and his FAC on June 17, 2024. The FAC asserts causes of action for: (1) retaliation; (2) failure to prevent and investigate discrimination and harassment; (3) discrimination, harassment, and retaliation; (4) intentional infliction of emotional distress; (5) negligent infliction of emotional distress; and (6) failure to take corrective action.

On August 7, 2024, Defendants filed a combined demurrer to the fourth and fifth causes of action (asserted against Olvera only) and motion to strike references to harassment in the second, third, and sixth causes of action. Crackel opposes.

III. DEMURRER

A. General Legal Standards

As relevant to the instant case, "[t]he party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: . . . [t]he pleading does not state facts sufficient to constitute a cause of action." (Code Civ. Proc., § 430.10, subd. (e).) A demurrer may be brought 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, in ruling on a demurrer, treats it "as admitting all properly pleaded material facts, 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. [Citation.] 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.' [Citation.]" (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214, superseded by statute on other grounds as stated in *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 227.)

B. Discussion

1. Fourth Cause of Action: Intentional Infliction of Emotional Distress

a) Personnel Management Activity

Defendants argue that the court should sustain Defendants' demurrer to the fourth cause of action for intentional infliction of emotional distress ("IIED") on the ground that "pleading wrongful 'personnel management activity is insufficient to support a [IIED cause of action], even if improper motivation is alleged.'" (Defendants' Memorandum of Points and Authorities ("MPA"), p. 11:11-12, citing *Janken v. GM Hughes Elecs.* (1996) 46 Cal.App.4th 55, 80 (*Janken*).) According to Defendants, "the vast majority of Plaintiff's allegations relate to personnel management activity" under *Janken*. (MPA, p. 11:21-22 [citing FAC, ¶¶ 22-28, 31-55].)

Crackel responds that "there have been numerous California court cases that cite an exception to that rule if the conduct of the employer or supervisor is [so] 'outside the normal employment environment' as to constitute extreme and outrageous behavior." (Opposition, p. 6:17-19, citing *Light v. Department of Parks & Recreation* (2017) 14 Cal.App.5th 75, 97 (*Light*), *Accardi v. Superior Ct.* (1993) 17 Cal.App.4th 341.) According to Crackel, Olvera's "personnel managing actions were well outside the normal scope of employment." (*Id.* at p. 6:22-24.)

In *Janken*, the Court of Appeal identified "commonly necessary personnel management actions" as including "hiring and firing, job or project assignments, office or work station assignments, promotion or demotion, performance evaluations, the provision of support, the assignment or nonassignment of supervisory functions, deciding who will and who will not attend meetings, deciding who will be laid off, and the like." (*Janken, supra,* 46 Cal.App.4th at pp. 64-65.) As the Court explained, "Managing personnel is not outrageous conduct beyond the bounds of human decency, but rather conduct essential to the welfare and prosperity of society. A simple pleading of personnel management activity is insufficient to support a claim of intentional infliction of emotional distress, even if improper motivation is alleged. If personnel management decisions are improperly motivated, the remedy is a suit against the employer for discrimination." (*Id.* at p. 80; see also *Singh v. Southland Stone, U.S.A., Inc.* (2010) 186 Cal.App.4th 338, 367 (*Singh*) ["An employer's intentional misconduct in connection with actions that are a normal part of the employment relationship, such as demotions and criticism of work practices, resulting in emotional injury is considered to be encompassed within the compensation bargain, even if the misconduct could be characterized as 'manifestly unfair, outrageous, harassment, or intended to cause emotional disturbance.' [Citation.] Workers' compensation ordinarily provides the exclusive remedy for such an injury. [Citation.]"].)

The court agrees with Defendants that much of the conduct alleged by Crackel constituted personnel management decisions not giving rise to a cause of action for IIED. These include: denying Crackel's requests for overtime (FAC, ¶¶ 22, 36), giving Crackel unwarranted written and informal counseling (*id.* at ¶¶ 23, 26), denying Crackel training opportunities (*id.* at ¶¶ 24, 41), instructing other supervisors not to schedule Crackel for double-time hours (*id.* at ¶ 38), refusing to grant Crackel requested shifts (*id.* at ¶ 39), assigning Crackel more work than other nurses (*id.* at ¶¶ 43, 44), and issuing baseless discipline evaluations (*id.* at ¶ 45).

As for Olvera's alleged attempt to frame Crackel for stolen narcotics, the court ultimately finds that this, too, was within the scope of employment, as odious as it may have been (if true). "An employer's intentional misconduct in connection with actions that are a normal part of the employment relationship, such as demotions and criticism of work practices, resulting in emotional injury is considered to be encompassed within the compensation bargain, even if the misconduct could be characterized as 'manifestly unfair, outrageous, harassment, or intended to cause emotional disturbance.'" (*Singh, supra,* 186 Cal.App.4th at p. 367, quoting *Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148, 160 (*Cole*).) As Defendants point out, the only place where this "framing" allegedly occurred was in a written warning contained in Crackel's personnel file. (FAC, ¶¶ 47-50.) There was no report to law enforcement, there was no criminal action, and there is no allegation that anyone else at the company even knew about this written warning, apart from the nurse supervisor, Tara Tyler. (*Id.*) Thus, this allegation is functionally no different from any other lies or falsehoods about an employee's performance that a supervisor may place in that employee's personnel file. While this alleged conduct by Olvera may well be evidence of a discriminatory animus, it does not constitute an action outside the scope of a personnel management decision. (See *Cole, supra,* 43 Cal.3d at pp. 159-160 ["Permitting such an action would throw open the doors to numerous claims already compensable under the compensation law. An employer's supervisory conduct is inherently 'intentional.' In order to properly manage its business, every employer must on occasion review, criticize, demote, transfer and discipline employees. Employers are necessarily aware that their employees will feel distressed by adverse personnel decisions, while employees may consider any such adverse action to be improper and outrageous. Indeed, it would be unusual for an employee not to suffer emotional distress as a result of an unfavorable decision by his employer."].)

At the same time, by arguing that "the vast majority" of Crackel's allegations relate to personnel management activity, Defendants necessarily concede that there are some aspects of Crackel's allegations—that Olvera directed other employees to tell Crackel that he was being watched, and that Olvera both expressed or supported ageist remarks against Crackel and other older employees (FAC, ¶¶ 29-30, 32)—that fall outside this IIED exception for "personnel management activity."

b) Extreme and Outrageous Conduct

Defendants go on to argue that none of the conduct alleged in the FAC qualifies as extreme and outrageous conduct as a matter of law. (MPA, p. 12:19-20.) The court generally agrees. "A cause of action for intentional infliction of emotional distress exists when there is '(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by

the defendant's outrageous conduct.' A defendant's conduct is 'outrageous' when it is so 'extreme as to exceed all bounds of that usually tolerated in a civilized community.' And the defendant's conduct must be 'intended to inflict injury or engaged in with the realization that injury will result.' [¶] Liability for intentional infliction of emotional distress 'does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities . . . .' [¶] With respect to the requirement that the plaintiff show emotional distress, this court has set a high bar. 'Severe emotional distress' 'means emotional distress of such a substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.'" (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-1051 (*Hughes*), internal quotations and citations omitted.)

"[M]any cases have dismissed intentional infliction of emotional distress cases on demurrer, concluding that the facts alleged do not amount to outrageous conduct as a matter of law. [Citations.]" (*Bock v. Hansen* (2014) 225 Cal.App.4th 215, 235.) "'[T]he trial court initially determines whether a defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. Where reasonable men can differ, the jury determines whether the conduct has been extreme and outrageous to result in liability. Otherwise stated, the court determines whether severe emotional distress can be found; the jury determines whether on the evidence it has, in fact, existed. [Citation.]' [Citation.]" (*Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1614.)

As noted above, the "vast majority" of Crackel's IIED allegations fall within the scope of "personnel management activity," which does not give rise to a cause of action for IIED. (See FAC, ¶¶ 22, 23, 24, 26, 36, 38, 41, 45.) Even if some of Defendants' actions did not constitute personnel management decisions, the court would still find that they do not rise to the level of sufficiently "extreme and outrageous" conduct. The allegations that Defendants denied Crackel access to union representation, that employees told Crackel they were "watching" him, that threatening comments were made by these same employees, and (more generally) that Olvera and others made insulting, harassing, and discriminatory comments are not sufficient to constitute "outrageous" and "shocking" conduct. (See *id.* at ¶¶ 27, 28, 29, 30, 32, 46. Again, "[l]iability for intentional infliction of emotional distress 'does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" (*Hughes, supra,* 46 Cal.4th at p. 1051 [internal citation omitted].)

Even Crackel's allegations related to Olvera's purported attempt to "frame" Crackel for stolen narcotics are not sufficient to show extreme and outrageous conduct. Crackel alleges that "Olvera issued a false written warning accusing Plaintiff of a discrepancy in medications in which Plaintiff was asked to backdate the false warning to June 2, 2023, presumably to cover up Olvera's own wrongdoing. Olvera backdated the formal write-up to June 2, 2023, intentionally excluded union representation, and asked Tara Tyler, the nurse supervisor, to go to [Crackel] and say, 'Marta says you have to sign this.' Olvera tried to implicate [Crackel] in a crime while knowing the true perpetrator, who had confessed to her." (FAC, ¶¶ 47-50.) The court has already determined that these acts constituted "personnel management activity," but even if they did not, they are not sufficient to "shock the conscience." As noted, there was no report to law enforcement or other criminal action, there was no public accusation, and there was no adverse consequence, other than a negative document in the personnel file that Olvera was later allegedly told by the RNPA union to remove. (*Id.* at ¶ 50.) While distasteful if true, the court finds these allegations to fall well short of the standard for pleading IIED.

c) Severe Emotional Distress

Defendants argue that Crackel has not sufficiently alleged that he actually suffered severe emotional distress. (MPA, pp. 13:16-14:6.) "Severe emotional distress means emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it." (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1004 (*Potter*), internal citations and quotations omitted.) Crackel alleges that he has "suffered severe emotional distress due to the unlawful actions of Defendants and experienced chronic fatigue, mental exhaustion, immune suppression, rashes, headaches, and digestive issues." (FAC, ¶ 67.) These conclusory allegations fall short of what a party needs to plead to show severe emotional distress. Indeed, as Defendants point out, they are similar to the distress allegations that the Court of Appeal found to be insufficient in *Hughes, supra*: "discomfort, worry, anxiety, upset stomach, concern, and agitation." (See *Hughes*, 46 Cal.4th at pp. 1051-1052.) As noted in *Hughes*, these allegations "did not comprise emotional distress such that no reasonable person in civilized society should be expected to endure it." (*Ibid.*; see also *Pitman v. City of Oakland* (1988) 197 Cal.App.3d 1037, 1047 [allegation that plaintiff suffered shame, humiliation, and embarrassment without further factual explanation "indicating the nature or extent of any mental suffering incurred as a result of the defendant's alleged outrageous conduct" fails to state claim for intentional infliction of emotional distress].)

For the foregoing reasons—failure to show extreme and outrageous conduct and failure to show severe emotional distress—the court sustains Defendants' demurrer to the fourth cause of action with 20 days' leave to amend.

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

Defendants argue that Crackel has failed to plead a cause of action for negligent infliction of emotional distress ("NIED"), noting that the "California Supreme Court has ruled that there is no duty to avoid negligently causing emotional distress to another. [Citation.]" (MPA, pp. 14:19-15:16 [citing *Gu v. BMW of North America, LLC* (2005) 132 Cal.App.4th 195, 208 and *Potter, supra*, 6 Cal.4th at p. 984].) "[U]nless the defendant has assumed a duty to plaintiff in which the emotional condition of the plaintiff is an object, recovery is available only if the emotional distress arises out of the defendant's breach of some other legal duty and the emotional distress is proximately caused by that breach of duty. Even then, with rare exceptions, a breach of the duty must threaten physical injury, not simply damage to property or financial interests. [Citations.]" (*Potter, supra*, 6 Cal.4th at p. 985.) According to Defendants, Crackel "does not allege that Defendants assumed a duty to Plaintiff in which the emotional condition of the Plaintiff is an object. Nor does the complaint allege a breach of duty that threatened physical injury, or a 'rare exception' to that requirement." (MPA, p. 15:6-8.)

The court finds this argument persuasive, and Crackel does not address it in his opposition brief. Rather, Crackel argues that a NIED cause of action may be pled in the alternative to an IIED cause of action when the allegations between the two causes of action are consistent. (Opposition, p. 8:11-15, citing *Steiner v Rowley* (1950) 35 Cal.2d 713, 719 (*Steiner*).) *Steiner* is inapposite. It stands for the general proposition that "unless [] alternate pleadings contain antagonistic statements, the statement of facts sufficient to constitute a cause of action in one count is not a bar to the maintenance of a separately stated count in the same

pleading based upon inconsistent allegations." (*Steiner, supra,* 35 Cal.2d at p. 719.) It does not address the circumstances here – a failure to properly plead a cause of action for NIED.

The court sustains Defendants' demurrer to the fifth cause of action with 20 days' leave to amend.[1]

IV. MOTION TO STRIKE

A. General Legal Standards

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading, or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.) The grounds for a motion to strike must appear on the face of the challenged pleading or on any matter of which the court takes judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) A motion to strike should not be a procedural "line item veto" for the civil defendant. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683.)

In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63, citing *Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.) The court's decision to strike pursuant to section 436 is discretionary. (See Code Civ. Proc., § 436 ["The court may . . . strike"]; see also *Colden v. Broadway State Bank* (1936) 11 Cal.App.2d 428, 429 [motion to strike is addressed to the sound discretion of the court].)

B. Discussion

Defendants argue that the court should strike all references to "harassment" in the second, third, and sixth causes of action because the facts pleaded are insufficient to support a cause of action for harassment. (MPA, p. 7:21-23.) According to Defendants, Crackel's allegations "consist almost entirely of personnel management actions, which do not constitute harassment as a matter of law." (*Id.* at p. 8:26-27.) Furthermore, the "few allegations that arguably were not personnel management actions were not 'so severe as to create a hostile work environment.'" (*Id.* at p. 8:27-28.)

The Fair Employment and Housing Act ("FEHA") prohibits employment harassment based on "race, religious creed, national origin," and other protected categories including "age." (Gov. Code, § 12940, subd. (j)(1).) "To establish a prima facie case of [harassment based on] a hostile work environment, [the plaintiff] must show that (1) [plaintiff] is a member of a protected class; (2) [plaintiff] was subjected to unwelcome harassment; (3) the harassment was based on [plaintiff's] protected status; (4) the harassment unreasonably interfered with [plaintiff's] work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment. [Citation.]" (*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581.) Harassment "consists of a type of conduct

[1] The court grants leave to amend because this is the first pleading challenge, not because the court discerns any sufficient factual basis upon which Crackel might be able to cure these pleading defects.

not necessary for performance of a supervisory job. Instead, harassment consists of conduct outside the scope of necessary job performance, conduct presumably engaged in for personal gratification, because of meanness or bigotry, or for other personal motives. Harassment is not conduct of a type necessary for management of the employer's business or performance of the supervisory employee's job." (*Janken, supra*, 46 Cal.App,4th at p. 63.) "Harassment focuses on situations in which the social environment of the workplace becomes intolerable because the harassment (whether verbal, physical, or visual) communicates an offensive message to the harassed employee." (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 706 (*Roby*).)

Defendant argues that all but two of Crackel's allegations arise from personnel management actions. (See MPA, pp. 8:26-9:8, citing FAC, ¶¶ 22, 23, 24, 26, 35-40, 41-42, 43-44, 46, 48, 51-55.) And these two allegations were not "so severe as to create a hostile work environment." (Opposition, p. 8:28.) According to Defendants, "[t]elling Plaintiff he was being watched is occasional, isolated, sporadic, and trivial conduct" that "pales in comparison to conduct found sufficiently severe to constitute harassment, such as incessant racial slurs or physical attacks." (*Id.* at p. 9:24-25.) Defendants further argue that "[l]ikewise, the alleged fact that unnamed employees told Plaintiff to 'retire already' or move to an easier job or less stressful department, while it may be objectionable, constitutes occasional, isolated, sporadic, and trivial conduct." (*Id.* at p. 10:3-5.) Moreover, Defendants contend that "alleged conduct by unnamed, nonsupervisory employees is not actionable under FEHA, because the statute requires that harassment be either committed by a supervisor, or reported to and ignored by the entity." (*Id.* at p. 10:15-17.) Crackel does not directly respond to these arguments in his opposition brief.

Nevertheless, the court finds it difficult to understand how Defendants could possibly know that the allegations are necessarily "isolated" and "sporadic," as opposed to "severe" and "pervasive," as a matter of law. Whether alleged conduct is severe or pervasive depends on the totality of the circumstances. (*Caldera v. Department of Corrections & Rehabilitation* (2018) 25 Cal.App.5th 31, 38.) The factors that can be considered are: 1) the nature of the conduct; 2) how often, and over what period of time, the conduct occurred; 3) the circumstances in which the conduct occurred; 4) whether the conduct was physically threatening or humiliating; and 5) the extent to which the conduct unreasonably interfered with an employee's work performance. (*Id.* at p. 39, citing CACI No. 2524.) "Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action." (Gov. Code, § 12940, subd. (j)(1).)

Here, the FAC includes allegations that Defendants made "many offensive and hostile comments to Plaintiff regarding his age"; that other employees "would tell Plaintiff that he was being watched to intimidate [him]"; that they "would often yell at Plaintiff in front of patients." (FAC, ¶¶ 29-30.) The FAC alleges that this occurred repeatedly and "often," and so there is no basis for the court to conclude *on the face of the pleading* that the harassment allegations are "isolated," "sporadic," "occasional," or "trivial." These are factual determinations that are inappropriate for resolution at the pleading stage. There is one allegation that supposedly occurred "[i]n one instance"—where Olvera "scolded [Crackel] for taking a meal break without her approval" (FAC, ¶ 26)—but that is the only example of a single, isolated instance in the FAC. Moreover, the Supreme Court has made clear that "in some cases the hostile message that constitutes the harassment is conveyed through official employment actions, and

therefore evidence that would otherwise be associated with a discrimination claim can form the basis of a harassment claim." (*Roby, supra*, 47 Cal.4th at p. 708.) "Moreover, acts of discrimination can provide evidentiary support for a harassment claim by establishing discriminatory animus on the part of the manager responsible for the discrimination, thereby permitting the inference that rude comments or behavior by that same manager were similarly motivated by discriminatory animus." (*Id.* at p. 709.)

The court notes that Defendants have relied heavily in their motion on case law decided at the summary judgment or trial stage, where the facts are necessarily more fully developed. (See *Hughes, supra*, 46 Cal.4th at p. 1035 [summary judgment]; *Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 283 [summary judgment]; *Swirski v. ProTec Bldg. Servs*. (S.D. Cal. Dec. 6, 2021) 2021 U.S. Dist. LEXIS 233384 [summary judgment]; *Saqqa v. San Joaquin Cty*. (E.D. Cal. Sept. 8, 2021) 2021 U.S. Dist. LEXIS 171494 [summary judgment].) On a motion to strike, where the court must accept the plaintiff's allegations as true, the court determines that the FAC sufficiently sets forth facts that could potentially support a finding of severe or pervasive harassment arising out of an intimidating, hostile, or offensive work environment. The court therefore denies Defendants' motion to strike portions of the second, third, and sixth causes of action.

V. CONCLUSION

The court SUSTAINS Defendants' demurrer to the fourth and fifth causes of action with 20 days' leave to amend. The court DENIES Defendants' motion to strike references to harassment from the second, third, and sixth causes of action.

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Calendar Lines 2-3
Case Name: *Dominik Schmidt v. Grand Junction Semiconductor Pte. Ltd. et al.*
Case No.: 24CV439196

I. BACKGROUND

This matter arises from the alleged wrongful termination of plaintiff Dominik Schmidt by defendant Grand Junction Semiconductor PTE Ltd. ("Grand Junction"), a Singapore company with its principal place of business in Singapore, as Grand Junction's CEO.

Schmidt filed his original and still-operative complaint on May 16, 2024.[2] It states eight causes of action: (1) Breach of Contract (against Grand Junction); (2) Breach of the Implied Covenant of Good Faith and Fair Dealing (against Grand Junction); (3) Wrongful Discharge in Violation of Public Policy (against Grand Junction); (4) Fraud (against Grand Junction, Alpha Wealth Global Limited ("Alpha," a British Virgin Islands LLC), Robert Marassa (a Tennessee resident), and Huan Wang (a California resident); (5) Intentional Interference with Contractual Relations (against Alpha, Marassa, and Wang); (6) Unjust Enrichment (against Grand Junction, Alpha, Marassa, and Wang); (7) Conspiracy (against Grand Junction, Alpha Marassa, and Wang); and (8) Violation of the Fair Labor Standards Act (against Grand Junction).

Currently before the court are two motions. The first is a motion by Grand Junction and Marassa to quash service of summons, based on a lack of personal jurisdiction. The second is a motion by Grand Junction, Marassa, and Wang to compel arbitration. These defendants filed both motions on August 9, 2024. Schmidt filed oppositions on October 9, 2024, including an unduly verbose opposition to the motion to quash that exceeds the page limits set forth in rule 3.1113(d) of the California Rules of Court.[3]

II. MOTION TO QUASH SERVICE OF SUMMONS

A. General Standards

California courts "may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) "The primary focus of the personal jurisdiction inquiry is the relationship of the defendant to the forum state. The 'constitutional touchstone' of this inquiry is whether the defendant 'purposefully established 'minimum contacts' in the forum State.'" (*Rivelli v. Hemm* (2021) 67 Cal.App.5th 380, 391 ("*Rivelli*"), internal citations omitted [citing *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County* (2017) 582 U.S. 255 ("*Bristol-Myers*") and *Burger King Corp. v. Rudzewicz* (1985) 417 U.S. 462, 474 ("*Burger King*")].)

"To comport with the constitutional requirements of due process, a California court may assert jurisdiction over a nonresident defendant (who has not consented to suit in the forum) *only* if the defendant's minimum contacts with the forum state are 'such that the maintenance of the suit "does not offend the traditional notions of fair play and substantial

[2] The unverified complaint does not comply with rule 2.108 of the California Rules of Court, as it lacks line numbers.
[3] The court exercises its discretion to consider the last two pages of the 17-page opposition.

justice.'" The minimum contacts test ensures that 'a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts' but only 'where the contacts proximately result from actions by the defendant *himself* that create a "substantial connection" with the forum State.' Personal jurisdiction under the minimum contacts framework may be either all-purpose (also called 'general') or case-linked (also called 'specific')." (*Rivelli, supra,* at pp. 391-392, internal citations omitted, emphasis in original.)

"Under the minimum contacts test, an essential criterion in all cases is whether the quality and nature of the defendant's activity is such that it is reasonable and fair to require him to conduct his defense in that state. The substantial connection between the defendant and the forum state necessary for a finding of minimum contacts must come about *by an action of the defendant purposefully directed toward the forum state*. A defendant's physical presence in the state is not required, as long as his or her efforts were purposely directed toward residents of that state. Thus, personal jurisdiction may be exercised over a defendant who has caused an effect in the forum state by an act or omission occurring elsewhere. But there must be evidence the nonresident defendant intentionally targeted his or her conduct *at the forum state* and not just at a plaintiff who lives in that state." (*Swenberg v. dmarcian, Inc.* (2021) 68 Cal.App.5th 280, 292 ("*Swenberg*") [internal citations and quotations omitted, emphasis in original].)

Regarding foreign business entities, the "inquiry to determine general or all-purpose jurisdiction "is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,' it is whether that corporation's 'affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." (*Daimler AG v. Bauman* (2014) 571 U.S. 117, 137-138, internal citations omitted ("*Daimler AG*").) "The paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and principal place of business." (*Id.* at p. 118.)

"Case-linked jurisdiction hinges on the 'relationship among the defendant, the forum, and the litigation.' It requires 'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.' Consistent with the constraints of due process, 'the defendant's suit-related conduct must create a substantial connection with the forum State.' [¶] As expressed by the California Supreme Court, a court may exercise case-linked jurisdiction over a nonresident defendant if three requirements are met. First, the defendant must have purposefully availed himself of the privilege of conducting activities in this state, thereby invoking the benefits and protections of California's laws. Second, the claim or controversy must relate to or arise out of the defendant's forum-related contacts. Third, the exercise of jurisdiction must be fair and reasonable and should not offend notions of fair play and substantial justice. The case-linked jurisdictional analysis is intensely fact-specific." (*Rivelli, supra,* 67 Cal.App.5th at pp. 392-393, internal citations omitted [citing *Daimler AG* and *Bristol-Myers, supra*].)

A defendant may move to quash service of summons on the ground that the court lacks personal jurisdiction. (See Code Civ. Proc., § 418.10(a).) "When a nonresident defendant challenges a trial court's exercise of personal jurisdiction, the plaintiff bears the initial burden to demonstrate facts justifying the exercise of jurisdiction. To meet this burden, a plaintiff must do more than make allegations. A plaintiff must support its allegations with 'competent evidence of jurisdictional facts. Allegations in an unverified complaint are insufficient to satisfy this burden of proof.' If the plaintiff makes this showing by a preponderance of the

evidence on the first two requirements (i.e., that the defendant has purposefully availed itself of the forum and the plaintiff's claims relate to or arise out of the defendant's forum-related contacts), the burden shifts to the defendant to demonstrate that the exercise of jurisdiction would be unreasonable." (*Rivelli, supra*, 67 Cal.App.5th at p. 393, internal citations omitted; see also *Strasner v. Touchstone Wireless Repair & Logistics, LP* (2016) 5 Cal.App.5th 215, 221-222 ["The plaintiff must provide specific evidentiary facts, through affidavits and other authenticated documents, sufficient to allow the court to independently conclude whether jurisdiction is appropriate. [Citation.] The plaintiff cannot rely on allegations in an unverified complaint or vague and conclusory assertions of ultimate facts. [Citation.]"].)

B. Discussion

There are no allegations in the complaint that either moving defendant is subject to general, all-purpose jurisdiction in California. Indeed, the complaint admits that Grand Junction is a Singapore private limited company with its principal place of business in Singapore, and that Marassa is a resident of Tennessee. (See Complaint, ¶¶ 2-3.)

Instead, the complaint alleges that the court has case-linked, specific jurisdiction over Grand Junction because it "purposefully and intentionally negotiated with, contracted with, and entered into a significant business relationship with Schmidt while he resided in and conducted business in" California. (See Complaint, ¶ 6.) In other words, the complaint alleges that the employment contract between Grand Junction and a California resident subjects Grand Junction to California's jurisdiction. As for Marassa, the complaint alleges that the court has personal jurisdiction over him because he "took purposeful and intentional action against Schmidt and engaged in business dealings with Schmidt while Schmidt resided in and conducted business in" California. (Complaint, ¶ 8.) The complaint further alleges that Marassa signed the employment agreement on behalf of Grand Junction in his capacity as director. (*Id.* at ¶ 130.)

None of this is sufficient—not even close. Again, "there must be evidence the nonresident defendant intentionally targeted his or her conduct *at the forum state* and not just at a plaintiff who lives in that state." (*Swenberg, supra*, 68 Cal.App.5th at 292 [italics in original; underscoring added].) For this basic reason, the court grants the motion to quash service of the summons and complaint.

In their motion, Grand Junction and Marassa argue that they have no relevant relationship with California, and that while the employment agreement acknowledges that Schmidt would work from his home in California, his efforts on behalf of Grand Junction would be directed to business in Asia (rather than California). Further, the agreement expressly states that it would be governed by Singapore law. Defendants' argument relies largely upon a copy of the employment agreement attached as Exhibit A to a declaration by Marassa. While Exhibit A is not properly authenticated by defendants, it does appear to be signed by both Schmidt and Marassa (on behalf of Grand Junction), and its terms match the extensive quotations from the employment agreement included in the complaint. (See, e.g., Complaint, ¶¶ 53-64 and 70.) The court therefore deems the document incorporated into the complaint by reference and takes judicial notice of it on its own motion under Evidence Code section 452, subdivision (h). The agreement's existence and contents are not reasonably subject to the dispute by the parties. (See, e.g., *Ascherman v. General Reinsurance Corp*. (1986) 183 Cal.App.3d 307, 310-311 [court took judicial notice of terms of reinsurance

contract referenced in complaint, where the parties did not dispute the existence of the contract].)

The employment agreement makes it clear that Schmidt was hired to be the CEO of a Singapore company (Grand Junction) effective January 30, 2023, and that his duties included "play[ing] a supporting role for government relations in China for the Company." (Agreement, ¶¶ 1.1-2.1.) The agreement contains an express integration clause and also states that its terms can only be changed through a writing signed by the parties. (*Id.* at ¶¶ 23-24.) The agreement states that it "is governed by and is to be construed in accordance with Singapore law," and that any "dispute, controversy, difference, conflict or claim arising out of or relating to this Agreement or its performance, including without any limitation any question regarding its existence, validity, or a claim for unlawful act under applicable law ('Dispute') shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ('SIAC'), in accordance with the Arbitration Rules of the SIAC for the time being in force (the 'SIAC Rules'), which rules are deemed to be incorporated by reference" into the employment agreement. (*Id.* at ¶¶ 27-28.1.)

A contract's choice-of-law provision is an important consideration in the purposeful availment analysis because it shows the nonresident intended to avail itself of the benefits and protections of the designated forum's laws—in this case, Singapore's rather than California's. (See *Burger King, supra*, 471 U.S. at p. 482; see also *Aquila, Inc. v. Super. Ct.* (2007) 148 Cal.App.4th 556, 572 ["The contract includes clauses for New York choice of law and forum selection, which tends to weigh against a conclusion from this document that Aquila itself or its predecessor sought to do significant business in California."].) The parties' express agreement that the employment relationship would be governed by Singapore law and that any dispute arising from it would be arbitrated in Singapore weighs against the notion that, by hiring a California resident as its CEO, Grand Junction was somehow purposefully availing itself of the privilege of conducting activities in California.

The motion is supported by two declarations. The first is from Robert Marassa. This declaration has not been considered because it does not comply with Code of Civil Procedure section 2015.5, which requires that a declaration executed out of state be made under penalty of perjury *under the laws of the State of California*. "'[C]ourts have made clear that a declaration is defective under section 2015.5 absent an express facial link to California or its perjury laws.'" (*Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 942, citing *Kulshrestha v. First Union Commercial Corp*. (2004) 33 Cal.4th 601, 610-611 (*Kulshrestha*) [a declaration executed out of state was invalid where it did not state it was made "under the laws of the State of California."]; see also *ViaView, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 217 [A "declaration in opposition to the motion to quash was not signed under penalty of perjury under the laws of the State of California as required by section 2015.5. It therefore had no evidentiary value and we shall not consider it in our review of the jurisdictional issue."]; *Bombardier Recreational Products, Inc. v. Dow Chemical Canada ULC* (2013) 216 Cal.App.4th 591, 604 ["Out-of-state declarations that do not state they were made 'under penalty of perjury under the laws of the State of California' (Code Civ. Proc., § 2015.5) are not deemed sufficiently reliable to be admitted into evidence."].) The Marassa declaration submitted with the reply and the declaration of James Stanley submitted with the reply suffer from the same defect. These reply declarations are also *not* considered.

The second declaration in support of the motion is from Benjamin Yao, one of Grand Junction's attorneys in Hong Kong. Yao states that Schmidt was represented by Singapore counsel, the law firm of Shook Lin & Bok, during the negotiations of the Employment Agreement. He states that the first draft of the agreement was prepared by Schmidt's counsel and included the choice-of-law and arbitration provisions that were included in the final agreement. (See Yao Declaration, ¶¶ 1-6, Exhibits A-D.)

The only evidence submitted with Schmidt's opposition is a declaration from Schmidt that is undated and unsigned and therefore has no evidentiary value.[4] Even if the court were to consider Schmidt's declaration, it would not change the result here: Schmidt does not deny that he entered into an employment agreement governed by Singapore law and that he expressly agreed that any disputes arising out of the employment relationship would be resolved through arbitration in Singapore.

Schmidt has failed to meet his burden of establishing through a preponderance of the evidence that Grand Junction and Marassa purposefully availed themselves of the privilege of conducting activities in California. As noted above, simply entering into an agreement with a California resident is not enough as a matter of law, and Schmidt has failed to submit *any* competent evidence that Grand Junction intentionally targeted its business at California rather than simply doing business with a plaintiff who lives in California. (See Complaint, ¶¶ 6 & 8.) All of Schmidt's inadmissible statements in his declaration about other entities that are not parties to this case or parties to the employment agreement (*e.g.*, Translarity, Pacific Gate Advisors, Pacific Gate Partners) are entirely irrelevant; they would not change the outcome even if they had been submitted in the form of admissible evidence. It is therefore not necessary for the court to address the second or third prongs of the case-linked/specific jurisdiction analysis.

III. MOTION TO COMPEL ARBITRATION

The motion to compel arbitration by defendants Grand Junction, Marassa, and Wang is based upon the judicially noticed employment agreement. (See Notice of Motion and Motion to Compel Arbitration, p. 7:11-15.) Because the court has granted the motion to quash service of summons by Grand Junction and Marassa, the court denies as MOOT the motion to compel as to Grand Junction and Marassa. The court has determined that it does not have jurisdiction over these defendants.

As for defendant Wang, the motion to compel is granted.

The "Dispute Resolution" portion of the employment agreement is binding on Schmidt and requires him to arbitrate any "dispute, controversy, difference, conflict or claim arising out of or relating to this Agreement." (See Agreement, ¶¶ 28-28.4.) The fourth, fifth, sixth, and seventh causes of action in the complaint all arise out of or relate to the Employment Agreement. While Wang is not a signatory to the employment agreement, equitable estoppel

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[4] Schmidt submitted an "amended" declaration without leave of court on the evening of October 10, 2024. This has not been considered. Parties have no right to amend motion papers without leave of court, and the amendment is untimely. "A trial court has broad discretion to under rule 3.1300(d) of the California Rules of Court to refuse to consider papers served and filed beyond the deadline without a *prior* court order finding good cause for late submission." (*Bozzi v. Nordstrom, Inc*. (2010) 186 Cal.App.4th 755, 765 [emphasis added].)

principles allow a nonsignatory to compel arbitration if the signatory "'must rely on the terms of the written agreement in asserting [its] claims' against the nonsignatory" and "'when the signatory . . . raises allegations of . . . substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.'" (*MS Dealer Services Corporation v. Franklin* (11th Cir. 1999) 177 F.3d 942, 947 [quoting *Sunkist Soft Drinks v. Sunkist Growers* (1993) 10 F.3d 753, 757 and *Boyd v. Homes of Legend, Inc.* (M.D. Ala. 1997) 981 F.Supp. 1423, 1433]; see also *Goldman v. KPMG LLP* (2009) 173 Cal.App.4th 209.) Both of the foregoing circumstances are present here.

The court is not persuaded by Schmidt's conclusory argument that the fourth through seventh causes of action "are not dependent on the Employment Agreement." (Opposition, pp. 2:4-6:20.) The causes of action for fraud, tortious interference, unjust enrichment, and conspiracy are all directly related to Schmidt's employment as CEO of Grand Junction. Indeed, without that employment, there would be no factual basis for any of these causes of action.

Even less persuasive is Schmidt's argument that the arbitration provision is "unenforceable because it was procured by fraud." (Opposition, p. 6:21.) Schmidt cannot simultaneously sue for a breach of contract and argue, on the other side of his mouth, that the entire contract is unenforceable because it was procured by fraud. The court agrees with defendants that Schmidt has not alleged "fraud in the inducement" in his complaint; instead, his fraud claim is directed to aspects of his employment: *i.e.*, his "responsibility and authority inherent in his position as CEO and . . . [his compensation]." (Complaint, ¶ 165; see also *id.* at ¶¶ 166-175.) Moreover, Schmidt has failed to rebut defendants' evidence that he was the one who proposed the arbitration provision in the first draft of the employment agreement, and that this provision was ultimately adopted without material alteration.

Finally, the court agrees with defendants that Labor Code section 925 does not preclude enforcement of the arbitration provision, because Schmidt has not alleged that this provision was required by Grand Junction "as a condition of [his] employment." (Lab. Code, § 925, subd. (a).) Indeed, as noted above, the arbitration provision appears to have been proposed by Schmidt.

IV. CONCLUSION

The motion to quash by Grand Junction and Marassa is GRANTED. The motion to compel arbitration by Wang is GRANTED.

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Calendar Line 4
Case Name: *Jose Manuel Flores Ruelas v. Alikssa Adilene Barragan Flores et al.*
Case No.: 24CV440131

Plaintiff Jose Manuel Flores Ruelas ("Ruelas") filed this action against defendants Alikssa Adilene Barragan Flores ("Barragan") and Innovation Outdoor Improvements Inc. ("IOI") (collectively, "Defendants") based on Barragan's removal of Ruelas as Chief Executive Officer, Secretary, and Chief Financial Officer of IOI. Barragan is Ruelas's niece. Defendants now bring a special motion to strike Ruelas's causes of action for intentional interference with prospective economic advantage, negligent interference with prospective economic advantage, and defamation.

I. BACKGROUND

According to the complaint, Ruelas and Barragan co-founded IOI. (Complaint, ¶ 9.) On November 4, 2022, Barragan filed a Statement of Information with the Secretary of State, in which she confirmed that Ruelas served as Chief Executive Officer, Secretary, and Chief Financial Officer of IOI, and in which she appointed herself as "Director" of IOI. (*Id.* at ¶ 14.) On December 4, 2022, Ruelas alleges that Barragan "unilaterally and without authorization or cause removed Ruelas from his positions as CEO, Secretary, and CFO, appointing herself in his place." (*Id.* at ¶ 17.) Following this, Barragan engaged in "a relentless campaign to destroy Ruelas' reputation" by spreading false and disparaging information about him to clients, industry contacts, and personal acquaintances. (*Id.* at ¶ 20.) Barragan's defamatory statements "included false accusations that Ruelas was incompetent, dishonest, and unethical in his business practices. She falsely claimed that Ruelas had mismanaged company funds, engaged in illegal activities, and was responsible for the company's alleged failures." (*Id.* at ¶ 78.)

Ruelas filed his complaint on May 29, 2024, asserting causes of action for: (1) breach of fiduciary duty; (2) intentional interference with prospective economic advantage; (3) negligent interference with a prospective economic advantage; (4) constructive fraud; (5) fraud; (6) conversion; (7) breach of contract; (8) unjust enrichment; (9) breach of the duty of care; (10) defamation; (11) injunctive relief; and (12) declaratory relief.

On August 12, 2024, Defendants filed a special motion to strike Ruelas's second, third, and tenth causes of action for intentional interference with prospective economic advantage, negligent interference with economic advantage, and defamation. Ruelas opposes.

II. REQUESTS FOR JUDICIAL NOTICE

Defendants have submitted a request for judicial notice of 15 documents. "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the issues before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, fn. 18, citing *People v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter." (Evid. Code, § 453, subd. (b).) Also, "[a] party requesting judicial notice of

material under Evidence Code sections 452 or 453 must provide the court and each party with a copy of the material." (Cal. Rules of Court, rule 3.1306(c).)

With their special motion to strike, Defendants request that the court judicially notice the following documents under Evidence Code section 452, subdivision (h): Exhibit 1 is the articles of incorporation for Fusion Pavers, Inc., obtained from the California Secretary of State's website. Exhibit 2 is a statement of information for Fusion Pavers, Inc., dated 2018, from the California Secretary of State's website. Exhibit 3 is the statement of information for Fusion Pavers, Inc., dated 2019, from the California Secretary of State's website. Exhibit 4 is a screenshot of the business status of Fusion Pavers, Inc. from the California Secretary of State's website. Exhibit 5 is a screenshot of the "Complaint Violation Disclosure" for Fusion Pavers, Inc. from the California Department of Consumer Affairs – Contractors State License Board's website. Exhibit 6 is the Articles of Incorporation for Grasshopper Builders, Inc. from the California Secretary of State's website. Exhibit 7 is a statement of information for Grasshopper Builders, Inc., dated September 12, 2023, from the California Secretary of State's website. Exhibit 8 is a certificate of amendment for Grasshopper Builders, Inc., dated December 29, 2023, from the California Secretary of State's website. Exhibit 9 is a screenshot of the "License Details" for El Borracho Sports Bar and Grill from the California Department of Alcoholic Beverage Control's website. Exhibit 10 is a screenshot of the "Business Information" and "Personnel List" for Grasshopper Builders, Inc. from the California Department of Consumer Affairs – Contractors State License Board's website. Exhibit 11 is the articles of incorporation for IOI from the California Secretary of State website. Exhibit 12 is the statement of information, dated 2022, for IOI from the California Secretary of State's website. Exhibit 14[5] is a screenshot regarding IOI from the California Department of Consumer Affairs – Contractors State License Board's website. Exhibit 15 is an excerpt from a "pamphlet issued to the public [by] the California Department of Consumer Affairs." Exhibit 16 is a screenshot entitled "About the Contractors State License Board" on the Contractors State License Board website.

The court GRANTS judicial notice of Exhibits 1-12 and 14. Evidence Code section 452, subdivision (c), permits a court to take judicial notice of "official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." (Evid. Code, § 452, subd. (c).) Evidence Code section 452, subdivision (h), permits a court to take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code, § 452, subd. (h).) Exhibits 1-12 and 14 are official records available on government agency websites. (See *In re Israel O.* (2015) 233 Cal.App.4th 279, 289 fn. 8 [taking judicial notice of materials "posted as reference sources on the official Web sites of the responsible federal agencies"].)

At the same time, the court does not take judicial notice of the truth of any disputed facts contained in these exhibits. "'While courts may notice official acts and public records, "we do not take judicial notice of the truth of all matters stated therein." [Citations.] "[T]he taking of judicial notice of the official acts of a governmental entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom, since in many instances what is being noticed, and thereby established, is no more than the existence of

[5] There appears to be no Exhibit 13.

such acts and not, without supporting evidence, what might factually be associated with or flow therefrom."' [Citation.]" (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 194.)

The court DENIES judicial notice of Exhibits 15 and 16. The information included in the exhibits does not appear to include or relate to an official act or record of a government agency. (See *Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 889 ["While there may be federal cases that adopt this approach, frequently without analysis [citation], we know of no 'official Web site' provision for judicial notice in California. [Citation.] 'Simply because information is on the Internet does not mean that it is not reasonably subject to dispute.' [Citation.]"].)

III. SPECIAL MOTION TO STRIKE

A. Threshold Procedural Question – Timeliness

Code of Civil Procedure section 425.16 authorizes a party to bring a special motion to strike allegations "arising from any act . . . in furtherance of [his or her] right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." (Code Civ. Proc., § 425.16, subd. (b)(1).) This is commonly referred to as an "anti-SLAPP" motion.

Ruelas argues that this particular motion is untimely, because under Code of Civil Procedure section 425.16, subdivision (f), a party must file an anti-SLAPP motion within 60 days of service of the complaint. (Opposition, p. 3:8-12.) Ruelas claims that Barragan filed the present motion 67 days after service of the complaint, and the court should therefore dismiss the motion as procedurally deficient. (*Id.* at p. 3:8-12.)

Code of Civil Procedure section 425.16, subdivision (f), provides that an anti-SLAPP motion "may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper." (Code Civ. Proc., § 425.16, subd. (f).) Ruelas filed his complaint on May 29, 2024. While Ruelas claims that he served the complaint on Barragan on June 6, 2024, Ruelas does not direct the court to any proof of service in the file that establishes such a date. Barragan responds that Ruelas did in fact serve the summons and complaint on her on June 6, 2024 but that she timely filed her motion on August 5, 2024, which is exactly 60 days later. (Reply Brief in Support of Special Motion to Strike, p. 2:21-22.) It does appear from the court file that Barragan *attempted* to file the anti-SLAPP motion on August 5, 2024—the same date on which she filed her answer and her cross-complaint—but the court clerk's office rejected the motion because of defects in the papers. Barragan then filed her motion successfully on August 12, 2024, including a proof of service stating that she served her moving papers on August 5, 2024. Because Barragan attempted to file the motion by the 60-day deadline, because Ruelas was served with the motion within the 60-day deadline, and because the court does not discern any prejudice to Ruelas, the court exercises its discretion to consider the merits.

B. General Legal Standards

Courts evaluate anti-SLAPP motions using a two-step analysis. (*Country Side Villas Homeowners Assn. v. Ivie* (2011) 193 Cal.App.4th 1110, 1116.) "First, the moving defendant

must identify 'all allegations of protected activity' and show that the challenged claim arises from that activity. [Citations.]" (*Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924, 934.) "Second, if the defendant makes such a showing, the 'burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated.' [Citation.] Without resolving evidentiary conflicts, the court determines 'whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment.' [Citation.]" (*Ibid*.)

1. First Step: Protected Activity

"A defendant meets his or her burden on the first step of the anti-SLAPP analysis by demonstrating the acts underlying the plaintiff's cause of action fall within one of the four categories spelled out in [Code of Civil Procedure] section 425.16, subdivision (e). [Citations.]" (*Collier v. Harris* (2015) 240 Cal.App.4th 41, 50-51.) Examples of protected speech include:

> (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(Code Civ. Proc., § 425.16, subd. (e).)

"In deciding whether the 'arising from' requirement is met, a court considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.' [Citations.]" (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 670.)

2. Second Step: Probability of Prevailing

The plaintiff meets its burden of showing a probability of prevailing by demonstrating "'that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' [Citations.]" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291 (*Soukup*), quoting *Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548].) This "probability of prevailing" standard is similar to the standard governing a motion for summary judgment in that it is the plaintiff's burden to make a prima facie showing of facts that would support a judgment in the plaintiff's favor. (See *Taus v. Loftus* (2007) 40 Cal.4th 683, 714.) Stated differently, the "plaintiff need only establish that his or her claim has 'minimal merit' [citation] to avoid being stricken as a SLAPP. [Citation.]" (*Soukup, supra,* 39 Cal.4th at p. 291.)

A plaintiff must show that there is admissible evidence that, if credited, would be sufficient to sustain a favorable judgment. (See *McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 108.) While the burden on the second prong belongs to the plaintiff, in determining whether a party has established a probability of prevailing on the merits of his or

her causes of action, a court considers not only the substantive merits of those causes of action, but also all defenses available to them. (See *Traditional Cat Assn., Inc. v. Gilbreath* (2004) 118 Cal.App.4th 392, 398.) Affidavits or declarations not based on personal knowledge, or that contain hearsay or impermissible opinions, or that are argumentative, speculative or conclusory, are insufficient to show a "probability" that the plaintiff will prevail. (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 26.)

C. Discussion

1. Protected Activity

Defendants seek to strike Ruelas's second cause of action for intentional interference with prospective economic advantage, third cause of action for negligent interference with prospective economic advantage, and tenth cause of action for defamation, all on the ground that Code of Civil Procedure section 425.16, subdivision (e)(4), protects the statements that form the bases of these causes of action.[6] (Memorandum of Points and Authorities in Support of Defendants' Special Motion to Strike ("MPA"), p. 6:3-8.) Defendants state that all parties involved in the lawsuit "are members of the California construction industry[,] which is regulated through the Department of Consumer Affairs." (*Id.* at p. 7:13-14.) Defendants also state that one "of the boards operated by the DCA to protect consumers is the California Contractors State License Board." (*Id.* at p. 7:16-17.) Because "the construction industry is regulated and licensed through the DCA and CSLB to protect consumers," Defendants argue that the "qualifications, competence, and professional ethics" of a member of the construction industry is a matter of public interest. (*Id.* at p. 7:21-23.) Therefore, according to Defendants, Barragan's allegedly defamatory statements "were made to warn the [construction] industry about Ruelas's 'qualifications, competence, and professional ethics.'" (*Id.* at p. 8:14-16.)

Defendants assert that "statements made as part of a goal to provide consumers protection are more likely to be deemed of public interest." (MPA, p. 6:10-11, citing *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 898 (*Wilbanks*) ["Consumer information . . . at least when it affects a large number of persons, also generally is viewed as information concerning a matter of public interest. [Citation.]"].) Defendants analogize the present situation—licensed contractors—to case law involving licensed medical professionals, noting that the "'qualifications, competence, and professional ethics' of a licensed professional was an issue of public interest and protected activity." (MPA, p. 6:21-22, citing *Yang v. Tenet Healthcare Inc.* (2020) 48 Cal.App.5th 939, 947 (*Yang*) ["In this case, the content of the speech, as indicated by both the allegations in the complaint and the affidavits submitted in opposition to the motion, show that the public issue implicated is the qualifications, competence, and professional ethics of a licensed physician. As Yang alleges, defendants told others that she was not 'qualified or competent,' that she 'rendered care below applicable standards of practice,' that her 'ethics' were 'below acceptable standards,' and that she was 'dangerous' to

[6] Code of Civil Procedure section 425.16, subdivision (e)(4) states that an act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue includes "any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (Code Civ. Proc., § 425.16, subd. (e)(4).)

her patients and others. These clearly implicate Yang's qualifications, competence, and professional ethics."].)

Ruelas responds by failing to address *Yang* and related case law. Instead, Ruelas's primary argument is that his causes of action for defamation and interference with prospective economic advantage "are grounded in [Defendants'] scheme to push Plaintiff out of his own company through exclusionary and defamatory tactics that are purely private, non-public acts unrelated to any protected speech or petitioning activity." (Opposition, p. 5:3-7.) According to Ruelas, "Defendant's actions were directed toward severing Plaintiff's professional and economic ties with [IOI], a private company, and had no bearing on any issue of public interest. Her statements were not aimed at furthering public discourse or advocacy but at manipulating the internal power dynamics within [IOI] and undermining Plaintiff's reputation within a narrow business community." (*Id.* at p. 5:17-22.) In addition, the "defamatory statements, if any, are secondary to the central allegations of exclusion and interference. Courts have consistently rejected Anti-SLAPP defenses in cases where speech is used as a means to achieve a private, non-public goal, particularly in commercial or business disputes." (*Id.* at p. 6:18-23, citing *Graffiti Protective Coatings, Inc. v. City of Pico Rivera* (2010) 181 Cal.App.4th 1207, 1224-25 (*Graffiti*).) Ruelas further argues that Barragan did not make the allegedly defamatory statements in a public forum or place open to the public, and "the fact that some of Defendant's actions involved communications with third parties (e.g. clients or partners) does not elevate this case to a matter of public interest or protected speech." (*Id.* at p. 5:22-26.) According to Ruelas, "California courts have consistently held that Anti-SLAPP protections do not extend to private grievances or defamatory statements made in the context of business disputes without a demonstrable connection to a broader public interest." (*Id.* at pp. 5:25-6:2, citing *Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924, 938.)

The court does not find Ruelas's position to be persuasive. To address his second point first, the court finds that the arguments regarding the presence or absence of a public forum are beside the point. Code of Civil Procedure section 425.16, subdivision (e)(4)—in contrast to subdivision (e)(3)—does not have a public forum requirement. (See *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 897-898 ["[S]ection 425.16, subdivision (e)(4), includes *conduct* in furtherance of free speech rights, regardless whether that conduct occurs in a place where ideas are freely exchanged. Section 425.16, therefore, governs even private communications, so long as they concern a public issue. [Citation.] It follows that even if Wolk's communications were not made in a public forum, and therefore do not fall under section 425.16, subdivision (e)(3), they fall under subdivision (e)(4)."] [Emphasis in original.].)

As for Ruelas's primary argument, the court disagrees with his characterizations of the second, third, and tenth causes of action. The defamation and interference with prospective economic advantage causes of action are based almost entirely on statements allegedly made by Barragan to others, not on her efforts to oust and exclude Ruelas from the company. The efforts to oust and exclude are the focus of the *other* causes of action in the complaint: for breach of contract, breach of fiduciary duty, conversion, and fraud.

Ruelas's tenth cause of action for defamation necessarily "arises" from the allegedly false and defamatory statements at issue. "The elements of a defamation cause of action are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage. [Citation.]" (*Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369 (*Wong*).) Here, Ruelas alleges that Barragan "embarked on a

malicious and systematic campaign to destroy Ruelas's hard-earned reputation. She intentionally and recklessly made false and defamatory statements about Ruelas to a wide audience, including current and potential clients, business partners, colleagues, and personal acquaintances. [¶] Barragan's defamatory statements included false accusations that Ruelas was incompetent, dishonest, and unethical in his business practices. She falsely claimed that Ruelas had mismanaged company funds, engaged in illegal activities, and was responsible for the company's alleged failures. [¶] Barragan's statements were published orally and in writing, reaching a broad audience within the landscape/hardscape industry and beyond . . . ." (Complaint, ¶¶ 77-79.)

Similarly, the second cause of action alleges that Barragan intentionally interfered with Ruelas's economic relationships by "a. Making false and disparaging statements about Ruelas to clients and industry contacts. b. Actively undermining Ruelas'[s] reputation and credibility. c. Implying that Ruelas was no longer associated with [IOI] or able to provide services." (Complaint, ¶ 30.) This cause of action is based entirely on representations made by Barragan to others. The third cause of action alleges that Barragan negligently interfered with Ruelas's economic relationships by: "a. Failing to consider the potential consequences of her actions on Ruelas'[s] business relationships. b. Negligently making false or misleading statements about Ruelas to clients and industry contacts. c. Carelessly creating an impression that Ruelas was no longer associated with Innovation or able to provide services." (*Id.* at ¶ 37.) Again, the crux of these allegations is on statements and representations made by Barragan to people outside the company, not on her efforts to exclude Ruelas from the company.

Ruelas argues that "Plaintiff's interference claims arise directly from Defendant's exclusionary tactics: removing him from the company, restricting his access to company resources, and cutting him off from further using [IOI's] economically. The alleged defamatory statements are not the core of Plaintiff's claims but rather part of the overall scheme to interfere with Plaintiff's economic prospects and reputation." (Opposition, p. 6:11-15.) The court disagrees. Barragan's allegedly false and defamatory statements to "clients and industry contacts" are the *basis of liability* for the second, third, and tenth causes of action—they are not merely *evidence of liability*. Further, even if the interference causes of action could be interpreted as encompassing both protected activity (Barragan's statements to others) and unprotected activity (her ouster of Ruelas), that does not save Ruelas from an anti-SLAPP motion. (See *Baral v. Schnitt* (2016) 1 Cal.5th 376, 396 ["When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage."].) So-called "mixed" causes of action are still subject to a motion under section 425.16.

The court finds Barragan's statements, made to an allegedly "wide audience" regarding a professional in a licensed industry, are protected conduct. The court agrees with Defendants' reading of the case law (including *Yang, supra*) that statements made as part of a goal to protect consumers from certain licensed professionals—including the qualifications, competence, and ethics of that professional—are a matter of public interest and therefore protected activity. (See MPA, p. 6:10-11; see also *Wilbanks, supra,*121 Cal.App.4th at pp. 898-901 [statements made about an insurance broker working in an industry that "touches a large number of people" were made in connection with "a matter of public interest"].)

2. Probability of Prevailing

As for whether Ruelas has demonstrated a probability of prevailing on these causes of action, the court finds that Ruelas has failed to discharge his burden. A plaintiff shows a probability of prevailing by demonstrating "that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (*Soukup, supra,* 39 Cal.4th at p. 291, internal citations and quotations omitted.) "[I]n order to satisfy its burden under the second prong of the anti-SLAPP statute, it is not sufficient that plaintiffs' complaint survive a demurrer. Plaintiffs must also substantiate the legal sufficiency of their claim. It would defeat the obvious purposes of the anti-SLAPP statute if mere allegations in an unverified complaint would be sufficient to avoid an order to strike the complaint. Substantiation requires something more than that. Once the court determines the first prong of the statute has been met, a plaintiff must provide the court with sufficient evidence to permit the court to determine whether 'there is a probability that the plaintiff will prevail on the claim.' [Citation.]" (*Dupont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 568.)

Ruelas has submitted no evidence, admissible or not, in support of his opposition to Defendants' motion. (See *Kreeger v. Wanland* (2006) 141 Cal.App.4th 826, 831 ["First, the court determines if the challenged cause of action arises from protected activity. If the defendant makes such a showing, the burden shifts to the plaintiff to establish, *with admissible evidence*, a reasonable probability of prevailing on the merits. [Citation.]"], italics added.) Here, his opposition brief consists solely of abstract legal argument and conclusory statements in connection with the second prong of the anti-SLAPP analysis. As such, Ruelas has failed to show any probability of prevailing. (See *Collins v. Hertz Corp.* (2006) 144 Cal.App.4th 64, 75 [it is a party's duty "to direct the court to evidence that supports their claims. It is not the court's duty to rummage through the papers to construct or resuscitate their case."].)

IV. ATTORNEY'S FEES

The "prevailing defendant" on an anti-SLAPP motion "shall be entitled" to recover attorney's fees and costs. (Code Civ. Proc., § 425.16, subd. (c).) "[A]ny SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.) "A prevailing defendant on an anti-SLAPP motion is entitled to seek fees and costs 'incurred in connection with' the anti-SLAPP motion itself, but is not entitled to an award of attorney fees and costs incurred for the entire action." (*569 East County Boulevard LLC v. Backcountry Against the Sump, Inc.* (2016) 6 Cal.App.5th 426, 433, citing *Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi* (2006) 141 Cal.App.4th 15, 21 (*Wanland*).) "An award of attorney fees to a prevailing defendant on an anti-SLAPP motion properly includes attorney fees incurred to litigate the special motion to strike (the merits fees) plus the fees incurred in connection with litigating the fee award itself (the fees on fees)." (*Ibid*.) However, a fee award under the anti-SLAPP statute may not include matters unrelated to the anti-SLAPP motion, such as "attacking service of process, preparing and revising an answer to the complaint, [or] summary judgment research." (*Ibid.*, citing *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1325.) Similarly, the fee award should not include fees for "obtaining the docket at the inception of the case" or "attending the trial court's mandatory case management conference" because such fees "would have been incurred whether or not [the defendant] filed the motion to strike." (*Ibid*.)

Defendants have submitted declarations stating the fees and costs incurred in bringing the special motion to strike. Ruelas argues that Defendants' fees are "overinflated and inappropriate" because they include not only work on the anti-SLAPP motion itself, but also "more general work done on the case, like preparing an answer to the complaint." (Opposition, p. 11:14-16.) This argument is made without citation to anything in the moving papers, and the court does not discern the basis for Ruelas's bare allegation that the fee request includes "more general work." The declarations of Defendants' counsel indicate that the amounts sought are solely for hours expended on the anti-SLAPP motion.

The court finds that counsel's hourly rates of $500 and $550 per hour are reasonable, and that the overall number of hours spent on this anti-SLAPP motion by all timekeepers (44.2 hours) was reasonable. Although the court typically does not find optional reply briefs to be critical in motion practice—as they often simply repeat arguments that were already in the opening brief—in this instance, the court observes that the reply brief makes three important rebuttal arguments: (1) the timeliness of the motion, (2) Ruelas's failure to address *Yang*, and (3) Ruelas's failure to submit evidence on the second prong of the anti-SLAPP motion. The court will therefore include award an amount that includes the amount of time spent preparing a reply. The total amount awarded is **$23,195.50**, which includes the $60 filing fee (The court does not intend to award any hours spent preparing for the hearing itself.)

V. CONCLUSION

The court GRANTS the Defendants' special motion to strike as to the second, third, and tenth cause of action. The court GRANTS Defendants' request for $23,195.50 in attorney's fees and costs.

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Calendar Line 5
Case Name: *Applied Materials, Inc. v. Huu T. Vu et al.*
Case No.: 22CV403017

Defendant Capital Asset Exchange & Trading LLC d/b/a CAE Online ("CAE") moves for sanctions against plaintiff Applied Materials, Inc. ("Applied"), based on two recent supplemental interrogatory responses by Applied.

On July 16, 2024, this court ordered Applied to provide substantive answers to CAE's Interrogatories Nos. 84 and 85, which ask, "State the amount of your claim for damages against [CAE]," and "Describe in detail how you calculated your claim for damages against [CAE]," respectively. Applied had previously provided objection-only responses to these interrogatories.

CAE argues that Applied's supplemental responses, served on July 31, 2024, are inadequate and therefore constitute "disobedience" of the court's July 16 order. CAE now seeks an order compelling further supplemental responses from Applied and compelling Applied to pay $4,000 in sanctions. For its part, Applied argues that the supplemental responses comply with the court's July 16 order and that it has provided all of the information presently in its possession. Applied says that it still needs discovery from CAE in order to perform a more precise calculation of its damages in response to these interrogatories. Applied argues that CAE should be ordered to pay monetary sanctions of $35,000 for having brought this motion.[7]

The court has reviewed the supplemental interrogatory answers and finds that they are not terribly informative or specific, and that they are also unnecessarily argumentative. They read more like miniature legal briefs than interrogatory answers. The court can certainly understand CAE's disappointment. At the same time, the court finds that CAE is expecting too much from these interrogatories when it argues that the answers constitute a "refusal" to comply with the court's prior order. Applied has represented that the information in its supplemental answers is all that it currently possesses, and that it needs more discovery from CAE before it can provide greater specificity. The court has been given no reason to believe otherwise. It appears from the arguments in the opening brief that CAE is seeking an *admission* from Applied that it does not have any concrete evidence that CAE actually sold (as opposed to attempted to sell) any stolen equipment from James Nguyen. But that is not the function of interrogatories, and CAE has not explained how it expects these particular answers to be supplemented in a manner that would make them more satisfactory to CAE, short of a capitulation to its position that the amount of provable damages is $0. That is not a reasonable expectation at this stage of discovery.

The court DENIES the motion. The court also DENIES Applied's opposing request for monetary sanctions.

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[7] Applied also contends that CAE did not properly meet and confer before filing this motion. Although the court finds that the parties' exchange of communications was not ideally fulsome in this instance, the court also finds that they were minimally adequate.