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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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| DR. IMAN SADEGHI, an individual,<br><br>Plaintiff,<br><br>v.<br><br>PINSCREEN, INC., a Delaware Corporation; DR. HAO LI, an individual; YEN-CHUN CHEN, an individual; LIWEN HU, an individual; HAN-WEI KUNG, an individual; and DOES 1 through 100,<br><br>Defendants | Case No. BC 709376<br><br>Assigned for all purposes to Hon. Lia Martin, Dept. 16<br><br>**INDIVIDUAL DEFENDANTS DR. HAO LI, YEN-CHUN CHEN, LIWEN HU, AND HAN-WEI KUNG'S REPLY BRIEF IN SUPPORT OF DEFENDANTS' DEMURRER TO THE VERIFIED FIRST AMENDED COMPLAINT**<br><br>Date: April 11, 2019<br>Time: 9:00 a.m.<br>Dept.: "16"<br>**Reservation ID: 181017357463**<br><br>Complaint filed: June 11, 2018<br>Trial date: None Set |

TO THE COURT AND TO PLAINTIFF AND HIS ATTORNEY OF RECORD:

COME NOW, Defendants Dr. Hao Li ("Li"), Yen-Chun Chen ("Chen"), Liwen Hu ("Hu") and Han-Wei Kung ("Kung") (collectively, the "Individual Defendants"), who pursuant to Code of Civil Procedure section 430.10, subsections (e) and (f), hereby submit their reply brief in support of demurrers to Plaintiff's FAC as a whole; as to Defendant Li, the First, Second, Third, Eighth, Ninth, Thirteenth, and Fourteenth Causes of Action therein; and as to Defendants, Chen, Hu, and Kung (who have filed joinders), the Third, Ninth, and Fourteenth Causes of Action.

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION.

In two lengthy meet and confer letters, and then in the demurrer proper, Dr. Li (now joined by the three newly named individual defendants), set forth in painstaking detail the numerous shortcomings of the original Verified Complaint and then the Verified FAC. Plaintiff Sadeghi never responded with any authority to Dr. Li's meet and confer efforts (see generally Davidson Decl. ISO Demurrer), such that it is only now, in opposition, that Defendants finally catch a glimpse of what Plaintiff believes to be the factual and legal underpinnings of his 274-page FAC.

The result, unfortunately, is quite underwhelming. Plaintiff fails to address the bulk of the issues raised by Defendants, instead wasting precious space telling the Court what a horrible person he thinks Dr. Li is (Opp. at 2:8-3:5) and then pasting whole portions of the FAC into his Opposition (see pages 3-4) for reasons that are entirely lost on Defendants. (He apparently is attempting to explain the difference between "hair shape" and "hair appearance," but how such a distinction is in any way relevant to his inability to state a cause of action is quite beyond the pale.) He also directs the Court to his personal website, which is of course far outside the four corners of the FAC and merits no further comment. (Opp. at 2:6-7, fn.1.) He obsesses with technicalities rather than substance by quibbling that the demurrer must be overruled entirely because its grounds are "conjunctively stated" (the horror!) before wasting nearly a page (Opp. at 8:17-9:13) ridiculing Defendant's use of a *hyphen* rather than an *em-dash* when Defendants have done nothing more than quote directly from a case law citation in CACI 1200. If Plaintiff has an issue on the use of punctuation, he can take it up with the Judicial Council of California.

All this means that he has little space to actually address Defendants' meritorious arguments on demurrer, and indeed he does not address many of them. In each case, where Plaintiff does not refute an argument, it is conceded. (*D.I. Chadbourne, Inc. v. Superior Court* (1964) 60 Cal.2d 723, 728, fn. 4 (where nonmoving party fails to oppose a ground for a motion "it is assumed that [nonmoving party] concedes" that ground).) And in those instances where he does engage Defendant on the law, his citations as a general rule either support Defendants' arguments, or do not resolve the defects inherent in the FAC. Defendants' demurrers to the 1st-3rd, 8th-9th,

and 13th-14th COAs should be sustained, and Defendants further request that the Court deny leave to amend, as no cause of action can properly be pled against an individual defendant.

## II. LEGAL ARGUMENT.

### A. Plaintiff Does Not Rebut Pinscreen's Main Grounds for Demurrer to the Fraudulent Misrepresentation and Concealment Claims (1st and 2nd COAs).

1. Plaintiff does not address and therefore concedes the claim that Dr. Li is an improper defendant for his fraud claims, or that he has failed to plead justifiable reliance.

Dr. Li demurred to the 1st and 2nd COAs for Fraudulent Misrepresentation and Concealment on the grounds that he is not a proper defendant to the fraud claims because the FAC alleges that he acted "on behalf of Pinscreen," **not** in his individual capacity. (Demurrer at 4:13-5:5; see FAC ¶¶ 299-300, 31 (1st COA); ¶¶ 316-317, 324 (2nd COA).) And indeed as a matter of law, absent a properly pleaded alter ego claim (which we do not have here), Dr. Li as an officer cannot be held personally liable on obligations that the company may have incurred in furtherance of the alleged fraud (which Defendants vehemently dispute occurred). (*Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 516.) Thus, Dr. Li is not a proper defendant to the first or second causes of action.

Similarly, Plaintiff fails to address, and therefore concedes, the argument that he has failed to meet the element of justifiable reliance. (Demurrer at 7:5-8:4.) Either ground is sufficient to sustain he demurrers as to the first two causes of action.

2. Plaintiff concedes that he has only pled one communication with particularity, but cannot show as a matter of law that this communication is a false statement of fact because it is controverted by other statements in the FAC.

Li's demurrer asserted that Plaintiff failed to plead fraudulent misrepresentation with particularity or, as to the allegation regarding "autogenerated hair," that the FAC fails to state a false representation of fact. Plaintiff appears to concede that none of the alleged misrepresentations are pled with specificity, but takes issue with Defendant's contention that he has not pled the "autogenerated hair" correspondence (i.e., "Sadeghi: '[…] Autogenerated hair?' Li: 'Yes.'") with particularity.

But Li has already accepted that this communication may meet the particularity requirement (Dem. at 5:18-20) but argues that this communication does **not** save the fraud claim because as a matter of law it is not a false representation of fact. (See Demurrer at 6:6-7:4.) In other words, Plaintiff is in agreement with Defendant that he has pled no communications with specificity save one, but Plaintiff does not rebut Defendant's argument that the FAC itself controverts the claim that there was any false representation of fact.

Defendant is not asking the Court to conduct a "mini-trial" (see Opp. at 11:16-12:2) but has cited to material within the FAC itself that *admits* that the avatar's hair was automatically generated, simply that there were issues with the speed and quality of the generation, all of which was openly acknowledged by Defendant. (See Demurrer at 6:6-7:4.) Plaintiff cannot plead a cause of action by the existence of a false representation of facts, where elsewhere in the FAC that very same fact is alleged to be true.[1]

3. Plaintiff's assortment of items in the opposition he believes should have been disclosed cannot substitute for properly pleading fraudulent concealment in the FAC.

Plaintiff cites a laundry list of items that he thinks should have been disclosed before the inception of the employment relationship. (Opp. at 12:21-13:25.) But Defendant should not be required to address the adequacy of Plaintiff's list, considering that it does not appear in the body of the second cause of action and is compiled for the sole benefit of his opposition. A defendant should not have to guess at the basis of the plaintiff's fraudulent concealment claim. Thus, Plaintiff's opportunistic list in opposition does not resolve the particularity problem of the FAC itself.

4. Plaintiff fails to cite to any language in the FAC that supports a cognizable damage that is recoverable in fraud.

Li's Demurrer argued that Plaintiff cannot claim wrongful termination damages in fraudulent inducement claim, as Plaintiff attempts to do (FAC ¶ 312).)

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[1] *Tindell v. Murphy* (2018) 22 Cal. App. 5th 1239, 1243 (affirming demurrer where defendant alleged, and the court agreed, that "allegations in the complaint were contradicted by exhibits attached to the complaint"); *Frazer v. Barlow*, 63 Cal. 71, 72 (1883) ("inconsistent and contradictory statements ma[k]e [a] complaint ambiguous, uncertain, and demurrable").

> [I]t is only through [Plaintiff's] purported wrongful termination – six months later – that he began accruing damages. But that termination has no nexus with the original decision to hire him and has no relationship with his fraud claim. Rather, his termination claim is predicated on his alleged whistleblowing activities, not on allegations of fraud. (See FAC ¶ 272.) . . . Thus, he has no lost wages arising from his fraud claim.

(Demurrer at 8:6-18.) In his Opposition, Plaintiff mischaracterizes Defendant's argument as alleging that "Sadeghi is only entitled to damages from the wrongful termination and not the fraudulent inducement." (Opp. at 9:17-20.) That's just wrong. Defendant's argument is that Plaintiff has *only* alleged wrongful termination damages in his fraud claim and has *not* alleged damages arising from the inducement. Whether Plaintiff can amend to "properly" assert fraud damages without contravening his prior verified pleadings is another question, but as it stands his FAC does not allege any recoverable damages under a fraud theory.[2]

For these additional reasons, the demurrers as to the fraudulent misrepresentation and concealment claims should be sustained.

**B. The Demurrer to the 3rd COA for Battery Should Be Sustained.**

The Individual Defendants, including newly joined defendants Chen, Hu, and Kung, demurred to the battery claim on several grounds, including that of (1) worker's compensation exclusivity; (2) failure to specify which defendant did the alleged battering and which "acted in concert with those that did" (an impermissibly uncertain allegation); (3) and failure to assert any facts to support the allegation that the individual defendants were acting in the "course and scope" of their employment. Plaintiff's Opposition cites to the legal requirement, provides a definition of "touching," and asserts that "less particularity is required" in a civil battery case, and then once again improperly cites to material on Plaintiff's website.[3] The recitation of black-letter law and

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[2] Having reviewed Plaintiff's authority (which was not provided during meet and confer), Defendant accepts the argument that emotional distress damages can be recovered in a case of intentional (as opposed to negligent) misrepresentation. However, "emotional distress . . . damages have been allowed **only as an aggravation of other damages**." (*Nagy v. Nagy* (1989) 210 Cal. App. 3d 1262, 1269 (emphasis added).) Since no other damages are properly pled, the demurrer should be sustained regardless.

[3] It is concerning that Plaintiff claims that this material was "obtained through a subpoena of Pinscreen's building security after the FAC was filed," as counsel for Defendants have no record of being served with a subpoena.

the generalized citation back to the FAC does not constitute a meaningful opposition, and therefore it appears Defendant's arguments are conceded. The demurrer should be sustained.

**C. The Demurrer to the 8th COA for Intentional Interference with Contract Should Be Sustained.**

Defendant's demurrer provides on-point authority that an intentional interference claim cannot proceed against an officer of the same company to which the contract is alleged. (Demurrer at 12:18-13:2.) Plaintiff's main objection to this demurrer is his aforementioned obsession with hyphens and em-dashes, a rambling diatribe which is frankly a bit embarrassing to read. (See Opp. at 8:17-9:13.) The law is clear that an intentional interference claim can only be made against *strangers* or *interlopers* to the contract, not against "insiders," and it does not make a whit of difference whether those two words are separated by a hyphen, a dash, or any other punctuation mark for that matter. (Opp. at 12:20-23 (citing to CACI 2200 and *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 514.)

Plaintiff desperately contends that the fact that Li allegedly acted "based on his personal motives" makes him a "stranger to the contract." (Opp. at 15:3-4.) But he cites no authority for this proposition and in any case he misrepresents the allegation in the FAC, which is that Li acted only "**in part** on personal motives." (FAC ¶ 384 (emphasis added).) And even this contradicts material elsewhere in the FAC stating that Li's alleged conduct in inducing Plaintiff to join Pinscreen was done "on behalf of Pinscreen," the contradictory allegations (See FAC ¶¶ 436-439.) In any case, the contortionism necessary to allege that Pinscreen's founder and CEO intentionally interfered with Plaintiff's contract with Pinscreen is a bridge too far. The demurrer should be granted without leave to amend.

**D. The Ninth Cause of Action for Intentional Infliction of Emotional Distress Fails to State a Cause of Action and Is Uncertain.**

Li, joined by the other Individual Defendants, demurred to the IIED claim on the grounds that no action alleged by Plaintiff can even remotely be considered "so extreme as to exceed all bounds of that usually tolerated in a civilized community.' (Demurrer at 13:5-9.) Moreover, as to the Individual Defendants, there is no public policy at work so worker's compensation exclusivity

applies. (*Id.* at 13:15-19.) Finally, since IIED is a derivative claim, to the extent that the Court grants demurrers as to the underlying claims, the IIED claim should fail as well. (*Id.* at 13:10-15.)

**E. The Thirteenth Cause of Action for Breach of Constructive Bailment Fails to State a Cause of Action and is Uncertain.**

Clearly aware of the frivolousness of his new claim for "Breach of Constructive Bailment," and the lack of any legal basis to proceed with such a claim, Plaintiff attempts to re-christen the 13th COA as "**Negligence** / Breach of Constructive Bailment" and then sets forth the elements for **negligence**. Not so fast. The 13th COA is titled and pled (however feebly) as "Breach of Constructive Bailment," not negligence.[4] (FAC ¶¶ 420-423.) As stated in the Demurrer, there is no reported case or jury instruction that references such a cause of action, and although "bailment" is a cause of action, Plaintiff does not come close to satisfying the elements for such a claim. (See Demurrer at 13:22-14:16.)[5] His Opposition does nothing to address any of Plaintiff's arguments, and therefore concedes that the 13th COA is flawed. The demurrer should be sustained. Moreover, here, since Plaintiff alleges that his property was in he custody of Pinscreen, it is difficult to fathom how Dr. Li can be held personally liable, and certainly no duty is alleged.

**F. The Fourteenth Cause of Action for Invasion of Privacy Fails to State a Cause of Action and Is Uncertain.**

A party claiming a violation of California's constitutional right to privacy 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." (*Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 998.) As argued in the demurrer, Plaintiff had no reasonable expectation of privacy, nor a legally protected privacy interest, in his work computer because the Confidentiality Agreement he executed states that "I have no expectation of privacy with the respect to the Company's . . . information processing systems" and "I agree that any property situated on the Company's premises and owned by the Company . . . is subject to inspection by

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[4] Plaintiff's initial Verified Complaint pled "Negligence" as the 13th Cause of Action, but wisely removed that cause of action following meet and confer. He cannot suddenly resurrect it in an opposition to demurrer.

[5] Futher underscoring the frivolousness of this claim is that it appears to be predicated on the allegation that that Pinscreen somehow mishandled Dr. Sadeghi's Mickey Mouse sculpture (which looks perfectly intact in the photographs appended on page 267 of the FAC). The claim is truly a throwaway.

Company personnel at any time with or without notice." (Dem. at 14:17-15:13; FAC at p. 252.)

As a matter of law, then, Sadeghi had no privacy interest in the contents of his backpack when those contents are admittedly a work computer, nor did he have a privacy interest in the personal files he stored in that computer, the content of which incidentally constitute a separate valid ground for terminating his employment. (*Id.*; see Verified Compl. ¶ 151 ("Sadeghi' s personal data that was stored on his work laptop . . . contained some of the only copies of Sadeghi's anniversary trip photos and videos, including **explicit photos of himself**.").)

In Opposition, Plaintiff cites to his opposition to the *Pinscreen* demurrer. (Opp. at 15:23.) Plaintiff's cross-reference to arguments contained in a different opposition should not be considered by the Court, as the grounds for each opposition should be separately pled rather than predicated on material in some other document. Nevertheless, to the extent that such cross-referencing is permitted by the Court, then Pinscreen incorporates by reference the relevant material in the Pinscreen Reply (starting at 9:20).

### G. Plaintiff's Argument That the Grounds for Demurrer Are Not "Conjunctively Stated" Is Nonsense and Merely Delays His Fate.

Briefly, Plaintiff's hypertechinical argument that Defendant has somehow violated California Rule of Court 3.1320(a) by allegedly not placing "[e]ach ground of demurrer . . . in a separate paragraph" smacks of desperation. Defendant's statement of demurrer follows standard pleading practice and counsel is unaware of any authority holding that Rule of Court 3.1320(a) must be read in the matter suggested by Plaintiff,. Even if that were so, nothing suggests that a technical violation of 3.1320 would cause the draconian result of the entire demurrer to be *overruled.* Finally, if these issues not resolved now, a Motion for Judgment on the Pleadings will certainly follow. Sadeghi, unfortunately, cannot postpone the inevitable through technicalities.

## III. CONCLUSION.

For these reasons, pursuant to Code of Civil Procedure section 418.10(a), Defendant Li requests that the Court grant his demurrer to the First Amended Complaint (FAC) of Plaintiff Dr. Iman Sadeghi, and specifically to Plaintiff's first, second, third, eighth, ninth, thirteenth, and fourteenth causes of action therein, pursuant to Code of Civil Procedure §§ 430.10(e) and (f); and

Defendants Chen, Hu, and Kung request that the Court grant their demurrer to the FAC, and specifically to Plaintiff's third, ninth, and fourteenth causes of action therein. Defendants further requests that Sadeghi be denied leave to amend unless it can show a reasonable likelihood of amending the FAC to state a cause of action.

Dated: April 4, 2019

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