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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DR. IMAN SADEGHI, an individual, Plaintiff, v. 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, Defendants	Case No. BC 709376 Assigned for all purposes to Hon. Lia Martin, Dept. 16 **DEFENDANT PINSCREEN, INC.'S REPLY BRIEF IN SUPPORT OF DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** Date: April 11, 2019 Time: 9:00 a.m. Dept.: "16" **Reservation ID: 181017357443** Complaint filed: June 11, 2018 Trial date: None Set

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

COMES NOW, Defendant Pinscreen, Inc. ("Defendant"), who hereby submits his reply brief in support of demurrers to Plaintiff's First Amended Complaint in its entirety, and to Plaintiff's First through Seventh and Ninth through Fifteenth Causes of Action pursuant to Code of Civil Procedure section 430.10, subsections (e) and (f), as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiff Iman Sadeghi's late-filed opposition[1] is one of desperation. He and his counsel care little for the basic rules of demurrer, specifically the rule that a demurrer should be adjudged from the four corners of the complaint and matters as to which the Court can take judicial notice. Instead, they cite deliberately to material that Sadeghi has posted on his personal website. (See Opp. at 2:6-7, fn. 1) while having the audacity a moment later to characterize Defendant Pinscreen, Inc.'s demurrer as a "speaking" demurrer" (Opp. at 2:11).

Plaintiff smears Pinscreen by claiming it used the demurrer procedure to "delay" proceedings (Opp. at 2:8-10), but it is Plaintiff himself who took 45 days to file an FAC, after Defendant met and conferred regarding the many deficiencies in the initial Complaint. (See Davidson Decl. ISO Demurrer, Exh. C.) That Plaintiff not only recycled but exacerbated the most glaring deficiencies, while stuffing the FAC with 274 pages of fluff and inserting frivolous claims for "Breach of Constructive Bailment" and "Breach of Implied Contract for Research Integrity" is the sole cause of the present demurrer and accompanying motion to strike.

And indeed, Plaintiff tacitly concedes the merits of Defendant's demurrer by ducking most of Plaintiff's arguments. After wasting time "opposing" arguments that Plaintiff has never made (such as that WC exclusivity extends to Plaintiff's fraud claims, see Opp. at 5:12-16) and asking the Court to rule on technicalities (such as that the entire demurrer should be overruled because Defendant has purportedly not "conjunctively stated" its grounds for relief, Opp. at 3:17-4:3), he spends precious little time actually opposing the merits of the Demurrer. The Opposition is little more than a recitation of the elements of each cause of action coupled with oblique references back to the FAC and string cites to authority. In light of this, Pinscreen's demurrer should be granted as to all causes of action, and leave to amend denied as to **at least** the 5th, 6th, 11th, 12th, 13th, and 14th COAs, and any other COA as to which Plaintiff cannot demonstrate a possibility of amending.

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[1] According to the Court's docket, the opposition was filed on March 29, 2019, eight court days before the April 11 hearing.

II. ARGUMENT.

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

Pinscreen demurred to the 1st and 2nd COAs alleging fraudulent misrepresentation and concealment, primarily on the grounds that Plaintiff has failed to plead (1) fraud with particularity; (2) any false representation of fact; (3) facts constituting justifiable reliance; and (4) any cognizable damages. (Dem. at 2:23-7:25.)[2] Plaintiff does not even attempt to rebut the grounds of Pinscreen's demurrer that his fraud claims fail because he as failed to plead justifiable reliance, and demonstrate the existence of a false representation of fact. This failure is sufficient have the demurrers sustained as to both fraud claims. (*D.I. Chadbourne, Inc. v. Sup. Ct.* (1964) 60 Cal.2d 723, 728 fn. 4 (where party fails to oppose a ground for a motion, "it is assumed that [nonmoving party] concedes" that ground).)

As to the pleading fraud with specificity, Plaintiff opposition proclaims that the fraudulent misrepresentation claim "is stated with specificity" (Opp. at 7:4) but then fails to point the Court to any such specificity. Instead, Plaintiff lazily quotes the *elements* for fraud and cites back to various paragraphs in the FAC, without further comment. (*Id.* at 7:4-11.) However, these are the very same paragraphs that Defendant quoted from in the Demurrer as proof that Plaintiff *failed* to plead these claims with specificity. (Dem. at 3:17-4:5.) If Plaintiff cannot even tell the Court "how, when, where, to whom, and by what means" the purported fraud was perpetrated, he cannot claim to have met the specificity requirement. (Dem. at 3:10-15.)[3] As to the 2nd COA for concealment, Plaintiff does not even bother to claim that he has pled this with specificity. Nevertheless, the requirement that "[f]raud must be pleaded with specificity" also applies to a claim for fraudulent concealment. (*Boschma v. Home Loan Ctr.* (2011) 198 Cal.App.4th 230.)[4]

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[2] Since Defendant has not argued worker's compensation exclusivity in connection with the fraud claims, Plaintiff's argument in that regard is the classic straw man. (Opp. at 5:7-17.)

[3] Plaintiff's cross-reference to arguments contained in his Opposition to Hao Li's Demurrer (see Opp. at 7:11) 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 Li Reply.

[4] Here again Plaintiff cross-references to a "discussion in Opposition to Li's demurrer 12:10." (Opp. at 7:19.) To the extent the Court finds cross-referencing appropriate, Pinscreen incorporates the material in the Li Reply.

1. Plaintiff misunderstands and fails to oppose Defendant's argument that Plaintiff has not pled the existence of damages recoverable under a fraud theory.

Plaintiff does address Defendant's argument that he has failed to plead any cognizable damages by relying on wrongful termination damages to support a fraudulent inducement claim. (Opp. at 6:6-7:3.) However, he mischaracterizes the demurrer as arguing 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 in demurrer was that Plaintiff has in fact *only* alleged wrongful termination damages in his fraud claim and has *not* alleged damages arising from the inducement. (See Dem. at 6:4-22, 7:22-25; FAC ¶ 312 ("Sadeghi was damaged . . . by being fraudulently induced to give up his employment at Google, which income and benefits were unsubstituted **once Sadeghi was retaliated against and wrongfully terminated from Pinscreen**.") (emphasis added).) 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.[5]

B. The Third Cause of Action for Battery Fails to State a Claim and Is Uncertain.

Pinscreen demurred to the third cause of action for battery on the grounds that (1) a corporation cannot physically commit a "battery"; and (2) to the extent that the plaintiff claims vicarious liability, workers' compensation is the sole forum for a battery claim by an employee against his or her employer. (Dem. at 7:26-8:21.)

In opposition, Plaintiff argues first that he has pled battery with particularity (Opp. at 7:20), but since that was not one of Pinscreen's grounds for opposition, that position is irrelevant. Second, Plaintiff claims that workers' compensation is "not a remedy" because "Sadeghi was battered *outside* the course and scope of–and *after*– his employment."[6] Yet it is telling that Plaintiff fails to cite to a single allegation in his entire 274-page FAC that would reflect that

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[5] 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.) Since no other damages are properly pled, the demurrer should be sustained nonetheless.

[6] For a third time, Plaintiff improperly cross-references to an alleged further "discussion" in his Opposition to the Li Demurrer. (See Opp. at 8:2.) To the extent the Court finds such cross-referencing appropriate, then Pinscreen incorporates its argument in the Li Reply.

Plaintiff was indeed battered outside the course and scope of, or after, his employment. This is stated in the opposition but such can be found nowhere in the FAC.

Quite the contrary – the FAC alleges that the purported battery took place on Pinscreen's premises **during** his final day of employment, and that he "intended to return the laptop before the end of business day." (FAC ¶¶ 278-280.) Similarly, the alleged termination letter states that "Your **last day** of employment with Pinscreen, Inc. is August 7, 2017." (FAC ¶ 267.) Thus, the FAC not only does not allege that Plaintiff was no longer employed by Pinscreen at the time of the purported battery, but also binds Plaintiff to allege, contrary to his opposition, that he was still employed at the time of the battery. Therefore workers' compensation exclusivity applies.

C. Plaintiff Fails to Rebut Defendant's Arguments that the 4th and 7th COAs for Whistleblower Retaliation and Wrongful Termination Are Subject to Demurrer.

Pinscreen demurred to the fourth cause of action for whistleblower retaliation on the grounds that either Plaintiff failed to cite to a predicate statute for his whistleblower claim, or that the predicate statute cannot possibly serve as a predicate or are too vague. (Dem. at 8:22-10:16.) There is no statute cited by Plaintiff that prohibits so-called "academic misconduct" (whatever that is) or "data fabrication"; Plaintiff fails to cite a single statute that prohibits what he claims to be "federal immigration law violations"; and he fails to allege any reasonable cause to believe that Pinscreen engaged in any "labor law violations." What we have are square pegs and round holes.

Plaintiff does nothing to ameliorate or explain this fatal defect. He says, "Sadeghi had reason to believe that Pinscreen's data fabrication and academic misconduct constituted **a fraud on Pinscreen investors** violating {sic} Code §§ 1572, and 1709." (Opp. at 8:15-16.) Yet, as stated in the demurrer, Civil Code section 1572 and 1709[7] do not apply because "neither the parties, nor the contract, nor the statement made, is alleged or pled with specificity." (Opp. at 9:11-15.) Who are these investors? What statements were made to them? Despite the FAC's 274 pages, every alleged statement is made in **internal chats** involving **Pinscreen personnel**.

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[7] Section 1572 prohibits untruthful statements or omissions "committed by a party to the contract . . . with intent to deceive another party thereto, or to induce him to enter into the contract." Section 1709 proscribes "willfully deceiv[ing] another with intent to induce him to alter his position to his injury or risk."

This is in contrast to *Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal. App. 4th 144, relied upon by Plaintiff, in which the allegations in Yau's pleadings complaints allege the specific conduct that was perpetrated on members of the general public. (*Id.* at 149-150.) For example:

> In October 2008, Selff told Yau to call Prudencio and give him the "green light on fictitious repairs in order to generate as much revenue as possible by the end of the month in order to bring Santa Margarita [Ford's] numbers up." Selff told Yau to "offer . Prudencio a high percentage of the total monies generated to compensate him for his participation." Yau "decided to bring the matter to Mamic's attention once again." Mamic again told Yau he would speak to Selff.

(*Id.*) There is absolutely nothing in the FAC that comes close to reflecting a communication between Pinscreen and any investor in which any allegedly fraudulent information was provided such that a whistleblower claim could be predicated.

Similarly, *Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, also cited by Sadeghi, is highly instructive. (See Opp. at 8:27, fn. 34.) In *Patten*, "the disclosures indisputably encompassed only the context of **internal personnel matters involving a supervisor and her employee**, rather than the disclosure of a legal violation," and thus were insufficient to rely on as a predicate for an 1102.5 claim. (*Id.* at 1384-85.) Here, too, any issues that Sadeghi claims to have had with *Hao Li's* alleged "data fabrication" or *Hao Li's* alleged "immigration law violations," are nothing more than personnel matters involving a supervisor and his employee.

The 7th COA for wrongful termination in violation of public policy similarly fails. Plaintiff fails to cite to a single statute that relates to the actual allegations in his claims against Pinscreen. The terms "academic misconduct" and "data fabrication" may be relevant issues for an individual professor in his relationship with his host university, but Plaintiff has pled nothing to suggest that a *corporate entity* can engage in "academic misconduct" or "data fabrication," or that such activity violates an actual statute or regulation, which the Legislature has found implicates a fundamental public policy. Wrongful termination in violation of public policy is a judicially created tort and as such requires firm statutory predicate to proceed. (*Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 172, 176-178 (cause of action lies where "discharge clearly violated an express statutory objective or undermined a firmly established principle of public policy").)

D. Plaintiff Implicitly Concedes that the 5th and 6th COAs for Breach of Employment Contract and Implied Contract for Research Integrity Do Not Set Specify a Breach.

Pinscreen demurred to the Fifth Cause of Action on the grounds that Plaintiff failed to identify the specific terms of the contract that were breached, and that Sadeghi sought a form of damages not recoverable in contract. (Dem. at 10:17-11:17.) Plaintiff throws in the towel here, essentially claiming that it is sufficient to simply attach the contract at issue (here, the employment agreement between Pinscreen and Plaintiff) without identifying any term that he alleges was breached. (Opp. at 9:1-11.) Plaintiff wrongly claims that Pinscreen's authority is "inapposite," but in fact the authority is directly on point:

> Without specifying the nature of the contract, ***nor the specific terms Holcomb claims the bank had breached***, the complaint fails to adequately state a cause of action for breach of contract. Thus, . . . the trial court did not err in sustaining [the] demurrer

(*Holcomb v. Wells Fargo Bank, N.A.* (2007) 155 Cal. App. 4th 490, 501 (cited in Dem. at 11:2-3).) Here, as in *Holcomb*, Plaintiff fails to identify the specific terms he claims to have been breached. And here, as in *Holcomb*, since Plaintiff has not advised the Court how he could fix this glaring defect, the demurrer should be sustained without leave to amend.

As for Plaintiff's 6th COA styled "Breach of Implied Contract for Research Integrity," Defendant's demurrer argued that this claim failed because, among other reasons, any alleged duty owed by Dr. Li to USC (where he is a professor) or ACM to engage in "research integrity," has nothing to do with *Sadeghi's* employment relationship with *Pinscreen*, nor can Sadeghi claim Pinscreen owes him any duty by virtue of *Dr. Li's* relationships. (Dem. at 11:18-13:2.)

Sadeghi resorts to *ad hominem* attacks, accusing Pinscreen of "squabbl[ing]," "lying," and "quarrel[ing]." (Opp. at 9:21-10:1.) He then claims that it is "settled law" that an implied contract's existence is "a question of fact for the trial court." (Opp. at 9:21-22.) He is wrong. In the first place, he misquotes *Unilab Corp. v. Angeles-IPA* (2016) 44 Cal. App. 4th 622, cynically omitting the key word "**usually**" from the Court's ruling that "[w]hether an implied contract exists is **usually** a question of fact for the trial court." (*Id.* at 636; cf. Opp. at 21.) And there is ample authority that an implied contract claim *is* demurrable if it does not "sufficiently plead [a] contract."[8]

[8] *Yari v. Producers Guild of Am., Inc.* (2008) 161 Cal. App. 4th 172, 182 (sustaining demurrer); see *Green Valley Landowners Assn. v. City of Vallejo* (2015) 241 Cal. App. 4th 425, 432 (same).

Sadeghi then objects that he has not plead the existence of a contract between Pinscreen on the one hand and USC/ABM on the other hand (Opp. at 9:23-10:1), but indeed he did just that: "Pinscreen had an implied-in-fact agreement and obligation to conform to scientific research ethics and to follow academic conduct guidelines, including that of [USC] and [ABM]." (FAC ¶ 366.) USC and ABM are not parties to this suit and Sadeghi simply does not have and cannot claim standing to claim recovery for a purported breach of these alleged contractual arrangements. The demurrers to both the 5th and 6th COAs should be sustained without leave to amend.

E. The 9th COA for Intentional Infliction of Emotional Distress Fails to State a Cause of Action and Is Uncertain.

Plaintiff's IIED claim is derivative of the fraud, battery, whistleblower, and wrongful termination causes of action. If the Court finds that Plaintiff has failed to allege a public policy, then worker's compensation exclusivity preempts the IIED claim, and even in the absence thereof, it may still be dismissed if the Court determines that as a matter of law, Sadeghi's petty grievances do not implicate conduct "so extreme as to exceed all bounds of that usually tolerated in a civilized community." (See Dem. at 14:5-19 (citing cases).)

Plaintiff argues that his IIED claim is "not subject to WC" and cites authority holding that an IIED claim can proceed civilly "when employers … commit acts which do not fall within the reasonably anticipated conditions of work…." (Opp. at 5:22-6:1 (citing *Hart v. National Mortgage Land Co.* (1987) 189 Cal. App. 3d 1420).) Yet here, unlike in *Hart*, Plaintiff has alleged that the purported battery and other torts by Pinscreen employees **were** conducted "within the course and scope of their employment" or "on behalf of Pinscreen," thus distinguishing this case from *Hart* and relegating the IIED claim to workers' compensation exclusivity. (FAC ¶¶ 300, 316, 332, 340, 372.)

F. Plaintiff Fails to Rebut Defendant's Argument That the 10th COA for Negligent Hiring/Retention is Subject to Worker's Compensation Exclusivity.

With respect to the 10th COA for negligent hiring/retention, Plaintiff argues that "WC is not a remedy because Sadeghi's damages "from fraudulent inducement and battery [] occurred outside the course of Sadeghi's employment." (Opp. at 11.) However, the question for workers' compensation is not whether they occurred outside the course of *Sadeghi's* employment, but rather

whether they occurred outside the course of those coworkers (Li, Chen, Hu, and Kung) who he claims perpetrated them on him.

> [Labor Code] section 3601, subdivision (a)(1), ... provides that workers' compensation is an employee's exclusive remedy for claims for "injury or death of an employee against **any other employee of the employer acting within the scope of his or her employment** . . . ."

(*Fretland v. Cty. of Humboldt* (1999) 69 Cal. App. 4th 1478, 1487.) Since Plaintiff concedes that the alleged battery occurred "within the course and scope of [Defendants'] employment" (FAC ¶ 332), workers' compensation exclusivity applies. And as to the fraudulent inducement claim, since the 1st and 2nd COAs fail as a matter of law, Sadeghi cannot rely on those claims to support his flimsy negligent hiring/retention claim.

G. Plaintiff Fails to Provide Any Rationale for Claiming COBRA Premiums Are a Business Expense Under Labor Code § 2802 for Purposes of the 11th COA.

As stated in the Demurrer, Plaintiff has not alleged any reimbursed business expenses. He claims instead that he was not reimbursed for out-of-pocket COBRA payments which reimbursement would be a **benefit**, not a "necessary expenditure[] or loss[] incurred by the employee in direct consequence of the discharge of his or her duties." (Lab. Code § 2802.) Moreover, COBRA payments are the *employee's* responsibility, not the employer's, rendering section 2802 even more inapplicable. (See Dem. at 15:7-23.)

Plaintiff does not offer any legal argument, and admits it is "obviously true" that "Sadeghi was the one responsible for paying his COBRA premiums." (Opp. at 12:14-16.) Instead, he asks the Court to simply ignore all of this, accusing Defendant of making a "speaking" demurrer. But this is no "speaking" demurrer. This is a failure by Plaintiff to satisfy the key element of a 2802 claim, i.e., identifying an unreimbursed expense incurred "in direct consequence" of his duties. COBRA premiums are not that, as a matter of law. The demurrer should be sustained without leave.

H. Plaintiff's Refusal to Accept a Check for Waiting Time Penalties Dooms the 12th COA.

It is undisputed that Pinscreen sent Plaintiff checks not only for the alleged vacation time he claimed he was owed, but also for waiting time penalties, which Plaintiff then refused to deposit. (FAC ¶ 419; Exh. J, p. 267.) There is no colorable claim that Pinscreen conditioned the

check on any agreement or waiver by Plaintiff, and nothing in the letter in question can be read as such. Section 203 is clear that an employee's refusal to accept payment defeats a 203 claim:

> An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.

(Lab. Code § 203(a).) Plaintiff gets especially worked up here, labeling Defendant's arguments as "[i]nefficacious inapposite factual fallacies." (Opp. at 13:7-8.) Yet Plaintiff provides no basis for asserting a claim of waiting time penalties when Defendant in good faith attempted to make the payment and Plaintiff refused to accept it. The demurrer should be granted and leave denied.

I. Plaintiff's Attempts to Recast the 13th COA as a Negligence Claim Rather than for "Breach of Constructive Bailment" Are to No Avail.

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. (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 Dem. at 13:22-14:16.) His Opposition does nothing to address any of Plaintiff's arguments, and therefore concedes that the 13th COA is fatally flawed. The demurrer should be sustained.

J. The 14th COA Fails Because Plaintiff Cannot Circumvent the Clear Language in the Confidentiality Agreement He Attached to the FAC.

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 Company personnel at any time with or without notice." (Dem. at 17:20-18:24; 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 desperately relies on the Fourth Amendment's prohibition against illegal search and seizure. However, private employers are "unconstrained by the Fourth Amendment" and thus "may engage in practices the government as employer cannot." (*Willner v. Thornburgh* (D.C. Cir. 1991) 928 F.2d 1185, 1192. And even for a government employer, the Fourth Amendment's doesn't apply under these circumstances:

> [G]overnment searches to retrieve work-related materials or to investigate violations of workplace rules–searches of the sort that are regarded as **reasonable and normal in the private-employer context**–do not violate the Fourth Amendment.

(*O'Connor v. Ortega* (1987) 480 U.S. 709, 711 (emphasis added).) Plaintiff has no more arguments. He has admitted to being subject to a company policy that negates any privacy interest in company property or the files stored therein. The Confidentiality Agreement attached to the complaint provides a complete defense. The demurrer should be sustained without leave.

K. The 15th COA Is Derivative.

As argued in demurrer, since the UCL is derivative of the aforementioned causes of action, and since those causes of action fail, the UCL claim must fail to the same extent.

L. 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, and the reasons stated in the underlying demurrer, Defendant Pinscreen Inc. requests that the Court sustain the demurrer to the Verified First Amended Complaint, and each cause of action, pursuant to Code of Civil Procedure §§ 430.10(e) and (f), and that the Court exercise its discretion to deny leave to amend as to any COA as to which Plaintiff cannot articulate how the claim can be amended to state a cause of action.

Dated: April 4, 2019

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