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11 DR. IMAN SADEGHI

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES—CENTRAL DISTRICT**

14 DR. IMAN SADEGHI, an individual,

15 Plaintiff,

16 v.

17 PINSSCREEN, INC., a Delaware Corporation;
18 DR. HAO LI, an individual;
19 YEN-CHUN CHEN, an individual;
20 LIWEN HU, an individual;
21 HAN-WEI KUNG, an individual;
22 and DOES 1-100,

23 Defendants.

Case No.: BC709376

**DR. IMAN SADEGHI'S OPPOSITION TO THE
DEMURRER OF DEFENDANT PINSSCREEN INC.
TO THE FIRST AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND AUTHORITIES**

Dept.: 16
Hon: Lia Martin
Complaint Filed: June 11, 2018

Date: April 11, 2019
Time: 9:00 am
Place: Dept. 16., Stanley Mosk Courthouse

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. FACTS

3 A. Statement of the case.

4 This is an action for employment fraud and numerous consequent illegal acts. Plaintiff
5 Iman Sadeghi, who holds a doctorate in Computer Science/Computer Graphics, developed and
6 patented a novel hair-appearance technology used at Walt Disney Animation Studios. After
7 having worked at Google as a software engineer for more than five years, Sadeghi was solicited
8 by defendant Hao Li to join the leadership of a software start-up, Pinscreen Inc., which Li
9 cofounded. Pinscreen specializes in automatically generating animated 3D face models,
10 called *avatars*, from only a photograph of a person. Hao Li, Pinscreen’s CEO, is an assistant
11 professor at the University of Southern California. Dr. Sadeghi alleges—supporting these
12 allegations with documentary proof in a verified complaint—that Dr. Li lied to and defrauded
13 him when Li obtained Sadeghi's employment as Pinscreen’s Vice President of Engineering. Li
14 fraudulently induced Sadeghi to resign from Google and join Pinscreen by intentionally
15 misrepresenting Pinscreen’s technology as Li deceived the public, the scientific community, and
16 its investors.

17 After being deceived into joining Pinscreen, Sadeghi gradually discovered Li’s grotesque
18 academic and professional misconduct. Among his various transgressions, Li perpetrated a
19 scientific hoax by proclaiming Pinscreen’s avatars as automatically generated using
20 “cutting-edge” deep neural networks and artificial intelligence. In reality, the avatars were being
21 manually prepared and tweaked by Pinscreen employees and freelance artists.

22 In retaliation for Sadeghi’s whistleblowing and objections to Li’s data fabrication,
23 academic misconduct, fraud on investors, labor law violations, and immigration law violations,
24 Pinscreen illegally terminated Sadeghi within his first working hour after Pinscreen deceived an
25 audience of thousands.

26 Sadeghi’s significant contributions to Pinscreen are well documented and his personnel
27 file is bereft of any concerns whatsoever regarding his performance or employment. Li boasted
28 about having Sadeghi onboard at Pinscreen, celebrating him as “the best” in digital hair

1 appearance which is a stark contrast to Li now maligning Sadeghi as “an abject failure.”

2 The consequent torts committed by Li include a brutal battery of Sadeghi, where Li and a
3 *group* of employees, under Li’s commands, physically attacked Sadeghi and invaded his
4 belongings. Even though the security cameras captured the brutal attack, Li denied the allegations
5 in the press stating “all the allegations are 100% false,” “no one assaulted [Sadeghi],” and went
6 so far as to allege that “the exact opposite happened.” The now public security camera footage of
7 the battery¹ confirms Sadeghi’s allegations and exposes Li’s lies.

8 Pinscreen and Li’s obstructionism exploits the demurrer process for delay, impediment of
9 discovery, and imposition of unnecessary legal expense, the opposite of the intents of the
10 Discovery Act and Trial Court Delay Reduction Act.

11 Pinscreen’s “speaking demurrer,” accompanied by a “speaking motion to strike,” argues
12 facts, misstates facts, misstates case laws, misquotes case laws, fails the pleading requirements,
13 is unintelligible, relies entirely on inapposite cases, is refuted by settled law and must be
14 overruled.

15 **B. The ruthless character required to perpetrate a fraud on the core values of one’s**
16 **profession combined with the stakes for Li may help the Court understand Li’s and**
17 **Pinscreen’s approach to this litigation: deny everything, concede nothing.**

18 When levelled against an academician and scientist, the allegations against Li are grave.
19 The strongest community strictures prohibit scientists from submitting fabricated data; in so
20 doing—violating core ethical commitments of his profession—Li incurred the most serious
21 professional risks. For more discussion see Opposition to Li’s Demurrer 2:8.

22 **C. Pinscreen’s technology relevant to Li’s fraud and Sadeghi’s expertise.**

23 Li’s demurrer conflates two separate processes of Pinscreen’s technology: [a] the process
24 of automatically generating the *Hair Shape* and [b] the process of generating the *Hair Appearance*
25 of the output avatar. The distinction is imperative because the former is related to Li’s fraud and
26 the latter is related to Sadeghi’s expertise.

27 For more discussion see Opposition to Li’s Demurrer 3:6.

28 _____
¹ <http://sadeghi.com/dr-iman-sadeghi-v-pinscreen-inc-et-al/#battery>

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II. ARGUMENT

A. **Pinscreen’s “speaking” demurrer must be overruled for violating the standard of review.**

“A demurrer tests the legal sufficiency of factual allegations in a complaint.”² It must admit all facts on the face of the pleading and all that may be inferred, “no matter how unlikely or improbable, and without regard to the [plaintiff]’s ability to prove them.”³ A pleading must be “liberally construed in favor of the pleader,” be “read as a whole, not word by word,”⁴ and survive a demurrer insofar as it states, “however inartfully, facts disclosing some right to relief.”⁵

“[A] factual question ... cannot be resolved on demurrer.⁶ ... ‘facts have no place in a demurrer’⁷ ... Demurrers supported by evidence are referred to as ‘speaking’ demurrers and are improper.⁸ ... ‘the “speaking demurrer” (one that contains factual matters) is not recognized in this state’⁹ ... [defendant] is precluded from morphing the demurrer into a motion for summary judgment or minitrial.”¹⁰

Pinscreen’s arguments are based, almost entirely, on its injected contrary facts not on the face of the FAC. Pinscreen relies on its version of events and morphs the demurrer into a slew of inapposite fact-determining minitrials. ’s improper “speaking” demurrer is not recognized in this state and must be overruled in its entirety.

B. **Pinscreen’s demurrer must be overruled because one of its conjunctively stated grounds—the ground for being “uncertain”—does not exist.**

The grounds for Pinscreen’s demurrer to the FAC as a whole and to each Cause of Action (“CoA”) are stated conjunctively—as “fails to state facts sufficient to constitute a cause of action and is uncertain”—and not in separate paragraphs in violation of pleading requirements:

“Each ground of demurrer must be in a separate paragraph.” (*Cal Rules of Court* 3.1320(a))

² *Rakestraw v. California Physicians’ Service*, 81 Cal. App. 4th 39 (Cal. Ct. App. 2000)

³ *Bock v. Hansen*, 225 Cal. App. 4th 215 (Cal. Ct. App. 2014)

⁴ *Rosenfeld, Meyer Susman v. Cohen*, 146 Cal. App. 3d 200 (Cal. Ct. App. 1983)

⁵ *Longshore v. County of Ventura*, 25 Cal. 3d 14 (Cal. 1979)

⁶ *Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1358.

⁷ *Bainbridge v. Stoner*, 16 Cal. 2d 423 (Cal. 1940)

⁸ *Mohlmann v. City of Burbank*, 179 Cal. App. 3d 1037 (Cal. Ct. App. 1986)

⁹ 5 Witkin, *Cal. Procedure* (5th ed. 2008) Pleading, § 948, p. 364.

¹⁰ *Kofi Kessey, MD/PHD, Inc. v. Los Robles Reg’l Med. Ctr.*, 2d Civil No. B279550 (Cal. Ct. App. Jan. 18, 2018)

1 “[W]here the grounds are stated **conjunctively all the grounds must exist**, or the
demurrer should be **overruled**.”¹¹

2 Consequently, unless all of its grounds—including its ground for uncertainty—exist as to
3 each cause of action, Pinscreen’s demurrer must be overruled.

4 **1. The FAC is not uncertain according to settled law.**

5 First, Pinscreen’s demurrer “is insufficient unless [it] points out specifically wherein the
6 pleading is ambiguous, uncertain or unintelligible.”¹² Pinscreen’s “failure to specify the uncertain
7 aspects of [the] complaint will defeat [the] demurrer based on the grounds of uncertainty.”¹³

8 “The demurrer ... **fails** to direct the attention to any portion of the complaint
9 alleged to be uncertain, or ambiguous or unintelligible, and, therefore, was
properly overruled.”¹⁴

10 Second, Pinscreen’s demurrer for uncertainty is *strictly construed* and must be overruled
11 so long as the FAC gives notice of the issues sufficient for Pinscreen to prepare a defense:

12 “[D]emurrers for **uncertainty** are **disfavored**, and are granted **only** if the
13 pleading is **so incomprehensible** that a defendant **cannot reasonably respond**.’¹⁵
14 ... a ‘demurrer for uncertainty is **strictly construed**, even where a complaint is in
15 some respects uncertain, because ambiguities can be clarified under modern
16 discovery procedures.’ ... ‘Where the allegations of the complaint are **sufficiently**
17 **clear** so as to apprise a defendant of the issues he must meet, a special demurrer
18 **should not be sustained**, even though the allegations of the complaint may not be
as clear or as detailed as might be desired.’¹⁶ ... A complaint will be **upheld** ‘so
long as it gives notice of the issues **sufficient to enable preparation of a**
defense.’¹⁷ ... **Because [defendant] never argued** or even suggested that the
FAC compromised her preparation of a defense, we hold that the FAC **was not**
uncertain.”¹⁸

19 Not only has Pinscreen never argued that the FAC compromised its preparation of a
20 defense, but Pinscreen has also stated several *inapposite weak* affirmative defenses in its
21 “speaking” demurrer. Therefore, the FAC must not be uncertain. Since Pinscreen has failed to
22 demonstrate uncertainty, the conjunctively stated grounds for uncertainty do not exist.

23 Wherefore, Li’s demurrer must be overruled in its entirety.

24 ¹¹ *Butler v. Wyman*, (1933) 128 Cal. App. 736 (Cal. Ct. App. 1933)

25 ¹² *Coons v. Thompson*, 75 Cal. App. 2d 687 (Cal. Ct. App. 1946)

26 ¹³ *Fenton v. Groveland Community Services Dist*, 135 Cal. App. 3d 797 (Cal. Ct. App. 1982)

27 ¹⁴ *Muraco v. Don*, 79 Cal. App. 738 (Cal. Ct. App. 1926)

28 ¹⁵ *Lickiss v. Fin. Indus. Regulatory Auth.*, 208 Cal. App. 4th 1125 (Cal. Ct. App. 2012)

¹⁶ *Beeler v. West American Finance Co.*, 201 Cal. App. 2d 702 (Cal. Ct. App. 1962)

¹⁷ *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 549-550.

¹⁸ *Burk v. Hirsch*, B266666 (Cal. Ct. App. Jun. 14, 2016).

1 **2. Unlike the FAC, Pinscreen’s demurrer is unintelligible and uncertain.**

2 In reference to Sadeghi’s objections to Pinscreen’s fraudulent public demo during
3 SIGGRAPH 2017 Real-Time Live, Pinscreen alleges, “[Sadeghi] objected to Pinscreen
4 representing at a trade show that avatars worked more smoothly than they actually did.”¹⁹ This
5 statement is self-contradictory and incomprehensible because the avatars can never perform more
6 smoothly than they actually do—unless they have been misrepresented to appear as such.

7 **C. Pinscreen is liable for Li’s tortious conduct both directly and vicariously. Workers**
8 **Compensation (“WC”) does not protect Pinscreen and is not a remedy.**

9 “[T]wo doctrines may be implicated in assessing **liability against an employer**.
10 One doctrine is **respondeat superior**, pursuant to which the employer is indirectly
11 or **vicariously liable for torts committed by its employees within the scope of**
12 **their employment**.²⁰ The other doctrine is an **agency theory** pursuant to which
13 an employer may be **directly liable for acts of its agents**.^{21, 22}

12 **1. Pinscreen may not hide behind the shield of WC because Sadeghi was defrauded,**
13 **battered and invaded outside the course of—also before or after—his employment.**

14 Contrary to Pinscreen’s contention, WC is not a remedy because: [1] Sadeghi was
15 defrauded to resign from Google and join Pinscreen by intentional misrepresentation (1st CoA
16 (FAC ¶¶ 298–314)) and intentional concealment (2nd CoA (FAC ¶¶ 315–327)) *before* his
17 employment at Pinscreen, [2] Sadeghi was battered (3rd CoA (FAC ¶¶ 328–337)) and invaded
18 (14th CoA (FAC ¶¶ 424–428)) *after* his termination, [3] Sadeghi’s Intentional Infliction of
19 Emotional Distress (“IIED”) claim (9th CoA (FAC ¶¶ 392–398)) is not subject to WC, and [4]
20 none of Pinscreen’s violations fall within the “reasonably anticipated condition” of Sadeghi’s role
21 as the Vice President of Engineering at Pinscreen:

22 “The **infliction of emotional distress** continues to be one wrong for which the
23 **workers’ compensation** system provides **no remedy**. ...when employers step out
24 of their roles as such and commit acts which do **not** fall within the **reasonably**
25 **anticipated conditions of work**, they may **not** then **hide behind the shield**
26 **of workers’ compensation**. ...the exclusivity doctrine does not apply to prevent
27 [plaintiff] from stating a **cause of action** against [defendant] for assault and
28

¹⁹ Li’s Demurrer 13:10–12; Pinscreen’s Demurrer 14:10–11

²⁰ *Mary M. v. City of Los Angeles*, 54 Cal. 3d 202 (Cal. 1991)

²¹ *Inter Mountain Mortgage v. Sulimen*, 78 Cal. App. 4th 1434 (Cal. Ct. App. 2000)

²² *Myers v. Trendwest*, 148 Cal. App. 4th 1403 (Cal. Ct. App. 2007)

battery”²³

1
2 **2. Pinscreen relies on inapposite cases to argue for its protection under WC.**

3 To argue for its protection under WC, for the 3rd CoA for battery, Pinscreen relies on an
4 inapposite case²⁴ where an employee was holding the employer liable for a battery committed by
5 a co-employee during the course and scope of their employment. However, Sadeghi was battered
6 outside the course of—and *after*—his employment.

7 **D. Sadeghi was damaged by fraudulent inducement and wrongful termination. Sadeghi**
8 **is entitled to all damages including punitive and emotional distress.**

9 Pinscreen contends that because Sadeghi’s Google income and benefits were temporarily
10 substituted for by those of Pinscreen, Sadeghi is only entitled to damages from the wrongful
11 termination and not the fraudulent inducement.²⁵ However, this particular situation was
12 considered in *Lazar v. Superior Court* and the court held:

13 “[I]t has long been the rule that where a contract is secured by **fraudulent**
14 **representations**, the injured party may elect to affirm the contract and **sue for the**
15 **fraud**. ... as to his fraud claim [plaintiff] may properly seek **damages** for ... the
16 loss of security and income associated with his **former employment** ... [plaintiff]
17 must rely on his **contract** claim for **recovery** of any loss of income allegedly
18 caused by **wrongful termination** of his employment ... Moreover, any overlap
19 between damages recoverable in tort and damages recoverable in contract would
20 be limited by the rule against double recovery. [plaintiff], therefore, may proceed
21 with his claim for **fraud in the inducement of employment contract**, properly
22 seeking damages for ‘**all the detriment** proximately caused thereby’ (Civ. Code,
23 § 3333), as well as appropriate **exemplary damages** (Civ. Code, § 3294).”²⁶

24 **1. Pinscreen’s objections to relief demands are inapposite and nonetheless refuted by**
25 **settled law including Pinscreen’s very own inapposite reference!**

26 Pinscreen’s objections to punitive and emotional distress damages are inapposite in a
27 demurrer.²⁷ Sadeghi’s fraudulent inducement claim alone supports recovery for punitive
28 damages²⁸ and emotional distress.²⁹ Pinscreen references an inapposite case *Branch v. Homefed*
29 *Bank*³⁰—which concerns *negligent* misrepresentation—to argue the availability of emotional

30 ²³ *Hart v. National Mortgage Land Co.*, 189 Cal. App. 3d 1420 (Cal. Ct. App. 1987)

²⁴ *Fretland v. County of Humboldt*, 69 Cal. App. 4th 1478 (Cal. Ct. App. 1999)

²⁵ Pinscreen’s Demurrer 6:3–16; Li’s Demurrer 8:5–18

²⁶ *Lazar v. Superior Court*, 12 Cal. 4th 631 (Cal. 1996) internal citations omitted.

²⁷ *Gomez v. Volkswagen of America, Inc.*, 169 Cal. App. 3d 921 (Cal. Ct. App. 1985)

²⁸ *Kuchta v. Allied Builders Corp.*, 21 Cal. App. 3d 541 (Cal. Ct. App. 1971)

²⁹ *Lenk v. Total-Western, Inc.*, 89 Cal. App. 4th 959 (Cal. Ct. App. 2001)

³⁰ *Branch v. Homefed Bank*, 6 Cal. App. 4th 793 (Cal. Ct. App. 1992)

1 distress for Sadeghi’s *intentional* misrepresentation fraud claim. Ironically, Pinscreen’s very own
2 inapposite reference to *Branch* refutes Pinscreen by holding “in cases of intentional
3 misrepresentation recovery for emotional distress need not be accompanied by physical injury.”

4 **E. 1st CoA for Fraudulent Inducement by Misrepresentation is stated with specificity.**

5 Since Li was acting on behalf of Pinscreen and as its CEO (FAC ¶ 311), Pinscreen is liable
6 for Li’s tortious conduct. The elements of fraud and their corresponding pleaded facts are: [a]
7 misrepresentation ([a.1] false representation (FAC ¶¶ 304–308, 72–75), [a.2] concealment, or
8 [a.3] nondisclosure); [b] knowledge of falsity, i.e., scienter (FAC ¶ 310); [c] intent to defraud,
9 i.e., to induce reliance (FAC ¶¶ 299–301, 70); [d] justifiable reliance (FAC ¶¶ 302–304, 309, 80–
10 81, 84–85); and [e] resulting damage (FAC ¶¶ 312–314, 83–84).³¹ The restrict specificity
11 requirements for pleading fraud are met. For discussion see Opposition to Li’s Demurrer 10:13.

12 **F. 2nd CoA for Fraudulent Inducement by Concealment is stated properly.**

13 The elements of fraud and their corresponding pleaded facts are: [a] misrepresentation
14 ([a.1] false representation, [a.2] concealment (FAC ¶¶ 317–319, 70, 79), or [a.3] nondisclosure);
15 [b] knowledge of falsity, i.e., scienter (FAC ¶¶ 320, 323, 79); [c] intent to defraud, i.e., to induce
16 reliance (FAC ¶¶ 320–323, 70–71, 79); [d] justifiable reliance (FAC ¶¶ 321–323, 80–82, 84–85);
17 and [e] resulting damage (FAC ¶¶ 325–326, 83–84).³²

18 Since Li was acting on behalf of Pinscreen and as its CEO (FAC ¶ 324), Pinscreen is liable
19 for Li’s tortious conduct. For discussion see Opposition to Li’s Demurrer 12:10.

20 **G. 3rd CoA for Battery is stated with required particularity and WC is not a remedy.**

21 The elements of battery and their corresponding pleaded facts are: [a] defendant
22 intentionally did an act which resulted in a harmful or offensive contact with plaintiff (FAC
23 ¶¶ 329–330, 334–337, 280); [b] without plaintiff’s consent (FAC ¶¶ 334, 329); and [c] the harmful
24 or offensive contact caused injury to the plaintiff (FAC ¶¶ 335–336).³³

25 Pinscreen is liable because Li, Yen-Chun Chen, Liwen Hu, and Han-Wei Kung were
26 acting during the course and scope of their employment (FAC ¶ 332). WC is not a remedy and

27 ³¹ *Lazar v. Superior Court*, 12 Cal. 4th 631 (Cal. 1996)

28 ³² *Id.*

³³ *Fluharty v. Fluharty*, 59 Cal. App. 4th 484 (Cal. Ct. App. 1997)

1 does not protect Pinscreen because Sadeghi was battered *outside* the course and scope of—and
2 *after*— his employment. For discussion see Opposition to Li’s Demurrer 14:4.

3 **H. 4th CoA for Violation of Labor Code § 1102.5 is stated properly. Sadeghi was fired**
4 **for reporting his reasonable suspicion of Pinscreen’s illegal activities.**

5 The elements of a section 1102.5(b) retaliation cause of action require a prima facie case
6 of retaliation to show [a] engagement in a protected activity (FAC ¶¶ 344–346), [b] adverse
7 employment action (FAC ¶ 347), and [c] a causal link between the two (FAC ¶ 348).³⁴ *Labor*
8 *Code* §1102.5 encourages whistle-blowers to report unlawful acts without fearing retaliation³⁵
9 and creates a right that did not exist at common law.³⁶

10 “An employer, or any person acting on behalf of the employer, **shall not retaliate**
11 against an employee for disclosing information, or because the employer believes
12 that the employee disclosed or may disclose information, to a government or law
13 enforcement agency, to a person with authority over the employee or another
14 employee who has the authority to investigate, discover, or correct the violation
15 ... if the **employee has reasonable cause to believe that the information**
16 **discloses a violation of state or federal statute...** regardless of whether disclosing
17 the information is part of the employee’s job duties.” (*Labor Code* §1102.5(b))

18 Sadeghi had reason to believe that Pinscreen’s data fabrication and academic misconduct
19 constituted a fraud on Pinscreen investors violating Code §§ 1572, and 1709 (FAC ¶ 345).

20 “[plaintiff] contends his ... complaint adequately alleged a **public policy** tethered
21 to a **statutory provision. We agree.** In particular, [plaintiff]’s ... complaint alleges
22 he was **terminated** because he **complained to his superiors** that his supervisor
23 and coworkers were submitting **fraudulent** ... claims to [a third-party]. Such
24 conduct, if true, implicates statutes proscribing theft (Pen. Code, §§ 484, 487) and
25 **fraud (Civ. Code, §§ 1572, 1709).** ... we conclude [plaintiff] adequately alleged
26 his termination violated **public policy** tethered to **statutes proscribing theft and**
27 **fraud.**”³⁷

28 Sadeghi also had reason to believe that Li’s refusal to pay overtime compensation was in
violation of California labor laws, and that Pinscreen’s employment of foreign workers without
proper work visas was in violation of federal immigration laws. (FAC ¶ 345) Sadeghi objected to
Li about these illegal practices (FAC ¶ 343), and Pinscreen wrongfully terminated Sadeghi in
retaliation for his objections to these illegal practices (FAC ¶ 340). The FAC establishes a
violation of *Labor Code* §1102.5 and the demurrer to the 4th CoA must be overruled.

³⁴ *Patten v. Grant Joint Union High School Dist*, 134 Cal. App. 4th 1378 (Cal. Ct. App. 2005)

³⁵ *Diego v. Pilgrim United Church of Christ*, 231 Cal. App. 4th 913 (Cal. Ct. App. 2014)

³⁶ *Campbell v. Regents of University of California*, 35 Cal. 4th 311 (Cal. 2005)

³⁷ *Yau v. Santa Margarita Ford, Inc.*, 229 Cal. App. 4th 144 (Cal. Ct. App. 2014)

1 **I. 5th CoA for Breach of Employment Contract is stated properly. Pinscreen breached**
2 **the implied covenant of good faith and fair dealing implied in every contract.**

3 The elements of breach of contract and its corresponding pleaded facts are: [a] the
4 existence of a contract (FAC ¶ 354); [b] plaintiff's performance of the contract (FAC ¶ 355, 352–
5 353) or excuse for nonperformance; [c] defendants' breach (FAC ¶¶ 356–358); and (4) resulting
6 damage (FAC ¶ 361). In addition, a copy of the written contract must be attached and incorporated
7 by reference (FAC ¶¶ 354, 352).³⁸

8 “[T]he law implies in **every contract** a **covenant of good faith and fair dealing**.
9 The implied promise requires each contracting party to refrain from doing
anything to injure the right of the other to receive the benefits of the agreement.”³⁹

10 Pinscreen relies on an inapposite case⁴⁰ where the plaintiff had failed to specify the nature
11 of the contract and its terms. The demurrer to the 5th CoA must be overruled.

12 **J. 6th CoA for Breach of Implied Contract for Research Integrity is stated properly.**
13 **The existence of implied-in-fac contract is a question of fact for the jury.**

14 Elements of an implied-in-fact contract CoA are the same as those for a breach of contract,
15 except that the promise is not expressed in words but is implied from the promisor's conduct.⁴¹
16 The elements and their corresponding pleaded facts are: [a] the existence of a contract (FAC ¶
17 364, 366); [b] plaintiff's performance of the contract (FAC ¶ 365) or excuse for nonperformance;
18 [c] defendants' breach (FAC ¶¶ 367, 363); and (4) resulting damage (FAC ¶ 361).

19 “Whether or not an **implied contract** has been created is determined by the acts
20 and conduct of the parties and all the surrounding circumstances involved and is
a question of fact.”⁴²

21 Although settled law holds that the existence of an implied contract is “a question of fact
22 for the trial court”⁴³—thus unresolvable on demurrer—Pinscreen squabbles over the existence of
23 such implied agreement. Yet more preposterously, Pinscreen’s “speaking”—rather “lying”—
24 demurrer mischaracterizes Sadeghi’s implied-in-fact contract as if it were ACM’s and USC’s.

25 _____
26 ³⁸ *Harris v. Rudin, Richman Appel*, 74 Cal. App. 4th 299 (Cal. Ct. App. 1999)

27 ³⁹ *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal. 3d 809 (Cal. 1979)

28 ⁴⁰ *Holcomb v. Wells Fargo Bank*, 155 Cal. App. 4th 490 (Cal. Ct. App. 2007)

⁴¹ *Gomez v. Lincare*, 173 Cal. App. 4th 508 (Cal. Ct. App. 2009)

⁴² *Del E. Webb Corp. v. Structural Materials Co.*, 123 Cal. App. 3d 593 (Cal. Ct. App. 1981)

⁴³ *Unilab Corp. v. Angeles-IPA*, 244 Cal. App. 4th 622 (Cal. Ct. App. 2016)

1 Pinscreen then quarrels with these fictional manufactured implied agreements.

2 **K. 7th CoA for Wrongful Termination in Violation of Public Policy is pleaded properly.**

3 The elements of a claim for wrongful discharge in violation of public policy are [a] an
4 employer-employee relationship (FAC ¶ 371), [b] the employer terminated the plaintiff's
5 employment (FAC ¶ 372), [c] the termination was substantially motivated by a violation of public
6 policy (FAC ¶ 370, 373–380), and [d] the discharge caused the plaintiff harm (FAC ¶ 381).⁴⁴

7 “[A]t-will employees may recover **tort damages** from their employers if they can
8 show they were discharged in contravention of fundamental **public policy**.... an
9 employee need not prove an actual violation of law; it suffices if the employer
10 **fired** him for reporting his ‘**reasonably based suspicions**’ of illegal activity.”⁴⁵

11 Sadeghi’s termination by Pinscreen was in retaliation for Sadeghi’s objections to Li’s and
12 Pinscreen’s illegal practices, including data fabrications and academic misconduct (FAC ¶ 380).
13 California’s public policy against Pinscreen’s data fabrication is expressed in the laws prohibiting
14 deceit of investors and imposing a fiduciary duty of corporate officers toward investors as well
15 as in Civil Code §§ 1572, and 1709 (FAC ¶ 175). The courts have agreed with Sadeghi:

16 “[plaintiff] contends his ... complaint adequately alleged a **public policy** tethered
17 to a statutory provision. **We agree.** In particular, [plaintiff]’s ... complaint alleges
18 he was **terminated** because he complained to his superiors that his supervisor and
19 coworkers were submitting **fraudulent** ... claims to [a third-party]. Such conduct,
20 if true, implicates statutes proscribing theft (Pen. Code, §§ 484, 487) and **fraud**
21 (**Civ. Code, §§ 1572, 1709**). ... we conclude [plaintiff] adequately alleged his
22 termination violated **public policy** tethered to **statutes** proscribing **theft and**
23 **fraud.**”⁴⁶

24 **1. Pinscreen contends its fraud on investors does not violate public policy and**
25 **ludicrously suggests no public policy can concern a private corporation!**⁴⁷

26 The *public* aspect of the policy is regarding its impact and not the type of the corporation:

27 “[T]he policy must be ‘**public**’ in that it ‘**affects society at large**’ rather than the
28 individual ... we interpreted the term to mean ... to be **injurious to the public or**
against the public good.”⁴⁸

29 **L. 9th CoA for IIED is stated properly and as discussed WC provides no remedy.**

30 The elements of the tort IIED and their corresponding pleaded facts are: [a] extreme and

31 ⁴⁴ *Yau v. Santa Margarita Ford, Inc.*, 229 Cal. App. 4th 144 (Cal. Ct. App. 2014)

32 ⁴⁵ *Green v. Ralee Engineering Co.* (1998) 19 Cal. 4th 66, 79-80.

33 ⁴⁶ *Yau v. Santa Margarita Ford, Inc.*, 229 Cal. App. 4th 144 (Cal. Ct. App. 2014)

34 ⁴⁷ Pinscreen’s Demurre 13:15–18

35 ⁴⁸ *Green v. Ralee Engineering Co.*, 19 Cal. 4th 66 (Cal. 1998)

1 outrageous conduct by the defendant (FAC ¶¶ 394, 396) with [b] intention to cause (FAC ¶ 395),
2 or reckless disregard of the probability of causing (FAC ¶ 395) emotional distress; [c] severe
3 emotional suffering (FAC ¶¶ 393, 397, 381, 349, 335, 326, 313); and [d] actual and proximate
4 causation of the emotional distress (FAC ¶¶ 393, 397, 381, 349, 335, 326, 313). Behavior may be
5 considered outrageous if a defendant [e] abuses a relation or position which gives him power to
6 damage the plaintiff's interest (FAC ¶ 394); [f] knows the plaintiff is susceptible to injuries
7 through mental distress (*Id.*); or [g] acts intentionally or unreasonably with the recognition that
8 the acts are likely to result in illness through mental distress (FAC ¶¶ 394–395).⁴⁹

9 “[T]he courts ... acknowledged the right to recover **damages for emotional**
10 **distress alone**, without consequent physical injuries, in cases involving extreme
11 and **outrageous** intentional invasions of one's mental and **emotional**
12 **tranquility**.”⁵⁰

13 **M. 10th CoA for Negligent Hiring Supervision or Retention is stated properly.**

14 Li was unfit, incompetent, and ineligible to perform the duties required for the CEO role
15 at Pinscreen due to his numerous instances of fraud, lack of proper work visa, and various illegal
16 practices (FAC ¶¶ 400–403, 294–297). Pinscreen knew, or should have known that Li was unfit,
17 incompetent, and ineligible (FAC ¶ 404) and that Li’s unfit, incompetence, and ineligibility
18 risked damaging Sadeghi (FAC ¶ 405). Li’s unfit, incompetence, and ineligibility harmed
19 Sadeghi including by being fraudulently deceived, illegally retaliated against, wrongfully
20 terminated, and assaulted and battered, (FAC ¶¶ 400, 406–408).

21 “California case law recognizes the theory that an **employer** can be **liable** to a
22 third person for **negligently hiring, supervising, or retaining** an **unfit** employee.
23 ... Liability for negligent hiring will be imposed on an employer if it **knew or**
24 **should have known** that hiring the employee created a particular risk or hazard
25 and that particular harm materializes. ... Liability for negligent supervision and/or
26 retention of an employee is one of **direct liability** for negligence, not vicarious
27 liability.”⁵¹

28 WC is not a remedy because as discussed Sadeghi’s damages—including damages from
fraudulent inducement and battery—occurred outside the course of Sadeghi’s employment.
Pinscreen’s only inapposite reference⁵² concerns negligence during the course and scope of

⁴⁹ *McDaniel v. Gile*, 230 Cal. App. 3d 363 (Cal. Ct. App. 1991)

⁵⁰ *Alcorn v. Ambro Engineering, Inc.*, 2 Cal. 3d 493 (Cal. 1970)

⁵¹ *Alcay v. City of Visalia*, 1:12-CV-1643 AWI SMS (E.D. Cal. Jun. 25, 2013)

⁵² *Coit Drapery Cleaners, Inc. v. Sequoia Insurance*, 14 Cal. App. 4th 1595 (Cal. Ct. App. 1993)

1 employment. Pinscreen’s demurrer to the 10th CoA must be overruled.

2 **N. 11th CoA for Violation of Labor Code § 2802 is stated properly.**

3 “An employer shall indemnify his or her employee for **all necessary expenditures**
4 **or losses** incurred by the employee in direct consequence of the discharge of his
5 or her duties ... (c) For purposes of this section, the term “necessary expenditures
6 or losses” shall include **all reasonable costs**, including, but not limited to,
7 attorney’s fees incurred by the employee enforcing the rights granted by this
8 section.” (*California Labor Code* § 2802(a))

9 Shortly after joining Pinscreen, Yen-Chun Chen, Pinscreen’s CFO, agreed in writing to
10 reimburse Sadeghi for his COBRA premiums until Pinscreen obtained a group health insurance
11 (FAC ¶ 285, Exhibit J3). However, after Sadeghi’s termination, Pinscreen withheld Sadeghi’s
12 business expense reimbursements including Sadeghi’s COBRA health insurance premiums
13 despite prior written agreements. Pinscreen subsequently acknowledged that reimbursements
14 were owed but refused to pay them unless there was a settlement or non-disclosure agreement in
15 violation of *California Labor Code* § 2802 (FAC ¶ 411–412, 285).

16 Pinscreen’s “speaking” demurrer requests an improper Judicial Notice⁵³ and
17 meaninglessly attempts to prove that Sadeghi was the one responsible for paying his COBRA
18 premiums. Though obviously true, that was the reason Sadeghi had the *reimbursement* agreement
19 with Pinscreen in the first place. Had Pinscreen incurred the expenses of purchasing a group
20 health insurance plan, Sadeghi would not have incurred the high COBRA premiums. Pinscreen
21 then contends—without providing any authorities—that Sadeghi’s written reimbursement
22 agreements falls outside the broad provisions of *Labor Code* § 2802 covering “all necessary
23 expenditures or losses.” Pinscreen’s contention at best frames an issue for the jury—not a
24 demurrer—and must be discarded. Li’s improper “speaking” demurrer must be overruled.

25 **O. 12th CoA for “Violation of Labor Code § 302 is stated properly.**

26 “If an employer willfully **fails to pay**, without abatement or reduction ... **any**
27 **wages** of an employee who is **discharged** or who quits, **the wages of the**
28 **employee shall continue as a penalty** from the due date thereof at the same rate
until paid or until an action therefor is commenced; but the wages shall not
continue for more than **30 days**.” (*California Labor Code* § 203(a))

Sadeghi was entitled to waiting time penalties due to Pinscreen’s delays in paying his final
wages. (FAC ¶ 417). Pinscreen sent Sadeghi a check for the waiting time penalties, but phrased

⁵³ See Opposition to Pinscreen’s Request for Judicial Notice in Support of Demurrer to FAC.

1 the purpose of a check mailed to Sadeghi as a settlement offer “to resolve any wage issues,” in
2 violation of California Labor Code § 203 (FAC ¶ 239). Sadeghi did not cash the check and
3 repeatedly requested Pinscreen to reissue another check for the late penalty only. Since Pinscreen
4 refused to reissue the penalty check for nine months, Sadeghi is entitled to waiting time penalties
5 including his salary for 30 additional days (FAC ¶ 419).

6 Pinscreen’s “speaking” demurrer blatantly contradicts the FAC and contends that labeling
7 a check as “to resolve any wage issues” is not a condition! Pinscreen’s inefficacious inapposite
8 factual fallacies has no place in a demurrer and must be discarded. Settled law holds that even in
9 a case of an ambiguous contract, the Court must accept plaintiff’s interpretation as correct:

10 “[W]here an **ambiguous** contract is the basis of an action, it is proper, if not
11 essential, for a plaintiff to allege its own construction of the agreement. ... we must
12 **accept as correct** plaintiff’s allegations as to the **meaning of the agreement.**”

12 **P. 13th CoA for Negligence / Breach of Constructive Bailment⁵⁴ is stated properly.**

13 The elements of negligence and their corresponding pleaded facts are [a] duty (FAC
14 ¶¶ 422–423), [b] breach (*Id.*), [c] causation (FAC ¶ 421–423), and [d] damages (*Id.*) and the
15 existence of a duty is a question of law for the court.⁵⁵

16 Contrary to Pinscreen’s contention—that “Pinscreen owed no duty to Sadeghi”⁵⁶—
17 Pinscreen has statutory duties to furnish a safe place of employment, to use safe practices and
18 procedures, and to provide and use appropriate safety devices and safeguards (*California Labor*
19 *Code* §§ 6400, 6401, 6403). Pinscreen also owes Sadeghi a common law duty of care which is
20 evaluated under the Rowland factors, namely:

21 “[T]he foreseeability of harm to the plaintiff, the degree of certainty that the
22 plaintiff suffered injury, the closeness of the connection between the defendant’s
23 conduct and the injury suffered, the moral blame attached to the defendant’s
24 conduct, the policy of preventing future harm, the extent of the burden to the
25 defendant and consequences to the community of imposing a **duty to exercise**
26 **care** with resulting liability for breach, and the availability, cost, and prevalence
27 of insurance for the risk involved.”⁵⁷

25 ⁵⁴ *Isik Jewelry v. Mars Media, Inc.*, 418 F. Supp. 2d 112 (E.D.N.Y. 2005) “Courts define a constructive bailment as
26 follows: an implied bailment arises when one comes into lawful possession of personal property of another ...”

26 ⁵⁵ *Melton v. Boustred*, 183 Cal. App. 4th 521 (Cal. Ct. App. 2010)

27 ⁵⁶ Pinscreen’s Demurrer 17:11

28 ⁵⁷ *Rowland v. Christian*, 69 Cal. 2d 108 (Cal. 1968)

1 Defendants are fixated on the title of the CoA which is immaterial since a demurrer must
2 be overruled if the FAC states “a cause of action on any available legal theory.”⁵⁸ Defendants
3 reference a few unrelated inapposite cases^{59,60,61} based on their misinterpretation of the title of
4 the CoA. The courts look to the gravamen of the cause of action rather than to any labels, to
5 determine if the claim contains facts which would entitle the plaintiff to relief.⁶²

6 Pinscreen’s misguided demurrer to the 13th CoA must be overruled.

7 **Q. 14th CoA for Invasion of Privacy is stated properly and WC is not a remedy.**

8 The right to privacy is protected as provided in Article I, section 1 of the California
9 Constitution. The elements of intrusion tort and their corresponding pleaded facts are: [a]
10 intrusion into a private place, conversation, or matter (FAC ¶¶ 426–427), [b] in a manner highly
11 offensive to a reasonable person (FAC ¶ 425).⁶³ While committing battery on Sadeghi, defendants
12 violated Sadeghi’s reasonable expectation of privacy in his backpack and forcefully intruded into
13 it in a manner that is highly offensive to a reasonable person (FAC ¶¶ 425–427).

14 Pinscreen conflates the expectation of privacy for Sadeghi’s computer files with that of
15 Sadeghi’s enclosed personal backpack—in which he has a clear protected privacy interest:

16 “[E]ven a **limited search** of the person is a **substantial invasion of privacy**. ...
17 searches of closed items of personal luggage are **intrusions on protected privacy**
18 **interests**, for ‘the Fourth Amendment provides protection to the owner of **every**
19 **container that conceals its contents** from plain view.’ ... A search of ... **bag**
20 **carried on her person ... is undoubtedly a severe violation of subjective**
21 **expectations of privacy.**”⁶⁴

22 Pinscreen’s “speaking”—or rather “lying”—demurrer blatantly contradicts the fact that
23 “Sadeghi intended to return the laptop before the end of business day ... and told Li that he would
24 return it after he preserved his personal data (FAC ¶ 278)” and **shamelessly** inject a slew of
25 allegations such as “[Sadeghi] was attempting to secrete,” “[Sadeghi’s] attempted theft,” “with
26 the intent to steal,” “stealing company property,”⁶⁵ and “[Sadeghi] had secreted”. In yet another

25 ⁵⁸ *Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1501.

26 ⁵⁹ *H.S. Crocker Co., Inc. v. McFaddin*, 148 Cal. App. 2d 639 (Cal. Ct. App. 1957)

27 ⁶⁰ *Windeler v. Scheers Jewelers*, 8 Cal. App. 3d 844 (Cal. Ct. App. 1970)

28 ⁶¹ *Erllich v. Menezes*, 21 Cal. 4th 543 (Cal. 1999)

⁶² *McBride v. Boughton*, 123 Cal. App. 4th 379 (Cal. Ct. App. 2004)

⁶³ *Sanders v. American Broadcasting Companies, Inc.*, 20 Cal. 4th 907 (Cal. 1999)

⁶⁴ *New Jersey v. T. L. O.*, 469 U.S. 325, 337 (1985) quoting *United States v. Ross*, 456 U.S. 798, 822-823 (1982).

⁶⁵ Pinscreen’s Demurrer 17:23, 17:25, 14:12; Li’s Demurrer 14:20, 14:22, 11:22, 13:12;

1 attempt to setup a minitrial, Pinscreen argues—without providing any authorities—that Sadeghi’s
2 *employment agreement* regarding the privacy expectation on *computer files*, situated *within* the
3 company premises, justifies a *brutal attack* on Sadeghi and a *forceful intrusion* into his *backpack*,
4 situated *outside* the company premises, and *after his termination*. Pinscreen’s inefficacious
5 deductive fallacy at best frames an issue for the jury—not a demurrer—and must be disregarded.

6 Whether Sadeghi had a reasonable expectation of privacy in his backpack is a question of
7 fact for the jury⁶⁶ and therefore unresolvable on demurrer.

8 **R. 15th CoA for Violation of California Unfair Competition Law (UCL), Business and**
9 **Professions Code § 17200 et seq. is stated properly.**

10 “The UCL prohibits ... ‘**any unlawful, unfair or fraudulent** business act or
11 practice.’ (§ 17200) Its purpose ‘is to protect both consumers and competitors by
12 promoting fair competition in commercial markets ... **private standing** is limited
13 to **any ‘person who has suffered injury** in fact and has lost money or property’
14 as a result of unfair competition”⁶⁷

15 Li’s and Pinscreen’s data fabrication and academic misconduct were fraudulent,
16 deceptive, misleading, unfair, unlawful, and in violation of California Business & Professional
17 Code § 17200 (FAC ¶ 431, 433–439). Sadeghi has standing under Business and Professions Code
18 § 17204 because he suffered actual injury from these practices (FAC ¶ 432).

19 “To state a claim under section 17200, a plaintiff ‘need not plead and prove the
20 elements of a tort. Instead, one **need only show that `members of the public are**
21 **likely to be deceived.**’ ... The ‘unlawful’ practices prohibited by ... section 17200
22 are **any practices forbidden by law**, be it civil or criminal, federal, state, or
23 municipal, statutory, regulatory, or court-made.”⁶⁸

24 Li’s and Pinscreen’s fraudulent misrepresentations have caused deception of the public,
25 scientific community, and investors (FAC ¶ 433). On behalf of Pinscreen and as its CEO, Li lied
26 to and deceived Sadeghi, academics, investors, and the public (FAC ¶¶ 436–439).

27 The 15th CoA for Violation of California Unfair Competition Law must be upheld.

28 **S. Were any portion of Pinscreen’s demurrer to be sustained, Sadeghi requests leave to**
amend.

Should the Court sustain any portion of Li’s demurrer, Sadeghi requests leave to amend

⁶⁶ *Shulman v. Group W Productions, Inc.*, 18 Cal. 4th 200 (Cal. 1998)

⁶⁷ *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (Cal. 2011)

⁶⁸ *South Bay Chev. v. Gen. Motors Acceptance*, 72 Cal. App. 4th 861 (Cal. Ct. App. 1999)

1 pursuant to Code of Civil Procedure §§ 472a, subd. (c), 473 subd. (a)(1).

2 “A ruling sustaining a general demurrer without leave to amend will only be
3 upheld if the complaint alleges facts which do not entitle plaintiff to relief on any
4 legal theory. ... **Unless the complaint shows on its face that it is incapable of
5 amendment, denial of leave to amend constitutes an abuse of
6 discretion,** irrespective of whether leave to amend is requested or not. Liberality
7 in permitting amendment is the rule, not only where a complaint is defective as to
8 form but also where it is deficient in substance.”⁶⁹

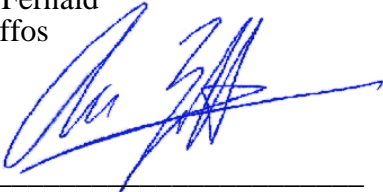
9 Sadeghi’s allegations have not been previously tested on demurrer. After the initial
10 complaint was filed, the parties engaged in an extensive meet and confer to resolve the issues and
11 Sadeghi filed the FAC as a matter *of course*. If necessary, Sadeghi can allege additional facts to
12 support the claims alleged and, if necessary, respectfully requests leave to amend.

13 I. CONCLUSION

14 **First**, Pinscreen’s “speaking” demurrer injects, misstates, and argues facts in a slew of
15 fact-determining minitrials. Speaking demurrers are improper and not recognized in this state.
16 **Second**, Pinscreen’s demurrer states its grounds conjunctively while its ground for uncertainty is
17 inadequately pled and does not exist. **Third**, Pinscreen’s demurrer, is completely without merit,
18 in unintelligible, relies entirely on inapposite cases, misstates case laws, and is categorically
19 refuted by settled law. **Fourth**, Pinscreen’s demurrer exploits the legal process for obstructing
20 discovery, delay, and imposition of unnecessary legal expense. **Wherefore**, the court must
21 overrule Pinscreen’s improper, inadequate and nonmeritorious demurrer in its entirety.

22 DATED: March 28, 2019

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23 By: 
24 Adam P. Zaffos
25 Attorneys for Plaintiff Dr. Iman Sadeghi
26
27
28

⁶⁹ *McDonald v. Superior Court*, 180 Cal. App. 3d 297 (Cal. Ct. App. 1986)