

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

DEPARTMENT 16

TENTATIVE RULING

DR. IMAN SADEGHI,

Plaintiff

vs.

PINSCREEN, INC.; DR. HAO LI; YEN-CHUN
CHEN; LIWEN HU; HAN-WEI KUNG;

Defendants

Case No.: BC709376

[Tentative] Order on Demurrer to Third
Amended Complaint

Hearing Date: October 2, 2020

TO PLAINTIFF DR. IMAN SADEGHI AND HIS ATTORNEYS OF RECORD AND
DEFENDANTS PINSCREEN, INC., DR. HAO LI, YEN-CHUN CHEN, LIWEN HU, HAN-
WEI KUNG AND THEIR ATTORNEYS OF RECORD:

Plaintiff filed this action alleging defendants Pinscreen and Li fraudulently induced him to accept employment with Pinscreen. Plaintiff discovered while working that Pinscreen was engaged in illegal practices, but he was assured there would be no public misrepresentations. Pinscreen made public misrepresentations and terminated plaintiff.

Defendants Pinscreen, Inc. and Dr. Li demur to the first five causes of action in the third amended complaint.

Demurrer to First Cause of Action for Fraudulent Inducement of Employment Contract by Intentional Misrepresentation and Second Cause of Action for Fraudulent Inducement of Employment Contract by Intentional Concealment

The prior demurrer to these causes of action were sustained as to both defendants for the failure to state cognizable damages.

In the third amended complaint, the damages allegations for these causes of action state:

“Sadeghi’s damages of his lost Google income and benefits started after February 1, 2017 when he was fraudulently induced to leave Google and were temporarily substituted by his Pinscreen income and benefits from February 2, 2017 to August 7, 2017. Sadeghi’s damages of his lost Google income and benefits pertaining to after August 7, 2017 are unsubstituted.” (TAC, ¶¶ 28, 52.)

This is merely another way of stating his previous allegations, that his damages were caused by his termination from Pinscreen, not by leaving employment with Google.

The damages for a fraudulent inducement to change employment are caused when the new employment is for less compensation than promised and/or less than obtained from the prior employer. (*Helmer v. Bingham Toyota Isuzu* (2005) 129 Cal.App.4th 1121, 1127; *Agosta v. Astor* (2004) 120 Cal.App.4th 596, 606.) That is not what the causes of action allege. They allege that plaintiff lost his compensation when he was terminated from Pinscreen after complaining of activities engaged in by Pinscreen, not when he left Google.

The demurrer is sustained.

“(e) (1) In response to a demurrer and prior to the case being at issue, a complaint or cross-complaint shall not be amended more than three times, absent an offer to the trial court as to such additional facts to be pleaded that there is a reasonable possibility the defect can be cured to state a cause of action. The three-amendment limit shall not include an amendment made without leave of the court pursuant to Section 472, provided the amendment is made before a demurrer to the original complaint or cross-complaint is filed.” (Code Civ. Proc., § 430.41.)

Plaintiff has amended this verified complaint three times. In none of the four versions of the complaint has he alleged that his compensation at Google was greater than his compensation at Pinscreen as a basis for the fraud claims, or that he was misled as to the compensation he would receive from Pinscreen. The court is inclined to hear argument on why plaintiff should be granted leave to amend to state fraud causes of action based solely on this newly proposed allegation.

THIRD CAUSE OF ACTION FOR VIOLATION OF LABOR CODE SECTION 1102.5 - RETALIATION AGAINST WHISTLEBLOWING AND FIFTH CAUSE OF ACTION FOR WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

The prior demurrer was sustained on the grounds that the causes of action failed to specify the protected activities in which plaintiff engaged or the nexus between the protected activity and the adverse action, his termination.

In the third amended complaint, the causes of action allege that, as to the fraud on investors claim, plaintiff believed Pinscreen violated Business & Professions Code section 17200, Corporations Code section 25401, and Civil Code sections 1572.1709 and 1710 by publicly misrepresenting its capabilities regarding its fabricated avatars. (TAC, ¶¶ 67, 115, 116.) It

alleges that plaintiff complained to Li of these public misrepresentations on various dates, including July 22 and August 7, 2017, and notified Li on August 6 that he wanted to meet August 7 to discuss the issue. (TAC, ¶¶ 70, 74, 77, 120,.) The causes of action allege that plaintiff was terminated August 7, because of his complaints to Li regarding the public misrepresentations. (TAC, ¶¶ 82, 122, 123.)

It is not necessary for plaintiff to allege that he reported the activities to a government entity. Reporting to a supervisor with authority over the employee is sufficient. (Lab. Code, § 1102.5, subd. (b).)

The demurrer is overruled.

Fourth Cause of Action for Breach of Employment Contract

In order to make out a cause of action for breach of contract, the complaint must allege: (a) the existence of a contract; (b) plaintiff's performance or excuse for non-performance; (c) defendant's breach; and (c) damages to plaintiff. (*First Coml. Mortgage v. Reese* (2001) 89 Cal. App. 4th 731, 745.)

The cause of action alleges defendant breached the contract by failing to reimburse for business expenses, and alleges the contract term regarding business expense reimbursement. The cause of action alleges that it was understood that, because Pinscreen did not have a group health insurance plan, Pinscreen would reimburse plaintiff for his health insurance premiums as a necessary and reasonable business expense.

Courts defer to plaintiffs' reasonable interpretations of contracts, in ruling upon demurrers. (*Performance Plastering v. Richmond American Homes of Cal., Inc.* (2007) 153 Cal.App.4th 659, 672.) Defendants have provided no authority that a health insurance premium cannot be classified as a necessary and reasonable business expense in a contract between private parties. That it is not a business expense listed in the Labor Code does not require a different result.

The demurrer is overruled.

[It is so ordered.]

Dated: October 2, 2020

Hon. Lia Martin
Judge of the Superior Court