

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

DEPARTMENT 16

DR. IMAN SADEGHI,

Plaintiff

vs.

PINSCREEN, INC, et al.,

Defendants

Case No.: BC709376

Order on Defendant Pinscreen, Inc's
Motion for Summary Judgment or in the
Alternative Summary Adjudication

Hearing Date: November 3, 2021

TO PLAINTIFF DR. IMAN SADEGHI, PLAINTIFF'S ATTORNEYS OF
RECORD, DEFENDANT PINSCREEN, INC., AND DEFENDANT'S
ATTORNEYS OF RECORD:

Plaintiff filed this action alleging defendant Pinscreen, Inc. fraudulently induced him to accept employment with Pinscreen, and other causes of action.

Motion for Summary Judgment

Defendant Pinscreen, Inc. moves for summary judgment on the grounds that there are no triable issues of material fact and it is entitled to judgment as a matter of law. The court heard argument on the motion on November 3, 2021, and it took the matter under submission at 11:07 a.m.. The court rules as follows:

Summary judgment is denied for the same reasons summary adjudication was denied as to issues 3, 6 and 7.

Plaintiff's Objections to Defendant's Evidence

Objection numbers 10, 11 are sustained, all others overruled.

Defendant's Objections to Plaintiff's Evidence

Objection numbers 1, 2, 3, 4, 25, 59 to the declaration of plaintiff are sustained. All other objections overruled.

Motion for Summary Adjudication

Issue 1: That there is no merit to plaintiff's third cause of action for Violation of Cal. Labor Code § 1102.5 - Retaliation Against Whistleblowing because Sadeghi did not engage in the required protected activity for purposes of a violation of Labor Code § 1102.5.
Issue 4: That there is no merit to Plaintiff's fifth cause of action for Wrongful Termination in Violation of Public Policy, which is duplicative of Plaintiff's whistleblower claim, because Sadeghi did not engage in the required protected activity for purposes of a violation of Labor Code § 1102.5.

Defendant argues that the violations plaintiff reported to Li were not protected activity because the violations were common knowledge in the company, and Li was responsible for the violations.

Prima facie case of retaliation requires that plaintiff engaged in a protected activity. the employer subjected plaintiff to adverse employment action; and there is a causal link between the two. Defendant employer can provide a legitimate, nonretaliatory explanation for its acts, in which case a plaintiff is required to show the explanation is merely a pretext for the retaliation. (*Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1384.)

A report to a supervisor of information which was already publicly known is not a

disclosure under Labor Code section 1102.5. (*Mize-Kurzman v. Marin County Community College Dist.* (2012) 202 Cal.App.4th 832, 858.) A disclosure to a supervisor of the supervisor's own wrongdoing is not a protected disclosure as the supervisor already knows of his or her own wrongdoing. (*Id.* at p. 859.)

In *Jaramillo v. County of Orange* (2011) 200 Cal.App.4th 811, 825-826, the court found an assistant county sheriff who reported the wrongdoing of the sheriff to the sheriff was a protected activity. The court relied on the fact that the disclosure fit within the definition of section 1102.5 because the disclosure was made to a law enforcement agency, and fell within the literal definition of the code section. Li is not part of a law enforcement agency. The court noted that a report of wrongdoing to the wrongdoer is covered by the statute when the wrongdoer is the county sheriff. (*Id.* at p. 827.) It does not hold that a report of wrongdoing to the supervisor engaged in the wrongdoing is protected when the wrongdoer is not in law enforcement or a government agency.

Plaintiff has stated he made his reports of wrongdoing to Li, and that the wrongdoer was Li. The disclosures were that defendant was using fabricated avatars claiming that defendant autogenerated them; that defendant failed to pay overtime wages to non-exempt employees; that defendant used employees who lacked the proper visas to work for defendant, that Li mistreated an employee plaintiff believed had a disability and Li discriminated against another employee based on that employee's family status. Li engaged in all the wrongdoing alleged.

Plaintiff argues that he also reported to Chen, the CFO. This does not raise a triable issue, as the disclosure to Chen was on August 7, 2017, at the termination meeting. As plaintiff was given termination paperwork at the meeting, the decision to terminate his employment was made before he made a report to Chen.

Plaintiff also argues that Li knew plaintiff was going to report his wrongdoing to ACM and USC. This does not raise a triable issue, as neither is a government entity or law enforcement agency. Section 1102.5, subdivision (b) provides for reporting to "a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, . . ." Neither ACM nor USC had authority over Li's actions as an employee of Pinscreen, nor were they employees of Pinscreen. They did not have the authority to investigate, discover or correct the violations. Plaintiff's argument that it was implied he would make a report to government entities or law

enforcement agencies is speculative, and insufficient to raise a triable issue of fact.

It is not necessary to address whether the information in the reports qualified as “publicly known.”

As to Issues 1 and 4, summary adjudication is granted since plaintiff failed to raise a triable issue of material fact that he engaged in a protected activity.

Issue 2: That there is no merit to Plaintiff’s third cause of action for Violation of Cal. Labor Code § 1102.5 - Retaliation Against Whistleblowing because defendant had a legitimate business reason for Plaintiff’s termination and there is no pretext.

Issue 5: That there is no merit to Plaintiff’s fifth cause of action for Wrongful Termination in Violation of Public Policy, which is duplicative of Plaintiff’s whistleblower claim, because Defendant had a legitimate business reason for Plaintiff’s termination, and there is no pretext.

The issues are moot as plaintiff did not engage in a protected activity.

Issue 3: That Plaintiff’s fourth cause of action for Breach of Employment Contract fails because Defendant did not owe a contractual duty to Plaintiff for any of the breaches alleged by Plaintiff.

Defendant argues that the employment contract does not provide that plaintiff’s health insurance premiums were a reimbursable employee expense.

The third amended complaint alleges that defendant breached the contract by requiring plaintiff to participate in the preparation and presentation of fabricated avatars, retaliating against plaintiff for raising concerns over his reasonable belief defendant was violating California and federal law, and failed to reimburse plaintiff for his health insurance premiums.

Legislative intent is that an issue shall be worded so as to dispose of an entire

cause of action or defense (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 249, or primary right (*Lillianthal & Fowler v. Sup. Ct.* (1993) 12 Cal.App.4th 1848, 1853).

Although the issue states it is directed to the entire cause of action, defendant only addressed the alleged breach as to the health insurance premiums. It failed to address whether the alleged requirement that plaintiff engage in conduct he believed violated the law, and if terminating plaintiff when he raised his concerns over the legality of defendant's actions were breaches of the contract. Rather, the moving party defendant addressed that a breach of covenant of good faith and fair dealing could not be incorporated into the contract.

Even if defendant had addressed whether requiring plaintiff to participate in the presentation of fabricated avatars or retaliating against plaintiff for raising concerns that the company was committing violations of law was a breach of any of the terms of the employment contract, plaintiff has raised a triable issue of as to whether COBRA payments could be considered business expenses under Exhibit 8 in support of the motion for summary judgment, Section 4. At the summary judgment stage, the court does not weigh the evidence. The plaintiff has raised a triable issue (Exhibit 27 in support of the opposition to the motion for summary judgment, Sadeghi declaration, ¶ 32) as to whether allowing reimbursement for health insurance payments, during a time that the company had no group health insurance plan, was a "generally applicable polic[y]" of Pinscreen.

Summary adjudication is denied as defendant failed to meet its burden of establishing that plaintiff could not establish a breach of contract.

Issue 6: That there is no merit to Plaintiff's sixth cause of action for Negligence because as a matter of law Defendant is an involuntary bailee of the Mickey Mouse statute and can only be liable for gross negligence.

Defendant argues that it was an involuntary bailee of plaintiff's statue, and that it can only be held liable for gross negligence.

"An involuntary deposit is made:

- (a) By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner.
- (b) In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.
- (c) By the delivery to, or picking up by, and the holding of, a stray live animal by any person or public or private entity.
- (d) By the abandonment or leaving of a live animal, as proscribed by Section 597.1 of the Penal Code, in or about any premises or real property that has been vacated upon, or immediately preceding, the termination of a lease or other rental agreement or foreclosure of the property.” (Civ. Code, § 1815.)

Defendant failed to establish that it is an involuntary bailee. The facts appear to be that following his termination plaintiff was escorted from the property without the opportunity to retrieve his personal property in his office. Defendant has cited to no authority that this circumstance makes it an involuntary bailee.

Defendant has not established that it was not grossly negligent in handling plaintiff's statue. No facts were submitted as to how defendant handled plaintiff's statue after plaintiff's termination.

Summary adjudication is denied as defendant failed to meet its burden of establishing that it was an involuntary bailee and was not grossly negligent.

Issue 7: That there is no merit to Plaintiff's sixth cause of action for Negligence because there is no “preexisting, consensual relationship” between the parties and therefore no cognizable damages as necessary to maintain a negligence cause of action.

Defendant argues that plaintiff is seeking only emotional distress damages, which are not recoverable as there was no preexisting consensual relationship between the parties.

The cause of action alleges that defendant failed to compensate plaintiff for the property damage. (TAC, ¶ 134.) Plaintiff does allege emotional distress damages. (TAC, ¶ 135.) This allegation does not negate that plaintiff alleged he is entitled to

compensation for personal property damages. The prayer for damages seeks compensatory damages, and does not identify the damages sought by each cause of action.

Summary adjudication is denied as defendant failed to meet its burden of establishing that plaintiff is seeking only emotional distress damages, and a determination of the issue of emotional distress damages would not wholly dispose of the cause of action.

Dated: November 5, 2021

LIA MARTIN

Hon. Lia Martin
Judge of the Superior Court