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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – SANTA MONICA COURTHOUSE

GORDON KLEIN, *Plaintiff*, v. ANTONIO BERNARDO; THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; and DOES 1 through 25, *Defendants*.	Case No. 21SMCV01577 *Assigned to the Hon. H. Jay Ford, III* **PLAINTIFF'S NOTICE OF RULING** Complaint Filed: 9/27/2021 Trial Date: 4/17/2023

PLAINTIFF'S NOTICE OF RULING

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 30, 2022, Defendants Antonio Bernardo and The Regents of the University of California's ("Defendants," collectively") Anti-SLAPP motion and Demurrer to Plaintiff's First Amended Complaint, and Plaintiff Gordon Klein's ("Plaintiff") Motion to Conduct Specified Discovery were heard in Dept. O of the above-captioned Court, the Hon. H. Jay Ford, III, presiding. The Court, having considered the moving, opposing, and reply papers of all parties, and having heard argument of counsel, took the matter under submission. Later, on March 30, 2022, the Court adopted its tentative rulings as to each motion, true and correct copies of which are attached hereto as **Exhibit 1**.

PLEASE TAKE FURTHER NOTICE that on March 30, 2022, a Case Management Conference was held, and the Court set a date for trial and other pre-trial hearings. Specifically, a Jury trial is scheduled for April 17, 2023, at 10:00 am in Dept. O of the above-referenced Court.

The Final Status Conference is scheduled for April 10, 2023, at 9:30 a.m. in Dept. O of the above-refenced Court. The parties are ordered to fully comply with LA County Local Rule 3.25(f) and (g).

A status conference regarding ADR and Discovery is scheduled for September 7, 2022, at 8:30 a.m. in Dept. O of the above-refenced Court. The parties are to submit a brief statement at least five days prior to the conference.

Respectfully submitted,

Dated: March 31, 2022 **MARKUN ZUSMAN & COMPTON LLP**

By: */s/ Tadeusz McMahon*
Steven M. Goldberg
Tadeusz McMahon
Attorney for Plaintiff GORDON KLEIN

EXHIBIT 1

Case Name:	**Klein v. Bernardo, et al.**		
Case No.:	21SMCV01577	**Complaint Filed:**	9-27-21
Hearing Date:	3-30-22	**Discovery C/O:**	None
Calendar No.:	15	**Discover Motion C/O:**	None
POS:	OK	**Trial Date:**	None

SUBJECT: **DEMURRER TO FAC**
MOVING PARTY: Defendants The Regents of the University of California and Antonio Bernardo
RESP. PARTY: Plaintiff Gordon Klein

TENTATIVE RULING

Defendants The Regents and Bernardo's Demurrer to the FAC is:

(1) MOOT as to the 2nd cause of action for public disclosure;

(2) SUSTAINED WITHOUT LEAVE TO AMEND as to the 5th cause of action for common law retaliation (against Bernardo and Regents) and 7th cause of action for breach of duty of neutrality under Labor Code §1102 (against Regents only);

(3) OVERRULED as to the entirety of the 1st cause of action for breach of contract (against Regents only) and 3rd cause of action for false light (against Bernardo only);

(4) OVERRULED as to the 4th cause of action for retaliation in violation of Labor Code §1102.5(c) as to Regents;

(5) SUSTAINED WITHOUT LEAVE as to the 4th cause of action for retaliation in violation of Labor Code §1102.5(c) as to Defendant Bernardo;

(6) SUSTAINED WITHOUT LEAVE as to the 6th cause of action for negligent interference as to Regents;

(7) OVERRULED as to the 6th cause of action for negligent interference as to Bernardo.

Defendants' RJN is GRANTED. However, the Court does not take judicially notice the fact that the attached MOU and Side Agreement were in effect during the relevant period. The Court does not judicially notice any interpretation or application of the provisions contain in the documents.

Defendants to answer in 20 days.

I. Defendants' Demurrer is MOOT as to the 2nd cause of action for public disclosure in light of the ruling on Defendants' SLAPP

The Court granted the SLAPP motion as to the entirety of the 2nd cause of action for public disclosure. The demurrer to the 2nd cause of action is therefore MOOT.

II. 1st cause of action for breach of contract (against Regents only)—OVERRULE

As discussed in connection with the SLAPP motion, Plaintiff's 1st cause of action for breach of contract is sufficiently pleaded. Plaintiff also presents authority supporting his right to sue for breach of contract despite his status as a public employee.

III. 3rd cause of action for false light (against Bernardo only)—OVERRULE

As discussed in connection with the SLAPP motion, Plaintiff has stated a legally sufficient claim for false light. Reasonable minds could conclude that the June 4, 2020 case Plaintiff in a false light, e.g. he was placed on leave as a disciplinary action due to violations of UCLA's code of conduct and core principles. See FAC, ¶¶42-47. Plaintiff also alleges facts from which a reasonable trier of fact could find that Defendant Bernardo negligently, knowingly or recklessly created this false impression. See FAC, ¶¶30, 35, 37, 40-43.

IV. 4th cause of action for retaliation in violation of Labor Code §1102.5(c)(against Regents and Bernardo)—SUSTAIN WITHOUT LEAVE as to Bernardo and OVERRULE as to Regents

Pursuant to the SLAPP motion, the allegations regarding the public disclosure of the Confidential Personnel Action and the Public Attacks were stricken. The only remaining allegations in the 4th cause of action involve the unprotected conduct that was not subject to the SLAPP motion.

Bernardo's demurrer to the 4th cause of action for retaliation is SUSTAINED WITHOUT LEAVE TO AMEND. Bernardo is not subject to Labor Code §1102.5, as discussed in the SLAPP Motion. Plaintiff fails to cite any Legislative history or case authority interpreting Labor Code §1102.5(c) to apply to supervisors. FEHA retaliation claims may not be brought against individuals, despite the statutory language using the word "person." See Jones v. Lodge at Torrey Pines Partnership (2008) 42 Cal.4th 1158, 1171. Although not binding, several federal district courts have concluded that Labor Code §1102.5 does not allow for individual liability, despite the 2014 amendment adding "or any person acting on behalf of the employer." See Unites States ex rel. Lupo v. Quality Assurance Services, Inc. (2017) 242 F.Supp.3d 1020, 1030; Vera v. Con-Way Freight, Inc. (CD. Cal. 2015) 2015 WL 1546178, at *1. The Court finds the reasoning of this federal authority persuasive.

Regents' Demurrer to the 4th cause of action for retaliation under Labor Code §1102.5(c) is OVERRULED. Regents fail to identify any deficiency in the allegations against it in the 4th cause of action.

V. 5th cause of action for common law retaliation (against Regents and Bernardo)—SUSTAIN WITHOUT LEAVE TO AMEND

Pursuant to the SLAPP motion, the allegations regarding the public disclosure of the Confidential Personnel Action and the Public Attacks were stricken. The only remaining allegations in the 5th cause of action involve the unprotected conduct that was not subject to the

SLAPP motion.

For the same reasons stated in connection with the SLAPP Motion, Plaintiff's 5th cause of action for common law retaliation fails to state a claim as to either Regents or Bernardo. Regents is not subject to liability for common law retaliation under GC §815. Bernardo cannot be individually held liable for common law retaliation. See Lloyd v. County of Los Angeles (2009) 172 Cal.App.4th 320, 329 (plaintiff's common law wrongful termination and retaliation claims failed to state a claim based on GC §815)(quoting Miklosy v. Regents of University of California (2008) 44 Cal.4th 876, 898-899).

VI. 6th cause of action for negligent interference with prospective economic advantage (against Regents and Bernardo)—SUSTAIN WITHOUT LEAVE TO AMEND as to Regents and OVERRULED as to Bernardo

Pursuant to the SLAPP motion, the allegations regarding the public disclosure of the Confidential Personnel Action and the Public Attacks were stricken as to Regents. The SLAPP motion was denied as to 6th cause of action as to Bernardo. The only remaining allegations in the 6th cause of action involve the unprotected conduct that was not subject to the SLAPP motion.

For the same reasons stated in connection with the SLAPP motion, the 6th cause of action fails to state a claim as to Defendant Regents. Defendant Regents is not subject to common law liability under GC §815. Civil Code §§1708 and 1714 are general negligence statutes. They cannot be relied on to create a duty of care as to Regents. See Eastburn v. Regional Fire Protection Authority (2003) 31 Cal.4th 1175, 1183; Zelig v. County of Los Angeles (2002) 27 Cal.4th 1112, 1127.

For the same reasons stated in connection with the SLAPP motion, the 6th cause of action states a claim against Bernardo. Plaintiff alleges independently wrongful conduct based on false light arising from the June 4, 2020 email and the public disclosure of the Confidential Personnel Action in violation of the confidentiality provision in the parties' agreement. Plaintiff also alleges loss of prospective business opportunities due to the conduct in the form of damage to his expert business. See FAC, ¶¶107-112.

VII. 7th cause of action for breach of duty of neutrality under Labor Code §1102 (against Regents only)—SUSTAIN WITHOUT LEAVE TO AMEND.

Pursuant to the SLAPP motion, the allegations regarding the public disclosure of the Confidential Personnel Action and the Public Attacks were stricken as to Regents. The only remaining allegations in the 7th cause of action involve the unprotected conduct that was not subject to the SLAPP motion.

For the same reasons stated in connection with the SLAPP, Plaintiff fails to state a cause of action against Regents for violation of Labor Code §1102. Regents is not subject to Labor Code §1102. See Johnson v. Arvin-Edison Water Storage Dist. (2009) 174 Cal.App.4th 729, 736 (quoting Campbell v. Regents of University of California (2005) 35 Cal.4th 311); see also Labor Code §1106.

VIII. Defendants' Affirmative Defenses

Defendants also demur based on several affirmative defenses. Many of the defenses were raised and discussed in connection with the SLAPP motion. A "demurrer based on an affirmative defense cannot properly be sustained where the action might be barred by the defense, but is not necessarily barred." CrossTalk Productions, Inc. v. Jacobson (1998) 65 Cal.App.4th 631, 635.

CC §47(b). "A privileged publication or broadcast is one made:… In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information." CC §47(c).

This privilege is "recognized where the communicator and the recipient have a common interest and the communication is of a kind reasonably calculated to protect or further that interest." Deaile v. General Telephone Co. of California (1974) 40 Cal.App.3d 841, 846 (employer may publish to his employees the reasons for termination of another employee, the rationale for the publication being the employer's economic interest in clarifying its policies and preventing future abuses of those policies). This common interest privilege has been held to apply to "[c]ommunications made in a commercial setting relating to the conduct of an employee" (Cuenca v. Safeway San Francisco Employees Fed. Credit Union (1986) 180 Cal.App.3d 985, 995), "statements by management and coworkers to other coworkers explaining why an employer disciplined an employee" (McGrory v. Applied Signal Technology, Inc. (2013) 212 Cal.App.4th 1510, 1538), and "uncomplimentary comments" or other statements made about the qualifications of a former or alleged employee to a prospective employer (Noel v. River Hills Wilsons, Inc. (2003) 113 Cal.App.4th 1363, 1369).

The "interest" must be something other than mere general or idle curiosity, such as where the parties to the communication share a contractual, business or similar relationship or the defendant is protecting his own pecuniary interest. See Rancho La Costa, Inc. v. Superior Court (1980) 106 Cal.App.3d 646, 664–665 (qualified privilege does not apply "merely because it relates to a matter which may have general public interest). Rather, it is restricted to "proprietary or narrow private interests." Hawran v. Hixson (2012) 209 Cal.App.4th 256, 287.

Defendants fail to establish that CC §47(b) bars the entire FAC as a matter of law, or any particular cause of action. A demurrer cannot be brought to parts of a cause of action. With the exception of the 3rd cause of action for false light, Plaintiff's other remaining causes of action are based on conduct that is not a statement or a writing, e.g. denial of a merit based raised. For this reason, CC §47(b) would not bar the entire cause of action.

In addition, Defendants fail to establish based on the face of the complaint that all elements of the litigation privilege apply to the June 4, 2020 email. D fails to establish that the 6-4-20 email to the Anderson School community at large, including alumni, qualifies as a statement made in the course and preparatory to an official proceeding. Even assuming there

was an official proceeding against Plaintiff or that Bernardo was initiating such an investigation, the June 4, 2020 email to the Anderson School community was not a statement made during an official proceeding or to initiate an official proceeding. "That is to say, the communicative act—be it a document filed with the court, a letter between counsel or an oral statement—must function as a necessary or useful step in the litigation process and must serve its purposes. This is a very different thing from saying that the communication's content need only be related in some way to the subject matter of the litigation." Rothman v. Jackson (1996) 49 Cal.App.4th 1134, 1146.

Instead, based on the FAC, Bernardo's June 4, 2020 email was more akin to a press release or a statement to the public regarding a subject matter that was potentially subject to an official proceeding. Such public statements are not privileged under CC §47(b). See GetFugu, Inc. v. Patton Boggs LLP (2013) 220 Cal.App.4th 141, 153 (press release and tweet to investment community regarding ds misdeeds was equivalent of statements to press and CC 47(b) did not apply). Defendants fail to establish that such a public statement bears the "logical relationship" to the alleged official proceeding required under CC §47(b). "While a "logical relation" certainly exists between court pleadings and out-of-court statements that include identical or similar allegations, a 'logical relation' of this kind is not sufficient to invoke the litigation privilege." Rothman, supra, 49 Cal.App.4th at 1145. "If anyone with an interest in the outcome of the litigation is a person to whom a privileged communication could be made, Silberg and Rothman would be eviscerated." GetFugu, Inc., supra, 220 Cal.App.4th at 154. Moreover, statements to nonparticipants in the action are generally not privileged under section 47(b), and are thus actionable unless privileged on some other basis. See Rothman, supra, 49 Cal.App.4th at 1141.

CC §47(c). "A privileged publication or broadcast is one made:… In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information." CC §47(c).

This privilege is "recognized where the communicator and the recipient have a common interest and the communication is of a kind reasonably calculated to protect or further that interest." Deaile v. General Telephone Co. of California (1974) 40 Cal.App.3d 841, 846 (employer may publish to his employees the reasons for termination of another employee, the rationale for the publication being the employer's economic interest in clarifying its policies and preventing future abuses of those policies). This common interest privilege has been held to apply to "[c]ommunications made in a commercial setting relating to the conduct of an employee" (Cuenca v. Safeway San Francisco Employees Fed. Credit Union (1986) 180 Cal.App.3d 985, 995), "statements by management and coworkers to other coworkers explaining why an employer disciplined an employee" (McGrory v. Applied Signal Technology, Inc. (2013) 212 Cal.App.4th 1510, 1538), and "uncomplimentary comments" or other statements made about the qualifications of a former or alleged employee to a prospective employer (Noel v. River Hills Wilsons, Inc. (2003) 113 Cal.App.4th 1363, 1369).

The "interest" must be something other than mere general or idle curiosity, such as where

the parties to the communication share a contractual, business or similar relationship or the defendant is protecting his own pecuniary interest. See Rancho La Costa, Inc. v. Superior Court (1980) 106 Cal.App.3d 646, 664–665 (qualified privilege does not apply "merely because it relates to a matter which may have general public interest). Rather, it is restricted to "proprietary or narrow private interests." Hawran v. Hixson (2012) 209 Cal.App.4th 256, 287.

Defendants fail to establish that the elements of CC §47(c) appear from the face of the complaint. The Court found Defendants failed to establish that CC §47(c) barred Plaintiffs' claims as an issue of law in connection with the SLAPP motion. For the same reasons, the Court finds CC §47(c) does not clearly and affirmatively bar Plaintiff's claims based on the FAC allegations. It is unclear from the FAC that the email was sent to persons interested in the Confidential Personnel Action, and the FAC contains allegations that could support a finding of actual malice. See FAC, ¶¶30, 35, 37, 40-43.

Statute of Limitations. Defendants argue the 3rd cause of action for false light is barred by the one-year statute of limitations under CCP §340(c). Bernardo's email was sent on June 4, 2021. During that time, the Judicial Council's Emergency Rules Related to COVID-19 applied and under those rules, the SOL for any causes of action were tolled for 180 days from April 6, 2020 through October 1, 2020. See Plaintiff's RJN ISO Opposition to SLAPP, Ex. 1, Emergency Rule 9(a). Plaintiff's complaint was filed on September 27, 2021, within one year after expiration of the tolling period.

Exhaustion of Administrative Remedies. Defendants fail to establish that the FAC's allegations clearly and affirmatively establish Plaintiff's failure to exhaust administrative remedies. Plaintiff also alleges that he filed a grievance as required under the employment agreement. See FAC, ¶77.

GC §821.6. Defendants fail to establish that any liability is being sought against them based on their referral of the matter for investigation. Defendants therefore fail to establish that GC §821.6 applies.

Case Name:	**Klein v. Bernardo, et al.**		
Case No.:	21SMCV01577	**Complaint Filed:**	9-27-21
Hearing Date:	3-30-22	**Discovery C/O:**	None
Calendar No.:	15	**Discover Motion C/O:**	None
POS:	OK	**Trial Date:**	None

SUBJECT: **MOTION FOR LEAVE TO CONDUCT SLAPP DISCOVERY**
MOVING PARTY: Plaintiff Gordon Klein
RESP. PARTY: Defendants The Regents of the University of California and Antonio Bernardo

TENTATIVE RULING

Plaintiff's Motion for Leave to Conduct Discovery under CCP §425.16(g) is DENIED.

A court may grant a continuance of an anti-SLAPP motion to allow discovery for good cause. (§ 425.16, subd. (g).) (§ 425.16, subd. (g).) "To establish good cause, the plaintiff must file a noticed motion identifying the specific discovery sought and showing this discovery is needed to establish a prima facie case and tailored to that end." Murray v. Tran (2020) 55 Cal.App.5th 10, 37. To satisfy the good cause requirement, plaintiff must make a prima facie showing at least as to the elements of the claim for which no discovery should be needed. See John Doe 2 v. Supr. Ct. (2016) 1 Cal.App.5th 1300, 1305 (no discovery re identity of "Doe" (sender of anonymous emails) because Doe's statements as matter of law not reasonably susceptible of defamatory meaning); Paterno v. Sup.Ct. (Ampersand Publishing) (2008) 163 Cal.App.4th 1342, 1349 (libel plaintiff cannot establish good cause for special discovery under section 425.16, subdivision (g) without a prima facie showing the allegedly libelous statements are false and unprivileged). "Where a defendant relies on motive evidence in support of an anti-SLAPP motion, a plaintiff's request for discovery concerning the asserted motive may often present paradigmatic 'good cause.'" Wilson v. Cable News Network, Inc. (2019) 7 Cal.5th 871, 891-892.

Plaintiff fails to demonstrate good cause for discovery. Plaintiff argues discovery is required to challenge Defendants' showing regarding motive, malice and retaliation. However, the Court did not grant the SLAPP as to any cause of action based on Defendants'evidence as to motive, malice and retaliation, or Plaintiff's failure to submit prima facie evidence as to that element.

Moreover, as to the 4th cause of action for retaliation, the Court's decision to strike that cause of action was based on Plaintiff's failure to present any evidence that Defendants' retaliatory conduct was based on Plaintiff's refusal to grant the student's original request for race-based grading accommodations. Plaintiff's motion does not claim he can discover specific additional facts supporting his allegation that Defendants' retaliatory acts were motivated by their desire to punish him for failing to implement the student's requested race-based grading accommodations.

In fact, Defendant Bernardo sets forth his motivations for placing Plaintiff on leave and sending the June 4, 2020 email. See Dec. of A. Bernardo ISO SLAPP, ¶¶7-9, 14-18. Plaintiff is not entitled to test Bernardo's declaration through discovery under CCP §425.16(c).

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Calendar No.:	15	**Discover Motion C/O:**	None
POS:	OK	**Trial Date:**	None

SUBJECT: **SLAPP MOTION**
MOVING PARTY: Defendants The Regents of the University of California and Antonio Bernardo
RESP. PARTY: Plaintiff Gordon Klein

TENTATIVE RULING

Defendants The Regents of the University of California and Antonio Bernardo's SLAPP Motion is GRANTED in part and DENIED in part. Defendant is to submit a proposed order consistent with the ruling that specifically identifies by page and line and quotes the allegations of protected conduct the Court orders stricken.

With the exception of the 2nd and 3rd causes of action for public disclosure and false light, Plaintiff's causes of action are based on mixed protected and unprotected conduct.
The only protected conduct successfully identified by Defendants for purposes of the 1st prong of SLAPP is the June 4, 2020 email by Bernardo and the Public Attacks alleged in the FAC.

Defendants' SLAPP is GRANTED as to the allegations of the transmittal of the June 4, 2020 email and the "Public Attacks" (i.e. public disclosure of the Confidential Personal Action and "publicly attacking Plaintiff") as alleged in the 2nd cause of action for public disclosure of private facts (only Bernardo named), 4th cause of action for retaliatory discrimination in violation of Labor Code §1102.5 as to both Defendants, 5th cause of action for common law retaliation as to both Defendants, 6th cause of action for negligent interference with prospective economic advantage as to Defendant Regents, the 6th cause of action for negligent interference against Bernardo to the extent based on the Public Attacks, 7th cause of action for breach of employer's duty under Labor Code §1102 (only Regents named). Plaintiff failed to make a prima facie showing that these allegations would support a judgment in his favor arising from the June 4, 2020 email and Public Attacks as to each of these claims. The allegations regarding the June 4, 2020 email and the Public Attacks are stricken from these causes of action. Because the 2nd cause of action for public disclosure is based solely on the public disclosure of the Confidential Personnel Action in the June 4, 2020 email, that entire cause of action is dismissed per SLAPP.

Defendants' SLAPP is DENIED as to the June 4, 2020 email and the Public Attacks as alleged in the 1st cause of action for breach of contract (alleged against Regents only), the 3rd cause of action for false light (against Bernardo only), and the 6th cause of action for negligent interference against Bernardo as to the June 4, 2020 email. Plaintiff makes a prima facie showing that would support judgment in his favor as to each of these claims. Defendants fail to establish that any of these causes of action are barred as an issue of law by the plethora of affirmative defenses raised.

Plaintiff's RJN is GRANTED. Defendants' evidentiary objections to the Plaintiff's

evidence are OVERRULED.

REASONING

"Litigation of an anti-SLAPP motion involves a two-step process. First, the moving defendant bears the burden of establishing that the challenged allegations or claims arise from protected activity in which the defendant has engaged. Second, for each claim that does arise from protected activity, the plaintiff must show the claim has "at least minimal merit. If the plaintiff cannot make this showing, the court will strike the claim." Bonni v. St. Joseph Health System (2021) 11 Cal.5th 995, 1009.

I. 1st Step

On the 1st stepg, "courts are to consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability. The defendant's burden is to identify what acts each challenged claim rests on and to show how those acts are protected under a statutorily defined category of protected activity." Bonni, supra, 11 Cal.5th at 1009.

Where the plaintiff alleges multiple factual bases for a particular cause of action and the defendant moves to strike the entire cause of action, the defendant must demonstrate that each factual basis qualifies as protected activity and supplies an element of the challenged claim, as opposed to being merely contextual or incidental. Bonni, supra, 11 Cal.5th at 1011-1012. If a defendant seeks to strike an entire cause of action with multiple factual bases, it is defendant's burden to address each factual basis. Id. at 1011. If the defendant fails to address a particular subpart or factual basis, the defendant fails to carry its first prong burden as to that subpart or claim. Id. "If a cause of action contains multiple claims and a moving party fails to identify how the speech or conduct underlying some of those claims is protected activity, it will not carry its first-step burden as to those claims. The nonmovant is not faced with the burden of having to make the moving party's case for it." Id.

Defendant argues the entire complaint "arises from" conduct protected under SLAPP based on the disapproved "principle thrust" gravamen test. The Supreme Court in Bonni clearly and unambiguously rejected the so called "principle thrust" - "essence" gravamen test. See Bonni, supra, 11 Cal.5th at 1010-1012 and . Instead, a moving party must present a "claim-by-claim" approach to meet their burden under the first step of the SLAPP analysis: (1) the moving defendant must identify the acts alleged in the complaint that it asserts are protected; (2) the moving defendant must then identify what claims for relief are predicated on these allegedly protected acts; and (3) identify how that speech or conduct underlying activity is protected activity that supply the basis for any claims. Id. at 1010-1011.

Where a cause of action "rests on allegations of multiple acts, some of which constitute protected activity and some of which do not," the defendant must establish that each of the acts is protected. Id. If the defendant fails to identify how a specific act is protected activity, it fails to carry its first-step burden as to those acts and those acts are "disregarded." Id.

A. SLAPP is only brought as to Bernardo's June 4, 2020 email and Defendants' "publicly attacking Plaintiff for having challenged the Student's request…"

Plaintiff has clearly alleged multiple factual bases in his complaint, including clearly unprotected conduct, such as denial of a merit raise. Under Bonni, to the extent Defendant maintains the causes of action are not mixed, it was required to demonstrate that they are not mixed. Defendant failed to do so.

However, Defendant clearly identified two of the factual bases alleged by Plaintiff as protected conduct under CCP §425.16(e)(2) and (e)(4)—Bernardo's June 4, 2020 email and Defendants' public attacks on Plaintiff for having challenged the Student's request. See Defendants' MP&As, 14:23-28-15:1-7. Defendant also identifies the element of the causes of action supplied by these two factual bases. Id. at 14:26-28-15:1-7. The June 4, 2020 email publicly disclosing the Confidential Personnel Action supplies the elements for each of the seven causes of action, and Defendants' public attacks supplies the elements for the 4th cause of action and 5th causes of action for retaliation, 6th cause of action for negligent interference and the 7th cause of action for breach of duty of neutrality. Id.

Plaintiff concedes that the public disclosure of his Confidential Personnel Action supplies an element of each of his seven causes of action. See Plaintiff's Opposition, 10:23. Plaintiff also concedes that Defendants' public attacks on him for challenging the student's request supplies an element of the 4th through 7th causes of action.

Plaintiff and Defendant therefore agree that (1) all causes of action arise from the June 4, 2020 email publicly disclosing Plaintiff's Confidential Personnel Action and (2) the 4th through 7th causes of action arise from Defendants' public attacks on Plaintiff for challenging the student's request. The SLAPP motion may properly proceed as to these factual bases. All other factual bases are outside the scope of the SLAPP motion and are disregarded because Defendant failed to address them. See Bonni, supra, 11 Cal.5th at 1010.

On reply, Defendant raised the June 21, 2020 email. New arguments are not generally permitted on reply, especially without a showing of good cause for failing to raise those points initially. See Balboa Ins. Co. v. Aguirre (1983) 149 Cal.App.3d 1002, 1010 (points raised on reply will not be considered unless good shown for failure to present them before); Jay v. Mahaffey (2013) 218 Cal.App.4th 1522, 1537-1538. Plaintiff also referenced the email in opposition. However, Defendant failed to identify the element of the cause of action supplied by the June 21, 2020 email, nor does it appear from the FAC that Plaintiff is including that email as a public disclosure of Confidential Personnel Action. Defendant was required to identify the element of the cause of action supplied by the June 21, 2020 email under Bonni; it failed to do so.

B. The June 4, 2020 email and Defendants' public attacks qualify as protected conduct under (e)(4)

Defendant fails to establish that (e)(2) applies. The anti-SLAPP statute protects communications "made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." CCP § 425.16(e)(2). "[O]ther official proceeding" means a governmental forum, regardless of the label. Olaes v. Nationwide Mut. Ins. Co. (2006) 135 Cal.App.4th 1501, 1506.

The official proceeding must be "ongoing—or, at the very least, immediately pending"—at the time of the communication. See Rand Resources, LLC v. City of Carson (2019) 6 Cal.5th 610, 627. "Conversely, if an issue is not presently 'under consideration or review' by such authorized bodies, then no expression—even if related to that issue—could be 'made in connection with an issue under consideration or review.' (§ 425.16, subd. (e)(2).) What our appellate courts have declined to do is presume speech meets the requirements of section 425.16, subdivision (e)(2) when no official proceeding was pending at the time of the speech." Id. (defendant's statements were not protected under (e)(2) where they were "not made at the time or on the eve" of renewal decision but years before issue came under review).

"The statute does not accord anti-SLAPP protection to suits arising from any act having any connection, however remote, with an official proceeding. The statements or writings in question must occur in connection with 'an issue under consideration or review' in the proceeding." Paul v. Friedman (2002) 95 Cal.App.4th 853, 866. A statement is "in connection with" litigation under CCP § 425.16(e)(2) if it relates to substantive issues in the litigation and is directed to persons having some interest in the litigation (need not be parties or potential parties. See Contemporary Services Corp. v. Staff Pro Inc. (2007) 152 Cal.App.4th 1043, 1055 (email providing litigation update to nine customers who were involved in litigation between plaintiff and defendant for defamation and unfair competition qualified as protected conduct under (e)(2)).

According to Bernardo, he forwarded complaints about Plaintiff to the Title IX office and the Discrimination Prevention Office on June 2, 2020. See Dec. of A. Bernardo, ¶¶13-14. Thereafter, Bernardo sent the June 4, 2020 email containing the Confidential Personnel Disclosures. Id. at 17. Defendant's evidence fails to clearly establish either an ongoing or immediately pending official proceeding authorized by law, or that the June 4, 2020 email was "in connection with an issue under consideration or review" in that proceeding." Defendant Bernardo's email was sent to the "UCLA Anderson Community," and he testifies that the email was sent to the Anderson email listserv, which includes Anderson's current and former students, faculty and alumni. Bernardo testifies that he sent the email to express his viewpoint on Plaintiff's remarks in response to a student's request for testing, grading and assignment accommodations for "Black classmates." Id. at ¶16; Defendant's Lodged Evidence, Ex. E. Defendant's evidence fails to establish that Bernardo's June 4, 2020 email was a statement in connection with issues under review in an "official proceeding authorized by law."

In addition to Bernardo's June 4, 2020 email, Plaintiff alleges public attacks by Defendants as follows: (1) a tweet by the Andersons School on June 3, 2020 to the general public that implied he did not believe in equal treatment for all (FAC, ¶38); (2) Professor Carla

Hayn's email on June 8, 2020 to all faculty indicating she was "saddened to learn about the troubling conduct of one of our instructors" (FAC, ¶48); and (3) an email by the Anderson School Office of Alumni Relations to alumni on June 16, 2020 referencing Plaintiff by name, the controversy surrounding him and reaffirming Anderson School's rejection of racism and violence (FAC, ¶50) (collectively hereinafter referred to as "the Public Attacks").

Defendants fail to present any evidence that the Public Attacks were statements made in connection with an issue under review in an "official proceeding authorized by law." As with the June 4, 2020 email, no clear "official proceeding authorized by law" was ongoing or immediately pending, nor is there evidence establishing that the persons receiving the communications had some interest in such an official proceeding. For example, the tweet was sent to the general public. The other emails were sent to all faculty and alumni.

Defendant establishes the June 4, 2020 email and the Public Attacks are protected conduct under (e)(4). Under (e)(4), protected conduct includes, "any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." CCP §425.16(e)(4). "The inquiry under the catchall provision instead calls for a two-part analysis rooted in the statute's purpose and internal logic. First, we ask what 'public issue or issue of public interest' the speech in question implicates—a question we answer by looking to the content of the speech. Second, we ask what functional relationship exists between the speech and the public conversation about some matter of public interest. It is at the latter stage that context proves useful." FilmOn.com Inc., supra, 7 Cal.5th at 149-150. The statute "targets…liability premised on speech or petitioning activity "in connection with a private issue." Rand Resources, LLC, supra, 6 Cal.5th at 630.

"Not surprisingly, we have struggled with the question of what makes something an issue of public interest…We share the consensus view that a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest, and that a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people." Rand Resources, LLC v. City of Carson (2019) 6 Cal.5th 610, 621.

"[I]n order to satisfy the public issue/issue of public interest requirement of section 425.16, subdivision (e)(3) and (4) of the anti-SLAPP statute, in cases where the issue is not of interest to the public at large, but rather to a limited, but definable portion of the public (a private group, organization, or community), the constitutionally protected activity must, at a minimum, occur in the context of an ongoing controversy, dispute or discussion, such that it warrants protection by a statute that embodies the public policy of encouraging participation in matters of public significance." Du Charme v. International Brotherhood of Electrical Workers (2003) 110 Cal.App.4th 107, 119 (union trustee's statement on union's website that plaintiff had been terminated for financial mismanagement did not qualify as protected conduct under (e)(4); statement was "mere informational statement" and granting protection to such statements "would in no way further the statute's purpose of encouraging participation in matters of public significance").

"[T]he California cases establish that generally, a public issue is implicated if the subject of the statement or activity underlying the claim (1) was a person or entity in the public eye; (2) could affect large numbers of people beyond the direct participants; or (3) involved a topic of widespread, public interest. And where the issue is of interest to only a private group, organization, or community, the protected activity must occur in the context of an ongoing controversy, dispute, or discussion, such that its protection would encourage participation in matters of public significance." D.C. v. R.R. (2010) 182 Cal.App.4th 1190, 1226.

Defendant establishes that, when Bernardo sent the June 4, 2020 email, there was an ongoing controversy over whether Plaintiff would be reprimanded for his June 2, 2020 email. See Dec. of A. Bernardo, ¶¶8 and 9; Plaintiff's FAC, ¶¶33-41; Notice of Lodge Exhibits, Ex. G. Bernardo testifies that Plaintiff's email was disseminated on social media, "sparking widespread outrage" and that he received "a multitude of complaints" about Plaintiff's email. See Dec. of A. Bernardo, ¶¶8-9; Notice of Lodgement, Ex. E. Defendants submit as Exhibit E to the Notice of Lodgment approximately 85 emails complaining about Plaintiff's June 2, 2020 email. See Notice of Lodgment, Ex. E. These emails demand that Defendant UCLA take action against Plaintiff, and a number of the emails demand Plaintiff's resignation or termination. Id.

Bernardo also lists numerous articles reporting on Defendant UCLA's decision to place Plaintiff on academic leave. See Notice of Lodgment, Ex. G. However, at least one of the articles has nothing to do with the controversy at hand. The remaining articles report on Defendants' decision to place Plaintiff on leave after it was made. The articles do not establish that there was an ongoing controversy or public debate regarding Plaintiff's Confidential Personnel Action when Bernardo sent his June 4, 2020 email. Nevertheless, the very fact that it was reported on by numerous outlets demonstrates public interest in UCLA's response to the underlying controversy, including whether UCLA would take any action against Plaintiff. In combination with the 85 complaints, Defendants satisfy their burden of establishing that Plaintiff's Confidential Personnel Action was an issue of public interest.

In addition, based on Plaintiff's FAC allegations, an ongoing public controversy existed during the relevant period. See FAC, ¶¶33, 34, 36, 38, 47, 51, 53, 84 (alleging Bernardo used the public punishment to placate the "online mob" that loudly and angrily" demanded "Plaintiff's proverbial head.") Plaintiff testifies that his email exchange with the student went "viral" when the student posted it on social media. See Dec. of G. Klein ISO of Opposition to SLAPP, ¶13. Plaintiff also concedes in his opposition brief that there was public interest in Plaintiff's private response to the student but argues there was no public interest in the Confidential Personnel Action. See Plaintiff's Opposition to SLAPP, 12:5-6.

Defendant's evidence and Plaintiff's FAC allegations demonstrate otherwise. There was public interest in how UCLA would respond to Plaintiff's exchange with the student, e.g. would UCLA, a large, public university, reprimand Plaintiff or would it do nothing? Plaintiff's FAC acknowledges public demands by online mobs for his head and Bernardo's use of him as a sacrificial lamb to placate these mobs.

Protection of Bernardo's statement would also encourage participation in matters of

public interest. By reporting to the Anderson Community that Defendants had taken action against Plaintiff for his June 2, 2020 email, Defendants indicated their responsiveness to the complainants' petitioning activity. Defendants therefore establish that Bernardo's June 4, 2020 email is protected conduct under CCP §425.16(e)(4).

For these same reasons, the Public Attacks are also protected conduct under (e)(4). The Public Attacks were statements regarding the speaker's opinions on the public controversy surrounding Plaintiff's exchange with the student.

C. It is undisputed that Bernardo's June 4, 2020 email disclosing Plaintiff's Confidential Personnel Action and the Public Attacks supply an element of each of Plaintiff's seven causes of action

Under Bonni, the Court must determine whether the June 4, 2020 email supplies an element of Plaintiff's causes of action. As discussed in Section I(A), Plaintiff and Defendant agree that (1) all causes of action arise from the June 4, 2020 email publicly disclosing Plaintiff's Confidential Personnel Action and (2) the 4th through 7th causes of action arise from Defendants' public attacks on Plaintiff for challenging the student's request.

II. 2nd Step

Once defendant demonstrates that a cause of action arises from protected conduct, the plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. See Navellier v. Sletten (2002) 29 Cal.4th 82, 88-89. "Precisely because the statute (1) permits early intervention in lawsuits alleging unmeritorious causes of action that implicate free speech concerns, and (2) limits opportunity to conduct discovery, the plaintiff's burden of establishing a probability of prevailing is not high: We do not weigh credibility, nor do we evaluate the weight of the evidence. Instead, we accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law. Only a cause of action that lacks 'even minimal merit' constitutes SLAPP." See Overstock.com, Inc. v. Gradient Analytics, Inc. (2007) 151 Cal.App.4th 688, 699; Ralphs Grocery Co. v. Victory Consultants, Inc. (2017) 17 Cal.App.5th 245, 261.

The "probability of prevailing" is tested by the same standard governing a motion for summary judgment, nonsuit, or directed verdict. Thus, in opposing a SLAPP motion, it is plaintiff's burden to make a prima facie showing of facts that would support a judgment in plaintiff's favor." Taus v. Loftus (2007) 40 Cal.4th 683, 714 (a "summary-judgment-like procedure").

Even if Defendant were to prevail on this SLAPP motion in whole or in part, it would only result in striking of the June 4, 2020 email and the Public Attacks from the complaint. See Baral v. Schnitt (2016) 1 Cal.5th 376, 393-394, 398 (SLAPP should be used like a scalpel, just as an ordinary motion to strike is, excising the protected activity

from the "mixed cause of action" but leaving the cause of action intact as to the unprotected activity). If a cause of action is based solely on the June 4, 2020 email and/or the Public Attacks, the SLAPP will result in dismissal of that entire cause of action. If a cause of action is based on something other than the June 4, 2020 email and/or the Public Attacks, only the allegations regarding the June 4, 2020 email will be stricken.

A. Plaintiff's 4th cause of action for violation of Labor Code §1102.5(c) as to Defendant Bernardo, 5th cause of action as to both Defendants, 6th cause of action as to Defendant Regents and 7th cause of action as to Defendant Regents fail to state a claim and are legally insufficient

4th cause of action for retaliation in violation of Labor Code §1102.5(c) against Defendant Bernardo. Pursuant to Labor Code §1102.5(c), "[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation." Defendant Bernardo is not Plaintiff's employer. Defendant Bernardo is the Dean of Anderson School and an employee of Defendant Regents, who employs them both.

Plaintiff fails to cite any Legislative history or case authority interpreting Labor Code §1102.5(c) to apply to supervisors. FEHA retaliation claims may not be brought against individuals, despite the statutory language using the word "person." See Jones v. Lodge at Torrey Pines Partnership (2008) 42 Cal.4th 1158, 1171. Although not binding, several federal district courts have concluded that Labor Code §1102.5 does not allow for individual liability, despite the 2014 amendment adding "or any person acting on behalf of the employer." See Unites States ex rel. Lupo v. Quality Assurance Services, Inc. (2017) 242 F.Supp.3d 1020, 1030; Vera v. Con-Way Freight, Inc. (CD. Cal. 2015) 2015 WL 1546178, at *1. The Court finds the reasoning of this federal authority persuasive.

Plaintiff's 4th cause of action for retaliation in violation of Labor Code §1102.5 against Defendant Bernardo is legally insufficient and fails to state a claim against him. Defendant's SLAPP motion is GRANTED as to the public disclosure of the Confidential Personnel Action and the Public Attacks alleged in the 4th cause of action against Bernardo.

5th cause of action for common law retaliation as to both Defendants. Pursuant to Government Code §815, all common law liability against a public entity was abolished, which includes claims for common law retaliation in violation of public policy. See Lloyd v. County of Los Angeles (2009) 172 Cal.App.4th 320, 329 (plaintiff's common law wrongful termination and retaliation claims failed to state a claim based on GC §815)(quoting Miklosy v. Regents of University of California (2008) 44 Cal.4th 876, 898-899. In addition, while a public entity can still be liable for torts committed by its employees based on respondeat superior under GC §§815.2 and 820, the tort of retaliation cannot be stated against an individual supervisor through whom the employer commits the tort. See Lloyd, supra.

"[S]ince all California governmental tort liability flows from the California Government Claims Act, the plaintiff must plead facts sufficient to show his or her cause of action lies outside the breadth of any applicable statutory immunity. He or she must plead with particularity, every fact essential to the existence of statutory liability." City of Los Angeles v. Superior Court (2021) 62 Cal.App.5th 129, 148.

Plaintiff cannot demonstrate that the 5th cause of action for common law retaliation is legally sufficient against Defendants. Defendant Regents is a public entity. Defendant Bernardo's alleged conduct was undertaken as an employee of Regents. Plaintiff fails to cite to any statutory basis for his common law retaliation claim against Defendants.

In his opposition to the demurrer, Plaintiff argues Labor Code §1102.5 provides him with a statutory basis to hold Defendants liable. However, Plaintiff alleges a separate retaliation claim based on Labor Code §1102.5 in his 4th cause of action. Labor Code §1102.5 would therefore not salvage the 5th cause of action for retaliation.

Plaintiff fails to establish that the 5th cause of action for common law retaliation is a legally sufficient claim as to Defendants. Defendants' SLAPP motion is GRANTED as to the allegations of public disclosure of Confidential Personnel Action and Public Attacks in Plaintiff's 5th cause of action.

6th cause of action for negligent interference with prospective economic advantage as to Defendant Regents only. Plaintiff's common law claim for negligent interference with prospective economic advantage fails based on GC §815. Plaintiff fails to cite any statutory basis to impose a duty of care on Defendant Regents. Plaintiff cites to Civil Code §§1708 and 1714.

However, the general negligence statutes are not grounds to impose direct tort liability against a public entity. A public entity is not liable for an injury "[e]xcept as otherwise provided by statute." GC §815 (a). "In other words, direct tort liability of public entities must be based on a specific statute declaring them to be liable, or at least creating some specific duty of care, and not on the general tort provisions of Civil Code section 1714. Otherwise, the general rule of immunity for public entities would be largely eroded by the routine application of general tort principles." Eastburn v. Regional Fire Protection Authority (2003) 31 Cal.4th 1175, 1183. The intent of the California Tort Claims Act is to confine the potential for governmental liability to rigidly delineated circumstances set forth by statute. See Zelig v. County of Los Angeles (2002) 27 Cal.4th 1112, 1127. Accordingly, public entities cannot be found liable for nonstatutory, common law negligence. See Eastburn, supra, at 1183.

Plaintiff does not cite any statute or other authority that would allow him to state a claim for negligent interference with prospective economic advantage against Defendant Regents. Plaintiff therefore fails to establish that the 6th cause of action for negligent interference with prospective economic advantage states a legally sufficient claim against Defendant Regents. Defendant Regent's SLAPP Motion is therefore GRANTED as to allegations regarding the

public disclosure of the Confidential Personnel Action and the Public Attacks contained in the 6th cause of action.

7th cause of action for breach of Labor Code §1102. Pursuant to Labor Code §1102, "[n]o employer shall coerce or influence or attempt to coerce or influence his employees through or by means of threat of discharge or loss of employment to adopt or follow or refrain from adopting or following any particular course or line of political action or political activity." Lab. Code, §1102. "Employer" is not defined. "However, traditionally, absent express words to the contrary, governmental agencies are not included within the general words of a statute. The Legislature has acknowledged that this rule applies to the Labor Code… Generally, however, provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable to public employees." Johnson v. Arvin-Edison Water Storage Dist. (2009) 174 Cal.App.4th 729, 736 (quoting Campbell v. Regents of University of California (2005) 35 Cal.4th 311).

In addition, the Legislature adopted express legislation to include public employees in the definition of "employee" for purposes of Labor Code §§1102.5, 1102.6, 1102.7, 1102.8, 1104 and 1105. Although it could have included Labor Code §1102 in the list of applicable statutes under Labor Code §1106, the Legislature refrained from doing so. Plaintiff fails to cite any other authority that would include public entities as "employers" or public employees as "employees" for purposes of Labor Code §1102.

Plaintiff's 7th cause of action for violation of Labor Code §1102 is therefore legally insufficient and fails to state a claim. Defendants' SLAPP Motion is GRANTED as to the allegations of public disclosure of Confidential Personnel Action and the Public Attacks in the 7th cause of action for breach of duty under Labor Code §1102.

B. Plaintiff fails to present prima facie evidence in support of the 2nd cause of action for public disclosure of private facts

"The claim that a publication has given unwanted publicity to allegedly private aspects of a person's life is one of the more commonly litigated and well-defined areas of privacy law." Shulman v. Group W Productions, Inc. (1998) 18 Cal.4th 200, 214. The elements of the public disclosure tort are: "(1) public disclosure (2) of a private fact (3) which would be offensive and objectionable to the reasonable person and (4) which is not of legitimate public concern." Id. (summary judgment of public disclosure tort properly granted as to plaintiff's public disclosure tort; TV broadcast of video footage showing plaintiff's extraction from car accident, including her dialogue with rescue workers, was newsworthy as a matter of law and of legitimate public concern).

"The element critical to this case is the presence or absence of legitimate public interest, i.e., newsworthiness, in the facts disclosed." Id. at 214. Lack of newsworthiness is an element of the "private facts" tort that the plaintiff must plead and prove. Id. at 215. "If the contents of a broadcast or publication are of legitimate public concern, the plaintiff cannot establish a necessary element of the tort action, the lack of newsworthiness." Id. "Although we speak of

the lack of newsworthiness as an element of the private facts tort, newsworthiness is at the same time a constitutional defense to, or privilege against, liability for publication of truthful information." Id. at 216.

When "a person is involuntarily involved in a newsworthy incident, not all aspects of the person's life, and not everything the person says or does, is thereby rendered newsworthy." Id. at 223. "[C]ourts have generally protected the privacy of otherwise private individual involved in events of public interest by requiring that a logical nexus exist between the complaining individual and the matter of legitimate public interest. The contents of the publication or broadcast are protected only if they have some substantial relevant to a matter of legitimate public interest. Thus, recent decisions have generally tested newsworthiness with regard to such individuals by assessing the logical relationship or nexus, or the lack thereof, between the events or activities that brough the person into the public eye and the particular facts disclosed." Id. at 223-224.

"[A] publication is newsworthy if some reasonable members of the community could entertain a legitimate interest in it." Id. at 225. It is plaintiff's burden to prove that the matter allegedly wrongfully disclosed was not a matter of public concern, i.e., not newsworthy. See Diaz v. Oakland Tribune, Inc. (1983) 139 Cal.App.3d 118, 130.

"Thus, newsworthiness is not limited to 'news' in the narrow sense of reports of current events. It extends also to the use of names, likenesses or facts in giving information to the public for purposes of education, amusement or enlightenment, when the public may reasonably be expected to have a legitimate interest in what is published." Jackson v. Mayweather (2017) 10 Cal.App.5th 1240, 1257 (SLAPP properly granted as to defendant's public disclosure of plaintiff's pregnancy, termination of pregnancy and plastic surgery, which were issues of legitimate concern given plaintiff's and defendant's celebrity status and plaintiff's regular disclosure of personal details on social media; however, defendant's posting of sonogram of twins plaintiff was carrying prior to termination and plaintiff's medical report was not newsworthy).

"Whether a publication is or is not newsworthy depends upon contemporary community mores and standards of decency. This is largely a question of fact, which a jury is uniquely well-suited to decide." Diaz, supra, 139 Cal.App.3d at 133.

Plaintiff's 2nd cause of action is based only on the Defendants' public disclosure of the Confidential Personnel Action. Plaintiff's evidence fails to establish that Defendants' placement of him on administrative leave was not newsworthy. As discussed in connection with the (e)(4) analysis of Bernardo's June 4, 2020 email, Plaintiff's own allegations and evidence establish that there was public interest in his email exchange with his student, that in response to the student's upload of his email on social media, an "online mob" was calling for his "proverbial head," that Bernardo place him on leave in response to overwhelming number of complaints and demands that he be reprimanded. See FAC, ¶¶33, 34, 36, 38, 47, 51, 53, 84 (alleging Bernardo used the public punishment to placate the "online mob" that loudly and angrily" demanded "Plaintiff's proverbial head"); Dec. of G. Klein ISO of Opposition to SLAPP, ¶13; Plaintiff's Opposition to

SLAPP, 12:5-6.

Plaintiff's own evidence and briefing supports a finding that the initial exchange between himself and the student became newsworthy after it was uploaded to social media, and what UCLA's response would be, if any, to the alleged public outcry also became newsworthy. The email exchange and UCLA's response were bound up in the larger context of the murder of George Floyd and the national turmoil that occurred thereafter, UCLA's status as a large public university and the larger debate over whether conduct like Plaintiff's was subject to reprimand at that large public university. Defendants' evidence corroborates Plaintiff's allegations of a public controversy over the email exchange and how Defendants would handle the situation. See Dec. of A. Bernardo, ¶¶8 and 9; Notice of Lodge Exhibits, Exs. E and G.

Plaintiff's 2nd cause of action is based exclusively on the public disclosure of the Confidential Personnel Action. Because Plaintiff fails to present any evidence or argument from which as jury could find the Confidential Personnel Action not newsworthy, Defendants' SLAPP motion is GRANTED as to the entirety of the 2nd cause of action for public disclosure of private facts.

C. Plaintiff fails to submit prima facie evidence in support of its 4th cause of action for retaliation in violation of Labor Code §1102.5(c) against Defendant Regents

Pursuant to Labor Code §1102.5(c), "[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation." Lab. Code, §1102.5(c). Plaintiff alleges Defendants retaliated against him, because Plaintiff refused to discriminate or grant preferential treatment to his students on the basis of race, which violates Article 1, Section 31(a) of the California Constitution and the rules and regulations of UCLA. See FAC, ¶97.

Plaintiff fails to present any evidence that Defendants retaliated against him, because he refused to grant the student's request for accommodations for the student's African-American classmates, as opposed to the content and tone of Plaintiff's June 2, 2020 email. Plaintiff therefore fails to present prima facie evidence of a retaliatory motive in violation of Labor Code §1102.5.

D. Plaintiff establishes prima facie evidence in support of the 1st cause of action for breach of contract based on Defendants' public disclosure of the Confidential Personnel Action

The elements of breach of contract are "(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." Reichert v. General Ins. Co. (1968) 68 Cal.2d 822, 830. Plaintiff's breach of contract is based in part on the disclosure of Confidential Personnel Action. Plaintiff's breach of contract is not based on the Public Attacks.

Plaintiff submits evidence from the period of February 29, 2016 to January 31, 2020, his employment with Defendant Regents was subject to an MOU entered into between his union, UC American Federation of Teachers and Defendant Regents. See Dec. of M. McIver, ¶4. The MOU expired on January 31, 2020, and from February 1, 2020 onward, the parties entered into a status quo period, in which most but not all the provisions of the expired contract remained in effect. Id. at ¶6. McIver identifies Article 33 of the MOU and confirms that it was one of the provisions that expired, but McIver does not discuss which other provisions were still in effect from February 1, 2020 onward.

Plaintiff submits a copy of the MOU in effect as of June 2020, when the public disclosure of Confidential Personnel Action took place. See Dec. of G. Klein, Ex. 18. The MOU limited access to Plaintiff's personnel file, personnel review records and other confidential information "strictly…to those representatives and employees who need access to information in the personnel file in the performance of their officially assigned duties…Members of the public and non-governmental entities shall not have access to confidential personnel files except as required by law." Id.

Plaintiff submits evidence, which is undisputed, that Bernardo's June 4, 2020 email disclosed Plaintiff's confidential personnel information—his placement on administrative leave, which is a personnel issue. While Plaintiff's name is not expressly mentioned, given Defendants' evidence, a jury could find that the email was clearly referring to Plaintiff and his response to the student's request for accommodations for African-American students and the audience would have understood this. Plaintiff therefore presents evidence of UCLA's breach of the confidentiality provision of the MOU.

Finally, Plaintiff testifies that he maintains a profitable expert witness consulting practice, which is his principal source of income. See Dec. of G. Klein, ¶22. During the relevant period, he was serving as an expert in pending matters. Id. at ¶23. Immediately after Bernardo's announcement of the Confidential Personnel Action, Plaintiff was dropped from pending matters by significant clients and his expert witness work has largely dried up. Id. Plaintiff also submits a declaration from former client, David Fischer, who testifies that he previously hired Plaintiff as an expert but would refrain from hiring Plaintiff now due to his public suspension. See Dec. of D. Fischer, ¶7.

Plaintiff submits evidence in support of each element of the breach of contract claim. Plaintiff therefore presents prima facie evidence in support of his 1st cause of action for breach of contract.

In response, Defendant argues a public employee may not sue a public employer for breach of contract. "[I]t is well settled in California that public employment is not held by contract but by statute and that, insofar as the duration of such employment is concerned, no employee has a vested contractual right to continue in employment beyond the time or contrary to the terms and conditions fixed by law." Miller v. State of California (1977) 18 Cal.3d 808, 813.

However, as explained in Cal Fire Local 2881 v. California Public Employees' Retirement System (2019) 6 Cal.5th 965, 977, while "contract clause protection of the terms and conditions of public employment historically has been the exception, rather than the rule," "the growing prevalence of collective bargaining by public employees has dramatically increased the number of employees whose terms and conditions of employment are governed by express contracts, rather than solely by legislative enactments." Cal Fire Local 2881, supra, 6 Cal.5th at 977-978. "At least for the term of their collective bargaining agreement, the employment of such employees is largely a matter of contract, not statute." Id. at 978.

"Thus, where the employment relationship is governed by contract, a public employee's breach of contract claim is not simply defeated by his status as a public employee. Indeed, all modern California decisions treat labor-management agreements whether in public employment or private as enforceable contracts (see Lab.Code, § 1126) which should be interpreted to execute the mutual intent and purpose of the parties. This principle has special force in the context of public employment, inasmuch as the bargaining power of public employees has been severely limited by statute." Retired Employees Assn. of Orange County, Inc. v. County of Orange (2011) 52 Cal.4th 1171, 1182–1183. "When a public employer chooses instead to enter into a written contract with its employee (assuming the contract is not contrary to public policy), it cannot later deny the employee the means to enforce that agreement." Shaw v. Regents of University of California (1997) 58 Cal.App.4th 44, 55.

Plaintiff has pled and presented evidence of a bilateral agreement governing the terms and conditions of his employment, specifically an MOU negotiated by Plaintiff's union with Defendant Regents. As such, Plaintiff's breach of contract claim is not defeated by his status as a public employee.

E. Plaintiff submits prima facie evidence in support of the 3rd cause of action for false light

The elements of a false light claim are: (1) defendant publicly disclosed information or material that showed plaintiff in a false light; (2) that the false light created by the disclosure would be highly offensive to a reasonable person in plaintiff's position; (3) in the case of a private person, defendant was negligent in determining the truth of the information or whether a false impression would be created by its disclosure; (4) that plaintiff was harmed or plaintiff sustained harm to his property, business, profession, or occupation; and (5) that defendant's conduct . See CACI 1802.

"Defamation requires a publication that is false, defamatory, unprivileged, and has a tendency to injure or cause special damage. To establish a false light invasion of privacy claim, [plaintiff] must meet the same requirements." Hawran v. Hixson (2012) 209 Cal.App.4th 256, 277.

"In many cases to which the rule stated here applies, the publicity given to the plaintiff is defamatory, so that he would have an action for libel or slander. In such a case the action for invasion of privacy will afford an alternative or additional remedy, and the plaintiff can proceed

upon either theory, or both, although he can have but one recovery for a single instance of publicity. However, it is not necessary that the plaintiff be defamed: It is enough that he is given unreasonable and highly objectionable publicity that attributes to him characteristics, conduct or beliefs that are false, and so is placed before the public in a false position." 5 Witkin, Summary (11th ed. 2021), Torts §781.

A "false light" claim, like libel, exposes a person to hatred, contempt, ridicule, or obloquy and assumes the audience will recognize it as such. See M.G. v. Time Warner, Inc. (2001) 89 Cal.App.4th 623, 636. A "false light" cause of action is in substance equivalent to a libel claim. See Jackson v. Mayweather (2017) 10 Cal.App.5th 1240, 1264 (defendant's statement that he broke off relationship with plaintiff because she had an abortion did not expose plaintiff to 'hatred, contempt, ridicule, or obloquy').

Plaintiff's 3rd cause of action for false light is based on Bernardo's public disclosure of the Confidential Personnel Action in the June 4, 2020 email, the failure to provide any context in the June 4, 2020 email, including the outcome of Plaintiff's exchange with the student, and the insinuation in the June 4, 2020 email that Plaintiff was placed on leave because he had engaged in conduct that violated core principles and policies of the University. To the extent Plaintiff's 3rd cause of action for false light is based on disclosure of the Confidential Personnel Action alone, it would fail as a matter of law, because it is undisputed that Plaintiff was in fact placed on leave. See Jackson, supra, 10 Cal.App.5th at 1264-1265 (defendant's statements that plaintiff had undergone extensive plastic surgery could not support a claim for false light where plaintiff admitted the truth of the statement).

However, Plaintiff alleges Defendants' announcement of his administrative leave was juxtaposed within numerous insinuations contained in the June 4, 2020 email, which cast him in a "false light" and implied false facts. Plaintiff argues the June 4, 2020 email implied that (1) he was placed on administrative leave because he was guilty of wrongdoing; and (2) the wrongdoing was the specific code violations cited in the email, e.g. failing to "provid[e] a safe, respectful and equitable environment," "abuse of power," "unfairly treat[ing] or malign[ing] because of identity." See FAC, ¶42. Defendant is not denying the content of the June 4, 2020 email.

"[T]he dispositive question is whether a reasonable fact finder could conclude the published statement declares or implies a provably false assertion of fact. See Franklin v. Dynamic Details, Inc. (2004) 116 Cal.App.4th 375, 385 (discussing defamation). "A defendant is liable for what is insinuated, as well as for what is stated explicitly. The fact that an applied defamatory charge or insinuation leaves room for an innocent interpretation as well does not establish that the defamatory meaning does not appear from the language itself. The language used may give rise to conflicting inferences as to the meaning intended, but when it is addressed to the public at large, it is reasonable to assume that at least some of the readers will take it in its defamatory sense." O'Connor v. McGraw-Hill, Inc. (1984) 159 Cal.App.3d 478, 485.

A reasonable fact finder could conclude that the June 4, 2020 email implies a provably false assertion of fact. A reasonable fact finder could determine that the June 4, 2020 email

implied that Plaintiff's placement on administrative leave was disciplinary action for violating the identified "core principles" of UCLA. Implying that Plaintiff's administrative leave was a form of disciplinary action for his June 2, 2020 exchange or any alleged violation of UCLA's core principles was false. As Bernardo testifies, he placed Plaintiff on the administrative leave "to allow UCLA time to review the allegations regarding his behavior and to determine whether Klein's conduct violated the Faculty Code of Conduct." See Dec. of A. Bernardo ISO of SLAPP Motion, ¶15.

In fact, UCLA's Diversity, Equity and Inclusion Bureau chose not to pursue any formal investigation into Klein's actions. Id. at ¶21. UCLA's Discrimination Prevention Office also declined to pursue any formal investigation into Klein's actions. Id. at ¶22. UCLA therefore never formally investigated Plaintiff for any wrongdoing or violation of any UCLA codes of conduct or policies, Plaintiff was never found guilty of any violations and Plaintiff never suffered any disciplinary action for his June 2, 2020 email exchange.

In addition, a reasonable fact finder could determine that the implications of the June 2, 2020 email would have exposed Plaintiff to hatred, contempt, ridicule, or obloquy. The tone of the email also assumes the audience will recognize such implications as garnering hatred, contempt, ridicule, or obloquy.

Moreover, Defendant Bernardo's failure to identify Plaintiff by name in the June 2, 2020 email does not negate Plaintiff's showing of false light. A reasonable fact finder could determine that, given the public furor over Plaintiff's June 2, 2020 exchange with the student, recipients would be able to identify the "undergraduate professor" referred to in the June 4, 2020 email as Plaintiff. See Tamkin v. CBS Broadcasting, Inc. (2011) 193 Cal.App.4th 133, 146-147 (reasonable person searching for real estate agents would not have made association between plaintiffs and defendants' TV show characters, despite similarities in names, occupations and general physical appearance, because draft and synopsis did not include biographical references, specific physical descriptions or unique identifying characteristics).

Finally, a reasonable fact finder could also conclude that, if Plaintiff were considered a private citizen, Bernardo was "negligent in determining the truth of the information or whether a false impression would be created by its disclosure." CACI 1802. A reasonable fact finder could also conclude that, if Plaintiff were considered a public figure or limited public figure, Bernardo either "knew the disclosure would create a false impression or acted with reckless disregard for the truth." CACI 1802.

Bernardo admits that the purpose of the email was to "disavow" Plaintiff's June 2, 2020 email exchange and to express his own personal viewpoint on the exchange. See Dec. of A. Bernardo, ¶¶16 and 17. Bernardo he testifies that he personally believed Plaintiff's email was "outrageous and inexcusable," that his conduct was the antithesis of UCLA's core principles and that Plaintiff's June 2, 2020 email was "inappropriate and callous." Id. at ¶¶6, 7. Bernardo also testifies that the administrative leave was not disciplinary action but "to allow UCLA time to review the allegations regarding his behavior and to determine whether Klein's conduct violated the Faculty Code of Conduct." Id. at ¶15.

Plaintiff also submits evidence that, on June 3, 2020, the Anderson School's interim director informed UCLA's central Academic Personnel Office that the Anderson School wanted to impose disciplinary measures against Plaintiff. See Dec. of G. Klein, ¶15. In response, the central UCLA Academic Personnel Department's Labor Relations Specialist stated, "The School cannot take any action against appointment, including any discipline or non-appointment at this time." Id. at ¶15, Ex. 8.

Despite these facts, Bernardo's June 4, 2020 email did not indicate the email was motivated by his own personal views, that the email only reflected his personal views, as opposed to the views of UCLA, nor did it indicate that the leave was prompted by the need to investigate the issue before determining whether Plaintiff's conduct warranted discipline. Instead, Bernardo's email juxtaposed announcement of Plaintiff's leave with statements condemning certain conduct as unacceptable and encouraging anyone who is unfairly treated or maligned due to identity to report it. Reasonable minds could conclude that Bernardo acted negligently, knowingly or recklessly in creating the false impression that Plaintiff had been disciplined for his June 2, 2020 email exchange, because it violated certain UCLA core principles.

As with the breach of contract claim, Plaintiff presents evidence that he was harmed as a result of the false light in which Bernardo's email cast him. See Dec. of G. Klein, ¶¶22-23; Dec. of D. Fischer, , ¶7. Plaintiff also submits evidence that he suffered general damages due to the false light in which Bernardo case him, "severe emotional distress, trauma, and physical ailments" for which he received treatment from physicians of various specialities. See Dec. of G. Klein, ¶23.

Plaintiff presents prima facie evidence of his 3rd cause of action for false light. Plaintiff satisfies his burden on the 2nd prong of SLAPP as to the 3rd cause of action for false light.

F. Plaintiff presents prima facie evidence to support his 6th cause of action for negligent interference with prospective economic advantage against Bernardo

Negligent interference with economic advantage requires plaintiff to allege (i) the existence of an economic relationship between the plaintiff and a third party which contained a reasonably probable future economic benefit or advantage to plaintiff and (ii) that defendant's negligent conduct interfered with plaintiff's relationship with that third party. See Korea Supply Co. v. Lockheed Martin Corp. (2003) 29 Cal.4th 1134, 1153 (intentional interference); see North American Chemical Co. v. Superior Court (1997) 59 Cal.App.4th 764, 786 (negligent interference).

The plaintiff must also plead and prove acts that are wrongful, independent of the interference itself. Id. at 1154, 1158-1159. "To establish a claim for interference with prospective economic advantage, therefore, a plaintiff must plead that the defendant engaged in an independently wrongful act. An act is not independently wrongful merely because defendant acted with an improper motive." Id. at 1158. "[A]n act is independently wrongful if it is

unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." Id. at 1159.

"The tort of negligent interference with economic relationship arises only when the defendant owes the plaintiff a duty of care. As Professor Witkin explained, among the criteria for establishing a duty of care is the 'blameworthiness' of the defendant's conduct. For negligent interference, a defendant's conduct is blameworthy only if it was independently wrongful apart from the interference itself." Lange v. TIG Ins. Co. (1998) 68 Cal.App.4th 1179, 1185 (reversing judgment after jury trial in plaintiff's favor on negligent interference with prospective advantage; defendant's exercise of right to terminate contract was not independently wrongful).

Bernardo is the only remaining defendant in Plaintiff's 6th cause of action for negligent interference. Regents prevailed on this SLAPP as to the 6th cause of action for negligent interference based on GC §815 and Plaintiff's failure to identify a statutory basis to hold Regents' liable for Bernardo's alleged negligent interference arising from the June 4, 2020 email and the Public Attacks.

Plaintiff alleges independently wrongful, negligent, knowing or reckless conduct against Bernardo based on his June 4, 2020 email. Plaintiff successfully pleads and submits evidence that the June 4, 2020 email breached the parties' employment agreement and qualified as the tort of false light. As discussed Plaintiff also submits evidence of damages flowing from the negligent interference caused by the June 4, 2020 email. See Dec. of G. Klein, ¶¶22-23; Dec. of D. Fischer, ¶7.

However, Plaintiff fails to submit any evidence that the Public Attacks were independently wrongful or actionable. Based on the evidence submitted, the Public Attacks were mere statements of opinion, and they are not alleged as the basis for either the breach of contract action or the false light cause of action.

Plaintiff presents prima facie evidence in support of the 6th cause of action for negligent interference based on the June 4, 2020 email but not the Public Attacks. As such, Plaintiff satisfies his burden on the 2nd prong of SLAPP only as to the June 4, 2020 email. Defendant Bernardo's SLAPP motion is GRANTED as to the Public Attacks alleged in the 6th cause of action for negligent interference.

G. Defendants' asserted affirmative defenses do not defeat Plaintiff's 1st cause of action for breach of contract, 3rd cause of action for false light or 6th cause of action for negligent interference against Bernardo

"Generally, a defendant may defeat a cause of action by showing the plaintiff cannot establish an element of its cause of action or by showing there is a complete defense to the cause of action, and there is nothing in the language of section 425.16 or the case law construing it that suggests one of these avenues is closed to defendants seeking protection from a SLAPP suit. [¶] However, the defendant also generally bears the burden of proving its affirmative defenses. Thus, although section 425.16 places on the plaintiff the burden of substantiating its claims, a

defendant that advances an affirmative defense to such claims properly bears the burden of proof on the defense." See Peregrine Funding Inc. v. Sheppard Mullin Richter & Hampton LLP (2005) 133 Cal.App.4th 658, 676 (defendant established that plaintiff investor's claims were time barred as a matter of law and plaintiff failed to establish likelihood of prevailing in face of that showing).

Defendant alleges several affirmative defenses. The Court evaluates these defenses as to those causes of action for which Plaintiff satisfied his burden on the 2nd prong of SLAPP: the 1st cause of action for breach of contract, the 3rd cause of action for false light and the 6th cause of action for negligent interference.

First Amendment. The First Amendment defense does not apply to the 1st cause of action for breach of contract against Regents. Plaintiff's 1st cause of action for breach of contract is based on Defendant Regents' contractual obligation not to publicly disclose the Confidential Personnel Action. The First Amendment is waivable. "It is possible to waive even First Amendment free speech rights by contract." Sanchez v. County of San Bernardino (2009) 176 Cal.App.4th 516, 528 (First Amendment did not protect County's disclosure of reasons for plaintiff's resignation where plaintiff and defendant entered into a severance agreement containing a confidentiality provision prohibiting either side from disclosing circumstances of plaintiff's resignation)("[W]e see no way to construe the confidentiality provision except as a waiver of whatever rights the County would otherwise have had to disclose the circumstances of Sanchez's resignation."); ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 319 (CC §47(b) did not apply to voluntary disclosure of trade secrets in violation of confidentiality agreement). Thus, Plaintiff has alleged and presented evidence that Defendant Regents waived any First Amendment right to disclose Plaintiff's Confidential Personnel Action. The Court cannot find that the First Amendment bars the 1st cause of action for breach of contract as an issue of law.

Defendants fail to establish that the First Amendment Defense bars the 3rd cause of action for false light against Bernardo as an issue of law. Bernardo was acting as an agent of UCLA and therefore arguably subject to the MOU's confidentiality provision and waiver of any First Amendment right to disclose Plaintiff's Confidential Personnel Action.

In addition, the First Amendment does not apply to defamatory speech. "The right of free speech, however, is not unlimited. The First Amendment permits restrictions upon the content of speech in a few limited areas…These categories include defamatory speech…." Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc. (2005) 129 Cal.App.4th 1228, 1249. Defendant fails to establish that the First Amendment applies to protect statements that knowingly create a "false impression" or "false light." See e.g. Solano v. Playgirl, Inc. (2002) 292 F.3d 1078, 1089 ("Even though the exceptions are to be broadly construed, the newsworthiness privileges do not apply where a defendant uses a plaintiff's name and likeness in a knowingly false manner to increase sales of the publication. The First Amendment does not protect knowingly false speech.")

For theses same reasons, Defendants fail to establish that the remaining 6th cause of

action for negligent interference against Bernardo is barred by the First Amendment defense. The 6th cause of action for negligent interference is based in part on Bernardo's public disclosure of the Confidential Personnel Action, which is also the basis of the 1st cause of action for breach of contract and 3rd cause of action for false light.

Gov't Code §§818.8 and 822.2. Defendants argue the 3rd cause of action for false light against Bernardo is barred by Gov't Code §§818.8 and 822.2. Section 818.8 provides, "A public entity is not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional." Section 822.2 provides, "A public employee acting in the scope of his employment is not liable for an injury caused by his misrepresentation, whether or not such misrepresentation be negligent or intentional, unless he is guilty of actual fraud, corruption or actual malice."

Defendant Regents is not named in the 3rd cause of action for false light. Section 818.8 therefore does not apply.

As to Defendant Bernardo and the immunity provided to public employees under Section 822.2, the Court cannot find as an issue of law that Bernardo did not act with actual malice for the reasons stated in connection with the scienter element of false light. In addition, section 822.2 only applies to "forms of the common law tort of deceit (codified in Civ. Code §1709) and involve interferences with financial or commercial interests. California law generally recognizes four forms of deceit: intentional misrepresentation, negligent misrepresentation, concealment, and failure to perform a promise. Courts have assumed the immunities in sections 818.8 and 822.2 apply to all four forms of deceit." Finch Aerospace Corp. v. City of San Diego (2017) 8 Cal.App.5th 1248, 1252–1253. Slander of title is not included under section 822.2, because it is "not a form of deceit. It is a form of the separate common law tort of disparagement, also sometimes referred to as injurious falsehood." Id. at 1253, fn 3 (distinguishing between torts of disparagement and deceit).

Civ. Code §47(c). "A privileged publication or broadcast is one made:… In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information." CC §47(c).

This privilege is "recognized where the communicator and the recipient have a common interest and the communication is of a kind reasonably calculated to protect or further that interest." Deaile v. General Telephone Co. of California (1974) 40 Cal.App.3d 841, 846 (employer may publish to his employees the reasons for termination of another employee, the rationale for the publication being the employer's economic interest in clarifying its policies and preventing future abuses of those policies). This common interest privilege has been held to apply to "[c]ommunications made in a commercial setting relating to the conduct of an employee" (Cuenca v. Safeway San Francisco Employees Fed. Credit Union (1986) 180 Cal.App.3d 985, 995), "statements by management and coworkers to other coworkers explaining why an employer disciplined an employee" (McGrory v. Applied Signal Technology, Inc. (2013)

212 Cal.App.4th 1510, 1538), and "uncomplimentary comments" or other statements made about the qualifications of a former or alleged employee to a prospective employer (Noel v. River Hills Wilsons, Inc. (2003) 113 Cal.App.4th 1363, 1369).

The "interest" must be something other than mere general or idle curiosity, such as where the parties to the communication share a contractual, business or similar relationship or the defendant is protecting his own pecuniary interest. See Rancho La Costa, Inc. v. Superior Court (1980) 106 Cal.App.3d 646, 664–665 (qualified privilege does not apply "merely because it relates to a matter which may have general public interest). Rather, it is restricted to "proprietary or narrow private interests." Hawran v. Hixson (2012) 209 Cal.App.4th 256, 287.

Defendants fail to establish that the common interest privilege under CC §47(c) bars the 1st cause of action for breach of contract, 3rd cause of action for false light or 6th cause of action for negligent interference. Defendants do not provide evidence establishing who received the disclosure of the June 4, 2020 email from Bernardo, or that the entire listserv qualified as persons with a proprietary or narrow private interest in Plaintiff's placement on academic leave or UCLA's response to Plaintiff's June 2, 2020 email exchange.

In addition, CC §47(c) applies to communications made without malice. For the reasons stated in connection with the scienter element of the false light claim, the Court cannot find as an issue of law that the communication was made without malice.

Statute of Limitations. Defendants argue the 3rd cause of action for false light is barred by the one-year statute of limitations under CCP §340(c). Defendants fail, however, to apply the SOL and merely state in a conclusory manner that the action is time barred. Defendants fail to carry their burden on the affirmative defense of SOL.

Moreover, Bernardo's email was sent on June 4, 2021. During that time, the Judicial Council's Emergency Rules Related to COVID-19 applied and under those rules, the SOL for any causes of action were tolled for 180 days from April 6, 2020 through October 1, 2020. See Plaintiff's RJN ISO Opposition to SLAPP, Ex. 1, Emergency Rule 9(a). Plaintiff's complaint was filed on September 27, 2021, within one year after expiration of the tolling period.

Exhaustion of Administrative Remedies. Defendant argues Plaintiff failed to comply with the administrative remedies required under the MOU prior to filing this lawsuit. Defendant failed, however, to identify what part of the MOU required such administrative remedies or the nature of these administrative remedies. Defendant therefore failed to satisfy its initial burden on the affirmative defense.

On reply, Defendant clarifies that the exhaustion of administrative remedies defense is based on Article 32 of the MOU provision. Defendant cannot raise Article 32 for the first time on reply. Doing so deprives Plaintiff of his due process rights, and it also deprives the Court of the opportunity to properly evaluate the argument.

Even if the Court considered the exhaustion defense based on Article 32, Defendant does

not establish Plaintiff's noncompliance therewith as an issue of law. Plaintiff submits evidence that he complied with Steps 1 and 2 of Article 32 and submitted a request to proceed to Step 3, but UCLA never responded to his request. See Dec. of G. Klein, ¶27, Exs. 19-20. UCLA was required to issue some response to Plaintiff's appeal. Id. at Ex. 20.

Defendant fails to establish that Plaintiff failed to comply with the administrative remedies required under the MOU prior to filing suit. Defendant's exhaustion of remedies defense therefore does not defeat Plaintiff's prima facie showing as to the 1st cause of action, 3rd cause of action and 6th cause of action.

GC §821.6. Defendants reference GC §821.6 in footnote 18 as a potential defense if the Plaintiff's complaint is not based on Defendants' "free speech" but the Defendants' "referral of the matter for investigatory review…" The SLAPP motion is directed at the June 4, 2020 email and the Public Attacks, not Defendants' referral of any matters for investigative review. GC §821.6 does not defeat Plaintiff's showing as to the 1st cause of action for breach of contract, 3rd cause of action for false light or 9th cause of action for negligent interference.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the United States and employed in the County of Los Angeles, State of California, over the age of 18 and not a party to the within action or proceedings; my business address is 17383 W. Sunset Boulevard, Suite A-380, Pacific Palisades, California 90272.

On March 31, 2022, I served the foregoing document(s) described as:

PLAINTIFF'S NOTICE OF RULING

on the interested parties and/or through their attorneys of record by depositing the original or true copy thereof as designated below, at Van Nuys, California, addressed to the following:

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(X) **BY ELECTRONIC FILING & SERVICE:** Pursuant to Code of Civil Procedure 1010.6 and this Court's Local Rules, I caused the documents described above to be electronically filed and served on Greenfiling's electronic filing system. Notice of this filing will be sent by Greenfiling to all parties indicated on the electronic service receipt. Parties may access these documents through Greenfiling's electronic filing system.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 31, 2022 at Van Nuys, California.

Kelsey Mejia