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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
APR 30 2026
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

YINTAO YU, Plaintiff-Counter-Defendant - Appellant, v. SHUYI (SELENE) GAO, Defendant - Appellee, BYTEDANCE, INC., Defendant-Counter-Claimant - Appellee.	No. 25-297 D.C. No. 3:23-cv-04910-SI MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Argued and Submitted April 16, 2026
Phoenix, Arizona

Before: GRABER, HURWITZ, and DESAI, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Plaintiff Yintao Yu appeals the district court's entry of case-terminating sanctions dismissing his complaint and granting a default judgment on Defendant ByteDance Inc.'s counterclaims. We consider sua sponte whether this case is moot. *In re Burrell*, 415 F.3d 994, 997 (9th Cir. 2005). We dismiss Plaintiff's appeal as moot.

1. Plaintiff rendered his appeal moot by initiating and proceeding with arbitration, for example, by "working to select an arbitrator" and participating in an "ongoing" arbitration proceeding for over a year. As a result of Plaintiff's actions, we would be unable "to grant any effectual relief" to Plaintiff, should he prevail on appeal. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (citation omitted); *see id.* (stating the standard for mootness); *see also Kasza v. Browner*, 133 F.3d 1159, 1172 (9th Cir. 1998) (explaining that a declaratory judgment action becomes moot when "the facts alleged, under all the circumstances," no longer "show that there is a substantial controversy" between the parties (citation omitted)). The parties' dispute concerned whether Plaintiff signed agreements with arbitration clauses and thus could be compelled to arbitrate his employment-related claims against ByteDance. That dispute no longer exists because Plaintiff submitted all his claims to arbitration and has continued to participate in arbitration. *See Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1279 (9th Cir. 2006) (en banc) (explaining that a party waives its challenge to an arbitrator's authority by initiating and participating "extensively" in arbitration).

Plaintiff's argument about the potential collateral consequences of the district court's order is unavailing. *See In re Burrell*, 415 F.3d at 999 (holding that

the collateral consequences exception to mootness requires a showing that "there is a substantial controversy . . . of *sufficient immediacy and reality*" (citation omitted)).

2. Where, as here, "the party seeking appellate relief" causes an appeal's mootness, we are not compelled to vacate the district court's order. *Pub. Utils. Comm'n of Cal. v. FERC*, 100 F.3d 1451, 1461 (9th Cir. 1996) (emphasis omitted). Equity, "the touchstone of vacatur," "counsels against vacatur, when the appellant has by his own act caused the dismissal of the appeal." *In re Burrell*, 415 F.3d at 999 (citations and internal quotation marks omitted). The case was not moot when the district court entered its order, because Plaintiff's mere demand for arbitration days before the district court entered its order, without his later substantial participation, did not waive clearly his objection to arbitration. *See Nagrampa*, 469 F.3d at 1279. Accordingly, we decline to vacate the district court's order.

APPEAL DISMISSED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

YINTAO YU, Plaintiff, v. BYTE DANCE INC., et al., Defendants.	Case No.: 23-cv-04910-SI **ORDER GRANTING DEFENDANT'S MOTION FOR TERMINATING SANCTIONS; COMPELLING ARBITRATION AND STAYING THIS ACTION PENDING ARBITRATION; AND DENYING ALL OTHER PENDING MOTIONS AS MOOT** Re: Dkt. Nos. 166-174, 177-184, 186, 188-196, 202-203, 224-225, 231

On November 20, 2024, the Court held an evidentiary hearing on defendants' motion for terminating sanctions. For the reasons set forth below, the Court GRANTS the motion, COMPELS arbitration pursuant to the ECIAA, and STAYS this case pending arbitration. All other pending motions are DENIED AS MOOT.

BACKGROUND

Plaintiff Yintao Yu is a former employee of defendant ByteDance Inc. ("BDI"). Prior to filing the current

declaratory relief action, Yu filed two lawsuits against BDI arising out of his employment and termination. The first lawsuit was filed by Yu *in pro per* on November 17, 2022, in the Superior Court for the County of San Francisco, and alleged eleven causes of action related to his employment and termination. On February 16, 2023, BDI removed that case to this Court, *Yu v. ByteDance Inc.*, Case No. 23-707 SI (N.D. Cal.), and on February 23, 2023, BDI moved to compel arbitration, asserting that Yu was required to arbitrate his claim pursuant to an "Employee Confidentiality Inventions and Assignment Agreement," ("ECIAA") that BDI claimed Yu signed. Yu did not respond to the motion, and on April 20, 2023, the Court dismissed that lawsuit without prejudice for failure to prosecute.

On May 1, 2023, Yu, now represented by his current counsel, filed a second lawsuit in San Francisco Superior Court, alleging employment claims against BDI and Shuyi (Selene) Gao, the head of Human Resources at BDI. On July 13, 2023, BDI removed that lawsuit to this Court based upon federal copyright preemption, *Yu v. ByteDance et al.*, Case No. 23-3503 SI (N.D. Cal.). The next day, BDI moved to compel arbitration pursuant to the ECIAA. Yu moved to remand, and in an order filed September 1, 2023, the Court dismissed the preempted copyright claims and remanded the balance of the case to the Superior Court. That case is pending in state court, and has been stayed awaiting the outcome of the declaratory relief action presently before this Court.

On September 5, 2023, Yu filed this declaratory relief action against BDI and Gao in the Superior Court for the County of San Francisco. The complaint seeks

a judicial determination that Yu did not sign the ECIAA and therefore could not be compelled to arbitrate his employment claims. Yu alleged, inter alia, "Having read the ECIAA, Plaintiff is confident that this is not a document he signed and that the arbitration agreement contained on page 11 of the ECIAA was not included in any document that he signed." Compl. ¶ 17. On September 25, 2023, BDI removed the case to this Court pursuant to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. § 203. *Yu v. ByteDance Inc. et al.*, Case No. 23-4910 SI.

On October 5, 2023, BDI moved to compel arbitration pursuant to the ECIAA, as well as three additional employment agreements containing arbitration clauses: the Stock Option Award Agreement, the Patent Assignment Agreement, and the Undertaking Agreement. On December 20, 2023, BDI filed an answer and counterclaim seeking a declaration that Yu signed the Stock Option Award Agreement, the Patent Assignment Agreement, and the Undertaking Agreement. Yu moved to dismiss the counterclaim and opposed the motion to compel arbitration, and Yu filed several declarations stating that he did not sign any employment agreements containing arbitration provisions. In connection with the motions, Yu and BDI each filed declarations from handwriting experts who provided conflicting opinions about whether Yu's signatures on the four agreements were genuine or forgeries.

In an order filed February 20, 2024, the Court denied BDI's motion to compel arbitration, finding that there were factual questions as to whether Yu signed any of the agreements, and denied Yu's motion to

dismiss the counterclaim. Dkt. No. 61. On February 26, 2024, the Court set a pretrial schedule and set a trial date for a November 18, 2024 jury trial on the issue of whether Yu signed the four agreements at issue.

Contentious discovery commenced. *See* Dkt. Nos. 66-100, 106-116, 118-120, 122-132, 139, 141-142, 147, 152 (discovery statements, motions, and orders).

I. Anonymous Declarant

One of the parties' many discovery disputes concerned BDI's attempts to learn the identity of an anonymous witness who had submitted a declaration, with the name redacted, on Yu's behalf in connection with a pre-litigation mediation between Yu and BDI. The declaration stated that the individual was an employee in a ByteDance HR Department, and had "observed an executed two-year term supplemental employment agreement between Mr. Yintao (Roger) Yu and ByteDance dated August 30, 2017 in Mr. Yintao (Roger) Yu's ByteDance personnel file, which was supplemental to Mr. Yintao (Roger) Yu's executed offer letter dated June 7, 2017." Yu Decl. in Support of Mtn. for Reconsideration, (Dkt. No. 84-6, Ex. A). BDI believed that the supplemental employment agreement referenced in the declaration was the Undertaking Agreement, one of the four arbitration agreements at issue in this case.

When Yu refused to provide the declarant's identity, BDI moved to compel. Dkt. No. 66. Yu opposed the motion on the ground that the declarant's identity was protected by California's mediation privilege. Dkt. No. 74. In an order filed May 3, 2024, this Court held that the identity of the declarant was not

privileged and ordered Yu to identify the anonymous declarant, respond to BDI's request for "all communications with the anonymous [] declarant," and provide a privilege log. Dkt. No. 78. Yu failed to comply with the Court's Order, and on May 10, 2024, Yu notified the Court of his intent to file a motion for reconsideration of the May 3 order "so he may demonstrate that disclosing the declarant's identity to ByteDance poses a risk to the declarant's safety and well-being." Dkt. No. 80.

On May 21, 2024, Yu requested leave to file a motion for reconsideration, asserting that the declarant's safety was at risk if his/her identity was disclosed to BDI. Dkt. No. 85. In support of the motion, Yu filed a declaration signed under penalty of perjury stating, "I believe the anonymous declarant's safety and well-being would be compromised if it is disclosed to ByteDance" and "[t]his belief is related to the declarant's fear of retaliation from ByteDance." Yu Decl. in Support of Mtn. for Reconsideration ¶ 9 (Dkt. No. 85-2). Yu attached to his declaration a copy of the anonymous declaration. *Id.* Ex. A & Dkt. No. 84-6.

On June 7, 2024, the Court held a hearing on Yu's motion for reconsideration. Dkt. Nos. 99, 104 (transcript of hearing). In response to questioning from the Court, Yu's counsel stated that they had not been in contact with the anonymous declarant and did not know his/her identity. June 7, 2024 Transcript at 4-6 (Dkt. No. 104). At the conclusion of the hearing, the Court once again ordered Yu to disclose the declarant's identity, and ordered BDI not to retaliate against the anonymous declarant in any way and to file a signed declaration affirming that no such retaliation would occur. Dkt. No. 98. During Yu's in-person

deposition later that day, Yu testified that he "did not have the name on the top of my head" and that he needed to get that information from the lawyer who represented him during the mediation. Yu Depo. at 239-240 (Dkt. No. 241). On June 8, 2024, Yu's counsel disclosed to BDI that the anonymous declarant was Haiyi Bao, who worked for ByteDance in Beijing from August 2017 through January 2024. Thompson Decl. in Support of Sanctions Mtn. ¶ 9 (Dkt. No. 202-1)

As detailed in BDI's motion for terminating sanctions, BDI employee Linlin Fan subsequently contacted Bao to ask about the signed agreement referenced in Bao's purported declaration. Fan Decl. in Support of Sanctions Mtn. ¶¶ 3, 4 (Dkt. No. 202-3). In her declaration to this Court in support of BDI's motion for terminating sanction, Fan states, "Bao told me that she had never reviewed Yu's personnel file, seen a signed two-year term supplemental agreement therein, or signed a declaration on behalf of Yu." *Id.* ¶ 4. Bao herself also submitted a declaration in support of BDI's motion for terminating sanctions stating,

> 1. I have been a partner of the Human Resources Business from August 2017 to January 2024.
>
> 2. I met Yintao "Roger" Yu ("Yu") for the first time around October 2017. I talked to Yu several times via WeChat. I don't know what documents Yu has signed in connection with his employment with ByteDance Inc. ("BDI"). I did not witness Yu signing any documents in connection with his employment with BDI. I have not checked or

reviewed the documents in Yu's personnel file.

3. On July 15, 2024, BDI's counsel Melissa Kendra (of Greenberg Traurig, LLP) contacted me regarding a redacted declaration (attached here as Exhibit A) (the "Anonymous Declaration"). BDI's counsel asked if I signed the anonymous declaration. I have never seen or reviewed this Anonymous Declaration before. I did not sign this Anonymous Declaration. I have never signed any declaration for Yu.
4. Contrary to what the anonymous declaration contained, I did not see a two-year supplemental employment agreement signed between Yu and BDI on August 30, 2017 in Yu's personnel file.
5. The last time I talked to Yu on WeChat was in 2019.

Bao Decl. in Support of Sanctions Mtn. (Dkt. No. 202-6).[1]

II. Bankruptcy

At his June 7, 2024 deposition, Yu was presented with documents from a Chapter 13 bankruptcy petition filed by "Y. Roger Yu" in the Northern District of California, including the petition and a February 15, 2023 declaration opposing a motion for relief from stay filed by "Y. Roger Yu" and containing a signature of "Y. Roger Yu." Yu denied filing the petition; denied

[1] Defendants filed a Mandarin version of Bao's declaration and a translated version. Yu did not object to the translation.

that the signature on the declaration was his; and testified that the lawyers listed on the bankruptcy filings (Nancy Weng and Arasto Farsas) were "not my attorney[s]" and that he had never hired them or talked to them. *See* Yu Depo. at 65, 242-246 & exhibits thereto.

III. Evidentiary Hearing

This case was set for a jury trial to begin on November 18, 2024. On October 25, 2024, defendants filed a motion for terminating sanctions, contending that Yu had engaged in numerous forms of misconduct in this litigation, including fabricating the anonymous declarant/declaration and committing perjury at his deposition when he denied filing the bankruptcy petition and signing the bankruptcy declaration. *See generally* Dkt. No. 202.

On October 29, 2024, this Court vacated the trial date in this matter, suspended briefing on all trial-related motions, and set a briefing schedule and evidentiary hearing regarding the motion for terminating sanctions. Dkt. No. 209. The Court informed the parties that it was particularly concerned about the alleged misconduct related to the anonymous declarant/declaration and Yu's deposition testimony about the bankruptcy, and the Court's order included a list of witnesses that the Court wished to have appear at the evidentiary hearing. *Id.*; *see also Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) ("[A] court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud."). The Court also directed plaintiff's counsel to be prepared to address what they knew, and when, regarding the anonymous declarant/declaration.

The evidentiary hearing was originally scheduled to begin on Monday, November 18, 2024. On November 12, 2024, the parties emailed the Court's clerk stating that they had reached a "tentative agreement to resolve the matter, and are drafting a stipulation." The Court rescheduled the evidentiary hearing to Wednesday, November 20. Dkt. No. 223. The parties did not file a stipulation, and instead on Friday, November 15, Yu filed a motion to dismiss. The motion stated, *inter alia*, that "Yu has decided not to contest the ECIAA's arbitration provision and to proceed to arbitration under its terms," and sought to dismiss the complaint with prejudice and to dismiss defendants' counterclaim without prejudice. Dkt. No. 224. Yu also sought to have the motion heard on shortened time prior to the evidentiary hearing, asserting that the motion to dismiss would moot the need for an evidentiary hearing. Dkt. Nos. 224-225. On Monday, November 18, Yu filed a motion to enforcement a settlement agreement, contending that the parties had reached a settlement, and on November 19, Yu filed an administrative motion to continue the evidentiary hearing, asserting that the Court should first rule on the motion to enforcement the settlement agreement prior to any evidentiary hearing. Dkt. Nos. 231, 233. The Court denied the administrative motion to continue. Dkt. No. 234.

The evidentiary hearing proceeded on November 20, 2024. At that hearing, Yu's counsel[2] informed the Court that Yu intended to generally assert his Fifth Amendment right against self-incrimination, and specifically that Yu would be invoking his Fifth Amendment rights in response to any questions about whether he fabricated the anonymous declaration and whether he filed a bankruptcy petition and signed the February 15, 2023 bankruptcy declaration. Nov. 20 Transcript at 8-19, 61-62 (Dkt. No. 237). Yu's counsel asserted that because Yu would be invoking his Fifth Amendment rights, the Court could draw adverse inferences against Yu and that those inferences, in conjunction with the evidence already submitted, would permit the Court to grant defendants' motion for terminating sanctions without the need for any additional testimony from other witnesses. *Id*. at 16. Based upon those representations, the Court dismissed all witnesses except Haiyi Bao, the purported anonymous declarant.

Bao testified with the assistance of an interpreter via zoom from South Korea. *Id*. at 43-60. Bao's testimony was consistent with the declaration she filed in support of defendants' sanctions motion, namely that she did not prepare the anonymous declaration and never authorized Yu to prepare that declaration on her behalf; she had never seen the declaration prior

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[2] On the morning of November 20, attorney Patrick Richard Delahunty filed a notice of appearance on behalf of Yu, and Mr. Delahunty represented Yu during the evidentiary hearing. Yu's counsel from Jung & Nassiri, who have represented Yu throughout this litigation, responded to the Court's questions about this litigation after Yu concluded his appearance on the witness stand.

to BDI's counsel showing it to her; and that when she worked for BDI she did not have access to Yu's personnel file and she never saw any signed agreement like the one referenced in the anonymous declaration. *Id.* at 46-51.

Yu then took the stand. Yu invoked his Fifth Amendment rights in response to every question, including questions about whether he fabricated the anonymous declaration; his deposition testimony about the bankruptcy case; and the veracity of statements made in the bankruptcy filings themselves. *Id.* at 64-79.

Finally, in response to questioning from the Court, Yu's counsel stated that they were unaware of any dispute as to the authenticity of the anonymous declarant/declaration until defendants filed the motion for terminating sanctions, and that prior to that filing that they had refrained from contacting Bao directly because they believed she was a current BDI employee. *Id.* at 80-85.

LEGAL STANDARD

District courts have inherent power to impose sanctions for "conduct which abuses the judicial process." *Chambers*, 501 U.S. at 44-45. "Dismissal is an available sanction when 'a party has engaged deliberately in deceptive practices that undermine the integrity of judicial proceedings' because 'courts have inherent power to dismiss an action when a party has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice.'" *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 958 (9th Cir. 2006) (quoting *Anheuser-Busch, Inc. v.*

Natural Beverage Distribs., 69 F.3d 337, 348 (9th Cir. 1995)).

Terminating sanctions should be imposed only in extreme circumstances, "where the violation is 'due to willfulness, bad faith, or fault of the party.'" *In re Exxon Valdez*, 102 F.3d 429, 432 (9th Cir. 1996) (quotation omitted). In deciding whether to impose terminating sanctions, courts consider the following factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Leon*, 464 F.3d at 958 (quoting *Anheuser-Busch*, 69 F.3d at 348). While the district court need not make explicit findings regarding each of the five factors, a finding of "willfulness, fault, or bad faith" is required for dismissal or default judgment to be proper. *See Leon*, 464 F.3d at 958. "In deciding whether to impose case-dispositive sanctions, the most critical factor is not merely delay or docket management concerns, but truth." *Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1097 (9th Cir. 2007). The Court has "broad fact-finding powers" with respect to sanctions, and its findings warrant "great deference." *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1366 (9th Cir. 1990).

In addition, "[w]hen a party asserts the privilege against self-incrimination in a civil case, the district court has discretion to draw an adverse inference from such assertion." *Nationwide Life Ins. Co. v. Richards*, 541 F.3d 903, 911 (9th Cir. 2008). "[T]he inference may be drawn only when there is independent

evidence of the fact about which the party refuses to testify." *Id*. at 912.

DISCUSSION

I. Sanctions Motion

Defendants' motion for terminating sanctions seeks an order granting the following relief:

> Dismissing the Complaint for declaratory relief filed by Yu, and entering default judgment in favor of Defendants' as to the Countercomplaint, including: (a) the declaratory that Yu executed the four disputed agreements at issue, including the Employee Confidentiality and Inventions Assignment Agreement, the Undertaking Agreement, the Notice of Stock Option Award and Stock Option Award Agreement, and the Side Letter to the Patent Assignment Agreement; and (b) the order compelling Yu to arbitration pursuant to the terms of the Employee Confidentiality and Inventions Assignment Agreement on all claims currently alleged or that could be alleged in his concurrent state court proceeding pending in California Superior Court, County of San Francisco. [errors in original]

Proposed Order at 2 (Dkt. No. 202-7). Defendants also request that the court stay this action pending arbitration. Defendants contend that Yu has abused the judicial process through pervasive lies and obstruction, and that Yu's misconduct had prejudiced defendants by impairing their ability to go to trial and interfering with a rightful decision in this case.

Yu's opposition to the sanctions motion asserts that "[t]his case is about Plaintiff Yintao Yu's fundamental right to a jury trial"; that "[b]ecause it [sic] cannot meet its burden to prove the existence of an agreement to arbitrate, defendants seek terminating sanctions on the basis of side shows"; and that "[n]either the Bao declaration nor the disavowal of the bankruptcy interfere with the substantive case or impact Defendants' ability to go to trial." Opp'n at 1 (Dkt. No. 214).[3]

Far from engaging in "side shows," defendants' sanctions motion and the evidentiary hearing have revealed that Yu has engaged in serious, bad faith conduct that has abused the judicial process. With regard to the "anonymous" declarant and declaration, the Court finds Bao's testimony credible, and based upon that testimony and Yu's invocation of the Fifth Amendment at the evidentiary hearing, the Court draws the adverse inference that Yu fabricated the anonymous declaration. Yu's litigation behavior further supports the conclusion that he fabricated that declaration. Yu resisted BDI's efforts to learn the identity of the anonymous declarant, including by refusing to comply with this Court's May 3, 2024 discovery order and seeking reconsideration of that order based on purported fears of retaliation against the anonymous declarant. In support of the motion for reconsideration, Yu filed a declaration signed under penalty of perjury attesting to his concerns about the safety of the anonymous declarant if his/her identity

[3] Yu filed his opposition to the sanctions motion on November 7, prior to his multiple filings seeking a continuance of the evidentiary hearing and to otherwise dismiss this case.

was revealed to BDI. The Court finds that Yu submitted a perjurious declaration to this Court, and that he did so in an apparent attempt to prevent defendants from discovering that he had fabricated the anonymous declaration. The Court also finds that Yu committed perjury at his deposition when he denied signing the February 15, 2023 declaration opposing a motion for relief from stay in the bankruptcy case. The Court has reviewed all of the documents from the bankruptcy proceedings and concludes based on those documents as well as Yu's invocation of his Fifth Amendment rights that Yu did in fact file the bankruptcy petition and that he signed the February 15, 2023 declaration.

In light of the gravity of Yu's misconduct, the Court concludes that terminating sanctions are warranted.[4] Lesser sanctions would not be useful because Yu's misconduct in this case has "made it impossible for [the] court to be confident that the parties will ever have access to the true facts." *Connecticut Gen. Life Ins. Co.*, 482 F.3d at 1097 (affirming terminating sanctions where party repeatedly lied to the district court and obstructed discovery). This is particularly true because Yu's credibility is central to his theory in this declaratory relief action that he did not sign any of the arbitration agreements and that BDI had forged his signatures on those documents. In addition, Yu's obstructive and mendacious conduct has

[4] Yu asserts that the Court must find bad faith by clear and convincing evidence in order to grant terminating sanctions, citing several district court cases. Assuming *arguendo* that such a standard applies, the Court finds that defendants have met this standard.

caused delay, required additional motion practice, and vexatiously multiplied these proceedings.

Yu's opposition to the sanctions motion argues that the fabricated evidence and Yu's perjury are "collateral" matters, and thus that any misconduct did not prejudice defendants. Opp'n at 1. The Court disagrees. Yu relied on the anonymous declarant in prelitigation mediation with BDI, and it was reasonable for BDI to believe that the agreement referenced in the anonymous declaration was the Undertaking Agreement. Whether Yu signed the Undertaking Agreement, one of the four arbitration agreements at issue in this case, is a central, and not collateral, issue in this case. In addition, "[f]alsified evidence substantially prejudices an opposing party by casting doubt on the veracity of all of the culpable party's submissions throughout litigation." *Martin v. Domino's Pizza.*, Case No. 2:22-cv-00784-GMN-DJA, 2023 WL 7461882, at *5 (D. Nev. Nov. 9, 2023) (dismissing plaintiff's complaint with prejudice as sanction for submitting falsified evidence to the court). Similarly, Yu's perjurious denial that he signed the bankruptcy declaration frustrated defendants' ability to conduct discovery on valid exemplars of Yu's signature. Throughout this litigation Yu has claimed that ByteDance forged his signatures on various documents, and thus discovery on Yu's signature is directly relevant to the claims in this case.

II. Other Pending Motions

The Court DENIES all other pending motions as moot. To the extent Yu argues that various actions taken by Yu either moot the motion for terminating sanctions (e.g., the filing of Yu's motion to dismiss or

Yu's motion to enforce settlement) or divest this Court of jurisdiction,[5] the Court disagrees. As a procedural matter, defendants filed the motion for terminating sanctions before Yu filed the motions to dismiss or to enforce settlement, and the sanctions motion was fully briefed and argued, and the evidentiary hearing was held, before either the motion to dismiss or motion to enforce was fully briefed or argued. Thus, the Court finds it appropriate to resolve the motion for terminating sanctions prior to considering Yu's motions.

More importantly, this Court has the inherent power to investigate whether a party has abused the judicial process or otherwise committed a fraud upon the court. *See Chambers*, 501 U.S. at 44. It would be a further abuse of the judicial process to allow a party who has committed egregious litigation misconduct to avoid sanctions by voluntarily dismissing his case or similar gamesmanship. Finally, because defendants have requested that the Court compel arbitration and that the Court stay this matter pending arbitration, the Court cannot dismiss this case. *See Smith v. Spizzirri*, 601 U.S. 472, 478 (2024) ("When a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA compels the court to stay the proceeding.").

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[5] On December 6, 2024, Yu filed his reply brief in support of his motion to dismiss. Yu states that he has initiated arbitration and thus that this Court lacks jurisdiction over this case. Yu did not submit a declaration in support of the factual assertion that he initiated arbitration, and thus the Court disregards that unsupported factual assertion. *See* Civil Local Rule 7-5(a).

CONCLUSION

For the foregoing reasons, the Court DISMISSES Yu's complaint for declaratory relief and enters default judgment in favor of defendants as to the countercomplaint. The Court declares that Yu executed the four disputed agreements at issue, including the Employee Confidentiality and Inventions Assignment Agreement, the Undertaking Agreement, the Notice of Stock Option Award and Stock Option Award Agreement, and the Side Letter to the Patent Assignment Agreement. The Court COMPELS Yu to arbitration pursuant to the terms of the Employee Confidentiality and Inventions Assignment Agreement on all claims currently alleged or that could be alleged in his concurrent state court proceeding pending in California Superior Court, County of San Francisco, and STAYS this case pending arbitration.

IT IS SO ORDERED.

Dated: December 12, 2024

s/
SUSAN ILLSTON
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

YINTAO YU, Plaintiff-ctr-defendant - Appellant, v. SHUYI (SELENE) GAO, Defendant - Appellee, BYTEDANCE, INC., Defendant-ctr-claimant - Appellee.	No. 25-297 D.C. No. 3:23-cv-04910-SI Northern District of California, San Francisco ORDER

Before: GRABER, HURWITZ, and DESAI, Circuit Judges.

Appellant's petition for panel rehearing, Docket No. 70, is DENIED.

Appellant's "Motion to Take Judicial Notice of, or in the Alternative to Consider, Extra-Record Documents in Connection with the Petition for Panel Rehearing," Docket No. 71, is GRANTED.

APPENDIX D

AMERICAN ARBITRATION ASSOCIATION

Yintao Yu, Claimant, vs. Bytedance, Inc. Respondent.	No. 01-24-0005-7790 **RULING ON MOTION TO DISMISS THE FIRST AMENDED DEMAND**

Claimant Yintao Yu (Yu") requests leave to file a First Amended Arbitration Demand. Respondent ByteDance Inc. ("BDI") has filed a Motion to Dismiss the Amended Demand. I have considered the Motion to Dismiss, Yu's Opposition to the Motion to Dismiss; BDI's Reply, oral argument on April 24, and the entire record in this proceeding. Yu initially filed a Demand alleging nine claims, and naming as respondents, BDI, ByteDance LTD ("BDL"), and Shuyi I(Selene) Gao. In my Order of January 5, 2026, after ruling on the motions to dismiss, six counts of the Demand remained as to Respondent BDI: Count 2, retaliation; Count 3, failure to prevent discrimination; Count 4, retaliation under Cal. Gov't Code § 12940(h); Count 7, wrongful termination; Count 8, unfair business practice; and Count 9 failure to pay wages. The proposed First Amended Demand seeks to add four new claims: a claim for public injunction under CAL. BUS. & PROF. CODE § 17200; breach of contract; breach of the covenant of good faith and fair dealing; and disability discrimination.

Public Injunction

Count 1 of the proposed First Amended Demand alleges a claim under California's Unfair Competition Law ("UCL"). This count alleges BDI engaged in a variety of unlawful business practices including misusing Yu's TikTok account and misusing his identity for BDI's commercial gain. BDI opposes this claim asserting that it requires a showing of economic injury and in addition, the statutes of limitation on the predicate statutes have run. Yu contends his UCL claim is timely, as a four-year statute of limitations applies. He also contends he has adequately alleged economic harm.

A UCL cause of action borrows the substantive portion of a predicate violation to prove the "unlawful" prong of that statute, but not the limitations procedural part of the borrowed statute. *Blanks v. Seyfarth Shaw LLP*, 89 Cal. Rptr. 3d 710, 731 (Cal. Ct. App. 2009). The UCL has a four-year statute of limitations, which applies even if the borrowed statute has a shorter limitations statute. *Id*. Yu's employment was terminated in November 2018. Because of California Emergency Rule 9, Yu's claims were tolled for 178 days; therefore, the statute of limitations did not begin to run until May 2019. Yu had until May 2023 within which to bring this claim. He asserted a UCL claim in November 2022, and again in May 2023 when the action was stayed; thus, the claim cannot be considered untimely. *Brock v. Kaiser Found. Hosps*., 13 Cal. Rptr. 2d 678, 684-85 (Cal. Ct. App. 1992).

UCL claims have a standing requirement. A "private plaintiff filing suit . . . must establish that he or she has personally suffered . . . harm." *Kwikset Corp.*

v. Superior Ct., 246 P.3d 877, 886 (Cal. 2011). Thus, a private UCL plaintiff must show harm to a legally protected interest which is concrete and particularized. The injury must affect the plaintiff in a personal and in an individualized way. *Troyk v. Farmers Grp., Inc.*, 90 Cal. Rptr. 3d 589, 623 (Cal. Ct. App. 2009). The alleged injury under the UCL is limited to those who have "suffered injury in fact and . . . lost money or property as a result of the unfair competition." *Howard v. Roman Cath. Archbishop of Los Angeles*, No. B333546, 2026 WL 222258, at *6 (Cal. Ct. App. Jan. 28, 2026).

Three of the allegations in Count 1 purport to directly affect Yu. Those allegations that do are the following: accessing and manipulating Yu's TikTok account; exploiting Yu's identity, account and engagement for BDI's commercial gain; and fabricating user accounts to interact with real user TikTok accounts including Yu's account. Yu claims to have suffered "actual damage" from the foregoing alleged conduct.

In *Moore v. Centrelake Med. Grp.*, Inc., 299 Cal. Rptr. 3d 544, 564 (Cal. Ct. App. 2022), the appellate court affirmed the dismissal of the complaint. Although the plaintiffs alleged they suffered "[a]scertainable losses in the form of deprivation of the value of their" personal identifying information, the court found that was insufficient to support UCL standing "as this constitutes a conclusion or deduction, unsupported by any properly pleaded facts." A similar failure to properly allege particularized injury in a UCL case is *Suchard v. Sonoma Acad.*, 331 Cal. Rptr. 3d 154 (Cal. Ct. App. 2025). There, the plaintiffs alleged the school employed three people who engaged in sexually abusive or inappropriate behavior with other

students, and the school did not disclose that conduct to them. The court upheld a demurer to the complaint disagreeing with the plaintiffs, finding that their claimed injury was "conjectural and hypothetical." *Id*. at 161. The court held that the "plaintiffs do not allege that the education they or their children received was altered in any way by the school's alleged failure to disclose its employees' improper behavior." *Id*. at 162.

The allegations in the First Amended Demand fall short of the needed assertion of economic injury as demonstrated in the cases relied upon by Yu. *Calhoun v. Google LLC*, 526 F. Supp. 3d 605, 636 (N.D. Cal. 2021) (plaintiffs who suffered a loss of their personal information suffered economic injury and had standing); *Bass v. Facebook, Inc*., 394 F. Supp. 3d 1024, 1035 (N.D. Cal. 2019) ("Between the obvious goal of taking personal information, the nature and amount of information taken, and the extended phishing emails which have subsequently followed the attack, plaintiff Adkins has plausibly shown he is at risk of further fraud and identity theft.").

Although Yu claims his TikTok account was manipulated, that his identify was exploited, and TikTok user accounts were fabricated to interact with his, the Amended Demand fails to explain how any of these actions caused Yu "concrete and particularized" injury. The proposed Count 1 alleges nothing more than Yu suffered "actual damages" which is nothing more than a conclusion without "properly pleaded facts." Perhaps, through discovery Yu can demonstrate the requisite injury from the alleged conduct of BDI. Thus, the request to add Count 1 is denied without prejudice.

Breach of Contract

In Count 5, Yu alleges three claims of breach of contract. First, Yu contends his Offer Letter promised stock options conditioned on his continued employment and he accepted the Offer Letter and performed all obligations necessary to acquire the options. He also alleges he executed the Notice of Stock Option Award that created a separate contractual obligation on the part of BDI. Finally Count 5 alleges BDI breached a two-year supplemental employment agreement.

Yu contends that although the Notice of Stock Option Award was executed by BDL, BDI is independently liable because the offer of stock options was used to induce his employment with BDI and was considered part of this compensation. Yu is correct that BDI promised him as part of his compensation he would receive options to purchase stock in BDL. Assuming BDI wrongfully terminated Yu's employment, can BDI be liable to Yu for an obligation assumed by BDL? If so, what is the proper forum for Yu to present his claim against BDI?

Yu is correct that as part of his Offer Letter he was promised 220,000 shares of "Bytedance ordinary share option[s]." The parties agree the reference to "Bytdance," is a reference to BDL. Assuming Yu has a claim against BDI for the value of the stock options, that claim falls within the scope of the arbitration provision in the Stock Option Award Agreement. The Stock Option Award Agreement provides that "any dispute, controversy or claim arising out of or relating to the Notice [of Stock Option Award], the [Stock Incentive] Plan, or [the Stock] Option [Award]

Agreement" must be brought in the Arbitration Centre in Hong Kong. Yu's contention that BDI is liable for an obligation assumed by BDL is a claim that arises out of or relates to, one or more the foregoing agreements.

Yu contends, however, that under CAL. LAB. CODE § 925, he cannot be required to arbitrate his dispute with BDI in a forum outside of California. In my ruling of January 6, I considered this assertion in connection with Yu's claim against BDL. I reach a different conclusion here. The promise by BDI that Yu is entitled to stock options in BDL is a condition of his employment with BDI. For example, in the Offer Letter of June 7, 2017, Yu's entitlement to the stock options is subject to approval of the BDI Board of Directors but "only offered upon the condition of [his] continued employment" with BDI. The Notice of Stock Option Award, likewise restricts Yu's entitlement to the options conditioned on his "Continuous Service."

Because Yu's entitlement to the stock options is a promise to him made by BDI, and is conditioned upon his ongoing employment with BDI, it is a condition of his employment like *Eller v. Automatic Data Processing, Inc.*, No. 23-CV-0943-BAS-AHG, 2023 WL 3829723, at *5 (S.D. Cal. June 5, 2023). There, the court found that Section 925 did apply because the "plain language of the Restrictive Covenant Agreements indicates that signing the agreement is a condition of employment." Similarly, in *Jurek v. Piller USA, Inc.*, No. 21-CV-150 W (KSC), 2021 WL 2937050, at *3 (S.D. Cal. July 13, 2021), the court held Section 925 applied because the employee's bonus eligibility and amount of any bonus was governed by his Employment Agreement. Similarly, here, Yu's

entitlement to the stock options is governed by the terms of his employment with BDI.

Yu's stock option benefit is unlike the Equityholders Agreement in *ABD Ins. & Fin. Servs., Inc. v. HUB Int'l Ins. Servs., Inc.*, 2023 WL 6226187, at *8 (Cal. Ct. App. Sept. 26, 2023), *as modified on denial of reh'g* (Oct. 17, 2023), where the court did not find LABOR CODE § 925 applicable. In that case, the Equityholders Agreement was provided by Hockey Parent, the parent company of the employees' employer. Moreover, it did not govern the terms of the employees' employment. The employees' interest in the Agreement was based on their status as investors, not employees. Similarly, in *Grove v. Juul Labs, Inc.*, 293 Cal. Rptr. 3d 202, 213 (Cal. Ct. App. 2022), the court refused to find a violation of § 925 declaring "nothing in section 925 . . . prevents an employer from including in its compensation package an option for employees to purchase shares in a foreign corporation." The court noted the employee's shareholder claim arose after his employment and bore "no relationship to his status as a former employee."

For the foregoing reasons, I find that Section 925 prohibits BDI from requiring Yu to bring his claim raised in Count 5 before the Hong Kong International Arbitration Centre.

Finally, Yu contends the termination of his employment breached a two-year supplemental employment agreement Yu claims provided for at-will employment. In *Yu v. ByteDance Inc.*, 759 F.Supp.3d 992 (N.D. Cal. 2024) (the "Declaratory Relief Action"), Yu claimed he was not subject to arbitrating his disputes with BDI because of the supplemental agreement. In

that case, Yu had the opportunity to prove the existence of that supplemental agreement but failed to do so. Indeed, the district court implicitly refused to find that such an agreement existed, as the court compelled arbitration. Moreover, despite having nine years to locate that agreement, Yu has been unable to do so.[1]

In the Declaratory Relief Action, Yu contended he did not sign the ECIAA; he produced a declaration, which the court found to have been fabricated, that he signed the supplemental agreement. Thus, the existence of the supplemental agreement was resolved against Yu because he was ordered to arbitrate his claims under the ECIAA. Based on the holding in the Declaratory Relief Action, the relitigation of the existence of the supplemental agreement is precluded. *Rodriguez v. Lawrence Equip., Inc.*, 327 Cal. Rptr. 3d 188, 199 (Cal. Ct. App. 2024).[2]

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[1] Yu has copied into the First Amended Demand a screen shot alleged to be from his personnel file. The screen shot does nothing to warrant reconsideration of an issue that already has been litigated in the Declaratory Relief Action and is now precluded.

[2] Claim preclusion applies where: (1) the same parties, or their privies, were involved in the prior litigation, (2) the prior litigation involved the same claim or cause of action as the later suit, and (3) the prior litigation was terminated by a final judgment on the merits. *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 952 (9th Cir. 2002). In the Declaratory Relief Action, Yu contended he did not have to arbitrate his claims against BDI because his employment was subject to the supplemental agreement. The "merits" of this dispute were decided against Yu because he was ordered to arbitrate and the court found no evidence of a supplemental agreement.

Therefore, the request to add Count 5 is granted only as follows. Yu is allowed to bring his claim against BDI for loss of the benefit of the stock options in this arbitration.

Breach of the Implied Covenant of Good Faith and Fair Dealing

Count 6 alleges that the Offer Letter, the Stock Option Agreement, and the supplemental employment agreement, assuming it exists, all contain implied covenants of good faith and fair dealing. The covenant of good faith is implied as a supplement to express contractual covenants to prevent a contracting party from engaging in conduct that frustrates the other party's rights to the benefits of the agreement. *Thompson Pac. Constr., Inc. v. City of Sunnyvale*, 66 Cal. Rptr. 3d 175, 188 (Cal. Ct. App. 2007). If allegations do not go beyond the statement of a mere contract breach, relying on the same alleged acts, and simply seeking the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated. *Careau & Co. v. Sec. Pac. Bus. Credit, Inc.*, 272 Cal. Rptr. 387, 400 (Cal. Ct. App. 1990). Because the allegations of Count 6 essentially allege no more than BDI deprived Yu of the benefits of the three agreements, they "seek the same damage or other relief" and are superfluous. Thus, the request to add Count 6 is denied.

Disability Discrimination

Cout 10 alleges Yu was a qualified individual who required reasonable accommodation and he was terminated because "of his taking medical leave and

need for treatment." Yu states that California law prohibits an employer from discharging an employee because of physical or mental disability or because he is regarded as having a physical or mental disability. Yu claims that the termination of his employment violated CAL. GOV'T CODE § 12940(a).

BDI contends this claim is barred by the applicable statute of limitations. Yu received his right to sue letter from the California Civil Rights Department on July 25, 2019. The deadline for him to file a suit, after extension by Emergency Rule 9, was January 19, 2021. The parties entered into tolling agreements which extended the time within which to file an action to November 17, 2022. Yu brought suit in San Francisco Superior Court on November 17, 2022. The case was dismissed on May 1, 2023. When he filed a second suit with a disability claim, the First Amended Complaint on May 12, 2023, the disability claim was dropped. That statute of limitations began to run again; but Yu did not raise the disability claim until the request to file the Amended Demand, three years later. Thus, the claim is untimely. For that reason, the request to add Count 10 is denied.[3]

[3] Given the passage of three years since the disability claim was omitted from a filing, and omitted again in several intervening submissions, including the original demand filed in this arbitration, BDI is correct that no case relied upon by Yu supports the application of equitable tolling under the circumstances here.

Conclusion

To summarize, Yu's request to add Counts 1 is denied without prejudice. The request to add Count 5 is granted as set forth above. The request to add Counts 6 and 10 is denied.

DATED this 1st day of May, 2026.

s/ Bruce E. Meyerson
Arbitrator

APPENDIX E

AMERICAN ARBITRATION ASSOCIATION

Yintao Yu, Claimant, vs. Bytedance, Inc. Respondent.	No. 01-24-0005-7790 **RULING ON MOTION TO DISMISS COUNTERCLAIM**

Respondent ByteDance Inc. ("BDI") has filed a counterclaim against Claimant Yintao Yu ("YU") for malicious prosecution. I have considered the Motion to Dismiss the counterclaim, the Response, the Reply, oral argument on April 24, and the entire record in this proceeding. BDI's counterclaim pertains to the action Yu filed for declaratory relief alleging he did not sign the Employee Confidentiality and Inventions Assignment Agreement (the "ECIAA"). In that case, *Yu v. ByteDance Inc.*, 759 F.Supp.3d 992 (N.D. Cal. 2024) (the "Declaratory Relief Action"), Yu alleged he did not sign any employment agreement containing an arbitration provision. In response to a Motion for Sanctions brought by BDI, the District Court dismissed the complaint, entered judgment in favor of the defendants, and compelled Yu to arbitrate his claims. BDI contends the Declaratory Relief Action was meritless, was pursued to legal termination, was without probable cause, and thus amounted to a malicious prosecution.

Contentions of the Parties

Yu has made a number of objections to BDI's request to bring the counterclaim. First, Yu contends a malicious prosecution is only permissible pursuant to California's anti-SLAPP statute if the allegations of the counterclaim demonstrate a probability of prevailing on the merits, and, according to Yu, the counterclaim fails to meet that test. Further, Yu contends the allegations of the counterclaim do not sufficiently allege the necessary elements to prove a claim for malicious prosecution. Finally, Yu contends the malicious prosecution counterclaim does not fall within the scope of the parties' arbitration agreement in the ECIAA.

BDI contends California's anti-SLAPP statute does not apply in arbitration and that the Declaratory Relief Action is not protected activity under the anti-SLAPP statute. BDI also claims the allegations of the counterclaim are sufficient to overcome Yu's objections. Finally, BDI contends its counterclaim falls within the scope of the arbitration provision in the ECIAA.

Arbitrability

I turn first to the question of whether BDI's malicious prosecution counterclaim falls within the scope of the arbitration provision in the ECIAA. It provides for arbitration of "any dispute, controversy or claim arising out of or relating to or resulting from [Yu's] employment with" BDI. The Declaratory Relief Action, the subject of the counterclaim, filed in September 2023, alleged that Yu did not sign the ECIAA and therefore he could not be compelled to arbitrate claims he sought to bring against BDI.

Does BDI's malicious prosecution claim based on the Declaratory Relief Action, raise a dispute that results from Yu's employment with BDI within the scope of the arbitration provision in the ECIAA? The answer is yes. Although the counterclaim makes reference to the manner in which Yu litigated the Declaratory Relief Action, the essence of the counterclaim is that Yu "acted without probable cause" by disputing that his employment with BDI was subject to arbitration despite having "signed four arbitration agreements when he was first hired by BDI."

Despite the apparent reservations of several of the judges in the pending appeal in the Ninth Circuit, reported by Yu in the recent oral argument, California decisions do hold that malicious prosecution cases can be subject to arbitration. For example, in *Greenberg v. Flynn*, 2010 WL 11596246, at *3 (C.D. Cal. Apr. 20, 2010), the plaintiff argued the arbitration provision in his employment agreement did not cover his malicious prosecution and civil conspiracy claims against his former employer because the arbitration provision covered only disputes that occurred prior to his departure from the employer. The court disagreed. Because the plaintiff's claims related to his prior employment, the court found the malicious prosecution claims fell within the scope of the arbitration agreement with the former employer.

In *Writers Guild of America, West, Inc. v. Merrick*, 181 Cal. Rptr. 530, 534 (Cal. Ct. App. 1982), Merrick brought a malicious prosecution action against the Guild for bringing an arbitration proceeding against him. The Guild moved to compel arbitration based on an arbitration agreement between Merrick and the Guild in a collective bargaining agreement. The

appellate court ordered arbitration in a collective bargaining agreement. The appellate court ordered arbitration explaining that the basis of the malicious prosecution action was Merrick's allegation the Guild prosecuted the arbitration proceeding in bad faith. The court held that because the malicious prosecution action "has its roots in the relationship between the parties," namely the collective bargaining provisions of their agreement, it granted the Guild's motion to compel arbitration.

Here, Yu's Declaratory Relief Action raised a dispute that pertained to his prior employment with BDI—whether he signed an arbitration agreement while employed by BDI. Thus, the counterclaim pertains to a dispute that arises out of, relates to, or results from, Yu's employment with BDI and therefore falls within the scope of the EIAAC arbitration provision. Stated differently, because BDI's malicious prosecution counterclaim has "its roots" in the employment agreement between Yu and BDI, the claim is arbitrable under the ECIAA.

Yu contends the counterclaim is not about his employment, but about how he litigated the Declaratory Relief Action. That is not quite correct. The malicious prosecution counterclaim is fundamentally based on the assertion that Yu's claim he did not sign an arbitration agreement while employed by BDI, was "without probable cause." Thus, the counterclaim does arise from, relate, and result from, Yu's employment with BDI.

Yu cites a number of cases addressing the arbitrability of malicious prosecution claims, but those cases are distinguishable. For example, in *Capital*

Reporting Co. v. Kripas, 2014 Il. App. (1st) 131924-U (Ill. App. Ct. Sept. 9, 2014), the court held the malicious prosecution claim, which arose after the employee resigned, unlike this case, had nothing to do with the terms of the employee's employment. In *Reed v. Doctor's Assocs., Inc.*, 772 N.E.2d 372 (Ill. App. Ct. 2002), the claim of malicious prosecution was based on actions the defendants took in another lawsuit, not the contractual relationship between the parties. In *Sutton v. Hollywood Entm't Corp.*, 181 F.Supp.2d 504 (D. Md. 2002), the court held the malicious prosecution claim did not have a significant relationship with the contract containing the arbitration clause.

For these reasons, I find that the malicious prosecution counterclaim is arbitrable.

Anti-SLAPP Statute

Yu objects to the counterclaim, contending it is prohibited by California's anti-SLAPP statute. That provision "allows defendants to seek early dismissal of unmeritorious claims arising from protected speech and petitioning activities." *Bonni v. St. Joseph Health Sys.*, 491 P.3d 1058, 1062 (Cal. 2021). Yu contends the malicious prosecution counterclaim is precisely the type of claim that fits with the "anti-SLAPP's protection." Yu also objects "on the merits" contending the counterclaim fails to set forth the elements of a malicious prosecution claim. BDI disagrees with the latter point, and further contends that because the arbitration is governed by the AAA Employment Rules, "the California Civil Procedural Code does not apply to arbitral proceedings" and the anti-SLAPP law was designed to "prevent abuse of the judicial process, not the arbitral process."

BDI first disputes that the anti-SLAPP rules apply in arbitration. BDI is correct. The anti-SLAPP statute is intended to target "abuse of the *judicial process*." CAL. CIV. PROC. § 425.16(a) (emphasis added). Private contractual arbitration is not a judicial proceeding under Section 425.16. *Zhang v. Jenevein*, 242 Cal. Rptr. 3d 800, 806 (Cal Ct. App. 2019), *as modified on denial of reh'g* (Jan. 23, 2019). "[C]laims filed only in an arbitral forum, while in some ways similar to pleadings, are very different because they are not filed in courts and they do not initiate judicial proceedings." *Sheppard v. Lightpost Museum Fund*, 52 Cal. Rptr. 3d 821, 826 (Cal. Ct. App. 2006). Yu is correct that in Sheppard the anti-SLAPP motion was filed in court seeking to strike an arbitration demand. Yu asserts this case is different because the anti-SLAPP motion is filed in an arbitration proceeding with the objective of dismissing a claim brought in that same arbitration proceeding. Yu also distinguishes Sheppard because the applicable arbitration rules in that case did not appear to have a provision comparable to the AAA rules which provide that rights and remedies in court are available in arbitration.

What is missing in Yu's argument is a California case upholding the use of the anti-SLAPP statute in arbitration. In contrast, every California case of which I am aware expressly holds the anti-SLAPP statute does not apply in arbitration. For example, in *Century 21 Chamberlain & Assocs. v. Haberman*, 92 Cal. Rptr. 3d 249, 254 (Cal. Ct. App. 2009), Century 21 brought two claims against Haberman. She responded by filing an anti-SLAPP motion to strike the complaint and a motion to compel arbitration. Among

other things, the trial court set a date for an evidentiary hearing on the motion to compel arbitration. Century 21 filed a declaration it did not have to arbitrate. Because that claim, according to the appellate court, arose from the arbitration demand, the court held a demand "commencing private contractual arbitration" does not fall within the anti-SLAPP statute; the appellate court held that trial court correctly denied the anti-SLAPP motion.

Although the anti-SLAPP motion in that case was not filed in an arbitration, that appears to be the proverbial "distinction without a difference." Citing *Century 21 Chamberlain* for the proposition that "claims arising from a demand commencing private contractual arbitration do not fall within the anti-SLAPP statute's protections" in a later decision, the California Court of Appeals held, that "claims arising from contractual arbitration, including malicious prosecution claims, do not fall within the ambit of the anti-SLAPP statute's protections." *Dunsworth v. Shoham*, No. B281356, 2018 WL 4940654, at *3 (Cal. Ct. App. Oct. 12, 2018).

Yu responds to BDI's argument pointing out that under the applicable AAA Rules, I am authorized to grant any remedy or relief that would have been available to the parties had the matter been heard in court. Yu also points out I am authorized to interpret the Employment Rules as they relate to my "powers and duties." Although I agree with the general principle relied upon by Yu, here California courts have specifically and repeatedly held the anti-SLAPP statute does not apply in arbitration. As this arbitration is governed by the substantive law of California. I am duty bound to follow that law and must necessarily

conclude that Yu's anti-SLAPP motion is impermissible in this proceeding.[1]

The Allegations of the Counterclaim

Yu's final argument is that the allegations of the counterclaim fail to allege the necessary elements of a malicious prosecution claim. The elements of a claim for malicious prosecution are: that a lawsuit (1) was commenced by or at the direction of the defendant and was pursued to a legal termination favorable to the plaintiff; (2) was brought without probable cause; and (3) was initiated with malice. *Nunez v. Pennisi*, 193 Cal. Rptr. 3d 912, 922 (Cal. Ct. App. 2015). In addition to disputing the sufficiency of the allegations of the counterclaim, Yu asserts that the first element is not present-the Declaratory Relief Action was not "terminated" on the merits but was due to the sanctions imposed on Yu by the District Court.

The requirement of a legal termination "is established by showing that the termination of the prior lawsuit reflected on the merits of the action." *Jarrow Indus., Inc. v. Kokozian & Nourmand, LLP*, No. B199597, 2009 WL 1277732, at *2-3 (Cal. Ct. App. May 11, 2009). In that case, the underlying action was dismissed because the plaintiff, representing herself, did not appear for a deposition. In holding the underlying case was not terminated on the merits, the court noted that the "trial court in the wrongful termination

[1] During the oral argument, counsel for Yu suggested that because BDI drafted the EICAA, Yu should have the same procedural rights in this arbitration he would have in court. There might be merit to that point but for the express prohibition on the use of the anti-SLAPP statute in arbitration.

action made clear that the dismissal did not reflect on the merits." However, a termination based on imposition of sanctions may qualify but the termination must "reflect on the merits" of the underlying action. *Ross v. Kish*, 51 Cal. Rptr. 3d 484, 493 (Cal Ct. App. 2006). For example, in *Ross*, the suit was dismissed because the complaining party refused to sit for a deposition. Although Yu is correct that the defendant's conduct went beyond merely refusing to sit for a deposition, the appellate court's holding was squarely limited to that fact: "We conclude Kish's refusal to be deposed reasonably may be construed as a concession his claims for breach of contract and legal malpractice lacked merit." *Id*. at 487.

What about the Declaratory Relief Action? In that case, Yu sought a judicial determination he did not sign the ECIAA and therefore should not be compelled to arbitrate his claims. In addition to granting the sanctions motion and dismissing the case, the court held that "Yu executed the four disputed agreements, including the [ECIAA]" and compelled arbitration. So, the result of the Declaratory Relief Action was on the merits—Yu disputed his obligation to arbitrate his claims, but the court ordered arbitration: "The Court COMPELS Yu to arbitration pursuant to the terms" of the ECIAA "on all claims currently alleged or that could be alleged" in the pending superior court proceeding.

In addition to disputing that the Declaratory Relief Action was terminated on the merits, Yu contends more broadly that the allegations of the counterclaim are insufficient to properly allege a claim for malicious prosecution. Although discovery may prove that Yu is correct that the malicious prosecution action is

deficient, at this stage I find the allegations of the counterclaim to be minimally adequate. Although the standard in Federal Rule of Civil Procedure Rule 12(b) is not binding here, it is a useful guide. Under that standard, "dismissal is proper only where it appears beyond doubt that the plaintiff can prove no set of facts in support of the claims that would entitle him to relief. *Rubin v. Padilla*, 183 Cal. Rptr. 3d 373, 385 (Cal. Ct. App. 2015). Yu has not met that burden.

Conclusion

For all of the foregoing reasons, Yu's Motion to Dismiss the Counterclaim is denied.

DATED this 1st day of May, 2026.

s/ Bruce E. Meyerson
Arbitrator