

6th Civ. Nos. H049521 and H049523 (considered together per 12/2/21 order)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

No. H049521:

LSI CORPORATION,
Plaintiff and Appellant,

vs.

KIRAN GUNNAM,
Defendant and Respondent.

No. H049523:

LSI CORPORATION,
Plaintiff and Respondent,

vs.

ANNAPURNA YARLAGADDA,
Defendant and Appellant.

Appeal from the Santa Clara County Superior Court,
Case No. 19-cv-358852
The Honorable Socrates P. Manoukian, Judge Presiding

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**Court of Appeal
State of California
Sixth Appellate District**

CERTIFICATE OF INTERESTED ENTITIES

Court of Appeal Case Nos: H049521 & H049523

Case Name: LSI Corporation v. Kiran Gunnam
 LSI Corporation v. Annapurna Yarlagadda

There are no interested entities or parties to list in this Certificate per California Rules of Court, Rule 8.208.

Interested entities or parties are listed below:

Name of Interested Entity or Person	Nature of Interest
1. Broadcom Inc.	LSI Corporation's parent company
2.	
3.	

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INTRODUCTION

Respondent Kiran Gunnam violated a confidentiality agreement by disclosing his former employer's confidential information to another company. That company then used the wrongfully disclosed information to sue Gunnam's former employer—appellant LSI Corporation—for patent and copyright infringement.

Having been forced into litigation by Gunnam's breach of contract, LSI sued Gunnam based on his *conduct*: the wrongful disclosure. But the trial court granted Gunnam's anti-SLAPP motion and struck LSI's claims based on the *consequences* of Gunnam's conduct: the resulting litigation against LSI. The trial court's ruling must be reversed because Gunnam's actions and the consequences of his actions are entirely distinct.

The trial court concluded that LSI's claims arose from protected activity and that LSI did not make a prima facie case because it did not submit evidence of damages. The trial court erred under both prongs of the anti-SLAPP analysis.

Under the first prong, LSI's claims do not arise from conduct protected by Code of Civil Procedure section 425.16. Gunnam's conduct—disclosing LSI's confidential information in violation of an employment agreement—is not protected activity because the act of disclosing is distinct from the damage caused by the conduct, i.e., a subsequent lawsuit against LSI. While LSI has been harmed by litigation resulting from Gunnam's breach of contract, LSI bases its present claims against Gunnam solely on

his wrongful disclosure, which has nothing to do with litigation and is not activity otherwise protected by section 425.16.

The trial court also erroneously considered Gunnam's motive for disclosing LSI's confidential information, which is irrelevant at this first step. California case law makes clear that the court's prong one analysis is limited to the defendant's *conduct*, regardless of any alleged motive.

Under the second prong of the anti-SLAPP analysis, LSI has shown that its claims have the requisite minimal merit. The trial court erroneously determined that LSI had not made this showing because LSI had not submitted any evidence of damages resulting from Gunnam's wrongful disclosure. To the contrary, the record contains ample evidence of actual damages, and even if it did not, LSI is entitled to nominal damages without proof of actual damages.

Aside from damages, the record also contains sufficient circumstantial and direct evidence to establish a prima facie case that Gunnam breached his employment agreement by disclosing LSI's confidential information.

This Court should reverse.

STATEMENT OF FACTS

Respondent Kiran Gunnam disclosed appellant LSI Corporation's confidential information to his wife Annapurna Yarlagadda's company, TexasLDPC, in violation of the confidentiality agreement he signed while employed at LSI. TexasLDPC then used the wrongfully disclosed information in a patent and copyright infringement lawsuit against LSI and its parent, Broadcom Inc. LSI filed the present action against Gunnam and Yarlagadda based on Gunnam's wrongful conduct.

A. The Parties.

LSI is a semiconductor and software design corporation. (3-AA-764.) LSI has developed semiconductor products that employ an error-correcting technology called a "low-density parity check" (LDPC) decoder that may be used in connection with the transmission of digital information. (2-AA-316 ¶ 41; 3-AA-764.)

Gunnam worked at LSI as a Development Design Engineer from January 2008 to March 2011. (3-AA-764, 951.) Before joining LSI, he was a Ph.D. student and employee at Texas A&M University. (3-AA-764.) Gunnam's work at Texas A&M generated then confidential information regarding certain LDPC architectures, including computer source code and unpublished patent applications. (*Ibid.*)

Yarlagadda and Gunnam are married. (3-AA-902:5-6.) Yarlagadda is the founder, chief executive officer and majority owner of TexasLDPC, a company she created to commercialize patents owned by Texas A&M pertaining to LDPC technology that incorporates Gunnam's Ph.D. work, and for which Gunnam

is a named inventor. (2-AA-439 ¶¶ 1, 3; 3-AA-795 [named inventor], 902:1-6, 938:5-12.) TexasLDPC asserts an exclusive license to Texas A&M’s patents and copyrights related to Gunnam’s LDPC decoder designs, and the ability to sublicense such rights. (2-AA-439 ¶ 3.) As a named inventor, Gunnam receives a portion of Texas A&M’s licensing revenues received from TexasLDPC, as well as Texas A&M’s other licensee, Marvell Semiconductor, Gunnam’s employer immediately preceding his employment at LSI. (3-AA-910:17-916:12.) Gunnam and Yarlagadda have joint bank accounts, own joint property, and file joint tax returns, and thus Gunnam presumably also benefits from TexasLDPC’s share of sublicensing revenues. (3-AA-902:10-903:25, 937:14-16.)

B. Gunnam Signs An “Employee Invention And Confidential Information Agreement” As A Condition Of His Employment With LSI.

As a condition of his employment with LSI, Gunnam signed and agreed to the terms of LSI’s “Employee Invention and Confidential Information Agreement” (Agreement). (3-AA-788; AOB Ex. 1.)¹

Section 1 of the Agreement provided that except as authorized by LSI in writing, Gunnam would keep confidential LSI’s proprietary information, during and after his employment.

¹ Pursuant to California Rules of Court, rule 8.204, subdivision (d), LSI has attached a copy of the Agreement to this opening brief as Exhibit 1, which it cites as “AOB Ex. 1.”

(AOB Ex. 1 ¶ 1.) Section 2 described examples of proprietary information. (*Id.* ¶ 2.)

Section 4 of the Agreement provided that Gunnam would not retain LSI's proprietary information after his employment ended. (AOB Ex. 1 ¶ 4.)

Section 10 of the Agreement provided that Gunnam would not “disclose to [LSI], nor induce [LSI] to receive or use, any confidential information belonging to, or designated as confidential by any of [his] previous employers or by any other person.” (AOB Ex. 1 ¶ 10.)

C. Gunnam Repeatedly Breaches The Agreement While Still An LSI Employee.

1. In 2008, Gunnam publishes LSI's proprietary information; LSI investigates and reprimands him.

In July 2008, Gunnam published a technical document—which he co-wrote—containing LSI proprietary information. (3-AA-793.) Gunnam promised to withdraw the document from the public domain on September 1, 2010, but instead he made the document available on a non-LSI website and forwarded the link to an outside party. (*Ibid.*)

In December 2010, LSI completed an investigation regarding the unauthorized publication, and told Gunnam that he had violated his employee obligations by publishing the document even after acknowledging its sensitivity, and that he “may have created a competitive disadvantage to LSI.” (3-AA-793.) On December 30, 2010, LSI blocked Gunnam's access to its internal network while the LSI human resources and legal

teams resolved issues related to the unauthorized publication. (3-AA-817-819.)

In January 2011, Gunnam met with the LSI legal and human resources teams, as well as his superior, to discuss his unauthorized publication, his conduct following his promise to withdraw the document from the public domain, and his emails concerning intellectual property issues, including emails he sent to third parties. (3-AA-849.) Gunnam admitted he did not follow company guidelines in sending certain emails and that the emails he sent “might have caused the damages to LSI.” (3-AA-822.) He stated he was “willing to take up any corrective actions under the guidance of the LSI legal and HR department” and would “not engage in such activities from now on.” (*Ibid.*) After Gunnam signed a memorandum acknowledging his wrongdoing, LSI reinstated his access to its internal network. (3-AA-813, 849-851.)

2. Gunnam discloses confidential LSI information to his former employers.

In a May 3, 2008 email, Gunnam revealed confidential information regarding certain types of LSI products he had actively worked on. (3-AA-847; 4-AA-1414 ¶¶ 3-5, 1494 ¶ 15, 1521.) He made these statements to Texas A&M to encourage Texas A&M to pursue patent protection for his Ph.D. work and to assist Texas A&M in licensing the work to LSI. (3-AA-847.)

In a December 28, 2010 email, Gunnam disclosed LSI confidential information regarding his current “patent work” at

LSI to Marvell Semiconductor, his prior employer and an LSI competitor. (3-AA-824; 4-AA-1414 ¶¶ 3-5, 1493 ¶ 10, 1516.)

3. Gunnam discloses confidential information from Texas A&M to LSI employees.

In May 2008, Gunnam violated Section 10 of the Agreement by forwarding confidential patent applications filed by Texas A&M to other LSI employees. (3-AA-839.) Gunnam testified he was aware the patent applications were confidential. (3-AA-893:6-894:3.)

In January 2009, Gunnam disclosed confidential Texas A&M source code to other LSI employees, after he placed the source code in an LSI directory, and encouraged them to evaluate and use it. (3-AA-941-944.)²

4. On leaving his employment with LSI, Gunnam retains documents containing LSI confidential information, and later discloses those documents to TexasLDPC.

On March 8, 2011, Gunnam informed LSI he was resigning. (3-AA-951.) Before leaving LSI, he printed emails containing LSI confidential information. (3-AA-896:12-897:22 [testimony

² LSI wasn't the only victim of Gunnam's penchant for disclosing confidential information—Gunnam had also disclosed Texas A&M's confidential information to his previous employer, Marvell Semiconductor. In a January 2008 email to Marvell Semiconductor, Gunnam admitted he “made a wrong judgment when [he] disclosed some of the Texas A&M confidential material in Marvell presentations and decoder software without the written permission from Texas A&M University.” (3-AA-826.)

regarding 8/27/2009 email printout], 853-854 [8/27/2009 email printout], 905:10-17, 906:8-909:2 [testimony regarding 12/21/2010 email printout], 856-859 [12/21/2010 email printout].) While Gunnam testified he had permission to keep these emails in his personal records, he could not point to any written authorization. (3-AA-897:2-898:13, 907:13-909:2.)

Gunnam gave these emails to TexasLDPC—Yarlagadda’s entity—through TexasLDPC’s counsel, Fish & Richardson. He did so before TexasLDPC filed a patent and copyright infringement lawsuit against LSI and before he himself was involved in any litigation with LSI. (3-AA-898:21-24, 905:10-17.)

D. Gunnam Breaches The Agreement After Leaving LSI.

1. Before leaving LSI, Gunnam accesses proprietary LSI technical documents, which are included among documents later uploaded to scribd.com.

On March 2, 2011, the week before he resigned, Gunnam accessed LSI’s “TWIKI” server—an internal electronic file-sharing platform and data repository. (3-AA-996 ¶¶ 3, 7.) Gunnam reviewed documents relating to the “McLaren” and “Spyder” read channel architectures. (*Id.* ¶ 7.)

On December 18, 2017, someone using the name “Wei Wang” created an account on the public website scribd.com and uploaded two document compilations in PDF form, entitled “Read Channel Overview Part 1” and “Read Channel Overview Part 2” (the Scribd Documents). (3-AA-957 ¶ 8, 976.) That Scribd user did not log back into the Scribd account after December 18, 2017.

(*Ibid.*) The “Read Channel Overview Part 1” PDF included internal LSI documents created by Gunnam that described aspects of the McLaren read channel architecture Gunnam worked on at LSI, i.e., the types of documents Gunnam accessed on March 2, 2011.³ The PDF included documents authored by Gunnam labeled “LSI Confidential” and “Internal Use Only.” (2-AA-308, e.g., ¶¶ 53, 56, 60, 106, 108.)

Seeking to refute LSI’s claim that Gunnam uploaded or caused the Scribd Documents to be uploaded, Gunnam’s counsel sent a letter to LSI’s counsel in December 2019 containing a screenshot of the “Read Channel Overview Part 1” PDF properties, which included the username “jgarofalo” in the “author” field of the document properties. (2-AA-637.) Gunnam’s counsel also included in the letter a screenshot of a LinkedIn profile of an individual named “Joe Garofalo,” which indicated Joe Garofalo was a Shanghai-based Technical Director at LSI while Gunnam was employed at LSI. (2-AA-638.) Gunnam testified that while working at LSI, he interacted with another LSI employee named Joe Garofalo—who was part of a design team based in Shanghai—in the context of high-level architecture and design guidance. (3-AA-1072:16-1073:1.) The December 2019 letter also included a LinkedIn profile screenshot of a

³ Gunnam has denied retaining any portion of the “Read Channel Overview Part 1” document or having any involvement with its upload to scribd.com. (2-AA-636.) He testified that he did not know who posted the Scribd Documents. (3-AA-1071:6-9.)

person named “Wei Wang,” who, at the time of the letter, worked at Micron Technology with a person named Joe Garofalo. (2-AA-640.) Gunnam offered no evidence that Joe Garofalo, Wei Wang, or anyone else was actually involved in the Scribd upload in any way. And both denied involvement.⁴

2. Within days after the upload, TexasLDPC “finds” the Scribd Documents, and then relies on those and other confidential LSI documents supplied by Gunnam in suing LSI and its parent, Broadcom, for patent infringement.

In December 2017, days after the Scribd Documents upload, TexasLDPC employee Osso Vahabzadeh, who—presumably supporting TexasLDPC’s and its counsel’s efforts to prepare a lawsuit against LSI—ran a Google search to gather “evidence of how LSI and its parent Broadcom were using LDPC decoders in hard disk drive controller chips,” and “discovered” the Documents. (2-AA-439 ¶ 6.)⁵

⁴ During his deposition in TexasLDPC’s lawsuit against LSI—described in Statement of Facts, § D.2., *post*—Joseph Garofalo denied any knowledge or involvement in posting the Scribd Documents. (3-AA-775.) LSI took the deposition of an individual named “Wei Huang Wang,” who denied uploading the Scribd Documents. (3-AA-947.)

⁵ While Gunnam and Yarlagadda’s reply brief in support of their anti-SLAPP motion alleges that the Scribd Documents “were first posted to a Chinese language sharing site, docin.com” in July 2015 (3-AA-1026, 1094, 1096), Gunnam and Yarlagadda’s own evidence contradicts that claim. (See 2-AA-637 [“Read Channel Overview Part 1” PDF was created on November 28, 2017].)

On December 12, 2018, TexasLDPC filed a patent and copyright infringement action in Delaware against Broadcom Inc., LSI's parent company. (1-AA-65.) TexasLDPC filed an amended complaint on January 11, 2019, adding claims against LSI and its distributor, Avago Technologies. (2-AA-308.) TexasLDPC relied on the Scribd Documents—in particular, the “Read Channel Overview Part 1” document—in support of its claims. (2-AA-320-324 ¶¶ 53-60.) TexasLDPC also explicitly relied on an email containing LSI confidential information that Gunnam had retained and provided to TexasLDPC. (2-AA-325 ¶ 63; 3-AA-856-859, 905:10-17.)

3. TexasLDPC's Delaware complaint also relies on other confidential emails Gunnam sent to LSI after he resigned, which Gunnam later disclosed to TexasLDPC.

TexasLDPC's complaint also relied on other emails Gunnam sent to LSI in April 2012, January 2013, and January 2014, after he resigned. (2-AA-326-328 ¶¶ 67-82.) Gunnam had designated these emails as “LSI Confidential.” (3-AA-800-802, 804-807.) In these emails, Gunnam accused LSI of infringing Texas A&M's patents and described specific features of the LDPC decoder he developed at LSI as the basis for such allegations. (*Ibid.*)

Gunnam testified that he printed the emails in October 2018 to give to TexasLDPC via its counsel, Fish & Richardson. (3-AA-878:15-879:23.) He did not ask LSI for authorization to

share the information contained in the emails with anyone outside LSI. (3-AA-883:7-886:3.)

Gunnam asserted that he redacted the emails to exclude LSI confidential information before sharing with TexasLDPC, but a comparison of the redacted and unredacted versions establishes that he redacted only the words “LSI Confidential” and nothing else. (3-AA-879:18-23, 881:3-19; compare 3-AA-804-807 [original email] with 3-AA-795-798 [redacted email]; compare 3-AA-800-802 [original email] with 3-AA-809-811 [redacted email].)

E. Trial Court Proceedings.

1. LSI sues Gunnam and Yarlagadda.

In November 2019, LSI filed this action against Gunnam and Yarlagadda. (1-AA-30.) As to Gunnam, LSI alleged breach of contract and breach of the covenant of good faith and fair dealing. (1-AA-37-38.) As to Yarlagadda, LSI alleged intentional interference with contract and inducement to breach contract. (1-AA-38-40.)

2. Gunnam and Yarlagadda file an anti-SLAPP motion.

Gunnam and Yarlagadda filed a special motion to strike the complaint under Code of Civil Procedure section 425.16.⁶ (1-AA-55.) The trial court granted LSI’s motion to conduct

⁶ They also filed a demurrer. (1-AA-42.) The trial court’s rulings on the demurrer—moot as to Gunnam and overruled as to Yarlagadda (4-AA-1324-1325)—are not the subject of this appeal.

limited discovery for purposes of responding to the anti-SLAPP motion. (2-AA-696-698.)

Gunnam and Yarlagadda argued (1) that the activity giving rise to their liability was the decision to speak about and use the Scribd Documents in TexasLDPC's Delaware action against LSI; (2) that the activity giving rise to each cause of action constituted protected activity under Code of Civil Procedure section 425.16, subdivision (e); and (3) that LSI could not show a probability of success on any cause of action. (1-AA-72-77.)

3. The trial court's ruling.

On October 14, 2021, the trial court granted the motion as to Gunnam and denied it as to Yarlagadda. (4-AA-1326.)

As to Gunnam, the trial court found:

- Prong one: LSI's allegations in both causes of action against Gunnam arose from protected activity under section 425.16, subdivision (e). (4-AA-1318-1321, 1323.)
- Prong two: LSI did not demonstrate a probability of prevailing on either claim. For this finding, the court relied solely on the fact that, in its view, LSI had not submitted any admissible evidence of resulting damage. (4-AA-1322-1323.) It expressly declined to reach any other merits issues. (*Ibid.*)

As to Yarlagadda, the trial court found that she did not show protected activity under prong one—her alleged conduct did not involve the furtherance of a right to petition or right to free speech under section 425.16. (4-AA-1323.)

4. The trial court grants LSI's motion to seal portions of its opposition brief.

LSI filed a motion to seal portions of its opposition to the special motion to strike, on the ground that its brief and accompanying declarations and exhibits—which include most of the documents described in this brief—related to or described specific intellectual property and proprietary information developed at LSI. (4-AA-1404-1411, 1414 ¶¶ 3-5.) The motion to seal covered documents Gunnam had designated as “LSI Confidential” and produced as confidential under the protective order in the present case. (4-AA-1414 ¶ 3; 3-AA-800-802, 804-807.)

Gunnam and Yarlagadda opposed the motion to seal. (4-AA-1694.) The trial court found that LSI's privacy interests outweighed the right to public access to the record and granted the motion. (4-AA-1778-1781.)

F. Statement of Appealability.

The trial court's order granting the special motion to strike as to Gunnam is appealable. (Code Civ. Proc., § 425.16, subd. (i).) LSI filed a timely appeal on October 29, 2021. (4-AA-1344.) (The companion appeal, to be considered with this one under the Court's December 2, 2021 order, is Yarlagadda's appeal from the denial of the anti-SLAPP motion as to her.)

STANDARD OF REVIEW

This Court reviews de novo the grant or denial of a special motion to strike under Code of Civil Procedure section 425.16. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067.)

On the first prong, the Court exercises independent judgment in determining whether, based on the Court’s own review of the record, the challenged claims arise from protected activity. (*Park, supra*, 2 Cal.5th at p. 1067.)

On the second prong, the Court does not weigh the evidence. It accepts the plaintiff’s submissions as true and considers only whether any contrary evidence from the defendant defeats that submitted by the plaintiff as a matter of law. (*Park, supra*, 2 Cal.5th at p. 1067.)

ARGUMENT

I. ANTI-SLAPP ANALYSIS OVERVIEW.

A. **Prong One: The Defendant Must Show The Challenged Claims Arise From Conduct Protected By Code Of Civil Procedure Section 425.16.**

“At this first step, 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.’” (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1009, quoting *Park, supra*, 2 Cal.5th at p. 1063.) “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

p. 1009, italics added, citing *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884.)

The Supreme Court in *Baral v. Schnitt* (2016) 1 Cal.5th 376 explained how courts should analyze a cause of action based on allegations of multiple acts, where some acts constitute protected activity under Code of Civil Procedure section 425.16 and others do not. Disapproving a line of cases holding that an anti-SLAPP motion may only strike an entire count as pleaded in the complaint, *Baral* held that “[i]nstead, courts should analyze each claim for relief—*each act or set of acts supplying a basis for relief*, of which there may be several in a single pleaded cause of action—to determine whether the acts are protected and, if so, whether the claim they give rise to has the requisite degree of merit to survive the motion.” (*Bonni, supra*, 11 Cal.5th at p. 1010, italics added, citing *Baral, supra*, 1 Cal.5th at pp. 393-395.)

In sum, when the cause of action appears to allege a mixture of protected and unprotected activity, the protected-activity analysis focuses on *the injury-producing conduct*, rather than on the “essence” or “gist” of a cause of action. (*Bonni, supra*, 11 Cal.5th at pp. 1011-1012.) Mere incidental or collateral assertions are not subject to section 425.16. (*Baral, supra*, 1 Cal.5th at p. 394.)

Moreover, a claim is not subject to an anti-SLAPP motion “simply because it contests an action or decision that was arrived at following speech or petitioning activity, or that was thereafter communicated by means of speech or petitioning activity.” (*Park*,

supra, 2 Cal.5th at p. 1060.) “Rather, a claim may be struck only *if the speech or petitioning activity itself is the wrong complained of*, and not just evidence of liability or a step leading to some different act for which liability is asserted.” (*Ibid.*, italics added.) “[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute.” (*Id.* at p. 1063, quoting *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

B. Prong Two: The Plaintiff Must Show That A Claim Has At Least Minimal Merit.

The plaintiff’s second-step burden is limited. The plaintiff need not prove its case; it need only show that the protected claim has “minimal merit.” (*Wilson, supra*, 7 Cal.5th at p. 891, quoting *Navellier, supra*, 29 Cal.4th at p. 89.) This “inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment.” (*Baral, supra*, 1 Cal.5th at pp. 384-385.)

“Evidence supporting a reasonable inference may establish a prima facie case.” (*Jenni Rivera Enterprises, LLC v. Latin World Entertainment Holdings, Inc.* (2019) 36 Cal.App.5th 766, 781, citing *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 822 and *Fremont Reorganizing Corp. v. Faigin* (2011) 198 Cal.App.4th 1153, 1175.)

II. PRONG ONE: BECAUSE LSI'S CLAIMS AGAINST GUNNAM DO NOT ARISE FROM PROTECTED ACTIVITY, THE INQUIRY ENDS—THE MOTION SHOULD HAVE BEEN DENIED.

A. Causing LSI's Confidential Documents To Be Uploaded To Scribd.Com Is Not Protected Activity Under Section 425.16.

1. LSI bases its claim on the posting itself, which is not protected activity.

The Supreme Court has drawn “a careful distinction between a cause of action based squarely on a privileged communication, such as an action for defamation, and one based upon an underlying course of conduct evidenced by the communication.” (*Park, supra*, 2 Cal.5th at p. 1064, quoting *White v. Western Title Ins. Co.* (1985) 40 Cal.3d 870, 888.) LSI's causes of action against Gunnam are based, in part, on his causing LSI's confidential information to be posted online. (1-AA-36 ¶ 33.) The injury-producing conduct of posting the documents online—or causing them to be posted online—in violation of the Agreement is not a statement or writing made in connection with litigation. Nor is it any other type of statement in furtherance of Gunnam's right of petition or free speech in connection with a public issue.

Gunnam claims a connection with litigation because TexasLDPC relied on the Scribd Documents in its subsequent lawsuit against LSI, and because Gunnam has connections to TexasLDPC through Yarlagadda. (1-AA-73-74.) But a court may not strike a claim unless *the speech or petitioning activity itself* is the wrong alleged, and not just evidence of liability. (*Park*,

supra, 2 Cal.5th at p. 1060.) Gunnam violated the Agreement by causing LSI's confidential information to be posted to a public website, as *evidenced by* TexasLDPC's lawsuit.

That LSI sued Gunnam for breach of contract after TexasLDPC initiated the Delaware litigation, and that the Delaware litigation features prominently in the complaint, do not mean that LSI's claims against Gunnam *arose from* the Delaware litigation for purposes of the anti-SLAPP statute. (See *Park, supra*, 2 Cal.5th at p. 1063.) With respect to the Scribd disclosure, LSI's claim is based solely on the upload itself, which is not protected activity under section 425.16.

2. Gunnam's motive for posting the confidential documents to scribd.com is irrelevant for purposes of prong one.

The trial court framed its prong one analysis as a choice between two cases: *Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924 (*Bel Air*) and *Renewable Resources Coalition, Inc. v. Pebble Mines Corp.* (2013) 218 Cal.App.4th 384 (*Renewable Resources*). (4-AA-1319-1321.) It found protection on the basis of *Bel Air*. (*Ibid.*) Although we believe that the court should have instead applied *Renewable Resources*, the fact is that neither these cases nor the trial court's ruling reflect current Supreme Court jurisprudence, which distinguishes between the *act* that caused injury and the *motive* for that act. (See *Wilson, supra*, 7 Cal.5th at pp. 886-888.)

Bel Air held that the defendants' conduct in actively encouraging fellow employees to quit and sue their employer

constituted protected activity. (*Bel Air, supra*, 20 Cal.App.5th at pp. 944-945.) The defendants’ prelitigation communications in urging other employees to pursue lawsuits were the *entire basis* for the plaintiff’s tortious interference and breach of contract claims—they were not evidence or consequences of *other* conduct that actually caused injury. (*Id.* at p. 945.)

Renewable Resources held that the defendants’ wrongful acquisition of confidential documents—which the defendants then used to sue the plaintiff—was not protected activity because the injury-producing conduct was the wrongful acquisition rather than the resulting lawsuit, which was the damage flowing from the conduct. (*Renewable Resources, supra*, 218 Cal.App.4th at pp. 396-398.) The plaintiff based its interference with contract and interference with prospective economic advantage claims on the acquisition itself, which was not an act in furtherance of the defendants’ right of petition or free speech. (*Id.* at p. 397.)

The trial court found Gunnam’s actions more akin to those alleged in *Bel Air* than in *Renewable Resources*, and on that basis concluded that the claims against Gunnam arose from protected activity. (4-AA-1321.) The court reasoned that because Gunnam allegedly caused the Scribd upload for TexasLDPC to find and use to prosecute its litigation against LSI, the conduct giving rise to LSI’s causes of action against Gunnam was “the same act that serves to prepare evidence for/encourage/counsel litigation by another (TexasLDPC).” (*Ibid.*)

But this language describes Gunnam’s *motive*, which is irrelevant for purposes of determining whether the Scribd posting

is protected activity. At the first step of the anti-SLAPP analysis, the court examines only the defendant's conduct, without reference to what motivated the defendant. (*Wilson, supra*, 7 Cal.5th at p. 888.) So, whether an act qualifies as protected activity cannot turn on allegations of a defendant's motives. (*Id.* at p. 889.)

The Supreme Court in *Wilson* addressed a growing divide over whether, "in an employment discrimination or retaliation case, an employer's alleged motive to discriminate or retaliate eliminates any anti-SLAPP protection that might otherwise attach to the employer's employment practices." (*Id.* at p. 883.) It disapproved two Court of Appeal cases that had relied on motive in the employment discrimination or retaliation context: *Nam v. Regents of University of California* (2016) 1 Cal.App.5th 1176, and *Bonni v. St. Joseph Health System* (2017) 13 Cal.App.5th 851. (*Wilson, supra*, 7 Cal.5th at p. 892.) The Court of Appeal in *Nam* had concluded that the plaintiff's basis for the defendant's liability included the defendant's retaliatory motive. (*Nam, supra*, 1 Cal.App.5th at pp. 1188-1189, 1193.) Similarly, the Court of Appeal in *Bonni* had determined that the defendants' retaliatory motive was the basis upon which the plaintiffs asserted liability, rather than the defendants' actual conduct. (*Bonni, supra*, 13 Cal.App.5th at p. 864.)

The Supreme Court in *Wilson* disagreed, noting that for pleading purposes, both motive *and* concrete adverse action are necessary elements of a cause of action for discrimination. (*Wilson, supra*, 7 Cal.5th at p. 886.) "It follows that even if

a plaintiff's discrimination claim can be said to be based in part on the employer's purported wrongful motives, it is necessarily *also* based on the employer's alleged acts—that is, the various outward 'manifestations' of the employer's alleged wrongful intent, such as failing to promote, giving unfavorable assignments, or firing." (*Id.* at pp. 886-887, citations omitted.) "Under the first step of the anti-SLAPP analysis, that is the end of the story, for it is the defendant's acts that matter." (*Id.* at p. 887, citations omitted.) The Supreme Court thus held that a plaintiff's allegations of a defendant's wrongful motives cannot shield the claim that qualifies as protected activity "from the same preliminary screening for minimal merit that would apply to any other claim arising from protected activity," i.e., from proceeding to the second prong of the anti-SLAPP analysis. (*Id.* at p. 881.)

At this first step, the court therefore neither presumes the plaintiff's allegations regarding the defendant's motives are true, nor requires the defendant to disprove allegations of illicit motive. (*Wilson, supra*, 7 Cal.5th at pp. 887-888.) The analysis is limited to the alleged *conduct*, "notwithstanding the plaintiff's allegation that the actions were taken for an improper purpose." (*Id.* at p. 892.) "If conduct that supplies a necessary element of a claim is protected, the defendant's burden at the first step of the anti-SLAPP analysis has been carried, regardless of any alleged motivations that supply other elements of the claim." (*Ibid.*)

Wilson makes clear that conduct and motive are distinct for purposes of prong one. The plaintiff in *Wilson* attempted to combine the two, arguing that the defendant’s conduct was not protected because of the defendant’s alleged discriminatory and retaliatory motive. (*Wilson, supra*, 7 Cal.5th at pp. 886-887.) Gunnam’s tactic is the same—he argues that his alleged *motive* of pursuing litigation protects his *conduct* of disclosing LSI’s confidential information. It doesn’t matter that the *Wilson* defendant’s motive was wrongful, while Gunnam presumably will claim that he only sought to pursue litigation. Under *Wilson*’s analysis, the nature of the alleged motive is irrelevant: If wrongful motive does not *eliminate* anti-SLAPP protection, an allegedly non-wrongful motive cannot *confer* anti-SLAPP protection.

The proper analysis therefore is limited to Gunnam’s *conduct*—disclosing LSI’s confidential information on a public website—regardless of any alleged motive for that conduct.

The trial court based its conclusion that Gunnam’s conduct constituted protected activity on *Bel Air*, which the trial court found “more comparable and compelling” as applied to the present case, noting that LSI alleged that “Gunnam disclosed LSI’s proprietary information *so that* defendant Gunnam (through his ownership of/financial stake in TexasLDPC) could use that proprietary information to sue LSI for patent infringement.” (4-AA-1321, italics added.) The trial court thus considered Gunnam’s *motive* for causing the Scribd upload—to pursue litigation—in concluding that Gunnam’s conduct was

protected activity. However, to the extent *Bel Air* requires consideration of motive or deems motive dispositive—which it seems to do, since the court noted that the complaint did not allege any motivation for the defendants’ alleged encouragement of other employees to quit other than to pursue litigation (*Bel Air, supra*, 20 Cal.App.5th at p. 945)—it is at least questionable in light of *Wilson*. (*Wilson, supra*, 7 Cal.5th at p. 889.)

3. Even if Gunnam’s motive as to the Scribd posting were relevant, he still failed to demonstrate protected conduct.

Even if Gunnam’s motive for retaining and posting the confidential information were relevant, the trial court erred. The court must look to “the allegedly wrongful and injurious conduct of the defendant, *rather than the damage which flows from said conduct.*” (*Renewable Resources, supra*, 218 Cal.App.4th at pp. 396-397, original italics.) Gunnam’s *conduct* was causing LSI’s confidential information to be posted online. The *damage flowing from that conduct* was TexasLDPC’s subsequent “discovery” and lawsuit against LSI. While these acts are certainly relevant to LSI’s claims, they are different from the disclosure and not, in themselves, wrongful in the way that the disclosure was.

This distinction is another reason why *Bel Air* is not controlling. There, the entirety of the defendant’s conduct was advising, counseling, and encouraging litigation. (*Bel Air, supra*, 20 Cal.App.5th at p. 930.) But while Gunnam implicitly did that, his actionable conduct—posting LSI’s confidential information in violation of the Agreement—was entirely separate, connected to

the litigation only by Gunnam's implicit motive. *Renewable Resources* drew essentially the same distinction, even though there the connection between the conduct and resulting damages was more direct, as the defendants themselves were the ones who used the confidential information. (See *Renewable Resources, supra*, 218 Cal.App.4th at pp. 397-398 [wrongful acquisition of confidential documents was not protected activity, even though defendants used the documents to sue plaintiff, because the injury-producing conduct was the wrongful acquisition itself].)

Suarez v. Trigg Laboratories, Inc. (2016) 3 Cal.App.5th 118, which Gunnam and Yarlagadda cited in their reply brief in support of their anti-SLAPP motion, also is easily distinguishable. (3-AA-1029-1030.) The plaintiff in *Suarez* sought rescission of a settlement agreement in litigation arising from his quantum meruit claim for his efforts to raise capital for and to sell the defendant's company. The plaintiff alleged that during settlement negotiations, the defendant had concealed or failed to disclose a letter of intent from a potential purchaser of the company, whose presence would have affected the plaintiff's claim. (*Suarez, supra*, 3 Cal.App.5th at pp. 121-122.) In response to an anti-SLAPP motion, the plaintiff argued that the action was not premised on the defendant's statements during settlement negotiations, which would be protected under the anti-SLAPP statute, but rather on the defendant's active concealment and nondisclosure of an anticipated letter of intent. (*Id.* at p. 123.)

The Court of Appeal focused on an email from the defendant to a company assisting with the prospective sale,

which stated that all correspondence related to the expected letter of intent should be sent to the defendant’s attorney, rather than directly to the defendant, “to keep the contents within attorney client privilege for the Rafael [Suarez] case.” (*Suarez, supra*, 3 Cal.App.5th at p. 123.) This showed that the conduct at issue in *Suarez* was litigation-related activity expressly aimed at plaintiff Suarez’s case, and “occurred as an explicit part of the settlement strategy.” (*Id.* at pp. 123-125.)

In contrast, Gunnam’s conduct in causing the Scribd upload did not occur during litigation and was entirely separate from any litigation resulting from the upload. The act of posting the Scribd Documents, or causing them to be posted, was not a litigation-related communication between Gunnam and anyone else. It is simply the publication of LSI’s confidential information online, evidenced by TexasLDPC’s resulting lawsuit against LSI.

B. Delivering Confidential Documents To TexasLDPC Is Not Protected Activity Under Section 425.16.

1. LSI bases its claim on the disclosure itself, which is not protected activity.

Gunnam violated the Agreement by printing and delivering emails containing LSI’s confidential information to TexasLDPC via TexasLDPC’s counsel, Fish & Richardson, before TexasLDPC filed the Delaware litigation. (3-AA-878:13-879:23, 898:21-24, 905:10-17, 906:8-907:16.) Gunnam did not ask LSI for authorization to share the information with anyone outside LSI. (3-AA-883:7-886:3.)

This disclosure is not protected activity under section 425.16 for the same reasons Gunnam’s conduct in causing the Scribd upload is not protected activity. LSI bases this claim on the disclosure itself rather than the harm caused by that disclosure, i.e., TexasLDPC’s subsequent lawsuit against LSI. Because TexasLDPC’s Delaware litigation is *evidence* of LSI’s claim that Gunnam violated the Agreement by giving confidential documents to TexasLDPC—and of damages resulting from that violation—LSI’s claim as to this specific disclosure cannot be stricken. (See *Park, supra*, 2 Cal.5th at p. 1060 “[A] claim may be struck only if the speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted.”].)

Just as with the Scribd upload, Gunnam’s motive is irrelevant for purposes of determining whether giving confidential email printouts to TexasLDPC is protected activity. (See *Wilson, supra*, 7 Cal.5th at pp. 887-888.) And even if Gunnam’s motive for disclosing confidential information to TexasLDPC were relevant, the disclosure still does not constitute protected activity because the injury-producing act of disclosing is distinct from the resulting lawsuit. (See *Renewable Resources, supra*, 218 Cal.App.4th at pp. 397-398 [wrongful acquisition of confidential documents was not protected activity].)

Though Fish & Richardson also later represented Gunnam in the present case—and Gunnam refers to Fish & Richardson as his attorneys—Gunnam himself was not involved in litigation

against LSI when he provided the confidential emails to TexasLDPC. In essence, Gunnam’s conduct in delivering confidential emails to TexasLDPC via Fish & Richardson was equivalent to delivering the documents to Yarlagadda, who then gave them to Fish & Richardson for purposes of filing the Delaware litigation.

To the extent Gunnam argues that he met with Fish & Richardson to discuss potential litigation against LSI, any prelitigation communication still is *evidence* of Gunnam’s breach of contract through this specific disclosure—giving TexasLDPC confidential documents—rather than the *basis* of LSI’s claim. (See *Graffiti Protective Coatings, Inc. v. City of Pico Rivera* (2010) 181 Cal.App.4th 1207, 1215 [prelitigation communications between defendant and others provided helpful context but were not the basis of plaintiff’s claims, which thus could not be stricken under the anti-SLAPP statute].)

2. Even if Gunnam’s conduct in disclosing confidential information to TexasLDPC is protected if treated as the *basis* for a claim, it is unprotected incidental conduct with respect to LSI’s primary claim based on the Scribd posting.

Mere incidental or collateral assertions are not subject to section 425.16. (*Baral, supra*, 1 Cal.5th at p. 394.) Regardless of whether Gunnam’s conduct in giving confidential documents to TexasLDPC could qualify as protected activity if it were asserted as a distinct claim, it is merely incidental to LSI’s claim that Gunnam caused the Scribd Documents to be uploaded to a public website.

Gunnam's breaches of contract by delivering multiple emails containing LSI's confidential information to TexasLDPC are circumstantial evidence that Gunnam made or caused the Scribd posting. They contribute to an extensive pattern of Gunnam's violating the Agreement by disclosing LSI's confidential information. Even if these multiple acts of wrongdoing could be characterized as protected activity that if proven could support a claim for recovery on their own, the allegations still cannot be stricken under the anti-SLAPP statute because they provide context for LSI's claim based on the Scribd posting. (*Baral, supra*, 1 Cal.5th at p. 394.)

C. Gunnam's Violations Of The Agreement During His Employment With LSI Are Not Protected Activity Under Section 425.16.

While Gunnam was an LSI employee, he disclosed LSI's confidential information via email to Texas A&M and competitor Marvell Semiconductor. (3-AA-824, 847.) He also knowingly forwarded confidential patent applications filed by Texas A&M to other LSI employees and placed Texas A&M's confidential source code in an LSI directory, encouraging other LSI employees to review and evaluate it. (3-AA-839-840, 893:6-894:3, 941-944.) After Gunnam left LSI, he retained documents containing LSI's confidential information. (3-AA-896:12-897:22 [testimony regarding 8/27/2009 email printout], 853-854 [8/27/2009 email printout], 905:10-17, 906:8-909:2 [testimony regarding 12/21/2010 email printout], 856-859 [12/21/2010 email printout].)

All of these actions are indisputable violations of the Agreement, and none was in furtherance of Gunnam's

constitutional right of petition or free speech in connection with a public issue. Gunnam's repeated Agreement violations as an LSI employee therefore cannot be protected conduct under the anti-SLAPP statute.

III. PRONG TWO: TO THE EXTENT LSI'S CLAIMS AGAINST GUNNAM ARISE FROM PROTECTED ACTIVITY, LSI HAS SHOWN A PROBABILITY OF PREVAILING.

A. The Trial Court Based Its Prong Two Ruling On An Erroneous Finding That LSI Had Not Submitted Any Admissible Evidence Of Damages.

The trial court dispatched the second prong in a single sentence: "[T]he court's analysis on the second step is made simple by the fact that plaintiff LSI has not submitted any admissible evidence of resulting damage." (4-AA-1322-1323, footnote omitted.) The error was both factual, because the record contains ample evidence of actual damages, and legal, because the court failed to recognize LSI's entitlement to nominal damages and injunctive relief.

1. LSI's damages showing was more than sufficient to defeat an anti-SLAPP motion.

LSI showed damages caused by Gunnam's conduct through evidence of TexasLDPC's Delaware lawsuit and the accompanying cost of litigation. (See *Renewable Resources*, *supra*, 218 Cal.App.4th at pp. 390, 396-397 [plaintiff's damages caused by defendants' wrongful acquisition of confidential documents included having to defend itself "at substantial expense" in a lawsuit resulting from the wrongful acquisition].) LSI did not have to quantify damages at the pleadings stage.

LSI's counsel submitted a declaration in support of its opposition to the anti-SLAPP motion, requesting attorneys' fees and expressly noting that LSI reduced the requested fees and costs by about 34% in part due to "potential overlap with work performed in connection with defense of the Delaware action given the overlap in team members." (3-AA-1003 ¶ 14.) Counsel reiterated at the hearing on the anti-SLAPP motion that LSI adjusted the fees and costs requested in connection with the anti-SLAPP motion "so as not to account or include the fees that can be fairly associated with defending the Delaware case." (RT-20:22-21:3.)

The Delaware complaint also is in the record. (2-AA-308.) The trial court took judicial notice of it. (4-AA-1319, fn. 7.) TexasLDPC's extensive allegations span over 100 pages and include six patent infringement claims and three copyright infringement claims. (2-AA-308.) While the trial court denied Gunnam's request for judicial notice of other filings in the Delaware action, the anti-SLAPP briefing references the robust litigation and breadth of motions filed in that case, including a motion to seal, three motions to dismiss, and a motion for summary judgment. (1-AA-66-67; 3-AA-1025.)

The Delaware lawsuit and the accompanying litigation costs—i.e., LSI's being forced to defend itself in the Delaware proceeding—are damages flowing from Gunnam's conduct in violating the Agreement. (*See Renewable Resources, supra*, 218 Cal.App.4th at pp. 396-397 [the fact that plaintiff was forced to defend itself in litigation resulting from the wrongful

acquisition of confidential documents constituted damages flowing from the wrongful conduct[.]) LSI has shown it suffered damages as a result of Gunnam's breach. It need not show more to defeat an anti-SLAPP motion.

2. California statutory authority and case law authorize nominal damages awards without proof of actual damages.

But a showing of actual damages was never necessary. For at least a century and a half, California has expressly permitted recovery of nominal damages when a breach of duty causes no appreciable detriment to the plaintiff. (Civ. Code, § 3360 [enacted 1872].)

California courts have long rejected arguments that breach of contract claims are not actionable without a showing of appreciable and actual damage. (*Elation Systems, Inc. v. Fenn Bridge LLC* (2021) 71 Cal.App.5th 958, 965-967; *Sweet v. Johnson* (1959) 169 Cal.App.2d 630, 632-633.) A “defendant’s failure to perform a contractual duty is, in itself, a legal wrong that is fully distinct from the actual damages,” and nominal damages, which are presumed as a matter of law to stem merely from the breach of a contract, “may properly be awarded for the violation of such a right.” (*Sweet, supra*, 169 Cal.App.2d at pp. 632-633.)

Not only that, but courts have repeatedly applied Civil Code section 3360 and *Sweet v. Johnson* in the anti-SLAPP setting. In *Midland Pacific Building Corp. v. King* (2007) 157 Cal.App.4th 264, 275, the Court of Appeal affirmed the

denial of an anti-SLAPP motion, finding that the plaintiff established a prima facie case for breach of contract without evidence of actual damages because nominal damages were available. Similarly, in *Mission Beverage Co. v. Pabst Brewing Co., LLC* (2017) 15 Cal.App.5th 686, 710-711, the Court of Appeal affirmed the denial of an anti-SLAPP motion and noted the availability of nominal damages as a way a plaintiff may satisfy its burden to show probability of prevailing on a breach of contract claim.

Civil Code section 3360 and the case law applying it make clear that LSI need not show actual damages at the pleadings stage, because LSI may recover nominal damages even without a finding of actual damages. The trial court therefore erred in striking a cause of action simply because LSI did not proffer concrete damages calculations at this point in the litigation.⁷

3. The Court should decline to follow contrary authorities that fail to acknowledge Civil Code section 3360.

A contrary line of cases has led some non-California courts to describe California law regarding nominal damages for breach of contract as “unsettled.” (See *In re Facebook Privacy Litigation* (N.D.Cal. 2016) 192 F.Supp.3d 1053, 1061 [“California case law

⁷ The trial court cited several key authorities, including Civil Code section 3360 and *Sweet v. Johnson*, but without discussing any of them said “[t]his Court sees no reason to alter the tentative ruling [stating that LSI did not show damages].” (4-AA-1325-1326 & fns. 14-17.)

reveals some uncertainty about whether actual damages are a necessary element for a breach of contract claim.”]; *United States ex rel. Bhansen v. Boston Scientific Neuromodulation Corporation* (D.N.J., Dec. 15, 2017, No. 11-1210) 2017 WL 6403853, at *6 [describing California law regarding nominal damages for a breach of contract as “unsettled” and noting “the California courts have not taken a consistent position on nominal damages”].)

The Court should decline to follow contrary cases, which fail to acknowledge Civil Code section 3360 or *Sweet v. Johnson*. Moreover, they are factually distinguishable.

One such case is *Roberts v. Los Angeles County Bar Assn.* (2003) 105 Cal.App.4th 604, 617, where the plaintiff alleged reputational damage based on two breach of contract claims. The Court of Appeal concluded that the plaintiff failed to show a probability of prevailing because while she alleged reputational damage, she failed to establish how any breach of contract proximately caused that damage. (*Ibid.*) The court noted that damages are not recoverable for mental suffering or reputational injury resulting from breach of contract, and, without referencing Civil Code section 3360 or *Sweet v. Johnson*, stated that actual damage—as opposed to mere nominal damage—is an essential element of a cause of action for breach of contract. (*Ibid.*)

This Court should decline to follow *Roberts*, not only because of its failure to address Civil Code section 3360 and *Sweet v. Johnson* but also because of the unique nature of the claimed contract in *Roberts* and the plaintiff’s apparent failure to

present any cogent arguments. (*Roberts, supra*, 105 Cal.App.4th at pp. 617-618.) Here, there is a direct line of causation between Gunnam's breach of the Agreement by disclosing LSI's confidential information and the harm suffered by LSI through the Delaware litigation.

This Court should also decline to follow *Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 475, in which the Court of Appeal struck the plaintiff's breach of contract claim because he produced no evidence demonstrating the formation of a contract, pleaded no damages compensable in contract, and provided no evidence of any damages. Like *Roberts, Hecimovich* disregards Civil Code section 3360 and *Sweet v. Johnson*. And unlike the claim in *Hecimovich*, LSI's breach of contract claim is premised on an undisputed contract between LSI and Gunnam. LSI also has pleaded and provided evidence of damages flowing from Gunnam's breach. While the Court of Appeal in *Hecimovich* found multiple reasons for striking the breach of contract claim, none of those reasons exists here.

Finally, this Court should not follow *Navellier v. Sletton* (2003) 106 Cal.App.4th 763, 774-776, in which the Court of Appeal, on remand from the Supreme Court (*Navellier, supra*, 29 Cal.4th 82), concluded that the trial court should have stricken the plaintiffs' breach of contract claim under the anti-SLAPP statute because the plaintiffs did not substantiate any damages by an affidavit or other evidence. The Court of Appeal noted the Supreme Court's observation "that a party in

plaintiffs’ position would need to substantiate its claims ‘by appending the alleged agreement to an affidavit stating the facts upon which the defendant’s liability is based.’” (*Id.* at p. 776, quoting *Navellier, supra*, 29 Cal.4th at p. 94.) The Court of Appeal then applied the Supreme Court’s observation to damages and found that while plaintiffs sufficiently pleaded damages, plaintiffs “presented no affidavit or other evidence stating facts with respect to their alleged damages.” (*Navellier, supra*, 106 Cal.App.4th at p. 776.)

But the Supreme Court in *Navellier* made no finding regarding damages—indeed, it did not even reach the second prong of the anti-SLAPP analysis. It simply observed that, in a case specifically alleging breach of an agreement *not to sue*, such an action “presumably would involve at a minimum the pleading and proof of the alleged agreement,” and that requiring plaintiffs to substantiate these claims at the outset “by appending the alleged agreement to an affidavit stating the facts upon which the defendant’s liability is based, as the anti-SLAPP statute provides (§ 425.16, subd. (b)), hardly seems excessive.” (*Navellier, supra*, 29 Cal.4th at p. 94.)

And, like *Roberts* and *Hecimovich*, the Court of Appeal’s finding on remand in *Navellier* fails to cite either Civil Code section 3360 or *Sweet v. Johnson*. Its holding also does not apply to LSI’s breach of contract cause of action, because LSI *has* provided evidence of damages based on Gunnam’s breach through counsel’s declaration, the Delaware litigation complaint, and references to the Delaware litigation throughout the record.

Under the second prong of the anti-SLAPP analysis, LSI need only show its claim has minimal merit. (*Wilson, supra*, 7 Cal.5th at p. 891.) A breach of contract claim has merit even without a showing of actual damages because a plaintiff may recover nominal damages based on the breach itself. That is why the Court of Appeal in *Elation Systems, Inc., supra*, 71 Cal.App.5th 958, citing Civil Code section 3360 and *Sweet v. Johnson*, reversed a judgment notwithstanding the verdict as to a breach of contract claim. It reasoned that although the trial court “correctly concluded that substantial evidence did not support the jury’s finding of harm of \$10,000 in damages for that harm, it should have awarded [plaintiff] nominal damages on this cause of action.” (*Id.* at pp. 965-968.) Because the availability of nominal damages is sufficient to render a breach of contract claim meritorious, LSI has shown minimal merit as to damages for purposes of the anti-SLAPP analysis.

4. Because injunctive relief is available for breach of a confidentiality obligation, LSI did not have to show any damages to establish a prima facie case.

LSI also need not show actual damages at the pleadings stage because LSI is entitled to the injunctive relief requested in its complaint. (1-AA-41.) “Equity will intervene to restrain an employee from divulging confidential information gained in the course of his employment or using such information to his employer’s prejudice.” (*Alex Foods, Inc. v. Metcalfe* (1955) 137 Cal.App.2d 415, 424.) Such relief is appropriate where a defendant possesses confidential information and has misused

the information in the past. (*Central Valley General Hospital v. Smith* (2008) 162 Cal.App.4th 501, 527.) The fact that Gunnam possesses LSI's confidential information and previously has disclosed it is sufficient to establish the threat of future disclosure, justifying injunctive relief. (See *ibid.*)⁸

B. LSI Presented Sufficient Evidence To Support An Inference That Gunnam Breached The Agreement By Posting The Scribd Documents, Or Causing Them To Be Posted.

To prevail on a breach of contract cause of action, a plaintiff must prove: (1) the contract; (2) plaintiff's performance of the contract or excuse for nonperformance; (3) defendant's breach; and (4) the resulting damage to plaintiff. (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.)

There is no dispute that the Agreement was an existing contract between LSI and Gunnam, or that LSI performed its contractual duty by employing Gunnam. LSI has addressed the damages element above (§ III.A., *ante*). The only remaining element LSI must demonstrate is Gunnam's breach of the Agreement by disclosing LSI's confidential information.⁹ (At this

⁸ An appellate court has discretion to consider an issue of law raised for the first time on appeal if the issue does not depend on disputed facts. (*Parada v. East Coast Transport, Inc.* (2021) 62 Cal.App.5th 692, 700, fn. 3.)

⁹ Because the trial court based its prong two analysis entirely on its view that LSI had not submitted any admissible evidence of resulting damage, it did not reach the merits of any other prong two issues. (4-AA-1322-1323.) Nevertheless, this Court has discretion to decide prong two in the first instance because it

point, LSI does not challenge the trial court’s conclusion that, as currently pleaded, LSI’s claim for breach of the covenant of good faith and fair dealing duplicates its claim for breach of contract and is subject to the same prong two analysis. (4-AA-1322-1323.))

1. The Scribd Documents were confidential.

The evidence in the record demonstrates the Scribd Documents contained LSI’s confidential information. The “Read Channel Overview Part 1” document, on which TexasLDPC relied in the Delaware action, included internal LSI documents authored by Gunnam and labeled “LSI Confidential” and “Internal Use Only.” (2-AA-308, e.g., ¶¶ 53, 56, 60, 106, 108.) LSI therefore has made a sufficient showing that the Scribd upload included confidential LSI documents, such that their disclosure would constitute a violation of the Agreement.¹⁰

independently reviews the question of whether LSI established a probability of prevailing. (*Collier v. Harris* (2015) 240 Cal.App.4th 41, 58.) We respectfully urge the Court to do so in order to avoid the likely outcome of a second appeal regardless of which party prevails on remand. (See *Wallace v. McCubbin* (2011) 196 Cal.App.4th 1169, 1195, disapproved on another point in *Baral, supra*, 1 Cal.5th at p. 396, fn. 11 [deciding prong two despite the trial court’s failure to reach it and concluding it would be more efficient for the Court of Appeal to resolve the matter because the parties had different views as to how prong two should be approached].)

¹⁰ Gunnam noted in the anti-SLAPP motion that the same scribd.com hyperlink was publicly identified in another patent litigation against LSI months prior. (1-AA-66-67.) This observation is immaterial. Whether LSI was on notice that the

2. **LSI presented ample circumstantial evidence that Gunnam made or caused the Scribd posting.**
 - a. **Circumstantial evidence supporting a reasonable inference is sufficient to establish a prima facie case for purposes of the prong two analysis.**

“Prima facie evidence is that which will support a ruling in favor of its proponent if no controverting evidence is presented.” (*Evans v. Paye* (1995) 32 Cal.App.4th 265, 280, fn. 13, citations omitted.) “It may be slight evidence which creates a reasonable inference of fact sought to be established but need not eliminate all contrary inferences.” (*Ibid.*) A plaintiff need not present direct evidence to establish a prima facie case. Evidence supporting a reasonable inference may suffice. (*Jenni Rivera Enterprises, supra*, 36 Cal.App.5th at p. 781.)

Because Gunnam flatly denies any involvement in the Scribd posting, LSI’s case is necessarily based on inferences from circumstantial evidence. This circumstantial evidence includes TexasLDPC’s patent infringement lawsuit against LSI, which used the information disclosed in the Scribd Documents, and Gunnam’s repeated breaches of his confidentiality agreement dating back to 2008, which culminated in taking LSI’s confidential documents on the eve of his resignation and delivering them to counsel for TexasLDPC.

Scribd Documents were publicly available and whether the Scribd Documents contained confidential information are different inquiries.

b. LSI's circumstantial evidence.

(1) LSI showed that Gunnam readily and willingly breached confidentiality agreements.

LSI's evidence showed that Gunnam repeatedly breached the Agreement—and other confidentiality agreements—while he was an LSI employee:

- In a May 2008 email, Gunnam disclosed confidential information about his work on LSI's products to Texas A&M. (3-AA-847.)
- Also in May 2008, Gunnam forwarded confidential patent applications filed by Texas A&M to other LSI employees. (3-AA-839.) Gunnam was aware the patent applications were still confidential at the time. (3-AA-893:6-894:3.) In January 2009, Gunnam disclosed confidential source code from Texas A&M to other LSI employees, after he placed the source code in an LSI directory, and encouraged them to review and evaluate it. (3-AA-941-944.)
- In July 2008, Gunnam published a technical document containing LSI proprietary information. (3-AA-793.) Though Gunnam promised to withdraw the document from public domain, he instead made the document available on a non-LSI website and forwarded the link to an outside party. (*Ibid.*) Following LSI's investigation, Gunnam executed a memorandum acknowledging his wrongdoing. (3-AA-849-851.)

- In a December 28, 2010 email, Gunnam disclosed LSI confidential information to Marvell Semiconductor, his prior employer and an LSI competitor. (3-AA-824.)
- Gunnam had also disclosed Texas A&M’s confidential information to his previous employer, Marvell Semiconductor. In a January 2008 email to Marvell Semiconductor, Gunnam admitted he “made a wrong judgment when [he] disclosed some of the Texas A&M confidential material in Marvell presentations and decoder software without the written permission from Texas A&M University.” (3-AA-826.)
- Finally, Gunnam violated the Agreement when he retained confidential documents after he resigned from LSI and gave the documents to TexasLDPC, via Fish & Richardson. (3-AA-896:23-898:24.) Gunnam also provided to TexasLDPC emails he sent to LSI in April 2012, January 2013, and January 2014, after he resigned. (2-AA-326-328 ¶¶ 67-82.) Gunnam had designated the emails as “LSI Confidential.” (3-AA-800-802, 804-807.)

Gunnam’s repeated pre- and post-resignation violations show his readiness to violate the Agreement, and are therefore circumstantial evidence that the Agreement would not have restrained him from making or causing the Scribd posting.

(2) LSI showed that the Scribd Documents included material to which Gunnam had access.

LSI also proffered evidence that Gunnam accessed LSI's TWIKI server on March 2, 2011, the week before he resigned, reviewing documents relating to the "McLaren" and "Spyder" read channel architectures. (3-AA-996 ¶ 7.)

The Scribd Documents—in particular, the "Read Channel Overview Part 1" PDF—included internal LSI documents created by Gunnam, which described aspects of the McLaren read channel architecture that Gunnam worked on at LSI. (2-AA-320-324 ¶¶ 53-60.) The Scribd Documents thus included the types of documents Gunnam accessed on March 2, 2011. (3-AA-996 ¶ 7.)

(3) LSI showed that Gunnam had a motive to breach the Agreement by disclosing LSI's confidential information.

LSI demonstrated that as a named inventor of the patents asserted in the Delaware Litigation, Gunnam will directly benefit from any licensing revenue TexasLDPC generates from that case because a portion is paid to Texas A&M. (3-AA-910:17-916:12.) He therefore had a clear motive to post the Scribd Documents: A successful infringement lawsuit against LSI likely would increase his royalties.

Gunnam also indirectly benefits if TexasLDPC succeeds in its lawsuit against LSI, since Yarlagadda is TexasLDPC's majority owner and Gunnam and Yarlagadda share assets. (3-AA-902:10-903:25, 937:14-16.)

The evidence points to Gunnam, rather than anyone else, as the person with an obvious motive to cause the Scribd upload, which made the documents available to TexasLDPC in a way that would conceal their origin with Gunnam.

(4) LSI showed the close timing of events leading to the Scribd disclosure and TexasLDPC’s subsequent lawsuit against LSI.

The Scribd Documents were uploaded on December 18, 2017. (3-AA-957 ¶ 8.) It was just days later that TexasLDPC employee Osso Vahabzadeh ran a Google search to gather “evidence of how LSI and its parent Broadcom were using LDPC decoders in hard disk drive controller chips” and supposedly “discovered” the Scribd Documents. (2-AA-439 ¶ 6.) TexasLDPC then sued LSI for patent infringement, relying on the Scribd Documents and other LSI confidential information Gunnam provided to TexasLDPC in support of its claims. (2-AA-320-325 ¶¶ 53-60, 63.)

The close timing of the upload and claimed “discovery” strongly suggests that Vahabzadeh, or whoever instructed him to run the search, knew the Scribd Documents were waiting to be “found.” That could well have been learned from someone connected with the upload who wanted the documents found—Gunnam.

C. Direct Evidence Of Gunnam’s Multiple Other Breaches Of The Agreement Also Establishes A Prima Facie Case That Satisfies Prong Two.

LSI proffered direct evidence that Gunnam violated the Agreement in other ways.

Gunnam has admitted that he violated Section 4 of the Agreement by retaining emails containing LSI proprietary information after he resigned.¹¹ (3-AA-896:12-897:22 [testimony regarding: 8/27/2009 email printout], 853-854 [8/27/2009 email printout], 905:10-17, 906:8-909:2 [testimony regarding 12/21/2010 email printout], 856-859 [12/21/2010 email printout].) Gunnam’s delivery of the retained emails to TexasLDPC is indisputable evidence that he retained them. The delivery also constituted a separate violation of Section 1 of the Agreement.

Emails LSI obtained in discovery show that Gunnam violated Section 1 of the Agreement by giving TexasLDPC, via Fish & Richardson, additional emails he sent to LSI after he resigned—which he designated as “LSI Confidential.” (See Statement of Facts, § D.3., *ante*.)

Finally, other emails LSI obtained in discovery show that while Gunnam was still an LSI employee, he violated Section 1 of the Agreement by disclosing confidential information to his

¹¹ As noted above (Statement of Facts, § E.4., *ante*), the trial court granted LSI’s motion to seal portions of its opposition to the anti-SLAPP motion. The order included all the confidential documents noted in this section except one of the emails Gunnam retained after he resigned. (4-AA-1781.)

former employers, and violated Section 10 of the Agreement by encouraging LSI employees to review and use confidential information from Texas A&M. (See Statement of Facts, §§ C.2. & C.3., *ante.*)

Taken together, this evidence shows multiple violations that are themselves independently actionable, and that only came to light by virtue of discovery in this litigation.



Both circumstantial and direct evidence amply establish a *prima facie* case that Gunnam breached the Agreement. LSI therefore met its prong two burden.

CONCLUSION

Over the course of a decade, Gunnam repeatedly demonstrated his utter disregard for confidentiality obligations owed not just to LSI, but to others as well. None of his conduct as it pertains to the present case is protected under the anti-SLAPP statute. Even assuming that any of his conduct were protected, there is more than enough evidence on the merits to establish a prima facie case.

The Court should reverse and direct denial of Gunnam's anti-SLAPP motion.

Date: April 15, 2022

MCKOOL SMITH HENNIGAN

Kirk D. Dillman

Alan P. Block

Makenna A. Miller

GREINES, MARTIN, STEIN &
RICHLAND, LLP

Robin Meadow

Laura G. Lim

By: /s/ Robin Meadow

Plaintiff, Appellant, and Cross-
Respondent, LSI Corporation

CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this **Appellant's Opening Brief** contains **10,301 words**, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: April 15, 2022

/s/ Robin Meadow

EXHIBIT 1
EMPLOYEE INVENTION AND CONFIDENTIAL
INFORMATION AGREEMENT

Employee Invention and Confidential Information Agreement

In consideration and as a condition of my employment, or continued employment, by LSI CORPORATION (hereinafter the "Company") and the compensation paid therefor:

1. **Confidentiality.** Except as authorized by the Company in writing, I agree to keep confidential and not to disclose, or make any use of, either during or subsequent to my employment, all inventions, trade secrets, proprietary or confidential information, works of authorship or proprietary matter that relate to the actual or demonstrably anticipated business, research, development, product, services, devices or activity of the Company, any of its clients, customers, consultants, licensees or affiliates (hereinafter "Others") or the Company's employees, which I may produce, obtain or otherwise acquire during the course of my employment. For the purposes of this Agreement, all of the foregoing items, which I am bound to maintain as confidential and not make unauthorized use of, or with respect to which I have a duty or obligation, shall be referred to in this Agreement, individually and collectively as "Proprietary Information."
2. **Examples of Proprietary Information.** Examples of Proprietary Information include, without limitation, any information, whether in oral, graphic, electronic or any other media or form, and other materialized forms of any intangibles within the foregoing:
 - a. Technical information includes, without limitation, any data or information relating to any use, process, methods, materials, test results, formulas, models, flow charts, software in various stages of development, computer programs or routines (in source code, object code or embedded format), hardware, firmware, middleware or software configurations and combinations thereof, trade secrets, know how, conceptions, ideas, innovations, discoveries, inventions, techniques, algorithms, technical reports, specifications, drawings, diagrams, documentation, translations, text and other works of authorship, databases, designs, symbols, names, procedures, processes, technical improvements, prototypes, samples, copies, research projects, works in process, future developments, scientific, engineering, manufacturing, and processing information, techniques, present or future products, devices, prototypes, net lists, mask works, test methodologies, hardware development tools, materials that document design or design processes (including failed designs), or that document research or testing (both design, processes and results), research, processes, technology development programs, and research and development procedures.
 - b. Business information includes, without limitation, any data or information relating to any marketing and development plans, price lists, pricing policies, business plans, information relating to customers' and/or suppliers' identities, characteristics and agreements, financial information and projections, marketing, financial, personnel matters (such as employee names, job descriptions, capabilities, contact information and organization charts), sales, marketing techniques, suppliers, pricing, customers, investors, or businesses.
3. **Exceptions To Confidentiality.** Proprietary Information shall be kept confidential by you unless it can be shown by competent proof that such information:
 - a. was, prior to the time of the commencement of your employment, already known to you, as shown by written records in your possession; or
 - b. was at the time of disclosure, or subsequently became, through no fault of yours, known to the general public through publication or otherwise; or
 - c. was, subsequent to disclosure to you, lawfully and independently received by you from a third party who had the right to disclose it without restriction.
4. **Conflicting Employment; Return of Confidential Material.** I agree that, without the prior written consent of the Company, during my employment with the Company I will not engage in any other employment, occupation, consulting or other activity relating to the actual or demonstrably anticipated business of the Company or which would otherwise conflict with my obligations to the Company. If my employment with the Company terminates for any reason I agree to promptly surrender and deliver to the Company all records, drawings, documents and data, in electronic or any other storage media or form pertaining to or containing any Proprietary Information as well as all tangible property of the Company that I have in my custody or control. Further, I will not retain copies of any Proprietary Information, whether in tangible or electronic form.
5. **Assignment of Rights in Proprietary Information.** I hereby assign and transfer and agree to assign and transfer to the Company my entire right, title and interest in all Proprietary Information, conceived solely by me or jointly with Others or with the Company's employees during the period of my employment with the Company. This Agreement does not require assignment of any invention excluded from assignment by Section 2870 of the California Labor Code (hereinafter "Section 2870").
6. **Disclosure of Proprietary Information.** I agree that in connection with all Proprietary Information:
 - a. I will disclose all Proprietary Information upon conception or creation in writing to my immediate supervisor, with a copy to a patent attorney in the Company's Legal Department, regardless of whether I believe the invention is protected by Section 2870, in order to permit the Company to claim rights to which it may be entitled under this Agreement. Such disclosure shall be provided to and received in confidence by the Company;



- b. Upon the Company's request, I will promptly execute a written assignment to the Company of all right, title, and interest to any Proprietary Information and I will preserve the aforementioned as confidential information of the Company;
- c. Upon the Company's request and at its expense, I agree to assist the Company (or its nominee) during and at any time subsequent to my employment in every reasonable way to obtain for its own benefit patents, copyrights, mask work rights or other proprietary interest or protections for such assignable Proprietary Information in any and all countries, which Proprietary Information shall be and remain the sole and exclusive property of the Company (or its nominee) regardless of whether patented, copyrighted, registered or otherwise protected; and
- d. I specifically acknowledge that any computer program, any programming documentation and any semiconductor chip products or mask works fall within the scope of this Agreement and that the Company owns all rights comprised in the registration or copyrights of such work.
7. Execution of Documents. In connection with Paragraph 6, upon the Company's (or its nominee's) request and at its expense, I agree to execute, acknowledge and deliver to the Company (or its nominee) all such documents, including without limitation applications for patents, registrations, assignments of invention and patents, assignments of copyrights and/or mask works to be issued or registered therefor, which the Company deems necessary or desirable to protect or register its interest in the Proprietary Information in any and all countries or to otherwise vest title thereto in the Company (or its nominee).
8. Prior Inventions. It is understood that all inventions, if any, patented or unpatented, which I made prior to my employment by the Company, are excluded from the scope of this Agreement. To preclude any uncertainty, I have attached with this Agreement a complete list of all of my prior inventions. For all inventions which have been made public, such list shall be attached to this form and include the numbers of all patents and patent applications. For all inventions which have not been made public, such list shall be sealed in an envelope and be maintained in a sealed state by the Company's Human Resources Department and include a brief description of all unpatented inventions that are not the property of a previous employer. I represent and covenant that the list is complete and that if no list is attached or provided to the Company's Human Resources Department, as appropriate, I have no such prior inventions. I hereby certify that I have no continuing obligations with respect to assignment of inventions to any previous employer. I understand that any improvements, whether subject to patent, copyright or other protection, made on the listed inventions after the commencement of my employment by the Company are assigned or are to be assigned to the Company to the extent that such improvements are covered by the provisions of Paragraph 5 of this Agreement.
9. Other Obligations. I acknowledge that the Company, from time to time, may have agreements with other persons or with the U.S. government, or agencies thereof, which impose obligations or restrictions on the Company regarding Proprietary Information made in the course of that work or regarding the confidential nature of such work. I agree to be bound by all such obligations and restrictions and to take all action necessary to discharge the obligations of the Company thereunder.
10. Trade Secrets, Property Rights and Confidential Information of Others. I represent that neither my performance of any of the terms of this Agreement nor my status as an employee of the Company will breach any agreement made prior to my employment with the Company, including agreements to keep in confidence or in trust any confidential information belonging to any of my previous employers or any other person. I agree not to enter into any agreement, either written or oral, in conflict with this Agreement. I will not disclose to the Company, nor induce the Company to receive or use, any confidential information belonging to, or designated as confidential by any of my previous employers or by any other person.
11. Solicitation. I will not during my employment or within one year after it ends, without the express written consent of the Company directly or indirectly solicit or induce any employee to terminate or alter his or her relationship with the Company.
12. Terms of Employment. I understand and agree that I am not being employed by the Company for any specified period of time and that either I or the Company may terminate my employment with the Company at any time for any reason, with or without cause.
13. Modification. This Agreement may not be amended, in whole or in part, except by a written instrument signed by both parties hereto.
14. Entire Agreement. I acknowledge receipt of this Agreement, and agree that with respect to the subject matter hereof it is my entire agreement with the Company, superseding any previous oral or written understandings or agreements with the Company or any officer or representative thereof.
15. Severability. If any provision of this Agreement shall be held to be illegal or unenforceable, such provision shall be modified so as to be legal and enforceable in a manner that is as consistent with the original intent as possible, or if such is not possible it shall be severed from this Agreement and this Agreement shall not fail on account thereof, but shall otherwise remain in full force and effect.
16. Successors and Assigns. This Agreement shall be binding upon my heirs, executors, administrators or other legal representatives and is for the benefit of the Company, its subsidiaries and successors in interest or assigns.

17. Export Regulations Compliance. I acknowledge and understand that any technology subject to the U.S. export regulations or related to defense articles on the U.S. Munitions List ("Restricted Technology"), to which I have access or which is disclosed to me in the course of employment by the Company, is subject to export control under either the Department of Commerce or the International Traffic in Arms Regulations. Unless having obtained prior written authorization from an officer of LSI Corporation, I agree not to: (a) export or re-export such Restricted Technology to any of the countries listed below or to any nationals of these countries; nor (b) export the product of any Restricted Technology, directly or indirectly, to any of the countries listed below or to any nationals of these countries. The list below may not be exhaustive and is merely provided as an aid. I understand that the intent is to comply with all export regulations at all times.

Albania	Iraq	Russia
Armenia	Kazakhstan	Rwanda
Azerbaijan	Kyrgystan	Serbia/Montenegro
Belarus	Laos	Sudan
Bulgaria	Latvia	Syria
Cambodia	Libya	Tajikistan
China (PRC)	Lithuania	Turkmenistan
Cuba	Moldova	Ukraine
Estonia	Mongolia	Uzbekistan
Georgia	North Korea	
Iran	Romania	Vietnam

18. Governing Law. This Agreement shall be governed by the laws of the State of California.

LSI CORPORATION

BY: *Kristine Alfonso*
 NAME: *KRISTINE ALFONSO*
 TITLE: *STAFFING ADMIN*
 DATE: *1/21/08*

EMPLOYEE

EMPLOYEE-PRINT NAME: *KIRAN GUNNAM*
 EMPLOYEE-SIGNATURE: *K. Kiran Kumar*
 DATE: *1/21/08*

List of inventions is attached.

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On **April 15, 2022**, I served the foregoing document described as: **Appellant's Opening Brief** on the parties in this action by serving:

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Executed on **April 15, 2022**, at Los Angeles, California.

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



Rebecca E. Nieto

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CA 6th District Court of Appeal
Court Name

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H049521
Case Number

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McKool Smith Hennigan		0850df63-d4c0-429a-9989-a680830cd870	
Alan Block	ablock@mckoolsmithhennigan.com	e-Serve	04-15-2022 11:29:34 AM
McKool Smith Hennigan		59169e91-ec2f-4364-bb0f-fa4cda40d107	

Makenna Miller	mmiller@mckoolsmithhennigan.com	e-Serve	04-15-2022 11:29:34 AM
McKool Smith Hennigan, P.C.		8d1069c4-68ea-47cd-9c4f-da9bc4a48086	

TrueFiling created, submitted and signed this proof of service on my behalf through my agreements with TrueFiling.

The contents of this proof of service are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

04-15-2022

Date

/s/Rebecca Nieto

Signature

Meadow, Robin (51126)

Last Name, First Name (Attorney Number)

Greines Martin Stein & Richland LLP

Firm Name