



## **(PS) CSPC Dopphen Corporation v. Hu**

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1 UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

CSPC DOPHEN CORPORATION,

Plaintiff, v. ZHIXIANG HU,

Defendant.

No. 2:17-cv-1895 MCE DB PS

### ORDER AND FINDINGS AND RECOMMENDATIONS

Defendant and counterclaimant, Dr. Zhixiang Hu, Ph.D., is proceeding in this matter pro se. (ECF No. 68.) Accordingly, this action has been referred to the undersigned pursuant to Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Pending before the undersigned are motion for leave for alternative service of process, plaintiff CSCP Dopphen Corporation partial motion to dismiss second amended counterclaim, and counter-defendant CSPC . (ECF Nos. 218, 227, 236.) For the reasons explained below, process is granted. Also, the undersigned recommends that the motions to dismiss be granted without further leave to amend.

BACKGROUND Plaintiff CSPC Dopphen Corporation, , commenced this action on September 11, 2017. (ECF No. 1.) Plaintiff filed a third amended complaint on May 7, 2019. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

2 (ECF No. 190.) Therein, plaintiff alleges that CSPC Dopphen is a pharmaceutical and development company based in Sacramento, California. (Third Am. Compl. (ECF No. 190) at 2. 1

Plaintiff hired defendant Dr. Hu Laboratory. (Id. at 3.) Dr. Hu signed a Non-Disclosure Agreement and a Policy of Conflict of Interest as part of that employment. (Id. at 3-4.) However, on April 24, 2014, Dr. Hu incorporated a competing entity named Dopphen Biomed, Inc., with the same address as CSPC Dopphen. (Id. at 4.) Dr. Hu also established a bank Id. at 5.) And in April of 2017, Dr. Hu filed an Investigational New Drug application with the Food and Drug Administration (Id.) Plaintiff terminated Dr. Hu employment on July 21, 2017. (Id. at 6.) Based on these allegations the third



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amended complaint asserts causes of action for breach of contract, breach of the duty of loyalty, violation of the Defend Trade Secrets Act, 18 U.S.C. § 1832(a)(1), violation of the Lanham Act, 15 U.S.C. § 1125(a), conversion, violation of the California Comprehensive Computer Data Access and Fraud Act, California Penal Code § 502, unfair competition, and defamation. (Id. at 7-16.) On November 24, 2019, Dr. Hu filed a motion seeking leave for alternative service of process on several counter defendants. (ECF No. 218.) On December 6, 2019, Dr. Hu filed a motion for a seven-day extension of time to file a second amended counterclaim. 2

(ECF No. 223.) Dr. Hu filed a second amended counterclaim on December 10, 2019. (ECF No. 224.) On December 23, 2019, plaintiff filed a partial motion to dismiss pursuant to Rule 12(6) and to strike pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. (ECF No. 227.) On January 10, 2020, Dr. Hu filed an opposition to the motion to dismiss and plaintiff filed an opposition to motion for leave for alternative service of process on the counter- /// 1 Page number citations such as this one are to the page system and not to page numbers assigned by the parties.

2 nunc pro tunc. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

3 defendants. (ECF Nos. 230 & 231.) The parties filed replies on January 17, 2020. (ECF Nos. 232 & 234.) On January 21, 2020, counter-defendant CSPC Pharmaceutical Group Limited filed a motion to dismiss for lack of jurisdiction pursuant to Rule 12(b)(2). (ECF No.

236.) Dr. Hu filed an opposition on February 28, 2020. (ECF No. 249.) CSPC Limited filed a reply on March 6, 2020. (ECF No. 251.)

### STANDARDS I. Legal Standards Applicable to Motions to Dismiss Pursuant to Rule 12(b)(2)

trial, to dismiss the complaint for lack of personal jurisdiction. *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977) here a defendant moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is appropriate. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) in the absence of an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts. *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). II. Legal Standards Applicable to Motions to Dismiss Pursuant to Rule 12(b)(6) The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of the complaint. , 720 F.2d 578, 581 (9th Cir. 1983). *Hana Financial, Inc. v. Hana Bank*, 500 F.Supp.2d 1228, 1232 (C.D. Cal. 2007). *Balistreri* , 901 F.2d 696, 699 (9th Cir. 1990). A party *Bell Atl. Corp. v. Twombly*, 550 U.S.

allows the court to draw the reasonable inference that the defendant is liable for the misconduct *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). /// 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28



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4 In determining whether a counterclaim states a claim on which relief may be granted, the court accepts as true the allegations in the counterclaim and construes the allegations in the light most favorable to the nonmoving party. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). In general, pro se pleadings are held to less stringent standards than formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). However, the court need not assume the truth of legal conclusions cast in the form of factual allegations. *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). unadorned, the defendant-unlawfully-harmed-Iqbal, 556 U.S. at 678. A

ple *Twombly*, 550 U.S. at 555; see also *Iqbal*, 556 U.S. at 676 ted by mere conclusory nonmoving party

*Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983). In ruling on a motion to dismiss brought pursuant to Rule 12(b)(6), the court is permitted to consider material which is properly submitted as part of the counterclaim, documents that are not physically attached if their authenticity is not contested and the counterclaim necessarily relies on them, and matters of public record. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001). III. Legal Standards Applicable to Motions to Strike Pursuant to Rule 12(f)

ed. R.

money that must arise from litigating spurious issues by dispensing with those issues prior to trial[.] *Whittlestone, Inc. v. Handi-Craft, Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (quoting 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

5 *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993)), *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 114 (1994); see also *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983).

A motion to strike is well- *LeDuc v. Kentucky Central Life Ins. Co.*,

814 F.Supp. 820, 830 (N.D. Cal. 1992). Impertinent allegations are those that are not responsive or relevant to issues involved in the action and which could not be admitted as evidence in the litigation. *Fantasy, Inc.* includes allegations that cast a cruelly derogatory light on a party or other person. *Talbot v.*

*Robert Mathews Distributing Co.*, 961 F.2d 654, 665 (7th Cir. 1992). Ultimately, whether to grant a motion to strike applying these standards lies within the sound discretion of the district court. *Fantasy, Inc.*, 984 F.2d at 1527; see also *California Dept. of Toxic Substances Control v. Alco Pacific, Inc.*, 217 F.Supp.2d 1028, 1032-33 (C.D. Cal. 2002). 3

ANALYSIS I. Motion for Alternative Service Dr. Hu seeks permission for alternative service of process on counter-defendants Yingui Li, Jinxu Wang, Jumin Sun, and Donghchen Cai who are



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alleged to reside in China. 4

(Alt. Serv. Mot. (ECF No. 218) at 3.) director of board of CSPC- No. 224) at 2.) Jinxu Wang - Id. at 3.) Jumin

Sun Id. Chairman of CSPC-Dopphen, CSPC Holding Limited . . . and CSPC Limited Id.) The motion

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3 Rule 12(f) motions are generally viewed with disfavor and not ordinarily granted. *Bureerong v. Uvawas*, 922 F.Supp. 1450, 1478 (C.D. Cal. 1996). A motion to strike should therefore not be granted unless it is absolutely clear that the matter to be stricken could have no possible bearing on the litigation. *Lilley v. Charren*, 936 F.Supp. 708, 713 (N.D. Cal. 1996). 4 The motion also sought alternative service on CSPC Limited, however, CSPC Limited has appeared in this action and moved to dismiss, rendering the request moot. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

6 is brought pursuant to Rule 4(f) of the Federal Rules of Civil Procedure. (Alt. Serv. Mot. (ECF No. 218) at 2.)

Rule 4(f) of the Federal Rules of Civil Procedure provide the means by which a plaintiff may serve an individual located outside of the United States. See Fed. R. Civ. P. 4(f). Under Rule 4(f)(3), the court Fed. R. Civ. Pro. 4(f)(3). Other than the requirement that the method of service not be proscribed by international agreement, the rule imposes no limitation on the court s authority to authorize alternative means of service. *Brown v. China Integrated Energy, Inc.*, 285 F.R.D. 560, 563 (C.D. Cal. 2012). as court-directed and not prohibited by an international agreement, service of process ordered

*Rio Properties, Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002). In this regard, is neither a last resort nor extraordinary relief but is merely one means among several which enables service of process on an international defendant. Id. at 1015. Here, Dr. Hu alleges that the foreign counter-

service to obtain company/personal info

218) at 3.) In this regard, the undersigned finds that Dr. Hu serve an el Rio, 284 F.3d at 1016. Plaintiff that the undersigned found in a prior order that service on these counter-defendants And that is true. See ECF No. 124 at 18. However, that was in the context of analyzing the counter- due to improper service of process where Dr. Hu had not sought leave for alternative service of process pursuant to Rule 4(f)(3). Dr. Hu now seeks leave for alternative service of process under Rule 4(f)(3). Plaintiff 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28



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7 Hague Convention is certainly no *ba* Xilinx, Inc. v. Godo Kaisha IP Bridge 1, 246 F.Supp.3d 1260, 1264 (N.D. Cal. 2017) (citing *Richmond Techs., Inc. v. Aumtech Bus. Sols.*, No. 11-cv- 02460- authorized alternativ ); see also *Brown*, 285 F.R.D. at 565 These courts rejected contentions similar to those made by *China Integrated*, i.e., that the Hague Convention provided the only means to effect service on a defendant residing in China. However,

[e]ven if facially permitted by Rule 4(f)(3), a method of service of process must also comport with constitutional notions of due process. To meet this requirement, the method of service crafted by the circumstances, to apprise interested parties of the pendency of the

*Rio*, 284 F.3d at 1016-17 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Here, Dr. Hu seeks to , counsel for the plaintiff CSPC Dopphen. declaration s -

defendants. (Wilson Decl. (ECF No. 23101) at 2.) However, ordered service through United States-based counsel even when counsel has refused to accept

*Products and Ventures International v. Axis Stationary (Shanghai) Ltd.*, CASE NO. 16-cv-0669 YGR, 2017 WL 1378532, at \*4 (N.D. Cal. Apr. 11, 2017). Regardless of whether counsel is authorized to accept service on behalf of the counter- defendants, in this action counsel for plaintiff has also repeatedly appeared on behalf of the counter-defendants. (See ECF Nos. 27, 95, 96, 154, 236.) ounsel has also served as the foreign counter- -based counsel. ervice upon a foreign defendant s United States-based counsel is a common form of service ordered under Rule   
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8 4(f)(3). *Richmond Technologies, Inc. v. Aumtech Business Solutions*, No. 11-2559 MMM (PLAx), 2011 WL 2607158, at \*13 (N.D. Cal. July 17, 2011). Accordingly, for the reasons stated above, motion for alternative service of process will be granted. II. Plain second amended counterclaims for defamation, declaratory relief regarding membership interest, grand larceny/theft by conversion, fraud and intentional misrepresentation, fraud in the offer of securities in interstate transactions, fraud in connection with the sale of securities, and retaliation. - *Id.* at 28.) A. Defamation (Third Cause of Action) In order to allege a prima facie claim for defamation, a party must allege facts that establish the existence of and that (e) has *Taus v. Loftus*, 40 Cal.4th 683, 720 (Cal. 2007). Publication is communication of the allegedly defamatory [defamed party] *Shively v. Bozanich*, 31 Cal.4th 1230, 1242 (Cal. 2003). Here, the second amended counterclaim for defamation simply alleges and efamed Dr. Hu writing to government agency NIH,

- other false and defamatory Sec. Am. CC (ECF No. 224) at 28.) Elsewhere in the second amended counterclaim, Dr. Hu

to do business with *Id.* at 21.)   
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9 These allegations lack the necessary specificity. In this regard, none of these allegations clearly allege: (1) what allegedly defamatory statement was made; (2) when it was made; (3) to whom it was made; and (4) that the statement had a natural tendency to injure or cause special damages.

Accordingly, plaintiff this counterclaim should be granted. B. Declaratory Relief (Fifth Cause of Action) A claim for

. . . declaratory relief operates prospectively to declare future rights, rather than to redress past wrongs. If a party has a fully matured cause of action for money, the party must seek the remedy of damages, and not pursue a declaratory relief claim. This is because declaratory relief is intended to offer guidance in shaping future conduct where no such opportunity is present. Consequently, where a party can allege a substantive cause of action, a declaratory relief claim should not be used as a superfluous second cause of action for the determination of identical issues subsumed within the first. *Public Service Mut. Ins. Co. v. Liberty Surplus Ins. Corp.*, 51 F.Supp.3d 937, 950 (E.D. Cal. 2014) (citations and quotations omitted); see also *Britz Fertilizers, Inc. v. Bayer Corp.*, 665 F.Supp.2d 1142, 1173 (E.D. Cal. 2009). Here, Dr. Hu in CSPC Limited pursuant to the transfer of funds from Dr. Hu to CSPC Limited, and the ownership in CSPC- s noted declaratory relief is intended to offer guidance in shaping future conduct so as to avoid *Public Service Mut. Ins. Co.*, 51 F.Supp.3d at 950. Where, as matured *Id.*) Moreover, the second amended counterclaim asserts several counterclaims against plaintiff for money and for which plaintiff has not sought dismissal. Specifically, plaintiff has not breach of contract, violation of California Business & Professions Code § 17200, et seq., failure to pay wages and other benefits, and breach of fiduciary duty. A declaratory relief claim would be a superfluous /// 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

10 cause of action for the determination of identical issues subsumed within these remaining causes of action. should also be granted. C. Grand Larceny/Theft by Conversion (Seventh Cause of Action) conversion under California law, a [defendant] must

*Firoozye v. Earthlink Network* [counterclaim] is stated for money had and received if the [plaintiff] is indebted to the [defendant]

in a certain sum for money had and received by the [plaintiff *Murphy v. American General Life Ins. Co.*, 74 F.Supp.3d 1267, 1280 (C.D. Cal. 2015) (quoting

*Gutierrez v. Girardi*, 194 Cal.App.4th 925, 937 (2011)). Here, Wang, as CEO of CSPC- Dopphen, offered Dr. Hu to purchase 500,000 IPO incentive stock shares of CSPC Limited (Sec. Am. CC (ECF No. Jumin Sun [later] informed Dr. Hu that the funds had been received by *Id.*)

However, absent from these assertions is an allegation that plaintiff CSPC Dopphen possessed any money belonging to Dr. Hu. And, as alleged by the second amended counterclaim, counter-defendant CSPC Limited is a Chinese Corporation, while plaintiff CSPC Dopphen is a separate entity incorporated in New Jersey. (*Id.* not plaintiff CSPC Dopphen. (*Id.* at 3.) Accordingly D. Claims of



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Fraud and Intentional Misrepresentation (Eighth Cause of Action); Fraud in the Offer of Securities (Ninth Cause of Action); and Fraud in Connection with the Sale of Securities (Tenth Cause of Action)

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11 the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally 5

Fed. R. Civ. P. 9(b).

discovery of unknown wrongs, to protect [defendants] from the harm that comes from being

subject to fraud charges, and to prohibit plaintiffs from unilaterally imposing upon the court, the *Bly Magee v. California*, 236 F.3d 1014, 1018 (9th Cir. 2001) (quoting *In re Stac Elec. Sec. Litig.*, 89 F.3d 1399, 1405 (9th Cir. 1996)). Circumstances that must be stated with particularity pursuant to Rule 9(b) include the content of the false representations as well as the identities of the *Sanford v. Memberworks, Inc.*, 625 F.3d 550, 558 (9th Cir. 2010) (quoting *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004)). Likewise, representation, knowledge of its falsity, intent to defraud, justifiable reliance, and damages.

*Vess v. Ciba Geigy Corp. USA*, 317 F.3d 1097, 1105 (9th Cir. 2003) (quoting *Moore v. Brewster*, 96 F.3d 1240, 1245 (9th Cir. 1996)). Here, none of these fraud-based causes of action allege with any specificity a claim upon which relief can be granted. In this regard, although the cause of action for fraud and intentional - wrongdoing asserted against CSPC Dophen. (Sec. Am. CC (ECF No. 224) at 33.) Instead, the *5 n Petersen v. Allstate Indem. Co.*, 281 F.R.D. 413, 416 (C.D. Cal. 2012) (quoting *Anschutz Corp. v. Merrill Lynch & Co.*, 785 F.Supp.2d 799, 823 (N.D. Cal. 2011)). But see *Puri v. Khalsa*, 674 Fed. Appx. 679, 689 (9th Cir. Kelley v. Rambus, Inc., 384 Fed. Appx. 570, 573 (9th Cir. 2010) Kelley's state law claims for common law fraud and negligent misrepresentation fail to meet the heightened pleading standards of Rule 9(b) of the Federal Rules of Civil Procedure. agrees with the line of cases that hold that negligent misrepresentation is a species of fraud, and, hence, must be plead in accordance with Rule 9(b). *Gilmore v. Wells Fargo Bank N.A.*, 75 F.Supp.3d 1255, 1270 (N.D. Cal. 2014). 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

12 allegations of wrongdoing involve counter-defendants Yingui Li, Jinxu Wang, Jumin Sun, and Dongchen Cai. (Id.) The claim for violation of 15 U.S.C. § 17(a) of the Securities Act fraud in the offer of securities in interstate transactions merely alleges in a vague and conclusory manner that CPSC (ECF No. 224) at 34.) In re

Washington Public Power Supply System Securities Litigation, 823 F.2d 1349, 1355 (9th Cir. 1987). Finally, in support of the claim for fraud in connection with the sale of securities, the second amended counterclaim simply alleges that





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35.) Absent from these allegations, however, is any specificity as to time, place, and/or specific content of allegedly false allegations. See generally *City of Dearborn Heights Act 345 Police & Fire Retirement System v. Align Technology, Inc.*, 856 F.3d 605, 619 (9th Cir. 2017)

A should be granted. E. Retaliation in Violation of Title VII of the Civil Rights Act (Eleventh Cause of Action) *Nilsson v. City of Mesa*, 503 F.3d 947, 953

(9th Cir. 2007). Under § 704 of the Civil Rights Act of 1964, it is unlawful

for an employer to discriminate against any of his employees . . . because [the employee] has opposed any practice made an unlawful employment practice by [Title VII], or because [the employee] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII]. 42 U.S.C. § 2000e 3 (2000). To make out a prima facie case of retaliation under Title VII, a plaintiff suffered an adverse employment action, and (3) there was a causal link between her activity and 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

13 *Stegall v. Citadel Broadcasting Co.*, 350 F.3d 1061, 1065-66 (9th Cir. 2003) (quoting *Raad v. Fairbanks North Star Borough Sch. Dist.*, 323 F.3d 1185, 1196-97 (9th Cir. 2003)); see also *Strother v. Southern California Permanente Medical Group*, 79 F.3d 859, 868 (9th Cir. 1996) (setting out same three elements for FEHA retaliation claim). Plaintiff asserts that this counterclaim should be dismissed because Dr. Hu failed to allege that he first exhausted his administrative remedies and fails to allege participation in a protected No. 227) at 27-28.) *Sommatino v. U.S.*, 255 F.3d a charge with the EEOC or an equivalent state agency, like the DFEH, and receiving a right-to- *Scott v. Gino Morena Enterprises, LLC*, 888 F.3d 1101, 1106 (9th Cir. 2018).

his former No. 230) at 9.) That, however, is not the claim that was assert

to dismiss this counter claim should also be granted. F. Punitive Damages The undersigned previously struck a prayer for punitive damages as it pertained to counterclaims for breach of contract, failure to pay wages and other benefits, and violation of Business & Professions Code § 17200, et. seq. (ECF No. 124 at 11.) Dr. Hu has again asserted a request for punitive damages without any explanation of why punitive damages are available in this action. 6

See *Berkla v. Corel Corp.* punitive damages, which are designed to punish and deter wrongful conduct, are not available in breach of contract actions In re Wal-Mart Stores, Inc. Wage and Hour Litigation, 505 F.Supp.2d 609, 620 (N.D. 6 gravamen of the action is not a breach of contract as such, but rather is the fraud inherent in the *Bowman v. Associates Home Equity Service*, No. CIV-S-06-0463 DFL EFB PS, 2008 WL 906276, at \*5 (E.D. Cal. Mar. 31, 2008). Here, however, the undersigned has already recommended that the second amended counterclaim fraud-based counterclaims be dismissed. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28





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14 it is settled law that punitive damages are not available under section 17200 *Czechowski v. Tandy Corp.*, 731 F. Supp. 406, 410 (N.D. Cal. 1990) (statutory penalties precludes an award of punitive damages). Accordingly, the undersigned finds that the second amended counterclaim should be granted. G. Further Leave to Amend For the reasons stated above, the undersigned will recommend that partial motion to dismiss and to strike be granted. The undersigned has carefully considered whether Dr.

*California Architectural Bldg. Prod. v. Franciscan Ceramics*, 818 F.2d 1466, 1472 (9th Cir. 1988); see also *Klamath-*, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court does not have

inability to successfully amend, the undersigned finds that granting further leave to amend would be futile. III. Counter-Defendant Motion to Dismiss Counter-defendant CSPC Limited moves to dismiss second amended counterclaim based on a lack of personal jurisdiction pursuant to Rule 12(b)(2). (ECF No. 236.) Dr. Hu bears the burden of establishing that jurisdiction is proper, although he need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss. *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010). bounds of their jurisdiction *Daimler AG v. Bauman* - arm jurisdictional statute is coextensive with federal due process requirements, the jurisdictional analyses under state law and federal *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800-01 (9th Cir. 2004). 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

15 *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Federal courts may exercise either general or specific personal jurisdiction. General

*Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

integra *Mavrix Photo, Inc.*, 647 F.3d at 1224 (quoting *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1172 (9th Cir. 2006)). discrete, isolated contacts with the forum support jurisdiction on a cause of action arising directly out of its *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1075 (9th Cir.

*Menken v. Emm*, 503 F.3d 1050, 1057 (9th Cir. 2007). inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant

*Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775

*Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773, 1780 (2017) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)). A three-part test has been developed by the Ninth Circuit to analyze an assertion of specific personal jurisdiction:



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(1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

16 privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or relates to the -related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Schwarzenegger, 374 F.3d at 802 (quoting Lake v. Lake, 817 F.2d 1416, 1421 (9th Cir. 1987)). As was true of the first amended counterclaim, the second amended counterclaim fails to allege any jurisdictional facts that could support either general or specific personal jurisdiction. To the contrary, the second amended counterclaim alleges that CSPC Chinese Corporation organized under the laws of Hong Kong, with its office in Hong Kong, and (Sec. Am. CC (ECF No. 224) at 2.) The second amended counterclaim does makes various vague and conclusory allegations with respect to CSPC Limited. For example, it alleges that salary. (Id. Id. at 10.) And that in orce Dr. Hu to (Id. at 18.) - Id. at 2.) -subsidiary relationship is insufficient, on its own, to just Ranza v. Nike, Inc. of American corporate law is that the corporation and its sh Dole Food Co. v. Patrickson, 538 U.S. 468, 474 (2003). Imputed general jurisdiction over a foreign defendant that has an in-state affiliate may be go test, a plaintiff must make out a prima facie case (1) that there is such unity of interest and ownership that the separate personalities of the two entities no longer exist and (2) that failure to disregard their separate identities would result in fra Ranza, 793 F.3d at 1071 (quotation omitted). /// 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

17 parent controls the subsidiary to such a degree as to render the latter the mere instrumentality of Id. (quoting Doe v. Unocal Corp.

from broad policy decisions to routine matters of day-today Id. (quoting Unocal Id. (citing Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.

-making about its subsidiari

Id. (internal brackets omitted) (quoting Unocal, 248 F.3d at 928). Here, CPSC Limited has asserted and provided a declaration in support of the following:

CSPC Limited is a foreign Corporation organized under the laws of Hong Kong with its principal place of business in Hong Kong. CSPC Limited does not own or lease any real estate in California or otherwise maintain an office in the state. CSPC Limited has no mailing address or a designated agent for service of process in California. CSPC Limited does not conduct business in California. CSPC Limited has never applied for or held a business license from the State of California. CSPC Limited has never employed any employees in California. CSPC Limited has no bank accounts in the state and does not pay California state taxes. CSPC Limited has a CSPC Limited and CSPC Dophen



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are separate entities. They are individually formed entities with different boards of directors. They maintain separate bank accounts, funds, and assets. They also maintain separate corporate records. CSPC Limited has never paid CSPC payroll. CSPC Limited does not share employees or offices with CSPC Dophen. -10) (citations omitted).

49) at 6). That there was

Id. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

18 Dophen is Id. at 8.) To the extent these vague and conclusory allegations are supported, they are supported by citation to the second amended counterclaim or to evidence that is entirely unclear, such as emails, some of which are written in Chinese, Wechat message screen shots, and purchasing records, the import of which are entirely unclear. (ECF Nos. 97 & 99.) Under these circumstances, the undersigned cannot find that Dr. Hu has made a prima facie showing that jurisdiction over CSPC Limited motion to dismiss should be granted.

CONCLUSION Accordingly, IT IS HEREBY ORDERED that: 1. November 14, 2019, motion for alternative service of process (ECF No. 218) is granted; 2. Within twenty-eight days of the date of this order defendant shall serve process on the counter defendants pursuant to Fed. R. Civ. P. 4(f)(3); and 3. -day extension of time (ECF No. 223) is granted nunc pro tunc. Also, IT IS HEREBY RECOMMENDED that: 1. December 23, 2019 motion to dismiss (ECF No. 227) be granted as articulated above; 2. and CSPC Limited be dismissed from this action; and 3. Defendant not be granted further leave to amend. These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

19 and filed within fourteen days after service of the objections. The parties are advised that failure to fil order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). Dated: July 20, 2020

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