SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

JAMES A PHILLS, JR., Plaintiff, vs. THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, GARTH SALONER, et al., Defendants.	Case No. 2014-1-CV-263146 ORDER ON MOTIONS FOR SUMMARY JUDGMENT

The motions by Defendants, Saloner and Stanford, for summary judgment were heard by the court on May 11, 2017, at 9:00 a.m. in Department 6. The matter having been submitted following the arguments of counsel, the Court finds and orders as follows. The motions are GRANTED, for the reasons set forth below.

This matter is an employment dispute involving, generally, alleged wrongful termination and discrimination on the basis of marital status, race and gender.

The two motions for summary judgment brought by defendants were originally filed on September 12, 2016, with a December 1, 2016 hearing date. They were continued, first to March 1, 2017 (by the Court's order of December 1, 2016) and then to the hearing date of May 11, 2017 (by the Court's order of March 1, 2017). Neither order continuing these two motions – particularly the order of March 1, 2017 – authorized or contemplated the filing of additional briefing. The initial continuance was based upon plaintiff's counsel's declaration for additional discovery under Code of Civil Procedure §437c(h). The subsequent continuance was based upon counsel's unavailability for the continued hearing date of March 1. At the time of the hearing, the Court had not considered any additional papers filed by either side after March 1, 2017, as no such filings had been authorized. The Court then agreed at the hearing to review the additional deposition testimony of two witnesses which had been submitted by plaintiff. Having done so, the court finds this testimony does not raise any triable issues of material fact, and thus the court's tentative ruling to grant the motions is adopted without modification.

Request for Judicial Notice

In support of its motion, Stanford has filed a request for judicial notice of the operative FAC. The request has no real utility in the context of summary judgment. Judicial notice can only be taken of the existence and filing date of a pleading, not of the truth of its contents, and the contents of a targeted pleading are already considered by a court in ruling on summary judgment. Nonetheless, the request is GRANTED pursuant to Evidence Code §452(d).

Defendant Saloner's Motion for Summary Judgment

Saloner moves for summary judgment/adjudication on all causes of action alleged against him in the FAC: the sixth cause of action for harassment; the seventh cause of action for intentional interference with contractual relations; the eighth cause of action for interference with prospective economic advantage; the ninth cause of action for intentional infliction of emotional distress ("IIED"), and the tenth cause of action for retaliation.

Plaintiff is bound by his FAC on summary judgment. The pleadings serve as the "outer measure of materiality" in a summary judgment motion, and the motion may not be granted or denied on issues not raised by the pleadings. (See *Government Employees Ins. Co. v. Sup. Ct.* (2000) 79 Cal.App.4th 95, 98; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins.* (2010) 181 Cal.App.4th 60, 73 ["the pleadings determine the scope of relevant issues on a summary judgment motion."].) The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

The moving party's declarations and evidence will be strictly construed in determining whether they negate or disprove an essential element of a plaintiff's claim "in order to resolve any evidentiary doubts or ambiguities in plaintiff's (or opposing party's) favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64, parentheses added.) While the same standards of admissibility govern both, the opposition declarations are liberally construed while the moving party's evidence is strictly scrutinized. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) The evidence must be liberally construed in support of the opposing party, resolving any doubts in favor of that party. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.) The opposing party may be bound by admissions made in deposition testimony or responses to discovery. (See *Whitmire v. Ingersoll-Rand Co.* (2010) 184 Cal.App.4th 1078, 1087 ["Where a declaration submitted in opposition to a motion for summary judgment clearly contradicts the declarant's earlier deposition testimony or discovery responses, the trial court may fairly disregard the declaration and 'conclude there is no substantial evidence of the existence of a triable issue of fact.'"])

In reviewing motions for summary judgment or adjudication in wrongful termination/discrimination cases, California courts employ the burden-shifting formula first articulated by the United States Supreme Court in *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792. (See *King v. United Parcel Service* (2007) 152 Cal.App.4th 426, 433, fn.2; see

also *Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1004.) Under *McDonnell Douglas*, the plaintiff bears the burden of establishing a prima facie case of discrimination, and the burden then shifts to the employer to offer a legitimate, nondiscriminatory reason for the adverse employment action. (*Mixon v. Fair Employment and Housing Commission* (1992) 192 Cal.App.3d 1306, 1318.)

"'A defendant employer's motion for summary judgment slightly modifies the order of these [McDonnell Douglas] showings.'" (*Scotch, supra*, 173 Cal.App.4th at 1005, quoting *Kelly v. Stamps.com, Inc.* (2005) 135 Cal.App.4th 1088, 1097.) To prevail on its motion for summary judgment, the defendant employer is "required to show either that (1) plaintiff could not establish one of the [prima facie] elements of the FEHA claim, or (2) there was a legitimate, nondiscriminatory reason for its decision to terminate plaintiff's employment." (*Avila v. Continental Airlines, Inc.* (2008) 165 Cal.App.4th 1237, 1247, citing *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 355-356 and *Kelly, supra*, 135 Cal.App.4th at 1097-1098.) The elements for a discrimination claim are: that (1) [the plaintiff] was a member of a protected class, (2) he was qualified for the position he sought or was performing competently in the position he held, (3) he suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests discriminatory motive." (*Guz, supra*, 24 Cal.4th at 355.)

Once the defendant articulates a legitimate, nondiscriminatory reason for the adverse employment action, the presumption of discrimination disappears. (*Guz, supra*, 24 Cal.4th at 356.) "If the employer has met its burden by showing a legitimate reason for its conduct, the employee must demonstrate a triable issue by producing substantial evidence that the employer's stated reasons were untrue or pretextual, or that the employer acted with a discriminatory animus, such that a reasonable trier of fact could conclude that the employer engaged in intentional discrimination or other unlawful action." (*DeJung v. Super. Ct.* (2008) 169 Cal.App.4th 533, 553, citing *Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1038

and *Guz*, *supra*, 24 Cal.4th at 357.) "Speculation cannot be regarded as substantial responsive evidence." (*Cucuzza*, *supra*, 104 Cal.App.4th at 1038.) "Further, an inference of intentional discrimination cannot be drawn solely from evidence, if any, that the company lied about its reasons." (*Guz*, supra, 24 Cal.4th at 360; see also *Guz*, supra, 24 Cal.4th at 361 [stating that "[t]he pertinent statutes do not prohibit lying, they prohibit discrimination... [and] there must be evidence supporting a rational inference that intentional discrimination, on grounds prohibited by the statute, was the true cause of the employer's actions"].) "[E]ven where the plaintiff has presented a legally sufficient prima facie case of discrimination, and has also adduced some evidence that the employer's proffered innocent reasons are false, the fact finder is not necessarily entitled to find in the plaintiff's favor." (*Id.* at 361-362.) "For instance, an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision, if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred." (*Id.* at 362.)

"The plaintiff's burden is to prove, by competent evidence, that the employer's proffered justification is mere pretext; i.e., that the presumptively valid reason for the employer's action was in fact a cover-up. In responding to the employer's showing of a legitimate reason for the complained-of action, the plaintiff cannot simply show the employer's decision was wrong, mistaken, or unwise. Rather, the employee must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence, and hence infer that the employer did not act for the [... asserted] non-discriminatory reasons." (*McRae v. Department of Corrections & Rehabilitation* (2006) 142 Cal.App.4th 377, 388-389 [internal quotation marks and citations omitted].) "The plaintiff must do more than raise the inference that the employer's asserted reason is false. '[A] reason cannot be proved to be 'a pretext for discrimination' unless it is shown both that the reason is false, and that discrimination was the real reason.' [Citation.] If the plaintiff produces no evidence from which a reasonable

factfinder could infer that the employer's true reason was discriminatory, the employer is entitled to summary judgment." (*Hicks v. KNTV Television, Inc.* (2008) 160 Cal.App.4th 994, 1003.) Such a requirement is necessary because "disbelief of an Employer's stated reason for a termination gives rise to a compelling inference that the Employer had a different, unstated motivation, but it does not, without more, reasonably give rise to an inference that the motivation was a prohibited one." (*McGrory v. Applied Signal Technology, Inc.* (2013) 212 Cal.App.4th 1510, 1531-1532.)

Defendant Saloner's motion for summary judgment is GRANTED as follows.

Saloner has shown he is entitled to judgment on the sixth cause of action for harassment. To establish a prima facie case of harassment a plaintiff is required to show 1) he/she is a member of a protected class; 2) he/she was subject to unwelcome harassment; 3) the harassment related to membership in the protected class; 4) the harassment unreasonably interfered with his/her work performance by creating an intimidating, hostile or offensive work environment, and; 5) the defendant is liable for the harassment. (See *Thompson v. City of Monrovia* (2010) 186 Cal.App.4th 860, 876 [dealing specifically with harassment based on race].) "Harassment, which may be verbal, physical, or visual and communicates an offensive message to the harassed employee, cannot be occasional, isolated, sporadic, or trivial; rather the plaintiff must show a concerted pattern of harassment of a repeated, routine or a generalized nature. Whether the harassment is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive environment must be assessed from the perspective of a reasonable person belonging to the racial or ethnic group of the plaintiff." (*Id.* at 877, internal citations omitted. See also *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 869 ["Harassment is distinguishable from discrimination under the FEHA. '[D]iscrimination refers to bias in the exercise of official actions on behalf of the employer, and harassment refers to bias *that is expressed or communicated through interpersonal relations in the workplace.*'"] Emphasis added.)

Plaintiff is bound by his deposition testimony (exhibit C to the Allen Ruby declaration) in which he admitted that he and Saloner had virtually no interaction in the workplace. Without such interaction, there cannot be a "concerted pattern" of conduct in the workplace. Plaintiff's claim as alleged against Saloner is for harassment only on the basis of race, but he also admitted at deposition that the only comments by Saloner he perceived as "racially charged" where not made to him or in his presence in the workplace but were instead made in Saloner's private electronic communications with Deborah Gruenfeld that Plaintiff had accessed without their knowledge.

Saloner has also shown that he is entitled to judgment on the seventh and eighth causes of action for interference with contractual relations and prospective economic relations, respectively. Plaintiff is bound by his admissions in the FAC that at all relevant times Saloner was acting as the agent of Stanford. The seventh cause of action alleges interference with a contract (loans) to which Stanford was a party and the only economic relationship identified in the eighth cause of action is Plaintiff's relationship with Stanford.

"The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126, internal citations omitted.) However a party (or its agent) cannot be liable for interfering with a contract to which it is a party. A plaintiff is limited to a breach of contract or breach of the implied covenant claim in such instances. (See *Allied Equip. Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 514 ["One contracting party owes no general tort duty to another not to interfere with performance of the contract; its duty is simply to perform the contract according to its terms. The tort duty not to interfere with the contract falls only on strangers--interlopers who have no legitimate interest in the scope or course of the

contract's performance."].) In *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 25, the Supreme Court held that corporate agents and employees acting for and on behalf of a corporation cannot be held liable for inducing a breach of the corporation's contract. The court reasoned that since a corporation cannot act except through such agents, "there is no viable 'inducement of breach of contract' or 'interference with economic advantage' that is distinguishable from a cause of action for breach of contract." (*Id.*)

Plaintiff's argument in opposition that Saloner has no immunity because he is alleged (FAC at 106) to have been pursuing a personal (romantic) interest does not raise a triable issue of material fact. Those cases that have found an exception to the agent immunity rule have done so where there is evidence that the manager was pursuing a personal *financial* interest. (See *Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 834 ["[c]ases have interpreted the 'financial advantage' exception to the agent's immunity rule to mean a personal advantage or gain that is over and above ordinary professional fees earned as compensation for performance of the agency."]) No such financial advantage is alleged here. In addition, it has been persuasively argued that there should be no exception to the immunity even where a personal financial advantage is alleged. "[T]he conclusion that there is no 'financial advantage' exception to the rule that a corporate agent cannot be liable for interfering with its principal's contract makes good sense. Every agent, in one way or another, acts for its own financial advantage when it acts for its principal, because the agent is compensated by its principal, and conduct in furtherance of the principal's interest will necessarily serve the agent's interests as well. A 'financial advantage' exception to the sound rule that the contracting party's agent, like the contracting party, cannot be liable for interference with the contract, would entirely swallow up the rule." (See *Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594, 1606.)

Agent immunity (sometimes referred to as the "manager's privilege") applies equally to the eighth cause of action. A party to the plaintiff's contract (or their agent) cannot be liable

under any of the four theories of interference, intentional or negligent interference with existing contract and intentional or negligent interference with prospective economic advantage; if the defendant is a party to the contract, the plaintiff is relegated to a cause of action for breach of that contract. (See *Woods v. Fox Broadcasting Sub., Inc.* (2005) 129 Cal.App.4th 344, 350.)

Even without the immunity/privilege the eighth cause of action fails as alleged against both Saloner *and Stanford.* The elements for intentional interference with prospective economic advantage "are usually stated as follows: (1) an economic relationship between the plaintiff *and some third party*, with the probability of future economic benefit to the plaintiff; (2) the *defendant's knowledge of the relationship*; (3) *intentional* acts on the part of the defendant *designed to disrupt the relationship*; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." (*Korea Supply v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153, emphasis added.) Plaintiff's allegation (FAC at 114) that Saloner acted to "facilitate the clandestine relationship" with Gruenfeld, not to disrupt any existing relationship Plaintiff had with Stanford or any identified third party – which shows a fatal flaw in the claim. (See *Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 546 ["[A]n essential element of the tort of intentional interference with prospective business advantage is the existence of a business relationship with which the tortfeasor interfered. Although this need not be a contractual relationship, an existing relationship is required."] See also *Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1291 ["A plaintiff must establish an *existing* relationship to establish a claim for intentional interference with prospective economic advantage."] Emphasis in original.) The FAC alleges that the existing relationship with Stanford was contractual and fails to identify any other third party with whom Plaintiff had an existing business relationship.

Saloner is also entitled to judgment on the ninth cause of action for IIED. In general workers' compensation is a complete defense to an IIED claim arising in an employment context. Emotional distress suffered by an employee caused by an employer's conduct involving termination, demotions, criticism of work, etc. is deemed a normal part of the employment

relationship and barred by the exclusive remedy provisions of workers' compensation. (See *Miklosy v. Regents of Univ. of Calif.* (2008) 44 Cal.4th 876, 902.) It is undisputed that Stanford at all relevant times had workers compensation insurance. (See the declaration of Cristina Dobleman submitted in support of Stanford's motion.) A plaintiff that has stated a claim for wrongful termination in violation of public policy can state a cause of action for IIED that is not barred by the exclusive remedy provisions of the Workers' Compensation Act. (See *Cabesuela v. Browning-Ferris Indus.* (1998) 68 Cal.App.4th 101, 112.) However, since the only FEHA claims alleged against Saloner are harassment (which fails as described above) and retaliation (which fails as described below) the defense applies to Saloner even if it is assumed Plaintiff can show wrongful termination. Plaintiff has failed to show that anything Saloner did *in the workplace* fell outside of the normal employment relationship even if it negatively affected his employment and caused him distress. As the Sixth District Court of Appeal has stated, "infliction of emotional distress claims are merely alternative legal theories for holding defendants liable for the same conduct" alleged in a related intentional tort. Thus, such emotional distress claims are "redundant" and stand or fall with the related claim. (See *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1378-1379.)

Finally Saloner is entitled to judgment on the tenth cause of action for retaliation. As Plaintiff concedes in his opposition Saloner is not (and is not alleged to be) Plaintiff's employer and thus cannot be liable for retaliation. (See *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1173.)

Defendant Stanford's Motion for Summary Judgment

Stanford moves for summary judgment/adjudication of the FAC's first cause of action for declaratory relief, second cause of action for discrimination on the basis of marital status, third cause of action for discrimination on the basis of race, fourth cause of action for discrimination on the basis of gender, fifth cause of action for wrongful termination, sixth cause of action for

harassment, eighth cause of action for interference with prospective economic relations, ninth cause for action for IIED, and tenth cause of action for retaliation.

Stanford's motion for summary judgment is GRANTED as follows.

Stanford is entitled to judgment on the first cause of action for declaratory relief. "When seeking summary judgment on a claim for declaratory relief, the defendant must show that the plaintiff is not entitled to a declaration in its favor by establishing '(1) the sought-after declaration is legally incorrect; (2) [the] undisputed facts do not support the premise for the sought-after declaration; or (3) the issue is otherwise not one that is appropriate for declaratory relief.' If this is accomplished, the burden shifts to the plaintiff to prove, by producing evidence of, specific facts creating a triable issue of material fact as to the cause of action or the defense." (*Cates v. California Gambling Control Com.* (2007) 154 Cal.App.4th 1302, 1307-1308, citing *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1402.) "When summary judgment is appropriate, the court should decree only that plaintiffs are not entitled to the declarations in their favor." (*Gafcon, Inc.*, *supra*, at 1402.)

Plaintiff is bound by his FAC on summary judgment, and the first cause of action seeks a declaration "[t]hat the provisions of the Notes requiring payment of interest and principal do not become effective until Phills ceases to be a member of the Academic Council, or he sells the residence or another condition specified in the Notes occurs, and that Stanford cannot terminate his membership in the Academic Council for failure to return from leave unless and until it agrees not to subject him to supervision by Saloner and premature acceleration of the Notes." (FAC at 65.)

Stanford is correct that this request as stated in the FAC is now moot as Plaintiff was terminated on June 3, 2015. (See Stanford UMF No. 42, undisputed by Plaintiff.) Plaintiff is also bound by his deposition testimony (here presented as exhibits A and G to the declaration of

Defense Counsel Linda Moroney) and he testified that when his termination became effective in June 2015 he would cease to be a member of the Academic Council. (See exhibit A to the Moroney Declaration at 43:10-22.) Plaintiff's argument in opposition that the claim is not moot because it is intertwined with his other claims is unpersuasive and, in any event, a plaintiff cannot establish the existence of actual, *present* controversy by pointing to the very lawsuit in which he or she seeks declaratory relief. (See *Cotati v. Cashman* (2002) 29 Cal.4th 69, 79-80.) Furthermore the Court may properly refuse to grant declaratory relief where to do so would be inappropriate because a specific statutory scheme (such as the FEHA) governs the underlying dispute. (See *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 433.) Accordingly the Court finds that Plaintiff is not entitled to the declaration sought in the FAC's first cause of action.

Stanford has shown that it is entitled to judgment on the second cause of action for discrimination on the basis of marital status.

While Plaintiff did testify that he thought Provost Etchemendy was biased against him because of his marital status he also testified that he did not believe that Etchemendy or Associate Dean Rajan held any animosity or bias against unmarried or separated persons *in general* and that he believed he was treated differently by Etchemendy specifically because he was separated from Gruenfeld rather than because he was separated in and of itself. This testimony establishes that Plaintiff does not have a true claim for discrimination on the basis of marital status under California law. (See *Chen v. County of Orange* (2002) 96 Cal.App.4th 926; *Hope Intern. University v. Sup. Ct.* (2004) 119 Cal.App.4th 719.)

"In [*Chen*] we explained that there are certain claims that, 'without doubt, implicate marital status discrimination.' Among those types of claims listed were when a landlord refuses to rent to unmarried couples because they are not married, or an employer refuses to hire unwed mothers because they are not married or grants maternity leave to married teachers only because they are married. In such cases the complaining party's case is based on discrimination *because*

of a given marital status. For these, there is no analytical problem: The basis of the adverse action is the *status* of being married or unmarried, as the case may be. On the other hand, sometimes marital status discrimination cases are based on adverse action taken against a person because of *something about* the plaintiff's spouse. These are not true marital status discrimination cases, but 'conduit' cases—the marital status serves only as conduit for some other kind of animus. Of course, if *that* animus is actionable, the case may still survive, but only because of the wrongfulness of the real animus, e.g., race discrimination. Conduit cases not based on some other wrongful animus have, however, been 'universally met with rejection.'" (*Hope International*, *supra*, at 742, internal citations omitted, emphasis in original.)

It is clear from the evidence presented that Plaintiff's second cause of action is not based on adverse actions taken against him *because of* his status as a separated spouse. There is no evidence here that Stanford discriminated against separated employees in general or Plaintiff specifically because of their status as separated spouses. Plaintiff at deposition testified he did not believe he was treated differently because of his general status as a separated employee, but because he was separated from Gruenfeld. Gruenfeld, as a tenured employee, was treated differently than Plaintiff by Stanford because of her tenured position. Plaintiff's dissatisfaction with how his status as a "trailing spouse" changed after his separation from his tenured spouse (Gruenfeld) does not support a claim for discrimination on the basis of marital status.

Stanford has shown that it is entitled to judgment on both the third cause of action for discrimination on the basis of race and the fourth cause of action for discrimination on the basis of gender. Again, Plaintiff is bound by his deposition testimony, and he testified that the only Stanford employee or official whom he believed harbored a race-based animus against him was Defendant Saloner, and Stanford has shown that Saloner did not make, approve or affect the outcome of any of the decisions which Plaintiff contends constitute adverse employment actions: 1) the (later withdrawn) request that Plaintiff and Gruenfeld (a Caucasian woman) repay their home loans, 2) the denial of a home loan package to Plaintiff individually, 3) the denial of his

request for a guaranteed number of courses to teach, 4) the decision regarding Plaintiff's course load, and 5) his termination. Those decisions were instead made and/or approved by other officials such as Stanford Provost John Etchemendy and Senior Associate Dean Madhav Rajan. (See exhibits A, B, D, E and G to the Moroney declaration and the Declaration of Madhav Rajan.) Plaintiff testified that he had no reason to believe that Etchemendy or Rajan were biased against him on the basis of race or gender. (He did testify that he believed the Provost was biased against him because of his marital status, which will be addressed below.) Given Plaintiff's testimony and the other evidence submitted by Stanford, Plaintiff cannot raise a triable issue of material fact as to either of these claims.

Based on the foregoing analysis and conclusions, Stanford is entitled to judgment on the fifth cause of action for wrongful termination. Plaintiff is bound by his FAC on summary judgment, and contrary to Plaintiff's argument in opposition the claim as stated in the FAC is exclusively statutory. The FAC expressly alleges that Plaintiff's termination was wrongful because it was based on alleged discrimination on the basis of marital status, race and/or gender. As no triable issues of material fact remain as to each of those discrimination claims as described above, Stanford has also shown that the wrongful termination claim fails.

Stanford is also entitled to judgment on the sixth cause of action for harassment. As previously noted, actionable harassment "cannot be occasional, isolated, sporadic, or trivial; rather the plaintiff must show a concerted pattern of harassment of a repeated, routine or a generalized nature." (*Thompson, supra*, 186 Cal.App.4th at 877.) Furthermore, harassment must be "expressed or communicated through interpersonal relations in the workplace." (*Serri, supra*, 226 Cal.App.4th at 869.) Stanford had shown, again primarily through Plaintiff's own deposition testimony, that Plaintiff has no evidence of a concerted pattern of harassment in the workplace by any Stanford employee or official on the basis of his gender or marital status. He also testified that the only Stanford employee or official who he believed harassed him on the basis of his race was Defendant Saloner, and his testimony further established that the only evidence for

this belief was Saloner's communications outside the workplace with Gruenfeld, which also cannot reasonably be construed as a "concerted pattern" of harassment "through interpersonal relations in the workplace." As he is bound by his testimony, Plaintiff cannot raise any triable issues of material fact as to this claim.

The eighth cause of action for interference with prospective economic advantage fails as alleged against Stanford for the same reasons stated above in the discussion of Saloner's motion. Plaintiff is bound by his FAC, and the eighth cause of action only alleges that there was "interference" to facilitate Saloner and Gruenfeld's relationship; it fails to allege that any existing business relationship with an identified third party was disrupted, much less that Stanford knew of a relationship with an identified third party and acted with the intent to disrupt it.

Stanford is entitled to judgment on the ninth cause of action for IIED. As explained above in the discussion of Defendant Saloner's motion, distress suffered by an employee caused by an employer's conduct involving termination, demotions, criticism of work, etc. is deemed a normal part of the employment relationship and barred by the exclusive remedy provisions of workers' compensation. (See *Miklosy, supra*, at 902.) Since Plaintiff has failed to show that he was wrongfully terminated, and Stanford has established through the declaration of Cristina Dobleman that it has had workers' compensation insurance at all relevant times, the exclusive remedy provisions of the Workers' Compensation Act provide Stanford a complete defense.

Finally, Stanford is entitled to judgment of the tenth cause of action for retaliation. "[I]n order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) he or she engaged in a 'protected activity,' (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action." (*Yanowitz v. L'Oreal USA, Inc., supra*, at 1042.) "[C]omplaints about personal grievances or vague" remarks do not qualify as protected activity. (*Id.* at 1047.)

Plaintiff is bound by his FAC on summary judgment and the only act of retaliation alleged in the FAC is his termination by Stanford. (See FAC at 125.) As Plaintiff has failed to show that he was subject to discrimination, was wrongfully terminated or was subject to harassment as alleged in the FAC he has failed to show that there is any causal link between his allegations and his termination.

Both motions for summary judgment brought by the respective defendants are therefore GRANTED.

7/31/17

Theodore C. Zayner

Hon. Theodore C. Zayner
Judge of the Superior Court