

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 19

22STCV28481

**BLACK LIVES MATTER GRASSROOTS, INC vs BLACK
LIVES MATTER GLOBAL NETWORK FOUNDATION, INC,
et al.**

June 27, 2023

3:08 PM

Judge: Honorable Stephanie M. Bowick
Judicial Assistant: Richard Duarte
Courtroom Assistant: Calvin Lam

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order

RULING

After consideration of the briefing filed and oral argument at the hearing, Defendant Black Lives Matter Global Network Foundation, Inc.'s Special Motion to Strike Plaintiff's Complaint Pursuant to CCP § 425.16 is GRANTED.

The Court reserves ruling on attorney's fees and costs pursuant to Code of Civil Procedure section 415.16, subdivision (c) pending a separate motion brought by Defendant Black Lives Matter Global Network Foundation, Inc.

Defendant Bowers Consulting Firm's Joinder to the Motion is GRANTED.

Counsel for Defendants Black Lives Matter Global Network Foundation, Inc. and Bowers Consulting Firm to file separate proposed orders of dismissal within ten (10) court days.

The Court sets a Non-Appearance Case Review Re: Judgment of Dismissal of Defendants Black Lives Matter Global Network Foundation, Inc. and Bowers Consulting Firm for July 10, 2023, in Department 19 of the Stanley Mosk Courthouse.

Counsel for Plaintiff Black Lives Matter Grassroots, Inc. to give notice.

STATEMENT OF THE CASE

This action arises out of alleged fraud. Plaintiff Black Lives Matter Grassroots, Inc. ("Plaintiff" or "BLM Grassroots") brings suit against Defendants Black Lives Matter Global Network

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Foundation, Inc. (“BLM GNF” or “GNF”), Bowers Consulting Firm (“Bowers Consulting”), and Shalomyah Bowers (collectively, “Defendants”) alleging the following causes of action:

1. Unfair Business Practices;
2. Intentional Misrepresentation;
3. Fraud;
4. Conversion; and
5. Unjust Enrichment.

The Complaint generally alleges that a founder of Plaintiff, Patrisse Cullors, formed Defendant BLM GNF as an administrative organization to raise funds to provide financial support for local-level community efforts of BLM Grassroots.” (Compl., ¶ 22.) The Complaint alleges that, during the summer of 2020 when Plaintiff was receiving “an unprecedented amount monetary support and public attention,” “Ms. Cullors, as Executive Director of BLM GNF, created the Black Lives Matter Support Fund (hereinafter referred to as ‘Fund’) in connection with the Tides Foundation (hereinafter referred to as ‘Tides’) to de-centralize governance over the unprecedented funds raised for BLM.” (Id. at ¶¶ 24-25.) The Complaint alleges that the Fund “was created for BLM Grassroots and was to be used for its work and that of the local BLM chapters pursuant to the terms of a grant agreement” for which Plaintiff was a third-party beneficiary. (Id. at ¶¶ 25-26.)

Plaintiff alleges that, in September 2020, Ms. Cullors hired Defendants Bowers and Bowers Consulting to handle the administration of Defendant GNF. (Id. at ¶ 27.) Plaintiff alleges that, in May 2021, “Ms. Cullors decided she could no longer lead GNF and that it should wind down and transition the entire organization to BLM Grassroots, where the BLM work was being done,” issued a formal transition plan, and stepped down “based on the assurances by Mr. Bowers that he would follow the transition plan, helping to administrate the process.” (Id. at ¶¶ 30-31.)

Plaintiff alleges that Defendant Bowers, “through a series of misrepresentations and unauthorized backroom dealings” and despite agreeing to execute the transition plan set forth by Ms. Cullors, acted in his own interest, “managed to steal control over GNF as the sole Board member and officer,” and used his “stolen primary decision-making power” to hire board members from his company, Defendant Bowers Consulting, and used GNF grants to enrich his company. (Id. at ¶¶ 33-35.) As a result, Plaintiff alleges that it “is now under investigation by various state attorney generals and under information and belief, the IRS for misuse of funds, self-dealing and other actions.” (Id. at ¶ 37.)

Plaintiff also alleges that, in March 2022, Defendant BLM GNF “changed the passwords to BLM

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shared social media channel” resulting in inconsistent messages and Plaintiff losing the ability to effectively use the accounts for their advocacy. (Id. at ¶¶ 40-41.)

Plaintiff further alleges that Defendant BLM GNF intentionally interfered with Plaintiff’s work by falsely accusing Tides of misconduct, including commingling funds, and requested Tides to not distribute funds in the Fund to Plaintiff and instead divert them Defendant GNF. (See id. at ¶¶ 43-56.)

Defendant BLM GNF filed the instant Special Motion to Strike Plaintiff’s Complaint Pursuant to CCP § 425.16 (the “Motion”).

GROUND FOR MOTION

Pursuant to Code of Civil Procedure section 425.16, Defendant GNF moves for an order striking all of Plaintiff’s causes of action on the grounds that all of Plaintiff’s claims arise out of conduct in furtherance of free speech and Plaintiff cannot demonstrate a probability of prevailing on his claims.

Defendant GNF seeks its attorney’s fees and costs if found as the prevailing party.

JOINDER

The Court GRANTS Defendant Bowers Consulting’s Joinder to the Motion. (See *Barak v. The Quisenberry Law Firm* (2006) 135 Cal.App.4th 654, 691.)

The Court finds Defendant Bowers Consulting’s Joinder is proper. First, it is not necessary for Defendant Bowers Consulting to present admissible evidence to shift the burden to Plaintiff. Second, the Joinder requests affirmative relief, (Joinder, p. 3), and states why a ruling on Defendant GNF’s Motion would also apply to Defendant Bowers Consulting. (Id. at pp. 3, 5.) The Court finds that, given the allegations in the Complaint, the Joinder would have the same effect as an anti-SLAPP motion filed by Defendant Bowers Consulting.

Plaintiff only objects to the Joinder on vague timeliness grounds. (Opposition, p. 7.) Plaintiff does not contend that it would be prejudiced if the Court considers the Joinder. The Court exercises its discretion pursuant to Code of Civil Procedure section 425.16, subdivision (f) to consider the Joinder. (See *San Diegans for Open Government v. Har Construction, Inc.* (2015)

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240 Cal.App.4th 611, 624).

The Court finds that Defendant Bowers Consulting provides a sufficient basis for why the Joinder is late, namely, because its corporate status was suspended, and that Plaintiff will not be prejudiced by the consideration of the Joinder. Plaintiff does not oppose the Joinder to the instant Motion. (Joinder at p. 4).

Considering the short delay, the reasons asserted by Defendant Bowers Consulting for the late filing, and the lack of prejudice to Plaintiff, the Court GRANTS the Joinder. (Code Civ. Proc., § 128.)

REQUEST FOR JUDICIAL NOTICE

Defendant BLM GNF's Request for Judicial Notice, made in Reply, is GRANTED in part as to Exhibits 1 and 6. The request is otherwise denied.

While Plaintiff does not object to the Request for Judicial Notice, for Exhibits Nos. 2-5, it is unclear which "facts" Defendant BLM GNF requests judicial notice of, and Defendant BLM GNF has not provided any foundation for these exhibits.

Third, while the Court takes judicial notice of the "Motion to Dismiss Petition to Enforce Civil Investigative Demand publicly filed by the Indiana Attorney General on March 21, 2023," the Court notes that it is not of final ruling or judgment.

EVIDENTIARY OBJECTIONS

I. The Court rules on the Defendant's evidentiary objections as follows:

Declaration of Meline Abdullah

OBJECTION #1: Not material

OBJECTION #2: Not material

OBJECTION #3: Not material as to her statement regarding being a scholar, professor and community work. SUSTAINED as to the remainder regarding being an expert.

OBJECTION #4: SUSTAINED

OBJECTION #5: Not material

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OBJECTION #6: SUSTAINED
OBJECTION #7: Not material
OBJECTION #8: Not material
OBJECTION #9: SUSTAINED
OBJECTION #10: SUSTAINED
OBJECTION #11: SUSTAINED
OBJECTION #12: SUSTAINED
OBJECTION #13: SUSTAINED
OBJECTION #14: SUSTAINED
OBJECTION #15: SUSTAINED
OBJECTION #16: SUSTAINED
OBJECTION #17: SUSTAINED
OBJECTION #18: SUSTAINED
OBJECTION #19: SUSTAINED
OBJECTION #20: SUSTAINED
OBJECTION #21: SUSTAINED
OBJECTION #22: SUSTAINED
OBJECTION #23: SUSTAINED
OBJECTION #24: SUSTAINED
OBJECTION #25: SUSTAINED
OBJECTION #26: SUSTAINED
OBJECTION #27: SUSTAINED
OBJECTION #28: SUSTAINED
OBJECTION #29: SUSTAINED
OBJECTION #30: SUSTAINED
OBJECTION #31: SUSTAINED
OBJECTION #32: SUSTAINED
OBJECTION #33: SUSTAINED
OBJECTION #34: SUSTAINED
OBJECTION #35: SUSTAINED
OBJECTION #36: SUSTAINED
OBJECTION #37: SUSTAINED
OBJECTION #38: SUSTAINED
OBJECTION #39: SUSTAINED
OBJECTION #40: SUSTAINED
OBJECTION #41: SUSTAINED

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OBJECTION #42: SUSTAINED
OBJECTION #43: SUSTAINED
OBJECTION #44: SUSTAINED
OBJECTION #45: SUSTAINED
OBJECTION #46: OVERRULED
OBJECTION #47: SUSTAINED
OBJECTION #48: SUSTAINED
OBJECTION #49: SUSTAINED
OBJECTION #50: SUSTAINED
OBJECTION #51: OVERRULED
OBJECTION #52: SUSTAINED
OBJECTION #53: SUSTAINED
OBJECTION #54: SUSTAINED
OBJECTION #55: SUSTAINED
OBJECTION #56: SUSTAINED
OBJECTION #57: SUSTAINED
OBJECTION #58: OVERRULED
OBJECTION #59: OVERRULED
OBJECTION #60: OVERRULED
OBJECTION #61: SUSTAINED
OBJECTION #62: SUSTAINED
OBJECTION #63: SUSTAINED
OBJECTION #64: SUSTAINED
OBJECTION #65: SUSTAINED
OBJECTION #66: SUSTAINED
OBJECTION #67: OVERRULED as to BLM; SUSTAINED as to other chapters.
OBJECTION #68: SUSTAINED
OBJECTION #69: SUSTAINED
OBJECTION #70: OVERRULED
OBJECTION #71: SUSTAINED
OBJECTION #72: SUSTAINED
OBJECTION #73: SUSTAINED
OBJECTION #74: SUSTAINED
OBJECTION #75: SUSTAINED
OBJECTION #76: SUSTAINED
OBJECTION #77: SUSTAINED

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OBJECTION #78: SUSTAINED
OBJECTION #79: SUSTAINED
OBJECTION #80: SUSTAINED
OBJECTION #81: SUSTAINED
OBJECTION #82: SUSTAINED
OBJECTION #83: SUSTAINED
OBJECTION #84: SUSTAINED
OBJECTION #85: OVERRULED
OBJECTION #86: SUSTAINED
OBJECTION #87: SUSTAINED
OBJECTION #88: SUSTAINED
OBJECTION #89: SUSTAINED
OBJECTION #90: OVERRULED
OBJECTION #91: SUSTAINED
OBJECTION #92: OVERRULED
OBJECTION #93: SUSTAINED
OBJECTION #94: SUSTAINED
OBJECTION #95: SUSTAINED
OBJECTION #96: OVERRULED
OBJECTION #97: SUSTAINED
OBJECTION #98: SUSTAINED
OBJECTION #99: SUSTAINED
OBJECTION #100: SUSTAINED
OBJECTION #101: SUSTAINED
OBJECTION #102: SUSTAINED
OBJECTION #103: SUSTAINED
OBJECTION #104: OVERRULED
OBJECTION #105: SUSTAINED
OBJECTION #106: SUSTAINED
OBJECTION #107: SUSTAINED
OBJECTION #108: SUSTAINED
OBJECTION #109: SUSTAINED
OBJECTION #110: SUSTAINED
OBJECTION #111: OVERRULED
OBJECTION #112: OVERRULED
OBJECTION #113: SUSTAINED

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OBJECTION #114: SUSTAINED as to “Mr. Bowers refused to cooperate and became more controlling, and he interfered with BLM Grassroots' work and disparaged our leaders. Therefore,” and “and, pursuant to the Defendants' prior representations regarding the transition, demanded that he immediately relinquish control of BLM and transfer assets, platforms, and BLM representation to BLM Grassroots,” OVERRULED as to rest

OBJECTION #115: SUSTAINED
OBJECTION #116: SUSTAINED
OBJECTION #117: SUSTAINED
OBJECTION #118: OVERRULED
OBJECTION #119: SUSTAINED
OBJECTION #120: SUSTAINED
OBJECTION #121: SUSTAINED
OBJECTION #122: SUSTAINED
OBJECTION #123: SUSTAINED
OBJECTION #124: OVERRULED
OBJECTION #125: SUSTAINED

Declaration of Monifa Bandele

OBJECTION #126: Not material
OBJECTION #127: SUSTAINED as to “Abdullah is a public figure in the national social justice movement” and OVERRULED as to rest.
OBJECTION #128: SUSTAINED as to the NDA. OVERRULED as to the rest.
OBJECTION #129: SUSTAINED
OBJECTION #130: OVERRULED as to “I am the co-founder of Black Lives Matter Grassroots in Tampa Bay, Florida.” SUSTAINED as to the rest.
OBJECTION #131: OVERRULED
OBJECTION #132: SUSTAINED
OBJECTION #133: SUSTAINED

Declaration of Funmilola Fagbamila

OBJECTION #134: Not material
OBJECTION #135: OVERRULED as to “I have known Dr. Melina Abdullah (“Abdullah”) since 2008.” SUSTAINED as to rest
OBJECTION #136: SUSTAINED

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OBJECTION #137: SUSTAINED
OBJECTION #138: SUSTAINED
OBJECTION #139: SUSTAINED
OBJECTION #140: SUSTAINED
OBJECTION #141: SUSTAINED
OBJECTION #142: SUSTAINED
OBJECTION #143: SUSTAINED

Declaration of Audrena Redmond

OBJECTION #144: OVERRULED as to “I am the co-founder of Black Lives Matter Long Beach.” The Court does not find remainder material to the disposition of the Motion.
OBJECTION #145: SUSTAINED as to “She has committed her life to achieving results mitigating systematic racism and advocating on behalf of the African American community.”
OVERRULED as to rest
OBJECTION #146: SUSTAINED
OBJECTION #147: SUSTAINED
OBJECTION #148: SUSTAINED
OBJECTION #149: SUSTAINED

Declaration of Gabriel Regalado

OBJECTION #150: Not material
OBJECTION #151: OVERRULED as to “I have known Dr. Melina Abdullah (“Abdullah”) for thirteen years.” SUSTAINED as to the rest.
OBJECTION #152: SUSTAINED
OBJECTION #153: SUSTAINED
OBJECTION #154: SUSTAINED

Declaration of Makani Themba

OBJECTION #155: Not material
OBJECTION #156: OVERRULED as to “I have known Dr. Melina Abdullah (“Abdullah”) for about ten years.” SUSTAINED as to the rest
OBJECTION #157: SUSTAINED
OBJECTION #158: SUSTAINED

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OBJECTION #159: SUSTAINED as to the NDA. OVERRULED to the rest.

OBJECTION #160: OVERRULED as to the information requested. SUSTAINED as to the rest.

II. The Court rules on Plaintiff's Evidentiary Objections as follows:

Declaration of Jessica Walker:

OBJECTION #1: Not material.

OBJECTION #2: Not material.

Declaration of Jordan Giger:

OBJECTION #1: OVERRULED

OBJECTION #2: OVERRULED

OBJECTION #3: SUSTAINED

DISCUSSION

I. TIMELINESS

The issue of timeliness was not raised or discussed by the parties. The Court finds the Motion is timely.

II. ANTI-SLAPP ANALYSIS

Pursuant to Code of Civil Procedure section 425.16, subdivision (b)(1): "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (Code Civ. Proc., § 425.16(b)(1).) "In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (Code Civ. Proc., § 425.16(b)(2).)

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A. Prong One: Defendant GNF's Burden

Under the anti-SLAPP statute, an “act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue” includes: “(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” (Code Civ. Proc. § 425.16(e); see also *Equilon Ent., LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 66.)

A moving defendant has the initial burden to demonstrate that a cause of action is subject to a special motion to strike. (*Martinez v. Metabolife Inter. Ins.* (2003) 113 Cal.App.4th 181, 186; *Fox Searchlight Pictures Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 304.) Specifically, courts decide whether a moving defendant has made a prima facie showing that the attacked claims arise from a protected activity, including defendants’ right of petition or free speech. (See, e.g., *Healy v. Tuscany Hills Landscape & Recreation Corp.*, (2006) 137 Cal.App.4th 1, 5; *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 278; Code Civ. Proc. § 425.16(e).) “[A] moving defendant's burden to show a cause of action arising from is not met simply by showing that the label of the lawsuit appears to involve the rights of free speech or petition; he or she must demonstrate that the substance of the plaintiff's cause of action was an act in furtherance of the right of petition or free speech.” (*Jespersen v. Zubiante-Beauchamp* (2003) 114 Cal.App.4th 624, 630.) “The sole inquiry under the first prong of the anti-SLAPP statute is whether the plaintiff's claims arise from protected speech or petitioning activity.” (*Castleman v. Sagaser* (2013) 216 Cal.App.4th 481, 490 (citing *Coretronic Corp. v. Cozen O'Connor* (2011) 192 Cal.App.4th 1381, 1389); see *Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1478.)

“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 v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 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

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statutorily defined category of protected activity.” (Id. (citing *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884).)

The California Supreme Court in *Bonni* held that, in evaluating anti-SLAPP motions directed to an entire cause of action or complaint, each allegation of protected activity must be evaluated separately, with the moving defendant bearing the burden of showing that each allegation supporting a claim of recovery is one that rests on protected activity. (Id. at 1010-1013.) “Assertions that are ‘merely incidental’ or ‘collateral’ are not subject to section 425.16. Allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute.” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 394; accord, *Bonni*, supra, 11 Cal.5th at 1012.)

Here, Defendant GNF contends that all of Plaintiff’s claims fall within Code of Civil Procedure section 425.16, subdivisions (e)(3) and/or (e)(4) because they all based upon the allegations that Defendant GNF “(1) solicited, disbursed, or donated funds in an allegedly improper manner; (2) made statements related to the transition of BLM GNF’s assets; or (3) posted messages on BLM GNF’s public-facing social media accounts and websites to solicit funds” which are all acts that constitute protected conduct. (Motion, pp. 13-15 (citing Compl. at ¶¶ 43-45, 63, 68, 75, 77, 83, 93); see Reply at p. 8.) Defendant GNF contends that these allegations arise out of protected activity because solicitation of funds constitutes protected activity. (Id. at pp. 13-15.)

Plaintiff contends that allegations concerning solicitation of funds merely provide context and are incidental or collateral to Plaintiff’s claims. (See Opposition, pp. 11-14.)

The Court finds that Defendant BLM GNF meets its burden showing that Plaintiff’s claims arise from acts by Defendant BLM GNF in furtherance of Defendant BLM GNF’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.

The Court considers the allegations in the Complaint and incorporations by reference, including paragraphs 22, 24 -26, 28, 30-31, 33-39, 37-42, 52-55). Each cause of action alleges that “Defendants should be made to disgorge their ill-gotten gains and restore such monies to Plaintiff.” (Compl. at ¶¶ 65, 72, 80, 90, 96.)

In addition to the incorporated allegations stated above, (Compl. at ¶¶ 22, 24-26, 28, 30-31, 33-39, 37-42, 52-55, 59), the Complaint further alleges under the First Cause of Action that Plaintiff

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was injured by Defendants’ unfair business practices when Defendants “publicly aligned themselves with the Plaintiffs’ core values and ideals,” “used their alignment with Plaintiffs to deceitfully induce and illicit significant amounts of monetary donations from the public at large,” and “held themselves to the public as an entity that provided funding to Plaintiffs on the ground efforts to further deceitfully induce and illicit significant amounts of monetary donations from the public at large.” (Compl. at ¶ 63; see id. at ¶¶ 59-62.) Pursuant to the First Cause of Action, Plaintiff alleges they were harmed by such “alignment and association with Plaintiffs” and seek to have Defendants “disgorge their ill-gotten gains and restore such monies to Plaintiff.” (Id. at ¶¶ 64-65.)

The Complaint further alleges under the Second Cause of Action that Defendant Bowers “made specific and false representations to BLM Grassroots that it intended to follow the transition plan agreed to by the leadership of BLM” and that “[i]n connection with the transition plan, Defendants intentionally represented to Plaintiffs that all the resources of GNF would be transferred to BLM Grassroots and that BLM Grassroots would continue to share the social media accounts.” (Compl. at ¶ 68.)

Under the Third Cause of Action, Plaintiff alleges that “Defendants used their positions to falsely induce the public to donate funds[,]” and the confusing allegation that “[a]t the time of Defendants’ concealment or suppression of the fact that Defendants had used donor funds to purchase the home on behalf of GNF and intended to use the property for purposes unrelated to the BLM mission and values.” (Id. at ¶¶ 75, 77.)

The Complaint continues by alleging under the Fourth Cause of Action, the Complaint alleges that “Defendants intentionally and substantially interfered with Plaintiffs’ ownership and possession of (i) donated funds; (ii) shared social media accounts and (iii) shared emails and websites.” (Id. at ¶ 84.)

Lastly, the Fifth Cause of Action alleges that “Defendants used their positions as sole director, treasurer, and officer to obtain a secret profit and/or exorbitant fees by diverting donations for BLM Grassroots to himself or to others in breach of their implied in fact contract,” in addition to reiterating that “Defendants improperly used donations raised on behalf of BLM Grassroots and for the work of BLM Grassroots.” (Id. at ¶ 93.)

All allegations in the second through fifth causes of action incorporate by reference the allegations above it.

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**BLACK LIVES MATTER GRASSROOTS, INC vs BLACK
LIVES MATTER GLOBAL NETWORK FOUNDATION, INC,
et al.**

3:08 PM

Judge: Honorable Stephanie M. Bowick
Judicial Assistant: Richard Duarte
Courtroom Assistant: Calvin Lam

CSR: None
ERM: None
Deputy Sheriff: None

In support of its argument, Defendant BLM GNF relies on the case of *Ojeh v. Brown* (2019) 43 Cal.App.5th 1027. On the other hand, Plaintiff relies on the case of *Starr v. Ashbrook* (2023) 87 Cal.App.5th 999.

In *Ojeh*, the Court of Appeal first found that “based on the complaint's allegations and the parties' evidentiary submissions, we conclude that defendants' affirmative conduct (i.e., soliciting investments, performing partial work on the uncompleted film, and using the invested funds for purposes unrelated to the film) supplied elements of each of plaintiff's causes of action.” (Id. at 1039.)

The Court concluded that this “affirmative conduct” “appear critical to plaintiff's theories of liability and are not reasonably viewed as merely incidental, collateral, or contextual to plaintiff's claims for relief.” (Id. at 1038.) The Court of Appeal noted that, while the complaint also alleged that the defendants had no intention of actually making the documentary, “our task at the first stage of the anti-SLAPP analysis is to examine the challenged conduct without regard to the allegations of improper motive.” (Id. at 1038 (citing *Wilson*, supra, 7 Cal.5th at 888).)

After determining that the “affirmative conduct” “supplied elements of each of plaintiff's causes of action,” the Court of Appeal determined that the “affirmative conduct” at issue was in furtherance of the exercise of free speech. (Id. at 1039-1042.) Specifically, the Court of Appeal held that “Defendants' solicitation of investment funding is also reasonably viewed as conduct in furtherance of the documentary's production[,]” reasoning that “[a]s the complaint alleged, defendants sought investor funding from plaintiff for the stated purpose of financing the filming and production of the documentary, and there appears no dispute that application of such funding toward the documentary would have furthered or helped advance the project within the meaning of the catchall provision.” (Id. at 1039-1040.)

The Court of Appeal then determined that the conduct at issue was in connection with a public issue or issue of public interest, reasoning that the conduct at issue involved the parties' discussions to make a feature documentary film for a public audience and that there was no dispute that the Syrian refugee crisis is an issue of public interest. (Id. at 1036, 1042-1044.)

In *Starr*, the plaintiff, Jonathan Starr, brought a probate petition challenging the actions of the defendant, M. Thomas Ashbrook, who was acting as the trustee of the revocable trust of the plaintiff's father. (*Starr*, supra, 87 Cal.App.5th at 1005.) The plaintiff asserted a “surcharge cause

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of action” alleging that the defendant had wasted and misused trust assets by pursuing a meritless petition for instructions and using trust assets to fund litigation against the plaintiff and his brothers. (Id.)

The Court of Appeal concluded that “the surcharge cause of action arose from the alleged waste and misuse of trust assets; that is, the alleged waste and misuse of trust assets was the injury-producing activity allegedly giving rise to [the defendant’s] liability for breach of trust.” (Id. at 1025.) The Court of Appeal reasoned that, although the complaint alleged that the defendant used funds to pursue protected activity, namely, litigation, and “[a]t first glance” it appears the alleged conduct constitutes constitutionally protected activities of filing and pursuing a lawsuit, “[c]loser analysis leads us to conclude that the basis of liability is not the filing and funding of litigation, but is, as [the plaintiff] contends, the waste and misuse of trust money ‘when [the defendant] was never supposed to serve as trustee under the trust instrument itself.’” (Id. at 1020.) As explained by the Court of Appeal:

The core injury-producing conduct asserted by Jonathan in the surcharge cause of action is the waste and misuse of trust assets. Jonathan does not allege that either the Petition for Instructions or the elder abuse lawsuit [i.e., the litigation] in itself produced the injury or gave rise to liability. The injury allegedly suffered is the loss of trust assets and the reduction of the trust corpus, and that injury was produced by the waste and misuse of those assets by Ashbrook, whom Jonathan alleged was never supposed to serve as trustee. The Petition for Instructions and the elder abuse lawsuit merely serve as evidentiary support for Jonathan's claim. (Park, supra, 2 Cal.5th at p. 1065, 217 Cal.Rptr.3d 130, 393 P.3d 905.)

.... The essence of Jonathan's surcharge cause of action is that Ashbrook violated those duties by wasting and misusing trust assets. Misconduct in the administration of a trust and preservation of trust assets is not action “in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution.” (§ 425.16(b)(1).) (Id. at 1020-1021.)

Thus, the Court of Appeal affirmed the denial of the defendant’s anti-SLAPP motion pursuant to the first prong analysis. (Id. at 1027.)

The Court agrees with Defendant GNF that the allegations in the instant Complaint are analogous to those in Ojje and distinguishable to those in Starr.

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As the Court of Appeal concluded in *Ojjeh* with respect to the defendants' affirmative conduct in soliciting funds, performing partial work on the uncompleted documentary, and using the solicited funds for purposes unrelated to the documentary, the Court here also finds that the allegations of Defendants' affirmative conduct in soliciting and raising funds from the public not only supply elements of each of Plaintiff's causes of action, but that such conduct constitutes the core injury-producing conduct for all of Plaintiff's claims. The Court of Appeal explained that the funds were sought "for the stated purpose of financing the filming and production of the documentary, and there appears no dispute that application of such funding toward the documentary would have furthered or helped advance the project within the meaning of the catchall provision." (*Ojjeh*, supra, 43 Cal.App.5th at 1040.)

Here, the Complaint alleges that Defendant GNF was created "as an administrative organization to raise funds to provide financial support for local-level community efforts of BLM Grassroots." (Compl. at ¶ 22.) The Complaint alleges that Patrisse Cullors, as Executive Director of GNF, created the Black Lives Matter Support Fund... in connection with the Tides Foundation... to de-centralize governance over the unprecedented funds raised for BLM," that the Black Lives Matter Support Fund "was created for BLM Grassroots and was to be used for its work and that of the local BLM chapters pursuant to the terms of a grant agreement," and that "[t]he motivating purpose for the grant agreement was for the benefit of BLM Grassroots and its on-the-ground efforts." (Id. at ¶ 25.) The Complaint alleges that Ms. Cullors hired Defendants Bowers and Bowers Consulting in September 2020 to handle the administration of Defendant GNF and that, after Ms. Cullors decided to step away from Defendant GNF, transitioned leadership of Defendant GNF to Defendant Bowers and Dr. Abdullah. (Id. at ¶¶ 27-31.)

Plaintiff alleges (1) that Defendant Bowers, instead of following the transition plan created by Ms. Cullors and through a "series of misrepresentations and unauthorized backroom dealings," stole control over Defendant GNF "as the sole Board member and officer" and usurped Defendant GNF; (2) that, under the usurped control of Defendant Bowers, Defendant GNF engaged in a series of unlawful, unfair, and/or fraudulent acts all in order to solicit and raise funds from the public, ostensibly on behalf of and for Plaintiff and its work, including by manipulating shared social media channels, email lists, and "website" to appear as Plaintiff, and "steal[ing]" Plaintiff's logo; and (3) that Defendant Bowers then diverted the solicited donations to his own coffers for the benefit of himself and his consulting company, Defendant Bowers Consulting, thereby preventing the funds from being used for Plaintiff's on-the-ground work. (Id. at ¶¶ 25-26, 28, 31-37, 39-46, 51-57, 59, 63-65, 67-72, 74-80, 82-90, 92-96.)

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All these allegations are incorporated into each of Plaintiff's claims and causes of action. (Id. at ¶¶ 59, 67, 74, 82, 92.)

Not only are all these allegations critical to Plaintiff's theories of liability and therefore, cannot be reasonably viewed as merely incidental, collateral, or contextual to Plaintiff's claims for relief, but they are also the only injury-producing allegations supporting a claim for relief by Plaintiff. The allegations concerning Defendants' aligning themselves with Plaintiff by manipulating shared social media, email lists, and "website," and stealing of Plaintiff's logo, are all conduct by Defendants in furtherance of their efforts to solicit funds from the public by unlawfully and/or fraudulently capitalizing on the goodwill and reputation of Plaintiff. The Court finds that the remaining factual allegations, (see Compl. at ¶¶ 19-24, 27, 29, 30, 38, 47-50), are merely incidental, collateral, or contextual to Plaintiff's claim for recovery of the funds received by Defendants, and do not themselves support a claim for recovery.

In contrast, as stated above, the wrong complained of in Starr was the loss of trust assets and the reduction of the trust corpus stemming from the defendant serving as trustee when he was not supposed to, with the filing and funding of litigation merely serving as evidentiary support for the plaintiff's sole claim that he was injured when the defendant unlawfully served as trustee. (Starr, supra, 87 Cal.App.5th at 1020-1021.) The Court of Appeal concluded that "[m]isconduct in the administration of a trust and preservation of trust assets is not action 'in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution.'" (Id. (quoting (Code Civ. Proc., § 425.16(b)(1)).)

Here, however, the sole liability-producing wrongs complained of that supply the elements of Plaintiff's claims are those concerning Defendants' soliciting of funds from the public by unlawful, unfair, and/or fraudulent means, as discussed above. Indeed, for each cause of action, Plaintiff seeks the recovery of those allegedly unlawfully solicited funds. (See Compl. at ¶¶ 65, 72, 80, 90, 96 ["Defendants should be made to disgorge their ill-gotten gains and restore such monies to Plaintiff."].)

The Court also finds the alleged fundraising is in connection with a public issue. Similarly, in this case, the Complaint alleges that Defendants solicited the public at large for funds ostensibly to be used for the purpose of furthering Plaintiff's activist and grassroots mission "to end state sanctioned violence against members of the Black community," (Compl. at ¶¶ 19-21, 24-25, 29, 39, 41-42, 48-50, 59, 63, 67, 74, 82, 92), and there is no dispute that ending state sanctioned violence against members of the Black community is a matter of public issue, and that the

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application of funds raised from Defendants’ solicitation of the public would have furthered or helped advance Plaintiff’s mission of ending state sanctioned violence against members of the Black community.

The allegations that Defendants intended to divert the solicited funds for their own use is immaterial for the first prong of the anti-SLAPP analysis; the Court must examine the challenged conduct without regard to the allegations of improper motive. (See, e.g., *Ojeh*, supra, 43 Cal.App.5th at 1038 (citing *Wilson*, supra, 7 Cal.5th at 888); *Starr*, supra, 87 Cal.App.5th at 1025.)

For the foregoing reasons, the Court finds that Defendant BLM GNF satisfies its burden establishing that Plaintiff’s claims arise out of acts in furtherance of the right of petition or free speech and in connection with a public issue and therefore are subject to a special motion to strike.

B. Prong Two: Plaintiff’s Burden

If the moving party successfully shifts the burden, then the opposing party must demonstrate a probability of prevailing on the merits of the complaint. (*Equilon Ent.*, supra, 29 Cal.4th at 67; Code Civ. Proc. § 425.16(b)(1).)

“To establish a probability of prevailing, the plaintiff ‘must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.’” (*Soukup*, supra, 39 Cal.4th at 291 (quoting *Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548); accord, *Rosenaur v. Scherer* (2001) 88 Cal.App.4th 260, 274; see *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88–89 (internal citations and quotations omitted) [“As we have previously observed, in order to establish the requisite probability of prevailing, the plaintiff need only have stated and substantiated a legally sufficient claim. Put another way, the plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.”].)

“This burden is somewhat akin to that required to resist a nonsuit or to move for summary judgment,” (*1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 584 (internal citation omitted)), and therefore “[t]he standard for determining the merits of a defendant’s special motion to strike a complaint is similar to that for determining the merits of a defendant’s motion

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for summary judgment. “Both seek to determine whether a prima facie case has been presented by [the] plaintiff in opposing the motions.” (Kenne, supra, 230 Cal.App.4th at 963 (quoting Bergman v. Drum (2005) 129 Cal.App.4th 11, 18) (citing with approval Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 7:1008, p. 7(II)–57 (rev. # 1, 2014) [“The ‘probability of prevailing’ is tested by the same standard governing a motion for summary judgment, nonsuit, or directed verdict”])). “If a plaintiff sets forth a prima facie case in opposition to such motions, the motions must be denied.” (Id.)

“The court does not, however, weigh that evidence against the plaintiff’s, in terms of either credibility or persuasiveness. Rather, the defendant’s evidence is considered with a view toward whether it defeats the plaintiff’s showing as a matter of law, such as by establishing a defense or the absence of a necessary element.” (Id. at 585.) “An [opposing party] cannot simply rely on his or her pleadings, even if verified. Rather, the [opposing party] must adduce competent, admissible evidence.” (Hailstone v. Martinez (2008) 169 Cal.App.4th 728, 735.) “[T]he court may only consider the opposing evidence to determine if it defeats the plaintiff’s showing as a matter of law.” (Colt v. Freedom Communications, Inc. (2003) 109 Cal.App.4th 1551, 1557 (internal quotation and citation omitted).)

“[I]n order to defeat a special motion to strike, a plaintiff need only present sufficient evidence showing ‘a case of ‘minimal merit.’” (GetFugu, Inc. v. Patton Boggs LLP (2013) 220 Cal.App.4th 141, 155 (quoting Grewal v. Jammu (2011) 191 Cal.App.4th 977, 989).)

1. Standing

As an initial matter, the Court does not address Defendant BLM GNF’s argument concerning Plaintiff’s lack of standing because it was inappropriately raised for the first time in the Reply brief. (Reply at pp. 10-11.)

2. First Cause of Action: Unfair Business Practices

The unfair business practices law found at Business and Professions Code section 17200 (hereafter “UCL”) “focuses solely on conduct and prohibits anything that can properly be called a business practice and that at the same time is forbidden by law.” (Albillo v. Intermodal Container Services, Inc. (2003) 114 Cal.App.4th 190, 206 (internal citation quotations omitted).) “To bring a UCL claim, a plaintiff must show either an (1) unlawful, unfair, or fraudulent business practice, or (2) unfair, deceptive, untrue or misleading advertising.” (Adhav v. Midway

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Rent A Car, Inc. (2019) 37 Cal.App.5th 954, 970 (quoting Lippitt v. Raymond James Financial Services Inc. (9th Cir. 2003) 340 F.3d 1033, 1043.) As explained by the Court of Appeal in Saunders v. Superior Court (1994) 27 Cal.App.4th 832:

Section 17200 defines unfair competition as “any unlawful, unfair or fraudulent business act or practice” The “unlawful” practices prohibited by section 17200 are any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made. (People v. McKale (1979) 25 Cal.3d 626, 632....) It is not necessary that the predicate law provide for private civil enforcement. (Samura v. Kaiser Foundation Health Plan, Inc. (1993) 17 Cal.App.4th 1284, 1299....) As our Supreme Court put it, section 17200 “borrows” violations of other laws and treats them as unlawful practices independently actionable under section 17200 et seq. (Farmers Ins. Exchange v. Superior Court (1992) 2 Cal.4th 377, 383....) “Unfair” simply means any practice whose harm to the victim outweighs its benefits. (Moters, Inc. v. Times Mirror Co. (1980) 102 Cal.App.3d 735, 740....) “Fraudulent,” as used in the statute, does not refer to the common law tort of fraud but only requires a showing members of the public “are likely to be deceived.’ ” (Bank of the West v. Superior Court (1992) 2 Cal.4th 1254, 1267....) (Id. at 838-839.)

Pursuant to the First Cause of Action, the Complaint alleges that Defendants violated the UCL by aligning and associating with Plaintiff’s “core values and ideals,” “used their alignment... to deceitfully induce and illicit significant amounts of monetary donations from the public at large” and “held themselves to the public as an entity that provided funding to Plaintiffs on the ground efforts to further deceitfully induce and illicit significant amounts of monetary donations from the public at large.” Plaintiff also alleges that its reputation has been harmed. (Compl. at ¶¶ 63-64.) The Complaint alleges that, to solicit and raise funds from the public ostensibly on behalf of and for Plaintiff and its work, Defendant GNF manipulated shared social media channels, email lists, and “website” to appear as Plaintiff, and stole Plaintiff’s logo. (Id. at ¶¶ 40-42, 52-55, 59.)

After ruling on Defendant BLM GNF’s evidentiary objections, the Court finds, as argued by Defendant, that Plaintiff fails to meet its burden demonstrating a probability of prevailing on the merits of the First Cause of Action. Plaintiff does not allege that BLM GNF violated any state or federal law. The admissible evidence provided by Plaintiff fails to establish that Defendant GNF’s alignment and association with Plaintiff was an unlawful, unfair, or fraudulent business practice. Plaintiff relies on statements in Dr. Abdullah’s declaration and attached exhibits. For example, Plaintiff submits that “BLMGNF represented itself to us as being there for the purpose

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of maintaining an operational and funding infrastructure that would permit BLM Grassroots chapters to chart our political direction, focus on advocacy, and organize demonstrations, often in concert with the families of victims,” and that Ms. Cullors “represented that money donated to BLM would be distributed to fund BLM Grassroots' local and on-the-ground work.” (Abdullah Decl. at ¶ 20.) Exhibit 29 to Dr. Abdullah’s declaration further suggests that, pursuant to the transition, Defendant GNF would align itself with Plaintiff as Plaintiff’s sister organization and “lean onto [Defendant GNF’s] capacity as a fundraising body....” (Id. at ¶ 79, Ex. 29.) Exhibit 7 to Dr. Abdullah’s declaration states that Defendant GNF’s “primary focus during the transition will be art and culture and grant making” and that Plaintiff “will be the primary face for blm and you all will have access to all social channels,” (Id. at ¶ 57, Ex. 7; see also ¶¶ 59-61, Exs. 9-11.)

Plaintiff has failed to establish the required link between an alleged violation of the law or engaging in unfair competition by Defendant BLM GNF and the resulting injury in fact and loss of money or property. (Muddy Waters, LLC v. Superior Court (2021) 62 Cal. App. 5th 905, 923.)

Accordingly, the Court strikes the First Cause of Action for Unfair Business Practices.

3. Second Cause of Action: Intentional Misrepresentation

“The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.” (Lazar v. Sup. Ct. (1996) 12 Cal.4th 631, 638 (internal quotations omitted).)

The Second Cause of Action is premised upon the allegations that Defendant Bowers “made specific and false representations to BLM Grassroots that it intended to follow the transition plan agreed to by the leadership of BLM.” (Compl. at ¶¶ 67-73.) Plaintiff further alleges that Defendants promised “that all the resources of GNF would be transferred to BLM Grassroots and that BLM Grassroots would continue to share the social media accounts,” but that Defendants had no intention to carry through with that promise when made. (Id.)

As explained further below, the Court finds, as argued by Plaintiff, that the Second Cause of Action is based on the alleged false misrepresentations by Defendant Bowers that all of Defendant GNF’s resources would be transferred to Plaintiff and that Plaintiff and Defendant GNF would continue to share social media accounts. (Id.) However, the Court rejects Plaintiff’s

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assertion that the Second Cause of Action may also be construed as a constructive fraud claim based on the existence of a fiduciary relationship, (see Opposition at pp. 17-18). The Complaint fails to plead facts establishing that “as Fund Manager for the BLM Support Fund, BLMGNF, Ms. Cullors, and Mr. Bowers after she left, owed a fiduciary duty to BLM Grassroots....” (Id. at p. 17.) Further, Plaintiff does not provide any legal authority or citations to admissible evidence to conclude that a fiduciary duty existed for purposes of Plaintiff’s fraud claims, i.e., the Second and Third Causes of Action.

The Court agrees with Defendant BLM GNF that Plaintiff fails to meet its burden demonstrating a probability of prevailing on the merits as to Second Cause of Action.

In support of its contention that it “met its burden of supplying facts showing the Defendants’ intention to induce BLM Grassroots to forgo breaking away from BLMGNF and forming its own organization and fund-raising infrastructure in 2020 and 2021,” (Opposition at p. 17), Plaintiff relies on the declaration of Dr. Abdullah and the assertions in the declaration of Deanna Joseph.

After ruling on Defendant GNF’s evidentiary objections, the remaining admissible evidence provided by Plaintiff fails to show that Defendant GNF promised Plaintiff that all of Defendant GNF’s resources would be transferred to Plaintiff and that Plaintiff and Defendant GNF would continue to share social media accounts, but that Defendant GNF had no intention to carry through with that promise when made, that Plaintiff detrimentally relied on those representations, and that such false promises caused Plaintiff’s alleged damages.

Most of Plaintiff’s admissible evidence concerns representations Dr. Abdullah attests were made by Ms. Cullors concerning the specifics of the transition. (See Abdullah Decl. at ¶¶ 16-24, 27-33, Ex. 29.) Although Dr. Abdullah attests that Defendant Bowers told her “that the transition of BLMGNF to BLM Grassroots described by Ms. Cullors would proceed,” (id. at ¶ 29), Plaintiff provides no admissible evidence sufficient to conclude that 1) Defendant Bowers, on behalf of Defendant GNF, promised that Defendant GNF would transfer all its resources to Plaintiff and share social media accounts, 2) Defendant Bowers made this promise with no intent to perform, and 3) Plaintiff as a corporation justifiably relied on this promise to its detriment.

In sum, considering Dr. Abdullah’s declaration, as well as Exhibits 7 and 10, Plaintiff fails to establish all of the elements of intentional misrepresentation.

Accordingly, the Court strikes the Second Cause of Action.

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4. Third Cause of Action: Fraud

The Third Cause of Action is also a fraud cause of action, and is premised upon the allegations that “Defendants used their positions to falsely induce the public to donate funds” “with the intent to deceive and defraud Plaintiffs.” (Compl. at ¶¶ 75-76.) The Third Cause of Action also includes the unintelligible allegation that “[a]t the time of Defendants’ concealment or suppression of the fact that Defendants had used donor funds to purchase the home on behalf of GNF and intended to use the property for purposes unrelated to the BLM mission and values.” (Id. at. ¶ 77.)

The Court agrees with Defendant GNF that Plaintiff cannot establish a probability of prevailing on the merits as to the Third Cause of Action.

First, the Court finds that Plaintiff fails to demonstrate that the Third Cause of Action is legally sufficient. (See Soukup, supra, 39 Cal.4th at 291 (quoting Matson, supra, 40 Cal.App.4th at 548) [“To establish a probability of prevailing, the plaintiff ‘must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.’”].)

Claims for fraud must be plead with specificity. (Charnay v. Cobert (2006) 145 Cal.App.4th 170, 185, fn. 14.) “[T]hat is, a plaintiff must plead facts that show with particularity the elements of the cause of action.” (Glaski v. Bank of Am., Nat’l Ass’n (2013) 218 Cal. App. 4th 1079, 1090.) A plaintiff must plead “facts which show how, when, where, to whom, and by what means the representations were tendered.” (Lazar, supra, 12 Cal.4th at 645 [emphasis in original omitted].) When the fraud claim is based on false or incomplete statements, the plaintiff “must set forth at least the substance of those statements.” (Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC (2008) 162 Cal.App.4th 858, 878 (emphasis in original omitted).) In the case of a corporate defendant, the plaintiff must also allege the names of the persons who made the allegedly fraudulent representations and their authority to speak on behalf of the corporate defendant. (Lazar, supra, 12 Cal.4th at 645.) In addition, damages must be alleged distinctly and their “causal connection with the reliance on the representations must be shown.” (Service by Medallion v. Clorox Co. (1996) 44 Cal.App.4th 1807, 1818.)

The specificity requirement “serves two purposes. First, it gives the defendant notice of the definite charges to be met. Second, the allegations should be sufficiently specific that the court

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can weed out nonmeritorious actions on the basis of the pleadings.” (Heritage Pacific Financial, LLC v. Monroy (2013) 215 Cal.App.4th 972, 989.) “Thus the pleading should be sufficient ‘to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.’” (Id. (quoting Committee on Children's Television, Inc. v. General Goods Corp. (1983) 35 Cal.3d 197, 216–217, superseded by statute on another issue).)

Here, the allegations are so confusing and unintelligible it cannot even be determined what Plaintiff is alleging with respect to the Third Cause of Action. The Third Cause of Action appears premised on both misrepresentations by Defendant Bowers on behalf of Defendant GNF, (see Compl. at ¶¶ 67-68, 74), but also refers to “concealment or suppression.” (Id. at ¶ 77.) The allegation “[a]t the time of Defendants' concealment or suppression of the fact that Defendants had used donor funds to purchase the home on behalf of GNF and intended to use the property for purposes unrelated to the BLM mission and values,” is unintelligible, (id.), and it is unclear what “fact” Plaintiff is alleging was concealed or suppressed. To the extent that the “fact” concealed or suppressed was the use of donor funds to purchase “the home,” the Complaint makes no other reference to the purchase of property elsewhere in the Complaint, and there are no factual allegations to establish which Defendants concealed the purchase of the “home,” or to establish intent to induce reliance, justifiable reliance, and resulting damage.

To the extent that the Third Cause of Action is premised upon misrepresentation rather than concealment, the Complaint fails to sufficiently allege the how, when, where, to whom, and by what means the representations were tendered.

The Court agrees with Defendant GNF that the Third Cause of Action is insufficiently plead.

Second, the Court agrees with Defendant GNF that, notwithstanding the lack of sufficiency of the claim, Plaintiff also fails to demonstrate a probability of prevailing on the merits of the Third Cause of Action because Plaintiff submits no admissible evidence establishing that Defendant GNF knowingly made any alleged misrepresentation or omission with an intent to defraud Plaintiff, or justifiable reliance by Plaintiff resulting in Plaintiff's alleged damages to its detriment. Plaintiff relies on the same evidence cited in support of the Second Cause of Action. (See Opposition at pp. 16-18.)

Accordingly, the Court strikes the Third Cause of Action.

5. Fourth Cause of Action: Conversion

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 19

22STCV28481

June 27, 2023

**BLACK LIVES MATTER GRASSROOTS, INC vs BLACK
LIVES MATTER GLOBAL NETWORK FOUNDATION, INC,
et al.**

3:08 PM

Judge: Honorable Stephanie M. Bowick
Judicial Assistant: Richard Duarte
Courtroom Assistant: Calvin Lam

CSR: None
ERM: None
Deputy Sheriff: None

The Fourth Cause of Action is premised upon the allegations that Defendants converted “(i) donated funds; (ii) shared social media accounts and (iii) shared emails and websites.” (Compl. at ¶¶ 82-84.) The Fourth Cause of Action seeks to have Defendants “disgorge their ill-gotten gains and restore such monies to Plaintiff.” (Id. at ¶ 90.)

Conversion is the wrongful exercise of dominion over the property of another. (Hodges v. County of Placer (2019) 41 Cal.App.5th 537, 551.) “To prove conversion, a plaintiff must establish three elements: (1) ‘plaintiff’s ownership or right to possession of property,’ (2) ‘defendant’s wrongful act toward or disposition of the property, interfering with plaintiff’s possession,’ and (3) damages.” (Fong v. East West Bank (2018) 19 Cal.App.5th 224, 231 (quoting McKell v. Washington Mutual, Inc. (2006) 142 Cal.App.4th 1457, 1491).)

To establish a viable cause of action for conversion, the plaintiff “must establish an actual interference with his ownership or right of possession of property.” (Sanowicz v. Bacal (2015) 234 Cal.App.4th 1027, 1041.) “To do that he must have ‘either ownership and the right of possession or actual possession [of the property] at the time of the alleged conversion thereof.’” (Id. (quoting General Motors Acceptance Corp. v. Dallas (1926) 198 Cal. 365, 370).) “It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use.” (Shopoff & Cavallo LLP v. Hyon (2008) 167 Cal.App.4th 1489, 1507.)

The Court finds that Plaintiff fails to satisfy its burden demonstrating a probability of success on the merits of the Fourth Cause of Action because Plaintiff’s evidence is insufficient to establish, for purposes of the instant Motion, that it had owned or had any right to possession of financial assets, “donated funds,” “shared social media accounts,” and/or “shared emails and websites” in BLM GNF’s possession. The Court considers the declaration of Dr. Abdullah and supporting admissible exhibits.

In Opposition, Plaintiff contends that it has a “direct, legal interest” in \$26,100,2224.39 in the Fund at Tides. (Opposition at p. 18.) As argued by Defendant, the admissible evidence cited by Plaintiff does not establish that it had a possessory interest in a specific, identifiable sum of “donated funds” in the Fund or elsewhere. (See id. at pp. 18-19 (citing Abdullah Decl. at ¶¶ 25-26, 42, 72, Exs. 4, 6, 11, 18, 24).) Plaintiff does not identify or describe the aforementioned “direct, legal interest” and provides no legal authority to conclude that such interest is a

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possessory interest. Further, Plaintiff provides no legal authority to conclude that being a third-party beneficiary to the Fund is the same as owning or having a right to possession of those funds. In addition, the Court fails to find that Plaintiff's admissible evidence establishes that Plaintiff was a third-party beneficiary of the money in the Fund sufficient to demonstrate, for purposes of the instant Motion, that it had a possessory in interest in a specific, identifiable sum of "donated funds" or assets. Plaintiff's evidence does not establish, even for purposes of showing "minimal merit," that Tides either gave "or expressly confirmed" a possessory interest in a specific, identifiable sum of "donated funds."

Further, in Opposition, Plaintiff fails to direct the Court to any evidence to show that it had an ownership or possessory interest in any "shared social media account" or "shared email [account] and website," and that Defendant GNF interfered with such interest thereby causing Plaintiff damages. Nor does Plaintiff explain how Defendant BLM GNF can or did interfere with accounts, emails, or websites that are "shared" or how Plaintiff could have exclusive ownership of accounts, emails, or websites that are alleged to be "shared."

Therefore, the Court strikes the Fourth Cause of Action.

6. Fifth Cause of Action: Unjust Enrichment.

As correctly asserted by Defendant GNF, "[u]njust enrichment is not a cause of action.' It is 'just a restitution claim.'" (De Havilland v. FX Networks, LLC (2018) 21 Cal.App.5th 845, 870 (quoting Hill v. Roll Internat. Corp. (2011) 195 Cal.App.4th 1295, 1307).) Because the Court finds that Plaintiff fails to demonstrate a probability of prevailing on its other causes of action for unfair business practices, intentional misrepresentation, fraud, and conversion, Plaintiff's unjust enrichment claim necessarily fails as well. (See id. [holding that since the plaintiff's causes of action fail, the unjust enrichment claim fails].)

Further, the Court agrees with Defendant BLM GNF that Plaintiff's evidence fails to establish for purposes of the instant Motion that it was entitled to any of the donated funds at issue or that Defendants have been enriched.

For all the foregoing reasons, the Court GRANTS Defendant BLM GNF's Special Motion to Strike the Complaint and request for an opportunity to file a motion for attorney's fees and costs. Certificate of Mailing is attached.