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6 **SUPERIOR COURT OF CALIFORNIA**
7 **COUNTY OF LOS ANGELES, NORTHWEST DISTRICT**

8
9 MICHAEL JONES, an individual

10 Plaintiffs,

11 vs.

12
13 STANDARD TECHNOLOGIES, INC., a
14 California "S" corporation; MICHAEL
15 FRANK, an individual; THOMAS SMITH
16 aka TOMMY SMITH, an individual; and
17 DOES 1 through 10, inclusive,

18 Defendants.

) Case No.: SC123456
) *[Complaint Filed January 3, 2013]*
) *Assigned for all purposes to the*
) *Honorable John J. Smith – Dept. 3*

) **PLAINTIFF'S OPPOSITION TO**
) **DEFENDANT STANDARD**
) **TECHNOLOGIES, INC.'S MOTION TO**
) **STRIKE COMPLAINT**

19
20 **TO THIS HONORABLE COURT AND TO DEFENDANT AND THEIR COUNSEL**
21 **OF RECORD:**

22 Plaintiff MICHAEL JONES ("plaintiff") hereby submits the following Opposition to the
23 motion of defendant STANDARD TECHNOLOGIES, INC. ("defendant") to strike complaint.

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1 **OPPOSITION MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**
3 **INTRODUCTION**

4 Defendant Standard Technologies, Inc.’s (“defendant”) contentions about the revelation of
5 background information which is necessary to inform the court of the nature of the dispute and
6 provide context for the harm done to plaintiff, Michael Jones (“Mr. Jones” or “plaintiff”) is little
7 more than a transparent attempt to exercise a paragraph-by paragraph veto over allegations which
8 have direct bearing on the dispute between the parties. The fact that defendant would like to bury
9 the truth of its majority shareholders’ historical dealings with Mr. Jones in the hopes that everyone
10 will ignore its unsavory past is absurd. Defendant may not manipulate the Code of Civil
11 Procedure¹ to limit the allegations of its wrongful conduct to a level of what it deems acceptable
12 immorality. Defendant appears to mistake the purpose of a motion to strike as to suppress
13 allegations of defendant’s distasteful behavior, which is not the case.

14 Defendant fails to provide any factual support for the position that it is entitled to strike
15 factual allegations that it regards as “irrelevant”² from the Complaint. Relying solely on three
16 sections of the Code of Civil Procedure, defendant has cobbled together the novel argument that it
17 is entitled to have background material about the misconduct of its majority shareholders stricken
18 unless plaintiff can show that the inclusion of the material is absolutely essential to proof of any
19 cause of action against defendant. In doing so, defendant misstates the law, attempts to improperly
20 shift the burden, and misconstrues the nature of the Complaint.

21 Defendant cites no case law that holds that plaintiff is prohibited from spelling out the
22 extent and scope of the long-standing and continuing fraudulent conspiracy of which he has been
23 the victim, but instead is limited to describing only part of the scheme of fiduciary breaches that
24 defendant deems “relevant”. On its face, defendant’s position seeks to improperly bar the
25 introduction of background facts that provide the context for plaintiff’s claims and prohibit

26 ¹ Code of Civil Procedure §§ 435-437, specifically, which is the sole legal authority cited by
27 defendant in its motion to strike.

28 ² See defendant’s motion to strike, p. 1:20-21: “*As far as we are concerned*, there is no
imaginable relevance or probity in these allegations to any claim in this case...” (emphasis added).

1 plaintiff from pleading facts necessary to show that defendants' scheme was not accidental, but a
2 willful and multifaceted enterprise designed to conceal from plaintiff the harm alleged in the
3 Complaint.

4 The only law cited by defendant in its motion to strike, Code of Civil Procedure sections
5 435-437, is not intended as a tool for contesting allegations that the Court must accept as true at
6 the pleadings stage, nor is it intended to provide defendant with a means of erasing core
7 allegations concerning its wrongdoing, deception, fraud, misconduct, or propensity to engage in
8 such acts. The absence of any citation to any case law appears to be defendant's concession that no
9 such law exists. Although defendant may wish to erase history by calling it "irrelevant",
10 defendant's misdeeds and the breaches of the fiduciary duties owed plaintiff are directly relevant
11 to the damages incurred by plaintiff due to such misconduct.

12 When stripped of its rhetoric, defendant's only argument appears to be that it does not like
13 having allegations about the prior misconduct of its majority shareholders – no matter how
14 relevant – stated in the instant Complaint. This is no argument for striking the material at issue, as
15 the standard for motions to strike does not hinge on whether defendant is unhappy with the
16 allegations made against it (as no defendant would be), but whether they are beyond the pale of
17 relevance. Plaintiff respectfully submits that the complained-of allegations are directly relevant to
18 the understanding of the conduct alleged and are necessary to plaintiff's causes of action, and that
19 defendant's motion to strike is without merit. Here, defendant has filed a motion that has no
20 support in existing case law, and unnecessarily caused plaintiff to undergo litigation expenses that
21 are unjustified by defendant's position.

22 Defendant has failed to and cannot meet the required (and disfavored) burden to prevail on
23 a motion to strike, and plaintiff respectfully requests that this Honorable Court deny the motion in
24 its entirety.

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1 II.

2 SUMMARY OF ALLEGATIONS OF PLAINTIFF'S COMPLAINT

3 In 1980, Michael Jones ("plaintiff") and his brother John Jones incorporated their former
4 partnership into a new entity, Standard Technologies, Inc. ("Standard") along with co-defendant
5 Michael Frank ("Mr. Frank"), each owning a one-third (1/3) interest in the corporation. Standard
6 manufactures and sells holographic images and printing and in or around 1983 or 1984, a second
7 corporation, "Discom Technologies, Inc." was formed by the Standard owners and a few other
8 investors including co-defendant Thomas Smith aka Tommy Smith ("Mr. Smith") with the
9 purpose of securing the licensing of Photo Thermo Transfer ("PTT") technology from Mr. Frank.
10 Plaintiff, his brother, and Mr. Smith each owned a 12% interest in Discom, Mr. Frank held a 32%
11 interest. (Complaint, ¶¶8-10.)

12 In the late 1980's and early 1990's, unbeknownst to plaintiff, Mr. Frank and Mr. Smith
13 began to engage in a pattern of calculated, protracted, willful misconduct that deprived plaintiff of
14 the value of his interest in Standard and diverted funds and resources from Standard to business
15 entities and transactions in which Mr. Frank and Mr. Smith had an exclusive interest. Mr. Frank
16 unilaterally determined that Mr. Smith should receive a 20% interest in Standard without
17 consideration and so he re-allocated the remaining shares so that Mr. Frank's interest increased to
18 40% while plaintiff and his brother's interests each decreased to 20% each. Mr. Smith
19 misrepresented to plaintiff in 1993 that because he had failed to timely re-register Standard with
20 the California Secretary of State, the corporation had been lost and a new corporation had to be
21 formed called Standard Holdings Corporation, wherein Mr. Frank memorialized the restructured
22 ownership interests and installed himself as Chairman of the Board and Vice President of
23 Research and Development. Mr. SMITH was installed as Standard's President and Secretary,
24 plaintiff was installed as the Vice President of Marketing, and his brother became the Vice
25 President of Manufacturing. (Complaint, ¶¶ 12-14.)

26 Beginning in 1995, Mr. Frank and Mr. Smith engaged in a pattern of self-dealing by
27 creating separate entities owned solely by them that subsequently would compete with Standard,

1 steal the licensing of the PTT technology and enter into a joint venture with a sport memorabilia
2 company, The Top Deck Company (“Top Deck”) to create a new entity. Mr. Frank and Mr. Smith
3 misrepresented facts to plaintiff, causing him to believe that such entities and agreements would
4 be for the benefit of Standard (and therefore plaintiff) and to satisfy the investors of Discom.
5 Plaintiff relied Mr. Frank and Mr. Smith to oversee the financial and operational/administrative
6 duties based on their longstanding relationship and friendship. (Complaint, ¶¶16-19.)

7 In or around 1998, the venture with Top Deck went south after Top Deck provided the
8 joint venture company that had been formed by co-defendants with \$7,000,000.00³ and Standard,
9 although it had had no relationship with Top Deck, was named as a defendant in a suit filed by
10 Top Deck based on misrepresentations made to Top Deck by Mr. Frank and Mr. Smith as majority
11 owners of Standard. Despite not having adequate cash reserves, Standard settled with Top Deck
12 for \$2,000,000.00 and over the course of several years, based on further misrepresentations by Mr.
13 Smith and Mr. Frank, plaintiff was forced to contribute \$400,000.00 out of his share of the profits
14 of Standard to satisfy the judgment. (Complaint, ¶¶ 19, 20, 21, 22, and 24.)

15 The Top Deck settlement negatively impacted Standard’s ability to go public at that time
16 and severely depleted its funds. Mr. Smith advised plaintiff that the only way to keep Standard
17 operational would be to take out loans, which plaintiff agreed to do, incurring loans in excess of
18 \$1,600,000.00 in order to pay the salaries of Mr. Smith, Mr. Frank and plaintiff⁴. (Complaint,
19 ¶¶23-25.) Plaintiff was unaware of the misrepresentations and concealments of Mr. Frank and Mr.
20 Smith and continued to rely on them to make proper decisions regarding the operations and
21 finances of Standard while he focused his efforts on the marketing and sales of Standard’s
22 products throughout the 1990’s and 2000’s. In order to try to resolve the financial straits Standard
23 had been placed in, plaintiff advocated partnering with an outside company in order to increase
24 sales and decrease debt. (Complaint, ¶ 27.)

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26 ³ Mr. Frank and Mr. Smith concealed the compensation that they received from the Top Deck
27 deal from plaintiff, who received no compensation from the joint venture despite the grant to Top
28 Deck of the exclusive license to Discom and Standard’s intellectual properties.

⁴ To date, plaintiff has repaid approximately \$762,000.00 of the outstanding loans incurred by
him based upon Mr. Smith and Mr. Frank’s misrepresentations.

1 In order to placate plaintiff, in 2010, when Standard was approached by Productos
2 (Mexico) (“Productos”), a prospective business partner, Mr. Frank and Mr. Smith went so far as to
3 come to an oral agreement with plaintiff that it would agree to partner with Productos and
4 prepared a draft Stock Purchase Agreement (“Productos Agreement”) whereby Productos would
5 purchase a 50% interest in Standard for \$6,000,000.00. Section 3.3.4 of the Productos Agreement
6 disclosed that Standard’s revenues were not sufficient to pay its operating costs and that Standard
7 lacked the resources to pay the landlord past due and current rent on its facilities. (Complaint, ¶¶28;
8 Exhibit A to Complaint.) However, in May 2011, before the Productos Agreement was executed,
9 Mr. Smith and Mr. Frank breached their agreement with plaintiff to move forward with the
10 Productos partnership and misrepresented to plaintiff that they were pursuing an agreement with
11 an Indian Company interested in purchasing a 65% interest in Standard – an agreement that never
12 materialized. After the agreement with the alleged Indian Company failed, Productos again
13 approached Standard in late 2011, seeking to form a partnership under the same terms as the
14 original Productos Agreement, but Mr. Frank and Mr. Smith refused to enter into a partnership
15 with Productos, despite the fact that they had agreed with plaintiff that doing so would resolve the
16 significant financial straits Standard was in at that time. (Complaint, ¶¶29-30.)

17 Shortly thereafter, in March 2012, plaintiff met Mr. Frank informally for lunch to discuss
18 business and personal matters, as was a frequent practice over the years. When plaintiff heard Mr.
19 Frank discussing how his wife had only ever been happy with Mr. Frank’s income from Standard
20 during the time that Mr. Frank was working with Mr. Smith on the Top Deck joint venture that
21 plaintiff had been informed had never materialized and resulted in the litigation costing Standard
22 and plaintiff, himself, millions of dollars, plaintiff became suspicious and began to investigate
23 Standard’s records regarding its business dealings and its finances. Plaintiff discovered
24 information that indicates that during the time that Mr. Frank and Mr. Smith had been receiving
25 their full salaries from Standard while working on the Top Deck joint venture, they had spent 90%
26 of their time engaged in self-dealing conduct and personally profiting from the Top Deck joint
27 venture. Based in information and belief, plaintiff alleges that from the time of the Top Deck joint

1 venture, Mr. Frank and Mr. Smith, majority shareholders of Standard, breached their fiduciary
2 duties to plaintiff by diverting business opportunities from Standard and squandering the funds
3 and resources of Standard on the entities owned by Mr. Frank and Mr. Smith to the detriment of
4 plaintiff's interest and continued to divert business, squander funds, mismanage the corporation,
5 incur substantial debt and personally profit from their self-dealing conduct.(Complaint, ¶¶ 32-34.)
6 On information and belief, it is this on-going self-dealing that motivated Mr. Frank and Mr. Smith
7 to breach their oral agreement with plaintiff to sell the 50% interest in Standard to Productos, so
8 that they could continue to profit at plaintiff's expense without the oversight of a partner.
9 (Complaint, ¶ 31.)

10 Upon discovery of the pattern of misconduct, misrepresentations, concealment, negligence
11 and other fraudulent activities by Mr. Frank and Mr. Smith, majority shareholders of Standard,
12 plaintiff resigned from Standard on August 1, 2012, the company he and his brother had started
13 and invested their time and money in growing for over thirty years. Defendants have refused to
14 pay plaintiff for his interest in Standard, have refused to reimburse him for the monies he
15 personally had to pay to satisfy the Top Deck settlement, which was the result of malicious
16 conduct on the part of Mr. Frank and Mr. Smith, and are demanding that plaintiff repay the
17 remainder of the loans taken out to pay their salaries during the times that they were engaged in
18 self-dealing and otherwise breaching their fiduciary duties to plaintiff. (Complaint, ¶¶ 34, 35,
19 52(g).)

20 A business partnership and friendship lasting over thirty years, the last twenty of which the
21 majority shareholders consistently engaged in self-dealing conduct designed to usurp business
22 opportunities from Standard to the direct and substantial detriment of plaintiff, who trusted his
23 partners not to breach their fiduciary duties of care and loyalty – is there any doubt that defendants
24 would be desperate to deem such unethical conduct irrelevant by filing this motion to strike? The
25 answer is no. However, the information contained in plaintiff's complaint is directly relevant to
26 determining what plaintiff's interest in Standard was at the time of his resignation, to determining
27 the damages owed to plaintiff for defendant's fraudulent activities based on the discovery rule, to

1 finding defendants guilty of breaching their fiduciary duties to plaintiff and to finding that
2 defendants breached their agreement with plaintiff to sell the company to Productos in order to
3 continue concealing past conduct and engaging in self-dealing behaviors. Plaintiff's allegations are
4 necessary to show that defendant's tortious conduct was not a single event, but a series of events
5 rising to levels of extreme indifference to plaintiff's rights, a level at which decent citizens, such
6 as Michael Jones, should not have to tolerate; making punitive damages appropriate in this case⁵.

7 III.

8 STANDARDS OF LAW FOR MOTION TO STRIKE

9 A motion to strike challenges the legal sufficiency of the complaint's allegations, which
10 are assumed to be true and which are given a liberal construction. *Blakemore v. Superior Court*
11 (2005) 129 Cal.App.4th 36, 53; *Velez v. Smith* (2006) 142 Cal.App.4th 1154, 1163. Allegations of
12 a pleading subject to a motion to strike are considered as a whole, with all parts in their
13 appropriate context. *Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504,
14 1519. (See also *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255 "[J]udges read
15 allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and
16 assume their truth.)

17 Motions to strike are disfavored and "will usually be denied unless the allegations have no
18 possible relation to the controversy and may cause prejudice to one of the parties." *Friedman v. 24*
19 *Hour Fitness USA, Inc.* (C.D. Cal. 2008) 580 F.Supp.2d 985, 990. Immaterial or irrelevant matter
20 is that which has no essential or important relationship to the causes of action being pleaded.
21 *Fantasy, Inc. v. Fogerty* (9th Cir. 1993) 984 F.2d 1524, 1527, rev'd on other grounds, 510 U.S.
22 517 (1994).

23 As a general rule, motions to strike "should not be granted unless it is clear that the matter
24 to be stricken could have no possible bearing on the subject matter of the litigation." *Neveau v.*
25 *City of Fresno* (C.D. Cal. 2005) 392 F.Supp.2d 1159, 1170. Where a motion to strike is so broad
26 as to include relevant matters, the motion to strike must be denied ***in its entirety***. *Triodyne, Inc. v.*

27 ⁵ See *American Airline, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th
28 1017, 1051 (citing *Tomaselli v. Transamerica, Inc.* (1994) 25 Cal.App.4th 1269, 1287.)

1 *Superior Court for Los Angeles County* (1966) 240 Cal.App.2d 536, 542-43 (citing *Hill v. Wrather*
2 (1958) 158 Cal.App.2d 818, 823 (emphasis added)). The court should never strike out matter
3 which will leave the complaint defective such that it leads to a dismissal of an action. *Allerton v.*
4 *King* (1929) 96 Cal.App. 230, 234 (emphasis added).

5 **IV.**

6 **DEFENDANT’S MOTION TO STRIKE MUST BE DENIED AS TO PORTIONS THAT**
7 **FAIL TO PROVIDE GROUNDS TO STRIKE IN VIOLATION OF CODE OF CIVIL**
8 **PROCEDURE §§ 436 & 437**

9 California Code of Civil Procedure §§ 436 and 437 provide the authority for the court to
10 strike out portions of a complaint where the grounds for the motion to strike appear on the face of
11 the challenged pleading. Defendant’s Notice of Motion to Strike states that it will move the Court
12 for an order striking a number of allegations, including paragraphs **28-34, 52, 56, 61** and **65** that
13 defendant then fails to mention, much less offer any grounds for striking, in its memorandum of
14 points and authorities, and on that basis, defendant’s motion to strike the aforementioned
15 paragraphs must be denied.

16 **V.**

17 **DEFENDANT’S MOTION TO STRIKE MUST BE DENIED AS TO PORTIONS NOT**
18 **QUOTED VERBATIM IN VIOLATION OF CALIFORNIA RULES OF COURT, RULE**
19 **3.1322**

20 California Rules of Court, Rule 3.1322(a) states that a notice of motion to strike a portion
21 of a pleading *must quote in full the portions sought to be stricken* except where the motion is to
22 strike an entire paragraph. Defendant’s notice of motion to strike portions of a pleading does not
23 seek to strike the entirety of paragraphs **12, 52, 56, 61**, and **65⁶**, in violation of Rule 3.1322 and on
24 that ground, defendant’s motion to strike those portions of the complaint must be denied.

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28 ⁶ Specifically, defendant’s motion seeks to strike: “Paragraph 12, page 3, lines 25-26 and page 4,
lines 1-6”; “Paragraph 52, page 14, lines 15-26, page 15 lines 1-2 and 10-14”; “Paragraph 56,
page 16, lines 18-24 and page 17, lines 3-13”; “Paragraph 61, page 18, lines 15-26 and page 19,
lines 5-15”; and “Paragraph 65, page 20, lines 11-21”.

VI.
**FACTS ALLEGED REGARDING PLAINTIFF'S PERCENTAGE OF INTEREST IN
STANDARD TECHNOLOGIES, INC. ARE RELEVANT TO THE DETERMINATION OF
PLAINTIFF'S RESPECTIVE RIGHTS REGARDING HIS SHARE**

As an initial matter, defendant fails to cite any legal authority in support of its motion to strike aside from a single conclusory statement at the end of the memorandum of points and authorities⁷ and does not provide sufficient law or analysis to grant its motion. Defendant states that “[a]s far as we are concerned” there is no relevance to plaintiff’s factual allegations that explain not only how Mr. Frank and Mr. Smith became majority shareholders of a corporation owned in equal parts by plaintiff, his brother and Mr. Frank without any consideration, but also establishes the beginning of a calculated pattern of willful misconduct designed to deprive plaintiff of the value of his interest in Standard, but the facts attacked are relevant to plaintiff’s claims.

These facts are directly relevant and necessary to plaintiff’s claims of breach of fiduciary duty as they show the beginning of a pattern of tortious conduct intended to defraud plaintiff of the value of his interest in Standard. Necessary to that cause of action is a showing that Mr. Frank and Mr. Smith, as majority shareholders of Standard, owed a fiduciary duty of care to plaintiff, the breach of which is subject to punitive damages.

“The Courts of Appeal have often recognized that majority shareholders, either acting singly or in concert to accomplish a joint purpose, have a fiduciary duty to the minority and to the corporation to use their ability to control the corporation in a fair, just and equitable manner. Majority shareholders may not use their power to control corporate activities to benefit themselves alone or in a manner detrimental to the minority. Any use to which they put the corporation of their power to control the corporation must benefit all shareholders proportionately and must not conflict with the proper conduct of the corporation’s business.”

Jones v. H.F. Ahmanson & Co. (1969) 1 Cal.3d 93, 108.

Plaintiff alleges that Mr. Frank and Mr. Smith, as the controlling and majority shareholders of Standard, breached the fiduciary duties of care and loyalty to plaintiff, and facts objected to by plaintiff are relevant in that they establish that upon Mr. Frank’s unilateral installment of himself

⁷ At the end of its two-page Discussion, defendant offers a single sentence that states, “[t]hus, pursuant to California Code of Civil Procedure Section 435-437, each of the allegations set forth above, or otherwise described in the accompanying Notice, should be stricken at this time, as they constitute “irrelevant” material under the code.”₁₀₋

1 and Mr. Smith as majority shareholders, they began to use their power in a manner detrimental to
2 plaintiff's minority interest and then further engaged in fraud to establish themselves as the
3 majority by issuing 60% of the shares of a new corporation that Mr. Smith misrepresented to
4 plaintiff and his brother was necessary to create because the Standard name had been lost when
5 Mr. Smith failed to renew registration with the state. (Complaint, pp. 3-4, ¶¶ 12-14.)

6 Additionally, while punitive damages are recoverable for breach of fiduciary duty, it must
7 be shown that the wrongdoer acted with the "intent to vex, injure or annoy, or with a conscious
8 disregard of the plaintiff's rights". *Lacker v. N.* (2006) 135 Cal.App.4th 1188, 1210. Paragraphs
9 12-14 of plaintiff's Complaint establish the beginning of not only a conscious disregard of
10 plaintiff's rights, but also the intent to injure plaintiff by forcing him to accept a decrease in his
11 shares in Standard from a 1/3 interest to a 1/5 interest without any consideration. These allegations
12 have an important if not essential relationship to plaintiff's claims and on that basis, defendant's
13 motion to strike should be denied in its entirety⁸, or, in the alternative, denied as to paragraphs 12-
14 14 of plaintiff's Complaint.

15 VII.

16 **FACTS ALLEGED REGARDING THE MAJORITY SHAREHOLDER AND OFFICERS'** 17 **WILLFUL, OPPRESSIVE, AND FRAUDULENT CONDUCT CONCERNING THE TOP** 18 **DECK DEALINGS ARE RELEVANT AND NECESSARY TO ESTABLISH** 19 **DEENDANTS' LONG PATTERN OF CONCEALMENT OF SELF-INTERESTS AND** 20 **BREACHES OF FIDUCIARY DUTIES OF LOYALTY AND CARE**

21 As noted in Section VI, *supra*, the majority shareholders of a corporation are in breach of
22 the fiduciary duty they owe to the minority shareholders when they use their control of the
23 company to benefit themselves to the detriment of the minority⁹. The conduct of defendants in
24 concealing the true facts of the dealings with Top Deck and the monies that Mr. Frank and Mr.
25 Smith were receiving from Top Deck personally, while usurping a business opportunity that
26 rightfully belonged to Discomm or Standard due to those corporations' ownership of the
27 intellectual property rights sought by Top Deck is directly relevant to show that defendant's

28 ⁸ See *Triodyne, Inc. v. Superior Court for Los Angeles County*, *supra*, 240 Cal.App.2d at 542-543,
Where a motion to strike is so broad as to include relevant matters, the motion to strike must be
denied *in its entirety*" (emphasis added).

⁹ *Jones v. H.F. Ahmanson & Co.* (1969) 1 Cal.3d 93, 108.

1 dealings were not mere negligence, but were concerted efforts to defraud plaintiff by siphoning
2 profits into entities owned solely by Mr. Frank and Mr. Smith. Also, the facts related to the Top
3 Deck joint venture and the subsequent litigation initiated by Top Deck against Standard are
4 necessary to provide the foundation for understanding how Standard was financially run into the
5 ground by Mr. Frank and Mr. Smith, leading to the agreement between plaintiff and defendants to
6 sell a 50% interest in Standard to Productos in order to relieve the severe financial strain on
7 Standard that was significantly affecting plaintiff's personal finances.

8 By alleging these facts in his Complaint, plaintiff has clearly pled that defendants acted
9 knowingly, intentionally, willfully, and in conscious disregard of the rights of plaintiff, which is
10 necessary in asserting that punitive damages should be awarded against defendants as plaintiff's
11 Complaint requests. These allegations have an important if not essential relationship to plaintiff's
12 claims and on that basis, defendant's motion to strike should be denied in its entirety¹⁰.

13 **VIII.**

14 **PLAINTIFF ALLEGES BREACH OF ORAL AND IMPLIED CONTRACTS BETWEEN** 15 **PLAINTIFF AND DEFENDANTS AND NOT STANDARD AND PRODUCTOS DUREL,** 16 **CONTRARY TO DEFENDANT'S ASSERTION**

17 Civil Code of Procedure § 436 does not authorize attacks on entire causes of action.
18 *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528. (See also *Quiroz v. Seventh Avenue*
19 *Center* (2006) 140 Cal.App.4th 1256, 1281, a court does not have the discretion to strike matter
20 that is essential to a cause of action and it is error to do so, as demurrers are the proper vehicle for
21 a challenge to a cause of action.) Defendant's motion essentially seeks to strike all of the first and
22 second causes of action which is improper and it would be error for the Court to exercise its
23 discretion to grant it. Therefore as a procedural matter, defendant's motion to strike these
24 paragraphs¹¹ must be denied.

25 Additionally, defendant attacks plaintiff's causes of action for breach of oral contract and
26 breach of implied contract, found in paragraphs 41-44 and 46-49 of plaintiff's complaint as "hard

27 ¹⁰ See *Triodyne, Inc. v. Superior Court for Los Angeles County, supra*, 240 Cal.App.2d at 542-
28 543, Where a motion to strike is so broad as to include relevant matters, the motion to strike must
be denied *in its entirety*" (emphasis added).

¹¹ Specifically ¶¶ 41-44 and 46-49 of plaintiff's Complaint.

1 to understand” how the allegations mean anything to any claim in the complaint. It is likely that
2 defendant’s misunderstanding arises from its assertion that the “Complaint does not suggest there
3 was a binding agreement with Productos that was breached”¹². Plaintiff is not alleging that there
4 was a breach of contract between Standard and Productos, but that there was a breach of the oral
5 and implied agreements *between Standard’s majority shareholders and plaintiff* to rescue
6 Standard from its precarious financial position by entering into the agreement with Productos,
7 which is evidenced by plaintiff’s Exhibit 1, the draft of the agreement that Standard had agreed to
8 enter into with Productos, but failed to do so, even after an alternative partnership with an Indian
9 company failed to come to fruition. Plaintiff’s allegations are directly relevant to his causes of
10 action for breach of oral contract and breach of implied contract, as they properly plea the
11 essential elements for breach of contract¹³.

12 IX.

13 **DEFENDANT’S ARGUMENT IMPROPERLY SEEKS FACTS THAT DO NOT APPER** 14 **ON THE FACE OF THE PLEADING, IN VIOLATION OF CODE OF CIVIL** 15 **PROCEDURE § 437(a)**

16 Code of Civil Procedure §437(a) states: “The grounds for a motion to strike shall appear on
17 the face of the challenged pleading or from any matter of which the court is required to take
18 judicial notice” and states that where the motion to strike is based on matter of which the court
19 *may* take judicial notice, such matter shall be specified in notice or motion. *Code of Civ. Proc.*
20 §§437(a)(b). Defendant did not specify any matter to be judicially noticed, therefore the only facts
21 properly before the court are those contained in the four corners of the pleadings.

22 It should be noted that the only appropriate grounds stated by defendant for striking
23 paragraphs 41-44 and 46-49 is relevance, which has been discussed in Section VIII, *supra*. A

24 ¹² Motion to Strike, p. 2:4-6.

25 ¹³ Specifically, paragraphs 41 and 46 allege that plaintiff on the one hand, and Mr. Frank and Mr.
26 Smith, on the other hand, entered into an oral and an implied contract (respectively) regarding
27 executing the Productos deal if the amount offered by Productos was sufficient to meet Standard’s
28 dual purposes of increasing revenue and decreasing debt, which at six million dollars, it was.
Paragraphs 42-43 and 47-48 allege the breach of the agreement between plaintiff and the Standard
majority shareholders, and Paragraphs 44 and 49 allege that as a direct and proximate result of
defendants’ breach of the contracts, plaintiff has sustained monetary damages. (Complaint, ¶¶ 41-
44 and 46-49.)

1 motion to strike may not be used to weigh evidence, resolve disputed legal issues, or simply
2 eliminate allegations with which STANDARD disagrees, all of which would be contrary to the
3 requirement that the Court accept the allegations of the Complaint as true and give those
4 allegations a liberal construction. (See *Velez v. Smith* (2006) 142 Cal.App.4th 1154, 1163.)
5 Defendant's motion violates the purpose of the motion to strike in that it attempts to argue
6 substantive issues of the case¹⁴, which is impermissible in a motion to strike.

7
8 **X.**
9 **THE FACTS ALLEGED ARE SUFFICIENT TO SUPPORT A CLAIM FOR PUNITIVE**
10 **DAMAGES FOR THE BREACH OF THE FIDUCIARY DUTIES OF CARE AND**
11 **LOYALTY**

12 Finally, defendant seeks to strike paragraphs 58, 63 and item 2 of the Prayer for Relief on
13 the grounds that there are no facts that would support a claim for punitive damages. However, as
14 discussed in Sections VI and VII, *supra*, plaintiff has alleged facts supporting his claims for
15 breach of the fiduciary duties of care and loyalty, and for punitive damages to be awarded against
16 defendant.

17 While a breach of fiduciary duty alone without malice, fraud or oppression does not permit
18 an award of punitive damages, when the tortious conduct rises to levels of extreme indifference to
19 the plaintiff's rights, a level which decent citizens should not have to tolerate, punitive damages
20 are justified. *Lacker v. N.*, *supra*, 135 Cal.App.4th at 1210. Under California law, the important
21 factor is if the "complaint as a whole contains sufficient facts to apprise the defendant of the basis
22 upon which plaintiff is seeking relief. *Conclusory allegations will not be stricken where they are*
23 *supported by other factual allegations in the Complaint.*" *Perkins v. Superior Court* (1981) 117
24 Cal.App.3d 1, 6.

25 Ironically, the very facts that plaintiff wishes to have stricken from the body of the
26 complaint as "irrelevant" are those that necessarily support plaintiff's allegations that defendants'

27 ¹⁴ Defendant asserts facts outside the four corners of the pleading and for which no judicial notice
28 has been (or can be) requested: "the corporation elected to negotiate instead with an Indian firm;
"the corporation elected to choose a different party to discuss its business with"; the corporation
failed "to consummate a transaction that, per the complaint, was dependent on the occurrence of
certain future events" and that the complaint fails to offer facts as to why plaintiff is not complicit
in this alleged bad act. (Motion to Strike, p. 2:1-14.)

1 actions rose to a level of extreme indifference to plaintiff's rights and sufficiently allege specific
2 conduct that defendants' conduct was willful, oppressive and malicious, such that an award of
3 punitive damages is appropriate. So not only are the underlying facts so relevant as to be necessary
4 to plaintiff's claims for punitive damages, but they sufficiently support plaintiff's allegations and
5 prayer in paragraphs 58 and 63 and prayer number 2.

6 Plaintiff's allegations in his Complaint are relevant if not necessary to the causes of action
7 and must be taken as true for the purpose of the motion to strike portions of the Complaint.
8 Therefore, not only should the motion to strike the subject paragraphs and prayer be denied, but
9 the entire motion should be denied.

10 **XI.**

11 **CONCLUSION**

12 For the reasons set forth herein, plaintiff, Michael Jones respectfully requests that this
13 Court deny defendant Standard Technologies, Inc.'s motion to strike in its entirety.

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15 Dated: *June 15, 2013*

16
17 By: BAYLEIGH J. PETTIGREW, ESQ.
18 Attorneys for Plaintiff,
MICHAEL JONES
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