

1 Despite her confidentiality, non-disparagement, and arbitration obligations, Pao filed a
2 detailed Complaint that included provocative facts—many unnecessary to the pleading of her
3 claims—which were likely to be the subject of widespread media interest. These included the
4 allegation that she had sex on “two or three occasions” with a married colleague over five years
5 ago. This allegation could not possibly have formed the basis of a timely harassment claim;
6 indeed, Pao pled no harassment cause of action, and these allegations were simply unnecessary to
7 the retaliation cause of action that was pled.¹⁵ Similarly, Pao twisted facts to imply that a
8 colleague’s gift of a book of poetry written by Leonard Cohen during his stay in a Buddhist
9 monastery was a sexual act, although Pao had recently given the colleague Buddhist-related gifts
10 and the Cohen book was in fact purchased by the accused colleague’s wife. Pao, moreover, never
11 raised this alleged harassment in an outside investigation into her claims, although she and her
12 counsel met with the investigator for several hours and both had ample opportunity to do so. She
13 also severely mischaracterized discussions with another partner, alleging now that he pressured
14 her to engage in a continued relationship with an alleged harasser (when in fact he supported her
15 and she thanked him for his help and understanding). *See* Answer of KPCB filed June 13, 2012
16 (“Answer”). Pao’s effort to attract media interest to her allegations was successful, creating a
17 media firestorm in which commentators accepted the truth of her false allegations.

18 The combination of Pao’s refusal to comply with her arbitration, confidentiality, and non-
19 disparagement obligations create significant defenses (and potential counter-claims) to Pao’s
20 Complaint. *See Wentland v. Wass*, 126 Cal. App. 4th 1484, 1494 (2005) (similar claim “sounds
21 in contract”: “Just as one who validly contracts not to speak waives the protection of the anti-
22 SLAPP statute...so too has he waived the protection of the litigation privilege. This breach was
23 not simply a communication, but also wrongful conduct or performance under the
24 contract....application of the privilege would frustrate the purpose of the ... agreement”); *Sanchez*
25 *v. County of San Bernardino*, 176 Cal. App. 4th 516, 528 n.3 (2009) (“the County had no duty to
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27 ¹⁵ For example, for her retaliation claim Pao could have simply pled that she protested
28 unwelcome attention, without publicly pleading scurrilous matters, including her inability to
remember how many times she actually had sexual relations with her married co-worker.