

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

JACOB MILLER,

Plaintiff,

v.

SHIELD AI, INC. and TREY LINDSEY,

Defendants.

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Civil Action No. 4:26-cv-00667-SDJ-AGD

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED
COMPLAINT AND ALTERNATIVELY, MOTION TO STRIKE,
AND BRIEF IN SUPPORT**

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INTRODUCTION

This is Plaintiff Jacob Miller’s (“Plaintiff”) third pleading, and it still does not state a legally viable claim. After Defendants Shield AI Inc. (“Shield AI” or the “Company,” and erroneously sued as “Shield AI, Inc.”) and Trey Lindsey (collectively, “Defendants”) identified substantial defects in the First Amended Complaint, Plaintiff elected not to oppose Defendants’ motion and instead amended again. The Second Amended Complaint (ECF No. 16, “SAC”) abandons several earlier theories: Plaintiff no longer asserts assault or invasion of privacy claims against Shield AI, and he no longer characterizes Trey Lindsey’s alleged conduct as “sexual assault.” But, the claims that remain suffer from fundamental legal and pleading defects.

Plaintiff’s own allegations also undermine the narrative on which his claims depend. Shield AI repeatedly promoted Plaintiff, retained outside employment counsel to investigate his concerns, continued his employment and compensation during the investigation, and previously persuaded him not to resign. Those allegations do not plausibly describe an employer seeking to retaliate against Plaintiff or force him from the workplace. It describes an employer that invested in Plaintiff’s career, investigated his allegations through outside counsel, and continued paying him during that process.

Against that backdrop, the SAC fails for several independent reasons. First, Plaintiff did not exhaust his Title VII retaliation and constructive-discharge theories. His EEOC Charge alleged sex-based harassment during a period ending August 1, 2025. It did not identify retaliation, protected activity, paid administrative leave, constructive discharge, aircraft-safety concerns, FAA compliance, data integrity, financial fraud, or any adverse employment action occurring after August 1, 2025.

Second, Plaintiff’s hostile-work-environment claim still does not plausibly allege that the challenged conduct occurred because of Plaintiff’s sex. The SAC adds conclusions that Lindsey

treated men and women differently, but it does not provide factual allegations supporting a reasonable inference of sexual desire, hostility toward men, gender stereotyping, or a meaningful comparison between Lindsey's treatment of similarly situated male and female employees.

Third, Plaintiff does not plausibly allege that his Title VII complaints were the but-for cause of his paid leave. The SAC alleges a gap of approximately six months between his initial complaint and his leave, identifies numerous non-Title VII disputes that could have prompted Shield AI's actions, and does not identify any retaliatory decisionmaker or facts showing retaliatory intent.

Fourth, paid administrative leave during an investigation does not constitute working conditions so intolerable that a reasonable employee would feel compelled to resign. Plaintiff alleges no demotion, pay reduction, reassignment, reduction in responsibilities, or other recognized circumstance supporting constructive discharge.

Fifth, "indecent assault" is a criminal offense, not an independent Texas civil cause of action. To the extent Plaintiff intends to assert a conventional civil assault claim, the SAC improperly combines several distinct theories and labels without clearly identifying the conduct supporting each one.

Sixth, unwanted proximity, touching, and offensive workplace conduct do not constitute intrusion upon seclusion. The tort protects against an invasion into a person's solitude, seclusion, or private affairs—not against allegedly offensive interactions occurring in shared workplace areas or meetings with coworkers.

The SAC also devotes substantial space to accusations of FAA violations, unauthorized flight testing, aircraft-safety failures, data manipulation, and financial fraud. Plaintiff asserts no FAA, whistleblower, securities, fraud, or aircraft-safety cause of action. Those accusations do not

establish any element of Plaintiff's Title VII or tort claims. Their inclusion instead threatens to transform a workplace dispute into a public forum for litigating unrelated and inflammatory accusations involving a defense technology company and sensitive aviation operations.

Rule 12 does not permit a plaintiff to substitute rhetoric, legal conclusions, and collateral accusations for facts plausibly establishing the elements of a claim. The Court should dismiss the SAC without leave to amend because Plaintiff failed to exhaust the Title VII retaliation and constructive discharge claims he now asserts and, separately and independently, has failed to state any cognizable claim. At a minimum, it should strike the irrelevant allegations concerning aviation safety, regulatory compliance, data integrity, and financial fraud because they are immaterial and prejudicial.

FACTUAL BACKGROUND

A. The Parties

Founded in 2015 and headquartered in San Diego, California, Shield AI is a defense technology company that develops autonomous aircraft and AI-powered autonomy software, including its flagship Hivemind AI pilot, the V-BAT vertical takeoff and landing drone, and the X-BAT (the world's first AI-piloted VTOL fighter jet). Shield AI's mission is to "protect service members and civilians with intelligent systems." Aligned with this mission, Shield AI's technology actively supports operations with the U.S. Department of Defense and allied forces worldwide. The Company maintains offices across the United States, as well as internationally.

Because Shield AI operates in a highly regulated, safety-critical industry supporting the United States and its allies, public accusations concerning aircraft safety, regulatory compliance, data integrity, and financial fraud carry substantial consequences. That context bears directly on the prejudice caused by Plaintiff's inclusion of such accusations in a lawsuit that asserts no aviation, regulatory, fraud, or whistleblower claim.

Since August 2020, Trey Lindsey has worked for Shield AI as Senior Director of Customer Operations, a role in which he has led the Company's efforts to establish flight test facilities and expand operations. Mr. Lindsey is a retired Green Beret who served 16 years in U.S. Army Special Forces before medically retiring due to injuries sustained in combat operations. He completed ten combat deployments throughout the Middle East and was awarded five Bronze Star Medals along with numerous joint military commendations. He was evaluated as the top Warrant Officer in his Special Forces Battalion for three consecutive years and received the Army's highest performance rating every year from his promotion to Staff Sergeant through his retirement as a Warrant Officer. Lindsey was hand-selected by his Commanders to serve as the Investigating Officer for numerous internal ethics investigations and as his unit's designated Casualty Assistance Officer for families of fallen servicemembers during his years of service in Special Forces. Plaintiff does not allege that Lindsey had authority to hire, fire, or determine compensation for Plaintiff.

This background does not determine whether Plaintiff has stated a claim, and Defendants do not rely on it as a ground for dismissal. It does, however, provide context for the concrete reputational prejudice caused by Plaintiff's decision to inject unrelated allegations concerning military aviation, safety, regulatory compliance, and corporate fraud into an employment lawsuit.

From October 16, 2023 to March 13, 2026, Plaintiff was employed at Shield AI. He was promoted throughout his tenure, starting as Manager, Fleet Maintenance, then Senior Manager, Operations Support, and ending as Senior Staff Technical Product Development Manager. ECF No. 16, SAC, ¶ 7. During his tenure, Plaintiff worked either in an open-plan workspace referred to as the "Bullpen" or in a "more private office shared with 3-5 other senior leaders." *Id.*, ¶ 67.

B. Plaintiff's Allegations Concerning Lindsey

Plaintiff alleges the following over an unspecified period: (1) Lindsey exhibited "a general demeanor" involving "vulgar, sexually charged language and behavior" that allegedly created an

“inappropriate . . . power dynamic” between Lindsey, Plaintiff, and other male employees; (2) Lindsey made sexually disparaging comments about women “to Plaintiff and male coworkers”; (3) Lindsey would “expose himself” to male coworkers; and (4) Lindsey approached Plaintiff and other employees in tight or revealing clothing. *Id.*, ¶¶ 20–49. Regarding conduct directed toward himself, Plaintiff alleges that Lindsey repeatedly “invaded [his] personal space,” “forc[ed] Plaintiff to look at his testicles” by wearing tight clothing, threatened to rape him, and showed Plaintiff inappropriate pictures on his cellphone. *Id.*, ¶¶ 25–42. Plaintiff alleges that this conduct “formed a coherent pattern of sex-based harassment qualitatively different from Lindsey’s interactions with other employees, particularly female employees.” *Id.*, ¶ 48.

C. Plaintiff’s Internal Concerns and Shield AI’s Response

Plaintiff alleges that on June 11, 2025, he met with Senior Director Jason Holden to raise concerns about Lindsey’s conduct and other workplace issues, after which Shield AI engaged outside counsel from Littler Mendelson LLP (“Littler”) to conduct an investigation into these allegations. *Id.*, ¶¶ 54, 59. Plaintiff alleges that he “repeatedly complained about Defendant Lindsey’s conduct” during interviews with Littler attorneys. *Id.*, ¶ 62.

Plaintiff also alleges that, in addition to complaining about Lindsey, he raised numerous concerns involving flight testing, aircraft safety, FAA compliance, data integrity, corporate finances, and other operational disagreements. *Id.* ¶¶ 65, 74–89.

D. Plaintiff’s Paid Leave and Resignation

Plaintiff alleges that around November 2025, he “attempted to resign” but was persuaded not to do so. *Id.*, ¶ 56. Plaintiff further alleges that he was placed on paid administrative leave in December 2025—the same month that Littler was “hired by Shield AI to investigate Plaintiff’s claims.” *Id.*, ¶¶ 59, 63, 105. Plaintiff now characterizes that leave as “indefinite” and alleges that Defendants kept him on leave to retaliate against and embarrass him. *Id.*, ¶¶ 106–10. He also

alleges that he was “forced to abandon his employment because Defendant continuously held him out of the workplace such that it was sufficient to cause an actual termination.” *Id.*, ¶ 130. Plaintiff still does not allege facts showing that paid administrative leave, standing alone, created working conditions so intolerable that a reasonable employee would feel compelled to resign. Plaintiff does not allege that Shield AI stopped paying him, demoted him, reduced his compensation, assigned him menial work, or altered the terms of his employment while he remained on leave.

Plaintiff resigned on March 13, 2026.

PROCEDURAL BACKGROUND

On March 3, 2026, Plaintiff filed EEOC Charge of Discrimination No. 450-2026-05551, in which he identified only “sex” as the basis of discrimination and alleged that discrimination occurred from June 1, 2024, through August 1, 2025. EEOC Charge (attached herewith as “Exhibit 1”), at 1.¹ While the Charge described Lindsey’s alleged harassment, it **did not**: (1) identify retaliation as a basis for discrimination; (2) allege any protected internal complaint; (3) mention paid administrative leave; (4) allege constructive discharge; (5) mention FAA compliance, aircraft safety, data integrity, or financial fraud; or (6) identify any adverse employment action after August 1, 2025. *Id.*, at 1–2.

On March 5, 2026, the EEOC issued a Notice of Right to Sue as to Plaintiff’s Charge and advised Plaintiff that any federal lawsuit based on the Charge had to be filed within 90 days of his receipt of the Notice. Notice of Right to Sue (attached herewith as “Exhibit 2”), at 1–2. Plaintiff

¹ The Court may take judicial notice of this EEOC Charge and related EEOC documents in ruling on this motion. *See Equal Employment Opportunity Commission v. AOD Ventures, Inc.*, No. 4:21-CV-418-SDJ, 2022 WL 4367199, at *1 n.1 (E.D. Tex. Mar. 31, 2022) (taking judicial notice of an EEOC charge in considering a motion to dismiss, and stating that “[t]he Court may take judicial notice of EEOC documents as a matter of public record when deciding a Rule 12(b)(6) motion”); *see also Jackson v. Wilkie*, No. 4:19-CV-00721-SDJ-CAN, 2020 WL 4912916, at *6–7 (E.D. Tex. Jul. 21, 2020) (same, and noting that judicially noticing EEOC documents “does not convert [the] motion to dismiss into a motion for summary judgment”).

alleges in his SAC that he received the Notice on March 5, 2026 and filed this action within 90 days. SAC, ¶ 14.

Notwithstanding the more limited allegations in his EEOC Charge, on May 28, 2026, Plaintiff filed the instant action in the Northern District of Texas (Dallas Division), asserting the following five causes of action: (1) sex / gender discrimination under Title VII; (2) retaliation under Title VII; (3) constructive discharge under Title VII; (4) assault, indecent assault, and sexual assault under Texas common law; and (5) intrusion upon seclusion and invasion of privacy—the first three of which were alleged only as to Shield AI and the latter two as to both Shield AI and Lindsey. ECF No. 1. The Court subsequently ordered that Plaintiff amend the complaint to include venue allegations and, separately, to include Lindsey in the “Parties” allegations. ECF No. 7.

On June 9, 2026, Plaintiff filed his First Amended Complaint. ECF No. 9. On June 17, 2026, the Court for the Northern District of Texas, on its own motion, transferred this case to this Court based on Plaintiff’s newly added venue allegations. *See* ECF Nos. 10, 11.

On June 24, 2026, Defendants filed a Motion to Dismiss, and in the Alternative, Motion to Strike Plaintiff’s Amended Complaint (after conferring with Plaintiff and describing the complaint’s deficiencies). Plaintiff’s counsel did not file an opposition to the motion within the 14-day timeframe required by Local Rule 7(e). Instead, on July 15, 2026, Plaintiff’s counsel filed the SAC. ECF No. 16. The SAC appears to attempt to counteract certain deficiencies listed in Defendants’ original Motion to Dismiss-Strike (although it fails to cure the majority), despite Plaintiff’s counsel previously refusing to acknowledge deficiencies in the First Amended Complaint during the parties’ conference. The SAC retains the same causes of action pled in Plaintiff’s original Complaint and First Amended Complaint, though it no longer alleges the Fourth

Cause of Action (assault and indecent assault) nor Fifth Cause of Action (intrusion upon seclusion) against Shield AI, and instead only against Lindsey.

Notwithstanding the nature of those claims, Plaintiff includes a number of allegations that have *no* bearing on or relationship with his claims—namely, allegations regarding aviation safety and regulatory compliance—and attached an OSHA Complaint regarding similarly impertinent matters. SAC, ¶¶ 65, 74–89 & Ex. A. This is, however, not an FAA enforcement action, a securities fraud action, or a whistleblower action. As such, these allegations and Exhibit A to the SAC are irrelevant.

On July 28, 2026, the Parties again met and conferred by telephone, during which Defendants’ counsel discussed (1) uncured deficiencies in the SAC; and (2) the irrelevant allegations therein and the inclusion of Exhibit A that subject it to a motion to strike. Once again, Plaintiff’s counsel did not agree to dismiss any cause of action or to strike any of the paragraphs alleging purported facts that have no bearing on the causes of action. As a result, Defendants now bring this Motion to Dismiss and, in the alternative, Motion to Strike, as to the SAC, which is submitted as opposed for the Court’s consideration.

STATEMENT OF THE ISSUES TO BE DECIDED

1. Whether Plaintiff’s Title VII retaliation and constructive discharge theories should be dismissed for failure to exhaust administrative remedies.
2. Whether the SAC alleges sufficient facts to state a plausible claim under Federal Rule of Civil Procedure 12(b)(6).
3. Whether, in the alternative, Paragraphs 65 and 74–89, and Exhibit A (the OSHA Complaint), should be stricken under Federal Rule of Civil Procedure 12(f) because they are immaterial, impertinent, and prejudicial.

MOTION TO DISMISS

A. Legal Standard

The Court may grant a Rule 12(b)(6) motion to dismiss when the plaintiff has failed to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, the plaintiff's complaint must contain sufficient factual allegations, which, if accepted as true, "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "To be plausible, the complaint's '[f]actual allegations must be enough to raise a right to relief above the speculative level.'" *In re Great Lakes Dredge & Dock Co.*, 624 F.3d 201, 210 (5th Cir. 2010) (quoting *Twombly*, 550 U.S. at 555).

This pleading standard does not require "detailed factual allegations," but it does demand more than an unadorned accusation devoid of factual support. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). A "formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. While a court must "accept as true" all well-pleaded facts, courts must not "accept as true a legal conclusion couched as a factual allegation." *Id.* (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Iqbal*, 556 U.S. at 679.

The Court "accept[s] all well-pleaded facts as true and view[s] those facts in the light most favorable to the plaintiff." *Stokes v. Gann*, 498 F.3d 483, 484 (5th Cir. 2007) (per curiam). The Court "do[es] not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions." *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir. 2007). Where the facts alleged in the complaint do not permit the Court to infer more than the mere possibility of misconduct, the

complaint has stopped short of showing that the plaintiff is plausibly entitled to relief. *Iqbal*, 556 U.S. at 679. In other words, the alleged facts must nudge the plaintiff's claims "across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

B. Argument

1. Plaintiff's Second and Third Title VII Causes of Action Should Be Dismissed Because Plaintiff Failed to Exhaust Administrative Remedies

As a threshold matter, Plaintiff cannot proceed on Title VII theories that he never presented to the EEOC. Plaintiff's recent pleading amendment does not—and cannot—cure this fundamental defect.

Before filing suit under Title VII, a plaintiff must exhaust administrative remedies by filing a charge of discrimination and receiving a right-to-sue notice. *See* 42 U.S.C. § 2000e-5(e), (f); *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378-79 (5th Cir. 2002). A Title VII lawsuit is limited to the "scope" of the EEOC Charge and the investigation that could "reasonably be expected to grow out of the charge." *Pacheco v. Mineta*, 448 F.3d 783, 788-89 (5th Cir. 2006); *McClain v. Lufkin Indus., Inc.*, 519 F.3d 264, 273 (5th Cir. 2008) ("a Title VII lawsuit may include allegations 'like or related to allegation[s] contained in the [EEOC] charge and growing out of such allegations during the pendency of the case before the Commission'"). While that standard may be liberal, it is not limitless. Courts may not use the "reasonable investigation" rule to rewrite the charge or add theories that the charge itself does not contain. *See, e.g., Pacheco*, 448 F.3d at 792. Additionally, under Title VII, discrete discriminatory acts are not entitled to the shelter of the continuing violation doctrine, and each act—including a discharge or other adverse employment action—must be separately exhausted. *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002); *Frank v. Xerox Corp.*, 347 F.3d 130, 136 (5th Cir. 2003). The Fifth Circuit applied that rule on facts analogous to this dispute in *Simmons-Myers v. Caesars Entertainment*

Corp., 515 F. App'x 269 (5th Cir. 2013) (per curiam) (unpublished). There, the plaintiff's charge alleged only pre-termination discrimination, and the court held that her later termination "was a separate employment event for which [she] was required to file a supplemental claim, or at the very least, amend her original EEOC charge." *Id.*, at 273. The Fifth Circuit further explained that the limited exception of claims "growing out" of an earlier EEOC Charge only applies to standalone retaliation claims, not cases in which a plaintiff alleges both discrimination and retaliation. *Id.* at 273–74. *See also Phillips v. Caris Life Sciences, Inc.*, 715 Fed. App'x 365, 369–70 (5th Cir. 2017) (unpublished) (same).

Here, Plaintiff's EEOC Charge exhausted—at most—a sex-based hostile work environment theory. Plaintiff alleged only "sex" as the basis for discrimination. EEOC Charge, at 1. He identified the relevant period as June 1, 2024 through August 1, 2025. *Id.* And the narrative describes Lindsey's alleged campaign of sexual and crude workplace conduct. *Id.* at 1–2. While that Charge may have placed Shield AI and Lindsey on notice of a sex-based harassment theory, it did not place either on notice of the separate retaliation and constructive discharge theories Plaintiff now pleads.

These omissions are dispositive. The Charge does not check retaliation. It does not allege that Plaintiff engaged in protected activity. It does not allege that Shield AI placed Plaintiff on paid administrative leave. It does not allege constructive discharge. It does not mention Plaintiff's alleged FAA, aircraft-safety, data-integrity, or financial-fraud concerns. And it does not identify any adverse employment action after August 1, 2025. EEOC Charge, at 1–2. Yet the SAC's retaliation and constructive discharge theories depend on precisely those omitted allegations. SAC, ¶¶ 63, 65, 74–89, 105–10, 121–24, 129–30.

The timing confirms the problem: Plaintiff alleges in the SAC that he was placed on paid administrative leave on December 12, 2025 (*id.*, ¶¶ 63, 105)—three months prior to filing his EEOC Charge (EEOC Charge, at 2). Having already experienced the alleged adverse employment action by the time he filed the Charge, Plaintiff could have—and should have—included it if he intended to pursue a Title VII retaliation theory based on that event. He did not. The Court should not permit him to circumvent his administrative requirements by now pleading an uncharged theory for the first time in this lawsuit. Plaintiff’s December 2025 paid administrative leave, as well as the retaliation and constructive discharge theories built upon it, are discrete acts following the conduct and time period alleged in his EEOC Charge, but Plaintiff neither supplemented nor amended that EEOC Charge to include them. Furthermore, Plaintiff brings both discrimination and retaliation claims, meaning he is not extended the limited exception of claims “growing out” of an earlier EEOC Charge. *Simmons-Myers*, 515 F. App’x at 273–74.

Accordingly, Plaintiff’s Second Cause of Action for Title VII retaliation should be dismissed for failure to exhaust administrative remedies. Plaintiff’s Third Cause of Action for constructive discharge should likewise be dismissed or, at a minimum, narrowed because the Charge did not identify the constructive discharge, paid administrative leave, or the alleged facts on which that theory rests. To the extent Plaintiff attempts to ground Title VII retaliation in FAA, financial fraud, data integrity, or aircraft safety complaints, those allegations are both unexhausted and outside Title VII’s protected activity framework.

2. Plaintiff’s First Cause of Action for Gender/Sex Discrimination Under Title VII Fails Because Plaintiff Does Not Allege Facts Sufficient to Establish that the Alleged Conduct Was “Because of Sex”

Plaintiff’s First Cause of Action alleges gender/sex discrimination under Title VII against Shield AI based on a hostile work environment theory. This claim fails because Plaintiff does not allege facts sufficient to establish that the alleged conduct was “because of” Plaintiff’s sex.

Title VII prohibits discrimination “because of . . . sex.” 42 U.S.C. § 2000e-2(a)(1). To state a hostile work environment claim, a plaintiff must allege that the workplace was “permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (internal brackets and quotation marks omitted). Crucially, the harassment must be “because of” the plaintiff’s sex—not merely offensive conduct that happens to occur in the workplace. *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998).

In same-sex harassment cases, this “because of sex” requirement demands additional analysis. In *Oncale*, the Supreme Court identified three evidentiary theories under which a plaintiff may demonstrate that same-sex harassment was because of sex: (1) credible evidence that the harasser was homosexual and presumably motivated by sexual desire toward the plaintiff; (2) evidence that the harasser was motivated by general hostility to the presence of one gender in the workplace; or (3) direct comparative evidence about how the alleged harasser treated members of both sexes in a mixed-sex workplace. *Id.* at 80–81. While these evidentiary theories are illustrative rather than exhaustive (*see EEOC v. Boh Bros. Constr. Co.*, 731 F.3d 444, 456 (5th Cir. 2013) (en banc)), a plaintiff proceeding on any evidentiary theory must still “prove that the conduct at issue was not merely tinged with offensive sexual connotations, but actually constituted ‘discrimina[tion] . . . because of . . . sex.’” *Oncale*, 523 U.S. at 81. The Fifth Circuit has consistently enforced this requirement. *See La Day v. Catalyst Tech., Inc.*, 302 F.3d 474, 478 (5th Cir. 2002) (applying two-step inquiry: first determining whether harasser’s conduct constitutes sex discrimination, and only then assessing whether conduct meets hostile-environment standards); *Lanier v. Wise County*, No. 24-10962, 2025 WL 2419612, at *2–3 (5th Cir. Aug. 21, 2025)

(affirming dismissal of same-sex harassment claim where complaint failed to allege any *Oncale* theory).

Here, the SAC fails to allege either any *Oncale* theory or an alternative theory such as the gender-stereotyping framework recognized in *EEOC v. Boh Bros. Constr. Co.* The SAC attempts to plead around *Oncale* by adding conclusory allegations that Lindsey acted against men, not women. But the SAC still does not allege facts plausibly establishing that the challenged conduct occurred *because of* Plaintiff's sex. Instead, Plaintiff now alleges that it is "unknown" whether Lindsey's conduct was caused by sexual desire for men and that Plaintiff will "seek discovery" on that issue. SAC, ¶ 23. That is speculation, not a factual allegation supporting a plausible Title VII claim.

Nor do Plaintiff's new comparator-style allegations solve the problem. Plaintiff asserts, in conclusory fashion, that Lindsey exposed himself to men but not women, that he engaged in certain conduct only to harass and embarrass men, and that his conduct toward Plaintiff was different from his conduct toward female employees. *Id.*, ¶¶ 23, 29, 33, 45–48. But the SAC identifies no female comparator, no specific mixed-sex workplace comparison, and no factual basis from which the Court could plausibly infer sex-based animus rather than alleged vulgar and inappropriate conduct. Indeed, the SAC still alleges that Lindsey made sexually disparaging comments about women and that he made homophobic slurs about women. *Id.*, ¶¶ 21, 38, 53. These allegations do not plausibly establish hostility to the presence of men in the workplace.

At bottom, the SAC adds labels but not any facts that support a plausible gender discrimination claim. It still does not plead facts showing sexual desire, general hostility to men in the workplace, direct comparative evidence, or gender stereotyping. This is simply insufficient to state a claim for gender/sex discrimination under Title VII. *See La Day*, 302 F.3d at 478–80

(requiring plaintiff in same-sex harassment case to demonstrate conduct constituted sex discrimination before reaching hostile-environment analysis); *see also Lanier*, 2025 WL 2419612, at *2–3. Conclusory allegations that Lindsey acted “based on [Plaintiff’s] sex and gender” (SAC, ¶ 5) and that his conduct was “sex-based” (*id.*, ¶ 48) are not entitled to the assumption of truth. *Iqbal*, 556 U.S. at 679. The Court should therefore dismiss the First Cause of Action with prejudice.

3. Plaintiff’s Second Cause of Action for Title VII Retaliation Also Fails Because Plaintiff Does Not Allege But-For Causation

Plaintiff’s Second Cause of Action alleges retaliation under Title VII against Shield AI. Specifically, Plaintiff alleges that he “complained about the hostile work environment,” was “swiftly retaliated against” following those complaints, was “placed on a retaliatory leave of absence,” and was “constructively discharged following his complaints of discrimination.” SAC, ¶¶ 121–24. Separate from Plaintiff’s failure to exhaust his administrative remedies, this claim fails because Plaintiff has not alleged facts sufficient to establish but-for causation between his complaints of discrimination and any adverse action.

To establish a *prima facie* case of retaliation under Title VII, a plaintiff must allege that: (1) he participated in an activity protected under the statute; (2) his employer took an adverse action against him; and (3) a causal connection exists between the protected activity and the adverse employment action. *Feist v. La., Dep’t of Just., Office of the Att’y Gen.*, 730 F.3d 450, 454 (5th Cir. 2013). With regard to the third element, the plaintiff must establish but-for causation—i.e., that “his or her protected activity was a but-for cause of the alleged adverse action by the employer.” *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 362 (2013). Where the facts alleged in a complaint are “not only compatible with, but indeed [are] more likely explained by, lawful” conduct, the complaint “stops short of the line between possibility and plausibility of

entitlement to relief.” *Iqbal*, 556 U.S. at 682. The SAC fails to satisfy these elements.

Plaintiff’s own pleading defeats any plausible inference of but-for causation. The SAC alleges that Shield AI placed Plaintiff on paid administrative leave in December 2025—the same month Shield AI hired Littler to investigate Plaintiff’s claims. SAC, ¶¶ 59, 63, 105. Plaintiff now labels the investigation a “sham” and the leave “indefinite,” but those labels are unsupported legal conclusions. *Id.*, ¶¶ 106–10. The SAC alleges no facts showing that Shield AI would not have placed Plaintiff on leave but for sex-based complaints, as opposed to the ongoing investigation, the confidentiality concerns Plaintiff himself alleges, or the many non-Title VII issues Plaintiff claims he raised.

Nor does the SAC identify the decisionmaker who allegedly retaliated against Plaintiff or plead facts showing that any such decisionmaker acted because of protected Title VII activity. Instead, the SAC groups together complaints about alleged harassment, aircraft safety, regulatory compliance, unauthorized flight testing, financial improprieties, data integrity, and other workplace disagreements. *See, e.g.*, SAC, ¶¶ 54, 62, 74–89, 90–110. Having identified numerous independent subjects that could have prompted Shield AI’s response, Plaintiff offers nothing more than the conclusory assertion that his Title VII complaints—not his other allegations—caused the challenged employment action. Rule 8 requires factual plausibility, not speculation by process of elimination.

To the extent Plaintiff attempts to base his Title VII retaliation claim on complaints about FAA violations, financial fraud, data integrity, unauthorized flight tests, or aircraft safety, those allegations are not protected activity under Title VII. Title VII protects opposition to an employment practice made unlawful by Title VII, not complaints about aviation safety or corporate governance. *See* 42 U.S.C. § 2000e-3(a). Plaintiff cannot satisfy *Nassar* by pointing to a mix of

Title VII and non-Title VII complaints and asking the Court to infer that the Title VII complaints were the but-for cause. The SAC does not plausibly allege that they were.

Accordingly, the Court should dismiss Plaintiff's Second Cause of Action for Title VII retaliation with prejudice.

4. Plaintiff's Third Cause of Action for Constructive Discharge Fails Because Plaintiff Does Not Allege Facts Sufficient to Establish Intolerable Working Conditions

Plaintiff's Third Cause of Action alleges constructive discharge under Title VII against Shield AI. Separate from Plaintiff's failure to exhaust his administrative remedies, this claim fails for an additional reason: Plaintiff does not allege facts sufficient to establish that his working conditions were so intolerable that a reasonable person would have felt compelled to resign.

Constructive discharge requires "working conditions so intolerable that a reasonable person would have felt compelled to resign." *Pa. State Police v. Suders*, 542 U.S. 129, 147 (2004). Whether an employee was constructively discharged depends on the presence of the following factors leading up to the employee's resignation: (1) demotion; (2) reduction in salary; (3) reduction in job responsibilities; (4) reassignment to menial or degrading work; (5) reassignment to work under a younger supervisor; (6) badgering, harassment, or humiliation by the employer calculated to encourage the employee's resignation; or (7) offers of early retirement or continued employment on terms less favorable than the employee's former status. *Newbury v. City of Windcrest*, 991 F.3d 672, 677 (5th Cir. 2021) (citing *Lauderdale v. Tex. Dep't of Crim. Just., Institutional Div.*, 512 F.3d 157, 167 (5th Cir. 2007)). Notably, constructive discharge claims "require[] a greater degree of harassment than that required by a hostile environment claim." *Brown v. Kinney Shoe Corp.*, 237 F.3d 556, 566 (5th Cir. 2001).

Here, Plaintiff was placed on paid administrative leave. Without more, such cannot constitute conditions so intolerable that a reasonable employee would feel compelled to resign.

See Gaudette v. Angel Heart Hospice, No. 24-50523, 2025 WL 1419720, at *3 (5th Cir. May 16, 2025) (affirming dismissal of constructive discharge claim where *Newbury* factors not satisfied). The SAC adds that the leave was “indefinite,” retaliatory, embarrassing, and part of a “sham investigation.” SAC, ¶¶ 106–10. But those characterizations do not plead the *Newbury* factors. Plaintiff does not allege that he was demoted, that his salary was reduced, that he was reassigned to menial work, or that he was subjected to “badgering, harassment, or humiliation . . . calculated to encourage” his resignation. To the contrary, Plaintiff alleges that when he previously sought to resign, Shield AI persuaded him to remain employed—the opposite of conduct designed to force an employee out. *Id.*, ¶ 56. In sum, Plaintiff’s allegations fall far short of the exacting standard for constructive discharge.

Accordingly, the Court should dismiss the Third Cause of Action with prejudice.

5. Plaintiff’s Fourth Cause of Action for Assault and Indecent Assault Fails Because Plaintiff Does Not Allege Sufficient Facts in Support

Plaintiff’s Fourth Cause of Action now alleges “assault” and “indecent assault” under Texas common law against Lindsey only. SAC, ¶¶ 132–42. This claim should be dismissed because Plaintiff impermissibly conflates civil assault with “indecent assault,” a criminal offense that is not a recognized civil cause of action, without pleading facts sufficient to support each theory.

Under Texas law, civil assault may be based on bodily injury, threat of imminent bodily injury, or offensive/provocative contact. Tex. Penal Code § 22.01(a). Meanwhile, “indecent assault” is a criminal offense. Tex. Penal Code § 22.012. Plaintiff cites no authority establishing “indecent assault” as an independent civil cause of action. A complaint must provide “a short and plain statement of the claim showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2), and “state its claims . . . in numbered paragraphs, each limited as far as practicable to a single set

of circumstances,” Fed. R. Civ. P. 10(b). The Court should therefore dismiss any purported independent claim for “indecent assault.”

The SAC also obscures the nature of Plaintiff’s remaining civil assault theory. It combines allegations and labels concerning bodily contact, apprehension of contact, battery, groping, excessive touching, and physical assault without identifying which acts supposedly establish which theory. SAC ¶¶ 134–39. The Fifth Circuit has long disapproved of this approach. *See Owens v. TransUnion, LLC*, No. 4:20-cv-665-SDJ-KPJ, 2021 WL 5088686, at *9 (E.D. Tex. Aug. 30, 2021) (citing *Southern Leasing Partners, Ltd. v. McMullan*, 801 F.2d 783, 788 (5th Cir. 1986) (abrogated on separate grounds)) (a “shotgun approach to pleadings, where the pleader heedlessly throws a little bit of everything into his complaint in the hopes that something will stick, is to be discouraged”). Rules 8 and 10 require a short and plain statement giving the defendant fair notice of the claim and separate allegations limited, as practicable, to a single set of circumstances. Fed. R. Civ. P. 8(a)(2), 10(b). A pleading that indiscriminately combines distinct theories in the hope that one may survive does not provide that notice. *See Owens*, 2021 WL 5088686, at *9.

Accordingly, the Court should dismiss the purported “indecent assault” claim with prejudice and dismiss or require a more definite pleading of any remaining civil assault theory.

6. Plaintiff’s Fifth Cause of Action for Intrusion Upon Seclusion Fails Because Plaintiff’s Allegations Do Not Establish the Required Elements

Plaintiff’s Fifth Cause of Action now alleges “intrusion upon seclusion and invasion of privacy” under Texas common law against Lindsey only. SAC, ¶¶ 143–49. This claim fails because Plaintiff’s allegations do not meet the narrow definition of an intrusion upon seclusion claim adopted by the Fifth Circuit and do not establish that the alleged conduct occurred in a place where Plaintiff had a reasonable expectation of privacy.

Under Texas law, intrusion upon seclusion requires: (1) an intentional intrusion upon the plaintiff's solitude, seclusion, or private affairs; and (2) the intrusion must be highly offensive to a reasonable person. *Valenzuela v. Aquino*, 853 S.W.2d 512, 513 (Tex. 1993) (citing the Restatement (Second) of Torts § 652B (1977)). The Fifth Circuit has clarified that an intrusion upon a plaintiff's seclusion or solitude, or into his private affairs, "exists only when there has been a physical invasion of a person's property or eavesdropping on another's conversation with the aid of wiretaps, microphones, or spying." *Ross v. Midwest Comms., Inc.*, 870 F.2d 271, 273 (5th Cir. 1989) (internal citation and punctuation omitted). Additionally, there is no intrusion where there is no legitimate expectation of privacy, and "an employee does not have a reasonable expectation of privacy in a workplace common area or in an area in plain view of others." *Smith v. Methodist Hosps. of Dall.*, No. 3:07-CV-1230-P, 2008 WL 5336342, at *6 (N.D. Tex. Dec. 19, 2008); see also *Vaughn v. Drennon*, 202 S.W.3d 308, 320 (Tex. App.—Tyler 2006, no pet.).

Here, Plaintiff's allegations involve neither a "physical invasion of [his] property" nor "eavesdropping on [his] conversation with the aid of wiretaps, microphones, or spying." *Ross*, 870 F.2d at 273. The SAC instead alleges unwanted touching and offensive workplace conduct. SAC, ¶¶ 145–47. This alone is sufficient to foreclose Plaintiff's intrusion upon seclusion claim.

Nor does the SAC plausibly allege seclusion. Plaintiff alleges that some vague amount of alleged inappropriate conduct occurred "at times" in private offices and that Lindsey "repeatedly isolated Plaintiff in private rooms." SAC, ¶¶ 31, 40. But a workplace meeting in an office with another employee is not the same thing as solitude, seclusion, or a private affair. The SAC also alleges that Plaintiff worked in an open plan "Bullpen" environment and a "more private office shared with 3-5 other senior leaders." *Id.*, ¶ 67. These alleged workspaces are not places of solitude or seclusion sufficient to support this tort.

Accordingly, Plaintiff's Fifth Cause of Action should be dismissed with prejudice for failure to allege the required elements of intrusion upon seclusion.

MOTION TO STRIKE

A. Legal Standard

Federal Rule of Civil Procedure 12(f) provides that the Court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Matter is "immaterial" when it has no essential or important relationship to the claims for relief. Matter is "impertinent" when it consists of statements that do not pertain, and are not necessary, to the issues in question. *See* 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* §1382 (3d ed. 2004).

A motion to strike serves the important function of "avoid[ing] the expenditure of time and money that must arise from litigating spurious issues by dispensing with" allegations that are unrelated to the claims at issue and that may prejudice the opposing party. *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). "The Court possesses considerable discretion in ruling on a motion to strike." *Paris Emergency Center, LLC v. Blue Cross and Blue Shield of Tex.*, No. 5:24-CV-000002-RWS, 2025 WL 3171163, at *1 (E.D. Tex. Nov. 12, 2025) (citing *In re Beef Indus. Antitrust Litig.*, 600 F.2d 1148, 1168 (5th Cir. 1979) (noting the "ample discretion [of district courts], under Rule 12(f) of the Federal Rules of Civil Procedure, to order stricken from the complaint any redundant or immaterial matter")). Prejudice sufficient to justify striking a pleading is present "where the allegation or defense would have the effect of confusing the issues." *Dishner v. Universal Health Services, Inc.*, No. 3:17-CV-3321-D, 2018 WL 1617844, at *2 (N.D. Tex. Apr. 4, 2018) (granting in part motion to strike factual allegations that were irrelevant and attenuated) (internal citations and punctuation omitted).

B. Argument

The SAC contains extensive—though conclusory—allegations that have no conceivable relationship with either Plaintiff’s Title VII claims or his narrowed state-law tort claims. Because the allegations are wholly untethered to the claims, they serve no purpose other than to harass Shield AI and prejudice the jury pool. The SAC reads less like a pleading designed to satisfy Rule 8 and more like an attempt to publicly litigate grievances concerning military technology, FAA oversight, and corporate operations that are not before this Court. Allowing those allegations to remain would invite precisely the type of issue confusion and reputational prejudice that Rule 12(f) exists to prevent.

Indeed, Plaintiff asserts no claim under the Federal Aviation Act. He asserts no whistleblower claim, securities claim, fraud claim, False Claims Act claim, or claim arising from aircraft safety or regulatory reporting. These accusations therefore do not establish any element of Plaintiff’s pleaded causes of action.

Specifically, Defendants move to strike the following paragraphs:

- *Paragraph 65* alleges that Plaintiff was removed from Shield AI’s Mishap Review Board following complaints about aircraft safety. But none of Plaintiff’s causes of action have any relationship to his alleged aircraft safety concerns. SAC, ¶ 65.
- *Paragraphs 74–89* allege that Shield AI committed FAA violations, conducted unauthorized flight tests, threatened individuals who reported data that did not align with a project’s narrative, committed financial fraud, and endangered aircraft safety. *Id.*, ¶¶ 74–89. As with the allegation above, these allegations have nothing to do with whether Lindsey engaged in any conduct as to Plaintiff because of his sex, whether Shield AI retaliated against Plaintiff for making “complaints of discrimination,”

whether Plaintiff was assaulted, or whether his seclusion was invaded. They are wholly immaterial and impertinent to every claim in this lawsuit.

- *Exhibit A* is the administrative complaint Plaintiff filed with the Occupational Safety and Health Administration (the “OSHA Complaint”), which Plaintiff attaches to and incorporates into the SAC as the basis for his aircraft-safety retaliation allegations. SAC, ¶¶ 6, 8 & Ex. A. The OSHA Complaint suffers from the same defect as the paragraphs above and, indeed, is its source: it consists entirely of the same collateral accusations regarding FAA violations, unauthorized flight testing, data manipulation, financial fraud, and aircraft safety that have no relationship to Plaintiff’s Title VII or state-law tort claims. Plaintiff asserts no cause of action under any statute enforced by OSHA, and the exhibit does not establish any element of the claims he does assert. Incorporating an entire regulatory complaint wholesale into the pleading serves only to amplify the immaterial, impertinent, and scandalous matter that Rule 12(f) permits the Court to strike. The Court should not allow Plaintiff to attach to the SAC an inflammatory document concerning a defense contractor’s sensitive aviation operations. The exhibit is therefore immaterial and impertinent for the same reasons as Paragraphs 65 and 74–89 and should likewise be stricken.

These paragraphs, as well as Exhibit A to the SAC, share a common theme: they pertain to issues—alleged regulatory matters, corporate fraud, and safety concerns—that are wholly irrelevant to any element of Plaintiff’s five causes of action. Including them in the SAC therefore serves no legitimate pleading purpose. Plaintiff’s new footnote asserting that the allegations are relevant to Lindsey’s control, constructive discharge, and retaliation does not change that conclusion. SAC, at 8 n.2. As a result, their inclusion appears calculated to: (1) publicly harass

and prejudice Shield AI—a defense contractor working on sensitive military technology—by airing unsubstantiated allegations in a case centered around alleged inappropriate sexual conduct in the workplace; (2) taint the jury pool with inflammatory allegations; and (3) exert improper settlement pressure by threatening reputational harm unrelated to the merits. This is precisely the abuse that Rule 12(f) was designed to address.

The prejudice to Defendants is concrete. Shield AI develops aircraft and autonomy systems used in highly regulated and safety-sensitive settings. Public accusations that the Company falsified aviation data, violated FAA requirements, endangered aircraft, or committed financial fraud are exceptionally serious. They have no place in this action unless they support an actual cause of action or a necessary element of one.

Their inclusion also risks expanding discovery into collateral disputes concerning flight-testing practices, engineering data, regulatory submissions, financial records, military technology, and sensitive operations. That would substantially increase the burden and complexity of the case while distracting from the employment and tort questions properly before the Court.

Whether intended or not, the effect of these allegations is to create reputational pressure and issue confusion unrelated to the merits of Plaintiff's pleaded claims. Rule 12(f) exists to prevent a pleading from being used in that manner.

Accordingly, if the Court does not dismiss the SAC in its entirety, it should strike Paragraphs 65 and 74–89 and Exhibit A (the OSHA Complaint).

LEAVE TO AMEND SHOULD BE DENIED

Plaintiff has already amended his pleading twice and should not be permitted a third bite at the apple.

Federal Rule of Civil Procedure 15(a)(2) provides that the court “should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). However, “leave to amend is not automatic.”

Avatar Exploration, Inc. v. Chevron, U.S.A., Inc., 933 F.2d 314, 320–21 (5th Cir. 1991). A court may deny leave to amend when amendment would be futile—that is, when “the amended complaint would fail to state a claim upon which relief could be granted.” *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 873 (5th Cir. 2000). The futility inquiry applies the same standard as Rule 12(b)(6). *Id.* In other words, “[i]f the complaint, as amended, would be subject to dismissal, then amendment is futile and the district court was within its discretion to deny leave to amend.” *Martinez v. Nueces County, Texas*, 71 F.4th 385, 391 (5th Cir. 2023) (citing *Ariyan, Inc. v. Sewage & Water Bd. of New Orleans*, 29 F.4th 226, 229 (5th Cir. 2022)). The court may also deny leave to amend where there has been “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, [and] undue prejudice to the opposing party.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Here, the Court should deny Plaintiff leave to amend because the deficiencies in the SAC are structural and legal—rather than the product of inartful pleading—and amendment cannot cure them. More specifically, Plaintiff’s Second and Third Causes of Action are barred, at least in part, because Plaintiff failed to exhaust administrative remedies with regard to the retaliation, paid administrative leave, constructive discharge, FAA, aircraft safety, data integrity, and financial fraud theories he now pleads. Plaintiff’s First Cause of Action for gender/sex discrimination fails because Plaintiff’s new allegations still rest on labels and speculation rather than facts plausibly showing that the alleged conduct occurred because of sex. Plaintiff’s Second Cause of Action for retaliation also fails because Plaintiff cannot demonstrate but-for causation. Plaintiff’s Third Cause of Action for constructive discharge also fails because paid administrative leave cannot constitute conditions so intolerable that a reasonable employee would feel compelled to resign, and Plaintiff alleges no facts satisfying any of the Fifth Circuit’s recognized constructive discharge

factors. Plaintiff's Fourth Cause of Action fails because "indecent assault" is not a recognized civil cause of action and the SAC fails to plead the remaining assault theory with sufficient clarity. Plaintiff's Fifth Cause of Action fails because Plaintiff cannot allege facts satisfying the elements of intrusion upon seclusion. No amendment can cure these deficiencies.

In the end, the problem is not that Plaintiff has omitted facts but rather that the facts he affirmatively alleges, and the administrative charge he chose to file, prove fatal to the claims he asserts. No amendment can transform uncharged retaliation and constructive discharge theories into exhausted Title VII claims, convert speculative labels into discrimination because of sex, convert paid administrative leave during an investigation into constructive discharge, create a civil cause of action for "indecent assault," or transform workplace interactions into intrusion upon seclusion.

This is not a case in which Plaintiff has simply failed to anticipate an argument. Defendants conferred with Plaintiff regarding the deficiencies in his First Amended Complaint and then filed a detailed motion identifying them. Plaintiff reviewed that motion and amended again in response. The SAC expressly attempts to address those arguments. Yet the defects remain.

The SAC demonstrates that the problem is not merely inartful pleading. Plaintiff's own factual allegations and the administrative Charge he chose to file foreclose the claims as pleaded. Further amendment would therefore be futile.

CONCLUSION

For the foregoing reasons, Defendants Shield AI Inc. and Trey Lindsey respectfully request that the Court:

1. Dismiss the First Cause of Action (Gender/Sex Discrimination Under Title VII) with prejudice for failure to adequately allege conduct "because of sex" under *Oncale* and *Boh Brothers*;

2. Dismiss the Second Cause of Action (Title VII Retaliation) for failure to exhaust administrative remedies or, alternatively, for failure to adequately plead but-for causation;
3. Dismiss the Third Cause of Action (Constructive Discharge) with prejudice for failure to exhaust administrative remedies or, alternatively, because paid administrative leave cannot constitute intolerable conditions and the SAC fails to allege facts satisfying any recognized constructive-discharge factor;
4. Dismiss the Fourth Cause of Action (Assault and Indecent Assault) with prejudice because “indecent assault” is not a recognized civil cause of action and the SAC fails to plead the remaining assault theory with sufficient clarity;
5. Dismiss the Fifth Cause of Action (Intrusion Upon Seclusion) with prejudice because the SAC fails to plead the required elements of that claim; and
6. (Alternatively, if all causes of action are not dismissed), strike Paragraphs 65 and 74–89, and Exhibit A (the OSHA Complaint), as immaterial, impertinent, and scandalous under Rule 12(f).

For the reasons set forth above, Defendants further request that any dismissal be with prejudice and without leave to amend.

Dated: July 29, 2026

Respectfully submitted,

By: /s/ Pankit Doshi

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2026, I electronically filed the foregoing document with the Clerk of the Court using the Court's CM/ECF system, which will send notice of the filing to counsel of record.

/s/ Pankit Doshi

Pankit Doshi

CERTIFICATE OF CONFERENCE

Pursuant to Local Rules 7(h) and 7(i), I hereby certify that Defendants have complied with the conference requirements prior to filing this motion. On July 28, 2026, I conferred with Evan Richardson, counsel for Plaintiff, regarding Defendants' renewed motion to dismiss and motion to strike directed to the Second Amended Complaint. During the conference, I discussed: (1) the deficiencies in the SAC that subject it to a motion to dismiss; and (2) the irrelevant allegations therein that subject it to a motion to strike. Plaintiff's counsel disagreed that the causes of action in the SAC fail to state a claim and should be dismissed, and disagreed that the allegations in paragraphs 65 and 74–89, and Exhibit A (the OSHA Complaint), are irrelevant and should be stricken. As a result, the Parties have reached an impasse, and this motion to dismiss to SAC or, alternatively, motion to strike is submitted as opposed for the Court's consideration.

/s/ Marina Kelly
Marina Kelly