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ARIZONA SUPERIOR COURT

MARICOPA COUNTY

REDFLEX TRAFFIC SYSTEMS, INC., a Delaware corporation,

Plaintiff,

vs.

AARON M. ROSENBERG and LISA F. ROSENBERG, husband and wife,

Defendants.

AND RELATED COUNTERCLAIMS

Case No: CV2013-001166

REDFLEX TRAFFIC SYSTEMS, INC.'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS COUNT II OF DEFENDANTS' COUNTERCLAIM (INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

(Assigned to the Honorable Douglas Rayes)

Oral Argument Requested

1. Introduction.

Defendants Aaron and Lisa Rosenberg ("the Rosenbergs") employ two faulty strategies in their effort to avoid dismissal of Count II of their Counterclaim. First, the Rosenbergs attempt to divert the Court's focus from the bare-bones allegations of their Counterclaim to never-pled and unsupported allegations as if these new allegations may be considered in ruling on Redflex's Motion to Dismiss. The law does not so permit. The Rosenbergs' total retreat from the limited, conclusory allegations in their Counterclaim cannot obscure the reality that those limited allegations – the only allegations that may here be considered – fail to support a claim for intentional infliction of emotional distress ("IIED").

The Rosenbergs next direct the Court to plainly inapposite authority that apply long-since rejected standards or which do not apply to the facts in this dispute. For example, and as detailed further below, the Rosenbergs contend that Redflex's alleged defamatory statements about Mr. Rosenberg's conduct as a Redflex employee are sufficiently extreme and outrageous to support a claim for IIED. Yet in making this argument, the Rosenbergs rely almost entirely on Arizona authority addressing charges of sexual harassment and discrimination against a protected class. These cases are irrelevant to whether alleged defamatory statements regarding Mr. Rosenberg's employment (which statements are unrelated to Mr. Rosenberg's race, gender, etc.) are sufficiently extreme and outrageous.

As detailed in Redflex's Motion to Dismiss and as confirmed below, the Rosenbergs' claim for IIED is legally deficient and should be dismissed.[1]

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[1] Defendants' Response violates multiple typeface sizing and lines-per-page rules, with at least 30 lines-per-page and a typeface of 10 point in each of the footnotes. [See Response at 2, 4, 6, 9-13, 16-17.] See Ariz. R. Civ. P. 10(d) ("The body of all documents shall be doubled spaced and shall not exceed 28 lines per page, except for headings. [sic] quotations and footnotes which may be single spaced." (emphasis added)); Local Rule 2.16 ("The typeface used in all pleadings, motions and other original documents (including text, quotations and footnotes, filed with the Clerk of the Superior Court shall be no smaller than twelve (12) point." (emphasis added)). Even while violating these rules, Defendants' Response remained over-length and Defendants were forced to request a page extension from this Court. Defendants' Motion to Exceed the Page Limit ignored these rule violations when they requested to exceed the applicable 15-page limit by merely "three" pages.

2. The Rosenbergs Have Not Pled Sufficient Facts To Support Their Alleged "Severe Emotional Distress."

As detailed in Redflex's Motion to Dismiss, the facts actually pled in the Rosenbergs' Counterclaim are quite limited. [See Motion to Dismiss at 2.] Apparently recognizing this reality, Defendants' Response is premised almost entirely on allegations that have not been pled, including:

- "Redflex [asked Mr. Rosenberg to accept blame for the $910 expenditure] because it needed to make every attempt possible to salvage its current contract with the City of Chicago. This contract generated over 10% of Redflex's revenue (worth about $100,000,000) and the City was in the process of a competitive bid for the contract. Redflex felt that by admitting to a nominal indiscretion and by 'blaming' it entirely on Mr. Rosenberg, the $910 gift to a city official could be swept under the rug."
- "Redflex [reported to the Chicago Tribune that it] sent Mr. Rosenberg to 'anti-bribery' training after the [$910 expenditure] incident, which Redflex knew was completely false."
- "Despite being provided with such evidence, Redflex did not correct the obvious misstatements to the media concerning company expense policies, and continued to submit false reports and defame Mr. Rosenberg by portraying Mr. Rosenberg as the sole rogue employee who engaged in the unethical conduct."
- "Unlike Mr. Rosenberg, Redflex's 'leadership,' namely its CEO and General Counsel, were permitted to quietly resign and have not been subjected to a public lawsuit and related press releases."
- "Redflex's conduct has predictably destroyed the Rosenbergs' lives."
- "The Rosenbergs have experienced public shame from Mr. Rosenberg's professional network, which he developed over the last decade with Redflex[.]"
- "The Rosenbergs have experienced public shame from Mr. Rosenberg's personal network. Since Redflex's false statements were repeatedly printed in the largest traditional and on-line media outlets, these statements were viewed by the Rosenbergs' personal network, thereby causing shame on the Rosenbergs' immediate and extended family[.]"
- "Mr. Rosenberg is completely unemployable as a result of this press. Executive recruiters and HR professionals have directly told Mr. Rosenberg that they cannot work with him, because of the press and statements provided by Redflex[.]"
- "As a result of his termination, Redflex did not pay Mr. Rosenberg severance and refused to pay Mr. Rosenberg the bonus to which he was entitled. Redflex will not allow Mr. Rosenberg to sell company stock. Mr. Rosenberg lost his health insurance[.]"
- "Mr. Rosenberg had to see a psychologist, which he can no longer afford[.]"

- "With no income and no ability to earn an income, Mr. Rosenberg sold his family home. The Rosenbergs have had to move twice in less than a year to reduce expenses. This has completely uprooted the Rosenbergs' family, which includes three young children[.]"

- "Aaron Rosenberg has suffered injury to his reputation among his peers and in the industry, effectively ruining his career and preventing him from ever finding a job. He has similarly lost his ability to earn an income and has been public disgraced."

[Response at 2, 3, 9.] The Rosenbergs' invitation to have the Court consider these never-pled facts in ruling on Redflex's Motion to Dismiss is improper. See Cullen v. Auto-Owners Ins. Co., 218 Ariz. 417, 419, 189 P.3d 344, 346 (2008) ("When adjudicating a Rule 12(b)(6) motion to dismiss, Arizona courts look only to the pleading itself and consider the well-pled factual allegations contained therein."). And, the fact that the Rosenbergs needed to include these additional allegations in their Response demonstrates the fatal deficiency within their claim for IIED as pled.[2]

As set forth in greater detail in Redflex's Motion to Dismiss, the Rosenbergs' sole conclusory statement that they "have experienced severe emotional distress" is insufficient as a matter of Arizona law to support an IIED claim. See, e.g., Leon v. Arizona, 2013 WL 2152559, *5 (D. Ariz. May 16, 2013); Mills v. Bristol-Myers Squibb Co., 2011 WL 3566131, *3 (D. Ariz. Aug. 12, 2011) (same). Defendants' reliance on Fedoseev v. Alexandrovich and Harris v. Maricopa County is misplaced as neither case compels a contrary conclusion.[3] First, Fedoseev does not comport with Arizona law and applies a pleading standard which the Arizona Supreme Court has since expressly rejected. Compare Fedoseev, 2006 WL 964281, *3 (D. Ariz. Apr. 11, 2006) ("A motion to dismiss should be granted if 'it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" (citation omitted)), with Cullen, 218 Ariz. at 419-20, 189 P.3d at 346-47 (explaining that the "*no set of facts in support of his claim which would entitle him to relief*" standard is not consistent with Arizona law (emphasis in original)).[4] The Harris decision is also inapposite. There, the Ninth Circuit reasoned that a claim for IIED was sufficient and not

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[2] Redflex respectfully submits that many of the new allegations in the Rosenbergs' Response are not "well grounded in fact," as required by Arizona Rule of Civil Procedure 11.

[3] We note that Defendants lifted nearly verbatim the facts as stated directly in the Fedoseev opinion without proper attribution.

[4] As Defendants concede in their Response, Cullen is controlling for determinations regarding the sufficiency of a pleading. [See Response at 4.]

frivolous because the defendants in that case had failed to challenge the sufficiency of the pleading before seeking judgment on the pleadings. 631 F.3d 963, 978-79 (9th Cir. 2011). In contrast to Harris, Redflex has challenged the sufficiency of the Rosenbergs' Counterclaim.[5]

Moreover, even if the Court considers the Rosenbergs' never-pled allegations, these new allegations for the most part do not constitute emotional distress, let alone the types of severe emotional distress required to support a claim for IIED.[6] See Restatement (Second) of Torts § 46 cmt. j (severe emotional distress includes "all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea"); Pankratz v. Willis, 155 Ariz. 8, 17, 744 P.2d 1182, 1191 (App. 1987) (citing comment j with approval); Fletcher v. Western Nat'l Life Ins. Co., 10 Cal. App. 3d 376, 402 (1970) (generally "[t]he tort of intentional infliction of emotional distress is designed to redress primarily invasions of the personal interest in emotional tranquility, not economic losses . . . ."). Likewise, the allegations of reputational harm and economic loss relating to Mr. Rosenberg's defamation claim do not constitute allegations of severe emotional distress.[7] See Restatement (Second) of Torts § 46 cmt. j;

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[5] Notably, unlike Defendants' Counterclaim, numerous District of Arizona cases Defendants cited in their Response exemplify pleadings containing much more than conclusory allegations of "severe emotional distress." See Thorp v. Home Health Agency, 941 F. Supp. 2d 1138, 1142 (D. Ariz. 2013) (alleging "deep depression for several months and suffered physical ailments, that required medical treatment"); Lombardi v. Copper Canyon Acad., LLC, 2010 WL 3775408, at *9 (D. Ariz. Sept. 21, 2010) (pleading "suffered and will continue to suffer for the rest of her life emotional distress, mental anguish, anxiety, anger, pain and suffering, stress, insecurity, shame and depression"); Leal v. Alcoa, 2007 WL 1412501, *1 (D. Ariz. May, 11 2007) (alleging "severe depression and anxiety"); Coffin v. Safeway, 323 F. Supp. 2d 997, 1004 (D. Ariz. 2004) (alleging "humiliation, mental anguish and emotional and physical distress of mind and body in the form of fear, shock, anger, worry, humiliation, nervousness, irritability, insomnia, and loss of appetite").

[6] The allegation that Defendants experienced "shame" as a result of Redflex's alleged conduct is the only new allegation that would even arguably constitute emotional distress. However, this allegation also fails as the Counterclaim does not allege sufficient facts to support such a conclusion. See Leon, 2013 WL 2152559, at *5; Mills, 2011 WL 3566131, at *3. Further, as demonstrated below, Redflex's alleged conduct was not sufficiently extreme and outrageous to support a claim for IIED.

[7] For this reason, the Rosenbergs' requested amendment to their Counterclaim would be futile. See, e.g., ELM Retirement Ctr., LP v. Callaway, 226 Ariz. 287, 292, ¶ 26, 246 P.3d 938, 943 (App. 2010) (affirming trial court's denial of motion for leave to amend claim because the proposed amendment "did not cure the defects in its original complaint . . . nor did it allege additional facts that would have compelled a different" result).

Fletcher, 10 Cal. App. 3d at 402.

Finally, the Rosenbergs' straw-man argument relating to "bodily injury" is but a distraction. The Rosenbergs rely on Vicente v. Barnett for the notion that bodily injury is not required to demonstrate severe emotional distress. 415 Fed. Appx. 767, 769 (9th Cir. 2011) (holding that testimony that appellees had anxiety, depression and insomnia, coupled with a psychological expert's testimony diagnosing appellees with emotional disorders, was sufficient evidence from which a jury could conclude that appellees' emotional distress was "severe"). Setting aside the reality that the Rosenbergs' allegations are not comparable to the evidence in Vincente, Redflex did not argue that Arizona courts require bodily injury to recover for IIED.

Simply stated, the Rosenbergs' mere allegation of "severe emotional distress" is insufficient to state a claim for relief. Defendants' IIED claim as pled is legally deficient and must be dismissed.

3. Redflex's Alleged Conduct Was Not Sufficiently Extreme And Outrageous To Support A Claim For IIED.

As a preliminary matter, it is within the proper dominion of this Court to determine whether the alleged Redflex misconduct as pled in the Rosenbergs' Counterclaim, is sufficiently extreme and outrageous to support a claim for IIED – in other words, whether it is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." See, e.g., Johnson v. McDonald, 197 Ariz. 155, 160-61, ¶¶ 23-24, 3 P.3d 1075, 1080-81 (App. 1999) (quoting Cluff v. Farmers Ins. Exchange, 10 Ariz. App. 560, 562, 460 P.2d 666, 668 (1969)); Midas Muffler Shop v. Ellison, 133 Ariz. 194, 197, 650 P.2d 496, 499 (App. 1982). Any suggestion that the Court cannot do so at this initial stage does not comport with Arizona law.

Turning to the sufficiency of the Rosenbergs' Counterclaim as pled, the Rosenbergs appear to contend that the Court should deny Redflex's Motion to Dismiss because (1) "potentially defamatory statements are sufficiently extreme or outrageous to support a claim for IIED, for purposes of a motion to dismiss" and (2) an employer's harassment and/or retaliation against a whistle-blower constitutes extreme and outrageous conduct. We address each argument in turn.

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A. The Alleged Defamatory Statements Are Not Extreme and Outrageous.

The Rosenbergs contend that "Arizona courts . . . find false and/or potentially defamatory statements are sufficiently extreme and outrageous to support a claim for [IIED]," yet fail to cite any Arizona state court decision reaching this result. Indeed, the Rosenbergs instead seek to steer the Court away from the Arizona decisions addressing the issue: Johnson v. McDonald, 197 Ariz. 155, 160-61, ¶¶ 23-24, 3 P.3d 1075, 1080-81 (App. 1999) and Duhammel v. Star, 133 Ariz. 558, 561, 653 P.2d 15, 18 (App. 1982), *disapproved on other grounds by*, Godbehere v. Phoenix Newspapers, Inc., 162 Ariz. 335, 783 P.2d 781 (1989). As set forth in Redflex's Motion to Dismiss, in Johnson, the Arizona Court of Appeals held that defamatory statements to state senators about molestation victims, including accusations of embezzlement, were not extreme and outrageous. 197 Ariz. at 160-61, ¶¶ 23-24, 3 P.3d at 1080-81. In reaching this result, the Johnson court relied on cases from Iowa, Maryland and Texas holding that allegedly defamatory statements made in the employment context, including allegations that employees engaged in theft, embezzlement and other crimes, were not sufficiently extreme and outrageous to support a claim for IIED. See id. (citing with approval Benishek v. Cody, 441 N.W.2d 399, 402 (Iowa App. 1989) (holding that termination of employee and accusations of embezzlement not extreme and outrageous); Hanssen v. Our Redeemer Lutheran Church, 938 S.W.2d 85, 94 (Tex. App. 1996) (similar); Batson v. Shifflett, 602 A.2d 1191, 1217 (Md. App. 1992) (holding that defamatory accusations of "conspiracy, perjury, [and] falsification of records" not sufficiently extreme and outrageous)). Likewise, in Duhammel, the Arizona Court of Appeals held that false accusations of unlawful conduct made to city council and reporters were not sufficiently extreme and outrageous. 133 Ariz. at 561, 653 P.2d at 18.[8]

In an effort to distinguish this compelling and controlling authority, the Rosenbergs first

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[8] See also Rosales v. City of Eloy, 122 Ariz. 134, 136, 593 P.2d 688, 690 (App. 1979) (holding that former employer's statement to newspaper that "charges" had been filed against employee not extreme and outrageous conduct); Allen v. Quest Online LLC, 2011 WL 4403674, *5-7, 10 (D. Ariz. Sept. 22, 2011) (holding that facts supporting defamation failed to support IIED claim, even assuming plaintiff "suffered harm to his reputation and credibility as well as financial harm" from defamatory statements in interviews, press releases and on the internet made by his former business partner); Bodett v. CoxCom, Inc., 366 F.3d 736, 747 (9th Cir. 2004) (holding employer's accusations that former employee performed an exorcism, proselytized and harassed another employee was not sufficiently extreme and outrageous under Arizona law).

contend that Johnson is inapplicable because, in that case, certain of the alleged defamatory statements were a matter of public record. Ironically, the same holds true here for two of the three alleged defamatory statements the Rosenbergs rely on to support their claim for IIED. In particular, the Rosenbergs rely on statements published in newspaper articles (i.e., public records) that merely reiterated comments already published in an October 14, 2012 newspaper article (a matter of public record). [See Counterclaim, ¶¶ 6-7.] The Rosenbergs further rely on statements published after the filing of the Complaint, which simply reiterate allegations within the Complaint (also a matter of public record). [Counterclaim, ¶ 9.] The Rosenbergs' assertions in their Response that "[t]his case is completely different" and the alleged defamatory statements in this case "were not previously raised in a public record or lawsuit" are simply untrue as reflected in the Rosenbergs' Counterclaim. The Rosenbergs' attempt to distinguish Duhammel likewise misses the mark. In that case, contrary to the Rosenbergs' assertions, the Arizona court made no finding that the appellant's occupation as a police officer prohibited his claim for IIED. See 133 Ariz. at 561, 653 P.2d at 18. Rather, the court's reasoning was more global: "Were we to hold otherwise, every . . . statement to the news media . . . would give rise to a claim alleging the [IIED]." Id. Here, as in Johnson and Duhammel, and as a matter of established Arizona law, Redflex's alleged statements contain matters of public record and are not extreme and outrageous. To hold otherwise would give rise to IIED claims based on nearly any statement by a publicly held employer to the press or in a public filing about its employees' employment-related conduct.

The Rosenbergs' reliance on Fedoseev, Lombardi v. Copper Canyon Academy, LLC and a variety of non-Arizona decisions to support their position does not alter the result in this case.[9] As noted above, Fedoseev relies on a long-since rejected pleading standard that does not comport with Arizona law and is simply not instructive. Lombardi is also not instructive, as it does not involve a claim for defamation. In that case, a seventy-four year old woman asserted wrongful discharge in

[9] The Rosenbergs seemingly criticize Redflex's Motion to Dismiss for citing non-Arizona authority (many of which were cited with approval by the Johnson court), then proceed themselves to cite numerous non-Arizona decisions (not adopted by any Arizona court). Of course, Redflex's citation to non-Arizona authority was and remains completely appropriate. See Midas, 133 Ariz. at 197, 650 P.2d at 499 (noting that "decisions from other jurisdictions which have considered the precise question before [the Court]" are instructive when evaluating an IIED claim).

violation of the Arizona Employment Protection Act and Arizona Civil Rights Act, age discrimination and harassment to support her IIED claim. 2010 WL 3775408, *1-2, 10 (D. Ariz. Sept. 21, 2010). She did not assert a claim for defamation, nor did the court evaluate whether any specific defamatory statements were extreme and outrageous to state a claim for IIED. Id.

Finally, the non-Arizona cases the Rosenbergs cite involve conduct far more extreme than Redflex's alleged statements regarding employment-related misconduct. See In re Peck, 295 B.R. 353, 366-67 (9th Cir. 2003) (involving slanderous statements by a former tenant to others that her landlord sexually molested her children); Holloway v. Am. Media, Inc. 2013 WL 2247990, *12 (N.D. Ala. May 22, 2013) (involving publication of "graphic descriptions of the treatment of her daughter's corpse" and no claim for defamation); Doe v. Gangland Prods., Inc., 730 F.3d 946, 960 (9th Cir. 2013) (disclosing former gang member's identity and exposing him to resulting harm from other gang members).[10] In contrast to these cases, the allegedly false statements here relate solely to Mr. Rosenberg's employment with Redflex – statements which do not rise to the level of extreme and outrageous conduct. See Benishek, 441 N.W.2d at 402; Hanssen, 938 S.W.2d at 94; see also, e.g., Williams v. District of Columbia, 9 A.3d 484, 487-88, 493-94 (D.C. App. 2010) (holding that terminating employee and spreading false statements that the employee embezzled from the company was insufficient to sustain an IIED claim); Brown v. Suncoast Beverage Sales, LLP, 2010 WL 555675, *3 (M.D. Fla. Feb. 10, 2010) (holding that employer's false, public accusations of theft by employee were insufficient to maintain an IIED claim).

As a matter of law, Redflex's alleged statements concerning Mr. Rosenberg's employment-related conduct are not sufficiently extreme and outrageous to support an IIED claim.

B. The Rosenbergs' New Allegations Of "Retaliation" By Redflex Are Unsupported And Do Not Constitute Extreme And Outrageous Conduct.

The Rosenbergs next contend that Redflex's alleged actions in "retaliating against Mr. Rosenberg as a result of his revelations about company indiscretions and . . . attempting to scapegoat him via defamatory statements in the media" are somehow sufficiently extreme and

[10] Defendants' reliance on Cartwright v. Cooney, 788 F. Supp. 2d 744, 748, 755 (N.D. Ill. 2011) is also unhelpful as, in that case, the court looked at the allegations simply as a matter of notice pleading, but did not analyze whether they alleged sufficiently extreme and outrageous conduct.

outrageous to support a claim for IIED. Notably, although they contend Redflex used Mr. Rosenberg as a "scapegoat," no allegation of "retaliation" appears in the Rosenbergs' Counterclaim. Moreover, the Rosenbergs cite no authority even remotely similar to this case and which supports its desired conclusion. Indeed, the authority previously cited in Redflex's Motion squarely contradicts the Rosenbergs' position. See Hinchey v. Horne, 2013 WL 4543994, *5, 14 (D. Ariz. Aug. 28, 2013) (holding that alleged conduct in defaming employee to other employees, "portray[ing] her as a rogue investigator," and retaliating against her did not "rise to the level of reprehensibility required for [IIED]" and dismissed plaintiff's IIED claim); Coors Brewing Co. v. Floyd, 978 P.2d 663, 666 (Colo. 1999) (holding termination of employee "to scapegoat him" for employer's illegal drug investigations and money-laundering scheme was not "so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community"); accord Mintz, 905 P.2d at 554 ("It is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of [IIED]."). Similarly here, the Rosenbergs allege that Redflex engaged in illegal conduct, made defamatory statements about Mr. Rosenberg and portrayed him as a scapegoat to allegedly shield itself from liability for its supposed illegal conduct. As in Hinchey and Floyd, such conduct is not as a matter of law sufficiently extreme and outrageous to give rise to a claim for IIED. Hinchey, 2013 WL 4543994, at *14; Floyd, 978 P.2d at 666.[11]

Remarkably, while seeking to convince the Court to disregard Hinchey and Floyd, the Rosenbergs proceed to cite a plethora of case law involving deliberate, repeated and prolonged stalking, sexual harassment and discrimination against a protected class. See, e.g., Thompson v. Paul, 657 F. Supp. 2d 1113, 1124 (D. Ariz. 2009) (involving allegations of assault, stalking and harassment of former employee and her family over a period of time); Coffin, 323 F. Supp. 2d at 1003-05 (raising allegations of prolonged sexual harassment); Thorp, 941 F. Supp. 2d at 1139, 1141-

[11] The Rosenbergs' attempts to distinguish Hinchey on the basis that the investigator was a "public official" and Floyd on the basis that it is a Colorado decision with no allegations of defamation are unavailing. See Hinchey, 2013 WL 4543994 at *13-14 (holding the allegations of "a scheme to destroy" employee's name and demoting employee based on a personal or political agenda, were not extreme and outrageous, without mention of employee's "public official" status); Midas, 133 Ariz. at 197, 650 P.2d at 499 (permitting consideration of non-Arizona decisions).

42 (involving allegations of prolonged "outrageous religious discrimination and sexual harassment"); Leal, 2007 WL 1412501, at *1, 4 (involving allegations of prolonged national origin and disability discrimination, harassment and retaliation for complaining about alleged harassment); Forsman v. Chi. Title Ins. Co., 2006 WL 4682253, *3 (D. Ariz. Jan. 20, 2006) (involving allegations of prolonged verbal and sexual harassment and resulting retaliation).[12] In contrast to these inapposite decisions, the Rosenbergs have not suffered from, nor alleged, any assault, verbal or sexual harassment, nor discrimination based on membership in a protected class.[13] And the conduct they have alleged does not rise to the level of extreme and outrageous. See, e.g., Hinchey, 2013 WL 4543994, at *14; Floyd, 978 P.2d at 666.[14]

4. Relief Requested.

The Rosenbergs' IIED claim fails for two primary reasons. First, the Rosenbergs do not properly allege (as they cannot) the severe emotional distress necessary to sustain a claim against Redflex. Second, Redflex's alleged employment-related conduct fails to exceed "all possible bounds of decency . . . to be regarded as atrocious and utterly intolerable in a civilized community.'" The alleged conduct, accordingly, cannot support an IIED claim. Johnson, 197 Ariz. at 160, ¶ 23, 3 P.3d at 1080 (citation omitted); see also Mintz, *supra*. The Rosenbergs' claim for IIED fails as a matter of law and should be dismissed.[15]

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[12] Defendants again copy and paste portions of the Thompson, Leal and Forsman opinions without proper attribution to the opinions. And, as in Fedoseev, Leal applies the same federal pleading standard Arizona has rejected. See Cullen, 218 Ariz. at 419-20, 189 P.3d at 346-47.

[13] To the extent Defendants seek to paint Mr. Rosenberg as an uninformed employee, it should be noted that he has purportedly obtained multiple post-graduate degrees, including a Master's degree from Pepperdine University and a Doctoral degree from the California School of Professional Psychology. Dr. Rosenberg has also been a registered lobbyist since at least 2006. He should be well-versed in the applicable rules rendering the lawfulness of his conduct.

[14] Defendants' efforts to distinguish Diamond Shamrock Refining and Mktg. Co. v. Mendez, 844 S.W.2d 198, 202 (Tex. 1992) ("there would be little left of the employment-at-will doctrine if an employer's public statement of the reason for the termination was, so long as the employee disputed that reason, in and of itself some evidence" of IIED) and Nelson v. Phoenix Resort Corp., 181 Ariz. 188, 199, 888 P.2d 1375, 1386 (App. 1994) (holding that terminating employee in front of media reporters was not extreme and outrageous) on the basis that these IIED claims were rejected at the summary judgment stage is unpersuasive. See, e.g., Johnson, 197 Ariz. at 160-61, ¶ 23, 3 P.3d at 1080-81 (relying on summary judgment decisions in dismissing IIED claim).

[15] This Reply does not address Mrs. Rosenberg's status as an improper claimant, as Defendants fail to rebut and apparently concede this point. See Restatement (Second) of Torts § 46(2)(a).

RESPECTFULLY SUBMITTED this 16th day of December, 2013.

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The foregoing was electronically FILED with the Clerk of Court this 16th day of December, 2013 and copy sent via Efiling System and hand-delivered to:

The Honorable Douglas Rayes
MARICOPA COUNTY SUPERIOR COURT
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A COPY sent via electronic mail this 16th day of December, 2013 and sent U.S. mail on the 17th day of December, 2013 to:

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