

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 20, Honorable Socrates Peter Manoukian, Presiding**

**Courtroom Clerk: Hien-Trang Tran-Thien**

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"Every case is important" . . . . "No case is more important than any other." —  
United States District Judge Edward Weinfeld (<https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html>)

"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the  
Biggest Case of Your Life." — Common Wisdom.

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and  
drink as friends." (Shakespeare, *The Taming of the Shrew*, act I, scene ii.)" (*Gregori v. Bank of  
America* (1989) 207 Cal.App.3d 291, 309.)

Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.*  
(1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented  
by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)

By Standing Order of this Court, all parties appearing in this Court are expected to comply with the  
Code of Professionalism adopted by the Santa Clara County Bar Association:

<https://www.sccba.com/code-of-professional-conduct/>

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**DATE: Tuesday, 14 May 2024**

**TIME: 9:00 A.M.**

This Department uses Zoom for Law and Motion  
and for Case Management Calendars. Please use the Zoom link below.

**TO ALL LAWYERS APPEARING IN THIS COURT: Please be on the lookout for announcements concerning "Civil Trials and Civil Motion Practice: Best Practices in Santa Clara County Superior Court." The program is tentatively set for 20 June 2024 at 12:00 PM on the Department 6 Teams Link. The program is available to all lawyers whether or not they are members of Santa Clara County Bar Association.**

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and **California Rules of Court**, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.

Join Zoom Meeting  
<https://scu.zoom.us/j/96144427712?pwd=cW1JYmg5dTdsc3NKNFBpSjlEam5xUT09>  
Meeting ID: 961 4442 7712  
Password: 017350

Join by phone:  
+1 (669) 900-6833  
Meeting ID: 961 4442 7712

One tap mobile  
+16699006833,,961 4442 7712#

**By appearing in this Department, whether in-person or by remote video platform, you represent that you have read the protocols of this Department, that you understand them, and that you will comply with them.**

## **APPEARANCES.**

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in-court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building. If the doors to the Old Courthouse are locked, please see the deputies at the metal detector next door at 191 North First Street.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See *Jensen v. Superior Court (San Diego)* (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwidth. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California **Rules of Court**, rule 3.672.

“A person's name is to him or her the sweetest and most important sound in any language.”—Dale Carnegie. All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, “with a name like mine, I try to be careful how I pronounce the names of others.” Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try [www.pronouncenames.com](http://www.pronouncenames.com) but that site mispronounces my name.

Please notify this Court immediately if the matter will not be heard on the scheduled date. **California Rules of Court**, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. **California Rules of Court**, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. California Rules of Court, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

**All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.**

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in

all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will be helpful if you “rename” yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the “rename” feature. You may type your name as: **Line #/name/party**. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as “Public.”

## **CIVILITY.**

In the 50 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

## **COURT REPORTERS.**

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); **California Rules of Court**, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

## **PROTOCOLS DURING THE HEARINGS.**

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with **California Rules of Court**, rule 3.1312.

## **TROUBLESHOOTING TENTATIVE RULINGS.**

To access a tentative ruling, move your cursor over the line number, hold down the “Control” key and click. If you see last week’s tentative rulings, you have checked prior to the posting of the current week’s tentative rulings.

You will need to either “REFRESH” or “QUIT” your browser and reopen it. Another suggestion is to “clean the cache” of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

**This Court's tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4<sup>th</sup> 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court's final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4<sup>th</sup> 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.**

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Demurrer of Defendant Yevgeniy Babichev to the First And Second Causes of Action to Plaintiff's First Amended Complaint.</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>SEE LINES #7, #8, and #9 BELOW.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on “Civility.”</p>
LINE 2	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Defendant Yevgeniy Babichev to Strike Punitive Damages and Amount of General Damages Causes of Action in Plaintiff's First Amended Complaint.</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>SEE LINES #7, #8, and #9 BELOW.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on “Civility.”</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 3	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Defendant Yevgeniy Babichev to Strike Claims for Harassment and Intentional Infliction of Emotional Distress in Plaintiff's 1<sup>st</sup> Amended Complaint.</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>SEE LINES #7, #8, and #9 BELOW.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 4	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Defendant Ekaterina Berman To Declare Plaintiff to Be a Vexatious Litigant and for an Order That Plaintiff Furnish Security.</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>The Motion is MOOT.</p> <p>NO FORMAL TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 5	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Defendant Yevgeniy Babichev to Dismiss the Case Pursuant to <i>Code of Civil Procedure</i>, § 391.7(c).</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p><b><i>Code of Civil Procedure</i>, § 391.7(c)</b> states: “The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding justice or presiding judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve, or the presiding justice or presiding judge may direct the clerk to file and serve, on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subdivision (a). The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within 10 days of the filing of that notice obtains an order from the presiding justice or presiding judge permitting the filing of the litigation as set forth in subdivision (b). If the presiding justice or presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of the order.</p> <p>The action is STAYED for 10 days from the filing and service of this Order so that plaintiff may obtain an order from the presiding judge permitting the filing of the litigation. His supporter is not obtained within 10 days, the action will be DISMISSED.</p> <p><b>NO FORMAL TENTATIVE RULING.</b></p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on “Civility.”</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 6	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Defendant Yevgeniy Babichev To Declare Plaintiff to Be a Vexatious Litigant and for an Order That Plaintiff Furnish Security.</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>The Motion is MOOT.</p> <p>NO FORMAL TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 7	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Demurrer of Defendant Yevgeniy Babichev To Plaintiff's First Amended Complaint</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>Defendant Babichev's special motion to strike those certain allegations within Plaintiff's FAC identified at page 2 of defendant Babichev's notice of motion is GRANTED.</p> <p>Defendant Babichev's motion to strike prayer for punitive damages and amount of general damages from Plaintiff's FAC is GRANTED.</p> <p>Defendant Babichev's demurrer to the first cause of action in Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for harassment is SUSTAINED WITHOUT LEAVE TO AMEND.</p> <p>Defendant Babichev's demurrer to the second cause of action in Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for intentional infliction of emotional distress is SUSTAINED with 10 days' leave to amend.</p> <p>Defendant Babichev's demurrer to Plaintiff's second cause of action on the ground that the pleading is uncertain [Code Civ. Proc, §430.10, subd. (f)] is SUSTAINED with 10 days' leave to amend.</p> <p>SEE ATTACHED TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>



LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 8	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Defendant Yevgeniy Babichev to Strike Prayer for Punitive Damages and Amount of General Damages from Plaintiff's First Amended Complaint.</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>SEE LINE #7.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 9	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Defendant Yevgeniy Babichev to Strike Causes of Action for harassment and Intentional Infliction of Emotional Distress (Code of Civil Procedure, § 425.16) from Plaintiff's First Amended Complaint.</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>SEE LINE #7</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>

LINE 10	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Plaintiff to Disqualify Opposing Counsel Andrei Romanenko, Esq.</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>SEE LINE #5.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 11	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Plaintiff to Impeach Witness Milada Beleya.</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>SEE LINE #5.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 12	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Plaintiff to Impeach Witness Milada Beleya (Duplicate Motion).</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>SEE LINE #5.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>

LINE 13	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Plaintiff to Impeach Witness Ilya Khasin.</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>SEE LINE #5.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 14	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Plaintiff to Impeach Witness Boris Aronshtam.</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>SEE LINE #5.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 15	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Plaintiff to Impeach Witness Ekaterina Berman, Esq.</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>SEE LINE #5.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>

LINE 16	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Motion of Plaintiff to Disqualify Opposing Counsel Andrei Romanenko, Esq.</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>SEE LINE #5,.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 17	20CV372317	Kateryna Pomogaibo vs Yevgeniy Babichev et al	<p><b>Case Management Conference (continued from 20 to March 2024 and from 25 April 2024.)</b></p> <p><i>On 28 February 2023 in Action No. 21CV382347, Plaintiff was declared to be a Vexatious Litigant. The Court Of Appeal, Sixth District, affirmed the order in an unpublished opinion filed on 29 February 2024 (H050674). Before proceeding on this case or any other case, plaintiff must obtain a Prefiling Order from the Presiding Judge of this Court.</i></p> <p>NO TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>

LINE 18	20CV367155	Reena Johar vs Beatriz Gacusan; Leonardo A. Gacusan.	<p><b>Motion of Defendants to Compel Plaintiffs to Respond to Supplemental Interrogatories and Supplemental Demand for Inspection.</b></p> <p>On 05 January 2022, defendant served the foregoing discovery requests upon plaintiff. Despite follow-up letters on 2 occasions, plaintiff has not responded.</p> <p>This motion is unopposed.</p> <p>A failure to oppose a motion may be deemed a consent to the granting of the motion. (see California <b>Rules of Court</b>, rule 8.54(c); <b>Sexton v. Superior Court</b> (1997) 58 Cal.App.4<sup>th</sup> 1403, 1410.)</p> <p>However, [t]he failure to file a written opposition or to appear at a hearing or the voluntary provision of discovery shall not be deemed an admission that the motion was proper. (California <b>Rules of Court</b>, rule 3.1348(b).)</p> <p>The Court has reviewed the discovery devices and finds that they are appropriate. Plaintiff has not shown good cause to justify the denial of this motion. The motion is GRANTED. Plaintiff is to provide code compliant response without objection within 15 days of the filing and service of this order. Counsel for defendants should serve notice of entry of order.</p> <p>NO FORMAL TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 19	23CV412522	Dr. Tal Lavian vs CRADAR, A1 LLC et al	<p><b>Motion of Plaintiff to Compel to Compel Defendants Eran Dor and Yekutiel Josefsberg To Produce Documents and for Monetary Sanctions.</b></p> <p>Continued from 28 March 2024.</p> <p>This Court will arrange a special setting on one of the following dates: Tuesday, 21 May, 2:00 PM or later; Wednesday, 22 May 9:00 AM-11:30 AM; Thursday, 23 May 2024 at 2:00 PM or later. Counsel are to meet and confer and agree at a time and then use the Tentative Ruling Protocol to advise this Court of their agreement.</p> <p>NO TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>

LINE 20	23CV412522	Dr. Tal Lavian vs CRADAR, A1 LLC et al	<p><b>Motion of Defendants Eran Dor And Yekutiel Josefsberg To Compel Plaintiff to Provide Further Responses To Special Interrogatories, Set One; Special Interrogatories, Set Two; Request For Production Of Documents, Set One; Requests For Production Of Documents, Set Two; To Compel Compliance With Production Demands; And For Monetary Sanctions.</b></p> <p>Continued from 28 March 2024.</p> <p>This Court will arrange a special setting on one of the following dates: Tuesday, 21 May, 2:00 PM or later; Wednesday, 22 May 9:00 AM-11:30 AM; Thursday, 23 May 2024 at 2:00 PM or later. Counsel are to meet and confer and agree at a time and then use the Tentative Ruling Protocol to advise this Court of their agreement.</p> <p>NO TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 21	19CV357691	Barclays Bank Delaware vs Denise Cortes	<p><b>Motion of Plaintiff for Setting Aside Default and Vacating Its Prior Order of Dismissal.</b></p> <p>OFF CALENDAR.</p> <p>NO FORMAL TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 22	20CV373378	Arthur Mungaray vs Greenpoint Mortgage Funding, Inc.	<p><b>Motion of Plaintiff for Entry of Default.</b></p> <p>The defendant was served on 10 December 2020 at an office in Sacramento which purported to be the designated agent for service of process.</p> <p>In an order filed on 16 March 2022, this Court advised plaintiff that the matter needed a court trial since the claim involves title to property. The case is already set for hearing on 08 August 2024 at 10:00 AM in Department 20.</p> <p>In his "Trial Brief" filed on 27 October 2023, plaintiff declares that "[defendant] has been out of business, and officially surrendered their right to do business on January ninth, 2004, and has no right to continue to do business in this state as a result of their CERTIFICATE OF SURRENDER OF RIGHT TO TRANSACT INTRASTATE BUSINESS." (§ 2.)</p> <p>Which, of course, then begs the question of whether defendant is indeed the current title holder of record.</p> <p>NO TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>

<p>LINE 23</p>	<p>22CV393993</p>	<p>Winston Arver vs Michael Chae et al</p>	<p><b>Motion of Plaintiff for Leave to File a First Amended Complaint.</b></p> <p>Plaintiff filed the complaint 31 January 2022. The eight count complaint alleges failure to maintain rental property resulting in filthy infestations of bedbugs and other complaints.</p> <p>On 08 February 2024 plaintiff substituted counsel. Mr. Avila filed a notice of limited scope representation agreeing to represent the plaintiff through mediation.</p> <p>Mr. Avila now seeks to amend the complaint to add additional cause of action for retaliatory eviction in violation of the eviction moratorium laws.</p> <p>Defendants oppose the motion, claiming prejudice and a need to do additional discovery. But defendants are not specific as to how they are prejudiced.</p> <p>Motions for leave to amend the pleadings are directed to the Court's sound discretion. (See Code of Civil Procedure, § 473(a)(1); Code of Civil Procedure, § 576.) Judicial policy favors the liberal exercise of discretion to permit amendment of the pleadings so as to resolve all disputed matters between the parties in the same lawsuit. (See <i>Nestle v. Santa Monica</i> (1972) 6 Cal.3d 920, 939; <i>Mabie v. Hyatt</i> (1998) 61 Cal.App.4th 581, 596.)</p> <p>The case has not yet been mediated. The trial setting conference is next week. This Court is currently n. Ot setting trials until March 2025 and later.</p> <p>The motion of plaintiff for leave to file a First Amended Complaint is GRANTED. Plaintiff should e-file a copy of the proposed pleading and serve an endorsed copy upon defendants who will then have twenty days leave within which to RESPOND.</p> <p><b>NO FORMAL TENTATIVE RULING.</b></p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
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LINE 24	23CV418195	Elijah Del Rio vs Steven Vo, M.D. et al	<p><b>Motion of Michael D. Gonzales, Esq. to Withdraw As Attorney for Post-Effective Date O'Connor Hospital.</b></p> <p>Due to the lack of insurance coverage, counsel contacted the trustee for this defendant and the current operator about continuing representation in this matter. No arrangements have been made. Therefore, counsel cannot continue with the representation.</p> <p>No party has opposed the motion. (cf. <i>Manfredi &amp; Levine v. Superior Court</i> (1998) 66 Cal.App.4<sup>th</sup> 1128, 1132.)</p> <p>The motion to be relieved as counsel is GRANTED. The Order will take effect upon the filing and service of the executed order of this Court and an order that is written on Form MC-053 and that otherwise complies with California <b>Rules of Court</b>, rule 3.1362(e). Counsel should add the next court dates on ¶ 8 of the proposed order and submit it to this Department via the Clerk's efilng queue.</p> <p>NO FORMAL TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 25	2004-1-CV-023047	Credigy Receivables Inc vs Daniel S. Jacobson	<p><b>Claim of Exemption.</b></p> <p>The claim of exemption is DENIED. Judgment Creditor is entitled to \$250.00 per pay period.</p> <p>NO FORMAL TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 26	2010-1-CV-169996	Capital One Bank vs George E. Hostutler	<p><b>Motion of Plaintiff to Set Aside and Vacate Default Judgment.</b></p> <p>In this collection action, plaintiff obtained a default judgment against defendant without knowing that the defendant had a valid fraud claim regarding the credit card account that is the subject of the instant matter.</p> <p>The motion is GRANTED as the entry of the default judgment appears to have been excusable neglect pursuant to <b>Code of Civil Procedure</b>, § 473(b).</p> <p>SEE ATTACHED TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>



LINE 27	20CV372833	Madison Reading, A Minor etc. et al. vs City of Sunnyvale; Grace Hao; Santa Clara Unified School District; et al.  and related cross-complaint.	<p><b>Compromise of Minor's Claim for Daniel Aguilar.</b></p> <p>The petition is APPROVED. Due to the complete petition, a hearing will not be necessary. This Court will execute the proposed order.</p> <p>The matter will be set for Dismissal Review on fifteen August twenty twenty-four at 10:00 AM in Department 20.</p> <p>NO FORMAL TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 28	20CV372833	Madison Reading, A Minor etc. et al. vs City of Sunnyvale; Grace Hao; Santa Clara Unified School District; et al.  and related cross-complaint.	<p><b>Compromise of Minor's Claim for Keena Lochner.</b></p> <p>The petition is APPROVED. Due to the complete petition, a hearing will not be necessary. This Court will execute the proposed order.</p> <p>The matter will be set for Dismissal Review on fifteen August twenty twenty-four at 10:00 AM in Department 20.</p> <p>NO FORMAL TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 29			<p>SEE ATTACHED TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>
LINE 30			<p>SEE ATTACHED TENTATIVE RULING.</p> <p>By appearing on a contested tentative ruling, you will be presumed to have read the Bannerhead at the top of this Tentative Ruling Page and the paragraph on "Civility."</p>

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Calendar Line 7

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**DEPARTMENT 20**

**161 North First Street, San Jose, CA 95113  
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(For Clerk's Use Only)

**CASE NO.: 20CV372317**

**Kateryna Pomogaibo v. Yevgeniy Babichev, et al.**

**DATE: 14 May 2024**

**TIME: 9:00 am**

**LINE NUMBER: 07, 08, 09**

**This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 13 May 2024. Please specify the issue to be contested when calling the Court and Counsel.**

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**Orders on:**

- (1) Defendant Yevgeniy Babichev's Special Motion To Strike  
Claims In Plaintiff Kateryna Pomogaibo's Causes Of Action For Harassment  
And Intentional Infliction Of Emotional Distress  
In The First Amended Complaint; and  
(2) Defendant Yevgeniy Babichev's Motion To Strike  
Prayer For Punitive Damages And Amount Of General Damages  
From First Amended Complaint; and  
(3) Defendant Yevgeniy Babichev's Demurrer To 1st Cause Of Action  
and To 2nd Cause Of Action In First Amended Complaint.**

**I. Statement of Facts.**

Plaintiff Kateryna Pomogaibo ("Plaintiff"), a self-represented litigant<sup>1</sup>, filed the operative Judicial Council form First Amended Complaint ("FAC") on 27 October 2023 against defendants Yevgeniy Babichev ("Babichev") and Ekaterina Berman ("Berman").

As to defendant Babichev, Plaintiff's FAC attaches two Judicial Council form PLD-PI-001(3) for "Intentional Tort(s)." In the first cause of action, Plaintiff sets forth the elements for a harassment cause of action and alleges, in relevant part, "In 2019-2020 Defendant [Babichev] intentionally harassed and abused Plaintiff, stalked and followed her personally in the court and [threatened] through friends, wrote defamation [sic] messages, damaged her reputation in Russian community in Bay area." According to Plaintiff, defendant Babichev's conduct was the basis for the court's issuance of a restraining order against defendant Babichev in a related case, a civil harassment action,

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<sup>1</sup> Although a judge should ensure that self-represented litigants are not being misled or unfairly treated (see *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284), self-represented litigants are not entitled to special treatment with regard to the Rules of Court or Code of Civil Procedure. "[W]e cannot disregard the applicable principles of law and accord defendant any special treatment because he instead elected to proceed in propria persona. [Citations.]" (*Stein v. Hassen* (1973) 34 Cal. App. 3d 294, 303.) "A litigant has a right to act as his own attorney [citation] 'but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts.'" (*Lombardi v. Citizens Nat'l Trust & Sav. Bank* (1955) 137 Cal.App.2d 206, 208-209.)



case number 19CH008591 ("Civil Harassment Action"). After the restraining order expired, defendant Babichev continued to harass Plaintiff who has suffered "strong emotional distress and depression."

Plaintiff's second cause of action against defendant Babichev sets forth the elements for an intentional infliction of emotional distress cause of action and then goes on to make allegations which are substantially similar to those allegations made in the first cause of action.

In attachments, Plaintiff alleges that her husband is Sergey Firsov ("Firsov") and Firsov was sued by defendant Berman on 19 February 2019 in the Civil Harassment Action. Defendant Babichev is defendant Berman's step-father. Defendant Babichev and defendant Berman's mother, Olga Kashlinskaya ("Kashlinskaya") actively participated in the Civil Harassment Action. Plaintiff's husband filed a civil harassment action against defendant Babichev, case number 19CH008613 ("Firsov Civil Harassment Action").

On 3 March 2019, a friend of defendants Berman and Babichev telephoned Plaintiff stating Berman demanded Plaintiff's husband remove a comment he posted about Berman on Yelp. This caller told Plaintiff that if she did not put pressure on her husband, defendant Berman would "do everything to ensure that later I would have difficulties with socialization and professional integration here in the Bay Area."

In an October 2019 court hearing, defendants Berman and Babichev said that they had been working on alienating Plaintiff from the community around her.

From 3 January 2020 to 5 January 2020, prior to Plaintiff's green card interview, different people repeatedly asked me if my marriage was a sham or fake. Plaintiff alleges these people contacted her at defendants Babichev and Berman's urging.

On 23 February 2019, Plaintiff received a message from defendant Babichev suggesting Plaintiff "reform" before he will talk to their mutual friends. Subsequently, Plaintiff started receiving threats and insistent demands from third parties urging Plaintiff to make her husband behave.

One time, defendant Babichev stalked me in the court elevator and tried to scare Plaintiff. Defendant Babichev kept track of where Plaintiff went and with whom Plaintiff communicated.

Defendant Babichev forbade members of the Russian community from communicating with Plaintiff.

Defendant Babichev and Berman engaged in the dissemination of false, prejudiced and biased information in the Russian speaking immigrant community that Plaintiff engaged in acts of moral turpitude such as marriage fraud. Defendants Babichev and Berman caused the filing of such allegations with the United States Citizenship and Immigration Service (USCIS) in retaliation for the Firsov Civil Harassment Action.

Defendant Babichev and another person created a closed private group on Facebook where they insult Plaintiff and her husband.

Plaintiff suffered severe emotional distress due to the fact that defendant Berman and defendant Babichev falsified evidence in court causing the court to grant an anti-SLAPP motion in a related civil case.

Plaintiff filed the original complaint in this action on 2 November 2020<sup>2</sup>. Plaintiff's original complaint also asserted as its first two causes of action, claims against defendant Babichev for harassment and intentional infliction of emotional distress.

On 21 February 2023, defendant Babichev filed a demurrer and motion to strike portions of Plaintiff's complaint. On 17 October 2023, the court (Hon. Chung) issued an order which, among other things, overruled defendant Babichev's demurrer to Plaintiff's first cause of action and sustained, with leave to amend, defendant

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<sup>2</sup> This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (**Government Code**, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil **Rules of Court**, Rule 3.714(b)(1)(C) and (b)(2)(C).)

Babichev's demurrer to the second cause of action. The court also granted defendant Babichev's motion to strike the prayer for punitive damages with leave to amend.

On 27 October 2023, Plaintiff filed the operative Judicial Council FAC which continues to assert, apparently, a first cause of action for harassment and second cause of action for intentional infliction of emotional distress. Plaintiff also asserts a third and fourth cause of action against defendant Berman also apparently asserting claims for harassment and intentional infliction of emotional distress.

On 27 December 2023, defendant Babichev filed three of the motions now before the court: (1) a special (anti-SLAPP) motion to strike Plaintiff's FAC; (2) a motion to strike portions of Plaintiff's FAC; and (3) a demurrer to Plaintiff's FAC.

## **II. Analysis.**

### **A. Defendant Babichev's special motion to strike Plaintiff's FAC is GRANTED.**

#### **1. The two-step procedure for anti-SLAPP motions.**

Code of Civil Procedure section 425.16 requires a court to engage in a two-step process when determining whether a defendant's anti-SLAPP motion should be granted. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one "arising from" protected activity. The moving defendant's burden is to demonstrate that the act or acts of which the plaintiff complains were taken in furtherance of the defendant's right of petition or free speech under the United States or California Constitution in connection with a public issue. If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim. In making these determinations, the trial court considers the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

More recently, the California Supreme Court clarified:

At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them. When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage. If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. There, the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. The court, without resolving evidentiary conflicts, must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken. Allegations of protected activity supporting the stricken claim are eliminated from the complaint, unless they also support a distinct claim on which the plaintiff has shown a probability of prevailing.

(*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396 (*Baral*).)

#### **2. Step one – arising from protected activity.**

A defendant meets the burden of showing that a plaintiff's action arises from a protected activity by showing that the acts underlying the plaintiff's cause of action fall within one of the four categories of conduct described in section 425.16, subdivision (e). [Citation.] Those four categories are: "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest;

(4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.”

(*Siam v. Kizilbash* (2005) 130 Cal.App.4th 1563, 1569 (*Siam*).)

“In applying section 425.16, subdivision (b)(1), the mode of proceeding and the applicable analysis at the often-elusive first step have been worked out in some detail in the case law. ‘[T]he court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.’ (§ 425.16, subd. (b)(2).) ‘To determine whether a cause of action arises from protected activity, we disregard its label and instead examine its gravamen “by identifying ‘[t]he allegedly wrongful and injury-producing conduct ... that provides the foundation for the claim.’” [Citation], i.e., “the acts on which liability is based,” ...’[citations]; *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78 [124 Cal. Rptr. 2d 519, 52 P.3d 695] (*City of Cotati*) [“the statutory phrase “cause of action ... arising from” means simply that the defendant’s act underlying the plaintiff’s cause of action must *itself* have been an act in furtherance of the right of petition or free speech”].)

“A claim arises from protected activity when that activity underlies or forms the basis for the claim.’ (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062 [217 Cal. Rptr. 3d 130, 393 P.3d 905] (*Park*).) ‘Critically, “the defendant’s act underlying the plaintiff’s cause of action must *itself* have been an act in furtherance of the right of petition or free speech.” [Citations.] [T]he focus is on determining what “the defendant’s activity [is] that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.”’ (*Id.* at p. 1063.) ‘If the core injury-producing conduct upon which the plaintiff’s claim is premised does not rest on protected speech or petitioning activity, collateral or incidental allusions to protected activity will not trigger application of the anti-SLAPP statute.’ (*Hylton v. Frank E. Rogozienski, Inc.* (2009) 177 Cal.App.4th 1264, 1272 [99 Cal. Rptr. 3d 805]; see *City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 767 [142 Cal. Rptr. 3d 74] (*Singletary*) [“the question is whether the protected activity is merely an incidental part of the cause of action”].)

(*Oakland Bulk & Oversized Terminal, LLC v. City of Oakland* (2020) 54 Cal.App.5th 738, 752-753 (*Oakland*); italics original.)

Plaintiff’s FAC asserts two causes of action against defendant Babichev, harassment and intentional infliction of emotional distress (“IIED”), but both appear to be predicated on the same general allegation that, “In 2019-2020 Defendant [Babichev] intentionally harassed and abused Plaintiff, stalked and followed her personally in the court and [threatened] through friends, wrote defamation [sic] messages, damaged her reputation in Russian community in Bay area.” To provide more detail, Plaintiff attaches a lengthy narrative of events she contends form the basis for her claims against not only defendant Babichev, but also defendant Berman. In reading through Plaintiff’s attached narrative, the court focused on the allegations related to defendant Babichev specifically and attempted to identify them above.

Furthermore, in reading Plaintiff’s narrative, it is clear to this court and apparently clear to defendant Babichev<sup>3</sup> that Plaintiff’s claims for harassment and IIED arise from protected and unprotected activity. Not surprisingly, defendant Babichev directs the court’s attention to allegations concerning protected activity. For instance, defendant Babichev points to Plaintiff’s allegation that defendant Babichev accused Plaintiff of marriage fraud in filings with the USCIS [and] defendant Babichev falsified evidence in court. On its face, these allegations qualify as protected activity under Code of Civil Procedure section 425.16, subdivision (e)(1), “written or oral statement[s] or writing[s] made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.”

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<sup>3</sup> This is so because defendant Babichev seeks only to strike certain claims within Plaintiff’s first and second causes of action. The particular allegations that defendant Babichev moves to strike are delineated at page 2 of defendant Babichev’s notice of motion.

Plaintiff's opposition is not entirely coherent, but Plaintiff appears to argue that defendant Babichev cannot strike these allegations because they involve defendant Babichev's intentional lies which are not protected. However, Plaintiff offers no legal authority to support her position. At best, the court understands Plaintiff to be asserting the legal argument that illegal conduct is not protected activity.

[Code of Civil Procedure] section 425.16, "by its express terms, does not apply to any activity that can conceivably be characterized as being 'in furtherance' of a defendant's protected speech or petition rights if, as a matter of law, that activity was illegal and by reason of the illegality not constitutionally protected. [Citation.] In such a narrow circumstance, **where either the defendant concedes the illegality of its conduct or the illegality is conclusively shown by the evidence**, the motion must be denied.

(*Flatley v. Mauro* (2006) 39 Cal.4th 299, 316; emphasis added.)

Here, however, defendant Babichev has not conceded any illegality nor has any illegality been conclusively established by the evidence.

Plaintiff's opposition also raises a procedural issue. Plaintiff cites Code of Civil Procedure section 425.16, subdivision (j)(1) which states:

Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by email or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

It is unclear why Plaintiff cites to this provision of Code of Civil Procedure section 425.16. Plaintiff has made no showing that defendant Babichev has not complied nor has Plaintiff explained what consequence, if any, would result from non-compliance.

Finally, Plaintiff incorrectly cites Code of Civil Procedure section 425.18, subdivision (e), which governs "SLAPPback" motions presumably to request a continuance to obtain necessary discovery. The instant motion is governed by Code of Civil Procedure section 425.16, not section 425.18. In any case, Plaintiff makes no argument or evidentiary showing that she would be entitled to a continuance.

The court finds defendant Babichev has met his threshold burden of showing that Plaintiff's first and second causes of action arise from protected activity, specifically those allegations identified at page 2 of defendant Babichev's notice of motion.

### 3. Step two – probability of prevailing.

"[I]f a court ruling on an anti-SLAPP motion concludes the challenged cause of action arises from protected petitioning, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. To satisfy this prong, the plaintiff must state and substantiate a legally sufficient claim. Put another way, the plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 741; internal citations and punctuation omitted.) "The court does not weigh credibility or comparative strength of the evidence. The court considers defendant's evidence only to determine if it defeats plaintiff's showing as a matter of law." (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291 (*Soukup*).)

The court's task is made simple here by virtue of Plaintiff's failure to submit any admissible evidence to support either of the claims asserted against defendant Babichev in her complaint. As such, defendant Babichev's special motion to strike those certain allegations within Plaintiff's FAC identified at page 2 of defendant Babichev's notice of motion is GRANTED.

**B. Defendant Babichev's motion to strike prayer for punitive damages and amount of general damages from Plaintiff's FAC is GRANTED.**

There being no opposition, defendant Babichev's motion to strike prayer for punitive damages and amount of general damages from Plaintiff's FAC is GRANTED.

**C. Defendant Babichev's demurrer to Plaintiff's FAC is GRANTED.**

## 1. Harassment.

In ruling on defendant Babichev's demurrer to the original complaint, the court (Hon. Chung) "observe[d] that the first cause of action appears to recite the elements of an intentional infliction of emotional distress claim, rather than harassment," but overruled defendant Babichev's demurrer on the basis that, "the fact that a cause of action misstates the legal standard or is duplicative of another cause of action is not a basis on which a demurrer may be sustained."

In the original complaint and again in the FAC, Plaintiff included the following statement: “Harassment may itself be an intentional tort or discrimination under FEHA and civil claim can be commenced, the state of the law is unclear.” Defendant Babichev previously attacked this first cause of action as not stating a claim under FEHA. To the FAC, defendant Babichev contends Plaintiff has not stated a civil cause of action for harassment recognizing Code of Civil Procedure section 527.6, subdivision (b)(3), states:

“Harassment” is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.

However, this definition of harassment merely serves as a basis for seeking a temporary restraining order. (See Code Civ. Proc., §527.6, subd. (a)(1)—“A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section.”) The court does not view this provision as support for either a statutory or common law right of action for harassment. Plaintiff offers no legal authority or argument to suggest otherwise. Moreover, as defendant Babichev argues, Plaintiff has not sufficiently alleged that defendant Babichev personally engaged in conduct which qualifies as harassment.

However, since it is this court's opinion that there is no statutory basis nor a common law claim for harassment, defendant Babichev's demurrer to the first cause of action in Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for harassment is SUSTAINED WITHOUT LEAVE TO AMEND.

## 2. Intentional Infliction of Emotional Distress.

A cause of action for intentional infliction of emotional distress exists when there is “ ‘ (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant’s outrageous conduct.’ ” (Potter v. Firestone Tire & Rubber Co. (1993) 6 Cal.4th 965, 1001 [25 Cal. Rptr. 2d 550, 863 P.2d 795]; see Christensen v. Superior Court (1991) 54 Cal.3d 868, 903 [2 Cal. Rptr. 2d 79, 820 P.2d 181].) A defendant’s conduct is “outrageous” when it is so “ ‘extreme as to exceed all bounds of that usually tolerated in a civilized community.’ ” (Potter, at p. 1001.) And the defendant’s conduct must be “ ‘intended to inflict injury or engaged in with the realization that injury will result.’ ” (Ibid.)

(*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-1051 (*Hughes*).)

In sustaining defendant Babichev's demurrer to the original complaint, the court (Hon. Chung) acknowledged allegations that defendant Babichev wanted Plaintiff deported, urged third parties to threaten Plaintiff, personally "stalked" Plaintiff in a courthouse elevator in a purportedly threatening manner, prohibited members of the Russian community from communicating with Plaintiff, and admitted to "working on alienating [Plaintiff] from the community." Even so, the court held the conduct described in the complaint, although mean-spirited and harsh, is not "outrageous" as a matter of law. While Plaintiff may have supplemented her allegations in the FAC, defendant Babichev contends any new allegations attributing conduct to him still do not amount to "outrageous" conduct as a matter of law. Part of the difficulty with Plaintiff's FAC is its narrative format which makes it difficult to isolate what conduct is being attributed to defendant Babichev and inclusion of numerous evidentiary facts rather than ultimate facts. In that regard, defendant Babichev's demurrer to Plaintiff's second cause of action on the ground that the pleading is uncertain [Code Civ. Proc., §430.10, subd. (f)] is SUSTAINED with 10 days' leave to amend.

In sustaining defendant Babichev's demurrer to the original complaint, the court (Hon. Chung) also relied, in part, upon *Hughes, supra*, 46 Cal.4th at p. 1051 where the court wrote, "plaintiff's assertions that she has suffered discomfort, worry, anxiety, upset stomach, concern, and agitation as the result of defendant's comments to her ... do not comprise ' "emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it." ' [Citation.]" (See also *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1004—"Severe emotional distress means 'emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.'" [Citations.]") Although *Hughes* involves a motion for summary judgment, there is authority which requires a plaintiff to plead "facts which indicate the nature and extent of any mental suffering incurred as a result of [defendant's] alleged outrageous conduct." (*Bogard v. Empls Casualty Co.* (1985) 164 Cal.App.3d 602, 617.)

In the FAC, Plaintiff alleges, in relevant part, "Due [to defendant Babichev's] acts, Plaintiff has got strong emotional distress and depression. Plaintiff has taken medical therapy \$190 per week to relief from stress." In the attachments, Plaintiff makes reference to being "offended;" "fac[ing] systematic psychological pressure;" "experiencing fear and hopelessness;" being "under great deal of stress;" Plaintiff's "hands [shaked] due stress after [Babichev stalked (chased, followed) me in court elevator];" "this offensive conduct continued for years, does mean [I] have got severe – substantial and enduring quality."

In opposition, Plaintiff asserts, "harassment can feel traumatic and lead to depression or anxiety, or symptoms related to post-traumatic stress disorder" and that she "visited personal therapist because Defendant permanently harassed her multiple years and continues to do so through his friends and buddies." While there appear to be some more allegations in Plaintiff's FAC, the court continues to find the FAC lacking in facts which indicate the nature and extent of any mental suffering incurred as a result of defendant Babichev's alleged conduct.

Accordingly, defendant Babichev's demurrer to the second cause of action in Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for intentional infliction of emotional distress is SUSTAINED with 10 days' leave to amend.

### **III. Order.**

Defendant Babichev's special motion to strike those certain allegations within Plaintiff's FAC identified at page 2 of defendant Babichev's notice of motion is GRANTED.

Defendant Babichev's motion to strike prayer for punitive damages and amount of general damages from Plaintiff's FAC is GRANTED.

Defendant Babichev's demurrer to the first cause of action in Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for harassment is SUSTAINED WITHOUT LEAVE TO AMEND.

Defendant Babichev's demurrer to the second cause of action in Plaintiff's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for

intentional infliction of emotional distress is SUSTAINED with 10 days' leave to amend. Defendant Babichev's demurrer to Plaintiff's second cause of action on the ground that the pleading is uncertain [Code Civ. Proc, §430.10, subd. (f)] is SUSTAINED with 10 days' leave to amend.

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**DATED:**

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**HON. SOCRATES PETER MANOUKIAN**

*Judge of the Superior Court*

*County of Santa Clara*

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