

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

**Department 3**

**Honorable William J. Monahan, Presiding**

Allison Croft, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: (408) 882-2130

**DATE: 4/4/2024 TIME: 9:00 A.M.**

**TO CONTEST THE RULING:** Before 4:00 p.m. today (4/3/2024) you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling.  
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

**TO APPEAR AT THE HEARING:** The Court prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to **Department 3**.

[https://www.sccscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml)

**TO SET YOUR NEXT HEARING DATE:** You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: **408-882-2430** When you can call: **Monday to Friday, 8:30 am to 12:30 pm**

**FINAL ORDERS:** The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept. and line number.

**COURT REPORTERS:** The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	23CV423256	Edward Jenkins vs Paul Sossaman et al	Motion: Quash Service of Summons by Specially Appearing Defendant Paul Sossaman  Ctrl Click (or scroll down) on Line 1 for tentative ruling. The court will prepare the order.

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<a href="#">LINE 2</a>	23CV425593	Andrew Dagley vs Marriott International, Inc et al	<p>Hearing: Motion to Strike portions of amended complaint by defendant BCore 660</p> <p>Ctrl Click (or scroll down) on Line 2 for tentative ruling. The court will prepare the order.</p>
<a href="#">LINE 3</a>	24CV431215	EL SOL REAL ESTATE INVESTMENTS LLC vs ANTHONY CAMBELL et al	<p>Motion: Quash summons and complaint in Unlawful Detainer by defendant Anthony Campbell (pro Per) and Seffon Taylor (Pro Per) **continued per 3/14/2024 minute order**</p> <p><b>APPEAR</b> and bring proposed order. On 3/14/2024, Plaintiff was ordered to provide notice of this hearing date, but the court does NOT see the ordered notice in the court's file. <b>Please bring the notice and POS to the hearing.</b></p> <p>Note: Answer by defendants Anthony Campbell (in pro per) and Steffon Taylor (in pro per) was filed 2/29/2024. Amended Notice of Scheduled Unlawful Detainer Trial Date on April 12, 2024, at 9:00 a.m. in Dept. 3.</p>
<a href="#">LINE 4</a>	23CV425899	S & L Engineers, Ltd., a Nevada Limited Company vs Does 1 through 10	<p>Motion: Compel responses to subpoena by Plaintiff</p> <p><b>CONTINUED</b> (by stipulation and order filed 3/28/2024) <b>to May 14, 2024, at 9am in Dept. 3.</b></p>
<a href="#">LINE 5</a>	21CV384411	CREDITORS ADJUSTMENT BUREAU, INC. vs HAYDEN SARJI et al	<p>Motion: Order for Terminating Sanctions by Plaintiff Creditors Adjustment Bureau, Inc.</p> <p>Plaintiff Creditors Adjustment Bureau, Inc. ("Plaintiff")'s motion for order for terminating sanctions, striking defendant Venice Tile &amp; Marble, Inc.'s ("VENICE") Answer to the Complaint and Entering Default against VENICE and for Monetary Sanctions in the sum of \$1,573.75 against VENICE.</p> <p>Unopposed and GRANTED.</p>
<a href="#">LINE 6</a>	21CV391490	Gregory Steshenko vs PATRICK AHRENS et al	<p>Motion: re: Stay. Motion to set aside stay of the case by Plaintiff Gregory Steshenko (in pro per)</p> <p>Ctrl click (or scroll down) on Line 6 for tentative ruling. The court will prepare the order.</p>

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<a href="#">LINE 7</a>	23CV422172	J Frederick vs Innova Products, Inc.	Hearing: Pro Hac Vice Counsel by Cameron Salehi for Plaintiff J Matthew Frederick  Unopposed and GRANTED. Moving party to submit proposed order.
<a href="#">LINE 8</a>	23CV422172	J Frederick vs Innova Products, Inc.	Hearing: Pro Hac Vice Counsel by Andrew Payne for Plaintiff J Matthew Frederick  Unopposed and GRANTED. Moving party to submit proposed order.
<a href="#">LINE 9</a>			
<a href="#">LINE 10</a>			
<a href="#">LINE 11</a>			
<a href="#">LINE 12</a>			

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## **Calendar Line 1**

**Case Name:** *Edward Charles Jenkins v. David Scott Karrigan, et al.*

**Case No.:** 23-CV-423256

Motion to Quash Service of Summons and Complaint by Defendant Paul Sossaman

### **Factual and Procedural Background**

On September 28, 2023, plaintiff Edward Charles Jenkins (“Plaintiff”) (self-represented) filed a Judicial Council Form Complaint alleging defamation against defendants David Scott Karrigan and Paul Sossaman (“Sossaman”). Plaintiff seeks damages in the amount of \$800,000 against each defendant.

On February 15, 2024, defendant Sossaman, specially appearing, filed a motion to quash service of summons and complaint. Plaintiff filed written opposition.

### **Motion to Quash Service of Summons**

Defendant Sossaman moves to quash service of summons as he was not personally served with the complaint in this action.

## **Legal Standard**

“Service of process is the means by which a court having jurisdiction over the subject matter asserts jurisdiction over the party and brings home to him reasonable notice of the action. [Citation.] It is an indispensable element of due process of law. [Citation.]” (*Kappel v. Bartlett* (1988) 200 Cal.App.3d 1457, 1464.)

“A motion to quash service challenges only the lack of jurisdiction over the person and, when ruling on such a motion, the trial court is not permitted to determine the merits of the complaint.” (*McClatchy v. Coblenz* (2016) 247 Cal.App.4th 368, 375.)

“When a motion to quash is properly brought, the burden of proof is placed upon the plaintiff to establish the facts of jurisdiction by a preponderance of the evidence. [Citation.] This may be done through presentation of declarations, with opposing declarations received in response.” (*Aquila, Inc. v. Super. Ct.* (2007) 148 Cal.App.4th 556, 568.) Where there is a conflict in the declarations, resolution of the conflict by the trial court will not be disturbed on appeal where the ruling is supported by substantial evidence. (*Ibid.*)

## **Analysis**

As stated above, Plaintiff filed his complaint in this action on September 28, 2023. The proof of service of summons was filed on November 17, 2023. (Daams Decl. at ¶ 2, Ex. A.) According to the proof of service, Jennifer Marie Garcia (“Ms. Garcia”), on behalf of Plaintiff, personally served Sossaman on October 13, 2023 at 6:10 a.m. at 1034 South Winchester Blvd.,

Apt. 4, San Jose, California, 95128. (Id. at Ex. A; see *Floveyor Internat., Ltd. v. Super. Ct.* (1997) 59 Cal.App.4th 789, 795 [“The filing of a proof of service creates a rebuttable presumption that the service was proper.”].)

Defendant Sossaman disputes the proof of service and contends he was never personally served with the summons and complaint by Plaintiff or Ms. Garcia. In support, Sossaman submits his declaration, signed under penalty of perjury, stating the following:

- I do not reside at 1034 South Winchester Blvd., Apt. 4, San Jose, California, 95128 or in any apartment complex of which this apartment is included.
- I was not at 1034 South Winchester Blvd., Apt. 4, San Jose, California, 95128 on October 13, 2023 at 6:10 a.m.
- I have never met Plaintiff nor Ms. Garcia.
- I have never been personally served with any legal documents in this matter. (Sossaman Decl. at ¶¶ 1-3, 5.)

And, even though Sossaman admits to receiving a copy of the complaint in the mail at his workplace, such notice is not a substitute for proper service. (Sossaman Decl. at ¶ 4; see *Slaughter v. Legal Process & Courier Service* (1984) 162 Cal.App.3d 1236, 1251 [“[I]t is long-settled that methods of service are to be strictly construed and that a court does not acquire jurisdiction where personal service is relied upon but has not in fact taken place.”]; see also *Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 808 [“A party cannot be properly joined unless served with the summons and complaint; notice does not substitute for proper service. Until statutory requirements are satisfied, the court lacks jurisdiction over a defendant.”].)

As a preliminary matter, the court notes that Plaintiff filed an untimely opposition to the motion to quash.

Code of Civil Procedure section 1005, subdivision (b), requires all opposing papers to be filed and served at least nine court days before the hearing. No paper may be rejected for filing on the ground that it was untimely submitted for filing. (Cal. Rules of Court, Rule 3.1300(d).) If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must indicate. (Ibid.)

Here, the instant motion to strike was filed on February 15, 2024. The hearing on the motion is scheduled for April 4, 2024. Thus, Plaintiff must file and serve his opposition no later than March 21, 2024 to be considered timely.<sup>1</sup> Plaintiff however did not file and serve his opposition until April 2, 2024, **two days before the hearing on this motion**. Plaintiff also fails to provide any explanation for the untimely filing of his opposition papers. Moreover, the extremely late filing deprives defendant Sossaman of the opportunity to submit timely reply papers. The court therefore declines to consider the untimely opposition. But, even if the court were to address the merits, Plaintiff fails to submit any evidence establishing personal service of the summons and complaint in this action.

Consequently, the motion to quash is GRANTED.

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<sup>1</sup> The court notes Monday April 1, 2024 is a court holiday.

**Disposition**

The motion to quash service of summons and complaint is GRANTED.

The court will prepare the Order.

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## **Calendar Line 2**

**Case Name:** *Andrew Dagley v. BCore 660 El Camino Real TRS LLC*

**Case No.:** 23-CV-425593

Motion to Strike Portions of the First Amended Complaint by Defendant BCore 660 El Camino Real TRS LLC

### **Factual and Procedural Background**

This is a malicious prosecution action brought by plaintiff Andrew Dagley (“Plaintiff”) against defendant BCore 660 El Camino Real TRS LLC (“BCore”).

According to the first amended complaint (“FAC”), on March 2, 2023, Plaintiff was a registered guest at the Courtyard by Marriott hotel in Sunnyvale, California which was owned and operated by defendants. (FAC at ¶ 4.) Plaintiff was attending a business function in the area at the time of the events alleged in the FAC. (Ibid.)

Around this time, defendants summoned officers of the Sunnyvale Police Department and had Plaintiff arrested without a warrant and detained for the crime of felony vandalism. (FAC at ¶ 5.) Plaintiff was then transported to the Santa Clara County Jail and held there for one day until his first court appearance, at which time he was released and the charges dismissed. (Ibid.)

Plaintiff alleges defendants had no probable cause for his arrest and he was entirely innocent of the crime of felony vandalism. (FAC at ¶ 7.) Plaintiff claims defendants acted maliciously in instigating his arrest and prosecution. (Id. at ¶ 8.)

On October 31, 2023, Plaintiff filed a complaint against defendant Marriott International, Inc. (“Marriott”) alleging causes of action for: (1) false arrest; (2) false imprisonment; and (3) intentional infliction of emotional distress.

On December 20, 2023, Plaintiff filed the operative FAC against defendant BCore setting forth a single cause of action for malicious prosecution and dismissed Marriott from this case without prejudice.

On February 13, 2024, defendant BCore filed the motion presently before the court, a motion to strike portions of the FAC. Plaintiff filed written opposition.

A case management conference is scheduled for April 16, 2024.

### **Motion to Strike Portions of the FAC**

Defendant BCore moves to strike the prayer for punitive damages in the FAC. (See FAC at Prayer for Relief at No. 4.)

## **Legal Standard**

A court may strike out any irrelevant, false, or improper matter asserted in a pleading. (Code Civ. Proc., § 436, subd. (a).) A court may also strike out all or any part of a pleading not filed in conformity with the laws of the State of California. (Code Civ. Proc., § 436, subd. (b).) The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).)

Irrelevant matter includes “immaterial allegations.” (Code Civ. Proc., § 431.10, subd. (c).) “An immaterial allegation in a pleading is any of the following: (1) An allegation that is not essential to the statement of a claim or defense; (2) An allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense; (3) A demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint.” (Code Civ. Proc., § 431.10, subd. (b).)

“As with demurrers, the grounds for a motion to strike must appear on the face of the pleading under attack, or from matter which the court may judicially notice.” (Weil & Brown, et al., *California Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2023) ¶ 7:168, p. 7(1)-77 citing Code Civ. Proc., § 437.) “Thus, for example, defendant cannot base a motion to strike the complaint on affidavits or declarations containing extrinsic evidence showing that the allegations are ‘false’ or ‘sham.’ Such challenges lie only if these defects appear on the face of the complaint, or from matters judicially noticeable.” (Id. at ¶ 7:169, p. 7(1)-78.)

“In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to the motion to strike as a whole, all parts in their context, and assume their truth.” (*Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.) “In ruling on a motion to strike, courts do not read allegations in isolation.” (*Ibid.*)

## Analysis

“In order to state a prima facie claim for punitive damages, a complaint must set forth the elements as stated in the general punitive damage statute, Civil Code section 3294. These statutory elements include allegations that the defendant has been guilty of oppression, fraud, or malice. ‘Malice’ is defined in the statute as conduct ‘intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.’ ‘Oppression’ means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights. ‘Fraud’ is ‘an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.’ ” (*Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63, internal citations omitted.)

Also, “[u]nder Civil Code section 3294, subdivision (b), punitive damages can properly be awarded against a corporate entity as a principal, because of an act by its agents, if the corporate employer authorized or ratified wrongful conduct. Ratification is shown if an officer, director, or managing agent of the corporation has advance knowledge of, but



consciously disregards, authorizes, or ratifies an act of oppression, fraud, or malice.” (*Pulte Home Corp. v. American Safety Indemnity Co.* (2017) 14 Cal.App.5th 1086, 1124.)

“In determining whether a complaint states facts sufficient to sustain punitive damages, the challenged allegations must be read in context with the other facts alleged in the complaint. Further, even though certain language pleads ultimate facts or conclusions of law, such language when read in context with the facts alleged as to defendants’ conduct may adequately plead the evil motive requisite to recovery of punitive damages.” (*Monge v. Super. Ct.* (1986) 176 Cal.App.3d 503, 510.)

As stated above, the operative pleading alleges a single cause of action for malicious prosecution. There are four essential elements to a malicious prosecution claim: (1) there had to have been a prior action commenced by or at the direction of the defendant that was pursued to a legal termination in the plaintiff’s favor; (2) the defendant must have brought the prior action without probable cause; (3) the defendant must have initiated the prior action with malice; and (4) the plaintiff must show resulting damage, which may include out-of-pocket losses of attorney fees and costs, as well as emotional distress and injury to reputation. (*Maleti v. Wickers* (2022) 82 Cal.App.5th 181, 203.)

Thus, as this is a malicious prosecution action, Plaintiff is relying on allegations of malice to support his request for punitive damages. Those allegations include the following:

¶ 7: Defendants had, at no time mentioned herein, any probable cause to seek Plaintiff’s arrest and he was entirely innocent of the crime of felony vandalism.

¶ 8: Defendants acted maliciously in instigating said arrest and prosecution of Plaintiff.

¶ 12: The acts of Defendants, and each of them, in causing Plaintiff to be arrested and taken to jail, were intentional, willful and malicious because at all times mentioned herein, Defendants knew that Plaintiff had committed no crimes. (See FAC at ¶¶ 7-8, 12.)

Here, defendant BCore persuasively argues the FAC fails to contain sufficient facts of malice, oppression, or fraud to support a claim for punitive damages. The aforementioned allegations of malicious conduct are simply conclusions which are not enough to maintain a request for punitive damages. (See *Today’s IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193 [punitive damages may not be pleaded generally as a complaint must include specific factual allegations showing the defendant’s conduct was oppressive, fraudulent or malicious]; *Grieves v. Super. Ct.* (1984) 157 Cal.App.3d 159, 166 [“Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim.”]; see also *Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872 [defendant’s conclusory conduct as intentional, willful and fraudulent is a patently insufficient statement of “oppression, fraud, or malice, express or implied,” within the meaning of section 3294.].) Nor are there facts alleging who on behalf of defendant BCore engaged in these acts and specifically authorized or ratified these acts to support punitive damages against a corporate entity.

The court notes that Plaintiff filed an untimely opposition to the motion to strike.

Code of Civil Procedure section 1005, subdivision (b), requires all opposing papers to be filed and served at least nine court days before the hearing. No paper may be rejected for filing on the ground that it was untimely submitted for filing. (Cal. Rules of Court, Rule 3.1300(d).) If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must indicate. (Ibid.)

Here, the instant motion to strike was filed on February 13, 2024. The hearing on the motion is scheduled for April 4, 2024. Thus, Plaintiff must file his opposition no later than March 21, 2024 to be considered timely.<sup>2</sup> Plaintiff however did not file his opposition until March 28, 2024, a week after the deadline imposed by the rules of court. Plaintiff also fails to provide any explanation for the untimely filing of his opposition papers. Furthermore, the late filing undoubtedly results in prejudice to defendant BCore as timely reply papers needed to be filed and served no later than March 27, 2024, ***a day before the opposition was filed in this instance***. Nor is it even clear if opposition was served on BCore as no proof of service has been filed with the court.

As a consequence, the court declines to consider the merits of the opposition and will grant the motion to strike with an opportunity for leave to amend. (See *Price v. Dames & Moore* (2001) 92 Cal.App.4th 355, 360 [with respect to motion to strike, leave to amend is routinely and liberally granted to give the plaintiff a chance to cure the defect in question].)

#### **Disposition**

The motion to strike portions of the FAC is GRANTED in its entirety WITH 20 DAYS' LEAVE TO AMEND.

The court will prepare the Order.

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<sup>2</sup> The court notes Monday April 1, 2024 is a court holiday.

**Calendar Line 3**

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**Calendar line 4**

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**Calendar Line 5**

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## Calendar Line 6

**Case Name:** *Gregory Steshenko vs PATRICK AHRENS et al.*

**Case No:** 21CV391490

Judge Monahan discloses that he graduated from Foothill College with an AA degree in 1977 and that he remembers taking at least one class at De Anza College sometime between 1980 and 1983. This was over 40 years ago (and so long ago) that it will have no impact on his ability to be fair in this proceeding.

Plaintiff Gregory Steshenko (“Plaintiff”)’s motion to lift stay is **GRANTED IN PART for the limited purpose** of addressing the Defendants Foothill-De Anza Community College District, Board of Trustees of Foothill-De Anza Community College District and Shinny Doung (collectively “Defendants”)’s motion seeking order (1) requiring Plaintiff to furnish security in this action and (2) prohibiting Plaintiff from filing any new lawsuits in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed (that Defendants filed 2/4/2024) and any other relief requested in that motion.

Defendants shall (obtain a law and motion hearing date on a Tuesday or Thursday at 9am in Dept. 3 from the court clerk’s office) and file and serve an **amended** notice of motion (and may supplement their moving papers filed 2/24/2022 with additional moving papers to bring their motion up to date) within 15 days of this order. Any opposition and reply papers shall be timely filed and served based on the amended hearing date.

**The stay is lifted ONLY for the limited purpose** of addressing Defendant’s motion filed 2/2/2024 (as amended in accordance with this order), the prefiling order and allowing Plaintiff to seek leave of court to file the complaint in this action and furnish security in such amount and within such a time as the court shall fix. (Cal. Civ. Proc. Code §§ 391.3(a); 391.7(a).)

The court will prepare the order.

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**Calendar Line 7**

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