SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 20
Honorable Drew C. Takaichi, Presiding (for Hon. Socrates Manoukian)
Farris Bryant, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

PROBATE LAW AND MOTION TENTATIVE RULINGS
DATE: April 16, 2024 TIME: 9:00 A.M.

NOTICE

APPEARANCES IN DEPT. 20 MAY BE IN PERSON OR REMOTELY. IF APPEARING REMOTELY, PLEASE USE DEPT. 20 TEAMS LINK FROM THE COURT WEBSITE: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

To contest a ruling: before 4:00 P.M. today you must notify the: (1) Court by calling (408) 808-6856 and (2) other side that you plan to appear at the hearing to contest the ruling

State and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while on Teams or Zoom

Prevailing party shall prepare the order by e-file, unless stated otherwise below.

The court does not provide official court reporters for civil law and motion hearings. See court website for policy and forms for court reporters at hearing.

TROUBLESHOOTING TENTATIVE RULINGS

If do not see this week's tentative rulings, they have either not yet been posted or your web browser cache (temporary internet files) is accessing a prior week's rulings. "REFRESH" or "QUIT" your browser and reopen it or adjust your internet settings to *see only the current version of the web page. Your browser will otherwise access old information from old cookies even after the current week's rulings have been posted*.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV410259	*John Doe vs Gelareh Homayounfar et al*	Click or scroll to line 1 for tentative ruling.
LINE 2	23CV410545	*David Martin vs GOOGLE LLC et al*	Click or scroll to line 2 for tentative ruling.
LINE 3	23CV416636	*Dennis Dillard et al vs Stephen Nunes et al*	Click or scroll to line 3 for tentative ruling.

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LINE 4	23CV427682	*Abdelsalam Mogasbe et al vs Sandra Gavney et al*	Click or scroll to line 4 for tentative ruling.
LINE 5	23CV427682	*Abdelsalam Mogasbe et al vs Sandra Gavney et al*	Tentative ruling is included in line 4.
LINE 6	23CV427682	*Abdelsalam Mogasbe et al vs Sandra Gavney et al*	Tentative ruling is included in line 4.
LINE 7	19CV360642	*JENNIFER BARTOLO et al vs THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION et al*	Defendant State of California Dept. of Transportation ("Defendant") motion to compel plaintiffs Jennifer Bartolo, individually and GAL for Bela Stewart, and Katelyn Bartolo ("Plaintiffs") to provide responses to form interrogatories, set one and for sanctions. Motion to compel is GRANTED. Plaintiffs shall prepare and serve Defendant with code-compliant responses to form interrogatories, set one, without objections, on or before May 6, 2024 . Plaintiffs and their attorney of record, David Azizi shall pay monetary sanctions to Defendant of $880 on or before May 16, 2024.

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LINE 8	19CV360642	*JENNIFER BARTOLO et al vs THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION et al*	Defendant State of California Dept. of Transportation ("Defendant") motion to compel plaintiffs Jennifer Bartolo, individually and GAL for Bela Stewart, and Katelyn Bartolo ("Plaintiffs") to provide responses to special interrogatories, set two and for sanctions. Motion to compel is GRANTED. Plaintiffs shall prepare and serve Defendant with code-compliant responses to special interrogatories, set two, without objections, on or before May 6, 2024. Plaintiffs and their attorney of record, David Azizi shall pay additional monetary sanctions to Defendant of $1,200 on or before May 16, 2024.
LINE 9	21CV382651	*Gregory Gilbert, MD vs Stanford Health Care et al*	Click or scroll to line 9 for tentative ruling. This matter is also set for lines 10 and 18. The court is informed that counsel has another appearance at 9:30AM in another court. Therefore, if a party contests a tentative in this case, the case will be called first.
LINE 10	21CV382651	*Gregory Gilbert, MD vs Stanford Health Care et al*	Tentative ruling is included in line 9.
LINE 11	19CV358368	*KYC Investment Group, a California corporation vs Kwok Chan et al*	The motion of plaintiff KYC Investment Group for leave to file first amended complaint ("FAC") is GRANTED and shall be filed and served on all parties forthwith. The court finds that the motion was timely filed, leave to file FAC is in the interests of justice and judicial efficiency because it arises from the same facts and allows for resolution of all claims in the litigation between the parties, and grant of leave to file FAC does not result in prejudice of significance to defendants Hing Sang Chan, HEI Chan, and ANP Investment Group.
LINE 12	20CV368958	*TIAO-MOU HSU et al vs BRENT LEE*	Motion of attorney for defendant Brent Wei-Tei Lee ("Defendant") to be relieved as counsel for Defendant. Attorneys for the parties are directed to appear at the hearing and attorney for Defendant shall notify attorneys for plaintiffs.
LINE 13	20CV369138	*Chicago Title Company vs. 28th ST Villa Apts LLC*	Click or scroll to line 13 for tentative ruling.

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LINE 14	24CV429538	*Matthew Spadi vs Lisa Henderson et al*	The motion of defendants to compel arbitration and stay of action is GRANTED. Proof of service of notice of hearing on file. No opposition to the motion is filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. Cal.Rules of Court, Rule 8.54 (c).
LINE 15	24CV430201	*Martin Tinoco vs Solar Mosaic, LLC*	The motion of defendant Solar Mosaic, LLC to compel arbitration and stay of action is GRANTED. Proof of service of notice of hearing on file. Reply of defendant states that on April 1, 2024, plaintiff Martin Tinoco filed notice of non-opposition. However, the notice is not in the court's file or in the e file queue. That said, no opposition to the motion is filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. Cal.Rules of Court, Rule 8.54 (c).
LINE 16	2011-1-CV-211988	*Meriwest Credit Union vs L. Quiwa*	Motion of plaintiff Meriwest Credit Union for spousal earnings withholding order is GRANTED. Proof of service of motion is filed. No opposition to the motion is filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. Cal.Rules of Court, Rule 8.54 (c).
LINE 17	20CV368954	*CHUN-CHE CHEN vs BRENT LEE*	Motion of attorney for defendant Brent Wei-Tei Lee ("Defendant") to be relieved as counsel for Defendant. Attorneys for the parties are directed to appear at the hearing, and attorney for Defendant shall notify attorneys for plaintiff Chun-Che Chen.
LINE 18	21CV382651	*Gregory Gilbert, MD vs Stanford Health Care et al*	Click or scroll to line 18 for tentative ruling.
LINE 19			
LINE 20			
LINE 21			
LINE 22			

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PROBATE LAW AND MOTION TENTATIVE RULINGS

LINE 23			
LINE 24			
LINE 25			
LINE 26			
LINE 27			
LINE 28			
LINE 29			
LINE 30			

Calendar line 1

Case Name: *John Doe v. Gelareh Homayounfar, et al.*

Case No.: 23CV410259

(1) Defendants' Special Motion to Strike Portions of the Complaint Pursuant to Code of Civil Procedure Section 425.16; and
(2) Defendants' Motion to Strike Portions of the Complaint Pursuant to Code of Civil Procedure Sections 435 and 436

Factual and Procedural Background

According to the allegations of the complaint, plaintiff ("Husband") and defendant Gelareh Homayounfar ("Wife") were married on August 21, 2016 in Washington D.C. (See Complaint, ¶21.) In September 2017, they had their first child ("Child 1") and in the summer of 2018, Wife, Child 1 and Wife's mother, defendant Homa Homayounfar ("Homa") moved from Brooklyn, New York to a residence in Santa Clara that Husband was renting. (See Complaint, ¶¶23-27.) In May 2021, Wife and Husband had a second child ("Child 2"). (See Complaint, ¶41.) After Child 2's birth, their relationship deteriorated and in September 2021, Husband floated the idea of divorce to Wife—which was not received well. (See Complaint, ¶¶42-44.) After several months of Wife emotionally abusing Husband, on September 21, 2021, Husband packed his bags, loaded them into his car and told Wife that he did not think their marriage was salvageable and would initiate divorce proceedings. (See Complaint, ¶ 45.) Husband had a change of heart, and decided to explore fixing the marriage before filing for divorce and apologized to Wife. (See Complaint, ¶ 46.) Wife did not accept Husband's apology and instead stated that their marriage was over. (See Complaint, ¶47.) Wife then refused to discuss the matter in private, to which Husband pulled Wife's arm so that she could get up off the sofa and talk in another room. (See Complaint, ¶¶48-51.) Wife then reacted by announcing that she was calling the police. (See Complaint, ¶¶52-55.) The police arrived and noted that Wife had no visible injuries, Wife declined medical attention, Children 1 and 2 were unharmed, there was no sign of chaos and Husband and Wife were calmly separated at the time of their arrival. (See Complaint, ¶56.)

Wife and Homa were interviewed by police where: Wife defamed Husband by fabricating, exaggerating or malicious misrepresenting facts and accusing Husband of numerous heinous crimes, falsely claiming that Husband caused a traumatic bodily injury, falsely claiming sexual abuse, falsely claiming a significant history of physical abuse, falsely claiming a significant history of emotionally abusing the Children, false claiming a significant history of making criminal threats, and concealing retaliatory intent and motives by misrepresenting or omitting key facts to Deputy Munoz; and, Homa defamed Husband by making false, malicious reports to police accusing Husband of crimes. (See Complaint, ¶¶57-87.) Wife and Homa's (collectively, "Defendants") false statements to police also caused Husband to be arrested on suspicion of committing multiple domestic violence felonies. (See Complaint, ¶¶88-96.) Defendants maliciously prosecuted Husband. (See Complaint, ¶¶104-106.) Defendants' false reports to law enforcement charging Husband with criminal acts or activities requiring law enforcement intervention are not barred by the statute of limitations because he did not discover the publication of the allegedly defamatory statements until

January 21, 2022, and Defendants should be equitably estopped from asserting any statute of limitations argument, or the statute of limitations should be equitably tolled. (See Complaint, ¶¶107-111.)

On January 19, 2023 , Plaintiff filed a complaint against Defendants, asserting causes of action for:

(1) Defamation per se;
(2) Intentional infliction of emotional distress;
(3) Abuse of process; and
(4) Malicious prosecution

Defendants specially move to strike the following portions from the complaint pursuant to Code of Civil Procedure section 425.16:

- Paragraphs 1 through 7;
- Paragraphs 16-96;
- Paragraphs 104-111;
- The first cause of action in its entirety;
- Paragraph 127, subparagraphs (m), (n), (o), (p) and (r);
- The third cause of action in its entirety; and,
- The fourth cause of action in its entirety.

Defendants also move to strike paragraphs 1-7, 16-96 and 104-111 from the complaint pursuant to Code of Civil Procedure sections 435 and 436.

This court has independently reviewed the papers filed in support of and in opposition to Defendants' motions and reaches the same conclusions as those made by the Hon. Amber Rosen in her order of August 18, 2023. Therefore, this court hereby adopts the same ruling.

I. Defendants' special motion to strike portions of the complaint pursuant to Code of Civil Procedure section 425.16.

In *Equilon Enterprises, LLC v. Consumer Cause, Inc*. (2002) 29 Cal.4th 53, the California Supreme Court established the trial court's duty in ruling on an anti-SLAPP motion to strike:

> Section 425.16, subdivision (b)(1) requires the court to engage in a two-step process. 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,' as defined in the statute. [Citation.] If the court finds [that defendant has made its threshold showing], it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. Under section 425.16, subdivision (b)(2), the trial court in making these determinations considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.'

(*Id.* at 67.)

"[I]n order to establish the requisite probability of prevailing [citation], the plaintiff need only have 'stated and substantiated a legally sufficient claim.'" (*Navellier v. Sletten* (2002) 29 Cal. 4th 82, 88, quoting *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal. 4th 1106, 1123.) "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.'" (*Id*. at 88-89, quoting *Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.) "Only a cause of action that satisfies both prongs of the anti-SLAPP statute-i.e., that arises from protected speech or petitioning and lacks even minimal merit-is a SLAPP, subject to being stricken under the statute." (*Id*. at 89; see also *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1061 (stating that "[i]f the defendant carries its burden, the plaintiff must then demonstrate its claims have at least 'minimal merit'"); see also *Kinsella v. Kinsella* (2020) 45 Cal.App.5th 442, 457 (stating that "[t]o demonstrate the 'requisite minimal merit,' [the plaintiff must establish a prima facie factual showing"); see also *Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 793 (stating that "a plaintiff's burden at the second anti-SLAPP step is a low one, requiring only a showing that a cause of action has at least 'minimal merit within the meaning of the anti-SLAPP statute'").) "In deciding the question of potential merit, the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant (§ 425.16, subd. (b)(2)); though the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim." (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821; see also *Integrated Healthcare Holdings, Inc. v. Fitzgibbons* (2006) 140 Cal.App.4th 515, 530 (stating that a plaintiff or cross-complainant in "a SLAPP motion [is allowed] a certain degree of leeway in establishing a probability of prevailing on its claims due to 'the early stage at which the motion is brought and heard [citation] and the limited opportunity to conduct discovery'"); see also *Monster Energy Co., supra*, 7 Cal.5th at p.795 (stating that "at the second anti-SLAPP step, a court 'does not weigh the credibility or comparative probative strength of competing evidence… [i]t 'accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law… [w]e resolve conflicts and inferences in the record in favor of plaintiff").)

A. Defendants' request for judicial notice.

In support of their special motion to strike, Defendants request judicial notice of the complaint. The request for judicial notice is GRANTED. (Evid. Code § 452, subd. (d).)

In support of their reply in support of the special motion to strike, Defendants request judicial notice of the 9 August 2022 redacted criminal case "snap-out" sheet, referenced by Plaintiff's complaint in paragraphs 106, 142 and Plaintiff's opposition, wherein the court accepted a nolo contendere by Plaintiff to an amended (added) Count 3 of the complaint to a violation of Penal Code section 415 (l), in exchange for a dismissal of Counts 1 and 2, respectively, violations of Penal Code section 243(3)(1), a misdemeanor, and Penal Code section 236, also a misdemeanor. Plaintiff does not oppose the request for judicial notice. The request for judicial notice is GRANTED. (See Evid. Code § 452, subds. (d), (h); see also *StorMedia Inc. v. Super. Ct.* (Werczberger) (1999) 20 Cal.4th 449, 456, fn. 9 (stating that "[s]ince both sides refer to the documents in their briefs and plaintiff implicitly requests

judicial notice of one of the documents and does not oppose the request, the request is granted").)

B. Defendants establish that the challenged allegations arise from protected activity.

Defendants argue that aside from paragraphs 8 through 15-which are general allegations regarding the parties and jurisdiction, and paragraphs 97 through 103-allegations concerning alleged cat abuse-the complaint arises from allegations of communications to the police and Child Protective Services which fall within the ambit of section 425.16. "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 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.)

Here, the first paragraph alleges that "[t]his action arises from the false and/or recklessly false statements made to law enforcement, prosecuting authorities, child protective services and other third parties by Defendant Gelareh Homanyounfar and her mother, Defendant Homa Homayounfar." (Complaint, 1.) The following allegations likewise support the first paragraph's allegation that the action arises from communications with police and prosecuting authorities. (See Complaint, 3 (alleging that "Defendants maliciously conspired to falsely accuse plaintiff and, by means of false testimony, to have Plaintiff indicted and convicted of numerous crimes of domestic violence"), 4 (alleging that "Defendants made knowingly false statements to police officers… "Defendants submitted false evidence to police and prosecuting authorities"), 5 (alleging that "such crimes were reported to law enforcement agencies by Defendants (as captured on the Police Footage)"), 58 (alleging that "Defendant Felareh made numerous false, concocted, or recklessly embellished statements defaming plaintiff per se by accusing Plaintiff of committing heinous crimes… [d]uring a recorded interview with Deputy Munoz"), 59 (alleging that "Defendant Gelareh insisted to Deputy Munoz that Plaintiff caused her significant pain of a six or seven on a scale of 1-10 (with 10 being the most extreme pain imaginable) when Plaintiff her off the sofa"), 61 (alleging that "[a]s Plaintiff learned through a Family Court filing by Defendant Gelareh, 'asked the police officers to come to my home to photograph the injuries that I had sustained as a result of [Plaintiff's] physical abuse, specifically, bruises that were on my arm'"), 62 (alleging that "Gelareh once again summoned the police to the pre-separation marital home to photograph her 'bruises'"), 63 (alleging that "Defendant Gelareh called the police for a second time in just two days and had them dispatched to the marital home where she then, once again, knowingly made false or recklessly false claims to law enforcement defaming Plaintiff per se by claiming he committed a spousal battery that resulted in a traumatic injury to her"), 64 ("Defendant Gelareh subsequently submitted the attached photo to the Family Court in connection with her petition for divorce and domestic violence restraining order"), 65 (alleging that "it would be

asinine to believe that Defendant Gelareh, when summoning the police to examine and document this sham injury, did not know-or else recklessly disregard-the spuriousness of such a report"), 66 (alleging that "by the use and publication of the words and conduct as alleged above [in the petition for divorce and domestic violence restraining order], Defendant Gelareh referred to Plaintiff and intended to charge, and to be understood as charging, and was understood as charging, that (i) Plaintiff had been guilty of having caused her a serious, traumatic bodily injury and (ii) that Plaintiff had committed deplorable acts of domestic violence on her"), 67 (alleging that "when Deputy Munoz asked Defendant Gelareh where there was 'any history of sexual abuse?' or 'has he ever forced you to have sex'… Defendant Gelareh responded, 'Well… I think so,' and then can be seen in the Police Footage to be attempting to convince Deputy Munoz that isolated disagreements over sex were alarming instances of sexual abuse or marital rape"), 70 (alleging that "Defendant Gelareh referred to Plaintiff and intended to charge, and to be understood as charging, and was understood as charging, that Plaintiff had been guilty of having had unlawful sexual relations and was of immoral, vile, and unchaste character"), 71 (alleging that "Defendant Gelareh tried to convince Deputy Munoz that Plaintiff had a significant history of being emotionally, verbally, and physically abusive-with escalating 'physicality' in their relationship that caused her great fear"), 72 (alleging that "Defendant Gelareh coolly implied to police she was not afraid of what happened prior to calling 911 but rather 'what would happen next'"), 73 (alleging that "Defendant Gelareh's fearful insistence to police that Plaintiff would be likely to commit crimes against her, the children, or Defendant Homa-against a clean history of no abuse-were just another recklessly false communication made by Defendant Gelareh to police to harm and harass Plaintiff"), 74 (alleging that "Defendant Gelareh's insistence on fearing Plaintiff seemed to also be fueled by her patent enthusiasm to obtain a restraining order against Plaintiff… [w]hen Deputy Munoz mentioned issuing a restraining order, Defendant Gelareh appeared to react with poorly-concealed excitement"), 75 (alleging that "Defendant Gelareh referred to Plaintiff and intended to charge, and to be understood as charging, and was understood as charging, that Plaintiff had been guilty of having a prolific and deplorable history of committing heinous acts of abuse and domestic violence"), 76 (alleging that "Defendant Gelareh reported to Deputy Munoz that Plaintiff had a significant history of emotionally abusing the Children… [b]ecause of Defendant Gelareh's false representations about child abuse, Plaintiff was reported to Child Protective Services"), 77 (alleging that "Defendant Gelareh attempted to convince Deputy Munoz that Plaintiff has a significant history of making criminal threats to 'ruin,' 'destroy,' or 'rape' her"), 78 (alleging that "Defendant referred to Plaintiff and intended to charge, and to be understood as charging, and was understood as charging, that Plaintiff had been guilty of having a significant history of making unlawful criminal threats"), 79 (alleging that "Defendant Gelareh also failed to mention to Deputy Munoz that just prior to her calling 911, Plaintiff had packed his bags earlier that day and told her he was going to divorce her"), 80 ("Defendant Gelareh went from reporting being picked up off a sofa… to defaming Plaintiff per se by maliciously reporting that he committed nearly a dozen heinous crimes directly to law enforcement"), 81 (alleging that "[d]uring a recorded interview with Deputy Patel, Defendant Homa made numerous false, concocted, or recklessly false or embellished statements defaming Plaintiff per se by accusing him of committing numerous crimes without probable cause"), 82 (alleging that "Defendant Homa reported to Deputy Patel by words or through her conduct that… she believed Plaintiff may kill her daughter, Defendant Gelareh… that Plaintiff has a history of acting violently against her daughter, Defendant Gelareh… that Plaintiff picked Defendant Gelareh up violently by the waist and carried her several steps on September 21, 2021.. [and] that Plaintiff came very close to 'slapping' Defendant Gelareh on September 21, 2021"), 83 (alleging that "as captured on the

Police Footage, Defendant Homa swung her fists wildly in what appears to be an attempt to convey to Deputy Patel that Plaintiff was out of control and possessed by a murderous rage… Defendant Homa then tells Deputy Patel she was convinced Plaintiff could kill somebody"), 84 (alleging that "Deputy Patel asks Defendant Homa if Plaintiff said he was going to kill Defendant Gelareh, to which she responds 'no' but then strongly implies that both she and Defendant Gelareh believe Plaintiff will kill them"), 85 (alleging that Defendant Homa… states briefly that Plaintiff was trying to 'make peace'"), 86 (alleging that "[i]t is clear from the Police Footage that Deputy Patel was tremendously alarmed by Defendant Homa's false representations of fact"), 87 (alleging that "Defendant Homa intended to charge, and to be understood as charging, and was understood as charging, that Plaintiff had been guilty of acts of domestic violence"), 88 (alleging that "[t]he Police Footage captures Defendant Gelareh making air quotation gestures as she repeats this"), 89 (alleging that "[t]hese statements are riddled with consciousness of guilt"), 90 (alleging that "Defendant Gelareh consulted with divorce attorneys… just hours after Plaintiff told her he was going to divorce her and the same day she made these false reports to police"), 93 (alleging that "because of the false, untrue, fabricated, and/or recklessly false statements made by Defendants to the police, Defendants caused Plaintiff to be arrested on aggravated felony charges"), 94 (alleging that "because of the false and/or recklessly false representations made by Defendants and the circumstances set forth above, Plaintiff was then placed in handcuffs by Deputy Munoz"), 104 (alleging that "Defendants, maliciously intending to oppress and ruin Plaintiff, repeatedly contacted the Santa Clara District Attorney's Office and the Santa Clara County Sherriff's Department on numerous occasions to request that Plaintiff be indicted and convicted of as many crimes as possible"), 105 (alleging that "because of the false and/or recklessly false testimony provided by Defendants, Plaintiff was criminally charged with misdemeanors"), and 106 (alleging that "Defendants' representations to police that intended to charge, and to be understood as charging and were understood as charging Plaintiff as having committed multiple domestic violence felonies"), 107 (alleging that "the false and recklessly false unprivileged reports made by Defendants to law enforcement charging Plaintiff with criminal acts or activities requiring law enforcement intervention"), 113 (alleging that "Defendants have falsely asserted to law enforcement, prosecuting authorities, and/or child protective services that Plaintiff has committed myriad crimes"), 114 (alleging that "[t]hese false and defamatory statements were made in the presence of police officers and have been memorialized in the Police Footage"), 127 (alleging that Defendants "ma[de] knowingly false statements to police officers… submitted false evidence to police and prosecuting authorities… [and m]aliciously assist[]… in the prosecution of Plaintiff"), 134 (alleging that "Defendants intentionally and wrongfully made false and/or recklessly false reports of criminal conduct to the police with the intent to intimidate and harm Plaintiff"), and 141 (alleging that Defendants provided false testimony and evidence to police officers that led to Plaintiff's arrest on aggravated felony charges for committing violent crimes against Defendants").)

Here, as to the allegations arising from communications made to police officers, it is clear that communications to the police constitutes protected activity. (See *Comstock v. Aber* (2012) 212 Cal.App.4th 931, 941 (stating that "communications to the police are within SLAPP"); see also *Chabak v. Monroy* (2007) 154 Cal.App.4th 1502, 1511 (stating that "statements to the police clearly arose from protected activity"); see also *Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1286 (stating that communications to police department and DA's office "sought official investigations into perceived wrongdoing, which might culminate in criminal prosecution or other official proceedings… [s]uch communications are protected by section 425.16").) Similarly, communications to child protective services and prosecuting

authorities are also within the ambit of section 425.16. (See *Salma, supra,* 161 Cal.App.4th at p.1286; see also *Siam v. Kizilbash* (2005) 130 Cal.App.4th 1563, 1569-1570 (stating that "defendant's reports of child abuse to 'people who were legally required to report any child abuse allegations'… [a]re statements [that] were designed to prompt action by law enforcement or child welfare agencies… [c]ommunications that are preparatory to or in anticipation of commencing official proceedings come within the protection of the anti-SLAPP statute…defendant's reports of child abuse to persons who are bound by law to investigate the report or to transmit the report to the authorities are protected by the statute"); see also *Chabak v. Monroy* (2007) 154 Cal.App.4th 1502, 1512 (stating that "reports of child abuse to individuals bound by law to investigate the report are protected by section 425.16").) Moreover, as to the statements in the petition for divorce and domestic violence restraining order, those are clearly "written or oral statement[s] or writing[s] made before a… judicial proceeding, or any other official proceeding authorized by law… [or a] written… statement or writing made in connection with an issue under consideration or review by a… judicial body, or any other official proceeding authorized by law" as stated in section 425.16, subdivisions (e)(1) and (2). (See *Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1012-1017 (in case where the complaint for malicious prosecution was premised on claims in prior suit that "were entirely without basis in law or fact" and where the defendants "had acted without probable cause in bringing the prior suit against him, court stated that "[i]t is beyond question that the initiation and prosecution of the prior suit here-as involving 'written or oral statement[s] or writing[s] made before a … judicial proceeding' (§ 425.16, subd. (e)(1))-were 'act[s] … in furtherance of the person's right of petition' under the federal and state Constitutions (§ 425.16, subd. (b)(1)) protected under the anti-SLAPP statute").)

In opposition, Plaintiff argues that the alleged conduct is not protected activity as it "falls within the illegal conduct exception outlined in *Flatley v. Mauro*." (Opposition, pp.5:22-28, 6:1-4.) However, while the *Flatley* court stated that "section 425.16 cannot be invoked by a defendant whose assertedly protected activity is illegal as a matter of law and, for that reason, not protected by constitutional guarantees of free speech and petition," it also clarified that this exception applies to the "narrow circumstance, where either the defendant concedes the illegality of its conduct or the illegality is conclusively shown by the evidence…." (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 316-317.) "If, however, a factual dispute exists about the legitimacy of the defendant's conduct, it cannot be resolved within the first step but must be raised by the plaintiff in connection with the plaintiff's burden to show a probability of prevailing on the merits." (*Id.* at p.316.) As Defendants note in reply, the California Supreme Court later made clear that "[t]he defendant must concede the point, or the evidence conclusively demonstrate it, for a claim of illegality to defeat an anti-SLAPP motion at the first step." (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 424.) Thus, Plaintiff's reliance on *Flatley* as pertaining to whether the cause of action arises from protected activity is misplaced as *Flatley* plainly instructs that Plaintiff's assertion of illegality may not affect the determination of whether the cause of action arises from protected activity unless the defendant concedes the issue or the evidence conclusively demonstrates illegality.

The allegations that are the subject of this motion all arise from protected activity. As Defendants make a threshold showing that the challenged allegations arise from protected activity, the Court must then determine whether Plaintiff has demonstrated a probability of prevailing on the claim.

C. Plaintiff fails to demonstrate that he has a probability of prevailing as to the first cause of action for defamation.

As to the first cause of action for defamation, Defendants assert that Plaintiff cannot demonstrate a probability of prevailing because: the *Noerr-Pennington* doctrine bars the claim; Civil Code section 47, subdivision (b) bars the claim; and, the one-year statute of limitations bars the claim.

As to the statute of limitations, the statute of limitations for a cause of action for defamation is one year. (See Civ. Code § 340, subd. (c) (stating that "[a]n action for libel [or] slander… must be commenced w]ithin one year").) As Defendants argue, the complaint plainly alleges that his counsel had notice of the police recordings on 12 January 2022, but filed the complaint more than one year later. (See Complaint, 107 (alleging that "Plaintiff's defense counsel first received discovery materials, including copies of the Police Footage on January 12, 2022").) "As against a principal, both principal and agent are deemed to have notice of whatever either has notice of…." (Civ. Code § 2332; see also *Santillan v. Roman Catholic Bishop of Fresno* (2008) 163 Cal.App.4th 4, 10-11 (stating same; also stating "[s]o long as the agent was under a duty to disclose certain information, the principal is bound by the agent's knowledge of that information whether or not the agent communicated it to the principal… [f]or this purpose, there is no difference between constructive and actual notice"); see also *Herman v. Los Angeles County Metropolitan Transportation Authority* (1999) 71 Cal.App.4th 819, 828 (stating that [a]n attorney is his client's agent, and that the agent's knowledge is imputed to the principal even where, as is undisputed here, the agent does not actually communicate with the principal, who thus lacks actual knowledge of the imputed fact").) "It has also been used to determine that an agent's knowledge of certain facts will be imputed to a principal when determining when a statute of limitations begins to run." (*Id.* at p.11.) *In Vafi v. McCloskey* (2011) 193 Cal.App.4th 874, the court affirmed the granting of the defendants' special motion to strike, finding that the plaintiff could not establish a probability of prevailing because the cause of action for malicious prosecution was barred by the one-year statute of limitations. (Id. at pp. 878-884.) Here, as the first cause of action was filed more than one year after Plaintiff had notice of the facts supporting it, it appears that Plaintiff cannot demonstrate a probability of prevailing on the first cause of action.

In opposition to the motion, Plaintiff fails to address the statute of limitations argument. Accordingly, Plaintiff fails to demonstrate a probability of prevailing on the first cause of action for defamation.

Moreover, as to the *Noerr-Pennington* doctrine, "the doctrine immunizes conduct encompassed by the petition clause-i.e., legitimate efforts to influence a branch of government-from virtually all forms of civil liability." (*Tichinin v. City of Morgan Hill* (2009) 177 Cal.App.4th 1049, 1065.) Here, the *Noerr-Pennington* doctrine applies to the alleged conduct that is the basis for the first cause of action. (See *People ex rel. Harris v. Aguayo* (2017) 11 Cal.App.5th 1150, 1161 (stating that "[t]he *Noerr-Pennington* doctrine has been extended to preclude virtually all civil liability for a defendant's petitioning activities before not just courts, but also before administrative and other governmental agencies"); see also *Synopsys, Inc. v. Ubiquiti Networks, Inc.* (N.D.Cal. 2018) 313 F. Supp. 3d 1056, 1075 (stating that "[p]rotected conduct includes conduct 'incidental' to litigation"); see also *Sosa v. DIRECTV, Inc.* (9th Cir. 2006) 437 F.3d 923, 929 (stating that "[u]nder the *Noerr-Pennington* doctrine, those who petition any department of the government for redress are generally immune from statutory

liability for their petitioning conduct"); see also *Drevaleva v. Narayan Travelstead Prof'l Law Corp*. (N.D.Cal. Mar. 10, 2023, No. 22-cv-02068-EMC) 2023 U.S.Dist.LEXIS 40835, at pp. *7-*8 (stating that "her claims, resting entirely on the defendants' prior litigation conduct, would be barred by the *Noerr-Pennington* Doctrine"); see also *Forro Precision, Inc. v. IBM* (9th Cir. 1982) 673 F.2d 1045, 1060 (holding that "the *Noerr-Pennington* doctrine applies to citizen communications with police").) "It is only when efforts to influence government action are a 'sham' that they fall outside the protection of the *Noerr-Pennington* doctrine." (*People ex rel. Harris, supra*, 11 Cal.App.5th 1150, 1161; see also *Tichinin, supra*, 177 Cal.App.4th 1049, 1065 (stating that "the protection for petitions extended to conduct 'incidental to' a petition, unless the petition itself was a sham").) Here, the activity may not be considered to be a sham because Gelareh's DVPA petition was successful and Defendants present evidence demonstrating that Gelareh was not solely motivated by process, as opposed to outcome. (See *Blank v. Kirwan* (1985) 39 Cal.3d 311, 325 (stating that "not only were defendants' efforts genuine, they were also successful -- and as such incapable of being deemed a mere sham"); see also *City of Columbia v. Omni Outdoor Advertising* (1991) 499 U.S. 365, 380 (stating that "[a] 'sham' situation involves a defendant whose activities are 'not genuinely aimed at procuring favorable government action' at all"); see also Gelareh decl. in support of special motion to strike, 2, 4-58, exhs. 1-34.)

Additionally, even considering Plaintiff's lone evidence-his declaration-he does not demonstrate a probability of prevailing on the first cause of action. "The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage." (*John Doe 2 v. Super. Ct.* (Avonguard Products U.S.A., Ltd.) (2016) 1 Cal.App.5th 1300, 1312.) Further, "[t]he defamatory statement must specifically refer to, or be 'of and concerning,' the plaintiff." (Id.)

Plaintiff's declaration does not identify any particular statement and fails to provide any facts demonstrating the falsity of any statement. Instead, Plaintiff's declaration refers to nonspecific "wrongful actions of the Defendants" (Pl.'s decl. in support of opposition to special motion to strike, 3), "malicious actions" (id. at 4), "false and unfounded allegations" (id. at 5), and "calculated and detrimental conduct" (id. at 7). Even crediting this evidence, it fails to sufficiently support a prima facie showing of facts to sustain a favorable judgment as to the first cause of action. (See *Lee v. Silveira* (2016) 6 Cal.App.5th 527, 546 (stating that "[i]n satisfying their burden in step two of the anti-SLAPP analysis, plaintiffs may not merely rely on the allegations in their complaint [citations] or evidence that would not be admissible at trial"); see also *Muddy Waters, LLC v. Super. Ct.* (Perfectus Aluminum, Inc.) (2021) 62 Cal.App.5th 905, 923, 926 (stating that "[t]o establish a probability of prevailing, 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'… [t]he plaintiff cannot rely on the allegations of the complaint, but must produce evidence that would be admissible at trial… [t]he burden was upon plaintiff to produce evidence to show a probability of prevailing… [w]here there is no evidence to support an essential factual element of the cause of action alleged, plaintiff has not met its burden").)

Defendants' special motion to strike the first cause of action is GRANTED.

Defendants' objections to paragraph 2 is OVERRULED. Defendants' objections to paragraphs 3 through 9 are SUSTAINED.

D. Plaintiff fails to demonstrate that he has a probability of prevailing as to paragraph 127, subparagraphs (m), (n), (o), (p) and (r) in the second cause of action for intentional infliction of emotional distress.

As to paragraph 127, subparagraphs (m), (n), (o), (p) and (r) in the second cause of action for intentional infliction of emotional distress, Defendants assert that Plaintiff cannot demonstrate a probability of prevailing because: the claim lacks causation; the Noerr-Pennington doctrine bars the claim; and, Civil Code section 47, subdivision (b) bars the claim.

The elements for intentional infliction of emotional distress are: "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." (*Davidson v. City of Westminister* (1982) 32 Cal.3d 197, 209.) "With respect to the requirement that a plaintiff show severe emotional distress, [the California Supreme C]ourt has set a high bar." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051.) To plead "outrageous" conduct, the conduct must be so extreme as to exceed all bounds of that usually tolerated in a civilized community. (See *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001.) "Liability for intentional infliction of emotional distress does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." (*Hughes, supra,* 46 Cal.4th at 1051.)

Here, in support of his cause of action, Plaintiff relies on paragraphs 10 through 14 of his declaration. However, Defendants' objections to paragraphs 10-12 and 14 are SUSTAINED. While Plaintiff presents a statement that demonstrates an amount of damages, he fails to present admissible evidence regarding Defendants' extreme and outrageous conduct, and Defendants' intent. As Plaintiff fails to sufficiently support a prima facie showing of facts to sustain a favorable judgment as to the allegations in paragraph 127, subparagraphs (m), (n), (o), (p) and (r), it is unnecessary to address Defendants' arguments. (See Lee v. Silveira (2016) 6 Cal.App.5th 527, 546 (stating that "[i]n satisfying their burden in step two of the anti-SLAPP analysis, plaintiffs may not merely rely on the allegations in their complaint [citations] or evidence that would not be admissible at trial"); see also *Muddy Waters, LLC v. Super. Ct.* (Perfectus Aluminum, Inc.) (2021) 62 Cal.App.5th 905, 923, 926 (stating that "[t]o establish a probability of prevailing, 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'… [t]he plaintiff cannot rely on the allegations of the complaint, but must produce evidence that would be admissible at trial… [t]he burden was upon plaintiff to produce evidence to show a probability of prevailing… [w]here there is no evidence to support an essential factual element of the cause of action alleged, plaintiff has not met its burden").)

Defendants' special motion to strike paragraph 127, subparagraphs (m), (n), (o), (p) and (r) is GRANTED.

E. Plaintiff fails to demonstrate that he has a probability of prevailing as to the third cause of action for abuse of process.

"The common law tort of abuse of process arises when one uses the court's process for a purpose other than that for which the process was designed." (*Rusheen v. Cohen* (2006) 37

Cal.4th 1048, 1056.) "[T]he essence of the tort [is] … misuse of the power of the court; it is an act done in the name of the court and under its authority for the purpose of perpetrating an injustice." (Id. at p. 1057.) "To succeed in an action for abuse of process, a litigant must establish that the defendant (1) contemplated an ulterior motive in using the process, and (2) committed a willful act in the use of the process not proper in the regular conduct of the proceedings." (Id.) However, the litigation "privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (Id.) "It is not limited to statements made during a trial or other proceedings, but may extend to steps taken prior thereto, or afterwards." (*Id*.) "The '[p]leadings and process in a case are generally viewed as privileged communications.'" (Id. at p.1058.) "The privilege has been applied specifically in the context of abuse of process claims alleging the filing of false or perjurious testimony or declarations." (*Id*.)

Defendants contend that Plaintiff cannot demonstrate a probability of prevailing because Plaintiff will be unable to show that the third cause of action is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment since, to the extent that the cause of action is premised on any statements or acts made or in preparation for any judicial proceeding, it is barred by the litigation privilege, and to the extent that the cause of action is premised on any statements or acts made outside the judicial proceedings, such as reports to the police, it fails to demonstrate a use of the process. (See Defs.' memorandum of points and authorities in support of special motion to strike portions of the complaint, p.14:11-28.) Additionally, Defendants assert that the cause of action is barred by the Noerr-Pennington doctrine.

Here, Plaintiff ignores all of Defendants' arguments. The third cause of action alleges that "Defendants have orchestrated, perpetrated, sought to enforce and enforced illicit and financially devastating court orders against Plaintiff that are in whole, or materially rely on, demonstrably false evidence…." (Complaint, 135.) The third cause of action also alleges that "Defendants have intentionally used restraining orders for improper purposes…." (Complaint, 136.) To the extent that the third cause of action is premised on such communications, these are communications that were made in judicial proceedings by litigants to achieve the objects of the litigation that have some connection or logical relation to this action, and are thus protected by the litigation privilege. (See *Rusheen, supra,* 37 Cal.4th at p.1057; see also *Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 38 (stating that "[t]he privilege in section 47 is 'relevant to the second step in the anti-SLAPP analysis in that it may present a substantive defense plaintiff must overcome to demonstrate a probability of prevailing'… [because the statements] were privileged under section 47… Plaintiff cannot meet her burden under the second step in applying the anti-SLAPP statute of demonstrating a probability of prevailing"); see also *JSJ Limited Partnership v. Mehrban* (2012) 205 Cal.App.4th 1512, 1522 (stating same); see also *Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 965 (stating that "Civil Code section 47, subdivision (b) protects any statements or writings that have 'some relation' to a lawsuit").)

The third cause of action also alleges that "Defendants intentionally and wrongfully made false and/or recklessly false reports of criminal conduct to the police…." (Complaint, 134.) As Defendants argue, to the extent that the third cause of action is premised on such statements, those statements are not "act[s] done in the name of the court and under its authority." (*Rusheen, supra,* 37 Cal.4th at p.1057.) Moreover, for identical reasons already articulated as to the first cause of action, it is likewise barred by the Noerr-Pennington doctrine.

(See *Tichinin, supra,* 177 Cal.App.4th at p.1065 (stating that "the doctrine immunizes conduct encompassed by the petition clause-i.e., legitimate efforts to influence a branch of government-from virtually all forms of civil liability… the protection for petitions extended to conduct 'incidental to' a petition, unless the petition itself was a sham"); see also *People ex rel. Harris, supra,* 11 Cal.App.5th at p. 1161 (stating that "[t]he *Noerr-Pennington* doctrine has been extended to preclude virtually all civil liability for a defendant's petitioning activities before not just courts, but also before administrative and other governmental agencies… [i]t is only when efforts to influence government action are a 'sham' that they fall outside the protection of the *Noerr-Pennington* doctrine"); see also *Synopsys, Inc. v. Ubiquiti Networks, Inc.* (N.D.Cal. 2018) 313 F. Supp. 3d 1056, 1075 (stating that "[p]rotected conduct includes conduct 'incidental' to litigation"); see also *Sosa v. DIRECTV, Inc*. (9th Cir. 2006) 437 F.3d 923, 929 (stating that "[u]nder the *Noerr-Pennington* doctrine, those who petition any department of the government for redress are generally immune from statutory liability for their petitioning conduct"); see also *Drevaleva v. Narayan Travelstead Prof'l Law Corp*. (N.D.Cal. Mar. 10, 2023, No. 22-cv-02068-EMC) 2023 U.S.Dist.LEXIS 40835, at pp. *7-*8 (stating that "her claims, resting entirely on the defendants' prior litigation conduct, would be barred by the *Noerr-Pennington* Doctrine"); see also *Forro Precision, Inc. v. IBM* (9th Cir. 1982) 673 F.2d 1045, 1060 (holding that "the Noerr-Pennington doctrine applies to citizen communications with police"); see also *Blank v. Kirwan* (1985) 39 Cal.3d 311, 325 (stating that "not only were defendants' efforts genuine, they were also successful -- and as such incapable of being deemed a mere sham"); see also *City of Columbia v. Omni Outdoor Advertising* (1991) 499 U.S. 365, 380 (stating that "[a] 'sham' situation involves a defendant whose activities are 'not genuinely aimed at procuring favorable government action' at all"); see also Gelareh decl. in support of special motion to strike, 2, 4-58, exhs. 1-34.) Therefore, Plaintiff has not demonstrated that the third cause of action is legally sufficient. (See *Muddy Waters, LLC, supra,* 62 Cal.App.5th at pp. 923(stating that "[t]o establish a probability of prevailing, 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'").)

Additionally, Plaintiff also fails to support the third cause of action with a sufficient prima facie showing of facts to sustain a favorable judgment through admissible evidence. Plaintiff relies on paragraphs 20 and 21 of his declaration and Defendants' objections to paragraphs 20 and 21 are SUSTAINED. However, even if the evidence was admissible, it does not address, much less establish, any ulterior motive of Defendants. (See Rusheen, supra, 37 Cal.4th at p.1057 (stating that "[t]o succeed in an action for abuse of process, a litigant must establish that the defendant… contemplated an ulterior motive in using the process").) As such, Plaintiff fails to demonstrate a probability of prevailing as he neither demonstrates that the complaint is legally sufficient nor supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. (See *Lee v. Silveira* (2016) 6 Cal.App.5th 527, 546 (stating that "[i]n satisfying their burden in step two of the anti-SLAPP analysis, plaintiffs may not merely rely on the allegations in their complaint [citations] or evidence that would not be admissible at trial"); see also *Muddy Waters, LLC v. Super. Ct.* (Perfectus Aluminum, Inc.) (2021) 62 Cal.App.5th 905, 923, 926 (stating that "[t]o establish a probability of prevailing, 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'… [t]he plaintiff cannot rely on the allegations of the complaint, but must produce evidence that would be admissible at trial… [t]he burden was upon plaintiff to produce evidence to show a probability

of prevailing… [w]here there is no evidence to support an essential factual element of the cause of action alleged, plaintiff has not met its burden").)

Defendants' special motion to strike the third cause of action is GRANTED.

F. Plaintiff fails to demonstrate that he has a probability of prevailing as to the fourth cause of action for malicious prosecution.

The fourth cause of action is for malicious prosecution. "To establish a cause of action for the malicious prosecution of a civil proceeding, a plaintiff must plead and prove that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in his, plaintiff's, favor [citations]; (2) was brought without probable cause [citations]; and (3) was initiated with malice." (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 965, quoting *Crowley v. Katleman* (1994) 8 Cal.4th 666, 676.) "[T]hat a malicious prosecution suit may be maintained where only one of several claims in the prior action lacked probable cause [citation] does not alter the rule there must first be a favorable termination of the entire action." (Crowley, supra, 8 Cal.4th at p.686 (emphasis original).) "[W]here the proceeding has been terminated without regard to its merits or propriety by agreement or settlement of the parties, or solely by the procurement of the accused as a matter of favor, or as the result of some act, trick, or device preventing action and consideration by the court, there is no such termination as may be availed of for the purpose of such an action." (*Jaffe v. Stone* (1941) 18 Cal.2d 146, 152; see also *Citizens of Humanity, LLC v. Ramirez* (2021) 63 Cal.App.5th 117, 129 (stating that "[g]enerally, a dismissal resulting from a settlement does not constitute a favorable termination"); see also *Ferreira v. Gray, Cary, Ware & Freidenrich* (2001) 87 Cal.App.4th 409, 412-413 (stating that "[i]n order to maintain an action for malicious prosecution, the plaintiff must first demonstrate that there was a favorable termination of the underlying litigation… [t]his requirement is an essential element of the tort of malicious prosecution, and it is strictly enforced… [w]here the underlying litigation ends by way of a negotiated settlement, there is no favorable termination for the purposes of pursuing a malicious prosecution action").)

Here, paragraphs 106 and 142 allege that Plaintiff was never convicted of any crime because "the District Attorney's Office dismissed the criminal complaint against Plaintiff in August 2022 in exchange for a settlement plea to an infraction for disturbing the peace and a $75 fine." (Complaint, 106; see also Complaint, 142 (alleging that "Plaintiff was never convicted of any crime…. Plaintiff paid a $75 fine in connection with pleading to the neither here-nor-there public offense (not a crime) of an infraction of 'disturbing the peace'"); see also Defs.' request for judicial notice in reply, exh. A.) As with many other arguments, Plaintiff fails to address this argument, instead arguing that "[t]he criminal complaint against me was ultimately dismissed, and I was never convicted of any crime… demonstrat[ing] that the prior actions were terminated in my favor." (Pl.'s opposition to special motion to strike, p.11:2-6.) Plaintiff's argument lacks merit as his own allegations and judicially noticeable facts demonstrate that he did not have a favorable termination as to the entire action. Accordingly, Plaintiff fails to demonstrate that the fourth cause of action is legally sufficient.

Moreover, Plaintiff's evidence fails to support the fourth cause of action for malicious prosecution with a sufficient prima facie showing of facts to sustain a favorable judgment through admissible evidence. Plaintiff relies on paragraphs 15-19 of his declaration to support his assertion that he has a probability of prevailing on the fourth cause of action; however,

Defendants' objections to paragraphs 15-19 are SUSTAINED. However, even if the evidence was admissible, none of these paragraphs mention a favorable termination for the purpose of pursuing a malicious prosecution action. As such, Plaintiff additionally fails to demonstrate a sufficient prima facie showing of facts to sustain a favorable judgment on the fourth cause of action through admissible evidence. (See *Lee v. Silveira* (2016) 6 Cal.App.5th 527, 546 (stating that "[i]n satisfying their burden in step two of the anti-SLAPP analysis, plaintiffs may not merely rely on the allegations in their complaint [citations] or evidence that would not be admissible at trial"); see also *Muddy Waters, LLC v. Super. Ct.* (Perfectus Aluminum, Inc.) (2021) 62 Cal.App.5th 905, 923, 926 (stating that "[t]o establish a probability of prevailing, 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'… [t]he plaintiff cannot rely on the allegations of the complaint, but must produce evidence that would be admissible at trial… [t]he burden was upon plaintiff to produce evidence to show a probability of prevailing… [w]here there is no evidence to support an essential factual element of the cause of action alleged, plaintiff has not met its burden").)

Defendants' special motion to strike the fourth cause of action of the complaint for malicious prosecution pursuant to Code of Civil Procedure section 425.16 is GRANTED.

G. Plaintiff fails to demonstrate that he has a probability of prevailing as to paragraphs 1-7, 16-96 and 104-111.

Lastly, paragraphs 1-7, 16-96 and 104-111 are allegations supporting the first through fourth causes of action-except for the allegations concerning cat abuse. Here, as with the aforementioned causes of action, and for identical reasons, these supporting allegations are insufficiently supported by Plaintiff's declaration and are not legally sufficient. (See *Lee v. Silveira* (2016) 6 Cal.App.5th 527, 546 (stating that "[i]n satisfying their burden in step two of the anti-SLAPP analysis, plaintiffs may not merely rely on the allegations in their complaint [citations] or evidence that would not be admissible at trial"); see also *Muddy Waters, LLC v. Super. Ct.* (Perfectus Aluminum, Inc.) (2021) 62 Cal.App.5th 905, 923, 926 (stating that "[t]o establish a probability of prevailing, 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'… [t]he plaintiff cannot rely on the allegations of the complaint, but must produce evidence that would be admissible at trial… [t]he burden was upon plaintiff to produce evidence to show a probability of prevailing… [w]here there is no evidence to support an essential factual element of the cause of action alleged, plaintiff has not met its burden").) Accordingly, as Plaintiff fails to demonstrate a probability of prevailing, Defendants' special motion to strike paragraphs 1-7, 16-96 and 104-111 pursuant to Code of Civil Procedure section 425.16 is GRANTED.

Defendants' objections to paragraphs 22 and 27 are SUSTAINED.

The Court did not rely on the remaining paragraphs of Plaintiff's declaration to which Defendants objected.

II. Defendants' motion to strike portions of the complaint pursuant to Code of Civil Procedure sections 435 and 436.

In light of the above ruling regarding Defendants' special motion to strike portions of the complaint pursuant to Code of Civil Procedure section 425.16, Defendants' motion to strike those same allegations pursuant to Code of Civil Procedure sections 435 and 436 is MOOT.

Calendar line 2

Case Name: *David Martin v. Google LLC, et al.*

Case No.: 23CV410545

(1) Defendant City of West Sacramento's Demurrer to Plaintiff's Third Amended Complaint

Factual and Procedural Background

Plaintiff David Martin ("Martin"), a self-represented litigant , filed his original complaint in this action on January 20, 2023. In the original complaint, plaintiff Martin alleges defendant Jose A. Ramirez ("Ramirez") is his landlord and that defendant Ramirez (and/or agents, employees, co-conspirators) committed trespass on plaintiff Martin's apartment.

Plaintiff Martin's original complaint further alleged that defendant Emalee Ousley ("Ousley") and defendant Ramirez (and/or agents, employees, co-conspirators) committed an assault and battery.

Plaintiff Martin's original complaint also names as defendants the City of Sacramento ("Sacramento"), City of West Sacramento ("West Sacramento"), and Google LLC ("Google"). Without much in the way of facts, plaintiff Martin's original complaint asserted the following causes of action:

(1) Trespass [against defendant Ramirez]
(2) Extortion [against defendant Ramirez]
(3) Violation of California Civil Code 1940.2 [against defendant Ramirez]
(4) Violation of California Civil Code 1942.5 [against defendant Ramirez]
(5) Violation of California Civil Code 1947.12 [against defendant Ramirez]
(6) Violation of California Civil Code 827 [against defendant Ramirez]
(7) Intentional Infliction of Emotional Distress [against defendant Ramirez]
(8) Negligence [against all defendants]
(9) Negligence per se [against defendant Ousley]
(10) Nuisance [against defendant Ramirez]
(11) Violation and/or conspiracy to violate California Civil Code 52.1 [against all defendants]
(12) Assault [against defendants Ramirez and Ousley]
(13) Battery [against defendant Ousley]
(14) Violation of Right of Privacy [against all defendants]
(15) False Advertising [against defendant Google]
(16) Unfair Competition [against defendant Google]
(17) Fraud [against defendant Google]
(18) Negligent Misrepresentation [against defendant Google]

On September 29, 2023, plaintiff Martin filed a first amended complaint ("FAC"). While plaintiff Martin's original complaint consisted of nine pages, plaintiff Martin's FAC ballooned to 177 pages in length. The FAC continued to assert the same eighteen causes of

action asserted in the original complaint against the same parties identified in the original complaint.

On October 30, 2023, plaintiff Martin filed a second amended complaint ("SAC"), growing further to 195 pages in length. The SAC continued to assert the same eighteen causes of action asserted in the original complaint against the same parties identified in the original complaint.

After the court (Hon. Kulkarni) took under submission various motions including demurrers to the SAC following a hearing on 7 December 2023, plaintiff Martin filed a request for dismissal on 12 December 2023 of "all causes of action only for Defendants: City of Sacramento, City of West Sacramento, Jose A. Ramirez, and Emalee Ousley." However, the court clerk did not enter dismissal as requested.

On December 14, 2023, the court (Hon. Manoukian) issued an order "dismiss[ing] all causes of action … regarding the following Defendants: City of West Sacramento, City of Sacramento, Jose A Ramirez, and Emalee Ousley."

On December 20, 2023, the court (Hon. Kulkarni) issued an order sustaining (some with and some without) the defendants' demurrers. As to defendant City of West Sacramento, the court sustained the demurrer with leave to amend.

On December 26, 2023, the court (Hon. Manoukian) issued an order setting aside the December 14, 2023 order which dismissed, among others, defendant City of West Sacramento.

On January 9, 2024, plaintiff Martin filed the operative third amended complaint ("TAC"), now 202 pages in length, continuing to assert the same eighteen causes of action asserted in the original complaint against the same parties identified in the original complaint.

On February 27, 2024, defendant City of West Sacramento filed the motion now before the court, a demurrer to plaintiff Martin's TAC.

I. Preliminary considerations.

As a preliminary matter, plaintiff Martin argues in opposition that defendant West Sacramento's demurrer is untimely. Plaintiff Martin cites Code of Civil Procedure section 430.40, subdivision (a), which states, "A person against whom a complaint or cross-complaint has been filed may, within 30 days after service of the complaint or cross-complaint, demur to the complaint or cross-complaint."

As noted above, plaintiff Martin filed the TAC on January 9, 2024. Plaintiff Martin did not file an accompanying proof of service with regard to the TAC. Instead, plaintiff Martin directs the court to paragraph 2 of the Declaration of Forrest C. Misenti in Support of Defendant City of West Sacramento's Demurrer to Plaintiff's Third Amended Complaint wherein West Sacramento's counsel states, "On January 9, 2024, my office received Plaintiff David Martin's Third Amended Complaint ('TAC')." Plaintiff Martin acknowledges West Sacramento attempted to file its demurrer on February 9, 2024, but the filing was rejected. West Sacramento did not file the instant demurrer until February 27, 2024, a date plaintiff Martin contends is beyond the time allowed to file a demurrer.

The flaw with plaintiff Martin's argument is that the deadline to file a demurrer begins to run "after service" of the TAC. Here, plaintiff has made no evidentiary showing as to when he served the TAC. Even if the court draws an inference that plaintiff Martin did properly and actually serve the TAC upon West Sacramento on January 9, 2024, the delay in West Sacramento's filing of a demurrer does not preclude the court from considering it now.

"Technically, defendants are 'in default' if they fail to file an answer, demurrer or other permitted response within the time allowed by law and without a court order excusing such filing. [] By itself, being 'in default' has no legal consequences because defendant can still appear in the action until the clerk has entered his or her default. [] Thus, even though the time to respond has expired, if no default yet has been entered, defendant can file a pleading or motion." (Weil & Brown, et al., CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group 2020) ¶¶5:2 - 5:3, p. 5-1 citing *Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 141-"it is now well established by the case law that where a pleading is belatedly filed, but at a time when a default has not yet been taken, the plaintiff has, in effect, granted the defendant additional time within which to plead and he is not strictly in default.") "An untimely demurrer may be considered by the court in its discretion." (Id. at ¶7:24, p. 7(I)-16 citing *Jackson v. Doe* (2011) 192 Cal.App.4th 742, 750 (*Jackson*).) The court will exercise such discretion here to consider West Sacramento's demurrer on the merits particularly in light of the fact that no default has been taken.

Plaintiff Martin also argues preliminarily that West Sacramento did not comply with its obligation to meet and confer in advance of the filing of the instant demurrer. Code of Civil Procedure section 430.41 requires a demurring party to meet and confer with the party who filed the challenged pleading to seek informal resolution of the demurring party's objections. (Code Civ. Proc., § 430.41, subd. (a).) Specifically, "If an amended complaint, cross-complaint, or answer is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a demurrer to the amended pleading." (Ibid.) The meet and confer must be conducted in person or by telephone, and must address each cause of action to be included in the demurrer. (*Ibid.)* "The parties shall meet and confer at least five days before the date the responsive pleading is due." (Code Civ. Proc., §430.41, subd. (a)(2).) If these efforts fail, the demurring party must file and serve a declaration regarding the meet and confer process with the demurrer. (Code Civ. Proc., § 430.41, subd. (a)(3).)

Plaintiff Martin questions the veracity of the declaration filed by West Sacramento with regard to compliance with the meet and confer requirements. Rather than delve into the veracity of counsel's declarations, the court will simply remind parties and counsel that compliance with Code of Civil Procedure section 430.41 is required. However, a court may not sustain a demurrer based on the insufficiency of the meet and confer process. (Code Civ. Proc., §430.41, subd. (a)(4).) To avoid wasting any further judicial resources, the court will move on to the merits of the demurrer.

As a third preliminary matter, plaintiff Martin contends the instant demurrer is unnecessary because plaintiff Martin has already dismissed West Sacramento as a defendant from this action. However, also noted above, the court set aside the order of dismissal. Moreover, this argument seems disingenuous in light of plaintiff Martin's vigorous opposition.

II. Defendant West Sacramento's demurrer to plaintiff Martin's TAC.

Of the eighteen causes of action asserted in plaintiff Martin's TAC, the following three are leveled against defendant West Sacramento: the eighth cause of action (negligence), the eleventh cause of action (violation and/or conspiracy to violate California Civil Code section 52.1), and the fourteenth cause of action (violation of right of privacy).

Defendant West Sacramento demurs initially to plaintiff Martin's TAC on the ground of uncertainty.

"'[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.'" (*Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 848, fn. 3 [222 Cal. Rptr. 3d 360]; accord, *Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135 [146 Cal. Rptr. 3d 173].) "'A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.'" (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822 [245 Cal. Rptr. 3d 378], quoting *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616 [17 Cal. Rptr. 2d 708].)

(*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695.)

Defendant West Sacramento nevertheless contends where the "complaint is framed in such a disjointed and incoherent manner[,] … "the only course open … was that of interposing a demurrer raising the questions of … uncertainty, ambiguity and unintelligibility." (*Evarts v. Jones* (1951) 104 Cal.App.2d 109, 111.) Defendant West Sacramento's argument is well taken.

A "complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged. [Citation.]' [Citation.]" (*Pich v. Lightbourne* (2013) 221 Cal.App.4th 480, 495.) Plaintiff Martin's TAC is replete with allegations of evidentiary fact, greatly muddying the waters and making it extremely difficult to discern and analyze whether he has sufficiently stated a cause of action against defendant West Sacramento. As defendant West Sacramento points out, plaintiff Martin has changed little to nothing from his SAC in now pleading his TAC.

Defendant West Sacramento demurs additionally to the eighth cause of action on the ground that "[u]nder the [Government Claims] Act, governmental tort liability must be based on statute; all common law or judicially declared forms of tort liability, except as may be required by state or federal Constitution, were abolished." (*Michael J. v. Los Angeles County Dept. of Adoptions* (1988) 201 Cal.App.3d 859, 866.) "[P]ublic entities are immune from liability except as provided by statute (§ 815, subd. (a))…." (*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 980.) "Except as otherwise provided by statute[,] [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Gov. Code, §815, subd. (a).)

"[Where] recovery is based on a statutory cause of action, the plaintiff must set forth facts in his [or her] complaint sufficiently detailed and specific to support an inference that each of the statutory elements of liability is satisfied. General allegations are regarded as inadequate. [Citations.]" (*Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 5.) At best, plaintiff Martin's TAC against defendant West Sacramento consists of general, not sufficiently specific, allegations.

[The court declines to address arguments defendant West Sacramento raised with regard to causes of action that are not specifically directed at West Sacramento.]

Plaintiff Martin has now had four opportunities to state a sufficient claim against defendant West Sacramento, but has not done so. A plaintiff has the burden to show in what manner it can amend its complaint and how that amendment will change the legal effect of the pleading. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Plaintiff Martin has not met this burden.

Accordingly, defendant West Sacramento's demurrer to plaintiff Martin's TAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] and on the ground that the pleading is uncertain [Code Civ. Proc., §430.10, subd. (f)] is SUSTAINED WITHOUT LEAVE TO AMEND.

Calendar line 3

Case Name: *Dennis Dillard et al. v. Stephen Nunes et al.*
Case No.: 23CV416636

I. Background

This matter involves claims for indemnity and contribution arising from a fire on residential property.

A. First Amended Complaint

Plaintiff Dennis Dillard is the owner and resident of 10490 Dougherty Avenue in Morgan Hill (the "Dillard Property"). (First Amended Complaint ("FAC"), ¶ 1.) Plaintiffs David Ernst and Jennifer Pham are residents of the Dillard Property. (Id. at ¶¶ 2-3.)

Defendants Stephen Nunes and Debbie Nunes reside at 10486 Dougherty Avenue in Morgan Hill (the "Nunes Property"). (FAC, ¶¶ 10-11.) Stephen Nunes operates three companies on the Nunes property: Nunes Enterprises Company; Nunes Electrical Corporation; and Nunes Electrical Services (collectively, the "Nunes Companies"). (Id. at ¶¶ 5-11.)

On June 11, 2022, a massive fire started on the Nunes Property and spread to the Dillard Property causing the total destruction of several structures. (FAC, ¶ 18.) The defendants caused the fire by negligently operating a Power Pro 25 Commercial Generator on the Nunes Property. (Id. at ¶¶ 18-21.) The fire caused several million dollars in damages. (Id. at ¶¶ 22, 25-28.)

On May 22, 2023, plaintiff Dillard filed a complaint against defendants Stephen Nunes, Debbie Nunes, and the Nunes Companies (collectively, "Defendants"), stating causes of action for:

(1) Negligence (against all defendants)
(2) Negligent Infliction of Emotional Distress (against all defendants)
(3) Intentional Infliction of Emotional Distress (against all defendants)
(4) Trespass to Land (against all defendants).

On September 18, 2023, plaintiffs Dillard, Ernst, and Pham (collectively, "Plaintiffs") filed the FAC against Defendants asserting causes of action for:

(1) Negligence (against all defendants)
(2) Negligent Infliction of Emotional Distress (against all defendants)
(3) Trespass to Land (against all defendants).

B. Cross-Complaint

On October 27, 2023, defendants and cross-complainants Stephen Nunes and Nunes Enterprises Company ("Cross-Complainants") filed a cross-complaint ("Cross-Complaint") against Plaintiffs and Hokuetsu Industries Co., Ltd. ("Hokuetsu") and Airman USA

Corporation ("AUC").[1] According to the Cross-Complaint, Hokuetsu and AUC are corporations doing business in California who defectively designed, manufactured, sold, and/or distributed the generator that is alleged to have cause the fire in this matter. (Cross-Complaint, ¶1.) The Cross-Complaint states causes of action for:

(1) Implied Contractual Indemnity (against all cross-defendants)
(2) Contribution (against all cross-defendants)
(3) Equitable Indemnity (against all cross-defendants)
(4) Declaratory Relief (against all cross-defendants).

On March 1, 2024, Hokuetsu and AUC filed the motion now before the court: a motion to quash service of summons. Cross-Complainants filed opposition papers and Hokuetsu and AUC filed reply papers.

II. Legal Standard

Code of Civil Procedure section 418.10, subdivision (a)(1), authorizes a defendant to file a motion to quash service of summons "on the ground of lack of jurisdiction of the court over him or her." (Code Civ. Proc., § 418.10, subd. (a)(1).)

Once a defendant files a motion to quash, the burden is on the plaintiff to establish the facts of jurisdiction by a preponderance of the evidence. (*Lebel v. Mai* (2012) 210 Cal.App.4th 1154, 1160; see also *HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160, 1167 ["A plaintiff opposing a motion to quash service for lack of personal jurisdiction has the initial burden to demonstrate facts establishing a basis for personal jurisdiction."].)

"Evidence of the jurisdictional facts or their absence may be in the form of declarations." (*Elkman v. National States Ins. Co.* (2009) 173 Cal.App.4th 1305, 1313.) "[W]here the evidence of jurisdictional facts is not conflicting, the question of whether a defendant is subject to personal jurisdiction is one of law." (*Ibid*.)

"California's long-arm statute permits a court to exercise personal jurisdiction on any basis consistent with state or federal constitutional principles. The primary focus of the personal jurisdiction inquiry is the relationship of the defendant to the forum state. The constitutional touchstone of this inquiry is whether the defendant purposefully established minimum contacts in the forum State." (*Rivelli v. Hemm* (2021) 67 Cal.App.5th 380, 391, internal punctuation and citations omitted (*Rivelli*).) To meet its initial burden, a plaintiff opposing a motion to quash must present "competent evidence of jurisdictional facts." (*Id*. at p. 393.)

There are 'two kinds of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction.'" (*Preciado v. Freightliner Custom Chassis Corp*. (2023) 87 Cal.App.5th 964, 976 [quoting *Ford Motor Company v. Montana Eighth Judicial District Court* (2021) 592 U.S. __, [141 S.Ct. 1017].) Where general jurisdiction exists as a result of a non-resident defendant's "continuous and systematic" activities in the state, the defendant can be sued on causes of action not related to its activities within the state. (*Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147.)

[1] Hokuetsu and AUC were erroneously sued as "Hokuetsu Industries Co. Ltd. dba Airman USA Corporation."

If a non-resident defendant's contacts with California are not sufficient for general jurisdiction, the defendant may still be subject to specific personal jurisdiction by the state if it meets a three-prong test: 1) the defendant must have purposefully availed itself of the state's benefits; 2) the controversy must arise out of or be related to the defendant's contacts with the state; and 3) considering the defendant's contacts with the state and other factors, California's exercise of jurisdiction over the defendant must comport with fair play and substantial justice. (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269.)

III. Request for Judicial Notice

"Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the matter issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, citing *People v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2; see also *Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 569 [Since judicial notice is a substitute for proof, it is always confined to those matters that are relevant to the issues at hand.]; *Jordache Enterprises, Inc. v. Brobeck, Phelger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [a court need not take judicial notice of a matter unless it "is necessary, helpful, or relevant"].) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

In support of their opposition to the motion to quash, Cross-Complainants have submitted a request for judicial notice of five items. Cross-Defendants' request for judicial notice ("RJN"), pp. 2:4-3:2.) The request is granted in part and denied in part as follows:

A. RJN 1

With their first request ("RJN 1"), Cross-Complainants request judicial notice of "the entire court record in the *In re RAJYSAN, INC. dba MMD EQUIPMENT,* United States Bankruptcy Court for the Central District of California, case no. 9:19-bk-11363-DS." (RJN, p. 2:4-6.)

Evidence Code section 452, subdivision (d), states that the court may take judicial notice of "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States." Nevertheless, the court need not take judicial notice of a matter unless the requesting party "[f]urnishes the court with sufficient information to enable it to take judicial notice of the matter." (Evid. Code, § 453, subd. (b).)

"A party requesting judicial notice of material under Evidence Code sections 452 or 453 must provide the court and each party with a copy of the material. If the material is part of a file in the court in which the matter is being heard, the party must: [¶] (1) Specify in writing the part of the court filed sought to be judicially noticed; and [¶] (2) Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court." (Cal. Rules of Court, Rule 3.1306.)

Here, Cross-Complainants have failed to provide the court with sufficient information to take judicial notice of the bankruptcy matter referenced because they have not provided the court with any part of the bankruptcy action. Therefore, the request as to RJN 1 is DENIED. Even if Cross-Complainants had provided sufficient information about the bankruptcy matter, the court could not take judicial notice of the truth of any factual assertions appearing in the documents. (See *State ex re Sills v. Gharib-Danesh* (2023) 88 Cal.App.5th 824, 837, fn. 6 ["we do not take judicial notice of the truth of any factual assertions appearing in the documents"].)

B. RJN 2

With RJN 2, Cross-Complainants request judicial notice of the following: "that the geographic area covered by the '562' area code encompasses Cypress, California and Los Angeles and Orange Counties" on the basis that this is a matter of common knowledge. (RJN, p.: 2:8-11.) Evidence Code section 452, subdivision (g), states that the court may take judicial notice of "[f]acts and propositions that of are such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute."

Here, while the relevance of this fact is not explained in Cross-Complainant's RJN, they argue in their opposition to the motion quash that Cross-Defendants are connected to the state of California because their distributor has a phone number with an area code of 562. Cross-Defendants offer no argument or authority in opposition to this RJN. The request as to RJN 2 is GRANTED.

C. RJNs 3-5

Lastly, Cross-Complainants request judicial notice of three documents identified as webpages, relying upon Evidence Code section 452, subdivision (h). (RJN, pp. 2:13-3:2.) RJN 3 is described as "the webpage of Cross-Defendant Airman USA Corporation printed on February 6, 2024… and all party admissions set forth therein." (Id. at p. 2:13-14.) RJN 4 is described as "the webpage of ANA Corp. printed February 6, 2024 … and all party admissions set forth therein." (Id. at p. 2:20-21.) RJN 5 is described as "the webpage of 'Discount Equipment' printed April 2, 2024 and all party admissions set forth therein." (Id. at p. 2:26-27.) The documents in question are attached to the Declaration of Jason Tortorici as Exhibits 1, 2, and 3, respectively.

Evidence Code section 452, subdivision (h), states that the court may take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." "[T]he mere fact that a statement appears on a Web page does not mean that it is not reasonably subject to dispute." (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 761; see also *Huitt v. Southern California Gas Co*. (2010) 188 Cal.App.4th 1586, 1605, fn. 10 ["Simply because information is on the internet does not mean that it is not reasonably subject to dispute"].)

On April 9, 2024, Cross-Defendants submitted objections to Exhibits 1, 2, and 3 to Mr. Tortorici's declaration, and by extension, to RJNs 3-5 ("Objections"). Cross-Defendants object to each of these webpage exhibits on the grounds that they lacks foundation. The objections on the basis of foundation have merit because the exhibits attached to Mr. Tortorici's declaration do not contain the URL ("uniform resource locator") address or date the website was accessed

(such as in the header or footer), and the declaration does not otherwise provide sufficient identification or authentication of the webpages. Cross-Defendants also object to each of these exhibits on the grounds that they are not relevant. The objections on the basis of relevance also have merit: Exhibits 1 and 2 (RJNs 3 and 4) show a California phone number for ANA Corp, an entity that is not a party to this action; and Exhibit 3 (RJN 5) is purportedly the website for "Discount Equipment," another entity that is not a party.

The objections to Exhibit 1, 2, and 3 to Mr. Tortorici declaration are SUSTAINED.

Accordingly, the request for judicial notice as to RJNs 3-5 is DENIED.

IV. Analysis

Cross-Defendants Hokuetsu and AUC move for an order quashing service of summons for lack of personal jurisdiction pursuant to Code of Civil Procedure, section 418.10, subdivision (a). (Notice of Motion and Motion, p. 2:3-13.) Cross-Defendants contend there is no constitutionally sufficient basis for this court to exercise jurisdiction over them. (Ibid.)

Hokuetsu is domiciled in Japan and does not distribute in the United States. (Memorandum of Points and Authorities in Support of Motion to Quash ("Mot."), pp. 5:23-6:10; Declaration of Sueshia Toyotaka ("Toyotaka Decl."), ¶¶ 8, 15.) The generator in question was manufactured in Japan in July 2006 and sold to a distributor, and again sold to a U.S. based distributor. (Mot., p. 6:10-14; Toyotaka Decl., ¶ 7.)

AUC is subsidiary of Hokuetsu. (Mot., p. 5:7.) AUC is incorporated in the state of Georgia and first came into existence in 2014, after the subject generator was manufactured and sold. (Mot., p. 7:6-8; Declaration of Hiroshi Yoshida ("Yoshida Decl."), ¶¶ 7, 11.) In 2017, AUC appointed Alliance North America dba ANA Corp ("ANA") as its exclusive distributor in the United States. (Mot., p. 7: 12-13; Yoshida Decl., ¶ 9.)

Only AUC, and not Hokuetsu, was served with process in this matter. (Mot., p. 7:20-23.) Service on a foreign individual is generally subject to the Hague Service Convention and requires the transmission of documents abroad. (*Kott v. Superior Court* (1996) 45 Cal.App.4th 1126, 1136-1136.) "Failure to comply with the Hague Service Convention procedures voids the service even though it was in compliance with California law." (Id. at p. 1136.)

The parties agree that Cross-Defendants are not subject to California's general jurisdiction. (Opp., p. 4:15-23.) Thus, the three-prong test for specific personal jurisdiction—purposeful availment, a controversy that arises out of (or relates to) Cross-Defendants' contact with the state, and fundamental fairness—must be satisfied in order to maintain this action against Hokuetsu and AUC.

Cross-Complainants assert that Hokuetsu and AUC have directed activities at California residents. (Opp., p. 5:10-11.) To meet their initial burden to demonstrate facts justifying the exercise of jurisdiction, "a plaintiff must do more than make allegations." (*Rivelli, supra,* 67 Cal.App.5th at p. 393.) "A plaintiff must support its allegations with competent evidence of jurisdictional facts. Allegations in an unverified complaint are insufficient to satisfy this burden of proof. [Citation.]" (*Ibid*.)

Here, Cross-Complainants rely solely upon their RJNs 3-5 to meet the purposeful availment prong. (Opp., p. 5:7-10.) They also rely upon RJNs 3-5 in support of their position that the current controversy arises out of Hokuetsu and AUC's connections with the state. (Opp., p. 6:2.)

As discussed above, RJNs 3-5 are the purported webpages of two non-party entities: ANA and "Discount Equipment." As the court has sustained the objections to these exhibits and denied Cross-Complainant's request for judicial notice as to these exhibits, they do not represent competent evidence of jurisdictional facts.

Even if this evidence were admissible, it would still not show how either Hokuetsu or AUC directed activities at California residents or intended to avail themselves of the privilege of doing business within the state. First, Hokuetsu and AUC have shown that AUC was not even in existence when the generator was sold in California. Cross-Complainants admit that the generator in this case was not sold by AUC but by Mitsui. (Opp., p. 4-7.) Thus, the claims in this matter cannot arise out of AUC's alleged connections with California because those connections began years after the subject generator made its way to California. The only showing that has been made of Hokuetsu's connections with California is that AUC has such contacts.

Cross-Complainants have not demonstrated any action by Hokuetsu to purposefully avail itself of the California market. Conversely, Cross-Complainant's have demonstrated Hokuetsu's lack of contacts with California: Hokuetsu has never designed, manufactured, or sold any generators in California; it did not design any aspect of the subject generator specifically for the California market; it does not target its products for California; it maintains no office in California nor has it directed any advertising to the State of California. (See Toyotaka Decl., ¶¶ 10-26.)

On these facts, the exercise of personal jurisdiction over Hokuetsu by this court would exceed the limits of due process. (See *Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 112-113 ["respondents have not demonstrated any action by Asahi to purposefully avail itself of the California market"]; see also *Dow Chemical Canada ULC v. Superior Court* (2011) 202 Cal.App.4th 170, 179 [fact that defendant could predict its products would reach California not sufficient to establish jurisdiction where there was no evidence that the defendant's product was in any way California-specific or that defendant intended to "to invoke or benefit from the protection of" California law].)

Cross-Complainants fail to meet their burden of showing jurisdictional facts by a preponderance of evidence on the first two requirements of the specific jurisdiction test (i.e., that the Cross-Defendants have purposefully availed themselves of the forum and the Cross-Complainants' claims relate to or arise out of the Cross-Defendants' forum-related contacts). Therefore, the court need not address whether Cross-Defendants meet their burden as to the fundamental fairness prong. (See Rivelli, supra, 67 Cal.App.5th at p. 393 [when the plaintiff meets its burden on the first two requirements the burden shifts to defendant to demonstrate that exercise of jurisdiction would be unreasonable].)

The motion to quash is GRANTED.

V. Order

The motion to quash service of summons by cross-defendants Hokuetsu and AUC is GRANTED.

The court will prepare the Order.

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Calendar lines 4-6

Case name: *Abdelsalam Mogasbe, individual, and on behalf of Gold Start Hospice, LLC v. Sandra R. Gavney, James Albert Gavney, Jr.*
Case no.: 23CV427682

Procedural background

On December 14, 2023, Petitioner Abdelsalam Mogasbe, individual, and on behalf of Gold Start Hospice, LLC ("Petitioner") filed petition against Respondents Sandra R. Gavney, James Albert Gavney, Jr.("Respondents") for expulsion of Respondent Sandra R. Gavney pursuant to Corporations Code section 17706.02 for breach of contract, breach of covenant of fair dealing, conversion and fraud.

On February 13, 2024, Respondents filed answer to petition and demand for jury trial.

On March 19, 2024, Respondents filed motion for stay of action and to compel arbitration, set for hearing today as line 4. On March 29, 2024, Respondents filed opposition, and on April 9, 2024, Respondents filed reply.

On December 19, 2023, Petitioner filed notice of hearing for the petition for expulsion of Respondent Sandra R. Garvey, set for hearing today as line 5. On March 6, 2024, Respondents filed opposition, and on March 11, 2024, Petitioner filed reply.

On February 23, 2024, Petitioner filed motion to strike demand for jury trial, set for hearing today as line 6. On March 15, 2024, Respondents filed opposition.

Line 4 - Motion for stay of action and to compel arbitration.

Summary of contentions

Respondents assert that the petition for expulsion involves disputes in management and operation of petitioner Gold Star Hospice which the agreement petitioner attaches as an exhibit to the petition mandates arbitration of the disputes. Respondents further assert that little discovery has occurred, or substantive motions ruled upon, and hence, no prejudice to the parties if the matter is ordered to arbitration. Respondents assert that they have not waived arbitration.

In opposition, petitioner asserts that the dispute is an action for removal of a partner from a LLC – a disassociation from a partnership by judicia order - not for damages, but for conduct pursuant to the Corporations Code, and as such, the Corporations Code contemplates a judicial order, not an arbitration award.

In reply, Respondents assert that the relief requested in the petition does not determine whether arbitration is appropriate where the demand for arbitration, as here, is based on contract, not statute.

Analysis

Plaintiff does not contest Respondents' assertions of a written agreement between the parties, and that the agreement contains a provision for arbitration of disputes. Instead, Plaintiff asserts that the conduct complained about in the petition and equitable relief requested relief requested is pursuant to the Corporations Code, and by inference, the Corporation Code which Petitioner asserts does not contemplate arbitration, and California Rules of Court, Rule 3.811 should determine whether arbitration is appropriate, not the agreement.

When considering a motion to compel arbitration, the court initially determines whether the parties agreed to arbitrate the dispute in question. This involves two questions, the first whether there is a valid agreement to arbitrate between the parties, and the second, whether the dispute in question falls within the scope of that arbitration agreement. (*Bruni v. Didion* (2008) 160 Cal.App.4th 1272, 1282 (citing *Banks v. Mitsubishi Motors Credit of America* (citation omitted).

Here, it is conceded that a written agreement – a partnership agreement - exists between the parties, and that the agreement contains a provision for arbitration of disputes. The validity of the agreement and its provisions is not contested.

The second question is whether the dispute falls within the scope of the arbitration provision of the agreement.

Section XVII of the agreement "Dispute Resolution" provides:

> "Any dispute arising out of, or relating to the Partnership or this Agreement, shall be resolved through friendly negotiations amongst the Partners. If the matter is not resolved by negotiation, then the Partners will seek to resolve the dispute using an Alternate Dispute Resolution (ADR) procedure as stated in this Article. The controversies or disputes arising out of or relating to the Partnership or this Agreement will first be submitted to mediation in accordance with the rules of mediation in the state of California. If, however, mediation does not successfully resolve the dispute or is unavailable for whatever reason, then the Partners shall proceed to binding arbitration by the American Arbitration Association in accordance with the Association's commercial rules then in effect. The arbitration shall take place in California and shall be binding on all parties. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction to do so. Costs of arbitration, including attorneys' fees, will be allocated by the arbitrator."

Here, the language defining the scope of arbitration is clear and unambiguous, and disputes identified in the causes of action in the petition arise out of the partnership and/or the agreement and are therefore encompassed within the scope of disputes to be resolved first in mediation, and if unsuccessful or unavailable for whatever reason, then pursuant to arbitration.

The disputes were not resolved by negotiation. The disputes are then to first be submitted to mediation, unless unavailable "for whatever reason". Neither party addresses whether mediation has occurred or is unavailable for any reason. That said, the evidence of the three pending motions seeking determination of the disputes by the court or by arbitration infer the "whatever reason" that mediation is not available.

Petitioner's argument that the subject matter and relief requested in the petition, require determination by the Court instead of by arbitration, is unpersuasive and unavailing.

Disposition

The motion to stay action and to compel arbitration is GRANTED.

In light of this ruling, **the petition for expulsion (line 5)** shall be determined in arbitration, and **motion to strike demand for jury trial (line 6)** is MOOT and ordered OFF-CALENDAR.

Respondents shall prepare the order.

- oo0oo -

Calendar line

Calendar line

Calendar line 7

Calendar line 8

Calendar lines 9-10

Case Name: *Gregory Gilbert, MD vs Stanford Health Care et al*
Case no.: 21CV382651

Motion for a Discovery Referee

On February 20, 2024, defendants The Leland Stanford Junior University, Stanford Health Care, and Andra Blomkalns, M.D. ("Defendants") filed motion for a discovery referee on a "go-forward basis" pursuant to Code of Civil Procedure sections 638 and 639.

On April 2, 2024, plaintiff Gregory H. Gilbert, M.D. ("Plaintiff") filed opposition (in part) which largely agrees with appointment of a discovery referee, but contests certain requests, including allocation of the cost.

Discovery to date includes eight motions and a variety of issues that the parties were unable to resolve through meet and confer which required a significant expenditure of court resources. Several submitted discovery motions are pending ruling. The Court has issued a tentative ruling for the current discovery motion set for today (line 18). While there are no new discovery motions filed, the history of the case suggests that a continuum of time-consuming discovery issues may arise simultaneously and require resolution prior to discovery cut-off (June 17, 2024) and trial (July 15, 2024).

The court finds good cause for appointment of a discovery referee and appoints Judge Peter Kirwan (Ret.), Signature Resolution, as discovery referee. The referee's fees and costs, including retainer, shall be paid 50% by Plaintiff and 50% by Defendants. While the evidence suggests that Defendants collectively have greater financial resources than Plaintiff, the evidence indicates that Plaintiff is a physician and infers ability to pay. Further, apportionment of the cost is fair and reasonable under the facts of this case, and financial participation of the parties provides mutual incentive for efficient and productive use of the referee's services. The parties shall contact Judge Kirwan, Signature Resolution, forthwith to initiate the engagement.

Motion to Continue Trial

On February 28, 2024, Plaintiff filed motion to continue trial.

On April 3, 2024, Defendants filed opposition, and on April 9, 2024, Plaintiff filed reply.

Jury trial is set for July 15, 2024. Trial was originally set for January 29, 2024. On November 7, 2023, Defendants filed motion for continuance of trial. On November 20, 2023, Plaintiff filed opposition, in part, but agreed that the date of trial was untenable for multiple reasons and concurred with Defendants that July 15, 2024 was a viable alternative trial date. While not entirely clear from the record, it appears that on November 27, 2023, the motion was granted, and trial was continued to July 15, 2024.

Plaintiff's instant motion requests continuance of trial set for July 15, 2024 to November 2024. Plaintiff asserts that good cause is shown for a continuance because of outstanding discovery matters the Court has taken under submission; unique circumstances of health of the case management judge and legal issues of Plaintiff attorney's sister; trial in another matter outside of the Bay Area in April that requires Plaintiff's attorney's presence, and that Plaintiff has not previously requested continuance of trial.

Defendants contend that the grounds asserted by Plaintiff do not rise to the level of good cause, that Defendants have been diligent in preparing the case for trial in July whereas Plaintiff has not, and a delay in trial prejudices Defendants.

Discussion

The case has been pending for approximately three years, and trial has been continued once. At the time trial was continued, Plaintiff and Defendants indicated that July 15, 2024 was an acceptable date.

Several discovery matters have been submitted and are pending court ruling. That said, it is anticipated that rulings will be issued by the Court that will not affect the viability of the current trial date.

The Court has issued a tentative ruling on the remaining discovery matter set for hearing today.

Further, pursuant to motion for a discovery referee set for hearing today, the Court has issued a tentative ruling appointing a discovery referee for future discovery matters, if any, that may arise pending discovery cut-off and trial.

Cal. Rules of Court, Rule 3.1332, subdivision (a) provides that:

> "To ensure the prompt disposition of civil cases, the dates assigned for a trial are firm. All parties and their counsel must regard the date set for trial as certain.
>
> Subdivision (c) of the section provides in pertinent part:
>
> "Although continuances of trials are disfavored, each request for continuance must be considered on its own merits. The court may grant a continuance only on an affirmative showing of good cause requiring the continuance. Circumstances that may indicate good cause include:
>
> (1) The unavailability of an essential lay or expert witness because of death, illness, or other excusable circumstances;
> (2) The unavailability of a party because of death, illness, or other excusable circumstances;
> (3) The unavailability of trial counsel because of death, illness, or other excusable circumstances;
> (4) The substitution of trial counsel …
> (5) The addition of a new party …

(6) A party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts; or

(7) A significant, unanticipated change in the status of the case as result of which the case is not ready for trial."

Here, Plaintiff does not assert facts to support circumstances (1) through (5). It appears that Plaintiff is relying on subdivisions (6) and (7) by asserting facts concerning submitted discovery matters pending Court ruling, circumstances of a judge's health and legal troubles of a sister of Plaintiff's attorney, the attorney's required appearance in a trial in April outside the Bay Area, and that Plaintiff has not previously requested a continuance.

As discussed, all pending discovery matters have been briefed and submitted for ruling. Tentative ruling has been issued on discovery matters set for today, and rulings are anticipated on other submitted matters which will not affect the current trial date. A tentative ruling appointing a discovery referee has been issued today for future discovery matters, if any, that may arise pending discovery cut off or trial.

The Court also considers other factors set forth in Cal Rules of Court, Rule 3.1332, subdivision (d) and makes the following findings:

Trial is set for July 15, 2024, approximately three months from the date of this hearing.

The request for continuance is timely; there is also sufficient time for the parties to complete discovery. The discovery cut-off date has been known to the parties since November 2023 when the trial date was continued.

There was one previous continuance of the trial set for January 29, 2024, upon motion of Defendants which Plaintiff agreed was necessary.

The first continuance of trial was five and one-half months; the instant, second trial continuance if granted, would be four to six months.

It appears the problem asserted by Plaintiff for the continuance is the status of the submitted discovery matters. The submitted discovery matters are discussed above and do not affect the pending trial; future discovery matters, if any, will be handled by a discovery referee pursuant to tentative ruling.

The prejudice to Defendants inferred from opposition is that Defendants were diligent in preparing the case for trial, and Plaintiff was not, and a continuance rewards Plaintiff's lack of diligence. It is inferred that the parties will incur additional costs and attorneys' fees from a continuance of trial.

There is no evidence or argument regarding preferential trial setting.

The next available court dates for trial, currently not overset, are November 25, 2024, January 6, 2025, and January 21, 2025.

Trial counsel for Plaintiff is in trial for two weeks in April, 2024, at a location outside of the Bay Area.

Considering the circumstances and additional factors set forth in Cal Rules of Court, Rule, 3.1332, and the policy of law regarding continuances set forth in subdivision (a) of the Rule, the Court finds that the grounds asserted by Plaintiff for continuance of trial do not rise to the level of good cause for continuance of the trial.

Disposition

Plaintiff's motion to continue trial is DENIED.

Defendants shall prepare the order.

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Case name: *Chicago Title Company vs. 28th ST Villa Apts LLC*
Case no.: 20CV369138

Motion before the court

On March 14, 2024, plaintiff and cross-defendant Chicago Title Company ("Plaintiff") filed motion for discharge and request for award of attorneys' fees and costs pursuant to Code of Civil Procedure sections 386, subdivision (b), 386.5 and 386.6.

On April 3, 2024, defendant and cross-complainant Green Villa Apartments, LP ("Cross-complainant") filed opposition and on April 9, 2024, plaintiff filed reply.

Procedural Background and Summary of Contentions

Plaintiff asserts that Plaintiff is a neutral stakeholder in the complaint in interpleader filed in this action. ("Complaint"). Plaintiff is the escrow holder of funds of $300,000 which is the subject of conflicting claims of entitlement ("Disputed Funds") of defendants 28th St Villa Apts LLC, Roygbiv Real Estate Development LLC, Huijun Li, Nobel Homes LLC and Green Villa Apartments, LP ("Defendants"). Plaintiff deposited the Disputed Funds with the court for court determination of entitlement to and among Defendants. Plaintiff asserts no claim to or interest in the Disputed Funds, except for payment of attorneys' fees and costs incurred in connection with the Complaint. Plaintiff asserts that Plaintiff is entitled to an order of discharge of all liability regarding the Disputed Funds and an award of reasonable attorneys' fees to be paid from the Disputed Funds.

In opposition, Cross-complainant asserts that Plaintiff is seeking an outright dismissal from the action, and that Plaintiff's motion for summary judgment ("MSJ") of Cross-complainant's cross-complaint against Plaintiff for breach of implied contract was recently denied[2] , and therefore, Plaintiff is a party with an interest in the outcome of the litigation, and discharge of Plaintiff pursuant to the motion would conflict with Cross-complainant's claims against Plaintiff in the cross-complaint.

In reply, Plaintiff asserts that the outcome of Plaintiff's MSJ of cross-complaint has nothing to do with the Complaint in interpleader, and an order discharging Plaintiff from liability with respect to the Disputed Funds, which Plaintiff asserts no entitlement, is separate from the claims of Cross-complainant against Plaintiff under the cross-complaint. Plaintiff asserts that the motion does not seek a discharge from the entire action, and instead seeks discharge from liability as to the Disputed Funds only. Plaintiff will remain a cross-defendant in Cross-complainant's cross-action. Hence, an order of discharge relating only to the Disputed Funds pursuant to the Complaint will not conflict with findings or in any way affect the claims of Cross-complainant against Plaintiff pursuant to the cross-complaint.

Analysis, Findings and Disposition

[2] Order denying Plaintiff's MSJ of cross-complaint and in the alternative, granting Plaintiff's motion for summary adjudication of the claim for punitive damages in the cross-complaint was filed and served on the parties on April 12, 2024.

Chapter 6 of Code of Civil Procedure, section 386 et seq., sets forth procedures for an action in interpleader including discharge of a defendant who is a stakeholder (Code of Civil Procedure section 386.5) and allowance of costs and attorney fees to a party who follows the procedure set forth in section 386 or 386.5 (Code of Civil Procedure section 386.6).

The statutes discharging a party from liability and "dismissing him from *the action*"[3] and allowance of costs and attorney fees do not infer contemplation of the claims here of Cross-complainant against the Plaintiff in the cross-complaint. The motion was filed prior to the ruling denying Petitioner's MSJ on Cross-complainant's cross-complaint, and had the MSJ been granted, the granting of the instant motion would dismiss Plaintiff from the entire action. However, the MSJ was denied, and Plaintiff remains a party in the action. It is therefore unclear what a grant of the instant motion will achieve while disposition of the action is pending, other than a possible award of attorney fees and costs.

That said, the opposition does not provide authority or persuasive argument to support denial of the motion for an order of discharge under the current facts. Discharge is sought only from the complaint in interpleader, where the issue is entitlement to the Disputed Funds and Plaintiff-escrow holder makes no claim.

Accordingly, the motion for order discharging Plaintiff pursuant to the Complaint in interpleader and for discharge of liability as to the Disputed Funds only, is GRANTED.

Attorneys' fees and costs

Code of Civil Procedure section 386.6, subdivision (a), in pertinent part, provides:

> "A party to an action who follows the procedure set forth in Section 386 and 3886.5 relating to interpleader and discharge, may insert in his motion, petition, complaint, or cross-complaint a request for allowance of his costs and reasonable attorney fees incurred in such action. In ordering the discharge of such party, the court may, in its discretion, award such party his costs and reasonable attorney fees from the amount in dispute ... At the time of final judgment in the action the court may make such further provision for assumption of such costs and attorney fees by one or more of the adverse claimants as may appear proper."

Here, after consideration of the facts and claims of the parties, the Court, in the exercise of its discretion, is persuaded that the interests of justice are served by deferring Plaintiff's request for attorneys' fees and costs for determination at the time final judgment in the action is entered.

Plaintiff shall prepare the order.

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[3] Code of Civil Procedure section 386.5 *(italics* added for emphasis).

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Calendar line 18

Case Name: Gregory Gilbert, MD vs Stanford Health Care et al
Case no.: 21CV382651

Motion to Compel

On January 31, 2024, defendants The Leland Stanford Junior University, Stanford Health Care, and Andra Blomkalns, M.D ("Defendants") filed motion to compel further responses and production of documents to requests for production (set one); special interrogatories (set one); employment and general interrogatories (set one); and for sanctions.

On March 6, 2024, plaintiff Gregory H. Gilbert, M.D. ("Plaintiff") filed opposition, and on March 12, 2024, Defendants filed reply.

After consideration of the authority, evidence, and argument of counsel in the papers filed in support, opposition and reply, the Court makes the following tentative ruling:

Meet and Confer and Timeliness of motion.

The court finds that Defendants conducted sufficient meet and confer prior to filing the motion to compel.

The motion to compel is timely filed. It is not prematurely filed.

Request to continue or postpone hearing.

Plaintiff's request to postpone the hearing is DENIED.

Request for Production of Documents (Set one) ("RPD")

RPD no. 1: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 2: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 3: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 4: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 5: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 6: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 7: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 8: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 9: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 10: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 11: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 12: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 13: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 14: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 15: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 16: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 17: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 18: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 19: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 20: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 21: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 22: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 23: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 24: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 25: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 26: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 27: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 28: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 29: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 30: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 31: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 32: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 33: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 34: All objections of Plaintiff are OVERRULED, except for the objection that the request is overbroad as to the time period requested, which is SUSTAINED. The Court finds a period of five years preceding and ending with Plaintiff's end of employment (alleged September 2020 in the first amended complaint) is appropriate; Plaintiff shall serve a code-compliant response for this period, without objections, and produce all documents responsive to the request as revised.

RPD no. 35: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 36: All objections of Plaintiff are OVERRULED, except for the objection that the request is overbroad as to the time period requested, which is SUSTAINED. The Court finds a period of five years preceding and ending with Plaintiff's end of employment (alleged September 2020 in the first amended complaint) is appropriate; Plaintiff shall serve a code-compliant response for this period, without objections, and produce all documents responsive to the request as revised.

RPD no. 37: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 38: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 39: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 40: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 41: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 42: All stated objections are OVERRULED; however, the stated objections infer objection to the term "complaints" as overbroad in the context of the request. "Complaints" is not defined in the RPD in "definitions" or in RPD no. 42; the objection is SUSTAINED. No further response from Plaintiff is required.

RPD no. 43: All objections of Plaintiff are OVERRULED, except for the objection that the request is overbroad as to the time period requested, which is SUSTAINED. The Court finds a period of five years preceding and ending with Plaintiff's end of employment (alleged September 2020 in the first amended complaint) is appropriate; Plaintiff shall serve a code-compliant response for this period, without objections, and produce all documents responsive to the request as revised.

RPD no. 44: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 45: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 46: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 47: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 48: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 49: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 50: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 51: All objections of Plaintiff are OVERRULED, except for the objection that the request is overbroad as to the time period requested, which is SUSTAINED. The Court finds a period of five years preceding and ending with Plaintiff's end of employment (alleged September 2020 in the first amended complaint) is appropriate; Plaintiff shall serve a code-compliant response for this period, without objections, and produce all documents responsive to the request as revised.

RPD no. 52: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 53: The objections of Plaintiff are OVERRULED; Plaintiff shall serve a code-compliant response, without objections, and produce all documents responsive to the request.

RPD no. 54: The objection of overbroad is SUSTAINED; no further response from Plaintiff is required.

Special Interrogatories (set one) ("SI")

SI no. 1: The objections of Plaintiff are OVERRULED and do not provide a response to the SI that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

SI no. 2: The objections of Plaintiff are OVERRULED and do not provide a response to the SI that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

SI no. 3: The objections of Plaintiff are OVERRULED and do not provide a response to the SI that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

SI no. 4: The objections of Plaintiff are OVERRULED and do not provide a response to the SI that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

SI no. 5: The objections of Plaintiff are OVERRULED and do not provide a response to the SI that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

SI no. 6: The objections of Plaintiff are OVERRULED and do not provide a response to the SI that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

SI no. 7: The objections of Plaintiff are OVERRULED and do not provide a response to the SI that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

SI no. 8: The objections of Plaintiff are OVERRULED and do not provide a response to the SI that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

SI no. 9: The objections of Plaintiff are OVERRULED and do not provide a response to the SI that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

SI no. 10: The objections of Plaintiff are OVERRULED and do not provide a response to the SI that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

SI no. 11: The objections of Plaintiff are OVERRULED and do not provide a response to the SI that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

Form Interrogatories (Employment) set one ("FIE")

FIE no. 200.3: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 200.4: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 200.6: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 202.1: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 202.2: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 205.1: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 206.1: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 206.2: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 206.3: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 207.1: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 207.2: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 208.1: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 210.2: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 210.3: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 210.4: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 210.5: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 210.6: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 212.2: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 212.3: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 212.4: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 212.5: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 212.6: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 212.7: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 213.1: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 213.2: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 215.1: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIE no. 215.2: The objections of Plaintiff are OVERRULED and do not provide a response to the FIE that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

Form Interrogatories (General) set one ("FIG")

FIG no. 2.11: No definition of "INCIDENT" is provided in preliminary FIG definitions or in the FIG; objection is therefore SUSTAINED; no further response from Plaintiff is required.

FIG no. 14.2: No definition of "INCIDENT" is provided in preliminary FIG definitions or in the FIG; the objection of Plaintiff is SUSTAINED; no further response from Plaintiff is required.

FIG no. 50.1: The objections of Plaintiff are OVERRULED and do not provide a response to the FIG that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIG no. 50.2: The objections of Plaintiff are OVERRULED and do not provide a response to the FIG that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIG no. 50.3: The objections of Plaintiff are OVERRULED and do not provide a response to the FIG that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIG no. 50.4: The objections of Plaintiff are OVERRULED and do not provide a response to the FIG that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIG no. 50.5: The objections of Plaintiff are OVERRULED and do not provide a response to the FIG that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

FIG no. 50.6: The objections of Plaintiff are OVERRULED and do not provide a response to the FIG that is code-compliant; Plaintiff shall serve a code-compliant response, without objections.

Date for service responses and producing documents.

Plaintiff shall serve Defendants with responses in compliance with the above rulings for the RPD, SI, FIE and FIG, and serve documents pursuant to the rulings for the RPD, on or before May 6, 2024

Sanctions

Defendants are the prevailing parties in motion to compel, and the evidence supports a finding of abuse of the discovery process by Plaintiff and Plaintiff's counsel. The court finds the blended hourly rate of $380 per hour and hours incurred by Defendants' attorneys to prepare the motion to compel, review opposition, prepare reply and appear at hearing are reasonable, considering the motion to compel involved four separate discovery requests. Defendants' request for attorneys' fees as sanctions is GRANTED, and Plaintiff and Plaintiff's attorneys are ordered to pay to Defendants attorneys' fees of $10,070 as sanctions on or before May 16, 2024.

Plaintiff's request for attorneys' fees as sanctions is DENIED.

Defendants shall prepare the order.

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Calendar line 25

- oo0oo -

Calendar line 26

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Calendar line 27

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Calendar line 28

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Calendar line 29

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Calendar line 30

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