SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: November 14, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

Scheduling motion hearings: Please go to https://reservations.scscourt.org or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV427200	Walter James Kubon et al. v. Rosalie Guancione	Click on LINE 1 or scroll down for ruling.
LINE 2	23CV427360	Chris Volek v. Knorex, Inc. et al.	Click on LINE 2 or scroll down for ruling.
LINE 3	24CV433557	Karla M. Williams v. American Honda Motor Company, Inc.	Click on LINE 3 or scroll down for ruling in lines 3-4.
LINE 4	24CV433557	Karla M. Williams v. American Honda Motor Company, Inc.	Click on LINE 3 or scroll down for ruling in lines 3-4.
LINE 5	21CV391013	Elizabeth Gonzalez v. Rogelio Pena et al.	Click on LINE 5 or scroll down for ruling.
LINE 6	23CV411137	Ana Gabriela Torres Anguiano et al. v. Young Van Vo et al.	Motion to compel discovery responses from plaintiff Carolina Villegas Ramos: notice is proper, and the motion is unopposed. The court finds good cause to GRANT the motion, given that responses are long overdue. In addition, the court finds defendant Vo's request for $810 in monetary sanctions to be reasonable and GRANTS that request as to Villegas Ramos, as well. Vo shall prepare the order for signature.
LINE 7	23CV414970	Alma Reyes v. Kenrick Morrison Kutzler	Click on LINE 7 or scroll down for ruling.
LINE 8	23CV418998	Holly Campana v. David Dellavecchia et al.	Continued to December 17, 2024 at 9:00 a.m. Click on LINE 8 or scroll down for additional discussion.
LINE 9	23CV418998	Holly Campana v. David Dellavecchia et al.	Continued to December 17, 2024 at 9:00 a.m. Click on LINE 8 or scroll down for additional discussion.

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LINE #	CASE #	CASE TITLE	RULING
LINE 10	23CV418998	Holly Campana v. David Dellavecchia et al.	Continued to December 17, 2024 at 9:00 a.m. Click on LINE 8 or scroll down for additional discussion.
LINE 11	23CV418998	Holly Campana v. David Dellavecchia et al.	Continued to December 17, 2024 at 9:00 a.m. Click on LINE 8 or scroll down for additional discussion.
LINE 12	23CV411435	Ke Fang v. Ritula Malhotra	OFF CALENDAR
LINE 13	23CV428084	Tyghe James Mullen v. City of San Jose	Petition for relief from claim filing requirements: parties to appear. There is no proof of service of the petition in the file, and there does not appear to be any proof of service of the summons and complaint of the case as a whole. The court is inclined to find that notice is not proper.
LINE 14	24CV429388	Keith Blaine et al. v. Hiroshi Shishido et al.	Click on LINE 14 or scroll down for ruling.
LINE 15	24CV445052	In re: Stone Street Originations, LLC	Petition for transfer of payment rights: parties to appear. It is not clear to the court that notice is proper for this petition, and so the court would like to discuss the petition with the parties.

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Calendar Line 1
Case Name: *Walter James Kubon et al. v. Rosalie Guancione*
Case No.: 23CV427200

Defendant Rosalie Guancione brings the present motion for a judgment on the pleadings ("JOP motion"), arguing that the complaint of plaintiffs Walter James Kubon and Vally Kubon fails to state a "quiet title" cause of action. The Kubons did not file a timely opposition, but at a hearing on November 7, 2024 on two other motions that they had filed, the court gave them permission to file a late response. The court has now received and reviewed the response but finds that it does not adequately address the arguments contained in the motion. The court grants the JOP motion with leave to amend.

1. General Legal Standards

A JOP motion is proper when the complaint does not state facts sufficient to constitute a cause of action against the defendant. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) "The grounds for motion provided in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (Code Civ. Proc., § 438, subd. (d).) A JOP motion is the functional equivalent of a general demurrer made after the time to demur has expired. (See Code Civ. Proc., § 438; see also *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999 (*Cloud*); *Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1254 (*Shea*).) "The court accepts as true all material factual allegations, giving them a liberal construction, but does not consider conclusions of fact or law, opinions, speculation, or allegations contrary to law or judicially noticed facts. [Citations.]" (*Shea, supra*, 110 Cal.App.4th at p. 1254.)

As with a demurrer, facts appearing in exhibits attached to the complaint are given precedence over inconsistent allegations in the complaint. (See *Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505 ["[T]o the extent the factual allegations conflict with the content of the exhibits to the complaint, we rely on and accept as true the contents of the exhibits and treat as surplusage the pleader's allegations as to the legal effect of the exhibits."].) Also, just as with a demurrer, the court may not consider extrinsic evidence when ruling on the motion, but (as noted above) it may consider any matter that is subject to judicial notice. (See Code Civ. Proc., § 438, subd. (d); see also *Sykora v. State Dept. of State Hospitals* (2014) 225 Cal.App.4th 1530, 1534, citing *Cloud, supra,* 67 Cal.App.4th at p. 999 ["Presentation of extrinsic evidence . . . is not proper on a motion for judgment on the pleadings."].)

2. Request for Judicial Notice

Guancione requests that the court take judicial notice of five documents under Evidence Code section 452, subdivisions (c) and (d): an August 19, 2019 "Deed of Trust" recorded in the Santa Clara County Recorder's Office and signed by the Kubons (Exhibit A); a "Deed-in-Lieu of Foreclosure" recorded in the Santa Clara County Recorder's Office on August 20, 2019 (Exhibit B); a "Voluntary Petition" filed by the Kubons in the U.S. Bankruptcy Court (N.D. Cal. Case No. 20-51443) (Exhibit C); a copy of the docket for the bankruptcy case (N.D. Cal. Case No. 20-51443) (Exhibit D); and a "Discharge of Debtor and Final Decree" from the court in the bankruptcy case (Exhibit E).

The court grants judicial notice of Exhibits A and B under section 452, subdivision (c). The court may take judicial notice of recorded deeds, as official acts of the executive branch. (See *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-65 ["a court may take judicial notice of the fact of a document's recordation, the date the document was recorded and executed, the parties to the transaction reflected in a recorded document, and the document's legally operative language . . . [and, f]rom this, the court may deduce and rely upon the legal effect of the recorded document"], disapproved on other grounds in *Yvanona v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919.) The court grants judicial notice of Exhibits C, D, and E under section 452, subdivision (d). The court may take judicial notice of the records of "any court of record of the United States." (Evid. Code, § 452, subd. (d).)

3. Discussion

a. Sufficiency of the Allegations

Guancione argues that the allegations in the complaint fail to state a quiet title cause of action, and the court agrees. According to Exhibits A and B, of which the court has taken judicial notice, the Kubons assigned and "quitclaimed" all of their rights in the property at 560 Hobie Lane in San Jose to Guancione in August 2019. The complaint now alleges that "Defendant presented documents to the county recorder and recorded documents on Plaintiffs[']title with the county that the Defendant must know are false," but there is no indication in the complaint as to what these documents are, why they are false, when they were presented, or when the Kubons allegedly discovered that they were presented. (Complaint, ¶ 16.) The allegations are vague and conclusory, and they do not specifically address the deeds submitted by Guancione. They do not set forth any basis for relief.

This failure is particularly glaring in light of the fact that the Kubons appear to be alleging fraud against Guancione. Fraud must be pleaded with particularity, including facts that show *how*, *when*, *where*, *to whom*, and *by what means* any false representations were allegedly made. (See *Lazar v. Superior Court* (1996) 12 Cal. 4th 631, 645; see also *Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 35.) The complaint here contains no such factual allegations.

b. Statute of Limitations

Guancione also argues that the complaint is barred by the three-year statute of limitations for fraud. She notes that the deeds are dated August 2019, but plaintiffs did not file their complaint until December 8, 2023, more than four years later. The complaint contains no allegation of delayed discovery, and so it does appear to be potentially time-barred, at least on its face.

At the same time, the court finds that the application of any statute of limitations remains somewhat murky here, given the lack of particularity in the allegations in the complaint. As a result, the court reserves judgment on the statute-of-limitations argument until more particular facts (including *when* any alleged misrepresentations were made) are contained in the pleading.

c. Judicial Estoppel

Finally, Guancione argues that the Kubons' quiet title cause of action is barred by the doctrine of judicial estoppel, based on representations that the Kubons made to the U.S. Bankruptcy Court that they did *not* own the property at 560 Hobie Lane, and based on the fact that that court then relied on these representations in discharging the Kubons' Chapter 7 case. According to Guancione, these prior representations are directly inconsistent with the allegations that the Kubons are now making in this case.

The court again reserves judgment on this judicial estoppel argument, given the lack of clarity in the factual allegations of the complaint as a whole. In particular, it is entirely unclear from the complaint in this case whether the Kubons are alleging that any fraud occurred *before or after* the bankruptcy court proceedings. Until the allegations in this case are clarified, the court cannot determine whether they are "totally inconsistent" with the prior representations to the bankruptcy court.

4. Conclusion

In short, the court GRANTS the JOP motion on the ground that the allegations in the complaint are insufficient to state a cause of action. (Code Civ. Proc., 430.10, subd. (e).) Because this is the first challenge to the sufficiency of the complaint, the court grants the Kubons 20 DAYS' LEAVE TO AMEND.

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Calendar Line 2
Case Name: *Chris Volek v. Knorex, Inc. et al.*
Case No.: 23CV427360

This action was originally filed by plaintiff Chris Volek against defendants Knorex, Inc. ("Knorex") and Khar Heng Choo (together, "Defendants") on December 11, 2023. Volek alleged that Defendants charged his credit card without authorization. Knorex then filed a cross-complaint against IDFK Ad Tech, LLC ("IDFK"), White Pants Agency, LLC ("White Pants"), Dreamcatchers International, Inc. ("Dreamcatchers"), and Hairlocs, Inc. ("Hairlocs"). The complaint by Volek has now been dismissed, and Dreamcatchers and Hairlocs have also been dismissed, leaving the only remaining dispute as between Knorex and IDFK/White Pants. IDFK and White Pants (together, "Cross-Defendants") now move to quash service of summons; alternatively, they move to dismiss the action for inconvenient forum. For the reasons that follow, the court denies the motion.

I. BACKGROUND

Knorex's cross-complaint alleges that IDFK and White Pants are companies involved in online digital advertising, and that two of IDFK and White Pants' customers were Dreamcatchers and Hairlocs. IDFK (but not White Pants) entered into a "Master Services Agreement" (the "Agreement") with Knorex to license Knorex's digital marketing software—including "XPO," Knorex's "cloud-based online advertising and marketing automation software platform"—for marketing campaigns for Dreamcatchers and Hairlocs. (Cross-Complaint, ¶¶ 9, 13.) White Pants entered credit card information belonging to Dreamcatchers and Hairlocs into Knorex's billing system to pay for services under the Agreement to Dreamcatchers and Hairlocs. (*Id.* at ¶ 20.) In doing so, the cross-complaint alleges that White Pants "intended that Knorex bill that card [*i.e.*, Dreamcatchers' and Hairlocs' card] for services rendered to the Dreamcatcher Defendants by Knorex," and White Pants "intentionally asserted that Knorex was fully authorized by the card holder to charge such credit card(s)." (*Ibid*.)

Between July 28, 2023 and October 31, 2023, Knorex charged "the subject credit card(s)" a total of $156,525.48 for services to Dreamcatcher and Hairlocs under the Agreement. (Cross-Complaint, ¶ 21.) This prompted Volek to bring his original complaint against Knorex. Volek is the CEO of Dreamcatchers, Hairlocs is allegedly a "sibling entity" or "alter ego" of Dreamcatchers, and it was apparently Volek's credit card that was charged. (*Id.* at ¶¶ 8, 12, 24-25.)

Knorex alleges that IDFK and White Pants are alter egos of each other, or "affiliates" of each other, as the term is used in the Agreement. (Cross-Complaint, ¶ 14.)

Knorex's cross-complaint asserts the following causes of action against IDFK and White Pants: (1) fraud; (2) breach of contract; (3) express of contractual indemnity; (4) equitable indemnity; (5) contribution; (6) apportionment; (7) quantum meruit; and (8) declaratory relief.

II. MOTION TO QUASH SERVICE OF SUMMONS

A. General Legal Standards

California courts "may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) "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 (*Rivelli*), internal citations omitted [citing *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County* (2017) 582 U.S. 255 (*Bristol-Myers*) and *Burger King Corp. v. Rudzewicz* (1985) 417 U.S. 462, 474 (*Burger King*)].)

"To comport with the constitutional requirements of due process, a California court may assert jurisdiction over a nonresident defendant (who has not consented to suit in the forum) *only* if the defendant's minimum contacts with the forum state are 'such that the maintenance of the suit "does not offend the traditional notions of fair play and substantial justice."' The minimum contacts test ensures that 'a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts' but only 'where the contacts proximately result from actions by the defendant *himself* that create a "substantial connection" with the forum State.' Personal jurisdiction under the minimum contacts framework may be either all-purpose (also called 'general') or case-linked (also called 'specific')." (*Rivelli, supra,* at pp. 391-392, internal citations omitted, emphasis in original.)

"Under the minimum contacts test, an essential criterion in all cases is whether the quality and nature of the defendant's activity is such that it is reasonable and fair to require him to conduct his defense in that state. The substantial connection between the defendant and the forum state necessary for a finding of minimum contacts must come about *by an action of the defendant purposefully directed toward the forum state*. A defendant's physical presence in the state is not required, as long as his or her efforts were purposely directed toward residents of that state. Thus, personal jurisdiction may be exercised over a defendant who has caused an effect in the forum state by an act or omission occurring elsewhere. But there must be evidence the nonresident defendant intentionally targeted his or her conduct *at the forum state* and not just at a plaintiff who lives in that state." (*Swenberg v. dmarcian, Inc.* (2021) 68 Cal.App.5th 280, 292 ("*Swenberg*") [internal citations and quotations omitted, emphasis in original].)

Regarding foreign business entities, the "inquiry to determine general or all-purpose jurisdiction "is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,' it is whether that corporation's 'affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." (*Daimler AG v. Bauman* (2014) 571 U.S. 117, 137-138, internal citations omitted ("*Daimler AG*").) "The paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and principal place of business." (*Id.* at p. 118.)

As for "case-linked" jurisdiction: "Case-linked jurisdiction hinges on the 'relationship among the defendant, the forum, and the litigation.' It requires 'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.' Consistent with the

constraints of due process, 'the defendant's suit-related conduct must create a substantial connection with the forum State.' [¶] As expressed by the California Supreme Court, a court may exercise case-linked jurisdiction over a nonresident defendant if three requirements are met. First, the defendant must have purposefully availed himself of the privilege of conducting activities in this state, thereby invoking the benefits and protections of California's laws. Second, the claim or controversy must relate to or arise out of the defendant's forum-related contacts. Third, the exercise of jurisdiction must be fair and reasonable and should not offend notions of fair play and substantial justice. The case-linked jurisdictional analysis is intensely fact-specific." (*Rivelli, supra*, 67 Cal.App.5th at pp. 392-393, internal citations omitted [citing *Daimler AG* and *Bristol-Myers, supra*].)

"When jurisdiction is challenged by a nonresident defendant, the burden of proof is on the plaintiff to demonstrate that sufficient 'minimum contacts' exist between the defendant and the forum state to justify imposition of personal jurisdiction." (*Taylor-Rush v. Multitech Corp.* (1990) 217 Cal.App.3d 103, 112, quoting *Sibley v. Superior Court* (1976) 16 Cal.3d 442, 445.) "[T]he burden of proof is upon the plaintiff to establish the facts of jurisdiction by a preponderance of the evidence. [Citations.]" (*Evangelize China Fellowship, Inc. v. Evangelize China Fellowship, Hong Kong* (1983) 146 Cal.App.3d 440, 444.)

B. Discussion

Here, Knorex does not argue that general jurisdiction applies. Instead, it relies on the notion that this court has case-linked jurisdiction over the Cross-Defendants.

1. Purposeful Availment

As to the first requirement of the analysis—whether Cross-Defendants purposefully availed themselves of the privilege of conducting activities in California—the court finds that it is a close call but ultimately answers the question in the affirmative.

The key factors that the court relies on in reaching this conclusion are: (1) the Agreement between Knorex and IDFK states that it is to be governed by "the laws of the State of California" (Declaration of Wilson Chandra, Exhibit A, ¶ 24); (2) the Agreement provides for "services" to be performed by Knorex to IDFK and its "Affiliates" in connection with its "XPO" platform (e.g., *id.* at ¶¶ 1, 2, 3, 12, and 23), and Cross-Defendants do not dispute Knorex's claims that these services were performed for IDFK and White Pants in California; (3) the Agreement states that IDFK's "Affiliate may receive Services from Knorex" either by entering into an affiliate agreement *or* by having IDFK "remain responsible for the actions and obligations of any such Affiliate" (*id.* at ¶ 23); and (4) Knorex asserts, and Cross-Defendants do not dispute, that "Knorex and IDKF[1] have periodically entered into similar agreements for the performance of work by Knorex in the State of California for end clients other than Dreamcatchers" (*id.* at ¶ 6).

[1] There appears to be some confusion as to whether the cross-defendants' name is "IDFK Ad Tech, LLC" or "IDKF Ad Tech, LLC," a confusion that is not clarified at all by the parties' papers. (For example, the Agreement itself says "IDKF.") For now, the court will use "IDFK," based on the fact that the President of IDFK, Brian Bethel, refers to "IDFK" in his declaration. (See Declaration of Brian Bethel.)

The parties point to many other factors that do not weigh in favor of either party. For example, Knorex argues that IDFK knew that it was entering into an agreement with a California company with a Sunnyvale, California address. This fact does not impact the purposeful availment analysis. Similarly, Cross-Defendants argue: that the "services" under the Agreement consisted of "simply placing information on the internet, which was in no way limited or targeted specifically towards California" (Reply, pp. 4:21-5:8); that there is no forum selection clause in the Agreement (*id.* at p. 5:19-26); and that the services provided to IDFK and White Pants' clients (Dreamcatchers and Hairlocs) were provided outside California, because Dreamcatchers is a Georgia company, and its CEO (Volek) resided in Texas.[2] Again, these facts have no direct bearing on the purposeful availment analysis: the location of IDFK and White Pants' various "end clients" are not relevant to whether IDFK and White Pants availed themselves of the benefit of conducting business in California when they entered into the Agreement with Knorex (and, apparently, other "periodic" agreements with Knorex that involved the provision of services to various other, unnamed "end clients").

The court recognizes that the mere act of entering into a contract with a California resident or California company is not enough to find purposeful availment. (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462 (*Burger King*); *Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 572 ["[I]t is not enough for a nonresident defendant to become subject to the specific jurisdiction of this state simply by entering into a contract with a California resident."].) Similarly, the fact that the contract was to be performed in California does not automatically confer jurisdiction (*Burger King*, 471 U.S. at p. 478), and the fact that the parties agreed on California law as the governing law does not, *by itself*, subject a defendant or cross-defendant to jurisdiction. Nevertheless, taking all these facts together, along with the fact that Cross-Defendants repeatedly entered into such agreements with Knorex, tips the balance in favor of finding jurisdiction. Indeed, a choice-of-law provision is a highly relevant consideration that generally weighs in favor of finding purposeful availment. (*Id.* at pp. 480-482; see also *Stone v. Texas* (1999) 76 Cal.App.4th 1043, 1048 ["Relevant factors include prior negotiations, contemplated future consequences, the parties' course of dealings, and the contract's choice-of-law provision."] [Internal citations omitted.].) When coupled with the fact that a defendant (or cross-defendant) may have had a history of entering into such agreements that choose California law, that makes the choice-of-law provision an even weightier consideration. (See *Burger King*, 471 U.S. at p. 482 ["Although such a [choice-of-law] provision standing alone would be insufficient to confer jurisdiction, we believe that, when combined with the 20-year interdependent relationship Rudzewicz established with Burger King's Miami headquarters, it reinforced his deliberate affiliation with the forum State and the reasonable foreseeability of possible litigation there."].) That situation appears to have been the case here, given the unrebutted assertion that "Knorex and IDKF have periodically entered into similar agreements for the performance of work by Knorex in the State of California for end clients other than Dreamcatchers." (Chandra Declaration, ¶ 6.) Although this assertion is rather vague and the duration of this purported history of engaging in "periodic" agreements remains unclear, such a history does support a finding of a "deliberate affiliation with the forum [s]tate."

The court also recognizes that the Agreement appears to be of the type in which "services" from Knorex were received online by either IDFK/White Pants or IDFK/White

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[2] Hairlocs is apparently a California company.

Pants' "end clients"—meaning that there was only a limited *physical* connection to California, if any. This is compounded by the fact that the nature of the specific services remains unclear to the court, given the limited evidence submitted on this motion. The only information regarding these services is what the court can glean from the Agreement itself, which is somewhat generic. (See, e.g., Agreement (Chandra Declaration, Exhibit A), Exhibit B ["Support Services shall cover issues or questions resulting directly out of the operation of the Platform, [including] helpdesk support for problem escalation"].) In addition, it appears that Knorex negotiated and signed the agreement from California, and Cross-Defendants negotiated and signed the Agreement from Texas, so the parties' activities in executing, negotiating, and drafting the Agreement do not tilt the analysis one way or the other.

In the end, the court finds that the evidence of purposeful availment is not robust, but it is sufficient to support personal jurisdiction. As noted above, the key factors relied upon by the court are the choice-of-law clause, the performance of services under the agreement in California, and the fact that IDFK entered into multiple previous agreements (exact number unknown) for the performance of these same services from California *and also choosing California law as the governing law*.

As for White Pants, Cross-Defendants correctly note that White Pants "is not a party" to the Agreement between Knorex and IDFK. (See Memorandum, p. 5:16-17.) Nevertheless, the Agreement expressly contemplates that "Affiliates"—*i.e.*, "any entity that directly or indirectly controls, is controlled by, or is under common control with the Party"—may receive services from Knorex, so long as the Affiliate either enters into an "Affiliate Adopting Agreement" or IDFK "uses Services on behalf of its Affiliate." (Agreement, ¶¶ 1, 23.)[3] In this case, there does not appear to be any dispute that White Pants is "under common control" with IDFK, given that Brian Bethel is the President of both entities. In addition, there is no apparent dispute that White Pants received services under the Agreement on behalf of its "end clients," Dreamcatchers and Hairlocs. Indeed, the court discerns no clear distinction between IDFK and White Pants in any of Cross-Defendants' papers. They do not even appear to dispute Knorex's allegation that they are alter egos of each other. In any event, regardless of whether IDFK and White Pants are alter egos, the court finds that they are "Affiliates" under the Agreement and that White Pants availed itself of the privilege of conducting activities in California, and receiving the protections of California law, to the same extent as IDFK.

2. Relationship to Forum-Related Contacts

"Case-linked jurisdiction . . . requires a showing not only that the defendant '"purposefully directed"' its activities at the forum but also that 'the litigation results from alleged injuries that "arise out of or relate to" those activities.' [Citation.] There must be 'a connection between the forum and the specific claims at issue.' [Citation.] 'If the operative facts of the allegations of the complaint do not relate to the [nonresident's] contacts in this state, then the cause of action does not arise from that contact such that California courts may exercise specific jurisdiction.' [Citation.]" (*Rivelli, supra*, 67 Cal.App.5th at p. 399.)

[3] The court disagrees with Cross-Defendants' interpretation of the Agreement that an Affiliate Adoption Agreement "is clearly necessitated by the MSA to subject White Pants to the provisions of the MSA." (Reply, p. 6:11-13.) Cross-Defendants appears to be reading Section 23(a) of the Agreement to the exclusion of Section 23(b).

Here, the court finds that the causes of action in the cross-complaint relate directly to the Agreement between the cross-parties, including not only the "services" provided under the Agreement, but also the "Indemnification" that each contracting cross-party agreed to provide to the other in the event of any claims or suits. (See Agreement, ¶ 18.) Thus, the claims here arise directly from the forum-related activities (the Agreement), and the second requirement for case-linked jurisdiction is met.

3. Fundamental Fairness

Finally, the court finds that the exercise of jurisdiction here would not be unreasonable and would "not offend notions of fair play and substantial justice." (*Rivelli, supra*, 67 Cal.App.5th at pp. 392-393.) As noted above, IDFK agreed to the application of California law to govern the Agreement, and it apparently agreed to the same in previous similar agreements with Knorex. Moreover, IDFK agreed to an indemnification provision in which each party would "defend, protect, indemnify and hold the other party . . . harmless from and against any liability, loss, cost, threat, suit, demand, claim, and expense including, but not limited to, attorney's fees and court costs or damages to property or person . . . ." (Agreement, ¶ 18 [all caps removed].) Thus, IDFK expressly acknowledged the possibility that Knorex would get sued in California by one of IDFK's or White Pants' "end clients," and then IDFK (or its affiliate, White Pants) would then be obligated to defend and/or indemnify Knorex in California courts—which is precisely the situation presented by the original allegations in this case by Volek. The fact that the end clients in this case (Dreamcatchers/Volek) have now resolved their dispute with Knorex does not suddenly nullify this obligation. Under these circumstances, the court is hard-pressed to find any unfairness or unreasonableness in exercising jurisdiction over Cross-Defendants.

The court finds that all three requirements for case-specific jurisdiction have been met and therefore denies Cross-Defendants' motion to quash.

III. MOTION TO DISMISS FOR INCONVENIENT FORUM

A motion to dismiss (or stay) an action based on the inconvenient forum doctrine "allows a court to decline to exercise jurisdiction where it finds that it is more appropriate and equitable to try the action elsewhere." (*Dendy v. MGM Grand Hotels, Inc.* (1982) 137 Cal.App.3d 457, 460.) It is to "be applied sparingly," as the plaintiff's (or cross-complainant's) "choice of forum should be respected unless equity weighs strongly in favor of the defendant." (*Ibid.*; see also Code Civ. Proc., § 410.30 [focusing on "the interest of substantial justice"].)

Under the relevant authorities, there are numerous factors that the court may consider in ruling on the motion. (*Great Northern Railway Co. v. Superior Court* (1970) 12 Cal.App.3d 105, 112-115 [setting forth 25 factors].) In *Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751, the California Supreme Court distilled the relevant analysis as follows:

> In determining whether to grant a motion based on forum non conveniens, a court must first determine whether the alternate forum is a "suitable" place for trial. If it is, the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in California. The private interest factors are those that make trial and the

> enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation.

In this case, Cross-Defendants advance Texas as a "suitable" alternative forum, and the court has been given no reason to doubt that the Texas courts are indeed capable of adjudicating the cross-complaint. That is where the analysis ends, however, as Cross-Defendants have failed to advance any evidence to support application of either the "private interest factors" or the "public interest factors" that must inform the court's decision. Cross-Defendants assert that "substantially all of the business records and persons involved in these transactions" are in Texas rather than California (Memorandum, p. 6:8-9), but then they fail to submit any competent evidence to support this conclusory attorney argument. By contrast, Knorex has submitted a declaration identifying various witnesses and documents that are located in California. (See Chandra Declaration, ¶¶ 7-9.) Moreover, as already discussed above, the Agreement here has a California choice-of-law clause and *no* forum selection clause, which means that the public interest factors—including California's interest in deciding cases that apply its own law—weigh against having a Texas court decide this dispute.

In the end, the court finds that litigating this case in California would be no more inconvenient for IDFK and White Pants and their witnesses than litigating this case in Texas would be for Knorex and its witnesses. In view of such a situation, the private interest factors are essentially a wash.

Cross-Defendants have failed to discharge their burden of showing that the interest of justice supports having this case heard in Texas rather than California. The court denies Cross-Defendants' motion to dismiss under Code of Civil Procedure section 410.30.

IV. CONCLUSION

The court DENIES Cross-Defendants' motion to quash and their alternative motion to dismiss based on an inconvenient forum.

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Calendar Lines 3-4
Case Name: *Karla M. Williams v. American Honda Motor Company, Inc.*
Case No.: 24CV433557

This is a "lemon law" action under the Song-Beverly Consumer Warranty Act by plaintiff Karla Williams against defendant American Honda Motor Company, Inc. ("Honda") and Doe defendants. The lawsuit is based on Williams's purchase of a 2023 Honda Accord. As part of the purchase, Williams alleges that she entered into a written warranty contract with Honda. Williams also alleges that the vehicle suffered from sensing defects, engine defects, and electrical defects.

Williams filed her original and still-operative complaint "for violation of statutory obligations" on March 20, 2024. The complaint states five causes of action: (1) Violation of Civil Code Section 1793.2, Subdivision (d); (2) Violation of Civil Code Section 1793.2, Subdivision (b); (3) Violation of Civil Code Section 1793.2, Subdivision (a)(3); (4) Breach of the Implied Warranty of Merchantability; and (5) Fraudulent Inducement-Concealment. Attached to the complaint as Exhibit A is a copy of the warranty contract.

Honda filed a demurrer to the complaint's fifth cause of action on May 22, 2024 that was set for hearing on September 10, 2024. Rather than oppose this demurrer, Williams attempted to file a first amended complaint ("FAC") on July 19, 2024, but this was apparently rejected by the court's clerk's office. The complaint therefore remains the operative pleading.

Neither side appears to have noticed that the proposed FAC was not accepted for filing, as Honda re-filed a demurrer to the FAC's fifth cause of action, as well as a motion to strike portions of the FAC, on August 19, 2024.[4] Honda also filed a notice of withdrawal of its demurrer to the original complaint on August 21, 2024. Williams, for her part, has now filed oppositions to the demurrer and motion to strike, focused on the FAC, without apparently ever confirming that the FAC had been accepted for filing.

Because the FAC is not filed, Honda's demurrer to the FAC and motion to strike portions of the FAC must be overruled and denied, respectively. This ruling is without prejudice to Honda's bringing a timely pleading challenge to the FAC once it is actually filed.

The court does note that one of the stated basis for Honda's demurrer to the FAC is that Williams' fifth cause of action in the FAC is barred by the economic loss rule. (*This basis is contained in the notice of demurrer but not actually discussed in the supporting memorandum*.) In any event, this argument is incorrect as a matter of law. (See *Rattagan v. Uber Technologies, Inc*. (2024) 17 Cal.5th 1, 38 ["the economic loss rule does not apply to limit recovery for intentional tort claims like fraud"].)

The demurrer is OVERRULED; the motion to strike is DENIED; both without prejudice.

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[4] Honda did not file the actual notice of demurrer and demurrer until August 28, 2024.

Calendar Line 5
Case Name: *Elizabeth Gonzalez v. Rogelio Pena et al.*
Case No.: 21CV391013

This is the third discovery motion in a row in which the parties have not communicated adequately in advance and have each taken extreme positions.

On the one hand, plaintiff Elizabeth Gonzalez is entitled to take the personal deposition of (now) third-party David Paolinelli, even if he was previously deposed as a PMK witness for defendant Piazza's Fine Foods, Inc. ("Piazza's"). On the other hand, Piazza's and Paolinelli are correct that Gonzalez inexplicably delayed in serving a subpoena for his testimony—by essentially a full year—and in bringing this motion as an ex parte application only two months before the discovery cutoff.

This dispute probably could have been obviated if, at the time of Paolinelli's PMK deposition testimony, the parties had agreed *in advance* that Paolinelli could also be deposed without restriction in his personal capacity. Piazza's and Paolinelli now argue, after the fact, that they did not restrict Gonzalez in any way in the areas of questioning allowed at the PMK deposition, but there is no showing that this was the mutual understanding of the parties at the time. It would have been a far better practice to agree to this in advance and to memorialize it.

In the absence of any evidence of such an agreement, the court will GRANT the motion IN PART and order Paolinelli to sit for a deposition in his personal capacity. At the same time, because this motion has been brought so late in the case, because Paolinelli was already deposed as a PMK witness for five hours, and because the trial is now less than eight weeks away, the court restricts the deposition to **two hours** on the record (*i.e.*, not including breaks or any discussions off the record).

In addition, the court DENIES Gonzalez's request for monetary sanctions.

It is so ordered.

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Calendar Line 7
Case Name: *Alma Reyes v. Kenrick Morrison Kutzler*
Case No.: 23CV414970

This motion presents a simple illustration of the wrong way to take a deposition, and the wrong way to defend one. Plaintiff Alma Reyes moves to compel defendant Kenrick Morrison Kutzler to answer questions that he did not answer at his deposition on June 11, 2024. The questions were by-and-large objectionable and poorly phrased, asking Kutzler for his "opinions" regarding the auto accident at issue in this case, among other improper areas of inquiry. Rather than object and allow the witness to answer the questions, Kutzler's counsel instructed him not to answer them on the ground that they were not relevant or reasonably calculated to lead to the discovery of admissible evidence. This, too, was completely improper—and in many instances, it was the wrong objection that was articulated.

Although counsel for Kutzler should *not* have instructed him to refrain from answering questions that sought improper or irrelevant "opinions" or were unduly argumentative—none of these questions sought privileged, confidential, or private information—the court has reviewed the entire deposition transcript (attached to the declaration of K. Anderson Franco) and finds that counsel for Reyes had a sufficient opportunity to question the witness about the accident at issue. The court finds that the questions that Kutzler did not answer have no evidentiary value and would not be admissible for any purpose at trial or in a pretrial motion. These include questions about Kutzler's "opinions" regarding the car crash, whether the lawsuit is frivolous, whether it is necessary or important to drive safely or with caution, and whether the police considered Kutzler to be at fault. Compelling answers to these questions would be an utter waste of time.

Thus, even though defense counsel improperly instructed her witness, there is nothing more to be gained from a further deposition of Kutzler.

The motion is DENIED.

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Calendar Lines 8-11
Case Name: *Holly Campana v. David Dellavecchia et al.*
Case No.: 23CV418998

Plaintiff Holly Campana has brought four discovery motions against defendant David Dellavecchia ("Dellavecchia"). According to the motions, Dellavecchia did not provide any responses to form interrogatories, special interrogatories, requests for admissions, or document inspection demands, even though responses were due in mid-May 2024. These motions were originally calendared for a hearing on October 1, 2024, but the court mistakenly took them off calendar, based on confusion with similar motions filed by Campana against defendant Ruth Dellavecchia (which were properly taken off calendar). At the October 1, 2024 hearing, both sides appeared, and the court continued the hearing on the motions to November 14, 2024. In the meantime, the court urged Dellavecchia to provide written responses to the discovery requests, or at a minimum, to provide a response to the motions. Counsel for Campana indicated that she would take the motions off calendar if Dellavecchia provided written responses.

The parties returned for a case management conference on November 5, 2024, and the court reminded Dellavecchia about the pending discovery motions.

On November 13, 2024 (the eve of the hearing), the court received a declaration from counsel for Campana (apparently filed at the end of the day on November 12, 2024), stating that partial discovery responses had been received on November 11, 2024, and that the parties were continuing to meet and confer regarding discovery, with a further extension to Dellavecchia to provide more complete responses by the end of November. Campana therefore requested a further continuance of the hearing to sometime in December.

The court ultimately finds good cause to continue the hearing to **December 17, 2024 at 9:00 a.m. in Department 10**. (This date was already reserved for a different discovery motion in this case, which is now apparently being taken off calendar.)

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Calendar Line 14
Case Name: *Keith Blaine et al. v. Hiroshi Shishido et al.*
Case No.: 24CV429388

This matter previously came before the court in the form of a special motion to strike under Code of Civil Procedure section 425.16—*i.e.*, an "anti-SLAPP motion"—that plaintiffs Keith Blaine and Megan Blaine filed against the cross-complaint of Hiroshi Shishido and Nazila Shishido. On June 20, 2024, this court determined that the anti-SLAPP motion was moot, because the Shishidos had withdrawn the five causes of action (the fourth through eighth) that were the target of the Blaines' motion. The court also found that the Blaines' request for attorney's fees was premature but "retain[ed] jurisdiction to consider whether cross-defendants are entitled to attorney's fees and costs incurred in bringing the motion." (Order, p. 5:4-9.)[5]

The Blaines have now brought their motion for attorney's fees, which the Shishidos oppose. For the reasons that follow, the court grants the motion in part.

I. BACKGROUND

As noted in the court's prior order, this is a dispute between neighbors in Los Gatos, California. On January 17, 2024, the Blaines brought suit against the Shishidos over the removal of trees allegedly located on the Blaines' property. The complaint states causes of action for willful and malicious damage to timber and trespass.

The Shishidos answered the complaint and filed a cross-complaint on February 29, 2024. The cross-complaint initially alleged eight causes of action against the Blaines and cross-defendant Justin Moorland, who resided at the Blaines' property. The eight causes of action were: (1) Quiet Title to Express Easement (against the Blaines); (2) Quiet Title to Prescriptive Easement (against the Blaines); (3) Quiet Title to Prescriptive Easement (against the Blaines); (4) Nuisance (against all cross-defendants); (5) Trespass (against all cross-defendants); (6) Invasion of Privacy (against all cross-defendants); (7) Negligent Infliction of Emotional Distress (against all cross-defendants); and (8) Intentional Infliction of Emotional Distress (against all cross-defendants). The fourth through eighth causes of action were based in part on allegations that the Blaines have made "patently false allegations" about the Shishidos cutting down trees.

On April 2, 2024, the Blaines and Moorland filed their anti-SLAPP motion as to the fourth through eighth causes of action in the cross-complaint. The notice of motion stated, in part, that the Blaines and Moorland "request that the Court grant the Anti-SLAPP motion in its entirety, order all of the SLAPP claims stricken, and order that Plaintiff pay Defendant's costs and attorney fees." (April 2, 2024 Notice of Motion, p. 5:21-22.) Among other things, the supporting memorandum stated that "[a]ttorneys fees should be awarded to the Cross-Defendants, which will be brought on noticed motion after a favorable ruling on this motion." (April 2, 2024 Memorandum, p. 13:7-8.)

On June 4, 2024, before any opposition to the special motion to strike was due, the Shishidos filed two dismissals. The first dismissed the fourth through eighth causes of action

[5] The court takes judicial notice of its June 20, 2024 order on its own motion.

in the cross-complaint and the second dismissed Moorland as a cross-defendant. The dismissals removed all of the targets of the anti-SLAPP motion.

II. GENERAL LEGAL STANDARDS

A. Motion for Attorney's Fees

Because the court found that the anti-SLAPP motion was moot, it did not make any determination regarding the merits of that motion. Nevertheless, because the trial court retains jurisdiction to "entertain a motion brought by [cross-]defendants for attorney fees and costs" (*Law Offices of Andrew L. Ellis v. Yang* (2009) 178 Cal.App.4th 869, 876, 881), the court must consider the merits of the anti-SLAPP motion to determine if the cross-defendant would have prevailed and would have been awarded fees and costs for the motion. (*Dickinson v. Cosby* (2017) 17 Cal.App.5th 655, 679; *Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1456-1457.)

The "prevailing defendant[s]" on a special motion to strike "shall be entitled" to recover their attorney's fees and costs. (Code Civ. Proc., § 425.16(c).) The purpose of this fee-shifting provision is both to discourage meritless lawsuits and to provide financial relief to the SLAPP lawsuit victim. "[A]ny SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.) Code of Civil Procedure section 425.16, subdivision (c), is ambiguous as to what "fees and costs" are recoverable, but legislative history shows that it was intended to allow only fees and costs incurred on the motion to strike itself and not the entire litigation. (*Lafayette Morehouse, Inc. v. Chronicle Pub. Co.* (1995) 39 Cal.App.4th 1379, 1383; see also *Platypus Wear, Inc. v. Goldberg* (2008) 166 Cal.App.4th 772 [prevailing defendant may recover attorney's fees and costs only on the anti-SLAPP motion, not the entire suit]).

B. Anti-SLAPP Motion

Courts evaluate anti-SLAPP motions using a two-step analysis. (*Country Side Villas Homeowners Assn. v. Ivie* (2011) 193 Cal.App.4th 1110, 1116.) "First, the moving defendant must identify 'all allegations of protected activity' and show that the challenged claim arises from that activity. [Citations.]" (*Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924, 934.) "Second, if the defendant makes such a showing, the 'burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated.' [Citation.] Without resolving evidentiary conflicts, the court determines 'whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment.' [Citation.]" (*Ibid.*)

1. First Step: Protected Activity

"A defendant meets his or her burden on the first step of the anti-SLAPP analysis by demonstrating the acts underlying the plaintiff's cause of action fall within one of the four categories spelled out in [Code of Civil Procedure] section 425.16, subdivision (e). [Citations.]" (*Collier v. Harris* (2015) 240 Cal.App.4th 41, 50-51.) Examples of protected speech include:

> (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 made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) 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.

(Code Civ. Proc., § 425.16, subd. (e).)

"In deciding whether the 'arising from' requirement is met, a court considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.' [Citations.]" (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 670.)

2. Second Step: Probability of Prevailing

The plaintiff meets its burden of showing a probability of prevailing by demonstrating "'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.' [Citations.]" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291 (*Soukup*), quoting *Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548].) This "probability of prevailing" standard is similar to the standard governing a motion for summary judgment in that it is the plaintiff's burden to make a prima facie showing of facts that would support a judgment in the plaintiff's favor. (See *Taus v. Loftus* (2007) 40 Cal.4th 683, 714.) Stated differently, the "plaintiff need only establish that his or her claim has 'minimal merit' [citation] to avoid being stricken as a SLAPP. [Citation.]" (*Soukup, supra,* 39 Cal.4th at p. 291.)

A plaintiff must show that there is admissible evidence that, if credited, would be sufficient to sustain a favorable judgment. (See *McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 108.) While the burden on the second prong belongs to the plaintiff, in determining whether a party has established a probability of prevailing on the merits of his or her causes of action, a court considers not only the substantive merits of those causes of action, but also all defenses available to them. (See *Traditional Cat Assn., Inc. v. Gilbreath* (2004) 118 Cal.App.4th 392, 398.) Affidavits or declarations not based on personal knowledge, or that contain hearsay or impermissible opinions, or that are argumentative, speculative or conclusory, are insufficient to show a "probability" that the plaintiff will prevail. (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 26.)

III. DISCUSSION

A. Merits of the Anti-SLAPP Motion

1. Protected Activity

As an initial matter, the court notes that the Shishidos' opposition briefs—both in response to the present motion and in response to the prior anti-SLAPP motion—do not appear to address the first step of the anti-SLAPP analysis at all. Instead, the Shishidos jump straight to the second step—their probability of prevailing on the merits of the fourth through eighth

causes of action in the cross-complaint, including whether the litigation privilege (Civil Code section 47) properly applies to bar their claims.[6]

In any event, the court finds that the allegations of the now-dismissed fourth through eighth causes of action contained allegations of both protected activity and unprotected activity—in other words, they were "mixed causes of action" under *Baral v. Schnitt* (2016) 1 Cal.5th 376, 381 (*Baral*). In *Baral*, the Supreme Court held that a plaintiff (or cross-complainant) cannot defeat a special motion to strike based on the probability of prevailing on *part* of a cause of action: the plaintiff must show that it would prevail on each cause of action that includes allegations of protected activity. Here, the fourth through eighth causes of action were premised on allegations that the Blaines engaged in behavior that is not protected under section 425.16, subdivision (e)—*e.g.*, "[b]locking access" to a driveway and "[b]ullying and intimidating" contractors employed by the Shishidos (Cross-Complaint, ¶ 31)—as well as behavior that is indisputably protected under section 425.16, subdivision (e)—*e.g.*, "[m]aking meritless claims of code violations to the Town of Los Gatos" and "[m]aking patently false allegations [*in this civil case*] that Cross-Complainants cut down Blaine Cross-Defendants' trees" (*ibid.*).

The Shishidos offer no argument whatsoever in their oppositions in support of the notion that what they alleged in the fourth through eighth causes of action constituted unprotected activity, much less that the entirety of it related to unprotected activity.

2. Probability of Prevailing

As for the second step of the anti-SLAPP analysis, the Shishidos focus on their likelihood of prevailing on some, but not all, of the allegations in the fourth through eighth causes of action. For example, they contend that they are likely to prevail on the allegations that Megan Blaine "flipped the bird" at Nazila Shishido, that the Blaines took unauthorized photos and videos of the Shishidos, that Justin Moorland pointed binoculars at Nazila Shishido, and that the Blaines bullied and harassed the Shishidos' former gardener. (Opposition to Motion for Attorney's Fees, pp. 3:1-4:17.) They also argue that these allegations, as well as the allegation that the Blaines knowingly made a false police report about the Shishidos, do not relate to privileged conduct under Civil Code section 47. (*Id.* at pp. 4:18-5:26.)

Even if this is all true, it ignores the fact that these causes of action also complain of conduct that clearly falls within the scope of the litigation privilege. That includes the Shishido's allegations that the Blaines made "patently false allegations" *in this civil case* and that the Blaines made "meritless claims of code violations to the Town of Los Gatos." (Cross-Complaint, ¶¶ 37, 47, 51.)[7] These allegations are not "merely incidental" or "collateral" to the cross-complaint (*Baral, supra*, 1 Cal.5th at p. 394); rather, they go to the heart of the present dispute between the parties, and they are repeated multiple times in the causes of action in the cross-complaint. As the Supreme Court has instructed, "when the [cross-]defendant seeks to

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[6] The Shishidos also raise a number of procedural objections to the original anti-SLAPP motion, which the court rejected in its April 20, 2024 order. (See Order, p. 3, fn. 1.) The court further rejects the Shishidos' argument that the earlier motion suffered from a material violation of the California Rules of Court. It did not.

[7] The Blaines argue that much of the other complained-of conduct in the fourth through eighth causes of action is protected under the "Noerr-Pennington Doctrine." Because the court does not need to reach this issue in order to decide the motion for attorney's fees, the court declines to do so.

strike particular claims supported by allegations of protected activity that appear alongside other claims within a single cause of action, *the motion cannot be defeated by showing a likelihood of success on the claims arising from unprotected activity*." (*Id.* at 392 [emphasis added].) That is essentially what the Shishidos have done here: they have attempted to show a likelihood of success on claims that relate to unprotected activity (*e.g.*, pointing binoculars) while ignoring the claims that relate to clearly protected activity (*e.g.*, pursuing this lawsuit).

In view of the foregoing, the court finds that the Blaines would have prevailed on the anti-SLAPP motion had the Shishidos not withdrawn the targeted causes of action before the hearing on the motion.[8]

B. Entitlement to Attorney's Fees

The Blaines seek an award of $77,678.29 in fees. They note that the fees would have been $44,960.86 if "the Shishidos had stopped after the Motion was filed," but instead "they continued to fight."

The Shishidos take exception to some of the amounts as not having been incurred directly in connection with the anti-SLAPP motion, and the court agrees in part. Although the Blaines argue that counsel was retained "only to handle the Anti-SLAPP motion" (Reply, p. 7:18-19; see also Memorandum, p. 10, fn. 1), that does not mean that everything that plaintiff's counsel did in representing his clients was a part of the motion itself. Indeed, it is apparent that counsel engaged in other distinct (but related) tasks, such as advising the Blaines regarding "settlement strategy," preparing a conflict-of-interest waiver for Justin Moorland, and handling discovery requests. (Declaration of Douglas Scott Maynard, Exhibit C.) As the Shishidos note, some of the time entries attached to counsel's declaration are "block billed" work, and so it is unclear how much of the two entries on 3/14/24 (for example) were for "settlement strategy" versus the "Anti-SLAPP Motion." (Maynard Declaration, Exhibit C, p. 2.)

The court exercises its discretion to reduce the amount of requested fees by the following amounts:

- One of the two entries on 3/14/24 ($402.50)
- One entry on 3/18/24 ($375.00)
- Two entries on 3/19/24 ($172.50 + $295.00)
- One entry on 3/21/24 ($187.50)
- One entry on 3/22/24 ($125.00)

[8] Relying on *Coltrain v. Shewalter* (1988) 66 Cal.App.4th 94, 107, the Blaines also argue that the Shishidos' voluntary dismissal of the targeted causes of action created "a presumption . . . that defendants were the prevailing parties." That may well be the case, but rather than rely heavily on any such presumption—which this court has seen only in dictum in this particular decision—the court determines that the Blaines would have prevailed on the merits in any event.

- One of two entries on 3/26/24 ($59.00)
- One of two entries on 3/28/24 ($125.00)
- One entry on 4/2/24 ($88.50) (the court agrees with the Shishidos that this is excessive billing for clerical work)
- One entry on 4/3/24 ($88.50) (the court agrees with the Shishidos that this is excessive billing for clerical work)
- One entry on 4/10/24 ($187.50)
- One entry on 6/12/24 ($88.50) (the court agrees with the Shishidos that this is excessive billing for clerical work)

The court therefore reduces the fee award by $2,194.50. Apart from the foregoing reductions, the Shishidos identify no other specific time entries that were obviously unrelated to legal work for the anti-SLAPP motion and motion for attorney's fees.

In addition, the Shishidos do not object to the hourly rates of opposing counsel. The court finds that counsel's charged rates were reasonable.

Finally, the court finds that the amount of time expended on the anti-SLAPP motion and motion for attorney's fees was not unreasonable. Although $75,483.79 is a considerable sum for an anti-SLAPP motion, it is quite apparent to the court that this is a bitter and unseemly dispute between neighbors, and this acrimony has resulted in extreme and unreasonable positions in litigation. Many issues are being disputed that would likely have been resolved between more reasonable parties.

The court GRANTS the motion IN PART and orders the Shishidos to pay $75,483.79 in attorney's fees for having brought SLAPP causes of action in their cross-complaint.

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