

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

Department 20, Honorable Socrates Peter Manoukian, Presiding

Courtroom Clerk: Hien-Trang Tran-Thien

191 North First Street, San Jose, CA 95113

Telephone: 408.882.2320

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

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

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

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

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

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

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DATE: Tuesday, 17 October 2023

TIME: 9:00 A.M.

**Please note that for the indefinite future, all hearings will be conducted remotely as the Old
Courthouse will be closed. This Department prefers that litigants use Zoom for Law and
Motion and for Case Management Calendars. Please use the Zoom link below.**

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

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

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

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

One tap mobile
+16699006833,,961 4442 7712#

APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building.

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

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

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

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

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

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

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

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

CIVILITY.

In the 48 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

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

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

COURT REPORTERS.

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

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if

any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

PROTOCOLS DURING THE HEARINGS.

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

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

TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the “Control” key and click. If you see last week’s tentative rulings, you have checked prior to the posting of the current week’s tentative rulings. You will need to either “REFRESH” or “QUIT” your browser and reopen it. Another suggestion is to “clean the cache” of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

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

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	22CV402201	Wells Fargo Bank, N.A. vs Mayra Morales et al	Motion of Plaintiff Wells Fargo Bank N.A. for Judgment on the Pleadings. Defendant did not file opposition to this motion. The Motion is GRANTED plaintiff is to prepare an appropriate judgment and presented to this Court for execution. The court trial currently set for 27 November 2023 at 8:46 AM in Department 1 is VACATED. The matter will be set for dismissal review on 08 February 2024 at 10:00 AM in Department 20. No formal TENTATIVE RULING.
LINE 2	23CV416910	Angela Teigen vs. Thor B. Teigen	Defendant’s Special Motion to Strike (Code of Civil Procedure, § 425.16). Thor’s special motion to strike by defendant is GRANTED. Inasmuch as the imposition of fees to the prevailing party is a requirement, plaintiff is ordered to pay Thor’s attorney’s fees pursuant to <i>Baral v. Schnitt</i> (2016) 1 Cal.5th 376, 396 and Code of Civil Procedure , § 425.16(c)(1). Counsel for defendant should submit an appropriate motion for attorney’s fees. Thor’s demurrer to the complaint is SUSTAINED WITHOUT LEAVE TO AMEND. SEE ATTACHED TENTATIVE RULING.
LINE 3	23CV416910	Angela Teigen vs. Thor B. Teigen	Defendant’s Demurrer to the Complaint. SEE LINE #2.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 4	22CV401041	UHG I, LLC vs. Anthony Tran	<p>Motion of Defendant to Compel Third-Party Citibank, N.A. to Appear and Testify at Deposition and Produce Documents and Request for Monetary Sanctions.</p> <p>Plaintiff/Cross-Defendant and/or Third-Party Citibank, N.A. or their counsel have apparently not filed opposition to this motion. Is this a concession that the motion is well taken?</p> <p>NO TENTATIVE RULING. The parties are invited to use the Tentative Ruling Protocol if they wish to appear and argue the merits of the motion.</p>
LINE 5	19CV357842	Tejinder Singh vs. Chung Lee, et al.	<p>Motion of Plaintiff for Leave to File a Cross-Complaint Against Sunmeet Anand and .</p> <p>This Court finds that it has previously denied the motion of plaintiff (filed on 30 March 2023, opposed by Sunmeet Anand and WDB Realty and Finance, Inc. on 23 April 2023) to file a cross-complaint against Mr. Anand and WDB pursuant to its order of 02 June 2023.</p> <p>Additionally, pursuant to Code of Civil Procedure, § 1008, this Court further believes it lacks jurisdiction to reconsider that order.</p> <p>Good cause appearing, the motion is DENIED.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 6	19CV360642	Jennifer Bartolo vs. State of California Department Of Transportation	<p>Motion of Plaintiff-in-Intervention America Zurich Ins. Co./ Tri-Star Risk Management for Leave to File a Complaint in Intervention.</p> <p>No party has filed opposition to this motion.</p> <p>The application is GRANTED (Code of Civil Procedure, § 387; Labor Code, § 3852.) Intervenor shall present a copy of the complaint-in-intervention to the clerk for filing and then serve the proposed defendants will in be given 30 days from the date of service within which to RESPOND.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 7	22CV406184	Richard Gohl vs. Susan Bereczky et al.	<p>Motion of Defendant to Disqualify Counsel for Plaintiff.</p> <p>Plaintiff/or his counsel has not filed opposition to this motion. Does plaintiff or counsel concede that the motion is well taken?</p> <p>NO TENTATIVE RULING. The parties are invited to use the Tentative Ruling Protocol if they wish to appear and argue the merits of the motion.</p>
LINE 8	19CV357842	Tejinder Singh vs. Chung Lee, et al.	Trial Setting Conference.
LINE 9			SEE ATTACHED TENTATIVE RULING.
LINE 10			SEE ATTACHED TENTATIVE RULING.
LINE 11			SEE ATTACHED TENTATIVE RULING.
LINE 12			SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 13			SEE ATTACHED TENTATIVE RULING.
LINE 14			SEE ATTACHED TENTATIVE RULING.
LINE 15			SEE ATTACHED TENTATIVE RULING.
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LINE 28			SEE ATTACHED TENTATIVE RULING.
LINE 29			SEE ATTACHED TENTATIVE RULING.
LINE 30			SEE ATTACHED TENTATIVE RULING.

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Calendar Line 1

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Calendar Line 2

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
DEPARTMENT 20**

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(For Clerk's Use Only)

CASE NO.: 23CV416910

Angela Teigen vs. Thor B. Teigen

DATE: 17 October 2023

TIME: 9:00 am

LINE NUMBER: 02, 03

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 16 October 2023. Please specify the issue to be contested when calling the Court and Counsel.

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Motions of Defendant to

- 1. Strike All Allegations in Case Number 20PR187701
(Code of Civil Procedure, § 425.16) and
For an Order Compelling Plaintiff to Pay Attorney's Fees;**
- 2. Demurrer to Plaintiff's Complaint.**

I. Statement of Facts.

Plaintiff filed the complaint in this case on 06 June 2023. The complaint has 29 pages of text and 46 pages of exhibits.

These parties have a long history arising out of Probate Case Number 20PR187701.

Ulf Teigen and Mona Teigen had three adult children: Thor Teigen ("Thor"), Angela A. Teigen ("Angela") and Kristen S. Teigen ("Kristen").

In 1991, Ulf¹ and Mona created The Ulf T. And Mona A. Teigen 1991 Family Trust ("Trust") naming themselves as the trustees and the beneficiaries. Ulf and Mona transferred to the Trust certain accounts and properties, including their house at 771 Sunshine Drive, Los Altos, CA 94024 ("the Los Altos house").

In 2012, Kristen and Angela moved to the Los Altos house.

In August 2015, Ulf and Mona moved to Aegis Living Fremont ("Aegis"), an assisted care facility.

In November 2015, Ulf executed a durable power of attorney in which he appointed Thor and Kristen as his attorneys-in-fact.

In January 2017, Mona passed away and Ulf became the sole trustee of the Trust. Ulf continues living at Aegis. He is 91 years old³ and has Alzheimer's disease.

In February of 2020, Thor began probate proceedings on behalf of his father alleging that his sisters engaged in financial abuse of Ulf. After an evidentiary hearing, the Probate Court issued an order on 30 November 2022 in which Kristen's authority to act as an attorney-in-fact was revoked pursuant to **Probate Code, § 4541(d.)**

¹ This Court intends no disrespect by the use of the first names of the parties.

Recently plaintiff filed on 06 June 2023 a motion for “Emergency Injunctive Relief” seeking to prevent defendant from conducting and “illegal eviction” from 771 Sunshine Drive, Los Altos, CA. She also seeks to enjoin defendant from removing property and entering the Los Altos residents.

Following a hearing on 23 August 2023 and in an order filed on 18 September 2023, Judge Kuhnle denied the application of plaintiff for the preliminary injunction, finding “there is not a probability of validity of Plaintiff’s claims accounting for the durable Power Of Attorney held by Defendant and the laws governing tenancy at will.”

II. Defendant’s Motions.

In this present action, Angela contends that Thor’s papers contain many errors in fact, errors of omission, and blatant untruths and that there is no evidence for the claims.

Thor, in turn, presents this special motion to strike pursuant to **Code of Civil Procedure**, § 425.16 as well as demurs to the complaint.

Plaintiff has filed no opposition to either motion.

A. Special Motion to Strike.

Code of Civil Procedure, § 425.16 requires a court to engage in a two-step process when determining whether a defendant’s anti-SLAPP motion should be granted. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one “arising from” protected activity. The moving defendant’s burden is to demonstrate that the act or acts of which the plaintiff complains were taken in furtherance of the defendant’s right of petition or free speech under the United States or California Constitution in connection with a public issue.

If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim. In making these determinations, the trial court considers the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. (**Equilon Enterprises v. Consumer Cause, Inc.** (2002) 29 Cal.4th 53, 67.)

While it is only necessary that plaintiff provide a sufficient prima facie showing of facts to sustain a favorable decision if the evidence submitted is credited, implicit therein is the assumption the evidence referred to is admissible, or at least not objected to, since otherwise there would be nothing for the trier of fact to credit. (**Wilcox v. Superior Court** (1994) 27 Cal.App.4th 809, overruled in part by **Equilon Enterprises v. Consumer Cause, Inc.** (2002) 29 Cal.4th 53 on the question of whether plaintiff was required to show the defendant’s subjective intent.)

B. Demurrer.

A complaint must contain substantive factual allegations sufficiently apprising the defendant of the issues to be addressed. (See **Williams v. Beechnut Nutrition Corp.** (1986) 185 Cal.App.3d 135, 139, fn. 2.)

A demurrer tests the legal sufficiency of a complaint. It is properly sustained where the complaint or an individual cause of action fails to “state facts sufficient to constitute a cause of action.” (**Code of Civil Procedure**, § 430.10, subd. (e).) “[C]onclusionary allegations . . . without facts to support them” are insufficient on demurrer. (**Ankeny v. Lockheed Missiles and Space Co.** (1979) 88 Cal.App.3d 531, 537.) “It is fundamental that a demurrer is an attack against the complaint on its face, it should not be sustained unless the complaint shows that the action may not be pursued.” (**Yolo County Dept. of Social Services v. Municipal Court** (1980) 107 Cal.App.3d 842, 846-847.)

“It is not the ordinary function of a demurrer to test the truth of the plaintiff’s allegations or the accuracy with which he describes the defendant’s conduct. A demurrer tests only the legal sufficiency of the pleading.” (**Committee on Children’s Television, Inc. v. General Foods Corp.** (1983) 35 Cal.3d 197, 213.) “It ‘admits the truth of all material factual allegations in the complaint . . . ; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.’ [Citation.]” (*Id.* at

pp. 213-214; see **Cook v. De La Guerra** (1864) 24 Cal. 237, 239: “[I]t is not the office of a demurrer to state facts, but to raise an issue of law upon the facts stated in the pleading demurred to.”)

III. Analysis.

A. Defendant’s Motion to Strike Is GRANTED.

In reading the complaint and putting aside any prolix, the causes of action for false allegations and perjury seek relief on the grounds that Thor purportedly made false statements in the Petition, Amended Petition, and Supplemental Brief.

1. Step one – “Arising From Protected Activity.”

A defendant meets the burden of showing that a plaintiff’s action arises from a protected activity by showing that the acts underlying the plaintiff’s cause of action fall within one of the four categories of conduct described in section 425.16, subdivision (e). [Citation.] Those four categories are: “(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.”

(**Siam v. Kizilbash** (2005) 130 Cal.App.4th 1563², 1569 (**Siam**).)

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

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

² This Judge was the trial judge in this case. Whether this Court believes that the Court of Appeal decision was correctly decided will be deferred to another day.

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

“[T]he litigation privilege is an entirely different type of statute than section 425.16. The former enshrines a substantive rule of law that grants absolute immunity from tort liability for communications made in relation to judicial proceedings (citation omitted); the latter is a procedural device for screening out meritless claims (citation omitted.)” (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 737.)

Plaintiff claims that Thor’s statements with which she takes issue were made in the course of litigation. She does not allege that she had a favorable outcome and so this Court finds that defendant establish the first prong of the test.

2. Plaintiff’s Likelihood Of Success.

While the discussion could end at this point, this Court believes it would be useful to discuss whether plaintiff here has a probability of prevailing in this lawsuit.

As stated above, if this Court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim. In making these determinations, the trial court considers the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. We have described this second step as a “summary-judgment-like procedure.” (*Id.* at p. 714, 54 Cal.Rptr.3d 775, 151 P.3d 1185.) [Footnote omitted.] The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It 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. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 819–820, 124 Cal.Rptr.3d 256, 250 P.3d 1115 (Oasis).) “[C]laims with the requisite minimal merit may proceed.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 94, 124 Cal.Rptr.2d 530, 52 P.3d 703 (*Navellier*).)

(*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384-385 (*Baral*).)

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

Here, this Court’s determination under the second prong is made easy by virtue of plaintiff’s failure to present any admissible evidence to make a prima facie showing of facts sufficient to sustain a favorable judgment.

As any statement made or action taken by Thor in the probate action was made during the course of litigation, his statements and conduct are absolutely privileged. She has not alleged any favorable outcome on her behalf.

Additionally, there has already been a ruling in this case that she does not have a likelihood of prevailing enough to justify a temporary restraining order or preliminary injunction.

Therefore, the special motion to strike by defendant is GRANTED. Inasmuch as the imposition of fees to the prevailing party is a requirement, plaintiff is ordered to pay Thor’s attorney’s fees pursuant to *Baral v. Schnitt* (2016) 1 Cal.5th 376, 396 and *Code of Civil Procedure*, § 425.16(c)(1).)

B. Demurrer.

A complaint shall state "facts constituting the cause of action." (**Code of Civil Procedure**, § 425.10(a)(1).) Each cause of action must be separately pleaded. (California **Rules of Court**, rule 2.112.) Each cause of action must specifically state its number (e.g. "first cause of action"). (Id., subd. (1).)

The party against whom a complaint has been filed may object, by demurrer, to the pleading on the ground that the pleading is "unintelligible." (**Code of Civil Procedure**, § 430.010(f).)

Here, the causes of action are not numbered and are not separately pleaded. Moreover, the complaint does not plead facts in an intelligible manner allowing to ascertain a cause of action and the elements thereof. Because the complaint does not comply with Rule 2.112 and § 425.10(a)(1), the complaint is "unintelligible" within the meaning of **Code of Civil Procedure**, § 430.010(f) and thus the demurrer is SUSTAINED.

Should plaintiff be given leave to amend?

"The plaintiff bears the burden of proving there is a reasonable possibility of amendment." (**Rakestraw v. California Physicians' Service** (2000) 81 Cal.App.4th 39, 43 (**Rakestraw**).) To satisfy this burden, a plaintiff "must show in what manner he (or she) can amend his (or her) complaint and how that amendment will change the legal effect of his pleading." (**Goodman v. Kennedy** (1976) 18 Cal.3d 335, 349.) "Plaintiff must clearly and specifically set forth the 'applicable substantive law' [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary." (**Rakestraw**, *supra*, at pp. 43-44.)

As a consequence, leave to amend is DENIED. (See **Shaeffer v. Califia Farms, LLC** (2020) 44 Cal.App.5th 1125, 1145 ["The onus is on the *plaintiff* to articulate the 'specifi[c] ways' to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend 'only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case. [Citation.]' ".])

The problems here are that plaintiff has not indicated how the complaint could be amended. Additionally, given this Court's ruling on the motion to strike and that the context of the lawsuit arose out of litigation (and in which for has been the prevailing party), this Court does not see (nor did plaintiff offer any explanation) how the complaint could be successfully amended.

Good cause appearing, defendants' demurrer will be SUSTAINED WITHOUT LEAVE TO AMEND.

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

Deferred to the Probate Department.

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VI. Order.

Thor's special motion to strike by defendant is GRANTED. Inasmuch as the imposition of fees to the prevailing party is a requirement, plaintiff is ordered to pay Thor's attorney's fees pursuant to **Baral v. Schnitt**

(2016) 1 Cal.5th 376, 396 and **Code of Civil Procedure**, § 425.16(c)(1).) Counsel for defendant should submit an appropriate motion for attorney's fees.

Thor's demurrer to the complaint is SUSTAINED WITHOUT LEAVE TO AMEND.

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

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