December 12, 2025, Civil Law & Motion Tentative Rulings

1. CL0003329 James L. Arrasmith vs. Ronald Moen, et al

Defendants' motion to quash service of summons is granted.

Defendants argue the Court lacks jurisdiction over them because Plaintiff improperly served the summons and complaint on them. More specifically, Plaintiff only served the summons and complaint via electronic mail with no prior attempts at personal service or substitute service. Motion, Exhs. A-B. The Court agrees.

Code of Civil Procedure section 418.10(a)(1) states: "A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes . . . (1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her."

"'[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction.'" *Ellard v. Conway* (2001) 94 Cal.App.4th 540, 544. Mere notice of litigation does not confer personal jurisdiction absent substantial compliance with the statutory requirements for service of summons. *MJS Enterprises, Inc. v. Superior Court* (1984) 153 Cal.App.3d 555, 557. The burden is on a plaintiff to prove facts showing that service was effective. *Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413.

Pursuant to Code of Civil Procedure section 415.10, "[a] summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served." In lieu of personal delivery, substitute service is also permitted under specified circumstances. *See* Code Civ. Proc. § 415.20(a) ("A summons may be served by leaving a copy of the summons and complaint during usual office hours in his or her office or, if no physical address is known, at his or her usual mailing address, …, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail….").

Here, there is no evidence Plaintiff personally served Defendants, or properly effectuated substitute service. Instead, it appears Plaintiff merely had the summons and complaint sent via electronic mail to both of Defendants email addresses. Ronald Moen Decl., Exh. A; Gina Moen Decl., Exh. B.

Additionally, Plaintiff has not filed a proper proof of service with the Court.

In summary, Plaintiff failed to effectuate proper service of Defendants. Defendants' motion to quash service of summons is granted.

2. CU0000316 Mardi Fisher v. Brandon O. Williams, et al.

The request for a temporary restraining order is granted in limited part as follows pursuant to Code of Civil Procedure section 872.130: (1) Defendant Williams shall supply an operable cell phone number to the Referee and not change the same without giving notice of the new number to the Referee. (2) Defendant shall respond to any text message from the Referee as soon as

possible and no later than within 24 hours. (3) The subject real property shall be made available, with 48 hours-notice, *without exception*, for *all* purposes deemed appropriate and necessary by the Referee and for the duration deemed appropriate and necessary by the Referee in connection with her obligation to carry out the orders made in the August 2, 2024, interlocutory judgment. (4) Defendant shall cooperate with the Referee so that she can carry out her obligations and shall not interfere with the Referee's performance of her duties or any agent of the Referee performing work on the subject real property at the direction of the Referee. All other requested temporary relief is denied at this time without prejudice.

Defendant is ordered to show cause why an injunction should not issue directing him to vacate the subject real property and to remove all of his personal property from the same pursuant to Code of Civil Procedure section 872.130. The hearing as to the injunction is set for February 6, 2020, at 10:00 a.m. in Department 6. Any opposition shall be filed/served no later than 9 court days prior thereto and any reply shall be filed/served no later than 5 court days prior thereto.

3. CU0001605 Andrew Alan Johnson vs. Donald Judas

Defendants' motion to strike is denied.

Timeliness

A notice of motion to strike must be given within the time allowed to plead, and if a demurrer is interposed, concurrently therewith. Code of Civil Procedure § 435; Cal. Rules of Ct., Rule 3.1322(b). A defendant can move to strike a complaint only before it is answered and not afterward. *Adohr Milk Farms, Inc. v. Love* (1967) 255 Cal.App.2d 366, 371. Therefore a motion to strike a complaint is untimely when, as here, it is made after an answer has already been filed. *See id.* The motion is denied on this ground alone.

The Merits

Defendants move to strike from the complaint references to punitive damages and the prayer for punitive damages. Pleadings are to be construed liberally with a view to substantial justice between the parties. Code Civ. Proc. § 452. "In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.

Civil Code section 3294, subdivision (a) provides:

> In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

With respect to punitive damage allegations, mere legal conclusions of oppression, fraud or malice are insufficient and therefore may be stricken. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. However, if, looking to the complaint as a whole, sufficient facts are alleged to support the

allegations, then a motion to strike should be denied. *Id*. Allegations that include conclusions of law or that are considered to be ultimate facts will stand if sufficient facts are alleged to support them. *Id.* Stated another way, if the facts and circumstances are set out clearly, concisely, and with sufficient particularity to apprise the opposite party of what is called on to answer, such is sufficient to support a claim for punitive damages. *Lehto v. Underground Const. Co.* (1977) 69 Cal.App.3d 933, 944.

Punitive damages are awardable only where there is clear and convincing evidence of "malice." Malice means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. Code Civ. Proc., § 3294(c)(1). Under the statute, malice does not require actual intent to harm. *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1299. Therefore, an allegation that a defendant intended to injure a plaintiff or acted in conscious disregard of his safety will suffice. *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 32-33. Conscious disregard for the safety of another may be sufficient where the defendant is aware of the probable dangerous consequences of his conduct and he willfully fails to avoid such consequences. *Pfeifer,* 220 Cal.App.4th at 1299. Malice may be proved either expressly through direct evidence or by implication through indirect evidence from which the jury draws inferences. *Id*.

The issue on a motion to strike is whether the allegations in the complaint are proper – not whether a defendant has an alternate view of the events. "In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." *Clauson,* 67 Cal.App.4th at 1255.

At bar, the complaint alleges Defendant Donald Judas had "full knowledge that his physical limitations rendered him unfit to safely operate a motor vehicle" and "willfully and intentionally chose to continue driving," and Defendant Diane Flindt had full knowledge of such limitations and willfully and intentionally allowed Defendant Judas to drive her vehicle. FAC, ¶¶ 14-15. The complaint also alleges Defendant Judas was aware of his visual and mental limitations because they had caused motor vehicle collisions and a "close call" within the previous five months. FAC, ¶ 30. Plaintiff's complaint alleges not only that Defendant was negligent and careless in operating a vehicle, but that both Defendants were aware of Defendant Judas' recent history with motor vehicle accidents due to his physical limitations rendering him unfit to drive, but still willfully and intentionally continued to drive despite these limitations and awareness of such. Taking the allegations as a whole and assuming their truth, as the court must, the allegations show that acted in conscious disregard of Plaintiff's safety. The complaint contains allegations sufficient to support a claim for punitive damages. As such, defendants' motion to strike is denied on this alternative ground as well.

4. CU0002107 Sheng Wang Chen vs. Federick Boey, et al.

Defendants' demurrer is overruled in part and sustained in part with leave to amend. Plaintiff is granted leave to amend causes of action seven, eight, and nine, and must file his amended complaint within ten (10) days of notice of the Court's order. Plaintiff's special anti-SLAPP motion to strike the first amended cross-complaint is granted as to the Second and Third causes of

action and otherwise denied. Defendants' motion for sanctions against Plaintiff's attorney pursuant to Code of Civil Procedure section 127.8 is denied.

Defendants' Demurrer to Plaintiff's Complaint

Legal Standard on Demurrer

A demurrer tests whether the complaint sufficiently states a valid cause of action. *Hahn v. Merda* (2007) 147 Cal.App.4th 740, 747. A demurrer may only challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. Code Civ. Proc. § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

Complaints are read as a whole, in context, and are liberally construed. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601. In reviewing the sufficiency of a complaint, courts accept as true all material facts properly pleaded and matters that may be judicially noticed, but not contentions, deductions, or conclusions of fact or law, or the construction of instruments pleaded, or facts impossible in law. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; *see also South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732. Opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.

Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Development v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.

Pre-litigation Settlement Agreement

Defendants/Cross-Complainants ("Defendants") argue that Plaintiff/Cross-Defendant ("Plaintiff") signed a pre-litigation Settlement Agreement ("Agreement") releasing all claims against Defendants on May 2, 2025 which bars Plaintiff's entire action. FACC, Exh. 1, Exh. A thereto. The Court is not persuaded.

As an initial matter, Defendants assert the court may take judicial notice of the agreement and enforce it as a matter of law because it bears Plaintiff's signature, the terms are clear and unambiguous, and Plaintiff concedes he signed it. The Court disagrees.

" ' "Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." ' " *Poseidon Development, Inc. v. Woodland Lane*

Estates, LLC (2007) 152 Cal.App.4th 1106, 1117 When ruling on a demurrer, "[a] court may take judicial notice of something that cannot reasonably be controverted, even if it negates an express allegation of the pleading." *Ibid.* "A matter ordinarily is subject to judicial notice only if the matter is reasonably beyond dispute." *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113. "Although the *existence* of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable." *Ibid.*

> Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning. On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. 'A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.' The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable.

Joslin v. H.A.S. Ins. Brokerage (1986) 184 Cal.App.3d 369, 374, *see also Tucker v. Pacific Bell Mobile Services* (2012) 208 Cal.App.4th 201, 219, n.11.

At bar, the circumstances and enforceability of the release/settlement agreement are far from undisputed. Defendants, as noted, assert "Plaintiff signed a binding settlement agreement releasing all claims against Defendants in exchange for the exact sum he demanded: $1,000." Demurrer, 1:2-4. Plaintiff, in turn argues he is entitled to "assert the invalidity of the" Agreement. Opposition to Demurrer, 2:19. Plaintiff has the better argument. While the Court can judicially notice the existence of the release/agreement, its enforceability is subject to reasonable dispute. The Court cannot accept, as a matter of law or fact, that the release/settlement agreement bars the Complaint.

<u>First through Fifth Causes of Action</u>

Defendants initially demur to these five causes of action arguing the release/settlement agreement is dispositive and bars the actions. The Court cannot agree. While the Court can judicially notice the existence of the document, its enforceability is subject to reasonable dispute. The Court cannot determine, as a matter of law at the demurrer stage, that the release/settlement agreement bars the Complaint.

Defendants also argue that each cause of action fails to state facts sufficient to constitute a claim. The Court is not persuaded.

As to the first through fifth claims, Plaintiff alleges: He was employed by Defendants as a non-exempt restaurant worker from approximately August 20, 2024, through February 17, 2025; he worked overtime but was paid a fixed monthly salary; Defendants failed to pay him overtime, failed to pay him minimum wage, failed to provide rest and meal periods, failed to furnish accurate itemized wage statements, and failed to timely pay wages due upon termination of his employment. Complaint, ¶¶ 3-37. The Complaint sufficiently alleges facts stating Plaintiff worked more than 40 hours per week without being compensated for overtime, Complaint ¶¶ 14-

16, 21, Plaintiff was paid less than the minimum wage, Complaint ¶¶ 14-16, Plaintiff was not authorized or permitted to have rest and meal periods, Complaint ¶ 26, Plaintiff was not furnished with accurate wage statements, Complaint ¶ 31, and Plaintiff was not paid wages earned and unpaid at the time of discharge. Complaint, ¶¶ 34-35. Accepting the allegations as true, the Court concludes the first through fifth causes of action adequately state claims for relief. The demurrers as to these causes of action are overruled.

Sixth Cause of Action

The Unfair Competition Law, Business and Professions Code section 17200 (UCL) bars "unfair competition," defined as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code." "An 'unlawful' business practice or act within the meaning of the UCL 'is an act or practice, committed pursuant to business activity, that is at the same time forbidden by law.'" *Bernardo v. Planned Parenthood Federation of Am.* (2004) 115 Cal.App.4th 322, 351 (citation omitted). "By proscribing 'any unlawful' business practice, section 17200 borrows violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable." *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180. Moreover, "a practice may be deemed unfair even if not specifically proscribed by some other law." *Ibid.* In order to have standing to bring a UCL claim, a plaintiff must "(1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, *i.e.*, economic injury, and (2) show that that economic injury was the result of, *i.e.*, caused by, the unfair business practice or false advertising that is the gravamen of the claim." *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 322.

Defendants argue that the UCL claim fails because (1) the claim is derivative of Plaintiff's wage and hour claims and necessarily fails due to a lack of factual support, and (2) Plaintiff does not provide facts supporting fraud. The Court is not persuaded. The Court has overruled Defendants' demurrer to the first through fifth claims. The sixth cause of action, which is derivative in part, adequately alleges unlawful business practices under the UCL. Complaint, ¶¶ 38-40.

Seventh through Ninth Causes of Action

The seventh through ninth claims are premised on allegations that Plaintiff was discharged for asserting his right to compensation for his work, opposing unlawful employment practices, and because he intended to report Labor Code violations to a governmental agency or file a civil action against Defendants. Complaint, ¶¶ 46-47, 53, 59.

"The elements of a claim for wrongful discharge in violation of public policy are (1) an employer-employee relationship, (2) the employer terminated the plaintiff's employment, (3) the termination was substantially motivated by a violation of public policy, and (4) the discharge caused the plaintiff harm." *Garcia-Brower v. Premier Automotive Imports of CA, LLC* (2020) 55Cal.App.5th 961 (internal citation omitted).

Labor Code section 98.6 provides:

> A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to their rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that they are owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of themselves or others of any rights afforded them.

Labor Code section 1102.5(b) provides:

> An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties

To establish a claim for whistleblower retaliation, the following elements must be met: (1) plaintiff engaged in a protected activity; (2) plaintiff suffered an adverse employment action; and (3) a causal link exists between the protected activity and adverse actions. *Mokler v. Cty. of Orange* (2007) 157 Cal.App.4th 121, 138.

Defendants argue the seventh through ninth causes of action fail because the Complaint alleges there is no adverse employment action. Per defendants, Plaintiff asked for unpaid overtime and compensation and stated he would file a civil action or report the Labor Code violations on February 24, 2025, *after* he was already terminated on February 17, 2025. The Court agrees. The Complaint does not allege Defendants retaliated against Plaintiff for his statement he would report the labor code violations, because he had already been terminated. Accordingly, the demurrer to the seventh through ninth causes of action are sustained. In opposition, Plaintiff states the differences in dates are due to a minor inconsistency and the exact date can be ascertained through discovery. It appears that this defect can potentially be remedied. Accordingly, leave to amend is permitted.

Plaintiff's Anti-SLAPP Motion

Plaintiff/Cross-Defendant filed a special motion to strike Defendants'/Cross-Complainants' entire Cross-Complaint under Code of Civil Procedure section 425.16, also known as the anti-SLAPP ("strategic lawsuit against public participation") statute. "The anti-SLAPP procedures are designed to shield a defendant's constitutionally protected conduct from the undue burden of frivolous litigation." *Baral v. Schnitt* (2016) 1 Cal.5th 376, 393. "The anti-SLAPP statute does not insulate defendants from any liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, meritless claims arising from protected activity." *Id*. at 384.

"Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. 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 …." *Baral*, 1 Cal.5th at 384 (citations omitted).

> "A claim arises from protected activity when that activity underlies or forms the basis for the claim. 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.' '[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute.' Instead, the 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.' 'The only means specified in section 425.16 by which a moving Defendant can satisfy the ["arising from"] requirement is to demonstrate that the Defendant's conduct by which Plaintiff claims to have been injured falls within one of the four categories described in subdivision (e)....' In short, in ruling on an anti-SLAPP motion, Courts should consider the elements of the challenged claim and what actions by the Defendant supply those elements and consequently form the basis for liability."

Park v. Board of Trustees of California State University (2017) 2 Cal.5th 1057, 1062–1063 (citations omitted).

> [Once a]defendant has shown that plaintiffs' causes of action arose from activities …that were protected by the anti-SLAPP statute , plaintiffs must demonstrate a probability of prevailing on their claims in order to defeat the motion to strike . This means that plaintiffs 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.' In deciding the question of potential merit, the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant; though the court does not *weigh* the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim." Thus, plaintiffs' burden as to the second prong of the anti-SLAPP test is akin to that of a party opposing a motion for

summary judgment.

Navellier v. Sletten (2003) 106 Cal.App.4th 763, 768 (citations omitted).

At bar, Cross-Plaintiffs/Defendants seek to impose liability on Cross-Defendant/Plaintiff and to obtain damages for purported breach of the release/settlement agreement and breach of the covenant of good faith and fair dealing ("covenant of good faith"). See First Amd. Cross-Complaint ¶¶10-27, and second and third causes of action. Cross-Plaintiffs/Defendants also seek declaratory relief in connection with the release/settlement agreement including adjudication of its validity and enforceability. See *id.,* ¶¶10-27, and first cause of action. The written cross-complaints, the release, the oral statements made during settlement negotiations prior to the original release/settlement agreement and after, and the prelitigation demand letters are all "written or oral statement or writing made before a … judicial proceeding," or "made in connection with an issue under consideration or review by a … judicial body ...." Code Civ.Proc., § 425.16, subd.(e)(1) and (2). Because Cross-Plaintiffs seek to impose liability on Cross-Defendant for having engaged in these protected activity, the action is "based on" that activity and comes within the scope of section 425.16 *See Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1024 ("[C]laims that arise out of the filing of a suit arise from protected activity for purposes of the anti-SLAPP statute. … "[P]ostfiling settlement negotiations or communications in anticipation of filing[] are protected activity for anti-SLAPP purposes."*); Vivian v. Labrucherie* (2013) 214 Cal.App.4th 267, 274.

At bar, because Cross-Defendant made the required showing, the burden shifts to the Cross-Plaintiffs to demonstrate the merit of the claim by establishing a probability of success.

The Court need not address all the elements of Cross-Plaintiffs' second and third causes of action. "A fundamental problem with these various claims is that there is no evidence in the record of any damages from the breach of contract [or breach of the covenant of fair dealing]." *Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 775. "Damages are, of course, a necessary element of [both claims], and proof of that element is wholly lacking. *Ibid.* "[Cross-Plaintiffs have] taken the position that there was 'no requirement for [them] to come forward with evidence of damages ….' " *Ibid.* "But where, as here, the motion to strike meets the 'arising from' prong of the anti-SLAPP test, the [Cross-plaintiffs] must satisfy the second prong of the test and "establish *evidentiary* support for [its] claim." *Ibid.* "Here, [Cross-plaintiffs] have presented nothing as to their damages on the breach of contract cause of action [and breach of the covenant of good faith cause of action] beyond the bare allegations of their unverified complaint—an insufficient showing to survive the motion to strike th[ose] cause[s] of action." *Id.* at 776. "[T]he foregoing is dispositive…." *Ibid.*

The analysis is different as to the first cause of action. Here, Cross-Plaintiffs have demonstrated that this claim 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 Cross-Plaintiffs is credited. The Court has considered the pleadings and evidentiary submissions of all parties as well as the parties' various arguments. Without weighing credibility or comparative probative strength of competing evidence, the Court cannot conclude, as a matter of law, that Cross-defendant's evidence supporting the motion defeats the Cross-Plaintiffs' attempt to establish evidentiary

support for their claim. Specifically, Cross-Defendant has not persuaded the Court that the release/settlement agreement is invalid *as a matter of law* because it is contrary to public policy, violative of Labor Code section 206.5 or unconscionable.

Therefore, for the reasons set forth above, the Court denies Plaintiff's/Cross-Defendant's Special Motion to Strike the Cross-Complaint pursuant to Code of Civil Procedure section 425.16 as to the first cause of action, and grants the same as to the second and third causes of action.

Defendants' Motion for Sanctions

Defendants request sanctions against Plaintiff pursuant to Code of Civil Procedure section 128.7. The Court is not so inclined.

The applicable principles governing Section 128.7 are set forth in *Kumar v. Ramsey* (2021) 71 Cal.App.5th 1110:

> Section 128.7 applies only in limited circumstances. It "authorizes trial courts to impose sanctions to check abuses in the filing of pleadings, petitions, written notices of motions or similar papers." *Musaelian v. Adams* (2009) 45 Cal.4th 512, 514. Under that authority, trial courts may issue sanctions, including monetary and terminating sanctions, against a party for filing a complaint that is legally or factually frivolous. Code Civ. Proc. § 128.7(b)-(d); *Ponce v. Wells Fargo Bank* (2018) 21 Cal.App.5th 253, 263-264. "A claim is factually frivolous if it is 'not well grounded in fact' and is legally frivolous if it is 'not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.' [Citation.] In either case, to obtain sanctions, the moving party must show the party's conduct in asserting the claim was objectively unreasonable. [Citation.] A claim is objectively unreasonable if 'any reasonable attorney would agree that [it] is totally and completely without merit.' [Citations.]" *Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 189.
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> "A court has broad discretion to impose sanctions if the moving party satisfies the elements of the sanctions statute." *Peake v. Underwood* (2014) 227 Cal.App.4th 428, 441 (Peake). … Code of Civil Procedure section 128.7 should be utilized only in "the rare and exceptional case where the action is clearly frivolous, legally unreasonable or without legal foundation, or brought for an improper purpose." *Operating Engineers Pension Trust v. A-C Co*. (9th Cir. 1988) 859 F.2d 1336, 1344. "Because our adversary system requires that attorneys and litigants be provided substantial breathing room to develop and assert factual and legal arguments, [section 128.7] sanctions should not be routinely or easily awarded even for a claim that is arguably frivolous" *Peake*, supra, 227 Cal.App.4th at p. 448, and instead "should be 'made with restraint.' " *Peake*, at p. 448. Indeed, even if a plaintiff could not successfully defend against either demurrer or summary judgment, that alone is insufficient to support the sanction of dismissal. *Ibid.*

Id. at 1120–1121 (parentheses and parallel citations omitted).

> To avoid sanctions under section 128.7, "the issue is not merely whether the party would prevail on the underlying factual or legal argument," but rather whether any reasonable

> attorney would agree that the claim is totally and completely without merit. *Peake*, supra, 227 Cal.App.4th at p. 448. Hence, the evidentiary burden to escape sanctions under section 128.7 is light. [The opposing party] must make a sufficient evidentiary showing to demonstrate that he made a reasonable inquiry into the facts and entertained a good faith belief in the merits of the claim. [The opposing party] need not amass even enough evidence to create a triable issue of fact as would be required if [the moving party] had brought a motion for summary judgment, or allege a valid cause of action, as required to overcome a demurrer.

Id. at 1120–1126 (parentheses and parallel citations omitted).

Defendants argue Plaintiff's counsel has brought baseless claims in bad faith, with no legal merit or factual basis in light of the release/settlement agreement. Plaintiff contends that the complaint is legally sufficient and was filed for a non-frivolous purpose. Moreover, Plaintiff contends that the validity of the release/settlement agreement is contested. Plaintiff has the better argument. On the record presented, the Court concludes that Plaintiff's complaint is *not* clearly frivolous, legally unreasonable or without legal foundation, or brought for an improper purpose. Sanctions are not warranted.

5. CU0002203 Eva Schauffler vs. W. Gregory Klein, et al.

On the Court's motion (J. Kellegrew), Defendant's anti-SLAPP special motion to strike is continued until December 19, 2025, at 10:00 a.m., in Department 6.

6. CU0002207 Deborah J. Carver vs. Michael W. Horner

Plaintiff's motions to vacate the judgment, to reinstate the action, and for leave to file an amended complaint is denied. Plaintiff's motion to disqualify counsel Patrick Macias is also denied.

Motion to Vacate the Judgment, Etc.

Plaintiff moves to vacate the judgment, reinstate the action, and to file an amended complaint in light of reported extrinsic evidence of fraud. The Court is not persuaded.

" '[A] judgment or order may be set aside on the ground of [extrinsic] fraud, [extrinsic] mistake or lack of jurisdiction…, when the application is seasonably made and the fraud or misrepresentation is alleged and proved.' " *Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 260, *quoting In re Estate of Sankey* (1926) 199 Cal. 391, 407. It can also be set aside pursuant to the authority of Code of Civil Procedure section 473 (b)[1]. *Ibid.*; *see e.g.*, *Estate of Carter* (2003) 111 Cal.App.4th 1139, 1154. "[T]he remedy afforded under section 473 'is

[1] Code of Civil Procedure section 473, subdivision (b), provides that a court may relieve a party from a judgment based on "his or her mistake, inadvertence, surprise, or excusable neglect," if the application is made within six months of the judgment. See, e.g., *Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 838.

merely concurrent with the remedy afforded by equity under proper circumstances.'" *Zamora*, 28 Cal. 4th at 260, *quoting Winn v. Torr* (1938) 27 Cal.App.2d 623, 627.

"It is well settled … that 'only upon proof of *extrinsic* and *collateral* fraud can plaintiff seek and secure equitable relief from the judgment. A showing of fraud practiced in the trial of the original action will not suffice.' " *Estate of Sanders* (1985) 40 Cal.3d 607, 614. A final judgment may be attacked and set aside for extrinsic fraud upon proof that "by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court." *Estate of Sanders* (1985) 40 Cal.3d 607, 615 (quotations and citations omitted). By contrast, "a final judgment may not be directly attacked and set aside on the ground that evidence has been suppressed, concealed, or falsified; …, such fraud is 'intrinsic' rather than 'extrinsic.'" *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 10.

The court has carefully reviewed Plaintiff's motion in its entirety, including, without limitation, her evidence/information provided by Chris H. Harris and related to the power of attorney at issue. Plaintiff has failed to allege or prove any form of extrinsic fraud, *i.e.*, that Carver has somehow been prevented by the Horners from presenting all of her case to the Court. Indeed, all of the allegations raised by Carver at this juncture relate, at best, to alleged intrinsic fraud. Moreover, plaintiff has failed to demonstrate that her cited evidence/information constitutes an excusable mistake, inadvertence, surprise, or neglect justifying the set aside of the judgment.

In sum, there is no good cause to vacate the judgment, reinstate the action, or allow the filing of an amended complaint.

Motion to Disqualify

Plaintiff moves to disqualify Patrick Macias, counsel for Michael Horner, arguing that "there is a strong possibility" or even "necessarily" counsel will be called to serve as a witness. The Court is not persuaded.

"A trial court's authority to disqualify an attorney derives from its inherent power, codified at Code of Civil Procedure section 128, subdivision (a)(5), to control the conduct of its ministerial officers and of all other persons connected with its proceedings in furtherance of justice." *Doe v. Yim* (2020) 55 Cal.App.5th 573, 581. "Disqualification may be ordered as a prophylactic measure against a prospective ethical violation likely to have a substantial continuing effect on future proceedings." *Ibid.* "[A] court retains discretion to disqualify a likely advocate-witness as counsel, notwithstanding client consent, where there is 'a convincing demonstration of detriment to the opponent or injury to the integrity of the judicial process.' " *Id. at* 582.

> In exercising its discretion to disqualify counsel under the advocate-witness rule, a court must consider: (1) " ' "whether counsel's testimony is, in fact, genuinely needed" ' "; (2) "the possibility [opposing] counsel is using the motion to disqualify for purely tactical reasons"; and (3) "the combined effects of the strong interest parties have in representation by counsel of their choice, and in avoiding the duplicate expense and time-consuming effort involved in replacing counsel already familiar with the case."

Id. at 583.

The Court denies the request to disqualify counsel. Plaintiff has failed to make a convincing demonstration that counsel's testimony is, in fact, genuinely needed. This is especially true given the procedural posture of this case: A judgment of partition was previously granted, and affirmed on appeal in a related case. The demurrer in this case has been sustained without leave to amend on the basis of *res judicata*. In addition, given the showing made by Plaintiff in her motion and timing of the same, the Court is concerned regarding the possibility that the motion is being interposed for purely tactical reasons. Lastly, the Court must be cognizant of the strong interest that Horner has in counsel of his choice including the avoidance of duplicate expense and effort to replace counsel Macias, who was counsel for Horner in the original partition case, on appeal for the same and in this case.

In sum, the motion lacks merit and is denied.

7. CU0002461 In the Matter of Yevgeniy Zebrov

The Court grants the request of Petitioner to continues the hearing on Petitioner's petition for release of property from lien to January 9, 2026 at 10:00 a.m. in Department 6 so Petitioner has adequate time to effectuate service on Respondent.

8. CU0002188 Cassandra Jordan v Ingrid Larson, et al.

On the Court's motion (J. Kellegrew), the demurrer is continued until December 19, 2025, at 10:00 a.m., in Department 6.

9. CU0002242 Kelly L. Hall vs. Matthew A. Mantovan Hudgens

On its own motion, the Court continues the hearing on Defendant's demurrer to February 6, 2026, at 10:00 a.m., in Department 6.

Defendant, personally served with the summons and complaint on July 25, 2025, filed a timely demurrer on August 22, 2025. *See* Code Civ. Proc. § 430.40(a). That said, Defendant failed to meet and confer as required prior to filing the demurrer; Defendant also failed to file a meet and confer declaration as required. *See* Code Civ. Proc. § 430.41(a). Defendant further failed to serve the demurrer or notice it for hearing within 35 days as required. *See* California Rules of Court, rule 3.1320(d), 3.1300, Code Civ. Proc. § 1005.

On October 27, 2025, the Court, *inter alia*, advised defendant to either properly notice and serve the demurrer or file a responsive pleading, and expressly declined to consider the demurrer. On October 30, 2025, defendant filed and served a *second* demurrer, noticed for hearing on December 4, 2025. This filing was filed beyond the 30-day deadline for demurrers. *See* Code of Civil Procedure section 430.40(a). Defendant again failed to meet and confer as required prior to filing the demurrer; Defendant also failed to file a meet and confer declaration as required. *See* Code Civ. Proc. § 430.41(a).

The Court has the discretion to deny an untimely filing; it also has the discretion to consider the same. *See Jackson v. Doe* (2011) 192 Cal.App.4th 742, 749; *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 280; Code Civ. Proc. §§ 430.40(a) and 473(a)(1). Code of Civil Procedure section 430.40(a) is permissive, not mandatory. *McAllister*, 147 Cal.App.4th at 280. "There is no absolute right to have a pleading stricken for lack of timeliness in filing where no question of jurisdiction is involved, and where … the late filing was a mere irregularity…." *Id.* at 281–282. Moreover, Code of Civil Procedure "section 473, subdivision (a)(1) allows the court to increase the time for filing a demurrer in furtherance of justice and on any terms that may be proper." *Jackson v. Doe* (2011) 192 Cal.App.4th 742, 750 ("The trial court's consideration of the demurrer, filed 38 days after plaintiff served the complaint, did not affect plaintiff's "substantial rights," where plaintiff did not take steps to obtain a default judgment or demonstrate the delay prejudiced her.").

Although Defendant has repeatedly failed to follow the appropriate Rules of Procedure and Rules of Court, and although the second demurrer has been filed well beyond the normal demurrer deadline, Plaintiff has not taken any steps to obtain a default judgment and has not demonstrated any prejudice from the delay. Therefore, in order to ensure compliance with all procedural requirements and to preserve the litigation rights of the parties, the Court will continue the current hearing for the demurrer. The parties are directed to meet and confer as required regarding the demurrer no later than January 2, 2025. The parties are directed to file a joint one-page report no later than January 9, 2025 indicating whether they have resolved their issues or whether adjudication of a demurrer is required. If the parties are unable to resolve their differences, defendant is granted leave to file and serve a third demurrer, in accordance with the timing requirements of the Rules of Civil Procedure, and that includes the required meet and confer declaration, all noticed for hearing on February 6, 2025. Briefing shall be filed in accordance with the Rules of Civil Procedure.

Defendant is admonished that he must follow all Rules of Civil Procedure, Rules of Court and Local Rules. The Court will be highly disinclined to countenance any further violations of the same.