May 29, 2026, Civil Law & Motion Tentative Rulings

1. CU0001580 Adrienne Schram vs. Bradley Shipley, et al.

The Court rules as follows with respect to the May 14, 2026, objections of Plaintiff/Cross-Defendant Schram and Cross-Defendant/Cross-Complainant Karwoski to the May 24, 2026, proposed judgment.

Objection to Paragraph 11: The objection is sustained. Shipley is entitled to a money judgment for damages, alone, without an order to pay. Shipley's request for post-judgment interest is granted. The money judgment for damages shall be stated in terms of an unpaid principal amount, together with post-judgment interest at the rate of 10% per year until paid. *See* Code Civ. Proc. § 685.010(a)(1).

Objection to Paragraph 12: The objection is sustained. The judgment should reflect that: A copy of the Lis Pendens was filed in this case on September 3, 2024; reflects recorder information as Document 2024001406, recorded August 2, 2024; said Lis Pendens is expunged and said Lis Pendens no longer has any legal effect.

Objection to Paragraph 14: The objection is overruled. The final ruling following bench trial was as follows:

> On Schram's Complaint, judgment for Shipley and against Schram as to Counts One and Two. On Karwowski's Cross-Complaint, judgment for Shipley and against Karwowski as to Counts One and Two. On Shipley's Cross-Complaint: judgment for Shipley and against Karwowski as to Counts One, Two, Three and Six; judgment for Shipley and against Schram as to Counts One, Three and Six; judgment for Schram and against Shipley as to Counts Two, Four and Five; judgment for Karwowski and against Shipley as to Counts Four and Five.

4/14/26 Memorandum Decision and Order, 7:15-18.

Easement rights were the clear gravamen of this case. Shipley prevailed in connection with *all* such claims, *i.e.*, Schram's Complaint for Prescriptive Easement (Claim One) and Injunctive Relief (Claim Two); Shipley's Cross-Claims to Quiet Title (Claim One) and for Declaratory Relief (Claim Six); Karwowski's Cross-Claims for Adverse Possession (Claim One) and for Declaratory Relief (Claim Two). *Id.* at 2:2-5:15.

Shipley prevailed against Karwowski, but not Schram, with respect to Cross-Complainant Shipley's Claims for Nuisance (Claim Two). *Id.* at 5:17-6:10.

Shipley prevailed against Karwowski and Schram with respect to Cross-Complainant Shipley's Claims for Trespass (Claim Three). *Id.* at 6:11-27.

Shipley did not prevail against either Karwowski or Schram with respect to Cross-Complainant Shipley's Claims for Conversion (Claim Four) and Trespass to Chattels (Claim Five). *Id.* at 7:1-13.

Under the totality of these circumstances, Shipley was the prevailing party against both Karwoski and Schram. *See* Code of Civil Procedure section 1032(4).

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

Plaintiff/Cross-Defendant's March 3, 2026, motion for attorney's fees is granted in part.

Jurisdiction to Consider Attorney's Fees Given Pendency of Appeal

Defendants/Cross-Complainants "preserve" their position that this Court is divested of jurisdiction to consider the motion for attorney's fees given the pendency of an appeal of the Court's December 12, 2025, order granting Plaintiff/Cross-Defendant's motion to strike in part. The Court is not persuaded.

First, Defendants/Cross-Complainants filed a May 14, 2026, request for a stay, but then did not appear on the scheduled hearing date. The matter was removed from calendar without prejudice. *See* 5/15/26 Minute Order. No motion for a stay was duly filed by defendants thereafter and none is pending.

In any event, no stay would be required.

> As a general rule (the automatic stay rule), the perfecting of an appeal automatically stays proceedings in the trial court both upon the judgment or order appealed from, and upon the matters embraced therein or affected thereby, including enforcement of the judgment or order. See generally Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 1999) ¶¶ 7:1 to 7:2, p. 7-1. The automatic stay rule is codified in section 916, subdivision (a) which provides in part: "*Except as provided in Sections 917.1* to 917.9, inclusive, and in Section 116.810, *the perfecting of an appeal stays proceedings* in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, *including enforcement of the judgment or order* ...." (Italics added.)
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> The purpose of the automatic stay rule is "to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. The rule prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it. [Citation.]" *Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 629.

Dowling v. Zimmerman (2001) 85 Cal.App.4th 1400, 1428 (parallel citations and parentheses omitted).

Here, an award of attorney's fees will not in any way render the appeal futile or affect the appealed judgment. Of course, should the Court of Appeal disagree with all or part of the Court's anti-SLAPP decision itself, the Court may be required to reexamine the question of who

prevailed and the award of attorney's fees.

Legal Standard for Prevailing Party and Attorney's Fees

"Section 425.16, subdivision (c) provides that 'a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs.' Under this provision, 'any SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees.' " *Mann v. Quality Old Time Service, Inc.* (2006) 139 Cal.App.4th 328, 338. "[A] party who partially prevails on an anti-SLAPP motion must generally be considered a prevailing party unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion. The determination whether a party prevailed on an anti-SLAPP motion lies within the broad discretion of a trial court." *Id.* at 340.

At bar, Plaintiff/Cross-Defendant's anti-SLAPP motion was granted as to the second and third causes of action in the Cross-Complaint, but not the first cause of action. Plaintiff/Cross-Defendant succeeded in removing two of the three claims. These results were both significant and a practical benefit to the moving party. Plaintiff/Cross-Defendant was a prevailing party.

Calculation of attorneys' fees is committed to the discretion of the trial court. *PLCM Group v. Drexler* (2000) 22 Cal.App.4th 1084, 1095-1096. The calculation must be based on "a computation of time spent on a case and the reasonable value of that time." For purposes of the calculation, "[t]he reasonable hourly rate is that prevailing in the community for similar work." *Id*. The court is not bound by the evidence and argument provided by the party seeking the fees. Under California law, "[t]he court has a duty, independent of any objection, to assure that the amount and mode of payment of attorney fees are fair and proper, and may not simply act as a rubberstamp for the parties' agreement." *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 555. "The courts repeatedly have stated that the trial court is in the best position to value the services rendered by the attorneys in his or her courtroom, and this includes the determination of the hourly rate that will be used in the lodestar calculus. In making its calculation, the court may rely on its own knowledge and familiarity with the legal market, as well as the experience, skill, and reputation of the attorney requesting fees, the difficulty or complexity of the litigation to which that skill was applied, and affidavits from other attorneys regarding prevailing fees in the community and rate determinations in other cases." *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 436 (citations omitted).

Generally, the standard for calculating an award of attorney fees begins with the 'lodestar,' a calculation obtained by multiplying the hours worked by each person entitled to compensation by a reasonable hourly rate for those services. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. The lodestar figure may then be adjusted, based on consideration of specific factors to the case, in order to fix the fee at the fair market value for the legal services provided. *Id*. Among the factors considered in adjusting the lodestar figure are: (1) the novelty and difficulty of the questions involved, and the skill demonstrated in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; and (3) the contingent nature of the fee award. *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322. The approach anchors the court's analysis to an objective determination of the value of the attorney's services, ensuring the amount awarded is not arbitrary. *Id*. Ultimately, the trial court has broad discretion

to determine the value of professional services rendered in its court. *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 446. A declaration attesting to the accuracy of the fee bill is entitled to a presumption of credibility. *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 396.

In the declaration in support of the motion, Plaintiff/Cross-Defendant Chen requests fees and costs as follows:

- Attorney X. Young Lai: billed $28,400 (56.8 hours billed at $500/hour) (66.8 hours were billed, and a deduction of 10 hours was made for the declaratory relief work), and requests a 2.0 multiplier under the lodestar method, resulting in fees of $56,800.
- Attorney X. Young Lai: billed $11,850 (17.7 hours at $500/hour drafting motion and 6 hours of anticipatory billing at $500/hour).
- $120 in costs for filing the anti-SLAPP motion and the present motion.

The Court has reviewed the declaration of counsel Lai and the billing ledger attached thereto and presided over the underlying litigation. The Court, cognizant of the prevailing attorney's fees in this county for work of this nature, finds that counsel Lai is entitled to compensation at a reasonable rate of $400.00 per hour.

Turning next to whether the number of hours incurred by the firm is reasonable, the Court has carefully reviewed the billing ledger attached to the declaration of counsel Lai. The Court finds that the 56.8 hours claimed for the underlying anti-SLAPP motion and the 23.7 hours claimed for the fees motion to be unreasonable and excessive in light of the nature and complexity of the issues presented. A reduction is also appropriate because Plaintiff/Cross-Defendant prevailed only as to two of the three claims. The Court shall reduce the billed/anticipated to be billed hours by 50%. The Court finds that 45.25 hours of time is appropriate, all things considered.

The Court, thus, concludes that Plaintiff/Cross-Defendant is entitled to total fees of $18,100.00 as well as $120.00 in costs.

3. CU0002367 Diana Dentoni vs. Patrick Gilmore

Plaintiff apparently reserved a date for the filing of a motion, presumably for leave to file a first amended complaint. Pursuant to Code of Civil Procedure section 1005(b), Plaintiff was required to file and serve a notice of motion and motion at least sixteen court days before the hearing. Moreover, the period of notice is extended by additional days depending on the method of service. *See, e.g.*, Code Civ. Proc. §§ 1005, 1010.6(a)(3). Here, the April 30, 2026, notice of motion is deficient as it does not include a hearing date. The May 5, 2026, notice is also deficient as it references a May 8, 2026, hearing date. The matter is withdrawn from calendar. No motion is set for May 29, 2026 and no action shall be taken in connection with the filed motion unless and until it is duly noticed for hearing and served.

4. CU0002519 Matthew William Vickers vs. Ariana Kathleen Couch

Defendant Ariana Couch's motion to strike under Code of Civil Procedure section 425.16 (Anti-SLAPP) is denied.

Legal Standard for Anti-SLAPP Motion

> "Code of Civil Procedure section 425.16 sets out a procedure for striking complaints in harassing lawsuits that are commonly known as SLAPP suits ... which are brought to challenge the exercise of constitutionally protected free speech rights." *Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 196, 46 Cal.Rptr.3d 41, 138 P.3d 193.[1] A cause of action arising from a person's act in furtherance of the

[1] Code of Civil Procedure section 425.16 provides, in relevant part:

> (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.
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> (b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the Court determines that the Plaintiff has established that there is a probability that the Plaintiff will prevail on the claim.
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> (2) In making its determination, the Court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.
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> …
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> (e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (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, 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.

> "right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability" that the claim will prevail. Code Civ. Proc., § 425.16, subd. (b)(1). "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. 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. [Citation.] 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.' [Citation.] 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. [Citation.] '[C]laims with the requisite minimal merit may proceed.' " *Baral [v. Schnitt* (2026) 1 Cal. 5th 376,] 384-385, 205 Cal.Rptr.3d 475, 376 P.3d 604, fn. omitted.) … As to the second step, a plaintiff seeking to demonstrate the merit of the claim "may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence." *San Diegans for Open Government v. San Diego State University Research Foundation* (2017) 13 Cal.App.5th 76, 95, 218 Cal.Rptr.3d 160; *see Grenier v. Taylor* (2015) 234 Cal.App.4th 471, 480, 183 Cal.Rptr.3d 867; *City of Costa Mesa v. D'Alessio Investments, LLC* (2013) 214 Cal.App.4th 358, 376, 154 Cal.Rptr.3d 698; *Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1017, 85 Cal.Rptr.3d 838.

Monster Energy Co. v. Schechter (2019) 7 Cal.5th 781, 788 (parentheses omitted).

In addition, and of importance:

> Analysis of an anti-SLAPP motion is not confined to evaluating whether an entire cause of action, as pleaded by the plaintiff, arises from protected activity or has merit. Instead, courts should analyze each claim for relief — each act or set of acts supplying a basis for relief, of which there may be several in a single pleaded cause of action — to determine whether the acts are protected and, if so, whether the claim they give rise to has the requisite degree of merit to survive the motion.

Bonni v. St. Joseph Health System (2021) 11 Cal.5th 995, 1010.

Analysis

Step One: Arising From Protected Activity

Code Civ. Proc. § 425.16.

> "A claim arises from protected activity when that activity underlies or forms the basis for the claim. [Citations.] 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 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.' [Citations.] 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.' [Citation.] '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)....' [Citation.] 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.

In addition, under Civil Code section 47(b), a publication or broadcast made, "[i]n any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law…" is privileged. Civ. Code § 47(b).

The litigation privilege, codified in Civil Code section 47, applies to any publication required or permitted by law in the course of a proceeding authorized by law to achieve the objects of the proceeding, even though the publication is made outside the Courtroom and no function of the Court, or its officers is involved. *Albertson v. Raboff* (1956) 46 Cal.2d 375, 381. The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action. *Silberg v. Anderson* (1990) 50 Cal.3d 205, 213-214.

There are exceptions to Section 47(b); specifically, there is no privilege when a "person makes a false report that another person has committed … a criminal act … knowing that the report is false, or with reckless disregard for the truth or falsity of the report." Civ. Code § 47(b).

The principal purpose of the litigation privilege is to afford litigants and witnesses the utmost freedom of access to the Courts without fear of being harassed subsequently by derivative tort actions. *Silberg,* 50 Cal.3d at 213. To achieve this purpose, courts have given the litigation privilege a broad interpretation. *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241. Other purposes underlying the litigation privilege include assurance of "the utmost freedom of communication between citizens and public authorities whose responsibility is to investigate and remedy wrongdoing." *Silberg,* 50 Cal.3d at 213-214. The privilege is a matter of substantive law and, when applicable, is absolute, because it applies regardless of the communicator's motives, morals, ethics, or intent. *Id.* at 216, 220.

The litigation privilege has been held applicable to all torts except malicious prosecution. *Silberg, supra,* 50 Cal.3d at 215-216, *citing Albertson,* 46 Cal.2d at 382.

At bar, Defendant argues, among other things, that "the alleged offending conduct all occurred in connection with reporting alleged criminal conduct to mandatory reporters", including "reporting a sexual assault to a co-worker who is a mandated reporter" and "fil[ing] a lawful police report with the Nevada County Sheriff's Officer." Mot. 5:6-11. The Court agrees in part.

Plaintiff alleges *three,* separate acts as a basis for all his relief, specifically the acts alleged in paragraphs 11 (statements on or about November 7, 2024), 14 (statements on or about December 15, 2025) and 15 (statements on or about November 11, 2025). Moreover, the Court must determine, individually, whether each act is protected and, if so, whether the claim they give rise to has the requisite degree of merit to survive the motion. *See Bonni,* 11 Cal.5th at 1010.

On the record presented, defendant has made a prima facie showing that she made an oral statement to law enforcement (the executive branch) in connection with a proceeding authorized by law. Defendant has made a sufficient prima facie showing that the challenged allegation in Complaint paragraph 11 arises from activity protected by Code of Civil Procedure section 425.16(e)(1). She has not, however, made a sufficient showing with respect to the allegations in Paragraphs 14 and 15 that any of these acts arise from activity protected by Code of Civil Procedure section 425.16. Thus, Defendant has met her step-one burden *solely* as to the activity set forth in paragraph 11.

Step Two: Probability of Success

> If the Court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. There, the burden shifts to the Plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. The Court, without resolving evidentiary conflicts, must determine whether the Plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken. Allegations of protected activity supporting the stricken claim are eliminated from the complaint, unless they also support a distinct claim on which the Plaintiff has shown a probability of prevailing.

Baral v. Schnitt, 1 Cal.5th at 396.

" 'To demonstrate a probability of prevailing on the merits, the Plaintiff must show that the complaint is legally sufficient and must present a prima facie showing of facts that, if believed by the trier of fact, would support a judgment in the Plaintiff's favor. [Citations.] The Plaintiff's showing of facts must consist of evidence that would be admissible at trial. . . . [Citations.]" *JSJ Limited Partnership, supra,* 205 Cal.App.4th at 1521.

At this second stage, "a Plaintiff seeking to demonstrate the merit of the claim 'may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence.' " *Sweetwater Union High School Dist. v. Gilbane Building Co*. (2019) 6 Cal.5th 931, 940. "If the pleadings are not adequate to support a cause of action, the plaintiff has

failed to carry his burden in resisting the motion." *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 31.

The litigation privilege is relevant to the second step in the anti-SLAPP analysis in that it may present a substantive defense which a complainant must overcome to demonstrate a probability of prevailing. *JSJ Limited Partnership v. Mehrban* (2012) 205 Cal.App.4th 1512, 1522. A complainant cannot establish a probability of prevailing if the litigation privilege precludes liability on the claim. *Flatley v. Mauro* (2006) 39 Cal.4th 299, 323.

> There is some dispute in the case law as to which party bears the burden of proof on an affirmative defense in the context of an anti-SLAPP motion. Some cases state that "although section 425.16 places on the plaintiff the burden of substantiating its claims, a defendant that advances an affirmative defense to such claims properly bears the burden of proof on the defense. " *E.g., Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 676. Others suggest that the litigation privilege presents " 'a substantive defense a plaintiff must overcome to demonstrate a probability of prevailing. ' " *Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1485.

Dickinson v. Cosby (2017) 17 Cal.App.5th 655, 683 (citations omitted).

"Given the evidence in this case, [this Court] need not resolve the dispute here. What is important is that, regardless of the burden of proof, the court must determine whether plaintiff can establish a prima facie case of prevailing, or whether defendant has defeated plaintiff's evidence as a matter of law." *Ibid.*

The Court focuses on the defamation claim first. The elements of a claim for defamation depend on whether plaintiff is a public figure or a private figure and whether it concerns a public or private matter. For a private figure, the elements for a defamation cause of action in general are "(1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage." *See John Doe 2 v. Superior Court* (2016) 1 Cal.App.5th 1300, 1312. "If the person defamed is a public figure, he cannot recover unless he proves, by clear and convincing evidence [citation], that the libelous statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 256 (quotations omitted); California Civil Jury Instructions (CACI) 1700. Similarly, if the defamation involves an issue of public concern, proof of actual malice is necessary to recover presumed or punitive damages even if the plaintiff is not a public figure. *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 747; CACI 1702. If the defamation relates to a private figure, in connection with a private matter, a plaintiff must prove negligence to recover any damages. *Brown, 4*8 Cal.3d at 747; *Carney*, 221 Cal.App.3d at 1016, CACI 1704.

"Determining what constitutes a matter of public concern is a difficult task." *Carney v. Santa Cruz Women Against Rape* (1990) 221 Cal.App.3d 1009, 1020. "To a significant extent, the mere act of publishing material in the mass media creates public interest in its contents. The more sensational and hence injurious a statement is, the more 'public interest' it generates. " *Ibid.* (citations and quotations omitted). "Whether ... speech addresses a matter of public

concern must be determined by [the expression's] content, form, and context ... as revealed by the whole record." *Ibid*. (citations and quotations omitted). "[S]exual harassment and violence against women is [recognized to be] of pressing public concern." *Id.* at 1021.

The Court assumes, *arguendo,* that the alleged defamation in Complaint paragraph 11 involves an issue of public concern. Accordingly, the court also assumes that proof of actual malice is necessary to recover presumed or punitive damages.

At bar, Plaintiff can establish a prima facie case of prevailing. Vickers Decl. ¶¶ 2,4. According to Plaintiff, "[o]n November 5, 2024, Defendant and [he] engaged in sexual relations. The encounter was planned and consensual. No rape occurred. Defendant's allegations that a rape occurred are false. Over the next few days, the Defendant sent multiple messages inferring the encounter was consensual." Complaint ¶ 2. Defendant further declared that, "on the morning of November 6, 2024, Defendant reported rape and abuse allegations to law enforcement. She declined to press charges the next day, November 7, 2024 and no further contact or investigation occurred thereafter. Defendant nevertheless continued to repeat the accusation to third parties after declining to pursue criminal charges." Id. ¶ 4. Lastly, Plaintiff declares: "A[s] a result of the Defendant's accusations …, and subsequent public dissemination, I have experienced humiliation, anxiety, emotional distress, and damage to my personal and professional reputation." Id. ¶ 27. In short, Plaintiff has presented evidence that Defendant made *per se* defamatory statements to third parties about Plaintiff allegedly raping his ex-wife, Ms. Couch, a crime, that the statements were false, that Defendant impliedly had knowledge of its falsity, and that the statement had a natural tendency to injure. Moreover, Defendant has not defeated all of Plaintiff's evidence regarding defamation as a matter of law.[2]

The same can be said for the remaining claims. "The elements of a cause of action for IIED are as follows: (1) defendant engaged in extreme and outrageous conduct (conduct so extreme as to exceed all bounds of decency in a civilized community) with the intent to cause, or with reckless disregard to the probability of causing, emotional distress; and (2) as a result, plaintiff suffered extreme or severe emotional distress." *Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1273, CACA 1600. "The elements of a cause of action for negligence are duty, breach, causation, and damages." *Woolard v. Regent Real Estate Services, Inc.* (2024) 107 Cal.App.5th 783, 791 *quoting Melton v. Boustred* (2010) 183 Cal.App.4th 521, 529; CACI 400. The same evidence noted above is sufficient to establish a prima facie case that has not been defeated as a matter of law.

In summary, Defendant's motion is denied.

5. CU0002568 Gabrielle Christakes vs. City of Nevada City

Defendant The City of Nevada City's demurrer to Plaintiff Gabrielle Christakes' First Amended Complaint is sustained as to the second cause of action. Plaintiff is granted leave to amend within ten (10) days of this Court's order.

[2] Assuming, *arguendo*, that Plaintiff's case solely relates to a private figure and matter, Plaintiff has also presented sufficient evidence to establish a prima facie case that has not been defeated as a matter of law.

Legal Standard

On demurrer, a court's function is limited to testing the legal sufficiency of the complaint. *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114. In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. *Miklosy v. Regents of the Univ. of Cal.* (2008) 44 Cal.4th 876, 883. A court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.

Contentions, deductions and conclusions of law, however, are not presumed as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967. A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate facts; the pleading is adequate if it apprises the defendant of the factual basis for the plaintiff's claim. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. A demurrer is not the appropriate procedure for determining the truth of disputed facts. *Fremont Indemnity Co.,* 148 Cal.App.4th at 113-114.

"If a complaint does not state a cause of action, but there is a reasonable possibility that the defect can be cured by amendment, leave to amend must be granted." *Milligan v. Golden Gate Bridge Highway & Transportation Dist.* (2004) 120 Cal.App.4th 1, 6.

Second Cause of Action: Age Harassment

Defendant asserts the second cause of action for age harassment in the First Amended Complaint (FAC) fails because Plaintiff fails to sufficiently state a claim. The Court agrees.

FEHA prohibits harassment of an employee including harassment based on age. Gov. Code § 12940(j)(1). To articulate a prima facie case of harassment under FEHA, a plaintiff must show: (1) she was a member of a protected class; (2) she was subjected to unwelcome harassment; (3) the harassment was based on the plaintiff's membership in a protected class; (4) the harassment unreasonably interfered with her work performance by creating an intimidating, hostile, or offensive work environment; and (5) the defendant is liable for the harassment (*i.e.*, that a supervisor engaged in conduct or knew/should have known of the same and failed to take immediate/appropriate corrective action). Martin v. Board of Trustees of California State University (2023) 97 Cal.App.5th 149, 170, CACI 2521A, CACI 2523.

As a starting point, any harassment must be "based on the plaintiff's membership in a protected class." *Ibid.* Thus, a plaintiff alleging harassment because of age must articulate how a defendant's conduct was harassment based on that protected characteristic. *See Martin v. Board of Trustees of California State University* (2023) 97 Cal.App.5th 149, 172 (noting for purposes of summary judgment, that "[employee] Martin … fails to articulate how [employer] CSU's response to the Sundial articles was harassment based on Martin's protected characteristics.")

"[H]arassment focuses on situations in which the *social environment* of the workplace becomes intolerable because the harassment (whether verbal, physical, or visual) communicates an offensive message to the harassed employee." *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686,

706. Thus "'the exercise of personnel management authority properly delegated by an employer to a supervisory employee might result in discrimination, but not in harassment.'" *Ibid*. A harassing act "consists of conduct outside the scope of necessary job performance, conduct presumably engaged in for personal gratification, because of meanness or bigotry, or for other personal motives." *Reno v. Baird* (1998) 18 Cal.4th 640, 646. While "[a] single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment," (Gov. Code, § 12923(b)), "[t]o prevail on a hostile work environment claim under California's FEHA, an employee must show that the harassing conduct was 'severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of their [disability].'" *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1043 (internal citations omitted).

"The words 'severe' and 'pervasive' have no peculiar meanings under the law. The adjective "severe" is defined as "strongly critical and condemnatory" or "inflicting pain or distress." The verb 'pervade" is defined as "to become diffused throughout every part of.'" *Caldera v. Department of Corrections and Rehabilitation* (2018) 25 Cal.App.5th 31, 38 (internal citations omitted). The totality of the circumstances are considered when determining whether conduct is severe or pervasive such as "[¶] (a) The nature of the conduct; [¶] (b) How often, and over what period of time, the conduct occurred; [¶] (c) The circumstances under which the conduct occurred; [¶] (d) Whether the conduct was physically threatening or humiliating; [¶] (e) The extent to which the conduct unreasonably interfered with an employee's work performance.' CACI No. 2524." *Id.* at 38–39 (parentheses omitted).

Where a plaintiff's "claims for harassment and retaliation are founded on the provisions of FEHA … [courts] apply the general rule that facts in support of each of the requirements of a statute upon which a cause of action is based must be specifically pled." *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 604

At bar, the FAC alleges, in pertinent part:

Plaintiff is a woman over 40 years of age who was placed on a "groundless and baseless" Performance Improvement Plan (PIP) from March 13, 2025 to June 12, 2025. FAC, ¶¶ 8, 10.

> During the PIP time period, Assistant City Manager Lon Peterson ("Peterson') and Grayson created a hostile and retaliatory work environment for Plaintiff through intimidation and shunning. Assistant City Manager Lon Peterson moved his desk into her office work area and placed it directly across from hers. Peterson insisted on having remote meetings with Plaintiff even though they were both in the same room.
>
> During the PIP time period, Plaintiff was in fear of losing her job and was frequently upset and in tears at work. Grayson largely ignored her, and on more than one occasion, when she questioned him about a procedure, he would shout words to the effect of "No! That's not how we do it!" without offering any help. During the PIP period, Finance Manager Brittnie Neundorfer scrutinized Plaintiff's every move, actively looking for problems.

FAC, ¶¶ 14-15.

On April 25, 2025, Plaintiff "overheard two City officials talking about 'getting' a younger female to work for Nevada City, using the first name of a younger woman…[and] laughed" off questions and "tried to minimize their comments." FAC, ¶ 17.

On the same date, the City Manager asked Plaintiff how much longer she was planning on working and whether she liked her job; "Plaintiff responded with a question using a blended last name of two older workers who had been pushed out of employment with NEVADA CITY, asking if he was trying to do the same thing to her." FAC, ¶ 18.

Plaintiff was placed on paid administrative leave pending an investigation on July 7, 2025. FAC, ¶ 19. While on leave, an interim employee under the age of 40 was hired to assume many of Plaintiff's duties. FAC, ¶ 20. Plaintiff was 62 years old at the time of her termination. FAC, ¶ 28.

The demurrer is well taken. While FAC paragraphs 8, 14-15 generally allege there was a hostile/retaliatory work environment during Plaintiff's PIP and includes allegations of the same, the FAC fails to meaningfully allege or articulate how Defendant's alleged harassment was based on the protected characteristic of age, how it was severe or pervasive harassing conduct, and how it unreasonably interfered with her work performance. Moreover, there is no allegation how Defendant is liable for purported conduct of the Finance Manager, i.e., her supervisory status or knowledge of her conduct by supervisors, etc.

To the extent that Plaintiff relies on the allegations of FAC paragraph 17, the FAC does not: identify the speakers, allege that the statement concerned Plaintiff or her position, allege how the remark was severe/pervasive harassing conduct, allege how the remark unreasonably interfered with her work performance, allege how Defendant is liable for the comments of these individuals, or otherwise connect the remark to other alleged hostile conduct.

Finally, to the extent Plaintiff relies on the allegations of FAC paragraph 18, Plaintiff fails to allege how the remark was severe/pervasive harassing conduct, unreasonably interfered with her work performance, or otherwise connect the remark to other alleged hostile conduct.

The demurrer as to the second cause of action is sustained.

Plaintiff asserts, without detail, that any deficiency may be cured by amendment, but makes no showing of how cure is reasonably possible. This notwithstanding, the Court will allow amendment given the liberality generally associated with amendment of pleadings.