June 12, 2026, Civil Law & Motion Tentative Rulings

1. CU0000090 Matthew Palleschi, et al. v. Daniel Fraiman Construction, Inc. et al.

Plaintiff's Motion to Compel Further Responses from Defendant Daniel Fraiman to Form Interrogatories – Construction (Set One)

On the Court's motion, the hearing on Plaintiff's motion to compel further responses from Defendant Daniel Fraiman to Form Interrogatories – Construction (Set One), and for monetary sanctions is continued to Friday, July 10, 2026, at 10:00 a.m., in Department 6, and the parties are directed to meet and confer as specified herein.

Legal Standard

Under Code of Civil Procedure section 2030.300(a), a court may order a party to serve a further response to an interrogatory when the court finds: "(1) An answer to a particular interrogatory is evasive or incomplete[;] (2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate[; or] (3) An objection to an interrogatory is without merit or too general."

"A meet and confer declaration in support of a motion shall state facts showing *a reasonable and good faith attempt*, *either in person, by telephone, or by videoconference*, to informally resolve each issue presented by the motion." Code Civ. Proc. § 2016.040(a) (italics added).

Analysis

At bar, Plaintiff sent Defendant a meet and confer letter on February 27, 2026 regarding the alleged inadequate responses. *See* Negele Decl., Ex. E. The letter only requests amended responses, and makes no mention of attempting to set up further communication with Defendant's counsel. *See id.* There is no evidence that Defendant responded to Plaintiff's meet and confer letter. Moreover, there is no evidence that the parties actually discussed the same in person or remotely. In short, there was not a sufficient and reasonable attempt by both sides to informally resolve their dispute as required.

Failing to confer or to attempt to confer "in a reasonable and good faith attempt to resolve informally any dispute concerning discovery" is a "misuse" of the discovery process and is subject to a mandatory monetary sanction. Code Civ. Proc. §§ 2023.010(i) and 2023.020. Failing to participate in the meet and confer process is also sanctionable in the amount of $1,000.00 (after notice and an opportunity to be heard). *See* Code Civ. Proc. §2023.050(a)(3).

Accordingly, the hearing on Plaintiff's motion to compel is continued to Friday, July 10, 2026, at 10:00 a.m., in Department 6. Within seven (7) days of this order, counsel for the parties are ordered to participate in a *meaningful* meet and confer with respect to the issues giving rise to the pending motion. Thereafter, the parties shall file a joint status report, no later than two weeks prior to the scheduled hearing, limited to five (5) pages, apprising the Court of the outcome of the meet and confer efforts and setting forth in succinct fashion each party's position at to what discovery issues remain outstanding in relation to the pending motions. The report shall also

include any request for discovery sanctions by any party. To the extent that any discovery disputes remain, the parties shall file an amended separate statement at least two weeks prior to the continued hearing date.

Defendant CG West Flooring dba Artisan Hardwood Floors, Inc. Motion for an Order Compelling Plaintiffs to Answer Special Interrogatories, Set 2, and for Sanctions

On the Court's motion, the hearing on Defendant CG West Flooring dba Artisan Hardwood Floors, Inc.'s motion for an order compelling Plaintiffs Michelle Palleschi and Matthew Palleschi to answer Special Interrogatories, Set 2, and for monetary sanctions is continued to Friday, July 10, 2026, at 10:00 a.m., in Department 6, and the parties are directed to meet and confer as specified herein.

Legal Standard

Under Code of Civil Procedure section 2030.300(a), a court may order a party to serve a further response to an interrogatory when the court finds: "(1) An answer to a particular interrogatory is evasive or incomplete[;] (2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate[; or] (3) An objection to an interrogatory is without merit or too general."

"A meet and confer declaration in support of a motion shall state facts showing *a reasonable and good faith attempt*, *either in person, by telephone, or by videoconference*, to informally resolve each issue presented by the motion." Code Civ. Proc. § 2016.040(a) (italics added).

Analysis

At bar, Defendant sent Plaintiffs a meet and confer letter on April 22, 2026 regarding the alleged inadequate responses. *See* Boardman Decl., Ex. C. The letter only requests amended responses, and makes no mention of attempting to set up further communication with Defendant's counsel. *See id.* There is no evidence that Plaintiffs responded to Defendant's meet and confer letter. In fact, Plaintiff's counsel states, "I saw no point and did not respond to Nora's meet and confer letter." Negele Decl., ¶ 16. While Mr. Negele states he held a telephone conversation with Defendant's counsel, he does not state the efforts made to "informally resolve each issue presented by the motion" as required by Code of Civil Procedure § 2016.040(a), and the telephone call preceded Defendant's meet and confer letter. Negele Decl., ¶ 12. On the record presented, there were no reported good faith discussions of the issues raised in Defendant's subsequent meet and confer letter. There was no showing of a sufficient and reasonable attempt by both sides to informally resolve their dispute as required.

Failing to confer or to attempt to confer "in a reasonable and good faith attempt to resolve informally any dispute concerning discovery" is a "misuse" of the discovery process and is subject to a mandatory monetary sanction. Code Civ. Proc. §§ 2023.010(i) and 2023.020. Failing to participate in the meet and confer process is also sanctionable in the amount of $1,000.00 (after notice and an opportunity to be heard). *See* Code Civ. Proc. §2023.050(a)(3).

Accordingly, the hearing on Defendant's motion to compel is continued to Friday, July 10, 2026, at 10:00 a.m., in Department 6. Within seven (7) days of this order, counsel for the parties are ordered to participate in a *meaningful* meet and confer with respect to the issues giving rise to the pending motion. Thereafter, the parties shall file a joint status report, no later than two weeks prior to the scheduled hearing, limited to five (5) pages, apprising the Court of the outcome of the meet and confer efforts and setting forth in succinct fashion each party's position at to what discovery issues remain outstanding in relation to the pending motions. The report shall also include any request for discovery sanctions by any party. To the extent that any discovery disputes remain, the parties shall file an amended separate statement at least two weeks prior to the continued hearing date.

Plaintiff's Motion for Pretrial Financial Discovery

Plaintiffs' motion for an order permitting pretrial discovery of the financial conditions, profits, and the net worth of Defendant Daniel Fraiman Construction, a corporation, and Daniel Fraiman, an individual, to determine potential punitive damages is granted.

Legal Standard

While pretrial discovery of a defendant's financial condition is generally not permitted, "[u]pon motion by the plaintiff supported by appropriate affidavits and after a hearing, if the court deems a hearing to be necessary, the court may at any time enter an order permitting the discovery otherwise prohibited by this subdivision if the court finds, *on the basis of the supporting and opposing affidavits presented*, that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294." Civ. Code, § 3295(c) (italics added); *see Jabro v. Superior Court* (2002) 95 Cal.App.4th 754, 756. "Such order shall not be considered to be a determination on the merits of the claim or any defense thereto and shall not be given in evidence or referred to at the trial." *Ibid.*

"[B]efore a court may enter an order permitting discovery of a defendant's financial condition, it must (1) weigh the evidence submitted in favor of and in opposition to the motion for discovery, and (2) make a finding that it is very likely the plaintiff will prevail on his claim for punitive damages." *Jabro*, 95 Cal.App.4th at 758. "In this context, a 'substantial probability' of prevailing on a claim for punitive damages means that it is 'very likely' that the plaintiff will prevail on such a claim or there is a 'strong likelihood' that the plaintiff will prevail on such a claim." *I-CA Enterprises, Inc. v. Palram Americas, Inc.* (2015) 235 Cal.App.4th 257, 283.

Analysis

Plaintiffs argue there is a substantial probability they will prevail on their claim for punitive damages under Civil Code section 3294. On the *record presented*, the Court agrees.

"The elements of fraud that will give rise to a tort action for deceit are: " '(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.' " *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974. "Fraud is an intentional tort; it is the element of fraudulent intent, or intent to deceive, that distinguishes it from

actionable negligent misrepresentation and from nonactionable innocent misrepresentation. It is the element of intent which makes fraud actionable, irrespective of any contractual or fiduciary duty one party might owe to the other." *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith* (1998) 68 Cal.App.4th 445, 482. "[F]raudulent intent is an issue for the trier of fact to decide." *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1061.

Punitive damages may be imposed where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. Civ. Code § 3294(a). As used in this section, the following definitions shall apply:

> (1) "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.
> (2) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights causing injury.
> (3) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

Civ. Code § 3294(c).

Plaintiffs argue their evidence shows Defendants fraudulently induced Plaintiffs to enter into a contract they would otherwise not have agreed to. Plaintiffs support their motion with excerpts from the Verified Second Amended Complaint ("VSAC"), as well as excerpts from the deposition of Daniel Fraiman ("Fraiman"). *See* 5/20/26 Pl. Mot at 2:5-4:26 (and citations therein).

Defendants argue Plaintiffs mischaracterized the testimony of Fraiman. Per Plaintiffs, the evidence they submit in opposition demonstrates that: it was Plaintiffs who requested the project proceed without finalized plans or engineering, permitting responsibilities were discussed before the contract was made, project costs and timeline changed as the scope evolved, and that the parties negotiated the Addendum to govern completion of the remaining work. *See* 6/1/26 Def. Op. at 4:14-22 (and citations therein). Defendants support their opposition with excerpts from the depositions of Fraiman, Plaintiff Michelle Palleschi, and Plaintiff Matthew Palleschi, as well as copies of the Original Home Improvement Contract and the Addendum Contract.

At bar, the Court has carefully reviewed the evidence presented by both parties and considered the reasonable inferences that can be drawn therefrom. The Court recognizes that there is conflicting evidence with respect to the claim for punitive damages. That said, based on the current record presented and the Court's weighing of the evidence, the Court concludes there is a substantial probability (*i.e.*, there is a strong likelihood) Plaintiffs will prevail on a claim for punitive damages. As such, pretrial financial condition discovery is warranted.

The Court has reviewed Plaintiff's revised requests for discovery as to the corporation and individual Defendants set forth in Plaintiff's reply. Pl. Reply, Ex. 1. The Court shall issue an order incorporating the provisions in Ex. 1 at 2:16-7:12 and 7:16-18.

2. CU0001511 Cassandra Leigh Triplett vs. Sammie's Friends Animal Shelter, et al.

Defendant Julia Carroll's motion for summary judgment is granted.

Relevant Factual History

This action stems from injuries sustained by Plaintiff, employed as an Animal Control Officer with the Nevada County Sheriff's Office, when she brought two goats into Defendant Sammie's Friends Animal Shelter ("Shelter") while Defendant Julie Carrol ("Carroll") was in the staff area behind the front business counter with a male Pitbull dog, Lenny. Plaintiff dropped a leash near a half door separating the staff/office area from the lobby, and when she leaned down to pick up the leash, Lenny reached over the half door and bit her face and left wrist.

Procedural Issue

Plaintiff's opposition was due to be filed and served 20 days before the hearing, which was May 22, 2026. Plaintiff filed and served her opposition on May 26, 2026. Defendant did not object to the late-filed opposition. In its discretion and in the interests of justice, the Court will consider the opposition. *See* Rules of Court, rule 3.1300(d).

Legal Standard

Code of Civil Procedure section 437c(f)(1) provides that, "A party may move for summary adjudication as to one or more causes of action within an action." Such "[a] motion for summary adjudication shall be granted only if it *completely* disposes of a cause of action…." Code Civ. Proc. § 437c(f)(1) (italics added). The function of a motion for summary judgment or adjudication is to allow a determination as to whether an opposing party cannot show evidentiary support for a pleading or claim and to enable an order of summary dismissal without the need for trial. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843. In analyzing such motions, courts must apply a three-step analysis: "(1) identify the issues framed by the pleadings; (2) determine whether the moving party has negated the opponent's claims; and (3) determine whether the opposition has demonstrated the existence of a triable, material factual issue." *Hinesley v. Oakshade Town Center* (2005) 135 Cal.App.4th 289, 294. Thus, summary judgment or summary adjudication is granted when, after the court's consideration of the evidence set forth in the papers and all reasonable inferences accordingly, no triable issues of fact exist and the moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c); *Villa v. McFarren* (1995) 35 Cal.App.4th 733, 741.

A defendant moving for summary judgment has the initial burden of showing that a cause of action lacks merit because one or more elements of the cause of action cannot be established or there is an affirmative defense to that cause of action. Code Civ. Proc. § 437c, subd. (o)(1), (2); *Aguilar*, 25 Cal. 4th at 850. As to each claim as framed by the complaint, the party moving for summary judgment or summary adjudication must satisfy the initial burden of proof by presenting facts to negate an essential element. *Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1520. Once the moving party has met the burden, the burden shifts to the opposing party to show via specific facts that a triable issue of material facts exists as to a cause of action or a defense thereto. Code Civ. Proc. § 437c(o)(2). When a party cannot establish an

essential element or defense, a court must grant a motion for summary adjudication. Code Civ. Proc. § 437c(o)(1)-(2).

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exists are to be resolved in favor of the party opposing summary judgment. *Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562; *see also See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900.

Analysis

The Volunteer Protection Act provides that a volunteer of a nonprofit organization is not liable for harm he or she caused while acting within the scope of the volunteer's responsibilities in the nonprofit organization, so long as "the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer." 42 U.S.C. § 14503(a)(3). The Act defines "nonprofit organization" as a tax-exempt organization described in 26 U.S.C. § 501(c)(3) (hereafter, a "501(c)(3) nonprofit") or "any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime" under the Hate Crime Statistics Act (28 U.S.C. § 534). 42 U.S.C. § 14505(4)(B).

The Volunteer Protection Act of 1997 was enacted to lessen the deterrence that liability actions create on volunteers offering their services. 42 U.S.C. § 14501(a); see *Institute of Cetacean Research v. Sea Shepherd Conservation Soc.* (9th Cir. 2014) 774 F.3d 935, 956-957 (discussing legislative history and purpose of Act "to immunize a volunteer from liability from harm caused by *ordinary negligence*") (emphasis in original).[1]

At bar, it is undisputed that Sammie's Friends is, and at the time of the incident was, a 501(c)(3) non-profit organization. SSUMF #3. It is also undisputed that Defendant Carroll was a volunteer of the nonprofit organization. SSUMF # 7. It is undisputed Defendant Carroll was not required to hold a license or certification to perform the duties to which she was assigned at the time of the incident. SSUMF #10.

Conduct Within the Scope of Volunteer Duties

Defendant Carroll contends she was acting within the scope of her duties as a volunteer. Plaintiff disagrees and contends that Carroll was the *de facto* supervisor of Lenny that day. Defendant has the better argument.

Defendant Carroll testified she was volunteering as a front desk receptionist at the time of the incident. SSUMF ## 7-8; Def. App. of Exhibits, Exh. 3, 7:24-8:7. In this capacity, Carroll

[1] However, the Act is limited in that it does not affect a civil action against the volunteer by the entity for which the volunteer was working. 42 U.S.C. § 14501(c). It also does not affect the liability of the nonprofit organization for whom the volunteer was working. 42 U.S.C. § 14501(d).

primarily answered the phone, took messages, and greeted people who were coming into the office. SSUMF # 9, Exh. 3, 8:18-22. Carroll further testified she was on the phone at the time the incident occurred. SSUMF #11, Exh. 3, 18:16-19. On the record presented, Defendant met her prima facie burden to establish that she was acting within the scope of her responsibilities at the time of the incident.

Plaintiff has presented no evidence that Defendant Carroll was acting outside of the scope of her volunteer duties as a receptionist at the time of the incident. Plaintiff offers evidence that: Lenny was in the office area where Defendant was sitting from 8:00 a.m. until the incident time of 1:07 p.m., PSSUMF ## 22, 38; Defendant was the only person in the office at the relevant time, PSSUMF # 23; Debbie Freele, was the shelter staff member in charge, but would come and go during Defendant's shift, PSSUMF ## 40, 41; and no other staff member came to check on Lenny during the relevant time period. PSSUMF # 44. That noted, Plaintiff has not made any evidentiary showing that Ms. Carroll was assigned responsibility for Lenny, exercised control over Lenny, made any decisions regarding Lenny's placement in the office area, or possessed any information suggesting Lenny posed a danger to Plaintiff. Defendant's presence with the dog (and other staff members absence) does not prove, by itself, that Defendant was engaged in duties beyond her normal responsibilities and, more particularly, that she was exercising any responsibility with respect to the dog in question. There is no material dispute as to whether Defendant Carroll was acting within the scope of her responsibilities.

Defined Wrongful Conduct

Plaintiff argues the Volunteer Protection Act does not apply because her injuries were caused by Carroll's gross negligence, reckless misconduct, criminal misconduct, or because she acted with a conscious, flagrant indifference to the rights or safety of Plaintiff. The Court cannot agree.

> [W]illful misconduct has a well-established meaning which is clearly differentiated from negligence and gross negligence. Gross negligence involves a failure to act under circumstances that indicate a passive and indifferent attitude toward the welfare of others. Negative in nature, it implies an absence of care. Willful misconduct, on the other hand, requires an intentional act or an intentional failure to act, either with knowledge that serious injury is a probable [not possible] result, or with a positive and active disregard for the consequences. No amount of descriptive adjectives or epithets may turn a negligence action into an action for intentional or willful misconduct.

Johns-Manville Sales Corp. v. Workers' Comp. Appeals Bd. (1979) 96 Cal. App.3d 923, 930 (citations and quotations omitted); *see also id.* at 931.

At bar, Defendant met her prima facie burden of establishing that she did not engage in acts or omissions that rose to the level of gross negligence, reckless misconduct, criminal misconduct, or a conscious, flagrant indifference to the rights or safety of Plaintiff. As noted previously, Defendant has demonstrated that her responsibilities were to serve as a receptionist and she was apparently on the phone at the time of the incident. UMF 8, 9, 11. Ms. Carroll had never interacted with "Lenny" prior to the day of the incident. UMF 14. Ms. Carroll did not know how Lenny came to be in the office area on the date of the incident. UMF 15.

At bar, Plaintiff contends that Defendant Carroll engaged in a series of omissions on the day in question that rise to the level of gross negligence, reckless misconduct, criminal misconduct, or conscious, flagrant indifference. *See* 5/26/26 Opposition at 3:12-4:25, 5:1-5:4, 5:10-14, 6:2-6:3 (and citations therein). The Court is not persuaded.

There is no evidence that Defendant was tasked with or actually assumed supervision of Lenny. There is no evidence that Defendant interacted with Lenny before the incident, knew anything about any dangerous propensities for the dog, or had any reason to anticipate the dog would attack Plaintiff. There is no evidence that Defendant placed or permitted Lenny to be in the staff area. At best, Defendant Carroll's claimed failures, *e.g.*, to notify staff that watching a dog was not her responsibility, or to notify staff she lacked training how to handle a dog like Lenny, etc., would constitute potentially negligent acts. On the record presented, Plaintiff has presented no evidence which creates an issue of material fact as to whether Defendant Carroll acted with the requisite *mens rea*, that is, willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of Plaintiff. Absent the same, the liability protections or immunity of the Volunteer Protection Act apply to Defendant.

3. CU0002023 Wendy Robinson v. Shellpoint Mortgage Servicing, et al.

One of the parties apparently reserved this date for the filing of a motion; none was filed. This matter is removed from calendar.

4. CU0002418 Andrew Ehlers v. Brandon Murray, et al.

Defendant's motion to compel mediation and stay proceedings pending mediation is denied.

Defendants, property owners, argue that the parties' agreement "contains a dispute resolution provision requiring that any disputes arising between the parties be submitted to mediation prior to the initiation of litigation or arbitration." As such, Defendants seek an order compelling the parties to participate in mediation pursuant to Code of Civil Procedure section 1281.2. The Court is not persuaded.

The Dispute Resolution clause states:

> At the sole election and option of Owner, in writing to Contractor, all claims, disputes and matters in question arising out of, or relating to this Agreement or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, shall be decided by the claim's procedure. No claims or disputes between Owner and Contractor shall be arbitrated unless separately elected in writing by Owner at its sole election, option and discretion, in which case, binding arbitration shall take place before the American Arbitration Association under its Construction Industry Rules. *If Owner demands mediation, Contractor shall comply and participate with the mediation sought through the American Arbitration Association under its Mediation selection provisions under its Construction Industry Rules, to take place expeditiously within 60 days of demand.*

Faircloth Decl., Ex. A, § 9.

Moreover, Defendants have "asked" Plaintiff to agree to submit their dispute to mediation on numerous occasions between December 2025 and March 2026. Faircloth Decl. ¶¶ 3, 4. There has been no response apparently from Plaintiff.

As a preliminary matter, it is not entirely clear that Defendants have "demanded" mediation; defendants requested the same. Assuming *arguendo* that the request, as posed, is a demand, the Dispute Resolution clause, literally read, states that the Contractor (Plaintiff) "shall comply and participate with the mediation." However, it is not so simple.

"Mediation is defined as a "process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement." § 1775.1, subd. (a); Evid.Code, § 1115; rule 3.852(1) [former rule 1620.2(a)].)" *Jeld-Wen, Inc. v. Superior Court* (2007) 146 Cal.App.4th 536, 540. "During this process, a neutral third party with no decisionmaking power intervenes in the dispute to help the litigants voluntarily reach their own agreement." *Ibid*. "Essential to the mediation process is the concept that the parties are in control of resolving their own dispute." *Ibid;* see also, Advisory Com. com. to Cal. Rules of Court, rule 3.853 (former rule 1620.3] ["Voluntary participation and self-determination are fundamental principles of mediation"). A court participating in the Civil Action Mediation Program may order a case to mediation if the amount in controversy does not exceed $50,000 for each plaintiff. Code Civ. Proc. § 1775.5; Cal. Rules of Ct., rule 3.891(a)(1), Local Rule 4.0010.[1] "[A]ny other action may be submitted to court-sponsored mediation, regardless of the amount in controversy, if all the parties so stipulate." *Jeld-Wen, Inc., supra*, 146 Cal.App.4th at 541; Cal. Rules of Ct., rule 3.891(a)(2).

"The case law and the statutory scheme outlined above emphasize the voluntary nature of mediation." *Jeld-Wen, Inc., supra*, at 541. "Significantly, the trial court must consider the expressed views of the parties *before* ordering a case to mediation … and even after a case has been ordered to mediation, the mediator must respect the right of any party to withdraw from the mediation at any time." *Ibid*. "While trial courts may try to cajole the parties … into stipulating to private mediation …, parties cannot be forced or coerced over the threat of sanctions into attending and paying for private mediation as this is antithetical to the entire concept of mediation." *Id.* at 543.[2]

Therefore, the Court must deny Defendants' motion to compel mediation. The parties may, if they choose, agree to participate in mediation. Moreover, the Court would very much encourage the parties to consider the potential advantages of participation in mediation. The Court, however, cannot mandate the same under the circumstances presented.

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[1] The Complaint seeks an amount in excess of the damages cap of $50,000.00.

[2] The Court has no authority to order mediation under Code of Civil Procedure section 1281.2 as requested by Defendants. That provision applies to enforcement of arbitration agreements.

5. CU0002519 Matthew William Vickers vs. Ariana Kathleen Couch

The Court previously continued the hearing for the anti-SLAPP motion to strike from May 29, 2026, to June 12, 2026, at 10:00 a.m., with the following tentative ruling:

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.
>
> (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.
>
> (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.
>
> …
>
> (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

> "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.

<u>Analysis</u>

> connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

Code Civ. Proc. § 425.16.

Step One: Arising From Protected Activity

> "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.

<u>Step Two: Probability of Success</u>

> 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.[21]

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.

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[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.