

## March 13, 2026, Civil Law & Motion Tentative Rulings

### 1. CL0001047      **First National Bank of Omaha vs. Gerasimos Christoforatos**

Defendant Gerasimos Christoforatos' motion to vacate judgment under Code of Civil Procedure section 473(b) or under the Court's equitable powers is denied.

Under [Code of Civil Procedure section 473(b)], a court may relieve a party from a default or default judgment due to 'mistake, inadvertence, surprise, or excusable neglect' if the party files an application for relief within six months from the date of the default." *Kramer v. Traditional Escrow, Inc.* (2020) 56 Cal.App.5th 13, 28. "The six-month time limit for granting statutory relief is jurisdictional and the court may not consider a motion for relief made after that period has elapsed." *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 42. Here, judgment was entered on February 13, 2025, and the operative motion, at earliest, was filed on December 12, 2025 (with an amended motion on January 13, 2026). This Court lacks jurisdiction under section 473(b) to consider this motion filed approximately ten months after the judgment.

"Aside from section 473, subdivision (b), 'courts have the inherent authority to vacate a default and default judgment on equitable grounds such as extrinsic fraud or extrinsic mistake.' The court's ability to grant relief under its inherent power is narrower than its ability to grant relief under section 473, subdivision (b)." *Kramer*, 56 Cal.App.5th at 29. "A party seeking relief under the court's equitable powers must satisfy the elements of a 'stringent three-pronged test': (1) a satisfactory excuse for not presenting a defense, (2) a meritorious defense, and (3) diligence in seeking to set aside the [judgment]." *Kramer*, 56 Cal.App.5th at 29, citing *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 982-983.

" 'Although the policy of the law is to favor a hearing on the merits of a case, courts are not required to set aside ... judgments for defendants who flagrantly ignore the responsibility to present a defense.... The defendant must ... demonstrate a satisfactory excuse for not responding to the ... action in a timely manner.' " *Kramer*, 56 Cal.App.5th at 29, quoting *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 503-504.

In addition, "a defendant that believes it is in default must act with diligence .... Our Supreme Court has stated that courts should evaluate "whether defendant[s] in the *light of the circumstances known to [them]* acted unreasonably in not filing the motion to set aside the ... judgment earlier." *Kramer*, 56 Cal.App.5th at 37, quoting *Weitz v. Yankosky* (1966) 63 Cal.2d 849, 857-858.

At bar, defendant has failed to demonstrate a credible and satisfactory excuse for not presenting a defense in connection with the request for entry of judgment and diligence in seeking to set aside the judgment. Defendant, of course, had notice of the instant lawsuit. He originally filed a December 28, 2023, answer and counterclaims, appeared for trial on March 4, 2024, and ultimately executed a comprehensive agreement to resolve the matter. See 3/4/24 and 3/12/24 Stipulation and Order. Of importance, Defendant had multiple notices that Plaintiff intended to seek entry of judgment. On January 23, 2025, Defendant was advised via a letter to his address of record that Plaintiff potentially would seek to have judgment entered; on February 7, 2025, Defendant was specifically advised that he was "in default" and that Plaintiff "will proceed in

requesting that the Court enter judgment against you....” See Amended Mot. 2:22-25, 3:10-14,1/13/26 Appendix of Exs., Exs. C, E. Plaintiff filed its application to enter judgment on February 11, 2025, and served the same on Defendant at his address of record. See 2/11/25 Application and Declarations. Notwithstanding full notice that Defendant was allegedly in default and that Plaintiff was applying for entry of judgment, Defendant filed *nothing* to oppose the request for entry of judgment including any sort of defense. Moreover, Defendant has provided no credible explanation as to why he took no action to challenge the instant judgment until December 2025.

“Given [Defendant’s] inability to satisfy the satisfactory excuse or diligence prong, [the Court need] address whether they have a meritorious defense.” *Kramer*, 56 Cal.App.5th at 38.

In sum, the motion lacks merit and is denied.

## **2. CU0000512            eCapital Asset Based Lending v. Nicole Medina, et al.**

Defendants’ motion for attorney’s fees is granted in part, that is, in the amount of \$74,480.00.

### Request for Judicial Notice

Defendants’ requests for judicial notice of exhibits 1-3 are granted.

### Mr. Bonuchi’s Fees

Plaintiff argues Mr. Bonuchi’s fees are not recoverable in this case as they were in a separate federal case (S.D.N.Y. Case No. 21-cv-0507). The Court agrees.

The case at bar was filed on January 17, 2023. The Declaration of Anthony W. Bonuchi shows all of his time billed took place between February 18, 2021 through August 5, 2021 and related entirely for the federal case. Mr. Bonuchi’s fees are not recoverable as fees associated with the instant matter.

### Ms. Jones and Mr. Richard’s Fees Under the Tracy Guaranty

#### Parties Entitled to Fees

Plaintiff argues that because Ms. Medina was the only personal representative of the Estate of David Freeman, Defendant Mitchell Freeman was not in privity of contract with decedent and cannot claim attorney’s fees under the reciprocal attorney’s fees clause of the Tracy Guaranty. The Court disagrees.

Plaintiff does not dispute the Tracy Guaranty contained a reciprocal attorney’s fees clause. Opp. 7:9-10. Under Civil Code 1717(a), thus, “the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney’s fees in addition to other costs.” “Prevailing party” is specifically defined in Code of Civil Procedure section 1032 to include “a defendant in whose favor a dismissal is entered....” Code Civ. Proc. § 1032(a)(4). Therefore, both Defendants were the prevailing party for purposes of Civil Code section 1717, whether specified in the contract or not. See *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 128 (“Section 1717 was enacted to establish mutuality of remedy where contractual provision makes recovery of attorney’s fees available for

only one party. ... Its purposes require section 1717 be interpreted to further provide a reciprocal remedy for a nonsignatory defendant, sued on a contract as if he were a party to it, when a plaintiff would clearly be entitled to attorney's fees should he prevail in enforcing the contractual obligation against the defendant.”).

#### Reasonable Fees

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.

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 declarations in support of the motion, defendants request fees and costs as follows:

- Attorney Jaimee Jones: billed \$77,490 (172.2 hours at \$450/hour), and requests a reasonable hourly rate of \$575 under the lodestar method, resulting in fees of \$99,015.00.
- Attorney James Richards: billed \$6720 (22.4 hours at \$300/hour), and requests a reasonable hourly rate of \$500 under the lodestar method, resulting in fees of \$11,200.00.

The court has reviewed the declarations of counsel in connection with the request for fees/costs and presided over the underlying litigation. The underlying litigation was legally and factually complex and highly contested. The Court is satisfied that the time spent by both counsel Jones and Richards was reasonable. The Court, cognizant of the prevailing attorney's fees in this county for work of this nature, finds that counsel Jones is entitled to compensation at a reasonable rate of \$400.00 per hour and counsel Richards is entitled to compensation at a reasonable rate of \$250.00 per hour. The court awards as follows:

Jones Fees: 172.2 hours @ \$400/hour=\$68,880.00

Richards Fees: 22.4 hours @ \$250=\$5,600.00

Total Fees: \$74,480.00

### Cost of Proof Expenses and Fees

Under Code of Civil Procedure section 2033.420(a), “[i]f a party fails to admit the genuineness of any document or the truth of any matter when requested to do so ..., and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees.” When requested, courts are required to impose such fees unless “(1) [a]n objection to the request was sustained or a response to it was waived ...”; “(2) [t]he admission sought was of no substantial importance[;]” “(3) [t]he party failing to make the admission had reasonable ground to believe that that party would prevail on the matter[;]” or “(4) [t]here was other good reason for the failure to admit. Code Civ. Proc. § 2033.420(b).

Attorney's fees under this statute are known as “cost-of-proof fees.” They are intended to encourage efficient trials rather than reward a party for prevailing on a claim. *Gamo v. Merrell* (2025) 113 Cal.App.5th 565, 668. “The primary purpose of requests for admissions is to set at rest triable issues so that they will not have to be tried; they are aimed at expediting trial. The basis for imposing [cost-of-proof fees] is directly related to that purpose.... [They are] designed to reimburse reasonable expenses incurred by a party in proving the truth of a requested admission where the admission sought was ‘of substantial importance’ such that trial would have been expedited or shortened if the request had been admitted.” *Orange County Water Dist. v. The Arnold Engineering Co.* (2018) 31 Cal.App.5th 96, 115 (citations omitted).

A number of factors are critical with respect to recovery of fees.

First, “[t]he trial judge [has] the authority to determine whether the party propounding the admission thereafter proved the truth of the matter which was denied.” *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864. “Costs of proof are recoverable only where the moving party actually proves the matters that are the subject of the requests. This means evidence must be introduced.” *Grace v. Mansourian* (2015) 240 Cal.App.4th 523, 529–530 (parentheses and citations omitted).

Second, cost-of-proof fees are not recoverable where a response to a request for admission was waived. *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618, 636.

Third, shifting of costs and expenses may be refused if the requested admission was “of no substantial importance” Code Civ. Proc. § 2033.420(b)(2). “[A]s a general rule a request for admission should have at least *some direct relationship* to one of the *central issues* in the case, *i.e.*, an issue which, if not proven, would have *altered the results* in the case.” *Brooks v. American Broadcasting Co.* (1986) 179 CA3d 500, 509, 224 CR 838, 843 (emphasis added).

Fourth, “[t]o justify denial of a request, a party must have a ‘*reasonable ground*’ to believe he would prevail on the issue. *Grace v. Mansourian* (2015) 240 Cal.App.4th 523, 532. “Whether a party has a reasonable ground to believe he or she will prevail necessarily requires consideration of all the evidence, both for and against the party's position, known or reasonably available to the party at the time the RFA responses are served.” *Orange County Water Dist.*, 31 Cal.App.5th at 118.

The party seeking to avoid sanctions has the burden of showing an exception applies under section 2033.420(b). *Samsky v. State Farm Mutual Automobile Ins. Co.* (2019) 37 Cal.App.5th 517, 523.

Lastly, a party moving for cost of proof sanctions is required to identify the attorney’s fees and costs incurred in proving the matters that responding party unreasonably denied. *See In re Tobacco Cases II* (2015) 240 Cal. App. 4th 779, 807-808. The moving party cannot recover costs or fees for proving matters other than the matters covered by the improperly denied requests. *See Garcia v. Hyster Co.* (1994) 28 Cal.App.4th 724, 736-737. “The requested amounts must be segregated from costs and fees expended to prove other issues.” *Grace v. Mansourian* (2015) 240 Cal.App.4th 523, 529. An accounting is required (*e.g.*, declarations from moving party's counsel) setting forth the hourly fees and time spent to “prove” the specific matters denied, as opposed to time spent on other matters not properly the subject of the section 2033 sanction such as preparation for trial generally or proving other matters at trial of the case. *Garcia*, 28 Cal.App.4th at 737.

At bar, Defendants contend Plaintiff unreasonably denied Requests for Admission (“RFAs”) No. 17 and 19; that is: that Plaintiff admit the statutory deadline for filing creditor claims had expired on April 17, 2022 and that Plaintiff admit it filed its creditor claim after the statutory deadline. The Court agrees.

The RFAs at issue were substantially important to the issue of whether Plaintiff’s creditor claim was time barred and precluded relief on the entire complaint. Plaintiff, the party seeking to avoid sanctions has failed to persuade the Court that any exception applies under section 2033.420(b). Consequently, Defendants are entitled to reasonable costs of proof, including the fees associated with the motion for summary judgment.

Defendants did not affirmatively identify the attorney’s fees and costs incurred in proving the matters unreasonably denied as was their obligation as the moving parties. Plaintiff did so in its opposition and suggests that Plaintiff’s Counsel Jones expended 27 hours in connection with the

same. In its reply, Defendants contend that Counsel Jones spent a total of 29.8 hours. The Court finds that Defendants spent 29.8 hours and finds that the reasonable hourly rate for Counsel Jones is \$400.00 per hour (based on consideration of the prevailing rate in this community for similar work by counsel with similar experience). Total cost of proof legal fees are found to be \$11,920.00.

#### Total Fees Awarded

The 29.8 hours of legal work incurred in proving the denied requests for admission under Code of Civil Procedure section 2033.420(a), was *also* claimed as legal work in connection with the recovery of prevailing party fees under Civil Code section 1717. No good cause has been suggested as to why Defendants should receive duplicative compensation for the same legal work. Accordingly, the Court awards total attorney's fees of \$74,480.00.

### **3. CU0001096            Gregory Heil, et al. vs. Telestream, LLC**

Plaintiffs' unopposed motion to file a settlement agreement under seal, enter judgment, and conditionally dismiss the lawsuit without prejudice is denied without prejudice.

#### Legal Standard

*California Rules of Court*, rule 2.551(b)(1) states, "A party requesting that a record be filed under seal must file a motion or an application for an order sealing the record. The motion or application must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing." "Unless confidentiality is required by law, court records are presumed to be open." *California Rules of Court*, rule 2.550(c). Express factual findings are required in connection with sealing. *California Rules of Court*, rule 2.550(d). Specifically: "The court may order that a record be filed under seal only if it expressly finds facts that establish:

(1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." *Ibid*. Moreover, the court must specify the content and scope of the order. *California Rules of Court*, rule 2.550(e). Specifically: "(1) An order sealing the record must: (A) Specifically state the facts that support the findings; and (B) Direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file." *Ibid*.

#### Discussion

At bar, Plaintiffs' counsel has filed a supporting declaration to establish the factors set out under *California Rules of Court*, Rule 2.550(d). Plaintiffs request the entire settlement agreements be filed under seal, or in the alternative, that Sections 1, 2, 5-9 of the agreements be filed under seal. Plaintiffs have not provided the Court with an unredacted copy of the agreements or any of the referenced sections. Moreover, Plaintiffs have not offered any meaningful discussion of the required factors under Rule 2.550(d). On this record, there is no good cause set forth for complete or partial sealing.

The parties are reminded of the requirements of Code of Civil Procedure section 664.6 in the event they wish the Court to enter judgment with retention of jurisdiction and the parties wish retain possession of the settlement agreements without formal filing at this time. Code of Civil Procedure section 664.6(a), provides:

If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If the parties to the settlement agreement or their counsel stipulate in writing or orally before the court, the court may dismiss the case as to the settling parties without prejudice and retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

Plaintiffs' motion is denied without prejudice.

**4. CU0001664            Carla Markeeta Jefferson, et al. vs. Heating-Cooling Service Co., et al.**

Defendants' motion to continue trial and reopen discovery is granted.

#### Legal Standard

“Continuances are granted only on an affirmative showing of good cause requiring a continuance.” *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 823. A trial court has broad discretion in considering a request for a trial continuance. *Pham v. Nguyen* (1997) 54 Cal.App.4th 11, 13-18. California Rules of Court, rule 3.1332 sets forth factors for the Court to consider in ruling on a motion to continue trial.

“To ensure the prompt disposition of civil cases, the dates assigned for a trial are firm. All parties and their counsel must regard the date set for trial as certain.” Cal. Rules of Court, rule 3.1332(a).

“A party seeking a continuance of the date set for trial, whether contested or uncontested or stipulated to by the parties, must make the request for a continuance by a noticed motion or an ex parte application..., with supporting declarations. The party must make the motion or application as soon as reasonably practical once the necessity for the continuance is discovered.” Cal. Rules of Court, rule 3.1332(b).

“Although continuances of trials are disfavored, each request for a continuance must be considered on its own merits. The court may grant a continuance only on an affirmative showing of good cause requiring the continuance.” Cal. Rules of Court, rule 3.1332(c).

Circumstances that may indicate good cause include:

- (1) The unavailability of an essential lay or expert witness because of death, illness, or other excusable circumstances;
- (2) The unavailability of a party because of death, illness, or other excusable circumstances;

- (3) The unavailability of trial counsel because of death, illness, or other excusable circumstances;
- (4) The substitution of trial counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice;
- (5) The addition of a new party if:
  - (A) The new party has not had a reasonable opportunity to conduct discovery and prepare for trial; or
  - (B) The other parties have not had a reasonable opportunity to conduct discovery and prepare for trial in regard to the new party's involvement in the case;
- (6) A party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- (7) A significant, unanticipated change in the status of the case as a result of which the case is not ready for trial.

Cal. Rules of Court, rule 3.1332(c).

“In ruling on a motion or application for continuance, the court must consider all the facts and circumstances that are relevant to the determination.” Cal. Rules of Court, rule 3.1332(d).

These [facts and circumstances] may include:

- (1) The proximity of the trial date;
- (2) Whether there was any previous continuance, extension of time, or delay of trial due to any party;
- (3) The length of the continuance requested;
- (4) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance;
- (5) The prejudice that parties or witnesses will suffer as a result of the continuance;
- (6) If the case is entitled to a preferential trial setting, the reasons for that status and whether the need for a continuance outweighs the need to avoid delay;
- (7) The court's calendar and the impact of granting a continuance on other pending trials;
- (8) Whether trial counsel is engaged in another trial;
- (9) Whether all parties have stipulated to a continuance;
- (10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance; and
- (11) Any other fact or circumstance relevant to the fair determination of the motion or application.

Cal. Rules of Court, rule 3.1332(d).

In determining whether to reopen discovery, the court must consider the necessity of and reasons for the additional discovery, the diligence or lack thereof by the party seeking to reopen discovery in attempting to complete discovery prior to the cutoff, whether permitting the discovery will prevent the case from going forward on the trial date or will otherwise prejudice any party, and any past continuances of the trial date. *See* Code Civ. Proc. § 2024.050(b).

### Discussion

Defendants assert Plaintiff Rountree's disclosure of additional alleged injuries and medical providers immediately before his noticed deposition on January 26, 2026, as well as his non-appearance at a scheduled neurological medical examination on February 20, 2026, requires a continuance, because there is insufficient time to conduct required discovery prior to the current discovery cutoff of March 22, 2026. The Court agrees. The Court finds that: there is good cause to reopen discovery under Code of Civil Procedure section 2024.050(b); and the Rule 3.1332 factors support the requested trial continuance (namely: (c)(6) and (b)(1), (2), (3), (4), (5) and (10)). Trial is continued to November 3, 2026, at 9:00 a.m., mandatory settlement conference is continued to October 12, 2026, at 10:00 a.m., pretrial conference is continued to September 18, 2026, at 11:00 a.m. All discovery and related dates will be based on the new trial date.

### **5. CU0001845            Mark Gold, et al. vs. Robert A. Tonnie, et al.**

Defendants' counsel's unopposed motion to be relieved as counsel is granted. Counsel is ordered to prepare and submit a revised order (MC-053) that reflects the continued case-management conference date of April 6, 2026. The order relieving counsel will be deemed effective only when Counsel files a proof of service with the Court of a copy of the signed order on the client. *See* California Rules of Court, Rule 3.1362(e). Counsel shall submit the revised order for the Court's signature within two (2) court days of the Court's order becoming final. No appearances are required.

### **6. CU0002095            Julie Childs v. Michael Brewer**

Respondent's November 12, 2025, request for attorney fees will be heard by Judge S. Thomsen on April 13, 2026, at 09:00, in Department 4.

### **7. CU0002489            Matthew William Vickers vs. Ethan Oliver Ralph**

Defendant Ralph's special motion to strike under Code of Civil Procedure section 425.16 (Anti-SLAPP Motion) is granted in part as described herein. His request for fees and costs is denied.

### Oversized Brief

Subject to exceptions which do not apply here, under California Rules of Court, rule 3.1113(d), "no opening ... memorandum may exceed 15 pages." Cal. Rules of Court, rule 3.1113(d). The memorandum submitted in support of the present motion is 24 pages. The Court's records reflect that plaintiff did not file an appropriate application with the Court requesting permission to file a longer memorandum. *See* Cal. Rules of Court, rule 3.1113(e). That stated, the Court, in the exercise of its discretion, will consider the moving papers in their entirety. Defendant is admonished to comply with the California Code of Civil Procedure and the California Rules of Court.

### Request for Judicial Notice

At bar, Defendant seeks judicial notice of a complaint filed in CU0001860, Ralph Decl. ¶ 48 Exhibit 10, but fails to make such request in a separate document as required. *See* Cal. Rules of

Court, Rule 3.1113(l) (“Any request for judicial notice must be made in a separate document listing the specific items for which notice is requested and must comply with rule 3.1306(c).”). Plaintiff does not object. The Court grants the request. Judicial notice will be limited to the fact the document was filed, but not of the truth of its contents. See *Espinoza v. Calva* (2008) 169 Cal.App.4th 1393, 1396. Defendant is again admonished to comply with all applicable procedural law.

### 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. A cause of action arising from a person's act in furtherance of the “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, supra*, 1 Cal.5th at pp. 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:

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.

### Step One: Conduct in Furtherance of Right to Free Speech

Defendant argues, among other things, that “allegations by Plaintiff’s ex-wife that Plaintiff raped her are under consideration by the Nevada County District Attorney and thus constitute constitutionally protected free speech in connection with a public issue.” Mot. 12:11-13. The Court agrees based on the record presented.

“[Code of Civil Procedure] [s]ection 425.16, subdivision (b)(1) expressly makes subject to a special motion to strike ‘[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 or California Constitution in connection with a public issue....’ ” *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1113. “For the statute’s purposes, an ‘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: ... (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....” *Ibid.*, citing 425.16(e)(2). “Thus, plainly read, section 425.16 encompasses any cause of action against a person arising from any statement or writing made ... in connection with an issue under consideration or review by, an official proceeding or body.” *Ibid.* Statements made in connection with an official proceeding need not also be shown to pertain to a matter of public interest. *Id.* at 1113-1114. Moreover, statements made in connection with an issue under consideration by a district attorney can be within the ambit of the anti-SLAPP statute. *Schaffer v. City and County of San Francisco* (2008) 168 Cal.App.4th 992, 1004 (“by demonstrating that Fewer’s and Haggett’s alleged statements were in connection with an issue under consideration by the district attorney, respondents made a prima facie showing that the acts underlying Schaffer’s causes of action are within the ambit of the anti-SLAPP statute.”). Finally, a court may properly look to the moving defendant’s declaration to determine whether they engaged in protected or unprotected activity for purposes of the first step assessment. *Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1286, citing *Brill Media Co., LLC v. TCW Group, Inc.* (2005) 132 Cal.App.4th 324, 330.

At bar, Defendant declares he became aware in early 2025 that the ex-wife of Plaintiff allegedly accused Plaintiff of rape and those accusations resulted in “an active investigation on the part of the Nevada County Sheriff’s Department.” The ex-wife confirmed to Defendant that the allegations of rape were true on a date uncertain thereafter. Defendant then made a February 26, 2025, public records request for the November 7, 2024 report filed by the ex-wife reporting that she was the victim of sexual assault by Plaintiff. The Sheriff’s Office indicated that the requested report was “in the hands of” the Nevada County District Attorney.” *See* Ralph Decl. ¶¶ 23-26, 29, 32-34, 46 and Exhibit 8, 48 and Exhibit 10. In light of this, the Court is satisfied that the November 19 and November 20, 2025 alleged defamatory statements by Defendant, *see*

Complaint ¶¶ 8, 9, constitute oral statements made in connection with an issue now under consideration or review by the Nevada County District Attorney, an official proceeding or body. Defendant has made a sufficient prima facie showing that the challenged claim arises from activity protected by Code of Civil Procedure section 425.16.

### Step Two: Probability of Success

Defendant contends that Plaintiff cannot establish a probability of success as to his claims. Mot. 15:3-4. In particular, he argues that Plaintiff “cannot meet his burden of establishing by ‘clear and convincing evidence that the allegedly defamatory statements were made with knowledge of their falsity or with reckless disregard of their truth or falsity’ because he has no evidence that ‘defendant [Ralph] in fact entertained serious doubts as to the truth of his publication.’ ” Mot. 20:19-24. The Court agrees in limited part only.

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; 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. Finally, if the defamation relates to a private figure, in connection with a private matter, a plaintiff must prove negligence to recover any damages. *Brown*, 48 Cal.3d at 747; *Carney v. Santa Cruz Women Against Rape* (1990) 221 Cal.App.3d 1009, 1016, CACI 1704.

At bar, the Court has carefully considered the declaration of Plaintiff submitted, in part, as evidence in connection with his claims. The Court addresses the defamation claim premised on the allegation of rape. The Court assumes, without deciding, that the defamation involved an issue of public concern or a limited public figure. Plaintiff has presented evidence that Defendant made *per se* defamatory statements to third parties about Plaintiff committing rape, a crime, and that the statements were false. Plaintiff has presented evidence that the very complaint utilized by Defendant to obtain the original information as to the alleged rape, included Plaintiff’s denials of the same. Moreover, Plaintiff has declared that the rape allegations are false. Vickers Decl. ¶¶ 3-4, 8-12. This evidence and the inferences therefrom constitute sufficient that Defendant repeated the rape allegations with knowledge that it was false or with reckless disregard of whether it was false. Plaintiff has met his *prima facie* factual showing sufficient to sustain a judgment as to defamation related to the allegation of rape.<sup>1</sup>

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<sup>1</sup> The outcome would be the same if this was a private figure/matter defamation matter. Sufficient evidence has been presented to establish that Defendant failed to use reasonable care to determine the truth or falsity of the rape statements. See CACI 1704.

The analysis is different for the claim of defamation predicated on “suggestions that Plaintiff Vickers was actively attempting to kill his ex-wife. *See* Complaint ¶ 9. Plaintiff has made no *prima facie* factual showing sufficient to sustain a favorable judgment as to these statements for either defamation *per se* or *per quod*. *See, e.g.*, CACI 1700-1705.

The same can be said of Defendant’s negligence claim. *See* Complaint ¶¶ 8, 9, 16, 17. Assuming *arguendo* that Plaintiff has properly alleged a claim of negligence, Plaintiff has made no *prima facie* factual showing sufficient to sustain a favorable judgment against Defendant for negligently making the statements as to Plaintiff raping or attempting to kill his ex-wife. *See Woolard v. Regent Real Estate Services, Inc.* (2024) 107 Cal.App.5th 783, 791 (“The elements of a cause of action for negligence are duty, breach, causation, and damages.”), quoting *Melton v. Boustred* (2010) 183 Cal.App.4th 521, 529; CACI 400. Specifically, there has been no evidentiary showing by Plaintiff that Defendant’s negligence was a substantial factor in causing him harm or any damages related thereto.

#### Fees

Defendant argues he is entitled to “reasonable fees and costs or, in the alternative, monetary sanctions, under the Anti-SLAPP statute.” Mot. 30:1-3. Not so.

Code of Civil Procedure section 425.16 (c) (1) provides, in relevant part: “a prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs.” “[The] decisional authority and the plain language of section 425.16, subdivision (c) supports the conclusion that the commonly understood definition of attorney fees ... applies with equal force to section 425.16 and a prevailing defendant is entitled to recover attorney fees *if represented by counsel.*” *Witte v. Kaufman* (2006) 141 Cal.App.4th 1201, 1208 (italics added), quoting *Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510, 524. In any event, it cannot be say that Defendant prevailed. Each side prevailed in part.

Defendant’s motion is granted in part and denied in part as specified.

### **8. CU0002494      Live Oak Banking Company, vs. Miller Real Estate Investments LLC, et al.**

Plaintiff’s application for an order extending time to serve Defendants and granting service of process on secretary of state as to Miller Real Estate Investments LLC, and Joseph A. Miller, DMD, Inc., is granted.

The Secretary of State may be served, rather than the designated agent of a domestic corporation, under any of the following circumstances: (1) if an agent designated for the purpose of service of process has resigned and has not been replaced; (2) if the designated agent cannot with reasonable diligence be found at the address designated for personal delivery of process; or (3) if no agent has been designated. Corp. Code § 1702.

Under any of these circumstances, it must be shown by affidavit to the satisfaction of the court that process against the domestic corporation cannot be served with reasonable diligence upon the designated agent by hand, by leaving copies in the office of the person to be served, or by

mail, or on the corporation in the manner provided in Code Civ. Proc. § 416.10(a)-(c) or in Code Civ. Proc. § 415.20(a). Civ. Code § 1702(a).

At bar, Plaintiff's affidavit demonstrates the corporations cannot be served with reasonable diligence in any of the above manners. Cram Decl. ¶¶ 4-12, Exs. A-G. Plaintiff's application is granted as prayed.

**9. CU0001544 Caitlin Peters vs. Cara Krpalek, et al.**

The October 16, 2025, demurrer by Defendant Jiri Krpalek is removed from calendar. A default had been entered against Defendant as of March 6, 2025, and the instant October 2025 demurrer was filed (improvidently by the Clerk) at the time the default remained in place. An affidavit of unsuccessful service was filed as to the demurrer on October 20, 2025, and there is no proof that the October 2025 motion has been properly served on Plaintiff. On November 7, 2025, the Court, among other things, set aside the default and ordered Defendant to file a responsive pleading. Defendant then filed an answer on November 13, 2025, seemingly asserting summary grounds for a demurrer therein. Again, there is no proof of service demonstrating that the November 2025, answer has been served on Plaintiff.

If Defendant wishes to proceed with a demurrer he must file the same, notice the same for hearing, serve the same and provide proof of service of the same, all prior to March 27, 2026. If no demurrer is properly filed, served and noticed prior thereto, the Court shall conclude that Defendant is waiving his right to demur. Furthermore, Defendant shall serve the answer (if it has not already been served) and provide the Court with proof of service of the same no later than March 27, 2026.

The parties are reminded that they must always ensure that their current address is known to the Court and all parties. Any change of address must be filed and served on all parties.