May 23, 2025 Civil Tentative Rulings

1. CL0001887 Paul Kolbus v. William Hackett

Plaintiff's unopposed motion to expunge lis pendens is granted.

Firstly, Code of Civil Procedure section 405.21 provides:

An attorney of record in an action may sign a notice of pendency of action. Alternatively, a judge of the court in which an action that includes a real property claim is pending may, upon request of a party thereto, approve a notice of pendency of action. A notice of pendency of action shall not be recorded unless (a) it has been signed by the attorney of record, (b) it is signed by a party acting in propria persona and approved by a judge as provided in this section, or (c) the action is subject to Section 405.6.

Here, defendant is appearing in propria persona and failed to have his two notices of lis pendens approved by a judge. As such, the notice recorded in this action are invalid.

Secondly, Code of Civil Procedure section 405.22 provides:

Except in actions subject to Section 405.6, the claimant shall, prior to recordation of the notice, cause a copy of the notice to be mailed, by registered or certified mail, return receipt requested, to all known addresses of the parties to whom the real property claim is adverse and to all owners of record of the real property affected by the real property claim as shown by the latest county assessment roll. If there is no known address for service on an adverse party or owner, then as to that party or owner a declaration under penalty of perjury to that effect may be recorded instead of the proof of service required above, and the service on that party or owner shall not be required. Immediately following recordation, a copy of the notice shall also be filed with the court in which the action is pending. Service shall also be made immediately and in the same manner upon each adverse party later joined in the action.

Code of Civil Procedure section 405.32 further provides:

Any notice of pendency of action shall be void and invalid as to any adverse party or owner of record unless the requirements of Section 405.22 are met for that party or owner and a proof of service in the form and content specified in Section 1013a has been recorded with the notice of pendency of action.

Here, there is no proof of service demonstrating that the notices were served on the other party prior to recordation. As defendant has failed to comply with the service requirements of this statute, the notices of lis pendens are void and invalid.

Lastly, Code of Civil Procedure section 405.32 provides, in relevant part:

In proceedings under this chapter, the court shall order that the notice be expunged if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim.

Here, defendant has failed to demonstrate that he has a real property claim. Unlawful detainer actions deal with possession of real property, not ownership of real property. As such, there is no real property claim asserted in this action.

Plaintiff is awarded attorney's fees of $1,800.00 as prevailing party to this motion pursuant to Code of Civil Procedure section 405.38.

2. CL0002789 Masters Team Mortgage vs. Ronald Pitts, et al.

Defendants' motion to quash service of summons is denied.

The proof of service is not dated; as such, there is no valid proof of service of the motion on plaintiff as required by Code of Civil Procedure section 1005(b). The motion is denied on this procedural ground alone.

In any event, the motion lacks merit. Firstly, there is a proof of personal service as to defendants Ronald Pitts and Branielle Pitts. Evidence Code section 647 creates a legal presumption that the facts stated in a proof of service filed by a registered process server are true and that the service of process is valid. Here, defendants have not asserted any facts to the contrary.

Secondly, a motion to quash is not an appropriate vehicle to challenge the adequacy of the complaint. See Stancil v. Superior Court (2021) 11 Cal.5th 381, 402; Borsuk v. Appellate Division of Superior Court (2015) 242 Cal.App.4th 607, 616.

3. CU0001190 Alice Branton, et al. vs. Zarlasht Fakiri, D.O., et al.

Defendants Fakiri and Cheema's motion to stay acting pending arbitration is granted.

California Code of Civil Procedure section 1281.4 provides, in relevant part, "[i]f a court of competent jurisdiction . . . has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before a court of this State, the court in which such action or proceeding is pending shall, upon motion of a party to such action or proceeding, stay the action or proceeding until arbitration is had in accordance with the order to arbitrate." Further, "it is irrelevant under the statute whether the movant is a party to the arbitration agreement." Marcus v. Superior Court (1977) 75 Cal.App.3d 204, 209. "Any party to a judicial proceeding 'is entitled to a stay of those proceedings whenever (1) the arbitration of a controversy has been ordered, and (2) that controversy is also an issue involved in the pending judicial action.' " Heritage Provider Network, Inc. v. Superior Court (2008) 158 Cal.App.4th 1146, 1152. "A controversy can be a single question of law or fact, and a stay shall be issued upon proper motion if the court has ordered arbitration of a controversy that is also an issue involved in an action or proceeding pending before it. Id. at 1152-1153. "The purpose of the statutory stay is to protect the jurisdiction of the arbitrator by preserving the status quo until arbitration is resolved." Federal Ins. Co. v. Superior Court (1998) 60 Cal.App.4th 1370,1374.

Here, the court has previously granted a motion to compel arbitration and stay the action as to other defendants. The court must respect the jurisdiction of the arbitrator and preserve the status quo until arbitration is resolved.

This action is stayed pending the arbitration. The currently set trial and related dates are vacated. A case management conference regarding status of arbitration is set for November 24, 2025, at 9:00 a.m. in Dept. 6. Plaintiff shall file a status report as to the arbitration by November 17, 2025.

4. CU0001664 Carla Jefferson vs. Heating-Cooling Service Co.

CU0001869 California FAIR Plan vs. Glenn David Jones, et al.

Defendants' unopposed motions to consolidate case numbers CU0001664 and CU0001869 are hereby granted.

Both actions stem from the same alleged incident, and involve common questions of law and fact. Moreover, consolidation is necessary to best serve the interests of justice and judicial economy, and to avoid the risk of prejudice and/or inconsistent verdicts. See Code Civ. Proc. § 1048 and Rules of Court, rule 3.350.

Pursuant to rule 3.350(b), case CU0001664 is deemed the lead file. All future filing shall contain this case number only. The case management conference currently set for June 30, 2025, at 9:00 am in Dept. 6 is confirmed.

5. CU0001842 Charles Murdock vs. Jodi Michelle Andrews

Defendant Ringen's motion to strike punitive damages is granted with leave to amend.

The first amended complaint does not sufficiently allege that defendant Ringen personally engaged in conduct with malice or oppression when he entrusted his vehicle to defendant Andrews. The operative complaint also does not sufficiently allege that defendant Ringen had any knowledge of defendant Andrews' unfitness or inability to drive the vehicle such that defendant Ringen could be said to have acted with malice or oppression. See Code Civ. Proc. 3294; Taylor v. Superior Court (1979) 24 Cal.3d 890, 895–896 ("a conscious disregard of the safety of others may constitute malice…. In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences."); see also RST, Inc. v. Superior Court (2017) 11 Cal.App.5th 1255, 1271 (punitive damages potentially available where managing agent "had advance knowledge of ... [employee's] ... unfitness ... and employed him ... with a conscious disregard of the rights or safety of others....").

Any second amended complaint shall be served and filed by June 2, 2025.

6. CU0001851 Paul Edward Gilbert vs. Clear Recon Corp., et al.

The motion for tender, the demand for oath, and the two motions to quash are continued on the court's own motion to June 6, 2025, at 10:00 a.m. in Dept. 6, due to the full bench recusal in the present case. A new judge has been assigned.

7. CU0001860 Matthew Vickers vs. Ariana Vickers

Plaintiff's motions to compel defendant's discovery responses are denied.

In the present case, at the request of plaintiff, default was entered against defendant on March 11, 2025. Any response to the discovery propounded by plaintiff on February 15, 2025 was due 30 days after service (extended by the means of service), i.e., after March 17, 2025. See Code Civ. Proc. 2030.260(a), 2031.260, 2016.050.

"A default 'cuts off the defendant from making any further opposition or objection to the relief which plaintiff's complaint shows he is entitled to demand.' " Rios v. Singh (2021) 65 Cal.App.5th 871, 887, quoting Title Insurance etc. Co. v. King etc. Co. (1912) 162 Cal. 44, 46. "After a default, a defendant is ' " 'out of court' " ' and cannot take any further steps in the cause affecting the plaintiff's right of action until the default is set aside in a proper proceeding." Ibid. (italics added); Garcia v. Politis (2011) 192 Cal.App.4th 1474, 1479 ("a case in which a defendant's default has been taken necessarily has no adversarial quality and the defaulted defendant would have no right to participate in the motion."). Indeed, " '[a] default confesses all the material facts in the

complaint.' "Title Ins. & Trust Co. v. King Land & Improv. Co. (1912) 162 Cal. 44, 46, cited with approval by Sass v. Cohen (2020) 10 Cal.5th 861, 865.

As the default of the sole defendant has been entered, defendant had no right to respond to the discovery requests and cannot be compelled to do so at this time. Plaintiff's motion is denied.

8. CU0001973 Patricia Healey vs. USAA Casualty Insurance Company

USAA's motion to compel plaintiff to respond to and answer Dr. Goz's questions regarding her medical history at her independent medical exam is granted in part.

Code of Civil Procedure section 2032.220(a) provides, in pertinent part, "In any case in which a plaintiff is seeking recovery for personal injuries, any defendant may demand one physical examination of the plaintiff …." The statute, on its face, does not authorize the examiner to inquire about the plaintiff's medical history. Reasonably construed, however, an examiner should be able to ask limited medical history questions as may be necessary to conduct the physical examination and to formulate an intelligent opinion about the nature and extent of the plaintiff's injuries. See Sharff v. Superior Court of City and County of San Francisco (1955) 44 Cal.2d 508, 510 ("It has been held that the court may order a plaintiff in a personal injury action to undergo a physical examination by the defendant's doctor. The doctor should, of course, be free to ask such questions as may be necessary to enable him to formulate an intelligent opinion regarding the nature and extent of the plaintiff's injuries, but he should not be allowed to make inquiries into matters not reasonably related to the legitimate scope of the examination."); see also, e.g., Plante v. Stack (R.I. 2015) 109 A.3d 846, 855, fn. 6 ("The doctor must be permitted to take the party's history and to ask such other questions that will enable him or her to formulate an intelligent opinion concerning the nature and extent of the party's injuries." quoting 8B Charles Alan Wright et al., Federal Practice & Procedure (2010) § 2236 at 297 and citing cases).

The court orders the physical examination to be conducted and will permit limited questioning by the physician related to pertinent medical history, i.e., plaintiff's preexisting relevant injuries, plaintiff's progress, plaintiff's treatment, and plaintiff's current condition. Counsel for plaintiff may be present at the examination to object to any perceived inappropriate questioning by the examiner.

USAA's request for sanctions is denied; plaintiff had substantial justification for its opposition to the requested relief.

9. CU0001762 William Dean Ferreira vs. Stephanie Diane Stone-Ferreira, et al

Defendant Malone's anti-SLAPP motion to strike is granted.

As an initial matter, in its discretion, the court has read and considered plaintiff's untimely opposition.

Evidentiary Rulings

Defendant's request for judicial notice is granted in its entirety. Defendant's evidentiary objections to plaintiff's declaration are sustained as follows: ¶5 (hearsay), ¶6 (hearsay), ¶10 (hearsay), ¶11 (lack of personal knowledge, speculation), ¶12 (lack of personal knowledge, speculation).

Standard of Review

"Section 425.16 posits ... a two-step process for determining whether an action is a SLAPP. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity.... If the court finds that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim. Only a cause of action that satisfies both prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 278–279 (quotations and citations omitted).

Threshold Showing

The first step in analyzing the present motion is to determine if the challenged causes of action arise from protected activity. Code of Civil Procedure section 425.16(e) sets forth activities protected by the statute:

(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

Here, the allegations of the complaint squarely place the claims within the definition of protected activities. Specifically, the complaint alleges: "Defendants KM and SS worked in concert to use the civil law process and the family law process to disparage Plaintiff WF with false allegations to secure financial renumeration and use said false salacious allegations in the family law matter for custody purposes, with the added benefit of securing additional financial renumeration through the civil and family law process." Complaint 2:11-16.

Plaintiff's argument that custody proceedings in family law cases are not "judicial proceedings" covered by the anti-SLAPP statute is incorrect. Notes the court in Sipple v. Foundation for National Progress (1999) 71 Cal App 4th 226: "We conclude that the custody dispute itself clearly comes within section 425.16, subdivision(e)(1) as it is a . . . ' judicial proceeding or any official proceeding authorized by law'. . . . Hence. . . respondents need not separately show that these statements concern an issue of public interest." Ibid at 238; see Begier v. Strom (1996) 46 Cal. App. 4th 887, 882 ("insofar as plaintiff alleges defendant made false accusations within the dissolution action, defendant's statements are privileged and cannot give rise to a cause of action for intentional infliction of emotional distress.")

Thus, the threshold showing of protected activities has been met.

Probability of Prevailing on the Merits

The second step is to determine whether Plaintiff has demonstrated a probability of prevailing on the merits.

To establish a probability of prevailing, the plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. For purposes of this inquiry, the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant ; though the court does not weigh the credibility or comparative probative strength of

competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim. In making this assessment it is the court's responsibility ... to accept as true the evidence favorable to the plaintiff.... The plaintiff need only establish that his or her claim has "minimal merit" to avoid being stricken as a SLAPP.

Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 291 (quotations and citations omitted).

Abuse of Process

The elements of a cause of action for abuse of process are: (1) a defendant must have acted with an ulterior purpose; and (2) there must be a willful act in the use of the process not proper in the regular conduct of the proceeding. See Templeton Feed & Grain v. Ralston Purina Co. (1968) 69 Cal.2d 461, 466; Friedman v. Stadum (1985) 171 Cal.App.3d 775, 779 ("For the tort of abuse of process, the plaintiff must allege a willful act in the use of the process not proper in the regular conduct of the proceeding. The process must be misused, i.e., it must be used for a purpose other than that for which the process is designed.")

Here, the complaint alleges no facts supporting the claim; specifically, plaintiff has not alleged any facts showing a willful act in the use of the process not proper in the regular conduct of the proceeding. Moreover, plaintiff has failed to offer any evidence demonstrating the same. Finally, the claim appears to be premised on the conduct by defendants in the underlying family law and employment matters. That conduct is protected by the litigation privilege under Civil Code section 47(b). In short, plaintiff cannot show a reasonable probability of prevailing on this claim.

Malicious Prosecution

The elements to a cause of action for malicious prosecution are: (1) an action commenced by or at the direction of defendant; (2) pursued to a legal termination favorable to the plaintiff; (3) brought without probable cause; and (4) initiated with malice. See Van Audenhove v. Perry (2017) 11 Cal. App. 5th 915, 918.

At bar, plaintiff has failed to include in his complaint any allegations supporting any claim for malicious prosecution. He has also failed to offer any evidence demonstrating the same.[i] Plaintiff cannot show a reasonable probability of prevailing on this claim.[ii]

Defamation

The elements of a cause of action for defamation are: (1) intentional publication by defendant; (2) of statement of fact; (3) that is false; (4) defamatory; (5) unprivileged; and (6) has a natural tendency to injure or that causes special damages. E.g., Taus v. Loftus (2007) 40 Cal.4th 683.

Here, plaintiff's defamation claims against defendant arise out of defendant's alleged statements in the family law and employment actions. Plaintiff's declaration statements regarding defamation, even if admissible, also plainly arise out of the family law matter. The alleged defamatory statements are protected under the litigation privilege. Plaintiff cannot show a reasonable probability of prevailing on this claim.

Intentional Infliction of Emotional Distress

"[T]o state a cause of action for intentional infliction of emotional distress a plaintiff must show: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or

extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc. (2005) 129 Cal.App.4th 1228, 1259.

Here, all of the purported outrageous conduct that plaintiff alleges in his complaint, or that is described in his declaration, arises out of either defendant Malone's employment action or are due to defendant Malone's participation in the family law action. As such, this conduct is protected by the litigation privilege. Plaintiff cannot show a reasonable probability of prevailing on this claim.

Conclusion

Defendant Malone's anti-SLAPP motion to strike is granted.

[i] In addition, the court takes judicial notice of case CU22-086160. That case has not yet gone to trial. Plaintiff obviously has not pursued any legal action to a legal termination favorable to plaintiff.

[ii] The litigation privilege does not extend to actions for malicious prosecution and serves as no bar here. See Action Apartment Assn., Inc. v. City of Santa Monica (2007) 41 Cal.4th 1232, 1242