TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, February 23, 2024 3:00 p.m.
Courtroom 17 – Hon. Bradford DeMeo
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN ZOOM ONLINE:

D17 – Law & Motion
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123?pwd=eHRoZTRvaHhoR25Ec21sVVdGem1Tdz09

TO JOIN ZOOM BY PHONE:
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The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge DeMeo's Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1. MCV-259728, Looney v. Family Market, LLC

Plaintiff Gary Looney's ("Plaintiff") unopposed motion to appoint Landon McPherson as the receiver to seize and sell Defendants Family Market, LLC's and Nooreddin Ali Obadi ("Defendants") California Liquor License number 619331 to satisfy the $3,047.145 judgment

entered against Defendants on March 6, 2023, is **GRANTED**, per California Code of Civil Procedure ("C.C.P.") section 564(b)(3).

PROCEDURAL HISTORY

This Court entered a judgment against Defendants for $3,047.145 on March 6, 2023, but Plaintiff has been unable to enforce it against Defendants so moves to appoint Mr. McPherson as receiver to take possession of and, if necessary, sell Defendants' California Liquor License number 619331 to satisfy the outstanding judgment. (Motion, 2:5-22.) Defendants' license is not subject to any security interests except for obligations under California. (*Id*. at 2:20-22.) Plaintiff provided sufficient notice of the hearing on this motion, but Defendants did not oppose and have not previously responded to any of Plaintiff's efforts to enforce the judgment. (*Id*. at 3:14-16.)

ANALYSIS

Per C.C.P. section 564(b)(3), a court may appoint a receiver to carry a judgment entered into effect. The receiver may enforce the judgment where the judgment credit has shown that, considering the interests of both the judgment creditor and judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment. (C.C.P. § 708.620.) Specifically, a court is allowed to appoint a receiver for the purpose of transferring the judgment debtor's interest in an alcoholic beverage license for the purpose of satisfying a judgment. (C.C.P. § 708.630.)

Here, Plaintiff has sufficiently shown that the appointment of a receiver is warranted because Defendants have never responded to the complaint in this action, to any post-judgment discovery requests, and to any of Plaintiff's efforts to enforce judgment entered against them. Plaintiff has proposed that Landon McPherson be appointed as receiver. Mr. McPherson is a consultant broker for CAL ABC License Services and specializes in the acquisition and sale of liquor licenses in California with over 15 years of experience in the field. Thus, Plaintiff has satisfied the minimum requirements for the appointment of a receiver and the Court will grant the unopposed motion.

CONCLUSION

Based on the foregoing, Plaintiff's motion to appoint Landon McPherson as receiver is **GRANTED** to take possession of and, if necessary, sell Defendants' California Liquor License number 619331 to satisfy the $3,047.145 judgment entered against them by this Court. Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312.

2. SCV-267181, Anabi Oil Corporation, a California corporation v. Petersen

Cross-Defendant Bethany Zoe ("Zoe") moves for an entry of judgment in her favor against Cross-Complainants Harold Petersen, Steven Petersen, Edward Petersen, James Petersen, and Robert Keith ("Cross-Complainants"). The motion is **GRANTED**.

PROCEDURAL HISTORY

Cross-Complainants brought a cross-complaint against Zoe and Peter Galligan for legal malpractice and breach of fiduciary duty. (Motion, 4:17-25.) Zoe moved for summary judgment on claims brought against her in the cross-complaint. (*Id*. at 2:2-12.) This Court issued an order after hearing on the motion granting Zoe's motion for summary adjudication (the "Order") because Cross-Complainants lacked essential elements to all of the causes of action as to Zoe. (See generally, Order After Hearing on Cross-Defendant Bethany Zoe's Motion for Summary Adjudication of the Cross-Complaint, p. 13.) Zoe did not pursue judgment earlier because she remained a defendant on Plaintiff Anabi Oil Company, Inc.'s Zoe has been dismissed from Plaintiff Anabi Oil Company, Inc.'s complaint and now moves complaint, but has since entered into a settlement agreement for Zoe's dismissal from the complaint. (Motion, 6:14-20.) Now Zoe moves for entry of judgment in her favor against Cross-Complainants on the Cross-Complaint per the Order. (*Id*. at 2:12-15.) Only Cross-Complainants have opposed.

ANALYSIS

Moving Papers

Zoe argues she is entitled to judgment in her favor after the issuing of the Order per C.C.P. section 437(c) and *Sangster v. Paetkau* (1998) 68 Cal.App. 4th 151. Zoe points to California Rules of Court, Rule 3.1700 which provides that the deadline to recover costs and fees is based upon the entry of judgment and not an order granting summary judgment. Zoe also argues she never released any rights to judgment as to Cross-Complainants by way of any agreement.

Cross-Complainants oppose arguing that because summary judgment and summary adjudication are not the same type of motion, that summary adjudication did not result in a final judgment from which costs can be claimed, because C.C.P. section 437(c) does not provide for that on its face as it does not apply to summary adjudication. (Opposition, 3:7-28.) Furthermore, they argue she waived costs by agreeing to the settlement agreement because she received the consideration that no party would be seeking costs or fees against her. (*Id*. at 6:22-27.)

In reply, Zoe argues that summary adjudication granted for her was as to all claims in the Cross-Complaint, so there are no surviving claims against her. Zoe also points out that she did not agree to waive any costs or release her right to judgment against Cross-Complainants.

Legal Standard

Per C.C.P. section 437c(f)(2), "a motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment." A motion for summary adjudication on a cause of action may be granted if it "completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (C.C.P. § 437c(f)(1).) If a motion for summary adjudication is granted, at trial the claims adjudicated will be deemed as established and will only proceed as to any remaining issues. (C.C.P. § 437c(n)(1).)

Application

Here, the Court has granted summary adjudication as to all claims in the Cross-Complaint against Zoe. As none remain, there are no pending issues against Zoe to proceed at trial. Kelly states in the transcript proceedings provided that "there aren't any active claims against Zoe at this point." (Declaration of Kelly, p. 71.) Fox in the same transcripts states to Zoe that there was no requirement to "contribute to the monies that we are paying Kelly's clients, the current owners. We are not asking any monies from you, and I don't think Mr. Holiday and Mr. Galligan are either." (*Id*. at p. 72.) This does not sufficiently show that Zoe has waived any rights to seek costs in this matter, but rather no other party was at the time requesting her to pay any costs. The Court finds that every issue claimed against Zoe by Cross-Complainants has been thoroughly disposed of by the summary adjudication Order.

CONCLUSION

Based on the foregoing, the motion is **GRANTED**. Zoe shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

3. SCV-268148, Abarca-Rueda v. Foley Family Wines, Inc

Plaintiffs Octavio and Huber Abarca-Rueda ("Plaintiffs"), move pursuant to California Rules of Court ("C.R.C."), rule 3.769, and California Code of Civil Procedure ("C.C.P.") section 382 for an order:

1. Granting preliminary approval of the Class Action and PAGA Settlements;
2. Certifying the proposed Class for settlement purposes;
3. Approving the Class Notices and plan for distribution of the Class Notices;
4. Appointing Plaintiffs as Class Representatives for settlement purposes;
5. Appointing Plaintiffs' Counsel, Justin F. Marquez and Benjamin H. Haber of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes;
6. Appointing Simpluris Class Action Settlement Administration as the Settlement Administrator; and
7. Scheduling a Final Approval Hearing.

Preliminary approval is **GRANTED**. The Final Fairness Hearing is hereby set for May 1, 2024, at 3:00 p.m., in Department 17.

PROCEDURAL BACKGROUND

Defendant Foley Family Wines, Inc. and Foley Family Farms ("Foley") and Defendant Ferrari-Carano Vineyards and Winery, LLC ("Ferrari-Carano") employed Plaintiffs and approximately 625 Class Members. (Motion, 1:3-24.) Plaintiffs alleged in the complaint that Defendants' payroll, timekeeping, and wage and hour practices resulted in Labor Code and Private Attorneys General Act violations. (*Id*. at 2:5-12.) They allege that Defendants failed to pay minimum and

straight time, failed to pay overtime wages, failed to provide meal periods, failed to authorize and permit rest periods, failed to timely pay final wages at termination, failed to provide accurate itemized wage statements, failed to indemnify employees for expenditures, and engaged in unfair business practices. (*Id*. at 2:13-21.)

The parties engaged in private mediation and settlement negotiations after exchanging discovery and have reached total settlement for $1,050,000, which represents 57.4% of the realistic maximum recovery of $1,828,586.40. (Motion, 3:28, 4:1.)

ANALYSIS

Legal Standard for Preliminary Approval

A settlement of an entire class action, or one of the causes of action, or as to a party, requires court approval after hearing. (C.R.C., Rule 3.769(a).) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. (C.R.C., Rule 3.769(c).) The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. (*Ibid*.) The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (C.R.C., Rule 3.769(d).) If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing. (C.R.C., Rule 3.769(e).)

The court must determine the settlement is fair, adequate, and reasonable. (C.R.C., Rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A presumption of fairness exists where: 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The test is not for the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250, disapproved of by *Hernandez v. Restoration Hardware, Inc*. (2018) 4 Cal.5th 260.) In making this determination, the court considers all relevant factors including "the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

Plaintiffs' Motion for Preliminary Approval

1. Class Members

"Class" or "Class Members" in the Ferrari-Carano Settlement include all persons who worked for Ferrari-Carno in California as hourly, non-exempt employees during the period of April 7, 2017, through August 25, 2020. (Motion, 4:14-17.) In the Foley Settlement, it includes all persons employed by Foley who worked for Ferrari-Carano in California as an hourly-paid or non-exempt employee during the period of August 26, 2020, through September 15, 2022. (*Id*. at 4:18-21.)

Aggrieved employees for Ferrari-Carano are participating class members who worked during April 7, 2020, through August 25, 2020, or for Foley during the period of August 26, 2020, through September 15, 2022. (Motion, 4:25-28, 5:1.)

2. Settlement

Total settlement is $1,050,000.00, with $750,000.00 allocated from Ferrari-Carano and $300,000.00 allocated from Foley. (Motion, 5:2-9.)

3. Administrator

Simpluris Class Action Settlement Administrators shall act as Settlement Administrator and will ensure that Notices are provided to the current addresses of class members. (Motion, 8:23-25.)

4. Attorney fees

Settlement provides that Defendants will not oppose a fee application of 33.33% of the combined settlement amounts, plus out-of-pocket costs not to exceed $20,000. (Motion, 8:13-16.)

5. LWDA

Settlement also provides for a combined $40,000 allocated to Plaintiffs' claims under PAGA, with $30,000 allocated to Ferrari-Carano and $10,000 allocated to Foley, for payment to the LWDA. (Motion, 7:12-19.)

6. Class Representative Service Award

Subject to Court approval, the Settlement provides for a Class Representative Service Award not to exceed $15,000, of which $7,500 will be allocated to each named Plaintiff. (Motion, 8:5-12.)

7. Net Settlement Amount

Per the Settlement, this includes the Settlement Amount minus any award of attorneys' fees and litigation costs, administrative costs, enhancements to the named Plaintiffs, and penalties recoverable pursuant to the PAGA. (Motion, 7:20-23.)

8. Fair, adequate, and reasonable

Plaintiffs claim that the settlement is fair, reasonable, and adequate, and the product of investigation, litigation, and negotiation. The settlement was reached following one day of arm's length mediation with an experienced employment mediator. (Motion, 10:5-12.)
Before reaching settlement, Class Counsel conducted extensive informal discovery regarding the claims set forth in the complaint and Defendants' policies and procedures, issued wage statements, timekeeping, and other relevant information. (*Id*. at 10:13-22.) The proposed settlement amount represents substantial recovery compared to Plaintiffs' reasonably forecasted recovery and class members will be able to receive timely, guaranteed relief and avoid the risk of an unfavorable judgment. (*Id*. at 11:15-23.) Finally, Class Counsel has extensive experience is Class Action Litigation. (*Id*. at 11:24-28, 12:1.)

10. Notice

The proposed notice, attached as Exhibit A to the Settlement Agreement attached to the Declaration of counsel Justin F. Marquez appears thorough and sufficient to adequately notify class members pursuant to Rule 3.769.

CONCLUSION

Preliminary certification of the class, the Settlement Agreement, and class notice is GRANTED. Plaintiffs are appointed as the Class Representatives. Plaintiffs' Counsel, Justin F. Marquez and Benjamin H. Haber of Wilshire Law Firm, PLC, are appointed as Class Counsel. The Final Approval Hearing is hereby set for May 1, 2024, at 3:00 p.m., in Department 17. The court will sign the proposed order.

4. SCV-269667, Jones v. Doe

Defendant County of Sonoma ("Sonoma") moves for an order compelling Plaintiff Sabrina Jones ("Jones") to provide full, complete, and verified objection-free responses to Sonoma's Request for Production, Set One, and Form Interrogatories, Set One, along with any responsive documents. Sonoma's unopposed motion is **GRANTED**. Sanctions are awarded in the amount of $1,551.00.

PROCEDURAL HISTORY

Jones commenced this lawsuit against Sonoma alleging negligence and motor vehicle negligence after she was injured in a motor vehicle collision between her vehicle/trailer and another vehicle. (Motion, 1:26-28, 2:1-3.) Sonoma propounded set one of form interrogatories and requests for production on Jones, but she has failed to ever respond despite Sonoma's meet and confer efforts regarding the discovery requests. (*Id*. at 3:7-28, 4:1-11.) Jones' counsel was relieved as counsel because there was a breakdown in communication and counsel was unable to locate or contact Jones, so she is currently self-represented. (*Id*. at 4:1-5.) Sonoma now moves to compel Jones' verified, objection-free responses.

ANALYSIS

Legal Standard

A party who fails to serve a timely response to interrogatories, absent evidence showing mistake, inadvertence, or excusable neglect, waives any right to object to the interrogatory, including objections based on privilege or work product, and the court shall impose monetary sanctions upon the party who unsuccessfully opposes a motion to compel initial the responses. (C.C.P. § 2030.290.) Where the responding party agrees to produce the documents, things, property, or information requested, but then fails to do so, the party seeking discovery may move to compel production of the promised documents, information, or things. (C.C.P.§ 2031.320.) For compelling responses to interrogatories and production requests, the court shall impose monetary sanctions on the losing party unless that party acted with substantial justification, or other circumstances make sanctions unjust. (C.C.P. §§2023.010, 2023.030, 2030.290, 2031.300.) With a motion to compel for failure to respond, there is no deadline and no meet-and-confer requirement. (*Ibid*.) The moving party must merely show that the responding party failed to comply as agreed. (C.C.P. § 2031.320(a); see also *Standon Co., Inc. v. Sup.Ct.* (1990) 225 Cal.App.3d 898, 903.)

Sonoma's motion to compel objection-free, verified responses to the initial discovery requests is supported by declaration of counsel that demonstrates the discovery requests were properly served, but that Jones never supplied any response to either. The motion is unopposed. Sonoma submitted a reply brief to reaffirm the requests made in the motion and request the Court to also set an order to show cause hearing for dismissal for Jones' failure to prosecute this matter.

Sonoma's motion to compel is both warranted and supported by the facts stated in the moving papers and supporting declarations. The Court will award sanctions as well for Jones' outright refusal to participate in the discovery process altogether despite having commenced this action against Sonoma.

CONCLUSION

Based on the foregoing, the motion is **GRANTED**, and sanctions are awarded for $1,551.00. Jones shall furnish objection-free, verified responses within 15 days of receipt of the notice of entry of this Court's order on this motion. Sonoma shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5. SCV-270969, Piazza v. Piazza

Partition Referee Amy Harrington's ("Referee") motion for instructions from the Court to the referee is **DENIED**, for the reasons stated below.

PROCEDURAL HISTORY

Plaintiff/Cross-Defendant Olivia Piazza ("Plaintiff") and her father, Defendant/Cross-Complainant Eugene Piazza ("Defendant"), own the Property as tenants in common. (Motion,

2:6-8.) This Court ordered partition by sale of the Property pursuant to an Interlocutory Judgment, so Plaintiff stated her intention to make a credit bid to purchase the Property. (*Id*. at 2:9-10.) Plaintiff's sister, Cross-Complainant Victoria Williams ("Cross-Complainant"), is not on the title to the property, but has previously made a claim for 1/3 ownership interest and wishes to have that interest reimbursed from the proceeds of sale. (Motion, 2:11-15.) As the referee cannot proceed regarding the credit bid without Court approval, she has filed this motion.

ANALYSIS

Legal Standard

Per Code of Civil Procedure ("C.C.P.") section 873.610(a), courts have the authority to prescribe the manner, terms, and conditions of a partition by sale of real property. If the matter is referred to a partition referee for recommendation, the court may approve the referee's report on a hearing upon noticed motion. (C.C.P. § 873.610(b).) The court may also direct a sale on credit for the property or any part of it and prescribe the terms of credit as well as approve or prescribe the terms of security to be taken upon the sale, the manner which title to the security is to be taken, whether in a single instrument or several instruments, as reflects the interests of the parties. (C.C.P. § 873.630(a)-(c).)

Moving Papers

The referee's motion notes that the Property here has a remaining loan balance of $570,000.00, and that Plaintiff intends to assume the balance of the loan and make an offer of $776,000.00 based on fair market value. (Motion, 6:5-10.) Here, if the Court approves a credit bid and the bid is accepted by the Referee as the highest and best net bid, the Referee recommends that Plaintiff be required to deposit her share of the estimated sale expenses plus an additional 15% of the total estimated expenses to cover potentially unknown additional costs. (*Id*. at 7:18-22.) Furthermore, Plaintiff is recommended to be ordered to pay her share of escrow expenses before close of escrow and escrow ought not to be closed until Plaintiff has remitted such a payment to the title company. (*Id*. at 8:8-10.) If the Court should authorize Plaintiff's bidding without an agent, then Referee recommends that the Court issue an order regarding credit for the bid amount. (*Id*. at 8:16-19.) Finally, the Referee recommends that the Court confirm that Plaintiff and Defendant are co-owners with 50% interest each in the property and that Cross-Complainants' claims and allocation of the sales proceeds to be made after the confirmation of the sale.

Defendant and Cross-Complainant oppose this motion. In their joint response, they argue that the terms of the Interlocutory Judgment require sale for cash and do not allow for a credit bid. (Opposition, 2:15-20.) Furthermore, Plaintiff never requested an opportunity for a credit bid when the Interlocutory Judgment was rendered by the Court. (*Ibid*.) The parties also do not agree to having Plaintiff assume the loan on the Property and argue that the Interlocutory Judgment should not be amended to allow this. (Opposition, 4:3-8.) For these reasons, they request the Court not issue instructions regarding this. However, if the Court does choose to issue an instruction, then opposing parties request that the credit bid be memorialized and left open during the entirety of the listing period and the Property be sold to the "highest and best bidder." (*Id*. at 4:21-24.) They also request that Plaintiff put up a $250,000.00 cash or bond under her

proposed credit bid scenario to cover security needed for the compensatory damage claim against Plaintiff. (*Id*. at 4:21-28, 5:1-3.)

Plaintiff has submitted a reply stating that the referee's motion should be rendered as moot because she is no longer interested in purchasing the property because of Defendant and Cross-Complainant's response demonstrating that they will prevent her from purchasing the Property. (Reply, 4:7-13.)

Application

As the parties cannot come to an agreement over the partition by sale of the Property and Plaintiff has submitted a reply stating that she is no longer interested in purchasing the Property by credit bid, the Court will deny this motion.

CONCLUSION

Based on the foregoing, the motion is **DENIED**. Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a)-(b).

6. SCV-271887, Richardson v. Wight

Chester and Charlotte Richardsons' (the "Richardsons") special motion to strike (the "anti-SLAPP") David and Cheryl Wight's (the "Wights") cross-complaint is **GRANTED** per Code of Civil Procedure ("C.C.P.") section 425.16. The Court will award mandatory sanctions to the Richardsons as the prevailing party, after the Court considers the motion for fees and costs according to proof that the Richardsons intend to file.

FACTS & PROCEDURE

This action arose from a contract for purchase and sale of real property between the Wights and the Richardsons. (Cross-Complaint, ¶ 10.) The Wights claim the Richardsons misrepresented the details of the metes and bounds of the property sold. (*Ibid*.) The Richardsons claim that they advised the Wights of errors in the legal description after the sale and applied to the Sonoma County Permit & Resource Management Department to correct the issue, but the Wights refused to participate and execute the documents needed to do so. (Anti-SLAPP, 3:7-25.) The Wights later listed the property for sale without disclosing the title issues to future purchasers, which led the Richardsons to file the Complaint in this action to make a claim for possession and title to the real property, for injunctive and declaratory relief, and for financial compensation, and to record a *lis pendens*. (Anti-SLAPP, 3:26-28, 4:1-4.)

The Wights cross-complained against the Richardsons for attempted extortion, intentional infliction of emotional distress, financial elder abuse, breach of contract, intentional misrepresentation, and negligent misrepresentation. (Cross-Complaint, ¶¶ 16-32.) The Richardsons have filed this anti-SLAPP motion arguing that these causes of action arise from their exercise of their constitutional right of free speech and the right to petition. (Notice of anti-

SLAPP, 2:15-20.) The Court notes the Wights improperly filed an amended cross-complaint while this anti-SLAPP motion was pending but have since voluntarily dismissed it.

REQUEST FOR JUDICIAL NOTICE

Courts may take judicial notice of records any court of California and of the decisional, constitutional, and statutory law of California. (Evid. Code §§ 452(a)-(d).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. section 452. (C.C.P. § 453.) Per these sections, the Richardsons' requests for judicial notice are **GRANTED**.

EVIDENTIARY OBJECTIONS

"All written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion. Objections to specific evidence must be referenced by the objection number in the right column of a separate statement in opposition or reply to a motion, but the objections must not be restated or reargued in the separate statement." (C.R.C., Rule 3.1354.)

The Richardsons' filed objections to the Wights' evidence submitted in opposition. The objections to Exhibit L and paragraphs 7, 8, 11, and 15-19 of the Declaration of David Wight are **SUSTAINED** in so far as they reference confidential settlement communications. The objections are **OVERRULED** as to all else.

ANALYSIS

Richardsons' Special Motion to Strike (anti-SLAPP)

Legal Standard

C.C.P. section 425.16(b)(1) prohibits 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," unless there is a probability of prevailing on that cause. Protected activity includes "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law." (C.C.P. § 425.16(e)(1).) The right to petition includes "the basic act of filing litigation or otherwise seeking administration action." (*Brings v. Eden Council for Hope Opportunity* (1999) 19 Cal.4th 1106, 1115.)

A cross-defendant bringing an anti-SLAPP motion bears the initial burden of showing that: (1) they were engaged in an activity that qualifies for protection; and (2) that this protected activity supplies one or more elements of cross-complainant's claims. (C.C.P. § 425.16(e); *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 887.) If cross-defendant meets this burden, the burden shifts to cross-complainant to establish that there is a probability of prevailing on those causes of action based on protected activity. (C.C.P. § 425.16(b)(1).) To establish a probability of prevailing, cross-complainant must show that the claim is legally sufficient and supported by a

prima facie showing of facts sufficient to support a favorable judgment if the admissible evidence submitted by the plaintiff is credited. (*Navelier v. Sletten* (2002) 29 Cal.4th 82, 89.)

Wights' Cross-Complaint's Causes of Action Arise from the Richardsons' Protected Activity

Here, the Richardsons claim that the causes of action in the cross-complaint are based on their protected activities, including: (1) their filing and serving of the complaint asserting a claim to title or possession of land; (2) their recording, filing, and serving the *lis pendens*; (3) pursuing corrective measures (lot line adjustment) from an administrative body in furtherance of relief sought in the lawsuit; and (4) serving a C.C.P. section 998 offer to compromise or other related settlement discussions. (Anti-SLAPP, 6:14-20.) The Richardsons argue these are activities are protected because they constitute lawful activity in furtherance of the Richardsons' right to participate in the judicial process or seeking administrative action. (*Id*. at 5:21-28, 6:1-25.) The Wights argue that all of the causes of action are not based on protected activities, but rather based on the *lis pendens* the Richardsons recorded instead, which was an "invalid" act because the Richardsons had no right to claim the property back from the Wights after it had been transferred. (Opposition, 8:19-25, 9:17-28, 10:1-4.) For this reason, they argue that the first, second, and third causes of action are "immune" from the anti-SLAPP. (*Ibid*.)

The Court finds that the recording of the *lis pendens* properly reflect Richardsons' legal action in which they assert a real property claim, so the act itself was neither invalid nor illegal. Furthermore, the Richardsons have demonstrated that the causes of action alleged in the cross-complaint are based on the above-stated protected activities, including recording the *lis pendens*.

The Wights Have Not Shown a Probability of Prevailing on their Claims

Richardsons argue that the Wights cannot prevail on their claims because they are barred by the litigation privilege, which bars any litigation arising from injuries received as a consequence of first amendment petition activity, including a privileged publication made in any legislative, judicial, or other official proceeding authorized by law, or in the initiation or course of any other proceeding authorized by law. (Cal. Civ. Code § 47(b); Anti-SLAPP, 8:8-22.) They claim that their underlying lawsuit, their recording of the *lis pendens*, their seeking of the administrative lot line adjustment, and their section 998 offer to compromise were all privileged under Civil Code section 47(b). (*Ibid*.) The Richardsons also note that evidence code sections 1152 and 1154 bar liability generated through settlement discussions. (Anti-SLAPP, 9:13-19.) Also, they contend that the Wights cannot meet their burden of proof on each element of causes of action for intentional infliction of emotional distress and financial elder abuse. (*Id*. at 9:21-28, 10:1-6, 11:3-12.) Finally, they argue that the contractual claim is barred per the statute of limitations of one year per Government Code section 66499.32(b) and the Sub-Division Map Act, which yields an entire contract void if any part of a single consideration is unlawful. (*Id*. at 10:9-28.) As the way Fidelity conveyed the property violated the Sub-Division Map Act, the Richardsons state that the transaction in its entirety was unenforceable and invalid. (*Id*. at 10:9-11.)

The Wights argue that the motion cannot reach the causes of action for breach of contract, intentional misrepresentation, and negligent misrepresentation because these causes of action do not rely solely on the original purchase contract rather than protected activities.

The Court finds that the fourth through sixth causes of action do indeed rely on the protected activities because each of these causes incorporates by reference all other allegations made in the cross-complaint in the paragraphs stated before them, which includes the protected activities mentioned. The Wights mainly argue that their causes of action are either immune to an Anti-SLAPP motion or that an anti-SLAPP is inapplicable. The Wights do not otherwise make other arguments to demonstrate these causes of action have a probability of prevailing. Thus, the initial burden has been met and it has shifted to the Wights, who have not met their burden.

Award of Fees and Costs

The prevailing cross-defendant on an anti-SLAPP suit shall be entitled to recover fees and costs, and a prevailing cross-complainant shall be awarded "costs and reasonable attorney's fees," but only pursuant to California Code of Civil procedure section 128.5 and if the court finds the motion was frivolous and intended to cause unnecessary delay. (C.C.P. § 425.16(c).) In both cases, the award is mandatory. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.)

The Richardsons request fees subject to a subsequent motion for fees and costs according to proof. As this Court's ruling will be to grant their anti-SLAPP motion against the cross-complaint, the Richardsons are the prevailing party. The Court will award mandatory sanctions against the Wights after considering a subsequent motion filed by the Richardsons for fees and costs according to proof.

CONCLUSION

For the foregoing reasons, the anti-SLAPP motion is **GRANTED**. Mandatory sanctions will be awarded to the Richardsons as the prevailing party, after the Court considers their anticipated motion for fees and costs according to proof.

7. SCV-273668, Lau v. Perry

Defendants Lesley Ramond Perry and Perry, Johnson, Anderson, Miller, Moskowitz, LLP's ("Defendants") demurrer is **DENIED** as moot per Code of Civil Procedure ("C.C.P.") sections 430.41(a) and 472(a). Defendants' request for judicial notice is **GRANTED** per Evidence Code section 452(d).

PROCEDURAL BACKGROUND

Plaintiff Jodie Lau ("Plaintiff") filed a complaint against Defendants for breach of fiduciary duty and professional negligence in connection with Plaintiff's parents' family trust. (Motion, 1:16-19.) Defendants filed this demurrer stating that both causes of action in the complaint failed to state facts sufficient to establish an element of duty and are otherwise barred by the one-year statute of limitations. (Demurrer, 1:24-26, 2:1-3.) Prior to the time her opposition was due to the demurrer, Plaintiff filed the first amended complaint and served it by email to all parties on February 9, 2024. (See generally, Proof of Service of First Amended Complaint.)

ANALYSIS

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) In response to a demurrer, a party may amend its pleading once without leave of the court before the demurrer is heard as long as it is filed and served no later than the date for filing an opposition to the demurrer. (C.C.P. 472(a).) If the party files an amended complaint in response to the demurrer, the responding party shall meet and confer again with the party who filed the amended pleading before filing a demurrer to the amended pleading. (C.C.P. § 430.41(a).)

Here, Plaintiff timely filed the first amended complaint without leave of court in response to the demurrer. The first amended complaint alleges the same causes of action as the complaint, but additional facts and paragraphs in support of those causes. Thus, procedurally the demurrer has become moot as Defendants are required to meet and confer again with Plaintiff before filing a demurrer to the first amended complaint, if necessary.

CONCLUSION

Based on the foregoing, the demurrer is **DENIED**. Defendants' request for judicial notice is **GRANTED**. Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

8. SCV-273701, ECB Corp. v. Pierce, Jr,

Attorneys Daniel P. Scholz and Scott M. Bennett of Finch, Thornton & Baird, LLP ("Counsel") move unopposed to be relieved as counsel for California Environmental Systems, Inc. ("CES"). The motion is **GRANTED**, per California Code of Civil Procedure section 284(2), for reasons stated below.

Counsel declares that CES has consistently failed to respond to communication, failed to furnish documents requested, and failed to follow critical legal advice resulting in severely detrimental consequences, so has ultimately made it unreasonably difficult for counsel to carry out effective legal representation. (Declaration of Counsel, ¶ 2.) Furthermore, CES is in default of payment obligations to Counsel. Despite stating that CES would obtain new counsel, CES has failed to substitute in new counsel. Counsel served this motion on all parties by mail, including to the client's last known address. (*Id*. at ¶ 3; Proof of Service dated December 20, 2023.) No oppositions or objections were filed. Trial has not been set and the next hearing in this matter is a case management conference scheduled for May 23, 2024.

As such, the unopposed motion is **GRANTED**. Unless oral argument is requested, the Court will sign the proposed order lodged with the motion.