

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, October 1, 2025 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
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.

CourtCall is not permitted for this calendar.

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

TO JOIN D17 ZOOM ONLINE:

Meeting ID: 161 126 4123

Passcode: 062178

<https://sonomacourt-org.zoomgov.com/j/1611264123>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

+1 669 254 5252

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 Gaskell's Judicial Assistant by telephone at **(707) 521-6723 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. 23CV00365, Kao v. Gonzales

Motion DROPPED from calendar pursuant to parties' signed stipulation and order for Good Faith Settlement.

2. 23CV01361, Green v. Whitcomb

Plaintiffs/Cross-Defendants David and Selena Green ("the Greens") demur to Defendant/Cross-Complainant Timothy Whitcomb's ("Whitcomb") Second Amended Cross-Complaint filed April 10, 2025 ("April SACC"). The demurrer to the April SACC is **SUSTAINED without leave to amend** in its entirety.

I. PROCEDURAL HISTORY

Whitcomb filed a Cross-Complaint on October 28, 2024, and later filed the FACC without leave of court on December 9, 2024. (Demurrer to SACC Memorandum of Points and Authorities ["MPA"], 5:21-27.) Finding that deficiencies continued to exist in the FACC, the Greens filed a demurrer to each cause of action in the FACC. (MPA, 6:2-3.) Whitcomb did not file an opposition to the demurrer but did file an improper Second Amended Cross-Complaint on March 6, 2025, (the "March SACC") without first

obtaining leave of court, to which the Greens filed an objection. (*Id.* at 6:3-4.) Per Code of Civil Procedure (“C.C.P.”) 472(a), a party may only amend a pleading once without leave of court. As Whitcomb had already filed the FACC without leave, he was required to obtain leave of the Court or a party stipulation prior to filing the March SACC, so the Court sustained the Greens’ objection and struck the March SACC from the Court’s record per C.C.P. sections 435 and 436 for failing to conform with C.C.P. section 472(a). (See Order After Hearing dated April 10, 2025.)

The Court also sustained the Greens’ demurrer to the FACC with leave to amend as to the First, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action, and also without leave to amend as to the Second Cause of Action for malicious prosecution. (*Ibid.*) The Court ordered that the SACC subject to the ruling on the demurrer be filed within 20 days of the Greens’ service of notice of the Court’s entry of the order. (*Ibid.*) The Court signed and entered the Order After Hearing on April 10, 2025. (*Ibid.*) On the same day, Whitcomb filed the April SACC.

The April SACC alleges causes of action for: (1) Defamation Per Se; (2) Fraud in the Inducement; (3) Fraudulent Concealment; (4) Fraud in the Execution; (5) Conversion; (6) Breach of Contract; (7) Breach of Implied Covenant of Good Faith and Fair Dealing; (8) Tortious Interference with Contractual Relations; and (9) Intentional Infliction of Emotional Distress. (April SACC, pp. 14-47.) The Court notes that five of these causes of action are new and that Whitcomb did not request leave from the Court to add them in. On May 12, 2025, the Greens’ counsel met and conferred with Whitcomb by phone call to discuss issues the Greens found with the April SACC, but the parties did not come to a resolution. (Thomas Decl., ¶ 3.)

The Greens now demur to the each and every cause of action alleged in the April SACC. (Demurrer, pp. 2-4.) Whitcomb filed a timely opposition, to which the Greens filed a reply brief. The Greens also note in their demurrer that Whitcomb has an appeal pending on the denial of his anti-SLAPP motion, for which a Notice of Appeal was filed on March 14, 2025. The Greens cite C.C.P. section 916(a) which allows the trial court to proceed upon any other matter embraced in the action and not affected by the judgment or order being appealed.

II. ANALYSIS

Legal Standard

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).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party’s proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) 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.)

The Greens’ Demurrer

The Greens demur to each cause of action in the April SACC. (Demurrer, pp. 2-4.) They argue that every cause of action fails to state facts sufficient to constitute a cause of action and that each cause of action is barred by the statute of limitations. (*Ibid.*)

1. *Defamation Per Se [C.C.P. § 340(c)]*

Defamation is effected by either libel or slander. (Cal. Civ. Code § 44.) Libel is defined as the “false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has tendency to injure him in his occupation.” (Cal. Civ. Code § 45.) On the other hand, slander is a false and unprivileged publication, orally uttered, and also communications by radio or any mechanical or other means that:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;
3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits;
4. Imputes to him impotence or a want of chastity; or
5. Which, by natural consequence, causes actual damage.

(Cal. Civ. Code § 46.)

Furthermore, the elements of a cause of action for defamation are a publication that is false, defamatory, unprivileged, and has a natural tendency to injure or cause special damage. (*Wong v. Jing* (2011) 189 Cal.App.4th 1354, 1369.) Where a reasonable reader would not perceive in a false and unprivileged publication a meaning that tended to injure the subject’s reputation, then the publication is not libel. (*Barker v. Fox & Associates* (2015) 240 Cal.App.4th 333, 351-352.)

The Greens argue that the April SACC clearly states that the alleged defamatory statements were made between 2020 and 2021, so even if they were false, Whitcomb brings the claim beyond the narrow one-year statute of limitations imposed on claims for defamation. (MPA, 11:11-26.) The

2. *Fraud in the Inducement [C.C.P. § 338(d)]*

Fraud in the inducement is a subset of the tort of fraud, which occurs when “the promisor knows what he is signing but his consent is induced by fraud, mutual assent is present and a contract is formed, which, by reason of the fraud, is voidable.” (*Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 839.)

The Greens argues that the April SACC’s allegation that “CATE knowingly made numerous false representations of material fact during settlement negotiations” implies that these representations were made before the Settlement Agreement was finalized on June 10, 2020. (MPA, 12:24-27.) As the statute of limitations for a fraudulent inducement claim is three years, and the alleged representations occurred before June of 2020 more than five years ago, the claim is time-barred and the demurrer should be sustained without leave to amend as to the Second Cause of Action. (*Id.* at 12:27-28, 13:1.)

3. *Fraudulent Concealment [C.C.P. § 338(d)]*

To claim fraud and deceit based on concealment, a plaintiff must allege as follows: “(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.” (*Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 612–613.)

The April SACC alleges that the Greens concealed their romantic and business relationship during settlement negotiations, that they planned to continue operations of Whitcomb and Cate, Inc., that they planned to continue to operate the business under the EIN rather than dissolving it, and their intention to use Whitcomb’s name and professional reputation after the settlement. (April SACC, ¶ 4.) The Greens argue that these facts were not material to the Settlement Agreement. (MPA, 13:22-26.) The Greens request that the demurrer be sustained without leave to amend as to the Third Cause of Action also because the claim is time-barred by the statute of limitations requiring actions for fraud to be brought within three years after the facts constituting the fraud are discovered. (*Id.* at 14:17-20.) The April SACC states that Whitcomb did not discover the misrepresentations until: (1) March 5, 2023, when Facebook revealed the romantic and business relationship between the Greens; (2) November of 2022, when he received corporate tax documents and discovered the same EIN was being used by the Greens; and (3) May 12, 2023, when a confrontation brought to light that the Greens intended to keep using “Whitcomb” in the company name. (*Id.* at 14:21-28, 15:1-3.) The Greens argue that Whitcomb discovered these facts years ago and he is only asserting those claims now to exact a measure of retribution in response to them. (MPA, 14:28, 15:1-3.)

4. *Fraud in the Execution [Civil Code §§ 1572, 1710]*

Whitcomb cites to the C.C.P. sections 1572 and 1710 in the April SACC, which sections are unrelated to claims for fraud, so the Court will treat this as a mistake and assume Whitcomb intended to cite to California Civil Code sections 1572 and 1710, which address the meaning of actual fraud and deceit. The Greens cite to *Munoz v. Patel* (2022) 81 Cal.App.5th 761, 775, in which case fraud in the execution was defined as a situation when “the promisor is deceived as to the nature of his act, and actually does not know what he is signing, or does not intend to enter into a contract at all.”

The Greens argue that Whitcomb’s failure to read the Settlement Agreement thoroughly before he signed it does not constitute fraud, when he conceded that “after signing, Cross-Complainant was emailed a finalized version via email, which he did not immediately review.” (MPA, 15:9-19.) The Greens also point out that this claim is also time-barred by the three-year statute of limitations for claims for fraud so they request that the demurrer be sustained without leave to amend as to the Fourth Cause of Action. (*Id.* at 16:3-11.)

5. *Conversion [C.C.P. § 338(c)]*

Whitcomb alleges that the failure to conduct a walk-through of any of the business or residential properties to distinguish between personal, business, and third-party property prior to the Settlement Agreement being signed due to COVID-19 restrictions constituted a conversion of his property. (April SACC, 31:1-3.) The Greens argue the claim is barred by the three-year statute of limitations under C.C.P. section 338(c)(1), so the demurrer to the Fifth Cause of Action for Conversion should be sustained without leave to amend. (MPA, 17:1-7.)

6. *Breach of Contract [C.C.P. § 337]*

In order to state a breach of contract cause of action, plaintiff must plead legally actionable damages. (*Gautier v. General Tel. Co.* (1965) 234 Cal.App.2d 302, 305.) The plaintiff will not be entitled to damages for injury to name, character, or personal reputation. (*Ibid.*)

The April SACC alleges that the Greens breached the Settlement Agreement, which required certain actions that were not performed such as dissolving the Business, using a name that was not agreed to by the parties verbally, and filing the final tax returns for 2019 and 2020 to resolve all corporate tax liabilities. (April SACC, pp. 33-37.) The Greens argue that none of the actions alleged in the SACC constituted breaches of the Settlement Agreement. (MPA, 18:14-18.)

7. *Breach of Implied Covenant of Good Faith and Fair Dealing [C.C.P. § 337]*

The covenant requires each contracting party to refrain from doing “anything which will injure the right of the other to receive the benefits of the agreement.” (*Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390, 400.) The implied covenant rests upon the existence of a specific contractual obligation and “cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement.” (*Agosta v. Astor* (2004) 120 Cal.App.4th 596, 607.)

The April SACC bases the Seventh Cause of Action on the fact that Whitcomb did not discover the “concealed relationship” between the Greens until March 5, 2023, but the Greens argue that Whitcomb knew as early as December of 2020 by way of email from Michael Judkins, which was attached as Exhibit DD.1.a. to the April SACC. (MPA, 19:4-8.)

8. *Tortious Interference with Contractual Relations [C.C.P. § 339(1)]*

As stated in the Greens’ demurrer, “tortious interference with contractual relations requires (i) the existence of a valid contract between the plaintiff and a third party; (ii) the defendant’s knowledge of that contract; (iii) the defendant’s intentional acts designed to induce a breach or disruption of the contractual relationship; (iv) actual breach or disruption of the contractual relationship; and (v) resulting damage.” (*Ixchel Pharma, LLC v. Biogen, Inc.*, (2020) 9 Cal.5th 1130, 1141).

The April SACC again references a Facebook post on March 5, 2023, due to which Whitcomb discovered the romantic relationship between the Greens. (April SACC, 42:7-8.) Whitcomb alleges various actions on the part of the Greens that he claims constitutes a tortious interference with the Settlement Agreement, but the Greens argue that these alleged actions happened prior to the 2020 Settlement Agreement and are time-barred by the statute of limitations of two years.

9. *Intentional Infliction of Emotional Distress [C.C.P. § 335.1]*

To plead a cause of action for intentional infliction of emotional distress, a plaintiff must allege that there is “(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant’s outrageous conduct.” (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050–1051.) Plaintiff may show that the defendant intended their conduct to inflict injury or realized injury would result by conduct that is “outrageous” and “so extreme as to exceed all bounds of that usually tolerated in a civilized community.” (*Id.*)

The Greens argue that Whitcomb’s April SACC continues to fail to allege outrageous conduct or conduct that was intended to inflict injury, as the FACC did. Furthermore, they argue that almost all of the facts alleged to support this claim happened on or before the 2020 Settlement Agreement, so Ninth Cause of

Action is time-barred by the statute of limitations for intentional infliction of emotional distress which requires such causes of action to be brought within two years. (MPA, 21:19-28.)

Opposition

In the Opposition, Whitcomb argues that the statute of limitations arguments are frivolous due to the delayed discovery rule because Whitcomb did not discover the Greens' "concealment" until November 2022 when he received the "falsified tax returns" and March 2023 when he says he learned of the Greens' romantic relationship through a Facebook post. (Opposition, 2:24-26, 3:1-15.) Whitcomb also argues that the Settlement Agreement does not bar his claims because it was procured under duress and coercion, it was unconscionable, because he signed it without consulting legal counsel, because of the Greens' fraud and deceit, and due to their immediate breach. (*Id.* at 4:7-21.)

Reply

The Reply emphasizes that there are five additional causes of action in the April SACC that the Court did not allow leave for Whitcomb to include. The Greens cite *Cnty. Water Coal. v. Santa Cruz Cnty. Loc. Agency Formation Com.* (2011) Cal.App.4th 1317, 1329, in which the Court of Appeal stated that leave to amend is limited to only "cure the defects in the particular causes of action to which the demurrer was sustained, but that is all." Otherwise, the Reply reaffirms the arguments made in their motion.

Application

The Court will sustain the Greens' demurrer to the April SACC in its entirety without leave to amend. The Court previously allowed Whitcomb leave to amend several causes of action because they are otherwise time-barred unless Whitcomb can allege facts that support a delayed discovery of those claims such that they are timely brought under the April SACC. However, the Court does not find that Whitcomb satisfactorily alleged facts to support a delayed discovery of his claims in the April SACC because most of the alleged actions that give rise to his claims occurred on or before the Settlement Agreement was entered into in 2020 and the statute of limitations has passed on all of those claims.

Furthermore, the Court finds that the April SACC alleges five new causes of action that Whitcomb was never allowed leave to amend to include. He was only allowed leave to amend the particular causes of action that were outlined in the Court's ruling on the Greens' demurrer to the FACC, but he went beyond and alleged additional causes of action without taking leave of the Court before doing so.

Based on the allegations in the April SACC and the Exhibits attached to the pleading, the Court does not find that there is a reasonable possibility that Whitcomb can cure the defects with regard to the statute of limitations issues that exist for the reasons stated above.

III. CONCLUSION

The Greens' demurrer is **SUSTAINED without leave to amend** as to the April SACC.

The Greens 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).

The hearing on Plaintiff's motion for reconsideration of the Court's order entered June 25, 2025, by the Hon. Patrick Broderick is **CONTINUED** to be heard in Department 16 on November 5, 2025, at 3:00 p.m. pursuant to C.C.P. section 1008(a). Sanctions will not be awarded under C.C.P. section 128.5.

4. **24CV01491, American Express National Bank v. Berhane**

Counsel Dustin Young's unopposed motion to be relieved as counsel for Defendant Yirgalem Berhane is **CONTINUED** to Wednesday, October 29, 2025, at 3:00 P.M. in Department 17. Counsel failed to file a proof of service to show that the moving papers were served on all parties in this matter. Counsel shall file a proof of service showing timely and proper service of the moving papers to all parties before the next hearing, otherwise the Court will deny the motion.

5. **24CV04790, Davila v. Harm**

Counsel John W. Bussman's two unopposed motions to be relieved as counsel for both Defendants Jody Harm and The Skin Clinique, Inc. are **CONTINUED** to Wednesday, October 29, 2025, at 3:00 P.M. in Department 17. Counsel failed to file a proof of service to show that the moving papers were served on all parties, including his two clients, in this matter. Counsel shall file a proof of service showing timely and proper service of the moving papers to all parties before the next hearing, otherwise the Court will deny the motion.

6. **24CV05683, Jones v. Deutsche Bank National Trust Company**

The hearing on Defendant Deutsche Bank National Trust Company's demurrer to Plaintiff Laura A. Jones's Complaint is **CONTINUED** to Friday, February 20, 2025, at 3:00 P.M. in Department 17. On May 14, 2025, Plaintiff filed a Notice of Automatic Stay of Proceedings due to the bankruptcy case pending against her and the matter is currently stayed.

7. **24CV07594, Gomez Flores v. Installed Building Products, LLC**

Defendants Installed Building Products, LLC, OJ Insulation, L.P., and OJ Insulation Holdings, Inc. (together as "Defendants") unopposed motion for stay of proceedings is **GRANTED**. This action is STAYED pending final resolution of the Mora Action in the Los Angeles Superior Court (Case No. 24STCV32994).

I. **PROCEDURAL HISTORY**

Plaintiff Francisco Gomez Flores ("Plaintiff") filed his Complaint on December 16, 2024, individually and on behalf of others similarly situated alleging seven causes of action including wage and hour violations pursuant to the Labor Code and the Business and Professions Code. (See Complaint, filed December 16, 2024.) Plaintiff subsequently amended his Complaint to add a violation of the Private Attorneys General Act ("PAGA"). (See First Amended Complaint, filed February 18, 2025.) Defendants allege that a former OJ Insulation employee, Ramon Ramirez Mora, filed a class and representative action for the same claims encompassing the same statutory period in the Los Angeles Superior Court (Case No. 24STCV32994) on December 13, 2024 ("the Mora Action"). (Motion for Stay, 3:6–10.) Defendants now request that the instant action be stayed pursuant to the rule of exclusive concurrent jurisdiction or the Court's inherent authority.

II. REQUEST FOR JUDICIAL NOTICE

Judicial notice of State and Federal laws, regulations, legislative enactments, official acts and court records is statutorily appropriate. (Evid. Code §§ 451, 452.) 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. § 452. (C.C.P. § 453.) Courts may take notice of public records but not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

In support of their motion to stay, Defendants request judicial notice of three documents from the Mora Action: the Complaint, the Court Order Re: Newly Filed Case dated January 8, 2025, and the Joint Initial Status Conference Class Action Response Statement filed May 7, 2025. (See Defendants' Request for Judicial Notice, filed June 13, 2025.) The Court **GRANTS** Defendants' request, subject to the evidentiary limitations stated above.

III. ANALYSIS

Legal Standard

A court's power to stay an action arises from its inherent discretionary power to stay a proceeding which will accommodate the ends of justice. (*St. Paul Fire & Marine Ins. Co. v. AmerisourceBergen Corp.* (2022) 80 Cal.App.5th 1, 6–7 [citations omitted].) Furthermore, "[u]nder the rule of exclusive concurrent jurisdiction, 'when two [California] superior courts have concurrent jurisdiction over the subject matter and all parties involved in litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matters have been resolved.' [Citations.] The rule is based upon the public policies of avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy, and preventing vexatious litigation and multiplicity of suits." (*Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 786–787.) "[T]he rule of exclusive concurrent jurisdiction does not require absolute identity of parties, causes of action or remedies sought in the initial and subsequent actions. [Citations.] If the court exercising original jurisdiction has the power to bring before it all the necessary parties, the fact that the parties in the second action are not identical does not preclude application of the rule. Moreover, the remedies sought in the separate actions need not be precisely the same so long as the court exercising original jurisdiction has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings." (*Id.* at 788.) "Although the parties in the two actions and the remedies sought need not be precisely the same, the issues in the two proceedings must be substantially the same and the individual suits must have the potential to result in conflicting judgments." (*Franklin & Franklin v. 7–Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1168, 1176.)

Moving Papers

Motion

Defendants contend that the Mora Action seeks to represent "all similarly situated non-exempt, individuals (excluding clerical and administrative personnel) who worked for defendants ... in the State of California, at any time during the period of four years prior to the filing of the complaint in this action up to the present" and asserts 15 causes of action for the following: (1) Failure To Pay All Earned Wages; (2) Failure To Pay All Earned Overtime Wages; (3) Failure To Permit Paid 10 Minute Rest Periods; (4) Failure To Provide 30 Minute Meal Periods; (5) Failure To Provide Cool-Down Recovery Periods; (6) Failure To Timely Pay All Earned Wages And Compensation; (7) Failure To Pay All Earned Wages And

Compensation Upon Termination; (8) Failure To Provide Lawful Wage Statements; (9) Failure To Provide California Wage Theft Prevention Act Notice; (10) Violation Of Labor Code §206.5; (11) Failure To Indemnify For Work-Related Expenses; (12) Failure To Permit Inspection And Copying Of Records; (13) Failure To Provide Paid Sick Days; (14) Failure To Maintain Workers Compensation Insurance; and (15) Unfair Business Practices. (Motion for Stay, 3:27–4:18.) Defendants represent that Plaintiff in the Mora Action intends to amend his complaint to include a cause of action for a violation of PAGA. (*Id.* at 4:10–14.) Thus, Defendants argue that the instant action must be stayed because the Parties (Installed Building Products LLC and OJ Insulation, L.P.), issues (violation of California’s wage and hour laws), and remedies (damages and equitable relief) across both cases are substantially similar. (*Id.* at 7:4–8:14.)

Application

Plaintiff’s Petition

On July 30, 2025, Plaintiff filed a Petition for Coordination and Motion for Stay with the Chairperson of the Judicial Council pursuant to Code of Civil Procedure (“C.C.P.”) section 404 and California Rules of Court, Rule 3.521. (See Notice of Submission of Petition for Coordination of Actions and Motion for Stay, filed July 30, 2025.) Ramon Ramirez Mora (Plaintiff in the Mora Action) filed an Opposition to Plaintiff Gomez Flores’ Petition for Coordination and Application for Stay on August 12, 2025, with this Court. However, Plaintiff only filed a Notice of Submission with this Court and submitted the Petition to the Judicial Council. Therefore, Plaintiff’s Petition is not before the Court at this time and the Court will not consider Plaintiff’s Petition or Ramon Ramirez Mora’s Opposition.

Defendants’ Motion for Stay

The Mora Action and the instant Gomez Flores action are substantially the same and necessarily related. Both are class action lawsuits on behalf of non-exempt current and former employees against Defendants Installed Building Products, LLC and OJ Insulation, L.P. alleging wage and hour violations for a period covering December 2020 through the present. All of Plaintiff Gomez Flores’ causes of action are covered by the Mora Action, except for the PAGA cause of action which Defendants claim Ramon Ramirez Mora intends to add to his complaint by an amendment. Both cases seek similar relief, primarily monetary damages for unpaid wages and meal and rest period premiums. While OJ Insulation Holdings, Inc. is not a party in the Mora Action but is a party in the instant action, absolute identity of parties is not required as the Los Angeles Superior Court has the power to bring all necessary parties before it. (*Plant Insulation Co.*, *supra*, 224 Cal.App.3d at 788.) Therefore, the Mora Action and instant Gomez Flores action have a high potential to result in conflicting judgments as the issues in the two actions are substantially similar because they involve Defendants’ wage and hour violations for the same time period affecting the same class of non-exempt current and former employees. (*Franklin & Franklin*, *supra*, 85 Cal.App.4th at 1176.) Since the Mora Action was filed first on December 13, 2024, the Los Angeles Superior Court was first to assume jurisdiction and now has “exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matters have been resolved.” (*Plant Insulation Co.*, *supra*, 224 Cal.App.3d at 786–787.) Thus, Defendants’ motion for stay is **GRANTED**.

IV. CONCLUSION

The motion is **GRANTED**. This action is STAYED pending final resolution of the Mora Action in the Los Angeles Superior Court (Case No. 24STCV32994).

Defendants’ counsel shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

8. **25CV01556, Alnounou v. Fakhouri**

Plaintiff/Cross-Defendant Mohanad Alnounou (“Alnounou”) specially moves to strike (the “anti-SLAPP”) the First Cause of Action for defamation and Paragraphs 9 and 23 from Defendants/ Cross-Complainant’s Tareq Fakhouri and Saltio, Inc.’s (“Tareq Fakhouri”) Complaint. The anti-SLAPP is **GRANTED** per Code of Civil Procedure (“C.C.P.”) section 425.16. Alnounou’s request for fees and costs are also **GRANTED** as a mandatory award for prevailing party.

I. **PROCEDURAL HISTORY**

Alnounou commenced this action against Tareq Fakhouri for failure to pay regular and overtime wages, failure to provide timely meal periods, failure to provide rest periods, failure to furnish wage statements and failure to reimburse him for necessary expenditures during his employment as General Manager at Saltio, Inc., doing business as “Cascabel”, (“Saltio/Cascabel”) from 2020 to 2025 when the restaurant closed and he was terminated. (First Amended Complaint, ¶¶ 1, 7-9; Alnounou Decl., ¶ 2.)

The Cross-Complaint alleges causes of action for defamation (libel & slander), conversion, and theft against Alnounou. (Cross-Complaint, ¶¶ 21-51.) Specifically, Tareq Fakhouri alleges the following against Alnounou:

1. Alnounou engaged in libelous and slanderous speech against Tareq Fakhouri, including but not limited to:
 - Alnounou falsely accused Tareq Fakhouri of stealing money from Saltio/Cascabel and/or both North Bay Crepevine locations in front of other employees, who reported the comments to Tareq Fakhouri.
 - Alnounou falsely accused Tareq Fakhouri of not paying Alnounou his full salary, in front of other employees, resulting in the other employees becoming hostile and aggressive to Tareq Fakhouri.
 - Alnounou falsely accused Tareq Fakhouri of stealing money which resulted in the other employees also accusing Tareq Fakhouri of stealing money and of intending to deny employees their final paychecks. Employees of Saltio/Cascabel repeated Alnounou’s false accusations in writing by using the company’s communication application.”

(Cross-Complaint, ¶ 9.)

2. Alnounou harmed Tareq Fakhouri by publishing one or more demonstrably false defamatory statements, both spoken and in writing, stating that Tareq Fakhouri was stealing money from the business, which led employees to believe he and Saltio/Cascabel intended to deny employees their final paychecks.

(Cross-Complaint, ¶ 23.)

Alnounou also is a witness in a separate lawsuit in Marin County Superior Court brought by a family member, Maher Fakhouri, who claims that Tareq Fakhouri stole cash and property from businesses he owned with Maher Fakhouri, including San Rafael Crepevine. (Memorandum of Points and Authorities in Support of anti-SLAPP [“MPA”], 1:15-19.) Alnounou helped Maher Fakhouri to determine how much

cash Tareq Fakhouri had stolen from San Rafael Crepevine with the intent of facilitating a settlement between the Fakhouris, and spoke to Maher Fakhouri's lawyer about it in late 2024. (MPA, 1:20-22.) Alnounou states that he will testify in that matter about these issues claimed in Maher Fakhouri's Complaint. (*Id.* at 1:23-24.)

Alnounou claims that these portions of the Cross-Complaint, as well as the entire First Cause of Action, arise out of the acts and/or speech taken by him which constitute protected activity under C.C.P. section 425.16(b)(1) and 425.16(e). (Notice of Anti-SLAPP Motion, 2:9-13.) Specifically, Alnounou argues that the Defamation cause of action in the Cross-Complaint is based entirely on his litigation activity related to this wage and hour case as well as his witness statements given in the Marin lawsuit on behalf of Maher Fakhouri. (MPA, 2:4-6.) Tareq Fakhouri filed an Opposition, to which Alnounou filed a Reply.

II. EVIDENTIARY OBJECTIONS

Tareq Fakhouri objects to Exhibits 1, 2, and 3 attached to Alnounou's Declaration. The Court rules as follows on the objections:

1. The objection to Exhibit 1 for lack of foundation, irrelevance, hearsay, and hearsay within hearsay is **OVERRULED**.
2. The objection to Exhibit 2 for lack of foundation, hearsay, best evidence rule, and unfair prejudice/confusion is **OVERRULED**.
3. The objection to Exhibit 3 for lack of foundation, hearsay, hearsay within hearsay, best evidence rule, and irrelevance is **OVERRULED**.

III. ANALYSIS

Special Motion to Strike ("Anti-SLAPP")

C.C.P. section 425.16(b)(1) provides that a cause of action against a person "arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue" shall be subject to a special motion to strike or "anti-SLAPP" motion, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. The anti-SLAPP statute further defines the foregoing phrase to include "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).) It is well established that, the "constitutional right to petition... includes the basic act of filing litigation or otherwise seeking administration action." (*Briggs v. Eden Council for Hope Opportunity* (1999) 19 Cal.4th 1106, 1115 ("*Briggs*").) Section 425.16 does not require that the parties meet and confer before filing an anti-SLAPP motion. (*Trinity Risk Mgmt., LLC v. Simplified Lab. Staffing Sols., Inc.* (2021) 59 Cal.App.5th 995, 1008.)

First Prong: Protected Speech in the anti-SLAPP

A defendant has the initial burden in the anti-SLAPP motion to make a prima facie showing that the complaint "arises from" the exercise of free speech or petition rights. (*Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61.) "At the first step of the analysis, the defendant must make two related showings. Comparing its statements and conduct against the statute, it must demonstrate activity qualifying for protection... Comparing that protected activity against the complaint, defendant must also demonstrate that the activity supplies one or more elements of a plaintiff's claims." (*Wilson v.*

Cable News Network, Inc. (2019) 7 Cal.5th 871, 887.) If defendant meets that initial burden, the burden shifts to the plaintiff to establish that there is a “probability” of prevailing on the claims which are based on protected activity. (C.C.P. § 425.16(b)(1).)

Second Prong: Probability of Success on the Merits

To establish a “probability” of prevailing on the merits, plaintiff must demonstrate that the claim is both legally sufficient and supported by a prima facie showing of facts sufficient to support a favorable judgment if the evidence submitted by the plaintiff is credited. (*Navelier v. Sletten* (2002) 29 Cal.4th 82, 89.) To demonstrate a probability of prevailing on the merits, the plaintiff must produce admissible evidence sufficient to overcome any privilege or defense that the defendant has asserted to the claim. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 323.)

Civil Code section 47(b) litigation privilege is a substantive defense the plaintiff must overcome to demonstrate a probability of prevailing. “In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (C.C.P. § 425.16(b)(2).) There is no requirement of finding an intent to chill free speech, or actual chilling of free speech. (*Equilon*, 29 Cal.4th 58-59.)

Fees and Costs on anti-SLAPP Motion

A prevailing party on an anti-SLAPP motion to strike may be entitled to recover fees and costs, but the standards for determining this differ depending on whether the prevailing party was the defendant moving to strike or the party opposing the motion to strike.

The “prevailing defendant” on a motion to strike an anti-SLAPP suit “shall be entitled” to recover fees and costs and if a plaintiff prevails, the court “shall award costs and reasonable attorney's fees” to the plaintiff, but only pursuant to C.C.P. section 128.5 and “[i]f the court finds that [the motion] is frivolous or is solely intended to cause unnecessary delay.” (C.C.P. § 425.16(c), emphasis added.) In both cases, the award is mandatory. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131; *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1375, 1388 (mandatory for prevailing plaintiff if court finds motion to be frivolous).)

Alnounou’s Anti-SLAPP Motion

Alnounou argues that Paragraphs 9 and 23 should be stricken from the Cross-Complaint because the statements alleged are protected by the anti-SLAPP statute because they are based on protected speech and conduct and because Tareq Fakhouri cannot prove a probability of success on the merits due to the Litigation Privilege under Civil Code section 47. (MPA, 2:4-15.)

The Cross-Complaint’s cause of action for Defamation is based on these three alleged statements that Alnounou argues are protected activities: (1) Alnounou accused Tareq Fakhouri of failing to pay him his “full salary”; (2) he accused him of stealing money from Cascabel and Crepevine restaurants; and (3) he accused him of stealing money which caused other employees to become concerned that he would not pay them their wages. (Cross-Complaint, ¶¶ 9, 21, and 23.) Alnounou claims his unpaid wages claim is protected by the anti-SLAPP statute because they are litigation-related communications. (MPA, 10:15-25.) The accusations of stealing money from Satio/Cascabel and North Bay Crepevine restaurants are pre-litigation statements that are related to the Marin lawsuit for which Alnounou will testify about Tareq Fakhouri’s alleged theft and misappropriation from businesses and restaurants he owned with Maher Fakhouri, including Crepevine. (*Id.* at 11:4-25.) Alnounou notes that the Marin lawsuit was filed first before the Cross-Complaint was filed and the alleged statements also occurred in relation to that lawsuit.

(*Id.* at 11:17-25.) Finally, Alnounou states that the allegations regarding Tareq Fakhouri stealing money from Maher Fakhouri, which resulted in other employees accusing him of stealing money and not paying wages, is also protected by the anti-SLAPP statute because those statements are directly related to the Marin lawsuit for which matter Alnounou will serve as a witness. (*Id.* at 12:5-24.)

Alnounou argues that Tareq Fakhouri cannot carry his burden to show a probability of success on the merits because of the litigation privilege under Civil Code section 47(b). (MPA, 13:24-26.) Alnounou argues that his pre-litigation demands, statements made in connection to the Marin lawsuit, and statements made concerning employees he represents in a PAGA action regarding Tareq Fakhouri's theft and non-payment of final wages are protected under section 47(b). (*Id.* at 13:24-28, 14:1.)

A prevailing defendant/cross-defendant is entitled to an award of attorney's fees and costs on an anti-SLAPP motion, so Alnounou seeks an award of attorney's fees and costs and requests to bring a separate fees and costs motion after the resolution of the anti-SLAPP motion. (MPA, 14:3-6.)

Tareq Fakhouri's Opposition

Tareq Fakhouri's position is that Alnounou's allegations are baseless and demonstrably false and that he did not make those statements to further any pending litigation, but to harm Tareq Fakhouri's professional reputation in the local restaurant business community. (Opposition, 3:13-23.) Tareq Fakhouri argues that Alnounou's allegations do not arise from protected activity because the Defamation cause of action in the Cross-Complaint is based on comments made to other Saltio/Cascabel employees asserting that Tareq Fakhouri was denying them full and fair wages, which were not made as part of "pre-filing accusations" or in connection with any pending litigation. (*Id.* at 5:12-25.) Furthermore, Tareq Fakhouri points out that Alnounou has not yet made any statements as a witness in any pending litigation, under oath in court, in a demand letter, or in response to any investigation relating to a litigation. (*Id.* at 6:10-28, 7:1-20.) Tareq Fakhouri also argues that Alnounou attempts to shoehorn his alleged defamatory statements to Saltio/Cascabel employees into being pursuant to his eventual status as a PAGA representative in the underlying action here. Tareq Fakhouri also notes that the Defamation cause of action is not based on any litigation or petitioning comments by Alnounou seeking to redress past alleged Labor Code violations, but rather on comments intended to turn employees against Tareq Fakhouri. (*Id.* at 7:22-27, 8:1-8.)

Were the Court to find that Alnounou's anti-SLAPP motion satisfied the first prong of the analysis to show that the Defamation cause of action was based on protected activity, then Tareq Fakhouri argues that he can carry his burden of showing a probability of success on the merits of the claim. (Opposition, 8:11-12.) Tareq Fakhouri argues that Alnounou cannot provide any evidence that Tareq Fakhouri stole the money because any money he took from the business was to pay his own salary, which he says he was entitled to do. (*Id.* at 8:11-18.) On the Defamation claim, Tareq Fakhouri states that it can be proven that: (1) one or more statements alleged were made to persons other than Tareq Fakhouri in spoken word or in writing; (2) that it can be shown that the alleged statements were reasonably understood to be about Tareq Fakhouri; (3) that statements that were published to these third parties were demonstrably false and/or Alnounou failed to use reasonable care to determine the truth or falsity of the statements made prior to being spoken and published to third parties; and (4) because the comments were not a protected activity, the evidence can demonstrate that the comments were made out of malice and intent to injure Tareq Fakhouri's reputation. (Opposition, 8:19-28, 9:1-12.)

Tareq Fakhouri also states that he is ready to prove the Defamation cause of action against Alnounou based on testimony of recipients of the statements and requests leave to conduct discovery on that matter should the Court require it. (*Id.* at 9:18-23.) As part of the declaration of Tareq Fakhouri, he provided his W-2 statements from 2020 through 2024, payroll summary, and Crepevine Santa Rosa and San Rafael register records. (Fakhouri Decl, Exhibit A.)

Finally, Tareq Fakhouri requests fees and costs should the Court rule in his favor on the anti-SLAPP motion. (*Id.* at 9:13-17.)

Reply

Alnounou says that even the statements he made to other employees of Saltio/Cascabel are protected activity because they are pre-litigation communications under *Briggs* (referenced above), and are directly connected to Alnounou's role as a witness in the Marin lawsuit.

Application

First, the Court will determine exactly which statements the Cross-Complaint alleges gave rise to the Defamation cause of action. In Paragraphs 9 and 23 of the Cross-Complaint, it is made clear that the statements giving rise to the Defamation claim were Alnounou's accusations in front of other Saltio/Cascabel employees that Tareq Fakhouri stole money from both Saltio/Cascabel and the North Bay Crepevine locations, failed to pay his full salary, and intended to deny the full paychecks of those employees after Saltio/Cascabel closed. The Court does not find that this expressly includes Alnounou's conversation in 2024 with Maher Fakhouri's attorney or any statements made explicitly referring to the Marin lawsuit.

Second, the Court must determine if those accusations made in front of other Saltio/Cascabel employees are classified as "protected activity" under C.C.P. section 425.16. In *Briggs*, the standard established was that, under a plain reading of section 425.16, protected activity encompasses any cause of action against a person arising from any statement or writing made in, or in connection with an issue under consideration or review by, an official proceeding or body. (*Briggs*, *supra*, at p. 1113.) Here, Maher Fakhouri alleges in the Marin lawsuit that Tareq Fakhouri stole money from restaurants they both managed together, which included the San Rafael Crepevine (one of the North Bay Crepevine locations). Alnounou met with Maher Fakhouri's attorney to discuss these claims in 2024 and agreed to be a witness. Paragraphs 9 and 23 in the Cross-Complaint refer to Alnounou's accusations that directly relate to Maher Fakhouri's claims in the Marin lawsuit, namely that Tareq Fakhouri stole money from one of the North Bay Crepevine locations in San Rafael. Under *Briggs*, the Court finds that section 425.16 encompasses Tareq Fakhouri's Defamation cause of action because it arises from accusations that are under consideration or in review by an official proceeding or body in Marin County. As such, the accusations are a protected activity.

Third, the Court must consider the parties' arguments on whether Tareq Fakhouri's Defamation cause of action has a likelihood of prevailing. Tareq Fakhouri requested to open discovery to produce evidence that there was no theft and Alnounou's claims were false. Alnounou argues that the claim is barred by the litigation privilege under Civil Code section 47 and the common interest privilege under section 47(c). In the matter, *Nguyen v. Proton Tech. Corp.* (1999) 69 Cal.App.4th 140, 145, the Court of Appeal held that the litigation privilege is absolute, not qualified, even when pre-litigation communications are implicated. Here, the accusations giving rise to the Defamation claim directly relate to the matters on which Alnounou has agreed to testify in the Marin lawsuit. As such, the Court find that the litigation privilege does bar Tareq Fakhouri's Defamation claim as alleged and that there is not a likelihood of success on the merits of that claim.

The Court will grant this anti-SLAPP motion for the reasons stated above. The Court will also award mandatory attorney's fees and costs to Alnounou as the prevailing party, per a separate motion that is to be filed.

IV. CONCLUSION

The anti-SLAPP motion is **GRANTED**. Mandatory sanctions will be awarded, pursuant to a separate fees motion to be filed by Alnounou. Alnounou shall submit a written order on this motion consistent with this Court's tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

9. MCV-242206, BH Financial Services, Inc. v. Weerts

Defendant Marie Weerts' (also known as Marie C Edwards) ("Defendant") Claim of Exemption is **GRANTED in part** and **DENIED in part**. Pursuant to C.C.P. sections 703.580(c) and (d), the Court orders that 3% of Defendant's wages are **not** exempt from garnishment, while the remaining 97% **are** exempt. The Sheriff's Office shall garnish 3% of Defendant's wages until the judgment is satisfied in full.

I. PROCEDURAL HISTORY

On July 17, 2017, Plaintiff/Judgment Creditor BH Financial Services, Inc. ("BH") filed its Complaint against Defendant for the collection of money owed on a defaulted loan account. On February 8, 2018, this Court entered default and a default judgment against Defendant in favor of BH in the amount of \$3,741.00. (See Judgment – Entire Action, filed February 8, 2018.) On May 8, 2025, BH served an Earnings Withholding Order on Defendant's employer. (See BH's Ex Parte Application for an Order Staying the Garnishment, 3:7–8.) Defendant filed a Claim of Exemption with the Sonoma County Sheriff's Office on June 11, 2025, which prompted the Sheriff's office to mail the Notice of Filing of Claim of Exemption to BH on June 12, 2025. (*Id.* at 3:10–12.) On June 17, 2025, BH filed the Notice of Hearing and Notice of Opposition, which was assigned a hearing date of October 1, 2025. (*Id.* at 3:12–13; see also Motion for Claim of Exemption and Opposition to Claim of Exemption, filed June 17, 2025.) On June 27, 2025, BH filed an *ex parte* application to stay the garnishment pursuant to California Code of Civil Procedure ("C.C.P.") section 706.105(e) since the Claim of Exemption hearing was not set within 30 days of the Notice of Motion as required by the statute. (See generally BH's Ex Parte Application for an Order Staying the Garnishment.) The Court granted the stay. (See Order re Ex Parte Application, filed July 2, 2025.) The Court now considers Defendant's Claim of Exemption.

II. ANALYSIS

Legal Standard

Property that has been levied upon may be claimed as exempt by the judgment debtor pursuant to C.C.P. section 703.510 et. seq. If property is claimed as exempt for the support of the judgment debtor and their spouse and dependents, the claim of exemption shall include a financial statement executed under oath. (C.C.P. § 703.530.) For an exemption based upon the judgment debtor and/or their family's financial support, including spouses and dependents, a court shall consider "all property of the judgment debtor and, to the extent the judgment debtor has a spouse and dependents or family, all property of such spouse and dependents or family, including community property and separate property of the spouse, whether or not such property is subject to enforcement of the money judgment." (C.C.P. § 703.115.)

The statute is liberally construed so that the judgment debtor and their family may retain enough money to "maintain a basic standard of living in order that the debtor may have a fair chance to remain a productive member of the community." (*Perfection Paint Prods. v. Johnson* (1958) 164 Cal.App.2d 739, 741, citations omitted.) At a hearing pursuant to C.C.P. section 703.570, the burden of proof is upon the judgment debtor to establish that the excess amount is exempt. (C.C.P. § 704.080(e)(4).) The trial court is necessarily vested with wide discretion in determining whether the judgment debtor has met their burden of proof because what is "necessary for the support" of the of the debtor's family does not have a precise

definition and differs with each debtor and their individual circumstances. (*Perfection Paint Prods.*, supra, 164 Cal.App.2d at 741, citations omitted.)

Moving Papers

Claim of Exemption

Defendant represents in her financial statement that her gross monthly income is \$7,600.00. Defendant lists two children as her dependents. Defendant's payroll deductions amount to \$2,700.00. Defendant lists her monthly take home income as \$4,900.00. Defendant lists her monthly expenses totaling \$7,650.00 for the following: \$3,000.00 in rent or house payment, \$1,800.00 for food and household supplies, \$740.00 for utilities and telephone, \$200 for medical and dental payments, \$710.00 for insurance, \$300 for transportation and auto expenses, \$800 for installment payments, and \$100 for laundry and cleaning. Under the debts section, Defendant lists her monthly payments on other debts and loans, which totals \$2,185.00. Based upon her finances, Defendant states she is willing to have \$50.00 withheld per paycheck.

BH's Opposition

BH opposes Defendant's Claim of Exemption arguing that Defendant's monthly allocation of the following seems excessive: \$1,800.00 for food/house supplies, \$740.00 for phone/utilities, \$710.00 for insurance, and \$800.00 for installment payments. (See Notice of Opposition to Claim of Exemption, filed June 17, 2025.) Additionally, BH argues that its judgment takes priority over Defendants other debts (installment payments): Wells Fargo credit card, Credit One credit card, One Main personal loan, and Community First Credit Union auto loan. (*Id.*, Exhibit A.)

Application

Defendant claims her monthly expenses total \$7,650.00 while her monthly take home income as \$4,900.00, which creates a nearly \$3,000 monthly deficit. Defendant does not have a spouse but has two children, one a minor and one adult child who is a full-time student. While BH argues that \$800.00 for installment payments is excessive, Defendant lists her monthly payments on other debts and loans under Item 5 totaling \$2,185.00. Therefore, \$800 is not excessive and appears to have been undercalculated by Defendant. However, \$740.00 for phone/utilities and \$710.00 for insurance appear to be excessive costs. Relying on Defendant's calculations, she claims that nearly 37% of her take home monthly income (\$1,800) is spent on food and household supplies, which also appears to be excessive. Based on the Court's review of Defendant's overall property, dependents, and needs, the Court has determined that a 97% exemption is sufficient for Defendant's needs. Three percent shall be non-exempt.

III. CONCLUSION

Defendant's claim of exemption is **GRANTED in part** and **DENIED in part**. The Court orders that 3% of Defendant's wages **are not** exempt from garnishment, while the remaining 97% are exempt.