

TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, October 7, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The 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, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

TO JOIN ZOOM ONLINE:

Department 18:

Meeting ID: 160—739—4368

Password: 000169

<https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWIL3NBeE9LVHU2NVVpQlVRUT09>

TO JOIN ZOOM BY PHONE:

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

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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. 26CV01973, In Re: 607 Oman Springs Circle

Petitioner The Mortgage Law Firm, PLC’s motion to (1) Allow Petitioner to Deposit Surplus Trustee’s Sale Proceeds with the Court, (2) Schedule A Hearing Date for Prove-Up of Filed Claims, and (3) Discharge Petitioner is **GRANTED**. The hearing for the distribution of the surplus proceeds shall take place on February 10, 2026 at 3:00 p.m. in Department 18.

Pursuant to Civil Code § 2924j(d) **the Clerk of Court is ORDERED** to “serve written notice of the hearing by first-class mail on all claimants identified in the trustee’s declaration at the addresses specified therein.” Those names and addresses can be found in the “Distribution List” included in Attachment 8 to the declaration of James F. Lewin in support of this motion.

Upon deposit of the surplus proceeds with the Court, the Petitioner shall be discharged from further responsibility for disbursement of the sale proceeds, pursuant to Civil Code § 2924j(c).

Petitioner's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Petitioner is the trustee under the foreclosed Deed of Trust which encumbered the underlying Property that was sold at a trustee's sale on April 24, 2024. There is currently a surplus of proceeds from the trustee's sale which former trustor, Russell Donald Goodman, has not yet claimed, despite being sent two notices. Since Mr. Goodman has not claimed the funds, the trustee is unable to distribute them after due diligence.

As reflected in the August 31, 2026 Stipulation and Order Distributing a Portion of Surplus Funds to Claimant, City of Sonoma, this Court has already granted Petitioner permission to deposit the balance of the surplus with the Court after \$49,496.16 is distributed to the City of Sonoma. What remains is the scheduling of a hearing date for the distribution of the Surplus Proceeds and the discharge of Petitioner. These requests are granted pursuant to Civil Code § 2924j(c) and (d).

2. 24CV06128, Khazal v. Newrez, LLC

Defendant's demurrer to Plaintiff's Second Amended Complaint is **SUSTAINED in part and OVERRULED in part**. It is **SUSTAINED** as to the First, Second, Third, and Fifth Causes of Action. It is **OVERRULED** as to the Fourth and Sixth Causes of Action. Leave to amend is **DENIED**.

Defendant's counsel shall submit a written order consistent with this ruling and in compliance with Rule 3.1312.

Analysis:

Plaintiff, Fred Khazal, individually and as administrator of the Estate of Mitra Khazal has filed a Second Amended Complaint against Defendant Shellpoint Mortgage Servicing, LLC asserting causes of action for (1) Promissory Estoppel, (2) Fraudulent Misrepresentation, (3) Negligent Misrepresentation, (4) Violation of 12 C.F.R. 1024.41, (5) Interference with Contract-In the Alternative, and (6) Unfair Competition.

Plaintiff alleges that Plaintiff was a lawful owner of the residential real property located at 1005 Glen Eagle Dr, Petaluma, CA 94952 ("the Property"). The Property is a single-family home and has served as Plaintiff's residence for all times mentioned herein. He alleges that in March of 2019, his wife, Mitra Khazal, secured a loan in the principal amount of \$840,000 from Calculated Risk Analytics, LLC dba Excelerate Capital. The Deed of Trust was recorded on February 13, 2019. Defendant Shellpoint Mortgage Servicing acted as the servicer of the Loan from 2019 to July 2024.

As alleged, Plaintiff and his wife made regular payments until August 2022 but faced difficulty making payments on the Loan beginning in January 2021. Additionally, Plaintiff's wife unexpectedly passed away on May 27, 2022, leaving no will or trust. Plaintiff asserts that the absence of estate planning, combined with the properties not being in Plaintiff's name during the probate process, complicated the family's ability to file for bankruptcy or obtain a refinance loan.

Plaintiff began applying for Loan Modification from August 2022 to June 2023. He was appointed as administrator of his wife's estate on September 16, 2022. As alleged, during the period from September 2022 to October 2023, Plaintiff submitted several Loan modification applications with all supporting materials. Shortly after submission, however, Defendant would then indicate that the application was incomplete and request that Plaintiff resubmit materials that had already been previously submitted. As alleged, the letters from Defendant would often not state which documents were missing from the application. The letter would simply state that the application was incomplete and request that Plaintiff call Defendant Shellpoint to reinstate. Plaintiff asserts that he complied with all procedural requirements, including submission of all necessary documentation, but consideration of his loan modification applications were delayed by almost a year.

On or around June 2023, Plaintiff applied for a loan modification and Defendant Shellpoint deemed the application complete. However, on September 26, 2023, while Plaintiff's Loan Modification Application was still pending, Defendant's authorized representative, Juliette Arencibia, recorded a Notice of Default ("NOD").

In October 2023, Defendant Shellpoint denied the loan modification application. Plaintiff immediately filed an appeal of the denial in October of 2023, but the appeal was subsequently denied that same month. The stated reason for the denial was because the Loan's debt-to-income ratio would not allow for a Loan modification. Plaintiff alleges that the debt-to-income ratio was improperly calculated.

On or around January 1, 2024, a Notice of Trustee's Sale was recorded for the Property with the auction initially scheduled for February 2024. The probate Court granted a restraining order and the auction date was postponed to July 2024. During this period, Defendant Shellpoint transferred the Loan to Rushmore Loan Management Services, LLC ("Rushmore"), which proceeded with foreclosure activities after informing Plaintiff that the Loan did not meet "basic eligibility criteria" for a loan modification and was thus never eligible for a loan modification. Plaintiff alleges that due to severe deficiencies in Defendant's Loan Assistance Department, Plaintiff was deprived of the opportunity to be properly considered for a Loan Modification application and was ultimately unable to keep ownership of the Property following the Loan's transfer to Rushmore Loan Management Services, LLC. This action followed.

I. First Cause of Action – Promissory Estoppel

"The elements of a promissory estoppel claim are "(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3)[the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance."" (*Aceves v. U.S. Bank, N.A.* (2011) 192 Cal.App.4th 218, 225; *US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 901.) "The party claiming estoppel must specifically plead all facts relied on to establish its elements." (*Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 48.) "Cases have characterized promissory estoppel claims as being basically the same as contract actions, but only missing the consideration element, and therefore the damages recoverable logically are, like in a contract case, limited to those caused by the breaching party." (*US Ecology, Inc. v. State of California, supra*, 129 Cal.App.4th at 903.) "Because promissory estoppel is an equitable doctrine to allow enforcement of a promise that would otherwise be unenforceable, courts are given wide discretion in its application." (*Id.* at 902.)

Plaintiff alleges, “Specifically, Defendant promised that Plaintiff’s application would be fairly reviewed in compliance with applicable laws and that no foreclosure actions would take place while the loan modification application was pending.” Plaintiff alleges that in believing that Defendant would honor its promise and lawfully review his loan modification application, he refrained from pursuing other foreclosure prevention options. He alleges that his reliance was reasonable and foreseeable and that he was injured as a result.

Plaintiff has failed to allege facts supporting reasonable and foreseeable reliance. He alleges only that Defendant promised to fairly consider his loan modification application and take no foreclosure action. Such a promise would not reasonably or foreseeably induce a party to refrain from pursuing other foreclosure prevention options. He does not allege that Defendant promised that the property would never be foreclosed upon. He also does not allege that Defendant promised that a loan modification would be approved. The facts alleged do not give rise to a cause of action for promissory estoppel because it is not reasonable to refrain from pursuing all available foreclosure prevention options based on such a promise. It is also not foreseeable that a party will refrain from taking such action based on such a promise.

II. Second and Third Causes of Action – Fraudulent Misrepresentation and Negligent Misrepresentation

The general elements of fraud are “misrepresentation, knowledge of falsity, intent to induce reliance on the misrepresentation, justifiable reliance on the misrepresentation, and resulting damages.” (*Reeder v. Specialized Loan Servicing LLC* (2020) 52 Cal.App.5th 795, 803, citing *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) The elements for negligent misrepresentation are “the same except that it does not require knowledge of falsity but instead requires a misrepresentation of fact by a person who has no reasonable grounds for believing it to be true.” (*Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230-31.)

“To withstand demurrer, facts constituting every element of fraud must be alleged with particularity.” (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 35.) “This particularity requirement necessitates pleading *facts* which ‘show how, when, where, to whom, and by what means the representations were tendered.’” (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.)

Plaintiff alleges that “Defendant invited Plaintiff to apply for a loan modification thereby fraudulently misrepresenting that the Subject Loan could, in fact qualify for a loan modification.” Plaintiff has failed to allege a misrepresentation. Plaintiff bases this cause of action on Defendant’s invitation to apply for a loan modification and that somehow such invitation constituted a misrepresentation that the loan would ultimately qualify for a modification. Plaintiff does not allege that Defendant ever represented to him that his loan would qualify for a modification if he submitted an application. An invitation to apply for a loan modification does not in and of itself constitute a representation that the loan modification will be approved.

Even if it did, Plaintiff does not allege facts demonstrating that Defendant knew that Plaintiff would not qualify for a loan modification when it invited Plaintiff to apply for one. He generally alleges such knowledge without factual support. Such is insufficient to support this cause of action.

Plaintiff alleges “In the alternative, if the Loan was eligible for a loan modification, Plaintiff alleges that Defendant misrepresented the debt-to-income ratio of the Loan despite having access to accurate information regarding Plaintiff’s monthly income and the arrears on the Loan.” Plaintiff does not allege facts showing knowledge of falsity, justifiable reliance, nor resulting damage in relation to this alternatively pleaded misrepresentation.

Regarding the negligent misrepresentation cause of action, even if Plaintiff’s allegations were sufficient to establish that Defendant misrepresented that Plaintiff would qualify for a loan modification, which they are not, Plaintiff does not allege facts showing that Defendant had no reasonable grounds for believing in such *at the time of making the representation*. Such is the only way to support a negligent misrepresentation cause of action.

III. Fourth Cause of Action - Violation of 12 C.F.R. 1024.41

12 C.F.R. 1024.41 provides that “A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. 2605(f)).” 12 U.S.C. 2605(f) provides,

Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

(1) Individuals

In the case of any action by an individual, an amount equal to the sum of—

(A) any actual damages to the borrower as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$2,000.

[...]

12 C.F.R. 1024.41(b) provides that “A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.”

Plaintiff alleges that Defendant did not exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application. He alleges that he acquired damages as a result of Defendant’s actions, including foreclosure fees and costs, attorneys fees, emotional distress, out-of-pocket expenses, lost time and inconvenience, and late fees. Plaintiff has sufficiently alleged this cause of action against Defendant.

As an additional basis for this cause of action, Plaintiff alleges that Defendant violated 12 C.F.R. 1024.41(c)(3)(i)(D)(1) by authorizing the recordation of a Notice of Default on September 26, 2023. That code section provides, “If the servicer has not made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, that the servicer cannot make the first notice or filing required to commence or initiate the foreclosure process under applicable law before evaluating the borrower's complete application.” According to subsection (b)(1), “A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower.”

Defendant argues that Plaintiff has not alleged facts showing that Defendant had received a complete loss mitigation application by September 26, 2023. However, Plaintiff alleges “Finally, on or around June 2023, Plaintiff applied for a loan modification and Defendant Shellpoint deemed the application complete.” Such is sufficient to allege that Defendant received a complete application prior to recording the NOD. Plaintiff has sufficiently alleged this as an additional basis for this cause of action.

IV. Fifth Cause of Action - Interference with Contract

“[A] stranger to a contract may be liable in tort for intentionally interfering with the performance of the contract.” (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.)

“The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage.” (*Ibid.*)

Plaintiff pleads that “should evidence arise indicating that the Loan was eligible for a modification, “then Plaintiff alternatively alleges that Defendant interfered with Plaintiff’s contract with the Loan’s beneficiary by misrepresenting the debt-to-income ratio on Plaintiff’s Loan to the Loan’s beneficiary after delaying consideration of Plaintiff’s loan modification application for approximately one year.”

Defendant argues that intentional interference with contract is not actionable against an agent acting for one of the contracting parties because that agent is not a stranger to such a relationship, citing *Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594. Plaintiff does not respond to this argument in his opposition and does not address the Fifth Cause of Action in his opposition whatsoever. The Court agrees with Defendant. The *Mintz* Court explained that “the representative of a contracting party may not be held liable for the tort of interfering with its principal’s contract.” (*Id.* at 1607.) The *Mintz* Court found that Mintz could not state a cause of action against Blue Cross for intentional interference with contract rights where Blue Cross acted as an agent for CalPERS in administering the contract of insurance. (*Ibid.*)

The same is true here. Shellpoint is alleged to have acted as the servicer of the loan from 2019 to July 2024. As such, Shellpoint is alleged to have acted as an agent for the loan beneficiary. Since Shellpoint was acting as an agent of the contracting party, Shellpoint cannot be held liable for the tort of interfering with the contract.

V. Sixth Cause of Action - Unfair Competition

California's Unfair Competition Law (“UCL”) prohibits “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” (Bus. & Prof. Code, § 17200.) As supporting this cause of action, Plaintiff relies upon the conduct alleged in the preceding causes of action. Though the Court has found most of Plaintiff’s causes of action to fail, the Fourth Cause of Action is sufficiently pleaded and alleges unlawful conduct that is sufficient to support this cause of action.

Defendant argues that Plaintiff does not have standing to assert this cause of action “because the default caused the foreclosure proceedings, not the defendant’s conduct.” This argument is not persuasive. The conduct that supports this cause of action (violation of 12 C.F.R. 1024.41) is defendant’s own conduct.

VI. Leave to Amend

It is Plaintiff’s burden to show how the allegations can be amended to state these causes of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) “Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.” (*Ibid.*) Plaintiff has not done so here. Plaintiff simply requests leave to amend without demonstrating how the complaint can be amended to adequately plead the First, Second, Third, and Fifth Causes of Action. Plaintiff has already amended the complaint twice and has failed to state these causes of action.

3. **24CV01706, Contrarian Investors Fund, LLC v. Patoka**

Cross-Complainant Kathrina Patoka’s motion to deem her Requests for Admissions (“RFAs”), Set One, admitted is **DENIED** for failure to properly serve the Requests for Admissions and the Notice of Motion upon Sean Lewis.

Cal. Rules of Court, Rule 2.251(c)(3)(B) provides that self-represented parties “are to be served by non-electronic methods unless they affirmatively consent to electronic service.” Cross-Defendant Sean Lewis was formerly represented by counsel, but became self-represented on August 18, 2024 when his counsel filed a substitution of attorney. Nowhere on the substitution of attorney does it indicate that Sean Lewis expressly consents to electronic service. Furthermore, there is nothing in the record before this court that indicates a manifestation of consent by Mr. Lewis to electronic service. Mr. Lewis has not filed anything with the Court since becoming self-represented. Cross-Complainant Patoka has not filed anything indicating that Mr. Lewis consented to electronic service.

According to the proof of service attached to Cross-Complainant’s motion, both this motion and the underlying RFAs were served solely by electronic means upon Sean Lewis after he began representing himself. This is in violation of Rule 2.251 and constitutes improper notice. Accordingly, the motion is denied.

4. **25CV02021, Kelm v. FCA US, LLC**

Plaintiffs’ motion to compel initial disclosures from Defendant FCA US, Inc. is **DENIED**. Plaintiffs’ request for monetary sanctions is **DENIED**.

Defendant’s counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Plaintiffs seek an order compelling Defendant FCA US, LLC to comply with CCP § 871.26 by producing all documents required under subdivisions (h)(6), (h)(7), (h)(8), (h)(9), (h)(10), (h)(12), and (h)(13). Defendant served its demurrer to Plaintiffs' complaint on June 19, 2025. Therefore, pursuant to CCP § 871.26, the 60-day deadline for mandatory initial disclosures was September 18, 2025.

Defendant has shown that it served all non-confidential documents on September 9, 2025, and also served a standard proposed stipulated protective order ("SPO") based on the Los Angeles Superior Court Model Protective Order on that same day. Defendant stated that once it received the executed SPO, it would send the remaining confidential documents. Plaintiff did not respond. On May 4, 2026, Defendant reached out to Plaintiffs' counsel regarding the status of the SPO out for signature. Plaintiffs' counsel returned a signed copy that day. Defendant served all remaining documents the following day, on May 5, 2026. Plaintiffs have failed to file a timely reply brief.

Plaintiffs argue that Defendants' initial disclosures must have been accompanied by written verified responses. This argument is not supported by the law. CCP § 871.26 does not require written verified responses accompany the document production, it requires merely an "initial disclosure and documents pursuant to subdivisions (f), (g), and (h)."

Plaintiffs' demand for DealerConnect records and their demand for unverified complaint and AutoPay claims exceed the scope of required production under Section 871.26. Plaintiffs cite to a case that predates the enactment of CCP § 871.26 by 30 years. It does not support Plaintiffs' position that these documents are required during initial disclosures.

Moreover, Plaintiffs provide no support for their claim that Defendant "must conduct a separate, independent search of all warranty claims paid under both LOP 85-41-XX-XX prefix and the LOP 08-19-XX-40 series for the Subject VIN." Section 871.26(h)(7) requires that the manufacturer produce the "entire warranty transaction history for the motor vehicle." In compliance with the statute, Defendant produced all Warranty Claim Records in its possession as part of its non-confidential document production, satisfying the requirements of the statute. Plaintiffs' assertion that Defendant must conduct a separate, independent search for these LOP records exceeds the scope of production required under the statute and lacks support.

Plaintiffs represent that Defendant has produced some TSBs, ISBs, and Recall Records, but without verifications there is no confirmation that what was produced consists of all the information Defendant has. Again, verifications are not required for initial disclosures. Moreover, there is nothing in the record to indicate that Defendant's disclosures of these items were incomplete. Finally, counsel for Defendant has submitted a declaration in support of Defendant's opposition in which he states, "FCA has produced all documents reasonably related to the subject vehicle and subject to production under Code of Civil Procedure section 871.26(h)." This should satisfy Plaintiffs' desire for confirmation.

Finally, Plaintiffs claim that Defendant has failed to supply sufficient service manuals. Defendant has sufficiently shown that it produced the applicable service manual for the same make, model, and year as the Subject Vehicle – a 2020 Chrysler Pacifica Hybrid and that there are not distinct manuals for servicing different parts (i.e., engine, transmission, etc.), as sought by Plaintiffs.

The Court does not find sanctions to be warranted. Defendant has sufficiently shown that it has complied with its initial disclosure obligations. Any delay in the production was the result of Plaintiffs' failure to respond to Defendant's proposed SPO for 8 months. It was reasonable for Defendant to withhold the confidential records until it obtained a signed SPO.

5. 23CV01999, Jacobson v. Lichter-Gardner

Defendants' petition to withdraw stipulation to binding arbitration is **DENIED**. Defendants' request for a stay of the arbitration is **DENIED**.

Plaintiffs' counsel shall submit a written order consistent with this tentative ruling and in compliance with rule 3.1312. If defense counsel seeks to contest this tentative ruling, the Plaintiffs will be given an opportunity to file an opposition because they were not properly served a formal notice.

Analysis:

On July 9, 2024, Defendants High Valley Holdings, LLC, Walter Cnare, William Cody Leck, and Donald Chad Hall filed a petition for an order compelling the arbitration of Plaintiffs' complaint. According to Defendants in their memorandum supporting that motion, "On or about March 31, 2022, Plaintiffs and *Defendants* entered into an Agreement for Purchase of Membership Interests wherein Defendants would purchase both Plaintiffs' membership interests in exchange for a payment of \$250,000," which contained an arbitration clause. "Subsequently, Plaintiffs and *Defendants* entered into a revised purchase agreement containing an identical arbitration clause." (Emphasis added.) Their motion was based on that arbitration clause, which Defendants represented was entered into by "Plaintiffs and Defendants." Indeed, the revised purchase agreement was signed by each individual member defendant: Kimberly Gardner, Donald Chad Hall, Cory Henke, William Cody Leck, Walt Cnare, and Croyden Drake (non-defendant).

Plaintiffs did not oppose the motion. Rather, the parties entered into a stipulation to arbitrate Plaintiffs' claims. On October 29, 2024, the Court signed the parties' Stipulation and Order to Arbitrate Claims. The stipulation was entered into between "Plaintiffs COLLIN JACOBSON and MICHAEL JACOBSON ("Plaintiffs") and Defendants HIGH VALLEY HOLDINGS, LLC, KIMBERLY LICHTERGARDNER, WALTER CNARE, WILLIAM CODY LECK, DONALD CHAD HALL, and CORY HENKE ("Defendants")." This matter has been in arbitration ever since.

Defendant High Valley Holdings, LLC ("the LLC") was suspended from doing business in California as of May 1, 2025. Considering that the LLC was precluded from prosecuting, defending, or participating in the arbitration in any way, the Arbitrator authorized Plaintiffs' counsel to enter a default against it with the superior court if appropriate. Plaintiffs have not yet done so. Plaintiffs' counsel prepared and served a request for entry of default and clerk's judgment against the LLC but have not filed it with the Court.

The member defendants now file this petition seeking to withdraw from the October 29, 2024 Stipulation and Order to Arbitrate Claims based on the following arguments, (1) there is a risk of inconsistent rulings, (2) the stipulation is void by operation of law, (3) Plaintiffs have waived their right to compel further arbitration, and (4) Plaintiffs have breached the stipulation to arbitration, so the members may avoid it.

There are several issues with the Defendants' arguments. The overarching issue is that they have not cited any authority that permits them to, or permits this Court to allow them to, "withdraw" from the stipulation and order. The stipulation itself is a contractual agreement. Defendants said it best in their own memorandum when they said, "The agreement or stipulation to arbitrate is a contract that is held together by mutual participation also known as consideration." One may not simply withdraw from a contractual agreement absent an express term authorizing such. The Court is aware of no authority allowing the Court to permit a party to withdraw from a contractual agreement absent proof of the existence of a defense to its enforceability.

Once the stipulation was signed by the Court, it also became a Court order. One may not simply withdraw from a Court order. A Court order stands until it is vacated or modified. Defendants have not presented any compelling argument to show that the stipulation is no longer enforceable. They also have not shown any compelling reason for why the Court order should be vacated or modified. The Court will address each of Defendants arguments below.

I. Defendants Have Failed to Show the Applicability of CCP § 1281.2

Defendants argue that the Court should exercise its power under CCP § 1281.2 not to enforce the arbitration agreement, or at the very least, to stay the arbitration because "a judgment against the LLC has an impact on the liability and continued litigation of the Members." Defendants cite CCP § 1281.2(c) which allows the Court to refuse to enforce an arbitration agreement if the Court finds that a party to the arbitration agreement is also a party to a pending court action, arising out of the same transaction, and there is a possibility of conflicting rulings. That is not the situation here, where all defendants are parties to the arbitration.

Defendants rely on CCP § 1281.2(c) based on their position that they are not signatories to the arbitration agreement between Plaintiffs and the LLC. However, this argument is entirely contrary to the position they previously took in this matter. Defendants High Valley Holdings, LLC, Walter Cnare, William Cody Leck, and Donald Chad Hall filed a petition to compel arbitration based on the revised purchase agreement—in doing so, asserting each of their ability to enforce the arbitration agreement. Indeed, each of the individual member defendants signed the revised purchase agreement on which the petition to compel arbitration was based. The change in position at this juncture by the member defendants is not well taken by the Court.

Moreover, each of the member defendants entered into the stipulation to arbitrate this matter. It was expressly entered into by and between "Plaintiffs COLLIN JACOBSON and MICHAEL JACOBSON ("Plaintiffs") and Defendants HIGH VALLEY HOLDINGS, LLC, KIMBERLY

LICHTERGARDNER, WALTER CNARE, WILLIAM CODY LECK, DONALD CHAD HALL, and CORY HENKE (“Defendants”).” Any argument by the member defendants that they were not signatories is entirely unpersuasive. Though the stipulation was signed on their behalf by their attorney, they are not now arguing that their attorney did not have the authority to bind them to such an agreement—nor would such an argument be persuasive. If an attorney’s signature is sufficient to bind parties to a stipulated judgment (CCP § 664.6) then it is certainly sufficient to bind parties to a stipulation to arbitrate.

Finally, though Defendants argue that the judgment against the LLC “has an impact on them,” they do not explain what that impact is. “An impact” is not the same as a conflicting ruling. So, even if CCP § 1281.2(c) applied here, which it does not, Defendants’ argument would be unpersuasive.

II. The Stipulation to Arbitrate is Not Void

Defendants next argue that the stipulation to arbitrate is void by operation of law because the LLC’s pleadings and petitions were stricken and, according to Defendants, stripping a signatory defendant of his answer/petition has the statutory effect of stripping the non-signatory member defendants of their answer/petition. Defendants cite CCP § 1281.7 in support of this argument. That section says no such thing.

First, to reiterate, Defendants’ position that they are not signatories is not well taken. Not only did they argue to the contrary when seeking to compel arbitration, the individual member defendants are signatories to the revised purchase agreement and they are express parties to the stipulation to arbitrate. Accordingly, each member defendant authorized the Arbitrator to have power to decide the Plaintiffs claims against them. The Court fails to see how the striking of the LLC’s pleadings and petitions affects the member defendants in such a way that would cause the stipulation to arbitrate to be void by operation of law. Defendants have failed to support this argument with authority.

III. Defendants Have Failed to Show Plaintiffs Waived the Right to Arbitrate

Defendants argue that “Plaintiffs conduct in seeking out the Clerks Judgment is an act of waiver of the right to arbitration.” As stated above, Plaintiffs have taken no action with the Court to obtain a clerk’s judgment against the LLC. They have merely obtained the permission of the Arbitrator to do so. Though they prepared and served a request for entry of default and clerk’s judgment (Lewis Decl., Exh. 6), they have not filed it with the Court.

Nonetheless, even if the request was filed with the Court, it would not constitute a waiver of Plaintiff’s right to arbitrate against the member defendants—nor would any of Plaintiffs’ other actions in relation to the default. Defendants cite *Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562 for the proposition that “‘Waiver’ is found when a party intentionally relinquishes or abandons a right expressed in words or conduct that is inconsistent with the intent to enforce the right.” This is true. However, the Court agrees with the Arbitrator when he said, “seeking a

judgment in court based on an agreement reached in arbitration is not the equivalent of engaging in litigation contrary to the agreement to arbitrate.” (Lewis Decl., Exh. 10.) The Court finds no waiver.

IV. Defendant Have Failed to Show Plaintiffs Breached the Stipulation to Arbitrate

Finally, Defendants argue that Plaintiffs breached the stipulation to arbitrate when they “abandoned performance.” Defendants have not shown that Plaintiffs have abandoned performance under the stipulation. This is a repackaging of their waiver argument, which is not persuasive. Even if Plaintiffs took action with the Court to obtain a default judgment against the LLC it would not constitute an abandonment of performance nor a material breach that would excuse the member defendants’ nonperformance.

6. 26CV01420, Linney v. Mercedes-Benz of Marin

Defendant Mercedes-Benz of Marin’s motion to compel arbitration is **GRANTED**. Defendant’s request for stay is **GRANTED** pursuant to 9 U.S.C. 3 and CCP § 1281.4.

If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

Analysis:

Plaintiff leased from Defendant a used 2023 Mercedes-Benz EQB 350 on or about August 21, 2024. The parties entered into the California Motor Vehicle Lease Agreement (“Lease”), which contains an arbitration clause, which states in pertinent part,

“any claim or dispute... between you and us... shall, at your or our election be resolved by neutral, binding arbitration and not by a court action... You may choose one of the following arbitration organizations, and its applicable rules, to control the arbitration... the American Arbitration Association (800-778-7879, www.adr.org).”

This matter arises out of issues Plaintiff had with the vehicle causing Plaintiff to seek early termination of the Lease.

Plaintiff initially demanded arbitration on October 1, 2025. However, on October 16, 2025, AAA wrote to the parties, advising that it would not administer Plaintiff’s claim because MBM has refused to comply with AAA’s policies and procedures on prior occasions. Thereafter, Plaintiff filed the complaint in this action on February 24, 2026, and served it on Defendant on May 15, 2026. On May 28, 2026, Defendant contacted AAA regarding the compliance issues. AAA responded on May 29, 2026, stating, “After further review, Mercedes-Benz of Marin/ Swickard Auto Group has continued to maintain their registration and paid their 2025 renewal fee and the registry has been updated. The business is in good standing with the AAA. We apologize for any inconvenience. The AAA will accept new cases going forward.” Defendant thereafter attempted to obtain Plaintiff’s agreement to resubmit the matter to arbitration, but Plaintiff refused. This motion followed.

Plaintiff argues in opposition that the arbitration agreement is unenforceable because it is unconscionable and because Defendant waived the right to compel arbitration by failing to respond to the AAA notice of noncompliance for several months. These arguments are addressed below.

I. Defendant Has Shown the Existence of a Valid Arbitration Agreement

“The party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute. Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement’s enforcement, such as unconscionability.” (*Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209.) “The party seeking arbitration can meet its initial [prima facie] burden by attaching to the petition a copy of the arbitration agreement purporting to bear the respondent's signature.” (*Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541, 543–544.) If a plaintiff challenges the authenticity of his signature on the document, it is his burden to submit sufficient evidence to create a factual dispute. “A party opposing arbitration by challenging the authenticity of his or her signature ‘need not prove that his or her purported signature is not authentic, but must submit sufficient evidence to create a factual dispute and shift the burden back to the arbitration proponent.’” (*Garcia v. Stoneledge Furniture LLC, supra*, 102 Cal.App.5th at 52.) “[A] denial of signing an arbitration agreement is sufficient to shift the burden.” (*Ibid.*)

Defendant has shown a valid arbitration agreement that applies to this dispute. This is not contested by Plaintiff in her opposition. Plaintiff also does not contest that the FAA applies to this dispute. This Court finds that Defendant has met its initial burden on this motion and has shown that the FAA applies here.

II. The Arbitration Agreement is Not Unconscionable

First, Defendant argues that Plaintiff is estopped from arguing that the arbitration agreement is unconscionable because Plaintiff initially filed a demand for arbitration. This argument is unsupported by authority. Nevertheless, the Court does not find the agreement to be unconscionable.

Unconscionability is a judicially created doctrine and involves a highly context-dependent analysis. (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 911.) Unconscionability has two elements: procedural and substantive. Well-established California law requires that both elements be present for an unconscionability defense to succeed. The two elements, however, need not be present to the same degree and are evaluated on a sliding scale. “[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.” (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114.)

A. *Procedural Unconscionability*

“Procedural unconscionability pertains to the making of the agreement; it focuses on the oppression that arises from unequal bargaining power and the surprise to the weaker party that results from hidden terms or the lack of informed choice.” (*Ajamian v. CantorCO2e, L.P.* (2012) 203 Cal.App.4th 771, 795.) The first step in determining procedural unconscionability is an inquiry into

whether the contract is one of adhesion. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126 (“*OTO*”).) “An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power ‘on a take-it-or-leave-it basis.’” (*Ibid.*) “Arbitration contracts imposed as a condition of employment are typically adhesive.” (*Id.* at 126.) Once the court determines the contract is one of adhesion, the question becomes whether the circumstances of the contract’s formation created such oppression or surprise that the overall fairness must be subject to closer scrutiny. (*Ibid.*)

The circumstances relevant to establishing oppression include, but are not limited to (1) the amount of time the party is given to consider the proposed contract; (2) the amount and type of pressure exerted on the party to sign the proposed contract; (3) the length of the proposed contract and the length and complexity of the challenged provision; (4) the education and experience of the party; and (5) whether the party's review of the proposed contract was aided by an attorney.

(*Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.* (2015) 232 Cal.App.4th 1332, 1348.)

Plaintiff argues that the agreement is procedurally unconscionable because it was one of adhesion. The Court agrees that the contract is one of adhesion, but this shows only a low degree of procedural unconscionability.

Plaintiff also argues that the agreement is procedurally unconscionable because “personnel from MBM misled Plaintiff as to her rights under the lease contract, convincing her she would be able to terminate the lease early by purchasing specific guarantees (that do not exist).” This statement is unsupported by any evidence, so it will not be considered.

The Court finds a very low degree of procedural unconscionability. Accordingly, a high degree of substantive unconscionability must be shown for this arbitration agreement to be unenforceable. This has not been shown, as discussed below.

B. Substantive Unconscionability

“Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided.” (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 246.) Mere unequal benefit is insufficient to show substantive unconscionability, rather, the terms must be “so one-sided as to shock the conscience.” (*24 Hour Fitness, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1199, 1213.) Though many factors go into determining substantive unconscionability, the primary consideration in assessing substantive unconscionability is mutuality. (*Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 657.) Lack of mutuality, unlimited duration, and broad scope of claims covered are all factors which may be considered substantively unconscionable within an arbitration provision. (*Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, 321-328.)

Plaintiff argues that the arbitration agreement is substantively unconscionable because “*in practice*, MBM uses the clause as a forum shopping clause.” The Court’s substantive unconscionability analysis concerns the “agreement’s actual terms.” Plaintiff has not shown any actual terms that are substantively unconscionable. Moreover, Plaintiff’s representations regarding how the clause is used in practice are unsupported by evidence. Plaintiff has not shown any degree of substantive unconscionability.

III. Plaintiff Has Failed to Show Waiver

Plaintiff argues that Defendant waived its right to arbitrate when it ignored AAA’s noncompliance letter. The letter was sent on October 16, 2025, and Defendant did not respond to it until May 28, 2026, after Plaintiff served her complaint.

“To establish waiver under generally applicable contract law, the party opposing enforcement of a contractual agreement must prove by clear and convincing evidence that the waiving party knew of the contractual right and intentionally relinquished or abandoned it.” (*Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 584.) “Under the clear and convincing evidence standard, the proponent of a fact must show that it is ‘highly probable’ the fact is true.” (*Ibid.*) “Its intentional relinquishment or abandonment of the right may be proved by evidence of words expressing an intent to relinquish the right or of conduct that is so inconsistent with an intent to enforce the contractual right as to lead a reasonable fact finder to conclude that the party had abandoned it.” (*Ibid.*)

The Court does not find clear and convincing evidence that Defendant waived its right to arbitrate. Though it delayed in responding to the AAA letter, such is insufficient to establish clear and convincing evidence of waiver of the right to arbitrate. Moreover, the fact that Defendant contacted AAA soon after receiving Plaintiff’s complaint indicates the opposite of waiver—it indicates an affirmative intent to enforce its right to arbitrate. It is also important to note that the most recent AAA letter indicated that Defendant had “maintained” compliance with the AAA rules. Thus, the evidence does not indicate that Defendant took any action with the AAA to show an intent not to participate in arbitration. Based on the overall record before the Court, the Court does not find clear and convincing evidence of waiver.

7. 25CV02734, Hernandez v. North Bay Rehabilitation Services, Inc.

Plaintiff’s unopposed motion for preliminary approval of class action settlement is **GRANTED**. The final approval hearing shall be set on March 3, 2027, at 3:00 p.m. in Department 18.

Plaintiff’s counsel shall submit a written order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

Analysis:

Plaintiff Abel Hernandez filed this class action complaint alleging causes of action against Defendant North Bay Rehabilitation Services, Inc. for violations of the Labor Code. The parties engaged in informal discovery. On February 12, 2026, the parties participated in an all-day mediation, which led to a settlement.

Plaintiff now seeks preliminary approval of the settlement agreement. The parties' settlement is for a total amount of \$1,215,000 with the following amounts to be deducted from the settlement sum: (i) Settlement Administrator costs not to exceed \$7,500; (ii) the attorneys' fees up to 35% of the Gross Settlement Amount (about \$425,250) and costs up to \$40,000; (iii) a service award of up to \$10,000.00 to Plaintiff; and (iv) PAGA penalties in the amount of \$182,250.00, seventy-five percent of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent of which will be distributed to the Allegedly Aggrieved Employees.

The Parties have agreed to retain Apex Class Action to handle the notice and settlement administration process. The Claims Administrator will determine each Settlement Class Member's pro rata share of the available Net Settlement Amount based on the total number of workweeks worked during the Class Period. Plaintiff has submitted the procedure by which the individual settlement amounts will be calculated and disbursed. Plaintiff has also submitted proposed notice and exclusion or objection procedures.

I. The Settlement

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 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.)

The settlement appears generally within the reasonable range of possible judicial approval. At this preliminary stage, Plaintiff has demonstrated the existence of many elements for the presumption of fairness to apply.

Plaintiff includes requests for the finding that the representative award and attorney's fees are reasonable. At this juncture, this request is premature, as attorney's fees and representative awards are both matters which may be the subject of objections by the class members at final approval. The Court is required at final approval to review the fees independently for fairness (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801), counsel should be prepared for analysis on either the lodestar or the common fund theory.

II. The Class

Plaintiff seeks certification of the provisional settlement class in connection with approval of the settlement. The two basic requirements to sustain a class action are an ascertainable class and a well-defined community of interest in the questions of law and fact involved. (CCP § 382; *see also Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 809.) The settlement class has been identified as "all persons currently or formerly employed by Defendant as non-exempt, hourly-paid employees during the putative Class Period in the State of California." The Class Period is from April 18, 2021 through December 16, 2025. Members of the class can be ascertained from Defendant's records, and a class with an estimated 287 members is sufficiently numerous. The community-of-interest requirement embodies common questions of law or fact, a class representative with claims or defenses typical of the class, and a class representative who can adequately represent the class.

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) The Court concludes that these requirements are met. The Court would approve the class.

III. The Notice

“Notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.” (*Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.) The purpose of a class notice in the context of a settlement is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Ibid.*) The proposed notice appears to fully apprise the class members of the relevant considerations. Therefore, preliminary approval appears appropriate.

8. 25CV08995, Sung v. Rowen

Defendant Nathan Mubasher’s Anti-SLAPP Motion to Strike is **GRANTED**. Defendant’s request for attorney’s fees and costs is **DENIED** without prejudice, as explained below. Defendant’s request for judicial notice is **GRANTED**.

Defendant’s counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Plaintiff, My Sung, brings this action against Defendants Robert Jay Rowen, Terri Su, and Nathan Mubasher. In Plaintiff’s First Amended Complaint, she alleges causes of action for (1) Sexual Assault/Battery, (2) Malicious Prosecution, (3) Abuse of Process, (4) Intentional Infliction of Emotional Distress, and (5) Unfair Business Practices.

Plaintiff alleges that on or about October 26, 2021, Plaintiff was treated by Defendant Rowan, who was a medical doctor at the time. Plaintiff alleges that during the consultation Defendant Rowan touched her in a sexual manner without medical purpose and without her consent. Thereafter, Plaintiff Sung filed a complaint with the California Medical Board alleging inappropriate behavior and sexual harassment by Defendant Rowen. The Board found Plaintiff’s allegations credible and filed an Accusation against Defendant Rowen. However, a hearing on the Board’s Accusation did not go forward as Defendant Rowen’s medical license was revoked as the result of prior accusations by the Board based on two federal felonies for tax evasion for which Defendant Rowen was imprisoned.

After Defendant Rowen was released from federal custody, he hired Defendant Mubasher to file a defamation complaint against Plaintiff based on her board complaint. The defamation complaint was filed on October 27, 2023, in this Court. Plaintiff alleges that defendants caused the Complaint to be filed in bad faith, without probable cause and for the purpose of attempting to extort an apology from Plaintiff.

As alleged, when Defendant Mubasher was informed that Plaintiff’s complaint to the Board was statutorily protected, instead of dismissing the complaint, he filed an amended complaint based on

Plaintiff's conversations with Rowen's employees regarding the allegations which were the subject of her complaint to the Board. Plaintiff alleges that Defendant Mubasher had not conducted a minimal research that would have shown that such conversations are also privileged. Defendants ultimately voluntarily dismissed the lawsuit.

Plaintiff asserts all but the First Cause of Action against Defendant Rowan. He has filed this Anti-SLAPP motion arguing that all of plaintiff's claims against him arise from his protected petitioning activity. He also argues that plaintiff cannot establish a probability of prevailing on any of the causes of action alleged against him.

In opposition, Plaintiff does not contest that her claims against Defendant Mubasher arise out of protected activity. Instead, she argues that she has demonstrated a probability of prevailing on the merits of her Second Cause of Action for Malicious Prosecution. Plaintiff also states that she "is agreeable" to having the remaining causes of action against this defendant dismissed.

I. Burdens on Anti-SLAPP Motions

CCP § 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, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. CCP § 425.16(e)(1) 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." "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." (CCP § 425.16(b)(2).)

A defendant has the initial burden to make a prima facie showing that the complaint "arises from" her exercise of free speech or petition rights. (*Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61; *Governor Gray Davis Committee v. American Taxpayers Alliance* (2002) 102 Cal.App.4th 449 at 458-59.) "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. (See § 425.16, subd. (e).) And comparing that protected activity against the complaint, it 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 a "probability" that he will prevail on the claims which are based on protected activity. (CCP § 425.16(b).)

To establish a "probability" of prevailing on the merits, the 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.) The court does not weigh credibility or comparative strength of the evidence in making this summary judgment-like determination. (See, e.g. *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.) But 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. (See, e.g. *Flatley v. Mauro* (2006) 39 Cal.4th 299, 323.) In making its determination, the Court considers the pleadings, as well as supporting and opposing affidavits. (CCP § 425.16(b).) The court considers defendant's evidence only to determine if it

defeats plaintiff's showing *as a matter of law*. (*Soukup v. Law Offices of Herbert Hafif*, *supra*, at 291.) The court must accept as true the evidence favorable to plaintiff. (*Ibid.*)

II. Plaintiff's Allegations Against This Defendant Arise Out of Protected Activity

All of Plaintiff's claims against this defendant arise out of his filing of the defamation action against Plaintiff on behalf of his client, Defendant Rowan. Plaintiff has not contested in her opposition that her claims against this defendant arise out of protected activity. The court finds that they do. (CCP § 425.16(b)(1).)

III. Probability of Prevailing on the Merits

In referring to the Third, Fourth and Fifth Causes of Action, Plaintiff states that she, "elects not to contest the dismissal of these secondary counts to streamline the litigation..." Though Plaintiff has not taken steps to voluntarily dismiss those causes of action, she has herein made no effort to show a probability of prevailing on the merits of those three causes of action. Accordingly, they shall be stricken.

Plaintiff does argue that there is a probability that she will prevail on the merits of her Second Cause of Action for Malicious Prosecution against this Defendant. "To prevail on a malicious prosecution claim, the plaintiff must show that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination favorable to the plaintiff; (2) was brought without probable cause; and (3) was initiated with malice." (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 292.)

A. Favorable Termination of Prior Action

The complaint against Plaintiff was voluntarily dismissed with prejudice after Plaintiff argued privilege defenses. The exact reasoning for the dismissal is unclear. Regardless of the reason, a voluntarily dismissal with prejudice is a termination that is favorable to Plaintiff.

B. Probable Cause

The original complaint, filed October 27, 2023, alleged two causes of action against Plaintiff, (1) Defamation (Libel Per Se), and (2) Defamation (Slander Per Se). The basis for the libel cause of action was Ms. Sung's complaint to the medical board of California and the basis for the slander cause of action was oral statements made to the employees of Mr. Rowan regarding the sexual misconduct.

After the complaint was filed, Ms. Sung's counsel that was representing her in the defamation action, Robert Kane, informed Defendant Mubasher that Ms. Sung's complaint to the medical board was privileged under Business & Professions Code § 2318 and Civil Code section 47. Defendant Mubasher thereafter agreed to amend the complaint.

On March 12, 2024, Mr. Kane received an email from Defendant Mubasher proposing a settlement offer for \$1.00 provided that Ms. Sung retracted her claims of Mr. Rowan's inappropriate conduct. Mr. Kane also received an email on April 1, 2024, advising that Mr. Rowan would pay Ms. Sung in the form of a refund of the money she paid to the clinic if she gave him a retraction/clarification.

When no settlement was reached, Defendant filed an amended complaint. The amended complaint, filed May 20, 2024, alleged only one cause of action for Defamation (Slander Per Se) based on the alleged oral statements made to Mr. Rowan's employees. Mr. Kane subsequently substituted out of the case and Counsel Nancy Lofdahl took over for Ms. Sung. No declaration has been submitted by Ms. Lofdahl to explain the remaining events of the defamation action.

Defendant Mubasher explains that he believed the remaining claim of Slander Per Se to be legally and factually tenable. He believed that Civil Code § 47.1 did not apply to the action because the original complaint had been filed before the statute's effective date. Defendant Mubasher articulated these arguments in his opposition to Ms. Sung's motion for attorney's fees pursuant to Civil Code § 47.1. Defendant Mubasher represents that at all times during his representation of Mr. Rowan in the defamation action, he acted on a good-faith assessment of the facts and the applicable law and that he did not file or maintain the action for an improper purpose or harbor any ill will toward Ms. Sung.

[T]he "probable cause" element in the malicious prosecution tort plays a role quite distinct from the separate "malice" element of the tort. Whereas the malice element is directly concerned with the subjective mental state of the defendant in instituting the prior action, the probable cause element calls on the trial court to make an objective determination of the "reasonableness" of the defendant's conduct, i.e., to determine whether, on the basis of the facts known to the defendant, the institution of the prior action was legally tenable. The resolution of that question of law calls for the application of an objective standard to the facts on which the defendant acted.

(*Sheldon Appel Co. v. Albert & Olier* (1989) 47 Cal.3d 863, 878.)

"The court determines if a claim is tenable by inquiring 'whether any reasonable attorney would have thought the claim tenable.'" (*Maleti v. Wickers* (2022) 82 Cal.App.5th 181, 218.) "Thus, as the high court later explained, 'probable cause to bring an action does not depend upon it being meritorious, as such, but upon it being arguably tenable, i.e., not so completely lacking in apparent merit that no reasonable attorney would have thought the claim tenable.'" (*Ibid.*) "A litigant will lack probable cause for his action either if he relies upon facts which he has no reasonable cause to believe to be true, or if he seeks recovery upon a legal theory which is untenable under the facts known to him.'" (*Ibid.*) "To preclude a later claim of malicious prosecution, a plaintiff must have probable cause for each cause of action it alleges against a defendant." (*Videotape Plus, Inc. v. Lyons* (2001) 89 Cal.App.4th 156, 161.)

Here, based on an objective overview of the record before the Court, the Court finds that Plaintiff has shown that she would probably prevail in showing Defendant Mubasher lacked probable cause for asserting the Libel Per Se cause of action since the conduct that was the bases for that cause of action was clearly privileged pursuant to Business & Professions Code § 2318. However, Plaintiff has not made such a showing on the Slander Per Se cause of action. Plaintiff has not shown that it was objectively unreasonable for Defendant to believe that Civil Code § 47.1 did not apply retroactively to the claim. The original complaint alleging that cause of action was filed before Civil Code § 47.1 took effect. Though the amendment was filed after it took effect, it cannot be said that no reasonable attorney would have thought the claim to be tenable.

Plaintiff argues that the claims were barred by the statute of limitations because Mr. Rowan

discovered the medical board complaint on August 25, 2022 so the statute of limitations expired on August 25, 2023, but the complaint was not filed until October 27, 2023. Plaintiff's argument is based solely on the timing of the medical board complaint but does not touch on the timing of the oral statements that were the basis of the slander cause of action. Regardless, Plaintiff has not shown that it was objectively unreasonable to believe the claim to be timely.

C. Malice

“‘The malice element of the malicious prosecution tort goes to the defendant's subjective intent in initiating the prior action.’” (*Maleti v. Wickers, supra*, 82 Cal.App.5th at 222.) “The requisite showing of malice ‘is not limited to actual hostility or ill will toward plaintiff but exists when the proceedings are instituted primarily for an improper purpose.’” (*Ibid.*) “Malice ‘may range anywhere from open hostility to indifference.’” “Malice may be found ‘where the proceedings are initiated for the purpose of forcing a settlement which has no relation to the merits of the claim.’” (*Ibid.*) “And ‘[s]ince parties rarely admit an improper motive, malice is usually proven by circumstantial evidence and inferences drawn from the evidence.’” (*Id.* at 223.)

Plaintiff argues that Defendant's malice is demonstrated by his offer of money in exchange for a statement clearing Mr. Rowan of sexual misconduct. Such conduct would not constitute “forcing a settlement which has *no relation* to the merits of the claim” such as to constitute malice. The settlement that Defendant Mubasher sought was in direct relation to the claims raised in the defamation lawsuit. Seeking a settlement in the form of money in exchange for a retraction of the alleged defamatory statements in a defamation suit does not indicate a malicious purpose, even if such a retraction would assist Mr. Rowan in reinstating his medical license.

Plaintiff also argues that filing and maintaining the defamation action notwithstanding Ms. Sung's privileges independently shows malice. However, the record reflects that Defendant Mubasher dropped the Libel cause of action once he was informed of the privilege. Moreover, the Court has already found that Defendant did not act unreasonably in maintaining the Slander cause of action considering his belief regarding the applicability of Civil Code § 47.1.

Plaintiff has not shown the likelihood of prevailing on the merits of the malice element. There is insufficient indication in the record that Defendant Mubasher prosecuted the defamation claims for an improper purpose or out of any hostility, or even indifference, toward Plaintiff. Accordingly, the Malicious Prosecution cause of action shall be stricken. There remain no causes of action alleged against this defendant.

IV. Attorney's Fees and Costs

Pursuant to CCP § 425.16(c), the prevailing defendant on an anti-SLAPP motion is entitled to recover reasonable attorney's fees and costs incurred in making the motion. Though Defendant Mubasher is entitled to recover his reasonable attorney's fees and costs incurred on this motion, he has not submitted any information regarding how much has been incurred. His counsel has not represented the number of hours spent on this motion, the hourly rates charged, nor the expenses paid so far. This is not represented anywhere in Defendant's motion. Accordingly, the Court does not have sufficient information to make a ruling regarding attorney's fees and costs at this time. Though Defendant states that he will be asking for fees and costs in a separate motion, he still

includes a request for those fees and costs in this motion. So, the Court will deny them at this time, but Defendant is permitted to bring a separate motion for fees and costs if he pleases.

*****This is the end of the Tentative Rulings*****