TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, March 12, 2025 3:00 p.m.
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

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) 521-6602**, 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.

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PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1. 24CV00176, Looney v. LBC Carlsbad, LLC

Plaintiff Gary E. Looney dba Collectronics of California ("Plaintiff"), assignee of Young's Market Company, obtained a default judgment against defendants Robert Edwin Lowe and Nicole Lynn Lowe (together "Defendants"). This matter is on calendar for Plaintiff's motion to compel answers to special interrogatories ("SIs") against Defendants under Code of Civil Procedure ("CCP") §§ 708.020 & 2030.290, and to compel production of documents ("RPODs") from Defendants under CCP §§ 708.030 & 2031.300. The unopposed Motion is **GRANTED**. Defendants shall serve verified code-compliant responses free of objections within thirty (30) days of notice of entry of the order on this Motion. Defendants shall pay $60 in sanctions to Plaintiff within thirty (30) days of notice of entry of the order on this Motion.

I. Governing Law

A judgment creditor generally has the same rights to propound discovery to the judgment debtor in order to facilitate collection of the judgment. Particularly, a judgment debtor may propound interrogatories as allowed under CCP § 2030.010, et seq. See CCP § 708.020. Judgment creditors may also request production of documents under CCP § 2031.010. See CCP § 708.030.

Regarding the SIs, a party responding to an interrogatory must provide a response that is "as complete and straightforward as the information reasonably available to the responding party permits" and "[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible." Code Civ. Proc. ("CCP") §2030.220(a)-(b). "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." CCP §2030.220(c). If a party fails to serve a timely response to interrogatories, the court shall impose sanctions unless it finds that the party subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. CCP §2030.290(c). Code of Civil Procedure section 2030.290 provides that if a party to whom interrogatories were directed fails to serve timely responses, the responding party waives all objections, including those based on privilege and work product protection, and the propounding party may move for an order compelling responses. CCP §2030.290(a)-(b); see also, *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404; CCP § 708.020(c). All that the moving party needs to show in its motion is that a set of interrogatories was properly served, that the time to respond has expired, and that no response has been provided. See, *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.

Similarly, Code of Civil Procedure section 2031.300 provides that if a party fails to serve timely responses to requests for production of documents, the responding party waives all objections, including those based on privilege and work product and "[t]he party making the demand may move for an order compelling [a] response to the demand." CCP §2031.300(a)-(b); CCP §708.030(c). When the motion to compel seeks a response to document requests, as opposed to further responses, no showing of "good cause" is required. CCP §2031.300.

CCP § 2030.290(c) (relating to interrogatories), and CCP § 2031.300(c) (relating to requests for production of documents), provide that a monetary sanction "shall" be imposed against the party losing a motion to compel further responses unless the court finds "substantial justification" for that party's position or other circumstances making sanctions "unjust."

II. Analysis

Plaintiff served their SIs and RPODs on August 19, 2024. Defendants have served no responses.

There is no opposition to the motion, nor is there evidence that there have been responses to the underlying requests. The time to respond has expired. Compelling responses is appropriate. Plaintiff's motion to compel responses to SIs and RPODs GRANTED. Defendants will serve code compliant, objection-free responses within 30 days of notice of this order.

III. Sanctions

Sanctions are mandatory under the CCP for discovery abuses, absent substantial justification. Absent substantial justification, the Court must grant compensatory monetary sanctions which represent reasonable and actual costs to Plaintiff. While Plaintiff appears to also ask for some form of discretionary sanctions, he provides no authority to support them.

Plaintiff requests sanctions for his actual costs of filing fees of $60. Filing fees of $60 is appropriate. The Court **GRANTS** Plaintiff's request for monetary sanctions in the amount of $60. Defendants shall pay $60 to Plaintiff within 30 days' notice of this order.

IV. Conclusion

Plaintiff's motion to compel responses to SIs and RPODs is GRANTED. Defendants will serve code compliant, objection-free responses within 30 days of notice of this order. The request for sanctions is granted and Defendants shall pay $60 to Plaintiff within 30 days' notice of this order.

Plaintiff 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).

2. 24CV01593, Looney v. Lowe

Plaintiff Gary E. Looney dba Collectronics of California ("Plaintiff"), assignee of Young's Market Company, obtained a default judgment against defendants Robert Edwin Lowe and Nicole Lynn Lowe (together "Defendants"). This matter is on calendar for Plaintiff's motion to compel answers to special interrogatories ("SIs") against Defendants under Code of Civil Procedure ("CCP") §§ 708.020 & 2030.290, and to compel production of documents ("RPODs") from Defendants under CCP §§ 708.030 & 2031.300. The unopposed Motion is **GRANTED**. Defendants shall serve verified code-compliant responses free of objections within thirty (30) days of notice of entry of the order on this Motion. Defendants shall pay $60 in sanctions to Plaintiff within thirty (30) days of notice of entry of the order on this Motion.

I. Governing Law

A judgment creditor generally has the same rights to propound discovery to the judgment debtor in order to facilitate collection of the judgment. Particularly, a judgment debtor may propound interrogatories as allowed under CCP § 2030.010, et seq. See CCP § 708.020. Judgment creditors may also request production of documents under CCP § 2031.010. See CCP § 708.030.

Regarding the SIs, a party responding to an interrogatory must provide a response that is "as complete and straightforward as the information reasonably available to the responding party permits" and "[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible." Code Civ. Proc. ("CCP") §2030.220(a)-(b). "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." CCP §2030.220(c). If a party fails to serve a timely response to interrogatories, the court shall impose sanctions unless it finds that the party subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. CCP §2030.290(c). Code of Civil Procedure section 2030.290 provides that if a party to whom interrogatories were directed fails to serve timely responses, the responding party waives all objections, including those based on privilege and work product protection, and

the propounding party may move for an order compelling responses. CCP §2030.290(a)-(b); see also, *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404; CCP § 708.020(c). All that the moving party needs to show in its motion is that a set of interrogatories was properly served, that the time to respond has expired, and that no response has been provided. See, *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.

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Plaintiff served their SIs and RPODs on August 19, 2024. Defendants have served no responses.

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Sanctions are mandatory under the CCP for discovery abuses, absent substantial justification. Absent substantial justification, the Court must grant compensatory monetary sanctions which represent reasonable and actual costs to Plaintiff. While Plaintiff appears to also ask for some form of discretionary sanctions, he provides no authority to support them.

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IV. Conclusion

Plaintiff's motion to compel responses to SIs and RPODs is GRANTED. Defendants will serve code compliant, objection-free responses within 30 days of notice of this order. The request for sanctions is granted and Defendants shall pay $60 to Plaintiff within 30 days' notice of this order.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

3-4. <u>24CV04261, Andrews v. Pittman</u>

Plaintiff Mark Andrews ("Plaintiff") filed the presently operative Complaint against defendants Robert Pittman ("Pittman"), Gregory Jenkins ("Jenkins"), the Jenkins-Pittman Trust ("Trust", together with Pittman and Jenkins, "Defendants") with causes of action for harassment, false imprisonment and intentional infliction of emotional distress (the "Complaint").

This matter is on calendar for Defendants' Anti-SLAPP motion brought pursuant to Cal. Code Civ. Proc. ("CCP") § 425.16 against the Complaint. The Anti-SLAPP Motion is **DENIED**.

The matter is also on calendar for Defendants' demurrer to all causes of action pursuant to Cal. Code Civ. Proc. ("CCP") § 430.10(e) for failure to state facts sufficient to constitute a cause of action. The Demurrer is **SUSTAINED with leave to amend.**

ANTI-SLAPP MOTION

I. <u>The Complaint as Related to the Motion</u>

Plaintiff is a process server. Complaint ¶ 2. Pittman is the County Counsel for the County of Sonoma. Complaint ¶ 40. On July 21, 2022, Plaintiff attempted to serve Pittman a lawsuit directed to him personally. Complaint ¶ 13. Plaintiff entered Defendants' property to effect service at 3:30 pm. Complaint ¶ 17. Plaintiff waited at the property until a sheriff's deputy arrived at 5:11 pm. Complaint ¶ 20-22. Defendants at this juncture exited the house and stated that they wanted Plaintiff arrested for trespassing. Complaint ¶ 21. Plaintiff asserted immunity from the trespassing statute as a process server under Penal Code § 602. Complaint ¶ 28. Pittman expressed doubt and informed the deputy that if he would not arrest Plaintiff, the District Attorney would feel different. Complaint ¶ 27. Pittman executed a citizen's arrest form at the officer's request, and Plaintiff was cited for trespassing as a result. Declaration of Robert Pittman, ¶ 10; Complaint ¶ 30. Plaintiff was contacted later that day by the officer, informing him that the citation was voided, and that no charges were being filed. Complaint ¶ 31.

Resulting from this conduct, Plaintiff has pled causes of action for harassment, false imprisonment and intentional infliction of emotional distress. Defendants bring the instant motion arguing that the contact with the police was protected activity, and therefore Plaintiff's suit should be struck as a strategic lawsuit against public participation.

II. <u>Evidentiary and Procedural Issues</u>

Defendants have lodged video evidence with the Court which they served on February 28, 2025. The Court finds this as an untimely inclusion in the motion under CCP § 1010. The Court declines to consider the late submitted evidence.

III. <u>Governing Authorities</u>

A. Anti-SLAPP

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 they meet 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 (Civil Code section 47(b) litigation privilege is a substantive defense the plaintiff must overcome to demonstrate probability of prevailing). In making its determination, the Court considers the pleadings, as well as supporting and opposing affidavits. CCP § 425.16(b). No finding of intent to chill free speech, or actual chilling of free speech, is required. *Equilon*, 29 Cal.4th 58-59.

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 plaintiff opposing the motion to strike. Consideration of the differences in the standards for the two sides is important for fully considering a motion for fees and costs brought on this basis.

The "prevailing defendant" on a motion to strike a 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 CCP section 128.5 and *"[i]f* the court finds that [the motion]

is frivolous or is solely intended to cause unnecessary delay." CCP section 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).

B. Determination of Protected Activity

Subdivision (e) sets forth the different types of activity which fall within the ambit of section 425.16. It states, in full,

> As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

"If the acts alleged in support of the plaintiff's claim are of the sort protected by the anti-SLAPP statute, then anti-SLAPP protections apply." *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 887. The alleged wrongful conduct must itself have been protected activity, and the anti-SLAPP statute does not apply merely because the allegations refer to or in some manner tangentially touch on events that include protected activity. *Old Republic Construction v. The Boccardo Law Firm* (2014) 230 Cal.App.4th 859, 867-868. "Allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute." *Baral v. Schnitt* (2016) 1 Cal.5th 376, 394. 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). The supporting affidavits, and even the arguments made in opposition may be considered by the court when determining whether the allegations constitute protected activity. *Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1017, fn. 5.

In order for private communications to be subject to anti-SLAPP protections, they must be in connection to a matter of public interest. *Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 736. The court must determine whether the content of the speech relates to an issue of public interest, and whether the conduct furthered the discourse that makes the issue one of public interest. *FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 145. Contacting law enforcement for protection is protected activity unless it is uncontroverted that the basis for contacting law enforcement is premised on false statements. *Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 966. In contrast, police reports which are admittedly false are not protected by the Anti-SLAPP statute. *Lefebvre v. Lefebvre* (2011) 199 Cal.App.4th 696, 703.

"While we agree that a report to police is subject to the privilege of Civil Code section 47, subdivision (b), we conclude that placing someone under a 'citizen's arrest' is not a 'publication or broadcast' within the meaning of section 47, and thus not privileged." *Wang v. Hartunian* (2003) 111 Cal.App.4th 744, 749 ("*Wang*"). "Delegating the task of taking an individual into custody by summoning a police officer to assist in making the arrest is most prudent for a private citizen, to avoid the danger of a confrontation with the suspect." *People v. Bloom* (2010) 185 Cal.App.4th 1496, 150. "The citizen's request need not, however, be express, but may be implied by the citizen's conduct in summoning police, reporting the offense and pointing out the offender." *People v. Johnson* (1981) 123 Cal.App.3d 495, 499. Signing a citizen's arrest form, even where defendant did not themselves perform the physical act of arresting a plaintiff, is sufficient to cross the line from communication to conduct, and anti-SLAPP protections will not apply. *Wang v. Hartunian* (2003) 111 Cal.App.4th 744, 751-752.

"Some cases have suggested that ambiguous pleading can in some instances make a suit not a SLAPP. (Citation). . . The statute instructs us to take account of [] additional allegations [presented in the evidence] in our analysis. (See § 425.16, subd. (b)(2) [courts ruling on anti-SLAPP motions "shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based"].)" *Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1017, fn. 5.

C. Probability of Success on the Merits

"(T)he plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88–89, internal quotations omitted. Conclusory allegations will not protect insufficient claims from anti-SLAPP remedies. *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1423. Plaintiff is charged with producing "competent and admissible evidence" to meet this burden *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1236. The court must "accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law." *Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699–700.

1. Litigation Privilege

The litigation privilege of CC section 47(b), bars a civil action for damages for communications made "[i]n any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to [statutes governing writs of mandate]."
On the other hand, section 47 (c) provides a *qualified* privilege to other communications *made without malice*, stating that this applies to "communication[s] ... to a person interested therein, (1) by one who is also interested or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information."

Moreover, to be protected, pre-lawsuit communications must relate to litigation either already pending or contemplated in good faith and under serious consideration. *Action Apt. Ass'n, Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1251; *A.F.Brown Electrical Contractor, Inc. v. Rhino Elec. Supply, Inc.* (2006) 137 Cal.App.4th 1118, 1128; *Feldman v. 1100 Park Lane Associates* (App. 1 Dist. 2008) 160 Cal.App.4th 1467. Additionally, the scope of protected activity under the Anti-SLAPP statute and the litigation privilege are similar but not identical. *Flatley v. Mauro* (2006) 39 Cal.4th 299, 323-325.

Briggs v. Eden Council for Hope & Opportunity (1999) 19 Cal.4th 1106, at 1115, held that ""'[j]ust as communications preparatory to or in anticipation of the bringing of an action or other official proceeding are within the protection of the litigation privilege of Civil Code section 47, subdivision (b) [citation], ...such statements are equally entitled to the benefits of section 425.16.'"' See also, *Comstock, supra*. Similarly, the court in *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc*. (2004) 122 Cal.App.4th 1049, at 1058, noted that communications "within the protection of the litigation privilege of Civil Code section 47, subdivision (b) [citation], ... are equally entitled to the benefits of [Code of Civil Procedure] section 425.16."

IV. The Instant Case is Not Subject to Anti-SLAPP Protections

In the instant case, Defendants argue that the causes of action in the Complaint derive from Constitutionally protected speech, and that Plaintiff cannot show a probability of success on the merits of these causes of action. Plaintiff has filed no timely opposition.

A. Defendants Cannot Show That the Case Arises from Protected Activity

Plaintiff alleges that Defendants called the police and attempted to have him arrested for trespassing on their property. The Complaint alleges that Defendants demanded that the officer "effect a citizen's arrest on" Plaintiff. Complaint ¶ 29. This, in combination with the evidence submitted by the Defendants is sufficient to find that Pittman has undertaken activity which is not protected. Pittman, in his declaration in support of the motion, concedes that he signed a citizen's arrest warrant. See Declaration of Robert Pittman, ¶ 10. Accordingly, anti-SLAPP protections will not apply.

Defendants cited cases offer no applicable law in the face of the citizen's arrest. This Court is bound by *Wang v. Hartunian* (2003) 111 Cal.App.4th 744. In that case, plaintiff was restricted by a restraining order protecting defendant. *Id*. at 746. Defendant called the police on multiple occasions, eventually resulting in plaintiff being arrested after defendant signed a citizen's arrest form. *Ibid*. Plaintiff subsequently filed a suit for false arrest and intentional infliction of emotional distress. *Ibid*. Defendant filed an anti-SLAPP motion, which was granted by the trial court. *Id*. at 747. The court of appeal reversed, finding that a citizen's arrest is conduct, and not speech. *Id*. at 749. That defendant never themselves physically restricted plaintiff's movement was irrelevant if defendant undertook signing the citizen's arrest warrant. *Id*. at 751-752.

The burden here is on Defendants "to identify what acts each challenged claim rests on and to show how those acts are protected under a statutorily defined category of protected activity." *Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1009. The determination of protected

activity is not reliant exclusively on the allegations of the Complaint, but the accompanying evidence and affidavits. *Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1017, fn. 5. Defendants identify the calling of police as protected activity, but the signing of the citizen's arrest form transmutes Defendants' actions from speech to conduct. It therefore enjoys no protection under CCP § 425.16. Defendants do not identify other protected activity which is relied upon to state a claim for recovery. *Baral v. Schnitt* (2016) 1 Cal.5th 376, 394.

Plaintiff's Complaint does not rely on conduct which is protected activity under the anti-SLAPP statute. Therefore, the motion to strike is properly DENIED.

B. The Second Prong is not Reached

Given that Defendants fail to show that the allegations stem from protected activity, the second step of the analysis is not reached.

V. Conclusion

Defendants have not shifted their burden, as they do not show that the Complaint is targeted at protected activity. Based on the foregoing, the Anti-SLAPP Motion is **DENIED**.

DEMURRER:

I. Governing Law

A. Demurrers Generally

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. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852. 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. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. 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. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

B. Trusts as Parties

"A probate or trust estate is not a legal entity; it is simply a collection of assets and liabilities. As such, it has no capacity to sue or be sued, or to defend an action. Any litigation must be maintained by, or against, the executor or administrator of the estate." *Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1344, quoting Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2003) ¶ 2:126. A judgment against a trust "is meaningless and cannot be enforced. To be enforceable against the trust property, [a] judgment should [be] entered against those who held title to such property—the trustees." *Portico Management Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 474.

C. False Imprisonment

"'[F]alse arrest' and 'false imprisonment' are not separate torts. False arrest is but one way of committing a false imprisonment." *Asgari v. City of Los Angeles* (1997) 15 Cal.4th 744, 752, fn. 3, quoting *Collins v. City and County of San Francisco* (1975) 50 Cal.App.3d 671, 673. "The elements of a tortious claim of false imprisonment are: (1) the nonconsensual, intentional confinement of a person, (2) without lawful privilege, and (3) for an appreciable period of time, however brief." *Easton v. Sutter Coast Hosp.* (2000) 80 Cal.App.4th 485, 496. The statute of limitations for false imprisonment is one year. CCP, § 340 (c).

D. Harassment

Harassment is illegal in the context of an employment relationship. Gov. Code § 12940 (j)(1). To establish a claim of harassment, plaintiff must allege a course of conduct which shows that plaintiff was harassed in the workplace based on a protected class. Gov. Code § 12940 (j)(1); *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 79; see also *Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 355 (In opposing summary judgment as to FEHA harassment claims, "the plaintiff must provide evidence that (1) he was a member of a protected class, (2) he was qualified for the position he sought or was performing competently in the position he held, (3) he suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests discriminatory motive."). Where plaintiff proves harassment under Gov. Code, § 12940, they are entitled to attorneys' fees and costs. Gov. Code § 12965 (c)(6). Harassment is not itself a common law cause of action. *Grant v. Clampitt* (1997) 56 Cal.App.4th 586, 591 (Injunctive relief for harassment under CCP § 527.6 was intended to supplement existing, separate common law causes of action); see *Myers v. Trendwest Resorts, Inc.* (2007) 148 Cal.App.4th 1403, 1426 ("There is no common law cause of action for sexual harassment, but conduct constituting sexual harassment may be alleged in common law claims such as battery and intentional infliction of emotional distress.").

E. Emotional Distress

Claims of intentional infliction of emotional destress require: "(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. Whether treated as an element of the prima facie case or as a matter of defense, it must also appear that the defendants' conduct was unprivileged. Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209 internal citations and quotations omitted. To constitute a basis for emotional distress, the alleged conduct must extend beyond mere insults, indignities, threats, annoyances, petty oppressions or other trivialities. *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051. The conduct must be such that on hearing of the alleged conduct an average member of the community would resent the defendant and lead the community member to exclaim, "Outrageous!" *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494. "In order to avoid a demurrer, the plaintiff must allege with great specificity the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832 (Internal quotations omitted). "Without such pleading, no cause of action for intentional infliction of emotional distress will stand." *Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 536.

"Severe emotional distress means 'emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.'" *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1004, quoting *Girard v. Ball* (1981) 125 Cal.App.3d 772, 787–788. "(T)he requisite emotional distress may consist of any highly unpleasant mental reaction such as fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worry." *Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 397.

II. Analysis

A. Trust as a Party

As an initial matter, Defendants properly raise that the Trust is not an entity capable of being sued. Accordingly, Plaintiff has failed to state a claim against the Trust. The Demurrer against the trust is SUSTAINED without leave to amend.

B. Governmental Defenses

While the Defendants make various arguments as to why the claims are precluded under the Government Code due to statutory immunities and failure to file under the Government Claims Act. Simply put, these defenses are not apparent from the face of the Complaint. The Court's analysis at demurrer is constrained to those matters on the face of the pleading. CCP § 430.30(a). While Defendants aver that the claims against them arise directly out of Pittman's position as County Counsel, other than the allegation that Pittman was utilizing his position to unduly influence the justice system, there is no allegation related to Pittman's position or duties. Complaint ¶ 40, ¶49. The Complaint expressly states that Pittman was being served in his personal capacity. The Complaint does not present adequate facts where the Defendants' assertion of governmental defenses appears appropriate at this juncture.[1]

[1] This is a purely legal analysis made without prejudice to evidence relating this matter to Pittman's governmental duties. It is simply that on the face of the pleading, the argued defense does not foreclose Plaintiff's claims.

C. Intentional Infliction of Emotional Distress

Plaintiff fails to plead adequate facts to constitute a claim for intentional infliction of emotional distress. The conduct alleged against Defendants does not rise beyond mere insults, indignities, threats, annoyances, petty oppressions or other trivialities. See *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051.

Cases where allegations were found to be outrageous sufficient to survive demurrer are marked by their allegations of conduct not acceptable in a civilized society. *Kiseskey v. Carpenters' Trust for So. California* (1983) 144 Cal.App.3d 222, 229 (plaintiff received repeated harassing calls, threatening the safety of his family); *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 498 (use of racial epithets in combination with discriminatory employment action was sufficient to allege outrageous conduct). In contrast, courts of appeal have repeatedly held that alleged conduct must be sufficiently outrageous, or the matter is susceptible to demurrer. *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 497 (even where defendant's comments were clearly threatening, where the threats lacked immediacy and had veiled meaning, the statements were not sufficiently outrageous and demurrer was properly sustained); *Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 536 (vague and conclusory allegations of outrageous conduct does not satisfy that element, and a cause of action for intentional infliction of emotional distress so plead will not withstand demurrer.) Plaintiff provides only vague pleading of "discriminatory, harassing and retaliatory actions". Complaint ¶ 52. The outrageousness of conduct is only a matter for a finder of fact "(w)here reasonable men may differ". *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 499. Defendants called the police regarding an apparent trespasser on their property. On the face of the Complaint, Plaintiff has conceded facts showing that Penal Code § 602 (n) does not provide him immunity from that trespass. Plaintiff entered the property at 3:30 pm and was still present at 5:11 pm when the sheriff's deputy arrived. Plaintiff "sat on the front porch swing" while he waited. Plaintiff's process server immunity relies upon "proceed[ing] immediately to attempt the service of process, and leaves immediately upon completing the service of process. . ." Pen. Code, § 602 (n). Plaintiff's allegation regarding Defendants having undertaken outrageous conduct by calling the police is not supported by specific facts supporting the allegation.

While Plaintiff avers that Defendant's threatened him with other reprisals, he does not allege that they undertook the threatened actions. Plaintiff's allegations draw no nexus between Pittman's vague reference to the District Attorney, and some ultimate fact wherein Pittman undertook some intervention. There is no alleged conduct which exceeds "all bounds of that usually tolerated in a civilized community." *Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832. There being no allegation of what could be outrageous conduct as a matter of law, no cause of action for intentional infliction of emotional distress may stand.

As to the Third cause of action, the demurrer is SUSTAINED with leave to amend.

F. Harassment

Plaintiff alleges harassment but has misapprehended the statutes on which he relies. Plaintiff alleges in conclusionary fashion that Defendants have harassed him, and cites to Govt. Code § 12965. Defendants accurately argue that this code section falls under the Fair Employment and Housing Act ("FEHA"). This appears to be the only cognizable construal of Plaintiff's cause of action, as there is no common law cause of action for harassment. Plaintiff fails to allege multiple elements essential to a FEHA claim for harassment, including an employment relationship, and that the harassment was resultant from Plaintiff's membership in a protected class.

Plaintiff has not pled the elements of a harassment cause of action, and therefore the demurrer to the First cause of action is SUSTAINED with leave to amend.

G. False Imprisonment

Plaintiff alleges false arrest, but this is not a distinguishable tort from false imprisonment. *Asgari v. City of Los Angeles* (1997) 15 Cal.4th 744, 752, fn. 3. In the Complaint, Plaintiff concedes three facts which render his cause of action for false imprisonment infirm. First, Plaintiff does not allege that he was actually detained on July 21, 2022. The issuance of the arrest citation did not result in Plaintiff's actual confinement for an appreciable period of time. *Easton v. Sutter Coast Hosp.* (2000) 80 Cal.App.4th 485, 496. Accordingly, essential elements of the cause of action are missing.

Second, Plaintiff must plead facts showing that he was confined without lawful privilege. As the Court notes in Section II. C. above, Plaintiff's conduct does not meet the standard for immunity from trespassing under Penal Code § 602 (n). Plaintiff did not proceed about his task "immediately", and therefore his conduct was trespassing. Any detention of Plaintiff therefore appears lawful.

Third, Plaintiff's claims are precluded by the statute of limitations. Plaintiff filed the instant suit on July 22, 2024. Plaintiff alleges that the relevant incident occurred on July 21, 2022. Plaintiff filed this suit more than two years after the incident. The statute of limitations for false imprisonment is one year. CCP § 340 (c). Therefore, Plaintiff's claim for false imprisonment is untimely, and entirely precluded by the statute of limitations.

As the Court notes above, Plaintiff has alleged no ultimate fact connecting his eventual arrest in SCR-756374-1 to Defendants, and therefore his vague assertion as to when that arrest occurred does not satisfy the required element that Plaintiff was actually detained. Accordingly, the failure of Plaintiff to provide specifics regarding that case does not render his cause of action for false imprisonment timely.

Therefore, the demurrer to the Second cause of action is SUSTAINED with leave to amend.

III. Conclusion

Based on the foregoing, the Demurrer by Defendants is **SUSTAINED with leave to amend as to each cause of action except as to the Trust. The demurrer as to the Trust is SUSTAINED without leave to amend.**

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

5. 24CV06452, Redwood Credit Union v. Segura

Plaintiff Redwood Credit Union ("Plaintiff") filed the complaint in this action against defendants Kristian J. Segura ("Defendant"), seeking possession of personal property and for breach of contract, claim and delivery, and declaratory relief, arising out of a retail installment sales contract for the sale of a 2015 GMC Yukon XL, VIN 1GKS2HKC7FR588612 (the "Vehicle"). This matter is on calendar for Plaintiff's Application for Writ of Possession after hearing pursuant to Cal. Code Civ. Proc. ("CCP") §§ 512.010 et seq. directed at Defendant. The file contains proofs of service by personal service on Defendant, which shows service of the Complaint and the moving papers, and no opposition has been filed. The Application is **GRANTED**. Defendant's option to post undertaking under CCP § 515.020 is set at $26,546.27.

I. Governing Law

To obtain a writ of possession under the statutory remedy set forth in CCP § 512.010 et seq., plaintiffs must meet certain procedural requirements and make a showing under the applicable substantive law that they have the right to immediate possession of tangible personal property, and that the property is being wrongfully withheld by defendant. CCP § 512.010; *Englert v. IVAC Corp*. (1979) 92 Cal.App.3d 178, 184. A plaintiff must show by declaration that it has the right to immediate possession of tangible personal property and that the property is being wrongfully withheld by the defendant (CCP § 512.010) and that the claim is "probably valid" (CCP § 512.040(b)). The court shall not issue the writ unless the plaintiff posts an undertaking of at least twice the value of the defendant's interest in the property. CCP § 515.010. The levying officer will deliver the undertaking to defendant (together with a copy of the writ and of the order for issuance of the writ) upon seizure of the property. CCP § 514.020(a). If the court finds that defendant has *no* interest in the property, no undertaking is required. CCP § 515.010(b). In that event, the writ must state the amount of any counterbond the defendant must post to prevent the plaintiff from taking or regaining possession. CCP § 515.010(b).

II. Analysis

Plaintiff has submitted a Verified Complaint. Plaintiff's Verified Complaint provides a statement of the property's value as required by CCP § 512.010 (b)(3).

The Verified Complaint establishes that pursuant to the sales agreement (Complaint, Ex. A (the "Agreement")) Defendant entered into a contract to purchase the Vehicle and Plaintiff maintained the right to repossess until full payment of the obligations under the Agreement (Agreement, pg. 3, ¶¶ 2c, 3d). The Agreement's Payment Schedule requires monthly payments on the thirteenth day of each month. The Complaint establishes that Defendant failed to make the

payment due on August 13, 2023, and has failed to make all subsequent payments. Complaint ¶ 7(d).

The foregoing establishes Plaintiff's right to a writ of possession. Furthermore, the Application meets the applicable procedural requirements in that it specifies the property and its location. Plaintiff asserts in the Application (supported by allegations in the Verified Complaint) that Defendant has no equity in the Vehicle. See Application, ¶ 4; Complaint ¶ 7. Defendant owes $26,546.27 under the Agreement, and the value of the Vehicle is $21,199. *Ibid*. Plaintiff maintains a security interest in the Vehicle. Agreement, pg. 3, ¶¶ 2c, 3d. As such, no undertaking is required. CCP § 515.010(b) ("If the court finds that the defendant has no interest in the property, the court shall waive the requirement of the plaintiff's undertaking and shall include in the order for issuance of the writ the amount of the defendant's undertaking sufficient to satisfy the requirements of subdivision (b) of Section 515.020.")

Therefore, Plaintiff does not need to post an undertaking. If Defendant wishes to forestall taking of the property under this writ, Defendant must post an undertaking equal to Plaintiff's potential recovery and costs. See CCP § 515.20 (a). Plaintiff presents a solid figure for the contractual damages, but provides no estimate of costs. As such, the Court finds that the amount remaining under the Agreement is the proper bond amount. Defendant may forestall execution of the writ of possession or obtain return of the Vehicle after the writ has been executed by posting a bond of $26,546.27.

Plaintiff's application is **GRANTED**. Defendant's option to post an undertaking under CCP § 515.020 is set at $26,546.27.

Plaintiff's counsel 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), along with a [proposed] Order for Writ of Possession (CD-120), and a [proposed] Writ of Possession (CD-130).

6. SCV-265714, County of Sonoma v. Castagnola

Plaintiff County of Sonoma (the "County"), filed the complaint in this action against the property owner in this case, defendant Michael L. Castagnola, as trustee of the Michael L. Castagnola revocable trust ("Defendant") alleging zoning violations and public nuisance under California Health and Safety Code §§ 17980 *et seq.* present at the property commonly known as 12778 Dupont Road, Sebastopol, California (the "Property"). Non-party, Carly S. Castagnola ("Intervenor") has filed a motion to bring suit against the receiver, Mark Adams ("Receiver"), or in the alternative, to intervene in this case.

The motion is GRANTED IN PART.

I. Governing Law

"A receiver is a court-appointed official who can be sued only by permission of the court appointing him." *Ostrowski v. Miller* (1964) 226 Cal.App.2d 79, 84. "The rule requiring court permission to sue a receiver stems from Code of Civil Procedure section 568." *Vitug v. Griffin*

(1989) 214 Cal.App.3d 488, 492. "[E]ven in cases where it would be proper for the court to dispose of the controversy under an intervention in the original special proceeding, it may, nevertheless, grant permission to bring an independent suit. It is not, however, required to do so, and when, by virtue of its ample legal and equitable jurisdiction, it can grant full relief in all proper form of law to a party asserting a claim against the receiver by his intervening in the original proceeding, it is no abuse of discretion to refuse him permission to bring an independent suit." *De Forrest v. Coffey* (1908) 154 Cal. 444, 450. However, in so doing the court is not entitled to assess the merits of the claims asserted against the receiver, nor may the court deprive the claimant both of the opportunity to bring suit against the receiver separately and refuse to allow them to intervene. *Jun v. Myers* (2001) 88 Cal.App.4th 117, 125.

II. Intervenor's Claims Should be Addressed in this Action

Intervenor seeks to either receive leave of this Court to file a separate action against the Receiver, or in the alternative, to intervene in this action and bring claims against the receiver. Receiver opposes the motion, asserting that the Court should not grant any leave for Intervenor to file her claims.

The Court does not find Receiver's opposition particularly persuasive, in part because Receiver's case citations appear to represent a misunderstanding of the law. Receiver contends that "Courts routinely deny leave to sue a receiver where the conduct in question falls within the receiver's role and court orders", citing *Ostrowski v. Miller* (1964) 226 Cal.App.2d 79, 83. This is not an accurate representation of the *Ostrowski* court's holding. Rather, the court there found that failing to obtain permission from the appointing court within the receivership proceeding was adequate basis for demurrer. *Id.* at 87. The *Ostrowski* court undertook no analysis of the propriety of the receiver's actions, or whether following the appointing court's orders was a defense.

Receiver's contention that the Court should not allow Intervenor to pursue her claims within this case also fails due to not reflecting the posture of the law. Receiver cites *Fireman's Fund Ins. Co. v. Gerlach* (1976) 56 Cal.App.3d 299, without pin citation, contending that "[c]ourts disfavor interventions that expand litigation unnecessarily or complicate the receiver's duties." The Court simply notes that this case does not relate to receiverships and accordingly provides no guidance.

Receiver overstates the Court's discretion in this matter. The Court may *either* allow Intervenor to file a separate case or intervene here. If this Court has legal and equitable jurisdiction to address Intervenor's claims, it is within the Court's discretion to order intervention rather than grant permission to file a separate case. *De Forrest v. Coffey* (1908) 154 Cal. 444, 449. However, in determining whether permission is appropriate, the Court **may not** decide whether Intervenor is entitled to present a claim at all. *Jun v. Myers* (2001) 88 Cal.App.4th 117, 125. The Court may not examine the merits of Intervenor's claims. *Ibid.* Refusal to allow Intervenor to raise her claims in any manner is denial of due process and is reversable error. *Id*. at 125. Intervenor must be allowed to raise her claims, the question is whether the claims can be adequately adjudicated in the instant action. Assuming that, the question is tendered to the discretion of the Court.

It does not appear to be the interests of timely or effective adjudication of Intervenor's claims to allow the claims against Receiver to be brought in a separate action. This Court has substantial experience with the ongoing contentions between Plaintiff, Defendant and the Receiver. Intervenor's contentions are related to the Receiver's duties under orders issued by this Court. Receiver's defenses appear predicated on further orders issued thereon. It does not appear in the interest of justice to allow Intervenor to bring these claims separately, when many of the contended issues are directly at hand within this action. There appears to be no foreclosure of Intervenor's claims and remedies being fully addressed in the case at bar. Intervention appears as the appropriate remedy.

Intervenor's motion to file a separate action against the receiver is DENIED. Intervenor's request to bring her claims as a claim in intervention against Receiver in this action is GRANTED.

Receiver's counsel 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).

Thereafter, Intervenor will file her complaint-in-intervention within 30 days of notice of this order.

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