

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, July 24, 2026 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa**

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

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

TO JOIN D17 ZOOM ONLINE:

Meeting ID: 161 126 4123

Passcode: 062178

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

TO JOIN ZOOM BY PHONE:

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

+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell’s Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by **4:00 p.m. the court day immediately preceding the day of the hearing.**

**IF A PARTY REQUESTS ORAL ARGUMENT IT WILL BE HEARD ON
WEDNESDAY, JULY 29TH, AT 3PM IN DEPT. 17 THERE WILL BE NO
APPEARANCES ON FRIDAY, JULY 24TH**

26CV00274, Flores v. Silacci

Defendant Kylie Oden (“Oden”) and Defendant Kimberly Silacci (a.k.a. Kim Mattei) (“Silacci”) both move separately to specially strike Plaintiff Mark Flores’ (“Plaintiff”) Complaint pursuant to C.C.P. section 425.16. Both Oden and Silacci’s special motions to strike pursuant to Section 425.16 are **DENIED**.

Plaintiff’s objections to Defendants’ declarations are **SUSTAINED in part** and **OVERRULED in part** as explained below. Oden’s objections to Plaintiff’s evidence are **SUSTAINED in part** and **OVERRULED in part** as explained below.

Plaintiff’s request for attorney’s fees and costs is **DENIED** pursuant to C.C.P. section 425.16(c)(1).

I. FACTUAL & PROCEDURAL HISTORY

Plaintiff is currently the assistant coach of the women’s basketball team at Cardinal Newman High School (“CNHS”) and has been involved with the program for more than six years. (Complaint, ¶¶ 6–7.) His

daughter also plays on this team. (Complaint, ¶ 7.) He alleges the following events. On January 14, 2025, CNHS played against the Mara Carillo High School women's basketball team ("MCHS"). (Complaint, ¶ 8.) After the basketball game concluded when players and coaches were shaking hands, Player #20 from MCHS grabbed Plaintiff's shoulder and yelled in his face "You tell her black ass!" in reference to a Black player on the CNHS team. (Complaint, ¶ 9.) Plaintiff alleges that he told her to stop yelling and at that point, other MCHS coaches intervened. (Complaint, ¶ 9.) Plaintiff left the basketball court and Player #20 also left the court, throwing her jersey on the ground. (Complaint, ¶ 10.) In Plaintiff's absence, Player #20's mother, Defendant Silacci, approached Plaintiff's children's mother and stated loudly in earshot of others that Plaintiff is a convicted felon and should not be allowed to coach at CNHS. (Complaint, ¶¶ 11–12.) Silacci, Defendant Oden (coach for MCHS basketball team), another coach for MCHS, and Oden's assistant coach approached Sam Loundagin, the Associate Athletic Director and Site Safety Supervisor at CNHS. (Complaint, ¶ 13.) Oden then asked Mr. Loundagin if Plaintiff was cleared and Silacci repeated her assertions that Plaintiff is a convicted felon and how can he be a coach if he's a felon. (Complaint, ¶¶ 14–15.) Plaintiff further alleges that Silacci made further statements about Plaintiff's criminal conviction, showing Oden how to retrieve Plaintiff's criminal history on a public website. (Complaint, ¶ 16.) Plaintiff alleges that Oden claimed that the website detailed misdemeanor charges against Plaintiff possibly without a conviction, which shows that Plaintiff is not and has never been accused of or convicted of any felony and Silacci therefore made knowingly false statements. (Complaint, ¶¶ 17–19.)

Plaintiff further alleges that Defendant Oden, acting in concert with Silacci, "insinuated" that Plaintiff should not have been cleared to act as a coach for the CNHS basketball team and questioned his clearance, "implying" that he should not have been cleared due to the fact that he is a convicted felon. (Complaint, ¶ 53.) Plaintiff alleges that after the January 14, 2025, basketball game, Oden stated to third parties including Plaintiff's representatives that Plaintiff was physically restrained in a "full nelson" after the game. (Complaint, ¶ 54.) Plaintiff claims this statement is verifiably false confirmed by witnesses and video evidence of the game and that Oden's false comments about Plaintiff being a felon and being physically restrained on January 14, 2025, were published to third parties harming his reputation. (Complaint, ¶¶ 55–57.)

On January 24, 2025, Plaintiff's counsel sent a cease-and-desist letter to Silacci demanding that she refrain from making further false statements about Plaintiff. (Complaint, ¶ 20.) In November 2025, Ryan Thompson, District Athletic Director for Santa Rosa City Schools, contacted Monica Mertle, Director of Athletics and varsity girls' basketball coach at CNHS, directing that Plaintiff would be excluded from coaching the CNHS basketball team and attending the upcoming January 13, 2026, game against MCHS. (Complaint, ¶ 24.) This exclusion was due to a MCHS student's family complaint about fears for safety. (Complaint, ¶ 24.) Plaintiff alleges that in or around December 2025, Silacci and/or Oden made a false complaint to MCHS and Santa Rosa City Schools falsely alleging fears for personal safety. Plaintiff also alleges that Silacci's complaint to MCHS about fearing for safety was a retaliatory response to Plaintiff's January 2025 cease and desist letter. (Complaint, ¶¶ 25–27.) Plaintiff claims that Silacci's conduct of stating false allegations in a crowded gymnasium with third parties present demonstrates clear malice, oppression or fraud and defamation per se harming his reputation. (Complaint, ¶¶ 39–40, 50–51.)

Defendants allege different and supplemental events at the January 14th basketball game in their motions. Oden alleges that Plaintiff yelled profanities at a minor child on the MCHS team and had to be restrained by other adults. (Oden MPA, 5:12–24.) Plaintiff also allegedly approached the minor in the corridor leading to the locker rooms, screaming profanities and causing multiple adults to intervene. (Oden MPA, 5:25–

6:5.) Oden further alleges that Plaintiff's attendance at the January 31st game was restricted, but he still yelled profanities and grabbed his crotch, directing his conduct toward the same minor from the prior altercation. (Oden MPA, 6:13–7:8.) Silacci alleges that during the handshake lineup, Player #20 (Silacci's daughter) refused to high five Player #2 from CNHS, which then caused #2 to call #20 a "soft-ass bitch." (Silacci MPA, 3:14–16.) Player #20 grabbed Plaintiff's hand and told him to tell #2 to check her sportsmanship, which Plaintiff responded to by saying "fuck off" to Player #20, a minor. (Silacci MPA, 3:16–19.) Plaintiff then began screaming and swearing at Player #20, had to be separated by MCHS coaches and players from #20, and continued to yell profanities at #20 as she walked into the locker room. (Silacci MPA, 3:19–21.) Silacci alleges that at the January 31st game, Plaintiff celebrated a foul by Player #20 against a CNHS player where his hand touched his genital area, which was caught on video. (Silacci MPA, 4:14–26.)

On January 13, 2026, Plaintiff filed his Complaint asserting the following causes of action: slander per se against all Defendants, defamation by slander against Silacci and DOES 1–5, defamation by slander against Oden and DOES 6–10, intentional infliction of emotional distress ("IIED") against Silacci, negligent infliction of emotional distress ("NIED") against all Defendants, and negligence against all Defendants, and invasion of privacy-false light against all Defendants. Defendant Oden moves to strike Plaintiff's Complaint in its entirety pursuant to C.C.P. section 425.16, Civil Code section 47(b), and Penal Code section 11164–11174.3 et seq. Defendant also requests monetary sanctions, which will be brought in a separate motion. Defendant Silacci moves to strike Plaintiff's Complaint in its entirety pursuant to C.C.P. section 425.16(c)(1) and moves for attorney's fees and costs in the amount of \$8,687.50.

II. DISCUSSION

A. Anti-SLAPP Framework

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

a. First Prong: Protected Speech in the anti-SLAPP

A defendant has the initial burden in the anti-SLAPP motion to make a prima facie showing that the complaint "arises from" the exercise of free speech or petition rights. (*Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61.) In this first step of analysis, "the defendant must make two related showings... Comparing its statements and conduct against the statute, it must demonstrate activity qualifying for protection... Comparing that protected activity against the complaint, defendant must also demonstrate that the activity supplies one or more elements of a plaintiff's claims." (*Wilson v. Cable News Network, Inc.* (2019)

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

b. Second Prong: Probability of Success on the Merits

To establish a “probability” of prevailing on the merits, plaintiff must demonstrate that the claim is both legally sufficient and supported by a prima facie showing of facts sufficient to support a favorable judgment if the evidence submitted by the plaintiff is credited. (*Navelier v. Sletten* (2002) 29 Cal.4th 82, 89.)

To demonstrate a probability of prevailing on the merits, the plaintiff must produce admissible evidence sufficient to overcome any privilege or defense that the defendant has asserted to the claim. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 323.)

c. Fees and Costs on anti-SLAPP Motion

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

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

B. Evidentiary Objections

a. Plaintiff’s Objections

On June 18, 2026, Defendant Silacci filed a notice of joinder in Defendant Oden’s declarations filed in support of her motion. Plaintiff filed evidentiary objections to all six declarations. Plaintiffs’ objections to Defendants’ requests for judicial notice are addressed below.

i. Mattei Declaration

Objection No. 2 is **SUSTAINED** as to the phrase “in a clear sign of retaliation” and **OVERRULED** as to the rest of the sentence. Objection No. 4 is **SUSTAINED**. Objection No. 5 is **SUSTAINED** as to the phrase “no false statements were made” and **OVERRULED** as to the rest of the sentence. Objection Nos. 1 and 3 are **OVERRULED**.

ii. Kylie Oden Declaration

Objection No. 2 is **OVERRULED** as **MOOT** due to Oden’s Notice of Errata, which deleted this

paragraph. Objection No. 6 is **SUSTAINED**. Objection Nos. 1, 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, and 15 are **OVERRULED**.

iii. Whitney Oden Declaration

Objection No. 2 is **SUSTAINED**. Objection Nos. 1, 3, 4, and 5 are **OVERRULED**.

iv. Thompson Declaration

Objection Nos. 1, 2, 3, 4, and 5 are **OVERRULED**.

v. Deakins Declaration

Objections Nos. 1, 2, and 3 are **OVERRULED**.

vi. Henry Declaration

Objection Nos. 2 and 3 are **SUSTAINED**. Objection Nos. 1 and 4 are **OVERRULED**.

b. Defendant Oden's Objections

i. Mark Flores Declaration

Objection Nos. 2, 3, 4, 5, 14, and 20 are **SUSTAINED**. Objection Nos. 1, 6, 7, 8, 9, 11, 12, 15, 16, 17, 18, 19, and 22 are **OVERRULED**. Objection Nos. 10 and 13 are **SUSTAINED**. The Flores declaration references "the Thompson email" and states that it is attached to the declaration as Exhibit 1 but there are no exhibits attached to the declaration. Objection No. 21 is **SUSTAINED** as to the phrases "As a result of the false statements" and "falsely" reported safety concerns but is **OVERRULED** as to the remaining statements.

ii. Maiya Flores Declaration

Objection Nos. 2, 3, 5, 6, 7, 8, and 9 are **SUSTAINED**. Objection Nos. 1 and 4 are **OVERRULED**.

iii. McMurtrie Declaration

Objection Nos. 1, 2, 3, 7, 9, and 10 are **SUSTAINED**. Objections Nos. 4, 5, 6, and 8 are **OVERRULED**.

iv. Loundagin Declaration

Objection Nos. 3 and 4 are **SUSTAINED**. Objection Nos. 1 and 2 are **OVERRULED**.

C. Defendants' Requests for Judicial Notice

The court may take judicial notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code § 452(h).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under Evidence Code section 452. (Evid. Code § 453.) The court may take

judicial notice of records of any court record of California, the U.S., or any other state. (Evid. Code § 452(d).) Courts may “take judicial notice of the *existence* of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact.” (*People v. Harbolt* (1997) 61 Cal.App.4th 123, 126–127 [citations omitted]; Evid. Code §§ 452, 453.)

In support of their motions, Defendants make identical requests for judicial notice (“RJN”), including notice of C.C.P. section 425.16 et seq. (RJN No. 1), Penal Code sections 1116.5–11172 (RJN No. 2), and the records for Sonoma County Superior Court Case *People v. Flores* MCR-380889-1 (RJN No. 3). RJN Nos. 1 and 2 are **GRANTED** pursuant to Evidence Code section 451(a). Plaintiff objects to RJN No. 3 arguing that the Court may take notice of the existence of the record in that case but may not take notice of the truth of the statements contained therein, that it is improper character evidence, and that it is irrelevant. The objections are **OVERRULED**. Evidence of Plaintiff’s conviction and the truth of the conviction are relevant because it is the basis of his defamation claims against Defendants as raised in the Complaint. RJN No. 3 is **GRANTED** subject to evidentiary limitations pursuant to Evidence Code sections 452(d) and 453. The Court only takes judicial notice of the truth of the results reached in judicial opinions and court documents, such as orders, statements of decision, and judgments, contained in the case file for *People v. Flores* MCR-380889-1 but the Court does *not* take judicial notice of the truth of hearsay statements in that may be contained in decisions or files in this case, including pleadings, affidavits, testimony, or statements of fact. (*Harbolt, supra*, 61 Cal.App.4th at 126–127; Evid. Code §§ 452(d), 453.)

RJN Nos. 4, 5, 6, and 7 ask the Court to take notice of specific facts:

4. Fact 1: Records maintained by the Sonoma County Superior Court as it relates to case no. MCR-380889-1 entitled *People v. Flores* filed September 10, 2001, are available for public review on the Sonoma County Superior Court’s own website.
5. Fact 2: That Plaintiff Mark Vincent Flores was convicted of the crime of “poolselling and bookmaking” under California Penal Code sec. 337(a)(1) on March 6, 2002, according to the Sonoma County Superior Court records under case no. MCR-380889-1.
6. Fact 3: That child safety is a public issue as supported by California Penal Code sections 1116.5-11172.
7. Fact 4: That child safety is a matter of public interest as supported by California Penal Code sections 1116.5-11172.

Plaintiff objects to these RJNs on several bases, such as relevancy and not properly subject to judicial notice. RJN No. 4 is **DENIED** for lack of specificity and for being duplicative of RJN No. 3. Notably, Defendants do not provide the link to the Court’s website that the requested fact is based on and do not specify what records are available for public review. (See Super. Ct. Sonoma County, Local Rules, rule 9.19(C).) RJN No. 5 is **GRANTED** with modifications. The Court takes judicial notice of the fact that “Plaintiff Mark Vincent Flores was convicted of the crime of pool selling and bookmaking under California Penal Code section

337(a)(1) on June 7, 2002.”¹ RJN Nos. 6 and 7 are **DENIED** as these are not proper subjects of judicial notice under Evidence Code section 452.

D. The Alleged Statements at Issue

As stated in the Complaint, both Oden and Silacci made statements about Plaintiff, which he claims are defamatory.

The alleged statements by Oden are: Plaintiff was restrained in a “full nelson” after the basketball game on January 14, 2025 (Complaint, ¶ 54), and that she initiated a conversation with Mr. Loundagin, Associate Athletic Director at CNHS asking “Aren’t your coaches cleared?” (Complaint, ¶ 14.) Plaintiff further alleges that Oden, acting in concert with Silacci, “insinuated” that Plaintiff should not have been cleared to act as a coach for the CNHS basketball team and questioned his clearance, “implying” that he should not have been cleared due to the fact that he is a convicted felon. (Complaint, ¶ 53.)

The alleged statements against Silacci are: Plaintiff is a felon and asking how can he be cleared to coach as a felon (Complaint, ¶¶ 11, 15) and showing Oden how Plaintiff’s criminal history can be viewed online (Complaint, ¶ 16.) In her Reply, Silacci attempts to reframe her argument in this case, directing the Court to review “what speech Defendant alleges is prevented” not to focus on the underlying action for defamation or defamatory speech as pled in the Complaint. She argues “[a]lleging that the protected speech Defendant asserts is calling Plaintiff a felon is an inaccurate interpretation of the law.” The “principal thrust” of Silacci’s argument, as she represents it, is that she asked if Plaintiff was cleared as a coach after the handshake skirmish and brought forth her complaints about Plaintiff’s conduct at other games with which she took issue.

E. Plaintiff’s Allegations Against Defendants Arise Out of Protected Activity

Oden and Silacci argue that the alleged wrongdoing is connected to a public issue and an issue of public interest (Section 425.16(e)(4)). Oden further argues that her statements are made in connection with a matter under review of a judicial proceeding (Section 425.16(e)(1)). Silacci also argues that her comments were made as a communication in connection with statements made in a place open to the public or a public forum in connection with an issue of public interest (Section 425.16(e)(3)).

a. Public Issue or an Issue of Public Interest

The Supreme Court of California articulated a two-step inquiry in *FilmOn.com Inc v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 143 (“*FilmOn*”), to determine whether the activity from which a lawsuit arises falls within section 425.16(e)(4)’s protection. “First, we ask what ‘public issue or [] issue of public interest’ the speech in question implicates—a question we answer by looking to the content of the speech. (§ 425.16, subd. (e)(4).) Second, we ask [whether] functional relationship exists between the speech and the public conversation about some matter of public interest.” (*FilmOn, supra*, 7 Cal.5th at 149–150.) Where the answer to the second question in the two-step inquiry is yes, then the anti-SLAPP statute is triggered and the burden shifts to the plaintiff. (*Geiser v. Kuhns* (2022) 13 Cal.5th 1238, 1243.)

¹ The original RJN states: Plaintiff Mark Vincent Flores was convicted of the crime of “poolselling and bookmaking” under California Penal Code sec. 337(a)(1) on March 6, 2002, according to the Sonoma County Superior Court records under case no. MCR-380889-1. Upon the Court’s review of the record in case no. MCR-380889-1, Flores entered a plea on March 6, 2002, but the conviction was not certified by the Clerk of the Court until June 7, 2002. The Court granted Flores’ motion to dismiss the conviction on April 21, 2021.

The case of *Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450 is substantially analogous to the case at hand. Parents were concerned with the plaintiff's fitness to coach young players and his relationships with parents (the basis of the dispute) and the PTO banned plaintiff from coaching due to his use of improper disciplinary tactics against a player. (*Id.* at 464–466.) Here, Plaintiff attempts to distinguish *Hecimovich* arguing that it predates the two-step approach as articulated in *FilmOn* and that the case was brought against an organization (the PTO), volunteers of the PTO, and the PTO's president due to her statements made while acting in her official capacity, which is distinguishable from the Defendants in this instant case. The Court does not find these arguments persuasive. The court in *Hecimovich* concluded that “safety in youth sports, not to mention problem coaches/problem parents in youth sports, is another issue of public interest within the SLAPP law.” (*Hecimovich, supra*, 203 Cal.App.4th at 468.) Nothing in *FilmOn* abrogates the court's conclusion in *Hecimovich* that safety in youth sports is an issue of public interest. Nor does the Court read *Hecimovich* so narrowly to opine that safety in youth sports is only an issue of public interest when it concerns individuals acting in a volunteer or official capacity, such as on behalf of an organization like a PTO or the school itself, and to categorically exclude concerned coaches, parents, or other adults observing behavior by a coach they find to be inappropriate. The public issue implicated by both Defendants' statements, as alleged in the Complaint, was children's safety and Plaintiff's fitness as a coach, which *Hecimovich* explicitly held to be a public issue.

At *FilmOn*'s second step, the inquiry is whether the challenged activity contributes to public discussion of any such issue, examining the “functional relationship” between the challenged activity and the public issue it implicates, and ask whether the activity contributed to public discussion of that issue. (*FilmOn, supra*, 7 Cal.5th at 149–150.) It is undisputed that Plaintiff and Player #20 had a negative interaction following the January 14th basketball game during the handshake lineup between the teams. Plaintiff alleges that he walked away from the incident and that Player #20 initiated the contact, while Defendants allege that Plaintiff yelled obscenities at Player #20 and had to be restrained by other adults to stop the interaction from escalating. During this time is when Silacci stated that Plaintiff was a convicted felon, which prompted Oden to approach Mr. Loundagin (CNHS Associate Athletic Director and Site Safety Officer) with Silacci, one MCHS coach, and Oden's assistant coach to question if Plaintiff had received proper clearance to coach the CNHS team. This is when Plaintiff alleges that Silacci began to repeat her assertion that Plaintiff is a felon, questioning “How can [Plaintiff] be cleared if he's a felon? I know he's a felon.” Both Defendants' inquiries were made in connection with Plaintiff's fitness as a coach and whether Plaintiff had received proper clearance to coach the team to the person that presumably has knowledge of Plaintiff's clearance—Mr. Loundagin, CNHS Associate Athletic Director and Site Safety Officer. Besides Defendants and Mr. Loundagin, the two other people involved in this conversation were MCHS coaches, who likely had the same safety concerns as Oden. Conduct and further participation related to such inquiry furthered the public discussion of children's safety in school sports generally and whether Plaintiff had the proper clearance to coach the CNHS basketball team, concerning the safety of the children on the CNHS and MCHS basketball teams. Even if defamatory, such statements may constitute protected activity under the SLAPP statute, and therefore defeat Plaintiff's arguments to the contrary. (*Hecimovich, supra*, 203 Cal.App.4th at 464.) Defendants have shown their conduct meets the second step in *FilmOn*. Therefore, the Court finds that Defendants have shown their underlying conduct is protected activity under Section 425.16(e)(4) and the Court will not address other bases of protected activity as argued by Defendants.

F. Prevailing on the Merits

Plaintiff now has the burden to establish a probability of prevailing on the merits of his claims. “The court, without resolving evidentiary conflicts, must determine whether the plaintiff’s showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken.” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) Defendants move to strike the entire Complaint and do not move to strike causes of action individually in the alternative. Thus, Plaintiff need only show he will prevail on the merits as to one cause of action applicable to each Defendant. “[T]he trial court is not required to take on the burden of identifying the allegations susceptible to a special motion to strike. If a defendant wants the trial court to take a surgical approach, whether in the alternative or not, the defendant must propose where to make the incisions. This is done by identifying, in the initial motion, each numbered paragraph or sentence in the complaint that comprises a challenged claim and explaining ‘the claim’s elements, the actions alleged to establish those elements, and wh[y] those actions are protected.’” (*Park v. Nazari* (2023) 93 Cal.App.5th 1099, 1109.)

a. Plaintiff Establishes a Probability of Prevailing on the Merits against Silacci

In her Reply, Silacci asserts two new arguments to support her motion that were not presented in the moving papers: privileged publication under Civil Code section 47 and mandatory reporting under Penal Code section 11172. As these arguments are made for the first time in the Reply, the Court does not address them. However, these same arguments were made by Oden and are addressed below.

The First Cause of Action alleges slander per se against all Defendants. Slander per se covers a false and unprivileged publication, orally uttered which charges any person with crime, or having been indicted, convicted, or punished for crime. (Civ. Code § 46.) In actions for defamation per se, damages can be presumed. (*Tilkey v. Allstate Ins. Co.* (2020) 56 Cal.App.5th 521, 542, citing *Contento v. Mitchell* (1972) 28 Cal.App.3d 356, 358.)

Here, Silacci’s statements are contradictory. In her declaration, Silacci does not affirmatively deny that she called Plaintiff a felon but claims in her MPA, that she never said the word “felon”. She claims that “[a]ll statements made involved his publicly documented arrest and misdemeanor conviction and no false statements were made.” (Silacci Decl., ¶ 19.) Therefore, Silacci does not affirmatively deny that she orally uttered that Plaintiff was a felon to others both before the conversation with Oden and other coaches and during the conversation with Oden and others. Silacci’s argument that the gym was loud enough for no one else to hear the comments is not persuasive as other MCHS coaches were in this conversation along with Mr. Loundagin. As highlighted by Defendants’ RJN No. 3 and No. 5–Fact 2, there is no evidence Plaintiff was convicted of a felony. Silacci then made oral statements that Plaintiff was a felon to others in the gym in two contexts. The Court does not resolve the evidentiary conflicts noted above at this stage. The Court finds that based on Plaintiff’s showings, if accepted by the trier of fact, are sufficient to sustain a favorable judgment against Silacci for slander per se. Silacci’s motion to strike is **DENIED**.

b. Plaintiff Establishes a Probability of Prevailing on the Merits against Oden

i. Penal Code Section 11172 is Inapplicable

Oden claims the causes of action alleged against her are barred by Penal Code section 11172 since she is a mandatory reporter of child abuse.

Penal Code section 11172 is not applicable here because no report was ever filed and Oden does not present argument or any evidence that any report under Section 11166 was made, other than her having the conversation at issue with Mr. Loundagin inquiring about Plaintiff's clearance to coach and informing the MCHS Athletic Director about her concerns for Player #20's safety. The immunity under Section 11172 does not attach until the report under Section 11166 is made. (*Stecks v. Young* (1995) 38 Cal.App.4th 365, 375 ["once the report is made, immunity attaches."].) Oden provides no authority to overcome this flaw and other cases analyzing Section 11172 immunity to SLAPP suits also involve statutorily required reports that were actually made. (See *Siam v. Kizilbash* (2005) 130 Cal.App.4th 1563; *Chabak v. Monroy* (2007) 154 Cal.App.4th 1502; and *Arce v. Childrens Hospital Los Angeles* (2012).)

ii. Civil Code Section 47(b) is Inapplicable

Oden argues the causes of action alleged against her are also barred by Civil Code section 47(b) because her statements were made within relation to the instant lawsuit. The Court is not persuaded.

Similarly, 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 shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (C.C.P. § 425.16(b)(2).) Subdivision (b)(3) applies to "any other official proceeding authorized by law" and subdivision (b)(4) applies to the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 of Title of Part 3 of the C.C.P.

Here, Oden claims that Plaintiff alleges that Oden's wrongful conduct included participating in a prelitigation interview with opposing counsel where she stated that Silacci instructed her how to find publicly available information on the Court's website about Plaintiff's criminal history, which is within the protection of Section 47(b). In Opposition, Plaintiff alleges that Oden's January 14th statements questioning Plaintiff's clearance and stating that he had to be physically restrained in a "full nelson" were all made the year before the instant lawsuit was initiated and are not protected under 47(b). In Reply, Oden attempts to reframe her argument relying on *Lee v. Fick* (2005) 135 Cal.App.4th 89, to support her contention that "complaints to school authorities about a teacher or principal in the performance of his or her official duties are privileged." Here, the challenged activity is Oden questioning whether Plaintiff was cleared and her statement about Plaintiff being restrained in a "full nelson". Neither of these actions were taken to prompt official action and in fact Oden did take further, official action by informing the MCHS Athletic Director about her safety concerns and provided the game footage for review by the school administration and was informed that Santa Rosa City Schools and her supervisors "would take over the reporting to law enforcement". (Oden Decl., ¶ 21.) However, the latter reporting is not what Plaintiff alleges in the Complaint as the basis of his claims against Oden—it is the conduct inside the gym on January 14th, not Oden's subsequent report. (Contra, *Lee, supra*, 135 Cal.App.4th at 96–97 [the court finding that a letter that was written due to the principal's instruction to concerned parents to put their complaints in writing that was later delivered to the school district was made to prompt official action and was therefore privileged under Section 47(b).] Furthermore, Oden's statements in the prelitigation interview with opposing counsel are neither the basis of Plaintiff's claims nor can the statements that form the basis of the Complaint that were made before the initiation of the lawsuit and are later referenced in a prelitigation interview then be considered to be protected. Thus, the Court does not find Section 47(b) to be applicable to the conduct at issue in the Complaint.

iii. Slander

As stated above, slander is a false and unprivileged publication, orally uttered, that causes actual damage. (Civ. Code § 46, subd. (5).) Here, Plaintiff has shown that Oden falsely claimed that Plaintiff was restrained in a “full nelson” that has caused serious harm to his reputation (damages). This showing if accepted by the trier of fact, is sufficient to sustain a favorable judgment against Silacci for slander. The Court does not resolve the evidentiary conflicts as to the truth of this statement at this stage. Oden’s motion to strike is **DENIED**.

G. Fees and Costs

Pursuant to C.C.P. section 425.16(c)(1), a court shall award costs and reasonable attorney’s fees when it finds a special motion to strike frivolous or is solely intended to cause unnecessary delay pursuant to C.C.P. section 128.5.

Here, while Plaintiff prevails, the Court does not find that the instant motions to strike are frivolous or solely intended to cause unnecessary delay. Plaintiff also makes no persuasive argument in its opposition other than the conclusory statement that the motions are frivolous. Therefore, Plaintiff’s request for attorney’s fees and costs is **DENIED**.

III. CONCLUSION

Based on the foregoing, both Oden and Silacci’s special motions to strike pursuant to Section 425.16 are **DENIED**.

Plaintiff’s objections to Defendants’ declarations are **SUSTAINED in part** and **OVERRULED in part**. Oden’s objections to Plaintiff’s evidence are **SUSTAINED in part** and **OVERRULED in part**.

Plaintiff’s request for attorney’s fees and costs is **DENIED** pursuant to C.C.P. section 425.16(c)(1).

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