TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 29, 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.***

1. 24CV02539, Arshi v. Nationstar Mortgage LLC

Plaintiffs Anna and Ben Arshi ("Plaintiffs") move to compel Defendant Rushmore Loan Management Services, LLC ("Rushmore") to provide verified responses to Plaintiffs' Requests for Documents, Set Two, Supplemental Interrogatories, and Supplemental Requests for Production of Documents ("Discovery Requests").

Plaintiffs' unopposed motion is **GRANTED**. Rushmore shall serve verified, objection-free responses to the above-mentioned Discovery Requests within 20 days of this Court's order and produce any documents responsive to Requests for Productions in a code-compliant manner, or otherwise provide a privilege log for all documents withheld on the basis of a privilege. In the Court's discretion, sanctions are awarded for the reduced amount of **$2,514.00** against Rushmore.

I. PROCEDURAL HISTORY

Plaintiffs served the Discovery Requests on Rushmore on January 15, 2026, but Rushmore failed to provide any responses by the deadline and never requested any extensions. (Motion, 1:26-28, 2:1-2;

Loveman Decl., ¶¶ 3-4.) Nevertheless, Plaintiffs' counsel spoke with Rushmore's counsel and extended the deadline to serve objection-free responses by March 11, 2026, but no responses were ever served to the Discovery Requests. (Motion, 2:3-9; Loveman Decl., ¶¶ 4-7.)

Now, Plaintiffs move to compel Rushmore's objection-free responses to these requests. The motion is unopposed despite proper and timely service of the moving papers and the notice of hearing.

II. ANALYSIS

Legal Standard

a. Interrogatories

A party who fails to serve a timely response to interrogatories absent evidence showing mistake, inadvertence, or excusable neglect, waives any right to object to the interrogatory, including objections based on privilege or work product, and the court shall impose monetary sanctions upon the party who unsuccessfully opposes a motion to compel initial the responses. (C.C.P. § 2030.290.)

b. Demand for Production of Documents

A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. (C.C.P. §2031.210(a).) If a responding party is not able to comply with a particular request, or part thereof, that party "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." (C.C.P. § 2031.230.) If the responding party fails to timely respond, the demanding party may move for an order compelling a response. (C.C.P. § 2031.300(b).)

Plaintiffs' Motion to Compel

Under C.C.P. sections 2030.290 and 2031.300, Plaintiffs move to compel Rushmore's verified objection-free responses to the outstanding Discovery Requests. (Motion, pp. 3-4.) Plaintiffs also request sanctions in the amount of $4,759.50, which includes counsel's work of four hours on the motion at a rate of $499.00 per hour, their paralegal's one hour of work at a rate of $229.00 per hour, filing fees of $60.00, and an anticipated 4.5 hours of counsel's work anticipated to review any opposition, prepare a reply, and appear at the hearing. (Loveman Decl., ¶¶ 8-9.)

As mentioned above, the motion is unopposed.

Application

The Court finds that Plaintiffs' unopposed motion is warranted as are the sanctions requested due to Rushmore's lack of engagement in the discovery process and failure to oppose this motion to offer any substantial justification for the lack of response. However, the Court will reduce the sanctions award from the amount requested to $2,514.00 because no opposition was filed, so no reply or appearance at the hearing is necessary.

III. CONCLUSION

As stated above, Plaintiffs' unopposed motion is **GRANTED**. Rushmore shall serve verified, objection-free responses to the Discovery Requests within 20 days of this Court's order and produce any documents responsive to Requests for Productions in a code-compliant manner, or otherwise provide a privilege log for all documents withheld on the basis of a privilege.

In the Court's discretion, sanctions are awarded in the amount of **$2,514.00** against Rushmore. Plaintiffs 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. 24CV05882, Kipperman v. Cole

Defendant William L. Cole's ("Defendant") motion to compel Plaintiff Alan L. Kipperman to serve further responses to Requests for Productions, Set Two, ("RFPDs") and produce responsive documents is **GRANTED**. Plaintiff shall serve further responses to Request Nos. 1, 2, 3, 4, 5, 6, 30, and 31, and any responsive documents or a privilege log within 20 days of this Court's Order. Sanctions are awarded in the amount of $2,860.00.

PROCEDURAL HISTORY

Plaintiff's action arises from an automobile accident that occurred on August 25, 2024, on which date Plaintiff alleges that Defendant's vehicle collided with Plaintiff's at Bloomfield Road and Bloomfield Court in Sebastopol, California. (Motion, 3:6-8.)

Defendant served Plaintiff with the RFPDs, Set Two, to which Plaintiff served responses on March 13, 2026. (*Id*. at 3:12-14; Graves Decl., ¶ 3.) Some of the responses only stated objections, which Defendant finds to be deficient. Defendant attempted to meet and confer with Plaintiff via their counsel on March 27, 2026, but Plaintiff did not respond to the attempt and did not cure the stated deficiencies in the responses. (Motion, 3:19-23; Graves Decl., ¶ 4.)

Now, Defendant moves to compel Plaintiff's further responses to the RFPDs and requests sanctions. Plaintiff opposes the motion and Defendant replied to Plaintiff.

ANALYSIS

Legal Standard

A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. (C.C.P. §2031.210(a).) If a responding party is not able to comply with a particular request, or part thereof, that party "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." (C.C.P. § 2031.230.) The response shall also specify "whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party" and also must set forth the "name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." (*Ibid*.) Otherwise, if a responding party is objecting to a demand only, then the responding party must identify the demanded document, tangible thing, land, or electronically stored information to which an objection is being made, set forth the grounds for objection, and if privileged, provide a privilege log for the demanded items that are privileged. (C.C.P. § 2031.240.)

A propounding party may move for an order compelling further response to a demand for production if that party deems that: (1) a statement of compliance with the demand is incomplete; (2) a representation of inability to comply is inadequate, incomplete, or evasive; or (3) an objection in the response is without merit or too general. (C.C.P. § 2031.310(a).) The court shall impose a monetary sanction against a party who unsuccessfully makes or opposes a motion to compel further responses to a demand for production, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (C.C.P. § 2031.310(h).)

Defendant's Motion to Compel

Defendant seeks further responses to Request Nos. 1, 2, 3, 4, 5, 6, 30, and 31, because Plaintiff provided objection-only responses, which Defendant argues are incomplete, nonresponsive, and evasive. (Motion, pp. 4-8; See generally Separate Statement.) Defendant also argues that the requested documents, including Plaintiff's personal and business state and federal tax returns from 2019 to present and Plaintiff's invoices, receipts, and monthly schedules for Plaintiff's QME from 2022 to present, are all relevant evidence related to Plaintiff's claims of significant wage loss and loss of earning capacity after the alleged motor vehicle incident. (Motion, 5:10-16.) Though Plaintiff objected on the basis of privilege, Plaintiff can waive the privilege to provide evidence to support Plaintiff's own claims. (Motion, 6:14-24.)

Defendant requests sanctions of $2,860.00 for the preparation of the motion, which includes 4 hours of time preparing the motion at a rate of $350.00 per hour, anticipated 4 hours to review Plaintiff's opposition, prepare a reply, and attend the hearing, and $60.00 in filing fees. (Graves Decl., ¶¶ 5-7.)

Opposition

Plaintiff's Opposition failed to address the arguments stated in the Motion to Compel altogether and instead focused on an inability to produce Plaintiff's vehicle currently in the possession of a third-party mechanic, which was not an issue Defendant raised in the Motion. (Opposition, pp. 3-8.)

Reply

The Reply reaffirmed the arguments made in the Motion and emphasized that the Motion and sanctions requested were warranted as the Opposition was essentially a non-opposition that failed to address any of the requests at issue in the RFPDs that were identified in the Separate Statement and Motion. (Reply, pp. 2-5.)

Application

The Court finds the Motion and request for sanctions are warranted because the objection-only responses were incomplete and evasive. Plaintiff failed to respond at all to any of the arguments made in the Motion, failed to offer substantial justification for the objection only responses to requests for information and documents that were relevant to Plaintiff's claims, and failed to meet and confer in good faith with Defendant as requested on issues raised in the Motion.

As such, the Court compels Plaintiff to serve further responses to the RFPDs, specifically to Request Nos. 1, 2, 3, 4, 5, 6, 30, and 31, and to produce any responsive documents within 20 days of this Court's Order. However, objections are not waived as Plaintiff timely asserted objections Plaintiff found appropriate so that these would not be later waived. If Plaintiff continues to assert such objections to any responsive documents on the basis of privilege or confidentiality, those documents shall be identified individually as withheld on the basis of said privilege or confidentiality in a privilege log which is to be served on Defendant along with the further responses. The Court will also award sanctions as requested.

CONCLUSION

Defendant's motion to compel further responses to the RFPDs is **GRANTED**. Further responses to Request Nos. 1, 2, 3, 4, 5, 6, 30, and 31 and any responsive documents or a privilege log shall be served within 20 days of this Court's order. Sanctions are granted in the amount of $2,860.00 as requested. Unless oral argument is requested, the Court shall sign the proposed order lodged with the Motion.

3. 24CV06818, Renn v. General Motors, LLC

Plaintiff Randall J. Renn ("Plaintiff") motion for attorney's fees and costs is **GRANTED** for the reduced amount of **$34,217.50 for attorneys' fees** and for the requested amount of **$4,261.38 for costs** against Defendant General Motors, LLC ("GM" or "Defendant"). Objections to evidence are addressed below.

I. PROCEDURAL HISTORY

Plaintiff commenced this action against GM for claims brought under the Song-Beverly Consumer Warranty Act (the "Act") regarding a 2019 Chevrolet Bolt (the "Vehicle") that GM manufactured and distributed. (Motion, pp. 1-2.) On January 6, 2026, the Court entered Judgment pursuant to GM's offer to compromise pursuant to Code of Civil Procedure ("C.C.P.") section 998. (Judgment, 2:2-4.) The Judgment also stated that, "Plaintiff's attorney fees, expenses and costs that have been reasonably incurred pursuant to California Civil Code § 1794(d) may be determined by the Court via noticed motion. For purposes of any such motion, GM will agree that Plaintiff is the prevailing party." (*Id*. at ¶ 2.)

Pursuant to the Judgment and Civil Code section 1794(d), Plaintiff moves for fees and costs reasonably incurred as the prevailing party in this litigation. (Motion, 1:3-14.)

II. EVIDENTIARY OBJECTIONS

The Court rules as follows to Plaintiff's objections to the Declaration of Natalie Keshishian in support of GM's Opposition:

1. Objection No. 1 to Paragraph 4 is **OVERRULED**.
2. Objection No. 2 to Paragraph 5 is **OVERRULED**.
3. Objection No. 3 to Paragraph 7 is **OVERRULED**.
4. Objection No. 4 to Paragraph 8 is **OVERRULED**.
5. Objection No. 5 to Paragraph 9 is **OVERRULED**.
6. Objection No. 6 to Paragraph 10 is **OVERRULED**.
7. Objection No. 7 to Paragraph 11 is **OVERRULED**.
8. Objection No. 8 to Paragraph 13 is **OVERRULED**.
9. Objection No. 9 to Paragraph 14 is **OVERRULED**.
10. Objection No. 10 to Paragraph 15 is **OVERRULED**.
11. Objection No. 11 to Paragraph 16 is **OVERRULED**.
12. Objection Nos. 12 and 13 to Paragraph 17 are **OVERRULED**.

III. ANALYSIS

Legal Standard

Attorney's Fees

Under Code of Civil Procedure section 1032, attorney's fees are an allowable cost when authorized by contract, statute, or law. (C.C.P. § 1033.5(a)(10)(B).) In general, the "prevailing party" is entitled as a matter of right to recover costs of suit in any action or proceeding. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 606.)

Fees Under Song-Beverly Consumer Warranty Act

Per Civil Code section 1794(d), if the buyer prevails, they may recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.

Plaintiff's Fees Motion

Per Civil Code section 1794(d), Plaintiff's counsel requests attorney's fees and costs to be awarded as follows:

1. $34,217.50 for attorney's fees incurred and anticipated for this motion to Jospeh Kaufman & Associates based on Lodestar calculated rates of attorney fees between $385.00-$615.00 per hour dependent on associate or partner experience level and $200.00-$250.00 per hour for paralegal and legal assistant work. (Kaufman Decl., ¶ 23.)

2. $4,261.38 in costs and expenses. (Kaufman Decl., Exhibit 3, Memorandum of Costs.)

Plaintiff's counsel also seeks a Lodestar multiplier enhancement of 1.2 arguing that it is warranted based on the contingent risks presented in this litigation, Plaintiff's exceptional and favorable result in obtaining the Judgment, and because of the delay in payment for counsel's loan of his or her services. (Motion, pp. 9-11.) In sum, Plaintiff seeks an award of fees with multiplier for the total amount of $41,061.00 and costs of $4,261.38. (*Id*. at 12:6-7.)

<u>Opposition</u>

The Opposition argues that the fees motion is untimely under California Rules of Court ("C.R.C."), Rule 3.1702(b)(1) and *Hatlevig v. General Motors LLC* (2026) 118 Cal.App.5th 644, a motion for statutory attorney's fees must be filed and served within the time for filing a notice of appeal, which is 180 days after entry of judgment. (Opposition, pp. 6-7.) Even though the motion was timely filed, it was not served until after the 180-day deadline had already passed according to Plaintiff's proof of service. (Opposition, 7:5-12.) As such, GM argues that the motion is untimely and in violation of C.R.C., Rule 3.1072.

The Opposition also argues that the motion was served with insufficient notice because the notice of motion must be served at least 16 court days prior to the hearing, according to C.C.P. section 1005(b), plus two court days when served electronically per C.C.P. section 1010.6. (Opposition, 7:18-20.) Here, Plaintiff's proof of service states that the motion was served by personal service and electronically on July 7, 2026, which Defendant argues is several court days after the required deadline for electronic service. (*Id*. at 7:21-26.)

Finally, the Opposition argues that even if the motion is considered regardless of the procedural deficiencies, then the requested fees should be reduced to those fees actually and reasonably incurred, not anticipated or duplicative fees or fees based on excessive time spent on motions with templates. (Motion, pp. 8-11.) Furthermore, Defendant argues counsel's rates should be reduced to reasonable Sonoma County rates and no multiplier should be given. (*Id*. at pp. 11-13.) If the motion is considered, then the Opposition requests fees be reduced to $22,122.50 and costs be reduced to $3,382.74. (*Id*. at 15:2-6.)

<u>Reply</u>

The Reply requests an extension under C.R.C., Rule 3.1702(d), which states that "the trial judge may extend the time for filing a motion for attorney's fees in the absence of a stipulation or for a longer period than allowed by stipulation." (Reply, pp. 2-4.)

Otherwise, the Reply reaffirms the arguments made in the motion that the hourly rates requested are reasonable, the time expended on this litigation was reasonable, and the enhancements requested are appropriate. (*Id*. at pp. 4-10.)

<u>Application</u>

Under Rule 3.1702(d), the Court will grant relief to Plaintiff for serving the papers outside of the 180-day deadline because the actual motion was filed well within the deadline and the papers were personally and electronically served only a few days outside of the 180-day deadline due to Plaintiff's counsel's claimed mis-calendaring of the service deadline, but within the Court's usual 16 court day deadline for personal service of a notice of motion. As Defendants have had ample time to review the papers and timely submit a thorough opposition, the Court does not find prejudice has resulted from the 2-3 day delay of service outside of the 180-day deadline.

Based on the moving papers, the Court does find Plaintiff is entitled to attorney's fees per Civil Code section 1794(d), C.C.P. sections 1032 and 1033.5, and per the Court's Judgment designating Plaintiff as the prevailing party of this action for the purposes of a fees motion.

First, the Court does not find any reasonable basis to award the 1.2 multiplier requested because this action does not present any novel or complex issues that are any different from the ordinary issues and claims involved in other Song-Beverly actions litigated by Plaintiff's counsel's firm, which specializes in this practice area. The parties were able to reasonably settle their claims through a section 998 offer to compromise prior to trial.

Second, the Court finds the hours worked by counsel as well as the rates requested to be reasonable for counsel's partners, associates, and legal support staff. As such, the Court will award attorney's fees of $34,217.50 for fees incurred litigating this action and for this motion and $4,261.38 for costs incurred.

IV. CONCLUSION

Based on the foregoing, Plaintiff's motion for attorneys' fees is **GRANTED** for the reduced amount of **$34,217.50** for fees and **$4,261.38** for costs. Plaintiff shall submit a written order on the motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4. 25CV06484, Lynch v. 458 Fairgrounds Drive, LLC

Self-Represented Plaintiff Darlene B. Lynch's request for leave of Court to file and lodge "limited curative papers" to address procedural points raised in Defendant 458 Fairgrounds Drive, LLC's ("Defendant") Opposition to Plaintiff's Motion to Strike Defendant's Affirmative Defenses is **DENIED as moot**.

Plaintiff had filed a Motion to Strike Defendant's Affirmative Defenses on January 8, 2026. The hearing was set for April 17, 2026. Defendant opposed the motion on procedural grounds on April 6, 2026, and instead of filing a reply brief, Plaintiff had filed this request for leave to file curative papers regarding the Motion to Strike on April 14, 2026.

The Court issued a Tentative Ruling on the Motion to Strike and neither party timely requested to present oral argument nor made an appearance on the date of the hearing. (Minute Order dated April 17, 2026.) The Court thereafter signed and entered an Order Denying Plaintiff's Motion to Strike as untimely under Code of Civil Procedure section 435(d). Thus, this request to file "curative papers" on the Motion to Strike, which has already been ruled on, is moot.

5. 25CV08287, Riisgaard v. Benchmark Builders LLC

The hearing on Plaintiff Soren Riisgaard's unopposed motion to compel self-represented Defendant Nicholas R. Kimber to serve responses to Form Interrogatories, Set No. One, and Special Interrogatories, Set No. One (the "Interrogatories") is **CONTINUED** to **August 28, 2026**, at 3:00 P.M. in Department 17 to be heard along with the remaining two discovery motions Plaintiff filed against Defendant Kimber. Though Plaintiff's counsel submitted a declaration regarding meet-and-confer efforts with Plaintiff, it did not adequately demonstrate that the moving papers and notice of hearing date were delivered timely and properly to Defendant Kimber. No other proof of service was filed demonstrating that. Such proof shall be filed prior to the next hearing date, otherwise the Court will deny the motion.

6-7. 26CV01186, Lester v. Illia

Self-Represented Defendant Steven J. Illia ("Illia") demurs to each and every cause of action in Plaintiff Jeffrey F. Lester's ("Lester") Complaint. The demurrer is **OVERRULED**.

Illia's concurrent motion to strike the prayer for attorney's fees in the Complaint is **DENIED**.

I. PROCEDURAL HISTORY

The Complaint alleges that Illia failed to pay Lester for arborist services for an agreed upon price of $21,100.00. (Complaint, ¶¶ 1, 9.) Lester is a licensed and certified arborist who provides tree services. (*Id*. at ¶ 8.) Lester alleges he orally contracted with Illia to plant, trim, and remove trees, for which Illia would pay Lester on or before July 1, 2024. (*Id*. at ¶ 9.) Though Lester alleges he performed the tree services, Illia failed to pay him, so Lester now brings three claims against Illia for: (1) Breach of Oral Contract; (2) Quantum Meruit; and (3) Open Book Account. (*Id*. at ¶¶ 12-26.)

In Illia's declaration, he claims that in or around June 2023, he agreed to assist a friend named Breize with Lester, who was one of her home organizing business clients. Breize separately negotiated an arrangement with Lester to exchange Illia's time assisting Breize with various tasks on Lester's home organizing project. This included an agreement for Lester's tree services as an hour-for-hour trade, although Illia did not personally negotiate or agree to the terms with Lester. (Illia Decl., ¶¶ 3-4.) Illia received a text message from Lester on June 14, 2024, with a photograph of an itemized proposal dated July 2023, claiming he was owed $21,100.00. The proposal was only signed by Lester. (*Id*. at ¶ 6.) Lester requests that the Court not consider these facts as they do not appear on the face of the Complaint and were not requested to be judicially noticed.

Illia met and conferred via email correspondence with Lester's counsel regarding deficiencies found with the Complaint, but the parties did not reach a resolution on these issues. (Illia Decl., ¶¶ 11-14.) Lester's counsel argues that the meet and confer efforts were improper as he offered to have a phone conversation with Illia as required and Illia did not agree. (Opposition, pp. 2-3.) Illia now demurs to the Complaint and each cause of action, and also moves to strike portions of the Complaint. While Lester filed an Opposition, no reply brief has been filed.

II. DEMURRER

Legal Standard

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts, but the distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The burden of proving that there is a reasonable possibility to cure the defect is squarely on the party that filed the pleading, but if that burden is met and leave to amend is not granted, then that constitutes an abuse of discretion by the trial court. (*Ibid*.)

Demurrer to First Cause of Action for Breach of Oral Contract

The Complaint alleges that Lester and Illia had an oral agreement for tree services for the price of $21,100.00, which Illia failed to make payment on even though Lester did all, or substantially all, of the significant things that the oral agreement required of him. (Complaint, ¶¶ 12-17.)

The Demurrer argues that the alleged planting, trimming, and removing trees at a residential property all constitute "home improvement" under Business & Professions Code ("Bus. & Prof. Code") section 7151, which expressly includes "landscaping, fences, porches, garages…" as some of the types of services that may be considered "home improvement." (Demurrer, 3:26-28, 4:1-2.) Under Bus. & Prof. Code section 7159(d), a home improvement contract exceeding $500 "shall be in writing and signed by the parties to the contract prior to the commencement of work covered by the contract." Illia argues that, though Courts have ruled that oral contracts made in violation of section 7159 are not immediately "void," they are "voidable" depending on the factual context and the public policies involved. (*Hinerfeld-Ward, Inc. v. Lipian* (2010) 188 Cal.App.4th 86, 93.) Some relevant factual context and public policies to consider include: (1) how complex the home improvement project was; (2) whether the home improvement service was fully completed; (3) whether the homeowner was involved in negotiating the terms of the oral contract; and (4) whether the homeowner would be unjustly enriched if the contractor providing home improvement services were not allowed to recover. (*Id*. at pp. 94–95.) Based on this, Illia claims that as the homeowner he elects to void the oral contract. (Demurrer, 4:14-24.)

Lester alleges that the factual portion of Illia's declaration should not be considered because, at demurrer, it is only proper to consider the face of the pleading and any facts judicially noticed.

(Opposition, 3:15-21.) Lester argues that the Complaint states all of the elements required for an oral contract claim. (*Id*. at pp. 3-5.)

While the Court does agree that the factual context and public policy considerations in this action could ultimately lead to a determination that the oral contract is voidable under the *Lipian* case cited by Illia, the Court finds that Lester's allegations in the Complaint are sufficient to pass the pleadings stage at demurrer. As such, the Demurrer is **OVERRULED** as to this claim.

<u>Demurrer to Second Cause of Action for Quantum Meruit</u>

The Complaint alleges that Illia should pay Lester for the reasonable value of the tree services provided in the amount of $21,100.00. (Complaint, ¶¶ 18-22.)

C.C.P. section 339 states that, "an action upon a contract, obligation or liability not founded upon an instrument of writing" must be brought within two years. Illia argues that this quantum meruit claimed is barred because the Complaint failed to state when the services performed pursuant to the oral contract were completed. (Demurrer, pp. 4-5.)

Opposition argues that a valid claim for quantum meruit has been alleged because the Complaint states that Illia requested the tree services that Lester fully performed, the reasonable value of which was $21,100.00. (Opposition, 5:8-28.)

While the Demurrer argues that the Complaint fails to state when the services were performed, it does state that, under the oral agreement, Illia was to pay Lester on or before July 1, 2024. (Complaint, ¶ 9.) Otherwise, the Court finds the allegations in the Complaint sufficient for the pleadings stage. The Demurrer is **OVERRULED** as to this claim.

<u>Demurrer to Third Cause of Action for Open Book Account</u>

The Third Cause of Action alleges that Lester kept an account of the debits and credits involved in the financial transaction between Lester and Illia with respect to the tree services provided and that Illia owes Lester $21,100.00. (Complaint, ¶¶ 23-26.)

The Demurrer argues that this claim is a bare conclusion that restates a portion of the statutory language without alleging any supportive facts, such as alleging that a detailed statement exists containing a principal record of the transactions, what the debits and credits are for the oral contract, against whom and in favor of whom entries were made, etc. (Demurrer, pp. 5-6.)

Plaintiff argues that the Complaint has sufficiently pleaded that he kept an account of the debits and credits involved in the financial transaction between Illia and Lester and that, according to this account, Illia owes Lester $21,100.00. (Opposition, 6:2-10.) Plaintiff argues that this is sufficient for the purposes of a demurrer and not merely a "bare conclusion." (*Id*. at 6:11-18.)

The Court finds that, at the pleadings stage, Plaintiff is not yet required to meet an evidentiary burden to prove this claim but is required to allege all of the elements of an open book account claim, which the Complaint does sufficiently allege for the purposes of this Demurrer. As such, the Demurrer is also **OVERRULED** as to this claim.

III. MOTION TO STRIKE

The Court may strike a pleading that contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (C.C.P. §§ 435, 436(b).)

Illia moves to strike the prayer for relief for attorney's fees pursuant to California Civil Code section 1717.5. (Notice of Motion, 2:7-14.) Illia argues that, section 1717.5 provides for attorney's fees in an action on a contract based on a book account, but Plaintiff failed to plead that there was an open book account satisfactorily under C.C.P. section 337a. (Motion, pp. 2-4.) However, Illia argues that even if the section 1717.5 applies, the fees should be statutorily capped at the lesser of $960.00 or 25% of the principal amount claimed. (*Id*. at 4:8-18.)

For the same reasons argued in the Demurrer, Lester argues that the Open Book Account claim was properly pleaded in the Complaint. (Opposition, 3:20-28.) Lester also argues that section 1717.5(a)(2) was amended in 2025 and now allows for the lesser of $1,200.00 for goods, moneys, or services which were primarily for personal, family, or household purposes, or 25% of the principal obligation owing under the contract. (*Id*. at 4:1-14.)

The concurrently filed Demurrer was overruled as stated above as to all causes of action including the Open Book Account claim in the Complaint. As such, Lester may include the prayer for attorney fees under Civil Code section 1717.5, which does not have to be stated in an exact amount at this stage in the litigation. For these reasons, the Motion to Strike is **DENIED**.

IV. CONCLUSION

Based on the foregoing, the Demurrer is **OVERRULED** and the concurrently filed Motion to Strike is **DENIED**. Plaintiff Lester shall submit a written order on Defendant Illia's motions to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

Matter continued from Friday 7/24/26 for Oral Argument

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.) Sillaci, 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. <u>The Alleged Statements at Issue</u>

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.)

[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 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.)

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 Sillaci, 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." (Sillaci 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 in 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 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).