

"Civility allows for zealous representation, reduces clients' costs, better advances clients' interests, reduces stress, increases professional satisfaction, and promotes effective conflict resolution. These guidelines foster the civility and professionalism that are hallmarks of the best traditions of the legal profession."

OCBA Civility Guidelines

**TENTATIVE RULINGS**  
**Judge Kimberly Knill, Dept. C31**

- **The court encourages remote appearances to save time, reduce costs, and increase public safety.** Go to [www.occourts.org/media-relations/civil.html](http://www.occourts.org/media-relations/civil.html) and click on the blue box that says, "Click here to appear/check-in for Civil Small Claims/Limited/Unlimited/Complex remote proceedings." Navigate to Department C31 Judge Kimberly Knill.
- All hearings are open to the public.
- If you desire a transcript of the proceedings, you **must** provide your court reporter (unless you have a fee waiver and request a court reporter in advance).
- Call the other side. If **everyone** submits to the tentative ruling, call the clerk at 657-622-5231. Otherwise, the court may rule differently at the hearing. (See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

**No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.**

**HEARING DATE: Friday, 4/26/2024 10:00 AM**

#	Case Name	Tentative
1	<b>Neal vs An Individual 30-2022- 01297588- CU-PO-CJC</b>	<b>Doe Defendant's Motion for Terminating Sanctions and Request for Monetary Sanctions</b>  Defendant DOE, aka James Neal's unopposed Motion for Terminating Sanctions against Plaintiff Virgil Neal is GRANTED.  Plaintiff failed to obey court orders to provide responses to DOE's three sets of discovery: Form Interrogatories, Set One; Special Interrogatories, Set One; and Request for Production of Documents, Set One. He has further failed to pay previously ordered sanctions. Plaintiff has ghosted the court and opposing counsel. He has not appeared since filing his complaint on 12/16/2022.  The court declines to award additional monetary sanctions. If defendant wishes a judgment against plaintiff for previously imposed monetary sanctions, defendant to submit a proposed judgment within 5 days. If no judgment is submitted within 5 days, the court will order the case dismissed. (Code Civ. Proc., § 2023.020, subd. (d)(3).)

		Clerk to give notice.
2	<p><b>Balboa Capital Corp. vs Architectural Mill Work and Stairs 30-2022-01287158-CU-CL-CJC</b></p>	<p><b>Defendant Architectural Mill Work and Stairs’ Motion to be Relieved from Deemed Admissions</b></p> <p>Defendant Architectural Millwork and Stairs, Inc.’s Motion to be Relieved from Deemed Admissions is DENIED.</p> <p>After a deemed admitted order has been entered, the party in default may seek relief from waiver by filing a motion to withdraw or amend the deemed admission under Code of Civil Procedure section 2033.300. (<i>Wilcox v. Birtwhistle</i> (1999) 21 Cal.4th 973, 979.) The party seeking relief must show the admission was the result of mistake, inadvertence or excusable neglect. (Code Civ. Proc., § 2033.300, subd. (b).)</p> <p>Here, Plaintiff filed and properly served the motion to deem the RFAs admitted on June 7, 2023, and the motion was heard on September 8, 2023. Defendant does not deny receiving the motion and offers no explanation why it did not file an opposition. Defendant also offers no explanation why the instant motion was not filed until after the discovery motions were granted and a motion for summary judgment filed. On this record, Defendant has not established mistake, inadvertence, or excusable neglect.</p> <p>Plaintiff to give notice.</p> <p><b>Defendant Daniel Joel Videen’s Motion to be Relieved from Deemed Admissions</b></p> <p>Defendant Joel Videen’s Motion to be Relieved from Deemed Admissions is DENIED.</p> <p>After a deemed admitted order has been entered, the party in default may seek relief from waiver by filing a motion to withdraw or amend the deemed admission under Code of Civil Procedure section 2033.300. (<i>Wilcox v. Birtwhistle</i> (1999) 21 Cal.4th 973, 979.) The party seeking relief must show the admission was the result of mistake, inadvertence or excusable neglect. (Code Civ. Proc., § 2033.300, subd. (b).)</p> <p>Here, Plaintiff filed and properly served the motion to deem the RFAs admitted on June 7, 2023, and the motion was heard on September 8, 2023. Defendant does not deny receiving the motion and offers no explanation why it did not file an opposition. Defendant also offers no explanation why the instant motion was not filed until after the discovery motions were granted and a motion for summary judgment filed. On this record, Defendant has not established mistake, inadvertence, or excusable neglect.</p> <p>Plaintiff to give notice.</p>

3	<b>Elliot vs Bassaly #1 LLC</b> <b>30-2023-01357944-CU-BC-CJC</b>	<b>Plaintiff's Application for Right to Attach Order/ Writ of Attachment</b>  Continued at parties' request.
6	<b>Zabanavar vs Jaguar Land Rover North America, LLC</b> <b>30-2023-01320716-CU-BC-CJC</b>	<b>Plaintiff's Motion to Compel Responses to Plaintiff's Requests for Production of Documents, Set One, and Request for Monetary Sanctions</b>  Plaintiff, Payam Zabanavar's motion to compel further responses to request for production of documents (RFP), set one, and for monetary sanctions against defendant, Jaguar Land Rover North America, LLC (JLRNA), is DENIED.  The parties have not submitted a separate statement as to the first or second supplemental responses, and the parties have not met and conferred regarding the second supplemental responses.  The only RFPs that have not been supplemented and remain in dispute are: Nos. 22, 23, 24, 25, 26, 27, 42, 43, 66, 67, 111, 112, 115, 117, 118, 129, and 130.  RFP Nos. 22, 23, 24, 25, 26, 27, 42, 43, 111, and 112: JLRNA has stated it does not have possession, custody, or control of the requested documents. The response is sufficient.  RFP Nos. 66 and 67, 115, 117, and 118: The discovery requests are not limited as to time and scope and therefore impose an undue burden on JLRNA.  RFP Nos. 129 and 130: The discovery requests are not limited as to time and scope, and therefore impose an undue burden on JLRNA. The requests are also vague and ambiguous as to the meaning of "performance standards."  Defendant to give notice.
7	<b>Haining vs Gratitude Lodge LLC</b> <b>30-2023-01340666-CU-PO-CJC</b>	<b>Defendant's Demurrer to Complaint</b>  Defendant's Demurrer is SUSTAINED with 10 days leave to amend. The court will allow plaintiffs <b>one opportunity</b> to attempt to amend the complaint with facts sufficient to establish Defendant owed Plaintiffs a duty.  There is no duty to prevent harm to third persons absent a special relationship. ( <i>Regents of Univ. of Calif. v. Sup.Ct.</i> (2018) 4 Cal.5th 607, 663-664.) Plaintiff has not alleged a legally recognized special relationship between Defendant and Lehr which would create a duty to control Lehr. There is no authority which imposes a duty upon residential rehabilitation facilities to control residents. (See <i>Rice v. Center Point, Inc.</i> (2007) 154 Cal.App.4th 949; <i>Cardenas v.</i>

		<p><i>Eggleston Youth Ctr.</i> (1987) 193 Cal.App.3d 331; <i>Beauchene v. Synanon Found., Inc.</i> (1979) 88 Cal.App.3d 342.)</p> <p>Plaintiffs are ordered to file a red-lined and clean version of the amended complaint.</p> <p>Defendant to give notice.</p>
<p><b>8</b></p>	<p><b>Jacobson vs LaVine &amp; Associates CPA, Inc. 30-2022-01269337-CU-RI-CJC</b></p>	<p><b>Defendant Larry D. Vince’s Demurrer To Third Amended Complaint</b></p> <p>Defendant Larry D. Vince’s demurrer to third amended complaint (TAC) is SUSTAINED without leave to amend.</p> <p>Plaintiffs’ Request for Judicial Notice is GRANTED.</p> <p>Defendant demurs to the first cause of action for aiding and abetting breach of fiduciary duty, second cause of action for aiding and abetting breach of trust, fourth cause of action for fraud and deceit, and fifth cause of action for unfair business practices.</p> <p>Defendant Vince is an attorney who allegedly assisted Defendant Jeffrey Jacobson in breaching fiduciary duties related to “breaking” the family trust in 2002 and transferring its assets to Jeffrey, including preparation of transfer documents. (TAC, ¶¶ 16, 83-99.) Plaintiffs allege they learned of the scheme after receiving a 20,000-page document production in the Daniel Jacobson case (2018-00975081) in July 2020. (TAC, ¶ 55.) They allege Jeffrey wrongfully sold the Gladys Factory and received the proceeds of \$600,000 in 2006. (TAC, ¶ 44.)</p> <p>As to Defendant Vince, the notable additions in the TAC are fleshed out allegations regarding Vince’s handling of the Jacobson Trust (¶¶ 83-99), including withholding certain information about the terms of the Trust when asking Plaintiffs to sign documents that transferred control of the Trust to Jeffrey, and the addition of a fourth cause of action for fraud (¶¶ 179-181).</p> <p>Plaintiffs’ claims against Defendant Vince are barred by the one-year statute of limitations in Code of Civil Procedure section 340.6, subdivision (a). Plaintiffs contend section 340.6 does not apply because their claims are not based on the performance of professional services under <i>Lee v. Hanley</i> (2015) 61 Cal.4th 1225, 1234. However, Plaintiffs’ claims implicate Defendant’s professional duty to employ reasonable skill, prudence, and diligence in representing Jeffrey Jacobson, distinguishable from the claims in <i>Lee</i> which were incidental or ancillary to the provision of professional services itself. (<i>Connolly v. Bornstein</i> (2019) 33 Cal.App.5th 783, 794-796 [malicious prosecution claims governed by section 340.6].)</p>

		<p>Plaintiffs' claim under Business and Professions Code section 17200 is also governed by section 340.6. (<i>Foxen v. Carpenter</i> (2016) 6 Cal.App.5th 284, 296.)</p> <p>Applying section 340.6, subdivision (a) here, Plaintiffs' causes of action against Defendant Vince are untimely. Construing the TAC in the light most favorable to Plaintiffs, they allege Defendant Vince's wrongful acts occurred in 2002, resulting in actual injury to Plaintiffs when Jeffrey wrongfully disposed of trust assets in 2006. Even assuming Defendant's wrongful conduct was not discovered until July 2020 when documents were produced in the related case, Plaintiffs did not file this lawsuit until approximately two years later. Plaintiffs have not alleged facts supporting a timely claim against Defendant Vince under any provision of section 340.6.</p> <p>Plaintiffs' fourth cause of action for fraud and deceit was not alleged in the Second Amended Complaint. Plaintiff added the cause of action against Defendant after the Court sustained Defendants' demurrer to the SAC without leave of court. (See <i>Harris v. Wachovia Mortgage, FSB</i> (2010) 185 Cal.App.4th 1018, 1023 [following order sustaining a demurrer or a motion for judgment on the pleadings with leave to amend, plaintiff may amend complaint only as authorized by the order].)</p> <p>Defendant Vince to give notice.</p> <p><b>Defendant Larry D. Vince's Motion to Strike Portions of Third Amended Complaint</b></p> <p>Defendant Larry D. Vince's Motion to Strike Portions of Plaintiffs' Third Amended Complaint is MOOT.</p> <p>Defendant Vince to give notice.</p>
<p><b>9</b></p>	<p><b>Semaan vs Mosier 30-2023-01352827-CU-PO-CJC</b></p>	<p><b>Defendants' Special Motion to Strike Complaint (Anti-Slapp)</b></p> <p>Defendants Robert P. Mosier and Mosier &amp; Company, Inc.'s motion to strike the entire Complaint filed by Plaintiffs, Simon Semaan, Pierrette Semaan, Mia Semaan, Simon Semaan, Jr., Melissa Semaan, a minor by and through her Guardian Ad Litem Pierrette Semaan, and Gilberts Rizallah is GRANTED.</p> <p>Plaintiffs' request for Judicial Notice is GRANTED. (Evid. Code § 452, subds. (d), (h).)</p> <p>"Litigation of an anti-SLAPP motion involves a two-step process. First, the moving defendant bears the burden of establishing that the challenged allegations or claims arise from protected activity in which the defendant has engaged. Second, for each claim that does arise from protected activity, the plaintiff must show the claim has at least minimal merit. If the plaintiff cannot make this showing,</p>

the court will strike the claim.” (*Bonni v. St. Joseph Health Sys.* (2021) 11 Cal.5th 995, 1009 (*Bonni*) (cleaned up).)

First Step – Protected Activity:

“At this first step, courts are to consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability. The defendant’s burden is to identify what acts each challenged claim rests on and to show how those acts are protected under a statutorily defined category of protected activity. (*Bonni, supra*, 11 Cal.5th at p. 1009 (cleaned up).)

“The anti-SLAPP statute identifies four categories of protected activity. (Code Civ. Proc., § 425.16, subd. (e)(1)-(4).)” (*Bonni, supra*, 11 Cal.5th at p. 1009.) Defendants move under section 425.16, subdivisions (e)(1) and (e)(2).

As relevant here, section 425.16 states: “ ‘act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue’ includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law . . . .”

Defendants seek to strike the entire Complaint which alleges a sole cause of action for breach of fiduciary duty.

Plaintiffs’ claim for breach of fiduciary duty arises from Defendants’ alleged actions in a criminal case filed by the State of California against Simon Semaan on 9-8-21, in which defendant Robert P. Mosier of Mosier & Company, Inc. was appointed as a receiver. (Complaint, ¶¶ 12, 13.) Plaintiffs allege on 12-7-21 the court in the criminal case ordered Defendants to liquidate TDA stock holdings, however, Defendants did not contact TDA until ten (10) days later on 12-17-21, despite concerns the underlying stock holdings were subject to potential losses. (Complaint, ¶ 24.) Defendants further failed to act for forty-nine (49) days from the date of the Court’s 12-7-21 order to the filing of receiver’s petition on 1-25-22. (*Ibid.*) The delays caused the stocks to not be liquidated before market fluctuation caused a loss in their value and damaged Plaintiffs.

The alleged failure of Defendants to timely act and the statements/communications made to TDA were acts performed within Defendants’ course of appointment as a receiver in the criminal case. Therefore, Defendants’ acts constitute protected activity within the anti-SLAPP statute.

Second Step – Probability Of Prevailing:

“If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. We have described this second step as a summary-judgment-like procedure. The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff’s evidence as true, and evaluates the defendant’s showing only to determine if it defeats the plaintiff’s claim as a matter of law. Claims with the requisite minimal merit may proceed.” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384–85 (*Baral*) (cleaned up).)

Defendants contend Plaintiffs’ claims are not legally sufficient because the claims are: (1) barred by the litigation privilege; and (2) subject to quasi-judicial immunity.

First, the claims asserted by Plaintiffs are covered by the litigation privilege.

“A plaintiff cannot establish a probability of prevailing if the litigation privilege precludes the defendant’s liability on the claim.” (*Fremont Reorganizing Corp. v. Faigin* (2011) 198 Cal.App.4th 1153, 1172.) The litigation privilege is “relevant to the second step in the anti-SLAPP analysis in that it may present a substantive defense a plaintiff must overcome to demonstrate a probability of prevailing.” (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 323.) “The litigation privilege is an absolute privilege, and it bars all tort causes of action except a claim of malicious prosecution.” (*Id.* at p. 322 (cleaned up).) The “burden of showing that the litigation privilege applies” is on the defendant. (*Optional Cap., Inc. v. Akin Gump Strauss, Hauer & Feld LLP* (2017) 18 Cal.App.5th 95, 118.)

The litigation privilege is defined in Civil Code section 47, subdivision (b) (*Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal.App.4th 793, 814) and provides any publication or broadcast made in any judicial proceeding or other official proceeding authorized by law is privileged. (Civ. Code, § 47, subd.(b).) “The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action.” (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.)

The litigation privilege “protects only against *communicative* acts and not against *noncommunicative* acts. Because the litigation privilege protects only publications and communications, a threshold issue in determining the applicability of the privilege is

whether the defendant's conduct was communicative or noncommunicative. However, if the gravamen of the action is communicative, the litigation privilege extends to noncommunicative acts that are necessarily related to the communicative conduct . . . . Stated another way, unless it is demonstrated that an independent, noncommunicative, wrongful act was the gravamen of the action, the litigation privilege applies." (*Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948 956-957 (cleaned up).)

Here, Plaintiffs' injury is based on Defendants' communicative conduct as alleged in paragraph 24 of the Complaint. Defendants' failure to contact TDA until 10 days after the court ordered Defendants to liquidate the TDA account stock holdings is communicative conduct. Plaintiffs' claim is also based on statements/communications between Defendants and TDA which, again, is communicative conduct.

Second, the claims asserted by Plaintiffs are covered by the quasi-judicial immunity.

"Under the concept of 'quasi-judicial immunity,' California courts have extended absolute judicial immunity to persons other than judges if those persons act in a judicial or quasi-judicial capacity." (*Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 852-853 (*Howard*)). "A first class of persons entitled to quasi-judicial immunity includes persons who perform functions normally performed by a judge, or who act in a judicial or quasi-judicial capacity." (*Holt v. Brock* (2022) 85 Cal.App.5th 611, 621 (*Holt*)). "A second class of persons entitled to quasi-judicial immunity includes persons who function apart from the courts but are engaged in neutral dispute resolution." (*Id.* at p. 622.) "A third class of persons entitled to quasi-judicial immunity includes persons connected to the judicial process who are not public officials, arbitrators, or referees but who serve functions integral to the judicial process and act as arms of the court. This class includes (1) persons appointed by the courts for their expertise, such as mediators, guardians ad litem, therapists, ***receivers***, Probate Code court investigators, custody evaluators, and bankruptcy trustees; and (2) persons not appointed by the courts but whose work product comes into the judicial process to be used by the courts, such as probation officers who prepare presentencing reports and social workers and psychiatrists involved in terminating parental rights." (*Id.* at p. 622 (emphasis added) (citation omitted).)

"When judicial immunity is extended to officials other than judges, it is because their judgments are 'functionally comparable' to those of judges—that is, because they, too, 'exercise a discretionary



judgment' as a part of their function." (*Holt, supra*, 85 Cal.App.5th at p. 623.)

Here, Defendants were appointed by the court as a receiver to liquidate all stock holdings into cash. (Complaint, ¶ 15, Ex. B.) The court vested discretionary authority in Defendants by giving Defendants "exclusive control and signing authority over the IRA listed in the complaint" and ordering Defendants to liquidate the stock "as soon as practicable." (*Id.*) Further, the order by not providing specifically how Defendants were to carry out the Court's order vested discretionary authority in Defendants. Therefore, Defendants fall under the third class of persons entitled to quasi-judicial immunity. Without immunity, persons like Defendants who are asked to perform a discretionary function on behalf of the court "will be reluctant to accept court appointments or provide work product for the courts' use. Additionally, the threat of civil liability may affect the manner in which they perform their jobs." (*Howard, supra*, 222 Cal.App.3d at p. 857.)

To the extent Plaintiffs argue a receiver may not be immune from allegations of theft and slander (*New Alaska Development Corp. v. Guetschow* (9th Cir. 1989) 869 F.2d 1298, 1303), here, there is no allegation Defendants stole or slandered Plaintiffs. All other cases relied upon by Plaintiffs to assert receiver liability pre-date the anti-SLAPP statute enacted in 1992 or rely on case law predating the anti-SLAPP statute; non arises in the context of an anti-SLAPP motion.

The court orders the case DISMISSED.

Clerk to give notice.