TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, February 6, 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. 25CV04600, Fitzpatrick v. Direct Action Everywhere SF Bay Area

Defendants Direct Action Everywhere and Direct Action Everywhere SF Bay Area Chapter ("Defendants") specially move to strike (the "anti-SLAPP") the entire First Amended Complaint ("FAC") filed by Plaintiffs Scott Fitzpatrick ("Fitzpatrick") and Perdue Foods, LLC ("Perdue")(doing business as Petaluma Poultry), or in the alternative move to strike portions of the FAC in the First, Second, Third, and Fourth Causes of Action. The anti-SLAPP is **DENIED** as to the full First Amended Complaint, and specifically the Third and Fourth causes of action, per Code of Civil Procedure ("C.C.P.") section 425.16. Defendants' motion is **GRANTED** as to the First and Second causes of action. Plaintiffs' requests for judicial notice are **GRANTED**. Defendants' five objections to evidence are **OVERRULED**.

I. PROCEDURAL HISTORY

Plaintiffs commenced this action for preliminary and permanent injunction seeking to protect Plaintiffs and Plaintiff Fitzpatrick's family from ongoing harassment from Defendants, who are animal rights activists that Plaintiffs allege employ "aggressive, frightening, and often illegal tactics known as 'direct action' to advance their fanatical belief in 'animal personhood.'" (FAC, ¶ 1.) Defendants are charitable nonprofit advocacy organizations, run by a three-person board, which have chapters that

independently and regularly organize events and protests to promote animal rights. (Anti-SLAPP, 8:13-28.) Defendants claim that they believe illegal animal cruelty is occurring at Plaintiffs' poultry farm and are trying to inform consumers about such practices as well as advocating for Plaintiffs to improve or change these practices. (*Id*. at 9:1-9.) Some of Defendants' protests took place on the sidewalk directly outside of Fitzpatrick's residence with graphic images and loud chanting on megaphones. Plaintiffs brought this action in response. (*Ibid*.; Fitzpatrick Decl., ¶¶ 1-20.) Plaintiffs lodged the following video and audio evidence:

1. A video of a protestor outside of Fitzpatrick's home holding a sign up that states "Scott Fitzpatrick Stop Animal Cruelty" while chanting on a megaphone "chickens don't want to be slaughtered" and "chickens deserve medical care." (Swaney Decl., Exhibit Q.)

2. An almost 4 minute video of a protestor, identified by Plaintiffs as Defendants' president, outside of Fitzpatrick's home who directly names Plaintiffs, graphically accuses Plaintiffs of poultry abuse, likens Perdue to Tyson, and threatens to continue loudly protesting until Plaintiffs give in to their demands of changing Perdue's poultry farming practices even though neighbors have lodged noise complaints with them (Swaney Decl., Exhibit R.)

3. A video of protestors outside of Fitzpatrick's home holding a sign that states "Perdue Abuse.com" while chanting various things on megaphones and arguing with what appears to be one of Fitzpatrick's neighbors who is complaining about the noise. (Swaney Decl., Exhibit S.)

4. A video of a protestor outside of Fitzpatrick's home chanting on a megaphone "Scott Fitzpatrick has death on his hands" and "Scott Fitzpatrick has blood on his hands." (Swaney Decl., Exhibit U.)

5. A video of 20 or so protestors outside of Fitzpatrick's home holding up signs and images of injured chickens as well as a large image of Fitzpatrick's face with the words "I torture chickens" in bold while loudly shouting various poultry abuse-related chants on megaphones. (Swaney Decl., Exhibit V.)

6. A video at a different angle of the same 20 or so protestors outside of Fitzpatrick's home holding up signs and images of injured chickens while loudly shouting various poultry abuse-related chants on megaphones. (Swaney Decl., Exhibit X.)

7. Another video of the same 20 or so protestors outside of Fitzpatrick's home holding up signs and images of injured chickens while loudly shouting various poultry abuse-related chants on megaphones. (Fitzpatrick Decl., Exhibit 5.)

8. An anonymous caller's voicemail from August 4, 2025, who referred to Zoe Rosenberg's criminal case and directed a series of explicit threats and abuses towards Plaintiffs. (Fitzpatrick Decl., Exhibit 6.)

The above conduct has occurred on at least three occasions in front of Fitzpatrick's residence. (FAC, ¶ 4.) Plaintiffs claim that the alleged "harassment and intimidation" is not isolated, but rather a part of an ongoing and escalating course of conduct beginning in 2018 as a part of Defendants' campaign for "animal liberation." (FAC, ¶ 2.) Fitzpatrick alleges that this conduct has caused severe anxiety, sleeplessness, and mental anguish to his pregnant wife and to himself, which can aggravate his own

existing medical condition. (*Id*. at ¶ 5.) Plaintiffs did not commence this action to enjoin Defendants from their lawful demonstrations outside of Perdue's or Petaluma Poultry's places of business, but rather to enjoin the repeated and ongoing demonstrations at Fitzpatrick's private residence that have resulted in his family fearing for their safety. (*Id*. at ¶ 8.)

The FAC alleges causes of action for: (1) Harassment under CCP § 527.6; (2) Intentional Infliction of Emotional Distress (IIED); (3) Violation of California Constitutional Right to Privacy; and (4) Public Nuisance. (FAC, ¶¶ 65-101.) Defendants' anti-SLAPP motion is to the entire FAC, or to alternatively specially strike paragraphs 65 to 101 in the FAC that contain the First, Second, Third, and Fourth Causes of Action. (Anti-SLAPP, p. 2:2-21.) Plaintiffs oppose the anti-SLAPP and Defendants submitted a reply brief. The parties' objections and request for judicial notice are also analyzed below.

II. REQUESTS FOR JUDICIAL NOTICE

Per Evidence Code section 452 and 453, the Court **GRANTS** Plaintiffs request judicial notice of the following court records from the related case *Perdue Foods LLC v. Direct Action Everywhere* (Case No. 25CV01985):

1. Order Granting Plaintiffs' *Ex Parte* Application for TRO and OSC RE: Preliminary Injunction issued on April 11, 2025;

2. Order Granting Plaintiffs' Motion for Preliminary Injunction issued on September 8, 2025; and

3. Order After Hearing on Plaintiffs' Order to Show Cause for Preliminary Injunction and Defendant's Anti-SLAPP Motion issued on November 20, 2025.

The Court does not take judicial notice of these matters for any precedential value or establishment of factual finding by the prior court.

III. EVIDENTIARY OBJECTIONS

As to the Declaration of Plaintiff Fitzpatrick, Defendants' four objections are **OVERRULED**. As to the Declaration of Steven Swaney, Defendants' objection to Exhibit S(t) is **OVERRULED**.

IV. ANALYSIS

Special Motion to Strike ("Anti-SLAPP")

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 ("*Briggs*").) 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.)

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).)

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.)

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).) There is no requirement of finding an intent to chill free speech, or actual chilling of free speech. (*Equilon*, 29 Cal.4th 58-59.)

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 (mandatory for prevailing plaintiff if court finds motion to be frivolous).)

Defendants' Anti-SLAPP Motion

First Prong: Protected Speech

Defendants argue that as Plaintiffs' causes of action arise from public protests at Fitzpatrick's residence, which Defendants claim are in furtherance of their right of petition or free speech under the U.S. and California Constitutions, Defendants argue that C.C.P. section 425.16(e)(4) is satisfied because the public protests were made in connection with an issue of public interest and in a public forum. (Anti-SLAPP, pp. 10-12.)

Second Prong: Probability of Prevailing

Defendants argue that Plaintiffs cannot establish their burden of showing that there is a probability of prevailing on any of their claims because Defendants' First Amendment rights protect public protest. (Anti-SLAPP, pp. 12-16.)

Defendants argue that the First Cause of Action for Harassment does not have a probability of prevailing because the claim was improperly filed and because Defendants are not natural persons. (*Id*. at pp. 16-18.)

As to the Second Cause of Action for Intentional Infliction of Emotional Distress, Defendants argue that it is barred by the First Amendment and that it was improperly pleaded. (*Id.* at 18:11-26, 19:1-5.)

Defendants argue that the Third Cause of Action for Violation of the California Constitution's right to privacy will not prevail because Fitzpatrick does not have a privacy interest in public sidewalks near his home or of an image of him published online. (*Id*. at 19:6-27, 20:1-3.)

Finally, Defendants argue that the Fourth Cause of Action for Public Nuisance does not have a probability of prevailing because it is barred by the First Amendment. (*Id*. at 20:4-18.)

Plaintiffs' Opposition

First Prong: Protected Speech

Plaintiffs argue that their claims do not arise from a constitutionally protected activity because, while peaceful protest is a protected activity, persistently assembling on the curtilage[1] of a person's private residence is not protected by the First Amendment. (Opposition, pp. 6-9.) Furthermore, Defendants' demonstrations at Fitzpatrick's residence do not implicate a public issue because Defendants

[1] The Court, in summarizing Plaintiffs' arguments, repeats their apparently inaccurate use of the term curtilage. There does not appear to be any evidence that Defendants actually passed onto Fitzpatrick's property. The opposition concedes that they were "inches from Mr. Fitzpatrick's property line" in describing the "curtilage". Opposition, pg. 4:17-19. The evidence shows that Defendants primarily protested from a shallow bar ditch beside the road.

failed to show how the repeated mass gatherings at Plaintiff Fitzpatrick's residence contributed to the public debate regarding animal rights. (*Id*. at pp. 9-10.)

Second Prong: Probability of Prevailing

Plaintiffs argue that there is a probability of prevailing on the First Cause of Action for Harassment because the Court already rejected Defendants' procedural argument in the related action by holding that C.C.P. section 527.6 does not preclude a petitioner from using other existing civil remedies even if there is an existing process outlined there to bring a harassment claim. (Opposition, 12:9-14; Request for Judicial Notice, Exhibit 1.) Furthermore, Plaintiffs argue that it does not matter that Defendants are not natural persons, because Plaintiffs are not seeking relief under this cause of action per C.C.P. section 527.6, but rather 527 generally, and such an argument is not a basis for granting an anti-SLAPP motion. (Opposition, 12:15-22.) Finally, Plaintiffs contend that there is no legitimate purpose in repeatedly congregating outside of Fitzpatrick's home. (*Id*. at 12:23-28, 13:1-12.)

As for the Second Cause of Action for IIED, Plaintiffs argue that this cause has a probability of prevailing because Perdue is seeking relief on behalf of its employees, specifically Fitzpatrick, and because the facts in the cases relied upon by Defendants in the anti-SLAPP are distinguishable from the facts in this action due to the repeated protests with megaphones on the curtilage directly in front of Fitzpatrick's home where the protestors intended to be seen and heard by all of the residents in the immediate area besides and inside of Fitzpatrick's home. (Opposition, 13:13-28, 14:1-9.)

Regarding the Third Cause of Action for invasion of privacy, Plaintiffs argue that it cannot be reasonably disputed that Plaintiff Fitzpatrick had a legally protected privacy interest in his home or that the targeted residential demonstrations intruded on Plaintiff Fitzpatrick's residential privacy or quiet enjoyment of his home. (*Id*. at 14:10-28, 15:1-15.)

Finally, Plaintiffs argue that the FAC makes a prima facie showing of Public Nuisance because Defendants conduct interfered with Fitzpatrick's and his neighbors' peaceful enjoyment of their homes and caused Fitzpatrick and his family emotional distress even when they were not present. (*Id*. at 15:16-26.) Furthermore, the Court has already held that such a claim against Defendants has more than minimal merit in the related action. (*Ibid*.)

Reply

Defendants reaffirm the arguments made in the anti-SLAPP motion and re-emphasize that, should the Court not want to grant the motion against the entire FAC, then Defendants are alternatively requesting that each and every cause of action be separately stricken from the FAC. (pp. 2-11.)

Initial Oral Argument

The Court ordered the parties to appear at the hearing on January 23, 2026, with no tentative ruling issued. The parties were presented with the opportunity to make oral argument. Both parties reiterated many of the matters raised in the papers. Defendants argued that application of the test articulated in *FilmOn.com Inc v. DoubleVerify Inc.* (2019) 7 Cal.5th 133 ("*FilmOn*"), requires the conclusion that Defendants' alleged conduct is "protected activity" as contemplated by the Anti-SLAPP

statute. Particularly, Defendants point to the level of analogy to the facts contained in *Geiser v. Kuhns* (2022) 13 Cal.5th 1238 ("*Geiser*") to indicate that residential protests fall within the ambit of protected activity. Defendants argue that the conduct is clearly intended to promote public discourse and reach the public regarding the Defendants' philosophical issue.

Plaintiffs in turn argued that the video evidence of Defendants' conduct shows a particular animus directed at Fitzpatrick which exceeds protected activity. Plaintiffs are quick to point out that targeting residential protests and "forcing speech into the home" is not the most effective method for public discourse. (*See, e.g., Frisby v. Schultz* (1988) 487 U.S. 474, 486). While the Court questioned whether the media attention drawn by the videos implicated public discourse, Plaintiffs offered that the videos of the protests have since been removed from Defendants' website.

With regard to the second prong, Plaintiffs argued that the evidence shows each of their causes of action has a prima facie probability of prevailing. Particularly, Plaintiffs reiterated the briefed issues regarding residential rights to privacy. Plaintiffs argue that the evidence presented sufficiently shows the basis of each cause of action that the whole motion should be denied. Defendants argued that the causes of action "stretch" Plaintiffs rights beyond what is found in established cases.

Application

Protected Activity

In deciding whether Defendants' conduct is protected by the anti-SLAPP statute, the Court finds that *Geiser* and *FilmOn* are relevant guiding authority here. In *Geiser*, the Supreme Court of California applied the two-step inquiry articulated in *FilmOn* to determine whether the activity from which a lawsuit arises falls within section 425.16(e)(4)'s protection and stated that, "first, we ask what public issue or issues the challenged activity implicates, and second, we ask whether the challenged activity contributes to public discussion of any such issue." (*Geiser*, supra, 13 Cal.5th at p. 1243.) 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. (*Ibid*.)

Here, it is clear that the public issue implicated by Defendants' residential demonstrations was animal rights for poultry at Plaintiffs' poultry farms. Plaintiffs argue that Defendants have at times shown an intent to pressure Fitzpatrick to resign, rather than to enact any changes at the farming facility. To this end, the evidence appears mixed, showing Defendants both exerting pressure on Fitzpatrick to cut ties and for him to make changes in his capacity as an officer of Perdue. Regardless, subjective intent is not dispositive on the issue of *FilmOn*'s first step. (*Geiser, supra,* 13 Cal.5th at 1255 [plaintiff's subjective intent to regain their home did not mean it failed to raise implicated issues of public interest]). Animal welfare, even where it is only part of the intended change, appears to be an objective issue of public interest. Plaintiff's arguments regarding the diminishing return of such protests is unpersuasive. (*Frisby v. Schultz* (1988) 487 U.S. 474, 498 [Stephens, J., dissenting] ["I see little justification for allowing them to remain in front of his home and repeat it over and over…"]).

At *FilmOn*'s second step, Defendants must display that the conduct advanced public discourse. Defendants argue that the rural location is less relevant because they disseminated awareness of the protest through videos on their website. Plaintiffs were quick to point out that while Defendants had previously published the videos, those have since been taken down by Defendants. The Court finds the initial publication is indicative of the intent to further attention and public discourse on the issue of animal welfare. While the Court considers Plaintiffs' representation that the videos have since been removed, that alone does not appear dispositive on the issue of whether Defendants have "participated in, or furthered, the discourse that makes an issue one of public interest." *FilmOn.com , supra,* 7 Cal.5th at 151. The conduct here allegedly undertaken in defense of animal welfare clearly draws attention to the issues as promoted by Defendants and encourages a response by Plaintiffs in the public discourse. Defendants have sufficiently displayed their conduct meets *FilmOn*'s second step.

Defendants have shown that the underlying conduct is protected activity as contemplated by CCP § 425.16, and the analysis proceeds to the second step.

Probability of Prevailing

The burden thereafter shifts to Plaintiffs to display a prima facie probability of prevailing. Defendants have filed this motion asking the Court to strike the First Amended Complaint in totality but asking in the alternative that the Court strike each cause of action. Plaintiffs have four causes of action: civil harassment under CCP § 527.6, intentional infliction of emotional distress, public nuisance, and invasion of privacy.

To show a probability of prevailing based on an invasion of privacy, Plaintiff "must establish each of the following: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 39–40). There are two classes of privacy interests, "(1) interests in precluding the dissemination or misuse of sensitive and confidential information ('informational privacy'); and (2) interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference ('autonomy privacy')." *(Id*. at 35). Autonomous privacy interests may protect a person from intrusion by a private party. (*Id*. at 41). Determination of whether a privacy interest exists is an issue of law. (*Id*. at 40). However, whether Plaintiffs have a reasonable expectation of privacy is a mixed question of law and fact. (*Ibid*). Plaintiffs sufficiently show that Defendants' conduct intrudes into the home. The privacy of a home is subject to protection, even from constitutionally protected speech, without any applicable ordinance. (*Madsen v. Women's Health Center, Inc.* (1994) 512 U.S. 753, 775). Autonomy privacy is "an interest in freedom from observation in performing a function recognized by social norms as private." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 41). As to the seriousness of the privacy invasion, Plaintiffs have presented prima facie evidence sufficient to meet their burden under the Anti-SLAPP statue. Defendants' request to strike the entire First Amended Complaint is DENIED. Defendants' request to strike the Fourth cause of action is DENIED.

Similarly, public nuisance appears viable as a cause of action. "A public nuisance is 'one which affects at the same time an entire community or neighborhood, or any considerable number of persons,

although the extent of the annoyance or damage inflicted upon individuals may be unequal.'" (*Koll-Irvine Center Property Owners Assn. v. County of Orange* (1994) 24 Cal.App.4th 1036, 1040 quoting Civ. Code § 3480). Plaintiffs have shown the personal burden borne by Fitzpatrick and his family as a result of the ongoing protests, which are personally disruptive based on their targeted nature. Second, they show the effect on nearby property owners, who have found the conduct of Defendants disruptive to the tranquility of the home. These are the elements of public nuisance by a private plaintiff. As the court has already determined in issuing the injunction here, no less restrictive means of protecting Fitzpatrick's rights exist. Defendants are not persuasive that their conduct is incapable of being curtailed because it is protected. Courts maintain the power to craft remedies to invasive protected speech. (*Madsen v. Women's Health Center, Inc.* (1994) 512 U.S. 753, 775). The application of remedies here can meet constitutional requirements, and therefore Plaintiffs have shown a prima facie case that they may prevail on this cause of action. As to the Third cause of action, the motion is DENIED.

However, two of Plaintiffs causes of action appear to fail as a matter of law after a finding of protected activity in the first step. Intentional infliction of emotional distress requires Defendants to have engaged in outrageous conduct which extends beyond mere insults, indignities, threats, annoyances, petty oppressions or other trivialities. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051). Plaintiffs provide no case showing that outrageous conduct may extend to conduct which is constitutionally protected speech. Constitutionally protected speech does not appear, in this case, to "exceed all bounds of that usually tolerated in a civilized community." (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209). The conduct is not outrageous as a matter of law, and therefore the cause of action fails. Plaintiff's request to strike the First cause of action is GRANTED.

Defendants' conduct also fails to be harassment as a matter of law. Constitutionally protected activity cannot form the basis for a civil harassment petition. CCP § 527.6 (b)(1). The Court has already found the conduct constitutionally protected, and that conduct therefore cannot support the cause of action. (*See*, *Geiser v. Kuhns* (2022) 13 Cal.5th 1238, 1255). Plaintiff's request to strike the Second cause of action is GRANTED.

Defendants have prevailed on the motion in part, but state that they will request fees under a separate motion.

V. CONCLUSION

Defendants' anti-SLAPP motion is **DENIED** as to the entire First Amended Complaint, and specifically the Third and Fourth causes of action. Defendants' motion is **GRANTED** as to the First and Second causes of action. Plaintiffs' requests for judicial notice are **GRANTED**. Defendants' five objections to evidence are **OVERRULED**.

Defendants shall submit a written order on this motion consistent with this Court's tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

2. 25CV04537, Master Bango v. Farfalle LLC

Moving Defendants Farfalle LLC, Gnocchi LLC, Linguine LLC, Rigatoni LLC, Penne LLC, and Fettuccine LLC's motion to compel arbitration is **GRANTED**.

In the interest of judicial efficiency, the Court **ORDERS** that this case be consolidated with the related case (Case No. SCV-269767) pursuant to C.C.P. section 1048(a) as explained below.

I. FACTUAL AND PROCEDURAL HISTORY

On February 16, 2021, Plaintiff Master Bango (Buyer) and Pasta Farm (Seller) entered into the "Bulk Flower Purchase Agreement" which is a written contract for the purchase of cannabis (the "Agreement"). (RJN, Exhibit 1 [Exhibit A to Plaintiff's Complaint].) The Agreement contains an arbitration clause:

> 8 Disputes; Binding Arbitration. ALL DISPUTES ARISING OUT OF THIS AGREEMENT SHALL BE SUBMITTED TO JAMS FOR ARBITRATION PURSUANT TO ITS COMPREHENSIVE ARBITRATION RULES & PROCEDURES, INCLUDING ITS EXPEDITED ARBITRATION PROCEDURES, WHICH ARE HEREBY ELECTED. THE ARBITRATION SHALL BE SCHEDULED TO TAKE PLACE IN SACRAMENTO, CALIFORNIA, AND ALL OF THE FEES AND COSTS OF THE ARBITRATION SHALL BE SHARED EQUALLY BY THE PARTIES. ATTORNEY'S FEES MAY BE AWARDED TO THE PREVAILING PARTY AT THE DISCRETION OF THE ARBITRATOR, BUT THE ARBITRATOR SHALL HAVE NO POWER TO ALTER OR AMEND THIS AGREEMENT OR TO AWARD ANY RELIEF INCONSISTENT WITH THE PROVISIONS HEREIN OR UNAVAILABLE IN A COURT OF LAW.

(Agreement, p. 3, ¶ 8.)

The Parties disagree as to whether the Agreement between Plaintiff as Buyer and Pasta Farm as Seller is applicable to the nine Defendant entities (Farfalle LLC, Fettucine LLC, Gnocchi LLC, Linguine LLC, Penne LLC, Ravioli LLC, Rigatoni LLC, Spaghetti LLC, and Tortellini LLC) (together as "Pasta Defendants") which thereby would compel the Parties into arbitration.

On December 1, 2021, Spaghetti LLC, Ravioli LLC, and Tortellini LLC filed their complaint against Master Bango in this Court (Case No. SCV-269767). On March 16, 2024, Spaghetti, Ravioli, and Tortellini filed a motion to compel arbitration in that case where the Court found that while an enforceable arbitration agreement existed between the Parties, these three entities had waived their right to arbitration by litigating the case for two and a half years before bringing the motion to compel arbitration. (See Minute Orders, Dated September 11, 2024.)

On February 21, 2024, Master Bango filed a JAMS Demand for Arbitration Form against Linguine LLC for alleged overpayment pursuant to the Agreement. (See McQuilla Declaration, Exhibit A.) On June 10, 2025, Master Bango filed a "Notice of Withdrawal of Claims" and subsequently filed the instant case in the Sonoma County Superior Court (25CV04537) on July 15, 2025. (*Ibid.*) On August 22, 2025, the Honorable Kenneth English heard Master Bango's application for a preliminary injunction to enjoin Pasta Defendants from instituting or continuing to prosecute any arbitration proceedings against

Master Bango arising out of the Agreement. The Court granted the preliminary injunction in part restraining and enjoining Ravioli LLC, Spaghetti LLC, and Tortellini LLC from instituting, or continuing to prosecute, any arbitration proceedings against Master Bango arising out of or alleging to arise out of the Agreement but allowing Ravioli LLC, Spaghetti LLC, and Tortellini LLC to defend against arbitration proceedings brought or prosecuted against all or any of these entities which arbitration proceedings arise out of or are alleged to arise out of the Agreement. (See Order After Hearing Granting Preliminary Injunction, filed September 5, 2025.) However, Master Bango's application for a preliminary injunction to enjoin and restrain Farfalle LLC, Gnocchi LLC, Linguine LLC, Rigatoni LLC, Penne LLC, and Fettuccine LLC from instituting or continuing to prosecute any arbitration proceedings against Master Bango arising out of or alleging to arise out of the Agreement was denied. (*Ibid.*) On September 11, 2025, the Arbitrator, the Honorable Gary Nadler (Retired), considered "whether the issue of arbitrability is to be determined by the Arbitrator, or whether the court must first determine whether the involved entities were parties to the contract containing the arbitration clause." (McQuilla Declaration, Exhibit A.) The Arbitrator found that "[T]here is no ambiguity as to the fact that the parties referenced in the Agreement are parties to that Agreement. As such, it is unnecessary for the court to make this threshold determination. The issue of arbitrability is properly the determination of the Arbitrator as defined under the applicable JAMS rules." (*Ibid.*)

The Court now considers the motion to compel in the instant case brought by Moving Defendants Farfalle LLC, Gnocchi LLC, Linguine LLC, Rigatoni LLC, Penne LLC, and Fettuccine LLC ("Moving Defendants").

II. ANALYSIS

A. 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.) Courts may take notice of public records but not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

In support of their motion to compel arbitration, Defendants request judicial notice of four documents: (1) Master Bango's Complaint for Declaratory Relief filed July 15, 2025 in the instant case; (2) JAMS Comprehensive Arbitration Rules and Procedures; (3) Master Bango's Cross-Complaint filed October 2022 in Case No. SCV-269767; and (4) the Court's Order Denying Motion to Compel Arbitration, Stay the Action, and Consolidate Arbitration Proceedings filed November 6, 2024 in Case No. SCV-269767. In support of their Reply, Defendants filed a supplemental request for judicial notice of the [Proposed] Order on Plaintiffs/Cross-Defendants' Motion to Compel Arbitration submitted for electronic filing on January 22, 2026, in Case No. SCV-269767.

These requests are **GRANTED** pursuant to Evidence Code section 452.

B. Moving Papers

Moving Defendants move to compel arbitration because Master Bango alleges that it is party to an agreement with an arbitration clause and such agreement is the source of the controversy in this action, rendering arbitration mandatory. (MPA in Support of Motion to Compel Arbitration, 3:11–4:5.) Moving Defendants further allege that all issues of arbitrability, including the parties subject to arbitration, are reserved for determination by the arbitrator pursuant to the JAMS Comprehensive Arbitration Rules and Procedures since the Agreement's arbitration clause specifically invokes such rules. (*Id*. at 4:8–5:9.) Moving Defendants contend that by filing the First Amended Cross-Complaint (in Case No. SCV-269767) and the Complaint in the instant action, Master Bango has refused arbitration satisfying the requirements of C.C.P. section 1281.2.

In Opposition, Master Bango argues that Moving Defendants have not proven an agreement to arbitrate exists between themselves and Master Bango because the arbitration clause is a contained in the Agreement between Master Bango and Pasta Farm to which Moving Defendants are not parties and thus cannot enforce such agreement. (Opposition, 3:26–4:15.) Master Bango further declares that Moving Defendants have not argued or submitted any proof that they had an "identity of interest" with Pasta Farm at the time Pasta Farm executed the Agreement, such as a principal and agent relationship. (*Id*. at 4:17–28.) Additionally, Master Bango insists that the Court must determine whether there is an agreement to arbitrate between the Parties because nonparties to the Agreement cannot compel arbitration of any issues, including the Parties properly subject to arbitration. (*Id*. at 5:3–20.) Lastly, Master Bango contends that commencing an arbitration does not, standing alone, establish an implied-in-fact, post-dispute arbitration agreement. (*Id*. at 5:21–28.)

In Reply, Moving Defendants maintain that the arbitrator should determine who the parties are to the agreement and whether the dispute is arbitrable. (Reply, 1:16–2:28.) Moving Defendants further contend that the fact that they are parties to the Agreement is beyond reasonable dispute because this Court and the appointed arbitrator have both already found that Moving Defendants are parties to the Agreement. (Reply, 3:5–4:23.)

C. Arbitrability

The issue of determination of arbitrability is properly decided by the Court in this case because the Parties disagree as to the existence of an enforceable agreement to arbitrate between Master Bango and Pasta Defendants. (*Consumer Advocacy Group, Inc. v. Walmart, Inc.* (2025) 112 Cal.App.5th 679, 691.) "The party petitioning to compel arbitration 'bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence. The party opposing the petition must meet the same evidentiary burden to prove any facts necessary to its defense [including unconscionability]. [Citation.].' " (*Higgins v. Superior Court* (2006) 140 Cal.App.4th 1238, 1249.)

While another department in this Court and the arbitrator in the related case have found that there is an enforceable arbitration agreement between the Parties, Master Bango continues to insist that there is not an enforceable arbitration agreement between the Parties. The Agreement at issue was signed by Owner Ron Ferraro on behalf of Buyer Master Bango, Inc. and CEO Peter Simon on behalf of Seller

Pasta Farm. (Agreement, pg. 4.) Subsection (E) of the Agreement lists the entities, corresponding license numbers, strain, price, finish pounds, and price for full flower trimmed pounds. (*Id*. at pgs. 1–2.) These entities include Moving Defendants Farfalle LLC, Gnocchi LLC, Linguine LLC, Rigatoni LLC, Penne LLC, Fettuccine LLC. (*Ibid.*) Subsection (F) details further terms of the Agreement: "Seller agrees to sell Buyer, and Buyer agrees to purchase from Seller, bulk cannabis flower of the types, in the quantities, and at the prices specified in Section E, above…" (*Id*. at pgs. 2–3.) Thus, the Agreement containing the arbitration clause imposes obligations on Moving Defendants to produce such cannabis, necessarily implicating their performance to effectuate the Agreement. As stated previously by the Court, the record does not reflect any lack of understanding by any Party that "Pasta Farm" was a term used to collectively describe Pasta Defendants as providers of the product. Furthermore, Master Bango initially compelled arbitration against Linguine LLC but withdrew such request and filed the instant action against all Pasta Defendants concerning issues pertaining to the Agreement.

"'The fundamental point' [of equitable estoppel] is that a party is 'not entitled to make use of [a contract containing an arbitration clause] as long as it worked to [his or] her advantage, then attempt to avoid its application in defining the forum in which [his or] her dispute ... should be resolved.'"(*Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 306 quoting *NORCAL Mutual Ins. Co. v. Newton* (2000) 84 Cal.App.4th 64, 84.) Allowing Master Bango to maintain two lawsuits in this Court (one as Defendant/Cross-Complainant and the instant action as Plaintiff) that concern the performance of the Agreement that must necessarily be completed by Pasta Defendants not only defies this Court's prior findings and the arbitrator's findings but also defies the principles of equitable estoppel. The motion to compel arbitration is **GRANTED**.

D. Consolidation

A trial court has broad discretion to consolidate actions with common questions of law or fact to avoid unnecessary costs or delay. (C.C.P. § 1048(a); *Walker v. Walker* (1960) 177 Cal.App.2d 89, 91–92.)

As described above and in both Parties' moving papers and the related requests for judicial notice, the instant case and Case No. SCV-269767 are inextricably intertwined. Both cases involve Master Bango and Pasta Defendants among other parties. Both cases concern issues of Master Bango and Pasta Defendants' performances pursuant to the Agreement. Thus, these two cases will necessarily involve common questions of law or fact surrounding the Agreement. The instant matter is set for trial on October 2, 2026 and Case No. SCV-269767 is set for trial on October 9, 2026. The case shall be consolidated in the interests of justice and judicial efficiency. Pursuant to California Rules of Court, rule 3.350, case number SCV-269767 is the lead case as the lowest numbered case and all documents filed must include the caption and case number of the lead case, followed by the case numbers of all the other consolidated cases.

III. CONCLUSION

Moving Defendants Farfalle LLC, Gnocchi LLC, Linguine LLC, Rigatoni LLC, Penne LLC, and Fettuccine LLC's motion to compel arbitration is **GRANTED**.

The Court further **ORDERS** that this case be consolidated with the related case (Case No. SCV-269767) pursuant to C.C.P. section 1048(a) in the interest of judicial efficiency.

Defendants' 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).

3. 23CV01361, Green v. Whitcomb

This matter comes on calendar for Defendant/Cross-Complainant Timothy Whitcomb's ("Defendant") two motions for sanctions pursuant to C.C.P. section 128.7 filed on July 10, 2025 and August 21, 2025, respectively. Both motions are **DENIED** in their entirety as discussed below. Plaintiffs' requests for relief, including attorney's fees, are **DENIED**.

In its discretion, the Court **STRIKES** the following: (1) "Defendant's Supplemental Memorandum of Points & Authorities in Support of Motion for Sanctions" filed on January 2, 2026 in its entirety pursuant to C.C.P. section 436(b); (2) "Declaration of Timothy Whitcomb in Support of Supplemental Memorandum of Points and Authorities" filed on January 2, 2026 in its entirety pursuant to C.C.P. section 436(b); and (3) lines 13–28 on page 3 of "Defendant's Response to Order to Show Cause re: Citation Accuracy (C.C.P. § 128.7(c)(2))" filed on November 3, 2025 pursuant to C.C.P. section 436(a).

I. PROCEDURAL HISTORY

On November 2, 2023, Plaintiffs/Cross-Defendants David and Selena Green ("Plaintiffs") filed their Complaint alleging that Defendant and his company Kind Estate Sales, LLC slandered Plaintiffs. On October 28, 2024, Defendant filed a Cross-Complaint alleging five causes of action against Plaintiffs including fraudulent concealment and conversion. Defendant amended his Cross-Complaint on December 9, 2024 and again on March 6, 2025. Plaintiffs demurred to the December 9, 2024 First Amended Cross-Complaint. In its ruling on the demurrer, the Court sustained the demurrer to First, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action with leave to amend, sustained the demurrer without leave to amend as to the Second Cause of Action, and struck the March 6, 2025 Second Amended Cross-Complaint since it was field without leave of the Court. (See Minute Orders, dated March 19, 2025.) Defendant then filed the Second Amended Cross-Complaint on April 10, 2025, which Plaintiffs demurred to on June 11, 2025. On October 1, 2025, the demurrer to the April Second Amended Cross-Complaint was sustained without leave to amend. (See Minute Orders, dated October 1, 2025.)

In the interim, on July 10, 2025, Defendant filed a motion for sanctions under C.C.P. section 128.7 and equitable relief for spoilation of evidence which was set to be heard on October 29, 2025 ("July Sanctions Motion"). On August 21, 2025, Defendant filed an additional motion for sanctions alleging "additional categories of misconduct" which was set to be heard on December 17, 2025 ("August Sanctions Motion"). (See MPA in Support of Motion for Sanctions, filed August 21, 2025.) On October 29, 2025, the Court set an Order to Show Cause ("OSC") on November 20, 2025 for Defendant's improper or inaccurate use of citations and continued the July Sanctions Motion to this same date. (See Minute Orders, dated October 29, 2025.) On November 3, 2025, Defendant filed a "response to the order

to show cause re: citation accuracy" which included a table of corrected citations for the July Sanctions Motion. On November 12, 2025, Defendant filed a Notice of Errata with citation corrections to his August Sanctions Motion. On November 20, 2025, the Court continued the OSC to December 18, 2025, vacated the December 17, 2025 hearing date for the August Sanctions Motion, and specially set the matter for Friday, February 6, 2025. (See Minute Orders, dated November 20, 2025.) On December 18, 2025, the Court vacated the OSC. (See Minute Orders, dated December 18, 2025.)

On January 2, 2026, Defendant filed a declaration and supplemental MPA in support of his motion for sanctions which "addresses conduct occurring after Defendant's July 10, and August 21, 2025 motions for sanctions were filed." On January 26, 2026, Plaintiffs filed an Opposition to Defendant's August Sanctions Motion. On January 29, 2026, Defendant filed a Reply to the August Sanctions Motion. On January 30, 2026, Plaintiffs filed an objection to Defendant's supplemental MPA and declaration filed January 2, 2026. The Court now considers Defendant's July Sanctions Motion, August Sanctions Motion, and Defendant's January 2nd supplemental pleadings.

II. ANALYSIS

A. Plaintiffs' Objections

Plaintiffs object to Defendant's January 2, 2026, supplemental MPA and declaration because the Court ordered "no new briefing" and argues that these filings act as a sur-reply, which is disallowed by California Courts. (Plaintiffs' Objections, ¶ 11.) Plaintiff asks the Court to strike (1) Defendant's January 2, 2026 supplemental MPA and declaration and (2) lines 13–28 on page 3 of Defendant's Response to the November 20, 2025, OSC filed on November 11, 2025, since it added a new argument. (*Id.* at ¶¶ 7–8, 13.)

Contrary to Plaintiffs' contention, a sur-reply is allowable by California courts in their discretion but requires leave of the court. (See *Fowler v. Golden Pacific Bancorp, Inc.* (2022) 80 Cal.App.5th 205, 216–217 [finding that the trial court did not abuse its discretion in denying defendant additional time to file a sur-reply brief addressing plaintiff's new evidence presented in its reply]; *Guimei v. General Electric Co.* (2009) 172 Cal.App.4th 689, 703–704 [consideration of a sur-reply brief and declaration were within the discretion of the trial court citing *Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1308].)

Here, Defendant argues that "This supplement does not seek to re-litigate or expand that motion and is submitted in compliance with the Court's prior instructions. Rather, Defendant respectfully asks the Court to make determinate findings concerning post-filing conduct and escalating inconsistencies that bear directly on the pending consolidated sanctions hearing." (Supplemental MPA, 2:7–10.) However, adding conduct that occurred after the filing the motions is precisely expanding the motion before the Court. Thus, the Court shall not consider Defendant's January 2nd Supplemental MPA and declaration and **STRIKES** these filings in its discretion pursuant to C.C.P. section 436(b) since Defendant did not have leave of the Court to file any supplemental briefing.

Regarding Defendant's Response to the November 20th OSC, the Court notes that this paper was filed on November 3, 2025, not November 11, 2025. Even though the Court finds that Defendant did not

rewrite his motion, he included an additional subsection entitled "CONTEXT: OPPOSING COUNSEL'S OBJECTIVES" where Defendant opines as to why Plaintiffs' counsel failed to identify citation issues later addressed on the Court's own motion. Such statement is outside the scope of the response to correct his citations and is facially improper. Thus, the Court **STRIKES** lines 13–28 on page 3 of Defendant's Response to the November 20, 2025, OSC filed on November 3, 2025 in its discretion pursuant to C.C.P. section 436(a).

B. Defendant's July 10, 2025, Sanctions Motion

a. Legal Standard

Pursuant to C.C.P. section 128.7(b), sanctions in the form of an order directing payment to the movant for some or all of the reasonable attorney's fees may be imposed for failing to ensure that "the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument," the paper "is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation," or the "allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery." When determining whether sanctions should be imposed, courts should apply an objective test of reasonableness, including whether "any reasonable attorney would agree that [the claim] is totally and completely without merit." (*Peake v. Underwood* (2014) 227 Cal.App.4th 428, 448 [citations omitted].) "[S]anctions should not be routinely or easily awarded even for a claim that is arguably frivolous. Courts must carefully consider the circumstances before awarding sanctions." (*Ibid.*)

b. Moving Papers

Defendant argues that Plaintiffs introduced allegations of embezzlement outside of the Complaint which demonstrates reckless disregard for the truth under C.C.P. section 128.7(b)(1). (MPA in Support of July Sanctions Motion, 5:9–14; 7:4–19.) While Plaintiffs filed a Notice of Errata on June 4, 2025, changing the phrase to "suspected embezzling," Defendant contends that this revised statement does not cure the reputational harm. (*Id*. at 5:16–6:3.) Defendant further claims that Plaintiffs and their counsel engaged in procedural gamesmanship and delay by filing the Errata on the last possible day without withdrawing the false accusation. (*Id.* at 6:5–6.) Defendant further argues that Plaintiffs violated section 128.7(b)(2) by making such accusation without any legal theory or claim. (*Id*. at 7:22–8:23.) Defendant contends that failing to withdraw or correct the statement violates section 128.7(b)(4). (*Id*. at 8:26–9:11.) Next, Defendant maintains that the removal of Plaintiffs' Squarespace website that allegedly published defamatory material about Defendant during litigation constitutes spoilation and justifies equitable relief. (*Id.* at 9:14–10:5.) Defendant further alleges that Plaintiffs' conduct shows a pattern of escalating malicious misconduct. (*Id*. at 10:7–11:17.) Lastly, Defendant requests the following relief: strike or disregard the defamatory allegation from the January 23, 2025, brief, impose monetary sanctions under C.C.P. section 128.7, issue evidentiary and adverse inference sanctions for spoilation of the Squarespace website, and order immediate preservation and verification of domain and e-mail server access. (*Id*. at 11:22–13:9.)

In Opposition, Plaintiffs argue that the Court's recent order sustaining Plaintiffs' demurrer to Defendant's Second Amended Cross-Complaint without leave to amend renders the instant motion for sanctions moot because the only active pleading in the case is Plaintiffs' Complaint. (Opposition to July Sanctions Motion, 1:20–25.) Plaintiffs further declare that they filed an Errata on June 4, 2025, changing its statement made in their Opposition to Anti-SLAPP to read that Defendant was "suspected of embezzlement." (*Id*. at 2:3–11.) Plaintiffs note that these statements were related to the previous versions of the Cross-Complaint which now do not exist since the Court sustained Plaintiffs' demurrer to Defendant's Second Amended Cross-Complaint without leave to amend. (*Id*. at 2:12–15.) In the alternative, Plaintiffs argue that the claims in question are protected by the litigation privilege since the statement was made within legal filings related to this action, were directly related to the action, and in furtherance of the litigation. (*Id*. at 2:16–3:14.) Regarding Defendant's request for equitable relief based on spoilation of evidence, Plaintiffs argue that these requests are related to the underlying and now dismissed cross complaint which is now moot. (*Id*. at 3:17–21.) Plaintiffs further declare that since there are no pending discovery requests or court orders compelling the production of the items he wants protected, any discovery issued by Defendant on these issues exceeds the scope of the complaint and would not lead to the discovery of any admissible evidence nor is the preservation of such evidence related to the litigation. (*Id.* at 3:22–4:4.) Lastly, Plaintiffs request attorney's fees pursuant to C.C.P. section 128.7(h) and ask the Court to consider declaring Defendant a vexatious litigant on its own motion pursuant to C.C.P. section 391.7(a). (*Id*. at 4:6–5:14.)

In Reply, Defendant argues that Plaintiffs' mootness claim does not have merit and exhibit A to Counsel Fish's Declaration proves improper purpose. (Reply to Opposition to July Sanctions Motion, 2:22–5:10.) Defendant claims that Plaintiffs' "counter-sanctions request" is void because it was made without any Safe Harbor notice and should be stricken. (*Id*. at 5:12–23.) Defendant further claims that the $10,000 request for sanctions to punish Defendant is improper and provides no evidence for such request. (*Id*. at 5:25–7:8.) Defendant declares that Plaintiffs' misconduct is both intrinsic and extrinsic which demonstrates conduct outside the litigation privilege warranting judicial sanctions. (*Id*. at 7:11–10:8.) Defendant requests the same or similar relief as in his initial motion. (*Id*. at 13:1–14:9.)

c. Analysis

General Procedure

First, the Court notes that reply or closing memorandums may not exceed 10 pages (excluding the caption page, table of contents, table of authorities, or proof of service) pursuant to rule 3.1113(d) of the California Rules of Court and filing a longer memorandum requires an application to the Court under rule 3.1113(e). Defendant's Reply is 14 pages, which exceeds the limit set forth by the California Rules of Court and is therefore treated like a late-filed paper, allowing the Court to refuse to consider such filing in its discretion. (See California Rules of Court, rules 3.1113(g), 3.1300(d).) However, the Court shall consider Defendants' Reply in its entirety in the interest of disposing of cases on their merits. Additionally, the Court acknowledges that Defendant filed a table of corrected citations on November 3, 2025, to correct his improper citations in the July Sanctions Motion as previously identified by the Court.

Embezzlement Allegations

Defendant challenges Plaintiffs' statement made in their Opposition to Defendant's Anti-SLAPP motion filed January 23, 2025: "After learning that the Defendant has been embezzling from the corporation, Plaintiff Selena Green ended her business relationship with Defendant by purchasing his 49% in the company (see Plaintiffs' Opposition to Motion to Strike, p. 6, lines 2-9)." On June 4, 2025, Plaintiffs filed an Errata which changed the statement to "After, *among other things, suspecting that the Defendant had been embezzling from the corporation*, Selena Green ended her business relationship with Defendant by purchasing his 49% interest in the company." (Emphasis added). The Court finds that the revised statement was not used for an improper purpose, such as to harass or cause unnecessary delay. Defendant cites to *Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, which is an Anti-SLAPP case, not a case for sanctions pursuant to C.C.P. section 128.7. Defendant declares that the statement was not made in good faith and was intended chill Defendant's protected speech and damage his professional reputation. However, Defendant fails to establish how sanctions under section 128.7 are the proper remedy when he is claiming damage to his reputation and First Amendment protections. The Court does not find Plaintiffs' revised statement to violate any subsection of 128.7(b) and sanctions on this basis are **DENIED**.

Spoilation of Evidence

Defendant asks the Court to exercise its inherent equitable powers to preserve digital evidence of Plaintiffs' website "whitcombandcate.com" since he claims Plaintiffs allowed it to expire during the instant litigation in February 2025 after Plaintiffs opposed Defendant's *ex parte* application to preserve the website in addition to preserving the verification of the website domain and email server. Defendant claims this website contained published defamatory material and "had been live since at least 2020." However, Defendant is asking for contradictory relief as he is essentially asking the Court to preserve the publication of defamatory statements that he claims has caused him reputational harm. Furthermore, Defendant fails to explain how he could not have obtained evidence of the website's defamatory statements from the time it was live "since at least 2020" to February 2025 (at least five years), such as obtaining a printout of the allegedly defamatory statements published on the website. Defendant also does not establish the relevance of such request to the instant action for the Court to consider exercising its equitable powers to order Plaintiffs to continue to expend money to keep a website domain and email server active. This request is **DENIED**.

Defendant's Requested Relief

Based on the foregoing, the Court **DENIES** Defendant's requests to (1) strike or disregard the defamatory allegation from the January 23, 2025, brief, (2) impose monetary sanctions under C.C.P. section 128.7, (3) issue evidentiary and adverse inference sanctions for spoilation of the Squarespace website, and (4) order immediate preservation and verification of domain and e-mail server access.

Plaintiffs' Requested Relief

Plaintiffs request $9,130 in attorney's fees in connection with the motion pursuant to C.C.P.

section 128.7(h) and asks that Defendant be sanctioned an additional $10,000 to "punish [Defendant] for this frivolous motion and continuing to use the Court system as a tool of harassment against Plaintiffs." (Fish Declaration, ¶¶ 7–12.) Section 128.7(h) states that "a motion for sanctions brought by a party or a party's attorney primarily for an improper purpose… shall itself be subject to a motion for sanctions." However, section 128.7(c)(1) allows the Court to award the prevailing party reasonable expenses and attorney's fees incurred in opposing the motion ("If warranted, the court *may* award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion" [emphasis added]). Since the Court does not find that the instant motion was brought by Defendant primarily for an improper purpose to harass, cause unnecessary delay, or needlessly increase litigation costs, the Court **DENIES** Plaintiffs' request for attorney's fees and punitive sanctions.

Furthermore, while the Court may enter a prefiling order on its own motion prohibiting a vexatious litigant from filing any new litigation without obtaining leave of the presiding judge of the court pursuant to section 391.7(a), the Court finds that this relief should be sought in a noticed motion, not as affirmative relief in an opposition. Therefore, this request to declare Defendant as a vexatious litigant is **DENIED** but Plaintiffs may file a motion for such relief as they represented they would do in the alternative should the Court not make such a determination.

Self-represented parties are required to abide by the Rules of the Court and Code of Civil Procedure, and the Court is required to uphold the rule of law and promote access to justice while ensuring a fair process. Defendant's actions at this stage do not rise to a level requiring monetary sanctions or a declaring Defendant a vexatious litigant. However, this does not foreclose Defendant from bringing noticed motions before the Court regarding Defendant's future conduct.

C. Defendant's August 21, 2025 Sanctions Motion

a. Moving Papers

In his August Sanctions Motion, Defendant seeks sanctions pursuant to C.C.P. section 128, 128.5, 128.7 and 2030.030 for various conduct. First, Defendant alleges that Plaintiffs failed to disclose a dispositive dismissal of *Spergel v. Cate* and such conduct warrants sanctions. (MPA in Support of August Sanctions Motion, 3:13–16.) Second, Defendant claims that Plaintiffs introduced embezzlement allegations, which demonstrates reckless disregard for the truth and is sanctionable under C.C.P. section 128.7. (*Id.* at 3:18–21.) Third, Defendant claims that there are contradictory billing records for 1.1 hours of work maintaining that "either Fish misrepresented his communications in violation of his duty of candor, or O'Hare submitted billing entries inconsistent with sworn representations, amounting to perjury and billing fraud." (*Id*. at 3:23–4:12.) Fourth, Defendant asserts that Plaintiffs suppressed consumer reviews and let hosting services lapse, affecting domain-related records, which constitutes misuse of discovery under C.C.P. section 2023.030. (*Id*. at 4:14–17.) Fifth, Defendant alleges that Plaintiffs did not register "Whitcomb and Cate" or "Green and Cate" as fictitious business names with the Sonoma County Clerk, denying Defendant due process and constituting spoilation. (*Id.* at 4:19–23.)

In Opposition, Plaintiffs argue that the Court's order sustaining the demurrer to the Second Amended Cross-Complaint without leave to amend renders Defendant's sanctions motion moot and now

the only active pleading remaining is Plaintiffs' original Complaint. (Opposition to August Sanctions Motion, 2:22–3:3.) First, Plaintiffs argue that the *Spergel* clock matter is irrelevant to the instant action. (*Id*. at 3:25–4:4.) Second, Plaintiffs argue that the "suspected of embezzlement" statement about Defendant contained in their Errata on June 4, 2025, originally is connected to Plaintiffs' Opposition to Defendant's Motion to Strike filed January 23, 2025, and previous version of the Cross-Complaint, which no longer exists since the Court granted Plaintiffs' demurrer to the Second Amended Cross-Complaint without leave to amend. (*Id*. at 4:24–5:11.) Plaintiffs argue in the alternative that the claims in question are protected by the litigation privilege. (*Id.* at 5:18–6:13.) Third, Plaintiffs assert that the remedy for billing contradictions would be to reduce attorney's request for fees and many of the attorney's fees incurred in this matter stem from responding to Defendant's motions. (*Id.* at 6:16–27.) Fourth, Plaintiffs maintain that Defendant's request for equitable relief based on spoilation of evidence are in relation to the Second Amended Cross-Complaint, which is now moot. (*Id*. at 7:3–20.) Plaintiffs further argue that Defendant continues to incorrectly cite cases from improper purposes or cite to cases that do not exist. (*Id.* at 3:4–22, 4:5–18.) Lastly, Plaintiffs contend that they are entitled to sanctions and attorney's fees pursuant to C.C.P. section 128.7(h) and ask the Court to consider declaring Defendant a vexatious litigant on its own motion pursuant to C.C.P. section 391.7(a). (*Id*. at 7:21–9:3.)

In his Reply, Defendant argues that C.C.P. section 128.7 applies independently of the merits and procedural posture underlying the claims. (Reply to Opposition to August Sanctions Motion, 2:16–23.) Defendant contends that reliance on errata does not resolve the section 128.7 violation. (*Id*. at 3:17–27.) Defendant further argues that litigation privilege and mootness do not bar sanctions. (*Id*. at 4:2–10.). Defendant contends that Plaintiffs are attempting to relitigate citation issues addressed at the November 2025 OSC, which is improper. (*Id*. at 4:12–19.) Finally, Defendant maintains that Plaintiffs' request for sanctions under section 128.7 are improper for punitive purposes and argues that the designation of a vexatious litigant requires a noticed motion. (*Id*. at 4:21–5:6.)

b. Application

Concealment of Spergel v. Cate (24SC00241)

Here, Defendant argues that failing to disclose material judicial records constitutes fraud. However, as explained below, the cases cited by Defendant do not support this contention. Additionally, Defendant does not state which section and subsection of the C.C.P. he is seeking sanctions against Plaintiffs concerning *Spergel* (section 128.5 or 128.7). Notably, Defendant fails to establish the relevance of *Spergel* to the instant matter in his motion and what makes the dismissal material to the instant case. Defendant insists that "Plaintiffs and counsel concealed a dispositive dismissal with prejudice in *Spergel v. Cate* while continuing to litigate and seek sanctions for months" which "demonstrates contradiction and consciousness of guilt." However, this is a small claims case that Defendant is not a party to and the alleged sanctions (and the case as a whole) do not concern Defendant. Defendant does not explain how the Court would have jurisdiction to sanction Plaintiffs and their counsel under section 128.5 or 128.7 for their alleged conduct in a separate matter to which Defendant is not a party to and has no bearing on the instant action. Therefore, Defendant's motion for sanctions is **DENIED** on this basis.

Embezzlement Allegations

As discussed above, Defendants' July Sanctions Motion presents the same argument. The Court does not find Plaintiffs' revised statement to violate any subsection of 128.7(b) and sanctions on this basis are **DENIED**.

Contradictory Billing Records

Defendant fails to show how Plaintiffs' counsel's alleged billing discrepancies are sanctionable under C.C.P. section 128.5 or 128.7. Counsel O'Hare billed for 1.1 hours of "review and strategy" and Defendant declares that Counsel Fish stating that he had not spoken to his clients or Counsel O'Hare prior to filing their Opposition to Defendant's Anti-SLAPP shows either a misrepresentation during the meet and confer or that Counsel O'Hare filed false billing records. Defendant's argument lacks coherency and specificity. Counsel Fish stating that he had not spoken with Counsel O'Hare does not indicate that Counsel O'Hare billing for 1.1 hours for "review and strategy" with Counsel Fish is fraudulent or untruthful. Defendant fails to show finite timing of these allegations to show actual misrepresentations: when did Counsel Fish claim that he had not spoken to Counsel O'Hare and when did the "review and strategy" occur. This argument is based on "Defendant's meet and confer recollection" as stated in his declaration. "Recollection" is not a sufficient basis for the Court to issue sanctions pursuant to section 128.5 or 128.7. Furthermore, as argued by Plaintiffs, even if the Court found the billing statement to contain discrepancies, Defendant fails to show how sanctions under section 128.5 or 128.7 would be the appropriate remedy for one instance of alleged billing misrepresentations instead of reducing the awarded attorney fees by 1.1 hours. Defendant's motion for sanctions for contradictory billing records is **DENIED.**

Spoilation of Evidence

As discussed above, insofar as Defendants' July Sanctions Motion presents the same argument, relief on this basis is **DENIED**. Additionally, Defendant fails to show how Plaintiffs' actions are relevant to the instant case and therefore constitute misuse of discovery under section 2023.030. Defendant's argument that failing to register certain fictitious business names with the County of Sonoma denies him due process and constitutes spoliation is unfounded and irrelevant. Relief on this basis is **DENIED**.

Improper Citations

Plaintiffs argue that Defendant continues to incorrectly cite cases for improper purposes or cases that do not exist: *Peake v Underwood* (2014) 227 Cal.App.4th 428, 440; *Roadway Express, Inc. v Piper* (1980) 447 U.S. 752, 764; *Varner v. Superior Court* (1992) 4 Cal.App.4th 1173, 1184; and *Aheroni v. Maxwell* (1988) 205 Cal. App.3d 284, 291. The Court disagrees with Defendant's contention that Plaintiffs are attempting to relitigate citation issues addressed at the November 2025 OSC in regard to his reference to *Peake v. Underwood*. Plaintiffs' argument concerns a different motion (August Sanctions Motion) than was addressed at the November 2025 OSC (July Sanctions Motion). However, Defendant filed a Notice of Errata with citation corrections to his August Sanctions Motion on November 12, 2025. Thus, Defendant has remedied this issue and it does not require Court action.

While the Court has already informed Defendant of his duty, the Court reminds Defendant that C.C.P. section 128.7(b) applies to parties representing themselves, which affirms to the court that by presenting any paper to the court, all claims, defenses and legal contentions in such papers are warranted by existing law. (Emphasis added.) Defendant shall only cite existing legal authority and not misrepresent case holdings or quotations and if he fails to do so in subsequent motions or filings, the Court shall revisit the issue of sanctions and consider ordering Defendant to show cause.

Plaintiffs' Requested Relief

Plaintiffs request the same relief in the August Sanctions Motion as it did in the July Sanctions Motion: attorney's fees in connection with the motion pursuant to 128.7(h) (totaling $8,550 here), an additional $10,000 in sanctions to "punish [Defendant] for this frivolous motion and continuing to use the Court system as a tool of harassment against Plaintiffs," and for the Court to declare Defendant a vexatious litigant pursuant to C.C.P. section 391.7(a). As explained above, these requests for relief are **DENIED** but Plaintiffs may file noticed motions for such relief.

III. CONCLUSION

Defendant's two motions for sanctions pursuant to C.C.P. section 128.7 are **DENIED** in their entirety, including Defendant's requests for various relief. Plaintiffs' requests for relief, including attorney's fees, are **DENIED**.

In its discretion, the Court **STRIKES** the following: (1) "Defendant's Supplemental Memorandum of Points & Authorities in Support of Motion for Sanctions" filed on January 2, 2026 in its entirety pursuant to C.C.P. section 436(b); (2) "Declaration of Timothy Whitcomb in Support of Supplemental Memorandum of Points and Authorities" filed on January 2, 2026 in its entirety pursuant to C.C.P. section 436(b); and (3) lines 13–28 on page 3 of "Defendant's Response to Order to Show Cause re: Citation Accuracy (C.C.P. § 128.7(c)(2))" filed on November 3, 2025 pursuant to C.C.P. section 436(a).

Plaintiffs' 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).

4-5. 24CV00335, Kruppa, Jr. v. Dowell, DVM

This case comes on calendar for two of Plaintiff Richard Kruppa, Jr.'s motions: a motion to vacate minute order and a judgment on the pleadings ("JOTP") to Defendants' Cross-Complaint. Plaintiff's motion to vacate the Court's November 13, 2025, Case Management Conference Minute Order pursuant to C.C.P. sections 473(b) and 473(d) is **DENIED**. Plaintiff's motion for JOTP to the Cross-Complaint is **GRANTED** *with* leave to amend as to the First and Second Causes of Action and **DENIED** as to the Third and Fourth Causes of Action.

Defendants have 30 days from service of notice of entry of the Court's order on this motion to file an amended Cross-Complaint pursuant to C.C.P. section 438(h)(2).

I. PROCEDURAL HISTORY

Plaintiff filed his Complaint on January 24, 2024, alleging negligence, product liability, and premises liability. Plaintiff amended his Complaint to add a cause of action for fraud. (See First Amended Complaint ["FAC"], filed March 8, 2024.) On April 10, 2024, Defendants Peter and Julie Dowell filed a Cross-Complaint alleging breach of contract, defamation, intentional infliction of emotional distress, and negligence. On July 9, 2025, the Court granted Defendants' motion to compel the deposition of Plaintiff and for the production of documents at his deposition. (See Minute Orders, dated July 9, 2025.) The Court also awarded $9,520 in sanctions against Plaintiff but stayed the sanctions pending Plaintiff's appearance at his deposition and production of documents. (*Ibid.*) The Court further set a Case Management Conference ("CMC") for a status update which was held on September 25, 2025. (See Minute Orders, dated September 25, 2025, and served September 29, 2025.) The Court continued the CMC to October 9, 2025, and again to November 13, 2025. (See Minute Orders, dated September 25, 2025, and October 9, 2025.) On November 13, 2025, the Court held a CMC where the Court lifted the stay on sanctions. (See Minute Orders, dated November 13, 2025.) Plaintiff did not appear on November 13, 2025. (*Ibid.*) Plaintiff now challenges the Court's November 13, 2025, Minute Orders lifting the stay of sanctions and moves for JOTP to Defendants' Cross-Complaint. The Court considers the two motions separately below.

II. PLAINTIFF'S MOTION TO VACATE THE COURT'S MINUTE ORDER

A. Moving Papers

Plaintiff argues for relief pursuant to C.C.P. sections 473(b) and 473(d) and cites due process concerns. Plaintiff states that he relied upon information given to him by a Court Clerk that the November 13th CMC had been dropped and no appearance was required, which is why Plaintiff did not appear on November 13, 2025. Plaintiff asserts that relying on the Clerk's guidance constitutes excusable neglect for relief pursuant to C.C.P. section 473(b). Plaintiff further argues that since Defendant did not state their intent to lift the stay of sanctions at the November 13th CMC in its October 29, 2025, Case Management Statement, he was deprived of notice of this issue and the resulting Minute Order is void for lack of due process pursuant to C.C.P. section 473(d). Thus, Plaintiff requests that the Court vacates the November 13th Minute Order and reinstates the sanction stay pending resolution of Plaintiff's JOTP.

In their Opposition, Defendants contend that Plaintiff had notice of the November 13th CMC as he emailed opposing counsel on November 12, 2025, of his intent to appear at the hearing. (McCormick Declaration, ¶ 5, Exhibit C.) After reading the Court's Tentative Ruling for the November 13th CMC, Defendants' counsel contacted the Court asking to be heard on the Tentative Ruling stating that the CMC should not have been taken off calendar because the Court needed to decide the issue of lifting the sanctions stay. (McCormick Declaration, ¶¶ 11–12.) Defendant's counsel then emailed Plaintiff stating that she would be appearing at the November 13th CMC and Plaintiff responded that he would also be appearing for the November 13th CMC. (McCormick Declaration, ¶ 12, Exhibits E–F.) Regarding the substance of the motion, Defendants contend that Plaintiff had adequate notice that the stay of the sanctions imposed against him would be discussed at the November 13th CMC because all orders continuing the CMC to November 13, 2025 and Defendants' October 28, 2025 Case Management

Statement and related declaration summarizing the total sanctions against Plaintiff were all served on Plaintiff before the November 13th CMC. Defendants further cite to an email from Plaintiff where he acknowledges that the Court has the sanction matter set on November13, 2025. (McCormick Declaration, Exhibit G.) Based on this information, Defendants assert that Plaintiff may not claim excusable neglect under section 473(b) and may not claim due process/notice issues under section 473(d). Furthermore, Defendants argue that Plaintiff's citations to support his contention that "[r]eliance in misinformation from court personnel constitutes excusable neglect" are either inapplicable or fabricated.

B. Defendants' Request 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.) Courts may take notice of public records, but not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

In support of their Opposition to Plaintiff's motion to vacate, Defendants request judicial notice of several Minute Orders, Case Management Statements and other filings in the instant action. This request is **GRANTED** pursuant to Evidence Code section 452.

C. Relief under C.C.P. 473(b)

Under Section 473(b), an application for discretionary relief from a judgment, dismissal, order, or other proceedings taken against a party or their legal representative must be (1) due to the party or their legal representative's mistake, inadvertence, surprise, or excusable neglect; (2) accompanied by a copy of the answer or other pleading proposed to be filed; (3) made within a reasonable time not to exceed six months after the judgment, dismissal, order, or proceeding was taken. Relief under the discretionary provision of the statute only allows relief from attorney error fairly imputable to the client, i.e., whether a reasonably prudent person under the same or similar circumstances might have made the same error. (*Toho-Towa Co. v. Morgan Creek Prods., Inc.* (2013) 217 Cal.App.4th 1096, 1112 [internal citations omitted].) Section 473 is remedial and is to be liberally construed to dispose of cases upon their substantial merits. (*Taliaferro v. Taliaferro* (1963) 217 Cal.App.2d 216, 220.)

Here, Plaintiff's contention that "[r]eliance in misinformation from court personnel constitutes excusable neglect," is unsupported by the authorities he cites, as discussed below. Plaintiff represented to Defendants' counsel that he would appear at the November 13, 2025, CMC after Defendants' counsel informed him of their intent to appear at the CMC. (McCormick Declaration, ¶ 12, Exhibits E–F.) Therefore, the Court does not find that there was any excusable neglect on Plaintiff's part. Even if the Court misinformed Plaintiff of the status of the CMC, he did not further contact Defendants' counsel or communicate that he would no longer be attending the CMC. Plaintiff told opposing counsel he would be appearing on November 13, 2025, but chose not to attend the hearing. Plaintiff's request for relief pursuant to C.C.P. section 473(b) is **DENIED**.

D. Relief under C.C.P. 473(d)

C.C.P. Section 473 allows the court to amend pleadings and relieve parties from a judgment or order taken against a party. Pursuant to C.C.P. section 473(d), the court may "correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed." When correcting clerical mistakes, "the function of a nunc pro tunc order is merely to correct the record of the judgment and not to alter the judgment actually rendered—not to make an order now for then, but to enter now for then an order previously made. (*In re Marriage of Padgett* (2009) 172 Cal.App.4th 830, 852.) In other words, "the court can only make the record show that something was actually done at a previous time; a nunc pro tunc order cannot declare that something was done which was not done." (*Johnson & Johnson v. Sup. Ct.* (1985) 38 Cal.3d 243, 256.) The difference between a clerical error and a judicial error is whether the error was made in rendering the judgment (judicial error) or in recording the judgment (clerical error). (*People v. Karaman* (1992) 4 Cal.4th 335, 345.) To distinguish a clerical error from judicial error, courts consider "whether the challenged portion of the judgment was entered inadvertently (which is clerical error) versus advertently (which might be judicial error but is not clerical error)." (*Tokio Marine & Fire Ins. Cop. V. Western Pacific Roofing Corp.* (1999) 75 Cal.App.4th 110, 117–118.)

Here, there was no clerical error on the Court's part as the record is correct as to Plaintiff's nonappearance at the November 13th CMC. Defendants' counsel informed Plaintiff of their intent to appear at the CMC and Plaintiff responded that he would also appear. Furthermore, Plaintiff had sufficient notice of the hearing and knew the issue of sanctions was to be discussed at the November 13th CMC. (McCormick Declaration, Exhibit G.) Thus, Plaintiff was not deprived of notice of the CMC or deprived of due process. Essentially, Plaintiff is asking the Court to alter the decision rendered, not to correct the record, which improper under section 473(d). This request for relief is **DENIED**.

E. Plaintiff's Citations

In support of his contention that "[r]eliance in misinformation from court personnel constitutes excusable neglect," Plaintiff cites to *Eastman v. Superior Court* (1970) 12 Cal.App.3d 692 and *County of Stanislaus v. Johnson* (1996) 43 Cal.App.4th 832. The Court finds that the reasoning and holding of *County of Stanislaus* is irrelevant to Plaintiff's contention and that the cited case *Eastman v. Superior Court* (1970) 12 Cal.App.3d 692 does not exist. The proper case to which the reporter, volume number, and pin cite pertain is *Volkswagen Pac., Inc. v. City of Los Angeles* (1970) 12 Cal.App.3d 689, not *Eastman v. Superior Court*. While Plaintiff is representing himself *in propria persona*, he must abide by all applicable rules of conduct and procedure, which includes C.C.P. section 128.7(b) that affirms to the court that by presenting any paper to the court, all claims, defenses and legal contentions in such papers are warranted by existing law. (Emphasis added.) However, in light of the Court's decision above to deny Plaintiff's request to vacate its November 13th Minute Order, the Court in its discretion shall not order Plaintiff to show cause. The Court **STRIKES** Plaintiff's references in his brief to *Eastman v. Superior Court* (1970) 12 Cal.App.3d 692 and *County of Stanislaus v. Johnson* (1996) 43 Cal.App.4th 832 in its discretion pursuant to C.C.P. section 446(b) since these citations do not support Plaintiff's contention.

III. PLAINTIFF'S JUDGMENT ON THE PLEADINGS

A. Moving Papers

Plaintiff also moves for JOTP as to Defendants' Cross-Complaint on the following bases: it fails to state facts sufficient to constitute a cause of action [C.C.P. section 438(c)(1)(B)(ii)], it is time-barred [C.C.P. sections 426.30, 340(c)], it was filed without required leave of the Court [C.C.P. section 428.50(c)], it was filed late and is deemed filed the next Court day [California Rule of Court, rule 2.210], it was improperly served on Plaintiff via email when he did not consent to electronic service [C.C.P. section 1010.6, California Rules of Court, rule 2.251(b)], and it is unverified, conclusory, and retaliatory in nature [C.C.P. section 446]. Plaintiff requests that the Court grant the JOTP as to the entire Cross-Complaint, dismiss the Cross-Complaint with prejudice, and consider sanctions under C.C.P. section 128.5 against Defendants' counsel.

In their Opposition, Defendants argue that Plaintiff's motion for JOTP asks the Court to consider extrinsic evidence in Plaintiff's declaration to refute the allegations in the Cross-Complaint rather than addressing defects on the face of the pleadings. Defendants ask the Court to disregard Plaintiff's declaration in its entirety because it turns the motion into a contested evidentiary dispute. Defendants further argue that Plaintiff altered the face page of the Cross-Complaint by either removing the Court's file stamp or using an unfiled version of the Cross-Complaint and adding the following text: "TIMESTAMP=APRIL 11, 2025." (Plaintiff's Declaration, Exhibit C.1.) Furthermore, Defendants argue that any procedural defects or factual substantive defects are without facial foundation or legal merit.

In his Reply, Plaintiff limits his JOTP to the issue that the Cross-Complaint fails to plead legally sufficient causes of action. He claims that the First Cause of Action for breach of contract does not plead the material terms of any agreement, mutual obligation of the parties, a specific breach, or causation of damages. The Second Cause of Action for defamation does not identify the specific statements alleged to be defamatory, the audience to whom they were made, why the statements were false, or how they caused harm. The Third Cause of Action for intentional infliction of emotional distress ("IIED") is "derivative of the same inadequately pled conduct and fails for the same reasons." Lastly, the Fourth Cause of Action for negligence does not clearly plead any duty owed, a breach of that duty, or causation of damages. Plaintiff also argues that timing is relevant because Defendants filed the Cross-Complaint without leave of the Court. Most notably, Plaintiff's Reply does not contain any legal authority to support his contentions.

Since Plaintiff limited the scope of the JOTP in his Reply, the Court only considers Plaintiff's arguments that Defendants failed to plead legally sufficient causes of action and that Defendants filed the Cross-Complaint without leave of the Court.

B. Defendants' Request for Judicial Notice

In support of their Opposition to Plaintiff's JOTP, Defendants request judicial notice of three pleadings in the instant case: Plaintiff's Amended Complaint filed March 8, 2024, Defendants' Cross-

Complaint filed April 10, 2024, and Defendants' Answer to the Amended Complaint filed April 10, 2024. The request is **GRANTED** pursuant to Evidence Code section 452.

C. Judgment on the Pleadings

a. Legal Standard

"A motion for judgment on the pleadings performs the same function as a general demurrer...." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) "It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings." (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429.) "The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (C.C.P. § 438(d).) "A trial court's determination of a motion for judgment on the pleadings *accepts as true* the factual allegations that the plaintiff makes." (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal. 4th 468, 515, emphasis added.) "In addition, it gives them a liberal construction." (*Ibid*.)

b. Filing the Cross-Complaint without Leave of the Court

As stated by Defendants, a party may file a cross-complaint against the party who filed the complaint before or at the same time as the answer to the complaint pursuant to C.C.P. section 428.50(a). Defendants filed their Answer to the Amended Complaint on the same day it filed the Cross-Complaint, which is allowed under section 428.50(a). Therefore, Defendants were not required to seek leave of the Court to file the Cross-Complaint. The JOTP lacks merit as to the alleged improper filing of the Cross-Complaint.

c. Plaintiff's Declaration

Defendants represent that Plaintiff's declaration is an improper attempt to introduce extrinsic evidence and asks that to the extent Plaintiff's declaration is an attempt to ask the Court to take judicial notice of Exhibits D through M, it should be denied. The Court does not read Plaintiff's Declaration to include any requests for judicial notice and the Court does not take judicial notice of any of these documents on its own motion. As stated above, a motion for JOTP only considers what is alleged on the face of the pleadings or judicially noticed documents so insofar that Plaintiff's declaration challenges the Cross-Complaint with extrinsic evidence, the Court shall not consider such arguments or documentation. However, the Court does note that it appears that Plaintiff altered the face page of the Cross-Complaint by either removing the Court's file stamp or using an unfiled version of the Cross-Complaint and adding the following text: "TIMESTAMP=APRIL 11, 2025." (Plaintiff's Declaration, Exhibit C.1.) The Cross-Complaint was filed on April 10, 2025, at 5:07 p.m., which was stamped by the Court. Plaintiff shall not alter or misrepresent any evidence he presents to the Court.

d. Meet and Confer Requirement

Code of Civil Procedure section 439 requires the moving party to "meet and confer in person, by telephone, or by video conference with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the

claims to be raised in the motion for judgment on the pleadings." The moving party is also required to file a declaration that the parties met and conferred and did not reach an agreement resolving the claims or that the party who filed the pleading subject to the motion for judgment on the pleadings failed to respond to the meet and confer request or failed to meet and confer in good faith. (C.C.P. § 439(a)(3).)

Plaintiff's declaration in support of his motion for JOTP makes no relevant statement about meet and confer efforts as to the instant motion. Plaintiff's declaration discusses meet and confer efforts from May and June of 2024 regarding form interrogatories, which is irrelevant to the motion for JOTP. Therefore, Plaintiff has failed to show the Court that he met and conferred with Defendants' counsel in good faith before the filing of the JOTP as required by C.C.P. section 439. While this does not give the Court grounds to deny the instant motion pursuant to C.C.P. section 439(a)(4), the Court reminds Plaintiff that he must comply with all procedural requirements even when representing himself in *propria persona*.

e. First Cause of Action–Breach of Contract

"To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.) A contract requires showing that the parties are capable of contracting, their consent, a lawful object, and a sufficient cause or consideration. (Civil Code § 1515.) "[T]he vital elements of a cause of action based on contract are mutual assent (usually accomplished through the medium of an offer and acceptance) and consideration." (*Pacific Bay Recovery, Inc. v. California Physicians' Services, Inc.* (2017) 12 Cal.App.5th 200, 215.) A plaintiff must show that a defendant's alleged misconduct was the cause in fact and the proximate cause of the damage. (*Tribeca Companies, LLC v. First American Title Ins. Co.* (2015) 239 Cal.App.4th 1088, 1102–1103 [citations omitted].)" The test for causation in a breach of contract ... action is whether the breach was a substantial factor in causing the damages." (*Id.* at 1103 [citations omitted].) Elements of breach of oral contract and breach of written contract claims are the same. (*Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453.)

Plaintiff argues that this cause of action does not plead the material terms of any agreement, mutual obligation of the parties, a specific breach, or causation of damages.

The Cross-Complaint alleges that on or about March 2021, the Parties entered into an agreement whereby Plaintiff would perform certain services for Defendants, including remolding Defendants' home located at 511 Sonoma Mountain Drive in Petaluma, California. (Cross-Complaint, ¶ 6.) Plaintiff did not provide Defendants with a written contract to sign. (*Id.* at ¶ 9.) Defendants allege that Plaintiff failed to perform the services which he contractually agreed to perform, including obtaining necessary permits or any of the other services he agreed to perform. (*Id.* at ¶ 10.) Defendants further allege they had performed their obligations required by their agreement, including paying the invoices submitted by Plaintiff for services actually performed. (*Id.* at ¶ 12.) Defendants argue they were damaged because they had to retain the services of others to complete the work Plaintiff was supposed to perform in an amount to be proven at trial but in excess of $25,000. (*Id.* at ¶¶ 13–14.)

Elements of Breach of Contract

Defendants concede that there is no written contract between the Parties. The Court finds that all of the material terms of the contract have not been pled *haec verba* or in their legal effect in order for the Court to determine whether there is an enforceable contract between the Parties. (*Gautier v. General Tel. Co.* (1965) 234 Cal.App.2d 302, 305 ["the law nonetheless requires that there be an allegation of such verbal agreement by setting forth the substance of its relative terms"].) The Cross-Complaint states what Plaintiff was supposed to remodel (updating the kitchen, updating the plumbing, updating the floors, and installing new baseboards) but does not state the agreed upon timeframe of such work to be completed, an estimate for Plaintiff's work, or how much Defendants have paid Plaintiff to date for the work he did complete. Defendants further pled that Plaintiff failed to perform the services, including obtaining the necessary permits to complete the remodeling or "virtually any of the other services he had agreed to perform" but do not specify exactly what services Plaintiff did or did not complete. Therefore, the Judgment on the Pleadings is **GRANTED** for failure to plead material terms of the contract.

Business and Professions Code Section 7159

Business and Professions Code section 7159 identifies the projects for which a home improvement contract is required and outlines the contract requirements. Home improvement contract in excess of $500 must be in writing. (Bus. & Prof. Code §§ 7159(b), (d).) However, "a contract made in violation of section 7159 does not involve the kind of illegality which automatically renders an agreement void." (*Asdourian v. Araj* (1985) 38 Cal.3d 276, 293.) Whether the Contract and change orders at issue are malim in se (void) or malum prohibitum (voidable) depends on the factual context and public policies involved. (*Id.*) "There is no indication that the Legislature intended that all contracts made in violation of section 7159 are void. Absent an express statutory prohibition, other exceptions to the general rule that illegal contracts are unenforceable may be applied." (*Id.* at 292.)

While Plaintiff argues that the Parties' oral agreement is unenforceable under this statute, the California Supreme Court in *Asdourian* found that certain oral home improvement contracts may be voidable, not void. (*Ibid.* ["In compelling cases, illegal contracts will be enforced in order to 'avoid unjust enrichment to a defendant and a disproportionately harsh penalty upon the plaintiff.'"].) Furthermore, the purpose of the statute is to protect unsophisticated homeowners and tenants from "overreaching by unscrupulous contractors." (*Asdourian, supra*, at 293.) It was clearly not the intention of the Legislature to allow Plaintiff as an alleged contractor to attempt to shield himself behind the statute that was intended to protect Defendants for work that he was allegedly contracted to perform but did not perform. However, the issue of whether the facts constitute a "compelling case" within the meaning of *Asdourian* cannot be definitively resolved at this stage. (*Arya Group, Inc. v. Cher* (2000) 77 Cal.App.4th 610, 616.)

f. Second Cause of Action–Defamation

The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage and must specifically refer to, or be, "of and concerning" the plaintiff. (*John Doe 2 v. Superior Court* (2016) 1 Cal.App.5th 1300, 1312 [citations omitted].)

Plaintiff argues that this cause of action does not identify the specific statements alleged to be defamatory, the audience to whom they were made, why the statements were false, or how they caused harm.

The Cross-Complaint alleges that once Defendants terminated their relationship with Plaintiff, Plaintiff forwarded several emails to representatives of the County of Sonoma from 2022 through 2023 stating that Defendants committed fraud, committed a criminal act against the County of Sonoma, were crafty liars and common thieves and liars. (Cross-Complaint, ¶¶ 15–17.) Defendants allege that the statements were false, and they caused harm because Defendants have suffered loss of their reputation, shame, mortification, and emotional distress. (Cross-Complaint, ¶¶ 18–23.) However, Defendants fail to allege sufficient specificity of the statements for the Court to ascertain whether the statements are sufficiently communicative of provable falsity or actual fact to subject the Plaintiff to liability, including the precise false statements that were sent via email rather than being paraphrased by Defendants or what Sonoma County representatives were sent in these emails. (*Kahn v. Bower* (1991) 232 Cal.App.3d 1599, 1608 [reasoning that "the court must first determine as a question of law whether the statement is reasonably susceptible of a defamatory interpretation" and "it is a question of law for the court whether a challenged statement is reasonably susceptible of an interpretation which implies a provably false assertion of actual fact"].) Therefore. Plaintiff's motion for JOTP is **GRANTED** as to the Second Cause of Action for defamation.

g. Third Cause of Action–IIED

A cause of action for IIED exists when "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050 [citations omitted].) Outrageous means so "extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Id.* at 1050–1051 [citations omitted].) The defendant's conduct must be "intended to inflict injury or engaged in with the realization that injury will result." (*Id.* at 1051 [citations omitted].)

Plaintiff claims that there are insufficient facts to sustain an IIED claim because the November 2, 2023, statement is not specified and "no words, audience or context" pled.

The Cross-Complaint alleges that Plaintiff implemented a campaign of attempted extortion in order to coerce Defendants into paying him money and intentionally instilling Cross-Complainants with severe emotional distress based upon a fear that if they did not pay Plaintiff money, which they believed they did not owe him, then they could be criminally prosecuted, held up to public ridicule, and lose business because of said threats conveyed by Plaintiff. (Cross-Complaint ¶ 25.) Defendants further allege that on or about November 2, 2023, Plaintiff stated that he would do everything to prove Defendants lied and stole his property and would have them arrested for fraud. (Cross-Complaint, ¶ 27.) Defendants allege that Plaintiff's conduct was intentional and outrageous and as a result of Plaintiff's conduct, they suffered severe emotional distress and damages. (Cross-Complaint, ¶¶ 28–31.)

Here, the Cross-Complaint sufficiently alleges all of the elements of IIED—Plaintiff engaged in extreme and outrageous conduct with the intention of causing emotional distress, Defendants suffered severe emotional distress, and Plaintiff's conduct caused Defendants' emotional distress. Therefore, Plaintiff's motion for JOTP is **DENIED** as to the Third Cause of Action for IIED.

h. Fourth Cause of Action–Negligence

A cause of action for negligence requires a showing of "(a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury." (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 919–918 [citations omitted].) Ordinary negligence "consists of a failure to exercise the degree of care in a given situation that a reasonable person under similar circumstances would employ to protect others from harm." (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 753–754 [citations omitted].)

Plaintiff maintains that the Fourth Cause of Action for negligence does not clearly plead any duty owed, a breach of that duty, or causation of damages and that negligence is factually impossible because he was the injured party, not the cause of the injury.

Defendant contends that the fact that Plaintiff owed a duty to Defendants is included in the allegations that he had agreed to provide remodeling services but failed to do so in a manner that was negligent and beneath the standard of care.

The Cross-Complaint pleads that Plaintiff's conduct was negligent and beneath the standard of care to the services he performed for Defendants. (Cross-Complaint, ¶ 33.) The Cross-Complaint further alleges that a result of Plaintiff's negligence, Defendants suffered damages. (Cross-Complaint, ¶ 34.) Defendants have adequately pled a duty by alleging that Plaintiff had agreed to provide remodeling services but failed to do so in a manner that was negligent and beneath the standard of care. Plaintiff's argument that negligence is factually impossible because he was the injured party is meritless. Plaintiff's motion for JOTP is **DENIED** as to the Fourth Cause of Action for Negligence.

i. Leave to Amend

The Court finds that there is a reasonable possibility Defendants may cure the defects stated above and **GRANTS** leave to amend. (*Mendoza v. Continental Sales Co.* (2006) 140 Cal.App.4th 1395, 1401 [holding that the trial court abuses its discretion by not granting leave to amend when a cure is a reasonable possibility].)

j. Plaintiff's Other Requested Relief

Plaintiff also discusses several issues that are outside the scope of his motion for JOTP such as Defendants' alleged pattern of procedural abuse, sanctions under C.C.P. section 128.5, Defendants' counsel's referral to the State Bar, and discovery compliance. All such relief is **DENIED**. If Plaintiff seeks Court review of these alleged issues, he must file the appropriate motions separately.

IV. CONCLUSION

Plaintiff's motion to vacate the Court's November 13, 2025, CMC Minute Order pursuant to C.C.P. sections 473(b) and 473(d) is **DENIED**. Plaintiff's motion for JOTP to the Cross-Complaint is **GRANTED** *with* leave to amend as to the First and Second Causes of Action and **DENIED** as to the Third and Fourth Causes of Action. Defendants shall file an amended Cross-Complaint within 30 days of service of notice of entry of the Court's order on this motion pursuant to C.C.P. section 438(h)(2).

Defendants' 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).