SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/04/26 TIME: 1:30 P.M. DEPT: A CASE NO: CIV1205504

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: KEITH KARPINSKI

vs.

DEFENDANT: SMITTY'S BAR INC., ET AL

NATURE OF PROCEEDINGS: MOTION – OTHER: ASSIGNMENT ORDER AND FOR ORDER RESTRAINING JUDGMENT DEBTOR

RULING

Judgment Assignees Zebulon Karpinski and Maya Karpinski's (collectively "Judgment Assignees") Motion for an Order assigning Judgment Debtor Kyle Philip Algeo's ("Judgment Debtor") interest in real estate commissions is **GRANTED in part.**

Judgment Assignees' Motion for an order restraining the Judgment Debtor and any servant, agent, employee or attorney for the Judgment Debtor and any person(s) in active concert and participating with the Judgment Debtor from encumbering, assigning, disposing or spending the earned real estate commissions and all rights to payment thereunder is **GRANTED in part**.

Legal Standard

Assignment orders may reach certain types of property that cannot be reached by a writ of execution or an earnings withholding order, such as wages due from the federal government not subject to an earnings withholding order, rents, commissions, royalties, patent or copyright payments, and an insurance policy loan value. (Code Civ. Proc., § 708.510, subds. (a)(1)-(6).) Other periodic payments, such as pension benefits and earnings and other forms of deferred compensation, may also be reached by an assignment order, within prescribed limits. (Code Civ. Proc., § 708.510, subd. (e).

In determining whether to order an assignment or the amount of the assignment, the court may consider:

(1) the reasonable requirements of the judgment debtor and any dependents;

> (2) other payments the debtor is obligated to make, including payments or deductions under other judgments and wage assignments, including earnings assignments for support;
> (3) the amount of the balance outstanding on the judgment; and
> (4) the amount to be received in satisfaction of the right to payment sought to be assigned.

(Code Civ. Proc., § 708.510, subds. (c)(1)-(4).)

Code of Civil Procedure section 708.520, subd. (a) permits the judgment creditor to apply for an order restraining the judgment debtor from assigning or otherwise disposing of the right to payment that is sought to be assigned when an application is made for an assignment order. The restraining order may be issued upon a showing of a need for the order. (Code Civ. Proc., § 708.520, subd. (b).) In its discretion, the Court may order the judgment creditor to provide an undertaking. (*Ibid.*)

The issuance of a restraining order under section 708.520 is permissible only if an assignment order is being issued or has issued. (*Landstar Global Logistics, Inc. v. Robinson & Robinson, Inc.* (2013) 216 Cal.App.4th 378, 390.)

Discussion

The motion is made on the grounds that the Judgment Assignees have a judgment against the Judgment Debtor, the balance due, including accrued interest to the date of this notice, is $3,676,173.16, that the Judgment Debtor has an assignable right to the real estate commissions described herein, and that there is a need to restrain the Judgment Debtor.

Judgment was entered in this action on behalf of Judgment Creditor Keith Karpinski ("Judgment Creditor") on October 17, 2014 against Judgment Debtor in the amount of $1,430,968.84. (LaLanne Decl., ¶ 3.) The Judgment Creditor died on February 25, 2022. (*Id.*, at ¶ 4.) The judgment was assigned to Judgment Assignees on September 6, 2023 in Marin Superior Court Case In Re: Estate of Keith Woods Karpinski (PRO2201989). (*Ibid.*) The judgment was last renewed on December 3, 2024. (*Id.*, at ¶ 5.) The amount of the renewed judgment as of that date was $3,227,640.63. (*Ibid.*) Interest has accrued on the renewed judgment, and post-judgment costs have been incurred. (*Id.*, at ¶ 6.) No payments have been received from Judgment Debtor or anyone to be applied this judgment. (*Id.*, at ¶ 7.)

There is now due and owing the sum of $3,676,173.16 plus interest accruing from the date of entry of judgment and post-judgment costs. (*Ibid.*) The Judgment Debtor has real estate commissions payable to him by his employing broker, San Francisco Real Estate Holdings Inc. dba Engel & Volkers, as a result of sales and/or leasing activities performed by Judgment Debtor. (*Id.*, at ¶ 9.) Moving parties argue there is a need to restrain the Judgment Debtor from encumbering, assigning, disposing or spending the commissions as doing so will interfere with Judgment Assignees' right to secure payment of the judgment. (*Id.*, at ¶ 11.)

Judgment Debtor opposes the Motion and seeks Exemption on the grounds that his income is driven solely from commissions, he supports his wife and minor child, and his commissions are necessary to support them. He seeks to have the Motion denied in its entirety, or alternatively, to have the assignment limited to a reasonable percentage of his net commissions.

Per Judgment Debtor's declaration, his monthly work related expenses (excluding broker splits and tax withholdings) are averaged to $2,586.21 per month. (Algeo Decl., ¶ 6.) He estimates his monthly average take home pay minus these expenses and tax withholdings of 30% is $14,373.64. (Claim of Exemption, ¶2(e).) That amount includes his spouse's income. (*Id.*) Judgement Debtor estimates his monthly expenses as $17,406.15, although this includes $500 a month to save for a planned relocation to a larger rental. (*Id.*, ¶4(m), (n).)

After reviewing the papers in support of the Motion and those in opposition thereto and evaluating the factors discussed in Code of Civil Procedure section 708.510, subdivisions (c)(1)-(4), the Court concludes that it is fair and reasonable to GRANT the Motion in part. **Judgment Assignees are assigned 10% of Judgment Debtor's interest in all *gross* real estate commissions currently held and those earned in the future, until the debt is paid in full.** Judgment Debtor and any person(s) in active concert and participating with the Judgment Debtor are restrained from encumbering, assigning, disposing or spending the commissions to the extent they have been assigned.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/04/26 TIME: 1:30 P.M. DEPT: A CASE NO: CIV2301453

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: CAROLYN BORDES, ET AL

vs.

DEFENDANT: DAMIR STOSIC, ET AL

NATURE OF PROCEEDINGS: MOTION – OTHER: REOPEN EVIDENCE

RULING

The Motion to Reopen Evidence by plaintiffs Stephen and Carolyn Bordes (collectively "Plaintiffs") seeking leave to admit into evidence: 1) certified records of the Marin County Property Tax Division showing payment of property taxes on the property located at 503 Sausalito Boulevard, Sausalito, California (the "Property"), authenticated through the Declaration of Long Truong, custodian of records; and 2) Trial Exhibit 109, is **GRANTED**.

Background

This matter came before the Court for trial on May 4, 6, and 7, 2026. At trial, plaintiff Stephen Bordes testified that Plaintiffs had timely paid all property taxes each year since 2011, and that testimony was not objected to or contradicted. Plaintiffs did not, however, introduce certified county tax records.

After reviewing the closing brief of defendants Pauli-Larsen Stosic and Damir Stosic (collectively "Defendants"), who argued that payment of taxes for adverse possession must be established by certified records of the county tax collector under Civil Code section 325(b), Plaintiffs' counsel concluded that the oral testimony may be insufficient. Accordingly, pursuant to Code of Civil Procedure sections 128(a)(3) and 473, and Evidence Code section 320, Plaintiffs moved to reopen the evidence, or to reopen their case in chief to admit certified tax records authenticated through the declaration of Long Truong, custodian of records for the Marin County Property Tax Division, and Trial Exhibit 109, which had been marked for identification but not admitted.

Legal Standard

A trial court has broad discretion to reopen the evidence and to reopen a party's case in chief, at any time before the matter is submitted for decision, in the exercise of its inherent authority to control the order of proof and the conduct of the proceedings. (Code Civ. Proc., §§ 128, subd. (a)(3), 607; Evid. Code, § 320; *Horning v. Shilberg* (2005) 130 Cal.App.4th 197, 208–209; *Rosenfeld, Meyer & Susman v. Cohen* (1987) 191 Cal.App.3d 1035, 1052.) That discretion is grounded in the court's inherent authority to control the conduct of proceedings and the order of proof. Every court has power "[t]o provide for the orderly conduct of proceedings before it." (Code Civ. Proc., § 128.) And "[e]xcept as otherwise provided by law, the court in its discretion shall regulate the order of proof." (Evid. Code, § 320.)

Reopening may be granted on a showing of good cause, which requires an adequate excuse for the failure to produce the evidence at trial and a showing of diligence. (*Sanchez v. Bay General Hospital* (1981) 116 Cal.App.3d 776, 793; *In re Estate of Horman* (1968) 265 Cal.App.2d 796, 807.)

Discussion

<u>The Court has Discretion to Reopen the Evidence and Finds Good Cause for the Same</u>

Plaintiffs' motion is made before submission and before entry of any statement of decision or judgment in this case. Thus, this Court's broad, pre-submission standard governs and the more demanding standard applicable to newly discovered evidence on a motion for new trial, for instance, is not present. (See Code Civ. Proc., § 657, subd. (4).) Additionally, the Court finds good cause to reopen the evidence.

At trial, plaintiff Stephen Bordes testified, without objection and without contradiction, that Plaintiffs timely paid the property taxes on the Property each year. Plaintiffs' failure also to offer the certified Tax Records was the product of mistake and inadvertence, not a knowing or voluntary tactical decision. The Court credits counsel's explanation and finds this an adequate excuse for the nonproduction of the certified records at trial.

The Tax Records are material and are not merely cumulative in effect. Payment of taxes is an element of adverse possession that "shall be established by certified records of the county tax collector." (Civ. Code, § 325, subd. (b); *McLear-Gary v. Scott* (2018) 25 Cal.App.5th 145, 152.) The certified Tax Records go directly to that element and may affect the outcome on the merits. Receiving competent, material evidence on a dispositive issue serves the ends of justice. (*In re Estate of Horman*, supra, 265 Cal.App.2d at pp. 807–809.)

Moreover, Defendants are not unfairly prejudiced or surprised. The subject matter of the Tax Records, namely payment of the property taxes, was placed in issue at trial through testimony admitted without objection, and the Tax Records corroborate that testimony. Little or no additional trial time is required. The Court has also considered and rejects Defendants' contention that Plaintiffs' omission was a tactical decision. The Court finds the omission was inadvertent.

<u>The Certified records of the Marin County Property Tax Division and the Declaration of Long Truong are Admissible</u>

Defendants' objections to the Declaration of Long Truong and the tax records are OVERRULED. Defendants object to the entire Truong Declaration and the attached Tax Records as hearsay (Objection No. 1) and object to specific statements in the Declaration as lacking foundation, calling for speculation beyond the declarant's personal knowledge, and constituting hearsay (Objection Nos. 2 through 4). The Tax Records, however, are admissible over hearsay objections.

The Tax Records are admissible under the official-records exception to the hearsay rule. (Evid. Code, § 1280.) A writing recording an act, condition, or event is not made inadmissible by the hearsay rule if (a) the writing was made by and within the scope of duty of a public employee; (b) the writing was made at or near the time of the act, condition, or event; and (c) the sources of information and method and time of preparation were such as to indicate its trustworthiness. (Evid. Code, § 1280, subds. (a)–(c).) The Tax Records are records of the Marin County Property Tax Division reflecting the receipt and payment of property taxes on the Property, made by public employees in the course of their official duties, and the entries reflect payments made at or near the dates the taxes were due and paid.

Unlike the business-records exception (Evid. Code, § 1271), the official-records exception does not require a custodian or other qualified witness to testify to the identity of the record and its mode of preparation. The Court may admit an official record without such a witness where it takes judicial notice or where sufficient independent evidence shows the record was prepared in a manner assuring its trustworthiness, and it is not necessary that the person making the entry have personal knowledge of the transaction. (*Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 317–319; *People v. George* (1994) 30 Cal.App.4th 262, 273–274; *People v. Martinez* (2000) 22 Cal.4th 106, 128–129.) Defendants' Objection No. 1, that the Declaration and Tax Records are inadmissible because they are presented by declaration without the opportunity to cross-examine, is thus not well taken. A sponsoring witness is not required for their admission under section 1280.

The trustworthiness element is also satisfied. It is presumed that the official duty has been regularly performed (Evid. Code, § 664), and that presumption both supplies foundation for the official-records exception and shifts to the objecting party the burden of proving that the records are not trustworthy. (*People v. Martinez*, *supra*, 22 Cal.4th at pp. 129–130; *People v. George*, *supra*, 30 Cal.App.4th at p. 274.) The County Tax Collector is charged by statute with collecting property taxes and accounting for the sums collected and the Court may rely on the presumption that these duties were regularly performed. Defendants have offered no evidence to rebut the presumption of trustworthiness. The Court also takes judicial notice that property taxes in California are due and payable on prescribed dates each year and finds the recorded payment dates consistent with those obligations.

The foundation, speculation, and identification objections (Objection Nos. 2 through 4) are overruled for the same reasons. Because the official-records exception does not require personal knowledge of the underlying transaction by the person making the entry, the declarant's asserted lack of personal knowledge does not bar admission. (*Jazayeri v. Mao*, *supra*, 174 Cal.App.4th at pp. 318–319.) The Tax Records are adequately identified: they bear the stamp of the Marin County Tax Collector and identify the Property at 503 Sausalito Boulevard, Sausalito, California, and Plaintiffs by name, and they are authenticated as certified copies of records in the legal custody of the Marin County Property Tax Division. (Evid. Code, §§ 1530, 1531.) A certified copy of a writing in the custody of a public entity is prima facie evidence of the existence and content of the writing.

In the alternative, and to the extent the Court were to require a sponsoring witness, Plaintiffs have offered to present the custodian of records to authenticate the Tax Records, with cross-examination limited to the scope of that direct testimony. However, because the Tax Records are admissible under section 1280 without a sponsoring witness, the Court need not require live testimony.

Accordingly, Plaintiffs' motion to reopen evidence is granted, Defendants' objections are overruled, and the proffered evidence is admitted. Defendants shall have a reasonable opportunity, on a schedule to be set by the Court, to offer rebuttal evidence directed solely to the reopened evidence and to be heard on any further matter arising from its admission.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/04/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0000350

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: SARAH ELLISON

vs.

DEFENDANT: MARIN HEALTH MEDICAL CENTER, ET AL

NATURE OF PROCEEDINGS: 1) MOTION – COMPEL ANSWERS TO INTERROGATORIES – DISCOVERY FACILITATOR PROGRAM
2) MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

These matters are **continued to August 25, 2026 at 1:30 p.m. in Courtroom A** to allow the parties to participate in the Court's Discovery Facilitator Program pursuant to Civ. Local Rule 2.13.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/04/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0000437

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: TRISTA CARR

vs.

DEFENDANT: CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

NATURE OF PROCEEDINGS: 1) MOTION – CONTINUE TRIAL
2) MOTION – OTHER: CONTINUE HEARING ON MOTION FOR SUMMARY JUDGMENT

RULING

Appearances required.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/04/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0002018

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PETITIONER: CHRISTIAN E. OLIVA FLORES, ET AL

vs.

DEFENDANT: NATIONAL RESPONSE TEAM LLC, ET AL

NATURE OF PROCEEDINGS: HEARING – OTHER: HEARING AFTER JURY VERDICT

RULING

After considering all the evidence presented at trial and the arguments of counsel, the Court provides the following additional award:

1. **Waiting-Time Penalties**

The Court finds that Defendant National Response Team, LLC failed to pay all wages due to Plaintiffs at discharge and that Plaintiffs are entitled to waiting-time penalties under Labor Code section 203. Accordingly, the Court awards waiting-time penalties against Defendant National Response Team, LLC as follows:

Christian E. Oliva Flores: **$5,280**

Luis David Perla Monterroza: **$5,280**

(*Mamika v. Barca* (1998) 68 Cal.App.4th 487, 493.)

2. **Wage-Statement Penalties**

The Court finds that Defendant National Response Team, LLC issued inaccurate wage statements to Plaintiffs and that Plaintiffs are entitled to wage-statement penalties under Labor Code section 226. The Court awards wage-statement penalties against Defendant National Response Team, LLC as follows:

Christian E. Oliva Flores: **$4,000.00**

Luis David Perla Monterroza: **$4,000.00**

3. **Prejudgment Interest**

The Court finds that Plaintiffs are entitled to prejudgment interest on the jury's unpaid-wage awards at the legal rate of 10% per annum from the date of the failure to pay through the date of final judgment.

4. **UCL Claim and Equitable Relief**

The Court finds in favor of Plaintiffs and against Defendant National Response Team, LLC on Plaintiffs' claim under Business and Professions Code section 17200 under the unlawful prong, based on the wage-payment, payroll, OT2/double-time, and wage-statement practices shown by the jury's unpaid-wage findings, the admitted records, and the trial testimony.

Defendant National Response Team, LLC is ordered to maintain payroll, timekeeping, and wage-statement procedures reasonably designed to:

1. accurately capture and preserve regular-time, overtime, and double-time/OT2 hours;
2. accurately transmit regular-time, overtime, and double-time/OT2 hours to any payroll provider, including BBSI or any successor payroll provider;
3. pay all regular-time, overtime, and double-time wages at the applicable lawful rates;
4. issue wage statements that separately identify all applicable hourly rates and the corresponding number of hours worked at each rate, including double-time/OT2 where applicable; and
5. review payroll submissions before wages and wage statements are issued to ensure that double-time/OT2 hours reflected in the timekeeping system are accurately paid and accurately itemized on wage statements.

Defendant National Response Team, LLC shall provide Plaintiffs, through counsel, a one-time written certification of compliance within **60 days** confirming that the above procedures are in place. No ongoing reporting or continuing Court supervision is ordered.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/04/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0009955

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PETITIONER: IH PROPERTIES, LP ET AL vs. DEFENDANT: CARON SCHMIERER, AS EXECUTOR OF THE ESTATE OF MARGARET GRADE, DECEASED ET AL	

NATURE OF PROCEEDINGS: MOTION -ANTI SLAPP 425.16

RULING

Defendant Daniel DeLong's ("DeLong") anti-SLAPP motion to strike is **GRANTED** as to the Third and Fourth Causes of Action in their entirety and otherwise **DENIED** as moot. (Code Civ. Proc., § 425.16, subd. (b)(1).) The effect of this ruling is to dismiss DeLong as a defendant in this action.

DeLong is a "prevailing defendant" on this motion and so is entitled to recover his attorney's fees and costs. (Code Civ. Proc., § 425.16, subd. (c)(1).) He may do so through a subsequent noticed motion. (*American Humane Ass'n v. Los Angeles Times Communications* (2001) 92 Cal.App.4th 1095, 1103.)

Background

This case arises out of Plaintiffs IH Properties, LP and Manka's Holdings, LLC's ("Plaintiffs") purchase of a portfolio of properties in West Marin. The purchased properties include Druid's Hall, an inn; Hotel Olema; Sir & Star, a restaurant on the ground floor of Hotel Olema; Manka's, another hotel; and Balmoral, a small inn. (Complaint, ¶¶ 18-22, 25.) Plaintiffs allege that on January 24, 2022, they entered into a purchase agreement for the properties (the "Purchase Agreement") with First Valley Four, LLC; Manka's Inverness Lodge, LP; and Margaret Grade ("Grade"; these three together, "Sellers"). (*Id.* at ¶ 2, 25.)

Ms. Grade, a well-known hotelier and chef, passed away in February 2024 following a car accident. (*Id.* at ¶¶ 1, 56.) Ms. Grade's estate (the "Estate") is a party to this case through Caron Schmierer, who is named as a defendant in her capacity as executor. (*Id.* at ¶ 7.) The complaint describes DeLong as an individual who has been in litigation with the Estate involving claims under *Marvin v. Marvin* (1976) 18 Cal.3d 660.[1] (*Id.* at ¶ 12.) The Court is familiar with Mr. DeLong and the various entities involved in that case from presiding over that *Marvin* litigation. Plaintiffs allege that in March 2023, they received a Transient Occupancy Tax ("TOT") notice from Marin County demanding that Plaintiffs pay $2,296,000 in TOT in connection with Druid's Hall. (Complaint, ¶¶ 18, 27 & Ex. B.) Plaintiffs allege that the Purchase Agreement obligates Sellers to pay this TOT and to indemnify Plaintiffs against any losses incurred as a result of Sellers' failure to pay it. (*Id.* at ¶¶ 29-31.) Marin County would not issue Plaintiffs a business license until the TOT was paid. (*Id.* at ¶ 32.) The Estate ultimately paid the TOT, but not until September 2025. (*Id.* at ¶¶ 31-32.) Plaintiffs allege that "DeLong induced delay in payment of the TOT by blocking or challenging payment of the TOT from the Estate's funds." (*Id.* at ¶ 28; see also ¶ 53.)

The complaint asserts that under the Purchase Agreement, Sellers were required to transfer the Sir & Star's liquor license to Plaintiffs. (Complaint, ¶¶ 33-34.) More than four years after execution of the Purchase Agreement, this transfer has still not occurred. (*Id.* at ¶ 33.) Plaintiffs claim that the Estate is responsible for effectuating this transfer and "has induced delay by vacillating over whether it would transfer the liquor license." (*Id.* at ¶ 34.) They explain that "Mr. DeLong is . . . inducing the Estate to withhold the liquor license based on wrongful statements that he owns or controls the liquor license." (*Ibid.*) DeLong's purported entitlement to the liquor license and/or payment for transferring it is allegedly based on his *Marvin* claims against the Estate. (*Id.* at ¶ 54.)

Plaintiffs further allege that sometime after execution of the Purchase Agreement, Sellers removed certain items Plaintiffs had purchased for various of the properties and stored them in the Boathouse, another property Sellers operated. (Complaint, ¶¶ 37, 52.)

The complaint asserts four causes of action. The First Cause of Action is a breach of contract claim against Sellers and Sir & Star LLC, the current holder of the liquor license. (Complaint, ¶ 11.) This cause of action alleges that Sellers' failure to pay the TOT; the Estate's delay in paying the TOT; and Sellers', the Estate's, and Sir & Star LLC's failure to transfer the liquor license breached the Purchase Agreement. (*Id.* at ¶ 69.) The Second Cause of Action is a conversion claim against Sellers based on their misappropriating Plaintiffs' property and stashing it in the Boathouse. (*Id.* at ¶ 77-80.) The Third Cause of Action is a claim for intentional interference with a contract against DeLong, and the Fourth Cause of Action is a claim for intentional interference with prospective economic advantage, also against DeLong. Both the Third and the Fourth Cause of Action allege that DeLong interfered with Sellers' and the Estate's performance of their obligation to transfer the Sir & Star's liquor license to Plaintiff. (*Id.* at ¶¶ 82, 84.) Before the Court is DeLong's motion to strike portions of the complaint under the anti-SLAPP statute.

Legal Standard

"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,

[1] DeLong's requests for judicial notice are GRANTED. (Evid. Code, § 452, subd. (d).)

unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (Code Civ. Proc., § 425.16, subd. (b)(1).) The purpose of this statute is to identify and dispose of lawsuits brought to chill the valid exercise of a litigant's constitutional right of petition or free speech. (Code Civ. Proc., § 425.16, subd. (a); *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1055-1056.)

Courts use a two-step process to evaluate anti-SLAPP motions. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) First, the moving defendant must show that the challenged lawsuit arises from protected activity. (*Ibid.*) To establish protected activity, the defendant must demonstrate that "the act or acts underlying the plaintiff's claim falls within one of the four categories [of protected activity] identified in section 425.16, subdivision (e)." (*Lee v. Silveira* (2016) 6 Cal.App.5th 527, 538; *accord Howard Jarvis Taxpayers Assn. v. Powell* (2024) 105 Cal.App.5th 955, 968.) In determining whether a complaint or a subset of it "arises from" protected activity, "[t]he critical consideration is whether the cause of action is *based on* the defendant's free speech or petitioning activity." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 [emphasis added]; see also *Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) "Courts deciding an anti-SLAPP motion . . . must consider the claim's elements, the actions alleged to establish those elements, and whether those actions are protected." (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1015; accord *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062.)

If the defendant makes this "threshold showing[,]" the court proceeds to the second step, where the plaintiff must demonstrate a probability of prevailing on the merits of the claims at issue. (*Equilon Enterprises*, *supra*, 29 Cal.4th 53, 67; Code Civ. Proc., § 425.16, subd. (b)(1).) This is not a particularly weighty burden. (See *Navellier*, *supra*, 29 Cal.4th 82, 95 [only "minimal merit" is "required to survive an anti-SLAPP motion].) The plaintiff must merely " 'demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' " (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291 [quoting *Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548]; see also *Bergman v. Drum* (2005) 129 Cal.App.4th 11, 18 [standard is similar to that governing a plaintiff's burden in opposition to a defendant's motion for summary judgment].) The court does not weigh the evidence, but accepts all evidence favorable to the plaintiff as true and asks whether it makes the required prima facie showing. (*Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699-700 [abrogated in unrelated part as described in *Muddy Waters, LLC v. Superior Court* (2021) 62 Cal.App.5th 905, 924].) The court should consider evidence presented by the defendant at the merits stage, but only to the extent of determining whether such evidence defeats the plaintiff's case as a matter of law. (*Ibid.*)
"Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute – i.e., that arises from protected speech or petitioning *and* lacks even minimal merit – is a SLAPP, subject to being stricken under the statute." (*Navellier, supra,* 29 Cal.4th 82, 89 [emphasis in original].)

Discussion

<u>Procedural Matters</u>

DeLong has moved to strike material beyond the Third and Fourth Causes of Action. However, the Court's decision to grant the motion as to the Third and Fourth Causes of Action in their entirety moots the rest of the motion. An anti-SLAPP motion may be directed only at "[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[.]" (Code Civ. Proc., § 425.16, subd. (b)(1).) The phrase "cause of action" as used here refers to "*allegations of protected activity that are asserted as grounds for relief.*" (*Baral, supra,* 1 Cal.5th 376, 395 [emphasis in original].) The Third and Fourth Causes of Action are the only causes of action asserted against DeLong. Once they are stricken from the pleading, no statement left in the complaint is "asserted as grounds for relief" (*ibid.*) against DeLong, so there are no proper subjects of an anti-SLAPP motion by DeLong[2] remaining in the pleading.

<u>Prong One: Protected Activity – Third (Intentional Interference with Contract) and Fourth (Intentional Interference with Prospective Economic Advantage) Causes of Action</u>

"To prevail on a cause of action for intentional interference with contractual relations, a plaintiff must plead and prove (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148.)

Plaintiffs' Third Cause of Action alleges that DeLong interfered with Sellers' performance of their contractual obligation to transfer the Sir & Star's liquor license to Plaintiffs. (Complaint, ¶ 82.) In connection with this claim, Plaintiffs allege that DeLong "wrongfully asserted control and/or ownership of the liquor license, and wrongfully prevented the Estate from duly transferring the liquor license." (Complaint, ¶ 82.) Because this is the only conduct by DeLong Plaintiffs allege in connection with this cause of action, this necessarily must be the "intentional act[] designed to induce a breach or disruption of the contractual relationship[.]" (*Reeves*, *supra*, 33 Cal.4th 1140, 1148.)

"The elements of intentional interference with prospective economic advantage have been stated as follows: '(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant.'" (*Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 521-522 [quoting *Youst v. Longo* (1987) 43 Cal.3d 64, 71, fn. 6].)

Plaintiffs' Fourth Cause of Action alleges that Sellers and the Estate were required to transfer the Sir & Star's liquor license to Plaintiffs, but "DeLong wrongfully asserted control and/or ownership of the liquor license, and wrongfully prevented the Estate from duly transferring the liquor license." (Complaint, ¶ 84.) Absent any other conduct by DeLong alleged in support of

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[2] DeLong can only move to strike a claim against *him* arising from *his* conduct. (See Code Civ. Proc., § 425.16, subd. (b)(1).) If any other defendants in this case want allegations about DeLong stricken as a basis for *their* liability to Plaintiffs, those defendants will have to file their own anti-SLAPP motions.

this claim, this conduct must supply the "intentional act" element. (*Westside Center*, *supra*, 42 Cal.App.4th 507, 522.)

The following excerpt from the complaint is determinative of the issue of whether the Third and Fourth Causes of Action arise out of protected activity:

> "Mr. DeLong has wrongfully claimed that he is entitled to the liquor license and/or money in exchange for the liquor license based on *Marvin* claims he brought against the Estate. Mr. DeLong has repeatedly asserted an interest in the liquor license, causing the Estate to withhold the liquor license."

(Complaint, ¶ 54.) This allegation makes it indisputable that when Plaintiffs, in connection with their Third and Fourth Causes of Action, accuse DeLong of "wrongfully assert[ing] control and/or ownership of the liquor license" (Complaint, ¶¶ 82, 84), they are accusing him of doing so through his *Marvin* claims against the Estate. When Plaintiffs accuse him of "wrongfully prevent[ing] the Estate from duly transferring the liquor license" (*ibid.*), they mean that he has embroiled the Estate in *Marvin* litigation and then told the Estate that his entitlements under *Marvin* include the liquor license,[3] and those statements have led the Estate to withhold the liquor license. The complaint does not describe any act of interference by DeLong beyond statements Plaintiffs themselves have tied directly to DeLong's prosecution of his *Marvin* claims against the Estate. (*Id.* at ¶ 54; see also Opposition, p. 10 [admitting that Plaintiffs are "challeng[ing] DeLong's use of those [*Marvin*] claims to prevent the Estate from performing a pre-existing contract with Plaintiffs"].)

Were the plain language of Plaintiffs' complaint not enough to establish that Plaintiffs have sued DeLong for filing *Marvin* claims against the Estate, prosecuting them, and advocating for their validity, Plaintiffs have also attached to the complaint various exhibits containing the communications whereby DeLong allegedly "asserted control and/or ownership of the liquor license[.]" (*Id.* at ¶¶ 82, 84.) These exhibits all consist of emails showing (sometimes secondhand) DeLong's counsel describing DeLong's litigation position to counsel for the Estate or for Plaintiffs, sometimes clearly in the context of settlement negotiations. (See Complaint, Exs. C-D, I.)

The Third and Fourth Causes of Action arise out of DeLong's filing his *Marvin* claims against the Estate and maintaining the validity of his claims in communications via counsel with his opponents' attorneys, some of which were clearly settlement negotiations. All of this is protected

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[3] Plaintiffs protest that DeLong has not, in his complaint in the *Marvin* action, alleged that he is entitled to the liquor license, as opposed to a share of the Estate's assets more generally. (Memorandum, p. 13.) This is irrelevant. The Court is not concerned with the merits or even the specifics of DeLong's *Marvin* claims. Plaintiffs have sued DeLong for asserting an entitlement to the liquor license *based expressly on those legal claims*. (Complaint, ¶ 54.) Plaintiffs' claims thus arise out of DeLong's statements in connection with the *Marvin* action regardless of whether the *Marvin* action is capable of actually entitling DeLong to the liquor license. (See *Medical Marijuana, Inc. v. ProjectCBD.com* (2020) 46 Cal.App.5th 869, 883 ["[T]he act or acts underlying a claim for purposes of an anti-SLAPP motion is *determined from the plaintiffs' allegations*."] [emphasis in original].) The emails attached to Plaintiffs' complaint further evidence that whatever is alleged in DeLong's *Marvin* complaint, he is in fact claiming an entitlement to the liquor license in connection with those claims.

activity under the anti-SLAPP statute, specifically Section 425.16, subdivision (e)(2).[4] (See *ValueRock TN Properties, LLC v. PK II Larwin Square SC LP* (2019) 36 Cal.App.5th 1037, 1046; *Cabral v. Martins* (2009) 177 Cal.App.4th 471, 480 ["[A]ll communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP statute."]; *GeneThera, Inc. v. Troy & Gould Professional Corp.* (2009) 171 Cal.App.4th 901, 901 ["An attorney's communication with opposing counsel on behalf of a client regarding pending litigation directly implicates the right to petition and thus is subject to a special motion to strike."].)

Plaintiffs argue that the Third and Fourth Causes of Action are based in part on the allegation that DeLong blocked the Estate from paying the TOT, which DeLong has not established is protected activity, meaning these causes of action cannot be stricken in their entirety. (See *Bonni*, *supra*, 11 Cal.5th 995, 1010-1011 [discussing anti-SLAPP motions directed at mixed causes of action].) The Court reproduces, verbatim, the manner in which the complaint pleads these causes of action:

"THIRD CAUSE OF ACTION
(INTENTIONAL INTERFERENCE WITH CONTRACT AGAINST DANIEL DELONG)

81. Plaintiffs repeat and re-allege all of the allegations of all the preceding paragraphs as if fully set forth herein.
82. Sellers (and the Estate) were required to transfer the liquor license for the Sir & Star Restaurant to Plaintiffs. Plaintiffs took the necessary steps to effectuate a transfer of the liquor license from Sellers to Plaintiffs. On information and belief, Daniel DeLong wrongfully asserted control and/or ownership of the liquor license, and wrongfully prevented the Estate from duly transferring the liquor license.

FOURTH CAUSE OF ACTION
(INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE AGAINST DANIEL DELONG)

83. Plaintiffs repeat and re-allege all of the allegations of all the preceding paragraphs as if fully set forth herein.
84. Sellers (and the Estate) were required to transfer the liquor license for the Sir & Star Restaurant to Plaintiffs. Plaintiffs took the necessary steps to effectuate a transfer of the liquor license. On information and belief, Daniel DeLong

[4] This provision covers "any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body[.]" (Code Civ. Proc., § 425.16, subd. (e)(2).) The Court takes sua sponte judicial notice of the fact that DeLong's *Marvin* claims against the Estate are currently pending before this Court in Case No. CV0001077, with a jury trial set to begin on September 3, 2026. (Evid. Code, § 452, subds. (d), (h); *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 752 [court may take judicial notice sua sponte].)

> wrongfully asserted control and/or ownership of the liquor license, and wrongfully prevented the Estate from duly transferring the liquor license."

Plaintiffs argue that these causes of action include DeLong's alleged conduct with regard to the TOT due to the boilerplate allegation in Paragraphs 81 and 83. The Court is not persuaded that this stock language is capable of expanding a cause of action to encompass a theory not expressly pleaded as a basis for that specific cause of action. As pleaded, Plaintiffs' theory of liability for both of these causes of action is that DeLong tortiously interfered with Plaintiffs' acquisition of the Sir & Star's liquor license. Interpreting these claims to be based on his alleged conduct in connection with the TOT as well would run afoul of the requirement that a plaintiff provide a defendant with fair notice of the allegations against him. (See *Signal Hill Aviation Co. v. Stroppe* (1979) 96 Cal.App.3d 627, 636 [it is "essential . . . that a complaint set forth the actionable facts relied upon with sufficient precision to inform the defendant of what plaintiff is complaining"].) The complaint likewise does not plead any cause of action against DeLong based on "his [alleged] continued unauthorized use of the [P]roperties" (Opposition, p. 9 [referring to Complaint, ¶ 49].) The Third and Fourth Causes of Action, which are the only causes of action pleaded against Delong, are both based entirely on DeLong's alleged conduct with regard to the Sir & Star's liquor license.

Plaintiffs' argument that these claims do not target speech or petitioning activity, but instead " 'an action or decision that was arrived at following speech or petitioning activity' " (Opposition, p. 10 [quoting *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1068]), is equally unavailing. The Court stresses that Plaintiffs characterize DeLong's "core wrongdoing" as "falsely representing to the Estate that he owned or controlled the liquor license" (Opposition, p. 10) and explain that he did this in connection with his *Marvin* litigation against the Estate (*id.* at p. 10; Complaint, ¶ 54). The basis for Plaintiffs' Third and Fourth Causes of Action is therefore DeLong's litigation activity *itself*, not some other event occurring in temporal proximity to his litigation activity. Plaintiffs' insistence that they are suing DeLong for "non-expressive conduct[,]" which they variously identify as his "knowingly false assertion of ownership" (Opposition, p. 11) or "false[] representation[,]" (*id.* at p. 10), is uncompelling. Neither an "assertion" nor a "representation[]" is capable of being "non-expressive."

Finally, Plaintiffs argue that the conduct at issue here is illegal and so not protected by the anti-SLAPP statute, relying on *Flatley v. Mauro* (2006) 39 Cal.4th 299. (Opposition, p. 15.) In Flatley, the Supreme Court held that "where a defendant brings [an anti-SLAPP motion] based on a claim that the plaintiff's action arises from activity by the defendant in furtherance of the defendant's exercise of protected speech or petition rights, but either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action." (39 Cal.4th 299, 320.) "The term 'illegal' in *Flatley* means criminal[.]" (*Price v. Operating Engineers Local Union No. 3* (2011) 195 Cal.App.4th 962, 971; accord *Mendoza v. ADP Screening & Section Services, Inc.* (2010) 182 Cal.App.4th 1644, 1654.) Conduct is "illegal as a matter of law" only where the defendant concedes as much or where "uncontroverted and conclusive evidence" demonstrates that it is. (*Flatley, supra*, 39 Cal.4th 299, 320.) "[I]f a plaintiff claims that the defendant's conduct is illegal and thus not protected activity, the plaintiff bears the burden of conclusively proving the illegal conduct." (*Cross v.*

Cooper (2011) 197 Cal.App.4th 357, 385.) Plaintiffs have neither alleged, nor argued, nor evidenced that DeLong has committed any criminal act.

Having concluded that the Third and Fourth Causes of Action arise out of protected activity in their entirety, the Court turns to the second step of the anti-SLAPP analysis.

<u>Prong Two: Probability of Prevailing – Third and Fourth Causes of Action</u>

Civil Code, section 47, subdivision (b)'s litigation privilege "generally protects from tort liability any publication made in connection with a judicial proceeding." (*Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948, 952.) " 'The usual formation [of the privilege] is that [it] applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action.' " (*Id.* at p. 955 [quoting *Silberg v. Anderson* (1990) 50 Cal.3d 205, 212].) Where the litigation privilege applies, it "present[s] a substantive defense a plaintiff must overcome to demonstrate a probability of prevailing" at the second step of the anti-SLAPP analysis. (*Flatley*, *supra*, 39 Cal.4th 299, 323; see also *Seltzer v. Barnes* (2010) 182 Cal.App.4th 953, 972, fn. 15 [if the litigation privilege bars the plaintiff's claim, plaintiff cannot demonstrate a probability of prevailing on the claim, regardless of what evidence plaintiff has presented as to the elements of the cause of action].)

The litigation privilege is not limited to statements made in a courtroom or to the court. It "attaches to any publication that has any reasonable relation to the action and is made to achieve the objections of the litigation even though published outside the courtroom and no function of the court or its officers is involved." (*Pettitt v. Levy* (1972) 28 Cal.App.3d 484, 489; accord *Silberg*, *supra*, 50 Cal.3d 205, 212; see also *Wilton v. Mountain Wood Homeowners Assn.* (1993) 18 Cal.App.4th 565, 569.) Communications between counsel for parties to ongoing litigation fall squarely within the scope of the litigation privilege provided the content of the communication is logically related to the action and directed at achieving the objects of the litigation. (*GeneThera*, *supra*, 171 Cal.App.4th 901, 909-910 [settlement letter from one party's attorney to the opposing party's attorney amid ongoing litigation]; *Geragos v. Abelyan* (2023) 88 Cal.App.5th 1005, 324 [email and phone conversations between counsel for the parties in ongoing litigation].)

Plaintiffs' Third and Fourth Causes of Action sue DeLong, the plaintiff in an ongoing *Marvin* action against the Estate, for statements he, or his counsel on his behalf, made in direct relation to his pending *Marvin* claims against the Estate. (Complaint, ¶¶ 53-55 & Exs. C, D, I.) These communications were about DeLong's purported entitlement to a share of the Estate's assets, which is the subject of the *Marvin* litigation, and were aimed at causing the Estate to pay him what he contends he is due, which is the object of the *Marvin* litigation. (*Ibid.*; see *Silberg*, *supra*, 50 Cal.3d 205, 212.) Plaintiff's Third and Fourth Causes of Action rest entirely upon communications that are absolutely precluded from serving as a basis for tort liability under the litigation privilege.

Plaintiffs suggest that the litigation privilege does not apply here because DeLong's "purpose" in making the statements at issue was, they contend, "induc[ing] [the Estate] to breach a pre-existing contract with someone else." (Opposition, p. 15.) But "[t]he litigation privilege is absolute; it applies, if at all, regardless whether the communication was made with malice or the intent to harm. Put another way, application of privilege does not depend on the publisher's 'motives, morals, ethics or intent.' " (*Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 913 [quoting *Silberg*, *supra*, 50 Cal.3d 205, 220].)

Because the Third and Fourth Causes of Action are barred by the litigation privilege, Plaintiffs cannot demonstrate a probability of prevailing on them. The motion is GRANTED as to the Third and Fourth Causes of Action. This moots the remainder of the motion, as discussed above.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for August, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1

Meeting ID: 160 526 7272
Passcode: 026935

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov