

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 1/23/26      TIME: 1:30 P.M.      DEPT: L      CASE NO: CV2201606

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF:      SUSAN DAVIA

vs.

DEFENDANT: PERFORMANCE HEALTH  
SUPPLY, INC., ET AL

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NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff's motion to compel discovery was continued on 1/8/26 to 2/20/26 by stipulation.

The Court reminds the parties that compliance with MCR Civ 2.13H not only includes the timely filing of the Declaration of Non-Resolution by each party five court days prior to the hearing, but also requires that "[t]he Declaration shall not exceed three pages and *shall briefly summarize the remaining disputed issues and each party's contentions.*" (MCR Civ 2.13H(1), emphasis added.)

***Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.***

***IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Kindly turn your camera on when your case is called and make sure the party or lawyer making the appearance is properly identified on the screen.***

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***FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.***

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 01/23/26      TIME: 1:30 P.M.      DEPT: L      CASE NO: CV2204312

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF: LIPOSOME  
FORMULATIONS INC.

vs.

DEFENDANT: GIGIA L. KOLOUCH, ET AL

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NATURE OF PROCEEDINGS: DEMURRER

**RULING**

The demurrer of Defendants Gigia L. Kolouch and Lisa Bjorn is sustained without leave to amend.

***Allegations in Plaintiffs' Fourth Amended Complaint***

Plaintiffs Liposome Formulations, Inc. ("Liposome") and William Heriot ("Heriot") allege that Liposome was the former tenant of two adjoining commercial condominiums in Novato, owned by Defendants. Heriot has been affiliated with Liposome in an unofficial capacity throughout its existence and holds the rights to several patents that Liposome has used in its research, development and manufacture of osteoarthritis drugs and supplements. Liposome completed an extensive build-out which included the installation of substantial laboratory equipment. When Liposome discovered unpermitted and unsafe conditions at the property, Heriot attempted to sever Liposome's tenancy by serving 30-day notices to quit and filing unlawful detainer actions.

On July 27, 2023, Liposome entered into a Settlement Agreement with Defendants Gigia L. Kolouch and Lisa Bjorn, as co-trustees of the Bjorn Living Trust U/D/T/ 12/18/90 (the "Bjorn Defendants"), with respect to one of the units, Unit 13. The City of Novato red tagged Unit 14, owned by Defendant Barbara A. Husak in her capacity as trustee (the "Husak Defendants"), deeming it unsafe for occupancy. Because Plaintiffs could not go into Unit 14, they had nowhere to put their property remaining in Unit 13 before August 23, 2023, the initial date to vacate Unit 13 under the Settlement Agreement. On November 2, 2023, the day before Plaintiffs planned to auction their property, the Bjorn Defendants seized possession of Unit 13. On or around February 17, 2024, Plaintiffs discovered that all documents in Unit 13 had been destroyed. When Liposome returned possession of Unit 14, it was unable to take its property due to the red tag. While Plaintiffs were able to retrieve some property from Unit 14, the Husak Defendants destroyed almost all of Liposome's manufacturing and process equipment and appropriated the remaining furniture and counters.

Plaintiffs assert causes of action for promissory estoppel, negligent misrepresentation, retaliatory eviction, breach of the covenant of quiet enjoyment, unjust enrichment, conversion, trespass to chattels, intentional interference with prospective economic advantage, intentional interference with contract, and civil conspiracy.

### *Standard*

“The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law.” (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) A complaint “ordinarily is sufficient if it alleges ultimate rather than evidentiary facts” (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550), but the plaintiff must set forth the essential facts of his or her case “with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent” of the plaintiff’s claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099 [citation and internal quotations omitted].) Legal conclusions are insufficient. (*Id.* at 1098–1099; *Doe*, 42 Cal.4th at 551, fn. 5.) The court “assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law.” (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

### *Request for Judicial Notice is GRANTED*

The Court grants the Bjorn Defendants’ request for judicial notice of the Settlement Agreement as this agreement is referenced in the Fourth Amended Complaint. (See *City of Warren Police & Fire Retirement System v. Natera Inc.* (2020) 46 Cal.App.5<sup>th</sup> 946, 950; *Salvaty v. Falcon Cable Television* (1985) 165 Cal.App.3d 798 n. 1.)

### *Discussion*

The Bjorn Defendants demur to the Sixth through Tenth Causes of Action.

#### **I. Liposome’s Claims**

##### **A. Sixth through Ninth Causes of Action**

The Bjorn Defendants argue that the Sixth Cause of Action for conversion, the Seventh Cause of Action for trespass to chattels, the Eighth Cause of Action for intentional interference with prospective economic advantage, and the Ninth Cause of Action for intentional interference with contractual relations, are barred under the parties’ Settlement Agreement. The specific language of the Settlement Agreement upon which the Bjorn Defendants rely states the following:

¶3a: “[Liposome] shall voluntarily surrender[s], vacate[s], and restore[s] possession of the premises to plaintiff on or before 2 p.m. on August 23, 2023. Failure by [Liposome] to surrender, vacate and restore possession to plaintiff shall constitute a default under this agreement. ‘Surrender, vacate, and restore possession’ means physically vacating the premises, removing all personal belongings from the premises, returning all keys and door openers

to the premises to [the Bjorn Defendants] or [their] designated agent, leaving no one in possession of the premises or making a claim of right to possession of the premises.”

¶3c: “[Liposome] shall remove all personal property and trade fixtures from the premises. Any personal property or trade fixtures left at the premises beyond the agreed upon surrender, vacate and restore date shall be deemed abandoned by defendants, and [the Bjorn Defendants] may dispose of such abandoned personal property in any manner [they] deem appropriate.”

The Court previously sustained the Bjorn Defendants’ demurrer to the Sixth through Ninth Causes of Action in the Third Amended Complaint on the ground that they were barred by this language in the Settlement Agreement. The Court noted among other things that Plaintiffs acknowledged in the Third Amended Complaint that Liposome did not vacate the property by the agreed-upon date of August 23, 2023, and that its property remained at the premises through at least the beginning of November 2023.

### 1. The Bankruptcy Stay

To avoid the bar of the above-quoted language in the Settlement Agreement, Liposome adds a new allegation in the Fourth Amended Complaint that its bankruptcy filing on August 5, 2023, which occurred a few weeks after the parties executed the Settlement Agreement, immediately stayed all legal proceedings against it. As a result, Liposome alleges, the Settlement Agreement could not be enforced as a matter of law, and the August 23, 2023, move out date in the agreement was stayed while the bankruptcy matter was pending. (Fourth Amended Complaint (“FAC”), ¶¶50, 51.)

11 USCA Section 362(a)(3) and (4) provide that the filing of a petition for bankruptcy operates as a stay of “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate” and “any act to create, perfect, or enforce any lien against property of the estate.” “[T]he purpose of the automatic stay is to give the debtor a breathing spell from creditors, to stop all collection efforts, and to permit the debtor to attempt repayment or reorganization.” (*In re Computer Communications, Inc.*, 824 F.2d 725, 729 (9<sup>th</sup> Cir. 1987).) The stay can apply to a debtor’s contractual obligations. (*Id.*)

The Bjorn Defendants contend that the parties agreed in the Settlement Agreement that their rights under the agreement would not be affected by the filing of a bankruptcy petition. Specifically, the Settlement Agreement provides:

Defendants herein waive any right of appeal and further stay of enforcement beyond the stipulated vacate, surrender, and restore date for any reason. The parties hereto agree that should such request for stay or appeal be brought, it shall be denied by the court based on this stipulation, and plaintiff shall be entitled to an award of reasonable attorney’s fees and costs incurred in opposing such request.

Defendant(s) here in waive any right to stay enforcement should they declare bankruptcy. The parties hereto agree that should such request for stay or appeal be brought, it shall be denied by the court based on this stipulation, and plaintiff shall be entitled to an award of reasonable attorney's fees and costs incurred in opposing such request.

The Ninth Circuit has found that both a debtor's pre-petition waiver of bankruptcy discharge, as well as a pre-petition agreement not to file for bankruptcy, is unenforceable. (See *In re Wank*, 505 B.R. 878, 888 (9<sup>th</sup> Cir. BAP 2014); *In re Huang*, 275 F.3d 1173, 1177 (9<sup>th</sup> Cir. 2002); *In re Cole*, 226 B.R. 647, 651-54 (9<sup>th</sup> Cir. BAP 1998).) At least one district court in the Ninth Circuit has indicated that a similar rule may apply to pre-petition waivers of the automatic stay. (See *In re BGM Pasadena, LLC*, Case No.: 2:15-bk-27833-BB, 2016 WL 1738109, \*3 (Bankr. C.D. Cal. April 27, 2016).) Accordingly, the Court finds that the waiver of the automatic stay in the Settlement Agreement to be unenforceable.

The Bjorn Defendants also argue that the automatic stay did not apply regardless of whether it was waived because the lease for Unit 3 terminated before the August 5, 2023 bankruptcy filing, and no interest to a leasehold passes to the bankruptcy estate if the lessor terminated the lease prepetition. This argument lacks merit as the factual allegations in the Fourth Amended Complaint do not reflect that the lease had terminated by the time Liposome filed for bankruptcy. Further, the Settlement Agreement contemplated that Liposome had until August 23, 2023 to move out. Therefore, at the time Liposome filed for bankruptcy on August 5<sup>th</sup>, the lease could still have been in effect.

However, the Court does agree with the Bjorn Defendants that they could pursue their rights under the Settlement Agreement once the stay was no longer in effect. Liposome's bankruptcy case was dismissed on October 27, 2023. (FAC, ¶59.) The stay was no longer in effect as of this time. (11 USCA § 362(c)(2)(B).) A dismissal "reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title." (11 USCA § 349(b)(3).) The purpose of this subsection is to undo the bankruptcy case as far as practicable and restore all property rights to the position they were in before the bankruptcy case commenced. (*In re Income Property Builders, Inc.* (9<sup>th</sup> Cir. 1982) 699 F.2d 963, 965 n. 1.) "11 U.S.C. § 349, treating the effects of a bankruptcy, obviously contemplates that on dismissal a bankrupt is reinvested with the estate, subject to all encumbrances which existed prior to the bankruptcy.

After an order of dismissal, the debtor's debts and property are subject to the general laws, unaffected by bankruptcy concepts." (*Id.* at p. 965.) As a result, as of October 27, 2023, the Settlement Agreement terms were in effect and the Bjorn Defendants could proceed with their rights under the agreement. Because Plaintiffs had not vacated, their property was deemed abandoned pursuant to the terms of the agreement. The Bjorn Defendants took possession of the property on November 2, 2023, after the stay was no longer in effect and their rights under the Settlement Agreement could be pursued. (FAC, ¶62.) On November 2, 2023, the Bjorn Defendants sent a Notice of Right to Reclaim Abandoned Property, stating among other things that unless Liposome paid the reasonable cost of storage for the property inside the unit and took

possession by November 21, 2023, the property could be disposed of pursuant to Civil Code Section 1993.07. (*Id.*, ¶64 and Exh. E.) Plaintiffs do not allege they paid the cost of storage or took possession by November 21, 2023.

On a final note, the Court notes that Plaintiffs allege in their Fourth Amended Complaint that the Bjorn Defendants took possession of Unit 13 in violation of 11 USC § 108(c)(2). Plaintiffs do not discuss this section in their Opposition, but the Court will briefly address it as it is raised in the Fourth Amended Complaint. Plaintiffs allege that Section 108 “provides that any deadline in an order entered in a non-bankruptcy proceeding that has not expired by the date of the bankruptcy petition is extended until 30 days after notice of the expiration of the stay.” Plaintiffs apparently contend that the extension in Section 108 applies to Liposome’s action as debtor and therefore extended Liposome’s time to fulfill its obligations under the Settlement Agreement. This is not what Section 108(c) says, however. Rather, Section 108 extends certain timelines for *creditors* for claims against the debtor: “. . . if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor . . . and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of (1) the end of such period . . . or (2) 30 days after notice of the termination or expiration of the stay . . . .” As the court explained in *Hazen First State Bank v. Speight* (8<sup>th</sup> Cir. 1989) 888 F.2d 574: “Where a creditor is stayed from commencing or continuing an action against a debtor in bankruptcy, section 108(c) gives the creditor an additional 30 days to enforce its claim against the debtor once the creditor receives notice of the termination of the stay . . . . The purpose of section 108(c) is to prevent a debtor from taking advantage of the bankruptcy scheme by filing for bankruptcy and then waiting for the statute of limitations to run on the creditor’s claim.” (*Id.* at pp. 576-577.) Therefore, this section does not support Plaintiffs’ allegations that the Bjorn Defendants took possession in violation of the Bankruptcy Code.

## 2. Language of the Settlement Agreement

Plaintiffs argue that the Settlement Agreement does not bar their claims because it does not contain an express release provision of all claims or unknown claims. However, wrongful possession or wrongful conduct in taking possession is an element of claims for conversion (the Sixth Cause of Action), trespass to chattels (the Seventh Cause of Action) and intentional interference with prospective economic advantage (the Eighth Cause of Action). (See *Plummer v. Day/Eisenberg, LLP* (2010) 184 Cal.App.4<sup>th</sup> 38, 45 [“Conversion is the wrongful exercise of dominion over the property of another”] [citation omitted]; *Thrifty-Tel, Inc. v. Bezenek* (1996) 46 Cal.App.4<sup>th</sup> 1559, 1566-1567; CACI 2101 [trespass to chattel requires defendant’s interference with plaintiff’s use without plaintiff’s consent], *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.App.4<sup>th</sup> 1134, 1158-1159 [interference with prospective economic relations requires independently wrongful act].)

Here, the Bjorn Defendants’ possession and disposal of the property in Unit 13 was not wrongful because Liposome agreed to that result under the terms of the Settlement Agreement. With respect to Plaintiffs’ Ninth Cause of Action for intentional interference with contractual relations, Plaintiffs allege that “Defendants’ conduct was wrongful beyond the mere fact of the interference itself. Defendants’ conduct, as alleged herein, constitutes a breach of contract,

conversion, trespass to chattels, and unjust enrichment.” (FAC, ¶155.) However, Plaintiffs do not even state breach of contract or unjust enrichment claims against the Bjorn Defendants, and their conversion and trespass to chattels claims are barred by the Settlement Agreement as set forth above. Liposome also fails to state viable interference claims against the Bjorn Defendants for the same reasons that are discussed below in connection with Heliot’s claims.

### 3. Civil Code Section 1668

Plaintiffs argue that the Settlement Agreement violates Civil Code Section 1668 and is thus unenforceable because the object of the agreement was to exempt the Bjorn Defendants from responsibility from future wrongdoing. This argument fails as the “object” of the agreement was the settlement of the parties’ pending dispute. Future conduct was contemplated only to the extent the agreement set a future deadline for removal of the property and specified consequences for failure to comply with that deadline and actions the Bjorn Defendants could take as a result.

### 4. Willful misconduct

Plaintiffs also make the same argument that was previously rejected by this Court, i.e., that they are excused from the bar of the Settlement Agreement under the “willful misconduct” language contained in the agreement. The Court incorporates its prior ruling and its analysis here and again rejects this argument.

The demurrer to the Sixth through Ninth Causes of Action as to Liposome is SUSTAINED for the reasons discussed above.

### B. Tenth Cause of Action

The demurrer to the Tenth Cause of Action for civil conspiracy is also SUSTAINED. As the Court previously stated in its order on the demurrer to the Third Amended Complaint, civil conspiracy is not an independent cause of action but is rather a form of vicarious liability. “Conspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration.” (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4<sup>th</sup> 503, 510-511.) “Standing alone, a conspiracy does no harm and engenders no tort liability. It must be activated by the commission of an actual tort.” (*Id.* at p. 511.) “A conspiracy cannot be alleged as a tort separate from the underlying wrong it is organized to achieve.” (*Id.* at p. 513.) In determining the acts on which the conspiracy claim is based, the court focuses on the tortious acts in which the defendant is alleged to have conspired, not the acts evidencing its participation in the conspiracy. (*Willis v. The Walt Disney Co.* (2025) 115 Cal.App.5<sup>th</sup> 1001, 1014.)

Plaintiffs identify the basis for their conspiracy claim in paragraph 161 of their Tenth Cause of Action: “Defendants engaged in wrongful acts in furtherance of their common design to harm plaintiffs, including but not limited to: (a) sending defendant Husak’s daughter to Unit 13 on August 16, 2023, to remove Plaintiffs from Unit 13 and Unit 14; (b) seizing possession of Plaintiffs’ property in Units 13 and 14; (c) refusing to allow Plaintiffs the legally required

amount of time to recover their property; (d) conditioning Plaintiffs' retrieval of their property upon a "global settlement" that would require Plaintiffs to purchase the two units at above-market rates and to pay to repair the defects to Unit 14 created by the Husak Defendants; (e) issuing false Notices of Right to Reclaim Abandoned Property, signed by Defendants' common counsel in the two unlawful detainer cases, to assert that Plaintiffs' property in Unit 14 was "abandoned" and worth less than \$2,500.00, when Defendants knew that neither point was true; (f) destroying the bulk of Plaintiffs' property in Units 13 and 14; and (g) using the remaining property Plaintiffs had in Unit 14 to assist in Defendants' joint marketing of Units 13 and 14 for sale."

Plaintiffs do not allege any underlying tortious conduct sufficient to support a conspiracy claim. They have failed to state any viable tort claims against the Bjorn Defendants as discussed above, and they do not allege that the Bjorn Defendants participated in the torts alleged against the Husak Defendants with respect to Unit 14, namely, promissory estoppel, negligent misrepresentation, retaliatory eviction, breach of the covenant of quiet enjoyment, and unjust enrichment. While Plaintiffs allege that both sets of defendants proposed unfair or unreasonable terms for the sale of the two units to Plaintiffs and used Plaintiffs' property to jointly market both units, this conduct is not alleged to constitute an independent tort. Joint conduct alone is insufficient to support civil conspiracy liability. "[A] conspiracy does not result in tort liability unless an actual tort is committed." (*Kenne v. Stennis* (2014) 230 Cal.App.4<sup>th</sup> 953, 968.)

## II. Heriot's Claims

The Court also sustains the demurrer to Heriot's causes of action.

Heriot does not viable state conversion, trespass to chattels and or interference causes of action (the Sixth through Ninth Causes of Action) against the Bjorn Defendants because under the Settlement Agreement, the Bjorn Defendants' possession and/or disposition of the property in Unit 13 was not wrongful. In paragraph 5 of the Settlement Agreement, Liposome represented that it was "the sole occupant[] of the subject premises and that the premises has not been rented, assigned, subleased, etc. to any third party at any time prior to the execution" of the agreement and that it would "not allow any other person to occupy the subject premises and that they shall not rent, assign, sublease, etc. the premises to any third party."

Heriot (and Liposome) also fail to state sufficient facts regarding the Bjorn Defendants' knowledge with respect to the Eighth and Ninth Causes of Action. The elements of a claim for intentional interference with prospective economic advantage are (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. (*Sugarman v. Brown* (2021) 73 Cal.App.5<sup>th</sup> 152.)

In the Eighth Cause of Action for intentional interference with prospective economic advantage, Plaintiffs generally allege that the Bjorn Defendants knew or should have known of Plaintiffs' existing business relationships with their customers and Plaintiffs' interest in onboarding new and existing customers. However, no actual facts are alleged to support this conclusory

allegation. Plaintiffs state only that the Bjorn Defendants knew or should have known about the fact that Plaintiffs had customers “[a]s commercial landlords”. (FAC, ¶140.) As the Court previously ruled in connection with the demurrer to the Third Amended Complaint, this allegation is insufficient. Heriot does not add any new allegations regarding the Bjorn Defendants’ knowledge to fix this deficiency.

The elements of a claim for intentional interference with contractual relations are (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. (*Réeves v. Hanlon* (2004) 33 Cal.4<sup>th</sup> 1140, 1148.) In the Ninth Cause of Action for intentional interference with contractual relations, Plaintiffs allege that Heriot had an ongoing royalty agreement with Liposome concerning the use of IP that Heriot owns and Plaintiffs had contractual relations with their customers, and that the Bjorn Defendants knew or should have known of these contractual relations as “[a]s commercial landlords.” (FAC, ¶153.) As noted above, this allegation is insufficient to allege the requisite knowledge and Plaintiffs failed to include additional allegations to fix this deficiency identified in the Court’s previous Order. Further, Plaintiffs do not allege that Heriot himself had any contractual relations with customers.

The demurrer to Heriot’s Tenth Cause of Action is SUSTAINED for the reasons discussed above.

### III. Leave to Amend

As Plaintiffs have now had several opportunities to state a viable claim against the Bjorn Defendants but have failed to do so, the demurrer is sustained without leave to amend.

***Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.***

***IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.***

***FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party’s absence.***

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 01/23/26      TIME: 1:30 P.M.      DEPT: L      CASE NO: CV0003881

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF:      GARY GREEN

vs.

DEFENDANT: RALPH DIAZ, ET AL

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NATURE OF PROCEEDINGS: MOTION - QUASH

**RULING**

Defendant Diaz, et al ("Defendant") filed this motion to quash service of summons on December 15, 2025. The motion was continued to January 23.

The party choosing to oppose motion should file and serve opposed opposition papers which include a memorandum of points and authorities, and any supporting papers such as declarations or other evidence. Code of Civil Procedure § 1005(b). The matter is continued again to allow moving party to file an evidentiary declaration. If evidentiary support is provided to the court, the court will likely GRANT the motion. However for now, the Court lacks the necessary evidentiary support for the motion.

Appearances are required.

***Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.***

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 01/23/26      TIME: 1:30 P.M.      DEPT: L      CASE NO: CV0005142

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF:    BLUE SKY UTILITY 2017 II  
LLC

vs.

DEFENDANT: 3902 ANNADALE LANE,  
LP, ET AL

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NATURE OF PROCEEDINGS: WRIT OF ATTACHMENT HEARING

RULING

Plaintiff Blue Sky Utility ("Plaintiff") filed an application for writ of attachment on December 26, 2025. Defendant 3902 Annadale Lane, LP, et al, ("Defendants") filed their untimely opposition to the application on January 16, 2026.

Code of Civil Procedure section 1005(b) requires that "all papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days . . . before the hearing" This timing requirement is mandatory unless otherwise ordered or specifically provided by law. California courts have consistently held that trial courts possess discretion to consider untimely opposition papers. In *Correia v. NB Baker Electric, Inc.*, the court stated that "reviewing courts have long held trial courts are authorized to consider late-filed opposition papers for good cause if there is no undue prejudice to the moving party" *Correia v NB Baker Electric*, (2019) 32 Cal.App. 5th 602.

The untimely Opposition deprived the Plaintiff with the opportunity to file a reply brief, which must be filed at least 5 court days prior to the hearing, §1005(b).

Defendants offer no explanation to justify the late filing, therefore the court lacks justification to review the papers. Plaintiff's application is GRANTED without review of the untimely opposition.

***Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by***

***order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.***

***IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.***

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 01/23/26      TIME: 1:30 P.M.      DEPT: L      CASE NO: CV0006547

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF:      WILLIAM HITCHCOCK

vs.

DEFENDANT: NOVATO HEALTH CARE  
CENTER, LLC ET AL

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NATURE OF PROCEEDINGS: MOTION – COMPEL

**RULING**

Defendants Novato Healthcare Center, LLC, ASRU, LLC, Citrus Wellness Center, LLC, Pacific Healthcare Holdings, Inc., Brius Healthcare, Corporate Interface Services LLC, Tamar Rechnitz, and Shlomo Rechnitz’s (collectively “Defendants”) Motion to Compel Arbitration and to Stay Court Proceedings is DENIED.

**BACKGROUND**

In support of their Motion, Defendants allege as follows:

On June 9, 2025, Plaintiff filed his Complaint against Defendants. Plaintiff alleges causes of action for (1) negligence, (2) willful misconduct and (3) elder abuse. (Clark Decl., Ex. 1.) Plaintiff’s claims against Defendants arise from medical care and treatment Plaintiff received while he was a resident at a skilled nursing facility. (*Id.*)

On June 6, 2023, Plaintiff was admitted to the facility. In connection with his admission, Judy Throop, whom Defendants contend identified herself as *Plaintiff’s wife*, signed Plaintiff’s admissions paperwork and the arbitration agreement. (*Id.*; Scott Decl., Ex. A.) The arbitration agreement covers medical malpractice/negligence disputes as well as any and all disputes or claims arising out of the services provided at the facility, including allegations of elder abuse under California Welfare & Institutions Code sections. (*Id.*)

**LEGAL STANDARD**

Under the Federal Arbitration Act (9 U.S.C. § 1 et seq. (“FAA”)) “ ‘[a] written provision in ... a contract evidencing a transaction involving [interstate] commerce to settle by arbitration the controversy thereafter arising out of such contract or transaction, ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.’ (9 U.S.C. § 2.)” (*Broughton v. Cigna Healthplans of California* (1999) 21 Cal.4th

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1066, 1073-1074, superseded by statute on other grounds as stated in *Ferguson v. Corinthian Colleges, Inc.* (9th Cir. 2013) 733 F.3d 928, 937.) The FAA was intended to reverse centuries of judicial hostility to arbitration agreements by putting arbitration agreements upon the same footing as other contracts. (*Shearson/American Exp., Inc. v. McMahon* (1987) 482 U.S. 220, 225-226.)

However, arbitration – whether under the California Arbitration Act (“CAA”) or FAA – “is a matter of consent, not coercion ... a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236 [internal quotations and citations omitted].) The existence of a valid agreement to arbitrate is a “question of arbitrability” to be decided by the court unless the parties expressly agree otherwise. (*Garden Fresh Restaurant Corp. v. Superior Court* (2014) 231 Cal.App.4th 678, 684 citing *Howsam v. Dean Witter Reynolds, Inc.* (2002) 537 U.S. 79, 83 [questions of arbitrability include whether parties are bound by an arbitration clause or whether binding clause applies to particular case or controversy].)

The party seeking to arbitrate must prove the existence of the agreement. (*Pinnacle, supra*, 55 Cal.4th at 236.) If it does so, the burden shifts to the party opposing arbitration to “demonstrate that an arbitration provision cannot be interpreted to require arbitration of the dispute” or that the agreement is otherwise unenforceable. (*Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 686-87.)

Both the FAA and CAA employ the same principles of contract interpretation. Thus, regardless of which act governs the interpretation of the Agreement, the result is the same.” (*Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 157.) Where the interpretation of an arbitration provision does not turn upon the credibility of extrinsic evidence, interpretation is solely a judicial function and the court should attempt to give effect to the parties' intentions, in light of the usual and ordinary meaning of the contractual language and the circumstances under which the agreement was made. (*Gravillis v. Coldwell Banker Residential Brokerage Co.* (2006) 143 Cal.App.4th 761, 771.)

## DISCUSSION

Defendants move to compel arbitration pursuant to California Code of Civil Procedure section 1281.2 and the Federal Arbitration Act (“FAA”) on the grounds that Plaintiff’s representative executed an arbitration agreement by which the claims alleged in Plaintiff’s Complaint are subject to binding arbitration. In support of their Motion, Defendants set forth evidence of an arbitration agreement signed by Judy Throop and dated June 9, 2023. (Scott Decl., ¶ 5, Ex. A.)

The Opposition counters that Defendants do not meet their burden to show that Plaintiff granted legal authority to Ms. Throop to enter into a binding arbitration agreement on his behalf. The Opposition presents Ms. Throop’s signed declaration confirming that she has never been Plaintiff’s wife and she has no legal authority to bind him to any arbitration agreement. (Throop Decl., ¶¶ 1-2.)

In Reply, Defendants contend that Ms. Throop represented to Defendants that she was Plaintiff’s agent through consent, instruction or his power of attorney, and that she was authorized to enter

into the arbitration agreement on Plaintiff's behalf. (Scott Decl, Exhibit B.) Defendants argue that they relied on these express representations and allowing Ms. Throop to "conveniently disclaim her authority" is not only inequitable, but it undermines the public policy underlying the enforcement of arbitration agreements.

Defendants have not met their burden. Just as in *Kinder v. Capistrano Beach Care Center, LLC* (2023) 91 Cal.App.5th 804, 813, courts have consistently rejected agency when the only evidence is the agent's "purported certification in the arbitration agreement that they were 'authorized to act as Resident's agent in executing and delivering of [sic] this arbitration agreement.'" This is because agency cannot be created by the conduct of the agent alone, rather, conduct by the principal is essential to create the agency. (*Id.*, at p. 812.)

When a defendant contends an agreement to arbitrate is binding because it was signed by an agent of the plaintiff, the defendant bears the burden of proving the signatory was the plaintiff's actual or ostensible agent. (*Ibid.* Internal citations omitted.) It is not Plaintiff's burden to show the signatory did not have authority to sign on his behalf, rather it is moving Defendants' burden to establish that either Plaintiff or someone with authority to act on his behalf agreed to arbitration. (*Id.* at pp. 815-6.)

Here, Defendants presented no evidence that Plaintiff did anything to lead Ms. Throop to believe she had the authority to enter into arbitration agreements on his behalf. Similarly, Defendants present no evidence that Plaintiff did anything to lead Defendants to believe that Ms. Throop had authority to do so. Instead, Defendants contend Ms. Throop was Plaintiff's agent based on her purported certification in the arbitration agreement that she was authorized to sign by "virtue of consent, instruction, and/or durable power of attorney." (Scott Decl., Ex A, p. 5.) As noted, courts have consistently rejected this position in closely analogous contexts. (*Kinder, supra*, at p. 813.)

Moreover, *Goldman v. Sunbridge Healthcare, LLC* (2013) 220 Cal.App.4th 1160, 1173, held that a married person does not inherently have authority to enter into an arbitration agreement on behalf of their spouse. Thus, even if Ms. Throop had been married to Plaintiff at the time she executed the arbitration agreement, she would not have had inherent agency to bind Plaintiff to arbitration.

For these reasons, the Motion to Compel Arbitration and to Stay Proceedings is DENIED.

***Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.***

***IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Litigants in the virtual courtroom are required to leave the video screen on and wait for your case to be called.***

***FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing. If the connection is inadequate, the Court may proceed with the hearing in the party's absence.***

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 01/23/26      TIME: 1:30 P.M.      DEPT: L      CASE NO: CV0007574

PRESIDING: HON. MARK A. TALAMANTES

REPORTER:

CLERK: M. GIL

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PLAINTIFF:      LINDA COOPER

vs.

DEFENDANT: NOR-CAL SEAFOD INC.,  
ET AL

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NATURE OF PROCEEDINGS: MOTION – ANTI-SLAPP 425.16

**RULING**

Defendants Nor-Cal Seafood, Inc. and Huechi Wong’s motion to strike Plaintiff Linda Cooper’s (“Plaintiff”) complaint under the anti-SLAPP statute is DENIED.

**BACKGROUND**

This is a malicious prosecution action. Plaintiff alleges that in August 2022, Defendant Wong filed a baseless lawsuit against her on behalf of Defendant Nor-Cal Seafood, Inc., his family’s company. (Complaint, Attachment 1, ¶ 1.) The lawsuit accused Plaintiff of accepting a fraudulent transfer of an interest in real property (her home in Sausalito) from her son, against whom Wong had a default judgment. (*Id.* at ¶ 3.) Plaintiff alleges that Defendants knew the lawsuit was baseless. (*Id.* at ¶ 5.)

According to Plaintiff’s complaint, the lawsuit was dismissed for failure to prosecute. (Complaint, Attachment 1, ¶ 6.) However, Defendants re-filed it in July 2023 under a different case number and then recorded a notice of *lis pendens* against Plaintiff’s home. (*Id.* at ¶¶ 7-8.) Plaintiff was trying to sell her home, and several purchasers contracted to buy it, but the *lis pendens* precluded the sale. (*Id.* at ¶¶ 2, 9-10.)

In June 2025, the second lawsuit was dismissed, again for failure to prosecute. (Complaint, Attachment 1, ¶ 11.) However, “Defendants did not remove the *lis pendens*[.]” (*Ibid.*) As a result, Plaintiff lost her property to foreclosure and received nothing from its sale. (*Id.* at ¶ 12.) The home was valued at over \$1 million. (*Id.* at ¶¶ 9, 12.) Plaintiff now brings causes of action for slander of title, intentional interference with contractual relations, malicious prosecution, and elder abuse.

The Court now considers Defendants’ motion to strike the complaint as a strategic lawsuit against public participation. (See Code Civ. Proc., § 425.16.)

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## 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, 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.*) 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. (*Id.* at p. 67.) “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 v. Sletten* (2002) 29 Cal.4th 82, 89 [emphasis in original].)

## DISCUSSION

Requests for Judicial Notice

Plaintiff filed her complaint on September 16, 2025. On November 17, Defendants filed a notice of special motion to strike under the anti-SLAPP statute, an approximately three-page brief, a request for judicial notice, and a short declaration solely directed at authenticating the exhibits for which Defendants sought judicial notice. However, Defendants neglected to attach any exhibits to their submission.

In her opposition to the motion, Plaintiff brought up the fact that Defendants’ moving papers did not contain the exhibits for which they sought judicial notice. In their December 9 reply, Defendants acknowledged the mistake, and did nothing to correct their error.

On December 12, 2025, the Court continued the hearing on the motion to January 23, 2026. On December 29, Defendants submitted “amended” moving papers attaching the exhibits they neglected to attach to their original moving papers.

The Court disregards Defendants’ December 29, 2025, submission. The Defendants are not permitted to wait until the motion is fully briefed and the initially-scheduled hearing date passes to submit materials on which their motion relies.

Defendants’ request for judicial notice is GRANTED as to Exhibits A, B, and D because these are court records that are readily available for the Court’s review. (Evid. Code, § 452, subd. (d).) Their request for judicial notice of Exhibit C is denied because Defendants neglected to timely

provide the Court with “sufficient information to enable it to take judicial notice of matter[,]” namely, copies of the material denominated Exhibit C. (Evid. Code, § 453, subd. (b).)

### Protected Activity

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, supra*, 29 Cal.4th 82, 89 [emphasis added]; see also *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78 [“[T]he defendant’s act underlying the plaintiff’s cause of action must *itself* have been an act in furtherance of the right of petition or free speech.”].) “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.)

In *Littlefield v. Littlefield* (2024) 106 Cal.App.5th 815, a trial court denied an anti-SLAPP motion to strike in part because the movants had “ ‘fail[ed] to state the elements of the challenged claim and identify what actions by [the defendants] supply those elements and form the basis for liability.’ ” (106 Cal.App.5th 815, 823 [quoting the trial court’s decision].) On appeal, the defendants “argu[ed] that it is the court’s obligation, not theirs, to determine the elements of the challenged claim and what actions by the defendant supply those elements.” (*Id.* at p. 826.) The First District soundly rejected this argument as “meritless[,]” stating that it is inconsistent with the substance of a defendant’s burden on an anti-SLAPP motion as described by the Supreme Court. (*Ibid.*; see, e.g., *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 887 [“At the first step of the [anti-SLAPP] analysis, the defendant must make two related showings. Comparing its [alleged] statements and conduct against the statute, it must demonstrate activity qualifying for protection. And comparing that protected activity against the complaint, *it must also demonstrate that the activity supplies one or more elements of a plaintiff’s claims.*”] [internal citation omitted and emphasis added].)

Elsewhere, the First District has suggested that a defendant moving to strike a pleading under the anti-SLAPP statute is required to discuss the allegations of protected activity in the context of the elements of the plaintiff’s claims to provide the plaintiff fair notice of what she must target in her opposition. (*Young v. Midland Funding LLC* (2023) 91 Cal.App.5th 63, 97-98.)

Defendants’ papers contain no discussion of how the purportedly protected acts described in the complaint meet the elements of Plaintiff’s causes of action. The court may not determine *sua sponte* that a cause of action arises out of protected activity without reference to the elements of that cause of action. (*Bonni, supra*, 11 Cal.5th 995, 1015.) Given Defendants’ showing, the only way the Court could rule in Defendants’ favor is if it assumed defense counsel’s responsibility to research the elements of Plaintiff’s claims and situate her allegations within the context of those elements. This would be improper and unfair to Plaintiff. Here too like the Defendants, Plaintiff has not discussed the elements of any of her causes of action or how any of the evidence she

presents relates to those elements, something she necessarily would have to do to demonstrate a likelihood of success on the merits. Neither party to a lawsuit is entitled to enlist the Court advocate for either side.

In their reply, Defendants “request [the] Court . . . impose ‘terms it deems proper’ under CCP § 425.15(f) to allow an anti-SLAPP motion to be refiled with the above technicalities cured[.]” (Reply, p. 4.) That provision does not exist. (See Code Civ. Proc., § 425.15.) Defendants have failed to carry their burden at the first step of the anti-SLAPP analysis.

The motion is denied.

***Parties must comply with Marin County Superior Court Local Rules, Rule 7.12(B), (C), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 7.12(C), the tentative ruling shall become the order of the court.***

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