Dept 2 Civil Law and Motion Tentative Rulings for Monday, October 3, 2022 @ 1:30 p.m.

If you wish to appear for oral argument, you must so notify the Court and all other parties by 4:00 p.m. one court day prior to the scheduled hearing, pursuant to California Rules of Court, rule 3.1308. The phone number for Department 2 is (209) 588-2382. The tentative ruling will become the ruling of the Court if the Court has not directed oral argument by its tentative ruling and notice of intent to appear has not been given.

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2. CV64401 **Bucksen v. Vera**

Hearing on: Demurrer and Special Motion to Strike
Moving Party: Defendants
Tentative Ruling: Demurrer sustained with 30 days leave to amend; special motion to strike denied without prejudice

This is a neighbor dispute. Although the parties are no longer neighbors, the fighting continues. In this, the latest chapter, Cynthia and Took Bucksen (hereinafter "Bucksens" for ease of reference) are suing Benjamin and Rebecca Vera (hereinafter "Veras" for ease of reference) for defamation and invasion of privacy. To appreciate the whole of this present litigation, it is necessary to revisit the origin of the hostilities.

The saga began on 02/21/09 when the Bucksens – who live at 18900 Horizon Court in Tuolumne – parked a vehicle in the center of the cul-de-sac. The Veras – who lived at 18910 Horizon Court – took offence to the act, claiming that the practice blocked access both to their residence, and impeded emergency vehicles trying to clear a recent snowfall. The Veras asked the Bucksens to reposition the vehicle to the curb, prompting the Bucksens to add a second vehicle to the problem. The Veras called the police, which set the Bucksens off to no end. From here, it soon metastasized into a war of the roses (minus the lovely petals).

Since that call to law enforcement on 02/21/09, it seems the Bucksens made sport of trying to harass and pester the Veras. Over the next few months, there were seven (7) calls to the Sheriff's Department, four (4) calls to the CHP, and numerous pleas for help from the HOA. Most of the episodes involved infantile antics, like blocking the Veras in; blocking their mailbox; blasting car horns; headlight beaming; peeling out; and stacking debris. Some of the episodes involved more sinister transgressions, like setting up cameras to peer into the Veras' home; dumping chicken broth on the Veras' driveway (to attract wild animals); and online cyber-bullying. In one notable episode on 05/17/19, Took followed Benjamin to the latter's work, reportedly inciting Benjamin along the way with profanity-laden well-wishes and an exclamatory extended middle finger.

On 09/03/19, the Veras filed *three* Requests for Civil Harassment Restraining Order: one against Took Bucksen (CV62641); another against Cynthia Bucksen (CV62642); and the last against Sarah Kutz, who was Took's girlfriend and co-conspirator (CV62640). All three matters were initially set to be heard together in a single hearing, but only CV62640 and CV62641 proceeded as scheduled. The Court found in favor of the Veras, ordering Took Bucksen to stay 100 years away, and not to block the Veras or beam/blast them, for three years. See Order dtd 12/20/19. The Court denied the petition relating to girlfriend Sarah. As for the mother, after the Court issued the TRO, she lawyered up and managed to secure numerous continuances until Rebecca gave up and filed a voluntary dismissal without prejudice on 03/24/21. (By that time, the Veras had already sold their home and moved.)

On 09/13/19, the Bucksens filed two Requests for Civil Harassment Restraining Order: one against Benjamin (CV62662); and the other against Rebecca (CV62663). The allegations here were more general: basically that the Veras were harassing them and peering into their windows. Both of these proceedings were repeatedly continued. The TROs were substantively denied. Despite notice that the Veras had since moved, this Court held a hearing and granted the Veras' request for a directed verdict based on petitioner's lack of evidence or proof of imminent/likely harm. See Minute Order dtd 04/19/21.

On 10/05/21, Cynthia filed a small claims action against Rebecca (SC20223). In her claim, Cynthia alleged that Rebecca "fraudulently filed for a restraining order based on false information," and that Cynthia had to incur $6,378.00 in attorney fees to defeat the claim. At the hearing thereon, the Court found that there was no prevailing party in the various civil harassment cases, and denied Cynthia's claim. See Minute Order dtd 12/03/21.

On 03/10/22, the Bucksens commenced the pending unlimited civil action. The causes of action set forth therein included abuse of process, malicious prosecution, defamation, invasion of privacy (false light), and intentional infliction of emotional distress. On 06/20/22, plaintiffs filed a First Amended Complaint, preserving only the claims for defamation and invasion of privacy (false light). Although the charging averments are relatively sparce, the gist of the two claims is that defendants allegedly made false and unflattering comments about plaintiffs to unidentified third-parties unrelated to the various civil proceedings. Defendants responded to the First Amended Complaint with both as demurrer and a special motion to strike.

Demurrer – Sustained with 30 days Leave to Amend

Defendants' demurrer is defective in that it does not "distinctly specify" the grounds upon which any of the objections are made in separate paragraphs. See CCP § 430.60; CRC 3.1320(a). There is also no meet and confer declaration from defense counsel, which is required. See CCP §430.41. However, given that the operative pleading has only two causes of action, and the demurrer itself is based on a single legal contention, these omissions will be forgiven.

Defendants contend that both causes of action are barred by res judicata. Given that this is an affirmative defense, in order to prevail at the pleading stage, defendants must demonstrate that plaintiffs are not entitled to any relief on either claim because (1) the affirmative defense applies to both claims and (2) the affirmative defense is established as a matter of law. Seeking dispositive relief for failure to state at the pleading stage on an affirmative defense is a high bar indeed. In general, success will not lie where the action may be, but is not necessarily, barred. Any doubts must be left for summary judgment. See *Committee for Green Foothills v. Santa Clara County Board of Supervisors* (2010) 48 Cal.4th 32, 42; *Silva v. Langford* (2022) 79 Cal.App.5th 710, 715; *Heshejin v. Rostami* (2020) 54 Cal.App.5th 984, 992; *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 223.

Res judicata bars subsequent litigation of a claim involving violation of the same primary right at issue in an earlier action, provided that the earlier action reached a final judgment on the merits between the same parties in the current litigation. Since the violation of a single primary right gives rise to a single cause of action, res judicata bars litigation not only of claims that were actually decided in the first action, but also claims that should have been asserted in the earlier action as part of the same cause of action. A matter that was within the scope of the earlier action, related to the subject matter, and relevant to the issues is subject to res judicata since these comprise one primary right even though there may be different legal theories and remedies available. See *Samara v. Matar* (2018) 5 Cal.5th 322, 326-327; *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 904; *Meridian Financial Services, Inc. v. Phan* (2021) 67 Cal.App.5th 657, 686; *Coleman v. CIT Bank, NA* (2021) 64 Cal.App.5th 259, 263-264; *Boyd v. Freeman* (2017) 18 Cal.App.5th 847, 855.

The earlier action here is the small claims case. There is a difference of opinion amongst appellate courts about the propriety of applying res judicata to a defense judgment from a small claims action. Compare *Sanders v. Walsh* (2013) 219 Cal.App.4th 855, with *Pitzen v. Superior Court* (2004) 120 Cal.App.4th 1374, and *Allstate Ins. Co. v. Mel Rapton, Inc.* (2000) 77 Cal.App.4th 901. Both sides of the argument agree, however, that a primary factor in determining whether to give collateral estoppel effect to a small claims judgment is whether the court record adequately reflects the issues presented by the plaintiff therein, and a reasoned basis for the defense judgment. Based on a review of the Register of Action, the small claims case was based on damages caused by the filing of CV62642. If plaintiffs were seeking damages for defamation and false light based on the allegations contained in CV62642, res judicata would clearly apply. In other words, the small claims' request for legal fees was merely one aspect of damages caused by the "wrong" associated with the filing (and prosecution) of that action (and in fact never had a legal basis since there is no right to recover legal fees from an adversary without a contract or statute). Although plaintiffs distance themselves from that action (see FAC Para 8), the problem with the FAC is that there is no factual predicate for the defamation or false light, permitting an easy inference that the claims are indeed based – at least in part – on matters subsumed within the small claims case. Demurrer sustained with 30 days leave to amend to make plain when, and to whom, the defamatory statements were made such that they can be distinguished from the small claims case. Defendant to prepare order.

Special Motion to Strike – Denied without prejudice

A cause of action arising from a person's act in furtherance of that person's right of petition, including statements made before a judicial proceeding, are subject to a special motion to strike. CCP §425.16. The statute does not immunize defendants from lawsuits arising out of such practices, but instead provides a procedure for weeding out, at an early stage, meritless claims arising from protected activity. Resolution of a special motion to strike involves two steps.

First, the defendant must establish that the challenged claim arises from activity protected by

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§425.16. A claim "arises from" protected activity if the principal thrust of the claim is based on the defendant's protected free speech or petitioning activity. *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89. To do so, the defendant has the burden of showing that the conduct for which the plaintiff is suing is based in whole or in significant part:

1) a statement made before a legislative, executive, judicial, or other official proceeding;
2) a statement made in connection with an issue under consideration or review by a legislative, executive, judicial, or other official body;
3) a statement made publicly in connection with an issue of public interest; or
4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest. CCP §425.16(e).

Assuming the defendant demonstrates that the claims asserted arise from protected activity, the burden then shifts to the plaintiff to show, with evidence outside the four corners of the pleading, that the claim has minimal merit – meaning that the claim is both legally sufficient and supported by sufficient facts to sustain a favorable judgment if her evidence is ultimately established at trial. *Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 788; *Gruber v. Gruber* (2020) 48 Cal.App.5th 529, 537.

There is no need to reach the second step because defendants have not demonstrated by a preponderance of the evidence that the defamation and false light claims stated in the First Amended Complaint arise out of the prior cases or any court action. Although the original Complaint clearly included claims which arose out of protected activity, those claims were dismissed before the special motion to strike was on calendar. Counsel contends that any statement made to anyone in the world must "arise out of" the restraining order or small claims case, but that is not true. If the statements were uttered to persons listed as witnesses therein, during the proceeding or in reasonable anticipation of its commencement, those would likely arise out of protected activity. However, walking up to a stranger in the store and rattling off a litany of complaints about one's neighbor does not arise out of anything protected since insular neighbor disputes are not matter of public interest. Since this Court sustained the demurrer to the First Amended Complaint, this Court will grant defendants leave to file another special motion to strike if warranted based on the more-detailed Second Amended Complaint. See *Starview Property, LLC v. Lee* (2019) 41 Cal.App.5th 203, 206. Defendants' objection to the Risley declaration is sustained. Plaintiff to prepare order.

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3. CVL64050 Carter v. Cunningham
Hearing on: Demurrer
Moving Party: Defendant
Tentative Ruling: Sustained without leave to amend

This is a limited jurisdiction case filed by an inmate, alleging that prison officials caused him harm after filing a "false" rule violation report. Before the Court this day is a demurrer to the entire operative Complaint, filed 09/10/21, which includes three distinct causes of action (fraud, intentional tort and negligence). According to defendant, plaintiff has failed to plead enough facts to support any cause of action.

The operative pleading contains very few facts. The only salient averment easily discernable is that in or about July of 2019, defendant J. Cunningham (and Does) caused to be filed a "false" rule violation report, which apparently became a part of plaintiff's custodian record. Plaintiff attached a copy of the report to the operative pleading, and as such is deemed to have incorporated the report therein as if fully stated. That report provides the missing information as follows: on Saturday 07/06/19, at approximately 9:40am, Corrections Officer Cunningham observed plaintiff in the library, which was considered out of bounds at the time given that the yard was just opened and there was an emergency count underway. See 15 CCR §§ 3017 and 3314(a)(3)(C). Plaintiff, in turn, filed a grievance against Officer Cunningham, claiming that he had permission to be in the library at the time and that she had a "grudge" against plaintiff. Plaintiff did possess an Inmate Assignment Card allowing him to be in the chapel on Saturday mornings from 10am-11am, but not the library. Plaintiff filed an internal administrative appeal, but there is no information about how that turned out. However, plaintiff did file a Government Claim Form over the incident, which was summarily denied on 08/09/19.

Defendant first contends that the claims based upon a false RVR are preempted by Govt Code §820.4, which provides that "a public employee is not liable for his act or omission, exercising due care, in the execution or enforcement of any law." The word "law" is defined to include "not only enactments but also the decisional law applicable within this State as determined and declared from time to time by the courts of this State and of the United States." Govt. Code §811. The word "enactment" is defined as "a constitutional provision, statute, charter provision, ordinance or regulation." Govt. Code §810.6. The word "regulation" means "a rule, regulation, order or standard, having the force of law, adopted by [an agency] pursuant to the Administrative Procedure Act." Govt. Code §811.6. It is not always easy to determine whether a particular regulation has the force of law. See *Peterson v. City of Long Beach* (1979) 24 Cal.3d 238, 244; *Posey v. State of California* (1986) 180 Cal.App.3d 836, 849; in accord, *Hansen v. California Dept. of Corrections*, 920 F.Supp. 1480, 1501-1502 (N.D. Cal. 1996). It is exceedingly rare to decide on the pleadings that the public employee exercised "due care" at the time. See *Ogborn v. City of Lancaster* (2002) 101 Cal.App.4th 448, 462. For these reasons, the demurrer on this basis alone cannot be sustained.

Defendant next contends that the claims based upon a false RVR are preempted by Govt. Code §821.6, which provides that "a public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." This immunity provision is to be construed broadly so as to further its purpose to protect public employees in the performance of their prosecutorial duties from the threat of harassment through civil suits. This statute not only immunizes the act of filing or prosecuting a judicial or administrative complaint, it also extends to actions taken in preparation for such formal proceedings, including acts undertaken in the course of an investigation. *Lawrence v. Superior Court* (2018) 21 Cal.App.5th 513, 526; *Strong v. State of California* (2011) 201 Cal.App.4th 1439, 1461; *Gillan v. City of San Marino* (2007) 147 Cal.App.4th 1033, 1048. In this instance, there can be little doubt that Officer Cunningham's decision to write plaintiff up for a perceived violation of administrative requirements falls within the scope of this immunity. Although plaintiff strongly contends that the investigation was bogus, and that Officer Cunningham made misrepresentations, that only plays into Govt. Code §821 ["a public employee is not liable for an injury caused by his adoption of or failure to adopt an enactment or by his failure to enforce an enactment"] and Govt. Code §822.2 ["a public employee acting in the scope of his employment is not liable for an injury caused by his misrepresentation, whether or not such misrepresentation be negligent or intentional, unless he is guilty of actual fraud, corruption or actual malice."] The facts alleged do not permit any finding of actual fraud, and at best suggest misrepresentation.

Finally, there is the issue of timing. Plaintiff's Government Claim was rejected on 08/09/19. See Govt. Code §913. Pursuant to Govt. Code §945.6, plaintiff had six months after the rejection letter was "deposited in the mail" to commence a civil lawsuit. Although the mail was "refused" because plaintiff was reportedly out to court (see 15 CCR §3190), the mail was presumably held for plaintiff until his return. There is no requirement that a public agency ensure that rejection letters actually get into the claimant's hands, and the mailing here was reasonable under the circumstances. Even if plaintiff never actually received the rejection letter, claims are deemed rejected by operation of law if there is no response within 45 days. Govt. Code §912.4(c). From there, plaintiff had only two years from when the claims accrued to file suit. Govt. Code §945.6(a)(2). Plaintiff's intentional tort and negligence claims are both controlled by a two-year statute of limitations, and lapsed before the suit was filed. Although imprisonment in state prison can toll the time period to file suit if the plaintiff has lost his civil rights, there is no evidence that occurred here. Although plaintiff has a "fraud" cause of action, the averments do not show how plaintiff relied to his detriment on the allegedly false RVR.

For the reasons stated, the operative pleading fails to state a viable cause of action against this defendant. Plaintiff does not offer a basis to cure. Finally, it is not at all clear how this allegedly false RVR makes any difference in the scheme of plaintiff's time at San Quentin. Demurrer sustained without leave to amend. Defendant to prepare order and judgment.

If you wish to appear for oral argument, you must so notify the Court and all other parties by 4:00 p.m. one court day prior to the scheduled hearing, pursuant to California Rules of Court, rule 3.1308. The phone number for Department 2 is (209) 588-2382. The tentative ruling will become the ruling of the Court if the Court has not directed oral argument by its tentative ruling and notice of intent to appear has not been given.

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4. CVL64423 Chung v. Chenault
Hearing on: Demurrer
Moving Party: Defendant
Tentative Ruling: Sustained, With and Without Leave to Amend

This is a limited jurisdiction case for conspiracy and slander of title against the attorney who represented plaintiff's former wife in a dissolution action. The dispute centers around defendant's use of a FLARPL. Before the Court this day is a demurrer to all three causes of action contained within the operative Complaint.

Before reaching the precise merits of the demurrer, it is necessary to revisit the dissolution action from whence the FLARPL emanated (FL15529). This was a marital dissolution proceeding, impliedly abated after respondent's untimely death.

Pertinent Background Facts

In 2009, Brian and Danielle Chung purchased 20732 Willow Springs Drive in Soulsbyville, and took title thereto as "husband and wife as joint tenants."

In 2018, Brian filed for divorce, represented at the time by Brian Chavez-Ochoa. Danielle was represented by Attorney Sally Chenault.

In 2019, Danielle executed a promissory note in favor of Attorney Chenault in the principal amount of $18,083.60, and secured that note with a deed of trust to, and notice of severance upon, the subject property. Shortly thereafter, Danielle died. Brian filed in the dissolution action an RFO to set aside Attorney Chenault's lien. Attorney Chenault offered to release the lien for $61,950.76.

In 2021, and with the lien issue still unresolved, Brian commenced a Spousal Property Petition pursuant to Probate Code §13500 (see PR11961) to acquire the whole of the subject property. Brian did not give notice to Attorney Chenault. The property was awarded to Brian per Probate Code §6401(a).

In 2022, Brian returned to the dissolution action to expunge Attorney Chenault's lien. After reviewing the briefings, this Court made the following pertinent observations:

- Attorney Chenault's lien was recorded surreptitiously, and unilaterally, against a community asset, in violation of Family Code §§ 2033, 2040;
- It was "outlandish" for Attorney Chenault to subsequently claim that the lien was not a FLARPL or that the subject property was not a community asset;
- There was no "joint tenancy" for respondent to sever, and thus no legal basis to record a severance or encumber the marital residence without proper notice;

- Both the deed of trust and the promissory note were null and void, and the FLARPL was expunged.

See Minute Order dtd 02/17/22.

Thirty days later, Brian filed the present lawsuit against Attorney Chenault.

Demurrer to the 1st COA for Civil Conspiracy with an Attorney – Sustained Without Leave to Amend

Plaintiff's first cause of action is based upon an alleged conspiracy between Danielle Chung (deceased) and Attorney Chenault to slander title to the subject property and secure an illegal encumbrance. In the usual case, parties are not allowed to sue an adversary's attorney for conspiracy with the adversary without first demonstrating to the Court that "there is a reasonable probability that the party will prevail in the action." Civil Code §1714.10(a). The purpose of section 1714.10 is to discourage frivolous claims that an attorney conspired with his or her client to harm another. Therefore, rather than requiring the attorney to defeat the claim by showing it is legally meritless, the plaintiff must make a prima facie showing before being allowed to assert the claim. *Klotz v. Milbank, Tweed, Hadley & McCloy* (2015) 238 Cal.App.4th 1339, 1350. Plaintiff readily concedes that no attempt was made to secure pre-filing approval of the claim, but contends that doing so was not required in this instance for three reasons:

1. The decision to secretly record a Notice of Severance and Deed of Trust to secure the promissory note for legal fees did not arise "from any attempt to contest or compromise a claim or dispute" (Civil Code §1714.10(a));
2. The decision to secretly record a Notice of Severance and Deed of Trust to secure the promissory note for legal fees breached an independent duty Attorney Chenault owed to plaintiff herein (Civil Code §1714.10(c)(1));
3. The decision to secretly record a Notice of Severance and Deed of Trust to secure the promissory note for legal fees went beyond the performance of a professional duty to serve the client and sought to violate a legal duty in furtherance of the attorney's financial gain (Civil Code §1714.10(c)(2)).

Regarding the first contention, there is no question that the recording of the Notice of Severance and the Deed of Trust arose from an attempt to contest Brian's dispute over pendente lite fees. To be sure, Brian was opposed to Danielle's RFO for either spousal support or an equitable allocation of legal fees, offering at one point to pay $100/month. See Chung Decl dtd 10/15/18. Brian defeated Attorney Chenault's request for pendente lite fees based largely on the fact that Danielle was supposed to receive $4,000/month in spousal support. See FOAH dtd 02/17/19. Shortly after the request for interim fees was denied, Attorney Chenault filed a motion to withdraw as counsel. Danielle agreed and substituted herself in as pro per, and as soon as she did Brian asked for an offset of arrears and an adjustment in the payment dates. Danielle convinced Attorney Chenault to come back, and as soon as she did Danielle secured from this Court an Earnings Assignment Order due to Brian's failure to comply with this Court's order

regarding spousal support (and accruing a sizable arrears). Brian had the Earnings Assignment Order terminated four weeks after Danielle died, when – according to Danielle's submission – Brian owed her over $30,000 in back spousal support. To draw a finer line, Brian avoided interim legal fees to Attorney Chenault based on the false assumption that he would pay spousal support. The decision to encumber the marital residence, which Danielle was occupying alone, was clearly and unmistakably tied to Brian's resistance to interim fees and failure to pay spousal support. See, *e,g., Cortese v. Sherwood* (2018) 26 Cal.App.5th 445, 457.

Regarding the second contention, there is no question that Attorney Chenault, like any human being, has an independent duty not to commit torts. Civil Cide §1714. However, the evidence/averments do not show slander of title, which requires publication of a false statement, without privilege or justification, that disparages title to property and causes direct and immediate pecuniary loss. See *Weeden v. Hoffman* (2021) 70 Cal.App.5th 269, 293; *RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 437; *Schep v. Capital One, N.A.* (2017) 12 Cal.App.5th 1331, 1336-1338; *Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 335-336. The Notice of Severance was a nullity because, as this Court observed in the family case, the subject property was by definition community property based on when it was acquired, regardless of the form of title. See Family Code §§ 760, 2581; *In re Brace* (2020) 9 Cal.5th 903, 934-937. The Notice of Severance was also not an instrument since it alone did not transfer title, give a lien, or create a right to a debt. See Govt. Code §27279; *Sisemore v. Master Financial, Inc.* (2007) 151 Cal.App.4th 1388, 1399-1400; *Robertson v. Superior Court* (2001) 90 Cal.App.4th 1319, 1323; *Ward v. Superior Court* (1997) 55 Cal.App.4th 60, 64-65. The Deed of Trust recorded on 06/20/19 was defective for technical reasons only; that kind of encumbrance is statutorily authorized by Family Code §2033(a) "to pay reasonable attorney's fees in order to retain or maintain legal counsel in a proceeding for dissolution of marriage," and given the size of the lien compared to the community estate, Brian had no bona fide basis for objecting. Brian admits that the property was community property, and as such the FLARPL was permissible. §2033(c)(3). Moreover, Danielle was living in the house alone, paying the mortgage, had at least a 50% ownership interest therein, and had she survived to adjudication, the lien would have been easily resolved out of her share without any damage to Brian. While it is true that Danielle's death dissolved her community interest, and Attorney Chenault should have filed a creditor's claim in any probate proceeding, Brian secured the order in PR11961 without ever giving notice to Attorney Chenault. The Deed recorded was not a false statement, nor did it cause harm being in the chain of title. Lastly, because it was recorded as part of ongoing litigation, it was more than likely a privileged communication under Civil Code §47. See *Weeden, supra*.

Regarding the third contention, recording of the deed/note was entirely part of Attorney Chenault's professional duty to Danielle. There was no separate duty violated to line Attorney Chenault's pockets. Even though Danielle certainly owed Brian a fiduciary duty, Attorney Chenault did not: a cause of action for civil conspiracy may not arise if the alleged conspirator, though a participant in the agreement underlying the injury, was not personally bound by the

duty violated by the wrongdoing and was acting only as the agent of the party who did have that duty. *Rickley v. Goodfriend* (2013) 212 Cal.App.4th 1136, 1157. In addition, the only "financial gain" alleged is payment of fees Attorney Chenault actually incurred, and "this exception does not apply to fees charged, even where the fees were excessive or the services unnecessary." *Klotz, supra* at 1351; *Cortese, supra* at 460-461.

In conclusion, while this Court found that Attorney Chenault's self-help in recording surreptitiously a FLARPL was inexcusable, and rightfully contributed to her inability to recover any fees for her work on the case, the fact remains that Attorney Chenault had a statutory right under the circumstances to pursue a FLARPL since (1) she worked on the case, (2) she was denied interim fees, (3) the encumbrance attached to a community asset with sufficient equity, and (4) had she complied with the statutory dictates, she was more likely than not to overcome any objection thereto. The deed remained viable until Brian secured his order in PR11961 confirming the property as 100% his separate property, and it was soon thereafter that the deed was expunged. Brian was required to secure pre-filing permission to bring this conspiracy claim, and based on the evidence presented, Brian has not shown a reasonable probability of prevailing on the conspiracy claim.

Demurrer to 2nd COA for Slander of Title – Sustained, 30 days leave to amend

Although defendant is incorrect that this cause of action rises and falls with the conspiracy claim, as set forth in more detail therein, the cause of action for slander of title is not adequately pled. That is not to say that plaintiff will be unable to cure the pleading deficiency. It seems to this Court a steep hill, but not entirely insurmountable. This being the first pleading attack, leave to amend is warranted.

Demurrer to the 3rd COA for Unfair Business Practices – Sustained, 30 days leave to amend

Plaintiff's third cause of action in uncertain. California's Unfair Competition Act statute (B&P Code §17200 et seq) prohibits any unlawful, unfair or fraudulent business act or practice. Plaintiff has not alleged facts demonstrating an act or practice, which is generally described as the habitual doing of certain things or a pattern of behavior pursued as a business practice. *People ex rel. City of Santa Monica v. Gabriel* (2010) 186 Cal.App.4th 882, 888; *Podolsky v. First Healthcare Corp.* (1996) 50 Cal.App.4th 632, 653-654. Although this Court can see light at the end of this tunnel, it is up to plaintiff to find his own way.

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5. CV61474 **Watkins v. Western Communications, Inc.**

Hearing on: Motion to Withdraw as Counsel
Moving Party: Defense Counsel
Tentative Ruling: n/a – case settled, matter is moot

This is an employment dispute. Plaintiff generally alleges that he was terminated from his job at The Union Democrat without the benefit of a "fair hearing" or any finding "of cause" as required by various employment agreements/understandings. On 08/15/22, this Court granted Rhode Island Suburban Newspapers, Inc's motion for summary judgment, but denied such an order on behalf of Union Democrat – which defense counsel admitted had made a general appearance in the action on accident. Defense counsel filed a motion to withdraw, noting his error, but in the intervening time the parties reached an unconditional settlement of the entire action. As such, the motion to withdraw is moot.