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RoxyLabs Up 83% in IPO

Local company surges; typography credited

NEW YORK — RoxyLabs, the local chew-toy manufacturer, had a spectacular first day on the NASDAQ. Shares of RoxyLabs, priced at \$20 each, rose to a high of \$40.25 before closing at \$36.60. RoxyLabs ended the day with a market capitalization of close to \$517 billion, making it very prestigious.

CEO Vanessa Manganese took the news in stride. "Our performance today shows that investors believe in our strategy of taking a scientifically insignificant product and surrounding it with a lot of hype and unverifiable claims," she said. "And of course, impressive typography." → **NEXT PAGE**

CONCOURSE

— THE SUPERBLY SATISFYING SANS SERIF —

DESIGNED BY MATTHEW BUTTERICK

AVAILABLE EXCLUSIVELY AT MBTYPE.COM

CRITIC AT LARGE: HADLEIGH GOFF-PLINKINGTON

Angeleno Society Demolishes "Helicopters"

The Angeleno Society went down in flames this past Friday with the debut of Michael Broderick's new play *Black Helicopters*.

How bad is it? By the end of the first act, merely bad would've been a welcome kindness. By the end of the second act, the audience, myself included, was reconsidering the value of free speech in our society.

Broderick (directing, to use an optimistic term, from his own script) stars as Potiphar Tewkesbury, a character who is himself a playwright and director. Autobiographical? You might think so, except that the play is set—inexplicably, unbearably—in the year 2605. This serves largely as a pretext for the cast to wear no → **CONT'D ON PAGE 9**

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CLARITY, PERSONALITY, SIMPLICITY, WARMTH.

William Zinsser, in his 1976 book *On Writing Well*, identified these as the four indispensable qualities of great writing. Why indispensable? Because the best writing is an expression of the writer's humanity. These qualities allow that humanity to shine through. As a writer, I find Zinsser's argument persuasive. ✨ As a typographer, I find that his argument analogizes well to design. The designer's role is to take mundane items and fill them with warmth and humanity. For instance, a font. What is it, really? Just a set of tiny black shapes. Yet, as every reader knows, those little shapes can express a huge range of emotions and possibilities. ✨ This contrast between constraints and possibilities is what anchors my enduring fascination with typography. Type possesses a strange magic. One reason I embark on new type-design projects is to understand that magic better. ✨ Another reason is to have some better fonts. **CONCOURSE** is my first new sans serif design in nearly 20 years. Hopefully, I've learned a few things. ✨ Perhaps most important among them is that drawing letters is the lowest form of type design. The magic inhabits the spaces in between—on the page, but also between us as readers & writers. Type builds a bridge that spans time and space, that connects us through the written word, that lets us share warmth and humanity. There's nothing else like it. **MB**

TOO DOLLA BILL

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Stepchild**

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**GOOD ART SHOULD
ELICIT A RESPONSE
OF 'HUH? WOW!'
AS OPPOSED TO
'WOW! HUH?'**
ED RUSCHA

**MANCHESTER
SPORTING CLUB**

QUARTERLY MEMBERS' EVENT

BOXING!

WEDS SEPT 29
7:30 PM

**IT'S THE BANTAMWEIGHT
BATTLE OF THE SEASON**

***Solomon
'Ice' Berg***

**THIS SCRAPPY FIGHTER FROM MAINE
HAS IMPROVED GREATLY SINCE
RECENT HUMILIATIONS.**

— vs. —

El Quetzal

**THE MYSTERY MAN FROM ZIHUATENEJO
IS ALMOST UNDEFEATED AND
RUMORED TO BE 18% TIGER.**

***If you don't get your type warm it will be ...
no use at all for setting down warm human ideas.***

***I'd like to make a type ... so full of
blood and personality that it would jump at you.***

W. A. DWIGGINS

THE GEOMETRIC SANS SERIF TYPEFACE has been a staple of the typographer's toolkit for nearly a hundred years. The first in the category was Erbar, the 1922 face that inspired dozens of others, including the still ubiquitous Gill Sans and Futura. In the late 1920s, Erbar also inspired American designer W. A. Dwiggins to create Metro.

Born in 1880, Dwiggins started out as a book designer and illustrator. He's credited with coining the term "graphic designer" in 1922. He would go on to become an influential type designer too.

Metro, his first typeface, unabashedly rode on the coattails of the trendsetting geometric sans serifs from Europe. But Dwiggins considered those faces to be overly rigid. His goal for Metro was to blend the geometric style with more warmth and personality.

My affection for Metro, however, began long before I'd learned the name Dwiggins. As a teenager, I discovered *Spy* magazine. *Spy*—as designed by Stephen Doyle and Alexander Isley—opened my eyes to typography. The two fonts *Spy* used the most were Garamond #3 and Metro. I totally had a crush on them. (Still do.)

It was the '80s, however, so *Spy* was using the earliest digital version of Metro, which had many shortcomings. I always hoped that some Dwiggins fan—and among American type designers, there are many—would create a reconsidered version of Metro.

No one did. So I began designing Concourse, with the idea of reviving the original Metro.

What I like about Metro, and the other geometric sans serifs of its era, is their unusual adaptability. They can come across as historical or modern, depending on how they're used. Like the best dinner-party guests, they add personality to the conversation without dominating it. This is why they remain valuable tools for typographers.



G A R T E R
A V E R S E
R E C I T E
T R I B A L
E S T A T E
R E E L E D

But when I studied samples of Metro, a funny thing happened. Though there was much I liked (e.g., its distinctive figures), there was also much I disliked (e.g., its ungainly lowercase). The disappointing truth emerged—as it often does with teenage enthusiasms—that the reality of Metro didn't measure up to my idealized memories.

Sorry, Metro. It's not you. It's me.

But parting ways with Metro sharpened the design brief for Concourse: it would be a sans family that drew on my affection for Metro and its era, but that didn't skimp on versatility, warmth, or personality. For instance—

↑ **Six weights.** In many of today's sans families, intermediate weights are made by mathematical interpolation. This buys consistency, but to my eye, comes at the cost of too much personality. So I drew each weight of Concourse individually, to elicit more personality—elegance at the lighter end, cheerfulness at the heavier end.

↑ **Small caps.** Sans serifs look great in all-cap settings. So why are small caps such a rare feature in sans serif families? Concourse has small caps for all six weights.

↓ **Real italics.** Traditionally, sans serif italics are based on sloped versions of the regular styles. This approach makes them less useful *for emphasis*. It's also a little dull. I took a more vigorous approach with Concourse's italics, adding flared ends and sharpened bowls that add contrast and visual interest.

qir

names
names
names
names

\$163⁷/₉
€2.08
£3⁵/₆
#4

↑ **Duplexing.** In type, *duplexing* means matching the widths between styles so that each character occupies the same space on the page. This way, you can easily change the weight and style without affecting your layout. In Concourse, weights 2, 3, 4, and 6 are duplexed to each other. (For this reason, the three lighter weights all use weight 6 as their bold style by default.) Every italic is also duplexed to its roman, including weights 7 and 8.

↓ **Stylistic sets.** I checked—there’s no rule that says a font always has to look the same. So Concourse has groups of alternate glyphs that are invoked via OpenType stylistic sets. Use them as ready-made options for text and display, or as a construction kit to assemble your own creative variations. (More samples on the next page.)

↑ **Figures & fractions.** Concourse has lining figures by default, but also oldstyle, proportional, tabular, superscript, and subscript figures, plus a full set of single-digit fractions.

Widely compatible. Concourse can be used with nearly all modern document-layout programs, from InDesign to Pages to Microsoft Office, Windows or Mac.

No-hassle embedding. The standard license allows Concourse to be embedded in PDFs, e-books, apps, and websites—no extra charge.

Major & Ray Quit Golfing
Major & Ray Quit Golfing
Major & Ray Quit Golfing



RoxyLabs

926 PAPER ST · LOS ANGELES CA · 90027

Pedro Hyacinth
MegaBankers Inc.
1534 S. Broadway
New York NY 10041

Dear Mr. Hyacinth:

RoxyLabs, the leading chew-toy research facility in the Western Los Feliz area, is looking for a banking partner to help us consider *strategic business alternatives* and *venture financing*.

Of course, we're familiar with your work on the ChickenTreats.com IPO last quarter. I think you will find that RoxyLabs is **uniquely well positioned** to leverage its competitive advantage in multiple market segments.

With very best wishes for the upcoming holiday,

VANESSA MANGANESE

CEO, ROXYLABS

VANESSA MANGANESE

CEO & CHAIRMAN OF THE BOARD

VANESSA@ROXYLABS.COM

(323) 555-2668 X59



RoxyLabs

926 PAPER ST · LOS ANGELES CA · 90027

& Arrow Grill

Plinkington
ignment

re has unleashed
aps most misbe-
r great city: the
& Grill.
foul would be to
No, Fye doesn't
e crashes through
worst restaurant
n hemisphere.
would get you to
s unmitigated di-
n the water. It's
e pink. Who ever
this how they do
ly? I doubt it.
nches every dish
flavorless sauce
make it stop?
e is the location,
u're coming back
ll. Otherwise, if
any choice at all,
far away.

place that only serves sushi and doughnuts?
Down the hatch, I guess, because it's delicious.
Hamachi roll with coconut-chocolate glaze.

The Thirsty Monster ★★★½ \$\$\$

Top floor, Hotel RNA (323-555-2663)

This midtown hotspot is the latest from night-club impresario J. B. Amberton. Party up, then walk it off. *Water; chicken nibbles.*

Hans Blix Pizza ★ \$

432 Bismuth St. @ 14th (213-555-6758)

No, the owner is not the former UN weapons inspector. Though he gets that a lot. Delicious slices served in the traditional Swedish style. *Braised reindeer with pesto; "mush-n-pep."*

Veblen Cucina ★★★ \$\$\$\$\$

67 Herkimer Ave. @ Strontium (917-555-1478)

Chef Thorsten Veblen serves the most exquisite grilled-cheese sandwiches in the city. Okay, they start at \$68 and run to over \$450. Quality is always worth it. *The Platinum Gruyère.*

iRestaurant ★★★ \$\$\$

14B Falkenburg Plaza (213-555-9157)

An innovative eight-course WiFi menu served in the South American style. Eat before you go—it'll be a long night. *Gigabits; terabits.*

L'Autre Poseur ★★★¼ \$\$\$\$

That minimall at 25th & 3rd (213-555-4561)

French-inflected cooking by way of Montpellier, Vermont. Be warned: even if you book a table in advance, you'll still need to tip the host \$20 to get seated. Even then, worth it. *Fromages et cracottes; les bananes aux poissons.*

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DUPRÉ

À L'ÉGLISE DE
ST. FRANÇOIS
LYON · FRANCE

- 1 Préludes et Fugues, OP. 7: *B major*
- 2 Esquisses, OP. 41: *C major*
- 3 Le Tombeau de Titelouze, OP. 38
- 4 Choral et Fugue, OP. 57
- 5 Variations sur un vieux Noël, OP. 20
- 6 Cortège et Litanie, OP. 19 NO. 2
- 7 Évocation, OP. 37: *Allegro deciso*
- 8 Deuxième Symphonie, OP. 26: *Preludio*
- 9 Épithalame en G mineur
- 10 Entrée, Canzone et Sortie, OP. 60
- 11 Le Chemin de la Croix, OP. 29
- 12 Miserere Mei, OP. 46: *Adagio*
- 13 Psaume XVIII, OP. 47
- 14 Poème Héroïque (avec orchestre), OP. 33
- 15 Offrande à la Vierge, OP. 40



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THE ANGELENO SOCIETY PRESENTS

BLACK HELICOPTERS

A NEW TRAGICOMEDY IN THREE ACTS

WRITTEN & DIRECTED BY

MICHAEL BRODERICK

POTIPHAR TEWKESBURY MICHAEL BRODERICK

SILAS TEWKESBURY, HIS FATHER JACQUES REÇOIT

RENÉE, POTIPHAR'S WIFE LORRAINE WARDLY

VERA MONTAGUE JILL EVERSHAM

NICK BISHOP, RENÉE'S SUITOR KENNETH ARUÑA

HAMISH FOWLER, RENÉE'S COUSIN STU HODGKINS

FIDO HIMSELF

ACT 1. KITCHEN OF TEWKESBURY MANOR

ACT 2. RENÉE'S STUDIO, CONNECTICUT

ACT 3. BASEMENT OF TEWKESBURY MANOR

TIME: AUTUMN, A.D. 2605

*

**

THERE WILL BE TWO 15-MINUTE INTERMISSIONS

PLEASE — NO SMOKING, MUNCHING, OR FIDGETING

The Ω^2 Programming Language

Sutcliffe & Lin

HOW TO BE A GOOD GIRL R.T. BOXER

BAD BOYS & SOFT TOYS

Teddy Bearstone

TEMECULAN TIGERS INEZ CRANE

TRAVELER'S GUIDE TO ESPERANTO

Doyle's Encyclopædia of
Unusual Perspiration

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TWELFTH
EDITION

Rexford

1984 Colombian Warthog Annual Jånsen, Ed.

Seemed Like a Good Idea K.S. NYSTEDT

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PRESS

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|----------------------------------|------------------------|--------------|---------------------------------------|--------------|-------------|--|--------------|--------------|
| | 1—3 | 2—4 | 1—3 | W | 2—4 | ** | S | |
| Frankfurt (M) Hbf. . . ab | 2 10 | 2 22 | 3 50 | 5 00 | 5 10 | 8 20 | 9 39 | |
| Frankfurt-Louisa | | 2 30 | 3 58 | 5 07 | | 8 27 | 9 47 | |
| Neu-Isenburg <i>M.N.B.</i> . . | | 2 37 | 4 05 | 5 14 | | 8 33 | 9 54 | |
| Sprendlingen-Buchschl. . | Eil.-Z. | 2 44 | 4 12 | 5 21 | | 8 40 | 10 00 | |
| Langen (<i>Hessen</i>) ** . . | | 2 50 | 4 18 | 5 27 | 5 18 | 8 46 | 10 07 | |
| Egelsbach | | 2 56 | 4 24 | 5 33 | | 8 52 | 10 13 | |
| Erzhausen | | 3 00 | 4 29 | 5 38 | | 8 57 | 10 18 | |
| Wixhausen. | | 3 08 | 4 34 | 5 44 | | 9 02 | 10 23 | |
| Arheilgen | | 3 16 | 4 39 | 5 49 | | 9 07 | 10 28 | |
| Darmstadt Hbf. 125. an | | 2 37 | 3 22 | 4 47 | 5 57 | 5 45 | 9 14 | 10 35 |
| <i>Cöln Hbh. 126</i> } ab | | 4 13 | 10 19 | — | | 2 26 | 5 40 | 6 18 |
| <i>Wiesbaden 18</i> } ab | 8 16 | 10 26 | — | | 3 08 | 7 12 | 8 26 | |
| <i>Mainz Hbf.</i> } ab | 9 37 | 12 45 | — | 5 26 | 4 45 | 8 02 | 9 28 | |
| Darmstadt Hbf. 125. ab | 2 40 | 3 23 | <i>Nur Sonntags und an Feiertagen</i> | 6 10 | 5 48 | ★ Nach Pfingstadt, nur an Werktagen | 10 40 | |
| Darmstadt Süd | | 3 28 | | 6 15 | | | 10 46 | |
| Eberstadt 251 b | Frankfurt-Basel | 3 36 | | 6 23 | | | 10 55 | |
| Hähnlein ★ | | 3 50 | | 6 38 | | | 11 04 | |
| Zwingenberg | | 3 54 | | 6 43 | | | 11 11 | |
| Auerbach | | 4 00 | | 6 49 | | | 11 17 | |
| Bensheim } 248 d { an | | 4 04 | | 4 04 | 6 53 | | 6 17 | 11 22 |
| Heppenheim. | | 4 05 | | 4 10 | 6 54 | | 6 18 | 11 24 |
| Laudenbach (<i>Baden</i>) . . | | 4 10 | | 4 10 | 7 05 | | 6 20 | 11 33 |
| Laudenbach (<i>Baden</i>) . . | | 4 12 | | 4 12 | 7 12 | | | 11 40 |
| Hemsbach | 4 19 | 4 19 | | 7 18 | | | 11 44 | |
| Weinheim { 245 c. | 2 09 | 4 23 | | 7 23 | 6 31 | | 11 46 | |
| 246 d. | 3 10 | 4 24 | | 7 25 | 6 32 | | 11 53 | |
| Großsachsen 247 e . . . | | 4 31 | | 7 27 | | | 11 58 | |
| Ladenburg. | | 4 32 | | 7 39 | | | 12 06 | |
| Friedrichsfeld <i>M.N.B.</i> an | 3 24 | 4 43 | | 7 46 | 6 56 | | 12 12 | |
| <i>Friedrichsfeld</i> } ** ab | — | 5 02 | | 8 03 | 7 00 | | | |
| <i>Mannheim . .</i> } ** an | — | 5 17 | | 8 18 | 7 24 | | | |
| <i>Friedrichsfeld</i> ab | — | 5 32 | 7 58 | 6 58 | | | | |
| <i>Schwetzingen</i> an | — | 5 58 | 8 07 | 7 32 | | | | |
| Karlsruhe Hbf. an | 2 55 | 8 31 | 9 53 | 9 04 | | | | |
| Stuttgart 293 an | 3 28 | 9 03 | 10 26 | 10 38 | | | | |
| Friedrichsfeld } s.a. ab | 2 25 | 4 58 | — | 7 56 | 7 02 | 12 21 | | |
| Wieblingen } 298 . . | — | 5 09 | — | 8 07 | | 12 28 | | |
| Heidelberg } an | 2 34 | 5 16 | — | 8 13 | 7 24 | 12 34 | | |

** Postverbindung nach dem Odenwald. **W** Nur Werktags.

S Sonntags im Oktober und am 1. November. ★ Hält nur nach Bedarf.

Fortsetzung der vorhergehenden Seite

1 Cadmium Q. Eaglefeather (SBN 502981)
2 Eaglefeather Law Offices
3 1920 Hillhurst Ave.
4 Los Angeles, CA 90027
5 (323) 555-1435
6 (866) 555-1147 fax
7 cadmium@cqelaw.com
8 Attorney for Plaintiff

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11
12 **TRIXIE ARGON**, individually and on behalf
13 of a class of similarly situated persons,

14 Plaintiff;

15 vs.

16 **MEGACORP INC.**, a California
17 corporation, and **DOES** 1 through 100,
18 inclusive,

19 Defendants.
20
21

Case No. BC5551212

**Plaintiff's Notice of Motion and Motion
to Compel Defendant MegaCorp to Pro-
duce Financial Records at Trial; Points &
Authorities**

Complaint filed: June 9, 2022

Trial date: August 20, 2024

Assigned to Judge Jerry Blank,
Dept. 1010, Central Civil Division

1 **NOTICE OF MOTION**

2

3 To all parties and their attorneys of record:

4 You are hereby notified that at a date and time to be determined, in Dept. 1010 of the
5 above-entitled court, plaintiff Trixie Argon will move the Court for a motion to compel defen-
6 dant MegaCorp to produce financial records she previously requested.

7 This motion is made on the ground that Ms. Argon served MegaCorp with a valid notice
8 to produce financial records at trial. Cal. Civ. Proc. Code § 1987(c), Cal. Civ. Code
9 § 3295(c). MegaCorp served objections and refused to comply.

10 Ms. Argon’s notice to produce seeks information directly relevant to her trial for puni-
11 tive damages against MegaCorp. Therefore, the documents are material to Ms. Argon’s case
12 and there is good cause to order them to be produced. Cal. Civ. Proc. Code § 1987(c).

13 The motion will be based on this notice, on the attached points and authorities, on the
14 papers and records on file, and—if there is a hearing on this motion—on the evidence pre-
15 sented at the hearing.

16

17 November 19, 2023

EAGLEFEATHER LAW OFFICES

18 By: _____

19 Cadmium Q. Eaglefeather

20 Attorney for Plaintiff

21

22

23

24

25

26

POINTS & AUTHORITIES

1
2
3 Previously, the Court denied MegaCorp’s motion for summary adjudication of Ms.
4 Argon’s claims for punitive damages. (Eaglefeather Decl. ¶ 1.) Ms. Argon served MegaCorp
5 with a timely notice to produce financial records at trial. (Eaglefeather Decl. ¶ 2.) MegaCorp
6 responded with boilerplate objections to Ms. Argon’s requests and refused to produce any
7 financial records. (Eaglefeather Decl. ¶ 3.) This motion seeks to compel MegaCorp to pro-
8 duce these records.

10 **1. Ms. Argon is entitled to the financial records.**

11 Because this is a punitive-damages case, Ms. Argon is entitled to subpoena documents
12 “to be available at the trial for the purpose of establishing the profits or financial condition”
13 of MegaCorp. Cal. Civ. Code § 3295(c).

14 Ms. Argon has a right to these records even without showing that there is a “substantial
15 probability that [she] will prevail”. *Id.* That’s the rule for pretrial discovery of financial
16 records, but not for records to be brought to trial. *Id.*

18 **2. The financial records are material to Ms. Argon’s case.**

19 If the jury finds MegaCorp liable for punitive damages, the jury may then consider
20 “[e]vidence of profit and financial condition” of those defendants to determine the amount
21 of punitive damages. Cal. Civ. Code §§ 3294(a) and 3295(d); *Nolin v. Nat’l Convenience*
22 *Stores, Inc.*, 95 Cal. App. 3d 279, 288 (1979).

24 **3. Ms. Argon will be prejudiced without the financial records, so there is good** 25 **cause to compel their production.**

26 MegaCorp was ordered to stand trial on punitive damages. (Eaglefeather Decl. ¶ 4.) If

1 the jury returns an initial verdict for punitive damages, Ms. Argon will need these financial
2 records to prove the amount of punitive damages. MegaCorp cannot circumvent the trial by
3 withholding evidence that the jury must consider. Cal. Civ. Code § 3295(d).

4
5 **4. Conclusion**

6 For these reasons, Ms. Argon asks that the Court order MegaCorp to produce the
7 requested financial records.

8
9 November 19, 2023

EAGLEFEATHER LAW OFFICES

10 By: _____

11 Cadmium Q. Eaglefeather

12 Attorney for Plaintiff
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26

THE LAW OFFICES OF

CADMIUM Q.

EAGLEFEATHER

PLC

5419 HURLEY BLVD STE C731

LOS ANGELES CA 90027

323 555 1435

323 555 1439 FAX

CADMIUM @ CQELAW.COM

February 15, 2024

George Falkenburg
Falkenburg, Fester, and Funk LLP
1252 W. 83rd Street
Bakersfield, CA 90909

Re: Nicholson v. MegaCorp, Case No. B718590125-2

Dear Mr. Falkenburg:

In response to your recent request, I've enclosed a DVD of photographs I took during the inspection of the MegaCorp facility on October 30, 2023.

I apologize for the delay, but I was recently hospitalized for a concussion sustained while rollerblading. Rest assured that I am on the mend. If you have any questions about this DVD, please let me know.

Separately: you recently served a set of **953 interrogatories** on my client. These interrogatories were *not* accompanied by the declaration of necessity that's required when serving more than 35 requests. See Cal. Civ. Proc. Code § 2030.050.

I must, therefore, ask you to withdraw these interrogatories. While you are welcome to serve them again with the necessary declaration, my client is not obligated to respond to procedurally defective discovery requests. Furthermore, if you don't withdraw these interrogatories within six days, I will file a motion for protective order and seek sanctions.

By the way, it was great seeing you and Thelma over the holidays. I think we still have your cheesecake platter. Let's talk soon about our plans for Maui in the spring.

Sincerely,

CADMIUM Q. EAGLEFEATHER

CQE / bqe
Enclosure

To: Cadmium Q. Eaglefeather

From: Trixie Argon

Date: 10 September 2024

Re: Cause of action for malicious prosecution

Malicious prosecution has three elements that must be pleaded and proved:

- 1) the defendant commenced a judicial proceeding against the plaintiff;
- 2) the original proceeding was “initiated with malice” and “without probable cause”; and
- 3) the proceeding was “pursued to a legal termination in [the plaintiff’s] favor.”

Bertero v. National General Corp., 13 Cal. 3d 43, 50 (1974).

1. Commencement of judicial proceeding

Any civil proceeding where the plaintiff seeks affirmative relief may be the basis of a malicious-prosecution claim. The original plaintiff does not need to personally sign the complaint. If the plaintiff is “actively instrumental” or the “proximate and efficient cause” of the action, the plaintiff may be liable. *Jacques Interiors v. Petrak*, 188 Cal. App. 3d 1363, 1372 (1987).

2. Initiated without probable cause and with malice

The malicious-prosecution plaintiff must establish both malice and lack of probable cause by the defendant in the underlying action.

In a malicious-prosecution action against an attorney in a civil suit, the standard for probable cause is whether a reasonable attorney would have thought the underlying claim was tenable at the time the original complaint was filed. *Sheldon Appel Co. v. Albert & Oliker*, 47 Cal. 3d 863, 885–86 (1989). An attorney may be liable for continuing to prosecute a claim after they discover the action lacks probable cause, even if there was probable cause at the outset. *Zamos v. Stroud*, 32 Cal. 4th 958, 970 (2004).

The showing of malice requires evidence of “ill will or some improper purpose,” ranging “anywhere from open hostility to indifference.” *Grindle v. Lorbeer*, 196 Cal. App. 3d 1461, 1465 (1987). Malice may be inferred from lack of probable cause if the party’s behavior was clearly unreasonable. However, this is not an automatic inference. *Grindle*, 196 Cal. App. 3d at 1468 (“Negligence does not equate with malice”). As above, failure by an attorney to conduct an adequate investigation may be evidence of “indifference” suggesting malice.

3. *Favorable termination*

Malicious prosecution requires that the underlying complaint to have been terminated in favor of the malicious-prosecution plaintiff. This means that a defendant cannot make a malicious-prosecution counterclaim as a “defense” to a complaint that appears to be malicious. Until the underlying complaint has been resolved, a malicious-prosecution claim cannot lie. *Babb v. Superior Court*, 3 Cal. 3d 841, 846-847 (1971). Thus, procedurally, the only option is to complete the underlying action, and then file a claim for malicious prosecution in a follow-on action.

“Termination” usually means the entry of judgment in favor of the malicious-prosecution plaintiff on a given claim. But any termination—for instance, deleting a claim from an amended complaint—is adequate basis for malicious prosecution. Whether the underlying claim may be revived (e.g., on appeal) is not relevant for malicious prosecution. As long as it’s been judicially terminated once, it’s fair game.

TRIXIE B. ARGON

1920 HILLHURST AVE. #C731 LOS ANGELES 90027

(213) 555-1234 TRIXIEARGON@GMAIL.COM

EDUCATION

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- Helped devise fundraising campaigns for this innovative nonprofit
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- Top in-store sales associate in seven out of eight quarters
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1 Cadmium Q. Eaglefeather (SBN 502981)
2 Eaglefeather Law Offices
3 1920 Hillhurst Ave.
4 Los Angeles, CA 90027
5 (323) 555-1435
6 (866) 555-1147 fax
7 cadmium@cqelaw.com
8 Attorney for Plaintiff

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11
12 **TRIXIE ARGON**, individually and on behalf
13 of a class of similarly situated persons,

14 Plaintiff;

15 vs.

16 **MEGACORP INC.**, a California
17 corporation, and **DOES** 1 through 100,
18 inclusive,

19 Defendants.
20
21

Case No. BC5551212

**Plaintiff's Notice of Motion and Motion
to Compel Defendant MegaCorp to Pro-
duce Financial Records at Trial; Points &
Authorities**

Complaint filed: June 9, 2022

Trial date: August 20, 2024

Assigned to Judge Jerry Blank,
Dept. 1010, Central Civil Division

1 **NOTICE OF MOTION**

2

3 To all parties and their attorneys of record:

4 You are hereby notified that at a date and time to be determined, in Dept. 1010 of the
5 above-entitled court, plaintiff Trixie Argon will move the Court for a motion to compel defen-
6 dant MegaCorp to produce financial records she previously requested.

7 This motion is made on the ground that Ms. Argon served MegaCorp with a valid notice
8 to produce financial records at trial. Cal. Civ. Proc. Code § 1987(c), Cal. Civ. Code
9 § 3295(c). MegaCorp served objections and refused to comply.

10 Ms. Argon’s notice to produce seeks information directly relevant to her trial for puni-
11 tive damages against MegaCorp. Therefore, the documents are material to Ms. Argon’s case
12 and there is good cause to order them to be produced. Cal. Civ. Proc. Code § 1987(c).

13 The motion will be based on this notice, on the attached points and authorities, on the
14 papers and records on file, and—if there is a hearing on this motion—on the evidence pre-
15 sented at the hearing.

16

17 November 19, 2023

EAGLEFEATHER LAW OFFICES

18 By: _____

19 Cadmium Q. Eaglefeather

20 Attorney for Plaintiff

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24

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POINTS & AUTHORITIES

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3 Previously, the Court denied MegaCorp’s motion for summary adjudication of Ms.
4 Argon’s claims for punitive damages. (Eaglefeather Decl. ¶ 1.) Ms. Argon served MegaCorp
5 with a timely notice to produce financial records at trial. (Eaglefeather Decl. ¶ 2.) MegaCorp
6 responded with boilerplate objections to Ms. Argon’s requests and refused to produce any
7 financial records. (Eaglefeather Decl. ¶ 3.) This motion seeks to compel MegaCorp to pro-
8 duce these records.

10 **1. Ms. Argon is entitled to the financial records.**

11 Because this is a punitive-damages case, Ms. Argon is entitled to subpoena documents
12 “to be available at the trial for the purpose of establishing the profits or financial condition”
13 of MegaCorp. Cal. Civ. Code § 3295(c).

14 Ms. Argon has a right to these records even without showing that there is a “substantial
15 probability that [she] will prevail”. *Id.* That’s the rule for pretrial discovery of financial
16 records, but not for records to be brought to trial. *Id.*

18 **2. The financial records are material to Ms. Argon’s case.**

19 If the jury finds MegaCorp liable for punitive damages, the jury may then consider
20 “[e]vidence of profit and financial condition” of those defendants to determine the amount
21 of punitive damages. Cal. Civ. Code §§ 3294(a) and 3295(d); *Nolin v. Nat’l Convenience*
22 *Stores, Inc.*, 95 Cal. App. 3d 279, 288 (1979).

24 **3. Ms. Argon will be prejudiced without the financial records, so there is good 25 cause to compel their production.**

26 MegaCorp was ordered to stand trial on punitive damages. (Eaglefeather Decl. ¶ 4.) If

1 the jury returns an initial verdict for punitive damages, Ms. Argon will need these financial
2 records to prove the amount of punitive damages. MegaCorp cannot circumvent the trial by
3 withholding evidence that the jury must consider. Cal. Civ. Code § 3295(d).

4
5 **4. Conclusion**

6 For these reasons, Ms. Argon asks that the Court order MegaCorp to produce the
7 requested financial records.

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9 November 19, 2023

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11 Cadmium Q. Eaglefeather

12 Attorney for Plaintiff
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LOS ANGELES CA 90027

323 555 1435

323 555 1439 FAX

CADMIUM @ CQELAW.COM

February 15, 2024

George Falkenburg
Falkenburg, Fester, and Funk LLP
1252 W. 83rd Street
Bakersfield, CA 90909

Re: Nicholson v. MegaCorp, Case No. B718590125-2

Dear Mr. Falkenburg:

In response to your recent request, I've enclosed a DVD of photographs I took during the inspection of the MegaCorp facility on October 30, 2023.

I apologize for the delay, but I was recently hospitalized for a concussion sustained while rollerblading. Rest assured that I am on the mend. If you have any questions about this DVD, please let me know.

Separately: you recently served a set of **953 interrogatories** on my client. These interrogatories were *not* accompanied by the declaration of necessity that's required when serving more than 35 requests. See Cal. Civ. Proc. Code § 2030.050.

I must, therefore, ask you to withdraw these interrogatories. While you are welcome to serve them again with the necessary declaration, my client is not obligated to respond to procedurally defective discovery requests. Furthermore, if you don't withdraw these interrogatories within six days, I will file a motion for protective order and seek sanctions.

By the way, it was great seeing you and Thelma over the holidays. I think we still have your cheesecake platter. Let's talk soon about our plans for Maui in the spring.

Sincerely,

CADMIUM Q. EAGLEFEATHER

CQE / bqe
Enclosure

To: Cadmium Q. Eaglefeather

From: Trixie Argon

Date: 10 September 2024

Re: Cause of action for malicious prosecution

Malicious prosecution has three elements that must be pleaded and proved:

- 1) the defendant commenced a judicial proceeding against the plaintiff;
- 2) the original proceeding was “initiated with malice” and “without probable cause”; and
- 3) the proceeding was “pursued to a legal termination in [the plaintiff’s] favor.”

Bertero v. National General Corp., 13 Cal. 3d 43, 50 (1974).

1. Commencement of judicial proceeding

Any civil proceeding where the plaintiff seeks affirmative relief may be the basis of a malicious-prosecution claim. The original plaintiff does not need to personally sign the complaint. If the plaintiff is “actively instrumental” or the “proximate and efficient cause” of the action, the plaintiff may be liable. *Jacques Interiors v. Petrak*, 188 Cal. App. 3d 1363, 1372 (1987).

2. Initiated without probable cause and with malice

The malicious-prosecution plaintiff must establish both malice and lack of probable cause by the defendant in the underlying action.

In a malicious-prosecution action against an attorney in a civil suit, the standard for probable cause is whether a reasonable attorney would have thought the underlying claim was tenable at the time the original complaint was filed. *Sheldon Appel Co. v. Albert & Oliker*, 47 Cal. 3d 863, 885–86 (1989). An attorney may be liable for continuing to prosecute a claim after they discover the action lacks probable cause, even if there was probable cause at the outset. *Zamos v. Stroud*, 32 Cal. 4th 958, 970 (2004).

The showing of malice requires evidence of “ill will or some improper purpose,” ranging “anywhere from open hostility to indifference.” *Grindle v. Lorbeer*, 196 Cal. App. 3d 1461, 1465 (1987). Malice may be inferred from lack of probable cause if the party’s behavior was clearly unreasonable. However, this is not an automatic inference. *Grindle*, 196 Cal. App. 3d at 1468 (“Negligence does not equate with malice”). As above, failure by an attorney to conduct an adequate investigation may be evidence of “indifference” suggesting malice.

3. Favorable termination

Malicious prosecution requires that the underlying complaint to have been terminated in favor of the malicious-prosecution plaintiff. This means that a defendant cannot make a malicious-prosecution counterclaim as a “defense” to a complaint that appears to be malicious. Until the underlying complaint has been resolved, a malicious-prosecution claim cannot lie. *Babb v. Superior Court*, 3 Cal. 3d 841, 846-847 (1971). Thus, procedurally, the only option is to complete the underlying action, and then file a claim for malicious prosecution in a follow-on action.

“Termination” usually means the entry of judgment in favor of the malicious-prosecution plaintiff on a given claim. But any termination—for instance, deleting a claim from an amended complaint—is adequate basis for malicious prosecution. Whether the underlying claim may be revived (e.g., on appeal) is not relevant for malicious prosecution. As long as it’s been judicially terminated once, it’s fair game.

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