

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
13 behalf of a class of similarly situated
14 persons,

15 Plaintiff;

16 vs.

17 **MEGACORP INC.**, a California
18 corporation, and **DOES 1** through
19 100, inclusive,

20 Defendants.

Case No. BC5551212

**Plaintiff's Notice of Motion and
Motion to Compel Defendant
MegaCorp to Produce Financial
Records at Trial; Points & Authori-
ties**

Complaint filed: June 9, 2020
Trial date: August 20, 2022

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
5 of the above-entitled court, plaintiff Trixie Argon will move the Court for a motion
6 to compel defendant MegaCorp to produce financial records she previously
7 requested.

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

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

15 The motion will be based on this notice, on the attached points and authori-
16 ties, on the papers and records on file, and—if there is a hearing on this
17 motion—on the evidence presented at the hearing.

18

19 November 19, 2021

EAGLEFEATHER LAW OFFICES

20 By: _____

21 Cadmium Q. Eaglefeather

22 Attorney for Plaintiff

23

24

25

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1 **POINTS & AUTHORITIES**

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

9
10 **1. Ms. Argon is entitled to the financial records.**

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

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

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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 con-
20 sider “[e]vidence of profit and financial condition” of those defendants to deter-
21 mine the amount of punitive damages. Cal. Civ. Code §§ 3294(a) and 3295(d);
22 *Nolin v. Nat’l Convenience Stores, Inc.*, 95 Cal. App. 3d 279, 288 (1979).

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

26 MegaCorp was ordered to stand trial on punitive damages. (Eaglefeather

1 Decl. ¶ 4.) If the jury returns an initial verdict for punitive damages, Ms. Argon
2 will need these financial records to prove the amount of punitive damages. Mega-
3 Corp cannot circumvent the trial by withholding evidence that the jury must con-
4 sider. Cal. Civ. Code § 3295(d).

5
6 **4. Conclusion**

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

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CADMIUM @ CQELAW.COM

February 15, 2022

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, 2021.

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 / bq
Enclosure

To: Cadmium Q. Eaglefeather
From: Trixie Argon
Date: 10 September 2022
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

UCLA Anderson School of Management 2019–21

- Cumulative GPA: 3.98
- Academic interests: real-estate financing, criminal procedure
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Hartford University 2011–15

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Boxer Bedley & Ball Capital Advisors 2016–19

Equity analyst

- Performed independent research on numerous American industries
- Steelmaking, croquet, and butterscotch manufacturing
- Led company in equities analyzed in two quarters

OTHER WORK EXPERIENCE

Proximate Cause 2015–16

Assistant to the director

- Helped devise fundraising campaigns for this innovative nonprofit
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