

e-con-o-my, *n.* Purchasing the barrel of whiskey that you do not need for the price of the cow that you cannot afford.

ed-i-ble, *adj.* Good to eat, and wholesome to digest, as a worm to a toad, a toad to a snake, a snake to a pig, a pig to a man, and a man to a worm.

ed-i-tor, *n.* A person who combines the judicial functions of Minos, Rhadamanthus and Æacus, but is placable with an obolus; a severely virtuous censor, but so charitable withal that he tolerates the virtues of others and the vices of himself; who flings about him the splintering lightning and sturdy thunders of admonition till he resembles a bunch of firecrackers petulantly uttering his mind at the tail of a dog; then straightway murmurs a mild, melodious lay, soft as the cooing of a donkey intoning its prayer to the evening star.

ed-u-ca-tion, *n.* That which discloses to the wise and disguises from the foolish their lack of understanding.

ef-fect, *n.* The second of two phenomena that always occur together in the same order. The first, called a CAUSE, is said to generate the other—which is no more sensible than it would be for one who has never seen a dog except in the pursuit of a rabbit to declare the rabbit the cause of a dog.

e-go-tist, *n.* A person of low taste, more interested in himself than in me.

e-lec-tric-i-ty, *n.* The power that causes all natural phenomena not known to be caused by something else. It is the same thing as lightning, and its famous attempt to strike Dr. Franklin is one of the most picturesque incidents in that great and good man's career.

el-o-quence, *n.* The art of orally persuading fools that white is the color that it appears to be. It includes the gift of making any color appear white.

e-mo-tion, *n.* A prostrating disease caused by a determination of the heart to the head. It is sometimes accompanied by a discharge of hydrated chloride of sodium from the eyes.

en-ter-tain-ment, *n.* Any kind of amusement whose inroads stop short of death by injection.

en-thu-si-asm, *n.* A distemper of youth, curable by small doses of repentance in connection with outward applications of EXPERIENCE. Byron, who recovered long enough to call it “*entuzy-muzy*,” had a relapse, which carried him off—to Missolonghi.

en-vy, *n.* Emulation adapted to the meanest capacity.

ep-i-taph, *n.* An inscription on a tomb, showing that virtues acquired by death have a retroactive effect.

E-qui-ty, *n.* A text family designed by Matthew Butterick. Available only at mbtype.com.

er-u-di-tion, *n.* Dust shaken out of a book into an empty skull.

eu-lo-gy, *n.* Praise of a person who has either the advantages of wealth and power, or the consideration to be dead.

ex-cep-tion, *n.* A thing which takes the liberty to differ from other things of its class. “The exception proves the rule” is an expression constantly upon the lips of the ignorant. In the Latin, “*Exceptio probat regulam*” means that the exception tests the rule, puts it to the proof, not confirms it. The malefactor who drew the meaning from this excellent dictum and substituted a contrary one of his own exerted an evil power which appears to be immortal.

ex-ec-u-tive, *n.* An officer of the GOVERNMENT, whose duty it is to enforce the wishes of the legislative power until such time as the judicial department shall be pleased to pronounce them invalid and of no effect.

ex-pe-ri-ence, *n.* The wisdom that enables us to recognize as an undesirable old acquaintance the folly that we have already embraced.

EVERY TYPE DESIGNER WILL EVENTUALLY be asked “*Why do we need more fonts?*” ❄️ One answer is that fonts are a vital cog in the grand machinery of the printing industry, which over the last 500 years has transformed world culture like no invention before or since. (The internet? As a predominantly textual medium, I’d contend that it’s just the next step in the evolution of printing.) Fonts are tools, and new technologies create the need for new designs. ❄️ Another answer is that fonts are expressive cultural artifacts. We need new fonts for the same reason we need new poems, new films, and new novels — even if the stories are the same, each generation gets to retell them in its own way. ❄️ But sometimes a font needs no explanation or rationale. It makes the case for its own existence — once you’ve used it, you wonder how you got along without it. ❄️ As a typographer, writer, and lawyer, Equity is a font I always wanted for my own work. Now that it’s here, I find it indispensable. I hope you will too.

Matthew Butterick

It is the proper business of effective business printing to include **provocation** among its constituent virtues. To be effective you must surprise—startle.

STANLEY MORISON · 1928

THE STORY of Equity begins with Stanley Morison. Born in England in 1889, Morison was a writer and self-taught typographer. In 1923 he became a typographic consultant to the Monotype Corporation. Over the next 40 years, he oversaw the creation of some of the best-known fonts of the 20th century, including Baskerville, Bembo, Gill Sans, and most famously, Times New Roman.

Today’s typographers sometimes cavil that Morison took too much credit for the work he supervised. Times New Roman, for instance, was actually drawn by Victor Lardent. (Morison would later say that he merely “excogitated” it.)

But a font doesn’t just contain letters. It contains ideas. And Morison’s novel ideas were vital to the progress of type design. Morison came of age when printing had split into two camps—on one side, the coarse but profitable

practices of the Second Industrial Revolution; on the other, the rarefied but commercially impractical approach of the Arts & Crafts movement.

Morison’s great insight was simply to ask: *Why can’t we have it both ways?* Morison was both a traditionalist and a pragmatist. He respected the history of typography. But he was always mindful of what he called its “economic utility.” As he put it in his book *A Tally of Types*:

“It must be the object of typography ... to multiply the greatest number of copies at the least cost.”

With proclamations like these, Morison the provocateur sometimes overshadowed Morison the typographer. At Monotype, he led a project to revive the great fonts of the previous 400 years, updating them for then-current needs. These fonts became cornerstones of modern typography. Most are still in use.

EHRHARDT

generally

EQUITY

generally

EHRHARDT

Signature

EQUITY

Signature

One notable exception is Ehrhardt. Though popular in its day, Ehrhardt is one of the few Morison fonts that went obscure in the digital age.

Ehrhardt was Morison’s 1938 revival of a 17th-century font commonly known as Janson, after the Dutch printer who popularized it (though more accurately credited to its Hungarian designer, Miklós Kis*). Linotype, Monotype’s archival in hot-metal typesetting, had already released a historically faithful version of Janson called Janson Text. Morison went a different direction, making Ehrhardt more compact and modern than the original Janson.

Ehrhardt was the primary influence on Equity. I studied printed samples of Ehrhardt so I could recreate its satisfying heft and authority.

* PRONOUNCED “KISH”

But along the way, I took many liberties and detours. Quaint details, like the droopy ear on the roman g, are gone. Hot-metal compromises—e.g., the stumpy italic *r*—have been fixed in the digital domain.

Equity also follows the Morison principle of being a practical font. First, it fits as much text per page as Times New Roman (see page 10 for a copyfitting comparison). Second, while suitable for professional designers, Equity also includes many features intended to make excellent typography easy for nonprofessionals, such as small caps that are already letterspaced. Third, Equity’s standard license allows you to embed it in PDFs, word-processing documents, and websites. Fourth, each style of Equity comes in two weight grades—a feature explained on the next page.

WEIGHT GRADES & YOU

A SPECIAL REPORT

One of the conveniences of digital typography is being able to use the same font file everywhere—on any platform, in any program, at any size. But this convenience masks a sometimes cruel reality: once you click “Print”, you cede control to your printer, which may or may not reproduce the font accurately.

The most common problem? Compared to the printers used by professional designers, office printers often add weight to fonts. (*Weight* refers to the overall darkness of the text on the page.) At smaller sizes, this extra weight can turn a pleasant, legible font into an overly dark headache.

What’s the solution? You can’t really change how your printer works. But you can change your font. So Equity comes in two *weight grades*—the default grade A, and the lighter grade B—so you can pick the grade that’s best for your printer.

To see how this works, consider the text samples at upper right.

The top sample is Equity grade A, from a professional-quality printer that reproduces text accurately.

The middle sample is also grade A, but printed on an office printer made by a popular manufacturer that I will refer to only as “Shoeless Placard”. Even though the font is the same, the output of the Shoeless Placard printer is darker. Here, it may appear to be a subtle distinction. But multiplied across many pages, it’s not. (In general, this is why text fonts are more sensitive to small changes in weight than other kinds of fonts—they take up most of the space in a document.)

The bottom sample comes from the same Shoeless Placard printer, but this time using Equity grade B. Notice how this sample comes much closer to matching the weight of the top text sample.

the People of the United States, in O
e perfect Union, establish Justice, in
iquility, provide for the common def
general Welfare, and secure the Bles:

GRADE A, ON AN ACCURATE PRINTER

the People of the United States, in O
e perfect Union, establish Justice, in
iquility, provide for the common def
general Welfare, and secure the Bles:

GRADE A, ON AN OFFICE PRINTER:

SAME FONT, BUT TEXT PRINTS HEAVIER

the People of the United States, in O
e perfect Union, establish Justice, in
iquility, provide for the common def
general Welfare, and secure the Bles:

GRADE B, ON AN OFFICE PRINTER:

TEXT NOW MATCHES THE ORIGINAL

I’ve carefully adjusted Equity’s weight grade B by hand to correct for the heavier output of Shoeless Placard and similar office printers. So even though grade B starts out slightly lighter, it ends up the right weight on the printed page.

All styles in the Equity family are furnished in A and B grades. Between the two grades, the widths of the characters are the same. That means you can switch between them at any time without disrupting your page layout.

And grades demand very little of you. After you install Equity, make a test document and print it twice—once in grade A, and once in grade B. Standardize on whichever grade looks best to you.

Though the main function of grades is weight correction for body text, creative typographers will find other uses for them. For example, when I use Equity at larger sizes, I like to use grade B, because at that scale, it looks more svelte than grade A.

Out of the thousands of text families in the world, grades are a feature found in only a handful. Grades make Equity even more beautiful and more practical.

EQUITY A

8 pt The Congress shall have Power: 1) To lay and collect Taxes, Duties, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the subject of Bankruptcies. 5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures. 6) To provide for the Punishment of counterfeiting the Securities and current Coin of the United States. 7) To establish Post Offices and Post Roads. 8) To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

9 pt The Congress shall have Power: 1) To lay and collect Taxes, Duties, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the subject of Bankruptcies. 5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures. 6) To provide for the Punishment of counterfeiting the Securities and current Coin of the United States. 7) To establish Post Offices and Post Roads. 8) To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

EQUITY B

The Congress shall have Power: 1) To lay and collect Taxes, Duties, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the subject of Bankruptcies. 5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures. 6) To provide for the Punishment of counterfeiting the Securities and current Coin of the United States. 7) To establish Post Offices and Post Roads. 8) To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

The Congress shall have Power: 1) To lay and collect Taxes, Duties, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the subject of Bankruptcies. 5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures. 6) To provide for the Punishment of counterfeiting the Securities and current Coin of the United States. 7) To establish Post Offices and Post Roads. 8) To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

EQUITY A

EQUITY B

10 pt The Congress shall have Power: 1) To lay and collect Taxes, Duties, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the subject of Bankruptcies. 5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures.

The Congress shall have Power: 1) To lay and collect Taxes, Duties, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the subject of Bankruptcies. 5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures.

11 pt The Congress shall have Power: 1) To lay and collect Taxes, Duties, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the subject of Bankruptcies. 5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures.

The Congress shall have Power: 1) To lay and collect Taxes, Duties, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the subject of Bankruptcies. 5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures.

8 pt **THE CONGRESS SHALL HAVE POWER: 1) TO LAY AND COLLECT TAXES, DUTIES, IMPOSTS and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the subject of Bankruptcies. 5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures. 6) To provide for the Punishment of counterfeiting the Securities and current Coin of the United States. 7) To establish Post Offices and Post Roads. 8) To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.**

9 pt **THE CONGRESS SHALL HAVE POWER: 1) TO LAY AND COLLECT TAXES, DUTIES, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the subject of Bankruptcies. 5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures. 6) To provide for the Punishment of counterfeiting the Securities and current Coin of the United States. 7) To establish Post Offices and Post Roads. 8) To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.**

THE CONGRESS SHALL HAVE POWER: 1) TO LAY AND COLLECT TAXES, DUTIES, IMPOSTS and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the subject of Bankruptcies. 5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures. 6) To provide for the Punishment of counterfeiting the Securities and current Coin of the United States. 7) To establish Post Offices and Post Roads. 8) To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

THE CONGRESS SHALL HAVE POWER: 1) TO LAY AND COLLECT TAXES, DUTIES, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the subject of Bankruptcies. 5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures. 6) To provide for the Punishment of counterfeiting the Securities and current Coin of the United States. 7) To establish Post Offices and Post Roads. 8) To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

10 pt **THE CONGRESS SHALL HAVE POWER:** 1) TO LAY AND COLLECT Taxes, Duties, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce *with foreign Nations, and among the several States, and with the Indian Tribes.* 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the *subject of Bankruptcies.* 5) *To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures.*

11 pt **THE CONGRESS SHALL HAVE POWER:** 1) TO LAY AND COLLECT Taxes, Duties, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) *To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.* 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the *subject of Bankruptcies.* 5) *To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures.*

THE CONGRESS SHALL HAVE POWER: 1) TO LAY AND COLLECT Taxes, Duties, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) To regulate Commerce *with foreign Nations, and among the several States, and with the Indian Tribes.* 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws *on the subject of Bankruptcies.* 5) *To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures.*

THE CONGRESS SHALL HAVE POWER: 1) TO LAY AND COLLECT Taxes, Duties, Imposts and Excises, to pay Debts up to \$98,765.00, and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts & Excises shall be uniform throughout the United States. 2) To borrow money on the credit of the United States. Hooray! 3) *To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.* 4) To establish a uniform Rule of Naturalization, and—seriously?—uniform Laws on the *subject of Bankruptcies.* 5) *To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures.*

11 pt The story of Equity begins with Stanley Morison. Born in England in 1889, Morison was a writer and self-taught typographer. In 1923 he became a typographic consultant to the Monotype Corporation. Over the next 40 years, he oversaw the creation of some of the best-known fonts of the 20th century, including Baskerville, Bembo, Gill Sans, and most famously, Times New Roman. But a font doesn't just contain letters. It contains ideas, and Morison's novel ideas were vital to the progress of type design. Morison came of age when printing had split into two camps—on one side, the coarse but profitable practice of the Second Industrial Revolution; on the other, the rarefied but commercially impractical approach of the Arts & Crafts movement. Morison's great insight was simply to ask: *Why can't we have it both ways?* Morison was both a traditionalist and a pragmatist. He respected the history of typography, but was always mindful of what he called its "economic utility." As he put it in his book *A Tally of Types*: **"It must be the object of typography...to multiply the greatest number of copies at the least cost."** With proclamations like these, Morison the provocateur sometimes overshadowed the contributions of Morison the typographer. At Monotype, he led a project to revive the great fonts of the previous 400 years to suit current technology. These fonts became cornerstones of modern typography. Most are still in use.

The story of Equity begins with Stanley Morison. Born in England in 1889, Morison was a writer and self-taught typographer. In 1923 he became a typographic consultant to the Monotype Corporation. Over the next 40 years, he oversaw the creation of some of the best-known fonts of the 20th century, including Baskerville, Bembo, Gill Sans, and most famously, Times New Roman. But a font doesn't just contain letters. It contains ideas, and Morison's novel ideas were vital to the progress of type design. Morison came of age when printing had split into two camps—on one side, the coarse but profitable practice of the Second Industrial Revolution; on the other, the rarefied but commercially impractical approach of the Arts & Crafts movement. Morison's great insight was simply to ask: *Why can't we have it both ways?* Morison was both a traditionalist and a pragmatist. He respected the history of typography, but was always mindful of what he called its "economic utility." As he put it in his book *A Tally of Types*: **"It must be the object of typography...to multiply the greatest number of copies at the least cost."** With proclamations like these, Morison the provocateur sometimes overshadowed the contributions of Morison the typographer. At Monotype, he led a project to revive the great fonts of the previous 400 years to suit current technology. These fonts became cornerstones of modern typography. Most are still in use.

Cite as: 562 U. S. _____ (2011)

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 09-150

**MICHIGAN, PETITIONER v.
RICHARD PERRY BRYANT**

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF MICHIGAN

[February 28, 2011]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

At respondent Richard Bryant’s trial, the court admitted statements that the victim, Anthony Covington, made to police officers who discovered him mortally wounded in a gas station parking lot. A jury convicted Bryant of, *inter alia*, second-degree murder. 483 Mich. 132, 137; 768 N.W. 2d 65, 67–68 (2009). On appeal, the Supreme Court of Michigan held that the Sixth Amendment’s Confrontation Clause, as explained in our decisions in *Crawford v. Washington*, 541 U.S. 36 (2004), and *Davis v. Washington*, 547 U.S. 813 (2006), rendered Covington’s statements inadmissible testimonial hearsay, and the court reversed Bryant’s conviction. 483 Mich., at 157; 768 N.W. 2d, at 79.

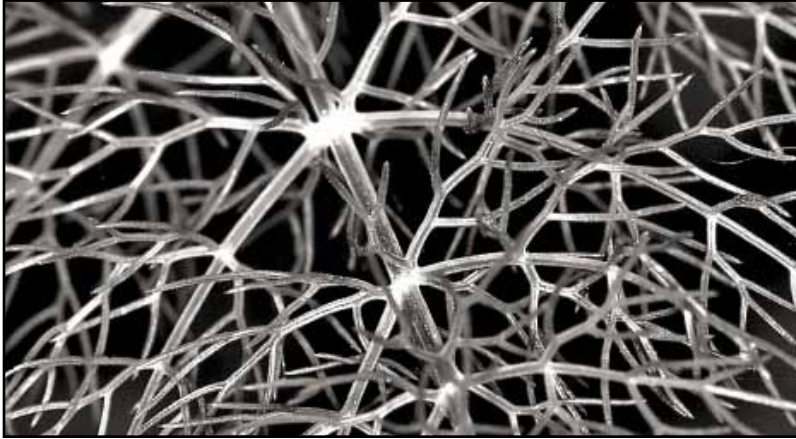
We granted the State’s petition for a writ of certiorari to consider whether the Confrontation Clause barred the admission at trial of Covington’s statements to the police. We hold that the circumstances of the interaction between Covington and the police objectively indicate that the “primary purpose of the interrogation” was “to enable police assistance to meet an ongoing emergency.” *Davis*, 547 U.S., at 822. Therefore, Covington’s identification and

Opinion of the Court

condition,” FED. R. EVID. 803; see also MICH. R. EVID. 803 (2010), are considered reliable because the declarant, in the excitement, presumably cannot form a falsehood. See *Idaho v. Wright*, 497 U.S. 805, 820 (1990) (“The basis for the ‘excited utterance’ exception ... is that such statements are given under circumstances that eliminate the possibility of fabrication, coaching, or confabulation ...”); 5 J. Weinstein & M. Berger, *Weinstein’s Federal Evidence* § 803.04[1] (J. McLaughlin ed., 2d ed. 2010) (same); Advisory Committee’s Notes on FED. R. EVID. 803, 28 U.S.C. App., p.371 (same). An ongoing emergency has a similar effect of focusing an individual’s attention on responding to the emergency.⁹

Following our precedents, the court below correctly began its analysis with the circumstances in which Covington interacted with the police. 483 Mich., at 143; 768 N. W. 2d, at 71. But in doing so, the court construed *Davis* to have decided more than it did and thus employed an unduly narrow understanding of “ongoing emergency”

⁹ Many other exceptions to the hearsay rules similarly rest on the belief that certain statements are, by their nature, made for a purpose other than use in a prosecution and therefore should not be barred by hearsay prohibitions. See, e.g., FED. R. EVID. 801(d)(2)(E) (statement by a co-conspirator during and in furtherance of the conspiracy); 803(4) (Statements for Purposes of Medical Diagnosis or Treatment); 803(6) (Records of Regularly Conducted Activity); 803(8) (Public Records and Reports); 803(9) (Records of Vital Statistics); 803(11) (Records of Religious Organizations); 803(12) (Marriage, Baptismal, and Similar Certificates); 803(13) (Family Records); 804(b)(3) (Statement Against Interest); see also *Melendez-Diaz v. Massachusetts*, 557 U.S. ___, ___ (2009) (slip op., at 18) (“Business and public records are generally admissible absent confrontation not because they qualify under an exception to the hearsay rules, but because—having been created for the administration of an entity’s affairs and not for the purpose of establishing or proving some fact at trial—they are not testimonial”); *Giles v. California*, 554 U.S., at 376 (noting in the context of domestic violence that “[s]tatements to friends and neighbors about abuse and intimidation and statements to physicians in the course of receiving treatment would be excluded, if at all, only by hearsay rules”); *Crawford*, 541 U.S., at 56 (“Most of the hearsay exceptions covered statements that by their nature were not testimonial—for example, business records or statements in furtherance of a conspiracy”).



*What are the roots that clutch, what branches grow
Out of this stony rubbish? Son of man,
You cannot say, or guess, for you know only
A heap of broken images, where the sun beats,
And the dead tree gives no shelter, the cricket no relief,
And the dry stone no sound of water. Only
There is shadow under this red rock,
(Come in under the shadow of this red rock),
And I will show you something different from either
Your shadow at morning striding behind you
Or your shadow at evening rising to meet you;
I will show you fear in a handful of dust.*

T. S. ELIOT THE WASTE LAND

A little boy of eleven, who had been thoughtfully assisting in the packing, joined the group of men, and as they rubbed their chins he spoke up, blushing at the sound of his own voice: “Aunt have got a great fuel-house, and it could be put there, perhaps, till you’ve found a place to settle in, sir.”

“A proper good notion,” said the blacksmith.

It was decided that a deputation should wait on the boy’s aunt—an old maiden resident—and ask her if she would house the piano till Mr. Phillotson should send for it. The smith and the bailiff started to see about the practicability of the suggested shelter, and the boy and the schoolmaster were left standing alone.

“Sorry I am going, Jude?” asked the latter kindly.

Tears rose into the boy’s eyes, for he was not among the regular day scholars, who came unromantically close to the schoolmaster’s life, but one who had attended the night school only during the present teacher’s term of office. The regular scholars, if the truth must be told, stood at the present moment afar off, like certain historic disciples, indisposed to any enthusiastic volunteering of aid.

The boy awkwardly opened the book he held in his hand, which Mr. Phillotson had bestowed on him as a parting gift, and admitted that he was sorry.

“So am I,” said Mr. Phillotson.

“Why do you go, sir?” asked the boy.

“Ah—that would be a long story. You wouldn’t understand my reasons, Jude. You will, perhaps, when you are older.”

“I think I should now, sir.”

**QUO USQUE
TANDEM ABUTERE,
CATILINA, PATIENTIA NOSTRA?
QUAM DIU ETIAM FUROR ISTE TUUS
NOS ELUDET? QUEM AD FINEM SESE
EFFRENATA IACTABIT AUDACIA? NIHILNE
TE NOCTURNUM PRAESIDIUM PALATI,
NIHIL URBIS VIGILIAE, NIHIL TIMOR POPULI,
NIHIL CONCURSUS BONORUM OMNIUM, NIHIL
HIC MUNITISSIMUS HABENDI SENATUS LOCUS, NIHIL
HORUM ORA VOLTUSQUE MOVERUNT? PATERE TUA
CONSILIA NON SENTIS, CONSTRICTAM IAM HORUM OMNIUM
SCIENTIA TENERI CONIURATIONEM TUAM NON VIDES? QUID
PROXIMA, QUID SUPERIORE NOCTE EGERIS, UBI FUERIS, QUOS
CONVOCAVERIS, QUID CONSILII CEPERIS, QUEM NOSTRUM
IGNORARE ARBITRARIS? O TEMPORA, O MORES! SENATUS HAEC
INTELLEGIT. CONSUL VIDET; HIC TAMEN VIVIT. VIVIT?
IMMO VERO ETIAM IN SENATUM VENIT, FIT PUBLICI
CONSILII PARTICEPS, NOTAT ET DESIGNAT
OCULIS AD CAEDEM UNUM QUEMQUE NOSTRUM.
NOS AUTEM FORTES VIRI SATIS FACERE REI
PUBLICAE VIDEMUR, SI ISTIUS FUROREM
AC TELA VITEMUS. AD MORTEM TE,
CATILINA, DUCI IUSSU CONSULIS
IAM PRIDEM OPORTEBAT, IN
TE CONFERRI PESTEM, QUAM
TU IN NOS OMNES IAM
DIU MACHINARIS.**

CICERO *IN CATILINAM I*

Marcel Proust

Du Côté de Chez Swann

Longtemps, je me suis couché de bonne heure. Parfois, à peine ma bougie éteinte, mes yeux se fermaient si vite que je n'avais pas le temps de me dire : « Je m'endors. »

Et, une demi-heure après, la pensée qu'il était temps de chercher le sommeil m'éveillait ; je voulais poser le volume que je croyais avoir encore dans les mains et souffler ma lumière ; je n'avais pas cessé en dormant de faire des réflexions sur ce que je venais de lire, mais ces réflexions avaient pris un tour un peu particulier ; il me semblait que j'étais moi-même ce dont parlait l'ouvrage : une église, un quatuor, la rivalité de François Ier et de Charles Quint.

Cette croyance survivait pendant quelques secondes à mon réveil ; elle ne choquait pas ma raison mais pesait comme des écailles sur mes yeux et les empêchait de se rendre compte que le bougeoir n'était plus allumé. Puis elle commençait à me devenir inintelligible, comme après

Je frottai une allumette pour regarder ma montre.

la métempsychose les pensées d'une existence antérieure ; le sujet du livre se détachait de moi, j'étais libre de m'y appliquer ou non ; aussitôt je recouvrais la vue et j'étais bien étonné de trouver autour de moi une obscurité, douce et reposante pour

mes yeux, mais peut-être plus encore pour mon esprit, à qui elle apparaissait comme une chose sans cause, incompréhensible, comme une chose vraiment obscure.

Je me demandais quelle heure il pouvait être ; j'entendais le sifflement des trains qui, plus ou moins éloigné, comme le chant d'un oiseau dans une forêt, relevant les distances, me décrivait l'étendue de la campagne déserte où le voyageur se hâte vers la station prochaine ; et le petit chemin qu'il suit va être gravé dans son souvenir par l'excitation qu'il doit à des lieux nouveaux, à des actes inaccoutumés, à la causerie récente et aux adieux sous la lampe étrangère qui le suivent encore dans le silence de la nuit, à la douceur prochaine du retour.

J'appuyais tendrement mes joues contre les belles joues de l'oreiller

qui, pleines et fraîches, sont comme les joues de notre enfance. Je frottai une allumette pour regarder ma montre. Bientôt minuit. C'est l'instant où le malade, qui a été obligé de partir en voyage et a dû coucher dans un hôtel inconnu, réveillé par

CAPITOLO I.

GIÙ NELLA CONIGLIERA.



ALICE COMINCIAVA a sentirsi mortalmente stanca di sedere sul poggio, accanto a sua sorella, senza far nulla: una o due volte aveva gittato lo sguardo sul libro che leggeva sua sorella, ma non c'erano immagini nè dialoghi, "e a che serve un libro," pensò Alice, "senza immagini e dialoghi?"

E andava fantasticando col suo cervello (come meglio poteva, perchè lo stellone l'avea resa sonnacchiosa e grullina), se il piacere di fare una ghirlanda di margherite valesse la noja di levarsi su, e cogliere i fiori, quand'ecco un Coniglio bianco con gli occhi di rubino le passò da vicino.

Davvero non c'era *troppo* da meravigliarsi di ciò, nè Alice pensò che fosse cosa *troppo* stravagante di sentire parlare il Coniglio, il quale diceva fra sè "Oimè! Oimè! ho fatto tardi!" (quando se lo rammentò in seguito s'accorse che avrebbe dovuto meravigliarsene, ma allora le sembrò una cosa assai naturale): ma quando il Coniglio *trasse un oriuolo dal taschino del panciotto*, e vi affisò gli occhi, e scappò via, Alice saltò in piedi, perchè l'era venuto in mente ch'ella non avea mai veduto un Coniglio col panciotto e il suo rispettivo taschino, nè con un oriuolo da starvici dentro, e divorata dalla curiosità, traversò il campo correndogli appresso, e giunse proprio a tempo di vederlo slanciarsi in una spaziosa conigliera, di sotto alla siepe.

In un altro istante, giù Alice scivolò, correndogli appresso, senza punto riflettere come mai avrebbe fatto per riuscirne fuori.

La buca della conigliera sfilava diritto come una galleria di *tunnel*, e poi s'inabissava tanto rapidamente che Alice non ebbe un solo istante per considerare se avesse potuto fermarsi, poichè si sentiva cader giù rotoloni in qualche precipizio che rassomigliava a un pozzo.

Una delle due, o il pozzo era arciprofondo, o ella vi ruzzolava assai adagino, poichè ebbe tempo, mentre cadeva, di guardare tutto intorno, e stupiva pensando a ciò che le avverrebbe poi. Prima di tutto aguzzò la vista e cercò di vedere nel fondo per scoprire ciò che le accaderebbe, ma gli era bujo affatto e non ci si vedea punto: indi guardò alle pareti del pozzo ed osservò ch'erano ricoperte di credenze e di scaffali da libri; quà e là vide mappe e quadri che pendeano da' chiodi.

Andando giù prese di volo un vasettino che avea un cartello, lo lesse: "CONSERVA D'ARANCE," ma oimè! era vuoto e restò delusa: non volle lasciar cadere il vasettino per non ammazzare chi era in fondo, e andando sempre giù lo depose in un'altra credenza.

"Bene," pensò Alice, "dopo una caduta tale, mi parrà proprio un niente il ruzzolare per le scale! A casa poi,

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 100,
19 inclusive,

20 Defendants.

Case No. BC5551212

**Plaintiff's Notice of Motion and
Motion to Compel Defendant Mega-
Corp to Produce 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
6 defendant MegaCorp to produce financial records she previously requested.

7 This motion is made on the ground that Ms. Argon served MegaCorp with a valid
8 notice 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
11 punitive damages against MegaCorp. Therefore, the documents are material to Ms.
12 Argon’s case and there is good cause to order them to be produced. Cal. Civ. Proc. Code
13 § 1987(c).

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

17

18 November 19, 2023

EAGLEFEATHER LAW OFFICES

19 By: _____

20 Cadmium Q. Eaglefeather

21 Attorney for Plaintiff

22

23

24

25

26

1 **POINTS & AUTHORITIES**

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 Mega-
5 Corp with a timely notice to produce financial records at trial. (Eaglefeather Decl. ¶ 2.)
6 MegaCorp responded with boilerplate objections to Ms. Argon’s requests and refused to
7 produce any financial records. (Eaglefeather Decl. ¶ 3.) This motion seeks to compel
8 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 docu-
12 ments “to be available at the trial for the purpose of establishing the profits or financial
13 condition” of MegaCorp. Cal. Civ. Code § 3295(c).

14 Ms. Argon has a right to these records even without showing that there is a “substan-
15 tial 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.*

17
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
21 amount of punitive damages. Cal. Civ. Code §§ 3294(a) and 3295(d); *Nolin v. Nat’l Conve-*
22 *nience Stores, Inc.*, 95 Cal. App. 3d 279, 288 (1979).

23
24 **3. Ms. Argon will be prejudiced without the financial records, so there is**
25 **good cause to compel their production.**

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

1 If the jury returns an initial verdict for punitive damages, Ms. Argon will need these finan-
2 cial records to prove the amount of punitive damages. MegaCorp cannot circumvent the
3 trial by 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
13
14
15
16
17
18
19
20
21
22
23
24
25
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

UCLA Anderson School of Management 2021–23

- Cumulative GPA: 3.98
- Academic interests: real-estate financing, criminal procedure
- Henry Murtaugh Award

Hartford University 2013–17

- B.A. *summa cum laude*, Economics
- Extensive coursework in Astrophysics, Statistics
- Van Damme Scholarship

BUSINESS EXPERIENCE

Boxer Bedley & Ball Capital Advisors 2018–21

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 2017–18

Assistant to the director

- Helped devise fundraising campaigns for this innovative nonprofit
- Handled lunch orders and general errands

Hot Topic 2014–16

Retail-sales associate

- Top in-store sales associate in seven out of eight quarters
- Inventory management
- Training and recruiting

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 100,
19 inclusive,

20 Defendants.
21
22
23
24
25
26

Case No. BC5551212

**Plaintiff's Notice of Motion and
Motion to Compel Defendant Mega-
Corp to Produce 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
6 defendant MegaCorp to produce financial records she previously requested.

7 This motion is made on the ground that Ms. Argon served MegaCorp with a valid
8 notice 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
11 punitive damages against MegaCorp. Therefore, the documents are material to Ms.
12 Argon’s case and there is good cause to order them to be produced. Cal. Civ. Proc. Code
13 § 1987(c).

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

17

18 November 19, 2023

EAGLEFEATHER LAW OFFICES

19 By: _____

20 Cadmium Q. Eaglefeather

21 Attorney for Plaintiff

22

23

24

25

26

1 **POINTS & AUTHORITIES**

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 Mega-
5 Corp with a timely notice to produce financial records at trial. (Eaglefeather Decl. ¶ 2.)
6 MegaCorp responded with boilerplate objections to Ms. Argon’s requests and refused to
7 produce any financial records. (Eaglefeather Decl. ¶ 3.) This motion seeks to compel
8 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 docu-
12 ments “to be available at the trial for the purpose of establishing the profits or financial
13 condition” of MegaCorp. Cal. Civ. Code § 3295(c).

14 Ms. Argon has a right to these records even without showing that there is a “substan-
15 tial 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.*

17
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
21 amount of punitive damages. Cal. Civ. Code §§ 3294(a) and 3295(d); *Nolin v. Nat’l Conve-*
22 *nience Stores, Inc.*, 95 Cal. App. 3d 279, 288 (1979).

23
24 **3. Ms. Argon will be prejudiced without the financial records, so there is**
25 **good cause to compel their production.**

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

1 If the jury returns an initial verdict for punitive damages, Ms. Argon will need these finan-
2 cial records to prove the amount of punitive damages. MegaCorp cannot circumvent the
3 trial by 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
13
14
15
16
17
18
19
20
21
22
23
24
25
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

UCLA Anderson School of Management 2021–23

- Cumulative GPA: 3.98
- Academic interests: real-estate financing, criminal procedure
- Henry Murtaugh Award

Hartford University 2013–17

- B.A. *summa cum laude*, Economics
- Extensive coursework in Astrophysics, Statistics
- Van Damme Scholarship

BUSINESS EXPERIENCE

Boxer Bedley & Ball Capital Advisors 2018–21

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 2017–18

Assistant to the director

- Helped devise fundraising campaigns for this innovative nonprofit
- Handled lunch orders and general errands

Hot Topic 2014–16

Retail-sales associate

- Top in-store sales associate in seven out of eight quarters
- Inventory management
- Training and recruiting