

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

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

Plaintiff;

vs.

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

Defendants.

Case No. BC5551212

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

Complaint filed: June 9, 2022  
Trial date: August 20, 2024

Assigned to Judge Jerry Blank,  
Dept. 1010, Central Civil Divi-  
sion

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  
5 Dept. 1010 of the above-entitled court, plaintiff Trixie Argon will move  
6 the Court for a motion to compel defendant MegaCorp to produce finan-  
7 cial records she previously requested.

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

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

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

19

20 November 19, 2023

EAGLEFEATHER LAW OFFICES

21 By: \_\_\_\_\_

22 Cadmium Q. Eaglefeather

23 Attorney for Plaintiff

24

25

26

## POINTS & AUTHORITIES

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

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

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

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

MegaCorp was ordered to stand trial on punitive damages. (Eagle-  
feather Decl. ¶ 4.) If the jury returns an initial verdict for punitive dam-  
ages, Ms. Argon will need these financial records to prove the amount of  
punitive damages. MegaCorp cannot circumvent the trial by withholding  
evidence that the jury must consider. Cal. Civ. Code § 3295(d).

**4. Conclusion**

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

November 19, 2023

EAGLEFEATHER LAW OFFICES

By: \_\_\_\_\_

Cadmium Q. Eaglefeather

Attorney for Plaintiff

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 / bq  
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 & Olier*, 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



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

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

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

Plaintiff;

vs.

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

Defendants.

Case No. BC5551212

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

Complaint filed: June 9, 2022  
Trial date: August 20, 2024

Assigned to Judge Jerry Blank,  
Dept. 1010, Central Civil Divi-  
sion

## NOTICE OF MOTION

To all parties and their attorneys of record:

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

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

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

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

November 19, 2023

EAGLEFEATHER LAW OFFICES

By: \_\_\_\_\_

Cadmium Q. Eaglefeather

Attorney for Plaintiff

## POINTS & AUTHORITIES

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

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

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

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

MegaCorp was ordered to stand trial on punitive damages. (Eagle-  
feather Decl. ¶ 4.) If the jury returns an initial verdict for punitive dam-  
ages, Ms. Argon will need these financial records to prove the amount of  
punitive damages. MegaCorp cannot circumvent the trial by withholding  
evidence that the jury must consider. Cal. Civ. Code § 3295(d).

**4. Conclusion**

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

November 19, 2023	EAGLEFEATHER LAW OFFICES
	By: _____
	Cadmium Q. Eaglefeather
	Attorney for Plaintiff

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 / bq  
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 & Olier*, 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



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

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

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

Plaintiff;

vs.

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

Defendants.

Case No. BC5551212

**Plaintiff’s Notice of Motion  
and Motion to Compel Defen-  
dant MegaCorp 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 Divi-  
sion

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  
5 Dept. 1010 of the above-entitled court, plaintiff Trixie Argon will move  
6 the Court for a motion to compel defendant MegaCorp to produce finan-  
7 cial records she previously requested.

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

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

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

19

20 November 19, 2023

EAGLEFEATHER LAW OFFICES

21 By: \_\_\_\_\_

22 Cadmium Q. Eaglefeather

23 Attorney for Plaintiff

24

25

26

## POINTS & AUTHORITIES

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

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

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

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

MegaCorp was ordered to stand trial on punitive damages. (Eaglefeather Decl. ¶ 4.) If the jury returns an initial verdict for punitive damages, Ms. Argon will need these financial records to prove the amount of punitive damages. MegaCorp cannot circumvent the trial by withholding evidence that the jury must consider. Cal. Civ. Code § 3295(d).

**4. Conclusion**

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

November 19, 2023	EAGLEFEATHER LAW OFFICES
	By: _____
	Cadmium Q. Eaglefeather
	Attorney for Plaintiff

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 / bq  
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 & Olier*, 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