

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,**
13 individually and on
14 behalf of a class of
15 similarly situated
16 persons,

17 Plaintiff;

18 vs.

19 **MEGACORP INC.,** a
20 California corporation,
21 and **DOES** 1 through 100,
22 inclusive,

23 Defendants.

Case No. BC5551212

**Plaintiff's Notice of
Motion and Motion to Com-
pel Defendant MegaCorp
to Produce Financial
Records at Trial; Points
& Authorities**

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

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

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

19

20 November 19, 2021

EAGLEFEATHER LAW OFFICES

21 By: _____

22 Cadmium Q. Eaglefeather

23 Attorney for Plaintiff

24

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1 POINTS & AUTHORITIES
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3 Previously, the Court denied MegaCorp's motion for
4 summary adjudication of Ms. Argon's claims for punitive
5 damages. (Eaglefeather Decl. ¶ 1.) Ms. Argon served
6 MegaCorp with a timely notice to produce financial
7 records at trial. (Eaglefeather Decl. ¶ 2.) MegaCorp
8 responded with boilerplate objections to Ms. Argon's
9 requests and refused to produce any financial records.
10 (Eaglefeather Decl. ¶ 3.) This motion seeks to compel
11 MegaCorp to produce these records.
12

13 **1. Ms. Argon is entitled to the financial**
14 **records.**

15 Because this is a punitive-damages case, Ms. Argon
16 is entitled to subpoena documents "to be available at
17 the trial for the purpose of establishing the profits
18 or financial condition" of MegaCorp. Cal. Civ. Code
19 § 3295(c).

20 Ms. Argon has a right to these records even without
21 showing that there is a "substantial probability that
22 [she] will prevail". *Id.* That's the rule for pretrial
23 discovery of financial records, but not for records to
24 be brought to trial. *Id.*
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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).

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).

November 19, 2021

EAGLEFEATHER LAW OFFICES
By: _____
Cadmium Q. Eaglefeather
Attorney for Plaintiff

THE LAW OFFICES OF

CADMIUM Q.

EAGLEFEATHER

PLC

5419 HURLEY BLVD STE C731

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323 555 1439 FAX

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.

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 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 & Olikar*, 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.

TRIXIE B. ARGON

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(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
- Henry Murtaugh Award

Hartford University 2011–15

- B.A. *summa cum laude*, Economics
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- Performed independent research on numerous American industries
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Proximate Cause 2015–16

Assistant to the director

- Helped devise fundraising campaigns for this innovative nonprofit
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- Top in-store sales associate in seven out of eight quarters
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