

CASE NAME: Elfman, et al., v. Jeff Anderson & Associates, P.A., et al.  
CASE NO.: 25SMCV02163  
MOTION: Special Motions to Strike  
HEARING DATE: 1/27/2026

### LEGAL STANDARD

Code of Civil Procedure ("CCP") section 425.16 permits the Court to strike causes of action arising from an act in furtherance of the defendant's right of free speech or petition, unless the plaintiff establishes that there is a probability that the plaintiff will prevail on the claim. "The anti-SLAPP procedures are designed to shield a defendant's constitutionally protected *conduct* from the undue burden of frivolous litigation." (Baral v. Schnitt (2016) 1 Cal.5th 376, 393.) "The anti-SLAPP statute does not insulate defendants from *any* liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity." (Id. at 384.)

"Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success." (Baral, supra, 1 Cal.5th at 384, citation omitted.) The California Supreme Court has "described this second step as a 'summary-judgment-like procedure.' The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a *prima facie* factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. '[C]laims with the requisite minimal merit may proceed.'" (Id. at 384-385, citations omitted.)

CCP section 425.16(e) defines protected acts as the following: 1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; 2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; 3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; or 4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

A moving party must move to strike under this section within 60 days of service of the complaint. (CCP §425.16(f).)

### EVIDENTIARY OBJECTIONS

Plaintiffs' evidentiary objections are OVERRULED.

Defendant's evidentiary objections to the Elfman Declaration are SUSTAINED as to no. 14 (hearsay).

Defendant's evidentiary objections to the O'Riley Declaration are SUSTAINED as to nos. 6, 12 (hearsay).

Defendant's evidentiary objections to the Rubin Declaration are SUSTAINED as to nos. 6-12, and 15. Otherwise, Defendant's objections are DENIED.

Plaintiffs' request for judicial notice in connection with the anti-SLAPP motions is GRANTED as to nos. 1-6, 8, 11-14, 17-18, 21-34, and DENIED as to the remainder.

Plaintiffs' request for judicial notice in connection with the motion for leave to conduct discovery is GRANTED as to nos. 1, 2, 6, 8-14, and DENIED as to the remainder. (Evid. Code § 452(d).)

## ANALYSIS

This hearing involves two special motions to strike. Defendant Jane Doe XX ("Doe") moves to strike Plaintiffs Daniel Elfman ("Elfman") and Musica De La Muerte Inc.'s ("MDLM") complaint for malicious prosecution pursuant to CCP section 425.16. Defendants Jeff Anderson & Associates, P.A., Jeff Anderson, Michael Reck, and Neda Lofti ("Anderson Defendants") also move to strike the complaint.

### Prong One Analysis

This malicious prosecution action seeks Defendants' liability for prosecuting an underlying action, Jane Doe XX v. Elfman, et al., LASC Case No. 23SMCV05013. There is no reasonable dispute that the action arises out of protected conduct under CCP section 425.16(e)(1) and (2). (See Jarrow Formulas, Inc. v. LaMarche (2003) 31 Cal.4th 728, 735 ["[b]y definition, a malicious prosecution suit alleges that the defendant committed a tort by filing a lawsuit...[a]ccordingly, every Court of Appeal that has addressed the question has concluded that malicious prosecution causes of action fall within the purview of the anti-SLAPP statute"; Daniels v. Robbins (2010) 182 Cal.App.4th 204, 215 ["[t]he plain language of the anti-SLAPP statute dictates that every claim of malicious prosecution is a cause of action arising from protected activity because every such claim necessarily depends upon written and oral statements in a prior judicial proceeding"].) Therefore, the Court focuses on the second prong of the analysis as to each set of Defendants.

### Prong Two Analysis – Doe

"To establish a cause of action for the malicious prosecution of a civil proceeding, a plaintiff must plead and prove that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in his, plaintiff's, favor [citations]; (2) was brought without probable cause [citations]; and (3) was initiated with malice [citations]." (Lanz v. Goldstone (2015) 243 Cal.App.4th 441, 458.)

A malicious prosecution plaintiff must allege and prove the prior action was commenced or continued without probable cause. (Wilson v. Parker, Covert & Chidester (2002) 28 Cal.4th 811, 822.) Probable cause exists “if any reasonable attorney would have thought the claim tenable” or “arguably meritorious.” (Sheldon Appel Co. v. Albert & Oliker (1989) 47 Cal.3d 863, 886.) Probable cause is lacking where a litigant asserts a legal theory that is “untenable under the facts known to him.” (Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 292; see Cole v. Patricia A. Meyer & Assocs., APC (2012) 206 Cal.App.4th 1095, 1107 [probable cause absent where attorneys “drew logically flawed inferences from known facts or stretched those facts to fit their fraud-based theories”]; see also Mabie v. Hyatt (1998) 61 Cal.App.4th 581, 597 [“In a situation of complete absence of supporting evidence, it cannot be adjudged reasonable to prosecute a claim”].) The existence or absence of probable cause is a question of law to be determined by the court from the facts established in the case. (Franklin Mint Co. v. Manatt, Phelps & Phillips, LLP (2010) 184 Cal.App.4th 313, 333.) A malicious prosecution action can be predicated on any single claim that lacked probable cause. (Crowley v. Katleman (1994) 8 Cal.4th 666, 678-681; see Bertero v. National General Corp. (1974) 13 Cal.3d 43, 57 [“We see no reason for permitting plaintiffs and cross-complainants to pursue shotgun tactics by proceeding on counts and theories which they know or should know to be groundless”].)

Malice focuses on the defendants' subjective intent in bringing the prior case. (Cole, supra, 206 Cal.App.4th at 1113–1114.) Malice does not require that the defendants harbor actual ill will toward the plaintiff in the malicious prosecution case, and liability attaches to attitudes that range from open hostility to indifference. (Id.) Malice may be inferred from circumstantial evidence, such as the defendants' lack of probable cause, supplemented with proof that the prior case was instituted largely for an improper purpose. (Id.) Additional proof may consist of evidence that the prior case was knowingly brought without probable cause or was brought to force a settlement unrelated to the merits of the claim. (Id.) In malicious prosecution actions, malice is usually proven by circumstantial evidence and inferences drawn from the evidence, since parties rarely admit an improper motive. (HMS Capital, Inc. v. Lawyers Title Co. (2004) 118 Cal.App.4th 204; see Nunez v. Pennisi (2015) 241 Cal.App.4th 861, 878 [malice could be inferred from “knowingly false allegations” in underlying complaint].) As malice concerns the underlying plaintiff's actual mental state, the issue is a question of fact. (Zamos v. Stroud (2004) 32 Cal.4th 958, 966.)

Plaintiffs present sufficient prima facie evidence to support each element of malicious prosecution against Doe. First, it is undisputed that the underlying action was commenced by Doe. The action ended in Plaintiff's favor via a summary judgment motion. There, the court found Elfman provided evidence that he did not sexually assault Doe and Doe, in turn, failed to adduce admissible evidence that she was sexually assaulted within the meaning of section 340.16 of the CCP and Section 243.4, 261, 264.1, 286, 287, or 289, or former Sections 262 and 288a, of the Penal Code (pertaining to rape, oral copulation and other forms of sexual battery). The court further concluded that the other claims were barred by the applicable statute of limitations. Thus, the first element of malicious prosecution is met.

Plaintiffs also present evidence that Doe lacked probable cause and harbored actual malice. In 2023, CCP section 340.16(e) provided in relevant part:

(1) Notwithstanding any other law, any claim seeking to recover damages suffered as a result of a sexual assault that occurred on or after the plaintiff's 18th birthday that would otherwise be barred before January 1, 2023, solely because the applicable statute of limitations has or had expired, is hereby revived, and a cause of action may proceed if already pending in court on January 1, 2023, or, if not filed by that date, may be commenced between January 1, 2023, and December 31, 2023.

(2) This subdivision revives claims brought by a plaintiff who alleges all of the following:

(A) The plaintiff was sexually assaulted.

(B) One or more entities are legally responsible for damages arising out of the sexual assault.

(C) The entity or entities, including, but not limited to, their officers, directors, representatives, employees, or agents, engaged in a cover up or attempted a cover up of a previous instance or allegations of sexual assault by an alleged perpetrator of such abuse.

[...]

(4) For purposes of this subdivision:

(A) "Cover up" means a concerted effort to hide evidence relating to a sexual assault that incentivizes individuals to remain silent or prevents information relating to a sexual assault from becoming public or being disclosed to the plaintiff, including, but not limited to, the use of nondisclosure agreements or confidentiality agreements.

(B) "Entity" means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity.

(C) "Legally responsible" means that the entity or entities are liable under any theory of liability established by statute or common law, including, but not limited to, negligence, intentional torts, and vicarious liability.

(5) This subdivision revives any related claims, including, but not limited to, wrongful termination and sexual harassment, arising out of the sexual assault that is the basis for a claim pursuant to this subdivision...

Elfman declares that Doe's accusations of sexual assault under CCP section 340.16 were "false" and "categorically untrue." (Elfman Decl., ¶¶ 6-8, 23-24.) Elfman states: "I knew JDX as a social acquaintance in or about the late 1990s. I have never sexually assaulted JDX (or anyone else) in any way. JDX and I had a completely platonic relationship, which did not involve any form of physical contact; we never even hugged. I have never physically or sexually touched Plaintiff without her consent. I have never physically restrained JDX or used or threatened to use any physical force against JDX. (Id., ¶ 6.) "At no point did I ever threaten or coerce JDX in any

way, and I never coerced her to take off her clothes or engage in any behavior whatsoever. I have never engaged in any behavior toward JDX that could reasonably be considered coercive; our friendship in the 1990s was friendly and comfortable, not coercive in any way. I understand that JDX also attests in her Declaration that years later, in 2002, I made the following statement to her: 'Every time you have ever slept next to me, I would masturbate next to you.' JDX's testimony about this is categorically untrue. I never made that statement to JDX, nor did I make any similar statement that could be so interpreted. I did not masturbate next to JDX, and I did not tell her in words or substance that I had done so. Nor did I ever touch JDX sexually or ejaculate on her in connection with any such masturbation (which, again, did not occur). This entire narrative appears to be simply fabricated." (Id., ¶ 7.) "Since I never made any such statement to JDX, she could not have truthfully told her attorneys that I did so. Nor could she have truthfully given her attorneys the impression that I masturbated next to her, because I did not. Any statement by JDX suggesting that I masturbated next to her or told her that I had done so is necessarily false." (Id., ¶ 8.) He reiterates: "I never touched JDX sexually without consent, and never sexually assaulted her in any manner. I never touched her sexually while she was sleeping, I did not masturbate next to her, and I did not tell her that I had masturbated next to her. I had never previously been accused of sexual assault, and neither I nor MDLM had ever engaged in any effort to cover up such an allegation." (Id., ¶ 23.) He also affirms his prior declaration at summary judgment in the underlying action: "'I have never sexually assaulted Plaintiff (or anyone else) in any way. I have never physically touched Plaintiff without her consent. I have never physically restrained Plaintiff or used or threatened to use any physical force against Plaintiff.'" (Id., ¶ 24, Ex. 26.)

If credited, Elfman's declaration establishes that Doe's allegations regarding sexual assault were false. Doe lacked probable cause to initiate the suit based on false admissions and accusations of sexual assault. Doe necessarily knew the falsity of these allegations. A reasonable fact finder could therefore infer that Doe's allegations were knowingly false, and thus, Doe harbored actual malice. The above declaration also establishes that Doe did not have a valid basis to allege that MDLM was "legally responsible for damages arising out of the sexual assault" as required by CCP section 340.16, since there was no sexual assault. Further, Plaintiffs establish that they never engaged in any effort to cover up a previous instance or allegation of sexual assault, a required element for entity liability. "During and prior to the time period alleged in the Complaint in the Underlying Action (1997 through and including 2002), I had never been accused of sexual misconduct or assault, and neither I nor MDLM had ever done anything to conceal any such allegation. Neither I nor MDLM had ever engaged in any concerted effort to conceal or otherwise cover up any prior accusations of sexual assault against me or against anyone else." (Elfman Decl. ¶ 6.) This establishes the falsity of Doe's conclusory allegation of a coverup.

Without the aid of revival provisions of section 340.16, the other claims would be facially barred by the two- and three-year statute of limitations. (Gov. Code, § 12960(e)(5); CCP § 335.1; Civ. Code, § 52.4(b).)

Additionally, the claim for Gender Violence under Civil Code section 52.4 was untenable due to the falsity of Doe's allegation that Elfman used coercion. (Elfman Decl., ¶ 6; see Civ. Code § 52.4(c) ["gender violence" means either... (1) One or more acts that would constitute a

criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, committed at least in part based on the gender of the victim... [or] (2) A physical intrusion or physical invasion of a sexual nature under coercive conditions].)

The claim for sexual harassment under Civil Code section 51.9 was untenable because Doe was not under the immediate and direct control and direction of Plaintiffs as alleged. Elfman provides: “Neither I nor MDLM ever had a business, service, or professional relationship with JDX. Neither I nor MDLM have ever hired JDX in any capacity, nor did either of us ever enter into a contractual relationship with her or compensate her for any services, or treat her as a mentee or consultant. I did not consider that we were in the same business. JDX has never rendered professional services to me or to MDLM. Indeed, JDX had no involvement with MDLM whatsoever. JDX was never prevented from terminating her social relationship with me, and our social relationship did in fact end, at the latest, in the early 2000s.” (Elfman Decl., ¶ 6.) In contrast, Doe only provides conclusory evidence that she was a “consultant” and “protégé” during the filming of Good Will Hunting in 1998. (Doe Decl., ¶ 3.) Such conflicting evidence does not, as a matter of law, establish a defense against this malicious prosecution action. (See Collins v. Waters (2023) 92 Cal.App.5th 70, 78 [“[W]e must accept the plaintiff’s proof, we do not resolve conflicts in the evidence, and we cannot settle credibility contests”].)

Plaintiffs also observe that Doe had no valid legal basis to allege a sexual assault, since her complaint was based on the speculation that Elfman might have touched her sexually. Indeed, the underlying complaint alleged that Doe did “not know if Defendant Elfman physically touched her[.]” (Underlying Compl. ¶ 35.) Further, Doe attested in discovery that she was unable to admit or deny whether Elfman had ever touched her sexually without her consent, whether Elfman has ever used physical force against her, or whether Elfman has ever physically restrained her. (Moniz Decl. ¶ 27.) At summary judgment, Doe continued to assert, without evidence, that “Defendant Elfman sexually assaulted Plaintiff on approximately 40 occasions.” (Moniz Decl. ¶ 29.) This bolsters Doe’s lack of probable cause and malice against Plaintiffs.

Doe argues that she relied on the advice of counsel. However, only good faith reliance on advice of counsel, after truthful disclosure of all the relevant facts, is a complete defense. (Bisno v. Douglas Emmett Realty Fund 1988 (2009) 174 Cal.App.4th 1534, 1544.) As discussed above, Plaintiff has submitted admissible evidence that Elfman did not masturbate next to Doe while she was asleep or otherwise commit any acts of sexual assault against Doe. Doe’s contrary evidence in support of the motion does not defeat Plaintiffs’ claim as a matter of law. (Collins, supra, 92 Cal.App.5th at 78.) Thus, the motion cannot be granted on this defense.

Plaintiffs have therefore met their prong two burden of showing minimal merits to their malicious prosecution claim against Doe. Accordingly, Doe’s motion is DENIED.

#### Prong Two - Anderson Defendants

A plaintiff may bring a malicious prosecution claim against the attorney who prosecuted a prior action as well as the adverse party. (Escamilla v. Vannucci (2025) 17 Cal.5th 571, 577-578.)

As discussed, the first element of malicious prosecution against the Anderson Defendants is not in dispute. The underlying action was directed by the Anderson Defendants and resolved in Plaintiffs' favor on the merits.

Plaintiffs present sufficient prima facie evidence that Anderson Defendants commenced or continued the underlying action without probable cause. Doe's subjective malice and bad faith discussed above does not itself establish the cause of action against Anderson Defendants. (See Litinsky v. Kaplan (2019) 40 Cal.App.5th 970, 982-983, 986 [unless a lawyer discovers that his or her client has provided false information, or that the information is indisputably false, the lawyer is generally entitled to rely on their client's version of events even if opposing party conflicting evidence].) There is no evidence that Anderson Defendants subjectively disbelieved, or had sufficient reason to disbelieve, their client. That said, the record demonstrates that any objective, reasonable attorney would not have thought the claims were tenable or arguably meritorious when considering Anderson Defendants' knowledge at the time of filing and during the underlying suit.

The record reflects Anderson Defendants had no evidence that Doe was *touch*ed sexually by Elfman. The statute was clear on the definition of sexual assault, which required some form of touching. (CCP § 340.16; Pen. Code §§ 243.4, 261, 264.1, 286, 287, 289; see also former Pen. Code §§ 262, 288a.) Doe's claims were premised on sexual harassment which allegedly occurring during a friendship between herself and Elfman from approximately 1997 through 2002. (Underlying Compl., ¶¶ 11, 31.) As noted, the underlying complaint affirmatively alleged that Doe "does not know if Defendant Elfman physically touched her[.]" (Id., ¶ 35.) Anderson Defendants admit that they speculated about the possibility that Mr. Elfman *could have* ejaculated on Doe or touched her because he supposedly told her that he had masturbated by her. (Anderson Decl., ¶ 10; Reck Decl., ¶ 7.) This speculation suggests that Anderson Defendants drew logically flawed inferences from known facts. (See Cole, supra, 206 Cal.App.4th at 1113 [to be reasonable, an inference cannot be based upon suspicion, imagination, speculation, surmise, conjecture or guesswork].)

Also required by CCP section 340.16(e), there had to be evidence that an entity engaged in a cover up or attempted a cover up of a "previous instance or allegations of sexual assault by an alleged perpetrator of such abuse." Plaintiffs present evidence that they never engaged in a cover up of a prior incident or allegation of sexual assault, and that Elfman had never previously been accused of sexual assault. (Elfman Decl. ¶ 6.) Anderson Defendants alleged no facts and presented no evidence to suggest otherwise. Anderson Defendants attempt to cite Abadi's allegations (including her individual reports to the Anderson Defendants, reports to a psychologist, as well as a police report) and associated confidentiality agreement. (Anderson Decl., ¶¶ 3-10; Reck Decl., ¶¶ 2-8; Hintz Decl., ¶ 2; Lofti, Decl., ¶¶ 2-4; Doe Decl., ¶¶ 2-12, Exs. 2-7.) This argument fails due to a timing problem: Abadi's allegations concern conduct which occurred over a decade *after* Doe's alleged assault. Therefore, this could not be a "previous instance or allegations of sexual assault." Thus, Anderson Defendants' allegations of a cover up were completely without support based on the facts known to them at the time.

As discussed *infra*, the lack of revival provided by CCP section 340.16 logically means the remainder of the claims were barred by the statute of limitations, which rendered those claims untenable as a matter of law. Simply put, Anderson Defendants asserted multiple legal theories that were untenable under the facts known to them. While counsel argues that the statute was new, the statute was clear and unambiguous on the above requirements. Moreover, Anderson Defendants have extensive expertise in the field of sexual abuse cases, which cuts against their argument. (See Jenkins v. Brandt-Hawley (2022) 86 Cal.App.5th 1357, 1383 [probable cause absent where attorneys and firm who brought CEQA action had extensive experience in CEQA and land use law].)

Plaintiffs present evidence that Anderson Defendants initiated the suit with malice. As discussed, Anderson Defendants lacked probable cause, which weighs in favor of a finding of malice. Further, Plaintiffs put forth evidence that Anderson Defendants true objective was to bolster their own reputations at Elfman's expense and attracting new clients. Anderson Defendants apparently coordinated with the media to release two Rolling Stone articles, leaking draft complaints prior to filing. (Nikolas Decl., ¶ 13, Elfman Decl., ¶¶ 20, 22; Kaufman Decl., ¶ 4; Moniz Decl., ¶¶ 5, 15, 20-23.) Anderson Defendants posted the July Article to their website, on a page that invited potential clients to contact them for a "free consultation," posting that "Abadi, a virtuoso pianist, singer, composer, and activist, has accused Elfman of multiple instances of sexual harassment, and is seeking injunctive relief for failing to pay two installments of a 2018 settlement." (Moniz Decl., ¶ 17.) Likewise, Anderson Defendants posted a press release on their website on October 20, 2023, which invited potential clients to contact them for a "free consultation," and had this headline: "Prolific Film & Television Composer Danny Elfman Accused of Sexual Assault." (Moniz Decl. ¶ 21.) Such evidence could lead to a reasonable inference that the Doe assault action was instituted largely for an improper purpose.

Plaintiffs have therefore met their prong two burden of showing minimal merits to their malicious prosecution claim against the Anderson Defendants. Accordingly, the Anderson Defendants' motion is DENIED.

#### Request for Leave to Conduct Discovery

As the motions to strike are denied on the current record, the Court finds Plaintiffs' motion for leave to conduct discovery to be MOOT.