TENTATIVE RULINGS

DEPT. C-16
(657-622-5216)

Judge David A. Hoffer
April 22, 2024

These are the Court's tentative rulings. They may become orders if the parties do not appear at the hearing. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

If a party intends to submit on the Court's tentative ruling, please call the Court Clerk to inform the court. If both parties submit, the tentative ruling will then become the order of the Court.

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#	Case Name	Tentative
1	30-2019-01113963 Sushi Bear, Inc vs. The One Solution Inc.	Before the Court are the following motions filed by Defendant/Cross-Complainant Wilshire Realty & Investment, Inc. ("Wilshire"): (1) motion to set aside the Court's May 22, 2023 Order; and (2) motion to reopen discovery. The motion to set aside is **DENIED**. The motion to reopen discovery is **GRANTED IN PART**.

		Motion to Set Aside Order Wilshire moves, pursuant to Code of Civil Procedure section 473, to set aside the Court's May 22, 2023 Order requiring Wilshire and its former counsel, Jaime Kim, to jointly and severally pay Cross-Defendants Zenbu USA, Inc., Time Escrow, Inc., Paramount Realty and Omni Realty (collectively, "Cross-Defendants") $5,300 in monetary sanctions related to several discovery motions filed by Cross-Defendants against Wilshire. As an initial matter, it is noted Wilshire did not submit an attorney affidavit of fault. Thus, relief under the mandatory provision of section 473(b) is not available. Wilshire also failed to meet its burden of demonstrating it is entitled to relief under the discretionary provision of section 473(b). The Court finds that Wilshire failed to demonstrate that the sanctions order was entered due to mistake, inadvertence, surprise or excusable neglect. On a motion for discretionary relief under section 473, "any neglect of the attorney is imputed to the client, who has the burden on the motion of showing this neglect was excusable…Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable. To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice." (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682.) As such, any conduct of Ms. Kim is imputed to Wilshire. Ms. Kim's conduct in failing to timely provide discovery responses and failing to keep Wilshire apprised of the status of discovery appears to the Court to be conduct falling below the professional standard of care and is therefore not excusable. Wilshire failed to offer any evidence demonstrating that Ms. Kim's conduct in this matter related to the underlying discovery motions and the stipulation for sanctions was excusable neglect. In addition, Wilshire failed to demonstrate it timely sought relief from dismissal. Regarding discretionary relief, "[t]he motion must 'be made *within a reasonable time*' after the dismissal's entry. (§ 473, subd. (b), italics added.) Thus, a " 'moving party ... must show *diligence* in making the motion

		after discovery of the default.' " (*Younessi v. Woolf* (2016) 244 Cal.App.4th 1137, 1144-1145.) Here, Wilshire's new counsel substituted into this case on June 30, 2023. This motion was filed approximately five months later. While some delay for counsel to become familiar with these proceedings is expected, an almost five-month delay with no explanation from Wilshire does not seem reasonable. Given the absence of evidence explaining the months long delay in seeking to set aside the Order, the diligence requirement is not satisfied. (See *Younessi*, supra, 244 Cal.App.4th at 1145 [finding seven-week delay untimely where no explanation for delay was provided].) Based on the foregoing, the motion is denied. **Motion to Reopen Discovery** The Court has considered the factors set forth in Code of Civil Procedure section 2024.050, subd. (b) and finds that good cause exists to reopen discovery as to the Cross-Defendants only. Wilshire explains the necessity and the reasons for discovery. Specifically, Wilshire contends that its former counsel did not conduct any depositions of Cross-Defendants or propound written discovery on Cross-Defendants. The Court also finds Wilshire was diligent in bringing this motion. Wilshire's new counsel substituted into this matter on June 30, 2023. This motion was filed approximately one month after the Court granted Wilshire's motion to set aside the dismissal of its cross-complaint. This time frame is not unreasonable. Wilshire also contends that it will be able to complete discovery in sufficient time such that reopening discovery will not prevent the case from going to trial in September. Good cause exists to reopen discovery to permit Wilshire's new counsel an opportunity to conduct discovery related to the allegations of Wilshire's cross-complaint. The Court finds good cause is not shown for reopening discovery as to Plaintiff Sushi Bear, Inc. The motion is thus granted in part to permit Wilshire to conduct further discovery only as to the Cross-Defendants. Plaintiff's request for sanctions is **DENIED**. The Court finds Wilshire acted with substantial justification in bringing this motion given Wilshire obtained new counsel following the abandonment by its former counsel and the dismissal of Wilshire's cross-complaint was set aside.

		Cross-Defendant's request for judicial notice is **GRANTED**. (Evid. Code § 452(d).) Counsel for Wilshire is ordered to give notice of these rulings.
2	30-2020-01149620 Balboa Capital Corporation vs. Noel-Uyloan	Defendant Catherine Noel-Uyloan's ("Defendant") Motion for Reconsideration ("Motion") is **DENIED**. The court first notes that it appears Defendant's Motion seeks reconsideration of this court's prior ruling on Defendant's Motion to Quash ("MTQ"). The Motion states the court entered a ruling on 11/06/23, however there is nothing in the court's record showing any ruling or filing being entered on 11/06/23. Instead, the court issued its ruling on the MTQ on 10/30/23. (ROA #212.) Plaintiff Balboa Capital Corporation ("Plaintiff") also filed and served a Notice of Ruling on the MTQ on 10/30/23. (ROA ##208, 210.) That Notice of Ruling was served via express mail, which extends the time to file a reconsideration motion by two-court days. (Civ. Proc. Code § 1013(c).) Thus, Defendant had until 11/11/23 to file the present Motion. Instead, Defendant did not file the Motion until 11/22/23, which is 11-days beyond the filing deadline. While Defendant contends she did not receive the Notice of Ruling until much later and that her Motion is timely, there is no evidence supporting such a contention. The Motion is therefore untimely and must be denied as such. The court will however briefly address the merits of the Motion as well. "(a) When an application for an order has been made to a judge, or to a court, and refused in whole or in part. . . any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and *based upon new or different facts, circumstances, or law*, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. (b) A party who originally made an application for an order which was refused in whole or part . . . may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by

		affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. For a failure to comply with this subdivision, any order made on a subsequent application may be revoked or set aside on ex parte motion. . .” [Emphasis added.] (Civ. Proc. Code § 1008.) When a motion is based upon new or different facts, the moving party must provide a satisfactory explanation for the failure to produce that evidence at an earlier time. (*Shiffer v. CBS Corp.* (2015) 240 Cal. App. 4th 246, 255.) “The burden under section 1008 is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial.” (*New York Times Co. v. Superior Ct.* (2005) 135 Cal. App. 4th 206, 212–13.) Granting a motion to reconsider is improper and in excess of a court’s jurisdiction where the “new facts” were within the moving party’s possession at the time of the underlying motion. (*Garcia v. Hejmadi* (1997) 58 Cal. App. 4th 674, 689-91.) Each of the “facts” Defendant bases her Motion on were all included in the MTQ or the reply brief and were known to Defendant at the time the MTQ was filed. (ROA ## 185, 206.) This Motion is therefore not based upon any “new facts.” Even if the court were to consider facts pled in the MTQ reply brief as not being part of the MTQ itself, each of those facts were known, or should have been known, to Defendant at the time the MTQ was filed. Defendant has not made any explanation as to why they were not included in the MTQ itself and, as such, has failed to comply with the requirements of Civ. Proc. Code § 1008(a). As to “new law,” each of the cases cited by Defendant in the Motion were issued well before the MTQ was filed, yet Defendant failed to state why they were not included in the MTQ itself. Additionally, none of the “new” cases cited in the present Motion change the court’s opinion on the underlying MTQ. Defendant has failed to meet the time requirements for reconsideration and failed to show new or different facts, circumstances, or law that the MTQ was either not previously

		based upon or which Defendant did not know at the time the MTQ was filed. The Motion is denied and the court's ruling on the MTQ remains in place. Defendant is ordered to give notice of this ruling.
3	30-2020-01155306 Nenana, LLC vs. Planet Home Lending, LLC	The Motion for Leave to Amend Cross-Complaint filed by Planet Home Lending LLC is **GRANTED**. The Motion complies with the requirements of CRC 3.1324, reflects good cause for allowing the amendment, and is unopposed. Moving party is to: (a) file a clean version of the proposed First Amended Cross-Complaint, as reflected in Ex. 1, within 5 court days; (b) promptly serve same and file proof of such service; and (c) give notice of this ruling.
4	30-2022-01243790 Mirhadi vs. Cole	**Continued to 06/24/2024**
5	30-2022-01246921 Mejia vs. American Honda Motor Company, Inc.	The motion for attorneys' fees filed by Plaintiffs, Germer U Mejia and Jenalyn M Mejia (collectively, "Plaintiffs") is **GRANTED IN PART**. "To award attorney fees under Song-Beverly Consumer Warranty Act, trial court must make determination of actual time spent and then ascertain whether, under all circumstances of case, amount of actual time expended and monetary charges for time are reasonable; the circumstances may include, inter alia, complexity of case, skill exhibited, and results achieved. The prevailing buyer has burden of showing that fees incurred are allowable, reasonably necessary to conduct of litigation, and reasonable in amount." (*Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 104-105.) Here, it is undisputed that Plaintiffs are the prevailing party entitled to recover fees pursuant to Civil Code §1794(d). While Defendant contends generally that the requested fees are not commensurate with the work performed, Defendant points

		only to a few specific entries that it contends are unreasonable, which are discussed below. The Court has reviewed the billing entries and, other than the entries discussed below, finds the hours expended to be generally reasonable given the nature of the litigation. Defendant is correct that 11 hours to draft a motion to compel deposition is excessive. (See entries dated 05/17/23-05/19/23.) The Court will allow 5 hours for this task, which results in a deduction of $2,100 (6 hours x $350 per hour). There is also an entry dated 07/03/23 for $1,400 (4 hours at $350 per hour) for "Continue drafting declaration in support of MTC PMQ and MPA in support of MTC". It is unclear why this entry is included when the motion to compel PMQ deposition was filed in May 2023, and the time spent for that task was already billed. The Court will thus deduct this amount, $1,400, from the fee award. As to the remaining specific entries challenged by Defendant, 3.3 hours to review the NHTSA website and 4.7 hours to review repair orders and repair documents is excessive. Both were billed at $450 per hour. The Court will allow 4 hours total for these tasks. This results in a deduction of $1,800 (4 hours x $450 per hour). The Court finds the remaining entries to be reasonable. As to the hourly rates, the Court finds Mr. Kowalski's rate of $350 per hour is reasonable. As to Mr. Moore's rate, the fees orders submitted by Plaintiffs for matters from 2020 to 2022 show that Mr. Moore was approved at an hourly rate of $450 per hour in other lemon law matters, which the Court finds to be more reasonable than the requested rate of $515 per hour. (See Exhs. 18, 20-22 to Moore Decl.; Mtn at p. 9:9-22.) The Court will thus reduce Mr. Moore's hourly rate to $450. The billing records show that Mr. Moore spent 44.1 hours on this matter. With the reduced hourly rate of $450 per hour, a deduction of $2,919 is imposed. Plaintiffs allowed attorney's fees, with the deductions noted above, thus totals $32,781.50. Plaintiffs' unchallenged request for costs of $623.88 is granted.

		Accordingly, the motion is **GRANTED IN PART** to award Plaintiffs the total amount of **$33,405.38 in fees and costs** ($32,781.50 in fees + $623.88 in costs.) Plaintiffs' request for judicial notice is **GRANTED**. (Ev. Code §452(d). Counsel for Plaintiffs is ordered to give notice of this ruling.
6	30-2023-01320965 Cortes Saucedo vs. General Motors LLC	**Off Calendar**
7	30-2023-01341928 Magnolia School District vs. Contreras	Attorney Refugio Ortega-Carrillo, Esq of Schumann Arevalo LLP's ("Ortega-Carrillo") Motion to Be Relieved as Counsel ("Motion") for defendant Jorge Contreras ("Defendant") is **TENTATIVELY GRANTED** with relief effective upon the filing of a proof of service of the signed order**.** Ortega-Carrillo has complied with the requirements of California Rule of Court 3.1362, and filed and served forms MC-051, MC-052, and MC-053 on Defendant and all parties who have appeared in this action. Ortega-Carrillo has also indicated good cause for requesting relief. There are no objections to the motion. However, based upon the wording in the pleadings, it appears that only Ortega-Carrillo is seeking to be relieved as counsel and not the entire firm of Schumann Arevalo LLP. The court requests Ortega-Carrillo appear at the hearing to confirm the entire law firm is also seeking the requested relief. The court also notes that a Mandatory Settlement Conference is scheduled for 01/31/25, and trial is scheduled for 03/10/25. In the order for relief, Ortega-Carrillo will need to notify Defendant of those dates as well. Ortega-Carrillo is ordered to give notice of this ruling.
8	30-2023-01345791 Faridi vs. Hassanzadeh	**Continued to 05/06/2024**

9	30-2023-01349717 Fierros vs. Hassanzadeh	**Off Calendar**
10	30-2023-01364631 Huynh vs. Tran Le	**Continued to 06/17/2024**
11	2024-01376555 Honarkar vs. Orgrill	Before the Court is a Special Motion to Strike brought by Mark Orgill, pursuant to CCP §425.16, as to several causes of action in the complaint filed by plaintiff Mohammad Honarkar. As set forth below, the motion is **GRANTED**. On 1/31/24, plaintiff filed a Complaint which included causes of action for RICO (18 U.S.C. § 1961, et seq.), Trade Libel and Unfair Business Practices (Bus. Prof. Code § 17200), among others. Defendant seeks an order striking these three causes of action. Code of Civil Procedure section 425.16 permits a special motion to strike Strategic Litigation Against Public Participation ("SLAPP") lawsuits. A SLAPP suit is "a meritless suit filed primarily to chill the defendant's exercise of First Amendment rights." (*Finton Construction, Inc. v. Bidna & Keys, APLC* (2015) 238 Cal.App.4th 200, 208.) The purpose of the anti-SLAPP law is "not [to] 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." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384.) The trial court engages in a two-step process to determine whether a special motion to strike should be granted. (CCP §425.16(b)(1); *Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1065.) First, "the moving defendant bears the burden of establishing that the challenged allegations or claims 'aris[e] from' protected activity in which the defendant has engaged." (*Bonni v. St. Joseph Health System, supra,* 11 Cal.5th at p. 1065 [quoting *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1061].) At the first step, the moving defendant bears the burden of identifying all allegations of protected activity and the claims for relief supported by them. (*Baral v. Schnitt, supra,* 1 Cal.5th at p. 396.) In the second step, 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. (*Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 940.) Here, the plaintiff asserts that Orgill filed a lawsuit against Hotel Laguna, LLC ("Hotel Laguna Action") as part of an effort to obtain an illegal bribe from Honarkar's adversaries in exchange for Orgill making false statements about Honarkar and thwarting his business endeavors in the City of Laguna Beach. The complaint in the Hotel Laguna Action, is Exhibit 1 to the complaint in the instant action. Plaintiff asserts that the Hotel Laguna Action was a pretext because Orgill had filed a claim with the Labor Board for "the exact same services" in which Orgill had sought compensation from 4G Wireless, another Honarkar company.(Complaint at ¶ 9) Plaintiff claims that "the entirety of the enmity that Orgill has towards Honarkar started with the false claim that underpinned Orgill's claim that Honarkar's entity 4G owed him money as an employee." (Complaint at ¶ 12) Plaintiff asserts that Orgill falsely reported unpermitted work to the City as part of Orgill's effort to obtain settlement of the Hotel Laguna Action. (Complaint at ¶¶ 9, 33(d)). Furthermore, plaintiff reiterates the connection between Orgill's conduct in harming plaintiff's business and the subject of the Hotel Laguna action (the allegedly fraudulent billing) in his declaration, stating categorically that ". . . Orgill's actions were retribution for 4G Wireless' denial of his fraudulent Billing Summary . . . ." Additionally, *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, cited by plaintiff to support the argument that the existence of a related lawsuit is insufficient to automatically invoke anti-SLAPP protections, is clearly distinguishable. Here, unlike in *City of Cotati*, the prior action is actually attached to the complaint and the allegations in the prior action expressly form the basis for those claims. (Complaint at ¶¶ 9, 11(e)). Thus, the common theme in the subject suit is that the Hotel Laguna Action was improperly filed, the conduct leading to the settlement was improper, and the settlement was improper. The filing of a lawsuit is "indisputably" a statement made before a judicial proceeding as referenced in CCP §425.16(e)(1). (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 90) The allegations regarding statements made to induce a settlement are inextricably intertwined with the allegations relating to filing and settlement of the Hotel Laguna Action.

		(See *Seltzer v. Barnes* (2010) 182 Cal.App.4th 953, 963 (summarizing several cases which held that "settlement negotiations are within the scope of section 425.16"); *O&C Creditors Group, LLC v. Stephens & Stephens XII, LLC* (2019) 42 Cal.App.5th 546, 566-567 (holding claims arising from settlement negotiations and alleged "wrongful disbursement" of settlement funds are protected under CCP § 425.16(e)(2)). In opposition, plaintiff argues that CCP §425.17 provides an "exclusion for claims concerning commercial speech" and that paras. 23 & 24 constitute commercial speech. (Opp. at 10:14-24) Plaintiff concludes therefore that §425.16 does not apply. The Court disagrees. "The legislative history indicates this legislation is aimed squarely at false advertising claims and is designed to permit them to proceed without having to undergo scrutiny under the anti-SLAPP statute." (*Demetriades v. Yelp, Inc.* (2014) 228 Cal. App. 4th 294, 309) Under its plain language, section 425.17 applies only when defendants are "primarily engaged in the business of selling or leasing goods or services...." (§ 425.17, subd. (c)) This is far from a false advertising case which this section was intended to address. Also, the statement in para. 23 where Orgill allegedly told the City that certain construction was unpermitted is not a statement directed to "an actual or potential buyer or customer." (§425.17(c)(2).) Further, the exclusion only applies when the action arises from statements or conduct consisting of "representations of fact about that person's or a business competitor's business operations, goods, or services ..." (*ibid.*) and those representations are made either in advertising, promotion, or during delivery of those services. Similarly, the allegation that Orgill "falsely represented" to Honarkar during his employment that he was a contractor fails to satisfy the requirements of 425.17. Moreover, the statements made to the City are not statements about Orgill. They are also not a statement about one of Honarkar's competitors. Accordingly, the statement was not a "statement or conduct by that person [Orgill] consisting of representations of fact about that person's or a business competitor's business operations, goods, or services." (*Simpson Strong-Tie Co. v. Gore* (2010) 49 Cal. 4th 12, 30–31) Accordingly, the Court finds that Orgill has met his burden of demonstrating that the acts underlying plaintiff's causes of

		action arises from a protected activity and plaintiff has not met his burden of establishing that an exclusion applies. With the defendant having met his burden, the burden shifts to the plaintiff to submit evidence showing a probability of success on each cause of action. The Court finds that plaintiff has failed to meet his burden on each of the three causes of action which are the subject of this motion. The first cause of action is for violation of the Racketeer Influenced and Corrupt Organizations Act (18 USC 1961, et. seq.) ("RICO") "A violation of 18 United States Code section 1962(c) requires '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' [] To establish a pattern of racketeering activity, plaintiffs must allege at least two predicate acts that 'are interrelated by distinguishing characteristics' [] and 'amount to or pose a threat of continued criminal activity.' [] '[T]he threat of continuity is sufficiently established where the predicates can be attributed to a defendant operating as part of a long-term association that exists for criminal purposes' or 'where it is shown that the predicates are a regular way of conducting defendant's ongoing legitimate business ... or of conducting or participating in an ongoing and legitimate RICO 'enterprise.'" (*Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 826, internal citations omitted.) 18 USC 1961(4) defines an "enterprise" as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." The Supreme Court has said that an enterprise is "proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." (*United States v. Turkette* (1981) 452 U.S. 576, 583.) The Seventh Circuit has described an enterprise as requiring "an ongoing 'structure' of persons associated through time, joined in purpose, and organized in a manner amenable to hierarchical or consensual decision-making." (*Jennings v. Emry,* (7th Cir.1990) 910 F.2d 1434, 1440). Here, the evidence submitted does not support the conclusion that Orgill was part of an "enterprise." There is also no evidence of the requisite predicate acts of racketeering or that there was a pattern of racketeering. Plaintiff has failed to submit evidence of two predicate acts that are interrelated and amount to continued criminal activity. While plaintiff alleges there were "multiple instances of wire

		and mail fraud" (Complaint at ¶33(e)), the fact is that plaintiff has not submitted evidence of such. For mail fraud, 18 USC 1341 requires there be evidence the person intending to defraud "places in any post office or authorized depository for mail" the matter which is the subject of the fraud. For wire fraud, 18 USC 1343 requires evidence that the person intending to defraud do so by "transmit[ting] or caus[ing] to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce." Here there is no evidence of any transmission of information over the wire or through the mail. Further, there is no evidence of an association between Orgill and "Honarkar's Investors" which establishes a pattern. There is no evidence of any interaction between Orgill and Honarkar's adversaries other than the process of settling the Hotel Laguna Action. In fact, plaintiff does not even identify the person with whom Orgill engaged in the alleged racketeering activity, other than to generally refer to them as "Honarkar's Investors." Accordingly the Court finds that plaintiff has failed to establish evidence of two predicate unlawful acts of racketeering that would fall within 18 USC 1961(1) and there is no evidence of a pattern of continued criminal activity. With regard to the seventh cause of action for violation of Business and Professions Code §17200, plaintiff asserts that "[w]ithout a doubt these practices [referring to the RICO claim] equally satisfy the elements of an unlawful, unfair, or fraudulent business practice under Bus. & Prof. Code § 17200." (Opp. at 14:9-10) "By proscribing 'any unlawful' business practice, 'section 17200 'borrows' violations of other laws and treats them as unlawful practices' that the unfair competition law makes independently actionable." (*Roskind v. Morgan Stanley Dean Witter & Co.* (2000) 80 Cal. App. 4th 345, 350 – "case authority clearly provides that violation of a federal law may serve as a predicate for a section 17200 action." (Id. at 352)) However, in this instance the plaintiff has failed to establish a probability of success on the RICO claim. Similarly, the plaintiff has failed to establish a probability of success on the Unfair Business Practices cause of action. Finally, Orgill seeks an order striking the Trade Libel cause of action. " 'Trade libel is defined as an intentional

		disparagement of the quality of property, which results in pecuniary damage to plaintiff.... 'Injurious falsehood, or disparagement, then, may consist of the publication of matter derogatory to the plaintiff's title to his property, or its quality, or to his business in general, ... [T]he plaintiff must prove in all cases that the publication has played a material and substantial part inducing others not to deal with him, and that as a result he has suffered special damages.... Usually, ... the damages claimed have consisted of loss of prospective contracts with the plaintiff's customers.' (Citation) … A cause of action for trade libel thus requires (at a minimum): (1) a publication; (2) which induces others not to deal with plaintiff; and (3) special damages." (*Nichols v. Great Am. Ins. Companies* (1985) 169 Cal. App. 3d 766, 773; see also, CACI 1731) Here, plaintiff bases the Trade Libel cause of action on the claim that Orgill's report to the City that certain work was "unpermitted" was false. (Opp. at 14:20-22) Honarkar describes the instance of libel in his declaration at ¶15. However, plaintiff does not submit evidence showing that anyone was induced to not deal with the plaintiff because unpermitted work was reported. Instead, he asserts this resulted in "red tag notices" being issued. (Honarkar Decl. at ¶8) This in turn led to a delay in the construction project but there is no evidence that the "publication" induced others "not to deal with plaintiff." Plaintiff has also failed to establish that the statement was false. There are no documents showing the properties were reported as being unpermitted when they were actually permitted. In fact, Honarkar states that although Orgill was "tasked with obtaining proper permitting" for the Terra Laguna project and AV Room, "no such permits were ever obtained which resulted in the City issuing red-tag notices for construction violations for the AV Room." (Honarkar Decl. at ¶6) This is evidence showing that the statement by Orgill that the work was unpermitted was true. "To constitute trade libel, a statement must be false." (*Leonardini v. Shell Oil Co.* (1989) 216 Cal. App. 3d 547, 572) And if it were assumed that the statement by Orgill was untrue, there is also no evidence presented that Orgill knew the matter was untrue when it was said. In fact, to the contrary, Honarkar asserts that "permits were never obtained."

		Overall, plaintiff has failed to submit evidence to show a probability of success on the merits as to the Trade Libel cause of action. The Request for Judicial Notice by Orgill is **GRANTED** as to Items 1, 2, and 6-11, as to the existence of the documents only. (Evid. Code §452(d)) The request is **DENIED** as to Items 3-5 and 12-17. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 - only relevant material is subject to judicial notice.) The Request for Judicial Notice by Honarkar is **GRANTED** as to the existence of the document only. (Evid. Code §452(d)) Honarkar's objections to the declaration of Mark Orgill are **OVERRULED**. Counsel for Orgill is ordered to give notice of this ruling.