PARTIES/ATTORNEYS

Plaintiff	Judith Jackson	Neil Tardiff
Defendant	Kenneth Ibsen	Michael Leight

RECOMMENDATION

For all the reasons discussed below, the court finds that Ibsen's conduct was protected activity and that Jackson cannot show a probability of prevailing on the merits given the litigation privilege defense. Attorney fees will be considered when a motion adequately supporting the request is filed.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

Plaintiff Judith Jackson was the life partner of Howard Ibsen for over 37 years. Howard died on September 21, 2022. Howard had four sons from a previous marriage, one of whom is defendant Kenneth Ibsen. On March 13, 2023, Kenneth Ibsen filed a petition to invalidate the second amendment to the Howard Ibsen 2018 Trust (Petition),[1] contending that Howard lacked capacity to execute the amendment, in which he gave Judith his Morgan Stanley account. (Related Case No. 23PR00138.) According to the complaint, on January 6, 2024, Ibsen came to Jackson's home and attempted to extort the Morgan Stanley Account from her by intimidation, fear, and harassment.

On May 22, 2025, Jackson[2] filed a complaint against defendant Ibsen asserting six causes of action, as follows: 1) attempted extortion; 2) intentional infliction of emotional distress; 3) negligent infliction of emotional distress; 4) physical elder abuse under Welfare and Institutions Code section 15610.07, 16610.53, and 15610.63; 5) financial elder abuse, pursuant to Welfare and Institutions Code section 15610, 15610.70, and 15657.5; and 6) trespass.

[1] The court takes judicial notice of this document as requested by Ibsen. The court acknowledges that it cannot take judicial notice of the truth of any fact contained in any pleading, just the fact that it says it. (*Lockley v. Law Office of Cantrell, Green. Pekich & McCort* (2001) 91 Cal.App.4th 875, 882.)

[2] Jackson died on September 29, 2025. (See Notice of Death filed October 3, 2025.) On February 6, 2026, the court ordered Erin Biddle, as the Special Administrator of the Estate of Judith Jackson, be substituted in as the plaintiff. The court refers to plaintiff in this memorandum as "Jackson." No offense is intended.

Defendant moves for an order striking the ***entire*** complaint pursuant to Code of Civil Procedure § 425.16 (the "anti-SLAPP statute") on the basis that all causes of action contained therein arise from his constitutionally protected right of petition as guaranteed under the United States and California Constitutions, and plaintiff cannot demonstrate a probability of prevailing on any cause of action.

Motion: Strike

1. Legal Standards Applicable to Anti-SLAPP Motions

The legal standards under the anti-SLAPP scheme are settled. "A SLAPP suit—a strategic lawsuit against public participation—seeks to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.] The Legislature enacted . . . section 425.16—known as the anti-SLAPP statute—to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights. [Citation.]" (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055–1056 [internal citations omitted].) "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (Code Civ. Proc., § 425.16, subd. (b)(1).)

Under the statute, an " 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (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; (4) or 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." (Code Civ. Proc., § 425.16, subd. (e).)

To determine whether a cause of action (or complaint) should be stricken under the anti-SLAPP statute, section 425.16 establishes a two-part test:

- Under the first part, the party bringing the motion has the initial burden of showing that the cause of action arises from an act in furtherance of the right of free speech or petition—i.e., that it arises from a protected activity. (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 965.)

- Once the moving party has met its burden, the burden shifts to the other party to demonstrate a probability of prevailing on the cause of action. (*Ibid*.)

Only a cause of action that satisfies both parts of the anti-SLAPP statute—i.e., that ***arises*** from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

In determining whether defendant has sustained its initial burden, the court considers the pleadings, declarations, and matters which may be judicially noticed. (*Brill Media Co., LLC v. TCW Group, Inc.* (2005) 132 Cal.App.4th 324, 329.)

2. Evidentiary Objections

Ibsen offers objections to the declarations of Erin Biddle and Noreen Freitas filed in support of the opposition to the motion. The court has not relied on either declaration in reaching its decision and considers the objections moot.

Ibsen also objects to the declaration of Judith Jackson. None of the objections challenge that portion relied on by this court. The court finds the objections to be moot.

3. Analysis

a. The Filing of the Complaint Arose from Protected Activity (e.g., the Petition)

Here, Ibsen asserts that all claims in the complaint arise from his filing of the petition to invalidate the second amendment to the Howard Ibsen 2018 Trust, in Case No. 23PR00138, and therefore fall squarely within the scope of the anti-SLAPP statute. In other words, he asserts that he engaged in "protected activity" when he filed his petition with this court. "The constitutional right to petition ... includes the basic act of filing litigation or otherwise seeking administrative action." (*Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8, 22.) That includes acts in furtherance of free speech or petition rights such as "any written or oral statement or writing made in connection with an issue under consideration or review by a ... judicial body." (Code Civ. Proc., § 425.16, subd. (e)(2).)

In attempting to explain this statement of "the often-elusive first step" (*Area 51 Productions, Inc. v. City of Alameda* (2018) 20 Cal.App.5th 581, 594), courts have articulated a variety of principles, sometimes in combination and at other times in isolation. One such principle is that "a claim or cause of action may be stricken ' "only if the [protected activity] itself is the wrong complained of." ' " (*Williams v. Doctors Medical Center of Modesto, Inc.* (2024) 100 Cal.App.5th 1117, 1130 quoting

Wilson v. Cable News Network, Inc. (2019) 7 Cal.5th 871, 884 and *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062; see also *Wong v. Wong* (2019) 43 Cal.App.5th 358, 364 [same].) A second such principle is that the proponent of an anti-SLAPP special motion to strike "must ... demonstrate that its protected conduct supplies one or more elements of [its adversary's] claim." (*Williams*, at p. 1131, citing *Wilson, supra*, 7 Cal.5th at p. 887.) A third such principle is that "[a]llegations that are ' "merely incidental," ' or ' "collateral," ' or that merely provide context without actually supporting a claim for recovery are not subject to being stricken through the anti-SLAPP [law]." (*Williams*, at p. 1131, quoting in part *Baral v. Schmitt* (2016) 1 Cal.5th 376, 394.)

The courts have repeatedly emphasized that the focus in determining whether a claim is one "arising from" protected speech or petitioning must be "on the substance of [the] lawsuit...." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78 (*Cotati*).) *Cotati* summarized it as follows (with the current case posture in brackets for ease of reference):

> "[T]he statutory phrase 'cause of action ... arising from' means simply that the defendant's [Ibsen's] act underlying the plaintiff's [Jackson's] cause of action must itself have been an act in furtherance of the right of petition or free speech. [Citation.] In the anti-SLAPP context, the critical point is whether the plaintiff's cause of action itself was based on an act in furtherance of the defendant's right of petition or free speech." (*Cotati, supra*, 29 Cal.4th at p. 78.)

In short, the relevant question is "[w]hat activity or facts underlie [Jackson's] cause of action for [extortion/elder abuse etc.]?" (*Cotati, supra*, 29 Cal.4th at p. 79; see also *Navellier v. Sletten* (2002) 29 Cal.4th 82, 92 [the statute's "definitional focus is ... the defendant's activity that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning"].)

Jackson's complaint reveals that the fundamental basis for her claims against Ibsen is the January 6, 2024 visit from him, in which he (according to the complaint):

- "demanded to know why Plaintiff had not accepted the proposed mediation terms that had been offered in the Trust Action (which, among other things, was to return the Morgan Stanley Account to the sons);"
- stated in an "angry voice that $10 million was missing from his father's estate and intimated that she had stolen the money and said that Plaintiff needed to explain where the money went unless she gave up the Morgan Stanley Account;"

- stated that "if she did not give up the Account, that the house (which Plaintiff was given a life estate) was not Howard's and if she did not accept the terms she could lose the house;"
- stated that "he was protecting Plaintiff from his brothers because she was "in trouble" for disposing of some of Howard's personal property and he filed the Trust Action to protect her from his other brothers;"
- "[s]aid it was clear that Plaintiff "begged" Howard to give her the [Morgan Stanley] Account when he was on his death bed, and she should give it back to the brothers;" and
- "demanded to know what she would be doing with the Morgan Stanley Account and intimating if she used the account for her own personal benefit, he would no longer protect her."

(Complaint, ¶ 15.)

Moreover, the Complaint itself characterizes the conduct essentially as "settlement negotiations." (Complaint, ¶ 15—"When Plaintiff came to the door, he asked Plaintiff if they could talk to see what can be done to make the Trust Action go away. Thinking that it was Defendant's intent to dismiss the Trust Action, Plaintiff allowed him into her house.") Jackson's declaration bolsters this, stating that after initial confusion about which Howard Ibsen's sons was at her door, Ibsen "asked if we could talk to see how we can make the litigation go away" and Jackson let him in. (Jackson Decl., ¶ 10; see also Ibsen Decl., ¶ 4—"Because I was interested to see if Jackson and I could resolve the Petition without further litigation, and/or see whether Jackson would agree to resume a mediation which had earlier taken place concerning the Petition, on 6 January 2024, I visited Jackson' residence for that purpose.")

Jackson argues that it is not Ibsen's filing of the Petition that forms the basis of the Jackson's Complaint or any of the issues raised by the Petition. Instead, it is Ibsen's behavior that he engaged in after the Petition was filed, which she characterizes as behavior that was not in furtherance of that right.

Ibsen, on the other hand, argues that all the statements attributed to him by Jackson concern and relate to the pending litigation between Ibsen and Jackson as described in the Petition. He asserts that the allegations at ¶15 of Jackson's Complaint clearly involve communications which were part of the ongoing Petition litigation between the parties. He asserts these communications qualify as an "act in furtherance of a person's right of petition or free speech" because these communications consist of "oral statement (s)... made in connection with an issue under consideration... by a judicial body." (See Code Civ. Proc. §425.16, subd. (e).)

It is evident from the face of the Complaint that Jackson's claims are premised entirely on Ibsen's January 6, 2024, conduct. The Petition requests the

court determine the invalidity of the second amendment of the trust, under which Jackson became the beneficiary of the Morgan Stanley accounts, based on Howard Ibsen's incapacity and/or Jackson's undue influence. To put Ibsen's statements in context, the Petition also shows that Howard nominated Jackson to serve as co-trustee with him (Petition, Exhibit 2—First Amendment to Trust), and that Jackson was given a life estate in the home they shared. (Petition, Exhibit 2—First Amendment to Trust). Thus, Ibsen's statements about accountability for Howard's and ownership of the home were clearly related to the pending Petition, as were statements about the failed mediation, the influence exerted on Howard, and the purpose of the probate litigation. These statements on their face were were made in connection with the pending probate matter.

Significantly, communications in anticipation of litigation *or as part of ongoing litigation* constitute legitimate speech or petitioning activity protected under the anti-SLAPP statute. (*Geragos v. Abelyan* (2023) 88 Cal.App.5th 1005, 1023; *Cabral v. Martins* (2009) 177 Cal.App.4th 471, 480 ["all communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP statute"]; *Seltzer v. Barnes* (2010) 182 Cal.App.4th 953, 963 [" '[a]n attorney's communication with opposing counsel on behalf of a client regarding pending litigation directly implicates the right to petition and thus is subject to a special motion to strike.' "][3]

However, this protection does not extend to communication or conduct that is, as a matter of law, illegal. (*Geragos, supra,* 88 Cal.App.5th at 1023.) The watershed case in this regard is *Flatley v. Mauro* (2012) 39 Cal.4th 299. Flatley was a well-known entertainer who sued Attorney Mauro for conduct arising out of his representation of a client who claimed Flatley raped her. Flatley asserted several

[3] To the extent Jackson contends this conduct was not settlement negotiations, she does not support the assertion with case law. She states: "An adverse party in a litigation going to the opposing party's home and entering by false pretenses to threaten the opposing party when all are represented by counsel does not normally fall under the statute and should never fall under the statute. (See for example, *Ralphs Grocery Co. v. Victory Consultants, Inc.* (2017) 17 Cal.App.5th 245– trespass not a protected activity under the statute.)" (Opposition, p. 14, ll. 23-p. 15, ll. 2.) As the application of this citation is entirely conclusory and without a pinpoint page number, it is difficult for the court to credit which portion of the analysis plaintiff asserts is in her favor. In any event, in *Ralphs,* the court was presented with whether the persons gathering signatures in front of their stores were doing so in a public forum and undertook a complex analysis to determine that they were not, and therefore their speech was unprotected activity. (*Ralphs,* at 259-260—"Respondents point to no allegations in the operative complaint that support their claim that the front of the subject stores should be considered a public forum for purposes of our analysis.") In addition, the court found that the store showed a probability of success on the trespass action. (*Ralphs* at 265-266.) Accordingly, it overturned the trial court's order granting the anti-SLAPP motion. All that can be said about that case is that the conduct at issue there, which was alleged to be trespass, was not protected activity. It was not a broad proclamation stating that trespass may never be a protected activity. (See e.g., *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1245-1246—"Plaintiffs contend this is not a SLAPP suit because they merely seek to enjoin illegal activity such as trespass. Mere allegations that defendants acted illegally, however, do not render the anti-SLAPP statute inapplicable.") And it said nothing about the nature, characteristics, or definition of a "settlement negotiation."

causes of action, including civil extortion, based on a demand letter from Mauro. (*Flatley, supra*, 39 Cal.4th at p. 305.) Mauro responded to the suit by filing an anti-SLAPP motion, claiming the demand letter was "a prelitigation settlement offer in furtherance of his constitutional right of petition." (*Id*. at p. 311.) He did not, however, deny the contents of the letter, which included "threats to publicly accuse Flatley of rape and to report and publicly accuse him of other unspecified violations of various laws unless he 'settled' by paying a sum of money of which Mauro would receive 40 percent." (*Flatley, supra*, 39 Cal.4th at p. 329.) "The key passage in Mauro's letter is ... where Flatley is warned that, unless he settles, 'an in-depth investigation' will be conducted into his personal assets to determine punitive damages and this information will then 'BECOME A MATTER OF PUBLIC RECORD, AS IT MUST BE FILED WITH THE COURT .... [¶] Any and all information, including Immigration, Social Security Issuances and Use, and IRS and various State Tax Levies and information will be exposed. We are positive the media worldwide will enjoy what they find.' " (*Ibid*.) The demand letter's "final paragraph warns Flatley that, along with the filing of suit, press releases will be disseminated to numerous media sources and placed on the Internet." (*Ibid*.) In Mauro's follow up phone calls, Mauro "named the price of [ ] silence as 'seven figures' or, at minimum, $1 million." (*Ibid*.)

The Supreme Court concluded that Mauro's letter and subsequent phone calls constituted "extortion as a matter of law" and were therefore not constitutionally protected speech or petitioning activities under the anti-SLAPP statute. (*Flatley, supra*, 39 Cal.4th at pp. 328, 330 ["These communications threatened to 'accuse' Flatley of, or 'impute to him,' 'crime[s]' and 'disgrace' (Pen. Code, § 519, subds. 2, 3) unless Flatley paid Mauro a minimum of $1 million of which Mauro was to receive 40 percent."].) The threat to disclose "criminal activity entirely unrelated to any alleged injury suffered by Mauro's client 'exceeded the limits of [Mauro's] representation of his client' and is itself evidence of extortion." (*Id*. at pp. 330–331.)

The Cal. Supreme Court made two significant observations in *Flatley* relevant here. First, it "note[d] that, in the proceedings below, Mauro did not deny that he sent the letter nor did he contest the version of the telephone calls set forth in [the] declarations in opposition to the motion to strike." (*Flatley, supra*, 39 Cal.4th at pp. 328–329.) This is why the court viewed the evidence as uncontroverted as a matter of law. (*Id*. at p. 329.) Second, the court emphasized that its conclusion that Mauro's communications constituted criminal extortion as a matter of law was "based on the specific and extreme circumstances of this case." (*Id*. at p. 332, fn. 16.) The *Flatley* court stated: "[O]ur opinion should not be read to imply that rude, aggressive, or even belligerent prelitigation negotiations, whether verbal or written, that may include threats to file a lawsuit, report criminal behavior to authorities or publicize allegations of wrongdoing, necessarily constitute extortion." (*Ibid*.)

These observations were key in *Geragos*, a case that was cited in the moving papers, but not addressed by plaintiff in the opposition. In that case, the Geragos Law Firm was sued by a client who alleged it did not provide the promised defense after he paid a retainer. In a cross-complaint, the Geragos Law Firm asserted that in a telephone conversation between the former client's counsel and the Geragos Firm's counsel, the former client's counsel threatened to file a State Bar complaint if the Geragos Firm didn't return the full retainer amount. The Court of Appeal observed: "The declarations provide conflicting accounts of what was said during the August 14, 2020 telephone conversation. We do not solely rely on the Geragos Parties' or [its attorney's] declarations. [] The declarations provided by both sides create a genuine issue of material fact [] and in no way qualify as uncontroverted evidence that conclusively establishes criminal extortionate conduct by [the former client's attorney]." (*Geragos, supra*, 88 Cal.App.5th at 1025.) As the respective declarations were the only admissible evidence on the issue, and because they result in a he-said-she-said conflict as to what was actually said, the *Geragos* court found: "This does not equate to conclusive evidence of extortion as a matter of law. If ... a factual dispute exists about the legitimacy of the defendant's conduct, it cannot be resolved within the first step but must be raised by the plaintiff in connection with the plaintiff's burden to show a probability of prevailing on the merits." (*Id.* at 1031.)

Unlike Mauro in *Flatley* who conceded the content of the telephone calls and letter, here, Ibsen does not concede that he engaged in extortionate or illegal conduct as alleged by Jackson. He expressly denies making demands or threats, in contradistinction to *Flatley* and in line with *Geragos*. (Ibsen Decl., ¶ 11—" At no time did I make any demand or threat or give any ultimatum to Jackson. I never raised my voice or spoke in anger. My intent in visiting Jackson was never to intimidate or harass her and I never did.") He denies threatening Jackson. (Ibsen Decl., ¶ 12—" I never threatened to report her behavior to any authorities or to anyone else, nor did I ever threaten to publicize any allegations of wrongdoing on her part.") This is significant. The court finds that, under *Flatley* and *Geragos*, there is insufficient evidence of illegal conduct or communications.

Ibsen has thus made the threshold showing that the entirety of Jackson's Complaint is based on protected activity (e.g., that the conduct and communication occurred during settlement discussions) and is thus protected communication under the anti-SLAPP statute.

b. It is Not Probable that Jackson Will Prevail on the Merits

The burden thus shifts to Jackson to establish a "probability" that she will prevail on whatever claims are asserted against defendant. (Code Civ. Proc., §

425.16., subd. (b).) To establish a "probability" of prevailing on the merits, plaintiff must demonstrate that the complaint is both:

- Legally sufficient; and
- Supported by a prima facie showing of facts sufficient to support a favorable judgment if the evidence submitted by plaintiff is credited.

(*Navellier v. Sletter* (2002) 29 Cal.App.4th 82, 89, 93.)

The court cannot weigh the evidence but must determine whether the evidence is sufficient to support a judgment in the plaintiff's favor as a matter of law, as on a motion for summary judgment. (*Wilson, supra,* at p. 821; *Kyle v. Carmon* (1999) 71 Cal.App.4th 901, 907; see *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192.) If the plaintiff presents a sufficient prima facie showing of facts, the moving defendant can defeat the plaintiff's evidentiary showing only if the defendant's evidence establishes as a matter of law that the plaintiff cannot prevail. (*Wilson, supra,* at p. 821.)

In order to demonstrate a probability of prevailing on the merits, plaintiff must also produce admissible evidence sufficient to overcome any privilege or defense that defendant has asserted to the claim. (*Flatley, supra,* 39 Cal.4th at p. 323—Civ.C. § 47(b) litigation privilege presents substantive defense plaintiff must overcome to demonstrate probability of prevailing.) To this end, Ibsen argues that there is no probability that plaintiff will prevail on the merit because, even assuming Jackson has prima facie evidence of facts sufficient to support a favorable judgment, all causes of action are barred by the litigation privilege as codified in Civil Code section 47 subdivision (b). The court finds the litigation privilege applies.

The principal purpose of the litigation privilege is to afford litigants and witnesses the utmost freedom of access to the courts without fear of harassment in subsequent derivative actions. (*People ex rel. Gallegos v. Pacific Lumber Co.* (2008) 158 Cal.App.4th 950, 958.) "The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.) The privilege is an absolute privilege and bars all tort cases of action except a claim of malicious prosecution. (*Flatley, supra*, 39 Cal.4th at p. 322.) Courts have consistently held that "statements relating to settlements also fall within the (litigation) privilege, including those made during settlement negotiations" (*Bonni v. St. Joseph Health System* (2022) 83 Cal.App.5th 288, 303.) As noted above, the communications here can reasonably be deemed settlement communications, falling within the protection of the litigation privilege.

Jackson argues that the litigation privilege does not apply to communications or conduct that rises to the level of abuse of process, citing *State Farm Mutual Automobile Ins. Co. v. Lee* (2011) 193 Cal.App.4th 34, 40. In that case, however, the court was merely addressing whether the plaintiff had established the probability of prevailing on his claim for abuse of process. No such claim has been asserted here and the argument is thus inapposite.

Jackson argues that the conduct here, characterized as "[i]nvading an opposing elderly party's home and making false threats and accusations unrelated to the action in order to coerce her to turn over money" is a far cry from the typical adversary system where heated battles between adverse parties are expected, citing *Asia Investment Co. v. Borowski* (1982) 133 Cal.App.3d 832, 843. In that case, the court considered whether to allow an amendment to add an abuse of process claim and denied it. The proposed misuse of the process was that defendant threatened to use a related CEQA action to force plaintiff to settle the pending action over the ownership of a house. The court held: "This statement was inferably a threat to coerce [plaintiff] into settling the house case by the use of the CEQA action. Perhaps so, but it was also a privileged statement." (*Id.*) The court stated: "The threatening inference aside, the statement was essentially a settlement proposal. As such it was made to achieve the objects of the house suit, in which both attorneys were counsel. Settlements of disputes have long been favored by the courts and attorneys should be accorded wide latitude in making statements during settlement negotiations. Protecting attorneys during the course of the representation of their clients is necessary to promote the litigants securing free access to the courts. Even considering the settlement proposal was made in a manner which might be considered a veiled "threat" we recognize "this type of language is part of the adversary system, and, as such, is to be anticipated in the course of 'heated battle' between adverse parties to proceedings considered to be within the context of 'judicial proceedings." As a statement made between counsel during a judicial proceeding regarding settlement, the alleged "threat" was within the privilege of Civil Code section 47, subdivision 2. Accordingly, the plaintiff could not state a cause of action for abuse of process." (*Id.* [cleaned up].) This conclusion, rather than supporting the claim, works against Jackson.

Jackson also seems to suggest that the communication between parties was inappropriate and thus cannot be considered settlement discussions: "[Ibsen] retained counsel to file the Petition and represent him throughout the proceedings both in the courtroom and out of the courtroom. [Ibsen's] self help (sic) of going to the adverse party's home to threaten that party and falsely accuse that party of crimes, with or without his counsel's permission, in order to get by threats and intimidation what his attorney was hired to get through the court system must be considered to be outside the adversary system and not allowed or condoned and not privileged." (Opposition, p. 17, ll. 24 – p. 18, ll. 2.) Jackson cites no cases in which

the court has made a distinction between settlement negotiations between attorneys as opposed to settlement negotiations between parties or that prohibits communication between parties that are represented by counsel. While the California Professional Rules of Conduct prohibit attorneys from speaking with a person that is represented by counsel, it "does not prevent represented persons[] from communicating directly with one another with respect to the subject of the representation, nor does it prohibit a lawyer from advising a client concerning such a communication. A lawyer may also advise a client not to accept or engage in such communications." (Calif. Rules Prof. Conduct, rule 4.2 (a); see also Comment [3]; see *San Francisco Unified School Dist. ex rel. Contreras v. First Student, Inc*. (2013) 213 Cal.App.4th 1212, 1233—case law and other legal authority clearly establish that the individual plaintiffs' contacts with defendant's employees violated [Rules of Professional Conduct, rule 4.2] only if the contacts were wrongfully orchestrated by plaintiffs' counsel.)[4] Both attorneys and parties should be entitled to the same access and leeway in the adversary system. The conduct should not be distinguished based on the fact the persons involved in the settlement negotiation are the parties themselves. The court rejects any argument that the fact the settlement communications occurred between the parties takes it out of reach of the litigation privilege.

Finally, it is worth observing that the privilege has been applied in "numerous cases" involving "fraudulent communication or perjured testimony." (*Silberg*, at p. 218.) The litigation privilege protects even communication made with an intent to harm, so long as the communication is made in "relation" to a pending/ongoing or genuinely contemplated judicial or other official proceeding. (Civ. Code, § 47, subd. (b); *Gallegos*, at pp. 958–959; *Wise v. Thrifty Payless, Inc.* (2000) 83 Cal.App.4th 1296, 1302 [the litigation privilege applies "regardless of the existence of malice or intent to harm"].) Thus, the court rejects Jackson's argument that the communication is a far cry from the typical adversary system where heated battles between adverse parties are expected.

The court finds the litigation privilege applies. Given the absolute nature of the litigation privilege, Jackson did not carry her burden of showing a probability of overcoming Ibsen's litigation privilege defense. [5]

Attorney Fees

Defendant, as prevailing party, requests an order to recover his attorney fees. Procedurally, a defendant who prevails on an anti-SLAPP motion has three avenues

[4] Here, there is evidence that Ibsen stated his attorney did not know he planned to talk to Jackson. (Jackson Decl., ¶ 10—"When I opened the door and realized it was Ken, I told him he should not be here, and he agreed and said he was probably going to get in trouble because his lawyer did not know he was coming over.)

[5] And it is the litigation privilege that rests at the heart of the court's determination. The conflicting evidence on the critical issue would normally be one that would have to be decided by the trier of fact. That being said, as the litigation privileges precludes reliance on the evidence submitted by plaintiff, no prima facie case can be established.

by which to seek prejudgment attorney's fees relating to the filing of the anti-SLAPP motion: (1) in the anti-SLAPP motion itself; (2) by a subsequent noticed motion; or (3) as part of a memorandum of costs (also known as a cost bill). (*Briggs v. Elliott* (2023) 92 Cal.App.5th 683, 692.) Here, while defendant made the request in his motion, he did not identify the amount sought, nor did he provide documentation in support. While the court acknowledges the ability to request the fees in the anti-SLAPP motion, it cannot grant them based on the present record. Thus, the court will await the filing of a motion or a motion to tax the memorandum of costs to determine the fees.