Cargasacchi v. Blanco 24CV00033
Cargasacchi v. Blanco 24CV00037
Cargasacchi v. Blanco 24CV00038

Hearing Date: April 14, 2026
Demurrers (3) to Each Complaint

PROPOSED TENTATIVE

In Case No. 24CV00037, on October 28,2024, plaintiff Mark Cargasacchi filed a first amended complaint against defendant Henry Blanco (defendant), advancing two causes of action: 1) malicious prosecution; and 2) negligent or intentional infliction of emotional distress. On the same day, in Case No. 24CV00038, plaintiff John Cargasacchi filed a first amended complaint against defendant, advancing the same two causes of action. And on October 20, 2024, in Case No. 24CV00033, plaintiff Laura Teresa Cargasacchi Belluz (individually and as Trustee of the Laura Teresa Cargasacchi Belluz Separate Property Trust Dated November 12, 2015), filed a first amended complaint against defendant, also advancing the same two causes of action. All three complaints arise from the "May 22, 2018" lawsuit initiated by defendant against the three plaintiffs for "Interference with Easement" over property involving the Cargasacchi Ranch. All three complaints contain the same allegations, based on the same set of operative facts. Plaintiffs in their respective amended complaints do not indicate the case number that initiated defendant's lawsuit, and do not indicate its ultimate resolution.[1] Nevertheless, each complaints predicates the two causes of action on the dismissal of "interference with easement" claim in Case No. 17CV04672, made on June 30, 2021. (¶ 10 from each operative pleading).[2] No related-case designation has been filed in these cases.

Defendant has filed a separate demurrer to each complaint, raising the same grounds in each motion. Defendant contends that because the operative date of the harm began on June 30, 2021, the day the "interference of easement" claims were dismissed; and because plaintiff waited until January 2, 2024, to file the initial complaints in all three matters, which is outside the

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1 That being said, the court will assume the lawsuit at issue in all three complaints is *Blanco v. Cargasacchi*, et al, Case No.17CV04672 (initiated before "May 22, 2018" given the case number), which was decided by Santa Barbara County Superior Court Judge Timothy Staffel. This is the case referenced in the opposition to the demurrer. Judge Staffel, following a court trial, issued a "Statement of Decision" that rejected defendant Blanco's contention that he should be able to improve the existing access way easement, a claim advanced exclusively through the prism of the two remaining causes of action - declaratory relief and quiet title. As noted in the "Statement of Decision" authored by Judge Staffel, all other causes of action from the operative pleading had been dismissed or were otherwise withdrawn (there were six (6) in total), including the second cause of action for "interference with easement" (at issue here), the fourth cause of action for breach of the covenant of good faith and fair dealing, and breach of contract (with injunctive relief not a cause of action but a remedy. Court of Appeal, Second District, Division 6, affirmed Judge Staffel's decision in full in an unpublished decision. (*Blanco v. Cargasacchi, et al,* ((324397), nonpub. opn. and filed Jan. 12, 2024.) The remittitur was issued on March 28, 2024 The court on its own motion will take judicial notice of these documents. A notice of related case as to this matter should be filed.

2 A review of the register of actions in Case No. 17CV04672 indicates that on June 30, 2021, plaintiff voluntarily dismissed the second and fourth causes of action from the operative pleading ("Interference with Easement" and Breach of the Implied Covenant of Good Faith and Fair Dealing, respectively). Dismissal of these two causes of action was entered on the same day. The court takes judicial notice of the register of actions.

statute of limitations period from the date of accrual, the demurrers should be sustained. Although the demurrer is not entirely clear, each demurrer appears to be challenging both causes of action in the first amended complaints based on their respective statute of limitations bars. A malicious prosecution cause of action is generally governed by a two-year statute of limitations period. (Code Civ. Proc.,[3] § 335.1; *Meri v. Shamtoubi* (2022) 81 Cal.App.5th 606, 618.) The same is true for the negligent or intentional infliction of emotional distress cause of action.[4] (§ 335.1; *Wassmann v. South Orange County Community College Dist*. (2018) 24 Cal.App.5th 825, 852-853.) Essentially, defendants are claiming that because the causes of action accrued on June 20, 2021, based on allegations from the face of each first amended complaint, the causes of action are barred unless an exception has been pleaded, which has not been done.

Plaintiffs have filed opposition in each case, and each opposition is the same. First, plaintiffs claim that defense counsel failed to engage in a meaningfully meet and confer effort, as required by section 431.30 (despite defense counsel's declaration, which provides that he attempted to meet and confer but plaintiff's counsel did not reply). Plaintiff's counsel observes that the motions were filed on January 20, 2026. He has attached to the opposition a letter from plaintiff's counsel as Exhibit A, dated December 30, 2025, detailing the statute of limitations argument and concluding with the following: "If you wish to discuss this further, ***please contact me after January 19***." (Emphasis added.) On the merits, plaintiffs argue that the demurrers are too "bare bones" to satisfy their burden to show the causes of action, are barred. Finally, plaintiffs (focusing exclusively on the first cause of action for malicious prosecution claim without mention of the second cause of action for negligent/intentional infliction), contends that "from the records of this Court" (of which no party asks the court to take judicial notice, although the court will do so on its own motion), the cause of action could not be raised until all claims in the initial lawsuit were raised and settled, and the remittitur representing finality was not filed until March 28, 2024, after the date all three complaints were filed.

Defendant filed a reply in each case on April 7, 2026. All briefing has been examined.

Before addressing the merits, the court directs the parties to address orally at the hearing the following issues:

- Whether these matters should be consolidated. It is unclear why three separate complaints have been filed when each raises the same causes of action based on the exact same operative facts. Three separate lawsuits is unwieldly and duplicative.[5]
- Plaintiffs have oddly failed to identify in their operative pleadings the critical case from which the two causes of action arise. The court can overcome this impediment by taking judicial notice of documents and the register of actions on

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[3] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[4] The court observes "there is no independent tort of negligent infliction of emotional distress.[Citation.] The tort is negligence, a cause of action in which a duty to the plaintiff is an essential element. [Citations.]" (*Potter v. Firestone Tire & Rubber, Co.* (1993) 6 Cal.4th 965, 984.)

[5] Should the cases remain separate, plaintiffs are instructed to file a notice of related case in each of the three cases, as well as 17CV04672, pursuant to California Rules of Court, rule 3.300.

its own motion in the relevant case. It should not have to do that. This remedy should be corrected in any future pleading.

- Whether the meet and confer efforts were sufficient. Based on the record before the court, the meet and confer efforts seem nonexistent. Defendant asks the plaintiffs to contact defense counsel after January 19, 2026, but then filed the motions at issue on January 20, 2026. Meet and confer efforts are intended to be meaningful. While the court cannot sustain or deny a demurrer based on this, it can inquire.

On the merits, the court directs plaintiffs to be prepared to address the viability of the second cause of action. Both causes of action as alleged (malicious prosecution and intentional/negligent infliction of emotional distress causes of action) arise from the prosecution of Case 17CV04672. Given this, both parties overlook the clear import of the litigation privilege as outlined in Civil Code section 47 subdivision (b) and (c), which is the starting point of any analysis when litigation is at issue, as it is here. The litigation privilege under well settled authority does not bar a malicious prosecution cause of action. (*Action Apartment Assn. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1242.) That is, our high court has made it very clear that the litigation privilege "***bars all tort causes*** of action except a claim for malicious prosecution." (*Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 369, citing Civ. Code, § 46, subd. (b); *Timothy W. v. Julie W.* (2022) 85 Cal.App.5th 648, 662 [the only recognized exception to the litigation privilege is actions for malicious prosecution].) Although not addressed by the parties, this means the second cause of action for negligent/intentional infliction of emotional distress is barred by the litigation privilege. (See, e.g., *Komarova v. National Credit Acceptance, Inc*. (2009) 175 Cal.App.4th 324, 341 ["It is well settled that the litigation privilege bars causes of action for intentional infliction of emotional distress]; see also *S.A. v. Maiden* (2014) 229 Cal.App.4th 27, 43–44 [same].) The same is true for negligent infliction of emotional distress. (*Jeffrey H. v. Imai, Tadlock & Keeney* (2000) 85 Cal.App.4th 345, disapproved on other grounds in *Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948, 962 [the authority that concludes the litigation privilege bars intentional infliction of emotional distress bars negligent infliction of emotional distress claims as well]; *Susan S. v. Israels* (1997) 55 Cal.App.4th 1290, 1304 [claims for negligent infliction of emotional distress that arouse during prosecution are barred by the litigation privilege].) The second cause of action is barred, and leave to amend is pointless. As a result, the court exercise its discretion to strike the second cause of action on its own authority as not drawn in conformity with the laws of the state, without leave to amend. (§ 436, subd. (b.)

This leaves the merit of the issues that have been briefed by the parties, and specifically whether the malicious prosecution causes of action are barred by the facial allegations of the operative pleading. It is settled, of course, that a demurrer based on a statute of limitations will not lie where the action may be, but is not necessarily, barred. In order for the bar to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint or through judicially noticed documents. It is not enough that the complaint shows that the action

may be barred.(*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.)

With this, a plaintiff must plead and prove three elements to establish the tort of malicious prosecution: a lawsuit "(1) was commenced by or at the direction of the defendant and was pursued to a legal termination favorable to the plaintiff; (2) was brought without probable cause; and (3) was initiated with malice." (*Nunez v. Pennisi* (2015) 241 Cal.App.4th 861, 872–873.) A cause of action for malicious prosecution first accrues at the conclusion of the litigation in favor of the party allegedly prosecuted maliciously. (*Babb v. Superior Court* (1971) 3 Cal.3d 841, 846.) The problem becomes more complex, however, when there is voluntary dismissal of the crucial cause of action at issue, such as the "interference of easement" claim dismissed on June 30, 2021 before final judgment, when the two causes of action that were actually tried to finality (for declaratory relief and quiet title, which were predicated exclusively on the interpretation of recorded documents), did not involve resolution of any "interference of easement."

"To state a cause of action for malicious prosecution, the plaintiff, in addition to alleging the prior action was initiated with malice and brought without probable cause, must plead the prior action was terminated in his favor. [Citation.] The requirement of favorable termination has been variously defined but the core of the concept is that termination must reflect on the *merits* of the prior action. (*Lackner v. LaCroix* 1979) 25 Cal.3d 747, 50-751; [citation].) Favorable termination does not mean the plaintiff prevailed in the prior action. For a termination to be favorable it must reflect the plaintiff's innocence of the alleged misconduct. (*Warren v. Wasserman, Comden & Casselman* (1990) 220 Cal.App.3d 1297, 1301-1302.) It is settled that a malicious cause of action does not accrue until such favorable termination has occurred. (*Ray v. First Federal Bank* (1998) 61 Cal.App.4th 315, 318.)

The favorable termination must reflect the merits of the action and plaintiff's innocence of the misconduct alleged on that point. (*Pender v. Radin* (1994) 23 Cal.App.4th 1807, 1814.) Here, plaintiffs expressly allege in the operative pleading that when the "interference of easement" claim was voluntarily dismissed on June 31, 2021, this was a favorable termination in their favor, and the court must accept this allegation as true at the demurrer stage. (See also *Lee v. Kim* (2019) 41 Cal.App.5th 705, 720 [a voluntary dismissal is deemed to be a favorable termination on the merits].) There is no indication in the operative pleading, for example, that the dismissal was for technical reasons that did not reflect on the merits of the cause of action (and that is an issue of fact beyond determination by demurrer). Plaintiff has adequately alleged the June 30, 2021 was a favorable termination.

But this does not end inquiry about the accrual date of the malicious prosecution causes of action. While the voluntary dismissal noted above supports the allegation that the claim was favorably terminated in plaintiffs' favor, case law indicates that courts should not consider the causes of action in the earlier lawsuit separately when determining when there is a favorable

termination. While each theory asserted in the prior action must be separately considered for purposes of probable cause, separate consideration of separate claims in the earlier lawsuit *is inappropriate for calculating when there was a favorable termination*. (*Dalany v. American Pacific Holding Corp*. (1996) 42 Cal.App.4th 822, 829-830.) The ***entire action*** has to be assessed for that purpose, which includes the entry of judgment involving the two causes of action for declaratory relief and quite title. (*Staffpro, Inc. v. Elite Show Services, Inc*. (2006) 136 Cal.App.4th 1392, 1406 [plaintiff is precluded from separating the causing of action in the underlying action for purposes of establishing favorable termination].) Put another way, courts do not consider the disposition of the causes of action in the earlier matter on a piecemeal basis; to determine whether there was a favorable termination, courts must look to the judgment as a whole in the prior action. (*Casea Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 342.) A favorable termination occurred for statute of limitations accrual purposes on the date of entry of judgment, which was made on September 27, 2022.

The court's inquiry is still not over. It is well settled that the pendency of an appeal from the judgment prevents the maintenance of a malicious prosecution, meaning the statute of limitations is tolled until the conclusion of the appellate process.(*Bellows v. Aliquot Associations, Inc.* (1994) 25 Cal.App.4th 426, 430.) An examination of the register of actions in Case No. 17CV04672 indicates that a notice of appeal was filed on November 7, 2022, and the appellate decision was not filed under January 12, 2024, 10 days after the operative complaints were filed in these matters.

Based on the totality of circumstances, including the facial allegations in the complaint, coupled with the documents the court has judicially noticed on its own motion, the malicious prosecution cause of action is not time barred, if for no other reason than the malicious prosecution was final on September 27, 2023, and was tolled during the pendency of the appeal, with the appeal only becoming final after the complaint had been filed. The court therefore overrules the demurrer as to the first cause of action for malicious prosecution.

The court wants to be crystal clear here. Whether the voluntary dismissal on June 30, 2021 was in fact a favorable termination in plaintiff's favor as contemplated under the case law remains an issue of fact to be determined. Because we are at the pleading stage, and because all presumptions favor plaintiffs, the court cannot make this determination at this time. That determination can only be resolved after the pleading stage.

The parties are directed to appear at the hearing, either in person or by Zoom.

Summary of Conclusions:

The parties should come prepared to discuss the following matters:

- Why are three separate complaints filed when the matters should be consolidated into one pleading?

- If the matters remain separate, plaintiff should come prepared to discuss why it has not filed notices of related cases in the three matters on calendar, as well as in case No. 17CV04672. In a related vein, the court has had to take judicial notice of the latter documents in that case (as well as the register of actions) in order to resolve the issues before it. The parties should be more thorough in any future briefing.
- The parties should come prepared to discuss the nature of the meet and confer effort as reflected in the record before the court. The requirements are intended to be meaningful; the efforts here fall far short of that standard.

On the merits:

- The court on its own motion strikes the second causes of action from each complaint for intentional or negligent infliction of emotional distress, as the claims are clearly barred by the litigation privilege per Civil Code section 47, subdivision (b), under existing case authority.
- The court overrules the demurrer as to the malicious prosecution causes of action, as the facial allegations in the complaint do not show the cause of action is barred under the appropriate statute of limitations, for the reasons articulated above.
- Plaintiff is directed to submit a new amended pleading with the above-described changes no later than 30 days from today's hearing date.