SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding
Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 1/16/2025 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (1/15/2025) you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling.
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court prefers in-person appearances or by Teams. If you must appear virtually, please use video.

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	24CV449015	Four Dimensions, Inc. et al vs Louis Wang et al	Motion: Quash Service of Summons by Defendant Louis Wang (Pro Per) Ctrl Click (or scroll down) on Line 1 for tentative ruling. The court will prepare the order.
LINE 2	24CV439423	Navy Federal Credit Union vs Christian Vieyra	Motion: Judgment on Pleadings By Plaintiff Navy Federal Credit Union Unopposed and GRANTED, Moving party to prepare the order for signature by the court.
LINE 3	24CV444758	Jpmorgan Chase Bank N.a. vs ELENE CORREA-SORICH	Motion: Judgment on Pleadings By Plaintiff JPMorgan Chase Bank N.A. Unopposed and GRANTED, Moving party to prepare the order for signature by the court.

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LINE 4	20CV370874	Mellisa Morrison vs Mitch Christow	Hearing: Motion Summary Judgment By Defendant/X-Complainant Mitch Christow Ctrl Click (or scroll down) on Line 4 for tentative ruling. The court will prepare the order.
LINE 5	24CV435415	ALONDRA GONZALEZ vs VOLKSWAGEN GROUP OF AMERICA, INC. et al	Motion: Compel VOLKSWAGEN GROUP OF AMERICA, INC.'s Further Responses to Requests for Admission, Set One, and for Sanctions by Plaintiff ALONDRA GONZALEZ This motion is continued by the court for hearing on Friday, **2/21/2025 at 9AM in Dept. 20.** The court needs more time to review the papers. No additional papers are requested. No further notice will be given. The clerk's minutes are deemed the order.
LINE 6	24CV435415	ALONDRA GONZALEZ vs VOLKSWAGEN GROUP OF AMERICA, INC. et al	Motion: Compel Defendant VOLKSWAGEN GROUP of AMERICA, INC.'s Further Responses to Requests for Production of Documents, Set One, and for Sanctions by Plaintiff Alondra Gonzalez This motion is continued by the court for hearing on Friday, **2/21/2025 at 9AM in Dept. 20.** The court needs more time to review the papers. No additional papers are requested. No further notice will be given. The clerk's minutes are deemed the order.
LINE 7	23CV425593	Andrew Dagley vs Marriott International, Inc et al	Hearing: Motion For Undertaking by Defendant BCORE 660 EL CAMINO REAL TRS LLC Ctrl Click (or scroll down) on Line 7 for tentative ruling. The court will prepare the order.

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DATE: 1/16/2025 TIME: 9:00 A.M.

LINE 8	24CV444513	Velocity Investments LLC vs Junchuan Wang	Hearing: Petition/Motion to Compel Arbitration And Stay Proceedings by Defendant Junchuan Wang (Pro Per) Defendant Junchuan Wang (Pro Per)'s petition/motion to compel arbitration and stay proceedings with plaintiff Velocity Investments LLC pursuant to the contract (attached to the complaint and the motion to compel arbitration as Exhibit A) is DENIED WITHOUT PREJUDICE. The proof of service for this motion filed 9/30/2024 is defective on its face. It inaccurately states "I am over the age of 18 and **not** a party to the action." [Emphasis added.] However, it was signed by the defendant Junchuan Wang (Pro Per), who is a party to the action. Self-represented litigants are entitled to the same, but no greater, consideration than other litigants and attorneys. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) Self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation."].) The court will prepare the order.
LINE 9	24CV449238	In Re: 4939 ARUNDEL CT, SAN JOSE CA 95136	Hearing: Motion On Surplus Funds by Plaintiff John Perkins, pro per ("Plaintiff") This hearing is continued by the court to **2/14/2024 at 9AM in Dept. 20.** There was no proof of service ("POS") for the opposition and request for judicial notice filed 1/3/2025 by Defendant, Claimant Kimberly Brockington ("Schatz"). There was no POS for the Plaintiff's reply filed 1/9/2025. Any opposition and reply papers must be timely filed (with a timely filed POS) based on the new hearing date. No further notice will be given. The clerk's minutes are deemed the order.

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DATE: 1/16/2025 TIME: 9:00 A.M.

LINE 10			
LINE 11			
LINE 12			

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Calendar Line 1
Case Name: *Four Dimensions, Inc. v. Louis Wang, et al.*
Case No.: 24-CV-449015

Motion to Quash Service of Summons by Defendant Louis Wang

Factual and Procedural Background

This is an action for breach of contract and related claims by plaintiff Four Dimensions, Inc. ("Plaintiff") against Louis Wang ("Wang"), Sherry Li ("Li"), Omni Venture Partners, LLC, and Asia-IO Partners International Pte. Ltd. ("Asia-IO") (collectively, "Defendants").

According to the complaint, Plaintiff is an industry leader in the field of "advanced semiconductor probing systems." (Complaint at ¶ 11.) Defendant Wang is a self-described "Tech Investor." (Id. at ¶ 1.) Defendant Li is Wang's partner and spouse. (Ibid.)

Sometime after March 8, 2023, Plaintiff's executive management prepared to sell the company and communicate with interested potential buyers about a sale transaction. (Complaint at ¶ 15.) In the course of those activities, defendant Wang expressed interest about a possible acquisition of Plaintiff by Asia-IO, of which Wang represented himself to be a partner and director. (Ibid.)

On June 13, 2023, Plaintiff and Wang, as director of Asia-IO, executed a Non-Disclosure Agreement ("NDA"). (Complaint at ¶ 16.) Pursuant to the NDA, Wang on behalf of Asia-IO, agreed that Plaintiff's "Confidential Information" (as defined in the NDA) was to be used solely and exclusively to evaluate, negotiate and/or consummate a potential business transaction between Plaintiff and Asia-IO. (Ibid.) Under the NDA, Wang and Asia-IO agreed not to use, copy, transfer, disclose or knowingly permit any unauthorized person to obtain any Confidential Information without the prior written consent of Plaintiff. (Ibid.)

Pursuant to Section 4 of the NDA, upon written request by Plaintiff at any time, defendants Wang and Asia-IO agreed to promptly return to Plaintiff or destroy all originals and copies of Confidential Information previously provided to them. (Complaint at ¶ 21.)

On March 15, 2024, Plaintiff's legal counsel contacted defense counsel and requested that all Plaintiff's Confidential Information be returned by Wang and Asia-IO to Plaintiff. (Complaint at ¶ 21.) Wang and Asia-IO refused and continue to refuse to return such Confidential Information to Plaintiff. (Ibid.)

On May 22, 2024 and May 31, 2024, Plaintiff's counsel again demanded that Defendants comply with the terms of the NDA and return or destroy Plaintiff's Confidential Information. (Complaint at ¶ 21.) Defendants failed to comply with the demand thereby breaching the NDA. (Ibid.)

On October 7, 2024, Plaintiff filed the operative complaint against Defendants alleging causes of action for: (1) breach of written contract; (2) breach of implied covenant of good faith and fair dealing; (3) intentional interference with prospective economic relations; (4) negligent interference with prospective economic relations; and (5) aiding and abetting a breach of duty of loyalty.

On November 15, 2024, defendant Wang, a self-represented litigant, filed the motion presently before the court, a motion to quash service of summons. Plaintiff filed written opposition.[1]

A case management conference is set for June 4, 2025.

Motion to Quash Service of Summons

Defendant Wang argues Plaintiff failed to properly execute personal or substitute service of the summons and complaint in this action.

Legal Standard

"Service of process is the means by which a court having jurisdiction over the subject matter asserts jurisdiction over the party and brings home to him reasonable notice of the action. [Citation.] It is an indispensable element of due process of law. [Citation.]" (*Kappel v. Bartlett* (1988) 200 Cal.App.3d 1457, 1464.)

"A motion to quash service challenges only the lack of jurisdiction over the person and, when ruling on such a motion, the trial court is not permitted to determine the merits of the complaint." (*McClatchy v. Coblentz* (2016) 247 Cal.App.4th 368, 375.)

"When a motion to quash is properly brought, the burden of proof is placed upon the plaintiff to establish the facts of jurisdiction by a preponderance of the evidence. [Citation.] This may be done through presentation of declarations, with opposing declarations received in response." (*Aquila, Inc. v. Super. Ct.* (2007) 148 Cal.App.4th 556, 568.) Where there is a conflict in the declarations, resolution of the conflict by the trial court will not be disturbed on appeal where the ruling is supported by substantial evidence. (*Ibid.*)

Analysis

"The preferred way to serve a defendant, of course, is by personal delivery, as prescribed in [Code of Civil Procedure] section 415.10, as this is the most likely to ensure actual notice to the defendant. [Citation.] Service is deemed complete at the time of delivery. If personal delivery to the defendant 'cannot with reasonable diligence be personally delivered,' section 415.20 authorizes substituted service by leaving a copy with a competent adult at the defendant's residence or workplace, followed by sending the documents by first class mail addressed to defendant at the residence or workplace where the documents were delivered. Service is complete upon the 10th day after the requisite copy is mailed to the defendant. Substituted service is permissible, however, 'only after a good faith effort at

[1] In reply, defendant Li filed a supplemental declaration to the motion to quash. Defendant Li however is not the moving party as the motion to quash was filed by defendant Wang. Nor does this court consider such evidence which is being introduced for the first time in the reply papers. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537 [the general rule of motion practice is that new evidence is not permitted with reply papers]; *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252 [improper to introduce new evidence in reply].)

personal service has first been made: the burden is on the plaintiff to show that the summons and complaint cannot with reasonable diligence be personally delivered to the individual defendant.' [Citation.]" (*Board of Trustees of Leland Stanford Junior University v. Ham* (2013) 216 Cal.App.4th 330, 336-337.)

In opposition, Plaintiff submits a declaration from Kathryn A. Paz ("Ms. Paz"), a registered process server. In her declaration, signed under penalty of perjury, she provides a physical description of defendant Wang (Paz Decl. at ¶ 8) and states in relevant part:

- In the early afternoon of October 17, 2024, Ms. Paz traveled to the single family residence located at 933 Cardoza Lane, Milpitas, California ("Cardoza Property") to attempt to serve the summons and complaint in this action.

- At that time, defendant Wang appeared at the front door of the Cardoza Property. He identified himself as Louis Wang. **Ms. Paz informed him that she was a registered process server and had legal documents from Santa Clara County Superior Court to serve on him as an individual and as an agent for service for Asia-IO Partners International**. **Wang indicated that he recognized the documents as being for him and Asia-IO**. After identifying himself, Wang just said that he had to get back to his meeting. Wang asked Ms. Paz to return on a later date. It was clear to Ms. Paz that Wang was attempting to avoid service of the documents on him.

- Thereafter, Ms. Paz said to Wang, "I can give you these documents or I can leave them here at your door." Wang however walked away without further comment. **Ms. Paz then announced that he was served personally and as the agent for service on behalf of Asia-IO**. Wang did not provide an opportunity for her to provide any further details. **Ms. Paz then placed two copies of the complaint in this action for Wang individually and as agent for Asia-IO at the front door of the Cardoza Property**. Ms. Paz left the Cardoza Property at approximately 1:25 p.m. PDT.
- On October 18, 2024, Ms. Paz prepared and executed proofs of service of summons for the service of the complaint on Wang and other defendants which were filed with the court on the same day. (See Ms. Paz Decl. at ¶¶ 4, 7, 9, Ex. A, emphasis in bold added.)

In support of the motion, defendant Wang contends that making mere "eye contact" with the process server does not constitute valid personal service. (See Motion at pp. 2:13-15, 4:24-25.) Instead, Wang asserts that personal service requires actual delivery of documents to the defendant with clear notice that he or she is being served with legal process. (Id. at p. 4:25-27.) Wang claims he was never informed of the legal nature of the documents, and no attempt was made to actually deliver them to him during the brief door interaction. (Id. at p. 5:1-2; Wang Decl. at ¶ 1.)

Defendant Wang however is mistaken on the law as it to relates to personal service of the summons and complaint as California cases have established that hand-to-hand delivery is not required to accomplish personal service when a target attempts to flee or avoid service.

For example, in *In re Ball* (1934) 2 Cal.App.2d 578 (*Ball*), a process server approached the target in the same location he had formerly served the target. About 12 feet from the target and with the process in his hand, the server said: " 'I have here another one of those things for you.' " (*Ball, supra,* 2 Cal.App.2d at pp. 578-579.) The target replied, " 'You have nothing for me.' " While looking at the process server, he started to walk away, and the server handed or tossed the process toward the target, saying " 'Now you are served.' " (*Id.* at p. 579.) The papers fell close to the target, who left without picking them up. (*Ibid.*) The *Ball* court found substantial evidence of personal service, cautioning "when men are within easy speaking distance of each other and facts occur that would convince a reasonable man that personal service of a legal document is being attempted, service cannot be avoided by denying service and moving away without consenting to take the document in hand." (*Ibid.*)

In *Trujillo v. Trujillo* (1945) 71 Cal.App.2d 257 (*Trujillo*), the target attempted to avoid service of process by entering his car and rolling up the window as the process server explained the nature of the documents and placed them under the windshield wiper in plain view, and the target then started the wipers to dislodge the papers. (*Trujillo, supra,* 71 Cal.App.2d at pp. 259-260.) The appellate court found the evidence supported a finding of personal service where the documents were left in the custody and control of the target with an explanation of their nature, the target knew the nature and purpose of the documents, and he deliberately attempted to avoid service. (*Id.* at p. 260.)

Finally, in *Crescendo Corp. v. Shelted, Inc.* (1968) 267 Cal.App.2d 209 (*Crescendo Corp*.), service was found effective where a process server knocked on the door of the target's apartment and heard a man say if it was for him to say he was not home; a woman opened the door and the process server saw a man in the apartment whom he recognized as the target; the woman said the target was not home and as she closed the door the process server stated loudly that he was serving the target with a copy of unlawful detainer papers; and he placed the papers under the windshield wiper of a car in the carport registered to the target. (*Crescendo Corp., supra,* 267 Cal.App.2d at p. 211.) The Court of Appeal found the evidence sufficient to support the trial court's necessarily implied finding that the process server attempted personal delivery but was prevented by the target himself. (*Id.* at p. 213.) The appellate court found no due process violation and no abuse of discretion in the denial of the defendant's motion to set aside the default judgment. (*Ibid.*)

Citing *Ball*, the *Crescendo Corp.* court explained: "The individual upon whom the process server attempts to make personal service by manual delivery may not be heard to claim that service was improper because he refused to accept service." (*Crescendo Corp., supra,* 267 Cal.App.2d at p. 213.) The Court of Appeal elaborated:

> " 'Personal service usually contemplates actual delivery. But the person on whom service is sought may not, by merely declining to take the document offered, deny the personal service on the ground of lack of delivery, where under the circumstances it would be obvious to a reasonable person that a personal service was being attempted. In such case the service may be made by merely depositing the process in some appropriate place where it would be most likely to come to the attention of the person being served.' [Citation.]" (*Id*. at p. 212.)

Similarly, Plaintiff's evidence shows: (1) defendant Wang was home; (2) the process server announced she had legal documents and attempted to personally serve Wang; (3) Wang recognized the documents as being for him and Asia-IO; (4) Wang attempted to avoid service; (5) the process server announced she was leaving the documents at the door and ultimately left copies of the complaint in this action for Wang individually and on behalf of Asia-IO; and (6) the process server executed proofs of service for the summons and complaint. Such evidence is sufficient to demonstrate personal service of the summons and complaint in this action on defendant Wang. (See *Floveyor Internat., Ltd. v. Super. Ct.* (1997) 59 Cal.App.4th 789, 795 ["The filing of a proof of service creates a rebuttable presumption that the service was proper."]; see also *Bein v. Brechtel-Jochim Group, Inc.* (1992) 6 Cal.App.4th 1387, 1393 ["Litigants have the right to choose their abodes; they do not have the right to control who may sue or serve them by denying them physical access."].) Thus, the court need not consider whether substitute service was valid in this instance.

Also, to the extent that defendant Wang argues the process server made misrepresentations of fact, the court is not persuaded as it finds her declaration to be credible. (Motion at p. 5:4-14.) The court also dismisses Wang's claim that defendant Li's compromised mental state and lack of authority invalidated any purported acceptance of service. (Id. at p. 6:13-28.) It is clear from the process server declaration that she intended personal service of the complaint only on defendant Wang, not defendant Li. (See Ms. Paz Decl. at ¶¶ 6-7.)

Accordingly, the motion to quash service of summons is DENIED.

Disposition

The motion to quash service of summons is DENIED.

The court will prepare the Order.

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Calendar Line 2

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Calendar line 4
Case Name: *Melissa Morrison v. Mitch Christow et al.*
Case No.: 20CV370874

I. Factual and Procedural Background

On September 17, 2020, plaintiff Melissa Morrison[2] ("Plaintiff") filed a Judicial form complaint ("complaint") against defendant Mitch Christow ("Defendant").

The complaint alleges that on September 23, 2018, Plaintiff was attacked by Defendant's dog ("Bruno") and sustained serious physical injury, requiring medical treatment. (Complaint, pp. 4-5.) Defendant was aware of the dog's dangerous tendencies and failed to warn about them. (Complaint, p. 4.)

Plaintiff's complaint alleges causes of action for: 1) general negligence; 2) strict animal liability; and 3) strict liability pursuant to Civil Code section 3342.

On October 4, 2024, Defendant filed a motion for summary judgment to Plaintiff's complaint. Plaintiff opposes the motion and Defendant filed a reply.

II. Legal Standard on Motion for Summary Judgment

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).)

The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact[.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id*. at p. 851.)

If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Aguilar*, *supra*, 25 Cal.4th at p. 850.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Ibid*.) "[I]f the court concludes that the [opposing party's] evidence or inferences raise a triable issue of material fact, it must conclude its consideration and deny the [moving party's] motion." (*Id*. at p. 856.)

Throughout the process, the trial court "must consider all of the evidence and all of the inferences reasonably drawn therefrom[.]" (*Aguilar*, *supra*, 25 Cal.4th at p. 844 [internal quotations omitted].) The moving party's evidence is strictly construed, while the opposing party's evidence is liberally construed. (*Id*. at p. 843.)

III. Defendant's Objections

[2] The form complaint refers to Plaintiff as "Mellisa." All other filed papers spell Plaintiff's name as "Melissa."

In reply, Defendant submits an objection to the inclusion of deposition testimony of Dr. Tal Solomon ("Solomon Depo.") in support of Plaintiff's opposition to refute Defendant's material facts Nos. 2 and 3 and to support Plaintiff's material facts Nos. 1, 2, 6, 7, 11, 14, and 24. Defendant contends he was blindsided by the inclusion of the Solomon Depo. because Defendant had no idea the deposition was ever taken and did not receive a copy of the deposition transcript in written discovery. (Defendant's Objections, p. 1:24-26.) The objection is OVERRULED.

IV. Discussion

Defendant moves for summary judgment of the complaint's three causes of action based on the affirmative defense that he is protected by the veterinarian's rule.

"The veterinarian's rule . . . has [] been recognized in past decisions of this court as yet another application of the doctrine of primary assumption of risk. . . . The rule, . . . 'has been held generally to exempt those who contract with veterinarians to treat their dogs from liability should the dog bite the veterinarian during treatment.'" (*Priebe v. Nelson* (2006) 39 Cal.4th 1112, 1120 (*Priebe*).) "The doctrine of assumption of risk, which is generally applicable in strict liability actions, has long been recognized as a defense to a personal injury action brought pursuant to the dog bite statute [(Civil Code] § 3342) under appropriate facts." (*Ibid.* [internal citations omitted]; see also *Opelt v. Al G. Barnes Co.* (1919) 41 Cal.App. 776, 780.) "A finding that the doctrine of primary assumption of risk applies in any given factual context is, in essence, a determination, reached as a matter of law, that the defendant should be excused from the usual duty of care based on some clear, overriding statutory or public policy. (*Ibid*.)

"[O]ne public policy supportive of the veterinarian's rule is the common sense recognition that veterinarians, their trained assistants, and those in similarly situated professions (e.g., dog groomers, kennel technicians) are in the best position, *and usually the only position*, to the take necessary safety precautions and protective measures to avoid being bitten or otherwise injured by a dog left in their care and control." (*Priebe, supra,* at p. 1130 [emphasis original].)

> A veterinarian or a veterinary assistant who accepts employment for the medical treatment of a dog, aware of the risk that *any* dog, regardless of its previous nature, might bite while being treated, has assumed this risk as part of his or her occupation. The veterinarian determines the method of treatment and handling of the dog. He or she is the person in possession and control of the dog and is in the best position to take necessary precautions and protective measures. The dog owner who has no knowledge of its particular vicious propensities has no control over what happens to the dog while being treated in a strange environment and cannot know how the dog will react to treatment. A dog owner who does no more than turn his or her dog over to a qualified veterinarian for medical treatment should not be held strictly liable when the dog bites a veterinarian or a veterinary assistant while being treated.

(*Nelson v. Hall* (1985) 165 Cal.App.3d 709, 715 (*Nelson*) [emphasis original].)

As a threshold matter, Plaintiff does not appear to dispute that the veterinary clinic where Plaintiff worked had exclusive control over Bruno. (See Opposition, p. 8:26-27 ["The

separate statement does establish a foundational requirement of exclusive control."].)[3] Thus, the remaining issues are 1) whether Plaintiff was providing treatment to Bruno; and 2) whether Defendant was aware of the vicious nature of Bruno.

In *Nelson*, the Court explained that the veterinarian rule "does not mean dog owners could never be held liable for injuries to veterinarians or their assistants. We emphasize that the defense of assumption of the risk extends only to the danger which the injured person has knowingly assumed; i.e., the danger the dog will bite *while being treated*." (*Nelson*, *supra*, 165 Cal.App.3d at p. 715, fn. 4 [emphasis original].)

Defendant asserts that Plaintiff is a certified veterinary assistant who should have been fully aware of the risk that Bruno, regardless of his previous nature, might bite her while being treated. (Motion, p. 7:1-2, 6-7.) First, Defendant provides evidence that he contacted Arch Veterinary Services ("ArchVet") to care for an injury sustained by Bruno and to board the dog while Defendant planned his wife's funeral. (UMFs 8-9.) Defendant proffers additional evidence that Plaintiff was providing care for Bruno every day in September and during that time, she was in possession and control of Bruno, her job duties included working in the kennel where the incident occurred, and every day she would go into Bruno's kennel, pet him, and take him to urinate in the treatment area. (*Id.* at p. 7:10-11; UMF 13 [citing Ex. C, Plaintiff's Depo., p. 10:4-12]; UMF 15 [Ex. C, Plaintiff's Depo., p. 13:9-18]; UMF 16 [citing Ex. C., Plaintiff's Depo., p. 23:18-25]; UMF 17 [citing Ex. C, Plaintiff's Depo., pp. 29:19-30:11].) Defendant proffers further evidence of Plaintiff's testimony that on the date of the subject incident she did the same thing she had done every day that month, including: going to Bruno's kennel and petting him; however, when she proceeded to stand up, Bruno lunged at her and locked his jaws on her left shoulder, then her left side, and then her left hip. (UMF 19 [citing Ex. C, Plaintiff's Depo., pp. 28:16-23, 31:11-25].) Based on this evidence, the Court finds that Defendant meets his initial burden to show that Bruno was receiving treatment at ArchVet and Plaintiff was providing care to him when the injuries occurred.

In opposition, Plaintiff contends that she was not treating Bruno at the time of the attack but merely "rubbing his belly, which was not during medical treatment." (Opposition, p. 10:16-19.) First, the only evidence proffered by Plaintiff to support this assertion is UMF 27, where Plaintiff testified that she was not checking Bruno's vitals at the time of the subject incident. However, Plaintiff goes on to testify that at the time of the accident she was there to check up on Bruno, both visually and physically after his procedure. (Ex. C, Plaintiff's Depo., p. 69:3-12.) Moreover, as presented by Defendant, part of Plaintiff's job was working in the kennel, where the incident took place. Accordingly, the Court is not persuaded that Plaintiff has established a triable issue of material fact regarding whether she was treating Bruno at the time of the incident.

Defendant additionally asserts that the veterinarian's rule should bar Plaintiff's claims because he was unaware of Bruno's propensity for aggression. Here, Defendant acknowledges that the veterinarian's rule does not excuse liability if a dog owner is aware of a dog's dangerous propensities but fails to warn plaintiff. (Motion, p. 7:23-25; see *Prays v. Perryman* (1989) 213 Cal.App.3d 1133, 1137.) "[I]f a dog owner purposefully or negligently conceals a particular known hazard from a veterinarian, he or she would not be relieved of

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[3] The Court requests that, going forward, all documents submitted to the Court include page numbers.

liability, for this would expose the injured person to unknown risk." (*Nelson*, *supra*, 165 Cal.App.3d at p. 715, fn. 4; see also *Lipson v. Superior Court* (1982) 31 Cal.3d 362, 371 ["Virtually all jurisdictions . . . allowed recovery where the failure to warn ultimately resulted in an injury . . ."].) Defendant presents evidence that Bruno never exhibited signs of aggression, viciousness, or danger or harm to others and that he was entirely unaware of any dangerous propensities regarding Bruno. (Motion, p. 8:26-28, UMFs 2-6 [Defendant's deposition testimony].) Thus, Defendant sufficiently meets his burden as to this point. Accordingly, the burden shifts to Plaintiff to establish a triable issue of material fact.

In opposition, Plaintiff argues that Defendant negligently or intentionally misled Plaintiff as to Bruno's vicious tendencies. (Opposition, p. 9:17-18.) Plaintiff contends that Bruno displayed the following dangerous propensities: 1) biting another employe prior to the subject incident (AMF 11); 2) having to be sedated before being taken to the veterinary clinic (AMF 8); 3) displaying signs of dog aggression (AMFs 6-7); 4) known as aggressive by neighbors (AMF 15); 5) would avoid leashes; 6) was treated using a muzzle (AMF 14); and 7) Defendant's wife discussed taking Bruno to a behavioral specialist (AMF 9).

As to the first item, Plaintiff does not proffer any evidence that Defendant was aware of the incident involving Bruno, another vet employee, and another dog, such that he could mislead Plaintiff about Bruno's vicious tendencies. Regarding Bruno's sedation, AMF 8 indicates that Defendant was unable to get Bruno out of the backyard and that the dog would not allow touch from strangers. However, in the transcript of Defendant's deposition he states, "I don't know if I used words 'wouldn't let touch.' I told them that he was in the backyard and I needed help to collect him." (Ex. B, Defendant's Depo., p. 43:22-24.) This does not support the assertion that Defendant was aware of Bruno's "vicious tendencies" such that he misled Plaintiff.

As for items 3, 5, 6, and 7, the Court is not persuaded that Defendant was aware of aggression by Bruno; rather, it appears that either Defendant's wife or the employees of ArchVet knew that Bruno was aggressive towards other animals. (Ex. A, Soloman Depo., p. 15:15-20 ["Q. So it states here, 'Prior to this incident this animal showed no human aggression.' Do you believe that to be the case?" "A. Correct. He showed animal aggression or direct - - directed aggression is what we call it, so two different things altogether."].) Finally, as to item 4, Plaintiff asserts that Bruno was known to be aggressive by Defendant's neighbors. To support this, she proffers a declaration from one of Defendant's neighbors who states that Defendant had two dogs, the younger one was aggressive, and that the mailman was always afraid of a dog barking at the window. (Ex. D, Murrieta Decl., p. 1.) Nothing in the Murrieta Declaration or the supporting declaration of Ken Crueldad indicates that Bruno was the aggressive dog or supports a showing that Defendant was aware of Bruno's vicious tendencies and concealed them from Plaintiff. Accordingly, the Court finds that Plaintiff fails to proffer sufficient evidence to establish a triable issue of material fact.

As such, Defendant's motion for summary judgment is GRANTED.

V. Conclusion and Order

The motion for summary judgment is GRANTED. Defendant's evidentiary objection is OVERRULED.

The Court shall prepare the final order. **- oo0oo –**

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Calendar Line 7
Case Name: Andrew Dagley vs Marriott International, Inc., et al.
Case No.: 23CV425593

Good cause appearing, defendant BCORE 660 EL CAMINO REAL TRS LLC ("Defendant")'s motion for undertaking that plaintiff Andrew Dagley ("Plaintiff") should be required to post an undertaking to secure payment of Defendant's potential award of costs pursuant to Code of Civil Procedure ("CCP") section 1030 is GRANTED. Plaintiff shall post an undertaking in the amount of $5,000 not later than 30 days after service of this order (to secure the Defendant's potential award of costs), or this action shall be dismissed against said Defendant pursuant to CCP section 1030.

CCP section 1030 states:

(a) When the plaintiff in an action or special proceeding **resides out of the state**, or is a foreign corporation, **the defendant may at any time apply to the court by noticed motion for an order requiring the plaintiff to file an undertaking to secure an award of costs** and attorney's fees **which may be awarded in the action** or special proceeding. For the purposes of this section, "attorney's fees" means reasonable attorney's fees a party may be authorized to recover by a statute apart from this section or by contract.

(b) The motion shall be made on the grounds that the plaintiff resides out of the state or is a foreign corporation **and that there is a reasonable possibility that the moving defendant will obtain judgment in the action or special proceeding.** The motion shall be accompanied by an affidavit in support of the grounds for the motion and by a memorandum of points and authorities. The affidavit shall set forth the nature and amount of the costs and attorney's fees the defendant has incurred and expects to incur by the conclusion of the action or special proceeding.

(c) If the court, after hearing, determines that the grounds for the motion have been established, the court shall order that the plaintiff file the undertaking in an amount specified in the court's order as security for costs and attorney's fees.

(d) The plaintiff shall file the undertaking not later than 30 days after service of the court's order requiring it or within a greater time allowed by the court. If the plaintiff fails to file the undertaking within the time allowed, the plaintiff's action or special proceeding **shall be dismissed as to the defendant in whose favor the order requiring the undertaking was made.**

(e) If the defendant's motion for an order requiring an undertaking is filed not later than 30 days after service of summons on the defendant, further proceedings may be stayed in the discretion of the court upon application to the court by the defendant by noticed motion for the stay until 10 days after the motion for the undertaking is denied or, if granted, until 10 days after the required undertaking has been filed and the defendant has been served with a copy of the undertaking. The hearing on the application for the stay shall be held not later than 60 days after service of the summons. If the defendant files a motion for an order requiring an undertaking, which is granted but the defendant

objects to the undertaking, the court may in its discretion stay the proceedings not longer than 10 days after a sufficient undertaking has been filed and the defendant has been served with a copy of the undertaking.

(f) The determinations of the court under this section have no effect on the determination of any issues on the merits of the action or special proceeding and may not be given in evidence nor referred to in the trial of the action or proceeding.

(g) An order granting or denying a motion for an undertaking under this section is not appealable.

(CCP § 1030 [emphasis added].)

There are two criteria under CCP section 1030(b). First, that Plaintiff "resides out of the state" of California. (I*d*.) Second, "that there is a reasonable possibility that the moving defendant will obtain judgment in the action." (*Id*.)

The court finds that Defendant has met its burden of proof of the first element. Plaintiff's Third Amended Complaint ("TAC") and the hotel Guest Folio confirm Plaintiff's out-of-state residence in Colorado, meeting the first criteria of CCP 1030(b). This is undisputed in Plaintiff's Response. (See Plaintiff's Response, p. 2.)

Here, the court also finds that the Defendant has met its burden of proof of the second element that there is a reasonable possibility that the moving Defendant will obtain judgment in the action.

Both sides agree that the elements of a claim for malicious prosecution include:

1. Initiation of prior action by Defendant with Plaintiff's favorable termination.
2. Lack of probable cause
3. Initiation with malice.

(See *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659; Plaintiff's Response, p. 3; Defendant's Reply, p. 2.)

Defendant is *not* disputing element 1 of Plaintiff's malicious prosecution claim. (Defendant's Reply, p. 2.)

Probable Cause

Defendant relies on the police report to show probable cause and lack of malice because the Sunnyvale Police is separate from the defendants and does not have any incentive or motive to act in concert with defendants. The police conducted their own investigation, spoke with the witnesses and to the Plaintiff and after gathering all of the evidence in the police report determined that Plaintiff should be arrested.

Plaintiff cites *Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863 in support of his position that probable cause is undermined if the prosecution was induced by false

information or malice. Further Plaintiff cites the Ninth Circuit (without identifying the case) which held that probable cause can by rebutted by showing that defendant acted fraudulently or in bad faith. (Plaintiff's Response, p. 3.) Plaintiff relies on his TAC which *concludes* that defendants acted based on knowledge of Plaintiff's innocence to show defendants lacked probable cause.

However, nowhere in that complaint nor his opposition to the motion for undertaking does Plaintiff provide *specific facts* to support his allegations that defendants knew Plaintiff was innocent of the crime of vandalism when they summoned the police nor that defendants acted fraudulently or in bad faith.

As stated in the police report, the front desk clerk "was in the lobby when she heard a loud bang coming from the front door of the lobby. She ran over and saw an Asian male adult ramming the front door repeatedly, attempting to gain entry." (See police report, p. 5.) Further, there is no indication of false information or malice as it is clear from the front desk lobby clerk's statement that she saw these actions with her own eyes and acted reasonably by calling the police in the circumstance. Staff members were reasonably fearful because the person would not identify himself nor stop trying to forcefully enter the hotel. The police were reasonably called because the person posed an ongoing threat to the safety and wellbeing of hotel guests and staff members. Plaintiff does *not* provide any facts to explain why Defendant's actions were unreasonable or why Defendant allegedly knew that there was a lack of probable cause. Accordingly, there is a reasonable possibility that the moving Defendant will obtain judgment in the action because Plaintiff will *not* be able to satisfy this element of his malicious prosecution claim.

The Element of Malice

Plaintiff asserts defendants acted with malice by willfully causing his arrest despite *knowing* Plaintiff was not responsible for any damage. Plaintiff cites to *Albertson v. Raboff* (1956) 46 Cal.2d 375 to attempt to support that malice may be inferred from defendant's intent to harm Plaintiff or from acting in reckless disregard for the truth. (Plaintiff's Response, p. 3.)

Again, Plaintiff fails to provide *any facts* to support his allegations that Defendant's actions rose to the level of malice. Nowhere in the TAC nor in his opposition does Plaintiff provide *facts* to show that Defendant intended to harm Plaintiff, nor that Defendant acted in reckless disregard for the truth. Accordingly, there is a reasonable possibility that the moving Defendant will obtain judgment in the action because Plaintiff will *not* be able to satisfy this element of his malicious prosecution claim.

Plaintiff states in his opposition that the CCP section 1030 statute requires a prima facia showing that Plaintiff may be unable to provide the undertaken, however Plaintiff is mistaken. Defendant has met its burden of proof to show that (1) Plaintiff is an out-of-state resident (which Plaintiff does not deny), and that (2) Defendant shows a reasonable possibility of prevailing on the merits through the police report. (CCP § 1030(b).)

Plaintiff cites *Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th 1427 for the proposition that the court has the authority to *waive or adjust* such requirements based on fairness and equity in the interests of justice. However, Plaintiff hasn't provided any evidence about how fairness or equity or the interests of justice would cause the court to exercise its

discretion in this manner. Accordingly, the court does *not* exercise its discretion to *waive or adjust* such requirements under *Baltayon*.

The Declaration of Carla N. Braunstein estimates that costs will be approximately $5,000. (*Id*., ¶ 9, Motion for Undertaking, p. 10.) There is no opposition declaration disputing this amount.

Conclusion

Good cause appearing, Defendant's motion for undertaking that Plaintiff should be required to post an undertaking to secure payment of Defendant's potential award of costs pursuant to CCP section 1030 is GRANTED. Plaintiff shall post an undertaking in the amount of $5,000 not later than 30 days after service of this order (to secure the Defendant's potential award of costs), or this action shall be dismissed against said Defendant pursuant to CCP section 1030.

The court will prepare the order.

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