CIVIL COMPLEX CENTER

DEPARTMENT CX103

Judge Lon F. Hurwitz

Procedural guidelines for several types of motions and dismissals handled regularly in this department are set forth here. The guidelines appear after the Tentative Rulings.

TENTATIVE RULINGS

Date: April 28th, 2025

Time: 2:00PM

Department CX105

https://acikiosk.azurewebsites.us/?dept=CX105

The Court will hear oral argument on all matters at the time noticed for the hearing. If you would prefer to submit the matter on your papers without oral argument, please advise the clerk telephonically in Department CX105 at (657) 622-5305 as soon as possible. The Court will not entertain a request for continuance nor filing of further documents once the ruling has been posted.

OTHER INFORMATION ABOUT THIS DEPARTMENT

HEARING DATES/RESERVATIONS: Except for Summary Judgment and Adjudication Motions, **no reservations are required for Law and Motion matters**. Call the Clerk to reserve a date for a Summary Judgment or Adjudication Motion. Regarding all other motions, the parties are to include a hearing date (Friday at 1:30PM) in their motion papers. The date initially assigned might later be continued by the Court if the assigned date becomes unavailable for reasons related to, among other things, calendar congestion.

COURT REPORTERS AND TRANSCRIPTS: Court reporters are not available in this department for *any* proceedings. Please consult the Court's website at www.occourts.org concerning arrangements for court reporters. If a transcript of the proceedings is ordered by *any* party, that party must

ensure that the Court receives an electronic copy by email as mentioned above.

SUBMISSION ON THE TENTATIVE

If a tentative ruling is posted and **ALL** counsel intend to submit on the tentative without oral argument, please advise the clerk telephonically as soon as possible. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling, and the prevailing party shall give Notice of Ruling. If there is no submission or appearance by either party, the court will determine whether the matter is taken off calendar or will become the final ruling.

ORDERS

The court's minute order will constitute the order of the court and no further proposed orders must be submitted to the court unless the court or the law specifically requires otherwise. **Where an order *is* specifically required by the court** or by law, the parties are required to do so in accordance with California Rules of Court, rule 3.1312(c) (1) and (2).

BOOKMARKS

Bookmarking of exhibits to motions and supporting declarations - **The court requires strict compliance with CRC, rule 3.1110 (f) (4)** which requires electronic exhibits to include electronic bookmarks with the links to the first page of each exhibit, and with bookmarked titles that identify the exhibit number or letter and briefly describe the exhibit. CRC, rule 3.1110 (f) (4).

The court may continue a motion that does not comply with rule 3.1110 (f) (4) and require the parties to comply with that rule before resetting the hearing.

April 28th, 2025, TENTATIVES LHURWITZ

		Tentative

#1	**Baer vs. Tedder** **30-2014-00746312**	**MOTION FOR NEW TRIAL** **Moving Party: Plaintiff Dan W. Baer** **Responding Party: Defendants Dennis Hartmann, Richard McGrath, Don Grammer, Banyan L.P., Pear Tree L.P., and Orange Blossom L.P.** **SERVICE: Notice of Intention served March 14, 2025** **RELIEF SOUGHT: Plaintiff seeks an order to set aside the decision of the Court and grant a new trial.** **UPCOMING EVENTS: None** **FACTS/OVERVIEW: This is a malicious prosecution action that arose out of a decades-long business dispute between Plaintiff Dan W. Baer ("Baer") and Defendant David H. Tedder ("Tedder").** **The underlying litigation, filed by Tedder in 1996, arose out of business dealings between Baer and Tedder during the late 1980s and 1990s. Tedder, an attorney, was a general partner of several Nevada limited partnerships that he created to provide "asset protection"**

		services to his clients. Tedder sued on behalf of the limited partnerships to recover on loans they allegedly made to Baer's two corporations for real estate acquisitions. **Baer's corporations and Tedder cross-complained against each other for a determination of their interests in the real estate and other business pursuits. The action was tried in four separate phases before seven superior court judges. After 10 years of litigation, Baer personally prevailed in the first three phases of trial. As a result, Tedder's clients changed strategy and alleged that Baer, as a non-attorney partner in Tedder's law firm, was liable for Tedder's breaches of his fiduciary duties. In Phase 4 of the trial, the trial court ruled these new allegations were time-barred and were not supported by sufficient evidence. In the final judgment, the trial court ruled that Baer was not liable on any cause of action in the original complaint. However, the court determined that two of Baer's corporations had to repay money owed on the loans made by the limited partnerships. The trial court**

		concluded that Tedder had no interest in the real estate owned by Baer's corporations, and he and Baer could not recover anything from each other. The Court of Appeal affirmed the final judgment. **Thereafter, on September 19, 2014, Baer initiated the current action against Tedder, Tedder's clients, and the attorneys who represented them. (ROA 2). The operative First Amended Complaint ("FAC") was filed January 28, 2019, and alleges a single claim for Malicious Prosecution. (ROA 415).** **The gravamen of the current malicious prosecution litigation is based on Plaintiff Baer's assertion that Tedder, his clients (Donald G. Grammar and Richard McGrath), and their attorneys maliciously conspired to advance a new breach of fiduciary duty theory in Phase 4 of the underlying trial, even though they knew the claim lacked merit. In his summary judgment motion (ROA 738), Tedder revealed that his defense to the malicious prosecution claim was that he had no involvement in prosecuting Phase 4 in the**

		underlying action, and he was unaware of how the case evolved into a breach of fiduciary claim against Baer. Tedder declared he was not involved in any discussions with the parties or attorneys litigating Phase 4, he was no longer a party in that action, and he had no financial stake in the outcome of that action. **At the April 2, 2024 Pre-Trial Conference, the Court and counsel conducted discussions regarding the probable cause issue. (ROA 2096.) The Court ordered the parties to simultaneously file briefs by April 9, 2024, as to whether there were sufficient uncontroverted facts for the Court to determine whether probable cause existed for the breach of fiduciary duty claim prosecuted against Baer in Phase 4 in the underlying litigation.** **At the hearing on April 15, 2024, the Court heard Baer's ex parte application for an Order (1) Advancing Trial, and (2) Finding Commencing Trial is Impossible, Impracticable, or Futile. (ROA 2141.) The ex parte application was denied. The**

		Court then stated that Phase 1 (Probable Cause) of the Court Trial would commence on June 20, 2024, to "determine undisputed facts and whether undisputed facts are sufficient to enable the Court to determine [the] probable cause issue." (Ibid.) The Court stated, "If undisputed facts are not sufficient and disputed facts are material to the issue of probable cause, the Court reserves the right to impanel a jury to determine such factual issues at a later date as part of this Phase 1 of Trial." (Ibid.) The Court then ordered the parties to simultaneously serve and file their trial briefs on June 3, 2024. (Ibid.) **On June 20, 2024, Phase 1 of the Trial commenced. (ROA 2186.) After hearing oral arguments to determine undisputed facts and whether undisputed facts were sufficient to enable the Court to determine the probable cause issue, the Court ordered counsel to meet and confer regarding a joint list of stipulated/undisputed facts. The Court ordered the joint list to be completed no later than August 30, 2024. The Court then stated it required further**

		briefing on the issues presented and ordered simultaneous supplemental briefs to be filed and served on or before October 1, 2024. The Court stated that no replies to the supplemental briefs would be permitted. (ROA 2186.) **On October 1, 2024, the parties filed their respective supplemental briefs. In addition, the parties filed a document entitled "Stipulations for Trial" wherein they listed several evidence and fact stipulations. (See, ROA 2203.) Regarding the evidence stipulations, the parties stated, "Notwithstanding the foregoing stipulations as to admissibility, the Parties each reserve their right to object to admission at the time of offering based on grounds of relevance as to the issues as to which admission is sought." (Id., ¶ 14.) After the parties filed their supplemental briefs and the Stipulations for Trial, the Court did not issue any further orders, conduct any further hearings, or hear any additional oral arguments.**

		On December 3, 2024, the Court issued its Ruling on Bifurcated Trial. (ROA 2213.) The Minute Order states: "The Court, having taken Phase 1 of Trial in the above-entitled action under submission on 10/02/24, now finds and rules as set forth in the attached Ruling on Bifurcated Trial." (Ibid.) **On January 7, 2025, Baer timely filed his Request for Statement of Decision. (2218.) The Court issued its Proposed Statement of Decision on January 9, 2025 (ROA 2219), and Baer filed his objections on January 28, 2025 (ROA 2222).** **On February 11, 2025, after considering Baer's objections, the Court ordered the parties to lodge all deposition transcripts taken in the underlying litigations of Mr. Berends (ROA 2225) based upon citation to certain *portions* of said deposition transcripts by Baer in his Trial Brief (ROA 2157, at page 29, lines 18-23, and page 41, line 24 to page 42, line 14; and Exhibits 141 and 142 as listed in Baer's Compendium of Evidence filed 6/3/24, ROA 2165). In Baer's Trial Brief, he asserted that Berends provided**

		testimony that established Baer's assertion that the subject 3-300 Statements had been prepared, thereby supporting Baer's position that there was no Probable Cause. The Court issued the Order to lodge all of Berends Deposition Testimony in order to verify that such assertions were consistent. The Court's Order was based upon Evidence Code Section 356 (Entire act, declaration, conversation, or writing to elucidate part offered in evidence). Plaintiff lodged said Deposition Transcripts. (ROAs 2228, 2230.) No further briefing or argument was ordered or considered by the Court. **The Statement of Decision was issued on February 28, 2025. (ROA 2231.) The attached Minute Order states: "The Court having considered the evidence admitted, arguments of counsel, matters considered via Judicial Notice and Evidence Code section 356, and matters admitted pursuant to Stipulations for Trial, now issues its Statement of Decision in Phase 1 of the above-entitled matter …. In conformity with the Statement of Decision, the Court issues Judgment for**

		Defendants." (Id.) Judgment was entered the same day. (ROA 2233.) **On March 14, 2025, Baer filed a Notice of Intention to Move for New Trial. (ROA 2237.) Defendants Dennis Hartmann, Richard McGrath, Don Grammer, Banyan L.P., Pear Tree L.P., and Orange Blossom L.P. ("Defendants") oppose the Motion. (ROA 2249.) Tedder joins in the opposition (ROA 2253), and Baer replies (ROA 2251).** **<u>CONTENTIONS AND ANALYSIS:</u>** **<u>Statement of the Law</u>** **A motion for new trial asks the court to reexamine one or more issues of fact or law after trial and decision by the judge or the jury. (See, Code Civ. Proc., §§ 656, 657.) "The right to a new trial is purely statutory...," and exact compliance with the detailed procedural steps prescribed by law is required. (See, Fomco, Inc. v. Joe Maggio, Inc. (1961) 55 Cal.2d 162, 166.) Code of Civil Procedure section 657 provides in relevant part:** **The ... decision may be modified or vacated, in whole or**

		in part, and a new or further trial granted on all or part of the issues, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party: **1. Irregularity in the proceedings of the court,..., or any order of the court or abuse of discretion by which either party was prevented from having a fair trial.** **...** **2. Insufficiency of the evidence to justify the verdict or other decision, or the verdict or other decision is against law.** **3. Error in law, occurring at the trial and excepted to by the party making the application.** **A new trial motion permits judgments entered after a jury or court trial to be challenged for error of fact or law. Judgments disposing of an action without trial where an "issue of fact or law" has been decided can also be challenged through a motion for new trial. (See, Carney v. Simmons (1957) 49 Cal.2d 84, 89-90.) An order granting a new trial begins the**

		trial process anew and automatically restarts the time limitations on discovery. (Fairmont Ins. Co. v. Sup. Ct. (Stendell) (2000) 22 Cal.4th 245, 253-254.) **The party intending to move for a new trial must file and serve the required moving papers either: (1) after the decision is rendered and before the entry of judgment, or (2) within 15 days of the date of mailing notice of entry of judgment by the clerk of the court or service by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest. (See, Code Civ. Proc., § 659, subd. (a).)** **A motion for a new trial based on the first four grounds enumerated in the statute must be made on affidavits. (Code Civ. Proc., § 658.) A motion based on one of the remaining grounds must be made on the minutes of the court. (Id.; see also, Wall Street Network, Ltd. v. New York Times Co. (2008) 164 Cal.App.4th 1171, 1192.) Minutes of the court include the records of the proceedings entered by the judge or courtroom clerk, showing what**

		action was taken and the date it was taken, and may also include depositions and exhibits admitted into evidence and the trial transcript. (Id.) **In court trials, the "decision" depends on whether one or more parties have requested a statement of decision. If a statement of decision was requested, then the "decision" is made when the statement of decision is signed and filed. (Ruiz v. Ruiz (1980) 104 Cal.App.3d 374, 378.) If a trial is bifurcated, "the judge conducting the separate trial … must, when requested under Code of Civil Procedure section 632, issue a statement of decision …." (CRC 3.1591(a).) "Any motion for a new trial following a bifurcated trial must be made after all the issues are tried …." (CRC 3.1591(c).)** **The burden of proof rests with the moving party. (Donovan v. Poway Unified School Dist. (2008) 167 Cal.App.4th 567, 625.) Code of Civil Procedure § 475 also provides, in pertinent part, that: "No judgment, decision, or decree shall be reversed or affected by reason of any error, ruling, instruction,**

		or defect, unless it shall appear from the record that such error, ruling, instruction, or defect as prejudicial, and also that by reason of such error, ruling, instruction, or defect, the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect has not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown." In ruling on a motion for new trial, the court must consider the entire record. (Casella v. Southwest Dealer Services, Inc. (2007) 157 Cal.App.4th 1127, 1159.) **<u>Merits</u>** **Baer moves for a new trial on three bases: Code of Civil Procedure sections 657(1), 657(6), and 657(7).** **<u>1. Irregularity in the Proceedings</u>** **Baer contends a new trial is warranted under Code of Civil Procedure § 657(1) because the Court's "irregular briefing and 'trial' proceedings" deprived**

		him of the ability to refute the deposition testimony of Ernest Berends lodged on February 13, 2025. **Irregularity in the proceedings of the court refers to conduct other than orders and rulings, such as personal misconduct by the trial judge, and reaches matters that may have to be proved by affidavit rather than by exceptions on the record during trial. (Montoya v. Barragan (2013) 220 Cal.App.4th 1215, 1226,1229-1230 [court's entry of judgment where jury was polled but no written verdict was returned was irregularity in proceedings, resulting in new trial].) Code of Civil Procedure § 657(1) may also be based on "any order of the court or abuse of discretion by which either party was prevented from having a fair trial." This may refer to evidentiary rulings and the failure to give instructions that is prejudicial to the moving party's right to a fair trial, e.g. failure to instruct on a theory of the case supported by substantial evidence. (Soule v. General Motors Corp. (1994) 8 Cal.4th 548, 580 [error must have resulted in "miscarriage of**

		justice" for reversal of judgment on appeal].) **Here, Baer contends Phase 1 of the trial was only supposed to determine whether the Court could adjudicate the element of lack of probable cause based on undisputed facts mutually agreed upon by the parties. According to Baer, however, the Statement of Decision ("SOD") was issued without an opportunity for him to present opposing evidence regarding the unreliability of Berends' deposition testimony. Baer notes that at the June 20, 2024 hearing, the Court asked for supplemental briefing on certain legal issues, ordered the parties to meet and confer and file a joint list of undisputed facts, and ordered the parties to file "further briefing regarding issues set forth on the record at today's hearing." (Pugh Decl., ¶ 2.d., Exh. D; ¶ 2.e., Exh. E (6/20/2024 Hearing Transcript, 68:3-11.)** **But Baer contends that after the parties filed their list of stipulated facts/evidence and their supplemental briefs, the Court did not conduct another hearing or permit written**

		responses to the June 3, 2024 evidentiary submission, and did not inform the parties that the matter was submitted for decision. In addition, Baer contends that after the Court issued a Minute Order on February 11, 2025, asking the parties to lodge all of the transcripts of Berends' deposition testimony in both the underlying litigation and the instant action, the Court did not conduct a hearing or request further briefing on that evidence, but instead simply issued its final SOD on February 28, 2025, without giving him the opportunity to refute Berends' testimony. **Baer notes that in their October 1, 2024 filing, the parties stipulated only to the limited admissibility of deposition transcripts from the underlying action; they did not stipulate to concede that such testimony was true or generally admissible. In addition, Baer contends the stipulation did not cover deposition testimony taken in the instant action. Baer argues, however, that much of the Court's Statement of Decision ("SOD") purports to rely on Berends' testimony in**

		the instant action. (See, SOD pp. 48-56.) The problem with reliance on this position by Baer is that he stipulated, in the Stipulations For Trial (ROA 2203), at Stipulation 3 ("Transcripts of all Depositions and Trial Testimony in Van Dan shall be admissible as if they had been taken in the present case"), without agreement to admissibility of Depositions and Trial testimony in *this* case, means that Baer is seeking to only admit testimony that is beneficial to him, without allowing the Court to consider ALL of the testimony under oath, as to the same issue, given by a witness in this litigation and the underlying litigation which engendered this Action. This is what Evidence Code Section 356 was designed to prevent. **Baer notes that although Defendants first included excerpts from Berends' deposition in their June 3, 2024 briefing, the parties were not given an opportunity to respond to the cross-filings. Thus, since Defendants' briefing did not mention Berends' claimed lack of knowledge of Baer's 50% profit-sharing interest in the**

		Tedder Law Firm, Baer was not given notice or an opportunity to object to any of Berends' deposition testimony taken in the instant action. Moreover, Baer contends much of Berends' deposition testimony taken in the instant action is false and misleading, and Baer would have testified to the falsity of Berends' assertions if Baer had been given the opportunity to do so. **In opposition, Defendants contend Baer's claim of irregularity of proceedings must fail because Baer did not previously object to the Court's proposed trial procedure. Alternatively, Defendants argue that Baer's fundamental argument is misplaced. According to Defendants, the question before the Court in Phase 1 was whether Defendants possessed undisputed facts that could objectively support a finding of probable cause as to Phase 4 in the underlying litigation. In that regard, Defendants contend that whether those undisputed facts were ultimately adjudicated against Defendants is immaterial to the probable cause issue that was before this**

		Court. As a result, Defendants argue that as the plaintiffs in Phase 4, they were entitled to rely on Berends' testimony in concluding they had probable cause to proceed on the breach of fiduciary duty claim against Baer. Defendants contend, therefore, that Baer's claim that he did not have an opportunity to refute Berends' testimony in Phase 1 does not, as a matter of law, require a new trial. **In reply, Baer contends Defendants are misconstruing his position regarding irregularity in the proceedings. Baer asserts that he is not objecting to the bifurcated trial procedure, but rather, he is objecting to the fact that the Court did not follow that procedure. According to Baer, the Court was supposed to view the list of stipulated undisputed facts and evidence as undisputed, and then make an assessment as to whether it could determine the lack of probable cause purely from those undisputed facts. Baer contends, however, that the Court incorrectly interpreted the parties' stipulation regarding the admissibility of Berends' deposition testimony as a**

		stipulation of conclusive fact that Berends' testimony was true. Baer asserts that Berend's deposition testimony was not true, but the Court did not allow Baer the opportunity to point out this error or introduce opposing evidence after the Court asked the parties to lodge Berends' deposition transcripts. **Unfortunately, Baer's assertion that the Court interpreted the parties' stipulation regarding the admission of Berend's testimony as one including the truth of that testimony, is a mischaracterization of the Court's interpretation and irrelevant to the determination of Probable Cause under the law.** **The truth or untruth of Berend's testimony in the different proceedings involved with respect to the issue of the 3-300 Statements is not relevant to the Probable Cause determination. The only aspect of the truth or untruth of Berend's testimony as to the Probable Cause issue is the *existence* of the ambiguities and/or prevarication of Mr. Berends in his various declarations under oath,**

		because that is what establishes the existence of Probable Cause-the reasonable interpretation of fact, via Berend's testimony, which might give rise to a Breach of Fiduciary Duty Cause of Action. **All that is necessary to establish Probable Cause is whether there is a triable issue of material fact; not whether the evidence for the asserting Party preponderates. Not whether the evidence would not result in a successful prosecution. The assertions by Mr. Berends in his various testimonial events, under oath, whether true or not, establishes triable issues of material fact. Mr. Berend's credibility is an element of whether or not a fact is proven; it does not go to whether or not there was justification to assert the Cause of Action.** **Defendants had the testimony of a licensed attorney (Berends), under oath, as to material fact. Whether or not he was telling the truth is an issue for Trial and goes to the merits of the case. But there is no requirement that Defendants had to reach a credibility determination of testimony**

		under oath before alleging their Cause of Action. **Baer's assertion that he did not get a fair trial under CCP 657(1) is based upon Baer's inability to show that Berend's testimony was wholly or partially false. That issue, as explained above, is irrelevant to the determination of Probable Cause. Therefore, there was no action by the Court which denied Baer a fair trial.** **2. Insufficiency of the Evidence/Error in Law** **Under the ground for insufficient evidence (Code Civ. Proc. § 657(6), the judge has the broadest power and acts as the "thirteenth juror". (Norden v. Hartman (1952) 111 Cal.App.2d 751, 758.) The trial judge is responsible for determining the weight of the evidence, which includes considering the credibility of the witnesses and drawing reasonable inferences even if contrary to those drawn by the jury. (Valdez v. J.D. Diffenbaugh Co. (1975) 51 Cal.App.3d 494, 512; see also, Casella v. SouthWest Dealer Services, Inc. (2007) 157 Cal.App.4th 1127,**

		1159-1160 [trial court has power to disbelieve witnesses, reweigh the evidence and draw reasonable inferences therefrom contrary to those of the trier of fact]; David v. Hernandez (2014) 226 Cal.App.4th 578, 588.) **Another ground is if the verdict or decision is "against law". (Code Civ. Proc. § 657(6).) Under "against law" ground, there is no weighing of the evidence or determining credibility and it applies when the evidence is without conflict on any material point and insufficient as a matter of law to support the verdict. (McCown v. Spencer (1970) 8 Cal.App.3d 216, 229.) This ground is similar to CCP § 657(7) [error in law excepted to at trial] but this ground applies where CCP §657(7) does not. (Collins v. Sutter Memorial Hosp. (2011) 196 Cal.App.4th 1, 16-18.) Thus, this ground is limited and if granted, would also be a basis for granting a JNOV.** **Regarding the "error in law" ground under CCP §657(7), a new trial cannot be granted for error of law unless the error was prejudicial i.e. the error**

		must likely have affected the outcome of the trial. (Bristow v. Ferguson (1981) 121 Cal.App.3d 823, 826.) **In the instant litigation, Baer expends considerable energy discussing each part of Berends' deposition testimony that Baer contends is false and could have been refuted by competing evidence. However, as noted by Defendants, Baer misses the point of the probable cause inquiry in this procedural posture. Courts have held that "[a] plaintiff has probable cause to bring a civil suit if his claim is *legally tenable*. This question is addressed objectively, without regard to the mental state of plaintiff or his attorney." (Roberts v. Sentry Life Insurance (1999) 76 Cal.App.4th 375, 382, citing to Sheldon Appel Co. v. Albert & Oliker (1989) 47 Cal.3d 863, 881.) "The court determines as a question of law whether there was probable cause to bring the alleged maliciously prosecuted suit. Probable cause is present unless any reasonable attorney would agree that the action is totally and completely without**

		merit." (Id., at p. 382 [citations omitted].) **Here, Baer seems to ignore that "[p]robable cause may be present even where a suit lacks merit," and only the subgroup of meritless lawsuits which all reasonable attorneys agree totally lack merit presents no probable cause. (Roberts, supra, 76 Cal.App.4th at p. 382.) Baer asserts that the Court could not have found probable cause because there is evidence that Defendants destroyed documents or purportedly knew that Berends' testimony was false. However, courts have held that a malicious prosecution defendant's subjective belief in the legal tenability of the prior action is not a necessary element of probable cause. (Sheldon Appel Co., supra, 47 Cal.3d at p. 879.)** **In this instance, as stated by the Court in the SOD, Baer's arguments are misplaced and based, in part, on tenuous inferences. First, as noted by the Court, Judge Colaw, in adjudicating Baer's summary judgment motion, found that the mere existence of a relationship between Baer and Tedder**

		provided a sufficient factual basis for Defendants to plead that Baer owed them a fiduciary duty. "The nature of that relationship was a question of fact which vitiated Baer's MSJ/MSA; and which, a fortiori, meant that there was a factual basis to pursue the action against Baer as Tedder's partner—Tedder owing a fiduciary duty to his clients as a lawyer." (SOD, pp. 60-61.) It has been found that denial of a summary judgment motion brought by the defendant in the underlying action provides "persuasive evidence that a suit does not totally lack merit" and that probable cause is present. (See, Roberts, supra, 76 Cal.App.4th at p. 383.) **As for the Court of Appeal's anti-SLAPP ruling, Baer's reliance on it is misplaced. Code of Civil Procedure section 425.16, the anti-SLAPP statute, provides in relevant part: "If the court determines that the plaintiff has established a probability that the plaintiff will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any**

		subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding." (Code Civ. Proc., § 425.16, subd. (b)(3).) **As noted in Bergman v. Drum (2005) 129 Cal.App.4th 11, a pretrial procedural determination that a plaintiff has presented a prima facie case for malicious prosecution should not have any impact on the trial of the matter where the plaintiff has to prove the case for malicious prosecution by a preponderance of the evidence. (Bergman, supra, at pp. 20-21.)** **Baer has not demonstrated insufficiency of the evidence [CCP 657(6)] or prejudicial error of law [CCP 657(7)] regarding the SOD. Therefore, the Motion for New Trial is be denied.** **<u>RULING:</u>** **The Motion for New Trial is DENIED. Plaintiff Dan W. Baer has not met his burden of demonstrating there were prejudicial irregularities in the proceedings or abuse of**

		discretion, or that the Court's decision is "against law", or arose from a prejudicial "error of law". **Clerk to give Notice of this Ruling.**
